

J. Mark Chevallier, State Bar No. 04189170  
James G. Rea, State Bar No. 24051234  
McGUIRE, CRADDOCK & STROTHER, P.C.  
2501 N. Harwood, Ste. 1800  
Dallas, TX 75201  
(214) 954-6800 Telephone  
(214) 954-6850 Facsimile  
Email: [mchevallier@mcslaw.com](mailto:mchevallier@mcslaw.com)  
Email: [jrea@mcslaw.com](mailto:jrea@mcslaw.com)

and

Martin T. Fletcher, MD Bar No. 07608  
Stephen F. Fruin, MD Bar No. 08456  
Thomas J. Francella, Jr., DE Bar No 3835  
WHITEFORD, TAYLOR & PRESTON L.L.P.  
Seven Saint Paul Street  
Baltimore, MD 21202  
(410) 347-8700 Telephone  
(410) 752-7092 Facsimile  
Email: [mfletcher@wtplaw.com](mailto:mfletcher@wtplaw.com)  
Email: [sfruin@wtplaw.com](mailto:sfruin@wtplaw.com)  
Email: [tfrancella@wtplaw.com](mailto:tfrancella@wtplaw.com)

PROPOSED ATTORNEYS FOR MONARCH LANDING, INC.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	<b>CASE NO. 10-34179</b>
	§	
<b>MONARCH LANDING, INC.,</b>	§	<b>CHAPTER 11</b>
	§	<b>(Joint Administration Pending)</b>
<b>Debtor.</b>	§	

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**DEBTOR'S MOTION FOR AN ORDER AUTHORIZING  
DEBTOR TO ESCROW INITIAL ENTRANCE DEPOSITS**

Monarch Landing, Inc., the above-captioned debtor and debtor in possession (the “Debtor” or “Monarch”), by their proposed attorneys, McGuire Craddock & Strother, P.C. and Whiteford, Taylor & Preston L.L.P., moves this Court, pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), for entry of an order authorizing the Debtor to escrow, during the pendency of this chapter 11 case, all

initial entrance deposits (“IEDs”) received postpetition (the “Motion”). In support of the Motion, the Debtor respectfully represents as follows:

**Jurisdiction and Venue**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory basis for the relief requested herein is Bankruptcy Code sections 105 and 363.

**The Debtor’s Chapter 11 Proceeding**

4. On June 15, 2010 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
5. The Debtor intends to continue in the possession of its property and the management of its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
6. No creditors committee has been appointed in this case by the United States Trustee.

**Related Chapter 11 Proceeding**

7. Contemporaneous with the filing of the Debtor’s case, Naperville Campus, LLC (“Naperville”), filed a petition for relief under Chapter 11 of the Bankruptcy Code in this Court (Case No. 10-34177). The Debtor leases its principal Facility (defined infra) from Naperville and has various financial as well as contractual relationships with Naperville.

8. Approximately nine (9) months prior to the Petition Date, Naperville's parent corporation, Senior Living Retirement Communities, LLC, formerly known as Erickson Retirement Communities, LLC ("Senior Living"), and certain other of its related entities<sup>1</sup> filed for bankruptcy in this Court (Main Case No. 09-37010). Senior Living developed and managed the Facility for the Debtor. Senior Living's Chapter 11 Plan was confirmed on April 16, 2010 ("Senior Living's Plan"). Senior Living and its related entities cases are still pending before this Court.

### **The Debtor and Its Business Operations**

9. The Debtor was established on August 10, 2004, as a Maryland nonstock corporation to operate a continuing care retirement community in Naperville, Illinois (the "Facility"), which opened in July, 2006. The Debtor is classified as an Internal Revenue Code Section 501(c)(3) organization based on its mission to provide affordable senior housing to seniors. The Debtor is a supported organization of National Senior Campuses, Inc. ("NSC"), a not-for-profit organization organized to support the Debtor and 16 other not-for-profit organizations that operate Continuing Care Retirement Communities ("CCRCs"). NSC is the sole member of the Debtor and appoints all of the members of the Debtor's board of directors.

10. The Facility and NSC's other CCRCs are designed to offer seniors a continuum of care during their retirement years from independent living to skilled

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<sup>1</sup> The Debtors in Senior Living's chapter 11 cases are: (i) Erickson Retirement Communities, LLC; (ii) Ashburn Campus, LLC; (iii) Columbus Campus, LLC; (iv) Concord Campus GP, LLC; (v) Concord Campus, LP; (vi) Dallas Campus GP, LLC; (vii) Dallas Campus, LP; (viii) Erickson Construction, LLC; (ix) Erickson Group, LLC; (x) Houston Campus, LP; (xi) Kansas Campus, LLC; (xii) Littleton Campus, LLC; (xiii) Novi Campus, LLC; (xiv) Senior Campus Services, LLC; (xv) Warminster Campus GP, LLC; and (xvi) Warminster Campus, LP.

nursing care on the same campus. These facilities provide affordable living accommodations and related healthcare and support services to a target market of middle-income seniors aged sixty-two (62) years and older.

11. Senior Living was the developer of the Facility. Senior Living and its affiliates are not related to or affiliated with the Debtor or NSC. The Debtor has entered into a master lease agreement and certain other agreements with Naperville. In addition, the Debtor and Senior Living have entered into a management and marketing agreement (the "Management Agreement"), pursuant to which Senior Living it to manage the community. As of April 30, 2010, pursuant to a transitional subcontract agreement, Senior Living subcontracted its right and obligations under the Management Agreement to Erickson Living Management, LLC ("ELM"), which is presently managing the Debtor's Facility (the "Transitional Subcontract Agreement"). In return for its management services, the Debtor pays ELM a monthly management fee, per the Management Agreement. The Debtor also reimburses ELM for the costs of: (a) marketing the re-occupancy of the units at the Facility; (b) the salary and benefits of the Debtor's employees and ELM's management personnel located at the Facility, and (c) the Debtor's share of certain other centralized services.

12. As of the Petition Date, the Facility had 362 completed independent living units and a seventy one percent (71%) occupancy rate. It was originally anticipated that the Facility would include up to 1,498 independent living units, 96 assisted living units and 132 skilled nursing beds.

13. The Debtor's capital structure consists of permanent financing in the form of project bonds and special tax district bonds. The Debtor's receipts from its operations

are not sufficient to cover its debt service and operating expenses, and the Facility is having difficulty attracting the middle market customer to which it is supposed to appeal. There is significant competition in the greater Chicago area, which has caused the Facility's occupancy rate to increase at a rate which is lower than expected. Moreover, the Chicago metropolitan area's employment rates and home prices have declined more than in other markets, thereby causing the Debtor to have problems selling units as well as causing significant liquidity and capital structure difficulties.

#### **Events Leading to Chapter 11 Filing**

14. As mentioned previously, the Debtor leases the Facility from Naperville (which Senior Living owns, directly or indirectly) pursuant to a master lease.

15. Under the terms of Senior Living's Plan, Wells Fargo Bank, N.A., the bond trustee for the Facility (the "Bond Trustee"), was to negotiate in good faith with the Debtor and Redwood-ERC Senior Living Holdings, LLC, a Maryland limited liability company ("Redwood"), regarding the possible sale of the Facility to Redwood during the 90-day period following the confirmation of the Plan (i.e. from April 16, 2010 through July 15, 2010) (the "Negotiation Period").<sup>2</sup> Although the Bond Trustee had an obligation

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<sup>2</sup> Section 6.2.3.1 of ERC's Plan provides:

