

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

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|                      |   |                               |
|----------------------|---|-------------------------------|
| <b>In re:</b>        | ) |                               |
|                      | ) | <b>Case No. 3:09-bk-04692</b> |
| <b>VANBECO, LLC,</b> | ) | <b>Chapter 11</b>             |
|                      | ) | <b>Judge Harrison</b>         |
| <b>Debtor.</b>       | ) |                               |

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**RESPONSE AND OBJECTION TO DEBTOR’S EXPEDITED MOTION  
FOR (SIC) INCUR CREDIT ON SENIOR BASIS FILED  
ON BEHALF OF CIVIC BANK AND TRUST**

Civic Bank and Trust (“Civic Bank”) hereby responds and objects to Debtor, Vanbeco, LLC’s (“Debtor”) expedited motion for (sic) incur credit on a senior basis. In opposition to this motion, Civic Bank would show to the Court that:

1. The Debtor filed a petition for relief under Chapter 11 of the United States Bankruptcy Code on April 25, 2009.
2. Civic Bank is the holder of certain notes executed by the Debtor and secured by that certain unapproved land and real property (the “Collateral”) described in the Debtor’s motion. The note proceeds were used by the Debtor for the development and infrastructure of certain subdivision lots on the unapproved land.
3. The Debtor’s motion seeks authority from this Court, pursuant to 11 U.S.C. § 364(d)(1), to allow it to draw on the prepetition line of credit extended by Civic Bank in order to perform erosion repair on the unapproved land and to mow the unapproved land. Civic Bank is unwilling to provide the Debtor with post-petition financing, and as the Debtor is aware, Civic Bank cannot be compelled to do so.

4. Even if the Debtor had identified a willing lender, the Debtor has failed to meet its burden under § 364(d)(1). In order to obtain credit under § 364(d)(1), the Debtor must establish (a) that it is unable to obtain credit otherwise; and (b) that Civic Bank's Collateral is adequately protected. 11 U.S.C. § 364(d)(1).

5. The Debtor has failed to show that Civic Bank's interest in the Collateral is adequately protected. On the Debtor's bankruptcy schedules, the Collateral is valued at \$2,088,400.00. The Debtor is currently indebted to Civic Bank under the notes in the amount of \$3,141,203.63.<sup>1</sup>

6. The Debtor has failed to establish that it is unable to obtain credit otherwise as required by § 364(d)(1)(A).

7. Civic Bank already has a first priority lien in the Collateral.

8. The motion also fails to include the documents and information required by Rule 4001(c)(1)(A) and Rule 4001(c)(1)(B) of the Federal Rules of Bankruptcy Procedure.

For the foregoing reasons, Civic Bank requests that this Court deny the Debtor's motion and grant Civic Bank such further relief as is necessary and proper.

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<sup>1</sup> Civic Bank filed for stay relief as to the Collateral on May 15, 2009. The Preliminary hearing on the motion for stay relief is scheduled for June 9, 2009 at 8:30 a.m. Hearing on the Debtor's motion to incur credit is scheduled the same day at 9:00 a.m.

Respectfully submitted,

/s/ Sean C. Kirk

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically on this 3rd day of June, 2009. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing system.

/s/ Sean C. Kirk

Sean C. Kirk