

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@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 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 SEDGEBROOK, INC.

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

<b>In re:</b>	§	<b>CASE NO. 10-34178-SGJ</b>
	§	
<b>SEDGEBROOK, INC.,</b>	§	<b>CHAPTER 11</b>
	§	<b>(Joint Administration Pending)</b>
<b>Debtor.</b>	§	

---

**DEBTOR'S MOTION FOR AUTHORIZATION TO PAY CERTAIN PREPETITION:  
(i) WAGES, SALARIES AND OTHER COMPENSATION; (ii) EMPLOYEE  
MEDICAL AND SIMILAR BENEFITS; AND (iii) OTHER MISCELLANEOUS  
EMPLOYEE EXPENSES AND BENEFITS**

Sedgebrook, Inc., debtor and debtor in possession in the above-captioned case (the "Debtor" or "Sedgebrook"), files this Motion for Authorization to Pay Certain Prepetition: (i) Wages, Salaries and Other Compensation; (ii) Employee Medical and Similar Benefits; and (iii) Other Miscellaneous Employee Expenses and Benefits (the "Motion"), and states as follows:

### **Jurisdiction**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. The relief sought with this Motion is predicated upon sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et. seq.* (the “Bankruptcy Code”).

### **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, Lincolnshire Campus, LLC (“Lincolnshire”), filed a petition for relief under Chapter 11 of the Bankruptcy Code in this Court [Case No. 10-34176 (SGJ)]. The Debtor leases its principal Facility (defined supra) from Lincolnshire and has various financial as well as contractual relationships with Lincolnshire.
8. Approximately nine (9) months prior to the Petition Date, Lincolnshire’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 July 18, 2003, as a Maryland nonstock corporation to operate a continuing care retirement community in Lincolnshire, Illinois (the “Facility”), which opened in July, 2005. The Debtor is classified as a 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 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.

---

<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.

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 Lincolnshire. 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. Other than through the various agreements associated with the development, construction, funding of the Facility, Senior Living and its affiliates are not affiliated with the Debtor or NSC. The Debtor contracts with Erickson Living Management, LLC to provide for the management of its community.

13. The Debtor leases the Facility from Lincolnshire (which Senior Living owns, directly or indirectly), pursuant to a master lease. The Debtor enters into a residence and care agreement (the “Residence and Care Agreement”) with each individual resident entering a community, pursuant to which the Debtor collects an initial entrance deposit (“IEDs”) and monthly fees from each resident. As of the Petition Date, the Facility had (i) 469 completed independent living units, 402 residents, and a percent (85.7%) occupancy rate; (ii) 44 completed

assisted living units, 10 residents, and a percent (21.7%) occupancy rate; and (iii) 44 completed skilled nursing units, 22 residents, and a percent (49.7%) occupancy rate. It was originally anticipated that the Debtor's facilities would include up to 1,392 independent living units, 96 assisted living units and 132 skilled nursing beds.

14. The Debtor's capital structure consists of permanent financing in the form of project bonds and special tax district bonds. The Debtor has very low operating margins compared to the cost of the Facility's programs and staffing. In addition, construction costs of the Facility have been much higher than similar costs for other CCRCs. Further, there is significant competition for the targeted residents in the greater Chicago area, which has caused the Facility's occupancy rate to increase at a lower rate than projected. 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**

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

16. Under the terms of Senior Living's Plan, the Bond Trustees<sup>2</sup> (as defined in the Plan) were 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 as well as two other related facilities, Monarch Landing, Inc. ("Monarch") and Linden Ponds, Inc. to Redwood during the 90-day period following the confirmation of Senior

---

<sup>2</sup> The trustee for the Debtor's bonds is US Bank National Association (the "Bond Trustee").

Living's Plan (i.e. from April 30, 2010 through July 31, 2010) (the "Negotiation Period").<sup>3</sup> Although the Bond Trustees had an obligation to negotiate in good faith during the Negotiation Period, approximately two (2) weeks ago, the bond trustee for Monarch, inappropriately effectuated a set-off against the Monarch's cash reserves in the amount of \$15,166,737.69. The action of Monarch's bond trustee has threatened to destabilize Monarch's operations. As a number of the Debtor's bond owners are the same as Monarch's and they both are represented by the same counsel, the Debtor filed this chapter 11 proceeding to stop its Bond Trustee from making a similar offset against Sedgebrook's cash reserves thereby causing severe damage to its operations and threatening the well being of its residents.

17. Additionally, beginning in December of 2009, the Bond Trustees began removing amounts held in escrow for the benefit of the Debtors in order to pay their professional fees. In doing so, the Bond Trustees did not follow the requisite procedures for removing such funds as proscribed in the bond documents, primarily the submission of bills and request of payment from Sedgebrook or Monarch Landing. Moreover, the Bond Trustees neglected to provide notice of their removal of the funds to either Sedgebrook or Monarch Landing. To date, the Bond

---

<sup>3</sup> Section 6.2.3.1 of Senior Living'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 Debtors 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.

Trustees have removed \$835,136 from the Sedgebrook reserve account, and \$792,562 from the Monarch Landing reserve account. The actions of the Bond Trustee have threatened to destabilize Monarch's operations by severely limiting liquidity and endangering its residents. The Debtors filed these chapter 11 proceedings to protect their assets and to stop the Bond Trustee from causing further damage to their operations and threatening the well being of their residents.

### **Relief Requested**

16. By this Motion, the Debtor seeks authority pursuant to Bankruptcy Code sections 105(a) and 363(b) to pay certain prepetition obligations of the Debtor, including, but not limited to, (i) amounts owed to its employees (the "Employees") for wages, salaries, bonuses and other compensation, (ii) reimbursement of employee business expenses incurred in the ordinary course, such as travel, lodging and parking expenses, (iii) maintenance of employee health benefits, 403(b), and other similar benefits, and (iv) other miscellaneous employee expenses and benefits (collectively, the "Prepetition Obligations").

17. The Debtor seeks authority to honor the Prepetition Obligations because payment of these obligations is critical and essential to the morale of the Employees and the Debtor's future business needs. If the Prepetition Obligations are not honored in the ordinary course, the morale of Employees would suffer, which would adversely impact the Debtor's business. Failure to honor the Prepetition Obligations could also cause Employees to endure personal hardship. This result would impair Employee morale and lead to unmanageable Employee turnover. Indeed, the Debtor will be unable to sustain operations and effectuate a successful reorganization without the ongoing good will of its Employees.

18. Consequently, the Debtor seeks to continue paying Prepetition Obligations (as set forth below) in the ordinary course and to direct the banks at which the Debtor maintains employee-related accounts to receive, process, honor and pay all payroll and employee benefit-related checks, drafts, wires, or automated clearing house transfers, provided sufficient funds are available to honor all such payments, without regard to when the applicable payroll check was issued.<sup>4</sup>

### **Prepetition Obligations**

#### **A. Employees' Unpaid Wages, Salaries, Bonuses and Other Compensation**

##### **i. The Debtor's Payroll Obligations**

17. The Debtor seeks an order authorizing the Debtor to honor all of its outstanding prepetition payroll obligations. In the ordinary course of business, the Debtor pays its Employees one week in arrears every two weeks. The most recent payroll for Employees was paid on June 14, 2010 for processing on June 18, 2010 and covered Employee compensation for all Employees for the period ending June 12, 2010. The Debtor utilizes the payroll-processing services of Automatic Data Processing ("ADP")<sup>5</sup> to issue payroll checks to Employees. In the ordinary course of business, the Debtor provides the funds necessary to meet their payroll obligations two to four business days in advance of the pay date. The Debtor's next scheduled payroll date is July 2, 2010, such

---

<sup>4</sup> Contemporaneously with this Motion, the Debtor is filing a motion seeking an order authorizing, among other relief, the continued maintenance of its bank accounts (the "Cash Management Motion"). To implement fully the relief sought herein, the Debtor, by the Cash Management Motion, seeks to authorize the banks at which its employee-related accounts are maintained to continue to honor checks drawn on such accounts.

<sup>5</sup> To the extent obligations for payment for such services or any portion of the next payment due may be characterized as a prepetition obligation, the Debtor seeks authority to pay such amounts to avoid disruption of services provided to its Employees.



payroll will be for the period ending June 26, 2010. As a result of adhering to this payroll process the debtor will be required to fund a payroll with approximately 3 days of pre-petition obligations owed to employees.

18. In sum, the Debtor estimates that approximately \$338,940.80 in unpaid salary, wages and other compensation is owing to its Employees as of the next pay date of which \$72,630 is pre-petition. Given the critical role of the Employees in the Debtor's business operations, the Debtor seeks authority to honor its salary, wage and bonus obligations by paying, in the ordinary course, any prepetition amounts owed to the Employees for services within 180 days of the Petition Date. The Debtor believes there will not be any Employees that will be owed more than the \$10,950 priority limit on account of prepetition salaries or wages under Bankruptcy Code section 507(a)(4).

**B. Employees' Reimbursable Business Expenses**

19. Prior to the Petition Date and in the ordinary course of business, the Debtor reimbursed Employees for certain business expenses incurred in the scope of their employment, including, without limitation, expenses for business travel, such as for mileage, lodging and parking (collectively, the "Reimbursable Expenses"). All of the Reimbursable Expenses were incurred on the Debtor's behalf in connection with employment by the Debtor and in reliance upon the understanding that such expenses would be reimbursed.

20. The Debtor estimates that, as of the Petition Date, the total amount owed by the Debtor for Reimbursable Expenses is approximately \$15,000. Accordingly, the Debtor seeks authority to honor the Debtor's Reimbursable Expenses obligations by paying, in the ordinary course, any prepetition Reimbursable Expenses owed to its Employees.

**C. Employee Benefits**

21. In the ordinary course of the Debtor's business, and as is customary for most companies, the Debtor provides its Employees with various benefits (collectively, the "Employee Benefits Programs"). The Debtor seeks authority to pay and/or honor its unpaid Prepetition Obligations under the Employee Benefits Programs that arose from services rendered within 180 days before the Petition Date (the "Prepetition Benefits"). The Employee Benefits Programs and corresponding unpaid Prepetition Benefits are described below:

Health Insurance (Medical, Prescription, Dental, and Vision)

22. The Debtor provides its Employees with medical and dental and vision insurance through third-party providers.

23. The Debtor offers medical and vision insurance to most of the Employees through a self-funded plan provided by Care First of Maryland. A portion of the premiums are paid by the Employees. The total claims, premium/medical and prescription payments for insurance payable by the Debtor under the medical plan is approximately \$140,000 per month on average, but may fluctuate significantly in any given month.

24. The Debtor provides dental insurance to most of its Employees through a plan provided by MetLife. A portion of the premiums are paid by the Employees. The total premium for insurance payable by the Debtor under the dental plan is approximately \$4,877 per month on average, but may fluctuate significantly in any given month.

25. The Debtor seeks authority to pay, in the ordinary course of business, any unpaid premiums, deductibles, and prepetition claims relating to the foregoing medical, dental,

and vision insurance that arose from services rendered within 180 days prior to the Petition Date (the "Prepetition Health Benefits").

Life, AD&D, Long Term Disability Insurance

26. The Debtor provides basic life and long term disability insurance to regular full- time Employees. A portion of the life insurance premium is paid by the Employee. The total premium paid for this insurance is approximately \$106 per month on average, but may fluctuate significantly in any given month.

28 The Debtor seeks authority to pay, in the ordinary course of business, any outstanding unpaid premiums, deductibles, and prepetition claim payments relating to life and long term disability insurance that arose before the Petition Date (the "Prepetition Life & Disability Benefits").

403(b) Plan

29 The Debtor maintains a 403(b) retirement savings plan for its Salaried Employees (the "403(b) Plan") which is administered by Lincoln Financial. All Salaried Employees are eligible to participate in the 403(b) Plan after ninety (90) days of employment with the Debtor.

30. Typically, the Debtor withholds each participating employee's contribution for each respective pay period and pays that contribution into the 403(b) Plan within fourteen days. The employee contributions for the month of May 2010 have already been paid over to the plan administrator. Accordingly, the Debtor respectfully requests that it be authorized to pay over accrued 403(b) withholdings as they are due in the ordinary course.

**D. Workers' Compensation**

31. The Debtor maintains premium-based workers' compensation insurance plans (the "Workers Compensation Obligations"), with combined claim payments and premiums of approximately \$30,000 monthly.

32. The Debtor seeks authority to continue to pay, in the ordinary course of business, any of the outstanding unpaid premiums, deductibles, and prepetition claims relating to the Workers Compensation Obligations that arose before the Petition Date.

**E. Payroll Taxes and Other Withheld Amounts**

33. The Debtor deducts flex spending amounts and 403(b) deductions and other miscellaneous amounts from its Employees' paychecks (collectively, the "Employee Deductions"). The Employee Deductions comprise property of the Debtor's Employees and are forwarded by the Debtor to appropriate third-party recipients at varying times.

34. The Debtor is required by law to withhold from an Employee's wages amounts related to federal, state and local income taxes, social security and Medicare taxes, garnishments, child support payments, etc (together with the Employee Deductions, the "Payroll Taxes") and remit the same to the appropriate taxing authorities (collectively, the "Taxing Authorities"). The Debtor's Payroll Taxes, including both the Employee and the employer portion, for a typical payroll total approximately \$85,000. It is likely that funds have been deducted from Employee wages but have not yet been forwarded to the appropriate third-party recipients. Accordingly, the Debtor seeks authority to pay and/or remit to the applicable Taxing Authorities up to \$85,000 in Payroll Taxes attributable to the period before the Petition Date. Absent such authority, the Debtor exposes its officers and

directors to personal liability, which could be highly disruptive to the Debtor's reorganization efforts.

**F. Paid Vacation or "Personal-Time-Off" Policy**

35. The Debtor offers paid vacation or "personal time off" ("PTO") to eligible Employees. The rate at which Employees earn PTO varies per pay period by the position of the individual employee. They may carry over up to one-and-a-half times their individual maximum allotment of PTO hours each year. All of the Debtor's PTO policies are referred to collectively as the "PTO Policy."

36. The Debtor estimates that the accrued, outstanding amount of unused time under the PTO Policy, if it were payable in cash, is approximately \$228,000 as of the Petition Date. The Debtor seeks authorization, in its sole discretion, for the Debtor to continue honoring the PTO Policy and to continue its practice of making cash payments for unused PTO that has accrued prepetition where deemed to be justified by individual employee circumstances. In addition, the Debtor seeks authorization, in its sole discretion, for the Debtor to make cash payments for unused PTO that has accrued postpetition upon the termination of an Employee to the extent that the Debtor would have done under the PTO Policy before the Petition Date.

**G. Administrative Service Providers**

37. The Debtor utilizes certain third-party providers to administer employee benefit plans and payroll services (the "Administrative Service Providers"). The continued support of the Administrative Service Providers is crucial to the Debtor's ability to maintain accurate and meaningful books and records, including, but not limited to, books and records reflecting the Debtor's employee benefit and payroll obligations. The Debtor

estimates that the average monthly cost of these services is approximately \$123. To the extent that any such amounts remain unpaid or may be characterized as Prepetition Obligations, the Debtor seeks to be authorized, but not directed, to pay such amounts.

#### H. **Miscellaneous Employee-Related Obligations**

38. The Debtor may determine that there are additional de minimus Prepetition Obligations, which have not been identified in the Motion. Consequently, the Debtor requests authority to pay any such additional obligations up to an aggregate amount of \$10,000 upon five (5) business days' prior written notice 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 Erickson Retirement Communities, LLC; (e) counsel to Erickson Living Management, LLC; (f) Sovereign Bank, 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 setting forth the nature and amount of the additional obligation sought to be paid. If an objection is interposed within such five-day period, and such objection is not resolved consensually, the Debtor will seek authority from this Court to make such payment. The Debtor also reserves the right to seek authority from the Court to pay any obligations in excess of the above-referenced limit.

#### **Basis For Relief**

39. Bankruptcy Code sections 105(a) and 363(b) and the "necessity of payment" doctrine provide the basis for the relief requested in this Motion. Section 363(b)(1) of the Bankruptcy Code provides that "the trustee, after notice and a hearing,

may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

40. In addition, Bankruptcy Code section 105(a) grants bankruptcy courts broad authority to enter "any order, process or judgment that is necessary or appropriate" to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). Accordingly, the Debtor submits that this Court is authorized to grant the relief requested herein.

41. Courts have recognized the applicability of the "necessity of payment" doctrine with respect to the payment of prepetition employee compensation and benefits. See, e.g., In re CoServ, L.L.C., 273 B.R. 487, 494 (Bankr. N.D. Tex. 2002) (noting that "wage claims typically are payable out of necessity as well as by virtue of their priority"): Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 285-86 (S.D.N.Y. 1987), appeal dismissed 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

42. Furthermore, Bankruptcy Code section 507(a) provides that the Prepetition Obligations, subject to certain conditions, are afforded priority distribution up to \$10,950. See 11 U.S.C. §§ 507(a)(4), 507(a)(5). In addition, section 507(a)(4) and 507(a)(5) priority claims are entitled to payment in full under a chapter 11 plan of reorganization. See 11 U.S.C. § 1129(a)(9)(B). Thus, because the Debtor's Employees may be entitled to a priority distribution for prepetition amounts owed, the relief requested in this Motion should primarily affect the timing of payment of employee claims rather than their treatment for distribution purposes, and should neither prejudice general unsecured creditors nor materially affect the Debtor's estate.

43. Bankruptcy Rule 6003 was amended in December 2007 to set limits on the relief that may be granted by a bankruptcy court during the initial stage of a bankruptcy case. Bankruptcy Rule 6003 provides, in pertinent part, that:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003(b) (emphasis added).

44. Application of Bankruptcy Code sections 105(a) and 363(b)(1) and the "necessity of payment" doctrine are warranted here. Additionally, the Debtor satisfies the "immediate and irreparable harm" standard set forth in Bankruptcy Rule 6003. Absent prompt payment of amounts owed in connection with the Prepetition Obligations, it is likely that Employee morale and support will be impaired, the Debtor's business will be immediately and irreparably harmed, and the reorganization of the Debtor will be impossible.

45. The Debtor's inability to pay its outstanding Prepetition Obligations will cause employees to endure significant stress, hardship and suffering. The effect of this disruption in Employee morale will likely have negative effect on all aspects of the Debtor's business operations. Many Employees live from paycheck to paycheck and rely exclusively on receiving their full compensation to pay their daily living expenses. Furthermore, many Employees rely on their Employee benefits, such as health insurance reimbursement, without which they would be forced to pay for or go without insurance coverage for themselves and their families. As a result, these Employees will be exposed to significant financial and



health-related problems if the Debtor is not permitted to honor their unpaid Prepetition Obligations.

46. In addition, amounts withheld by the Debtor from Employees' paychecks represent, in many cases, employee earnings specifically designated by employees or, in the case of garnishments, by judicial authorities, to be deducted from Employee paychecks and paid accordingly. The failure to make these payments will result in hardship to certain Employees. The Debtor expects to be inundated with a multitude of inquiries from garnishors and other designated recipients regarding the Debtor's failure to submit, among other things, taxes, child support and alimony payments which are not the Debtor's property, but rather have been withheld from Employee paychecks. Moreover, the Debtor is unable to remit certain of these amounts, the Employees could face legal action and/or imprisonment.

47. The Debtor's Employees are an essential component of a successful reorganization. Any deterioration in Employee morale and welfare at this critical time undoubtedly would have a devastating impact on the Debtor, the value of its assets and businesses, and ultimately, the Debtor's ability to reorganize. Accordingly, the relief sought herein is in the best interests of the Debtor's estate and creditors, and will allow the Debtor to continue to operate its business with minimal disruption and proceed with the important task of stabilizing its operations.

