

PAUL HASTINGS LLP

Harvey A. Strickon

Brett Lawrence

Justin Rawlins

Nicholas A. Bassett

200 Park Avenue

New York, New York 10166

Telephone: (212) 318-6000

Email: harveystrickon@paulhastings.com

brettlawrence@paulhastings.com

justinrawlins@paulhastings.com

nicholasbassett@paulhastings.com

Counsel to Flagstar Bank, N.A., a national association

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

BROADWAY REALTY I CO., LLC, *et al.*,

Debtors.¹

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Chapter 11

Case No. 25-11050 (DSJ)

(Jointly Administered)

**OMNIBUS OBJECTION OF FLAGSTAR BANK, N.A.
TO DEBTORS' (I) CASH COLLATERAL MOTION, ECF NO. 7, (II) CASH
MANAGEMENT MOTION, ECF NO. 8, AND (III) MOTION FOR EXTENSION OF
TIME FOR FILING SCHEDULES AND SOFA, ECF NO. 9**

¹ The last four digits of Broadway Realty I Co., LLC's tax identification number is 5426. A complete list of the Debtors in these jointly administered chapter 11 cases is affixed as Schedule 1 to Broadway Realty I Co., LLC's voluntary petition, [ECF No. 1]. The Debtors' mailing addresses are located at 2 Grand Central Tower, 140 East 45th St, 12th Floor, New York, NY 10017.

Flagstar Bank, N.A., a national association (“Flagstar”), successor-in-interest to New York Community Bank (“Original Lender”), by and through its undersigned counsel, hereby submits this omnibus (a) objection to the *Motion of Debtors for Entry of Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Scheduling Final Hearing, and (III) Granting Related Relief* [ECF No. 7] (the “Cash Collateral Motion”); (b) limited objection to the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Continue Using Existing Cash Management System, Bank Accounts, and Business Forms, (B) Implement Changes to Cash Management System in the Ordinary Course of Business; and (II) Granting Related Relief* [ECF No. 8] (the “Cash Management Motion”); and (c) limited objection to *Motion of Debtors for Entry of Order Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs* [ECF No. 9] (the “Extension Motion”) (collectively, the “Objection”). In support hereof, Flagstar respectfully states as follows:

PRELIMINARY STATEMENT²

1. Flagstar is the Debtors’ largest creditor and its only secured creditor. As of the Petition Date, Flagstar is owed approximately \$564 million in aggregate outstanding principal, plus accrued interest and other costs and fees, on its approximately 82 loans to 82 different borrowers. No Debtor has paid a penny of interest or principal on the Flagstar Loans since January 1, 2025.

2. Flagstar holds its claims against the Debtors pursuant Mortgage Notes (“Notes” or “Flagstar Loans”), one mortgage per Debtor. The Notes are secured by comprehensive liens in the Debtors’ real properties, together with all fixtures, improvements, rents, leases, and other earnings,

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Cash Collateral Motion, proposed interim order approving the Cash Collateral Motion (the “Proposed Interim Order”), or the *Declaration of Ephraim Diamond Pursuant to Local Bankruptcy Rule 1007-2 in Support of Debtors’ Chapter 11 Petitions and First Day Relief*, [ECF No. 10] (the “First Day Declaration”), as applicable.

royalties, and accounts receivable associated with the applicable properties. While the Debtors now purport to describe their business as a consolidated property ownership and management enterprise (i.e., “the Company,” as defined in the Debtors’ First Day pleadings, which includes non-debtor affiliates and non-debtor counterparties to executory contracts with the Debtors, all of whom are controlled by insiders of the Debtors), (First Day Declaration ¶ 27),³ it is in reality a collection of single asset real estate entities (almost exclusively apartment buildings generating income through rental revenue) with which Flagstar dealt and extended credit on an individual basis.⁴

3. As the Debtors’ most significant stakeholder, Flagstar approaches these cases with an open mind but also with major concerns regarding both the events that led to the filing of the Chapter 11 Cases and the Debtors’ gameplan moving forward. Multiple New York State Courts had appointed receivers against many of the Debtors’ properties due to each relevant Debtor’s failure to timely pay its loans. No one knows where the rental income went, but it did not go to pay the lenders and appears to have been consolidated to pay bondholders at the debtor’s upstream (non-debtor) equity holder level.

4. The Debtors’ lack of transparency has been, and continues to be, a major issue. For months prepetition, Flagstar repeatedly sought basic information from the Debtors and their advisors to help understand and potentially resolve the Debtors’ outstanding defaults on the Flagstar Loans, including basic cash flow information showing revenues and expenses at each

³ See also First Day Declaration ¶¶ 1 (the CRO of the Debtors has been “working for the Company on restructuring initiatives” since November 2024), 6 (the CRO is provided information by the Company’s advisors), 31 (the Debtors’ Capital Structure), 32 (the Company’s Capital Structure), Ex. A (Organizational Structure Chart).

⁴ Flagstar believes each Debtor is plainly a single asset real estate debtor within the meaning of 11 U.S.C. § 101(51B) and intends to file a motion for entry of an order determining such classification and that each Debtor is subject to the single asset real estate provisions of 11 U.S.C. § 362(d)(3). Flagstar expressly reserves all of its rights in connection with the foregoing.

property. The bulk of this information was never provided, and Flagstar was ultimately left with no choice but to pursue remedies in state court, including foreclosure on the mortgaged properties and the appointment of receivers.

5. This history naturally gives Flagstar concerns about what happened to the rental revenues at each Debtor in the months leading up to the Petition Date—a concern that is amplified by the Debtors’ assertion in their Cash Collateral Motion that, over the next four weeks, they expect to generate sufficient revenue to fund all operating expenses, including over \$400,000 in management fees to non-debtor insiders, *and* have more than \$2.4 million remaining to fund professional fees. To the extent the Debtors generated similar (or any) excess revenue in the past five months, it apparently evaporated into thin air. Flagstar has serious concerns about the role that insiders, including the Debtors’ principal, Joel Wiener, and his property management company, Zarasai (and Pinnacle), may have played in the disappearance of the Debtors’ cash, including through simple mismanagement of the Debtors’ properties, or worse.⁵

6. This same history informs Flagstar’s position on the Debtors’ chosen path forward, including the relief they seek in their “first day” motions. By the Cash Collateral Motion, the Debtors seek permission to use Flagstar’s Cash Collateral at each Debtor to fund these Chapter 11 Cases, but in doing so they fail to carry their burden under the Bankruptcy Code to show that Flagstar will receive adequate protection of its interests in the mortgaged properties and the rents they produce. Indeed, the Debtors offer nothing to Flagstar in exchange for Flagstar’s Cash Collateral carrying the “full freight” of these Chapter 11 Cases—no cash payments, no

⁵ Publicly available records provided by the Department of Housing Preservation and Development, an agency of the City of New York, indicate that over the last two years, more than 12,095 “Complaints” have been lodged against 93 properties owned by the Debtors and approximately 4,979 “Violations” have been recognized by local authorities. (*See generally* <https://hpdonline.nyc.gov/hpdonline/> (last visited May 27, 2025)). This amounts to an average of approximately 130 Complaints and 53 Violations per property.

replacement liens or superpriority administrative expense claims on account of any diminution in value—nothing.

7. Flagstar holds liens both on the Debtors’ real properties and the rental income they generate. It is entitled to adequate protection on both interests, but the Debtors have provided none as to either. As an initial matter, the vaguely described “appraisals” that the Debtors reference in their filings as purported evidence of a significant equity cushion at the properties fall far short of satisfying the Debtor’s burden to show adequate protection of Flagstar’s interests in the Debtors’ real properties. The appraisals have never been shared with Flagstar despite numerous requests, were not attached to the Debtors’ filings, and have not even been described on a Debtor-by-Debtor level. Thus, the basis for the Debtors’ purported valuations of their properties remains completely unknown. Accordingly, the allegation of an equity cushion based on the appraisals falls far short of satisfying the Debtor’s burden to show that Flagstar is adequately protected.

8. Equally unavailing is the Debtors’ argument that Flagstar is adequately protected as to its interest in rental income simply because the Debtors’ cash balance is projected to increase over the next four weeks. This assertion is flawed because it assumes the amounts the Debtors propose to spend will correspondingly increase the value of the underlying real properties and their ability to continue generating rental income. Flagstar does not have an issue with the Debtors using rental income to pay the *actual and necessary expenses* of operating and maintaining their properties, but the Debtors’ proposed budget is not limited to such expenses.

9. Among other things, the budget contemplates payment of more than \$500,000 in “management fees” (which are payments to Wiener or Wiener-controlled non-debtor entities under executory contracts that such non-debtor counterparties remain obligated to perform under during the Interim Period and which the Debtors have not assumed or rejected) and more than \$2.4 million

in escrowed professional fees. The Debtors have provided no explanation for how these payments constitute actual and necessary expenses of maintaining the properties, and they have provided no evidence of how these expenses—or any of the information in their budget for that matter—breaks down on a debtor-by-debtor basis. Indeed, the management fees, based on information obtained by Flagstar to date, are purportedly paid pursuant to management agreements that, by their terms, are subordinated to the Debtors’ obligations under the Flagstar mortgages.

10. For these reasons and those set forth below, Flagstar objects to the relief the Debtors seek in the Cash Collateral Motion as currently proposed. Flagstar understands that the Debtors are now in chapter 11,⁶ and as such they need access to some amount of funding to operate and maintain the real properties that constitute Flagstar’s collateral. Under no circumstances, however, should the Debtors be permitted to use Cash Collateral to (i) make payments to insiders, including Wiener or companies controlled by him, such as Pinnacle, or (ii) escrow more than \$2.4 million in professional fees without demonstrating, on a Debtor-by-Debtor basis, how such fees are actual and necessary expenses of preserving the mortgaged properties.

11. Flagstar requests that any order authorizing the use of Cash Collateral be revised to address these issues and to provide Flagstar other customary protections in exchange for use of its Cash Collateral. To that end, affixed hereto as Exhibit A is a proposed Interim Order (the “Flagstar Proposed Interim Order”), marked against the Debtors’ proposed Interim Order, substantially in a form to which Flagstar would consent to the use of its Cash Collateral during the Interim Period.

12. Finally, Flagstar also objects on a limited basis to certain of the relief sought in the Cash Management Motion and the Extension Motion, as described below.

⁶ For the avoidance of doubt, Flagstar reserves any and all rights to seek relief in these cases, including without limitation to seek dismissal of the cases, to seek the appointment of a chapter 11 trustee, and to obtain relief from the automatic stay to exercise remedies against the mortgaged properties.

RELEVANT FACTUAL BACKGROUND

A. Flagstar's Collateral & the Debtors

13. The Debtors are a collection of single asset real estate entities whose sole funded debt obligations consist of approximately \$564 million of secured first lien property level mortgage debt held by Flagstar, a national banking association. *See* First Day Decl., ¶ 31. This first lien Debt is held pursuant to the Flagstar Mortgages and certain other documents related thereto (collectively, the “Flagstar Loan Documents”).

14. The Debtors’ aggregate total outstanding secured obligations to Flagstar as of the Petition Date consists of approximately \$564 million in principal, plus all interest accrued thereon through the Petition Date, including at the applicable default rate, plus all applicable prepetition fees, costs, expenses, and costs of collection (including, without limitation, reasonable attorneys’, financial advisors’ and other professionals’ fees and expenses), plus any and all other amounts required to be paid under and in connection with the Flagstar Loan Documents, all as set forth therein (collectively, the “Prepetition Secured Obligations”).⁷

15. As security for the Prepetition Secured Obligations, each of the Debtors, individually, executed and delivered and/or acknowledged to the Original Lender⁸ a Mortgage, Assignment of Leases and Rents, and Security Agreement securing each Debtor’s respective Note and Flagstar Mortgage by the property, fixtures, improvements, rents, leases, and other earnings, royalties, and accounts receivable associated with the applicable properties.

⁷ Flagstar expressly reserves all rights with respect to the amounts owed by the Debtors, respectively, to Flagstar, including with respect to the principal outstanding, accrued, unpaid interest, late fees, default interest, and other fees and expenses and charges, including legal fees and expenses.

⁸ In December 2022, Original Lender merged with and into Flagstar, with Flagstar being the surviving company of the merger. Flagstar remains the owner and holder of the Notes and the Flagstar Mortgages.

16. The Flagstar Mortgages were purposefully entered into on an individual basis, across different tenors and time periods spanning years, as evidenced by the separate Flagstar Mortgages and Flagstar Loan Documents by and among Flagstar and each Debtor.

B. Events Preceding the Chapter 11 Cases

17. Leading up to and into January 2025, the Debtors, whose properties have average occupancy rates of approximately 95%,⁹ elected to stop making debt service payments and, seemingly, use the Debtors' revenue from rents for other purposes. After attempting to work with the Debtors and their principals cooperatively to resolve the Debtors' financial difficulties, Flagstar sought remedies in state courts in March and April 2025 to protect its rights and interests. *See* First Day Decl. ¶¶ 35-36. Because of the lack of transparency regarding the Debtors' financial condition, cash flow, and use of rents, profits, and proceeds of Flagstar's collateral, which has generally continued to date, Flagstar sought not only to foreclose on its secured collateral but also the appointment of receivers to impose order and proper governance over the Debtors' finances.

B. The Proposed Use of Cash Collateral

18. Through the Cash Collateral Motion, the Debtors are seeking the consensual (or Court authorized) use of Flagstar's Cash Collateral, including the rent generated by the Debtors' properties. As of the Petition Date, the Debtors estimate approximately \$0.00 cash on hand and estimate through their 4-week interim forecast that "ending" cash on hand will fluctuate between approximately \$295,000 to \$357,000. *See* Cash Collateral Motion, (Proposed Budget). Despite projected "Net Rental Income" of over \$8.1 million in the four-week Interim Period, in exchange for the use of its Cash Collateral to fund the Debtors' Chapter 11 Cases, Flagstar is to be granted

⁹ First Day Decl. ¶ 10.

effectively no protections other than the Debtors’ assurances that undisclosed appraisals performed in December 2024 provide an alleged substantial equity cushion to Flagstar.

OBJECTION TO CASH COLLATERAL MOTION

19. With respect to a hearing held under section 363 of the Bankruptcy Code, “[i]t is well settled that the debtor bears the burden to demonstrate that a creditor is adequately protected.” *In re S. Side House, LLC*, 474 B.R. 391 408 (Bankr. E.D.N.Y. 2012); *In re Constable Plaza Assocs. L.P.*, 125 B.R. 98, 104 (Bankr. S.D.N.Y. 1991) (“The debtor has the burden of demonstrating that the creditor will be adequately protected if it is authorized to use the cash collateral.”). Here, the Debtors provide no admissible evidence that Flagstar is adequately protected by—solely—the purported equity in the Debtors’ properties. They decline to offer Flagstar any of the enumerated non-exclusive methods of adequate protection under section 361 of the Bankruptcy Code, and instead move for Flagstar to involuntarily fund the Debtors’ purported reorganization with essentially no guardrails or protections for the most significant stakeholder in the Chapter 11 Cases. Because of the Debtors’ failure to carry their burden, the Cash Collateral Motion should be denied, or, approved only to the extent of the Flagstar Proposed Interim Order on consent.

A. The Debtors’ Fail to Carry Their Burden to Demonstrate Flagstar Is Adequately Protected

20. Flagstar is secured by both the Debtors’ real properties *and* the rent they generate; it is entitled to adequate protection as to both interests. The “sound notion that [sections] 506(b) and 552(b) require[] protection for the creditor’s interest in the property and the rents” separately is well accepted in the Second Circuit. *In re Gramercy Twins Assocs.*, 187 B.R. 112, 121 (Bankr. S.D.N.Y. 1995). “When considering adequate protection for the use of rents, courts recognize that Section 552(b) creates a security interest in post-petition rental income that is separate and distinct from the creditor’s security interest in the property securing the mortgage.” *In re South Side*

House, LLC, 474 B.R. 391, 408 (Bankr. E.D.N.Y. 2012) (citation omitted). “As a result, a creditor ‘is entitled to adequate protection of two distinct interests: its mortgage on the property and its right to collect the rents flowing from the property or, at the very least, its security interest in such rents.’” *Id.* (citation omitted).¹⁰ The Debtors have failed to carry their burden of demonstrating adequate protection as to either of Flagstar’s interests.

21. As to Flagstar’s interests in the real properties, the Debtors rely entirely on certain purported December 2024 appraisals of the mortgaged properties allegedly prepared by Bowery Valuation. The Debtors, however, do not attach these appraisals to the Cash Collateral Motion, provide no expert testimony to support their valuations, and have never even mentioned the appraisals—much less provided copies of them—to Flagstar, despite requests for such information. The Debtors also do not break down the appraised values on a property-by-property basis. Parties in interest are entitled to analyze the methodologies used to value the Debtors’ assets, the experience and expertise of those performing the evaluation, and the information and/or assumptions upon which they relied. Without this information, there is no way to probe the veracity and reliability of the evidence the Debtors rely upon. For these reasons, the Debtors’ purported appraisals fail to carry the Debtors’ burden to show that Flagstar is adequately protected as to its interests in the Debtors’ properties.

22. Nor have the Debtors shown that Flagstar is adequately protected as to its lien on the rents generated by the properties. Courts regularly condition the use of cash collateral comprised of rental income strictly to expenditures for actual, necessary operating, maintenance,

¹⁰ The Debtors own authorities bring home this point. *See* Cash Collateral Mot. ¶ 26 (citing *In re 499 W. Warren St. Assocs., Ltd. P’ship*, 142 B.R. 53 (Bankr. N.D.N.Y. 1992)). In *499 W. Warrant St.*, the Court recognized that a secured creditor holds “two distinct interests” when it has a mortgage securing a debt on real property and a security interest in rents derived therefrom. 142 B.R. at 56. There, the Court only authorized the debtor to “utilize a limited portion of the rents . . . for payment of the reasonable and necessary operating expenses of the property[.]” *Id.* at 58.

and repair expenses of mortgaged properties. *See, e.g., Federal Nat'l Mortgage Ass'n v. Dacon Bollingbrook Assocs. Ltd. Partnership (In re Federal Nat'l Mortgage Ass'n)*, 153 B.R. 204, 214 (N.D. Ill. 1993) (stating that debtor “cannot provide adequate protection for the Rents except to the extent the Rents are reinvested in the Property for maintenance and repair” and requiring detailed weekly reports on expenditures and authorizing adequate protection liens on excess rents); *In re R & G Props.*, No. , 2009 WL 2043875, at *6 (Bankr. D. Vt. July 6, 2009) (finding that estate’s use of rents to maintain properties adequately protected creditor’s interest in mortgaged properties, but requiring additional adequate protection as to the net (or surplus) rents, i.e. those amounts left after disbursement of necessary and reasonable operating expenses); *In re River Oaks Ltd. Partnership*, 166 B.R. 94, 97-98 (E.D. Mich. 1994) (“if the secured party is deemed ‘adequately protected’ simply because the building is properly maintained, the secured creditor would have no right to object to the use of the cash collateral for expenses not related to the maintenance of the rental project, *e.g.* normal estate administration expenses. In this Court’s opinion, the secured party’s interests should not be so adversely affected”).

23. Here, the Debtors’ proposed Budget goes well beyond the actual, necessary operating, maintenance, and repair expenses of the mortgaged properties and, instead, seeks—without any protection to Flagstar—to use all net rents (on gross rent of more than \$8 million in the Interim Period) to fund the Chapter 11 Cases and all of their ancillary expenses. Although Flagstar and its advisors have received some information from the Debtors and their advisors over the past few days, it remains difficult to discern the particular services and benefits that various line-items in the budget relate to precisely. Two categories of disbursements that stand out, however, are the proposed payment of management fees and the professional fee escrow.

24. The proposed Budget provides for more than \$400,000 in “Management Fees (Direct Expenses)” and “Asset Management Fees (Direct Expenses).” Cash Collateral Mot., Annex 1.¹¹ The Debtors have provided no showing that these payments—which will benefit insiders, namely the management company controlled by the Debtors’ principal, Joel Wiener—are necessary and reasonable to maintain the mortgaged properties. Indeed, it appears to Flagstar that the Debtors need not pay *any* of such fees in the Interim Period on numerous grounds.

25. Flagstar finally received last night, after multiple requests, an example of one of the management agreements that purportedly governs the payment of these management fees. In one section of the example agreement, Pinnacle acknowledges, in its capacity as “Manager,” “that *its right to compensation under this Agreement is subject and subordinate to any mortgage now or hereinafter encumbering the Property.*” Management Agreement ¶ 8. Another provision states that Pinnacle will cause the properties to remain in compliance with all laws, regulations, and loan document provisions. (Management Agreement ¶ 4.(e)). Based on these provisions, the management agreement itself provides that management fees need not be paid where, as here, the Debtors are not paying their mortgages.¹²

26. Even if a reason existed for the Debtors to continue paying management fees to Pinnacle under their management agreements, the compensation provided under the agreements—4% of Property revenues, paid in monthly arrears, plus expenses reimbursement¹³—is entirely

¹¹ Flagstar, in concept, does not object to the Management Fees (Expense Reimbursement), to the extent such reimbursements are more clearly directed to expenses that must be paid to maintain the mortgaged properties, as opposed to purported management fees that would be disbursed to Pinnacle, a non-debtor insider whose conduct as manager is subject to dispute.

¹² In addition, the Manager (Pinnacle) has likely already breached multiple provisions of the Management Agreements, including on account of its failures to comply with its duties provide financial reporting information to the Debtor on a monthly and annual basis—at the property (i.e. individual Debtor) level, (Management Agreement ¶ 4(j)).

¹³ Management Agreement, Schedule B.

disconnected from the property's expenses, repairs, maintenance, and upkeep. Taking 4% of gross rent off the top hardly supports a finding that the management fees are reasonable and necessary expenditures to maintain the value of Flagstar's collateral.

27. Finally, but perhaps most critically, there is no basis under the Bankruptcy Code for the Debtors—estate fiduciaries for all parties in interest, including Flagstar—to needlessly pay management fees to insiders and non-debtor affiliates led by Joel Wiener, who has mismanaged the Debtors into these Chapter 11 Cases, under an executory contract that has not been assumed or rejected by the Debtors, only seven days into the case. The Debtors need not elect to assume or reject the Management Agreements at this time, (11 U.S.C. § 365(d)(2)), and, to the extent of any post-petition services to be provided to the Debtors, such claimants can seek reimbursement or priority in payment in due course, (11 U.S.C. § 503(b)), among other available relief.

28. The Debtors have likewise failed to carry their burden of demonstrating that the proposed professional fees for the Interim Period of more than \$2.4 million are actual and necessary expenses of preserving the Debtors' properties and not efforts to reorganize Zarasai, other non-Debtors, or provide other services that do not maintain, repair, and operate the Debtors' mortgaged properties. The Debtors have provided no indication how the proposed professional services will contribute specifically to property management, operation, and upkeep.

29. Nor have the Debtors provided an allocation of any budgeted items—including the management fees and proposed professional fees—on a Debtor-by-Debtor basis. This is so notwithstanding the admonition in the example management agreement that the bank accounts maintained by Pinnacle must be “in the name of, and shall be the sole property of, [Debtor.]” (Management Agreement ¶ 4.(l)). The Debtors' decision to lump all Debtors together in the proposed Budget is problematic because it disregards corporate separateness and fails to provide

any visibility into the revenues and expenses on a per-Debtor basis, such that parties in interest may evaluate the particular capital structure where their claims reside. Such information should be provided before Flagstar can fully evaluate (on a final basis) the extent of diminution in value at each Debtor and the ongoing and/or further need for adequate protection.

B. Additional Modifications to Proposed Interim Order

30. The Flagstar Proposed Interim Order includes additional proposed revisions to the Interim Order, which would be acceptable to Flagstar and underly its consent to the use of Cash Collateral on the terms provided therein. Given that the Debtors propose to use Flagstar's Cash Collateral to fund the entirety of these Chapter 11 Cases, at the proposed cadence of an approximately 95% cash burn of "Net Rental Income" (i.e. Flagstar's Cash Collateral) provided in the Budget, without any adequate protection provided to Flagstar beyond the alleged equity cushion, Flagstar submits that its revisions to the Interim Order are necessary and reasonable lender protections that, for the purposes of the Interim Order, should be approved on an interim basis. Moreover, such lender protections are regularly approved in this Court under circumstances similar to those here. *See, e.g., In re Wythe Berry Fee Owner LLC*, No. 22-11340, [ECF No. 91] (Bankr. S.D.N.Y. March 2, 2023) (approving cash collateral order that provided for adequate protection liens and 507(b) adequate protection claims, disclaiming "equities of case," 506(c), and marshalling, even where secured creditor contemplated over-security and receipt of post-petition interest and fees); *In re Evergreen Gardens Mezz LLC*, No. 21-10335, [ECF No. 94] (Bankr. S.D.N.Y. Sept. 15, 2021) (substantially similar interim cash collateral order).

LIMITED OBJECTION TO CASH MANAGEMENT MOTION

31. Flagstar has no issue in concept with the Debtors continuing to use cash management procedures, modified as necessary to protect the Debtors' cash. The Debtors'

description of their cash management system, however, and the relief they seek, raises a number of questions that require clarifications and/or modifications to the proposed order.

32. The management agreement shared by the Debtors on May 27, 2025 provides that Pinnacle, the manager for the various Debtors, is required to maintain accounts in each Debtor's name, owned by the Debtor, for the operations and collections of such Debtor (Management Agreement, ¶ 4.(1)). But in reality, according to the Debtors' representations, no more than five (5) of the 82 Debtors have such accounts and, as a result, the Debtors' rents, profits, charges, and payments received from tenants are directed by a vendor to Weiner-controlled non-debtor affiliate "HoldCo Accounts" not subject to the reporting burdens and obligations of the Bankruptcy Code or the U.S. Trustee's safeguards.

33. Even more concerning, the Debtors in paragraph 14 of the Cash Management Motion seek authority to "conduct routine transfers of all funds deposited into the Holdco Accounts that relate to the Debtors *post-petition* to these Debtor specific Centralized Accounts." In other words, on a post-petition basis, the Debtors propose to continue allowing Debtor funds to flow through non-Debtor accounts controlled by non-Debtor insiders. All Debtor cash should flow exclusively through Debtor-controlled accounts on a post-petition basis, and the proposed order should be modified to reflect this direction.

34. In addition, as a practical matter, the proposed Centralized Operating Account and Centralized Disbursement Account should be opened at Flagstar, not JPMorgan Chase Bank. The Debtors maintain approximately 80 bank accounts at Flagstar, an authorized depository by the Office of the United States Trustee for Region 2 pursuant to the U.S. Trustee's Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees. The Debtors' post-petition accounts should be opened with Flagstar so that the Debtors' most significant

stakeholder may have greater real-time transparency into how and when its Cash Collateral is being received, as opposed to waiting to obtain the same information through monthly operating reports or discovery processes.

LIMITED OBJECTION TO EXTENSION MOTION

35. Flagstar did not make a single “all assets” loan to a complicated business or parent holding company; instead, it made 80-plus individual loans to 80-plus individual companies that each own a single real estate property where each property generates revenue from rental income. While extensions of time to file schedules and statements of financial affairs may be routinely granted in large corporate cases, the Court should deny this motion unless and until there is a showing of a need for the requested relief on an individual Debtor-by-Debtor basis.

36. As noted above, this is a case where each Debtor voluntarily chose not to pay a penny of the rental income to Flagstar for the past five months and steadfastly refused to provide more than the bare minimum financial information upon Flagstar’s requests. The Debtors should not be able to continue to maintain the shroud of secrecy around their financial information for no reason other than that their insiders may want to now present a cleansed version of prepetition financial mismanagement. The rental income that comes from each property should allow the Debtors to quickly populate much of what is required under their respective statements of financial affairs.

37. If the Court does determine to grant the Debtors additional time, it should be clear that (i) the schedules and statements of financial affairs must be disclosed prior to the Court considering any relief related to the use of Cash Collateral on a final basis and (ii) such extension is without prejudice to Flagstar’s rights to seek discovery from the Debtors.

RESERVATION OF RIGHTS

38. Flagstar reserves all rights to amend and/or supplement this Objection, attend the hearing on the First Day Motions, including the Final Hearing on such motions, and to make all arguments as may be applicable, including, but not limited to, as a result of information learned subsequent to the filing of this Objection and in discovery.

CONCLUSION

WHEREFORE, the Flagstar respectfully requests that this Court (i) deny the Cash Collateral Motion, or, to the extent any interim relief is provided, grant such relief consistent with this Objection and the Flagstar Proposed Interim Order; (ii) deny the Cash Management Motion and the Extension Motion to the extent described above.

Dated: May 28, 2025
New York, New York

Respectfully submitted

/s/ Nicholas A. Bassett

PAUL HASTINGS LLP

Harvey A. Strickon

Brett Lawrence

Justin Rawlins

Nicholas A. Bassett

PAUL HASTINGS LLP

200 Park Avenue

New York, New York 10166

Telephone: (212) 318-6000

Facsimile: (212) 319-4090

Emails: harveystrickon@paulhastings.com

brettlawrence@paulhastings.com

justinrawlins@paulhastings.com

nicholasbassett@paulhastings.com

Counsel to Flagstar Bank, N.A., a national association

Exhibit A

Flagstar Proposed Interim Cash Collateral Order (redline)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
:
BROADWAY REALTY I CO., LLC, *et al.*, : Case No. 25-25-11050 (DSJ)
:
Debtors.¹ : (Jointly Administered)
----- x
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**INTERIM ORDER (I) AUTHORIZING
THE DEBTORS TO USE CASH COLLATERAL,
(II) MODIFYING THE AUTOMATIC STAY, (III) SCHEDULING
FINAL HEARING, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”),² dated May ____, 2025, of Broadway Realty I Co., LLC and its debtor affiliates, as debtor and debtor in possession (the “**Debtors**”) in the above-captioned chapter 11 cases, pursuant to sections 105, 361, 362(d), 363(c), 363(e), 503(b), 506(c), 507, and 552(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), for entry of an interim order ([“Interim Order”](#)), (a) authorizing the Debtors to use cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, “**Cash Collateral**”) of Flagstar (as defined herein); (b) modifying the automatic stay imposed by section 362 of the Bankruptcy Code (the “**Automatic Stay**”) to the extent necessary to implement and effectuate the terms and provisions

¹ The last four digits of Broadway Realty I Co., LLC’s tax identification number is 5426. A complete list of the Debtors in these chapter 11 cases is attached to the Motion as [Annex 1](#). The Debtors’ mailing addresses are located at 2 Grand Central Tower, 140 East 45th St., 12th Floor, New York, NY 10017.

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

of this Interim Order³; (c) scheduling a Final Hearing (as defined herein) with respect to the relief, and (d) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and proper notice of the relief requested in the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the First Day Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, their creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. Petition Date. On May 21, 2025 (the “**Petition Date**”), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code in this Court.

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact pursuant to Fed. R. Bankr. P. 7052.

B. Debtors in Possession. The Debtors are continuing in the management and operation of their business and properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date hereof, no trustee or examiner or official committee of unsecured creditors (the “~~Creditors’ Committee~~”) has been appointed in the Debtors’ chapter 11 cases.

C. Jurisdiction and Venue. This Court has jurisdiction over the Debtors, the Debtors’ estate, this proceeding, and the persons and properties affected hereby, pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors have consented to entry of a final order by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Notice. Due, sufficient and appropriate notice under the circumstances has been provided in compliance with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b) and (d), and the Local Rules.

E. Cash Collateral. For purposes of this Interim ~~Cash Collateral~~ Order, the term “Cash Collateral” shall be deemed to include, without limitation, all of each Debtor’s “Cash Collateral” as defined under section 363 of the Bankruptcy Code, ~~in which the Flagstar Bank, N.A. (“Flagstar”) asserts valid, perfected security interests, liens, or mortgages.~~ and shall include and consist of, without limitation, all of the rents, fees, charges, accounts, or other payments made to each Debtor.

F. Debtors’ Stipulations. The Debtors, on their own behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows:

- i. Prepetition Notes and Mortgages. Prior to the Petition Date, each of the Debtors, respectively, on an individual basis, executed and delivered to

New York Community Bank k/n/a Flagstar Bank pursuant to a December 2022 merger (“Flagstar”) a mortgage note (“Notes”) to evidence a loan by the Flagstar to each such Debtor. To secure the payment of the Notes, each Debtor executed and delivered and/or acknowledged to Flagstar a mortgage or mortgages (as consolidated, modified, and extended pursuant to Consolidation, Modification and Extension Agreements from time to time, collectively, the “Flagstar Mortgages”) to secure the principal indebtedness under the Notes, and which Flagstar Mortgages were all recorded in the office of the City Register in the counties of New York state where such real property is located, including but not limited to, as applicable, New York County, Queens County, Bronx County, and Kings County.

- ii. Prepetition Collateral. The Flagstar Mortgages encumber real and personal property all located in the State of New York, Counties of New York, Kings, Bronx, and Queens. Flagstar is still the owner and holder of the Notes and the Flagstar Mortgages, and Flagstar is not an insider of the Debtors. Pursuant to the Notes and Flagstar Mortgages and certain other documents related thereto (collectively, the “Flagstar Loan Documents”), Flagstar has a valid, binding, enforceable, non-avoidable and properly perfected security interest (the “Prepetition Liens”) in the Debtors’ real property and certain assets and personal property of the Debtors (the “Prepetition Collateral”).
- iii. Prepetition Secured Obligations. As of the Petition Date, the Notes are in the aggregate outstanding principal amount of not less than approximately \$564 million, plus all interest accrued thereon through the Petition Date, including at the applicable default rate, plus all applicable prepetition fees, costs, expenses, and costs of collection (including, without limitation, reasonable attorneys’, financial advisors’ and other professionals’ fees and expenses), plus any and all other amounts required to be paid under and in connection with the Flagstar Loan Documents, all as set forth therein (collectively, the “Prepetition Secured Obligations”), heretofore and/or hereafter incurred by Flagstar in connection therewith, which amounts constitute legal, valid, binding, enforceable, and non-avoidable obligations.
- iv. Cash Collateral. All proceeds of Prepetition Collateral, including all or substantially all of the Debtors’ cash and cash equivalents, including cash on deposit in any account or accounts as of the Petition Date, including, without limitation, all rents, fees, charges, accounts, or other payments made to each Debtor constitute Cash Collateral of Flagstar.
- v. No Claims or Disputes; Releases. There is no dispute with the Debtors and the Debtors do not have, and hereby forever waive, release, and affirmatively agree not to allege or otherwise pursue, any defenses,

affirmative defenses, counterclaims, claims, causes of action, recoupments, setoffs or other rights that they have or may have arising under the Bankruptcy Code, applicable nonbankruptcy law or otherwise against Flagstar or any of its respective affiliates, subsidiaries, agents, officers, directors, employees, attorneys and advisors (i) to contest any “Defaults” or “Events of Default” under the Flagstar Loan Documents which were or could have been declared by Flagstar as of the Petition Date; (ii) to contest any provisions of the Flagstar Loan Documents; (iii) to contest the amount of the Debtors’ indebtedness, respectively and in the aggregate, to Flagstar as of the Petition Date; (iv) to contest the conduct of Flagstar in administering the Flagstar Loan Documents; (v) against Flagstar with respect to any lender liability theories or pursuant to section 510 of the Bankruptcy Code or in connection with any Avoidance Actions; and (vi) to challenge that the mortgages, security interests and liens granted to Flagstar under the Flagstar Loan Documents or this Interim Order are senior, valid, fully perfected, non-voidable, enforceable first priority mortgages, security interests and liens fully securing the Prepetition Secured Obligations.

- i. Section 552. The Debtors represent, acknowledge, stipulate, and agree solely for themselves and their estates that Flagstar shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to Flagstar with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

G. F.—Adequate Protection. As ~~a result of the authorization for the Debtors~~
~~to adequate protection for the~~ use of Cash Collateral and the imposition of the Automatic Stay,
Flagstar is entitled to adequate protection pursuant to Bankruptcy Code sections 361, 362, and
363 for any diminution in the value, if any, from and after the Petition Date of ~~their~~its interests in
the ~~Flagstar~~Prepetition Collateral (including the Cash Collateral) resulting from the Automatic
Stay and/or from ~~the Debtors’~~each Debtor’s use, sale or lease of the Flagstar Collateral or
otherwise during the chapter 11 cases. ~~The Court hereby determines that Flagstar is adequately~~
~~protected pursuant to Bankruptcy Code sections 361, 362, and 363 for the reasons set forth in the~~
~~Motion.~~Pursuant to sections 361, 363, 503(b), and 507(b) of the Bankruptcy Code, as adequate
protection, Flagstar shall receive the Adequate Protection Liens (as defined below) and the

Adequate Protection Superpriority Claim (as defined below) for the benefit of itself. While the Motion and the record presented to this Court have not provided that the terms of the proposed adequate protection are fair and reasonable, Flagstar has consented to this Interim Order on an interim basis to preserve the value of the collateral for a short period pending a final hearing on the Motion. Flagstar's rights are reserved to seek additional adequate protection beyond the adequate protection provided in this Interim Order.

H. ~~G.~~ Necessity of Relief Requested and Good Cause. ~~Good cause has been shown for the entry of this Interim Order.~~ The Debtors have an immediate need to use Cash Collateral to, among other things, ~~fund the orderly continuation of their business, maintain the Debtor Properties, pay their~~ pay non-insider operating expenses, ~~and fund the administrative expenses of these cases, which will~~ to preserve their going-concern value, with all such payments consistent with the revised Budget.⁴ In the absence of the availability of such liquidity in accordance with the terms hereof, the continued operation of the Debtors' business would not be possible, and serious and irreparable harm to the Debtors, their estates, and their creditors would occur. The ~~terms for the Debtors' use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.~~ The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (d). Absent granting the relief sought by this Interim Order, the Debtors' estates would be immediately and irreparably harmed. ~~The use of Cash Collateral in accordance with this Interim Order is therefore in the best interest of the Debtors and their estates, their creditors, and other parties in interest.~~

⁴ For the avoidance of doubt, the Budget has been revised to remove any direct or indirect payments to insiders during the Interim Period.

Based upon the foregoing findings and conclusions, and upon the record made before the Court at the Hearing, and good and sufficient cause appearing therefor, IT IS HEREBY ADJUDGED AND ORDERED that:

1. Motion Granted. The Motion is GRANTED on an interim basis as set forth herein. Any objection to the interim relief requested in the Motion to the extent not withdrawn or resolved is hereby overruled on the merits.

2. Authorization to Use Cash Collateral. The Court hereby authorizes the Debtors to use existing and hereafter acquired Cash Collateral during the period beginning with the date hereof through twenty-eight (28) days following the date hereof (the “**Interim Period**”), ~~to~~ subject to the terms and conditions of this Interim Order, to maintain and operate the Debtor Properties in the ordinary course, to pay ~~administrative~~ non-insider operating expenses in accordance with the budget attached as Annex 1 hereto (as such budget may be modified from time to time by the Debtors ~~with notice to~~ upon the prior written consent of Flagstar) (the “**Budget**”), ~~and to pay any claims permitted and authorized pursuant to future orders of the Court.~~

3. Budget. Subject to the deviation allowance(s) provided below (each a “**Permitted Deviation**”), as of any Measurement Period, the Debtors shall not allow the aggregate cumulative actual total disbursements (other than fees and expenses of legal, financial and other professional advisors, and a Creditors’ Committee (if appointed)) for the Measurement Period to be more than the projected amount therefor set forth in the most recently delivered Budget by more than ~~15~~ 10% on a cumulative basis; *provided that*, if the Debtors can reasonably demonstrate that any such non-compliance is due solely to a change in timing of anticipated disbursements, then the Debtors shall have an additional week to return to

compliance with the Budget. The Debtors shall be permitted to carry forward unused amounts to successive weeks for purposes of Budget testing set forth in this paragraph 3. Flagstar may, in its sole discretion, agree in writing to the Debtors' use of Cash Collateral ~~(i)~~ in a manner or amount which does not conform to the Budget (other than Permitted Deviations) (each such approved non-conforming use of Cash Collateral, a "Non-Conforming Use") ~~or (ii) for the period following the Interim Period pursuant to paragraph 5 of this Interim Order (such period, the "Subsequent Budget Period").~~ If such written consent is given, the Debtors shall be authorized pursuant to this Interim Order to use Cash Collateral for any such Non-Conforming Use ~~or any such Subsequent Budget Period in accordance with a subsequent Budget (a "Subsequent Budget")~~ without further Court approval, and Flagstar shall be entitled to all of the protections specified in this Interim Order for any such use of Cash Collateral; *provided* that each such permitted Non-Conforming Use shall be deemed a modification to the Budget for all testing purposes.

4. Reporting.

a. By no later than 5:00 p.m. New York City time on (i) the Friday after the ~~second~~first full calendar week after the Petition Date, and (ii) every ~~second~~ Friday thereafter (or, if such Friday is not a Business Day, the next Business Day thereafter) (each such Friday, a "Variance Report Date"), a variance reconciliation report (a "Variance Report") setting forth, in reasonable detail, on a weekly basis for the prior week and on a cumulative basis for the applicable Measurement Period (as defined herein) any differences between actual amounts in the Budget for the Measurement Period versus projected amounts set forth in the Budget included therein on a cumulative basis for such

Measurement Period, with a copy to counsel to any creditors' committee appointed.

b. "Measurement Period" shall mean (i) initially, the period ending on the Friday of the ~~second~~first full calendar week after the Petition Date and (ii) each ~~two-week~~week period thereafter.

5. Escrow of Administrative Expenses.~~—~~

a. *Escrow Amount.* As used in this Interim Order, the "Escrow Amount" means the sum of ~~(i)~~ all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee (the "US Trustee") under section 1930(a) of title 28 of the United States Code ~~and (ii) all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code and the Creditors' Committee (if any) pursuant to section 328 or 1103 of the Bankruptcy Code (collectively, the "Professional Persons") at any time.~~

b. *Funding of Escrow Account.* The Debtors shall on a weekly basis transfer cash on hand in an amount equal to the total budgeted weekly Escrow Amount for the prior week set forth in the Budget, but not greater than \$250,000.00, into a segregated account ~~not subject to the control of Flagstar or any other secured or unsecured creditor~~ (the "Escrow Account"). The Debtors shall use funds held in the Escrow Account exclusively to pay ~~Allowed Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any orders of the Court, provided that the Debtors' obligations to pay Allowed Professional Fees shall not~~

~~be limited or be deemed limited to funds held in the Professional Fees Escrow Account. Funds transferred to the Professional Fees Escrow Account shall be held in trust for and exclusively available for the payment of~~ any fees and expenses of the US Trustee ~~and Professional Persons.~~

c. The fees and expenses of Professional Persons during the Interim Period shall be paid by any applicable retainer.

6. Adequate Protection. Flagstar is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interest in the Prepetition Collateral (including Cash Collateral) (such adequate protection as set forth in clauses (a)-(c) below, the “Adequate Protection Offerings”) in the form of the following:

- Adequate Protection Liens. As adequate protection of the interests of Flagstar in the Prepetition Collateral against any diminution in value of such interests, pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Debtors shall grant, and as of entry of the Interim Order are hereby deemed to have granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), to Flagstar a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon any and all of the Debtors’ and their estates’ tangible and intangible prepetition and postpetition property, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to (i) a valid, perfected and non-avoidable lien or (ii) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, and the proceeds, products, rents, and profits thereof (excluding claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or applicable state-law equivalents (“Avoidance Actions”), but including, subject to entry of a Final Order, any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise (“Avoidance Proceeds”) (the “Unencumbered Property” or “Adequate Protection Collateral”). The foregoing shall not include assets or property (other than Prepetition Collateral, including Cash Collateral) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this Interim Order, would not be

enforceable pursuant to applicable law, but shall include the proceeds thereof, which Adequate Protection liens are granted thereupon.

- Adequate Protection Superpriority Claims. To the extent of any diminution in value of the interests of Flagstar in the Prepetition Collateral, the Debtors shall grant, and as of entry of the Interim Order are hereby deemed to have granted, to Flagstar an allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the “**Adequate Protection Superpriority Claim**”), which Adequate Protection Superpriority Claim shall have (i) priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code, and (ii) which shall have recourse to and be payable from (a) all prepetition and postpetition property of the Debtors, and (ii) subject to entry of a Final Order, the proceeds of Avoidance Actions.
- Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of Flagstar to request further or alternative forms of adequate protection or the rights of the Debtors or any other party to contest such request.

7. ~~6.~~ Modification of Automatic Stay. The Automatic Stay is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to ~~authorize:~~ (a) authorize the Debtors to grant the Adequate Protection Liens and the Adequate Protection Superpriority Claim; (b) permit the Debtors to perform such acts as may be necessary to assure the perfection and priority of the liens granted herein; and (c) permit the Debtors to make payments in accordance with the terms of this Interim Order.

~~7. Bank Authorization. Each of the Banks are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, electronic funds or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts,~~

~~wires, electronic funds or automated clearing house transfers are dated before, on, or after the
Petition Date, without any duty to inquire otherwise.~~

8. This Interim Order shall be sufficient and conclusive evidence of the
granting, creation, attachment, validity, perfection, enforceability, and priority of the Adequate
Protection Liens without requiring any additional filing or recordation of statements or
documents.

9. Subject to the terms of this Interim Order, the Debtors are authorized to
use Cash Collateral, solely in accordance with the Budget, until the earlier of (a) the date of the
Final Hearing (unless such date is extended by the written consent of Flagstar); (b) five (5)
business days after receipt of written notice of an Event of Default (as defined below); or, the
conclusion of the Interim Period.

10. The occurrence or continuance of any of the following events, unless
waived in writing by Flagstar, shall constitute an event of default (each individually, an “**Event
of Default**”):

- the Debtors sell, transfer, lease, encumber, or otherwise dispose of any
portion of the Prepetition Collateral, Cash Collateral or other assets
outside the ordinary course of business;
- The effective date of a plan of reorganization;
- The entry of any order appointing a trustee or examiner with expanded
powers in the Chapter 11 Cases;
- The entry of an order converting or dismissing the Chapter 11 Cases;
- The failure by the Debtors to perform, in any material respect, any of the
terms, provisions, conditions, covenants or obligations under this Interim
Order;
- The failure of the Debtors to timely deliver a Budget;

- Upon the making of any direct or indirect payment to any insider of any Debtor;
- A negative variance of 10% or more from the “Total Bankruptcy Disbursements” in the Budget tested every week on a cumulative rolling four (4)-week basis; provided, that in any rolling four (4)-week period that “Total Bankruptcy Disbursements” are less, and/or total cash receipts are more, than the budgeted amount for such period, the amount by which “Total Bankruptcy Disbursements” are less and/or total cash receipts are more may be carried forward and added to the subsequent period; or
- the filing by the Debtors of any application, motion, or borrowing request seeking to use Cash Collateral on a non-consensual basis;
- the entry of an order granting another claim or lien pari passu with or senior to the Adequate Protection Liens and the Adequate Protection Superpriority Claims, the Prepetition Secured Obligations or the Prepetition Liens granted to Flagstar under this Interim Order;
- any motion, pleading, or proceeding is filed or is commenced by any Debtor seeking, or otherwise consenting to or supporting, (i) the invalidation, subordination, or other challenge to the Prepetition Secured Obligations, the Prepetition Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims or (ii) any relief under section 506(c) of the Bankruptcy Code with respect to any Prepetition Collateral, including the Cash Collateral, or against Flagstar;
- the entry of an order granting relief from or modifying the automatic stay imposed by section 362 of the Bankruptcy Code to any entities other than Flagstar with respect to the Prepetition Collateral;
- the filing by the Debtors of a plan of liquidation or a plan of reorganization that is not conditioned upon the payment of the Prepetition Secured Obligations and the Adequate Protection Superpriority Claims granted hereunder, in full in cash, no later than the effective date of such chapter 11 plan (unless a chapter 11 plan is filed that provides for alternative treatment with the written consent of Flagstar);
- The reversal, vacatur, or material modification of this Interim Order.

11. Notwithstanding anything herein to the contrary or any other order entered by the Court, neither the Prepetition Collateral (including the Cash Collateral) nor Adequate Protection Collateral nor any portion of the foregoing, may be used directly or indirectly, be

included, apply to, or be available for any fees, costs or expenses incurred by any party, including the Debtors, and including without limitation through reimbursement of professional fees of any non-Debtor party, but excluding an official committee of unsecured creditors appointed in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, if any, subject to an agreed budget for any Investigation (as defined herein), if any, included in a Final Order, in connection with any of the following: (i) an investigation (including by way of examinations or discovery proceedings), initiation, assertion, joining, commencement, support or prosecution of any claims, counter-claims, causes of action, adversary proceedings, applications, motions, objections, defenses, or other contested matters against Flagstar, and each of its successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns, in each case in their respective capacities as such and with respect to any transaction, occurrence, omission, action or other matter related to any Debtor (including formal discovery proceedings in anticipation thereof) (each, a “**Lender Claim**”), including, without limitation, (a) investigating or challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Secured Obligations or the Prepetition Liens, (b) investigating or asserting any claims or causes of action arising under chapter 5 of the Bankruptcy Code against Flagstar, (c) investigating or asserting any so-called “lender liability” claims and causes of action against Flagstar; and (d) investigating or asserting any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition Secured Obligations; (ii) the assertion of any claims or causes of action against Flagstar, including, without limitation, claims or actions to hinder or delay the assertions,

enforcement or realization on the liens securing the Prepetition Secured Obligations in accordance with this Interim Order (including attempting to stay the exercise of any right or remedy described in this Interim Order); (iii) seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to Flagstar hereunder or under the Flagstar Loan Documents, in each of the foregoing cases without such applicable parties' prior written consent; (iv) the payment of any amount on account of any claims arising prior to the Petition Date unless such payments are approved by order of the Court; or (v) any purpose that is prohibited under the Bankruptcy Code (collectively, "**Investigation**").

12. Section 506(c) Claims. Subject to and effective upon the entry of the Final Order, as a further condition of the authorization to use the Cash Collateral contained herein, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged or assessed against or recovered from Flagstar or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law. No action, inaction, or acquiescence by Flagstar, including permitting the use of Cash Collateral hereunder, shall be construed as consent to a charge, lien, assessment or claim against, or in respect of, the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise.

13. No Marshaling. Subject to and effective upon entry of the Final Order, Flagstar shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral.

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

15. ~~9.~~ Binding Effect of Interim Order. The provisions of this Interim Order shall be binding upon all parties in interest in the chapter 11 cases, including Flagstar, any statutory committees that may be appointed in the chapter 11 cases, and the Debtors and their respective successors and assigns and shall inure to the benefit of Flagstar, the Debtors and their respective successors and assigns. This Interim Order shall bind any trustee hereafter appointed or elected for the Debtors' estate whether in the chapter 11 cases or in the event of the conversion of the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. Any payments to be made by the Debtors under any order shall be made in accordance with this Interim Order and the Budget.

16. ~~10.~~ Findings of Fact and Conclusions of Law. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof. To the extent that any findings of fact are determined to be conclusions of law, such findings of fact shall be adopted as such; and to the extent that any conclusions of law are determined to be findings of fact, such conclusions of law shall be adopted as such.

17. The admissions, stipulations, agreements, releases, and waivers set forth in Paragraph F above of this Interim Order (collectively, the “Prepetition Lien and Claim Matters”) are and shall be binding on the Debtors, any subsequent trustee (including any chapter 7 trustee), responsible person, examiner with expanded powers, any other estate representative and all parties-in-interest and all of their successors-in-interest and assigns, including, without

limitation, any Committee, unless, and solely to the extent that, a party-in-interest with standing and requisite authority, (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a “Challenge”) by 45 days from entry of this Interim Order for any party in interest (the “Challenge Deadline”), as such applicable date may be extended in writing from time to time by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal. For the avoidance of doubt, any chapter 7 trustee appointed before the Challenge Deadline shall be deemed to be a non-debtor party and shall not be bound by the admissions, stipulations, agreements, releases, and waivers set forth in Paragraph F above until 30 days after his/her appointment.

18. ~~11.~~ Order Effective upon Entry. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

19. ~~12.~~ Retention of Jurisdiction. The Court has and will retain jurisdiction and power to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

20. ~~13.~~ Rule 6004. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

21. ~~14.~~ Final Hearing. The Final Hearing on the Motion shall be held on _____, 2025, at _____ (Prevailing Eastern Time) and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (i) the proposed attorneys for the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Garrett A. Fail, Matthew P. Goren, and Philip L. DiDonato); and (ii) the Notice Parties, in each case so as to be received no later than _____ (Prevailing Eastern Time) on _____, 2025.

22. ~~15.~~ Miscellaneous. ~~Nothing~~ Other than the admissions, stipulations, agreements, releases, and waivers set forth in Paragraph F above and the findings and conclusions in Paragraph 15 above, nothing contained in the Motion or this Order, nor any payment made pursuant to the authority granted by this Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party, other than as provided with respect to Flagstar, as set forth above.

23. ~~16.~~ General Authority. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

Dated: _____, 2025
New York, New York

HONORABLE DAVID S. JONES
UNITED STATES BANKRUPTCY JUDGE