

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§	Chapter 11
	§	
EVANGELICAL RETIREMENT	§	Case No. 23-07541
HOMES OF GREATER CHICAGO,	§	
INCORPORATED d/b/a	§	
FRIENDSHIP VILLAGE OF	§	
SCHAUMBURG,	§	
	§	
FEIN: 36-2815382,	§	
	§	
Debtor.	§	Hon. Timothy A. Barnes

**DEBTOR'S BRIEF IN SUPPORT OF PLAN
CONFIRMATION AND OMNIBUS REPLY TO OBJECTIONS**

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Evangelical Retirement Homes of Greater Chicago, Incorporated, d/b/a Friendship Village of Schaumburg, debtor and debtor in possession herein (the “**Debtor**”) hereby submits this brief (“**Confirmation Brief**”) in support of confirmation of *Debtor’s Fourth Amended Chapter 11 Plan of Liquidation Dated February 29, 2024* [Docket No. 570] (as amended, supplemented, and/or modified, the “**Plan**”)¹ and as an omnibus reply to objections filed thereto. The Debtor respectfully requests confirmation of the Plan pursuant to the proposed form of order filed contemporaneously herewith (the “**Confirmation Order**”).

In support of the Plan and this Confirmation Brief, the Debtor relies on and incorporates by reference each of the following: (a) *Declaration of Mike Flynn, Chief Executive Officer of the Debtor in Support of the Debtor’s First Day Pleadings* [Docket No. 16] (the “**First Day Declaration**”); (b) the *Declaration of Mike Flynn in Support of the Fourth Amended Chapter 11 Plan of Liquidation Dated February 29, 2024* [Docket No. 671] (the “**Confirmation Declaration**”); (c) the *Declaration of Clarissa Cu on Behalf of Stretto Regarding Solicitation of Votes and Tabulation of Ballots Accepting and Rejecting the Debtor’s Fourth Amended Plan of Liquidation Dated February 29, 2024* [Docket No. 672] (the “**Balloting Declaration**”); and (d) the *Declaration of Avraham Satt, Principal of IL CCRC LLC* (the “**Buyer Declaration**”). In further support of the Plan, the Debtor respectfully states as follows.

PRELIMINARY STATEMENT

1. The Debtor respectfully requests confirmation of the Plan, which is supported by creditors entitled to vote including the official committee of unsecured creditors (the “**Committee**”) and Friendship Senior Options, Inc., NFP (“**FSO**”). Objections to confirmation were filed by UMB Bank, N.A., in its capacity as bond trustee and successor master trustee (the

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

“**Bond Trustee**”) and the United States Trustee (the “**U.S. Trustee**”). Prior to the objection deadline, the Debtor received informal comments from the U.S. Trustee and Leaf Capital Funding, LLC, which resulted in certain changes that will be reflected in an amended version of the Plan. To the extent not resolved, the Debtor submits that the Objections (as defined below) should be overruled because the Plan satisfies the necessary legal requirements for confirmation. Accordingly, the Plan should be confirmed.

BACKGROUND

I. General Background

2. On June 9, 2023 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), commencing the above captioned Chapter 11 case (the “**Chapter 11 Case**”).

3. The factual background regarding the Debtor, including its business operations, capital and debt structures, and events leading to the filing of the Chapter 11 Case is set forth in detail in the First Day Declaration.

4. On June 23, 2023, the U.S. Trustee appointed the Committee pursuant to Bankruptcy Code section 1102(a)(1). *See* Docket No. 88. No trustee or examiner has been appointed.

5. On November 22, 2023, the Court entered the *Order (A) Approving Asset Purchase Agreement Between the Debtor and the Successful Bidder; (B) Authorizing the Sale of Substantially all of the Debtor’s Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (C) Authorizing the Assumption and Assignment of Designated Contracts; and (D) Granting Related Relief* [Docket No. 365], authorizing the Debtor to sell substantially all of its assets under Bankruptcy Code section 363 (the “**Sale**”) to IL CCRC LLC (the “**Buyer**”). The Sale closed on December 28, 2023. *See* Docket No. 441.

6. On January 12, 2024, the Court entered the *Order Approving the Sale of Real Estate Commonly Referred to as the Huntley Property* [Docket No. 469], authorizing the Debtor to sell certain real estate located at PIN #02-08-401-018 in the County of Kane in the state of Illinois (the “**Huntley Sale**”). The Huntley Sale closed on January 31, 2024.

7. The Debtor is no longer conducting business operations.

II. The Plan and Solicitation Process

A. The Plan

8. On October 18, 2023, the Debtor filed *Debtor’s Chapter 11 Plan of Liquidation* [Docket No. 277], the *Disclosure Statement with Respect to Debtor’s Chapter 11 Plan of Liquidation* [Docket No. 278], and *Debtor’s Motion for Entry of an Order: (I) Approving (A) the Disclosure Statement; (B) Voting Record Date, Voting Deadline, and Other Dates, Including the Confirmation Hearing; (C) Procedures for Soliciting and Tabulating Votes on the Plan and for Filing Plan Objections; (D) Manner and Forms of Notice and Other Related Documents; and (II) Granting Related Relief* [Docket No. 281].

9. On November 14, 2023, the Debtor filed *Debtor’s First Amended Chapter 11 Plan of Liquidation Dated November 14, 2023* [Docket No. 336] and *First Amended Disclosure Statement with Respect to Debtor’s First Amended Chapter 11 Plan of Liquidation, Dated November 14, 2023* [Docket No. 337].

10. On January 17, 2024, the Debtor filed *Debtor’s Second Amended Chapter 11 Plan of Liquidation Dated January 17, 2024* [Docket No. 478] and *Second Amended Disclosure Statement with Respect to the Debtor’s Second Amended Chapter 11 Plan of Liquidation, Dated January 17, 2024* [Docket No. 479].

11. On February 16, 2024, the Debtor filed *Debtor’s Third Amended Chapter 11 Plan of Liquidation Dated February 16, 2024* [Docket No. 550] and *Third Amended Disclosure*

Statement with Respect to the Debtor's Third Amended Chapter 11 Plan of Liquidation, Dated February 16, 2024 [Docket No. 551].

12. Following the disclosure statement hearing, on February 29, 2024, the Debtor filed the Plan and *Fourth Amended Disclosure Statement with Respect to the Debtor's Fourth Amended Chapter 11 Plan of Liquidation, Dated February 29, 2024* [Docket No. 571] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Disclosure Statement**”).

13. On March 12, 2024, the Court entered the *Order: (I) Approving (A) the Disclosure Statement, (B) Solicitation and Voting Procedures, and (C) Form of Ballots, Solicitation Materials and Forms and Methods of Notice with Respect Thereto; (II) Scheduling the Confirmation Hearing and Establishing Key Deadlines; and (III) Granting Related Relief* [Docket No. 590] (the “**DS Order**”), which, *inter alia*, approved (i) the Disclosure Statement as containing “adequate information” as defined by Bankruptcy Code section 1125; and (ii) the solicitation procedures, inclusive of the opt out mechanism with respect to third party releases.

14. The following table summarizes the Classes of Claims and Interests under the Plan, the treatment of such Classes, and whether such Classes were entitled to vote to accept or reject the Plan:

Class	Claim	Estimated Allowed Claims	Status	Voting Rights
1	Other Priority Claims	\$481,000	Unimpaired	Deemed to Accept
2	Bond Claims	\$131,600,000	Impaired	Entitled to Vote
3	Other Secured Claims	\$60,000	Unimpaired	Deemed to Accept
4	Deficiency Claims	101,070,000 ²	Impaired	Entitled to Vote

² The Deficiency Claim of the Bond Trustee is determined by the amount of Net Sale Proceeds available for Distribution to Class 2 Claims after confirmation of the Plan. The Deficiency Claim of the Other Secured Claim Holder (Leaf Capital Funding, LLC) (“**Leaf**”) is estimated at \$42,327.79 as the Debtor and Leaf have agreed the value of the

Class	Claim	Estimated Allowed Claims	Status	Voting Rights
5A	Former Residents Claims	\$19,667,384.54	Impaired	Entitled to Vote
5B	Opt Out Former Resident Claims	\$332,615.46	Impaired	Entitled to Vote
6	Non-Resident General Unsecured Claims	\$3,956,000	Impaired	Entitled to Vote
7	Intercompany Claims	\$0 ³	Impaired	Not Entitled to Vote
8	Interests in Debtor	N/A	Impaired	Not Entitled to Vote

15. The deadline to vote to accept or reject the Plan was April 18, 2024 at 4:00 p.m. (CT). As set forth in the Balloting Declaration, Classes 5 and 6 voted to accept the Plan.

Impaired Class and Description	Accept		Reject	
	Votes Counted	Amount	Votes Counted	Amount
Class 2-Bond Claims	11 30.6%	\$13,900.00 0.00 12.9%	25 69.4%	\$93,880,00.00 87.1%
Class 4-Deficiency Claims	12 32.4%	\$10,765,327.79 13.0%	25 67.6%	\$72,287,600.00 87.0%
Class 5A-Former Resident Claims	96 100.0%	\$19,200,311.03 100.0%	0 0.0%	\$0.00 0.0%
Class 5B-Opt Out Former Resident Claims	1 50.0%	\$164,405.46 49.4%	1 50.0%	\$168,210.00 50.6%
Class 6-Non-Resident General Unsecured Claims	18 81.8%	\$1,613,154.03 95.6%	4 18.2%	\$74,473.85 4.4%

vehicle securing the debt has a fair market value of approximately \$60,000, as opposed to \$40,000 as previously estimated and asserted by the Debtor.

³ The Bond Trustee has raised potential claims, including a claim pertaining to the Intercompany Claim as the Bond Trustee asserts that the Debtor's receivable from FSO should be over \$8,000,000. The Debtor and FSO dispute this claim.

16. On April 4, 2024, the Debtor filed the *Notice of Filing of Plan Supplement* [Docket No. 618] (as may be modified, amended, or supplemented, the “**Plan Supplement**”), which included, among other things, drafts of the: (i) FSO Settlement and Contribution Agreement, (ii) Unsecured Creditor Trust Agreement, and (iii) Former Residents Trust Agreement.

17. On April 19, 2024, the Debtor filed its *Notice of Filing Revised Plan Supplement Document*, which included a revised draft of the Unsecured Creditor Trust Agreement, including both redline and clean copies. *See* Docket No. 664.

B. Plan Solicitation

18. The Court entered the DS Order on March 12, 2024.

19. On March 15, 2024, the Debtor caused its solicitation agent, Stretto, Inc. (“**Stretto**”), to distribute to Holders of Claims in Classes 2, 4, 5A, 5B, and 6 (collectively the “**Voting Classes**”) a copy of the Disclosure Statement with all exhibits, including the Plan, the DS Order, the *Committee Letter to the Unsecured Creditors of Friendship Village of Schaumburg*, the *Notice to Parties in Multiple Classes Concerning Solicitation Materials*, and/or the *Instructional Cover Letter to Banks, Brokers, Intermediaries, and Nominees* if applicable (*see* Docket Nos. 605 at Exhibits B, C, L; 606 at Exhibits B, C, L), the applicable form of ballot (“**Ballot**”), and the *Notice of (I) Approval of Disclosure Statement; (II) Hearing Regarding Confirmation of Debtor’s Fourth Amended Chapter 11 Plan of Liquidation; and (III) Related Voting, Opt Out, and Objection Deadlines* (the “**Confirmation Hearing Notice**”) (substantially in the form attached as Exh. 7 to the DS Order) (collectively, the “**Solicitation Package**”), which provided notice of, among other things, the Confirmation Hearing.

20. On April 12, 2024, the Debtor, through counsel, learned that certain holders of Claims in Class 6 did not receive complete solicitation packages because such holders also held Claims in Class 1 and had been provided only the materials on account of claims held in Class 1.

On April 15, 2024, the Debtor caused Stretto to distribute a notice, a copy of which is attached to the *Supplemental Certificate of Service* [Docket No. 643] filed by Stretto on April 15, 2024, along with Solicitation Packages to holders of claims in Class 6 who had not previously been provided with Ballot forms. The Debtor agreed to extend the voting deadline to and through April 24, 2024. On April 22, 2024, the Debtor caused Stretto to distribute a second notice, providing notice to such holders that the Debtor agreed to further extend the voting deadline to and through May 15, 2024.⁴

21. Classes of holders of Claims and Interests without the right to vote on the Plan, which includes Classes 1, 3, 7, and 8 (collectively, the “**Non-Voting Classes**”) received the same Solicitation Package except that in lieu of a Ballot, such Non-Voting Classes received the following forms, as applicable: *Notice of Non-Voting Status with Respect to the Debtor’s Chapter 11 Plan of Liquidation* (substantially in the form of Exhibit 4 to the DS Order); *Notice of Non-Voting Status with Respect to Disputed Claims* (substantially in the form of Exh. 5 to the DS Order); *Opt Out Form for Non-Voting Claims* (substantially in the form of Exh. 6 to the DS Order); and/or the *Notice Regarding Ballot(s) and Solicitation Materials in Connection with Debtor’s Chapter 11 Plan of Liquidation* (see Docket Nos. 605, Exh. D; 606, Exh. D).

22. As evidence of service of the Solicitation Packages in accordance with the DS Order, (i) on March 19, 2024, Stretto filed a *Certificate of Service* [Docket No. 605] and *Amended Certificate of Service* [Docket No. 606]; (ii) on April 15, 2024, Stretto filed the *Supplemental Certificate of Service* [Docket No. 643]; and (iii) on April 22, 2024, Stretto filed a *Certificate of Service* with respect to the Debtor’s Second Notice Concerning Solicitation Materials [Docket No. 665].

⁴ Although the voting results will not impact the Debtor’s ability to confirm the Plan, as a cram down plan, because Class 5 has voted to accept the Plan, the Debtor will file or cause to be filed an amended Balloting Declaration after May 15, 2024.

23. Further, the Debtor caused Stretto to publish the Confirmation Hearing Notice in the *Chicago Tribune* on March 16, 2024, and in the *Northwest Suburbs Daily Herald* on March 18, 2024 as evidenced by and described in the *Affidavit of Publication of the Notice of (I) Approval of Disclosure Statement; (II) Hearing Regarding Confirmation of Debtor's Fourth Amended Chapter 11 Plan of Liquidation; and (III) Related Voting, Opt Out, and Objection Deadlines* [Docket No. 602] (the “**Publication Affidavit**”).

24. The DS Order established key deadlines and hearing dates, including: (a) April 18, 2024 at 4:00 p.m. (CT) as the deadline for parties to file objections, if any, to confirmation of the Plan; and (b) April 30, 2024 at 9:00 a.m. (CT) as the scheduled date of the commencement of the Confirmation Hearing.⁵

C. Plan Objections

25. Two objections to the Plan were filed: (a) *the United States Trustee's Objection to Debtor's Fourth Amended Chapter 11 Plan of Liquidation, Dated February 29, 2024* [Docket No. 657] (the “**UST Objection**”); and (b) *Objection of UMB Bank, N.A., to Confirmation of Debtor's Fourth Amended Chapter 11 Plan of Liquidation Dated February 29, 2024* [Docket No. 661] (the “**BT Objection**” and together with the UST Objection, the “**Objections**”).

THE PLAN SATISFIES THE STATUTORY REQUIREMENTS FOR CONFIRMATION UNDER THE BANKRUPTCY CODE

I. The Plan Satisfies the Applicable Provisions of Bankruptcy Code section 1129(a)(1)

26. To obtain confirmation of the Plan, the Debtor must demonstrate, by a preponderance of the evidence, that the Plan satisfies section 1129. *See In re S. Beach Sec., Inc.*, 421 B.R. 456, 463 (N.D. Ill. 2009), *aff'd*, 606 F.3d 366 (7th Cir. 2010) (“A Chapter 11 debtor ‘has

⁵ On April 17, 2024, the Court announced that the hearing would commence on April 30, 2024 but would be continued to May 20, 2024 at 9:00 a.m. (CT).

the burden of proving by at least a preponderance of the evidence’ that the plan satisfies the requirements of § 1129(a).”) (quoting *In re Rusty Jones*, 110 B.R. 362, 373 (Bankr. N.D. Ill. 1990)); *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120 (D. Del. 2006) (“[T]he Debtors’ standard of proof that the requirements of § 1129 are satisfied is preponderance of the evidence.”). As set forth below and based on the record and filings in this Chapter 11 Case, the Plan satisfies section 1129 and should be confirmed.

27. Bankruptcy Code section 1129(a)(1) requires that a plan must “compl[y] with the applicable provisions of [the Bankruptcy Code].” 11 U.S.C. § 1129(a)(1); see also *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 648 (2d Cir. 1988). The legislative history of section 1129(a)(1) informs that this provision encompasses the requirements of sections 1122 and 1123 governing classification of claims and contents of a plan, respectively. See H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978); see also *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984); *In re Tribune Co.*, 464 B.R. 126, 183 (Bankr. D. Del. 2011); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 599 (Bankr. D. Del. 2001).

28. As set forth more fully below and in the Confirmation Declaration, the Plan complies with all applicable provisions of the Bankruptcy Code, including sections 1122, 1123 and 1129, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Illinois (the “**Local Rules**”), and applicable non-bankruptcy law.

A. Bankruptcy Code sections 1122 and 1123: The Plan Does Not Impermissibly Gerrymander Classes of Claims

29. In accordance with Bankruptcy Code section 1122(a), the claims and interests placed in each Class are substantially similar to other claims and interests in each such Class.

B. The Plan Complies with Bankruptcy Code section 1123(a)

30. Bankruptcy Code section 1123(a) enumerates seven (7) applicable requirements. *See* 11 U.S.C. § 1123(a). The Plan complies with the applicable provisions of section 1123(a), as follows:

i. Bankruptcy Code section 1123(a)(1): Designation of Classes of Claims and Equity Interests

31. Bankruptcy Code section 1123(a)(1) requires that a plan designate classes for all claims and interests, other than the types of claims specified in section 507(a)(2) (administrative expense claims), section 507(a)(3) (claims arising during the “gap” period in an involuntary bankruptcy case) and 507(a)(8) (priority tax claims). *See* 11 U.S.C. § 1123(a)(1). Section 3 of the Plan expressly classifies all Claims and Interests against the Debtor, other than Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, DIP Facility Claims, Escrow Resident Claims, and the U.S. Trustee Fees, which are all unclassified in accordance with section 1123(a)(1) and set forth under Section 2 of the Plan.

ii. Bankruptcy Code section 1123(a)(2): Specification of Classes That Are Unimpaired by the Plan

32. Bankruptcy Code section 1123(a)(2) requires that a plan “specify any class of claims or interests that is not impaired under the plan.” 11 U.S.C. § 1123(a)(2). Section 3 of the Plan identifies each of Class 1 (Other Priority Claims) and Class 3 (Other Secured Claims) as Unimpaired, satisfying section 1123(a)(2).

iii. Bankruptcy Code section 1123(a)(3): Specification of Treatment of Classes That Are Impaired by the Plan

33. Bankruptcy Code section 1123(a)(3) requires that a plan “specify the treatment of any class of claims or interests that is impaired under the plan.” 11 U.S.C. § 1123(a)(3). Section 3

of the Plan satisfies this requirement by specifying in detail the proposed treatment of Classes 2, 4, 5, 6, 7, and 8, which are each Impaired under the Plan.

iv. Bankruptcy Code section 1123(a)(4): Equal Treatment Within Each Class

34. Bankruptcy Code section 1123(a)(4) requires that a plan provide that each claim or interest in a particular class receive the same treatment as other members of the same class. *See* 11 U.S.C. § 1123(a)(4). Section 3 of the Plan provides for equal treatment within each Class as required by section 1123(a)(4).

v. Bankruptcy Code section 1123(a)(5): Adequate Means for Implementation

35. Bankruptcy Code section 1123(a)(5) requires that a plan “provide adequate means for the plan’s implementation,” and sets forth examples of typical means for implementing a plan. 11 U.S.C. § 1123(a)(5). Section 4 of the Plan provides the means for implementation of this Plan, including, without limitation: (i) establishing an Unsecured Creditor Trust for the benefit of certain unsecured creditors, pursuant to the Unsecured Creditor Trust Agreement and, with respect thereto, appointing the Unsecured Creditor Trustee, (ii) establishing the Former Residents Trust to receive and distribute contributions made to former residents pursuant to the terms of the Asset Purchase Agreement, between the Debtor and the Buyer (the “**APA**”), and the FSO Settlement and Contribution Agreement (the “**FSO Settlement**”) for the benefit of the Former Residents Trust Beneficiaries and, with respect thereto, appointing the Residents Trust Trustee; (iii) distributing proceeds of the Sale and Huntley Sale; and (iv) providing for the return of funds deposited into the entrance fee escrow maintained for the benefit of certain residents.

36. Accordingly, the Plan, together with the documents and agreements contemplated therein and in the Plan Supplement, provides the means for implementation of the Plan as required by Bankruptcy Code section 1123(a)(5).

vi. Bankruptcy Code section 1123(a)(6) is Not Applicable

37. Bankruptcy Code section 1123(a)(6) prohibits the issuance of non-voting equity securities and requires that a reorganized debtor's charters so provide. The Plan does not provide for the issuance of non-voting equity securities and, thus, section 1123(a)(6) is inapplicable.

vii. Bankruptcy Code section 1123(a)(7): Provisions Regarding Directors and Officers

38. Bankruptcy Code section 1123(a)(7) requires that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." 11 U.S.C. § 1123(a)(7).

39. As an initial matter, section 1123(a)(7) is likely inapplicable to the Plan. This section relates primarily to a business that reorganizes and continues to operate, as opposed to a liquidation like the Chapter 11 Case at hand. Notwithstanding this distinction, the Plan provides for the appointment of: (a) the Unsecured Creditor Trustee, who will have the powers of a trustee under Bankruptcy Code sections 704 and 1106 and Bankruptcy Rule 2004 solely with respect to the Unsecured Creditor Trust Assets; and (b) the Former Residents Trust Trustee, who will act, in a fiduciary capacity, for the benefit of the Former Residents Trust Beneficiaries. *See* Plan, §§ 4.2.5 and 4.4. The Unsecured Creditor Trust and the Former Residents Trust will be administered and controlled by their respective trustees for the benefit of their beneficiaries.

40. The Debtor has identified Gregg Szilagyi ("**Szilagyi**") as the Unsecured Creditor Trustee and Former Residents Trust Trustee. *See* Plan Supplement, Exh. B, § 2.1; Exh. C, § 2.1. Szilagyi is not an insider of the Debtor. Accordingly, to the extent it applies, Bankruptcy Code section 1123(a)(7) has been met because the selection of an independent Unsecured Creditor

Trustee and Former Residents Trust Trustee is consistent with the interests of creditors, holders of equity interests, and public policy.

viii. Bankruptcy Code section 1123(b): The Plan Contains Certain Permissible Provisions

41. Bankruptcy Code section 1123(b) sets forth permissive provisions that may be incorporated into a Chapter 11 plan. The contents of the Plan are consistent with these provisions.

42. Bankruptcy Code section 1123(b)(1) permits a plan to “impair or leave unimpaired any class of claims, secured or unsecured, or of interests.” Consistent with section 1123(b)(1), Sections 2 and 3 of the Plan provides for the classification and impairment or unimpairment of certain Classes and describes the treatment for the Impaired and Unimpaired Classes. Further, Sections 5 and 7 of the Plan contain procedures for distributions and the allowance or disallowance of Claims.

43. Bankruptcy Code section 1123(b)(2) allows a plan to provide for the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases pursuant to Bankruptcy Code section 365. The Plan generally provides that, unless assumed and assigned in accordance with the Sale, all executory contracts will be rejected as of the Sale closing date or confirmation date, as applicable, with resulting claims treated as Class 6 Non-Resident General Unsecured Claims. *See id.*, § 6. These and other related provisions under Section 6 of the Plan are permitted by section 1123(b)(2).

44. Bankruptcy Code section 1123(b)(3)(A) permits the settlement or adjustment of any claim or interest belonging to the Debtor or the Debtor’s estate. The Plan incorporates the FSO Settlement, which is integral to the Plan and represents a fair compromise and settlement of potential claims among the Debtor, the Committee and FSO. The FSO Settlement is an efficient way to resolve potential claims and conclude the Chapter 11 Case while facilitating a higher

recovery to general unsecured creditors than would otherwise be achieved if the Debtor had liquidated its assets under Chapter 7. Without the FSO Settlement, unsecured creditors would be entitled to recover much less under the Plan.⁶ The approval of the FSO Settlement will not only maximize but will expedite recoveries to creditors and provide certainty and finality to the Debtor and all parties in interest. The FSO Settlement is a cornerstone of the Plan and the result of good-faith, arm's length negotiations during the Chapter 11 Case.

45. The Debtor determined, after a reasonable investigation, that any claims it may have were, at best, speculative and of questionable value. Accordingly, the Debtor exercised its business judgment to negotiate a reasonable settlement with the Committee and FSO that will result in substantial additional value contributed to the Debtor's estate, including a \$1,000,000 waiver of the Debtor's obligation to repay the DIP Facility in exchange for a release of such potential claims.

46. The Committee conducted a separate investigation into potential claims and causes of action belonging to the Debtor's estate. After its investigation, the Committee similarly concluded that the potential claims were of limited value and engaged in extensive negotiations with the Debtor and FSO that resulted in the FSO Settlement proposed in the Plan. Thus, in addition to the value provided to unsecured creditors through the Unsecured Creditor Trust, the Debtor's estate will receive value through a \$1,000,000 waiver of the DIP Facility, as stated above, and \$1,500,000 in cash (the "**FSO Former Resident Contribution**") to be provided to the Former Residents Trust and a commitment by FSO to dedicate its remaining assets to support the current residents of the Debtor's community, including but not limited to support for benevolent care.

⁶ Unsecured creditors would be entitled to recover only from any recovery of the Unsecured Creditor Trust.

47. As both the Debtor and the Committee have separately concluded, the FSO Settlement is in the best interest of the Debtor and its estate. Similarly, it represents the most efficient and value maximizing mechanism for compensating general unsecured creditors. Each aspect of the FSO Settlement is interdependent and relied upon by the Debtor, the Committee, and FSO, each of which made material concessions to their respective positions to enable the expeditious confirmation of the Plan. Modification to any aspect of the FSO Settlement or the failure to approve it *in toto* will almost certainly result in the disintegration of the FSO Settlement and the Plan. Unsecured creditors, including current and former residents, stand to lose the most in the event the FSO Settlement and Plan are not approved because these are the only means of ensuring funds are available for distribution to such creditors.

C. Applicable Legal Standard under Bankruptcy Code section 1123(b)(3)

48. Section 1123(b)(3) provides that “a plan may provide for the settlement or adjustment of any claim or interest belonging to the debtor or to the estate.” 11 U.S.C. § 1123(b)(3)(A). Bankruptcy Code section 105(a) provides that “[t]he court may issue any order . . . that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy Rule 9019 provides: “[o]n motion by the trustee, after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). As part of the chapter 11 process, the Court “may approve a compromise or settlement” under Bankruptcy Rule 9019(a), and “[t]he standards for approval of a settlement under section 1123 are generally the same as those under Rule 9019[.]” *In re Coram Healthcare Corp.*, 315 B.R. 321, 334–35 (Bankr. D. Del. 2004); *see also In re Envirodyne Indus. Inc.*, 1993 WL 566565, at *31 (Bankr. N.D. Ill. Dec. 20, 1993) (noting that “the rules governing the approval of a settlement are instructive and helpful to the court” in determining whether settlement releases should be approved as part of a plan). The “benchmark for determining the propriety of a bankruptcy settlement is whether the

settlement is in the best interests of the estate.” *In re Energy Co-Op., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989); *see also In re Holly Marine Towing, Inc.*, 669 F.3d 796, 801 (7th Cir. 2012) (“A bankruptcy court may approve a settlement agreement only if it is in the best interest of the bankruptcy estate.”). When a “proposed settlement falls into the ‘reasonable range of possible litigation outcomes,’ then it will pass the ‘best interests’ test.” *In re Holly Marine Towing*, 669 F.3d at 801.

49. A court’s decision to approve a compromise “will not be disturbed on appeal absent a clear showing of abuse of discretion.” *See In re Del Grosso*, 106 B.R. 165, 167 (Bankr. N.D. Ill. 1989). In making this determination it is not necessary for a court to conduct a “mini-trial” of the facts or merits of the underlying disputes or “write an extensive opinion every time he approves or disapproves a settlement.” *In re Am. Rsrv. Corp.*, 841 F.2d 159, 163 (7th Cir. 1987) (holding that the “judge need only apprise himself of the relevant facts and law so that he can make an informed and intelligent decision”); *see also In re Teknek, LLC*, 402 B.R. 257, 261 (N.D. Ill. 2009) (“The court is not required to conduct a full evidentiary hearing before a compromise can be approved.”). The court should disapprove a settlement only “if a settlement falls below the low end of possible litigation outcomes” *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007); *see also In re Oakfabco, Inc.*, 571 B.R. 771, 776 (Bankr. N.D. Ill. 2017) (“[L]itigation outcomes cannot be predicted with mathematical precision and as long as the settlement does not fall below the low end of possible litigation outcomes, it will pass the reasonable equivalence standard.”) (internal quotation marks omitted).

50. To determine whether the FSO Settlement is in the best interests of the estate and above the lowest range of reasonableness, the Court must consider the following factors: (i) the litigation’s probability of success, (ii) its complexity, (iii) expenses associated with the litigation,

and (iv) inconvenience and delay, “including the possibility that disapproving the settlement will cause a wasting of assets.” *In re Doctors Hosp. of Hyde Park*, 474 F.3d at 426; *see also In re Holly Marine Towing*, 669 F.3d at 801 (“[T]he court must weigh the costs and benefits of litigation versus settlement.”); *In re Am. Rsrv.*, 841 F.2d at 161 (“Central to the bankruptcy judge’s determination is a comparison of the settlement’s terms with the litigation’s probable costs and probable benefits.”). Moreover, in the Seventh Circuit, while a bankruptcy court can consider creditor objections, “the creditors’ views are not controlling.” *In re Am. Rsrv.*, 841 F.2d at 162.

51. When considering these factors, the Court should defer to the Debtor’s business judgment. *See First Premier Cap. LLC n/ka/ Commend Cap. LLC v. Republic Bank of Chicago, et. al. (In re Equip. Acquisition Res. Inc.)*, 692 F.3d 558, 562 (7th Cir. 2012) (stating that plan administrator’s “business judgment appear[ed] sound” in settling dispute); *see also JPMorgan Chase Bank, N.A. v. Charter Commc’ns Operating, LLC (In re Charter Commc’ns)*, 419 B.R. 221, 252 (Bankr. S.D.N.Y. 2009) (while the “approval of a settlement rests in the Court’s sound discretion, the debtor’s business judgment should not be ignored”), appeal dismissed sub nom., *R2 Invs. LDC v. Charter Commc’ns, Inc. (In re Charter Commc’ns, Inc.)*, 449 B.R. 14 (S.D.N.Y. 2011), *aff’d*, 691 F.3d 476 (2d Cir. 2012); *see e.g., In re Glob. Indus. Techs., Inc.*, No. 02-21626-JKF, 2013 WL 587366, at *11 (Bankr. W.D. Pa. Feb. 13, 2013) (“The Settlements are fair and equitable and a proper exercise of the Debtors’ business judgment because they enable the Debtors to consummate the [plan] and to reorganize . . . , while at the same time avoiding complex, expensive and protracted litigation with uncertain outcomes . . .”).

52. In considering whether to approve the FSO Settlement, the Court should exercise its discretion in approving the settlement because “settlements are generally favored due to their expediency, finality, and cost-effective results.” *In re Oakfabco*, 571 B.R. at 776; *see also In re*

Del Grosso, 106 B.R. at 167 (“Courts generally recognize that compromises are favored.”). When evaluating proposed settlements, courts look to “whether the settlement as a whole is reasonable.” *In re Wash. Mut., Inc.*, 442 B.R. 314, 329 (Bankr. D. Del. 2011). The FSO Settlement should be approved because it is in the best interests of the estate and falls above the lowest point in the range of reasonableness. Furthermore, it provides for an equitable outcome that will allow unsecured creditors, including current and former residents, who have suffered significantly throughout this difficult process, to receive immediate distributions that would not otherwise be available.

53. Bankruptcy Code section 1123(b)(3)(B) permits the inclusion of plan provisions related to the “retention and enforcement by the debtor, by the trustee, or by a representative of the estate” of certain claims or interests. 11 U.S.C. § 1123(b)(3)(B). As discussed above, the Plan creates both an Unsecured Creditor Trust and a Former Residents Trust. *See* Plan, §§ 4.2 and 4.4. Section 4.7 of the Plan further (a) provides for the preservation of Causes of Action, other than those expressly waived or released under the Plan and (b) authorizes the Unsecured Creditor Trustee to pursue such Retained Causes of Action for the benefit of the holders of the Unsecured Creditor Trust Interests consistent with the provisions of the Unsecured Creditor Trust Agreement. Further, Section 4.4 of the Plan vests the Former Residents Trust Trustee with the authority to enforce the terms of the FSO Settlement, which is assigned to the Former Residents Trust upon the Effective Date of the Plan. These provisions are consistent with section 1123(b)(3)(B).

54. As permitted by Bankruptcy Code section 1123(b)(5), the Plan modifies the rights of holders of Claims and Interests in the Voting Classes and the Classes deemed to reject and leaves Unimpaired the rights of the holders of Claims in Classes 1 and 3, which are each deemed to accept the Plan.

55. Bankruptcy Code section 1123(b)(6) permits a plan to “include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code].” 11 U.S.C. § 1123(b)(6). As permitted by section 1123(b)(6), Section 8 of the Plan contains release, exculpation, and injunction provisions consistent with applicable provisions of the Bankruptcy Code and Seventh Circuit law. Specifically, the Plan provides for, without limitation (a) the releases by the Debtor of certain parties in interest (the “**Debtor Releases**”), (b) the consensual releases by holders of Claims with respect to certain non-debtor parties (the “**Third Party Releases**”), (c) an exculpation provision, and (d) an injunction provision prohibiting, *inter alia*, the pursuit of Claims or Interests otherwise released under the Plan. These discretionary provisions are appropriate and the result of extensive arm’s length negotiations in good faith, are made in exchange for good, valuable, and reasonably equivalent consideration, are integral to the Plan, and are supported by the Committee and other various parties in interest.

i. The Debtor Releases Should Be Approved

56. Section 8.4 of the Plan provides that on the Effective Date, the Debtor and the Estate will release the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action, setoffs, recoupments, remedies, enforcement rights and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of the debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising in law, equity, or otherwise; provided further that claims or liabilities arising out of or related to any omission of a related party or former officer or director of the Debtor constituting willful misconduct or gross negligence are not released, nor are any post-effective date obligations.⁷

⁷ The foregoing description is meant as a summary of the Debtor Releases only. To the extent of any conflict between the foregoing summary, the language under the Plan, including, without limitations, the provisions and defined terms of Sections 8 and 1, respectively, shall control.

57. Under Section 1.146 of the Plan, the Released Parties include, among others, the Debtor, the Liquidating Debtor, FSO, and for each, the current and former predecessors, successors and assigns, subsidiaries, affiliates, managed accounts or funds, and each of their current and former officers, directors, principals, shareholders, and all professionals and representatives.

58. The Estate Releases set forth under Section 8.4 of the Plan are appropriate because Released Parties have made substantial contributions in this Chapter 11 Case that have maximized value for the Debtor's estate. Specifically, the representatives of the Debtor have expended considerable time and effort on the Debtor's behalf to ensure the Debtor's assets were preserved for the benefit of the Estate. Additionally, the Debtor (and its Professionals) have substantially contributed to the Chapter 11 Case by orchestrating the resolutions in the Plan, including the Sale and the FSO Settlement. Their work requires specialized knowledge and skills regarding the Debtor's operations and assets, as well as in the substantive areas of bankruptcy and corporate law. The knowledge and understanding of these Professionals were essential to the negotiation and formulation of the Plan. FSO and its representatives (many of whom serve FSO on a volunteer basis) have also contributed considerable time with respect to reviewing and commenting on multiple plan versions; provided a below market, unsecured DIP loan to fund the Chapter 11 Case and the successful transition of the Debtor's community to a new owner and operator; and agreed to fund millions of additional value for the benefit of the Debtor's estate and current and former residents.

59. Section 1123(b)(3) permits "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3). The release provision in Section 8.4 of the Plan is limited to the claims or causes of action belonging to the Debtor and represents a proper exercise of the Debtor's ability to settle any claims it may have against the Released

Parties. *See In re Envirodyne Indus., Inc.*, No. 93 B 310, 1993 WL 566565, at *30 (Bankr. N.D. Ill. Dec. 20, 1993). Indeed, Courts in this jurisdiction have approved similar release provisions, where such provisions are for good and valuable consideration.⁸

60. Based upon the foregoing and Released Parties' contributions and material concessions in the Chapter 11 Case, which facilitated the Sale and Plan implementation, the Estate Releases should be approved. The UST Objection to approval of the Estate Releases should be overruled for the reasons set forth below.

ii. The Consensual Third Party Releases Should Be Approved

61. Section 8.5 of the Plan contains the Third Party Releases, which provides for the release of the Debtor, the Estate, FSO, and all other Released Parties by certain third parties of any and all pre and postpetition causes of action relating to, based on, or in connection with or related to the Debtor or its assets, operations, finances, property and Estate, the Chapter 11 Case or the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, any Plan Supplement or related agreements, instruments, or other documents, the FSO Settlement, the DIP Facility, and the Sale.⁹ The Third Party Releases do not release claims or liabilities arising out of or relating to any act or omission of a released party or a former officer or director of the Debtor that constitutes willful misconduct (including fraud) or gross negligence. *See* Plan, § 8.5.

62. The Third Party Releases are consensual, because they are granted only by:
(a) creditors who did not affirmatively opt out of "Releases by Holders of Claims", either by

⁸ *See e.g., In re Clare Oaks*, No. 19-16708 (Bankr. N.D. Ill. Sept. 30, 2020); *In re Clare at Water Tower*, No. 11-46151 (Bankr. N.D. Ill. April 27, 2012); *In re Kimball Hill, Inc.*, No. 08-10095 (SPS) (Bankr. N.D. Ill. Mar. 12, 2009); *In re UAL Corp.*, No. 02-48191 (ERW) (Bankr. N.D. Ill. Jan. 20, 2006); *In re Kmart Corp.*, No. 02-02474 (SPS) (Bankr. N.D. Ill. Apr. 22, 2003).

⁹ The foregoing description is meant as a summary of the Third Party Releases only. To the extent of any conflict between the foregoing summary, the language of the Third Party Releases under Section 8, and the definitions of "Releasing Party" and "Released Party" under Section 1 shall control.

marking their Ballots, if holders of Claims in Voting Classes, or failing to submit an Opt-Out Form, if not entitled to vote; and (b) the Committee. *See* Plan, § 1.147, Plan Supplement, Exh. A. The Third Party Releases were critical to incentivizing parties, including FSO, to enter into the FSO Settlement and support the Plan and preventing significant and time-consuming litigation regarding the parties' respective rights and interests. As such, the Third Party Releases are a critical and necessary component of the Plan, and are permissible, consensual releases consistent with Seventh Circuit precedent.

63. It is well-established in the Seventh Circuit and other districts that consensual third party releases are acceptable in a chapter 11 plan. *See, e.g., Airadigm Commc'ns, Inc. v. FCC (In re Airadigm Commc'ns, Inc.)*, 519 F.3d, 640, 655 (7th Cir. 2008) (acknowledging that consensual non-debtor releases had been approved by the Seventh Circuit).¹⁰ The Debtor provided extensive notice of the Third Party Releases and the opportunity to opt out of such releases to all parties in interest. Indeed, the Debtor provided extensive notice of the Plan and the Third Party Releases contained therein to all holders of Claims and Interests. In addition to conspicuous placement in the Plan and the Disclosure Statement, the Debtor provided bold, conspicuous, and clear language regarding the Third Party Releases on the Ballots and the Non-Voting Notices that contained the full text of the Third Party Releases, as well as the definitions of "Releasing Party" and "Released Party" under the Plan. Such forms were previously approved by the DS Order, which found that "The Opt Out Form clearly and conspicuously instructs the recipient of such form that the form

¹⁰ *See, e.g., Matter of Specialty Equip. Cos., Inc.*, 3 F.3d 1043, 1047 (7th Cir. 1993) ("[C]ourts have found releases that are consensual and non-coercive to be in accord with the strictures of the Bankruptcy Code."); *In re Conseco, Inc.*, 301 B.R. 525, 528 (Bankr. N.D. Ill. 2003) (finding a release that "binds only those creditors who agreed to be bound, either by voting for the Plan or by choosing not to opt out of the release" was "purely consensual."); *In re Timothy Place, NFP*, No. 20-21554 (Bankr. N.D. Ill. March 16, 2021); *In re Clare Oaks*, No. 19-16708 (Bankr. N.D. Ill. Sept. 30, 2020); *In re The Clare at Water Tower*, No. 11-46151 (Bankr. N.D. Ill. April 27, 2012), *In re Kimball Hill, Inc.*, No. 08-10095 (SPS) (Bankr. N.D. Ill. Mar. 12, 2009); *In re Kmart Corp.*, No. 02-02474 (SPS) (Bankr. N.D. Ill. Apr. 22, 2003); *In re CJ Holding Co.*, 597 B.R. 597, 609 (Bankr. S.D. Tex. 2019); *In re SunEdison, Inc.*, 576 B.R. 453, 458 (Bankr. S.D.N.Y. 2017).

must be completed and submitted to avoid becoming a Releasing Party, as defined in the Plan” and that “[t]he Opt Out Form sufficiently alerts holders not entitled to vote of their right to make the election and the manner in which such election must be made by timely submitting a duly completed Opt Out Form to the Claims and Balloting Agent in accordance with the instructions provided on the Opt Out Form.” See Solicitations Procedure Order, ¶ 25. The Opt Out Forms included a box to be checked to indicate opposition to such releases along with instructions for returning the Opt Out Form. The Confirmation Hearing Notice and the notices published in the *Chicago Tribune* and *Northwest Suburbs Daily Herald* also provided extensive notice of the Third Party Releases to any potential unknown creditors or parties in interest.

64. The Third Party Releases satisfy additional relevant considerations for approval of a consensual non-debtor release. First, the Third Party Releases are sufficiently specific, as the Plan and the Disclosure Statement describe in detail the nature and type of claims released and the scope of the Released Parties, and all parties in interest were provided notice of the releases through the Disclosure Statement, the Confirmation Hearing Notice, the Ballots, and Non-Voting Notices. Second, along with the Debtor Releases, the Third Party Releases are an integral part of the Plan. The Released Parties would be unwilling to support the Plan and provide significant consideration and contributions, including the partial DIP Facility waiver, the FSO Former Resident Contribution, and continued support for current residents, without the ability to seek protection from the risk of future litigation with respect to any potential claims held by creditors of the Debtor. Further, Released Parties provided important contributions to the Debtor’s efforts in this Chapter 11 Case, which have culminated in the Plan, and the transactions contemplated thereunder.

65. The U.S. Trustee objects to the Third Party Releases, and such objection should be overruled for the reasons set forth below.

iii. The Exculpation Provision Should Be Approved

66. The Plan proposes to provide protections to the Exculpated Parties, including: (a) the Debtor, (b) the Liquidating Debtor, (c) the Issuer, (d) the Committee and its members, (e) FSO, and (f) with respect to each of the foregoing, such Entity and its d its current and former predecessors, successors and assigns, subsidiaries, affiliates, managed accounts or funds, and all of their respective current and former officers, directors, principals, shareholders, members, partners, managers, employees, attorneys, advisors, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals. *See* Plan, §§ 1.75 and 8.3.¹¹ Specifically, among other things, the Exculpated Parties shall be released and exculpated from any Cause of Action for any claim related to any act or omission arising out of the Chapter 11 Case, the Plan, the Sale, the FSO Settlement or the Debtor’s restructuring efforts, except for acts or omissions that are determined in a Final Order to have constituted gross negligence or willful misconduct (including fraud) (the “**Exculpation Provision**”).¹²

67. The Exculpation Provision does not release the liability of Exculpated Parties per se, but instead sets a standard of care of actual fraud, willful misconduct, or gross negligence in hypothetical future litigation against Exculpated Parties for acts arising out of the Debtor’s restructuring. *See In re PWS Holding Corp.*, 228 F.3d 224, 245 (3d Cir. 2000) (holding that an exculpation provision “does not affect the liability of these parties, but rather states the standard

¹¹ Although the Plan currently includes the Bond Trustee as an exculpated party, the Debtor reserves the right to revise the definition to exclude the Bond Trustee and anticipates this change will be reflected in an amended Plan to be filed.

¹² *See* Plan, § 8.4. The foregoing description is meant as a summary of the Exculpation Provision only. To the extent of any conflict between the foregoing summary, the language of the Exculpation Provision in Plan Section 8, and the definition of “Exculpated Party” shall control.

of liability under the Code”); *see also In re Health Diagnostic Lab., Inc.*, 551 B.R. 218, 232 (Bankr. E.D. Va. 2016) (“The practical effect of a proper exculpation provision is not to provide a release for any party, but to raise the standard of liability of fiduciaries for their conduct during the bankruptcy case.”). Bankruptcy courts have the power to approve exculpation provisions in Chapter 11 plans because a plan cannot be confirmed without the court’s finding that the plan has been proposed in good faith and satisfies other important requirements. Thus, an exculpation provision represents a legal conclusion that flows inevitably from several different findings a bankruptcy court must make in confirming a plan. Once the court makes its good faith finding, it is appropriate to set the standard of care of parties involved in the formulation and implementation of the Chapter 11 plan. Exculpation provisions, therefore, appropriately prevent future collateral attacks against the Plan and the Debtor’s restructuring. *See, e.g., In re Flushing Hosp. & Med. Ctr.*, 395 B.R. 229, 245 (Bankr. E.D.N.Y. 2008) (noting that the exculpation provision approved in the confirmation order insulated an exculpated party from future collateral attacks on the propriety of such provisions.). Here, the Exculpation Provision prevents such collateral attacks against fiduciaries of the Debtor’s Estate, who facilitated the restructuring and, ultimately, the sale and liquidation process.

68. Debtors are entitled to the relief embodied in the Exculpation Provision. Even courts that have taken a narrow view of exculpation provisions have not raised any concerns with exculpation for debtors.¹³ Here, the Exculpation Provision also appropriately extends to fiduciaries of the Debtor and its Estate, such as their directors, advisors, and other professionals, as these parties acted for and on behalf of the Debtor during the bankruptcy process. To the extent the Court

¹³ *See, e.g., In re Pac. Lumber Co.*, 584 F.3d 229 (5th Cir. 2009) (limiting the discussion to non-debtor exculpations and releases).

finds that the Debtor acted in good faith and confirms the Plan, the Debtor's directors and professionals should presumptively not be subject to liability for actions or omissions related to the negotiation, execution, or implementation of the Plan and the Debtor's restructuring.¹⁴

69. The Exculpation Provision is necessary to protect the Exculpated Parties, who have made substantial contributions to the Debtor's reorganization, from collateral attacks related to their good faith acts or omissions in effecting the Debtor's successful restructuring during the course of the Chapter 11 Case. Importantly, the scope of the Exculpation Provision is limited in time and subject matter and has no effect on liability resulting from willful misconduct, gross negligence, or intentional fraud, as determined by a Final Order. *See WR. Grace & Co.*, 475 B.R. at 131 (finding that an exculpation provision that exculpated among others, the debtors and a future claims representative, from acts or omissions "in connection with or arising out of the [c]hapter 11 [c]ases" that did not amount to willful misconduct or gross negligence was appropriate). Moreover, courts in Seventh Circuit have approved exculpation provisions similar to the Exculpation Provision under Section 8.4 of the Plan.¹⁵

¹⁴ See, e.g., *Berwick Black Cattle Co.*, 394 B.R. 448, 459 (Bankr. C.D. Ill. 2008) (citing *In re Granite Broad. Corp.*, 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007)) ("[T]he now customary exculpation for acts and omissions in connection with the plan and the bankruptcy case requires, in effect, that any claims in connection with the case be raised in the case and not saved for future litigation."); *In re Wash. Mut., Inc.*, 442 B.R. 314, 348 (Bankr. D. Del. 2011) (citing *In re PWS Holding Corp.*, 228 F.3d 224, 246 (3d Cir. 2000)); *In re Pilgrim's Pride Corp.*, 2010 WL 200000, at *5 (Bankr. N.D. Tex. 2010) ("[t]o the extent Debtors acted in the Chapter 11 cases, other than in bad faith, pursuant to the authority granted by the Code or as directed by court order, Debtors' management and professionals presumptively should not be subject to liability.").

¹⁵ See e.g., *In re Clare Oaks*, No. 19-16708 (Bankr. N.D. Ill. Sept. 30, 2020); *In re Clare at Water Tower*, No. 11-46151 (Bankr. N.D. Ill. April 20, 2012); *In re UAL Corp.*, No. 02-48191 (ERW) (Bankr. N.D. Ill. Jan. 20, 2006); *In re Conseco, Inc.*, No. 02-49672 (CAD) (Bankr. N.D. Ill. Sept. 9, 2003); *In re Line Capital*, No. 01-03320 (JBS) (Bankr. N.D. Ill. Jan. 9, 2002); see also *In re GVS Texas Holdings I, LLC*, No. 21-31121, ECF No. 873 (Bankr. N.D. Tex. March 21, 2022); *In re Bainbridge Uinta, LLC*, No. 20-42794, 2021 WL 2692265 (Bankr. N.D. Tex. June 28, 2021) (Mullin, J.).

iv. The Injunction Provision Should Be Approved

70. Section 8.2 of the Plan (the “**Injunction Provision**”) implements the Plan’s provisions by permanently enjoining all Entities from commencing or maintaining any action against the Released Parties and the Exculpated Parties on account of, or in connection with, or with respect to, any claims or interests that have been addressed under the Plan. The Injunction Provision is a necessary part of the Plan because it enforces provisions that are integral components of the Plan. Accordingly, to the extent the Court finds that the Plan’s exculpation and release provisions are appropriate, the Debtor respectfully requests that the Court approve the Injunction Provision. The U.S. Trustee objects to the Injunction Provision, and such objection should be overruled for the reasons set forth below.

D. Bankruptcy Code section 1123(d): The Cure Provisions in the Plan Are Appropriate

71. Bankruptcy Code section 1123(d) provides that “if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable non-bankruptcy law.” 11 U.S.C. § 1123(d). As noted above, the Section 6.1 of the Plan provides for the rejection of executory contracts that are not otherwise assumed pursuant to section 365 under the Sale Order or separate order of the Court. Accordingly, the Plan complies with section 1123(d).

E. Bankruptcy Code section 1129(a)(2): The Debtor Has Complied with Applicable Solicitation Procedures

72. Bankruptcy Code section 1129(a)(2) requires that a plan “compl[y] with the applicable provisions” of the Bankruptcy Code, which is generally intended to ensure that a plan proponent has complied with the requirements of the Bankruptcy Code governing the solicitation of acceptances of a plan. *See, e.g., In re Texaco Inc.*, 84 B.R. 893, 906-07 (Bankr. S.D.N.Y. 1988); *In re Star Ambulance Serv., LLC*, 540 B.R. 251, 262 (Bank. S.D. Tex. 2015) (“Courts interpret

[section 1129(a)(2)] to require that the plan proponent comply with the disclosure and solicitation requirements set forth in Bankruptcy Code 1125 and 1126.”).

73. Here, the Debtor has complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the DS Order, and other applicable law in transmitting the Plan, the Disclosure Statement, the Ballots, the Non-Voting Notices, and related documents and notices. Further, in accordance with the DS Order, the Debtor, through Stretto, has tabulated the Ballots submitted by holders of Claims entitled to vote on the Plan and timely filed the Balloting Declaration. The Debtor, thus, submits that Bankruptcy Code section 1129(a)(2) has been satisfied.

F. Bankruptcy Code section 1129(a)(3): The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law

74. Bankruptcy Code section 1129(a)(3) requires that a Chapter 11 plan be “proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1129(a)(3). “[T]he term [good faith] is generally interpreted to mean that there exists a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.” *In re Madison Hotel Assoc.*, 749 F.2d 410, 425 (7th Cir. 1984); *see also In re Multiut Corp.*, 449 B.R. 323, 341 (Bankr. N.D. Ill. 2011) (“In evaluating whether a plan has been proposed in good faith, the focus of the inquiry is the plan itself, which must be viewed based on the totality of the circumstances surrounding the development and proposal of that plan.”).

75. The Plan was developed with significant input of major constituents in the Chapter 11 Case after considering every available alternative and was proposed with the legitimate and honest purpose of maximizing value for the benefit of the Estate and its creditors. After multiple prior plans in this Chapter 11 Case, the Plan allows holders of Allowed Claims to realize the highest possible recovery under the circumstances from Net Sale Proceeds, the FSO

Settlement, and liquidation of Unsecured Creditor Trust Assets. Accordingly, the Plan has been conceived and proposed with the “honest purpose” and “reasonable hopes of success” by which the “good faith” under Bankruptcy Code section 1129(a)(3) is measured. *See Brite v. Sun Country Dev., Inc. (In re Sun County Dev., Inc.)*, 764 F.2d 406, 408 (5th Cir. 1985). For these reasons, the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(3).

76. Additionally, Bankruptcy Rule 3020(b)(2) further specifies that, “[i]f no objection [to a plan] is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.” Fed. R. Bankr. P. 3020(b)(2). In accordance with Bankruptcy Rule 3020(b)(2), because there has been no objection to the Plan on the grounds of a lack of good faith, the Court should find that Bankruptcy Code section 1129(a)(3) is satisfied without further inquiry.

G. Bankruptcy Code section 1129(a)(4): The Payment of Services and Expenses is Subject to Court Approval

77. Bankruptcy Code section 1129(a)(4) requires that payments “for services or for costs and expenses in connection with the case, or in connection with the plan and incident to the case,” be either approved by the Court as reasonable or subject to Bankruptcy Court approval as reasonable. 11 U.S.C. § 1129(a)(4). Any payment made or to be made by the Debtor, for services or for costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or is subject to the approval of, the Court as reasonable. Indeed, under Section 2.2 of the Plan, Professionals must file and serve a properly noticed final fee application on the first business day that is forty-five (45) days after the Effective Date, and pursuant to the Bankruptcy Code, only the amount of Allowed fees will be paid. Accordingly, Bankruptcy Code section 1129(a)(4) is satisfied.

H. Bankruptcy Code section 1129(a)(5): Necessary Information Regarding the Litigation Trust Trustee and Residents Trust Trustees Has Been Disclosed

78. Bankruptcy Code section 1129(a)(5) requires that a plan proponent disclose “the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor. . . or a successor to the debtor under the plan.” 11 U.S.C. § 1129(a)(5)(A)(i). Further, section 1129(a)(5) requires that the appointment of such individual be “consistent with the interests of creditors and equity security holders and with public policy. . . .” 11 U.S.C. § 1129(a)(5)(A)(ii).

79. The Plan complies with Bankruptcy Code section 1129(a)(5). The identities of the Unsecured Creditor Trustee and the Former Residents Trust Trustee have been disclosed in the Plan Supplement, and the appointment of such trustees is consistent with the interests of holders of Claims against and Interests in the Debtor and with public policy. Accordingly, the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(5).

I. Bankruptcy Code section 1129(a)(6) is Not Applicable

80. Bankruptcy Code section 1129(a)(6) requires that any regulatory commission with jurisdiction over the rates of a debtor approve any changes in rate regulations provided in a plan. *See* 11 U.S.C. § 1129(a)(6). Because the Debtor is not subject to any such regulation and the Plan does not propose any such rate changes, section 1129(a)(6) is inapplicable.

J. Bankruptcy Code section 1129(a)(7): The Plan is in the Best Interests of Creditors and Equity Interest Holders

81. Bankruptcy Code section 1129(a)(7) requires that, with respect to each class of impaired claims or interests under a plan, every holder of a claim or interest in such impaired class either (a) accept the plan, or (b) receive or retain property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(7). Under the best

interests test, courts “must find that each [non-accepting] creditor will receive or retain value that is not less than the amount he would receive if the debtor were liquidated [under Chapter 7 of the Bankruptcy Code].” *Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 440 (1999); *United States v. Reorganized CF&I Fabricators, Inc.*, 518 U.S. 213, 228 (1996); *see also Tex. Extrusion Corp. v. Lockhead Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) (under section 1129(a)(7), a court is required to determine whether impaired claims would receive no less under a reorganization than through a liquidation). The best interests test focuses on individual dissenting creditors rather than classes of claims. *See 203 N. LaSalle St. P’ship*, 526 U.S. at 440.

82. The Debtor has provided affirmative evidence through its Liquidation Analysis attached to the Disclosure Statement as Exhibit 2 to demonstrate that Holders of Class 2 and Class 4 Claims will recover more under the Plan than they would receive in a hypothetical Chapter 7 liquidation. Further, Classes 5 and 6, each of which is an accepting class, will recover more under the Plan than they would under Chapter 7. Class 1 and Class 3 Claims are Unimpaired and such holders are deemed to have accepted the Plan. Class 7 (Intercompany Claims) and Class 8 (Interests in Debtor) are not entitled to recover under the Plan and, thus, are deemed to have rejected the Plan. Accordingly, the Plan satisfies Bankruptcy Code section 1129(a)(7).

83. For the reasons set forth below, the Bond Trustee incorrectly asserts that the Bond Trustee would recover more under a hypothetical Chapter 7 liquidation than it will recover under the Plan.

K. Bankruptcy Code section 1129(a)(8): Acceptance by All Impaired Classes

84. Bankruptcy Code section 1129(a)(8) requires that each class of claims and interests established under a plan either accept the plan or not be impaired under the plan. *See* 11 U.S.C. § 1129(a)(8). As detailed above and in the Balloting Declaration, Classes 1 and 3 are unimpaired

and deemed to have accepted the Plan under Bankruptcy Code section 1126(f), while Classes 7 and 8 are deemed to have rejected the Plan under Bankruptcy Code section 1126(g). FSO, the Holder of all Claims and Interests in Class 7 and Class 8, respectively, is a Plan supporter and consents to the proposed treatment in the Plan. Accordingly, the Court could consider section 1129(a)(8) satisfied by consent. Alternatively, the Plan may nevertheless be confirmed pursuant to Bankruptcy Code section 1129(b).

L. Bankruptcy Code section 1129(a)(9): Payment of Allowed Priority Claims

85. Bankruptcy Code section 1129(a)(9) requires that persons holding allowed claims entitled to priority under Bankruptcy Code sections 503(b) and 507(a) either receive specified cash payments under the plan or agree to a different treatment with respect to such claim. The Plan, including provisions under Section 2, provides for payment of certain priority claims, including Administrative Expense Claims, Professional Fee Claims, and Priority Tax Claims in accordance with Bankruptcy Code section 1129(a)(9).

86. Specifically, with respect to Administrative Expense Claims, Section 2.1 of the Plan provides that each holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to the unpaid amount of such Allowed Administrative Claim on the later of the Effective Date, in accordance with the terms and conditions of the particular transaction giving rise to the Administrative Expense Claim, or the date on which such Administrative Expense Claim becomes an Allowed Expense Administrative Claim, or as soon thereafter as is reasonably practicable.¹⁶

87. With respect to payment of Professional Fee Claims, Section 2.2 of the Plan provides that such Claims be paid the full unpaid amount as is Allowed by the Court (a) as soon

¹⁶ The foregoing description is meant as a summary only. To the extent of any conflict between the foregoing summary, the language of the Section 2.1 shall control.

as is reasonably practicable following the later of (i) the Effective Date and (ii) the date upon which the order relating to any such Allowed Professional Fee Claim is entered by the Court; or (b) upon such other terms as agreed by the holder(s) of the Allowed Professional Fee Claim(s).¹⁷

88. With respect to Priority Tax Claims, the Plan provides that holders of Allowed Priority Tax Claims will receive payment in Cash in full either on the Effective Date or as soon as reasonably practicable thereafter or the first Business Day after the date that is thirty (30) calendar days after the date on which such Priority Tax Claim becomes Allowed, or as soon thereafter as is reasonably practicable.¹⁸

89. Sections 2.4, 2.5, and 2.6 of the Plan further specify that: (a) U.S. Trustee Fees will be paid in full as they come due; (b) Escrow Resident Claims will be satisfied no later than confirmation; and (c) DIP Facility Claims shall be satisfied, in part, in Cash on the Effective Date.

90. Based upon the foregoing, the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(9).

M. Bankruptcy Code section 1129(a)(10): The Plan Has Been Accepted by at Least One Impaired Class Entitled to Vote

91. Bankruptcy Code section 1129(a)(10) requires that at least one (1) class of claims that is impaired under the plan has voted to accept the plan, determined without including any acceptance of the plan by any insider. *See* 11 U.S.C. § 1129(a)(10). As set forth in the Balloting Declaration and as stated above, two Voting Classes voted to accept the Plan. Therefore, Bankruptcy Code section 1129(a)(10) is satisfied.

¹⁷ The foregoing description is meant as a summary only. To the extent of any conflict between the foregoing summary, the language of Section 2.2 shall control.

¹⁸ *See* Plan, § 2.3. The foregoing description is meant as a summary only. To the extent of any conflict between the foregoing summary, the language of the Section 2.3 shall control.

N. Bankruptcy Code section 1129(a)(11): The Plan is Feasible

92. Bankruptcy Code section 1129(a)(11) requires a court to find that “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.” 11 U.S.C. § 1129(a)(11). This requirement, commonly known as the “feasibility” standard, usually encompasses two interrelated determinations: (a) the debtor’s ability to consummate the provisions of the plan, and (b) the debtor’s ability to reorganize as a viable entity. *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988) (“[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.”); *In re Lakeside Global II, Ltd.*, 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989) (stating that the definition of feasibility “has been slightly broadened and contemplates whether [a] debtor can realistically carry out its Plan. . . and [b] whether the Plan offers a reasonable prospect of success and is workable”).

93. Because the Plan expressly provides for the sale of substantially all of the Debtor’s assets, Bankruptcy Code section 1129(a)(11) is satisfied. *See In re Revco*, 131 B.R. 615, 622 (Bankr. N.D. Ohio 1990) (holding that “[s]ection 1129(a)(11) is satisfied as the plan provides that the property of [the] Debtors shall be liquidated”). The Sale has closed, and the Plan contemplates the distribution of the Net Sale Proceeds in accordance with the Plan. Therefore, there is little risk that the Debtor will be unable to distribute the Net Sale Proceeds as described in the Plan. Confirmation of the Plan is not likely to be followed by the need for further financial reorganization or liquidation of the Debtor. The Bond Trustee incorrectly asserts that the Plan is not feasible, but such objection should be overruled for the reasons set forth below.

94. Thus, the Plan satisfies Bankruptcy Code section 1129(a)(11).

O. Bankruptcy Code section 1129(a)(12): The Plan Provides for Full Payment of Statutory Fees

95. Bankruptcy Code section 1129(a)(12) requires the payment of “[a]ll fees payable under Section 1930 [of Title 28 of the United States Code], as determined by the court at the hearing on confirmation of the plan.” 11 U.S.C. § 1129(a)(12). Bankruptcy Code section 507(a)(2) provides that “any fees and charges assessed against the estate under [section 1930 of] Chapter 123 of Title 28” are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(2). The Plan includes fees and charges assessed pursuant to 28 U.S.C. § 1930(a)(6) in its definition of the term “Administrative Expense Claim” and provides for the payment of such claims in full on or before the Effective Date, or thereafter as and when they become due and owing. *See* Plan, §§ 1.5, 2.1, and 2.6. Thus, the Plan satisfies Bankruptcy Code section 1129(a)(12).

P. Bankruptcy Code sections 1129(a)(13), 1129(a)(14), and 1129(a)(15) Do Not Apply

96. Bankruptcy Code section 1129(a)(13) requires that a plan provide for the continuation of all retiree benefits, as defined in, and at the levels established by Bankruptcy Code section 1114. *See* 11 U.S.C. § 1129(a)(13). Because the Debtor has no pension or retiree benefits, Bankruptcy Code section 1129(a)(13) is inapplicable.

97. Bankruptcy Code section 1129(a)(14) relates to the payment of domestic support obligations. *See* 11 U.S.C. § 1129(a)(14). Bankruptcy Code section 1129(a)(15) applies only in cases in which the debtor is an “individual” (as that term is defined in the Bankruptcy Code). *See* 11 U.S.C. § 1129(a)(15). Because the Debtor is not an “individual” and does not owe any domestic support obligations, Bankruptcy Code section 1129(a)(14) and (a)(15) are inapplicable.

Q. Bankruptcy Code section 1129(a)(16): Transfers of Property in accordance with Applicable Non-Bankruptcy Law

98. Bankruptcy Code section 1129(a)(16) applies to transfers of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. The Debtor is a non-profit corporation and submits that all transfers of property under the Plan will be made in accordance with applicable provisions of non-bankruptcy law.

R. Bankruptcy Code section 1129(b): The Plan Satisfies “Cram Down Requirements”

99. Bankruptcy Code section 1129(b) provides a mechanism, commonly referred to as “cram down,” to confirm a plan when all of the requirements of Bankruptcy Code section 1129(a) have not been met. This mechanism is commonly referred to as “cram down.” Bankruptcy Code section 1129(b) provides in pertinent part:

if all of the applicable requirements of [Bankruptcy Code section 1129(a)] other than [Bankruptcy Code section 1129(a)(8)] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1). Therefore, a court may “cram down” a plan over rejection by impaired classes of claims or equity interests if plan does not “discriminate unfairly” and is “fair and equitable” with respect to such classes. *Kane v. Johns-Manville Corp.*, 843 F.2d at 650.

100. To determine whether “unfair discrimination exists,” courts look to the facts and circumstances of a particular case. *In re 203 N. LaSalle St. Ltd. P’ship.*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995), *rev’d on other grounds*, 526 U.S. 434 (1999) (noting “the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan” and that “the limits of fairness in this context have not been established.”); *In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985) (“[W]hether or not a particular plan does so [unfairly]

discriminate is to be determined on a case-by-case basis.”). *See also In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to “consider all aspects of the case and the totality of all the circumstances”). A plan unfairly discriminates when it treats similarly situated classes materially different without a compelling justification. *In re Coram Healthcare Corp.*, 315 B.R. 321, 349 (Bankr. D. Del. 2004) (collecting cases).

101. A plan is fair and equitable with respect to an impaired class of unsecured claims or interests that rejects a plan if it follows the absolute priority rule. 11 U.S.C. § 1129(b)(2)(B)(ii) and (C)(ii). *See In re Armstrong World Indus., Inc.*, 320 B.R. 523, 532 (D. Del. 2005) (finding the fair and equitable requirement to be rooted in the absolute priority rule). However, the absolute priority rule requires that unsecured creditors receive payment in full before holders of equity can receive or retain any property under a plan. *See* 11 U.S.C. § 1129(b)(2)(B)(ii); *see also Dish Network Corp. v. DBSD N. Am., Inc. (In re DBSD N. Am., Inc.)*, 634 F.3d 79, 94 (2d Cir. 2010) (defining the “absolute priority rule” to mean that “all creditors [are] entitled to be paid before the stockholders”) (internal quotes omitted). Thus, this rule exists to ensure that a plan of reorganization cannot be used to allow equity to benefit at the cost of higher-priority unsecured debt. Therefore, because both the residents and the Bond Trustee are creditors and neither are equityholders, payment to residents before the Bond Trustee is made whole does not violate the absolute priority rule.

102. The Plan also does not discriminate unfairly. As discussed above, holders in Class 7 (Intercompany Claims) and Class 8 (Interests in Debtor) are not receiving distributions under the Plan, are not entitled to vote, and are deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). Holders in Class 1 (Other Priority Claims) and Class 3 (Other Secured

Claims) are Unimpaired, and thus, deemed to have accepted the Plan. Because Classes 5 and 6 voted to accept the Plan, “cram down” is only relevant to Classes 2 and 4. Despite the BT Objection, the Plan can be crammed down for the reasons set forth below. Accordingly, the requirements of Bankruptcy Code section 1129(b) have been satisfied as the Plan is fair and equitable and does not unfairly discriminate.

S. The Plan Satisfies Bankruptcy Code sections 1129(c) and 1129(d)

103. Subject to certain conditions, Bankruptcy Code section 1129(c) requires that the Court confirm only one plan. The Plan is the only plan being proposed for Confirmation in this Chapter 11 Case and, therefore, Bankruptcy Code section 1129(c) is satisfied. Additionally, the principal purpose of the Plan is not the avoidance of taxes or the avoidance of Section 5 of the Securities Act of 1933, and no governmental unit has objected to Confirmation of the Plan on such grounds. The Plan, thus, satisfies the requirements of Bankruptcy Code section 1129(d).

T. Bankruptcy Code section 1129(e) Is Not Applicable

104. The Chapter 11 Case is not a “small business case” as defined in the Bankruptcy Code and, accordingly, Bankruptcy Code section 1129(e) is inapplicable.

REPLY TO OBJECTIONS

II. The BT Objection

A. The Settlement Should Be Approved

i. The ERTC Funds Are Not Property of the Debtor’s Estate

105. The Bond Trustee continues to insist, with no legal authority, that FSO misappropriated nearly \$7.6 million from the Debtor’s estate with the bald assertion that the ERTC funds belonged to the Debtor simply because FSO had chosen in the past to send certain ERTC funds received by FSO to certain of its subsidiaries. The Bond Trustee’s position is not supported by any applicable caselaw and is directly contrary to both the facts and applicable law.

106. After FSO agreed to lend a substantial portion of the ERTC funds in a below market DIP loan to the Debtor to support a process to sell the Bond Trustee's collateral, in addition to certain unencumbered assets, the Sale closed and proceeds were received by the Debtor's estate, the Bond Trustee then demanded that the Debtor pursue a specious claim against FSO to seek turnover of ERTC funds paid by the IRS to FSO. Based on an evaluation of the facts and inapplicable law governing ownership of the ERTC funds, which the Debtor had investigated before the Bond Trustee made its demand, the Debtor declined to pursue this potential claim because the Debtor does not believe it is a colorable claim, much less a viable claim. Indeed, the Debtor asked the Bond Trustee for any legal authority or analysis that could support such a claim, but the Bond Trustee failed to provide either, which is further evidence that the Debtor's initial determination regarding the ownership of the ERTC funds was correct. The Bond Trustee then filed a motion for derivative standing to pursue a turnover action against FSO [Docket No. 476] (the "**Motion for Standing**").¹⁹ Once the Motion for Standing was filed, with absolutely no binding—much less persuasive—authority, it was crystal clear that the Bond Trustee was attempting to manufacture a claim in hopes of (i) avoiding the repayment of the DIP Facility that it consented to and benefited from and (ii) recovering from an insurance policy. In support of its claim that the ERTC funds paid by the IRS to FSO somehow belonged to the Debtor, the Bond Trustee disregards several relevant facts and instead highlights irrelevant facts, and cites to a single, inapplicable, case. A review of the CARES Act, the BT Objection, and case law cited herein shows that the ERTC funds at issue are not property of the Debtor's Estate, and the Debtor has no valid legal claim to them.

¹⁹ The Motion for Standing, which has not been decided, should be denied for the reasons asserted in the Debtor's objection to the Motion for Standing and herein.

107. Nothing discovered or asserted by the Bond Trustee changes the irrefutable fact that FSO was the proper recipient of the ERTC funds and had the legal right to use the ERTC funds as it wished. And, despite having complete discretion with respect to the use of such funds, FSO elected to use most of the ERTC funds to support the Debtor through this Chapter 11 Case. The Bond Trustee attempts to complicate the analysis by focusing on irrelevant facts, but the relevant (and undisputed) facts are simple:

- a. FSO was the employer of all of the employees who worked at the community at all relevant times;²⁰
- b. Prior to the Petition Date, FSO paid a tax consultant to evaluate and apply for the ERTC funds with respect to FSO employees, using FSO's employee identification number.
- c. As the employer of the employees, FSO was the eligible applicant under the CARES Act and the Debtor was not a co- or joint-applicant;²¹
- d. The IRS granted FSO's applications and issued checks to FSO; and
- e. There is no agreement that requires FSO to pay any employee related credits, including the ERTC funds, to FVS.

108. The Debtor did reimburse FSO for the costs of the employees leased by FSO to FVS as required under the Management Agreement. However, it is of no relevance to the analysis of ownership over the ERTC funds that the Debtor (much less a non-debtor, former affiliate of FSO) reimbursed some or all of the salaries and wages of FSO employees pursuant to the Management Agreement. Similarly, even if FSO previously used a portion of ERTC funds received by FSO to help support the operations of FVS, that fact does not give rise to a future ownership interest or obligation of FSO to transfer to the Debtor all or a portion of ERTC funds.

²⁰ Pursuant to the Management Agreement, FSO retained and employed the employees who worked at the Debtor's community. At all times material to this matter, all of the staff (executive and non-executive) who worked at Friendship Village were employed by FSO alone and compensated by FSO. FSO also employed the employees who worked at another senior living community in Geneva, Illinois ("**GreenFields**") which FSO owned, as well as a charitable foundation used by all of the companies in FSO's corporate structure.

²¹ The CARES Act provided: "In general. In the case of an eligible employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 70 percent of the qualified wages with respect to each employee of such employer for such calendar quarter." 26 U.S.C. § 3134(a). FSO was the "eligible employer" as defined by 26 U.S.C. § 3134(c)(2).

It is also irrelevant that FSO was willing to contribute a portion of the ERTC funds to facilitate a potential transaction with a potential buyer, which did not materialize, leading up to the filing of this Chapter 11 Case. If it is relevant at all, it undercuts the Bond Trustee's position because it shows that FSO owned the ERTC funds but was willing to negotiate a contribution of some or all of the funds to facilitate a transaction that would include the assumption of resident agreements and liabilities. Under that potential transaction, FSO would not have needed to retain the ERTC funds to help protect and support the residents because the proposed buyer was going to do so.

109. Even less relevant is what FSO did or did not do with respect to ERTC funds and a different, former affiliate. The fact that FSO agreed to transfer certain of the ERTC funds to the new sponsor of Greenfields after the sponsorship substitution is completely irrelevant to the determination of who owned the ERTC funds because it was a *different* transaction with *materially different* economic terms.²² Finally, the fact that FSO decided to transfer certain ERTC funds to the new sponsor to facilitate the transaction is further evidence that the ERTC funds are FSO's property and FSO has the ability to decide how such funds are used. There was no legal obligation to do so, it was a negotiated transaction.

110. Moreover, the Bond Trustee relies on only one inapposite and distinguishable case, *McInerney*, to support its contention that the ERTC funds are estate property because the ERTC funds (and reimbursed employee wages) were reported on one or more of the Debtor's tax returns. In *McInerney*, the court addressed allocation of a tax refund in connection with married filers of a joint tax return where only one spouse was a debtor. *Id.* Like the Bond Trustee's Motion for Standing, the BT Objection provides no analysis, authority or explanation as to why the

²² Indeed, the Greenfields transaction involved a new sponsor that, *inter alia*, agreed to (a) assume all of Greenfields bond debt and trade obligations; (b) assume all of the resident obligations in full; and (c) assume certain of FSO's direct financial obligations for several million dollars. The fact that FSO agreed, under these economic terms, to transfer the ERTC Funds related to the Greenfields to the new sponsor is irrelevant to the facts at hand.

“withholding rule” referenced in *McInerney* would apply to the ERTC funds. It is undisputed that only FSO could apply for the ERTC funds and in fact FSO is the only entity who applied for them. This was not a joint application between FSO and the Debtor, with checks issued to both parties to be allocated at a later date. In fact, the *McInerney* court rejects the very argument asserted by the Bond Trustee here – that FVS reporting the reimbursement of costs for employees leased by FSO on its tax return somehow gives rise to a property right of FVS in the ERTC funds. *Id.* (“Fundamental to the Withholding Rule is the premise that the filing of a joint tax return **does not change the property rights** between the spouses.” (emphasis added) [Motion for Standing, ¶ 45, citing *In re McInerney*, 609 B.R. 497, 505 (Bankr. N.D. Ill. 2019) (collecting cases).])

111. The Bond Trustee has had over two months to conduct discovery and build its case against plan confirmation, and yet its overall argument is virtually the same as it was before. The Bond Trustee has failed to identify any legal authority that supports its position with respect to FVS’s purported ownership interest in the ERTC funds. The Bond Trustee’s goal in advancing this “claim”, despite the lack of any factual or legal support, is clear—if the ERTC funds were the Debtor’s property, then the Bond Trustee could assert its lien over that cash and take all of the value for itself at the expense of the Debtor’s various other stakeholders, including the Debtor’s residents and their families, who will otherwise receive a material distribution if the Plan is confirmed. But, the Bond Trustee cannot show that FSO had any legal obligation to turn over the ERTC funds that FSO properly received from the IRS, much less how or why the Debtor is the rightful owner of such funds under the law.

112. Although the Debtor believes both the facts and applicable authority clearly support a ruling by this Court that the ERTC funds are not property of the estate, this Court does not need to go that far. To approve the settlement, which is integral to the Plan, the Court need only find

that the Plan, which resolves that potential claim, among others, in exchange for a significant contribution from FSO was a proper exercise of the Debtor's business judgement and falls above the lowest of the reasonable range of litigation outcomes. That standard has been satisfied here, as the Court has a sufficient basis to determine that the Debtor acted with sound business judgment in determining not to pursue a turnover action against FSO regarding the ERTC funds.

113. The Bond Trustee effectively asks the Court to find that, contrary to the CARES Act definition of eligible employer, the Debtor was an eligible employer. In other chapter 11 cases when courts have considered competing claims to the designation of "employer" for FICA and FUTA tax issues (including tax credit eligibility), the "employer" definition under 26 U.S.C. § 3401(d)(1) has been applied, and these cases are instructive here.²³

114. The Fourth Circuit, in *Winstead v. United States*, 109 F.3d 989 (4th Cir. 1997), discussed § 3401(d)(1) which provides guidance to this Court on the issue of whether FSO or the Debtor is the eligible employer. In *Winstead*, a group of tenant farmers farmed land belonging to the Winstead Family Partnership (the "**Partnership**"), and L. Dan Winstead, Jr. ("**Winstead**"), a partner in the Partnership paid the tenant farmers what was due to them under their sharecropper agreements from his own personal checking account. *Id.* at 990. Later, Winstead and the Partnership were assessed by the IRS for FICA and FUTA taxes and withholding arising from the payments made by Winstead to the tenant farmers under their sharecropper agreements with the Partnership for the relevant time period. *Id.* at 990–91. The IRS took that position because Winstead paid the tenant farmers directly from his checking account, Winstead "must therefore be

²³ See, e.g., *Otte v. United States*, 419 U.S. 43, 51, 42 L. Ed. 2d 212, 95 S. Ct. 247 (1974); *Lane Processing Trust v. United States*, 25 F.3d 662, 666 (8th Cir. 1994); *In re Sw. Restaurant Sys., Inc.*, 607 F.2d 1237, 1238-39 (9th Cir. 1979); *In re Armadillo Corp.*, 561 F.2d 1382, 1385-86 (10th Cir. 1977); *Cf. TriNet Grp., Inc. v. United States*, 979 F.3d 1311 (11th Cir. 2020).

considered the employer under Section 3401(d)(1).” *Id.* at 991. The Fourth Circuit agreed with the IRS, noting:

The plain language of that statute suggests that the government's position is correct. The statute provides that the employer is normally “the person for whom an individual performs or performed any service” ***with one significant exception. In those circumstances where the person receiving services does not control the payment of wages, the individual controlling the actual payment of wages is deemed to be the employer.*** Since Winstead paid the day laborers directly from his checking account and the sharecroppers had no authority over this account, he would appear to fit squarely within the 3401(d)(1) exception.

Winstead contests this conclusion, maintaining that section 3401(d)(1) requires more than just paying salaries, but rather requires control over the hiring, firing, supervision, and the amount to be paid employees. This argument, however, misses the point of the statute. The factors to which Winstead points are indicia of a common law employment relationship. Section 3401(d)(1), however, by design does not look to those factors but rather focuses on who has control over the payment of wages. As the Supreme Court noted in [*Otte v. United States*, 419 U.S. 43, 51, 42 L. Ed. 2d 212, 95 S. Ct. 247 (1974)], the 3401(d)(1) provision was included to simplify the collection of taxes by placing “responsibility for withholding at the point of control.” 419 U.S. at 50. As the Ninth Circuit has explained:

No one other than the person who has control of the payment of the wages is in a position to make the proper accounting and payment to the United States. It matters little who hired the wage earner or what his duties were or how responsible he may have been to his common law employer. Neither is it important who fixed the rate of compensation. When it finally comes to the point of deducting from the wages earned that part which belongs to the United States and matching it with the employer’s share of FICA taxes, the only person who can do that is the person who is in “control of the payment of such wages.”

Id. at 991–92 (emphasis added).

115. The reasoning from *Winstead* has been followed by a number of courts, including the Seventh Circuit. *See, e.g., Kittlaus v. United States*, 41 F. 3d 327, 329-30 (7th Cir. 1994) (“Regardless of how ‘control’ is defined, it is clear that the management agent, not the partnership, possessed it over the payment of wages. The exception laid out in § 3401(d)(1) thus governs, and the only logical conclusion is that the management agent, rather than Inn Investors, was the liable employer.”); *In re Mader*, 444 B.R. 409, 413 (Bankr. N.D. Ill. 2011) (“Mr. Mader filed corporate taxes on behalf of PMMI and, although the parties submitted no evidence concerning the manner

in which wages were paid to employees, it stands to reason that Mr. Mader, as the individual in control of PMMI's financial affairs, also controlled the payment of wages to employees."); *see also, e.g., In re Sw. Restaurant Sys., Inc.*, 607 F. 2d 1237, 1240 (9th Cir. 1979); *Consol. Flooring Servs. v. United States*, 38 Fed. Cl. 450, 458-59 (CFC 1997); *Educ. Fund of Elec. Indus. v. United States*, 426 F. 2d 1053, 1058 (2d Cir. 1970).

116. In the case at hand, not only was FSO responsible for paying its employees, FSO was the sole party responsible for hiring, firing and making other employment-related decisions with respect to FSO's employees, which include the employees leased to the Debtor.

117. The Debtor respectfully submits that, to the extent the Court is willing to consider whether the Debtor was the eligible employer, an argument that the Bond Trustee has not expressly articulated, the above cited line of cases, including *Kittlaus*, control. In applying *Kittlaus*, the Debtor clearly has no ownership rights over the ERTC funds. And, if the IRS were to seek to recoup or recover such funds, FSO—and not the Debtor—would be on the hook for repayment to the IRS.

ii. FSO Did Not Violate the Automatic Stay Because the Debtor Caused FSO Employees, Acting on Behalf of the Debtor, to Conduct the Intercompany Analysis and Reconciliation

118. The Bond Trustee asserts that the Settlement (and the Plan) cannot be approved because FSO violated Bankruptcy Code section 362(a)(7), which bars "setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor." *See* BT Objection, ¶¶ 80-85. The Bond Trustee states that a "creditor cannot unilaterally offset its claim against the debtor without first obtaining court approval." *Id.* (citations omitted). However, the Bond Trustee incorrectly relies on *Off. Comm. Of Unsecured Creditors of High Strength Steel, Inc. v. Lozinski*, 269 B.R. 560, 570 (Bankr. D. Del. 2001) to argue that the ***Debtor's reconciliation*** of an intercompany account on the Debtor's books constituted a transfer

and a stay violation. In *Lozinski*, a post-petition reconciliation of balance sheet accounts by debtor principals was a setoff because the allocation of losses to the debtor and the obligation of the affiliated entity to pay the debtor did not arise out of the same transaction. See *Lozinski*, 269 B.R. at 566 (offsetting of loan repayment obligations with negative retained earnings).

119. *Lozinski* is distinguishable. First, the analysis and reconciliation of the intercompany account (and balance) on the Debtor's books was performed by FSO's employees ***on behalf of the Debtor*** in connection with the Chapter 11 Case and the preparation of the Debtor's bankruptcy schedules. It is common for the deadline to file bankruptcy schedules in large complex cases to be extended to a time after the petition filing date. There is nothing nefarious about the fact that the Debtor reconciled its intercompany account in connection with preparing and finalizing bankruptcy schedules that were due to be file dafter the Petition Date. FSO cannot be charged with a stay violation, much less a willful violation, when its employees, who were leased to the Debtor, were acting on behalf of and at the direction of the Debtor pursuant to the Management Agreement. Accordingly, the reconciliation cannot be fairly considered a setoff or a recoupment.

120. Secondly, even if FSO had directed the reconciliation (which it did not), it would be more properly classified as recoupment than setoff. "Property subject to the recoupment doctrine by contrast [to setoff], is exempt from the automatic stay." *In re Thigpen*, 590 B.R. 810, 812 (N.D. Ill. 2018) (citing *In re Malinowski*, 156 F.3d 131, 133 (2d Cir. 1998)). "Recoupment applies only if the debtor's and the party's mutual obligations arise out of the 'same transaction.'" *Thigpen*, 590 B.R. at 812; see also *Northern Trust Co. v. Peters*, 69 F.3d 123, 135 (7th Cir. 1995). "In contract cases, creditors are most successful in asserting a recoupment defense where the creditor's obligations to the debtor and the debtor's obligations to the creditor arise from the same

contract.” *Thigpen*, 590 B.R at 815 (collecting cases). Here, the reconciliation of the intercompany account between FSO and the Debtor would satisfy the same transaction test, to the extent applicable, given the “close, necessary relationship” between FSO and FVS, pursuant to the terms of the Management Agreement. Put simply, the reconciliation arose out of the same transaction under the Management Agreement.

121. As with the ownership of ERTC funds, discussed above, the Court can confirm the Plan without determining whether a stay violation occurred. For these reasons, the Bond Trustee’s objections based on a purported stay violation should be overruled.

iii. The FSO Settlement is in the Best Interest of the Debtor’s Estate

- a. *The Plan and FSO Settlement resolves speculative, hypothetical claims that have not been articulated much less Pled in a Proposed, Draft Complaint by the Bond Trustee.*

122. Almost immediately after the Sale closed and the sale proceeds were secured by the Debtor for the Bond Trustee’s benefit, the Bond Trustee began making vague allegations that the Debtor has or may have potential claims against its directors and officers and/or the directors and officers of FSO. The Bond Trustee’s unsubstantiated allegations are at transparent attempt to squeeze out an additional recovery from FSO’s D&O policy. See BT Objection, ¶¶ 63, 101. In its Motion for Standing, the Bond Trustee sought leave to pursue one of the “potential claims without even attaching a complaint.”²⁴ To date, the Bond Trustee has not articulated any potential causes of action against the directors and officers of either the Debtor or FSO. to the Debtor’s knowledge, the Bond Trustee has not prepared a complaint to assert any cause of action, whether based on

²⁴ The Debtor reasserts its objection to the Motion to Standing, which is based, in part, on the fact that the Bond Trustee’s Motion for Standing is fundamentally and procedurally flawed in that the Bond Trustee sought leave to file a turnover motion rather than to file a complaint.

facts relating to the ERTC funds, the intercompany accounting, and/or the management fee.²⁵ And after conducting significant discovery, including 9 depositions, the Bond Trustee filed a lengthy Plan objection, totaling 742 pages including exhibits in a prodigious attempt to muddy the proverbial waters.²⁶ Despite its length, not once has the Bond Trustee set forth any actual causes of action that it believes the Debtor can and should prosecute on behalf of the estate, much less whether any of those claims would have any reasonable probability of success. The Bond Trustee similarly has not stated the basis of any purported claims, whether the claims are based in common law or statutory law or identified the specific elements of the claims. Nevertheless, the Bond Trustee leaps to the unsupported conclusion that the “claims” are worth a whopping \$18 million to the estate, a number that coincidentally equals all of the ERTC funds paid to FSO that relate to FSO’s employees that provided services to the Debtor plus the D&O policy limits.

123. Typically, when a debtor is asked to investigate causes of action, they are well articulated and oftentimes pleaded. However, in this Chapter 11 Case, as soon as the Sale closed, the Bond Trustee made vague assertions of the existence of “claims” and has since made it its mission to discover and spin facts in an attempt to demonstrate that some unspecified causes of action exist. The Bond Trustee’s goal here is clear—to prevent the Court from approving the FSO Settlement and confirming the Plan so that the Bond Trustee can take its sale proceeds and walk away, leaving all other creditors holding the bag. It is impossible to analyze the likelihood of

²⁵ The Debtor recognizes that the Bond Trustee has not been granted leave to commence an adversary proceeding, and in fact, the Bond Trustee did not request leave to do so but rather sought derivative standing to file a turnover *motion*. As such, the Bond Trustee was not required to prepare a complaint; however, the Bond Trustee needed to demonstrate precisely to the Court the cause of action that the Bond Trustee sought leave to pursue, which must be via Complaint.

²⁶ The Bond Trustee has taken the deposition of Mike Flynn twice, once in December 2023 and more recently in April 2024. The Bond Trustee has also has taken depositions of the financial advisor to the Committee; a member of the Committee; the financial advisor of the Debtor; Jeff Nyberg, former controller of FSO; Clark Delanois, chair of the board of FSO; and the three (3) FVS board members: Jean Schlunkmann, Mary Sheahen.

success on a theoretical, unnamed cause of action based on nothing but a string of mischaracterized and incomplete facts. The Debtor properly exercised its sound business judgment to enter into the FSO Settlement, to, among other things, save the Estate the expense of chasing ghosts as the Bond Trustee is doing. It may be true that a plaintiff's lawyer could theoretically conduct discovery and extensive legal research and plead claims that might be covered by a D&O policy; however, it does not follow that it would have been in the best interest of the Estate for the Debtor to do so. Even if the facts discovered would support a viable claim that could survive the Rule 11 scrutiny, or a motion to dismiss, there is certainly no guaranty of any additional recovery for creditors and litigation would ensure inconvenience and delay and would likely waste resources.

b. *FSO has agreed to waive \$1,000,000 of the DIP Facility.*

124. In exchange for the Estate Releases, FSO has agreed to waive \$1,000,000 of the DIP Facility. This settlement is above the lowest point in the range of reasonableness in resolving any of the claims released by the Estate Releases and provides the further benefit of facilitating a smooth exit from this Chapter 11 Case. The Debtor believes the released claims are not viable and/or sufficiently valuable to justify pursuing for the following reasons:

- The Debtor's analysis as to ownership of the ERTC funds showed that FSO was the legal owner of the ERTC funds and could not be compelled to turn over those funds to the Debtor's estate.
- The Debtor—not FSO—directed the employees responsible for maintaining the Debtor's books and records to investigate and reconcile the Debtor's intercompany balances, including those due to/from FSO, to ensure they were accurately reported in this Chapter 11 Case, including on the Debtor's Schedules.
- The Debtor paid the contractual amount of management fees due under the Management Agreement. The fee structure, while different from other management fees in the industry, was designed to only reimburse FSO's overhead costs and ***was disclosed to and approved by the bondholders before the 2017 bond issuance.***

125. The Bond Trustee's "valuation" of these claims has nothing to do with the merits of the claims (or lack thereof). Instead, the Bond Trustee merely adds together \$8.9 million (for

the purported intercompany accounting adjustment) and \$7.6 million (the amount of the ERTC funds paid to FSO and allocated to the FSO employees who provided services to the Debtor) and concludes that the Estate has claims valued at more than \$15 million. *See* BT Objection, ¶¶ 99, 100. The Bond Trustee provides no evidence to support that actual value of these released claims, taking into account the probability of success. In fact, the Debtor’s investigation into these claims reveals they are without merit and likely worthless, and, if pursued, would only result in waste of significant estate resources and unnecessary delay in exiting this Chapter 11 Case and providing distributions to creditors, including residents and their family members.

126. The Bond Trustee’s allegations regarding potential claims against the directors and officers of the Debtor and FSO are similarly misguided. Importantly all of the directors and officers of FSO and the Debtor serve on not-for-profit boards on a voluntary basis, without compensation, which means they are protected by a statutory shield under 805 ILCS 105/108.70(a), which provides in pertinent part:

No director and officer serving without compensation . . . of a [not-for-profit] corporation . . . shall be liable, ***and no cause of action may be brought***, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director or officer unless the act or omission involved willful or wanton misconduct.

805 Ill. Comp. Stat. 105/108.70(a) (emphasis added). In Illinois, “[t]o sufficiently plead willful and wanton misconduct, a plaintiff must allege either a deliberate intention to harm or an utter indifference to or conscious disregard for the welfare of the plaintiff.” *Adkins v. Sarah Bush Lincoln Health Ctr.*, 544 N.E.2d 733, 743 (Ill. 1989). The statute significantly limits exposure and recovery potential because the members of the board each serve voluntarily, and because willful or wanton misconduct is difficult to demonstrate and not alleged here. This applies to each of the members of the FSO and Debtor boards, who were directly involved in the various decisions that

allegedly gave rise to the purported “claims” the Bond Trustee is attempting to demonstrate. Even if this Court concludes that there are potential, viable claims, it is clear that none of these claims constitute a claim based on willful or wanton misconduct.

- c. *The Debtor, the Committee, and the Bond Trustee have conducted investigations of potential claims.*

127. The potential claims have been investigated by two different estate fiduciaries and the Bond Trustee. When the Committee sought discovery to investigate potential claims, the Debtor cooperated fully with the investigation. The Debtor caused FSO, as the party in possession, custody, and control to produce requested documents, and the Debtor even consented to the Committee’s 2004 motion. The Committee participated in the Bond Trustee’s initial deposition of the Debtor’s and FSO’s Chief Executive Officer, Mike Flynn, in December 2023, as well as the Bond Trustee’s subsequent 8 depositions that occurred as part of the Plan discovery process.

128. Likewise, the Debtor considered the potential claims and elected to enter into the FSO Settlement, which includes, *inter alia*, an agreement to release any claims the Debtor may have against FSO and its directors and officers. The FSO Settlement was negotiated by counsel, for each of the parties to the agreement. The members of the Debtor’s board were informed of and, in fact, unanimously voted to approve the FSO Settlement. Since the FSO Settlement was approved and announced on the record at a hearing, where the Bond Trustee’s counsel was present and learned of the resolution, the Bond Trustee has spent—and caused the Debtor’s estate to spend—significant resources with respect to the Bond Trustee’s investigation.

B. The Plan Satisfies the Requirements of Bankruptcy Code section 1129

i. The Plan Properly Classifies Claims of Unsecured Creditors

129. The Bond Trustee objects to the Debtor’s classification of creditors, asserting that “separately classifying the Former Residents from other unsecured creditors with identical legal

rights is improper as a matter of law, no matter how sympathetic of a constituency the Former Residents may be.” See BT Objection, at ¶ 115. The Plan proposes three classes of unsecured creditors: Class 4, including the deficiency claims of the Bond Trustee and Leaf (the “**Deficiency Claims**”); Class 5, including claims of former residents (the “**Former Resident Claims**”) who do (Class 5B) and do not (Class 5A) opt out of the release and exculpation provisions contained in Section 8 of the Plan; and Class 6, including non-resident general unsecured claims (the “**Trade Debt**”) and rejection claims of current residents (collectively, the “**Non-Resident GUCs**”). Deficiency Claims, Former Resident Claims, and Non-Resident GUCs should not all be classified together.

130. “[A] plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.” 11 U.S.C. § 1122(a). Thus, “by its terms, § 1122 does not expressly prohibit the separate classification of similar claims.” *In re STC, Inc.*, No. 14-41014, 2016 WL 3884799, at *4 (Bankr. S.D. Ill. Apr. 7, 2016) (citing *Matter of Woodbrook Assocs.*, 19 F.3d 312, 318 (7th Cir. 1994)). “Rather, it ‘requires only that dissimilar claims not be classified together.’” *Id.* (quoting *In re Multiut Corp.*, 449 B.R. 323, 333 (Bankr. N.D. Ill. 2011)). Some courts have adopted a corollary principal, known as the “one clear rule,” which forbids the separate classification of similar claims for the sole purpose of gerrymandering an affirmative vote. See *In re Greystone III Joint Venture*, 995 F.2d 1274, 1278–79 (5th Cir. 1991).

131. The Seventh Circuit, however, has explicitly rejected the one clear rule, finding it difficult to apply because it focuses on the debtor’s motivations rather than the classification of similar claims under the statute. *Woodbrook*, 19 F.3d at 318 (citing *Greystone*, 995 F.2d at 1279). Urging that “[t]he reasons for such blatant gerrymandering are obvious,” the Bond Trustee

erroneously attempts to place undue emphasis on the Debtor's motivations. See BT Objection, at ¶ 112. Instead, courts within the Seventh Circuit and this District focus on the legal rights of the claimholders rather than the debtor's motivations. See *Woodbrook*, 19 F.3d at 318; *In re Bloomingdale Partners*, 170 B.R. 984, 996 (Bankr. N.D. Ill. 1994) (observing that "every plan proponent 'gerrymanders' to some extent; an examination of the plan proponent's intent is neither helpful nor feasible."). Thus, if the plan proponent "can articulate differences among the claims—that is, if the plan proponent can demonstrate the lack of 'substantial similarity'—then separate classification is proper." *Bloomingdale*, 170 B.R. at 997. "The differences may relate to legal rights or bankruptcy priorities . . . or business reasons relevant to the success of the reorganized debtor." *Id.* Indeed, as the Bond Trustee concedes, "the Seventh Circuit Court of Appeals has indicated that plan proponents have considerable discretion in classifying claims,"²⁷ requiring only that: (1) the claimants have significantly different legal rights; (2) a legitimate business reason exists for separate classification; or (3) the claimants have sufficiently different interests in the plan. *STC, Inc.*, 2016 WL 3884799, at *1 (citing *Woodbrook*, 19 F.3d at 312; *Matter of Wabash Valley Power Ass'n, Inc.*, 72 F.3d 1305 (1995), cert. denied sub nom. *U.S. v. Wabash Valley Power Ass'n, Inc.*, 117 S.Ct. 389 (1996), abrogated on other grounds by *In re Castleton Plaza, LP*, 707 F.3d 821 (7th Cir. 2013)).

132. In the Chapter 11 Case, the Deficiency Claims, Former Resident Claims, and Non-Resident GUCs are substantially different in nature. First, Class 6 is comprised of non-resident claims and primarily includes Trade Claims. These claimants have sufficiently different interests in the Plan by virtue of the potential for a continued relationship with the community, including under new ownership. See *In re EBP, Inc.*, 172 B.R. 241 (Bankr. N.D. Ohio 1994) (separate

²⁷ See BT Objection, at ¶ 113.

classification was appropriate because the trade creditors provided “a potential continuing benefit”); *Wabash*, 72 F.3d at 1321 (separate classification was warranted because the trade creditor’s stake in the Debtor’s reorganization efforts differed significantly from the other general unsecured creditors). This ongoing relationship with the community also provides a business reason for separate classification of the Trade Claims. *See In re STC, Inc.*, 2016 WL 3884799, at *6 (finding, in part, that the trade creditor’s ongoing relationship with the debtor constituted a good business reason for separate classification). Additionally, Class 5 consists of Former Resident Claims and holders of such claims have the opportunity under the Plan to become a beneficiary of the Former Residents Trust that is established by the Plan and the Former Residents Trust Agreement if they choose to participate in the FSO Settlement.

133. Second, holders of Former Resident Claims and Non-Resident GUCs have materially different legal rights. Non-Resident GUCs are subject to dispute through the claims reconciliation process, while Former Resident Claims are fixed based upon the entrance fee refunds the claimants and/or their heirs are entitled to, and, therefore, are generally not subject to dispute. *See* Docket No. 132, at Schedule E/F Part 2 Attachment (listing non-priority Former Resident Claims); *see also STC, Inc.*, 2016 WL 3884799, at *5 (observing that the creditors had different legal rights, in part, where one class of claims was generally liquidated and undisputed while the other was disputed). Additionally, Former Resident Claims are held by heirs and family members or other successors of residents, many of whom invested their life savings in exchange for the agreement that, among other things, the entrance fee deposits would be refunded to them and/or their estates. This is likely why, at least in part, that it was important to the Buyer that former residents recover as much as possible, through the Buyer Former Resident Contribution, to preserve the goodwill that the Buyer acquired when it purchased the community. In any event,

even if Classes 5 and 6 had been combined, it would not have impacted the voting results because both classes voted to accept the Plan. *See* Balloting Decl., ¶ 19.

134. Third, Deficiency Claims **must** be separately classified. *See Woodbrook*, 19 F.3d at 318 (requiring separate classification of deficiency claim from class of general unsecured claims); *In re Victorian Park Assocs.*, 189 B.R. 147 (Bankr. N.D. Ill. 1995) (modified plan could not be confirmed because it failed to separately classify deficiency claim from other general unsecured claims). “This is so because a general unsecured claim exists under all chapters of the code but a [deficiency claim] only exists while the case is in chapter 11” *Woodbrook*, 19 F.3d at 318. Even if not mandated, separate classification of the Deficiency Claims is certainly permissible by virtue of the different legal rights enjoyed by holders of Deficiency Claims, which render them not substantially similar to Class 5 and Class 6 Claims of former residents and non-residents, respectively.

135. Accordingly, the classification scheme proposed in the Plan is permissible under Bankruptcy Code section 1122 and the BT Objection should be overruled.

ii. The Plan Does Not Unfairly Discriminate Against Similarly Situated Creditors

136. The Bond Trustee objects that the Plan unfairly discriminates by excluding Class 4 from any recovery potential from the Unsecured Creditor Trust; however, Section 3.1.4 of the Plan provides that Holders of Allowed Claims in Class 4 are entitled to recover their pro rata share of any recovery of the Unsecured Creditor Trust. Indeed, a prior version of the Plan was amended to ensure that the Plan does not unfairly discriminate with respect to the Unsecured Creditor Trust. To avoid any confusion, the Debtor will file an amended Plan that (a) revises Sections 4.2 and 4.2.10 to expressly state that holders of allowed Claims in Class 4, like Classes 5 and 6, will be holders of Unsecured Creditor Trust Interests. The amendments will likely be as follows:

4.2 ***Unsecured Creditor Trust.*** Upon the Effective Date, an Unsecured Creditor Trust will be formed, into which (i) the Buyer Former Resident Contribution (totaling \$2,000,000) and (ii) potential Causes of Action of the Debtor, including the Retained Causes of Action, shall be transferred. Holders of Unsecured Creditor Trust Interests shall consist of Holders of Allowed Claims in [Class 4 \(Deficiency Claims\)](#), Class 5A (Former Resident Claims), Class 5B (Opt Out Former Resident Claims), and Class 6 (Non-Resident General Unsecured Claims). For the avoidance of doubt, any claims the Debtor may have against FSO will be released under the terms of the FSO Settlement and Contribution Agreement and will not be included among the Retained Causes of Action that are transferred to the Unsecured Creditor Trust.

4.2.10 ***Unsecured Creditor Trust Interests.*** Holders of Claims in Classes [4](#), 5A, 5B, and 6 shall, by operation of this Plan, receive a Pro Rata share of the Unsecured Creditor Trust Interests in accordance with the terms of and priorities set forth in the Plan. Unsecured Creditor Trust Interests shall also be reserved for holders of Disputed Claims which, if Allowed, would be entitled to participate in Distributions from the Unsecured Creditor Trust, and such reserved Unsecured Creditor Trust Interests shall be held by the Unsecured Creditor Trustee pending allowance or disallowance of such Claims. No other Person shall have any interest, legal, beneficial or otherwise, in the Unsecured Creditor Trust Assets upon the assignment and transfer of such assets to the Unsecured Creditor Trust. As set forth in the Unsecured Creditor Trust Agreement, Distributions from the Unsecured Creditor Trust on account of Unsecured Creditor Trust Interests shall be made from the Unsecured Creditor Trust Assets after paying, reserving against or satisfying, among other things, the Unsecured Creditor Trust Expenses. The Unsecured Creditor Trust Interests shall be uncertificated and shall be nontransferable except upon death of the holder or by operation of law. Holders of Unsecured Creditor Trust Interests shall have no voting rights with respect to such interests.

137. The amended Plan will also be amended to clarify that the Buyer Former Resident Contribution will not be an asset of the Unsecured Creditor Trust and will be distributed by the Former Residents Trust pursuant to the Former Residents Trust Agreement.²⁸ Thus, the BT Objection should be overruled and the Court should find the Plan does not unfairly discriminate against similarly situated creditors.

²⁸ Consistent with the Unsecured Creditor Trust Agreement and Former Residents Trust Agreement, the Buyer Former Residents Contribution, as well as other provisions of the Plan, including Section 3.1.5, the Plan will be amended to clarify that the \$2,000,000 Buyer Former Residents Contribution will be an asset of the Former Residents Trust rather than the Unsecured Creditors Trust.

iii. The Plan is Feasible and the Plan Satisfies section 1129(a)(9)

138. The Bond Trustee argues that the Plan is not feasible because the Plan provides that Net Sale Proceeds will be used first to pay certain claims, including the DIP Facility, before remaining proceeds are distributed to the Bond Trustee. See BT Objection, ¶¶ 125-31. As reflected in the Liquidation Analysis attached to the Disclosure Statement, as of February 29, 2024, the Debtor estimated unclassified claims totaling approximately \$5.1 million, priority claims of approximately \$480,000, and other secured claims of \$40,000. Attached hereto as **Exhibit A** is the Debtor's amended Liquidation Analysis, which estimates unclassified administrative expense claims totaling approximately \$3.7 million, priority claims of approximately \$480,000, and other secured claims of \$60,000.²⁹ Attached as **Exhibit B** is the Debtor's budget to actual, reflecting, *inter alia*, an estimated ending cash balance, exclusive of Net Sale Proceeds, of \$3,743,574 as of April 23, 2024.³⁰

139. The Bond Trustee incorrectly states that the Debtor should not be authorized to use some portion of the Bond Trustee's collateral, whether through remaining funds in the DIP Account, Net Sale Proceeds, or both. Under the circumstances, the Bond Trustee is not entitled to recover \$35.5 million, and to permit this outcome would be unfair and inequitable.

a. *The Bond Trustee's lien attached to less than \$33.5 million.*

140. Although the Sale was approved and consummated outside of the Plan, all rights were reserved with respect to Net Sale Proceeds. See Sale Order, Dkt. No. 365, ¶ 8. The Sale Order

²⁹ Leaf (as defined above) provided the Debtor with evidence as to the value of its collateral and the Debtor agreed to the allowance of a secured claim in the amount of \$60,000. Via email correspondence of counsel, on April 1, 2024, the Debtor provided notice of such agreement to the U.S. Trustee, the Committee and the Bond Trustee. No party responded or raised any objection with respect to the increased amount of the secured portion of Leaf's under-secured claim against the estate.

³⁰ This number will likely change between now and the Confirmation Date as the Debtor continues to pay expenses provided in the Court-approved cash collateral budget.

provides that interests would attach to the Net Sale Proceeds “with the same validity, priority, and extent as existed with respect to the Assets prior to the Closing.” *Id.* The Bond Trustee’s lien attached to an amount less than approximately \$33.5 million. First, the Buyer Former Resident Contribution of \$2,000,000 does not constitute sale proceeds.³¹ These funds were not provided in exchange for assets of the Debtor. As is clear from the APA, and as counsel for the Buyer made clear on the record at the sale hearing, the Buyer agreed to provide \$2,000,000 to be held in trust for the benefit of former residents. *See* APA, § 2.6; November 22, 2023 Hearing Tr. at 32:15-33:2 (“And just so everybody is clear, if that money wasn’t going to the residents, it doesn’t go back into the pot. It goes back into IL CCRC’s pocket.”). The Buyer had a legitimate business justification for making this contribution for the exclusive benefit of former residents and to preserve goodwill and morale at the community that it was acquiring.

141. In accordance with Section 2.6 of the APA, \$2,000,000 was set aside, and has been held in trust as restricted funds, for the exclusive benefit of former residents. *See* Amended Budget, Dkt. No. 586. Likewise, the Plan proposes to transfer, the Buyer Former Resident Contribution, to the Former Residents Trust to be distributed pro rata to former residents. Thus, the Buyer Former Resident Contribution was not received in exchange for assets sold to the Buyer, is not an estate asset, and is being held in trust (for the exclusive benefit of former residents). Thus, the \$2,000,000 Buyer Former Resident Contribution is not the Bond Trustee’s collateral.

142. Second, the Bond Trustee did not have a lien on all of the assets sold by the Debtor. For example, the Debtor owned a parking parcel (the “**Parking Parcel**”) that it acquired through the purchase of real estate from the Village of Schaumburg in 2019 for the price of \$916,000. The

³¹ To permit the sale to close, which was in the best interest of the Bond Trustee, counsel for the Bond Trustee stated “we do not think there needs to be a determination as to who has rights to that \$2 million today. We don’t think that’s an issue that needs to be resolved today in order for the sale to be approved.” Counsel added that all parties rights should be reserved to “assert and fight over their interests over that particular pile of cash at a later date.”

Debtor attempted to reach a negotiated resolution to avoid a contested confirmation and advised the Bond Trustee of the Debtor's position in November 2023. Attached hereto as **Exhibit C** is email correspondence, dated November 27, 2023 to counsel for the Bond Trustee, which provides the Debtor's analysis as to the unencumbered nature of the Parking Parcel. To date, the Debtor has received no response and the Bond Trustee has not asserted, much less demonstrated, any interest in the Parking Parcel.

143. In addition to the Parking Parcel, the Debtor also sold the Huntley Property, an asset that the Bond Trustee has acknowledged on the record and in the current approved cash collateral budget was not subject to and encumbered by its lien. And, finally, the vast majority of the cash on hand by the Debtor are the remaining proceeds of the unsecured DIP Facility provided by FSO over which the Bond Trustee does not have a lien. The Bond Trustee, while reserving rights to dispute who owns the funds being used by FSO to provide the financing, consented to the DIP Facility funded by FSO. After receiving all of the benefits from the sale process funded by the DIP Facility, the Bond Trustee now objects to the Debtor's obligation to repay those funds.

144. In total, the Debtor's estate used unencumbered funds and the proceeds of the DIP loan from FSO in the approximate amount of \$8.0 million to finance the sale process.

- b. *To prevent an inequitable outcome and an abuse of the bankruptcy process, Bond Trustee should be required to carve out from its sale proceeds sufficient cash to fund the bankruptcy process and Plan that was implemented for its benefit.*

145. Although the Bond Trustee reserved rights related to the ownership of ERTC funds used for the DIP Loan, the Bond Trustee consented to the DIP Loan in this Chapter 11 Case. Similar to reserving rights with respect to the Buyer Former Resident Contribution but agreeing that the Sale should close, the Bond Trustee consented to allow the Chapter 11 Case to be filed and to proceed to and through a sale closing, for which it is the primary beneficiary. As the Debtor

has explained in prior pleadings, once the Sale closed, the Bond Trustee reversed course and immediately demanded payment of all cash proceeds and has stridently objected to any further proceedings, such as confirmation of a chapter 11 plan, that could provide any benefits to other stakeholders. The Bond Trustee wants its cake and to eat it too. In fact, more than a month prior to the Sale Closing, the Debtor unsuccessfully made repeated attempts to engage in settlement discussions with the Bond Trustee, but the Bond Trustee refused to engage. Near the expiration of the approved cash collateral budget, the Bond Trustee expressed through counsel that they would disapprove any amended budget that included payment of any professional fees—attempting to starve the Debtor of the ability to fulfill its fiduciary duties to bring this Chapter 11 Case to a successful conclusion through confirmation of a plan.

146. If the Bond Trustee had its way, the Debtor would have moved to dismiss the Chapter 11 Case immediately after the Sale closed and turn over all value derived from the bankruptcy process to the Bond Trustee as secured lender. However, chapter 11 cases, and in particular, chapter 11 liquidation cases, cannot be filed solely for the benefit of a secured lender.³²

147. It is well-established that secured lenders must pay for the privilege of an expedited and value maximizing transaction in bankruptcy. See Sally McDonald Henry, *Paying to Play in Chapter 11*, 17 J. Bus. & Sec. L. 113, 135–36 (2017) (“The benefit of the approach proposed herein, however, is that it allows undersecured lenders to obtain the full benefit of their bargain—state law foreclosure—but choose themselves whether they think their recovery will be enhanced by using a federal liquidation remedy and bearing the costs of that remedy.”) “[M]ost secured

³² See, e.g., *In re Encore Healthcare Assocs.*, 312 B.R. 52 (Bankr. E.D. Pa. 2004) (finding case was not filed in furtherance of plan of liquidation when assets were liquidated for benefit of secured creditor and debtor intended to convert or dismiss following approval of sale); see also *In re Gulf Coast Oil Corp.*, 404 B.R. 407, 426-28 (Bankr. S.D. Tex. 2009); *In re Golf LLC*, 322 B.R. 874, 878 (Bankr. D. Neb. 2004); *In re Duro Indus., Inc.*, 2004 Bankr. LEXIS 1235, at *16 (Bankr. D. Mass Aug. 26, 2004) (liquidation of assets in Chapter 11 not appropriate where unsecured creditors will not receive a recovery); *In re Fremont Battery Co.*, 73 B.R. 277, 279 (Bankr. N.D. Ohio 1987).

creditors understand the necessity of making some distribution available to other creditors as the price of a court-approved sale.” *Encore Healthcare Assocs.*, 312 B.R. at 57, n 10. If the Bond Trustee intended to place all the financial burdens of the bankruptcy process on other creditors, the Bond Trustee should not have supported the filing of this Chapter 11 Case and should not have consented to the DIP Loan. In any event, it is inequitable to permit the Bond Trustee to take advantage of the benefits provided to it under the Bankruptcy Code by pursuing this Chapter 11 Case, including not only the Sale (and related proceeds), but the Debtor’s significant and costly efforts in defeating a sale objection by Morrison Management, successfully resolving nearly \$3.0 million in allegedly secured claims³³ If the Bond Trustee is successful, this would encourage secured lenders to abuse the bankruptcy process and use it as an alternative foreclosure proceeding. Accordingly, the value of the Bond Trustee’s secured claim should be calculated as approximately \$30.5 million, the remaining sale proceeds after paying the costs of the sale process. The Debtor will provide proceeds in this amount to the Bond Trustee under the Plan.

148. Plan feasibility is a factual question subject to a “clearly erroneous” standard of review. *In re Corestates Bank, N.A., v. United Chem. Tech., Inc.*, 202 B.R. 33, 45 (E.D. Pa. 1996) (citation omitted). “Indeed, a debtor need only prove the feasibility of its plan by a preponderance of the evidence, which is the ‘appropriate standard of proof under both [section] 1129(a) and in a cram down.’” *Id.* (citation omitted). Because substantially all of the Debtor’s assets have been sold, a subsequent liquidation is virtually impossible. The Plan will be consummated, if the Court will permit the Debtor to utilize \$3.0 million of the Net Sale Proceeds. The Debtor respectfully

³³ In addition to significant fees that were incurred in responding to and defeating the sale objection, the Debtor has had to incur significant fees in connection with the appeal of the Court’s order overruling the sale objection. The Debtor will continue to incur fees given that the District Court will require oral argument on May 16, 2024.

submits that the circumstances of this Chapter 11 Case warrant a finding that the Plan is feasible, fair, and equitable.

iv. The Plan Satisfies the Best Interest of Creditors Test under Bankruptcy Code section 1129(a)(7).

149. Bankruptcy Code section 1129(a)(7) is “one of the cornerstones of Chapter 11 practice” that was designed to ensure that each creditor and interest holder receives as much in a Chapter 11 reorganization as such creditor and interest holder would receive if the assets of the Chapter 11 case were liquidated under Chapter 7 as of the Effective Date.³⁴

150. The Plan necessarily provides creditors with at least the amount of Chapter 7 liquidation value because the Debtor is a liquidating debtor and substantially all the Debtor’s assets were sold, not through a prompt, discounted, fire sale under Chapter 7, but rather through robust, Court-approved marketing and sale processes as a going concern under Chapter 11.³⁵

151. Indeed, Bankruptcy Code section 1125 requires that disclosure statements provide the estimated return to creditors under a “**Chapter 7**” liquidation of assets. *See In re U.S. Brass Corp.*, 194 B.R. 420, 424 (Bankr. E.D. Tex. 1994) (citation omitted)). Accordingly, the best

³⁴ See, e.g., 7 Collier on Bankruptcy ¶ 1129.02(7) (16th ed. 2023) (“Section 1129(a)(7) is . . . an individual guaranty to each creditor or interest holder that it will receive at least as much in reorganization as it would in liquidation.”); see also *In re Sentinel Mgmt. Grp., Inc.*, 398 B.R. 281, 310 (Bankr. N.D. Ill. 2008) (“All claimants in a class of claims that is impaired under the proposed plan must be accorded treatment under the Plan at least as good as treatment they would receive upon the liquidation of the debtor under Chapter 7”) (citing *In re Rusty Jones, Inc.*, 110 B.R. 362, 373 (Bankr. N.D. Ill. 1990)). Accordingly, “[s]ection 1129(a)(7) requires a determination whether ‘a prompt Chapter 7 liquidation would provide a better return to particular creditors or interest holders than a Chapter 11 **reorganization**.’” See *In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) (citation omitted) (emphasis added); see also 7 Collier on Bankruptcy ¶ 1129.02 (7)(b) (“[A]bsent consent, a creditor or interest holder must receive property that has a present value equal to that participant’s hypothetical Chapter 7 distribution if the debtor were liquidated instead of reorganized on the plan’s effective date.”); *In re Saratoga and North Creek Railway, LLC*, 635 B.R. 581, 613 (Bankr. D. Colo. 2022) (“Section 1129(a)(7) is a liquidation comparison which boils down to whether the Debtor can obtain more money for creditors than a Chapter 7 Trustee.”).

³⁵ See e.g., *In re Genesis Health Ventures, Inc.*, 266 BR. 591, 610-11 (Bankr. D. Del. 2001) (creditors recovered more through Chapter 11 debtors’ sale of assisted living facilities than they would have recovered if the businesses had been sold by a Chapter 7 trustee, even if as a going concern); *In re Station Casinos, Inc.*, No. 09-52477, 2010 WL 11813123, at *10 (Bankr. D. Nev. July 15, 2010) (discounting the value of debtors’ assets because value recovered in Chapter 11 would not have been recovered in Chapter 7).

interest of creditors test has been satisfied as reflected in the Debtor's Liquidation Analysis attached as Exhibit 2 to the Disclosure Statement, which has been approved by the Court as providing adequate information to creditors entitled to vote to accept or reject the Plan.³⁶

152. In addition to the indisputable fact that a Chapter 7 trustee would not obtain sale proceeds equal to or greater than those recovered by the Debtor through a going concern sale of substantially all of the Debtor's assets, a Chapter 7 case would have higher administrative expenses and distributions would be delayed.³⁷ Thus, the estimated recovery amounts creditors would be entitled to under a hypothetical Chapter 7 liquidation sale of the Debtor's business (and the Huntley Property), which is the baseline of what must be provided to the Bond Trustee under the Plan, is very different than the estimated and/or actual recoveries following a Chapter 11 going concern sale of the same assets.

153. Yet, now that the Bond Trustee has received the benefits of the Chapter 11 sale processes, as well as the benefit of the Debtor's success in its dispute with Morrison Management Specialists, Inc., the Bond Trustee argues the Plan cannot be confirmed because section 1129(a)(7) has not been satisfied. To support this strained position, the Bond Trustee mistakenly argues the Debtor's Liquidation Analysis should compare the Chapter 11 sale that has already occurred with the hypothetical scenario whereby the Debtor is converted and then "liquidates" and distributes

³⁶ The Bond Trustee consented to entry of the order approving the Disclosure Statement that included the Debtor's Liquidation Analysis.

³⁷ See, e.g., *In re Blitz U.S.A., Inc.*, No. 11-13603 (PJW), 2014 WL 2582976, at *12 (Bankr. D. Del. Jan. 30, 2014) (finding that "the increased costs associated with a liquidation under Chapter 7 would substantially reduce the proceeds available for distribution. These costs would include, among other things, administrative fees and costs payable to a trustee in bankruptcy . . ."); *In re Centaur, LLC*, No. 10-10799 (KJC), 2011 WL 2750755, at *12 (Bankr. D. Del. Dec. 21, 2011) (finding that "[i]n the context of [*inter alia*] the increased costs and delay associated with the administration of a Chapter 7 case, confirmation of the Plan provides each rejecting creditor and interest holder with a recovery that is not less than such holder would receive in a Chapter 7 liquidation of the Debtors."); *In re Pub. Serv. Co. of New Hampshire*, 114 B.R. 820, 824 (Bankr. D.N.H. 1990) ("there would be the time element and administrative expense of a Chapter 7 liquidation which would increase the administrative expenses of the bankruptcy and force the claim and interest holders to wait until the bankruptcy was concluded before receiving any dividend from the estate.").

the sale proceeds from the Chapter 11 going concern sale through a Chapter 7. However, the law is clear – the best interests of creditors test requires the Court to compare the distributions of proceeds from a Chapter 11 going concern sale to the distribution of proceeds from a hypothetical chapter 7 liquidation sale, not the same Chapter 11 going concern sale. Moreover, the Debtor’s remaining assets are the proceeds of the assets that have already been liquidated, such that there is literally nothing left to liquidate.

154. Simply put, the Bond Trustee’s analysis merely evaluates how the significant sale proceeds the Debtor obtained for the estate through a fulsome Chapter 11 sale process would be distributed if the Debtor converted to Chapter 7. Setting aside that the Chapter 11 Case cannot be converted to Chapter 7 unless the Debtor moves to convert or otherwise consents to such conversion,³⁸ the Bond Trustee’s analysis is fundamentally flawed and contrary to the purpose of section 1129(a)(7). As stated above, the purpose is to ensure that creditors in a **Chapter 11 reorganization** recover at least as much as they would recover in a **Chapter 7 liquidation**. Thus, the Bond Trustee’s position leads to an illogical conclusion. Moreover, the Bond Trustee has failed to show that Debtor’s creditors would recover more under a Chapter 7 liquidation than they will recover as a result of the sales that have occurred in the Chapter 11 Case. In fact, because substantially all of the Debtor’s assets were liquidated under Chapter 11 pursuant to robust, Court-approved marketing processes there can be no doubt that each creditor is recovering as much as such creditor would recover if the Debtor’s business were instead liquidated and sold under Chapter 7. See 6 Collier on Bankruptcy, ¶ 704.01, at 704-5 (“Section 704(a)(1) requires the trustee to perform the basic tasks necessary to liquidate the debtor’s property—collecting the property of

³⁸ See 11 U.S.C. § 1112(c) (“The court may not convert a case under this chapter to a case under Chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.”).

the estate and reducing it to money. These tasks are normally accomplished by the trustee's sale of the property, and are to be accomplished expeditiously."); *In re Lason, Inc.*, 300 B.R. at 233 (recognizing that a liquidation "contemplates valuation according to the depressed prices that one typically receives in distress sales" and "liquidation under Chapter 7 typically realizes less than the value of the Debtors' assets in Chapter 11."). Indeed, that creditors will recover more under the Plan than they would under a hypothetical Chapter 7 sale of the Debtor's assets, which have already been liquidated, is true no matter what date the hypothetical Chapter 7 liquidation of such assets is assumed to have occurred.

155. The Bond Trustee has not cited any authority requiring a liquidating debtor's liquidation analysis to begin with sale proceeds as opposed to substantially all the assets of the liquidated business. Cash is, by definition, a liquid asset that does not need to—nor can it—be liquidated. *See* Black's Law Dictionary (11th ed. 2019) (defining liquidation as "[t]he act or process of converting assets into cash, esp. to settle debts.") At this point, and as of the effective date, the Net Sale Proceeds (*i.e.*, cash), are only capable of being distributed, which is the sole focus of the Bond Trustee's analysis. If bankruptcy courts were to accept the Bond Trustee's position, Chapter 11 debtors would never be able to satisfy section 1129(a)(7) in cases where substantially all assets are sold prior to the proposal and confirmation of Chapter 11 plans. This cannot be what the Bankruptcy Code intends or requires, which explains the lack of applicable and binding authority and expert testimony offered by the Bond Trustee in contradiction of the Debtor's liquidation analysis.

v. The Plan Proposes to Distribute Non-Estate Funds Set Aside for Former Residents as Required by the Approved APA

156. As discussed above, the Buyer Former Resident Contribution is not subject to the Bond Trustee's lien because the Buyer did not agree to provide the Buyer Former Resident

Contribution to the Seller in exchange for assets. Indeed, the Bond Trustee acknowledges that Section 2.6 of the APA provides that \$2,000,000 would be provided to the Debtor to hold in trust for former residents. BT Objection, ¶ 138. As such, the Plan proposes to distribute the \$2,000,000 to all former residents through a trust established by the Plan and a related trust agreement, a draft copy of which has been provided in the Plan Supplement.³⁹

157. The facts of *In re Amsterdam House Continuing Care Retirement Community, Inc.* No. 21-71095 (Bankr. E.D.N.Y. July 20, 2021) are distinguishable and the comparison is instructive in this Chapter 11 Case. In *Amsterdam*, the Court did not approve the proposed asset purchase agreement between the debtor and the winning bidder because, *inter alia*, the Debtor proposed to give former residents more than \$41 million of what were clearly sale proceeds provided as “consideration for the sale of the CCRC Assets by Seller to buyer” under section 3.01 of the asset purchase agreement filed at Dkt. No. 448-1 on October 25, 2023.

158. The “purchase price” provision under the winning bid asset purchase agreement in *Amsterdam* is very different than the closing requirement provisions in the APA here. In *Amsterdam*, the full \$63,250,000 was clearly designated as consideration for all of the assets being sold. There was no breakdown of cash to be provided at closing as in the APA between the Debtor and the Buyer, which provides as follows:

(a) The purchase price for the Purchased Assets under this Agreement is estimated to be a value of One Hundred Fourteen Million Seven Hundred Sixty-Nine Thousand Two Hundred Sixty-Four Dollars (\$114,769,264), as adjusted in accordance with this Section 2.6 (“Purchase Price”) and as otherwise provided in this Agreement, allocable as follows:

(i) At Closing, the Seller’s estate will receive Thirty-Five Million Five Hundred Seventy-Four Thousand Dollars (\$35,574,000);

³⁹ Because the Debtor has no discretion as to how the Buyer Former Resident Contribution is distributed, the Plan does not provide \$2,000,000 only to former residents who elect to grant releases under Section 8 of the Plan.

(ii) ***Former Residents will receive Two Million Dollars (\$2,000,000) (clauses (i) and (ii) and (iv), collectively, the “Closing Cash Purchase Price”), to be held in trust by Seller and paid out to such Former Residents on a pro rata basis;***

(iii) Current Residents will be entitled to receive a value of up to Seventy-Six Million Five Hundred Sixty-Nine Thousand Two Hundred Fifty-Two Dollars (\$76,569,252) (such value is measured at a maximum 100% of the Entrance Fee Refund Amount as of the Closing Date) paid in the form of repayments of all or a portion of their entrance fees, as amortized and payable over time when triggered as described in Section 5.10; and

(iv) At Closing or the appropriate time required by law, Buyer will pay the Accrued PTO as provided in Section 5.8 (estimated at Six Hundred Twenty-Six Thousand Twelve Dollars (\$626,012) solely for purposes of calculating amounts that are based on the Closing Cash Purchase Price, such as the Break-Up Fee).

APA, § 2.6(a) (emphasis added). The bid comparison matrix at Dkt. No. 470-12 is consistent with the definition of purchase price in *Amsterdam*, which further indicates that there was no question that \$41,745,390 was being deducted from sale proceeds and was not a contribution.

	NELP	LCS
Cash Consideration (Base)	\$ 53,400,000	\$ 63,250,000
Cash Consideration (Resident Refund)	19,043,000	-
Cash Consideration - Contract Cure	50,000	1,136,582
Total Cash Consideration	72,493,000	64,386,582
(-) Current Resident (Unit Resold + HLOC)	-	-
(-) Former Residents	(41,745,390)	(41,745,390)
(-) Occupancy Deduction	-	-
(-) Contract Cure	(50,000)	(1,136,582)
Net Proceeds Distributable before Break-up	30,697,610	21,504,610

159. Additionally, in *Amsterdam*, the vast majority (nearly 70% of the \$63,250,000 purchase price) was to be distributed to former residents. In contrast, under the APA in this Chapter 11 Case, the Buyer agreed provide to former residents only about 6% (\$2,000,000/\$33,500,000) of total cash to be provided by the Buyer. Here, the relatively low percentage, especially when coupled with Section 2.6 of the APA, is evidence that the Buyer Former Resident Contribution is, in fact, a contribution to former residents and is not intended to use sale proceeds to repay entrance fee claims as in *Amsterdam*.

160. In addition, the Buyer stated on the record that the \$2,000,000 was not part of the purchase price and was only available if it was paid to former residents. Buyer's counsel further stated that if the Court believed there was no way the Buyer could direct the funds to the former residents, they would be returned to the Buyer and unavailable for any other party, including the Bond Trustee.

III. The UST Objection

A. The Estate Releases Are Proper and Should Be Approved

161. Bankruptcy Code section 1123(b)(3)(A) permits “the settlement or adjustment of any claim or interest belonging to the debtor or to the estate.” 11 U.S.C. § 1123(b)(3)(A). The Plan provides for a release (the “**Estate Releases**”) of, among others, the Debtor, the Liquidating Debtor, FSO, and for each, the current and former predecessors, successors and assigns, subsidiaries, affiliates, managed accounts or funds, and all of their respective current and former officers, directors, principals, shareholders, and all professionals and representatives. (the “**Released Parties**”). See Plan, at §§ 1.146; 8.4. Citing a test used in select Delaware cases, which does not discuss section 1123(b)(3)(A) or appear to have been applied to estate releases within the Seventh Circuit,⁴⁰ the U.S. Trustee objects to the Estate Releases as overly broad and unsupported by a substantial contribution from the Released Parties, apart from FSO (See UST Objection, ¶¶ 5–7).

162. Many of the Released Parties, which are the U.S. Trustee's focus with this objection, contributed to and benefited from the Chapter 11 Case and the Debtor's efforts to maximize value for its creditors including with respect to, *inter alia*, the Sale, Huntley Sale, and

⁴⁰ See *In re Envirodyne Indus., Inc.*, No. 93 B 310, 1993 WL 566565, at *31 (Bankr. N.D. Ill. Dec. 20, 1993) (indicating that the benchmark for reviewing releases contained in a plan is the “best interests of the estate.”).

the Plan. The work of certain Released Parties required specialized knowledge and skill regarding the senior living industry, as well as in substantive areas of bankruptcy law, corporate law and healthcare regulations. The knowledge and understanding of these entities and individuals was essential to, *inter alia*, the Sale, the Huntley Sale, and the Plan. The Estate Releases are not overly broad and numerous courts have approved similar releases—especially with respect to estate professionals—even when such professionals are also exculpated parties.⁴¹ As a result, the definition and scope of Released is appropriate and the Estate Releases should be approved.

B. The Consensual Third Party Releases Are Proper and Should Be Approved

i. The Opt Out Mechanism is Appropriate

163. The U.S. Trustee objects to the opt out mechanism employed by the Debtor, whereby claimants who do not wish to grant the third-party release, injunction, and exculpation provisions contained in Section 8 of the Plan (collectively, the “**Releases**”) may avoid granting such releases by electing to opt out. The U.S. Trustee contends that the claimants should instead have to affirmatively opt in to grant the Releases. *See* UST Objection, ¶¶ 49–50. The objection should be overruled because, *inter alia*, The opt out mechanism is comprehensive and transparent and the Court has already approved such opt out mechanism. *See* DS Order, ¶ B(e) (the Opt Out Form “contain[s] sufficient information and [is] **appropriate under the circumstances**”) (emphasis added); *see also* ¶ 24 (“The Debtor will also send a separate Opt Out Form . . . **which is hereby**

⁴¹ *See, e.g. In re Clare Oaks*, No. 19-16708 (Bankr. N.D. Ill. Sept. 30, 2020) (approving estate release and exculpation provisions including officers, directors, members, employees, advisors, attorneys, professionals, accountants, investment bankers, financial advisors, consultants, agents and other representatives of each released party); *In re Clare at Water Tower*, No. 11-46151 (Bankr. N.D. Ill. April 27, 2012) (same); *In re Kimball Hill, Inc.*, No. 08-10095 (SPS) (Bankr. N.D. Ill. Mar. 12, 2009) (same, apart from former officers, directors, and employees); *see also In re The Prospect-Woodward Home*, No. 21-10523 (Bankr. D.N.H. May 9, 2022) (approving estate release and exculpation provisions including the professionals of the released parties); *In re CMC II*, No. 21-10461 (Bankr. D. Del. Dec. 3, 2021) (approving estate release and exculpation provisions including, *inter alia*, Debtor’s current professionals, attorneys, and officers and directors); *In re Sears Methodist Retirement Sys., Inc.*, No. 14-32821-11 (Bankr. N.D. Tex. March 6, 2015) (same).

approved . . .” (emphasis added). Moreover, the Debtor has already completed the solicitation process in compliance with the DS Order. See Balloting Decl., ¶ 7.

164. Second, it is well established in this District that the opt out mechanism is appropriate. See, e.g., *In re Conseco*, 301 B.R. 525, 526 (Bankr. N.D. Ill. 2003) (finding that a settlement incorporated into the chapter 11 plan was consensual where an opt out mechanism was used). As one court explained, “[i]naction is action under appropriate circumstances. When someone is clearly and squarely told if you fail to act your rights will be affected[,] [t]hat person is then given information that puts them on notice that they need to do something or else. That’s not a trap.” *In re Cumulus Media, Inc.*, No. 17-13381, [Dkt. No. 434] (Bankr. S.D. N.Y. Feb. 5, 2018), Feb. 1, 2018 Hr’g Tr. at 27: 6-11. Additionally, bankruptcy courts in senior living cases routinely approve the opt out mechanism proposed by the Debtor in this Chapter 11 Case.⁴²

165. The proposed opt-out structure is also consistent with the Supreme Court’s views on consent in the context of class action releases. In *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), the Court upheld an “opt out” class action structure, explaining that due process merely requires notice “reasonably calculated. . . to apprise [a person] of the pendency of the action and afford them an opportunity to present their objections.” *Phillips*, 472 U.S. at 812 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). As in *Phillips*, creditors in the Chapter 11 Case were apprised of the Releases and afforded the opportunity to opt out of them. Additionally, the *res judicata* effect of a chapter 11 plan against parties who remain silent in the

⁴² See *In re Timothy Place, NFP*, No. 20-21554 [Dkt. No. 130] (Bankr. N.D. Ill. Jan. 26, 2021); *In re Clare Oaks*, No. 19-16708 [Dkt. No. 576] (Bankr. N.D. Ill. Aug. 19, 2020); *In re CMC II, LLC*, No. 21-10461 [Dkt. No. 674] (Bankr. D. Del. Nov. 11, 2021); *In re Kansas City United Methodist Retirement Home*, No. 21-41049 [Dkt. No. 107] (Bankr. W.D. MO. Sept. 28, 2021); *In re Buckingham Senior Living Cmty, Inc.*, No. 21-32155 [Dkt. No. 337] (Bankr. S.D. Tex. Sept. 23, 2021); *In re Amsterdam House Continuing Care Retirement Cmty., Inc.* No. 21-71095 [Dkt. No. 132] (Bankr. E.D.N.Y. July 20, 2021); *In re Tarrant Cnty. Senior Living Ctr., Inc.*, No. 19-33756 [Dkt. No. 119] (Bankr. N.D. Tex. Dec. 20, 2019); *In re Mayflower Cmty., Inc.*, No. 19-30283 [Dkt. No. 320] (Bankr. N.D. Tex. Aug. 5, 2019); *In re SQLC Senior Living Ctr. at Corpus Christi, Inc.*, No. 19-20063 [Dkt. No. 116] (Bankr. S.D. Tex. Feb. 26, 2019).

face of actual notice is both well established and uncontroversial. *See, e.g., In re Arcapita Bank B.S.C.(c)*, 520 B.R. 15, 24 (Bankr. S.D.N.Y. 2014). Similarly, there is nothing controversial about enforcing the Releases against creditors who elect not to opt out after being fully and clearly apprised of the Releases and their responsibility to opt out if they do not wish to grant them.

ii. Because Third Party Releases are Consensual, the U.S. Trustee’s Cited Authority is Inapplicable

166. The U.S. Trustee objects to the non-debtor releases contained in Section 8.5 of the Plan (the “**Third Party Releases**”), arguing that they are not narrowly tailored or supported with sufficient consideration. *See* UST Objection, ¶ 19. The Third Party Releases in the Plan are appropriate because they are consensual—a fact the U.S. Trustee ignores that is fatal to the objection. *See In re Specialty Equipment Companies, Inc.*, 3 F.3d 1043 (7th Cir. 1993) (permitting consensual releases of non-debtor third parties). In *Specialty Equipment*, the Seventh Circuit observed that “a consensual release does not inevitably bind individual creditors. It binds only those creditors voting in favor of the plan of reorganization.” *Id.* at 1047. As in *Specialty Equipment*, the Plan specifies that only those creditors who have “not chosen, by marking the appropriate box on the Ballot, to opt out of the [Third Party Releases]” are bound by them. *See* Plan, at §§ 1.147; 8.5. Such opt out mechanisms result in “purely consensual” third party releases “within the scope of releases that *Specialty Equipment* permits.” *In re Conseco, Inc.*, 301 B.R. 525, 527 (Bankr. N.D. Ill. 2003); *see also In re Arsenal Holdings Intermediate Holdings, LLC*, No. 23-10097 (CTG), 2023 WL 2655592, at *6 (Bankr. D. Del. Mar. 27, 2023) (extensively discussing consent and finding that failing to opt out can be deemed consent for the purposes of third party releases).

167. All of the authority cited by the U.S. Trustee exclusively addresses nonconsensual third party releases. *See In re Ingersoll, Inc.*, 562 F.3d 856, 865 (7th Cir. 2009) (approving

nonconsensual third party releases under the *Airadigm* standard); *In re Airadigm Communications*, 519 F.3d 640, 657 (7th Cir. 2008) (approving nonconsensual third party releases that were appropriately tailored and critical to the plan as a whole); *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141-42 (2d Cir. 2005) (finding that the nonconsensual third party releases contained in the confirmed plan were not sufficiently supported by the bankruptcy court’s findings); *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 730 (Bankr S.D.N.Y. 2019) (declining to approve broad nonconsensual third party releases); *In re Berwick Black Cattle Co.*, 394 B.R. 448, 461 (Bankr. C.D. Ill. 2008) (declining to approve nonconsensual third party releases under the *Airadigm* standard). Relying on these cases, the U.S. Trustee asserts that the Third Party Releases cannot be granted because they are not narrowly tailored and are not supported by sufficient consideration. See UST Objection, ¶ 19. That is not the applicable standard, and there is no need for the Court to evaluate whether the releases are narrowly tailored or supported by adequate consideration because they are consensual. See *Specialty Equipment*, 3 F.3d at 1047 (“Although these releases in their various forms do pose a rather knotty problem, it is not one that we need to unravel completely inasmuch as the Releases granted in the Debtors’ reorganization are consensual.”). Moreover, courts in this jurisdiction and others generally permit the inclusion of consensual non-debtor releases in a plan. Accordingly, the consensual Third Party Releases are appropriate and the UST Objection should be overruled.

iii. The FSO Settlement Provides Additional Recovery Potential through Non-Estate Assets and Does Not Create a “Death Trap” for Former Residents

168. The U.S. Trustee argues the Plan creates a “death trap” for former residents that punishes “a class solely because of how they cast their ballot”—a result the U.S. Trustee contends is unsupported by any provision of the Bankruptcy Code. See UST Objection at ¶ 40. This objection should be overruled because the Plan is not a death trap plan and, even if it is, it is not

unfairly discriminatory and/or coercive. Under the FSO Settlement, FSO has agreed to make the FSO Former Resident Contribution (\$1,500,000) for the benefit of former residents in exchange for a consensual release of any claims they may have against the Released Parties. *See* FSO Settlement at ¶ 2. The recovery offered to former residents is not conditioned on whether former residents vote to accept the Plan. The Plan does not propose provide additional recovery to creditors in Class 5 if Class 5 votes to accept the Plan. Accordingly, it is not a “death trap” designed to improperly coerce votes in favor of the Plan as the U.S. Trustee suggests. *Cf. In re Adelphia Commc’ns Corp.*, 368 B.R. 140, 275–76 (Bankr. S.D.N.Y. 2007) (“requiring equity holders to vote in favor of the plan or forfeit their distributions under it.”); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 714, 716–17 (Bankr. S.D.N.Y. 1992) (offering warrants to impaired classes in exchange for plan acceptance). Rather it is an offer for each individual Former Resident to consider **regardless** of how the Former Resident votes on the Plan. Each Former Resident can either accept their pro rata distribution of the FSO Former Resident Contribution in exchange for a release of claims or forgo that distribution and opt out of the release and preserve whatever claims they may have.⁴³ That is a permissible consensual third party release mechanism – not a death trap designed to coerce votes for the Plan.

169. In *In re Washington Mutual, Inc.*, the Court overruled an objection to a plan provision conditioning distribution under the plan on the grant of a third party release on the basis that such treatment was discriminatory. 442 B.R. 314, 355 (Bankr. D. Del. 2021) (“[p]roviding different treatment to a creditor who agrees to settle instead of litigating is permitted by Section 1123(a)(4).”). The *Washington Mutual* court reasoned that “[w]hat is important is that

⁴³ Under Sections 3.1.5 and 3.1.6 of the Plan, former residents in Class 5 who (i) do not elect to opt out of the Third Party Releases will receive their pro rata shares of the FSO Former Resident Contribution and (ii) do elect to opt out of the Releases, will not receive any portion of the FSO Former Resident Contribution.

each claimant within a class have the same opportunity to receive equal treatment.” *Id.* at 356. As in *Washington Mutual*, Class 5 former residents each have the same opportunity to share in the FSO Former Resident Contribution and are fully in control over whether they receive the additional distribution or, alternatively, forego the additional distribution and retain claims. Such treatment is not impermissibly discriminatory. *See Energy Future Holdings Corp. v. Del. Tr. Co.*, 648 F. App’x 277, 284 (3d Cir. 2016) (“[M]ere differences in potential final outcomes resulting from choices made by individual creditors do not violate the equal treatment protections of § 1123(a)(4).”). It is not uncommon for bankruptcy courts to approve Chapter 11 plans pursuant to which non-debtors make contributions in exchange for third party releases. *See, e.g., In re Nw. Senior Housing Corp., et al.*, No. 22-30659 [Dkt. Nos. 1241, §§ 3.2.5, 3.2.6; 1393 (confirming Chapter 11 plan providing for increased distributions to claimants electing not to opt out of third party releases and/or participating in the settlement agreement). Even assuming, *arguendo*, that the Plan is a “death trap” plan, such plans are not per se impermissible.⁴⁴

170. The proposed treatment of former residents does not “trap” claimants with respect to votes to accept or reject the Plan, or with respect to Releases, and the proposed additional distribution to former residents who grant release is not unfairly discriminatory. Accordingly, the U.S. Trustee objection should be overruled.

⁴⁴ *See, e.g., In re Emerald Oil, Inc.*, No. 16-10704 Docket No. 1134 (Bankr. D. Del., March 24, 2017) (approving plan providing a distribution to holders of Class 4 claims voting to accept the plan and no distribution for Class 4 claimholders voting to reject the plan); *Adelphia*, 368 B.R. at 275–76 (approving a “carrot and stick” provision in a plan that required equity holders to vote in favor of the plan or forfeit their distributions because the plan provided an inducement to vote on the Plan to holders that would otherwise not receive a distribution); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 105–06 (Bankr. D. Del. 1999) (approving a plan providing that bondholders would receive \$50 million worth of notes only if they voted to accept the plan); *Drexel*, 138 B.R. at 716–17 (approving a plan providing that if Classes 7, 8 or 9 voted in favor of the plan, each accepting class would receive certain warrants since each class was able to vote on the distribution it would receive).

C. The Court Has Jurisdiction and Authority to Approve the FSO Settlement

171. The U.S. Trustee argues that two parts of the FSO Settlement: (i) the FSO Former Resident Contribution; and (ii) FSO's commitment to support Current Residents, including benevolent support (the "**Resident Support**") fall outside the subject matter jurisdiction and constitutional authority of the Court, rendering the Plan unconfirmable. *See* UST Objection, ¶ 51. In short, the U.S. Trustee complains that the FSO Former Resident Contribution and Resident Support are each funded by non-estate property contributed by a non-debtor.⁴⁵ However, any request to excise these two components from the FSO Settlement should be rejected. *See, e.g., In re Telesphere Commc'ns, Inc.*, 179 B.R. 544, 565 (Bankr. N.D. Ill. 1994) ("The settlement has been presented to the court as a whole, and must be approved or rejected on that basis.").

172. Despite the U.S. Trustee's argument to the contrary, the Court need not "override explicit mandates of other sections of the Bankruptcy Code" to approve the FSO Settlement. *See* UST Objection, ¶ 59 (citing *Law v. Siegel*, 571 U.S. 415, 421 (2014)). Indeed, the U.S. Trustee cites to no section of the Bankruptcy Code that the Debtor asks the Court to violate in contravention of *Law v. Siegel*. To the contrary, the Bankruptcy Code explicitly permits a plan to "provide for—the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). Moreover, a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). Section 1123, in tandem with section 105(a) underlies a court's authority to approve even **nonconsensual** third party releases. *See In re Ingersoll, Inc.*, 562 F.3d 856, 864 (7th Cir. 2009). Confirmation of the Plan is well within the Court's core jurisdiction. *See* 28 U.S.C. § 157(b)(2)(L). Thus, the FSO

⁴⁵ *See* UST Objection, ¶¶ 55, 58. To the extent that the U.S. Trustee's position is that the Court's related to jurisdiction is limited to property of the estate, that is incorrect. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (though not limitless, "the 'related to' language of § 1334(b) must be read to give district courts (and bankruptcy courts under § 157(a)) jurisdiction over more than simple proceedings involving the property of the debtor or the estate.>").

Settlement, as a whole, falls squarely within the jurisdiction of the Court because it resolves claims belonging to the Debtor or its Estate under section 1123(b)(3)(A) and is permissible as to the non-debtor third parties under section 1123(b)(6). Indeed, the U.S. Trustee's logic, if accepted, would preclude approval of third party releases in many cases. And, the fact that a non-debtor, FSO, is contributing funds in exchange for third party releases does not justify such result in this Chapter 11 Case. *See In re Holly Marine Towing, Inc.*, 669 F.3d 796, 802 (7th Cir. 2012) (affirming the approval of a settlement including the distribution of non-estate assets to non-debtor parties).

173. The U.S. Trustee also asserts that the Court lacks constitutional authority to enter a final order approving the FSO Former Resident Contribution and Resident Support portions for the FSO Settlement without the consent of all parties involved. *See* UST Objection, ¶¶ 54, 56. Apart from blanket citations to *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015); *Executive Benefits Ins. Agency v. Arkinson*, 573 U.S. 25 (2014); and *Stern v. Marshall*, 564 U.S. 462 (2011), the U.S. Trustee gives no explanation for this position, how core but unconstitutional "Stern" claims are implicated at all, or how any party is being forced to forego their right to Article III adjudication of their claims without consent. *Id.* Even assuming that any of the claims implicated by the settlement are *Stern* claims, the FSO Settlement is a settlement, which by its very nature is consensual. The affected creditors were provided the opportunity to either opt out of the releases and retain their causes of action against FSO or not opt out and release their claims in exchange for the FSO Former Resident Contribution and Resident Support. None of the claims implicated in any portion of the FSO Settlement are being forcibly taken from any party involved or affected, thus their right to Article III adjudication of their claims has not been stripped without their consent.

174. The consensual nature of the releases goes unacknowledged by the U.S. Trustee, but it materially sets this Chapter 11 Case apart from *In re Berwick Black Cattle Co.*, 394 B.R. 448 (Bankr. C.D. Ill. 2008), upon which the U.S. Trustee relies. In *Berwick*, the bankruptcy court found it lacked jurisdiction to **order** the **non-consensual** release of non-debtor claims against a non-debtor. However, **consensual** third-party releases have been approved in the Seventh Circuit. *See Matter of Specialty Equip. Companies, Inc.*, 3 F.3d 1043, 1047 (7th Cir. 1993); *In re Conseco*, 301 B.R. 525, 528 (Bankr. N.D. Ill. 2003) (“The [plan provision] release now binds only those creditors who agreed to be bound, either by voting for the Plan or by choosing not to opt out of the release. Therefore, the [plan provision] release is purely consensual and within the scope of releases that *Specialty Equipment* permits.”).

175. Accordingly, the Court has subject matter jurisdiction and constitutional authority to approve the FSO Settlement in connection with confirmation of the Plan and the U.S. Trustee’s arguments to the contrary should be rejected.

D. The Injunction Should Be Approved

176. The UST objects to the injunction provision contained in Section 8.2 of the Plan (the “**Injunction**”), arguing that the Disclosure Statement does not contain any factual or legal basis for the Injunction, and thus cannot be granted because it is “an improper attempt to secure a discharge for a debtor not otherwise entitled to one.” *See* UST Objection, at ¶¶ 62-67.

177. First, the proposed Injunction is not a discharge. The Debtor expressly acknowledges that it “shall not receive a discharge as set forth in Bankruptcy Code section 1141(d)(3)(A).” *See* Plan at § 8.2. Further, the Injunction specifies that parties are enjoined from taking action against “**property** that is to be distributed under the terms of the plan on account of any” claims against the Debtor or its estate. Through this language, the Injunction clarifies that it seeks to protect the **property** to be distributed under the Plan, not the Debtor or any non-Debtor

party. Numerous courts have approved similar, and indeed more expansive injunction provisions in cases—including CCRC cases—involving liquidating plans with injunction provisions applicable to the debtor⁴⁶ or the debtor and third parties.⁴⁷

178. Occasionally courts decline to approve proposed injunctions in liquidating plans because such provisions provide protection to non-debtors with respect to direct liability. *See, e.g., In re U.S. Brass Corp.*, 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996) (the debtor’s original plan was unconfirmable on its face because the injunction provision protected third parties from direct liability). As stated above, the Debtor seeks only to protect the **property** to be distributed under the Plan during the distribution of the same. The Injunction does not provide protection to third parties with respect to direct liability.

179. The UST cites four cases for support: *In re Bigler LP*, 442 B.R. 537, 544 (Bankr. S.D. Tex. 2010); *In re Sis Corp.*, 120 B.R. 93, 96 (Bankr. N.D. Ohio 1990); *In re Sacred Heart Hosp. of Norristown*, 182 B.R. 413, 422 (Bankr. E.D. Pa. 1995); and *In re Midway Gold US, Inc.*, 575 B.R. 475 (Bankr. D. Colo. 2017). *See* UST Objection, at ¶ 66. None is binding precedent, and all are distinguishable. First, the language at issue in *Bigler* and *Sis Corp.* was far broader than the language of the Injunction and explicitly included the debtors, third party purchasers of the debtors’ property, and the debtors’ estates. By contrast, the Injunction language here is much narrower, protecting only the property distributed under the Plan and excluding the Debtor and third parties from its application. Second, in *Sacred Heart*, the debtor presented inconsistent

⁴⁶ *See In re The Prospect-Woodward Home*, No. 21-10523 (Bankr. D.N.H. May 31, 2022) [Dkt. No. 509]; *In re CMC II, LLC*, No. 21-10461 (JTD) (Bankr. D. Del. Nov. 11, 2021) [Dkt. No. 718]; *In re Kaumana Drive Partners, LLC*, No. 19-01266 (Bankr. D. Hi. Sept. 15, 2021) [Dkt. No. 563]; *In re The LaSalle Group, Inc.*, No. 19031484 (Bankr. N.D. Tex. Dec. 31, 2019) [Dkt. No. 585].

⁴⁷ *In re California-Nevada Methodist Homes*, No. 21-40363 (Bankr. N.D. Cal. July 3, 2023) [Dkt. No. 769]; *In re Henry Ford Village, Inc.*, No. 20-51066 (Bankr. E.D. Mich. Dec. 6, 2021) [Dkt. No. 663]; *In re Good Samaritan Lutheran Health Care Ctr., Inc.*, No. 19-12215 (Bankr. N.D.N.Y. Dec. 2, 2020) [Dkt. No. 302]; *In re Mayflower Cmtys., Inc.*, No. 19-30283-hdh11 (Bankr. N.D. Tex. Aug. 5, 2019) [Dkt. No. 353].

responses to the creditor's objection to that injunction language, leading the court to conclude that "the meaning and effect [of the provision] is unclear, even to the Debtor itself," and that alone was sufficient reason to strike it from the plan. Here, the purpose of the Injunction is clear: to protect the property to be distributed under the Plan until such distribution is effectuated. Third, in *Midway Gold*, the court found the limiting language in the plan clarifying that: (i) the debtors would not be discharged and (ii) that claimants were precluded from seeking recourse against distributions from the liquidating trust assets after the effective date of the plan "sufficiently over[came] what would otherwise render the Plan unconfirmable as written." *Midway Gold*, 575 B.R. at 515. Similarly, the Injunction clarifies that the Debtor will not receive a discharge and merely precludes claimants from seeking recourse against property to be distributed under the Plan and the Unsecured Creditor Trust.

180. Moreover, the Debtor has proposed consensual injunctive relief. The Injunction, like the Third-Party Release and Exculpation provisions under Section 8 of the Plan, are included in the solicitation materials that were distributed to creditors entitled to vote. Additionally, an opportunity to opt out of the Injunction was provided to all creditors, irrespective of whether they are entitled to vote. The Ballots that were distributed included a box that creditors could check to opt out, and Opt Out forms were distributed to creditors not entitled to vote to accept or reject the Plan. As discussed above, the opt-out mechanism included in the Plan is comprehensive and transparent, permitting creditors to opt out of the Injunction if they so choose. The consensual nature of the Injunction further distinguishes it from a discharge, which does not require the consent of the creditors or permit them to opt out from its application.

181. Although a liquidating debtor typically has no assets in need of protection, there are practical reasons for including injunction clauses similar to the Injunction provision under

Section 8.2 of the Plan. Judicial economy is served by preventing parties from bringing claims against or seeking recovery from assets of the Debtor that should be protected pending distribution. Additionally, though it may be atypical, liquidating debtors sometimes discover assets after the occurrence of the effective date, and such assets need to be protected.

182. For the reasons set forth above, the Injunction is appropriately limited and does not constitute a de facto discharge in violation of Bankruptcy Code section 1141(d)(3). As a result, the UST's objection should be overruled.

183. Alternatively, should the Court find the Injunction impermissible as written, the Debtor requests that a temporal limitation be imposed to cure the defect. In a letter ruling issued in *In re Kabbage*, the Delaware Bankruptcy Court revised a much broader injunction provision to specify that the relief granted thereunder would be temporary rather than permanent and would remain in effect only as long as the debtors and their wind down estates held assets. According to the *Kabbage* court, the granting of such temporary injunctive relief "would not run afoul of § 1141(d)(3) or the purpose it serves." See *In re Kabbage*, No. 22-10951, Dkt. No. 681 (Bankr. D. Del. March 15, 2023). If the Court finds that the Injunction runs afoul of Bankruptcy Code section 1141(d)(3), the Debtor requests that the Injunction provision be revised to specify that the Injunction, as proposed, is temporary and lasts only until all assets have been distributed under the Plan, whether by the Debtor on or shortly after the Effective Date or the Unsecured Creditor Trustee or Former Residents Trust Trustee thereafter.

E. The Plan, if Confirmed, Will Resolve Claims as Set Forth in Section 8.1

184. The U.S. Trustee objects to the language under Section 8.1 of the Plan, which provides, generally, that, subject to entry of a confirmation order, the Plan constitutes a good faith compromise of Claims and Interests. See U.S. Objection, ¶¶ 68-70. In support of this argument, the U.S. Trustee cites to a single case, *Boy Scouts of America and Delaware BSA, LLC*, 642 B.R.

504, 626 (Bankr. D. Del. 2022), which is a very different case with a different set of facts and circumstances than this Chapter 11 Case. More importantly, the court rejected the argument that “[Trust Distribution Procedures (“TDP”)] and related Plan provisions reflected a negotiated settlement” because, *inter alia*, the TDP did “not settle any Abuse Claims.” Instead, the TDP “establish[ed] a process under which Abuse Claims may ultimately be settled.

185. The language under Section 8.1 is standard plan language that has been approved in numerous bankruptcies.⁴⁸ The “settlement and compromise” language should be approved in this Chapter 11 Case as well because if the Court approves the Plan, the Claims and Interests will be resolved and the treatment of Claims and Interests will be afforded pursuant to satisfaction of the requirements under Bankruptcy Code section 1129. To the extent that modification of Section 8.1 is required, the Debtor respectfully submits that removal of reference to Bankruptcy Rule 9019 would address the U.S. Trustee’s concerns while leaving the provision otherwise intact.

F. The Bankruptcy Code Does Not Prohibit Use of the Word “Deemed” and Numerous Bankruptcy Plans Including the Word Deemed Have Been Approved by Numerous Bankruptcy Courts

186. Similar to Section 8.1 of the Plan, countless chapter 11 plans, including use of the word “deemed”, have been approved, and the Court should not deny confirmation of the Plan based on the U.S. Trustee’s objection in this regard. However, the Debtor will file an amended version of the Plan that revises the “Dissolution of the Debtor” provision in a manner substantially similar to the following:

⁴⁸ See, e.g., *In re Reverse Mortgage Inv. Trust Inc.*, No. 22-11225-MFW [Dkt. No. 713] (Bankr. D. Del. April 27, 2023); *In re Nw. Senior Housing Corp.*, No. 22-30659 [Dkt. No. 1394] (Bankr. N.D. Tex. April 7, 2023); *In re The Prospect-Woodward Home dba Hillside Village*, No. 21-10523-BAH [Dkt. No. 509] (Bankr. D.N.H. May 31, 2022); *In re GVS Texas Holdings I, LLC*, No. 21-31121-MVL [Dkt. No. 873] (Bankr. N.D. Tex. March 21, 2022); *In re Lucky’s Market Parent Co.*, No. 20-10166-JTD, [Dkt. No. 1423] (Bankr. D. Del. Dec. 23, 2020); *In re Senior Care Ctrs., LLC*, No. 18-33967-BJH [Dkt. No. 2376] (Bankr. N.D. Tex. Dec. 13, 2019); *In re Orion HealthCorp, Inc.*, No. 18-71748 [Dkt. No. 701] (Bankr. E.D.N.Y. Feb. 26, 2019).

4.9 **Dissolution of Debtor.** Debtor shall not be a reorganized debtor. Upon the Effective Date, the Debtor shall ~~be deemed to~~ be dissolved without any further action by the Debtor or the Bankruptcy Court, including the filing of any documents with the secretary of state of Illinois. The Plan shall constitute a decree of dissolution with respect to the Debtor. For the avoidance of doubt, Debtor shall be ~~deemed to remain intact~~ dissolved except to the extent necessary solely with respect to the preparation, filing, review, and/or resolution of applications and motions to be filed following the Effective Date for, among other things, the assertion of Professional Fee Claims or to satisfy any obligations of the Debtor contained in the APA or related documents.

G. The Debtor Has Filed a Supplement to the Plan Supplement.

187. As permitted by the DS Order and the approved notice of Plan Supplement and as contemplated by the Plan, the Debtor is permitted to amend its Plan Supplement and exhibits attached thereto. *See* DS Order, ¶ 38 and Exh. 8. On April 4, 2024, the Debtor timely filed its Plan Supplement, including a draft of the Unsecured Creditors Trust Agreement. *See* Docket No. 618. On April 19, 2024, the Debtor filed a supplement to the Plan Supplement, including clean and redline copies of a further revised draft of the Unsecured Creditors Trust Agreement, which includes Exhibit A to the agreement. *See* Docket No. 664.

CONCLUSION

188. For the reasons set forth in this Brief, the Debtor respectfully request that this Bankruptcy Court enter an order (i) confirming the Plan, and (ii) granting such other and further relief as is just and proper.

[signature on following page]

Dated: April 25, 2024
Chicago, Illinois

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EXHIBIT A

(Amended Liquidation Analysis)

Friendship Village Liquidation Analysis \$000s		Notes	Book Value	Chapter 7 Liquidation						Chapter 11 Plan				
				Assumptions		Recovery (\$)		Recovery (%)		Book Value	Recovery (\$)	Recovery (%)		
				Low	High	Low	High	Low	High					
Assets														
Cash and Cash Equivalents	1	\$	1,241	100.0%	100.0%	\$	1,241	\$	1,241	\$	2,221	100.0%		
Accounts Receivables, Net	2		2,392	40.0%	60.0%		957		1,435		1,228	20.0%		
Inventory	3		123	0.0%	0.0%		-		-		-	0.0%		
Prepaid Expenses	4		1,233	0.0%	0.0%		-		-		402	0.0%		
Restricted Assets Held by Trustee	5		3	0.0%	0.0%		-		-		2	0.0%		
Fixed Assets, Net	6		87,757	10.0%	20.0%		8,776		17,551		-	0.0%		
Long-Term Investments	7		2,049	0.0%	0.0%		-		-		2,087	0.0%		
Notes Receivable from Affiliate	8		327	100.0%	100.0%		327		327		327	0.0%		
Huntley Property Net Sale Proceeds	9		-	0.0%	0.0%		-		-		420	100.0%		
Net Sale Proceeds	10		-	0.0%	0.0%		-		-		31,824	100.0%		
Buyer Former Resident Contribution	11		-	0.0%	0.0%		-		-		2,000	100.0%		
FSO Former Resident Contribution	12		-	0.0%	0.0%		-		-		1,500	100.0%		
Chapter 5 Causes of Action	13		160	50.0%	100.0%		80		160		160	75.0%		
Other Potential Claims	14		-	0.0%	0.0%		-		-		-	0.0%		
Total Cash Available for Distribution						\$	11,381	\$	20,715	11.9%	21.7%			
											\$ 42,170	\$ 38,330	90.9%	
Restricted Cash														
Former Residents - Buyer Contribution	15	\$	-			\$	-	\$	-	\$	2,000	\$ 2,000		
Former Residents - FSO Settlement	16		-				-		-		1,500	1,500		
Unsecured Creditor Trust - Huntley Proceeds	17		-				-		-		50	50		
Total Restricted Cash						\$	-	\$	-		\$ 3,550	\$ 3,550		
Total Unrestricted Cash Available for Distribution						\$	11,381	\$	20,715		\$ 38,620	\$ 34,780		
Chapter 7 Costs														
Chapter 7 Trustee Commission	18	\$	341			\$	341	\$	341	100.0%	100.0%	\$ -	\$ -	0.0%
Chapter 7 Trustee Professional Fees	19		250				250		250	100.0%	100.0%	-	-	0.0%
Wind Down/Closure	20		3,873				3,873		3,873	100.0%	100.0%	-	-	0.0%
Total Chapter 7 Costs						\$	4,464	\$	4,464	100.0%	100.0%	\$ -	\$ -	0.0%
Cash Available for Distribution to Other Priority Claims							\$ 6,916	\$	16,250			\$ 34,780		
Other Priority Claims														
Resident Deposits	21	\$	481			\$	-	\$	-	0.0%	0.0%	\$ 481	481	100.0%
Total Other Priority Claims						\$	-	\$	-	0.0%	0.0%	\$ 481	\$ 481	100.0%
Cash Available for Distribution to Administrative Claims							\$ 6,916	\$	16,250			\$ 34,300		
Administrative Claims														
DIP Facility Claims	22	\$	3,053			\$	-	\$	-	0.0%	0.0%	\$ 2,053	\$ 2,053	100.0%
United States Trustee Fees	23		-				-		-	0.0%	0.0%	284	284	100.0%
Professional Fee Accrual	24		-				-		-	0.0%	0.0%	1,213	1,213	100.0%
Accrued Property Tax	25		724				724		724	100.0%	100.0%	-	-	0.0%
Accrued Expense / Post-Petition Trade AP	27		-				-		-	0.0%	0.0%	159	159	100.0%
Total Administrative Claims						\$	724	\$	724	19.2%	19.2%	\$ 3,710	\$ 3,710	100.0%
Cash Available for Distribution to Other Secured Claims							\$ 6,193	\$	15,527			\$ 30,590		
Other Secured Claims														
Other Secured Claims	28	\$	60			\$	-	\$	-	0.0%	0.0%	\$ 60	\$ 60	100.0%
Total Other Secured Claims						\$	-	\$	-	0.0%	0.0%	\$ 60	\$ 60	100.0%
Cash Available for Distribution to Estimated Bond Claims							\$ 6,193	\$	15,527			\$ 30,530		
Estimated Bond Claims														
Series 2017 Bonds	29	\$	131,600			\$	6,193	\$	15,527	4.7%	11.8%	\$ 131,600	\$ 30,530	23.2%
Total Estimated Bond Claims						\$	6,193	\$	15,527	4.7%	11.8%	\$ 131,600	\$ 30,530	23.2%
Cash Available for Deficiency Claims							\$ -	\$	-			\$ -		
Deficiency Claims														
Bondholder Deficiency Claims	30	\$	101,070			\$	-	\$	-	0.0%	0.0%	\$ 101,070	\$ -	0.0%
Leaf Capital Deficiency Claim			42				-		-	0.0%	0.0%	42	-	0.0%
Total Deficiency Claims						\$	-	\$	-	0.0%	0.0%	\$ 101,070	\$ -	0.0%
Cash Available for General Unsecured Claims							\$ -	\$	-			\$ -		
General Unsecured Claims														
Current Resident Claims	31	\$	77,350			\$	-	\$	-	0.0%	0.0%	\$ -	\$ -	0.0%
Former Resident Claims	32		20,000				-		-	0.0%	0.0%	20,000	3,500	17.5%
Unsecured Creditor Trust	33		-				-		-	0.0%	0.0%	50	50	100.0%
Trade Creditors	34		3,956				-		-	0.0%	0.0%	3,956	-	0.0%
Total General Unsecured Claims						\$	-	\$	-	0.0%	0.0%	\$ 24,006	\$ 3,550	14.8%
Cash Available for Intercompany Claims							\$ -	\$	-			\$ -		
Intercompany Claims														
Due to Affiliates	35	\$	232			\$	-	\$	-	0.0%	0.0%	\$ 232	\$ -	0.0%
Total Intercompany Claims						\$	-	\$	-	0.0%	0.0%	\$ 232	\$ -	0.0%
Shortfall							\$ (331,609)	\$	(322,275)			\$ (222,828)		

Class Recovery Summary

Unclassified Claims												
Operating Claims	36	\$	-			\$ -	\$ -	0.0%	0.0%	\$ 159	\$ 159	100.0%
Professional Claims	37		-			-	-	0.0%	0.0%	1,497	1,497	100.0%
DIP Facility Claim	38		3,053			-	-	0.0%	0.0%	2,053	2,053	100.0%
Accrued Property Tax			724			724	724	100.0%	100.0%	-	-	0.0%
Class 1 – Other Priority Claims			481			-	-	0.0%	0.0%	481	481	100.0%
Class 2 – Bond Claims			131,600			6,193	15,527	4.7%	11.8%	131,600	30,530	23.2%
Class 3 – Other Secured Claims			60			-	-	0.0%	0.0%	60	60	100.0%
Class 4 – Deficiency Claims			101,070			-	-	0.0%	0.0%	101,070	-	0.0%
Class 5A – Former Residents Claims	39		20,000			-	-	0.0%	0.0%	20,000	3,500	17.5%
Class 5B – Opt-Out Former Residents Claims	40		-			-	-	0.0%	0.0%	-	-	0.0%
Class 6 – Non-Resident General Unsecured Claims	41		3,956			-	-	0.0%	0.0%	3,956	-	0.0%
Class 7 – Intercompany Claims	42		232			-	-	0.0%	0.0%	232	-	0.0%
Class 8 – Interests in Debtor			-			-	-	0.0%	0.0%	-	-	0.0%

Friendship Village
Notes to the Liquidation Analysis

Global Note: The book values of all assets under the Chapter 7 Liquidation are as of 9/30/23, unless otherwise noted. The book values of all assets under the Chapter 11 Plan are estimated as of 4/30/24, unless otherwise noted.

- 1 The Chapter 7 Liquidation reflects cash and cash equivalents as of 10/31/23.
- 2 Includes accounts receivable due from Medicaid, Medicare, Supplemental Insurance, Private Pay, and Managed Care. The Chapter 7 Trustee would oversee the collection of accounts receivable under the Chapter 7 Liquidation.
- 3 Includes food and supplies related to housekeeping and maintenance. A recovery of 0% is assumed due to the perishable nature of food inventory and lack of marketability of the supplies. Inventory is included in the Purchased Assets under the Chapter 11 Plan.
- 4 Includes prepaid insurance, licenses, and deposits.
- 5 Reflects the debt service reserve fund established in connection with the 2017 Bond Indenture.
- 6 Includes land, buildings, capital projects and improvements, equipment, and vehicles. Recoveries under the Chapter 7 Liquidation are estimated at 10% - 20% due to the limited time to close. Recoveries under the Chapter 11 Plan reflect the net Transaction Proceeds, per the APA and includes \$2,712,101 set aside pursuant to the bankruptcy court order for Morrison Management Specialists, Inc.
- 7 A recovery of 0% is assumed as these assets collateralize the workers compensation policy, and will be transferred to the Purchaser.
- 8 Reflects intercompany receivables from GreenFields of Geneva Project (\$20,675) and Friendship Senior Options, NFP (\$306,530).
- 9 Estimated net cash proceeds from the Huntley Property. \$50,000 of the proceeds are earmarked for the funding of the Unsecured Creditor Trust.
- 10 Reflects the net Transaction Proceeds, per the APA and includes \$2,712,101 set aside pursuant to the bankruptcy court order for Morrison Management Specialists, Inc.
- 11 Under a Chapter 11 Plan, the Purchaser will provide \$2,000,000 to be held in trust for the benefit of Holders of Class 6 Former Resident Claims.
- 12 Under a Chapter 11 Plan, the FSO Settlement and Contribution Agreement provides \$1,500,000 to be funded into the Former Residents Trust for the benefit of Holders of Class 6 Former Resident Claims.
- 13 Debtor assumes recovery on transfers to vendors. No costs incurred to pursue the litigation have been estimated.
- 14 No Other Potential Claims have been identified.
- 15 Under a Chapter 11 Plan, the Purchaser will provide \$2,000,000 to be held in trust for the benefit of Holders of Class 6 Former Resident Claims.
- 16 Under a Chapter 11 Plan, the FSO Settlement and Contribution Agreement provides \$1,500,000 to be funded into the Former Residents Trust for the benefit of Holders of Class 6 Former Resident Claims.
- 17 The Chapter 11 Plan will establish an Unsecured Creditor Trust to be funded from proceeds obtained through the sale of the Huntley Property.
- 18 Chapter 7 Trustee estimated to receive 3% of proceeds available per statutory default.
- 19 Estimated Chapter 7 Trustee fees and expenses (including counsel).
- 20 This includes all costs incurred during the estimated six month liquidation period associated with the wind down of the Estate, including operating costs to transition and turn over the property, and the administrative closure of the Estate.
- 21 Reflects unamortized resident garage deposits.
- 22 The full DIP Facility has been drawn. The proceeds will be used to satisfy all administrative claims in addition to those specifically mentioned below. Under a Chapter 11 Plan, \$1.0 million of the DIP proceeds will be waived and applied to Former Resident Claims.
- 23 Estimated accrued Chapter 11 US Trustee fees through 5/31/24.
- 24 The Chapter 11 Plan reflects the estimated accrued and unpaid professional fees as of 5/31/24, which will be satisfied in full. The Chapter 7 Liquidation reflects the accrued professional fees as of 10/31/23. Upon the conversion to a Chapter 7, all Allowed Professional Fees will be covered via the Carve-Out, as defined in the DIP Term Sheet and Cash Collateral Order.
- 25 Estimated accrued and unpaid real estate taxes.
- 26 All payroll liabilities under the Chapter 7 Liquidation are included in the wind down budget. The Purchaser will pay the accrued PTO of Transferred Employees under the Chapter 11 Plan.
- 27 Estimated post-petition trade vendors that are unpaid as of the liquidation date.
- 28 Relates to secured claim on community van.
- 29 Bond Claims include outstanding principal and accrued interest due on the Series 2017 Bonds at \$131.6 million.
- 30 Under the Chapter 11 Plan, holders of Deficiency Claims shall not receive any Distribution on account of such Class 4 Claims, which shall be discharged, cancelled, released, and extinguished as of the Effective Date, and shall be of no further force or effect.
- 31 Book value reflects the refundable portion of pre-petition entrance fees of current residents, including garage deposits. The Chapter 11 Plan considers all current resident contracts are assumed by the Purchaser.
- 32 Book value reflects the refundable portion of pre-petition entrance fees of former residents. Under a Chapter 11 Plan, the Purchaser will provide \$2,000,000 to be held in trust, and the FSO Settlement and Contribution Agreement provides \$1,500,000 to be funded into the Former Residents Trust for the benefit of Holders of Class 6 Former Resident Claims.
- 33 Under a Chapter 11 Plan, an Unsecured Creditor Trust will be established and is to be funded from proceeds obtained through the sale of the Huntley Property.
- 34 Trade creditors reflects pre-petition amounts owed to vendors or other third parties.
- 35 There is an approximately \$232,000 Due to Affiliate obligation between the Debtor and Friendship Senior Options, NFP as of the Petition Date.
- 36 Includes Payroll Liabilities Accrued Expense / Post-Petition Trade AP claims.
- 37 Includes United States Trustee Fees Professional Fee Accrual claims.
- 38 Includes DIP Facility Outstanding.
- 39 The Debtor cannot currently predict or accurately estimate any recovery percentage that holders of claims in this class could recover from the Unsecured Creditor Trust.
- 40 The Debtor cannot currently predict or accurately estimate any recovery percentage that holders of claims in this class could recover from the Unsecured Creditor Trust.
- 41 Includes Trade Creditors.
- 42 The Debtor cannot currently predict or accurately estimate any recovery percentage that holders of claims in this class could recover from the Unsecured Creditor Trust.

EXHIBIT B

(Budget)

Friendship Village of Schaumburg

Budget vs. Actual

Cumulative for weeks ended 03/08/24 - 04/19/24

Week Ended	Forecast 19-Apr	Actual 19-Apr	Variance (\$) 19-Apr	Variance (%) 19-Apr
Opening Cash Balance	\$ 4,002,262	\$ 3,964,768	\$ (37,494)	(0.9%)
Funding	-	-	-	-
Independent Living Receipts	-	-	-	-
Assisted Living Receipts	-	10,902	10,902	N/A
Outpatient Receipts	-	1,321	1,321	N/A
Healthcare Receipts	-	167,345	167,345	N/A
Other Operating Receipts	-	-	-	-
Non-Operating Receipts	372,000	5,694	(366,306)	(98.5%)
Entrance Fees	-	-	-	-
Total Receipts	372,000	185,261	(186,739)	(50.2%)
Salary & Benefits	-	-	-	-
Supplies	-	4,505	(4,505)	N/A
Marketing	55,000	-	55,000	100.0%
Pharmacy	40,839	-	40,839	100.0%
Outsourced Labor	12,218	17,161	(4,942)	(40.4%)
Dietary	-	314	(314)	-
Repairs & Maintenance	-	923	(923)	-
Utilities	-	273	(273)	-
Insurance	-	-	-	-
Ordinary Course Professionals	5,000	11,378	(6,378)	(127.6%)
Transition Agreement	27,000	-	27,000	100.0%
Taxes	-	-	-	-
Office	-	-	-	-
Management Fee	490,721	-	490,721	100.0%
Claims Noticing	28,883	-	28,883	100.0%
Bed Tax	58,330	55,712	2,618	4.5%
Other	17,443	22,438	(4,995)	(28.6%)
Total Operating Disbursements	735,435	112,704	622,731	84.7%
Total Operating Cash Flow	(363,435)	72,558	435,993	120.0%
Capital Expenditures	-	15,704	(15,704)	(100.0%)
Entrance Fee Refunds	-	-	-	-
Debt Service	-	-	-	-
Debtor Advisors	528,165	278,048	250,117	47.4%
Claims Agent	-	-	-	-
UCC Advisors	-	-	-	-
United States Trustee	10,696	-	10,696	(100.0%)
Restructuring Other	-	-	-	-
Total Non-Operating Disbursements	538,861	293,752	245,109	45.5%
TOTAL CASH FLOW	\$ (902,296)	\$ (221,194)	\$ 681,102	75.5%
Ending Cash	\$ 3,099,966	\$ 3,743,574	\$ 643,608	(20.8%)

EXHIBIT C

(Email to Counsel for the Bond Trustee)

Lindsey Suprum

From: Trinitee Green
Sent: Monday, November 27, 2023 11:59 AM
To: McKeon, Timothy; Bleck, Daniel
Cc: Jeremy Johnson
Subject: FVS - Parking Parcel (unencumbered asset)
Attachments: Commitment 092123 (Madison Title) (91325158v2).pdf

Hi Tim,

As we discussed last week, it's our understanding that UMB does not have a lien on the parking parcel. Per your request I am sharing the attached title commitment for both the main property (identified as Parcel 1) and the parking parcel (identified as Parcel 2). PDF pages 15 and 16 show the two mortgages recorded against the property as #18 and 19. Each mortgage includes the legal description for the main property, but neither mortgage includes the legal description for the parking parcel as shown on pdf page 11.

I should have asked last week whether you guys have a different view. If so, please share your analysis.

Thanks,

Trinitee

Trinitee G. Green

Shareholder

tggreen@polsinelli.com

Office: 214.397.0030

Cell: 713.679.4455

2950 N. Harwood, Suite 2100

Dallas, TX 75201

Direct: 312.463.6201

150 N. Riverside Plaza, Suite 3000

Chicago, IL 60606



Polsinelli PC, Polsinelli LLP in California

polsinelli.com



ALTA COMMITMENT FOR TITLE INSURANCE

File No.: MTAIL-191544

Issued by Old Republic National Title Insurance Company

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Florida corporation, (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

A Stock Company

1408 North Westshore Blvd., Suite 900, Tampa, Florida 33607

(612)371-1111

www.oldrepublictitle.com

By

President

Attest

Secretary

Authorized Officer or Agent

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions.

COMMITMENT CONDITIONS

1. DEFINITIONS

- a. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
- b. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
- c. "Land": The land described in Item 5 of Schedule A and improvements located on that land that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- d. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
- e. "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- f. "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Amount of Insurance of each Policy to be issued pursuant to this Commitment.
- g. "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- h. "Public Records": The recording or filing system established under State statutes in effect at the Commitment Date under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
- i. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
- j. "Title": The estate or interest in the Land identified in Item 3 of Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements; and
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

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5. LIMITATIONS OF LIABILITY

- a. The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - I. comply with the Schedule B, Part I—Requirements;
 - II. eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - III. acquire the Title or create the Mortgage covered by this Commitment.
- b. Company is not liable under Commitment Condition 5.a. if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- c. The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- d. The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5.a. or the Proposed Amount of Insurance.
- e. The Company is not liable for the content of the Transaction Identification Data, if any.
- f. The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- g. The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT; CHOICE OF LAW AND CHOICE OF FORUM

- a. Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- b. Any claim must be based in contract under the State law of the State where the Land is located and is restricted to the terms and provisions of this Commitment. Any litigation or other proceeding brought by the Proposed Insured against the Company must be filed only in a State or federal court having jurisdiction.
- c. This Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- d. The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- e. Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- f. When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT

issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for closing, settlement, escrow, or any other purpose.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. CLAIMS PROCEDURES

This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.

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10. CLASS ACTION

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS COMMITMENT, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS COMMITMENT, ANY BREACH OF A COMMITMENT PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS COMMITMENT, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING. ANY POLICY ISSUED PURSUANT TO THIS COMMITMENT WILL CONTAIN A CLASS ACTION CONDITION.

11. ARBITRATION

Policy contains an arbitration clause. All arbitrable matters when the Proposed Amount of Insurance is \$2,000,000 or less may be arbitrated at the election of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>

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OLD REPUBLIC TITLE

FACTS

WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social Security number and employment information • Mortgage rates and payments and account balances • Checking account information and wire transfer instructions When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For non-affiliates to market to you	No	We don't share

Go to www.oldrepublictitle.com (Contact Us)

Who we are	
Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.

What we do	
How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit https://www.oldrepublictitle.com/privacy-policy
How does Old Republic Title collect my personal information?	We collect your personal information, for example, when you: • Give us your contact information or show your driver's license • Show your government-issued ID or provide your mortgage information • Make a wire transfer We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only: • Sharing for affiliates' everyday business purposes - information about your creditworthiness • Affiliates from using your information to market to you • Sharing for non-affiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See the State Privacy Rights section location at https://www.oldrepublictitle.com/privacy-policy for your rights under state law.

Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. • <i>Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., Mississippi Valley Title Services Company, and The Title Company of North Carolina.</i>
Non-affiliates	Companies not related by common ownership or control. They can be financial and non-financial companies. • <i>Old Republic Title does not share with non-affiliates so they can market to you</i>
Joint marketing	A formal agreement between non-affiliated financial companies that together market financial products or services to you. • <i>Old Republic Title doesn't jointly market.</i>

Affiliates Who May be Delivering This Notice				
American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.	eRecording Partners Network, LLC
Genesis Abstract, LLC	Guardian Consumer Services, Inc.	iMarc, Inc.	Kansas City Management Group, LLC	L.T. Service Corp.
Lenders Inspection Company	Lex Terrae National Title Services, Inc.	Lex Terrae, Ltd.	Mississippi Valley Title Services Company	National Title Agent's Services Company
Old Republic Branch Information Services, Inc.	Old Republic Diversified Services, Inc.	Old Republic Escrow of Vancouver, Inc.	Old Republic Exchange Company	Old Republic National Ancillary Services, Inc.
Old Republic National Commercial Title Services, Inc.	Old Republic Title and Escrow of Hawaii, Ltd.	Old Republic National Title Insurance Company	Old Republic Title Company	Old Republic Title Companies, Inc.
Old Republic Title Company of Conroe	Old Republic Title Company of Indiana	Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma	Old Republic Title Company of Oregon
Old Republic Title Company of St. Louis	Old Republic Title Company of Tennessee	Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.	Old Republic Title, Ltd.
RamQuest Software, Inc.	Republic Abstract & Settlement, LLC	Sentry Abstract Company	Surety Title Agency, Inc.	The Title Company of North Carolina
Trident Land Transfer Company, LLC				

Old Republic National Title Insurance Company

Commitment Number: MTAIL-191544

IMPORTANT NOTICE AND DISCLOSURE

1. By law Madison Title Agency, LLC is required to advise you that the Title Insurance Commitment issued by us may contain conditions, exceptions, exclusions, limitations and requirements governing our liability and the coverage you may receive. REAL ESTATE TITLE TRANSACTIONS ARE COMPLEX. THE COMPANY DOES NOT REPRESENT YOU AND CANNOT GIVE YOU LEGAL ADVICE. YOU ARE ENTITLED TO REVIEW THE TITLE INSURANCE COMMITMENT WITH ANY ATTORNEY AT LAW OF YOUR OWN CHOOSING, AT YOUR EXPENSE, PRIOR TO THE TRANSFER OF TITLE. WE STRONGLY ADVISE THAT YOU DO SO.
2. THE ATTORNEY RETAINED BY YOU, OR BY YOUR LENDER, CLOSING OR SETTLING THIS TITLE IS NOT AN AGENT FOR AND DOES NOT ACT ON BEHALF OF MADISON TITLE AGENCY, LLC. THE COMPANY ASSUMES NO LIABILITY FOR ANY LOSS, COST OR EXPENSE INCURRED BY YOU BECAUSE YOUR ATTORNEY OR YOUR LENDER'S ATTORNEY HAS MADE A MISTAKE OR MISAPPLIED YOUR FUNDS. Because the attorney is not our agent, we assume no responsibility for any information, advice, or title insurance promise the attorney may give or make. Our only liability to you is under the terms of the Commitment, Policy and Closing Protection Letter - Single Transaction if you choose to obtain one.
3. If you desire to obtain protection from this company regarding the application of your funds or compliance with requirements relating to the issuance of the proposed policy, the company will, on request and the payment of the fees filed with, and approved by, the Department of Insurance, provide for a settlement service.
4. By law we are also required to advise you that we have been asked to issue a mortgagee policy to the lender in the amount shown on Schedule A of the enclosed Title Insurance Commitment. If you have not already requested it, you have the right and opportunity to obtain title insurance in your own favor for an additional premium, which we will quote on request.

**Madison Title Agency, LLC
1125 Ocean Avenue, Lakewood, NJ 08701
Telephone: 732-905-9400 Fax: 732-905-9420**

American Land Title Association

Commitment for Title Insurance

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Issuing Agent: Madison Title Agency, LLC
Issuing Office: 1125 Ocean Avenue, Lakewood, NJ 08701
Issuing Office's ALTA® Registry ID: B1202S
Loan ID No.: N/A
Commitment No.: 191544
Issuing Office File No.: 191544
Property Address: 350 and 460 West Schaumburg Road, Schaumburg, IL 60194

SCHEDULE A

1. Commitment Date: August 24, 2023 at 08:00 AM
2. Policy to be issued:
 - a. 2021 ALTA Owner's Policy
Proposed Insured: IL CCRC LLC
Proposed Amount of Insurance: \$100,000.00
The estate or interest to be insured: Fee Simple (as to Parcels 1 and 2) and Easement (as to Parcel 3)
 - b. 2021 ALTA Loan Policy
Proposed Insured: Lender with contractual obligations under a loan agreement with IL CCRC LLC.
Proposed Amount of Insurance: \$100,000.00
The estate or interest to be insured: Fee Simple (as to Parcels 1 and 2) and Easement (as to Parcel 3)
3. The estate or interest in the Land at the Commitment Date is: Fee Simple (as to Parcels 1 and 2) and Easement (as to Parcel 3).
4. The Title is, at the Commitment Date, vested in:
[Evangelical Retirement Homes of Greater Chicago, Inc. d/b/a Friendship Village of Schaumburg](#)
5. The Land is described as follows:

SEE SCHEDULE A, LEGAL DESCRIPTION ATTACHED

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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SCHEDULE A

(Continued)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

By: _____



Elliot Zaks
Authorized Officer or Agent
Madison Title Agency, LLC

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American Land Title Association

Commitment for Title Insurance

**SCHEDULE A
LEGAL DESCRIPTION**

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Schaumburg, County of Cook, State of Illinois.

PARCEL 1

BEING KNOWN AS Lot 1, in the Final Plat of Subdivision of Friendship Village Consolidation, recorded on September 10, 2003 in the Cook County records in Document No. [0325310046](#).

PARCEL 2

Lot 1 in Schaumburg Village Addition Subdivision, being a Subdivision of part of the Northeast Quarter of Section 21, Township 41 North, Range 10 East of the Third Principal Meridian, according to the plat thereof recorded December 5, as Document [1933906300](#), in Cook County, Illinois.

PARCEL 3

Stormwater Management and Drainage Easement for the benefit of Parcel 2, as created by Plat of Schaumburg Village Addition Subdivision, recorded December 5, 2019 as document [1933906300](#).

NOTE FOR INFORMATION: Being Parcel No(s). 07-22-100-026-0000 and 07-21-201-007-0000, of the City of Schaumburg, County of Cook.

SCHEDULE B, PART I
Requirements

All of the following Requirements must be met:

1. Pay the agreed amount for the estate or interest to be insured.
2. Pay the premiums, fees, and charges for the Policy to the Company.
3. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - a. Warranty Deed from Evangelical Retirement Homes of Greater Chicago, Inc. d/b/a Friendship Village of Schaumburg to IL CCRC LLC.
 - b. Mortgage from IL CCRC LLC to proposed lender.
4. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

NOTE: Company must be advised if entity to be insured (Proposed Purchaser and/or Proposed Lender) is classified as a Series LLC. Company reserves the right to raise further requirements if entity to be insured is a Series LLC.

5. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractors, sub-contractors, labor and materialmen are all paid; and have released of record all liens or notice of intent to perfect a lien for labor or material.

NOTE: COMPANY RESERVES THE RIGHT TO RAISE ADDITIONAL REQUIREMENTS OR EXCEPTIONS IF CONSTRUCTION IS ONGOING AT THE PROPERTY BEING CONTEMPLATED TO BE INSURED HEREIN.

UPON RECEIPT OF TITLE COMMITMENT PLEASE ADVISE IF THERE IS CONSTRUCTION CURRENTLY ONGOING AT THE PROPERTY.

6. Owner's Affidavit satisfactory to the Company should be furnished.
7. Mortgagor's Affidavit satisfactory to the Company should be furnished.

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Commitment for Title Insurance (07-01-2021)
Schedule BI



191544

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8. We should be provided with a notarized affidavit from all seller(s), purchaser(s), lessee (s), and any other parties holding an interest in the land establishing:

- (i) the identity of any broker(s), known to have an agreement with the affiant, or any party claiming by, through or under said affiant, relative to any interest in the land, and
- (ii) the amount of compensation due or to become due such broker(s), or
- (iii) certifying that there are no broker(s) with any lien, or right to a lien, under any existing agreement with a broker.

In the event that said affidavit(s) is not provided, then our policy(ies) when issued shall contain the following exception:

"Any lien, or right of lien, of a broker for compensation agreed upon by the broker and the broker's client or customer under the terms of any agreement for the purpose of buying, selling, leasing, financing, or otherwise conveying any interest in the land, under Public Act 87-779, S.H.A. Ch. 82 Paragraph 651."

9. Company should be furnished with either (a) an Affidavit from the Owner indicating that there is no property manager employed to manage the Land, or, (b) a Final Lien Waiver from the property manager acting on behalf of the Owner.
10. Property lying within Cook, Will, Kane or Peoria Counties in Illinois is subject to the Predatory Lending Database Program Act (765 ILCS 77/70 et seq.). In order to record any Insured Mortgage encumbering such property, a Certificate of Compliance or a Certificate of Exemption must be obtained at the time of closing. If the closing is not conducted by the Company, the appropriate certificate should be attached to the mortgage to be recorded.
11. The State of Illinois has enacted legislation that amends the Title Insurance Act (215 ILCS 155/ et al) to require that all parties of residential transactions, and non-residential real estate transactions of under \$2,000,000.00, to receive Closing Protection Letters. The legislation also comes with an amendment that establishes minimum charges for the issuance of the Closing Protection Letters.
For all refinance transactions these charges will apply:
Lender(s) - \$25.00; and Borrowers - \$50.00.
For all purchase transactions these charges will apply:
Lender(s) - \$25.00; Buyers - \$25.00; Sellers - \$50.00.
This legislation is effective January 1, 2011, for all transactions closed after December 31, 2010.

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12. NOTE: An amendment to the Title Insurance Act, 215 ILCS 155/26, took effect on January 1, 2010 requiring title companies to only accept good funds when closing on a transaction within the state. Please note the limitation on the funds we are allowed to disburse on;
 1. For amounts of \$50,000 or greater the funds must be either a wire, or a check issued by the United States or any political subdivision or a title insurance company check or collected funds.
 2. For amounts less than \$50,000 any of the above are acceptable in addition to cash, cashiers checks, certified checks, bank money orders, official bank checks, teller checks or a check drawn on the trust account of any licensed lawyer or real estate broker.
 3. Personal check or checks in the aggregate amount that do not exceed \$5,000 provided that the title company has reasonable grounds to believe that sufficient funds are available for withdrawal in the account upon which the check is drawn at the time of disbursement. (NOTE: For any personal check(s), please contact your local ORTIC office for approval.)
 4. Collected funds are funds that are deposited, finally settled, and credited to the title companies trust account.

This is only a summary of the act. Please review the law or contact your closer for any additional question or concerns.
13. The proposed Amount(s) of Insurance must be increased to the full value of the estate or interest being insured. When the final Amount(s) of Insurance are approved by the Company, the proposed Amount(s) of Insurance will be revised accordingly, and the underwriting rate for the policy or policies and endorsement charges will be calculated consistent therewith.
14. With respect to IL CCRC LLC, the Company requires for its review satisfactory copy of the "Articles of Organization," the Operating Agreement and the regulations of the limited liability company, any amendment thereof, a certificate of good standing, and satisfactory evidence of authority of the officers, managers, or members to execute the documents.
15. With respect to Evangelical Retirement Homes of Greater Chicago, Inc. d/b/a Friendship Village of Schaumburg, the Company requires for its review a copy of the articles of incorporation and bylaws, a satisfactory resolution of the Board of Directors authorizing the proposed transaction, Shareholders Resolution where applicable, and a Good Standing Certificate evidencing that the corporation is in good standing in the state of its incorporation. At the time the Company is furnished these items, the Company may make additional requirement or exceptions.

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16. Payment of all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.

Tax Information:

[Parcel No. 07-22-100-026-0000:](#)

1st Installment of Taxes for the year 2022 was paid on March 31, 2023 in the amount of \$379,561.62.

[Parcel No. 07-01-201-007-0000:](#)

1st Installment of Taxes for the year 2022 is exempt.

NOTE: The tax information supplied with this commitment has been furnished for informational purposes only, and should be verified with appropriate taxing authority(s). The Company makes no warranties, expressed or implied concerning the accuracy or reliability of this data.

17. Pay all Water and Sewer bills that are due and payable, also provide company with final reading of Water and Sewer bills. If there is no final Water and Sewer reading, either escrow will be taken at closing or company will take exception to same.

18. Record in the public records a release or satisfaction of the following (As to Parcel 1):

- a. Mortgage and Security Agreement made by Evangelical Retirement Homes of Greater Chicago, Incorporated, doing business as Friendship Village of Schaumburg in favor of Wells Fargo Bank, National Association, as Master Trustee dated July 15, 2005 and recorded on July 28, 2005 in the Cook County Records in Document No. [0520934043](#).

First Supplemental Mortgage and Security Agreement by and between Evangelical Retirement Homes of Greater Chicago, Incorporated, doing business as Friendship Village of Schaumburg and Wells Fargo Bank, National Association, as Master Trustee dated March 1, 2010 and recorded on March 22, 2010 in Document No. [1008110018](#).

Second Supplemental Mortgage and Security Agreement by and between Evangelical Retirement Homes of Greater Chicago, Incorporated, doing business as Friendship Village of Schaumburg and Wells Fargo Bank, National Association, as Master Trustee dated November 1, 2017 and recorded on November 16, 2017 in Document No. [1732034051](#).

Third Supplemental Mortgage and Security Agreement by and between Evangelical Retirement Homes of Greater Chicago, Incorporated, doing business as Friendship Village of Schaumburg and Wells Fargo Bank, National Association, as Master Trustee dated December 1, 2017 and recorded on December 29, 2017 in Document No. [1736345079](#).

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NOTE: If the above mortgage appears to be an open end, HELOC, revolving credit mortgage or secure future advances. Care should be taken to obtain an accurate pay-off figure, and the lender should be apprised that the loan will be paid in full and that the mortgage is to be satisfied of record. In addition, the mortgagor(s) must execute a document authorizing and directing the lender to close the account; terminate the line of credit; dishonor any checks drawn against same or deny the mortgagor(s) the ability to make withdrawals electronically or by credit card. This document must be returned to the lender along with the pay-off funds, even if the lender does not specifically require the same. If the mortgagor(s) draw funds by writing checks or using credit cards, the checkbook(s) or credit card(s) must be surrendered to the settlement agent or closing attorney and returned to the lender along with the pay-off funds. Neither a "zero balance" letter nor a HELOC "forgiveness letter" is an acceptable substitute for the procedures set forth above.

- b. Financing Statement between Evangelical Retirement Homes of Greater Chicago, Incorporated, doing business as Friendship Village of Schaumburg; (debtor), and Wells Fargo Bank, National Association, as Mortgagee; (secured party) recorded on July 28, 2005 in the Cook County Records in Document No. [0520934044](#).

Continuation of Financing Statement recorded on March 19, 2010 in Document No. [1007822101](#).

Continuation of Financing Statement recorded on June 3, 2015 in Document No. [1515429065](#).

Continuation of Financing Statement recorded on February 19, 2020 in Document No. [2005028022](#).

19. Record in the public records a release or satisfaction of the Mortgage and Security Agreement made by Evangelical Retirement Homes of Greater Chicago, Incorporated, doing business as Friendship Village of Schaumburg in favor of Wells Fargo Bank, National Association, as Master Trustee dated January 31, 2022 and recorded on June 9, 2022 in the Cook County Records in Document No. [2216004065](#).

NOTE: The above mortgage appears to be an open end, HELOC, revolving credit mortgage or secure future advances. Care should be taken to obtain an accurate pay-off figure, and the lender should be apprised that the loan will be paid in full and that the mortgage is to be satisfied of record. In addition, the mortgagor(s) must execute a document authorizing and directing the lender to close the account; terminate the line of credit; dishonor any checks drawn against same or deny the mortgagor(s) the ability to make withdrawals electronically or by credit card. This document must be returned to the lender along with the pay-off funds, even if the lender does not specifically require the same. If the mortgagor(s) draw funds by writing checks or using credit cards, the checkbook(s) or credit card(s) must be surrendered to the settlement agent or closing attorney and returned to the lender along with the pay-off funds. Neither a "zero balance" letter nor a HELOC "forgiveness letter" is an acceptable substitute for the procedures set forth above.

20. NO MORTGAGES WERE FOUND OF RECORD SINCE THE DATE OF THE VESTING DEED. SUBMIT SATISFACTORY EVIDENCE TO THE COMPANY THAT THERE ARE NO UNRECORDED MORTGAGES AFFECTING THE PREMISES INSURED HEREIN (As to Parcel 2).

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21. NOTE FOR INFORMATION: State UCC search has been ordered vs. Evangelical Retirement Homes of Greater Chicago, Inc. d/b/a Friendship Village of Schaumburg in the State of Illinois. Results are available under separate cover.
22. Plat Act Affidavit required to comply with Section 1 of the "Plat Act", Illinois Compiled Statutes 765 ILCS 205/1 et seq., when recording any conveyance of the land.
23. Bankruptcy filed as Case No. 1:2023bk07541 dated 06/09/2023 in the Illinois Federal Bankruptcy Court. The Company requires a discharge of this filing or an order to sell or refinance from the bankruptcy court.

Company reserves the right to add additional exceptions and/or requirements based on further documents submitted to this company related to the above.

24. The transaction contemplated by this Commitment for Title Insurance is subject to high liability approval by Old Republic National Title Insurance Company. Delivery of this Commitment for Title Insurance is not an obligation to issue the title policy(ies) contemplated hereby, if said high liability approval is not obtained.
25. Subject to receipt of a survey acceptable to this company.
26. As to Parcel 1: the legal description contained in Schedule A herein is a consolidation of the land described in the vesting deeds recorded in Document Nos. [29-67-765](#), [29-67-766](#), [31-62-606](#), [94636179](#), [94636180](#), [23458873](#), [2865093](#), [87352150](#), [87505823](#), [87616433](#), [95032226](#), [95032227](#), [95032228](#), [95032229](#), [96283811](#), [96283812](#), [96283813](#), [96452731](#), [98661698](#), [08158270](#), [99268515](#), [99447996](#), [99447997](#), [99501819](#), [99569374](#), [99673673](#), [00484071](#), and plat of vacation recorded in Document No. [0325310045](#), and was taken from Plat recorded in Document No. [0325310046](#). Company requires receipt of a current and accurate survey to confirm the legal description. Upon review of said survey, legal description may be amended and additional exceptions and/or requirements may be made.

NOTE: In order to insure additional easements as appurtenant, title company must conduct additional search work and surveyor may have to plot the appurtenant parcel. This takes time and incurs additional cost. Title company should be advised early on to avoid delays in closing.

27. NOTICE: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.

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NOTE FOR INFORMATIONAL PURPOSES ONLY: The last recorded transfer of the property described herein is as follows:

Evangelical Retirement Homes of Greater Chicago, Inc. d/b/a Friendship Village of Schaumburg by the following deeds:

AS TO PARCEL 1

Evangelical Retirement Homes of Greater Chicago, Inc. by Trustee's Deed A from Schaumburg State Bank, as trustee under the provisions of a deed or deeds in trust duly recorded and delivered to said company in pursuance of a trust agreement dated the 18th day of August 1970, and known as Trust Number 215 dated April 15, 1976 and recorded April 21, 1976 in the Cook County Records in Document No. [23458873](#).

NOTE: Deed description includes properties not contemplated to be insured herein.

Evangelical Retirement Homes of Greater Chicago, Inc. by Trustee's Deed B from Schaumburg State Bank, as trustee under the provisions of a deed or deeds in trust duly recorded and delivered to said company in pursuance of a trust agreement dated the 18th day of August 1970, and known as Trust Number 215 dated April 15, 1976 and recorded April 21, 1976 in the Cook County Records in Document No. [2865093](#).

NOTE: Deed description includes properties not contemplated to be insured herein.

Evangelical Retirement Homes of Greater Chicago, Incorporated by Quit Claim Deed from Life Care Services Corporation, f/k/a Christian Home Services, Inc. dated September 14, 1977 and recorded on September 15, 1977 in Document No. [29-67-765](#).

Evangelical Retirement Homes of Greater Chicago, Incorporated by Indenture from Schaumburg State Bank dated August 8, 1977 and recorded in Document No. [29-67-766](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Herbert O. Schmisser and Sandra Schmisser dated April 15, 1980 and recorded May 28, 1980 in the Cook County Records in Document No. [31-62-606](#).

Evangelical Retirement Homes of Greater Chicago, Incorporated by Certificate of Title dated December 27, 1978 and recorded on July 21, 1994 in Document No. [94636179](#).

Evangelical Retirement Homes of Greater Chicago, Incorporated by Certificate of Title dated July 1, 1980 and recorded on July 21, 1994 in Document No. [94636180](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by deed from LaSalle National Bank, as Trustee under the provisions of a Deed or Deeds of Trust, duly recorded and delivered to said Bank in pursuance of a trust agreement dated 5th day of November, 1976, and known as Trust Number 46657 dated June 3, 1987 and recorded June 26, 1987 in the Cook County Records in Document No. [87352150](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Trustee's Deed from Palatine National Bank,

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as Trustee under the provisions of a deed or deeds in trust, duly recorded and delivered to said company in pursuance of a trust agreement dated the 16th day of September, 1983 and known as Trust Number 4146 dated August 24, 1987 and recorded September 16, 1987 in the Cook County Records in Document No. [87505823](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Donald Cornell and Loretta Cornell dated November 12, 1987 and recorded November 17, 1987 in the Cook County Records in Document No. [87616433](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Terry S. Hilgeman dated December 27, 1994 and recorded January 13, 1994 in the Cook County Records in Document No. [95032226](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Pauline E. Bertoli dated December 27, 1994 and recorded January 13, 1995 in the Cook County Records in Document No. [95032227](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Adeline Lint dated December 27, 1994 and recorded January 13, 1995 in the Cook County Records in Document No. [95032228](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Clifford Chantrey dated December 29, 1994 and recorded January 13, 1995 in the Cook County Records in Document No. [95032229](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Stephen Nomikoudis and Sharon A. Nomikoudis, his wife, a/k/a Stephen Nomikoudas and Sharon A. Nomikoudas, his wife dated April 9, 1996 and recorded April 16, 1996 in the Cook County Records in Document No. [96283811](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Peter A. Wydra and Denise M. Wydra, his wife dated April 9, 1996 and recorded April 16, 1996 in the Cook County Records in Document No. [96283812](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Harold Fred Biarnesen as trustee of the Harold Fred Biarnesen Trust Agreement dated January 23, 1996 dated April 9, 1996 and recorded April 16, 1996 in the Cook County Records in Document No. [96283813](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Carmen Geanto and Virginia Geanto, his wife dated April 9, 1996 and recorded June 13, 1996 in the Cook County Records in Document No. [96452731](#).

Evangelical Retirement Homes of Greater Illinois d/b/a Friendship Village of Schaumburg by Warranty Deed from Randy J. Shuttle and Maryann Shuttle, husband and wife dated July 23, 1998 and recorded July 29, 1998 in the Cook County Records in Document No. [98661698](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Trustee's Deed from Harold Fred Biarnesen, not personally but as Trustee under the provisions of a deed in trust duly recorded and delivered to said trustee in pursuance of a certain trust agreement dated January 23, 1996 and know as the Harold Fred

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Biarnesen Trust dated December 18, 1998 and recorded December 21, 1998 in the Cook County Records in Document No. [08158270](#).

Evangelical Retirement Homes of Greater Illinois d/b/a Friendship Village of Schaumburg by Warranty Deed from Daniel E. Dworzynski married to Jennifer Hill dated January 28, 1999 and recorded March 19, 1999 in the Cook County Records in Document No. [99268515](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Adeline Lint dated April 28, 1999 and recorded May 10, 1999 in the Cook County Records in Document No. [99447996](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Pauline E. Bertoli dated April 28, 1999 and recorded May 10, 1999 in the Cook County Records in Document No. [99447997](#).

Evangelical Retirement Homes of Greater Chicago, Inc. by Warranty Deed from Peter A. Wydra and Denise M. Wydra, his wife dated May 20, 1999 and recorded May 25, 1999 in the Cook County Records in Document No. [99501819](#).

Evangelical Retirement Homes of Greater Chicago, Inc., d/b/a Friendship Village of Schaumburg by Warranty Deed from Clifford Chantrey dated June 11, 1999 and recorded June 14, 1999 in the Cook County Records in Document No. [99569374](#).

Evangelical Retirement Homes of Greater Chicago, Inc., d/b/a Friendship Village of Schaumburg by Warranty Deed from Martin S. Merkau and Donna Merkau dated July 9, 1999 and recorded July 14, 1999 in the Cook County Records in Document No. [99673673](#).

Evangelical Retirement Homes of Greater Chicago, Inc., d/b/a Friendship Village of Schaumburg by Warranty Deed from Melodee Chantrey Eggert F/K/A Melodee Chantrey, sole heir of Howard L. Isaacson and Hazel A. Isaacson, both deceased dated June 7, 2000 and recorded June 29, 2000 in the Cook County Records in Document No. [00484071](#).

Friendship Village of Schumburg by Plat of Vacation recorded on September 10, 2003 in Document No. [0325310045](#).

AS TO PARCEL 2

Evangelical Retirement Homes of Greater Chicago, Inc., d/b/a Friendship Village of Schaumburg by Warranty Deed from the Village of Schaumburg dated November 6, 2019 and recorded on December 5, 2019 in Document No. [1933906301](#).

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SCHEDULE B, PART II Exceptions

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.
2. Rights or claims of parties other than Insured in actual possession of any or all of the property.
3. Any lien, mechanic's lien or materialman's lien or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

NOTE: In order for this exception to be intentionally deleted from the final policy company must be in receipt of either a satisfactory title affidavit certifying that no labor, material or services have been provided within 180 days prior to closing or receipt of satisfactory escrow/indemnification agreement to be held by the title company pending completion of the improvements disclosed in the title affidavit.

4. Public or private easements, or claims of easements, not shown by the public record.
5. Rights of tenants as tenants only under unrecorded leases.
6. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
7. No insurance is afforded as to the exact amount of acreage contained in the property described herein.
8. Taxes which are due and payable subsequent to the date of policy.
9. (As to Parcel 2) At the time of the issuance of this commitment/policy, the insured property was not assessed for tax purposes, however, this commitment/policy does not insure against future assessments, or any and all back assessments for taxes that may be made by the city and/or county assessors subsequent to the date of this commitment/policy.
10. Rights of residents of the facility on the Land pursuant to the terms of unrecorded residency agreements, if any.

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11. Restrictions on the uses, occupancy and ownership of the Land as established under 42 U.S.C. § 291 et seq. or any similar laws, and rights of the United States pursuant thereto to recover its contribution to construction costs on violation.

NOTE: Subject property is not found on the Hill-Burton Obligated Facilities List.
12. Rights of others, including utilities, in and to the vacated portion of Lincoln Street, Library Lane and Library Court, as set forth in Plat of Vacation recorded September 10, 2003 in Document No. [0325310045](#).
13. Any lien, or right to a lien in favor of the property manager employed to manage the Land.
14. No title is insured to any land lying in the bed of any road, abutting, adjoining, passing through or crossing the premises herein.
15. Grant in favor of Northern Illinois Gas Company recorded on February 11, 1963 in Document No. [18718001](#).
16. Grant of Easement granted to Comcast of Illinois XI, LLC recorded on May 29, 2007 in Document No. [0714918068](#).
17. Grant of Easement granted to Comcast Cable Communications Management, LLC recorded on November 3, 2020 in Document No. [2030604035](#).
18. Grant of Easement granted to Comcast Cable Communications Management, LLC recorded on November 3, 2020 in Document No. [2030604036](#).
19. Watershed Management Permit No. 19-318 recorded on August 16, 2022 in Document No. [2222815066](#).
20. All conditions, matters, easements and setback lines as set forth on plat recorded in Plat Document No. [0325310046](#).
21. All conditions, matters, easements and setback lines as set forth on plat recorded in Plat Document No. [0325310047](#).
22. All conditions, matters, easements and setback lines as set forth on plat recorded in Plat Document No. [LR2829998](#).

NOTE: In the event that the Commitment Jacket is not attached hereto, all of the terms, conditions and provisions contained in said Jacket are incorporated herein. The Commitment Jacket is available for inspection at any Company office.

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ALTA Commitment for Title Insurance (07-01-2021)
 Schedule BII



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