

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re:

Chapter 11

HRK HOLDINGS, LLC, and
HRK INDUSTRIES, LLC,

Case No. 8:12-bk-9868-KRM
Case No. 8:12-bk-9869-KRM

Debtors.

Jointly Administered under
Case No. 8:12-bk-9868-KRM

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR AUTHORITY
TO OBTAIN ADDITIONAL POST-PETITION FINANCING UNDER SECOND
DIP FACILITY FROM REGIONS BANK TO GRANT SENIOR LIENS AND
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, AND TO EXTEND
MATURITY UNDER ALL DIP LOAN FACILITIES NUNC PRO TUNC**

THIS CASE came on for hearing on October 2, 2014, at 1:45 p.m. (the "**Hearing**"), upon the Debtors' Emergency Motion for Authority to Obtain Additional Post-Petition Financing Under Second DIP Facility From Regions Bank to Grant Liens and Superpriority Administrative Expense Status, and to Extend Maturity Under All DIP Loan Facilities Nunc Pro Tunc (Doc. No. 682) (the "**Motion**"),¹ requesting the following relief:

A. authorizing the Debtors to obtain additional post-petition loans, advances and other financial accommodations from Regions Bank ("**Regions**" or the "**DIP Lender**") under the Operating Line of Credit in the amount of \$228,254 plus additional funds for interest on the Operating Line of Credit, and closing costs.

B. extending the maturity date of the Operating Line of Credit, the Site Work Line of Credit and the Long Term Care Line of Credit nunc pro tunc;

¹ Unless otherwise indicated, capitalized terms used herein shall have the meaning ascribed to such terms in the Motion.

C. authorizing the Debtors to use existing availability under the Operating Line of Credit and the Site Work Line of Credit consistent with the extended maturity period.

D. authorizing the Debtors to execute definitive modifications to the DIP Loan Documents (as defined below);

E. authorizing the Debtors, under § 364 of the Bankruptcy Code, to obtain additional post-petition financing under the Second DIP Facility, which financing and indebtedness due and owing thereunder by the Debtors to the DIP Lender shall be secured by first liens on and security interests on all property of the Debtors, other than Avoidance Actions;

F. granting the DIP Lender a superpriority administrative expense claim pursuant to 11 U.S.C. § 364(c); and

G. granting the Debtors such other and further relief as the Court deems necessary, appropriate, equitable, proper and consistent.

During the hearing, counsel for the Debtor made an *ore tenus* amendment to the Motion to extend the maturity date under all DIP Loan Documents to November 30, 2014 and to vary budgeted line item expenditures as may be necessary for operational expenses and professional fees, and counsel for Regions indicated that Regions did not oppose the relief requested. The Court having considered the Motion, the proffers by counsel, and finding, in accordance with Rules 4001(c)(1) and (2) of the Federal Rules of Bankruptcy Procedure, that due and proper notice of the Motion was given under the circumstances, and noting that no objections to the relief requested, it is

ORDERED that:

1. The Motion is granted to the extent set forth below.
2. The maturity date under the DIP Loan Facilities is hereby extended, nunc pro tunc, through and including November 30, 2014.
3. The Debtors are authorized to execute and deliver the modifications to the loan documents establishing the Second DIP Facility (the “**Second DIP Loan Documents**”), and the loan documents establishing the Fourth DIP Facility (the “**Fourth DIP Loan Documents**”) (collectively, the “**DIP Loan Documents**”), which
 - a. increases the availability under the Operating Line of Credit by the amount of Two Hundred Twenty Eight Thousand Two Hundred Fifty Four and 00/100 (\$228,254.00) plus additional funds for interest and closing costs;
 - b. provides for the use of existing availability under the Operating Line of Credit and the Site Work Line of Credit during the extended maturity period; and
 - c. provides for the extension in the maturity date under the DIP Loan Facilities.
 - d. provides that, notwithstanding further availability under the Operating Line of Credit and/or the Site Work Line of Credit, the obligation of Regions to provide further advances under the Second DIP Facility are conditioned upon it being entitled to receive the first dollars from the net proceeds of all future real property sales by the Debtors in the aggregate amount of all advances made by Regions after April 21, 2014 under the Operating Line of Credit and/or the Site Wok Line of Credit up to the Reimbursement Cap of \$1.3 million, all as provided

for under the MOU. In no event shall Regions be obligated to further fund on either the Operating Line of Credit or the Site Work Line of Credit unless all such further funding together with all prior funding by it on either the Operating Line of Credit or the Site Work Line of Credit subsequent to April 21, 2014 is entitled to such first dollar reimbursement.

4. Following execution of the modifications to the DIP Loan Documents, the Debtors and the DIP Lender may enter into any further non-material amendments of or modifications to the DIP Loan Documents without the need of further notice and hearing or order of this Court.

5. The Debtors are further authorized to seek advances under the DIP Loan Facility consistent with the DIP Loan Documents, the MOU, and the Budget attached hereto as Exhibit "A",

6. Expenditures may vary as necessary to pay for operational expenses and professional fees from the amounts budgeted.

7. The Debtors are authorized and directed to perform all of their obligations under the DIP Loan Facilities.

8. The additional advances will bear interest at nine percent (9%) per annum. Regions shall not be entitled to any default interest in conjunction with the DIP Loan Facilities.

9. The Debtors are authorized to pay the closing costs with respect to the modifications to the DIP Loan Facilities, which authorization shall specifically include State of Florida documentary stamp taxes required to be affixed to the modified promissory note (Operating Line of Credit).

10. As provided in the DIP Loan Facilities, the Debtors' obligations to repay Regions shall be accorded a first lien on all assets of the Debtors as provided for therein (the "**DIP Post-Petition Lender Liens**"), including, without limitations, the real property located in Manatee County, Florida described on Exhibit "B" to this Order (the "**Remaining Property**"). The DIP Post-Petition Lender Liens shall prime and be senior in priority to all pre-petition liens and all post-petition liens in favor of all secured creditors and all other entities having or asserting an interest in any or all assets of the Debtors, except the Post-Petition DIP Lender Liens shall not prime or be senior in priority to *ad valorem* taxes in favor of Manatee County, Florida for 2012 and subsequent years. Provided, however, the DIP Post-Petition Liens shall not prime the contingency fees as set forth in the Attorneys' Fee Contract previously approved by this Court. Regions shall not be granted a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549 or 553(b) of the Bankruptcy Code (collectively, the "**Avoidance Actions**").

11. The Debtors' obligations to repay Regions for advances pursuant to this order and the Second DIP Facility Financing Orders shall be accorded superpriority administrative expense status pursuant to § 364(c)(1) of the Bankruptcy Code, subject only to the administrative fee payable to the Office of the United States Trustee and, with limitations, fees for professionals and consultants retained by the Debtors and incurred through the Extended Maturity Period.

12. This order shall be conclusive evidence of the priority, perfection, and validity of all of the Post-Petition DIP Lender Liens granted pursuant to this order in favor of the DIP Lender without the necessity of filing, serving, or recording any financing statements, mortgages, deeds of trust or other agreements, documents, or instruments which may be otherwise required under federal or state law.

13. The DIP Lender shall be entitled to all protections provided for in the Second DIP Facility Financing Orders and the Fourth DIP Facility Financing Order, the terms of which are incorporated into this order.

14. Notwithstanding anything herein to the contrary, no loans or advances made pursuant to the Second DIP Loan Documents may be used by the Debtors or any other person or entity (including, without limitation, any committee of unsecured creditors) to object to or contest in any manner, or raise any defenses to, the validity, extent, perfection, priority or enforceability of the obligations under the Second DIP Loan or any liens or security interests with respect thereto or any other rights or interests of the DIP Lender, or to assert any claims or causes of action against the DIP Lender.

15. Advances under the Operating Line of Credit shall be accompanied by a written certification that the funds disbursed will only be used to pay expenses set forth on the Budget approved by Regions.

16. Notwithstanding anything to the contrary contained in this order, the Debtors shall be authorized to continue the use of cash collateral in accordance with the terms and conditions of the cash collateral orders, as approved by the Court.

17. Notwithstanding the occurrence of an event of default, all of the rights, remedies, benefits and protections provided to Regions under this order shall survive the termination of any obligation of Regions to make advances under the terms set forth herein.

18. The terms of this order shall be binding upon and inure to the benefit of Regions, the Debtors, and their respective successors and assigns. This order shall bind any trustee hereafter appointed or elected for the estates of the Debtors, whether in these Chapter 11 cases or

in the event of a conversion of the Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this order.

19. No failure or delay on the part of Regions in exercising any right, power or privilege provided for in this order shall operate as a waiver thereof. This order shall not be construed in any way as a waiver or relinquishment of any right that Regions may have to bring before or be heard on any matter brought before this Court.

20. This order constitutes findings of fact and conclusions of law and takes effect and becomes enforceable immediately upon execution hereof. To the extent any of the terms of the Operating Line of Credit, the Site Work Line of Credit or the Long Term Care Line of Credit are inconsistent or conflict with this order, the terms of this order shall control.

DATED: October 10, 2014



K. RODNEY MAY
United States Bankruptcy Judge

Attorney Barbara A. Hart is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.

HRK DIP Budget - Thru October 31, 2014

	W/E 9/5	W/E 9/12	W/E 9/19	W/E 9/26	W/E 10/3	W/E 10/10	W/E 10/17	W/E 10/24	W/E 10/31	Total
	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$5,400
Total Aggregate Revenues										
Core Operations/Existing Business										
Payroll-Other ⁽¹⁾	\$ (5,000)	\$ (5,000)	\$ (5,000)	\$ (5,000)	\$ (5,000)	\$ (5,000)	\$ (5,000)	\$ (5,000)	\$ (5,000)	(\$20,000)
Payroll-Site/Work and Jeff H	(14,000)	(14,000)	(14,000)	(14,000)	(14,000)	(14,000)	(14,000)	(14,000)	(14,000)	(70,000)
Power & Light	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(4,000)
Fuel	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(27,000)
Insurance	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(27,000)
R/E Taxes/Audit Expense ⁽²⁾	(6,500)	(6,500)	(6,500)	(6,500)	(6,500)	(6,500)	(6,500)	(6,500)	(6,500)	(65,000)
Bank Fees ⁽³⁾	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(1,500)
Data Room-Interlinks	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(27,000)
Repairs & Maintenance/Rental	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(150)	(1,500)
T&E ⁽⁴⁾	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(27,000)
Dredge/Groutack Related Outflows										
Water Sampling	(5,500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(9,500)
Fuel	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(9,000)
Total Operating Outflows	(\$33,650)	(\$7,500)	(\$33,000)	(\$7,500)	(\$31,150)	(\$7,500)	(\$33,000)	(\$7,500)	(\$21,500)	(\$182,500)
Operating Profit (Loss)	(\$33,050)	(\$6,000)	(\$32,400)	(\$6,900)	(\$30,550)	(\$6,900)	(\$32,400)	(\$6,900)	(\$20,900)	(\$176,900)
Professional Fees/FIDP Mandated Repairs/Closing Expenses										
Gulf Atlantic ⁽⁵⁾⁽⁶⁾										
FIDP Fees										
Curlman & Wakefield-Marketing	(700)	(404)	(22,500)	(404)	(1,850)		(22,500)		(60,000)	(105,000)
Clements-Surveying	(5,000)									(2,358)
Title Work		(350)								(3,000)
Hankruptcy Trustee Fees										(350)
SR Fees ⁽⁵⁾			(25,000)				(5,200)		(80,000)	(130,000)
Professional Fees - Martin/Preston/Kynes, Markman ⁽⁶⁾			(15,000)				(25,000)		(25,000)	(55,000)
Total Professional Fees	(5,700)	(754)	(62,500)	(404)	(1,850)	-	(67,700)	-	(165,000)	(203,908)
Monthly Profit (Loss)	(38,750)	(7,654)	(94,900)	(7,304)	(32,400)	(6,900)	(100,100)	(6,900)	(185,900)	(480,808)
Cumulative Profit	(\$38,750)	(\$46,404)	(\$141,304)	(\$148,608)	(\$181,008)	(\$187,908)	(\$288,008)	(\$294,908)	(\$460,808)	(\$480,808)

Notes:

- (1) Incorporates a \$10,000 monthly salary for Nicole Corboy to replace the work previously performed by Jordan Levy and Lionel Singh.
(2) Assumes real estate taxes are paid in connection with the closing of a transaction.
(3) Assumes Regions waives the fee associated with any required extension of the \$1.65MM letter of credit.
(4) Assumes a trip is made by Mickey Hatley to attend the proposed auction during the week of Oct. 3rd.
(5) Amounts shown represent estimated payments to account for accrued and unpaid fees through the estimated closing of a transaction.
(6) All or some portion of the amount shown for GACC may be funded with the post-petition retainer of \$50,000.

Confidential

Exhibit "A"

**LEGAL DESCRIPTION OF REAL PROPERTY
OWNED BY HRK HOLDINGS, LLC
AS OF APRIL 10, 2014**

That certain real property in Manatee County, Florida, conveyed by Quitclaim Deed from Piney Point Phosphates, Inc. to HRK Holdings, LLC dated August 15, 2006, and recorded August 21, 2006, at O.R. Book 2148, Page 3143, Public Records of Manatee County, Florida, LESS the following real property:

1. Parcel 2 as described in the above-described Quitclaim Deed recorded at O.R. Book 2148, Page 3143, and as described in the Settlement Agreement dated May 17, 2007, and recorded July 18, 2007, at O.R. Book 2216, Page 3782, as approved by the order dated June 21, 2007, and recorded August 13, 2012, at O.R. Book 2432, Page 4913, Public Records of Manatee County, Florida.
2. That certain real property in Manatee County, Florida, conveyed by Special Warranty Deed from Debtor in Possession Pursuant to Free and Clear Order of Bankruptcy Court from HRK Holdings, LLC to Air Products and Chemicals, Inc. dated November 10, 2012, and recorded November 13, 2012, at O.R. Book 2444, Page 7399, Public Records of Manatee County, Florida.
3. That certain real property in Manatee County, Florida, conveyed by Fee Simple Deed from Debtor in Possession Pursuant to Free and Clear Sale Order of Bankruptcy Court from HRK Holdings, LLC to Thatcher Chemical of Florida, Inc. dated December 20, 2013, and recorded January 2, 2014, at O.R. Book 2504, Page 2840, Public Records of Manatee County, Florida.
4. That certain real property in Manatee County, Florida, conveyed by Special Warranty Deed from Debtors in Possession Pursuant to Free and Clear Sale Orders of Bankruptcy Court from HRK Holdings, LLC to Allied New Technologies 2, Inc. dated March 28, 2014, and recorded April 2, 2014, at O.R. Book 2514, Page 7689, Public Records of Manatee County, Florida.
5. That certain real property in Manatee County, Florida, conveyed by Special Warranty Deed from Debtors in Possession Pursuant to Free and Clear Sale Orders of Bankruptcy Court from HRK Holdings, LLC to Manatee Bulk Storage, LLC dated March 28, 2014, and recorded April 2, 2014, at O.R. Book 2514, Page 7815, Public Records of Manatee County, Florida.
6. That certain real property in Manatee County, Florida, conveyed by Special Warranty Deed from Debtors in Possession Pursuant to Free and Clear Sale Orders of Bankruptcy Court from HRK Holdings, LLC to Manatee Bulk Storage, LLC dated March 28, 2014, and recorded April 2, 2014, at O.R. Book 2514, Page 7821, Public Records of Manatee County, Florida.