UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:	:	Chapter 11
	:	
Wordsworth Academy, *et al.*,[1]	:	Case No. 17- 14463 (AMC)
	:	
Debtors.	:	Jointly Administered
	:	

OBJECTION OF M&T BANK TO THE MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS: (I) AUTHORIZING THEM TO OBTAIN POST-PETITION FINANCING FROM SIENA LENDING GROUP LLC PURSUANT TO SECTIONS 363 AND 364 OF THE BANKRUPTCY CODE, (II) AUTHORIZING THEM TO ENTER INTO THE DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT, AND (III) GRANTING LIENS AND ADMINISTRATIVE PRIORITY CLAIMS TO DIP LENDER PURSUANT TO SECTION 364 OF BANKRUPTCY CODE AND MODIFYING THE AUTOMATIC STAY TO IMPLEMENT THE TERMS OF THE DIP ORDER

M&T Bank ("M&T"), by and through its undersigned attorneys, herby files this objection (the "Objection") to the Motion of the Debtors for Entry of Interim and Final Orders: (I) Authorizing Them to Obtain Post-Petition Financing from Siena Lending Group LLC pursuant to Sections 363 and 364 of the Bankruptcy Code, (II) Authorizing Them to Enter into the Debtor-In-Possession Loan and Security Agreement, and (III) Granting Liens and Administrative Priority Claims to DIP Lender Pursuant to Section 364 of Bankruptcy Code and Modifying the Automatic Stay to Implement the Terms of The DIP Order (the "Motion").[2] In support of the Objection, M&T states as follows:

I. INTRODUCTION

The relief sought in the Motion unfairly and unreasonably seeks to leave M&T in a fundamentally worse position than it was as of the Petition Date. It is undisputed that, as of the

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Wordsworth Academy (9031); Wordsworth CUA 5, LLC (0983); and Wordsworth CUA 10, LLC (5980). Wordsworth Academy has an address at 3300 Henry Ave., Philadelphia, PA 19129.

[2] Capitalized terms used but not defined herein shall have the meanings given to such terms in the Motion.

Petition Date, M&T had and continues to have first priority liens on and security interests in all of the Debtors' assets, which assets secure a claim in the approximate amount of $4,800,000. *See* Interim Order § D; Final Cash Collateral Order. It is further undisputed that M&T's claim is fully secured by the Debtors' assets. *Id.* Although M&T advised the Debtors and Siena that M&T would consent to a priming lien on accounts receivable (to secure the working capital DIP Facility), the Debtors and Siena unreasonably and unfairly seek more. Not only are the proposed DIP Facility terms unfair and unreasonable, but such terms fail to adequately protect M&T.

The relief sought by the Debtors in the Motion seeks to devalue and impair M&T's interests in the Debtors' assets by eviscerating rights and remedies that M&T had as the sole lienholder with respect to the Debtors' assets as of the Petition Date. The effect of the relief sought by the Debtors is to impede the alienability of the Fort Washington Campus and M&T's ability to exercise rights and remedies with respect to M&T's prepetition collateral, while simultaneously vesting the DIP Lender with unfettered right, upon default, to exercise remedies as to any and all of the Debtors' assets (including, without limitation the Fort Washington Campus, in which the DIP Lender is seeking a third priority lien), all to M&T's detriment.

Moreover, the proposed terms of the DIP Financing also appear to improperly cede control over the Debtors' reorganization efforts, as well as all of the Debtors' assets, to Siena. Such efforts include the unrestrained rights and remedies Siena seeks with respect to the collateral, including waiver of marshaling requirements. The unrestrained, absolute control that Siena seeks to impart over the Debtors and these Bankruptcy Cases is further evidenced by the waivers required of the Debtors in section 5.1 of the proposed Interim Order, including agreement that the Debtors will not seek use of Cash Collateral absent Siena's consent, whether

or not a default has occurred and the requirement that, not only any proposed plan, but any ***confirmed*** plan be acceptable to Siena and include releases in favor of Siena.

In addition to the proposed DIP Financing terms being unfair, unreasonable and failing to adequately protect M&T, the relief sought also appears unwind (although to what extent is unclear) the negotiated and agreed upon Final Cash Collateral Order. Further, the proposed Interim Order seeks relief, in the form of retroactive liens and prospective releases, which are improper under the circumstances. Particularly because the value of the accounts receivable and proceeds therefrom (in which collateral M&T would be willing to subordinate its first priority lien position), is sufficient to fully secure the proposed DIP Lender's post-petition extensions of credit, the relief sought in the Motion should be denied.

II. OBJECTION

As a threshold matter, the Debtors are unable to meet their burden to establish that they are authorized to obtain financing pursuant to section 364 of title 11 of the United States Code (as amended, the "Bankruptcy Code") for the following reasons:

- The Debtors, by their own projections, cannot establish the emergency nature of the relief requested on an interim basis;
- The requested financing will improperly cede control of the reorganization to Siena;
- The Debtors fail to satisfy the requirements for obtaining financing pursuant to section 364(c) of the Bankruptcy Code because the terms of the requested financing are not fair and reasonable under the circumstances;
- The Debtors cannot establish the requisite adequate protection for M&T, as required under section 364(d) of the Bankruptcy Code;

- Certain aspects of the proposed terms for the post-petition financing are improper; and
- Authorization for continued use of cash collateral should not undermine the negotiated and agreed upon terms of the Final Cash Collateral Order.

A. The Debtors Fail to Satisfy the Requirements for the Interim Relief Sought

The Debtors do not, because they cannot, allege facts to support the conclusion that they will suffer immediate and irreparable harm, if their request for an interim order authorizing $1,500,000 of post-petition financing is denied. Accordingly, consistent with Bankruptcy Rule 4001(c)(2), the Debtors' request for interim relief must be denied.

Federal Rule of Bankruptcy Procedure 4001(c)(2) provides that, in connection with a motion to obtain credit,

> The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests the court may conduct a hearing before such 14 day period expires, ***but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing***.

Fed. R. Bankr. P. 4001(c)(2) (emphasis added). The Debtors' own projections, set forth in the Budget (a copy of which is attached as Exhibit A to the proposed Interim Order), prove that the Debtors are "cash positive" through the week ending September 23, 2017 without receiving any funds from the proposed DIP Facility. Section 5.9 of the proposed Credit Agreement contains a representation and warranty that,

> The Budget was prepared in good faith by the Chief Financial Officer of Borrower and based upon assumptions which provide a reasonable basis for the projections contained therein and reflect Borrower's reasonable judgment based on present circumstances of the most likely set of conditions and course of action for the projected period.

Thus, the Debtors acknowledge that they have no need to borrow funds from Siena for a full month from the date on which the Debtors filed the Motion. Since no need to borrow funds arises during the 14 day period after filing the Motion, the Debtors cannot demonstrate that authorization to obtain financing on an interim basis is necessary to avoid immediate and irreparable harm to the Debtors' bankruptcy estate. Consequently, the interim relief sought must be denied.

B. The Terms of the Proposed Financing Improperly Cede Control of the Debtors' Reorganization to Siena.

The requested DIP Financing must be denied because it improperly vests control of the Debtors' reorganization in Siena. While courts generally defer to a debtor's business judgment concerning issues related to obtaining credit, the terms of such credit cannot "unfairly cede control of the reorganization to one party in interest." *See, e.g., In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008). Here, the terms of the proposed Siena DIP Facility improperly place Siena in control of the Debtor's reorganization.

Specifically, the proposed DIP Loan Agreement provides:

- § 3.5(f) . . ."(iii) no Loan Party Obligor shall propose or support any Reorganization Plan that is not conditioned upon termination of Lender's commitment to make Loans hereunder and indefeasible payment in full in cash of all Obligations and the release of Lender in full from all claims of Loan Party Obligors and their estates, in each case, on or before the effective date of such Reorganization Plan, and (iv) no Reorganization Plan shall be confirmed if it does not satisfy the foregoing requirements";

- § 5.15(i) . . . "(ii) File with the Bankruptcy Court, as soon as reasonably practicable after the Closing Date, but in no event later than ninety (90) days following the Closing Date, a Reorganization Plan acceptable to Lender and PHMC";

- § 7.1 of the DIP Loan Agreement states that Events of Default shall occur under the DIP Loan Agreement if:

- "(m) if a Reorganization Plan acceptable to Lender and PHMC is not confirmed by the Bankruptcy Court in a final order within one hundred fifty (150) days following the Closing Date";

- "(cc) (i) a Reorganization Plan is filed in the Case which does not contain provisions for termination of Lender's commitment to make Loans hereunder and indefeasible payment in full in cash of all Obligations on or before the effective date of such Reorganization Plan, for the release of the Lender in full from all claims of Loan Party Obligors and their estates on or before the effective date of such Reorganization Plan, and the continuation of the Liens and security interests granted to Lender until the effective date of such Reorganization Plan, or (ii) an order shall be entered by the Bankruptcy Court confirming a Reorganization Plan in the Case which does not contain provisions for termination of Lender's commitment to make Loans hereunder and indefeasible payment in full in cash of all Obligations and the release of the Lender in full from all claims of Loan Party Obligors and their estates on or before, and the continuation of the Liens and security interests granted to Lender until, the effective date of such Reorganization Plan upon entry thereof"; and

- "(dd) the expiration of the "exclusive period" and any extensions thereto of the Loan Party Obligors under Section 1121 of the Bankruptcy Code for the filing of a plan of reorganization."

See also Interim Order at § 5.1 (containing Debtors' waivers). These provisions, demonstrate the control Siena seeks to exert over the Debtors' reorganization process. Such provisions are particularly concerning because they mandate third party releases in favor of Siena and provide not only that the Debtors must propose a Reorganization Plan acceptable to Siena that provides for such releases (an act within the Debtors' control), but also that a plan containing such provisions must be confirmed, a determination over which this Court, not the Debtors have the final say.

The control that Siena seeks to exert over the Debtors in their chapter 11 cases is further exemplified by the provisions in the DIP Loan Agreement and proposed Interim Order, which prohibit the Debtors from seeking use of cash collateral absent Siena's prior written consent. *See* DIP Loan Agreement at § 7(bb); Interim Order at § 5.1. Since Siena seeks control over various

aspects of the Debtors' reorganization process and Bankruptcy Cases, the relief requested in the Interim Order should be denied.

C. The Proposed DIP Financing Terms are Not Fair and Reasonable under the Circumstances

The Debtors' request for financing pursuant to section 364(c) should be denied because it is not fair and reasonable under the circumstances. In determining whether to authorize financing under section 364(c) of the Bankruptcy Code, a bankruptcy court "acts in its informed discretion." *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990). In considering whether to grant relief under section 364(c) of the Bankruptcy Code, courts have employed a three part test, pursuant to which "debtor(s) must show the following to succeed in a motion under § 364(c): (1) They are unable to obtain unsecured credit per 11 U.S.C. § 364(b), *i.e.*, by allowing a lender only an administrative claim per 11 U.S.C. § 503(b)(1)(A); (2) The credit transaction is necessary to preserve the assets of the estate; and (3) The terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender. *In re Aqua Assoc.*, 123 B.R. 192, 195-196 (Bankr. E.D. Pa. Jan. 17, 1991) (citing *In re Crouse Group, Inc.*, 71 B.R. 544, 549–51 (Bankr. E.D. Pa. 1987)). Here, the Debtors' request for authority to obtain post-petition financing should not be granted because the terms of the Siena DIP Facility are unfair and unreasonable.

The request for financing under section 364(c) of the Bankruptcy Code, including the grant of a third priority lien on and security interest in the Fort Washington Campus, is not fair and reasonable under the circumstances because it improperly seeks to diminish and impair M&T's undisputed rights as a prepetition secured creditor with first priority liens on all of the Debtors' assets. Siena has agreed to provide the Debtors with a revolving loan to fund the Debtors' working capital needs and ongoing operations. Since the Siena loan seeks to fund the

Debtors' ongoing operations, it is reasonable that such loan be secured by assets derived from the Debtors' operations – to wit: the Debtors' accounts receivable and the proceeds thereof.[3]

As of the Petition Date, the Debtors valued their accounts receivable at approximately $8.5 Million – $3.5 Million more than the maximum amount of the Siena DIP Loan for which approval is sought. Therefore, the Debtors' accounts receivable, on their own, render Siena oversecured. Nevertheless, Siena wants more. Specifically, Siena desires to obtain a third priority lien on the Fort Washington Campus, which will serve as M&T's primary collateral for its prepetition claims and already is further encumbered by a second priority lien in favor of Play and Learn in connection with the Play and Learn DIP. Tellingly, notwithstanding the fact that the lien sought is a third priority lien, Siena seeks waiver of the requirement that it marshal assets and the ability to exercise rights and remedies with respect to all of the Debtors' assets, with no consent by M&T. *See* Interim Order §§ 4.2.2, 4.2.3, 4.3, 6.7. Siena also seeks to have any and all proceeds of the Debtors' assets paid to Siena, including proceeds from the real estate comprising the Fort Washington Campus on which Siena seeks a third lien. *See* Interim Order § 6.3. These provisions unfairly and unreasonably interfere with M&T's lien rights in and to the Fort Washington Campus and further suggest that Siena seeks to obtain control over the Debtors' assets and their reorganization process in these Bankruptcy Cases.

The proposed third lien on the real property comprising the Fort Washington Campus (which is unnecessary due to the equity cushion Siena will enjoy if it obtains a priming lien on the Debtors' accounts receivable) will have a material impact on M&T's interest in the property. First, in the event of any sale of the Fort Washington Campus during the Bankruptcy Cases, the Debtors will have to either sell the property for an amount sufficient to repay M&T, Play and

[3] M&T previously advised the Debtors and Siena that M&T would consent, on terms acceptable to M&T, to a priming lien in favor of Siena on the Debtors' accounts receivable and the proceeds thereof as security for the proposed Siena DIP Financing.

Learn and Siena in full or Siena consents to the sale. *See* 11 U.S.C. § 363(f). The Debtors contend that a 2017 appraisal values the Fort Washington Campus at $9.5 Million.[4] Assuming M&T is owed approximately $5 Million (taking into consideration attorneys' fees and costs, expenses and post-petition interest that may be due and owing at the time of a sale)[5] and Play and Learn is owed approximately $1.5 Million, if Siena is owed more $3.0 Million in respect of the DIP Facility,[6] any sale of the Fort Washington Campus will not be sufficient to pay in full all parties having a security interest in the Fort Washington Campus, according to the Debtors' value estimates. Accordingly, Siena's consent to such a sale would be required. Moreover, to the extent that the Debtors seek to sell a portion of the Fort Washington Campus to Play and Learn, as the Interim Order suggests may occur (*see* Interim Order ¶ F) or otherwise conduct a partial sale of the Fort Washington Campus, the likelihood that all three lienholders would be paid in full from the sale of the Fort Washington Campus is further diminished. Thus, granting Siena a third priority lien on the Fort Washington Campus serves as a restraint upon the alienability of such property. Such restraint is unreasonable due to the equity cushion Siena will have in the Debtors' accounts receivable, assuming Siena obtains a priming lien on such assets.

A third lien on the Fort Washington Campus in favor of Siena similarly will serve as an unreasonable restraint on alienability outside of the Debtors' Bankruptcy Cases (assuming dismissal of the Bankruptcy Cases or a situation in which M&T were to obtain relief from the automatic stay with respect to the Fort Washington Campus). Outside the bankruptcy context, the same consent to sale issue exists. Additionally, the value of the Fort Washington Campus in

[4] M&T reserves all rights with respect to arguments concerning valuation of the Debtors' assets, including the Fort Washington Campus.

[5] In a liquidation scenario, M&T's debt balance likely will increase continuously due to accruing interest, fees and costs and/or the need for M&T to expend funds to preserve and protect the Fort Washington Campus.

[6] While the Interim Order only seeks relief to borrow up to $1.5 Million, the total amount of the requested DIP Facility ($5 Million) is relevant because M&T's interests and lien rights should not be impaired by relief granted in any interim order if the size of the requested facility will preclude the Debtors' from obtaining approval of the DIP Facility in its full amount on a final basis.

a distressed sale context (*i.e.*, foreclosure) may be diminished due to the existence of a third lien on the property.

Siena's request for a waiver of marshaling and unfettered ability to take action with respect to the Fort Washington Campus further exemplify the unfairness and unreasonableness of the proposed lien. These provisions could result in a situation where, notwithstanding M&T's continuing first priority lien position, Siena assumes control of a process to dispose of the Fort Washington Campus. *See* Loan Agreement § 4.4(v); Interim Order §§ 4.2.2 and 4.2.3(c) (providing Siena with power of attorney to transfer, sell any of the Debtors' assets and ability to exercise rights and remedies with respect to any of Debtors' assets, subject only to notice requirements). By way of example, assume the Debtors' Bankruptcy Cases are dismissed without a plan having been confirmed, triggering a default under the Siena DIP Facility. Siena can, on five days' written notice to M&T begin to exercise rights and remedies with respect to any of the Debtors' assets, including the Fort Washington Campus. On the proposed terms, Siena may do so without first looking to the collateral in which it would hold a first priority lien and regardless of whether M&T consents to the action being taken or believes it is in M&T's best interest at the time.[7] The potential harm to M&T resulting from a third lien on the Fort Washington Campus renders the request for a third lien on the Fort Washington Campus, unreasonable and unfair under the circumstances, particularly where the proposed third lienholder could be oversecured by a consensual priming lien on accounts receivable.

In addition to the junior third priority lien on the Fort Washington Campus, Siena also seeks to subordinate M&T's superpriority administrative expense claims to Siena's superpriority administrative expense claims, to M&T's detriment. To the extent M&T and Siena are relying

[7] The valuation and adequate protection issues described *infra* in Section II(D) lend further support to the potential harm that M&T will suffer in a situation where Siena is exercising rights and remedies with respect to the Fort Washington Campus.

upon superpriority administrative expense claims to obtain payment in this case, M&T will be in a worse position than it would have been as of the Petition Date because the collateral values will have proved inadequate to repay M&T and Siena in full. Subordinating M&T's superprioirty administrative expense claims, particularly in light of all of the other relief sought, is not fair and reasonable under the circumstances. Consequently, the Debtors' request for authority to obtain post-petition financing pursuant to section 364(c) of the Bankruptcy Code should be denied.

D. M&T Bank is not Adequately Protected

The adequate protection Debtors propose to grant M&T under the Interim Order is insufficient to preserve and protect M&T's current position. Accordingly, the Debtor's request to obtain post-petition financing pursuant to section 364(d) of the Bankruptcy Code should be denied.

The concept of adequate protection is derived from the Fifth Amendment's protection of property interests as well as the notion that secured creditors should not be deprived of the benefit of their bargain. *See Pennsylvania State Employees' Retirement Fund v. Roane*, 14 B.R. 542, 544 (E.D. Pa. 1981); *In re Dispirito,* 371 B.R. 695, 698 (Bankr. D.N.J. 2007). The purpose of adequate protection is to make sure that the creditor receives the value that it had as of the Petition Date. *See In re Mosello*, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996) ("Adequate protection is designed to preserve the secured creditor's position at the time of the bankruptcy"); *In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy."). Adequate protection therefore requires that the existing creditor's interests are protected notwithstanding the action proposed by a debtor. *See Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland),* 16 F.3d 552, 566 (3d Cir. 1994) (finding evidence did not establish that property had increased in value sufficiently to protect existing

secured lender from its loss of priority lien position). Thus, adequate protection "should as nearly as possible under the circumstances of the case provide the creditor with the value of his bargained for rights." *Id.* at 564 (3d Cir. 1994) (citing *In re Martin*, 761 F.2d 472, 476 (8th Cir. 1985); *In re American Mariner Indus., Inc.*, 734 F.2d 426, 435 (9th Cir. 1984)).

"Whether protection is adequate 'depends directly on how effectively it compensates the secured creditor for loss of value.'" *Swedeland*, 16 F.3d at 564 (internal citation omitted); *see also In re Price*, 370 F.3d 362, 373 (3d Cir. 2004) ("A secured creditor retains the right to 'adequate protection' of its collateral, which means it is entitled to have the value of its collateral maintained at all times"). Consequently, section 364(d) of the Bankruptcy Code "should not be read as authorization to increase substantially the risk of the existing lender in order to provide security for the new, post-petition lender." *In re Stoney Creek Techs., LLC*, 364 B.R. 882, 891 (citing *In re Windsor Hotel, LLC*, 295 B.R. 307, 314 (Bankr. C.D. Ill. 2003)).

Moreover, "adequate protection" is intended to protect a secured creditor not merely from the granting of a lien, but rather the grant of a lien under section 364 of this title that "results in a decrease in the value of such entity's interest in" a debtor's property. *See* 11 U.S.C. § 361(1) and (2). Thus, to ensure that a secured creditor's risk is not increased by any financing sought, § 364(d) of the Bankruptcy Code requires a debtor to *prove* that the existing lien holder's interests are adequately protected. 11 U.S.C. § 364(d)(1)(B); *see also In re Aqua Assoc.*, 123 at 196 (citations omitted) ("The important question, in determination of whether the protection to a creditor's secured interest is adequate, is whether that interest, whatever it is, is being unjustifiably jeopardized.") Further, because the Bankruptcy Code's requirement of adequate protection is so steadfast, neither potential benefit to junior creditors nor public interest considerations can mitigate the failure to plainly establish and prove adequate protection. *In re*

Mosello, 195 B.R. at 293 (Bankr. S.D.N.Y. 1996) (citing *In re Chevy Devco*, 78 B.R. 585 (Bankr. C.D. Calif. 1987)).

M&T's interests will not be adequately protected if Siena obtains a priming lien on all of the Debtors' personal property and a junior lien on the Fort Washington Campus on the proposed terms. The Debtors argue that M&T's interests are protected by an equity cushion based upon the value of the Fort Washington Campus. *See* Motion ¶¶ 34-36. However, an equity cushion alone may or may not be sufficient to constitute adequate protection. *See In re Liona Corp.*, 68 B.R. 761, 767 (Bankr. E.D. Pa. 1987) ("Where an equity cushion is insufficient in size or likely to erode, it cannot, standing alone, constitute adequate protection.")

Any valuation of the Fort Washington Campus, in the context of an adequate protection analysis, must take into consideration the specialized use of the property and improvements thereon which serve such purpose and the potential limited universe of prospective purchasers and extended sale time due to such specialized use, as well as the likelihood that, in a liquidation scenario, M&T's debt balance will continue to increase due to unpaid interest, fees and costs. *See In re Stoney Creek Techs., LLC*, 364 B.R. at 894 (noting deferral of sale due to lack of buyer, while interest continues to accrue, will impair prepetition lender's interest); *see also In re Aqua Assoc.*, 123 at 196 (citations omitted) ("An equity cushion analysis contains certain inherent pitfalls. It must first be determined whether 'going concern' or 'liquidated' valuation is in issue."); H.R.Rep. No. 595, 95th Cong., 1st Sess. 356 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 6312 ("Value" does not necessarily contemplate forced sale or liquidation value of the collateral; nor does it imply a full going concern value. Courts will have to determine value on a case-by-case basis, taking into account the facts of each case and the competing interests in the case."). These factors likely will materially and significantly qualify the Debtors' contentions

with respect to the value of the Fort Washington Campus and limit any purported equity cushion therein. M&T leaves the Debtors to their proofs on the issues of adequate protection.

E. Certain of the Requested Financing Terms are Improper

In addition to the various issues noted above, the DIP Loan Agreement and Interim Order provide that liens granted to Siena in connection with the requested post-petition financing will be effective as of the Petition Date. *See, e.g.*, Loan Agreement § 3.1. The effective date of any liens should not pre-date entry of an order authorizing the financing. Additionally, the Interim Order contains a prospective release. *See* Interim Order ¶ 5.3. Such requests are improper and further render the requested relief unfair and unreasonable.

F. The Proposed Terms for Use of Cash Collateral Override the Existing Final Cash Collateral Order

The Interim Order seeks to unwind the negotiated terms upon which M&T agreed to permit the Debtors to use cash collateral in these cases. Pursuant to the Interim Order, the provisions of the Final Cash Collateral Order and M&T's Prepetition Financing Documents are overridden to the extent inconsistent with the terms of the Interim Order. *See* Interim Order § 2.6. The Interim Order further provides for use of cash collateral consistent with the terms of the Loan Documents. *Id.* at § 3. Siena and the Debtors should not be permitted to surreptitiously alter the terms of the Final Cash Collateral Order through reliance on a lengthy credit agreement, without identifying specific instances where the Final Cash Collateral Order and the Interim Order and Loan Documents conflict, so that M&T and other parties in interest have a fair opportunity to assess the impact of any such inconsistencies. Such approach constitutes a flagrant disregard of M&T's continuing interest in cash collateral which will not be eliminated by the granting of the relief sought in the Motion, even if the priority of such interest is altered.

Further, failure to address these potential inconsistencies now, increases the likelihood of contested litigation over such issues in the future to the detriment of all parties in interest.

WHEREFORE, M&T Bank respectfully requests that the relief sought in the Motion be denied and further leaves the Debtors to their proofs and reserves any and all rights to raise further objections to the Motion in connection with any interim or final hearing on the Motion.

Respectfully submitted,

REED SMITH LLP

By: s/ Jennifer P. Knox

Peter S. Clark, II, Esq. (PA 37342)
Jennifer P. Knox, Esq. (PA 206298)
Three Logan Square, Suite 3100
1717 Arch Street
Philadelphia, PA 19103-7301
(215) 851-8100
(215) 851-1420 (telecopy)
pclark@reedsmith.com
jknox@reedsmith.com

Counsel for M&T Bank

Dated: August 29, 2017