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Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

USI Services Group, Inc.  
Ultimate Services, Inc.  
Strike Force Protective Services, Inc.  
Strike Force of New Jersey, Inc.  
Initial Protective Services, Inc.  
USI Landscape and Design, Inc.  
Summit Staffing Solutions, Inc.

Debtors.

Chapter 11

Case No. 18-10153 (JKS)  
Case No. 18-10154 (JKS)  
Case No. 18-10156 (JKS)  
Case No. 18-10158 (JKS)  
Case No. 18-10159 (JKS)  
Case No. 18-10160 (JKS)  
Case No. 18-10162 (JKS)

(Joint Administration Requested)

**DEBTORS' MOTION FOR AN INTERIM ORDER AND  
FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362,  
AND 363 AND BANKRUPTCY RULE 4001 (I)  
AUTHORIZING THE DEBTORS TO USE CASH  
COLLATERAL, AUTHORIZING THE DEBTORS TO  
OBTAIN DEBTOR IN POSSESSION FINANCING  
(III) GRANTING LIENS AND ADEQUATE PROTECTION,  
AND (IV) SCHEDULING A FURTHER HEARING**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”) hereby move this Court (the “Motion”) for the entry of an interim order (the “Interim Order”) substantially in the form accompanying this application and a final order substantially in the form of the Interim Order (the “Final Order,” and with the Interim Order, the “Orders”), pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001 and

9014 (I) authorizing debtors and debtors-in-possession to obtain post-petition financing from Prestige Capital Corporation (“Prestige” or the “Lender”) pursuant to agreements between the Lender and the Debtors dated January 2, 2018 (the “Financing Agreement”), (II) authorizing use of cash collateral, (III) granting liens and super-priority claims, (IV) granting adequate protection to prepetition secured creditor, the Internal Revenue Service (“IRS”) (V) modifying the automatic stay; (VI) scheduling a final hearing, and (VII) granting related relief. The Debtors request, in accordance with Rules 4001 and the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), a hearing before this Court (the “Court”) for the entry of the Interim Order to be held as soon as the Court’s schedule permits and the Debtors have simultaneously sought expedited consideration of this Motion. Debtor believes the Court’s entry of the Interim Cash Collateral Order providing for the authorization and approval of Debtor’s use of Cash Collateral and granting adequate protection to the Internal Revenue Service (“IRS”) as a secured creditor, pending the Final Hearing, is in the best interests of Debtor’s estate, its creditors and its equity interest holders.

**Local Bankruptcy Rule 4001-3**

1. The provisions described in Local Bankruptcy Rule 4001-3 are set forth at the following sections the Loan Agreement and/or Interim Order:

- a. Amount to be Financed on a Revolving Basis:* Prestige will purchase the Debtors’ accounts receivable, up to an aggregate maximum advance of \$4,000,000, plus interest, fees and expenses. [Financing Agreement Paragraph 2.]
- b. Budget:* All advances provided by Lender to the Debtors pursuant to the Financing Order, the Financing Agreement or otherwise, shall only be used by Debtors to the extent (a) provided for in the Budget or (b) authorized by the Bankruptcy Court and consented to by the Lender for (i) general working capital needs, and (ii) the repayment of the Obligations. [Interim Order Paragraph 6.]

- c. Interest Rates:* The factoring charges are 1.95% for the first thirty days from the date of the Advance, plus an additional .65% for each ten day period for the following sixty days thereafter, up to a maximum of 90 days that the Advance is outstanding. There is an additional charge of 1.5% for each 10 day period after 90 days that the Advance remains outstanding. [Financing Agreement Paragraph 4.]
- d. DIP Facility Fee:* Borrowers paid to Lender a financing facility fee, in the amount of \$10,000, on account of the financing provided by Lender to Borrowers in the Chapter 11 of which \$7,000 was paid pre-petition and the balance will be paid with the first advance. [Interim Order Paragraph 1.]
- e. Repayment of Loan:* By June 30, 2018 or upon confirmation of the Plan, whichever is earlier. [Financing Agreement Paragraph 26.]
- f. Carve-Outs:* Allowed Administrative Expenses for Clerk of the Bankruptcy Court, Fees payable to U.S. Trustee and Certain Professional Fees. [Interim Order Paragraph 10.]
- g. Grant of Security Interest:* First and senior security interest in favor of Prestige in all Accounts Receivable of the Debtors. [Financing Agreement Paragraph 11; Interim Order Paragraph 2.]
- h. Adequate Protection:* As described in Paragraph 7 of the Interim Order.
- i. Lien Priority:* The liens and security interests of Prestige granted under the Credit Documents and this Interim Order in the Collateral securing all Obligations (be first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with §§ 363, 364 or any other section of the Bankruptcy Code or other applicable law; provided, however, that Lender's liens on and security interests in the Collateral shall be subject the Carve-Out (as defined above). [Interim Order Paragraph 2.]
- j. Cross Collateralization:* Each Debtor shall execute a guaranty of the other Debtors' obligations to Prestige so that the receivables of each Debtor shall serve as security for the entire obligation. [Interim Order Paragraph 1.]

## JURISDICTION

6. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M), (A) and (O).

7. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105, 361, 362 and 363 and Federal Rule of Bankruptcy Procedure 4001.

### **BACKGROUND**

9. On January 2, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”). The Debtors continues to operate their businesses and property as debtors-in-possession in accordance with Sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or creditors’ committee has been appointed in this chapter 11 case.

10. The factual background relating to the commencement of this chapter 11 case is set forth in detail in the accompanying Declaration of Harry B. Malinowski (“Malinowski Declaration”) which is incorporated herein by reference.

#### **A. The Debtors**

11. The Debtors have been in business for over one hundred years, offering facilities management services, including janitorial services, landscaping, snow management and security services. The Debtors provide these services across the county to a wide variety of customers including Macys, Bloomingdales and the Children’s Place. The Debtors collectively employ approximately 2,000 employees across the country, although these amounts can vary seasonally. Their combined annual revenues approximate almost \$37 million.

12. The Debtors operate out of the corporate headquarters located at 51 Progress Street, Union, New Jersey. Fredrick G. Goldring (“Goldring”), the great-grandson of the founder,

is the President of all the Debtors. Goldring has been the chief executive officer of the Debtors for the past forty years.

13. The Debtors corporate structure is as follows:

- USI Services Group, Inc. (“USI”) is the parent company. It provides the day-to-day management of the operating companies, and janitorial/maintenance services to customers nationwide. Its annual revenues average \$7 million, it has over 170 employees. Goldring owns 100% of USI, and utilizes other service providers as subcontractors on occasion.
- Ultimate Services, Inc. (“Ultimate”) is the primary operating entity and provides janitorial services to customers nationwide. It is a 100% subsidiary of USI. Its annual revenues average \$14 million, it has almost 900 employees and utilizes other service providers as subcontractors on occasion.
- Strike Force Protective Services, Inc. (“Strike Force”) provides security services, primarily armed and unarmed security offices, to retail, commercial and industrial sites. It also provides security services for concerts and similar public events. It is a wholly owned subsidiary of USI. Its annual revenues average over \$4 million, it has over 125 employees and utilizes other service providers as subcontractors on occasion.
- Strike Force of New Jersey, Inc. (“Strike Force NJ”) provides security services in New Jersey, primarily armed and unarmed security offices, to retail, commercial and industrial sites. It also provides security services for concerts and similar public events. It is a wholly owned subsidiary of USI. Its annual revenues average \$7.5 million, it has approximately 450 employees and utilizes other service providers as subcontractors on occasion.

- Initial Protective Services, Inc. (“IPS”), based at the Union facility, provides security services, executive protection, event security and investigative services in Pennsylvania. It is 100% owned by Goldring. Its annual revenues average \$350,000 and currently, it has 14 employees.
- USI Landscape and Design, Inc. (“USI Landscape”) provides landscape design, snow removal and other maintenance services in the metropolitan area. It is a wholly owned subsidiary of USI. Its annual revenues average \$1.5 million, it has over 40 employees and utilizes other service providers as subcontractors on occasion.
- Summit Staffing Solutions, Inc. (“Summit”) provides temporary staffing services for the hospitality, janitorial and events industries in the New York metropolitan area and Florida. It operates out of a facility located at 1100 Globe Avenue, Mountainside, New Jersey. It is 100% owned by Goldring. Its annual revenues average \$2.0 million and it currently has 17 employees.

