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*PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	)	
	)	Chapter 11
	)	
TOMMY'S FORT WORTH, LLC, <i>et al.</i> , ¹	)	Case No. 24-90000
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**EMERGENCY MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE USE OF CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTING, (III) MODIFYING THE
AUTOMATIC STAY, (IV) SETTING A SECOND INTERIM HEARING, (V) SETTING A
FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

**EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS
REQUESTED NOT LATER THAN 1:30 P.M. (CENTRAL TIME) ON MAY
23, 2024.**

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Tommy's Fort Worth, LLC (3473); Tommy's Holding Company, LLC (2662); Tommy's Grand Rapids, LLC (9224); Tommy's Castaic, LLC (7501); Tommy's Lewisville, LLC (4750); High Country Watersports, LLC (6160); Walloon Lake Village Marina, LLC (0277); MKB Florida Holdings, LLC (5698); Tommy's Detroit, LLC (5242); Tommy's California Fresno, LLC (8597); Tommy's Phoenix, LLC (3036); Tommy's Las Vegas, LLC (7721); Tommy's Chattanooga, LLC (0839); Tommy's California Ventura, LLC (5149); Tommy's Rancho Cordova, LLC (1070); Tommy's Stockton, LLC (1338); and Tommy's Knoxville, LLC (8052).

IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST APPEAR AT THE HEARING IF ONE IS SET, OR FILE A WRITTEN RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON MAY 23, 2024, AT 1:30 P.M. (CENTRAL TIME) IN ROOM 204, UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, 501 W. 10TH STREET, FORT WORTH, TX 76102.

YOU MAY PARTICIPATE IN THE HEARING EITHER IN PERSON OR BY AND AUDIO AND VIDEO CONNECTION.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT (650) 479-3207. VIDEO COMMUNICATION WILL BE BY USE OF THE CISCO WEBEX PLATFORM. CONNECT VIA THE CISCO WEBEX APPLICATION OR CLICK THE LINK ON JUDGE MORRIS' HOME PAGE.² THE MEETING CODE IS 2309-445-3213. CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF ELECTRONIC HEARING. TO MAKE YOUR APPEARANCE, CLICK THE "ELECTRONIC APPEARANCE" LINK ON JUDGE MORRIS' HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.

The above-captioned debtors and debtors in possession (the "**Debtors**") hereby move (the "**Motion**"), pursuant to sections 105, 361, 362, 363, 506, and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"); Rules 2002, 4001, 6004(h), 7062 and 9014 of Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"); and Appendix H to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "**Local Rules**") for entry of an order, substantially in the form of Exhibit A attached hereto

² <https://us-courts.webex.com/meet/morris>

(the “**Interim Order**”), (i) authorizing the Debtors to use the Cash Collateral of M&T Bank (“**M&T**”) and other subordinated lenders, (ii) granting M&T adequate protection upon the terms set forth in the Interim Order and in any final orders, (iii) modifying the automatic stay, and (iv) scheduling a second interim and a final hearing on the Motion and approving the form and manner of notice thereof, and granting such other and further relief as the Court deems just and appropriate. In support of the Motion, the Debtors rely upon the *Declaration of Monica S. Blacker in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court before the first-day hearing (the “**First Day Declaration**”). In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). The Debtors consent to entry of a final order under Article III of the United States Constitution.

2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 361, 362, 363, 506, and 507 Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014, and Appendix H to the Local Rules.

BACKGROUND

A. General Background

4. On May 20, 2024 (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Cases**”).

5. The factual background regarding the Debtors, including their business

operations, their capital and debt structures, and the events leading to the filing of the Cases is set forth in the First Day Declaration and incorporated herein by reference.

6. The Debtors continue to operate their businesses and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

7. No trustee or examiner, or official committee of unsecured creditors has been appointed in the Cases.

B. Prepetition Debt Structure

(i) Prepetition Floorplan Loans

8. On May 18, 2023, the Debtors, as borrowers, entered into that certain *Loan Agreement (Floor Plan Financing)* (as amended, restated, modified, or supplemented from time to time, the “**Floor Plan Agreement**”) with M&T. Pursuant to the Prepetition Floor Plan Agreement, and the associated *Variable Rate Demand Note (with Variable Rate Rider)* (the “**Prepetition Demand Note**”) and *Revolving Line Note (with Variable Rate Rider)* (the “**Prepetition Revolving Note**”, together with the Prepetition Demand Note, the “**Notes**” and together with the Floor Plan Agreement, the “**Floor Plan Loan Documents**”), M&T extended to the Debtors floor plan financing, in addition to a revolving line, in the aggregate amount of \$115,000,000.

9. Under the Prepetition Floor Plan Agreement, the M&T, pursuant to the Prepetition Demand Note, provided the Debtors with financing in the maximum aggregate amount of up to \$110,000,000. Availability under the Prepetition Demand Note is allocated among certain percentages of the Debtors’ inventory; specifically, new, used and marine inventory.

10. Pursuant to the Prepetition Demand Note, interest is set at Daily Simple SOFR, although in the event of default, and at the M&T’s discretion, interest may be set at the Base Rate,

without waiving the M&T's right to institute the Default Rate. Payment by the Debtors to the M&T is to be remitted upon the sale of any item of Floor Loan Collateral (as defined herein) that consists of marine inventory upon Debtors' receipt of the proceeds, or within 10-days from the date of the sale of such marine inventory. Currently, the Prepetition Demand Note is accruing interest at the Default Rate.

11. Additionally, the M&T, pursuant to Prepetition Revolving Note, provided the Debtors with revolving availability in the maximum aggregate amount of up to \$5,000,000. The Prepetition Revolving Note is a discretionary facility, with the M&T, at its discretion, able to modify, restrict, suspend or terminate the facility at any time and for any reason. Similar to the Prepetition Demand Note, interest on the Prepetition Revolving Note is set at Daily Simple SOFR, although in the event of default, and at M&T's discretion, interest may be set at the Base Rate, without waiving the M&T's right to institute the Default Rate.

