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

In re:	§	Chapter 11
	§	
Buckingham Senior Living Community, Inc.,	§	Case No. 25-80595 (MVL)
	§	
	§	
Debtor.	§	**Related to Docket Nos. 19 and 50**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTOR'S EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO (A) OBTAIN POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF

The Official Committee of Unsecured Creditors (the "Committee") files this objection (the "Objection") to the *Debtor's Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting*

Related Relief [Docket No. 19] (the "DIP Financing Motion"),[1] and respectfully represents as follows:

PRELIMINARY STATEMENT

1. Given the recent formation of the Committee and the Committee's lack of information given the time constraints, a second interim order approving the Debtor's DIP Financing Motion would be appropriate at this early stage of the Chapter 11 case (the "Case"), as opposed to final allowance of the debtor-in-possession financing arrangement (the "DIP Facility"). The Committee was appointed on December 3, 2025, only ten days prior to the filing of this Objection. The Committee did not retain legal counsel until December 5, 2025 (seven days ago) and on December 11, 2025 (one day ago) engaged a financial advisor. The Committee is in the process of entering into a confidentiality agreement with the Debtor, so that the Committee members and its professionals can obtain full access to a data room (the "VDR") established by the Debtor. Proposed counsel to the Committee received access to the VDR after close of business on December 11, 2025, and requires sufficient time to review the volume of information contained therein. The Committee has provided the Debtor with 2004 discovery requests detailing the information needed to, among other things, understand whether this DIP Facility proposed by the Debtor is sufficient to sustain the Debtor's operations and this Case through a sale process, without leaving this Case administratively insolvent and without jeopardizing the care and safety of the residents under the Debtor's care. Proposed counsel to the Committee has requested a "meet and

[1] Capitalized terms not specifically defined herein shall have the meanings set forth in the DIP Financing Motion.

confer" conference with the Debtor's proposed counsel regarding the 2004 discovery, which has not yet occurred as of the filing of this Objection.

2. This Case is on a fast track and needs to slow down to provide more transparency to the current and former residents and other creditors, who have nearly $150 million of claims at stake and to allow the Committee an adequate opportunity to evaluate the sufficiency of the DIP Facility, the budget, and the timeline of this Case.

3. The Committee is concerned that the DIP Facility will not provide the Debtor with sufficient liquidity to complete the sale process and sufficient liquidity to ensure that this Case is not administratively insolvent. The Budget appears to be tight. Pursuant to the DIP Financing Motion, the Debtor has proposed a $4 million DIP Facility that, at the end of the 13-week cash forecast, leaves the Debtor with roughly $1.1 million cash and access to only $1 million of financing under the DIP Facility for the remainder of this Case. These limited funds will be the only available source of cash to support the Debtor's senior living facility that cares for 330 independent, assisted, memory care and skilled nursing residents and to support what may be a lengthy sale process. While the Debtor is seeking to approve an accelerated sale process over the holiday season, even if approved, the sale likely will not close for several months as various governmental approvals are obtained and operations are transferred from a non-profit operator to a for-profit operator, all as detailed in the proposed stalking horse agreement that has an outside closing date of 121 days after the Petition Date (as defined below). This Case will extend beyond

the 13-week Budget attached to the DIP Financing Motion and likely beyond the proposed March 31, 2026 maturity date for the DIP Facility.

4. In addition to liquidity concerns, the DIP Facility is also objectionable for the following reasons:

- **No Liens on Avoidance Action Proceeds or Commercial Tort Claims**. Avoidance Actions, commercial tort (or litigation) claims, and their proceeds, including any proceeds of any officer and director insurance, must be reserved for unsecured creditors. The DIP Lender and the Prepetition Lender should not receive liens on proceeds of Avoidance Actions or commercial tort claims or seek payment of any superpriority claims from these assets.

- **Protection of Escrowed Entrance Fees**. Any escrowed Entrance Fees and Reservation Deposits must be excluded from the liens and claims of the DIP Lender and Prepetition Lender. These funds are held for the benefit of the Residents.[2]

- **Unfettered Rights to Modify the Budget**. The Interim Order gives the Debtor and the DIP Lender authority to amend or modify the Budget without the consent of the Committee or Court approval. This provision is unacceptable because it grants the Debtor and the DIP Lender control over critical case funding, including amounts for professionals and estate administration, leaving the Committee with no oversight or opportunity to object.

- **Reporting, Non-Material DIP Facility Amendments and Weekly Calls**. Under the Interim Order, the Debtor will provide extensive reporting to the DIP Lender, may enter into non-material amendments to the DIP Facility without court approval and have weekly calls with the DIP Lender. The Committee is entitled to the same reporting and weekly calls. In addition, the Committee should be provided notice prior to the Debtor entering into any non-material amendment to the DIP Facility.

- **Inadequate Challenge Budget and Investigation Period**. The proposed $35,000 budget and the 60-day period to investigate the Prepetition Liens are inadequate. The limited budget only covers investigation of Prepetition Liens, restricting the Committee's ability to act on findings that could yield significant recoveries for unsecured creditors. Additionally, the 60-day deadline is unreasonably short for a case of this complexity, which may prevent the Committee from conducting a fulsome investigation.

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[2] *See Debtor's Emergency Motion for Entry of an Order (I) Authorizing the Debtor to (A) Escrow Certain Reservation Deposits and Entrance Fees and (B) Refund Certain Reservation Deposits and Entrance Fees Held in Escrow; and (II) Granting Related Relief* [Docket No. 15, ¶ 15] (the "Escrow Motion") ("The funds held in the Escrow Accounts are held in escrow for the benefit of residents and, accordingly, do not constitute property of the Debtor's estate under Bankruptcy Code section 541.").

- **Carve-Out for Professional Fees**. The Committee has insufficient information to evaluate whether sufficient funds are available to pay the professional fees likely to be incurred in this Case. A more detailed and longer Budget is needed. In addition, professional fees should be escrowed for the benefit of estate professionals and funded on a weekly to ensure funds are set aside to cover the administrative costs of this Case.

- **Standing To Pursue Causes of Action**. Under the Interim Order, the Committee must complete its investigation of claims against the Prepetition Lender and related parties within 60 days *and* seek and obtain an order granting it standing to pursue any such claims (with a complaint attached to any motion seeking standing) within such 60-day period. The Debtor has agreed to broad stipulations and releases in favor of the Prepetition Lender. Practically, the Committee is the only party in interest who could pursue any such claims against the Prepetition Lender and should be granted standing to pursue any claims that it identifies during the investigation period.

- **Sale Milestones**. The sale milestones set forth in the Interim Order are extremely aggressive, with bids due 43 days after the Petition Date, an auction 47 days after the Petition Date and a sale hearing 66 days after the Petition Date. All of these deadlines are running during the holiday season, when the business and transaction world slows down. Additionally, the maturity date of the DIP Facility appears equally aggressive. If the sale has not closed before the maturity date, there may be significant disruption in this Case. This timeline is aggressive and not designed to maximize value for all creditors, in particular the residents.

- **Insufficient Basis for Independent Director Fees**. The initial Budget includes $90,000 for Independent Director fees, but the Debtor has not established the reasonableness, scope, and necessity of this expense at this stage of the Case. The Committee requires disclosure of engagement terms to review the reasonableness of these fee arrangements.

- **No Waivers of 506(c), 552(b) or Marshaling Rights**. The Court should not grant waivers of the Debtor's section 506(c) surcharge rights, section 552(b) equities of the case exception, or marshaling rights without first assuring that all administrative claims and other costs and expenses of preserving this estate will be paid in full. At this early stage of the Case, the requested waivers are inappropriate and harmful to the estate.

5. While the Committee understands the need for DIP financing, for all of the reasons set forth herein, the Committee requests that a second interim order be entered on agreed upon terms to allow the Committee time to review the DIP Facility and Budget. To the extent that this Court seeks to enter a final order approving the DIP Facility, the Committee seeks modifications

to the Final Order to address the issues set forth herein to ensure that the rights of unsecured creditors and residents are protected, the financing structure does not prejudice their recoveries and this Case has sufficient liquidity to ensure administrative solvency.

