

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

WOODBRIIDGE GROUP OF COMPANIES, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-\_\_\_\_ (\_\_\_\_)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING PAYMENT OF  
OBLIGATIONS TO HOMEOWNER ASSOCIATIONS, CONDOMINIUM  
ASSOCIATIONS, AND OTHER COMMUNITY ORGANIZATIONS**

Woodbridge Group of Companies, LLC and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") hereby move the Court (this "Motion") for entry of an order substantially in the form annexed hereto as Exhibit A, pursuant to sections 105(a), 363(b), and 363(c) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), authorizing, but not directing, the Debtors to pay obligations to homeowner associations, condominium associations, and other community organizations. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Lawrence R. Perkins in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the

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<sup>1</sup> The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14225 Ventura Boulevard #100, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, for which the Debtors have requested joint administration, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed noticing and claims agent at [www.gardencitygroup.com/cases/WGC](http://www.gardencitygroup.com/cases/WGC), or by contacting the proposed undersigned counsel for the Debtors.

“First Day Declaration”), which was filed concurrently herewith. In further support of this Motion, the Debtors respectfully represent as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b) and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9013-1(f) the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), and 363(c) of the Bankruptcy Code, Bankruptcy Rule 6003(b), and Local Rule 9013-1(m).

**BACKGROUND**

2. On the date hereof (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

3. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases (collectively, the “Chapter 11 Cases”) pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Chapter 11 Cases.

4. Information regarding the Debtors' history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of the Chapter 11 Cases can be found in the First Day Declaration.

### **THE ASSOCIATION OBLIGATIONS**

5. The Debtors typically incorporate non-profit homeowners or condominium associations or other community organizations (collectively, the "Associations") in conjunction with certain of their residential developments (each, a "Development" and collectively, the "Developments").

6. The Associations are managed pursuant to recorded governing documents (the "Governing Documents") that meet the requirements of applicable local laws. The rights and obligations provided in the Governing Documents apply to all homes or condominiums in their respective Developments. Although the Debtors initially control each of the Associations, control is ultimately transferred to the homeowners when certain thresholds of houses or condominiums in the Associations are sold.

7. While the Debtors still own homes in the Associations and have not yet sold all of them, the Debtors are required to pay dues and other obligations to the Associations ("Association Obligations"). Association Obligations are a critical source of funds used to maintain and to preserve common areas, and to enforce conditions, covenants, and regulations governing title to properties in the Developments.

8. For each of the Associations, the Debtors are obligated (i) to fund any deficit in the Association's operating budget after accounting for Association Obligations paid by homeowners prior to turning over control and (ii) to pay Association Obligations for the unsold units that the Debtors own and hold in inventory even after turning over control.

9. If the Debtors fail to pay Association Obligations, the Associations will be able to cause liens to attach to particular properties. If such liens attach, in many instances, the Debtors will be unable to convey clean title to their property. In addition, if the Debtors do not pay Association Obligations that fund certain of the Associations' operating budgets, the shortfall may be assessed among other property owners in the Associations, causing a significant increase in assessments on each homeowner. Such circumstances would cause all homes in affected Developments to lose value. Prospective homeowners would either be unwilling to buy homes in a Development in which they face the prospect of increasing Association Obligations, or they would only purchase homes in such a Development at a deep discount. In either case, the Debtors would lose revenue, and their going-concern value would suffer.

10. Association Obligations are due on a monthly, annual, or quarterly basis, depending on the particular Development. As of the Petition Date, the Debtors believe that there are no more than \$107,000 of pre-petition Association Obligations.

**RELIEF REQUESTED**

11. The Debtors seek entry of an order authorizing, but not directing, the Debtors to pay pre-petition Association Obligations.

12. The Debtors also request (a) that financial institutions be authorized to receive, process, honor, and pay all checks presented for payment and electronic payment requests related to Association Obligations, whether such checks were presented or submitted prior to or after the Petition Date, and (b) that financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as appropriate.

