

SENIOR HOUSING PROPERTIES TRUST
Form 8-K
April 05, 2019

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **April 1, 2019**

SENIOR HOUSING PROPERTIES TRUST

(Exact Name of Registrant as Specified in Its Charter)

Maryland

(State or Other Jurisdiction of Incorporation)

001-15319
(Commission File Number)

04-3445278
(IRS Employer Identification No.)

Two Newton Place,
255 Washington Street, Suite 300
Newton, Massachusetts
(Address of Principal Executive Offices)

02458-1634
(Zip Code)

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617-796-8350

(Registrant's Telephone Number, Including Area Code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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In this Current Report on Form 8-K, the terms we, us, our and the Company refer to Senior Housing Properties Trust and its applicable subsidiaries and the term Five Star refers to Five Star Senior Living Inc. and its applicable subsidiaries.

Item 1.01. Entry into a Material Definitive Agreement.

Transaction Agreement

On April 1, 2019, we entered into a transaction agreement with Five Star, or the Transaction Agreement, pursuant to which we agreed to modify our existing business arrangements with Five Star. Also on April 1, 2019, in connection with the Transaction Agreement, we entered into a credit agreement with Five Star, pursuant to which we extended to Five Star a \$25 million line of credit, or the Credit Facility, which is secured by six senior living communities owned by Five Star, as further described below. Among other things, the Transaction Agreement provides that, subject to approval by Five Star's stockholders of the Share Issuances (as defined below) and receipt of other required approvals, effective January 1, 2020 (or January 1, 2021 if extended under the Transaction Agreement), or the Conversion Time:

- our five existing master leases with Five Star for 184 of our senior living communities that are leased by Five Star, as well as our existing management agreements and pooling agreements with Five Star for 77 of our senior living communities that are operated by Five Star, will be terminated and replaced, or the Conversion, with new management agreements for all 261 of these senior living communities, or collectively, the New Management Agreements;
- Five Star will issue to us such number of Five Star common shares as is necessary to cause us, together with our then owned Five Star common shares, to own approximately 34% of the then outstanding Five Star common shares, and we will declare a pro rata distribution to holders of our common shares of beneficial interest of the right to receive, and Five Star will issue on a pro rata basis to such holders, a number of Five Star common shares which equals approximately 51% of the then outstanding Five Star common shares; the noted percentage ownership amounts are post-issuance, giving effect to both share issuances, and those share issuances are referred to in this Current Report on Form 8-K as the Share Issuances; and
- as consideration for the Share Issuances, we will provide to Five Star \$75 million of additional consideration, or, collectively with the Conversion and the Share Issuances, the Restructuring Transactions.

Also pursuant to the Transaction Agreement, (1) commencing February 1, 2019, the aggregate amount of monthly minimum rent payable to us by Five Star is \$11 million, subject to adjustment, and no additional rent is payable to us by Five Star from such date to the Conversion Time, and (2) on April 1, 2019, we purchased from Five Star approximately \$50 million of unencumbered Qualifying PP&E (as defined in the Transaction Agreement) related to our senior living communities leased and operated by Five Star, which amount is subject to adjustment but will not exceed \$60 million.

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The Restructuring Transactions are subject to conditions, including, among others: (1) approval of the Share Issuances by at least a majority of the votes cast, in person or by proxy, by the holders of outstanding Five Star common shares at any meeting of Five Star's stockholders held for that purpose, or the Five Star Stockholder Approval; (2) the receipt of all Required Licenses (as defined in the Transaction Agreement) and any other third party consent or approval required for the consummation of the Restructuring Transactions; (3) the effectiveness of the registration statement on Form S-1 to be filed by Five Star with the Securities and Exchange Commission, or SEC, to register the Five Star common shares to be issued pursuant to the Share Issuances; and (4) approval by The Nasdaq Stock Market LLC of the listing of the Five Star common shares to be issued pursuant to the Share Issuances, subject to official notice of issuance.

If any required approval (other than the Five Star Stockholder Approval) is not obtained by December 31, 2019, and the failure to obtain such approval is not the result of a breach or default by Five Star under the Transaction Agreement, we and Five Star have agreed to work in good faith to determine an alternative to allow the Restructuring Transactions to occur on January 1, 2020; provided we are not required to agree to any alternative that would adversely affect our qualification for taxation as a real estate investment trust under the Internal Revenue Code of 1986, as amended. If we and Five Star do not agree to any such alternative, and, as of January 1, 2020, the failure to obtain a required approval is the only remaining condition under the Transaction Agreement, the Conversion Time will be automatically extended to January 1, 2021.

If the Five Star Stockholder Approval is not obtained by December 31, 2019, and we do not elect to extend the Transaction Agreement, the Transaction Agreement will terminate, our existing master leases and management agreements and pooling agreements with Five Star will remain in effect, and the amount of monthly minimum rent payable to us by Five

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Star under our existing master leases with Five Star will return to the rate provided for therein and additional rent again will be payable to us by Five Star in accordance therewith. If the Five Star Stockholder Approval is obtained by December 31, 2019, our existing master leases with Five Star will remain at \$11 million per month, subject to adjustment, regardless of whether the Transaction Agreement is extended and/or is terminated.

The Transaction Agreement contains certain customary representations, warranties and covenants, including, among others, covenants with respect to the conduct of Five Star's business prior to the Conversion Time. Further, Five Star has agreed to, within six months following the Conversion Time, expand its board of directors to add an independent director (as defined in Five Star's bylaws) reasonably satisfactory to us. In addition, we and ABP Trust, on behalf of ABP Acquisition LLC, or ABP, a wholly owned subsidiary of ABP Trust and Five Star's largest stockholder, have each agreed to vote all the Five Star common shares that we and ABP beneficially own in favor of approval of the Share Issuances at any meeting of Five Star's stockholders held for that purpose. As of April 1, 2019, the 4,235,000 Five Star common shares that we owned represented approximately 8.3% of the outstanding Five Star common shares, and the 17,999,999 Five Star common shares that ABP owned represented approximately 35.4% of the outstanding Five Star common shares.

New Management Agreements

Pursuant to the New Management Agreements, Five Star will receive a management fee equal to 5% of the gross revenues realized at the applicable senior living communities plus reimbursement for its direct costs and expenses related to such communities, as well as an annual incentive fee equal to 15% of the amount by which the annual EBITDA of all communities on a combined basis exceeds the target EBITDA for all communities on a combined basis for such calendar year, provided that in no event shall the incentive fee be greater than 1.5% of the gross revenues realized at all communities on a combined basis for such calendar year.

The New Management Agreements provide for 15 year terms, subject to Five Star's right to extend for two consecutive five year terms if it achieves certain performance targets for the combined managed communities portfolio. The New Management Agreements also provide us with the right to terminate the New Management Agreement for any community that does not earn 90% of the target EBITDA for such community for two consecutive calendar years or in any two of three consecutive calendar years, with the measurement period commencing January 1, 2021 (and the first termination not possible until the beginning of calendar year 2023), provided we may not in any calendar year terminate communities representing more than 20% of the combined revenues for all communities for the calendar year prior to such termination.

Credit Agreement

The Credit Facility matures on January 1, 2020, or January 1, 2021 if the Conversion Time is extended pursuant to the Transaction Agreement. The Credit Facility provides for interest to be paid on borrowed amounts at a rate of 6% per year and is secured by real estate mortgages on six senior living communities owned by certain of Five Star's subsidiaries that guarantee Five Star's obligations under the Credit Facility, and certain personal property owned by those and certain other Five Star subsidiaries. The Credit Facility provides for acceleration of payment of all amounts outstanding under the Credit Facility upon the occurrence and continuation of certain events of default, including a default by Five Star under the Transaction Agreement and certain other agreements. The agreement governing the Credit Facility, or the Credit Agreement, contains various covenants, including covenants that restrict Five Star's ability to incur debt or to pay dividends or make other distributions to its stockholders in certain circumstances.

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The foregoing descriptions of the Restructuring Transactions, the Transaction Agreement, the New Management Agreements and the Credit Agreement are qualified in their entirety by reference to the full texts of the Transaction Agreement (including the forms of guaranty, management agreement and omnibus agreement attached as exhibits thereto) and the Credit Agreement, copies of which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K.

Because of the continuing relationships between us and Five Star which are described below, the transactions contemplated by the Transaction Agreement and the terms thereof were evaluated, negotiated and recommended to our Board of Trustees and Five Star's board of directors for approval by a special committee of our Board of Trustees and a special committee of Five Star's board of directors, respectively, comprised solely of our and Five Star's independent Trustees and directors, respectively, and were separately approved and adopted by our Independent Trustees and Five Star's independent directors, respectively, and by our Board of Trustees and Five Star's board of directors, respectively. Morgan Stanley & Co. LLC acted as financial

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advisor to the special committee of our Board of Trustees and Citigroup Global Markets Inc. acted as financial advisor to the special committee of Five Star's board of directors.

Information Regarding Certain Relationships and Related Person Transactions

Five Star was our 100% owned subsidiary until we distributed its common shares to our shareholders in 2001. We are currently one of Five Star's largest stockholders, owning, as of April 1, 2019, 4,235,000 Five Star common shares, or approximately 8.3% of the outstanding Five Star common shares. Five Star is our largest tenant and the manager of our managed senior living communities. The RMR Group LLC, or RMR LLC, provides management services to both us and Five Star. The RMR Group Inc., or RMR Inc., the managing member of RMR LLC, is controlled by Adam Portnoy, one of our Managing Trustees, as the sole trustee of ABP Trust. ABP is Five Star's largest stockholder, owning, as of April 1, 2019, 17,999,999 Five Star common shares, or approximately 35.4% of the outstanding Five Star common shares. Adam Portnoy is also a managing director of Five Star. Jennifer B. Clark, our other Managing Trustee, serves as a managing director and as executive vice president, general counsel and secretary of RMR Inc. and an officer and employee of RMR LLC. Our executive officers and Five Star's executive officers are also officers and employees of RMR LLC.

For further information about these and other such relationships and related person transactions, please see our Annual Report on Form 10-K for the year ended December 31, 2018, or our Annual Report, including Notes 5, 6 and 7 to our consolidated financial statements included in our Annual Report and the sections captioned "Business", "Management's Discussion and Analysis of Financial Condition and Results of Operations", "Related Person Transactions" and "Warning Concerning Forward Looking Statements" of our Annual Report, and our other filings with the Securities and Exchange Commission, or the SEC. In addition, please see the section captioned "Risk Factors" of our Annual Report for a description of risks that may arise as a result of these and other such relationships and related person transactions. Our filings with the SEC and copies of certain of our agreements with these related parties, including our existing master leases, management agreements and pooling agreements with Five Star, are publicly available as exhibits to our public filings with the SEC and accessible at the SEC's website, www.sec.gov.

WARNING CONCERNING FORWARD LOOKING STATEMENTS

THIS CURRENT REPORT ON FORM 8-K CONTAINS STATEMENTS THAT CONSTITUTE FORWARD LOOKING STATEMENTS WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND OTHER SECURITIES LAWS. ALSO, WHENEVER WE USE WORDS SUCH AS BELIEVE, EXPECT, ANTICIPATE, INTEND, PLAN, ESTIMATE, WILL, MAY AND NEGATIVES OR DERIVATIVES OF THESE OR SIMILAR EXPRESSIONS, WE ARE MAKING FORWARD LOOKING STATEMENTS. THESE FORWARD LOOKING STATEMENTS ARE BASED UPON OUR PRESENT INTENT, BELIEFS OR EXPECTATIONS, BUT FORWARD LOOKING STATEMENTS ARE NOT GUARANTEED TO OCCUR AND MAY NOT OCCUR. ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE CONTAINED IN OR IMPLIED BY OUR FORWARD LOOKING STATEMENTS AS A RESULT OF VARIOUS FACTORS. FOR EXAMPLE:

- **THIS CURRENT REPORT ON FORM 8-K STATES THAT WE ENTERED INTO A DEFINITIVE AGREEMENT TO MODIFY OUR EXISTING BUSINESS ARRANGEMENTS WITH FIVE STAR. AS DESCRIBED HEREIN, CERTAIN OF THE TRANSACTIONS CONTEMPLATED BY THE TRANSACTION AGREEMENT ARE EXPECTED TO BE EFFECTIVE JANUARY 1, 2020. THESE TRANSACTIONS ARE SUBJECT TO CONDITIONS, INCLUDING, AMONG OTHERS, THE RECEIPT**

OF THE FIVE STAR STOCKHOLDER APPROVAL AND CERTAIN REGULATORY APPROVALS. WE CANNOT BE SURE THAT ANY OR ALL OF SUCH CONDITIONS WILL BE SATISFIED. ACCORDINGLY, THESE TRANSACTIONS MAY NOT BECOME EFFECTIVE AS OF JANUARY 1, 2020 OR AT ALL, OR THE TERMS OF SUCH TRANSACTIONS AND THE OTHER TRANSACTIONS MAY CHANGE.

- **AS NOTED ABOVE, THE SHARE ISSUANCES WILL REQUIRE THE FIVE STAR STOCKHOLDER APPROVAL, AND THE EFFECTIVENESS OF A REGISTRATION STATEMENT ON FORM S-1 TO BE FILED BY FIVE STAR WITH THE SEC TO REGISTER THE FIVE STAR COMMON SHARES TO BE ISSUED PURSUANT TO THE SHARE ISSUANCES. THE PROCESS OF PREPARING THE FORM S-1 IS TIME CONSUMING AND THE TIME BEFORE THE SEC DECLARES THE REGISTRATION STATEMENT EFFECTIVE IS BEYOND FIVE STAR'S CONTROL.**

ACCORDINGLY, WE CANNOT BE SURE THAT THE TRANSACTION AGREEMENT AND THE RESTRUCTURING TRANSACTIONS WILL BE COMPLETED WITHIN A SPECIFIED TIME PERIOD OR AT ALL.

• THIS CURRENT REPORT ON FORM 8-K STATES THAT THE TRANSACTIONS CONTEMPLATED BY THE TRANSACTION AGREEMENT AND THE TERMS THEREOF WERE EVALUATED, NEGOTIATED AND RECOMMENDED TO OUR BOARD OF TRUSTEES AND FIVE STAR S BOARD OF DIRECTORS FOR APPROVAL BY A SPECIAL COMMITTEE OF OUR BOARD OF TRUSTEES AND A SPECIAL COMMITTEE OF FIVE STAR S BOARD OF DIRECTORS, RESPECTIVELY, COMPRISED SOLELY OF OUR INDEPENDENT TRUSTEES AND FIVE STAR S INDEPENDENT DIRECTORS, RESPECTIVELY, AND WERE SEPARATELY APPROVED AND ADOPTED BY OUR INDEPENDENT TRUSTEES AND FIVE STAR S INDEPENDENT DIRECTORS, RESPECTIVELY, AND BY OUR BOARD OF TRUSTEES AND FIVE STAR S BOARD OF DIRECTORS, RESPECTIVELY, AND THAT MORGAN STANLEY & CO. LLC AND CITIGROUP GLOBAL MARKETS INC. ACTED AS A FINANCIAL ADVISOR TO US AND FIVE STAR, RESPECTIVELY. DESPITE THIS PROCESS, WE COULD BE SUBJECT TO CLAIMS CHALLENGING THE TRANSACTION AGREEMENT OR THE RESTRUCTURING TRANSACTIONS OR OUR ENTRY INTO THE TRANSACTION AGREEMENT AND RELATED AGREEMENTS BECAUSE OF THE MULTIPLE RELATIONSHIPS AMONG US, FIVE STAR, RMR LLC AND THEIR RELATED PERSONS AND ENTITIES OR OTHER REASONS, AND DEFENDING EVEN MERITLESS CLAIMS COULD BE EXPENSIVE AND DISTRACTING TO MANAGEMENT.

THE INFORMATION CONTAINED IN OUR FILINGS WITH THE SEC, INCLUDING UNDER THE CAPTION RISK FACTORS IN OUR PERIODIC REPORTS, OR INCORPORATED THEREIN, IDENTIFIES OTHER IMPORTANT FACTORS THAT COULD CAUSE OUR ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE STATED IN OR IMPLIED BY OUR FORWARD LOOKING STATEMENTS. OUR FILINGS WITH THE SEC ARE AVAILABLE ON THE SEC S WEBSITE AT WWW.SEC.GOV.

YOU SHOULD NOT PLACE UNDUE RELIANCE UPON FORWARD LOOKING STATEMENTS.

EXCEPT AS REQUIRED BY LAW, WE DO NOT INTEND TO UPDATE OR CHANGE ANY FORWARD LOOKING STATEMENTS AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

10.1 Transaction Agreement, dated as of April 1, 2019, between the Company and Five Star Senior Living Inc.

10.2 Credit Agreement, dated as of April 1, 2019, among the Company, Five Star Senior Living Inc. and the guarantors party thereto.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SENIOR HOUSING PROPERTIES TRUST

By:	/s/ Richard W. Siedel, Jr.
Name:	Richard W. Siedel, Jr.
Title:	Chief Financial Officer and Treasurer

Dated: April 4, 2019
