

Shari L. Heyen
Aimee M. Housinger
Emily D. Nasir
GREENBERG TRAUIG, LLP
1000 Louisiana St., Suite 6700
Houston, Texas 77002
Telephone: (713) 374-3500
Facsimile: (713) 374-3505
Email: Shari.Heyen@gtlaw.com
HousingerA@gtlaw.com
Emily.Nasir@gtlaw.com

*Proposed Co-Counsel to the Official
Committee of Unsecured Creditors*

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

In re: § Chapter 11
§
Buckingham Senior Living Community, § Case No. 25-80595 (MVL)
Inc., §
§
Debtor. § **Related to Docket Nos. 22 and 144**

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS
PURSUANT TO THE STALKING HORSE ASSET PURCHASE AGREEMENT**

The Official Committee of Unsecured Creditors (the “Committee”) objects to the sale of all or substantially all of the Debtor’s assets pursuant to that certain bid (the “Stalking Horse Bid”) submitted by Focus SH Acquisitions LLC (the “Stalking Horse Bidder” or “Focus”) and the related Asset Purchase Agreement, dated November 12, 2025 (as amended, supplemented, or otherwise modified by the parties thereto, the “Stalking Horse APA”), attached as Exhibit 2 to the *Order (I) Approving Bidding Procedures and Bid Protections, (II) Approving the Debtor’s Entry Into the Stalking Horse APA, (III) Scheduling Certain Dates and Deadlines, (IV) Approving the Form and Manner of Notice Thereof, and (V) Establishing Notice and Procedures for the Assumption and*

Assignment of Contracts and Leases [Docket No. 144] (the “Bidding Procedures Order”),¹ as follows:

PRELIMINARY STATEMENT

1. At the core of this Chapter 11 case (the “Case”) lies the security, dignity, and wellbeing of hundreds of elderly Texans. This is not a typical bankruptcy sale. Instead, it is about promises made to hundreds of seniors, loss of (for many seniors) their life savings paid in the form of Entrance Fees to the Debtor, and the devastating consequences if and when those promises are erased through a rushed sale process.

2. Current and Former Residents of The Buckingham paid Entrance Fees aggregating at least \$150 million and signed agreements that were marketed to them as a guarantee: pay once and live at the Buckingham for life with care and dignity and if you leave, you or your family members receive the Entrance Fees refunded in accordance with the contract. The Residents planned their retirement and inheritance plans around these promises. They moved in, built communities, advocated for their neighbors to join them, and trusted that if healthcare needs or financial condition changed, the care would continue. Now, the proposed Transaction under the Stalking Horse APA strips away these promises and the benefits that Residents—both former and current—bargained for.

3. The proposed Transaction contemplated under the Stalking Horse APA imposes severe conditions on the most vulnerable stakeholders in this Case, the Residents of The Buckingham. Specifically, Current Residents are faced with the following:

- **Potential Loss of Their Homes.** Unless Current Residents enter into new rental agreements with the Stalking Horse Bidder (which agreements have not yet been provided to the Residents or the Committee for review), the Debtor and Focus are

¹ Capitalized terms not specifically defined herein shall have the meanings set forth in the Bidding Procedures Order, the Bidding Procedures (as defined therein), or the Stalking Horse APA, as applicable.

threatening that the Residents may lose their homes. The Residents may have contractual and property interests that are entitled to statutory and Constitutional protections. The Committee is in the process of conducting discovery and has requested copies of all Entrance Fee agreements and related contracts entered into by and between the Debtor and Current and Former Residents. To date, the Committee has not received all of the documents. To the extent that the agreements in place for the Current Residents constitute real property leases under section 365 of the Bankruptcy Code, the Debtor's and the Current Residents' rights are governed by that section. Specifically, while the Debtor, acting as a landlord, may seek to reject those agreements, section 365(h) of the Bankruptcy Code preserves the non-debtor occupant's right to remain in the possession of the premises for the duration of the lease term and any applicable extension thereof, subject to continued payment of amounts due thereunder.

- **Loss of Life Care Benefits.** The Residents will need to pay for their own healthcare and lose the benefit of substantial fees paid to The Buckingham to ensure that they would be provided with healthcare for life. The \$750,000 credit for Life Care contracts (the "Life Care Contracts") offered by the Stalking Horse Bidder does not provide a recovery to the Residents. Based on discussions with the Stalking Horse Bidder, the \$750,000 credit will be a fund available to Residents who may need financial assistance to pay for their healthcare costs and Residents will need to apply for these credits, which will be allotted at the discretion of the Stalking Horse Bidder.
- **An Illusory Recovery on Their Entrance Fees.** Current Residents are owed at least \$75 million in Entrance Fees and are being offered a pro rata share of a \$12 million Rent Rebate Fund that equates to approximately a 15% recovery (less on a present value basis). This \$12 million Rent Rebate Fund is not funded at closing and payments will not begin until year three (3) after closing. The Residents have seen this approach before from the Debtor in its prior bankruptcy case. Under The Buckingham's confirmed plan in its 2021 bankruptcy,² residents, who were owed approximately \$154.7 million in Entrance Fees, were promised repayment of Entrance Fees over time and received an initial approximately \$2 million from the Debtor on the plan effective date, with no further distributions since then. This new "fund" risks being yet another empty promise, designed to induce the Residents to accept the Stalking Horse Bidder's onerous terms while providing little to no actual recovery.
- **Loss of Other Recoveries.** Residents are being asked to sign releases in favor of the Debtor, the Debtor's officers and directors, Greystone, the Bond Trustee, and others, all of which are being investigated by the Committee with respect to their actions leading up to this Case. Residents are being provided no consideration and

² See *In re Buckingham Senior Living Community, Inc.*, Case No. 21-32155 (Bankr. S.D. Tex. June 25, 2021) [Docket No. 493].

no information to support such a release that amounts to an impermissible third-party release that likely would not be approved as part of a plan process.

4. For Former Residents, it is worse. Former Residents and their family members who are owed at least \$72 million in Entrance Fees refunds, including from the 2021 bankruptcy case,³ receive nothing under the proposed Transaction. These are the people who upheld their end of the contracted bargain and either moved out or passed away. Promises were made to these Former Residents and their family members that their Entrance Fees would be repaid, and this proposed Transaction writes them off completely.

5. Finally, the seventeen (17) Benevolent Care Residents are given six (6) months to move out. This group of Residents is most in need and fear that they may not be able to find another place to live and receive care. The proposed Transaction provides no safety net after six (6) months. For the very individuals the Debtor has promised to help, the Debtor's message is undeniable: its generosity has an expiration date.

6. This bankruptcy has been profoundly stressful and destabilizing for this elderly community. The Committee has been contacted by many Current and Former Residents and their family members and has attended several town hall meetings since its appointment. The Resident's stories and concerns are heart breaking. The Residents love their community but are scared, frustrated, and confused about how The Buckingham ended up in bankruptcy yet again. They are questioning what happened to the money, why their right to live at The Buckingham is being threatened, and why the money paid to The Buckingham was not sufficient to sustain operations and is now in jeopardy. For example, one Current Resident fears losing her home and has already lost funds intended for future medical care.⁴ The estate of a Former Resident reports a

³ See *In re Buckingham Senior Living Community, Inc.*, Case No. 21-32155 (Bankr. S.D. Tex. June 25, 2021).

⁴ The testimonial provides, in relevant part, as follows: "I am 80 years old, and it now appears that I could wind up homeless because I am no longer guaranteed a place to live . . . and have lost a substantial amount of my money

long, painful process and alleges that the facility exploited trust by failing to honor refund obligations.⁵ Children of a Former Resident lament that their parents' efforts to protect their estates and ensure financial security have been undermined.⁶

7. The Residents have raised many questions about The Buckingham's board of director's (the "Board") activities pre-bankruptcy and the transparency of communications with Current and Former Residents regarding The Buckingham's financial condition over the past several years as additional Entrance Fees were paid and Former Residents were promised refunds. For example, the Debtor's principal failed to appear at the 341 meeting of creditors despite knowing for weeks he would be unavailable and withheld advance notice from creditors. Because the rescheduled meeting occurs after the objection deadline to the Stalking Horse Bid, Residents, many of whom attended that meeting, may now be deprived of timely access to essential information to evaluate the proposed Transaction. This conduct reflects a troubling approach by the Debtor and its Board to these proceedings and a lack of regard for Residents who face significant economic consequences. This disregard is not new. [REDACTED]

that may be needed for my care as I grow older. So, instead of what was represented to us a worry-free, safe environment to spend our last years, I am placed in a position of losing money that may be needed to care for me through any final illnesses and of possibly having to find another place to live and incurring substantial moving expenses that were not part of our expectations."

⁵ The testimonial provides, in relevant part, as follows: "This has been such a long, arduous process. It pains me that the Buckingham took such advantage of my mother's trust - that she would get her refund. The Buckingham's financial issues and problems started long before Covid - an excuse used during the first bankruptcy. It does not surprise me that the Buckingham is filing for bankruptcy again."

⁶ The testimonial provides, in relevant part, as follows: "My father also wanted to protect his estate in order to make sure they were covered financially and had an estate to pass on to their children. They were assured by the PROMISE of the contract to provide full life care and to return 90% of their investment to their estate upon passing."

⁷ [REDACTED] Copies of these Minutes attached hereto as Exhibits B

[REDACTED]

[REDACTED]¹⁰ These actions demonstrate a sustained pattern of failing to protect the very people the Debtor is obligated to serve.

8. For these reasons, the Committee cannot support a transaction that provides little to no recovery for unsecured creditors and strips a vulnerable population of the benefit of their bargain.

9. The terms of the Stalking Horse APA are harsh and fundamentally unjust. The proposed Transaction prioritizes bondholders while leaving Former Residents and their estates without any recovery. Current Residents face an untenable choice: surrender core Life Care

through M, will be filed under seal in accordance with the Confidentiality Agreement effective December 11, 2025, entered into by the Debtor, the Committee, and its counsel, GT (the “Confidentiality Agreement”).

⁸ [REDACTED], a copy of which is attached hereto as Exhibit K and will be filed under seal in accordance with the Confidentiality Agreement; [REDACTED] a copy of which is attached hereto as Exhibit N and will be filed under seal in accordance with the Confidentiality Agreement.

