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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
:
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**LIMITED REPLY OF U.S. BANK NATIONAL AS INDENTURE TRUSTEE TO
DEBTOR'S MOTION FOR AN ORDER PURSUANT TO SECTION 345, 363(c)(1) AND
364(a): (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**

[Relates to Docket No. 10]

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) 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 “Sedgebrook Cash Management 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 has no objection to the relief requested in the Sedgebrook Cash Management Motion. Still, certain disputes remain with the Debtor regarding the classification of certain funds, and each of the parties has agreed to reserve any and all

rights with respect to these matters. The fact that the Trustee has agreed not to object to the Sedgebrook Cash Management Motion should not be deemed authority for the Debtor to use any funds held by the Trustee or than such funds are in any way property of the estate.

Dated: June 23, 2010

Respectfully submitted,

/s/ Cynthia J. Rerko

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