**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 AN ORDER (I) AUTHORIZING DEBTOR TO (A) CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEMS, (B) MAINTAIN BANK ACCOUNTS AND CONTINUE USE OF EXISTING BUSINESS FORMS AND CHECKS, AND (C) HONOR CERTAIN RELATED PREPETITION AND POSTPETITION OBLIGATIONS; (II) DETERMINING COMPLIANCE WITH, OR GRANTING A WAIVER OF, THE REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE; AND (III) GRANTING RELATED RELIEF

Sea Palms Condominium Council of Co-Owners ("Debtor" or "Association") seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"): (i) authorizing the Debtor to (a) continue to use its existing cash management system, (b) continue to use the Debtor's existing bank and existing Business Forms,[2] and (c) honor certain related prepetition and postpetition obligations; (ii) determining that the Debtor is in compliance with the deposit requirements set forth in section 345 of the Bankruptcy Code[3] or, alternatively, waiving the requirements thereof, (iii) waiving the *Operating Guidelines and Reporting Requirements for Chapter 11 Cases* (the "Guidelines") promulgated by the United States Trustee's Office for Region 8 (the "U.S. Trustee"); and (iv) granting any additional relief required in order to effectuate the foregoing. In support of this Motion, the Debtor relies upon the *Declaration of Kent Lovett in Support of Debtor's Chapter 11 Petition and Applications for First Day Relief* (the "Lovett

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

[2] "Business Forms" means the Debtor's pre-printed business forms, including checks, business cards, letterhead, envelopes, expense reports, purchase orders and invoices.

[3] All references to the "Bankruptcy Code" refer to title 11 of the United States Code.

Declaration") which has been filed with the Court on or about the date hereof and is incorporated herein, and respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

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, 503(b), 1107 and 1108 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 6004(h) of the Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

4. On June 26, 2026, the Debtor filed for protection under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"). 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 the Chapter 11 Case 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 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 By-Laws, 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 By-Laws, 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 to 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 "Association Member" and collectively as "Association Members."

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,

[4] S.C. Code Ann. § 27-31-10 et seq.

its physical address is 371-395 Sea Clouds Circle, Edisto Beach, SC 29438 and it is commonly 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 Declaration.

RELIEF REQUESTED

27. Debtor seeks entry of the Proposed Order because any disruption to the Cash Management System would have an immediate adverse effect on the Debtor's operating and maintenance of the Property to the detriment of the Debtor's estate and all Association Members.

---

[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.

Moreover, Debtor's operating and reserve funds are deposited in compliance with the Debtor's operating and reserve account investment policy.

A. Debtor's Cash Management System

28. In the ordinary course of business, the Debtor maintains a cash management system (the "Cash Management System"). The Cash Management System includes Checking Accounts (including a linked Sweep Account), Reserve Accounts, and an Investment Account (collectively, the "Bank Accounts"), as defined below:

- The "Checking Accounts": One Checking Account is with Comerica Bank, N.A. having an account number ending in x3104. The other Checking Account is with Truist Bank having an account number ending in x2876.
- The "Sweep Accounts": One Sweep Account is with Comerica Bank, N.A. having an account number ending in x6459. The other Sweep Account is with Truist Bank having an account number ending in x2876.
- The "Reserve Account": The Reserve Account is with Ameriprise Financial Services LLC (through its relationship with Comerica Bank, N.A.) having an account number ending in x7965.
- The "Investment Accounts": The Investment Account is with Ameriprise Financial Services LLC (through its relationship with Comerica Bank, N.A.) having an account number ending in x5606.

29. A schedule listing the Debtor's Bank Accounts, including the name and address of the applicable Bank, the type of account, the last four digits of each account number, and the balance of each account as of April 30, 2026, is attached as **Exhibit B**.

30. Debtor deposits monies into the Bank Accounts in compliance with the Debtor's operating and reserve account investment policy, described further below.

31. Debtor respectfully asserts that the funds deposited in the Bank Accounts generally satisfy the deposit requirements of section 345(b), or alternatively that a waiver of the requirements of section 345(b) is warranted. All funds in the Bank Accounts are held or invested in either (a) FDIC member banks in amounts under the $250,000 FDIC insurance limit (or can easily be

reduced to below the FDIC insurance limit), (b) FDIC-insured certificates of deposit, (c) U.S. Treasury Notes, or (d) a fund that invests only in government securities, repurchase agreements collateralized solely by government securities and/or cash, and cash.

B. The Checking Account, the Sweep Account, the Reserve Account, the Investment Account

32. The Cash Management System is tailored to meet the Debtor's historical operating needs, enabling the Debtor to control and monitor corporate funds, segregate and protect certain amounts required by law or the Debtor's organization documents, ensure cash availability and liquidity, and reduce administrative expenses by facilitating the efficient movement of funds and the development of accurate account balances.

33. The Checking Accounts operate the Debtor's "main" accounts, from which the Debtor pays its ongoing expenses as these are the only Bank Accounts that cut checks. Prior to 2026, the Interval Owners would remit their annual fees into the Checking Accounts in general around the first of each calendar year, but some would pay in advance and others would pay late, meaning there was little activity outside of the months of November through January, with the majority being deposited in December of each calendar year. Several Interval Owners had autopay features on their accounts to make their annual payments to the Debtor; however, others paid by check or manual ACH payment as well. On a daily basis the cash balance in the Checking Accounts sweep into the Sweep Accounts, where it would accrue interest at a higher rate than if the Debtor held cash in their Checking Accounts. When the Debtor needed to cut checks, it wrote them directly from the Checking Accounts which would automatically pull money back from the Sweep Accounts to fund the checks.

34. Thereafter, Debtor manually moves cash from the Sweep Accounts to either the Reserve Account or the Investment Account, focusing first on ensuring the Reserve Account is funded for the year, with the excess moving to the Investment Account.

35. The Reserve Account is a trust and business account established at Ameriprise Financial, LLC (through its relationship with Comerica Bank). Debtor funds the account from amounts paid by Interval Owners for fees and costs. Upon receipt of the annual fees, in January of each year, Debtor historically would segregate a portion of the receipts into the Reserve Account in an amount sufficient to fund the reserve amounts set forth in the annual budgets for the entire year. Historically, the Reserve Account funded certain capital expenditures and other costs at the Property and any outlays made therefrom were only made to the extent expressly authorized in the annual budgets or as authorized by vote of the respective Association Members.[6] Because of the nature of the Reserve Account, the funds were (and still are) invested very conservatively—with such funds invested in U.S. Treasury Notes or funds that almost exclusively invest in government securities, repurchase agreements collateralized solely by government securities and/or cash, and cash.

36. Finally, with respect to the Investment Account, Debtor periodically moves excess cash from the Sweep Accounts in order to enable Debtor to generate a higher rate of return, and to diversify where the cash is held when it becomes too concentrated in the Sweep Accounts.

37. To ensure the safety of the funds in the Reserve Account and the Investment Account, Debtor has adopted specific investment requirements to ensure the funds are preserved and grow at an appropriate rate over time without risk to the underlying principal (the "Debtor's

---

[6] In connection with the approval of the commencement of this Chapter 11 Case, the Association Members voted to allow the money held in the Reserve Accounts to be used to fund the bankruptcy and sale processes currently in motion.

Investment Policy"). The Debtor's stated goals with respect to the Reserve and Investment Accounts are, in order of importance, (1) safety of principal, (2) adequate liquidity, and (3) maximizing yields. As such, Debtor's Investment Policy requires that the Reserve and Investment Accounts utilize "conservative investments" to avoid principal losses. Primary investment types include money market funds, FDIC-insured certificates of deposit (or related instruments) in amounts not to exceed the FDIC insurance limit, and U.S. Treasury securities. Secondarily, the Debtor's Investment Policy provides that Debtor may invest less than 50% of the funds in the Reserve and Investment Account in U.S. Government Agency securities, insured/AAA rated tax-free municipal securities (with an underlying issuer rating of at least A), and funds composed primarily of U.S. Treasury Securities and/or Government Agency securities. Thus, under the Debtor's Investment Policy, Debtor conservatively invests the funds in the subject accounts to ensure the safety of principal and adequate liquidity therein.

38. As noted above, though certain of the transfers into the Bank Accounts are made on an *ad hoc* basis, many of the collections related to the members' assessments and fees have historically been automatically deducted from their bank accounts and deposited into the Checking Accounts on the proper cadence. Similarly, many of the payments from the Checking Accounts are also automated in order to ensure Debtor satisfies all of its obligations on a timely basis. Without this automation, the Debtor's collection and payment processes may be disrupted. Though the Debtor has ceased having guests at the Property and is no longer collecting the automated maintenance fees, certain of the Association Members may still make payments into the Checking Accounts either (a) accidentally, by failing to cancel their autopay features (which the Debtor will refund), or (b) intentionally, in order to make catch up payments to cure deficiencies and participate in the sale process.

39. Through its property manager (the "Property Manager"), Debtor maintains detailed accounting records that track transfers of funds to and from the Bank Accounts in the ordinary course. The Property Manager will continue these practices during the pendency of this case in order to maintain governance, manage liquidity, and meet court reporting requirements. It is imperative that Debtor be able to continue using its existing Cash Management System, as such system is designed to ensure (a) the safety of the cash received, (b) the adequate funding of ongoing expenses and maintenance as well as taxes, and (c) compliance with local law. Moreover, as noted above, a substantial portion of collections and remittances are automated for convenience to the Interval Owners as well as the Debtor, and, to the extent any Interval Owners desire to cure deficiencies, utilizing the existing Cash Management System is imperative. Any change to this system, therefore, would cause, at best, immediate disruption in disbursements and payments as well as unnecessary delays, and, at worst, potential violations of applicable law and/or the inability to collect outstanding maintenance fees.

C. Bank and Processing Fees

40. In the ordinary course, Debtor incurs periodic service charges and other fees from the Banks in connection with the maintenance of the Cash Management System (such charges and fees, the "Bank Fees"). On average, Debtor pays approximately $237 per month on account of its Bank Fees. As of the Petition Date, Debtor estimates that there are no outstanding Bank Fees; however, within thirty (30) days of the Petition Date, Debtor estimates that it will owe approximately one month's worth of the bank fees in the amounts set forth above in accordance with its past practice.

D. Corporate Credit Card Program & D&O Expense Program[7]

41. To support the Debtor's business, Debtor has provided (through the Management Agreement) certain employees with corporate credit cards (the "Corporate Credit Cards" and each individually, a "Corporate Credit Card"),[8] which employees can use on behalf of the Debtor and in connection with Debtor's expense policies to make work-related purchases. Debtor's Corporate Credit Cards are issued through Wells Fargo's "Wells One" program and are governed by the Corporate Card Program and related agreements. Specifically, the cards are issued in the name of the actual user (rather than the business) and may be used for expenses for the Debtor. Expenses are coded by location, so the Property Manager is able to trace the amounts allocable to the Debtor and ensure that the Debtor only pays for those expenses expressly allocated to each.[9] Pursuant to the Corporate Card Program, the Debtor may not exceed a maximum exposure of up to $45,000.00. plus interest, fees, costs, and other charges related thereto or accruing with respect thereto (including for expenses at the other locations). At the close of each pay cycle, Debtor initiates a payment to the Property Manager, which then remits payment to Wells Fargo to pay down the outstanding balance on the Corporate Credit Cards.

42. By this Motion, Debtor seeks authority, but not direction, to continue utilizing the Corporate Credit Cards, paying expenses related thereto (each in accordance with historical practice, but subject to the changes described below), and honoring any outstanding obligations

---

[7] Prior to the Petition Date, the Debtor also maintained an additional corporate card/expense reimbursement program with American Express; however, they have discontinued its use.

[8] The Property Manager has obtained several corporate cards on behalf of various timeshare associations with which it is affiliated, pursuant to that certain Wyndham Destinations Purchasing Card (P-Card) Policy and Program (the "Corporate Card Program").

[9] Certain "back office" expenses have historically been categorized as shared expenses for each of the timeshare associations in the area; however, since the Debtor has ceased occupancy at the Property, they will no longer share in these ongoing expenses and, instead, will only be allocated expenses directly related to—and consumed or utilized at—the specific Property.

related to the Corporate Credit Cards, regardless of whether such expenses arose before or after the Petition Date.

43. Typically, the Debtor owes approximately $405.84 in credit card fees a month. As of the Petition Date, Debtor does not believe that it has any amounts past due on account of the Corporate Credit Cards, but it requests authority to continue satisfying obligations thereunder in accordance with past practice.

44. In addition to the Corporate Credit Cards, prior to the Petition Date, Debtor's directors and officers also incurred certain expenses related to the fulfillment of their obligations to the Debtor for which they are entitled to reimbursement (such expenses, the "Corporate Expenses"). Pursuant to those certain Officer and Director Travel Expense Reimbursement Policies adopted by Debtor (collectively, the "D&O Expense Programs"), the directors of Debtor are entitled to receive reimbursement for (as necessary) mileage/airfare expenses, hotel accommodations, and a per diem allowance related to board meetings and other obligations incurred as a result of their position. In order to receive reimbursement for such expenses, each director must submit an "Expense Reimbursement Request Form" along with receipts evidencing particularized expenses.

45. It is difficult for Debtor to determine the exact amount of the Corporate Expenses outstanding as of the Petition Date, because, among other things, the directors and officers may have expenses that are yet to be submitted to Debtor for reimbursement. Historically, the director and officers have had little to no expenses. Debtor estimates that there are no delinquent Corporate Expenses as of the Petition Date; however, to avoid any harm to the directors and officers, Debtor seeks authority, but not direction, to continue reimbursing the Corporate Expenses as they come due under the D&O Expense Program in accordance with their prepetition policies and practices,

regardless of when such expenses accrued. Such amounts should be consistent with historical averages.

E. Debtor's Existing Business Forms

46. As part of the Cash Management System and in the ordinary course, Debtor uses numerous pre-printed business forms. To minimize the expense to Debtor's estate, Debtor respectfully requests that the Court authorize the Debtor to continue to use all pre-printed business forms, including business cards, letterhead, envelopes, expense reports, purchase orders and invoices (collectively, the "Business Forms") as such forms were in existence immediately prior to the Petition Date, without reference therein to the Debtor's status as "Debtor in Possession" rather than requiring the Debtor to incur the expense and delay of ordering entirely new Business Forms as required under the Guidelines. Debtor has communicated its anticipated commencement of this Chapter 11 Case to all Interval Owners previously, and has suspended occupancy at the Property, so their interactions with vendors going forward should be limited. As such, the Debtor believes that the risk of confusion over Debtor's status as debtor in possession should be minimal.

MAINTENANCE OF DEBTOR'S EXISTING BANK ACCOUNTS, CASH MANAGEMENT SYSTEM, CHECKS, AND BUSINESS FORMS IS WARRANTED

A. Waiver of the Guidelines

47. By this Motion, Debtor seeks a waiver of certain operating Guidelines established by the U.S. Trustee for Debtor in possession for the purpose of supervising the administration of chapter 11 cases. These Guidelines require chapter 11 Debtor to, among other things, (a) close all existing bank accounts, (b) open new debtor in possession ("DIP") bank accounts in certain financial institutions designated as authorized depositories by the U.S. Trustee, (c) establish one DIP account for all estate monies required for the payment of taxes (including payroll taxes), (d) maintain a separate DIP account for cash collateral, and (e) obtain checks or all DIP accounts

that bear the designation, "debtor in possession," the bankruptcy case number, and the type of account. The Guidelines also require a debtor to close its books and records as of the petition date and to open new books and records. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition transactions and operations and to prevent the inadvertent postpetition payment of prepetition claims. Through this Motion, Debtor seeks relief from each of these requirements.

B. Books & Records

48. Debtor seeks a waiver of the requirement that it open new sets of books and records as of the Petition Date. Debtor respectfully submits that opening new books and records would create unnecessary administrative burdens and hardship and would cause unnecessary expense, utilization of resources, and delay. With the use of computer technology, it is now easy to differentiate between pre- and postpetition transactions by date. Debtor historically has used many checks, invoices, stationery, and other business forms. By virtue of the nature and limited scope of ongoing operations and limited need to transact with other parties going forward, Debtor does not believe the expense associated with updating Business Forms is justified by the risk of confusion. A substantial amount of time and expense would be required in order to print new business forms. Fulfillment of the requirement would likely cause more harm than good, including requiring Debtor to incur unnecessary expenses and potentially delay payment of claims. Accordingly, Debtor respectfully requests that it be authorized to continue to use its existing business forms and to maintain its existing business records.

C. Request for Determination of Compliance with or, in the Alternative, Waiver of Section 345(b) Deposit Requirements

49. By this Motion, Debtor also seeks a determination that Debtor is either in compliance with the deposit requirements set forth in section 345(b) of the Bankruptcy Code,

and/or that a waiver of the same is warranted, to permit Debtor to maintain its existing Bank Accounts and Cash Management System. Section 345(b) of the Bankruptcy Code sets forth specific requirements for deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States … or backed by the full faith and credit of the United States. . . ." 11 U.S.C. § 345(b). For such deposits or investments, section 345(b) requires, from the entity with which the money is deposited or invested, a bond in favor of the United States secured by the undertaking of a surety, or, in the alternative, a deposit of securities of the kind specified in section 9303 of title 31. These requirements may be waived by the Court "for cause."

50. Debtor believes that the Bank Accounts are in compliance with the section 345(b) deposit requirements. As set forth above, the Debtor's funds are held or invested in either (a) FDIC member banks in amounts under the $250,000 FDIC insurance limit (or can be reduced to an amount below the FDIC limit easily), (b) FDIC-insured certificates of deposit, (c) U.S. Treasury Notes, or (d) a fund that invests only in government securities, repurchase agreements collateralized solely by government securities and/or cash, and cash. Accordingly, Debtor respectfully asserts that the cash in the Bank Accounts is deposited in compliance with section 345(b) of the Bankruptcy Code.

51. Nevertheless, to the extent the Court disagrees with the Debtor's analysis, Debtor requests that the Court grant it a waiver of the requirements to comply with section 345(b). In short, the benefits of imposing the requirements of section 345(b) in this case is outweighed by the cost and disruption of opening new accounts and altering the Debtor's investment practices.

52. "Cause" exists to waive the requirements of Section 345. Debtor believes that the Banks at which it maintain its accounts are financially stable banking institutions and are insured

either by the FDIC or the Securities Investor Protection Corporation ("SIPC"). Moreover, the funds invested in the Reserve Accounts are all made in accordance with Debtor's internal Investment Policy as detailed above to ensure that the investments are safe and secure, with the emphasis of such policy being to protect the principal. Therefore, Debtor believes that estate funds at the specific accounts in question will be protected during the Chapter 11 Case consistent with the requirements contemplated by section 345(b) of the Bankruptcy Code.

53. Additionally, as explained above, the Debtor's Bank Accounts comprise established Cash Management System that Debtor needs to maintain in order to ensure that collections and disbursements from the Bank Accounts are not disrupted. Debtor has automated substantial portions of its Cash Management System and believes maintaining the system to allow for the collection of latent maintenance fees is in the best interest of the estate. Debtor will note the date and time the chapter 11 petition was filed, and the records will reflect each postpetition receipt and disbursement. Therefore, a waiver of the section 345(b) deposit requirements would not pose a risk to Debtor's estate or its creditors. Accordingly, Debtor requests that its existing accounts be deemed DIP accounts, and that its maintenance and continued use be authorized.

D. Request for Authorization to Maintain Existing Business Forms

54. Debtor also seeks authority to continue to use its pre-petition Business Forms without reference to its status as debtor in possession. Changing correspondence and business forms would be unnecessary and burdensome, expensive, and disruptive. Given the currently limited nature of Debtor's businesses, including the limited number of suppliers of goods and services, vendors, and others with whom Debtor plans to transact business going forward, it is in the best interest of the estate to maintain the existing business forms and the costs of doing so are relatively minimal.

55. Authorization to use the Business Forms will facilitate a smooth and orderly chapter 11 case, minimize the disruption of Debtor's affairs (without violating the requirements of, or the policies underlying, the Bankruptcy Code), and enable Debtor to more effectively and expeditiously achieve a conclusion to the Chapter 11 Case. Moreover, vendors doing business with Debtor will be aware of Debtor's status as debtor in possession as a result of receiving notice of the commencement of the case. Debtor accordingly requests that it be authorized to use its existing Business Forms without being required to label each with the "debtor-in-possession" identifier.

AUTHORITY FOR RELIEF

A. Continued Use of the Cash Management System Is Essential to Debtor's Business Operations

56. Debtor should be authorized to continue to use its existing Bank Accounts and Cash Management System. Debtor will work closely with each Bank at which a Bank Account is held to ensure that appropriate procedures are in place so that checks issued prior to the Petition Date, but presented after the Petition Date, will not be honored absent approval from the Court. Debtor will also maintain records of all transfers within the Cash Management System so that all transfers and transactions will be documented in its books and records to the same extent such information was maintained by Debtor prior to the Petition Date.

57. Permitting Debtor to use its existing Bank Accounts and Cash Management System is in the best interest of Debtor's estate, its creditors, and other interested parties. Requiring Debtor to use new accounts would be disruptive and would impair its efforts to maximize the value of the estate. Moreover, having to open new accounts as of the Petition Date would unnecessarily distract Debtor's key decisionmakers, whose efforts are more appropriately focused on assisting with the efforts related to the Chapter 11 Case. Furthermore, any delays or disruption in the payment of vendors, taxes, and utilities resulting from changing Bank Accounts could result in interruptions

to such services or result in audits, which could disrupt Debtor's operations and cause distractions at this critical juncture. Finally, closing Bank Accounts into which Interval Owners render their annual payments could mean that the Debtor misses collecting additional monies it is owed if such transactions are unable to be completed.

58. Conversely, maintenance of Debtor's prepetition Bank Accounts and Cash Management System would avoid delays in the payment of such necessary expenses and will ensure a smooth transition into chapter 11 without the inconvenience, cost, confusion, and delay associated with transferring cash management operations to new accounts. By allowing the continued use of its existing Bank Accounts and Cash Management System, Debtor will have the ability to continue controlling its flow of funds and ensure its cash is generating the maximum return on investment, while allowing the Debtor to continue lingering and outstanding collections unimpeded. Accordingly, Debtor respectfully request authorization to maintain its Bank Accounts and Cash Management System in accordance with its historical practices, *provided that* no prepetition checks, drafts, wire transfers, or other forms of tender that have not yet cleared the relevant drawee Bank as of the Petition Date will not be honored unless authorized by separate order of this Court.

59. Debtor also requests authority to preserve various reporting and accounting mechanisms, such as signatory authorizations and accounting systems central to the maintenance of the Bank Accounts. The interruption or termination of such reporting and accounting mechanisms would undermine the utility of the Bank Accounts. In accordance with existing practices, Debtor will maintain strict records of all receipts and disbursements from the Bank Accounts during the pendency of the case and will ensure that its records properly distinguish between pre- and postpetition transactions.

60. Debtor's request for authorization to continue to use the Cash Management System is consistent with section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). Section 363(c)(1) is intended to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the court. *See In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007) (same); *see also United States ex rel. Harrison v. Estate of Deutscher (In re H & S Transp. Co.)*, 115 B.R. 592, 599 (Bankr. M.D. Tenn. 1990) ("[s]ection 363 is designed to strike [a] balance, allowing a business to continue its daily operations without excessive court or creditor oversight and protecting secured creditors and others from dissipation of the estate's assets."); *Spradlin v. Wrigley's 7–711, Inc. (In re Licking River Mining, LLC)*, 572 B.R. 830, 847 (Bankr. E.D. Ky. 2017). Included within the purview of section 363(c) is a debtor's ability to continue the "routine transactions" necessitated by a debtor's cash management system. *See Amdura Nat'l Distrib. Co. v. Amdura Corp., (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996) (noting that certain postpetition transfers were "no more than a continuation of the routine transactions necessitated by the cash management system the companies had adopted[; a] debtor in possession under Chapter 11 is generally authorized to continue operating its business") (citing 11 U.S.C. § 363(c)). Nevertheless, Debtor has filed this Motion out of an abundance of caution, to the extent any aspect of the Cash Management System could be considered as outside the ordinary course of business for purposes of section 363(c) of the Bankruptcy Code.

61. Bankruptcy courts routinely permit chapter 11 Debtor to maintain its existing cash management system, generally treating such requests as a relatively "simple matter." *See In re*

Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In granting such relief, courts recognize that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993); *see also In re Columbia Gas Sys.*, 997 F.2d 1039, 1061 (3d Cir. 1993) (recognizing that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient"); *The Charter Co. v. Prudential Ins. Co. of Am. (In re The Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that allowing the Debtor to use its prepetition "routine cash management system" was "entirely consistent" with applicable provisions of the Bankruptcy Code); *Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F.3d 1111, 1114 (5th Cir. 1995) (maintaining an existing cash management system allows a debtor "to administer more efficiently and effectively its financial operations and assets").

62. The Court may also exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court 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(a). Section 105(a) is intended "to assure the bankruptcy courts['] power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (15th ed. 2015).

63. Continuing the Cash Management System without interruption is important to the success of the Chapter 11 Case, and it is well within the Court's equitable power under section 105(a) to approve the Cash Management System continued use.

64. Accordingly, courts in this jurisdiction routinely grant the same or similar relief in chapter 11 cases. *See*, *e.g., In re Veristar, LLC*, Case No. 23-00413 (Bankr. M.D. Tenn. 2023); *In re Brighthouse Green Home Cleaning, LLC*, Case No. 23-00035 (Bankr. M.D. Tenn. 2023); *In re Hidden Acres Healthcare, LLC*, Case No. 22-02780 (Bankr. M.D. Tenn. 2022); *In re TourGigs, LLC*, Case No. 22-02014 (Bankr. M.D. Tenn. 2022); *In re Pinnacle Constructors, Inc.*, Case No. 22-00670 (Bankr. M.D. Tenn. 2022); *In re Old Time Pottery*, Case No. 20-03138 (Bankr. M.D. Tenn. 2020); *In re Oreck Corp.*, Case No. 13-04006 (Bankr. M.D. Tenn. 2013); *In re Sofa Express*, Case No. 07-9024 (Bankr. M.D. Tenn. 2007).

B. The Court Should Waive Certain Requirements of the Guidelines, Including Authorizing Debtor to Maintain Existing Bank Accounts

65. As noted above, the U.S. Trustee has promulgated certain operating Guidelines for Debtor in possession relating to cash management system. The Guidelines, which are designed to provide a clear demarcation between a Debtor's prepetition and postpetition operations, require, among other things, that a debtor (a) close all existing bank accounts, (b) open new accounts designated as "debtor in possession" accounts, (c) make all post-petition disbursements by check, and (d) include the words "debtor in possession" and certain other information on all checks. *See* 28 U.S.C. § 586 and Guidelines.

66. In chapter 11 cases, courts have routinely waived the requirements of the Guidelines, recognizing that they are often impractical and potentially detrimental to a debtor's restructuring efforts. *See, e.g., Official Comm. of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys., Inc.)*, 997 F.2d 1039, 1061 (3d Cir. 1993) (finding that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient"); *Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F.3d 1111, 1114 (5th Cir. 1995) (finding that the cash management system

allows the debtor "to administer more efficiently and effectively its financial operations and assets").

67. Subject to a prohibition against honoring prepetition checks without specific authorization from this Court, Debtor requests that the Bank Accounts be deemed to be debtor in possession accounts, and that its maintenance and continued use, in the same manner and with the same account numbers, styles, and document forms as those employed during the prepetition period, be authorized. Debtor represents that if the relief requested in this Motion is granted, Debtor will not pay—and each of their Banks will be directed not to pay—any debts incurred before the Petition Date, other than as authorized by this Court.

C. The Court Should Authorize Debtor to Maintain the Reimbursement Programs and Continue Honoring the Expenses Incurred in Connection with the Corporate Credit Card and Corporate Expenses

68. Section 363(b)(1) of the Bankruptcy Code provides as follows: "The trustee, 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). A debtor's decision to use, sell, or lease assets outside the ordinary course of business must be based upon a sound business purpose. *See In re Filene's Basement, LLC*, No. 11-13511, 2014 WL 1713416, at *39 (Bankr. D. Del. Apr. 29, 2014) ("Transactions under § 363 must be based upon the sound business judgment of the debtor or trustee."); *The Dai-Ichi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (requiring that the debtor show a "sound business purpose" to justify its actions under section 363 of the Bankruptcy Code); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (same). Further, "[w]here 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 and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville*

1612250425.3

Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also Stanziale v. Nachtomi (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").

69. Moreover, as noted above, section 105(a) grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code under equitable common law principles. The purpose of section 105 is to ensure that the bankruptcy court has the power "to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (16th ed. 2020).

70. Pursuant to these provisions, courts allow the immediate payment of prepetition claims where such payment is essential to the debtor's continued operations. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that "if payment of a [prepetition] claim … is essential to the continued operation of the [debtor,] … payment may be authorized. . . ."); *In re Motor Coach Indus. Int'l*, No. 09-078 (SLR), 2009 WL 330993, at *2 n.5 (D. Del. Feb. 10, 2009) ("The 'doctrine of necessity' or 'necessity of payment' doctrine is a general rubric for the proposition that a court can authorize the payment of prepetition claims if such payment is essential to the continued operation of the debtor."). Indeed, the Supreme Court of the United States (in dicta) tacitly endorsed motions seeking to pay certain prepetition claims pursuant to the doctrine of necessary in order to "enable a successful reorganization and make even the disfavored creditors better off." *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 468 (2017) ("Courts, for example, have approved 'first-day' wage order that allow payment of employees' prepetition wages … to be paid first on their prepetition claims…. In doing so, these courts have usually found that the distributions at issue would enable a successful reorganization and make even the disfavored creditors better off.") (internal citations and quotation marks omitted).

71. Continuing satisfaction of the obligations arising under the Corporate Credit Card and the D&O Expense Programs qualify under the foregoing rubric. Debtor must continue its corporate policies of reimbursing its agents, directors, and officers by the Corporate Credit Card and/or as Corporate Expenses to enable such individuals to perform their jobs effectively. Without the Corporate Credit Card, Debtor may be unable to continue purchasing certain necessary items for the Property. Similarly, without incurrence of the Corporate Expenses, the directors and officers may shirk their duties to the Debtor, as it are not otherwise compensated and would need to bear the burden of travel expenses themselves while performing services for the Debtor's benefit. Though it is true the Debtor has ceased guest occupancy at the Property, its decisionmakers may still have to acquire items to continue maintaining the Property in marketable condition, requiring the use of the Corporate Credit Card, and the directors and officers may be required to incur expenses to oversee and steer the direction of the Chapter 11 Case.

72. Accordingly, to ensure a smooth transition into chapter 11 and authorize the Debtor to continue exercising its fiduciary duties to maintain the Property pending a sale, Debtor should be authorized to continue honoring these expense programs and policies.

D. The Court Should Authorize the Banks Participating in the Cash Management System to Honor Certain Transfers and Charge Bank Fees and Certain Other Amounts

73. Debtor requests that the Banks be authorized to accept and fulfill all representations from Debtor\ as to which checks, drafts, wires, or ACH transfers (each, a "<u>Disbursement</u>") it should honor, consistent with any order of this Court and governing law, whether such Disbursements are dated prior to, on, or subsequent to the Petition date; *provided, however,* that to the extent Debtor directs the Banks to dishonor any Disbursements or the Banks inadvertently dishonor any Disbursements, Debtor may issue a replacement Disbursement consistent with the order(s) of this Court. Pursuant to the relief requested in this Motion, the Banks will not be liable

to any party, including, without limitation, Debtor and its estate, on account of (a) following the Debtor's instructions or representations as to any order of this Court, (b) the honoring of any Disbursement in a good faith belief that Debtor or the Court authorized such prepetition Disbursement to be honored, or (c) an innocent mistake made despite the Bank's implementation of normal and customary item-handling and clearing procedures in respect of the Disbursements. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

74. Finally, in connection with the Cash Management System, the Banks charge—and Debtor pays, honors, or allows the deduction from the appropriate account—certain Bank Fees. As with the Cash Management System, payment of the Bank Fees will ensure the Debtor continues to have access to its Cash Management System and is therefore in the best interests of its estate. Absent payment of the Bank Fees, the Banks might assert setoff rights against the funds in the Bank Accounts on account of the Bank Fees, freeze the Bank Accounts, or refuse to provide banking services to Debtor. Accordingly, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, Debtor seeks authority, in its sole discretion, to pay or to reimburse the Banks for any Bank Fees arising prior to or after the Petition Date in accordance with its past practices.

E. Debtor Should Be Authorized to Use Existing Business Forms

75. Historically, Debtor has used a multitude of business forms. It is important that the Debtor be permitted to continue to use its existing business forms without alteration or change, and the risk of confusion by any party with which the Debtor engages is minimal. The Interval Owners previously voted to authorize the filing of the case, and all creditors will receive notice of the commencement of the case. Accordingly, pursuant to sections 363(c) and 105(a) of the Bankruptcy Code, Debtor request that it not be required to include the legend "Debtor in Possession" and the corresponding bankruptcy case number on any business forms immediately

upon the commencement of the Chapter 11 Case. Absent this relief, Debtor's estate will be required to bear potentially significant and unnecessary expenses, which Debtor respectfully submits is unwarranted. Because the few parties that presently conduct business with Debtor likely will be aware of the Debtor's status as Debtor in possession, the alteration of the Debtor's checks and business forms would be unnecessary and unduly burdensome.

F. The Court Should Determine that Debtor Is in Compliance with, or Alternatively Waive the Requirements of, Section 345(b) of the Bankruptcy Code

76. As noted above, Debtor believes that the Bank Accounts are in compliance with the section 345(b) deposit requirements. As set forth above, the Debtor's funds are primarily held or invested in either (a) FDIC member banks in amounts under the $250,000 FDIC insurance limit, (b) FDIC-insured certificates of deposit, (c) U.S. Treasury Notes, or (d) a fund that invests only in government securities, repurchase agreements collateralized solely by government securities and/or cash, and cash. Given these facts, Debtor believes that its conservative investment strategies render them substantially in compliance with the requirements of section 345(b).

77. Alternatively, to the extent the Court disagrees, Debtor seeks a waiver of the deposit requirements set forth in section 345(a) of the Bankruptcy Code to permit Debtor to maintain its existing Bank Accounts even if they are not in full compliance with the requirements thereof. Pursuant to section 345(b) of the Bankruptcy Code, for any deposit or other investment made by a debtor (except those insured or guaranteed by the United States or by department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States), the Bankruptcy Code requires from the Debtor either (a) a bond in favor of the United States that is secured by the undertaking of an adequate corporate surety or (b) the deposit of securities of the kind specified in section 9303 of Title 31 of the United States Code. *See* 11 U.S.C. § 345(b). Section 345(b) provides further, however, that a court may allow the use of alternatives to those

approved investment requirements "for cause." *See* 11 U.S.C. § 345(b)(2); *see also In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999). In *Service Merchandise*, the court identified the following factors as a guide for determining whether "cause" exists to waive the requirements of section 345(b):

a. the sophistication of the debtor's business;

b. the size of the debtor's business operations;

c. the amount of investments involved;

d. the bank ratings of the financial institutions where the debtor's funds are held;

e. the complexity of the case;

f. the safeguards in place with the debtor's own business for ensuring the safety of the funds;

g. the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;

h. the benefit to the debtor of current practices;

i. the harm, if any, to the estate; and

j. the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.

Serv. Merch., 240 B.R. at 896. Examining the foregoing factors, the *Service Merchandise* court concluded that "cause" existed, because the Debtor were "large, sophisticated [companies] with a complex cash management [system]" that had the ability to shift money as needed to ensure the safety of its funds. *Id.* Moreover, the benefits to the Debtor of waiving the section 345(b) requirements far outweighed any potential harm to the estate, and the failure to waive the requirements "would [have] needlessly handcuff[ed] the[] Debtor's reorganization efforts." *Id.* at 896–97 (internal quotation marks omitted).

78. In this case, Debtor satisfies at least six of the ten prongs in *Service Merchandise*. With respect to prong (c), Debtor holds only relatively small amounts of investments, and for those investments it holds, they are subject to stringent and conservative investment guidelines under the Debtor's Investment Policies. For prong (d), Debtor's Bank Accounts are at large, stable banks, each of which is insured by the FDIC or SIPC. With respect to prongs (e), (h), and (i), the Chapter 11 Case includes a sophisticated Cash Management System that provides material benefits to Debtor's estate by ensuring Debtor remains in compliance with its internal policies and allowing them to move cash to where it is most productive and/or subject to the least risk—the disruption of which could cause serious compliance problems for the Debtor. For prong (f), Debtor has stringent investment policies in place to ensure the safety of cash on hand. In other words, as in *Service Merchandise* and chapter 11 cases in which courts have granted requests for approval of the continued use of prepetition deposit accounts, the facts and circumstances of this Chapter 11 Case similarly justifies a waiver of section 345(b)'s requirements.

79. In light of the safety of Debtor's Bank Accounts, Debtor respectfully requests that, to the extent its practices do not comply with the requirements of section 345(b) of the Bankruptcy Code, the Court waive Debtor's requirement to comply therewith.

REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

80. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property (other than cash collateral) is stayed for 14 days after the order is entered." Fed. R. Bankr. P. 6004(h). As set forth throughout this Motion, any disruption in, among other things, the Debtor's ability to continue to use the Cash Management System would be detrimental to Debtor, its creditors, and its estate, and would impair the Debtor's ability to optimize the value of the Property as part of the chapter 11 process. For this reason and those set forth above, Debtor

submits that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Order.

81. To implement the foregoing immediately, Debtor also respectfully requests a waiver of the notice requirements of Bankruptcy Rule 6004(a), to the extent it is applicable to the Proposed Order.

RESERVATION OF RIGHTS

82. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action taken pursuant to such relief requested or granted, is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against Debtor under the Bankruptcy Code or other applicable nonbankruptcy law; (b) an impairment or waiver of the Debtor's or any other party in interest's right to dispute any claim against, or interest in, Debtor, its property, or its estate on any grounds; (c) a promise or requirement to pay any claim; (d) an assumption, adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (e) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (f) an implication, admission, or finding as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on the property of the Debtor or its estate; (g) an impairment or waiver of any claims or causes of action which may exist against any entity; or (h) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or other applicable law.

83. No trustee, examiner, or creditors' committee has been appointed in these Chapter 11 Case. In compliance with the Bankruptcy Code and Bankruptcy Rules, a copy of the proposed order accompanying this Motion has been or will immediately be served by facsimile,

email, overnight mail, or hand delivery on: (i) the Office of the United States Trustee for the District of South Carolina; (ii) the Subchapter V trustee; (iii) the holders of the 20 largest claims against each Debtor; (iv) the Office of the United States Attorney for the District of South Carolina; (v) the Internal Revenue Service; (vi) the Secretary of State for the State of South Carolina; (vii) all statutory committees appointed in the case (if any); (viii) the Banks; and (ix) all parties requesting notice under Bankruptcy Rule 2002. Debtor submits that, given the nature of the relief requested, no other or further notice need be given.

84. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, Debtor respectfully requests the entry of an order, substantially in the form of the Proposed Order, (i) granting the Motion; (ii) authorizing, but not directing, Debtor to (a) continue to use its existing Cash Management System, (b) continue to use Debtor's existing Bank Accounts listed in the attached **Exhibit B** and existing Business Forms and checks, (c) continue to use the Corporate Credit Card consistent with historical practices; and (d) honor certain related prepetition and postpetition obligations; (iii) determining that the Bank Accounts satisfy the deposit requirements of section 345(b), or otherwise waiving compliance with such requirements; (iv) waiving compliance with the UST Guidelines; and (v) granting any additional relief required in order to effectuate the foregoing that the Court deems just and proper.

[Remainder of Page Left Intentionally Blank.]

Date: June 26, 2026

Respectfully submitted,

/s/ Michael Conrady
Kevin Campbell
District Court ID: 0030
Michael Conrady
District Court ID: 5560
CAMPBELL LAW FIRM, PA
890 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29646
- and -

Daniel M. Eliades (*pro hac vice* pending)
K&L GATES LLP
One Newark Center, Tenth Floor
Newark, NJ 07102
Telephone: (973) 848-4000
Email: daniel.eliades@klgates.com
peter.dauria@klgates.com

Jeffrey T. Kucera (pro hac vice pending)
Carly S. Everhardt (pro hac vice pending)
K&L GATES LLP
200 S. Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 539-3300
Email: jeffrey.kucera@klgates.com
carly.everhardt@klgates.com

Proposed Counsel for Debtor and Debtor-in-Possession

EXHIBIT A

(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 AN ORDER (I) AUTHORIZING DEBTOR TO (A) CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEMS, (B) MAINTAIN BANK ACCOUNTS AND CONTINUE USE OF EXISTING BUSINESS FORMS AND CHECKS, AND (C) HONOR CERTAIN RELATED PREPETITION AND POSTPETITION OBLIGATIONS; (II) DETERMINING COMPLIANCE WITH, OR GRANTING A WAIVER OF, THE REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE; AND **(III) GRANTING RELATED RELIEF**

THIS CASE came before the Court on ________, 2026 at __:__ _.m. (the "Hearing") upon *Debtor's Motion for an Order (I) Authorizing Debtor to (A) Continue to Use Existing Cash Management System, (B) Maintain Bank Accounts and Continue Use of Existing Business Forms and Checks, and (C) Honor Certain Related Prepetition and Postpetition Obligations; (II) Determining Compliance with, or Granting a Waiver of, Certain Investment and Deposit Guidelines; and (III) Granting Related Relief* (the "Motion")[2] (Doc. No. 3) filed by the above-captioned debtor and debtor-in-possession for entry of an order for authority, among other things, to maintain its existing Bank Accounts and to continue to use its existing Cash Management System and Business Forms and for a waiver of certain investment and deposit guidelines. The Court, having considered the Motion, finds that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue is proper before this Court pursuant to 28 U.S.C.

---

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

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

§§ 1408 and 1409; (c) this matter is core pursuant to 28 U.S.C. § 157(b)(2); (d) the Court may enter a final order consistent with Article III of the United States Constitution; (e) notice of the Motion and the Hearing thereon was sufficient under the circumstances and no other or further notice need be provided; (f) the relief requested in the Motion is in the best interest of Debtor, its estate, its creditors and other parties in interest; and (g) upon a review of the record before the Court, including the legal and factual bases set forth in the Motion and the First Day Declaration and the statements made by counsel at the Hearing, and being otherwise fully advised in the premises, does for the reasons stated on the record of the Hearing, all of which are incorporated herein; and after due deliberation and sufficient cause appearing therefor, has determined that good and sufficient cause exists to grant the relief requested. Accordingly, it is

ORDERED:

1. The Motion is **GRANTED** effective as of the Petition Date.

2. Debtor is authorized to maintain and use its existing Cash Management System, as more fully set forth in the Motion. In connection with the ongoing utilization of the Cash Management System, Debtor shall continue to maintain strict records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

3. Debtor is authorized to maintain and use its existing Bank Accounts which are identified on the schedule attached as **<u>Exhibit B</u>** to the Motion in the names and with the account numbers existing immediately prior to the Petition Date.

4. The Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of Debtor, as debtor in possession, without interruption and in the ordinary course of business consistent with past practice, and to receive, process, honor, and pay, to the

extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, and all such Banks are authorized to rely on Debtor's designation of any particular check or electronic payment requests as approved by this Order; *provided that*, subject to paragraph 5, Debtor shall only instruct or request any Bank to pay or honor any check, draft, or other payment item issued on a Bank Account prior to the Petition Date but presented to such Bank for payment after the Petition Date as authorized by an order of the Court.

5. The Banks are authorized to debit the Bank Accounts in the ordinary course of business, consistent with past practice, without the need for further order of this Court, for: (a) all checks drawn on the Bank Accounts that are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks, automated clearing house entries, and other items deposited or credited to one of the Bank Accounts with such Bank prior to the Petition Date that have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent Debtor was responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

6. Any existing deposit agreements between or among Debtor, the Banks, and other parties shall continue to govern the postpetition cash management relationship between Debtor and the Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, rights, benefits, offset rights and remedies afforded under such agreements, shall remain in full force and effect unless otherwise ordered by the Court, and Debtor and the Banks may, without further order of this Court, agree to and implement changes to the

Cash Management System and cash management procedures in the ordinary course of business, pursuant to the terms of those existing deposit agreements, including, without limitation, the opening and closing of bank accounts.

7. The Banks are authorized, without further order of this Court, to charge back to the appropriate accounts of Debtor any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such returned items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

8. Subject to the terms set forth herein, the Banks may rely upon the representations of Debtor with respect to whether any check, draft, wire, transfer, or other payment order drawn or issued by Debtor prior to the Petition Date should be honored pursuant to any order of this Court, and no such Bank shall have any liability to any party for relying on such representations by Debtor as provided for herein.

9. The Banks are further authorized to honor Debtor's directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, Debtor's funds in accordance with Debtor's instructions; *provided that* the Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

10. Debtor is authorized, but not directed, to maintain and use its existing Corporate Credit Cards in the ordinary course of business consistent with prepetition practice, including honoring any outstanding obligations incurred related to the Corporate Credit Cards whether they arose prepetition or postpetition, subject to the limitations of this Order and any other applicable

interim and/or final orders of this Court. Debtor is further authorized to continue to use the Corporate Credit Cards and related loan documents pursuant to which the obligations in respect of the Corporate Credit Cards are included as obligations thereunder. Any Bank may rely on the representations of Debtor with respect to its use of the Corporate Credit Cards, and such Bank shall not have any liability to any party for relying on such representations by Debtor as provided for herein.

11. Any existing agreements between or among Debtor and any bank in respect of the Corporate Credit Cards program shall continue to govern the postpetition relationship between Debtor and such bank, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, rights, benefits, offset rights and remedies afforded under such agreements, shall remain in full force and effect unless otherwise ordered by the Court, and Debtor and such bank may, without further order of this Court, agree to and implement changes related to the Corporate Credit Cards in the ordinary course of business, pursuant to the terms of those existing agreements.

12. Debtor is authorized, but not directed, to maintain and use its existing D&O Expense Program in the ordinary course of business consistent with prepetition practice, including honoring any outstanding obligations incurred as Corporate Expenses whether they arose prepetition or postpetition, subject to the limitations of this Order and any other applicable interim and/or final orders of this Court. The relevant directors and officers are further authorized to continue to rely on the D&O Expense Program and related documents and incur, submit, and be reimbursed for Corporate Expenses in accordance with prepetition, ordinary course practice. Any Bank may rely on the representations of Debtor with respect to its reimbursement of Corporate

Expenses, and such Bank shall not have any liability to any party for relying on such representations by Debtor as provided for herein.

13. Debtor is authorized to pay all prepetition Processing Fees and Bank Fees and to continue to pay such Processing Fees and Bank Fees in the ordinary course of business postpetition.

14. The requirements in the Guidelines promulgated by the Office of the United States Trustee are each separately and collectively excused, including, for the avoidance of doubt, the requirements that Debtor (a) close all existing bank accounts and open new debtor in possession ("DIP") bank accounts in certain financial institutions designated as authorized depositories by the U.S. Trustee, (b) establish one DIP account for all estate monies required for the payment of taxes (including payroll taxes), (c) maintain a separate DIP account for cash collateral, (d) obtain checks for all DIP accounts that bear the designation, "debtor-in-possession," the bankruptcy case number, and the type of account, and (e) close its books and records as of the petition date and to open new books and records. Debtor shall continue, pending such final hearing, to work with the Office of the United States Trustee for the District of South Carolina to address the issues set forth herein, and, where feasible, to comply with the Guidelines.

15. Debtor shall retain the authority to close certain of its Bank Accounts and open new debtor-in-possession accounts, or otherwise make changes to its Cash Management System as it deems necessary to facilitate the Chapter 11 Case and operations. In the event that Debtor opens or closes any additional bank accounts, such opening or closing shall be timely indicated on Debtor's monthly operating reports and/or notice of such opening or closing shall be provided to the Office of the United States Trustee for the District of South Carolina three (3) days prior to such opening or closure.

16. Debtor is authorized to deposit funds in and withdraw funds from its Bank Accounts by all usual means including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers, and other debits and to treat the Bank Accounts for all purposes as debtor-in-possession accounts.

17. Debtor is authorized to continue to use its prepetition business forms, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, checks, and other business forms, substantially in the forms existing immediately prior to the Petition Date, without reference to Debtor's debtor-in-possession status.

18. The Banks maintaining Debtor's Bank Accounts that are listed on **Exhibit B** to the Motion, and any and all other financial institutions receiving or transferring funds from or to Debtor, are authorized and directed to cooperate with respect to Debtor's efforts to maintain and use its Cash Management System and accounts.

19. For purposes of this Order, Debtor is authorized to deposit funds in accordance with its established deposit practices in effect as of the commencement of this case and, to the extent that such deposit practices are not consistent with the requirements of section 345(b) of the Bankruptcy Code or the Guidelines for chapter 11 cases, such requirements are waived.

20. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(a).

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

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

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

24. The Court retains jurisdiction to hear and determine all matters arising from or relating to the interpretation or implementation of this Order.

# # #

EXHIBIT B

Schedule of Bank Accounts

No.	Bank	Address	Type	Acct. No. (Last 4 digits)	Balance as of 5/31/2026
1	Comerica Bank, N.A.	2321 Rosecrans Avenue, Ste. 5000 El Segundo, CA 90245-4537	Operating (Checking)	x3104	$0.00
2	Comerica Bank, N.A.	2321 Rosecrans Avenue, Ste. 5000 El Segundo, CA 90245-4537	Operating (Sweep)	x6459	$23,752.97
3	Ameriprise Financial Services LLC (Comerica)	611 Anton Blvd Ste. 200 Costa Mesa, CA 92626-7002	Investment (Brokerage)	x5606	$12,665.00
4	Ameriprise Financial Services LLC (Comerica)	611 Anton Blvd Ste. 200 Costa Mesa, CA 92626-7002	Reserve (Brokerage)	x7965	$2,333,075.26
5	Truist	214 N. Tryon St. Charlotte, NC 28202	Operating (Checking)	x2876	$10,000
6	Truist	214 N. Tryon St. Charlotte, NC 28202	Operating (Sweep)	X2876	$282,673.65