

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re: Elk Run Property Owners Association, Inc., ¹ EIN: 84-1055016 Debtor.	Case Number: 26-10311 Chapter 11, Subchapter V
In re: Village Pointe Property Owners Association, Inc., ² EIN: 84-1118687 Debtor.	Case Number: 26-10314 Chapter 11, Subchapter V
In re: Masters Place Condominiums Property Owners Association, Inc., ³ EIN: 84-1118688 Debtor.	Case Number: 26-10313 Chapter 11, Subchapter V

**DEBTORS' MOTION FOR AN ORDER (I) AUTHORIZING
DEBTORS 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, THE REQUIREMENTS OF
SECTION 345(b) OF THE BANKRUPTCY CODE; AND
(III) GRANTING RELATED RELIEF**

Elk Run Property Owners Association, Inc. ("Elk Run"), Village Pointe Property Owners
Association, Inc. ("Village Pointe"), and Masters Place Condominiums Property Owners

¹ Elk Run Property Owners Association, Inc.'s corporate headquarters is located at: 42 Pinon Causeway, Pagosa Springs, Colorado 81147.

² Village Pointe Property Owners Association, Inc.'s corporate headquarters is located at: 42 Pinon Causeway, Pagosa Springs, Colorado 81147.

³ Masters Place Condominiums Property Owners Association, Inc.'s corporate headquarters is located at: 42 Pinon Causeway, Pagosa Springs, Colorado 81147.

Association, Inc. (“Masters Place”) (collectively, the “Debtors”) seek entry of an order, substantially in the form filed contemporaneously herewith (the “Proposed Order”): (i) authorizing the Debtors to (a) continue to use their existing cash management systems, (b) continue to use the Debtors’ existing bank accounts (each, the “Elk Run Bank Accounts,” the “Village Pointe Bank Accounts,” the “Masters Place Bank Accounts,” and, collectively, the “Bank Accounts”) and existing Business Forms,⁴ and (c) honor certain related prepetition and postpetition obligations; (ii) determining that the Debtors are in compliance with the deposit requirements set forth in section 345 of the Bankruptcy Code⁵ or, alternatively, waiving the requirements thereof, (iii) waiving the *United States Trustee’s Chapter 11, Subchapter V Guidelines for Debtors in Possession* (the “Guidelines”) promulgated by the United States Trustee’s Office for Region 19 (the “U.S. Trustee”); and (iv) granting any additional relief required in order to effectuate the foregoing. In support of this Motion, Elk Run relies upon the *Declaration of LuAnn Blea in Support of Debtor’s Chapter 11 Petition and First Day Relief* (the “Elk Run First Day Declaration”); Village Pointe relies upon the *Declaration of Amy Bornmann in Support of Debtor’s Chapter 11 Petition and First Day Relief* (the “Village Pointe First Day Declaration”); and Masters Place relies upon the *Declaration of Rusty Nabors in Support of Debtor’s Chapter 11 Petition and First Day Relief* (the “Masters Place First Day Declaration” and, collectively, with the Elk Run First Day Declaration and the Village Pointe First Day Declaration, the “First Day Declarations”),⁶ which have been filed contemporaneously herewith, and respectfully state as follows:

⁴ “Business Forms” means the Debtors’ pre-printed business forms, including checks, business cards, letterhead, envelopes, expense reports, purchase orders and invoices.

⁵ All references to the “Bankruptcy Code” refers to title 11 of the United States Code.

⁶ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the applicable First Day Declaration.

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 requested herein are Sections 105(a), 345(b), 363(c), and 364 of the Bankruptcy Code, Rule 6004 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

4. On January 20, 2026 (the “Petition Date”), Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code and each has elected to proceed under Subchapter V of Chapter 11 of the Bankruptcy Code. Debtors are operating their business and managing their affairs as debtors 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 any of the Debtors as debtors in possession.

5. Debtors are not-for-profit corporations organized under the laws of the State of Colorado pursuant to their respective Articles of Incorporation filed with the Colorado Secretary of State, filed on May 22, 1986, for Elk Run; December 2, 1988, for Village Pointe; and March 14, 1989, for Masters Place.

6. Each respective Articles of Incorporation reflects that the Debtors were organized and exist to, among other things, operate, manage, lease, maintain, repair, and generally administer the affairs of the Properties, each located at 42 Pinon Causeway, Pagosa Springs, Colorado 81147 (collectively, the “Properties”), with the following features:

- a) Elk Run includes five buildings, with a total of 18 separate units
- b) Village Pointe includes six buildings, with a total of 32 separate units
- c) Masters Place includes two buildings, with a total of 20 separate units

7. Debtors were formed pursuant to the (a) Declaration of Protective Covenants and Interval Ownership for Elk Run Townhouses, filed on June 26, 1986 (as amended thereafter, the “Elk Run Declaration”); (b) Declaration of Condominium and Interval Ownership for Village Pointe Condominiums, filed on January 6, 1989 (as amended thereafter, the “Village Pointe Declaration”); and (c) Declaration of Condominium and Interval Ownership for Masters Place Condominiums, filed on March 14, 1989 (as amended thereafter, the “Masters Place Declaration” and, collectively, with the Elk Run Declaration and the Village Pointe Declaration, the “Declarations”).

8. The original By-Laws for each Debtor were recorded in the Office of the County Clerk and Recorder for Archuleta County, Colorado (the “Clerk’s Office”), on January 26, 1986, for Elk Run; January 6, 1988, for Village Pointe; and on March 14, 1989, for Masters Place. The By-Laws, as subsequently amended for each Debtor, are collectively referred to as the “By-Laws”.

