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PROPOSED COUNSEL TO THE DEBTORS  
AND DEBTORS IN POSSESSION

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

In re:

Northwest Senior Housing Corporation, *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Joint Administration Requested)

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I)  
AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES,  
COMMISSIONS, EMPLOYEE BENEFITS, PREPETITION PAYROLL TAXES, AND  
OTHER OBLIGATIONS, (B) MAINTAIN COMPENSATION AND BENEFITS  
PROGRAMS, AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, AND (C)  
MAKE PAYROLL DEDUCTIONS, (II) AUTHORIZING APPLICABLE BANKS AND  
OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED  
CHECKS AND TRANSFERS, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move (the “**Motion**”), for entry of an interim order (the “**Interim Order**”) and a final order (the “**Final Order**”), substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, pursuant to Sections 105(a), 363(b), 507(a), 541, 1107(a), and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.



Procedure (the “**Bankruptcy Rules**”), (i) authorizing, but not directing, the Debtors to (a) pay all prepetition wages, salaries, commissions, certain other compensation, and related administration obligations to third parties in connection therewith and other costs incidental to the foregoing (the “**Compensation Obligations**”), (b) maintain all prepetition employee benefits, including paid time off, health and medical benefits and insurance, retirement savings accounts, workers’ compensation, reimbursable business expenses, and other welfare benefits, and related administration obligations to third parties in connection therewith and other costs incidental to the foregoing (the “**Employee Benefit Obligations**”), and (c) pay all employment, unemployment, Social Security, and similar federal, state, and local taxes relating to the Compensation Obligations and Employee Benefit Obligations, whether withheld from wages or paid directly by the Debtors to governmental authorities (the “**Payroll Taxes**”), and make other payroll deductions, including retirement and other employee benefit plan contributions, garnishments, child support, and voluntary (the “**Payroll Deduction Obligations**”), (ii) authorizing applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on and transfers made from the Debtors’ accounts to the extent such checks or transfers relate to any of the foregoing, and (iii) granting related relief, including scheduling a hearing to consider approval of the Motion on a final basis (the “**Final Hearing**”). In support of the Motion, the Debtors rely upon the *Declaration of Nick Harshfield in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),<sup>2</sup> filed concurrently herewith. In further support of the Motion, the Debtors respectfully state as follows:

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<sup>2</sup> Capitalized terms used but not defined in this Motion shall have the meanings given to them in the First Day Declaration.

## **JURISDICTION AND VENUE**

1. The Court has jurisdiction over these cases pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent to the entry of a final order or judgment by the Court in connection with the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and other predicates for the relief requested herein are Bankruptcy Code Sections 105(a), 363(b), 507(a), 541, 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004.

## **BACKGROUND**

### **A. General Background**

4. On the date hereof (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “**Court**”).

5. The Debtors continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code Sections 1107(a) and 1108.

6. No trustee, examiner, or official committee of unsecured creditors has been appointed.

7. The factual background regarding the Debtors and the events leading to the filing of the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”) is set forth in the First Day Declaration, which is incorporated herein by reference.

**B. The Debtors' Workforce**

8. In connection with the operations of the Debtors' businesses, the Debtors employ approximately 283 employees (the "**Employees**"), of which approximately 250 are full-time Employees, 9 are part-time Employees, and 22 are per diem Employees. None of the Employees are union employees. Approximately 25 Employees are salaried and 258 are paid hourly.<sup>3</sup>

9. The Employees are critical to the Debtors' businesses, and their value cannot be overstated. Indeed, the loss of the Employees would not only impede the Debtors' business operations and the Debtors' ability to successfully implement their bankruptcy strategy but would seriously threaten the Debtors' ability to provide critical care to Residents.

**C. Compensation Obligations**

i. *Employee Compensation*

10. Prior to the Petition Date and in the ordinary course of business, the Debtors incurred payroll obligations to the Employees, comprised generally of salaries and wages, in arrears on a biweekly basis to their Employees.

11. The Employees are compensated two (2) weeks in arrears. Specifically, the hours worked by an Employee as of every other Saturday—the last day of a payroll period—are paid on the following Friday. Thus, when Employees receive their direct deposit or payroll check, as applicable, they have already earned—and are owed—up to an additional five (5) days' pay. For example, the last payroll date prior to the Petition Date was April 8, 2022 and covered payroll obligations earned through April 2, 2022.<sup>4</sup>

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<sup>3</sup> Three (3) of the Debtors' executive Employees are compensated directly by Lifespace.

<sup>4</sup> Unless otherwise specified, all prepetition obligations discussed herein pertain to the first eleven (11) days of the regular pay period beginning April 3, 2022.

12. On average, per pay date, the Debtors' gross payroll obligations total approximately \$470,000, which includes applicable employer payroll taxes of approximately \$43,000. The Debtors estimate that as of the Petition Date approximately \$413,000 is accrued and unpaid, which includes gross wages and compensation earned, as well as employer payroll taxes related thereto. The Debtors do not request authority to pay – and will not pay – any Employee more than \$13,650 in accordance with Bankruptcy Code section 507(a)(4) on account of prepetition amounts owed pursuant to salaries, wages, commissions, PTO and/or any similar policy or program.

13. The Debtors use ADP, LLC (“**ADP**”) as their third-party payroll administrator to coordinate and transmit payment to Employees. One day prior to the Employees receiving compensation on a given Friday, ADP initiates an automated clearing house deposit to the Debtors' operating account for the net payroll amount due to the Employees.

14. The Debtors seek authorization, but not direction, to pay any unpaid Compensation Obligations. In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were provided in payment of payroll related obligations prior to the Petition Date to be honored and to reissue any check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

ii. *Sales Incentive Program*

15. The Debtors maintain a sales incentive program (the “**Sales Incentive Program**”) for approximately eight (8) Employees who work in the Debtors' sales and marketing department, and none of whom are directors or C-suite executives. The Sales Incentive Program is based on established criteria and sales metrics, and the Debtors pay earned commissions on a regular basis.<sup>5</sup>

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<sup>5</sup> Employees who are eligible to receive commission in connection with independent living unit sales are paid on a quarterly basis, and the remaining Employees who earn commission are paid such commission amounts monthly.

The Sales Incentive Program is an important aspect of sales and marketing Employees' overall compensation. Maintaining historical prepetition practices is essential to ensuring that the Debtors can retain their Employees and continue to operate the businesses and maximize value through the duration of the Chapter 11 Cases.

16. Indeed, due to recent press coverage and other events caused by egregious conduct of the Debtors' landlord, Intercity Investment Properties, Inc. ("**Intercity**"), as set forth more fully in the adversary complaint filed contemporaneously herewith, sales of independent living units to prospective residents have become dramatically harder to achieve. Indeed, sales have absolutely plummeted since Intercity engaged in wrongful actions designed to destroy the Edgemere community by usurping control to convert the Edgemere community to a different use that Intercity believes will allow Intercity to realize a windfall. In response to Intercity's attack on the Debtors' businesses, the Debtors have modified the Sales Incentive Program to motivate and incentivize sales and marketing Employees, who are growing weary, to continue to perform at a high level and uphold best efforts to make sales of independent living units to prospective residents in an increasingly challenging environment. Specifically, the formulaic changes account for the need to modify – at least temporarily – certain budgeted sales goals for these particular Employees. This modification is necessary to retain sales and marketing Employees, who are critical to the Debtors' ability to bring prospective independent living residents into the Edgemere community and produce revenue for the benefit of the Debtors' estates, creditors, and all stakeholders.

17. In 2021, the Debtors paid \$200,000 in commission payments to Employees. Monthly, the Debtors' obligations under the Sales Incentive Program average \$1,000 to \$5,000 per eligible Employee. Prior to the Petition Date, on or about March 25, 2022, the Debtors paid \$17,420 to Employees for commission earned February 2022. As of the Petition Date, the Debtors

estimate that they owe approximately \$30,000 in earned but unpaid commissions under the Sales Incentive Program. Accordingly, the Debtors request authority to make such commission payments in the ordinary course and to continue and maintain the Sales Incentive Program, as modified with respect to independent living sales Employees, consistent with their prepetition practices.

iii. *Short Term Incentive Program*

18. In 2021, certain Employees earned a short-term incentive that is scheduled to be paid no sooner than April 22, 2022. As of the Petition Date, the Debtors estimate that the amount due and owing is \$5,500. The Debtors request authority to make such incentive payments and to continue and maintain the Short Term Incentive Program, consistent with their prepetition practices.

iv. *Administrative Fee Obligations*

19. In connection with the services provided by ADP, as discussed above, the Debtors pay ADP approximately \$20,000 per month. The Debtors estimate that as of the Petition Date \$20,000 is due and owing to ADP in connection with ADP's services.

20. The Debtors seek authorization, but not direction, to pay all unpaid administrative fee obligations due to ADP and to continue to make such payments in the ordinary course of business during the Chapter 11 Cases. In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were given in payment of administrative fee obligations to be honored and to reissue any check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

**D. Payroll Taxes and Payroll Deduction Obligations**

21. For each applicable pay period, the Debtors deduct certain amounts directly from the Employees' paychecks, including, without limitation, pre- and after-tax deductions payable

pursuant to certain of the Employees' benefit plans, policies and arrangements, including, but not limited to, those discussed herein, including an Employee's share of health care benefits and insurance premiums, court-ordered deductions, and other miscellaneous deductions. The Debtors withhold approximately \$36,400 per month in the aggregate from Employees' wages on account of such deductions, which the Debtors remit to the appropriate third-party recipients and/or retain on account of "self-insured" benefit and insured benefit programs as further described below.

22. In connection with Employee earnings, the Debtors are required by law to withhold amounts related to federal, state, and local income taxes, as well as Social Security and Medicare taxes (the "**Employee Withholding Taxes**") and to remit the same to the applicable taxing authorities. In addition, the Debtors are required to make matching payments from their own funds for, among other things, Social Security and Medicare taxes and to pay, based on a percentage of gross payroll, state and federal unemployment insurance and other taxes. Each pay cycle, ADP, on behalf of the Debtors, withholds the Employees' portion of the Payroll Tax obligations from Employees' gross pay. Specifically, the Debtors withhold an average of \$148,000 per month, which includes Medicare, Social Security, federal, state, and local taxes. In addition, Debtors contribute, on average, \$86,000 per month to fund the Debtors' employer portion of Social Security, Medicare and state unemployment taxes. As of the Petition Date, the Debtors estimate that it is obligated to remit to taxing authorities approximately (a) \$35,000 for the Debtors' employer portion of the Payroll Tax obligations and (b) \$60,000 for the Employees' portion of the Payroll Taxes, which have been withheld by ADP.<sup>6</sup>

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<sup>6</sup> The Debtors' estimate reflects prepetition Payroll Taxes and Payroll Deduction Obligations for the pay period ending April 16, 2022, which includes eleven (11) days through the Petition Date.



23. In the ordinary course of processing payroll checks for the Employees, the Debtors may be required by law, in certain circumstances, to withhold certain additional amounts from Employees' paychecks, including wage amounts for various garnishments, child support, tax levies, and similar deductions (the "**Garnishments**"). Accordingly, ADP, on behalf of the Debtors, withholds amounts from certain Employees' paychecks related to Garnishments, and it remits such amounts to the appropriate governmental authorities on a monthly basis. On average, approximately \$6,400 per month is remitted to governmental authorities on account of Garnishments. As of the Petition Date, the Debtors estimate that they owe approximately \$3,200 in accrued Garnishments outstanding.<sup>7</sup>

24. The Debtors request authority, but not direction, to continue to make the deductions described herein and satisfy, inter alia, Payroll Tax obligations and remit amounts withheld on behalf of third parties post-petition in the ordinary course.

**E. Employee Benefit Obligations**

**i. Paid Time Off**

25. The Debtors provide eligible Employees with various additional forms of compensation, including, without limitation, paid time off ("**PTO**"), which is customary and typical and necessary to retain valuable Employees during the duration of the Chapter 11 Cases. Further, the Debtors' PTO policies are essential to the Employees and failure to provide these benefits could harm Employee morale and encourage the premature departure of Employees. In total, the Debtors estimate that as of the Petition Date the value of accrued PTO hours is \$436,000,

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<sup>7</sup> The Debtors' estimate reflects prepetition Garnishments due and owing for the pay period ending April 16, 2022 which includes eleven (11) days through the Petition Date.

consisting of vacation and sick PTO in the amount of approximately \$300,000 and \$136,000, respectively.

26. The Debtors request authority to continue to maintain the existing PTO policies, as described more fully below, in the ordinary course. Further, the Debtors request authority to continue to honor all PTO related obligations as and when they become due.

a. *Vacation PTO*

27. Employees begin to accrue vacation PTO on the first day of employment with the Debtors pursuant to an accrual rate variable that is tied to the time employed by the Debtors. The following chart sets forth such accrual rates for Debtors’ Employees, excluding department directors:

<b>Years of Service</b>	<b>Max Hours Accrued Per Pay Period</b>	<b>Max Hours Accrued Annually</b>	<b>Accrual Rate</b>
0 -4 years	3.08	80	0.0385
5 – 9 years	4.61	120	0.0577
10 – 19 years	6.15	160	0.0769
20 + years	7.70	200	0.0962

The Debtors’ department directors earn vacation PTO as follows:

<b>Months of Service</b>	<b>Max Hours Accrued Per Pay Period</b>	<b>Max Hours Accrued Annually</b>	<b>Accrual Rate</b>
0	4.61	120	0.0577
48	6.15	160	0.0769
168	7.70	200	0.0962

28. An exempt Employee can utilize accrued vacation PTO upon employment. However, a non-exempt Employee cannot utilize vacation PTO until it has been accrued and the non-exempt Employee has been employed by the Debtors for at least ninety (90) continuous days.

