

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

SKIP BARBER RACING SCHOOL LLC,

Chapter 11

Case No. 17-35871 (CGM)

Debtor.

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**INTERIM ORDER, PURSUANT TO SECTIONS 361, 363, 503, AND 507(b)
OF THE BANKRUPTCY CODE, AUTHORIZING USE OF CASH
COLLATERAL, PROVIDING ADEQUATE PROTECTION AND
GRANTING ADDITIONAL RELIEF**

Upon the Motion (the "Motion") of Skip Barber Racing School LLC, debtor and debtor in possession (the "Debtor"), dated May 22, 2017, for an Order: (1) Authorizing the Debtor to incur use the cash collateral of People's United Bank, N.A. ("People's" or "Lender") and CMS Mezzanine Debt Subpartnership ("CMS"); (2) Granting People's and CMS replacement liens and security interests pursuant to 11 U.S.C. §§361(2) and (3), on, among other things, all of Debtor's pre- and post-petition now existing and after acquired, assets, including but not limited to accounts, merchandise, returns, inventory, machinery and equipment, and intangibles together with the proceeds and products thereof; (3) Granting People's and CMS superpriority administrative claims pursuant to 11 U.S.C. §§503 and 507(b); and (4) Modifying the automatic stay as to People's; the Debtor stipulates and agrees as follows:

A. On May 22, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Prior to the Petition Date, the Debtor entered into certain loan documents and security agreements with People's which include, but are not limited to:

1. SBA Loan No.: 4323145001
\$1,000,000 SBA Express Term Loan
Dated: January 25, 2011
2. SBA Loan No.: CAP 62752050
\$250,000.00 SBA CapLines Loan
Dated: June 28, 2013
3. MasterCard BusinessCard ChargeCard Account
Revolving Credit Agreement

(Collectively hereinafter referred to as the “People’s Documents”). Pursuant to the People’s Documents, People’s made loans, advances, and other financial accommodations to and for the benefit of the Debtor secured by a first lien on, and security interest in, substantially all of Debtor’s assets including but not limited to, all of Debtor’s existing and after acquired accounts, inventory, machinery, vehicles, equipment, and intangibles, together with the proceeds and products thereof all as more particularly described in the People’s Documents, the terms of which are incorporated herein by reference (the “Collateral”);

B. Prior to the Petition Date and as of May 22, 2017, the Debtor was indebted to People’s pursuant to the People’s Documents in the total principal amount of \$1,422,565.48, plus accrued and compound interest, fees, costs and attorneys’ fees as may be accrued (the “Pre-Petition Obligations”);

C. The successful operation of the business of the Debtor and its ability to propose and consummate a going concern sale of its business and reorganization of its financial affairs is dependent on its ability to obtain, among other things, the immediate authority to use People’s “cash collateral” within the meaning of § 363(a) of the Bankruptcy Code (the “Cash Collateral”);

D. People’s is willing to permit the use of its cash collateral for a period of sixty (60) days from the Petition Date upon the terms and conditions of this Order;

E. The Debtor and CMS Mezzanine Debt Subpartnership (“CMS”) are parties to that certain Amended and Restated Loan and Security Agreement by and Between Skip Barber Racing school LLC as borrower and CMS Mezzanine Debt Subpartnership as Lender Dated as of January 27, 2011 as Amended and Restated as of May 22, 2015 (the “CMS Debt”) pursuant to which CMS holds claims in the aggregate principal amount of \$6,400,109 plus accrued and compound interest, fees, costs and attorneys fees as of the Petition Date secured by a second priority lien (the “CMS Lien”) on substantially all of the Collateral;

F. CMS is willing to permit the use of its cash collateral upon the terms and conditions of this Order;

G. The Debtor and the Estate of David M. Culver (the “Culver Estate”) are parties to a Promissory Note and Security Agreement dated May 18, 2017 pursuant to which the Debtor borrowed \$41,717 (the “Estate Loan”) to fund a chapter 11 case.

And the Court finds as follows:

H. The Debtor would suffer irreparable harm absent obtaining the use of Cash Collateral contemplated herein;

I. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtor’s Chapter 11 case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409;

J. The statutory predicates for the relief sought in the Motion are §§ 105, 361, 362, 363, 503 and 507 of the Bankruptcy Code and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Rules”); and

K. Due notice of the Motion has been given to all creditors holding the 20 largest unsecured claims, all those who filed Notices of Appearance prior to the date of service of the

Motion, the taxing authorities, all known secured creditors, and the Office of the United States Trustee, pursuant to § 102 of the Bankruptcy Code, Rule 4001(c) of the Rules and any and all applicable Local Bankruptcy Rules.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Motion is granted to the extent set forth herein.
2. Subject to the Carve Out as defined below, to the extent the Debtor uses cash collateral that is subject to the interest of People's, People's consents to the limited use of its cash collateral for a period of sixty (60) days from the Petition Date provided that it is used in accordance with and solely for the purposes set forth in the budget (the "Budget"), a copy of which is annexed hereto, and subject to the terms of the People's Documents and this Order. As adequate protection for the Debtor's use of People's cash collateral, People's is hereby granted a replacement lien in all of the Debtor's presently owned or hereafter acquired property and assets, including but not limited to accounts receivable, wherever located whether in possession of the Debtor or third parties, whether such assets were acquired before or after the Petition Date, of any kind or nature, tangible or intangible, wherever located, and the proceeds and products thereof (excluding claims which have or may be commenced under § 544, 547, 548 or 550 of the Bankruptcy Code and the proceeds and products thereof) (the "People's Collateral"). To the extent that the replacement lien is insufficient to provide adequate protection for the diminution of the value of People's interest in the People's Collateral arising from the Debtor's use of cash collateral, People's is hereby granted an allowed super priority administrative claim as provided in § 507(b) of the Bankruptcy Code against the Debtor's estate which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtor and over all administrative expenses or charges against property arising in the

Debtor's Chapter 11 case or any superseding Chapter 7 case, including without limitation those specified in §§ 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code. In further consideration of People's consent to the Debtor's use of cash collateral, the Debtor hereby reaffirms People's pre-petition security interest in the Debtor's trade name, trade mark and related general intangibles and intellectual property pursuant to the People's Documents, and confers upon People's pursuant to that certain Confirmation and Acknowledgement of Security Interest in Trade Name, Trade Mark and Related General Intangibles and Intellectual Property submitted herewith as addendum hereto, the full power and authority as Debtor's Attorney-In-Fact, coupled with an interest, to assume ownership and control of the Debtor's internet domain name and webpage and to submit such certificates of amendment, registrant name change and/or the transfer of the domain name to another registrar, including obtaining any requisite Registry Authorization Code, together with the full power and authority to execute and file certificates of amendment changing the name of the Debtor limited liability company in all jurisdictions in which the debtor has filed for authority to do business or other made official record of its trade name, all as may be necessary and appropriate in order to effectuate the provisions of such Assignment.

3. Notwithstanding anything to the contrary herein, as adequate protection for the Debtor's use of the Collateral and solely to the extent of any diminution in the value of CMS' interest in the Collateral and the imposition of the automatic stay from and after the Petition Date, the Debtor shall grant, and hereby is deemed to have granted, to CMS, a replacement lien (the "CMS Postpetition Lien") in all of the Debtor's presently owned or hereafter acquired assets, subordinate to the liens provided to People's.

4. This Order shall be sufficient evidence of People's perfected post-petition liens and security interests in and to People's Collateral and shall be binding, enforceable and perfected upon the entry of this Order. The Debtor is authorized and directed to execute such documents including, without limitation, Uniform Commercial Code financing statements and to pay such costs and expenses as may be reasonably required to perfect People's security interests in the Collateral as provided herein; People's is authorized (but not required) to file and record financing statements with respect to such security interests and liens, all such financing statements being deemed to have been filed or recorded on the Petition Date.

