

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

GPS Industries, Inc.,

Debtor.

Case No.: 8:09-bk-16766-CPM
Chapter 11

DEBTOR’S EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING DEBTOR-IN POSSESSION TO OBTAIN POST-PETITION FINANCING AND ACCORD SUPER-PRIORITY STATUS PURSUANT TO SECTIONS 105, 361, 362, 363 AND 364 OF THE BANKRUPTCY CODE; (B) AUTHORIZING USE OF CASH COLLATERAL AND AFFORDING ADEQUATE PROTECTION PURSUANT TO SECTIONS 105, 361, 363 AND 364 OF THE BANKRUPTCY CODE; (C) SCHEDULING FINAL HEARING TO CONSIDER FINAL POST-PETITION FINANCING AND USE OF CASH COLLATERAL; AND (D) PRESCRIBING FORM AND MANNER OF NOTICE THEREFORE

GPS Industries, Inc. (“GPSI”, “Company”, “Debtor” or “Borrower”), the debtor and debtor in possession moves the Court, pursuant to sections 105, 361, 362, 363, and 364 of title 11 of the United States Code, 11 U.S.C. §101 et. seq. as amended (the “Bankruptcy Code”), and Rules 4001 (c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for the entry of interim and final orders:

(a)(i) authorizing, pursuant to section 364 of the Bankruptcy Code and Bankruptcy Rules 4001(b)(1) and 4001(c)(1) for the Debtors to obtain post-petition financing (the “DIP Financing”) pursuant to the terms and provisions of that certain Post-Petition Loan and Security Agreement (as it may be amended, supplemented or otherwise modified from time to time) (the “DIP Financing Agreement”), to be entered into by and among the Debtor and Tulip Group Investments, Ltd. (the “Lender”). The DIP Finance Agreement will be filed under separate notice, but a summary of the material terms is contained herein;

(a)(ii) granting for the benefit of the Lender, pursuant to section 364(d) of the Bankruptcy Code, a security interest in and lien upon all assets of the Debtor, senior in priority to any and all existing liens (except for those held by CitiCapital Commercial Corp., Optimal IP Holdings, LP and Microsoft Capital Corp. (hereinafter the “Excluded Liens”)) and granting the Lender priority in payment over any and all administrative expenses except for Carve-Outs (as defined herein and in the attached proposed Interim Order) pursuant to section 364(c)(1) of the Bankruptcy Code;

(b) authorizing, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 4001(b), the Debtor’s use of cash collateral pursuant to the DIP Financing Agreement and attached proposed Interim Order;

(c) pending the final hearing on this Motion (the “Final Hearing”) and entry of a final order on this Motion (the “Final Order”), authorizing emergency, post-petition loans under the DIP Financing Agreement and emergency use of cash collateral from and including the date of an interim order on the Motion (the “Interim Order”), a copy of which is attached hereto as Exhibit “A”; and

(d) in accordance with Bankruptcy Rules 4001(b)(2) and 4001(c)(2), scheduling the Final Hearing and approving notice with respect thereto.

In further support of this Motion, the Debtor respectfully states:

BACKGROUND

A. The Chapter 11 Filing

1. On July 31, 2009, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the “Petition Date”).

2. The Debtor continues in possession of its property and continues to operate its business as debtor and debtor in possession pursuant to section 1107 and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 157 and 1334. The subject matter for this Motion is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this district pursuant to 28 U.S.C. §1408. The statutory predicates for the relief sought herein are §105, 361, 362, 363, and 364 of the Bankruptcy Code.

B. The Debtor

4. GPSI (OTCB: GPSN) develops and markets GPS and Wi-Fi multimedia solutions to enable managers of golf facilities, resorts, and residential communities to improve operational efficiencies and generate new revenue streams. The Company's patented Inforemer® Management Solutions system provides integrated software applications and high-resolution 10.4-inch cart mounted and hand held "HD/MAX" display panels. The HD/MAX vividly illustrates each hole, providing precise distance measurement information, strategic playing tips and targeted advertising messages.

5. GPSI has the following subsidiaries which have not filed petitions for relief under the Bankruptcy Code: Direct Golf Services Inc. and Golf Academies Ltd. (collectively GPSI Europe).

6. GPSI has incurred losses since its inception. Although it has recently implemented a restructuring plan, GPSI's ability to implement its plan and the continued commercialization of its technology is dependent on its ability to successfully finance its working capital requirements through a combination of debt and equity financing, sales of its GPS systems and payments from distributors and potential strategic partners.

7. GPSI was originally incorporated as Diversified Marketing Services Ltd. in 1996, subsequently changed its name to Inforetech Wireless Technology Inc. in 1999 and then to GPS Industries, Inc in 2004. GPSI common stock was first publicly traded on the OTC Bulletin Board in January 2000 as Inforetech Wireless Technology and is currently trading on the OTC Bulletin Board under the symbol "GPSN."

8. In January 2001, Inforetech Wireless Technology Inc. acquired 100% of the outstanding capital stock of ProShot Golf, Inc. through a wholly owned subsidiary, Inforetech Golf Technology 2000 Inc. (IGT). IGT filed for relief under Chapter 7 of the U.S. Bankruptcy Court on December 19, 2002 and ProShot filed for relief under Chapter 7 of the U.S Bankruptcy Court on May 31, 2002.

9. In October 2007, GPSI acquired 100% of the outstanding capital stock of Direct Golf Services Inc. and Golf Academies Ltd., now operating jointly as GPSI Europe; GPSI also owns 17.5% of GPSI Asia, its Asian distributor.

10. On January 18, 2008, GPSI's wholly owned subsidiary, GPS IT, LLC, acquired the assets and assumed certain liabilities of Uplink. In mid 2009, two subsidiaries, (Optimal Golf Solutions, Inc. and GPSIT, LLC) were merged into GPSI, and ceased as independent entities.

C. The Debtor's Business

11. GPSI is a global technology solutions provider with customizable, patent-protected applications in GPS and Wi-Fi software and hardware for use with golf course operations, residential community developments and other recreational and industrial applications. With the development of its latest generation product, the Inforemer HDX largely complete, GPSI is transitioning away from a research and development focus; however, GPSI

will continue to dedicate resources to new opportunities where market potential and economics justify investment. The primary business is the development, manufacture and sale of the Inforemer HDX mobile display units (MDU) in both cart mounted and hand held product lines along with the related infrastructure.

12. In late 2007, GPSI reorganized its various product offerings and divisions to more accurately reflect how GPSI manages its internal operations.

13. GPSI has offices in the United States, Canada and United Kingdom with exclusive distributor arrangements covering Asia, South Africa, Australia and New Zealand. The North American market is GPSI's primary market.

14. In mid 2008, the Company commenced consolidating its operations previously divided between GPSI's Vancouver, Canada and Austin, Texas locations, into new Sarasota, Florida headquarters. Software development, research development, and repair/maintenance will be located in the Austin office. Finance, sales and customer service will be located in Sarasota.

D. The Debtor's Management Team

15. The following table sets forth the names and position held by GPSI's executive officers and directors. Directors¹ are elected for a period of one year and thereafter serve until the next annual meeting at which their successors are duly elected by the stockholders.

Name	Position
Tony Sole	Chairman of the Board of Directors
Bart Collins	Director
Declan Hogan	Director
David Chessler	Chief Executive Officer
Benjamin E Porter	Chief Operating Officer

Russell R Lee III

Chief Financial Officer

Alex Doaga

Vice President, Chief Technical Officer

16. Tony Sole, Chairman of Board of Directors. Mr. Sole was appointed to the Board of Directors and elected as Chairman in June 2008 pursuant to the Securities Purchase Agreement dated as of November 13, 2006 (the "Purchase Agreement"), between the Company, GWSE and Leisurecorp. Mr. Sole has not had any relationship with, or engaged in any transaction with the Company during the past two years. From June 2000 to February 2008, Mr. Sole was the Chief Financial Officer of Dubai Aluminum Company Limited, and since February 2008, Mr. Sole has been Chief Financial Officer of Leisurecorp.

17. Bart Collins, Director. Bart Collins has served as a Director of GPSI since January 26, 2005. Mr. Collins is President of GWSE, a multi-national corporation founded by Greg Norman in 1993. GWSE is involved in the areas of golf course design, residential development, turf grass development, golf events, golf equipment, merchandising and licensing. Having worked in some capacity with Greg Norman since 1987, Mr. Collins was retained on a full time basis by GWSE in 1995 as an International Vice President based in Sydney, Australia, overseeing GWSE's interests in the Asia-Pacific region. In 1997 Mr. Collins moved into his current position in Jupiter, Florida. Prior to joining GWSE, he spent 12 years with the sports conglomerate International Management Group (IMG) that he joined in 1983 and became a Vice President. At the age of 31 he established and managed IMG's operation in Southeast Asia from their offices in Singapore. Mr. Collins graduated from Wittenberg University in 1983.

18. Declan Hogan, Director. Mr. Hogan was appointed as a Director of GPSI in June 2008 pursuant to the Securities Purchase Agreement dated as of November 13, 2006 (Purchase

Agreement), between the Company, GWSE and Leisurecorp. Mr. Hogan has been Senior IT Manager of Leisurecorp since February 2007. Prior thereto, from 1999 to December 2007, Mr. Hogan was a senior solution designer and project manager for Optus Telecommunications of Sydney Australia. Mr. Hogan has not had any relationship with or engaged in any transactions with the Company during the past two years. Mr. Hogan holds a B.A. in Anthropology and Post Grad diploma in Communications from the National University of Ireland, Maynooth, Co. Kildare, Ireland.

19. David Chessler, Chief Executive Officer. Mr. Chessler began his career as an entrepreneur, taking several companies from start-up to sale, between 1991 and 2002. Mr. Chessler had been the managing member of DC Leasing, LLC since January 2003. DC Leasing and their subsidiaries hold and manage many different assets from RFID asset tracking tags developed to track valuable assets as they were moved throughout global locations, to asset based debt lending, GPS golf course leasing, reverse mergers, land banking and a diverse variety of strategic lending. From March 1993 to October 2002 Mr. Chessler was the CEO and Founder of ParView, Inc., which manufactured GPS golf system mounted in the roof of the golf cart. Mr. Chessler oversaw day-to-day operations, capital raising and strategic relationships. In January 2003, Mr. Chessler formed Global Asset Tracking, LLC, a technology company funded by Yamaha to develop an asset tracking tag to manage inventory control for their product lines. Mr. Chessler continued to expand his investment portfolio and formed multiple investment companies that held a variety of assets from real estate ventures to individual company loans.

E. Events Leading to Chapter 11 Filing

20. In mid-2008, GPSI began developing a plan to consolidate the majority of its remaining operation in Sarasota, Florida. This plan was initiated in the fourth quarter of 2008

and is has continued into the first half of 2009. At 2008 year end, GPSI estimated that the one time expenses remaining to be incurred in 2009 would be approximately \$1,476,000. These costs have been included in restructuring costs in the consolidated statement of operations for the year ended December 31, 2008.

21. The Company's loss before other income (expense) increased by \$3,185,000 from \$12,306,000 in 2007 to \$15,491,000 in 2008. The increase in loss from operations for 2008 was due to increased operating expenses of the Uplink and GPSI Europe operations. Higher operating expenses during this period were due to \$1,553,000 increase in depreciation and amortization of intellectual property, and a \$2,742,000 increase in selling, general and administrative expenses offset by a \$1,883,000 million decrease in operations, engineering, research and development expenses.

22. Interest and financing expenses increased from \$636,000 in 2007 to \$1,581,000 in 2008. These costs increased primarily due to the \$3,500,000 increase in its previous line of credit, and the \$5,500,000 borrowing under a Convertible Promissory Note.

23. During the year ended December 31, 2008, GPSI incurred a foreign currency exchange gain of \$401,000 compared to a loss of \$618,000 in 2007.

24. At December 31, 2008 the Company recorded an impairment charge of approximately \$14,324,000 primarily associated with the intangible assets that were purchased from Uplink in January 2008. GPSI initially recorded \$7,455,000 of intangible assets in connection with the Uplink acquisition, primarily related to patents and technology that it acquired from Uplink. Subsequently, management elected to focus on sales of its Inforemer™ GPS Management System and to decrease its focus on other products and technologies,

including the Uplink products. As a result, the Company elected to take the forgoing impairment charge, since the future utilization of the Uplink assets is in doubt.

25. Net loss was \$30,881,000 for the year ended December 31, 2008 compared to \$11,593,000 for the year ended December 31, 2007. The Company's 2007 net loss applicable to common shareholders included a deemed preferred stock dividend of \$12,500,000, whereas the Company's 2008 net loss included an intangible impairment charge of \$14,324,000. No similar impairment was recorded during the 2007 period.

26. GPSI has incurred losses since its inception and expects to continue to incur losses in the near future. Its auditors have issued a going concern opinion as a result of an inability to generate sufficient cash from operations to meet its current obligations.

27. GPSI is undercapitalized and requires a substantial amount of new funding to support its business operations and to allow it to continue as a going concern.

28. As of December 31, 2008 the Company had a working capital deficiency of \$18,403,000 compared to \$5,172,000 as of December 31, 2007.

29. Just prior to filing its petition for relief, GPSI obtained an expert opinion as to the maximum value of its assets (the "Opinion"). The Opinion was prepared by Alfred King, with the Marshall Stevens organization. Mr. King concluded that the assets of GPSI are not worth more than \$3,100,000. GPSI has secured debt in excess of \$11,000,000 and unsecured debt in excess of \$8,000,000.00.

RELIEF REQUESTED

30. By this Motion, the Debtor seeks the authority to obtain the DIP Financing and the use of cash collateral under the terms set forth in the DIP Financing Agreement and the Interim Order and all documents to be executed herewith. The principal terms and conditions of the DIP Financing are summarized below:

- a. **Borrowers.** The Debtor.
- b. **Amount of DIP Financing.** In accordance with the terms of the Interim Order, pending the Final Hearing, the Debtor may obtain advances under the DIP Financing Agreement only to the extent necessary to avoid immediate and irreparable harm to the Debtor, which funds shall be used to pay payroll and only any other critical business expense that must be paid before the Final Hearing. The Debtor anticipates that the amount that it will need to borrow prior to August 7, 2009 to cover payroll and critical business expenses is \$200,000.00.
- c. **Interest Rate, Fees and Expenses of Lender.** Interest shall accrue on the outstanding principal balance of the DIP Financing at the rate of 12% compounded monthly. The Debtor shall pay a commitment fee equal to 5% of the aggregate principal amount funded during the term of the Loan, which amount shall be tacked on to the end of the loan. The professional fees and costs incurred by the Lender in connection with the negotiation, documentation, Bankruptcy Court approval, administration and (if necessary) the collection of the amounts due under the DIP Loan, shall be added to the amount of the loan to be paid when the loan matures.

- d. **Term of the Loan and Amount Available.** The DIP Financing shall be repaid prior to December 31, 2009, otherwise it will be deemed to be satisfied by the issuance of 75.2% of the stock in the reorganized debtor. The principal amount that is available to the Debtor if needed shall be \$1,300,000.00 which will not include Lender's attorney's fees, interest or the commitment fee.
- e. **Priority and Liens.** The Debtor's post-petition obligations under the DIP Financing Agreement shall at all times:
- i. pursuant to section 364(c)(1) of the Bankruptcy Code, be entitled to superpriority claim status in this case, subject only to the Carve-Out defined below; and
 - ii. pursuant to section 364(c)(2) of the Bankruptcy Code, be secured by a perfected, first priority lien on all of the assets of the Estate but shall not prime the Excluded Liens (defined above), and such lien shall not attach to any avoidance actions.
- f. **Carveout.** The Lender shall "carve-out" of its respective liens and administrative priority claims all fees due to the Office of the United States Trustee and the Clerk of the Court and the fees and expenses of the professionals retained, pursuant to order of this Court, by the Debtors and any committee appointed in this case up to a maximum aggregate of \$100,000.00.
- g. **Section 506(c) Waiver.** The Lender will seek waiver under section 506(c) of the Bankruptcy Code at the Final Hearing as follows: except to the extent of the Carve-Out and fees payable to the Office of the United States Trustee and the Clerk of the Court, no expenses of administration of these cases or any

future proceeding or cases which may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code or otherwise against the collateral securing the DIP Financing without the prior written consent of the Lender and no such consent shall be implied from any other action, inaction, or acquiescence by the Lender. No waiver under section 506(c) of the Bankruptcy Code is sought under the Interim Order.

**BASIS FOR APPROVAL OF THE DIP FINANCING AND USE OF CASH
COLLATERAL**

31. The Debtor does not have sufficient available sources of working capital and financing to carry on the operation of their business and preserve the value of the Estate pending confirmation. Confirmation of the Debtor's plan will yield a distribution to unsecured creditors where they would receive nothing outside of bankruptcy or in a liquidation. It is anticipated that the Secured Creditors whose claims will be primed by the DIP Financing lien will consent to the relief requested in this Motion and to ultimately convert their secured claims to equity in the reorganized debtor under the terms of the plan. In the absence of the DIP Financing, the operation of the Debtor's business would stop immediately and serious and irreparable harm to the Debtor and the Estate would occur.

A. Approval Under Section 364 of the Bankruptcy Code

32. The Debtor proposes to obtain financing under the DIP Financing by providing security interests and liens as set forth above pursuant to section 364(c) of the Bankruptcy Code. The statutory requirement for obtaining post-petition credit under section 364(c) is a finding, made after notice and a hearing, that the Debtor is "unable to obtain unsecured credit allowable under section 503(b)(1) of the [Bankruptcy Code]". Section 346(c) financing is appropriate when the trustee or debtor in possession is unable to obtain secured credit allowable as an

ordinary administrative expense claim. In re Crouse Group, Inc., 71 B.R. 544, 549, *modified on other grounds*, 75 B.R. 533 (Bankr. E.D. Pa. 1987) (secured credit under 364(c)(2) is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

33. Courts have articulated a three-part test to determine whether a debtor is entitled to section 364(c) financing: (a) the debtor is unable to obtain unsecured credit under section 364(b), ie. by allowing a lender only an administrative claim; (b) the credit transaction is necessary to preserve the assets of the estate; and (c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

B. The Debtor Does Not Have An Alternative to the DIP Financing.

34. The evidence at the Interim Hearing will show that a working capital facility of the type and magnitude needed in this case could not have been obtained on an unsecured basis. As will be shown, potential sources of the Proposed DIP Financing for the Debtor, obtainable on an expedited basis and on similar terms were practically non-existent. In these circumstances, “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” Bray v. Shenandoah Fed. Sav. And Loan Assn., (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986).

35. A debtor need only demonstrate “by a good faith effort that credit was not available without “the protection of section 364(c). Id. Where there are few lenders likely to be able and/or willing to extend the necessary credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing. In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D.Ga. 1988), *aff’d sub nom* Anchor Sav. Bank FSB v .

Sky Valley, Inc., 99 B.R.117, 120 n.4 (N.D. Ga. 1989). The Debtor will show that the proposed DIP Financing was not available from any other source under more favorable terms.

36. It is in the best interest of the estate that the DIP Financing be granted. There will be a substantial net benefit to the estate, in that without the DIP Financing the Debtor will shut down immediately, the secured creditors will get less and the unsecured creditors will get nothing.

37. In addition, failure to authorize borrowing as requested is likely to result in loss of employees and shutdown of operations, all of which will make a reorganization unlikely or impossible.

C. Application of the Business Judgment Standard

38. As described above, after appropriate investigation and analysis and given the exigencies of the circumstances, the Debtors; management concluded that the DIP Financing was on the only alternative available in the circumstances of these cases. Bankruptcy courts routinely defer to the debtor's business judgment on most business decisions, including the decision to B., R. borrow money. In re Simasko Prod. Co., 47 B.R. 444,449 (D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court").

39. The Debtors exercised sound business judgment in determining that a post-petition credit facility is appropriate and have satisfied the legal prerequisites to borrow under the DIP Financing. The terms of the DIP Financing, which are substantially identical to the Pre-Petition Loan, are fair and reasonable and are in the best interests of the Debtors' estates. Accordingly, the Debtors should be granted authority to enter into the DIP Financing and borrow funds from the Lender on the secured, administrative super priority basis described above,

pursuant to 364(c) and (d) of the Bankruptcy Code, and take the other actions contemplated by the DIP Financing Agreement and as requested herein.

40. Without the liquidity provided by the DIP Financing, the Debtors will be unable to pay their suppliers, employees and other constituencies that are essential to the orderly operation of their business and the retention of the value of their assets through a closing on the proposed asset sale. The Debtors; management exercised their best business judgment in negotiation the DIP Financing that is presently before the Court.

D. The DIP Facility is Necessary to Effectively Preserve the Assets of the Debtors' Estate and to Sell their Assets

41. As with most other large businesses, the Debtors have significant cash needs. Accordingly, access to substantial credit is necessary to meet the substantial day-to-day costs associated with continuing their business pending the asset sale. Access to sufficient cash is critical to the Debtors. In the absence of immediate access to cash and credit, the Debtors' suppliers will refuse to sell critical supplies and services to the Debtors, and the Debtors will be unable to operate their business or maximize recoveries on their assets.

42. For these reasons, access to credit under the DIP Financing is critical to promote; (a) continuing operations of the business by the Debtors; (b) the maintenance of the value of the Debtors' assets; and (c) the Debtors' ability to effectively maximize the value of their assets. The Debtors cannot wait for the beneficial effects of the DIP Financing; any substantial delay could have the same impact as denial of the Motion. The Debtors' need for access to the DIP Financing therefore is immediate.

E. The Terms of the DIP Facility are Fair, Reasonable and Appropriate

43. The Debtors are unable to obtain unsecured credit allowable solely as an administrative expense. The proposed DIP Financing reflects the exercise of sound and prudent

business judgment. The Debtors would not have been able to obtain financing on an unsecured basis, or otherwise. In the Debtors' business judgment, the DIP financing is the best financing option available in the circumstances in these cases.

44. The proposed terms of the DIP Financing are fair, reasonable and adequate in that these terms neither (a) tilt the conduct of these cases and prejudice the powers and rights that the Bankruptcy Code confers for the benefit of all creditors, nor (b) prevent motions by parties in interest from being decided on their merits. The purpose of the DIP Financing is to enable the Debtors to maintain the value of their estates pending a sale of substantially all of their assets. Importantly, the terms of the DIP Financing are substantially identical to those of the Pre-Petition Loan. The Lender has agreed, in effect, to continue the Debtors' per-petition financing arrangement subject only to provisions necessary to implement the same in the Chapter 11 Context.

45. The Debtors believe the Interim Order represents a fair and reasonable interim arrangement for DIP Financing pending a final hearing. The Interim Order does not purport to make any findings with regard to the amount of the Pre-Petition indebtedness or the validity, extent or priority of the Lender's liens and security interests that bind any entity other than the Debtors. Accordingly, the rights of all parties in respect of such matters are fully reserved. Moreover, the termination provisions of the Interim Order afford the Debtors a reasonable opportunity to seek relief from this Court. Thus, unsecured creditors will not be prejudiced by entry of the Interim Order.

46. The proposed DIP Financing provides that the security interests and administrative expense claims granted to the DIP Lenders are subject to the Carve Out. In Ames Dept. Stores, 115 B.R. 34 (Bankr. S.D.N.Y. 1990), the bankruptcy court found that such "carve-

outs” are not only reasonable, but are necessary to insure that official committees and the debtor’s estate will be assured of the assistance of counsel. Id. at 40.

47. The fairness and reasonableness of the terms of the DIP Financing will be shown at the Interim and Final Hearings.

F. Request for modification of the Automatic Stay

48. As set forth more fully in the proposed Interim Order, the DIP Financing Agreement contemplates a modification of the automatic stay established pursuant to section 362 of the Bankruptcy Code to permit the Lender to: (a) file financing statements, or other similar documents to evidence the Lender’s security interests under the DIP Financing; (b) give the Debtors any notice provided for in the DIP Financing Agreement; (c) subject to certain notice requirements, execute upon their security interests or exercise other remedies under the DIP Financing Agreement in the event of an Event of Default; and (d) take such other actions required or permitted by the DIP Financing Agreement. Stay modification provisions of this sort are ordinary and usual features of post-petition, debtor-in-possession financing facilities and, in the Debtors’ business judgment, are reasonable under the present circumstances. The Court, Accordingly, should modify the automatic stay to the extent contemplated by the DIP Financing Agreement and the Interim Order.

G. Request for Adequate Protection

49. As set forth more fully in the proposed Interim Order, the DIP Financing Agreement contemplates granting the Lender adequate protection for any post-petition diminution in value of the Lender’s interests in the pre-petition collateral resulting from the use by the Debtors of the cash collateral. To adequately protect the Lender, effective upon the date

of the Interim Order, the Lender is granted an adequate protection claim and lien as defined in the Interim Order.

H. **Permission to Use Cash Collateral**

50. The assets of the Estate (the “Collateral”) may constitute the cash collateral of Great White Shark Enterprises, LLC, Green Tulip Enterprises, Ltd., Green Tulip, Inc., Tulip Group Investments, Ltd., Hansen, Inc., and Doug Woods Holdings, LLC collectively, the foregoing are hereinafter referred to as the “Secured Creditors”. By this Motion, the Debtor seeks the entry of an order authorizing its use of cash collateral. The Debtor proposes to use cash collateral for purposes which include the following:

- (a) Care, maintenance and preservation of the Debtor’s assets;
- (b) Payment of necessary payroll and other business expenses;
- (c) Purchase of goods and services, including inventory; and
- (d) Continued business operations.

Except as specifically authorized by law or court order, the Debtor will not use cash collateral to pay pre-petition obligations.

51. The Debtor proposes to allow replacement liens on the post-petition Collateral at the same amount and to the same extent, validity and priority as the Secured Creditors held pre-petition and maintain the same level of Collateral as pre-petition. Because of uncertainties regarding the timing of expenses and purchases, and the impact of Chapter 11 on these items, it is impossible to predict with accuracy the precise amount of cash collateral necessary for the Debtor to operate its business. The proposed utilization of cash collateral will not, in any event, impair the Secured Creditors position.

52. The Debtor requests authority to use cash collateral immediately to fund the operating expenses necessary to continue the operation of its business and to maintain the estate, to acquire inventory, to maximize the return on its assets, and to otherwise avoid irreparable harm and injury to its business and the estate.

53. A projected three (3) month operational budget is attached as Exhibit "B", and reflects the operating expenses required to continue to operate the Debtor.

54. There is insufficient time for a full hearing pursuant to Bankruptcy Rule 4001 (b) (2) to be held before the Debtor must use cash collateral. If this Motion is not considered on an expedited basis and if the Debtor is denied the ability to immediately use cash collateral, there will be a direct and immediate material and adverse impact on the continuing operation of the Debtor's business and on the value of its assets. In order to continue its business activity in an effort to achieve a successful reorganization, the Debtor must use cash collateral in its ordinary business operations. The inability of the Debtor to meet its ordinary business expenses will require the Debtor to discontinue normal operations which will result in irreparable injury to the Debtor and its chances of reorganization. Any such discontinuation would also materially and adversely impact upon the value of the Collateral. Indeed, it is in the best interest of the Debtor that the Debtor use the cash collateral, if such usage will preserve the value of the Collateral.

55. The Debtor proposes to grant the Secured Creditors a replacement lien on all deposit accounts and accounts receivable acquired after the Petition Date equal in extent, validity and priority to the security interest in the deposit accounts and accounts receivable that the Secured Creditors held as of the Petition Date. In other words, the Debtor proposes that the Secured Creditors floating lien continue to "float" on post-petition deposit accounts and accounts

receivable, notwithstanding §552 of the Bankruptcy Code to the same extent and level of priority as the pre-petition liens on collateral.

56. The interest of the Secured Creditors will be adequately protected by the Debtor's continued operation. The Debtor further alleges that all conditions precedent to the use of cash collateral have been preformed or have occurred.

57. If allowed to use cash collateral, the Debtor believes that it can operate its business during the Chapter 11 and successfully reorganize its business.

H. Request for Immediate Interim Relief

58. Pending the Final Hearing, the Debtors require immediate use of cash collateral and financing for, among other things, maintenance of their operations and other working capital needs. It is essential that the Debtors immediately stabilize their operations and resume paying for ordinary, post petition operating expenses, as well as the pre-petition expenses approved in the first day orders, to minimize the damage occasioned by cash flow restrictions and maximize the potential value of their assets.

59. Absent immediate use of cash collateral and financing, the Debtors will be unable to pay operating expenses and, therefore, unable to maintain the value of their business pending the Final Hearing. Consequently, if interim relief is not obtained, the Debtors' assets will be immediately and irreparably jeopardized, to the detriment of their estates, their creditors and other parties in interest.

60. Accordingly, the Debtors request that, pending the Final Hearing, the Court schedule the Interim Hearing as soon as practicable to consider the Debtors' request for authorization to use cash collateral and obtain emergency interim credit under the DIP Financing, which shall not exceed the amounts required during such period for the operation of the Debtors'

business in the ordinary course, in accordance with and pursuant to the terms and conditions contained in the DIP Financing Agreement and the Interim Order.

61. Bankruptcy Rules 4001(b) and 4001(c) permit a court to approve a debtor's request for financing during the 15-day period following the filing of a motion requesting authorization to obtain post-petition financing, "only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing."

62. No prior motion for the relief requested herein has been made to this or any other court.

Time Required for Hearing

63. Pursuant to Local Rule 9004-2(f), the Debtors estimate that the interim hearing on this Motion will require 30 minutes for presentation and argument, and the final hearing on this Motion will require 2 hours. Due to the fact that the Debtor was unable to make the payroll due on the date of filing (July 31, 2009), the Debtor respectfully requests that the Court hold an interim hearing on the use of cash collateral, DIP Financing and payment of prepetition wages (sought within a separate motion filed simultaneously with this motion), on Tuesday, August 4, or Wednesday, August 5, 2009, and a final hearing on Friday, August 7, or Monday, August 10, 2009, or as soon thereafter as is practical under the circumstances.

Respectfully submitted,

/s/ Richard J. McIntyre

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Attorneys for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion has been furnished by U.S. Mail or by electronic CM/ECF Noticing System on all creditors and parties in interest on the attached matrix on the 31st day of July, 2009.

/s/ Richard J. McIntyre _____

ⁱ Directors receive no compensation as directors.

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

GPS Industries, Inc.,

Debtor.

Case No.: 8:09-bk-16766-CPM
Chapter 11

INTERIM ORDER (i) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING FROM TULIP GROUP INVESTMENTS, LTD., PURSUANT TO SECTIONS 364 OF THE BANKRUPTCY CODE; (ii) GRANTING LIENS AND SUPERPRIORITY CLAIMS, (iii) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDERS, (iv) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE; (v) MODIFYING THE AUTOMATIC STAY, (vi) SCHEDULING THE FINAL HEARING ON THE DEBTORS' MOTION TO INCUR SUCH FINANCING ON A PERMANENT BASIS, AND (vii) APPROVING THE FORM AND METHOD OF NOTICE THEREOF

Upon the motion, dated July 31, 2009 (the "Motion"), of GPS Industries, Inc. ("GPSI") as a debtor in possession, ("Debtor"):

- (i) for authorization and approval, pursuant to sections 105, 361, 362 and 364 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the Debtor to obtain post-petition financing (the "DIP Facility"), including without limitation, principal, accrued interest, unpaid fees and expenses, and all other amounts due from time to time under the documents referred to below (collectively, the "DIP Facility Obligations"), from Tulip Group Investments, Ltd. (the "Lender") thereunder to (A) fund, among other things, ongoing working capital needs of the Debtors, and (B) pay fees and expenses (including, without limitation, reasonable attorneys' fees and expenses) owed to the DIP Agent and

the DIP Facility Lenders under the DIP Facility and the other DIP Facility Documents (as defined below);

(ii) requesting, pursuant to section 364(c) and (d) of the Bankruptcy Code, that the financing under the DIP Facility:

(A) have priority over any and all administrative expenses, including, without limitation, the kinds specified in sections 105, 326, 330, 331, 503(b), 506(c), 507(b) and 726 of the Bankruptcy Code, except for the Carve-Out (as defined below) and fees payable pursuant to 28 U.S.C. § 1930 and to the Clerk of Court as provided for herein (the “DIP Facility Superpriority Claims”);

(B) be secured by a first priority security interest in, and lien upon, all assets of the Debtor and all assets of the Debtors constituting Accounts, Chattel Paper, Documents, General Intangibles including payment intangibles, Goods, Equipment, Fixtures, intellectual property, real property, all stock held by a Debtor or its subsidiaries (within the meaning of Treas. Reg. section 1.956-2(c)(2)) of each Foreign Subsidiary (as defined in the DIP Facility Loan Agreement (as defined below) all Instruments, all Investment Property, Deposit Accounts, including all controlled deposit accounts, concentration accounts, disbursement accounts, and all other bank accounts and all deposits therein, money, cash or cash equivalents of, Supporting Obligations and Letter-of-Credit Rights, all commercial tort claims, and to the extent not otherwise included, all proceeds, tort claims, insurance claims, and other rights to payment not otherwise included in the foregoing

and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing, but specifically excluding any actions or proceeds of any actions under chapter 5 of the Bankruptcy Code (capitalized terms used in this subparagraph (ii)(B) that are not defined herein shall have the meanings set forth in the Prepetition Revolving Credit Facility), as provided for by section 364(c) and (d) of the Bankruptcy Code (all of the foregoing, collectively, the “Collateral” and the security interests in, and liens upon such Collateral, the “DIP Facility Liens”), subordinate to only the liens of CitiCapital Corp., Microsoft Capital and Optimal IP.

- (iii) seeking the Court’s authorization pursuant to sections 361(a), 363(c), and 364(d)(1) of the Bankruptcy Code to provide adequate protection to the Prepetition secured creditors on account of their claims, which claims are to be “primed” by the financing provided herein, until such claims are paid in full pursuant and subject to the terms hereof and the Final Order;
- (iv) requesting, pursuant to section 363 of the Bankruptcy Code, authorization for the Debtors’ use of “Cash Collateral” (as defined in section 363(a) of the Bankruptcy Code) pursuant to the DIP Facility Loan Agreement and this Order and solely for the purpose of providing adequate protection in accordance with the terms of this Order;
- (v) seeking modification of the automatic stay imposed by section 362 of the Bankruptcy Code as provided herein;

- (vi) requesting, pursuant to Bankruptcy Rule 4001, that an interim hearing (the “Interim Hearing”) on the Motion be held for this Court to consider entry of an interim order (this “Order”) authorizing the Debtor, on an interim basis, to obtain under the DIP Facility from the DIP Facility Lenders the principal amount of up to \$_____ pursuant to the terms of the DIP Facility Loan Agreement; and
- (vii) requesting, pursuant to Bankruptcy Rule 4001, that a final hearing (the “Final Hearing”) be held for this Court to consider entry of an order approving the DIP Facility on a final basis (the “Final Order”), as set forth in the Motion and the DIP Facility Loan Agreement; and, pursuant to Bankruptcy Rules 4001(b) and 4001(c)(1), due and sufficient notice under the circumstances of the Motion and the Interim Hearing having been provided by the Debtors as set forth below, and the Interim Hearing having been held on August [____], 2009, and upon consideration all of the pleadings filed with this Court; and any objections to the relief requested in the Motion that have not been resolved re hereby overruled; and upon the record made by the Debtor at the Interim Hearing, and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS HEREBY FOUND:

- A. On July 31, 2009, (the “Petition Date”), the Debtor commenced in this Court a case under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as debtors in possession pursuant to sections 107 and 1108 of the Bankruptcy Code.

- B. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
- C. The Debtor's businesses require the availability of credit to finance the ordinary costs of their operations, including, without limitation, to provide letters of credit to support purchase of raw materials and credit enhancements. Without such credit, the Debtor would not be able to operate their businesses and the Debtor's estates would be irreparably harmed.
- D. The Debtor is unable to obtain sufficient interim unsecured credit solely under section 503(b)(1) of the Bankruptcy Code as an administrative expense, and a credit facility in the amount and on the terms provided by the DIP Facility and any and all documents and instruments delivered pursuant thereto or in connection therewith (inclusive of the DIP Facility Loan Agreement, the "DIP Facility Documents") is unavailable to the Debtors without their granting (i) the DIP Facility Superpriority Claims and (ii) the DIP Facility Liens as provided herein and in the DIP Facility Documents.
- E. The DIP Facility Lender has indicated a willingness to consent and agree to provide financing to the Debtor subject to (i) the entry of this Order; (ii) the terms and conditions of the DIP Facility Loan Agreement, (iii) the terms and conditions of all First-Day Orders that are, in form and substance, reasonably satisfactory to the DIP Facility Agent, and (iv) findings by the Court that such financing is essential to the Debtors' estates, that the terms of such financing were negotiated in good faith and at arm's length, and that the DIP Facility Agent's and/or the DIP Facility Lenders'

security interests, liens, encumbrances, claims, superpriority claims, and other protections granted pursuant to this Order and the DIP Facility Documents will not be affected by any subsequent reversal, modification, vacatur or amendment of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

- F. The Debtor provided notice of the Interim Hearing and the entry of this Order by facsimile or electronic mail (or, where both of the foregoing were impracticable, overnight delivery) to (i) the twenty (20) largest unsecured creditors listed in the Debtors' consolidated list of creditors, (ii) the Office of the United States Trustee for the Middle District of Florida (the "U.S. Trustee"), (iii) the Securities and Exchange Commission, (iv) counsel to the DIP Facility Agent, (v) counsel to the Prepetition Agent, (vi) the Internal Revenue Service, (vii) the Attorney General of the United States, (viii) the Office of the United States Attorney for the Middle District of Florida, (ix) those parties that have requested service pursuant to Bankruptcy Rule 2002, and (x) all other creditors known to the Debtors who may have liens against the Debtors' assets or properties (collectively, the "Service Parties"). Under the urgent circumstances, requisite notice of the Motion and the relief requested thereby has been provided under the Bankruptcy Code, including, without limitation, sections 102(1) and 364 of the Bankruptcy Code, and no other notice need be provided for entry of this Order.
- G. The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent entry of this Order, the Debtor's estates will be immediately and irreparably harmed.

- H. The ability of the Debtor to finance their respective operations and the availability of the Debtor of sufficient working capital through the incurrence of new indebtedness for borrowed money and other financial accommodations, including credit support, is in the best interests of the Debtors and their respective creditors and estates. The interim financing authorized hereunder is vital to avoid immediate irreparable harm to the Debtor's estates and to allow the orderly continuation of the Debtor's businesses.
- I. Based upon the record presented by the Debtors to this Court: (1) the terms of the DIP Facility are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with their fiduciary duty, and are supported by reasonably equivalent value and fair consideration; and (ii) the DIP Facility has been negotiated in good faith and at arm's length among the Debtor and the Lender, and any credit extended, letters of credit issued, loans made, and other financial accommodations extended to the Debtors by the DIP Facility Lenders shall be deemed to have been extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Grant of Motion. The Motion is granted as set forth in this Order.
2. Authorization to Borrow and Use Cash Collateral. Upon finalizing and executing that certain Post-Petition Loan and Security Agreement (as at any time amended, the "DIP Facility Loan Agreement") by and among the Debtor, the DIP Facility Agent, and the DIP Facility Lenders, in substantially the form annexed to the Motion as Exhibit "A", and provided that the Debtors are not in default under the terms of this Order, the Debtors are immediately authorized to (a) borrow under the DIP Facility from the

DIP Facility Lender the principal amount of up to \$1,300,000 outstanding at any time pursuant to the terms of the DIP Facility Loan Agreement for the Debtors to continue to operate their businesses and (b) use Cash Collateral solely for the purpose of providing adequate protection in accordance with the terms of the DIP Facility Loan Agreement and this Order. Upon execution and delivery, the DIP Facility Documents shall constitute legal, valid, and binding obligations of the Debtors party thereto, enforceable against each such Debtor in accordance with their terms. Available financing and advances under the DIP Facility Loan Agreement until the Final Hearing will be made only to fund the Debtors' ordinary working capital and general corporate needs and to pay other amounts required or allowed to be paid pursuant to the DIP Facility Loan Agreement and this Order. Until the Final Hearing, all amounts held or received by the Debtors as set forth in Paragraph 11(b) shall be applied to the Prepetition Indebtedness outstanding, due, and owing under the Prepetition Revolving Credit Facility in accordance with the terms of this Order and the DIP Facility Loan Agreement until such amounts are paid in full (or cash collateralized), and thereafter to claims and obligations due and owing under the DIP Facility Loan Agreement.

3. DIP Facility Superpriority Claims. For all of the Debtor's DIP Facility Obligations and indebtedness arising under the DIP Facility and the DIP Facility Documents, the DIP Facility Lenders and the DIP Facility Agent are granted, pursuant to section 364I(c)(1) of the Bankruptcy Code, the DIP Facility Superpriority Claims as described in subparagraph (ii)(A) of the first paragraph of this Order (which claims shall be payable from and have recourse to, in addition to the Collateral, any

unencumbered postpetition property of the Debtors), with the seniority, scope, and effect set forth in such subparagraph.

4. DIP Facility Liens. As security for the DIP Facility Obligations, pursuant to sections 364(c)(2), (c)(3), and (d) of the Bankruptcy Code, the DIP Facility Agent, on behalf of itself and the DIP Facility Lenders, is hereby granted (effective upon the date of this Order and without the necessity of the execution of the Debtor or the filing or recordation of mortgages, security agreements, financing statements, or otherwise) the DIP Facility Liens, all with the perfection, seniority, scope, and effect set forth in subparagraphs (ii)(B) and (C) of the first paragraph of this Order. In the event of the occurrence of an event of default or similar event under the DIP Facility Documents (an “Event of Default”), or an event that would constitute an Event of Default with the giving of notice or lapse of time or both (a “Default”), such security interests and liens shall be subject to the payment of the Carve-Out and fees payable pursuant to 28 U.S.C. § 1930 and to the Clerk of the Court.
5. Carve-Out. In the event of the occurrence of an Event of Default or a Default, the DIP Facility Superpriority Claims, the DIP Facility Liens and the Prepetition Lenders’ liens in and to the Prepetition Collateral shall be subject to the payment of (x) fees pursuant to 28 U.S.C. § 1930 and to the Clerk of the Court, and (y) unpaid and outstanding fees and disbursements actually incurred on or after the Petition Date by the Debtors’ professionals and professionals for any official committee (each a “Committee”) appointed in the Chapter 11 Cases (collectively, the “Professionals”) and allowed by order of this Court pursuant to sections 326, 328, 330, or 331 of the Bankruptcy Code (collectively, the “Allowed Professional Fees”), less the amount of

any retainers held by any such Professionals (the “Carve-Out”) in an aggregate amount not to exceed \$100,000; *provided, however*, that the Carve-Out shall not include, apply to, or be available for any fees or expenses incurred by any party, including the Debtors or any Committee, in connection with any of the following: (a) an assertion, a joinder in, or the support of (but excluding any investigation conducted prior to the assertion or joinder in) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against the DIP Facility Agent, the DIP Facility Lender, including, without limitation, challenging the amount, legality, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to, (i) the DIP Facility Obligations or the security interests and liens of the DIP Facility Agent in respect thereof, and/or (ii) the Prepetition Revolving Credit Facility or the security interests and liens of the Prepetition Agent and Prepetition Lenders in respect thereof, or asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the Lender, (b) a request to use Cash Collateral without the prior written consent of the DIP Facility Lenders, (c) a request for authorization to obtain postpetition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code other than from the DIP Facility Lenders without the prior written consent of the DIP Facility Lenders, or (e) any act or omission to act adverse to the Agent, the DIP Facility Lenders, or their rights and remedies under the DIP Facility Loan Agreement or their interests in the Collateral that would, individually or in the aggregate, have a Material Adverse Effect (as defined in the DIP Loan Agreement). The foregoing shall not be construed as

consent to the allowance of any fees and expenses referred to above and shall not affect the right of the Debtors, the DIP Facility Agent, the DIP Facility Lenders, any Committee, the U.S. Trustee, or other parties in interest to object to the allowance and payment of such amounts. Any payment or reimbursement made either directly by or on behalf of the DIP Facility Lenders at any time or by or on behalf of the Debtors on or after the occurrence of an Event of Default in respect of any Allowed Professional Fees or any other obligations relating to the Carve-Out shall, in either case, permanently reduce the Carve-Out on a dollar-for-dollar basis. The DIP Facility Lenders' obligation to fund or otherwise pay the Carve-Out and any other claims entitled to payment under this paragraph 5 shall be added to and made a part of the DIP Facility Obligations, secured by the Collateral, and shall entitle the DIP Facility Agent and the DIP Facility Lenders to all of the rights, claims, liens priorities, and protections under this Order, the DIP Facility Documents, the Bankruptcy Code, and applicable non-bankruptcy law. Payment of any obligations relating to the Carve-Out, whether by or on behalf of the DIP Facility Lenders, shall not and shall not be deemed to reduce the DIP Facility Obligations and shall not and shall not be deemed to subordinate any of the DIP Facility Liens or the DIP Facility Superpriority Claims to any junior prepetition or postpetition lien, interest, or claim in favor of any other party. Except as otherwise provided herein with respect to the Carve-Out and the other claims entitled to payment under this paragraph, the DIP Facility Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Professionals incurred in connection with the Chapter 11 Cases or the Debtor's cases under any other chapter of the Bankruptcy Code, and nothing in

this Order or otherwise shall be construed to obligate the DIP Facility Lenders, in any way, to pay compensation to or to reimburse expenses of any Professional, or to ensure that the Debtors have sufficient funds to pay any such compensation or reimbursement.

6. Payment of Administrative Claims. So long as no Default or Event of Default shall have occurred, (i) the Debtors shall be permitted to pay administrative expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code, as the same may become due and payable, and (ii) such payments shall not be applied to reduce the Carve-Out; *provided, however,* that in the event of the occurrence of an Event of Default or Default, the Debtor shall be permitted to pay administrative expenses allowed and payable under section 330 and 331 from the Carve-Out and, to the extent not previously applied, any retainers held by any Professionals; *provided further, however,* that nothing contained in this Order or otherwise shall be construed to obligate the DIP Facility Lenders in any way to lend or advance any additional funds to the Debtor, or provide other financial accommodations to the Debtors, upon or after the occurrence of an Event of Default or Default.
7. Limitation on Additional Surcharge. So long as the DIP Facility Lenders are providing postpetition financing or otherwise allowing the use of Cash Collateral, with the exception of Carve-Out and fees payable pursuant to 28 U.S.C. § 1930 and to the Clerk of the Court, neither the Collateral nor the DIP agent nor the DIP Facility Lenders shall be subject to surcharge, pursuant to section 506(c) of the Bankruptcy Code or otherwise, by the Debtors or any other party in interest, until all DIP Facility Obligations and Prepetition Indebtedness are indefeasibly paid in full in cash (or cash

collateralized), without the prior written consent of the DIP Facility Agent and the DIP Facility Lenders, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Facility Agent or the DIP Facility Lenders in this proceeding, including, but not limited to, funding of the Debtors' ongoing operations by the DIP Facility Lenders. In no event shall the DIP Facility Agent or the DIP Facility Lenders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

8. Restrictions on Use of Proceeds. The Debtors may use the proceeds of the DIP Facility only for the purposes specifically set forth in the DIP Facility Loan Agreement. Notwithstanding anything set forth herein or in the DIP Facility Loan Agreement to the contrary, no proceeds of the DIP Facility or any proceeds of the Collateral may be used by the Debtors or any other person or entity to (a) assert, join in, or support the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against the DIP Facility Agent, the DIP Facility Lenders, the Prepetition Agent, or the Prepetition Lenders, including, without limitation, to challenge the amount, validity, extent, perfection, priority, or enforceability of, or assert any defense, counterclaim, or offset to, (i) the DIP Facility Obligations or the security interest and liens of the DIP Facility Agent and the DIP Facility Lenders in respect thereof and/or (ii) the Prepetition Indebtedness or the security interests and liens of the Prepetition Agent and the Prepetition Lenders in respect thereof, or any other rights or interests of the DIP Facility Agent, the DIP Facility Lenders, the Prepetition Agent, or the Prepetition Lenders, or assert any claims or causes of action, including, without limitation, any actions under chapter 5

Bankruptcy Code, against the DIP Facility Agent, the DIP Facility Lenders, the Prepetition Agent, or the Prepetition Lenders (b) request to use Cash Collateral (as defined in section 363 of the Bankruptcy Code) without the prior written consent of the DIP Facility Lenders, (c) request authorization to obtain post petition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code other than from the DIP Facility Lenders without the prior written consent of the DIP Facility Lenders, or (e) act or fail to act in a manner adverse to the Agent, the DIP Facility Lenders, or their rights and remedies under the DIP Facility Loan Agreement or their interest in the Collateral, which act or failure to act would, individually or in the aggregate, have a Material Adverse Effect.

9. Commitment Termination Date. The DIP Facility Obligations shall be due and payable, without notice or demand, on the earlier of (i) the Termination Date (as defined in the DIP Facility Loan Agreement) and (ii) the closing of a sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code (the “Commitment Termination Date”).

10. Adequate Protection. As adequate protection for, among other things, any diminution in value of the Prepetition Lenders’ interest in the Prepetition Collateral resulting from (i) the use of their Cash Collateral and the use, sale, lease, other disposition, and depreciation of the Prepetition Collateral (except the application of such collateral to the repayment of indebtedness owed to the Prepetition Lenders other than adequate protection obligations), (ii) the priming of the Prepetition Lenders’ liens on the Prepetition Collateral by the DIP Facility Liens, and (iii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, in

addition to the existing rights and interests of the Prepetition Lenders under the Prepetition Revolving Credit Facility and until all Prepetition Indebtedness is paid in full in cash:

a. the Prepetition Agent, for the benefit of the Prepetition Lenders, is hereby granted, a valid, perfected, and enforceable security interest in and replacement lien having priority immediately junior to the priority of the liens granted to the DIP Facility Lenders, upon all of the assets of the Debtors created or acquired after the Petition Date, including, without limitation, the Collateral, and all the Debtors' accounts, contract rights, inventory, general intangibles and such other collateral in which the Prepetition Agent and Prepetition Lenders had an interest prior to the Petition Date and all improvements thereof, all books and records with respect thereto and all products and proceeds of the foregoing. The liens and security interests as granted in this Paragraph 11 shall be effective immediately and without the necessity of the execution, delivery or filing by the Debtors of a security agreement, financing statements, trademark, copyright, tradename or patent assignment filings with the United States Patent and Trademark Office or Copyright Office, mortgages, landlord lien waivers, licensee consents, or otherwise;

b. all collections on accounts and sale of inventory of the Debtors and all collections on, or proceeds of, other Prepetition Collateral shall be applied to the Prepetition Indebtedness, including specifically to pay current interest (at the non-default rate) on the Prepetition Indebtedness as adequate protection payments to the Prepetition Lender, all as set forth in the DIP Facility Loan Agreement. All such payments are adequate protection payments and are to be afforded the full and complete protection

given to such payments under the Bankruptcy Code. These payments are to be made to the DIP Facility Agent on behalf of the Prepetition Lenders because, among other things, the Debtors will continue to use the Prepetition Collateral that secures the claims and obligations owing under the Prepetition Revolving Credit Facility. Such payments are being made for the purpose of, among other things, protecting the Prepetition Lenders' prepetition claims and obligations, and collateral interests from such use and the potential depreciation and deterioration of the Prepetition Collateral as a result thereof. Under the circumstances, the adequate protection provided herein is reasonable to protect the interests of the Prepetition Lenders.

11. Fees and Expenses of the DIP Agent and the DIP Facility Lenders. The Debtors shall, promptly following receipt of a written notice, reimburse the DIP Agent and the DIP Facility Lenders for their reasonable costs, fees (including reasonable attorneys' fees), charges, and expenses incurred (whether incurred prior to or after the Petition Date) in connection with the DIP Facility or the Chapter 11 Cases, and the DIP Agent shall have the option of making an advance for the account of the Debtors under the DIP Facility Loan Agreement to pay such costs, fees, charges, and expenses. None of such costs, fees, charges, and expenses shall be subject to Court approval, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court, provided that the Court shall have jurisdiction to determine any dispute concerning such invoices.

12. Restrictions on the Debtors. Other than the Carve-Out and fees payable pursuant to 28 U.S.C. § 1930 and to the Clerk of Court, no claim having a priority superior or *pari passu* with those granted by this Order to the DIP Facility Agent and the DIP Facility

Lenders shall be granted or permitted by any order of the Court heretofore or hereafter entered in the Chapter 11 Cases, while any portion of the DIP Facility Loan Agreement remains outstanding. Except as expressly permitted by the DIP Facility Loan Agreement, the Debtors will not, at any time during the Chapter 11 Cases, grant mortgages, security interests, or liens in the Collateral or any portion thereof to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise.

13. Additional Perfection Measures. The DIP Facility Agent and DIP Facility Lenders shall not be required to file financing statements, mortgages, deeds of trust, notices of lien, or similar instruments in any jurisdiction or effect any other action to attach or perfect the security interests and liens granted under the DIP Facility Documents and this Order (including, without limitation, the execution of any control, lock-box, deposit account, or similar documents or agreements). Notwithstanding the foregoing, the DIP Facility Agent and DIP Facility Lenders may, in their sole discretion, file (or require the Debtor to execute and file) such financing statements, mortgages, deeds of trust, notices of lien, or similar instruments or otherwise confirm perfection of such liens, security interests, and mortgages without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, and all such documents shall be deemed to have been filed or recorded at the time of and on the Petition Date and all recording fees and expenses shall be borne by the Debtor.

14. Automatic Stay. Subject only to the provisions of the DIP Facility Loan Agreement, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Facility Agent and DIP Facility Lenders to exercise, upon the occurrence and during the continuance of any Event of

Default, after the giving of five (5) business days' notice in writing, served by overnight delivery service or telefax, upon the Court, counsel to the Debtors, counsel to each Committee, and the U.S. Trustee, all rights and remedies provided for in the DIP Facility Documents (including, without limitation, the right to set off monies of the Debtors in accounts maintained by the DIP Facility Agent or any Postpetition Lender). During the five (5) business day notice period stated above, the Debtors shall have the right to make an emergency application to the Court to seek a determination as to whether an event of default has actually occurred and is continuing in accordance with the DIP Facility Loan Agreement and this Order. Notwithstanding the occurrence of an Event of Default or the Commitment Termination Date or anything herein, all of the rights, remedies, benefits, and protections provided to the DIP Facility Agent and the DIP Facility Lenders under the DIP Facility Documents and this Order shall survive the Commitment Termination Date. If it becomes necessary for the DIP Facility agent or DIP Facility Lenders, at any time, to exercise any of their rights and remedies hereunder or under applicable law to effect repayment of the DIP Facility Obligations or to receive any amounts or remittances due in connection therewith, including, without limitation, foreclosing upon and selling all or a portion of the Collateral, the DIP Facility Agent and DIP Facility Lenders may, without further order of this Court, exercise such rights and remedies as to all or part of such Collateral as the DIP Facility Agent and DIP Facility Lenders may elect in their sole discretion, subject to the DIP Facility Agent having given five (5) business days' notice in writing, served by overnight delivery service or telefax, upon the Court, counsel to the Debtors, counsel to each Committee, and the U.S. Trustee.

15. Binding Effect. The provisions of this Order shall be binding upon and inure to the benefit of the DIP Facility Agent, the DIP Facility Lenders, the Prepetition Agent, the Prepetition Lender, the Debtors, and their respective successors and assigns. To the extent permitted by applicable law, this Order shall bind any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of the conversion of any Chapter 11 Case to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Order.

16. Survival. The provisions of this Order and any actions taken pursuant hereto shall survive the entry of any order (i) confirming any plan of reorganization in any of the Chapter 11 Cases (and, to the extent not satisfied in full, the DIP Facility Obligations shall not be discharged by the entry of any such order, or pursuant to section 1141(d)(4) of the Bankruptcy Code, each of the Debtors having hereby waived such discharge; (ii) converting any of the Chapter 11 Cases to a chapter 7 case; or (iii) dismissing any of the Chapter 11 Cases, and the terms and provisions of this Order as well as the DIP Facility Superpriority Claims and the DIP Facility Liens granted pursuant to this Order and the DIP Facility Documents shall continue in full force and effect notwithstanding the entry of any such order, and such claims and liens shall maintain their priority as provided by this Order and the DIP Facility Documents and to the maximum extent permitted by law until all of the DIP Facility Obligations are indefeasibly paid in full and discharged (and, with respect to outstanding undrawn letters of credit issued pursuant to the DIP Facility Loan Agreement, cash collateralized in accordance with the provisions of the DIP Facility Loan Agreement).

17. Dismissal of Case. unless all DIP Facility Obligations shall theretofore have been paid in full (and, with respect to outstanding undrawn letters of credit issued pursuant to the DIP Facility Loan Agreement, cash collateralized in accordance with the provisions of the DIP Facility Loan Agreement), the Debtors shall not seek, and it shall constitute an Event of Default if any of the Debtors seek, or if there is entered, an order dismissing any of the Chapter 11 Cases. If an order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that the superpriority claims, liens and security interests, replacement security interests, and other protections granted to the DIP Facility Agent and/or the DIP Facility Lenders pursuant to this Order and the DIP Facility Documents shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Facility Obligations in respect thereof shall have been paid and satisfied in full (and that such superpriority claims, liens, and other protections, shall, notwithstanding such dismissal, remain binding on all parties in interest).

18. After Acquired Property. Except as otherwise provided in this Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by the Debtors after the Petition Date, including, without limitation, all Collateral pledged to the DIP Facility Agent, on behalf of itself and the DIP Facility Lenders, pursuant to the DIP Facility Documents and this Order, is not and shall not be subject to any lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitute proceeds of property of the Debtors that is subject to a valid, enforceable, perfected, and unavoidable lien as of the Petition Date.

19. Access to the Debtors. Without limiting the rights of access and information afforded the DIP Facility Agent and DIP Facility Lenders under the DIP Facility Documents, the Debtors shall permit representatives, agents, and/or employees of the DIP Facility Agent and DIP Facility Lenders to have reasonable access to their premises and records during normal business hours (without unreasonable interference with the proper operation of the Debtors' businesses) shall cooperate, consult with, and provide to such representatives, agents, and/or employees all such non-privileged information s they may reasonably request.

20. Authorization to Act. Each of the Debtors is authorized to do and perform all acts, to make , execute, and deliver all instruments and documents (including, without limitation, the execution of security agreements, mortgages, and financing statements), and to pay fees, which may be reasonably required or necessary for the Debtors' performance under the DIP Facility and this Order, including, without limitation:

- (i) the execution f the DIP Facility Documents;
- (ii) the modification or amendment of the DIP Facility Loan Agreement or any other DIP Facility Documents without further order of this Court, in each case, in such form as the Debtors, the DIP Facility Agent, and the DIP Facility Lenders may agree (except for any modification or amendment to shorten the maturity of the extensions of credit thereunder, or increase the rate of interest or the letter of credit fees payable thereunder; *provided, however,* that notice of any such modification or amendment shall be provided to any Committee and the U.S. Trustee, each of which will have five (5) business days from the date of such notice within which to object in writing; *provided, further, however,* that if such objection is timely provided, then such modification or amendment shall be permitted only pursuant to an order of the Court; and

(iii) the non-refundable payment to the DIP Facility Agent or the DIP Facility Lenders, as the case may be, of the fees referred to in the DIP Facility Loan Agreement and reasonable costs and expenses as may be due from time to time, including, without limitation, reasonable attorneys' and other professional fees and disbursements as provided in the DIP Facility Documents.

21. Insurance Policies. Upon entry of this Order, the DIP Facility Agent, and DIP Facility Lenders shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Debtors which in any way relates to the Collateral.

22. Subsequent Reversal. If any or all of the provisions of this Order or the DIP Facility Documents are hereafter modified, vacated, amended, or stayed by subsequent order of this Court or any other court without the consent of the DIP Facility Agent: (i) such modification, vacatur, amendment, or stay shall not affect the validity of any obligation to the DIP Facility Agent or DIP Facility Lenders that is or was incurred prior to the effective date of such modification, vacatur, amendment, or stay (the "Effective Date"), or the validity and enforceability of any security interest, lien, or priority authorized or created by this Order and the DIP Facility Documents; and (ii) the DIP Facility Obligations pursuant to this Order and the DIP Facility Documents arising prior to the Effective Date shall be governed in all respects by the original provisions of this Order and the DIP Facility Documents, and the validity of any such credit extended or security interest granted pursuant to this Order and the DIP Facility Documents is protected by section 364(e) of the Bankruptcy Code.

23. Final Hearing. This letter is set for Final Hearing at __:__0__M. (Prevailing Eastern Time) on _____, 2009 in this Court, at which time any party in interest may

appear and state its objections. The notice provided by the Debtors of the Interim Hearing was provided in accordance with Bankruptcy Rule 4001(c) (2). The Debtors shall promptly mail copies of this Order and notice of the Final Hearing to the Service Parties. Any objection by a party-in-interest to the relief sought in the Final Order shall be made in writing filed with the Court (with a courtesy copy to chambers) and served upon counsel for the Debtors, counsel for the DIP Facility Agent, and the U.S. Trustee so as to be received no later than 5:00 p.m.

(Prevailing Eastern Time) on _____, 200__. If no objection is timely filed in accordance with the foregoing, the Court may grant the Motion and enter the Final Order without a hearing.

24. Findings of Fact and Conclusions of Law. This Order constitutes findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof.

25. Controlling Effect of Order. To the Extent any provision of this Order conflicts with any provision of the Motion, any prepetition agreement, or any documents executed in connection with the DIP Facility, the provisions of the Order shall control.

Dated: Tampa, Florida
July _____, 2009

CATHERINE PEEK-MCEWEN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Name	Current Salary	other earnings	total earnings	Medical	Child support	Current Deductions	Federal taxes	state SIT	Soc Sec	Medicare	total taxes	Net Check
ABRAMS, ROBERT RAYMOND	2,708.33		2,708.33			-	474.68		167.92	39.27	681.87	2,026.46
ALEXANDER, JASON T	2,083.33		2,083.33			-	242.37		129.17	30.21	401.75	1,681.58
BAKER, BARRY DANE	2,396.17		2,396.17			-	358.61		148.56	34.74	541.91	1,854.26
BALLENGER, DOUGLAS S	3,208.50		3,208.50	157.50		157.50	295.47	180.07	189.16	44.24	708.94	2,342.06
BARNARD, JAMES	3,041.67		3,041.67			-	523.51		188.58	44.10	756.19	2,285.48
BARTLEY, JASON W	2,000.00		2,000.00			-	259.58		124.00	29.00	412.58	1,587.42
BOUCHARD, GREGORY A	1,875.00		1,875.00			-	119.07	66.76	116.25	27.19	329.27	1,545.73
BRADFORD, SCOTT C	4,166.67		4,166.67	291.50		291.50	350.66		240.26	56.19	647.11	3,228.06
CARPENTER, KEVIN A	6,250.00	1,250.00	7,500.00	291.50		291.50	1,268.63		446.93	104.52	1,820.08	5,388.42
CHESSLER, DAVID L	5,000.00	500.00	5,500.00	136.50		136.50	1,003.28		332.54	77.77	1,413.59	3,949.91
CLARY, WADE PATRICK	2,312.17		2,312.17			-	161.83	63.98	143.35	33.52	402.68	1,909.49
CLAUSEN, HYUN H	1,666.67		1,666.67			-	129.98		103.34	24.16	257.48	1,409.19
CONFESSORE, RICHARD RALPH	3,475.00		3,475.00			-	436.98		215.45	50.39	702.82	2,772.18
COOK, SUZANNE MARIE	1,666.67		1,666.67	157.50		157.50	87.00		93.57	21.88	202.45	1,306.72
DALY, ROBERT RICHARD	2,000.00		2,000.00			-	134.36		124.00	29.00	287.36	1,712.64
FREEDMAN, SETH J	4,166.67		4,166.67	291.50		291.50	282.23		240.26	56.19	578.68	3,296.49
GISSER, ADDIE	4,166.67		4,166.67	291.50		291.50	259.42		240.26	56.19	555.87	3,319.30
HAAS, MICHAEL G	1,000.00		1,000.00	157.50		157.50	-		52.23	12.21	64.44	778.06
HACKATHORN, NATHAN RICHARD	2,166.67		2,166.67			-	187.20		134.34	31.41	352.95	1,813.72
HAECKER, DAVID E	5,000.00		5,000.00	291.50		291.50	-		291.92	68.27	360.19	4,348.31
HAMMOND, ANGELIQUE C	1,850.00		1,850.00	91.50		91.50	143.75		109.03	25.50	278.28	1,480.22
HARTNESS, G GLEN	2,291.33		2,291.33			-	332.40	18.79	142.06	33.22	507.68	1,783.65
HAWKINS, MAURICE M	2,000.00		2,000.00	291.50		291.50	-		105.92	24.77	149.48	1,559.02
HOURLIHAN, CHRISTIE A	1,875.00		1,875.00			-	228.31		116.25	27.19	371.75	1,503.25
JONES III, RICHARD F	3,750.00		3,750.00	107.50		107.50	364.80		225.83	52.82	643.45	2,999.05
KENNEDY, CHRISTOPHER T	2,083.34		2,083.34	157.50		157.50	126.69		119.40	27.93	274.02	1,651.82
LEE, RUSSELL R	7,500.00	300.00	7,800.00			-	2,776.75		483.60	113.10	3,373.45	4,426.55
MILICI, RONALD J	2,000.00		2,000.00	136.50		136.50	29.48	27.63	115.54	27.02	199.67	1,663.83
MORRIS, BRIAN E	2,000.00		2,000.00			-	259.56	81.40	124.00	29.00	493.96	1,506.04
MULLINIX, DAVID J	6,125.00		6,125.00	291.50		291.50	841.05		361.67	84.58	1,287.30	4,546.20
NEIGHBORS, LEE L	2,916.67		2,916.67	291.50		291.50	163.16		162.76	38.07	363.99	2,261.18
NELSON, JAMES R	3,750.00		3,750.00			-	467.72		232.50	54.38	754.60	2,995.40
PARK, JOHN M	2,083.67		2,083.67			-	193.18		129.19	30.21	352.58	1,731.09
PIERCE JR, GLENN A	1,000.00		1,000.00	291.50		291.50	-		43.93	10.27	54.20	654.30
PORTER, JOHN BE	9,166.67	400.00	9,566.67			-	1,843.76		593.14	138.71	2,575.61	6,991.06
RODRIGUEZ, TOMAS M	3,000.00		3,000.00	291.50		291.50	152.85		167.93	39.28	360.06	2,348.44
SASLOW, DAVID M	4,162.50		4,162.50			-	348.14	18.00	258.08	60.35	666.57	3,495.93
SCARBROUGH, JOHN S	2,000.00		2,000.00		289.75	289.75	20.30		124.00	29.00	191.30	1,808.70
SMITH, DOUGLAS J	2,312.50		2,312.50			-	299.67		143.38	33.53	476.58	1,546.17
STACK, JUSTIN J	1,875.00		1,875.00			-	161.23		116.25	27.19	304.67	1,570.33
YANTIS, BRIAN D	2,500.00		2,500.00			-	422.58	135.07	155.00	36.25	748.9	1,751.10
YATES, DAVID K	3,541.67		3,541.67	291.50		291.50	279.72		201.51	47.13	528.36	2,721.81
ZIGLAR, JAMES	1,456.00		1,456.00			-	144.00		90.27	21.11	255.38	1,200.62
			134,039.51	4,308.50	289.75	4,598.25	16,173.96	591.70	8,043.33	1,881.06	26,690.05	102,751.21