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

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

**MOTION OF THE DEBTOR PURSUANT TO SECTIONS 105(a), 365 AND 554(a)
OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO ESTABLISH PROCEDURES FOR
THE REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND
ABANDONMENT OF RELATED PERSONAL PROPERTY**

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

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

BACKGROUND

General

1. On the date hereof, 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 Businesses

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 is in the process of reviewing its Contracts and Leases (as defined below). The Debtor expects that, as this review continues, it will determine that it is in the best interest of the estate to reject certain Contracts and Leases. Accordingly, by this Motion, the Debtor seeks entry of an order pursuant to sections 105(a) and 365 of the Bankruptcy Code authorizing the Debtor (i) to use the proposed procedures for the rejection of Contracts and Leases (the "Rejection Procedures"), and (ii) to take actions as may be necessary and appropriate to implement and effectuate the Rejection Procedures as approved by this Court, including the abandonment of personal property in connection with rejection of real estate Leases pursuant to section 554(a) of the Bankruptcy Code. The Debtor believes that the Rejection Procedures are necessary to efficiently reject Contracts and Leases in the future and to avoid the otherwise significant administrative costs attendant with filing multiple motions for the same relief.

The Contracts and Leases

7. The Debtor is a party to hundreds of contracts and leases, including numerous unexpired real property leases, personal property leases, and other executory contracts (the "Leases" or "Contracts", as the case may be), with vendors who, among other things, lease property, perform services, or deliver goods.

The Proposed Rejection Procedures

8. In connection with the commencement and continuation of this case, the Debtor continues to review its Leases and Contracts and analyze the same. Consistent with the practice in large chapter 11 cases and in an effort to conserve the resources of this estate, the Debtor seeks approval of the procedures described below to facilitate an expeditious and efficient process for rejecting designated Leases and Contracts.

9. The Debtor respectfully requests that the Court authorize, but not require, the Debtor to reject any or all of its Contracts or Leases, pursuant to Bankruptcy Code section 365(a), as an appropriate exercise of its business judgment through the following procedures:

- (a) The Debtor will file on the docket for this chapter 11 case a notice (the "Rejection Notice") setting forth the proposed rejection of one or more Contracts and/or Leases,² and will serve the Rejection Notice via Federal Express or other overnight mail delivery service and fax or email (where available) on: (i) the non-Debtor party under the respective Lease or Contract at the last known address available to the Debtor, (ii) counsel for the statutory committee of unsecured creditors appointed in this chapter 11 case, (iii) the United States Trustee for the Southern District of New York, and (iv) Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02108 (Attn: Donald E. Rothman, Esq.) as counsel for Wells Fargo Bank, N.A., and (v) 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 (collectively, the "Rejection Notice Parties").
- (b) The Rejection Notice shall be substantially in the form of **Exhibit A** annexed hereto. With respect to real property Leases to be rejected, the Rejection Notice shall set forth the following information, to the best of the Debtor's information: (i) the street address of real property that is the subject of the Lease (if applicable), (ii) the monthly rental obligation, (iii) the remaining term of the Lease, and (iv) the name and address of the affected landlord. With respect to personal property Leases and Contracts to be rejected, the Rejection Notice shall set forth the following information, to the best of the Debtor's information: (i) the name and address of the contract counterparty, and (ii) a brief description of the Contract to be rejected.

² Consistent with Rule 6006(f) of the Federal Rules of Bankruptcy Procedure, no more than 100 executory contracts or unexpired leases will be contained on any one Rejection Notice.

- (c) Should a party in interest object to the proposed rejection of a Contract or Lease, such party must file and serve a written objection so that such objection is filed with this Court and actually received by the Debtor and the Rejection Notice Parties as set forth in the Rejection Notice no later than ten (10) days after the date that the Debtor served the Rejection Notice.
- (d) If no timely objection is filed and served with respect to a Rejection Notice, the Debtor shall file with the Court a certificate of no objection along with a Rejection Order. The Rejection Order shall provide, *inter alia*, that the rejection of such Contract or Lease shall be deemed effective as of the date set forth in the applicable Rejection Notice, or, if no such date is set forth therein, the date the Rejection Notice is filed with the Court (the "Rejection Date").³
- (e) If a timely objection is properly filed and served on the Debtor and the Rejection Notice Parties as specified above, and unless the parties otherwise agree in writing, the Debtor will schedule a hearing to consider the objection. If the objection is overruled by the Court or withdrawn, the rejection of the affected Contract or Lease shall be deemed effective either (a) as of the Rejection Date, or (b) as otherwise determined by the Court in any order overruling such objection.
- (f) If the Debtor has deposited monies with a Lease or Contract counterparty as a security deposit or other arrangement, such Lease or Contract counterparty may not set off or recoup or otherwise use such deposit without the prior approval of the Court.
- (g) If an affected lessor or counterparty or any other party in interest (the "Rejection Claimant") asserts a claim or claims against the Debtor arising from the rejection of a Contract or Lease, such Rejection Claimant shall submit a proof of claim to the Debtor's claims and noticing agent, Omni Management Group, LLC, on or before the date that is the later of (i) 30 days after the date an order is entered approving the rejection of the Contract or Lease, or (ii) the bar date for general unsecured claims to be established in this case. If a Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim for such rejection damages.
- (h) The Debtor also requests authority to remove any property from the premises that are the subject of any rejected Lease, consistent with the Debtor's ownership rights or other property interests therein, personal property that the Debtor has installed in or about the leased premises (*i.e.*, fixtures, furniture, equipment, and other property) that is either owned by the Debtor, leased by the Debtor

³ With respect to the rejection of a real property Lease, the rejection effective date will not occur until such time as the Debtor has vacated the premises and returned the keys to the affected landlord.

from third parties, or subject to any equipment financing agreements with third parties. Moreover, to the extent that the Debtor determines that any interest of the Debtor in such property has little or no value or that the preservation thereof will be burdensome to its estate compared with the expense of removing and storing such property, the Debtor requests authority to abandon, in its sole discretion, such property remaining at the premises subject to a rejected Lease as of the Rejection Date. No personal property subject to a true lease shall be abandoned without first rejecting the applicable Lease. If such a Lease is rejected, the automatic stay shall be deemed modified to permit the respective personal property lessor to recover such abandoned property within fifteen (15) days of abandonment. In the event the Debtor proposes to abandon property, the foregoing notice and objection procedures will apply and the Rejection Notice will set forth a description of the property proposed to be abandoned, as required by Rule 6007-1 of the Local Bankruptcy Rules for the Southern District of New York. Absent a timely objection filed in accordance with these Rejection Procedures, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code as of the Rejection Date and, except as set forth above, the landlord(s) may dispose of such abandoned property without liability to any third party claiming an interest in such abandoned property.

10. In connection with the foregoing Rejection Procedures, the Debtor also requests that it be authorized to execute and deliver all instruments and documents, and take such other actions as may be necessary or appropriate to implement and effectuate the Rejection Procedures as approved by this Court and that entry of the requested order be without prejudice to the Debtor's right to seek further, other, or different relief regarding the Leases and Contracts.

11. The proposed Rejection Procedures will streamline the Debtor's ability to reject burdensome Contracts and Leases that provide no benefit to the Debtor's estate, and thereby minimize unnecessary post-petition obligations, while also providing Contract and Lease counterparties with adequate notice of the rejection of any such Lease or Contract and an opportunity to object to such rejection within a reasonable time period. Accordingly, the Debtor respectfully submits that the Rejection Procedures should be approved as they balance the respective interests of the parties, are an appropriate exercise of the Debtor's business

judgment and constitute a common form of relief in many bankruptcy cases in this and other jurisdictions.

Cause Exists to Establish Rejection Procedures

12. Section 365 of the Bankruptcy Code empowers a debtor in possession to, subject to court approval, reject any executory contract or unexpired lease of the debtor. 11 U.S.C. § 365(a). In determining whether the rejection of an unexpired lease or executory contract should be authorized, courts apply the “business judgment” standard. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993), cert. dismissed, 511 U.S. 1026 (1994). Rejection is appropriate based solely on the resultant benefit to the estate. See In re Stable News Assoc., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984). Therefore, the business judgment standard is satisfied when a debtor determines that rejection will benefit the estate. See In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); In re Ionosphere Clubs, Inc., 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989). See also In re TS Industries, Inc., 117 B.R. 682, 685 (Bankr. D. Utah 1990); In re Del Grosso, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990).