12. The obligations under the Notes (the "**Floor Loan Obligations**") are secured by a first priority lien on substantially all of the Debtors' personal property and fixtures including, without limitation, the Debtors' accounts (including receivables), deposit and security accounts, all cash and cash equivalents, investment property, goods, equipment, inventory, general intangibles, chattel paper, instruments, payment intangibles, books and records related to the foregoing, in addition to all substitutions, accessions, products and proceeds of any kind related to the foregoing (the "**Floor Loan Collateral**").

13. As of the Petition Date, the Debtors estimate that, in the aggregate, approximately \$105,687,454 in Floor Loan Obligations are outstanding.

(ii) Subordinated Floor Plan Loan

13. On July 28, 2021, certain of the Debtors entered into that certain *Business Loan*

Agreement (as amended, restated, modified, or supplemented from time to time, the “**Subordinated Loan**”) with Mercantile Bank of Michigan (“**Mercantile**”, and together with M&T, the “**Lenders**”).

14. Under the Prepetition Subordinated Loan and related loan documents (the “**Mercantile Financing Documents**”), Mercantile provided secured funding to the Debtors in the original principal amount of \$7,294,048.29 to be utilized by the Debtors for business operations.

15. The Debtors’ obligations under the Subordinated Loan (the “**Mercantile Subordinated Obligations**”) are secured by a subordinate lien behind that of M&T on the Floor Loan Collateral M&Ts entered into that certain Subordination Letter Agreement dated May 18, 2023 (as has been amended, modified or supplemented, the “**Subordination Agreement**”), wherein Mercantile agreed, *inter alia*, to subordinate the indebtedness evidenced by the Subordinated Loan, and all liens and security interests securing such indebtedness, to the prior payment in full, in cash, of the to the outstanding Floor Plan Loans on the terms and conditions set forth in the Subordination Agreement. Mercantile, in paragraph 3 of the Subordination Agreement, agreed that so long as the Subordination Agreement is in effect, it would not, at any time, challenge or object to the M&T’s priority, or, in the context of a bankruptcy, raise, claim or assert any challenge or objection to, among other things, any cash collateral or adequate protection arrangement.

16. As of the Petition Date, the Debtors estimate that approximately \$4,740,611 in outstanding under the Mercantile Prepetition Financing Documents.

(iii) Prepetition Liens of Various Creditors

17. Other than as described above, the Debtors do not believe they have any other secured, funded-debt obligations as of the Petition Date. Notwithstanding the foregoing, suppliers

of certain goods consumed by the Debtors, in addition to lessors of certain equipment and real estate to the Debtors, each as more individually described below (collectively, the “**Lienholders**”), have filed liens in various jurisdictions against certain of the Debtors.

a. Marine Equipment and Boat Inventory Liens

18. Volvo Penta of the Americas, LLC (“**Volvo**”) provides the Debtors with various marine products and accessories. Volvo has filed several UCC-1 Financing Statements with respect to certain of the Debtors, describing its collateral as all products, inventory, parts, engines and accessories delivered by Volvo to certain of the Debtors on account that has not yet been paid, including equipment and systems used for repairs and training (the “**Volvo Collateral**”). As of the Petition Date, the Debtors believe, with respect to the Volvo Collateral, that the outstanding debt is less than \$3,000.

19. Malibu Boats, LLC (“Malibu”) provides the vast majority of the boat inventory sold by the Debtors. Malibu has filed several UCC-1 Financing Statement (PMSI) with respect to the majority of the Debtors. The collateral is described by Malibu in the filed UCC-1 Financing Statements as consisting of a purchase money security interest in all of the Debtor’s inventory sold by Malibu to the Debtors in which Malibu has not yet received payment (the “**Malibu Collateral**”). As of the Petition Date, the Debtors believe that Malibu, with respect to the Malibu Collateral, has, to date, been paid for all boats delivered to the Debtors.

b. Specific Operational Equipment Liens

20. Various parties have filed UCC-1 Financing Statements related to specific equipment sold and/or leased by such parties to the Debtors for the Debtors’ use in their businesses and operations. Such parties (hereinafter collectively referred to as the “**Equipment Lenders**”), and the equipment described in the various UCC-1 Financing Statements (hereinafter collectively

referred to as the “**Equipment Collateral**”), include: (i) Team Finance Group, Inc. (Accrolift Hoists, Caldwell Cranes, Toyota Forklift – C3845, Toyota Lift Truck – C2086); (ii) Deere & Company (3025E Tractor); (iii) Toyota Industries Commercial Finance, Inc. (Toyota Forklift – C3559); (iv) Unicarriers Capital A Program of De Lage Landen Financial Services (certain leased Unicarriers forklifts); (v) PNC Bank, National Association (certain marine accessories, including stackers and pedestals); and (vi) Industrial Leasing, LLC (2022 Unicarrier forklift).

21. As of the Petition Date, the Debtors believe that, in the aggregate, the outstanding principal debt due and owing to the Equipment Lenders with respect to the Equipment Collateral is approximately \$78,000 in the aggregate.

c. Landlord Liens

22. Certain of the Debtors lease real property in various locations, including, but not limited to, California, Colorado, Florida, Michigan, Tennessee and Texas, for purposes of their businesses and operations. The landlords under the lease agreements related to the locations, including TCO Golden, LLC, and STORE Master Funding XVIII, LLC (together, the “**Landlords**”), have each filed UCC-1 Financing Statements wherein the Landlords are granted a security interest in the personal property of the applicable Debtor in order to secure the lease payments under the respective lease agreements. As of the Petition Date, the Debtors believe that not all lease payments to the Landlords are current.

