

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VAN DYKE & ASSOCIATES  
A PROFESSIONAL LAW CORPORATION  
Richard S. Van Dyke, Esq. (CA Bar # 196753)  
James A. Bush, Esq. (CA Bar #195917)  
Faraday Business Park  
5741 Palmer Way, Suite B  
Carlsbad, California 92010  
Telephone: (760) 438-8437  
Facsimile: (760) 438-8371  
E-mail: [rsvandyke@vdalaw.com](mailto:rsvandyke@vdalaw.com)

Attorneys for Debtor in Possession SAIF, INC.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

In re  
**SAIF, INC.,**  
Debtor.

Case No. 07-04500-PB11  
Case No. 07-04500- PB11

**Jointly Administered under  
Case No. 07-04500-PB11**

Date:  
Time:  
Dept: 4  
Room: 328  
Judge: Peter W. Bowie

**EMERGENCY MOTION OF DEBTOR FOR INTERIM ORDER  
AUTHORIZING USE OF CASH COLLATERAL AND  
GRANTING ADEQUATE PROTECTION  
AND MOTION FOR EXPEDITED HEARING THEREON**

SAIF, Inc., (“SAIF”), the debtor and debtor in possession herein, respectfully submit the following Emergency Motion for Interim Order Authorizing Use of Cash Collateral and Granting Adequate Protection and Motion for Expedited Hearing Thereon (the “Motion”), and for such would show the Court as follows:

1. The Debtor seeks authority to use the cash collateral of and provide certain relief to related debtor Secured Assets Trust (“SAT”), (by and though its court appointed Chapter 11

1 Trustee Richard Kipperman), in consideration for the Debtors' use of Cash Collateral that is  
2 presently subject to liens, security interests, and mortgages held by SAT; and the Debtor's use, in  
3 the ordinary course of business, of property subject to liens, security interests, and/or mortgages  
4 in favor of SAT. Counsel for the Debtors and counsel for SAT have negotiated extensively  
5 regarding the entry of an agreed order regarding the relief requested herein but have not finalized  
6 an agreement regarding the same.

### 7 RECITALS

8 A. SAIF filed a voluntary petition for relief under Chapter 11 of the Bankruptcy  
9 Code on August 20, 2007 ("Petition Date"). SAIF has thereafter remained in possession of its  
10 assets and is operating as a debtor in possession.

11 B. SAIF noted on its bankruptcy filing that its bankruptcy case is related to the  
12 bankruptcy case of In re Secured Assets Trust, Case No. 07-04501-PB11 which was also  
13 commenced on August 20, 2007.

14 C. Pursuant to that certain Order Directing Appointment of Chapter 11 Trustee  
15 Based on the United States Trustee's Motion to Dismiss the Case or Appoint a Chapter 11  
16 Trustee entered on November 20, 2007, the Office of the United States Trustee appointed  
17 Richard M. Kipperman as the Chapter 11 Trustee for the SAT bankruptcy estate ("SAT Estate").

18 D. SAT is a business trust operating in San Diego County, California. SAT raises  
19 money through loans from private party lenders ("Noteholders") which are documented by  
20 collateralized commercial promissory notes. In its Bankruptcy Schedule D, SAT has listed  
21 approximately two hundred and fifteen Noteholders with secured debt totaling at least  
22 \$15,898,044. SAIF's secured obligation to SAT described below is the principal asset of the  
23 SAT Estate.

24 E. SAIF is a California corporation and licensed lender with its principal place of  
25 business in Encinitas, California. Essentially, SAIF provides financing to dealers of used autos  
26 and generates income from the repayment of such loans (including principal, interest, fees, etc.).  
27 The loans to the auto dealers are supposed to be secured by the underlying vehicles and other  
28 collateral.

1 F. Prior to the Petition Date, SAT and SAIF entered into a business loan  
2 arrangement whereby the money SAT borrows from its Noteholders is advanced to SAIF, who  
3 as a licensed California finance lender, loans the monies to the used auto dealers. Under their  
4 business loan arrangement, when operated as intended, the loan repayments SAIF collects from  
5 its borrowers, the used auto dealers, are to be paid to SAT so that SAT can repay its Noteholders.

6 G. SAT asserts that as of the Petition Date, under the business loan arrangement  
7 between the SAT and SAIF (collectively the "Business Loan Agreement"), SAIF was indebted to  
8 SAT in the aggregate sum of not less than \$15,898,044. SAIF does not presently dispute this  
9 obligation to SAT, however, SAIF does intend to audit this claim for accuracy.

10 H. SAT asserts that as of the Petition Date, SAIF's obligations to SAT under the  
11 Business Loan Agreement are secured by an lien encumbering the following assets of SAIF's  
12 Estate: ALL ASSETS, REAL OR PERSONAL, NOW OR HEREAFTER OWNED OR  
13 HEREAFTER ACQUIRED BY THE DEBTOR, INCLUDING ALL INVENTORY,  
14 ACCOUNTS, ACCOUNTS RECEIVABLE, GOODS, EQUIPMENT, MONIES, VEHICLES,  
15 CHATTEL PAPER, DOCUMENTS AND CERTIFICATES OF TITLE, INSTRUMENTS,  
16 NEGOTIABLE INSTRUMENTS, GENERAL INTANGIBLES, DEPOSIT ACCOUNTS,  
17 CHOSES IN ACTION, COMMERCIAL CONTRACT AND TORT CLAIMS, AND ANY  
18 INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, INVENTORY, AND ALL  
19 PROCEEDS, RENEWALS, ACCESSIONS AND SUBSTITUTIONS THEREOF OR  
20 THERETO (collectively the "Collateral"), pursuant to a UCC-1 Financing Statement filed with  
21 the California Secretary of State on January 25, 2007, Instrument No. 077100226671.

22 I. SAT and SAIF are in the process of determining the value of the Collateral.

23 J. SAIF acknowledges that the obligations to SAT under the Business Loan  
24 Agreement are in default and that SAT has a valid fully secured first priority lien position on the  
25 Collateral.

26 K. SAIF acknowledges that all of SAIF's cash and proceeds of the Collateral and  
27 that all cash and cash equivalents in its possession on the Petition Date and that all cash and cash  
28 equivalents that have been or will be received by SAIF after the Petition Date are the cash

1 collateral of SAT within the meaning of Bankruptcy Code Section 363(a) (collectively the “Cash  
2 Collateral”).

3 L. SAIF has asserted that it has a continued need for use of the Cash Collateral  
4 because it does not have any unencumbered cash from which to pay employees, vendors, utilities  
5 and other creditors on a going-forward basis. While the actual amount necessary to compensate  
6 SAT for the use and diminution in value of its Collateral is as yet not determined, SAIF has  
7 offered to adhere to the 30 Day Cash Collateral Budget attached hereto as **Exhibit 1** (“Budget”)  
8 and provide payment to SAT as provided herein for the use of the Cash Collateral pursuant to  
9 Bankruptcy Code Sections 361 and 363.

10 M. SAIF and the Trustee on behalf of SAT cannot, however agree on the amount of  
11 the payment to SAT for the stipulated use of the Cash Collateral. Nor can SAIF and the Trustee  
12 on behalf of SAT agree on the scope of the business analysis to be accomplished during the  
13 period covered by the negotiated stipulation for the use of Cash Collateral.

14 N. On the one hand, SAIF has offered to complete by January 31, 2008, a formal  
15 audit of its business operations, accounting records, and loan files as they relate to the nine (9)  
16 active used car dealerships that are currently funded by SAIF. SAIF intends to seek the Court’s  
17 approval of the employment of its present accountant Semmens & Semmens, CPAs to  
18 accomplish the audit and to aid the debtor in compiling its monthly operating reports. SAIF has  
19 been quoted an approximate sum of \$6,000.00 to accomplish the audit and to aid in the  
20 preparation of the monthly reports. SAIF believes that Semmens & Semmens, CPAs are in the  
21 best position to accomplish this task because this professional accounting firm already has  
22 familiarity with the debtor’s books and records and related financial information.

23 O. On the other hand, the Trustee of SAT is demanding the sum of \$150,000.00 to  
24 fund the SAT estate for purposes unknown to SAIF. Through discussion and negotiation with the  
25 Trustee for SAT however, the Debtor believes that said payment will be used only to pay  
26 administrative expenses of the SAT estate to include the Trustee’s fees and attorney’s fees.

27 P. SAIF has agreed to the Trustee’s demand for the payment of \$100,000 (less  
28 approximately \$6,500 the Trustee has already received into the SAT estate through closure of

1 SAT's previous bank account. However, SAIF does not agree with the most recent demand to  
2 increase this payment to \$150,000.00 because the debtor has been informed that the Trustee  
3 wishes to use the additional \$50,000.00 to engage the services of Universal Specialty Auto  
4 Finance, Inc. as an outside consultant to the Trustee of SAT. SAIF, does not believe that a  
5 \$50,000.00 expenditure for outside business consulting, on top of the \$100,000.00 expenditure to  
6 be incurred for Trustee and attorney fees, is necessary or appropriate. Rather, SAIF believes that  
7 all of the proposed payment be put to use in SAIF's lending activities, subject to the other  
8 adequate protection for SAT proposed herein, rather than put to unknown uses at the whim of  
9 SAT's Trustee.

10 Q. Counsel for SAIF has evaluated the credentials of Universal Specialty Auto  
11 Finance, as shown on the company's web site, and has determined that this company is not an  
12 expert in the field of inventory financing for used car dealerships, but rather claims expertise in  
13 the area of evaluating sub-prime borrowers that typically are the marketplace for used car  
14 dealerships.

15 R. Given the foregoing difference of opinion as to the business judgment of SAIF's  
16 management, who does not believe the such an expenditure is necessary or appropriate, SAIF  
17 and the Trustee for SAT cannot reach stipulation for the use of Cash Collateral and hereby  
18 request this Court's order providing for the same.

19 S. The Debtor has filed this Motion seeking authority to use SAT's Collateral,  
20 including Cash Collateral, on an interim and final basis, and to grant SAT adequate protection in  
21 the form of replacement liens and security interests, which replacement liens, security interests,  
22 and mortgages will be first and prior in all respects as to postposition.

23 T. The Debtor proposes to use Cash Collateral generally in accordance, and for  
24 expenditures not inconsistent, with those listed on the Budget which is appended as Exhibit "A"  
25 to this Motion, and the Debtor proposes to continue to use the Collateral as needed in the  
26 ordinary course of business (although not necessarily for the amounts shown therein). For  
27 adequate protection, Debtors, pursuant to Sections 361 and 363 of the Code, to grant to SAT  
28 replacement security interests in and liens and mortgages upon all categories of property of the

1 Debtor and its estate (whether now existing or hereafter acquired or arising), on which SAT held  
2 prepetition liens, security interests, or mortgages.

3 **MOTION**

4 1. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M) and (O), and  
5 Sections 361 and 363 of the Code provide the legal predicate for the relief requested. The Court  
6 has jurisdiction of the matters raised herein.

7 2. The Debtor has provided such notice as was practicable under the circumstances  
8 to: (a) SAT (b) the Official Committee of Unsecured Creditors of the Debtors, (c) the United  
9 States Trustee for the Southern District of California, (d) any other persons requesting special  
10 notice, and (e) any other persons entitled to notice under Bankruptcy Rule 4001(b) of the hearing  
11 to be held in connection with this Order by giving them telephonic notice of such hearing and/or  
12 by transmitting to them, the Motion and notice of the preliminary hearing on the Motion, by  
13 overnight courier or by telecopier. The Debtor submits that such notice is appropriate under the  
14 circumstances and in light of the emergency nature of the Motion and the notice procedures for  
15 further objection to the proposed order as set forth herein.

16 3. A creditor's committee, as provided for under Section 1102 of the Code, has been  
17 appointed.

18 4. An emergency need exists for the Debtor to use the Cash Collateral of SAT in  
19 order to maintain operations and to have an opportunity to reorganize. The Debtor will be  
20 irreparably harmed unless it is authorized immediately to use Cash Collateral on the terms and  
21 conditions set forth herein.

22 5. The Debtor has been generally unable to obtain unsecured credit allowable under  
23 Section 503(b)(1) of the Code as an administrative expense or unsecured credit allowable under  
24 Sections 364(a) or 364(b) of the Code. The only source of secured credit available to the  
25 Debtors, other than the use of Cash Collateral, will be the Debtor-in-Possession Facility to be  
26 proposed subsequently. The Debtors require the use of Cash Collateral in order to operate, and  
27 may require the funds from a Debtor-in-Possession loan as well as from Cash Collateral both to  
28 operate and attempt to reorganize.

1           6.       Good cause exists for the entry of relief requested herein. Among other things,  
2 granting the relief requested will minimize disruption of the Debtor as a going concern, will  
3 increase the possibilities of the Debtor's successful reorganization and is in the best interests of  
4 the Debtor, its creditors and its estate. SAT is entitled to the adequate protection set forth herein.  
5 The protections proposed for SAT's interests are fair under the circumstances.

6           7.       The proposed Order should provide as follows:

7           a.       As adequate protection against the diminution of value of SAT's interests  
8 in the Collateral (to the extent that such liens, security interests, and mortgages  
9 are valid, perfected, enforceable and non-avoidable), SAT will be granted,  
10 pursuant to Sections 361 and 363 of the Code, valid, perfected, and enforceable  
11 new first priority and senior security interests in and liens and mortgages upon all  
12 categories of property of the Debtor and its estate (whether now existing or  
13 hereafter acquired or arising), upon which SAT held prepetition liens, security  
14 interests, and mortgages, and all proceeds, rents, products, or profits thereof,  
15 including, without limitation, the Collateral owned by the Debtors as of the  
16 Petition Date (collectively, the "Post-Petition Collateral").

17           b.       To the extent that the value of the replacement liens and security interests  
18 granted to SAT pursuant to this Order proves to be inadequate to assure full  
19 payment of the Adequate Protection Obligation, the Adequate Protection  
20 Obligation shall be afforded status as an administrative priority claim equivalent  
21 in priority to a claim under Section 507(b) of the Code.

22           c.       If SAT hereafter requests the Debtor to execute and deliver to SAT  
23 financing statements, mortgages, or other instruments or documents considered by  
24 SAT to be necessary or desirable to further evidence the perfection of the liens  
25 and security interests granted in this Order, the Debtors are hereby authorized, but  
26 not required, to execute and deliver those financing statements, instruments, and  
27 documents. Nothing in this Order shall in any way restrict the scope of SAT's  
28 prepetition liens, security interests, mortgages, rights of set-off or claims with

1 respect to the Prepetition Indebtedness or the Collateral, and SAT's liens, security  
2 interests, and mortgages on the Collateral shall extend to the fullest extent  
3 permitted by Section 552(b) of the Code.

4 d. The Debtors are authorized and directed to manage all Cash Collateral in  
5 accordance with their normal operating procedures as modified by the procedures  
6 established for debtors-in-possession by the Office of the United States Trustee  
7 for the Southern District of California.

8 e. This Order shall remain in effect until \_\_\_\_\_, 2008, at which  
9 time it may be renewed with SAT's written consent or by further order of the  
10 Court after notice and a hearing.

11 f. Nothing contained in this Order shall be deemed a finding with respect to  
12 the adequate protection (as that term is defined in Section 361 of the Code) of the  
13 interests of SAT. Without limiting the foregoing in any respect, SAT may, at any  
14 time, request the Court to increase the payments to or other protections for the  
15 benefit of SAT as a condition to the continued use by the Debtor of the Collateral.  
16 In such event, the Debtor may also request the Court to decrease the adequate  
17 protection payments or other adequate protection provisions granted pursuant to  
18 this Order.

19 8. The Debtor shall promptly serve by mail copies of a notice of entry of an interim  
20 Order, together with a copy of this Order, to SAT, the Official Committee of Unsecured  
21 Creditors of the Debtors, the United States Trustee for the Southern District of California,  
22 persons Requesting Special Notice, and any other persons entitled to notice under Bankruptcy  
23 Rule 4001(b). The notice of approval of this Order shall state that any party in interest objecting  
24 to the entry of a final order on the Motion shall file a written objection with the United States  
25 Bankruptcy Court Clerk for the Southern District of California by the date set by the Court,  
26 which objection shall be served so that the same is received no later than 5:00 p.m. (Pacific  
27 Time) on such date by the Office of the United States Trustee and each counsel for the Debtor  
28 and counsel for the Chapter 11 Trustee of SAT at the addresses set forth at the end of this Order.  
If no written objection and request for final hearing on the Motion has been timely filed with this