**BASIS FOR RELIEF**

13. Section 105(a) of the Bankruptcy Code empowers a court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the

Bankruptcy Code. The purpose of section 105(a) of the Bankruptcy Code is to ensure a bankruptcy court's power to take whatever action "is appropriate or necessary in aid of the exercise of [its] jurisdiction." 2 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 105.01 (16th ed.); see also *In re DeLorean Motor Co.*, 991 F.2d 1236, 1242 (6th Cir. 1993) ("The basic purpose of [section 105(a)] is to enable the court to do whatever is necessary to aid its jurisdiction, *i.e.*, anything arising in or relating to a bankruptcy case.") (internal citation omitted); *In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. 710, 843 (S.D.N.Y. 1991), *vacated on other grounds*, 982 F.2d 721 (2d Cir. 1992), *modified on other grounds*, 993 F.2d 7 (2d Cir. 1993); *In re Cooper Properties Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) ("[T]he Bankruptcy Court is one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.") (internal citation omitted); *Management Technology Corp. v. Pardo*, 56 B.R. 337, 339 (Bankr. D. N.J. 1985) (stating that a court's equitable powers are derived from section 105(a)).

14. A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under [section 105], the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *In re Ionosphere Clubs, Inc.*, 98 B.R. at 177).

15. Further, under the "necessity of payment rule," or the "doctrine of necessity,"<sup>2</sup> courts often allow the immediate payment of pre-petition claims where the payments are

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<sup>2</sup> This doctrine, first articulated by the U.S. Supreme Court in *Miltenberger v. Logansport, C. & S. W. R. Co.*, 106 U.S. 286, 311-12 (1882), recognizes the existence of judicial power to authorize a debtor in a

essential to the debtor's continued operations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824 (Bankr. D. Del. 1999); *In re Columbia Gas System, Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (noting that a debtor may pay a class of pre-petition creditors in advance of a confirmed plan if essential to the continued operation of the business). The doctrine of necessity recognizes that paying pre-petition obligations outside of a plan of reorganization is often necessary to realize the paramount purpose of a chapter 11 reorganization, *i.e.*, preventing the liquidation of the debtor-in-possession and preserving its potential for rehabilitation. *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that the doctrine of necessity permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid").

16. Moreover, section 363 of the Bankruptcy Code provides that "[t]he 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). Under this section, a court may authorize a debtor to pay certain pre-petition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. In order to do so, "the debtor must articulate some business justification, other than the mere appeasement of major creditors. . . ." *Id.* For the reasons set forth herein, there exist several sound and prudent justifications for payment of pre-petition Association Obligations.

17. Additionally, the Debtors are fiduciaries with a "duty to maximize the value of the bankruptcy estate." *Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003). "The debtor-in-possession's fiduciary duty to maximize includes the 'duty to protect and conserve property in its possession for the benefit of creditors.'" *In re Mushroom Transp. Co., Inc.*, 382

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reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.

F.3d 325, 339 (3d. Cir. 2004) (citing *In re Marvel Entm't Grp., Inc.*, 140 F.3d 463, 474 (3d Cir. 1998)). Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). The *CoServ* court specifically noted that the preplan satisfaction of pre-petition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate. . . .” *Id.*

18. Selling homes is the Debtors’ business, and their ability to do so is crucial to the Debtors’ value as a going concern. As mentioned above, if the Debtors are not allowed to pay pre-petition Association Obligations, liens may attach to unsold properties, assessments in such affected Developments may increase significantly, and services may be reduced—all of which would adversely affect the Debtors’ ability to market and sell homes. In addition, pursuant to the Governing Documents of some of the Associations, to the extent Association Obligations are not paid, other homeowners may be assessed a surcharge to cover the shortfall.

19. Finally, the failure to honor pre-petition Association Obligations could potentially expose the Debtors to significant liability to the Associations, to the homeowners in the Developments, as well as to governmental authorities pursuant to applicable state and local laws. Such liability could cause extensive and unnecessary litigation in these cases. Affected parties could possibly file adversary proceedings, move this Court to lift the automatic stay, or take other precipitous action. Notably, pursuant to section 362(b)(4) of the Bankruptcy Code, the automatic stay does not apply to “the commencement or continuation of a governmental unit . . . to enforce such governmental unit’s police and regulatory power.” Hence, state and local governments could—despite the protections of the automatic stay—commence actions on account of delinquent Association Obligations, which could make it difficult, if not impossible, for the

Debtors to do business in such jurisdictions, and distract the Debtors' management team and professionals from preserving enterprise value.