C. The Debtors’ Need for the Use of Cash Collateral

23. The Debtors have determined that absent the use of Cash Collateral, the Debtors will be unable to operate their businesses during the Cases, irreparably harming the Debtors’ estates and creditors. The denial of the use of Cash Collateral would directly result in the interruption of business operations. Further, the Debtors’ business operations would immediately

suffer the loss of key employees and vendors because the Debtors would be unable to demonstrate financial stability. Therefore, the Debtors' immediate access to Cash Collateral is necessary to preserve and maximize the value for the benefit of all parties in interest, including patients and employees.

24. In exchange for the use of Cash Collateral, the Debtors have agreed, and the Interim Order provides, adequate protection in the form of, among other things, adequate protection liens, superpriority claims, and adequate protection payments to protect M&T against any diminution in the value of interest interests in the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral, and the imposition of the automatic stay.

25. Access to existing Cash Collateral on an interim basis will provide the Debtors with the liquidity necessary to ensure that the Debtors have sufficient working capital and liquidity to operate their businesses and thus preserve and maintain the value of the Debtors' estates. Without access to such liquidity, the Debtors will face irreparable harm.

RELIEF REQUESTED

26. The Debtors respectfully request entry of the Interim Order, pursuant to Bankruptcy Code sections 105, 361, 362, 363, 506, 507 and Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014, (i) authorizing the Debtors to use the Cash Collateral, (ii) granting M&T adequate protection upon the terms set forth in the Interim Order and in any final orders, (iii) modifying the automatic stay, and (iv) scheduling a final hearing on the Motion.

27. Pursuant to Bankruptcy Rule 4001(c)(1)(B), the following is a concise statement of the material provisions of the Interim Order:³

³ Capitalized terms used but not otherwise defined in the chart have the meanings ascribed to them in the Interim Order. This summary and any other description of the Interim Order provided for in this Motion is qualified in its entirety by the actual terms of the Interim Order. The actual terms of the Interim Order will control in the event of any inconsistency between this Motion and the Interim Order.

Provision	Summary	Location
Entities with Interests in the Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(i)</i>	M&T Bank	¶ D
“Prepetition Collateral”	a. all accounts, chattel paper, investment property, deposit accounts, documents, goods, equipment, farm products, general intangibles (including trademarks, service marks, trade names, patents, copyrights, licenses and franchises), instruments, inventory, money, letter of credit rights, causes of action (including tort claims) and other personal property (including agreements and instruments not constituting chattel paper or a document, general intangible or instrument); b. all additions to, accessions to, substitutions for, replacements of and supporting obligations of the foregoing; c. all proceeds, products, rents, issues, profits and accounts arising from the foregoing and substitutions therefore, including, without limitation, insurance proceeds; and d. all business records and information relating to any of the foregoing and any software or other programs for accessing and manipulating such information.	¶ E
“Cash Collateral”	M&T’s security interests and liens have attached to all funds and property of the Debtors consisting of the Floor Loan Collateral and the products and proceeds thereof, and M&T’s security interests and liens will, notwithstanding the commencement of these Cases, as of the Petition Date and thereafter, attach to the products and other proceeds of the Floor Loan Collateral. Without limiting the foregoing, M&T’s security interests and liens attach to all cash (whether as original collateral or cash proceeds of the Prepetition Collateral), negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents now or hereafter in the possession, custody or control of the Debtors (the “ Cash Collateral ”).	¶ F
Purpose for the Use of Cash Collateral <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i>	Subject to the terms and conditions set forth in this Interim Order, the Debtors are, through and including the earlier of (a) ten (10) days from the date of entry of this Interim Order, (b) the conclusion of a further hearing on the Debtors’ use of Cash Collateral, or (c) termination of this Interim Order following issuance of a Termination Notice as set forth in <u>Paragraph 9</u> below, authorized pursuant to Bankruptcy Code sections 105, 361, 362, and 363, and Bankruptcy Rules 2002, 4001, 6003, and 9014 to use Cash Collateral on an interim basis.	¶ 2
Budget <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i>	<u>Use of Cash Collateral</u> . Subject to the terms and conditions set forth in this Interim Order, the Debtors are, through and including the earlier of (a) ten (10) days from the date of entry of this Interim Order, (b) the conclusion of a further hearing on the Debtors’ use of Cash Collateral, or (c) termination of this Interim Order following issuance of a Termination Notice as set forth in <u>Paragraph 9</u> below,	¶¶ 2; 3

Provision	Summary	Location
	authorized pursuant to Bankruptcy Code sections 105, 361, 362, and 363, and Bankruptcy Rules 2002, 4001, 6003, and 9014 to use Cash Collateral on an interim basis. The Cash Collateral may only be used to fund the types and corresponding amounts of itemized expenditures contained in the budget attached hereto as <u>Exhibit 1</u> (the “Budget”); <u>provided, however</u>, that the Debtors may use Cash Collateral in excess of the amount designated for a particular line-item so long as the percentage of deviation of each line item during any rolling 4-week period does not exceed ten percent (10%) (the “Variance”); and <u>provided further</u> that the Debtors may not amend or modify the terms and conditions of their use of the Cash Collateral, or amend, modify, roll-forward or replace the Budget itself, without the prior written consent of M&T, which may be granted or withheld in M&T’s reasonable discretion. <u>Reporting.</u> As additional protection for the Debtors’ use of Cash Collateral, the Debtors shall allow M&T and its respective professionals and designees reasonable access, during normal business hours, to the premises of the Debtors in order to conduct appraisals, analyses, and/or audits of the Prepetition Collateral, and shall otherwise reasonably cooperate in providing any other financial information requested by M&T for this purpose. From and after the entry of this Interim Order, the Debtors shall provide to M&T on Wednesday of every other week (commencing with the second week after the Petition Date), a weekly report (the “Bi-Weekly Budget Report”) certified by the Debtors’ chief restructuring officer and in the same form as the Budget indicating all receipts received and disbursements made by the Debtors in the week ending the prior Friday compared to the Budget and detailing any variances of more than 10% from the disbursements and receipts in the Budget. The Debtors, and their professionals and consultants, shall be available weekly (subject to reasonable scheduling conflicts) for a telephonic conference call with M&T and/or its professionals to discuss the status of the Cases, the results of operations and other matters pertaining to the Debtors’ facilities, including any sale or restructuring efforts. M&T shall have independent access to the Debtors’ financial advisors (if any) to discuss matters relating to the Debtors, including any contemplated sale or restructuring of the Debtors. The Debtors shall provide to M&T such other reports and information as M&T may reasonably request from time to time.	
Duration of Use of Cash Collateral/Events of Default <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i>	Subject to the terms and conditions set forth in this Interim Order, the Debtors are, through and including the earlier of (a) ten (10) days from the date of entry of this Interim Order, (b) the conclusion of a further hearing on the Debtors’ use of Cash Collateral, or (c) termination of this Interim Order following issuance of a Termination Notice as set forth in <u>Paragraph 9</u> below, authorized pursuant to Bankruptcy Code sections 105, 361, 362, and 363, and Bankruptcy Rules 2002, 4001, 6003, and 9014 to use Cash Collateral on an interim basis.	¶¶ 2; 7; 8

