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PROPOSED ATTORNEYS FOR SEDGEBROOK, INC.

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

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

AFFIDAVIT OF PAUL RUNDELL IN SUPPORT OF FIRST DAY MOTIONS

State of Illinois)
) ss.
County of Cook)

1. I am the Chief Restructuring Officer of Senior Living Retirement Communities, LLC, f/k/a Erickson Retirement Communities, LLC, which is the sole member of Naperville Campus, LLC and Lincolnshire Campus, LLC, both of which have filed for protection under Chapter 11 of the Bankruptcy Code. I am also a consultant to the above-captioned Debtor

pursuant to the Management Agreement between the above-captioned Debtor and Senior Living Retirement Communities, LLC.

2. I am also a Managing Director of Alvarez and Marsal in its Healthcare Industry Group in New York, New York. I have more than thirteen (13) years of experience, specializing in interim management, with a focus on cash management and financial analysis. I have provided cash management, financial support, crisis management, turnaround consulting, business strategy and planning, market analysis and operational improvement services to clients, and I have advised unsecured and secured creditors and debtors both in and out of court.

3. In my capacity as Chief Restructuring Officer of Senior Living Retirement Communities, LLC, I have personal knowledge of, and am familiar with, the business affairs, day-to-day operations, books and records, and financial condition of the Debtor, and I am authorized to submit this Affidavit on behalf of the Debtor.

4. On June 15, 2010 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas – Dallas Division (the "Bankruptcy Court").

5. The Debtor remains in possession of its assets and continues to manage its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. No trustee, examiner, or committee has been appointed in this case.

7. The Debtor has filed the following motions and applications (collectively, the "First Day Motions"):

- (a) Motion for Order Directing Joint Administration of the Debtors' Chapter 11 Cases;
- (b) Debtor's Motion to Extend Time to File Schedules and Statements of Financial Affairs;

- (c) Debtor's Emergency Motion To Approve Interim And Final Orders (I) Authorizing The Use Of Cash Collateral (II) Granting Adequate Protection To Secured Creditors And (III) Scheduling Final Hearing;
- (d) 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;
- (e) Debtor's Motion for Entry of Interim and Final Orders: (i) Prohibiting Utility Companies From Altering, Refusing or Discontinuing Service to the Debtor; (ii) Deeming the Utility Companies Adequately Assured of Future Performance by the Debtor; (iii) Authorizing the Debtor to pay the Utilities a one Month Deposit; and (iv) Establishing Procedures for Determining Requests to the Debtor for Additional Adequate Assurance;
- (f) Debtor's Motion for an Order Pursuant to Sections 345, 363(c)(1), 364(a) and 503(b)(1): (i) Approving the Continued Use of its Cash Management System, Bank Accounts and Business Forms; (ii) Granting Approval of Investment Guidelines; and (iii) Authorizing Banks to Honor Certain Transfers and Charge Certain Fees and Other Amounts;
- (g) Debtor's Motion for an Order Pursuant to 11 U.S.C. § 105(a) and Bankruptcy Rule 2002 Establishing Notice Procedures;
- (h) Debtor's Motion for an Order Authorizing Debtors to Escrow Initial Entrance Deposits.

8. I am submitting this Affidavit in support of the Debtor's First Day Motions. Capitalized terms not defined in this Affidavit shall have the meanings ascribed to the term in the relevant First Day Motion. Except as otherwise indicated, all facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents, my opinion based upon my experience and knowledge of the Debtor's operations and financial condition, and information provided to me by management or other representatives of the Debtor. If I were called upon to testify, I would testify consistent with the facts set forth in this Affidavit.

9. This Affidavit provides an overview of the Debtor and the circumstances leading to the commencement of this chapter 11 case. Part I provides an overview of the Debtor's

operations. Part II recounts the events preceding the bankruptcy filing. Part III affirms and incorporates facts that support the First Day Motions.

I. Overview of the Debtor's Operations

10. 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 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 which supports the Debtor and 16 other not-for-profit organizations that operate retirement communities. NSC is the sole member of the Debtor and appoints all of the members of the Debtor's board.

11. The Debtor's community and the other Continuing Care Retirement Communities ("CCRCs") supported by NSC are designed to offer seniors a full lifecycle of services 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.

12. Senior Living Retirement Communities LLC, formerly known as Erickson Retirement Communities, LLC ("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 leases the Facility from Lincolnshire Campus, LLC ("Lincolnshire") (which Senior Living owns, directly or indirectly), pursuant to a master lease.

13. 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, 409 residents, and a percent 87% occupancy rate; (ii) 44 assisted living units; and (iii) 44 skilled nursing beds. 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 (Lincolnshire is primarily liable for the special tax district bonds). The Debtor has very low operating margins compared to the cost of the program and staffing. In addition, construction costs of the Facility have been much higher than other CCRCs. Further, there is significant competition in the greater Chicago area, which, together with that area’s higher unemployment rate and declining home prices, has caused the Facility’s occupancy rate to increase at a rate lower than originally forecast, thereby causing the Debtor to have problems selling units as well as significant liquidity and capital structure difficulties.

15. As mentioned above, the Debtor’s facility is classified as a CCRC. CCRCs offer seniors a full lifecycle of services during their retirement years from independent living to skilled nursing care on the same campus. This type of facility provides affordable living accommodations and related healthcare and support services to a target market of middle-income seniors aged sixty-two (62) years and older.

16. Unlike limited purpose senior living facilities that specialize in providing care for a particular set of healthcare needs, CCRCs do not require seniors to relocate as their needs change. Rather, the CCRCs enable seniors to remain in the same place as they age and their needs change by providing various levels of support and care at the same facility. In addition,

the CCRCs provide the residents with multiple entertainment outlets and other social benefits for all stages of their retirement living.

17. Upon completion, CCRCs are akin to small college campuses with multiple interconnected buildings which typically include several on-site dining rooms, an on-site medical center, on and off-campus transportation, on-site classes, fully-staffed fitness centers, card rooms, game rooms, an indoor aquatics center for exercise and recreation, an auditorium, an in-house television studio run by the residents, a library, full-service branch banks, beauty salons, convenience stores, and other amenities. The CCRCs are often five (5) times larger than alternative facilities, thereby providing residents with more amenities, offerings, and feeling of community.

18. The Debtor raises cash from several sources—initial entrance deposits (“IEDs”) (explained below), monthly fees and municipal bond offerings. 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 IEDs and monthly fees from each resident. The Debtor also raised capital through a municipal bond offering as a result of its 501(c)(3) status. The municipal bond offering is explained in more detail below.

i. IEDs

19. Pursuant to the Residence and Care Agreement, each resident pays an IED on a unit when they move in when they are the first resident to occupy a particular unit. When a resident moves out or dies, if the unit’s new resident pays an entry deposit (ED) that is the same or greater than the entry deposit paid by the departing resident then the departing resident’s entry deposit will be 100% refunded and the Debtor will keep the difference between the new entry deposit from the sale of the unit and the departing resident’s deposit. If the new entry deposit is

less than the departing resident's entry deposit, then the departing resident will receive the lesser amount. In this regard, the Debtor does not participate in the downside risk in this transaction.

20. As an example, the entry deposit on a unit was \$270,000 and a new entry deposit of \$300,000 is received, the Debtor keeps the \$30,000 difference for campus enhancements or improvements (and the \$270,000 is returned to the departing resident once the unit has been re-occupied, subject to payment of outstanding accounts). If an entry deposit on a unit was \$270,000 and a new entry deposit of \$250,000 is received, then the \$250,000 is returned to the departing resident. Generally the departing resident or his or her descendants must agree to sell the unit at the lower price prior to the Debtor making such a sale.

ii. The Lifecycle of a CCRC

21. The Debtor's Facility is being developed by Senior Living in three (3) phases over a period of approximately seven (7) to ten (10) years.

22. It was originally anticipated that the Debtor's facility would be comprised of three (3) residential neighborhoods. Each neighborhood is designed to have one community building (the approximate cost of the community building is \$15 million), four (4) to five (5) residential buildings, each with 80-120 independent living units (the average cost of one residential building is \$21 million), and a care center with approximately 96 assisted living units and 132 skilled nursing units (the average cost of one care center is \$13 million).

23. The Debtor leases the land and the campus from Lincolnshire, pursuant to an amended and restated master lease and use agreement dated as of August 1, 2007 (the "Master Lease"). The Master Lease is a twenty-year, triple net lease, requiring the Debtor to pay all ongoing maintenance expenses (e.g. utilities, taxes, and insurance), with three (3) ten-year renewal options.

24. In addition, the Debtor and Senior Living have entered into a management and marketing agreement (the "Management Agreement"), pursuant to which Senior Living agreed 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.

25. The Management Agreement expires on July 29, 2010, subject to extension as provided in the Transitional Subcontract Agreement.

26. The Debtor enters into a Residence and Care Agreement with each of its residents prior to their occupancy of the units. Pursuant to the Residence and Care Agreement, each resident of a unit is required to pay an entry deposit before occupying the unit (as explained above). If that resident is the initial occupant of a unit, after the Debtor collects the initial entrance deposit from that resident, it transfers that deposit to the Bond Trustee (defined supra) pursuant to a Trust Indenture.

27. The Debtor and Lincolnshire have entered into a working capital loan ("Working Capital Loan"), pursuant to which Lincolnshire would loan the Debtor the funds necessary to cover operating deficiencies of the Debtor. The agreement provides for borrowing up to \$15 million until the exercise of the purchase option (described in greater detail below) and \$10 million thereafter at an annual interest rate of prime plus 1%. Repayment of the Working Capital

Loan is due no later than the date that is the later to occur of (i) two years following the date on which the Debtor acquires fee simple title to the Facility, (ii) the first Remaining Liquidity Testing Date on which the Liquidity Ratio Covenant is tested and on which the Debtor is in compliance with the Liquidity Ratio Covenant without including in Days' Cash on Hand amounts available to be borrowed under the Amended and Restated Working Capital Loan Agreement dated as of August 1, 2007 (the "Working Capital Loan Agreement"), and (iii) three years following Final Completion of the Facility (all capitalized terms having the meanings set forth in the Working Capital Loan Agreement). In return for this loan the Debtor granted Lincolnshire a security interest in all assets of the Debtor, including the Residence and Care Agreements and the IEDs, which Lincolnshire has assigned to the Bond Trustee.