⁹ See [REDACTED], a copy of which is attached hereto as Exhibit N and will be filed under seal in accordance with the Confidentiality Agreement; [REDACTED], a copy of which is attached hereto as Exhibit O and will be filed under seal in accordance with the Confidentiality Agreement.

¹⁰ See [REDACTED], a copy of which is attached hereto as Exhibit P and will be filed under seal in accordance with the Confidentiality Agreement.

protections and execute sweeping releases for minimal, delayed refunds, or lose their homes after (for many Residents) handing over their life savings to the Debtor in the form of Entrance Fees.

10. If this Court is inclined to approve the Transaction, there are essential changes that must be addressed. The Committee's concerns with the Stalking Horse APA include:

- **The \$12 Million Rent Rebate Fund.** \$12 million is woefully inadequate consideration to be paid to the Current Residents losing \$75 million in Entrance Fees, multiple millions in Life Care Contracts, and other valuable contractual rights. The monies in this Fund should be substantially increased, funded into escrow at the sale closing, and paid to Residents immediately after closing of the sale. By delaying payment of these monies to Residents for two years, the Stalking Horse Bidder is essentially requiring Residents to extend a \$12 million unsecured loan to The Buckingham. Moreover, there is no information regarding where the Rent Rebate Fund will be established, who will control the fund, which Residents are entitled to these monies or whether Residents will be parties to any agreements related to the fund. All of these details need to be spelled out in the Stalking Horse APA or Sale Order in order to protect the Residents from a repeat performance of the Debtor's failed 2021 restructuring.
- **\$750,000 Life Care Credit.** The proposed treatment of the Life Care Contracts, worth multiple millions of dollars per resident, provides no material recovery to Residents. Based on discussions with the Stalking Horse Bidder, as noted above, these credits will be available to Residents who apply for them due to financial hardship and an inability to pay for healthcare. The Stalking Horse Bidder should be providing additional recoveries to the holders of Life Care Contracts generally and the details surrounding access to those recoveries and/or credits should be included in the Stalking Horse APA or Sale Order.
- **Impermissible Third-Party Releases.** Current Residents are being asked to release the Debtor, the Debtor's officer and directors, Greystone, the Bond Trustee and others. The Committee is in the process of investigating potential claims against all of these persons, which claims may be the only source of recovery to Former Residents and their family members. The Current Residents should not be required to sign these releases in order to stay in their homes and this requirement should be stricken from the Stalking Horse APA.
- **Unlimited Rental Increases.** Under the Stalking Horse APA, Current Residents are faced with unlimited rental increases as they move through the continuum of care. Rental rates should be limited to 5% per annum to allow Current Residents, who may live on fixed incomes, to plan for their care and to continue to obtain the benefit of the bargain promised by The Buckingham.

- **Benevolent Care Residents.** The Stalking Horse Bidder is knowingly purchasing a non-profit, who was likely required to provide some benevolent care. The seventeen (17) Benevolent Care Residents, who may have no other housing and care options, should be “grandfathered” into the Facility with the Stalking Horse Bidder’s commitment to house and care for them during their lifetime.
- **Sale Proceeds Should Be Escrowed.** Pursuant to the proposed Sale Order, all sale proceeds are paid to UMB Bank, N.A. (the “Prepetition Lender”) at closing. This approach is premature and inequitable given that the investigation deadline regarding the Prepetition Lender will not have expired at the time the Sale Order is entered, and the Committee is in the process of investigating claims against the Prepetition Lender and others.¹¹ The Court should require all sale proceeds be escrowed pending further court order. The Residents and other creditors may have claims entitling them to some or all of these sale proceeds. Moreover, the Debtor’s estate will need to be wound down after the sale closing and sufficient funds must remain in the estate to ensure that the case is not administratively insolvent.
- **Additional Issues.** In addition to the above issues:
 - **Form of Rental Agreement.** The Committee should be given an opportunity to review and comment on the form of rental agreement each Resident is being asked to sign. While the Committee does not represent the individual Residents, the Committee should be given an opportunity to ensure that the form agreement is consistent with market terms and that Residents are apprised of their rights, if any, under section 365(h) of the Bankruptcy Code before entering into any new rental agreement.
 - **Escrowed Funds.** The escrowed monies remain with the Debtor. There are no details on who is entitled to those monies or when the monies will be distributed. These details must be included in the Stalking Horse APA or Sale Order. Residents are entitled to these monies at closing.
 - **Stalking Horse Bid is Vague and Illusory Given Conditions Precedent.** The Stalking Horse Bidder has a material contingency in its agreement— “[a]t least 272 units occupied by paying residents (who are paying the prevailing rate) across any level of care shall have signed New Residency Agreements with the Stalking Horse Bidder as of the Closing Date.” *See* Stalking Horse APA, § 6.2(j). Given that the Stalking Horse Bidder plans

¹¹ “Any party in interest (including the Committee, but excluding the Debtor) may file an adversary proceeding or contested matter (a “Challenge”) (i) challenging the amount, validity, extent, enforceability, perfection or priority of the Bond Claim or the Prepetition Liens in respect thereof or (ii) otherwise asserting any claims or causes of action against the Trustee and/or Bondholders on behalf of the Debtor’s estate so long as any Challenge is filed with the Court on or before February 17, 2026 (such period of time, the “Investigation Period”).” *See Final 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, and (V) Granting Related Relief* [Docket No. 180, ¶ 34].

to convert this community into a rental community, there is no guaranty that this condition will be met or how long it might take for this condition to be met.

- **Access to Books and Records Post-Closing.** The Committee, and any trustee appointed under Chapter 7 or pursuant to a confirmed plan, must have access to the books and records acquired by the Stalking Horse Bidder after closing. This access is necessary for investigating potential litigation claims, pursuing those claims, and conducting claims reconciliation. The Sale Order should expressly provide for such access to ensure transparency and preserve estate rights.
- **Excluded Assets.** The Committee has asked for clarification that (a) all claims and causes of action are excluded assets, including, without limitation, all avoidance actions, claims against the Debtor’s current and former officers and directors, and claims against Greystone, (b) all employee tax refund credits are excluded assets and (c) any residual of the workers’ compensation policy collateral is an excluded asset.

BACKGROUND

A. The Debtor’s Chapter 11 Case

11. 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.

12. The Debtor filed the *Motion for Entry of an Order (I)(A) Approving Bidding Procedures and Bid Protections, (B) Approving the Debtor’s Entry into the Stalking Horse APA, (C) Scheduling Certain Dates and Deadlines, (D) Approving the Form and Manner of Notice Thereof, and (E) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, and (II)(A) Authorizing the Sale of the Assets Free and Clear of All Encumbrances; (B) Approving the Assumption and Assignment of the Assumed Contracts; and (III) Granting Related Relief* [Docket No. 22] (the “Bidding Procedures Motion”) on November 18, 2025, seeking entry of an order (a) approving the Bidding Procedures, by which the Debtor

will solicit and select the highest or otherwise best offer for the sale of all, substantially all of the Debtor's Assets pursuant to Bankruptcy Code section 363 and (b) authorizing the Debtor to select Focus SH Acquisitions LLC as the Stalking Horse Bidder pursuant to the Stalking Horse APA, among other relief.

13. 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].

14. On December 5, 2025, the Committee selected Greenberg Traurig, LLP ("GT") as proposed counsel. On December 11, 2025, the Committee selected Berkeley Research Group, LLC ("BRG") as its financial advisor. On December 12, 2025, the Committee selected Kane Russel Coleman Logan PC ("KRCL") as its proposed bankruptcy co-counsel.

15. On December 16, 2025, the Court entered the Bidding Procedures Order, by which the Court approved the Bidding Procedures setting forth the process by which the Debtor is authorized to solicit bids for and conduct an auction (the "Auction"), if any, and ultimately select a purchaser for the sale of all or substantially all of the Debtor's assets or any portion thereof (such sale(s), the "Transaction(s)").

16. The Bidding Procedures Order also authorized, among other things, the Debtor's entry into the Stalking Horse APA between the Debtor and the Stalking Horse Bidder pursuant to which the Stalking Horse Bidder has agreed to acquire substantially all of the Assets of the Debtor and to assume certain liabilities of the Debtor, each as specifically enumerated in the Stalking Horse APA and subject to the terms and conditions set forth therein. The Stalking Horse Bid is

subject to higher and better bids in accordance with the terms and conditions of the Bidding Procedures.

17. Under the Bidding Procedures Order, the deadline to object to consummation or approval of the Transaction(s) is January 9, 2026, at 4:00 p.m., prevailing Central Time (the “Sale Objection Deadline”). The Debtor extended the Sale Objection Deadline for the Committee to January 15, 2026, at 4:00 p.m., prevailing Central Time. Competing bids may be submitted through January 16, 2026 at 12:00 p.m. prevailing Central Time.

18. On December 22, 2025, the Debtor filed its *Schedules of Assets and Liabilities* [Docket No. 175] (the “Schedules”) and its *Statement of Financial Affairs* [Docket No. 176] (the “SOFA”). Pursuant to the Schedules, the Debtor reported total liabilities of approximately \$332 million as of the Petition Date. This number encompasses \$182,514,629.38 in allegedly secured debt owed to UMB Bank, N.A. (the “Bond Trustee”), priority claims of \$437,558.24, and unsecured claims of \$149,322,674.76, primarily arising from Entrance Fee Obligations.

19. The meeting of creditors pursuant to section 341 of the Bankruptcy Code (the “341 Meeting”) was originally scheduled for December 29, 2026 at 10:00 a.m. prevailing Central Time. However, the Debtor’s principal was unavailable at that time, a fact of which the Committee did not receive advance notice until the meeting convened. As a result of the principal’s unavailability, the 341 Meeting was rescheduled for January 16, 2026, nearly three weeks after the originally noticed date.

B. Summary of the Stalking Horse APA

20. Under the Stalking Horse APA, the Stalking Horse Bidder will purchase substantially all of the Debtor’s assets, including real property, buildings, improvements, tangible personal property, intellectual property, permits (to the extent transferable), books and records, inventory, and certain Assumed Contracts.

21. The purchase price consists of \$100,000,000 in cash, a \$12,000,000 Rent Rebate Fund, and \$750,000 in credits relating to Life Care Contracts.

22. Under the proposed terms of the Stalking Horse APA, in order for Residents to remain in their homes at The Buckingham, they must meet the conditions to qualify as “Eligible Current Residents.” These conditions include the following:

- Having an entrance fee Residency Agreement in effect with the Debtor immediately prior to Closing, under which a refund of their original entrance fee is or will be due and has not been repaid by the Debtor;
- Not being delinquent on any rents previously owed to the Debtor;
- Executing, prior to Closing, a New Residency Agreement with the Stalking Horse Bidder for the same unit, level of acuity, and the same base service fee or rental rate as they were paying immediately before Closing, with the new agreement effective upon Closing;
- Signing a release of all liabilities in favor of the Debtor’s current board members and officers, Greystone Management Services Company, LLC, any trustee, the Bond Trustee, any bondholder, the Stalking Horse Bidder and its affiliates, and their respective representatives and agents, in a form reasonably acceptable to the Stalking Horse Bidder; and
- Remaining at the Facility through the end of the last day of the month that is the twenty-fifth (25th) month following the Closing Date (the “Eligibility Period”).

23. Despite serving as the primary relief for Eligible Current Residents, the Stalking Horse APA provides no meaningful detail on where the Rent Rebate Fund will be established, who will control the fund, whether monies will be set aside at closing, or what protections will ensure that the Eligible Current Residents receive the promised payments. Similarly, the Stalking Horse APA provides no binding commitments regarding the structure or funding of the Healthcare Discount Program.

24. The Stalking Horse Bidder will assume only liabilities under the Assumed Contracts (including cure costs) and obligations arising after Closing related to Purchased Assets.

All other liabilities, including pre-Closing obligations to Residents, Taxes, and employee-related liabilities, remain with the Debtor.

25. The material terms of the Stalking Horse APA are summarized on pages 19–25 of the Bidding Procedures Motion.

OBJECTION

26. Section 363(b) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The Fifth Circuit has established that “for the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.” *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). “Whether the proffered business justification is sufficient depends on the case.” *Id.*

27. In evaluating whether a sound business purpose exists to justify a sale of property pursuant to section 363(b), courts consider a variety of factors which essentially constitute a “business judgment test.” Courts have collectively set forth the following non-exclusive list of factors for courts to consider when determining whether there is an “articulated business justification” and a “good business reason” for proceeding with a sale of assets without awaiting confirmation of a plan:

- i. the proportionate value of the asset to the estate as a whole;
- ii. the amount of elapsed time since the filing;
- iii. the likelihood that a plan of reorganization will be proposed and confirmed in the near future;
- iv. the effect of the proposed disposition on future plans of reorganization;

- v. the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property;
- vi. which of the alternatives of use, sale, or lease the proposal envisions; and
- vii. whether the asset is increasing or decreasing in value.

See id. (quoting *In re Lionel*, 722 F.2d 1063, 1071 (2d Cir. 1983) (noting that “[t]his list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge”).

28. The Stalking Horse APA fails to meet the business judgment standard required under section 363 of the Bankruptcy Code. A sale outside the ordinary course must demonstrate a sound business purpose and maximize value for the estate. Here, the proposed Transaction does neither. It provides minimal and conditional benefits to Current Residents, offers no recovery to Former Residents, and imposes coercive requirements such as sweeping liability releases, undisclosed rental agreements, and a 25-month occupancy mandate. The terms of the Stalking Horse APA prioritize the interests of bondholders and insiders over vulnerable stakeholders and do not reflect a fair or value-maximizing transaction. Accordingly, the Stalking Horse APA cannot be justified as a proper exercise of business judgment.

A. Minimal Benefit to Residents

29. The Debtor selected Focus SH Acquisition LLC as the Stalking Horse Bidder pursuant to the Stalking Horse APA, which is attached as Exhibit 2 to the Bidding Procedures Order.

30. The Stalking Horse APA imposes strict conditions for Current Residents to qualify for the Rent Rebate Payment program, including execution of releases, new rental agreements, and continued occupancy at the facility for 25 months post-closing.

i. Overbroad Releases of Liability

31. The Stalking Horse APA requires sweeping releases of liability in favor of insiders and other parties without proper investigation of potential mismanagement or malfeasance. Indeed, section 5.17(b)(iv) of the Stalking Horse APA requires Current Residents to execute releases in favor of the Debtor's Board, officers, management company, bondholders, and even the purchaser as a condition to receiving certain benefits under the Rent Rebate Payment program.

32. Specifically, the Stalking Horse APA provides the following:

In order for a Current Resident to be eligible to participate in the Rent Rebate Payment program described in this Section 5.17(b) (an "Eligible Current Resident"), such Current Resident shall, during the Eligibility Period: . . . execute a release (a "Rent Rebate Payment Program Release") of **all liabilities** in favor of current members of the Board and current officers of Seller, Greystone Management Services Company, LLC, any trustee, the Trustee, any bondholder, Buyer and any of Buyer's affiliates and subsidiaries, and the respective representatives and agents of the foregoing, on a form reasonably acceptable to Buyer[.]

Stalking Horse APA, § 5.17(b), (iv) (emphasis added).

33. These releases are not limited to claims arising under Residency Agreements but extend to "all liabilities," effectively insulating parties from potential claims of fraud, mismanagement, or other malfeasance. Such releases are inappropriate at this stage, violate fundamental bankruptcy principles, and circumvent the protections afforded by the Bankruptcy Code. They are particularly egregious because they are to be obtained from Current Residents who may be under financial duress and/or fearful of losing their residences and care.

ii. New Rental Agreements

34. The Committee objects to the requirement under the Stalking Horse APA that Current Residents execute new rental agreements as a condition to remain at The Buckingham and participate in the Rent Rebate Fund, without any disclosure of the terms of those agreements.

35. The terms of these new rental agreements have not been disclosed, which forces the Current Residents to contemplate life-altering decisions without knowing the financial or contractual implications, such as monthly rental rates, care provisions, refund rights, and termination terms. This lack of transparency is coercive and fundamentally unfair. Residents cannot make informed choices when critical details such as monthly rates, care provisions, and refund rights remain undefined.

36. Accordingly, the Sale Order must require that the Stalking Horse Bidder provide the Committee with copies of all proposed rental agreements prior to execution and grant the Committee and any successor fiduciary access to these agreements post-closing.

37. In addition, the Committee objects to any language in the proposed rental agreements that would allow for unlimited rental increases through the continuum of care. This is particularly problematic for the Current Residents living on fixed or limited budgets. Under the proposed structure, rent can be reset without any cap if a Resident moves for increased acuity of care. Such provisions create significant financial uncertainty and expose the Current Residents to potentially unaffordable costs at a time when they are most vulnerable.

38. The Sale Order should require full disclosure of these terms and impose reasonable limitations on rental increases to protect the Current Residents from excessive pricing or further financial strain if they voluntarily elect to enter into new rental agreements.

iii. 25-Month Occupancy Requirement

39. The Stalking Horse APA conditions access to the Rent Rebate Fund on Current Residents remaining in their units for 25 months after a sale closes. This requirement is fundamentally unfair and impractical, particularly for residents with Life Care Agreements who may need to transition to higher levels of care during the Eligibility Period. Forcing Current

Residents to gamble with their comfort and healthcare needs in order to preserve a partial recovery places an unreasonable burden on an elderly population that relied on contractual promises of lifetime care and housing security.

40. The proposed structure of the Rent Rebate Fund offered under the Stalking Horse APA is also objectionable. Other than timing (*i.e.*, “paid out over the twelve-month period beginning in the month following the end of the Eligibility Period”) and eligibility requirements explained above, the Stalking Horse APA provides no information about the mechanics of establishing the Rent Rebate Fund, who will control or administer the fund, whether the funds will be segregated or set aside at Closing, or what protections will ensure that the Eligible Current Residents actually receive the promised payments. *See* Stalking Horse APA, § 5.17(d)(i).

41. Similarly, the Stalking Horse APA provides no binding commitments regarding the structure or funding of the Healthcare Discount Program. Aside from its definition and the requirement that the Stalking Horse Bidder “make available and provide” the program *after* Closing, which can be administered in its sole discretion, the Stalking Horse APA offers no practical detail as to what this purported benefit entails or how it will operate in practice. *See* Stalking Horse APA, §§ 1(kkk), 5.17(d)(iii).

42. The \$12 million Rent Rebate Fund and the \$750,000 Healthcare Discount Program do not constitute meaningful recovery for the Residents, particularly given the substantial concessions the Residents must make to participate in the limited relief offered. The Debtor and the Stalking Horse Bidder are effectively forcing the Residents to relinquish their Entrance Fee refunds and Life Care Agreements, release *all* claims against a broad array of parties, and sign new rental agreements with undisclosed terms, under the threat of losing their homes for which many have invested their life savings.

43. In return for these onerous concessions, the Residents receive only the uncertain possibility, without any guaranty or defined structure, of eventually receiving a portion of the \$12 million Rent Rebate Fund and limited access to a \$750,000 healthcare credit pool. The Stalking Horse APA provides no meaningful detail as to how these funds and/or credits will be established, administered, or paid. This is not reasonable or adequate consideration in light of the significant and material concessions demanded from the Residents, and it underscores the fundamental imbalance and unfairness of the proposed Transaction.

44. Without transparency or enforceable safeguards, these components of the purchase price are illusory and provide the Residents with no genuine assurance that the promised amounts will ever be funded or paid. These provisions demonstrate that the proposed Transaction does not reflect sound business judgment; therefore, approval of the Transaction under section 363 of the Bankruptcy Code should be denied.

B. Impermissible *Sub Rosa* Plan

45. The Fifth Circuit's landmark decision in *In re Braniff Airways, Inc.* established that "the debtor and the Bankruptcy Court should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets." 700 F.2d 935, 940 (5th Cir. 1983) (holding that certain portions of the proposed transaction, such as the release of claims against the debtor, were clearly outside the scope of section 363(b)).

46. The Stalking Horse APA does exactly that. It encompasses material provisions that belong in a Chapter 11 plan, including treatment of Resident claims, releases, and restructuring of contractual rights without complying with sections 1125 through 1129 of the Bankruptcy Code. By conditioning benefits on execution of new agreements and releases, the Stalking Horse APA

effectively confirms a *sub rosa* plan extinguishing nearly \$150 million in resident claims while providing token recoveries to a select few and nothing to Former Residents. This circumvents the disclosure, voting, and confirmation safeguards of Chapter 11 and undermines transparency and fairness. Courts have consistently held that such arrangements constitute an impermissible *sub rosa* plan and must be rejected. *See, e.g., In re Braniff Airways*, 700 F.2d 935 (5th Cir. 1983); *Matter of Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 354 (5th Cir. 1997).

C. Disproportionate Harm to Vulnerable Creditors

47. The proposed transaction by the Stalking Horse Bidder disregards the interests of Former Residents and their estates, who are excluded entirely from the Rent Rebate Payment program and receive no consideration under the Stalking Horse APA. These stakeholders include estates of deceased residents owed substantial Entrance Fee refunds, often representing entire life savings, making them among the most vulnerable parties in this Case.

48. Current Residents with Life Care Agreements face an untenable choice: lose their homes or accept conditions that gut the very promises that induced them to invest in The Buckingham. These Residents were assured comprehensive care from Independent Living to Assisted Living to Skilled Nursing, and financial security, including the guarantee they would never be asked to leave due to financial hardship. *See* 2022 Flyer Life Care Commitment, a copy of which is attached hereto as **Exhibit A**. These commitments were not marketing fluff; they were the foundation of the Residents' decisions. Yet, under the proposed Transaction, Residents must sign new rental agreements with the Stalking Horse Bidder and execute sweeping liability releases for the Debtor and insiders, among other concessions. Even then, recovery is capped at a pro rata share of \$12 million in Rent Rebate Funds paid over twelve months after the Eligibility Period. Stripping away these protections, while honoring only a fraction of the financial investment,

renders the treatment of Life Care Agreements profoundly inequitable and contrary to the reliance interests of hundreds of Residents.

49. The seventeen Current Residents who reside at the Facility free of charge or at reduced rates pursuant to the Seller's Benevolent Care Policy (the "Benevolent Care Residents") fair even worse under the proposed terms of the Stalking Horse APA. The Transaction, as proposed, offers these Residents only a temporary agreement allowing them to remain at The Buckingham for six months after the Transaction closes. After that allotted time, the Benevolent Care Residents would be required to leave The Buckingham community.

50. Critically, the Stalking Horse APA offers no option to extend the six-month period, nor does it plan for transition assistance or alternative placement. These Residents, *by definition*, lack the financial resources to secure comparable housing and care elsewhere, yet they are given no assurances of continued housing, continuity of care, or support in relocation by the Debtor or the Stalking Horse Bidder. Such treatment is inconsistent with the Debtor's historic mission and underscores the Debtor's failure to protect the most vulnerable population at The Buckingham.

D. Changes to the Proposed Sale Order

i. Payment of Sale Proceeds to the Prepetition Lender

51. The Committee objects to any language in the proposed Sale Order directing all sale proceeds to the Prepetition Lender at closing without any carve-out for estate obligations. This structure is fundamentally flawed and prejudicial to unsecured creditors. First, the Sale Order will likely be entered before the expiration of the Investigation Deadline regarding the Prepetition Lender's liens and claims. Directing all proceeds to the Prepetition Lender prior to completion of that investigation effectively moots any challenge rights and deprives the estate of leverage to recover value for unsecured creditors. Second, the proposed Sale Order fails to reserve funds for

post-closing administrative expenses, including costs necessary to wind down the estate. Without a dedicated wind-down budget, the estate faces imminent administrative insolvency, leaving professionals unpaid and critical statutory duties unfulfilled.

52. The Bankruptcy Code requires that administrative expenses be paid ahead of prepetition claims; yet, under the current structure, the Prepetition Lender would receive all sale proceeds while the estate is left without resources to satisfy these obligations. At a minimum, the Sale Order must require that a reasonable portion of sale proceeds be set aside to fund post-closing costs and preserve the estate's ability to comply with its fiduciary duties. Anything less would contravene the priority scheme under the Bankruptcy Code and undermine the integrity of these proceedings.

ii. Access to Books and Records Post-Closing

53. The Committee objects to the absence of any provision in the proposed Sale Order granting access to the Committee over the Debtor's Books and Records following closing. Such access is essential for the Committee and any successor fiduciary, including, but not limited to, a Chapter 7 trustee or a trustee appointed under a confirmed plan, to fulfill his or her statutory duties.

54. Without access, the estate will be unable to comprehensively investigate potential causes of action, pursue litigation claims, or conduct an accurate claims reconciliation process. These functions are critical to maximizing recoveries for all unsecured creditors and ensuring compliance with the Bankruptcy Code.

55. Accordingly, the Sale Order must expressly provide that the Committee and any successor fiduciary shall have reasonable access to all books and records transferred to the Stalking Horse Bidder, including electronic data, correspondence, and financial records, for purposes of

investigation, litigation, and claims administration. Failure to include such a provision would materially prejudice creditor rights and undermine the integrity of these proceedings.