***The Debtors’ Financial Problems and Events Leading to Bankruptcy***

14. The Debtors face two significant debt issues: outstanding tax liabilities and personal injury claims. The Debtors have been struggling with these issues for years. While juggling payments to these creditors, the Debtors have been unable to initiate money saving cash management programs that would substantially reduce the cost of their operations, especially maintaining a payroll and time management system for a nationwide workforce. Notwithstanding these Herculean efforts, the Debtors are no longer able to operate without the relief provided by the Bankruptcy Code.

15. The Debtors cash flow problems date back to the early 2000s. The Debtors were facing a cash flow crunch due to a combination of a poor business decision to self-insure itself

for personal injury claims and expanding the business without raising capital or debt to fund the growth. In attempting to address its cash flow problems the Debtors' controller decided to not pay employee withholding taxes to the federal government or to the state governments in which it operated. In addition, the Debtors did not pay to certain states sales taxes which they had collected. The Debtors have tried to pay these tax obligations, and have entered into payment agreements with various tax authorities, but they have been unable to meet their obligations under these agreements and to stay current. The Debtors have been unable to make any meaningful reductions in these obligations because the federal and state taxing authorities continue to assess interest and penalties. Despite it being clear the Debtors would never be able to meet all of their obligations, the federal and state taxing authorities will not compromise the principal amounts of the taxes due.

16. With regard to the IRS the Debtors owe a total of \$6,496,957 as of October 31, 2017, comprised of principal (\$4,710,488), interest (\$1,198,420) and penalties (\$587,836). Ultimate is responsible for \$4,231,518 and Strike Force NJ is responsible for \$1,426,086. The IRS has filed numerous liens against each of the Debtors which have attached against the assets of the Debtors. Up until now the IRS has taken no steps to enforce its liens.

17. The IRS recently advised the Debtors that it intends to levy on previously filed liens by seizing the Debtors' bank accounts and garnishing the Debtors' accounts receivable. The Debtors have requested a review of that decision. The review process should be completed shortly, however, the Debtors' tax advisors are not optimistic that they will be able to obtain any relief.

18. With regard to the state tax obligations, the Debtors' largest obligations are to New York (approximately \$21 million), Pennsylvania (approximately \$4.5 million) and New

Jersey (approximately \$4.2 million). Each of these states have filed tax judgments against the Debtors, but none of these states, as of yet have executed on those judgments. However, New York, New Jersey and Pennsylvania have indicated in recent weeks that they are prepared to take enforcement actions against the Debtors and shut down operations.

19. The tax issues and the cash flow issues were directly tied to the Debtors' now abandoned self-insurance program. In order to save on the substantial insurance premiums it was paying for liability insurance, the Debtors decided in 2005 to adopt a self-insurance program whereby it would defend itself against all personal injury claims up to a limit of its self-insured retention of \$250,000. The self-insurance program resulted in a further drain, not only in terms of substantial legal fees but also from the cost of resolving the underlying tort claims, in excess of \$12 million.

20. Due to the extraordinary costs, the Debtors terminated the self-insurance program in 2010. However, the damage was already done and there are substantial legacy costs remaining. As of today, the Debtors have 72 active lawsuits and ongoing settlement agreements, totaling in excess of \$1.8 million. The monthly payments on the settled claims exceeds \$100,000. The Debtors unilaterally suspended payments in May 2017, and represented to the claimants that the payments would hopefully resume in November. However, until recently, the Debtors had nevertheless continued to make payments to those claimants who had threatened to enforce their judgments.

21. As a result of the financial juggling required to pay both taxes and personal injury claims, the Debtors have been unable to maintain sufficient bank balances to fund payroll expenses in advance which allow them to employ a payroll service and reduce costs. Thus, in order to meet payroll obligations to its employees, the Debtors continue to send out all the



payroll checks by overnight courier, incurring substantial delivery costs. In addition, the Debtors have been incurring excessive bank charges because of a delay in the clearing of payments from customers. The Debtors incur on average additional expenses of \$75,000 a month, expenses which would be eliminated if the Debtors are able to obtain an investor to properly capitalize the Debtors.

***The Debtors' Plan for Reorganization in Bankruptcy***

22. If the Debtors could eliminate these administrative expenses and implement a time management and payroll system, it would be profitable on an operating basis. The Debtors' plan is to find an investor who will provide funding for both working capital and financing a plan of reorganization. If the Debtors cannot find an investor in a reasonable period of time, they would consider selling the businesses as a going concern as part of a liquidating plan of reorganization.

**RELIEF REQUESTED**

23. Before the Debtor can move forward with their plans for reorganization they need to stabilize their businesses. In order to do that they need both permission to use existing cash collateral and to borrow additional funds to be used as working capital,

24. The Debtors will be requesting two forms of post-petition financing relief: debtor in possession financing in the form of a factoring agreement (the "Factoring Facility") with Prestige Capital Corporation ("Prestige" or the "Lender"); and use of cash collateral, i.e. cash on hand and accounts receivable, that is subject to the liens of the IRS.

***The Factoring Agreement***

25. Under the terms of the proposed agreements with Prestige, a sample of which is annexed as **Exhibit A**,<sup>1</sup> Prestige will purchase portions of the Debtors' current receivables and post-petition receivables, based on an initial advance (the "Advance") of 80% of the eligible accounts receivable, up to an aggregate maximum outstanding advance of \$4,000,000. Advances will be funded upon submission of the invoices. Reserves (the remaining 20% of the collected receivable, less fees earned by Prestige on the factored receivables will be sent to the Debtors within four (4) business days after the accounts receivable have been collected.

26. Prior to the filing, Prestige charged a \$10,000 one-time, non-refundable due diligence fee which covered Prestige's investigation and legal expenses. Prestige agreed that the Debtors would pay \$7,000 upon accepting Prestige's proposal, and \$3,000 would be paid at the time of the first Advance. The factoring charges are 1.95% for the first thirty days from the date of the Advance, plus an additional .65% for each ten day period for the following sixty days thereafter, up to a maximum of ninety days that the Advance is outstanding. There is an additional charge of 1.5% for each ten day period after ninety days that the Advance remains outstanding.

27. As protection for its Advances, Prestige has requested the following: (i) an order pursuant to Bankruptcy Code § 364(c) authorizing the sale of the receivables and granting Prestige a first security interest in the Debtors' receivables that is superior to the existing lien of the IRS as to the receivables; (ii) cross-guaranties of each Debtor of the other Debtors' obligations to Prestige; and (iii) a validity guaranty of the Debtors' principal, Goldring; and (iv)

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<sup>1</sup> Each of the Debtors is executing a separate, but identical Factoring Agreement with Prestige. However, Prestige will not purchase any receivables from Strike Force Protective Services, Inc. until that Debtor has its corporate charter reinstated.

creation of a lockbox to which payments of all factored receivables will be paid, with the right to notify all account debtors

28. On an interim basis, Prestige has offered to provide the Debtors with access to a portion of the Factoring Facility to satisfy certain post-petition operating expenses and administrative expenses. Annexed here to as **Exhibit B** is a budget which includes both the interim application and the full thirteen weeks of the final application. The budget incorporates both the use of the proceeds of the Factoring Facility and the use of cash collateral generated by the sale of the Debtors' receivables and cash on hand.

29. Pursuant to section 364(c) and (d) of the Bankruptcy Code, the Debtors respectfully request that this Court enter an Interim Order approving the Factoring Facility on an emergency, interim basis. This financing is necessary for the Debtors to continue operations until they can seek final Court approval.

30. After extensive efforts to obtain post-petition financing on terms more favorable than the Factoring Facility offered by the Lender, the Debtors have reasonably determined that the Factoring Facility offered by the Lender provides terms most favorable to the Debtors and their estates. We solicited offers from at least half a dozen potential lenders on both an unsecured and secured basis. Only four were willing to sign non-disclosure agreements and review the Debtors' financial information. Of those four, Prestige was the only one willing to provide financing needed by the Debtors to continue their operations in Chapter 11 pending a sale of the Debtors' business. The Debtors believe they would not be able to obtain post-petition financing or other financial accommodations from any alternative lender on more favorable terms and conditions than those for which approval is sought herein.

