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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:

HD RETAIL REPAIR, LLC.  
47-1225736  
4514 Cole Ave, 910  
Dallas, TX 75205

Debtor.

Case No.: 16-34817-BJH-11

Chapter: 11  
[JOINT ADMINISTRATION REQUESTED]

IN RE:

LOPEK COMPANIES, LLC  
27-3641469  
729 3rd Avenue  
Dallas, TX 75226

Debtor.

Case No.: 16-34818-BJH-11

Chapter: 11  
[JOINT ADMINISTRATION REQUESTED]

LOPEK COMPANIES, LLC'S, EMERGENCY MOTION FOR ORDER AUTHORIZING  
THE INTERIM AND FINAL USE OF CASH COLLATERAL

TO THE HONORABLE BARBARA J. HOUSER, CHIEF UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, HD Retail Repair, LLC, and Lopek Companies, LLC, Debtors and Debtors in possession in the above-styled and numbered cases (collectively, the "Debtors"), and files this *Lopek Companies, LLC's, Emergency Motion for Order Authorizing the Interim and Final Use of Cash Collateral* by and through the undersigned attorney. Lopek Companies, LLC, ("Lopek") requests the entry of an interim order substantially in the form attached hereto as Exhibit "A" (the "Interim Order") and a final order (the "Final Order", and in conjunction with the Interim Order, the "Cash Collateral Orders"), pursuant to 11 U.S.C. §§ 105, 361, and 363 and Federal Rules of Bankruptcy Procedure 4001 and 9014: (a) authorizing Lopek to use the cash collateral of the Secured Lender (defined *infra*) and granting adequate protection thereto; and (b) prescribing the form and manner of notice and setting the time for the final hearing on this

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Motion (the "Final Hearing"). The facts and circumstances supporting this Motion are set forth  
in the Affidavit of Brian Loper (the "Loper Affidavit"), filed concurrently herewith. In support  
thereof Lopek respectfully shows the Court as follows:

**I. JURISDICTION**

1. The Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §1334(b) and the standing order of reference of the District Court. This matter is a core proceeding. 28 U.S.C. §§ 157(b)(1), (b)(2)(M).

2. Venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 361 and 363 of title 11 of United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

**II. BACKGROUND**

**A. Procedural History**

4. This case was commenced by the filing of a voluntary petition under Chapter 11 of the United States Bankruptcy Code on December 16, 2016 (the "Petition Date").

5. No trustee or examiner has been appointed, and no official committee of creditors has yet been established.

**B. Business History and Operations**

6. Lopek is a Texas limited liability company.

7. HD Retail Repair, LLC ("HDRR") and Lopek are in the business of facilities maintenance for retail outlets. HDRR provides facilities maintenance services to all Home Depot stores nationwide. Lopek provides facilities maintenance services to several local car dealerships. HDRR provides management and supervisory personal regarding the facilities

**C. Secured Lenders**

8. In accord with Bankruptcy Rule 4001(b)(1)(B)(i) and (iii), Lopek’s secured creditors<sup>1</sup> that filed a UCC-1 financing statement in order to perfect a security interest in personal property, are as follows:

