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ATTORNEYS FOR U.S. BANK NATIONAL
ASSOCIATION, AS INDENTURE TRUSTEE

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

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In re: :
 : CASE NO. 10-34178
 :
 :
 SEDGEBROOK, INC. :
 : CHAPTER 11
 :
 :
 Debtor. : (joint administration pending)¹
 :
 :
-----X

**LIMITED REPLY OF U.S. BANK NATIONAL
ASSOCIATION, AS INDENTURE TRUSTEE TO DEBTOR'S MOTION
TO APPROVE INTERIM AND FINAL ORDERS (I) AUTHORIZING THE
USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION
TO SECURED LENDERS, AND (III) SCHEDULING FINAL HEARING
[Relates to Docket No. 13]**

U.S. Bank National Association, not individually but as indenture trustee for the

^{1/} The Debtors in these Chapter 11 cases are (a) Lincolnshire Campus, LLC, Case No. 10-34176, (b) Naperville Campus, LLC, Case No. 10-34177, (c) Monarch Landing, Inc., Case No. 10-34179, and (d)

bonds described more particularly below (the “Trustee”) makes this limited reply in connection with the emergency motion filed by Sedgebrook, Inc. (“Sedgebrook” or the “Debtor”) requesting the approval of interim and final orders (i) authorizing the use of cash collateral, (ii) granting adequate protection to secured creditors, and (iii) scheduling final hearing (the “Sedgebrook Cash Collateral Motion”).

BACKGROUND

The Bonds

1. Lincolnshire Campus, LLC (“Lincolnshire”) owns certain land in Lincolnshire, Illinois upon which a continuing care retirement community (“CCRC”) was constructed. The construction and development of this CCRC facility (the “Facility”) was supported through the issuance of publicly traded tax-exempt bonds (the “Bonds”) in the aggregate original face amount of \$137,145,000 issued by the Illinois Finance Authority (the “Issuer”).

2. This bond financing was evidenced by, among other documents, a Loan Agreement, dated as of August 1, 2007 (the “Loan Agreement”) between the Issuer and Sedgebrook.

3. In connection with the issuance of the Bonds, an Indenture of Trust dated as of August 1, 2007 (the “Indenture”) was entered into by and between the Issuer and the Manufacturers and Traders Trust Company (the “Original Trustee”). The Trustee replaced the Original Trustee and is the current Trustee under the Indenture. The Indenture, among

Sedgebrook, Inc., Case No. 10-34178. A motion seeking joint administration of the Debtors’ cases was filed on June 15, 2010.

other things, assigned to the Original Trustee substantially all of the rights of the Issuer under the Loan Agreement.

4. As part of the bond financing, the Debtor also applied to Sovereign Bank (the “Credit Bank”) for the issuance of a certain letter of credit (the “Letter of Credit”) as additional security for a portion of the Bonds. The Trustee was authorized to draw upon the Letter of Credit in amounts equal to the principal amount of the Series 2007B Bonds outstanding and up to 51 days’ interest thereon calculated at the rate of 10% per annum. The Indenture, the Loan Agreement, the Mortgage (as defined below), the Letter of Credit, and the other documents entered into as part of the bond financing are referred to herein as the “Bond Documents”.

5. Pursuant to the Bond Documents, the Trustee has a lien and security interest in all of Sedgebrook’s right, title and interest in real and personal property and all other tangible and intangible property of Sedgebrook used in connection with or relating to the Facility, including without limitation all funds and accounts related to the Bonds and pursuant to a Fee and Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of August 1, 2007 (the “Mortgage”), the Trustee has a lien and security interest in all of Sedgebrook’s right, title and interest in its leasehold interest in Sedgebrook and certain personal property, as well as Lincolnshire’s right, title and interest in real property.

6. Under the terms of the Bond Documents, certain accounts are established and held by the Trustee, including (i) the Operating Reserve Fund, (ii) the Development Fee Account, (iii) Special Initial Entrance Fee Account, (iv) the Debt Service Fund, and (v)

the Debt Service Reserve Fund. The provisions of the Bond Documents provide restrictions as well as requirements as to when and how the Trustee may and must make deposits or withdrawals from these accounts.

The Trustee is Separate and Distinct from the Monarch Bond Trustee

7. The Trustee is separate and distinct from Wells Fargo Bank, National Association as Indenture Trustee (the “Monarch Bond Trustee”) for the bonds issued in connection with the Monarch facility (the “Monarch Bonds”). The Trustee had no participation or knowledge regarding the actions alleged against the Monarch Bond Trustee by the Debtors in the bankruptcy filing.

8. In addition, there is no connection among the bond documents relating to Sedgebrook/Lincolnshire and those relating to Monarch/Naperville. Notwithstanding the lack of any connection, the Debtor asserts that the cause of the filings of the bankruptcy was the result of the alleged actions of the Monarch Bond Trustee. Further, the Debtor asserts that both the Monarch Bond Trustee and the Trustee were operating under an implied forbearance agreement and had other duties imposed on them by way of the confirmed plan in the bankruptcy case of Erickson Retirement Communities, LLC. The Trustee disagrees with these legal conclusions.

9. As to the Debtor’s allegation that the Trustee may have inappropriately applied funds for the payment of its professionals by failing to provide notice, the Indenture expressly permits the Trustee to make such payments and does not require any invoices, other documentation, or even notice to be provided to the Debtor. *See* Indenture, at § 6.10. Indeed, following a default, payment owing to the Trustee (which include

payment of professionals) are the first amounts to be paid. *See* Indenture, at § 7.04. Moreover, the Trustee did provide the Debtor with notice of the payment of such fees by including all such charges in the monthly account statements that were sent to the Debtor.

REPLY

The Trustee is in the midst of negotiations with Sedgebrook regarding use of the Trustee's cash collateral for a limited interim period. The Trustee files this reply to protect its rights under Section 363 of Title 11 of the United States Code to the extent that an agreement for the interim period is not finalized or if Sedgebrook seeks to use the Trustee's cash collateral beyond the interim period expected to expire on July 15, 2010.^{2/} The parties have been actively involved in discussions on a possible agreement for use of cash collateral on an interim basis. As of the submission of this reply it is anticipated that such an agreement will be finalized prior to the hearing. However, no such agreement has been reached for use of cash collateral as of the time of the filing of this reply.

The Trustee does not believe that the adequate protection described in the Sedgebrook Cash Collateral Motion is fair, reasonable or constitutes reasonably equivalent value. However, the Trustee appreciates and understands the need for interim relief, and thus is working with Sedgebrook on an agreement that would permit Sedgebrook to use

^{2/} The Trustee reserves any and all rights to object to the Debtor's statements that it has an interest in the funds held by the Trustee or that such funds constitute cash collateral of the Debtor. It is not necessary to resolve this issue in connection with the relief requested in the Sedgebrook Cash Collateral Motion, however, because the Debtor has only requested to use the funds in the Operating Account. Further, the Debtor asserts that the Trustee does not have a lien against the Operating Account. Given the anticipated consensual order, this matter does not need to be resolved at this time. Rather, the parties shall reserve their respective rights. Additionally, the Debtor suggests that the lien of the

cash collateral on terms agreeable to the Trustee. Although it appears that an agreement will be reached, as of the time of this filing, no such agreement has been reduced to writing and thus the Trustee reserves any and all rights to file further objections and pleadings in connection with the final hearing on the use of cash collateral.

Trustee does not extend to post-petition initial entrance deposits. Once again, the Trustee disputes this assertion. However, this issue need not be determined at this time.

WHEREFORE, the Trustee respectfully requests that the Court deny the Sedgebrook Cash Collateral Motion except as set forth herein and that it grant the Trustee such other and further relief as the Court deems appropriate.

Dated: June 23, 2010

Respectfully submitted,

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