31. In the sound exercise of their business judgment and fiduciary duties, the Debtors have determined to proceed under the Factoring Facility offered by the Lender, which will benefit the estates generally and provide the Debtors with the ability to continue operations as they seek to reorganize under Chapter 11.

32. Approval of the Factoring Facility on an interim basis will provide the Debtors with immediate access to borrowing availability to pay its current and ongoing operating expenses, including post-petition wages, until a final hearing can be scheduled. On a final basis, the Factoring Facility will provide the Debtors with the ability to pay ongoing operating expenses, including post-petition wages and Allowed Administrative Expenses until the Debtors' business can be reorganized or sold. Unless these expenses are paid, the Debtors will be forced to cease operations, which would likely: (i) result in the loss of over 2,000 jobs, (ii) result in irreparable harm to its business and (iii) jeopardize the Debtors' ability to reorganize or sell its assets and maximize value for all interested parties. The credit provided under the Factoring Agreement will enable the Debtors to continue to satisfy its vendors, pay employees and operate their business in the ordinary course and in an orderly and reasonable manner to preserve the value of its estate for the benefit of the Debtors' creditors. The availability of credit under the Factoring Agreement will provide confidence to the Debtors' suppliers, employees and customers that will enable and encourage them to continue their relationships with the Debtors. Accordingly, the timely approval of the relief requested herein is imperative.

33. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or incur debt: (a) with priority over any and all administrative expenses, as specified in section 503(b) or

507(b) of the Bankruptcy Code; (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364. The Debtors propose to obtain the financing set forth in the Factoring Agreement by providing, inter alia, security interests and liens pursuant to section 364(c) of the Bankruptcy Code.

34. The Debtors' liquidity needs can be satisfied only if the Debtors are authorized to operate under the Factoring Facility and to use such proceeds to fund their operations. The Debtors have been unable to procure sufficient financing in the form of unsecured credit allowable under section 503(b)(1), as an administrative expense under section 364(a) or (b) or in exchange for the grant of a super-priority administrative expense claim pursuant to section 364(c)(1). The Debtors have sought such funding from numerous sources prior to initiating these cases, none of which was willing to lend funds on an unsecured basis or on terms more favorable than the Lender.

35. Bankruptcy courts grant a debtor considerable deference in acting in accordance with its business judgment. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest"); *see also In re Funding Sys. Asset Mgmt. Corp.*, 72 B.R. 87 (Bankr. W.D. Pa. 1987); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444,449 (D. Colo. 1985).

36. The Debtors assets are primarily its accounts receivable and its good will. These assets, along with the Debtors tangible assets, are subject to the lien of the IRS. The Debtors have been unable to procure the funding required to meet their ongoing operational needs absent granting the proposed claims and liens on their assets as set forth in the Factoring Agreement. The Debtors submit that the circumstances of this case require the Debtors to obtain financing pursuant to section 364(c) of the Bankruptcy Code and, accordingly, the Factoring Agreement reflects the exercise of its sound business judgment.

37. The terms and conditions of the Factoring Agreement are fair and reasonable and were negotiated extensively by the parties in good faith and at arms' length. Accordingly, the DIP Lender and all obligations incurred under the Factoring Agreement should be accorded the benefits of section 364(e) of the Bankruptcy Code.

#### ***Cash Collateral Relief***

38. As set forth above, the Debtors have an urgent need for the use of the Cash Collateral pending the final hearing on this Motion. Cash Collateral in this case consists of the cash on hand and the proceeds of pre-petition accounts receivable that will be factored with the Prestige. Accordingly, the Debtors seek to use Cash Collateral existing on or after the Petition Date that is subject to the Lender's post-petition liens and the tax liens of the IRS. As of the Petition Date, the Debtors do not have sufficient unencumbered cash to fund their business operations and pay present operating expenses.

39. Absent the ability to obtain debtor-in-possession financing and use Cash Collateral, the Debtors will not be able to pay insurance, wages, rent, utility charges, and other critical operating expenses. Consequently, without access to Cash Collateral, the Debtors will not be able to maintain their business operations and continue their restructuring efforts, and would

likely be forced to cease operations and liquidate. As such, the Debtors' estates would be immediately and irreparably harmed.

40. If the Debtors are unable to obtain sufficient operating liquidity to meet their post-petition obligations on a timely basis, a permanent and irreplaceable loss of business will occur, causing a loss of value to the detriment of the Debtors and their creditors. This potential loss of revenue and going concern value would be extremely harmful to the Debtors, their estates and their creditors at this critical juncture. The Debtors cannot obtain funds sufficient to administer their estates and operate their businesses other than by obtaining the relief requested herein pursuant to section 363 of the Bankruptcy Code.

41. The Debtors' management has formulated the Budget for the use of debtor-in-possession financing and Cash Collateral from the Petition Date and thirteen weeks hereafter. The Debtors believe that the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in the ordinary course in connection with the operation of their businesses and their restructuring efforts for the period set forth in the Budget. The Debtors also believe that the use of Cash Collateral in accordance with the Budget will provide the Debtors with adequate liquidity to pay administrative expenses as they become due and payable during the period covered by the Budget.

***The Interest of the IRS is Adequately Protected.***

42. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor in possession may only use "cash collateral" with the consent of the secured party with an interest therein or court approval. *See* 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in cash collateral sought to be used by a debtor, the court shall prohibit or condition such use of cash collateral as is necessary to provide adequate

protection of such entity's interest. See 11 U.S.C. § 363(e). In this case, the tax liens of the IRS, which will be subordinated to the liens to be granted to Prestige, will be adequately protected with (i) junior replacement liens on the Debtors' post-petition receivables, albeit subordinated to Prestige, (ii) continued first liens on the Debtors' other assets, and (iii) the continuation of the Debtors' business operations.

43. As adequate protection for any diminution in value of the IRS's interests, the Debtors' request that the Court grant the IRS security interests ("Replacement Liens") equivalent to a lien granted under section 364(c)(2) and (3) of the Bankruptcy Code, as applicable, in and upon the Debtors' real and personal property and the Cash Collateral, whether such property was acquired before or after the Petition Date, subject only to the liens granted to the Lender. If granted, the Replacement Liens will adequately protect the IRS's interests from any potential depreciation and deterioration. As shown in the Budget, the Debtors' collateral base will increase over the next thirteen weeks by more than the amount of the Prestige liens so that the Replacement Liens should be more than adequate to protect the Lenders' interests from depreciation and deterioration.

44. Moreover, the IRS will retain its liens on the Debtors' other assets, such as inventory, machinery and equipment.

45. In addition to the proposed Replacement Liens and continued liens, the IRS is also adequately protected as a result of the continuation of the Debtors' business operations. Without the use of the Cash Collateral, the Debtors would forego business opportunities and their operations would be irreparably harmed. Indeed, absent use of the Cash Collateral, the Debtors likely will be unable to pay their ordinary business expenses, including employee wages. In that event, all operations will cease, employees will be terminated, and all assets on which the



IRS asserts a lien will be liquidated. Those assets will be worth less in a liquidation than they will be worth as a going concern reorganization or a sale. Since the Debtors have generated positive EBITDA in the past and project positive EBITDA for the future, use of cash collateral to operate the business and maintain going concern value provides adequate protection to the Lenders. As going concern value exceeds liquidation value, adequate protection is being provided.

### ***Modification of the Automatic Stay***

46. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtors to: (i) grant the security interests, liens and claims described above with respect to Prestige and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; and (ii) implement the terms of the proposed Interim and Final Orders. Stay modifications of this kind are ordinary and standard features of post-petition debtor financing facilities and, in the Debtors' business judgment, are reasonable and fair under the present circumstances. The Debtors submit that the Lenders are adequately protected by the proposed Replacement Liens in the Collateral and by maintaining the business of the Debtors as a going concern and thereby preventing any diminution in the value of the Prepetition Collateral.

### **Basis for Cash Collateral Relief**

#### **A. The Debtors Require Use of the Cash Collateral.**

47. As set forth above, the Debtors have an urgent need for debtor-in-possession financing, which includes use of the Cash Collateral pending the final hearing on this Motion on the terms set forth in the Factoring Agreement. Cash Collateral in this case consists of each of the Lenders' interests in the Collateral which supports the debtor-in-possession financing.

Accordingly, the Debtors seek to use Cash Collateral existing on or after the Petition Date that is subject to the Prestige's post-petition liens and each of the IRS's pre-petition liens and security interests on the terms set forth in the Factoring Agreement. As of the Petition Date, the Debtors do not have sufficient unencumbered cash to fund their business operations and pay present operating expenses.

48. Absent the ability to obtain debtor-in-possession financing and use Cash Collateral, the Debtors will not be able to pay insurance, wages, rent, utility charges, and other critical operating expenses. Consequently, without access to Cash Collateral, the Debtors will not be able to maintain their business operations and continue their restructuring efforts, and would likely be forced to cease operations and liquidate. As such, the Debtors' estates would be immediately and irreparably harmed.

49. If the Debtors are unable to obtain sufficient operating liquidity to meet their post-petition obligations on a timely basis, a permanent and irreplaceable loss of business will occur, causing a loss of value to the detriment of the Debtors and their creditors. This potential loss of revenue and going concern value would be extremely harmful to the Debtors, their estates and their creditors at this critical juncture. The Debtors cannot obtain funds sufficient to administer their estates and operate their businesses other than by obtaining the relief requested herein pursuant to section 363 of the Bankruptcy Code.

50. The Debtors' management has formulated the Budget for the use of debtor-in-possession financing and Cash Collateral from the Petition Date through nine weeks hereafter. The Debtors believe that the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in the ordinary course in connection with the operation of their businesses and their restructuring efforts for the period set forth in the Budget. The Debtors also believe that the

use of Cash Collateral in accordance with the Budget will provide the Debtors with adequate liquidity to pay administrative expenses as they become due and payable during the period covered by the Budget.

51. The Debtors' right to use Cash Collateral as approved by the Interim Order shall 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. The Interest of the IRS is Adequately Protected.**

52. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor in possession may only use "cash collateral" with the consent of the secured party with an interest therein or court approval. *See* 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in cash collateral sought to be used by a debtor, the court shall prohibit or condition such use of cash collateral as is necessary to provide adequate protection of such entity's interest. See 11 U.S.C. § 363(e).

53. Appropriate adequate protection is decided on a case-by-case basis. *See, e.g., In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Beker Indus. Corp.*, 58 B.R. 725 (Bankr. S.D.N.Y. 1986); *see also In re JKL Chevrolet, Inc.*, 190 B.R. 542, 545 (Bankr. E.D. Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case) (citing *In re O'Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987)). Although adequate protection is not defined in the Bankruptcy Code, section 361 of the Bankruptcy Code provides the following three (3) nonexclusive examples of what may constitute adequate protection:

(1) requiring the [debtor] to make a cash payment or periodic cash payments to such entity, to the extent that the ... use ... under section 363 ... results in a decrease in the value of such entity's interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such. . . use . . . results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief... as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361. Essentially, with the provision of adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. at 736; *see also In re Nice*, 355 B.R. 554, 563 (Bankr. N.D. Va. 2006) (“adequate protection is solely a function of preserving the value of the creditor’s secured claim as of the petition date due to a debtor’s continued use of collateral”). The Debtors assert that the Lenders are adequately protected by the granting of replacement liens as set forth in the Factoring Agreement, and the continuation of the Debtors’ business.

#### Replacement Liens

54. As adequate protection for any diminution in value of the Lenders’ interests, the Debtors request that the Court grant the IRS security interests (“Replacement Liens”) equivalent to a lien granted under section 364(c)(2) and (3) of the Bankruptcy Code, as applicable, in and upon the Debtors’ real and personal property and the Cash Collateral, whether such property was acquired before or after the Petition Date, subject only to the super-priority liens granted to Prestige. If granted, the Replacement Liens will adequately protect the IRS’s interests from any

potential depreciation and deterioration with respect to the pre-petition Collateral. As shown in the Budget, the Debtors' collateral base will increase over the next thirteen weeks by more than the amount of the factoring liens so that the Replacement Liens should be more than adequate to protect the Lenders' interests from depreciation and deterioration.

*Continued Operation of the Debtors' Business*

55. In addition to the proposed Replacement Liens, the IRS is also adequately protected as a result of the continuation of the Debtors' business operations. Without the use of the Cash Collateral, the Debtors would forego business opportunities and their operations would be irreparably harmed. Indeed, absent use of the Cash Collateral, the Debtors likely will be unable to pay their ordinary business expenses, including employee wages. In that event, all operations will cease, employees will be terminated, and all assets on which the IRS asserts a lien will be liquidated. Those assets will be worth less in a liquidation than they will be worth as a going concern reorganization. As going concern value exceeds liquidation value, adequate protection is being provided.

56. The continuation of the Debtors' operations likely presents the best opportunity for the IRS to receive the greatest recovery on account of its lien. Accordingly, the Debtors submit that use of the Cash Collateral will allow the Debtors to continue their operations and, thereby, protect the Lenders' interests. Courts have recognized that the preservation of the going concern value of secured lender's collateral constitutes adequate protection of such creditor's interest in the collateral. *See, e.g., In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (holding that if there is no actual diminution of value of collateral and the debtor can operate profitably post-petition, then the secured creditor is adequately protected); *In re 499 W. Warren Street Assocs., Ltd. P'ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (where the court

found a secured creditor's interest in collateral adequately protected when cash collateral was applied to normal operating and maintenance expenditures on the collateral property); *In re Willowood E. Apartments of Indianapolis II, Ltd.*, 114 B.R. 138, 143 (Bankr. S.D. Ohio 1990) (same); *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (creditor's secured position would be enhanced by the continued operation of the debtor's business); *In re Aqua Assocs.*, 124 B.R. 192, 196 (Bankr. E.D. Pa. 1991) ("The important question, in determining whether the protection to a creditor's secured interest is adequate, is whether that interest, whatever it is, is being unjustifiably jeopardized.") (citation omitted).

### **The Automatic Stay Should Be Modified on a Limited Basis**

57. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtors to: (i) grant the security interests, liens and claims described above with respect to Prestige and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; and (ii) implement the terms of the proposed Interim and Final Orders.

58. Stay modifications of this kind are ordinary and standard features of post-petition debtor financing facilities and, in the Debtors' business judgment, are reasonable and fair under the present circumstances.

59. The Debtors submit that the Lenders are adequately protected by the proposed Replacement Liens in the Collateral and by maintaining the business of the Debtors as a going concern and thereby preventing any diminution in the value of the Prepetition Collateral.

### **Interim Approval Should Be Granted**

60. The Debtors respectfully request that the Court conduct an expedited preliminary hearing on this Motion and authorize the Debtors (from and after the entry of the Interim Order

and pending the final hearing) to obtain debtor-in-possession financing on the terms set forth above and the use of the Cash Collateral in accordance with the Budget for, among other things, working capital purposes and the payment of certain obligations in accordance with the relief authorized by the Court. Interim access to the debtor-in-possession financing and Cash Collateral will ensure that the Debtors maintain ongoing operations and avoid immediate and irreparable harm and prejudice to their estates and all parties in interest pending the Final Hearing.

61. The Debtors submit that, for the reasons set forth herein, immediate access to the debtor-in-possession financing and use of Cash Collateral (first, on an interim basis as requested in this Motion) on the terms set forth in the Budget, is necessary to preserve the value of the Debtors' estates for the benefit of all parties in interest.

#### **Request for Final Hearing**

62. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than twenty-one (21) 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.

#### **Waiver of Bankruptcy Rules Regarding Notice and Stay of an Order**

63. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rules 6004(h), 7062, 9014, or Local Rule 9013-1(b)

#### **Waiver of Memorandum of Law**

64. In accordance with Local Rule 9013-1(a)(3), no brief is being filed in support of this Motion because the legal principles involved are not novel or in dispute and are adequately set forth in the Certification.

**NOTICE IS SUFFICIENT UNDER THE CIRCUMSTANCES**

65. The Debtor submits that given the exigencies of the situation, the timing of the filing, and the Debtor's immediate need for funds, expedited notice as contemplated by Bankruptcy Rule 4001 is sufficient to permit this Court to enter an interim order authorizing Debtor's use of Cash Collateral. The Debtor will provide notice of the Interim Hearing to: (i) the Office of the United States Trustee, (ii) the Debtors thirty (30) largest unsecured creditors on a consolidated basis, (iii) counsel for the IRS (iv) Debtor's other Secured Creditors, and their counsel, if known, if any, and (v) all other persons and entities that have requested notice pursuant to Fed. R. Bankr. P. 2002.

66. The Debtor submits that no other or further notice is necessary

**NO PREVIOUS RELIEF REQUESTED**

67. The Debtor has not previously sought the relief requested herein from this Court or any other court.

**EXPEDITED RELIEF**


68. Due to the exigent circumstances of this case, the Debtor has filed contemporaneously herewith a motion requesting the Court enter an order scheduling an expedited hearing and shortening time (the "Motion to Expedite") on the relief requested herein with a hearing at the Court's its earliest convenience. We ask that the Court be mindful of the fact that the Debtor needs to make payroll on Saturday so that time is off the essence.



**WHEREFORE**, the Debtor respectfully requests that the Court (i) GRANT the Motion, (ii) enter the Interim Order, substantially in the form attached hereto, granting the relief requested; (iii) set the Final Hearing; and (iv) grant such other and further relief as is just and proper.

Respectfully submitted,

MANDELBAUM SALSBERG P.C.  
Proposed Counsel for Debtors and Debtors in Possession

By   
Stuart Gold

DATED: January 4, 2018

**EXHIBIT A**

# ***Prestige Capital Corporation***

400 KELBY STREET, 14TH FLOOR, FORT LEE, NEW JERSEY 07024 (201) 944-4455

## **Purchase and Sale Agreement (“Agreement”)**

**1. ASSIGNMENT.** PRESTIGE CAPITAL CORPORATION (“Prestige”) hereby buys and **USI SERVICES GROUP, INC. (DIP)** (“Seller”) hereby sells, transfers and assigns all of Seller’s right, title and interest in and to those specific accounts receivable owing to Seller as set forth on the assignment forms provided by Prestige (the “Assignments”) together with all rights of action accrued or to accrue thereon, including without limitation, full power to collect, sue for, compromise, assign or in any other manner enforce collection thereof in Prestige’s name or otherwise. All of Seller’s accounts receivable and contract rights which are presently or at any time hereafter assigned by Seller, and accepted by Prestige, are collectively referred to as (the “Account(s)”).

**2. ADVANCE.** Upon Prestige’s receipt and acceptance of each Assignment, Prestige shall pay to Seller **EIGHTY percent (80%)** of the face value of the Accounts therein described (the “Down Payment”). Notwithstanding anything to the contrary contained in this Agreement, the maximum outstanding balance of Seller to Prestige shall be **\$1,000,000 (“Maximum Advance”)**.

**3. RESERVE.** Prestige will hold in reserve the difference between the Purchase Price (hereinafter defined) and the Down Payment (the “Reserve”) and provided there are no outstanding chargebacks or disputes, will pay to Seller, the Reserve, less any sums due Prestige hereunder, four (4) business days from the date on which the Accounts have been collected in good funds, charged back and/or deemed collected by Prestige due to an account debtor’s insolvency. For purposes of this Agreement, the term “Purchase Price” shall mean the net face value of Accounts, less; Prestige’s discount fee described in paragraph 4 below, returns, credits, allowances and discounts; and less all other sums charged or chargeable to Seller’s Accounts.

**4. DISCOUNT.** Prestige’s purchase of the Accounts from Seller shall be at a discount fee which is deducted from the face value of each Account upon collection. The discount fee, which shall be based on the number of days an Account is outstanding from the date of the Down Payment, shall be as follows: If paid within 30 days a discount fee of **1.95%**; if paid within 40 days a discount fee of **2.60%**; if paid within 50 days a discount fee of **3.25%**; if paid within 60 days a discount fee of **3.90%**; if paid within 70 days a discount fee of **4.55%**; if paid within 80 days a discount fee of **5.20%**; if paid within 90 days a discount fee of **5.85%** and an additional 1.5% for each 10 day period thereafter until the Account is paid in full.

**5. WARRANTIES, REPRESENTATION AND COVENANTS.** As an inducement for Prestige’s entering into this Agreement and with full knowledge that the truth and accuracy of the warranties, representations and covenants in this Agreement are being relied upon by Prestige, instead of the delay of a complete credit investigation, Seller warrants, represents and covenants that:

- (a) Seller is properly licensed and authorized to operate the business of janitorial and facilities management services;
- (b) Seller is the sole and absolute owner of the Accounts and has the full legal right to make said sale, assignment and transfer;
- (c) The correct amount of each Account will be set forth on the Assignments;
- (d) Each Account is an accurate and undisputed statement of indebtedness from an account debtor for a sum certain, without offset or counterclaim and which is due and payable in ninety days or less;
- (e) Each Account is an accurate statement of a bona fide sale, delivery and acceptance of merchandise or performance of service by Seller to an account debtor;
- (f) Seller does not own, control or exercise dominion in any way whatsoever, over the business of any account debtor;
- (g) All financial records, statements, books or other documents shown to Prestige by Seller at any time either before or after the signing of this Agreement are true and accurate;
- (h) Seller will not under any circumstance or in any manner whatsoever, interfere with any of Prestige’s rights under this Agreement;
- (i) Other than liens of the Internal Revenue Service, which are subordinated to the liens of Prestige by an Order of the United States Bankruptcy Court for the District of New Jersey, Seller has not and will not, at any time, permit any lien, security interest or encumbrance to be created upon any of its accounts receivable and/or its inventory without the prior written consent of Prestige;
- (j) Seller will not change or modify the terms of the Accounts with any account debtor unless Prestige first consents, in writing;

- (k) Seller will notify Prestige, in writing, in advance of: any change in Seller's places of business; Seller having or acquiring more than its existing two places of business; any change in Seller's chief executive office; and/or any change in the office or offices where Seller's books and records concerning accounts receivable are kept;
- (l) Seller will immediately notify Prestige of any proposed or actual change of the Seller's and/or any account debtor's identity, legal entity or corporate structure;
- (m) A notification letter from Seller and/or all invoices will state on their face that the Accounts represented thereby have been assigned to Prestige and are to be paid directly to Prestige; and
- (n) No Account shall be on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis;

The warranties, representations and covenants contained in this paragraph 5 shall be continuous and be deemed to be renewed each time Seller assigns Accounts to Prestige. Notwithstanding the provisions contained in paragraph 6 of this Agreement, Prestige shall have recourse against the Seller in the event that any of the warranties, representations and covenants set forth in this paragraph 5 are breached.

**6. NO RECOURSE.** Prestige shall have no recourse against Seller if payments are not received solely due to the "Insolvency" of an account debtor within 90 days of invoice date. For purposes of the foregoing, Insolvency shall be deemed to have occurred only when: (a) a voluntary or involuntary bankruptcy proceeding for the relief of an account debtor under either Chapter 7 or Chapter 11 shall have been instituted in a United States Bankruptcy Court or a state court insolvency proceeding; (b) a receiver or assignee is appointed for the whole or any part of the property of an account debtor; (c) an account debtor's assets shall have been sold under a writ of execution or attachments, or a writ of execution shall have been returned unsatisfied; (d) an account debtor shall have absconded; or (e) an account debtor's assets shall have been sold under levy by any taxing authority or by a landlord.

**7. CHARGE-BACK.** In the event that any Account is not paid within 90 days of invoice date for any reason whatsoever (other than as a result of an account debtor's Insolvency), including, without limitation, any alleged defense, counterclaim, offset, dispute or other claim (real or merely asserted) whether arising from or relating to the sale of goods or rendition of services or arising from or relating to any other transaction or occurrence, then in any such event Prestige shall have the right to chargeback such Account to Seller. No chargeback shall be deemed a reassignment to Seller of the Account involved. Seller acknowledges that all amounts chargeable to Seller's account under this Agreement shall be payable by Seller on demand.

