

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF GEORGIA
 ROME DIVISION

IN RE:)	CHAPTER 11
)	
REGIONAL HOUSING & COMMUNITY)	Jointly Administered Under
SERVICES CORP., et al.,)	CASE NO. 21-41034-pwb
)	
Debtors.)	
)	

APPLICATION FOR AUTHORITY TO RETAIN COMMERCIAL REAL ESTATE EXCHANGE, INC. AS REAL ESTATE MARKETING PLATFORM TO THE DEBTORS

COME NOW the above-captioned debtors and debtors and debtors-in-possession (collectively, the “**Debtors**”)¹ by and through the undersigned counsel and hereby file this application (the “**Application**”) for an order under Sections 327(a) and 328(a) of Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2014, 2016, and 5002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the employment and retention of Commercial Real Estate Exchange, Inc. (“**Crexi**”) as the real estate marketing platform to the Debtors. In making this Application, the Debtors have relied upon the Declaration of Eli Randel, a copy of which is attached hereto as Exhibit A (the “**Randel Declaration**”). In further support of this Application, the Debtors respectfully represent as follows:

¹ The Debtors in these Chapter 11 cases include: Regional Housing & Community Services Corporation, RHCSC Columbus AL Holdings LLC, RHCSC Columbus Health Holdings LLC, RHCSC Douglas AL Holdings LLC, RHCSC Douglas Health Holdings LLC, RHCSC Gainesville AL Holdings LLC, RHCSC Gainesville Health Holdings LLC, RHCSC Montgomery I AL Holdings LLC, RHCSC Montgomery I Health Holdings LLC, RHCSC Montgomery II AL Holdings LLC, RHCSC Montgomery II Health Holdings LLC, RHCSC Rome AL Holdings LLC, RHCSC Rome Health Holdings LLC, RHCSC Savannah AL Holdings LLC, RHCSC Savannah Health Holdings LLC, RHCSC Social Circle AL Holdings LLC, and RHCSC Social Circle Health Holdings LLC.



Background

1. On August 26, 2021 (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Northern District of Georgia, Rome Division (the “**Court**”). The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No committee, trustee or examiner has been requested or appointed in this Case.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C § 157(b)(2). Venue of the Debtors’ Chapter 11 cases (collectively, the “**Case**”) and this Application are proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. On or about April 1, 2022, the Debtors filed an Application for Authority to Retain SLIB II, Inc. d/b/a Senior Living Investment Brokerage as Investment Broker to the Debtors [Dkt. No. 126].

5. On or about April 15, 2022, the Court entered an order approving the retention of SLIB II, Inc. d/b/a Senior Living Investment Brokerage [Dkt. No. 128].

6. Pursuant to the terms of the Representation Agreement with SLIB II, Inc. d/b/a Senior Living Investment Brokerage (“**SLIB II**”), SLIB II had the exclusive right to market the Debtors’ assets for sale through and including August 16, 2022. The Representation Agreement expired without the Debtors consummating a sale transaction.

7. On or about January 9, 2023, the Debtors filed an Application for Authority to Retain Senior Housing Services, LLC (“**SHS**”) as Exclusive Broker Agent to the Debtors [Dkt. No. 226].

8. On or about January 30, 2023, the Court entered an order approving the retention of SHS [Dkt. No. 236].

9. The Debtors currently own and operate seven facilities, and own one closed facility. The closed facility is owned by Debtors RHCSC Montgomery II AL Holdings LLC and RHCSC Montgomery II Health Holdings LLC (collectively, “**Montgomery II**”) and is located in Montgomery, Alabama (the “**Montgomery II Assets**”). As the Montgomery II Assets are closed, they are longer being operated as a senior living facility.

Relief Requested

10. The Debtors now desire to employ Crexi as their real estate marketing platform to market and solicit offers on the Montgomery II Assets through an on-line auction of the assets, pursuant to Section 328(a) of the Bankruptcy Code, and Bankruptcy Rules 2014 and 2016, and to obtain approval of the terms under which Crexi will be compensated, at the expense of the Debtors’ estates and on the terms set forth in the engagement agreement with Crexi (the “**Engagement Agreement**”), a copy of which is attached hereto as Exhibit B.

Basis for Relief

11. Under Sections 327 and 328 of the Bankruptcy Code, a trustee, debtor in possession and committee appointed under Section 1102 of the Bankruptcy Code may employ one or more professionals, that do not hold or represent an interest adverse to the estate and that are disinterested persons, to assist such parties in carrying out their duties under the Bankruptcy Code.

Specifically, Section 328(a) of the Bankruptcy Code provides that the Debtors:

with the court’s approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.

11 U.S.C. § 328(a). Further, Bankruptcy Rule 2014(a) requires that an application for retention include:

specific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014(a).

12. By this Application, the Debtors request that the Court approve the compensation arrangement described in the Engagement Agreement pursuant to Section 328(a) of the Bankruptcy Code. The compensation arrangement contained in the Engagement Agreement is beneficial to the Debtors' estates as it provides certainty and proper inducement for Crexi to act expeditiously and prudently with respect to the matters for which it will be employed.

Necessity

10. The Debtors, in consultation with UMB Bank, National Association, as trustee (the "**Bond Trustee**"), have chosen Crexi to act as their real estate marketing platform with regard to the Montgomery II Assets. To date, no offers have been received on such assets through the efforts of the Debtors' prior retained investment brokers, and therefore the Debtors and the Bond Trustee have come to the conclusion that that selling the Montgomery II Assets through Crexi's auction platform is the best course of action.

Qualifications

11. Crexi has substantial experience in facilitating online auctions and marketplaces for commercial real estate. Since 2015, Crexi has created and operated an online marketplace for owners and brokers to market, analyze, and find commercial real estate properties and related

transaction opportunities. Since 2015, Crexi's online real estate marketing platform has helped to close upwards of \$330 billion in total transactions.

Services To Be Rendered

12. As more fully set forth in the Engagement Agreement, the services that Crexi will provide to the Debtors include, but shall not be limited to, assistance in marketing the Montgomery II Assets for sale, identification of potential buyers and negotiation of terms for a sale transaction.

Compensation

13. Subject to the Court's approval, and in accordance with Section 328(a) of the Bankruptcy Code, Crexi and SLS will be paid commissions only upon the closing of a sale, as follows:

- A Transaction Fee of 5% of the winning bid amount or \$20,000.00, whichever is greater. This amount will be added to the bidder's winning bid amount. As such, the Transaction Fee will be paid by the winning bidder to Crexi at closing.
- SLS will continue to work with potential purchasers and will direct them to the Crexi platform for bidding. In addition, SLS will work with the successful bidder to transition through a closing. The Debtors and SLS have agreed that in exchange for these services, in connection with the sale of the Montgomery II Assets, SLS will earn a commission of 2.75%, reduced from its originally approved commission of 4.75%, which will be earned upon the closing of the sale, and paid exclusively from the proceeds of such sale.

14. The overall compensation structure described above is comparable to compensation generally charged by brokerage firms of similar stature to Crexi for comparable engagements, both in and out of court.

Conflicts

15. To the best of the Debtors' knowledge, information, and belief, and based upon the Randel Declaration, Crexi is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code.

16. As described in detail in the Randel Declaration, Crexi has, among other things, searched its client databases to determine whether it represents, or has represented, certain of the Debtors' creditors or other parties in interest in these proceedings and/or matters wholly unrelated to these proceedings. Due to the size of Crexi and the number of creditors and other parties in interest involved in the case, however, Crexi may have represented certain of the Debtors' creditors or other parties in interest in matters wholly unrelated to this Chapter 11 Case. Except as may be described in the Randel Declaration, Crexi does not, to its knowledge, represent any party with an interest materially adverse to the Debtors.

Notice

17. Notice of this Motion has been provided to the Office of the United States Trustee, counsel to the Bond Trustee and all parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing Program. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

WHEREFORE, based on the facts and disclosures above, the Debtors respectfully request that the Court:

- (a) grant the Debtors authority to employ and retain Crexi as its real estate marketing platform for the Montgomery II Assets;
- (b) approve the terms of employment set forth in the Engagement Agreement, pursuant to the provisions of Section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014;
- (c) approve the compensation of Crexi at the expense of the Debtors' estate on the terms set forth in the Engagement Agreement, pursuant to the provisions of Section 328(a) of the Bankruptcy Code and Bankruptcy Rule 2016; and
- (d) grant such other and further relief as is just and proper.

This 4th day of August, 2023.

SCROGGINS & WILLIAMSON, P.C.

By: /s/ Matthew W. Levin

J. ROBERT WILLIAMSON

Georgia Bar No. 765214

ASHLEY REYNOLDS RAY

Georgia Bar No. 601559

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Counsel for the Debtors

Exhibit A

Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:) **CHAPTER 11**
)
REGIONAL HOUSING & COMMUNITY) **Jointly Administered Under**
SERVICES CORP., et al.,) **CASE NO. 21- 41034**
)
Debtors.)

**DECLARATION OF ELI RANDEL IN SUPPORT OF APPLICATION FOR
AUTHORITY TO RETAIN COMMERCIAL REAL ESTATE EXCHANGE, INC.
AS REAL ESTATE MARKETING PLATFORM TO THE DEBTORS**

I, Eli Randel, declare under penalty of perjury as follows:

1.

I am the Chief Operating Officer of Commercial Real Estate Exchange, Inc. (“**Crexi**”), and in that capacity, I have personal knowledge of, and authority to speak on behalf of, Crexi with respect to the matters set out herein. This Declaration is offered in support of the Application of the above-captioned debtors (collectively, the “**Debtors**”)¹ to retain Crexi as their real estate marketing platform during the pendency of their Chapter 11 cases (the “**Application**”), and the matters set out herein are true and correct to the best of my knowledge, information and belief.

2.

Crexi has substantial experience in facilitating online auctions and marketplaces for commercial real estate. Since 2015, Crexi has created and operated an online marketplace for

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owners and brokers to market, analyze and find commercial real estate properties and related transaction opportunities. Since 2015, Crexi's online real estate marketing platform has helped to close upwards of \$330 billion in total transactions.

3.

Neither Crexi nor any of its principals, associates or other professional employees have any connection with the above-named estates, their creditors, or any party in interest, or their respective attorneys or accountants.

4.

Neither Crexi nor any of its principals, associates or other professional employees represent any interest adverse to that of the estates or the Debtors-in-Possession in matters upon which Crexi shall be engaged.

5.

Based on the foregoing, I believe that Crexi is a "disinterested person" within the meaning of 11 U.S.C. § 101(14).

6.

I believe that the retention of Crexi under the terms outlined herein and in the Application would be in the best interest of the Debtors and their creditors.

This 3rd day of August, 2023.



ELI RANDEL

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§152 and 3571.

Exhibit B

Engagement Agreement



THIS AUCTION MARKETING AGREEMENT, together with (i) Crexi Customer Terms of Service made available at <https://www.crexi.com/tos>; and (ii) Crexi Privacy Policy, available at <http://www.crexi.com/privacy> collectively referred to as ("Agreement") is made and entered into by and between the Property Owner RHCSC Montgomery I AL Holdings LLC and RHCSC Montgomery I Health Holdings LLC (the "Customer"), and Commercial Real Estate Exchange, Inc. ("Crexi"). The effective date ("Effective Date") of this Agreement shall be the last date that this Agreement is executed either by Customer or Crexi.

1. DETAILS

1.1 Term of Agreement. This Agreement is in full force and effect as of the Effective Date and shall continue for a period of three (3) months. If, during the Term or the Tail Period set forth in section 1.2, a purchase contract for the Property is entered, then Customer will provide Crexi with a copy of the executed purchase agreement affecting such sale. Crexi agrees to keep all terms regarding such purchase agreement confidential.

1.2 Tail Period. During the ninety (90) days following the termination of this Agreement (the "Tail Period"), all the provisions of this Agreement will remain in full force and effect as if the Tail Period was part of the Term. In the event Customer enters into any agreement regarding the sale or purchase of the Property within the Tail Period to a buyer that appears on Crexi's marketing reports, Crexi shall be entitled to the Transaction Fee.

2. FEES

2.1 Condition of Sale. Crexi shall be entitled to the Transaction Fee if a purchase contract for the Property is entered into during the Term of this Agreement as defined in Section 1.

2.2 Transaction Fee. For all properties sold under the terms of this Agreement, a Transaction Fee will be added to the bidder's winning bid amount to equal the total purchase price payable by the buyer. For each property sold, 5% (five percent) of the winning bid amount or \$20,000.00 (twenty thousand dollars and zero cents), whichever is greater, will be paid at closing. Crexi will seek the Transaction Fee by providing an invoice/demand to the Escrow/Closing Agent prior to the closing of the transaction.

2.3 Withdrawal Fee. Should Seller withdraw any Asset from a Sale Event, regardless of the reason for which such Asset is being withdrawn from the Sale Event (other than due to a breach of this Agreement by Crexi), then Seller shall be required to pay to Crexi immediately upon tendering notice of such withdrawal, as liquidated damages for such withdrawal, a sum equal to 5% (five percent) of the Reserve Price (or if a Reserve Price has not been set for such Asset, then the most recent Broker Price Opinion) for the withdrawn Asset.

3. COMMISSIONS



3.1 Sale Event. Crexi has agreed to allow Seller’s Brokers to conduct online sales of the Assets on the Platform (each, a “Sale Event”), utilizing such Platform sale selections as mutually determined by CREXi, the Seller’s Brokers and Seller.

3.2 Listing Agent. The Listing Agent must be licensed in the state in which the property is located. If the Listing Agent is not licensed in the property state, a broker licensed in the property state must be appointed and indicated in section (b) below for commission disbursement.

(a) Listing Agent Brokerage Name: Senior Housing Services
 Agent’s Name: Dan Owens Phone Number: (704)641-1469
 Crexi Account Email Address: dowens@seniorhousingservices.com
 State of Licensure: AL Real Estate License No: TBD

(b) Licensed Agent Brokerage Name: _____
 Agent’s Name: _____ Phone Number: _____
 Email Address: _____
 State of Licensure: _____ Real Estate License No: _____

3.3 Broker Commission. Customer shall provide Crexi with the cooperative commissions offered pursuant to Customer’s Listing Agreement with the Listing Agent and/or Licensed Agent. These cooperative broker commission rates shall be advertised on the Platform. Broker commissions available under the Listing Agreement entered by Seller and Listing Agent are as follows:

(a)	Buyer’s Broker Commission	0	%	Paid by Listing Agent
(b)	Buyer’s Broker Commission	0	%	Paid by Seller

3.4 Additional Terms.

All terms are subject to approval by the United States Bankruptcy Court for the Northern District of Georgia in Bankruptcy Case No. 21-41034-pwb

4. DUE DILIGENCE

4.1 Customer Deliverables. Customer or Listing Agent shall provide a current Offering Memorandum, all third-party reports, PCA, Environmental, Income and Expenses, Purchase and Sale Agreement, and Title policy, if available.



4.2 Title and Escrow

- (a) **Attorney Appointed Escrow and Title Services (if applicable).** Customer shall select an attorney at Customers expense for all properties located in states in which the customary closing entity is an appointed attorney. Customer to provide the selected attorney information below.

Customers appointed attorney to facilitate Escrow services:

Law Firm: _____
 Attorney's Name: _____ Phone Number: _____
 Email Address: _____

Please advise how title will be handled, check the below accordingly:

- Attorney will order title, at Customer's expense
- Crexi will order title, in accordance with section (c)

- (b) **Customer Selected Title and Escrow (non-attorney state).** Customer elects to provide title report, property profile report, abstract of title, and/or title policy at Customer's expense and assign Title and Escrow/Closing to:

Title and Escrow Company: _____
 Agent's Name: _____ Phone Number: _____
 Email Address: _____

- (c) **Crexi Preferred Title and Escrow.** If a Customer Selected attorney or title and escrow company has not been appointed, Crexi shall order a title report, property profile report, and/or abstract of title from Fidelity National Title Group, the Crexi preferred provider. In the event Customer, Seller and/or Buyer does not utilize the services of Fidelity National Title Group for both title and escrow services, or if the property is sold during the Term of this Agreement, all fees incurred by Fidelity National Title Group up to and including the date of contract execution shall be due and payable by Customer to Fidelity National Title Group immediately.



IN WITNESS WHEREOF, the parties execute this Agreement as of the date set forth as the Effective Date.

COMMERCIALREAL ESTATE EXCHANGE, INC.

Signature: _____
Name: Eli Randel
Title: COO
Date: _____

Customer	<small>RHCSC Montgomery I AL Holdings LLC and RHCSC Montgomery I Health Holdings LL</small>
Signature	_____
Name:	_____
Title:	_____
Email:	_____
Phone:	_____
Date:	_____
Signature	_____
Name:	_____
Title:	_____
Email:	_____
Phone:	_____
Date:	_____



Schedule I

Property
Owner

Property Details

Reserve Price

(Seller's Agreement to
accept the highest bid
in auction equal to or
exceeding the Reserve
Price)

(Legal Entity
together with
Affiliates)

Street

City

State

Zip

Price)

(Legal Entity together with Affiliates)	Street	City	State	Zip	Reserve Price
	3300 Lynchburg Drive,	Montgomery	AL	36116	\$2,300,000

CERTIFICATE OF SERVICE

This is to certify that on this date a true and correct copy of the within and foregoing **Application for Authority to Retain Commercial Real Estate Exchange, Inc. as Real Estate Marketing Platform to the Debtors** was served (i) by the Court's CM/ECF system on all counsel of record registered in this case through CM/ECF, and (ii) by causing same to be deposited in the United States Mail with adequate postage affixed thereon and addressed to the following:

Thomas W. Dworschak
Office of the United States Trustee
362 Richard Russell Federal Building
75 Ted Turner Drive, S.W.
Atlanta, Georgia 30303

Charles W. Azano
Greenberg Traurig, LLP
One International Place
Suite 2000
Boston, MA 02110

This 4th day of August, 2023.

SCROGGINS & WILLIAMSON, P.C.

By: /s/ Matthew W. Levin

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ASHLEY REYNOLDS RAY
Georgia Bar No. 601559
MATTHEW W. LEVIN
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