

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

MIDWEST CHRISTIAN VILLAGES, INC.
et al.,¹

Debtors.

Chapter 11

Case No. 24-42473-659
(Joint Administration Requested)

Hearing Date: July 17, 2024
Hearing Time: 2:00 p.m. (CT)
Hearing Location: Courtroom 7

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING (I) PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL
VENDORS; (II) PAYMENT OF 503(B)(9) CLAIMS TO CERTAIN CRITICAL
VENDORS AND (III) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
RELATED CHECKS AND TRANSFERS**

The above-captioned debtors and debtors-in-possession (the “**Debtors**”), by and through their proposed counsel, submit this motion (the “**Critical Vendor Motion**”) for entry of interim and final orders, pursuant to §§ 105(a), 363(b), 503(b)(9), 1107 and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Chapter 11 Mega Case Guidelines on Authority to Pay Essential Suppliers and/or Critical Vendors, and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) authorizing, but not directing, the Debtors,

¹ The address of the Debtors is 2 Cityplace Dr, Suite 200, Saint Louis, MO 63141-7390. The last four digits of the Debtors' federal tax identification numbers are: (i) Midwest Christian Villages, Inc. [5009], (ii) Hickory Point Christian Village, Inc. [7659], (iii) Lewis Memorial Christian Village [3104], (iv) Senior Care Pharmacy Services, LLC [1176], (v) New Horizons PACE MO, LLC [4745], (vi) Risen Son Christian Village [9738], (vii) Spring River Christian Village, Inc. [1462], (viii) Christian Homes, Inc. [1562], (ix) Crown Point Christian Village, Inc. [4614], (x) Hoosier Christian Village, Inc. [3749], (xi) Johnson Christian Village Care Center, LLC [8262], (xii) River Birch Christian Village, LLC [7232], (xiii) Washington Village Estates, LLC [9088], (xiv) Christian Horizons Living LLC [4871], (xv) Wabash Christian Therapy and Medical Clinic, LLC [2894], (xvi) Wabash Christian Village Apartments, LLC [8352], (xvii) Safe Haven Hospice, LLC [6886], (xviii) Heartland Christian Village, LLC [0196], and (xxiii) Shawnee Christian Nursing Center, LLC [0068].



subject to the terms of any debtor in possession financing and/or cash collateral agreement or order, to pay certain prepetition claims critical vendor claims of certain vendors and service providers that are essential for the day-to-day operations of the Debtors' nursing home communities.

In addition, the Debtors further request the Court authorize, but not direct, banks and financial institutions to receive, process, honor, and pay, to the extent of funds on deposit, any and all checks issued or to be issued and electronic fund transfers requested or to be requested by the Debtors relating to the Critical Vendor Claims (as defined below). In support of this Critical Vendor Motion, the Debtors respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are §§ 105(a), 363(b), 1107 and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

BACKGROUND

2. Midwest Christian Villages is a faith-based, 501(c)(3) not-for-profit corporation headquartered in St. Louis, Missouri, with a 60-year history of providing quality care to residents of its senior living communities. Simultaneously with the filing of this Motion, the Debtors filed the *Declaration of Kathleen (Kate) Bertram* (the “**First Day Declaration**”). As described in more detail in the First Day Declaration, the Debtors operate a mix of independent, assisted and skilled nursing campuses in 10 locations across the Midwest, serving over 1,000 residents. There is also a pharmacy business as discussed further in the First Day Declaration.

3. On July 16, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtors continue in the operation and management of their business as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or official committee has been appointed in these chapter 11 cases.

THE DEBTORS’ CRITICAL VENDORS

4. The Debtors purchase goods and services from certain vendors and independent contractors that are unaffiliated with the Debtors and are, by and large, sole source or limited source suppliers or provide a material economic or operational advantage when compared to other available vendors; without them, the Debtors could not operate (collectively, the “**Critical Vendors**”). As discussed in further detail below, the Critical Vendors are essential to the Debtors’ businesses in that the lack of any of their particular services, even for a short duration, could significantly disrupt the Debtors’ operations and cause irreparable harm to the Debtors’ ability to maintain safe and hospitable facilities wherein the Debtors’ residents can receive the care and attention that they need.

5. Upon careful consideration and in consultation with their professionals, the Debtors have determined that selling substantially all of their assets in one or more going-concern sales will maximize the value of the Debtors’ estates and creditor recoveries. To that end, the Debtors have reviewed their accounts payable to identify those vendors truly essential to the Debtors’ operations and, in turn, to the consummation of one or more value-maximizing asset sales.

6. In total, the Debtors believe the Critical Vendors are owed approximately \$2,796,271. The Debtors propose to maintain a matrix summarizing (i) the name of each Critical

Vendor paid, and (ii) the amount paid to each Critical Vendor on account of its Critical Vendor Claim (and any 503(b)(9) Claims). This matrix will be provided, upon request, to the Office of the United States Trustee, the professionals retained by any official committee appointed in the Chapter 11 Cases, and counsel to the lenders under the Debtors' proposed DIP facility; provided, that the professionals for any such committee shall keep the matrix confidential and shall not disclose any of the information in the matrix to anyone, including any member of such statutory committee, without the prior written consent of the Debtors.

7. While the Debtors hope and expect to assure a continuing postpetition supply of goods and services by consensual negotiation with the vendors in the categories described in this Critical Vendor Motion, the Debtors recognize that their fiduciary duties bind them to consider and plan for the vendors that may refuse to provide future goods or services unless their prepetition claims are paid.

8. Replacement vendors, even where available, would likely result in substantially higher costs for the Debtors. Some of the Debtors' facilities are located in remote locations where, in certain instances, there is only one particular Critical Vendor that can provide the goods and/or services required by the Debtors to maintain safe and hospitable facilities. Even if it were possible to locate alternate Critical Vendor services, the costs associated with switching from one vendor to another are significant and would be detrimental to the Debtors' estates. The delay caused by switching would make it impossible for the Debtors to continue operations and therefore would hurt the Debtors' ability to preserve asset value. Moreover, any interruption of the Critical Vendor Services would prevent the Debtors from, among other things: (i) providing critical rehabilitation and therapy services; (ii) providing necessary meal services to residents and

(iii) generally maintaining safe and hospitable facilities, all of which are necessary to the success of the Debtors.

9. If the Debtors can pay selected Critical Vendors some or all of their prepetition claims (such claims, the “**Critical Vendor Claims**”) and thereby maintain lower costs of goods and services purchased during the postpetition period and avoid the severe disruption that might result from the cessation of such essential goods and services, it is prudent for the Debtors to do so. Such disruption would cause irreparable harm to the Debtors and to the recoveries of all of the Debtors’ creditors that would far outweigh the cost of payment of the Critical Vendor Claims.

10. The Debtors’ Critical Vendors generally fall into one or more of the following categories:

- a. Operational Vendors – Several of the Debtors’ Critical Vendors are providers of the various supplies that are essential to the daily operation of the Debtors’ healthcare facilities. The operational vendors include, but are not limited to, food vendors and distributors, information technology and systems providers, billing vendors, mechanical supply providers, hospitality vendors, and various operational equipment (including maintenance of such equipment) and service providers. These operational vendors are critical for the Debtors to maintain their ability continue to adequately care for their residents without interruption.
- b. Healthcare Vendors – Several of the Debtors’ Critical Vendors are providers of the essential healthcare supplies that are required for the daily care of the residents in the Debtors’ facilities. The healthcare vendors include, but are not limited to, therapy providers, medical staffing vendors, pharmacy vendors and medical device and equipment providers. The healthcare vendors are essential to the Debtors’ operations and ability to provide uninterrupted and adequate care for their residents.

11. The Debtors believe that the Critical Vendors may immediately stop existing shipments and services, refuse to provide future shipments and services, and/or would immediately tighten credit terms if the Debtors do not have authority to satisfy the Critical Vendors’ prepetition claims. Given that the success of the Debtors’ business and the care of the Debtors’ residents depends on, among other things, their ability to (i) provide operational and healthcare supplies and

services, and (ii) continue to employ skilled nurses and other medical care providers, these disruptions would have an immediate and detrimental impact on operations and resident care. The Debtors' goals in these chapter 11 cases are to facilitate an orderly administration of their bankruptcy cases and to maintain efficient and seamless operations for the benefit of the residents in the nursing homes operated by the Debtors in order to maximize the value of their assets for the benefit of all stakeholders.

12. The Debtors also have assessed, with respect to each Critical Vendor, whether they can go without such Critical Vendors goods or services during the course of these bankruptcy cases and whether such Critical Vendors are likely to continue supplying the Debtors with goods or services absent payment. With respect to each Critical Vendor, the Debtors determined that the answer to both questions is "no."

13. The Debtors further will seek to condition any such payments upon an agreement with the Critical Vendor in question to provide goods or services to the Debtors on the most favorable terms in effect between that Critical Vendor and the Debtors in the twelve-month period preceding the Petition Date or on terms more favorable to the Debtors which the Debtors and the Critical Vendor may agree (the "**Trade Terms**"). The Debtors thus seeks the authority, but not direction, to obtain a written agreement with each Critical Vendor before issuing any payment to a Critical Vendor that the Critical Vendor will continue to provide its goods and services to the Debtors on the Trade Terms throughout this case, substantially in the form attached hereto as **Exhibit A** (each, a "**Trade Agreement**"). Such Trade Agreement, once agreed to and accepted by a Critical Vendor, shall be a legally binding, contractual arrangement between the Debtors and such Critical Vendor, governing the commercial trade relationship as provided therein.

14. Conversely, if a Critical Vendor refuses to supply goods or services to the Debtors on the Trade Terms following receipt of payment of amounts owed pre-petition, the Debtors seek the authority, but not the direction, in their sole discretion and without further Court order to declare that such provisional payments be deemed to have been made in payment of post-petition obligations to such vendor as may be outstanding from time to time and require that the Critical Vendor immediately repay to the Debtors any payment made to it on account of amounts owed pre-petition without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or otherwise.

15. Finally, to effectuate the substantive relief requested above, the Debtors seeks entry of interim and final orders authorizing all applicable banks and financial institutions to receive, process, honor and pay all checks presented for payment and all electronic payment requests made by the Debtors related to payments to the Critical Vendors, whether such payments were presented or electronic requests were submitted before or after the date hereof.

SECTION 503(B)(9) CLAIMS

16. The Debtors receive certain supplies on an order-by-order basis. As of the Petition Date, the Debtors believe that they owe certain Critical Vendors on account of goods received by the Debtors within the 20 days immediately prior to the Petition Date (claims related to such goods, the “503(b)(9) Claims”). After closely analyzing the scope of potential 503(b)(9) Claims, the Debtors expect that the majority of the 503(b)(9) Claims will come due prior to a final hearing on this Motion. The Debtors seek to have Critical Vendors which hold 503(b)(9) Claims apply any postpetition payment received under proposed orders in the first instance against such Critical Vendors’ 503(b)(9) Claims(s), in full or in part, as applicable. As discussed below, the Debtors believe that, to the extent Critical Vendor Claims qualify as 503(b)(9) Claims, in full or in part,

payment at the outset of these proceedings will not prejudice the estates, as it merely affects the timing of payment given the need to satisfy such claims in connection with a proposed plan of reorganization or liquidation, whereas non-payment Critical Vendor Claims which qualify as 503(b)(9) Claims would have a devastating impact on the estates and the Debtors' ability to care for their residents and progress through these chapter 11 cases. For the avoidance of doubt, any payments made or to be made by the Debtors under this Motion and any related order, and any authorization contained in any order approving this Motion, shall be in accordance with and shall be subject to the budget attached as Exhibit 1 (as may be amended, modified, or supplemented, the "**DIP Budget**") to the *Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5) Scheduling a Final Hearing* (the "**Interim DIP Order**"), and all payments shall be subject to all rights and interests granted to UMB Bank, N.A. as DIP Lender and any other terms, conditions, or requirements set forth in the Interim DIP Order and any subsequent final order.

RELIEF REQUESTED

17. By this Motion, the Debtors seek entry of interim and final orders, pursuant to §§ 105(a), 363(b), 503(b)(9), 1107 and 1108 of the Bankruptcy Code, and subject to the DIP Budget, (i) granting them the authority in their sole discretion, but not requiring them, to pay all or a portion of their prepetition obligations to certain Critical Vendors, (ii) granting them the authority in their sole discretion, but not requiring them, to pay claims of Critical Vendors for the value of goods received by the Debtors in the ordinary course of their businesses during the 20-day period prior to the Petition Date, which are likely entitled to administrative expense priority under § 503(b)(9) of the Bankruptcy Code, (iii) authorizing financial institutions to receive, process, honor

and pay checks or electronic transfers used by the Debtors to pay the foregoing and (iv) granting related relief.

BASIS FOR RELIEF

18. Courts, including this Court, have consistently granted relief of the type sought here, whether under § 363(b) of the Bankruptcy Code, under the Court’s general equitable powers, under the “necessity of payment” doctrine, or under §§ 1107(a) and 1108 of the Bankruptcy Code as part of a debtor-in-possession’s duty to protect and preserve the estate, including an operating business’s going-concern value. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 467-68 (2017) and authorities cited therein (acknowledging that “critical vendor” orders allowing “payment of essential suppliers’ prepetition invoices” are commonly entered to further “significant Code-related objectives”); *In re Wehrenberg, Inc.*, 260 B.R. 468, 469 (Bankr. E.D. Mo. 2001) (approving critical vendor payments under § 105(a)); *see also, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (approving under general equitable powers and necessity of payment); *In re CoServ*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (approving under §§ 1107(a) and 1108 based on a debtor-in-possession’s implicit duty “to protect and preserve the estate,” including an operating business’ “going-concern value”). On any or all of those bases, the relief sought here should be granted.

19. Such action has also been recognized as a legitimate practice in bankruptcy proceedings by the Supreme Court. *Jevic*, 580 U.S. 451 (listing critical vendor orders that allow payment of essential supplier prepetition invoices as legitimate exceptions to the common priority scheme). Indeed, the Supreme Court reasoned that critical vendor orders supported “significant Code-related objectives.” *Id.* In *Jevic*, the Supreme Court offered several appropriate considerations for courts in determining whether to grant motions for payment of

critical vendors: (a) preserve the debtor as a going concern; (b) make the disfavored creditors better off; (c) promote the possibility of a confirmable plan; (d) restore the status quo *ante*; or (e) protect reliance interests. *Id.* Granting the Debtors' Motion will meet these objectives and is authorized pursuant to the Court's powers under section 105(a) of the Bankruptcy Code. 11 U.S.C. § 105 ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].").

20. Moreover, § 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtors' decisions to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *In re Trilogy Dev. Co., LLC*, 2010 Bankr. LEXIS 5636, at *3-4 (Bankr. W.D. Mo. 2010); *In re Channel One Comm., Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (citing *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting the standard for determining a section 363(b) motion is "a good business reason").

21. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied "as long as the proposed action *appears* to enhance the debtor's estate." *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107

F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis original, internal alterations and quotations omitted)); *see also In re AbitibiBowater, Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”). Under the business judgment rule, “management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003), *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985) and *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8th Cir. 1997) (“[w]here the [debtor’s] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor's estate” (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985))); *In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (approving the rejection of employment agreements and noting that “[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors' best economic interests, based on the Debtors' best business judgment in those circumstances.” (citations omitted)).

22. Similar relief has been granted in other chapter 11 cases in this district. *See e.g., In re Allied Healthcare Products, Inc.*, Case No. 23-41607 (Bankr. E.D. Mo. 2023) (Dkt. No. 103) (authorizing up to \$260,000.00 in payments to critical vendors); *In re Payless Holdings LLC, et al.*, Case No. 19-40883 (Bankr. E.D. Mo. 2019) (Dkt. No. 600) (authorizing up to \$5

million in payments to critical vendors); *In re Arch Coal, Inc., et al.*, Case No. 16-40120 (Bankr. E.D. Mo. 2016) (Dkt. No. 71) (authorizing up to \$5 million in payments to critical vendors); *In re Noranda Aluminum, Inc., et al.*, Case No. 16-10083 (Bankr. E.D. Mo. 2016) (Dkt. No. 96) (authorizing up to \$8.1 million in payments to critical vendors).

23. In sum, the Debtors respectfully submit that the relief requested herein is necessary and appropriate to ensure a smooth transition into chapter 11, to normalize and maintain existing relationships with the Debtors' Critical Vendors during the early stages of this bankruptcy case, and to preserve and maximize value for the benefit of the Debtors' creditors. One of the keys to the Debtors' successful reorganization will be maintaining harmonious relationships with their employees, medical services providers, most critical vendors, and residents, and preserving the going-concern value of the Debtors' business. Notwithstanding anything herein to the contrary, the relief requested herein and in any related order approving this Motion shall be in accordance with and subject to the DIP Budget, the rights and interests granted to UMB Bank, N.A. as DIP Lender, and the Interim DIP Order and any subsequent final order.

NECESSITY FOR IMMEDIATE RELIEF

24. Further, Bankruptcy Rule 6003 permits the relief requested here to be granted if it is "necessary to avoid immediate and irreparable harm." For all the reasons set forth herein, that standard is satisfied here. Authorizing the Debtors to pay these claims and granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. *See* Bankruptcy Rule 6003 (a court may grant relief within the first 21 days after the petition date to the extent such relief is necessary to avoid immediate and irreparable harm). The relief requested is necessary for

the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. If the Debtors are not authorized to pay certain Critical Vendors, immediate and irreparable harm might be caused to the Debtors' estates. Accordingly, the relief requested herein is consistent with Bankruptcy Rule 6003.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(H)

25. Finally, Bankruptcy Rule 6004(h) authorizes the presumptive 14-day stay to be modified in instances where, as here, immediate relief is necessary to avoid immediate and irreparable harm. As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NO PREVIOUS REQUEST

26. No previous application for the relief sought herein has been made to this or any other Court.

NOTICE

27. This Motion and notice of this Motion will be served respectively on Master Service List No. 1 (dated July 16, 2024) and Master Notice List No. 1 (dated July 16, 2024). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1). The Debtors submit that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtors respectfully request entry of an order granting the relief requested herein, together with such other and further relief as the Court deems just and proper.

Dated: July 16, 2024
St. Louis, Missouri

Respectfully submitted,

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/s/ Stephen O'Brien

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EXHIBIT A

Form Trade Agreement

TRADE AGREEMENT

[•] (the “**Company**”), on the one hand, and the supplier identified in the signature block below (“**Supplier**”), on the other hand, hereby enter into the following trade agreement (this “**Trade Agreement**”) dated as of the date in the Supplier’s signature block below.

Recitals

WHEREAS on July 16, 2024 (the “**Petition Date**”), Midwest Christian Villages, Inc., and certain of its affiliates (collectively, the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Eastern District of Missouri (the “**Court**”).

WHEREAS on [•], 2024, the Court entered its *Interim Order (I) Authorizing, but not Directing, the Debtors to Pay Prepetition Claims of Certain Vendors and (II) Granting Related Relief* (collectively, with the final order granting similar relief, the “**Critical Vendor Orders**”)¹ [Docket No. [•]] authorizing the Debtors on an interim basis, under certain conditions, to pay the prepetition claims of certain suppliers, including Supplier, subject to the terms and conditions set forth therein.

WHEREAS prior to the Petition Date, Supplier delivered goods to and/or performed services for the Company, and the Company paid Supplier for such goods and/or services, according to Customary Trade Terms (as defined herein).

WHEREAS the Company and Supplier (each a “**Party**,” and collectively, the “**Parties**”) agree to the following terms as a condition of payment on account of certain pre-petition claims Supplier may hold against the Company.

Agreement

1. **Recitals.** The foregoing recitals are incorporated herein by reference as if set forth at length herein.

2. **Supplier Payment.** Supplier represents and agrees that, after due investigation, the sum of all amounts currently due and owing by the Company to Supplier is \$[•] (the “**Agreed Supplier Claim**”). Following execution of this Trade Agreement, the Company shall, in full and final satisfaction of the Agreed Supplier Claim, pay Supplier \$[•] on account of its prepetition claim (the “**Supplier Payment**”) (without interest, penalties, or other charges), as such amounts become due and payable in the ordinary course.

3. **Agreement to Supply.**

a. Supplier shall supply goods and/or perform services to or for the Company, and the Company shall accept and pay for goods and/or service from Supplier, for the Duration of the Cases (as defined below), on the trade terms (the “**Customary Trade Terms**”) at least as

¹ Capitalized terms used but not defined herein shall have the meanings set forth in the Critical Vendor Orders.

favorable to the Company as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances (as may be incorporated or contemplated by any agreements between the Parties or based on historic practice, as applicable), product mix, availability, and other programs) in place in the 180 days prior to the Petition Date except for any partial payments or other payments (or assurances) Company made with respect to any unfinished product.

b. **“Duration of the Cases”** means the earlier of: (i) the effective date of a chapter 11 plan in the Debtors’ chapter 11 case; (ii) the closing of a sale of all or a material portion of the Debtors’ assets pursuant to Bankruptcy Code section 363 resulting in a cessation of the Debtors’ business operations; (iii) conversion of the Debtors’ chapter 11 cases to cases under chapter 7 of the Bankruptcy Code; or (iv) a default under any of the Debtors’ debtor-in-possession financing facilities that results in the Company losing access to funds available under any such facility.

c. The Customary Trade Terms may not be modified, adjusted, or reduced in a manner adverse to the Company except as agreed-to in writing by the Parties. For the avoidance of doubt, such Customary Trade Terms include, but are not limited to:

d. Supplier shall continue to honor any existing allowances, credits, contractual obligations, or balances that accrued as of the Petition Date and shall apply all such allowances, credits, or balances towards future orders in the ordinary course of business.

4. Other Matters.

a. Supplier agrees that it shall not require a lump-sum payment upon the effective date of a plan in the Debtors’ chapter 11 cases on account of any outstanding administrative claims Supplier may assert arising from the delivery of postpetition goods or services, to the extent that payment of such claims is not yet due. Supplier agrees that such claims will be paid in the ordinary course of business after confirmation of a plan pursuant to the Customary Trade Terms then in effect. The Supplier Payment will be made concurrently with payment of other outstanding administrative claims as provided in a confirmed plan.

b. Supplier will not separately seek payment from the Debtors on account of any prepetition claim (including, without limitation, any reclamation claim or any claim pursuant to section 503(b)(9) of the Bankruptcy Code) outside the terms of this Trade Agreement or a plan confirmed in the Company’s chapter 11 cases.

c. Supplier will not file or otherwise assert against the Debtors, their assets, or any other affiliated person or entity, or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to Supplier by the Debtors arising from prepetition agreements or transactions. Furthermore, if Supplier has taken steps to file or assert such a lien prior to entering into this Trade Agreement, Supplier will promptly take all necessary actions to remove such liens.

5. Breach.

a. In the event that the Company pays Supplier its Supplier Payment and Supplier is determined to have breached this Trade Agreement (a “**Supplier Breach**”), upon written notice to Supplier, Supplier shall promptly pay to the Company immediately available funds in an amount equal to, at the election of the Company, the Supplier Payment or any portion of the Supplier Payment which cannot be recovered by the Company from the postpetition receivables then owing to Supplier from the Company.

b. In the event that the Company recovers the Supplier Payment pursuant to Section 5(a) hereof or otherwise, the full Agreed Supplier Claim shall be reinstated as if the Supplier Payment had not been made.

c. Supplier agrees and acknowledges that irreparable damage would occur in the event of a Supplier Breach and remedies at law would not be adequate to compensate the Company. Accordingly, Supplier agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to seek an injunction or injunctions to prevent breaches of the provisions of this Trade Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive relief and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Trade Agreement. Supplier hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance, or other equitable remedies. Notwithstanding the foregoing, in the event of a specific performance action by the Company, the Supplier retains its right to seek adequate assurance of payment and other similar relief pursuant to applicable law.

d. In the event the Company fails to pay for goods or services delivered postpetition in accordance with this Trade Agreement, and the Company fails to cure such default within ten (10) days after receiving notice of such default from the Supplier, the Supplier shall have the right to terminate this Trade Agreement, in which event the Supplier (i) shall have no obligation to continue to provide goods or services to the Company, and (ii) reserves its rights to file a timely proof of claim for any alleged unpaid amounts of the Supplier Payment.

6. Notice.

If to Supplier, then to the person and address identified in the signature block hereto.

If to Company:

Midwest Christian Villages
2 Cityplace Dr, Suite 200
Saint Louis, MO 63141-7390
Attn: Kenna Hudson; Zach Rowe
khudson@chliving.com
zrowe@hcmpllc.com

– and –

Robert E. Richards
Samantha Ruben
DENTONS US LLP
233 S. Wacker Drive, Suite 5900
Chicago, Illinois 60606-6404
Telephone: (312) 876-8000
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– and –

David A. Sosne
MoBar # 28365
SUMMERS COMPTON WELLS LLC
903 South Lindbergh Blvd., Suite 200
St. Louis, Missouri 63131
Telephone: (314) 991-4999
dsosne@scw.law

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

7. Representations and Acknowledgements. The Parties agree, acknowledge and represent that:

a. the Parties have reviewed the terms and provisions of the Critical Vendor Orders and this Trade Agreement and consent to be bound by such terms and that this Trade Agreement is expressly subject to the procedures approved pursuant to the Critical Vendor Orders;

b. any payments made on account of the Agreed Supplier Claim shall be subject to the terms and conditions of the Critical Vendor Orders;

c. if Supplier refuses to supply goods or services to the Company as provided herein or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under the Critical Vendor Orders, the Bankruptcy Code, or applicable law; and

d. in the event of disagreement between the Parties regarding whether a breach has occurred, either Party may apply to the Court for a determination of their relative rights, in which event, no action may be taken by either Party, including, but not limited to, the discontinuing of shipment of goods from Supplier to the Company, until a ruling of the Court is obtained.

8. Confidentiality. In addition to any other obligations of confidentiality between

Supplier and Company, Supplier agrees to hold in confidence and not disclose to any party: (a) this Trade Agreement; (b) any and all payments made by the Company pursuant to this Trade Agreement; (c) the terms of payment set forth herein; and (d) the Customary Trade Terms (collectively, the “**Confidential Information**”); provided that if any party seeks to compel Supplier’s disclosure of any or all of the Confidential Information, through judicial action or otherwise, or Supplier intends to disclose any or all of the Confidential Information, Supplier shall immediately provide the Company with prompt written notice so that the Company may seek an injunction, protective order or any other available remedy to prevent such disclosure; provided, further, that, if such remedy is not obtained, Supplier shall furnish only such information as Supplier is legally required to provide.

9. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Trade Agreement on behalf of the respective Parties; (ii) the respective Parties have full knowledge of, and have consented to, this Trade Agreement; and (iii) they are fully authorized to bind that Party to all of the terms and conditions of this Trade Agreement.

b. This Trade Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them for the Duration of the Cases, provided that any terms from prior agreements that are not addressed in the Trade Agreement continue to apply. This Trade Agreement may not be changed, modified, amended or supplemented, except in a writing signed by both Parties.

c. Electronic signatures shall count as original signatures for all purposes.

d. This Trade Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

e. The Parties hereby submit to the exclusive jurisdiction of the Court to resolve any dispute with respect to or arising from this Trade Agreement.

f. This Trade Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature page follows]

AGREED AND ACCEPTED AS OF THE DATE SET FORTH ABOVE:

[COMPANY]

By:
Title:

[SUPPLIER]

By:
Title: