

Scanned by Judge

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

M&T Bank,  
Plaintiff

Case No. <sup>2A</sup>03177 -CB B /

vs.  
Tommy's Holding Company, LLC,  
et al., jointly and severally,  
Defendants.

Hon.

TJ. ACHER  
(P-37123)

BALLARD SPAHR LLP  
Christine L. Barba, Esq.\*  
NJ Bar 016962007 / PA Bar 206938  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
Telephone: (215) 665-8500  
Facsimile: (215) 864-8999  
barbac@ballardspahr.com

John D. Sadler, Esq.\*  
DC Bar 483301 / MD Bar 0212190114 / VA Bar 80026  
1909 K Street, NW, 12<sup>th</sup> Floor  
Washington, DC 20006  
Telephone: (202) 661-2200  
Facsimile: (202) 661-2299  
sadlerj@ballardspahr.com

(\*Pro Hac Vice Admission Pending)

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.  
Steven A. Roach (P39555)  
Ronald A. Spinner (P73198)  
150 West Jefferson, Suite 2500  
Detroit, MI 48226  
(313) 496-7933  
roach@millercanfield.com  
spinner@millercanfield.com  
Attorneys for Plaintiff

RECD & FILED  
KENT COUNTY  
CIRCUIT COURT  
2024 APR - 1 PM 3:08  
LC

Ex Parte Motion for Order to Show Cause and  
Motion for Appointment of a Receiver and Possession Pending Final Judgment  
-and-  
Brief in Support Thereof

Scanned on: 4/2/24  
By: Jenney C

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IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

M&T Bank,

Plaintiff

Case No. <sup>24</sup>03177

-CB B /

vs.

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Tommy's Holding Company, LLC,  
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Defendants.

FILED  
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BALLARD SPAHR LLP  
Christine L. Barba, Esq.\*  
NJ Bar 016962007 / PA Bar 206938  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
Telephone: (215) 665-8500  
Facsimile: (215) 864-8999  
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John D. Sadler, Esq.\*  
DC Bar 483301 / MD Bar 0212190114 / VA Bar 80026  
1909 K Street, NW, 12<sup>th</sup> Floor  
Washington, DC 20006  
Telephone: (202) 661-2200  
Facsimile: (202) 661-2299  
sadlerj@ballardspahr.com

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Steven A. Roach (P39555)  
Ronald A. Spinner (P73198)  
150 West Jefferson, Suite 2500  
Detroit, MI 48226  
(313) 496-7933  
roach@millercanfield.com  
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Ex Parte Motion for Order to Show Cause and  
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-and-

Brief in Support Thereof

Scanned on: 4/2/24  
By: Jenney C

Plaintiff moves for the appointment of a receiver over the assets of Defendants Tommy's Holding Company, LLC; Tommy's Grand Rapids, LLC; Tommy's Castaic, LLC; Tommy's Fort Worth, LLC; Tommy's Lewisville, LLC; High Country Watersports, LLC; Walloon Lake Village Marina, LLC; MKB Florida Holdings, LLC; Tommy's Detroit, LLC; Tommy's California Fresno, LLC; Tommy's Phoenix, LLC; Tommy's Las Vegas, LLC; Tommy's Chattanooga, LLC; Tommy's California Ventura, LLC; Tommy's Rancho Cordova, LLC; Tommy's Stockton, LLC; and Tommy's Knoxville, LLC (collectively, "Borrowers"), pursuant to MCL 554.1011, et seq, for possession pending final judgement under MCR 3.105, and for an ex parte order to show cause under MCR 3.105(E)(2)(b), for the following reasons:

1. Plaintiff M&T Bank ("M&T" or "Bank") is the secured lender to Defendants Borrowers, guaranteed by Defendant Matthew Borisch ("Guarantor"). Plaintiff seeks the appointment of a receiver for purposes of obtaining access to the Collateral and to sell the Collateral.

2. Borrowers (defined below) operate a number of boat dealerships in Michigan and in other states. Bank entered into a floor plan financing arrangement with Borrowers, whereby Bank loaned funds to Borrowers that Borrowers used to buy boats for resale. Upon the sale of a boat, Borrowers agreed to repay Bank the amount advanced to Borrowers to purchase the boat. Borrowers, however, failed to remit sale proceeds to repay the loans. Rather, Borrowers have diverted at least Fourteen Million (\$14,000,000.00) Dollars and are out of trust with Bank. In addition, the primary supplier of boats to Borrowers, Malibu Boats, Inc., has terminated all dealer agreements with Borrowers to sell Malibu, Cobalt, and Axis boats, which accounted for over 80% of the boats that Borrowers sold in 2022-2023. These events are Events of Default under the loan

agreements. Borrowers agreed in the loan documents (*See Security Agreement (defined below), Page 6, § 7.2.6*) to the appointment of a receiver upon an Event of Default.

3. Plaintiff has filed a verified complaint that testifies to the following facts.

4. Plaintiff provided funding to Borrowers, evidenced by a *Variable Rate Demand Note (Floor Plan)* dated May 18, 2023 (the “Floor Plan Note”). A copy of the Floor Plan Note is attached as **Exhibit A** to the Verified Complaint.

5. The Floor Plan Note provides that Borrower will pay the then outstanding principal sum of the Floor Plan Note plus interest, fees, and costs to Bank on the demand of Bank. *See Floor Plan Note, ¶ 2a.*

6. Plaintiff also provided a revolving line of credit to Borrowers, evidenced by a *Revolving Line Note (New York)* dated May 18, 2023 (the “Revolving Note,” and collectively with the Floor Plan Note, the “Notes”). A copy of the Revolving Note is attached as **Exhibit B** to the Verified Complaint.

7. The Revolving Note provides that Borrower will pay the then outstanding principal sum of the Revolving Note plus interest, fees, and costs to Bank on the demand of Bank. *See Revolving Note, “Promise to Pay.”*

8. A *Loan Agreement (Floor Plan Financing)* was executed May 18, 2023 (the “Loan Agreement”). A copy of the Loan Agreement is attached as **Exhibit C** to the Verified Complaint.

9. On May 17, 2023, Borrowers executed a *General Security Agreement (New York)* (“Security Agreement”). A copy of the Security Agreement is attached as **Exhibit D** to the Verified Complaint.

10. Under the terms of the Security Agreement, Bank was granted a first priority lien on all of the Borrowers’ personal property (“Collateral”). *See Security Agreement, ¶ 1.1.*

11. Bank filed UCC-1 Financing Statements for each Borrower, copies of which are attached as **Exhibit E** to the Verified Complaint.

12. Borrowers are all located at (a) 146 Monroe Center NW, Suite 820, Grand Rapids, Michigan; and (b) 120 Ottawa Ave NW, Floor 4, Grand Rapids, Michigan; and their Collateral is at either one of these two locations or at one of the Borrower's locations listed on **Exhibit F** to the Verified complaint (collectively, the "Premises").

13. The loan was guaranteed by Defendant Guarantor by Guarantor executing a *Continuing Guaranty (Personal) (New York)* ("Guaranty"). A copy of the Guaranty is attached as **Exhibit G** to the Verified Complaint.

14. The Notes, Loan Agreement, Security Agreement, Guaranty, and related documents are referred to collectively as the "Loan Documents."

15. Plaintiff Bank made demand for payment, evidenced by its letters to Borrowers and Guarantor dated February 27, 2024 ("Initial Demand Letter") and March 28, 2024 (the "Second Demand Letter," and collectively with the Initial Demand Letter, the "Demand Letters"). Copies of the Demand Letters are attached as **Exhibits H and I**, respectively, to the Verified Complaint.

#### **Termination of Malibu Dealer Agreements**

16. When Bank made the Loans, the largest volume of sales that Borrowers made were Malibu, Cobalt, and Axis boats. Borrowers have provided sales data for 2022-23 that indicate that Malibu and Axis sales accounted for over 80% of their annual sales.

17. After sending the Initial Demand Letter, Bank learned that Malibu Boats, Inc. sent Borrowers a letter dated March 22, 2024, attached as **Exhibit J** to the Verified Complaint, that all dealer agreements between each Borrower and Malibu Boats, Inc. had either expired on June 30, 2023, or was terminated on March 11, 2024 (the "Malibu Termination Letter"). The Malibu

Termination Letter stated that Malibu Boats, Inc. will not sell any more Malibu or Axis boats to Borrowers and that Malibu Boats, Inc. **“does not anticipate entering into dealer agreements with any of the Tommy’s Dealerships [the Borrowers] for the remainder of model year 2024, model year 2025, and beyond.”** (emphasis in original).

#### **The Defaults**

18. The termination of the Malibu Dealer Agreements is a material adverse change and an Event of Default under Section 7.1(xiii) of the Security Agreement.

19. Borrowers agreed to provide Lender with monthly dealership statements, which disclose what boats have been sold and what boats are still in inventory. Section 11.1(ii) of the Loan Agreement. However, the reports that Defendants provided to Bank did not accurately set forth the sales or the boats in inventory. Rather, the reports did not disclose all of the sales and overstated the boats in inventory.

20. In late February 2024, the auditor conducting a collateral field audit for the Bank discovered that Borrowers were selling boats, but keeping them on the dealership lots in storage. The sales and inventory records supplied to the auditor and Bank by the Borrowers did not disclose this practice or distinguish between unsold inventory and “sold-but-stored” inventory. As a result, the audit reports – one of the primary methods for the Bank to verify and monitor its Collateral – were inaccurate, leading the Bank to believe that there were more unsold boats in inventory than there actually were. Instead, many of the boats onsite had been sold out of trust, even though they still were listed on Borrowers’ records as unsold inventory.

21. In addition, Borrowers did not provide Lender with the Contracts in Transit log or the Sales log that would have detailed all sales. These logs would have provided an accurate report of the sales and inventory.

22. Under Section 9.1 of the Loan Agreement, Borrowers agreed to remit to Lender the sale proceeds immediately upon the sale of a boat, but in no event later than 10 days after such sale. Borrowers also agreed that they “will hold the Proceeds in trust for the Bank and the Bank’s property.”

23. Borrowers, however, sold numerous boats without remitting the Proceeds to Lender. Rather, in breach of the express trust, Borrowers diverted the Proceeds for other purposes.

24. The Bank notified the Borrowers of the out of trust and diversion of Proceeds reflected in its February 2024 collateral field exam, and reiterated the need for complete information. The Bank did not discover the full scope of the diversion until mid-March 2024, when the Borrowers admitted, with the Bank and its consultants, that the actual out-of-trust sales exceeded \$16 million. Had Borrowers accurately reported their sales and inventory numbers, Lender would have discovered the multi-million-dollar diversion of trust Proceeds months sooner.

25. Borrowers defaulted under the Notes, Loan Agreement, and Security Agreement because, among other things:

a. Borrowers sold Collateral out of trust, failing to remit sales proceeds as covenanted in violation of section 9.1 of the Loan Agreement and section 7.1 of the Security Agreement.

- i. As of February 27, 2024, Bank was able to confirm that at least \$5 million in Collateral had been sold out of trust.
- ii. In early March, more information became available, and Bank realized that the amount diverted was at least \$11 million.
- iii. The out-of-trust amounts have fluctuated over the past several weeks, and based on information provided by the Borrowers, has been as high as \$16

million. Currently, Bank believes that over \$14 million in diverted Collateral proceeds remain outstanding and unaccounted for. Borrowers have thus misappropriated more than 10% of the maximum loan amount in a loan they obtained less than one year ago from Bank.

- b. Borrowers were able to divert Collateral by storing sold Collateral onsite even after it was sold and by not clearly recording such Collateral as “sold” on its books and records. This made it difficult for auditors to distinguish sold from unsold inventory, and violates sections 9.1 and 11.3 of the Loan Agreement.
- c. On multiple occasions, Bank’s auditors have not been able to locate various boats that were financed by Bank and were listed as Collateral. These boats should have been found at Borrower’s locations. At the February 2024 audit referenced above, at least 17 boats could not be located. This violates sections 3.5 and 6.1 of the Security Agreement and section 8 of the Loan Agreement.
- d. Bank has requested that Borrowers maintain all bank accounts with Bank. While Borrowers have begun to utilize certain accounts with Bank, they have continued to maintain and utilize accounts at other institutions and have not complied with this request, in violation of section 11.6 of the Loan Agreement.
- e. Borrowers have lost access to its primary boat manufacturer, which constitutes a material adverse change and an event of default under Section 7.1(xiii) of the Security Agreement.
- f. Advances outstanding on the Floor Plan Note exceeded the maximum amount available under the Loan Agreement and Borrowers failed to pay Bank the excess



advances in violation of section 9.1 of the Loan Agreement and section 7.1 of the Security Agreement.

- g. Borrowers failed to pay upon demand, violating section 9.3 of the Loan Agreement and section 7.1 of the Security Agreement.
- h. Borrowers have not been timely paying state sales taxes to various state taxing authorities. At this time, Borrowers have reported to Bank that the sales tax deficiency is at least \$3,232,879.17.

26. Bank, through counsel, gave notice of default to Borrowers and Guarantor in the Initial Demand Letter and made demand for immediate repayment of the excess advances and diverted Collateral proceeds.

27. Although Borrowers have made partial payments since the Initial Demand Letter was sent, they were insufficient to repay all demanded sums and the defaults remain uncured.

28. Accordingly, by the Second Demand Letter, Bank notified Borrowers and Guarantor of the ongoing, uncured defaults, and made formal demand for repayment of the Loans in full.

29. Neither Borrowers nor Guarantor made payment to Bank in response to the Second Demand Letter.

#### **Amount of Debt**

30. As of March 27, 2024, the amounts due and owing under the Notes was \$115,974,527.59 in principal, plus accrued interest of \$2,272,536.05 through March 27, 2024, which interest continues to accrue, and is accruing at the rate of 13.5% on and after March 29, 2024 per annum, plus attorneys' fees, costs, and expenses (collectively, and with interest, fees, costs, and expenses continuing to accrue, the "Indebtedness").

### **Factual Bases for Possession Pending Final Judgment**

31. Plaintiff has a security interest in the Collateral, and is entitled to the immediate possession of the Collateral pursuant to the terms of the Security Agreement and in accordance with Article 9 of the Uniform Commercial Code, being MCL 440.9101, et seq.

32. Plaintiff believes that the Collateral is worth approximately \$85,000,000, which is an estimate only and not an admission of value.

33. The Collateral are independent pieces of property.

34. Under the Security Agreement, Plaintiff has the right to take immediate possession of the Collateral and to sell the Collateral, and for the appointment of a receiver to accomplish same.

35. Due to the nature of the Collateral and the circumstances of the Defendants, there is a substantial risk of dissipation if immediate steps are not undertaken to preserve the value of the Collateral and to allow Plaintiff to realize the collections from the accounts receivables.

36. This is especially true given the difficulties to date in obtaining accurate information from the Borrowers with respect to the amount and location of the Collateral.

37. The likelihood of collapse of the businesses following the loss of the main supplier, coupled with Borrowers' difficulty or reluctance to provide accurate accounting of the Collateral and their past practice of selling Collateral out of trust and diverting the proceeds, necessitates appointment of a receiver to take immediate possession pending final judgment.

### **Factual Basis for Appointment of Receiver**

38. Borrowers agreed to the appointment of a receiver in the Security Agreement:

Appointment of Receiver. Secured Party, upon occurrence of an Event of Default, shall be entitled, and Debtor hereby consents, without notice or demand and without regard to the adequacy of any security for the indebtedness and other Obligations or the solvency

or insolvency of any person liable for the payment thereof, to the appointment of a receiver for the Collateral. The receiver shall have all rights and powers permitted under applicable law and such other powers as the court making such appointment shall confer. . . . The right of a receiver, among other rights and powers, to enter and take possession of and to manage and operate the Collateral, and to collect the rents, issues, profits and proceeds thereof shall be cumulative to any other rights or remedies hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. . . .

See Security Agreement, ¶ 7.2.6.

39. As a result, in accordance with MCL 554.1016(2)(b), Plaintiff is entitled to the appointment of a receiver over the Collateral, with all powers available to the receiver under Michigan's Receivership Act, being MCL 554.1011, *et seq.*

40. Borrowers sold Bank's Collateral out of trust, diverting tens of millions of dollars in proceeds, with at least Fourteen Million (\$14,000,000.00) Dollars still outstanding. They have not fully complied with the Bank's demands for information or to move their bank accounts to the Bank as required by the Loan Documents, nor have they provided a clear proposal as to full repayment of the diverted proceeds.

41. Borrowers' main supplier has terminated its working relationship with Borrowers.

42. Under the circumstances, a receiver is needed to properly secure, market, and liquidate the Collateral, as provided under MCL 554.1016(2)(a).

43. In addition, there is a likelihood that the value of the Collateral will be insufficient to pay the debt, which is a further basis for the appointment of a receiver under MCL 554.1016(2)(d).

44. Further, the Loan Agreement includes a formula for advances in section 2 that determines the maximum amounts that Borrower may have outstanding under the loan, based on the amount of Borrower's eligible Collateral, subject to certain limitations and caps. As noted in

paragraph 9.1 of the Loan Agreement, if the Outstanding Principal Amount exceeds the Approved Principal Amount, the Borrower must immediately repay the excess.

45. The Outstanding Principal Amount currently exceeds the Approved Principal Amount. As explained in the Second Demand Letter, the partial payments made by Borrowers have been insufficient to address all excess advances, and despite demand, an overadvance still remains. This is a further basis for the appointment of a receiver under MCL 554.1016(2)(e).

46. Therefore, in accordance with MCL 554.1016, Plaintiff is entitled to the appointment of a receiver over the Collateral, with all powers available to the receiver under Michigan's Receivership Act, being MCL 554.1011, *et seq.*

47. Plaintiff recommends to the Court Beane Associates, Inc. to serve as receiver, through Mr. Thomas J. Beane. The affidavit for Mr. Beane is attached as **Exhibit 1**, and includes his CV and additional information about Beane Associates, Inc.

48. Beane Associates, Inc. has operated as a receiver in numerous cases in Michigan, other states, and Canada. Its professionals each have over 20 years of experience in the finance, accounting and banking industries.

49. The proposed order appointing receiver and authorizing the receiver to sell property is attached as **Exhibit 2**.

50. Pursuant to MCR 3.105(E)(2), upon a showing of good cause, the Court "must order the defendant to

"(a) refrain from damaging, destroying, concealing, disposing of, or using so as to substantially impair its value, the property until further order of the court; and

"(b) appear before the court at a specified time to answer the motion."

51. Plaintiff has established good cause in its Verified Complaint and this motion.

52. The proposed order restraining Defendants from damaging or disposing of the Collateral and setting a hearing to show cause is attached as **Exhibit 3**.

Wherefore, Plaintiff respectfully requests this Honorable Court to:

A. Enter a restraining order that refrains Defendants from damaging, destroying, concealing, disposing of, or using so as to substantially impair its value, the Collateral;

B. Order Defendants to appear before this Court to show cause, if any there be, why Plaintiff should be not awarded possession pending final judgment;

C. Grant Plaintiff possession pending final judgment of the Collateral; and

D. Appoint a receiver over the Collateral, in accordance with MCL 554.1011, *et seq.*

**Brief in Support of  
Motion for Appointment of Receiver**

**A. The Court has the power to appoint a receiver.**

The Court's authority to appoint a receiver is indisputable. Historically, a Michigan equity court's power to appoint a receiver is inherent and may be exercised "in all cases pending where appointment is allowed by law." MCL § 600.2926. Likewise, the recently-enacted Receivership Act authorizes appointment in an action in which "a receiver may be appointed on equitable grounds." MCL § 554.1016(1)(c). Michigan law has clearly confirmed the "inherent power of a court of equity" to appoint a receiver based upon ancient principles of the jurisdiction of English Courts of Chancery. *Grand Rapids Trust Co v Carpenter*, 229 Mich 491, 494; 201 NW2d 448 (1924).

In March 2018, the Michigan Legislature further blessed courts appointing receivers by enacting what is now known as the Receivership Act, MCL §§ 554.1011 *et seq.* (the "Act"). The Act specifically contemplates appointing a receiver where a borrower granted a security agreement in which it consented to a receiver upon default, then defaulted on the loan:

In connection with the foreclosure or other enforcement of a security agreement or lien, the court may appoint a receiver for the property under any of the following circumstances:

- (a) Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment.
- (b) The person that granted a lien in the property agreed in a signed record to appointment of a receiver on default.

[. . .]

- (d) The property held by the secured party is not sufficient to satisfy the secured obligation.
- (e) The owner fails to turn over to the secured party proceeds or rents the secured party was entitled to collect. [MCL § 554.1016(2).]

Here, all of these circumstances exist. This suit is brought in connection with enforcement of the Borrowers' Security Agreement. *See generally* Complaint.

- B. A receiver should be appointed under the Michigan Receivership Act because the Collateral is subject to risk of loss; Borrower expressly consented to a receiver; the value of the Collateral may be less than the debt; and Borrower has failed to pay over advances in excess of the formula specified in the Loan Agreement.**

Pursuant to MCR 3.105(E), a secured party may be granted possession of collateral pending final judgment if the Plaintiff can demonstrate its right to possession is valid and the collateral will be damaged, destroyed, concealed disposed of or used so as to substantially impair its value. *See*, MCR 3.105(E)(3). Here, Plaintiff has a valid right to possess the Collateral and the Collateral may be disposed of or damaged so as to substantially impair its value pending final judgment. For this reason, Plaintiff seeks an ex parte order under MCR 3.105(E)(2)(b) requiring Defendants to respond to this Motion.

Borrowers agreed in the Security Agreement that, upon a default, Plaintiff may have a receiver appointed over the Property:

Appointment of Receiver. Secured Party, upon occurrence of an Event of Default, shall be entitled, and Debtor hereby consents, without notice or demand and without regard to the adequacy of any security for the indebtedness and other Obligations or the solvency

or insolvency of any person liable for the payment thereof, to the appointment of a receiver for the Collateral. The receiver shall have all rights and powers permitted under applicable law and such other powers as the court making such appointment shall confer. . . . The right of a receiver, among other rights and powers, to enter and take possession of and to manage and operate the Collateral, and to collect the rents, issues, profits and proceeds thereof shall be cumulative to any other rights or remedies hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. . . .

See Security Agreement, ¶ 7.2.6. For this reason alone, the Court has the power to appoint a receiver under the Michigan Receiver Act. MCL 554.1016(2)(b). However, not only did Borrowers consent to the appointment of a receiver, there are additional bases for the appointment of a receiver.

Protection of the Collateral constitutes a basis to appoint a receiver under MCL 554.1016(2)(a): “Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment.” The Collateral is stored at premises controlled by the Borrowers, and the Borrowers have previously and repeatedly sold Collateral out of trust. Preventing waste or loss of the Collateral thus provides an additional basis for the appointment of a receiver to ensure security of the Collateral.

The value of the Collateral might not be sufficient to pay the debt in full. This is another basis for the appointment of a receiver under MCL 554.1016(2)(d).

Borrower has failed to remit advances that exceed the amount permitted under the Loan Agreement as required. This is yet another basis for appointment of a receiver under MCL 554.1016(2)(e).

In addition, a receiver will facilitate the repossession of the Collateral and its sale. This assists in “the foreclosure or other enforcement of” the Security Agreement.

The Court should appoint a receiver at this time for any and all of the above reasons.

**C. There is good cause to appoint Beane Associates, Inc. as receiver.**

As discussed above, there is good cause to appoint a receiver over the Collateral, under Michigan statute, Michigan common law, and the specific contracts executed in this case.

Plaintiff recommends that Beane Associates, Inc. be appointed as receiver (the “Proposed Receiver”). Proposed Receiver is highly experienced and well-qualified to serve. Mr. Beane has served as a receiver in many cases over the past 20 years, and prior to that held positions as Chief Financial Officer, Chief Executive Officer, and Corporate Controller. In particular, the Proposed Receiver has experience with floor plan monitoring and out of trust reporting situations, such as has occurred here. An Affidavit of the Proposed Receiver is attached as **Exhibit 1**.

Appointing Proposed Receiver as receiver for the Collateral was agreed to by Borrowers, is critical to its preservation, and appropriate under Michigan law. Bank thus requests that the Court appoint Proposed Receiver as receiver over the Collateral.

Wherefore, Plaintiff respectfully requests that this Honorable Court enter an order for Defendants to appear before the Court at a specified time to answer this Motion and show cause why a receiver should not be appointed over the Collateral with all of the rights permitted to a receiver under law and equity, including specifically those powers available under the Michigan Receivership Act, and why Plaintiff should not be awarded possession of the Collateral through a receiver.



Respectfully submitted,

BALLARD SPAHR LLP

/s/ Christine L. Barba  
Christine L. Barba, Esq.\*  
NJ Bar 016962007 / PA Bar 206938  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
Telephone: (215) 665-8500  
Facsimile: (215) 864-8999  
barbac@ballardspahr.com

*(\*Pro Hac Vice Admission Pending)*

- and -

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/Steven. A. Roach  
Steven A. Roach (P39555)  
Ronald A. Spinner (P73198)  
150 West Jefferson, Suite 2500  
Detroit, MI 48226  
(313) 496-7933  
roach@millercanfield.com  
spinner@millercanfield.com

*Attorneys for Plaintiff*

Dated: April 1, 2024

ATTACHMENT (Exhibit) 1 TO MOTION FOR APPOINTMENT OF  
RECEIVER

*Affidavit of Proposed Receiver*

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

M&T Bank,

Plaintiff

Case No.

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Hon.

Tommy's Holding Company, LLC,  
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Defendants.

---

**Affidavit of Thomas J. Beane**

State of Delaware     )  
                              :SS  
County of New Castle)

Thomas J. Beane, being first duly sworn, deposes and states:

1. I am President of Beane Associates, Inc., (BAI), which has offices in Wilmington, Delaware and Orlando, Florida. For purposes of this Affidavit, my use of the term "I" refers to myself and to BAI. If called as a witness, I am competent to testify to the facts in this Affidavit, and those facts are true.

2. Attached as Exhibit A is my resume. I am a Certified Management Consultant (CMC), am certified as a Certified Insolvency and Restructuring Advisor (CIRA), and have been granted the designation of Certified Turnaround Professional (CTP)

3. I have served as a receiver in matters similar to the one here. Attached as Exhibit B is a list of relevant receivership and liquidation experiences that I have, including my rate structure. In particular, I have experience with floor plan monitoring and out of trust reporting situations as alleged in the complaint here.

4. I have reviewed the complaint. Based on my review of the complaint and my familiarity with similar businesses, I have the relevant business, legal, and receivership knowledge

to serve as a receiver in this matter over the collateral at issue, and have the ability to obtain a bond.

5. I am not a creditor or a holder of an equity security of the receivership estate.

6. I am not, and have not been, an investment banker for any outstanding security of the receivership estate.

7. I have not been, at any time, an investment banker for a security of the receivership estate, or an attorney for such an investment banker, in connection with the offer, sale, or issuance of a security of the receivership estate.

8. I am not, and have not been, a director, an officer, or an employee of the receivership estate or of an investment banker of the type specified in the two preceding paragraphs.

9. I do not have an interest materially adverse to the interest of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in the receivership estate or an investment banker specified in paragraphs 6 or 7 above, or for any other reason.

10. I do not have, and do not represent, an interest adverse to the receivership estate or stand in any relation to the subject of the action or proceeding that would tend to interfere with the impartial discharge of duties as an officer of the court.

11. I have not, at any time within five years before the date of the appointment of a receiver, (1) represented or been employed by the receivership estate; nor (2) except as set forth below and on Exhibit C attached hereto, by any secured creditor of the receivership estate as an attorney, accountant, appraiser, or in any other professional capacity. Within the past five years, I have been employed by M&T Bank to provide consultation services and advice with respect to

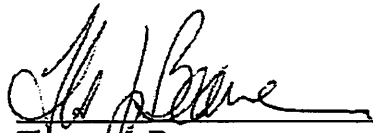
certain of its borrowers. Exhibit C contains a list of such matters. The names of the borrowers have been redacted because their identities are confidential: the engagements were not in connection with public court proceedings. None of the borrowers and matters identified on Exhibit C had their principal places of business or, to the best of my knowledge, any facilities in Michigan. All of my engagements designated on Exhibit C have been concluded; I have no current matters for M&T as its consultant or in any other capacity.

12. I am not an "insider" as defined by MCL 566.31(h).


13. I do not represent, nor am I employed by, a creditor of the receivership estate.

14. I do not have a relationship to the action or proceeding that will interfere with the impartial discharge of the receiver's duties.

15. Further Affiant says not.

  
Thomas J. Beane

Subscribed and sworn to before me,  
a notary public, on ~~March~~ April 01, 2024, 2024.

  
\_\_\_\_\_, Notary Public  
New Castle County, Delaware

My commission expires: AUDREY RICE  
Notary Public  
State of Delaware  
My Commission Expires on Jul 12, 2027

**EXHIBIT A**



## Thomas J. Beane CMC CIRA CTP

President, Beane Associates, Inc.

Thomas J. Beane is President of Beane Associates, Inc., a boutique turnaround and crisis management firm. He has over thirty years of broad-based business experience, including over two decades of turnaround and crisis management consulting. He is experienced in both financial and operating issues and is highly skilled at identifying and implementing practical solutions in time critical situations.

Before joining Beane Associates, Inc., Mr. Beane worked in management positions for NCR and AT&T. At AT&T in Maitland, Florida, he helped transform a marginally profitable \$23 million business unit into one of the most profitable units in the company. His responsibilities included profit and loss, departmental budgets, strategic planning, employee development and contract negotiations.

Elected in 1997 as a **Certified Management Consultant (CMC)** by the Institute of Management Consultants, Tom meets the Institute's standard for technical competence, professional experience and ethical conduct. In 2006 Tom completed all the requirements set forth by the Association of Insolvency and Restructuring Advisors for certification as a **Certified Insolvency and Restructuring Advisor (CIRA)**. In 2018 Tom was granted the **Certified Turnaround Professional (CTP)** designation by the Turnaround Management Association, a community of professionals who work with companies to improve performance, manage disruption, restructure, work through insolvency, preserve equity, and drive significantly improved results. The association grants certification to professionals who demonstrate experience and competency in assisting companies resolve their operational and financial issues.

Tom earned his B.S. degree from the University of Delaware in Newark, DE and his M.B.A. from Rollins College in Winter Park, FL. He is a member of the Turnaround Management Association (TMA) and former board member and Treasurer of the Philadelphia Chapter of the TMA and is currently a board member of the Florida Chapter of the TMA. He is a member of the American Bankruptcy Institute (ABI) and the Association of Insolvency and Restructuring Advisors (AIRA). Additionally, Tom is a founding member of the Delaware chapter of Vistage a peer mentoring membership organization for CEOs, business owners and executives of small- to mid-size businesses.

### Sample consulting assignments with Beane Associates, Inc. include:

- CRO in the restructuring of a multi-million dollar turbine blade manufacturer.
- Representing the debtor as crisis manager in the restructuring of a \$60 million health-care provider.
- Representing the secured creditor in the orderly wind-down of a multi-state \$400 million textile manufacturer.
- Elected to the board of directors for a private specialty chemical company.

### Court Appointments:

- **Wind-Down Administrator** in re: CSH Winddown, Inc., et. al. Chapter 11 U.S. Bankruptcy Court for the District of Delaware, Case No. 18-11272 (LSS)
- **Rent Receiver** in re: Worley & Obetz, Inc., et. al., Christine C. Shubert, Ch. 7 Trustee for the Estates of Worley & Obetz, Inc., et. al. vs. Robert Seth Obetz, et. al., Chapter 7 U.S. Bankruptcy Court for the Eastern District of Pennsylvania, Case No. 18-13774 (REF); Adv. No. 18-00235 (REF)
- **Rent Receiver** Wells Fargo Bank, N.A. vs. MCM Bethlehem Property, LLC, Court of Common Pleas of Northampton, PA, Civil Action No. C-48-CV-2019-04041
- **Receiver** PNC Bank, N.A. and PNC Equipment Finance, LLC, Vs. Kentucky Pain Group, PSC et. al. United States District Court, Eastern District of Kentucky, Lexington Division, No. 5:16-280-DCR
- **Plan Administrator** in Re: Minuteman Spill Response, Inc., a/k/a Minuteman Environmental Services Debtor Chapter 11, U.S. Bankruptcy Court for the Middle District of Pennsylvania, Case No. 4:14-bk-01825-JJT
- **Receiver** Milestone Bank v. HPD Communications, Inc. d/b/a Doeutech, Bucks County Court of Common Pleas, Civil Action No. 2015-04721
- **Receiver** Beneficial Mutual Savings Bank v. KS Sports, Inc., Bucks County Court of Common Pleas, Civil Action No. 2013-05013
- **Receiver** PNC Bank, N.A. vs Casale Marble Imports, Inc. et. al. United States District Court, Southern District of Florida, West Palm Beach Division Case No. 9:13-cv-80482-KAM
- **Receiver** Wilmington Savings Fund Society, FSB v. JABMD Court of Common Pleas Montgomery County, No.2013-0169
- **Receiver** Wells Fargo Bank, N.A. v. Philmont Business Center, LLC, Court of Common Pleas Montgomery County, No.12-04554
- **Receiver** PNC Bank, N.A. v. Wild Pines Enterprises, LLC and Wild Pines Management, Inc., Court of Common Pleas of Monroe County, No.10471, Civil 2008, No. 10478, Civil 2008
- **Receiver** Wilmington Savings Fund Society, FSB v. The Creek Course, LLC, In the Court of Chancery in the State of Delaware, C.A. No. 4029-VCS
- **Receiver** Wilmington Savings Fund Society, FSB v. Ardentown Holdings, LLC and Ardentown Assisted Living, LLC, In the Court of Chancery in the State of Delaware, C.A. No. 6763-CS

**Industry Experience includes:**

- Aerospace
- Defense
- Health & Medical
- Retail
- Automotive
- Distribution
- High Technology
- Service
- Building Products
- Financial Services
- Manufacturing
- Textiles
- Construction
- Hospitality, Food & Beverage
- Oil and Gas
- Transportation

**Professional Experience includes:**

- Strategy Development & Implementation
- Turnarounds and Crisis Management
- Management Evaluation
- Financial Analysis & Forecasting
- Operational Restructuring & Implementation
- Chapter 11 Reorganizations
- Chapter 11 Wind-downs
- Chapter 7 Liquidations
- Refinancing – Debt or Capital Acquisition
- Disposition of Under-performing Assets
- Creditor Negotiations & Management
- Court Appointed Receiver

**Contact Information:**

Thomas J. Beane CMC CIRA CTP  
President  
Beane Associates, Inc.  
E: [tjbeane@beaneassociates.com](mailto:tjbeane@beaneassociates.com)  
C: (302) 383-1443

**Delaware**

22 The Commons  
3518 Silverside Road  
Wilmington, DE 19810-4907  
O: (302) 479-5438

**Florida**

618 E. South Street  
Suite 500  
Orlando, FL 32801  
O: (407) 992-6293

The CMC (Certified Management Consultant) designation is awarded to those select consultants who have demonstrated a history of substantive results for clients, adherence to the canon of ethics of the Institute of Management Consultants USA, and professional practice management. At this time, about 1,000 consultants in the United States have been recognized with the CMC. That is less than 1% of all active professional management consultants.

CIRA (Certified Insolvency and Restructuring Advisor) is the certification mark awarded by the Association of Insolvency and Restructuring Advisors. The association grants certification to professionals who demonstrate a high level of competency in more than 4,000 hours of specialized experience in business turnaround, restructuring and bankruptcy cases.

CTP (Certified Turnaround Professional) is the designation granted by the Turnaround Management Association, a community of professionals who work with companies to improve performance, manage disruption, restructure, work through insolvency, preserve equity, and drive significantly improved results. The association grants certification to professionals who demonstrate experience and competency in assisting companies resolve their operational and financial issues.



**EXHIBIT B**

### **Relevant Receivership, Operational and Liquidation experiences**

**Receiver** PNC Bank, N.A. and PNC Equipment Finance, LLC. Vs. Kentucky Pain Group, PSC et. al. United States District Court, Eastern District of Kentucky, Lexington Division. No. 5:16-280-DCR

*Responsible for liquidation of medical centers located in multiple states. All assets liquidated included owner-occupied real estate.*

**Receiver** PNC Bank, N.A. vs Casale Marble Imports, Inc. et. al. United States District Court, Southern District of Florida, West Palm Beach Division Case No. 9:13-cv-80482-KAM

*Responsible for operation of large marble and tile fabricator selling direct to consumer as well as through dealers and residential contractors. Initial action taken to continue as an operating entity allowing conversion of inventory to finished goods and collection of AR. Liquidation of remaining assets via private sale and public auction.*

### **Dealership Experience**

Multi and single state dealerships including Auto (New and Used); Light trucks; Recreational Vehicles; Farm and Agricultural Equipment; Personal watercraft and small RV's

*Consulting experience includes engagement by secured creditor or the borrower depending on the assignment. Each matter included floor plan monitoring and out of trust reporting; operational cash flow and financial projections; parts and service monitoring and reporting. Experience also includes oversight of inventory unit sales via auction and liquidation of individual and/or multiple stores.*

### **Rate Structure**

Principal	\$405/Hour
Managing Director	\$385/Hour
Director	\$360/Hour
Administration	\$200/Hour

**EXHIBIT C**

**Beane Associates, Inc.**  
**Assignments in the Past Five Years for M&T Bank**

In the last five years, Beane Associate Inc. has been retained as an advisor to M&T Bank on the following assignments:

- New & Used Automobile Dealership
- Multi-Unit Assisted Living Facility
- Distributor of Frozen Foods
- New & Used RV Dealership

ATTACHMENT (Exhibit) 2 TO MOTION FOR APPOINTMENT OF  
RECEIVER

Form of Proposed Order Appointing Receiver

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

M&T Bank,  
a New York Banking Corporation,

Plaintiff

Case No.

-CB

vs.

Hon.

Tommy's Holding Company, LLC,  
a Michigan limited liability company;  
Tommy's Grand Rapids, LLC,  
a Michigan limited liability company;  
Tommy's Castaic, LLC,  
a Michigan limited liability company;  
Tommy's Fort Worth, LLC,  
a Michigan limited liability company;  
Tommy's Lewisville, LLC,  
a Michigan limited liability company;  
High Country Watersports, LLC,  
a Colorado limited liability company;  
Walloon Lake Village Marina, LLC,  
a Michigan limited liability company;  
MKB Florida Holdings, LLC,  
a Michigan limited liability company;  
Tommy's Detroit, LLC,  
a Michigan limited liability company;  
Tommy's California Fresno, LLC,  
a Michigan limited liability company;  
Tommy's Phoenix, LLC,  
a Michigan limited liability company;  
Tommy's Las Vegas, LLC,  
a Michigan limited liability company;  
Tommy's Chattanooga, LLC,  
a Michigan limited liability company;  
Tommy's California Ventura, LLC,  
a Michigan limited liability company;  
Tommy's Rancho Cordova, LLC,  
a Michigan limited liability company;  
Tommy's Stockton, LLC,  
a Michigan limited liability company;  
Tommy's Knoxville, LLC,  
a Michigan limited liability company; and  
Matthew Borisch, an individual,  
jointly and severally,

Defendants.

**Order Appointing Receiver**

Christine L. Barba, Esq.\*  
NJ Bar 016962007 / PA Bar 206938  
BALLARD SPAHR LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
Telephone: (215) 665-8500  
Facsimile: (215) 864-8999  
barbac@ballardspahr.com

John D. Sadler, Esq.\*  
DC Bar 483301 / MD Bar 0212190114 / VA Bar 80026  
BALLARD SPAHR LLP  
1909 K Street, NW, 12<sup>th</sup> Floor  
Washington, DC 20006  
Telephone: (202) 661-2200  
Facsimile: (202) 661-2299  
sadlerj@ballardspahr.com

*(\*Pro Hac Vice Admission Pending)*

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.  
Steven A. Roach (P39555)  
Ronald A. Spinner (P73198)  
*Attorneys for Plaintiff*  
150 West Jefferson, Suite 2500  
Detroit, MI 48226  
(313) 496-7933  
roach@millercanfield.com  
spinner@millercanfield.com

**Order Appointing Receiver**

At a session of said Court  
Held in Grand Rapids, Michigan  
On \_\_\_\_\_, 2024

Present: Hon. \_\_\_\_\_  
Circuit Court Judge

This Court having reviewed Plaintiff's *Motion for Appointment of a Receiver and Possession Pending Final Judgment* (the "Motion"), having reviewed the experience and qualifications of the Receiver (defined below), having heard the Motion in open Court on \_\_\_\_\_, 2024, and being otherwise advised in the premises:

### Findings and Certain Definitions:

A. Plaintiff M&T Bank ("Bank") filed its Verified Complaint for Appointment of Receiver seeking the appointment of a receiver, among other relief.

B. Bank made loans to Defendants Tommy's Holding Company, LLC; Tommy's Grand Rapids, LLC; Tommy's Castaic, LLC; Tommy's Fort Worth, LLC; Tommy's Lewisville, LLC; High Country Watersports, LLC; Walloon Lake Village Marina, LLC; MKB Florida Holdings, LLC; Tommy's Detroit, LLC; Tommy's California Fresno, LLC; Tommy's Phoenix, LLC; Tommy's Las Vegas, LLC; Tommy's Chattanooga, LLC; Tommy's California Ventura, LLC; Tommy's Rancho Cordova, LLC; Tommy's Stockton, LLC; and Tommy's Knoxville, LLC (collectively, "Borrowers") evidenced by a *Variable Rate Demand Note (Floor Plan)* dated May 18, 2023 (the "Floor Plan Note") and a *Revolving Line Note (New York)* dated May 18, 2023 (the "Revolving Note," and collectively with the Floor Plan Note, the "Notes").

C. Defendant Matthew Borisch ("Guarantor") executed a *Continuing Guaranty (Personal) (New York)* ("Guaranty") guarantying payment of the Notes.

D. The Loans are secured by all personal property of Borrowers, including without limitation accounts, inventory, equipment, and contract rights, as evidenced by a *General Security Agreement (New York)* ("Security Agreement"). The term "Collateral" has the meaning given to that term in the Security Agreement.

E. Borrowers' and Guarantor's agents, employees, members, managers, officers, and other agents and representatives are collectively referred to here as "Defendants' Agents."

F. Bank's proposed receivership is a limited receivership over the Receivership Property (defined below) and not over the Borrowers. The receivership's purpose is to preserve the Receivership Property, to safeguard the Receivership Property, to liquidate the Receivership

Property, including to operate the businesses of Borrowers to the extent necessary, and to otherwise effect the terms of this Order.

G. The Court has reviewed Bank's Complaint and Motion, along with their accompanying Exhibits, and any responses to them, and finds that appropriate notice has been given under the circumstances before issuance of this Order. Based on these papers, the Court finds that good cause has been shown for the appointment of a receiver.

H. The Receivership Property (defined below) is likely to be insufficient to satisfy Bank's claims.

I. The Receiver identified below has sufficient competence, qualifications, and experience to administer the receivership estate.

Pursuant to MCL 554.1011-1040 (the "Receivership Act"), MCL 600.2926, and MCR 2.622, IT IS ORDERED:

**1. Appointment of Receiver and the Receivership Property**

1.1 Thomas J. Beane, President, Beane Associates, Inc. (the "Receiver"), whose address is 22 The Commons, 3518 Silverside Road, Wilmington, DE 19810-4907; E-mail: tjbeane@beaneassociates.com; Phone: (302) 479-5438, Mobile: (302) 383-1445, Fax: (302) 479-5434, is appointed receiver of the Receivership Property (defined below). This Order is effective upon entry (the "Effective Date"), but the Receiver's duty to act is subject to its filing an acceptance of receivership with the Court within 7 days after the Effective Date. The receiver's acceptance of the receivership shall be served on all parties to this action. The Receiver's duty to act is subject to the terms of this Order.



1.2 Bank shall not be construed to be a mortgagee in possession of any of the Defendants' properties as a result of the entry of this Order, and none of the actions taken by Receiver shall be construed to have been taken by or on behalf of Bank.

1.3 As of the Effective Date, the Receiver is authorized and directed to take immediate possession and full control of the Receivership Property and to take such other actions as the Receiver deems reasonable and appropriate to take possession of, to exercise full control over, to prevent waste, and to preserve, manage, secure, and safeguard the Receivership Property. Defendants shall have neither possession nor control of, nor any right to, the Receivership Property or any Income (as defined below) derived from the Receivership Property.

1.4 The Receiver shall take possession of and receive all Income on deposit wherever held, including but not limited to with all depositories, banks, brokerages, and otherwise (collectively, "Financial Institutions"), whether held in accounts titled in the name of any of the Defendants or otherwise. All Financial Institutions are directed to deliver such deposits to the Receiver, together with such records as the Receiver may reasonably request with respect to such accounts. The Receiver may indemnify the Financial Institution upon whom such demand is made, and is empowered to open or close any such accounts.

1.5 The Receiver must deposit all Income collected and received at one or more federally insured banking institutions or savings associations. The Receiver may use any of the Defendants' tax identification numbers in connection with such accounts. If the amounts in such account(s) exceed the federal insurance limit, Receiver may obtain a surety bond (interest or noninterest bearing) to protect such excess amounts.

1.6 Defendants and Defendants' Agents are ordered to cooperate with the Receiver in transitioning management and control of the Receivership Property to Receiver. As part of this

transition, Defendants and Defendants' Agents shall turn over the following documents, property, and information to Receiver on the Effective Date, to the extent in the possession, custody, or control of Defendants or any of Defendants' Agents, in both physical and electronic form where available, pertaining to all or any part of the Receivership Property:

- (a) All keys, including masters;
- (b) All Collateral, including without limitation, accounts, inventory, machinery, work in process, equipment, and contract rights;
- (c) All books and records relating to the Collateral, including documents regarding sales to customers, orders from customers, purchase orders and accounts receivable;
- (d) All leases and subleases, including all amendments, together with all communications/correspondence files, including any expired leases, and all security deposits and rents;
- (e) Bank accounts of any of the Defendants;
- (f) All Income;
- (g) The petty cash fund, if any;
- (h) All patents issued to Borrower, all licenses to and all assignments to Borrower relating to any patents, all trade secrets of Borrower or licensed or otherwise assigned to Borrower;
- (i) A current aged account receivable/delinquency report;
- (j) An aged listing of all trade payables and other payables;
- (k) Documents identifying and summarizing all pending litigation related in any manner to the Receivership Property (excluding this action);
- (l) All existing service contracts;
- (m) All documents, books, records, computer files, e-mails, and all other records concerning the Receivership Property;
- (n) A list of utilities and utility accounts, along with copies of the most recent and any unpaid utility bills;
- (o) All technical manuals for all systems, together with operating procedures;
- (p) All insurance policies on the Receivership Property and their terms;
- (q) All vendor insurance certificates and loss runs;
- (r) All documents relating to all insurance claims submitted in the past three (3) years.
- (s) All documents, books, records and computer files, computer equipment, software, management files, equipment, furniture, supplies located at the

on-site management office (if any), all passwords needed to access all software and computer files, including emails, stored on computer equipment located at the on-site management office, all passwords needed to access all financial records stored off-site, and all records concerning the Income and the operation and management of the Receivership Property;

- (t) All records required to be kept under applicable safety and environmental laws and such other records pertaining to the management of the Receivership Property as may be reasonably requested by Receiver;
- (u) All current warranties in existence with respect to any of the Receivership Property;
- (v) Surveys, site plans, stacking plans, specifications, floor plans, drawings, measurements, etc.;
- (w) Any federal employer identification number(s) associated with Defendants;
- (x) Documents and information related to any pending personal property or ad valorem tax and related appeals;
- (y) Such other records pertaining to the management of the Receivership Property as may be reasonably requested by the Receiver.

1.7 Defendants shall prepare and submit to Bank and the Receiver an accounting for all Income generated since May 18, 2023. This accounting shall be delivered no later than 14 days after the Effective Date.

1.8 Defendants and Defendants' Agents shall turn over to the Receiver, on the Effective Date or otherwise upon the Receiver's request, all Income, except to the extent such Income is held in an account with a Financial Institution of which the Receiver has taken control.

1.9 Defendants and Defendants' Agents are under a continuing obligation to turn over all items listed in Section 1.6 after the Effective Date.

1.10 Defendants and Defendants' Agents are prohibited from removing any Receivership Property, and are prohibited from diverting any Income.

1.11 Defendants and Defendants' Agents shall fully cooperate with Receiver and shall take all steps necessary to comply with this Order and other orders of the Court, and with all

applicable law and/or rules and are enjoined from interfering with the use, management, possession, control, and liquidation of the Receivership Property by Receiver.

1.12 Defendants shall fully cooperate with the Receiver in (i) adding the Receiver and Bank as additional insureds; (ii) adding Bank as the loss payee; and (iii) modifying (to the extent Approval has been given) all insurance policies relating to the operation and management of the Receivership Property (the "Policies"). These Policies include, without limitation, fire, extended coverage, auto and van coverage, property damage, liability (both general liability and excess liability), fidelity, errors and omissions, and workers compensation. Defendants and Defendants' Agents are prohibited from canceling, reducing, or modifying any Policies and coverages with respect to the Receivership Property.

1.13 Within 28 days after the Effective Date, the Receiver shall give notice of this Order to all persons and entities that hold a recorded interest in the Receivership Property on the Effective Date.

1.14 Because the Receivership Property is unlikely to satisfy the claims of Bank, the Receiver need not give notice to any creditors of Defendants, and unsecured creditors need not submit claims against Defendants arising before the Effective Date.

## **2. Receiver's Duties and Authority.**

2.1 The Receiver shall be vested with and shall discharge the following authority, powers, and duties:

- (a) To take control of all Collateral, including Collateral and sales transferred to Guarantor.
- (b) To enter the Borrowers' offices at (a) 146 Monroe Center NW, Suite 820, Grand Rapids, Michigan; and (b) 120 Ottawa Ave NW, Floor 4, Grand Rapids, Michigan; and any of the buildings at Borrowers' locations listed on Exhibit F attached to the Complaint, including changing the locks and taking reasonable steps to provide electricity to the offices and buildings, and if appropriate, limit access to some or all of the Receivership Property.

- (c) To maintain, secure, manage, repair, and preserve the Receivership Property.
- (d) To sell or otherwise dispose of Receivership Property, with Bank's Approval.
- (e) To assume control over the Receivership Property and to collect and receive all Income.
- (f) To prepare and maintain complete books, records, and financial reports of the Receivership Property, in a form acceptable to Bank.
- (g) To allow Bank and its counsel access to the Receivership Property at all reasonable times to inspect the Receivership Property and all books and records.
- (h) To review existing worker's compensation, disability, general liability, excess liability, and "all risks" hazard insurance and to retain, modify, or purchase such insurance, and name Bank and the Receiver as additional insureds, as the Receiver deems appropriate for the Receivership Property's preservation and protection, but subject to Approval.
- (i) To maintain a separate account with a federally insured banking institution or savings association with offices in the Receiver's own name, as Receiver, from which the Receiver shall disburse all authorized payments as provided in this Order.
- (j) To receive and endorse checks pertaining to the Receivership Property either in the Receiver's name or in the name of any of the Defendants.
- (k) To pay all appropriate personal property taxes, and any other taxes or assessments against the Receivership Property, if the Receiver deems appropriate in its discretion and to the extent not paid by any tenant in possession. The Receiver shall not be liable for any taxes owed by any of the Defendants.
- (l) To prepare and file any tax returns arising in connection with the Receivership Property and the operation of the Receivership Property as may be required by law. The Receiver shall not be responsible for the preparation and filing of any tax returns for Defendants or affiliates, (including income, personal property, commercial activity, gross receipts, sales and use, or other tax returns) other than to provide Defendants with information in the Receiver's possession that may be necessary for Defendants or their affiliates to prepare and file their returns. Defendants shall provide to the Receiver any information needed to file any tax returns for the Receivership Property.
- (m) To operate the Receivership Property under any existing name or trade name (or a new name, if the Receiver deems it appropriate to do so).
- (n) To use or to license any patent, license, or assignment as Receiver deems necessary to sell the Inventory.

- (o) To determine and report to the Court and Bank whether any Income previously received by Defendants has been used for purposes other than for the operations of Borrower.
- (p) To initiate, prosecute, defend, compromise, adjust, intervene in, or become party to such actions or proceedings in state or federal court as may, in its opinion and discretion, be necessary or proper for the protection, maintenance and preservation of the Receivership Property or carrying out the terms of this Order.

2.2 The Receiver and the Receivership Property shall not be bound by any existing property management agreement affecting the Receivership Property. Defendants are enjoined from retaining a management firm for the Receivership Property or from otherwise interfering with the Receiver's retention of a management firm for the Receivership Property.

2.3 In carrying out the duties contained in this Order, the Receiver is authorized, but not required to, and only upon Bank's Approval:

- (a) To engage an auctioneer.
- (b) To enforce, amend, or terminate any existing contracts affecting the Receivership Property.
- (c) To reject any lease or unexpired contract of Defendants that is burdensome on the Receivership Property.
- (d) To execute, cancel, modify, renegotiate, or abrogate all service, maintenance, or other contracts relating to the operations of the Receivership Property, but subject to Approval for contracts in excess of \$5,000. All such contracts are to be terminated upon a sale or disposition of the Receivership Property or termination of the Receivership, unless expressly assumed.
- (e) To hire any employees necessary to aid him in the administration of the receivership, including one or more employees of the Defendants, and to use the payroll systems of each Defendant for same.
- (f) To employ attorneys, accountants, agents, tax appeal consultants, and other professional persons (collectively "Professional Persons") as the Receiver may from time to time deem appropriate and on such terms and conditions as the Receiver deems appropriate. Such Professional Persons include Beane Associates, Inc.; McElroy, Deutsch, Mulvaney & Carpenter, LLP; and such local professionals as the Receiver may deem necessary or appropriate.
- (g) To contest, protest, or appeal any ad valorem tax or assessment, personal property tax, or any other tax or assessment pertaining to the Receivership

Property for any new or currently pending tax appeal. Any refund or reimbursement of taxes, whether for taxes paid by the Receiver or Defendants (but expressly excluding personal taxes paid by or refunded or reimbursed to Guarantor individually) and whether pertaining to any tax period before or after the entry of this Order, shall be deemed Income to applied as provided in this Order.

- (h) To prosecute any and all claims, including but not limited to claims related to going out of business sales, administrative expenses, lease assumptions, lease assignments and/or lease rejections, against any of Defendants' tenants in any bankruptcy court action on behalf of or in the name of Defendants until conclusion of the bankruptcy action and to file any proof of claim, amended proof of claim, and/or any such other pleading as may be necessary to pursue any administrative expense, lease assumption, lease assignment and/or lease rejection claim (collectively the "Bankruptcy Claim"). Any amounts paid in partial or full satisfaction of any Bankruptcy Claim, whether such claim arose before or after entry of this Order, shall be deemed Income to be applied as provided in this Order.

### **3. Receiver's Duties and Authority.**

3.1 While Defendants or their assigns retain title to the Receivership Property, the Receiver is authorized and directed:

- (a) To execute, cancel, or modify lease agreements or extensions of leases, subject to Approval.
- (b) To enforce any valid covenant of any existing lease; and to execute, cancel, or modify leases, but subject to Approval.

3.2 The Receiver shall have the right to borrow money, provided, however, that any borrowings must first be approved in writing signed by an authorized representative of Bank and, if and when made, the amount of such borrowings shall be deemed to be a protective advance under the Loan Documents and shall be added to the balance of the Indebtedness. Bank's Approval of any requests for borrowings made by the Receiver may be sought by means of email messages sent by a representative of the Receiver to Bank.

#### **4. Extent of Receiver's Authority.**

4.1 Although the Receiver shall have possession and control of the Receivership Property, the Receiver shall not take title to the Receivership Property.

4.2 The Receiver is authorized to exercise all powers and authority granted under the Receivership Act to the extent not inconsistent with this Order. The Receiver shall have such additional powers that are provided by law and that the Court may from time to time direct or confer, and may apply to this Court for further instructions or directions.

4.3 The Receiver shall not take any action that impedes or interferes with the foreclosure or foreclosure sale process in carrying out the duties contained in this Order. The Receiver is barred from impeding or frustrating the foreclosure or foreclosure sale process.

4.4 The authority granted to the Receiver is self-executing, unless the action requires Approval. The Receiver is authorized to act on behalf of, and in name of, any of the Defendants (or the Receiver's name) as the Receiver deems appropriate without further order of this Court and without personal recourse against the Receiver (subject to the General Provisions).

#### **5. Receivership Property and Income.**

5.1 "Receivership Property" means and includes:

- (a) All personal property assets of Borrowers, wherever located, including without limitation, Accounts, Inventory, contract rights and General Intangibles.
- (b) All tangible and intangible property used or useable in connection with the business of Borrowers, including, without limitation, insurance premium refunds, insurance proceeds, condemnation awards, utility deposits and deposits of every other kind, causes of action, drawings, plans, specifications, escrow agreements, and other personal property described in the Security Agreement (the "Personal Property").
- (c) All Income and claims to the Income.
- (d) Any refund or reimbursement of taxes, whether for taxes paid by the Receiver or Borrowers, or on behalf of Borrowers, or by the Guarantor due to any income generated by any of the Borrowers, and whether pertaining



to any tax period before or after the entry of this Order, and the right to institute or continue any contest, protest, or appeal of any ad valorem tax or assessment, personal property tax, or other tax or assessment pertaining to the Receivership Property.

- (e) All trade names, trademarks, patents, trade secrets, and other intellectual property owned or used by Defendants in connection with the business of Borrower.
- (f) All books, records, accounts, and documents that in any way relate to the Inventory, business, or Income.
- (g) All other property, estate, right, title and interest of Defendants as described in the Security Agreement, Note and other loan documents.

5.2 The term "Income" means, collectively: all cash, cash on hand, checks, cash equivalents, credit card receipts, demand deposit accounts, bank accounts, cash management or other financial accounts, bank or other deposits, and all other cash collateral (all whether now existing or later arising); current and past-due earnings, rents, prepaid rents, revenues, issues and profits, accounts, and accounts receivable (all whether unpaid, accrued, due, or to become due); and all claims to issues, profits, income, cash collateral, and all other gross income derived from the business operations of any of the Defendants related to the Receivership Property, regardless of whether earned before or after entry of this Order.

5.3 Income shall be applied as follows (but subject to the lien rights granted to Bank):

- (a) First, to the Receiver's approved fees and expenses;
- (b) Next, to the repayment of outstanding receivership certificates;
- (c) Next, disbursed to Bank until the balance due to Bank is fully paid; and
- (d) Finally, any surplus to be held pending further order of the Court.

## **6. Receiver Compensation, Reports, Accounting, and Bond.**

6.1 The Receiver's compensation shall be set at the following rate schedule, plus reasonable expenses:

Title	Rate per Hour
Principal	\$405
Managing Director	\$385
Director	\$360
Administration	\$200

6.2 Except as otherwise provided in an order of this Court authorizing the retention of a particular professional, the Receiver may seek interim payment of compensation and reimbursement of expenses in accordance with the following procedures:

- (a) No earlier than the fifteenth (15th) day of each month following the month for which compensation is sought (with the first fee application filed in the month following the first full month of appointment), the Receiver may file an application with this Court for interim allowance of compensation for services rendered and reimbursement of expenses incurred during the preceding month (a "Monthly Fee Application") and serve such Monthly Fee Application on the Notice Parties.
- (b) Each Notice Party will have ten (10) business days after service of a Monthly Fee Application to object (the "Objection Deadline"). If no objections are raised before the Objection Deadline, the Receiver may file a certificate of no objection with this Court, after which the Receiver shall be authorized to pay the requested fees and costs. If any Notice Party objects to a Monthly Fee Application, it must, on or before the expiration of the Objection Deadline, file with this Court and serve on the Receiver and, each other Notice Party a written objection (the "Objection") so as to be received on or before the Objection Deadline. Any Objection shall identify with specificity the objectionable fees and expenses, including the amount of such objected to fees and expenses, and the basis for such Objection. Thereafter, the objecting party and the Receiver, as applicable, may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution within twenty (20) days after service of the Objection, the Receiver may either: (i) file a response to the Objection and set the matter for hearing with the Court; or (ii) forego payment of the objected to amount until the time at which the Receiver seeks final approval of its fees and expenses.

6.3 Within thirty (30) days of the completion of the Receiver's duties and obligation under this Order, or the resignation or dismissal of the Receiver, the Receiver shall:

- (a) File a final application with this Court for final approval of fees and expenses incurred during the pendency of this receivership (the "Final Receivership Fee Application"); and

- (b) Serve the Final Receiver Fee Application on the Notice Parties. Each Notice Party will have fifteen (15) business days after the service of a final Receiver Fee Application to object, and if no objections are raised prior to the expiration of such time period, the Receiver may file a certificate of no objection with this Court, after which the Receiver shall be authorized to pay all fees and expenses set forth in the Final Receiver Fee Application that are still due and outstanding.

6.4 If an objection is received with respect to a Final Receiver Fee Application, the Receiver may file a response to such objection and this Court shall promptly set a hearing to consider the Final Receiver Fee Application.

6.5 The Receiver's compensation shall be paid: (1) first from the Income from the Receivership Property, and (2) next, by Bank as a protective advance, but only to the extent that the Income is insufficient to pay the Receiver's compensation. The Receiver shall be permitted to deduct its fees directly from the Income or other proceeds of the Receivership Property, subject to approval in accordance with this Order. The Receiver is authorized to issue receivership certificate(s) to secure any protective advances made by Bank to pay the Receiver's compensation, but subject to Approval.

6.6 No notice or hearing shall be required before payment of any portion of the Receiver's compensation that is a flat amount for a particular period of time, nor shall it be required for any percentage-based contingent fee (such as a commission) to the extent that all approvals required under this Order have been given for the amount upon which the percentage is calculated. Notice and opportunity for a hearing must be provided for all compensation calculated on any other basis (such as an hourly fee), in accordance with this Order.

6.7 The Receiver's compensation as provided above shall automatically terminate at the end of the month during which (1) all or substantially all of the Receivership Property is sold. Thereafter, Receiver's compensation, if any, shall be subject to Bank's Approval and further order of the Court.

6.8 Nothing in this Order shall require the Receiver to advance funds other than from Income without a bond or security for payment satisfactory to the Receiver.

6.9 Within 35 days after the Effective Date, the Receiver shall submit to the Court, for the Court's *in camera* inspection, a list of all of the personal property, whether tangible or intangible, of which it has taken possession.

6.10 By the 20<sup>th</sup> day of each calendar month after the first full month of appointment, the Receiver shall prepare a monthly financial report (the "Receiver's Reports") in a form approved by Bank. Each Receiver's Report shall include, without limitation, an income and expense statement, a balance sheet, and a cash flow analysis pertaining to the operations of the Receivership Property during the immediately preceding month; a copy of the relevant bank statement(s); a summary of advances from Bank; a description of any other activities of the Receiver since the previous report; and an itemized statement setting forth the compensation paid to the Receiver for the services rendered and costs incurred by it as receiver during the preceding three months, reflecting the dates of service, time spent, and the nature of the services rendered and costs incurred. Unless any party entitled to receive said Receiver's Report under this Order files with the Court and serves on the Receiver and all other parties an objection to said Receiver's Report within ten (10) days following service of the Receiver's Report, the compensation set forth in the Receiver's Report shall be approved, subject to the Court's review of all compensation paid to the Receiver in connection with the Court's review and approval of the Receiver's final accounting.

6.11 The Receiver shall submit the Receiver's Reports to the Court, for the Court's *in camera* inspection. The Receiver's Reports are not to be filed with the Clerk at the Court and shall not be available for public inspection without a specific order of the Court.

6.12 The Receiver shall furnish to the parties' counsel any additional information regarding the Receivership Property as required by law and as may be reasonably requested by them. The Receiver is authorized to request instructions from this Court should any party request information or documents that would be unduly burdensome or expensive to produce, or to annoy or harass, or for any other improper purpose.

6.13 The Receiver shall furnish the Receiver's Reports to the following:

Steven A. Roach  
Miller, Canfield, Paddock and Stone, P.L.C.  
150 West Jefferson, Suite 2500  
Detroit, MI 48226  
roach@millercanfield.com

and

Christine L. Barba  
Ballard Spahr LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103  
barbac@ballardspahr.com

6.14 The Receiver shall post a surety bond from an insurance company licensed to do business in this State in an amount not less than \$10,000.00, effective as of the Effective Date. The Receiver is authorized to act before it posts this bond. The cost of the bond is an expense of the Receivership.

## **7. Approval.**

7.1 "Bank's Approval" means written consent either directly by Bank or by Bank's counsel. "Court Approval" means approval by a specific Order of the Court. "Approval" when appearing without a modifier means *either* Bank's Approval *or* Court Approval.

## **8. Term and Final Accounting.**

8.1 This Receivership shall continue until further order of the Court.

8.2 The Receiver shall be removed automatically and without cause thirty days after the filing of a written demand for removal signed by Bank's counsel and filed with the Clerk of the Court; this removal shall be self-executing and have immediate effect upon filing with the Clerk without further order of the Court. The Receiver may also be removed in the Court's equitable discretion upon a motion for good cause filed by Defendants. If the Receiver is removed, either automatically by Bank or upon motion for cause by Defendants, a successor receiver shall be appointed upon the submission of a stipulated order on behalf of Bank and Defendants. If Bank and Defendants cannot agree on a successor receiver, the Court will name a successor receiver by further order after a motion is filed by Bank or Defendants requesting the appointment of a successor receiver.

8.3 Immediately upon termination of the Receivership, the Receiver shall turn over to Bank or its designee (including any property manager) all of the Receivership Property unless otherwise ordered by the Court.

8.4 Neither the termination of the Receivership nor the Receiver's removal will discharge the Receiver or the Receiver's bond.

8.5 The Receiver shall submit a final accounting (with copies to the recipients of Receiver's Reports as identified above) for approval by the Court within thirty days after the termination of the Receivership or the Receiver's removal, unless a differing time period is later ordered by the Court.

8.6 Only after the Court approves the Receiver's final accounting may the Receiver be discharged and the Receiver's bond be cancelled.

## **9. General Provisions.**

9.1 The Receiver is only the receiver of the Receivership Property. The Receiver's responsibilities, duties, and liabilities are expressly limited to those stated in this Order as the same are related to the Receivership Property.

9.2 No person or entity shall file suit against the Receiver, or its employees, agents, or attorneys, or take other action against the Receiver or the Receiver's bond, without first obtaining an order of this Court permitting the suit or action upon motion and evidentiary hearing; provided, however, that no prior court order is required to file a motion in this action to enforce or effect the provisions of this Order or any other order of this Court in this action.

9.3 The Receiver and its employees, agents, and attorneys shall have no personal liability in connection with any liabilities, obligations, liens, citations, code violations, or amounts owed to any of Defendants' creditors, taxing authorities, bodies politic, or other claimants because of its duties as Receiver, whether arising before or after the Receiver's appointment. The Receiver and Receiver's employees, agents and attorneys shall have no personal liability with respect to any environmental liabilities arising out of or relating to the Receivership Property. Nothing in this Order shall grant any rights to trade creditors or general unsecured creditors, whose rights shall be solely determined in accordance with Michigan law.

9.4 The Receiver and the Receivership Property shall not be liable for the payment of goods or services provided to the Defendants prior to the date of this Order. Any individual or entity receiving a copy of this Order is hereby enjoined and restrained from discontinuing service to the Receiver or the Receivership Property based upon non-payment of such goods or services prior to the date of this Order and from attempting to collect taxes, assessments, and invoices from the Receiver pre-dating the date of this Order.

9.5 The Receiver and its employees, agents and attorneys shall have no claim asserted against them relating to the Receiver's duties under this Order, except for claims due to their gross negligence, gross or willful misconduct, or failure to comply with this Court's orders.

9.6 All creditors, claimants, bodies politic, parties in interest, and their respective attorneys, agents, employees, and all other persons, firms, and corporations, hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity to foreclose any lien or enforce any claim against the Receivership Property, the books, records, revenues, profits, and related assets associated with the Receivership Property, or against the Receiver in any court, unless otherwise ordered by this Court. These persons and entities are further stayed from executing or issuing or causing the execution or issuance out of any court of any writ, process, summons, attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or enforcing any claim or lien upon any of the Receivership Property or the books, records, revenues, profits and related assets associated with the Receivership Property, or upon the Receiver, and from doing any act or thing whatsoever to interfere with the Receiver in the discharge of its duties in this proceeding or within the exclusive jurisdiction of this Court over the Receivership Property and the books, records, revenues, profits and related assets associated with the Receivership Property, unless otherwise ordered by this Court.

9.7 The Receiver and its employees, agents, and attorneys shall have no personal liability, and they shall have no claim asserted against them or the Receiver's bond, relating to the Receiver's duties under this Order regarding any action taken or not taken by them in good faith. The Receiver and its employees, agents, and attorneys shall not be liable for any mistake of fact



or error of judgment or for any acts or omissions of any kind, unless caused by gross negligence, gross or willful misconduct, malicious acts, or the failure to comply with this Court's orders.

9.8 Nothing in this Order shall be construed such that the Receiver is considered to be in a fiduciary relationship with Bank, any of the Defendants, or all of them collectively.

9.9 In accordance with MCL 554.1024, Defendants, Defendants' Agents, and all those in active participation or concert with them who receive notice of this Order, along with all those having claims against the Receivership Property who receive notice of this Order, are enjoined from, and shall not:

- (a) ***Commit Waste.*** Commit or permit any waste on all or any part of the Receivership Property, or suffer or commit or permit any act on all or any part of the Receivership Property in violation of law, or remove, transfer, encumber, or otherwise dispose of any of the Receivership Property.
- (b) ***Collect Income.*** Demand, collect, receive, discount, or in any other way divert or use any of the Income.
- (c) ***Terminate any Utility Service.*** Terminate, discontinue, or withhold any electric, gas, water, sewer, telephone, or other utility service supplying the Receivership Property, require any utility deposit (including demanding the deposit of additional funds to maintain or secure service), do other than transfer any deposits relating to utility or other services to the exclusive control of the Receiver, or otherwise interfere with the continued operations of the Receivership Property.
- (d) ***Interfere with the Receiver.*** Directly or indirectly interfere in any manner with the discharge of the Receiver's duties under this Order, or the Receiver's possession, operation, and management of the Receivership Property, or the Receiver's (including any broker's) marketing or sale of the Receivership Property.
- (e) ***Transfer or Encumber the Receivership Property.*** Expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal, or in any manner whatsoever deal in or dispose of the whole or any part of the Receivership Property including, but not limited to, the Income, without prior Court order.
- (f) ***Impair the Preservation of the Receivership Property.*** Do any act that will, or that will tend to, impair, defeat, divert, prevent, or prejudice (i) the preservation of the Receivership Property, including the Income, or

(ii) Bank's interest in the Receivership Property and the Income, or the preservation of that Interest.

9.10 The Receiver shall faithfully perform and discharge the Receiver's duties and obey the Court's orders.

9.11 The Receiver is subject to the personal jurisdiction of the Court.

9.12 The Receiver and its counsel are permitted to communicate *ex parte* with the Court and any magistrate referred to this matter, as well as their staff, on any matters related to the Receivership Property.

9.13 The Receiver's duty to act as Receiver is subject to the Receiver's written acceptance and approval of the terms of this Order. Upon acceptance, the Receiver shall be bound by each and every term contained in this Order and each and every obligation of the Receiver imposed by this Order.

#### **10. Amendment of Order.**

10.1 This Order may be amended for cause after a motion or hearing. This Order may also be amended by order agreed to by Bank, Defendants, and the Receiver.

#### **11. No Prejudice to Foreclosure.**

11.1 This Order shall not prejudice Bank's foreclosure in accordance with the Security Agreement, or an action by Bank under any security agreement or the Uniform Commercial Code with respect to the Personal Property, or any of Bank's other claims as set forth in any amendments to the Complaint. The Receiver shall not take any action that impedes or interferes with the foreclosure or foreclosure sale process in carrying out the duties contained in this Order. The Receiver is barred from impeding or frustrating the foreclosure or foreclosure sale process.

**12. Final Appealable Order.**

12.1 Pursuant to MCR 2.604(B), the Court expressly finds and determines that there is no just reason for delay and therefore enters this Order as a final order on Bank's claim for appointment of a receiver.

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Circuit Court Judge

Acceptance of Receivership

\_\_\_\_\_ accepts the duties of the  
Receiver as set forth in this Order and agrees to submit to the personal jurisdiction of the Court.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2024

ATTACHMENT (Exhibit) 3 TO MOTION FOR APPOINTMENT OF  
RECEIVER

Form of Proposed Order to Show Cause

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

M&T Bank,  
a New York Banking Corporation,

Plaintiff

Case No. 24 - 03177 - CBB

vs.

Hon.

Tommy's Holding Company, LLC,  
a Michigan limited liability company;  
Tommy's Grand Rapids, LLC,  
a Michigan limited liability company;  
Tommy's Castaic, LLC,  
a Michigan limited liability company;  
Tommy's Fort Worth, LLC,  
a Michigan limited liability company;  
Tommy's Lewisville, LLC,  
a Michigan limited liability company;  
High Country Watersports, LLC,  
a Colorado limited liability company;  
Walloon Lake Village Marina, LLC,  
a Michigan limited liability company;  
MKB Florida Holdings, LLC,  
a Michigan limited liability company;  
Tommy's Detroit, LLC,  
a Michigan limited liability company;  
Tommy's California Fresno, LLC,  
a Michigan limited liability company;  
Tommy's Phoenix, LLC,  
a Michigan limited liability company;  
Tommy's Las Vegas, LLC,  
a Michigan limited liability company;  
Tommy's Chattanooga, LLC,  
a Michigan limited liability company;  
Tommy's California Ventura, LLC,  
a Michigan limited liability company;  
Tommy's Rancho Cordova, LLC,  
a Michigan limited liability company;  
Tommy's Stockton, LLC,  
a Michigan limited liability company;  
Tommy's Knoxville, LLC,  
a Michigan limited liability company; and  
Matthew Borisch, an individual,  
jointly and severally,

Defendants.

TJ. ACKER  
(P-37128)

**Order to Show Cause Regarding  
Appointment of Receiver**

Christine L. Barba, Esq.\*  
NJ Bar 016962007 / PA Bar 206938  
BALLARD SPAHR LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
Telephone: (215) 665-8500  
Facsimile: (215) 864-8999  
barbac@ballardspahr.com

John D. Sadler, Esq.\*  
DC Bar 483301 / MD Bar 0212190114 / VA Bar 80026  
BALLARD SPAHR LLP  
1909 K Street, NW, 12<sup>th</sup> Floor  
Washington, DC 20006  
Telephone: (202) 661-2200  
Facsimile: (202) 661-2299  
sadlerj@ballardspahr.com

(\*Pro Hac Vice Admission Pending)

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.  
Steven A. Roach (P39555)  
Ronald A. Spinner (P73198)  
Attorneys for Plaintiff  
150 West Jefferson, Suite 2500  
Detroit, MI 48226  
(313) 496-7933  
roach@millercanfield.com  
spinner@millercanfield.com

**Order to Show Cause Regarding Appointment of Receiver**

At a session of Said Court  
Held in Grand Rapids, Michigan  
On \_\_\_\_\_, 2024

Present: Hon. \_\_\_\_\_  
Circuit Court Judge

This matter having come before the Court on Plaintiff's *Ex Parte Motion for Order to Show Cause and Motion for Appointment of a Receiver and Possession Pending Final Judgment*, and the Court being fully advised in the premises, including that Plaintiff's Verified Complaint shows that

Plaintiff has a first lien position on all accounts, general intangibles, chattel paper, contract rights, deposit accounts, documents, instruments and rights to payment evidenced by chattel paper, documents or instruments, inventory, work in process, machinery, equipment, fixtures, software, and investment property, including all proceeds from same (collectively, the "Collateral");

IT IS ORDERED that Defendants refrain from damaging, destroying, concealing, disposing of, or using so as to substantially impair its value, the Collateral until further order of the Court.

IT IS FURTHER ORDERED that in accordance with the Loan Documents, Borrowers shall deliver to Bank the proceeds from the sales of Collateral that occur on and after the entry of this Order.

IT IS FURTHER ORDERED that said Defendants shall appear before this Court on \_\_\_\_\_, 2024, at \_\_\_\_:\_\_\_\_.m. to show cause, if any there be, as to why Plaintiff should not be granted possession pending final judgment of the Collateral and why a receiver should not be appointed over the Collateral with all of the rights permitted to a receiver under law and equity, including specifically those powers available under the Michigan Receivership Act.

IT IS FURTHER ORDERED that copies of this Order, together with Plaintiff's Complaint, Motion, and Brief and supporting documents, be served on Defendants at least \_\_\_\_ days prior to the hearing date.

This Order was entered on \_\_\_\_\_, 2024 at \_\_\_\_:\_\_\_\_.m.

\_\_\_\_\_  
Circuit Court Judge