***Disposition.*** During the 90-day period immediately following the Plan Confirmation Date, Redwood will negotiate (non-exclusively) in good faith with the applicable NFPs and Bond Trustees for the Bond Communities to reach a resolution regarding such Bond Communities. During such 90-day period, the applicable NFP, with the consent of the applicable Bond Trustee, may market the applicable Bond Community for sale with the consent of the applicable Bond Trustee and letter of credit provider, may consummate such sale. At the conclusion of the 90-day period, if the parties have reached a resolution with respect to a particular Bond Community then the Debtor will facilitate a definitive agreement regarding such a resolution for such Bond Community. If Redwood does not reach an agreement with respect to resolution of a particular Bond Community during this 90-day period that is acceptable to Redwood, the applicable NFP, the letter of credit provider and the applicable Bond Trustee, then promptly at the end of such 90-day period, ERC's interests in the entity related to such Bond Community (Naperville Campus, LLC, Linconshire Campus, LLC and/or Hingham Campus, LLC, as applicable will be transferred to the applicable NFP.

to negotiate in good faith during the Negotiation Period, approximately two weeks ago, the Bond Trustee inappropriately effectuated a set-off against the Debtor's cash reserves in the amount of \$15,166,737.69. The Bond Trustee's actions threatened to destabilize the Debtor's operations and, as a result of such actions, the Debtor filed this Chapter 11 proceeding to stop the Bond Trustee from causing further damage to its operations and, thereby, threatening the well being of its residents.

### **Initial Entrance Deposit Obligations**

16. The Debtor enters into a residence and care agreement (the "Residence and Care Agreement") with each individual resident entering the Facility, pursuant to which the Debtor collects entrance deposits ("EDs") and monthly fees from each resident. Pursuant to the Residence and Care Agreement, each resident places an entrance deposit on a unit when they move in. The ED is initially held in escrow until the resident takes occupancy. Once released from escrow, if the ED is an IED it is transferred to the Bond Trustee for disbursement pursuant to the Trust Indenture.

17. When a resident ceases to reside at the Facility, if the ED, paid by a subsequent resident for that unit, is the same or greater than the ED paid by the departing resident, then the departing resident's ED will be 100% refunded. If the next ED is less than the departing resident's ED, then the departing resident will generally opt to receive the lesser amount. In any event, the Debtor does not participate in the downside risk in this transaction and, in most cases, realizes an increase.<sup>3</sup>

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<sup>3</sup> As an example, if an ED on a unit was \$270,000 and a new ED of \$300,000 is received, the \$30,000 difference remains in the Debtors' accounts (and the \$270,000 is returned to the departing resident once the unit has been reoccupied, subject to payment of outstanding accounts). If an ED on a unit was \$270,000 and a new entrance deposit of \$250,000 is received, then the departing resident has the option to accept the \$250,000 or to keep the unit on the market. To date, every departing resident of the Debtor has received 100% of their deposit back upon receipt of the new ED when paid in cash except if certain unrelated

### **The Debtor's Interest in the IEDs**

18. To fund the Debtor's working capital deficits, Naperville provides a working capital loan ("Working Capital Loan"). To secure its obligations under the Working Capital Loan, the Debtor granted Naperville a security interest in all assets of such NFP, including the Residence and Care Agreements and the IEDs.

19. Construction of the Facility was initially financed by a construction loan to Naperville. The construction loan was paid in full by Naperville with the purchase option deposit of \$162,000,000 paid by the Debtor, which deposit was financed by the issuance and sale of \$178,754,000 in bonds by the Illinois Finance Authority (the "Authority").

20. Once released from escrow, the IEDs are transferred to the Bond Trustee for disbursement to various reserves pursuant to the Trust Indenture. One of the reserves is the Operating Reserve, from which the Debtor receives funds to pay operating expenses to the extent monthly fees are deficient.

### **Relief Requested**

21. The Debtor seeks an order (i) authorizing the Debtor to amend the Residences and Care Agreements with an addendum providing that residents shall be entitled to refunds of their respective IEDs, to the extent deposited in an escrow account (the "Escrow Account"), during the pendency of this case if they elect to leave the Facility, (ii) requiring the designated escrow agent (the "Escrow Agent") to return IEDs in the Escrow Account to the respective residents who had made such payments should any transaction involving a Debtor occur that results in a closure of the Facility (a

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charges are applied to the deposit or unless the departing resident chose to accept less than 100% of the deposit.