Provision	Summary	Location
	<u>Events of Default.</u> Each of the following shall constitute an event of default (“Event of Default”) with respect to the Debtors’ authorization to use Cash Collateral hereunder, unless otherwise waived in writing by M&T: a. entry of an order converting any of these Cases to a case under Chapter 7 of the Bankruptcy Code; b. entry of an order dismissing any of these Cases; c. entry of an order appointing or directing the election of a trustee or an examiner with expanded powers for any of the Debtors under Bankruptcy Code sections 1104 or 1106(b); d. without the prior written consent of M&T, the entry of any order (or other judicial action which has the effect of) amending, reversing, supplementing, staying the effectiveness of, vacating, or otherwise modifying this Interim Order; e. any of the Debtors uses Cash Collateral for any purpose or in a manner other than as permitted in this Interim Order and in the Budget or otherwise fails to comply with any term of this Interim Order; f. the filing by any of the Debtors of any debtor-in-possession financing pleadings or any documents pertaining to a debtor-in-possession financing not acceptable to and supported by M&T; g. the filing by any of the Debtors of any bid procedure and/or sale documents relating to the sale of the Prepetition Collateral, postpetition collateral subject to the Replacement Lien, and/or Cash Collateral not acceptable to and supported by M&T; or h. any of the Debtors voluntarily or involuntarily dissolves or is dissolved, liquidates or is liquidated or ceases the operation of any material portion of its business. <u>Termination Notice.</u> Immediately upon the occurrence or existence of an Event of Default, M&T shall be authorized to issue a notice (a “Termination Notice”) thereof to the Debtors, their counsel, counsel to any Committee and the U.S. Trustee, which Termination Notice may be delivered by electronic mail. Unless, within ten (10) business days after the issuance of such notice, the Court determines that the applicable Event of Default has not occurred or does not exist, the Debtors’ authority to use Cash Collateral shall terminate immediately without further order of the Court.	

Provision	Summary	Location
Adequate Protection <i>Bankruptcy Rule 4001(b)(1)(B)(iv)</i>	<u>Adequate Protection; Replacement Liens.</u> M&T is entitled, pursuant to Bankruptcy Code sections 361 and 363(e), to adequate protection of their interests in the Prepetition Collateral, including, but not limited to, the Cash Collateral, for any diminution in value of their interests in the Prepetition Collateral, including, without limitation, any such diminution resulting from the Debtors' use of Cash Collateral and any other Prepetition Collateral and the imposition of the automatic stay pursuant to Bankruptcy Code section 362. As security for and solely to the extent of any diminution in the value of Prepetition Collateral from and after the Petition Date, calculated in accordance with Bankruptcy Code section 506(a) (a "Diminution in Value"), M&T is hereby granted senior priority replacement liens upon all assets and property of the Debtors and their estates of any kind or nature whatsoever, now existing or hereafter acquired, including, without limitation, the Prepetition Collateral (the "Replacement Liens"), but excluding all claims and causes of action, and the products and proceeds thereof, arising under or permitted by Bankruptcy Code sections 502(d), 506(c), 544, 545, 547, 548, 549, and 550 and any other avoidance claims and causes of action arising under state or federal law; <u>provided, however</u>, that the Replacement Liens shall be subject and subordinate to (a) the Carve-Out (as defined below), and (b) the Prior Senior Liens. The Replacement Liens so granted are in addition to all security interests, liens, and rights of setoff existing in favor of M&T on the Petition Date, and are and shall be valid, perfected, enforceable, and effective as of the Petition Date without any further action of the Debtors or M&T and without the necessity of the execution, filing or recording of any financing statements, security agreements, deeds of trust, or other documents, or of obtaining control agreements over bank accounts. Notwithstanding the foregoing, M&T is hereby authorized, but not required, to file or record any financing statements, security agreements, deeds of trust, or other documents in any jurisdiction or take any other action in order to validate and perfect the Replacement Liens granted hereunder. <u>Adequate Protection; 507(b) Priority Claim.</u> M&T is hereby granted an administrative claim with a priority equivalent to a claim under Bankruptcy Code sections 364(c)(1), 503(b), and 507(b), on a dollar-for-dollar basis for and solely to the extent of any Diminution in Value, which administrative claim shall, among other things, have priority over all other costs and expenses of the kind specified in, or ordered pursuant to, Bankruptcy Code sections 105, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 1113, and 1114 (the "Superpriority Administrative Claim"), except for expenditures constituting the Carve-Out. <u>Adequate Protection; Fees and Expenses.</u> The Debtors are hereby authorized and directed to pay the reasonable and documented fees and expenses of M&T's outside legal and financial advisors in accordance with the Budget on a regular	¶¶ 4; 5; 6