20. Courts in other homebuilder bankruptcies have recognized that permitting the debtor to pay pre-petition obligations to homeowners associations is in the best interest of all parties-in-interest. *See, e.g., In re Orleans Homebuilders Inc.*, Case No. 10-10684 (PJW) (Bankr. D. Del. Apr. 6, 2010) (authorizing the homebuilder-debtors to continue paying similar obligations); *In re WCI Communities*, Case No. 08-11643 (Bankr. D. Del. Aug. 6, 2008) (same).

21. Accordingly, the Debtors submit that it is the best interests their estates, creditors, and other parties-in-interest for them to pay pre-petition Association Obligations.

#### **SATISFACTION OF BANKRUPTCY RULE 6003**

22. Bankruptcy Rule 6003 provides that to the extent "relief is necessary to avoid immediate and irreparable harm," the Court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty-one days after the Petition Date. Fed. R. Bankr. P. 6003. As described above and in the First Day Declaration, the payment of the pre-petition Association Obligations is necessary to prevent immediate and irreparable damage to the Debtors' operations, going-concern value, and ability to restructure. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and therefore, Bankruptcy Rule 6003 is satisfied.

#### **WAIVER OF BANKRUPTCY RULES 6004(a) AND (h)**

23. To implement the foregoing, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable

harm to the Debtors for the reasons set forth herein. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

24. To implement the foregoing immediately, the Debtors respectfully request a waiver of the notice requirements of Bankruptcy Rule 6004(a) to the extent that they are deemed applicable.

### **RESERVATION OF RIGHTS**

25. Nothing in the Order or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (ii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, (iii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any Authority, or (iv) shall be construed as a promise to pay a claim.

### **NOTICE**

26. The Debtors have provided notice of this Motion to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Securities and Exchange Commission; (iii) the Office of the United States Attorney General for the District of Delaware; (iv) the Internal Revenue Service; (v) the DIP Lender and counsel thereto; (vi) the Debtors' cash management banks; and (vii) those creditors holding the thirty (30) largest unsecured claims against the Debtors' estates (on a consolidated basis). Notice of this Motion and any order entered on this Motion will be served as required by Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form filed herewith, granting the relief requested herein and such other and further relief that may be just and proper under the circumstances.

Dated: Wilmington, Delaware  
December 4, 2017

*/s/ Ian J. Bambrick*

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*Proposed Counsel to the Debtors and Debtors in  
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**EXHIBIT A**

**PROPOSED ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

WOODBRIIDGE GROUP OF COMPANIES, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-\_\_\_\_ (\_\_\_\_)

(Jointly Administered)

Ref. Docket No. \_\_\_\_

**ORDER AUTHORIZING PAYMENT OF OBLIGATIONS TO HOMEOWNER  
ASSOCIATIONS, CONDOMINIUM ASSOCIATIONS,  
AND OTHER COMMUNITY ORGANIZATIONS**

Upon the *Debtors' Motion for Entry of an Order Authorizing Payment of Obligations to Homeowner Associations, Condominium Associations, and Other Community Organizations* (the "Motion")<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); and upon consideration of the First Day Declaration; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that notice of the Motion has been given as set forth in

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<sup>1</sup> The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14225 Ventura Boulevard #100, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, for which the Debtors have requested joint administration, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed noticing and claims agent at [www.gardencitygroup.com/cases/WGC](http://www.gardencitygroup.com/cases/WGC), or by contacting the proposed undersigned counsel for the Debtors.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

the Motion and that such notice is adequate and no other or further notice need be given; and a hearing having been held to consider the relief requested in the Motion; and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized and empowered, but not directed, to pay any pre-petition Association Obligations to the extent permitted in any post-petition financing and/or cash collateral orders, not to exceed \$107,000.
3. Nothing in this order shall be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors or any party-in-interest's right to dispute such claim, or an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code or otherwise.
4. All of the Debtors' financial institutions are authorized and directed to honor all checks issued and fund transfers requested with respect to Association Obligations, as approved by this Order, to the extent sufficient funds are on deposit, regardless of whether such checks or fund transfer requests were issued prior to or after the Petition Date.
5. Nothing contained herein shall be deemed to constitute a post-petition assumption or adoption of any practice, policy, plan, program, or agreement pursuant to section 365 of the Bankruptcy Code, and the Debtors have reserved all their rights under the Bankruptcy Code with respect thereto.

6. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.
7. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.
8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
9. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order in accordance with the Motion.
10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: December \_\_\_, 2017  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE