IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In re: SEA PALMS CONDOMINIUM COUNCIL OF CO-OWNERS,[1] Debtor.	Case Number: 26-02880-EG Chapter 11, Subchapter V

DEBTOR'S MOTION FOR AUTHORITY TO PAY PREPETITION TRUST FUND, PROPERTY, AND OTHER TAXES AND SIMILAR OBLIGATIONS

SEA PALMS CONDOMINIUM COUNCIL OF CO-OWNERS ("Debtor" or the "Association") files this motion (the "Motion"), seeking the entry of an order authorizing, but not directing, Debtor to pay prepetition trust fund, property, and other taxes and similar obligations, as detailed herein, in the ordinary course of Debtor's business. In addition, Debtor requests that (i) to the extent Debtor has paid certain taxes which should not have been paid, the Court authorize Debtor to seek a refund of such taxes, and (ii) to the extent that Debtor disputes any such prepetition tax, the Court authorize Debtor to set aside, in a segregated account, funds to pay the subject tax until a final determination is made as to whether Debtor is obligated to pay the subject tax. In support of this Motion, Debtor relies upon the *Declaration of Kent Lovett in Support of Debtor's Chapter 11 Petition and First Day Relief* (the "First Day Declaration"),[2] which has been filed with the Court on or about the date hereof and is incorporated herein and respectfully represents as follows:

[1] The last four digits of the Debtor's tax identification number are 0191.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of chapter 11 of title 11 of the United States Code[3] (the "Bankruptcy Code"), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

4. On June 26, 2026, the Debtor filed for protection under chapter 11 of the Bankruptcy Code. Debtor is operating its business and managing its affairs as debtor in possession pursuant to section 1184 of the Bankruptcy Code. No official committee has been appointed in any of the Chapter 11 Cases and no request has been made for removal of the Debtor as debtor in possession.

5. The Association is an unincorporated association of owners at the Property (defined below) organized under the laws of the State of South Carolina.

6. The Bylaws for the Association were dated September 24, 1984, and recorded on October 10, 1984, in Book 302 at Page 249 with the Clerk of the Court's office for Colleton County, South Carolina (the "Clerk's Office").

7. The Association was created by the Declaration of Horizontal Property Regime, Master Deed and Bylaws, Sea Palms Condominium, Fairfield Ocean Ridge, Colleton County, South Carolina (the "Declaration of Horizontal Property Regime") dated September 24, 1984, and

[3] All references to the "Bankruptcy Code" refer to 11 U.S.C. §§ 101-1532.

recorded on October 10, 1984 in Book 302 at Page 209 in the Clerk's Office. The Declaration of Horizontal Property Regime was amended by that certain Supplemental Declaration to Declaration of Horizontal Property Regime, Master Deed and Bylaws, Sea Palms Condominium, Fairfield Ocean Ridge, Colleton County, South Carolina ("Supplemental Declaration") dated July 22, 1985 and recorded on August 1, 1985 in Book 322 at Page 8 in the Clerk's Office; that certain Amendment to The Sea Palms Condominium Horizontal Property Regime, Elimination of Phase III ("Amendment") dated December 5, 1985 and recorded on December 16, 1985 in Book 334 at Page 98 in the Clerk's Office; and that certain Second Amendment to Horizontal Property Regime, Master Deed and Bylaws, Sea Palms Condominium ("Second Amendment") dated December 8, 2023 and recorded on February 12, 2024 in Book 3285 at Page 226 in the Clerk's Office. The Declaration of Horizontal Property Regime, Supplemental Declaration, Amendment, and Second Amendment are collectively referred to as the "Declaration."

8. The Declaration submits the property identified in the Declaration to an interval ownership.

9. Pursuant to Section l of Article II of the Declaration, "*'Unit' shall have the same meaning as the term '"Apartment'" as used in this Declaration and defined in the [Horizontal Property] Act.*"

10. Pursuant to Section o(1) of Article II of the Declaration, "*'Interval Ownership' is a concept whereby Apartments and the share of common elements assigned to the Apartments are conveyed for periods of time, the purchaser receiving a stated time period for a period of years together with a remainder over in fee simple as a tenant in common with all other purchasers of "Unit Weeks" in each particular Apartment upon termination of the Interval Ownership program in accordance with this Master Deed.*"

11. Pursuant to Section o(3) of Article II of the Declaration, "*'Unit Weeks' shall consist of individual Unit Weeks which shall each be an interest in a Unit and shall thereby constitute an interest therein for stated periods of time per year for a stated number of years together with a remainder interest in the Apartment in fee simple.*"

12. Pursuant to Section o(4) of Article II of the Declaration, "*'Unit or Apartment Committed to Interval Ownership' shall be any Apartment sold under a plan of Interval Ownership.*"

13. Pursuant to Section o(2) of Article II of the Declaration, "*'Unit Week Owner' or 'Interval Owner' shall mean a person owning one or more of said Unit weeks, whether entirely or jointly or in common with others.*"

14. Pursuant to Section m of Article II of the Declaration, "*'Unit Week Purchaser' or 'Purchaser' shall mean any individual, person, corporation, partnership or other legal entity, including his or its heirs, assigns, or successors, who purchases a Unit Week from the Developer either by cash payment or by an installment sales contract.*"

15. Pursuant Article II of the Declaration, "*Unless it is plainly evident from the context that a different meaning is intended, [] general common elements (generally referred to herein as common elements) [] shall have [] the meanings stated in said 'Horizontal Property Act.'*"[4]

16. Each Unit Week Owner or Interval Owner is also referred to herein individually as an "<u>Association Member</u>" and collectively as "<u>Association Members.</u>"

17. The property subject to the Declaration, and governed by the Association, has its principal place of business at #1 King Cotton Road, Edisto Beach, South Carolina 29438; however, its physical address is 371-395 Sea Cloud Circle, Edisto Beach, SC 29438 and it is commonly

[4] S.C. Code Ann. § 27-31-10 et seq

known as *Sea Palms Condominium* (the "Property"). The Property consists of six (6) buildings containing between four (4) and six (6) Units each as well as common elements.

18. The Property is operated as a timeshare community. All Units are fully furnished, and each contains a full kitchen.

19. The Property contains twenty-five (25) total Units, which are operated as a timeshare. Each Unit contains fifty-two (52) Unit Weeks.

20. There are 1,300 Unit Weeks at the Property.

21. As of May 8, 2026, the Association owns 58 Unit Weeks at the Property together with a concomitant share of the common elements (the "Association Interest"). The Association Interest comprises approximately 4.46% of the total Unit Weeks at the Property. The Association owns the Association Interest as a tenant-in-common with all Interval Owners at the Property. The Unit Weeks owned by the Association are sometimes referred to as maintenance weeks.

22. According to the records of the Association, as of May 8, 2026, First American Trust, FSB, as Trustee, Duly Appointed Under the Declaration of Trust for the Club Wyndham Access Vacation Ownership Plan ("First American Trust, as Trustee") owns 798 Unit Weeks at the Property, and a concomitant share of the common elements at the Property. First American Trust, as Trustee, owns approximately 61.38% of the total Unit Weeks at the Property. First American Trust, as Trustee, is a tenant in common with all other Interval Owners at the Property as well as the Debtor.

23. According to the records of the Association, as of May 8, 2026, Wyndham Vacation Resorts, Inc. ("WVR") owns 226 Unit Weeks at the Property, and a concomitant share of the common elements at the Property. WVR owns approximately 17.38% of the total Unit

Weeks at the Property. WVR is a tenant in common with all other Interval Owners at the Property as well as the Debtor.

24. According to the records of the Association, as of May 8, 2026, the remaining 218 Unit Weeks, and a concomitant share of the common elements, are owned by other Interval Owners. These Interval Owners own approximately 16.78% of the total Unit Weeks at the Property as tenants in common with all other Interval Owners as well as the Debtor.

25. Upon information and belief, Club Wyndham Access Vacation Ownership Plan[5] has offered to acquire certain Interval Owners' Unit Weeks in the Property, in exchange for certain consideration. Debtor is not and will not be a party to any such transaction.

26. For a detailed description of Debtor and its business, Debtor respectfully refers the Court and parties in interest to the First Day Declarations.

RELIEF REQUESTED

27. Debtor requests entry of an order, (a) authorizing, but not directing, Debtor: (i) to pay, in Debtor's sole discretion, trust fund, property, and other taxes and similar obligations, as detailed herein, in the ordinary course of Debtor's business, without regard to whether such obligations accrued or arose before or after the Petition Date; (b) authorizing, but not directing,

[5] Upon information and belief, pursuant to the Declaration of Covenants, Conditions and Restrictions; Grant and Reservation of Easements for Club Wyndham Access Vacation Ownership Plan ("CWA"), dated January 3, 2008, as amended, supplemented or restated from time to time (the "Club Declaration"), PTVO, a non-stock, non-profit corporation duly organized and existing under the laws of the State of Delaware, and Wyndham Vacation Resorts, Inc. created a multi-site timeshare program known as Club Wyndham Access. Upon information and belief, pursuant to a Declaration of Trust for CWA dated as of January 4, 2008, as amended, supplemented or restated from time to time, (the "Trust Declaration") PTVO Owners Association, Inc. ("PTVO") and WVR created an irrevocable trust to hold legal title to certain real property interests in one or more resort properties ("Club Properties") that have been subjected to the Club Declaration. Upon information and belief, the Club Properties are deeded to First American Trust, a Federal Savings Bank ("First American Trust"). Upon information and belief, First American Trust, as Trustee is the trustee under the Trust Declaration. Upon information and belief, PTVO is the beneficiary under the Trust Declaration.

Debtor: (i) to seek a refund of any taxes that have been already paid by Debtor that Debtor determines, in the exercise of its business judgment, should not have been paid and (ii) to set aside, in a segregated account, funds to pay any unpaid taxes that Debtor disputes, until a final determination is made as to whether Debtor is obligated to pay such tax; (c) authorizing Debtor's financial institutions (collectively, the "Banks") to receive, process, honor, and pay all related checks and electronic payment requests, solely to the extent Debtor has sufficient funds with Banks as directed by Debtor; and (d) granting related relief.

DEBTOR'S TAX OBLIGATIONS

28. In the ordinary course of operating its business, Debtor (a) incurs certain trust fund, property, and other taxes (collectively, the "Taxes"), and (b) may be charged amounts for fees and other similar charges and assessments by various licensing authorities (collectively, the "Fees"). Debtor remits the Taxes and Fees to various federal, state, and local taxing, licensing, and other governmental authorities (collectively, the "Taxing Authorities") on a periodic basis (whether monthly, quarterly, or annually, as established for each particular Tax or Fee) via checks and electronic funds transfers that are processed through its Banks.

29. As of the Petition Date, Debtor estimates that, collectively, it owes the various Taxing Authorities described in detail on **Exhibit A** approximately $49,715.80 in prepetition Taxes and Fees.[6] Through this Motion, Debtor seeks only the authorization, but not direction, to pay the Taxing Authorities the amounts described herein, when they become due in the ordinary course. The following table describes the various categories of Taxes and Fees incurred by Debtor in the ordinary course of business and includes good faith estimates of such Taxes that have

[6] As explained in the First Day Declaration, the Debtor has no direct employees, so it incurs no payroll or other employment-related taxes.

accrued as of the Petition Date based on Debtor's books and records and remain subject to potential audits and other adjustments:

Type of Taxes and Fees	**Approximate Amount Accrued and Unpaid as of the Petition Date**
Income Taxes	$0
Real and Personal Property Taxes	$43,931.53
Total	$0

A. Income Taxes

30. Debtor incurs and is required to pay federal income taxes (the "Income Taxes"). Income Taxes are generally calculated as a percentage of net income (*i.e.*, the difference between gross receipts and expenses, after accounting for additional write-offs). Debtor generally estimates and remits Income Taxes on a quarterly basis—making payments on April 15, June 15, September 15, and December 15 of each year, with a final "true up" payment due on October 15 of the subsequent year. In fiscal year 2025, Debtor remitted approximately $25,791 in Income Taxes to the applicable Taxing Authorities.

31. For calendar year 2026, Debtor estimates that its total Income Tax burden will be approximately $18,903, of which Debtor has paid estimates totaling approximately $9,266.30 in estimated payments prior to the Petition Date. Within thirty (30) days from the Petition Date, Debtor expects that none of this amount will become due.

B. Real and Personal Property Taxes

32. State and local laws where Debtor operates generally grant the applicable Taxing Authorities the power to levy property taxes against Debtor's real and personal property (collectively, the "Property Taxes"). To avoid the imposition of statutory liens on its real and

personal property, the Debtor typically pays Property Taxes in the ordinary course of business on an annual basis. In the ordinary course of business, Debtor pays its Property Taxes in full for the calendar year on or before January 15th of the next calendar year to avoid a 3% penalty on its Property Taxes. Debtor generally pays Property Taxes directly to the Taxing Authorities. By operation of this Motion, Debtor seeks authorization to pay all 2026 Property Taxes in full, on or before January 15, 2027.

33. Debtor requests authorization, but not direction, to satisfy any amounts owed on account of such Property Taxes that may become due and owing in the ordinary course of business during the Chapter 11 Case.

C. Audits

34. As of the filing of this Motion, Debtor is unaware of any pending or threatened audits. However, it is possible that certain Taxing Authorities may initiate audit investigations of prior-year tax returns (any such investigations, the "Audits") during the pendency of the Chapter 11 Case. These Audits may result in additional prepetition Taxes being assessed against Debtor (such additional Taxes, "Audit Amounts"), though Debtor will use its best efforts to avoid any such additional liability. Debtor seeks authority, but not direction, to satisfy any such Audit Amounts in the ordinary course of business.[7]

35. As set forth below, if the Taxes and Fees are not paid, it is possible that some, if not all, of the Taxing Authorities may, pursuant to section 362(b)(9) of the Bankruptcy Code, cause Debtor to be audited and subjected to various administrative proceedings. Such Audits and administrative proceedings and the accompanying disruption in business activities would

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[7] Nothing contained herein or in the order approving the Motion constitutes or should be construed as an admission of liability by the Debtor with respect to any Audit or Audit Amount. The Debtor expressly reserves all rights with respect to any Audit. Furthermore, the Debtor reserves the right to contest the Audit Amounts, if any, claimed to be due as a result of an Audit.

materially and adversely affect Debtor's restructuring effort and unnecessarily divert Debtor's attention away from the Chapter 11 Case. To avoid any such disruption, Debtor needs the authority of this Court to pay, if necessary, the various Taxes and Fees, including any Audit Amounts.

AUTHORITY FOR RELIEF

36. Ample cause exists to authorize the payment of the Taxes and Fees, including that (a) certain of the Taxes and Fees may not be property of Debtor's estate; (b) the failure to pay the Taxes and Fees may interfere with Debtor's continued operations; (c) the failure to pay prepetition Property Taxes may increase the scope of secured and priority claims held by the applicable Taxing Authorities against Debtor's estate; (d) the payment of Taxes and Fees generally affects only the timing of payments, because most, if not all, of the Taxes and Fees are afforded priority status under the Bankruptcy Code; and (e) the Court has authority to grant the requested relief under sections 363 and 105(a) of the Bankruptcy Code.

A. Certain Prepetition Taxes and Fees May Not Be Property of Debtor's Estate

37. Certain Taxes and Fees may not be property of Debtor's estate, as they have been collected from third parties and held in trust for payment to various Taxing Authorities. Section 541(d) of the Bankruptcy Code provides, in relevant part:

> Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest … becomes property of the estate … only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d).

38. Certain of the Taxes and Fees constitute "trust fund" taxes, which Debtor is required to collect from third parties and hold in trust for payment to the Taxing Authorities. As a result, courts have held that such taxes are not part of a debtor's estate. *See, e.g., Begier v. I.R.S.*, 496 U.S. 53, 57–60 (1990) (holding that a prepetition payment of trust fund taxes does not

constitute a transfer that is subject to avoidance because such funds are not the debtor's property); *In re Scanlon*, 239 F.3d 1195, 1197 (11th Cir. 2001) (quoting *T&B Scottdale Contractors, Inc. v. United States*, 866 F.2d 1372, 1376 (11th Cir. 1989)) ("A debtor's estate in bankruptcy consists of 'all legal and equitable interests of the debtor in property as of the commencement of the case"); *Official Comm. of Unsecured Creditors v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1056–60 (3d Cir. 1993) (indicating that even if a statute does not establish an express trust, a constructive trust may be found);[8] *Al Copeland Enters., Inc. v. Texas*, 991 F.2d 233, 235 (5th Cir. 1993) (finding that debtors' prepetition collection of sales taxes and interest thereon held subject to trust and not property of estate); *Tex. Comptroller of Pub. Accounts v. Megafoods Stores (In re Megafoods Stores, Inc.)*, 163 F.3d 1063, 1067–69 (9th Cir. 1988) (holding that, under applicable state law, state sales taxes collected created statutory trust fund, if traceable, and were not property of the estate); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) ("[C]ertain prepetition tax claims, such as sales taxes, could be trust fund claims"); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (holding that funds held in trust for federal excise and withholding taxes are not property of the debtor's estate).

39. As such, with respect to certain Taxes and Fees, Debtor generally does not have an equitable interest in such funds, which Debtor holds in trust for the applicable Taxing Authority. Thus, such funds should not be considered property of Debtor's estate, and Debtor should be permitted to pay such funds to the applicable Taxing Authority in the ordinary course of business as the relevant Taxes and Fees become due.

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[8] Additionally, a constructive trust may be imposed on collected taxes where there exists a reasonable nexus between the funds and the taxes in question. *See In re Integrated Health Servs., Inc.*, 344 B.R. 262, 270 (Bankr. D. Del. 2006). Debtor, therefore, may not have a legally cognizable interest in funds held on account of such "trust fund" taxes and, accordingly, such taxes, which generally consist of sales taxes, would not constitute "property of the [Debtor's] estate" as such term is defined in section 541 of the Bankruptcy Code.

B. Failure to Pay Prepetition Taxes and Fees May Increase the Scope of Secured and Priority Claims Held By the Taxing Authorities

40. Payment of prepetition Taxes and Fees is also warranted, because Debtor's non-payment of certain of the Taxes and Fees may give rise to tax liens or increase the amount of secured claims held by the Taxing Authorities against Debtor's estate. Specifically, the Taxing Authorities may assert liens against any personal property for which the Taxes and Fees are due and owing. Arguably, the relation back of a tax lien to the assessment or tax status date generally does not affect the enforceability of the tax lien against a debtor or violate the automatic stay imposed by section 362(a) of the Bankruptcy Code. *See* 11 U.S.C. § 362(b)(3). In fact, the creation and perfection of such a lien may not violate the automatic stay—even if the lien arises under applicable law for taxes due after the Petition Date. *See* 11 U.S.C. § 362(b)(18) (providing that the automatic stay does not apply to "the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition"); *see also In re Gifaldi*, 207 B.R. 54, 56 n.1 (Bankr. W.D.N.Y. 1997) (noting that section 362(b)(18) of the Bankruptcy Code abrogated case law that had held that the creation of a statutory lien against *ad valorem* property taxes violated the automatic stay).

41. Furthermore, to the extent the Taxing Authorities hold oversecured claims, postpetition interest, fees, penalties, and other charges may accrue where prepetition Taxes and Fees are not paid. 11 U.S.C. § 506(b); *see United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (holding that nonconsensual lienholders may receive interest on their claims under section 506(b) of the Bankruptcy Code). Even if such Taxes and Fees are not treated as secured claims, the Taxes and Fees may be entitled to priority treatment in the Chapter 11 Case. *See* 11 U.S.C. § 507(a)(8). Any attendant penalties assessed by the applicable Taxing Authority

on delinquent taxes owed by the Debtor may be entitled to similar treatment. As such, the Debtor's failure to pay prepetition Taxes and Fees may increase the amount of priority claims held by the Taxing Authorities against the Debtor's estate. Indeed, if the Debtor is required to pay interest on such tax claims, section 511 of the Bankruptcy Code provides that "the rate of interest shall be the rate determined under applicable nonbankruptcy law," which may exceed prevailing market interest rates. *See* 11 U.S.C. § 511(a).

42. Accordingly, prompt payment of the Taxes and Fees may avoid the potential imposition of liens, prevent the accrual of interest charges and unnecessary fees and penalties on such claims, and eliminate claims for interest at potentially above-market rates for any resulting secured claims. Avoiding such negative outcomes by the timely payment of the prepetition Taxes and Fees, thereby, preserves the value of the Debtor's estate and maximizes the distribution available for creditors in the Chapter 11 Case.

C. Many of the Taxes and Fees are Priority Claims, the Payment of Which Will Affect Only the Timing of Payments

43. Most, if not all, of the Taxes and Fees described in the Motion may be afforded priority status pursuant to section 507(a)(8) of the Bankruptcy Code and, thus, payment of such Taxes and Fees would give the Taxing Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan. As such, the only practical effect of authorizing Debtor to pay the Taxes and Fees in the ordinary course of business is that such payment will save Debtor potential interest expense, legal expense, and penalties that otherwise might accrue on, or be incurred in connection with, the late payment thereof.

44. Section 507(a)(8) of the Bankruptcy Code provides that claims entitled to priority status include unsecured claims of governmental units for (a) taxes on or measured by income or gross receipts for a taxable year ending on or before the Petition Date, for which a return,

if required, is last due after three years prior to the Petition Date, and which is assessed within 240 days before the Petition Date (*see* 11 U.S.C. § 507(a)(8)(A)); (b) property taxes incurred before the Petition Date and last payable without penalty after one year before the Petition Date (*see* 11 U.S.C. § 507(a)(8)(B)); and (c) taxes required to be collected or withheld and for which the debtor is liable in whatever capacity. *See* 11 U.S.C. § 507(a)(8)(C). Moreover, to the extent that the Taxes and Fees are entitled to priority treatment under section 507(a)(8)(B) of the Bankruptcy Code, the governmental unit may attempt to assess penalties that may also be accorded priority status. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth-priority status to "a penalty related to a claim of a kind specified in [section 507(a)(8)] and in compensation for actual pecuniary loss").

45. Courts frequently authorize early payment of priority claims when such early payment is intended to prevent some harm to—or to procure some benefit for—the estate. *See, e.g., In re CEI Roofing, Inc.*, 315 B.R. 50, 60–61 (Bankr. N.D. Tex. 2004) (finding that authorization of early payment of priority claims does not upset the Code's priority scheme or trigger concerns of unfair discrimination); *In re CoServ, L.L.C.*, 273 B.R. 487, 493 (Bankr. N.D. Tex. 2002) (implying that bankruptcy court may authorize early payment of prepetition priority claims in instances where nonpayment could impair debtor's ability to operate); *Equalnet Commc'ns*, 258 B.R. at 370 (stating that court may authorize pre-plan payment of priority claims, including certain tax claims, because "the need to pay these claims in an ordinary course of business time frame is simple common sense").

46. To the extent that the prepetition Taxes and Fees are priority claims, they must be paid in full before any of Debtor's general unsecured obligations may be satisfied according to the waterfall established by Congress in the Bankruptcy Code. Based on the foregoing, payment of

the Taxes and Fees effectively amounts to only an issue of timing, and early payment may save Debtor potential interest expense, legal expense, and penalties that otherwise might accrue with respect to such Taxes and Fees.

D. Payment of Taxes and Fees Is Warranted Under Sections 363 and 105(a) of the Bankruptcy Code

47. Finally, the doctrine of necessity justifies the immediate payment of the Taxes and Fees and related services. Section 363(b) of the Bankruptcy Code provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1); *see In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming bankruptcy court decision to authorize payment of prepetition claims under section 363(b)). To approve the use of assets outside the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, courts require only that the debtor "show that a sound business purpose justifies such actions." *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted). Moreover, if "the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task").

48. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105; *see Ionosphere*

Clubs, 98 B.R. at 175 (applying section 105(a) to justify an order authorizing the payment of certain prepetition wages, salaries, medical benefits, and business expense claims to debtor's employees). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *Ionosphere Clubs, Inc.*, at 175. Under section 105(a), a court can permit the pre-plan payment of a prepetition obligation when it is essential to the continued operation of the debtor. *See In re Cargo Transp. Svcs., Inc.*, No. 8:11-bk-00432-MGW (Bankr. M.D. Fla. Jan. 20, 2011) (granting authority to pay prepetition claims under authority of sections 105 and 363 of the Bankruptcy Code); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 17 (Bankr. M.D. Fla. 2005) (noting that "[b]ankruptcy courts recognize that section 363 is a source for authority to make vendor payments, and section 105 is used to fill in the blanks"). Several courts across the country have authorized such payments of prepetition claims under the "doctrine of necessity" (or "necessity of payment" doctrine) when such payment is essential to the continued operation of a debtor's business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code provides a statutory basis for payment of prepetition claims under the doctrine of necessity and noting that "[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11"); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is standard for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

49. Here, Debtor's requested payment of the Taxes and Fees (to the extent such funds constitute property of the estate) is necessary not only because of the aforementioned risks

associated with non-payment, but also because it is necessary for Debtor to comply with its fiduciary duties. Specifically, section 1107(a) of the Bankruptcy Code "contains an implied duty of the debtor-in-possession" to act as a fiduciary to "protect and preserve the estate, including an operating business' going-concern value," on behalf of a debtor's creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. at 497); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) ("[U]pon filing its petition, the Debtor became debtor in possession and, through its management … was burdened with the duties and responsibilities of a bankruptcy trustee."). Courts consistently have permitted payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that "if payment of a claim which arose prior to reorganization is essential to the continued operation of the … [business] during reorganization, payment may be authorized even if it is made out of [the] corpus").

50. Debtor's timely payment of the Taxes and Fees represents a sound exercise of Debtor's business judgment and will maximize value by avoiding potential distractions in the form of Audits as well as the potential dilution of recovery to other creditors of the estate. First, if Debtor fails to pay the Taxes and Fees in a timely manner, the Taxing Authorities may assert that Debtor's directors and officers are personally liable for payment of certain Taxes and Fees. *United States v. A&B Heating & Air Conditioning, Inc. (In re A&B Heating & Air Conditioning)*, 861 F.2d 1538, 1539 n.2 (11th Cir. 1988) ("The Internal Revenue Code imposes personal liability on responsible corporate officers who fail to remit trust fund taxes to the government."). This assertion may be made even where the failure to pay the Taxes and Fees was not a result of

malfeasance on the directors' and officers' behalf. Any claims or litigation related to the failure to pay the Taxes and Fees would be distracting for Debtor, its directors and officers, as well as the Court, which may be asked to entertain various motions by Taxing Authorities seeking relief. Second, the Taxing Authorities may seek to assert monetary penalties or—worse yet—liens on estate assets or seek to lift the automatic stay to pursue Debtor for payment, needlessly complicating the case and costing Debtor additional legal fees. As such, it is in the best interest of Debtor's estate to eliminate the possibility of these distractions or unnecessary costs and to enable the Debtor to continue its business without interruption and to focus on its restructuring efforts.

BANKS SHOULD BE AUTHORIZED TO RECEIVE, PROCESS, HONOR, AND PAY CHECKS AND ELECTRONIC FUNDS TRANSFERS

51. Debtor has sufficient funds to pay any amounts related to the Taxes and Fees in the ordinary course of business. Under Debtor's existing cash management system, Debtor is prepared to readily identify checks or wire transfer requests relating to the Taxes and Fees, as applicable. Debtor believes there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Thus, Debtor requests that the Court authorize the Banks to receive, process, honor, and pay any and all checks or wire transfer requests as directed by Debtor in respect of the Taxes and Fees, to the extent Debtor has sufficient funds on deposit in its accounts with such Banks, whether such checks or wire transfers are dated before, on, or after the Petition Date, and such Banks may rely on the representations of Debtor without any duty of further inquiry and without liability for following Debtor's instructions.

SATISFACTION OF BANKRUPTCY RULE 6003(a)

52. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For reasons discussed above, authorizing Debtor, in its sole discretion, to pay the Taxes and Fees

accrued prior to the Petition Date and granting the other relief requested herein is integral to Debtor's ability to transition its operations into Chapter 11 Case. Failure to receive such authorization and other relief during the first 21 days of the Chapter 11 Case would severely disrupt Debtor's operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary for Debtor to operate its businesses in the ordinary course, preserve the ongoing value of Debtor's operations, and maximize the value of its estate for the benefit of all stakeholders. Accordingly, Debtor submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

53. To implement the foregoing successfully, Debtor requests that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that Debtor has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h). As noted above and in the First Day Declaration, the relief requested is necessary to avoid immediate and irreparable harm to Debtor. Accordingly, ample cause exists to justify waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay under Bankruptcy Rule 6004(h) to the extent such provisions apply.

RESERVATION OF RIGHTS

54. Nothing contained herein is intended or should be construed as an admission as to the validity of any Tax or Fee against Debtor, a waiver of Debtor's right to dispute any Tax or Fee, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. Debtor expressly reserves its rights to contest any claim related to the Taxes and Fees under applicable non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed

as an admission as to the validity of any claim or a waiver of Debtor's right to dispute such claim subsequently.

WHEREFORE, Debtor respectfully requests the Court enter an order, substantially in the form attached hereto as **Exhibit B**, (i) granting the relief requested on a final basis, (ii) authorizing, but not directing, Debtor to remit and pay the Taxes and Fees as Debtor, in its sole discretion, deems necessary, (iii) authorizing the Banks to receive, process, honor, and pay all checks issued and electronic payment requests made relating to the foregoing, and (iv) granting such other and further relief as the Court deems appropriate.

[Remainder of Page Intentionally Left Blank]

Date: June 26, 2026

Respectfully submitted,

/s/ Michael Conrady
Kevin Campbell
District Court ID: 0030
Michael Conrady
District Court ID: 5560
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- and -

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Proposed Counsel for Debtor and Debtor-in-Possession

EXHIBIT A

(Taxes and Fees)

TAXING AUTHORITY NAME	**TYPE OF TAX**	**ADDRESS**
US Department of Treasury, Internal Revenue Service	Income	Department of Treasury Internal Revenue Service Ogden, UT 84201-0012
South Carolina, Department of Revenue	Income	SC Department of Revenue Corporate Voucher P.O. Box 100153 Columbia, SC 29202
Colleton County Treasurer	Property	Colleton County Treasurer P.O. Box 8 Walterboro, SC 29488

EXHIBIT B

(Proposed Order)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In re: SEA PALMS CONDOMINIUM COUNCIL OF CO-OWNERS,[1] Debtor.	Case Number: 26-02880-EG Chapter 11, Subchapter V

ORDER GRANTING DEBTOR'S MOTION FOR FINAL ORDER AUTHORIZING DEBTOR TO PAY PREPETITION TRUST FUND, PROPERTY, AND OTHER TAXES AND SIMILAR OBLIGATIONS

THIS MATTER came before the Court on **[•]**, 2026, at **[•]** [a.m./p.m.], for a hearing (the "Hearing"),[2] upon *Debtor's Motion to Authorize Debtor to Pay Prepetition Trust Fund, Property, and Other Taxes and Similar Obligations* [Doc. No. **[•]**] (the "Motion"). The Motion seeks entry of interim and final orders authorizing, but not directing, Debtor to pay prepetition trust fund, property, and similar taxes, and related fees. The Court, having considered the Motion, finds (i) notice of the Motion and the Hearing thereon was sufficient under the circumstances and no other or further notice need be provided; (ii) the legal and factual bases set forth in the Motion, and First Day Declaration, together with the representations of the parties present at the Hearing establish just cause for the relief granted herein; and (iii) the relief requested in the Motion is in the best interests of Debtor, its estate, its creditors, and all parties in interest. Accordingly, it is hereby

ORDERED:

1. The Motion (Doc. No. __) is **GRANTED**.

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[1] The last four digits of the Debtor's tax identification number are 0191.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. Debtor is authorized, but not directed, in its sole discretion, to pay prepetition Taxes and Fees.

3. Regarding Property Taxes, Debtor is further authorized, but not directed, in its sole discretion, to pay all 2026 Property Taxes in accordance with Debtor's past practices.

4. To the extent Debtor has paid Taxes which should not have been paid, Debtor is authorized to seek a refund of such Taxes. Likewise, to the extent Debtor disputes any pre-petition Taxes, Debtor is authorized to set aside, in a segregated account, funds to pay such Taxes until a final determination is made as to whether Debtor is obligated to pay such Taxes.

5. Each of the Banks at which Debtor maintains its accounts is authorized to (a) receive, process, honor, and pay all checks presented for payment and electronic payment requests as directed by the Debtor on account of the relief granted herein, to the extent sufficient funds on deposit are in those accounts, whether such checks were presented or electronic requests were submitted before, on, or after the Petition Date; and (b) accept and rely on Debtor's designation of any particular check or electronic payment request as appropriate pursuant to the Motion without any duty of further inquiry and without liability for following Debtor's instructions.

6. Nothing in this Order precludes Debtor from (a) contesting, in its sole discretion, the validity and amount of any Taxes and Fees under applicable bankruptcy or non-bankruptcy law, or (b) seeking or not seeking approval or assumption of any agreement, contract, or lease under 11 U.S.C. § 365.

7. All depositories on which checks were drawn in payment of prepetition amounts to the Taxing Authorities shall honor such checks as and when presented for payment.

8. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

9. The notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

11. Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

# # #