

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

MIDWEST CHRISTIAN VILLAGES, INC.
et al.,¹

Debtors.

Chapter 11

Case No. 24-42473-659
(Joint Administration Requested)

Hearing Date: July 17, 2024
Hearing Time: 2:00 p.m. (CT)
Hearing Location: Courtroom 7

DEBTORS' MOTION FOR ENTRY OF ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE (A) INSURANCE PROGRAMS AND (B) PREPETITION SURETY BONDS, AND PAY OBLIGATIONS ARISING THEREUNDER; AND (II) PREVENTING INSURANCE COMPANIES FROM ENFORCING IPSO FACTO CLAUSES OR GIVING ANY NOTICE OF TERMINATION OR OTHERWISE MODIFYING ANY INSURANCE POLICY WITHOUT OBTAINING RELIEF FROM THE AUTOMATIC STAY

The above-captioned debtors and debtors-in-possession (the “**Debtors**”), by and through their proposed counsel, submit this motion (the “**Motion**”) for entry of an order, pursuant to §§ 105(a), 361, 362, 363, and 364 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the Debtors to (i) continue their existing insurance policies and surety bond program

¹ The address of the Debtors headquarters is 2 Cityplace Dr, Suite 200, Saint Louis, MO 63141-7390. The last four digits of the Debtors' federal tax identification numbers are: (i) Midwest Christian Villages, Inc. [5009], (ii) Hickory Point Christian Village, Inc. [7659], (iii) Lewis Memorial Christian Village [3104], (iv) Senior Care Pharmacy Services, LLC [1176], (v) New Horizons PACE MO, LLC [4745], (vi) Risen Son Christian Village [9738], (vii) Spring River Christian Village, Inc. [1462], (viii) Christian Homes, Inc. [1562], (ix) Crown Point Christian Village, Inc. [4614], (x) Hoosier Christian Village, Inc. [3749], (xi) Johnson Christian Village Care Center, LLC [8262], (xii) River Birch Christian Village, LLC [7232], (xiii) Washington Village Estates, LLC [9088], (xiv) Christian Horizons Living, LLC [4871], (xv) Wabash Christian Therapy and Medical Clinic, LLC [2894], (xvi) Wabash Christian Village Apartments, LLC [8352], (xvii) Wabash Estates, LLC [8743], (xviii) Safe Haven Hospice, LLC [6886], (xix) Heartland Christian Village, LLC [0196], (xx) Midwest Senior Ministries, Inc. [3401] and (xxi) Shawnee Christian Nursing Center, LLC [0068].



and pay all obligations arising thereunder, including under an insurance premium finance agreement; and (ii) preventing insurance companies from enforcing any *ipso facto* clauses or giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay imposed by § 362. In support of this Motion, the Debtors respectfully represent as follows:

BACKGROUND

1. On July 16, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code.

2. The Debtors continue in the operation and management of their business as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3. No trustee, examiner or official committee has been appointed in these chapter 11 cases.

4. Simultaneously with the filing of this Motion, the Debtors filed the *Declaration of Kathleen (Kate) Bertram in Support of the Debtors’ Chapter 11 Petition and First Day Motions* (the “**First Day Declaration**”). As described in more detail in the First Day Declaration, the Debtors operate a mix of independent, assisted, and supportive living skilled nursing campuses in 10 locations across the Midwest, serving over 1,000 residents.

5. The Debtors filed these chapter 11 cases to pursue one or more going concern sales and/or going concern affiliates for each of their facilities.

JURISDICTION

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

RELIEF REQUESTED

7. By this Motion, pursuant to §§ 105, 361, 362, 363, and 364, the Debtors seek authority to pay and perform all obligations arising under their existing insurance policies, including any Premium Financing Obligations and Surety Bond Obligations (each, as further defined herein), whether arising pre-petition or post-petition, in the ordinary course of business consistent with past practice and in accordance with the budget attached as Exhibit 1 (as may be amended, modified, or supplemented, the “**DIP Budget**”) to the *Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5) Scheduling a Final Hearing* (the “**Interim DIP Order**”), to continue and as applicable, renew their insurance policies and related premium financing arrangements and their Surety Bond Program. The Debtors also request entry of an order preventing insurance companies from enforcing any *ipso facto* clauses or giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay imposed by § 362. For the avoidance of doubt, all payment authorization requests set forth in this Motion are subject to the DIP Budget and all rights and interests granted to UMB Bank, N.A. as DIP Lender in the Interim DIP Order, or any subsequent final order.

The Debtors’ Insurance Programs

A. The Debtors’ Insurance Policies

8. The Debtors maintain various insurance policies issued by several insurance carriers (collectively, the “**Insurance Carriers**”). Collectively, these policies provide for coverage for, among other things: workers’ compensation, D&O liability, general liability, professional

liability, commercial property, commercial automobile, cyber liability, pollution liability, crime, fiduciary liability, and employment practices liability (collectively, the “**Insurance Policies**”). A schedule of the Insurance Policies is attached hereto as **Exhibit A**.²

9. Continuation of the Insurance Policies is essential to the operation and preservation of the value of the Debtors’ business, properties and assets. The Debtors, as employers and operators of independent, assisted, and supportive living skilled nursing campuses across the Midwest, must maintain workers’ compensation insurance coverage. *See, e.g.*, (820 ILCS 305/1) (from Ch. 48, par. 138.1) (requiring workers’ compensation coverage). Also, as a practical and legal matter, the Debtors cannot provide patient care and continue to operate a skilled nursing system without professional and general liability insurance, among other coverages.

10. As set forth in **Exhibit A**, most of the Debtors’ Insurance Policies will expire between January 1, 2025 and June 30, 2025. It is critical that the Debtors continue to carry the necessary insurance coverage to operate their business. As a result, the Debtors plan to negotiate renewals, extensions and/or entries into new insurance policies with respect to the expiring Insurance Policies. The Debtors seek the authority to renew, modify, extend or enter into new Insurance Policies (collectively, the “**New Insurance Policies**”) on a postpetition basis in the ordinary course of business.

11. In certain instances, the Debtors pay premiums for their Insurance Policies in full at the beginning of the policy and in other instances in monthly or quarterly installments. The total annual premium due for Insurance Policies is approximately \$2,788,668.60. As of the Petition Date, there are no outstanding unpaid premiums due.

² The descriptions of the Insurance Policies set forth in this Motion constitute a summary only. The actual terms of the Insurance Policies and related agreements will govern in the event of any inconsistency with the descriptions in this Motion.

12. To ensure continued insurance coverage in the ordinary course of the Debtors' business, the Debtors seek the authority to pay all premium payments that may come due on current Insurance Policies during the course of these Chapter 11 Cases, subject to the DIP Budget. The Debtors also seek authority to pay all premiums associated with the New Insurance Policies on a postpetition basis in the ordinary course of business, subject to the DIP Budget.

B. Insurance Premium Finance Agreement

13. The Debtors finance payments of premiums due under certain of their Insurance Policies pursuant to a Premium Finance Agreement. These annual premiums total approximately \$1,387,625.60. This amount of premiums has been financed and paid in full for next year under the Premium Finance Agreement.

14. The Debtors make monthly payments under the Premium Financing Agreement. Under the Premium Finance Agreement with IPFS Corporation, the Debtors pay \$118,540.42 per month to finance \$1,387,625.60 of total premiums owed under certain Insurance Policies.

15. As of the Petition Date, there are no outstanding unpaid premiums due or payments due under the Premium Finance Agreement (the "**Premium Financing Obligations**").

16. To ensure continued insurance coverage in the ordinary course of the Debtors' business, the Debtors seek the authority to pay any outstanding Premium Financing Obligations, subject to the DIP Budget.

C. The Debtors' Self-Insured Retentions

17. The Debtors maintain self-insured retentions of \$250,000 per claim under their GLPL coverage, \$250,000 per claim under their Property liability coverage, \$100,000 per claim under their D&O liability coverage, \$100,000 per claim under their EPL coverage, and \$25,000

per claim under their crime coverage (the “**Self Insured Retentions**” or “**SIRs**”). A SIR is a loss amount that the insured is obligated to pay before the insurer’s coverage obligation is triggered.

18. The Debtors’ Self-Insured Retentions are administered so that the Debtors pay directly for the losses under each policy as they are incurred up to the amounts of the Self-Insured Retentions. For the last year, no SIR amounts have been due for (a) the D&O liability coverage and (b) the crime coverage. The Debtors seek authority to pay all losses incurred up to the amounts of the Self-Insured Retentions as such amounts have come due prepetition or will come due on a postpetition basis in the ordinary course of business, subject to the DIP Budget.

Insurance Broker Services

19. Propel Insurance (the “**Insurance Broker**”) serves as the Debtors’ insurance broker for the Insurance Policies and related programs other than policies providing coverage for general liability and professional liability. The Insurance Broker is compensated for its services through either commissions from the relevant Insurance Carriers or payment by the Debtors of a set percentage of the policy premium reduced by any related commissions the Insurance Broker receives from such Insurance Carriers. The Insurance Broker must disclose any commissions collected to the Debtors. To the best of the Debtors’ knowledge, they do not owe any prepetition fees to the Insurance Broker.

Surety Bond Program

20. Pursuant to their surety bond program (the “**Surety Bond Program**”), in the ordinary course of business, the Debtors are required to provide surety bonds to certain third parties (the “**Obligees**”), including governmental units and other public agencies, to secure the Debtors’ payment or performance of certain obligations in connection with resident trust funds, and certain other obligations (the “**Surety Bonds**”), including, but not limited to those listed on **Exhibit B**

hereto. The Surety Bonds are issued by Swiss Re Corporate Solutions America Insurance Company and CNA Surety (each, a “**Surety**”).

21. Pursuant to the Surety Bond Program, the Debtors pay premiums based upon a fixed rate established and billed by each Surety (collectively, the “**Surety Premiums**”). The Surety Premiums are generally determined on an annual basis and total in the aggregate approximately \$9,800 per year (the “**Surety Bond Obligations**”). The Debtors remit premium payments when the bonds are issued or renewed on an annual basis. The Debtors estimate that no Surety Bond Obligations are outstanding as of the Petition Date. By this Motion, the Debtors seek authority, but not direction, to pay such Surety Bond Obligations that may become due and owing during these chapter 11 cases, subject to the DIP Budget.

22. As a condition to issuing the bonds, the Sureties require that the Debtors enter into indemnity agreements (collectively, the “**Indemnity Agreements**”), pursuant to which the Sureties are indemnified from any loss, cost, or expense that the Sureties may incur on account of the issuance of any bonds on behalf of the Debtors. Pursuant to certain contracts between the Debtors and the Sureties, the Sureties may demand cash collateral or letters of credit to secure the obligations under surety bonds at any point during the time the Surety Bonds remain outstanding. As of the Petition Date, the Debtors have not yet posted any cash collateral or letters of credit in connection with the Surety Bonds.

BASIS FOR RELIEF REQUESTED

23. As set forth above, and subject to the DIP Budget, the Debtors seek authority to continue to honor all obligations arising under their existing insurance policies and related programs (collectively, the “**Insurance Obligations**”), including any Premium Financing Obligations and Surety Bond Obligations, in the ordinary course of business and to pay any

outstanding prepetition Insurance Obligations the Debtors subsequently may discover. The Court may grant the relief requested herein pursuant to §§ 105(a), 363(b), 364 and 503(b) of the Bankruptcy Code. For the avoidance of doubt, all payment authorization requests set forth in this Motion are subject to the DIP Budget and all rights and interests granted to UMB Bank, N.A. as DIP Lender in the Interim DIP Order, or any subsequent final order.

A. Ordinary Course Payments

24. “[A] debtor receiving necessary benefits from a prepetition executory insurance contract must accord the nondebtor party an administrative expense priority for the pro rata share of the premium, during the period in which the estate received benefits from the contract.” *In re Sharon Steel Corp.*, 161 B.R. 934, 937 (Bankr. W.D. Pa. 1994) (*quoting In re Gamma Fishing Co., Inc.*, 70 B.R. 949 (Bankr. S.D. Cal. 1987)). Administrative expenses incurred in the ordinary course of business are payable in the ordinary course of business. *In re Wireless Telecomms. Inc.*, 449 B.R. 228, 235 n. 5 (Bankr. M.D. Pa. 2011) (*quoting* 4 Collier on Bankruptcy, 16th ed., ¶ 503.03[4], 503–17) (“‘ordinary course of business’ administrative expenses (such as current postpetition wages and trade debt) generally are paid when due. . .”). Additionally, § 363(c) allows a trustee to use property of the estate in the ordinary course of business without providing for notice or an opportunity for a hearing. *See In re Pac. Forest Indus., Inc.*, 95 B.R. 740, 743 (Bankr. C.D. Cal. 1989) (*quoting* 3 Collier on Bankruptcy, 15th ed., ¶ 503.01) (“there is a virtually unstated

assumption that ‘ordinary course of business’ administrative expenses (such as current post petition wages and trade debt) will be paid when due.”)).

25. The insurance premiums and payments under the Insurance Policies and the Debtors’ Premium Finance Agreement, which come due postpetition, must be paid to maintain the Debtors’ postpetition insurance coverage. The maintenance of the Debtors’ postpetition insurance coverage is essential to the operation of the Debtors’ business. Thus, the Debtors’ expenses for postpetition payments due under the Premium Finance Agreement and any other postpetition insurance premiums which come due are administrative in nature and are appropriately paid by Debtors in the ordinary course of business.

B. Payment of Insurance Obligations under §§ 363(b) and 105, including prepetition amounts, is necessary to operate and confirm a plan.

26. In some limited circumstances, the insurance premiums and other Insurance Obligations owed by the Debtors relate to occurrences prior to the Petition Date. The Debtors believe those obligations are minimal, since they are current on payment of their Insurance Obligations.

27. The Debtors submit that payment of these Insurance Obligations is appropriate pursuant to §§ 105(a), 363(b), 1107(a) and 1108, as well as the “necessity of payment” doctrine.

i. Payment of the Insurance Obligations is appropriate under Section 363 of the Bankruptcy Code

28. This Court may authorize the Debtors’ proposed payment of Insurance Obligations under § 363(b)(1). Section 363(b)(1) authorizes a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” *See* 11 U.S.C. § 363(b)(1). Courts have authorized payment of prepetition obligations under § 363(b) of the Bankruptcy Code when a sound business purpose exists for doing so. *See*,

e.g., Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (noting that a debtor may sell property outside the ordinary course of business if it can provide “an articulated business justification”) (citing *The Inst’l Creditors of Cont’l Airlines v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1225 (5th Cir. 1986)); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Nine West Holdings, Inc.*, 588 B.R. 678, 686 (Bankr. S.D.N.Y. 2018). The business judgment rule is highly deferential to debtors and may be satisfied “as long as the proposed action appears to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997)). Once a debtor articulates a valid business justification for a particular form of relief, that relief “should be approved by the court unless it is shown to be ‘so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, whim, or caprice.’” *In re Aerovox, Inc.*, 269 B.R. 74, 80 (Bankr. D. Mass. 2001) (quoting *In re Logical Software, Inc.*, 66 B.R. 683, 686 (Bankr. D. Mass. 1986) (citations omitted)).

29. When applying the “business judgment” rule, courts show great deference to the debtor’s decision making. See, e.g., *In re Castre*, 312 B.R. 426, 430 (Bankr. D. Colo. 2004); *In re Murphy*, 288 B.R. 1, 5 (D. Me. 2002); *In re Bakalis*, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998); *In re First Wellington Canyon Assocs.*, 1989 WL 165028, *1 (N.D. Ill Dec. 28, 1989); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981). Because certain of the Insurance Obligations are entitled to priority status, and because maintenance and renewal of insurance coverage is vital to the Debtors’ ongoing operations and their prospects for successfully confirming a plan, it is in the best interest of the Debtors’ estates to pay such insurance obligations in the ordinary course of business during these Chapter 11 cases.

30. Additionally, it is critical that (i) the Debtors maintain their Insurance Policies and renew or enter into the New Insurance Policies, as applicable, in order to provide a comprehensive range of coverage that protects their business and property; and (ii) the Debtors have no rupture in their relationship with carriers, from which they seek renewals, and their service providers that administer its professional and general liability coverage. The insurance coverage provided under the Insurance Policies is essential to the continued operations of the Debtors, and some of the Insurance Policies are required by various state and federal regulations and by contracts that govern the Debtors' business. Disruption of the Debtors' insurance coverage would expose the Debtors to serious risks, including: (a) the incurrence of direct liability for the payment of claims that otherwise would have been payable by the Insurance Carriers; (b) the occurrence of material costs and other losses that would have otherwise been reimbursed by the Insurance Carriers; (c) the loss of good-standing certification to conduct business in States where the Debtors operate; (d) the inability to obtain similar types of insurance coverage; and (e) the incurrence of higher costs for obtaining new insurance coverage. Granting the relief requested herein would avoid these consequences and would allow the Debtors' business operations to continue without interruption during the Chapter 11 process.

31. Further, if the Debtors are unable to pay the premiums and other Insurance Obligations necessary to maintain the Insurance Policies, they may be unable to find alternative insurance carriers willing to offer them similar insurance at a competitive price given the magnitude of the insured's risk and the additional risk of non-payment. While the Debtors question the right of any insurer to terminate the Insurance Policies for non-payment of premiums, any litigation associated with such alleged termination would be contested, and thus, very costly to the Debtors' estates.

32. The Debtors represent that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor in possession financing. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment of the Insurance Obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests with respect to the Insurance Obligations.

ii. Payment of the Insurance Obligations is authorized under §§ 1107(a) and 1108.

33. The Debtors, operating their business as debtors-in-possession under §§ 1107(a) and 1108, are fiduciaries "holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a Chapter 11 debtor-in-possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.*

34. According to the Court in *CoServ*, there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *See id.* The Court in *CoServ* specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

35. Payment of the prepetition Insurance Obligations meets each element of this standard. As discussed, the payment of the Insurance Obligations is necessary to maintain insurance coverage postpetition and continue to operate. The Debtors, as employers and operators of skilled nursing facilities across the Midwest, must maintain workers' compensation insurance coverage. *See, e.g.*, 820 Ill. Comp. Stat. Ann. 305/4 (requiring workers' compensation coverage). Also, as a practical and legal matter, the Debtors cannot operate without professional and general liability insurance, among other coverages. Further, if the Debtors are unable to pay the premiums necessary to maintain the Insurance Policies, they may be unable to find alternative insurance carriers willing to offer them similar insurance at a competitive price. The potential harm and economic disadvantage that could stem from the failure to pay the Insurance Obligations is grossly disproportionate to the amount of any prepetition claim that may be paid.

36. Accordingly, the Debtors can meet their fiduciary duties as debtors-in-possession under §§ 1107(a) and 1108 only by payment of their Insurance Obligations.

iii. Section 105 of the Bankruptcy Code provides a separate, additional basis for payment of the Insurance Obligations.

37. The Debtor's proposed payment of the Prepetition Obligations also should be authorized under the "doctrine of necessity," which is grounded in § 105(a). Pursuant to § 105, this Court "may issue any order . . . that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a); *see also In re NWFEX, Inc.*, 864 F.2d 588, 590 (8th Cir.

1988) (“The overriding consideration in bankruptcy, however, is that equitable principles govern”); *In re Wehrenberg, Inc.*, 260 B.R. 468, 469 (Bankr. E.D. Mo. 2001) (“Pursuant to 11 U.S.C. § 105(a) the Court may authorize the payment of prepetition claims when such payments are necessary to the continued operation of the Debtor”). Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition obligations may be permissible within the first 21 days of a case where doing so is “necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. 6003.

38. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the Chapter 11 case where the payment of such claims is necessary to the Chapter 11 efforts. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-192 (Bankr. D. Del. 1994) (noting that debtors may pay prepetition claims that are essential to continued operation of business) (*citing In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981)).

39. The doctrine of necessity is a widely accepted component of modern bankruptcy jurisprudence. *See, e.g., In re Braniff, Inc.*, 218 B.R. 628, 633 (Bankr. M.D. Fla. 1998) (noting that debtors may pay prepetition wages when necessary to ensure employees remain on the job postpetition); *Just For Feet*, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (recognizing that the doctrine of necessity is derived from the court’s

equitable powers and allows debtors to make payment on prepetition claims to creditors who will refuse to supply services or material essential to the conduct of the debtors' business).

40. The Debtors submit that the payment of the Insurance Obligations represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is therefore justified under §§ 105(a) and 363(b). The Insurance Obligations will benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption. Indeed, the Debtors believe that without the relief requested herein, they will be unable maintain their current insurance coverage or find suitable replacement or renewal insurance coverage. Without insurance coverage the Debtors will be unable to operate their business and successfully complete a plan of reorganization.

41. For the reasons discussed herein, payment of the Insurance Obligations is necessary to ensure that the Debtors are able to continue operations postpetition and complete a plan. This Court should exercise its equitable powers to grant the relief requested in this Motion.

C. The Automatic Stay

42. The Debtors also request that the Court prevent the Insurance Carriers from giving any notice of termination or otherwise modifying or canceling any Insurance Policies without obtaining relief from the automatic stay imposed by § 362. The purpose of this relief is to aid in the administration of the Debtors' bankruptcy cases and to preserve the value of the business operations. The Debtors' Insurance Carriers may be unfamiliar with the protections afforded Chapter 11 debtors under § 362, and thus, an order of this Court affirming these protections would help avoid costly and unnecessary litigation.

43. As a result of the commencement of the Debtors' Chapter 11 Cases, and by operation of law pursuant to § 362, the automatic stay prevents all persons from, *inter alia*, (a)

commencing or continuing any judicial, administrative or other proceeding against the Debtors; (b) taking any action to exercise control over property of the estates; or (c) taking any action to collect, assess or recover a claim against the Debtors that arose before the commencement of such cases. *See* 11 U.S.C. § 362(a).

44. The appropriate procedure for obtaining Court approval of termination under an insurance policy is to seek relief from the automatic stay. *In re Adana Mortg. Bankers, Inc.*, 12 B.R. 983, 988 (Bankr. N.D. Ga. 1980). The injunctions contained in § 362 are self-executing and constitute fundamental debtor protections, which, in combination with other provisions of the Bankruptcy Code, provide the Debtors with the “breathing spell” that is essential to the Debtors’ ability to reorganize. *See, e.g., Sternberg v. Johnston*, 595 F.3d 937, 948 (9th Cir. 2010), *overruled on other grounds, In re Schwartz-Tallard*, 803 F.3d 1095 (9th Cir. 2015).

45. As fundamental as the foregoing protections may be, and notwithstanding that they arise as a matter of law upon commencement of a Chapter 11 case, not all parties affected or potentially affected by the commencement of a Chapter 11 case are aware of the Bankruptcy Code provisions or cognizant of their significance and impact. Experience has shown that it is often necessary to advise third parties of the existence and effect of § 362 and, occasionally, it is necessary to commence proceedings in the bankruptcy court to enforce the protections contained therein.

46. The Debtors submit that this Court has ample authority to grant the relief sought herein. Under § 105(a), “the Court may 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). The purpose of § 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy, ¶ 105.01 (Alan N. Resnick &

Henry J. Sommer eds., 16th ed). This is consistent with the broad equitable authority of the bankruptcy courts. *See, e.g., United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990).

47. Accordingly, the Debtors believe that under the circumstances of these Chapter 11 cases, entry of the proposed order, which incorporates a restatement of the applicable provisions of § 362, would help protect the Debtors from violations of these crucial provisions by Insurance Carriers. It would also spare the Debtors from the burden and expense of commencing proceedings to enforce the Bankruptcy Code. Accordingly, an order entered by this Court enforcing the automatic stay may increase substantially the efficiency of the administration of this case.

48. To the extent an Insurance Policy is deemed an executory contract within the meaning of § 365, the Debtors do not at this time intend to assume such agreement. Court authorization of payment shall not be deemed to constitute postpetition assumption or adoption thereof as an executory contract pursuant to § 365 of the Bankruptcy Code. The Debtors are in the process of reviewing the Insurance Policies and reserve all of their rights under the Bankruptcy Code with respect thereto.

RESERVATION OF RIGHTS

49. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the

Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

**APPLICABLE FINANCIAL INSTITUTIONS SHOULD BE AUTHORIZED
TO RECEIVE, PROCESS, HONOR, AND PAY CHECKS ISSUED AND
TRANSFERS REQUESTED TO PAY INSURANCE OBLIGATIONS**

50. The Debtors further request that the Court authorize applicable financial institutions (the "**Banks**") to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the Insurance Obligations to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payment. The Debtors also seek authority to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or fund transfer requests on account of prepetition Insurance Obligations dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

BANKRUPTCY RULE 6003(B) HAS BEEN SATISFIED

51. The Debtors respectfully request consideration of this Motion under Bankruptcy Rule 6003, which provides that the Court may grant relief within the first 21 days after the Petition Date to the extent such relief is necessary to avoid immediate and irreparable harm. As described herein and in the First Day Declaration, the relief requested is essential to avoid the immediate and irreparable harm that would be caused by the Debtors' inability to transition smoothly into chapter 11. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

**COMPLIANCE WITH BANKRUPTCY RULE 6004(A)
AND WAIVER OF BANKRUPTCY RULE 6004(H)**

52. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion satisfies Bankruptcy Rule 6004(a) and that the Court waive the 14-day period under Bankruptcy Rule 6004(h).

NO PREVIOUS REQUEST

53. No previous application for the relief sought herein has been made to this or any other Court.

NOTICE

54. This Motion and notice of this Motion will be served respectively on Master Service List No. 1 (dated July 16, 2024) and Master Notice List No. 1 (dated July 16, 2024). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1). The Debtors submit that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtors respectfully request entry of a proposed order granting the relief requested herein, together with such other and further relief as the Court deems just and proper.

[Signature page to follow]

Dated: July 16, 2024, 2024

St. Louis, Missouri

Respectfully submitted,

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/s/ Stephen O'Brien

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*Proposed Co-Counsel to the Debtors
and Debtors-in-Possession*

Exhibit A
Insurance Summary

Exhibit A

Insurance Summary

Policy Type	Carrier	Policy No.	Inception	Expiration	Approximate Annualized Premium
Auto	Philadelphia Indemnity Ins Company	PHPK2683413	5/1/2024	5/1/2025	\$ 74,481.00
Property	Travelers Indemnity Company	KTKCMB8K54029624	5/1/2024	5/1/2025	\$ 1,213,302.00
Workers' Compensation	Accident Fund Insurance Co. of America	UHWCP100090478	3/1/2024	3/1/2025	\$ 471,666.00
GLPL	Caring Communities	CCRRRG-0067-24	1/1/2024	1/1/2025	\$ 929,344.00
Cyber Liability	Travelers Excess and Surplus Lines Co.	CYB10801084700	5/1/2024	5/1/2025	\$ 22,881.60
Pollution	Ascot Specialty Insurance Company	ENPM241000128201	5/1/2024	5/1/2025	\$ 22,837.50
D&O/Fiduciary/EPL	Ironshore Specialty Insurance Company	DO6CAC2MCO001	7/1/2024	6/30/2025	\$ 47,029.50
Crime	Ironshore Specialty Insurance Company	FI4NAC2MQS001	6/30/2024	6/30/2025	\$ 8,350.00
Excess D&O/Fiduciary/EPL	Hudson Excess Insurance Company	HE-0303-11718	6/30/2024	6/30/2025	\$ 40,425.00
Excess D&O/Fiduciary/EPL	Ascot Insurance Company	MLXS2410001605-1	6/30/2024	6/30/2025	\$ 32,800.00

Exhibit B
Surety Bonds

Exhibit B

Surety Bonds

Surety Bond No.	Community	Address	City	State	Zip	Bond Amount	Annual Premium	Issuance Date	Expiration Date
SUR 2264980 06	THE CHRISTIAN VILLAGE	1507 7TH STREET	LINCOLN	IL	62656	\$85,000.00	\$850.00	6/1/2024	6/1/2025
SUR 2264983 06	LEWIS MEMORIAL CHRISTIAN VILLAGE	3400 W. WASHINGTON ST.	SPRINGFIELD	IL	62711	\$70,000.00	\$700.00	6/1/2024	6/1/2025
SUR 2264987 06	HICKORY POINT CHRISTIAN VILLAGE	951 HOPE	FORSYTH	IL	62535	\$20,000.00	\$200.00	6/1/2024	6/1/2025
SUR 2264988 06	CROWN POINT CHRISTIAN VILLAGE	6685 E 117TH AVE.	CROWN POINT	IN	46307	\$105,000.00	\$1,050.00	6/1/2024	6/1/2025
SUR 2264989 06	HOOSIER CHRISTIAN VILLAGE	621 S SUGAR ST.	BROWNSTOWN	IN	47220	\$45,000.00	\$450.00	6/1/2024	6/1/2025
SUR 2264990 06	SPRING RIVER CHRISTIAN VILLAGE	201 S NORTH PARK LN.	JOPLIN	MO	64801	\$60,000.00	\$600.00	6/1/2024	6/1/2025
SUR 2264991 06	RISEN SON CHRISTIAN VILLAGE	3000 RISEN SON BLVD.	COUNCIL BLUFFS	IA	51503	\$40,000.00	\$400.00	6/1/2024	6/1/2025
SUR 2289467 04	SENIOR CARE PHARMACY SERVICES, LLC	1212 BEAR LANE DRIVE	MONTICELLO	IL	61856	\$50,000.00	\$500.00	8/22/2023	8/22/2024
SUR 2289477 04	RIVER BIRCH CHRISTIAN VILLAGE, LLC	4012 COCKRELL LN	SPRINGFIELD	IL	62711	\$504,136.00	\$5,041.00	2/1/2024	2/1/2025