1 Court, and served upon and timely received by all parties entitled to notice thereof by the time  
 2 specified above, this Order shall be deemed to be the final order on such date after 5:00 p.m.  
 3 (Pacific Time) and shall continue on a final basis and remain in full force and effect and  
 4 constitute final authority for the financial accommodations contemplated by this Order, and any  
 5 objection by any party in interest to the terms of this Order and the relief requested in the Motion  
 6 shall be deemed forever waived. If an objection is timely filed, served, and received, (a) a  
 7 written reply thereto shall not be required but may be filed and served so that it is received no  
 8 later than 5:00 p.m. (Pacific Time) two days prior to any final hearing hereon, and (b) a final  
 9 hearing shall be held on the Motion and objections thereto on \_\_\_\_\_, \_\_\_\_, 2008, at \_\_\_\_\_  
 10 o'clock \_\_.m. at the United States Bankruptcy Court, 325 F Street, San Diego, California 92101,  
 11 Bankruptcy Courtroom 328. The provisions of this Order shall remain in full force and effect  
 12 unless modified or vacated (a) at that hearing, or (b) by other subsequent order of this Court.

13 9. Notices. Any notices to be provided hereunder shall be deemed delivered upon  
 14 receipt if sent via telecopy, hand delivery or electronic transmission or upon transmission if sent  
 15 by U.S. mail if time is not of the essence. Notices shall be sent to the following persons as  
 16 follows:

To SAIF:	SAIF , Inc. Thomas A. Sterling, Vice President 119 N. El Camino Real #147 Encinitas, CA 92024 Telephone: 760-944-0216 Facsimile:
With a Copy to:	Richard S. Van Dyke, Esq. Van Dyke & Associates, APLC 5741 Palmer Way, Suite B Carlsbad, CA 92010 Telephone: 760-438-8437 Facsimile: 760-438-8371 Email: <a href="mailto:rsvandyke@vdlaw.com">rsvandyke@vdlaw.com</a>
To SAT:	Richard M. Kipperman Trustee for the Bankruptcy Estate of Secured Assets Trust Post Office Box 3939 La Mesa, CA 91944-3939 Telephone: 619-668-4500 Facsimile: 619-668-9014 Email: <a href="mailto:mk@corpmgt.com">mk@corpmgt.com</a>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

With a Copy to:	James C. Bastian, Jr., Esq. Shulman Hodges & Bastian LLP 26632 Towne Center Drive Suite 300 Foothill Ranch, CA 92610 Telephone: 949-340-3400 Facsimile: 949-340-3000 Email: <a href="mailto:jbastian@shblp.com">jbastian@shblp.com</a>
-----------------	--

**PREMISES CONSIDERED**, the Debtor prays that the relief requested herein be granted and that they have such other and further relief as the Court deems necessary and appropriate.

SAIF, INC., a California corporation

---

Thomas A. Sterling, Vice President

**VAN DYKE & ASSOCIATES**  
**A Professional Law Corporation**

---

Richard S. Van Dyke  
Attorneys for SAIF, Inc., a California corporation

**EXHIBIT 1**

**Budget**

**SAIF, INC.**  
**30 DAY CASH COLLATERAL**  
**BUDGET**

<b><u>CATEGORY</u></b>	<b><u>AMOUNT</u></b>	<b><u>SUB-TOTALS</u></b>	<b><u>NOTES</u></b>	<b><u>TOTALS</u></b>
<b>DEALER FUNDINGS:</b>				
<u>Existing Dealers</u>				
Donnell	\$150,000.00			
Used Car Depo	\$50,000.00			
Bear Auto	\$40,000.00			
Total	\$240,000.00			\$240,000.00
<u>New Dealers</u>	\$725,000.00			\$725,000.00
 <b><u>EXPENSES:</u></b>				
<b>VARIABLE:</b>				
Marketing & Sales (nte. 1)	\$4,750.00			
Dealer Servicing	\$2,250.00			
Legal	\$15,000.00			
Accounting	\$6,000.00			
DMV & Repo				
Fees	\$1,250.00			
Office	\$7,000.00			
Misc. & Petty				
Cash	\$300.00			
Sub-Total	\$36,550.00	\$36,550.00		
 <b>FIXED:</b>				
Insider				
Compensation	\$10,000.00			
Auto Note	\$882.00			
Office Rent	\$1,100.00			
Insurance	\$331.00			
Sub-Total	\$12,313.00	\$12,313.00		
Total Expenses		\$48,863.00		\$48,863.00
			<b>Total Cash Collateral</b>	<b>\$1,013,863.00</b>

NOTES:

1. This estimate assumes SAIF will be able to fund new loans using its monthly income and loan principal returns.