

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>	)	<b>Case No. 07-10086 (KG)</b>
	)	
<b>EARTHSHELL CORPORATION,</b>	)	<b>Chapter 11</b>
	)	
<b>Debtor.</b>	)	
	)	

**DECLARATION OF VINCENT J. TRUANT  
IN SUPPORT OF FIRST DAY RELIEF**

I, VINCENT J. TRUANT, hereby declare under penalty of perjury:

1. I am the Chief Executive Officer and Chairman of the Board of Directors of Earthshell® Corporation ("Earthshell" or the "Debtor"), a corporation organized under the laws of the State of Delaware. The Debtor's principal executive offices are located at 1301 York Road, Suite 200, Lutherville, Maryland. In connection with my duties for the Debtor, I am familiar with the Debtor's day-to-day operations, business affairs and books and records. In recent weeks, I have participated in Debtor's discussions relating to potential debtor-in-possession ("DIP") financing and am familiar with the proposed DIP credit agreement.

2. The Debtor commenced its bankruptcy case on January 19, 2007 by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware.

3. To enable the Debtor to maximize the value of its assets for the benefit of creditors and parties in interest, the Debtor intends to request various types of relief in certain "first day" applications and motions (collectively, the "First Day Relief").

4. I submit this Declaration in support of the First Day Relief. Any capitalized terms not expressly defined herein have the meanings set forth in the applicable motion or application. Except as otherwise indicated, all statements in this Declaration are based upon my personal

knowledge, my review of relevant documents, my opinion based upon my experience and knowledge of the Debtor's operations and financial condition or information provided to me by the Debtor's employees. If I were called upon to testify, I could and would testify to each of the facts set forth herein. I am authorized to submit this Declaration on behalf of the Debtor.

### **I. BACKGROUND**

5. The Debtor is a Delaware corporation with its corporate headquarters located in Lutherville, Maryland. EarthShell, originally founded in 1992, is a technology company and innovator of a revolutionary development in environmentally sound disposable food service packaging which is publicly-traded on the over the counter market ("OTC"). In addition to certain environmental characteristics, EarthShell packaging products are designed to be cost and performance competitive compared to other foodservice packaging materials.

6. EarthShell is engaged in the licensing and commercialization of proprietary composite material technology for the manufacture of foodservice disposable packaging. Current sub-licensees include ReNewable Products, Inc., EarthShell Hidalgo, and others. EarthShell's business structure was created to allow it to leverage the infrastructure of its partners to accelerate market penetration of EarthShell packaging.

7. The events precipitating this chapter 11 filing are a combination of economic factors, most notably the company's inability to procure stable long-term funding to complete the execution of its business plan. EarthShell required such funding in order to accomplish the successful turnaround of the business, complete the commercialization of EarthShell's technology and retire the company's pre-existing debt. The required funding has not materialized and the company was faced with the inability to meet its payroll and other financial obligations. The Debtor has approximately \$12 million in total liabilities.

8. As a result of the foregoing, EarthShell filed this Chapter 11 proceeding for the purpose of selling the company's assets so as to maximize the value of its assets for the benefit of creditors and parties in interest. Earthshell Acquisition Corp. ("Proposed Purchaser"), an affiliate of RPI, has submitted a "stalking horse" bid of \$1 million pursuant to an Amended and Restated Asset Purchase Agreement (the "Agreement") by and between Proposed Purchaser and the Debtor dated January 22, 2007 providing for the sale of all or substantially all of the Debtor's assets to Proposed Purchaser pursuant to a sale conducted under section 363 of the Bankruptcy Code. The Debtor has filed a motion seeking authority for such a sale. The Debtor hopes to maximize the purchase price for substantially all of its assets through a competitive bidding sale process with the Proposed Purchaser acting as the stalking horse bidder.

## **II. FIRST DAY PLEADINGS**

9. An important element for the success of the Debtor's Chapter 11 case is approval of each of the Debtor's requests for First Day Relief submitted concurrently herewith. Generally, the First Day Relief has been designed to facilitate preserving the value of the Debtor's intellectual property assets and establishing procedures for the smooth and efficient administration of this case. I have reviewed the First Day Relief, and I believe that the relief sought therein is tailored to meet the goals described above and, ultimately, will be critical to the Debtor's ability to maximize the value of its estate for its creditors and other stakeholders.

### **A. Motion For Authorization To Pay Certain Pre-Petition Wages And Other Employee Expenses And Benefits**

10. By this Motion, the Debtor seeks authority to pay certain pre-petition wages and other employee expenses and benefits for the benefit the Debtor's sole remaining employee,

William Mooney (“Mr. Mooney”),<sup>1</sup> pursuant to the terms of the proposed debtor-in-possession financing (the “DIP Financing”). Pursuant to the terms of the DIP Financing, the proposed lender, ReNewable Products, Inc. (“RPI”), has approved an initial 13-week rolling budget of cash receipts and disbursements for weekly periods during the case (the “Initial Budget”).

11. The Initial Budget provides for the payment of certain pre-petition and post-petition wages, salary and benefits.<sup>2</sup> The pre-petition obligations include: (i) wages, salaries and other compensation<sup>3</sup>; (ii) employee medical and similar benefits; (iii) and other miscellaneous employee expenses and benefits (collectively, the “Pre-Petition Employee Obligations”). The Debtor’s aggregate amount of Pre-Petition Employee Obligations is \$13,458.00.

12. Further, as part of the Debtor’s customary payroll practices, the Debtor withholds specified amounts from employees’ salaries or wages including, but not limited to, federal, state and local payroll taxes, employee contributions to health and welfare benefit plans, and/or garnishments (the “Designated Payments”), and the payroll service then pays such amounts to applicable designated third parties (collectively, the “Designated Recipients”). If such payments are not timely made, the applicable employees will be harmed. Consequently, the Debtor seeks

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<sup>1</sup> At the Debtor’s discretion, and as necessary to fulfill the Debtor’s obligations, the amounts allocated in the Budget for the Pre-Petition Employee Obligations and the post-petition employee obligations may be allocated among and between Mr. Mooney and various other former employees of the Debtor, including but not limited to Dr. David Roesser, Cindy Eikenberg, John Neuling, Paul Sussie, Skip Boyles, Vincent Truant and Scott Houston, as may be necessary to complete designated tasks, so long as the total payments to employees do not exceed the amounts allocated in the Budget.

<sup>2</sup> Historically, the Debtor has provided various benefits (the “Employee Benefits”) to their employees, including (i) health benefits through Nippon Life Insurance of America; (ii) other insurance benefits, including but not limited to life insurance benefits, and (iii) other optional benefits, such as an Employee’s 401k retirement plan.

<sup>3</sup> The amounts sought to pay for wages, salaries and other compensation include withholdings for taxes and certain benefits.

authority to pay all Designated Payments on account of the Pre-Petition Employee Obligations to the Designated Recipients.

13. Due to the fact that under any chapter 11 plan, the Debtor would be required to pay the majority of unpaid compensation, including wages, salaries and other compensation, pursuant to section 507(a)(4) of the Bankruptcy Code,<sup>4</sup> the potential prejudice to any party in interest for the payment of the Pre-Petition Employee Obligations at this time would be minimal, if any. Again, the Debtor only seeks authority to pay a total of \$13,458.00 on account of the Pre-Petition Employee Obligations.

14. Further, the continued loyalty of Mr. Mooney, or any of the other potential former employees who may provide services to the Debtor post-petition (see *supra* Footnote 2 and collectively referred to as the “Employees”), is necessary to successfully maximize the purchase price for substantially all of the Debtor’s assets through a competitive bidding sale process in this case. As such, payment of the requested Pre-Petition Employee Obligations is necessary and reasonable.

**B. Motion For Order Pursuant To Section 364(C) Of The Bankruptcy Code Authorizing The Debtor To Enter Into An Agreement For Interim And Final Debtor In Possession Financing, Granting Liens And Super-Priority Claims And Modifying The Automatic Stay**

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<sup>4</sup> Section 507(a)(4) of the Bankruptcy Code states in relevant part:

(a) The following expenses and claims have priority in the following order:

(3) Fourth, allowed unsecured claims, but only to the extent of \$10,000 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor’s business, whichever occurs first, for –

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor’s business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor;.... 11 U.S.C. § 507(a)(4).

15. By this Motion (the "DIP Financing Motion"), the Debtor seeks the entry of an order for interim and final relief. The pertinent provisions of the DIP Financing, as set forth in the Proposed Interim Order, are as follows:

**Borrower:** EarthShell Corporation

**Lender:** ReNewable Products, Inc.

**Credit Commitment:** The Debtor is authorized to borrow and RPI is authorized to loan the Debtor up to \$300,000 (including the Pre-Petition Retainer) to meet the expenses set forth in the Budget. The DIP Financing shall be evidenced by a promissory note in form satisfactory to RPI and, so long as no Event of Default has occurred and is continuing thereunder, may be funded through the Debtor's withdrawals from the Deposit Account. Provided that RPI makes the Deposit, no further commitment of funds is required from RPI for purposes of financing the Debtor.

**DIP Operating Account/Projected Budget:** Debtor shall establish an operating account (the "DIP Operating Account") which shall be used to fund all payroll and other expenses of the debtor-in-possession. Subject to order of Court, it may be the same operating account used prior to the Petition Date and shall be denominated the "EarthShell DIP Operating Account". The Debtor and RPI have agreed that the Debtor shall update and adhere to, on a weekly basis, a 13-week rolling Budget of cash receipts and disbursements for weekly periods during the case (the "Budget"). A copy of the initial Budget is attached to the DIP Financing Motion as an exhibit (the "Initial Budget"). Debtor's uses of cash from the DIP Operating Account shall be limited to the actual and necessary expenditures required to pay the items identified in the Budget with no variance greater than five percent (5%) on a cumulative or line item basis per weekly period. On Wednesday following the end of each weekly Budget period, the Debtor shall provide to RPI a statement of actual cash receipts and disbursements for such period with a discussion of variances. The Initial Budget is approved by RPI, but any further Budget proposed by the Debtor shall not be effective until approved by RPI. The Budget documents shall be certified by an officer of the Debtor.

**Maturity:** The earlier to occur of (a) acceleration by RPI upon the occurrence of an Event of Default after termination of the cure period; (b) closing under the Asset Purchase Agreement has not occurred on or before March 31, 2007 other than as a result of the breach thereof by RPI thereunder; (c) the Asset Purchase Agreement has been terminated under circumstances that obligate the Debtor to return the Deposit to RPI; (d) a trustee or examiner with authority to affect the operation of Debtor's business, is appointed in Debtor's Chapter 11 proceedings without RPI's consent; (e) the Debtor's case is dismissed or converted to a case under Chapter 7; (f) the consummation of a sale of substantially all of the Debtor's assets pursuant to Section 363 of the Bankruptcy Code; or (g) the effective date of any plan of Debtor confirmed pursuant to Bankruptcy Code Section 1129.

**Lien Priority:** As security for repayment of the principal amount of the DIP Financing, RPI is granted liens and security interests upon all property of its bankruptcy estate created under §541 of the Bankruptcy Code (the "Post-Petition Security Interests") **other than property recovered through exercise of the avoiding powers granted under §§ 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code, a lien on which shall be sought at any final hearing on this motion.** The Post-Petition Security Interests granted to RPI to secure the DIP Financing obligations (including the Pre-Petition Retainer) shall be junior to the liens and security interests granted by Debtor to Cornell prior to the Petition Date. Said Post-Petition Security Interests shall constitute, and remain, a perfected lien and security interest in all of the Collateral, subject only to the liens and security interests granted by Debtor to Cornell prior to the Petition Date and any other valid and properly perfected liens and security interests in the Collateral as of the Petition Date.

**Perfection and Priority of Post-Petition Security Interests** RPI's Post-Petition Security Interests shall be valid, perfected, enforceable and effective against Debtor and its successors and assigns, including any trustee or receiver in this or any superseding Chapter 7 case, without any further action by Debtor or RPI and without the execution, delivery, filing or recordation of any promissory notes, financing statements, mortgages, security agreements or other documents. The Proposed Interim Order and any final order thereafter shall be deemed a security agreement and may be filed as a financing statement and Debtor shall execute and deliver such notes, security agreements, assignments, financing statements and other documents that RPI shall reasonably request to further evidence the liens and security interests granted hereby.

**506(c) Waiver:** At a final hearing on this Motion, RPI intends to seek, in consideration for the funding of the Budget, the Debtor's waiver of all claims or surcharges against RPI, its claims, its collateral or the proceeds thereof, pursuant to § 506(c) or any other provisions of the United States Code arising for expenses of the Debtor or its estate that are paid or incurred during the term of the order.

**Events of Default.** The following shall constitute events of default ("Events of Default"): (a) If Debtor makes any sale or transfer of its property without the consent of RPI or an order of the Court after notice and a hearing to RPI; (b) If Debtor fails to timely make any of the payments called for herein when due or if Debtor pays obligations not shown on the Budget without RPI's prior written consent; (c) If any certificate, representation or warranty made after the commencement of this Chapter 11 case by Debtor or under this Order or any certificate, report or financial statement delivered to RPI pursuant to the foregoing shall prove to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty or statement not misleading); (d) Debtor fails to provide when due the accounting information required by the Proposed Interim Order or access to the DIP Operating Account, such as books and records or the weekly statement of actual operations under the Budget; (e) Debtor breaches any other covenant of the Proposed Interim Order not elsewhere listed as an Event of Default, which breach remains uncured for five (5) days after written notice thereof to Debtor; (f) the remaining officer of the Debtor shall resign or is removed without being replaced within five (5)

days thereafter with a person approved in writing by RPI; (g) Debtor seeks an order authorizing borrowing secured by an equal or senior priority lien and security interest to that of RPI or seeks the use of RPI's cash without the consent of RPI; (h) Debtor shall be in breach or violation of, or there shall occur an act or omission that, with the passage of time or the giving of notice, shall mature into a breach or violation by Debtor of, the Asset Purchase Agreement; and (i) Debtor incurs liabilities for expenses of a type or in an amount not provided for in the Budget without the prior written consent of RPI.

Upon the occurrence of any of the following event of default, RPI may declare an Event of Default by providing three (3) business days' prior written notice of such occurrence and the Debtor shall have an opportunity to cure the Event of Default during the cure period.

**Other Provisions:** The DIP Financing, as outlined in the Proposed Interim Order, also contains representations and warranties and events of default customarily found in credit agreements of this nature.

16. The Debtor seeks an emergency hearing (the "Interim Hearing") on the DIP Financing Motion to consider entry of the Interim Order approving on an interim basis the postpetition financing pursuant to the DIP Loan Documents, authorizing the Debtor to obtain, on an interim basis, the loans thereunder, and scheduling and approving the form and method of notice for a Final Hearing (as defined in the DIP Financing Motion).

17. Approval of the DIP Loan Agreement will permit the Debtor to (a) continue its operations; (b) maintain the going-concern value of the Debtor; and (c) thereby maximize the value of the Debtor's assets pending reorganization or sale, which will inure to the benefit of the Debtor's estate, creditors, and other stakeholders.

18. The Debtor has insufficient cash to meet its ongoing obligations necessary to allow it to operate its business while it implements its financial and operational restructuring. Specifically, without additional financing, the Debtor cannot maintain its business operations, nor can the Debtor pay the wages, salaries, rent, utilities and other expenses associated with operating its business.

19. Only the DIP Lender was willing and able to provide the DIP Facility on terms that met the Debtor's short-term needs. Without immediate access to the DIP Facility, the Debtor will continue to suffer the acute liquidity crisis that existed prepetition and led to the Debtor's chapter 11 filing, that threatens the Debtor's ability to maintain operations in the short term, and harms any opportunity at a successful restructuring or sale of the Debtor's assets as a going concern. The ability of the Debtor to reorganize or receive the maximum possible value for its assets in a sale therefore depends upon obtaining the relief requested in the DIP Financing Motion.

20. The Debtor has sought pre and post-petition financing from numerous sources but is unable to obtain sufficient unsecured credit, allowable as an administrative expense under § 503(b)(1) of the Bankruptcy Code and is unable to obtain credit from any other person on terms better than those set forth in this Order. The only available funding source appears to be RPI.

21. The Debtor is not able to obtain post-petition financing on an unsecured basis, pursuant to section 364(a) or 364(b) and, therefore, granting RPI a security interest in property of the estate is reasonable and in the best interests of the Debtor, its estate and its creditors pursuant to section 364(c)(2). Additionally, the Debtor is not able to obtain post-petition financing without granting RPI priority over any and all administrative expenses of the kind specified in section 503(b) or 503(7) as allowed pursuant to section 364(c)(1).

**C. Debtor's Motion For Entry Of Order Approving (A) Sale Of Substantially All Of The Debtor's Assets Free And Clear Of Liens, Claims And Interests; (B) The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases; (C) Bidding Procedures And The Form And Manner Of Notice Of The Sale; And (D) Payment Of Break-Up Fee**

20. The stalking horse bid from the Proposed Purchaser represents the only alternative presently available to the Debtor to attempt to maximize the value of its assets for the

benefit of creditors and parties in interest. As such, the current proposal, which is subject to higher and better offers, is the highest and best offer to acquire the Debtor's assets.

21. Given the Debtor's limited ability to operate into the future given the relatively short duration permitted for DIP Borrowings under the Budget, the Debtor filed the motion seeking, among other things: (a) the establishment of bidding procedures, (b) the Court's approval of the form and manner of various notices relating to the sale process, (c) the Court's approval of the Agreement, (d) the establishment of a date for a hearing on the sale of Debtor's assets, (e) the Court's approval of various bidding incentives including a break up fee to the Proposed Purchaser, (f) the Court's approval of the sale of all, or substantially all, of the Debtor's Assets free and clear of liens, claims and encumbrances, (g) the authority to assume and assign certain executory contracts and leases, and (h) the Court's approval of procedures relating to such assumption and assignment.

22. Among the First Day Relief being sought, the Debtor requests that the Court schedule an expedited hearing to approve the proposed bid and sale related procedures so that the Debtor may search out potential bidders and maximize the value of its assets.

### **III. CONCLUSION**

23. The Debtor's ultimate goal in this Chapter 11 case is to maximize the value of its estates for the benefit of its creditors and other stakeholders through a successful reorganization or sale of the Debtor's business. To minimize any loss of value of the Debtor's business during the Debtor's transition to operating in chapter 11, the Debtor's immediate objective is to engage in business as usual with as little interruption or disruption to the Debtor's operations as possible. I believe that if the Court grants the First Day Relief, the Debtor's prospects for achieving the

Debtor's overriding goal of maximizing value for its creditors and other stakeholders will be substantially enhanced.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2007

EARTHSHELL CORPORATION

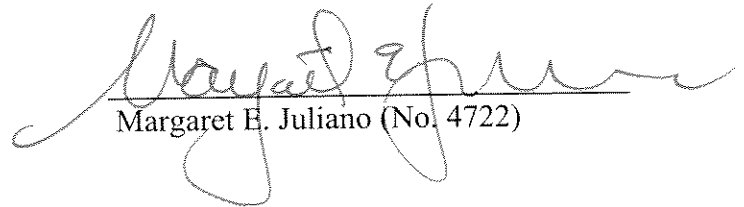
/s/ Vincent J. Truant  
Vincent J. Truant  
Chief Executive Officer

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**CERTIFICATE OF SERVICE**

I, Margaret E. Juliano, certify that I am not less than 18 years of age, and that service of the foregoing **Declaration Of Vincent J. Truant In Support Of First Day Relief** was made on January 23, 2007, in the manner indicated upon the party listed on the attached service list.

Dated: January 23, 2007  
Wilmington, Delaware

  
Margaret E. Juliano (No. 4722)

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