Accrued vacation PTO can accumulate up to a maximum available balance that is equal to two (2) years' accrual. Vacation PTO carries over to the next calendar year.

29. Exempt Employees may use vacation PTO in full (8-hour) or half-day (4-hour) increments based on their regular working schedule. Non-exempt Employees can request time-off in half-hour increments, with the minimum amount of vacation PTO that can be requested being a half-hour.

30. Certain Employees are permitted to monetize accrued vacation PTO.<sup>8</sup> Accrued vacation PTO is paid to Employees upon the termination of their employment, whether voluntary or involuntary.

b. *Sick PTO*

31. Full-time Employees begin to accrue sick PTO on the first day of employment pursuant to various accrual rates as set forth in the following chart.

<b>Category</b>	<b>Max Hours Accrued Per Pay Period</b>	<b>Max Hours Accrued Annually</b>	<b>Accrual Rate</b>
Non-exempt	1.54	40	0.0192
Exempt	1.85	48	0.0231
Exempt-Director Level	2.46	64	0.0308

32. An exempt Employee can utilize sick PTO upon employment. However, a non-exempt Employee cannot utilize sick PTO until it has been accrued and the non-exempt Employee has been employed by the Debtors for at least ninety (90) continuous days.

33. An Employee's available sick PTO balance can accumulate up to a maximum available balance equal to two (2) years' accrual, and sick PTO carries over to the next calendar

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<sup>8</sup> Employees who accrue vacation PTO at the minimum rate of 0.0769 (equivalent to 160 hours annually) may elect to cash-out up to forty (40) hours of vacation PTO annually, based on anniversary date.

year. Non-exempt Employees are allowed to take time off in half-hour increments based on their regular working schedule. Exempt Employees are allowed to take time off in full or half-day increments based on their regular working schedule.

34. Once per year, in November, Employees may monetize up to forty (40) accrued hours of sick PTO. Accrued sick PTO is not paid to Employees upon termination of their employment.

c. *Flexible Holidays*

35. Each full-time Employee in their first year of employment and Employees who change status to full-time are eligible to use paid flexible holidays<sup>9</sup> annually as set forth in the following chart.

<b>Full-Time Start Date</b>	<b>Flexible Holiday Time</b>
January 1 – March 31	24 Hours
April 1 – June 30	16 Hours
July 1 – September 30	8 Hours
After October 1	Zero

36. Employees cannot work their flexible holiday or monetize flexible holiday hours.

d. *Bereavement Leave*

37. Each full-time Employee who has completed a 90-day introductory period of employment is entitled to take up to three (3) bereavement days per year in the event of the death of an immediate family member and up to two (2) bereavements days per year in the event of the death of a non-immediate family member (“**Bereavement Leave**”).<sup>10</sup> As of the Petition Date, there

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<sup>9</sup> Each flexible holiday is equivalent to eight (8) hours.

<sup>10</sup> Immediate family members are defined as spouse, domestic partner, child, step-child, parent, step-parent, childhood guardian, sibling, step-sibling, and current-in-laws (parent, son, daughter). Non-immediate family members are defined as brother-in-law, sister-in-law, niece or nephew, grandparents, step-grandparent, grandparents-in-law and grandchildren.

are no amounts outstanding on account of accrued Bereavement Leave. Although there are no such amounts outstanding at this time, out of an abundance of caution, the Debtors request authority to pay any such amounts that may arise and become due and payable in the ordinary course of business.

e. *Jury and Witness Duty*

38. In the event an Employee is summoned for jury duty or to serve as a witness, such Employee would be eligible for paid leave while fulfilling its jury duty and certain witness obligations (the “**Jury and Witness Duty Leave**”), provided that the Employee notifies and provides documentation of the obligation to the Debtors in advance of commencing Jury and Witness Duty Leave. In 2021, the Debtors paid approximately \$2,000 on account of Jury and Witness Duty Leave. As of the Petition Date, there are no amounts outstanding on account of accrued Jury and Witness Duty Leave. Although there are no such amounts outstanding at this time, out of an abundance of caution, the Debtors request authority to pay any such amounts that may arise and become due and payable in the ordinary course of business.

f. *Voluntary Community Service*

39. All full-time and part-time Employees, after completing the 90-day introductory period of employment, are encouraged to take paid leave to participate in authorized voluntary community service programs (the “**Voluntary Service Leave**”).<sup>11</sup> Each year, the Voluntary Service Leave hours are pre-loaded on January 1, and full-time Employees are eligible to take eight (8) hours per year, and part-time Employees are eligible to take four (4) hours per year of

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<sup>11</sup> The event or service must benefit an organization in the team member’s county, town of residence, town of employment, or another nearby town within a fifty-mile radius. The activity or event must be sponsored, facilitated/supervised by a duly registered not-for-profit, charitable organization 501(c)(3), and the volunteer service must be uncompensated by the charitable organization.

Voluntary Service Leave.<sup>12</sup> As of the Petition Date, the Debtors estimate that the amount outstanding on account of accrued Voluntary Service Leave is \$42,000. Although there are no such amounts outstanding at this time, out of an abundance of caution, the Debtors request authority to pay any such amounts that may arise and become due and payable in the ordinary course of business.

ii. **Severance**

40. Historically, the Debtors have provided severance benefits in the ordinary course of business on an individualized and case-by-case basis (the “**Severance Payments**”). Currently, no Employee is entitled to Severance Payments and, as of the Petition Date, there are no amounts outstanding on account of accrued and unpaid Severance Payment obligations. Although there are no such amounts outstanding at this time, out of an abundance of caution, the Debtors request authority to pay any such amounts that may arise and become due and payable in the ordinary course of business.

iii. **Health and Welfare Benefits**

41. Prior to the Petition Date, the Debtors offered their Employees certain health benefits (the “**Health Benefits**”), including, but not limited to health insurance, vision insurance, dental insurance, flexible spending accounts, life insurance, and short- and long-term disability, which are provided to Employees in the ordinary course of business.

42. Lifespace, Inc. (“**Lifespace**”) the Debtors’ sole corporate member, procures the insurance policies for the Debtors and their affiliates (at discounted rates) and the Debtors pay their allocated portion of the premiums (the “**Premium Equivalent**”). The amounts set forth below

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<sup>12</sup> Voluntary Service Leave shall only accrue during the Employee’s normally scheduled work hours and shall not create a need for overtime.

reflect the approximate cost of each program to the Debtors and the benefits attributable to the Employees.

43. The Health Benefits and related policies are essential to the Employees and failure to provide such benefits would likely result in the departure of the Debtors' Employees. The Debtors request authority to continue to maintain the Health Benefits and related programs, as described more fully below, in the ordinary course. Further, the Debtors request authority to continue to honor all of related obligations as and when they become due.

a. *Medical Plan*

44. As noted above, Lifespace procures certain insurance policies at discounted rates for the benefit of Debtors and, as part of this arrangement, Lifespace charges the Debtors a Premium Equivalent. Through Lifespace, the Debtors offer medical coverage to qualifying Employees and their eligible dependents through Wellmark Blue Cross and Blue Shield of Iowa ("**Wellmark**"). The Debtors offer two (2) medical plan options to qualifying Employees: (i) the Alliance Select PPO plan (the "**PPO Plan**") and (ii) the Alliance Select HDHP PPO plan (the "**HDHP Plan**" and together with the PPO Plan, the "**Medical Plans**"), both administered by Lifespace. As of the Petition Date, (a) approximately 107 Employees participate in the PPO Plan, and the average annual premium allocated to the Debtors under the PPO Plan is approximately \$840,000, exclusive of Employee contributions, and (b) approximately 50 Employees participate in the HDHP Plan, and the average annual premium allocated to the Debtors under the PPO Plan is approximately \$370,000, exclusive of Employee contributions.

45. The Debtors and the Employees share in the cost of the PPO Plan and HDHP Plan. The Premium Equivalent paid by the Debtors to Lifespace is approximately \$103,000 per month, which such payment being made at month end. Thus, as of the Petition Date, the Debtors estimate that approximately \$103,000 is outstanding on account of the Medical Plans. The Debtors request

authority to continue to operate the Medical Plans in the ordinary course of business and, to the extent necessary, further request authority to pay any related administrative fees under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”).

b. *Dental Plan*

46. The Debtors offer dental coverage (the “**Dental Plan**”) to qualifying Employees and their eligible dependents through Delta Dental of Iowa (“**Delta Dental**”), as well as a “buy-up” plan with additional coverage through Delta Dental.

47. The Debtors and Employees share in the cost of the Dental Plan, through employer contributions and payroll deductions. Specifically, the Debtors contribute 75% and 64% of the costs for the base plan and buy up plan, respectively. The Debtors estimate that as of the Petition Date, \$6,000 is outstanding on account of their obligations under the Dental Plan. Accordingly, the Debtors request authority to pay such amount and any additional amounts as they become due and payable in the ordinary course of business.

c. *Vision Plan*

48. The Debtors offer vision coverage to qualifying Employees and their eligible dependents through a vision insurance plan administered by Fidelity Security Life Insurance Company (the “**Vision Plan**”). As of the Petition Date, 145 Employees participate in the Vision Plan. The Debtors and the Employees share in the cost of the Vision Plan, through employer contributions and payroll deductions. Specifically, the Debtors contribute approximately 75% of the cost of the Vision Plan. In 2021, the Debtors were responsible for premiums of approximately \$9,300 in connection with the Vision Plan. As of the Petition Date, there are no obligations currently outstanding under the Vision Plan. Although there are no such amounts outstanding at this time, out of an abundance of caution, the Debtors request authority to pay any such amounts that may arise and become due and payable in the ordinary course of business.



d. *COBRA*

49. The Debtors' manager, Lifespace, coordinates and administers the maintenance of accounts to provide health insurance benefits under COBRA to Employees who have been terminated. As of the Petition Date, no former employee of the Debtors participates in COBRA insurance. The Debtors, however, request authority to continue the COBRA insurance program through Lifespace in the ordinary course consistent with prepetition practices.

e. *Life Insurance/AD&D Plan*

50. The Debtors provide (a) all part-time Employees who work between sixteen (16) and thirty-two (32) hours on a weekly basis, and (b) any vice president that works at least twenty-one (21) hours per week with the option of enrolling in basic life insurance and additional insurance coverage in the event of serious illness, injury, or death (the "**Life Insurance Plan**") through Metropolitan Life Insurance Company. The Debtors are responsible for 100% of the premiums with respect to the Life Insurance Plan.

51. The Debtors also provide basic life insurance and accidental death and dismemberment insurance coverage to all full-time Employees through MetLife (the "**Life and AD&D Plan**"). The Debtors are responsible for 100% of the premiums with respect to the Life & AD&D Plan.

52. In 2021, the Debtors paid approximately \$12,000 in connection with the Life Insurance Plan. As of the Petition Date, the Debtors estimate they have accrued approximately \$1,000 in obligations under the Life Insurance Plan.

53. The Debtors also provide qualifying Employees with access to additional Voluntary Life & AD&D insurance, the cost of which is fully borne by Employees.

f. *Short-Term Disability Insurance*

54. The Debtors offer a short-term disability insurance plan (the “**Short-Term Disability Insurance Plan**”) through Metropolitan Life Insurance Company for all full-time Employees. The program confers benefits equal to 60% of the Employee’s pre-disability earnings, calculated weekly, with base maximum weekly benefit up to \$1,000. The Debtors bear 100% of the cost of the premiums owed under the Short-Term Disability Insurance plan, which is approximately \$2,100 monthly.<sup>13</sup> As of the Petition Date, the Debtors estimate they have accrued approximately \$2,100 in obligations under the Short-Term Disability Insurance Plan.

g. *Long-Term Disability Insurance*

55. The Debtors offer a long-term disability plan through Metropolitan Life Insurance Company for all full-time salaried and executive Employees. The program confers benefits equal to 60% of the Employee’s basic monthly earning, up to a maximum of \$10,000 per month for full-time salaried Employees. The long-term disability benefit payment period begins after 180 days of continuous disability. The Debtors bear 100% of the cost of the premiums owed under the Long-Term Disability Insurance plan, which is approximately \$272 monthly. As of the Petition Date, the Debtors estimate they have accrued approximately \$275 in obligations under the Long-Term Disability Insurance Plan.

h. *Flexible Spending Programs*

56. The Debtors offer two (2) health care and dependent care flexible spending accounts to full-time Employees that are funded entirely by Employees.

i. *Other Employee Program Offerings*

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<sup>13</sup> Employees may elect to purchase additional coverage through the Short-Term Disability Insurance program provided that such additional costs are borne by such Employees.

57. The Debtors offer, through third parties, various additional benefit programs including Accident, Critical Illness and Pet Insurance. In addition, the Debtors offer Discounted Legal Services and Identity Theft Protection. These additional programs are available to full-time Employees, and participating Employees bear all costs of participation.

iv. **The 401(k) Plan**

58. The Debtors offer eligible Employees an opportunity to participate in a 401(k) plan (the “**401(k) Plan**”) administered by ADP. The Debtors match 25% of the Employee contributions, up to 6% of such Employee’s annual compensation.

59. The Debtors’ average monthly contributions on account of the 401(k) Plan are approximately \$6,000. The Debtors seek authority to continue to maintain the 401(k) Plan and pay any accrued but unpaid matching contributions and any fees and costs associated with the 401(k) Plan. Additionally, out of an abundance of caution, the Debtors request authority to remit any amounts withheld from Employees’ paychecks with respect to the 401(k) Plan.

v. **Workers Compensation Program**

60. The Debtors provide workers’ compensation insurance for the Employees in compliance with the Texas workers’ compensation system (the “**Workers’ Compensation Program**”). Through Lifespace, the Debtors maintain the Workers’ Compensation Program policy through Sentry Casualty Corporation, and the insurance carrier is Security Casualty Company.

61. During 2021, the Debtors paid fees and claims totaling approximately \$69,000. As of the Petition Date, the Debtors estimate that approximately \$6,200 is due and owing under the Workers’ Compensation Program. Accordingly, the Debtors request authority to pay such amounts and any additional amounts as they become due and payable in the ordinary course of business.

vi. **Expense Reimbursements**

62. The Debtors reimburse certain Employees for expenses incurred in connection with their employment and limited to activities related to the operations of the Debtors' businesses. To be reimbursed, the Employee must submit a copy of the receipt, the method of payment, and a copy of the financial statement demonstrating the amount of the charge. Reimbursements are then paid to the extent approved. In 2021, the Debtors paid approximately \$216,000 in expense reimbursements to Employees. As of the Petition Date, there was no outstanding balance on account of any business expenses. Although there are no such amounts outstanding this time, out of an abundance of caution, the Debtors request authority to pay any such amounts that may arise and become due and payable in the ordinary course of business.

63. Further, approximately fourteen (14) of the Employees are authorized to use Lifespace credit cards for travel and other business expenses. Lifespace pays the credit card bills associated with such expenses and is reimbursed by the Debtors. Additionally, a Lifespace corporate card is used for certain routine, de minimis administrative office expenses, including cable and water bills. In 2021, the Debtors paid approximately \$820,000 on account of Lifespace credit card charges. On average, the Debtors reimburse Lifespace in the amount of approximately \$71,000 per month for credit card charges. As of the Petition Date, the Debtors estimate that \$106,000 is owing on account of credit card charges and, thus, request authority to pay such amount and any additional amounts that may arise and become due and payable in the ordinary course of business.

vii. **Education and Tuition Assistance**

64. The Debtors also provide full-time Employees with at least one (1) year of active employment the opportunity to apply for education and/or tuition assistance that relates with the area of the Employee's work responsibility (the "**Education/Tuition Assistance**"). An eligible

Employee may be granted Education/Tuition Assistance in the amount of no more than \$3,000 per calendar year.

65. Currently, no Employee is participating in the Education/Tuition Assistance program. As of the Petition Date, there are no amounts outstanding on account of the Education/Tuition Assistance program obligations. Although there are no such amounts outstanding at this time, out of an abundance of caution, the Debtors request authority to pay any such amounts that may arise and become due and payable in the ordinary course of business.

viii. ***De Minimus Employee Benefits***

66. The Debtors also provide other *de minimus* benefits (the “***De Minimus Employee Benefits***”) such as stipends for cell phones and gifts cards for certain Employees, which boosts morale and encourages teamwork. In 2021, the Debtors paid approximately \$11,400 on account of *De Minimus Employee Benefits*. The Debtors seek authorization (i) to pay any prepetition amounts owed in connection with these *De Minimus Employee Benefits*, and (ii) to continue such benefits post-petition in the ordinary course, consistent with prepetition practices.

**RELIEF REQUESTED**

67. By the Motion, the Debtors request entry of the Interim Order and the Final Order, substantially in the forms of Exhibit A and Exhibit B, respectively, attached hereto: (i) authorizing, but not directing, the Debtors to (a) pay all Compensation Obligations, (b) maintain all Employee Benefit Obligations, and (c) pay all Payroll Taxes and related withholding Obligations, (ii) authorizing applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on and transfers made from the Debtors’ accounts to the extent such checks or transfers relate to any of the foregoing, and (iii) granting related relief.

**BASIS FOR RELIEF**

**I. Sufficient Cause Exists to Authorize the Debtors to Honor the Employee Compensation and Benefits Obligations.**

68. The Debtors' Employees are among their most valuable assets and are vital to the success of the Debtors' businesses and the Chapter 11 Cases. Accordingly, it is imperative that Employee morale be maintained and that the Debtors have the authority to assure that Employees do not unduly suffer due to the commencement of the Chapter 11 Cases. Indeed, in the absence of granting the relief requested herein, Employees will unquestionably suffer undue economic hardship, which will have a detrimental impact on the administration of the Chapter 11 Cases. For these reasons and those set forth below, the Debtors respectfully request that the relief sought herein be granted.

69. Under Bankruptcy Code Section 363(b)(1), a debtor may, in the exercise of its sound business judgment and after notice and a hearing, "use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1); *Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court may approve an application under Section 363(b) upon a showing of a good business reason for the disposition). Further, Bankruptcy Code Section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

70. Federal courts often use their power under Bankruptcy Code Sections 363(b) and 105(a) to authorize the payment of prepetition claims when such payment is essential to the continued operation of the debtor. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (discussing prior order authorizing payment of prepetition wage claims pursuant to Bankruptcy Code Section 363(b); relief appropriate where payment was needed to "preserve

and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale.”); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.* (*In re James A. Phillips, Inc.*), 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on Bankruptcy Code Section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of debtor, such as where there is a “possibility that the creditor will employ an immediate economic sanction, failing such payment”); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the “necessity of payment” doctrine “permit[s] immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (noting that Bankruptcy Code Section 105 and the necessity of payment doctrine provide courts with authority to permit payment of prepetition claims necessary to facilitate a successful reorganization); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that debtors may pay prepetition claims that are essential to continued operation of business); *see also Miltenberger v. Logansport Ry. C. & S. W. R. Co.*, 106 U.S. 286, 311 (1882) (holding that “[m]any circumstances may exist which may make it necessary and indispensable to the business . . . and the preservation of the property, for the receiver to pay preexisting debts . . . out of the earnings of the [debtor] . . . under the order of the court.”).

71. The Debtors have a strong business purpose for paying the Employee Benefit Obligations and Compensation Obligations. The Debtors’ success in the Chapter 11 Cases cannot be accomplished without the contribution of the Employees. Failure to pay Employee Benefit

Obligations and Compensation Obligations would negatively impact the morale of the Debtors' Employees at a critical time for the Debtors and their businesses and potentially jeopardize the Debtors' ability to provide the level of care that their patients and residents expect and deserve. The creditors of the Debtors will ultimately benefit from the payment of these prepetition claims.

72. Moreover, courts have authorized payment of prepetition obligations under the doctrine of necessity when payment of certain creditors' prepetition claims is necessary or appropriate to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See In re CEI Roofing, Inc.*, 315 B.R. 50 (Bankr. N.D. Tex. 2004) (approving payment of priority wage claims and employee benefits); *In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003) (approving payment of prepetition claims to critical vendors); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“[I]t is only logical that the bankruptcy court be able to use Section 105(a) of the Code to authorize satisfaction of the pre-petition claim in aid of preservation or enhancement of the estate,” and “this Court is prepared to apply the Doctrine of Necessity to authorize payment of prepetition claims in appropriate cases.”); *In re Pers. Commc’ns Devices, LLC*, 588 B.R. 661, 666 (Bankr. E.D.N.Y. 2018) (“[The necessity of payment] rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor,” (quoting *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–176 (Bankr. S.D.N.Y. 1989))). Although the “necessity of payment doctrine” has not been codified in the Bankruptcy Code, “courts have used their equitable power under Section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.” *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999).



73. Furthermore, courts have long recognized that paying some categories of prepetition obligations outside a plan of reorganization is often necessary to realize the paramount purpose of chapter 11, which is to prevent the forced liquidation of the debtor and preserve its potential for financial rehabilitation. *See In re CoServ*, 273 B.R. at 497 (applying a form of the doctrine of necessity in noting that payment of unsecured prepetition claims is appropriate where such payment is the “only means to effect a substantial enhancement of the estate”); *In re Lehigh & N.E. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that the doctrine of necessity permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Bos. & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor’s continued operation). As one court noted, “a per se rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *In re Structurlite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988).]

74. The relief requested in the Motion is necessary for the Debtors to maximize value for all stakeholders. Indeed, continued payment, without interruption, of the Compensation Obligations, and the continuation, without interruption, of the Debtors’ compensation and benefits plans, policies, programs, and practices attendant to the Compensation Obligations, including paying related administrative obligations and meeting all Employee Benefit Obligations as described herein are vital to the Debtors’ businesses and will assure both a smooth transition into chapter 11 and administration of the Chapter 11 Cases.

75. Any delay or failure to pay wages, salaries, benefits, and other similar items would irreparably impair the Employees' morale, dedication, confidence, and cooperation and would adversely impact the Debtors' relationship with their Employees at a time when the Employees' support is critical to the success of the Debtors' Chapter 11 Cases. At this early stage, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably attend any decline in Employee morale.

76. Additionally, absent orders granting the relief requested herein, the Employees could suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question may be needed to enable certain of the Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors' workforce will be undermined, perhaps irreparably, by the distinct possibility that otherwise loyal Employees will seek alternative employment.

**II. The Debtors Should be Authorized to Pay the Compensation Obligations Under Bankruptcy Code Section 1107(a) and 1108.**

77. The Debtors are operating their businesses as debtors in possession under Bankruptcy Code Sections 1107(a) and 1108 and therefore, is fiduciary "holding the bankruptcy estates and operating the businesses for the benefit of their creditors and (if the value justifies) equity owners." *In re CoServ LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.*

78. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement

of the estate.” *Id.* at 497. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.* at 498.

79. Payment of the Compensation Obligations meets each element of the *CoServ* court’s standard. First, it is critical that the Debtors honor their Compensation Obligations because the efforts of the Employees are necessary to the Debtors’ administration of the Chapter 11 Cases, and any failure by the Debtors to pay the Compensation Obligations would negatively impact the morale of the Debtors’ Employees at a critical time for the Debtors and their businesses. Second, as explained below, the Employees likely maintain priority claims against the Debtors for the Compensation Obligations. Third, the potential harm and economic disadvantage that would stem from the failure to pay the Compensation Obligations is grossly disproportionate to the amount of any prepetition claim that may be paid because of the aforementioned reasons why the Employees are critical to the Debtors’ businesses. Finally, with respect to the Employees, the Debtors have examined other options short of payment of the Compensation Obligations and have determined that to avoid significant disruption of the Debtors’ business operations there exists no practical or legal alternative to payment of such obligations. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under Bankruptcy Code Sections 1107(a) and 1108 by payment of the Compensation Obligations.

**III. The Compensation Obligations Constitute Priority Claims Under Bankruptcy Code Section 507(a).**

80. The Debtors believe that most, if not all, of the Compensation Obligations constitute priority claims under sections Bankruptcy Code Sections 507(a)(4), (a)(5), and (a)(8), which must be satisfied prior to any general unsecured claims against the Debtors' estates. 11 U.S.C. §§ 507(a)(4), 507(a)(5), 507(a)(8), 726. Specifically, pursuant to Bankruptcy Code Section 507(a)(4)(A), claims of employees for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of \$13,650 per individual. 11 U.S.C. § 507(a)(4)(A). Similarly, Bankruptcy Code Section 507(a)(5) provides that employees' claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$13,650 per employee covered by such plan, less any amount paid pursuant to Section 507(a)(4). 11 U.S.C. § 507(a)(5)(A). Further, payment of the Payroll Taxes will not prejudice other creditors of the Debtors, as the relevant taxing authorities generally would hold priority claims under Bankruptcy Code Section 507(a)(8) with respect to such obligations. *See* 11 U.S.C. § 507(a)(8). Payment of the Compensation Obligations merely expedites the treatment afforded to such claims thereby doing no violence to the priority scheme of the Bankruptcy Code.

81. Further, the Debtors will not attempt to "cash out" unpaid PTO upon termination of an Employee in excess of the caps provided by Bankruptcy Code Sections 507(a)(4) or (5) unless applicable Texas State law requires such payment.

**IV. Funds Related to the Payroll Taxes and Payroll Deduction Obligations are Held in Trust and are not Property of the Estates.**

82. The portion of the Payroll Taxes withheld from an Employee's wages and the other Payroll Deduction Obligations are held in trust by the Debtors for the benefit of the applicable taxing authority. As such, Payroll Taxes and other Payroll Deduction Obligations are not property

of the Debtors' estates under Bankruptcy Code Section 541 and therefore, such funds are not available for the satisfaction of creditors' claims. *See* 11 U.S.C. § 541(b); *see, e.g., Begier v. IRS*, 496 U.S. 53 (1990) (withholding taxes are property held by debtor in trust for another and, as such, are not property of the debtors' estates); *Al Copeland Enters., Inc. v. Texas (In re Al Copeland Enters., Inc.)*, 991 F.2d 233, 235 (5th Cir. 1993) (debtors' prepetition collection of sales taxes and interest thereon were held subject to trust and not property of estate); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433 (2d Cir. 1985) (sales taxes are "trust fund" taxes); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994) (withheld taxes were subject to a trust); *Shank v. Wash. State Dep't of Revenue (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (sales taxes required by state law to be collected by sellers from their customers are "trust fund" taxes); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (excise and withholding taxes are "trust fund" taxes). Instead, the Debtors may be obligated to remit such funds to the applicable taxing authority.

83. Additionally, many federal, state, and local statutes impose personal liability on officers and directors of companies for certain Payroll Taxes and other Payroll Deduction Obligations owed by such entities. To the extent that the relevant Payroll Taxes and other Payroll Deduction Obligations remain unpaid by the Debtors, the Debtors' directors, officers, and executives may be subject to lawsuits or criminal prosecution during the pendency of the Chapter 11 Cases. Any such lawsuit or criminal prosecution (and the ensuing potential liability) would distract the Debtors and their officers, directors and executives from devoting their full attention to the Debtors' businesses and the orderly administration of the Chapter 11 Cases. The Debtors believe that this would materially and adversely affect their ability to operate in the ordinary course

of business and to administer the Chapter 11 Cases, with resulting detriment to all parties in interest.

84. Courts in this and other jurisdictions have approved payment of prepetition claims for compensation, benefits, and expense reimbursements similar to those described herein in other chapter 11 cases. *See, e.g., In re Bainbridge Uinta, LLC*, Case No. 20-42974 (Bankr. N.D. Tex. Sept. 3, 2020) [Docket No. 31] *In re J. Hilburn, Inc.*, Case No. 20-31308 (Bankr. N.D. Tex. May 33, 2020) [Docket No. 96]; *In re American Workers Insurance Services, Inc.*, Case No. 19-44209 (Bankr. N.D. Tex. Oct. 18, 2019) [Docket No. 24]; *In re SAS Healthcare, Inc.*, Case No. 19-40401 (Bankr. N.D. Tex. Feb. 6, 2019) [Docket No. 48]; *In re PHI, Inc.*, Case No. 19-30923 (Bankr. N.D. Tex. April 11, 2019) [Docket No. 213]; *Senior Care Centers, LLC*, Case No. 18-33967 (SGJ) (Bankr. N.D. Tex. Dec. 7, 2018) [Docket No. 78]; *In re Taco Bueno Rest., Inc.*, Case No. 18-33678 (Bankr. N.D. Tex. Nov. 6, 2018) [Docket No. 156]; *In re 4 West Holdings, Inc.*, Case No. 18-30777 (HDH) (Bankr. N.D. Tex. Apr. 18, 2018) [Docket No. 257]; *In re PAYCOMT DFW Holdings LLC*, Case No. 17-31432 (SGJ) (Bankr. N.D. Tex. May 19, 2017) [Docket No. 207].

85. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the estates and creditors, and all parties in interest, and therefore, should be granted.

**V. Bankruptcy Rule 6003 Has Been Satisfied and Bankruptcy Rule 6004 Should Be Waived.**

86. Certain isolated aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, as court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that facts set forth herein demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors, and, thus, Bankruptcy Rule 6003 has been satisfied.

87. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code Section 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in the Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

**RESERVATION OF RIGHTS**

88. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors; a waiver of the Debtors' rights to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under Bankruptcy Code Section 365. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

**NOTICE**

89. Notice of this Motion will be provided to (a) the U.S. Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors on an aggregate basis, (c) UMB Bank, N.A., as Trustee and counsel thereto, (d) Lifespace Communities, Inc. and counsel thereto, (e) the United States Attorney's Office for the Northern District of Texas, (f) the Internal Revenue Service, (g) the United States Department of Justice, (h) the Texas State Attorney General, (i) the United States Securities and Exchange Commission, and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002.

90. The Debtors respectfully submit that, in light of the nature of the relief requested herein, no other or further notice need be given.

**NO PRIOR REQUEST**

91. No previous request for the relief sought herein has been made to this Court or any other court.

**WHEREFORE**, the Debtors respectfully request that the Court enter the Interim Order and Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: \_\_\_\_\_, 2022  
Dallas, Texas

**POLSINELLI PC**

/s/ DRAFT  
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PROPOSED COUNSEL TO THE DEBTORS  
AND DEBTORS IN POSSESSION



**Exhibit A**

**Interim Order**

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

In re:

Northwest Senior Housing Corporation, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Joint Administration Requested)

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) PAY PREPETITION WAGES, SALARIES, COMMISSIONS, EMPLOYEE  
BENEFITS, PREPETITION PAYROLL TAXES, AND OTHER OBLIGATIONS,  
(B) MAINTAIN COMPENSATIONS AND BENEFITS PROGRAMS, AND PAY  
RELATED ADMINISTRATIVE OBLIGATIONS, AND (C) MAKE PAYROLL  
DEDUCTIONS, (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND  
TRANSFERS, AND (III) GRANTED RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of the debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Debtors**”) for entry of an interim order (this “**Interim Order**”),

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

<sup>2</sup> All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

pursuant to Bankruptcy Code Sections 105(a), 363(b), 507(a), 541, 1107(a), and 1108, and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing, the Debtors to (a) pay all prepetition wages, salaries, commissions, certain other compensation, and related administration obligations to third parties in connection therewith and other costs incidental to the foregoing (the “**Compensation Obligations**”), (b) maintain all prepetition employee benefits, including paid time off, health and medical benefits and insurance, retirement savings accounts, workers’ compensation, reimbursable business expenses, and other welfare benefits, and related administration obligations to third parties in connection therewith and other costs incidental to the foregoing (the “**Employee Benefit Obligations**”), and (c) pay all employment, unemployment, Social Security, and similar federal, state, and local taxes relating to the Compensation Obligations and Employee Benefit Obligations, whether withheld from wages or paid directly by the Debtors to governmental authorities (the “**Payroll Taxes**”), and make other payroll deductions, including retirement and other employee benefit plan contributions, garnishments, child support, and voluntary (the “**Payroll Deduction Obligations**”), (ii) authorizing applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on and transfers made from the Debtors’ accounts to the extent such checks or transfers relate to any of the foregoing, and (iii) granting related relief, including scheduling a hearing to consider approval of the Motion on a final basis (the “**Final Hearing**”); and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests

of the Debtors' estates, creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and the opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED on an interim basis as set forth herein.

2. The Final Hearing on the Motion shall be held on \_\_\_\_\_, 2022 at \_\_\_:\_\_\_ \_\_.m., prevailing Central Time. Any objections or responses to entry of a final order (the "**Final Order**") on the Motion shall be filed with the Court and served on the following parties at least seven (7) days prior to the commencement of the Final Hearing: (a) the Debtors, 8523 Thackery Street, Dallas, TX 75225 (attn: Nick Harshfield) (b) proposed counsel to the Debtors, Polsinelli PC, 2950 N. Harwood, Suite 2100, Dallas, TX 75201 (attn: Trinitee G. Green) and 600 3<sup>rd</sup> Avenue, 42<sup>nd</sup> Floor, New York, NY 10016 (attn: Jeremy R. Johnson and Brenna A. Dolphin); (c) the Office of the United States Trustee for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242; (d) counsel to UMB Bank N.A., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (attn: Daniel Bleck); (e) counsel to Lifespace, Inc., Dorsey & Whitney LLP, 801 Grand Avenue, Suite 4100, Des Moines, IA 50309 (attn: David D. Grossklaus) and Perkins Coie, 110 N. Wacker Dr., 34<sup>th</sup> Floor, Chicago, IL 60606 (attn: Eric E. Walker), (f) counsel to any statutory

committee appointed in these Chapter 11 Cases; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002.

3. Subject to the limitations set forth in Bankruptcy Code Sections 507(a)(4) and (a)(5), the Debtors are authorized, but not directed, to (a) pay or otherwise honor, in their sole discretion, the Compensation Obligations as and when they come due, (b) honor and continue their programs, policies, and practices with respect to the Employee Benefit Obligations that were in effect as of the Petition Date, in the ordinary course of business, and in the same manner and on the same basis as the Debtors honored and continued such programs, policies, and practices with respect to the Compensation Obligations prior to the Petition Date, and (c) withhold all federal, state, and local taxes relating to the Compensation Obligations and Employee Benefit Obligations as required by applicable law.

4. Notwithstanding any other provision of this Interim Order, (a) payments to or on behalf of any one person on account of prepetition obligations in the interim period shall be limited by Bankruptcy Code Sections 507(a)(4) and (5) and capped at the amount afforded priority by those statutory subsections, and (b) the Debtors are not authorized to “cash out” unpaid PTO upon termination of an Employee in excess of the caps provided by Bankruptcy Code Sections 507(a)(4) or (5) unless applicable state law requires such payment.

5. The Debtors’ applicable banks and other financial institutions are authorized to receive, process, honor, and pay all checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtors’ bank accounts prior to the Petition Date in respect of Prepetition Taxes (or to re-issue checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtors’ bank accounts, as may be necessary), and authorized to rely on the representations of the Debtors as to which checks, drafts, electronic fund transfers, or other

forms of payment drawn or issued on the Debtors' bank accounts, provided that sufficient funds are on deposit in the applicable bank accounts to cover such payments. Further, the Debtors' banks and financial institutions are prohibited from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Compensation Obligations, provided that sufficient funds are on deposit in the applicable bank accounts to cover such transfers.

6. The Debtors are authorized to reissue payment on account of the Compensation Obligations and to replace any inadvertently dishonored or rejected payments. Further, the Debtors are authorized to reimburse any expenses that Employees may incur as a result of any bank's failure to honor a prepetition check.

7. All payments made pursuant to this Interim Order (a) may be funded with Cash Collateral (as defined in the Cash Collateral Order) in which the Trustee (as defined in the Cash Collateral Order) has an interest, and (b) shall be subject to any interim or final order entered by the Court governing the Debtors' rights to use the Trustee's cash collateral (as such order or orders may be amended, modified or supplemented, the "Cash Collateral Order"), including the budget attached thereto.

8. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed as (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors' rights to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this Interim Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to Bankruptcy Code Section 365, or (f) a waiver

of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Interim Order is necessary to avoid immediate and irreparable harm to the Debtors' estates.

10. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice or waived.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

12. All payments made pursuant to this Order shall be subject to any interim or final order entered by the Court governing the Debtors' right to the use the cash collateral of UMB Bank, N.A., as Trustee, including the budget attached thereto.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

14. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

### End of Order ###

Submitted by:

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*Proposed Counsel to Debtors and  
Debtors-in-Possession*



**Exhibit B**

**Final Order**

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

In re:

Northwest Senior Housing Corporation, *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) PAY PREPETITION WAGES, SALARIES, COMMISSIONS, EMPLOYEE  
BENEFITS, PREPETITION PAYROLL TAXES, AND OTHER OBLIGATIONS,  
(B) MAINTAIN COMPENSATIONS AND BENEFITS PROGRAMS, AND PAY  
RELATED ADMINISTRATIVE OBLIGATIONS, AND (C) MAKE PAYROLL  
DEDUCTIONS, (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND  
TRANSFERS, AND (III) GRANTED RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of the debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Debtors**”) for entry of a final order (this “**Final Order**”), pursuant

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

<sup>2</sup> All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

to Bankruptcy Code Sections 105(a), 363(b), 507(a), 541, 1107(a), and 1108, and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing, the Debtors to (a) pay all prepetition wages, salaries, commissions, certain other compensation, and related administration obligations to third parties in connection therewith and other costs incidental to the foregoing (the “**Compensation Obligations**”), (b) maintain all prepetition employee benefits, including paid time off, health and medical benefits and insurance, retirement savings accounts, workers’ compensation, reimbursable business expenses, and other welfare benefits, and related administration obligations to third parties in connection therewith and other costs incidental to the foregoing (the “**Employee Benefit Obligations**”), and (c) pay all employment, unemployment, Social Security, and similar federal, state, and local taxes relating to the Compensation Obligations and Employee Benefit Obligations, whether withheld from wages or paid directly by the Debtors to governmental authorities (the “**Payroll Taxes**”), and make other payroll deductions, including retirement and other employee benefit plan contributions, garnishments, child support, and voluntary (the “**Payroll Deduction Obligations**”), (ii) authorizing applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on and transfers made from the Debtors’ accounts to the extent such checks or transfers relate to any of the foregoing, and (iii) granting related relief; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and the opportunity

for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing and, if necessary, a final hearing, before this Court; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED on a final basis as set forth herein.
2. Subject to the limitations set forth in Bankruptcy Code Sections 507(a)(4) and (a)(5), the Debtors are authorized, but not directed, to (a) pay or otherwise honor, in their sole discretion, the Compensation Obligations as and when they come due, (b) honor and continue their programs, policies, and practices with respect to the Employee Benefit Obligations that were in effect as of the Petition Date, in the ordinary course of business, and in the same manner and on the same basis as the Debtors honored and continued such programs, policies, and practices with respect to the Compensations Obligations prior to the Petition Date, and (c) withhold all federal, state, and local taxes relating to the Compensation Obligations and Employee Benefit Obligations as required by applicable law.
3. Notwithstanding any other provision of this Final Order, (a) payments to or on behalf of any one person on account of prepetition obligations shall be limited by Bankruptcy Code Sections 507(a)(4) and (5) and capped at the amount afforded priority by those statutory subsections, and (b) the Debtors are not authorized to “cash out” unpaid PTO upon termination of an Employee in excess of the caps provided by Bankruptcy Code Sections 507(a)(4) or (5) unless applicable state law requires such payment.

4. The Debtors' applicable banks and other financial institutions are authorized to receive, process, honor, and pay all checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtors' bank accounts prior to the Petition Date in respect of Prepetition Taxes (or to re-issue checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtors' bank accounts, as may be necessary), and authorized to rely on the representations of the Debtors as to which checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtors' bank accounts, provided that sufficient funds are on deposit in the applicable bank accounts to cover such payments. Further, the Debtors' banks and financial institutions are prohibited from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Compensation Obligations, provided that sufficient funds are on deposit in the applicable bank accounts to cover such transfers.

5. The Debtors are authorized to reissue payment on account of the Compensation Obligations and to replace any inadvertently dishonored or rejected payments. Further, the Debtors are authorized to reimburse any expenses that Employees may incur as a result of any bank's failure to honor a prepetition check.

6. All payments made pursuant to this Final Order (a) may be funded with Cash Collateral (as defined in the Cash Collateral Order) in which the Trustee (as defined in the Cash Collateral Order) has an interest, and (b) shall be subject to any interim or final order entered by the Court governing the Debtors' rights to use the Trustee's cash collateral (as such order or orders may be amended, modified or supplemented, the "Cash Collateral Order"), including the budget attached thereto.

7. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed as (a) an admission as to the validity or priority of any claim or lien against any Debtors, (b) a waiver of the Debtors' rights to subsequently dispute such claim or lien on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this Final Order, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to Bankruptcy Code Section 365, or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

8. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are waived by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

10. All payments made pursuant to this Order shall be subject to any interim or final order entered by the Court governing the Debtors' right to the use the cash collateral of UMB Bank, N.A., as Trustee, including the budget attached thereto.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

12. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

### End of Order ###

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