

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsb.uscourts.gov

In re: Case No. 21-15555-BKC-EPK
Palm Beach Resort and Beach Club Chapter 11
Condominium Association, Inc.,
Debtor-in-Possession.

**EXPEDITED¹ MOTION TO ALLOW DEBTOR
TO MAINTAIN PRE-PETITION BANK ACCOUNTS**

Expedited Hearing Requested

The Debtor respectfully requests that the Court conduct a hearing on this Motion on an expedited basis. The United States Trustee Guidelines require the closing of all prepetition bank accounts and the establishment of new DIP accounts. The Debtor maintains bank accounts at federally insured banking institutions. Changing the Debtor's existing bank accounts would severely disrupt and adversely affect the Debtor's operations.

Debtor, Palm Beach Resort and Beach Club Condominium Association, Inc. (the "Debtor" or "Association"), by and through the undersigned counsel, hereby requests entry of an order, pursuant to 11 U.S.C. §§ 105 and 345(b) and Local Rule 9013-1(F) and (J), authorizing the Debtor to maintain its pre-petition bank checking accounts at: (i) Alliance Association Bank, a division of Western Alliance Bank ("Alliance Bank") (account numbers ending in 2789, 3764, and 5047)(the "Alliance Association Pre-Petition Checking Accounts"),

¹ Debtor believes a hearing is necessary on an expedited basis as the relief requested herein is urgent (but is not an emergency) in nature and does not lend itself to advance resolution. Local Rule 9013-1(F) requires that relief sought (as in the instant Motion) pursuant to Local Rule 9013-1(J), to be made pursuant to Rule 9075-1. Since there is no emergency but an urgency to conduct a hearing, Debtor has been in contact with the US Trustee's office concerning the instant Motion, and respectfully requests that the Court waive the requirements of Rule 9013-1(F) and 9075-1, as deemed necessary.

and (ii) at Wells Fargo Bank, N.A. (“Wells Fargo”), (account number ending in 6520)(the “Wells Fargo Pre-Petition Checking Account”); and in support thereof, states as follows:

1. On June 4, 2021 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Subchapter V, Chapter 11 of Title 11 of the United States Code(the “Bankruptcy Code”). The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1181 and 1184 of the Bankruptcy Code.

2. The Debtor is a Florida not for profit corporation (the “Association”) operating as a condominium association, with its principal place of business located in Palm Beach County, Florida. The Association is organized under the laws of the state of Florida and pursuant to the Florida Condominium Act, Chapter 718, Florida Statutes, and the Florida Timeshare Act, Chapter 721, Florida Statutes, and was formed for the purpose of managing, operating and maintaining the Palm Beach Resort and Beach Club Condominium (the “Condominium”), according to Declaration of Condominium of The Palm Beach Resort and Beach Club Condominium, as recorded in Official Records Book 3464, Page 1474 of the Public Records of Palm Beach County, Florida (the “Declaration”), and all amendments thereto.

3. As required by Local Rule 9013-1(J), as of the Petition Date, Debtor has maintained its deposits at the following banks:

Bank Name	Account No. (last 4 digits)	Purpose	Amount (as of June 4, 2021)
Alliance Bank	5047	Main Operating Account	\$37,274.72
Alliance Bank	3764	Reserve Account	\$276,633.00
Alliance Bank	2789	Tax (Ad Valorem) Escrow Account	\$41,665.68
Wells Fargo	6520	Secondary Operating Account	\$10,779.15

4. The relief requested will enable the Debtor to smoothly transition its business operations into the instant Subchapter V, Chapter 11 case.

5. Debtor seeks relief from certain operating Guidelines established by the Office of the United States Trustee, which requires debtors in possession to: (i) close all existing bank accounts, (ii) open new debtor in possession (“DIP”) bank accounts in certain financial institutions designated as authorized depositories by the U.S. Trustee, (iii) establish one DIP account for all estate monies required for the payment of taxes (including payroll taxes), (iv) maintain a separate DIP account for cash collateral, and (v) obtain checks for all DIP accounts that bear the designation, “debtor in possession,” the bankruptcy case number, and the type of account.