9. The Declarations establish the Properties as subject to plans of internal ownership as part of timeshare programs in accordance with Colorado law and provide that the owners of the condominium units are the members of the respective Debtor (the “Association Members”).

10. The Properties operate as timeshare resorts. There are in total 3,640 unit-weeks (known as “Intervals”) across the Properties, including 936 at Elk Run, 1,664 at Village Pointe,⁷ and 1,040 at Masters Place.

11. Elk Run owns 18 Intervals at its Property and a concomitant share of the common elements (the “Elk Run Association Interest”), which comprises approximately 1.92% of the total Intervals at Elk Run; Village Pointe owns 32 Intervals at its Property and a concomitant share of the common elements (the “Village Pointe Association Interest”), which comprises approximately

⁷ The Village Pointe Intervals may be subdivided in two biennial interval ownership interests.

1.92% of the total Intervals at Village Pointe; and Masters Place owns 20 Intervals at its Property and a concomitant share of the common elements (the “Masters Place Association Interest” and, collectively, with the Elk Run Association Interest and Village Pointe Association Interest, the “Association Interests”), which comprises approximately 1.92% of the total Intervals at Masters Place. Each Debtor is a tenant in common with its Association Members.

12. PTVO Owners Association, Inc. (“PTVO”) owns 179, 408, and 267 Intervals at Elk Run, Village Pointe, and Masters Place, respectively, which represents approximately 19.12%, 24.52%, and 25.67% of the total Intervals. WorldMark, the Club (the “Club”) owns 340, 632, and 301 Intervals at Elk Run, Village Pointe, and Masters Place, respectively, which represents approximately 36.32%, 37.98%, and 28.94% of the total Intervals. Wyndham Vacation Resorts, Inc. (“WVR”) owns 73, 95, and 52 Intervals at Elk Run, Village Pointe, and Masters Place, respectively, which represents approximately 7.80%, 5.71%, and 5.00% of the total Intervals. The remaining 326, 497, and 400 Intervals (34.83%, 29.87%, and 38.46% of the total Intervals) are owned by parties to corresponding contracts (collectively, the “Interval Owners”), with each interval having its own separate corresponding contract with the corresponding Debtor.

13. Vacation Resort Management, Inc. f/k/a Wyndham Vacation Management, Inc. (the “Property Manager”) provides management services to the Properties for the Debtors, pursuant to (a) that certain Amended and Restated Management Agreement between the Property Manager and Elk Run, dated as of January 1, 2025 (the “Elk Run Management Agreement”), (b) that certain Amended and Restated Management Agreement between the Property Manager and Village Pointe, dated as of January 1, 2025 (the “Village Pointe Management Agreement”), and (c) that certain Amended and Restated Management Agreement between the Property Manager and Masters Place, dated as of January 1, 2025 (the “Masters Place Management”).

Agreement” and, collectively, with the Elk Run Management Agreement and Village Pointe Management Agreement, the “Management Agreements”).⁸ Upon information and belief, Property Manager and WVR, an Association Member, are affiliates.

14. The Properties are located within a broader development known as *Fairfield Pagosa* (the “Master Development”) and are also subject to that certain Declaration of Restrictions, related to the Master Development, recorded in Book 190, at Page 760 of the Clerk’s Office (as amended and supplemented, the “Master Declaration”). The Master Declaration provides that the Association Members are also members of the Pagosa Property Owners Association, Inc. (the “Master Association”) and are obligated to make payments in respect thereof.

15. As of December 27, 2025, the Debtors suspended occupancy at the Properties and are no longer accepting guests and reservations.

16. For a detailed description of Debtors and their businesses, Debtors respectfully refer the Court and parties in interest to the First Day Declarations.

RELIEF REQUESTED

17. Debtors seek entry of the Proposed Order because any disruption to the Cash Management Systems would have an immediate adverse effect on the Debtors’ operating and maintenance of the Property to the detriment of the Debtors’ estates and all Association Members. Moreover, Debtors’ operating and reserve funds are deposited in compliance with the Debtors’ operating and reserve account investment policy.

⁸ The terms of the Management Agreements are essentially identical as such is relevant to this Motion.

A. Debtors' Cash Management Systems

18. In the ordinary course of business, each of the Debtors maintain separate—yet internally integrated—centralized cash management systems (the “Elk Run Cash Management System,” the “Masters Place Cash Management System,” and the “Village Pointe Cash Management System” and, collectively, the “Cash Management Systems”). The Cash Management Systems are substantially similar, all of which include Checking Accounts (with linked Sweep Accounts), Reserve Accounts, and Investment Accounts, as defined below:

- The “Checking Accounts”: Each is with Comerica Bank, N.A., with Elk Run having an account number ending in x7835 (the “Elk Run Checking Account”), Masters Place having an account number ending in x7959 (the “Masters Place Checking Account”), and Village Pointe having an account number ending in x8072 (the “Village Pointe Checking Account”)
- The “Sweep Accounts”: Each is with Comerica Bank, N.A., with Elk Run having an account number ending in x6723 (the “Elk Run Sweep Account”), Masters Place having an account number ending in x6053 (the “Masters Place Sweep Account”), and Village Pointe having an account number ending in x6509 (the “Village Pointe Sweep Account”)
- The “Reserve Accounts”: Each is with Ameriprise Financial, LLC (Comerica), with Elk Run having an account number ending in x1133 (the “Elk Run Reserve Account”), Masters Place having an account number ending in x1133 (the “Masters Place Reserve Account”), and Village Pointe having an account number ending in x6133 (the “Village Pointe Reserve Account”)
- The “Investment Accounts”: Each is with Ameriprise Financial, LLC (Comerica), with Elk Run having an account number ending in x0133 (the “Elk Run Investment Account”), Masters Place having an account number ending in x2133 (the “Masters Place Investment Account”), and Village Pointe having an account number ending in x3133 (the “Village Pointe Investment Account”)

Additionally, Elk Run and Masters Place also each have additional account(s) with Axiom Bank, N.A. Elk Run’s account, ending in x9805 (the “Elk Run Loan Account”), was established in 2023 as part of a potential loan transaction to hold proceeds and collateral; however, such loan was never finalized. The Elk Run Loan Account has held little money at any time, is unneeded, and may be

closed during the pendency of the Chapter 11 Cases. Masters Place has one account with Axiom Bank, N.A., ending in x9858 (the “Masters Place Loan Reserve Account”), which was similarly established in connection with a secured loan transaction with Axiom Bank, N.A., which Masters Place obtained in June 2024 and remains outstanding as of the date hereof. The Masters Place Loan Reserve Account holds funds as security in respect of the purported secured loan with Axiom Bank, from which Masters Place remits its monthly payments.⁹ Debtor does not intend to utilize any funds maintained in the Masters Place Loan Reserve Account at Axiom prior to either (i) reaching an agreement with Axiom regarding such use or (ii) entry of an order of the Court authorizing such use. As of the Petition Date, the Masters Place Loan Reserve Account holds approximately \$517,219.50 in funds, and the outstanding balance on the loan totaled approximately \$238,000.00, according to Debtor Masters Place’s books and records.

19. A schedule listing each of the Debtors’ Bank Accounts, including the name and address of the applicable Bank, the type of account, and the last four digits of each Bank Account Number, is attached as **Exhibit A**.

20. Debtors deposit monies into the Bank Accounts in compliance with the Debtors’ operating and reserve account investment policy, described further below, as well as (with respect to Masters Place) in compliance with the Loan Documents.

21. Debtors respectfully assert 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 (other than the

⁹ The Debtors reserve all rights with respect to any purported loan obligations, and nothing herein shall be deemed an admission with respect thereto.

amounts held with Axiom Bank related to the Loan¹⁰), (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 Accounts, the Reserve Accounts, and the Investment Accounts

22. The Cash Management Systems are tailored to meet the Debtors' historical operating needs, enabling the Debtors to control and monitor corporate funds, segregate and protect certain amounts required by law or the Debtors' 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.

23. The Checking Accounts operate as each of the Debtors' "main" accounts, from which the Debtors pay all of their ongoing expenses as these are the only Bank Accounts that cut checks. While the Debtors were operating, 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 Debtors; 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 they would accrue interest at a higher rate than if the Debtors held cash in their Checking Accounts. When the Debtors needed to cut checks, they write them directly from the Checking Accounts which would automatically pull money back from the Sweep Accounts to fund the checks.

¹⁰ This term shall have the meaning ascribed to it in the Masters Place First Day Declaration.

24. Thereafter, Debtors manually move cash from the Sweep Accounts to either the Reserve Accounts or the Investment Accounts, focusing first on ensuring the Reserve Accounts are funded for the year, with the excess moving to the Investment Accounts. Because the Checking Accounts zero out on a daily basis and transfer balances to the Sweep account, each Checking Account generally has a balance of \$0.00. Relatedly, as of January 12, 2026, the Elk Run Sweep Account had a balance of approximately \$106,848.82; the Masters Place Sweep Account had a balance of approximately \$74,016.59; and the Village Pointe Sweep Account had a balance of approximately \$229,592.14.

25. The Reserve Accounts are trust and business accounts established at Ameriprise Financial, LLC (through its relationship with Comerica Bank). Debtors fund such accounts from amounts paid by Interval Owners for fees and costs. Upon receipt of the annual fees, Debtors historically would segregate a portion of the receipts into the Reserve Accounts in an amount equal to one-twelfth (1/12) of each of the Debtors' annual budget. Historically, the Reserve Accounts funded certain capital expenditures and other costs at the Properties 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.¹¹ Because of the nature of the Reserve Accounts, the funds were (and still are) invested very conservatively—with such funds invested in U.S. Treasury Notes and in funds that invest only in government securities, repurchase agreements collateralized solely by government securities and/or cash, and cash. As of January 12, 2026, the Elk Run Reserve Account had a balance of approximately \$1,205,561.56; the Masters Place

¹¹ In connection with the approval of the commencement of these Chapter 11 Cases, 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.

Reserve Account had a balance of approximately \$127,944.73; and the Village Pointe Reserve Account had a balance of approximately \$1,996,508.22.

26. Finally, with respect to the Investment Reserve Accounts, Debtors periodically move excess cash from the Sweep Accounts in order to enable Debtors to generate a higher rate of return, and to diversify where the cash is held when it becomes too concentrated in the Sweep Accounts. As of January 12, 2026, the Elk Run Investment Account had a balance of approximately \$374,231.49; the Masters Place Investment Account had a balance of approximately \$624,166.24; and the Village Pointe Investment Account had a balance of approximately \$788,844.35.

27. To ensure the safety of the funds in the Reserve Accounts and the Investment Accounts, Debtors have 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 “Debtors’ Investment Policies”).¹² The Debtors’ stated goals with respect to the Reserve and Investment Accounts are, in order of importance, (a) safety of principal, (b) adequate liquidity, and (c) maximizing yields. As such, Debtors’ Investment Policies require 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. Secondly, the Debtors’ Investment Policies provide that Debtors 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.

¹² The substantive terms and requirements of the Investment Policies are identical.

Thus, under the Debtors' Investment Policies, Debtors conservatively invest the funds in the subject accounts to ensure the safety of principal and adequate liquidity therein.

28. 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 Debtors satisfy all of their obligations on a timely basis. Without this automation, the Debtors' collection and payment processes may be disrupted. Though the Debtors have ceased operations and are 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 Debtors will refund), or (b) intentionally, in order to make catch up payments to cure deficiencies and participate in the sale process.

29. Through the Property Manager, Debtors maintain 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 these cases in order to maintain governance, manage liquidity, and meet court reporting requirements. It is imperative that Debtors be able to continue using their existing Cash Management Systems, as such systems are 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 Debtors, and, to the extent any Interval Owners desire to cure deficiencies, utilizing the existing Cash Management Systems 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

30. In the ordinary course, Debtors incur periodic service charges and other fees from the Banks in connection with the maintenance of the Cash Management Systems (such charges and fees, the “Bank Fees”). On average, Elk Run pays approximately \$694.22 per month, Masters Place pays approximately \$751.12 per month, and Village Pointe pays approximately \$891.75 per month on account of their respective Bank Fees. As of the Petition Date, Debtors estimate that there are no outstanding Bank Fees; however, within thirty (30) days of the Petition Date, they estimate that Elk Run will owe approximately \$694.22, Masters Place will owe approximately \$751.12, and Village Pointe will owe approximately \$891.75 in accordance with their past practice.

D. Corporate Credit Card Program & D&O Expense Program

31. To support the Debtors’ businesses, Debtors have provided (through the Management Agreement) certain of their employees with a corporate credit card (the “Corporate Credit Cards”),¹³ which employees can use on behalf of the Debtors and in connection with Debtors’ expense policies to make work-related purchases. Debtors’ Corporate Credit Cards are issued through Wells Fargo’s “Wells One” program and are governed by the Corporate Card Program and related agreements. Specifically, each card is issued in the name of the actual user (rather than the business) and may be used for expenses of the Debtors as well as four other

¹³ 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”). Nine of the corporate cards issued under the Corporate Card Program are used for Debtors’ operations as set forth herein.

timeshare associations located in the same vicinity. Expenses, however, are coded by location, so the Property Manager is able to trace the amounts allocable to the Debtors and ensures that the Debtors only pay for those expenses expressly allocated to each.¹⁴ Pursuant to the Corporate Card Program, the Debtors may not exceed a maximum exposure of up to \$195,000.00 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, Debtors initiate a payment to the Property Manager, which then remits payment to Wells Fargo to pay down the outstanding balance on the Corporate Credit Cards.

32. By this Motion, Debtors seek authority, but not direction, to continue utilizing the Corporate Credit Cards, paying expenses related thereto (each in accordance with historical practice), and honoring any outstanding obligations related to the Corporate Credit Cards, regardless of whether they arose before or after the Petition Date. Debtors estimate that they incur liabilities of approximately \$12,575.00 per month on account of the Corporate Credit Cards in the aggregate.¹⁵ As of the Petition Date, Debtors do not believe that they have any amounts past due on account of the Corporate Credit Cards, but they request authority to continue satisfying obligations thereunder in accordance with past practice. Elk Run, Masters Place, and Village Pointe, respectively, estimate that they have outstanding on their Corporate Cards approximately \$3,215.92, \$3,273.51, and \$8,376.59 as of the Petition Date.

¹⁴ Certain “back office” expenses have historically been categorized as shared expenses for each of the timeshare associations in the area; however, since the Debtors have ceased occupancy at the Properties, 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 Properties.

¹⁵ This amount includes expenses totaling approximately \$3,750.00, \$4,275.00, and \$4,550.00 per month with respect to Elk Run, Masters Place, and Village Pointe, respectively.

33. In addition to the Corporate Credit Cards, prior to the Petition Date, Debtors' directors and officers also incurred certain expenses related to the fulfillment of their obligations to the Debtors 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 Debtors (collectively, the "D&O Expense Programs"),¹⁶ the directors of Debtors 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.

34. It is difficult for Debtors 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 they have yet to submit to Debtors for reimbursement. Historically, however, Elk Run directors have incurred approximately \$158.00 per month on average; Masters Place directors have incurred approximately \$653.44 per month on average; and Village Pointe directors have incurred approximately \$824.40 per month on average under the respective D&O Expense Programs. Debtors estimate that there are no delinquent Corporate Expenses as of the Petition Date; however, to avoid any harm to the directors and officers, Debtors seek 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.

¹⁶ The details of the D&O Expense Programs (such as exact per diem amounts and number of nights stay in a hotel covered by the particular policy) differ, but the categories of reimbursable expenses and procedures to request reimbursement are the same.

E. Credit Cards and Other Payment Processors

35. In addition to cash receipts from Interval Owners for their annual fees, Debtors have also historically received payment for certain *ad hoc* services and transactions, including related to the sale of concierge items, charity wristbands, and other similar goods at the Properties; such payments were made at physical credit card terminal(s) at the Properties, or paid via online or in-app portals (the “Non-Cash Payments”). To process Non-Cash Payments, Debtors are party to certain agreements (the “Payment Processing Agreements”) with certain point-of-sale and merchant service providers, including but not limited to Braintree (each, a “Payment Processing Company,” and collectively, the “Payment Processing Companies”).

36. The Payment Processing Companies charge a 3.0% processing fee in connection with each of the Non-Cash Payments to Debtors (the “Processing Fees”), with the balance of receipts being deposited into the Debtors’ respective Checking Accounts. Receipts generated by the Non-Cash Payments have historically been relatively *de minimis*, meaning Debtors’ obligations to the Payment Processing Companies are similarly *de minimis* as well totaling approximately \$20.00, \$25.00, and \$120.00, per month on average for Elk Run, Masters Place, and Village Pointe, respectively. As of the Petition Date, Debtors do not believe any Processing Fees are due and owing and they have ceased collecting Non-Cash Payments considering the ceased occupancy; however, they request to continue paying such amounts as they become due and payable within thirty (30) days of the Petition Date in accordance with past practice.

37. Though the Debtors no longer anticipate utilizing the services of the Payment Processing Companies, there may be lingering amounts collected thereby requiring the payment of the Processing Fees in order to collect such receipts. Thus, Debtors seek authority, but not direction, to pay any prepetition Processing Fees incurred in connection with processing any

Non-Cash Payments in accordance with their historical practice pursuant to the terms of the Payment Processing Agreements.

F. Debtors' Existing Business Forms

38. As part of the Cash Management Systems and in the ordinary course, Debtors use numerous pre-printed business forms. To minimize the expense to Debtors' estates, Debtors respectfully request that the Court authorize the Debtors 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 Debtors' status as "Debtors in Possession" rather than requiring the Debtors to incur the expense and delay of ordering entirely new Business Forms as required under the Guidelines. Debtors have communicated their anticipated commencement of these Chapter 11 Cases to all Interval Owners previously, and they have suspended occupancy at the Properties, so their interactions with vendors going forward should be limited. As such, the Debtors believe that the risk of confusion over Debtors' status as debtors in possession should be minimal.

MAINTENANCE OF DEBTORS' EXISTING BANK ACCOUNTS, CASH MANAGEMENT SYSTEMS, CHECKS, AND BUSINESS FORMS IS WARRANTED

A. Waiver of the Guidelines

39. By this Motion, Debtors seek a waiver of certain operating Guidelines established by the U.S. Trustee for debtors in possession for the purpose of supervising the administration of chapter 11 cases. These Guidelines require chapter 11 debtors 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 (other than the Masters Place Loan Reserve Account to the extent it constitutes 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, Debtors seek relief from each of these requirements.

B. Books & Records

40. Debtors seek a waiver of the requirement that they open new sets of books and records as of the Petition Date. Debtors respectfully submit 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. Debtors historically have 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, Debtors do 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 Debtors to incur unnecessary expenses and potentially delay payment of claims. Accordingly, Debtors respectfully request that they be authorized to continue to use their existing business forms and to maintain their existing business records.

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

41. By this Motion, Debtors also seek a determination that Debtors are 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 Debtors to maintain their existing Bank Accounts and Cash Management Systems. 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.”

42. Debtors believe that the Bank Accounts (other than the amounts held with Axiom Bank related to the Loan) 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 (other than the amounts held with Axiom related to the Loan), (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, Debtors respectfully assert that the cash in the Bank Accounts (other than the amounts held with Axiom Bank related to the Loan) is deposited in compliance with section 345(b) of the Bankruptcy Code.

43. With respect to the Masters Place Loan Reserve Account, Debtors acknowledge that Axiom Bank is not an Authorized Depository and that the funds held there exceed the FDIC

insurance limit. Nevertheless, Debtors request a waiver of section 345(b) with respect to this account because Masters Place opened it in connection with the Loan, which may or may not constitute a secured obligation of Masters Place. Masters Place does not believe it is in the interest of its estate to contest the secured nature of the Loan at this juncture because it anticipates paying creditors' claims in full, meaning Axiom Bank would be paid in full regardless of the Loan's secured status. Instead of establishing a new account at an Authorized Depository at this juncture—which would necessarily require the determination of its secured or unsecured status—Masters Place proposes maintaining the status quo during the pendency of the case. Masters Place proposes that it will not utilize the money in the Masters Place Loan Reserve Account absent either (a) reaching an agreement with Axiom Bank regarding such use or (b) entry of an order by the Court authorizing its use.

44. Nevertheless, to the extent the Court disagrees with the Debtors' analysis above with respect to the Bank Accounts other than the Masters Place Loan Reserve Account, Debtors request 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 are outweighed by the cost and disruption of opening new accounts and altering the Debtors' investment practices.

45. "Cause" exists to waive the requirements of Section 345. Debtors believe that the Banks at which they maintain their accounts are financially stable banking institutions and are insured either by the Federal Deposit Insurance Corporation ("FDIC") or the Securities Investor Protection Corporation ("SIPC"). Moreover, the funds invested in the Reserve Accounts are all made in accordance with Debtors' internal Debtors Investment Policies as detailed above to ensure that the investments are safe and secure, with the emphasis of such policy being to protect the principal. Therefore, Debtors believe that estate funds at the specific accounts in question will be

protected during the Chapter 11 Cases consistent with the requirements contemplated by section 345(b) of the Bankruptcy Code.

46. Additionally, as explained above, the Debtors' Bank Accounts comprise established Cash Management Systems that Debtors need to maintain in order to ensure that collections and disbursements from the Bank Accounts are not disrupted. Debtors have automated substantial portions of their Cash Management Systems and believe maintaining the system to allow for the collection of latent maintenance fees is in the best interest of the estates. Debtors will note the date and time the chapter 11 petitions were 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 Debtors' estates or their creditors. Accordingly, Debtors request that their existing accounts be deemed DIP accounts, and that their maintenance and continued use be authorized.

D. Request for Authorization to Maintain Existing Business Forms

47. Debtors also seek authority to continue to use their pre-petition Business Forms without reference to their status as debtors in possession. Changing correspondence and business forms would be unnecessary and burdensome, expensive, and disruptive. Given the currently limited nature of Debtors' businesses, including the limited number of suppliers of goods and services, vendors, and others with whom Debtors plan 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.

48. Authorization to use the Business Forms will facilitate smooth and orderly chapter 11 cases, minimize the disruption of Debtors' affairs (without violating the requirements of, or the policies underlying, the Bankruptcy Code), and enable Debtors to more effectively and expeditiously achieve a conclusion to the Chapter 11 Cases. Moreover, vendors doing business

with Debtors will be aware of Debtors' status as debtors in possession as a result of receiving notice of the commencement of the case. Debtors accordingly request that they be authorized to use their 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 Systems Is Essential to Debtors' Business Operations

49. Debtors should be authorized to continue to use their existing Bank Accounts and Cash Management Systems. Debtors 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. Debtors will also maintain records of all transfers within the Cash Management Systems so that all transfers and transactions will be documented in their books and records to the same extent such information was maintained by Debtors prior to the Petition Date.

50. Permitting Debtors to use their existing Bank Accounts and Cash Management Systems is in the best interest of Debtors' estates, their creditors, and other interested parties. Requiring Debtors to use new accounts would be disruptive and would impair their efforts to maximize the value of the estate. Moreover, having to open new accounts as of the Petition Date would unnecessarily distract Debtors' key decisionmakers, whose efforts are more appropriately focused on assisting with the efforts related to the Chapter 11 Cases. 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 Debtors' operations and cause distractions at this critical juncture. Finally, closing Bank Accounts into

which Interval Owners render their annual payments could mean that the Debtors miss collecting additional monies they are owed if such transactions are unable to be completed.

51. Conversely, maintenance of Debtors' prepetition Bank Accounts and Cash Management Systems 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 their existing Bank Accounts and Cash Management Systems, Debtors will have the ability to continue controlling their flow of funds and ensure their cash is generating the maximum return on investment, while allowing the Debtors to continue lingering and outstanding collections unimpeded. Accordingly, Debtors respectfully request authorization to maintain their Bank Accounts and Cash Management Systems in accordance with their 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.

52. Debtors also request 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, Debtors will maintain strict records of all receipts and disbursements from the Bank Accounts during the pendency of this case and will ensure that their records properly distinguish between pre- and postpetition transactions.

53. Debtors' request for authorization to continue to use the Cash Management Systems 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). 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, Debtors have filed this Motion out of an abundance of caution, to the extent any aspect of the Cash Management Systems could be considered as outside the ordinary course of business for purposes of section 363(c) of the Bankruptcy Code.

54. Bankruptcy courts routinely permit chapter 11 debtors to maintain their existing cash management systems, 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 debtors to use their 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”).

55. 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).

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

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

57. As noted above, the U.S. Trustee has promulgated certain operating Guidelines for debtors in possession relating to cash management systems. The Guidelines, which are designed to provide a clear demarcation between a Debtors’ 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.

58. 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”).

59. Subject to a prohibition against honoring prepetition checks without specific authorization from this Court, Debtors request that the Bank Accounts be deemed to be debtor in possession accounts, and that their 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. Debtors represent that if the relief requested in this Motion is granted, Debtors 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 Debtors to Maintain the Respective Programs and Continue Honoring the Expenses Incurred in Connection with the Corporate Credit Cards and Corporate Expenses

60. 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 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”).

61. 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).

62. 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).

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

64. Accordingly, to ensure a smooth transition into chapter 11 and authorize the Debtors to continue exercising their fiduciary duties to maintain the Properties pending a sale, Debtors should be authorized to continue honoring these expense programs and policies.

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

65. Debtors request that the Banks be authorized to accept and fulfill all representations from Debtors as to which checks, drafts, wires, or ACH transfers (each, a “Disbursement”) they 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 Debtors direct the Banks to dishonor any Disbursements or the Banks inadvertently dishonor any Disbursements, Debtors 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, Debtors and their estates, on account of (a) following the Debtors’ instructions or representations as to any order of this Court, (b) the honoring of any Disbursement in a good faith belief that Debtors 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.

66. Finally, in connection with the Cash Management Systems, the Banks charge—and Debtors pay, honor, or allow the deduction from the appropriate account—certain Bank Fees. As with the Cash Management Systems, payment of the Bank Fees will ensure the Debtors continue to have access to their Cash Management System and is therefore in the best interests of their estates. 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 Debtors. Accordingly, pursuant to sections 105(a) and 363(b) of the

Bankruptcy Code, Debtors seek authority, in their sole discretion, to pay or to reimburse the Banks for any Bank Fees arising prior to or after the Petition Date in accordance with their past practices.

E. Debtors Should Be Authorized to Use Existing Business Forms

67. Historically, Debtors have used a multitude of business forms. It is important that the Debtors be permitted to continue to use their existing business forms without alteration or change, and the risk of confusion by any party with which the Debtors engage is minimal. The Interval Owners previously voted to authorize the filing of the cases, and all creditors will receive notice of the commencement of the cases. Accordingly, pursuant to sections 363(c) and 105(a) of the Bankruptcy Code, Debtors request that they 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 Cases. Absent this relief, Debtors’ estates will be required to bear potentially significant and unnecessary expenses, which Debtors respectfully submit is unwarranted. Because the few parties that presently conduct business with Debtors likely will be aware of the Debtors’ status as debtors in possession, the alteration of the Debtors’ checks and business forms would be unnecessary and unduly burdensome.

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

68. As noted above, Debtors believe that the Bank Accounts (other than the amounts held with Axiom Bank related to the Loan) 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 (other than the amounts held with Axiom related to the Loan), (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, Debtors believe that

their conservative investment strategies render them substantially in compliance with the requirements of section 345(b).

69. Alternatively, to the extent the Court disagrees, Debtors seek a waiver of the deposit requirements set forth in section 345(a) of the Bankruptcy Code to permit Debtors to maintain their 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 debtors 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 debtors were “large, sophisticated [companies] with a complex cash management [system]” that had the ability to shift money as needed to ensure the safety of their funds. *Id.* Moreover, the benefits to the debtors of waiving the section 345(b) requirements far outweighed any potential harm to the estates, and the failure to waive the requirements “would [have] needlessly handcuff[ed] the[] debtors’ reorganization efforts.” *Id.* at 896–97 (internal quotation marks omitted).

70. In this case, Debtors satisfy at least six of the ten prongs in *Service Merchandise*. With respect to prong (c), Debtors hold only relatively small amounts of investments, and for those investments they hold, they are subject to stringent and conservative investment guidelines under the Debtors’ Investment Policies. For prong (d), Debtors’ 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 Cases include sophisticated Cash Management Systems that provide material benefits to Debtors’ estates by ensuring Debtors remain in compliance with their 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 Debtors. For prong (f), Debtors have 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 these Chapter 11 Cases similarly justify a waiver of section 345(b)'s requirements.

71. Furthermore, as noted above, Masters Place does not intend to utilize or transfer funds from the Masters Place Loan Reserve Account absent either (a) reaching an agreement with Axiom Bank regarding such use or (b) entry of an order by the Court authorizing its use, which would be necessary to the extent it were required to bring such account into compliance with section 345(b).

72. In light of the safety of Debtors' Bank Accounts, Debtors respectfully request that, to the extent their practices do not comply with the requirements of section 345(b) of the Bankruptcy Code, the Court waive Debtors' requirement to comply therewith.

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

73. 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 Debtors' ability to continue to use the Cash Management Systems would be detrimental to Debtors, their creditors, and their estates, and would impair the Debtors' ability to optimize the value of the Properties as part of the chapter 11 process. For this reason and those set forth above, Debtors submit 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.

74. To implement the foregoing immediately, Debtors also respectfully request a waiver of the notice requirements of Bankruptcy Rule 6004(a), to the extent they are applicable to the Proposed Order.

RESERVATION OF RIGHTS

75. 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 Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) an impairment or waiver of the Debtors' or any other party in interest's right to dispute any claim against, or interest in, Debtors, their property, or their estates 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 Debtors or their estates; (g) an impairment or waiver of any claims or causes of action which may exist against any entity; or (h) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or other applicable law.

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

WHEREFORE, Debtors respectfully request the entry of an order, substantially in the form of the Proposed Order, (i) granting the Motion; (ii) authorizing, but not directing, Debtors to (a) continue to use their existing Cash Management Systems, (b) continue to use Debtors' existing Bank Accounts listed in the attached **Exhibit A** and existing Business Forms and checks, (c) continue to use the Corporate Credit Cards 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.

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Date: January 20, 2026

Respectfully submitted,

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Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A**Schedule of Bank Accounts**

No.	Bank	Address	Type	Acct. No. (Last 4 digits)
<u>Elk Run</u>				
1	Comerica Bank, N.A.	2321 Rosecrans Avenue, Ste. 5000 El Segundo, CA 90245-4537	Elk Run Checking Account	X7835
2	Comerica Bank, N.A.	2321 Rosecrans Avenue, Ste. 5000 El Segundo, CA 90245-4537	Elk Run Sweep Account	x6723
3	Ameriprise Financial Services LLC (Comerica)	611 Anton Blvd, Ste. 200 Costa Mesa, CA 92626-7002	Elk Run Reserve Account	x0133
4	Ameriprise Financial Services LLC (Comerica)	611 Anton Blvd, Ste. 200 Costa Mesa, CA 92626-7002	Elk Run Investment Account	x1133
5	Axiom Bank, N.A.	258 Southhall, Ste. 400 Maitland, FL 32751	Elk Run Loan Account	x9805
<u>Masters Place</u>				
1	Comerica Bank, N.A.	2321 Rosecrans Avenue, Ste. 5000 El Segundo, CA 90245-4537	Masters Place Checking Account	x7959
2	Comerica Bank, N.A.	2321 Rosecrans Avenue, Ste. 5000 El Segundo, CA 90245-4537	Masters Place Sweep Account	x6053
3	Ameriprise Financial Services LLC (Comerica)	611 Anton Blvd, Ste. 200 Costa Mesa, CA 92626-7002	Masters Place Reserve Account	x1133
4	Ameriprise Financial Services LLC (Comerica)	611 Anton Blvd, Ste. 200 Costa Mesa, CA 92626-7002	Masters Place Investment Account	x2133

No.	Bank	Address	Type	Acct. No. (Last 4 digits)
5	Axiom Bank, N.A.	258 Southhall, Ste. 400 Maitland, FL 32751	Masters Place Loan Reserve Account	x9858
<u>Village Pointe</u>				
1	Comerica Bank, N.A.	2321 Rosecrans Avenue, Ste. 5000 El Segundo, CA 90245-4537	Village Pointe Checking Account	X8072
2	Comerica Bank, N.A.	2321 Rosecrans Avenue, Ste. 5000 El Segundo, CA 90245-4537	Village Pointe Sweep Account	x6509
3	Ameriprise Financial Services LLC (Comerica)	611 Anton Blvd, Ste. 200 Costa Mesa, CA 92626-7002	Village Pointe Reserve Account	x6133
4	Ameriprise Financial Services LLC (Comerica)	611 Anton Blvd, Ste. 200 Costa Mesa, CA 92626-7002	Village Pointe Investment Account	x3133