5. The provisions of this Order shall inure to the benefit of People's, CMS and the Culver Estate and shall be binding upon the Debtor and its respective successors and assigns (including any trustee or other fiduciary herein appointed as a legal representative of the Debtor in this Chapter 11 case or in any succeeding case under Chapter 7 or otherwise with respect to the property of the estate of the Debtor).

6. People's is hereby authorized to continue to charge the Debtor's loan account for all interest, facility fees, administrative and other reasonable fees, transaction costs, legal fees, and expenses to the Debtor with respect to the Debtor's use of Cash Collateral and any and all other expenses as provided in the People's Documents. In the event that People's seeks reimbursement of fees and expenses of its counsel ("Counsel"), Counsel's invoices shall be sent to the Debtor, the Official Committee of Unsecured Creditors (the "Committee"), and the United States Trustee. In the event that no objection is received by People's within ten (10) days of transmission of the invoices, and upon People's filing with the Court of a Certification of No Objection, Counsel's fees and expenses may be paid without further Court order.

7. The Debtor shall (i) provide People's with such written reports as are required under the People's Documents, including, without limitation, inventories detailing the location and condition of the Collateral, and particularly including all equipment and motor vehicle parts inventories. All reports must be in a format acceptable to People's and shall be certified by an officer of the Debtor acceptable to People's to be accurate to the best of such officer's knowledge, information and belief. The Debtor shall also provide CMS attention Robert Palmer with any such reports as provided to People's.

8. Each of the following shall constitute an "Event of Default" for purposes of this Order:

- (a) The Court enters an order authorizing the sale of all or substantially all assets of the Debtor that does not provide for the payment in full to People's of its claims in cash upon the closing of the sale, unless otherwise agreed by People's in its sole and absolute discretion;
- (b) The Debtor ceases operations of its present business as such existed on the Petition Date or takes any material action for the purpose of effecting the foregoing without the prior written consent of People's, except to the extent contemplated by the Budget;
- (c) The Debtor's bankruptcy case is either dismissed or converted to a Chapter 7 case, pursuant to an order of the Court, the effect of which has not been stayed;
- (d) A Chapter 11 trustee, an examiner, or any other responsible person or officer of the Court with similar powers is appointed by order of the Court, the effect of which has not been stayed;
- (e) A change in the Debtor's ownership or management occurs, in a manner that is not reasonably acceptable to People's;
- (f) This Order is reversed, vacated, stayed, amended, supplemented or otherwise modified in a manner which shall, in the sole opinion of People's; (i) materially and adversely affect the rights of People's hereunder, or (ii) materially and adversely affect the priority of any or all of People's claims and/or the liens granted herein;

- (g) The Debtor expends any funds or monies for any purpose other than those set forth on the Budget within a variance of ten (10) percent, or the Debtor's net cash flow, as set forth in the Budget, is more than ten (10) percent less than the net cash flow projections set forth in the Budget at any time, but any accrued expenses of the professionals retained by the Debtor or the Committee in excess of the budgeted amounts shall not, in and of itself, be an Event of Default;
- (h) The occurrence of a material adverse change, including without limitation any such occurrence resulting from the entry of any order of the Court, or otherwise in each case as determined by People's in: (1) the condition (financial or otherwise), operations, assets, business or business prospects of the Debtor; (2) the Debtor's ability to repay People's; and/or (3) the value of the People's Collateral;
- (i) Any material and/or intentional misrepresentation by the Debtor in any financial reporting or certifications to be provided by the Debtor to People's;
- (j) Non-compliance or default by the Debtor with any of the terms and provisions of this Order; provided, however, that said non-compliance or default shall not be deemed an Event of Default if curable and cured by the Debtor within seven (7) days after notice of such non-compliance or default is given to the Debtor and counsel to CMS by People's;
- (k) The failure to obtain entry of a Final Order authorizing use of Cash Collateral and DIP Financing on or before the sixtieth (60th) day following the Petition Date or such time as may be extended upon the consent of People's;
- (l) The Debtor fails to have identified a purchaser for substantially all of its assets at the conclusion of a Court-approved auction which shall occur within sixty (60) days of the Petition Date unless such date is extended by People's upon reasonable request made by the Debtor;

9. Upon the occurrence of an Event of Default and five (5) day's written notice thereof by People's to the Debtor's counsel, the committee, if any, or the top twenty unsecured creditors if no committee has been appointed, to CMS's counsel, and the Office of the U.S. Trustee (which notice may be given by facsimile or e-mail transmission) (the "Default Notice"), the Debtor's use of cash collateral shall terminate.

10. With respect to an Event of Default as to which a Default Notice has been given, the Debtor, CMS, the Committee, if any, or the top twenty unsecured creditors if no committee has been appointed, and/or the U.S. Trustee shall have seven (7) days from the receipt of the Default Notice (the “Remedy Notice Period”) to obtain an order of the Court on notice to People’s enjoining or restraining People’s from exercising rights and remedies based upon the Event of Default specified in the Default Notice (the “Restraint on Remedies”).

11. With respect to an Event of Default as to which a Default Notice has been given, immediately upon expiration of the Remedy Notice Period, unless a Restraint on Remedies has timely been obtained from the Court the Debtor’s use of the Cash Collateral pursuant to this Order and the Budget shall cease and the obligations due People’s shall be immediately due and payable.

12. As consideration for People’s consenting to the Debtor’s use of Cash Collateral and the Carve Out, as defined below, People’s will require that in a Final Order that no expenses of administration of the Debtor’s Chapter 11 case or any future proceeding which may result from such case, including liquidation in this Chapter 11 case or other proceedings under the Bankruptcy Code, shall be charged against People’s Collateral pursuant to § 506(c) of the Bankruptcy Code, other than the Carve Out, defined below, as applicable, without the prior written consent of People’s and no such consent shall ever be implied from any other action, inaction or acquiescence by People’s.

13. With respect to an Event of Default as to which a Default Notice has been given, immediately upon expiration of the Remedy Notice Period, unless a Restraint on Remedies has timely been obtained from the Court, People’s shall be deemed to be in possession of all of the People’s Collateral and People’s shall be entitled to have the Debtor or any superseding trustee

or any other fiduciary assemble all Collateral at the Debtor's business location in Braselton, Georgia and immediately surrender and/or deliver peaceful possession to People's of the People's Collateral and People's shall, at its sole election, be authorized to liquidate the People's Collateral in accordance with applicable law and/or its rights.

14. There shall not at any time be entered in the Debtor's Chapter 11 case or any succeeding Chapter 7 case any further order which authorizes: (a) The use of cash collateral of the Debtor or the sale, lease or other disposition, out of the ordinary course of business, of property of the estate of the Debtor in which People's has an interest; or (b) Under § 364 of the Bankruptcy Code, the obtaining of credit or the incurring of indebtedness secured by a lien or security interest which is equal or senior to the liens or security interests held by People's, or which is entitled to priority administrative status which is equal to or superior to that granted to People's herein, unless, (i) People's shall have given its prior written consent thereto, (ii) entry of an Order determining People's and CMS are adequately protected; or (iii) such Order requires that there shall first be indefeasibly paid in full to People's all debts and obligations of the Debtor which arise or result from the People's Documents and the obligations, loans, credit, security interests and liens authorized herein.

15. The provisions of this Order and any action pursuant thereto shall be and remain in effect unimpaired and shall survive entry of any order which may be entered confirming a Plan of Reorganization of the Debtor or converting this case from Chapter 11 to Chapter 7 and the terms and provisions of this Order, as well as the priorities, liens and security interests created hereunder, shall continue in this or any other superseding case under the Code, and such liens and security interests shall maintain that priority as provided for in this Order until satisfied and discharged in full.

16. The term “Carve Out” means: (i) Quarterly fees, and interest thereon, of the United States Trustee and other fees due the United States Bankruptcy Court pursuant to 28 U.S.C. § 1930 and 31 U.S.C. § 3717, and any fees due to the Clerk of the Court; (ii) The sum of thirty- five thousand dollars (\$35,000) for professional fees and expenses, in excess of the pre-petition retainer incurred by Debtor’s counsel; (iii) the sum of twenty-five thousand dollars (\$25,000) for any claims agent required to be retained in this case; (iv) as may be agreeable to People’s, a reasonable carve out for a committee if one is formed; and (v) any cost and fees of a Chapter 7 trustee, should one be appointed, however, not to exceed the amount of \$7,500.

17. Without prejudice to the rights of third parties to the extent set forth in this paragraph; (a) the validity, extent, priority, perfection, enforceability and non-avoidability of People’s pre-petition claims against the Debtor and/or pre-petition liens shall not be subject to challenge by the Debtor; (b) the Debtor shall not seek to avoid or challenge (whether pursuant to Chapter 5 of Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtor to or for the benefit of People’s prior to the Petition Date; and (c) the Debtor hereby releases and waives all defenses, affirmative defenses, counterclaims, claims, causes of action, recoupments, setoffs or other rights that it may have to contest, (1) any Events of Default (as defined in this Order) which were or could have been declared by People’s as of the Petition Date, (2) any provisions of the People’s Documents; (3) the amount of the Pre-Petition Obligations and/or the value of the People’s Collateral on the Petition Date; or (4) the conduct of People’s and its directors, officers, employees, agents, attorneys and other professionals (collectively, the “People’s Parties”) in administering the business relationship among the Debtor and People’s, including, without limitation, “equitable subordination”, “lender liability” and/or “deepening insolvency” claims and causes of action. The Debtor hereby waives and agrees not to assert any

defenses, offsets, claims, or counterclaims, if any, with respect to the Pre-Petition Obligations, or to challenge the extent, validity, priority, enforceability, propriety or perfection of any of the liens and security interests encumbering People's pre-petition Collateral securing same, and shall not seek to avoid or challenge any transfer made by or on behalf of the Debtor to or for the benefit of People's prior to the Petition Date. Notwithstanding anything to the contrary contained in the immediately preceding sentence, a party in interest or a committee may commence a proceeding in this Court pursuant to § 506 of the Bankruptcy Code, (a) challenging the validity, extent, priority, perfection, enforceability and non-avoidability of People's pre-petition claims against the Debtor and/or pre-Chapter 11 liens, (b) seeking to avoid or challenge any transfer made by or on behalf of the Debtor to or for the benefit of People's prior to the Petition Date; or (c) seeking damages or equitable relief against People's arising from or related to the Pre-Petition business relationship between the Debtor and People's including without limitation "equitable subordination", or "lender liability" claims and causes of action (collectively, a "People's Challenge") provided such action is commenced the later of sixty (60) days following the Petition Date or, if a committee of unsecured creditors is formed, within sixty (60) days (or a longer period for cause shown before the expiration of such period) from the date of the Order approving the appointment of committee counsel. All parties in interest, including without limitation any committee, that fail to act in accordance with the time periods set forth in the preceding sentences of this paragraph shall be, and hereby are, barred forever from commencing a People's Challenge. The foregoing is without prejudice to any and all of the People's Parties' legal and equitable claims, counterclaims, defenses and/or rights of offset and setoff in response to any such People's Challenge, all of which are reserved, and the foregoing shall in no event revive, renew or reinstate any applicable statute of limitations which may have

expired prior to the date of initiation of such People's Challenge. Despite the commencement of a People's Challenge, People's pre-petition claims and liens shall be deemed valid, binding, properly perfected, enforceable, non-avoidable, not subject to disallowance under § 502(d) of the Bankruptcy Code and not subject to subordination under § 510 of the Bankruptcy Code until such time as a final and non-appealable order and/or judgment is entered sustaining such People's Challenge in favor of the plaintiff(s) therein. Notwithstanding anything to the contrary contained in this Order, any party-in-interest may commence a proceeding in this Court challenging the extent, validity, priority, and/or perfection of the CMS Lien (such a proceeding or a People's Challenge is a "Challenge"). People's or CMS, as applicable, and such challenger may enter into one or more stipulations and agreed orders ("Challenge Stipulations") in order to resolve a Challenge or potential Challenge and submit such Challenge Stipulations to the Court for consideration on presentment, and upon entry by the Court, such Challenge Stipulations shall be deemed to supersede the relevant provisions of this Order.

18. Except as set forth herein with respect to a Challenge, no rights are created under this Order for the benefit of any creditor of the Debtor, any other party in interest in the Debtor's bankruptcy case, or any other persons or entities, or any direct, indirect or incidental beneficiaries thereof.

19. The terms and conditions of this Order shall be: (a) immediately enforceable notwithstanding Rule 6004(h) of the Rules; and (b) not be stayed absent (1) an application by a party in interest for such stay in conformance with Rule 8007 of the Rules, and (2) a hearing upon notice to the Debtor, People's and CMS.

20. The provisions of this Order shall survive entry of any orders which may be entered confirming any plan of reorganization or which may be entered converting this

bankruptcy case from Chapter 11 to Chapter 7 of Bankruptcy Code. The terms and provisions of this Order, as well as the claims and debtor in possession liens granted by this Order, shall continue in this or any superseding case under Bankruptcy Code and shall continue notwithstanding any dismissal of the Debtor's bankruptcy case, and such claims and debtor in possession liens shall maintain their priority as provided by this Order until the secured obligations due People's and CMS are satisfied in full.

21. To the extent that any of the provisions of this Order shall conflict with any of the provisions of the People's Documents, this Order is deemed to control and shall supersede the conflicting provision(s).

22. The Debtor's interim authorized use of Cash Collateral pursuant to this Order, shall be in effect for the period commencing with the Petition Date through and including July , 2017 or such extension date as may be agreed upon by People's or ordered by the Court (the "Expiration Date").

23. People's shall not be subject to the equitable doctrines of "marshalling" or any similar claim or doctrine with respect to any Cash Collateral.

24. Nothing contained herein is intended to amend or supersede the terms of the Subordination Agreement with respect to the priority of liens and/or payments as between People's and CMS.

25. The hearing to approve a Final Order shall be held on July 24, 2017 at 11:00 am (the "Final Hearing") before the Honorable Cecelia G. Morris, Chief United States Bankruptcy Judge for the Southern District of New York.

26. On or before May 31, 2017, Debtor's counsel shall serve notice of the Final Hearing and a copy of this Interim Order upon (a) the parties having been given notice of the

interim hearing on the Application; (b) any other party which has filed a request for Notice with this Court and served such request upon Debtor's counsel prior to the date hereof and did not receive notice of the interim hearing. Any party in interest objecting to the approval of the proposed Final Order shall file written objections with the Clerk of the Bankruptcy Court with a courtesy copy delivered to the Honorable Cecilia G. Morris, Chief United States Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of New York at 355 Main Street, Poughkeepsie, NY 12601, so as to be received no later than July 14, 2017 and served so as to be received on or before noon on such date by the Office of the United States Trustee, for the Southern District of New York, located at 355 Main Street, Poughkeepsie, NY 12601; Edward Pontacoloni, Esq., counsel to People's Bank, Updike, Kelly & Spellacy, P.C., 100 Pearl Street, Hartford, CT 06103 and Debtor's proposed counsel, Gerard R. Luckman, Esq., Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, located at 333 Earle Ovington Boulevard, Uniondale, NY 11553.

Dated: May 24, 2017
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge