



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 17, 2024

A handwritten signature in black ink, appearing to be "Edward" followed by a stylized flourish.

United States Bankruptcy Judge

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.	§	(JOINTLY ADMINISTERED)
	§	

FINAL ORDER

**(I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT
TO 11 U.S.C. § 363; (II) GRANTING ADEQUATE PROTECTION TO THE
PREPETITION SECURED LENDER; AND (III) GRANTING RELATED RELIEF**

Upon the *Emergency Motion of Debtors for Entry of Interim and Final Orders (i) Authorizing Use of Cash Collateral; (ii) Granting Adequate Protecting [sic], (iii) Modifying the Automatic Stay, (iv) Setting a Second Interim Hearing, (v) Setting a Final Hearing, and (v) [sic]*

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).

Granting Related Relief [Docket No. 12] (the “Motion”),² originally filed by the debtors in the above captioned cases, Tommy’s Fort Worth, LLC, *et al.* (collectively, the “Debtors”), seeking entry of a final order (this “Final Order”), pursuant to sections 105(a), 361, 362, 363, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014:

- (a) authorizing the continued use of Cash Collateral (defined below) and all other Prepetition Collateral (each as defined below) in which Secured Lender (defined below) has an interest according to the terms and conditions of this Final Order, and the granting of adequate protection to the Secured Lender;
- (b) authorizing the provision of adequate protection to the Secured Lender to the extent of any diminution in value of its interest, not including any diminution in value as a result of depreciation or loss in value due to the passage of time, in the Prepetition Collateral, including Cash Collateral (each as defined below), under or in connection with the Prepetition Secured Agreements (as defined below);
- (c) subject to certain challenge rights of certain parties in interest (subject to the limitations specified herein), approving certain stipulations with respect to (i) the Prepetition Secured Agreements; (ii) the Loan Documents (as defined in the Credit Agreements (as defined below)); and (iii) the liens and security interests arising therefrom ((i)-(iii) are collectively defined as the “Prepetition Loan Documents”);
- (d) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein;
- (e) to the extent set forth herein, waiving the right to assert with respect to the Prepetition Collateral or the Adequate Protection Collateral (as defined below) (i) any claims to surcharge pursuant to section 506(c) of the Bankruptcy Code, (ii) any “equities of the case” exception pursuant to section 552(b) of the Bankruptcy Code, and (iii) the equitable doctrine of “marshalling” or any similar doctrine;
- (f) waiving any applicable stay with respect to the effectiveness and enforceability of this Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and
- (g) granting related relief;

and this Court having jurisdiction over the Chapter 11 Cases (defined below), the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* from the United States District Court for the

² All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

Northern District of Texas, dated August 3, 1984; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Chapter 11 Trustee (as defined below) consents to the entry of a final order by this Court under Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that, under the circumstances of these Chapter 11 Cases, proper, timely, adequate and sufficient notice of the Motion, the Final Order, and the hearing to consider entry of the Final Order (the “Final Hearing”) has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the N.D. Tex. L.B.R., and no other or further notice of the Motion, the Final Hearing, or this Final Order shall be required; and this Court having reviewed the Motion and all proposed orders submitted thereon, and having heard the statements in support of the relief requested therein at the Final Hearing; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the relief requested in the Motion being in the best interests of the Debtors, their bankruptcy estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. Disposition. The relief requested in the Motion is granted on a final basis in accordance with the terms of this Final Order. Any and all objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived or resolved, and all reservations of rights, are hereby denied and overruled on the merits, except as may be set forth herein. This Final Order shall become effective immediately upon its entry.

B. Petition Date. On May 20 and 21, 2024, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing these chapter 11 cases (the “Chapter 11 Cases”). On May 24, 2024, this Court entered an order approving the joint administration of these Chapter 11 Cases. On June 17, 2024, the United States Trustee appointed Mark Andrews as Chapter 11 Trustee (the “Chapter 11 Trustee”) for each of the Debtors’ estates. The Chapter 11 Trustee is operating the Debtors’ businesses and managing their affairs pursuant to the Bankruptcy Code. On June 24, 2024, the Office of the U.S. Trustee appointed the Official Unsecured Creditors’ Committee (the “Creditors’ Committee”).

C. Interim Orders. On May 24, 2024, May 29, 2024 and May 31, 2024, respectively, the Court entered the *Interim Order*, *Second Interim Order* and *Third Interim Order*, each (i) *Authorizing the Debtors to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363*; (ii) *Granting Adequate Protection to the Prepetition Secured Party Pursuant to 11 U.S.C. §§ 105(a), 361, 362, 363, 503 And 507*; and (iii) *Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b)*; and (iv) *Granting Related Relief* [Docket Nos. 52, 76, 95] (the “Interim Orders”). For the avoidance of doubt, the provisions of this Order supersede and replace the Interim Orders *nunc pro tunc*.

D. Stipulations. In requesting use of its Cash Collateral and the other Prepetition Collateral, and in exchange for and as a material inducement to the Secured Lender’s agreement to permit consensual use of use of its Cash Collateral and the other Prepetition Collateral, the Chapter 11 Trustee acknowledges, represents, stipulates, reconfirms, and agrees, subject only to the challenge rights set forth in Paragraph 19 below (but subject to the limitations thereon contained herein), as follows (Paragraphs D(i) through D(xvii) are collectively defined as the “Chapter 11 Trustee’s Stipulations”):

(i) The Debtors executed and delivered to M&T Bank a *Variable Rate Demand Note (Floor Plan)* dated May 18, 2023 (the “Floor Plan Note”). The Debtors also executed and delivered to M&T Bank a *Revolving Line Note (New York)* dated May 18, 2023 (the “Revolving Note,” and collectively with the Floor Plan Note, the “Notes”), and a *Loan Agreement (Floor Plan Financing)* dated May 18, 2023 (the “Loan Agreement”). Pursuant to the Notes and Loan Agreement, M&T Bank made two revolving credit loans to the Debtors for purposes of providing floor plan financing and working capital, in an aggregate maximum principal amount totaling over \$115,000,000.00 (the “Loans”). On May 17, 2023, Debtors executed a General Security Agreement (New York) (the “Security Agreement”). The Notes, Loan Agreement, Security Agreement, and related documents are referred to collectively as the “Credit Agreements” and along with the relevant Loan Documents, including, without limitation, that certain Subordination Letter Agreement dated May 18, 2023, by and between M&T Bank and Mercantile Bank (the “Subordination Agreement” and together with the Credit Agreements, the “Prepetition Secured Agreements”), pursuant to which M&T Bank, as lender, agreed to make loans to the Debtors;³

(ii) Under the terms of the Security Agreement, Secured Lender was granted a first priority lien on all of the Debtors’ accounts, inventory, equipment, general intangibles and all other business assets and personal property including, without limitation, (A) all “New Marine Inventory,” “Rental Marine Inventory” and “Used Marine Inventory” (as those terms are defined in the Loan Agreement), and all boats, trailers, engines, motors and other marine inventory acquired by the Debtors with Floor Plan Loan advances (collectively, the “Financed Marine Inventory”), (B) all other boats, trailers, engines, motors and other marine inventory held by the

³ M&T Bank, in its capacities as lender under the Credit Agreements and secured party under the Security Agreement is collectively referred to as the “Secured Lender”.

Debtors for sale or lease, whether acquired by the Debtors with Loan advances or otherwise), and (C) all products, replacements, cash and non-cash proceeds thereof. *See* Security Agreement § 1.1. (collectively, the “Collateral”);

(iii) as of the Petition Date, the Debtors were liable to the Secured Lender pursuant to the Prepetition Loan Documents for (a) the aggregate principal amount not less than \$105,687,454.00 and (b) accrued and unpaid interest, fees, expenses (including advisors fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition Loan Documents), disbursements, charges, claims, indemnities, and other costs and obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the Prepetition Loan Documents or applicable law, whether arising before or after the Petition Date, including any “Obligations” (as defined in the Prepetition Loan Documents), of any kind or nature, whether or not evidenced by any note, agreement or other instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Debtors’ obligations under the Prepetition Loan Documents ((a) through (b) are collectively defined as the “Prepetition Obligations”);

(iv) all of the Prepetition Obligations constitute the legal, valid, properly authorized, binding, and unconditional obligations of the Debtors to the Secured Lender, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code);

(v) no portion of the Prepetition Obligations or any payments made to the Secured Lender or applied to or paid on account of the obligations owing under the Prepetition Loan Documents prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery,

reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise, and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff, or defense of any kind, nature or description that would in any way affect the validity, enforceability, and non-avoidability of any Prepetition Obligations;

(vi) pursuant to and in connection with the Prepetition Loan Documents, each Debtor granted to M&T Bank, in its capacity as Secured Lender, continuing, legal, valid, binding, properly authorized, and perfected, enforceable, non-avoidable first priority liens on and security interests in (the “Prepetition Liens”) all of the Collateral (as defined in each respective Prepetition Loan Document) (the “Prepetition Collateral”), which Prepetition Liens (a) secure all of the Prepetition Obligations; (b) are not subject to any contest, avoidance, recharacterization, subordination (whether equitable, contractual or otherwise) (except as expressly set forth in subclause (c) below), recovery, reduction, attachment, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, challenge, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any nature under the Bankruptcy Code or any other applicable law or regulation or otherwise; and (c) are and remain senior in priority over any and all other liens on and security interests in the Prepetition Collateral, subject only to valid, perfected, and unavoidable liens on or security interests in the Prepetition Collateral that are senior to or *pari passu* with the Prepetition Liens (a “Permitted Encumbrance”);

(vii) the Secured Lender duly perfected the Prepetition Liens in the Prepetition Collateral by, among other things, filing financing statements, and, where necessary, possessing the relevant instruments, certificates, or other property;

(viii) [reserved];

(ix) as of the Petition Date, other than tax liens filed by governmental units or as expressly permitted under the Prepetition Loan Documents, there were no liens on or security interests in the Prepetition Collateral other than the Prepetition Liens and other than liens that are subordinate to that of the Secured Lender and for which Debtors have no obligation to provide adequate protection;

(x) the Chapter 11 Trustee agrees to waive, discharge and release any right he may have to challenge the Prepetition Obligations and the Prepetition Liens on the Prepetition Collateral, and to assert any offsets, set-offs, recoupments, defenses, claims, objections, challenges of any kind, causes of action and/or choses of action against the Secured Lender, with respect to the Prepetition Obligations, the Prepetition Liens, or the Prepetition Collateral;

(xi) any payments made on account of the Prepetition Obligations before the Petition Date were (a) payments out of the Prepetition Collateral, and/or (b) made in the ordinary course of business and did not diminish any property otherwise available for distribution to unsecured creditors;

(xii) all of the Debtors' cash, as of the Petition Date, including the cash in their deposit accounts and other accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral and is Prepetition Collateral of the Secured Lender;

(xiii) the Chapter 11 Trustee admits, stipulates, acknowledges, and agrees that the Secured Lender may credit bid the full amount of (or any portion of) the Prepetition Obligations;

(xiv) the Secured Lender has never been and is not a control person or insider of the Debtors by virtue of any of the actions taken by any of them in respect of or in connection with (a) making the decision to consent to the use of Cash Collateral; (b) extending other financial accommodations to the Debtors under this Final Order or the Interim Orders; (c) making the decision to make the loans and financial accommodations under the Prepetition Loan Documents; (d) administering the loans and financial accommodations extended under the Prepetition Loan Documents; (e) extending other financial accommodations to the Debtors under the Prepetition Loan Documents; and (f) making the decision to collect the indebtedness and obligations of the Debtors, the Secured Lender shall not be considered to be exercising control over any operations of the Debtors or acting in any way as a responsible person, or as an owner or operator under any applicable law; and

(xv) the Secured Lender is entitled, pursuant to sections 361, 362(c)(2), 363(e), and 507 of the Bankruptcy Code, to adequate protection of its respective interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any diminution in the value of the Prepetition Collateral occurring from and after the Petition Date, in exchange for (a) the use of Cash Collateral, (b) the subordination of the Prepetition Obligations to the Carve Out (as defined herein), and (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

E. Cash Collateral. For purposes of this Final Order, the term “Cash Collateral” shall mean and include all “cash collateral,” as defined in section 363 of the Bankruptcy Code, in or on which the Secured Lender has a lien, security interest or other interest (including, without

limitation, any adequate protection liens or security interests granted pursuant to the Interim Orders and this Final Order).

F. Findings Regarding the Secured Lender's Consent to Use of the Prepetition Collateral (including Cash Collateral). The Secured Lender has consented to the adequate protection and the subordination of their liens and superpriority claims to the Carve Out provided for in this Final Order; provided, however, that the consent of the Secured Lender to subordinate its liens and superpriority claims to the Carve Out, the use of the Prepetition Collateral (including Cash Collateral), and the sufficiency of the respective adequate protection provided for herein are expressly conditioned upon the entry of this Final Order; provided, further, that such consents shall be of no further force and effect in the event this Final Order is not entered (or is entered and subsequently vacated).

G. Necessity of Relief Requested. The Chapter 11 Trustee requests the use of the Prepetition Collateral (including Cash Collateral) in order to permit, among other things, the orderly continuation of the operation of the Debtors' businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, and to satisfy other working capital and operational needs, in accordance with the terms of this Final Order, including the Budget (as defined below).⁴ The access of the Chapter 11 Trustee to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral is necessary to preserve and maintain the going concern value of the bankruptcy estates and is vital to the Chapter 11 Trustee's liquidation efforts. Without the use of Cash Collateral, the Chapter 11 Trustee may not have sufficient liquidity to continue to operate the Debtors' businesses. Entry of

⁴ For clarity, all references in the Final Order to the Budget shall refer to the Budget subject to any applicable Permitted Variance (as defined herein).

this Final Order will preserve the assets of each of the Debtors' bankruptcy estates and their value and is in the best interests of the Debtors, their creditors, and their estates. The Adequate Protection Liens, the Adequate Protection Superpriority Claims, and the Adequate Protection Payments (each as defined below) provided herein are consistent with and authorized by the Bankruptcy Code.

H. Marshalling and Sections 506(c) and 552(b) Waivers. To the extent set forth herein, in light of the Secured Lender's agreement to subordinate its liens and superpriority claims to the Carve Out, the Court's ruling that such liens and superpriority claims do not attach or have recourse against the Unencumbered Collateral (as defined below), the Prepetition Secured Parties' consent to use of their Cash Collateral, and the Budget covering anticipated administrative costs projected by the Chapter 11 Trustee, the Prepetition Secured Parties are entitled to a waiver of (i) any "equities of the case" claims under section 552(b) of the Bankruptcy Code, (ii) the provisions of section 506(c) of the Bankruptcy Code, and (iii) the equitable doctrine of "marshalling" or any similar doctrine.

I. Exercise of the Chapter 11 Trustee's Business Judgment. Based on the Motion and the record presented to the Court at the Final Hearing, the terms on which the Chapter 11 Trustee may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Final Order are fair and reasonable and reflect the Chapter 11 Trustee's exercise of prudent business judgment consistent with his fiduciary duties.

J. Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Good cause has been shown for entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules (N.D. Tex. L.B.R.). Entry of this Final Order and the use of Prepetition Collateral, including Cash Collateral, in accordance with this Final Order are in the best interests of the Debtors, their estates and their creditors. The terms of this Final Order are fair and reasonable under the circumstances,

reflect the Chapter 11 Trustee's exercise of prudent business judgment consistent with his fiduciary duties and are supported by reasonably equivalent value and fair consideration.

K. Certain Secured Parties Subject to Subordination Agreement. Mercantile Bank of Michigan ("Mercantile") and Secured Lender are parties to the Subordination Agreement. The Subordination Agreement is a "subordination agreement" within the meaning of section 510(a) of the Bankruptcy Code. The respective interests of Secured Lender and Mercantile in the Prepetition Collateral shall in each instance continue to be governed by the Subordination Agreement. In accordance with the Subordination Agreement, Mercantile is deemed to consent to the relief requested in this Final Order.

Based on the foregoing, the Motion, and the record made before the Court at the Final Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. Motion Granted. The Motion is GRANTED, and the Chapter 11 Trustee's use of Cash Collateral and other Prepetition Collateral on a final basis is authorized, subject to the terms and conditions of this Final Order.

2. Authorization.

(i) Any funds that are (or have been) deposited into any Deposit Account (as defined in Article 9 of the Uniform Commercial Code) of the Debtors on or after the Petition Date (such new funds, the "Postpetition Funds") and all funds existing in any of the Debtors' Deposit Accounts as of the Petition Date (such existing funds, the "Prepetition Funds") shall be deemed "Collateral" (as defined in each respective Prepetition Loan Document) of the Secured Lender; and

(ii) Notwithstanding the foregoing, to the extent any funds deposited into Debtors' Deposit Accounts are determined by the Court not to be Collateral ("Unencumbered Funds"), any funds used by the Debtors or Chapter 11 Trustee after the Petition Date shall first be deemed to be made out of the Unencumbered Funds. If the Debtors or the Chapter 11 Trustee use any of the Prepetition Funds or any Postpetition Funds that are the Collateral of the Secured Lender (the "Encumbered Funds"), then the Secured Lender shall be entitled to adequate protection, as provided for in Paragraph 5 of this Final Order, to the extent of any diminution in value of the Encumbered Funds, not including any diminution in value as a result of depreciation or loss in value due to the passage of time. The Chapter 11 Trustee and Creditors' Committee reserve all rights to challenge any assertion of any diminution in value of the Encumbered Funds or any other claim for any alleged diminution in value.

(iii) The Chapter 11 Trustee is hereby authorized, subject to the terms and conditions of this Final Order and compliance with the Budget (as defined below), to use Cash Collateral to the extent unencumbered funds are unavailable; provided that (a) the Secured Lender is granted the adequate protection as hereinafter set forth and (b) except on the terms, conditions and limitations of this Final Order, the Debtors and the Chapter 11 Trustee shall be prohibited from at any time using the Cash Collateral absent further order of the Court.