LENDER	COLLATERAL
<p><b>BB&amp;T</b>                      1522 Gross Road                      Mesquite, TX 75149</p> <p><b>Default Judgment Date:</b> November 16, 2016  <b>Maturity Date:</b> n/a  <b>Est. Balance:</b> \$116,494  <b>Original Balance:</b> n/a  <b>Obligor(s):</b> Lopek Companies, LLC  <b>Guarantor(s):</b> Kevin Loper  <b>UCC-1 Filed:</b> August 1, 2014</p>	<p>All of the Debtor’s now owned and hereafter acquired and wherever located Accounts, including all contract rights and health-care-insurance receivables, general intangibles including all payment intangibles, copyrights, trademarks, patents, trade names tax refunds, company records (paper and electronic), rights under equipment leases, warranties, software licenses, supporting obligations, and all proceeds (cash and non-cash) and products of the foregoing.</p>
<p><b>Comerica Bank</b>  <b>Attention: Commercial Loan</b>                      39200 Six Mile Road, MC7578                      Livonia, MI 48152</p> <p><b>Original Loan Date:</b> March 12, 2015  <b>Maturity Date:</b> November 19, 2015  <b>Est. Balance:</b> \$72,000  <b>Original Balance:</b> n/a  <b>Obligor(s):</b> Lopek Companies, LLC  <b>Guarantor(s):</b> Kevin Loper</p>	<p>All of the property now owned or later acquired by Debtor, wherever located: all accounts (including without limit health care insurance recievables), chattel paper (including without limit tangible and electronic chattel paper), commercial tort claims, contract rights, deposit accounts, documents (including negotiable instruments), equipment, fixtures, general intangibles (including without limit payment intangibles and software), instruments (including without limit promissory notes), and rights to payment evidenced by chattel paper, documents or instruments, inventory (including without limit returns and repossessions), investment property (including securities, securities settlements and financial assets), securities accounts and all investment property and other property and assets at anytime contained therein, letters of credit, letter of credit rights, money, supporting obligations, rights to payment for money or funds advanced or sold, and all additions, attachments, accessions, parts replacements, substitutions, renewals, interest, dividends,distributions, rights of anykind, software all general intangibles (including without limit, software) acquired or used in connection with any of the foregoing and all of the Debtor’s books and records with respect to any of the foregoing (including without limit computer software and the computers and equipment containing said books and records), and all products and proceeds of any of the foregoing (whether cash or non-cash proceeds), including wihtout limit insurance and condemnation proceeds. A reference to a type of collateral shall not be limited by a separate reference to a more specific or narrower type of that collateral. All terms herein have the meaning assigned to them in the Uniform Commercial Code,</p>

<sup>1</sup> Premised upon the UCC-1 filings and other related security documents reviewed to date of the Lopek.

as those meanings may be amended, revised or replaced from time to time. "Uniform Commercial Code" means the Texas Business and Commerce Code as amended, revised or replaced from time to time. The terms used herein which are defined in the Uniform Commercial Code shall have, at all times, the broadest and most inclusive meanings possible.

UCC-1 Filed:

August 11, 2014

9. As evidenced above, it is likely the Lopek has two (2) lenders (collectively, the "Secured Lenders") asserting a security interest in its assets. At this juncture it is less than clear whether there are sufficient assets so as to secure the obligations due and owing each of the Secured Lenders.

10. BB&T asserts that it is secured by a first priority lien on and security interest in substantially all of Lopek's personal property. It is unclear from the UCC- financing statement if this assertion is accurate. BB&T recently liquidated its claim against Lopek through a default judgment.

11. Comerica Bank ("Comerica") asserts that it is secured by a second priority lien on and security interest in substantially all of Lopek's personal property. Assuming the BB&T lien is valid and perfected, there may not be any assets available to Comerica to secure the obligation due and owing from Lopek.

12. As described in the Loper Declaration, in the normal course of business, Lopek uses cash on hand and cash flow from operations to fund working capital, capital expenditures, fuel, materials, supplies, and other general corporate purposes. An inability to use these funds during the chapter 11 cases would cripple Lopek's business operations. Indeed, Lopek must use its cash to, among other things, continue the operation of the business in an orderly manner, maintain business relationships with vendors, suppliers and customers, pay employees and satisfy other working capital and operation needs—all of which are necessary to preserve and maintain Lopek's going-concern value and, ultimately, effectuate a successful reorganization.