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re: Elk Run Property Owners Association, Inc., ¹ EIN: 84-1055016 Debtor.	Case Number: 26-10311 Chapter 11, Subchapter V
In re: Village Pointe Property Owners Association, Inc., ² EIN: 84-1118687 Debtor.	Case Number: 26-10314 Chapter 11, Subchapter V
In re: Masters Place Condominiums Property Owners Association, Inc., ³ EIN: 84-1118688 Debtor.	Case Number: 26-10313 Chapter 11, Subchapter V

**ORDER GRANTING DEBTORS' MOTION FOR AN ORDER (I) AUTHORIZING
DEBTORS 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, THE REQUIREMENTS OF
SECTION 345(b) OF THE BANKRUPTCY CODE; AND
(III) GRANTING RELATED RELIEF**

*Upon Debtors' Motion for an Order (I) Authorizing Debtors to (A) Continue to Use
Existing Cash Management System, (B) Maintain Bank Accounts and Continue Use of Existing*

¹ Elk Run Property Owners Association, Inc.'s corporate headquarters is located at: 42 Pinon Causeway, Pagosa Springs, Colorado 81147.

² Village Pointe Property Owners Association, Inc.'s corporate headquarters is located at: 42 Pinon Causeway, Pagosa Springs, Colorado 81147.

³ Masters Place Condominiums Property Owners Association, Inc.'s corporate headquarters is located at: 42 Pinon Causeway, Pagosa Springs, Colorado 81147.

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 (the “Motion”; Docket No. __)⁴ filed by the above-captioned debtors and debtors-in-possession for entry of an order (the “Order”) for authority, among other things, to maintain their existing Bank Accounts and to continue to use their existing Cash Management Systems 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. §§ 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 any hearing thereon was sufficient under the circumstances according to the Debtors and no other or further notice need be provided; (f) the relief requested in the Motion is in the best interest of Debtors, their estates, their 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 Declarations and any statements made by counsel at any hearing, and being otherwise fully advised in the premises, does for the reasons stated on the record at any 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, it is hereby:

ORDERED THAT:

1. The Motion is granted, effective as of the Petition Date.

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

2. Debtors are authorized to maintain and use their existing Cash Management Systems, as more fully set forth in the Motion. In connection with the ongoing utilization of the Cash Management Systems, Debtors 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. Debtors are authorized to maintain and use their existing Bank Accounts which are identified on the schedule attached as **Exhibit A** 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 Debtors, as debtors in possession, without interruption and 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 Debtors' designation of any particular check or electronic payment requests as approved by this Order; *provided that*, subject to paragraph 5, Debtors 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 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 Debtors were 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 Systems.

6. Any existing deposit agreements between or among Debtors, the Banks, and other parties shall continue to govern the postpetition cash management relationship between Debtors 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 Debtors and the Banks may, without further order of this Court, agree to and implement changes to the Cash Management Systems and cash management procedures consistent with past practice, 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 Debtors 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 the Debtors with respect to whether any check, draft, wire, transfer, or other payment order drawn or issued by the Debtors 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 Debtors as provided for herein.

9. The Banks are further authorized to honor Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, Debtors' funds in accordance with the Debtors' 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. Debtors are authorized, but not directed, to maintain and use their existing Corporate Credit Cards 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. Debtors are 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 the Debtors with respect to their use of the Corporate Credit Cards, and such Bank shall not have any liability to any party for relying on such representations by Debtors as provided for herein.

11. Any existing agreements between or among Debtors and any bank in respect of the Corporate Credit Cards program shall continue to govern the postpetition relationship between Debtors 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 Debtors and such bank may, without further order of this Court, agree to and implement changes

related to the Corporate Credit Cards in accordance with past practices, pursuant to the terms of those existing agreements.

12. Debtors are authorized, but not directed, to maintain and use their existing D&O Expense Programs 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 practices. Any Bank may rely on the representations of Debtors with respect to their reimbursement of Corporate Expenses, and such Bank shall not have any liability to any party for relying on such representations by Debtors as provided for herein.

13. Debtors are authorized to pay all prepetition Processing Fees and Bank Fees and to continue to pay such Processing Fees and Bank Fees consistent with past practice.

14. Debtors shall retain the authority to close certain of their Bank Accounts and open new debtor-in-possession accounts, or otherwise make changes to their Cash Management Systems as they deem necessary to facilitate the Chapter 11 Cases and operations. In the event that Debtors open or close any additional bank accounts, such opening or closing shall be timely indicated on Debtors' monthly operating reports and/or notice of such opening or closing shall be provided to the United States Trustee three (3) days prior to such opening or closure.

15. Debtors are authorized to deposit funds in and withdraw funds from their 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.

16. Debtors are authorized to continue to use their 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 Debtors' debtor-in-possession status.

17. The Banks maintaining Debtors' Bank Accounts that are listed on **Exhibit A** to the Motion, and any and all other financial institutions receiving or transferring funds from or to Debtors, are authorized and directed to cooperate with respect to the Debtors' efforts to maintain and use their Cash Management Systems and accounts.

18. For purposes of this Order, Debtors are authorized to deposit funds in accordance with their 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 UST Guidelines for chapter 11 cases, such requirements are waived.

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

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

21. Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Dated: _____

BY THE COURT:

United States Bankruptcy Judge