BACKGROUND

A. The Debtor's Chapter 11 Case

6. On November 17, 2025 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Case. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtor continues to operate its businesses as debtor-in-possession. No trustee or examiner has been appointed in this Case.

7. The Debtor filed the DIP Financing Motion on November 18, 2025, seeking entry of interim and final orders: (i) authorizing the Debtor to (a) obtain postpetition financing and (b) utilize cash collateral, (ii) granting liens and superpriority administrative expense claims, (iii) granting adequate protection, and (iv) modifying the automatic stay, among other relief.

8. On November 19, 2025, the Bankruptcy Court entered the *Interim Order (I) Authorizing the Debtor to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 50] (the "Interim Order").

9. On December 3, 2025, the United States Trustee appointed the Committee, which consists of the following members: (i) Thomas C. Ryan; (ii) Lee Adcock Hunnell; (iii) Thomas A. Willet, Trustee of the Prillaman Living Trust; (iv) Manuel Ariel Payan, Co-Executor of the Estate of Margaret Payan; and (v) Steven Dyer, for the Estate of Robert Dyer. *See Notice of Appointment of the Official Unsecured Creditors' Committee* [Docket No. 102].

10. On December 5, 2025, the Committee selected Greenberg Traurig, LLP as proposed counsel. On December 11, 2025, the Committee selected Berkeley Research Group, LLC as its proposed financial advisor. On December 12, 2025, the Committee selected Kane Russell Coleman Logan PC as proposed co-counsel and conflicts counsel.

B. Summary of DIP Facility

11. The Debtor seeks authority to obtain a senior secured superpriority DIP Facility in an aggregate amount of $4,000,000 (with $1,000,000 available upon entry of the Interim Order) on the terms and conditions set forth in the DIP Indenture, which is attached to the Interim Order as Exhibit B. The Debtor also seeks authority to use Cash Collateral of the Trustee in accordance with the Budget.

12. The major operative terms, covenants, and conditions of the DIP Facility are summarized on pages 8–17 of the DIP Financing Motion.

13. As security, the Debtor seeks the Court's authorization to grant to the DIP Lender, subject to the Carve-Out, a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code and first priority priming liens on and security interests in substantially all assets and property of the Debtor (now owned or hereafter acquired) pursuant to sections 364(c)(2), (c)(3), and (d)(1) of the Bankruptcy Code.

14. In connection with the DIP Facility, the Debtor would also be permitted to grant adequate protection for the benefit of the DIP Lender and Trustee, including the Rollover Liens, the Supplemental Liens, and the Prepetition Superpriority Claim.

OBJECTION

A. The Post-Petition Collateral Should Not Include Liens on Avoidance Actions, Proceeds, Commercial Tort Claims, Nor Should Superpriority Claims be Paid from Such Proceeds

15. Avoidance actions are distinct creatures of bankruptcy law designed to benefit and ensure equality of distribution among general unsecured creditors. *See Official Comm. Of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 244 (3d Cir. 2000), *rev'd en banc*, 330 F.3d 548 (3d Cir. 2003) (identifying underlying intent of avoidance powers to recover valuable assets for the estate's benefit); *In re Tribune Co.*, 464 B.R. 126, 171 (Bankr. D. Del. 2011) (noting "that case law permits all unsecured creditors to benefit from avoidance action recoveries."); *see also Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm L.P. IV*, 229 F.3d 245, 250 (3d Cir. 2000) (stating that "any recovery [under avoidance powers] is for the benefit of all unsecured creditors, including those who individually had no right to avoid the transfer"). Commercial tort claims are unencumbered assets.

16. The Debtor has not provided any justification for granting liens on, or paying superpriority claims from, Avoidance Actions or commercial tort claims, or the proceeds of either. Keeping the proceeds of Avoidance Actions and commercial tort claims available for unsecured creditors is critical here where the Debtor is granting the DIP Lender priming liens on already encumbered assets and the value of Avoidance Actions and commercial tort claims has not been determined. It would be inequitable to allow the Debtor to administer this Case for the sole benefit of the Debtor's secured creditor and potentially claw back prepetition payments to trade creditors for the benefit of the DIP Lender.