6. Debtor maintains its primary accounts for normal operations, tax escrows and required condominium reserve account at Alliance Bank. Debtor has opted to manage its account at this financial institution specially because of higher insurance protection provided by the bank, above and beyond the normal FDIC insurance limits. Alliance Bank specializes in providing banking services to condominium association who require higher depository insurance limits. In fact, Alliance Bank participates in the Promontory Inter-financial Network. This network permits associations to have access to multimillion-dollar FDIC coverage through CDARS5 and ICS sweeps, all while transacting and maintaining accounts through Alliance Bank. Through this network, associations may have more than \$250,000 in deposits, which at times is the case when considering the Association’s reserve and tax escrow requirements.

7. Section 345(b)(1) of the Bankruptcy Code ordinarily requires a bond in favor of the United States, secured by the undertaking of a surety approved by the United States trustee for the district in which the case is pending, or, in the alternative, a deposit of securities of the kind specified in section 9303 of title 31, 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..." from the entity with which the money is deposited or invested.

8. Because of the nature and extent of the Debtor's operations (a condominium association that collects dues, escrows taxes and reserve amounts pursuant to applicable Florida laws), the Debtor seeks a waiver of the requirements of the Office of the United States Trustee pursuant to Section 345(b)(2) of the Bankruptcy Code. The benefits of imposing the requirements of the Office of the United States Trustee in these cases are outweighed by the cost and disruption of opening new accounts, obtaining new check stock, and manually preparing checks until the new check stock arrives. Furthermore, and more critical to the Debtor's operations is the potential disrupting to the collection of association membership fees.

9. Accordingly, pursuant to Section 345(b)(2), "cause" exists to waive the requirements of Section 345. The banks at which the Debtor maintains its accounts are financially stable banking institutions and are FDIC insured. Alliance Bank provides a higher threshold of protection to the accounts maintained by the Association, providing protection in the millions rather than standard \$250,000 FDIC limit per account.

10. Wells Fargo is a depository authorized in the Southern District of Florida pursuant to 11 U.S.C. § 345(b). Debtor will make the necessary name change with respect to the Wells Fargo Pre-Petition Checking Account, designating the account "DIP".

11. Debtor needs to maintain its pre-petition bank accounts to ensure that collections and disbursements in the ordinary course of its business are not disrupted. The Debtor will note in its records, the date and time of the chapter 11 filing, and the records will reflect each post-petition receipt and disbursement.

12. Therefore, a waiver of the section 345 deposit guidelines would not pose a risk to the Debtor's estate nor its creditors. Accordingly, the Debtor requests that its existing

accounts be deemed debtor-in-possession accounts, and that their maintenance and continued use be authorized.

13. Allowing the Debtor to continue to use its pre-petition bank accounts will ensure minimal disruptions to the receipts and disbursements made by the Debtor in the ordinary course of its business as it transitions into this Subchapter V, Chapter 11 case. It will minimize distraction for key personnel involved in the day-to-day operations of the Debtor as they undertake the duties necessary to achieve the goals of the instant Subchapter V, Chapter 11 case.

WHEREFORE, for all the foregoing reasons, Debtor requests entry of Order, in substantially the same format as the proposed order attached hereto as **Exhibit A**: (i) authorizing the Debtor to maintain its Alliance Association Pre-Petition Checking Accounts and its Wells Fargo Pre-Petition Checking Account, effective as of the Petition Date; (ii) waiving the requirement that the Debtor's Alliance Association Pre-Petition Checking Accounts and its Wells Fargo Pre-Petition Checking Account be closed, and that new debtor-in-possession bank accounts be opened, effective as of the Petition Date; (v) authorizing the continued use of the Debtor's checks from the Debtor's Alliance Association Pre-Petition Checking Accounts and its Wells Fargo Pre-Petition Checking Account, as of the Petition Date; and (vi) granting such other and further relief as is just and proper.

Dated: June 5, 2021

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By: _____/s/_____
IDO J. ALEXANDER
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on June 5, 2021 to all parties on the list to receive e-mail notice/service for this case, via the Notice of Electronic Filing (which is incorporated herein by reference).

By: _____/s/_____
Ido J. Alexander

EXHIBIT "A"
(Proposed Order)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
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In re: Case No. 21-15555-BKC-EPK
Palm Beach Resort and Beach Club Chapter 11
Condominium Association, Inc.,
Debtor-in-Possession.

**ORDER GRANTING DEBTOR'S
EXPEDITED MOTION TO MAINTAIN PREPETITION
BANK ACCOUNTS**

THIS MATTER came before the Court on June ____, 2021 at ____ a.m./p.m. upon Debtor, Palm Beach Resort and Beach Club Condominium Association, Inc.'s (the "Debtor") *Expedited Motion to Main Prepetition Bank Accounts* (the "Motion") [ECF # ____], pursuant to 11 U.S.C. §§ 105 and 345(b), and Local Rule 9013-1(J), upon the motion (the "Motion") [ECF # ____], to authorize the Debtor to maintain its pre-petition bank checking accounts at: (i) Alliance Association Bank (account numbers ending in 2789, 3764, and 5047); and (ii) at Wells Fargo Bank, N.A., (account number ending in 6520); to continue to use its existing

checks; and for a waiver of certain investment and deposit guidelines under section 345 of the Bankruptcy Code and the United States Trustee's Guidelines. The Court having reviewed the Motion, having heard the argument of counsel, noting that all parties received proper service, and for the reasons stated on the record, finds good cause to grant the Motion. Accordingly, it is --

ORDERED as follows:

1. The Motion is **GRANTED**, effective as of the Petition Date.
2. The Debtor is authorized to maintain its pre-petition bank checking accounts at: (i) Alliance Association Bank (account numbers ending in 2789, 3764, and 5047)(the "Alliance Association Pre-Petition Checking Accounts") and (ii) at Wells Fargo Bank, N.A., (account number ending in 6520)(the "Wells Fargo Pre-Petition Checking Account").
3. The Debtor is authorized to continue to use its existing checks for the Alliance Association Pre-Petition Checking Accounts and the Wells Fargo Pre-Petition Checking Account.
4. For purposes of this Order, the requirements in the United States Trustee Guidelines (the "Guidelines") that the Debtor (i) 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, (ii) establish one DIP account for all estate monies required for the payment of taxes (including payroll taxes), (iii) maintain a separate DIP account for cash collateral, (iv) obtain checks for all DIP accounts that bear the designation, "debtor-in-possession," the bankruptcy case number, and the type of account, and (v) close its books and records as of the Petition Date and to open new books and records, are **excused** and **waived**.
5. Debtor must report all activity on the pre-petition accounts on a monthly basis in the Debtor's Subchapter V, Chapter 11 Monthly Financial Reports and must attach copies

of all relevant bank statements to its monthly reports.

6. Each of the banks that maintain the bank accounts is authorized to debit the Debtor's accounts in the ordinary course and without further order of this Court on account of (a) (i) all checks drawn on the Debtor's accounts which are cashed at such bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or other items deposited in one of Debtor's accounts with such bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date; (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any such bank as service charges for the maintenance of the cash management system; and (iv) all reversals, returns, refunds, and chargebacks of checks, deposited items, and other debits credited to Debtor's accounts after the Petition Date, regardless of the reason such item is returned or reversed (including, without limitation, for insufficient funds or a consumer's statutory right to reverse a charge).

7. Any bank may rely upon the representations of the Debtor with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtor prior to the Petition Date should be honored pursuant to any order of this Court, and such bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtor, (b) in a good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of customary item handling procedures, shall be deemed to be nor shall be liable to the Debtor, its estate, or any other party on account of such pre-petition check or other item being honored post-petition, or otherwise deemed to be in violation of this Order.

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

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Submitted by:

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(Attorney ALEXANDER shall serve a copy of this Order upon all interested parties and file a Certificate of Service)