

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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In re:	:	Chapter 11
	:	
Wordsworth Academy,	:	Case No. 17- 14463 (AMC)
	:	
Debtor.	:	(Joint Administration Requested)
	:	

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In re:	:	Chapter 11
	:	
Wordsworth CUA 5, LLC,	:	Case No. 17- 14466 (AMC)
	:	
Debtor.	:	(Joint Administration Requested)
	:	

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In re:	:	Chapter 11
	:	
Wordsworth CUA 10, LLC,	:	Case No. 17- 14467 (AMC)
	:	
Debtor. <sup>1</sup>	:	(Joint Administration Requested)
	:	

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**APPLICATION OF THE DEBTORS FOR  
ENTRY OF AN ORDER PURSUANT TO SECTIONS 327(a)  
AND 328(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS  
TO RETAIN AND EMPLOY GETZLER HENRICH & ASSOCIATES LLC  
AS FINANCIAL ADVISORS FOR THE DEBTORS**

The above captioned debtors and debtors-in-possession (the “Debtors”) hereby submit this application (the “Application”), pursuant to sections 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Pennsylvania (“Local Rules”), for entry of an order authorizing the retention and employment of Getzler Henrich & Associates LLC (“Getzler Henrich”) as financial advisors

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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: Wordsworth Academy (9031); Wordsworth CUA 5, LLC (0983); and Wordsworth CUA 10, LLC (5980). Wordsworth Academy has an address at 3300 Henry Ave., Philadelphia, PA 19129.

to the Debtors. In support of this Application, the Debtors rely upon the Declaration of William H. Henrich in Support of the Application (the “Declaration”), which is attached hereto as Exhibit A and incorporated herein by reference, and respectfully represent as follows:

**Background**

1. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief with the Court under chapter 11 of title 11 of the Bankruptcy Code.

2. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases (the “Chapter 11 Cases”) and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

4. Concurrently with the filing of this Motion, the Debtors have requested joint administration of these Chapter 11 Cases.

5. Debtor Wordsworth Academy (“Wordsworth”) is a Pennsylvania non-profit corporation. Its mission is to provide education, behavioral health and child welfare services to children and youth who have emotional, behavioral and academic challenges so that they are empowered to reach their potential and lead productive, fulfilling lives. In addition to other programs, Wordsworth provides services through two Community Umbrella Agencies. Wordsworth is the sole member of Debtors Wordsworth CUA 5 (“CUA 5”) and Wordsworth CUA 10 (“CUA 10”) (together, the “CUAs”), which are Pennsylvania non-profit limited liability companies.

6. The factual background relating to the Debtors’ commencement of these Chapter 11 cases is set forth in detail in the First Day Declaration filed on the Petition Date and incorporated herein by reference.

**Jurisdiction, Venue, And Statutory Predicates**

7. The Court has jurisdiction over this Application 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 core within the meaning of 28 U.S.C. § 157(b)(2).

8. The statutory predicates for the relief sought herein are sections 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rule 2014-1.

**Relief Requested**

9. By this Application, the Debtors seek, pursuant to sections 327 and 328 of the Bankruptcy Code, to employ and retain Getzler Henrich as their financial advisors pursuant to the terms and conditions set forth in this Application and that certain Engagement Letter by and between the Debtors and Getzler Henrich dated as of May 25, 2017 (the “Agreement”), a true and correct copy of which is attached as Schedule 1 to the Declaration and incorporated herein by reference.

**Services To Be Rendered**

10. As set forth more fully in the Declaration and the Agreement, the Debtors propose to retain Getzler Henrich to serve as financial advisors to the Debtors. A detailed description of the scope of services to be provided is set forth in the Agreement.

11. The Debtors believe that Getzler Henrich is well qualified and able to provide the foregoing services to the Debtors. Getzler Henrich has indicated a willingness to act on behalf of the Debtors on the terms described herein.

**Qualifications Of Professional**

12. The Debtors have selected Getzler Henrich as their financial advisors in connection with these Chapter 11 Cases because of the firm’s diverse experience and extensive knowledge. Getzler Henrich is a firm that provides a broad range of corporate advisory services

to its clients. Getzler Henrich's professionals have served as financial advisors in many Chapter 11 proceedings. As such, Getzler Henrich is well qualified to perform the work required in these Chapter 11 Cases.

13. The Debtors desire to retain a qualified financial advisor to provide financial advisory services which will be important with respect to the Debtors' Chapter 11 case. The resources, capabilities, and experience of Getzler Henrich are important to the Debtors' efforts to maximize value for their stakeholders. Given Getzler Henrich's work to date, should the Debtors be required to retain a financial advisor other than Getzler Henrich in connection with these Chapter 11 Cases, the Debtors, their estates, and all parties-in-interest would be unduly prejudiced by the time and expense necessarily attendant to such financial advisors' familiarization with the intricacies of the Debtors and their business operations and financial affairs. The Debtors therefore believe that the retention of Getzler Henrich as financial advisors is in the best interests of the Debtors' estates.

#### **Disinterestedness Of Professional**

14. To the best of the Debtors' knowledge and based upon the Declaration, Getzler Henrich does not hold or represent an interest adverse to the Debtors' estates and is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

15. To the best of the Debtors' knowledge and based upon the Declaration, (1) Getzler Henrich's connections with the Debtors, creditors, any other party-in-interest are disclosed at Schedule 3 to the Declaration; and (2) Getzler Henrich and the Getzler Henrich professionals working on this matter are not relatives of and do not have connections with the United States Trustee of the District of Delaware or of any known employee in the office thereof, or the United States Bankruptcy Judge assigned to this Chapter 11 Case.

16. Getzler Henrich has not provided, and will not provide, any professional services to any of the creditors, other parties-in-interest, or their respective attorneys and accountants with regard to any matter related to these Chapter 11 Cases.

**Indemnification And Limitation Of Liability**

17. The Agreement provides for a limitation of liability, and provides that the Debtors will indemnify and hold harmless Getzler Henrich, and its personnel (collectively, the “Indemnified Parties”) under certain circumstances (such indemnification obligations, as modified by the proposed retention order, the “Indemnification Provisions”), which provisions are a part of the Agreement.

18. The Debtors and Getzler Henrich believe that the Indemnification Provisions are customary and reasonable for financial advisory engagements, both out of court and in chapter 11 cases. The terms and conditions of the Agreement, including the Indemnification Provisions, were negotiated by the Debtors and Getzler Henrich at arm’s-length and in good faith. The Debtors respectfully submit that the Indemnification Provisions contained in the Agreement, viewed in conjunction with the other terms of Getzler Henrich’s proposed retention, are reasonable and in the best interests of the Debtors, their estates and creditors in light of the fact that the Debtors require Getzler Henrich’s services for a successful result in these Chapter 11 Cases. Accordingly, as part of this Application, the Debtors request that the Court approve the Indemnification Provisions, as outlined in the Agreement, subject during the pendency of the Chapter 11 Cases to the following modifications:

- a. Subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify the Getzler Henrich Parties (as defined in the Agreement), in accordance with the Agreement, for any claim arising from, related to or in connection with their performance of the services described in the Agreement; provided, however, that the Getzler Henrich Parties shall not be indemnified for any claim arising from services other than the services provided under the Agreement, unless such services and

- the indemnification, contribution or reimbursement therefore are approved by the Court;
- b. Notwithstanding anything to the contrary in the Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, (i) for any claim or expense that is judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege breach of Getzler Henrich's obligations under the Agreement, unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Agreement as modified by the proposed order; and
- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these Chapter 11 Cases, Getzler Henrich believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Agreement (as modified by the proposed order), including without limitation the advancement of defense costs, Getzler Henrich must file an application before this Court, and the Debtors may not pay any such amounts before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Getzler Henrich.

### **Professional Compensation**

19. Getzler Henrich's decision to advise and assist the Debtors is conditioned upon its ability to be retained in accordance with its customary terms and conditions of employment and to be compensated for services and reimbursed for the expenses it incurs in accordance with its customary billing practices.

20. The Agreement provides for Getzler Henrich to be compensated for William Henrich's time at \$565 per billable hour and for Margie Kaufman's time at \$485 per billable

hour, reflecting up to a 7.5% discount from standard rates. In addition, travel time will not be billed. Such rates are subject to adjustment from time to time.

21. In addition to the fees described above, the Debtors agree to reimburse Getzler Henrich for all of Getzler Henrich's reasonable out-of-pocket expenses incurred in connection with the subject matter of the Agreement.

22. By this Application, the Debtors request that the Court approve the compensation arrangements described in the Agreement pursuant to section 328(a) of the Bankruptcy Code. Getzler Henrich's fees and expenses will remain subject to Court approval, consistent with the proposed compensation set forth in the Agreement.

#### **Record Keeping And Applications For Compensation**

23. Getzler Henrich will keep time records for its work on this engagement.

24. Getzler Henrich will also maintain detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services.

#### **Basis For Relief**

25. Under sections 327 and 328 of the Bankruptcy Code, a debtor-in-possession may employ one or more professionals, that do not hold or represent an interest adverse to the estate and that are disinterested persons, to assist it in carrying out its duties under the Bankruptcy Code. Specifically, section 327(a) of the Bankruptcy Code provides that a debtor, subject to court approval:

[M]ay employ one or more attorney, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor's] duties under this title.

11 U.S.C. § 327(a).

26. In addition, section 328(a) of the Bankruptcy Code provides:

The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.

Id. § 328(a) (emphasis added). Section 328(a) of the Bankruptcy Code makes clear that the Debtors may retain, subject to bankruptcy court approval, a professional on a fee basis such as the fee structure proposed by the Debtors herein.

27. Getzler Henrich intends to submit applications for compensation for professional services rendered and reimbursement of expenses incurred in connection with these Chapter 11 Cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of the Court and consistent with the fee structure set forth in the Agreement.

#### **Notice**

28. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Eastern District of Pennsylvania; (b) the Commonwealth of Pennsylvania, Department of Labor and Industry; (c) the Commonwealth of Pennsylvania, Department of Revenue; (d) the Office of the Attorney General of Pennsylvania; (e) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (f) the Internal Revenue Service; (g) the City of Philadelphia; (h) M&T Bank; and (i) all parties who have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

**No Prior Request**

29. No prior request for the relief sought in this Application has been made to this or any other Court.

[SIGNATURE PAGE FOLLOWS]

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that this Court enter an order granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: June 30, 2017

Wordsworth Academy

BY:  \_\_\_\_\_

Wordsworth CUA 5, LLC

BY:  \_\_\_\_\_

Wordsworth CUA 10, LLC

BY:  \_\_\_\_\_