B. The Escrowed Entrance Fees and Reservation Deposits Must Be Protected for the Benefit of Unsecured Creditors and Not Pledged as DIP Collateral

17. Escrowed Entrance Fees and Reservation Deposits often represent the most sensitive and protected assets in cases involving senior living facilities, healthcare providers, or similar entities. These funds are not part of the Debtor's assets and should remain fully segregated and protected throughout the chapter 11 process.

18. Accordingly, the Committee objects to any provision in the Final Order that permits escrowed Entrance Fees, Reservation Deposits, or similar statutory trust accounts to be pledged as collateral or otherwise encumbered by Post-Petition Liens or adequate protection claims. These funds are held in trust for the benefit of the unsecured creditors and do not constitute property available for DIP financing. *See* the Escrow Motion, ¶ 15 ("The funds held in the Escrow Accounts are held in escrow for the benefit of residents and, accordingly, do not constitute property of the Debtor's estate under Bankruptcy Code section 541."). Allowing the DIP Lender to assert liens on these funds would violate applicable law, undermine contractual and fiduciary obligations, and expose the estate to significant litigation risk.

19. The Committee therefore requests that the Final DIP Order expressly provide that all escrowed Entrance Fees, Reservation Deposits, statutory deposits, and similar trust funds are excluded from the Post-Petition Collateral and shall not be subject to any Post-Petition Liens, superpriority claims, or adequate protection rights.

C. The DIP Lender Cannot Have Unilateral Control Over Budget Modifications

20. Moreover, the DIP Lender's unfettered discretion of the Budget is unacceptable. In paragraph 6 on page 11, the Interim Order provides the following, in relevant part:

> . . . [W]hich budget may be amended at the request of the Debtor and with the written consent of the DIP Lender and incorporated herein by reference (as it may be amended, supplemented, replaced or otherwise modified from time to time solely with the consent of the DIP Lender, the "Budget") and this Interim Order; *provided that*, in the event that the DIP Lender does not approve any such modified Budget, the current Budget shall remain in effect.

Interim Order, ¶ 6. The Committee objects to this provision and any similar terms permitting the Budget to be amended, extended or modified in any way without the Committee's prior written consent or Court order after notice, hearing and an opportunity for the Committee to object.

21. Furthermore, the Committee must be provided with such budgets concurrently with all financial reporting delivered to the DIP Lender and Trustee.

D. The Committee Is Entitled to Equal Access and Reporting as the DIP Lender

22. The Interim Order grants the Debtor significant latitude in its dealings with the DIP Lender, including the ability to provide extensive reporting, conduct weekly calls with the DIP Lender, and enter into non-material amendments to the DIP Facility without prior Court approval. These provisions, while intended to facilitate transparency and efficiency, cannot operate to the exclusion of the Committee.

23. As the statutory fiduciary for unsecured creditors, the Committee is entitled to equal access to all reporting provided to the DIP Lender and to participate in the weekly calls to ensure adequate oversight of the Debtor's financial condition and compliance with the DIP Facility. Moreover, the Committee must receive advance notice of any proposed non-material amendment to the DIP Facility.

24. Absent such notice and participation rights, the Committee's ability to fulfill its duties under the Bankruptcy Code would be materially impaired, and creditor interests would be left unprotected. Accordingly, the Committee objects to the Interim Order to the extent it fails to provide these essential rights and requests that the Final Order expressly incorporate these protections.

E. The Proposed Challenge Budget and Timeline Jeopardize the Committee Fulfilling Its Fiduciary Duty

25. The Committee is a fiduciary for the Debtor's unsecured creditors. *See, e.g.*, *In re Venturelink Holdings, Inc.*, 299 B.R. 420, 423 (Bankr. N.D. Tex. 2003); *In re First RepublicBank Corp.*, 95 B.R. 58, 61 (Bankr. N.D. Tex. 1988). As such, it has statutory duties that it must discharge in pursuing its express purpose of protecting the rights of its constituency. *See Advisory*

Comm. of Major Funding Corp. v. Sommers (In re Advisory Comm. of Major Funding Corp.), 109 F.3d 219, 224 (5th Cir. 1997) (creditors' committees "have the responsibility to protect the interest of the creditors; in essence, the function of a creditors' committee is to act as a watchdog on behalf of the larger body of creditors which it represents") (internal quotation marks and citation omitted); *In re Refco, Inc.*, 336 B.R. 187, 195 (Bankr. S.D.N.Y. 2006) ("An official committee of creditors plays a pivotal role in the bankruptcy process. The function of an official creditors committee is to aid, assist and monitor the debtor to ensure that the unsecured creditors' views are heard and their interests promoted and protected") (internal citation omitted).

26. In furtherance of this purpose, Congress authorized official committees to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or the formulation of a plan." 11 U.S.C. § 1103(c)(2).

27. Pursuant to the proposed DIP Facility, the Debtor proposes to circumscribe the Committee's ability to properly exercise its statutory duties. The Committee objects to the proposed Challenge budget and Challenge Period as set forth in the Interim Order. The Committee has a fiduciary duty to maximize value for unsecured creditors, which includes investigating the validity, priority, and extent of the Prepetition Liens and potential causes of action. However, the Debtor's proposed budget of $35,000 is strictly limited to conducting a lien audit. Any such actionable claims, if successfully prosecuted, may provide a significant source of recovery for unsecured creditors. Accordingly, the Committee submits that a larger budget must be made available for the investigation.

28. Further, the Interim Order imposes a 60-day Challenge Period following the Committee's formation (*i.e.*, until February 2, 2026) to commence any challenge to the claims and

liens of the Trustee and if necessary, obtain standing to do so. This truncated timeline is unreasonable in a case of this complexity and may impede the Committee's ability to complete its investigation and pursue claims, thereby undermining its ability to fulfill its fiduciary duties.

29. The Committee objects to the Final Order unless the Challenge Period is extended, the Committee is granted standing to pursue any action against the Trustee and the Challenge budget is increased to ensure the Committee can adequately protect the interests of unsecured creditors by conducting a fulsome investigation.

F. The Carve-Out for the Committee's Professional Fees Appears Inadequate and Curtails the Committee's Ability to Fulfill its Fiduciary Duty

30. The Bankruptcy Code expressly contemplates that the Committee is entitled to effective representation. *See* 11 U.S.C. §§ 1103, 328, and 330. However, that right is illusory if professionals are required to perform services without assurance of meaningful payment.

31. The budget for the Committee's professionals must be sufficient to address the complexity of this Case. The current professional fee budget appears inadequate and will undermine the Committee's ability to meet its fiduciary duties, particularly given the need for lien investigation, potential litigation, and sale negotiations. Courts consistently hold that these duties cannot be met without sufficient resources for legal and financial advisors. Underfunding professional fees may impair creditor oversight and undermine the fairness of the Chapter 11 process. *See, e.g.*, *In re Prospect Medical Holdings, Inc.* No. 25-800002, 2025 WL 510458, at *14 (Bankr. N.D. Tex. Feb. 14, 2025) (SGJ) (final DIP order requiring funding of segregated carve-out accounts for committee professionals, permitting true-up adjustments, and stating that "any

changes to the professional fee budget for Committee professionals shall require the prior written consent of the Committee" to ensure adequate resources for fiduciary duties).

32. Moreover, the Carve-Out, as currently structured, provides no assurance that funds will actually be available when needed. A cap without a mechanism for timely funding leaves professionals exposed to significant risk and creates leverage for the DIP Lender. This structure effectively allows the DIP Lender to control whether professionals investigating its conduct are paid, undermining the independence and integrity of the Committee's statutory role. *See, e.g.*, *In re Prospect Medical Holdings, Inc.* No. 25-800002, 2025 WL 510458, at *14 (Bankr. N.D. Tex. Feb. 14, 2025) (SGJ) (final DIP order requiring weekly funding of segregated carve-out account, for committee professionals, in amounts equal to the fees and expenses in the approved budget); *see also In re Think Fin., LLC*, No. 17-33964 (HDH), 2019 WL 8272638, at *38 (Bankr. N.D. Tex. Dec. 2, 2019) (confirmed plan required the establishment of a professional fee escrow to secure payment of allowed fees).

33. To prevent this inequitable result, the Carve-Out must be funded into a dedicated, segregated escrow account for the benefit of estate professionals and replenished on a weekly basis. Weekly escrow funding ensures that professionals can continue their work without fear of nonpayment and preserves the integrity of the chapter 11 process by guaranteeing that the Committee and other estate fiduciaries have the resources necessary to represent their constituencies effectively. Without such protections, the DIP Lender's control over payment

creates an unacceptable conflict and threatens to chill investigations and advocacy critical to maximizing value for unsecured creditors.

34. The Committee is the only party with an incentive to unlock value for unsecured creditors, and the Court should ensure that the Committee is empowered to perform its fiduciary duties.

35. Accordingly, the Committee requests that the Court (a) reject the proposed $200,000 post-default cap as inadequate; (b) require that the Carve-Out be increased to an amount commensurate with the complexity of this Case; and (c) direct that the Carve-Out be funded into a segregated escrow account for the benefit of Committee professionals on a weekly basis.

G. The Committee Should be Granted Standing to Pursue Causes of Action

36. The Interim Order imposes an unreasonably compressed timeline on the Committee, requiring it to complete its investigation of potential claims against the Prepetition Lender within sixty (60) days of Committee formation (*i.e.*, by February 2, 2026), as well as seek and obtain an order granting standing to pursue any such claims (complete with a filed complaint) within that same period. This requirement is unduly burdensome and prejudicial.

37. The Debtor has already agreed to broad stipulations and sweeping releases in favor of the Prepetition Lender, effectively foreclosing any challenge absent Committee action. *See* Interim Order, ¶ 33. Such releases are inappropriate at this early stage of the Case and should be addressed, if at all, in connection with confirmation of a Chapter 11 plan, not in the context of approving the DIP Facility.

38. Practically, the Committee is the only party in interest capable of pursuing these claims, yet the Interim Order conditions that right on an unrealistic timeframe that fails to account

for the complexity of the investigation, the need for discovery, and the procedural steps required to obtain standing.

39. At a minimum, the Committee should be granted standing to pursue any claims identified during the investigation period without the additional requirement of filing a complaint within the 60-day period. Anything less undermines the Committee's statutory role under sections 1102 and 1103 of the Bankruptcy Code and risks insulating the Prepetition Lender from accountability without meaningful review. Accordingly, the Committee objects to these provisions and requests that the Final Order be modified to provide a reasonable investigation period and automatic standing upon identification of viable claims.

H. The Aggressive Sale Milestones Undermine a Robust Marketing Process

40. The sale milestones set forth in the Interim Order are extremely aggressive and impose an unrealistic timeline that jeopardizes the ability to maximize value for all stakeholders. Under the current schedule, bids are due forty-three (43) days after the Petition Date, the auction is scheduled for forty-seven (47) days after the Petition Date, and the sale hearing is set for sixty-six (66) days after the Petition Date. These deadlines are not only compressed but fall squarely during the holiday season, a period when business activity and transactional processes traditionally slow down. This timing creates significant practical challenges for potential bidders, financial

advisors, and other parties in interest, all of which undermine the integrity and competitiveness of the sale process.

41. Additionally, the occurrence of the DIP Facility's maturity date would create a material risk to the integrity of this Case. If the maturity date occurs while the sale process remains pending, the Debtor could face a liquidity crisis, which may impact any contemplated transaction.

42. Such an accelerated timeline is not designed to foster a robust marketing process or to maximize value for creditors, particularly the residents whose interests are most directly impacted. Accordingly, the Committee objects to the sale milestones as currently proposed and respectfully requests that the Final Order extend these deadlines to allow for a fair and effective sale process that prioritizes value maximization over expediency.

I. There Is No Sufficient Basis for $90,000 Independent Director Fees

43. The Committee objects to the inclusion of $90,000 for Independent Director fees in the initial Budget because the Debtor has not provided any evidence establishing the reasonableness, scope, or necessity of this expense at this early stage of the Case. Independent directors may play a role in governance during chapter 11; however, the Committee cannot evaluate whether these fees are appropriate without disclosure of the engagement terms, hourly rates, anticipated responsibilities, and the process by which the Debtor determined that $90,000 is reasonable.

44. Absent transparency, this budget item risks diverting estate resources away from critical functions without demonstrating a corresponding benefit to the estate.

45. The Committee therefore requests that the Court condition approval of any Independent Director fees on (i) full disclosure of the engagement agreement and compensation structure, and (ii) a reasonableness review by the Court after notice and an opportunity to object.

Alternatively, the Court should reduce or defer this budget allocation until such disclosures are made and the Committee can assess whether the expense is justified.

J. The Proposed Waivers of Sections 506(c), 552(b), and Marshalling Rights Are Inappropriate

46. Against this backdrop, there is no basis for the Court to grant the proposed waivers of several critical rights, including (i) the estate's right to surcharge the Post-Petition Collateral or any Prepetition Collateral under section 506(c) of the Bankruptcy Code, (ii) the statutory right to apply the "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (iii) the doctrine of marshaling. These waivers are inappropriate and harmful to the estate.

i. Section 506(c) Rights Must Be Preserved

47. Section 506(c) of the Bankruptcy Code provides, in relevant part: "[t]he trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim . . . ." 11 U.S.C. § 506(c). Courts have noted that section 506(c) helps ensure that general unsecured creditors do not bear the costs of a secured lender liquidating its collateral. *See, e.g.*, *In re Visual Indus., Inc.*, 57 F.3d 321, 325 (3d Cir. 1995) ("section 506(c) is designed to prevent a windfall to the secured creditor").

48. Congress' intent in enacting section 506(c) was to ensure that the debtor in possession would be entitled to recover expenses from its secured lender to the extent that those expenses are necessary and reasonably associated with preserving or disposing of the lender's collateral. *See Precision Steel Shearing, Inc. v. Fremont Fin. Corp. (In re Visual Industries, Inc).*, 57 F.3d 321, 325–26 (3d Cir. 1995) (discussing Congressional Record, 124 Cong.Rec. 32,398 (Sept. 28, 1978) (statement of Rep. Edwards)). Section 506(c) is thus designed to prevent "a

windfall to the secured creditor at the expense of the claimant." *Id.* (citing *IRS v. Boatmen's First Nat'l Bank of Kansas City*, 5 F.3d 1157, 1159 (8th Cir. 1993)).

49. Here, there is no justification for a preemptive waiver of section 506(c). The Committee was only recently appointed, and it would be inappropriate to waive the Debtor's surcharge rights, particularly where the DIP Facility is priming the Debtor's prepetition secured debt, thereby already reducing the value that could otherwise be available to satisfy administrative costs. Waiving its section 506(c) surcharge rights poses a risk to the Debtor's estate that the costs of preserving the Prepetition Collateral may ultimately be borne by unsecured creditors. Accordingly, the estate's right to surcharge collateral should not be waived in a blanket fashion in any final order.

ii. Waiver of the Section 552(b) Equities of the Case Exception Is Inappropriate

50. Section 552(b) of the Bankruptcy Code allows a court to refuse, based on the equities of a case, to extend a prepetition lien to postpetition "proceeds, products, offspring or profits" of prepetition collateral. 11 U.S.C. § 552(b)(1). "The purpose of the equity exception is to prevent a secured creditor from reaping benefits from collateral that has appreciated in value as a result of the trustees/debtor-in-possessions use of other assets of the estate (which normally would go to general creditors) to cause the appreciated value." *In re Muma Servs.*, 322 B.R. 541, 558–59 (Bankr. D. Del. 2005) (citation omitted); *see also Nanuet Nat'l Bank v. Photo Promotion Assocs., Inc. (In re Photo Promotion Assocs., Inc.)*, 61 B.R. 936, 939 (Bankr. S.D.N.Y. 2000).

51. For the same reasons that a section 506(c) waiver is inappropriate, the Debtor should not be permitted to waive its rights under section 552(b) given the uncertainty that all administrative claims will be paid. The Committee is not requesting a prospective application of the "equities of the case" exception but merely requests that the Court preserve the right to seek, and for the Court to make, a determination as to whether such exception applies at a later time.

Granting a section 552(b) waiver at the outset of this Case would unfairly prejudice unsecured creditors and deprive the estate of important statutory rights that could yield value for all stakeholders.

iii. The Estate's Marshaling Rights Should Not Be Waived

52. The Marshaling Doctrine is the theory that "[w]hen a paramount creditor has liens on two funds from which to satisfy his debt and a creditor with a subsequent lien has only one fund from which to satisfy his debt, the subsequent creditor may require the paramount creditor to resort initially to the singly charged fund." *In re Dan Hixson Chevrolet Co.*, 20 B.R. 108, 113 (Bankr. N.D. Tex. 1986). Indeed, marshaling "prevent[s] the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security." *Meyer v. United States*, 375 U.S. 233, 237 (1963). Marshaling can be pursued by the Committee for the benefit of unsecured creditors. *See, e.g.*, *Official Comm. of Unsecured Creditors of America's Hobby Ctr., Inc. v. Hudson United Bank (In re America's Hobby Ctr., Inc.)*, 223 B.R. 275, 287 (Bankr. S.D.N.Y. 1998) ("Because a debtor in possession has all the rights and powers of a trustee . . . [the Committee] standing in the shoes of the debtor in possession . . . can assert this [marshaling] claim.").

53. For the same reasons that section 506(c) and 552(b) waivers are inappropriate, the Court should reject any limit to the marshaling doctrine. At this early stage of the Case, the requested waivers are inappropriate and harmful to the estate.

K. There Is a Lack of Evidence That the DIP Financing Is the Best Available Option

54. The Debtor has not demonstrated that the proposed DIP Facility reflects the best available terms following a good-faith, comprehensive marketing process, as required under section 364 of the Bankruptcy Code. The DIP Motion is devoid of any evidence showing that the

Debtor solicited alternative financing proposals or engaged in a competitive process to ensure that the DIP Facility represents the least costly financing reasonably available under the circumstances.

55. Specifically, the Committee requests that the Debtor produce evidence of: (i) the scope and nature of marketing efforts undertaken to identify potential DIP lenders; (ii) the number and identity of third-party lenders contacted; (iii) any competing proposals received, including their economic terms and conditions; and (iv) a comparative analysis of the proposed DIP Facility's economics, covenants, and case controls against any alternative proposals.

56. Without a fulsome record of these efforts, the Court cannot make the requisite finding that the DIP Facility satisfies the statutory standard of being the best financing available. The absence of such evidence raises serious concerns that the proposed DIP Facility may impose unnecessary costs and restrictive covenants on the estate, to the detriment of unsecured creditors.

RESERVATION OF RIGHTS

57. The Committee will work in good faith with the Debtor and the DIP Lender to resolve the Committee's objections to the DIP Financing Motion and the DIP Facility prior to the final hearing.

58. The Committee expressly reserves all rights with respect to the proposed DIP Facility (including, without limitation, any Final Order) and expressly reserves and preserves all rights to raise any additional objections to the relief requested in the DIP Financing Motion or in connection with the proposed DIP Facility at or prior to any final hearing.

Dated: December 12, 2025

KANE RUSSEL COLEMAN LOGAN PC

/s/*Mark C. Taylor*
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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2025, a true and correct copy of the foregoing pleading was served via CM/ECF to all parties authorized to receive electronic notice in this Case.

/s/ *Mark C. Taylor*
Mark Taylor