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

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In re : **Chapter 11**
: **Case No. 11-_____ (RDD)**
METROPARK USA, INC., :
: **Debtor.**
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**MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO
SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE
(I) AUTHORIZING PAYMENT OF WAGES, COMPENSATION AND EMPLOYEE
BENEFITS AND (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR
AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

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

Metropark USA, Inc., as debtor and debtor in possession ("Metropark" or the "Debtor"),¹ 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.

¹ 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. 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. The Debtor requests, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, entry of an order authorizing, but not requiring, the Debtor to (i) pay, in its sole discretion, Wage Obligations, Expense Reimbursements, Payroll Taxes, certain Employee Benefits (each as defined below, and collectively, the "Employee Obligations"), and costs incident to the foregoing, and (ii) maintain and continue to honor its practices, programs, and policies for its employees (the "Employee Benefits") as they were in effect on the Petition Date, and as such may be modified, amended, or supplemented from time to time in the ordinary course.

7. By this Motion, the Debtor seeks to pay the following amounts owed prior to the Petition Date (i) to the Debtor's Employees, up to \$1,552,998.11, which is comprised of (a) Wage Obligations in the amount of approximately \$965,000; (b) amounts owed under the Incentive Sales Programs (for store-level employees) in the amount of approximately \$8,000; and (c) Expense Reimbursements in the amount of \$6,898.11, and (d) \$573,100 on account of the Debtor's PTO Plans (defined below), of which the Debtor seeks authority to pay approximately \$371,580 on an interim basis; (ii) on account of the Debtor's Health and Welfare Plans, up to \$1,034.50; and (iii) to third party vendors in connection with the Employee obligations in the amount of approximately \$7,610.44.

8. As part of its cash management system, the Debtor maintains certain accounts (the "Accounts") at the banks identified on **Exhibit A** hereto (the "Banks"). The Debtor may draw upon funds in three of its Accounts to satisfy obligations arising from the Employee

Obligations and Employee Benefits. The Debtor requests that the Court authorize the Banks, or such other banks or financial institutions, as applicable, to receive, honor, process, and pay any and all checks drawn, or electronic fund transfers requested or to be requested, on the Accounts to the extent that such checks or electronic fund transfers relate to any Employee Obligations and Employee Benefits.

BASIS FOR RELIEF REQUESTED

The Debtor's Prepetition Employee Obligations

9. In the ordinary course of its businesses, the Debtor incurs payroll and employee benefits obligations to its employees for the performance of services. As of the Petition Date, the Debtor employs approximately 815 individuals, of which approximately 714 are paid on an hourly basis (the "Hourly Employees") and 101 are salaried employees (the "Salaried Employees") and, together with the Hourly Employees, the "Employees").

10. The Debtor has incurred obligations with respect to the Employees relating to the period prior to the Petition Date. Certain of these costs and obligations are outstanding, due and payable now, while others will become due and payable in the ordinary course of the Debtor's business after the Petition Date.

11. The Debtor submits that since in excess of 85 percent of its employees are hourly, and the Debtor's business is service-oriented, any delay in the process of regular payment to Employees would cause the Debtor irreparable harm.

Wages and Salaries

12. Prior to the Petition Date and in the ordinary course of business, the Debtor typically paid obligations relating to wages and salaries for its Employees on a bi-weekly basis (the "Wage Obligations") in arrears, through direct deposits to Employees or by check delivered to particular Employees. Approximately 51 percent of the Debtor's employees receive payment by direct deposit, while the remaining 49 percent receive a check from the Debtor.

The Debtor's current estimated bi-weekly gross payroll for its Employees is approximately \$800,000.

13. The Debtor's payroll compensates Employees for work already performed. Thus, when Employees receive their payroll check or direct deposit, those Employees have accrued an additional five days' worth of compensation, which is payable in the next pay period. On or about April 22, 2011, the Debtor funded payroll for the bi-weekly pay period ending April 16, 2011. Because its Employees are paid in arrears, the Debtor has accrued outstanding Wage Obligations for the prepetition period from April 17, 2011 through and including May 1, 2011, aggregating approximately \$965,000, which amount is inclusive of estimated payroll tax obligations.

14. ADP manages the payment of the Debtor's Wage Obligations and Expense Reimbursements (defined below). ADP calculates the funds needed to satisfy any outstanding Wage Obligations and Expense Reimbursements. To pay the Wage Obligations and Expense Reimbursements, ADP withdraws the funds from the Debtor's operating account and then remits the funds to the Employees.

15. The Debtor pays a monthly administrative fee to ADP for these services. The Debtor requires ADP's continued services in satisfying Wage Obligations and processing Expense Reimbursements for its Employees. As of the Petition Date, the Debtor estimates that approximately \$7,560.44 in fees to ADP are outstanding, or accrued and unpaid.

16. The Debtor also offers certain incentive and award payments to its employees. One of such programs provides incentive payments to certain employees (the "Incentive Sales Programs"). For the first quarter of 2011, the Debtor made approximately \$45,000 in payments to its Employees in respect of the Incentive Sales Programs. The Debtor believes that less than \$8,000 will have accrued and remains unpaid as of the Petition Date in respect of the Incentive Sales Programs.

Garnishments and Payroll Taxes

17. In the ordinary course of processing payroll checks for its Employees, the Debtor withholds certain amounts for various garnishments (such as tax levies, child support, any other court-ordered garnishments and 401(k) loans). For each bi-weekly payroll period, the Debtor garnishes an aggregate amount of approximately \$915. As ADP processes the garnishments on a bi-weekly basis in connection with processing the Debtor's Wage Obligations, any amounts owed on account of garnishments are included, on a net basis, in amounts owed on account of Wage Obligations.

18. The Debtor is also required by law to withhold from its Employees' wages amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes (collectively, the "Withholding Taxes") and to remit the same to the appropriate taxing authorities (collectively, the "Taxing Authorities"). In addition, the Debtor is required to make matching payments from its own funds on account of social security and Medicare taxes, and to pay, based on a percentage of gross payroll (and subject to state-imposed limits), additional amounts to the Taxing Authorities for, among other things, state and federal unemployment insurance (collectively, the "Employer Payroll Taxes" and, together with the Withholding Taxes, the "Payroll Taxes").

19. ADP calculates the funds needed to satisfy any outstanding Payroll Taxes. To pay the Payroll Taxes, ADP withdraws the funds from the Debtor's operating account and then remits the funds to the applicable Taxing Authorities.

20. The administrative fee paid to ADP in connection with its services related to the Wage Obligations and Expense Reimbursements includes fees owed by the Debtor in connection with ADP's services in satisfying Payroll Taxes for the Debtor's Employees.

Reimbursement Expenses

21. The Debtor's Employees incur various expenses in the discharge of their ordinary duties, such as travel and meal expenses. Because these expenses are incurred as

part of their official duties and in furtherance of the Debtor's businesses, the Employees are reimbursed in full (the "Expense Reimbursements") after submission of appropriate documentation to the Debtor's accounting department. A majority of Expense Reimbursements are travel-related expenses. Expenses are reimbursed in every pay cycle. Regardless of whether an Employee pays for the expense with a corporate American Express credit card provided by the Debtor or otherwise, Expense Reimbursements are paid by the Employee and reimbursed by the Debtor.

22. In the first quarter of 2011, Expense Reimbursements averaged approximately \$14,000 per month. The Debtor estimates that there are Expense Reimbursements currently outstanding in the amount of \$6,898.11. However, Employees may have incurred expenses prior to the Petition Date but may have not submitted requests for reimbursement of such expenses prior to the Petition Date.

Employee Benefits Plans

23. In the ordinary course of business, the Debtor has established various benefit plans and policies for its Employees that can be divided into the following categories: (i) paid time-off plans, including vacation days, sick days, and personal days (collectively, the "PTO Plans"), (ii) medical insurance (including vision and prescription drug coverage), vision, dental insurance, life insurance, AD&D insurance and disability insurance (collectively, the "Health and Welfare Plans") and together with the PTO Plans the "Employee Benefits"). The Debtor directly deducts specified amounts from certain Employees' wages in connection with certain of the Employee Benefits.

(i) Paid Time-Off Benefits

24. Under the PTO Plans, eligible Employees may receive their full wages for, among other things, vacation, personal days, and sick days. Under the PTO Plans, eligible Employees receive a fixed number of days off at the beginning of each calendar year, which varies based upon the number of years of service provided by each Employee. Time under the

PTO Plans accrues each pay period. Such time-off may be used, generally, at the Employee's discretion but subject to supervisor approval for vacation or personal days. Employees are paid for any unused paid time-off days upon termination.²

(ii) Health and Welfare Plans

25. The Debtor sponsors several Health and Welfare Plans to provide benefits to full-time Employees, including, without limitation, (i) medical, dental, or other health plans, (ii) life, accidental death, and dismemberment ("AD&D"), (iii) short- and long-term disability insurance, and (iv) flexible spending programs for medical and dependent care benefits.

(a) Medical, Dental, and Other Health Plans

26. The Debtor offers various health benefits to eligible Employees, including, among others, medical, dental, and vision care. The medical coverage, which includes a vision plan, is administered by Anthem Blue Cross of California ("Anthem"). The dental coverage is administered by CIGNA Prepaid Dental ("CIGNA") (together with the medical coverage, the "Medical Plans"). Generally, the Debtor and eligible employees share the cost of medical health insurance, with the Debtor contributing 70% of the cost. Employees bear the full cost of vision, dental, and long term disability insurance. Life insurance and AD&D insurance are provided at no cost to eligible employees. The Debtor's average monthly cost for life insurance is \$1,700. The Debtor withholds from eligible Employees' wages amounts related to the Medical Plans and remits the same to the medical health care plan providers. Anthem and CIGNA withdraw the amounts paid on behalf of the Debtor in connection with the Medical Plans.

² There are no outstanding, or accrued and unpaid, amounts owing to terminated eligible Employees as of the Petition Date in connection with the PTO Plans. The Debtor's employees have accrued approximately \$573,100 in connection with the PTO Plans as of the Petition Date and the Debtor estimates that approximately \$371,580 will become payable by the Debtor during the first 20 days of this case. Accordingly, the Debtor is seeking authority to pay approximately \$371,580 on an interim basis and will seek authority to pay the remainder at a final hearing on the Motion.

27. The Debtor also offers COBRA benefits to its terminated Employees. The Debtor pays through a third party vendor, Conexis. Approximately \$50.00 is outstanding as of the Petition Date in respect of the Debtor's obligations to Conexis.

(b) Life Insurance and AD&D

28. The Debtor maintains basic life and additional insurance coverage for all full-time Employees in the event of serious illness, injury or death. The Debtor pays the full premium cost of the basic life insurance. The Debtor's life insurance plan is maintained under a policy provided by CIGNA Group Insurance ("CIGNA Group"), as well as supplemental voluntary life insurance and AD&D plans for those eligible Employees with a need for a higher level of protection than afforded under the basic life insurance plan.

Cause Exists to Authorize Payment to the Debtor's Employees

29. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, claims against the Debtor for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of \$11,725 per individual. Similarly, section 507(a)(5) of the Bankruptcy Code provides that Employees' claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$11,725 per Employee covered by such plan, less any amount paid pursuant to section 507(a)(4) of the Bankruptcy Code.

30. The Debtor believes that substantially all, if not all, of the Employee Obligations relating to the period prior to the Petition Date constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtor may be satisfied. Accordingly, the relief requested may affect only the timing of the payment of these priority obligations, and will not prejudice the rights of general unsecured creditors or other parties in interest.

31. Notwithstanding the foregoing, the Debtor submits that, to the extent Employees are owed in excess of \$11,725,³ satisfaction and payment of the amounts owed is necessary and appropriate and may be authorized under sections 105(a) and 363(b) of the Bankruptcy Code pursuant to the “necessity of payment” doctrine. The Debtor, however, does not seek authority to pay any such amount in excess of the statutory cap on an interim basis. The “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (authorizing the payment of prepetition employee wages and benefits); see also Mich. Bureau of Workers’ Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279-285-86 (S.D.N.Y. 1987), appeal dismissed 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits). This doctrine is consistent with the paramount goal of chapter 11 of “facilitating the continued operation and rehabilitation of the debtor.” Ionosphere Clubs, 98 B.R. at 176.

32. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” Ionosphere Clubs, 98 B.R. at 175. “Under Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing Ionosphere Clubs, 98 B.R. at 177).

³ The Debtor believes that two Employees are owed in excess of the statutory cap, one being owed approximately \$3,083 in excess of the cap and one being owed approximately \$4,352 in excess of the cap on account of unpaid salary or wages. In addition, approximately 10 employees, including the two aforementioned employees, are owed in excess of the statutory cap on account of prepetition salary and wages combined with accrued PTO. The Debtor is not seeking approval to pay any amount in excess of the statutory cap on an interim basis.

33. Furthermore, section 363(b)(1) of the Bankruptcy Code provides, “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

34. Any delay or failure to pay wages, salaries, benefits, and other similar items would irreparably impair the Employees’ morale, dedication, confidence, and cooperation, and would adversely impact the Debtor’s relationship with its Employees at a time when the Employees’ support is critical to the success of the Debtor’s chapter 11 case. At this early stage, the Debtor simply cannot risk the substantial damage to its business that would inevitably attend any decline in their Employees’ morale.

35. Absent an order granting the relief requested herein, the Employees will suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain of the Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtor will be undermined, perhaps irreparably, by the distinct possibility that otherwise loyal Employees will seek other employment alternatives. In addition, it would be inequitable to require the Debtor’s Employees to bear personally the cost of any business expenses they incurred prepetition for the benefit of the Debtor, with the understanding that they would be reimbursed.

36. With respect to Payroll Taxes in particular, the payment of such taxes will not prejudice other creditors of the Debtor’s estate, as the relevant Taxing Authorities generally would hold priority claims under section 507(a)(8) of the Bankruptcy Code with respect to such obligations. Moreover, the portion of the Payroll Taxes withheld from an Employee’s wages on behalf of the applicable Taxing Authority are held in trust by the Debtor. As such, these Payroll Taxes are not property of the Debtor’s estate under section 541 of the Bankruptcy Code. See, e.g., Begier v. IRS, 496 U.S. 53 (1990) (withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtor’s estate).

37. In addition, the Debtor believes it is necessary to continue payment of administrative fees to the administrators of the Debtor's Employee Obligations and the administrators of programs related to Employee Benefits. Without the continued services of these administrators, the Debtor would be unable to continue to honor its Wage Obligations and Employee Benefits obligations in an efficient and cost-effective manner.

38. The Debtor does not seek to alter any of its Employee Benefits at this time. This Motion is intended only to permit the Debtor, in its discretion, to make payments consistent with the Debtor's existing policies to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code, and to permit the Debtor, in its discretion, to continue to honor its practices, programs, and policies with respect to its Employees, as such practices, programs, and policies were in effect as of the Petition Date. Payment of all Employee Obligations in accordance with the Debtor's prepetition business practices is in the best interests of the Debtor's estate, its creditors, and all parties in interest and will enable the Debtor to continue to operate its businesses in an economic and efficient manner without disruption. As explained more fully above, the Debtor's Employees are central to its operations as a service-oriented business and are vital to this chapter 11 case. A significant deterioration in employee morale at this critical time undoubtedly would have a devastating impact on the Debtor, its clients and vendors, the value of the Debtor's assets and businesses, and the Debtor's ability to continue operations. The total amount sought to be paid herein is relatively modest compared with the size of the Debtor's overall business and the importance of the Employees to the Debtor's chapter 11 case and the Debtor's reorganization efforts.

39. In other chapter 11 cases, courts in this District have approved payment of prepetition claims for compensation, benefits, and expense reimbursements similar to those

described herein.⁴ See, e.g., In re The Great Atlantic & Pacific Tea Company, Inc., et al., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2011); In re Uno Restaurant Holdings Corp., Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Feb. 17, 2010); In re Finlay Enterprises, Inc., Case No. 09-14873 (JMP) (Bankr. S.D.N.Y. Sept. 3, 2009); In re General Motors Corp., Case No. 09-50026 (REG) (Bankr. S.D.N.Y. June 1, 2009); In re U.S. Shipping Partners L.P., Case No. 09-12711 (RDD) (Bankr. S.D.N.Y. Apr. 30, 2009); In re General Growth Properties, Inc., Case No. 09-11977 (ALG) (Bankr. S.D.N.Y. May 11, 2009); In re Bearing Point, Inc., Case No. 09-10691 (REG) (Bankr. S.D.N.Y. March 13, 2009); In re Tronox Inc., et al., Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Feb. 6, 2009); In re Lyondell Chemical Co., et al., Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 26, 2009); In re Lenox Sales, Inc., et al., Case No. 08-14679 (ALG) (Bankr. S.D.N.Y. Nov. 25, 2008); In re Steve & Barry's Manhattan LLC, et al., Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 10, 2008); In re Lexington Precision, et al., Case No. 08-11153 (MG) (Bankr. S.D.N.Y. April 2, 2008); In re PRC, LLC, et al., Case No. 08-10239 (MG) (Bankr. S.D.N.Y. Jan. 24, 2008); In re Silicon Graphics, Inc., et al., Case No. 06-10977 (BRL) (Bankr. S.D.N.Y. May 10, 2006).

40. Accordingly, by this Motion, the Debtor seeks authority pursuant to sections 105(a) and 363(b) of the Bankruptcy Code to pay Employee Obligations as they become due and owing during the pendency of this case and to continue, uninterrupted, its practices, programs and policies with respect to its Employees, as such practices, programs, and policies were in effect as of the Petition Date.

41. Furthermore, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the stay of the order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

⁴ 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.

**Applicable Banks Should Be Authorized to Honor and Pay Checks
Issued and Make Other Transfers to Pay Employee Obligations**

42. The Debtor further requests that the Court authorize the applicable Banks, identified on Exhibit A annexed hereto, to receive, process, honor, and pay all prepetition and postpetition checks issued or to be issued, and electronic fund transfers requested or to be requested, by the Debtor in respect of the Employee Obligations. The Debtor also seeks authority to issue new postpetition checks, or effect new electronic fund transfers, on account of the Employee Obligations to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected.

43. As a result of the commencement of the Debtor's chapter 11 case, and in the absence of an order of the Court providing otherwise, the Debtor's checks, wire transfers and direct deposit transfers in respect of the Employee Obligations may be dishonored or rejected by the Banks.

44. The Debtor represents that each of these checks or transfers is or will be drawn on specific Accounts that can be readily identified as relating directly to payment of Employee Obligations. Accordingly, the Debtor believes that prepetition checks and transfers other than those for Employee Obligations will not be honored inadvertently.

45. Authorization to pay all amounts on account of Employee Obligations shall not be deemed to constitute postpetition assumption or adoption of any contract, program, or policy pursuant to section 365 of the Bankruptcy Code. The Debtor is in the process of reviewing these matters and reserves all of its rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay all amounts on account of Employee Obligations shall not affect the Debtor's right to contest the amount or validity of any such claims, including without limitation, the Payroll Taxes that may be due to any Taxing Authority.

NOTICE

46. The Debtor has served notice of this Motion on (i) the Office of the United States Trustee for the Southern District of New York (Attn: Susan Golden, Esq.), (ii) Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02198 (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 listed on Exhibit A hereto. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be provided.

47. 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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Proposed Attorneys for Debtor and Debtor in Possession

EXHIBIT A

BANK ACCOUNTS

<u>Division</u>	<u>Account Description</u>	<u>Store No.</u>	<u>Bank Name</u>	<u>Account No.</u>
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

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

----- X
In re : **Chapter 11**
METROPARK USA, INC., :
Debtor. : **Case No. 11-_____ (___)**
----- X

**INTERIM ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF
THE BANKRUPTCY CODE (I) AUTHORIZING PAYMENT OF
WAGES, COMPENSATION AND EMPLOYEE BENEFITS AND
(II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Upon the motion, dated May 2, 2011 (the "Motion"),¹ of Metropark USA, Inc., as debtor and debtor in possession (the "Debtor"),² for an order pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code") (i) authorizing payment of wages, compensation, certain employee benefits and (ii) authorizing the banks identified in **Exhibit A** (the "Banks") to honor and process checks and electronic funds transfers related to such obligations, all as more fully described in the Motion; 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 Court 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 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 Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, New York, NY 10004 (Attn: Susan Golden, Esq.), (ii) Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02198 (Attn:

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

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

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 (iv) the Banks listed on Exhibit A hereto, 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 on an interim basis; and it is further

ORDERED that, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized, but not required, to satisfy certain prepetition Employee Obligations (as defined below) without further Order of the Court, and in accordance with the Debtor's stated policies, including, without limitation, all obligations with respect to (i) wages and salaries, (ii) payroll taxes, social security taxes, Medicare taxes, (iii) health and welfare benefit plans, (iv) business expense reimbursements, (v) other employee benefit programs, excluding obligations related to the Incentive Sales Programs, and (vi) all obligations with respect to insurance policies and coverage related to the foregoing (collectively, the "Employee Obligations"); and it is further

ORDERED that, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized, but not required, to pay amounts owed prior to the Petition Date (i) to

the Debtor's Employees on account of Wage Obligations, PTO Plans, Expense Reimbursements;³ and (ii) on account of the Debtor's Health and Welfare Plans; and it is further

ORDERED that the Debtor is authorized, but not required, to continue to honor its practices, programs, and policies with respect to its employees as such practices, programs, and policies were in effect as of the Petition Date, including, but not limited to the Employee Obligations; and it is further

ORDERED that the Debtor is authorized, but not required, to pay costs and expenses incidental to the payment of the Employee Obligations, including all administration and processing costs and payments to outside professionals or independent contractors, in the ordinary course of business, in order to facilitate the administration and maintenance of the Debtor's programs and policies related to the Employee Obligations; and it is further

ORDERED that nothing in this Order nor any action taken by the Debtor in furtherance of the implementation hereof shall be deemed an approval of the assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that nothing in this Order shall impair the ability of the Debtor or appropriate party in interest to contest any claim of any creditor pursuant to applicable law or otherwise dispute, contest, setoff, or recoup any claim, or assert any rights, claims or defenses related thereto; and it is further

ORDERED that each Bank and all other applicable banks or financial institutions are authorized, when requested by the Debtor in the Debtor's sole discretion, to receive, process, honor and pay all checks drawn on or direct deposit and funds transfer instructions

³ The Debtor believes that two Employees are owed in excess of the statutory cap, one being owed approximately \$3,083 in excess of the cap and one being owed approximately \$4,352 in excess of the cap on account of unpaid salary or wages. In addition, approximately 10 employees, including the two aforementioned employees, are owed in excess of the statutory cap on account of prepetition salary and wages combined with accrued PTO. This Order does not authorize the Debtor pay any amount in excess of the statutory cap, pending entry of a final order.

relating to the Debtor's Accounts and any other transfers that are related to Employee Obligations, and the costs and expenses incident thereto; provided, however, that sufficient funds are available in the Accounts to make such payments; provided, further, that any such bank or financial institution may rely on the representations of the Debtor regarding which checks that were drawn or instructions that were issued by the Debtor before the Petition Date should be honored postpetition pursuant to an order of this Court and that any such bank or financial institution shall not have any liability to any party for relying on the representations of the Debtor as provided herein; and it is further

ORDERED that the Debtor is authorized (consistent with this Order) to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests related to Employee Obligations to the extent that such checks or transfers have been dishonored or rejected as a consequence of the commencement of the Debtor's chapter 11 case; 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 a final hearing on the relief requested in the Motion shall be scheduled for _____, 2011 at ____:____ __.m. (prevailing Eastern time); and it is further

ORDERED that any objections to the relief requested in the Motion on a final basis must be filed no later than [____], 2011 at 4:00 p.m. (Eastern Time) (the "Objection Deadline") and served on the following parties: (i) the U.S. Trustee, 33 Whitehall Street, New York, NY 10004 (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 Taxing Authorities; 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

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A
BANK ACCOUNTS

<u>Division</u>	<u>Account Description</u>	<u>Store No.</u>	<u>Bank Name</u>	<u>Account No.</u>
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