

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re: DELTAVILLE BOATYARD, LLC ¹ Debtor	Case No. 16-35974-KLP Chapter 11
In re: BOATYARD RENTALS, LLC ² Debtor	Case No. 16-35389-KLP Chapter 11
In re: DELTAVILLE MARINA, LLC ³ Debtor	Case No. 16-35390-KLP Chapter 11

**FINAL ORDER AUTHORIZING USE OF CASH
COLLATERAL AND ADEQUATE PROTECTION**

This matter came before the Court upon the Debtors' Motion to Authorize Use of Cash Collateral and Adequate Protection and Memorandum in Support Thereof (the "Motion")⁴ and the Objection of SummitBridge National Investments III LLC (the "Summit Objection"). The Court having reviewed the Motion, the Summit Objection and having heard the statements of counsel at a

¹ The Debtor's address is PO Box 497, Deltaville, VA 23043 and the Debtor's EIN is 13-4216818.

² The Debtor's address is PO Box 497, Deltaville, VA 23043 and the Debtor's EIN is 20-1921031.

³ The Debtor's address is PO Box 497, Deltaville, VA 23043 and the Debtor's EIN is 20-1958245.

⁴ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

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Proposed Counsel for the Debtors

hearing before the Court (the “Hearing”); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2) and (c) notice of this Motion and the Hearing was sufficient under the circumstances; and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; it is hereby

FOUND, DETERMINED, ORDERED AND ADJUDGED, BASED UPON THE RECORD BEFORE THE COURT AT THE HEARING, that:

1. *Bankruptcy Filings.* Each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, and each has continued with the management and operation of its businesses and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. *Jurisdiction.* This Court has core jurisdiction over the Debtors’ cases, the Motion, and the parties and property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334.

3. *Objections.* All pending objections to the entry of this Order are overruled.

4. *Use of the Cash Collateral – Cash Management.* The Debtors allege that, in the ordinary course of business, the Debtors require cash on hand and cash flow from their operations to fund their working capital needs and therefore there is a risk that the going concern value of the Debtors’ businesses will decline if they cannot access cash on hand and cash flow from their operations. Subject to the terms and conditions set forth herein, the Debtors are hereby authorized to use the Cash Collateral to pay amounts approved by any other Order of this Court and to provide working capital for the Debtors, but in any event solely in accordance with the Budget, this Order, and other applicable orders of this Court.

5. *Terms of Cash Collateral Use.* The terms of the Debtors' use of the Cash Collateral and the adequate protection arrangements, in each case as more fully set forth in this Order, (i) are fair and reasonable, (ii) reflect the prudent exercise of business judgment consistent with the Debtors' fiduciary duties, (iii) constitute reasonably equivalent value and fair consideration and (iv) are essential and appropriate for the continued operation and management of the Debtors' businesses and the preservation of their assets and properties. Entry of this Order is in the best interests of the Debtors and their Estates and creditors and will, among other things, allow for the continued operation of the Debtors' existing businesses.

6. *The Budget.*

- a. The amount of the Cash Collateral authorized to be used hereby by the Debtors shall not exceed the amounts reflected in the budget attached to this Order as Exhibit A (as amended, supplemented, extended or otherwise modified from time to time, the "Budget") for the time period set forth herein except as provided below:
 - i. Debtors shall be authorized to use Cash Collateral in accordance with the Budget, in an amount that would not cause the Debtors to use Cash Collateral for operating disbursements in an aggregate amount greater than one-hundred and ten percent (110%) of the operating disbursements in the Budget for any 4-week period (a "Permitted Variance"). If the aggregate amount of Cash Collateral actually used by the Debtors, measured on a 4-week basis, is less than the aggregate amount of Cash Collateral available for use by the Debtors in the Budget during such period, then for purposes of the Permitted Variance, the Debtors may carry over any such unused

amount to the future periods in the Budget.

- ii. Debtors shall be authorized to purchase materials in excess of amounts reflected on the Budget if a deposit has been received in an amount in excess of the cost of said materials.
 - iii. The Debtors may also pay all amounts due and owing to the Office of the United States Trustee.
- b. The Debtors represent, based on the best of their knowledge, due diligence and a review of documents and information, that (i) the Budget is achievable and will likely allow the Debtors to operate in the ordinary course of business and without the accrual of unpaid administrative expenses; and (ii) the Budget includes all reasonable, necessary, and presently foreseeable expenses that are required to be incurred and paid in connection with the operation of the Debtors' businesses for the period set forth in the Budget with the exception of (y) additional amounts that may be necessary for the purchase of materials where a deposit to cover said materials has already been received and (z) amounts due and owing to United States Trustee.
- c. The Budget (a) shall be extended for future weeks in substantially similar amounts as provided in the initial 13 weeks reflected in the Budget until further order of this Court and (b) may be amended, supplemented, extended or otherwise modified from time to time in form and substance to which the Debtors and Summit agree, only upon the written consent of the Debtors and Summit, and any such amendment, supplement, extension or modification shall be effective without

further approval by the Court or notice to any party, other than notice to the United States Trustee, the IRS, and any official committee(s).

7. *Adequate Protection.* Summit and/or the IRS may be entitled, pursuant to §§ 361, 363(c)(2), and 363(e) of the Bankruptcy Code, to adequate protection of potential interests in the Collateral and the Cash Collateral (“Adequate Protection”), in an amount equal to the aggregate diminution in value of the particular creditor’s Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of the Collateral and from the imposition of the automatic stay pursuant to § 362 of the Bankruptcy Code (such diminution in value, the “Adequate Protection Obligations”). Any claim or lien granted by this Order with respect to adequate protection shall not be: (a) subject or junior to any lien that is avoided and preserved for the benefit of the Debtors’ Estates, whether under § 551 of the Bankruptcy Code or otherwise; or (b) subordinated to or made *pari passu* with any other claim or lien, whether under § 364(d) of the Bankruptcy Code or otherwise.

8. As Adequate Protection, Summit is hereby granted the following:

- a. Adequate Protection Liens. Summit is hereby granted (effective and perfected upon the date of the entry of this order and without the necessity of the execution by the Debtors of mortgages, deeds of trust, security agreements, pledge agreements, control agreements, financing statements or other agreements), to the extent of the diminution in value of Summit’s Collateral from the Debtors’ use of Cash Collateral, additional and valid, perfected and enforceable continuing replacement security interests and liens (the “Adequate Protection Liens”) in the collateral type similar to the Collateral to the extent that Summit held a valid and perfected lien

prior to the Petition Date (such collateral, the “Replacement Collateral”); and

- b. Adequate Protection Payments. Summit shall receive, as additional adequate protection, a payment on or before the first business day of each month in the aggregate amount of \$7,500.00 commencing January 3, 2017, which payment amount shall also satisfy any and all obligations due and owing under 11 U.S.C. § 362(d)(3), provided, however, all parties’ rights are preserved, as provided in Paragraph 13 herein, such that any party may request a modification to the amount provided herein.
9. As Adequate Protection, the IRS is hereby granted the following:
- a. Adequate Protection Liens. IRS is hereby granted (effective and perfected upon the date of the entry of this order and without the necessity of the execution by the Debtors of mortgages, deeds of trust, security agreements, pledge agreements, control agreements, financing statements or other agreements), to the extent of the diminution in value of the IRS’s Collateral from the Debtors’ use of Cash Collateral, additional and valid, perfected and enforceable continuing replacement security interests and liens (the “Adequate Protection Liens”) in the collateral type similar to the Collateral to the extent that the IRS held a valid and perfected lien prior to the respective Petition Date (such collateral, the “Replacement Collateral”); and
 - b. Adequate Protection Payments. The IRS shall receive, as additional adequate protection, a payment on or before the 21st day of each month in the aggregate

amount of \$5,800.00 commencing January 2017.

10. *Perfection of Adequate Protection Liens.*

- a. Subject to the provisions of this Order, Summit and/or the IRS is hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the liens and security interests granted to Summit and/or the IRS hereunder. Whether or not Summit and/or the IRS shall, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of this Order.
- b. The Debtors are authorized to execute such agreements, security agreements, pledge agreements, control agreements and documents, including without limitation, mortgages, pledges, Uniform Commercial Code financing statements, mortgages, instruments or other documents as may be reasonably required by Summit to provide further evidence of the perfection of security interests and mortgages in the Replacement Collateral as provided herein.

11. *Authorization to Act.* Each of the Debtors is expressly authorized and empowered to perform, and the automatic stay of § 362 of the Bankruptcy Code is hereby modified to permit them to make, execute and deliver all instruments and documents (including the execution of

security agreements, mortgages and financing statements), take such other actions and to pay all fees and expenses, which may be reasonably required or necessary for the Debtors' performance under this Order, including, inter alia, to: (i) perform all of their obligations as provided for in this Order; (ii) pay the fees and expenses set forth in this Order, and (iii) to perform all other acts that may be required in connection with this Order. The Debtors are authorized to perform all acts and to make, execute and deliver any and all instruments as may be necessary to implement the terms and condition of this Order and the transactions contemplated hereby. The stay of § 362 of the Bankruptcy Code is hereby modified to permit the Debtors, Summit and the IRS to accomplish the transactions contemplated by this Order without further order of the Court.

12. *Amendments.* If necessary to implement the terms and condition of this Order, each of the Debtors are expressly authorized and empowered to enter into amendments or other modifications of the Loan Documents without further order of the Court, in each case, in such form as Summit and/or the IRS (as applicable) may agree with the Debtors in writing.

13. *Reservation of Rights.* (a) Under the circumstances and given that the above described Adequate Protection is consistent with the Bankruptcy Code, including § 506(b) thereof, the Court finds that the Adequate Protection is reasonable and sufficient to protect the interests of Summit and the IRS for the limited duration of this Order. However, notwithstanding anything herein to the contrary, at any time Summit and/or the IRS may request further or different adequate protection or other relief from the Court with respect to the these cases or this Order after notice and a hearing, which may be conducted on an expedited basis, and the Debtors or any other party in interest may contest any such request. Except as expressly provided herein, nothing contained in this Order (including, without limitation, the authorization of the use of any Cash Collateral) shall

impair or modify any rights, claims or defenses available in law or equity to Summit, the IRS, and/or the Debtors. (b) Nothing contained in this Order shall impair or modify any rights or claims of the Debtors related to assets not subject to a properly perfected security interest.

14. *Immediate Entry of this Order.* The Debtors have requested immediate entry of this Order pursuant to, and have complied with, Bankruptcy Rule 4001(b)(2). For the reasons stated herein and as stated on the record at the Hearing, this Court concludes that immediate entry of this Order is in the best interests of the Debtors.

15. *Effectiveness.* This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

Enter: Dec 23 2016

/s/ Keith L Phillips
UNITED STATES BANKRUPTCY JUDGE

I ask for this:

Entered on Docket: Dec 23 2016

/s/ Paula S. Beran
Lynn L. Tavenner, Esquire (Va. Bar No. 30083)
Paula S. Beran, Esquire (Va. Bar No. 34679)
David N. Tabakin, Esquire (Va. Bar No. 82709)
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Proposed Counsel to the Debtors

Local Rule 9022-1 Certification

I hereby certify that, pursuant to Local Rule 9022-1, the foregoing proposed Order has either been served upon and/or endorsed by all necessary parties. Specifically, the proposed Order was sent via email at approximately 12 noon on December 23, 2016 to: Richard A. Robinson, J. Ellsworth Summers, Jr., and Robert Van Arsdale

/s/ Paula S. Beran
Proposed Counsel

SERVICE LIST FOR ENTERED ORDER

Lynn L. Tavenner,
Tavenner & Beran, PLC
20 North Eighth Street, Second Floor
Richmond, Virginia 23219

Thereafter, Lynn L. Tavenner shall serve upon the Office of the United States Trustee, the Debtors' unsecured creditors as identified in the chapter 11 petitions, the Debtors' known secured creditors, any known legal counsel for the Debtors' secured creditors.

Exhibit A

Deltaville Boatyard					
Three Week Cash Flow Projection for the Period ending					
#					
Week Ending Saturday,					
		1	2	3	
		12/6-10/16	12/17/2016	12/24/2016	Total
I	Cash Receipts				
	Services	1,800	1,200	2,000	5,000
	Fees	150	150	150	450
	Labor	31,000	32,000	35,000	98,000
	Storage	3,160	3,160	3,160	9,480
	Freight	300	300	200	800
	Finance Charges	0	0		0
	Outside Service Sub-Contractor	800	800	800	2,400
	Outside Service Rigging	1,715	1,715	1,715	5,145
	Materials Income	9,940	8,520	6,500	24,960
	Marina Fuel Income	800	700	800	2,300
	Marina Merchandise Sale	70	70	70	210
	Marina Office Rent Income	0	0	1,700	1,700
	Marina Yearly Slip Fee Income	0	0	0	0
	Marina Transient Income	800	800	875	2,475
					0
	Total	50,535	49,415	52,970	152,920
II	Cash Disbursements from				

Exhibit A

	Operations				
	Payroll and Taxes		38000		38000
	Terrapin Financial Services, LLC				0
	Insurance (Workers Comp, Health, General Liability, Auto)	6000	6000	6000	18000
	Sales Tax ST9			1323	1323
	941 Tax 2014 & 2015 (To be updated 1/2017)				0
	Marina and Rentals Property tax 2013 -2016				0
	Summit (To be updated 1/2017)				0
	Property Taxes (To be updated 1/2017)				0
	Cost of goods	7000	6000	4000	17000
	cost of goods - marina fuel				0
	Outside Labor - sub contractors	600	600	600	1800
	Janitorial supplies, cleaning and maintenance and misc.	800	800	800	2400
	Total	14400	51400	12723	78523
III	Net Cash Flow from Operations	36135	-1985	40247	74397
IV	Restructuring/Other - Receipts & (Disbursements)				
	Utilities, Electricity, Phone, Dumpsters, Water	2000	2000	2000	6000
	Professional Fees (To be updated 1/2017)				0
	Legal Fees (To be updated 1/2017)				0
	Uniforms (To be updated 1/2017)				0
	Guaranteed Payment		4536.12		4536
	Accounting (To be updated 1/2017)				0

Exhibit A

	Training				0
	Travel	500	500	100	1100
	Banking fees and online payment				0
	Fuel (Machinery and Equip)	500	500		1000
	Accounting software	375	375	375	1125
	Office supplies (To be updated 1/2017)				0
	Warranty	432	1542	1589	3563
	Total	3807	9453	4064	17324
V	Net Change in Cashflow	32,328	(11,438)	36,183	57,073
VI	Cash Balance (Book)	Total Week 1	Total Week 2	Total Week 3	
	Beginning Cash Balance (Operations Account)	12,314	44,642	33,204	
	Change in Cashflow	32,328	(11,438)	36,183	
	Ending cash Balance	44,642	33,204	69,387	

Exhibit A

Deltaville Boatyard												
Thirteen Week Cash Flow Projection for the Period ending												
#												
Week Ending Saturday,												
		4	5	6	7	8	9	10	11	12	13	
		12/31/2016	1/7/2017	1/14/2017	1/21/2017	1/28/2017	2/4/2017	2/11/2017	2/18/2017	2/25/2017	3/4/2017	Total
I	Cash Receipts											
	Services		2,000	2,000	2,000	1,800	1,200	2,000	1,800	1,200	2,000	16,000
	Fees		150	150	150	150	150	150	150	150	500	1,700
	Labor		40,000	40,000	41,000	42,000	38,000	42,000	40,000	42,000	45,000	370,000
	Storage	3,160	3,160	3,160	3,160	3,160	3,160	3,160	3,160	3,160	2,000	30,440
	Freight		300	300	200	300	300	200	300	300	300	2,500
	Finance Charges		0	0	0	0	300	0	0	0	300	600
	Outside Service Sub-Contractor		800	800	800	800	800	800	800	800	1,000	7,400
	Outside Service Rigging		1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	2,000	11,600
	Materials Income		5,320	5,320	7,980	9,310	9,310	10,640	10,640	11,970	15,960	86,450
	Marina Fuel Income		800	800	800	800	800	1,000	2,000	2,500	2,500	12,000
	Marina Merchandise Sale		70	70	70	70	70	70	70	70	70	630
	Marina Office Rent Income		0	0	1,700	0	0	1,700	0	0	1,700	5,100
	Marina Yearly Slip Fee Income				0			0			0	0
	Marina Transient Income		800	800	875	300	300	300	800	1000	1000	6,175
												0
	Total	3,160	54,600	54,600	59,935	59,890	55,590	63,220	60,920	64,350	74,330	550,595

Exhibit A

II	Cash Disbursements from Operations											
	Payroll and Taxes	28000		31000		36000		40000		43000		178000
	Terrapin Financial Services, LLC		3000				3000				3000	9000
	Insurance (Workers Comp, Health, General Liability, Auto)	6000	6000	6000	6001	6000	6000	6000	6000	6000	6000	60001
	Sales Tax ST9	0	282	282	423	493	493	564	564	634	846	4582
	941 Tax (adequate protection)				5800				5800			11600
	Summit (adequate protection)		7500				7500				7500	22500
	Cost of goods	4000	4000	4000	6000	7000	7000	8000	8000	9000	12000	69000
	cost of goods - marina fuel		4000	500	500	500	500	500	500	500	1000	8500
	Outside Labor - sub contractors		600	600	600	600	600	600	600	600	1000	5800
	Janitorial supplies, cleaning and maintenance and misc.			500		800	1000	1000	1500	2000	2000	8800
	Total	38000	25382	42882	19324	51393	26093	56664	22964	61734	33346	377783
III	Net Cash Flow from Operations	-34840	29218	11718	40611	8497	29497	6556	37956	2616	40984	172812
IV	Restructuring/Other - Receipts & (Disbursements)											
	Utilities, Electricity, Phone, Dumpsters, Water	2000	2000	2000	2000	2000	2000	2000	2000	2000	2000	20000
	Professional Fees	2703		2703		2703		2703		2703		13515
	Legal Fees (To be updated)											0
	Uniforms		370	370	370	370	370	370	370	370	370	3330
	Guaranteed Payment	5769		5769		5769		5769		5769		28845
	Accounting (To be updated)											0
	Training	750	750	750	750	750	750	750	750	1000	1000	8000

Exhibit A

	Travel	100	100	500	500	500	500	500	500	800	800	4800
	Banking fees and online payment		250				250				250	750
	Fuel (Machinery and Equip)		600				600				600	1800
	PierVantage account software, Microsoft 365, USA E-pay		1500				1500				1500	4500
	Office supplies and Misc Material	300	300	300	300	300	300	300	300	300	300	3000
	Warranty	95	1638	1638	1798	1797	1668	1897	1828	1931	2230	16518
	Total	11717	7508	14030	5718	14189	7938	14289	5748	14873	9050	105058
V	Net Change in Cashflow	(46,557)	21,710	(2,312)	34,893	(5,692)	21,559	(7,733)	32,208	(12,257)	31,934	67,754
VI			Total				Total	Total	Total	Total	Total	
	Cash Balance (Book)	Total	Week	Total	Total	Total	Week	Week	Week	Week	Week	
		Week 4	5	Week 6	Week 7	Week 8	9	10	11	12	13	
	Beginning Cash Balance (Operations Account)	69,387	22,830	44,540	42,228	77,121	71,429	92,988	85,256	117,464	105,207	
	Change in Cashflow	(46,557)	21,710	(2,312)	34,893	(5,692)	21,559	(7,733)	32,208	(12,257)	31,934	
	Ending cash Balance	22,830	44,540	42,228	77,121	71,429	92,988	85,256	117,464	105,207	137,141	