Provision	Summary	Location
	monthly basis during these Cases. M&T shall provide copies of invoices to the Debtors, whom shall have ten (10) days to object to the fees and expenses sought under this paragraph. Notwithstanding the foregoing, M&T reserve its right to assert claims for the payment of additional amounts provided for in the OCAs, and to seek additional or further adequate protection from the Court.	
Carve-Out <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i>	N/A	

BASIS FOR RELIEF

A. Cash Collateral and Adequate Protection

28. Bankruptcy Code section 363(c) provides that a debtor in possession may use cash collateral if all interested entities consent or the Court, after notice and a hearing, authorizes such use. 11 U.S.C. § 363(c). Bankruptcy Code section 363(e) provides that s that “on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). *See also In re DeSardi*, 350 B.R. 790, 797 (Bankr. S.D. Tex. 2006) (“Adequate protection . . . is grounded in the belief that secured creditors should not be deprived of the benefit of their bargain”). The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor’s use. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral); see also *In re Cont’l Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 is limited to use-based decline in value).

29. Bankruptcy Code section 361 delineates non-exhaustive forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other

forms of relief. Adequate protection is determined on a case-by-case basis and may take various forms. *See, e.g., United Sav. Ass'n of Tex. V. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 793 F.2d 1380, 1388 (5th Cir. 1986). *See also In re Self*, 239 B.R. 877, 881 (E.D. Tex. 1999) (noting that the adequate protection determination is not an “exact science”); *In re Continental Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993); *MBank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *Martin v. U.S. (In re Martin)*, 761 F.2d 472, 474 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003). The focus of this requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”). “[T]he debtor-in-possession has the burden of proof on the issue of adequate protection.” *In re Cafeteria Operators, L.P.*, 299 B.R. 400, 406 (Bankr. N.D. Tex. 2003).

30. Here, M&T has not yet consented to the Debtors’ use of Cash Collateral on the terms set forth in the Interim Order. The Debtors will continue to negotiate with M&T in the attempt to achieve consent prior to the First Day Hearing. Notwithstanding consent from M&T, the proposed adequate protection included in the Interim Order provides the appropriate level of adequate protection in the form of, among other things, the Replacement Liens, the Superpriority Administrative Claim, adequate protect payments, including fees and expenses, and reporting requirements. The Debtors submit that the proposed adequate protection is appropriate and sufficient to protect M&T from any diminution in value of the Floor Loan Collateral.

31. The Cash Collateral will be used for funding business operations and allowing the Debtors to transition into the Cases. Immediate access to this liquidity will permit the Debtors to

fund necessary payroll, pay postpetition vendors, and otherwise continue business in the ordinary course. As detailed in the First Day Declaration, one reason underlying the filing of these Cases is to stabilize operations. If Cash Collateral is not available, the Debtors will be unable to make payroll and thus will dissipate value to the detriment of the M&T and other stakeholders, including employees. Thus, the use of Cash Collateral will protect M&T's security interests by preserving the value of the Floor Plan Collateral throughout the Cases. *See In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that a debtor's use of cash collateral to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor). *See also Save Power Ltd. v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.)*, 193 B.R. 713, 716 (Bankr. D. Del. 1996); *In re 499 W. Warren St. Assocs., Ltd. P'ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992).

32. In light of the foregoing, the Debtors submit that the proposed adequate protection to be provided is appropriate and necessary to protect such party against any diminution in value and is also fair and appropriate on an interim basis under the circumstances of this case and to ensure that the Debtors are able to continue using Cash Collateral in the near term, for the benefit of all parties in interest and their estates.

33. Based on the foregoing, the Debtors respectfully submit that entry of the Interim Order authorizing the interim use of Cash Collateral and scheduling a Final Hearing to approve the use of Cash Collateral on a final basis is necessary and appropriate.

B. Modification of the Automatic Stay is Warranted

34. The relief requested by this Motion contemplates a modification of the automatic stay. 11 U.S.C. § 362. The automatic stay should be modified on a limited basis (to the extent applicable) as necessary to effectuate all terms and provisions of the Interim Order, including,

without limitation to: (a) permit the Debtors to grant the Replacement Liens and Superpriority Administrative Claim and to make the adequate protection payments; (b) permit the Debtors to perform such acts as M&T may request to assure the perfection and priority of the liens granted in the Interim Order; and (c) authorize the Debtors to make, and M&T to retain and apply, payments made in accordance with the terms of the Interim Order.

35. In addition, the Interim Order provides for the termination of the automatic stay to permit M&T to exercise, upon the occurrence and during the continuation of an Event of Default, and to take other remedies relating to the Cash Collateral without further order or application to the Court. M&T is required to provide ten (10) business days' notice to the Debtors, U.S. Trustee, and the Committee (if appointed).

36. Stay modifications of this kind are ordinary and standard terms of postpetition use by debtors in possession of prepetition collateral, and, in the Debtors' business judgment, is reasonable under the present circumstances.

37. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order.

C. Interim Approval and Scheduling of a Further Interim Hearing

38. Interim relief may be granted on a motion to use cash collateral pursuant to Bankruptcy Code sections 363(c) or 364 where relief "is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2), (c)(2).

39. The Debtors believe that all or substantially all of their available cash constitutes Cash Collateral and they are therefore unable to proceed to continue their business operations without the ability to use Cash Collateral; and they will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest, including employees. The Debtors' ability

to finance its operations is vital to the preservation and maintenance of the value of the Debtors' assets, the Floor Plan Collateral, and M&T's interest.

40. The Debtors will face immediate and irreparable harm without the entry of the Interim Order. Therefore, the Debtors respectfully request that the Court schedule a further interim hearing, no later than 14 days after the date of this Motion, to consider entry of a further interim order for use of Cash Collateral.

41. Moreover, Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. The Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor.

WAIVER OF BANKRUPTCY RULES

42. To the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h), to the extent applicable. *See* Fed. R. Bankr. P. 6004(a), (h). As described above, the relief that the Debtors seeks in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

43. Notice of this Motion will be provided to the following parties or their counsel, if known: (a) the Office of the United States Trustee for Region 6; (b) the Debtors' prepetition

secured creditors; (c) the Internal Revenue Service; (d) all relevant state taxing authorities; (e) the parties included on the Debtors' consolidated list of their thirty largest unsecured creditors; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002.

44. The Debtors respectfully submit that such notice is sufficient and that no further notice of this Motion is required.

NO PRIOR REQUEST

45. No previous request for the relief sought herein has been made to this Court or any other Court.

WHEREFORE, for the reasons stated herein, the Debtors respectfully request that the Court enter the Proposed Order substantially in the form attached hereto as Exhibit A, granting the relief requested in this Motion, and granting such other relief as the Court deems just and proper.

Dated: May 22, 2024

Respectfully submitted,

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*PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION*

Exhibit A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:

TOMMY'S FORT WORTH, LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90000
)
) (Joint Administration Requested)
)

**INTERIM ORDER (I) AUTHORIZING THE USE OF CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION, (III) MODIFYING THE AUTOMATIC
STAY, (IV) SETTING A SECOND INTERIM AND A FINAL HEARING, AND
(V) GRANTING RELATED RELIEF**

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Tommy's Fort Worth, LLC (3473); Tommy's Holding Company, LLC (2662); Tommy's Grand Rapids, LLC (9224); Tommy's Castaic, LLC (7501); Tommy's Lewisville, LLC (4750); High Country Watersports, LLC (6160); Walloon Lake Village Marina, LLC (0277); MKB Florida Holdings, LLC (5698); Tommy's Detroit, LLC (5242); Tommy's California Fresno, LLC (8597); Tommy's Phoenix, LLC (3036); Tommy's Las Vegas, LLC (7721); Tommy's Chattanooga, LLC (0839); Tommy's California Ventura, LLC (5149); Tommy's Rancho Cordova, LLC (1070); Tommy's Stockton, LLC (1338); and Tommy's Knoxville, LLC (8052).

Upon the motion (the “**Motion**”)² of the Debtors for entry of an interim order (this “**Interim Order**”) (i) authorizing the Debtors to use the Cash Collateral of M&T Bank (“**M&T**”), (ii) granting M&T adequate protection upon the terms set forth in this Interim Order and in any final orders, (iii) modifying the automatic stay, (iv) scheduling a final hearing on the Motion and approving the form and manner of notice thereof, and (v) granting such other and further relief as the Court deems just and appropriate; the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b); and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consented to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor:

IT IS HEREBY FOUND THAT:³

B. On May 20, 2024 (the “**Petition Date**”), the Debtors filed petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Since the Petition Date, the Debtors have continued in the management and operation of their businesses and property as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or committee has been appointed in the Cases.

D. M&T asserts that the Debtors are obligated under the Floor Plan Loan Documents. Any and all monetary and nonmonetary obligations of the Debtors under the Floor Plan Loan Documents as of the Petition Date are referred to herein as the “**Floor Loan Obligations.**”

E. M&T’s liens and security interests with respect to the Debtors’ include:

- (1) “all accounts, chattel paper, investment property, deposit accounts, documents, goods, equipment, farm products, general intangibles (including trademarks, service marks, trade names, patents, copyrights, licenses and franchises), instruments, inventory, money, letter of credit rights, causes of action (including tort claims) and other personal property (including agreements and instruments not constituting chattel paper or a document, general intangible or instrument);
- (2) all additions to, accessions to, substitutions for, replacements of and supporting obligations of the foregoing;
- (3) all proceeds, products, rents, issues, profits and accounts arising from the foregoing and substitutions therefore, including, without limitation, insurance proceeds; and
- (4) all business records and information relating to any of the foregoing and any software or other programs for accessing and manipulating such information.”

F. M&T’s security interests and liens have attached to all funds and property of the Debtors consisting of the Floor Loan Collateral and the products and proceeds thereof, and M&T’s security interests and liens will, notwithstanding the commencement of these Cases, as of the Petition Date and thereafter, attach to the products and other proceeds of the Floor Loan Collateral. Without limiting the foregoing, M&T’s security interests and liens attach to all cash

(whether as original collateral or cash proceeds of the Prepetition Collateral), negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents now or hereafter in the possession, custody or control of the Debtors (the “**Cash Collateral**”).

G. The Debtors have requested that M&T consent to the Debtors’ use of Cash Collateral and M&T is not willing to consent to the Debtors’ use of Cash Collateral.

H. The superpriority claims, security interests and liens and other protections granted to M&T pursuant to this Interim Order (1) are fair and reasonable and satisfy the requirements of the Bankruptcy Code, and (2) will not be affected by any subsequent reversal, modification, vacatur or amendment of this Interim Order or any other order, as provided in Bankruptcy Code section 364(e).

I. The liens and security interests granted to M&T hereunder shall not prime or impair any validly perfected lien or security interest senior to the liens and security interests of M&T with respect to the Debtors’ assets and properties in existence as of the Petition Date, if any (the “**Prior Senior Liens**”). The granting of the replacement liens, superpriority administrative claims and other agreements of the Debtors hereunder constitute adequate protection to M&T for the Debtors’ use of Cash Collateral for purposes of this Interim Order.

J. Good cause has been shown for entry of this Interim Order. Without use of Cash Collateral, the Debtors will not be able to fund their day-to-day operations, including payroll for their employees. Unless the Court authorizes the use of Cash Collateral, the Debtors will be unable to pay for the goods and services necessary to preserve and maximize the value of the Debtors’ assets. Accordingly, this Interim Order is required to avoid immediate and irreparable harm to the Debtors’ estates. Entry of this Interim Order is in the best interests of the Debtors, their creditors, and the estates.

