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*Proposed Counsel to the Debtors and Debtors in Possession*

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

**In re:**

**THINK FINANCE, LLC, *et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 17-[ ] ( )**

**(Joint Administration Requested)**

**EMERGENCY MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (II) DETERMINING ADEQUATE PROTECTION, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by their undersigned proposed counsel, file this motion (the “Motion”) seeking 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 together with the Interim Order, the “Cash Collateral Orders”), pursuant to sections 105, 361, and 363 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (a) authorizing the Debtors to use cash collateral,

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Think Finance, LLC (6762), Think Finance SPV, LLC (4522), Financial U, LLC (1850), TC Loan Service, LLC (3103), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), and TC Decision Sciences, LLC (8949).

(b) determining that the GPLS Secured Parties<sup>2</sup> are adequately protected, and (c) granting related relief. In support of the Motion, the Debtors rely on the Declaration of Barney C. Briggs, the Chief Financial Officer of the Debtors, in support of Chapter 11 Petitions and First Day Pleadings (the “Briggs Declaration”), and the Declaration of Jonathan Tibus in Support of the Emergency Motion of the Debtors and Debtors in Possession for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral, (II) Determining Adequate Protection, and (III) Granting Related Relief (the “Tibus Declaration”). In further support of the Motion, the Debtors submit as follows:

**I. Preliminary Statement**

1. The Debtors have been starved of needed liquidity by the wrongful actions of Victory Park in refusing to turn over tens of millions of dollars that belong to the Debtors. Based on Victory Park’s conduct prior to the Petition Date, the Debtors anticipate that Victory Park will not voluntarily turn over these funds as required by sections 362 and 542(a) of the Bankruptcy Code. Accordingly, the Debtors intend to initiate an adversary proceeding (the “Adversary Proceeding”) by filing a complaint against Victory Park Capital Advisors, LLC (“Victory Park”), its affiliates Victory Park Management, LLC (“VP Management”) and GPL Servicing Agent, LLC (the “Collateral Agent”), and GPL Servicing, Ltd. (“GPLS”; together with Victory Park, VP Management, and the Collateral Agent, “Defendants”), seeking, among other relief, turnover of the funds improperly withheld.

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Briggs Declaration.

2. This Motion seeks authority for the Debtors to have immediate access and use of cash collateral<sup>3</sup> consistent with the “Seven Week Forecast” attached hereto as Exhibit B. This relief is necessary for the Debtors to address their working capital needs and to fund their reorganization efforts. The Debtors’ ability to immediately use the cash collateral also is critical to reassure their employees, trade vendors, and other constituencies that the Debtors will be in a position to meet their obligations during the pendency of these cases. Absent immediate access to the cash collateral, the Debtors almost certainly will experience business disruptions and, moreover, their ability to reorganize and to maximize the value of their assets will be damaged irreparably to the direct detriment of all creditors and parties in interest.

3. In accordance with Bankruptcy Rule 4001, the following is a concise statement and summary of the proposed material provisions regarding the Debtors’ proposed use of cash collateral.<sup>4</sup>

| <u>Material Terms</u>  | <u>Summary of Material Terms</u>   |
|--|--|
| <p><b>Parties with Potential Interest in Cash Collateral</b></p> <p><b>FRBP 4001(b)(1)(B)(i)</b></p> | <p>The “<u>GPLS Secured Parties</u>” which are defined to include the Collateral Agent, Victory Park and GPLS. <i>See</i> Interim Order at Introduction.</p> |

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<sup>3</sup> The Debtors use the term “cash collateral” as a term of convenience to refer to the funds improperly withheld by Defendants and those that are currently in the Debtors’ possession. The Debtors dispute the validity of any liens asserted by Defendants, and the use of the term “cash collateral” herein is not an admission that the funds represent collateral securing valid liens of any party. The Debtors reserve all rights to challenge any asserted lien rights in any property of the Debtors.

<sup>4</sup> This summary is qualified in all respects by reference to the Interim Order and to the extent of any inconsistency between the Motion and the Interim Order, the Interim Order shall govern.

|  |   |
|--|---|
| <p><b>Purpose and Use of Cash Collateral and Material Terms</b></p> <p><b>FRBP</b><br/><b>4001(b)(1)(B)(ii), (iii)</b></p> | <p>The Debtors will use the cash collateral, consistent with the Seven Week Forecast attached hereto as <u>Exhibit B</u>, to operate their business and effectuate a reorganization of their business. <i>See</i> Interim Order at ¶ 2.</p>   |
| <p><b>Adequate Protection Obligations</b></p> <p><b>FRBP</b><br/><b>4001(b)(1)(B)(iv)</b></p>                              | <p>GPLS is adequately protected pursuant to Section 1.1. of the AAA, which provides that any expenses of GPLS are deducted from the interest and financing charges received by GPLS each month on account of the participation interests. <i>See</i> AAA §1.1. The Debtors believe that GPLS will receive interest and finance charges in an adequate amount to pay all such expenses that will arise during the period covered by the Interim Order.</p> <p>The GPLS Secured Parties also are adequately protected by an equity cushion that far exceeds 20% for the duration of the interim period, which clearly constitutes adequate protection under applicable case law.</p>  |
| <p><b>Other Provisions</b></p>   | <p>GPLS shall submit a list of all expenses incurred by it, including any invoices evidencing such expenses, to the Debtors, the United States Trustee and any official committees appointed in these bankruptcy cases (collectively, the “<u>Notice Parties</u>”) at least fourteen (14) days prior to payment of the expenses (the “<u>Notice Period</u>”). In the event any Notice Party objects to the reasonableness of the expenses (a “<u>Disputed Expense</u>”), such Notice Party shall provide written notice of the objection to GPLS prior to expiration of the Notice Period. In the event the parties are unable to resolve the objection within ten (10) days after expiration of the Notice Period (the “<u>Resolution Period</u>”), either GPLS or the objecting Notice Party may file a notice of the objection with the Bankruptcy Court and request a hearing on at least fourteen (14) days’ notice. After the Notice Period, GPLS may pay any expense, or portion thereof, that is not a Disputed Expense, <i>provided, however</i>, GPLS shall not pay a Disputed Expense prior to consensual resolution of the objection or further order of the Bankruptcy Court after notice and a hearing. The amounts due to the Debtors each month by GPLS shall be calculated net of any Disputed Expense, <i>provided, however</i>, in the event such Disputed Expense is reduced or disallowed, whether by consensual resolution of the objection or by order of the Bankruptcy Court, GPLS shall pay such amount to the Debtors to the extent such amount would have been payable as part of the Agent Fee, Fixed Return or Redemption Amount.</p> |

## **II. Jurisdiction, Venue, and Predicates for Relief**

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 28 U.S.C. § 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. §157 (b)(2).

4. The predicates for the relief requested herein are sections 105, 361, and 363 of the Bankruptcy Code and Bankruptcy Rule 4001.

## **III. Background**

### **A. Chapter 11 Cases**

5. On the date hereof (the "Petition Date"), the Debtors filed with the Court their respective voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, commencing the above-captioned Chapter 11 cases. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No creditors' committee has been appointed in these cases. No trustee or examiner has been appointed.

7. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their Chapter 11 cases.

8. A full description of the Debtors' business operations, corporate structures, capital structures, and reasons for commencing these cases is set forth in full in the Briggs Declaration, which was filed contemporaneously with the Motion and which is incorporated herein by reference. The Tibus Declaration, which is incorporated herein by reference, also contains information in support of the relief requested herein. Additional facts in support of the specific relief sought herein are set forth below.

**B. The Debtors' Business**

9. Founded in 2001 in Fort Worth, Texas, Think Finance is a leading provider of financial technology services, often referred to “fintech,” primarily to online consumer lenders. For over 15 years, Think Finance’s has proven itself an innovator in the fintech industry, having earned recognition from Forbes in 2013 as #2 on the list of “America’s Most Promising Companies” and as a five-time honoree on the “Inc. 5000 list of Fastest Growing Companies.” Think Finance has developed an online lending platform that allows its clients to grow their lending portfolios, mitigate fraud with established technology and process controls, and manage compliance through established credit policies. Think Finance also offers administrative services to its clients, such as consumer marketing, loan servicing, and compliance and risk management services. *See* Briggs Declaration ¶¶ 8–9.

**C. The Debtors' Grant of a Security Interest to the GPLS Secured Parties**

10. In 2011, Victory Park created GPLS for the purpose of purchasing participation interests in consumer loans originated by Native American Tribal lending businesses. Think Finance agreed to provide (and continues to provide), through TCAS, its financial technology and administrative services in support of the venture, and TCAS is entitled to fees for these services, which have not been paid. As part of Victory Park’s proposal to invest in GPLS, Victory Park required Think Finance also to invest in GPLS, which it did through TF SPV.

11. The Debtors guaranteed payment of amounts owed on the investments by Victory Park. The Debtors also provided a corresponding lien on their assets to secure such investments. In particular, the GSA granted a lien on substantially all of the assets of the Debtors to the Collateral Agent for the benefit of the “GPLS Secured Parties,” which consist of Victory Park, the Collateral Agent and GPLS. VP Management is not one of the “GPLS Secured Parties.”

**D. Obligations Owed by the Debtors to the GPLS Secured Parties**

12. All equity shares in GPLS held by Victory Park and other investors other than Think SPV were fully redeemed as of May 31, 2017. The total redemption payments of \$137.2 million were paid to Victory Park for distribution to investors—including \$105 million to funds directly or indirectly managed by Victory Park. Each investor received a full return of principal invested and all contractually required interest payments. Victory Park or its affiliates also received management fees from GPLS. As a result of the redemption, neither Victory Park nor any of the investment funds that Victory Park originated and controls owns any beneficial interest in GPLS.

13. As a result, the money on deposit with GPLS or diverted by Defendants to VP Management accounts or elsewhere, all belongs to Debtor Think SPV as matured fixed return and share redemption obligations or to Debtor TCAS as agent fees. While lacking any beneficial interest in GPLS, Victory Park is using its legacy management control over GPLS to hold the Debtors hostage by cutting off access to the GPLS accounts, intercepting payments and reserving tens of millions of dollars in cash collateral for its own benefit for remote, contingent obligations.

14. Apart from the contingent, unliquidated indemnification obligations described below, as of May 31, 2017, none of the Debtors owed any obligations to any of the GPLS Secured Parties. Similarly, as of the Petition Date, none of the Debtors owe any currently due obligations to any of the GPLS Secured Parties.

**E. The Indemnification Provision of the GSA**

15. Section 16 of the GSA provides that the Debtors agree to indemnify the GPLS Secured Parties and their affiliates for certain “Losses” arising from the transactions related to

GPLS's purchase of the participation interests, including any "litigation or administrative proceedings before any court, tribunal or government or administrative body." Section 16 of the GSA also provides, however, that the Debtors have no indemnification liability "to the extent that [the Losses] arise from the willful misconduct, gross negligence, deceit or fraud of GPLS." GSA § 16.

16. As discussed in the Briggs Declaration, there are no "Losses" at the present that would give rise to an indemnification claim. Briggs Declaration ¶ 22. Rather, Defendants have asserted that they may incur "Losses" in the future in defending the GPLS Litigation that would be subject to indemnification under Section 16 of the GSA. Certain of the Debtors are also parties to the GPLS Litigation and have been sued based on the same legal theories. As a result, the Debtors intend to seek in the Adversary Proceeding the disallowance of Defendants' contingent indemnification claims under section 502(e)(1)(B) of the Bankruptcy Code.

17. Even if Defendants' claims are not disallowed under section 502(e)(1)(B), Defendants still would not have any valid indemnification claims for underlying liability in the GPLS Litigation. The plaintiffs in the GPLS Litigation assert claims under the Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO), the state equivalent, or violations of state usury laws. Liability on such counts would require a finding of willful misconduct, gross negligence, deceit and/or fraud by GPLS, which are expressly excluded from the indemnification provisions in the GSA. *See* GSA § 16(b).

18. In addition, Defendants have denied liability under all of the legal theories asserted in the GPLS Litigation and the Debtors believe that Defendants will be successful in their defense of those lawsuits. If there is no liability in the GPLS Litigation, there will be no



“Losses” incurred by the GPLS Secured Parties for which the Debtors could be liable, other than possibly defense costs.

19. The Debtors understand that GPLS is incurring legal fees and other costs in defending against the GPLS Litigation. A law firm representing the GPLS Secured Parties incurred the following amounts within the last few months:

|               |                                   |
|---------------|-----------------------------------|
| June 2017:    | \$321,911.43                      |
| July 2017:    | \$237,219.77                      |
| August 2017:  | \$594,961.99                      |
| <b>TOTAL:</b> | <b>\$1,154,093.19<sup>5</sup></b> |

Another law firm also representing the GPLS Secured Parties incurred the follow amounts within the last few months:

|                 |                     |
|-----------------|---------------------|
| May 2017 (VA):  | \$22,219.93         |
| May 2017 (PA):  | \$38,371.20         |
| June 2017 (VA): | \$24,397.60         |
| June 2017 (PA): | \$29,084.19         |
| July 2017 (VA): | \$35,073.20         |
| July 2017 (PA): | \$4,844.90          |
| <b>TOTAL:</b>   | <b>\$153,991.02</b> |

20. The AAA provides that any expenses of GPLS are deducted from the interest and financing charges received by GPLS each month on account of the participation interests. *See* AAA §1.1. The Debtors believe that GPLS will receive interest and finance charges in an adequate amount to pay all reasonable defenses costs anticipated to be incurred in defending the GPLS Litigation during the period covered by the proposed Interim Order. *See* Tibus Declaration ¶ 11. However, the Debtors currently lack full visibility into the nature, amount, and

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<sup>5</sup> Upon information and belief, a substantial portion of the law firm’s fees incurred in August 2017 related to the Arbitration, not defending the GPLS Litigation. At the direction of Victory Park, GPLS paid the law firm its August fees on September 29, 2017, in violation of the provisions of the ISA.

reasonableness of the expenses that GPLS, which is under the control of Victory Park and its affiliates.

21. The Debtors also understand that Victory Park and VP Management are incurring legal fees and other costs in defending against the Pennsylvania Litigation. If Victory Park and VP Management ultimately are successful in defending against the Pennsylvania Litigation, the Debtors understand that Victory Park and VP Management may assert claims for their defense costs as “Losses” under the indemnification provision of the GSA. On October 6, 2017, Defendants completed briefing in the Pennsylvania Litigation in support of their motion to dismiss. The district court currently has the motion under advisement.

22. If Victory Park and VP Management are not successful in defending against the Pennsylvania Litigation, their defense costs will not be eligible for indemnification under the GSA because a finding of liability on the claims in the Pennsylvania Litigation will entail a finding of willful misconduct, gross negligence, deceit and/or fraud by GPLS.

23. Accordingly, as more fully set forth in the pleadings filed therein, through the Adversary Proceeding the Debtors will seek to estimate the indemnification claims of Defendants related to defense costs incurred in the GPLS Litigation at zero or close to zero for all purposes in these bankruptcy cases.

24. Finally, the GPLS Litigation is in relatively early stages of litigation and/or in between periods of substantial work. In the Pennsylvania Litigation, the district court has a motion to dismiss under advisement and the deadline for completing fact discovery is not until April 30, 2018. In the Virginia Litigation, the district court similarly has a motion to dismiss under advisement and has not yet entered a scheduling order. In the Florida Litigation, the plaintiffs served the complaint on certain of the Debtors on October 19, 2017. Accordingly,

these cases have not progressed beyond the pleadings stage and, as well as because of the automatic stay, there should be minimal, if any, defense costs incurred in defending the GPLS Litigation during the period governed by the proposed Interim Order.

**F. Victory Park's Diversion of Funds Payable to the Debtors**

25. As discussed in further detail in the Briggs Declaration, following the final redemption payment on May 31, 2017, which paid in full all amounts owed to holders of Participating Shares in GPLS other than Think SPV, at the direction of Victory Park and/or the Collateral Agent, GPLS stopped making the monthly payments of the Agent Fee to TCAS and the Fixed Return to Think SPV other than a single partial payment of the Agent Fee on June 12, 2017. *See* Briggs Declaration ¶¶ 30–35.

26. On or about August 2, 2017, without prior warning, Victory Park, or another party acting at its direction, cut off the ability of the Debtors to view information concerning GPLS's financial accounts. Up until this point, the Debtors always had visibility into the GPLS bank accounts. Indeed, TCAS needed that access to perform its accounting and disbursement duties as agent, and Defendants' actions in cutting off such access have inhibited the performance of TCAS of those duties.

27. Also on or about August 2, 2017, unbeknownst to the Debtors and without their consent, Victory Park and/or the Collateral Agent at the direction of Victory Park, transferred \$10 million out of the GPLS "Collections Account." On or about August 21, again unbeknownst to the Debtors and without their consent, Victory Park and/or the Collateral Agent at the direction of Victory Park, transferred an additional \$5.5 million out of the GPLS "Collections Account." The Debtors have since determined that the \$15.5 million was transferred to one or more accounts owned by VP Management.

28. In addition, subsequent to regaining some visibility in the GPLS financial accounts, the Debtors learned that on or about September 28, 2017, Victory Park and/or the Collateral Agent at the direction of Victory Park transferred \$5,000,000 out of the GPLS “Collections Account” to one or more accounts owned by VP Management.

29. During the briefing stage of the Arbitration, Victory Park admitted that in transferring the funds—which totaled \$20.5 million at that time—out of GPLS it “ha[d] exercised its rights as a first priority secured party to control the cash collateral.” *See Respondents’ Response to Claimants’ Claim for Emergency Injunctive Relief Pursuant to Rule 2(C) of JAMS Comprehensive Arbitration Rules, Affirmative Defenses and Counterclaims* (the “Respondents’ Response”), at 1. Victory Park also took the position that it had a right to hold the funds indefinitely “regardless of whether [Think’s indemnity] obligation have (sic) fully matured or are contingent.” *Id.* at 3. Victory Park further argued that it “had the absolute right to take control of the collateral for its own protection.” *Id.* at 7.

30. The Debtors since learned that on October 20, 2017, Victory Park, or someone acting on its behalf, caused GPLS to make an additional transfer of \$5,000,000 out of the GPLS “Collections Account” to an account owned by VP Management. The total amount transferred out of GPLS by Victory Park is now at least \$25.5 million,<sup>6</sup> which underscores with need for immediate relief to avoid irreparable harm to the Debtors as Victory Park continues to raid the GPLS bank accounts.

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<sup>6</sup> \$4.3 million of this amount was paid to the Debtors on September 12, 2017, in connection with entry in the ISA.

#### **IV. Relief Requested**

31. By this Motion, the Debtors seek entry of the Cash Collateral Orders (i) authorizing the Debtors to use cash collateral, (ii) determining that the interests of the GPLS Secured Parties are adequately protected; and (iii) granting related relief, including the establishment of procedures to review the expenses incurred by GPLS.

32. The Debtors also request that this Court authorize and approve the Debtors' use of cash collateral for the payment of any fees and expenses owed to professionals employed by them upon the entry of an order from this Court authorizing the payment of such professional expenses.

33. The Debtors dispute the validity of any liens asserted by Defendants and do not concede that any party has a perfected security interest in the cash collateral. Solely for purposes of the Motion and the immediate hearing thereon, however, the Debtors will presume that the GPLS Secured Parties have perfected security interests in the Debtors' cash collateral as the existence of the liens asserted by Defendants is an issue that the Debtors seek to resolve through the Adversary Proceeding.

34. Attached hereto as Exhibit C is a copy of the *Attorney Checklist Concerning Motion and Order Pertaining to Use of Cash Collateral*.

#### **V. Basis for Relief Requested**

##### **A. Use of the Cash Collateral Should be Approved**

35. Section 363(c)(2) of the Bankruptcy Code governs the Court's approval of the use of cash collateral and provides that a debtor-in-possession may not use cash collateral without the consent of the secured party or approval by the Court. 11 U.S.C. § 363(c)(2). By obtaining approval from the Court to use cash collateral, however, a debtor can continue to operate its

business and maintain and enhance the value of its lenders' collateral. *See, e.g., In re Constable Plaza Assocs., L.P.*, 125 B.R. 98, 105 (Bankr. S.D.N.Y. 1991); *In re T.H.B. Corp.*, 85 B.R. 192, 195 (Bankr. D. Mass. 1988).

36. To the extent the Debtors' cash on hand represents "cash collateral," it is subject to the use restriction set forth in section 363(c)(2) of the Bankruptcy Code. The Debtors, therefore, seek to use the cash collateral, consistent with the Seven Week Forecast, to operate their businesses. Specifically, the Debtors require the cash collateral to permit them to pay vendors, meet their payroll and benefit obligations to their employees, preserve and protect their assets, and to generally and otherwise pay obligations critical to continuing the operation of their businesses.

37. Additionally, the Debtors believe that following the commencement of these cases, the Debtors will need cash on hand to satisfy their contractual obligations. Failure to pay such obligations on a timely basis may require the Debtors to cease their business operations, which would result in irreparable harm to the Debtors and eliminate any ability to effectively reorganize. Specifically, Debtor TCAS has ongoing obligations under the AAA to provide administrative services to GPLS. Additionally, Debtors Decision Sciences and TC Loan Service are providing a number of information technology, network operations, accounting and financial reporting services, marketing services, and a number of other services to non-debtor affiliates. These contracts are producing substantial revenue for the Debtors. Accordingly, the Debtors believe their value as a going concern enterprise is far greater than the liquidation value of their assets. As a consequence, the Debtors' unsecured creditors are likely to receive substantially less if the Debtors immediately cease operations than they would if the Debtors are authorized to use cash collateral and continue operating as a going concern.

38. Without authorization from the Court to immediately use cash collateral, the Debtors submit that they will be left without a source of working capital and will be unable to operate their businesses and thereby preserve the value of their estates for the benefit of all creditors and parties-in-interest.

39. It is well established that a Bankruptcy Court, where possible, should resolve issues in favor of preserving the business of the debtor as a going concern.

A debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use cash collateral in its effort to rebuild. Without the availability of cash to meet daily operating expenses such as rent, payroll, utilities etc., the congressional policy favoring rehabilitation over economic failure would be frustrated.

*Chrysler Credit Corp. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.)*, 727 F.2d 1017, 1019 (11th Cir. 1984); *see also In re Triplett*, 87 B.R. 25, 27 (Bankr. W.D. Tex. 1988) (Cash collateral may be used “for the general benefit of the estate and need not be devoted exclusively to the protection of the creditor or the collateral.”). Accordingly, to avoid immediate and irreparable harm, the Debtors require immediate use of cash collateral for the payment of necessary business expenses and to continue to operate their business during the period governed by the proposed Interim Order.

**B. Under the Supreme Court Decision in *United States v. Whiting Pools, Inc.*, Victory Park Must Turn Over All Property of the Debtors’ Estates and Cannot Substitute Its Own Judgment as to What is Adequate Protection**

40. In *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983), the United States Supreme Court held that property of the debtor that the IRS had seized pre-petition had to be returned to the debtor because the Bankruptcy Code replaced a secured creditor’s right to “protection by possession” with a “right to adequate protection.” *Id.* at 207.

41. In the opinion, the Supreme Court recognized that “a troubled enterprise may be restructured to enable it to operate successfully in the future. Until the business can be reorganized pursuant to a plan ... the debtor-in-possession is authorized to manage the property of the estate and to continue the operation of the business.” *Id.* at 203. The Supreme Court further observed that “the reorganization effort would have small chance of success, however, if property essential to running the business were excluded from the estate.” *Id.* Importantly,

[t]his authorization extends even to property of the estate in which a creditor has a secured interest. Although Congress might have safeguarded the interests of secured creditors outright by excluding from the estate any property subject to a secured interest, it chose instead to include such property in the estate and to provide secured creditors with “adequate protection” for their interests. At the secured creditor's insistence, the bankruptcy court must place such limits or conditions on the trustee's power to sell, use, or lease property as are necessary to protect the creditor. The creditor with a secured interest in property included in the estate must look to this provision for protection, *rather than to the nonbankruptcy remedy of possession.*

Both the congressional goal of encouraging reorganizations and Congress' choice of methods to protect secured creditors suggest that Congress intended a broad range of property to be included in the estate.

*Id.* at 203-04 (emphasis added) (internal citations omitted).

42. Section 542(a) of the Bankruptcy Code modifies the procedural rights available to a secured creditor to exercise rights and remedies against collateral. *Id.* at 206 (citing *Wright v. Union Central Life Ins. Co.*, 311 U.S. 273, 278-79 (1940)). “In effect, § 542(a) grants to the estate a possessory interest in certain property of the debtor that was not held by the debtor at the commencement of reorganization proceedings.” *Whiting Pools*, 462 U.S. at 207. “Any other interpretation of § 542(a) would deprive the bankruptcy estate of the assets and property essential to its rehabilitation effort and thereby would frustrate the congressional purpose behind the reorganization provisions.” *Id.* at 208. Section 542(a) requires that secured creditors seek



protection of their interest in collateral under the established bankruptcy procedures rather than by “withholding the seized property from the debtor’s efforts to reorganize.” *Id.* at 212.

43. Here, Victory Park seized and is retaining at least \$21.2 million of property of the estate, including \$5 million as recently as October 20, 2017, by intercepting and diverting funds that were payable to one or more of the Debtors and depositing those funds into accounts owned or controlled by VP Management. As set forth more fully in pleadings that will be filed in the Adversary Proceeding, the seized funds as well as funds still held by GPLS are subject to turnover under sections 542(a) and/or 542(b) prior to any determination concerning adequate protection.

**C. The Court Should Find that the GPLS Secured Parties Are Adequately Protected**

44. Section 363(e) of the Bankruptcy Code provides that upon request of an entity that has an interest in property to be used by a debtor, the court shall prohibit or condition such use as is necessary to provide “adequate protection” of such interest. 11 U.S.C. §363(e). The Bankruptcy Code does not explicitly define “adequate protection,” but does provide a non-exclusive list of the means by which a debtor may provide adequate protection. *See* 11 U.S.C. § 361(c).

45. What constitutes adequate protection must be evaluated on a case-by-case basis. *See Resolution Trust Corp. v. Swedeland Dev. Grp. Inc. (In re Swedeland Dev. Grp. Inc.)*, 16 F.3d 552, 564 (3rd Cir. 1994) (citing *MBank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987)); *Martin v. Prod. Credit Ass’n of Fargo, N.D. (In re Martin)*, 761 F.2d 472, 474 (8th Cir. 1985). Adequate protection is meant to ensure that the secured lender receives the value for which it originally bargained. *See In re Mosello*, 195 B.R.

277, 288 (Bankr. S.D.N.Y. 1996) (citing *In re Swedeland Dev. Grp. Inc.*, 16 F.3d at 564) (“The purpose of ‘adequate protection’ for a creditor ‘is to insure that the creditor receives the value for which he bargained prebankruptcy’”). Courts have noted that “[t]he essence of adequate protection is the assurance of the maintenance and continued recoverability of the lien value during the interim between the filing . . . and the confirmation.” *In re Arriens*, 25 B.R. 79, 81 (Bankr. D. Or. 1982); *In re O.P. Held, Inc.*, 74 B.R. 777, 782 (Bankr. N.D.N.Y. 1987). The focus of the requirement is to protect a secured creditor from diminution in value during the use period. See *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. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Ledgemere Land Corp.*, 116 B.R. 338, 343 (Bankr. D. Mass. 1990); *In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988).

46. “[I]n determining whether a secured creditor's interest is adequately protected, most courts engage in an analysis of the property’s ‘equity cushion’—the value of the property after deducting the claim of the creditor seeking relief from the automatic stay and all senior claims.” *Mendoza v. Temple-Inland Mortgage Corp. (Matter of Mendoza)*, 111 F.3d 1264, 1272 (5th Cir. 1997) (quoting *In re Indian Palms Assoc., Ltd.*, 61 F.3d 197, 207 (3d Cir. 1995)) (internal citation omitted). Case law is nearly uniform in finding that an equity cushion greater than 20% constitutes adequate protection. See, e.g., *In re Knight Energy Corp.*, Nos. 09-32163, 09-32165, 2009 Bankr. LEXIS 1841, at \*3 (Bankr. N.D. Tex. June 26, 2009) (applying the 20% equity cushion test to determine whether the secured lender was adequately protected).

47. As discussed above, none of the GPLS Secured Parties have asserted any liquidated, non-contingent secured claims against the Debtors. Thus, the starting point for the analysis is the Debtors have 100% equity in all of the property of the estate, in which case the

GPLS Secured Parties simply are not entitled to any adequate protection until they can demonstrate that they have a liquidated, non-contingent claim against property of the estate.

48. The GPLS Secured Parties likely will argue that they are entitled to adequate protection for their alleged contingent indemnification claims. In the Adversary Proceeding, among other things, the Debtors seek to disallow the claims of the GPLS Secured Parties, and to the extent such claims are not disallowed, to estimate such claims at or close to \$0 for all purposes. Thus, the parties dispute the validity of the claims of the GPLS Secured Parties.

49. The Court, however, does not need to address such dispute in connection with the Interim Order. For the purposes of the interim relief sought in this Motion, the only potential claims of the GPLS Secured Parties that are relevant for adequate protection purposes are the claims for expense costs that could arise during the period covered by the Interim Order.

50. To the extent any of the GPLS Secured Parties incur defense costs in defending the GPLS Litigation during the interim period, those disputed claims are adequately protected during the interim period by an equity cushion far in excess of 20%. First, as to GPLS, any defense costs incurred in the GPLS Litigation are first deducted as expenses from the interest and finance charges received by GPLS. The amounts GPLS has received and will receive during the period covered by the Interim Order will be more than sufficient to pay any reasonable defense costs incurred during the interim period, meaning GPLS will have no indemnification claim for those amounts against the Debtors. Second, as to the other GPLS Secured Parties, the Pennsylvania Litigation—the only lawsuit involving GPLS in which Victory Park has been named as a defendant—is in its early stages and the district court currently has a motion to dismiss under advisement. Thus, any defense costs incurred during the interim period by GPLS

Secured Parties other than GPLS that could be asserted as claims against the Debtors will be modest.

51. In any event, as the Seven Week Forecast shows, the Debtors will have more than \$31 million in cash at the end of the period covered by the Interim Order. Thus, even if the GPLS Secured Parties other than GPLS incurred defense costs of several hundred thousand dollars during the interim period—an outrageous and patently unreasonable amount—the equity cushion would far exceed 20%.

52. The Debtors also propose to provide to the U.S. Trustee, counsel to the GPLS Secured Parties and to counsel to any official committees appointed in these cases on a weekly basis a report of actual receipts and disbursements for the prior week compared to the Seven Week Forecast.

53. Based on the foregoing, the Debtors submit that the interests of the GPLS Secured Parties in the cash collateral—to the extent they have any—are adequately protected and the Debtors' request for authority to use cash collateral on the terms set forth herein is fair, reasonable, and sufficient to satisfy the requirements of the Bankruptcy Code.

**D. The Requirements of Bankruptcy Rules 4001(b)(2) and 6003(b) Have Been Satisfied**

54. Pursuant to Bankruptcy Rule 4001(b)(2), a minimum of 14 days' notice is required before a final hearing on the Motion may take place. The same rule, however, also provides that the Court “may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2).

55. In addition, Bankruptcy Rule 6003(b) provides that, “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition,” grant relief upon “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate.” Fed. R. Bankr. P. 6003(b).

56. As set forth above, the Debtors have an immediate and urgent need to use cash collateral consistent with the Seven Week Forecast. Absent the use of cash collateral, the Debtors will not be able to meet their working capital and liquidity needs, and their estates and creditors will suffer immediate and irreparable harm. Accordingly, the Debtors submit that the requirements of Bankruptcy Rules 4001(b)(2) and 6003(b) have been satisfied.

**E. Request for Final Hearing**

57. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors request that the Court schedule a final hearing on the Motion.

58. The Debtors request that they be authorized to serve a copy of the signed Interim Order, which fixes the time and date for the filing of objections, if any, by electronic mail, where possible, and otherwise by first class mail upon the Notice Parties listed below.

**VI. Notice**

59. The Debtors have served notice of the Motion via electronic mail, to the extent possible, or overnight mail on (a) the U.S. Trustee; (b) counsel for the GPLS Secured Parties; (c) all known creditors holding secured claims against the Debtors’ estates; (d) those creditors holding the 30 largest unsecured claims against the Debtors’ estates on a consolidated basis; (e) the IRS; (f) the Consumer Financial Protection Bureau; and (g) the Pennsylvania Office of the Attorney General.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

DATED: October 23, 2017

Respectfully submitted,

/s/ Gregory G. Hesse

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*Proposed Counsel to the Debtors and Debtors In Possession*

**Certificate of Conference**

Due to emergency nature of the Debtors' first day filings, it was not practicable for counsel to the Debtors to hold a conference with all interested parties prior to filing the Motion. I hereby certify that counsel for the Debtors is currently conferring with the U.S. Trustee and with other interested parties regarding the relief requested in the Motion. Accordingly, the Motion is presumed to be opposed.

/s/ Gregory G. Hesse  
Gregory G. Hesse

**EXHIBIT A**

**Proposed Interim Order**



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

**In re:**

**THINK FINANCE, LLC, *et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**No. 17-[ ]( )**

**(Joint Administration Requested)**

**INTERIM ORDER AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL,  
GRANTING ADEQUATE PROTECTION AND RELATED RELIEF, AND  
SCHEDULING A FINAL HEARING**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order, pursuant to sections 105, 361, and 363 of the Bankruptcy Code and Bankruptcy Rule 4001, authorizing the Debtors to use cash collateral, granting certain adequate protection, and granting related relief; the Court finds that: (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the relief requested in the Motion is in the best interest of the Debtors, their estates and creditors, and is necessary to

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Think Finance, LLC (6762), Think Finance SPV, LLC (4522), Financial U, LLC (1850), TC Loan Service, LLC (3103), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), and TC Decision Sciences, LLC (8949).

<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

prevent immediate and irreparable harm; (d) notice of the Motion and the hearing thereon (the “Interim Hearing”) has been given via electronic mail, to the extent possible, or overnight mail to (i) the U.S. Trustee, (ii) counsel for the GPLS Secured Parties, (iii) all known creditors holding secured claims against the Debtors’ estates, (iv) those creditors holding the 30 largest unsecured claims against the Debtors’ estates on a consolidated basis, (v) the IRS, (vi) the Consumer Financial Protection Bureau, and (vii) the Pennsylvania Office of the Attorney General; (e) GPL Servicing, Ltd. (“GPLS”) is adequately protected by the projected interest and finance charges that GPLS will receive during the interim period and that it can use to pay expenses in accordance with the AAA and the terms of this Interim Order; (f) the interest of GPLS, GPL Servicing Agent, LLC (the “Collateral Agent”), and Victory Park Capital Advisors, LLC (“Victory Park” and, collectively, with the Collateral Agent and GPLS, the “GPLS Secured Parties”) in property of the estate, to the extent they have any, is adequately protected by an equity cushion that exceeds 20%; and (g) based on the record established at the Interim Hearing and after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

**IT IS HEREBY ORDERED THAT:**

1. The relief requested in the Motion is hereby GRANTED on an interim basis.
2. The Debtors are authorized to use cash collateral consistent with the expenditures identified in the Seven Week Forecast attached hereto as Exhibit 1 to satisfy (i) any and all pre-Petition Date operating and other expenses approved by the Court, (ii) obligations incurred in the ongoing post-Petition Date operations of the Debtors’ business, and (iii) any and all costs and expenses arising in connection with the administration of the Debtors’ estates, including, without limitation, for the payment of any fees and expenses owed to professionals employed by them in

these Chapter 11 cases upon the entry of an order from this Court authorizing the payment of such professional's fees and expenses.

3. The Debtors shall provide to the U.S. Trustee, counsel to the GPLS Secured Parties and counsel to any official committees appointed in these cases on a weekly basis a report of actual receipts and disbursements for the prior week compared to the Seven Week Forecast.

4. Unless and until Victory Park or the Collateral Agent receive express relief from this Court, neither Victory Park nor the Collateral Agent nor any entity acting on behalf of them shall withdraw any funds from accounts owned by GPLS.

5. GPLS shall submit a list of all expenses incurred by it, including any invoices evidencing such expenses, to the Debtors, the U.S. Trustee and any official committees appointed in these bankruptcy cases (collectively, the "Notice Parties") at least fourteen (14) days prior to payment of the expenses (the "Notice Period"). In the event any Notice Party objects to the reasonableness of the expenses (a "Disputed Expense"), such Notice Party shall provide written notice of the objection to GPLS prior to expiration of the Notice Period. In the event the parties are unable to resolve the objection within ten (10) days after expiration of the Notice Period (the "Resolution Period"), either GPLS or the objecting Notice Party may file a notice of the objection with the Bankruptcy Court and request a hearing on at least fourteen (14) days' notice. After the Notice Period, GPLS may pay any expense, or portion thereof, that is not a Disputed Expense, *provided, however*, GPLS shall not pay a Disputed Expense prior to consensual resolution of the objection or further order of the Bankruptcy Court after notice and a hearing. The amounts due to the Debtors each month by GPLS shall be calculated net of any Disputed Expense, *provided, however*, in the event such Disputed Expense is reduced or disallowed, whether by agreement of the parties or by order of the Bankruptcy Court, GPLS shall

pay such amount to the Debtors to the extent such amount would have been payable as part of the Agent Fee, Fixed Return or Redemption Amount.

6. Nothing in this Interim Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest whether any of the GPLS Secured Parties, or any other party, has a valid perfected security interest in the cash collateral or any other assets of the Debtors.

7. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

8. The final hearing on the Motion is scheduled on \_\_\_\_\_, 2017, at \_\_\_\_\_ (prevailing Eastern Time) before this Court (the "Final Hearing").

9. Within three business days of the entry of this Interim Order, the Debtors shall serve a copy of this Interim Order, thereby providing notice of the Final Hearing, on (a) the U.S. Trustee; (b) the attorneys for the GPLS Secured Parties; (c) those creditors holding the 30 largest unsecured claims against the Debtors' estates on a consolidated basis; (d) the IRS, (e) the Consumer Financial Protection Bureau, and (f) the Pennsylvania Office of the Attorney General.

10. Any objection to the relief requested in the Motion on a permanent basis must, by 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2017 (the "Objection Deadline"), be: (a) filed with the Court; and (b) actually received by: (i) the Office of the U.S. Trustee, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242; (ii) proposed counsel to the Debtors, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown, Esq., email: tpbrown@hunton.com; (iii) counsel for the GPLS Secured Parties; and (iv) the attorneys for any official committee of unsecured creditors, if then appointed in these cases, on or before the Objection Deadline.

11. A reply to any timely filed and served objection may be filed with the Court and served on or before 12:00 p.m. (prevailing Eastern Time) on the day that is at least two business days before the Final Hearing.

12. Notwithstanding any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Bankruptcy Rule that might otherwise delay the effectiveness of this Order, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Interim Order.

###END OF ORDER###

Submitted by:

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT B**

**Seven Week Forecast**



# Think Finance, LLC

**Seven Week Forecast**

*As of October 23, 2017*



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**Receipts**

|  |  |
|--|--|
| [A] 3rd Party Service Fees -             | Assumes no impact on service fees as a result of the Chapter 11 filing   |
| [B] Interest Income                      | Includes interest on the Intercompany Credit Facility with Cortex Holdings, LLC and TF Investment Services, LLC                                      |
| [C] Debt Sales                           | Reflects the sale of bad loans, which is assumed to continue as usual  |
| [D] Note Receivables                     | Relates to the collection of the Haynes note   |
| [E] Intercompany Receivables             | Assumes the collection of intercompany receivables, including payments associated with the service and license agreements                            |
| [F] Intercompany Credit Facility Paydown | Assumes no paydown of the intercompany credit facilities with Cortex Holdings, LLC and TF Investment Services, LLC occurs during the forecast period |

**Operating Disbursements**

|  |  |
|--|--|
| [G] Trade Vendors                        | Assumes approximately 25% of vendors require payment in advance for the first 4 weeks of the forecast period and return to 30 day terms thereafter                                 |
| [H] Payroll & Benefits                   | Assumes payroll and benefit related payments continue as usual   |
| [I] Occupancy                            | Assumes occupancy payments continue as usual   |
| [J] Taxes                                | Assumes no tax payments are disbursed during the forecast period as 4th quarter taxes, if applicable, would be paid beyond the forecast period                                     |
| [K] Insurance Premiums                   | Annual insurance premiums were paid prior to filing, therefore no additional insurance premium payments are contemplated during the forecast period                                |
| [L] Ordinary Course Professionals        | Assumes ordinary course professionals will be paid for services performed from the filing date through November 30th during the 2nd week of December based on historical run rates |
| [M] Intercompany Credit Facility Funding | Assumes no funding of the intercompany credit facilities with Cortex Holdings, LLC and TF Investment Services, LLC occurs during the forecast period                               |
| [N] Other Operating Expenses             | Includes \$25k per week of contingency   |

**Restructuring Activity**

|                        |   |
|------------------------|---|
| [O] Pre-petition Taxes | Assumes no prepetition tax payments will be made during the forecast period |
| [P] Professional Fees  | Includes 1 month of fees and expenses for the claims agent                  |

|  |           | Fcst<br>1         | Fcst<br>2         | Fcst<br>3         | Fcst<br>4         | Fcst<br>5         | Fcst<br>6         | Fcst<br>7          | Total<br>Forecast Period |
|--|-----------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|--------------------------|
| Week Ending:   |           | 10/29/17          | 11/5/17           | 11/12/17          | 11/19/17          | 11/26/17          | 12/3/17           | 12/10/17           |                          |
| <b>Receipts</b>  |           |                   |                   |                   |                   |                   |                   |                    |                          |
| 3rd Party Service Fees [A]                             | \$        | -                 | 76,351            | -                 | -                 | -                 | -                 | 65,359             | \$ 141,710               |
| Interest Income [B]                                    |           | 38,352            | 63,352            | 38,352            | 38,352            | 38,352            | 63,352            | 38,352             | 318,464                  |
| Debt Sales [C]   |           | -                 | -                 | -                 | -                 | -                 | -                 | -                  | -                        |
| Note Receivables [D]                                   |           | -                 | -                 | -                 | -                 | 800,000           | -                 | -                  | 800,000                  |
| Intercompany Receivables [E]                           |           | -                 | -                 | 1,372,000         | -                 | -                 | -                 | 1,372,000          | 2,744,000                |
| Intercompany Credit Facility Paydown [F]               |           | -                 | -                 | -                 | -                 | -                 | -                 | -                  | -                        |
| <b>Total Receipts</b>                                  |           | <b>38,352</b>     | <b>139,703</b>    | <b>1,410,352</b>  | <b>38,352</b>     | <b>838,352</b>    | <b>63,352</b>     | <b>1,475,711</b>   | <b>4,004,174</b>         |
| <b>Operating Disbursements</b>                         |           |                   |                   |                   |                   |                   |                   |                    |                          |
| Trade Vendors [G]                                      |           | -                 | (125,000)         | (125,000)         | (125,000)         | (400,000)         | (400,000)         | (400,000)          | (1,575,000)              |
| Payroll & Benefits [H]                                 |           | -                 | (301,238)         | -                 | (249,244)         | -                 | (301,238)         | -                  | (851,720)                |
| Occupancy [I]  |           | -                 | (166,000)         | -                 | -                 | -                 | (125,000)         | -                  | (291,000)                |
| Taxes [J]  |           | -                 | -                 | -                 | -                 | -                 | -                 | -                  | -                        |
| Insurance Premiums [K]                                 |           | -                 | -                 | -                 | -                 | -                 | -                 | -                  | -                        |
| Ordinary Course Professionals [L]                      |           | -                 | -                 | -                 | -                 | -                 | -                 | (750,000)          | (750,000)                |
| Intercompany Credit Facility Funding [M]               |           | -                 | -                 | -                 | -                 | -                 | -                 | -                  | -                        |
| Other Operating Expenses [N]                           |           | (25,000)          | (25,000)          | (25,000)          | (25,000)          | (25,000)          | (25,000)          | (25,000)           | (175,000)                |
| <b>Total Operating Disbursements</b>                   |           | <b>(25,000)</b>   | <b>(617,238)</b>  | <b>(150,000)</b>  | <b>(399,244)</b>  | <b>(425,000)</b>  | <b>(851,238)</b>  | <b>(1,175,000)</b> | <b>(3,642,720)</b>       |
| <b>Total Operating Cash Flow</b>                       | <b>\$</b> | <b>13,352</b>     | <b>(477,535)</b>  | <b>1,260,352</b>  | <b>(360,892)</b>  | <b>413,352</b>    | <b>(787,886)</b>  | <b>300,711</b>     | <b>\$ 361,454</b>        |
| <b>Restructuring Activity</b>                          |           |                   |                   |                   |                   |                   |                   |                    |                          |
| Pre-petition Taxes [O]                                 |           | -                 | -                 | -                 | -                 | -                 | -                 | -                  | -                        |
| Professional Fees [P]                                  |           | -                 | -                 | -                 | -                 | -                 | -                 | (50,000)           | (50,000)                 |
| <b>Total Restructuring Activity</b>                    |           | <b>-</b>          | <b>-</b>          | <b>-</b>          | <b>-</b>          | <b>-</b>          | <b>-</b>          | <b>(50,000)</b>    | <b>(50,000)</b>          |
| <b>Net Cash Flow</b>                                   | <b>\$</b> | <b>13,352</b>     | <b>(477,535)</b>  | <b>1,260,352</b>  | <b>(360,892)</b>  | <b>413,352</b>    | <b>(787,886)</b>  | <b>250,711</b>     | <b>\$ 311,454</b>        |
| <b>Cash Schedule</b>                                   |           |                   |                   |                   |                   |                   |                   |                    |                          |
| Beginning Cash Balance                                 | \$        | 5,039,348         | 5,052,700         | 4,575,165         | 5,835,517         | 5,474,625         | 5,887,977         | 5,100,091          | \$ 5,039,348             |
| Net Cash Flow  |           | 13,352            | (477,535)         | 1,260,352         | (360,892)         | 413,352           | (787,886)         | 250,711            | 311,454                  |
| <b>Ending Cash Balance</b>                             | <b>\$</b> | <b>5,052,700</b>  | <b>4,575,165</b>  | <b>5,835,517</b>  | <b>5,474,625</b>  | <b>5,887,977</b>  | <b>5,100,091</b>  | <b>5,350,802</b>   | <b>\$ 5,350,802</b>      |
| <b>Adjusted Cash Balance for GPLS Related Activity</b> |           |                   |                   |                   |                   |                   |                   |                    |                          |
| Beginning Cash Balance                                 | \$        | 5,039,348         | 27,529,638        | 28,331,041        | 30,316,189        | 30,713,558        | 31,851,706        | 31,890,554         | \$ 5,039,348             |
| Net Cash Flow  |           | 13,352            | (477,535)         | 1,260,352         | (360,892)         | 413,352           | (787,886)         | 250,711            | 311,454                  |
| GPLS / VPC Turnover                                    |           | 21,200,000        | -                 | -                 | -                 | -                 | -                 | -                  | 21,200,000               |
| GPLS Fixed Return                                      |           | -                 | 913,333           | -                 | -                 | -                 | -                 | 730,883            | 1,644,217                |
| GPLS Redemption Amounts                                |           | 1,276,938         | 365,605           | 724,796           | 758,262           | 724,796           | 826,734           | 654,979            | 5,332,108                |
| GPLS Agent Fee <sup>(1)</sup>                          |           | -                 | -                 | -                 | -                 | -                 | -                 | -                  | -                        |
| <b>Adjusted Ending Cash Balance</b>                    | <b>\$</b> | <b>27,529,638</b> | <b>28,331,041</b> | <b>30,316,189</b> | <b>30,713,558</b> | <b>31,851,706</b> | <b>31,890,554</b> | <b>33,527,127</b>  | <b>\$ 33,527,127</b>     |

<sup>(1)</sup> GPLS Agent Fee is forecasted to be \$0 primarily due to the inclusion of non-cash items, such as charge-offs, within the Agent Fee calculation. A substantial amount of finance and interest related cash inflows are reflected in the GPLS Redemption Amounts line.

**EXHIBIT C**

**Attorney Cash Collateral Checklist**

**RESET**

**CHECKLIST FOR LENGTHY MOTIONS AND ORDERS PERTAINING TO  
CASH COLLATERAL AND POST-PETITION FINANCING**

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

**IN RE:** THINK FINANCE, LLC, et al.,                                 )  
  )  
  )  
  )  
  )  
  )  
  )  
  )  
  )  
**DEBTOR**   )

**CASE NO. 17-33964**

**HEARING:**

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS  
PERTAINING TO USE OF CASH COLLATERAL AND POST-PETITION  
FINANCING (WHICH ARE IN EXCESS OF TEN (10) PAGES)**

Motions and orders pertaining to cash collateral and post-petition financing matters tend to be lengthy and complicated. Although the Court intends to read such motions and orders carefully, it will assist the Court if counsel will complete and file this checklist. All references are to the Bankruptcy Code (§) or Rules (R).

**PLEASE NOTE:**

- “\*” Means generally not favored by Bankruptcy Courts in this District.
- “\*\*” Means generally not favored by Bankruptcy Courts in this District without a reason and a time period for objections.

If your motion or order makes provision for any of the following, so indicate in the space provided:

**CERTIFICATE BY COUNSEL**

This is to certify that the following checklist fully responds to the Court’s inquiry concerning material terms of the motion and/or proposed order:

Yes, at Page/Exhibit  
Y means yes; N means no  
N/A means not applicable  
(Page Listing Optional)

Enter Y, N,  
or N/A

|                                   |  |             |
|-----------------------------------|--|-------------|
| 1. Identification of Proceedings: |  |             |
| (a)                               | Preliminary or final motion/order (circle one).....  | Preliminary |
| (b)                               | Continuing use of cash collateral (§ 363) .....  | Y           |
| (c)                               | New financing (§ 364) .....  | N           |
| (d)                               | Combination of §§ 363 and 364 financing .....  | N           |
| (e)                               | Emergency hearing (immediate and irreparable harm) .....   | Y           |
| 2. Stipulations:                  |  |             |
| (a)                               | Brief history of debtor's businesses and status of debtor's prior relationships with lender .....  | N           |
| (b)                               | Brief statement of purpose and necessity of financing .....  | N           |
| (c)                               | Brief statement of type of financing (i.e., accounts receivable, inventory).....   | N           |
| **                                | (d) Are lender's pre-petition security interest(s) and liens deemed valid, fully perfected and non-avoidable .....                         | N           |
|                                   | (i) Are there provisions to allow for objections to above?.....  | N/A         |
|                                   | (e) Is there a post-petition financing agreement between lender and debtor?.....   | N           |
|                                   | (i) If so, is agreement attached?.....   | N/A         |
| **                                | (f) If there is an agreement are lender's post-petition security interests and liens deemed valid, fully perfected and non-avoidable?..... | N           |
| (g)                               | Is lender undersecured or oversecured? (circle one).....   | Oversecured |
| (h)                               | Has lender's non-cash collateral been appraised?.....  | N           |
|                                   | (i) Insert date of latest appraisal.....   | N/A         |
| (i)                               | Is debtor's proposed budget attached? .....  | Y           |
| (j)                               | Are all pre-petition loan documents identified?.....   | Y           |
| (k)                               | Are pre-petition liens on single or multiple assets? (circle one).....   | Multiple    |
| (l)                               | Are there pre-petition guaranties of debt? .....   | Y           |
|                                   | (i) Limited or unlimited? (circle one) .....   | Unlimited   |
| 3. Grant of Liens:                |  |             |
| *                                 | (a) Do post-petition liens secure pre-petition debts? .....  | N/A         |
| *                                 | (b) Is there cross-collateralization?.....   | N/A         |
| **                                | (c) Is the priority of post-petition liens equal to or higher than existing liens? .....   | N/A         |
| **                                | (d) Do post-petition liens have retroactive effect? .....  | N/A         |
|                                   | (e) Are there restrictions on granting further liens or liens of equal or higher priority?.....  | N/A         |
| *                                 | (f) Is lender given liens on claims under §§ 506(c), 544-50 and §§ 522?.....   | N/A         |
| **                                | (i) Are lender's attorneys fees to be paid?.....   | N/A         |
|                                   | (ii) Are debtor's attorneys fees excepted from § 506(c)?.....  | N/A         |
| *                                 | (g) Is lender given liens upon proceeds of causes of action under §§ 544, 547 and 548?.....  | N/A         |

Enter Y, N,  
or N/A

- |     |   |     |
|-----|---|-----|
| 4.  | Administrative Priority Claims:   |     |
|     | (a) Is lender given an administrative priority? .....   | N/A |
|     | (b) Is administrative priority higher than § 507(a)? .....  | N/A |
|     | (c) Is there a conversion of pre-petition secured claim to post-petition administrative claim by virtue of use of existing collateral? .....        | N/A |
| 5.  | Adequate Protection (§ 361):  |     |
|     | (a) Is there post-petition debt service? .....  | N/A |
|     | (b) Is there a replacement/addition 361(l) lien? (circle one or both) .....   | N   |
| **  | (c) Is the lender's claim given super-priority? (§ 364(c) or (d)) [designate].....  | N   |
|     | (d) Are there guaranties? .....   | N   |
|     | (e) Is there adequate Insurance coverage? .....   | Y   |
|     | (f) Other? .....  | N/A |
| 6.  | Waiver/Release Claims v. Lender:  |     |
| **  | (a) Debtor waives or release claims against lender, including, but not limited to, claims under §§ 506(c), 544-550, 552, and 553 of the Code? ..... | N   |
| **  | (b) Does the debtor waive defenses to claim or liens of lender? .....   | N   |
| 7.  | Source of Post-Petition Financing (§ 364 Financing):  |     |
|     | (a) Is the proposed lender also the pre-petition lender? .....  | N/A |
|     | (b) New post-petition lender? .....   | N/A |
|     | (c) Is the lender an insider? .....   | N/A |
| 8.  | Modification of Stay:   |     |
| **  | (a) Is any modified lift of stay allowed? .....   | N   |
| **  | (b) Will the automatic stay be lifted to permit lender to exercise self-help upon default without further order? .....                              | N   |
|     | (c) Are there any other remedies exercisable without further order of court? .....  | N   |
|     | (d) Is there a provision that any future modification of order shall not affect status of debtor's post-petition obligations to lender? .....       | N   |
| 9.  | Creditors' Committee:   |     |
|     | (a) Has creditors' committee been appointed? .....  | N   |
|     | (b) Does creditors' committee approve of proposed financing? .....  | N/A |
| 10. | Restrictions on Parties in Interest:  |     |
| **  | (a) Is a plan proponent restricted in any manner, concerning modification of lender's rights, liens and/or causes? .....                            | N   |
| **  | (b) Is the debtor prohibited from seeking to enjoin the lender in pursuant of rights? .....   | N   |
| **  | (c) Is any party in interest prohibited from seeking to modify this order? .....  | N   |

Enter Y, N,  
or N/A

- |     |   |     |
|-----|---|-----|
|     | (d) Is the entry of any order conditioned upon payment of debt to lender?.....  | N   |
|     | (e) Is the order binding on subsequent trustee on conversion? .....   | N   |
| 11. | Nunc Pro Tunc:  |     |
|     | (a) Does any provision have retroactive effect?.....  | N   |
| 12. | Notice and Other Procedures:  |     |
|     | (a) Is shortened notice requested? .....  | Y   |
|     | (b) Is notice requested to shortened list? .....  | Y   |
|     | (c) Is time to respond to be shortened?.....  | Y   |
|     | (d) If final order sought, have 15 days elapsed since service of motion pursuant to Rule 4001(b)(2)?.....   | N/A |
|     | (e) If preliminary order sought, is cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing?..... | Y   |
|     | (f) Is a Certificate of Conference included?.....   | Y   |
|     | (g) Is a Certificate of Service included? .....   | Y   |
|     | (h) Is there verification of transmittal to U.S. trustee included pursuant to Rule 9034? .....  | Y   |
|     | (i) Has an agreement been reached subsequent to filing motion? .....  | N/A |
|     | (i) If so, has notice of the agreement been served pursuant to Rule 4001(d)(4)? .....   | N/A |
|     | (ii) Is the agreement in settlement of motion pursuant to Rule 4001(d)(4)? .....  | N/A |
|     | (iii) Does the motion afford reasonable notice of material provisions of agreement pursuant to Rule 4001(d)(4)? .....                             | N/A |
|     | (iv) Does the motion provide for opportunity for hearing pursuant to Rule 9014? .....   | N/A |

SIGNED this the 23rd day of October, 20017.

Hunton & Williams LLP

Firm: \_\_\_\_\_

By: /s/ Gregory G. Hesse

Attorney's Name: Gregory G. Hesse

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Identification Role in Case: Proposed Attorney for Debtors