



Dated: 11/28/2018

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:)		
)	CHAPTER:	11
REEL AMUSEMENTS, LLC)	CASE NO.:	18-05883
)	JUDGE:	HARRISON
Debtor)		
)		

FINAL AGREED ORDER AUTHORIZING USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION

This matter came before the Court on November 27, 2018 for a final hearing on the Debtor’s *Expedited Motion for Entry of Order (I) Authorizing the Debtor to Use Cash Collateral (II) Granting Adequate Protection, and (III) Scheduling a Final Hearing* (the “Cash Collateral Motion”) [Docket No. 4] filed by the above-captioned debtor and debtor-in-possession (collectively, the “Debtor”) as a first day motion on August 31, 2018. Following the initial hearing on first day motions held on September 4, 2018, the Court entered certain *Expedited Interim Orders* [Docket Nos. 30, 65, and 88] (the “Interim Orders”). The last of the Interim Orders set the final hearing for the Cash Collateral Motion on November 27, 2018. No party has filed a written objection to the Cash Collateral Motion; however, respective counsel for Pinnacle Bank and Credibility Capital, Inc. – through the Credibility Capital Successors (defined *infra*) – have asserted rights and reservations concerning the use of cash collateral. Based on the signatures of counsel below, it appears that the Debtor, Pinnacle Bank and Credibility Capital Successors have reached an agreement on the use of cash collateral. Such use is necessary for the ongoing

operations of the Debtor, and to prevent irreparable harm to the bankruptcy estate. Absent objection, the relief set forth herein further appears to be in the best interest of all parties in interest.

LOCAL RULE 2081-1 NOTICE

Pursuant to Local Rule 2081-1(f), the Debtor provided notice of the following relief in the Cash Collateral Motion:

A. *Granting surcharge or “carve-out” rights to professionals or any restrictions (other than court approval) on the surcharge or carve-out rights granted to professionals.* The budget attached hereto as Exhibit A (the “Budget”)¹ contains cash flow projections and a proposed carve-out for the Debtor’s professionals.

B. *Findings, conclusions, or holdings as to the amount of a debt or the validity, priority, or extent of a lien or security interest that purport to affect the rights of any entity other than the debtor-in-possession and the creditor.* For the limited purpose of obtaining the relief requested in the Cash Collateral Motion, the Debtor does not dispute the validity or extent of liens in favor of Pinnacle Bank or Credibility Capital, Inc. (“Credibility Capital”) against the Debtor’s cash. The right to challenge the validity or extent of any such liens throughout the pendency of the bankruptcy case as needed after discovery of any necessary facts related to lien perfection and priority is reserved as to the Debtor, any committee formed in this case, all parties in interest, including Pinnacle Bank, Credibility Capital, the Credibility Capital Successors, any appointed trustees, and the U.S. Trustee.

C. *Payment of prepetition wages, salary, or other compensation to any insiders.* There are no pre-petition wages owed; however, there are pre-petition benefits owed as well as payment

¹ The Budget attached as Exhibit A to the Cash Collateral Motion was updated and applicable continuing versions were attached to the Interim Orders. The Budget attached as Exhibit A to this Agreed Order provides for five (5) periods, each consisting of either four (4) or five (5) weeks, through on April 26, 2019.

due to the Debtor's payroll service. There are seven (7) insiders employed by the Debtor and they make up a substantial portion of the Debtor's employees. The loss of these employees would have a severe negative impact on the business operations of the Debtor. The prepetition benefits include: (i) 401(k) benefits; (ii) the trust fund portion of the employees' taxes, which are paid to the federal government; and (iii) various medical benefits that may become due for pre-petition services rendered to employees. These pre-petition amounts are essential to maintaining the current work force (both to insider and non-insider employees) and total approximately \$6,000.00.

CONCLUSIONS

The Court has considered the Cash Collateral Motion, and after due deliberation and good and sufficient cause appearing for the entry of the within order, the Court hereby finds as follows:

1. The Debtor filed its petition under Chapter 11 of the Bankruptcy Code on August 31, 2018 and is presently operating as a debtor-in-possession in accordance with Sections 1107 and 1108 of the Bankruptcy Code.

2. Notice of the Cash Collateral Motion has been served in accordance with Federal Rule of Bankruptcy Procedure 4001(d) and the applicable Local Bankruptcy Rules, which notice is appropriate in the particular circumstances and is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules with respect to the relief requested therein.

3. The Debtor has identified multiple parties that appear to have a lien on Debtor's cash collateral (as that term is defined in 11 U.S.C. §363(a)). These parties, listed below, are referred to as the "Secured Creditors."

4. **Pinnacle Bank**: On May 21, 2003, Pinnacle Bank filed a UCC financing statement, Document No. 103020948, with the Tennessee Secretary of State, asserting a lien on all of the Debtor's assets and property, including its cash collateral (collectively, the "Collateral"). Three

(3) continuation statements have since been filed: Document Nos. 308007020, 213102000, and 428266299, were filed on January 8, 2008; January 7, 2013; and November 2, 2017, respectively.²

5. **Credibility Capital / Seacoast Bank / NBKC Bank**: Credibility Capital, Inc. (“Credibility Capital”) was referenced as a party that may assert a lien on the Debtor’s cash collateral in the Cash Collateral Motion, and also in the Interim Orders. On October 18, 2018, Seacoast Bank and NBKC Bank, as assignees of Credibility Capital (together, the “Credibility Capital Successors”), filed proofs of claim asserting claims secured by the Collateral, which includes the Debtor’s cash collateral.

6. Pinnacle Bank and the Credibility Capital Successors assert valid, perfected security interests in and liens on the Collateral. Pinnacle Bank has not subordinated its position to Credibility Capital or the Credibility Capital Successors, with respect to the Collateral or any of Debtor’s assets. Therefore, based on the timing of the UCC filings and applicable laws of perfection, Pinnacle Bank’s security interest in the Debtor’s cash collateral appears to be senior to the security interests asserted by the Credibility Capital Successors. Notwithstanding the foregoing, nothing in this Order shall be construed to limit or expand any interested party’s rights, including the Debtor’s, to challenge the validity, perfection, priority and/or enforceability of the prepetition liens and any prepetition obligations. Similarly, nothing in this Order is intended, nor shall it be deemed, to expand or limit any party in interest’s rights in the Collateral, as such rights existed on the Petition Date.

² Pinnacle Bank’s claim, in the approximate, estimated total amount of \$1,041,000.00 consists of five (5) secured notes consolidated into one (1) secured note. In addition to the UCC financing statement referenced in the body of this Interim Order, Pinnacle Bank has recorded the following with the Tennessee Secretary of State: [1] UCC financing statement, Document No. 2080014640 on March 25, 2008 (continuation statement, Document No. 212066213 on October 17, 2012; and continuation statement, Document No. 427746799 on November 2, 2017); [2] UCC financing statement, Document No. 310032480 on June 3, 2010 (continuation statement, Document No. 422752878 on February 2, 2015); [3] UCC financing statement, Document No. 111013336 on February 3, 2011 (continuation statement, Document No. 424451269 on January 26, 2016); and [4] UCC financing statement, Document No. 212038812 on July 19, 2012 (continuation statement, Document No. 426636428 on April 7, 2017).

7. Any issue that arises concerning the validity, perfection, priority and/or enforceability of the prepetition liens and any prepetition obligations, as referenced in the preceding paragraph, shall be deferred until a hearing on confirmation or a proposed plan of reorganization.

Therefore, based on the representations made in Court on November 27, 2018, and in consideration of the agreed terms herein, as evidenced by the signatures of respective counsel below, and having determined that the relief requested in the Cash Collateral Motion is in the best interest of the Debtor and its estate and creditors, it is hereby **ORDERED** as follows:

1. The Cash Collateral Motion is GRANTED.
2. Absent any order to the contrary, Debtor is hereby immediately authorized to spend up to a maximum of 115% of the total amount set forth on the budget attached hereto as Exhibit A (the "Budget") to pay the expenses reflected on the Budget. The Budget covers the time period of December 7, 2018 through April 26, 2019. The Debtor may seek advance permission, in writing, from Pinnacle Bank and the Credibility Capital Successors to spend in excess of this allowed amount, but nothing herein shall require Pinnacle Bank or the Credibility Capital Successors to permit such additional use of its cash collateral. In the event such permission is obtained, the Debtor shall file a Notice of such change with the Court within forty-eight (48) hours.
3. The Debtor is further authorized to use cash collateral to pay amounts and/or any fees payable to the Clerk of the Court and to the United States Trustee.
4. Nothing herein shall be deemed to be a waiver by Pinnacle Bank or the Credibility Capital Successors, on prior notice to the Debtor, of their respective rights to request additional or further protection of their respective interests, to move for relief from the automatic stay, to seek the appointment of a trustee or examiner or the conversion or dismissal of this Chapter 11 case, or

to request any other relief in this case; nor shall anything herein constitute an admission by Pinnacle Bank or the Credibility Capital Successors of the quantity, quality or value of any pre-petition collateral or constitute a finding of adequate protection with respect to the interests of the parties in any prepetition collateral.

5. Nothing included herein shall prejudice, impair, or otherwise affect undersigned creditors' rights to seek any other or supplemental relief or additional adequate protection, or the Debtor's right to oppose the same.

6. **Adequate Protection**: Subject to the provisions of other paragraphs herein, the Secured Creditors are granted the following (and in order of lien priority as determined under applicable non-bankruptcy law):

a. *Replacement Liens*. The Secured Creditors shall receive a replacement security interest under Section 361(2) of the Bankruptcy Code in the Debtor's post-petition property and proceeds thereof (excluding the Debtor's rights under Sections 544, 545, 546, 547, 548, 549, and 550 of the Bankruptcy Code), to the same extent and priority as its respective purported security interest in the Debtor's prepetition property and the proceeds thereof.

b. *Automatic Perfection*. For the limited purpose of this Order, the replacement liens and security interests granted herein shall be deemed perfected upon entry of this Order without the necessity of the applicable creditor taking possession of any collateral or filing financing statements or other documents.

c. **507(b) Claims**. To the extent replacement liens fail to adequately protect the Secured Creditors, such Secured Creditor shall be entitled to a superpriority administrative expense claim, pursuant to 11 U.S.C. § 507(b), in an amount equal to the

diminution in value of such Secured Creditor's security interest in and liens on the Collateral.

7. **Insurance and Reporting:** The Debtor shall keep its assets insured by reasonable and sufficient insurance coverage as required by the terms of the loan documents executed by the Debtor in favor of Pinnacle Bank and shall continue to provide to Pinnacle Bank proof of such insurance coverage within three (3) days of a future request.

8. **Financial Reports:** The Debtor shall provide to the undersigned creditors weekly financial reports by 3:00 p.m. on the Wednesday following the prior week, with the first report due on Wednesday, December 5, 2018 for the period ending Friday, November 30, 2018. Such weekly reports shall contain and reflect the following minimum items: (a) the cash revenues collected and the cash expenditures disbursed by Debtor during the preceding week; (b) a rolling comparison of the actual revenues and expenditures to the budgeted amounts per period; and (c) such other information as may be reasonably requested by undersigned creditors.

9. In no event shall the undersigned creditors have any obligation to consent to the use of Cash Collateral to any Chapter 7 or Chapter 11 trustee appointed or elected for the estate of Debtor.

10. If this Chapter 11 case is dismissed, converted or substantively consolidated with another case, then neither the entry of this Order nor the dismissal, conversion or substantive consolidation of this Chapter 11 Case shall affect the rights or remedies of the undersigned creditors under this Order, and all of the respective rights and remedies thereunder of undersigned creditors shall remain in full force and effect as if this Chapter 11 case had not been dismissed, converted, or substantively consolidated. The provisions of this Order, and any actions taken pursuant thereto, shall survive the entry of and shall govern with respect to any conflict with any

order that may be entered confirming any plan of reorganization or converting this Chapter 11 case from Chapter 11 to Chapter 7.

11. **Default**: Any of the following events or occurrences shall constitute an event of default (“Default”) hereunder:

- a. Any failure to comply with any of the terms of this Order;
- b. The Debtor seeks, or if there is entered, any order dismissing this Chapter 11 case; or
- c. The Debtor submits any materially inaccurate information to the undersigned creditors or to the Court.

12. Upon the occurrence of a Default, Pinnacle Bank or the Credibility Capital Successors shall be entitled to file a notice of default (“Notice of Default”) with the Court. Unless the Notice of Default is cured within (5) days, the Debtor’s authority to use cash collateral is revoked and Pinnacle Bank or the Credibility Capital Successors, as applicable, may immediately seek an expedited termination of the automatic stay provided for in 11 U.S.C. § 362 and may additionally seek an expedited declaration from the Court that the Collateral be deemed abandoned from the Debtor’s estate.

13. **Final Order**. This is a final order and supersedes any interim orders in connection with the Cash Collateral Motion.

14. **No Limitation**. Nothing contained herein shall be deemed or construed to (i) limit the Debtor or the undersigned creditors to the relief granted herein, (ii) bar the Debtor or the undersigned creditors from seeking other and further relief for cause shown on appropriate notice to parties-in-interest entitled to notice of same, or (iii) require the undersigned creditors to make any loans or advances to the Debtor.

15. *Surcharge/Carveout.* The Debtors acknowledge and agree that, except as contained in the Budget, any party's consent to the entry of this Order does not constitute an agreement, consent or acknowledgment (i) that any cost or expenses of administration may be imposed against a party in interest or its collateral under § 506(c) or § 552 of the Bankruptcy Code or otherwise by the Debtor, or (ii) to the carve-out from any party in interest's collateral any amounts to be utilized for the payment of any professional fees incurred by the Debtor or any Committee appointed under Section 1102 of the Bankruptcy Code.

16. Upon entry of this Order, notice of this Order shall be mailed to (i) the Debtor's twenty largest unsecured creditors, and (ii) the Office of the United States Trustee, and (iii) the Debtor's secured creditors. Any party objecting to the relief granted herein shall have fourteen (14) days from entry of this Order to file a motion to reconsider pursuant to Fed. R. Bankr. P. 9023.

17. Subject to the right to request reconsideration of this Order, as indicated in the preceding paragraph, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

IT IS SO ORDERED.

THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY AS
INDICATED AT THE TOP OF THE FIRST PAGE

APPROVED FOR ENTRY:

/s/ Gray Waldron

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EXHIBIT A

Reel Amusements, LLC.: 5 Period Cash Budget

in thousands (000's)

	Period 1	Period 2	Period 3	Period 4	Period 5	5 Period Total
Start of Period	12/07/18	01/04/19	02/01/19	03/01/19	04/05/19	12/07/18
Ending of Period	12/28/18	01/25/19	02/22/19	03/29/19	04/26/19	04/26/19
# of Weeks	4	4	4	5	4	21
Beginning Cash	\$ 525.28	\$ 384.93	\$ 411.43	\$ 537.61	\$ 382.78	\$ 525.28
Operating						
Revenue Collections						
Revenue Collection	248.20	248.24	248.24	310.30	248.24	1,303.24
Future Collections	32.00	-	162.00	154.50	64.75	413.25
Total Revenue Collection	280.20	248.24	410.24	464.80	312.99	1,716.49
Disbursements						
Payroll	(110.50)	(88.40)	(88.40)	(110.50)	(88.40)	(486.20)
Cost of Goods Sold	(187.92)	(27.34)	(101.34)	(397.93)	(22.34)	(736.87)
Cost of Goods Sold - Delivery & Travel	(20.00)	(20.00)	(20.00)	(25.00)	(20.00)	(105.00)
Rent	(12.22)	(12.22)	(12.22)	(12.22)	(12.22)	(61.08)
Credit Card Expenses	-	-	-	-	-	-
Kevin Sharp - Draw	(8.00)	(6.40)	(6.40)	(8.00)	(6.40)	(35.20)
Insurance - Health	(15.02)	(15.02)	(15.02)	(15.02)	(15.02)	(75.08)
Equipment loan	-	-	-	-	-	-
401(k) contributions	(3.60)	(3.60)	(3.60)	(4.50)	(3.60)	(18.90)
Taxes-Sales & Use	-	-	-	-	-	-
Insurance - Business	(1.53)	(1.53)	-	(3.06)	(1.53)	(7.65)
Freight	(2.40)	(2.40)	(2.40)	(3.00)	(2.40)	(12.60)
Professional - Legal	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.50)
Communication	(1.99)	(1.99)	-	(3.97)	(1.99)	(9.93)
Office	(0.13)	(0.63)	(0.19)	(0.44)	(0.63)	(2.02)
Utilities	(1.92)	(1.92)	(1.76)	(2.08)	(1.92)	(9.59)
Repairs and Maintenance	(1.34)	(1.34)	(1.34)	(1.34)	(1.34)	(6.70)
T&E	-	-	-	-	-	-
Tractor / Trailer Expense	(4.55)	(4.55)	(4.55)	(4.55)	(4.55)	(22.76)
Advertising	-	-	-	-	-	-
Bank Charges/Credit Card Fees	(0.48)	(0.48)	(0.48)	(0.48)	(0.48)	(2.38)
Employee Related Admin	-	-	-	-	-	-
Employee Benefits	(1.44)	(1.44)	(1.44)	(1.44)	(1.44)	(7.18)
Insurance - Life	(0.15)	(1.52)	(0.15)	(0.15)	(1.52)	(3.50)
Taxes-Franchise & Excise	(2.59)	-	-	-	-	(2.59)
Software Commissions	(1.60)	(1.60)	(1.60)	(2.00)	(1.60)	(8.40)
Automobile (Fuel/Tolls)	-	-	-	-	-	-
Other expenses	(3.10)	(3.10)	(3.10)	(3.88)	(3.10)	(16.29)
Total Disbursements G&A	(380.55)	(195.57)	(264.07)	(599.63)	(190.57)	(1,630.39)
Total Operating	(100.35)	52.68	146.17	(134.83)	122.43	86.10
Bankruptcy Costs						
US Trustees Fees	-	(6.18)	-	-	(4.88)	(11.05)
Legal Fees	(20.00)	-	-	-	-	(20.00)
Tortola Advisors, LLC	(20.00)	(20.00)	(20.00)	(20.00)	(20.00)	(100.00)
Total Bankruptcy Costs	(40.00)	(26.18)	(20.00)	(20.00)	(24.88)	(131.05)
Net Cash Activity	(140.35)	26.50	126.17	(154.83)	97.55	(44.95)
Ending Cash	384.93	411.43	537.61	382.78	480.33	480.33

Other expenses include Fedex shipping, Google business email service, E-Fax and USPS postage charges.

This Order has been electronically signed. The Judge's signature and Court's seal appear at the top of the first page.
United States Bankruptcy Court.