“Closure Event”), and (iii) requiring the Escrow Agent to pay over such IEDs held in the Escrow Account pursuant to such further order of the Court, upon the earlier of (a) a disposition of the assets of the Debtor (through sale, transfer of equity interests or otherwise) (other than a Closure Event) or (b) confirmation of a plan of reorganization (each, a “Trigger Event”). The relief requested by the Debtor in this motion relates solely to postpetition IED’s. Prepetition IEDs and EDs are not impacted by the relief sought herein.

### **Basis for Relief**

22. The Debtor anticipates a substantial decrease in the amount of IEDs received from new residents during its bankruptcy. The Debtor is hopeful the relief sought in this Motion will provide new residents with comfort that during the time periods covered in this motion, the new residents can elect to leave the Facility and receive a refund of their IED. The Debtor believes that these modifications are critical to obtaining new IEDs pending confirmation of a plan in these cases.

23. A resident’s ability to elect to leave their respective CCRC is necessary to provide prospective residents with the peace of mind that, during the pendency of the Debtor’s chapter 11 case, the residents are not held captive by their obligations under the Residence and Care Agreements. The current requirement that a new resident pay an IED prior to the refund of an exiting resident’s IED will necessarily deter prospective residents from entering into Residence and Care Agreements while the Debtor’s case is pending. Allowing the residents to have a free look at whether or not the Facility is operating effectively while this case is pending should drastically increase the willingness of potential residents to pay an IED. Because IEDs are critical to the Debtor’s



operations, the provision regarding return of the IEDs should be amended to encourage prospective residents to reside at the Facility.

24. Equally important to a residents' peace of mind is the knowledge that should the Facility close, their IED would be promptly refunded. Should a Closure Event happen, it is imperative that the residents have access to their IEDs. The IEDs are relatively large sums of money paid by each individual resident and would likely be necessary for the resident to secure alternative housing upon a Closure Event. If prospective residents were not certain that their IEDs would be returned upon a Closure Event, it would discourage such prospective residents from choosing to reside at the Facility

25. The placement of the IEDs in escrow during the pendency of these cases is necessary to protect residents' interests in the IED, however, upon a Trigger Event (a disposition of the assets of the Debtor or confirmation of a plan of reorganization), such protection will no longer be necessary because the Debtor will no longer be a chapter 11 debtor. Such funds should instead be used to satisfy the Debtor's obligations pursuant to the Bond Indenture. Accordingly, upon the occurrence of a Trigger Event, the escrowed IEDs shall be disbursed by the Escrow Agent pursuant to further order of the Court.

26. This motion provides a practical manner in which to protect the interests of residents in the IEDs during the pendency of this case and provide for the proper transfer of the IEDs upon a Trigger Event. The relief requested is reasonable under the circumstances and will maximize the value of the estate by not discouraging prospective residents from choosing to live at the Facility and thereby paying an IED.

**Notice**

27. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) the Debtor's 20 largest unsecured creditors on a consolidated basis (until an official committee of unsecured creditors is appointed and has retained counsel, in which event, such committee's counsel); (c) counsel to the bondholders; (d) counsel to Senior Living Retirement Communities, LLC; (e) counsel to Erickson Living Management, LLC; (f) Wells Fargo Bank, N.A., as issuing party of the letter of credit; and (g) those persons who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice is necessary or required.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**Conclusion**

WHEREFORE, the Debtor respectfully requests entry of an order of this Court substantially in the form annexed hereto as Exhibit A, granting the relief requested by this Motion and such other and further relief as may be just and proper.

Dated: June 18, 2010  
Dallas, Texas

Respectfully Submitted,

MCGUIRE, CRADDOCK & STROTHER, P.C.

By: /s/ J. Mark Chevallier  
J. Mark Chevallier, Texas Bar No.04189170  
James G. Rea, Texas Bar No. 24051234  
2501 N. Harwood, Ste. 1800  
Dallas, TX 75201  
(214) 954-6800 Telephone  
(214) 954-6850 Facsimile  
Email: [mchevallier@mcsllaw.com](mailto:mchevallier@mcsllaw.com)  
Email: [jrea@mcsllaw.com](mailto:jrea@mcsllaw.com)

and

Martin T. Fletcher, MD Bar No. 07608  
Stephen F. Fruin, MD Bar No. 08456  
Thomas J. Francella, Jr., DE Bar. No. 03835  
Whiteford Taylor & Preston L.L.P.  
Seven Saint Paul Street  
Baltimore, MD 21202  
(410) 347-8700 Telephone  
(410) 752-7092 Facsimile  
Email: [mfletcher@wtplaw.com](mailto:mfletcher@wtplaw.com)  
Email: [sfruin@wtplaw.com](mailto:sfruin@wtplaw.com)  
Email: [tfrancella@wtplaw.com](mailto:tfrancella@wtplaw.com)

Proposed Attorneys for Monarch Landing, Inc.

**CERTIFICATE OF SERVICE**

I certify that on the 18<sup>th</sup> day of June, 2010, a copy of the foregoing was sent by electronic mail or First Class U.S. Mail, postage prepaid, on all parties on the attached service list.

/s/J. Mark Chevallier \_\_\_\_\_

Allen, Jeff  
5141 Virginia Ave., Ste 460  
Brentwood, TN 37027

APCO Worldwide Washington DC  
700 12th Street, NW Suite 800  
Washington, DC 20005

Emerald Restaurant Service Inc.  
201 Airport Drive  
Joliet, IL 60431

FCA, Inc.  
2852 West Ogden Ave.  
Naperville, IL 60540

Floor Installation Techs Inc.  
1273 Marks Ct.  
Naperville, IL 60565

Get Fresh Produce  
1441 Brewer Creek Blvd.  
Bartlett, IL 60103

Grainger  
Dept. 865530927  
Palatine, IL 60038-0001

Grieshaber, Mark  
8711 Beverly Lane  
Orlando Park, IL 60462

Gulf South Medical Supply  
Attn: Melanie Brewer  
4345 South Point Blvd.  
Jacksonville, FL 32216

Healthcare Cosmetology Services, In  
PO Box 850243  
Braintree, MA 02185

Imbert Intl Inc.  
Dept 20-1084  
PO Box 5940  
Carol Stream, IL 60197-5940

Inside Out Painting  
1125 Paramount Parkway, Suite G  
Batavia, IL 60510

Lencioni Wholesale Meats, Inc  
1000 Brown Street  
Wauconda, IL 60084

Mickey's Linen  
PO Box 5789  
Villa Park, IL 60181

Richard H. Moche [Email]  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
1 Financial Center  
Boston, MA 02111-2657

S3 Integration  
1550 Caton Center Drive, Suite F  
Baltimore, MD 21227

Skyline Restoration, Inc.  
5435 W. 110th St., Suite 7  
Oak Lawn, IL 60453

Supreme Lobster  
200 E. North Avenue  
Villa Park, IL 60181-1221

Sysco Food Services - Chicago  
PO Box 5037  
Des Plaines, IL 60017-5037

Waste Management  
PO Box 4648  
Carol Stream, IL 60197-4648

Wells Fargo Bank, National Assoc.  
Attn: Lorna Gleason [Email]  
625 Marquette Ave. 11th Fl.  
Minneapolis, MN 55479

William W. Kannel [Email]  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
1 Financial Center  
Boston, MA 02111-2657

Wm. F. Meyer Co.  
PO Box 37  
Aurora, IL 60507

Monarch Landing, Inc.  
701 Maiden Choice Lane  
Baltimore, MD 21228

Office of the U. S. Trustee [ECFmail]  
1100 Commerce Street Rm 976  
Dallas, TX 75242

Office of the Attorney General  
c/o Cara Smith, Esq. [Email]  
100 West Randolph St.  
Chicago, IL 60601

Illinois Department of Public Health  
c/o Marc Gibbs [Email]  
535 W. Jefferson St.  
Springfield, IL 62761

Vincent P. Slusher  
DLA Piper LLP (US)  
1717 Main Street, Suite 4600  
Dallas, Texas 75201

Thomas R. Califano/Jeremy R. Johnson  
DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020-1104

Fifth Third Bank As Agent  
424 Church St., Suite 500  
Nashville, TN 37219

**Exhibit A**  
**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§ <b>CASE NO. 10-34179</b>
<b>MONARCH LANDING, INC.,</b>	§
<b>Debtor.</b>	§ <b>CHAPTER 11</b>
	§ <b>(Joint Administration Pending)</b>
	§

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**ORDER AUTHORIZING DEBTORS  
TO ESCROW INITIAL ENTRANCE DEPOSITS**

Upon the Debtor's Motion For an Order Authorizing Debtor to Escrow Initial Entrance Deposits, dated June 17, 2010 (the "IED Motion") and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and due and proper notice of the Motion having been provided to the necessary parties; and it appearing that no other or further notice need be provided; and hearings

having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearings; and upon the record of the Hearings and all of the proceedings had before the Court; and the Court having determined that the relief sought in the Motions is in the best interests of the Debtor, its creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motions establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is hereby:

**ORDERED** that the Motions are GRANTED as provided for herein; it is further

**ORDERED** that capitalized terms not defined herein shall have those meanings prescribed in the Motion; it is further

**ORDERED** that all capitalized terms not defined herein shall have the meaning ascribed to them in the Motions; it is further

**ORDERED** that the Debtor is authorized to escrow all postpetition IEDs (defined supra) transferred to the Debtor, which for the avoidance of doubt include all payments from residents associated with postpetition Initial Entrance Deposits, including "P-Notes" or postpetition flex pay arrangements (collectively, the "IEDs"), until the occurrence of a Trigger Event or Closure Event (as such terms are defined herein) as set forth herein; it is further

**ORDERED** that the Debtor in this proceeding shall designate an independent escrow agent (the "Escrow Agent"), no later than three (3) days after the entry of this Order, to receive and hold in trust the IEDs received from the residents of the Facility into an escrow account (the "Escrow Account"), pursuant to this Order. The Escrow Agent shall be any bank that is authorized to do business in Illinois, if required by



applicable state law, and that is a member of the Federal Deposit Insurance Corporation;  
it is further

**ORDERED** that the Debtor, the Bond Trustee, and the Escrow Agent shall execute a mutually agreeable escrow agreement no later than seven (7) days after the entry of this Order in compliance with the terms of the Order; it is further

**ORDERED** that on each date that a particular IED is available for release to the Bond Trustee as provided under the Trust Indenture, such IED will be delivered to the Escrow Agent forthwith to be deposited into the Escrow Account; it is further

**ORDERED** that the Debtor will provide to the Bond Trustee an accounting of the IEDs deposited into the Escrow Account every two weeks, including the name of the Resident from whom the IED was collected, the building and unit number to which the IED pertains, and the amount of such IED; it is further

**ORDERED**, the following transfers shall occur upon the earlier of (i) a disposition of substantially all of the assets of the Debtor (through sale or otherwise) (other than a Closure Event, as defined below) or (ii) confirmation of a plan of reorganization (each, a "Trigger Event"), the escrowed IEDs shall be disbursed by the Escrow Agent pursuant to further order of the Court; it is further

**ORDERED** that should any transaction involving the Debtor occur that results in a closure of the Facility (a "Closure Event"), the IEDs in the Escrow Account shall be returned by the Escrow Agent to the respective residents who had made such payments without further order of this Court; it is further

**ORDERED** that residents shall be entitled to refunds of their respective IEDs, to the extent deposited in the Escrow Account, during the pendency of this case if they elect

to leave the Facility and comply with all the requirements set forth in their Residence and Care Agreement, including the addendum providing for such refund, without the necessity of a new resident occupying the departing resident's unit.

**### End of Order ###**

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