**8. NOTICE OF DISPUTE.** Seller must immediately notify Prestige of any disputes between any account debtor and Seller.

**9. SETTLEMENT OF DISPUTE.** Prestige may, at its option, settle any dispute with any account debtor. Such settlement does not relieve Seller of any of its obligations under this Agreement.

**10. SOLE PROPERTY.** Once Prestige has purchased the Accounts, the payment from account debtors relative to the Accounts is the sole property of Prestige. Any interference by Seller with this payment will result in civil and/or criminal liability.

**11. SECURITY INTEREST.** As a further inducement for Prestige to enter into this Agreement, and as security for the prompt performance, observance and payment of all obligations owing by Seller to Prestige, and in accordance with the terms of the financing order approved by the Bankruptcy Court, Seller hereby grants to Prestige a continuing security interest in and lien upon the following (herein collectively referred to as the "Collateral"): all accounts, inventory, machinery and equipment, instruments, documents, chattel paper and general intangibles (as such terms are defined in the Uniform Commercial Code), whether now owned or hereafter created or acquired by Seller, wherever located, and all replacements and substitutions therefore, accessions thereto, and products and proceeds thereof, and all property of Seller at any time in Prestige's possession.

**12. FINANCING STATEMENTS.** Seller will, at its expense perform all acts and execute all documents requested by Prestige at any time to evidence, perfect, maintain and enforce Prestige's security interest and other rights in the Collateral and the priority thereof. Seller hereby authorizes Prestige to file Financing Statements listing the Seller as debtor, Prestige as Secured Party and listing all assets now owned or hereafter acquired as the collateral.

**13. HOLD IN TRUST.** Seller will hold in trust and safekeeping, as the property of Prestige and immediately turn over to Prestige, the identical check or other form of payment received by Seller if payment on the Accounts comes into Seller's possession. Should Seller come into possession of a check comprising payments owing to both Seller and Prestige, Seller shall turnover said check to Prestige. In the event a payment belonging to Prestige is improperly deposited into Seller's bank account, and if not paid by the Seller to Prestige within 3 Business Days of deposit by Seller, Prestige reserves the right to impose liquidated damages upon Seller of up to 20% of the amount of any payment so improperly deposited.

**14. FINANCIAL RECORDS.** Seller will furnish to Prestige financial statements and such other information as is, from time to time, requested by Prestige.

**15. BOOK ENTRY.** Seller will immediately, upon the sale of the Accounts, make the proper entry on its books and records disclosing the absolute sale of the Accounts to Prestige.

**16. POWER OF ATTORNEY.** In order to implement this Agreement, with respect to all Accounts sold by Seller to Prestige, Seller irrevocably appoints Prestige its special attorney in fact or agent with power to:

- (a) Strike out Seller's address on any correspondence to any account debtor and put on Prestige's address;
- (b) Receive and open all mail addressed to Seller via Prestige's address;
- (c) Endorse the name of Seller or Seller's trade name on any checks or other evidences of payment that may come into the possession of Prestige in connection with the Accounts;
- (d) In Seller's name, or otherwise, demand, sue for, collect any and all monies due in connection with the Accounts; and
- (e) Compromise, prosecute or defend any action, claim or proceeding relative to the Accounts;

The authority granted to Prestige shall remain in full force and effect until the Accounts are paid in full and the entire indebtedness of Seller to Prestige is discharged.

**17. ADDITIONAL NOTIFICATION; VERIFICATION OF ACCOUNTS**

- (a) Without in any way limiting the terms and provisions of paragraph 5 (m) hereinabove, Prestige may, upon default by Seller and in its sole discretion, notify any account debtor to make payment on any of Seller's open invoices to Prestige; and
- (b) Prestige, or any of its agents, may at any time verify the Accounts by any means deemed appropriate by Prestige.

**18. NO ASSUMPTION.** Nothing contained in this Agreement shall be deemed to impose any duty or obligation upon Prestige in favor of any account debtor and/or any other party in connection with the Accounts.

**19. FUTURE ASSIGNMENTS.** Seller may from time to time, at Seller's option, sell, transfer and assign different Accounts to Prestige. The future sale of any Accounts shall be subject to and governed by this Agreement and such Accounts shall be identified by separate and subsequent Assignments.

**20. DISCRETION.** Nothing contained in this Agreement shall be construed to impose any obligation upon Prestige to purchase Accounts from Seller. Prestige shall at its sole discretion determine which Accounts it shall purchase. Further, Prestige shall have the absolute right at any time to cease accepting any further Assignments from Seller.

**21. LEGAL FEES; EXPENSES.** Seller will pay on demand any and all collection expenses and reasonable outside legal counsel's fees that Prestige incurs in the event it should become necessary for Prestige to enforce its rights under this Agreement. In addition, Seller will pay on demand all costs and expenses incurred by Prestige in any way relating to the transactions contemplated by this Agreement, including, without limitation, all reasonable attorneys' fees, Federal Express costs (or similar expenses), wire transfer costs, certified mail costs, facsimile transmission costs and lien search costs.

**22. BINDING ON FUTURE PARTIES.** This Agreement shall inure to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto, except that Seller may not assign or transfer any or all of its rights and obligations under this Agreement to any party without the prior written consent of Prestige.

**23. WAIVER; ENTIRE AGREEMENT.** No failure or delay on Prestige's part in exercising any right, power or remedy granted to Prestige herein, will constitute or operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right set forth herein. This Agreement contains the entire agreement and understanding of the parties hereto and no amendment, modification or waiver of, or consent with respect to, any provision of this Agreement, will in any event be effective unless the same is in writing and signed and delivered by Prestige.

**24. NEW JERSEY LAW.** This Agreement shall be deemed executed in the State of New Jersey and, in all respects shall be governed and construed in accordance with the laws of the State of New Jersey.

**25. INDEMNITY.** Seller shall hold Prestige harmless from and against any action or other proceeding brought by any account debtor against Prestige arising from Prestige's collecting or attempting to collect any of the Accounts.

**26. TERM.** This Agreement will remain in effect for six (6) months from the date that this Agreement becomes effective (the "Term"). Thereafter, the Term will be automatically extended for successive periods of six (6) months each unless either party provides the other with a written notice of cancellation of at least forty-five (45) days prior to the expiration of the initial Term or any renewal Term; provided, however, Prestige may cancel this Agreement at any time upon forty-five (45) days' notice to Seller. In the event of a breach by Seller of any term or provision of this Agreement or upon Seller's insolvency or the insolvency of any guarantor of Seller's obligations herein, Prestige shall have the right to cancel this Agreement without notice to Seller, and all of Seller's obligations to Prestige herein

shall be immediately due and payable. In the event of cancellation, the provisions of this Agreement shall remain in full force and effect until all of the Accounts and all of Sellers obligations to Prestige have been paid in full.

**27. EARLY TERMINATION.** In the event that Seller wishes to terminate the Agreement prior to the expiration of the Term, then in addition to paying Prestige all other obligations due under this Agreement, Seller shall also pay Prestige an early termination fee equal to **\$15,000** per month for each month remaining under the Term. This fee is a collective amount owed, jointly and severally, by all seven (7) related sellers being factored by Prestige pursuant to order by the Bankruptcy Court.

**28. INVALID PROVISIONS.** If any provision of this Agreement shall be declared illegal or contrary to law, it is agreed that such provision shall be disregarded and this Agreement shall continue in force as though said provision had not been incorporated herein.

**29. EFFECTIVE.** This Agreement shall become effective when it is accepted and executed by an authorized officer of Prestige. Facsimile machine or PDF copies of an original signature by either party on this Agreement shall be binding as if said copies were original signatures.

**30. JURY WAIVER.** The parties hereto hereby mutually waive trial by jury in the event of any litigation with respect to any matter connected with this Agreement.

**Accepted:**

**USI SERVICES GROUP, INC. (DIP)**

**PRESTIGE CAPITAL CORPORATION**

By: \_\_\_\_\_  
**FREDERICK GOLDRING, CEO**

By: \_\_\_\_\_  
**HARVEY L. KAMINSKI, President/CEO**

This \_\_\_\_\_ day of \_\_\_\_\_, 2017

This \_\_\_\_\_ day of \_\_\_\_\_, 2017

**In consideration of the foregoing Agreement, each of the undersigned hereby personally agrees to be jointly and severally liable for any damages suffered by Prestige Capital Corporation by virtue of the material breach of any warranty, representation or covenant made by Seller in paragraph 5 above.**

**Date:** \_\_\_\_\_ **By:** \_\_\_\_\_  
**FREDERICK GOLDRING, Individually**

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a notary public in and for the said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me, he/she/they executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
**Notary Public (Signature)**

\_\_\_\_\_  
**Notary- Print Name**

**State:** \_\_\_\_\_

**Commission Expires:** \_\_\_\_\_

**EXHIBIT B**

**USI - Consolidated**

Week	1	2	3	4	5	6	7	8
Week Ended	1/5/18	1/12/18	1/19/18	1/26/18	2/2/18	2/9/18	2/16/18	2/23/18
<b>Non-Factored Sales</b>	<b>354,554</b>	<b>289,668</b>	<b>289,668</b>	<b>589,268</b>	<b>287,680</b>	<b>574,403</b>	<b>335,467</b>	<b>469,654</b>
<b>Factored Sales</b>	<b>1,063,661</b>	<b>289,668</b>	<b>289,668</b>	<b>589,268</b>	<b>287,680</b>	<b>574,403</b>	<b>335,467</b>	<b>201,280</b>
<b>Total Sales</b>	<b>1,418,215</b>	<b>579,336</b>	<b>579,336</b>	<b>1,178,535</b>	<b>575,359</b>	<b>1,148,806</b>	<b>670,934</b>	<b>670,934</b>

**Cash Receipts**

Operating Cash Receipts

Collections of AR (Net Revenue)	1,578,253	420,322	420,322	535,564	473,914	625,957	186,276	372,552
IPP From Factors	850,929	231,734	231,734	471,414	230,144	459,522	268,373	161,024
Collections of Residuals	-	-	-	-	50,948	33,966	207,532	57,934
Less Credits/Allowances	(7,891)	(2,102)	(2,102)	(2,678)	(2,370)	(3,130)	(931)	(1,863)
Other (Macy's Bloomingdales & I	(800,000)	(125,000)	(125,000)	-	-	-	-	-
<b>Total Operating Receipts</b>	<b>1,621,291</b>	<b>524,955</b>	<b>524,955</b>	<b>1,004,300</b>	<b>752,637</b>	<b>1,116,315</b>	<b>661,250</b>	<b>589,647</b>

**COGS Related Disbursements**

Gross Payroll	501,060	249,019	488,038	263,296	497,481	323,204	483,488	284,584
Payroll Taxes	66,140	32,870	64,421	34,755	65,668	42,663	63,820	37,565
Subcontractors	12,634	12,634	12,634	12,634	12,634	12,634	12,634	12,634
Supplies	7,689	7,689	7,689	7,689	7,689	7,689	7,689	7,689
Purchases	4,900	4,900	4,900	4,900	4,900	4,900	4,900	4,900
Equipment Leases/Other Equip P	3,815	3,815	3,815	3,815	3,815	3,815	3,815	3,815
Other COGS	8,527	8,527	8,527	8,527	8,527	8,527	8,527	8,527
Union Dues	6,550	6,550	6,550	6,550	6,550	6,550	6,550	6,550
WC Insurance	-	-	95,585	-	-	-	95,585	-
<b>Total COGS Related Disbursements</b>	<b>611,316</b>	<b>326,005</b>	<b>692,160</b>	<b>342,166</b>	<b>607,265</b>	<b>409,982</b>	<b>687,010</b>	<b>366,265</b>

**Other Operating Disbursements**

Gross Payroll	165,668	-	-	152,206	-	149,962	-	149,962
Payroll Taxes	21,868	-	-	20,091	-	19,795	-	19,795
Other Insurance	-	-	73,642	-	-	-	73,642	-



**USI - Consolidated**

<b>Week</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
<b>Week Ended</b>	<b>1/5/18</b>	<b>1/12/18</b>	<b>1/19/18</b>	<b>1/26/18</b>	<b>2/2/18</b>	<b>2/9/18</b>	<b>2/16/18</b>	<b>2/23/18</b>
Auto Insurance	-	-	14,952	-	-	-	14,952	-
Health Insurance	-	33,452	-	-	-	33,452	-	-
Auto Fuel and Maintenance	12,316	12,450	12,450	12,450	12,450	12,450	12,450	12,450
Auto Leases	27,070	-	-	-	27,859	-	-	-
Rent	35,293	-	-	-	37,112	-	-	-
Utilities	-	-	20,612	-	-	-	20,612	-
Travel and Meals	6,969	6,969	6,969	6,969	6,969	6,969	6,969	6,969
Other G & A	12,473	13,305	13,305	13,305	13,305	13,305	13,305	13,305
Sales Taxes	-	-	-	146,110	-	-	-	170,880
Payroll Processor/PEO Fees	-	-	-	-	6,219	5,915	6,044	5,432
<b>Total Operating Disbursements</b>	<b>281,658</b>	<b>66,177</b>	<b>141,931</b>	<b>351,132</b>	<b>103,914</b>	<b>241,848</b>	<b>147,975</b>	<b>378,794</b>
<b>Net Operating Cash Flow</b>	728,317	132,773	(309,135)	311,002	41,458	464,484	(173,734)	(155,412)
<b>Restructuring Costs</b>								
Debtor Counsel					150,000			
Debtor Financial Advisor	12,100				48,400	12,100	12,100	12,100
OCUC Professionals					15,000			
Investment Bankers					7,500			
Claims Agent	10,850				9,850			
DIP Factoring Fees	20,741	5,649	5,649	11,491	5,610	11,201	6,542	3,925
U.S. Trustee Fees					9,750			
<b>Total Restructuring Costs</b>	<b>43,691</b>	<b>5,649</b>	<b>5,649</b>	<b>11,491</b>	<b>246,110</b>	<b>23,301</b>	<b>18,642</b>	<b>16,025</b>
<b>Net Cash Flow</b>	684,626	127,125	(314,784)	299,512	(204,651)	441,184	(192,376)	(171,437)
<b>Beginning Cash</b>	<b>\$ 25,000</b>	<b>\$ 709,626</b>	<b>\$ 836,750</b>	<b>\$ 521,967</b>	<b>\$ 821,478</b>	<b>\$ 616,827</b>	<b>\$ 1,058,010</b>	<b>\$ 865,635</b>
<b>Net Cash Flow</b>	<b>684,626</b>	<b>127,125</b>	<b>(314,784)</b>	<b>299,512</b>	<b>(204,651)</b>	<b>441,184</b>	<b>(192,376)</b>	<b>(171,437)</b>
<b>Ending Cash</b>	<b>\$ 709,626</b>	<b>\$ 836,750</b>	<b>\$ 521,967</b>	<b>\$ 821,478</b>	<b>\$ 616,827</b>	<b>\$ 1,058,010</b>	<b>\$ 865,635</b>	<b>\$ 694,198</b>

## USI - Consolidated

Week	1	2	3	4	5	6	7	8
Week Ended	1/5/18	1/12/18	1/19/18	1/26/18	2/2/18	2/9/18	2/16/18	2/23/18

## Factor Balance

Beginning Balance	\$ -	\$ 871,670	\$ 1,109,053	\$ 1,346,436	\$ 1,829,341	\$ 2,065,094	\$ 1,684,889	\$ 1,728,069
Purchase of AR @80%	850,929	231,734	231,734	471,414	230,144	459,522	268,373	161,024
Collections @80%						(850,929)	(231,734)	(231,734)
Fees/Interest	20,741	5,649	5,649	11,491	5,610	11,201	6,542	3,925
Ending Factor Balance	\$ 871,670	\$ 1,109,053	\$ 1,346,436	\$ 1,829,341	\$ 2,065,094	\$ 1,684,889	\$ 1,728,069	\$ 1,661,284

## Collateral Analysis

Beginning Accounts Receivable	2,489,147	2,065,448	2,059,793	2,054,139	2,107,842	1,921,608	1,870,054	2,019,244
Plus Sales	1,418,215	579,336	579,336	1,178,535	575,359	1,148,806	670,934	670,934
Less Factored Sales	(1,063,661)	(289,668)	(289,668)	(589,268)	(287,680)	(574,403)	(335,467)	(201,280)
Less Cash Collections (Non Facto	(770,362)	(293,221)	(293,221)	(532,886)	(471,544)	(622,827)	(185,345)	(370,689)
Plus (Minus) Other	(7,891)	(2,102)	(2,102)	(2,678)	(2,370)	(3,130)	(931)	(1,863)
Ending Balance	\$ 2,065,448	\$ 2,059,793	\$ 2,054,139	\$ 2,107,842	\$ 1,921,608	\$ 1,870,054	\$ 2,019,244	\$ 2,116,346

Factor Balance	871,670	1,109,053	1,346,436	1,829,341	2,065,094	1,684,889	1,728,069	1,661,284
Net Collateral	2,514,147	2,896,544	2,576,105	2,929,320	2,538,435	2,928,064	2,884,879	2,810,544
	-	382,397	61,958	415,173	24,287	413,917	370,732	296,397

**USI - Consolidated**

Week	9	10	11	12	13	Weeks 1 - 13
Week Ended	3/2/18	3/9/18	3/16/18	3/23/18	3/30/18	Total
<b>Non-Factored Sales</b>	<b>341,992</b>	<b>783,565</b>	<b>336,069</b>	<b>493,198</b>	<b>432,296</b>	<b>5,577,480</b>
<b>Factored Sales</b>	<b>227,995</b>	<b>421,920</b>	<b>180,960</b>	<b>218,031</b>	<b>69,611</b>	<b>4,749,610</b>
<b>Total Sales</b>	<b>569,987</b>	<b>1,205,485</b>	<b>517,029</b>	<b>622,945</b>	<b>464,071</b>	<b>10,200,971</b>

**Cash Receipts**

Operating Cash Receipts

Collections of AR (Net Revenue)	303,771	622,676	277,195	388,073	257,645	6,462,521
IPP From Factors	182,396	337,536	144,768	174,425	55,688	3,799,688
Collections of Residuals	52,832	112,752	57,536	55,548	43,117	672,164
Less Credits/Allowances	(1,519)	(3,113)	(1,386)	(1,940)	(1,288)	(32,313)
Other (Macy's Bloomingdales & I	-	-	-	-	-	(1,050,000)
<b>Total Operating Receipts</b>	<b>537,479</b>	<b>1,069,850</b>	<b>478,113</b>	<b>616,105</b>	<b>355,162</b>	<b>9,852,060</b>

**COGS Related Disbursements**

Gross Payroll	478,348	323,044	461,345	276,750	468,710	5,098,367
Payroll Taxes	63,538	42,642	60,898	36,531	61,870	673,380
Subcontractors	12,634	12,634	12,634	12,634	12,634	164,244
Supplies	7,689	7,689	7,689	7,689	7,689	99,953
Purchases	4,900	4,900	4,900	4,900	4,900	63,701
Equipment Leases/Other Equip P	3,815	3,815	3,815	3,815	3,815	49,595
Other COGS	8,527	8,527	8,527	8,527	8,527	110,855
Union Dues	6,550	6,550	6,550	6,550	6,550	85,156
WC Insurance	-	-	95,585	-	-	286,756
<b>Total COGS Related Disbursements</b>	<b>586,001</b>	<b>409,801</b>	<b>661,943</b>	<b>357,397</b>	<b>574,696</b>	<b>6,632,007</b>

**Other Operating Disbursements**

Gross Payroll	-	145,475	-	145,475	-	908,747
Payroll Taxes	-	19,203	-	19,203	-	119,955
Other Insurance	-	-	73,642	-	-	220,926

**USI - Consolidated**

<b>Week</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>Weeks 1 - 13</b>
<b>Week Ended</b>	<b>3/2/18</b>	<b>3/9/18</b>	<b>3/16/18</b>	<b>3/23/18</b>	<b>3/30/18</b>	<b>Total</b>
Auto Insurance	-	-	14,952	-	-	44,856
Health Insurance	-	33,452	-	-	-	100,356
Auto Fuel and Maintenance	12,450	12,450	12,450	12,450	12,450	161,715
Auto Leases	27,859	-	-	-	-	82,787
Rent	37,112	-	-	-	-	109,516
Utilities	-	-	20,612	-	-	61,837
Travel and Meals	6,969	6,969	6,969	6,969	6,969	90,603
Other G & A	13,305	13,305	13,305	13,305	13,305	172,138
Sales Taxes	-	-	-	140,626	-	457,616
Payroll Processor/PEO Fees	6,017	5,856	5,767	5,278	5,859	52,385
<b>Total Operating Disbursements</b>	<b>103,712</b>	<b>236,710</b>	<b>147,698</b>	<b>343,305</b>	<b>38,584</b>	<b>2,583,437</b>
<b>Net Operating Cash Flow</b>	(152,234)	423,338	(331,528)	(84,597)	(258,118)	636,616
<b>Restructuring Costs</b>						
Debtor Counsel	125,000					275,000
Debtor Financial Advisor	12,100	12,100	12,100	12,100	12,100	157,300
OCUC Professionals	15,000					30,000
Investment Bankers	7,500					15,000
Claims Agent	15,350					36,050
DIP Factoring Fees	4,446	8,227	3,529	4,252	1,357	92,617
U.S. Trustee Fees						9,750
<b>Total Restructuring Costs</b>	<b>179,396</b>	<b>20,327</b>	<b>15,629</b>	<b>16,352</b>	<b>13,457</b>	<b>615,717</b>
<b>Net Cash Flow</b>	(331,630)	403,011	(347,157)	(100,948)	(271,575)	20,899
<b>Beginning Cash</b>	<b>\$ 694,198</b>	<b>\$ 362,568</b>	<b>\$ 765,579</b>	<b>\$ 418,422</b>	<b>\$ 317,474</b>	<b>\$ 25,000</b>
<b>Net Cash Flow</b>	<b>(331,630)</b>	<b>403,011</b>	<b>(347,157)</b>	<b>(100,948)</b>	<b>(271,575)</b>	<b>20,899</b>
<b>Ending Cash</b>	<b>\$ 362,568</b>	<b>\$ 765,579</b>	<b>\$ 418,422</b>	<b>\$ 317,474</b>	<b>\$ 45,899</b>	<b>\$ 45,899</b>

USI - Consolidated

Week	9	10	11	12	13	Weeks 1 - 13
Week Ended	3/2/18	3/9/18	3/16/18	3/23/18	3/30/18	Total

Factor Balance

Beginning Balance	\$ 1,661,284	\$ 1,376,712	\$ 1,492,331	\$ 1,181,106	\$ 1,091,408	\$ -
Purchase of AR @80%	182,396	337,536	144,768	174,425	55,688	3,799,688
Collections @80%	(471,414)	(230,144)	(459,522)	(268,373)	(161,024)	(2,904,875)
Fees/Interest	4,446	8,227	3,529	4,252	1,357	92,617
Ending Factor Balance	\$ 1,376,712	\$ 1,492,331	\$ 1,181,106	\$ 1,091,408	\$ 987,430	\$ 987,430

Collateral Analysis

Beginning Accounts Receivable	2,116,346	2,154,568	2,315,457	2,374,331	2,391,172	2,489,147
Plus Sales	569,987	1,205,485	517,029	622,945	464,071	10,200,971
Less Factored Sales	(227,995)	(421,920)	(180,960)	(218,031)	(69,611)	(4,749,610)
Less Cash Collections (Non Facto	(302,252)	(619,563)	(275,809)	(386,133)	(256,356)	(5,380,208)
						-
Plus (Minus) Other	(1,519)	(3,113)	(1,386)	(1,940)	(1,288)	(32,313)
Ending Balance	\$ 2,154,568	\$ 2,315,457	\$ 2,374,331	\$ 2,391,172	\$ 2,527,987	\$ 2,527,987

Factor Balance	1,376,712	1,492,331	1,181,106	1,091,408	987,430	987,430
Net Collateral	2,517,136	3,081,036	2,792,753	2,708,645	2,573,886	2,573,886
	2,988	566,889	278,606	194,498	59,739	59,739