

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

GPS Industries, Inc.,

Debtor.

Case No.: 8:09-bk-16766-CPM
Chapter 11

**Notice of Final Hearing
August 19, 2009 at 1:00P.M.
Courtroom 8A
(Judge Williamson's Courtroom)
801 N. Florida Ave.
Tampa, Florida 33602**
Note filing deadline in Paragraph 23,
page 19.

INTERIM ORDER (i) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING FROM TULIP GROUP INVESTMENTS, LTD., PURSUANT TO SECTIONS 364 OF THE BANKRUPTCY CODE; (ii) GRANTING LIENS AND SUPERPRIORITY CLAIMS, (iii) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED LENDERS, (iv) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE; (v) MODIFYING THE AUTOMATIC STAY, (vi) SCHEDULING THE FINAL HEARING ON THE DEBTORS' MOTION TO INCUR SUCH FINANCING ON A PERMANENT BASIS, AND (vii) APPROVING THE FORM AND METHOD OF NOTICE THEREOF

THIS CAUSE came on for hearing on August 6, 2009, upon the motion, dated July 31, 2009 (the "Motion"), of GPS Industries, Inc. ("GPSI") as a debtor in possession, ("Debtor"):

- (i) for authorization and approval, pursuant to sections 105, 361, 362 and 364 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the Debtor to obtain post-petition financing (the "DIP Facility"), including without limitation, principal, accrued interest, unpaid fees and expenses, and all other amounts due from time to time under the documents referred to below (collectively, the "DIP Facility Obligations"), from Tulip Group Investments, Ltd. (the "Lender") there-under to (A) fund, among other things, ongoing working capital needs of the Debtor, and (B) pay fees and expenses (including, without

limitation, reasonable attorneys' fees and expenses) owed to the Lender under the DIP Facility and the other DIP Facility Documents (as defined below);

(ii) requesting, pursuant to section 364(c) and (d) of the Bankruptcy Code, that the financing under the DIP Facility:

(A) have priority over any and all administrative expenses, including, without limitation, the kinds specified in sections 105, 326, 330, 331, 503(b), 506(c), 507(b) of the Bankruptcy Code, except for the Carve-Out (as defined below), Chapter 7 Trustee's fees, and fees payable pursuant to 28 U.S.C. § 1930 and to the Clerk of Court as provided for herein (the "DIP Facility Superpriority Claims");

(B) be secured by a first priority security interest in, and lien upon, all assets of the Debtor and all assets of the Debtor constituting Accounts, Chattel Paper, Documents, General Intangibles including payment intangibles, Goods, Equipment, Fixtures, intellectual property, real property, all stock held by a Debtor or its subsidiaries (within the meaning of Treas. Reg. section 1.956-2(c)(2)) of each Foreign Subsidiary (as defined in the DIP Facility Loan Agreement (as defined below) all Instruments, all Investment Property, Deposit Accounts; including all controlled deposit accounts, concentration accounts, disbursement accounts, and all other bank accounts and all deposits therein (but excluding any deposits held by professionals employed by the Debtor), money, cash or cash equivalents of, Supporting Obligations and Letter-of-Credit Rights, all commercial tort claims, and to the extent not otherwise included, all proceeds, tort claims, insurance

claims, and other rights to payment not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing, but specifically excluding any actions or proceeds of any actions under chapter 5 of the Bankruptcy Code as provided for by section 364(c) and (d) of the Bankruptcy Code (all of the foregoing, collectively, the “Collateral” and the security interests in, and liens upon such Collateral, the “DIP Facility Liens”), subordinate to only the liens of CitiCapital Corp., Microsoft Capital and, Charles Heston and Darryl Cornish.

- (iii) seeking the Court’s authorization pursuant to sections 361(a), 363(c), and 364(d)(1) of the Bankruptcy Code to provide adequate protection to the Prepetition secured creditors on account of their claims, which claims are to be “primed” by the financing provided herein, until such claims are paid in full pursuant and subject to the terms hereof and the Final Order;
- (iv) requesting, pursuant to section 363 of the Bankruptcy Code, authorization for the Debtors’ use of “Cash Collateral” (as defined in section 363(a) of the Bankruptcy Code) pursuant to the DIP Facility Loan Agreement and this Order and solely for the purpose of providing adequate protection in accordance with the terms of this Order;
- (v) seeking modification of the automatic stay imposed by section 362 of the Bankruptcy Code as provided herein;
- (vi) requesting, pursuant to Bankruptcy Rule 4001, that an interim hearing (the “Interim Hearing”) on the Motion be held for this Court to consider entry of an

interim order (this “Order”) authorizing the Debtor, on an interim basis, to obtain under the DIP Facility from the DIP Facility Lenders the principal amount of up to \$350,000.00, pursuant to the terms of the DIP Facility Loan Agreement; and

(vii) requesting, pursuant to Bankruptcy Rule 4001, that a final hearing (the “Final Hearing”) be held for this Court to consider entry of an order approving the DIP Facility on a final basis (the “Final Order”), as set forth in the Motion and the DIP Facility Loan Agreement; and, pursuant to Bankruptcy Rules 4001(b) and 4001(c)(1), due and sufficient notice under the circumstances of the Motion and the Interim Hearing having been provided by the Debtors as set forth below, and the Interim Hearing having been held on August 6, 2009, and upon consideration all of the pleadings filed with this Court; and any objections to the relief requested in the Motion that have not been resolved are hereby overruled; and upon the record made by the Debtor at the Interim Hearing, and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS HEREBY FOUND:

- A. On July 31, 2009, (the “Petition Date”), the Debtor commenced in this Court a case under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as debtor in possession pursuant to sections 107 and 1108 of the Bankruptcy Code.
- B. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

- C. The Debtor's businesses require the availability of credit to finance the ordinary costs of their operations. Without such credit, the Debtor would not be able to operate their businesses and the Debtor's estate would be irreparably harmed.
- D. The Debtor is unable to obtain sufficient interim unsecured credit solely under section 503(b)(1) of the Bankruptcy Code as an administrative expense, and a credit facility in the amount and on the terms provided by the DIP Facility and any and all documents and instruments delivered pursuant thereto or in connection therewith (inclusive of the DIP Facility Loan Agreement, the "DIP Facility Documents") is unavailable to the Debtor without their granting (i) the DIP Facility Superpriority Claims and (ii) the DIP Facility Liens as provided herein and in the DIP Facility Documents.
- E. The Lender has indicated a willingness to consent and agree to provide financing to the Debtor subject to (i) the entry of this Order; (ii) the terms and conditions of the DIP Facility Loan Agreement, (iii) the terms and conditions of all First-Day Orders that are, in form and substance, reasonably satisfactory to the DIP Facility Agent, and (iv) findings by the Court that such financing is essential to the Debtor's estate, that the terms of such financing were negotiated in good faith and at arm's length, and that the Lender's security interests, liens, encumbrances, claims, superpriority claims, and other protections granted pursuant to this Order and the DIP Facility Documents will not be affected by any subsequent reversal, modification, vacatur or amendment of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

- F. The Debtor provided notice of the Interim Hearing and the entry of this Order by facsimile or electronic mail (or, where both of the foregoing were impracticable, overnight delivery) to (i) the twenty (20) largest unsecured creditors listed in the Debtors' consolidated list of creditors, (ii) the Office of the United States Trustee for the Middle District of Florida (the "U.S. Trustee"), (iii) the Securities and Exchange Commission, (iv) the Internal Revenue Service, (v) those parties that have requested service pursuant to Bankruptcy Rule 2002, and (vi) all other creditors known to the Debtors who may have liens against the Debtors' assets or properties (collectively, the "Service Parties"). Under the urgent circumstances, requisite notice of the Motion and the relief requested thereby has been provided under the Bankruptcy Code, including, without limitation, sections 102(1) and 364 of the Bankruptcy Code, and no other notice need be provided for entry of this Order.
- G. The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent entry of this Order, the Debtor's estates will be immediately and irreparably harmed.
- H. The ability of the Debtor to finance their respective operations and the availability of the Debtor of sufficient working capital through the incurrence of new indebtedness for borrowed money is in the best interests of the Debtor and their respective creditors and estate. The interim financing authorized hereunder is vital to avoid immediate irreparable harm to the Debtor's estate and to allow the orderly continuation of the Debtor's business.

- I. Based upon the record presented by the Debtor to this Court: (1) the terms of the DIP Facility are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duty, and are supported by reasonably equivalent value and fair consideration; and (ii) the DIP Facility has been negotiated in good faith and at arm's length among the Debtor and the Lender, and any credit extended, loans made, and other financial accommodations extended to the Debtor by the Lender shall be deemed to have been extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Grant of Motion. The Motion is granted as set forth in this Order.
2. Authorization to Borrow and Use Cash Collateral. Upon finalizing and executing that certain Post-Petition Loan (filed on August 5, 2006 Doc. No. 14) and Security Agreement (filed on August 6, 2009 Doc. No. 24)(as at any time amended, the "DIP Facility Loan Agreement") by and among the Debtor, the Lender, in substantially the form filed with the court, and provided that the Debtors are not in default under the terms of this Order, the Debtors are immediately authorized to (a) borrow under the DIP Facility from the Lender the principal amount of up to \$350,000 outstanding at any time pursuant to the terms of the DIP Facility Loan Agreement for the Debtor to continue to operate their businesses and (b) use Cash Collateral for the operation of the Debtor's business to the extent set forth within the Budget (Corrected Exhibit B to the Motion, filed on July 31, 2009, Doc. No. 9) and in accordance with the terms of the DIP Facility Loan Agreement and this Order. Upon execution and delivery, the DIP Facility Documents shall constitute legal, valid, and binding obligations of the Debtor party thereto, enforceable against the Debtor in accordance with their terms. Available financing and advances

under the DIP Facility Loan Agreement until the Final Hearing will be made only to fund the Debtor's ordinary working capital and general corporate needs and to pay other amounts required or allowed to be paid pursuant to the DIP Facility Loan Agreement and this Order. To the extent that the Debtor obtains cash collateral of Charles Huston and Darryl Cornish (ie. royalty payments on a patent covered by their security interest), the Debtor shall provide notice to counsel for Charles Huston and Darryl Cornish, and all such amounts shall be segregated and shall not be used by the Debtor without further order of this court.

3. DIP Facility Super-priority Claims. For the Debtor's DIP Facility Obligations and indebtedness arising under the DIP Facility and the DIP Facility Documents, the Lender and is granted, pursuant to section 364I(c)(1) of the Bankruptcy Code, the DIP Facility Superpriority Claims as described in subparagraph (ii) of the first paragraph of this Order (which claims shall be payable from and have recourse to, in addition to the Collateral, any unencumbered postpetition property of the Debtor), with the seniority, scope, and effect set forth in such subparagraph. The super-priority administrative claim shall be subordinate to the administrative claim of any Chapter 7 Trustee appointed in this case.

4. DIP Facility Liens. As security for the DIP Facility Obligations, pursuant to sections 364(c)(2), (c)(3), and (d) of the Bankruptcy Code, Lender, is hereby granted (effective upon the date of this Order and without the necessity of the execution of the Debtor or the filing or recordation of mortgages, security agreements, financing statements, or otherwise) the DIP Facility Liens, all with the perfection, seniority, scope, and effect set forth in subparagraphs (ii)(B) and (C) of the first paragraph of this Order. In the event of the occurrence of an event of default or similar event under the DIP Facility Documents (an "Event of Default"), or an event that would constitute an Event of Default with the giving of notice or lapse of time or both (a

“Default”), such security interests and liens shall be subject to the payment of the Carve-Out and fees payable pursuant to 28 U.S.C. § 1930 and to the Clerk of the Court.

5. Carve-Out. The DIP Facility Superpriority Claims and the DIP Facility Liens shall be subject to the payment of (x) fees pursuant to 28 U.S.C. § 1930 and to the Clerk of the Court, and (y) unpaid and outstanding fees and disbursements actually incurred on or after the Petition Date by the Debtor’s professionals and professionals for any official committee (each a “Committee”) appointed in the Chapter 11 Case (collectively, the “Professionals”) and allowed by order of this Court pursuant to sections 326, 328, 330, or 331 of the Bankruptcy Code (collectively, the “Allowed Professional Fees”), less the amount of any retainers held by any such Professionals (the “Carve-Out”) in an aggregate amount not to exceed \$100,000; *provided, however,* that as to the amounts funded prior to the entry of the Final Order, the Carve-Out shall not include, apply to, or be available for any fees or expenses incurred by any party, including the Debtor or any Committee, in connection with any of the following: (a) an assertion, a joinder in, or the support of (but excluding any investigation conducted prior to the assertion or joinder in) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against Lender, including, without limitation, challenging the amount, legality, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Facility Obligations or the security interests and liens of the Lender in respect thereof, (b) a request to use Cash Collateral without the prior written consent of the Lender, (c) a request for authorization to obtain postpetition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code other than from the Lender without the prior written consent of the Lender, or (d) any act or omission to act adverse to the Lender, or its rights and remedies under the DIP Facility Loan Agreement or its interests in the Collateral that

would, individually or in the aggregate, have a Material Adverse Effect (as defined in the DIP Loan Agreement). The foregoing shall not be construed as consent to the allowance of any fees and expenses referred to above and shall not affect the right of the Debtor, the Lender, any Committee, the U.S. Trustee, or other parties in interest to object to the allowance and payment of such amounts. Any payment or reimbursement made either directly by or on behalf of the Lender at any time or by or on behalf of the Debtor on or after the occurrence of an Event of Default in respect of any Allowed Professional Fees or any other obligations relating to the Carve-Out shall, in either case, permanently reduce the Carve-Out on a dollar-for-dollar basis. The DIP Facility Lender's obligation to fund or otherwise pay the Carve-Out and any other claims entitled to payment under this paragraph 5 shall be added to and made a part of the DIP Facility Obligations, secured by the Collateral, and shall entitle the Lender to all of the rights, claims, liens priorities, and protections under this Order, the DIP Facility Documents, the Bankruptcy Code, and applicable non-bankruptcy law. Payment of any obligations relating to the Carve-Out, whether by or on behalf of the Lender, shall not and shall not be deemed to reduce the DIP Facility Obligations and shall not and shall not be deemed to subordinate any of the DIP Facility Liens or the DIP Facility Superpriority Claims to any junior prepetition or postpetition lien, interest, or claim in favor of any other party. Except as otherwise provided herein with respect to the Carve-Out and the other claims entitled to payment under this paragraph, the Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Professionals incurred in connection with the Chapter 11 Cases or the Debtor's case under any other chapter of the Bankruptcy Code, and nothing in this Order or otherwise shall be construed to obligate the Lender, in any way, to pay compensation to or to

reimburse expenses of any Professional, or to ensure that the Debtor have sufficient funds to pay any such compensation or reimbursement.

6. Payment of Administrative Claims. So long as no Default or Event of Default shall have occurred, (i) the Debtor shall be permitted to pay administrative expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code, as the same may become due and payable, and (ii) such payments shall not be applied to reduce the Carve-Out; *provided, however,* that in the event of the occurrence of an Event of Default or Default, the Debtor shall be permitted to pay administrative expenses allowed and payable under section 330 and 331 from the Carve-Out; *provided further, however,* that nothing contained in this Order or otherwise shall be construed to obligate the Lender in any way to lend or advance any additional funds to the Debtor, or provide other financial accommodations to the Debtor, upon or after the occurrence of an Event of Default or Default.

7. Limitation on Additional Surcharge. Neither the Collateral nor the Lender shall be subject to surcharge, pursuant to section 506(c) of the Bankruptcy Code or otherwise, by the Debtor or any other party in interest, until all DIP Facility Obligations and Prepetition Indebtedness are indefeasibly paid in full in cash (or cash collateralized), without the prior written consent of the Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by the Lender in this proceeding, including, but not limited to, funding of the Debtor's ongoing operations by the Lender. In no event shall the Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

8. Restrictions on Use of Proceeds. The Debtor may use the proceeds of the DIP Facility only for the purposes specifically set forth in the DIP Facility Loan Agreement. Notwithstanding anything set forth herein or in the DIP Facility Loan Agreement to the contrary,

no proceeds of the DIP Facility or any proceeds of the Collateral may be used by the Debtor or any other person or entity to (a) request to use Cash Collateral (as defined in section 363 of the Bankruptcy Code) without the prior written consent of the Lender, (b) request authorization to obtain post petition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code other than from the Lender without the prior written consent of the Lender, or (c) act or fail to act in a manner adverse to the Lender, or their rights and remedies under the DIP Facility Loan Agreement or their interest in the Collateral, which act or failure to act would, individually or in the aggregate, have a Material Adverse Effect.

9. Commitment Termination Date. The DIP Facility Obligations shall be due and payable, without notice or demand, on the earlier of (i) the Termination Date (as defined in the DIP Facility Loan Agreement) and (ii) the closing of a sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code (the “Commitment Termination Date”).

10. Adequate Protection. As adequate protection for, among other things, any diminution in value of the prepetition secured creditors’ interest in the prepetition collateral resulting from (i) the use of their Cash Collateral and the use, sale, lease, other disposition, and depreciation of the prepetition collateral, and (ii) the priming of the prepetition secured creditors’ liens on the prepetition collateral by the DIP Facility Liens:

- a. the holders of prepetition secured claims against the estate are hereby granted replacement liens upon property of the estate acquired post-petition provided that such liens shall have the same scope, validity and priority as the pre-petition liens, however all such replacement liens shall be subordinate to the liens granted to the DIP Facility

Lenders, upon the assets of the Debtor created or acquired after the Petition Date, including, without limitation, the Collateral. The liens and security interests as granted in this Paragraph 10 shall be effective immediately and without the necessity of the execution, delivery or filing by the Debtor of a security agreement, financing statements, trademark, copyright, tradename or patent assignment filings with the United States Patent and Trademark Office or Copyright Office, mortgages, landlord lien waivers, licensee consents, or otherwise. Notwithstanding the foregoing, the replacement liens granted to CitiCapital Corp., Microsoft Capital and, Charles Heston and Darryl Cornish, shall not be subordinate to the liens granted to the DIP Facility Lender.

11. Fees and Expenses of the Lender. On or before Monday, August 10, 2009, the Lender's professionals shall provide copies of their invoices related to this transaction to the following entities; counsel for and the chairman of the Official Committee of Unsecured Creditors, counsel for the pre-petition senior secured creditors (Roberta Colton), the United States Trustee (Denise Barnett), counsel for Charles Huston and Darryl Cornish (Edward Peterson), counsel for the Debtor (Richard McIntyre) along with any other party in interest that serves a written request upon the Lender (hereinafter the "Notice Parties") via email or overnight mail to be received on August 10, 2009. The Notice Parties shall have until Friday, August 14, 2009 at 5:00 pm ESDT to file and serve an objection to the fee requests (any such objection shall not introduce the invoice into the public record). In the absence of a timely filed objection the Debtor shall pay the invoices submitted by the Lender, via additional funds advanced by the Lender that are not subject to the \$350,000 cap contained herein. In the event that an objection to any invoice is timely filed, the court shall resolve the objection at the time of the Final Hearing and no payment shall be made in connection with the invoice until further order of the

court. To the extent necessary, upon request, the Lender's professionals shall provide to any Notice Party, a redacted invoice that may be filed within the public record.

12. Restrictions on the Debtor. Other than the Carve-Out and fees payable pursuant to 28 U.S.C. § 1930 and to the Clerk of Court, no claim having a priority superior or *pari passu* with those granted by this Order to the Lender shall be granted or permitted by any order of the Court heretofore or hereafter entered in the Chapter 11 Cases, while any portion of the DIP Facility Loan Agreement remains outstanding. Except as expressly permitted by the DIP Facility Loan Agreement, the Debtors will not, at any time during the Chapter 11 Cases, grant mortgages, security interests, or liens in the Collateral or any portion thereof to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise.

13. Additional Perfection Measures. The Lender shall not be required to file financing statements, mortgages, deeds of trust, notices of lien, or similar instruments in any jurisdiction or effect any other action to attach or perfect the security interests and liens granted under the DIP Facility Documents and this Order (including, without limitation, the execution of any control, lock-box, deposit account, or similar documents or agreements). Notwithstanding the foregoing, the DIP Lender may, in their sole discretion, file (or require the Debtor to execute and file) such financing statements, mortgages, deeds of trust, notices of lien, or similar instruments or otherwise confirm perfection of such liens, security interests, and mortgages without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, and all such documents shall be deemed to have been filed or recorded at the time of and on the Petition Date and all recording fees and expenses shall be borne by the Debtor.

14. Automatic Stay. Subject only to the provisions of the DIP Facility Loan Agreement, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and

modified to the extent necessary to permit the Lender to exercise, upon the occurrence and during the continuance of any Event of Default, after the giving of five (5) business days' notice in writing, served by overnight delivery service or telefax, upon the Court, and the Notice Parties, all rights and remedies provided for in the DIP Facility Documents. Notwithstanding the occurrence of an Event of Default or the Commitment Termination Date or anything herein, all of the rights, remedies, benefits, and protections provided to the Lender under the DIP Facility Documents and this Order shall survive the Commitment Termination Date. If it becomes necessary for the Lender, at any time, to exercise any of their rights and remedies hereunder or under applicable law to effect repayment of the DIP Facility Obligations or to receive any amounts or remittances due in connection therewith, including, without limitation, foreclosing upon and selling all or a portion of the Collateral, the Lender may, without further order of this Court, exercise such rights and remedies as to all or part of such Collateral as the Lender may elect in their sole discretion, subject to the Lender having given five (5) business days' notice in writing, served by overnight delivery service or telefax, upon the Court, counsel to the Debtor, counsel to each Committee, the Secured Creditors, and the U.S. Trustee. Notwithstanding the foregoing, in the event that Lender serves a notice of default and any party in interest files a written objection to the default declared, within 5 days of the date of the notice of default, the automatic stay shall not be automatically modified to permit the Lender to exercise its remedies and the court shall rule upon the objection on an emergency basis.

15. Binding Effect. The provisions of this Order shall be binding upon and inure to the benefit of the Lender, the, the Debtor, and their respective successors and assigns. To the extent permitted by applicable law, this Order shall bind any trustee hereafter appointed for the estate of the Debtor, whether in these Chapter 11 Cases or in the event of the conversion of any

Chapter 11 Case to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Order.

16. Survival. The provisions of this Order and any actions taken pursuant hereto shall survive the entry of any order (i) confirming any plan of reorganization in any of the Chapter 11 Cases (and, to the extent not satisfied in full, the DIP Facility Obligations shall not be discharged by the entry of any such order, or pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor having hereby waived such discharge; (ii) converting any of the Chapter 11 Cases to a chapter 7 case; or (iii) dismissing the Chapter 11 Case, and the terms and provisions of this Order as well as the DIP Facility Superpriority Claims and the DIP Facility Liens granted pursuant to this Order and the DIP Facility Documents shall continue in full force and effect notwithstanding the entry of any such order, and such claims and liens shall maintain their priority as provided by this Order and the DIP Facility Documents and to the maximum extent permitted by law until all of the DIP Facility Obligations are indefeasibly paid in full and discharged (and, with respect to outstanding undrawn letters of credit issued pursuant to the DIP Facility Loan Agreement, cash collateralized in accordance with the provisions of the DIP Facility Loan Agreement).

17. Dismissal of Case. If an order dismissing the Chapter 11 Case under section 1112 of the Bankruptcy Code or otherwise is, at any time, entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that the superpriority claims, liens and security interests, replacement security interests, and other protections granted to the Lender pursuant to this Order and the DIP Facility Documents shall continue in full force and effect and shall maintain their priorities as provided in this Order until all DIP Facility Obligations in respect thereof shall have been paid and satisfied in full (and that such

superpriority claims, liens, and other protections, shall, notwithstanding such dismissal, remain binding on all parties in interest).

18. Stock in the Reorganized Debtor to be Delivered to the Lender. The Plan and the DIP Facility Documents provide that upon confirmation of the Debtor's Chapter 11 Plan of Reorganization, approximately 75% of the stock in the reorganized debtor shall be issued to the Lender. This obligation is contingent upon the confirmation of the Debtor's Chapter 11 Plan, and shall not be effective in the event that the Plan is not confirmed.

19. Access to the Debtor. Without limiting the rights of access and information afforded the Lender under the DIP Facility Documents, the Debtor shall permit representatives, agents, and/or employees of the Lender to have reasonable access to their premises and records during normal business hours (without unreasonable interference with the proper operation of the Debtor's businesses) shall cooperate, consult with, and provide to such representatives, agents, and/or employees all such non-privileged information as they may reasonably request.

20. Authorization to Act. The Debtor is authorized to do and perform all acts, to make , execute, and deliver all instruments and documents (including, without limitation, the execution of security agreements, mortgages, and financing statements), and to pay fees, which may be reasonably required or necessary for the Debtor's performance under the DIP Facility and this Order, including, without limitation:

- (i) the execution of the DIP Facility Documents;
- (ii) the modification or amendment of the DIP Facility Loan Agreement or any other DIP Facility Documents without further order of this Court, in each case, in such form as the Debtor, the and Lender may agree (except for any modification or amendment to shorten the maturity of the extensions of credit thereunder, or increase the rate of interest or the letter of

credit fees payable thereunder; *provided, however*, that notice of any such modification or amendment shall be provided to any Committee and the U.S. Trustee, counsel for the senior secured creditors (Roberta Colton), counsel for Hutson and Cornish (Edward Peterson) each of which will have five (5) business days from the date of such notice within which to object in writing; *provided, further, however*, that if such objection is timely provided, then such modification or amendment shall be permitted only pursuant to an order of the Court; and

(iii) the non-refundable payment to the Lender, as the case may be, of the fees referred to in the DIP Facility Loan Agreement and reasonable costs and expenses as may be due from time to time, including, without limitation, reasonable attorneys' and other professional fees and disbursements as provided in the DIP Facility Documents, subject to the limitations set forth herein.

21. Insurance Policies. Upon entry of this Order, the Lender shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Debtor which in any way relates to the Collateral.

22. Subsequent Reversal. If any or all of the provisions of this Order or the DIP Facility Documents are hereafter modified, vacated, amended, or stayed by subsequent order of this Court or any other court without the consent of the Lender: (i) such modification, vacatur, amendment, or stay shall not affect the validity of any obligation to the Lender that is or was incurred prior to the effective date of such modification, vacatur, amendment, or stay (the "Effective Date"), or the validity and enforceability of any security interest, lien, or priority authorized or created by this Order and the DIP Facility Documents; and (ii) the DIP Facility Obligations pursuant to this Order and the DIP Facility Documents arising prior to the Effective Date shall be governed in all respects by the original provisions of this Order and the DIP

Facility Documents, and the validity of any such credit extended or security interest granted pursuant to this Order and the DIP Facility Documents is protected by section 364(e) of the Bankruptcy Code in that the DIP Facility is expressly found to have been extended in good faith.

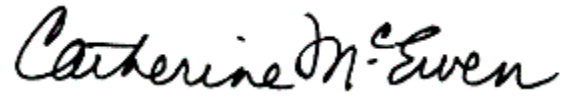
23. Deadline to Object to Scheduled Secured Claims. Any party in interest must file any objection to any scheduled secured claim on or before the earlier of: (a) 10 days prior to the confirmation hearing which is presently set for September 18, 2009 and (b) 60 days from the date of this order. The Debtor agrees and stipulates to the validity of the Lender's secured claims.

23. Final Hearing. This Motion is set for Final Hearing at 1:00 P.M. (Prevailing Eastern Time) on August 19, 2009, Courtroom 8A, at which time any party in interest may appear and state its objections. The notice provided by the Debtor of the Interim Hearing was provided in accordance with Bankruptcy Rule 4001(c)(2). The Debtor shall promptly mail copies of this Order and notice of the Final Hearing to the Service Parties. Any objection by a party-in-interest to the relief sought in the Motion and this Order shall be made in writing filed with the Court (with a courtesy copy to chambers) and served upon counsel for the Notice Parties as defined herein.

24. Findings of Fact and Conclusions of Law. This Order constitutes findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof.

25. Controlling Effect of Order. To the Extent any provision of this Order conflicts with any provision of the Motion, any prepetition agreement, or any documents executed in connection with the DIP Facility, the provisions of the Order shall control.

DONE AND ORDERED in, Tampa Florida, this 10th day of August, 2009.



CATHERINE PEEK MCEWEN
UNITED STATES BANKRUPTCY JUDGE

Copies to:
Richard J. McIntyre
Cindy P. Burnette
Denise Barnett
Aaron Rachelson
David Softness
Roy Kobert
Roberta Colton
Edward Peterson
Robert Soriano
And all Creditors on the Mailing Matrix