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted on an interim basis in accordance with the terms and conditions of this Interim Order.

2. Use of Cash Collateral. Subject to the terms and conditions set forth in this Interim Order, the Debtors are, through and including the earlier of (a) ten (10) days from the date of entry of this Interim Order, (b) the conclusion of a further hearing on the Debtors' use of Cash Collateral, or (c) termination of this Interim Order following issuance of a Termination Notice as set forth in Paragraph 9 below, authorized pursuant to Bankruptcy Code sections 105, 361, 362, and 363, and Bankruptcy Rules 2002, 4001, 6003, and 9014 to use Cash Collateral on an interim basis. The Cash Collateral may only be used to fund the types and corresponding amounts of itemized expenditures contained in the budget attached hereto as Exhibit 1 (the "**Budget**"); provided, however, that the Debtors may use Cash Collateral in excess of the amount designated for a particular line-item so long as the percentage of deviation of each line item during any rolling 4-week period does not exceed ten percent (10%) (the "**Variance**"); and provided further that the Debtors may not amend or modify the terms and conditions of their use of the Cash Collateral, or amend, modify, roll-forward or replace the Budget itself, without the prior written consent of M&T, which may be granted or withheld in M&T's reasonable discretion.

3. Reporting. As additional protection for the Debtors' use of Cash Collateral, the Debtors shall allow M&T and its respective professionals and designees reasonable access, during normal business hours, to the premises of the Debtors in order to conduct appraisals, analyses, and/or audits of the Prepetition Collateral, and shall otherwise reasonably cooperate in providing any other financial information requested by M&T for this purpose. From and after the entry of this Interim Order, the Debtors shall provide to M&T on Wednesday of every other week

(commencing with the second week after the Petition Date), a weekly report (the “**Bi-Weekly Budget Report**”) certified by the Debtors’ chief restructuring officer and in the same form as the Budget indicating all receipts received and disbursements made by the Debtors in the week ending the prior Friday compared to the Budget and detailing any variances of more than 10% from the disbursements and receipts in the Budget. The Debtors, and their professionals and consultants, shall be available weekly (subject to reasonable scheduling conflicts) for a telephonic conference call with M&T and/or its professionals to discuss the status of the Cases, the results of operations and other matters pertaining to the Debtors’ facilities, including any sale or restructuring efforts. M&T shall have independent access to the Debtors’ financial advisors (if any) to discuss matters relating to the Debtors, including any contemplated sale or restructuring of the Debtors. The Debtors shall provide to M&T such other reports and information as M&T may reasonably request from time to time.

4. Adequate Protection; Replacement Liens. M&T is entitled, pursuant to Bankruptcy Code sections 361 and 363(e), to adequate protection of its interests in the Prepetition Collateral, including, but not limited to, the Cash Collateral, for any diminution in value of their interests in the Prepetition Collateral, including, without limitation, any such diminution resulting from the Debtors’ use of Cash Collateral and any other Prepetition Collateral and the imposition of the automatic stay pursuant to Bankruptcy Code section 362. As security for and solely to the extent of any diminution in the value of Prepetition Collateral from and after the Petition Date, calculated in accordance with Bankruptcy Code section 506(a) (a “**Diminution in Value**”), M&T is hereby granted senior priority replacement liens upon all assets and property of the Debtors and their estates of any kind or nature whatsoever, now existing or hereafter acquired, including, without limitation, the Prepetition Collateral (the “**Replacement Liens**”), but excluding

all claims and causes of action, and the products and proceeds thereof, including but not limited to those claims and causes of action arising under or permitted by Bankruptcy Code sections 502(d), 506(c), 544, 545, 547, 548, 549, and 550 and any other avoidance claims and causes of action arising under state or federal law; provided, however, that the Replacement Liens shall be subject and subordinate to (a) the Carve-Out (as defined below), and (b) the Prior Senior Liens. The Replacement Liens so granted are in addition to all security interests, liens, and rights of setoff existing in favor of M&T on the Petition Date, and are and shall be valid, perfected, enforceable, and effective as of the Petition Date without any further action of the Debtors or M&T and without the necessity of the execution, filing or recording of any financing statements, security agreements, deeds of trust, or other documents, or of obtaining control agreements over bank accounts. Notwithstanding the foregoing, M&T is hereby authorized, but not required, to file or record any financing statements, security agreements, deeds of trust, or other documents in any jurisdiction or take any other action in order to validate and perfect the Replacement Liens granted hereunder.

5. Adequate Protection; 507(b) Priority Claim. M&T is hereby granted an administrative claim with a priority equivalent to a claim under Bankruptcy Code sections 364(c)(1), 503(b), and 507(b), on a dollar-for-dollar basis for and solely to the extent of any Diminution in Value, which administrative claim shall, among other things, have priority over all other costs and expenses of the kind specified in, or ordered pursuant to, Bankruptcy Code sections 105, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 1113, and 1114 (the “**Superpriority Administrative Claim**”), except for expenditures constituting the Carve-Out.

6. Adequate Protection; Fees and Expenses. The Debtors are hereby authorized and directed to pay the reasonable and documented fees and expenses of M&T’s outside legal and financial advisors in accordance with the Budget on a regular monthly basis during these Cases.

M&T shall provide copies of invoices to the Debtors, whom shall have ten (10) days to object to the fees and expenses sought under this paragraph. Notwithstanding the foregoing, M&T reserve its right to assert claims for the payment of additional amounts provided for in the Credit Financing Documents, and to seek additional or further adequate protection from the Court.

7. Events of Default. Each of the following shall constitute an event of default (“**Event of Default**”) with respect to the Debtors’ authorization to use Cash Collateral hereunder, unless otherwise waived in writing by M&T:

- a. entry of an order converting any of these Cases to a case under Chapter 7 of the Bankruptcy Code;
- b. entry of an order dismissing any of these Cases;
- c. entry of an order appointing or directing the election of a trustee or an examiner with expanded powers for any of the Debtors under Bankruptcy Code sections 1104 or 1106(b);
- d. without the prior written consent of M&T, the entry of any order (or other judicial action which has the effect of) amending, reversing, supplementing, staying the effectiveness of, vacating, or otherwise modifying this Interim Order;
- e. any of the Debtors uses Cash Collateral for any purpose or in a manner other than as permitted in this Interim Order and in the Budget or otherwise fails to comply with any term of this Interim Order;
- f. the filing by any of the Debtors of any debtor-in-possession financing pleadings or any documents pertaining to a debtor-in-possession financing not acceptable to and supported by M&T;
- g. the filing by any of the Debtors of any bid procedure and/or sale documents relating to the sale of the Prepetition Collateral, postpetition collateral subject to the Replacement Lien, and/or Cash Collateral not acceptable to and supported by M&T; or
- h. any of the Debtors voluntarily or involuntarily dissolves or is dissolved, liquidates or is liquidated or ceases the operation of any material portion of its business.

8. Termination Notice. Immediately upon the occurrence or existence of an Event of Default, M&T shall be authorized to issue a notice (a “**Termination Notice**”) thereof to the Debtors, their counsel, counsel to any Committee and the U.S. Trustee, which Termination Notice may be delivered by electronic mail. Unless, within ten (10) business days after the issuance of such notice, the Court determines that the applicable Event of Default has not occurred or does not exist, the Debtors’ authority to use Cash Collateral shall terminate immediately without further order of the Court.

9. Failure of Adequate Protection. Nothing herein shall constitute a waiver, release or modification of the rights of M&T to assert a claim under Bankruptcy Code sections 364(c) and 507(b).

10. Automatic Stay. The automatic stay under Bankruptcy Code section 362(a) shall be, and it hereby is, vacated and modified to the extent necessary to permit (i) M&T to receive and apply payments made pursuant to this Interim Order in accordance with the terms and provisions of this Interim Order and the Budget, and (ii) to permit M&T to send the Termination Notice (as defined herein) and to exercise any rights and remedies or other action authorized or contemplated by this Interim Order, subject to the terms and conditions contained herein.

11. Deemed Request for Stay Relief. This Interim Order shall be deemed to constitute a request by M&T for relief from the automatic stay with respect to the Prepetition Collateral (but solely to the extent provided by this Interim Order), for adequate protection for the use of Cash Collateral as of the Petition Date and shall suffice for all purposes of Bankruptcy Code section 507(b).

12. No Duty to Monitor Compliance. M&T may assume that the Debtors will comply with all terms and conditions of this Interim Order and the Budget and shall not (a) be obligated

to ensure or monitor the Debtors' compliance with any financial covenants, formulae or other terms and conditions of this Interim Order or the OCAs, (b) be obligated to pay (directly or indirectly from Cash Collateral or otherwise) any expenses incurred or authorized to be incurred pursuant to this Interim Order or in connection with the operation of the Debtors' businesses, or (c) be obligated to ensure or monitor that Cash Collateral exists to pay such expenses.

13. No Waiver. The failure of M&T to seek relief or otherwise exercise their rights and remedies under this Interim Order or the Credit Facility Documents, as applicable, shall not constitute a waiver of any of M&T's rights hereunder, thereunder or otherwise.

14. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holders or any direct, indirect or incidental beneficiary.

15. Effect of Order. This Interim Order shall be effective upon its entry and not subject to any stay (notwithstanding anything to the contrary contained in the Bankruptcy Rules, including Bankruptcy Rule 4001(a)(3)). The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered (a) confirming any plan of reorganization; (b) dismissing any one of these Cases; (c) converting any one of these Cases to any other chapter under the Bankruptcy Code; (d) withdrawing of the reference of any one of these Cases from the Court; and (e) providing for abstention from handling or retaining of jurisdiction of any one of these Cases in the Court.

16. Amendments and Waivers. The Debtors and M&T may amend, modify, supplement or waive any provision of this Interim Order in writing if such amendment, modification, supplement or waiver is not material, without any need to apply to, or receive further approval from, the Court. The Debtors shall provide notice of any such nonmaterial amendment,

modification, supplement or waiver to counsel for any Committee and the Office of the United States Trustee. Any material amendment, modification, supplement or waiver shall be in writing, signed by the Debtors and M&T, and approved by the Court on appropriate notice by the Debtors.

17. Order Governs. In the event of any inconsistency between the provisions of this Interim Order and the Motion, the provisions of this Interim Order shall govern.

18. Further Hearing. A further hearing on the Motion will be scheduled for _____, 2024, at ____ a.m./p.m. CST (the “**Further Interim Hearing**”). The Debtors will provide notice of the Final Hearing by first class mail to (a) counsel for M&T, (b) counsel for the Committee (if any), (c) the Office of the United States Trustee, (d) all parties who have filed requests for notice under Bankruptcy Rule 2002, (e) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis, (g) the Landlords; and (h) such other parties as this Court may order. Any party wishing to object to the relief granted herein being granted on a permanent basis shall file such objection with the Court, together with proof of service thereof, and served upon: (a) counsel for the Debtors; (b) counsel for M&T; (c) counsel for the Committee (if any); and (d) the Office of the United States Trustee, so as to be received no later than _____, 2024, at 4:00 p.m. CST (the “**Objection Deadline**”). If no objections are filed and served on or before the Objection Deadline, at the Final Hearing, the Court may enter a final order permitting the use of Cash Collateral by the Debtor.

###End of Order###

Exhibit 1

Budget