28. The Debtor has secured financing through municipal bond offerings. On August 17, 2007, the Illinois Finance Authority issued Revenue Bonds, Series 2007 (Sedgebrook, Inc. Facility), in the aggregate principal amount of \$137,145,000 (the "Project Bonds"). The issuance was comprised of Series 2007A and Series 2007B Tax-Exempt Bonds. Interest on the Series 2007A bonds is payable semi-annually on November 15th and May 15th each year, commencing November 15, 2007. Interest on the Series 2007B Bonds is payable monthly commencing September 1, 2007. The Series 2007A Bonds consist of \$98,145,000 of tax-exempt fixed rate term bonds with a final maturity date in 2042. The Series 2007B Bonds consist of \$39,000,000 of tax-exempt variable rate demand bonds with a final maturity date in 2042.

29. A Debt Service Reserve Fund was established from the proceeds of the Project Bonds in the amount of \$9,089,985 which represents the maximum annual debt service on the outstanding Series 2007 Bonds. The Series 2007A bonds have a stated interest rate of 5%. The

average annual interest rate for the Series 2007B bonds was 2.22% and 3.45% as of December 31, 2008 and 2007, respectively.

30. An irrevocable transferable direct-pay letter of credit was issued by Sovereign in the initial stated amount of \$39,500,000 (the "Letter of Credit"). Of this amount, \$37,894,387.08 supports the face value of the Series 2007B bonds. The Letter of Credit expires on December 27, 2012.

31. On December 1, 2007, the Debtor entered into a purchase option agreement ("Purchase Option") with Lincolnshire. The Purchase Option provides the Debtor with the option to purchase either Lincolnshire directly or the land and buildings owned by Lincolnshire at the completion of the development of the campus. The Debtor has placed a refundable, non-interest bearing deposit of \$125,000,000 with Lincolnshire. In exchange, the Debtor has been granted an option to purchase the Facility at a price of the lower of (i) 75% of the going-concern value based on a third-party appraisal, plus forgiveness of the Community Loan, or (ii) the Purchase Option Deposit. Even after the sale of a community is complete, Senior Living remains the manager of the community, pursuant to the Management Agreement. The Purchase Option may be exercised upon the earlier of either the completion of the Facility or June 1, 2016.

32. Until the sale of the campus has closed, Senior Living is a limited guarantor of the Project Bonds, in that if the Debtor defaults on the Project Bonds or decides not to purchase the Facility, Senior Living is required to repay the Purchase Option Deposit, plus all transaction costs for issuance of the Project Bonds and early redemption costs, which is then used to repay the bondholders.

II. Events Leading to Bankruptcy

33. The senior housing market has been hindered over the last few years by a weakened credit environment, including limited access to capital, falling real estate values, and

significantly reduced liquidity due to realized and unrealized losses on investments. New senior housing units under construction have significantly declined since 2004. New units under construction in 2008 totaled 15,862, compared to 20,775 units in 2007, a twenty-four percent (24%) decline.

34. Senior living facilities have experienced substantial declines in occupancy as a result of the market changes. Prospective residents are faced with (i) difficulty selling their homes due to uncertainty in value and (ii) significant declines in their equity portfolio value. This has made it difficult, if not impossible, for seniors to move into or remain in senior housing facilities such as the Debtor's.

35. These market conditions have contributed to decreased revenue and lower than anticipated absorption rates at the Debtor's Facility. In addition, the Debtor's Facility is not yet mature and, as a result, it is not cash flow positive at this point in time.

36. As mentioned previously, the Debtor leases the Facility from Lincolnshire (which Senior Living owns, directly or indirectly) pursuant to the Master Lease.

37. Under the terms of Senior Living's Plan (the "Plan"), the Bond Trustees¹ (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 Living's Plan (i.e. from April 16, 2010 through July 15, 2010) (the

¹ The trustee for the Debtor's bonds is US Bank National Association (the "Bond Trustee").

“Negotiation Period”).² 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 \$15,166,737.69 set-off against Monarch’s cash reserves. The actions of Monarch’s Bond Trustee 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.

38. 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 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

² 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.

destabilize Sedgebrook'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.

III. Facts in Support of First Day Motions

39. The Debtor has filed the First Day Motions. The Debtor requests that each of the First Day Motions described below be granted, as they constitute a critical element in ensuring the Debtor's successful reorganization in this chapter 11 case.

A. Motion for Order Directing Joint Administration of the Debtors' Chapter 11 Cases (the "Joint Administration Motion")

40. By the Joint Administration Motion, the Debtor (as well as related debtors Monarch Landing, Inc. (Case No. 10-34179), Lincolnshire Campus, LLC (Case No. 10-34176) and Naperville Campus, LLC (Case No. 10- 34177) (collectively, the "Debtors") seeks an order consolidating, for procedural purposes only, the administration of its chapter 11 proceeding with those of its related the Debtors' chapter 11 cases with debtor Lincolnshire as the lead debtor, pursuant to Bankruptcy Rule 1015. In addition, the Debtor requests that the Clerk make an entry on the docket of each of the Debtors' cases, other than the Lincolnshire case, stating that an order has been entered directing joint administration of the chapter 11 cases and that all further pleadings and other papers shall be filed in and all further docket entries shall be made in the Lincolnshire docket.

41. The Debtors are all related entities and are filing petitions in the same court. I believe that joint administration will be less costly and burdensome than the separate administration of the estates due to the combined docket and combined notice to creditors and parties in interest. Many applications, motions, orders, hearings and notices will be made in these cases that will affect all of the Debtors. Joint administration will keep all parties informed of matters

related to these cases without the inconvenience and confusion of reviewing separate dockets.

42. In addition, as the Debtors are only seeking administrative consolidation by this motion, rather than substantive consolidation, I do not believe creditors' interests will be harmed.

43. I believe that if each Debtors' case were administered independently, there would be a number of duplicative pleadings and overlapping service. This unnecessary duplication of identical documents would be wasteful of the Debtors' resources, as well as other parties' and this Court's resources.

44. Therefore, I believe that the Debtors' chapter 11 cases should be jointly administered for procedural purposes only.

B. Motion to Extend Time to File Schedules and Statements of Financial Affairs (the "Motion for Extension of Time for Filing Schedules and SOFA")

45. By the Motion for Extension of Time for Filing Schedules and SOFA, the Debtor seeks an order extending its time for filing the Schedules and Statements of Financial Affairs ("SOFAs") for an additional 30 days (for a total of 45 days).

46. As a result of the nature of the Debtor's chapter 11 filing, the Debtor has not yet commenced preparation of its schedules and statements, and I do not believe that the fifteen-day automatic extension of time to file its Schedules and SOFAs will be sufficient to permit completion of the Schedules and SOFAs.

47. At this juncture, I believe that an extension of 30 days (for a total of 45 days) should provide enough time to prepare and file the Schedules and SOFAs.

C. Debtor's Emergency Motion To Approve Interim And Final Orders (I) Authorizing The Use Of Cash Collateral (II) Granting Adequate Protection To Secured Creditors And (III) Scheduling Final Hearing (the "Cash Collateral Motion")

48. By the Cash Collateral Motion, the Debtor seeks Court authority to use the Cash Collateral (defined below) in the Operating Accounts (defined below) according to the budget attached to the Cash Collateral Motion.

49. In the ordinary course of business, the Debtor requires cash on hand and cash flow from its operations to fund its working capital and liquidity needs, satisfy payroll obligations, and pay other routine payables.

50. The Debtor's cash is currently on deposit in numerous accounts, on which cash the Secured Creditors claim a lien (the "Cash Collateral"). A portion of these funds are in accounts not controlled by the Secured Creditors (the "Operating Accounts"). Any liens asserted by the Secured Creditors on the Operating Accounts are not perfected and, thus, subject to avoidance pursuant to Chapter 5 of the Bankruptcy Code. As of June 15, 2010, the amount available for use by the Debtor in the Operating Accounts is approximately \$7,000,000. The Debtor also has an "Escrow Funds" account. The Escrow Funds are amounts that are maintained in a separate account as a reserve required under applicable Illinois law. The amount of cash on deposit related to the Escrow Funds as of June 14, 2010 is approximately \$2,897,000.

51. In addition to the Operating Accounts and the Escrow Funds are the following limited use reserve accounts established pursuant to the Trust Indenture that may be subject to the control of the Bond Trustees:

- a. Development Funds. The amount of cash on deposit related to the Development Funds as of June 14, 2010 is approximately \$1,429,000.
- b. Debt Service Reserve Funds. The amount of cash on deposit related to the DSR Funds as of June 14, 2010, is approximately \$8,783,000.
- c. Interest Funds. The amount of cash on deposit related to the Interest Funds as of June 14, 2010 is approximately \$4,201,000.
- d. Operating Reserve Funds. The amount of cash on deposit related to the Operating Funds as of May 31, 2010, is approximately \$1,623,000.

e. Restricted Funds. The amount of cash on deposit related to the Restricted Funds as of June 14, 2010, is approximately \$1,036,000.

f. Supplemental Account. The supplemental account was established as part of the forbearance agreement to hold resident initial entrance deposits. The amount of cash on deposit in the Supplemental Account as of June 14, 2010 is approximately \$1,539,000.

52. The Debtor has an emergency need for the immediate use of Cash Collateral to, among other things, maintain ongoing day-to-day operations, fund its working capital needs, and satisfy its payroll obligations. Absent the use of Cash Collateral, the Debtor will be unable to continue operating the Facility, and it will be forced to cease operations of its business, thereby jeopardizing its ability to maximize the value of its estate. Such an abrupt cessation of the Facility would have devastating effects on the Debtor's residents, including leaving many residents without food, medical supplies, and the health and support services that they require. Many residents may be forced to immediately relocate, and they will suffer extreme hardship, risking both their lives and health.

53. In addition, absent the use of Cash Collateral, the Debtor cannot fund payroll for its 340 employees and will likely lose many employees. The Debtor will also likely be unable to satisfy other routine payable obligations, thereby leaving the Facility in a complete state of disarray.

54. The Debtor has submitted with the Cash Collateral Motion a proposed interim order granting the relief requested (the "Interim Order"). Attached to the Interim Order is a detailed operating budget (the "Budget"). Certain of the terms of the Interim Order are summarized below:

Use of Cash Collateral

The Debtor is authorized to use Cash Collateral upon the terms and conditions set forth in the Interim Order and in accordance with the Budget from the Petition Date through and including the date of conclusion of the final hearing on the Motion.

Adequate Protection

The Secured Creditors are entitled to adequate protection of their interest in the Cash Collateral and other security granted. The shall provide the Secured Creditors with the following adequate protection (collectively, the "Adequate Protection"): The Secured Creditors shall be provided with the following adequate protection under the Order: (i) a replacement lien on all postpetition assets of the Debtor pursuant to § 361 of the Bankruptcy Code to the extent of diminution in the value of the Secured Creditors' interest in Cash Collateral, and (ii) an administrative priority expense claim pursuant to § 507(b) of the Bankruptcy Code, to the extent there is a diminution in the value of the prepetition liens of the Secured Creditors. The adequate protection shall not include a lien on or recoveries from Avoidance Actions.

Carve-Out To the extent unencumbered funds are not available to pay administrative expenses in full, the Adequate Protection granted hereunder to the Secured Creditors shall be subject only to payment of the Carve-Out. As used in the Interim Order, the term "Carve-Out" means the following: (a) the unpaid fees of the Clerk of the Court and the United States Trustee pursuant to 28 U.S.C. § 1930(a); and (b) the aggregate accrued and unpaid fees and expenses payable under Bankruptcy Code sections 330 and 331 to professionals retained pursuant to an order of the Court by the Debtor and any statutory committee which may be appointed in these cases. For purposes of a Final Order approving the use of Cash Collateral, in addition to the Carve-Out provided under the Interim Order shall also include) the aggregate accrued and unpaid fees and expenses payable under Bankruptcy Code sections 330 and 331 to professionals retained pursuant to an order of the Court by the Debtor and any statutory committee which may be appointed in these cases, not to exceed (i) all approved fees paid to such professionals during any period in which the Debtor is authorized to use Cash Collateral and (ii) all approved fees of such professionals not paid during a period in which the Debtor is authorized to use Cash Collateral, in an amount not to exceed \$500,000.

I

55. I believe that the relief requested in the Debtor's Cash Collateral Motion is in the best interests of the Debtor, its estate and its creditors, and absent such relief, the Debtor will experience immediate and irreparable harm and its reorganization efforts will be jeopardized.

D. 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 "Wage Motion")

56. By the Wage Motion, the Debtor requests authorization to pay certain prepetition claims, honor obligations and continue programs, in the ordinary course of business related to employee compensation, payroll administration, wage deductions, government withholdings and payroll taxes, reimbursable expenses, and employee benefit programs. In addition, the Debtor is

requesting an order authorizing and directing banks and other financial institutions to honor all related checks and electronic payment requests.

57. The Debtor has 340 full and part time employees (collectively, the “Employees”). None of the Debtor’s Employees are subject to a collective bargaining agreement. The Debtor estimates that in total, approximately \$72,630.00 in unpaid salary, wages and other compensation is owing to its Employees as of the Petition Date.

58. I believe that any delay in paying prepetition employee obligations will adversely impact the Debtor’s relationship with its Employees and will irreparably impair the Employees’ morale, dedication, confidence and cooperation in the chapter 11 process. At this early stage in the case, the Debtor simply cannot risk the substantial damage to its business that would inevitably result from a decline in the Employees’ morale and cooperation attributable to the Debtor’s failure to pay wages, salary, benefits and other similar items.

E. Motion for Entry of Bridge and Final Orders Pursuant to Sections 105(a) and 366 of the Bankruptcy Code: (i) Prohibiting Utility Companies From Altering, Refusing or Discontinuing Service to the Debtor; (ii) Deeming the Utility Companies Adequately Assured of Future Performance by the Debtor; (iii) Authorizing the Debtor to pay the Utilities a one Month Deposit; and (iv) Establishing Procedures for Determining Requests to the Debtor for Additional Adequate Assurance (the “Utilities Motion”)

59. By the Utilities Motion, the Debtor is requesting interim and final orders to: (i) prohibiting utilities from altering, refusing, or discontinuing service to the Debtor; (ii) deeming the utility companies adequately assured of future performance by the Debtor; (iii) authorizing the Debtor to pay the Utilities a one month deposit; and (iv) establishing procedures for determining requests to the Debtor for additional adequate assurance.

60. In the ordinary course of business, the Debtor obtains gas, water, sewer, electric, data, telephone, cable, and other similar utility services from various utility providers. Approximately twelve (12) utility providers (as such term is used in Section 366 of the Bankruptcy Code) provide

these services to the Debtor. On average, the Debtor spends approximately \$90,976 each month for utility services.

61. At all relevant times, the Debtor has attempted to remain current with regard to its utility bills. Furthermore, to the best of my knowledge, the Debtor is current on all amounts owing to the Utility Providers, other than payment interruptions that may be caused by the commencement of this chapter 11 proceeding.

62. I believe that uninterrupted utility services are essential to the ongoing operations of the Debtor, and therefore, to the successful resolution of this case. Any interruption of utility services, even for a brief period of time, would negatively affect the Debtor's operations, customer relationships, revenues and profits, seriously jeopardizing the Debtor's efforts and, ultimately, the value of recoveries for its creditors. It is, therefore, critical that utility services continue uninterrupted during this chapter 11 proceeding.

63. The Debtor proposes to provide a deposit (an "Adequate Assurance Deposit") within ten (10) business days of the entry of the Bridge Order to each Utility Company in an amount equal to one month of the average cost of such Utility Company's services to the Debtor, calculated from the historical average over the past twelve (12) months; provided that such Utility Company does not already hold a prepetition deposit equal or greater than one month of the average costs of such Utility Company's services to the Debtor.

64. The Debtor expects to have access to Cash Collateral and/or Debtor in Possession Financing, which means that it will have liquidity sufficient to keep its utility obligations current.

65. Finally, the Debtor proposes to protect the Utility Providers by establishing the Procedures provided in the Utilities Motion, whereby any Utility Provider can request additional

adequate assurance in the event that it believes there are facts and circumstances with respect to its providing postpetition services to the Debtor that would merit greater protection.

66. Therefore, I believe that the Utility Providers have adequate assurance of future performance, and the relief sought in the Utility Motion should be granted.

F. Motion for an Order Pursuant to Sections 345, 363(c)(1), 364(a) and 503(b)(1): (i) Approving the Continued Use of its Cash Management System, Bank Accounts and Business Forms; (ii) Granting Approval of Investment Guidelines; and (iii) Authorizing Banks to Honor Certain Transfers and Charge Certain Fees and Other Amounts (the “Cash Management Motion”)

67. By the Cash Management Motion, the Debtor seeks entry of an order granting the following relief:

- (a) Authorizing the Debtor to continue to use the Cash Management System [defined supra], subject to any modification or other relief granted by order of this Court relating thereto, including the following:
 - (i) the continued use of the existing Bank Accounts [defined supra] with the same names and account numbers as such Bank Accounts existed immediately prior to the Petition Date (with the option of streamlining their Cash Management System by closing or consolidating Bank Accounts);
 - (ii) the ability of the Debtor to deposit funds into and withdraw funds from any of the Bank Accounts (subject to available funds or, in the case of zero balance accounts, subject to the availability of funds in the applicable linked funding accounts) by all usual means, including but not limited to checks, wire transfers, electronic funds transfers and other debits;
 - (iii) the ability of the Debtor to otherwise treat the Bank Accounts, along with any accounts opened postpetition, for all purposes as debtor in possession accounts;
 - (iv) the waiver of any requirements to establish separate accounts for cash collateral and/or tax payments;

- (v) authorizing and directing the Banks to maintain, service and administer such deposit accounts or investment accounts, without interruption and in the ordinary course of business, in accordance with applicable non-bankruptcy law and the account agreements and/or other service documentation between the applicable Bank and the Debtor relating to such accounts;
 - (vi) authorizing the Banks to charge and collect, and authorizing but not directing the Debtor to pay, the prepetition and postpetition service charges and other fees and expenses to which the Banks are entitled under the terms of their account agreements and/or other service documentation with the Debtor;
- (b) Authorizing the Debtor to continue to use its existing business forms without alteration or change; and,
- (c) Authorizing the Debtor to maintain its existing investment practices and waiving the requirements of Section 345(b) of the Bankruptcy Code as to the Debtor's Cash Management System.

68. I believe that by using the existing Bank Accounts and Investment Practices [defined supra], the Debtor will avoid unnecessary expense and delay, which will disrupt the ordinary financial affairs and business operations of the Debtor, delay the administration of the Debtor's estate, and increase the costs to the estate.

69. Prior to the Petition Date and in the ordinary course of business, the Debtor maintained a centralized cash management system through which funds are collected into an operating account and disbursed to various other accounts to pay operating expenses, with excess funds being invested (the "Cash Management System"). A flow chart depicting the Cash Management System is attached to the Cash Management Motion as Exhibit I.

70. The Debtor's Cash Management System employs a series of integrated financial accounts, including a centralized operating account maintained at Bank of America which receives cash from various sources. The cash maintained in the operating account is used to fund the Debtor's day-to-day operations, including payroll, employee benefits, payments to vendors

and other accounts payable. Any funds remaining in the operating account are automatically transferred on a daily basis to an interest-bearing sweep account.

71. As of the Petition Date, the Debtor's Cash Management System utilized a total of twelve (12) bank accounts (collectively, the "Bank Accounts") with the following financial institutions: (i) Bank of America; (ii) Devon Bank; (iii) US Bank; and (iv) PNC Bank (collectively with any other institutions with which the Debtor maintains or establishes deposit accounts or investment accounts, the "Banks"). The Bank Accounts are described in detail below:

(a) Sedgebrook (SED) Operating Account:

The focal point of the SED Cash Management System is the SED Operating Account at PNC Bank (Account No. xxxxxxx485), which serves as the collection point for all funds moved into and through the SED Cash Management System. The SED Operating Account pools and holds cash, and supplies cash to all other accounts as necessary.

The SED Operating Account receives cash receipts due to SED, which are deposited from three primary sources: (i) monthly fees from residents, (ii) entry deposits (EDs) from campus residents, and (iii) releases from the SED Supplemental Account.

The cash in the SED Operating Account is used to fund the operations of the SED campus, including payments to vendors, debt service, payroll, and for other general payables. Cash from the SED Operating Account is also transferred, automatically or manually, to certain accounts discussed below.

Manual transfers are made to a Controlled Disbursement Account, which is the central disbursement account for all the Not-For-Profits and is located under Erickson Living Management's Tax ID in order to pay checks issued by SED.

(b) SED Devon Operating Account:

The SED Devon Operating Account is held at Devon Bank (Account No. xxxxxxx701). The SED Devon Operating Account is used for small onsite deposits and any emergency manual checks that may need to be written.

(c) SED Special Initial Entrance Fee Reserve Account:

The SED Special Initial Entrance Fee Reserve Account is held at US Bank (Account No. xxxxxx012). Historically, this account was funded through manual transfers from the SED Escrow Account and/or SED Operating Accounts on a monthly basis. The SED Special Initial Entrance Fee Reserve Account is used to hold special initial entrance fee reserves related to the facility.

(d) SED Construction Account:

The SED Construction Account is held at US Bank (Account No. xxxxxx001). Historically, this account was funded through manual transfers from the SED Escrow Account and/or SED Operating Accounts on a monthly basis. The SED Construction Account is used to hold construction reserves related to construction projects at the facility. These reserves are required either by local authorities and/or the terms of Sedgebrook's bond agreement.

(e) SED A&B Debt Service Reserve (DSR) Accounts:

The SED A&B DSR Account is held at US Bank (Account No. xxxxxx008). Historically, this account was funded through manual transfers from the SED Escrow Account and/or SED Operating Accounts on a monthly basis. The SED DSR Account is used to hold debt service reserves for facility debt obligations.

(f) SED Interest Accounts:

The SED Interest Accounts A & B are held at US Bank (Account No. xxxxxx002 & xxxxxx003). Historically, this account was funded through manual transfers from the SED Escrow Account and/or SED Operating Accounts on a monthly basis. The SED Interest Accounts are used to fund interest payments for facility debt obligations. Payments out of this account are automatically made by the bond trustee twice a year.

(g) SED Principal Accounts:

The SED Principal Accounts A & B are held at US Bank (Account No. xxxxxx004 & xxxxxx005). Historically, this account was funded through manual transfers from the SED Escrow Account and/or SED Operating Accounts on a monthly basis. The SED Principal Accounts are used to fund principal payments for facility debt obligations. Payments out of this account are automatically made by the bond trustee twice a year.

(h) SED Escrow Account:

The SED Escrow Account is held at Bank of America (Account No. xxx849) and is used to hold resident entrance deposits for a statutory period after they move

into SED. Funds were transferred from this account twice a month to various other SED accounts.

(i) SED Restricted Funds Account:

The SED Restricted Funds Account is held at Devon Bank (Account No. xxxxxxx703). The SED Restricted Funds Account is used to hold restricted cash required at the facility.

(j) SED 2007 A&B Dev Fee Account:

The SED 2007 A&B Dev Fee Account is held at US Bank (Account No. xxxxxx011). The SED 2007 A&B Dev Fee Account is used to hold development fees payable to Erickson based on sales of living units on campus. Funds are released to Erickson from this account when Sedgebrook's building hit certain occupancy hurdles.

(k) SED In-house General Liability Account:

Cash in the SED General Liability Account is part of a pooled bank account with other communities used for shared insurance expenses.

(l) SED Supplemental Account:

The SED Supplemental Account is held at US Bank (Account No. xxxxxx014) and funded through transfers from the SED Escrow Account. The SED Supplemental Account was put in place as part of the previously mentioned forbearance with the trustee to hold initial entrance deposits after they were available for release from the SED escrow account.

72. The Debtor manages its cash receipts, transfers and disbursements through the Bank Accounts. In doing so, the Debtor routinely deposits, withdraws and otherwise transfers funds to, from and between the Bank Accounts by various methods including check, wire transfer, automated clearing house transfer and electronic funds transfer. On a daily basis, the Debtor processes large numbers of transactions the Cash Management System. The Debtor maintains current and accurate records of all transactions processed through the Cash Management System.

73. The Debtor's Cash Management System is similar to those commonly employed by corporate enterprises of comparable size and complexity. Among other benefits, the Cash Management System permits the Debtor to accurately monitor cash availability at all times. The Cash Management System also permits the Debtor to centrally manage and track the collection and transfer of funds, including intercompany transfers, which reduces administrative burden and expense and maximizes interest income.

74. In addition to its Cash Management System and Bank Accounts, the Debtor uses in the ordinary course of its business numerous business forms (including but not limited to checks, deposit slips, letterhead, contracts, purchase orders and invoices). The Debtor has a supply of these forms on hand. It would be expensive and wasteful, and disruptive to the Debtor's business, to destroy all of these forms and order new ones.

75. Contemporaneously with the filing of the Cash Management Motion, the Debtor has filed other motions seeking authority to pay certain prepetition obligations, including obligations to employees, taxing authorities and other entities. With respect to certain of these prepetition obligations, the Debtor already has issued, in the ordinary course of business, checks and other debits that have yet to clear the banking system. In other instances, the Debtor will issue checks or other debits postpetition on account of the prepetition obligations once the Court has entered an appropriate order permitting the Debtor to do so. The Debtor intends to inform the Banks which prepetition checks and other debits should be honored pursuant to orders of the Court authorizing such payment.

76. I believe that the relief requested in the Cash Management Motion will help to ensure the Debtor's orderly entry into and administration in chapter 11 and avoid many of the

possible disruptions and distractions that could divert the Debtor's attention from more pressing matters during the initial days of this chapter 11 case.

77. Given the size and complexity of the Debtor's business operations, any disruption of its accounting and cash management procedures would be enormously burdensome and disruptive, and could adversely impact the Debtor's efforts to reorganize. At this critical juncture, the Debtor must be able to conduct "business as usual" to the extent possible. To this end, it is essential that the Debtor be permitted to continue using its existing Cash Management System and Bank Accounts.

78. Historically, all excess funds of the Debtor have been maintained in interest-bearing domestic bank accounts insured by the United States (through the FDIC) or invested through low risk investment accounts. The investment of the Debtor's excess funds is managed exclusively through the Cash Management System. Although the Debtor's investment practices may not strictly comply in all respects with the guidelines identified in Section 345 of the Bankruptcy Code, the Debtor's investments are nevertheless safe, prudent and designed to yield the maximum reasonable return on the funds invested, taking into account the safety of such deposits and investments. Accordingly, the Debtor requests authority to maintain its existing investment practices and a waiver of the requirements of Section 345(b) of the Bankruptcy Code.

79. The Debtor has a complex Cash Management System that provides the Debtor with the ability to transfer funds rapidly to ensure their safety and to maximize their investment value. The Debtor and its estate will receive significant benefit from the continued investment of excess funds. In light of these factors, I believe that the Debtor should be permitted to maintain its investment practices.

G. Debtor's Motion for an Order Pursuant to 11 U.S.C. § 105(a) and Bankruptcy Rule 2002 Establishing Notice Procedures (the "Notice Procedures Motion")

80. By the Notice Procedures Motion, the Debtor requests the entry of an order limiting notice on various matters to only the affected parties.

81. The Debtor has approximately 75 creditors who may be entitled to receive notice in these cases. Notice of all pleadings and other papers filed in these cases to each creditor is unnecessary and would be extremely burdensome and costly to the estate, as a result of photocopying, postage expenses, and other expenses associated with these mailings.

82. The Debtor requests the establishment of a master service list (the "Master Service List") that would include: (a) the Office of the United States Trustee; (b) the Debtor's 30 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 Bond Trustee; (d) any party whose interests are directly affected by a specific pleading; (e) counsel to Senior Living Retirement Communities LLC, formerly known as Erickson Retirement Communities, LLC ("Senior Living"); (f) counsel to Erickson Living Management, LLC; and (g) those persons who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002.

83. The proceedings with respect to which notice would be limited to the Master Service List would include all matters covered by Bankruptcy Rule 2002, with the express exception of the following: (a) meeting of creditors under sections 341 or 1104(b); (b) any notices related to claims bar dates; (c) the time fixed for filing objections and the hearing to consider approval of a disclosure statement or confirmation of a plan of reorganization or liquidation; and (d) notice of and transmittal of ballots for accepting or rejecting a plan of reorganization.

84. The Master Service List would also be used for pleadings, papers and procedures that may, pursuant to the Local Rules, require service upon all parties in interest. The Debtor will update the Master Service List regularly to include the names and addresses of any parties in interest who have made written request for notice.

85. Further, the Debtor will submit to the Court upon the completion of noticing any particular matter, either an affidavit of service or certification of service annexing the list of those parties receiving notice.

86. I believe that the administration of this chapter 11 case would be more efficient and cost effective if the relief requested is granted, and, therefore, the Debtor submits that the relief requested in this Motion is in the best interest of the Debtor's estate, its creditors, and parties in interest and will not prejudice the rights of any party in interest in this case.

H. Debtor's Motion for an Order Authorizing Debtors to Escrow Initial Entrance Deposits (the "IED Motion")

87. By the IED Motion, the Debtor seeks authority to escrow all IEDs collected postpetition, in order to provide assurance to new residents that the Debtor's bankruptcy case will not affect the residents' rights to a refund. The Debtor proposes to escrow the IEDs pending confirmation of a plan of reorganization in this case or sale of substantially all of the Debtor's assets or such other order of this Court.

88. A resident's willingness to pay the IED to the Debtor is necessarily dependent upon such resident's conviction that the Debtor's bankruptcy will not negatively affect the refundability of the IED. Any negative publicity suggesting that a community is in bankruptcy will necessarily deter prospective residents from entering into the new Residence and Care Agreements, which are the precursors to the Debtor's receipt of future IEDs.

89. The relief requested with respect to the IEDs should be granted because the IEDs required under the Residence and Care Agreements and loaned to the Debtor are the lifeblood of the Debtor's operations. The IEDs account for a significant portion of the Debtor's annual operating budget and the collection of such amounts is critical to the Debtor's ability to reorganize.

90. Providing the relief requested in this Motion maintains the status quo pending a resolution of this case. Prior to confirmation of a plan, the Debtor will refund IEDs to residents as provided in the Residence and Care Agreements. Upon confirmation of a plan, the IEDs will be transferred to the Debtor or such other party as directed by this Court. I believe it will have a devastating effect on the Debtor's operations if it can not guarantee potential purchasers that their IEDs will be escrowed. Accordingly, the Debtor seeks authorization to escrow all IEDs received postpetition and protect the residents' interest with respect thereto.

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CONCLUSION

91 For all the foregoing reasons, I respectfully request that the Court grant the relief requested in the First Day Motions.

92. I declare under penalty of perjury that the foregoing is true and current.

/s/ Maureen G. Wener

Subscribed and sworn to before me
this 21st day of June, 2010 *mgw*

My commission expires:

20 January 2014
Notary Public, State of *IL*



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 22nd day of June, 2010, copies of the foregoing *Affidavit of Paul Rundell in Support of First Day Motions* were sent by overnight delivery to the parties identified on the attached service list (except that, for any of the parties identified on the attached service list without a street address, copies were sent by first-class United States mail, postage prepaid).

/s/ _____

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