3. Budget. The Chapter 11 Trustee (for the Debtors' and each of their bankruptcy estates) and the Secured Lender have agreed to an initial budget attached hereto as **Exhibit 1**, including an initial four (4)-week cash flow forecast setting forth all projected cash receipts and cash disbursements on a weekly basis (the "Budget"). The Budget includes and contains the Chapter 11 Trustee's reasonable estimate of all operational receipts and all operational disbursements, fees, costs, and other expenses that will be payable, incurred, and/or accrued by

any of the Debtors during the period covered by the Budget. The Secured Lender shall have no obligation to permit the use of Cash Collateral, and neither the Debtors nor the Chapter 11 Trustee shall have any authority to use Cash Collateral hereunder other than in accordance with the Budget, subject to the Permitted Variance (as defined below), and as set forth in this Final Order. The Secured Lender (i) may assume the Chapter 11 Trustee will comply with the Budget, (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred in excess of the Budget (subject to any Permitted Variance (as defined herein)), except the Carve Out as permitted in this Final Order. For the avoidance of doubt, the Budget shall not serve as a limit or cap on the fees and expenses that may be incurred by any of the estates, Chapter 11 Trustee's professionals, or the Creditors' Committee's professionals, or prevent such professionals from seeking or obtaining payment and reimbursement of its respective professional fees and expenses.

4. Permitted Variance. So long as no Event of Default (as defined below) has occurred, the Chapter 11 Trustee shall be authorized to use Cash Collateral with respect to the Budget subject to the Permitted Variances (as defined herein). Subject to the foregoing, the Chapter 11 Trustee shall not permit, for any applicable four (4)-week period (each a "Measurement Period"), the actual disbursements during such Measurement Period to be greater than one-hundred five percent (105%) of the projected disbursements set forth in the Budget for such Measurement Period (the "Permitted Variance"); provided, however, that the following shall be excluded in determining Permitted Variances for any Measurement Period: (i) any Allowed Professional Fees (as defined below) and any payments to the U.S. Trustee (as defined herein), and (ii) any proceeds of Financed Marine Inventory remitted to the Secured Lender in excess of the projected amount

set forth in the Budget, to the extent of a corresponding increase in receipts related to ordinary course sales of such Financed Marine Inventory.

5. Adequate Protection of Secured Lender. Pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, the Secured Lender is entitled to adequate protection of its interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate actual diminution (if any) in the value of the Secured Lender's interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, not including any diminution in value as a result of depreciation or loss in value due to the passage of time, if any, for any reason provided for under the Bankruptcy Code (such diminution in value, the "Adequate Protection Amount"); *provided that* (a) the Adequate Protection Amount shall be \$0 if the Prepetition Obligations are paid in full from the proceeds of the Prepetition Collateral and (b) the avoidance of the Secured Lender's interests in Prepetition Collateral as determined by a final non-appealable order of a court of competent jurisdiction shall not constitute diminution in the value of the Secured Lender's interests in Prepetition Collateral. As adequate protection for the Adequate Protection Amount, and solely to the extent of same, the Secured Lender is hereby granted the following:

(i) *Adequate Protection Liens.* Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for the Adequate Protection Amount, effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by the Secured Lender of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the Secured Lender of any Adequate Protection Collateral (as defined below), the Secured Lender is hereby granted, solely to the extent of any actual diminution in value (not including any diminution

in value as a result of depreciation or loss in value due to the passage of time), if any, of the Prepetition Collateral, as security for the payment of the Adequate Protection Amount, valid, binding, continuing, enforceable, fully perfected, first priority senior replacement liens on and security interests in (collectively, the “Adequate Protection Liens”) any and all tangible and intangible pre- and post-petition property of the Debtors, whether existing before, on or after the Petition Date, together with any proceeds thereof, including, without limitation, any and all cash and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, goods, investment property, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, securities accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing (collectively, the “Adequate Protection Collateral”), *provided, however*, that Adequate Protection Collateral shall not include, and the Adequate Protection Liens granted hereunder shall not attach to, unencumbered prepetition commercial tort claims asserted or assertable by the Debtors or the proceeds of any claims or causes of action of the bankruptcy estates arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law (collectively, the “Unencumbered Collateral”). The Adequate Protection Liens shall be junior only to (a) the Carve Out (as defined herein), and (b) any Permitted Encumbrance. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Adequate Protection Collateral. Subject in all respects to the Carve Out (as

defined herein), the Adequate Protection Liens shall not be subject to sections 506(c), 510, 549, 550, or 551 of the Bankruptcy Code. The Adequate Protection Liens shall be enforceable against and binding upon the Chapter 11 Trustee, the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (each, a “Successor Case”). Notwithstanding the foregoing, the Adequate Protection Liens granted hereunder shall be subordinate to any existing security interests created pursuant to a Loan Contract or Retail Contract under any recreation finance dealer agreements between the Debtors and U.S. Bank National Association or other recreational financiers.

(ii) *Adequate Protection Superpriority Claims.* The Adequate Protection Amount due to the Secured Lender shall constitute allowed superpriority administrative expense claims against the Debtors in the amount of any actual diminution (if any) in value of the Prepetition Collateral, including Cash Collateral, as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113, 1114 and any other provision of the Bankruptcy Code, and shall at all times be senior to the rights of the Chapter 11 Trustee, the Debtors and any successor trustee or creditor in these Chapter 11 Cases or any Successor Case (the “Adequate Protection Superpriority Claims”), subject and subordinate only to the Carve Out (as defined herein). Notwithstanding the foregoing and for the avoidance of doubt, (i) the Adequate Protection

Superpriority Claims shall not have recourse to, or be payable from, the Unencumbered Collateral, and (ii) nothing in this Final Order shall alter or modify the requirements set forth in Bankruptcy Code section 1129.

(iii) *Application of Proceeds of Collateral.* The Chapter 11 Trustee shall remit to the Secured Lender, as Adequate Protection Payments (as defined below), all net proceeds (after paying all necessary costs consistent with the Budget, including, without limitation, sales taxes) from any sale of the Financed Marine Inventory and other Collateral: (a) for sales outside of the ordinary course of business, as may be approved by separate orders of the Bankruptcy Court, in the amounts set forth in the Budget or as may be otherwise agreed between the Chapter 11 Trustee and the Secured Lender, and (b) for sales of Financed Marine Inventory in the ordinary course, unless otherwise agreed to by the Chapter 11 Trustee and the Secured Lender, in amounts not less than the principal amounts advanced by the Secured Lender for the Debtors' acquisition of such Financed Marine Inventory (the "Floor Plan Amount"); *provided, however*, that in the event any Financed Marine Inventory was subject to an existing security interest held by U.S. Bank National Association or another recreational financier at the time such Financed Marine Inventory was acquired by the Debtors (a "Customer Trade Lien"), the net proceeds of such Financed Marine Inventory shall be paid first, to the holder of such Customer Trade Lien up to the amount of the unpaid balance owed on such Customer Trade Lien, subject to the holder's delivery of satisfactory documentation, and then to the Secured Lender up to the Floor Plan Amount. The foregoing Adequate Protection Payments shall be applied by the Secured Lender as a permanent reduction of the Prepetition Obligations under and in accordance with the terms of the applicable Prepetition Loan Documents (subject, for the avoidance of doubt, to clause (iv) below).

(iv) *Payment of Prepetition and Postpetition Interest.* To the extent and only to such extent the Bankruptcy Court determines, after notice and a hearing, that the Secured Lender is over-secured at any time during the pendency of the case, the Chapter 11 Trustee shall pay to the Secured Lender all accrued and unpaid interest (including, for the avoidance of doubt, interest accruing and becoming due after the Petition Date) at the applicable default rates and consistent with the ordinary course interest payment dates set forth in each respective Prepetition Loan Document (the “Adequate Protection Interest Payments”) and current cash payments of all reasonable and documented prepetition and postpetition fees and expenses payable to the Secured Lender under the Prepetition Loan Documents, including, but not limited to, the reasonable and documented prepetition and postpetition fees and disbursements of legal counsel, financial advisors, and other consultants (the “Adequate Protection Fees and Expenses”, and together with the Adequate Protection Interest Payments, the “Adequate Protection Payments”). Payment of all such Adequate Protection Fees and Expenses shall not be subject to allowance by the Court but shall be subject to the following process. At the same time such invoices are delivered to the Debtors and the Chapter 11 Trustee, the professionals for the Secured Lender shall deliver a copy of their respective invoices to counsel for any committee appointed in these Bankruptcy Cases pursuant to section 1102 of the Bankruptcy Code, including counsel for the Creditors’ Committee, and the office of the United States Trustee (the “U.S. Trustee”). The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, may be in summary form only, and shall not be subject to application or allowance by the Court. Any objections raised by the Chapter 11 Trustee, Debtors, the U.S. Trustee, or the Creditors’ Committee with respect to such invoices within ten (10) business days of receipt thereof will be resolved by the Court (absent prior

consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be promptly paid by the Chapter 11 Trustee. Except as otherwise ordered by the Court in the event an objection is timely filed, such fees and expenses shall not be subject to any setoff, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever.

(v) *Possession of Title/MSOs*. The Chapter 11 Trustee shall, within five (5) days of the date of this Final Order, provide written verification to the Secured Lender of the Chapter 11 Trustee's physical possession, dominion, and control of all certificates of title, manufacturer's certificate or origin, manufacturer's statement or origin or other similar certificates, instruments or documents reflecting ownership of any Financed Marine Inventory (collectively, the "MSOs") for any of the Financed Marine Inventory. As soon as practicable following the Termination Date (as defined below), the Chapter 11 Trustee shall transmit to the Secured Lender original copies of all MSOs remaining in the Chapter 11 Trustee's physical possession, dominion, and control as of the Termination Date, except for MSOs relating to Financed Marine Inventory that is the subject of a sale to a bona fide third party purchaser prior to the Termination Date, or for which the full Floor Plan Amount has been delivered to the Secured Lender prior to the Termination Date.

6. Reporting. The Chapter 11 Trustee shall comply with the reporting requirements set forth in the Prepetition Loan Documents, and the Chapter 11 Trustee shall provide the following additional reporting to the Secured Lender and the Creditors' Committee:

(i) On or before the last business day of every second calendar week starting on the first Friday two (2) weeks following the entry of this Final Order, an updated Budget (the "Proposed Budget") with respect to the Debtors for the current calendar week then ended and the immediately following consecutive four (4) weeks (collectively, five (5) weeks), set forth on a

weekly basis. Each Proposed Budget provided to the Secured Lender (with a copy to the Creditors' Committee) shall be of no force and effect unless and until it is approved by the Secured Lender and, until such approval is given, the prior Budget shall remain in effect. Each Proposed Budget shall become the Budget five (5) days after delivery by the Chapter 11 Trustee to the Secured Lender (with a copy to the Creditors' Committee) if approved in accordance with the foregoing (and the Secured Lender shall be deemed to have approved the Proposed Budget upon the passage of five (5) days with no written objection, including e-mail). Any such Proposed Budget, upon the approval of the Secured Lender shall become, as of the date of such approval or such determination and for the period of time covered thereby, the Budget, and shall prospectively replace any prior Budget. If the Chapter 11 Trustee and the Secured Lender are unable to agree on a Proposed Budget's terms, the Chapter 11 Trustee reserves the right to seek an expedited hearing with the Court to resolve such disagreement. In that event, the Secured Lender shall not oppose the request for expedited consideration provided that any such hearing is held on not less than 48 hours' notice to the Secured Lender. In the event of any dispute regarding the terms of a Proposed Budget, the Chapter 11 Trustee, the Creditors' Committee, and the Secured Lender reserve any and all rights under the Bankruptcy Code or applicable law;

(ii) on or before the fifth (5th) business day following every calendar week, starting the first Friday following the entry of this Final Order, a report (each a "Variance Report"), in each case certified by the Chapter 11 Trustee showing (a) for the two-week period ended the preceding Friday, the cumulative actual "Total Cash Receipts," "Total Third Party Disbursements Excluding Professional Fees" and "Net Cash Flow Excluding Professional Fees"; and (b) the variance (as a percentage) of the amounts set forth in clause (a) from the amounts set forth in then-applicable Budget;

(iii) on each Friday following entry of this Final Order, a report showing the actual cash receipts and disbursements for the week ending the preceding Friday;

(iv) on each Friday of the first full week following entry of this Final Order, a weekly sales report reflecting the status of all cashiered sales (including, without limitation, purchase price, customer deposits, all applicable VINs, HINs, stock and/or serial numbers for the inventory being sold), and a detailed calculation of all proceeds of Financed Marine Inventory received during the applicable week together with such information as Secured Lender may require in order to confirm its receipt and application of the relevant proceeds in accordance with the terms of this Final Order;

(v) all financial reports, forecasts and all other financial documentation, pleadings and other filings that are reasonably requested by the Secured Lender or its representatives and agents;

(vi) in addition to, and without limiting, whatever rights to access which the Secured Lender has under the Prepetition Loan Documents, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall (a) permit representatives of the Secured Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and (b) cause their representatives and agents to make themselves reasonably available to discuss the Debtors' affairs, financial condition, properties, business, operations and accounts with the representatives and agents of the Secured Lender.

7. Cash Management. Subject to the cash management order entered by the Court, the Chapter 11 Trustee is authorized and directed to maintain their cash management system in a

manner consistent with this Final Order, and any order of this Court approving the maintenance of the cash management system.

8. Requests for Further Adequate Protection. Nothing in this Final Order shall be deemed to limit, abridge, waive or otherwise affect (i) any right of the Secured Lender to request at any time that the Court provide different, additional or further adequate protection of its interests in the Prepetition Collateral (including Cash Collateral) or to seek different, additional, or further adequate protection in the event the Secured Lender contends that the adequate protection provided herein is inadequate or (ii) the ability of the Chapter 11 Trustee or any other party in interest to oppose any such relief.

9. Continuation of Prepetition Liens. Subject to the challenge rights set forth in Paragraph 19, until the Secured Lender is Paid in Full, all liens and security interests of the Secured Lender (including, without limitation, the Adequate Protection Liens) shall remain valid and enforceable with the same continuing priority as described herein. The term “Paid in Full” or “Payment in Full” means (i) all of the Prepetition Obligations, any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims, have been indefeasibly paid in full in cash and completely satisfied (including the cash collateralization of any letters of credit); and (ii) the Secured Lender shall receive a release from each Debtor of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities in form and substance acceptable to the Secured Lender, and the Challenge Period has expired without the commencement of any Challenge Proceeding, or, if a Challenge

Proceeding was timely commenced in accordance with Paragraph 19 of this Final Order, any such Challenge Proceeding has been resolved or dismissed on a final and non-appealable basis.

10. Modification of Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to effectuate all of the terms and provisions of this Final Order.

11. Perfection of Adequate Protection Liens.

(i) The Secured Lender is hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the Adequate Protection Liens. Whether or not the Secured Lender shall, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments, or take possession of or control over any cash, securities or any other property of the Debtors, or take any action that otherwise may be required under federal, state or local law in any jurisdiction to validate and perfect a security interest or lien, in any such case, the Adequate Protection Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Final Order), at the time and on the date of entry of this Final Order or thereafter. Upon the reasonable request of the Secured Lender, the Secured Lender (at the Debtors' cost and expense) and the Debtors, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the Secured Lender to further validate, perfect, preserve and enforce the Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(ii) A certified copy of this Final Order (or the notice of the filing hereof) may, in the discretion of the Secured Lender, be filed with or recorded in filing or recording offices in addition to or *in lieu* of such financing statements, mortgages, deeds of trust, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order or notice for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the Secured Lender to take all actions, as applicable, referenced in this Paragraph 11(ii) and Paragraph 11(i).

12. Termination of Cash Collateral Authorization. Subject to any applicable cure or Remedies Notice Period set forth below, the Chapter 11 Trustee's right to use Cash Collateral shall terminate without prior order of this Court or any further action by the Secured Lender, unless such Event of Default is waived by the Secured Lender in writing, on the earliest to occur of (each, an "Event of Default"):

(i) the date the Chapter 11 Trustee (or any other party with standing to act on behalf of the Debtors' estates) files or otherwise support any motion, pleading, or other document that materially, adversely affects the Secured Lender, including under a plan of reorganization or liquidation, without the prior written consent of the Secured Lender; provided, that if, pursuant to a plan of reorganization or liquidation, the Prepetition Obligations, any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims, are Paid in Full on the effective date of such plan, such consent shall not be required; provided, further, that a Challenge Proceeding shall not trigger an Event of Default under this Paragraph;

(ii) any failure to comply by the Chapter 11 Trustee with any of the material terms or conditions of this Final Order, including, but not limited to, (a) the use of Cash Collateral

for any purpose other than as permitted in this Final Order, (b) the failure to comply with the Budget (including any distributions in excess of the Permitted Variance that have not been resolved and approved, in writing, by the Secured Lender), (c) the sale of any Financed Marine Inventory, from and after the date of entry of this Final Order, without remitting the applicable Floor Plan Amount to the Secured Lender in accordance with Paragraph 5(iii) of this Final Order, or (d) the failure to make any payment under this Final Order to the Secured Lender within five (5) business days after such payment becomes due (other than payments required under Paragraph 5(iv) of this Final Order, which payments shall be made as required therein);

(iii) the date the Chapter 11 Trustee file an application, motion, or other pleading seeking to amend, modify, supplement, or extend this Final Order without the prior written consent of the Secured Lender;

(iv) this Final Order ceases, for any reason (other than by reason of the express written agreement by the Secured Lender), to be in full force and effect in any material respect, or any Debtor or Chapter 11 Trustee so asserts in writing, or the Adequate Protection Liens or Adequate Protection Superpriority Claims created by this Final Order cease in any material respect to be enforceable and of the same effect and priority purported to be created hereby or any Debtor or Chapter 11 Trustee so asserts in writing;

(v) the Court shall have entered an order reversing, amending, supplementing, staying, vacating, or otherwise modifying this Final Order in a manner materially adverse to the Secured Lender without its consent;

(vi) the date the Chapter 11 Trustee files or otherwise supports any application, motion, or other pleading for the approval of any superpriority claim or any lien in these Chapter

11 Cases that is *pari passu* with or senior to the Adequate Protection Superpriority Claims, or the Adequate Protection Liens without the prior written consent of the Secured Lender;

(vii) the date the Chapter 11 Trustee files any pleading or commences any action against the Secured Lender challenging the validity or enforceability of the Prepetition Obligations or the Prepetition Liens or seeking to avoid, disallow, subordinate, or recharacterize any claim, lien, or interest held by the Secured Lender arising under or related to the Prepetition Obligations; provided, however, that the Termination Date (defined below) shall not be deemed to occur if the Chapter 11 Trustee seeks approval of debtor in possession financing, including, without limitation, debtor in possession financing which primes existing liens, that provides for Payment in Full of the Prepetition Obligations, any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims, unless the Secured Lender provides prior written consent for financing that does not provide for Payment in Full of the Prepetition Obligations, any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims; provided, further, that a Challenge Proceeding shall not trigger an Event of Default under this Paragraph;

(viii) the date (a) any court enters an order dismissing any of the Chapter 11 Cases, converting any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, unless consented to in writing by the Secured Lender, or (b) the Chapter 11 Trustee applies for, consents to, acquiesces in any such dismissal, conversion, or appointment;

(ix) the Court shall have entered an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed *in*

lieu of foreclosure or the like) on any of the Prepetition Collateral or Adequate Protection Collateral which has an aggregate value in excess of \$50,000;

(x) the Chapter 11 Trustee supporting (in any such case by way of any motion or other pleading filed with the Court or any other writing to another party in interest) any other person's opposition to any motion filed in the Court by the Secured Lender seeking confirmation of the amount of its Prepetition Obligations or the validity or enforceability of the Prepetition Liens or the Adequate Protection Liens, except with regard to good faith disputes over the payment of expenses and fees; provided, however, that the Termination Date (defined below) shall not be deemed to occur if the Chapter 11 Trustee seeks approval of debtor in possession financing, including, without limitation, debtor in possession financing which primes existing liens, that provides for Payment in Full of the Prepetition Obligations, any Adequate Protection Payments, and solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims unless the Secured Lender provides prior written consent for financing that does not provide for Payment in Full of the Prepetition Obligations, any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims; and

(xi) Notwithstanding anything to the contrary herein, a Challenge Proceeding shall not trigger an Event of Default.

13. Rights and Remedies upon the Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, the provisions of Bankruptcy Code section 362 notwithstanding, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Final Order, the Secured Lender may provide written notice to the Chapter 11 Trustee and the Creditors' Committee (such notice, a "Termination Notice" and

the date of such notice, the “Termination Date”) that (i) any Adequate Protection Amount, Adequate Protection Superpriority Claims and/or Adequate Protection Payments determined by the Court to be due and owing as of the delivery of the Termination Notice, if any, shall become due and payable, and/or (ii) the application of the Carve Out has occurred through the delivery of a Carve Out Trigger Notice. Unless otherwise ordered by this Court, the automatic stay in the Chapter 11 Cases otherwise applicable to the Secured Lender hereby modified so that five (5) business days after the date a Termination Notice is delivered (the “Remedies Notice Period”), the Chapter 11 Trustee’s authority to use Cash Collateral shall cease, unless the Chapter 11 Trustee or the Creditors’ Committee files a motion (on an emergency basis) prior to the expiration of the Remedies Notice Period seeking a determination that an Event of Default has not occurred, in which case, the Remedies Notice Period is extended until the Court rules on such emergency motion. During the Remedies Notice Period or thereafter, the Secured Lender shall be entitled to seek an emergency hearing with the Court to seek relief from stay to exercise its rights and remedies to the extent available in accordance with the applicable Prepetition Loan Documents, this Final Order, or applicable law, and the Chapter 11 Trustee and the Creditors’ Committee shall not oppose the setting of such emergency hearing; provided that the Secured Lender shall not, unless otherwise ordered by the Court, take any action on relief from the stay until the conclusion of the Remedies Notice Period. All rights of the Chapter 11 Trustee and the Creditors’ Committee to oppose the Prepetition Secured Parties’ efforts to obtain relief from stay (aside from the setting of an emergency hearing on the matter) are preserved. All rights of the Debtors and the Chapter 11 Trustee to seek authority to use Cash Collateral over the objection of the Secured Lender are preserved, and all rights of the Secured Lender to contest such request are similarly preserved. Upon an Event of Default, the Chapter 11 Trustee shall use cash from the Prepetition Collateral

and Adequate Protection Collateral in the amount of the incurred but unpaid operational expenses accounted for in the applicable Budget (including subject to Permitted Variances) through the Termination Date and use such cash to pay such incurred but unpaid operational expenses in the ordinary course, subject to the right of any party in interest to argue that the circumstances of the cases warrant the ratable distribution of such cash to all holders of incurred but unpaid operational expense claims through the Termination Date.

14. Carve Out. Subject to the terms and conditions contained in this Paragraph and each subparagraph thereof, each of the Prepetition Obligations, Prepetition Liens, Adequate Protection Liens, and Adequate Protection Superpriority Claims shall be subject and subordinate to payment and full funding of the Carve Out.

(i) As used in this Final Order, the “Carve Out” means the sum of (a) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (c) below); (b) all reasonable fees and expenses up to \$25,000 incurred by a trustee, if any, appointed under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (c) below); (c) all accrued and unpaid fees, disbursements, costs, and expenses (the “Professional Fees”) incurred by persons or firms retained by the Chapter 11 Trustee or the Creditors’ Committee pursuant to sections 327, 328, 363 or 1103 of the Bankruptcy Code (the “Professional Persons”), which Professional Fees (i) are allowed by the Court or another court of competent jurisdiction at any time, (ii) were incurred (regardless of when invoiced or applied for) before delivery by the Secured Creditor of a Carve Out Trigger Notice (as defined below), and (iii) are subject to the amounts provided for in the Approved Budget (the amounts set forth in these clauses (a) through (c), the “Pre-Carve Out Amounts”); and (d) Professional Fees of

the Chapter 11 Trustee and the Creditors' Committee not to exceed \$200,000, incurred after the first business day following delivery by the Secured Creditor of the Carve Out Trigger Notice (defined below), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (d) being the "Post-Carve Out Trigger Notice Cap").

(ii) For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the Secured Creditor to the Chapter 11 Trustee, its restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee, which notice may be delivered, at the direction of the Secured Creditor, following the occurrence and during the continuation of an Event of Default, stating that the Post-Carve Out Trigger Notice Cap has been invoked. Nothing herein shall be construed to impair the ability of any party to object to fees, expenses, reimbursement or compensation described in the Carve Out on any grounds.

(iii) Prior to the delivery of the Carve Out Trigger Notice, on a weekly basis, the Chapter 11 may, in his discretion, cause to be funded from the Cash Collateral or cash on hand into a segregated account (the "Funded Reserve Account") held for the benefit of Professional Persons an amount equal to the aggregate amount of the estimated accrued fees of Professional Persons, based on the estimates provided weekly, (the "Weekly Fee Estimates"), remaining unpaid as of the Friday of the preceding week (and not previously funded to the Funded Reserve Account). Promptly after the delivery of the Carve Out Trigger Notice, the Chapter 11 Trustee shall fund from the Cash Collateral or cash on hand into the Funded Reserve Account an amount equal to the Pre-Carve Out Amounts and the Post-Carve Out Trigger Notice Cap (collectively, the "Carve Out Reserves").

(iv) Notwithstanding anything to the contrary in the Prepetition Loan Documents or the Final Order, following delivery of a Carve Out Trigger Notice, the Secured Lender shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets other than proceeds of sales from the ordinary course sales of the Financed Marine Inventory up to the applicable Floor Plan Amount) of the Debtors or the Chapter 11 Trustee until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves after payment and full funding of all Carve Out amounts, which shall revert to the Chapter 11 Trustee subject to such security interest. Further, notwithstanding anything to the contrary in this Final Order, (a) the failure of the Carve Out Reserves to satisfy in full the Professional Fees shall not affect the priority of the Carve Out, and (b) the Carve Out Reserves shall serve as a limitation only on the amount of Professional Fees that may be paid from such Carve Out Reserves, and in no way shall the approved Budget, the Carve Out, the Carve Out Trigger Notice Cap, the Carve Out Reserves or any of the foregoing be construed as a cap or limitation on the amount of Professional Fees that a party in interest may seek to be paid by the Debtors in these Chapter 11 Cases.

(v) After the delivery of a Carve Out Trigger Notice as required herein, any payment or reimbursement made on or in respect of any Post-Carve Out Amounts (excluding any incurred and unpaid professional fees and expenses of the Secured Lender payable pursuant to this Final Order) in an aggregate amount not in excess of the amounts accrued or paid for each such Professional Person as set forth in the Budget, shall permanently reduce the Carve Out on a dollar-for-dollar basis.

(vi) Notwithstanding anything to the contrary herein, the Carve Out shall be senior to all liens and claims granted under this Final Order, including the Adequate Protection

Liens, the Adequate Protection Superpriority Claims, and any and all other liens or claims securing the Prepetition Obligations.

(vii) The Secured Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Professional Person, the Creditors' Committee, the U.S. Trustee, or the Clerk of this Court (or of any other entity) incurred in connection with these Chapter 11 Cases or any Successor Case, and nothing in this Final Order or otherwise shall be construed to obligate such parties in any way to (a) pay such compensation to or to reimburse such expenses or (b) assure that the Debtors have sufficient funds on hand to pay any of the foregoing.

15. Limitation on Charging Expenses against Collateral. Nothing contained in this Final Order shall be deemed a consent by the Secured Lender to any charge, lien, assessment, or claim against the Prepetition Collateral, or the Adequate Protection Liens, or otherwise. Except to the extent of the Carve Out, no costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases or any Successor Case at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against the Secured Lender, or any of the Prepetition Obligations, the Carve Out, or the Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the Secured Lender. No action, inaction or acquiescence by the Secured Lender shall be deemed to be or shall be considered evidence of any alleged consent to a surcharge against the Secured Lender, the Prepetition Obligations, or the Prepetition Collateral.

16. Equities of the Case Waiver. The Secured Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and no person may assert an "equities of the case" claim under section 552(b) of the Bankruptcy Code against the Secured Lender with

respect to proceeds, product, offspring or profits of any of the Collateral, provided that, for the avoidance of doubt, what constitutes Collateral is subject to the rights of parties-in-interest to bring a Challenge Proceeding.

17. Disgorgement. Notwithstanding anything to the contrary herein, in the event of a successful Challenge Proceeding or a determination by final order that the Secured Lender undersecured in the Collateral, all rights of the Debtors, the Chapter 11 Trustee and the Creditors' Committee to seek recharacterization, disgorgement, or refund of any amounts paid to the Secured Lender (including the Adequate Protection Payments) are fully and expressly preserved.

18. No Marshaling. The Secured Lender shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Collateral. Without limiting the generality of the immediately preceding sentence, no party shall be entitled, directly or indirectly, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of the Collateral after an Event of Default.

19. Effect of Chapter 11 Trustee's Stipulations.

(i) Each of the Chapter 11 Trustee's Stipulations and other admissions, agreements and releases contained in this Final Order, including, without limitation, in Paragraph D of this Final Order, shall be binding upon the Chapter 11 Trustee, on behalf of the bankruptcy estates for each of the Debtors, under all circumstances and for all purposes upon entry of this Final Order.

(ii) Each of the Chapter 11 Trustee's Stipulations and other admissions, agreements and releases contained in this Final Order, including, without limitation, in Paragraph D of this Final Order, shall be binding upon all other parties in interest, including, without limitation, the Creditors' Committee and any other person or entity acting or seeking to act on

behalf of the bankruptcy estates, including any chapter 7 or subsequent chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless: (a) the Creditors' Committee, or any other party in interest with standing has filed (subject to the limitations contained herein, including, *inter alia*, in this Paragraph) by no later than a date that is the later of (1) in the case of a party in interest with standing other than the Creditors' Committee, August 24, 2024; (2) in the case of the Creditors' Committee, August 24, 2024; (3) with respect to any chapter 7 trustee appointed or elected for any of the Debtors, prior to the expiration of the periods set forth in subsections (1) and (2) above, no later than the date that is the later of (A) fourteen (14) days after the appointment of such chapter 7 trustee or (B) the expiration of the time periods set forth in the foregoing subsections (1) and (2) above; (4) with respect to any Challenge Proceeding (as defined below) against the Secured Lender, any such later date agreed to in writing (which may be by email) by the Secured Lender in its sole discretion; or (5) any such later date ordered by the Court for cause shown after notice and an opportunity to be heard, provided that such order is sought before the expiration of any applicable period as set forth in clauses (1) through (4) of this sentence (the "Challenge Period"), a motion or other pleading requesting standing as to the Debtors to file a contested matter, adversary proceeding or other action or "claim" (as defined in the Bankruptcy Code), (A) contesting, objecting or otherwise challenging the admissions, stipulations, findings or releases included in the Chapter 11 Trustee's Stipulations and this Final Order, (B) contesting, objecting or otherwise challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Obligations or the Prepetition Liens (including, but not limited to, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code), (C) contesting, objecting or otherwise challenging the right of the Secured Lender credit bid, up to the full amount of the Prepetition Obligations, in any sale

of the Prepetition Collateral, in each case pursuant to section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise, or (D) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) or any other claims, counterclaims or causes of action, objections, contests, defenses, setoffs, offsets or recoupments, whether arising at law or equity against the Secured Lender or its subsidiaries, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case solely in their respective capacities as such (collectively, the “Representatives”), and solely in their capacities as Representatives of the Secured Lender, in connection with (I) the prepetition business relationship between or conduct of the Secured Lender with the Debtors, (II) the actions or inactions of the Secured Lender arising out of or related to the Prepetition Obligations or otherwise, including, without limitation, any claim against the Secured Lender in the nature of an “equitable subordination,” “lender liability,” “deepening insolvency” or “control person” liability, or (III) matters related to the Prepetition Loan Documents, the Prepetition Obligations, the Prepetition Liens and the Prepetition Collateral ((A), (B), (C) and (D) collectively, a “Challenge Proceeding”); and (b) there is a final and non-appealable order in favor of the plaintiff or movant in any such timely filed Challenge Proceeding.

(iii) If no such Challenge Proceeding is timely filed during the Challenge Period and thereafter granted, then: (a) the Chapter 11 Trustee’s Stipulations, admissions, agreements and releases contained in this Final Order, including, without limitation, those contained in

Paragraph D of this Final Order, shall be binding on all parties in interest, including, without limitation, the Creditors' Committee or any trustee appointed in these Chapter 11 Cases or any Successor Case; (b) the obligations of the Debtors under the Prepetition Loan Documents, including the Prepetition Obligations, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in these Chapter 11 Cases and any Successor Case; (c) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance or other defense (other than as to the value of the Prepetition Collateral at the Petition Date and whether the Prepetition Obligations are fully secured within the meaning of Section 506 of the Bankruptcy Code (the "Collateral Value Issues")); and (d) the Prepetition Obligations and the Prepetition Liens (including all payments made to or for the benefit of the Prepetition Secured Parties pursuant to, or otherwise authorized by, the Prepetition Loan Documents or this Final Order or otherwise, whether made prior to, on, or after the Petition Date) shall not be subject to any other or further claim or challenge by the Creditors Committee or any non-statutory committees appointed or formed in these Chapter 11 Cases, or any other party in interest acting or seeking to act on behalf of the bankruptcy estates and any defenses, claims, causes of action, counterclaims and offsets by the Chapter 11 Trustee, the Creditors' Committee, any non-statutory committees appointed or formed in these Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, whether arising under the Bankruptcy Code or otherwise, against the Secured Lender and its Representatives arising out of or relating to the Prepetition Loan Documents shall be deemed forever waived, released, and barred, other than as to the Collateral Value Issues.

(iv) If any such Challenge Proceeding is timely filed during the Challenge Period, (a) any claim or action that is not brought in such Challenge Proceeding shall forever be barred, and (b) each of the Chapter 11 Trustee's Stipulations and other admissions and agreements contained in this Final Order, including, without limitation, those contained in Paragraph D of this Final Order, shall nonetheless remain binding and preclusive on the Creditors Committee and on any other person or entity, except to the extent that such stipulations, admissions, and agreements were successfully challenged in such Challenge Proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Creditors Committee or any non-statutory committees appointed or formed in these cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenge Proceedings with respect to the Prepetition Loan Documents, the Prepetition Obligations, or the Prepetition Liens. Notwithstanding anything to the contrary herein, the Challenge Period shall be tolled if the Creditors' Committee or any other party in interest enumerated in Paragraph 19(ii) above brings a timely motion for standing (a "Standing Motion") to assert a Challenge Proceeding prior to the expiration of the applicable Challenge Period, pending a resolution of such motion.

20. Restriction on Use of Cash Collateral and Prepetition Collateral. Notwithstanding anything herein or in any other order by this Court to the contrary, no Cash Collateral, Prepetition Collateral, proceeds, products, or offspring of any of the foregoing or any portion of the Carve Out may be used to (except to the extent otherwise expressly agreed in writing by the Secured Lender in response to a written request from the Chapter 11 Trustee specifying the proposed use) pay any claims for services rendered by any of the professionals retained by the Chapter 11 Trustee, the Debtors, the Creditors' Committee, any subsequent trustee appointed under these Chapter 11 Cases

or any Successor Case to: (i) apply to the Bankruptcy Court for authority to approve superpriority claims or grant liens or security interests in the Prepetition Collateral and Cash Collateral, or any portion thereof that are senior to, or on parity with, the Prepetition Liens, unless the Prepetition Obligations, and claims granted to the Secured Lender under this Final Order, as applicable, have been Paid in Full or otherwise agreed to in writing by the Secured Lender; (ii) to prevent, hinder or otherwise delay the Secured Lender's assertion, enforcement or realization on the Collateral, including Cash Collateral, and liens, claims and rights granted to the Secured Lender under this Final Order, in accordance with the Prepetition Loan Documents or this Final Order; (iii) to seek to modify any of the rights and remedies granted to the Secured Lender under this Final Order or the Prepetition Loan Documents; (iv) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are provided for in the Budget and approved by an order of this Court that is in form and substance reasonably satisfactory to the Secured Lender; (v) investigate, assert, join, commence, support or prosecute any action or claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against the Secured Lender or its respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, or action, including, without limitation, (a) any avoidance actions or other actions arising under chapter 5 of the Bankruptcy Code, (b) any action relating to any act, omission or aspect of the relationship between the Secured Lender, on the one hand, and the Debtors or any of their affiliates, on the other, (c) any action with respect to the validity and extent of the Prepetition Obligations, or the validity, extent, and priority of the Prepetition Liens or the Adequate Protection Liens, (d) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition Liens or the Adequate Protection Liens granted

under this Order, (e) except to contest the occurrence of any Event of Default as permitted in Paragraph 13, any action that has the effect of preventing, hindering or delaying (whether directly or indirectly) the Secured Lender in respect of its liens and security interests in the Cash Collateral or the Prepetition Collateral, (f) pay any fees or similar amounts to any person to purchase the Secured Lender's interests in any of the Debtors' assets without the prior written consent of the Secured Lender, unless such person consummates or otherwise closes the purchase of the Secured Lender's interests in any of the Debtors' assets, or (g) [reserved]; or (vi) for objecting to, contesting, delaying, preventing, hindering or otherwise interfering with in any way with the exercise of rights or remedies by the Secured Lenders with respect to any Prepetition Collateral, including Cash Collateral, after the occurrence of an Event of Default; provided that, notwithstanding anything to the contrary in this Paragraph, the Creditors' Committee may use Prepetition Collateral, including Cash Collateral, and the proceeds thereof to investigate (y) the claims and liens of the Secured Lender, solely to the extent set forth in this Paragraph (but not to prepare, initiate, litigate, prosecute, object to, or otherwise challenge any of the foregoing) and (z) potential claims, counterclaims, causes of action, or defenses against the Secured Lender, solely to the extent set forth in this Paragraph (but not to prepare, initiate, litigate, prosecute, object to, or otherwise challenge any of the foregoing); provided further that no more than an aggregate of \$25,000 of the Collateral (including the Cash Collateral) may be used by the Creditors' Committee in respect of the investigations set forth in the preceding proviso (the "Investigation Budget"). For the avoidance of doubt, nothing in this Final Order shall serve as a limit or cap on the fees and expenses that may be incurred by the Creditors' Committee or restrict the Creditors' Committee

from seeking or obtaining payment and reimbursement of its respective professional fees and expenses.

21. Release. The release, discharge, waivers, settlements, compromises, and agreements set forth in this Paragraph shall be deemed effective upon entry of this Final Order and subject only to the challenge rights set forth in Paragraph 19 above. The Chapter 11 Trustee, on behalf of the bankruptcy estates forever and irrevocably (i) releases, discharges, and acquits the Secured Lender and each of its respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest (collectively, the “Releasees”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type arising prior to the Petition Date, including, without limitation, any claims arising from any actions relating to any aspect of the relationship between the Secured Lenders and the Debtors and their affiliates including any equitable subordination claims or defenses, with respect to or relating to the Prepetition Obligations, the Prepetition Liens, the Prepetition Loan Documents, the Debtors’ attempts to restructure the Prepetition Obligations, any and all claims and causes of action arising under title 11 of the United States Code, and any and all claims regarding the validity, priority, perfection or avoidability of the liens or secured claims of the Secured Lender; and (ii) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and non-avoidability of the Prepetition Obligations and the Prepetition Liens.

22. Prohibition on Granting of Additional Liens and Interests, Use of Prepetition Collateral. No liens, claims, interests or priority status, other than the Carve Out and the Permitted

Encumbrances, having a lien or administrative priority superior to or *pari passu* with that of the Adequate Protection Superpriority Claim, the Prepetition Liens, or the Adequate Protection Liens shall be granted while any portion of the Prepetition Obligations remain outstanding, or any commitment under the Prepetition Loan Documents remains in effect, without the prior written consent of the Secured Lender. Nothing in this Final Order shall authorize, other than in the ordinary course of the Debtors' business, the sale, transfer, lease, encumbrance, or other disposition of any assets of the Debtors or their estates without the prior written consent of the Secured Lender (and no such consent or direction shall be implied from any other action, inaction, or acquiescence by the Secured Lender or any order of this Court), except as permitted in the Prepetition Loan Documents and this Final Order, and approved by the Court to the extent required under applicable bankruptcy law; provided, however, that the Termination Date shall not be deemed to occur if the Debtors seek approval of debtor in possession financing, including, without limitation, debtor in possession financing which primes existing liens, that provides for Payment in Full of the Prepetition Obligations, any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims, unless the Secured Lender provides prior written consent for financing that does not provide for Payment in Full of the Prepetition Obligations, any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims.

23. Binding Effect of Final Order. Subject to the challenge rights set forth in Paragraph 19 above, immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases or any Successor Case, including,

without limitation, the Debtors and their estates, the Chapter 11 Trustee, the Secured Lender, all other creditors of the Debtors, the Creditors' Committee, and each of their respective successors and assigns (including, without limitation, any trustee, examiner with expanded powers, responsible officer, estate administrator or representative, or similar person appointed in a case for any Debtor under any chapter of the Bankruptcy Code) and shall inure to the benefit of the Debtors and their estates, the Secured Lender, and their respective successors and assigns.

24. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order (i) confirming any plan of reorganization or liquidation in any of these Chapter 11 Cases; (ii) converting any of these cases to a case under chapter 7 of the Bankruptcy Code; (iii) dismissing any of these cases or any Successor Case; or (iv) pursuant to which this Court abstains from hearing any of these Chapter 11 Cases or any Successor Case. Notwithstanding the entry of any such order, the terms and provisions of this Final Order, including the claims, liens, security interests and other protections granted to the Secured Lender pursuant to this Final Order, shall continue in these Chapter 11 Cases, in any Successor Case, or following dismissal of these Chapter 11 Cases or any Successor Case, and shall maintain their priority as provided by this Final Order and not be modified, altered or impaired in any way, whether by act or omission, until all of the Prepetition Obligations and any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims have been Paid in Full, notwithstanding the occurrence of an Event of Default or any earlier termination of the Debtors' authorization to use the Prepetition Collateral, including Cash Collateral.

25. Limitation of Liability. In determining to permit the use of Cash Collateral, making and administering the loans and financial accommodations extended under the Prepetition Loan

Documents, extending other financial accommodations to the Debtors under this Final Order and the Prepetition Loan Documents, or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the Prepetition Loan Documents, as applicable, the Secured Lender, solely in its capacity as a lender under the Prepetition Loan Documents, or any successor of any of the foregoing shall not (a) be deemed to be in “control” of the operations of the Debtors or any of their affiliates; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and (c) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors or any of their affiliates (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute). Furthermore, nothing in this Final Order or the Prepetition Loan Documents or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the Secured Lender, or any successor of any of the foregoing, of any liability for any claims arising from the prepetition or postpetition activities of the Debtors or any of their subsidiaries or affiliates in the operation of their businesses or in connection with their restructuring efforts.

26. Insurance. The Chapter 11 Trustee and the Debtors shall maintain insurance on the Prepetition Collateral in amounts, for the risks, and by the entities as required under the Prepetition Loan Documents.

27. No Waiver. Other than as provided for in this Final Order, nothing in this Final Order shall not be construed in any way as a waiver or relinquishment of any rights that the

Debtors, the Chapter 11 Trustee, or the Secured Lender may have to bring or be heard on any matter brought before this Court.

28. Effectiveness. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding any Bankruptcy Rule, any Local Rule, any Federal Rule of Civil Procedure, or other applicable law, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

29. Proofs of Claim. The Secured Lender shall not be required to file proofs of claim in any of these Chapter 11 Cases or a Successor Case for any claim allowed herein. The Debtors' and Chapter 11 Trustee's Stipulations shall be deemed to constitute a timely filed proof of claim for the Secured Lender upon approval of this Final Order, and the Secured Lender shall be treated under section 502(a) of the Bankruptcy Code as if it had filed a timely proof of claim. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of these Chapter 11 Cases or a Successor Case to the contrary, the Secured Lender is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as they see fit) a proof of claim and/or aggregate proofs of claim in each of these Chapter 11 Cases or a Successor Case for any claim allowed herein.

30. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any party, creditor, equity holder, other entity or any direct, indirect or incidental beneficiary other than (i) the Secured Lender and its respective

Representatives, (ii) the Debtors, (iii) the Chapter 11 Trustee, (iv) the Creditors' Committee and (v) the respective successors and assigns of each of the foregoing.

31. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Order.

32. Rights Reserved. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly (i) the Secured Lender's rights to pursue any and all rights and remedies under the Bankruptcy Code, the Prepetition Loan Documents or any other applicable agreement or law, or seek any other or supplemental relief in respect of the Debtors, including the right to seek new, different or additional adequate protection, as applicable, or the Debtors', the Chapter 11 Trustee's, or any other party in interest's rights to oppose such relief, or (ii) any of the rights and remedies of the Debtors, the Chapter 11 Trustee, the Secured Lender, or any other party in interest under the Prepetition Loan Documents or other applicable agreement, the Bankruptcy Code or applicable nonbankruptcy law.

33. Relief Under 11 U.S.C. § 543(c)(1). Nothing in this Final Order shall limit or restrict any party's right to seek relief under section 543(c)(1) of the Bankruptcy Code, or the Trustee's or Secured Lender's right to oppose such relief, provided, however, that any relief requiring payment from Cash Collateral or Adequate Protection Collateral must be filed with the Court and served on the Trustee, the Committee, the U.S. Trustee, and the Secured Lender on or before August 24, 2024.

34. Texas Taxing Authorities. Notwithstanding any other provisions included in this Final Order, or any agreements approved hereby, any statutory liens (collectively, the "Tax Liens") on property of the Debtors' estates held by the taxing authorities of Denton County, Texas and Tarrant County, Texas (collectively, the "Texas Taxing Authorities") shall not be primed by nor

made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, perfected, unavoidable and senior to the Secured Lender, and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Texas Taxing Authorities are fully preserved.

35. Electronic Writing. Any written consents, waivers or extensions contemplated by this Final Order may be done by electronic mail or other electronic means.

36. Bankruptcy Rules. The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

37. Necessary Action. The Chapter 11 Trustee and the Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Final Order.

38. Retention of Jurisdiction. The Court shall retain jurisdiction to enforce the provisions of this Final Order, and this Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Final Order, including following confirmation and consummation of any chapter 11 plan for any one or more of the Debtors.

39. Service of the Final Order. The Debtors shall promptly serve copies of this Final Order to the parties having been given notice of the Final Hearing, to any party that has filed a request for notices with this Court and to the Creditors' Committee.

End of Order

Submitted by:	July 17, 2024
<u>/s/ Aaron M. Kaufman</u> Aaron M. Kaufman (Texas Bar No. 24060067) Lydia R. Webb (Texas Bar No. 24083758) Emily F. Shanks (Texas Bar No. 24110350) GRAY REED LLP 1601 Elm Street, Suite 4600 Dallas, TX 75201 Telephone: (214) 954-4135 Facsimile: (214) 953-1332 Email: akaufman@grayreed.com lwebb@grayreed.com eshanks@grayreed.com <i>Proposed Counsel to Mark E. Andrews, Chapter 11 Trustee</i>	<u>/s/ Toby L. Gerber (with permission)</u> Toby L. Gerber (Texas Bar No. 07813700) Michael Berthiaume (Texas Bar No. 24066039) NORTON ROSE FULBRIGHT US LLP 2200 Ross Ave., Suite 3600 Dallas, TX 75201 Telephone: (214) 855-8274 Facsimile: (214) 855-8200 Email: toby.gerber@nortonrosefulbright.com michael.berthiaume@nortonrosefulbright.com and Jason L. Boland (Texas Bar No. 24040542) NORTON ROSE FULBRIGHT US LLP 1550 Lamar Street, Suite 2000 Houston, Texas 77010 Telephone: (713) 651-5151 Facsimile: (713) 651-5246 Email: jason.boland@nortonrosefulbright.com <i>Counsel to M&T Bank</i>

Exhibit 1

Budget

Tommy's
Cash Collateral 4 Week Budget

	Notes	Week Ending 7/5/2024	Week Ending 7/12/2024	Week Ending 7/19/2024	Week Ending 7/26/2024	4 Week CummulativeTotal
A						
Revenue						
Boat		-	-	-	-	-
Service		-	-	-	-	-
Pro Shop		-	-	-	-	-
Other	B	150,000	-	-	-	150,000
Total Revenue		150,000	-	-	-	150,000
COGS						
Boat		-	-	-	-	-
Service		-	-	-	-	-
Pro Shop		-	-	-	-	-
Sales Tax	C	-	350,000	-	250,000	600,000
Total COGS		-	350,000	-	250,000	600,000
Net Cash Inflow		150,000	(350,000)	-	(250,000)	(450,000)
Wages, 401k, Taxes		25,000	503,000	25,000	503,000	1,056,000
Monthly Benefits		94,000	-	2,000	-	96,000
Monthly Commissions		1,500	-	-	100,000	101,500
Stay Bonus			180,000	-	-	180,000
Total Staffing		120,500	683,000	27,000	603,000	1,433,500
Leases		582,165	-	-	-	582,165
Other Adminisrtrative Rents		-	-	-	372,191	372,191
Commercial Insurance		150,000	-	-	-	150,000
Utilities		25,000	25,000	25,000	25,000	100,000
Utilities Catch Up		10,000	10,000	10,000	10,000	40,000
Marketing - BoatTrader.com		15,750	-	-	-	15,750
Marketing Catch Up		31,500	-	-	-	31,500
Payroll		-	-	3,000	-	3,000
Accounting		-	-	6,000	-	6,000
Inventory		-	-	1,250	-	1,250
Server Hosting		-	-	4,000	-	4,000
Data Storage		-	-	3,500	-	3,500
Email		-	-	2,500	-	2,500
Total IT Services		-	-	20,250	-	20,250
IT Services Catch Up		18,700	-	-	-	18,700
Site Security		-	5,769	5,769	5,769	17,308
Accounting Temp		-	2,000	2,000	2,000	6,000
Merchant Fees		5,000	-	-	-	5,000
Merchant Fee Catch Up	A	12,000	-	-	-	12,000
Operations Fuel		6,250	6,250	6,250	6,250	25,000
Enterprise Lease		-	-	85,000	-	85,000
Janitorial		3,600	-	-	-	3,600
Computer		1,400	1,400	1,400	1,400	5,600
Licenses, Fees, Permits		4,000	4,000	4,000	4,000	16,000
Office Supplies		4,500	-	-	-	4,500

Tommy's

Cash Collateral 4 Week Budget

Notes	Week Ending 7/5/2024	Week Ending 7/12/2024	Week Ending 7/19/2024	Week Ending 7/26/2024	4 Week CummulativeTotal
Operating Supplies	3,375	3,375	3,375	3,375	13,500
Repairs & Maintenance	5,000	5,000	5,000	5,000	20,000
Shipping	1,500	1,500	1,500	1,500	6,000
Shipping Catch Up	12,500	-	-	-	12,500
5/3 Catch Up	3,000	-	-	-	3,000
Travel	1,250	1,250	1,250	1,250	5,000
Property Tax	-	-	-	-	-
Misc	1,250	1,250	1,250	1,250	5,000
Trustee	-	-	-	75,000	75,000
Trustee Counsel	90,000	90,000	90,000	90,000	360,000
Trustee Advisors	109,500	109,500	109,500	109,500	438,000
Creditor Committee	-	-	-	75,000	75,000
Sales Tax Rec/Income Tax Prep	-	-	25,000	25,000	50,000
US Trustee	-	-	-	-	-
Total Professional Fees	199,500	199,500	224,500	374,500	998,000
Liquidation Sale Marketing	-	-	23,000	23,000	46,000
Legal	-	-	2,650	2,650	5,300
Supervisory	-	-	100,000	78,000	178,000
Total Gordon Bros. Liquidation Expenses	-	-	125,650	103,650	229,300
Total Cash Outflows	1,217,740	949,294	549,194	1,520,136	4,236,364
Net Cash	(1,067,740)	(1,299,294)	(549,194)	(1,770,136)	(4,686,364)
Cummulative Net Cash	(1,067,740)	(2,367,034)	(2,916,228)	(4,686,364)	
Beginning Cash Balance	8,714,250	7,646,510	6,347,216	3,498,022	8,714,250
Proceeds From Asset Sales	-	-	-	-	-
Adequate Assurance Payment	D	-	(2,300,000)	-	(2,300,000)
Cash Reserve	E	-	-	-	-
Ending Cash Balance	7,646,510	6,347,216	3,498,022	1,727,886	1,727,886

Notes	A	Cash receipts and payments that have not occurred while budget approval is pending will be moved to future weeks but will not affect budget totals.
	B	Pending deposit to be received from POS merchant once \$12,000 of past due merchant fees are paid.
	C	May / June sales taxes Pursuant to the Final Order, Trustee shall promptly remit all net proceeds of asset sales during each Budget period to Secured Lender as Adequate Protection Payments in
	D	accordance with the terms of Paragraph 5 of the Final Order.
	E	To be determined