E. Lack of Transparency and Obstructive Conduct

56. The integrity of this Case has been compromised by a troubling lack of transparency by the Debtor and its Board. For example, the Debtor's principal, Michael Wyse ("Wyse") failed to appear at the December 29, 2025 341 Meeting, a critical forum for hundreds of creditors seeking answers and accountability from the Debtor and its Board for driving The Buckingham into its second bankruptcy in just four years.

57. Although publicly attributed to a "family emergency," Debtor's counsel privately admitted to GT that they had known for two weeks that Wyse would be unavailable for the 341 Meeting scheduled as of the Petition Date [Docket No. 6] yet provided no advance notice to the Committee or creditors of this unavailability. The Debtor's proposal to reschedule the 341 Meeting to January 16, 2026, nearly three weeks after the original date and after a key deadline of the Sale Objection Deadline, deprives creditors of timely access to essential information about the Debtor's financial condition.

58. This lack of transparency is not an isolated incident. Ongoing discovery efforts by the Committee have revealed that in the months prior to the Petition Date, [REDACTED]

[REDACTED],¹² [REDACTED]

[REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED]¹⁴

60. [REDACTED]

[REDACTED]

[REDACTED]¹⁵ This approach raises grave concerns about whether the Debtor can be trusted to honor any of its obligations, whether that be refunding escrowed Entrance Fees, funding the Rent Rebate Fund, or providing the promised \$750,000 healthcare credits to eligible Residents.

61. Transparency into the Debtor’s finances and the sale process is critical for creditors, the Committee, and the Court to evaluate the fairness of proposed Transaction. Instead, creditors

¹² [REDACTED] Copies of these Minutes attached hereto as **Exhibits B** through **M**, will be filed under seal in accordance with the Confidentiality Agreement.

It is also noteworthy that Wyse received \$235,000 in the year preceding the Petition Date for his services on the Board. *See* SOFA, p. 25 of 41. This high compensation [REDACTED] of The Buckingham.

¹³ [REDACTED], a copy of which is attached hereto as **Exhibit K** and will be filed under seal in accordance with the Confidentiality Agreement; [REDACTED], a copy of which is attached hereto as **Exhibit N** and will be filed under seal in accordance with the Confidentiality Agreement.

¹⁴ *See* [REDACTED], a copy of which is attached hereto as **Exhibit N** and will be filed under seal in accordance with the Confidentiality Agreement; [REDACTED], a copy of which is attached hereto as **Exhibit O** and will be filed under seal in accordance with the Confidentiality Agreement.

¹⁵ *See* [REDACTED], a copy of which is attached hereto as **Exhibit P** and will be filed under seal in accordance with the Confidentiality Agreement.

have been left in the dark and forced to rely on selectively disclosed information while the Debtor seeks approval of a sale that strips Residents of contractual protection and offers minimal recovery. The Court should require full disclosure and accountability before approving any sale. Given the Debtor's conduct, the Court should require full disclosure, accountability, and heightened scrutiny of their business judgment before approving any sale.

RESERVATION OF RIGHTS

62. The Committee expressly reserves all rights with respect to the proposed Stalking Horse APA and the contemplated Transaction. The Committee further reserves and preserves all rights to raise any additional objections to the relief requested in connection with approval of the Stalking Horse APA, the sale of substantially all assets, or any related agreements, at or prior to the Sale Hearing.

Dated: January 15, 2026

GREENBERG TRAUIG, LLP

By: /s/ Shari L. Heyen
Shari L. Heyen (TX Bar No. 09564750)
Aimee M. Housinger (TX Bar No. 24083203)
Emily D. Nasir (TX Bar No. 24118477)
GREENBERG TRAUIG, LLP
1000 Louisiana St., Suite 6700
Houston, Texas 77002
Telephone: (713) 374-3500
Facsimile: (713) 374-3505
Email: Shari.Heyen@gtlaw.com
HousingerA@gtlaw.com
Emily.Nasir@gtlaw.com

-and-

Casey Roy (TX Bar No. 00791578)
Mark Taylor (TX Bar No. 19713225)
KANE RUSSEL COLEMAN LOGAN PC
401 Congress Avenue, Suite 2100
Austin, Texas 78701
Telephone: (512) 487-6572

Email: croy@krcl.com
mtaylor@krcl.com

*Proposed Co-Counsel to the Official Committee of
Unsecured Creditors*

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 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.

By: /s/ Emily D. Nasir
Emily D. Nasir

Exhibit A

2022 Flyer – Life Care Commitment

EXHIBIT A

Life Care

Our Commitment

A Comprehensive Choice in Senior Living

Unlimited use of the residential apartment home,
Assisted Living, Health Care Center and commons areas.

Estate Preservation

90% Refundable One-Time Resident Deposit
Controlled future health care costs
Equalized monthly fee if long-term health care is needed

Priority Access to

Licensed *Quality* Health Care

Private Assisted Living Apartments
Private Nursing Care Suites
Private Memory Enhancement Center
Care by people you know and who know you

Financial Security

Knowing you will not be asked to leave
in the event of a financial hardship.

EXHIBITS B - O

To Be Filed Under Seal