III. RELIEF REQUESTED

13. By this Motion and pursuant to 11 U.S.C. §§ 105, 361 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001 and 9014, Lopek requests that the Court grant the following relief:

a. Authorize Lopek, **on an interim basis**, pursuant to section 363(c) of the Bankruptcy Code, to use proceeds of assets on which Secured Lenders assert a first priority lien and security interest (the "Cash Collateral")<sup>2</sup> in accord with the budget attached hereto as Exhibit "B" (the "Budget");

b. Authorize Lopek, **on an interim basis**, pursuant to sections 361 and 363 of the Bankruptcy Code, to provide the adequate protection described herein to the Secured Lenders as regards any diminution in value of the Secured Lenders' interest in the Collateral as existing on the Petition Date ("Prepetition Collateral"), whether from the use of Cash Collateral or the use, sale, lease, depreciation, or decline in value of said collateral;

c. Schedule the Final Hearing pursuant to Bankruptcy Rule 4001 no later than fourteen (14) days after the entry of the Interim Order, to consider the entry of a Final Order authorizing the use of Cash Collateral and approving the notice procedures relative thereto;

d. Authorize Lopek, **on a final basis**, pursuant to 363(c) of the Bankruptcy Code, to use the Cash Collateral in accord with the Budget and any supplemental budgets as approved by the Court after further notice and hearing; and

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<sup>2</sup> Lopek does not hereby admit or consent to the validity, priority, extent or enforceability of the liens asserted by Secured Lenders and hereby reserves all rights with respect thereto.

e. Authorize Lopek, **on a final basis**, pursuant to sections 361 and 363 of the Bankruptcy Code to provide the adequate protection described herein to the Secured Lenders as regards any diminution in value of the Secured Lenders' interest in the Prepetition Collateral, whether from the use of Cash Collateral or the use, sale, lease, depreciation, or decline in value of said collateral.

#### **IV. BASIS FOR RELIEF**

##### **A. Immediate Need for Use of Cash Collateral**

14. Pursuant to Bankruptcy Rule 4001(b)(2), the Court may conduct a preliminary cash collateral hearing within fourteen (14) days of the Petition Date if the relief requested is **necessary to avoid immediate and irreparable harm** to the estate pending a final hearing.

15. Lopek has an immediate need for the use of Cash Collateral pending a final hearing on this Motion. As of the Petition Date, Lopek lacks sufficient unencumbered cash to fund its business operation.

16. Without the use of Cash Collateral, Lopek will have no ability to operate the business. Lopek will not be able to pay its vendors and its vendors will likely cease to provide goods and services to Lopek on credit. Lopek will not be able to fund its payroll. Lopek will not be able to pay professionals necessary for the successful reorganization of its business. Finally, Lopek will not be able to service the needs of its customers. All of these outcomes will cause immediate and irreparable harm to Lopek's bankruptcy estate.

17. Lopek's ability to finance its operations and the availability to Lopek of sufficient working capital and liquidity through the use of Cash Collateral is vital to the confidence of its employees, suppliers, and customers and to the preservation and maintenance of the going-concern value and other values of the bankruptcy estate. Lopek, therefore, seeks immediate

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authority to use the Cash Collateral as set forth in the Motion and in the Interim Cash Collateral  
Order to prevent immediate and irreparable harm to its bankruptcy estate pending the Final  
Hearing pursuant to Bankruptcy Rule 4001(c).

18. Lopek has formulated a Budget for the use of Cash Collateral from the Petition  
Date through two weeks (14 days) thereafter. Lopek believes the Budget includes all  
reasonable, necessary and foreseeable expenses to be incurred in the ordinary course of  
business during the subject time period **so as to avoid immediate and irreparable harm** to the  
bankruptcy estate pending a final hearing.

19. Accordingly, Lopek seeks to use Cash Collateral existing on or after the Petition  
Date that may be subject to Secured Lenders' interest in the Prepetition Collateral. As of the  
Petition Date, Lopek lacks sufficient unencumbered cash to fund the business operation.

20. If approved by this Court Lopek's right to use Cash Collateral under the terms of  
the Interim Order will commence on the date of the entry of the Interim Order and expire on  
the earlier of: (a) the entry of a subsequent interim order; or (b) the entry of the Final Order.

#### **B. Adequate Protection**

21. In consideration for the interim use of cash collateral, and as adequate  
protection for any diminution of the interest of the Secured Lenders in the Prepetition  
Collateral, Lopek hereby tenders to the Secured Lenders, to the extent the Secured Lenders  
may hold valid, perfected and unavoidable security interests in the Prepetition Collateral  
without any requirement to file any documents to perfect that interest, additional and  
replacement security interests and liens (the "**Replacement Liens**") as follows:

**The granting of postpetition security interests equivalent to a  
lien granted under sections 364(c)(2) and (3) of the Bankruptcy  
Code, as applicable, in and upon the Debtor's personal property**

**and the Cash Collateral, whether such property was acquired before or after the Petition Date.**

22. In addition to the Replacement Liens, the Secured Lenders are adequately protected as a result of the continued business operations. But for the continued operation of Lopek, it will be forced to liquidate its assets.

**C. Request for Final Hearing**

23. Pursuant to Bankruptcy Rule 4001(b)(2), Lopek requests this Court set a date for the Final Hearing that is as soon as practicable, but in no event later than fourteen (14) days following the entry of the Interim Order, and fix the time and date prior to the Final hearing for parties to file objections to this Motion.

**V. BANKRUPTCY RULE 4001(B)**

24. Lopek submits the facts set forth in the Loper Affidavit filed contemporaneously herewith establish that “the relief requested herein is necessary to avoid immediate and irreparable harm” to Lopek. Bankruptcy Rule 4001(b)(2). Accordingly, Bankruptcy Rule 4001 is satisfied.

**VI. NOTICE**

25. Bankruptcy Rules 4001 and 9014 generally require that any proceeding to use cash collateral be made only upon Motion and on notice to: (1) any entity that has an interest in the Cash Collateral; (2) a Committee that may be appointed under the Bankruptcy Code (11 U.S.C. § 1102) or, if no such committee is appointed, on the twenty largest unsecured creditors; and (3) such other entities as the Court may direct.

26. Notice of this Motion has been given via email and/or facsimile transmission to: (1) the Office of the United States Trustee for the Northern District of Texas; and (2) the



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Secured Lenders. Each of the Debtor's unsecured creditors and any additional parties identified  
on the attached Mailing Matrix were served via US Mail.

WHEREFORE, Lopek respectfully requests this Court enter an Interim Order on an  
emergency basis granting the relief requested herein, establishing a date and time for the Final  
Hearing, and providing for such other and further relief to which Lopek may be justly entitled.

Respectfully submitted,

Dated: December 19, 2016

/s/ Robert T. DeMarco

**DeMarco•Mitchell, PLLC**

Robert T. DeMarco, Texas Bar No. 24014543

Email robert@demarcomitchell.com

Michael S. Mitchell, Texas Bar No. 00788065

Email mike@demarcomitchell.com

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Plano, TX 75075

T 972-578-1400

F 972-346-6791

**Proposed Counsel for Debtors and Debtors in  
Possession**

**CERTIFICATE OF CONFERENCE**

The undersigned counsel hereby certifies that, prior to the filing of this Motion, he  
conferred with the following parties concerning their respective positions on the Motion:

Attorney	Position
Meredyth Kippes, counsel for the United States Trustee	No position

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that true and correct copies of the foregoing  
pleading and all attachments were served upon all parties listed below in accordance with  
applicable rules of bankruptcy procedure on this 19<sup>th</sup> day of December, 2016. Where possible,  
service was made electronically via the Court's ECF noticing system or via facsimile transmission  
where a facsimile number is set forth below. Where such electronic service was not possible,  
service was made via regular first class mail.

**DEBTORS**

**HD Retail Repair, LLC.**  
4514 Cole Ave, 910  
Dallas, TX 75205

**Lopez Companies, LLC**  
4514 Cole Ave, 910  
Dallas, TX 75205

**UNITED STATES TRUSTEE**

**Office of the United States Trustee**  
Earle Cabell Federal Building  
1100 Commerce Street, Room 976  
Dallas, TX 75242  
Email: [Meredyth.A.Kippes@usdoj.gov](mailto:Meredyth.A.Kippes@usdoj.gov)

**ADDITIONAL PARTIES IN INTEREST AND/OR PARTIES REQUESTING NOTICE**

**BB&T**  
c/o Weltman, Wienber & Reis Co., LPA  
323 W. Lakeside Avenue  
Suite 200  
Cleveland, OH 44113-1009  
Email: [sfink@weltman.com](mailto:sfink@weltman.com)  
Email: [jstallworth@wetlman.com](mailto:jstallworth@wetlman.com)

Mr. George Thorson  
**Advance Business Capital LLC**  
701 Canyon Drive, Suite 105  
Coppell, Texas 75019

**Advance Business Capital LLC**  
c/o Mr. Jared A. Ullman, Esq.  
Ullman & Ullman, P.A.  
7700 W. Camino Real  
Suite 401  
Boca Raton, Florida 33433  
Email: [jared.ullman@uulaw.net](mailto:jared.ullman@uulaw.net)

**Comerica Bank**  
Attention: Jackie Florindi - Commercial Loan  
39200 Six Mile Road, MC7578  
Livonia, MI 48152  
Email: [jgflorindi@comerica.com](mailto:jgflorindi@comerica.com)

**SEE ATTACHED MATRIX**

*/s/ Robert T. DeMarco*

**DeMarco•Mitchell, PLLC**

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Email [robert@demarcomitchell.com](mailto:robert@demarcomitchell.com)  
Michael S. Mitchell, Texas Bar No. 00788065  
Email [mike@demarcomitchell.com](mailto:mike@demarcomitchell.com)  
1255 W. 15<sup>th</sup> Street, 805  
Plano, TX 75075  
T 972-578-1400  
F 972-346-6791



# EXHIBIT "A"

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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:

HD RETAIL REPAIR, LLC  
47-1225736  
4514 Cole Ave, 910  
Dallas, TX 75205

Debtor.

Case No.: 16-34817-BJH-11

Chapter: 11  
[JOINT ADMINISTRATION REQUESTED]

IN RE:

LOPEK COMPANIES, LLC  
27-3641469  
729 3rd Avenue  
Dallas, TX 75226

Debtor.

Case No.: 16-34818-BJH-11

Chapter: 11  
[JOINT ADMINISTRATION REQUESTED]

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**ORDER AUTHORIZING INTERIM USE OF CASH COLLATERAL BY LOPEK COMPANIES, LLC**

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On this day came on for consideration the *Debtor's Emergency Motion for Order Authorizing the Interim and Final Use of Cash Collateral* (the "**Motion**"). The Motion is made pursuant to 11 U.S.C. §§ 105, 361 and 363 and Federal Rules of Bankruptcy Procedure 4001 and 9014: (a) authorizing the Debtor to use cash collateral of existing secured lenders and granting

**EXHIBIT "A"**

adequate protection to existing secured lenders for the use of their cash collateral; and (b) prescribing the form and manner of notice and setting the time for the final hearing (the "**Final Hearing**") on the Motion. Upon review of the Motion, the Affidavit of Cody Adams and based upon the evidence presented to this Court at the interim hearing on the Motion (the "**Interim Hearing**"), the Court hereby makes the following findings of fact and conclusions of law:

1. Adequate and sufficient notice of the Motion and the Interim Hearing has been provided to all persons entitled thereto pursuant to Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure.

2. This matter constitutes a "core proceeding" within the meaning of 28 U.S.C. § 157.

3. This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.

4. Lopek Companies, LLC, Debtor and Debtor in possession in the above-styled and numbered case ("**Debtor**") commenced the case *sub judice* on December 16, 2016 (the "**Petition Date**") by the filing of a petition for relief under chapter 11 of the Bankruptcy Code.

5. Secured Lenders (defined in the Motion) assert that they are secured in substantially all Debtor's personal property (collectively, the "**Prepetition Collateral**") and the proceeds thereof (the "**Cash Collateral**").

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Debtor is permitted to use Cash Collateral, in accord with the Budget attached hereto as Exhibit "A" (the "**Budget**"), provided, the Debtor may exceed any line item in the Budget by up to ten percent (10%). The Budget may be updated and modified through

the date of the Final Hearing by: (a) consensual agreement of Debtor and the Secured Lenders; or (b) by further order of this Court.

2. Debtor's right to use Cash Collateral under the Interim Order shall commence on the date of entry of the Interim Order and expire on the earlier of: (a) the entry of a subsequent interim cash collateral order; or (b) the entry of a Final Order.

3. As adequate protection of the Secured Lender's interest, if any, in the Cash Collateral pursuant to sections 361 and 363(e) of the Bankruptcy Code to the extent of any diminution in value from the use of the Collateral the Court hereby grants the Secured Lenders replacement security liens on and replacement liens on all of Debtor's personal property (the "**Replacement Liens**"), whether such property was acquired before or after the Petition Date.

4. Such Replacement Liens are exclusive of any avoidance actions available to the Debtor's bankruptcy estate pursuant to sections 544, 545, 547, 548, 549, 550, 553(b) and 724(a) of the Bankruptcy Code and the proceeds thereof.

5. Further, such Replacement Liens shall be equal to the aggregate diminution in value of the Collateral, if any, that occurs from and after the Petition Date. The Replacement Liens shall be of the same validity and priority as the liens of the Secured Lenders on the prepetition Collateral.

6. The Replacement Liens granted herein shall maintain the same priority, validity and enforceability as the Secured Lenders' liens on the prepetition Collateral. The Secured Lenders shall not be required to file or serve financing statements, notices of liens or similar interests which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect such Replacement Liens.

7. The Replacements Liens shall be subject and subordinate to: (a) professional fees and expenses of the attorneys, financial advisors and other professionals retained by the Debtor in the amounts set forth in the Budget and any supplemental budget approved by the Court and/or consented to by the Secured Lenders; and (b) any and all fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and the Clerk of the Bankruptcy Court (collectively, the "Carve Out").

8. This Interim Order is without prejudice to the rights of the Secured Lenders or the Debtor as to any further order regarding the use of Cash Collateral as to the request for payment of any other expenses incurred during the period covered by this Interim Order.

9. This Interim Order is without prejudice to the rights of any party-in-interest, including the Debtor, to contest the priority, validity and enforceability of the Secured Lenders' liens and security interests in and to the prepetition Collateral.

10. During the term of this Interim Order, Debtor shall comply with all terms and conditions of the loan documents executed by the Debtor and the Secured Lenders, including but not limited to the reporting requirements set forth therein, except to the extent modified herein.

11. The Final Hearing to consider the entry of a Final Order authorizing and approving the use of Cash Collateral is hereby scheduled for \_\_\_\_\_, 2017, at \_\_\_\_\_:\_\_\_\_\_.m.

12. This Interim Order is and shall be fully effective upon its entry.

### END OF ORDER ###

**ORDER SUBMITTED BY:**

---



*/s/ Robert T. DeMarco*

**DeMarco•Mitchell, PLLC**

Robert T. DeMarco, Texas Bar No. 24014543

**Email** robert@demarcomitchell.com

Michael S. Mitchell, Texas Bar No. 00788065

**Email** mike@demarcomitchell.com

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**T** 972-578-1400

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---

***Proposed Counsel for Debtors and  
Debtors in Possession***

**EXHIBIT "A"**

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**Lopek Companies Budget**

Income \$101,000.00

Expense	Week of	Amount
Gas	12/19-12/30	\$8,000.00
Hotels	12/19-12/30	\$10,000.00
Payroll	12/23	\$26,000.00 approx
Rent	12/30	\$12,500.00
Electric Bill	12/30	\$3,935.00
Payroll	12/30	\$26,000.00 approx
Insurance		\$86,435.00
NET		\$14,565.00

**EXHIBIT "A"**

# EXHIBIT "B"

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**Lopek Companies Budget**

**Income** \$101,000.00

<b>Expense</b>	<b>Week of</b>	<b>Amount</b>
Gas	12/19-12/30	\$8,000.00
Hotels	12/19-12/30	\$10,000.00
Payroll	12/23	\$26,000.00 approx
Rent	12/30	\$12,500.00
Electric Bill	12/30	\$3,935.00
Payroll	12/30	\$26,000.00 approx
Insurance		\$86,435.00
NET		\$14,565.00

**EXHIBIT "B"**