48. In other chapter 11 cases, courts in this district and other jurisdictions have approved payment of prepetition claims for compensation, benefits, and expense reimbursements similar to those described herein. See e.g., In re Tusa-Expo Holdings, Inc., et al., Case No. 08- 45057 (DML) (Bankr. N.D. Tex. Nov. 7, 2008); In re Home Interiors &

Gifts, Inc., Case No. 08-31961 (BJH) (Bankr. N.D. Tex. May 2, 2008); In re Manchester, Inc., et al., Case No. 08- 30703(BJH) (Bankr. N.D. Tex. Mar. 7, 2008); In re Steve & Barry's Manhattan LLC, et al., Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 10, 2008); In re Fortunoff Fine Jewelry and Silverware, LLC, Case No. 08-10353 (JMP) (Bankr. S.D.N.Y. Feb. 29, 2008); Charvs Holding Co., Inc., Case No. 08-10289 (BLS) (Bankr. D. Del. Feb. 15, 2008).

### **Notice**

49. 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) Sovereign Bank, 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.

**Conclusion**

**WHEREFORE**, the Debtor respectfully requests entry of the order attached hereto, and such other and further relief as this Court may deem 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 \_\_\_\_\_

Alpha Baking Company  
36230 Treasury Center  
Chicago, IL 60694

Architerra  
239 US Hwy 45  
Indian Creek, IL 60061

Becker Electrical Group Inc.  
4210 43rd Avenue  
Kenosha, WI 53144

Direct Supply Systems Inc.  
PO Box 88201  
Milwaukee, WI 53288-0201

Get Fresh Produce  
1441 Brewer Creek Blvd  
Bartlett, IL 60103

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

Healthcare Cosmetology Services Inc  
PO Box 850243  
Braintree, MA 02185

Hershey Creamery Company  
301 S. Cameron Street  
PO Box 1821  
Harrisburg, PA 17105-1821

IKON Financial Services  
Attn Donna Tanner Spec Assets Dept  
PO Box 6338  
Macon, GA 31208-6338

Koeckritz International, Inc.  
1400 Hicks Road  
Rolling Meadows, IL 60008

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

Linda Roberts & Associates Inc.  
104 East Roosevelt Rd. Suite 201  
Wheaton, IL 60187

Phase 2 Services  
143 Briarwood North  
Oak Brook, IL 60523

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

Sovereign Bank  
Attn Brian Moran  
3 Friends Lane, 2nd Floor  
Newtown, PA 18940

Sun Office Products  
15508 E. 19th Avenue  
Aurora, CO 80011

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

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

Universal Fleetcard  
PO Box 70997  
Charlotte, NC 28272-0997

U.S. Bank National Association  
Corporate Trust Services **[Email]**  
Attn James E. Murphy  
100 Wall Street  
NY, NY 10005

Vigil Health Solutions  
2102-4464 Markham St.  
Victoria, BC V8Z 7X8  
Canada

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

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

Sedgebrook, Inc.  
701 Maiden Choice Lane  
Baltimore, MD 21228

Office of the U. S. Trustee **[ECF mail]**  
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

Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Catonsville, MD 21228

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

Wells Fargo, Trustee  
9062 Old Annapolis Road  
Columbia, MD 21045

## **Proposed Order**

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

<b>In re:</b>	§	<b>CASE NO. 10-34178-SGJ</b>
	§	
<b>SEDGEBROOK, INC.,</b>	§	<b>CHAPTER 11</b>
	§	<b>(Joint Administration Pending)</b>
<b>Debtor.</b>	§	

---

**ORDER AUTHORIZING DEBTOR TO PAY CERTAIN PREPETITION:  
(i) WAGES, SALARIES AND OTHER COMPENSATION; (ii) EMPLOYEE  
MEDICAL AND SIMILAR BENEFITS; AND (iii) OTHER MISCELLANEOUS  
EMPLOYEE EXPENSES AND BENEFITS**

Upon the Debtor’s Motion for Authorization to Pay Certain Prepetition: (i) Wages, Salaries and Other Compensation; (ii) Employee Medical and Similar Benefits; and (iii) Other Miscellaneous Employee Expenses and Benefits for an Order Authorizing Debtors To Escrow Initial Entrance Deposits, dated June 18, 2010 (the “Motion”), and all as more fully set forth in the 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 a hearing 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 Hearing; and upon the record of the Hearing and all of the proceedings had before the Court; and no objections having been received; and the Court having determined that the relief sought in the Motion 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 Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is hereby:

**ORDERED** that the Motion is **GRANTED**.

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