13. The Debtor continues to evaluate its Contracts or Leases and may determine that various Contracts and Leases are burdensome and unnecessary to the Debtor’s estate. As such, the Debtor seeks approval of the Rejection Procedures to streamline the process of rejecting Leases and Contracts.

14. The counterparties to the Leases and Contracts will not be prejudiced by the Rejection Procedures because, upon receipt of a Rejection Notice, such counterparties will have received advance notice of the Debtor’s intent to reject their respective Lease or Contract and of the effective date of the rejection. See, e.g., In re Mid Region Petroleum, Inc., 111 B.R. 968, 970 (Bankr. N.D. Okla. 1990) (effective date of rejection of leases was the date the trustee gave notice to lessor of intent to reject); In re Carlisle Homes, Inc., 103 B.R. 524, 535 (Bankr. D.N.J. 1988) (debtor may reject executory contract by clearly communicating intention to reject).

The Debtor submits that the proposed Rejection Procedures balance the need for reduction of burdensome costs to the Debtor's estate while providing due notice of the proposed rejection to the Contract or Lease counterparties.

15. With respect to the Debtor's request for authority to abandon property, the Debtor submits that the standard set forth in section 554(a) of the Bankruptcy Code is satisfied. Section 554(a) provides that a debtor in possession may abandon, subject to court approval, "property of the estate that . . . is of inconsequential value and benefit to the estate." 11 U.S.C. §554(a). Before authorizing abandonment of property, a bankruptcy court must find either: (i) the property is burdensome to the estate or (ii) the property is both of inconsequential value and inconsequential benefit to the estate. See, e.g., Midlantic Nat'l Bank v. N.J. Dep't of Env'tl. Prot., 474 U.S. 494, 497 (1986), reh'g denied, 475 U.S. 1091 (1986); In re Texaco, Inc., 90 B.R. 38, 44 (S.D.N.Y. 1988); In re Crowthers McCall Pattern, Inc., 114 B.R. 877, 882 n.7 (Bankr. S.D.N.Y. 1990). The personal property proposed to be abandoned in connection with any real property Leases which may be rejected in the future would primarily consist of fixtures, furniture, advertising displays, and other office and store equipment that is (a) of no value or benefit to the Debtor's estate and/or (b) burdensome insofar as the costs of removal and storage of such property is likely to exceed the net proceeds realizable from their sale.

16. Finally, section 105 of the Bankruptcy Code provides, in relevant part, that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The Debtor submits that the implementation of the proposed procedures is appropriate in this chapter 11 case and is well within the Court's equitable powers under section 105 of the Bankruptcy Code. See, e.g., In re Crabtree & Evelyn, Ltd., Case No. 09-14267 (BRL) (Bankr. S.D.N.Y. June 30, 2009); In re Lenox Sales, Inc., et al., Case No. 08-14679 (ALG) (Bankr. S.D.N.Y. May 6, 2009); In re Steve & Barry's Manhattan LLC, et al., Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. Sept. 25, 2008); In re

WorldCom, Inc., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Sept. 25, 2002) (granting similar relief).

NOTICE

17. The Debtor has served notice of this Motion 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 and (iv) the Debtor's 30 largest unsecured creditors. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be provided.

18. 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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New York, New York 10036
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Cathy Hershcopf (CH 5875)
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Proposed Attorneys for Debtor and Debtor in Possession

EXHIBIT A
REJECTION NOTICE

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

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

**NOTICE OF REJECTION OF
EXECUTORY CONTRACTS OR UNEXPIRED LEASES**

PLEASE TAKE NOTICE that, on May ____, 2011, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") entered an order (the "Procedures Order") in the above-referenced chapter 11 case of Metropark USA, Inc., as debtor and debtor in possession (the "Debtor"), among other things, approving procedures (the "Rejection Procedures") for the rejection of executory contracts and unexpired leases ("Contracts" or "Leases", as the case may be).

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Procedures Order, the Debtor hereby provides notice of its intent to reject the Leases and/or Contracts listed on Schedule 1 hereto (the "Rejected Contracts and Leases"). Pursuant to the terms of the Procedures Order, unless a written objection is filed and served in accordance with the terms of the Procedures Order, the Leases and/or Contracts set forth on **Schedule 1** to this Rejection Notice will be rejected pursuant to 11 U.S.C. § 365(a), and the following property shall be abandoned pursuant to 11 U.S.C. § 554(a), effective as of the later of (a) the date of this Notice, unless otherwise agreed, in writing, by the Debtor and the counterparty to the applicable Lease or Contract, (b) the date of the surrender of the leased property and keys to the affected lessor (where applicable), or (c) the effective date otherwise set forth on Schedule 1 (the "Rejection Date").

PLEASE TAKE FURTHER NOTICE that objections, if any, to this Rejection Notice must be filed and served so that such objection is filed with the Bankruptcy Court and **actually received** by the following parties no later than ten (10) days after the date this Rejection Notice is filed with the Bankruptcy Court (i.e., by _____, 2011): (i) the Debtor, 5750 Grace Place, Los Angeles, California 90022 (Attn.: Rick Hicks), (ii) counsel to the Debtor, Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Jeffrey L. Cohen, Esq. and Alex R. Velinsky, Esq.), (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Susan Golden, Esq.), (iv) Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02108 (Attn: Donald E. Rothman, Esq.) as counsel for Wells Fargo Bank, N.A., (v) 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, and (vi) [_____] as counsel for the creditors' committee (collectively, the "Rejection Notice Parties").

PLEASE TAKE FURTHER NOTICE that, if an objection to this Notice is timely filed and served, the Debtor shall seek a hearing on such objection and shall provide notice of such hearing to the objecting party and the Rejection Notice Parties. If such objection is overruled by the Court or withdrawn, the rejection of the Contract or Lease shall be deemed effective (a) as of the Rejection Date, or (b) as otherwise determined by the Court as set forth in any order overruling such objection.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Procedures Order, if the Debtor has deposited monies with the Contract or Lease counterparty as a security deposit or otherwise, the Contract or Lease counterparty may not setoff or otherwise use such deposit without the prior authorization of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Procedures Order, for any claim that you may assert against the Debtor as a result of the rejection of any Contract or Lease, you must submit a proof of claim for damages arising from

such rejection, if any, to Omni Management Group, LLC, the Debtor's notice and claims agent at the following address:

Metropark USA, Inc., Rejection Damage Claims
c/o Omni Management Group, LLC
16161 Ventura Blvd., Suite C
PMB 480
Encino, CA 91436

on the date that is the later of (i) 30 days after the date an order is entered approving the rejection of the Contract or Lease, or (ii) the bar date for general unsecured claims to be established in this case. If you do not timely file such proof of claim, you shall be forever barred from asserting a claim for damages arising from the rejection of the applicable Lease or Contract.

Dated: _____, 2011
New York, New York

Schedule 1

NON-RESIDENTIAL REAL PROPERTY LEASES

Address of Subject	Monthly Rental Obligation	Remaining Lease Term	Landlord Name / Address	Effective Date of

PERSONAL PROPERTY LEASES AND CONTRACTS

Title of Contract	Contract Counterparty (Name / Address)	Description of Contract	Effective Date of Rejection

capacity as second lien agent and (iv) the Debtor's 30 largest unsecured creditors, 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 further

ORDERED that the following procedures (the "Rejection Procedures") for the Debtor's rejection of Leases and Contracts pursuant to section 365(a) of the Bankruptcy Code and abandonment of related personal property pursuant to section 554(a) of the Bankruptcy Code are hereby authorized and approved and established in the Debtor's chapter 11 case:

- (a) The Debtor will file on the docket for this chapter 11 case a notice (the "Rejection Notice") setting forth the proposed rejection of one or more Contracts and/or Leases,³ and will serve the Rejection Notice via Federal Express or other overnight mail delivery service and fax or email (where available) on: (i) the non-Debtor party under the respective Lease or Contract at the last known address available to the Debtor, (ii) counsel for the statutory committee of unsecured creditors appointed in this chapter 11 case, (iii) the United States Trustee for the Southern District of New York, and (iv) Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02108 (Attn: Donald E. Rothman, Esq.) as counsel for Wells Fargo Bank, N.A., and (v) 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 (collectively, the "Rejection Notice Parties").
- (b) The Rejection Notice shall be substantially in the form of **Exhibit A** annexed hereto. With respect to real property Leases to be rejected, the Rejection Notice shall set forth the following information, to the best of the Debtor's information: (i) the street address of real property that is the subject of the Lease (if applicable), (ii) the monthly rental obligation, (iii) the remaining term of the Lease, and (iv) the name and address of the affected landlord. With respect to personal property Leases and Contracts

³ Consistent with Rule 6006(f) of the Federal Rules of Bankruptcy Procedure, no more than 100 executory contracts or unexpired leases will be contained on any one Rejection Notice.

to be rejected, the Rejection Notice shall set forth the following information, to the best of the Debtor's information: (i) the name and address of the contract counterparty, and (ii) a brief description of the Contract to be rejected.

- (c) Should a party in interest object to the proposed rejection of a Contract or Lease, such party must file and serve a written objection so that such objection is filed with this Court and actually received by the Debtor and the Rejection Notice Parties as set forth in the Rejection Notice no later than ten (10) days after the date that the Debtor served the Rejection Notice.
- (d) If no timely objection is filed and served with respect to a Rejection Notice, the Debtor shall file with the Court a certificate of no objection along with a Rejection Order. The Rejection Order shall provide, *inter alia*, that the rejection of such Contract or Lease shall be deemed effective as of the date set forth in the applicable Rejection Notice, or, if no such date is set forth therein, the date the Rejection Notice is filed with the Court (the "Rejection Date").⁴
- (e) If a timely objection is properly filed and served on the Debtor and the Rejection Notice Parties as specified above, and unless the parties otherwise agree in writing, the Debtor will schedule a hearing to consider the objection. If the objection is overruled by the Court or withdrawn, the rejection of the affected Contract or Lease shall be deemed effective either (a) as of the Rejection Date, or (b) as otherwise determined by the Court in any order overruling such objection.
- (f) If the Debtor has deposited monies with a Lease or Contract counterparty as a security deposit or other arrangement, such Lease or Contract counterparty may not set off or recoup or otherwise use such deposit without the prior approval of the Court.
- (g) If an affected lessor or counterparty or any other party in interest (the "Rejection Claimant") asserts a claim or claims against the Debtor arising from the rejection of a Contract or Lease, such Rejection Claimant shall submit a proof of claim to the Debtor's claims and noticing agent, Omni Management Group, LLC, on or before the date that is the later of (i) 30 days after the date an order is entered approving the rejection of the Contract or Lease, or (ii) the bar date for general unsecured claims to be established in this case. If a Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim for such rejection damages.

⁴ With respect to the rejection of a real property Lease, the rejection effective date will not occur until such time as the Debtor has vacated the premises and returned the keys to the affected landlord.

- (h) The Debtor also requests authority to remove any property from the premises that are the subject of any rejected Lease, consistent with the Debtor's ownership rights or other property interests therein, personal property that the Debtor has installed in or about the leased premises (*i.e.*, fixtures, furniture, equipment, and other property) that is either owned by the Debtor, leased by the Debtor from third parties, or subject to any equipment financing agreements with third parties. Moreover, to the extent that the Debtor determines that any interest of the Debtor in such property has little or no value or that the preservation thereof will be burdensome to its estate compared with the expense of removing and storing such property, the Debtor requests authority to abandon, in its sole discretion, such property remaining at the premises subject to a rejected Lease as of the Rejection Date. No personal property subject to a true lease shall be abandoned without first rejecting the applicable Lease. If such a Lease is rejected, the automatic stay shall be deemed modified to permit the respective personal property lessor to recover such abandoned property within fifteen (15) days of abandonment. In the event the Debtor proposes to abandon property, the foregoing notice and objection procedures will apply and the Rejection Notice will set forth a description of the property proposed to be abandoned, as required by Rule 6007-1 of the Local Bankruptcy Rules for the Southern District of New York. Absent a timely objection filed in accordance with these Rejection Procedures, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code as of the Rejection Date and, except as set forth above, the landlord(s) may dispose of such abandoned property without liability to any third party claiming an interest in such abandoned property.

ORDERED that, pursuant to section 365(a) of the Bankruptcy Code, the Debtor's rejection of Leases and Contracts in accordance with the Rejection Procedures set forth in this Order is hereby approved; and it is further

ORDERED that, pursuant to section 554(a) of the Bankruptcy Code, the Debtor is authorized to abandon any personal property, furniture, fixtures, and/or equipment remaining at the premises subject to a rejected Lease in accordance with the procedures set forth in this Order; and it is further

ORDERED that the Debtor is hereby authorized to execute and deliver all instruments and documents, and take such other actions, as may be necessary or appropriate

to implement and effectuate the Rejection Procedures as approved by this Order; and it is further

ORDERED that to the extent not inconsistent with the relief granted herein, entry of this Order is without prejudice to the rights of the Debtor to seek further, other, or different relief regarding the Leases and Contracts pursuant to, among other things, section 365 of the Bankruptcy Code; 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: _____, 2011
White Plains, New York

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A
REJECTION NOTICE

PLEASE TAKE FURTHER NOTICE that objections, if any, to this Rejection Notice must be filed and served so that such objection is filed with the Bankruptcy Court and **actually received** by the following parties no later than ten (10) days after the date this Rejection Notice is filed with the Bankruptcy Court (i.e., by _____, 2011): (i) the Debtor, 5750 Grace Place, Los Angeles, California 90022 (Attn.: Rick Hicks), (ii) counsel to the Debtor, Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Jeffrey L. Cohen, Esq. and Alex R. Velinsky, Esq.), (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Susan Golden, Esq.), (iv) Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02108 (Attn: Donald E. Rothman, Esq.) as counsel for Wells Fargo Bank, N.A., (v) 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, and (vi) [_____] as counsel for the creditors' committee (collectively, the "Rejection Notice Parties").

PLEASE TAKE FURTHER NOTICE that, if an objection to this Notice is timely filed and served, the Debtor shall seek a hearing on such objection and shall provide notice of such hearing to the objecting party and the Rejection Notice Parties. If such objection is overruled by the Court or withdrawn, the rejection of the Contract or Lease shall be deemed effective (a) as of the Rejection Date, or (b) as otherwise determined by the Court as set forth in any order overruling such objection.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Procedures Order, if the Debtor has deposited monies with the Contract or Lease counterparty as a security deposit or otherwise, the Contract or Lease counterparty may not setoff or otherwise use such deposit without the prior authorization of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Procedures Order, for any claim that you may assert against the Debtor as a result of the rejection of any Contract or Lease, you must submit a proof of claim for damages arising from

such rejection, if any, to Omni Management Group, LLC, the Debtor's notice and claims agent at the following address:

Metropark USA, Inc., Rejection Damage Claims
c/o Omni Management Group, LLC
16161 Ventura Blvd., Suite C
PMB 480
Encino, CA 91436

on the date that is the later of (i) 30 days after the date an order is entered approving the rejection of the Contract or Lease, or (ii) the bar date for general unsecured claims to be established in this case. If you do not timely file such proof of claim, you shall be forever barred from asserting a claim for damages arising from the rejection of the applicable Lease or Contract.

Dated: _____, 2011
New York, New York

Schedule 1

NON-RESIDENTIAL REAL PROPERTY LEASES

Address of Subject	Monthly Rental Obligation	Remaining Lease Term	Landlord Name / Address	Effective Date of

PERSONAL PROPERTY LEASES AND CONTRACTS

Title of Contract	Contract Counterparty (Name / Address)	Description of Contract	Effective Date of Rejection