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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MADISON SQUARE BOYS & GIRLS CLUB, INC.,¹

Debtor.

Chapter 11

Case No. 22-10910 (___)

**DEBTOR'S MOTION FOR ENTRY
OF INTERIM AND FINAL ORDERS (I) AUTHORIZING
THE DEBTOR TO (A) CONTINUE TO OPERATE ITS CASH MANAGEMENT
SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED
THERE TO, (C) MAINTAIN EXISTING BUSINESS FORMS, AND (D) MAINTAIN
INVESTMENT PRACTICES, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the "Debtor") respectfully states as follows in support of this motion (the "Motion"):

Relief Requested²

1. By this Motion, the Debtor seeks entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (the "Proposed Interim Order") and **Exhibit B** (the

¹ The last four digits of the Debtor's federal tax identification number are 6792. The Debtor's mailing address is 250 Bradhurst Avenue, New York, New York 10039.

² A description of the Debtor's business, the reasons for commencing this chapter 11 case, the relief sought from the Court to allow for a smooth transition into chapter 11, and the facts and circumstances supporting this Motion are set forth in the *Declaration of Jeffrey Dold (I) in Support of First Day Motions and (II) Pursuant to Local*

“Proposed Final Order”), respectively: (a) authorizing the Debtor to (i) continue to operate its Cash Management System (as defined below); (ii) honor certain prepetition obligations related thereto; (iii) maintain its existing Business Forms (as defined below); and (iv) continue to maintain its investment practices; and (b) granting related relief. In addition, the Debtor requests that the Court (as defined below) schedule a final hearing within approximately twenty-one (21) days from the date hereof (the “Petition Date”) to consider approval of this Motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York, dated January 31, 2012. The Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), 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.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105, 345, and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 6003 and 6004 of the Bankruptcy Rules, and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Bankruptcy Rule 1007-2 (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the First Day Declaration.

Cash Management System

I. The Debtor's Cash Management System

5. In the ordinary course of business, the Debtor utilizes a centralized cash management system (the “Cash Management System”) to collect, manage, invest, and disburse funds in support of its charitable mission, including seven (7) Bank Accounts and eleven (11) Investment Accounts (each as defined below). The Debtor holds various accounts with a number of financial institutions (the “Banks”) to facilitate the Cash Management System. A list of the Debtor's Bank Accounts and Investment Accounts (each as defined below) can be found attached hereto as **Exhibit C**. A diagram setting forth the flow of funds among the Bank Accounts and Investment Accounts and summarizing the Cash Management System, as it exists on the Petition Date, is attached hereto as **Exhibit D**.

6. The Debtor implements certain protocols to ensure that donor funds are used in accordance with any applicable restrictions. Each donation is flagged by the resource development team at Madison Square Boys & Girls Club Foundation, Inc. (the “Foundation”)³ to the Debtor's finance personnel with a description of the donation and its restricted status, if any. This information is recorded and tracked in a donor data base. Restricted funds that are expected to be used in the short term (typically less than a year) are placed in the General Operating Account (as defined below) and disbursed from the General Operating Account or a disbursement account for their intended purposes. Those that are not expected to be used in the short-term or are raised as part of a special campaign are typically segregated in a separate Bank Account or Investment

³ As set forth more fully in the First Day Declaration, the Foundation is an independent entity that was established in 2020 to support the Debtor's mission through fundraising activities. The Debtor and the Foundation use an integrated software system that tracks all donations that are received through the Foundation or, in a minority of instances, directly through the Debtor.

Account. At the end of each fiscal year, and in compliance with applicable New York law,⁴ the Debtor performs an accounting and reconciliation of the funds deposited in the General Operating Account to ensure that the Debtor's spending was consistent with applicable donor restrictions.

A. Bank Accounts

7. In the ordinary course of business, the Debtor maintains seven (7) cash accounts (the "Bank Accounts") described herein to facilitate the financial operations of its central administrative office and six clubhouse locations. Each of the Bank Accounts serve dedicated functions as described in the following table:

Accounts	Description of Accounts
<u>General Operating Account</u> <i>JPM Account ending 9065</i>	<p>The Debtor maintains its general operating account (the "<u>General Operating Account</u>") with JPMorgan Chase Bank, N.A. ("<u>JPM</u>"). Cash from Investment Accounts, Government Grant Accounts (as defined below), and the majority of contributions from donors (including donations that come in through the Foundation) are deposited in the General Operating Account. Certain disbursements are made from the General Operating Account, including wire payments to certain vendors and payments to scholarship recipients. The rest of the funds are transferred to certain other accounts (as described below) for disbursements, including vendor and payroll payments.</p> <p>As of the Petition Date, the Debtor holds a balance of approximately \$1,325,000.00 in the General Operating Account.</p>
<u>Operating Disbursements Account</u> <i>JPM Account ending 9815</i>	<p>The Debtor maintains a disbursement account (the "<u>Operating Disbursements Account</u>") with JPM from which the majority of its vendor payments are disbursed via check. The Operating Disbursements Account receives weekly transfers of funds from the General Operating Account in an amount sufficient to satisfy the Debtor's vendor obligations.</p> <p>As of the Petition Date, the Debtor holds a balance of approximately \$4,116.00 in the Operating Disbursements Account.</p>
<u>Payroll Account</u> <i>JPM Account ending 6765</i>	<p>The Debtor maintains a disbursement account (the "<u>Payroll Account</u>") with JPM to fund its payroll obligations. The Payroll Account receives bi-weekly transfers of funds from the General Operating Account two (2) days before payroll is due in a rounded amount sufficient to satisfy the Debtor's payroll obligations and related fees payable to its payroll processing service provider, ADP, Inc. Most staff are paid via direct deposit, though the Debtor will occasionally write manual checks.</p> <p>As of the Petition Date, the Debtor holds a balance of approximately \$12,858.14 in the Payroll Account.</p>

⁴ See New York Not for Profit Corp. L. ("N-PCL") § 513(b).

Accounts	Description of Accounts
<u>Flexible Spending Account</u> <i>JPM Account ending 6665</i>	<p>The Debtor maintains a disbursement account (the “<u>Flexible Spending Account</u>”) with JPM to fund full-time employees’ debit cards used for medical co-pays, transit, and parking expenses, and certain other health and welfare expenses (the “<u>Benefit Cards</u>”). Each time an employee uses its Benefit Card, the funds are debited from the Flexible Spending Account. The Flexible Spending Account is funded from the General Operating Account in advance to cover future transactions and is replenished as needed, generally maintaining an approximately \$5,000 balance.</p> <p>As of the Petition Date, the Debtor holds a balance of approximately \$4,900.00 in the Flexible Spending Account.</p>
<u>Government Grant Accounts</u> <i>JPM Accounts ending 2792, 0447</i>	<p>The Debtor maintains accounts to receive grant deposits from New York State (the “<u>NYS Account</u>”) and New York City (the “<u>NYC Account</u>” and, together with the NYS Account, the “<u>Government Grant Accounts</u>”). The NYC Account also receives deposits from the Boys & Girls Clubs of America, which are comprised of “pass-through grants” from other sources. The funds deposited in the Government Grant Accounts are transferred to the General Operating Account on a weekly basis.</p> <p>As of the Petition Date, the Debtor holds an aggregate balance of \$1,173.08 in the Government Grant Accounts.</p>
<u>Staff Debit Card Account</u> <i>JPM Account ending 9066</i>	<p>The Debtor maintains a disbursement account (the “<u>Staff Debit Card Account</u>”) with JPM to cover debit card charges by certain employees for small-scale business expenses incurred in the ordinary course. The Staff Debit Card Account is funded on an as-needed basis from the General Operating Account and generally maintains an approximately \$5,000 balance.</p> <p>As of the Petition Date, the Debtor holds a balance of approximately \$5,300.00 in the Staff Debit Card Account.</p>

8. Each Bank Account is maintained at JPM, which is insured by the Federal Deposit Insurance Corporation (the “FDIC”) and is an authorized depository in the Southern District of New York. As such, the Bank Accounts comply with section 345(b) of the Bankruptcy Code and the *U.S. Trustee’s Operating Guidelines and Financial Reporting Requirements for Debtors In Possession and Trustees* (the “U.S. Trustee Guidelines”).

B. Investment Accounts

9. The Debtor maintains eleven (11) investment accounts (the “Investment Accounts”), ten (10) of which are subject to donor-specified restrictions (the “Restricted Investment Accounts”). Three (3) of the Restricted Investment Accounts are bound by purpose

restrictions and the remaining seven (7) Restricted Investment Accounts contain donor endowments. The only Investment Account that holds unrestricted assets, the Operating Brokerage Account (as defined below), exists solely to receive stock donations, the proceeds of which are subsequently disbursed to other accounts on a routine basis (usually within five (5) days). Other than the Operating Brokerage Account, the Investment Accounts are no longer receiving previously unpledged contributions.

10. The Debtor established a finance and investment committee (the “Investment Committee”), which sets and periodically updates an investment policy, a copy of which is attached hereto as Exhibit E (the “Investment Policy”), that is designed to safeguard the Debtor’s assets while earning investment returns that are sufficient to meet the Debtor’s operational requirements. The Investment Committee reports to the Debtor’s board of directors (the “Board”) and is accountable to the Board for meeting its responsibilities and taking appropriate actions in accordance with the Investment Policy.

11. In accordance with the Investment Policy, the Debtor currently withdraws on an annual basis approximately 3-4% of the balance from restricted endowment Investment Accounts and 3-7% of the balance from purpose-restricted Investment Accounts and transfers such funds to the General Operating Account. The funds are subsequently disbursed to other accounts for various uses and in accordance with any applicable restrictions. As of May 31, 2022, there is an aggregate balance of \$48,133,491.14⁵ in the Investment Accounts. A description of each Investment Account is set forth below.

⁵ The Debtor receives monthly reports of the holdings in its Investment Accounts. Therefore, the Debtor has approximated the aggregate holdings based on last month’s reported ending balances.

12. The Debtor maintains the following stock donation Investment Account:

<u>Accounts</u>	<u>Description of Accounts</u>
<u>Operating Brokerage Account (Stock Donations)</u> <i>JPM Account Ending 2009</i>	<p>The Debtor maintains an investment brokerage account (the “<u>Operating Brokerage Account</u>”) with JPM, which receives donations in the form of stocks. The Debtor typically liquidates the stock within five (5) days of receipt and transfers the proceeds to its General Operating Account or to its Capital Campaign Savings Account if satisfying a specific donor pledge. The Operating Brokerage Account is the only Investment Account that receives contributions in the ordinary course, and is utilized solely for securities that are donated to the Debtor.</p> <p>As of the Petition Date, the Operating Brokerage Account has a zero balance.</p>

13. The Debtor maintains the following three (3) purpose-restricted investment accounts:

<u>Accounts</u>	<u>Description of Accounts</u>
<u>100th Anniversary Accounts</u> <i>BBH Account Ending 0155</i> <i>JPM (Ruane Cunniff & Goldfarb) Account Ending 1007</i>	<p>The Debtor maintains two brokerage accounts (the “<u>100th Anniversary Accounts</u>”), one with Brown Brothers Harriman (“<u>BBH</u>”) and another with JPM, which contain proceeds of the Debtor’s 100th Anniversary campaign that began in 1982 as the organization was approaching its 100th anniversary. The Debtor transfers approximately 3-7% of the proceeds of the 100th Anniversary Accounts annually to the General Operating Account to fund the following four objectives based on need: (a) expansion of clubhouse services, (b) camping and outdoor education, (c) staff development and training, and (d) supplemental remedial education.</p> <p>As of the Petition Date, the 100th Anniversary Accounts have an aggregate balance of approximately \$7,688,327.70.</p>
<u>Pooled Scholarship Funds Account</u> <i>Fidelity Account Ending 7011</i>	<p>The Debtor maintains a brokerage account (the “<u>Pooled Scholarship Funds Account</u>”) with Fidelity Investments Inc. (“<u>Fidelity</u>”), which contains contributions received from donors for purposes of funding scholarships. The Debtor transfers approximately 3-7% of the proceeds of the Pooled Scholarship Funds Account annually to the General Operating Account to fund its scholarship programs.</p> <p>As of the Petition Date, the Pooled Scholarship Funds Account has a balance of approximately \$658,057.00.</p>

14. The Debtor maintains the following seven (7) restricted endowment accounts:

<u>Accounts</u>	<u>Description of Accounts</u>
<u>Pinkerton Clubhouse Endowment Accounts</u> <i>Sequoia Fund Account Ending 8895</i>	<p>The Debtor maintains three brokerage accounts (the “<u>Pinkerton Clubhouse Endowment Accounts</u>”) with each of Sequoia Fund (“<u>Sequoia</u>”), BBH, and Ruane, Cunniff & Goldfarb (“<u>RCG</u>”), which contain multiple donations for the operation of the Debtor’s Pinkerton</p>

<p><i>BBH Account Ending 3873</i></p> <p><i>Ruane, Cunniff & Goldfarb Account Ending 0932</i></p>	<p>Clubhouse in Harlem. Depending on the account, the Debtor transfers between approximately 3-4% of the proceeds of the Pinkerton Clubhouse Endowment Accounts annually to the General Operating Account and such amounts are used for certain purposes in connection with the Pinkerton Clubhouse, including annual programming and operating expenses. To the extent there are excess funds available from the annual withdrawal restricted to support the Pinkerton Clubhouse, certain of the excess funds can be allocated from time to time to other uses in the Debtor's organization, subject to Board approval and the limitations established by the donors' intent.</p> <p>As of the Petition Date, the Pinkerton Clubhouse Endowment Accounts have an aggregate balance of approximately \$35,649,107.52.</p>
<p><u>Niarchos Endowment Account</u></p> <p><i>BBH Account Ending 8326</i></p>	<p>The Debtor maintains a brokerage account (the "<u>Niarchos Endowment Account</u>") with BBH, which contains funds pledged for the purpose of supporting programming across all of the Debtor's clubhouses. The Debtor transfers approximately 3-4% of the proceeds of the Niarchos Endowment Account annually to the General Operating Account to be allocated in accordance with the stated purpose.</p> <p>As of the Petition Date, the Niarchos Endowment Account has a balance of approximately \$568,654.27.</p>
<p><u>Fleishman/Wright Endowment Account</u></p> <p><i>BBH Account Ending 5837</i></p>	<p>The Debtor maintains a brokerage account (the "<u>Fleishman/Wright Endowment Account</u>") with BBH, which contains funds pledged for the purpose of buying computers, technology, and/or teaching the use of technology across the Debtor's clubhouses. The Debtor transfers approximately 3-4% of the proceeds of the Fleishman/Wright Endowment Account annually to the General Operating Account to be allocated in accordance with the stated purpose.</p> <p>As of the Petition Date, the Fleishman/Wright Endowment Account has a balance of approximately \$734,364.34.</p>
<p><u>Building Hope Capital Campaign – Investment Management Account</u></p> <p><i>JPM Account Ending 9006</i></p>	<p>The Debtor maintains an investment management account (the "<u>Capital Campaign Investment Account</u>") with JPM, which contains proceeds from the Debtor's Building Hope capital campaign for construction of the Pinkerton Clubhouse (which was completed in 2020). These funds are anticipated to be added to the endowment for the Pinkerton Clubhouse per donor agreements.</p> <p>As of the Petition Date, the Capital Campaign Investment Account has a balance of approximately \$1,389,668.23.</p>
<p><u>Building Hope Capital Campaign – Savings Account</u></p> <p><i>JPM Account ending 0009</i></p>	<p>The Debtor maintains a savings account (the "<u>Capital Campaign Savings Account</u>") with JPM, which was funded with the pledge payments from the Debtor's Building Hope capital campaign for construction of the Pinkerton Clubhouse (which was completed in 2020) and continues to receive proceeds of capital campaign donations from the Operating Brokerage Account. These funds are anticipated to be added to the endowment for the Pinkerton Clubhouse per donor agreements.</p> <p>The Capital Campaign Savings Account is also used to deposit the quarterly interest received on the Debtor's \$25.5 million leverage loan (the "<u>NMTC Leverage Loan</u>"), which helped finance the construction of the Debtor's Pinkerton Clubhouse through the New Markets Tax Credit</p>

	<p>Program.⁶ In turn, the Debtor remits from the Capital Campaign Savings Account \$98,250.00 per fiscal quarter to its non-debtor affiliate, MSBGC-NYC Support Corporation (“<u>MSBGC</u>”), to satisfy its lease obligations to MSBGC with respect to the Pinkerton Clubhouse.</p> <p>As of the Petition Date, the Debtor maintains an aggregate balance of approximately \$1,445,312.00 in the Capital Campaign Savings Account.</p>
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II. Bank Fees and Investment Advisory Fees

15. In the ordinary course of business, the Debtor incurs and pays, honors, or allows to be deducted from the appropriate Bank Accounts certain monthly service fees and other charges, costs, and expenses charged by the Banks (collectively, the “Bank Fees”). Additionally, in the ordinary course of business, the Debtor incurs and pays, honors, or allows to be deducted from the appropriate Investment Accounts certain fees for investment advisor services from JPM, RCG, Pinnacle Associates Ltd., BBH, and Sequoia, respectively (collectively, the “Investment Advisors” and such fees, the “Investment Advisory Fees”). The Investment Advisory Fees generally utilize a tiered structure with fee percentages that range from 0.52% and 1.35%, depending on the particular Investment Advisor and the account balance. JPM also charges an additional annual base fee of approximately \$2,250.00.

16. The Debtor estimates that approximately \$150.00 in monthly Bank Fees and \$83,882.00 in Investment Advisory Fees are due and owing as of the Petition Date. To maintain the integrity of its Cash Management System, the Debtor respectfully requests authority to pay the full amount of the accrued prepetition Bank Fees and the accrued prepetition Investment Advisory Fees, including fees for prepetition transactions that are charged postpetition, and to continue to pay the Bank Fees and Investment Advisory Fees on an uninterrupted basis postpetition. By this Motion, the Debtor is seeking to pay the accrued prepetition Bank Fees pursuant to the Proposed

⁶ Additional detail regarding the NMTC Program is set forth in the First Day Declaration.

Interim Order, and the accrued prepetition Investment Advisory Fees solely upon entry of the Proposed Final Order.

III. Existing Business Forms and Checks

17. In the ordinary course of business, the Debtor uses numerous business forms, including, without limitation, checks, business cards, letterhead, purchase orders, and invoices (the “Business Forms”). In particular, the Debtor issues checks on existing stock that cannot be easily altered. To minimize expense to its estate and avoid confusion on the part of donors, employees, and suppliers, the Debtor respectfully requests that the Court authorize it to continue to use all correspondence and Business Forms, as such forms were in existence immediately prior to the Petition Date without reference to the Debtor’s status as a debtor in possession; provided, however, that upon depletion of the Debtor’s Business Forms stock, the Debtor will obtain new Business Forms reflecting its status as a debtor in possession, and the Debtor will cause any checks and other business forms electronically generated during this chapter 11 case to contain the designation “Debtor in Possession.” Such authorization will enable the Debtor to avoid the expense and delay of ordering new Business Forms.

Basis for Relief

I. The Court Should Approve the Debtor’s Continued Use of the Cash Management System Because it is Essential to the Debtor’s Operations and Restructuring Efforts

19. The Cash Management System provides significant benefits to the Debtor including, among other things, the ability to control funds, ensure the availability of funds when necessary, effectively segregating donor-restricted funds, and reduce costs and administrative expenses by facilitating the movement of funds and developing timely and accurate account balance information. To ensure the seamless operation of the Debtor’s operations and realize the benefits of the Cash Management System, the Debtor should be allowed to continue using the Cash

Management System consistent with prepetition practices and should not be required to open new bank accounts.

20. The U.S. Trustee Guidelines require debtors in possession to, among other things: (a) close all existing bank accounts and open new debtor-in-possession bank accounts; (b) establish one debtor-in-possession account for all estate monies required for payment of taxes, including payroll taxes; (c) physically set aside all monies required by law to be withheld from employees or collected from others for taxes; (d) open a new set of books and records as of the commencement date of the case; (e) use new business forms indicating the debtor-in-possession status of the chapter 11 debtor; and (f) make all disbursements of estate funds by check with a notation representing the reason for the disbursement. *See* Region 2 Guidelines for Debtor-in-Possession. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and help protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the petition date.

21. The continuation of the Cash Management System is nevertheless permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes the 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). Bankruptcy courts routinely treat requests for authority to continue utilizing existing cash management systems as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In addition, 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 relevant part*, 997 F.2d 1039, 1061 (3d Cir. 1993); *see also In re Frigitemp*

Corp., 34 B.R. 1000, 1010 (S.D.N.Y 1983), *aff'd*, 753 F.2d 230 (2d Cir. 1985). The requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (stating that a cash management system allows a debtor “to administer more efficiently and effectively its financial operations and assets”).

22. Here, requiring the Debtor to adopt a new, segmented cash management system during this chapter 11 case would be expensive, burdensome, and unnecessarily disruptive to the Debtor’s operations and fulfillment of its charitable mission. By contrast, maintaining the current Cash Management System will facilitate the Debtor’s transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies. In addition, the Cash Management System implements procedures and controls to facilitate proper tracking of the Debtor’s donor-restricted assets to ensure that such assets are used in accordance with donor intent. Maintaining the current Cash Management System will also allow the Debtor’s employees to focus on their daily responsibilities. Accordingly, the Debtor respectfully requests that the Court authorize the continued use of the existing Cash Management System to facilitate the Debtor’s transition into chapter 11. Specifically, the Debtor respectfully requests that the Court: (a) authorize the Banks to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtor as debtor in possession, without interruption; (b) authorize each of the Banks to receive, process, honor, and pay any and all checks, wire transfer, credit card, and other instructions, and drafts payable through, or drawn or directed on, such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto, irrespective of whether such checks, drafts, wires, or credit card payments are dated prior to or subsequent to the Petition Date, provided that sufficient funds are

on deposit and standing in the Debtor's credit in the applicable Bank Accounts to cover such payments; and (c) to the extent a Bank honors a prepetition check or other item drawn on any Bank Account at the direction of the Debtor, in a good faith belief that the Court has authorized such prepetition check or item to be honored, or as the result of a mistake made despite implementation of reasonable item handling procedures, find that such Bank will not be deemed to be liable to the Debtor, its estate, or any other party on account of such prepetition check or other item honored postpetition.

23. Courts in this district routinely allow the continued use of cash management systems and prepetition bank accounts employed in the ordinary course of a debtor's prepetition business. *See, e.g., In re Revlon, Inc.*, Case No. 22-10760 (Bankr. S.D.N.Y. June 17, 2022) [Docket No. 74]; *In re GTT Comms.*, Case No. 21-11880 (Bankr S.D.N.Y. Nov. 3, 2021) [Docket No. 55]; *In re Automotores Gildemeister SpA*, Case No. 21-10685 (Bankr. S.D.N.Y. Apr. 16, 2021) [Docket No. 46]; *In re Garrett Motion*, Case No. 20-12212 (Bankr. S.D.N.Y. Sept. 22, 2020) [Docket No. 53]; *In re Century 21*, Case No. 20-12097 (Bankr. S.D.N.Y. Sept. 11, 2020) [Docket No. 45]; *In re Roman Catholic Diocese of Rockville Centre*, Case No. 20-12345 (Bankr. S.D.N.Y. Oct. 20, 2020) [Docket No. 28].⁷

II. Cause Exists for Waving the Investment Guidelines of Section 345 of the Bankruptcy Code and, to the Extent Necessary, the U.S. Trustee Guidelines

24. Section 345(a) of the Bankruptcy Code authorizes deposit or investment of estate monies, such as cash, as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency or instrumentality of the

⁷ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtor's proposed counsel.

United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code provides that the estate must require 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 corporate surety, “unless the court for cause orders otherwise.” 11 U.S.C. § 345(b)(2).

25. In determining whether the “for cause” standard has been met, the Court should consider the “totality of the circumstances,” utilizing the following factors:

- a. the sophistication of the debtor’s business;
- b. the size of the debtor’s business operations;
- c. the amount of the investments involved;
- d. the bank ratings (Moody’s and Standard & Poor’s) of the financial institutions where the debtor in possession funds are held;
- e. the complexity of the case;
- f. the safeguards in place within the debtor’s own business of insuring 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;
- i. the harm, if any, to the debtor;
- j. the harm, if any, to the estate; and
- k. the reasonableness of the debtor’s request for relief from section 345(b) requirements in light of the overall circumstances of the case.

See In re Ditech Holding Corp., 605 B.R. 10, 17 (Bankr. S.D.N.Y. 2019).

26. Here, the Debtor’s Bank Accounts comply with section 345(b) of the Bankruptcy Code because such Bank Accounts are maintained at banks insured by federal agencies, such as the FDIC. As of the Petition Date, the Debtor maintains each of its Bank Accounts with JPM, which is insured by the FDIC. Additionally, JPM is designated as an authorized depository by the

Office of the United States for the Southern District of New York (the “U.S. Trustee”) pursuant to the U.S. Trustee Guidelines.

27. Although the Debtor’s Investment Accounts are not insured or guaranteed by a federal agency, the Debtor respectfully requests authority to continue to utilize such Investment Accounts consistent with past practices and in accordance with its Investment Policy.

28. The Court’s ability to excuse strict performance of the deposit and investment requirements of section 345(b) of the Bankruptcy Code “for cause” is supported by the 1994 amendments to the Bankruptcy Code. The legislative history of that amendment, in relevant part, provides:

Section 345 of the [Bankruptcy Code] governs investments of funds of bankruptcy estates. The purpose is to make sure that funds of a bankrupt that are obliged to creditors are invested prudently and safely with the eventual goal of being able to satisfy all claims against the bankruptcy estate. Under current law, all investments are required to be FDIC insured, collateralized or bonded. While this requirement is wise in the case of smaller debtors with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors. This section would amend the Code to allow the courts to approve investments other than those permitted by Section 345(b) for just cause

See In re Service Merch. Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (quoting H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 1994)).

29. Here, the Debtor submits that “cause” exists under section 345(b) of the Bankruptcy Code to allow the Debtor to continue maintaining its Investment Accounts. First, prior to the Petition Date, the Debtor liquidated all of its investment accounts with unrestricted assets other than the Operating Brokerage Account, which is utilized solely to receive stock donations and to hold such donations for a brief period (usually no more than five (5) days) before they are liquidated. All of the assets in the remaining Investment Accounts represent restricted donations

that must be used in accordance with donative intent and, therefore, cannot be used to satisfy general creditor claims. Indeed, the Investment Policy specifically provides that “[i]n all instances, donor intent shall be respected when decisions are rendered concerning the investment or expenditure of donor restricted funds.” Thus, the Debtor’s creditors are not prejudiced by maintenance of the Investment Accounts because the funds within those accounts are subject to restrictions and are not available under applicable law for distribution to creditors.

30. Second, the funds in the Investment Accounts are invested conservatively in accordance with the Investment Policy, which, among other things, specifies standards to be used in the investment and management of the Debtor’s investments, as well as guidelines for the Investment Advisors. The Debtor’s investment portfolio is designed to provide long-term financial security that enables continual support of the Debtor’s activities and programs. To achieve this, the Debtor’s investment objectives include the following:

- (a) seeking investment returns that maintain adequate liquidity to meet the Debtor’s annual operational requirements, as determined by the Board;
- (b) preserving the real purchasing power of the Debtor’s assets by seeking investment returns that are in excess of the spending rate and the rate of inflation;
- (c) achieving growth in excess of inflation by emphasizing long-term investment fundamentals and evaluating total investment returns on a five-year rolling basis; and
- (d) diversifying the Debtor’s portfolio to control risk and reduce volatility.

31. Each Investment Advisor has its own investment policy statement, which is subject to review of the Investment Committee, designed to promote these objectives. The Investment Advisors provide monthly account statements regarding the performance of the investments under their management, as well as reports on portfolio structure, performance and investment strategy, and expected changes in investments as requested by the Investment Committee or the Board. To

measure and evaluate the success of the Investment Advisors, the Investment Committee uses performance benchmarks, such as the S&P 500, that are representative of the Debtor's long-term return objectives and risk tolerance and, to the extent possible, assesses performance against similar public charity endowments. In addition, the Investment Committee oversees compliance with the New York Prudent Management of Institutional Funds Act, which governs the management and investment of funds held by not-for-profit corporations and other institutions, including prudent spending of endowment funds that are subject to donor-imposed restrictions. Thus, the Investment Policy contains abundant safeguards and procedures to maximize the investment returns and to mitigate risk of loss.

32. Requiring the Debtor to limit its investments to U.S. government securities would be administratively difficult, potentially expensive, and would be of limited utility in achieving section 345(b)'s purpose of protecting funds for the benefit of the Debtor's creditors. To do so, the Debtor would need to (a) arrange for the withdrawal of its investments in the Investment Accounts, (b) potentially hire new personnel or a third-party investment manager to oversee such investments, and (c) establish (i) a new accounts to trade the securities and (ii) associated controls and procedures. The Investment Advisors are all sophisticated investment funds, and the Debtor's Investment Committee has determined that the Investment Accounts will benefit the Debtor and not cause harm to its estate or creditors.

33. For all these reasons, the Debtor respectfully submits that "cause" exists to waive (the "345(b) Waiver") the requirements of section 345(b) of the Bankruptcy Code in this case and that Debtor should be allowed to continue to maintain its Investment Accounts in accordance with past practice. To maintain full transparency, the Debtor proposes that it will provide to the U.S. Trustee and any official committees appointed in this chapter 11 case the account statements

from its Investment Accounts no later than five (5) business days following the Debtor's receipt of any account statements. The Debtor further proposes that the U.S. Trustee maintain the discretion, by motion or notice to the Debtor, to request that the Court reconsider the 345(b) Waiver based upon a showing that there has been a material and sustained diminution in the Debtor's investments in the Investment Accounts and that cause no longer exists to support the 345(b) Waiver. The Debtor respectfully submits that the 345(b) Waiver, with these additional safeguards, is reasonable in light of the overall circumstances and will benefit the Debtor's estate by allowing the Debtor and its employees to direct their focus, resources, and energy on the Debtor's restructuring efforts at this critical juncture.

34. Courts in this district and others have granted similar relief. *See, e.g., In re Revlon, Inc.*, Case No. 22-10760 (Bankr. S.D.N.Y. June 17, 2022) [Docket No. 74]; *In re Avaya Inc.*, Case No. 17-10089 (Bankr. S.D.N.Y. Mar. 31, 2017) [Docket No. 341]; *In re Toisa Limited*, Case No. 17-10184 (Bankr. S.D.N.Y. Feb. 1, 2017) [Docket No. 17]; *In re ION Media Networks, Inc.*, Case No. 09-13125 (Bankr. S.D.N.Y. May 21, 2009) [Docket No. 35]; *In re The Diocese of Rochester*, Case No. 19-20905 (Bankr. W.D.N.Y. Jan. 14, 2020) [Docket No. 368]; *Decor Holdings, Inc.*, Case No. 19-71020 (Bankr. E.D.N.Y. Feb. 27, 2019) [Docket No. 84].⁸

III. Payment of Fees and Prepetition Obligations Related to the Bank Accounts and Investment Accounts Will Facilitate a Smooth Transition into Chapter 11 and Benefit the Estate

35. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*,

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtor's proposed counsel.

29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 496–501 (Bankr. N.D. Tex. 2002) (granting authority to pay prepetition claims to certain vendors).

36. Section 503(b)(1)(A) of the Bankruptcy Code provides that “[a]fter notice and a hearing, there shall be allowed, administrative expenses[,] including . . . the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). In addition, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. at 497. Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

37. Further, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy 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). Under section 105(a) of the Bankruptcy Code, courts may permit preplan payments of prepetition obligations when essential to the continued operation of a debtor’s business. Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”).

38. The “doctrine of necessity” or the “necessity of payment” rule has long been recognized by bankruptcy courts. *See Ionosphere*, 98 B.R. at 176. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is “the

paramount policy and goal of Chapter 11.” *Id.*; see also *In re Just For Feet*, 242 B.R. 821, 824–26 (Bankr. D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation” is appropriate); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”); 2 COLLIER ON BANKRUPTCY, 105.02[4][a] (16th ed. rev. 2015) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

39. The Debtor submits that there is sufficient business justification to grant the relief requested herein. Payment of prepetition Bank Fees and Investment Advisory Fees will ensure the continued support of the Debtor’s Cash Management System on a go-forward basis at this critical juncture of the Debtor’s chapter 11 case. Courts in this district have regularly approved

the payment of fees related to a debtor's cash management system in the ordinary course of a debtor's prepetition business. *See, e.g., In re Revlon, Inc.*, Case No. 22-10760 (Bankr. S.D.N.Y. June 17, 2022) [Docket No. 74]; *In re GTT Comms.*, Case No. 21-11880 (Bankr S.D.N.Y. Nov. 3, 2021) [Docket No. 55]; *In re Automotores Gildemeister SpA*, Case No. 21-10685 (Bankr. S.D.N.Y. May 11, 2021) [Docket No. 102]; *In re Diocese of Rockville*, Case No. 20-12345 (Bankr. S.D.N.Y. Dec. 10, 2020) [Docket No. 253]; *In re Garrett Motion*, Case No. 20-12212 (Bankr. S.D.N.Y. Oct. 20, 2020) [Docket No. 253].⁹

IV. The Debtor Should Be Granted Authority to Use Existing Business Forms

40. The Debtor submits that the continued use of the Business Forms will not prejudice parties in interest and such relief will avoid unnecessary expenses and administrative delays at this critical time. Furthermore, the Debtor's requested relief will not prejudice parties in interest because parties doing business with the Debtor undoubtedly will know of the Debtor's status as a debtor in possession. Thus, changing the Business Forms is unnecessary and unduly burdensome. Once the Debtor has exhausted its existing stock of Business Forms, however, it shall ensure that any new Business Forms are clearly labeled "Debtor in Possession," and with respect to any Business Forms that exist or are generated electronically, the Debtor shall ensure that such electronic Business Forms are clearly labeled "Debtor in Possession."

41. Courts in this district regularly permit debtors to use their prepetition check forms without the "debtor in possession" label. *See, e.g., In re Revlon, Inc.*, Case No. 22-10760 (Bankr. S.D.N.Y. June 17, 2022 [Docket No. 74]; *In re GTT Comms.*, Case No. 21-11880 (Bankr S.D.N.Y. Nov. 3, 2021) [Docket No. 55]; *In re Automotores Gildemeister SpA*, Case No. 21-10685 (Bankr. S.D.N.Y. May 11, 2021) [Docket No. 102]; *In re Diocese of Rockville*, Case No. 20-12345 (Bankr.

⁹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtor's proposed counsel.

S.D.N.Y. Dec. 10, 2020) [Docket No. 253]; *In re Garrett Motion*, Case No. 20-12212 (Bankr. S.D.N.Y. Oct. 20, 2020) [Docket No. 253].¹⁰

The Requirements of Bankruptcy Rule 6003 are Satisfied

42. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one (21) days after the petition date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, the Debtor believes an immediate and orderly transition into chapter 11 is critical to the viability of the Debtor’s estate and its ability to continue its charitable mission. As described above, the failure to receive the requested relief during the first twenty-one (21) days of this chapter 11 case could subject the Debtor to significant disruption in, or a potential cessation of, its clubhouse operations and imperil the Debtor’s restructuring efforts, thereby causing immediate and irreparable harm to the Debtor’s estate and parties in interest. Accordingly, the Debtor submits that it has satisfied the “immediate and irreparable” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

43. To implement the foregoing successfully, the Debtor requests that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtor has established cause to exclude such relief from the fourteen (14) day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

44. Nothing contained herein or any actions taken pursuant to such relief requested is intended to or should be construed as (a) an admission as to the validity of any prepetition claim against the Debtor, (b) a waiver of the Debtor’s or any other party in interest’s right to dispute any

¹⁰ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtor’s proposed counsel.

prepetition claim on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (g) a concession by the Debtor that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

Motion Practice

45. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtor submits that this Motion satisfies Local Rule 9013 1(a).

Notice

46. The Debtor will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the twenty (20) largest unsecured claims against the Debtor; (c) counsel to the Ad Hoc Committee; (d) counsel to BGCA; (e) counsel to Rockefeller; (f) the Debtor's insurers that have accepted coverage related to the CVA Claims; (g) the office of the Attorney General for the State of New York; (h) the United States Attorney's Office for the Southern District of New York; (i) the Banks; (j) the Investment Advisors; and (k)

any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Interim Order and Proposed Final Order and grant such other and further relief as may be appropriate.

Dated: June 29, 2022
New York, New York

Respectfully submitted,

/s/ Alan W. Kornberg

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Proposed Counsel to the Debtor and Debtor in Possession

Exhibit A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MADISON SQUARE BOYS & GIRLS CLUB, INC.,¹

Debtor.

Chapter 11

Case No. 22-10910 (____)

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO (A) CONTINUE TO
OPERATE ITS CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN
PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN
EXISTING BUSINESS FORMS, AND (D) MAINTAIN INVESTMENT PRACTICES,
AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of an interim order (this “Interim Order”), (a) authorizing the Debtor to (i) continue to operate its Cash Management System (as defined below); (ii) honor certain prepetition obligations related thereto; (iii) maintain its existing Business Forms; and (iv) continue to maintain its investment practices; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York, dated January 31, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and this Court having found that the Debtor’s notice of the Motion and opportunity for a hearing

¹ The last four digits of the Debtor’s federal tax identification number are 6792. The Debtor’s mailing address is 250 Bradhurst Avenue, New York, New York 10039.

² Capitalized terms used herein that are not defined herein shall have the meaning ascribed to such term in the Motion.

on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein on an interim basis.
2. The final hearing on the Motion shall be held on _____, 2022, at __:__.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion must be filed with the Court on or before _____p.m., prevailing Eastern Time, on _____, 2022.
3. The Debtor is authorized to: (a) maintain its Cash Management System, in substantially the same form as the Cash Management System described in the Motion; (b) open and close Bank Accounts, and close Investment Accounts; provided, however, that the Debtor gives not less than five (5) business days' notice to the U.S. Trustee and any official committees appointed in this chapter 11 case prior to opening or closing a Bank Account or closing an Investment Account; and the opening of any new Bank Account (i) must be at depository that the U.S. Trustee has authorized for cases filed in this district and (ii) must be reported as a new account on the Debtor's monthly operating report; (c) pay any Bank Fees incurred in connection with the Bank Accounts, that arose prior to the Petition Date; and (d) utilize existing Business Forms in accordance with paragraph 8 of this Interim Order.
4. Subject to paragraph 11 of this Interim Order, the Debtor is authorized to continue to use the Bank Accounts and Investment Accounts under existing account numbers without interruption.

5. The Debtor shall maintain accurate records of all transfers within the Cash Management System so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, its books and records, to the same extent by the Debtor before the Petition Date.

6. The Banks are authorized to continue to service and administer the Bank Accounts and, subject to paragraph 11 hereof, the Investment Accounts as debtor-in-possession accounts without interruption, and to receive, process, honor, and pay any and all checks, ACH transfers and other instructions for payment, drafts drawn on or electronic transfer requests made on, the Bank Accounts and Investment Accounts, as applicable, after the Petition Date by the holders or makers thereof or other persons or parties entitled to issue instructions with respect thereto, as the case may be; provided, however, that any check, advice, draft or other notification drawn or issued by the Debtor before the Petition Date may be honored by any bank only if directed by the Debtor. Nothing in this Interim Order shall require any Bank to process, honor, and pay any checks, make ACH transfers or honor other instructions for payment, drafts drawn on or electronic transfer requests made on, the Bank Accounts and Investment Accounts, as applicable, whether in the ordinary course of business or otherwise, when such action requires the Bank to extend credit to the Debtor.

7. All Banks provided with notice of this Interim Order maintaining any of the Bank Accounts shall not honor any checks issued against the Bank Accounts prior to the commencement of this chapter 11 case, except as otherwise authorized by an order of this Court and directed by the Debtor.

8. The Debtor shall not be required to include the legend “Debtor in Possession” and the corresponding bankruptcy case number on existing checks or Business Forms; provided, however, that any new check or business form stock ordered by the Debtor shall contain the

designation “Debtor in Possession”; provided further, that, as of the date hereof, the Debtor will cause any checks and other Business Forms that are generated electronically during this chapter 11 case to contain the designation “Debtor in Possession.”

9. The Banks are authorized to accept and honor all representations from the Debtor regarding which checks, drafts, wires, or ACH transfers should be honored or dishonored consistent with any order of this Court, whether such checks, drafts, wires, or ACH transfers are dated prior to, on, or subsequent to the Petition Date; provided, however, that to the extent the Debtor directs the Banks to dishonor any disbursements or the Banks inadvertently dishonor any disbursements, the Debtor may issue replacement disbursements consistent with the orders of this Court. The Banks shall not be liable to any party on account of: (a) following the Debtor’s instructions or representations as to any order of this Court; (b) honoring any prepetition check or item in a good faith belief that this Court has authorized such prepetition check or item to be honored; or (c) an innocent mistake made despite implementation of reasonable item-handling procedures.

10. Any Bank, without further order of this Court, is (a) authorized to charge, and the Debtor is authorized to pay or honor prepetition service and other fees, costs, charges, and expenses to which the Banks are entitled under the terms and in accordance with their contractual arrangements with the Debtor; and (b) authorized, but not directed, to charge back returned items to the Bank Accounts in the normal course of business.

11. To the extent that the Investment Accounts do not comply with the requirements of the U.S. Trustee Guidelines or sections 345(a) or 345(b) of the Bankruptcy Code, the Debtor shall have a period of forty-five (45) days from the date of this Interim Order to come into compliance therewith or otherwise obtain a waiver from this Court; provided, however, that: (a) upon the

consent of the U.S. Trustee, such initial forty-five (45) period may be extended without further order of the Court; and (b) nothing herein shall (i) preclude the Debtor from seeking a further extension of time to come into compliance or otherwise obtain a waiver for any Investment Account or (ii) prejudice the U.S. Trustee, any committee that the U.S. Trustee may appoint in this case, or any other party in interest from objecting to such request for a waiver or assertion that an Investment Account complies with sections 345(a) and 345(b) of the Bankruptcy Code.

12. Any Banks are further authorized to (a) honor the Debtor's directions with respect to the opening and closing of any Bank Account and the closing of any Investment Account and (b) accept and hold the Debtor's funds in accordance with the Debtor's instructions; provided, in each case, that the Debtor's Banks shall not have any liability to any party for relying on such representations.

13. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtor; (b) a waiver of the Debtor's or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtor that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in

interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

14. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Interim Order.

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

16. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

17. The requirements set forth in Local Rule 9013-1(a) are satisfied.

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

19. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2022

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MADISON SQUARE BOYS & GIRLS CLUB, INC.,¹

Debtor.

Chapter 11

Case No. 22-10910 (___)

**FINAL ORDER (I) AUTHORIZING THE DEBTOR TO (A) CONTINUE TO OPERATE
ITS CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN
PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN
EXISTING BUSINESS FORMS, AND (D) MAINTAIN INVESTMENT PRACTICES,
AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of a final order (this “Final Order”), (a) authorizing the Debtor to (i) continue to operate its Cash Management System (as defined below); (ii) honor certain prepetition obligations related thereto; (iii) maintain its existing Business Forms; and (iv) continue to maintain its investment practices; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other

¹ The last four digits of the Debtor’s federal tax identification number are 6792. The Debtor’s mailing address is 250 Bradhurst Avenue, New York, New York 10039.

² Capitalized terms used herein that are not defined herein shall have the meaning ascribed to such term in the Motion.

parties in interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein on a final basis.
2. The Debtor is authorized to: (a) maintain its Cash Management System, in substantially the same form as the Cash Management System described in the Motion; (b) open and close Bank Accounts, and close Investment Accounts; provided, however, that the Debtor gives not less than five (5) business days' notice to the U.S. Trustee and any official committees appointed in this chapter 11 case prior to opening or closing a Bank Account or closing an Investment Account; and the opening of any new Bank Account (i) must be at depository that the U.S. Trustee has authorized for cases filed in this district and (ii) must be reported as a new account on the Debtor's monthly operating report; (c) pay any Bank Fees incurred in connection with the Bank Accounts, that arose prior to the Petition Date; (d) pay any Investment Advisory Fees incurred in connection with the Investment Accounts, that arose prior to the Petition Date; and (e) utilize existing Business Forms in accordance with paragraph 7 of this Final Order.
3. Subject to paragraph 10 of this Final Order, the Debtor is authorized to continue to use the Bank Accounts and Investment Accounts under existing account numbers without interruption.
4. The Debtor shall maintain accurate records of all transfers within the Cash Management System so that all postpetition transfers and transactions shall be adequately and promptly

documented in, and readily ascertainable from, its books and records, to the same extent by the Debtor before the Petition Date.

5. The Banks are authorized to continue to service and administer the Bank Accounts and, subject to paragraph 10 hereof, the Investment Accounts as debtor-in-possession accounts without interruption, and to receive, process, honor, and pay any and all checks, ACH transfers and other instructions for payment, drafts drawn on or electronic transfer requests made on, the Bank Accounts and Investment Accounts, as applicable, after the Petition Date by the holders or makers thereof or other persons or parties entitled to issue instructions with respect thereto, as the case may be; provided, however, that any check, advice, draft or other notification drawn or issued by the Debtor before the Petition Date may be honored by any bank only if directed by the Debtor. Nothing in this Final Order shall require any Bank to process, honor, and pay any checks, make ACH transfers or honor other instructions for payment, drafts drawn on or electronic transfer requests made on, the Bank Accounts and Investment Accounts, as applicable, whether in the ordinary course of business or otherwise, when such action requires the Bank to extend credit to the Debtor.

6. All Banks provided with notice of this Final Order maintaining any of the Bank Accounts shall not honor any checks issued against the Bank Accounts prior to the commencement of this chapter 11 case, except as otherwise authorized by an order of this Court and directed by the Debtor.

7. The Debtor shall not be required to include the legend “Debtor in Possession” and the corresponding bankruptcy case number on existing checks or Business Forms; provided, however, that any new check or business form stock ordered by the Debtor shall contain the designation “Debtor in Possession”; provided further, that, as of the date hereof, the Debtor will cause any checks and other Business Forms that are generated electronically during this chapter 11 case to contain the designation “Debtor in Possession.”

8. The Banks are authorized to accept and honor all representations from the Debtor regarding which checks, drafts, wires, or ACH transfers should be honored or dishonored consistent with any order of this Court, whether such checks, drafts, wires, or ACH transfers are dated prior to, on, or subsequent to the Petition Date; provided, however, that to the extent the Debtor directs the Banks to dishonor any disbursements or the Banks inadvertently dishonor any disbursements, the Debtor may issue replacement disbursements consistent with the orders of this Court. The Banks shall not be liable to any party on account of: (a) following the Debtor's instructions or representations as to any order of this Court; (b) honoring any prepetition check or item in a good faith belief that this Court has authorized such prepetition check or item to be honored; or (c) an innocent mistake made despite implementation of reasonable item-handling procedures.

9. Any Bank, without further order of this Court, is (a) authorized to charge, and the Debtor is authorized to pay or honor prepetition service and other fees, costs, charges, and expenses to which the Banks are entitled under the terms and in accordance with their contractual arrangements with the Debtor; and (b) authorized, but not directed, to charge back returned items to the Bank Accounts in the normal course of business.

10. To the extent that the Investment Accounts do not comply with the requirements of the U.S. Trustee Guidelines or sections 345(a) or 345(b) of the Bankruptcy Code, the Debtor shall have a period of forty-five (45) days from the date of the Interim Order [Docket No.] to come into compliance therewith or otherwise obtain a waiver from this Court; provided, however, that: (a) upon the consent of the U.S. Trustee, such initial forty-five (45) period may be extended without further order of the Court; and (b) nothing herein shall (i) preclude the Debtor from seeking a further extension of time to come into compliance or otherwise obtain a waiver for any Investment Account or (ii) prejudice the U.S. Trustee, any committee that the U.S. Trustee may appoint in this case, or any other party in interest from objecting to such request for a waiver or

assertion that an Investment Account complies with sections 345(a) and 345(b) of the Bankruptcy Code.

11. Any Banks are further authorized to (a) honor the Debtor's directions with respect to the opening and closing of any Bank Account and the closing of any Investment Account and (b) accept and hold the Debtor's funds in accordance with the Debtor's instructions; provided, in each case, that the Debtor's Banks shall not have any liability to any party for relying on such representations.

12. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtor; (b) a waiver of the Debtor's or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtor that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

14. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

15. The requirements set forth in Local Rule 9013-1(a) are satisfied.

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

17. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2022

UNITED STATES BANKRUPTCY JUDGE

Exhibit C

Schedule of Bank Accounts

Account Name	Bank	Type of Account	Last 4 Digits of Acct. #
General Operating Account	JPMorgan Chase	Cash	9065
Operating Disbursements Account	JPMorgan Chase	Cash	9815
Payroll Account	JPMorgan Chase	Cash	6765
Flexible Spending Account	JPMorgan Chase	Cash	6665
Government Grant Account	JPMorgan Chase	Cash	2792
Government Grant Account	JPMorgan Chase	Cash	0447
Staff Debit Card Account	JPMorgan Chase	Cash	9066
Operating Brokerage (Stock Donations)	JPMorgan Chase	Investment	2009
100th Anniversary Account	Brown Brothers Harriman	Investment	0155
100th Anniversary Account	JPMorgan Chase	Investment	1007
Pooled Scholarship Funds	Fidelity	Investment	7011
Pinkerton Clubhouse Endowment	Sequoia Fund	Investment	8895
Pinkerton Clubhouse Endowment	Brown Brothers Harriman	Investment	3873
Pinkerton Clubhouse Endowment	Ruane Cunniff & Goldfarb	Investment	0932
Niarchos Endowment	Brown Brothers Harriman	Investment	8326
Fleishman/Wright Endowment	Brown Brothers Harriman	Investment	5837
Building Hope Capital Campaign Investment Management Account	JPMorgan Chase	Investment	9006
Building Hope Capital Campaign Savings Account	JPMorgan Chase	Cash/Savings	0009

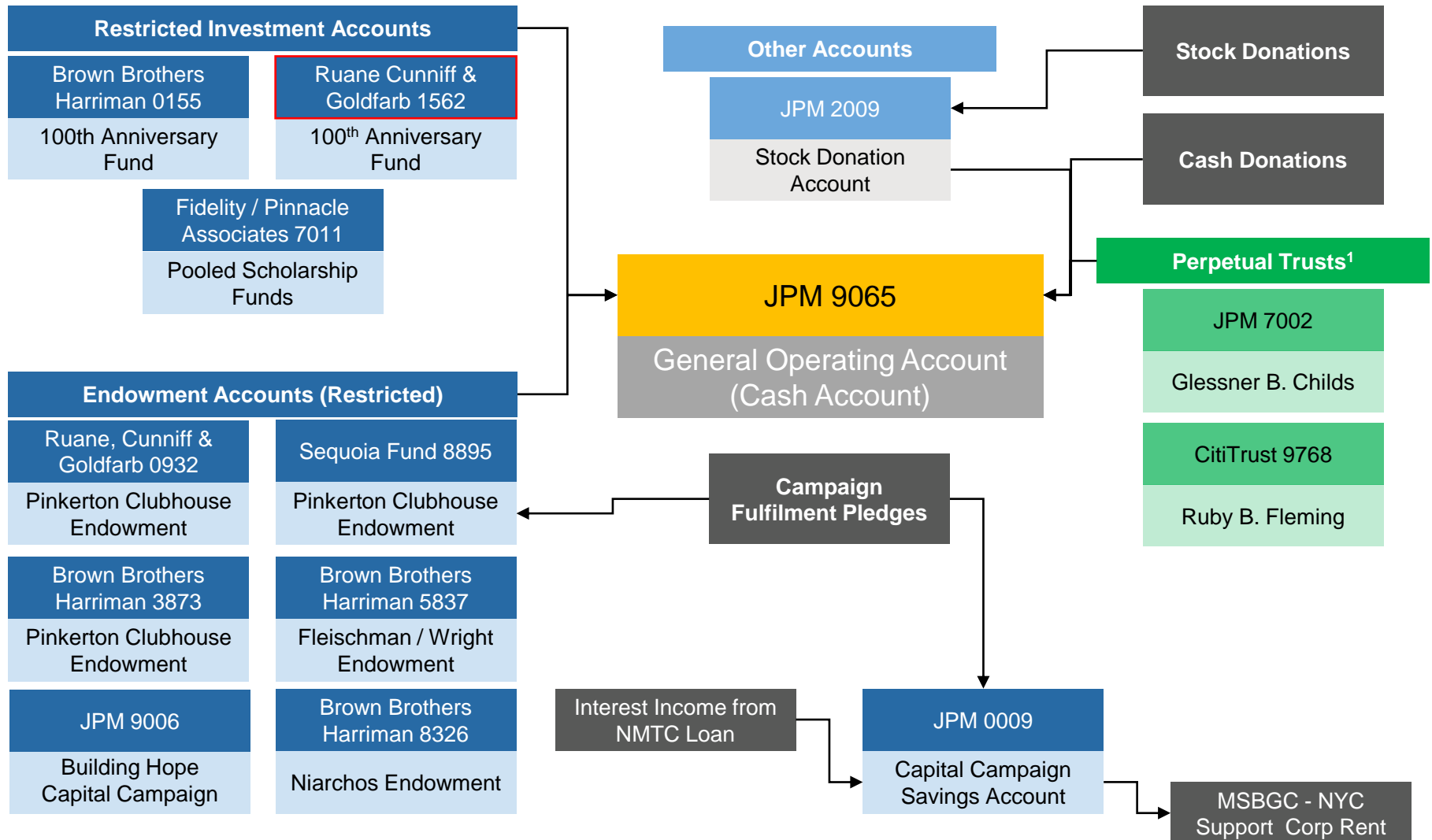
Exhibit D

Cash Management System Flowchart



Investment Accounts

Denotes JPM
Custody Account



1. The Trusts are not held in the Debtor's name and the Debtor has no control over the Trusts. The Trusts are not assets of the Debtor's estate.



Cash Accounts

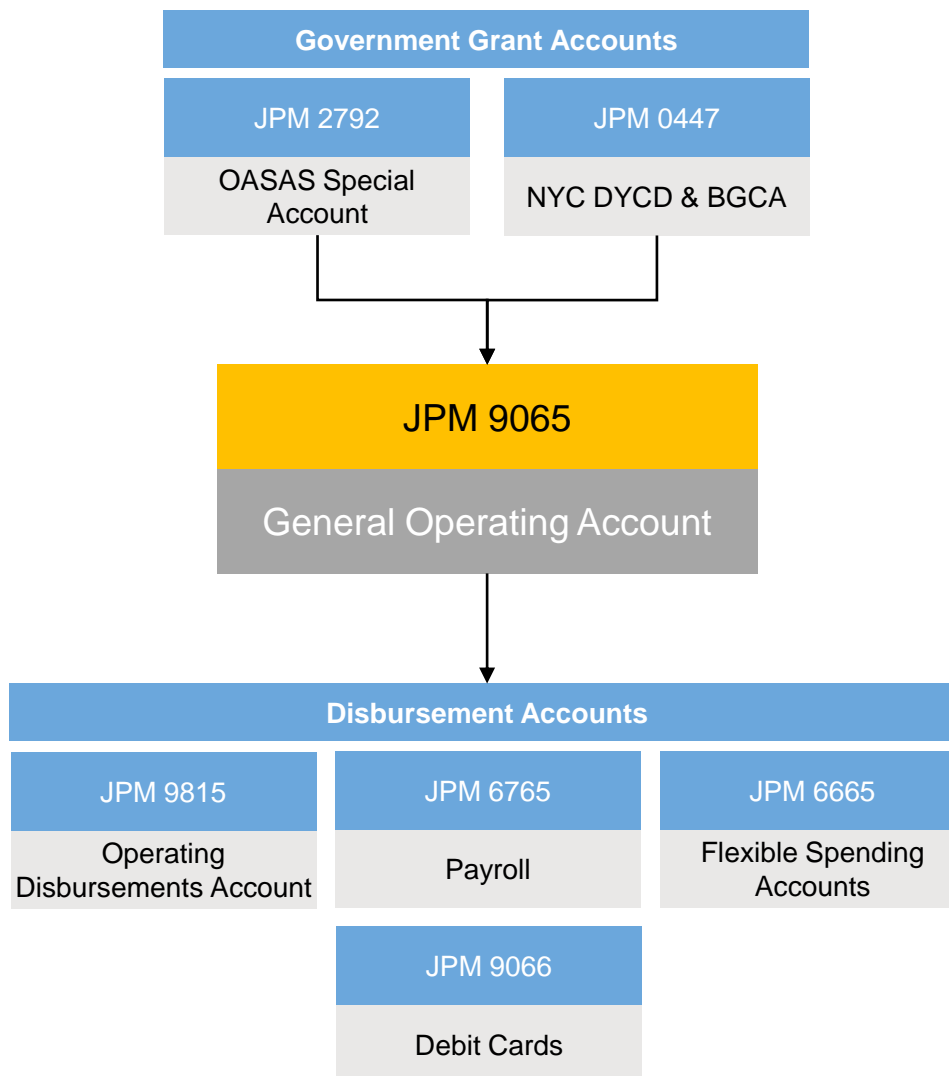


Exhibit E

Investment Policy

Madison Square Boys & Girls Club, Inc.

Investment Policy

September 3, 2021

Introduction

This Policy is intended to be a summary of an investment philosophy and the procedures that provide guidance for Madison, the Board of Directors, Finance/Investment Committee, and Investment Manager(s).

The purpose of this Policy is to:

- Define Madison Square Boys & Girls Club's (Madison) investment objectives.
- Specify standards to be used in the investment and management of Madison's investments.
- Establish the respective responsibilities of the Board of Directors, the Finance/Investment Committee, and Investment Manager(s) with respect to the investment of Madison's assets.
- Describe the investment guidelines for Madison's Investment Manager(s).

The Board of Directors oversees the endowment assets of the Madison Square Boys & Girls Club. The Finance/Investment Committee reports to the Board of Directors, and is accountable to the Board of Directors for meeting its responsibilities and taking appropriate actions in accordance with this policy.

Madison's Investment Portfolio

Madison's investment portfolio (the "Portfolio"), which consists of all the investment assets of Madison is designed to provide long-term financial security to Madison in order to provide continual support of Madison's activities and programs.

Certain assets have restrictions imposed by an outside trustee, as follows:

- The Glessner B. Childs Trust is managed by JP Morgan, as trustee; investment decisions are made by the Trustee.
- The Ruby Fleming Trust is managed by CitiTrust, as trustee; investment decisions are made by the Trustee.

Investment Objectives

Madison's investment objectives are to safeguard its assets and preserve the real purchasing power of its assets while earning investment returns that are commensurate with Madison's risk tolerance and sufficient to meet its operational requirements.

More specifically, Madison's investment objectives include the following:

- **Time Horizon.** Madison intends to invest for the long-term, with the total return on the Portfolio evaluated on a five-year rolling basis. It is recognized that not every five-year period will meet Madison's objectives, but Madison aims to attain its objectives over a series of five-year periods.
- **Preservation of Purchasing Power.** Madison aims to preserve the real purchasing power of its assets over time by seeking returns on its investments that are in excess of the spending rate (described below) and the rate of inflation.
- **Long-Term Growth.** Madison seeks to achieve growth in its assets in excess of inflation by emphasizing long-term investment fundamentals in structuring its investments.
- **Risk Tolerance.** Madison seeks to control risk and reduce the volatility in its Portfolio through diversification. However, short term volatility is characteristic of the securities markets and will be tolerated if such volatility is consistent with the volatility of similar investment portfolios (such as the volatility of performance benchmarks, described below).
- **Liquidity Requirements.** Madison seeks investment returns that will maintain adequate liquidity to meet its annual operational requirements as determined by the Board of Directors.

The Board of Directors will inform the Finance Committee of any anticipated need for additional liquidity as such need becomes known. The Finance Committee will require that the Investment Manager(s) adequately meets all liquidity requirements while managing any impact on the investment portfolio.

Finance/Investment Committee Responsibilities

Madison's Board of Directors has delegated to the Finance/Investment Committee the following responsibilities:

- To manage and invest Madison's Portfolio through the engagement of investment managers with expertise in the variety of investment disciplines and styles required to

meet Madison's portfolio and investment objectives. Engagement of any manager is subject to the approval of the Executive Committee or the Board of Directors.

- To designate an Investment Coordinator from among the Investment Managers to assist the Finance/Investment Committee in carrying out its investment responsibilities.
- To meet periodically to monitor Madison's Portfolio and report its performance to the Board of Directors at least semi-annually.
- To monitor the work of the Investment Coordinator and Investment Manager(s), evaluate their performance, adherence to this policy, and, where appropriate, terminate the Investment Coordinator or Investment Manager(s) subject to the approval of the Board of Directors or Executive Committee.
- To implement this Policy and recommend amendments to the Policy to Board of Directors from time to time.
- To establish in writing Madison's asset allocation, including minimum and maximum allocations for each asset class in the Portfolio, and to modify it from time to time, conducting a review of targets annually. Tactical rebalancing of asset classes within their ranges is permissible to take advantage of near-term market conditions. The asset allocation in effect at the present time is attached to this Policy as Exhibit A.
- To rebalance the portfolio if asset levels reach either the minimum or maximum allocation for any asset class. The Finance/Investment Committee may, in its discretion, forego the rebalancing of the portfolio, if it believes that prevailing market conditions are such that rebalancing at the time would be detrimental to Madison's long term goals for the investment portfolio.
- The Finance/Investment Committee will identify the destination of all significant cash flows into the portfolio, consistent with this Investment Policy.
- When applicable, to ensure compliance with the New York Prudent Management of Institutional Funds act ("NYPMIFA"), which took effect on September 17, 2010. NYPMIFA is New York State's version of the Uniform Prudent Management of Institutional Funds Act ("UPMIFA") which governs the management and investment of funds held by not-for-profit corporations and other institutions. NYPMIFA specifically governs prudent spending of endowment funds, which are funds that are not wholly expendable on a current basis due to donor-imposed restrictions on spending.

Investment Coordinator

The Finance/Investment Committee may designate an Investment Coordinator from among the Investment Managers to assist with asset allocation and holistic review of the investment Portfolio. The Investment Coordinator shall provide guidance in the following areas:

- Making asset allocation recommendations.

- Making rebalancing recommendations.
- Providing detailed monthly account statements related to the holdings for which it is directly responsible.
- Providing integrated reports addressing overall portfolio structure, performance and investment strategy to the Finance/Investment Committee, as they may reasonably request, and as made possible by the provision of information by Investment Managers.
- Providing necessary information and cooperating with Madison's accounting staff in preparing reports as requested.
- Attending meetings in person or by telephone conference, as requested.

Investment Manager(s)

The Finance/Investment Committee will employ one or more Investment Managers based on appropriate criteria including investment philosophy, expertise, historical performance, depth and availability of resources, experience of key personnel, and financial viability.

The Finance/Investment Committee is authorized to delegate investment authority to the Investment Manager(s) consistent with Madison's investment objectives as set forth in this Investment Policy. Managers will have discretion to select investments in accordance with their stated philosophy and investment strategy.

Each Investment Manager is responsible for:

- Adhering to the investment strategy for which the Investment Manager was selected.
- Providing detailed monthly account statements and such other reports on portfolio structure, performance and investment strategy, and expected changes in investments as the Finance/Investment Committee or Board of Trustees may reasonably request.
- Attending meetings in person or by telephone conference with the Finance/Investment Committee and Madison staff, as requested.
- Suggesting performance benchmarks (described below) to facilitate the Investment Committee's evaluation of such Investment Manager's performance.
- Voting all proxies for Madison's securities, to the extent that the Investment Manager is authorized to vote proxies on behalf of Madison.
- Taking reasonable steps to promptly communicate significant changes in the Investment Manager's firm to Madison's Finance/Investment Committee, including changes in high-level personnel; changes in the Investment Manager's ownership; and changes in the Investment Manager's investment strategy and/or style.

- Taking reasonable steps to promptly report to Madison's Finance/Investment Committee any violations of this Policy, any lawsuits, and any findings against the firm or its principals, either by a court, the SEC, or any other regulatory authority

Restrictions on Investment Management

The Finance/Investment Committee reserves the right to place investment restrictions on Investment Managers if it deems that certain types of investments are not consistent with Madison's policies, principles, or long-term objectives.

Donor Restrictions

In all instances, donor intent shall be respected when decisions are rendered concerning the investment or expenditure of donor restricted funds. If a donor, in the gift instrument, has directed that appreciation not be spent, Madison shall comply with that directive and consider it when making decisions regarding the management and investment of the fund. Any attempt to lift restrictions on any fund shall be conducted in full compliance with NYS law.

Spending/Withdrawal Policy

The Board of Directors will approve (typically at its September meeting) an annual spending/withdrawal rate applicable for the upcoming fiscal year (Oct-Sep) which is consistent with Madison's long-term investment objective of preserving the real purchasing power of its assets over time. In order to achieve such long-term real growth, Madison's expenditures should be less than Madison's total inflation-adjusted return on investments over time.

Madison's current spending/withdrawal rate is as follows:

- **Donor Restricted Endowment Funds** – An amount calculated by multiplying the preceding rolling 20 quarter average market value of the Portfolio as of June 30th each year, by a rate ranging from 3-4%. If the fund has not been in existence for at least 20 quarters, then the calculation will be based on the earliest date the fund was fully established. If a donor has specified an alternate spending rate or calculation in a gift instrument, then the donor's intent shall be followed instead.
- **Temporarily Restricted Operating Funds** - An amount calculated by multiplying the preceding rolling 20 quarter average market value of the Portfolio as of June 30th each year, by a rate ranging from 3-7%. If the fund has not been in existence for at least 20 quarters, then the calculation will be based on the earliest date the fund was fully

established. If a donor has specified an alternate spending rate or calculation in a gift instrument, then the donor's intent shall be followed.

- **Unrestricted Investments** - An amount calculated by multiplying the preceding rolling 20 quarter average market value of the Portfolio, by a rate ranging from 3-7%, plus any additional expenditures as approved by the Board of Directors.

The Board of Directors is responsible for amending this spending/withdrawal rate from time to time based on the recommendations of its Finance/Investment Committee and/or Budget Committee.

Performance Benchmarks

Performance benchmarks, such as the S&P 500, are used by the Finance/Investment Committee to properly measure and evaluate the success of the Investment Manager(s). The performance benchmarks selected by the Committee should be representative of Madison's long-term return objectives and risk tolerance and be calculated over the same time period as the returns on Madison's Portfolio with which the performance benchmark is being compared.

The Finance/Investment Committee will also evaluate the overall performance of Madison's Portfolio versus one or more commonly accepted performance benchmarks and, to the extent possible assess the performance against similar public charity endowments.

EXHIBIT A

Total Asset Allocation*

(as of September 2021)

<u>Asset Class</u>	<u>Lower Limit</u>	<u>Upper Limit</u>
Cash	0	50
Fixed Income	0	75
Equity	20	95
Alternatives	0	25

*The above represents the limits on the allocation of the total investment portfolio, including all funds and all investments. Each individual investment manager or separate fund may have a more detailed asset allocation and may have individually different limits within the assets they manage. For example, one manager may solely have a fixed income portfolio, and another may solely manage equities.