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**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

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	:	
In re	:	<b>Chapter 11</b>
	:	
<b>METROPARK USA, INC.,</b>	:	<b>Case No. 11-_____ (RDD)</b>
	:	
<b>Debtor.</b>	:	
	:	
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**MOTION FOR AN ORDER PURSUANT TO SECTIONS 105(a), 345(b), 363(c) AND  
 364(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO  
 (I) CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEM, (II) MAINTAIN  
 EXISTING BANK ACCOUNTS AND BUSINESS FORMS, AND (III) WAIVE  
REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE**

TO THE HONORABLE ROBERT D. DRAIN, UNITED STATES BANKRUPTCY JUDGE:

Metropark USA, Inc., as debtor and debtor in possession (the "Debtor"),<sup>1</sup>  
 respectfully represents:

**BACKGROUND**

**General**

1. On the date hereof (the "Petition Date"), the Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is authorized to operate its businesses and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory creditors' committee has been appointed in this chapter 11 case.

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 6659.

## **The Debtor's Business**

2. Metropark was founded in 2004 to capitalize on the large Gen Y segment (the 25-35 year old customer) who had moved on from teen retailers, but were still looking for fashion-forward apparel and accessories. Through a multi-channel sales strategy, including sales through brick-and-mortar stores and e-commerce, Metropark caters to trendsetting young adult customers by offering a unique and highly differentiated merchandise assortment introducing a "Fashion, Music, Art" philosophy into the marketplace.

3. Since its founding in 2004, Metropark has grown rapidly from its four original store locations to approximately 70 stores in 21 states, in addition to its newly redesigned online retail presence at [www.metroparkusa.com](http://www.metroparkusa.com). Metropark offers its customers a unique mix of premium quality apparel and accessories geared toward the 25-35 year old trendsetter. The Metropark retail stores provide a truly unique experiential lifestyle shopping environment including, style consultants, in-store events (e.g. live art installations, fashion shows and DJ performances) and a carefully edited inventory assortment of highly sought after brands with a strong offering of up and coming, fashion forward designer talent to deliver an authentic and culturally relevant mix of diverse brands to the customer.

4. As a result of several internal and external factors, the Debtor faced extraordinary liquidity constraints in the first quarter of 2011. Because of this reality, the Debtor spent the better part of the first quarter of 2011 trying to identify a financial partner to provide an equity infusion, debt investment or otherwise stabilize the financial wherewithal of the Company. Unfortunately, a transaction in the best interest of the Company, its creditors and its shareholders was not available outside of chapter 11 and the Company has reached the end of its liquidity runway. Accordingly, the Debtor has determined that the commencement of this case would provide the sole opportunity to, among other things, sell substantially all of the assets of the Debtor as a going concern or liquidation and, if successful in identifying a going

concern buyer, right-size the Debtor's business through (i) the evaluation and elimination of liabilities that serve as a drain on the Debtor's profitability, and (ii) operational improvements.

### **JURISDICTION**

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 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.

### **RELIEF REQUESTED**

6. Pursuant to sections 105(a), 345(b), 363(c), and 364(a) of the Bankruptcy Code, the Debtor requests authorization to (i) continue to use its existing cash management system (the "Cash Management System"), (ii) maintain its existing bank accounts (the "Bank Accounts") and Business Forms (defined below), and (iii) waive the requirements of section 345(b) of the Bankruptcy Code to the extent its Bank Accounts contain funds in excess of the amounts insured by the Federal Deposit Insurance Corporation. By separate motion filed concurrently herewith, the Debtor has requested authority to use funds held in its Bank Accounts that constitute cash collateral of its prepetition secured lender.

7. To efficiently and seamlessly manage its businesses, the Debtor uses the Cash Management System to collect and transfer the funds generated by its collective operations and to disburse funds needed to satisfy its financial obligations. The Cash Management System facilitates cash monitoring, forecasting and reporting, and enables the Debtor to maintain control over the administration of its Bank Accounts located at various banks (the "Banks"), including those listed on **Exhibit A** annexed hereto.

8. By preserving business continuity, and avoiding the disruption and delay to the Debtor's payroll, disbursement, and collection activities that would necessarily result from closing the Bank Accounts and opening new accounts, all parties in interest, including employees, vendors, clients, and creditors, will be best served. The benefit to the Debtor, its business operations, and all parties in interest will be considerable. Moreover, the confusion

that would otherwise result, absent the relief requested herein, would ill-serve the Debtor's rehabilitative efforts.

### **The Debtor's Cash Management System**

9. The Debtor's Cash Management System consists of seven<sup>2</sup> Bank Accounts at various banks, five of which are maintained by Wells Fargo, N.A. ("Wells Fargo"). With this system in place, the Debtor is able to accurately record collections, transfers, and disbursements as they are made through the various Bank Accounts. The Cash Management System has four main components: (i) cash collection at the store level, whereby the cash and checks from sales at the Debtor's retail stores is deposited into one of two store accounts<sup>3</sup> (the "Store Accounts"); (ii) deposits into consolidated accounts, whereby deposits from the Store Accounts are swept into a main depository account (the "Main Depository Account") at Wells Fargo; (iii) a disbursement account (the "Disbursement Account") maintained at Wells Fargo from which funds are deposited to a controlled disbursement account (the "Controlled Disbursement Account") for check disbursement, whereby the Debtor disburses funds by check to satisfy various financial obligations, or a payroll account (the "Payroll Account") also at Wells Fargo. For demonstrative purposes, a diagram generally illustrating the flow of funds through the Cash Management System is annexed hereto as **Exhibit B**.

### **Collection and Concentration of Cash**

10. The Debtor generates revenue primarily from the sale of fashion apparel and accessories through its retail and e-commerce businesses. Cash receipts from retail sales are deposited into the Store Accounts. Two to three times per week, deposits in the Store

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<sup>2</sup> In addition to the accounts described herein, the Debtor currently maintains an inactive depository account at Compass Bank, which the Debtor intends to close. This account had a zero balance as of the Petition Date.

<sup>3</sup> Cash and checks from sales at all of the Debtor's stores except for the Hawaii store (Store Number 47) are deposited into a Store Account at Wells Fargo. The Debtor maintains a separate account at the Bank of Hawaii for deposits from their Hawaii store. Funds in this account are periodically swept into the Main Depository Account at Wells Fargo.

Accounts are swept to the Main Depository Account. Daily receipts from credit card sales are also deposited into the Main Depository Account.

### **Disbursements of Cash**

11. The Debtor maintains three disbursement accounts. Disbursements by check are paid from the Controlled Disbursement Account. The Controlled Disbursement Account is a zero-balance account. When checks are presented, the Controlled Disbursement Account accumulates a negative balance. At the end of each day, the Main Depository Account transfers the sum of the debits to the Controlled Disbursement Account. This leaves the Controlled Disbursement Account with a zero balance and the Main Depository Account with a balance in the aggregate amount of the cash on hand less the daily disbursements. The Debtors fulfill their Payroll obligations by issuing checks or initiating direct deposit transactions from the Payroll Account.

### **Continuing the Cash Management System Is in the Best Interests of the Debtor, Its Creditors, and All Parties In Interest**

12. The Debtor seeks authorization to continue to operate its Cash Management System consistent with its prepetition practices and operations. The Cash Management System constitutes an ordinary course and essential business practice providing significant benefits to the Debtor, including, among other things, the ability to (i) control corporate funds; (ii) ensure the maximum availability of funds when and where necessary; and (iii) reduce administrative expenses by facilitating the movement of funds and the development of more timely and accurate account-balance information.

13. As a practical matter, because the Debtor conducts business in numerous locations that collect funds from customers, and because the Cash Management System interconnects the Debtor's operations with its affiliates and its export business, it would be extremely difficult and expensive to establish and maintain a different cash management system. The Debtor therefore requests that the Court approve the continuation of its existing

Cash Management System after the Petition Date. The existing Cash Management System is the most effective mechanism for managing receipts and disbursements between the Debtor and third parties.

14. Section 363(c)(1) of the Bankruptcy Code authorizes the debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without unnecessary oversight by its creditors or the court. See, e.g., Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne), 114 F.3d 379, 384 (2d Cir. 1997); Chaney v. Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.), 207 B.R. 406, 409 (S.D.N.Y. 1997); In re Enron Corp., Case No. 01-16034 (ALG), 2003 WL 1562202, at \*15 (Bankr. S.D.N.Y. Mar. 21, 2003). Included within the purview of section 363(c) is a debtor’s ability to continue the “routine transactions” necessitated by a debtor’s cash management system. Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.), 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtor seeks authority under section 363(c)(1) of the Bankruptcy Code to continue the collection, concentration, and disbursement of cash pursuant to its Cash Management System described above.

15. The Bankruptcy Code also provides a debtor in possession the freedom to obtain unsecured credit and incur unsecured debt in the ordinary course of business without notice and a hearing. 11 U.S.C. § 364(a); In re Amdura Corp., 75 F.3d at 1453 (10th Cir. 1996); LNC Inv., Inc. v. First Fidelity Bank, 247 B.R. 38, 45 (S.D.N.Y. 2000); Mulligan v. Sobiech, 131 B.R. 917, 921 (S.D.N.Y. 1991). Accordingly, the Debtor seeks authorization, to the extent necessary, to obtain unsecured credit and incur unsecured debt in the ordinary operation of its Cash Management System.

16. Furthermore, section 345 of the Bankruptcy Code governs a debtor’s deposit and investment of cash during a chapter 11 case and authorizes deposits or

investments of money as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) requires the estate to obtain from the entity with which the money is deposited or invested a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, unless the Court for cause orders otherwise. 11 U.S.C. § 345(a). In the alternative, the estate may require the entity to deposit governmental securities pursuant to 31 U.S.C. § 9303. Section 9303 provides that when a person is required by law to give a surety bond, that person, in lieu of a surety bond, may provide a governmental obligation. 31 U.S.C. § 9303.

17. Strict compliance with the requirements of section 345(b) of the Bankruptcy Code would, in a case such as this, be inconsistent with section 345(a), which permits a debtor in possession to make such investments of money of the estate “as will yield the maximum reasonable net return on such money.” 11 U.S.C. § 345(a). Thus, in 1994, to avoid “needlessly handcuff[ing] larger, more sophisticated debtors,” Congress amended section 345(b) of the Bankruptcy Code to provide that its strict investment requirements may be waived or modified if the Court so orders “for cause.” 140 Cong. Rec. 10,767 (Oct. 4, 1994), 1994 WL 545773.

18. The Debtor’s Cash Management System leaves it with limited, if any, funds in excess of the amounts insured by the Federal Deposit Insurance Corporation. Nevertheless, to the extent such funds exist, the Debtor believes that those funds are secure and that obtaining bonds to secure such funds, as required by section 345(b) of the Bankruptcy Code, is unnecessary and detrimental to the Debtor’s estate and creditors. The Debtor submits that “cause” exists pursuant to section 345(b) of the Bankruptcy Court to waive such requirement because, among other considerations, (i) the Debtor’s Banks are highly rated,

federally chartered banks subject to supervision by federal banking regulators, (ii) the Debtor retains the right to remove funds held at the Banks and establish new bank accounts as needed, (iii) the cost associated with satisfying the requirements of section 345 is burdensome, and (iv) the process of satisfying those requirements would lead to needless inefficiencies in the management of the Debtor's businesses. Moreover, strict compliance with the requirements of section 345 of the Bankruptcy Code would not be practical in this chapter 11 case. A bond secured by the undertaking of a corporate surety would be prohibitively expensive, if such bond were available at all. The Debtor believes that the benefit of waiving the 345(b) requirement far outweighs any potential harm to the estate. See generally In re Serv. Merchandise Co., Inc., 240 B.R. 894 (Bankr. M.D. Tenn. 1999).

19. Lastly, the Court may exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a). Continuing the Cash Management System without interruption is vital to the efficient and economic administration of this chapter 11 case. Therefore, it is within the Court's equitable power under section 105(a) to approve the continued use of the Cash Management System.

20. The cash management procedures described herein are similar to those employed by comparable corporate enterprises and the relief requested in this Motion is similar to relief granted in other large chapter 11 cases in this District.<sup>4</sup> See, e.g., In re The Great Atlantic & Pacific Tea Company, Inc., et al., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011); In re Finlay Enterprises, Inc., et al., Case No. 09-14873 (JMP) (Bankr. S.D.N.Y. Sept. 3, 2009); In re Extended Stay Inc., et al., Case No. 09-13764 (JMP) (Bankr. S.D.N.Y. July 20, 2009); In re U.S. Shipping Partners L.P., et al., Case No. 09-12711 (RDD) (Bankr. S.D.N.Y. June 18, 2009); In re Bearing Point, Inc., Case No. 09-10691 (REG) (Bankr. S.D.N.Y. March 13,

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<sup>4</sup> Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon email request of Debtor's counsel by contacting Alex R. Velinsky, Esq. at [avelinsky@cooley.com](mailto:avelinsky@cooley.com).

2009); In re Lyondell Chem. Co., Case No. 09-10023 (REG) (Bankr. S.D.N.Y. March 12, 2009); In re Lenox Sales, Inc., et al., Case No. 08-14679 (ALG) (Bankr. S.D.N.Y. Dec. 16, 2008); In re Steve & Barry's Manhattan LLC, et al., Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 30, 2008); In re Lexington Precision Corp., et al., Case No. 08-11153 (MG) (Bankr. S.D.N.Y. April 2, 2008); In re Silicon Graphics, Inc., et al., Case No. 06-10977 (BRL) (Bankr. S.D.N.Y. July 19, 2006); In re Atkins Nutritionals, Inc., et al., Case No. 05-15913 (ALG) (Bankr. S.D.N.Y. Aug. 1, 2005); and, In re Footstar, Inc. et al., Case No. 04-22350 (ASH) (Bankr. S.D.N.Y. March 31, 2004).

**Maintenance of the Debtor's Existing  
Bank Accounts and Business Forms Is Warranted**

21. Prior to the Petition Date and in the ordinary course of its businesses, the Debtor maintained seven Bank Accounts with the financial institutions identified on **Exhibit A** annexed hereto.

22. The Office of the United States Trustee's "Operating Guidelines and Financial Reporting Requirements Required in All Cases Under Chapter 11" mandate the closure of the Debtor's prepetition bank accounts, the opening of new accounts and the immediate printing of new checks with a "Debtor in Possession" designation on them. If the Debtor is required to comply with these guidelines, its operations would be severely harmed by the disruption, confusion, delay and cost that would most certainly result therefrom.

23. The Debtor believes, therefore, that its transition to chapter 11 will be more orderly, with a minimum of harm to operations and minimal costs, if all Bank Accounts are continued following the Petition Date with the same account numbers; provided, however, that checks issued on account of prepetition claims will not be honored, absent a prior order of the Court. By preserving business continuity and avoiding the disruption and delay to the Debtor's collection and disbursement procedures that would necessarily result from closing the Bank Accounts and opening new accounts, all parties in interest, including employees, vendors, and

clients, will be best served. Accordingly, the Debtor respectfully requests authority to maintain the Bank Accounts in the ordinary course of business, to continue utilizing the Cash Management System to manage cash in a manner consistent with prepetition practices, and to pay any ordinary course Bank fees that may be incurred in connection with the Bank Accounts prior to or following the Petition Date.

24. Unless otherwise ordered by this Court, no Bank shall honor or pay any check issued on account of a prepetition claim. However, the Banks may honor any checks issued on account of prepetition claims where this Court has specifically authorized such checks to be honored. Furthermore, notwithstanding anything to the contrary in any other “first day” order or other order of this Court, the Debtor requests the Banks be authorized to accept and honor all representations from the Debtor as to which checks should be honored or dishonored consistent with any order(s) of this Court, whether or not the checks are dated prior to, on, or subsequent to the Petition Date. The Banks shall not be liable to any party on account of following the Debtor’s instructions or representations regarding which checks should be honored. The Banks shall also be permitted to accept and process chargebacks against the Bank Accounts arising out of returned deposits into such accounts without regard to the date such return item was deposited.

25. In other large chapter 11 cases, courts in this District have recognized that strict enforcement of the requirement that a debtor in possession close its prepetition bank accounts does not serve the rehabilitative process of chapter 11. Accordingly, this Court has waived those requirements and replaced them with similar alternative procedures. See, e.g., In re The Great Atlantic & Pacific Tea Company, Inc., et al., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011); In re Lenox Sales, Inc., et al., Case No. 08-14679 (ALG) (Bankr. S.D.N.Y. Dec. 16, 2008); In re Steve & Barry’s Manhattan LLC, et al., Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 30, 2008); In re Lexington Precision Corp., et al., Case No. 08-11153

(MG) (Bankr. S.D.N.Y. April 2, 2008); and, In re Footstar, Inc., et al., Case No. 04-22350 (ASH) (Bankr. S.D.N.Y. March 31, 2004).

26. In addition, to minimize expenses, the Debtor further requests that it be authorized to continue to use its correspondence and business forms, including, but not limited to, purchase orders, invoices, multi-copy checks, letterhead, envelopes, promotional materials, and other business forms (collectively, the "Business Forms"), substantially in the forms existing immediately before the Petition Date, without reference to its status as debtor in possession; provided, however, that as soon as practicable after the Petition Date the Debtor shall print "Debtor in Possession" and the chapter 11 case number under which this case is being administered on any new check stock.

27. If the Debtor is not permitted to maintain and utilize its Bank Accounts and continue to use its existing Business Forms, the resulting prejudice will include, among other things, (i) disruption of the ordinary financial affairs and business operations of the Debtor, (ii) delay in the administration of the Debtor's estate, and (iii) cost to the estate to set up new systems, open new accounts, and print new Business Forms.

28. Based on the foregoing, the Debtor submits that the relief requested is necessary and appropriate, is in the best interests of its estate and creditors, and should be granted in all respects.

### **NOTICE**

29. The Debtor has served notice of this Application on (i) the U.S. Trustee (Attn: Susan Golden, Esq.), (ii) Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02108 (Attn: Donald E. Rothman, Esq.) as counsel for Wells Fargo Bank, N.A., (iii) Solomon Ward Seidenwurm & Smith, LLP, 401 B Street, Ste. 1200 San Diego, CA 92101 (Attn: Michael D. Breslauer, Esq.) as counsel to Bricoleur Capital Partners, LP in its capacity as second lien agent (iv) the Debtor's 30 largest unsecured creditors, and (v) the Banks. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be provided.

30. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as is just and appropriate.

Dated: May 2, 2011  
New York, New York

Respectfully submitted,

By: /s/ Cathy Hershcopf  
Cathy Hershcopf

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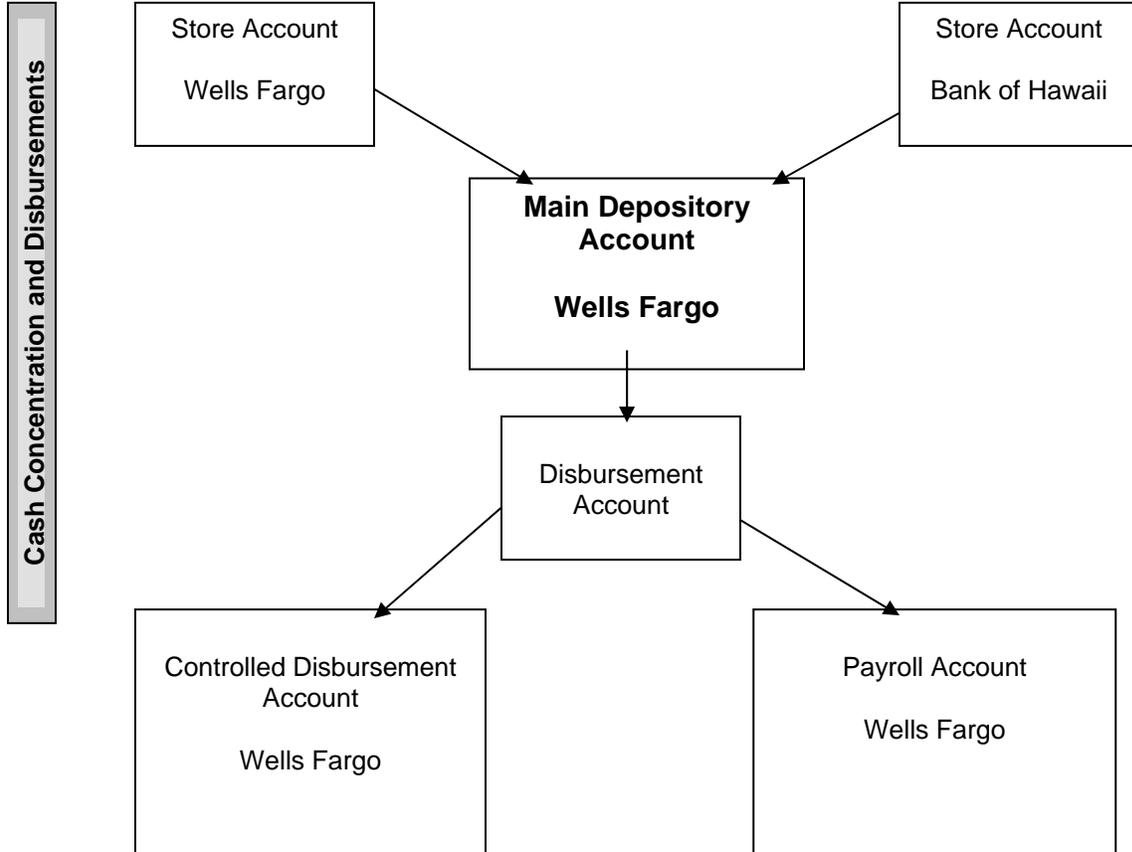
**EXHIBIT A**

**DEBTOR'S BANK ACCOUNTS**

<b><u>Division</u></b>	<b><u>Account Description</u></b>	<b><u>Store No.</u></b>	<b><u>Bank Name</u></b>	<b><u>Account No.</u></b>
Corporate	Store Account	N/A	Wells Fargo Bank, N.A.	4121418446
Corporate	Disbursement Account	N/A	Wells Fargo Bank, N.A.	4121707491
Corporate	Controlled Disbursement Account	N/A	Wells Fargo Bank, N.A.	9600121564
Corporate	Payroll Account	N/A	Wells Fargo Bank, N.A.	4121707517
Corporate	Main Depository Account	N/A	Wells Fargo Bank, N.A.	4121707509
Retail	Store 47 Depository Account	47	Bank of Hawaii	0005609267
Retail	Inactive Account to be Closed	N/A	Compass Bank	2637069

**EXHIBIT B**

**CASH MANAGEMENT SYSTEM**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11**  
METROPARK USA, INC., : **Case No. 11-\_\_\_\_\_ (RDD)**  
Debtor. :  
----- X

**ORDER PURSUANT TO SECTIONS 105(a), 363(c), 345(b) AND 364(a) OF THE  
BANKRUPTCY CODE AUTHORIZING DEBTOR TO (I) CONTINUE TO USE  
EXISTING CASH MANAGEMENT SYSTEM, (II) TO MAINTAIN EXISTING  
BANK ACCOUNTS AND BUSINESS FORMS, AND (III) WAIVE  
REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE**

Upon the motion, dated May 2, 2011 (the "Motion"),<sup>1</sup> of Metropark USA, Inc.. in the above-referenced chapter 11 case, as debtor and debtor in possession (the "Debtor"),<sup>2</sup> for an order, pursuant to sections 105(a), 363(c), 345(b) and 364(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") for (A) authorization to continue to use its existing cash management system (the "Cash Management System") and to maintain existing bank accounts (the "Bank Accounts") and business forms (the "Business Forms"), and (B) a waiver of section 345(b) of the Bankruptcy Code, all as more fully set forth in the Motion; and upon consideration of the Declaration of Cynthia Harriss pursuant to Local Rule 1007-2; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the U.S.

<sup>1</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Motion.

<sup>2</sup> The last four digits of the Debtor's federal tax identification number are 6659.

Trustee (Attn: Susan Golden, Esq.), (ii) Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02108 (Attn: Donald E. Rothman, Esq.) as counsel for Wells Fargo Bank, N.A., (iii) Solomon Ward Seidenwurm & Smith, LLP, 401 B Street, Ste. 1200 San Diego, CA 92101 (Attn: Michael D. Breslauer, Esq.) as counsel to Bricoleur Capital Partners, LP in its capacity as second lien agent (iv) the Debtor's 30 largest unsecured creditors and (v) the Banks, and it appearing that no other or further notice need be provided; and the Court having determined that the relief requested in the Motion being in the best interests of the Debtor, its creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted to the extent provided herein; and it is further

ORDERED that the Debtor is authorized and empowered, pursuant to sections 105(a) and 363(c)(1) of the Bankruptcy Code, to continue to manage its cash pursuant to the Cash Management System maintained by the Debtor before the commencement of this chapter 11 case and under the terms of the Service Agreements (as defined below), and to collect, concentrate, and disburse cash in accordance with that Cash Management System; and it is further

ORDERED that the Debtor is authorized to: (i) designate, maintain and continue to use any or all of its existing Bank Accounts, including but not limited to the Bank Accounts with those banks (the "Banks") listed on **Exhibit A** annexed hereto, in the names and with the account numbers existing immediately prior to the commencement of this chapter 11 case, (ii) deposit funds into and withdraw funds from such accounts by all usual means including, without limitation, checks, wire transfers, automated transfers and other debits, and (iii) treat its prepetition Bank Accounts for all purposes as debtor in possession accounts; and it is further

ORDERED that all Banks with whom the Debtor maintains Bank Accounts are authorized to maintain, service, and administer the Bank Accounts and any other accounts opened postpetition in accordance with applicable non-bankruptcy law and in accordance with the service agreements and related documentation between the Debtor and its respective Banks (the "Service Agreements"), and the same may be amended from time to time, including by lifting any administrative or debit freeze placed on any of the Bank Accounts as a consequence of the filing of the petition commencing this case; and it is further

ORDERED that unless otherwise ordered by this Court, no Bank shall honor or pay any check issued or dated prior to the Petition Date; provided, however, that any such Bank may rely on the representations of the Debtor with respect to whether any check or other transfer drawn or issued by the Debtor prior to the Petition Date should be honored pursuant to an Order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein; and it is further

ORDERED that the Debtor is directed to maintain records of each and every transfer within the Cash Management System occurring postpetition to the same extent maintained by the Debtor prior to the Petition Date, such that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, the Debtor's books and records; and it is further

ORDERED that the Debtor's continued use of its Cash Management System shall be deemed to comply with section 345 of the Bankruptcy Code, and the Debtor is relieved from the obligations pursuant to section 345(b) of the Bankruptcy Code to obtain a bond from any entity for any of the other Bank Accounts; and it is further

ORDERED that nothing contained herein shall prevent the Debtor from opening any additional bank accounts, or closing any existing Bank Account(s), as it may deem necessary and appropriate, and the Banks are authorized to honor the Debtor's requests to open or close, as the case may be, such Bank Accounts or additional bank accounts at an

authorized depository (unless otherwise agreed by the Office of the United States Trustee for the Southern District of New York); and it is further

ORDERED that, pursuant to section 364(a) of the Bankruptcy Code, the Debtor is authorized in connection with the ordinary operation of its Cash Management System to obtain unsecured credit and incur unsecured debt in the ordinary course of business without notice and a hearing; and it is further

ORDERED that the Debtor is authorized to use its existing Business Forms, including, check stock; provided, however, that as soon as practicable after the Petition Date the Debtor shall print "Debtor In Possession" and the chapter 11 case number under which this case is being administered on any new check stock; and it is further

ORDERED that the Debtor is authorized and shall (i) pay undisputed prepetition amounts outstanding as of the date hereof, if any, owed to its Banks as service charges for the maintenance of the Cash Management System, and (ii) reimburse the Banks for any claims arising, or chargebacks of deposits made, before or after the Petition Date in connection with customer checks or other deposits into the Bank Accounts that have been dishonored or returned for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor is responsible therefor by operation of non-bankruptcy law or under the terms of the Service Agreements with the Banks; and it is further

ORDERED that within two (2) business days after the entry of this Order, the Debtor shall serve a copy of this Order on the Banks; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order; and it is further

ORDERED that notice of the Motion as provided herein shall be deemed good and sufficient notice of such Motion.

Dated: May \_\_\_\_, 2011  
White Plains, New York

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HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**DEBTOR'S BANK ACCOUNTS**

<b><u>Division</u></b>	<b><u>Account Description</u></b>	<b><u>Store No.</u></b>	<b><u>Bank Name</u></b>	<b><u>Account No.</u></b>
Corporate	Store Account	N/A	Wells Fargo	4121418446
Corporate	Disbursement Account	N/A	Wells Fargo	4121707491
Corporate	Controlled Disbursement Account	N/A	Wells Fargo	9600121564
Corporate	Payroll Account	N/A	Wells Fargo	4121707517
Corporate	Main Depository Account	N/A	Wells Fargo	4121707509
Retail	Store 47 Depository Account	47	Bank of Hawaii	0005609267
Retail	Inactive Account to be Closed	N/A	Compass Bank	2637069