

**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

**FOURTH AMENDED DISCLOSURE STATEMENT WITH  
RESPECT TO DEBTOR'S FOURTH AMENDED CHAPTER  
11 PLAN OF LIQUIDATION, DATED FEBRUARY 29, 2024**

Dated: February 29, 2024

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THE DEBTOR SUPPORTS THE CONFIRMATION OF THE PLAN AND RECOMMENDS THAT ALL HOLDERS OF CLAIMS AND INTERESTS WHOSE VOTES ARE BEING SOLICITED ACCEPT THE PLAN.

**EXHIBITS**

1. Debtor's Fourth Amended Chapter 11 Plan of Liquidation, Dated February 29, 2024
2. Liquidation Analysis
3. FSO Settlement and Contribution Agreement Term Sheet
4. Bond Trustee Letter regarding Potential Claims
5. Debtor's Responsive Letter to Bond Trustee regarding Potential Claims
6. UCC Letter regarding Potential Claims

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## I. EXECUTIVE SUMMARY

In compliance with Local Bankruptcy Rule 3016-1, the Debtor submits this Executive Summary, which provides a general overview of this disclosure statement (as may be amended, supplemented, or otherwise modified from time to time, the “**Disclosure Statement**”) and the material terms of the *Debtor’s Fourth Amended Chapter 11 Plan of Liquidation Dated February 29, 2024* [Docket No. 570] (as may be amended, supplemented, or otherwise modified from time to time, the “**Plan**”), which Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg (“**FVS**” or the “**Debtor**”) will seek to have confirmed by the Bankruptcy Court for the Northern District of Illinois (the “**Bankruptcy Court**”) pursuant to Bankruptcy Code section 1129. A copy of the Plan is attached hereto as Exhibit 1. The Debtor urges all parties to read this Executive Summary in conjunction with the remainder of this Disclosure Statement and the Plan. The rules of interpretation set forth in Section 1 of the Plan shall govern the interpretation of this Disclosure Statement.<sup>1</sup>

A copy of the Plan and this Disclosure Statement and all other filed documents related to the Chapter 11 Case are available for free on the Case Website at <https://cases.stretto.com/FVS/>.

### A. Introduction

The Debtor is a private Illinois not-for-profit corporation that, as of the Petition Date, owned and operated a continuing care retirement community (“**CCRC**”) in Schaumburg, Illinois. The community (the “**Community**”), which is the largest CCRC in Illinois, is known as Friendship Village of Schaumburg and is currently home to approximately 600 residents.

Prior to the Petition Date, the Debtor experienced liquidity constraints due to several factors. In addition to depressed occupancy rates, due to the impact of COVID-19, the Debtor’s revenues were insufficient to reasonably sustain the Debtor’s debt. As a result, with the consent of the Bond Trustee, the Debtor attempted to accomplish a transaction outside of bankruptcy, ultimately engaging in a marketing and sale process. After months of negotiating with a potential purchaser, negotiations ceased, leaving the Debtor with no other option than to seek protection under chapter 11 of the Bankruptcy Code. On June 9, 2023, the Debtor commenced the Chapter 11 Case seeking relief under Chapter 11. On October 18, 2023, the Debtor filed its initial Chapter 11 plan and disclosure statement with respect thereto, each of which the Debtor amended on November 14, 2023. *See* Docket Nos. 277, 278, 336, and 337. Thereafter, certain formal and informal objections to the November 14<sup>th</sup> disclosure statement were filed and the Debtor began to work with objecting parties to resolve such objections. Additionally, settlement discussions among FSO, the Debtor, and the Committee, which had been ongoing during the Chapter 11 Case, resulted in the parties reaching a resolution that provides benefits for all stakeholders, including a \$1 million contribution to the Debtor’s Estate, a \$1.5 million contribution to the Debtor’s Former Residents and continued support for the Debtor’s Current Residents. On January 17, 2024, the Debtor filed second amended versions of the Plan and Disclosure Statement to incorporate the terms of the FSO Settlement and Contribution Agreement Term Sheet and to address certain objections to the November 14<sup>th</sup> disclosure statement. *See* Docket Nos. 478, 479. On February 14, 2024, the UST

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan, unless otherwise provided.

filed the sole objection to the second amended Disclosure Statement. Accordingly, the Debtor files the Plan and this Disclosure Statement, which, among other things, addresses certain of issues raised in the UST's objection.

The overarching goal of the Chapter 11 Case was to market the Community and procure a buyer to provide maximum recovery for creditors while allowing Residents to continue to reside in their homes without jeopardizing the quality of service and care received. As discussed below, the Debtor's sale process was successful and the Sale Closing has occurred. As a result, Residents continue to reside at the Community and the Debtor has Cash and sale proceeds available for distribution to creditors of the Debtor's estate pursuant to the terms of the Plan. The Debtor will use available Cash, including, without limitation, proceeds obtained through multiple sales of the Debtor's Assets, including the Huntley Property, to, *inter alia*: (i) satisfy Unclassified Claims, including a portion of the DIP Facility Claims; (ii) satisfy cure obligations, if any; (iii) repay secured creditors of the Debtor; and (iv) fund the Unsecured Creditor Trust to be formed for the benefit 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), who will receive their Pro Rata share of any Unsecured Creditor Trust recovery. Current Residents who had modified Residency Agreements assumed and assigned to the Purchaser, pursuant to the APA and Sale Order, no longer have claims against the Estate arising under applicable Residency Agreements and, thus, cannot recover from the Unsecured Creditor Trust.

The Plan will establish an Unsecured Creditor Trust, into which certain assets of the Debtor, including the Buyer Former Resident Contribution and certain potential causes of action, the Retained Causes of Action, will be transferred. The Unsecured Creditor Trustee, who will be identified through the Plan Supplement, will be authorized to, among other things, investigate, prosecute and liquidate the Unsecured Creditor Trust Assets in accordance with the terms and conditions of the Plan and the Unsecured Creditor Trust Agreement, which will be included in the Plan Supplement.

The Plan also includes a settlement of all potential Estate and Resident claims and/or Claims against FSO and its affiliates, including the Debtor and related directors and officers, in exchange for FSO's agreement to make certain contributions described more fully below and in the FSO Settlement and Contribution Agreement Term Sheet attached hereto as Exhibit 3. In connection with the FSO Settlement and Contribution Agreement, the Plan will also establish a Former Residents Trust that will be funded by a Cash contribution of \$1,500,000 contributed by FSO for the purpose of providing additional recovery to Former Residents who consent to the releases under the Plan by not electing to Opt Out of the releases set forth under the Plan.

## **B. Sale Transactions**

The Plan is a liquidating Chapter 11 plan based, primarily, on the sale of substantially all the Debtor's Assets to the Purchaser, free and clear of all Liens, Claims, encumbrances, or interests, as well as a separate sale of real estate to The Prime Group, Inc., or its designee ("**Prime Group**"). With respect to the sale to Purchaser, the transaction was the result of a sale process that was approved by the Bid Procedures Order and resulted in the Stalking Horse Bid, with a cash purchase price of approximately \$33,000,000 with additional future financial and other

commitments to Participating Current Residents (who consent to the modification of their Residency Agreements to be assumed and assigned to the Purchaser). As required by the Bid Procedures Order, on September 15, 2023, the Debtor provided notice of the Stalking Horse Bid that was subject to higher and better bids to be received by the Overbid Deadline of October 16, 2023. An Auction was conducted at the offices of Polsinelli PC on October 20, 2023 and such auction, which was adjourned, ultimately closed on October 25, 2023 after the Debtor announced IL CCRC LLC as the winning bidder (the “**Winning Bidder**”). The transaction, reflected in the form of asset purchase agreement filed on October 26, 2023, provided the Debtor and its estate with more than \$35,500,000 in Cash consideration, not including \$2,000,000 to be set aside for former residents and payment of accrued paid time off obligations in the amount of approximately \$626,000. On November 8, 2023, the Bankruptcy Court conducted the Sale Hearing and, following the hearing, approved the sale transaction and entered the sale order on November 22, 2023 [Docket No. 365] (the “**Sale Order**”). Since the Sale Closing, the Estate has held all Net Sale Proceeds to be distributed as set forth in the Plan, subject to approval of the Bankruptcy Court.

Additionally, the Debtor sold the Huntley Property to Prime Group for a purchase price of \$450,000, as described more fully in the approved PSA and below. The net sale proceeds not subject to any secured liens will be distributed pursuant to the Plan in accordance with applicable provisions of the Bankruptcy Code.

#### **C. Assumption of Current Resident Modified Residency Agreements**

As a result of the sale of substantially all of the Debtor’s Assets to the Purchaser, the Community remains an operating CCRC, and Current Residents were provided with the opportunity to continue to reside at the Community and to participate in the Current Resident Entrance Fee Program. In connection therewith, pursuant to the terms of the APA and the Sale Order, the Debtor assumed and assigned to Purchaser modified addenda with respect to all Residency Agreements between the Debtor and Residents residing at the Community on the Closing Date; *provided, however*, that any Resident who may have elected not to sign an addendum to the Residency Agreement shall not be permitted to participate in the program and such Residency Agreement is rejected under the Sale Order. Accordingly, through the sale and the Plan, the Debtor has resolved approximately \$77 million in refund obligations to current residents.

#### **D. FSO Settlement and Contribution Agreement**

FSO, the Debtor, and the Committee, after extensive good faith negotiations, have reached an agreement, the terms of which are set forth in the FSO Settlement and Contribution Term Sheet attached hereto as Exhibit 3, and prior to Confirmation, the parties will execute the FSO Settlement and Contribution Agreement, which shall be included in the Plan Supplement(s). As set forth in Exhibit 3, in exchange for releases of any and all claims to FSO, FSO agrees to: (i) waive and forgive \$1,000,000 of the Debtor’s obligation to repay and satisfy the DIP Facility Claims (the “**Partial DIP Waiver**”); (ii) contribute Cash of \$1,500,000 (the “**FSO Former Resident Contribution**”) to fund a trust (the “**Former Residents Trust**”) to be formed for the benefit of the Debtor’s former residents who are owed entrance fee refunds by the Debtor as of the effective date of the Plan and do not Opt Out of the releases under Section 8 of the Plan (“**Former Residents Trust Beneficiaries**”), with the FSO Former Resident Contribution to be distributed on a Pro Rata basis to Former Residents Trust Beneficiaries in accordance with the terms of a trust agreement,

that shall be acceptable to FSO and the Committee and shall be executed on or before the Effective Date (the “**Former Residents Trust Agreement**”); and (iii) for the benefit of Current Residents, to amend and restate the organizational documents for FSO and the FSO Foundation so that both entities, and their respective net assets, are effectively combined into FSO with an amended and restated mission to support current residents of the Community, including but not limited to benevolent care support.

As set forth below, the Bond Trustee has asserted that monies used by FSO to fund the DIP Facility, i.e. Employee Refund Tax Credits (“**ERTC**”), that were received by FSO are assets of the Debtor.<sup>2</sup> The Bond Trustee further asserts that, if the Court (i) determines that the ERTC funds are estate assets, (ii) orders turnover of such funds to the Debtor’s estate, and (iii) avoids the DIP Facility, then the FSO Settlement and Contribution Agreement, including the releases provided to FSO, will be nullified. The Debtor acknowledges that the Plan, as proposed, cannot be confirmed if the FSO Settlement and Contribution Agreement is not approved by the Court.

As the FSO Settlement and Contribution Agreement Term Sheet reflects, this resolution, provides an additional, material recovery to Current and Former Residents who agree to grant the releases described in such Term Sheet and do not elect to Opt Out of releases set forth under Section 8 of the Plan. For the avoidance of doubt, as stated above and as set forth in the definition of “Released Parties,”<sup>3</sup> in exchange for the contributions made by FSO, the Debtor, FSO and the directors and officers of each entity shall be Released Parties under the Plan, and releases shall be

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<sup>2</sup> To date, FSO has received approximately \$7.6 million in ERTC funds attributable to FSO’s employees that provided services to the Debtor. The Bond Trustee’s allegations concerning such funds and related potential claims are discussed more fully below.

<sup>3</sup> For the avoidance of doubt, Released Parties as used herein shall have the meaning ascribed to it under Section 1.146 of the Plan, which is as follows: “*Released Parties*” means (i) the Debtor, (ii) the Liquidating Debtor, (iii) FSO, and (iv) with respect to each of the foregoing Entities in clauses (i) through (iii), such Entity and its current and former predecessors, successors and assigns, subsidiaries, affiliates (which shall include, without limitation, Friendship Village of Mill Creek d/b/a GreenFields of Geneva) and all of their respective current and former officers (which shall include, without limitation, Arnab Bagchi, Mike Flynn, Benjamin Gilchrist, Patricia Mash, Stephen Yenchek, Richard Zelinski, and Mark Zullo), directors (which shall include, without limitation, Ron Ahlman, Brad Barrie, Bill Bowne, Chuck Cassel, Tom Castronovo, Clark Delanois, Kathy Gilmer, Bill Powell, Kathleen Rivera, Geoff Roehll, Paul Schaffhausen, Jean Schlinkmann, Mary Sheahen, Connie Shoemake, Steve Smith, Cathie Tardy, Duane Tyler, Loren Trimble, Jan Tucker, and Stephen Yenchek), principals, members, managers, employees, medical professionals, attorneys (which shall include, without limitation, Atlas & Leviton; Cooley LLP; Dopkelaw LLC; Duane Morris LLP; Frost Brown Todd LLP; Greenberg Traurig, LLP; The Leviton Law Firm, LTD; Maslon LLP; McCarter & English, LLP; McDermott Will & Emery LLP; McVey & Parsky LLC; Polsinelli PC; Schiff Hardin LLP; Seyfarth Shaw LLP; and Smith, Hemmesch, Burke & Kaczy), advisors, accountants (which shall include, without limitation, CliftonLarsonAllen LLP), financial advisors (which shall include, without limitation, Wyse Advisors LLC), brokers (which shall include, without limitation, Avison Young - Chicago, LLC; Continuum Advisors LLC; and Grandbridge Real Estate Capital LLC), investment bankers (which shall include, without limitation, B.C. Ziegler and Company), consultants (which shall include, without limitation, American Arbitration Association; ARCH Consultants, Ltd.; Arthur J. Gallagher Management Services, Inc.; Attane, formerly known as GlynnDevins; A.V. Powell & Associates LLC; Davis Harrison Dion, Inc.; EBI Consulting; Frederick Schutz; Ivy Marketing Group, Inc.; L2 Services, LLC; Love & Company; The Loyola Group; O’Brien & Associates, Inc.; Pearl Creek Advisors, LLC; Portage Point Partners, LLC; Senior Living Valuation Services, Inc.; Sentinel Technologies, Inc.; Stretto, Inc.; and TMI Trust Company), representatives, and management companies. To the extent there is any inconsistency between the definition as stated herein and under the Plan, the Plan (as may be amended, modified, and/or supplemented) shall control and govern.

of any and all claims, including, without limitation, those described or referenced in the UCC Letter and the Bond Trustee Letter.

***Residents who believe they have valuable claims against any of the Released Parties may elect to Opt Out of the releases under Section 8, and they will be permitted to retain such claims but will not be permitted to participate in the benefits of the FSO Settlement and Contribution Agreement.***

**E. Former Residents Trust**

Upon the Effective Date, the Former Residents Trust will be formed. The Residents Trust shall be established for the purposes of receiving (i) the FSO Former Resident Contribution to be contributed by FSO; and (ii) the right to enforce the terms of the FSO Settlement and Contribution Agreement (collectively, with any earnings on deposits, the “**Residents Trust Assets**”); and making distributions to the Former Residents Trust Beneficiaries in accordance with the terms of the Plan and that certain Former Residents Trust Agreement, between the Committee and FSO, which will be included in the Plan Supplement.

The Former Residents Trust Trustee will act, in a fiduciary capacity, for the benefit of the Former Residents Trust Beneficiaries, which will include Former Residents who do not elect to Opt Out of the releases under the Plan and, thus, will be entitled to receive distributions from the Former Residents Trust in accordance with the terms of the Plan and the Former Residents Trust Agreement.

**F. Unsecured Creditor Trust**

Upon the Effective Date, an Unsecured Creditor Trust will be formed, into which various Assets of the Debtor, including certain Retained Causes of Action, shall be transferred. The Unsecured Creditor Trust shall be established for the purposes of: (i) liquidating any non-Cash Unsecured Creditor Trust Assets; (ii) maximizing recovery of the Unsecured Creditor Trust Assets for the benefit of the holders of Unsecured Creditor Trust Interests; (iii) distributing the proceeds of the Unsecured Creditor Trust Assets to holders of Unsecured Creditor Trust Interests in accordance with the Plan and the Unsecured Creditor Trust agreement; (iv) prosecuting or otherwise resolving the Retained Causes of Action for the benefit of holders of Unsecured Creditor Trust Interests; and (v) winding down the Chapter 11 Case, including, without limitation (a) distributing the Buyer Former Resident Contribution to Former Residents on a Pro Rata basis in accordance with the Plan and (b) evaluating and potentially objecting to and resolving disputed claims, as provided in the Plan and the Unsecured Creditor Trust Agreement.

**G. Entrance Fee Escrow**

As of the date hereof, the Entrance Fee Escrow, which is maintained by the Debtor for the benefit of certain residents, holds approximately \$620,000\$ in funds that will be disbursed in accordance with the terms of the Escrow Agreement and Option Agreements. The Debtor has begun and will continue to cooperate and work with Residents and the Escrow Agent to cause the Escrow Agent to disburse the funds from the Entrance Fee Escrow, after expense, to return deposits and Entrance Fees to Residents irrespective of whether such Resident elects or elected to continue to reside at the Community after the Sale Closing.

## **H. Purpose of this Disclosure Statement**

The Debtor has prepared this Disclosure Statement as required by Bankruptcy Code section 1125 and Bankruptcy Rule 3016(c). It is being distributed to assist Holders in evaluating the feasibility of the Plan, the treatment of Claims and Interests under the Plan, and whether the Plan satisfies the requirements for Confirmation set forth under Bankruptcy Code section 1129. The purpose of this Disclosure Statement is to assist those entitled to vote on the Plan to make an informed judgment when choosing whether to accept or reject the Plan.

This Disclosure Statement describes the background of the Debtor and the significant events leading up to the filing of the Chapter 11 Case. It also summarizes the Plan, which divides Claims and Interests into Classes and provides for the treatment of Allowed Claims and Interests.

**THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION WITH RESPECT TO THE MERITS OF THE PLAN. ALL CREDITORS ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS EXHIBITS CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE TO ACCEPT OR REJECT THE PLAN.**

The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. To the extent that the information provided in this Disclosure Statement and the Plan (including any Plan Supplements) conflict, the terms of the Plan (including any Plan Supplement(s)) will control.

## **I. The Chapter 11 Plan of Liquidation**

### **(1) Purpose and Effect of the Plan**

Chapter 11 allows debtors to reorganize or liquidate and wind up their affairs for the benefit of debtors and their creditors. Upon the commencement of a Chapter 11 case, an estate is created comprised of all the legal and equitable interests of a debtor as of the date the petition is filed, which typically remain in control of the debtor as a debtor-in-possession.

Pursuant to Bankruptcy Code section 362, the filing of a bankruptcy petition imposes an automatic stay of all attempts by creditors or third parties to collect or enforce prepetition claims against a debtor or otherwise interfere with its property or business, unless relief from the automatic stay is obtained from the bankruptcy court.

The Bankruptcy Code is designed to encourage the parties-in-interest in a Chapter 11 proceeding to negotiate the terms of a Chapter 11 plan so that it may be confirmed. A Chapter 11 plan is the vehicle for satisfying or otherwise addressing all claims against and interests in the debtor. Confirmation of a Chapter 11 plan makes it binding on a debtor and all of its creditors and the prior obligations owed by the debtor to such parties are compromised in exchange for the obligations specified in the plan.

## **(2) Feasibility of the Plan**

Pursuant to Bankruptcy Code section 1129(a)(11), among other things, the Bankruptcy Court must determine that Confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Debtor or any successors to the Debtor under the Plan. This condition is often referred to as the “feasibility” of the Plan. The Debtor believes the Plan satisfies this requirement, to the extent the standard applies to a Chapter 11 plan of liquidation.

Here, the Plan provides for the liquidation all substantially all of the Debtor’s Assets and for the distribution of all Assets. Accordingly, all Plan obligations will be satisfied without the need for further reorganization of the Debtor. However, if the FSO Settlement and Contribution Agreement is not approved by the Court, the Plan, as proposed, will not be feasible.

## **(3) Best Interests of Creditors**

Bankruptcy Code section 1129(a)(7) requires, as a condition to confirmation of a Chapter 11 plan, that each holder of impaired claims or interests receive property with a value not less than the amount such holder(s) would receive in a liquidation carried out under chapter 7 of the Bankruptcy Code as of the Effective Date. *See, e.g., In re Lason, Inc.*, 300 B.R. 227 (Bankr. D. Del. 2003) (“[T]he Court must contrive a hypothetical chapter 7 liquidation conducted on the effective date of the plan.”); *In re Genesis Health Ventures Inc.*, 266 B.R. 591, 610 (D. Del. 2001) (Section 1129(a)(7)(A)(iii) requires a showing “that the holders of claims or interests comprising an impaired class either unanimously accept the plan, or receiver, in terms of present value, an amount not less than they would receive in a liquidation of the debtor under Chapter 7 occurring on the plan’s effective date.”). Thus, The Debtor believes the Plan satisfies this standard because, among other things, the recoveries expected to be available to Holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation scenario as of the Effective Date (or any other date in the Chapter 11 Case).

In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor’s assets and to make distributions to creditors in accordance with the priorities established by the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any assets remain in the bankruptcy estate after satisfaction of secured creditors’ claims from their collateral, administrative expenses are next to be paid. Unsecured creditors are paid from any remaining liquidation proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all creditors are paid in full.

Substantially all the Debtor’s Assets have already been sold and transferred to the Purchaser under the Sale Order. Although a liquidation under chapter 7 of the Bankruptcy Code would have the same goal, the Plan provides the best source of recovery for several reasons. First, it is well established that debtors, and their creditors, recover significantly more from a marketing and sale process under Chapter 11 than from a liquidation sale under chapter 7 of the Bankruptcy Code. Second, chapter 7 liquidation would not provide for a timely distribution (and likely no distribution at all) for certain creditors. Third, distributions would likely be smaller because of

reduced sale proceeds through a subsequent non-going concern sale and increased fees and expenses incurred in a liquidation under chapter 7 of the Bankruptcy Code.

As of this filing, there are no alternative plans available to the Debtor. As a result of the occurrence of the Sale Closing, the Debtor is no longer a going concern enterprise and has few assets remaining.<sup>4</sup> Therefore, the Debtor believes that the Plan provides the greatest possible value to all stakeholders under the circumstances and has the greatest chance to be confirmed and consummated.

**(4) Analysis of Recoveries to Holders of Claims and Interests under the Plan and Recommendation of the Debtor**

After a careful review of the Debtor's business operations and liquidity, its status as an ongoing business prior to the Sale Closing, its current transitional state post-Sale Closing, and estimated recoveries to creditors in an alternative reorganization scenario, the Debtor concluded that it will maximize recoveries to its stakeholders through the Plan, which includes, among other things, the FSO Settlement and Contribution Agreement, the establishment of the Former Residents Trust and the Unsecured Creditor Trust for the benefit of Residents and other unsecured creditors. The Debtor's business and Assets, prior to the Sale Closing, were of significant value that the Debtor was able to realize through the Chapter 11 sale process and the Sale Closing. The proceeds obtained through the Sale Closing and the sale of the Huntley Property will be distributed pursuant to the Plan. As set forth more fully below, the Debtor believes the Plan provides the best recoveries possible for the Debtor's stakeholders and the Debtor recommends that, if you are entitled to vote, you vote to accept the Plan.

The classified claimants who may recover Distributions are Holders of Claims in Classes 1, 2, 3, 4, 5A, 5B, and 6. Thus, Cash available following the closing of the sales of the Debtor's Assets and payment of any unpaid Allowed Administrative Expense Claims, Priority Tax Claims, Professional Fee Claims, DIP Facility Claims, and U.S. Trustee Fees, shall be distributed to secured creditors, in accordance with their senior secured status vis a vis one another, on account of Allowed Class 1, 2, and 3 Claims; *provided, however*, that the Debtor is unaware of any Class 1 Claims that may be Allowed and, therefore, estimates that no payment will be made to any Holder of a Class 1 Claim.

**(5) Classification and Treatment of Claims and Interests Under the Plan**

Section 3 of the Plan describes the Classes of Claims and Interests and their treatment under the Plan, which is also summarized herein. Current Residents who elected to continue to reside at the Community had their Residency Agreements assumed, on modified terms, and therefore have no remaining Claims against the Estate, and therefore, Current Residents are not classified under the Plan. Allowed Claims (other than Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, DIP Facility Claims, and U.S. Trustee Fees) are placed in the following Classes and will receive the following treatment under the Plan:

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<sup>4</sup> Such assets include, without limitation, Cash, Cash Collateral, Accounts Receivable, and Medicare and/or Medicaid collections.

***Summary of Classification and Treatment of Claims Under the Plan***

| <b>Class</b>                              | <b>Estimated Allowed Claims<sup>5</sup></b> | <b>Treatment &amp; Voting Rights</b> | <b>Estimated Recovery<sup>6</sup></b> |
|-------------------------------------------|---------------------------------------------|--------------------------------------|---------------------------------------|
| Class 1 – Other Priority Claims           | \$481,000                                   | Unimpaired, deemed to accept         | 100%                                  |
| Class 2 – Bond Claims                     | \$131,600,000 <sup>7</sup>                  | Impaired, entitled to vote           | 23.3%                                 |
| Class 3 – Other Secured Claims            | \$40,000                                    | Unimpaired, deemed to accept         | 100%                                  |
| Class 4 – Deficiency Claims               | TBD <sup>8</sup>                            | Impaired, entitled to vote           | Unknown%                              |
| Class 5A – Former Residents Claims        | \$20,000,000                                | Impaired, entitled to vote           | 10.0% - 17.5% <sup>9</sup>            |
| Class 5B – Opt Out Former Resident Claims | \$0.00                                      | Impaired, entitled to vote           | 0.0% <sup>10</sup>                    |

<sup>5</sup> These amounts represent estimated Allowed Claims, and do not represent amounts actually asserted by creditors in Proofs of Claim or otherwise. The Debtor has not completed its review and analysis of all Claims in the Chapter 11 Case, and objections to such Claims have not been Filed and/or fully litigated and may continue following the Effective Date. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

<sup>6</sup> The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims in the Chapter 11 Case. As set forth above, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are Allowed by the Bankruptcy Court.

<sup>7</sup> The extent to which the Bond Trustee's Class 2 Claim is secured has not been determined. The Purchased Assets included assets not encumbered by the Bond Trustee's lien or interest. Thus, the Debtor reserves the right to dispute the amount of the Bond Claim.

<sup>8</sup> The Deficiency Claim of the Bond Trustee will be determined by the amount of Net Sale Proceeds available for Distribution to Class 2 Claims. The Deficiency Claim of the Other Secured Claim Holder (Leaf Capital Funding, LLC) is estimated at \$62,327.79 as the Debtor estimates the value of the vehicle securing the debt has a fair market value of approximately \$40,000.

<sup>9</sup> Pursuant to the APA, the Purchaser provided \$2,000,000 to be held in trust for the benefit of Holders of Class 5A Former Resident Claims, irrespective of whether such Holders vote to accept the Plan or grant the releases thereunder. Additionally, subject to approval of the Bankruptcy Court, the FSO Settlement and Contribution Agreement provides \$1,500,000 to be funded into the Former Residents Trust for the benefit of Holders who vote in favor of the Plan and do not elect to Opt Out of the releases under the Plan and the FSO Settlement and Contribution Agreement. Accordingly, the Unsecured Creditor Trustee and the Former Residents Trust Trustee, as applicable, will cause the funds to be distributed to such Holders, as appropriate. Additionally, Former Residents will recover from any recovery of the Unsecured Creditor Trust.

<sup>10</sup> Holders of any Allowed Class 5B Claims will recover in an unknown amount from any recovery of the Unsecured Creditor Trust.

| Class                                           | Estimated Allowed Claims <sup>5</sup> | Treatment & Voting Rights      | Estimated Recovery <sup>6</sup> |
|-------------------------------------------------|---------------------------------------|--------------------------------|---------------------------------|
| Class 6 – Non-Resident General Unsecured Claims | \$3,956,000                           | Impaired, entitled to vote     | Unknown <sup>11</sup>           |
| Class 7 – Intercompany Claims                   | \$232,000 <sup>12</sup>               | Impaired, not entitled to vote | 0.0%                            |
| Class 8 – Interests in Debtor                   | N/A                                   | Impaired, not entitled to vote | 0.0%                            |

## (6) Summary of Voting Requirements for Plan Confirmation

### (a) In General

Under the Bankruptcy Code, only holders of Claims that are “impaired” are entitled to vote to accept or reject the Plan. Under Bankruptcy Code section 1124, a class of claims or interests is deemed to be “impaired” unless (1) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder thereof; or (2) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan, among other things, cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default. An Impaired class of creditors votes to accept a plan if the holders of at least two-thirds (2/3) in dollar amount, and more than one-half (1/2) in number, of those creditors that actually cast ballots vote to accept such plan. See 11 U.S.C. § 1124. Classes that are not impaired are not entitled to vote and are deemed to accept a plan. Classes that are not entitled to a distribution and will not retain property under a plan are deemed to reject a plan.

A class of interest holders is deemed to accept a plan if the holders of at least two-thirds (2/3) in amount of those interest holders that actually cast ballots vote to accept such plan. A class of interest holders is Impaired, not entitled to vote, and deemed to reject the plan if the plan treats such holders by providing that they will retain no property and receive no Distributions under the plan. Pursuant to the Bankruptcy Code, only holders of Claims and Interests who actually vote on the Plan will be counted for purposes of determining whether the required number of acceptances have been obtained. Failure to deliver a properly completed ballot (“**Ballot**”) to the Voting Agent by the Voting Deadline will result in an abstention, which means such vote will not be counted.

### (b) Classes Entitled to Vote

<sup>11</sup> In addition to trade debt, Class 6 General Unsecured Claims will include any Rejection Claims that arise as a result of a Holder of a Current Resident Claim electing not to consent to be bound by the terms of a modified Residency Agreement and, thus, causing their Residency Agreement to be rejected. The recovery percentage will depend on any recovery by the Unsecured Creditor Trust.

<sup>12</sup> Debtor’s books and records reflect a receivable of approximately \$100,000 from FSO, which is not accounted for in this figure of \$232,000. Additionally, 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 in excess of \$8,000,000. FSO disputes this claim.

The Holders of Claims in Classes 2, 4, 5A, 5B, and 6 are Impaired under the Plan and entitled to vote to accept or reject the Plan.

**(c) Classes Deemed to Accept the Plan**

The Holders of Claims in Classes 1 and 3 are Unimpaired under the Plan and, thus, such Holders are deemed to accept the Plan.

**(d) Classes Deemed to Reject the Plan**

The Holders of Interests in Class 8 are Impaired and deemed to reject the Plan as Interests in the Debtor shall be terminated on the Effective Date. The Holders of Claims in Class 4 and 7 are entitled to no Distributions under the Plan and, thus, are deemed to reject the Plan. Additionally, Holders of Class 7 (Intercompany) Claims are not entitled to vote due to status as an insider of Debtor.

**(e) Voting Deadline**

The Voting Agent will assist the Debtor with the transmission of the Solicitation Materials (as defined herein) and the tabulation of votes with respect to the Plan. Holders of Claims classified in Voting Classes (as defined herein) will have the right to vote to accept or reject the Plan. To be counted, votes must be submitted in accordance with the voting instructions, which require such votes to be made in writing prior to April 18, 2024 at 4:00 p.m. (Central Time) (the “**Voting Deadline**”). The record date for determining which holders may vote on the Plan is February 21, 2024, or the date that the Disclosure Statement Hearing is concluded, whichever is later (the “**Voting Record Date**”).

**(f) Voting Instructions**

Bankruptcy Code section 1126(c) defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims in that class, counting only those claims that actually vote to accept or to reject such plan. *See* 11 U.S.C. § 1126(c). As stated above, to be counted as votes to accept or reject the Plan, all Ballots must be properly executed, completed, and timely delivered by the Voting Deadline. Holders of Claims in Voting Classes will receive a Ballot with instructions for submitting the Ballot.

Most holders of Claims related to the Bonds will submit votes by completing a Ballot and returning it to their specified bank, broker, nominee or other intermediary (a “**Nominee**”). Each Nominee may provide specific instructions to beneficial holders of Bond Claims related with respect to how to complete and submit a Ballot. Such holders will be instructed to return their Ballot to the Nominee to enable the Nominee to complete and submit a master Ballot to the Voting Agent so that it is received by the Voting Deadline. Beneficial holders of Claims related to the Bonds should carefully follow the instructions that accompany their Ballot to ensure that it is properly received by the Nominee with sufficient time for the Nominee to complete a master Ballot that can be delivered to the Voting Agent by the Voting Deadline. Voting instructions are more fully described in the Ballots.

The Debtor may accept (a) Ballots from voters via first class mail, overnight courier, and hand delivery, or, except for Ballots of holders of Bond Claims (“**Bondholder Ballots**”), via electronic transmissions, solely through an online balloting portal to be maintained by the Voting Agent (“**E-Ballot**”); and (b) Bondholder Ballots, including Master Ballots submitted by Nominees, on behalf of beneficial holders, via e-mail to FVSsecuritiesvote@Stretto.com. Parties, other than parties submitting Bondholder Ballots, may cast an E-Ballot solely through an online balloting portal on the Case Website located at <https://cases.stretto.com/FVS>, and electronically sign and submit the Ballot. Instructions for electronic, online transmission of Ballots are set forth on the Ballot. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor’s electronic signature will be deemed to be immediately legally valid and effective.

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, revocation, or withdrawal of Ballots will be determined by the Debtor in its sole discretion, and such determination will be final and binding unless otherwise ordered by the Bankruptcy Court. Once a party delivers a valid Ballot for the acceptance or rejection of the Plan, such party may not withdraw or revoke such acceptance or rejection without the Debtor’s written consent or an order of the Bankruptcy Court. The Debtor also reserves the right to reject any and all Ballots not in proper form, if the acceptance of which would, in the opinion of the Debtor with the advice of its counsel, be unlawful.

The Debtor further reserves the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. The interpretation (including the Ballot and the respective instructions therein) by the Debtor, unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtor (or the Bankruptcy Court) determines. Neither the Debtor nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until such irregularities are cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will be invalidated.

If a holder of a Claim casts more than one (1) Ballot with respect to the same Claim prior to the Voting Deadline, the last valid Ballot timely received shall be deemed to reflect the voter’s intent and shall supersede and revoke any earlier received Ballot. If a holder of a Claim simultaneously casts inconsistent duplicate Ballots with respect to the same Claim, such Ballots shall not be counted.

#### **(g) Additional Information**

If you hold one or more Claims in a Voting Class and have any questions about (i) the procedure for voting with respect to your Claim, (ii) the Solicitation Materials, or (iii) obtaining or replacing a Ballot, the Plan, this Disclosure Statement, or any exhibits to such documents, please contact the Voting Agent by (a) calling (855) 886-6266 (toll-free) or (949) 784-0581 (international); (b) writing to FVS Ballot Processing, c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; or (c) emailing at TeamFVS@stretto.com with a reference to “FVS” in the subject line.

### **(7) The Confirmation Hearing**

On October 18, 2023, the Debtor filed a motion to approve the Debtor's Disclosure Statement, wherein the Debtor requested, among other things, that the Bankruptcy Court: (i) approve the Plan for solicitation; (ii) schedule a hearing to consider confirmation of the Plan (the "**Confirmation Hearing**"); and (iii) approve the proposed form of notice of such Confirmation Hearing ("**Confirmation Hearing Notice**"). The Bankruptcy Court established February 21, 2024 (the "**Disclosure Statement Hearing**") as the date of hearing to consider approval of the Disclosure Statement and related deadlines, including the date of the Confirmation Hearing, which is **April 30, 2024 at 9:00 a.m. (CT)**. Following the Disclosure Statement Hearing, subject to the Bankruptcy Court's approval, the Debtor will provide the Confirmation Hearing Notice to all necessary parties in accordance with applicable law.

The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on any master service list ordered by the Bankruptcy Court and any entities which filed objections to the Plan, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

### **(8) Effect of Confirmation and Consummation of the Plan**

Following Confirmation, subject to the occurrences of certain conditions precedent set forth under Section 9 of the Plan, the Plan will be consummated on the Effective Date. Among other things, on the Effective Date, certain release, injunction, exculpation and discharge provisions set forth in Section 8 of the Plan will become effective and will bind any parties that do not affirmatively elect to opt out. As such, **it is important to read the provisions contained in Section 8 of the Plan very carefully so that you understand how confirmation and consummation of the Plan will affect you and any Claim you may hold against the Debtor.** Regardless of whether you are entitled to vote to accept the Plan, you will receive an Opt Out Form and if you do not wish to be a "Releasing Party" as defined in the Plan and/or you do not wish to be bound by the releases, injunctions, and exculpation provisions under Section 8 of the Plan, you must affirmatively elect to opt out of these provisions by timely submitting an Opt Out Form.

#### **J. Solicitation Procedures**

Only Holders in Classes 2, 4, 5A, 5B, and 6 (the "**Voting Classes**") are entitled to vote on the Plan. Accordingly, Holders in Voting Classes will receive a solicitation package that will include the following materials (collectively, the "**Solicitation Materials**"):

- a Ballot, which will include the voting instructions, and a postage-prepaid return envelope (with the exception that Solicitation Packages provided to Nominees will not include postage-prepaid return envelopes);

- a copy of this Disclosure Statement with all exhibits, including the Plan, and any other supplements or amendments to these documents, and the Disclosure Statement Order, excluding exhibits;
- the Confirmation Hearing Notice; and
- such other materials as the Bankruptcy Court may direct.

In lieu of the foregoing Solicitation Materials, the Debtor will distribute the following forms and notices, subject to Bankruptcy Court approval, to holders of Claims that are not in Voting Classes:

- a notice of non-voting status;
- a form permitting holders to opt out of third-party releases and other provisions set forth under Section 8 of the Plan; and
- the Confirmation Hearing Notice.

## **II. BACKGROUND INFORMATION**

### **A. Overview of the Debtor's Business**

Prior to the Sale Closing, the Debtor, a private Illinois not-for-profit corporation, owned and operated a CCRC in Schaumburg, Illinois. The Community, which is the largest CCRC in Illinois, is known as Friendship Village of Schaumburg and is currently home to approximately 600 residents. The Community offers its residents a continuum of care in a campus-style setting, providing living accommodations and related healthcare and support services to persons aged 62 or older. The Community is situated on more than 60 acres and, as of the Petition Date, is comprised of 537 independent living apartments, 84 assisted living units, 169 nursing care units, and 25 memory care units. The Community also contains a community center, health center, dining rooms and lounges, library, indoor pool, performing arts theater, and other common spaces.

As is common practice in the CCRC industry, the Debtor primarily received revenue from Entrance Fees and monthly service fees under Residency Agreements. Before a prospective Resident would move into the Community, they were required to execute a Residency Agreement. Several types of Residency Agreements had been offered by the Debtor over the years preceding the Petition Date with the various contracts differing in the required Entrance Fee deposit, monthly service fees, and the amount of the Entrance Fee to be refunded, if any. As described more fully below, when the Debtor began to experience financial distress, it implemented an arrangement that is commonly used by distressed CCRCs and designed to encourage sales and improve occupancy, notwithstanding the Community's financial distress, while maintaining optionality for residents. Through this program, prospective residents were offered the opportunity to move into the Community pursuant to an Option Agreement that allows Option Deposits to be securely placed with the Escrow Agent until the resident elects to either move out of the Community and receive the full amount of the Option Deposit or remain as a resident at the Community and have the Option Deposit converted to an Entrance Fee. Because the Community was sold and the Purchaser

converted to a rental (versus Entrance Fee) business model, all residents who deposited funds into the Entrance Fee Escrow will receive the full refund of such deposits.

## **B. The Debtor's Organizational Structure**

### **(1) Corporate Governance**

The Debtor is governed by the Board and managed by the sole member of the Debtor, Friendship Senior Options, NFP ("FSO"), an Illinois not-for-profit corporation chartered under the laws of Illinois, a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "IRC").

### **(2) Management of the Debtor Prior to the Sale Closing**

Prior to the Sale Closing, pursuant to the Management Agreement, FSO served as the exclusive manager of the day-to-day operations of FVS. The categories of services that FSO provided to FVS include: (i) corporate management; (ii) personnel lease; (iii) financial; (iv) human resources; (v) information technology; (vi) marketing; (vii) risk management; (viii) equipment and supplies; (ix) third party and resident billing and collection services; (x) contract negotiations; and (xi) licenses, permits, certifications and accreditations. In exchange for these services, FVS would reimburse certain costs incurred by FSO in providing goods and management services to FVS and pay a management fee as set forth in the Management Agreement. During the Chapter 11 Case, as of the date hereof, FVS has only remitted pass-through expense reimbursement for goods and services actually provided by FSO and has otherwise not paid FSO any management fees.

### **(3) CCRC Regulators**

The CCRC industry nationwide is regulated by various state and federal agencies. Each state has a different regulatory scheme governing CCRCs. As a Medicare-certified CCRC operating in the State of Illinois, the Debtor is regulated by, among others, the Illinois Department of Public Health.

## **C. Prepetition Capital Structure**

As of the Petition Date, on a book value basis, the Debtor had approximately \$99,600,000 in Assets consisting of approximately (i) \$72,000 in Cash and cash equivalents; (ii) \$2,200,000 of restricted assets; (iii) \$100,000 in inventory; (iv) \$800,000 in prepaid expenses; (v) \$2,200,000 in accounts receivable; (vi) \$89,800,000 in net fixed assets; (vii) \$4,300,000 in long term investments; and (viii) \$100,000 in receivables from FSO.<sup>13</sup> As of the Petition Date, the Debtor

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<sup>13</sup> The Bond Trustee sent the Debtor correspondence, dated January 4, 2024, wherein the Bond Trustee made certain requests of the Debtor, including confirmation that the Debtor had or would provide notice to its insurance carrier(s) regarding "potential breach of fiduciary duty claims against the directors and officers of the Debtor and FSO related to, among other things, fraudulent conveyances, the intermingling of corporate funds, the improper withholding of the ERTC Funds, and the improper elimination of an \$8.8 million liability that FSO owed to the Debtor . . . ." The notice of the Bond Trustee's letter was provided to the insurance carrier's and confirmation of same was provided to the Bond Trustee on January 9, 2024.

owed approximately \$131,600,000 on account of the bond obligations and \$96,000,000 of unsecured obligations (including contingent amounts owed to Residents).<sup>14</sup>

### (1) Bond Obligations

The Debtor's indebtedness under the Master Indenture (as defined below) includes obligations under the Series 2017 Bonds and the Guaranteed Bonds.

The development of the Community was initially financed through the issuance of bonds by Illinois Finance Authority (the "**Issuer**"). In 2017, the Issuer and the Bond Trustee entered into the Bond Trust Indenture (the "**2017 Bond Indenture**"), dated December 1, 2017, pursuant to which the Issuer issued revenue bonds in the aggregate principal amount of \$122,550,000 (the "**Series 2017 Bonds**") to (a) refund the outstanding bond debt, (b) pay or reimburse FVS for certain costs of constructing, renovating, remodeling, and equipping the campus, and (c) fund a debt service reserve fund. The Debtor and the Issuer entered into that certain Loan Agreement, dated December 1, 2017, pursuant to which the Issuer agreed to lend the proceeds of the Series 2017 Bonds to the Debtor.

The Series 2017 Bonds are secured by FVS's Direct Note Obligation, Series 2017-2 (Illinois Finance Authority) in the principal amount of \$122,550,000 to be issued pursuant to a Master Trust Indenture, dated as of July 15, 2005 (the "**Original Master Indenture**"), and as supplemented and amended by a Third Supplemental Master Indenture dated December 1, 2017 (the "**Third Supplemental Master Indenture**" and collectively with the Original Master Indenture, the "**Master Indenture**") between the Debtor and Wells Fargo Bank, National Association, as master trustee (the "**Master Trustee**"). The Bond Trustee is entitled to the protection of the covenants, restrictions and other obligations imposed upon FVS by the Master Indenture.

The following additional bonds (collectively, the "**Guaranteed Bonds**") are secured by FVS's Direct Note Obligation, Series 2017 (Illinois Finance Authority): (i) Taxable Bonds, Series 2017A (GreenFields of Geneva Project); (ii) Series 2017B (GreenFields of Geneva Project); and (iii) Series 2017C Bonds (GreenFields of Geneva Project). Prepetition, the Debtor provided a secured guaranty for repayment of the Guaranteed Bonds and the obligations under the Guaranteed Bonds are *pari passu* with the obligations under the Master Indenture.

As of the Petition Date, the Debtor's indebtedness under the Series 2017 Bonds and the Guaranteed Bonds was approximately \$131,000,000 and secured by the Bond Trustee's lien against primarily all of the Debtor's Assets.

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<sup>14</sup> The Debtor owes approximately \$1.8 million to Morrison, which the Debtor proposes to treat as a general unsecured claim under the Plan due to the failure of Morrison to perfect its retention of title security interest. Accordingly, \$1.8 million is included in the \$96 million figure with respect to general unsecured claims. As described more fully herein, approximately \$2.7 million of the proceeds of the Sale Transaction has been set aside for satisfaction of Morrison's potential secured claim, which may include interest; *provided, however*, that Morrison's must demonstrate to the Bankruptcy Court that Morrison holds a properly perfected interest that attached to the Sale Proceeds under the Sale Order. The Debtor does not believe Morrison can make such a demonstration, and, thus, does not believe that Morrison will be entitled to recover any portion of the \$2.7 million as a secured creditor.

## **(2) Other Debt**

In addition to the secured obligations under the Bonds, the Debtor estimates the following liabilities as of the Petition Date: (i) approximately \$40,000 of debt to one or more other secured creditors; (ii) approximately \$3,900,000 of unsecured debt due to trade creditors, including Morrison; (iii) approximately \$5,200,000 of triggered, non-Contingent liabilities to former residents; (iv) approximately \$14,800,000 of untriggered, Contingent liabilities to former residents; (v) approximately \$77,700,000 of untriggered, Contingent liabilities to current residents; and (vi) approximately \$232,000 of unsecured debt to FSO.

## **III. EVENTS LEADING TO THE CHAPTER 11 FILING**

Prior to the Sale Closing, the Debtor relied on revenue generated by existing and new residents to, among other things, maintain day-to-day operations, service debt obligations and honor Refund Obligations. However, like other communities and facilities in the senior living industry, especially CCRCs, for years FVS faced challenges that threatened its ability to honor long-term debt obligations and maintain stable operations, including optimal occupancy levels.

In March 2020, the World Health Organization declared COVID-19 to be a pandemic. The extent to which COVID-19 has affected all aspects of life for senior citizens cannot be denied or understated, especially because senior citizens are acutely susceptible to its effects. Research shows that as of June 14, 2023, more than 93% of the total deaths caused by COVID-19 were among those aged 50 and older.<sup>15</sup>

The effects of COVID-19 were immediately felt by the Community. In February 2020, the Debtor was meeting its census and operating goals. On March 20, 2020, Governor Pritzker announced a Stay at Home order to help minimize the spread of COVID-19.<sup>16</sup> The emergency orders and state-wide shut down directly impacted the Community and its operations. Census began to decline, and stress was put on Residents and employees from dealing with the associated state and federal guidelines. Although CCRCs are somewhat better equipped to handle COVID-19 because of the independent nature of the units, including individual kitchens, the social distancing and isolation had a negative impact on the residents. The Debtor incurred significant expenses in responding to the pandemic, including but not limited to a significant increase in staffing costs.

In addition to responding to the direct risks to residents and staff, prospective residents were hesitant to move into the Community due to fears of COVID-19. Moreover, the State of Illinois did not allow any new Residents to be admitted to assisted living, memory care, or nursing home units for a period of time. The marketing efforts, which typically include site visits or onsite events, were significantly limited by state and federal regulations. Despite the best efforts of FVS's marketing team, the number of new move ins dropped precipitously and did not recover by the Petition Date.

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<sup>15</sup> See <https://www.statista.com/statistics/1191568/reported-deaths-from-covid-by-age-us/>.

<sup>16</sup> See <https://www.illinois.gov/news/press-release.21326.html>.

As a result of COVID-19's effect on census and the resulting effect on revenue, the Debtor began to face liquidity constraints. By January 2022, the Debtor was unable to make a debt service payment of approximately \$708,642.00, inclusive of interest, due under the 2017 Bond Documents, which payment was partially funded with funds held in reserve funds under the 2017 Bond Documents. On January 5, 2021, the Debtor informed the Bond Trustee that it could no longer afford to pay debt service on the Series 2017 Bonds. This discussion ultimately led to the decision to market the Community to accomplish an affiliation or similar transaction whereby a new operator would own and operator the Community.

On March 9, 2022, the Debtor engaged B.C. Ziegler and Company to run a sales and marketing process. Multiple bids were received and the Debtor engaged in negotiations over a period of months with the highest bidder, but the bidder ultimately decided not to go forward with the contemplated transaction and, instead, expressed desire for an asset sale rather than an affiliation. Given this development, the Debtor engaged Grandbridge Real Estate Capital ("**Grandbridge**") to plan and execute a sale process, and negotiations with the preferred bidder continued for an additional three (3) months before the potential purchaser informed the Debtor it preferred to purchase the Community through a bankruptcy sale and auction. Although steps were taken to accommodate the bidder's request, on April 17, 2023, the potential purchaser withdrew its bid and terminated negotiation discussions. Left with little runway and no other option, the Debtor commenced the Chapter 11 Case and prepared to implement a sale process that would be subject to the oversight of the Bankruptcy Court.

In summary, the Debtor was forced to file the Chapter 11 Case for multiple reasons, including the impact of the COVID-19 pandemic on the senior housing industry followed by an unsuccessful, pre-Petition Date marketing process that left the Debtor with insufficient liquidity to sustain operations and debt without the protections of the Bankruptcy Code.

#### **IV. EVENTS DURING THE CHAPTER 11 CASE**

##### **A. First Day Pleadings**

On the Petition Date, the Debtor commenced the Chapter 11 Case by filing a voluntary petition for relief under Chapter 11. The Debtor also filed certain first day motions to transition into operations during the Chapter 11 Case and to preserve relationships with Residents, vendors, and employees.

The first day motions requested relief from the Bankruptcy Court to, among other things: (i) protect resident confidentiality; (ii) authorize interim use of cash collateral; (iii) maintain the Debtor's cash management system; (iv) maintain utilities; (v) waive the requirement of a patient care ombudsman; and (vi) authorize the Debtor to continue its escrow arrangement for new resident deposits. These motions were supported by the *Declaration of Mike Flynn, Chief Executive Officer of the Debtor in Support of the Debtor's First Day Pleadings* [Docket No. 16]. The Bankruptcy Court conducted hearings and entered orders with respect to each of the first day motions. See Docket Nos. 72, 77, 84, 85, 86, 149, and 246.

## **B. Cash Collateral and DIP Financing**

In the ordinary course of business, the Debtor requires Cash on hand and cash flow from its operations to fund its working capital, liquidity needs and other routine payables. In addition, the Debtor requires Cash on hand to administer the Chapter 11 Case. Under the 2017 Bond Documents, the Bond Trustee has a first priority security interest in and liens on primarily all of the Debtor's prepetition assets.

As stated above, on the Petition Date, the Debtor filed a motion requesting authority to use cash collateral [Docket No. 9] (the "**Cash Collateral Motion**"), and thereafter a first and second interim order with respect to the Cash Collateral Motion were entered. *See* Docket No. 85 and 152. On August 11, 2023, the Bankruptcy Court entered its final order approving the Cash Collateral Motion (the "**Final Cash Collateral Order**"). *See* Docket No. 207. With the Bond Trustee's consent, on October 30, 2023, the Debtor filed a Cash Collateral budget to replace the budget attached to the Final Cash Collateral Order. *See* Docket No. 299.

On July 24, 2023, the Debtor filed a motion requesting approval to obtain post-petition financing on an unsecured administrative priority basis with the loan facility to be issued by the DIP Lender [Docket No. 166] (the "**DIP Motion**"). In response, certain objections and/or notices of objection were filed. *See* Docket Nos. 177, 180, and 181.

The Bond Trustee's limited objection to the DIP Motion [Docket No. 181] (the "**DIP Objection**"), filed on August 2, 2023, asserted, among other things, that the Bond Trustee had questions regarding the monies FSO used to fund the DIP Facility and, therefore, believed such ERTC funds "may be property of the Debtor's bankruptcy estate, and, therefore should not be subject to a 'loan' from FSO." *See* DIP Objection, ¶ 1. The Bond Trustee asserted in its limited objection that there were "a multitude of unresolved and pending questions regarding the Debtor's rights and interest in the monies that are being 'advanced' by the DIP Lender . . . to fund the DIP Facility." *Id.* Additionally, the Bond Trustee asserted that the Debtor had "determined not to pursue or even preserve [related] rights." The Bond Trustee made a number of additional assertions in its DIP Objection, which may be reviewed for free by visiting the Case Website.

On August 11, 2023, the Bankruptcy Court, with the consent of the Bond Trustee, entered an order approving the DIP Motion [Docket No. 205] (the "**DIP Order**"). The DIP Order provides the Debtor with authority to borrow up to \$3,000,000 from the DIP Lender, and, as of the date hereof, the Debtor has borrowed approximately \$3,000,000. In response to the Bond Trustee's concerns, as raised in the limited DIP Objection, the DIP Order provides, in relevant part, that:

The Debtor's entry into the DIP Term Sheet shall not and does not waive any rights and/or interests the Debtor may have in the ERTC Funds, including the DIP Funds, nor prevent any further findings by this Court or any court of competent jurisdiction that the ERTC Funds, including the DIP Proceeds, are property of the Debtor's bankruptcy estate under 11 U.S.C. § 541. In the event it is determined that any Draws were funded by ERTC Funds that a court of competent jurisdiction determines by final order are property of the Debtor's estate, then the Debtor's right to access and utilize such funds shall no longer be subject to the terms of this Order and the DIP Term Sheet.

DIP Order, ¶ 4.1.

**C. Schedules and Statements**

On July 6, 2023, the Debtor filed its Schedules and Statement of Financial Affairs. *See* Docket Nos. 132-134. On January 15, 2024, the Debtor filed amended Schedules. *See* Docket No. 464.

**D. Retention of Professionals**

During the Chapter 11 Case, the Bankruptcy Court has approved the Debtor's retention and employment of the following Professionals to assist in the administration of the Debtor's Chapter 11 Case: (a) DopkeLaw LLC, as restructuring counsel to the Debtor; (b) Polsinelli PC as co-counsel to the Debtor; (c) Wyse Advisors, LLC as financial advisor; (d) Stretto, Inc. ("**Stretto**") as claims and noticing agent and administrative advisor; (e) Grandbridge, as real estate broker with respect to the sale of the Community;<sup>17</sup> and (f) Avison Young – Chicago, LLC ("**Avison Young**"), as real estate broker with respect to the Huntley Property.

**E. Appointment of the Committee**

On June 23, 2023, the United States Trustee (the "**U.S. Trustee**") appointed the official committee of unsecured creditors (the "**Committee**"), which is comprised entirely of Residents and/or representatives of Residents: (a) Kathryn Dahl; (b) Lawrence A. Gerlach; (c) Barbara Hershberger; (d) Matthew Hower; (e) Jerry A. Horney; (f) Leonard R. Kofkin; and (g) Daniel M. Scheibenreif. The Committee has retained Crane, Simon, Clar & Goodman, as counsel, and Newpoint Advisors Corporation, as financial advisor.

**F. Sale of Substantially all the Debtor's Assets**

On June 14, 2023, the Debtor filed the Bid Procedures and Sale Motion, which, among other things, sought entry of an order establishing bid procedures and approval of a marketing process for the sale of substantially all the Debtor's assets.<sup>18</sup> On July 12, 2023, the Bankruptcy Court entered the Bid Procedures Order, approving the Debtor's bid procedures and establishing key deadlines and dates, including, without limitation:

- Stalking Horse LOI Deadline: July 25, 2023;
- Stalking Horse Agreement Deadline: September 11, 2023 at 4:00 p.m.;
- Stalking Horse Designation Deadline: September 15, 2023 at 4:00 p.m.;
- Overbid Deadline: October 16, 2023;

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<sup>17</sup> On November 1, 2023, the Debtor filed a motion to retain Continuum Advisors, LLC, as a result of the change of employment with respect to the Debtor's real estate broker, David Kliwer. *See* Docket No. 304.

<sup>18</sup> Capitalized terms that are used but not defined in this Article IV.G. shall have the meanings ascribed to them in the APA.

- Auction Date: October 20, 2023;
- Notice of Designated Contracts: October 25, 2023 at 4:00 p.m.;
- Sale Objection Deadline: October 26, 2023 at 4:00 p.m.;
- Adequate Assurance Objection Deadline: October 30, 2023 at 4:00 p.m.; and
- Sale Hearing: November 1, 2023 at 11:00 a.m.

In accordance with the Bid Procedures Order, the Debtor, through its professionals and advisors conducted a comprehensive post petition marketing and sale process. On September 11, 2023, the Debtor received multiple bids, each in compliance with the Bid Procedures Order. On September 15, 2023, the Debtor filed its *Notice of Filing Executed Version of Stalking Horse Asset Purchase Agreement* [Docket No. 247], wherein the Debtor designated IL CCRC, LLC as the stalking horse bidder (the “**Stalking Horse**”) and provided a copy of the Stalking Horse APA. The Bond Trustee, as the only creditor with a right to object to the Debtor’s designation of the Stalking Horse, did not object and the deadline to do so expired on September 20, 2023 at 4:00 p.m.

October 16, 2023 at 4:00 p.m., the Debtor timely filed its proposed sale order, as required by the Bid Procedures Order. See Docket No. 272.

#### (1) Competing Bids, Auction, and Sale Hearing

Under the terms of the Bid Procedures Order, Lapis Municipal Opportunities Fund (“**Lapis**”) was deemed a qualified bidder, and prior to October 20, 2023, Lapis announced its intentions to attend and participate at the auction. Accordingly, on October 20, 2023, the Debtor conducted an auction that was continued and ultimately closed on October 24, 2023. Before closing the auction, the Debtor determined that the bid of the Stalking Horse was the highest and best offer and announced that the Stalking Horse Bidder was the Winning Bidder and further designated Lapis Municipal Opportunities Fund as the Backup Bidder. On October 26, 2023, the Debtor filed the Notice of Filing Executed Winning Bidder Asset Purchase Agreement with copies of the Asset Purchase Agreement (“**Winning Bid APA**”) and a redline reflecting changes between the Stalking Horse APA and the Winning Bid APA, each attached thereto. See Docket No. 292.

On November 8, 2023, the Bankruptcy Court conducted the Sale Hearing and approved the Sale Transaction. On November 22, 2023, the Bankruptcy Court entered the Sale Order, which, among other things, approved the Sale to the Purchaser for the Purchase Price of approximately \$35.5 million. See Docket No. 365. Upon the Sale Closing, the Purchaser acquired the Purchased Assets (as defined in the APA) and assumed the Assumed Liabilities (as defined in APA). The Purchased and Excluded Assets are summarized below, and to the extent of any inconsistency, the APA shall control:

**(2) Purchased Assets<sup>19</sup>**

Under Article 2.1 of the APA, the Debtor agreed to sell and the Purchaser agreed to purchase the following assets (collectively, the “**Purchased Assets**”):

- (a) The Facility, the Premises and the improvements thereon;
- (b) the Books and Records;
- (c) the Assumed Contracts;
- (d) the Equipment;
- (e) the Inventory;
- (f) to the extent transferable under applicable law, the Permits;
- (g) all Resident Trust Funds;
- (h) Option Deposits and other deposits relating to the Business;
- (i) any and all prepaid fees and other amounts for room and service charges of Residents relating to periods on or after Closing;
- (j) all Intellectual Property, including, without limitation, community specific intellectual property, including domain name FriendshipVillage.org, as well as the name “Friendship Village of Schaumburg” and related logos and marketing materials;
- (k) subject to the Buyer’s establishment of a qualified vehicle on the Closing Date to accept or otherwise hold it (or an Affiliate of Seller qualified to accept or otherwise hold it, to the extent mutually agreeable between Buyer and Seller), the Gift Annuity Account and any endowment or donor-restricted funds held by Seller (collectively, the “Endowment”), to be used solely for charitable purposes as required therein; and
- (l) any and all other items of tangible and intangible personal property and assets required, used or useful for the operation of the Facility or the Business.

**(3) Excluded Assets<sup>20</sup>**

Under Article 2.2 of the APA, the Debtor did not agree to sell and the Purchaser did not agree to purchase the following assets (collectively, the “**Excluded Assets**”).

- (a) the Entrance Fees;
- (b) all cash and cash equivalents;

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<sup>19</sup> Capitalized terms used in this section but not otherwise defined in the Plan and/or this Disclosure Statement shall have the meanings ascribed to such terms in the APA.

<sup>20</sup> Capitalized terms used in this section but not otherwise defined in the Plan and/or this Disclosure Statement shall have the meanings ascribed to such terms in the APA.

- (c) the operating checking account;
- (d) the Purchase Price and all rights under this Agreement;
- (e) the Accounts Receivable of the Business;
- (f) the debt service reserve funds, interest reserve funds, and any other funds or accounts held by the Master Trustee, the Guaranteed Bonds Trustee, and/or the Schaumburg Bonds Trustee in connection with the Bonds (unless otherwise specifically provided for herein);
- (g) all claims and causes of action, including avoidance actions under Chapter 5 of the Bankruptcy Code;
- (h) all set-off rights to claims filed or asserted in the Chapter 11 Case (except to the extent arising in connection with an Assumed Contract which is subject to a Cure Amount);
- (i) hold-backs and escrows for any prorations or Taxes being paid by Seller in connection with the Closing or afterward, and utility deposits;
- (j) all insurance policies of Seller, any prepaid insurance premiums and any rights or claims or proceeds arising from such policies, except those assigned to Buyer under Section 2.9 of this Agreement, and except any residual of the workers' compensation policy collateral following liquidation of claims;
- (k) all Tax refunds, credits (including the Employee Retention Credit, if any), rebates, and overpayments related to Seller's operation of the Business prior to Closing solely to the extent received by Seller prior to Closing or, if not yet received, applied for by Seller or its Affiliates prior to the Execution Date;
- (l) all (i) corporate seals, corporate organizational records, minute books, charter documents, record books, and stock transfer books pertaining to Seller, (ii) original Tax, accounting and financial records which pertain exclusively to the Excluded Assets, and (iii) such other files, books and records which pertain exclusively to the Excluded Assets or to the formation, existence, membership, or capitalization of Seller or its Affiliates;
- (m) all Inventory and Assets disposed of or exhausted through the Closing Date in the ordinary course of business; provided, that such Inventory and Assets are likewise replenished in the ordinary course of business;
- (n) all Rejected Contracts;
- (o) any records which Seller is legally required to retain in its possession and any records related to Excluded Assets or Retained Liabilities (as hereinafter defined);
- (p) all equipment and tangible property located at the Business but not owned by Seller, or subject to an equipment lease or vehicle lease or software license that is not an Assumed Contract, and all other assets, properties and rights not related to or used in the Business;
- (q) personnel records for Employees who are not Transferred Employees and, to the extent the transfer of such records (whether directly or by means of the sale of a Seller) to Buyer or its affiliates is prohibited by applicable law, for Transferred Employees, and all

Organizational Documents and minute books of Seller; board designated, restricted and trustee-held or other escrowed funds (such as the debt service reserves, self-insurance trusts, workers compensation trusts, working capital trust assets, and assets and investments restricted as to use), donor restricted assets, beneficial interests in charitable trusts and accrued earnings on all of the foregoing;

(r) the Gift Annuity Account and any endowment or donor-restricted funds held by Seller (collectively, the “Endowment”);

(s) the FSO Management Agreement, and any intercompany obligations between Seller and FSO;

(t) all Benefit Plans and all trust agreements, services agreements, and assets attributable thereto; and

(u) Seller’s attorney-client and work-product privileges.

#### **(4) Dispute Regarding Equipment**

At the Sale Hearing, the Debtor asserted ownership with respect to certain Equipment that was included in the proposed Purchased Assets, and Morrison Management Specialists, Inc. (“**Morrison**”) objected, asserting an ownership interest with respect to such Equipment (the “**Disputed Property**”). The Bankruptcy Court set a briefing schedule and a hearing concerning the Disputed Property. Following briefing and oral argument, the Bankruptcy Court overruled Morrison’s objection and found the Debtor owned the Equipment that was the subject to the dispute with Morrison. *See* Docket Nos. 309, 329, 377, 393, and 426. Additionally, the Bankruptcy Court required the Debtor to set aside \$2,712,100.97 from proceeds of the Sale Transaction to ensure Morrison could recover on its claim, including interest, if Morrison is able to establish a priority interest in the Disputed Property. *See* Docket No. 426. A day after the Sale Closing occurred, on December 29, 2024, Morrison filed a Notice of Appeal. *See* Docket No. 433. On January 12, 2024, Morrison filed its designation and statement of issues on appeal. The Debtor’s deadline to file any counter-designation and statement of issues is January 26, 2024.

#### **G. Sale of Huntley Property**

On October 4, 2023, the Debtor filed an application to employ Avison Young, as broker, with respect to the Huntley Property. *See* Docket No. 261. On October 11, 2023, the Bankruptcy Court entered its *Order Authorizing the Employment and Retention of Avison Young – Chicago, LLC as Debtor’s Real Estate Advisor and Broker Effective as of August 28, 2023*. The Huntley Property, which has been held in trust for the benefit of the Debtor by Chicago Title Land Trust Company (the “**Land Trust**”), was marketed by Avison Young for the benefit of the Estate. On January 10, 2024, the Bankruptcy Court granted the Debtor’s motion to sell the Huntley Property, approving the terms of an agreement, including a cash purchase price of \$450,000, and authorized the Debtor and the Land Trust to transfer the title to Prime Group. The sale closed on January 31, 2024, and, as a result, the Debtor’s Estate received net sale proceeds of approximately \$420,000 after payment of closing costs, fees, and satisfaction of debts, including, without limitation a commission payment to Avison Young in the amount of \$27,000.

The Plan contemplates using \$50,000 in sale proceeds from the Huntley Property sale to fund the Unsecured Creditor Trust, and the balance of the proceeds will be distributed in accordance with the Plan and applicable provisions of the Bankruptcy Code. On January 10, 2024, counsel for the Bond Trustee acknowledged on the record that the Bond Trustee does not have a lien against the Huntley Property.

#### **H. Claims Process and Bar Dates**

Pursuant to the Bar Date Order, all creditors holding or wishing to assert unsecured or secured, priority or nonpriority Claims against the Debtor's estate, accruing prior to the Petition Date were required to file a separate, completed, and executed Proof of Claim Form on account of each such Claim, together with accompanying documentation by the Claims Bar Date, October 13, 2023 at 11:59 p.m. More than 300 claims were filed by the Claims Bar Date. On January 15, 2024, the Debtor amended its schedules. Accordingly, with respect to certain Claims the Amended Schedules Bar Date may apply.

Pursuant to the Bar Date Order, Governmental Units with Claims against the Debtor or the Debtor's estate, accruing prior to the Petition Date, are required to file Proofs of Claim by the Governmental Bar Date, November 17, 2023 at 11:59 p.m.

Because the resolution process for Claims is incomplete as the Debtor has focused its efforts and resources on, among other things, the sale of substantially all of its assets and soliciting a plan to propose classification and treatment of Allowed Claims, among other things, the Claims figures identified in the Plan and this Disclosure Statement represent estimates only and, in particular, the estimated recoveries for Holders of General Unsecured Claims could be materially lower if the actual amounts of Allowed General Unsecured Claims are higher than current estimates.

#### **I. Exclusivity**

On September 20, 2023, the Debtor filed a motion to extend to: (i) December 6, 2023, the period within which only the Debtor can file a Chapter 11 plan; and (ii) February 5, 2024, the period within which only the Debtor can solicit votes to accept or reject such a plan. *See* Docket No. 250. On September 28, 2023, the Bankruptcy Court approved the Debtor's motion, establishing the extended exclusivity periods, as requested. *See* Docket No. 254.

#### **J. Disputes and Potential Disputes and/or Litigation**

As of the Petition Date, the Debtor was not prosecuting any claims or causes of action. Since the Petition Date, certain constituents, including the Bond Trustee and the Committee, have expressed the belief that certain potential claims may exist. The Debtor has considered the claims, to the extent they have been articulated and described in sufficient detail to allow the Debtor to conduct an analysis. The Debtor is unaware of the existence of any claim or cause of action that would warrant litigation as opposed to settlement, and the Debtor believes the FSO Settlement and Contribution Agreement is in the best interest of the Estate as it: (i) provides significant, additional

benefits and recoveries to creditors, including the Bond Trustee;<sup>21</sup> (ii) avoids the administrative and economic burdens, including significant delay, associated with litigation; and (iii) allows creditors to obtain the economic benefit of the remaining ERTC funds held by FSO.<sup>22</sup> For the reasons discussed herein, the Bond Trustee disputes that the FSO Settlement and Contribution Agreement provides “significant” benefits to the Estate. The Bond Trustee also disputes that the FSO Settlement and Contribution Agreement “allows creditors to obtain the economic benefit of the remaining ERTC funds held by FSO” because the FSO Former Resident Contribution is being provided solely to Class 5A creditors (former residents) and the FSO Current Resident Contribution is being provided solely to Current Residents, which the Bond Trustee asserts is not consistent with the provisions of the Bankruptcy Code.

Although the Debtor does not believe the Estate holds meritorious claims that warrant litigation against FSO and/or the Debtor’s directors and officers, the Bond Trustee alleges that it believes the Estate has claims related to:

- turnover of up to \$7.6 million in ERTC Funds to the Estate;
- approximately \$8.8 million intercompany liability that appeared on the Debtor’s records for at least 2 years before it was reconciled and removed through an adjustment journal entry shortly before the commencement of the Chapter 11 Case;
- the amount of the management fee charged by FSO to the Debtor;
- transfer(s) from the Debtor to FSO and/or FSO’s affiliates; and
- breaches of fiduciary duties by the Debtor’s directors.

The Bond Trustee did not seek standing to pursue any claim other than a purported turnover action relating to the ERTC Funds. The Debtor does not believe the purported action would be in the best interest of the estate to pursue and, as such, the Debtor has agreed should be settled with the Committee. On February 7, 2024, the Bond Trustee informed the Debtor that the Bond Trustee believes that the value of such purported claims exceeds \$18 million, which may be partially recoverable under a \$10 million insurance policy against which judgments on such claims could potentially be collected. Under the terms of the FSO Settlement and Contribution Agreement, the Debtor and the Committee have agreed to settle and release such potential claims, including the ability to recover any proceeds of the insurance policy and/or to demand the turnover of the ERTC Funds, in exchange for the payments and other consideration provided by FSO to the Estate and the Debtor’s Current and Former Residents.

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<sup>21</sup> FSO has already contributed \$3,000,000 to fund the Chapter 11 Case, and the release of any and all potential claims and causes of action will bring in: (a) \$1,500,000 in additional recovery for the Debtor’s Former Residents; (b) up to approximately \$3,000,000 in potential, additional recovery and benefits to the Debtor’s Current Residents; and (c) \$1,000,000 for the benefit of the Estate through the forgiveness and waiver of \$1,000,000 of the DIP Facility Claims.

<sup>22</sup> The FSO Current Resident Contribution will increase or decrease proportionately with the repayment of the DIP Facility Claims.

The Debtor cannot accurately estimate the value of any potential claims that the Committee and/or the Bond Trustee believe may exist, particularly because such claims are speculative and undeveloped.

FSO disputes that there is any merit to the claims alleged by the Bond Trustee on the basis that, among other things: (1) the ERTC funds were paid by the IRS to FSO on account of FSO employees and thus constitute FSO property as a matter of law, (2) the \$8.8 million intercompany liability was investigated and reconciled prior the commencement of the Chapter 11 Case to reflect the accurate intercompany liability, (3) the management fees paid by the Debtor to FSO were authorized under the Management Agreement and constitute reasonably equivalent value for the management and administrative services FSO provided to the Debtor, (4) all intercompany transfers between and among the Debtor, FSO and affiliates were appropriately reconciled, and (5) no party has articulated any basis for a breach of fiduciary duty claim against any of the volunteer directors of the Debtor or FSO, who are protected from liability by the statutory shield provided by 850 ILCS 105/108.70 except for acts or omissions involving willful or wanton conduct, which has not been alleged.

Nonetheless, FSO has negotiated a comprehensive settlement agreement to facilitate a successful exit from this Chapter 11 Case that provides significant cash payments to (1) the Estate and (2) the Debtor's former residents, and dedicates the use of FSO's remaining net assets to support the Debtor's current residents, consistent with FSO charitable mission.

#### **(1) The UCC Letter and Investigation**

Prior to the Petition Date, the relationship between the Debtor and its current and former residents, including family members and representatives, had become strained. Upon the Committee's formation and following the completion of the Section 341 Creditors' Meeting, the Committee recognized that, given significant financial losses sustained by certain Residents, the Committee would need to conduct an investigation into potential claims and causes of action belonging to the Debtor's Estate.

The Committee, aided by its professionals, conducted an investigation into the dealings between the Debtor and the Residents and the Debtor and FSO. In particular, on November 1, 2023, the Committee filed a motion for 2004 examination of the Debtor, which the Debtor did not contest, and on November 8, 2023, the motion was granted. *See* Docket Nos. 303 and 321. The Committee reviewed publicly available information and the documents produced, as well as information that the Debtor voluntarily provided. Based on its review, the Committee determined that the Debtor's Estate may be able to allege certain claims or causes of action. Thus, the Committee provided the Debtor with a letter, dated November 16, 2023 (the "**UCC Letter**"), a copy of which is attached hereto as Exhibit 6, wherein the Committee demanded payment for losses sustained by Residents. The Committee also requested that the Debtor provide contact information for the necessary and applicable insurance carriers so that notice of the letter could be provided. The Debtor has confirmed that FSO provided such carriers with notice of the letter.

Although the Committee believes the Debtor's Estate may have claims that could yield recovery for the benefit of creditors, the Committee is nonetheless mindful that the Estate has limited resources at its disposal. Accordingly, rather than adopting a full litigation posture and

potentially exhausting significant Estate resources, following its review of the documents and other information, the Committee and its professionals engaged in negotiations with the Debtor and FSO. Such settlement discussions resulted in the FSO Settlement and Contribution Agreement, pursuant to which the Committee believes Residents will receive considerable consideration in exchange for a release of the Estate's potential claims without the risk and expense associated with litigation.

The Debtor does not believe that the Estate has any valuable and meritorious claims or causes of action that warrant pursuing, and to the extent that such claims or causes of action do exist, the Debtor's Estate is receiving adequate consideration under the FSO Settlement and Contribution Agreement. Likewise, FSO disputes the merit of the potential claims described in the UCC Letter.

## (2) Bond Trustee Demand Letter

The Bond Trustee has made certain assertions concerning ERTCs that were received by FSO.<sup>23</sup> In particular, the Bond Trustee has asserted in pleadings that the Bond Trustee believes that ERTC funds received by FSO constitute property of the Debtor's estate. The Bond Trustee provided the Debtor with a letter, dated January 4, 2024 (the "**Bond Trustee Letter**"), a copy of which is attached hereto as Exhibit 4, which, among other things, requested that the Debtor seek turnover of the ERTC funds from FSO. The Debtor responded by requesting that the Bond Trustee provide more information and legal authority concerning the Bond Trustee's position concerning ownership of the ERTC funds. A copy of the Debtor's responsive letter is attached hereto as Exhibit 5. To date, the Debtor has not been provided with any response, substantive or otherwise. The Debtor's research and analysis does not support the Bond Trustee's position. FSO disputes that the Debtor owns any portion of the ERTC funds FSO has received on account of FSO employees.

The Bond Trustee Letter also included a request that the Debtor confirm it had provided notice to the Debtor's insurance companies regarding potential claims against the Debtor's directors and officers, which includes voluntary board members protected by a statutory shield under Illinois law. The purported claims referenced in the Bond Trustee Letter include "fraudulent conveyances, the intermingling of corporate funds, the improper withholding of the ERTC funds, and the improper elimination of an \$8.8 million liability that FSO owed the Debtor." The Debtor confirmed that FSO, which is the party that handles the Debtor's insurance, provided notice.

On January 16, 2024, the Bond Trustee filed a motion for standing to pursue a claim for turnover of ERTC funds [Docket No. 476] (the "**Standing Motion**"). On January 22, 2024, notices of objection and objections were filed by IL CCRC LLC, FSO, the Committee, and the Debtor. See Docket Nos. 484-487. On January 24, 2024, the Bankruptcy Court heard but did not grant (or deny) the Standing Motion, and the hearing has been continued to February 21, 2024. Thus, the purported potential claims are not pending before the Bankruptcy Court or any other court. Nevertheless, FSO disputes the merit of the potential claims asserted by the Bond Trustee and further disputes that the motion for standing should be granted.

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<sup>23</sup> As noted above, to date, FSO has received approximately \$7.6 million in ERTC funds attributable to FSO employees who provided services to the Debtor.

As noted in Section IV.J above, the Bond Trustee claims that it believes the Debtor has substantial causes of action against FSO, as well as its own board of directors, including claims for breach of fiduciary duty and fraudulent conveyance. According to the Bond Trustee, such claims related to, among other things, (i) taking funds from the Debtor to support operations at FSO and affiliates, (ii) an \$8.8 million obligation owing to the Debtor from FSO, which was eliminated shortly before the Chapter 11 Case, and (iii) charging the Debtor an above-market management fee for the purpose of providing monetary support to an under-performing affiliate. The Debtor and/or FSO have a \$10 million insurance policy against which judgments on such claims could potentially be collected.

Also as noted above, FSO disputes that there is any merit to the claims alleged by the Bond Trustee on the basis that, among other things: (1) the ERTC funds were paid by the IRS to FSO on account of FSO employees and thus constitute FSO property as a matter of law, (2) the \$8.8 million intercompany liability was investigated and reconciled prior the commencement of the Chapter 11 Case to reflect the accurate intercompany liability, (3) the management fees paid by the Debtor to FSO were authorized under the Management Agreement and constitute reasonably equivalent value for the management and administrative services FSO provided to the Debtor, (4) all intercompany transfers between and among the Debtor, FSO and affiliates were appropriately reconciled, and (5) no party has articulated any basis for a breach of fiduciary duty claim against any of the volunteer directors of the Debtor or FSO, who are protected from liability by the statutory shield provided by 850 ILCS 105/108.70 except for acts or omissions involving willful or wanton conduct, which has not been alleged.

Nonetheless, FSO has negotiated a comprehensive settlement agreement to facilitate a successful exit from this Chapter 11 Case that provides significant cash payments to (1) the Estate and (2) the Debtor's former residents, and dedicates the use of FSO's remaining net assets to support the Debtor's current residents, who had their entrance fee refunds and life care benefits modified as a result of the Sale Transaction, consistent with FSO's charitable mission.

### **(3) FSO Settlement and Contribution Agreement**

After an extensive investigation, including two Rule 2004 examinations into the Debtor and FSO, and several months of negotiations, the Debtor, the Committee and FSO entered into the FSO Settlement and Contribution Agreement that provides for (i) a substantial contribution to the Debtor's Estate, through the forgiveness and waiver of \$1,000,000 of the DIP Facility Claims, (ii) a Cash contribution of \$1,500,000 to the Former Residents Trust for the benefit of the Debtor's Former Residents, and (iii) dedication of the remaining net assets of FSO and the FSO Foundation to be used for the ongoing support of the Debtor's Current Residents, in exchange for a release of any and all potential claims against FSO and its affiliates, including the Debtor, and each of their respective current and former officers and directors. A copy of the FSO Settlement and Contribution Term Sheet is attached as Exhibit 3,

### **(4) Morrison Appeal**

At the Sale Hearing, the Debtor asserted ownership with respect to certain Equipment that was included in the proposed Purchased Assets, and Morrison objected, asserting an ownership

interest with respect to the Disputed Property. The Bankruptcy Court set a briefing schedule and a hearing concerning the Disputed Property. Following briefing and oral argument, the Bankruptcy Court overruled Morrison's objection and found the Debtor owned the Equipment that was the subject to the dispute with Morrison. See Docket Nos. 309, 329, 377, 393, and 426. Additionally, the Bankruptcy Court required the Debtor to set aside \$2,712,100.97 from proceeds of the Sale Transaction to ensure Morrison could recover on its claim, including interest, if Morrison is able to establish a priority interest in the Disputed Property. See Docket No. 426. A day after the Sale Closing occurred, on December 29, 2024, Morrison filed a Notice of Appeal. See Docket No. 433. On January 12, 2024, Morrison filed its designation and statement of issues on appeal. The Debtor's deadline to file any counter-designation and statement of issues is January 26, 2024. The Debtor has attempted to initiate discussions with Morrison as it relates to the appeal and a potential stipulation in the Chapter 11 Case concerning Morrison's Claim, which the Debtor asserts is a general unsecured claim due to the failure of Morrison to perfect any lien that it may have had in the Disputed Property.

## **V. SUMMARY OF THE CHAPTER 11 PLAN**

**THIS SECTION PROVIDES A DETAILED SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT 1.**

The Claims against the Debtor are divided into Classes according to their seniority and other criteria. The Classes of Claims and Interests against the Debtor and its Estate and the funds and other property to be distributed under the Plan are more fully described below.

**THE DEBTOR BELIEVES THE PLAN AFFORDS CREDITORS THE POTENTIAL FOR THE GREATEST REALIZATION OF THE VALUE OF THE DEBTOR'S ASSETS.**

### **A. Unclassified Claims**

#### **(1) Administrative Expense Claims**

To be eligible to receive Distributions under the Plan on account of an Administrative Expense Claim that is not otherwise Allowed by the Plan, requests for payment of Administrative Expense Claims must be Filed no later than the applicable Administrative Expense Bar Date. Holders of Administrative Expense Claims that do not File requests for the allowance and payment thereof on or before the applicable Administrative Expense Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtor or the Estate. For the avoidance of doubt, the DIP Lender, as Holder of the DIP Facility Claims, shall not be required to file an Administrative Expense Claim for the allowance and satisfaction of such Claims; *provided, however*, that subject to the approval of and pursuant to the terms of the FSO Settlement and Contribution Agreement, the DIP Facility Claim shall only be Allowed as an Administrative Expense Claim to the extent of \$2,000,000.

Except to the extent that, prior to the Effective Date, the Debtor and a Holder of an Allowed Administrative Expense Claim agree to less favorable treatment or has been paid by the Debtor

prior to the Effective Date, in full and final satisfaction, settlement, and release of and in exchange for release of each Allowed Administrative Expense Claim, each Holder of an Allowed Administrative Expense Claim will be paid the full unpaid amount of such Allowed Administrative Expense Claim in Cash (i) if such Allowed Administrative Claim is based on liabilities that the Debtor incurred in the ordinary course of business after the Petition Date, on the Effective Date or in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Expense Claim, in the Debtor's discretion, and without any further action by any holder of such Allowed Administrative Expense Claim; (ii) if such Allowed Administrative Expense Claim is due on the Effective Date, or, if such Allowed Administrative Expense Claim is not due as of the Effective Date, on the date that such Allowed Administrative Expense Claim becomes due or as soon as reasonably practicable thereafter; (iii) if an Administrative Expense Claim is not Allowed as of the Effective Date, on the date that is no later than thirty (30) days after the date on which an order allowing such Administrative Expense Claim becomes a Final Order of the Bankruptcy Court or as soon as reasonably practicable thereafter; or (iv) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

## **(2) Professional Fee Claims**

All Professionals requesting payment or satisfaction of Professional Fee Claims for services rendered before the Effective Date (including compensation requested by any Professional or other entity for making a substantial contribution in the Chapter 11 Case) shall File an application for final allowance of compensation and reimbursement of expenses no later than the Professional Fee Claims Bar Date.

The Final Fee Hearing shall be held as soon as practicable after the Professional Fee Claims Bar Date. The Debtor, through its counsel, shall File a combined notice of the Final Fee Hearing. Such notice shall also be posted on the Case Website, and served upon counsel for the Committee, counsel for Bond Trustee, all Professionals, the U.S. Trustee, and all parties on the Debtor's Bankruptcy Rule 2002 service list.

Allowed Professional Fee Claims shall be paid: (i) as soon as is reasonably practicable following the later of (a) the Effective Date and (b) the date upon which the order relating to any such Allowed Professional Fee Claims is entered by the Bankruptcy Court; or (ii) upon such other terms as agreed by the Holder of such an Allowed Professional Fee Claims. Allowed Professional Fee Claims shall be paid in full in Cash by the Debtor.

## **(3) Priority Tax Claims**

Except to the extent that the Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment with the Debtor, each Holder of an Allowed Priority Tax Claim will receive in full and final satisfaction, settlement, release, and discharge of, and in exchange for, its Allowed Priority Tax Claim an amount of Cash equal to the full unpaid amount of such Allowed Tax Claim on (a) the Effective Date, or (b) the first Business Day after the date which is thirty (30) days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable. Cook County Treasurer's Office has filed a proof of claim, asserting a Claim in the amount of \$723,856.09, the full amount of which has been satisfied.

**(4) DIP Facility Claims**

Pursuant to the terms of the FSO Settlement and Contribution Agreement, described in Exhibit 3 to this Disclosure Statement, the DIP Facility Claims shall be deemed an Allowed Administrative Expense Claim to the extent of the full amount due and owing under the DIP Order less \$1,000,000 (the repayment of which the DIP Lender has agreed to waive in connection with the FSO Settlement and Contribution Agreement), as of the Effective Date. As stated above, the DIP Lender is not required to file any Proof of Claim with respect to the DIP Facility Claims, which shall be satisfied in from Net Sale Proceeds and/or other Cash available on the Effective Date.

**(5) Escrow Resident Claims**

As of November 14, 2023 and January 17, 2024, the Entrance Fee Escrow held approximately \$5,300,000 and \$4,900,000, respectively. As of the date hereof, the Entrance Fee Escrow holds approximately \$620,000. Thus, numerous depositors have already received the return of their Option Deposits. The remaining Option Deposits will be released pursuant to applicable agreements as soon as reasonably practicable and no later than Confirmation.

**(6) U.S. Trustee Fees**

All U.S. Trustee Fees due and payable prior to the Effective Date shall be paid by the Debtor on or before the Effective Date in accordance with Bankruptcy Code section 1129(a)(12). On and after the Effective Date, until the earliest of the Chapter 11 Case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code, the Unsecured Creditor Trustee shall pay any and all U.S. Trustee Fees when due and payable, and shall File with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee.

**B. Classification and Treatment of Claims and Interests**

**(1) Classification of Claims and Interests**

Pursuant to Bankruptcy Code sections 1122 and 1123(a)(1), Claims are classified for all purposes, including, without express or implied limitation, voting, confirmation and distribution pursuant to the Plan, as set forth herein. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving Distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

Except to the extent that the Debtor and a Holder of an Allowed Claim or Allowed Interest, as applicable, agree in writing to less favorable treatment for such Allowed Claim or Allowed Interest, as applicable, such Holder shall receive under the Plan the treatment described below and set forth in Section 8 of the Plan in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Holder's Allowed Claim or Allowed Interest. Unless otherwise

indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the Effective Date or as soon thereafter as reasonably practicable.

The following table designates the Classes of Claims and Interests in the Debtor and specifies which of those Classes are: (i) Impaired or Unimpaired; (ii) entitled to vote to accept or reject the Plan; and (iii) deemed to accept or reject the Plan.

| <b>Class</b>                       | <b>Estimated Allowed Claims<sup>24</sup></b> | <b>Treatment &amp; Voting Rights</b> | <b>Estimated Recovery<sup>25</sup></b> |
|------------------------------------|----------------------------------------------|--------------------------------------|----------------------------------------|
| Class 1 – Other Priority Claims    | \$481,000                                    | Unimpaired, deemed to accept         | 100%                                   |
| Class 2 – Bond Claims              | \$131,600,000 <sup>26</sup>                  | Impaired, entitled to vote           | 23.3%                                  |
| Class 3 – Other Secured Claims     | \$40,000                                     | Unimpaired, deemed to accept         | 100%                                   |
| Class 4 – Deficiency Claims        | TBD <sup>27</sup>                            | Impaired, entitled to vote           | Unknown%                               |
| Class 5A – Former Residents Claims | \$20,000,000                                 | Impaired, entitled to vote           | 10.0% - 17.5% <sup>28</sup>            |

<sup>24</sup> These amounts represent estimated Allowed Claims, and do not represent amounts actually asserted by creditors in Proofs of Claim or otherwise. The Debtor has not completed its review and analysis of all Claims in the Chapter 11 Case, and objections to such Claims have not been Filed and/or fully litigated and may continue following the Effective Date. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

<sup>25</sup> The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims in the Chapter 11 Case. As set forth above, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are Allowed by the Bankruptcy Court.

<sup>26</sup> The extent to which the Bond Trustee's Class 2 Claim is secured has not been determined. The Purchased Assets included assets not encumbered by the Bond Trustee's lien or interest. Thus, the Debtor reserves the right to dispute the amount of the Bond Claim.

<sup>27</sup> The Deficiency Claim of the Bond Trustee will be determined by the amount of Net Sale Proceeds available for Distribution to Class 2 Claims. The Deficiency Claim of the Other Secured Claim Holder (Leaf Capital Funding, LLC) is estimated at \$62,327.79 as the Debtor estimates the value of the vehicle securing the debt has a fair market value of approximately \$40,000.

<sup>28</sup> Pursuant to the APA, the Purchaser provided \$2,000,000 to be held in trust for the benefit of Holders of Class 6 Former Resident Claims, irrespective of whether such Holders vote to accept the Plan or grant the releases thereunder. Additionally, subject to approval of the Bankruptcy Court, the FSO Settlement and Contribution Agreement provides \$1,500,000 to be funded into the Former Residents Trust for the benefit of Holders who vote in favor of the Plan and do not elect to Opt Out of the releases under the Plan and the FSO Settlement and Contribution Agreement. Accordingly, the Unsecured Creditor Trustee and the Former Residents Trust Trustee, as applicable, will cause the funds to be distributed to such Holders, as appropriate. Additionally, Former Residents will recover from any recovery of the Unsecured Creditor Trust.

| <b>Class</b>                                    | <b>Estimated Allowed Claims<sup>24</sup></b> | <b>Treatment &amp; Voting Rights</b> | <b>Estimated Recovery<sup>25</sup></b> |
|-------------------------------------------------|----------------------------------------------|--------------------------------------|----------------------------------------|
| Class 5B – Opt Out Former Resident Claims       | \$0.00                                       | Impaired, entitled to vote           | 0.0% <sup>29</sup>                     |
| Class 6 – Non-Resident General Unsecured Claims | \$3,956,000                                  | Impaired, entitled to vote           | Unknown <sup>30</sup>                  |
| Class 7 – Intercompany Claims                   | \$232,000 <sup>31</sup>                      | Impaired, not entitled to vote       | 0.0%                                   |
| Class 8 – Interests in Debtor                   | N/A                                          | Impaired, not entitled to vote       | 0.0%                                   |

## **(2) Treatment of Claims and Interests**

### **(a) Class 1: Other Priority Claims**

*Classification.* Class 1 consists of all Other Priority Claims.

*Treatment.* Except to the extent that a Holder of an Allowed Other Priority Claim and the Debtor agree in writing to less favorable treatment of such Holder's Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive, in full and complete satisfaction, settlement, discharge, and release of, and in exchange for, its Allowed Other Priority Claim:

- a. payment in full, in Cash, on the later of (i) the Effective Date; or (ii) the date such Other Priority Claim is Allowed;
- b. payment in the ordinary course of business between the Debtor and the Holder of such Allowed Other Priority Claim; or
- c. payment at such time and upon other terms as the Debtor and the Holder of such Allowed Other Priority Claim may agree.

<sup>29</sup> Holders of any Allowed Class 5B Claims will recover in an unknown amount from any recovery of the Unsecured Creditor Trust.

<sup>30</sup> In addition to trade debt, Class 6 General Unsecured Claims will include any Rejection Claims that arise as a result of a Holder of a Current Resident Claim electing not to consent to be bound by the terms of a modified Residency Agreement and, thus, causing their Residency Agreement to be rejected. The recovery percentage will depend on any recovery by the Unsecured Creditor Trust.

<sup>31</sup> Debtor's books and records reflect a receivable of approximately \$100,000 from FSO, which is not accounted for in this figure of \$232,000. Additionally, 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 in excess of \$8,000,000. FSO disputes this claim.

*Voting.* Class 1 is Unimpaired. Holders of Allowed Other Priority Claims in Class 1 are conclusively presumed to have accepted the Plan under Bankruptcy Code section 1126(f). Holders of Other Priority Claims are not entitled to vote to accept or reject the Plan.

**(b) Class 2: Bond Claims**

*Classification.* Class 2 consists of the Bond Claims.

*Treatment.* Upon the terms and subject to the conditions set forth in the Plan, in full and final satisfaction, settlement, release, and discharge of the Allowed Bond Claims against the Debtor, the Bond Trustee shall receive, on behalf of the Holders of the Allowed Bond Claims, (i) on the Effective Date or as soon as practicable thereafter, the Net Sale Proceeds, subject to the amounts required to satisfy other Allowed Claims and fund the Wind Down Reserve; and (ii) any funds remaining in the Wind Down Reserve after payments of applicable obligations. All Distributions made on account of the Bond Claims shall be paid to the Bond Trustee, and the 2017 Bond Trustee shall make further Distributions to the holders of the Bonds as set forth in the 2017 Bond Documents. In addition to the foregoing and as allowed by the Final Cash Collateral Order, the Bond Trustee may apply any and all funds in its possession as set forth in the 2017 Bond Documents free from the automatic stay imposed by Bankruptcy Code section 362.

*Voting.* Class 2 is Impaired. Holders of Allowed Bond Claims are entitled to vote to accept or reject the Plan.

**(c) Class 3: Other Secured Claims**

*Classification.* Class 3 consists of all Other Secured Claims.

*Treatment.* Except to the extent that a Holder of an Allowed Other Secured Claim and the Debtor agree in writing to less favorable treatment of its Allowed Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive, in full and complete satisfaction, settlement, discharge, and release of, and in exchange for, its Allowed Other Secured Claim:

- a. payment in full, in Cash, of the unpaid portion of its Allowed Other Secured Claim on the following: (i) if such Allowed Other Secured Claim is Allowed as of the Effective Date, the Effective Date or as soon thereafter as reasonably practicable (or, if payment is not then due, the date such Allowed Other Secured Claim becomes due and payable, or as soon thereafter as is reasonably practicable); and (ii) if such Allowed Other Secured Claim is not Allowed as of the Effective Date, the date such Other Secured Claim is Allowed or as soon as reasonably thereafter practicable;
- b. a Distribution of such Collateral securing the Other Secured Claim;
- c. a Distribution of the proceeds of the sale or disposition of such Collateral securing the Other Secured Claim; or
- d. such other treatment as the Debtor and the Holder of such Allowed Other Secured Claim may agree.

*Voting.* Class 3 is Unimpaired. Holders of Class 3 Claims are conclusively presumed to have accepted the Plan under Bankruptcy Code section 1126(f). Holders of Other Secured Claims are not entitled to vote to accept or reject the Plan.

**(d) Class 4: Deficiency Claims**

*Classification.* Class 4 consists of Deficiency Claims.

*Treatment.* Holders of Allowed Deficiency Claims shall recover their Pro Rata share of any recovery of the Unsecured Creditor Trust.

*Voting.* Class 4 is Impaired. Holders of Class 4 Claims are entitled to vote to accept or reject the Plan.

**(e) Class 5A: Former Resident Claims**

*Classification.* Class 5A consists of all Claims of Former Residents, who consent to granting the releases set forth under the Plan and the FSO Settlement and Contribution Agreement.

*Treatment.* Holders of Class 5A Claims will recover their Pro Rata shares of: (i) any recovery of the Unsecured Creditor Trust; (ii) \$2,000,000 (the Buyer Former Resident Contribution); and (iii) \$1,500,000 (the FSO Former Residents Contribution).

*Voting.* Class 5A is Impaired. Holders of Allowed Class 5A Claims are entitled to vote to accept or reject the Plan.

**(f) Class 5B Opt Out Former Resident Claims**

*Classification.* Class 5B consists of all Claims of Former Residents, who do not consent to granting the releases set forth under the Plan and the FSO Settlement and Contribution Agreement.

*Treatment.* Holders of Class 5B Claims will recover their Pro Rata shares of: (i) any recovery of the Unsecured Creditor Trust; and (ii) \$2,000,000 contributed by the Purchaser.

*Voting.* Class 5B is Impaired. Holders of Allowed Class 5B Claims are entitled to vote to accept or reject the Plan.

**(g) Class 6: Non-Resident General Unsecured Claims**

*Classification.* Class 6 consists of General Unsecured Claims.

*Treatment.* Holders of General Unsecured Claims shall recover their Pro Rata share of any recovery of the Unsecured Creditor Trust.

*Voting.* Class 6 is Impaired. Holders of Allowed Class 6 Claims are entitled to vote to accept or reject the Plan.

**(h) Class 7: Intercompany Claims**

*Classification.* Class 7 consists of Intercompany Claims.

*Treatment.* FSO, as the Holder of Intercompany Claims, shall not receive any Distribution on account of such claims, and such Class 7 Claims shall be waived, released, and extinguished as of the Effective Date, and shall be of no further force or effect.

*Voting.* Class 7 is Impaired. Holders of Intercompany Claims, in Class 7, are deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g) and are not entitled to vote to accept or reject the Plan.

**(i) Class 8: Interests in Debtor**

*Classification.* Class 8 consists of FSO's Interests in the Debtor.

*Treatment.* Holders of Interests in the Debtor shall not receive any Distribution on account of such Interests, and such Interests shall be terminated on the Effective Date.

*Voting.* Class 8 is Impaired. Holders of Interests in the Debtor are deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g) and are not entitled to vote to accept or reject the Plan.

**(3) Acceptance or Rejection of the Plan**

**(a) Acceptance by an Impaired Class**

In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

**(b) Presumed Acceptance of the Plan**

Classes 1 and 3 are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f).

**(c) Presumed Rejection of the Plan**

Class 7 is conclusively presumed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g).

**(d) Voting Classes**

Classes 2, 4, 5A, 5B, and 6 are entitled to vote to accept or reject the Plan.

**(4) Subordinated Claims**

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective Distributions and treatments under the Plan take into account the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, Bankruptcy Code section 510(b), or otherwise. For purposes of Bankruptcy Rule 7001(8), the Plan provides for subordination. The Unsecured Creditor Trustee, as set forth herein, shall have the right to request to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto under the Bankruptcy Code. Subordinated Claims shall not receive a Distribution under the Plan until any and all senior Allowed Claims are paid in full.

**(5) Cramdown and No Unfair Discrimination**

If all applicable requirements for confirmation of the Plan are met as set forth in Bankruptcy Code section 1129(a) except subsection (8) thereof, the Debtor shall request that the Bankruptcy Court confirm the Plan in accordance with Bankruptcy Code section 1129(b) on the bases that the Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims or Interests that is Impaired hereunder, and has not accepted or is deemed to reject, the Plan.

**C. Means for Implementation and Effective Date of the Plan**

**(1) Sale Transactions**

**(a) The Sale Transaction and Transfer of Net Sale Proceeds**

Consistent the APA, pursuant to the Sale Order, substantially all the Assets have been sold to the Purchaser, free and clear of all Liens, Claims, Encumbrances, and Interests, with all such Liens, Claims, Encumbrances and Interests attaching automatically to the Net Sale Proceeds in the same manner, extent, validity and priority as existed on the Closing Date. Net Sale Proceeds will be distributed pursuant to the Plan.

The Bond Trustee shall receive the following on account of the Bond Claims on the Effective Date, or as soon as practicable thereafter, the Net Sale Proceeds, less any amounts required to be distributed to (i) Holders certain other Allowed Claims, including Unclassified Claims. All Distributions made on account of the Bond Claims shall be paid to the Bond Trustee, and the Bond Trustee shall make further distributions to the Holders of the Bonds in accordance with the 2017 Bond Documents.

**(b) The Huntley Property Sale and Transfer of related Proceeds**

Under the PSA, which was approved by the Bankruptcy Court on January 10, 2024, the Huntley Property was sold and transferred to Prime Group, free and clear of any Liens, Claims, Encumbrances, and Interests. The sale closed on or about January 31, 2024.

The Estate received net sale proceeds of approximately \$420,000 after payment of closing costs, fees, and satisfaction of debts, including, without limitation a commission payment to Avison Young in the amount of \$27,000. A portion such net sale proceeds, totaling \$50,000, will be used to fund the Unsecured Creditor Trust that will be formed for the benefit of certain unsecured creditors, and the balance of the proceeds will be distributed in accordance with the Plan and applicable provisions of the Bankruptcy Code.

**(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 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.

(i) Creation of the Unsecured Creditor Trust. On or prior to the Effective Date, the Debtor shall execute the Unsecured Creditor Trust Agreement. On the Effective Date, the Unsecured Creditor Trust shall become effective and shall be deemed to be valid, binding and enforceable in accordance with the terms and provisions of the Plan and the Unsecured Creditor Trust Agreement. After the Effective Date, the Unsecured Creditor Trust Agreement may be amended in accordance with its terms without further order of the Bankruptcy Court. The Unsecured Creditor Trust Agreement must be acceptable in form and substance to the Debtor and the Committee.

(ii) Purpose of the Unsecured Creditor Trust. The Unsecured Creditor Trust shall be formed for the purposes of: (i) liquidating any non-Cash Unsecured Creditor Trust Assets; (ii) maximizing recovery of the Unsecured Creditor Trust Assets for the benefit of the holders of Unsecured Creditor Trust Interests; (iii) distributing the proceeds of the Unsecured Creditor Trust Assets to holders of Unsecured Creditor Trust Interests in accordance with the Plan and the Unsecured Creditor Trust agreement; (iv) prosecuting or otherwise resolving the Retained Causes of Action for the benefit of holders of Unsecured Creditor Trust Interests; and (v) winding down the Chapter 11 Case, including, without limitation (a) distributing the Buyer Former Resident Contribution to Former Residents on a Pro Rata basis in accordance with the Plan and (b) evaluating and potentially objecting to and resolving disputed claims, as provided in the Plan and the Unsecured Creditor Trust Agreement.

(iii) Funding of the Unsecured Creditor Trust. On the Effective Date, Cash in the amount of \$50,000 will be funded from proceeds obtained through the sale of the Huntley Property. The Cash will be used exclusively for the purpose of paying Unsecured Creditor Trust Expenses.

(iv) Transfer of Unsecured Creditor Trust Assets. As of the Effective Date, pursuant to the provisions of sections 1141(b) and (c) of the Bankruptcy Code, the Debtor and the Estate shall preserve, transfer and assign all of its right, title, and interest in and to all of

the Unsecured Creditor Trust Assets, which shall automatically vest in the Unsecured Creditor Trust free and clear of all Claims, Liens, encumbrances, charges, Interests, and other interests, subject only to the Allowed Claims of the Holders of Unsecured Creditor Trust Interests as set forth in the Plan and the Unsecured Creditor Trust Agreement.

(v) Appointment of Unsecured Creditor Trustee. Prior to Confirmation, the Unsecured Creditor Trustee shall be identified, and on the Effective Date, shall be deemed the Estate's representative with respect to Unsecured Creditor Trust Assets in accordance with Bankruptcy Code section 1123 and such trustee shall have all powers, authority and responsibilities specified in the Plan and Unsecured Creditor Trust Agreement solely with respect to the Unsecured Creditor Trust Assets, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004.

(vi) Governance of Unsecured Creditor Trust. The Unsecured Creditor Trust shall be governed by the Unsecured Creditor Trust Agreement and administered by the Unsecured Creditor Trustee who shall report to the Unsecured Creditor Trust Oversight Committee in accordance with the terms of the Plan and the Unsecured Creditor Trust Agreement.

(vii) Tax Treatment. Except to the extent allocable to Disputed Claims, consistent with the principles of Revenue Procedure 94-45, 1994-2 C.B. 684, as of the Effective Date, for federal income tax purposes, (i) the Debtor will be deemed to transfer the Unsecured Creditor Trust Assets to the holders of the Unsecured Creditor Trust Interests, (ii) the holders of the Unsecured Creditor Trust Interests will be deemed to transfer such Assets to the Unsecured Creditor Trust, (iii) the Unsecured Creditor Trust will be treated as a "liquidating trust," as defined in Treasury Regulation section 301.7701-4(d), and as a "grantor trust" within the meaning of Internal Revenue Code sections 671-679 and (iv) the holders of the Unsecured Creditor Trust Interests will be treated as the "grantors" of the Unsecured Creditor Trust.

(viii) Securities Registration Exemption. The Debtor intends that the Unsecured Creditor Trust Interests shall not be deemed "securities" under applicable laws, but to the extent such units are deemed to be "securities," the Debtor believes the issuance of such units under the Plan is exempt, pursuant to Bankruptcy Code section 1145 (except with respect to an entity that is an "underwriter" as defined in Bankruptcy Code section 1145(b)).

(ix) Rights, Powers, and Duties of the Unsecured Creditors Trust and the Unsecured Creditors Trust Trustee. The Unsecured Creditors Trust will act for the benefit of holders of Unsecured Creditor Trust Interests in a fiduciary capacity and shall have comparable authority as a bankruptcy trustee of the Debtor, as the exclusive representative of the Estate under section 1123(a)(5)(B) of the Bankruptcy Code or any corresponding federal or state laws with respect to the Unsecured Creditor Trust Assets and shall succeed to all of the Debtor's and the Estate's rights with respect thereto, subject to the provisions of the Plan and the Unsecured Creditor Trust Agreement. The Unsecured Creditor Trust is the successor to the Debtor and its Estate. The powers, rights and duties of the Unsecured Creditor Trustee shall arise on the Effective Date and shall include, all subject to the terms and conditions of the Unsecured Creditor Trust Agreement, the following:

- a. Commencing, pursuing and liquidating Retained Causes of Action;

- b. Distributing the Buyer Former Resident Contribution pursuant to the Plan;
- c. engaging attorneys, consultants, agents, employees and any other professional persons to assist the Unsecured Creditors Trustee with respect to the Unsecured Creditors Trustee's responsibilities;
- d. paying the fees and expenses of the attorneys, consultants, agents, employees and other professional persons engaged by the Unsecured Creditors Trust and paying all other expenses;
- e. compromising and settling Claims without notice or Bankruptcy Court approval;
- f. calculating and implementing distributions of Unsecured Creditor Trust Assets for the benefit of the holders of the Unsecured Creditor Trust Interests;
- g. resolving issues involving Claims and Interests in accordance with the Plan;
- h. making Plan Distributions in accordance with the Plan;
- i. overseeing compliance with accounting, finance and reporting obligations, including preparing financial statements and U.S. Trustee post-confirmation quarterly reports, and filing such reports on the docket of the Chapter 11 Case until such time as a final decree has been entered;
- j. consulting with members of the Unsecured Creditor Trust Oversight Committee regarding the potential prosecution and/or settlement of Retained Causes of Action and reporting to the Unsecured Creditor Trust Oversight Committee regarding such matters, and seeking approval from the Unsecured Creditor Trust Oversight Committee regarding the prosecution and/or settlement of each Cause of Action, to the extent set forth in the Unsecured Creditor Trust Agreement;
- k. investing Cash in accordance with Bankruptcy Code section 345, and withdrawing and making Distributions of Cash to holders of Unsecured Creditor Trust Interests holding and paying taxes and other obligations incurred by the Unsecured Creditor Trustee in connection with winding down the Estate in accordance with the Plan;
- l. coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any Unsecured Creditor Trust Assets;
- m. taking possession of all books, records, and files of the Debtor and its Estate; and providing for the retention and storage of such books, records, and files until such time as the Unsecured Creditor Trust determines, in accordance

with the Unsecured Creditor Trust Agreement, that retention of same is no longer necessary or required;

- n. paying taxes or other obligations incurred by the Unsecured Creditor Trust;
- o. overseeing the filing of final tax returns, refund requests, audits and other corporate dissolution documents, as required;
- p. performing any additional corporate actions as necessary to carry out the wind down and liquidation of the Estate;
- q. exercising such other powers as may be vested in or assumed by the Unsecured Creditor Trustee pursuant to the Plan, the Unsecured Creditor Trust Agreement or other Order of the Bankruptcy Court or as may be needed or appropriate to carry out the provisions of the Plan; and
- r. undertaking all administrative functions of the Chapter 11 Case, including the payment of fees payable to the U.S. Trustee and the ultimate closing of the Chapter 11 Case.

(i) Unsecured Creditor Trust Interests. Holders of Claims in Classes 4, 5A, 5B, and 6 shall, by operation of the 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.

### **(3) FSO Settlement and Contribution Agreement**

On or before the Effective Date, the Debtor, FSO, and the Committee shall have executed and entered into the FSO Settlement and Contribution Agreement, the principal terms of which are reflected in the FSO Settlement and Contribution Agreement Term Sheet attached to the Disclosure Statement. In exchange for releases set forth under the Plan and to be described in the FSO Settlement and Contribution Agreement, FSO has agreed to make certain contributions for the benefit of the Debtor and its Estate, as well as Current and Former Residents.

As set forth in the FSO Settlement and Contribution Agreement Term Sheet attached as Exhibit 3, in exchange for releases, FSO agrees to: (i) provide the Partial DIP Waiver; (ii) contribute the FSO Former Resident Contribution to fund the Former Residents Trust to be formed

for the benefit of the Former Residents who are owed entrance fee refunds by the Debtor upon the Effective Date and do not Opt Out of the releases under Section 8 of the Plan, with the FSO Former Resident Contribution to be distributed on a Pro Rata basis to Former Residents Trust Beneficiaries in accordance with the terms the Former Residents Trust Agreement; and (iii) for the benefit of Current Residents, amend and restate the organizational documents for FSO and the FSO Foundation so that both entities, and their respective net assets, are effectively combined into FSO with an amended and restated mission to support current residents of the Community, including but not limited to benevolent care support. The FSO Current Resident Contribution would provide significant value in additional benefits to Current Residents who do not Opt Out of the releases under Section 8 of the Plan.

The FSO Settlement and Contribution Agreement shall be included in the Plan Supplement(s).

***Residents who believe they have valuable claims, including without limitation, tort claims such as personal injury or wrongful death, against any of the Released Parties may elect to Opt Out of the releases under Section 8, and, if such an Opt Out election is properly made, such Resident(s) will be permitted to retain such claims to be individually pursued but will not be permitted to participate in the benefits of the FSO Settlement and Contribution Agreement.***

The Bond Trustee believes the FSO Settlement and Contribution Agreement is unreasonable and improper because, among other things, the alleged value of the Debtor's potential claims against FSO, which the Bond Trustee asserts is more than \$18 million, substantially exceeds any purported value the Debtor asserts it is receiving under the FSO Settlement and Contribution Agreement. The Bond Trustee asserts that the Debtor is receiving no value under the proposed agreement, as FSO is using funds that the Bond Trustee asserts already belong to the Debtor to make the payments due under the proposed agreement.

#### **(4) Former Residents Trust**

Upon the Effective Date, the Former Residents Trust will be formed. The Former Residents Trust will receive and distribute the FSO Former Resident Contribution.

The Residents Trust shall be established for the purposes of receiving (i) the FSO Former Resident Contribution; and (ii) the right to enforce the terms of the FSO Settlement and Contribution Agreement (collectively, with any earnings on deposits, the “**Residents Trust Assets**”); and making distributions to the Former Residents Trust Beneficiaries in accordance with the terms of the Plan and that certain Former Residents Trust Agreement, between the Committee and FSO, which will be included in the Plan Supplement(s) and executed before the Effective Date.

The Former Residents Trust Trustee will act, in a fiduciary capacity, for the benefit of the Former Residents Trust Beneficiaries, which will include Former Residents who do not elect to Opt Out of the releases under the Plan and, thus, will be entitled to receive distributions from the Former Residents Trust in accordance with the terms of the Plan and the Former Residents Trust Agreement.

**(5) Entrance Fee Escrow**

As of the date hereof, the Entrance Fee Escrow, which is maintained by the Debtor for the benefit of certain residents, holds approximately \$620,000 in funds that will be disbursed as soon as practicable and no later than Confirmation. The Debtor has begun and will continue to cooperate and work with Residents and the Escrow Agent to cause the Escrow Agent to disburse the funds from the Entrance Fee Escrow, after expense, to return deposits and Entrance Fees to Residents irrespective of whether such Resident elects or elected to continue to reside at the Community after the Sale Closing.

**(6) Other Resident Matters**

Pursuant to the APA and Sale Order, and as described in Section 4 of the Plan, on the date of the Sale Closing, all Residency Agreements between the Debtor and Former Residents were rejected. The Purchaser offered modified Residency Agreements to Residents who resided at the Community as of the Closing Date, converting the Residency Agreements into monthly rental agreements. The Debtor assumed and assigned to Purchaser the modified Residency Agreements, and the Purchaser agreed to honor a portion of the Debtor's Refund Obligations to Participating Current Residents in accordance with the terms of the modified Residency Agreements and the APA. Any Residency Agreements of Non-Participating Current Residents are rejected.

Although Former Residents' Residency Agreements will be rejected, the APA requires the Debtor to hold \$2,000,000 in trust to be distributed to Former Residents on a Pro Rata basis. Pursuant to the Plan, such funds will be deposited into the Unsecured Creditor Trust. Additionally, as discussed above, the FSO Settlement and Contribution Agreement provides \$1,500,000 to be paid to Former Residents, who do not Opt Out and, therefore, consent to granting the releases under the Plan. Distributions to Former Residents will be made by the Unsecured Creditor Trustee and Former Residents Trust Trustee, as applicable, to Former Residents on a Pro Rata basis as to each of the trusts.

**(7) Retained Causes of Action of the Debtor**

As of the Petition Date, the Debtor's Estate had no pending claims or causes of action that it was prosecuting, as reflected in the Schedules. As set forth in the Statement of Financial Affairs, the Debtor made certain transfers within the 90-day period preceding the Petition Date. Although the Debtor cannot guaranty any recovery on account of potential Avoidance Actions, the Debtor estimates that the Avoidance Actions may lead to recovery of at least \$161,000.

In accordance with Bankruptcy Code section 1123(b), and except where such Causes of Action have been expressly released (including, for the avoidance of doubt, the Exculpated Claims against the Exculpated Parties and the Debtor Released Claims against the Released Parties), the Unsecured Creditor Trustee shall be vested with the authority to enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtor, including, Avoidance Actions, whether arising before or after the Petition Date, and the Unsecured Creditor Trustee's right(s) to commence, prosecute, or settle such Causes of Action shall be consistent with the terms of the Unsecured Creditor Trust Agreement. The Unsecured Creditor Trustee is the sole party that may pursue such Causes of Action, as appropriate, in accordance with the best interests of the

holders of the Unsecured Creditor Trust Interests. No Person may rely on the absence of a specific reference in the Plan or this Disclosure Statement to any Cause of Action against such Person as any indication that the Debtor or the Unsecured Creditor Trustee, as applicable, will not pursue any and all available Causes of Action against such Person. Except with respect to Causes of Action as to which the Debtor has released any Person on or before the Effective Date (including pursuant to the Releases by the Debtor or otherwise), the Unsecured Creditor Trustee, as applicable, expressly reserves all rights to prosecute any and all Causes of Action of the Debtor against any Person, except as otherwise expressly provided in the Plan. Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, the FSO Settlement and Contribution Agreement, or by an order of the Bankruptcy Court, the Unsecured Creditor Trustee expressly reserves all Causes of Action for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the confirmation or consummation of the Plan. For the avoidance of doubt, nothing in this section or the corresponding section of the Plan shall affect any provisions under Section 8 of the Plan.

#### **(8) Corporate Action; Effectuating Documents**

On the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the trustees or officers of the Debtor.

The Board shall remain intact until the Debtor is dissolved, as set forth more fully below. All corporate action shall be taken in accordance with the Corporate Governance Documents. Upon the dissolution of the Debtor, the officers and trustees of the Board shall be deemed to have resigned to the extent permissible under applicable law.

Even after the Effective Date, the officers and trustees of the Debtor shall be authorized to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such other actions as may be necessary or appropriate to satisfy the Debtor's obligations with respect to this Chapter 11 Case and to effectuate and implement the provisions of the Plan.

#### **(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 confirmed Plan shall constitute a decree of dissolution with respect to the Debtor. For the avoidance of doubt, Debtor shall be deemed to remain intact 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.

**(10) Effective Date**

The Effective Date shall not occur until the conditions for the Effective Date are satisfied or otherwise waived in accordance with the terms of the Plan. As soon as reasonably practicable following the occurrence of the Effective Date, the Debtor shall File notice of the Effective Date, which shall also be posted on the Case Website.

**D. Provisions Governing Distributions Under the Plan**

All Distributions under the Plan shall be made by the Debtor or the Unsecured Creditor Trustee, as appropriate.

**(1) Timing and Calculation of Amounts to Be Distributed**

Except as otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such a Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each holder of an Allowed Claim shall receive the full amount of the Distributions that the Plan provides for Allowed Claims in the applicable Class and in the manner provided therein. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, Distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in the Plan. Except as otherwise provided for in the Plan, holders of Claims shall not be entitled to interest, dividends, or accruals on the Distributions provided for herein, regardless of whether such Distributions are delivered on or at any time after the Effective Date.

**(2) Method of Payment**

Unless otherwise expressly agreed in writing, all Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank or an electronic wire.

**(3) Objections to and Resolution of Claims**

The Unsecured Creditor Trustee shall have the right to file objections to Claims after the Effective Date. All objections shall be litigated to entry of a Final Order; *provided, however*, that only the Unsecured Creditor Trustee shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections without approval of the Bankruptcy Court.

**(4) Claims Objection Deadline**

The Unsecured Creditor Trustee and any other party in interest to the extent permitted pursuant to Bankruptcy Code section 502(a), shall file and serve any objection to any Claim no later than the Claims Objection Deadline; *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court from time to time upon notice of motion by the Unsecured Creditor Trustee for cause.

**(5) No Distribution Pending Allowance**

Notwithstanding any other provision of the Plan, no payment or Distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by the Plan. Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed Claims as of the Effective Date (but that later become Allowed Claims), shall be deemed to have been made on the Effective Date. Notwithstanding any other provision of the Plan and except as may be agreed to by the Debtor, the Liquidating Debtor, or the Unsecured Creditor Trustee, as applicable, on the one hand, and the holder of a Disputed Claim, on the other hand, no partial payments and no partial Distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

**(6) Escrow of Cash Distributions**

On any date that Distributions are to be made under the terms of the Plan, the Unsecured Creditor Trustee shall deposit in one or more segregated accounts, Cash or property equal to 100% of the Cash or property that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto. The Unsecured Creditor Trustee shall also segregate any interest, dividends, or proceeds of such Cash. Such Cash, together with any interest, dividends, or proceeds thereof, shall be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

**(7) Distribution After Allowance**

Except as otherwise provided herein, within the later of (i) seven (7) Business Days after a Claim becomes an Allowed Claim and (ii) thirty (30) days after the expiration of the Claims Objection Deadline, the Unsecured Creditor Trustee shall distribute all Cash or other property, including any interest, dividends, or proceeds thereof, to which a Holder of an Allowed Claim is then entitled.

**(8) Investment of Segregated Cash and Property**

To the extent practicable, the Unsecured Creditor Trustee may invest any Cash or other property segregated on account of a Disputed Claim, undeliverable distribution, or any proceeds thereof (i) in a manner that will yield a reasonable net return taking into account the safety of the investment or (ii) in any manner permitted by Bankruptcy Code section 345; *provided, however*, that the Unsecured Creditor Trustee shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash, other property, or proceeds.

**(9) Delivery of Distributions**

Except as provided herein, Distributions to Holders of Allowed Claims shall be made: (i) at the addresses set forth on the respective Proofs of Claim Filed by such holders; (ii) at the addresses set forth in any written notices of address changes delivered to the Unsecured Creditor

Trustee after the date of any related Proof of Claim; or (iii) at the address reflected in the Schedules if no Proof of Claim is filed and the Unsecured Creditor Trustee has not received a written notice of a change of address. The Unsecured Creditor Trustee shall be entitled to conclusively rely on the Distribution Matrix for purposes of making Distributions. None of the Debtor, the Liquidating Debtor, or the applicable Unsecured Creditor Trustee shall incur any liability whatsoever on account of any Distributions under the Plan except for gross negligence, willful misconduct, or fraud.

**(10) Undeliverable and Unclaimed Distributions**

**(a) Undeliverable Distributions**

If the Distribution to the Holder of any Claim is returned to the Unsecured Creditor Trustee as undeliverable, no further distribution shall be made to such Holder unless and until the Unsecured Creditor Trustee is notified in writing of such Holder's then current address. Undeliverable Distributions shall remain in the possession of the Unsecured Creditor Trustee until the earlier of (i) such time as a Distribution becomes deliverable or (ii) such undeliverable Distribution becomes an Unclaimed Distribution.

Until such time as an undeliverable Distribution becomes an Unclaimed Distribution, within thirty (30) days after the end of each calendar quarter following the Effective Date, or upon such other interval as the Bankruptcy Court may order, but in no event less frequently than annually, the Unsecured Creditor Trustee shall make distributions of all Cash and property that has become deliverable during the preceding quarter. Each such Distribution shall include the net return yielded from the investment of any undeliverable Cash, from the date such Distribution would have been due had it then been deliverable to the date that such Distribution becomes deliverable.

The Unsecured Creditor Trustee shall make reasonable efforts to update or correct contact information for recipients of undeliverable Distributions; *provided, however*, that nothing contained in the Plan shall require the Unsecured Creditor Trustee to locate any Holder of an Allowed Claim.

**(b) Unclaimed Distributions**

Any Cash or other property to be distributed under the Plan shall revert to the Unsecured Creditor Trustee if it is not claimed by the Entity on or before the Unclaimed Distribution Deadline. If such Cash or other property is not claimed on or before the Unclaimed Distribution Deadline, the Distribution made to such Entity shall be deemed to be reduced to zero.

**(11) Setoff**

The Debtor or Unsecured Creditor Trustee, as applicable, retains the right to reduce any Claim by way of setoff in accordance with the Debtor's books and records and in accordance with the Bankruptcy Code.

**(12) Withholding and Reporting Requirements**

In connection with the Plan and all instruments issued in connection therewith, the Unsecured Creditor Trustee shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions under the Plan shall be subject to any such withholding or reporting requirements.

**(13) Minimum Distributions**

Notwithstanding anything herein to the contrary, the Unsecured Creditor Trustee shall not be required to make Distributions or payments of less than \$25.00.

**(14) Interest on Claims.**

Unless otherwise specifically provided for in the Plan or separate order of the Bankruptcy Court, postpetition interest will not accrue or be paid on Claims, and no Holder will be entitled to interest accruing on or after the Petition Date on any Claim. Similarly, unless otherwise specifically provided for in the Plan, postpetition interest will not accrue or be paid on any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

**E. Executory Contracts and Unexpired Leases**

**(1) Deemed Rejected as of the Effective Date if Not Assumed**

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumption and/or rejection of Executory Contracts and Unexpired Leases as set forth in the Plan, all pursuant to Bankruptcy Code sections 365(a) and 1123. Unless otherwise indicated, the assumption and rejection, as applicable, of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date.

In accordance with the Bid Procedures Order, as amended by the Order entered at Docket No. 291, on October 27, 2023, the Debtor filed a notice of Executory Contracts and Unexpired Leases that the Purchaser designated for assumption and assignment (the “**Designated Contracts Notice**”). See Docket No. 294. Among other executory contracts listed, the Purchaser designated for assumption “modified” residency agreements with residents who reside at the Community as of the Closing Date. A list of Executory Contracts that were assumed and assigned to Purchaser is attached as an exhibit to the Sale Order, which provides for the rejection, as of the Closing Date, of Residency Agreements of Residents who do not reside at the Community as of the Closing Date.

Unless an Executory Contract or Unexpired Lease was assumed pursuant to the APA and the Sale Order, or is assumed pursuant to separate order of the Bankruptcy Court, the Executory Contract or Unexpired Lease shall be deemed to have been rejected by the Debtor on the Closing Date and/or Confirmation Date, as applicable. The Debtor reserves the right to file a motion to assume additional executory contracts within the statutory timeframe proscribed by the Bankruptcy Code.

**(2) Claims Based on Rejection of Executory Contracts or Unexpired Leases**

In the event that the rejection of an Executory Contract by the Debtor pursuant to the Plan results in a Rejection Claim in favor of a counterparty to such Executory Contract, such Rejection Claim, if not heretofore evidenced by a timely and properly filed Proof of Claim, shall be forever barred and shall not be enforceable against the Debtor, the Estate, the Liquidating Debtor, or their respective properties or interests in property as agents, successors, or assigns, unless a Proof of Claim is filed with the Bankruptcy Court and served upon counsel for the Debtor and the Liquidating Debtor on or before the date that is third (30) days after then Effective Date. All Allowed Rejection Claims shall be treated as Class 6 Non-Resident General Unsecured Claims pursuant to the terms of the Plan.

**(3) Modifications, Amendments, Supplements, Restatements, or Other Agreements.**

Unless otherwise provided, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated, or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith, unless such Executory Contract or Unexpired Lease has been previously assumed by the Debtor.

**(4) Reservation of Rights.**

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtor or the Liquidating Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor or the Liquidating Debtor have any liability thereunder.

**(5) Full Release and Satisfaction.**

Assumption of any Executory Contract pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed Executory Contract at any time before the effective date of the assumption.

**F. Procedures for Resolving Contingent, Unliquidated, and Disputed Claims**

**(1) Prosecution of Objections to Claims**

Prior to the Effective Date, the Debtor, and on or after the Effective Date, the Unsecured Creditor Trustee shall have the authority and all requisite standing to File objections to Claims and Interests, and the exclusive authority and standing to settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtor's Estate to any and all such Claims and Interests, regardless of whether such Claims and Interests are in a Class or otherwise. From and after the Effective Date, the Unsecured Creditor Trustee shall have the sole authority to administer and adjust the Claims Register with respect to Claims and Interests to reflect any such settlements or compromises. No further notice to or action, order, or approval of the Bankruptcy Court with respect to such settlements or compromises entered into with a Holder of any Claim or Interest shall be required.

**(2) Allowance of Claims**

Prior to the Effective Date, the Debtor, and, on and after the Effective Date, the Unsecured Creditor Trustee, shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Allowed Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Case allowing such Claim or Interest.

**(3) Estimation of Claims**

On and after the Effective Date, the Unsecured Creditor Trustee may, at any time, request that the Bankruptcy Court estimate (i) any Disputed Claim pursuant to applicable law and (ii) any Contingent or unliquidated Claim pursuant to applicable law, in each case regardless of whether the Debtor or the Unsecured Creditor Trustee has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any such Disputed Claim, Contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

If the Bankruptcy Court estimates any Disputed Claim, Contingent Claim, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for purposes of Distributions, and the Unsecured Creditor Trustee may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Unsecured Creditor Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding Bankruptcy Code section 502(j), in no event shall any Holder of a Claim that has been estimated pursuant to

Bankruptcy Code section 502(c) or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before twenty-one (21) days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

**(4) Expungement or Adjustment to Claims without Objection**

Any Claim that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be marked as satisfied, adjusted or expunged (as applicable) on the Claims Register by the Claims Agent at the direction of the Debtor without an objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court; provided, that the Unsecured Creditor Trustee shall provide thirty (30) days' notice of any of the foregoing modifications to the Claims Register to the Holder of any affected Claim or Interest during which period the Holder may object thereto.

**G. Settlement, Exculpation, Releases, Injunction, and Related Provisions**

**(1) Compromise and Settlement of Claims, Interests and Controversies**

Pursuant to Bankruptcy Code section 1123 and Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any Distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, its Estate, and holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019(a), without any further notice to, action by, or order or approval of the Bankruptcy Court, after the Effective Date, the Unsecured Creditor Trustee may compromise and settle Claims against it and Causes of Action against other Persons.

**(2) Injunctions**

**ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASE UNDER BANKRUPTCY CODE SECTIONS 105 OR 362, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE SHALL REMAIN PERMANENTLY IN FULL FORCE AND EFFECT. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL BE OTHERWISE DEEMED TO MODIFY, LIMIT, AMEND OR SUPERSEDE ANY INJUNCTIONS OR STAYS GRANTED IN THE SALE ORDER.**

**EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR TO THE EXTENT NECESSARY TO ENFORCE THE TERMS AND CONDITIONS OF THE PLAN, THE CONFIRMATION ORDER, OR A SEPARATE ORDER OF THE BANKRUPTCY COURT, ALL ENTITIES THAT HAVE HELD, HOLD, OR MAY HOLD CLAIMS**

AGAINST THE DEBTOR OR ITS ESTATE THAT AROSE PRIOR TO THE EFFECTIVE DATE ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST ANY PROPERTY THAT IS TO BE DISTRIBUTED UNDER THE TERMS OF THE PLAN ON ACCOUNT OF ANY SUCH CLAIMS: (A) COMMENCING OR CONTINUING IN ANY MANNER, OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST ANY PROPERTY OF THE DEBTOR OR ITS ESTATE THAT IS TRANSFERRED TO THE UNSECURED CREDITOR TRUST OR ANY OTHER PERSON PURSUANT TO THE PLAN, INCLUDING THE FORMER RESIDENTS TRUST TRUSTEE TO THE EXTENT APPLICABLE; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST ANY PROPERTY OF THE DEBTOR OR ITS ESTATE THAT IS TRANSFERRED TO THE UNSECURED CREDITOR TRUST OR ANY OTHER PERSON PURSUANT TO THE PLAN, INCLUDING THE FORMER RESIDENTS TRUST TRUSTEE TO THE EXTENT APPLICABLE; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN OR ENCUMBRANCE AGAINST ANY PROPERTY OF THE DEBTOR OR ITS ESTATE THAT IS TRANSFERRED TO THE UNSECURED CREDITOR TRUST OR ANY OTHER PERSON PURSUANT TO THE PLAN, INCLUDING THE FORMER RESIDENTS TRUST TRUSTEE TO THE EXTENT APPLICABLE; (D) EXCEPT TO THE EXTENT PERMITTED BY BANKRUPTCY CODE SECTIONS 362(B), 553, 559, 560, OR 561, OR AS OTHERWISE PROVIDED IN THE PLAN OR CONFIRMATION ORDER, ASSERTING A SETOFF RIGHT, SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY, OR OBLIGATION DUE TO THE DEBTOR, ITS ESTATE, THE UNSECURED CREDITOR TRUST, THE UNSECURED CREDITOR TRUSTEE, OR ANY OTHER PERSON PURSUANT TO THE PLAN, INCLUDING THE FORMER RESIDENTS TRUST TRUSTEE TO THE EXTENT APPLICABLE; AND (E) COMMENCING OR CONTINUING IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN; *PROVIDED, HOWEVER*, THAT SUCH ENTITIES SHALL NOT BE PRECLUDED FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN OR THE CONFIRMATION ORDER; *PROVIDED, FURTHER*, THAT THE FOREGOING SHALL NOT APPLY TO ANY ACTS, OMISSIONS, CLAIMS, CAUSES OF ACTION OR OTHER OBLIGATIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN OR ANY DEFENSES THERETO. NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION UNDER THE PLAN, THE DEBTOR SHALL NOT RECEIVE A DISCHARGE AS SET FORTH IN BANKRUPTCY CODE SECTION 1141(D)(3)(A).

**(3) Exculpation**

UPON THE EFFECTIVE DATE, THE DEBTOR AND ITS OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS AND OTHER PROFESSIONALS AND AGENTS WILL BE DEEMED TO HAVE SOLICITED ACCEPTANCES OF THE PLAN IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING BANKRUPTCY CODE SECTION 1125(E).

EXCEPT WITH RESPECT TO ANY ACTS OR COMMISSIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN, THE PLAN SUPPLEMENT OR ANY RELATED DOCUMENTS, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR, ANY LIABILITY TO ANY ENTITY FOR ANY POSTPETITION ACT OR OMISSION IN CONNECTION WITH OR RELATED TO FORMULATING, NEGOTIATING, PREPARING, DISSEMINATING, IMPLEMENTING, ADMINISTERING, CONFIRMING, OR EFFECTING THE PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN, THE FILING OF THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE DISTRIBUTION OF PROPERTY UNDER THE PLAN OR ANY OTHER RELATED AGREEMENT OR ANY OTHER POSTPETITION ACT OR OMISSION TAKEN IN CONTEMPLATION OF THE RESTRUCTURING AND/OR LIQUIDATION OF THE DEBTOR; *PROVIDED, HOWEVER*, THAT THE FOREGOING "EXCULPATION" SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (INCLUDING FRAUD); *PROVIDED, FURTHER*, THAT EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES IN CONNECTION WITH THE PLAN OR ANY OTHER RELATED DOCUMENT, INSTRUMENT, OR AGREEMENT.

THE FOREGOING PARAGRAPH SHALL APPLY TO ATTORNEYS TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE BAR RULES AND CASE LAW.

**(4) Estate Releases**

PURSUANT TO BANKRUPTCY CODE SECTION 1123(B), AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASED PARTIES SHALL BE DEEMED RELEASED BY THE DEBTOR AND THE ESTATE FROM ANY AND ALL CLAIMS, OBLIGATIONS, DEBTS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER (OTHER THAN FOR ILLEGAL CONDUCT, GROSS NEGLIGENCE, BAD FAITH, OR FRAUD), INCLUDING DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTOR OR THE ESTATE, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ANY OF THE DEBTOR OR THE ESTATE, AS APPLICABLE, WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN ITS OWN RIGHT, OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE OPERATIONS AND MANAGEMENT OF THE DEBTOR'S COMMUNITY, THE CHAPTER 11 CASE, THE PURCHASE, SALE, TRANSFER, OR RESCISSION OF THE PURCHASE, SALE, OR TRANSFER OF ANY DEBT, SECURITY, ASSET, RIGHT, OR

**INTEREST OF THE DEBTOR, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CHAPTER 11 CASE, THE FINANCING OF THE CHAPTER 11 CASE, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN AND ANY OTHER AGREEMENTS OR DOCUMENTS EFFECTUATING THE PLAN, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE FSO SETTLEMENT AND CONTRIBUTION AGREEMENT TERM SHEET, AND ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTOR OR THE ESTATE. FOR PURPOSES OF THE RELEASES CONTAINED IN THE PLAN, THE UNSECURED CREDITOR TRUSTEE DEEMED TO BE A SUCCESSOR TO THE ESTATE AND, THEREFORE, IS BOUND BY THE RELEASES CONTAINED IN THE PLAN.**

**ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASE OF THE RELEASED PARTIES BY THE DEBTOR AND THE ESTATE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASE OF THE RELEASED PARTIES BY THE DEBTOR AND THE ESTATE IS: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR OR THE ESTATE; (C) IN THE BEST INTERESTS OF THE DEBTOR, THE ESTATE AND ALL HOLDERS OF CLAIMS AND INTERESTS; (D) FAIR, EQUITABLE, AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (F) A BAR TO THE DEBTOR OR THE ESTATE ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE RELEASE BY THE DEBTOR OR THE ESTATE.**

**(5) Third Party Releases**

**EFFECTIVE AS OF THE EFFECTIVE DATE, EACH OF THE RELEASING PARTIES CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASES (AND EACH ENTITY SO RELEASED SHALL BE DEEMED RELEASED BY THE RELEASING PARTIES) EACH AND ALL OF THE RELEASED PARTIES, AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER (OTHER THAN FOR ILLEGAL CONDUCT, GROSS NEGLIGENCE, BAD FAITH, OR FRAUD), INCLUDING WITH RESPECT TO ANY RIGHTS OR CLAIMS THAT COULD HAVE BEEN ASSERTED AGAINST ANY OR ALL OF THE RELEASED PARTIES WITH RESPECT TO ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTOR, OR THE ESTATE, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN,**

**FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY), BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE OPERATIONS AND MANAGEMENT OF THE DEBTOR'S COMMUNITY, THE CHAPTER 11 CASE, THE PURCHASE, SALE, TRANSFER, OR RESCISSION OF THE PURCHASE, SALE, OR TRANSFER OF ANY DEBT, SECURITY, ASSET, RIGHT, OR INTEREST OF THE DEBTOR, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THE FINANCING OF THE CHAPTER 11 CASE, THE RESTRUCTURING OR ANY ALLEGED RESTRUCTURING OR LIQUIDATION OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CHAPTER 11 CASE, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN AND ANY OTHER AGREEMENTS OR DOCUMENTS EFFECTUATING THE PLAN, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE FSO SETTLEMENT AND CONTRIBUTION AGREEMENT TERM SHEET (INCLUDING, FOR THE AVOIDANCE OF DOUBT, PROVIDING ANY LEGAL OPINION REQUESTED BY ANY ENTITY REGARDING ANY TRANSACTION, CONTRACT, INSTRUMENT, DOCUMENT, OR OTHER AGREEMENT CONTEMPLATED BY THE PLAN OR THE RELIANCE BY ANY RELEASED PARTY ON THE PLAN OR THE CONFIRMATION ORDER IN LIEU OF SUCH LEGAL OPINION), AND ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTOR OR THE ESTATE.**

**ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASES ARE: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE RELEASING PARTIES; (C) IN THE BEST INTERESTS OF THE DEBTOR, THE ESTATE AND ALL HOLDERS OF CLAIMS AND INTERESTS; (D) FAIR, EQUITABLE AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; (F) CONSENSUAL; AND (G) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE THIRD PARTY RELEASE.**

**FOR THE AVOIDANCE OF DOUBT, UNLESS A CREDITOR, INCLUDING FORMER RESIDENTS, OPTS OUT OF GRANTING THE THIRD PARTY RELEASE FOR THE BENEFIT OF RELEASED PARTIES, SUCH CREDITOR, INCLUDING FORMER RESIDENTS, WILL RELEASE AND BE UNABLE TO PURSUE ANY**

**INDIVIDUAL CLAIMS, INCLUDING TORT CLAIMS, SUCH AS PERSONAL INJURY OR WRONGFUL DEATH, AGAINST ONE OR MORE OF THE RELEASED PARTIES.**

**(6) Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to Bankruptcy Code sections 105 or 362 or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. Upon the Effective Date, all injunctions or stays contained in the Plan or the Confirmation Order shall be in full force and effect in accordance with their terms.

**(7) Release of Liens**

Except as otherwise provided in the Plan or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Liquidating Debtor and/or the Purchaser. For the avoidance of doubt, except as otherwise provided in the Plan (including the Plan Supplement), all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate, whether expressly addressed or discussed herein or in the Plan, shall be fully released and discharged on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

**H. Conditions Precedent to Confirmation and Effective Date**

**(1) Conditions Precedent to Confirmation**

The following is the list of conditions precedent to Confirmation:

- a. the Bankruptcy Court shall have entered an order approving the Disclosure Statement as containing adequate information and such order shall have become a Final Order that has not been stayed or modified or vacated on appeal;
- b. a form of Unsecured Creditor Trust Agreement shall be in a form agreed upon by the Debtor and the Committee;
- c. the proposed Unsecured Creditor Trustee, the members of the Unsecured Creditor Trust Advisory Board are identified and disclosed;
- d. the Plan Supplement shall have been filed;

- e. the Plan shall not have been materially amended, altered, or modified, unless such material amendment, alteration or modification has been made in accordance with Section 11.1 of the Plan; and
- f. the Confirmation Order shall have been entered by the Bankruptcy Court confirming the Plan in form and substance acceptable to the Debtor and the FSO, and such order shall have become a Final Order that has not been stayed or modified or vacated on appeal.

**(2) Conditions Precedent to Effective Date**

The following is the list of conditions precedent to the Effective Date:

- a. the foregoing conditions precedent as to Confirmation shall have been met;
- b. the Unsecured Creditor Trust Agreement shall be executed and the Unsecured Creditor Trustee shall have been appointed and accepted such appointment;
- c. the confirmed Plan shall not have been materially amended, altered, or modified from the Plan, unless such material amendment, alteration, or modification has been made in accordance with Section 11.1 of the Plan;
- d. No Option Deposits shall remain in the Entrance Fee Escrow and all Residents who deposited an Option Deposit shall have received a return of the Option Deposit in accordance with the terms of applicable agreements, including the Option Agreements; and
- e. the Debtor shall have Filed a notice of the Effective Date.

**(3) Waiver of Conditions**

The conditions precedent to Confirmation and conditions precedent to the Effective Date may be waived in whole or in part, in writing, by the Debtor, without further order of the Bankruptcy Court.

**(4) Effect of Nonoccurrence of Conditions**

If the conditions precedent to the Effective Date are not satisfied or waived, the Debtor may, upon motion and notice to parties in interest, seek to vacate the Confirmation Order; *provided, however*, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions precedent to the Effective Date are satisfied or waived before the Bankruptcy Court enters an order granting such motion.

If the Confirmation Order is vacated: (a) the Plan is null and void in all respects; and (b) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against the Debtor, or (ii) prejudice, in any manner, the rights of the Debtor or any other party in interest.

**I. Retention of Jurisdiction**

Following the Confirmation Date and the Effective Date, the Bankruptcy Court shall retain jurisdiction for the following purposes:

- a. to hear and determine any objections to Claims and to address any issues relating to Disputed Claims;
- b. to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- c. to issue such orders in aid of execution and consummation of the Plan, to the extent authorized by Bankruptcy Code section 1142;
- d. to consider any amendments to or modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- e. to hear and determine all requests for compensation and reimbursement of expenses to the extent allowed by the Bankruptcy Court under Bankruptcy Code sections 330 or 503;
- f. to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan;
- g. to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Sale Order;
- h. to hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;
- i. to hear any other matter not inconsistent with the Bankruptcy Code;
- j. to enter the Final Decree;
- k. to ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
- l. to decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtor which may be pending on the Effective Date;
- m. to issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Plan, except as otherwise provided therein;

- n. to determine any other matters that may arise in connection with or related to the Plan, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Plan;
- o. to determine any other matters that may arise in connection with or related to the Sale Order or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Sale Order;
- p. to enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, releases and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);
- q. to resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and
- r. to resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the Bar Dates, or the Confirmation Hearing for the purpose of determining whether a Claim or Interest is discharged hereunder, or for any other purpose.

## **VI. MISCELLANEOUS PROVISIONS**

### **A. Amendment or Modification of the Plan**

Alterations, amendments, or modifications of the Plan may be proposed in writing by the Debtor at any time before the Confirmation Date, provided that the Plan, as altered, amended, or modified, satisfies the conditions of Bankruptcy Code sections 1122 and 1123 and the Debtor shall have complied with Bankruptcy Code section 1125. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted such Plan as modified if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder. Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to Bankruptcy Code section 1127(a) and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

### **B. Exhibits/Schedules, and Plan Supplement**

The Debtor will File the Plan Supplement no later than fourteen (14) days before the Voting Deadline. The Debtor reserves the right to alter, modify, or amend the Plan Supplement through and to the Confirmation Hearing. All exhibits and schedules to this Disclosure Statement, the Plan, and the Plan Supplement are incorporated into and are part of the Plan as if set forth in full therein.

### **C. Filing of Additional Documents**

On or before the Effective Date, the Debtor may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further

evidence the terms and conditions of the Plan. The Debtor and all Holders of Claims receiving Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

**D. Binding Effect of the Plan**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or any other Bankruptcy Rule, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtor, the Holders of Claims, and their respective successors and assigns. Notwithstanding anything to the contrary herein, (i) nothing in the Plan modifies, alters, or amends the respective rights and obligations of the Debtor or the Purchaser under the Sale Order, the APA, or any other document governing the Sale, and (ii) the 2017 Bond Documents shall continue to govern the rights of and among the Bond Trustee and the beneficial owners of the Bonds.

**E. Governing Law**

Except as required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, the rights and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the laws of the State of Illinois.

**F. Time**

To the extent that any time for the occurrence or happening of an event as set forth in the Plan falls on a day that is not a Business Day, the time for the next occurrence or happening of said event shall be extended to the next Business Day.

**G. Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation.

**H. Revocation**

The Debtor reserves the right to revoke and withdraw the Plan prior to the entry of the Confirmation Order. If the Debtor revokes or withdraws the Plan, the Plan shall be deemed null and void, and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtor, any other Person, or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtor.

**I. Dissolution of the Committee**

On the Effective Date, the Committee shall be dissolved and its members deemed released of any continuing duties, responsibilities and obligations in connection with the Chapter 11 Case or the Plan and its implementation, and the retention and employment of the Committee's Professionals shall terminate, except with respect to: (i) any matters concerning Distributions; (ii) prosecuting applications for Professionals' compensation and reimbursement of expenses incurred as a member of the Committee; (iii) asserting, disputing and participating in resolution of Professional Fee Claims; or (iv) prosecuting or participating in any appeal of the Confirmation Order or any request for consideration thereof. Upon the resolution of (i) through (iv), the Committee shall be immediately dissolved, and released.

**J. Claims Agent**

Stretto, in its capacity as Claims Agent, shall be relieved of such duties on the date of the entry of the Final Decree or upon written notice by the Debtor or the Unsecured Creditor Trustee.

**K. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained herein, or the taking of any action by the Debtor with respect to the Plan and/or this Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor or Holders of Claims before the Effective Date.

**L. Inconsistency**

To the extent that the Plan conflicts with or is inconsistent with any agreement related to the Plan, the provisions of the Plan shall control; *provided, however*, that nothing in the Plan shall be deemed to supersede, amend, modify the provisions of the Sale Order, the Bid Procedures Order, or the APA. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of the Confirmation Order, the Confirmation Order shall control and take precedence; *provided, however*, that nothing in the Confirmation Order shall be deemed to supersede, amend, modify the provisions of the Sale Order, the Bid Procedures Order, or the APA.

**M. No Admissions**

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission by any Entity with respect to any matter set forth herein.

**N. No Discharge**

As set forth in Bankruptcy Code section 1141(d)(3), the Plan does not grant the Debtor a discharge. However, notwithstanding the foregoing, except as otherwise provided herein, the rights afforded pursuant to the Plan and the treatment of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor or any of its Assets. All persons and entities shall be precluded from asserting against

the Debtor, or any of its Assets, any further Claims and Interests based upon any act, or omission, transaction, or other activity of any kind or nature that occurred before the Effective Date, except as otherwise expressly provided in the Plan.

**O. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtor will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code and any applicable non-bankruptcy law, and pursuant to Bankruptcy Code section 1125(e), the Debtor and its affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code.

**P. Notices**

All notices of requests in connection with the Plan shall be in writing and given by mail and email addressed as follows:

DOPKE LAW LLC  
Attn: Bruce Dopke  
1535 W. Schaumburg Road, Suite 204  
Schaumburg, Illinois 60194  
bd@dopkelaw.com

And

POLSINELLI PC  
Attn: Jeremy R. Johnson  
600 3rd Avenue, 42nd Floor  
New York, New York 10016  
jeremy.johnson@polsinelli.com

And

Attn: Trinitee G. Green  
1500 N. Riverside Plaza, Suite 3000  
Chicago, Illinois 60606  
tggreen@polsinelli.com

**Q. Headings**

The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect the construction of the provisions of the Plan.

**R. Validity and Enforceability**

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with

the foregoing, is valid and enforceable pursuant to its terms. Should any provision in the Plan be determined by the Bankruptcy Court or any appellate court to be unenforceable following the Effective Date, such determination shall in no way limit the enforceability and operative effect of any and all other provisions of the Plan.

**S. Request for Confirmation**

The Debtor requests entry of a Confirmation Order under Bankruptcy Code section 1129(a) and, to the extent necessary, Bankruptcy Code section 1129(b).

**VII. STATUTORY REQUIREMENTS FOR CONFIRMATION**

The following is a brief summary of the confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own advisors with respect to the summary provided in this Disclosure Statement.

**A. Confirmation Hearing**

The Bankruptcy Court, after notice, will conduct a hearing on **April 30, 2024 at 9:00 a.m. (CT)** to consider Confirmation of the Plan. The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on any master service list ordered by the Bankruptcy Court and any entities which filed objections to the Plan, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

Any objection to Confirmation of the Plan must: (a) be in writing; (b) conform to the Bankruptcy Rules and applicable Local Rules; (c) state, with particularity, the legal and factual bases for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with the Bankruptcy Court (contemporaneously with a proof of service) and served upon the following notice parties so as to be actually received on or before **April 18, 2024 at 4:00 p.m. (CT)**:

Counsel for the Debtor: (i) Dopkelaw LLC, 1535 W. Schaumburg Road, Suite 204, Schaumburg, Illinois 60194, Attn: Bruce Dopke (Email: bd@dopkelaw.com); and (ii) Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois, 60606 Attn: Jeremy R. Johnson (Email: jeremy.johnson@polsinelli.com) and Trinitee G. Green (Email: tggreen@polsinelli.com);

Counsel for the Committee: Crane, Simon, Clar, & Goodman, 139 S. LaSalle Street, #3950, Chicago, Illinois 60603, Attn: Scott Clar (Email: sclar@cranesimon.com) and Karen Goodman (Email: kgoodman@cranesimon.com); and

Counsel for the Office of the United States Trustee: 219 South Dearborn Street, Room 873, Chicago, IL 60604, Attn: Jeffrey L. Gansberg (Email: jeffrey.l.gansberg@usdoj.gov).

## **B. Confirmation Standards**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of Bankruptcy Code section 1129. The Debtor believes the Plan satisfies or will satisfy all of the statutory requirements of Chapter 11 and that it has complied or will have complied with all of the requirements of Chapter 11. Specifically, the Debtor believes the Plan satisfies or will satisfy the applicable confirmation requirements of Bankruptcy Code section 1129, including those set forth below.

### **(1) Feasibility of the Plan**

Pursuant to Bankruptcy Code section 1129(a)(11), among other things, the Bankruptcy Court must determine that Confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Debtor or any successors to the Debtor under the Plan. This condition is often referred to as the “feasibility” of the Plan. The Debtor believes the Plan satisfies this requirement, to the extent the standard applies to a Chapter 11 plan of liquidation.

Here, the Plan provides for the liquidation and distribution of all the Debtor’s Assets. Accordingly, all Chapter 11 plan obligations will be satisfied without the need for further reorganization of the Debtor.

### **(2) Best Interests Test**

Bankruptcy Code section 1129 requires, as a condition to confirmation of a Chapter 11 plan, that each holder of impaired claims or interests receive property with a value not less than the amount such holder(s) would receive in a hypothetical liquidation carried out under chapter 7 of the Bankruptcy Code. The Plan satisfies this standard because, among other things, the recoveries expected to be available to Holders of Allowed Claims under the Plan are greater than the recoveries that would be available to such Holders in the hypothetical chapter 7 liquidation scenario.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor’s assets and to make distributions to creditors in accordance with the priorities established by the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any assets remain in the bankruptcy estate after satisfaction of secured creditors’ claims from their collateral, administrative expenses are next to be paid. Unsecured creditors are paid from any remaining liquidation proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all creditors are paid in full.

As discussed above, substantially all the Debtor’s Assets have been marketed through a robust process pursuant to the Bid Procedures Order and sold to the Purchaser under the Sale Order. Additionally, the Huntley Property was marketed and sold pursuant to Bankruptcy Court orders. Although a liquidation under chapter 7 of the Bankruptcy Code would have had the same goal of liquidating the Debtor’s assets, the Chapter 11 Case and the Plan provide the best source of recovery for several reasons, including, without limitation, the following. First, a hypothetical

Chapter 7 liquidation would likely not be a going-concern sale, which could require temporary closure of the facility and significant risk to current residents. Second, the Debtor obtained a significantly better purchase price through its Chapter 11 Bankruptcy Court-approved going-concern sale processes, than could have been obtained in a hypothetical chapter 7 liquidation. Third, a chapter 7 liquidation would not provide for a timely distribution and likely no distribution at all for certain creditors who will recover under the Plan, including, but not limited to, current and former residents. Fourth, distributions, in addition to being delayed, would likely be smaller because of the fees and expenses incurred in a liquidation under chapter 7 of the Bankruptcy Code. Fifth, it is unlikely that the FSO Settlement and Contribution Agreement could or would occur in a Chapter 7.

At this time, there are no alternative plans available to the Debtor. Upon the occurrence of the Sale Closing, the Debtor ceased to be a going concern enterprise. After the Sale Closing, as a result of good faith efforts, the Debtor, FSO, and the Committee finalized negotiations and reached a resolution that provides additional means of implementation and recovery for unsecured creditors. Therefore, the Debtor believes that the Plan provides the greatest possible value to all stakeholders under the circumstances and provides the best chance of confirmation and consummation.

### **(3) Acceptance by Impaired Class**

The Bankruptcy Code requires, as a condition to confirmation, that except as described in the following section, each class of claims or equity interests that is impaired under a plan accept the plan. *See* 11 U.S.C. § 1129(a)(8). A class that is not “impaired” under a plan is presumed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. *See* 11 U.S.C. § 1126(f). Pursuant to Bankruptcy Code section 1124, a class is “impaired” unless the plan, among other things: (i) leaves unaltered the legal, equitable, and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; or (ii) cures any default, reinstates the original terms of such obligation, and compensates the applicable party in question. *See* 11 U.S.C. § 1124.

Bankruptcy Code section 1126(c) defines acceptance of a plan by a class of impaired creditors as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class that are entitled to vote on the plan, but for that purpose counts only those who actually vote to accept or to reject a plan. Thus, a Class of Claims will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number entitled to vote and actually voting cast their Ballots in favor of acceptance. Bankruptcy Code section 1126(d) defines acceptance of a plan by a class of interests as acceptance by holders of at least two-thirds (2/3) in amount of those interests who are entitled to vote and actually vote to accept or reject a plan. Votes that have been “designated” under Bankruptcy Code section 1126(e) are not included in the calculation of acceptance by a class of interests. Thus, a Class of Interests will have voted to accept the Plan only if two-thirds (2/3) in amount entitled to vote and actually voting cast their Ballots in favor of acceptance, not counting designated votes. Only Holders in the Voting Classes will be entitled to vote on the Plan. If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Debtor shall request that the Bankruptcy Court deem the Plan accepted by the Holders of such Claims or Interests in such Class. Such “deemed acceptance” by an impaired class in which no

class members submit ballots satisfies Bankruptcy Code section 1129(a)(10). *See In re Tribune Co.*, 464 B.R. 126, 183 (Bankr. D. Del. 2011) (“Would ‘deemed acceptance’ by a non-voting impaired class, in the absence of objection, constitute the necessary ‘consent’ to a proposed ‘per plan’ scheme? I conclude that it may.” (footnote omitted)); *see In re Adelphia Commc’ns Corp.*, 368 B.R. 14, 259–63 (Bankr. S.D.N.Y. 2007).

#### **(4) Confirmation without Acceptance by All Impaired Classes**

Bankruptcy Code section 1129(b) allows a bankruptcy court to confirm a plan if it is accepted by at least one impaired voting class even if other impaired voting classes vote to reject it. Pursuant to Bankruptcy Code section 1129(b), notwithstanding an impaired class’s rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent’s request, in a procedure commonly known as “cram down,” if the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan. *See* 11 U.S.C. § 1129(b).

##### **(a) No Unfair Discrimination**

The “unfairly discriminates” test under Bankruptcy Code section 1129(b)(1) applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). The Debtor does not believe the Plan discriminates unfairly against any Impaired Class of Claims or Interests. The Debtor believes the Plan and, in particular, the proposed treatment of all Classes of Claims and Interests satisfies the foregoing requirements for nonconsensual confirmation.

##### **(b) Fair and Equitable**

The “fair and equitable” test under Bankruptcy Code section 1129(b)(1) and (2) applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the non-accepting class, the test sets different standards depending on the type of claims or interests in such class. As set forth below, the Debtor believes the Plan satisfies the “fair and equitable” requirement because there is no Class of equal priority receiving more favorable treatment and no Class that is junior to such dissenting Class that will receive or retain any property on account of the Claims or Interests in such Class.

Secured Claims. A plan is “fair and equitable” with respect to a non-accepting class of secured creditors if either (i) each holder of an impaired secured claim retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (ii) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim, or (iii) the property securing the claim is sold free and clear of liens, with such liens attaching to the proceeds of the sale and the treatment of such liens on proceeds is as provided in clauses (i) or (ii) above. *See* 11 U.S.C. § 1129(b)(2)(A).

Unsecured Claims. A plan is “fair and equitable” with respect to a non-accepting class of unsecured creditors if either: (i) the plan provides that each holder of a claim in such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (ii) the holders of claims and equity interests that are junior to the claims of the dissenting class will not receive or retain any property under the plan. *See* 11 U.S.C. § 1129(b)(2)(B).

Equity Interests. A plan is “fair and equitable” with respect to a non-accepting class of equity interests if: (i) the plan provides that each holder of an interest in such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property. *See* 11 U.S.C. § 1129(b)(2)(C).

### **VIII. RISK FACTORS TO CONSIDER BEFORE VOTING**

Prior to voting on the Plan, each Holder entitled to vote should carefully consider the risk factors described below, as well as all of the information contained in the Plan and this Disclosure Statement, including the exhibits hereto. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

Risk of Non-Confirmation of Plan. Although the Debtor believes the Plan and this Disclosure Statement will satisfy all requirements necessary for approval and Confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for Confirmation or that such modifications would not necessitate a re-solicitation of votes.

Cramdown. Although the Debtor believes that the requirements of Bankruptcy Code section 1129 have been met, the Bankruptcy Court is afforded discretion to determine whether dissenting Holders of Claims would receive more if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

Claims Estimation. Although the Debtor has undertaken its best efforts to estimate the amount of Claims in each Class is correct, as noted above in Article IV.H of this Disclosure Statement, the actual amount of Allowed Claims may differ from the estimates.

Delays of Confirmation and/or Effective Date. Any delay in Confirmation and the occurrence of the Plan Effective Date could result in, among other things, increased Administrative Expense Claims. These or any other negative effects of delays in Confirmation or effectiveness of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court.

Alternative Plan. If the Plan is not confirmed, the Debtor or any other party in interest could attempt to formulate a different plan. However, the additional costs, all of which would constitute Administrative Expense Claims, may be so significant that one or more parties in interest could request that the Chapter 11 Case be converted to chapter 7. Accordingly, the Debtor believes that the Plan enables creditors to realize the best return under the circumstances.

Settlement Risk. If, for any reason, FSO fails to provide the contributions set forth under the FSO Settlement and Contribution Agreement or otherwise comply with its terms, the Former Residents Trust Trustee will be authorized to take action to enforce the agreement, which would require the Former Residents Trust Trustee to incur fees and expenses in connection with the enforcement of the FSO Settlement and Contribution Agreement. Additionally, because the FSO Settlement and Contribution Agreement is subject to approval of the Bankruptcy Court, the benefits to be provided under such agreement will (or may not) be provided to creditors, including Residents, if the Bankruptcy Court does not approve the FSO Settlement and Contribution Agreement in whole (or in part).

## **IX. TAX CONSEQUENCES**

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan and this Disclosure Statement to the Debtor and to Holders of Claims. This discussion is based on the Tax Code, Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules, and pronouncements of the IRS, all as in effect on the date hereof.

Due to the complexity of certain aspects of the Plan and Disclosure Statement, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims, and each Holder's status and method of accounting and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are uncertain. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and Disclosure Statement and no rulings have been or will be requested from the IRS with respect to any of the issues discussed below. Further, legislative, judicial, or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtor and the Holders of Claims.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtor or the Holders of Claims in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, for example, insurance companies, financial institutions, real estate investment trusts, tax-exempt organizations, small business investment companies, regulated investment companies, foreign taxpayers, persons whose functional currency is not the U.S. dollar, persons subject to the alternative minimum tax, and persons holding Claims as part of a "straddle," "hedge," "constructive sale," or "conversion transaction" with other investments). This discussion does not address the tax consequences to Holders of Claims who did not acquire such Claims at the issue price on original issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

|                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX CONSEQUENCES OF THE PLAN AND DISCLOSURE STATEMENT.</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### **A. Tax Consequences to the Debtor**

The Debtor is a private foundation, as described in Section 509 of the IRC. Typically, a private foundation is subject to an excise tax on its investment income as set forth in IRC Section 4940, generally at a rate of 1.39%. However, as an exempt operating foundation described in IRC Section 4940(d)(2), with a ruling issued July 9, 1986, the Debtor is exempt from excise taxes imposed under IRC Section 4940. Thus, assuming the Debtor continues to qualify as an exempt operating foundation, the sale of substantially all the Debtor's assets will not cause a tax to be incurred by the estate.

If the Debtor dissolves at the conclusion of the bankruptcy proceedings, the Debtor will be required to comply with IRC Section 507 relating to the termination of its status as a private foundation. Pursuant to IRC Section 507, a private foundation may only terminate its status in a manner described in that section to avoid the imposition of a termination tax. In the instant case, since the Debtor will not have any assets which may be granted/transferred to another qualified organization, it will be required to provide notice to IRS of its intent to terminate pursuant to IRC Section 507(a)(1). Such notice (described below) must be provided once the Debtor no longer has any assets (e.g. at least one (1) day after the last asset is transferred). At that time, because the Debtor will have no assets, the amount of the termination tax pursuant to IRC Section 507(c) will be zero.

When a private foundation terminates its status pursuant to IRC Section 507(a)(1), it must submit a statement to the Manager, Exempt Organizations Determinations, Tax Exempt and Government Entities Division (TE/GE). The statement must set forth in detail the computation and amount of the termination tax. It is customary to also include a copy of the filed certificate of dissolution and, in this case, something evidencing the bankruptcy and lack of assets. The submission of a Form 990-PF marked "Final" does not, in and of itself, satisfy the requirements of Section 507.

#### **B. Tax Consequences to Holders of Claims**

Generally, a Holder of a Claim should in most, but not all circumstances, recognize gain or loss equal to the difference between the "amount realized" by such Holder in exchange for its Claim and such Holder's adjusted tax basis in the Claim. The "amount realized" is equal to the sum of the cash and the fair market value of any other consideration received under a plan of reorganization in respect of a Holder's Claim. The tax basis of a Holder in a Claim will generally be equal to the Holder's cost. To the extent applicable, the character of any recognized gain or loss (e.g., ordinary income, or short-term or long-term capital gain, or loss) will depend upon the status of the Holder, the nature of the Claim in the Holder's hands, the purpose and circumstances of its acquisition, the Holder's holding period of the Claim, and the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the Holder's hands, any gain or loss realized generally will be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the Holder has held such Claim for more than one (1) year.

A Holder who received Cash (or potentially other consideration) in satisfaction of its Claims may recognize ordinary income or loss to the extent that any portion of such consideration

is characterized as accrued interest. A Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a distribution on account of its Claim pursuant to the Plan, will be treated as having received interest income to the extent that any consideration received is characterized for United States federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain or loss as a result of the distribution it may receive under the Plan and Disclosure Statement on account of its Claim.

**X. RECOMMENDATION**

In the opinion of the Debtor, the Plan is superior and preferable to the alternatives described in the Plan and this Disclosure Statement. Further, the value being provided to creditors under the Plan was subject to a competitive process through which parties other than the Purchaser could have provided higher and better bids, but determined, in their reasonable business judgment, that the Purchaser submitted the highest and best bid. Accordingly, the Debtor recommends that Holders of Claims entitled to vote on the Plan vote to accept the Plan and support Confirmation.

Executed this 29<sup>th</sup> day of February, 2024

/s/ Mike Flynn

Mike Flynn  
Chief Executive Officer  
Debtor and Debtor in Possession

**EXHIBIT 1**

Debtor's Fourth Amended Chapter 11 Plan of Liquidation, Dated February 29, 2024

**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 FOURTH AMENDED CHAPTER 11  
PLAN OF LIQUIDATION DATED FEBRUARY 29, 2024**

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COUNSEL TO THE DEBTOR AND  
DEBTOR IN POSSESSION

Dated: February 29, 2024

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## **INTRODUCTION**<sup>1</sup>

On June 9, 2023, Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg (“**FVS**” or “**Debtor**”) commenced its Chapter 11 Case, seeking relief under Chapter 11 of the Bankruptcy Code. As debtor and debtor-in-possession, the Debtor proposes this Plan pursuant to Bankruptcy Code sections 1125 and 1129 for the resolution of outstanding Claims against, and Interests in, the Debtor.

Reference is made herein to the Disclosure Statement for a discussion of the Debtor’s history and assets, a summary and analysis of this Plan, and certain related matters, including the Distributions to be made under the Plan and the risk factors relating to consummation of this Plan. No materials other than the Disclosure Statement, this Plan, and any and all exhibits and/or schedules attached thereto or hereto have been authorized by the Debtor for use in soliciting votes of acceptance with respect to the Plan.

Copies of the Plan and the Disclosure Statement and all other filed documents related to the Chapter 11 Case are available for review without charge, on the Case Website at <https://cases.stretto.com/FVS/>.

The Plan is a liquidating plan that proposes the sale of substantially all the Debtor’s Assets to the Purchaser, free and clear of all Liens, Claims, encumbrances, or interests. The sale proceeds will be used to satisfy certain Allowed Claims and fund the Plan.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THIS PLAN ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT FILED CONTEMPORANEOUSLY HERewith IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

## **SECTION 1. DEFINITIONS AND INTERPRETATION**

### **A. Definitions.**

The following terms used herein shall have the respective meanings below:

1.1 “*503(b)(9) Claims*” means any Claims arising under Bankruptcy Code section 503(b)(9).

1.2 “*2017 Bond Documents*” means the 2017 Bond Indenture, and any bonds, loan agreement, mortgage, security agreement, document, agreement, or instrument executed or delivered in connection with the issuance of the Series 2017 Bonds, including the 2017 Loan Agreement.

1.3 “*2017 Bond Indenture*” means that certain Bond Trust Indenture, dated December 1, 2017, between the Issuer and Bank of UMB Bank, National Association, as bond trustee, pursuant to which the Series 2017 Bonds were issued.

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<sup>1</sup> Capitalized terms used but not defined shall have the meanings ascribed to them in Section 1.A of this Plan.

1.4 “*2017 Loan Agreement*” means that certain Loan Agreement, dated December 1, 2017, by and between the Issuer and FVS, pursuant to which the Issuer loaned the proceeds of the Series 2017 Bonds to FVS.

1.5 “*Administrative Expense Claim*” means any Claim against any Debtor for costs and expenses of administration of the Chapter 11 Case pursuant to Bankruptcy Code sections 503(b), 507(a)(2), or 507(b), including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estate and operating the Debtor’s business; (b) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Case pursuant to Bankruptcy Code sections 503(b)(3), (4), and (5); (c) all fees and charges assessed pursuant to 28 U.S.C. § 1930(a)(6); and (d) 503(b)(9) Claims.

1.6 “*Administrative Expense Bar Date*” means the date by which Administrative Claims must be Filed, which: with respect to (a) Administrative Expense Claims that are not 503(b)(9) Claims shall be no later than the first Business Day that is thirty (30) days after the Effective Date; and (b) 503(b)(9) Claims, shall be no later than the Claims Bar Date.

1.7 “*Affiliate*” means, with respect to any Entity, an “affiliate” as defined in Bankruptcy Code section 101(2) as if such entity were a debtor.

1.8 “*Allowed*” means with respect to Claims: (a) any Claim, proof of which is timely filed by the applicable Bar Date; (b) any Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely filed; or (c) any Claim Allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; provided, that with respect to any Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time, as may be extended by the Bankruptcy Court from time to time, fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely filed, is not considered Allowed and shall be expunged without further action by the Debtor and without further notice to any party or action, approval, or order of the Bankruptcy Court. An Allowed Claim (i) includes a Disputed Claim to the extent such Disputed Claim becomes Allowed after the Effective Date and (ii) shall be net of any valid setoff exercised with respect to such Claim pursuant to the provisions of the Bankruptcy Code and applicable law. Unless otherwise specified in this Plan, Bankruptcy Code section 506(b), or by Final Order of the Bankruptcy Court, “Allowed” Claims shall not, for purposes of Distributions under this Plan, include interest on such Claim accruing from and after the Petition Date.

1.9 “*Amended Schedules Bar Date*” has the meaning given to such term in the Bar Date Order, which states that if amended Schedules are filed after service of the Bar Date Order and such amendment(s) change “the amount, nature, priority, classification, or characterization of a debt owing to a creditor and the creditor does not agree with such modification, then the affected creditor must file a proof of Claim on or before the later of (A) the General Bar Date or the Governmental Bar Date (as applicable) and (B) 11:59 p.m.,

prevailing Central Time, on the day that is 60 days from the date on which the Debtor provides notice of such amendment, supplement, or modification to the Schedules (or another time period as may be fixed by the Court).”

1.10 “*APA*” means the form of Asset Purchase Agreement approved by the Sale Order.

1.11 “*Assets*” means all interests, legal or equitable, in property, real, personal, tangible and intangible, of the Debtor as defined in Bankruptcy Code section 541(a)

1.12 “*Assigned Contracts*” means the Executory Contracts and Unexpired Leases that were assumed by the Debtor and assigned to the Purchaser, pursuant to the Sale Order.

1.13 “*Avoidance Actions*” means all actions, causes of action, suits, choses in action, and claims of the Debtor and/or the Estate against any entity or Person, whether direct, indirect, derivative, or otherwise arising under Bankruptcy Code section 510 or seeking to avoid a transfer of property or recover property pursuant to Bankruptcy Code sections 542 through 550 or applicable non-bankruptcy law, including fraudulent transfer laws, whether or not litigation is commenced before or after the Effective Date.

1.14 “*Ballot*” means the ballots upon which holders of Impaired Claims entitled to vote to accept or reject this Plan may indicate their acceptance or rejection in accordance with applicable rules and instructions regarding voting.

1.15 “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

1.16 “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Illinois, having jurisdiction over the Chapter 11 Case or, if the Bankruptcy Court ceases to exercise jurisdiction over the Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Case in lieu of the United States Bankruptcy Court for the Northern District of Illinois.

1.17 “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

1.18 “*Bar Date Order*” means the Bankruptcy Court’s *Order and Notice Granting Amended Motion to Set Last Day to File Proofs of Claim* [Docket No. 148].

1.19 “*Bar Date(s)*” means the Claims Bar Date, the Governmental Bar Date, the Amended Schedules Bar Date, or the Rejection Damages Bar Date, as applicable; and “*Bar Dates*” shall be a collective reference to the Claims Bar Date, the Governmental Bar Date, the Amended Schedules Bar Date, and the Rejection Damages Bar Date.

1.20 “*Bid Procedures and Sale Motion*” means the *Debtor’s Motion for Entry of (I) an Order (A) Approving Bid Procedures in connection with the Sale of Substantially all of the*

*Debtor's Assets, (B) Approving the Form and Manner of Notice Thereof, (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief; and (II) an Order (A) Approving the 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 Contracts, and (D) Granting Related Relief [Docket No. 45].*

1.21 “Board” means the board of directors of the Debtor as of the Petition Date.

1.22 “Bond Claims” means the Series 2017 Bond Claims and the Guaranteed Bond Claims.

1.23 “Bond Trustee” means, with respect to the Series 2017 Bonds, (i) UMB Bank, National Association., as bond trustee under the 2017 Bond Indenture and successor master trustee; and (ii) any successor trustee in such capacity.

1.24 “Bonds” means the Series 2017 Bonds and the Guaranteed Bonds.

1.25 “Business Day” means any day, other than a Saturday, Sunday or “legal holiday” as defined in Bankruptcy Rule 9006(a).

1.26 “Buyer Former Resident Contribution” means Cash in the amount of \$2,000,000 that the Purchaser requires the Debtor to hold in trust for Distribution to Holders of Former Resident Claims.

1.27 “Case Website” means the Debtor’s website maintained by Stretto at <https://cases.stretto.com/FVS/>.

1.28 “Cash” means the legal tender of the United States of America or the equivalent thereof.

1.29 “Cash Collateral Orders” means the *Interim Order Granting Emergency Motion for Entry of Interim and Final Orders (I) Granting (A) Replacement Liens and Superpriority Claims; and (B) Adequate Protection; (II) Authorizing Use of Cash Collateral; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief [Docket No. 85]; Second Interim Order on Emergency Motion for Entry of Interim and Final Orders (I) Granting (A) Replacement Liens and Superpriority Claims and (B) Adequate Protection; (II) Authorizing Use of Cash Collateral; (III) Modifying the Automatic Stay; (IV) Scheduling a Second Interim Hearing; and (V) Granting Related Relief [Docket No. 152]; and Final Order (I) Granting (A) Replacement Liens and Superpriority Claims and (B) Adequate Protection; (II) Authorizing Use of Cash Collateral; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief [Docket No. 207].*

1.30 “Causes of Action” means any claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, offsets, or setoffs of any kind or character whatsoever, and in each case, whether known or unknown, Contingent or non-Contingent, matured or unmatured, suspected or unsuspected,

foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Case, including through the Effective Date.

1.31 “*Chapter 11*” means chapter 11 of the Bankruptcy Code.

1.32 “*Chapter 11 Case*” means Case No. 23-07541 commenced by the Debtor and pending in the Bankruptcy Court.

1.33 “*Claim*” means a “claim,” as that term is defined in Bankruptcy Code section 101(5), against the Debtor.

1.34 “*Claims Agent*” means Stretto in its capacity as claims and noticing agent to the Debtor.

1.35 “*Claims Bar Date*” means the general bar date by which entities, other than Governmental Units, shall file Proofs of Claim, October 13, 2023 at 11:59 p.m. Central Time.

1.36 “*Claims Objection Deadline*” means the deadline for objecting to a Claim or Interest asserted against or in the Debtor, which shall be on the date that is the later of (a) 180 days after the Effective Date, and (b) such other date as may be specifically fixed by Order of the Bankruptcy Court.

1.37 “*Claims Register*” means the official register of Claims maintained by the Claims Agent.

1.38 “*Class*” means a category of holders of Claims or Interests as set forth in Section 3 hereof pursuant to Bankruptcy Code section 1122 and 1123(a)(1).

1.39 “*Closing Date*” shall mean December 28, 2023.

1.40 “*CMS*” means Centers for Medicare & Medicaid Services.

1.41 “*Collateral*” means any property or interest in property of the Estate subject to a Lien, charge or other encumbrance to secure the payment or performance of a Claim, which Lien, charge or other encumbrance is not subject to avoidance or otherwise invalid under the Bankruptcy Code or other applicable law.

1.42 “*Committee*” means the official committee of creditors appointed by the U.S. Trustee in the Chapter 11 Case pursuant to Bankruptcy Code section 1102 [Docket No. 88].

1.43 “*Community*” means the continuing care retirement community, located in Schaumburg, Illinois, known as “Friendship Village of Schaumburg.”

1.44 “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case within the meaning of Bankruptcy Rules 5003 and 9021.

1.45 “*Confirmation Hearing*” means the hearing(s) before the Bankruptcy Court under Bankruptcy Code section 1128 at which the Debtor seeks entry of the Confirmation Order, as such hearing(s) may be adjourned or continued from time to time.

1.46 “*Confirmation Order*” means a Final Order of the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code section 1129.

1.47 “*Contingent*” means, with respect to any Claim or Interest, or any portion thereof, except as otherwise provided herein, any contingent or unliquidated Claim asserted or which may be asserted against the Debtor.

1.48 “*Corporate Governance Documents*” means the certificates of incorporation, certificates of formation, resolutions, by-laws, and related documents of the Debtor.

1.49 “*Cure*” or “*Cure Claim*” means any Claim (unless waived or modified by the applicable counterparty) against the Debtor based upon defaults under an Executory Contract or an Unexpired Lease assumed by the Debtor under Bankruptcy Code section 365, other than a default that is not required to be cured pursuant to Bankruptcy Code section 365(b)(2).

1.50 “*Cure Notice*” means a notice sent to counterparties to an Executory Contract or Unexpired Lease in connection with the proposed assumption or assumption and assignment of such Executory Contract or Unexpired Lease under the Plan pursuant to Bankruptcy Code section 365, the form and substance of which notice shall be approved by the Bid Procedures and/or the Disclosure Statement Order and shall include: (a) procedures for objecting to proposed assumptions or assumptions and assignments of Executory Contracts and Unexpired Leases, (b) the proposed amount to be paid on account of Cure Claims, and (c) procedures for resolution by the Bankruptcy Court of any related disputes.

1.51 “*Current Resident*” means a resident who resided at the Community as of the Closing Date.

1.52 “*Current Resident Entrance Fee Program*” means the program described in Section 5.10 of the Winning Bid APA and as may be amended, modified or supplemented before the Sale Closing.

1.53 “*Debtor*” means Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg.

1.54 “*Deficiency Claim*” means a Claim for the difference between (i) the aggregate amount of an Allowed Claim and (ii) the value received on account of the portion of such Allowed Claim that is a Secured Claim.

1.55 “*DIP Facility*” means that term loan facility between the Debtor and the DIP Lender, together with any amendments, modifications or supplements thereto, which the Bankruptcy Court approved under the DIP Order.

1.56 “*DIP Facility Claims*” means a Claim held by the DIP Lender for all debts, indebtedness, obligations, covenants, and duties of payment and performance arising under or relating to the DIP Facility.

1.57 “*DIP Lender*” means FSO, in its capacity as the lender under the DIP Facility.

1.58 “*DIP Order*” means the Bankruptcy Court’s *Order Granting Debtor’s Motion for Entry of an Order (I) Authorizing the Debtor to Obtain Unsecured Postpetition Financing; (II) Modifying the Automatic Stay; and (III) Granting Related Relief* [Docket No. 205], as may be amended from time to time in the Chapter 11 Case.

1.59 “*Disallowed*” means, with respect to any Claim or Interest, or any portion thereof, except as otherwise provided herein, a Claim or Interest, or any portion thereof, that (a) has been disallowed by a Final Order, or (b) (i) is Scheduled at zero, in an unknown amount or as contingent, disputed or unliquidated and (ii) as to which the Bar Date has been established but no Proof of Claim has been timely Filed or deemed timely Filed under applicable law.

1.60 “*Disclosure Statement*” means the Disclosure Statement with respect to Debtor’s First Amended Chapter 11 Plan of Liquidation, as may be modified or amended, accompanying and describing this Plan.

1.61 “*Disclosure Statement Order*” means the order of the Bankruptcy Court approving the Disclosure Statement and solicitation procedures.

1.62 “*Disputed*” means, with respect to any Claim or Interest, or any portion thereof, a Claim or Interest, or any portion thereof, that is not yet Allowed, including (a) any Claim evidenced by a Proof of Claim that, on its face, is contingent or unliquidated; (b) any Claim that is subject to an objection Filed by the Claims Objection Deadline or a request for estimation, in each case that has not been withdrawn, resolved, or ruled on by a Final Order of the Bankruptcy Court; (c) any Claim or Interest scheduled by the Debtor as Contingent, unliquidated or disputed, (d) any Claim or Interest evidenced by a Proof of Claim that amends a Claim or Interest scheduled by the Debtor as Contingent, unliquidated or disputed, and (e) any Claim or Interest that is not an Allowed Claim or Allowed Interest or a Disallowed Claim or a Disallowed Interest; *provided, however*, that Resident Claims are not Disputed on account of being scheduled by the Debtor as Contingent or unliquidated.

1.63 “*Disputed Property*” means certain equipment that was included in the Purchased Assets under the APA between the Debtor and the Purchaser and which, following entry of the Bankruptcy Court’s order overruling Morrison’s sale objection asserting an ownership interest in the equipment, was sold and transferred to the Purchaser.

1.64 “*Distribution*” means Cash, property, interests in property or other value distributed to holders of Allowed Claims, or their designated agents, under the Plan.

1.65 “*Distribution Agent*” means the Debtor, Liquidating Debtor, or Unsecured Creditor Trustee, as applicable, or the Entity or Entities selected by the Debtor, Liquidating Debtor, or Unsecured Creditor Trustee, as applicable, to make or facilitate distributions contemplated under the Plan.

1.66 “*Distribution Record Date*” means the record date for purposes of determining which Holders of Allowed Claims against the Debtor are eligible to receive Distributions under the Plan, which date shall be the first day of the Confirmation Hearing, or such other date that is designated in a Final Order of the Bankruptcy Court.

1.67 “*Effective Date*” means the date that is the first Business Day on which the conditions set forth in Section 9 of this Plan have been satisfied or waived.

1.68 “*Entity*” shall have the meaning set forth in Bankruptcy Code section 101(15).

1.69 “*Entrance Fee Escrow*” means the escrow account maintained by TMI Trust Company, as escrow agent, on behalf of the Residents pursuant to Residency Agreements and Escrow Agreements. The entrance Fee Escrow holds Option Deposits received from Residents on or after April 17, 2023 pursuant to Residency Agreements and Option Agreements.

1.70 “*Entrance Fee Escrow Order*” means the *Order Authorizing the Debtor to (I) Continue to Utilize an Addendum to Certain of Its Contracts Which Allow the Debtor and Its Depositors to Place Certain Deposits into Escrow; and (II) Authorizes the Debtor, Its Depositors, the Escrow Agent Which Administers the Escrow and the Depository Bank Which Holds the Escrowed Funds to Continue to Manage and Perform Their Respective Duties in a Manner Consistent with the Terms of the Addendum and the Escrow Agreement* [Docket No. 84].

1.71 “*Entrance Fees*” means the fees paid by Residents, pursuant to applicable Residency Agreements, as a requirement to obtaining the right to occupy a unit at the Community, which may be fully or partially refundable to Residents, in accordance with the terms of the applicable Residency Agreement.

1.72 “*Escrow Agent*” means TMI Trust Company, in its capacity as the escrow agent with respect to the Entrance Fee Escrow.

1.73 “*Escrow Agreement*” means that certain Escrow Agreement dated as of April 17, 2023, by and among FVS, the Bond Trustee, and TMI Trust Company, as escrow agent.

1.74 “*Estate*” means the estate of the Debtor created by the Chapter 11 Case pursuant to Bankruptcy Code section 541.

1.75 “*Exculpated Party*” means each of: (i) the Debtor, (ii) the Liquidating Debtor, (iii) the Bond Trustee, (iv) FSO, (v) the Issuer, (vi) the Committee, (vii) the DIP Lender, and (viii) with respect to each of the foregoing Entities in clauses (i) through (vii), such Entity and 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.

1.76 “*Executory Contract*” means all contracts and leases to which Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

1.77 “*File, Filed or Filing*” means file, filed, or filing with the Bankruptcy Court in the Chapter 11 Case.

1.78 “*Final Decree*” means order entered pursuant to Bankruptcy Code section 350 and Bankruptcy Rule 3022 closing the Chapter 11 Case.

1.79 “*Final Fee Hearing*” means the hearing to be conducted by the Bankruptcy Court to consider approval and allowance of final Professional Fee Claims.

1.80 “*Final Order*” means an order or judgment of the Bankruptcy Court entered by the Clerk of the Bankruptcy Court on the docket in the Chapter 11 Case that has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, to petition for certiorari, or to move for a new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rules 9023 or 9024, may be filed relating to such order shall not cause such order to not be a Final Order.

1.81 “*First Day Declaration*” means the *Declaration of Mike Flynn, Chief Executive Officer of the Debtor in Support of the Debtor’s First Day Pleadings* [Docket No. 16].

1.82 “*Former Resident*” means a resident who resided at the Community prior to the Closing Date but no longer resided at the Community as of the Closing Date.

1.83 “*Former Resident Claim*” means a Claim, based on a Residency Agreement, of a Former Resident, who consents to the releases set forth under Section 8 of the Plan and the FSO Settlement and Contribution Agreement.

1.84 “*Former Residents Trust*” means the trust to be established under the Plan for the benefit of Former Residents Trust Beneficiaries.

1.85 “*Former Residents Trust Trustee*” means the Person appointed to serve in a fiduciary capacity as the trustee of the Former Residents Trust, who shall be identified and disclosed in the Plan Supplement, and any successor thereto appointed pursuant to the Former Residents Trust Agreement.

1.86 “*Former Residents Trust Agreement*” means the trust agreement, in a form acceptable to the Committee and FSO, that shall be (i) included, in draft form, in the Plan Supplement and (ii) executed on or before the Effective Date, subject to Confirmation of the Plan and the FSO Settlement and Contribution Agreement contained in the Plan.

1.87 “*Former Residents Trust Beneficiaries*” means Former Residents who do not elect to Opt Out and, thus, agree and consent to grant the releases set forth under Section 8 of the Plan and in the FSO Settlement and Contribution Agreement.

1.88 “*FSO*” means Friendship Senior Options, NFP, the sole member of the Debtor.

1.89 “*FSO Current Resident Contribution*” the Current Resident support to be provided by FSO pursuant to the FSO Settlement and Contribution Agreement.

1.90 “*FSO Former Resident Contribution*” means the Cash contribution in the amount of \$1,500,000 that will be used to fund the Former Residents Trust pursuant to the FSO Settlement and Contribution Agreement, the principal terms of which are described in the FSO Settlement and Contribution Agreement Term Sheet attached as an exhibit to the Disclosure Statement.

1.91 “*FSO Foundation*” means Friendship Senior Options Foundation, NFP, incorporated under the laws of Illinois.

1.92 “*FSO Settlement and Contribution Agreement*” means the settlement agreement that will be included in the Plan Supplement(s) and, on or before the Effective Date, must be entered into and executed by FSO, the Debtor, and the Committee.

1.93 “*General Unsecured Claim*” means any Unsecured Claim that is not: Administrative Expense Claims, Professional Fee Claims, Other Priority Claims, DIP Facility Claims, Intercompany Claims, Deficiency Claims, Former Resident Claims, and Opt Out Former Resident Claims.

1.94 “*Governmental Bar Date*” means the date by which Governmental Units must file Proofs of Claims, November 17, 2023 at 11:59 p.m. Prevailing Central Time.

1.95 “*Government Unit*” means a “governmental unit” as defined in Bankruptcy Code section 101(27).

1.96 “*Guaranteed Bond Claims*” means any and all Claims in respect of the Guaranteed Bonds.

1.97 “*Guaranteed Bonds*” means the following FSO bonds that are secured by FVS’s Direct Note Obligation, Series 2017 (Illinois Finance Authority): (i) Taxable Bonds, Series 2017A (GreenFields of Geneva Project); (ii) Series 2017B (GreenFields of Geneva Project); and (iii) Series 2017C Bonds (GreenFields of Geneva Project).

1.98 “*Holder*” means the beneficial holder of a Claim or Interest.

1.99 “*Huntley Property*” means the real property located at PIN #02-08-401-018 in the County of Kane in Illinois, which is held in trust for the benefit of the Debtor.

1.100 “*Indemnification Provisions*” means the Debtor’s indemnification provisions in effect as of the Petition Date, whether in the Debtor’s bylaws, certificates of incorporation, other formation, documents, board resolutions, management or indemnification agreements, employment contracts, or otherwise providing a basis for any obligation of the Debtor to indemnify, defend, reimburse or limit the liability of, or to advance fees and expenses to, any of the Debtor’s current and former directors, officers, equity holders, managers, members, employees, accountants, investment bankers, attorneys, other professionals, and professionals of the Debtor, and such current and former directors’, officers’, and managers’ respective Affiliates, each of the foregoing solely in their capacity as such.

1.101 “*Impaired*” means, with respect to a Claim, that such Class of Claims is “impaired” within the meaning of Bankruptcy Code section 1124.

1.102 “*Insider*” means an “insider,” as defined in Bankruptcy Code section 101(31).

1.103 “*Intercompany Claim*” means any Claim against the Debtor held by an Affiliate.

1.104 “*Interest*” means any membership interest in the Debtor, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest.

1.105 “*Issuer*” means the Illinois Finance Authority.

1.106 “*Land Trust*” means Chicago Title Land Trust Company, the trust in which the Huntley Property has been held for the benefit of the Debtor.

1.107 “*Lien*” means “lien,” as defined in Bankruptcy Code section 101(37).

1.108 “*Local Rules*” means the Local Rules of Bankruptcy Procedure for the Northern District of Illinois.

1.109 “*Local Rules*” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Illinois, or any other court having jurisdiction over the Chapter 11 Case.

1.110 “*Management Agreement*” means that certain Exclusive Administrative Services and Personnel Lease Agreement, dated November 13, 2017 between FSO and FVS.

1.111 “*Master Indenture*” means the Third Supplemental Master Indenture together with the Original Master Indenture.

1.112 “*Master Trustee*” means UMB Bank, National Association, as successor to Wells Fargo Bank, National Association, as predecessor master trustee under the Original Bond Documents.

1.113 “*Morrison*” means Morrison Management Specialists, Inc.

1.114 “*Morrison Appeal*” means the appeal by Morrison of the Bankruptcy Court’s ruling to overrule Morrison’s sale objection.

1.115 “*Net Sale Proceeds*” means the sale proceeds of the Sale, less any customary transaction fees and expenses, which for the avoidance of doubt, shall be used to satisfy certain Allowed Claims and will be distributed in accordance with the Plan.

1.116 “*Non-Participating Current Residents*” means the Residents who do not consent to the modification of their Residency Agreements to be assumed by the Debtor and assigned to the Purchaser.

1.117 “*Opt Out Former Resident Claims*” are Claims, based on Residency Agreements, of Former Residents who elect to opt out of the releases set forth under Section 8 of the Plan and do not consent to the releases set forth thereunder and/or under the FSO Settlement and Contribution Agreement.

1.118 “*Option Agreement*” means the Addendum to Contract at Friendship Village of Schaumburg, amending the Residency Agreements, entered into on or after April 17, 2023, to incorporate the terms of the Escrow Agreement and conditions for return of new Entrance Fees.

1.119 “*Option Deposits*” means deposits made by Residents that are directed to and held by the Escrow Agent in accordance with the Escrow Agreement and Option Agreements.

1.120 “*Original Bonds*” means, collectively, the Series 2005 Bonds and the Series 2010 Bonds.

1.121 “*Original Bond Documents*” means, collectively, the Original Master Indenture and the Original Mortgage.

1.122 “*Original Master Indenture*” means that Master Trust Indenture, dated July 15, 2005 between FVS and Wells Fargo Bank, National Association, as master trustee.

1.123 “*Original Mortgage*” means that Mortgage and Security Agreement, dated July 15, 2005, as supplemented and amended (the “Original Mortgage”) from FVS, as mortgagor, to Wells Fargo Bank, National Association, as master trustee under the Original Bond Documents.

1.124 “*Other Priority Claim(s)*” means any Claim, other than an Administrative Claim, a Priority Tax Claim, or the DIP Facility Claims, which is entitled to priority under Bankruptcy Code section 507(a).

1.125 “*Other Secured Claim(s)*” means any Secured Claim other than a Bond Claim.

1.126 “*Partial DIP Waiver*” means the \$1,000,000 portion of the total DIP Facility Claims that FSO, as DIP Lender, agrees to waive for the benefit of the Estate and its creditors subject to the approval of the FSO Settlement and Contribution Agreement, in a form acceptable to FSO and the Committee.

1.127 “*Participating Current Residents*” means the Residents who consent to the modification of their Residency Agreements to be assumed by the Debtor and assigned to the Purchaser.

1.128 “*Person*” means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization, governmental unit, government (or agency or political subdivision thereof), or other entity, including, without limitation, the Debtor.

1.129 “*Petition Date*” means June 9, 2023, the date on which the Debtor filed its voluntary petition for relief commencing the Chapter 11 Case.

1.130 “*Plan*” means this Debtor’s Chapter 11 Plan of Liquidation, dated as of November 14, 2023, including all exhibits, supplements, appendices, and schedules thereto, either in its present form or as the same may be amended, supplemented, or modified from time to time.

1.131 “*Plan Documents*” means the Plan, the Plan Supplement, and all of the exhibits and schedules attached to each of the foregoing.

1.132 “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to this Plan, which may include, without limitation, (i) the FSO Settlement and Contribution Agreement; (ii) notice of the selected Unsecured Creditor Trustee; (iii) a list of any particular Retained Causes of Action, if necessary; (iv) a draft of Unsecured Creditor Trust Agreement; (v) a draft of the Former Residents Trust Agreement, and the Plan Supplement shall be filed no later than fourteen (14) days before the Voting Deadline with the Debtor having the right to amend all of the Plan Supplement documents and/or exhibits through the Effective Date.

1.133 “*Prime Group*” means The Prime Group, Inc., or its designee, as purchaser of the Huntley Property.

1.134 “*Priority Tax Claim*” means any Claim of a governmental unit of a kind entitled to priority under Bankruptcy Code section 507(a)(8).

1.135 “*Pro Rata*” shall mean the proportion that the amount of a Claim in a particular Class or Classes bears to the aggregate amount of all Claims in such Class or Classes, unless this Plan otherwise provides.

1.136 “*Professionals*” means all professionals employed in the Chapter 11 Case pursuant to Bankruptcy Code sections 327, 328, and 1103.

1.137 “*Professional Fee Claim*” means a Claim of a Professional for compensation and/or reimbursement of expenses incurred by such Professional through and including the Effective Date.

1.138 “*Professional Fee Claim Bar Date*” means the first Business Day that is fourth-five (45) days after the Effective Date.

1.139 “*Proof of Claim*” means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

1.140 “*PSA*” means that certain Real Estate Purchase and Sale Agreement that was approved by the Bankruptcy Court on January 10, 2024 and in the order entered January 12, 2024 [Docket No. 469].

1.141 “*Purchaser*” means, IL CCRC LLC, the winning bidder with respect to substantially all the Assets of the Debtor as set forth under the APA that is approved by the Sale Order.

1.142 “*Refund Obligations*” means any Resident refund obligations that are currently due and owing under the terms of the Residency Agreements, which shall include amounts due and owing to former Residents who are no longer occupying their respective higher level of care units.

1.143 “*Reinstate*,” “*Reinstated*,” or “*Reinstatement*” means with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with Bankruptcy Code section 1124.

1.144 “*Rejection Claims*” means any Claim arising from, relating to, the rejection of an Executory Contract or Unexpired Lease pursuant to Bankruptcy Code section 365(a) by the Debtor, as limited, in the case of a rejected Unexpired Lease, by Bankruptcy Code section 502(b)(6).

1.145 “*Rejection Damages Bar Date*” means the date by which Rejection Claims must be Filed, which shall be the latest of: (i) the General Bar Date, (ii) thirty (30) days after the date of the entry of any order authorizing the rejection of the Executory Contract or Unexpired Lease, or (iii) thirty (30) days after the effective date of rejection of such Executory Contract or Unexpired Lease, including pursuant to Bankruptcy Code section 365(d)(4).

1.146 “*Released Parties*” means (i) the Debtor, (ii) the Liquidating Debtor, (iii) FSO, and (iv) with respect to each of the foregoing Entities in clauses (i) through (iii), such Entity and its current and former predecessors, successors and assigns, subsidiaries, affiliates (which shall include, without limitation, Friendship Village of Mill Creek d/b/a GreenFields of Geneva) and all of their respective current and former officers (which shall include, without limitation, Arnab Bagchi, Mike Flynn, Benjamin Gilchrist, Patricia Mash, Stephen Yenchek, Richard Zelinski, and Mark Zullo), directors (which shall include, without limitation, Ron

Ahlman, Brad Barrie, Bill Bowne, Chuck Cassel, Tom Castronovo, Clark Delanois, Kathy Gilmer, Bill Powell, Kathleen Rivera, Geoff Roehll, Paul Schaffhausen, Jean Schlinkmann, Mary Sheahen, Connie Shoemake, Steve Smith, Cathie Tardy, Duane Tyler, Loren Trimble, Jan Tucker, and Stephen Yenchek), principals, members, managers, employees, medical professionals, attorneys (which shall include, without limitation, Atlas & Leviton; Cooley LLP; Dopkelaw LLC; Duane Morris LLP; Frost Brown Todd LLP; Greenberg Traurig, LLP; The Leviton Law Firm, LTD; Maslon LLP; McCarter & English, LLP; McDermott Will & Emery LLP; McVey & Parsky LLC; Polsinelli PC; Schiff Hardin LLP; Seyfarth Shaw LLP; and Smith, Hemmesch, Burke & Kaczy), advisors, accountants (which shall include, without limitation, CliftonLarsonAllen LLP), financial advisors (which shall include, without limitation, Wyse Advisors LLC), brokers (which shall include, without limitation, Avison Young - Chicago, LLC; Continuum Advisors LLC; and Grandbridge Real Estate Capital LLC), investment bankers (which shall include, without limitation, B.C. Ziegler and Company), consultants (which shall include, without limitation, American Arbitration Association; ARCH Consultants, Ltd.; Arthur J. Gallagher Management Services, Inc.; Attane, formerly known as GlynnDevins; A.V. Powell & Associates LLC; Davis Harrison Dion, Inc.; EBI Consulting; Frederick Schutz; Ivy Marketing Group, Inc.; L2 Services, LLC; Love & Company; The Loyola Group; O'Brien & Associates, Inc.; Pearl Creek Advisors, LLC; Portage Point Partners, LLC; Senior Living Valuation Services, Inc.; Sentinel Technologies, Inc.; Stretto, Inc.; and TMI Trust Company), representatives, and management companies.

1.147 “*Releasing Party*” means each Holder who has not chosen, by marking the appropriate box on the Ballot, to opt out of the “Third Party Releases” provided for in Section 8 of this Plan.

1.148 “*Residency Agreements*” means those certain agreements entered into by and between the Residents and the Debtor, including all Assisted Living Residency Agreements, Life Care Agreements, Skilled Nursing Residency Agreements, Memory Care Agreements, and any additional documents related thereto, including any amendments, supplements, or addendums.

1.149 “*Resident*” means a current or former resident of the Community who is a party to a Residency Agreement.

1.150 “*Resident Claim*” means the Claims of Residents arising under a Residency Agreement or for de minimis cash deposits held by the Debtor for Residents for Resident activities at the Property, but excludes any tort or professional liability Claims against the Debtor.

1.151 “*Retained Causes of Action*” shall have the meaning set forth in Section 4.7 of the Plan and will include any potential causes of action that are expressly included in the Plan Supplement.

1.152 “*Sale Hearing*” means the hearing held by the Bankruptcy Court to consider the approval of the proposed sale of substantially all the Debtor’s Assets to the Purchaser.

1.153 “*Sale Closing*” means the consummation of the Sale Transaction.

1.154 “*Sale Order*” means 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].

1.155 “*Sale Transaction*” means the sale of substantially all the Debtor’s Assets, free and clear of all Liens, Claims, encumbrances and Interests, to the Purchaser in accordance with the Bid Procedures Order and the Sale Order, which such transaction is described in the Disclosure Statement and proposed herein as a means of implementation for the Plan.

1.156 “*Schedules*” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs, if any, filed by the Debtor pursuant to Bankruptcy Code section 521 and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

1.157 “*Secured Claim*” means any Claim against the Debtor: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to Bankruptcy Code section 553, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Bankruptcy Code section 506(a) or (b) Allowed as such pursuant to the Plan.

1.158 “*Security*” means “security,” as defined in Bankruptcy Code section 101(49).

1.159 “*Series 2005 Bonds*” means the Series 2005A Bonds and the 2005B Bonds.

1.160 “*Series 2005A Bonds*” means the \$75,500,000 in original aggregate principal amount of the Illinois Finance Authority Revenue Bonds, Series 2005A (Friendship Village of Schaumburg) issued pursuant to the Series 2005 Bond Indenture, which was satisfied with the issuance of the Series 2017 Bonds.

1.161 “*Series 2005B Bonds*” means the \$5,000,000 in original aggregate principal amount of the Illinois Finance Authority Revenue Bonds, Series 2005B (Friendship Village of Schaumburg) Extendable Rate Adjustable Securities issued pursuant to the Series 2005 Bond Indenture, which was satisfied with the issuance of the Series 2017 Bonds.

1.162 “*Series 2010 Bonds*” means the \$33,610,000 in original aggregate principal amount of the Illinois Finance Authority Revenue Bonds, Series 2010 (Friendship Village of Schaumburg), which was satisfied with the issuance of the Series 2017 Bonds.

1.163 “*Series 2017 Bonds*” means the \$122,550,000 aggregate principal amount of Illinois Finance Authority Revenue Bonds, Series 2017 (Friendship Village of Schaumburg) authorized to be issued pursuant to the terms and conditions of the 2017 Bond Indenture.

1.164 “*Series 2017 Bond Claims*” means any and all Claims in respect of the Series 2017 Bonds.

1.165 “*Series 2017 Obligation*” means the \$122,550,000 principal amount Direct Note Obligation, Series 2017-2 (Illinois Finance Authority) of FVS, in substantially the form attached to the Third Supplemental Master Indenture.

1.166 “*Stalking Horse*” means IL CCRC, LLC.

1.167 “*Stalking Horse Bid*” means the bid submitted by the Stalking Horse, as reflected in the Stalking Horse APA filed with the Bankruptcy Court in the Chapter 11 Case on September 15, 2023.

1.168 “*Stalking Horse APA*” means that certain Asset Purchase Agreement by and between the Debtor, as seller, and IL CCRC LLC, as purchaser, dated September 14, 2023, a copy of which is attached to the *Notice of Filing Executed Version of Stalking Horse Asset Purchase Agreement* filed on September 15, 2023

1.169 “*Stretto*” means Stretto, Inc., employed by the Debtor in the Chapter 11 Case pursuant to the *Order Granting Emergency Motion for Entry of an Order (I) Authorizing the Debtor to Retain and Appoint Stretto, Inc. as Claims and Noticing Agent Effective as of the Petition Date; and (II) Approving Notice Procedures and Master Service List* [Docket No. 83] and *Order Granting Motion to Employ Stretto, Inc. as Administrative Advisor for the Debtor Effective as of the Petition Date* [Docket No. 129].

1.170 “*Third Supplemental Master Indenture*” means that Third Supplemental Master Trust Indenture, dated December 1, 2017, supplementing and amending the Original Master Indenture.

1.171 “*Unclaimed Distributions*” means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

1.172 “*Unclaimed Distribution Deadline*” means the first Business Day that is six (6) months after the Effective Date.

1.173 “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

1.174 “*Unimpaired*” means, with respect to a Claim, a Class of Claims that is “unimpaired” within the meaning of Bankruptcy Code section 1124.

1.175 “*Unsecured Claim*” means any Claim that is not a Secured Claim.

1.176 “*Unsecured Creditor Trust*” means the trust described in Section 4 of the Plan.

1.177 “*Unsecured Creditor Trust Agreement*” means the agreement between the Debtor and the Unsecured Creditor Trustee to be entered into as of the Effective Date, substantially in the form set forth in the Plan Supplement, as may be amended and supplemented from time to time, with such final form being acceptable to the Committee.

1.178 “*Unsecured Creditor Trust Assets*” means from and after the Effective Date: (i) Buyer Former Resident Contribution; (ii) all legal and equitable interests of the Debtor in Retained Causes of Action; (iii) all legal and equitable defenses or counterclaims of the Debtor to Claims; and (iv) any other Assets to be vested in the Unsecured Creditor Trust pursuant to this Plan and the Unsecured Creditor Trust Agreement.

1.179 “*Unsecured Creditor Trust Expenses*” means reasonable and documented out-of-pocket fees, costs and expenses incurred by the Unsecured Creditor Trust or the Unsecured Creditor Trustee (or any professional or other Person retained by the Unsecured Creditor Trustee in administering the Unsecured Creditor Trust) on or after the Effective Date in connection with any of their responsive duties under this Plan and the Unsecured Creditor Trust Agreement, including any administrative fees, attorneys’ fees and expenses, insurance fees, taxes and escrow expenses, all as further set forth in the Unsecured Creditor Trust Agreement.

1.180 “*Unsecured Creditor Trust Interests*” means uncertificated interest in the Unsecured Creditor Trust representing the rights of Holders of Allowed Unsecured Claims in Class 5A (Former Resident Claims), Class 5B (Opt Out Former Resident Claims), and Class 6 (Non-Resident General Unsecured Claims).

1.181 “*Unsecured Creditor Trust Oversight Committee*” means three (3) Persons, initially selected by the Committee, identified in the Plan Supplement that shall provide oversight and direction to the Unsecured Creditor Trustee in accordance with the terms of the Unsecured Creditor Trust Agreement. After the Effective Date, the members shall be appointed in accordance with the terms of the Unsecured Creditor Trust Agreement.

1.182 “*Unsecured Creditor Trustee*” means the Person identified as such in the Plan Supplement or other filing with the Bankruptcy Court, and retained as of the Effective Date pursuant to the terms of the Unsecured Creditor Trust Agreement, as the fiduciary responsible for implementing the applicable provisions of this Plan and the Unsecured Creditor Trust Agreement, and any successor thereto appointed, pursuant to the Unsecured Creditor Trust Agreement.

1.183 “*U.S. Trustee*” means the Office of the United States Trustee for the Northern District of Illinois.

1.184 “*U.S. Trustee Fees*” means all fees and charges assessed against the Estate of the Debtor under 28 U.S.C. § 1930.

1.185 “*Voting Agent*” means Stretto, Inc., in its capacity as solicitation and tabulation agent.

1.186 “*Voting Classes*” means Classes 2, 5A, 5B and 6.

1.187 “*Voting Deadline*” means the deadline to vote to accept or reject this Plan set forth in the Disclosure Statement or an order of the Bankruptcy Court, as such deadline may be extended or modified from time to time.

1.188 “*Voting Record Date*” means the date for determining which Holders in the Voting Classes are entitled to receive the Disclosure Statement and to vote to accept or reject the Plan, and, such date shall be the date the Disclosure Statement Hearing is concluded.

1.189 “*Winning Bid APA*” means the Asset Purchase Agreement by and between the Debtor and IL CCRC LLC, executed on October 24, 2023 and filed in this Chapter 11 Case on October 26, 2023 at Docket No. 292-1.

1.190 “*Winning Bidder*” means IL CCRC LLC.

B. Interpretation: Application of Definitions and Rules of Construction.

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan, as the same may be amended, waived, or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in Bankruptcy Code section 102 shall apply to this Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Unless otherwise provided, any reference in this Plan to an existing document, exhibit, or schedule means such document, exhibit, or schedule as it may have been amended, restated, revised, supplemented, or otherwise modified. If a time or date is specified for any payments or other Distribution under this Plan, it shall mean on or as soon as reasonably practicable thereafter. Further, where appropriate from a contextual reading of a term, each term includes the singular and plural form of the term regardless of how the term is stated and each stated pronoun is gender neutral. In the event of any ambiguity or conflict between this Plan and the Disclosure Statement, the provisions of this Plan shall govern.

C. Computation of Time.

In computing any period of time prescribed or allowed by the terms of this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. Any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

D. Controlling Document.

In the event of an inconsistency between this Plan and the Disclosure Statement, the terms of this Plan shall control in all respects. In the event of an inconsistency between this Plan and the Plan Supplement, this Plan shall control. In the event of an inconsistency between this Plan and the Confirmation Order, the Confirmation Order shall control.

## **SECTION 2. TREATMENT OF ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND U.S. TRUSTEE FEES**

2.1 ***Administrative Expense Claims.*** To be eligible to receive Distributions under the Plan on account of an Administrative Expense Claim that is not otherwise Allowed by the Plan, requests for payment of Administrative Expense Claims must be Filed no later than the applicable Administrative Expense Bar Date. Holders of Administrative Expense Claims that do not File requests for the allowance and payment thereof on or before the applicable Administrative Expense Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtor or the Estate. For the avoidance of doubt, the DIP Lender, as Holder of the DIP Facility Claims, shall not be required to file an Administrative Expense Claim for the allowance and satisfaction of such Claims; *provided, however*, that subject to the approval of and pursuant to the terms of the FSO Settlement and Contribution Agreement, the DIP Facility Claim shall only be Allowed as an Administrative Expense Claim to the extent of \$2,000,000.

Except to the extent that, prior to the Effective Date, the Debtor and a Holder of an Allowed Administrative Expense Claim agree to less favorable treatment or has been paid by the Debtor prior to the Effective Date, in full and final satisfaction, settlement, and release of and in exchange for release of each Allowed Administrative Expense Claim, each Holder of an Allowed Administrative Expense Claim will be paid the full unpaid amount of such Allowed Administrative Expense Claim in Cash (i) if such Allowed Administrative Claim is based on liabilities that the Debtor incurred in the ordinary course of business after the Petition Date, on the Effective Date or in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Expense Claim, in the Debtor's discretion, and without any further action by any holder of such Allowed Administrative Expense Claim; (ii) if such Allowed Administrative Expense Claim is due on the Effective Date, or, if such Allowed Administrative Expense Claim is not due as of the Effective Date, on the date that such Allowed Administrative Expense Claim becomes due or as soon as reasonably practicable thereafter; (iii) if an Administrative Expense Claim is not Allowed as of the Effective Date, on the date that is no later than thirty (30) days after the date on which an order allowing such Administrative Expense Claim becomes a Final Order of the Bankruptcy Court or as soon as reasonably practicable thereafter; or (iv) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

2.2 ***Professional Fee Claims.*** All Professionals requesting payment or satisfaction of Professional Fee Claims for services rendered before the Effective Date (including compensation requested by any Professional or other entity for making a substantial contribution in the Chapter 11 Case) shall File an application for final allowance of compensation and reimbursement of expenses no later than the Professional Fee Claims Bar Date.

The Final Fee Hearing shall be held as soon as practicable after the Professional Fee Claims Bar Date. The Debtor, through its counsel, shall File a combined notice of the Final Fee Hearing. Such notice shall also be posted on the Case Website, and served upon counsel for the Committee, counsel for Bond Trustee, all Professionals, the U.S. Trustee, and all parties on the Debtor's Bankruptcy Rule 2002 service list.

Allowed Professional Fee Claims shall be paid: (i) as soon as is reasonably practicable following the later of (a) the Effective Date and (b) the date upon which the order relating to any such Allowed Professional Fee Claims is entered by the Bankruptcy Court; or (ii) upon such other terms as agreed by the Holder of such an Allowed Professional Fee Claims. Allowed Professional Fee Claims shall be paid in full in Cash by the Debtor.

2.3 **Priority Tax Claims.** Except to the extent that the Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment with the Debtor, each Holder of an Allowed Priority Tax Claim will receive in full and final satisfaction, settlement, release, and discharge of, and in exchange for, its Allowed Priority Tax Claim an amount of Cash equal to the full unpaid amount of such Allowed Tax Claim on (a) the Effective Date, or (b) the first Business Day after the date which is thirty (30) days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable. Cook County Treasurer's Office has filed a proof of claim, asserting a Claim in the amount of \$723,856.09, the full amount of which has been satisfied.

2.4 **DIP Facility Claims.** Pursuant to the terms of the FSO Settlement and Contribution Agreement, described in Exhibit 3 to the Disclosure Statement, the DIP Facility Claims shall be deemed an Allowed Administrative Expense Claim to the extent of the full amount due and owing under the DIP Order less \$1,000,000 (the repayment of which the DIP Lender has agreed to waive in connection with the FSO Settlement and Contribution Agreement), as of the Effective Date. As stated above, the DIP Lender is not required to file any Proof of Claim with respect to the DIP Facility Claims, which shall be satisfied in from Net Sale Proceeds and/or other Cash available on the Effective Date.

2.5 **Escrow Resident Claims.** As of November 14, 2023 and January 17, 2024, the Entrance Fee Escrow held approximately \$5,300,000 and \$4,900,000, respectively. As of the date hereof, the Entrance Fee Escrow holds approximately \$620,000. Thus, numerous depositors have already received the return of their Option Deposits. The remaining Option Deposits will be released pursuant to applicable agreements as soon as reasonably practicable and no later than Confirmation.

2.6 **U.S. Trustee Fees.** All U.S. Trustee Fees due and payable prior to the Effective Date shall be paid by the Debtor on or before the Effective Date in accordance with Bankruptcy Code section 1129(a)(12). On and after the Effective Date, until the earliest of the Chapter 11 Case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code, the Unsecured Creditor Trustee shall pay any and all U.S. Trustee Fees when due and payable, and shall File with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee.

### **SECTION 3. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

#### **A. Treatment of Claims and Interests Under the Plan.**

3.1 **Classification and Specification of Treatment of Claims.** Pursuant to Bankruptcy Code sections 1122 and 1123(a)(1), Claims are classified for all purposes, including, without express or implied limitation, voting, confirmation and distribution pursuant to the Plan,

as set forth herein. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving Distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

Except to the extent that the Debtor and a Holder of an Allowed Claim or Allowed Interest, as applicable, agree in writing to less favorable treatment for such Allowed Claim or Allowed Interest, as applicable, such Holder shall receive under this Plan the treatment described below and set forth in Section 7 of this Plan in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Holder's Allowed Claim or Allowed Interest. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the Effective Date or as soon thereafter as reasonably practicable.

The following table designates the Classes of Claims and Interests in the Debtor and specifies which of those Classes are: (i) Impaired or Unimpaired; (ii) entitled to vote to accept or reject the Plan; and (iii) deemed to accept or reject this Plan.

| <b>Class</b>                    | <b>Estimated Allowed Claims<sup>2</sup></b> | <b>Treatment &amp; Voting Rights</b> | <b>Estimated Recovery<sup>3</sup></b> |
|---------------------------------|---------------------------------------------|--------------------------------------|---------------------------------------|
| Class 1 – Other Priority Claims | \$481,000                                   | Unimpaired, deemed to accept         | 100%                                  |
| Class 2 – Bond Claims           | \$131,600,000 <sup>4</sup>                  | Impaired, entitled to vote           | 23.3%                                 |
| Class 3 – Other Secured Claims  | \$40,000                                    | Unimpaired, deemed to accept         | 100%                                  |
| Class 4 – Deficiency Claims     | TBD <sup>5</sup>                            | Impaired, entitled to vote           | Unknown%                              |

<sup>2</sup> These amounts represent estimated Allowed Claims, and do not represent amounts actually asserted by creditors in Proofs of Claim or otherwise. The Debtor has not completed its review and analysis of all Claims in the Chapter 11 Case, and objections to such Claims have not been Filed and/or fully litigated and may continue following the Effective Date. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

<sup>3</sup> The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims in the Chapter 11 Case. As set forth above, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are Allowed by the Bankruptcy Court.

<sup>4</sup> The extent to which the Bond Trustee's Class 2 Claim is secured has not been determined. The Purchased Assets included assets not encumbered by the Bond Trustee's lien or interest. Thus, the Debtor reserves the right to dispute the amount of the Bond Claim.

| Class                                           | Estimated Allowed Claims <sup>2</sup> | Treatment & Voting Rights      | Estimated Recovery <sup>3</sup> |
|-------------------------------------------------|---------------------------------------|--------------------------------|---------------------------------|
| Class 5A – Former Residents Claims              | \$20,000,000                          | Impaired, entitled to vote     | 10.0% - 17.5% <sup>6</sup>      |
| Class 5B – Opt Out Former Resident Claims       | \$0.00                                | Impaired, entitled to vote     | 0.0% <sup>7</sup>               |
| Class 6 – Non-Resident General Unsecured Claims | \$3,956,000                           | Impaired, entitled to vote     | Unknown <sup>8</sup>            |
| Class 7 – Intercompany Claims                   | \$232,000 <sup>9</sup>                | Impaired, not entitled to vote | 0.0%                            |
| Class 8 – Interests in Debtor                   | N/A                                   | Impaired, not entitled to vote | 0.0%                            |

3.1.1 Class 1 —Other Priority Claims. Class 1 is Unimpaired and deemed to accept the Plan and, thus, is not entitled to vote on the Plan. This Class consists of all Allowed Other Priority Claims, if any such Claims still exist as of the Effective Date. Each Allowed Other Priority Claim shall be in a separate subclass. Except to the extent that a Holder of an Allowed Other Priority Claim and the Debtor agree in writing to less favorable treatment of such Holder's Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive, in full and complete satisfaction, settlement, discharge, and release of, and in exchange for, its Allowed Other Priority Claim: (a) payment in full, in Cash, on the later of (i)

<sup>5</sup> The Deficiency Claim of the Bond Trustee will be determined by the amount of Net Sale Proceeds available for Distribution to Class 2 Claims. The Deficiency Claim of the Other Secured Claim Holder (Leaf Capital Funding, LLC) is estimated at \$62,327.79 as the Debtor estimates the value of the vehicle securing the debt has a fair market value of approximately \$40,000.

<sup>6</sup> Pursuant to the APA, the Purchaser provided \$2,000,000 to be held in trust for the benefit of Holders of Class 6 Former Resident Claims, irrespective of whether such Holders vote to accept the Plan or grant the releases thereunder. Additionally, subject to approval of the Bankruptcy Court, the FSO Settlement and Contribution Agreement provides \$1,500,000 to be funded into the Former Residents Trust for the benefit of Holders who vote in favor of the Plan and do not elect to Opt Out of the releases under the Plan and the FSO Settlement and Contribution Agreement. Accordingly, the Unsecured Creditor Trustee and the Former Residents Trust Trustee, as applicable, will cause the funds to be distributed to such Holders, as appropriate. Additionally, Former Residents will recover from any recovery of the Unsecured Creditor Trust.

<sup>7</sup> Holders of any Allowed Class 5B Claims will recover in an unknown amount from any recovery of the Unsecured Creditor Trust.

<sup>8</sup> In addition to trade debt, Class 6 General Unsecured Claims will include any Rejection Claims that arise as a result of a Holder of a Current Resident Claim electing not to consent to be bound by the terms of a modified Residency Agreement and, thus, causing their Residency Agreement to be rejected. The recovery percentage will depend on any recovery by the Unsecured Creditor Trust.

<sup>9</sup> Debtor's books and records reflect a receivable of approximately \$100,000 from FSO, which is not accounted for in this figure of \$232,000. Additionally, 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 in excess of \$8,000,000. FSO disputes this claim.

the Effective Date; or (ii) the date such Other Priority Claim is Allowed; (b) payment in the ordinary course of business between the Debtor and the Holder of such Allowed Other Priority Claim; or (c) payment at such time and upon other terms as the Debtor and the Holder of such Allowed Other Priority Claim may agree.

3.1.2 Class 2 —Bond Claims. Class 2 is Impaired and entitled to vote on the Plan. This Class consists of the Bond Claims. Upon the terms and subject to the conditions set forth in the Plan, in full and final satisfaction, settlement, release, and discharge of the Allowed Bond Claims against the Debtor, the Bond Trustee shall receive, on behalf of the Holders of the Allowed Bond Claims, (i) on the Effective Date or as soon as practicable thereafter, the Net Sale Proceeds, subject to the amounts required to satisfy other Allowed Claims and fund the Wind Down Reserve; and (ii) any funds remaining in the Wind Down Reserve after payments of applicable obligations. All Distributions made on account of the Bond Claims shall be paid to the Bond Trustee, and the 2017 Bond Trustee shall make further Distributions to the holders of the Bonds as set forth in the 2017 Bond Documents. In addition to the foregoing and as allowed by the Final Cash Collateral Order, the Bond Trustee may apply any and all funds in its possession as set forth in the 2017 Bond Documents free from the automatic stay imposed by Bankruptcy Code section 362.

3.1.3 Class 3 — Other Secured Claims. Class 3 is Unimpaired and deemed to accept the Plan and, thus, is not entitled to vote on the Plan. Except to the extent that a Holder of an Allowed Other Secured Claim and the Debtor agree in writing to less favorable treatment of its Allowed Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive, in full and complete satisfaction, settlement, discharge, and release of, and in exchange for, its Allowed Other Secured Claim: (a) payment in full, in Cash, of the unpaid portion of its Allowed Other Secured Claim on the following: (i) if such Allowed Other Secured Claim is Allowed as of the Effective Date, the Effective Date or as soon thereafter as reasonably practicable (or, if payment is not then due, the date such Allowed Other Secured Claim becomes due and payable, or as soon thereafter as is reasonably practicable); and (ii) if such Allowed Other Secured Claim is not Allowed as of the Effective Date, the date such Other Secured Claim is Allowed or as soon as reasonably thereafter practicable; (b) a Distribution of such Collateral securing the Other Secured Claim; (c) a Distribution of the proceeds of the sale or disposition of such Collateral securing the Other Secured Claim; and (d) such other treatment as the Debtor and the Holder of such Allowed Other Secured Claim may agree.

3.1.4 Class 4 —Deficiency Claims. Class 4 is Impaired and entitled to vote to accept or reject the Plan. This Class consists of all Deficiency Claims, and holders of such Allowed Deficiency Claims will recover their Pro Rata share of any recovery of the Unsecured Creditor Trust.

3.1.5 Class 5A — Former Resident Claims. Class 5A is Impaired and entitled to vote on the Plan. This Class consists of all Claims of Former Residents, who consent to granting the releases set forth under this Plan and the FSO Settlement and Contribution Agreement. Holders of Class 5A Claims will recover their Pro Rata shares of: (i) any recovery of the Unsecured Creditor Trust; (ii) \$2,000,000 (Buyer Former Resident Contribution); and (iii) \$1,500,000 (the FSO Former Residents Contribution).

3.1.6 Class 5B — Opt Out Former Resident Claims. Class 5B is Impaired and entitled to vote on the Plan. This Class consists of all Claims of Former Residents, who do not consent to granting the releases set forth under the Plan and the FSO Settlement and Contribution Agreement. Holders of Class 5B Claims will recover their Pro Rata shares of: (i) any recovery of the Unsecured Creditor Trust; and (ii) (Buyer Former Resident Contribution).

3.1.7 Class 6 — Non-Resident General Unsecured Claims. Class 6 is Impaired and entitled to vote on the Plan. This Class consists of all Non-Resident General Unsecured Claims. Holders of Class 6 claims shall recover their Pro Rata share of any recovery of the Unsecured Creditor Trust.

3.1.8 Class 7 — Intercompany Claims. Class 7 is Impaired and not entitled to vote to accept or reject the Plan. This Class consists of FSO's Intercompany Claim. There will be no Distribution to FSO on account of its Intercompany Claim(s).

3.1.9 Class 8 — Interests in Debtor. Class 8 is Impaired and deemed to reject the Plan. This Class consists of Interests of the Debtor, which are held by FSO as the sole member of the Debtor. On the Effective Date, Interests of the Debtor shall be terminated.

### 3.2 ***Acceptance or Rejection of this Plan.***

3.2.1 Acceptance by an Impaired Class. In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall have accepted the Plan if this Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

3.2.2 Presumed Acceptance of this Plan. Classes 1 and 3 are not Impaired under this Plan and are, therefore, conclusively presumed to have accepted this Plan pursuant to Bankruptcy Code section 1126(f).

3.2.3 Presumed Rejection of this Plan. Class 7 are conclusively presumed to have rejected this Plan pursuant to Bankruptcy Code section 1126(g).

3.2.4 Voting Class. Classes 2, 4, 5A, 5B, and 6 are entitled to vote to accept or reject this Plan.

3.3 ***Subordinated Claims.*** The allowance, classification, and treatment of all Allowed Claims and Interests and the respective Distributions and treatments under this Plan take into account the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, Bankruptcy Code section 510(b), or otherwise. For purposes of Bankruptcy Rule 7001(8), the Plan provides for subordination. The Unsecured Creditor Trustee, as set forth herein, shall have the right to request to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto under the Bankruptcy Code. Subordinated Claims shall not receive a Distribution under the Plan until any and all senior Allowed Claims are paid in full.

3.4 ***Cramdown and No Unfair Discrimination.*** If all applicable requirements for confirmation of the Plan are met as set forth in Bankruptcy Code section 1129(a) except subsection (8) thereof, the Debtor shall request that the Bankruptcy Court confirm the Plan in accordance with Bankruptcy Code section 1129(b) on the bases that the Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims or Interests that is Impaired hereunder, and has not accepted or is deemed to reject, the Plan.

#### **SECTION 4. MEANS FOR IMPLEMENTATION AND EFFECTIVE DATE OF THIS PLAN**

##### **4.1 *Sale Transactions***

4.1.1 ***Sale Transaction and Transfer of Net Sale Proceeds.*** Consistent the APA, pursuant to the Sale Order, substantially all the Assets have been sold to the Purchaser, free and clear of all Liens, Claims, Encumbrances, and Interests, with all such Liens, Claims, Encumbrances and Interests attaching automatically to the Net Sale Proceeds in the same manner, extent, validity and priority as existed on the Closing Date. Net Sale Proceeds will be distributed pursuant to this Plan.

The Bond Trustee shall receive the following on account of the Bond Claims on the Effective Date, or as soon as practicable thereafter, the Net Sale Proceeds, less any amounts required to be distributed to (i) Holders certain other Allowed Claims, including Unclassified Claims. All Distributions made on account of the Bond Claims shall be paid to the Bond Trustee, and the Bond Trustee shall make further distributions to the Holders of the Bonds in accordance with the 2017 Bond Documents.

4.1.2 ***The Huntley Property Sale and Transfer of related Proceeds.*** Under the PSA, which was approved by the Bankruptcy Court on January 10, 2024, the Huntley Property will be sold and transferred to Prime Group, free and clear of any Liens, Claims, Encumbrances, and Interests. The sale closed on or about January 31, 2024.

The Estate received net sale proceeds of approximately \$420,000 after payment of closing costs, fees, and satisfaction of debts, including, without limitation a commission payment to Avison Young in the amount of \$27,000. A portion such net sale proceeds, totaling \$50,000, will be used to fund the Unsecured Creditor Trust that will be formed for the benefit of certain unsecured creditors, and the balance of the proceeds will be distributed in accordance with this Plan and applicable provisions of the Bankruptcy Code.

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 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.

4.2.1 Creation of the Unsecured Creditor Trust. On or prior to the Effective Date, the Debtor shall execute the Unsecured Creditor Trust Agreement. On the Effective Date, the Unsecured Creditor Trust shall become effective and shall be deemed to be valid, binding and enforceable in accordance with the terms and provisions of this Plan and the Unsecured Creditor Trust Agreement. After the Effective Date, the Unsecured Creditor Trust Agreement may be amended in accordance with its terms without further order of the Bankruptcy Court. The Unsecured Creditor Trust Agreement must be acceptable in form and substance to the Debtor and the Committee.

4.2.2 Purpose of the Unsecured Creditor Trust. The Unsecured Creditor Trust shall be formed for the purposes of: (a) liquidating any non-Cash Unsecured Creditor Trust Assets; (b) maximizing recovery of the Unsecured Creditor Trust Assets for the benefit of the holders of Unsecured Creditor Trust Interests; (c) distributing the proceeds of the Unsecured Creditor Trust Assets to holders of Unsecured Creditor Trust Interests in accordance with this Plan and the Unsecured Creditor Trust agreement; (d) prosecuting or otherwise resolving the Retained Causes of Action for the benefit of holders of Unsecured Creditor Trust Interests; and (e) winding down the Chapter 11 Case, including, without limitation (i) distributing the Buyer Former Resident Contribution to Former Residents on a Pro Rata basis in accordance with this Plan and (ii) evaluating and potentially objecting to and resolving disputed claims, as provided in this Plan and the Unsecured Creditor Trust Agreement.

4.2.3 Funding of the Unsecured Creditor Trust. On the Effective Date, Cash in the amount of \$50,000 will be funded from proceeds obtained through the sale of the Huntley Property. The Cash will be used exclusively for the purpose of paying Unsecured Creditor Trust Expenses.

4.2.4 Transfer of Unsecured Creditor Trust Assets. As of the Effective Date, pursuant to the provisions of sections 1141(b) and (c) of the Bankruptcy Code, the Debtor and the Estate shall preserve, transfer and assign all of its right, title, and interest in and to all of the Unsecured Creditor Trust Assets, which shall automatically vest in the Unsecured Creditor Trust free and clear of all Claims, Liens, encumbrances, charges, Interests, and other interests, subject only to the Allowed Claims of the Holders of Unsecured Creditor Trust Interests as set forth in this Plan and the Unsecured Creditor Trust Agreement.

4.2.5 Appointment of Unsecured Creditor Trustee. Prior to Confirmation, the Unsecured Creditor Trustee shall be identified, and on the Effective Date, shall be deemed the Estate's representative with respect to Unsecured Creditor Trust Assets in accordance with Bankruptcy Code section 1123 and such trustee shall have all powers, authority and responsibilities specified in this Plan and Unsecured Creditor Trust Agreement solely with respect to the Unsecured Creditor Trust Assets, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004.

4.2.6 Governance of Unsecured Creditor Trust. The Unsecured Creditor Trust shall be governed by the Unsecured Creditor Trust Agreement and administered by the Unsecured Creditor Trustee who shall report to the Unsecured Creditor Trust Oversight Committee in accordance with the terms of this Plan and the Unsecured Creditor Trust Agreement.

4.2.7 Tax Treatment. Except to the extent allocable to Disputed Claims, consistent with the principles of Revenue Procedure 94-45, 1994-2 C.B. 684, as of the Effective Date, for federal income tax purposes, (i) the Debtor will be deemed to transfer the Unsecured Creditor Trust Assets to the holders of the Unsecured Creditor Trust Interests, (ii) the holders of the Unsecured Creditor Trust Interests will be deemed to transfer such Assets to the Unsecured Creditor Trust, (iii) the Unsecured Creditor Trust will be treated as a “liquidating trust,” as defined in Treasury Regulation section 301.7701-4(d), and as a “grantor trust” within the meaning of Internal Revenue Code sections 671-679 and (iv) the holders of the Unsecured Creditor Trust Interests will be treated as the “grantors” of the Unsecured Creditor Trust.

4.2.8 Securities Registration Exemption. The Debtor intends that the Unsecured Creditor Trust Interests shall not be deemed “securities” under applicable laws, but to the extent such units are deemed to be “securities,” the Debtor believes the issuance of such units under this Plan is exempt, pursuant to Bankruptcy Code section 1145 (except with respect to an entity that is an “underwriter” as defined in Bankruptcy Code section 1145(b)).

4.2.9 Rights, Powers, and Duties of the Unsecured Creditors Trust and the Unsecured Creditors Trust Trustee. The Unsecured Creditors Trust will act for the benefit of holders of Unsecured Creditor Trust Interests in a fiduciary capacity and shall have comparable authority as a bankruptcy trustee of the Debtor, as the exclusive representative of the Estate under section 1123(a)(5)(B) of the Bankruptcy Code or any corresponding federal or state laws with respect to the Unsecured Creditor Trust Assets and shall succeed to all of the Debtor’s and the Estate’s rights with respect thereto, subject to the provisions of this Plan and the Unsecured Creditor Trust Agreement. The Unsecured Creditor Trust is the successor to the Debtor and its Estate. The powers, rights and duties of the Unsecured Creditor Trustee shall arise on the Effective Date and shall include, all subject to the terms and conditions of the Unsecured Creditor Trust Agreement, the following:

- (a) Commencing, pursuing and liquidating Retained Causes of Action;
  - a. Distributing the Buyer Former Resident Contribution pursuant to this Plan;
  - b. engaging attorneys, consultants, agents, employees and any other professional persons to assist the Unsecured Creditors Trustee with respect to the Unsecured Creditors Trustee’s responsibilities;
  - c. paying the fees and expenses of the attorneys, consultants, agents, employees and other professional persons engaged by the Unsecured Creditors Trust and paying all other expenses;
  - d. compromising and settling Claims without notice or Bankruptcy Court approval;

e. calculating and implementing distributions of Unsecured Creditor Trust Assets for the benefit of the holders of the Unsecured Creditor Trust Interests;

f. resolving issues involving Claims and Interests in accordance with this Plan;

g. making Plan Distributions in accordance with this Plan;

h. overseeing compliance with accounting, finance and reporting obligations, including preparing financial statements and U.S. Trustee post-confirmation quarterly reports, and filing such reports on the docket of the Chapter 11 Case until such time as a final decree has been entered;

i. consulting with members of the Unsecured Creditor Trust Oversight Committee regarding the potential prosecution and/or settlement of Retained Causes of Action and reporting to the Unsecured Creditor Trust Oversight Committee regarding such matters, and seeking approval from the Unsecured Creditor Trust Oversight Committee regarding the prosecution and/or settlement of each Cause of Action, to the extent set forth in the Unsecured Creditor Trust Agreement;

j. investing Cash in accordance with Bankruptcy Code section 345, and withdrawing and making Distributions of Cash to holders of Unsecured Creditor Trust Interests holding and paying taxes and other obligations incurred by the Unsecured Creditor Trustee in connection with winding down the Estate in accordance with this Plan;

k. coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any Unsecured Creditor Trust Assets;

l. taking possession of all books, records, and files of the Debtor and its Estate; and providing for the retention and storage of such books, records, and files until such time as the Unsecured Creditor Trust determines, in accordance with the Unsecured Creditor Trust Agreement, that retention of same is no longer necessary or required;

m. paying taxes or other obligations incurred by the Unsecured Creditor Trust;

n. overseeing the filing of final tax returns, refund requests, audits and other corporate dissolution documents, as required;

o. performing any additional corporate actions as necessary to carry out the wind down and liquidation of the Estate;

p. exercising such other powers as may be vested in or assumed by the Unsecured Creditor Trustee pursuant to this Plan, the Unsecured Creditor Trust Agreement or other Order of the Bankruptcy Court or as may be needed or appropriate to carry out the provisions of this Plan; and

q. undertaking all administrative functions of the Chapter 11 Case, including the payment of fees payable to the U.S. Trustee and the ultimate closing of the Chapter 11 Case.

4.2.10 Unsecured Creditor Trust Interests. Holders of Claims in Classes 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.

4.3 **FSO Settlement and Contribution Agreement.** On or before the Effective Date, the Debtor, FSO, and the Committee shall have executed and entered into the FSO Settlement and Contribution Agreement, the principal terms of which are reflected in the FSO Settlement and Contribution Agreement Term Sheet attached to the Disclosure Statement. In exchange for releases set forth under this Plan and to be described in the FSO Settlement and Contribution Agreement, FSO has agreed to make certain contributions for the benefit of the Debtor's and its Estate, as well as Current and Former Residents, which are summarized as follows:

As set forth in the FSO Settlement and Contribution Agreement Term Sheet, a copy of which is attached to the Disclosure Statement, in exchange for releases, FSO agrees to: (i) provide the Partial DIP Waiver; (ii) contribute the FSO Former Resident Contribution to fund the Former Residents Trust to be formed for the benefit of the Former Residents who are owed entrance fee refunds by the Debtor upon the Effective Date and do not Opt Out of the releases

under Section 8 of this Plan, with the FSO Former Resident Contribution to be distributed on a Pro Rata basis to Former Residents Trust Beneficiaries in accordance with the terms the Former Residents Trust Agreement; and (iii) for the benefit of Current Residents, amend and restate the organizational documents for FSO and the FSO Foundation so that both entities, and their respective net assets, are effectively combined into FSO with an amended and restated mission to support current residents of the Community, including but not limited to benevolent care support. The FSO Current Resident Contribution would provide significant value in additional benefits to Current Residents who do not Opt Out of the releases under Section 8 of the Plan.

The FSO Settlement and Contribution Agreement shall be included in the Plan Supplement(s).

***Residents who believe they have valuable claims against any of the Released Parties may elect to Opt Out of the releases under Section 8, and they will be permitted to retain such claims but will not be permitted to participate in the benefits of the FSO Settlement and Contribution Agreement.***

4.4 **Former Residents Trust.** Upon the Effective Date, the Former Residents Trust will be formed. The Former Residents Trust will receive and distribute the FSO Former Resident Contribution.

The Residents Trust shall be established for the purposes of receiving: (i) the FSO Former Resident Contribution; and (ii) the right to enforce the terms of the FSO Settlement and Contribution Agreement (collectively, with any earnings on deposits, the “Residents Trust Assets”); and making distributions to the Former Residents Trust Beneficiaries in accordance with the terms of the Plan and that certain Former Residents Trust Agreement, between the Committee and FSO, which will be included in the Plan Supplement(s) and executed before the Effective Date.

The Former Residents Trust Trustee will act, in a fiduciary capacity, for the benefit of the Former Residents Trust Beneficiaries, which will include Former Residents who do not elect to Opt Out of the releases under the Plan and, thus, will be entitled to receive distributions from the Former Residents Trust in accordance with the terms of the Plan and the Former Residents Trust Agreement.

4.5 **Entrance Fee Escrow.** As of the date hereof, the Entrance Fee Escrow, which is maintained by the Debtor for the benefit of certain residents, holds approximately \$620,000 in funds that will be as soon as practicable and no later than Confirmation. The Debtor has begun and will continue to cooperate and work with Residents and the Escrow Agent to cause the Escrow Agent to disburse the funds from the Entrance Fee Escrow, after expense, to return deposits and Entrance Fees to Residents irrespective of whether such Resident elects or elected to continue to reside at the Community after the Sale Closing.

4.6 **Other Resident Matters.** Pursuant to the APA and Sale Order, on the date of the Sale Closing, all Residency Agreements between the Debtor and Former Residents were rejected. The Purchaser offered modified Residency Agreements to Residents who resided at the Community as of the Closing Date, converting the Residency Agreements into monthly rental

agreements. The Debtor assumed and assigned to Purchaser the modified Residency Agreements, and the Purchaser agreed to honor a portion of the Debtor's Refund Obligations to Participating Current Residents in accordance with the terms of the modified Residency Agreements and the APA. Any Residency Agreements of Non-Participating Current Residents are rejected.

Although Former Residents' Residency Agreements will be rejected, the APA requires the Debtor to hold \$2,000,000 in trust to be distributed to Former Residents on a Pro Rata basis. Pursuant to the Plan, such funds will be deposited into the Unsecured Creditor Trust. Additionally, as discussed above, the FSO Settlement and Contribution Agreement provides \$1,500,000 to be paid to Former Residents, who do not Opt Out, and, therefore, consent to granting the releases under the Plan. Distributions to Former Residents will be made by the Unsecured Creditor Trustee and Former Residents Trust Trustee, as applicable, to Former Residents on a Pro Rata basis as to each of the trusts.

4.7 **Retained Causes of Action of the Debtor.** As of the Petition Date, the Debtor's Estate had no pending claims or causes of action that it was prosecuting, as reflected in the Schedules. As set forth in the Statement of Financial Affairs, the Debtor made certain transfers within the 90-day period preceding the Petition Date. Although the Debtor cannot guaranty any recovery on account of potential Avoidance Actions, the Debtor estimates that the Avoidance Actions may lead to recovery of at least \$160,000.

In accordance with Bankruptcy Code section 1123(b), and except where such Causes of Action have been expressly released (including, for the avoidance of doubt, the Exculpated Claims against the Exculpated Parties and the Debtor Released Claims against the Released Parties), the Unsecured Creditor Trustee shall be vested with the authority to enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtor, including, Avoidance Actions, whether arising before or after the Petition Date, and the Unsecured Creditor Trustee's right(s) to commence, prosecute, or settle such Causes of Action shall be consistent with the terms of the Unsecured Creditor Trust Agreement. The Unsecured Creditor Trustee is the sole party that may pursue such Causes of Action, as appropriate, in accordance with the best interests of the holders of the Unsecured Creditor Trust Interests. No Person may rely on the absence of a specific reference in this Plan or the Disclosure Statement to any Cause of Action against such Person as any indication that the Debtor or the Unsecured Creditor Trustee, as applicable, will not pursue any and all available Causes of Action against such Person. Except with respect to Causes of Action as to which the Debtor has released any Person on or before the Effective Date (including pursuant to the Releases by the Debtor or otherwise), the Unsecured Creditor Trustee, as applicable, expressly reserves all rights to prosecute any and all Causes of Action of the Debtor against any Person, except as otherwise expressly provided in the Plan. Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, the FSO Settlement and Contribution Agreement, or by an order of the Bankruptcy Court, the Unsecured Creditor Trustee expressly reserves all Causes of Action for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the confirmation or consummation of the Plan. For the avoidance of doubt, nothing in this section or the corresponding section of the Plan shall affect any provisions under Section 8 of the Plan.

4.8 **Corporate Action; Effectuation Documents.** On the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the trustees or officers of the Debtor.

The Board shall remain intact until the Debtor is dissolved, as set forth more fully below. All corporate action shall be taken in accordance with the Corporate Governance Documents. Upon the dissolution of the Debtor, the officers and trustees of the Board shall be deemed to have resigned to the extent permissible under applicable law.

Even after the Effective Date, the officers and trustees of the Debtor shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such other actions as may be necessary or appropriate to satisfy the Debtor's obligations with respect to this Chapter 11 Case and to effectuate and implement the provisions of the Plan.

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 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.

4.10 **Effective Date.** The Effective Date shall not occur until the conditions for the Effective Date are satisfied or otherwise waived in accordance with the terms of the Plan. As soon as reasonably practicable following the occurrence of the Effective Date, the Debtor shall file notice of the Effective Date, which shall also be posted on the Case Website.

## **SECTION 5. PROVISIONS GOVERNING DISTRIBUTIONS UNDER THIS PLAN**

All Distributions under the Plan shall be made by the Debtor or the Unsecured Creditor Trustee, as appropriate.

### **5.1 *Timing and Calculation of Amounts to Be Distributed***

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such a Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each holder of an Allowed Claim against the Debtor shall receive the full amount of the Distributions that this Plan provides for Allowed Claims in the applicable Class and in the manner provided herein. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, Distributions on account of any such Disputed Claims shall be made pursuant

to the provisions set forth in this Plan. Except as otherwise provided for in this Plan, holders of Claims shall not be entitled to interest, dividends, or accruals on the Distributions provided for herein, regardless of whether such Distributions are delivered on or at any time after the Effective Date.

#### **5.2 Method of Payment**

Unless otherwise expressly agreed in writing, all Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank or an electronic wire.

#### **5.3 Objections to and Resolutions of Claims**

The Unsecured Creditor Trustee shall have the right to file objections to Claims after the Effective Date. All objections shall be litigated to entry of a Final Order; *provided, however*, that only the Unsecured Creditor Trustee shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections without approval of the Bankruptcy Court.

#### **5.4 Claims Objection Deadline**

The Unsecured Creditor Trustee and any other party in interest to the extent permitted pursuant to Bankruptcy Code section 502(a), shall file and serve any objection to any Claim no later than the Claims Objection Deadline; *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court from time to time upon notice of motion by the Unsecured Creditor Trustee for cause.

#### **5.5 No Distribution Pending Allowance**

Notwithstanding any other provision of this Plan, no payment or Distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by the Plan. Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed Claims as of the Effective Date (but that later become Allowed Claims), shall be deemed to have been made on the Effective Date. Notwithstanding any other provision of this Plan and except as may be agreed to by the Debtor, the Liquidating Debtor, or the Unsecured Creditor Trustee, as applicable, on the one hand, and the holder of a Disputed Claim, on the other hand, no partial payments and no partial Distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

#### **5.6 Escrow of Cash Distributions**

On any date that Distributions are to be made under the terms of the Plan, the Unsecured Creditor Trustee shall deposit in one or more segregated accounts, Cash or property equal to 100% of the Cash or property that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto. The Unsecured Creditor Trustee shall also segregate any interest, dividends, or proceeds of such Cash. Such Cash, together with any interest, dividends, or proceeds thereof,

shall be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

#### **5.7 *Distribution After Allowance***

Except as otherwise provided herein, within the later of (i) seven (7) Business Days after a Claim becomes an Allowed Claim and (ii) thirty (30) days after the expiration of the Claims Objection Deadline, the Unsecured Creditor Trustee shall distribute all Cash or other property, including any interest, dividends, or proceeds thereof, to which a Holder of an Allowed Claim is then entitled.

#### **5.8 *Investment of Segregated Cash and Property***

To the extent practicable, the Unsecured Creditor Trustee may invest any Cash or other property segregated on account of a Disputed Claim, undeliverable distribution, or any proceeds thereof (i) in a manner that will yield a reasonable net return taking into account the safety of the investment or (ii) in any manner permitted by Bankruptcy Code section 345; *provided, however*, that the Unsecured Creditor Trustee shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash, other property, or proceeds.

#### **5.9 *Delivery of Distributions***

Except as provided herein, Distributions to Holders of Allowed Claims shall be made: (i) at the addresses set forth on the respective Proofs of Claim Filed by such holders; (ii) at the addresses set forth in any written notices of address changes delivered to the Unsecured Creditor Trustee after the date of any related Proof of Claim; or (iii) at the address reflected in the Schedules if no Proof of Claim is filed and the Unsecured Creditor Trustee has not received a written notice of a change of address. The Unsecured Creditor Trustee shall be entitled to conclusively rely on the Distribution Matrix for purposes of making Distributions. None of the Debtor, the Liquidating Debtor, or the applicable Unsecured Creditor Trustee shall incur any liability whatsoever on account of any Distributions under the Plan except for gross negligence, willful misconduct, or fraud.

**5.9.1 Undeliverable Distributions.** If the Distribution to the Holder of any Claim is returned to the Unsecured Creditor Trustee as undeliverable, no further distribution shall be made to such Holder unless and until the Unsecured Creditor Trustee is notified in writing of such Holder's then current address. Undeliverable Distributions shall remain in the possession of the Unsecured Creditor Trustee until the earlier of (i) such time as a Distribution becomes deliverable or (ii) such undeliverable Distribution becomes an Unclaimed Distribution.

Until such time as an undeliverable Distribution becomes an Unclaimed Distribution, within thirty (30) days after the end of each calendar quarter following the Effective Date, or upon such other interval as the Bankruptcy Court may order, but in no event less frequently than annually, the Unsecured Creditor Trustee shall make distributions of all Cash and property that has become deliverable during the preceding quarter. Each such Distribution shall include the net return yielded from the investment of any undeliverable Cash, from the date such Distribution

would have been due had it then been deliverable to the date that such Distribution becomes deliverable.

The Unsecured Creditor Trustee shall make reasonable efforts to update or correct contact information for recipients of undeliverable Distributions; provided, however, that nothing contained in the Plan shall require the Unsecured Creditor Trustee to locate any Holder of an Allowed Claim.

#### **5.10 *Unclaimed Distributions***

Any Cash or other property to be distributed under the Plan shall revert to the Unsecured Creditor Trustee if it is not claimed by the Entity on or before the Unclaimed Distribution Deadline. If such Cash or other property is not claimed on or before the Unclaimed Distribution Deadline, the Distribution made to such Entity shall be deemed to be reduced to zero.

#### **5.11 *Setoff***

The Debtor or Unsecured Creditor Trustee, as applicable, retains the right to reduce any Claim by way of setoff in accordance with the Debtor's books and records and in accordance with the Bankruptcy Code.

#### **5.12 *Withholding and Reporting Requirements***

In connection with the Plan and all instruments issued in connection therewith, the Unsecured Creditor Trustee shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions under the Plan shall be subject to any such withholding or reporting requirements.

#### **5.13 *Minimum Distributions***

Notwithstanding anything herein to the contrary, the Unsecured Creditor Trustee shall not be required to make Distributions or payments of less than \$25.00.

**5.14 *Interest on Claims.*** Unless otherwise specifically provided for in this Plan or separate order of the Bankruptcy Court, postpetition interest will not accrue or be paid on Claims, and no Holder will be entitled to interest accruing on or after the Petition Date on any Claim. Similarly, unless otherwise specifically provided for in this Plan, postpetition interest will not accrue or be paid on any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

### **SECTION 6. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **6.1 *Deemed Rejected as of the Effective Date if Not Assumed.***

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumption and/or rejection of Executory Contracts and Unexpired Leases as set forth in the Plan, all pursuant to Bankruptcy Code sections 365(a) and 1123. Unless otherwise indicated, the

assumption and rejection, as applicable, of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date.

In accordance with the Bid Procedures Order, as amended by the Order entered at Docket No. 291, on October 27, 2023, the Debtor filed a notice of Executory Contracts and Unexpired Leases that the Purchaser has designated for assumption and assignment (the “**Designated Contracts Notice**”). See Docket No. 294. Among other executory contracts listed, the Purchaser designated for assumption “modified” residency agreements with residents who reside at the Community as of the Closing Date. A list of Assigned Contracts is attached as an exhibit to the Sale Order, which provides for the rejection, as of the Closing Date, of Residency Agreements of Residents who do not reside at the Community as of the Closing Date.

Unless an Executory Contract or Unexpired Lease was assumed pursuant to the APA and the Sale Order, or is assumed pursuant to a separate order of the Bankruptcy Court, the Executory Contract or Unexpired Lease shall be deemed to have been rejected by the Debtor on the Closing Date and/or Confirmation Date, as applicable. The Debtor reserves the right to file a motion to assume additional executory contracts within the statutory timeframe proscribed by the Bankruptcy Code.

**6.2 Claims Based on Rejection of Executory Contracts or Unexpired Leases.**

In the event that the rejection of an Executory Contract by the Debtor pursuant to the Plan results in a Rejection Claim in favor of a counterparty to such Executory Contract, such Rejection Claim, if not heretofore evidenced by a timely and properly filed Proof of Claim, shall be forever barred and shall not be enforceable against the Debtor, the Estate, the Liquidating Debtor, or their respective properties or interests in property as agents, successors, or assigns, unless a Proof of Claim is filed with the Bankruptcy Court and served upon counsel for the Debtor and the Liquidating Debtor on or before the date that is third (30) days after then Effective Date. All Allowed Rejection Claims shall be treated as Class 6 Non-Resident General Unsecured Claims pursuant to the terms of this Plan.

**6.3 Modifications, Amendments, Supplements, Restatements, or Other Agreements.** Unless otherwise provided, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated, or is rejected or repudiated under this Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith, unless such Executory Contract or Unexpired Lease has been previously assumed by the Debtor.

**6.4 Reservation of Rights.** Nothing contained in this Plan or the Plan Supplement shall constitute an admission by the Debtor or the Liquidating Debtor that any such

contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor or the Liquidating Debtor have any liability thereunder.

6.5 **Full Release and Satisfaction.** Assumption of any Executory Contract pursuant to this Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed Executory Contract at any time before the effective date of the assumption.

## **SECTION 7. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS**

7.1 **Prosecution of Objections to Claims.** Prior to the Effective Date, the Debtor, and on or after the Effective Date, Unsecured Creditor Trustee shall have the authority and all requisite standing to File objections to Claims and Interests, and the exclusive authority and standing to settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtor's Estate to any and all such Claims and Interests, regardless of whether such Claims and Interests are in a Class or otherwise. From and after the Effective Date, the Unsecured Creditor Trustee shall have the sole authority to administer and adjust the Claims Register with respect to Claims and Interests to reflect any such settlements or compromises. No further notice to or action, order, or approval of the Bankruptcy Court with respect to such settlements or compromises entered into with a Holder of any Claim or Interest shall be required.

7.2 **Allowance of Claims.** Prior to the Effective Date, the Debtor, and, on and after the Effective Date, the Unsecured Creditor Trustee, shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Allowed Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Case allowing such Claim or Interest.

7.3 **Estimation of Claims.** On and after the Effective Date, the Unsecured Creditor Trustee may, at any time, request that the Bankruptcy Court estimate (i) any Disputed Claim pursuant to applicable law and (ii) any Contingent or unliquidated Claim pursuant to applicable law, in each case regardless of whether the Debtor or Unsecured Creditor Trustee has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any such Disputed Claim, Contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

If the Bankruptcy Court estimates any Disputed Claim, Contingent Claim, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for

purposes of Distributions, and the Unsecured Creditor Trustee may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Unsecured Creditor Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding Bankruptcy Code section 502(j), in no event shall any Holder of a Claim that has been estimated pursuant to Bankruptcy Code section 502(c) or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before twenty-one (21) days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

#### **7.4 *Expungement or Adjustment to Claims without Objection***

Any Claim that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be marked as satisfied, adjusted or expunged (as applicable) on the Claims Register by the Claims Agent at the direction of the Debtor without an objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court; provided, that the Unsecured Creditor Trustee shall provide thirty (30) days' notice of any of the foregoing modifications to the Claims Register to the Holder of any affected Claim or Interest during which period the Holder may object thereto.

### **SECTION 8. SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS**

#### **8.1 *Compromise and Settlement of Claims, Interests and Controversies.***

Pursuant to Bankruptcy Code section 1123 and Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any Distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, its Estate, and holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019(a), without any further notice to, action by, or order or approval of the Bankruptcy Court, after the Effective Date, the Unsecured Creditor Trustee may compromise and settle Claims against it and Causes of Action against other Persons.

**8.2 *Injunction.* ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASE UNDER BANKRUPTCY CODE SECTIONS 105 OR 362, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE SHALL REMAIN PERMANENTLY IN FULL FORCE AND EFFECT. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL BE OTHERWISE DEEMED TO MODIFY, LIMIT, AMEND OR SUPERSEDE ANY INJUNCTIONS OR STAYS GRANTED IN THE SALE ORDER.**

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR TO THE EXTENT NECESSARY TO ENFORCE THE TERMS AND CONDITIONS OF THE PLAN, THE CONFIRMATION ORDER, OR A SEPARATE ORDER OF THE BANKRUPTCY COURT, ALL ENTITIES THAT HAVE HELD, HOLD, OR MAY HOLD CLAIMS AGAINST THE DEBTOR OR ITS ESTATE THAT AROSE PRIOR TO THE EFFECTIVE DATE ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST ANY PROPERTY THAT IS TO BE DISTRIBUTED UNDER THE TERMS OF THE PLAN ON ACCOUNT OF ANY SUCH CLAIMS: (A) COMMENCING OR CONTINUING IN ANY MANNER, OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST ANY PROPERTY OF THE DEBTOR OR ITS ESTATE THAT IS TRANSFERRED TO THE UNSECURED CREDITOR TRUST OR ANY OTHER PERSON PURSUANT TO THE PLAN, INCLUDING THE FORMER RESIDENTS TRUST TRUSTEE TO THE EXTENT APPLICABLE; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST ANY PROPERTY OF THE DEBTOR OR ITS ESTATE THAT IS TRANSFERRED TO THE UNSECURED CREDITOR TRUST OR ANY OTHER PERSON PURSUANT TO THE PLAN, INCLUDING THE FORMER RESIDENTS TRUST TRUSTEE TO THE EXTENT APPLICABLE; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN OR ENCUMBRANCE AGAINST ANY PROPERTY OF THE DEBTOR OR ITS ESTATE THAT IS TRANSFERRED TO THE UNSECURED CREDITOR TRUST OR ANY OTHER PERSON PURSUANT TO THE PLAN, INCLUDING THE FORMER RESIDENTS TRUST TRUSTEE TO THE EXTENT APPLICABLE; (D) EXCEPT TO THE EXTENT PERMITTED BY BANKRUPTCY CODE SECTIONS 362(B), 553, 559, 560, OR 561, OR AS OTHERWISE PROVIDED IN THE PLAN OR CONFIRMATION ORDER, ASSERTING A SETOFF RIGHT, SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY, OR OBLIGATION DUE TO THE DEBTOR, ITS ESTATE, THE UNSECURED CREDITOR TRUST, THE UNSECURED CREDITOR TRUSTEE, OR ANY OTHER PERSON PURSUANT TO THE PLAN, INCLUDING THE FORMER RESIDENTS TRUST TRUSTEE TO THE EXTENT APPLICABLE; AND (E) COMMENCING OR CONTINUING IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN; PROVIDED, HOWEVER, THAT SUCH ENTITIES SHALL NOT BE PRECLUDED FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN OR THE CONFIRMATION ORDER; PROVIDED, FURTHER, THAT THE FOREGOING SHALL NOT APPLY TO ANY ACTS, OMISSIONS, CLAIMS, CAUSES OF ACTION OR OTHER OBLIGATIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN OR ANY DEFENSES THERETO. NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION UNDER THE PLAN, THE DEBTOR SHALL NOT RECEIVE A DISCHARGE AS SET FORTH IN BANKRUPTCY CODE SECTION 1141(D)(3)(A).

8.3 *Exculpation.* UPON THE EFFECTIVE DATE, THE DEBTOR AND ITS OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS AND OTHER PROFESSIONALS AND AGENTS WILL BE DEEMED TO HAVE SOLICITED ACCEPTANCES OF THE PLAN IN GOOD

**FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING BANKRUPTCY CODE SECTION 1125(E).**

**EXCEPT WITH RESPECT TO ANY ACTS OR COMMISSIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN, THE PLAN SUPPLEMENT OR ANY RELATED DOCUMENTS, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR, ANY LIABILITY TO ANY ENTITY FOR ANY POSTPETITION ACT OR OMISSION IN CONNECTION WITH OR RELATED TO FORMULATING, NEGOTIATING, PREPARING, DISSEMINATING, IMPLEMENTING, ADMINISTERING, CONFIRMING, OR EFFECTING THE PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN, THE FILING OF THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE DISTRIBUTION OF PROPERTY UNDER THE PLAN OR ANY OTHER RELATED AGREEMENT OR ANY OTHER POSTPETITION ACT OR OMISSION TAKEN IN CONTEMPLATION OF THE RESTRUCTURING AND/OR LIQUIDATION OF THE DEBTOR; PROVIDED, HOWEVER, THAT THE FOREGOING "EXCULPATION" SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (INCLUDING FRAUD); PROVIDED, FURTHER, THAT EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES IN CONNECTION WITH THE PLAN OR ANY OTHER RELATED DOCUMENT, INSTRUMENT, OR AGREEMENT.**

**THE FOREGOING PARAGRAPH SHALL APPLY TO ATTORNEYS TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE BAR RULES AND CASE LAW.**

**8.4 Estate Releases.**

**PURSUANT TO BANKRUPTCY CODE SECTION 1123(B), AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASED PARTIES SHALL BE DEEMED RELEASED BY THE DEBTOR AND THE ESTATE FROM ANY AND ALL CLAIMS, OBLIGATIONS, DEBTS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER (OTHER THAN FOR ILLEGAL CONDUCT, GROSS NEGLIGENCE, BAD FAITH, OR FRAUD), INCLUDING DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTOR OR THE ESTATE, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ANY OF THE DEBTOR OR THE ESTATE, AS APPLICABLE, WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN ITS OWN RIGHT, OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, BASED ON OR**

RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE OPERATIONS AND MANAGEMENT OF THE DEBTOR'S COMMUNITY, THE CHAPTER 11 CASE, THE PURCHASE, SALE, TRANSFER, OR RESCISSION OF THE PURCHASE, SALE, OR TRANSFER OF ANY DEBT, SECURITY, ASSET, RIGHT, OR INTEREST OF THE DEBTOR, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CHAPTER 11 CASE, THE FINANCING OF THE CHAPTER 11 CASE, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN AND ANY OTHER AGREEMENTS OR DOCUMENTS EFFECTUATING THE PLAN, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE FSO SETTLEMENT AND CONTRIBUTION AGREEMENT TERM SHEET, AND ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTOR OR THE ESTATE. FOR PURPOSES OF THE RELEASES CONTAINED IN THE PLAN, THE UNSECURED CREDITOR TRUSTEE DEEMED TO BE A SUCCESSOR TO THE ESTATE AND, THEREFORE, IS BOUND BY THE RELEASES CONTAINED IN THE PLAN.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASE OF THE RELEASED PARTIES BY THE DEBTOR AND THE ESTATE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASE OF THE RELEASED PARTIES BY THE DEBTOR AND THE ESTATE IS: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR OR THE ESTATE; (C) IN THE BEST INTERESTS OF THE DEBTOR, THE ESTATE AND ALL HOLDERS OF CLAIMS AND INTERESTS; (D) FAIR, EQUITABLE, AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (F) A BAR TO THE DEBTOR OR THE ESTATE ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE RELEASE BY THE DEBTOR OR THE ESTATE.

8.5 *Third Party Releases.* EFFECTIVE AS OF THE EFFECTIVE DATE, EACH OF THE RELEASING PARTIES CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASES (AND EACH ENTITY SO RELEASED SHALL BE DEEMED RELEASED BY THE RELEASING PARTIES) EACH AND ALL OF THE RELEASED PARTIES, AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER (OTHER THAN FOR ILLEGAL CONDUCT,

**GROSS NEGLIGENCE, BAD FAITH, OR FRAUD), INCLUDING WITH RESPECT TO ANY RIGHTS OR CLAIMS THAT COULD HAVE BEEN ASSERTED AGAINST ANY OR ALL OF THE RELEASED PARTIES WITH RESPECT TO ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTOR, OR THE ESTATE, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY), BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE OPERATIONS AND MANAGEMENT OF THE DEBTOR'S COMMUNITY, THE CHAPTER 11 CASE, THE PURCHASE, SALE, TRANSFER, OR RESCISSION OF THE PURCHASE, SALE, OR TRANSFER OF ANY DEBT, SECURITY, ASSET, RIGHT, OR INTEREST OF THE DEBTOR, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THE FINANCING OF THE CHAPTER 11 CASE, THE RESTRUCTURING OR ANY ALLEGED RESTRUCTURING OR LIQUIDATION OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CHAPTER 11 CASE, AND THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN AND ANY OTHER AGREEMENTS OR DOCUMENTS EFFECTUATING THE PLAN, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE FSO SETTLEMENT AND CONTRIBUTION AGREEMENT TERM SHEET (INCLUDING, FOR THE AVOIDANCE OF DOUBT, PROVIDING ANY LEGAL OPINION REQUESTED BY ANY ENTITY REGARDING ANY TRANSACTION, CONTRACT, INSTRUMENT, DOCUMENT, OR OTHER AGREEMENT CONTEMPLATED BY THE PLAN OR THE RELIANCE BY ANY RELEASED PARTY ON THE PLAN OR THE CONFIRMATION ORDER IN LIEU OF SUCH LEGAL OPINION).**

**ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASES ARE: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE RELEASING PARTIES; (C) IN THE BEST INTERESTS OF THE DEBTOR, THE ESTATE AND ALL HOLDERS OF CLAIMS AND INTERESTS; (D) FAIR, EQUITABLE AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; (F) CONSENSUAL; AND (G) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE THIRD PARTY RELEASE.**

**FOR THE AVOIDANCE OF DOUBT, UNLESS A CREDITOR, INCLUDING FORMER RESIDENTS, OPTS OUT OF GRANTING THE THIRD PARTY RELEASE**

**FOR THE BENEFIT OF RELEASED PARTIES, SUCH CREDITOR, INCLUDING FORMER RESIDENTS, WILL RELEASE AND BE UNABLE TO PURSUE ANY INDIVIDUAL CLAIMS, INCLUDING TORT CLAIMS, SUCH AS PERSONAL INJURY OR WRONGFUL DEATH, AGAINST ONE OR MORE OF THE RELEASED PARTIES.**

8.6 ***Term of Injunctions or Stays.*** Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to Bankruptcy Code sections 105 or 362 or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. Upon the Effective Date, all injunctions or stays contained in this Plan or the Confirmation Order shall be in full force and effect in accordance with their terms.

8.7 ***Release of Liens.*** Except as otherwise provided in the Plan or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to this Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Liquidating Debtor and/or the Purchaser. For the avoidance of doubt, except as otherwise provided in this Plan (including the Plan Supplement), all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate, whether expressly addressed or discussed herein or in the Plan, shall be fully released and discharged on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

## **SECTION 9. CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE**

9.1 ***Conditions Precedent to Confirmation.*** It shall be a condition precedent to the confirmation of the Plan, such that the Confirmation Order shall not be entered, until each of the following conditions precedent have been satisfied or waived pursuant to the provisions of this Plan.

- (a) The Bankruptcy Court shall have entered an order approving the Disclosure Statement as containing adequate information and such order shall have become a Final Order that has not been stayed or modified or vacated on appeal;
- (b) A form of Unsecured Creditor Trust Agreement shall be in a form agreed upon by the Debtor and the Committee;
- (c) The proposed Unsecured Creditor Trustee, the members of the Unsecured Creditor Trust Oversight Committee are identified and disclosed;
- (d) The Plan Supplement shall have been filed;

- (e) The Plan shall not have been materially amended, altered, or modified, unless such material amendment, alteration or modification has been made in accordance with Section 11.1 of this Plan; and
- (f) The Confirmation Order shall have been entered by the Bankruptcy Court confirming this Plan in form and substance acceptable to the Debtor and the FSO, and such order shall have become a Final Order that has not been stayed or modified or vacated on appeal.

9.2 ***Conditions Precedent to the Effective Date.*** It shall be a condition precedent to the Effective Date that each of the following provisions, terms, and conditions shall have been satisfied or waived pursuant to the provisions of this Plan.

- (a) The foregoing conditions precedent as to Confirmation shall have been met;
- (b) The Unsecured Creditor Trust Agreement shall be executed and the Unsecured Creditor Trustee shall have been appointed and accepted such appointment;
- (c) The confirmed Plan shall not have been materially amended, altered, or modified from the Plan, unless such material amendment, alteration, or modification has been made in accordance with Section 11.1 of the Plan;
- (d) No Option Deposits shall remain in the Entrance Fee Escrow and all Residents who deposited an Option Deposit shall have received a return of the Option Deposit in accordance with the terms of applicable agreements, including the Option Agreements; and
- (e) The Debtor shall have Filed a notice of the Effective Date.

9.3 ***Waiver of Conditions.*** The conditions precedent to Confirmation and conditions precedent to the Effective Date may be waived in whole or in part, in writing, by the Debtor, without further order of the Bankruptcy Court.

9.4 ***Effect of Nonoccurrence of Conditions.*** If the conditions precedent to the Effective Date are not satisfied or waived, the Debtor may, upon motion and notice to parties in interest, seek to vacate the Confirmation Order; *provided, however*, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions precedent to the Effective Date are satisfied or waived before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated: (a) the Plan is null and void in all respects; and (b) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against the Debtor, or (ii) prejudice, in any manner, the rights of the Debtor or any other party in interest.

## **SECTION 10. RETENTION OF JURISDICTION**

Following the Confirmation Date and the Effective Date, the Bankruptcy Court shall retain jurisdiction for the following purposes:

- (a) to hear and determine any objections to Claims and to address any issues relating to Disputed Claims;
- (b) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (c) to issue such orders in aid of execution and consummation of this Plan, to the extent authorized by Bankruptcy Code section 1142;
- (d) to consider any amendments to or modifications of this Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- (e) to hear and determine all requests for compensation and reimbursement of expenses to the extent allowed by the Bankruptcy Court under Bankruptcy Code sections 330 or 503;
- (f) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan;
- (g) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Sale Order;
- (h) to hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;
- (i) to hear any other matter not inconsistent with the Bankruptcy Code;
- (j) to enter the Final Decree;
- (k) to ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
- (l) to decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtor which may be pending on the Effective Date;
- (m) to issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Plan, except as otherwise provided therein;

- (n) to determine any other matters that may arise in connection with or related to this Plan, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with this Plan;
- (o) to determine any other matters that may arise in connection with or related to the Sale Order or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Sale Order;
- (p) to enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, releases and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);
- (q) to resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and
- (r) to resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the Bar Dates, or the Confirmation Hearing for the purpose of determining whether a Claim or Interest is discharged hereunder, or for any other purpose.

## **SECTION 11. MISCELLANEOUS PROVISIONS**

11.1 ***Amendment or Modification of the Plan.*** Alterations, amendments, or modifications of the Plan may be proposed in writing by the Debtor at any time before the Confirmation Date, provided that the Plan, as altered, amended, or modified, satisfies the conditions of Bankruptcy Code sections 1122 and 1123 and the Debtor shall have complied with Bankruptcy Code section 1125. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted such Plan as modified if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder. Entry of the Confirmation Order shall mean that all modifications or amendments to this Plan occurring after the solicitation thereof are approved pursuant to Bankruptcy Code section 1127(a) and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

11.2 ***Exhibits, Schedules, and Plan Supplement.*** The Debtor will File the Plan Supplement no later than ten (10) days before the Voting Deadline. The Debtor reserves the right to alter, modify, or amend the Plan Supplement through and to the Confirmation Hearing. All exhibits and schedules to the Disclosure Statement, this Plan, and the Plan Supplement are incorporated into and are part of the Plan as if set forth in full therein.

11.3 ***Filing of Additional Documents.*** On or before the Effective Date, the Debtor may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor and all Holders of Claims receiving Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or

documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

11.4 ***Binding Effect of this Plan.*** Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or any other Bankruptcy Rule, upon the occurrence of the Effective Date, the terms of this Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtor, the Holders of Claims, and their respective successors and assigns. Notwithstanding anything to the contrary herein, (i) nothing in the Plan modifies, alters, or amends the respective rights and obligations of the Debtor or the Purchaser under the Sale Order, the APA, or any other document governing the Sale, and (ii) the 2017 Bond Documents shall continue to govern the rights of and among the Bond Trustee and the beneficial owners of the Bonds.

11.5 ***Governing Law.*** Except as required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, the rights and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the laws of the State of Illinois.

11.6 ***Time.*** To the extent that any time for the occurrence or happening of an event as set forth in the Plan falls on a day that is not a Business Day, the time for the next occurrence or happening of said event shall be extended to the next Business Day.

11.7 ***Severability.*** If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation.

11.8 ***Revocation.*** The Debtor reserves the right to revoke and withdraw the Plan prior to the entry of the Confirmation Order. If the Debtor revokes or withdraws the Plan, the Plan shall be deemed null and void, and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtor, any other Person, or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtor.

11.9 ***Dissolution of The Committee.*** On the Effective Date, the Committee shall be dissolved and its members deemed released of any continuing duties, responsibilities and obligations in connection with the Chapter 11 Case or the Plan and its implementation, and the retention and employment of the Committee's Professionals shall terminate, except with respect to: (i) any matters concerning Distributions; (ii) prosecuting applications for Professionals' compensation and reimbursement of expenses incurred as a member of the Committee; (iii) asserting, disputing and participating in resolution of Professional Fee Claims; or (iv) prosecuting or participating in any appeal of the Confirmation Order or any request for consideration thereof. Upon the resolution of (i) through (iv), the Committee shall be immediately dissolved, and released.

11.10 **Claims Agent.** Stretto, in its capacity as Claims Agent, shall be relieved of such duties on the date of the entry of the Final Decree or upon written notice by the Debtor or the Unsecured Creditor Trustee.

11.11 **Reservation of Rights.** Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained herein, or the taking of any action by the Debtor with respect to this Plan and/or the Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor or Holders of Claims before the Effective Date.

11.12 **Inconsistency.** To the extent that the Plan conflicts with or is inconsistent with any agreement related to the Plan, the provisions of the Plan shall control; *provided, however*, that nothing in the Plan shall be deemed to supersede, amend, modify the provisions of the Sale Order, the Bid Procedures Order, or the APA. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of the Confirmation Order, the Confirmation Order shall control and take precedence; *provided, however*, that nothing in the Confirmation Order shall be deemed to supersede, amend, modify the provisions of the Sale Order, the Bid Procedures Order, or the APA.

11.13 **No Admissions.** Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission by any Entity with respect to any matter set forth herein.

11.14 **No Discharge.** As set forth in Bankruptcy Code section 1141(d)(3), the Plan does not grant the Debtor a discharge. However, notwithstanding the foregoing, except as otherwise provided herein, the rights afforded pursuant to the Plan and the treatment of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor or any of its Assets. All persons and entities shall be precluded from asserting against the Debtor, or any of its Assets, any further Claims and Interests based upon any act, or omission, transaction, or other activity of any kind or nature that occurred before the Effective Date, except as otherwise expressly provided in this Plan.

11.15 **Votes Solicited in Good Faith.** Upon entry of the Confirmation Order, the Debtor will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code and any applicable non-bankruptcy law, and pursuant to Bankruptcy Code section 1125(e), the Debtor and its affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code.

11.16 **Notices.** All notices of requests in connection with the Plan shall be in writing and given by mail and email addressed as follows:

DOPKE LAW LLC  
Attn: Bruce Dopke  
1535 W. Schaumburg Road, Suite 204  
Schaumburg, Illinois 60194  
[bd@dopkelaw.com](mailto:bd@dopkelaw.com)

And

POLSINELLI PC  
Attn: Jeremy R. Johnson  
600 3rd Avenue, 42nd Floor  
New York, New York 10016  
[Jeremy.johnson@polsinelli.com](mailto:Jeremy.johnson@polsinelli.com)

And

Attn: Trinitee G. Green  
1500 N. Riverside Plaza, Suite 3000  
Chicago, Illinois 60606  
[tggreen@polsinelli.com](mailto:tggreen@polsinelli.com)

11.17 **Headings.** The headings used in this Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the construction of the provisions of this Plan.

11.18 **Validity and Enforceability.** The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms. Should any provision in this Plan be determined by the Bankruptcy Court or any appellate court to be unenforceable following the Effective Date, such determination shall in no way limit the enforceability and operative effect of any and all other provisions of this Plan.

11.19 **Request for Confirmation.** The Debtor requests entry of a Confirmation Order under Bankruptcy Code section 1129(a) and, to the extent necessary, Bankruptcy Code section 1129(b).

Dated: February 29, 2024

Respectfully submitted,

**Evangelical Retirement Homes of  
Greater Chicago, Incorporated d/b/a  
Friendship Village of Schaumburg**

By: /s/ Mike Flynn

Name: Mike Flynn

Title: Chief Executive Officer

**EXHIBIT 2**

Liquidation Analysis

## **CHAPTER 7 LIQUIDATION ANALYSIS**

It is well established that debtors recover more value when selling substantially all of assets under chapter 11 compared with alternatives like a Chapter 7. Here, substantially all the Debtor's assets have been sold in its Chapter 11 Case. Bankruptcy Code section 1129(a)(7) requires that each holder of an impaired claim or equity interest receive property, under the proposed plan, on account of such claim or interest with a value not less than the value of the property such holder would receive if a liquidation were conducted under chapter 7 of the Bankruptcy Code. The following analysis and computations (the "**Liquidation Analysis**") have been prepared by the Debtor's management, with the assistance of Wyse Advisors, as an estimate of the values that might have been realized if the Debtor's assets had been liquidated or could be liquidated in a chapter 7 case.

Under the Plan, Classes 2 (Bond Claims), 4 (Deficiency Claims), 5A (Former Residents Claims), 5B (Opt Out Former Resident Claims), 6 (Non-Resident General Unsecured Claims), 7 (Intercompany Claims), and 8 (Interests in Debtor) are impaired. The Liquidation Analysis shows that the holders of claims in each of these Class would receive less value if the Debtor's assets were liquidated under chapter 7 than they will receive under the Plan, which is based on a chapter 11 sale of the assets that was conducted subject to the Court's supervision and bid procedures, with the assistance of a highly qualified and experienced professionals.

The chart set forth below shows the application of the Liquidation Analysis as to each class of claims and interests.

The Liquidation Analysis described herein and set forth below is hypothetical and based on estimates and assumptions (as described below and as noted in the chart below) that, although developed and considered reasonable by the Debtor are inherently subject to significant uncertainties and contingencies, many of which are beyond the Debtor's control. Accordingly, there can be no assurance that the estimated values would have been realized if the Debtor were in fact liquidated under Chapter 7.

NO REPRESENTATION OR WARRANTY CAN OR IS BEING MADE WITH RESPECT TO THE ACTUAL PROCEEDS THAT COULD BE RECEIVED IN A CHAPTER 7 LIQUIDATION OF THE DEBTOR. THE LIQUIDATION VALUATIONS HAVE BEEN PREPARED SOLELY FOR PURPOSES OF ESTIMATING PROCEEDS AVAILABLE IN A CHAPTER 7 LIQUIDATION OF THE DEBTOR'S ESTATE AND DO NOT REPRESENT VALUES THAT MAY BE APPROPRIATE FOR ANY OTHER PURPOSES. NOTHING CONTAINED IN THESE VALUATIONS IS INTENDED OR MAY CONSTITUTE A CONCESSION OR ADMISSION BY THE DEBTOR FOR ANY OTHER PURPOSE.

### **Approach**

A chapter 7 trustee is charged with liquidating a debtor's assets as expeditiously as possible to make distributions to creditors and, if applicable, equity interest holders. A chapter 7 case typically results in additional expenses, including the chapter 7 trustee's compensation and the expenses of its counsel and other advisors. In addition, a "forced" non-going concern sale in chapter 7 is likely to result in lower net proceeds than a sale under normal circumstances as a

consequence of, among other things, the additional risks assumed by potential buyers due to a shortened diligence process, potentially negative perceptions involved in liquidation sales, the current state of the capital markets, the limited universe of prospective distress buyers for these types of assets, and the “bargain hunting” mentality of liquidation sales. Because chapter 7 trustees are not in a position to operate businesses as a going concern in a chapter 7, particularly in the case of debtors with a significant health care component, it is assumed the chapter 7 trustee would relocate the residents, likely under the supervision of regulators, and close the community pending the sale process. It is unclear what financing, if any, would be available to finance the closure and forced liquidation of the assets.

#### Allocation of Proceeds

The Liquidation Analysis necessarily contains estimates of the amounts of claims that will ultimately become allowed claims. Estimates for various classes of claims are based solely on the Debtor’s books and records. No order or finding has been entered by the Court to estimate or otherwise fix the amount(s) of claims as set forth in the Liquidation Analysis.

Any available net proceeds would be allocated to holders of claims against, and interests in, the Debtor in the following order, in accordance with the priority scheme under Bankruptcy Code section 726.

- Chapter 11 Carve Out Claims: includes (i) any fees payable to the Clerk of the Court and to the U.S. Trustee pursuant to section 1930(a) of title 28 of the United States Code; and (ii) all accrued and unpaid fees and out of pocket expenses for the Debtor and UCC’s professionals so long as such fees and costs are incurred in accordance with the Debtor’s approved cash collateral budget.
- Prepetition Bond Claims.
- Other Secured Claims, including LEAF Capital
- Chapter 11 Administrative & Priority Claims: claims for postpetition accounts payable, post-petition accrued expenses, claims arising under Bankruptcy Code section 503(b)(9), and certain priority tax claims.
- General Unsecured Claims: unsecured debt, pre-petition trade payables, any lease rejection damage claims, other contract damage claims, and certain employee claims.
- Equity Interests: equity interests in the Debtor.

| Friendship Village<br>Liquidation Analysis<br>\$000s     |       |            | Chapter 7 Liquidation |        |               |              |              |        | Chapter 11 Plan |               |              |
|----------------------------------------------------------|-------|------------|-----------------------|--------|---------------|--------------|--------------|--------|-----------------|---------------|--------------|
|                                                          | Notes | Book Value | 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     |              |        | \$ 1,934        | \$ 1,934      | 100.0%       |
| Accounts Receivables, Net                                | 2     | 2,392      | 40.0%                 | 60.0%  | 957           | 1,435        |              |        | 2,392           | 2,188         | 91.5%        |
| Inventory                                                | 3     | 123        | 0.0%                  | 0.0%   | -             | -            |              |        | 123             | -             | 0.0%         |
| Prepaid Expenses                                         | 4     | 1,233      | 0.0%                  | 0.0%   | -             | -            |              |        | 1,233           | -             | 0.0%         |
| Restricted Assets Held by Trustee                        | 5     | 3          | 0.0%                  | 0.0%   | -             | -            |              |        | 3               | -             | 0.0%         |
| Fixed Assets, Net                                        | 6     | 87,757     | 10.0%                 | 20.0%  | 8,776         | 17,551       |              |        | 87,757          | -             | 0.0%         |
| Long-Term Investments                                    | 7     | 2,049      | 0.0%                  | 0.0%   | -             | -            |              |        | 2,049           | -             | 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             | 420           | 100.0%       |
| Net Sale Proceeds                                        | 10    | -          | 0.0%                  | 0.0%   | -             | -            |              |        | 31,824          | 31,824        | 100.0%       |
| Buyer Former Resident Contribution                       | 11    | -          | 0.0%                  | 0.0%   | -             | -            |              |        | 2,000           | 2,000         | 100.0%       |
| FSO Former Resident Contribution                         | 12    | -          | 0.0%                  | 0.0%   | -             | -            |              |        | 1,500           | 1,500         | 100.0%       |
| Chapter 5 Causes of Action                               | 13    | 160        | 50.0%                 | 100.0% | 80            | 160          |              |        | 160             | 120           | 75.0%        |
| Other Potential Claims                                   | 14    | -          | 0.0%                  | 0.0%   | -             | -            |              |        | -               | -             | 0.0%         |
| Total Cash Available for Distribution                    |       |            | \$ 95,284             |        | \$ 11,381     | \$ 20,715    | 11.9%        | 21.7%  | \$ 131,721      | \$ 39,986     | 30.4%        |
| 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       |       |            | \$ 95,444             |        | \$ 11,381     | \$ 20,715    |              |        | \$ 128,171      | \$ 36,436     |              |
| 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      | \$ 4,464     | 100.0%       | 100.0% | \$ -            | \$ -          | 0.0%         |
| Cash Available for Distribution to Other Priority Claims |       |            |                       |        | \$ 6,916      | \$ 16,250    |              |        |                 | \$ 36,436     |              |
| Other Priority Claims                                    |       |            |                       |        |               |              |              |        |                 |               |              |
| Resident Deposits                                        | 21    | \$ 481     |                       |        | \$ -          | \$ -         | 0.0%         | 0.0%   | \$ 481          | 481           | 100.0%       |
| Total Other Priority Claims                              |       |            | \$ 481                |        | \$ -          | \$ -         | 0.0%         | 0.0%   | \$ 481          | \$ 481        | 100.0%       |
| Cash Available for Distribution to Administrative Claims |       |            |                       |        | \$ 6,916      | \$ 16,250    |              |        |                 | \$ 35,955     |              |
| 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%   | 394             | 394           | 100.0%       |
| Professional Fee Accrual                                 | 24    | -          |                       |        | -             | -            | 0.0%         | 0.0%   | 1,568           | 1,568         | 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%   | 1,110           | 1,110         | 100.0%       |
| Total Administrative Claims                              |       |            | \$ 3,777              |        | \$ 724        | \$ 724       | 19.2%        | 19.2%  | \$ 5,125        | \$ 5,125      | 100.0%       |
| Cash Available for Distribution to Other Secured Claims  |       |            |                       |        | \$ 6,193      | \$ 15,527    |              |        |                 | \$ 30,830     |              |
| Other Secured Claims                                     |       |            |                       |        |               |              |              |        |                 |               |              |
| Other Secured Claims                                     | 28    | \$ 40      |                       |        | \$ -          | \$ -         | 0.0%         | 0.0%   | \$ 40           | \$ 40         | 100.0%       |
| Total Other Secured Claims                               |       |            | \$ 40                 |        | \$ -          | \$ -         | 0.0%         | 0.0%   | \$ 40           | \$ 40         | 100.0%       |
| Cash Available for Distribution to Estimated Bond Claims |       |            |                       |        | \$ 6,193      | \$ 15,527    |              |        |                 | \$ 30,790     |              |
| Estimated Bond Claims                                    |       |            |                       |        |               |              |              |        |                 |               |              |
| Series 2017 Bonds                                        | 29    | \$ 131,600 |                       |        | \$ 6,193      | \$ 15,527    | 4.7%         | 11.8%  | \$ 131,600      | \$ 30,790     | 23.4%        |
| Total Estimated Bond Claims                              |       |            | \$ 131,600            |        | \$ 6,193      | \$ 15,527    | 4.7%         | 11.8%  | \$ 131,600      | \$ 30,790     | 23.4%        |
| Cash Available for Deficiency Claims                     |       |            |                       |        | \$ -          | \$ -         |              |        |                 | \$ -          |              |
| Deficiency Claims                                        |       |            |                       |        |               |              |              |        |                 |               |              |
| Bondholder Deficiency Claims                             | 30    | \$ 100,810 |                       |        | \$ -          | \$ -         | 0.0%         | 0.0%   | \$ 100,810      | \$ -          | 0.0%         |
| Leaf Capital Deficiency Claim                            |       | 62         |                       |        | -             | -            | 0.0%         | 0.0%   | 62              | -             | 0.0%         |
| Total Deficiency Claims                                  |       |            | \$ 100,810            |        | \$ -          | \$ -         | 0.0%         | 0.0%   | \$ 100,810      | \$ -          | 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                           |       |            | \$ 101,305            |        | \$ -          | \$ -         | 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                                |       |            | \$ 232                |        | \$ -          | \$ -         | 0.0%         | 0.0%   | \$ 232          | \$ -          | 0.0%         |
| Shortfall                                                |       |            |                       |        | \$ (331,329)  | \$ (321,995) |              |        |                 | \$ (222,309)  |              |

**Class Recovery Summary**

|                                                 |    |    |         |  |  |       |        |        |        |          |          |        |
|-------------------------------------------------|----|----|---------|--|--|-------|--------|--------|--------|----------|----------|--------|
| <b>Unclassified Claims</b>                      |    |    |         |  |  |       |        |        |        |          |          |        |
| Operating Claims                                | 36 | \$ | -       |  |  | \$ -  | \$ -   | 0.0%   | 0.0%   | \$ 1,110 | \$ 1,110 | 100.0% |
| Professional Claims                             | 37 |    | -       |  |  | -     | -      | 0.0%   | 0.0%   | 1,962    | 1,962    | 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  | 30,790   | 23.4%  |
| Class 3 - Other Secured Claims                  |    |    | 40      |  |  | -     | -      | 0.0%   | 0.0%   | 40       | 40       | 100.0% |
| Class 4 - Deficiency Claims                     |    |    | 100,810 |  |  | -     | -      | 0.0%   | 0.0%   | 100,810  | -        | 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 are as of 9/30/23, unless otherwise noted.

- 1 The Chapter 7 Liquidation reflects cash and cash equivalents as of 10/31/23. The Chapter 11 Plan reflects estimated cash and cash equivalents as of 4/30/24.
- 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 1/31/24.
- 24 The Chapter 11 Plan reflects the estimated accrued and unpaid professional fees as of 4/30/24, 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 3**

FSO Settlement and Contribution Agreement Term Sheet

### SETTLEMENT TERM SHEET

This term sheet (this “Settlement Term Sheet”) describes the principal terms of a proposed settlement (the “Settlement”) by and among (i) Evangelical Retirement Homes for Greater Chicago, Inc. d/b/a Friendship Village of Schaumburg (the “Debtor”), (ii) the Official Committee of Unsecured Creditors appointed in the Debtor’s above-referenced chapter 11 case (the “Committee”), and (iii) Friendship Senior Options, NFP, the Debtor’s sole member (“FSO” and together with the Debtor, and the Committee, the “Parties”).

The first day on which all of the Parties have executed this Settlement Term Sheet or definitive documentation memorializing the terms of the Settlement summarized in the Settlement Term Sheet shall be referred to as the “Execution Date”. Except for certain specified obligations arising upon the Execution Date as explicitly provided below, this Settlement Term Sheet shall become binding and enforceable on the Parties only upon the Effective Date (defined below).

This Settlement Term Sheet is being offered pursuant to Federal Rule of Evidence 408.

| <b>Settlement Terms</b>       | <b>Description of Terms</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Cash Consideration</b>     | FSO agrees to contribute \$1 million in cash to the Debtor to first be used to fund the administration of the bankruptcy case and next to fund additional cash proceeds into the estate (the “ <u>Cash Consideration</u> ”), which shall be funded by the partial forgiveness by FSO, in its capacity as lender under that certain term loan facility between the Debtor and FSO (the “ <u>DIP Facility</u> ”), <sup>1</sup> of the DIP Obligations (as defined in the DIP Order).                                                                                                                                                                                                                                                                                                                     |
| <b>Chapter 11 Plan</b>        | The Debtor’s chapter 11 plan (the “ <u>Plan</u> ”) and any documentation with respect to the Plan shall be in a form and substance satisfactory to FSO, in its sole discretion.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Former Residents Trust</b> | FSO and the Committee will establish a trust, in connection with the Plan (the “ <u>Former Residents Trust</u> ”), for the benefit of the Debtor’s former residents who are owed entrance fee refunds by the Debtor upon the effective date of the Plan (the “ <u>Former Residents</u> ”). The Former Residents Trust shall be funded by FSO in an amount equal to \$1,500,000 (the “ <u>Former Residents Trust Consideration</u> ”). The proceeds of the Former Residents Trust shall be used to make additional distributions on a pro rata basis to former residents that hold claims against the Debtor pursuant to residency agreements entered by such residents and the Debtor (“ <u>Former Resident Claims</u> ”) in accordance with the terms of a trust agreement, acceptable by FSO and the |

<sup>1</sup> On August 8, 2023, the Bankruptcy Court approved the DIP Facility pursuant to the *Order Granting Debtor’s Motion for Entry of an Order (I) Authorizing the Debtor to Obtain Unsecured Postpetition Financing; (II) Modifying the Automatic Stay; and (III) Granting Related Relief* [Docket No. 205] (the “DIP Order”).

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       | Committee, which shall be executed on or prior to the effective date of the Plan (the “ <u>Former Residents Trust Agreement</u> ”).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Former Residents Trust Trustee</b> | The trustee of the Former Residents Trust (the “ <u>Former Residents Trust Trustee</u> ”) shall be appointed by the Committee. The Former Residents Trust Trustee shall act for the benefit of the holders of Former Resident Claims in a fiduciary capacity solely with respect to the Former Residents Trust assets and shall make distributions to holders of Former Resident Claims in accordance with the terms of the Plan and the Former Residents Trust Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Current Resident Support</b>       | FSO agrees to amend and restate the organizational documents for FSO and the FSO Foundation so that both entities, and their respective net assets, are effectively combined into FSO with an amended and restated mission to support the Debtor’s current residents, including but not limited to benevolent care support.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Debtor Releases</b>                | Effective on the Execution Date and in exchange for the Settlement Consideration, the Debtor and its estate, shall release and discharge FSO and its direct and indirect affiliates and each of their respective present or former partners, members, directors, officers, managers, employees, attorneys, consultants, insurers, representatives, agents, and advisors from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, including any derivative Claims asserted or that could have been asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtor could have been entitled to assert in its own right or on behalf of its estate or any holder of any claim or equity interest, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the chapter 11 case, including the making of any loan to the Debtor, the sale, this Settlement Term Sheet, the Plan, or any related agreements, instruments, or other documents, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Execution Date. |
| <b>Former Resident Releases</b>       | Effective on the Execution Date and in exchange for beneficial interests in the Former Residents Trust, holders of a Former Resident Claim shall release and discharge FSO and its direct and indirect affiliates and each of their respective present or former partners, members, directors, officers, managers, employees, attorneys, consultants, insurers, representatives, agents, and advisors from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

|                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                         | based on or relating to, or in any manner arising from, in whole or in part, the Debtor, FSO, the chapter 11 case, including the making of any loan to the Debtor, the sale, this Settlement Term Sheet, the Plan, or any related agreements, instruments, or other documents, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Execution Date.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Opt-Out Releases</b> | The Plan shall include opt-out releases for all holders of claims that release and discharge the Debtor, FSO and its direct and indirect affiliates and each of their respective present or former partners, members, directors, officers, managers, employees, attorneys, consultants, insurers, representatives, agents, and advisors from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, FSO, the chapter 11 case, including the making of any loan to the Debtor, the sale, this Settlement Term Sheet, the Plan, or any related agreements, instruments, or other documents, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Execution Date. |

**EXHIBIT 4**

Bond Trustee Letter regarding Potential Claims

Daniel Bleck  
+1.617.348.4498  
DSBleck@mintz.com



One Financial Center  
Boston, MA 02111  
617 542 6000  
mintz.com

January 4, 2024

***Sent via email***

Bruce Dopke  
Dopkelaw LLC  
1535 W. Schaumburg Road, Suite 204  
Schaumburg, IL 60194  
Email: [bd@DopkeLaw.com](mailto:bd@DopkeLaw.com)

Jeremy R. Johnson  
Polsinelli PC  
150 N. Riverside Plaza, Suite 3000  
Chicago, IL 60606  
Email: [Jeremy.johnson@polsinelli.com](mailto:Jeremy.johnson@polsinelli.com)

Dear Bruce and Jeremy:

As you are aware, on December 22, 2023, UMB Bank, N.A., in its capacity as bond trustee and successor master trustee (collectively, the “Bond Trustee”), and the Official Committee of Unsecured Creditors conducted a joint examination of (i) Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg (the “Debtor”) and (ii) Friendship Senior Options, NFP (“FSO”) pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Rule 2004 Exam”) where Michael Flynn, in his capacity as CEO of both the Debtor and FSO, was the designated witness. As you know, our office is counsel to the Bond Trustee. Unless otherwise defined herein, all capitalized terms have the meaning ascribed to such terms in the *Topics of Examination and Requests for the Production of Documents Pursuant to Bankruptcy Rule 2004* served by the Bond Trustee on FSO on August 25, 2023.

During the Rule 2004 Exam, Mr. Flynn provided testimony related to the ownership of the ERTC Funds held by FSO. A copy of transcript from the Rule 2004 Exam is attached, in part, hereto as **Exhibit A** (the “Rule 2004 Transcript”). The testimony highlighted in the Rule 2004 Transcript unquestionably demonstrates that more than \$7 million in ERTC Funds attributable to more than \$17 million in salaries funded by the Debtor are property of the Debtor’s bankruptcy estate. Indeed, Mr. Flynn testified that the \$7 million in ERTC Funds (currently being held by FSO) will be reported as revenue of the Debtor on its 2023 IRS Form 990, since the salaries that gave rise to that credit were reported as expenses of the Debtor. Mr. Flynn also acknowledged that: (i) FSO has not retained the ERTC funds attributable to Greenfields (and instead immediately paid those over to Greenfields’ secured lender); and (ii) as late as April 2023, FSO was telling third parties, including potential acquirers of the Debtor and even Senator Durbin’s office that the ERTC Funds at issue are the property of the Debtor and could potentially save the Debtor from bankruptcy once received. In light of such testimony, the Bond Trustee presumes that the Debtor will file a motion with the Bankruptcy Court to compel FSO to relinquish the ERTC Funds to the Debtor’s Estate, including any such funds designated for use in connection with the DIP.

MINTZ



January 4, 2024  
Page 2

Please acknowledge by **Friday, January 5, 2024**, that the Debtor will (i) immediately make such demand on FSO for the turnover of such funds (given that FSO continues to spend down such funds for other uses), and (ii) if FSO refuses such demand, that the Debtor will file such a request with the Bankruptcy Court within the next seven days along with an immediate request to enjoin FSO from further dissipating such funds.

Additionally, please confirm that you have or that you will by **Friday, January 5, 2024**, provide notice to QBE Insurance Corporation, Hudson Insurance Group, and Allied Word Specialty Insurance Company (collectively, the "D&O Insurers") regarding potential breach of fiduciary duty claims against the directors and officers of the Debtor and FSO related to, among other things, fraudulent conveyances, the intermingling of corporate funds, the improper withholding of the ERTC Funds, and the improper elimination of an \$8.8 million liability that FSO owed to the Debtor until FSO wiped this liability off its books in April 2023 once it knew a Chapter 11 filing was imminent. .

If we do not receive a response from you by **Friday, January 5, 2024**, we reserve all rights, including the right to file a motion with the Bankruptcy Court seeking (i) standing to file a motion to compel FSO to relinquish the ERTC Funds, and (ii) leave to provide the D&O Insurers notice of potential claims given the Debtor's refusal.

Best regards,

A handwritten signature in black ink, appearing to read 'Daniel Bleck', with a stylized flourish at the end.

Daniel Bleck  
Member

cc: Larry Schoen (via email)  
Tim McKeon (via email)  
Scott Clar (via email)  
Trinitee Green (via email)

**EXHIBIT A**

**Rule 2004 Transcript**

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

In re: ) Chapter 11  
)  
EVANGELICAL RETIREMENT HOMES ) Case No. 23-07541  
OF GREATER CHICAGO, )  
INCORPORATED d/b/a FRIENDSHIP )  
VILLAGE OF SCHAUMBURG, )  
)  
Debtor. )

Remotely held deposition of MICHAEL FLYNN taken  
before CAROL CONNOLLY, CSR, CRR, and Notary Public,  
pursuant to the Federal Rules of Civil Procedure for the  
United States District Courts pertaining to the taking of  
depositions, commencing at 10:15 a.m. on the 22nd day of  
December, A.D., 2023.

1                   There were present at the taking of this  
2 deposition the following counsel:

3                   CRANE SIMON CLAR & GOODMAN by  
4                   SCOTT CLAR (via Zoom)  
5                   135 South LaSalle Street  
6                   Suite 3950  
7                   Chicago, Illinois 60603  
8                   (312) 641-6777  
9                   sclar@cranesimon.com

10                   appeared on behalf of the Official  
11                   Unsecured Creditors;

12                   MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO by  
13                   LAURENCE SCHOEN (via Zoom)  
14                   3580 Carmel Mountain Road  
15                   Suite 300  
16                   San Diego, California 92130  
17                   (617) 347-1764  
18                   lschoen@mintz.com

19                   AND

20                   MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO by  
21                   TIMOTHY McKEON (via Zoom)  
22                   1 Financial Center  
23                   Boston, Massachusetts 02111  
24                   (617) 956-4016  
                 tjmckeon@mintz.com

                  appeared on behalf of  
                  UMB bank, Bond Trustee;  
25                   COOLEY, LLP by  
26                   SAM RABUCK (via Zoom)  
27                   110 North Wacker Drive  
28                   Suite 4200  
29                   Chicago, Illinois 60606  
30                   (312) 881-6500  
31                   srabuck@cooley.com

                  appeared on behalf of Friendship  
                  Senior Options;

1 POLSINELLI by  
2 TRINITEE G. GREEN (via Zoom)  
3 2950 North Harwood  
4 Suite 2100  
5 Dallas, Texas 75201  
6 (214) 661-5508  
7 tggreen@polsinelli.com

8 appeared on behalf of the Debtor;

9 DOPKELAW, LLC by  
10 BRUCE DOPKE (via Zoom)  
11 1535 West Schaumburg Road  
12 Suite 204  
13 Schaumburg, Illinois 60194  
14 (847) 524-4811  
15 bd@dopkelaw.com

16 appeared on behalf of the Debtor.

17 Also Present: Carin Sorvik, Newpoint Advisors  
18 Michael Cunningham, Newpoint Advisors  
19 Leonard Kofkin, Chair of Official  
20 Unsecured Creditors Committee

21 James Farmer, Technical Concierge  
22  
23  
24

**I N D E X**  
**REMOTELY HELD DEPOSITION OF MICHAEL FLYNN**  
**TAKEN December 22, 2023**

| <b>EXAMINATION BY</b>  | <b>PAGE</b> |
|------------------------|-------------|
| <b>Laurence Schoen</b> | <b>7</b>    |
| <b>Scott Clar</b>      | <b>144</b>  |

- - - - -  
**EXHIBITS MARKED**

|                  | <b>PAGE</b>                                                                                                                             |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Exhibit 1</b> | <b>Committee Deposition<br/>Notice</b><br><b>14</b>                                                                                     |
| <b>Exhibit 2</b> | <b>Topics of Examination<br/>and Requests for the<br/>Production of Documents<br/>Pursuant to Bankruptcy<br/>Rule 2004</b><br><b>14</b> |
| <b>Exhibit 3</b> | <b>Exclusive Administrative<br/>Services and Personnel<br/>Lease Agreement</b><br><b>24</b>                                             |
| <b>Exhibit 4</b> | <b>August 15, 2018 email<br/>from Mike Flynn to<br/>Andrew Foust, etc.</b><br><b>37</b>                                                 |
| <b>Exhibit 5</b> | <b>Breakdown of ERTC<br/>Submissions and<br/>Payments spreadsheet</b><br><b>49</b>                                                      |
| <b>Exhibit 6</b> | <b>FSO 2021 Tax Return</b><br><b>54</b>                                                                                                 |
| <b>Exhibit 7</b> | <b>FSV 2021 Tax Return</b><br><b>99</b>                                                                                                 |
| <b>Exhibit 8</b> | <b>June 28, 2022 email<br/>from Marie Carlson to<br/>Mike Flynn, etc.</b><br><b>105</b>                                                 |

|    |            |                                                                                                                                                                                                                                                        |     |
|----|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 1  | Exhibit 9  | July 7, 2022 FSO<br>Board of Directors<br>Meeting minutes                                                                                                                                                                                              | 108 |
| 2  |            |                                                                                                                                                                                                                                                        |     |
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1 A I can't comment on that, because I mean, you  
2 know, the -- right now the intention was to keep any ERTC  
3 moneys at the parent level so that decision that would  
4 have been made separate from the transaction just  
5 happened to be made because we sold the community at that  
6 point.

7 Q Okay. Whose tax return -- whose Form 990 tax  
8 return is the \$2.7 million in ERTC credits attributable  
9 to GreenFields going to be reported on?

10 A On GreenFields' tax return.

11 Q So FSO is going to report zero dollars on its  
12 Form 990 in terms of revenues for the \$2.7 million in  
13 ERTC credits attributable to GreenFields, is that  
14 correct?

15 A That is correct.

16 Q Whose tax return is the \$7.6 million in ERTC  
17 credits attributable to FVS going to be reported on?

18 A On FVS's 990 return.

19 Q Why is that?

20 A You know, that's -- I'm just thinking through  
21 this now. Yeah, any tax expenses or credits related to  
22 the entity would go on that entity's tax return so that  
23 would be FVS's tax return.

24 Q Because it would be problematic to tell the IRS

1 that the payroll expenses are just a pass through and  
2 that those are -- those are an expense of FVS but not to  
3 put the credits on the same tax return, correct?

4 A Correct.

5 Q So for consistency of treatment, if the  
6 expenses that created the credit were reported as an  
7 expense of FVS for IRS purposes, then the ERTC credit  
8 revenues that come in to offset those expenses also have  
9 to be reported on that entity level, in this case FVS,  
10 correct?

11 A That is correct, yes.

12 Q To do otherwise would be inconsistent tax  
13 treatment, correct?

14 A Correct.

15 Q Your best understanding is that all 11 million  
16 that's reflected in the credit values on Exhibit 5 has  
17 been received and that there's no additional ERTC money  
18 expected to come in, is that correct?

19 A That is correct, yes.

20 Q Thank you. We can put that aside.

21 If we could mark Tab 2 as an exhibit, please.

22 CONCIERGE: Will be Exhibit 6.

23 MR. SCHOEN: Thank you.

24 (Exhibit 6 marked as requested)

1 A Yes.

2 Q If you look at the second email on the page,  
3 the email that is from you to Marie Carlson at Ziegler.  
4 Who is Marie Carlson?

5 A She's on their team when we hired Ziegler to do  
6 our sale process the first time. Marie is on that team  
7 with Ziegler.

8 Q You say to her under the heading Stimulus:  
9 Where funds were received at the FSO level, 72 percent of  
10 funds were allocated to FVS since FVS has that percentage  
11 of labor.

12 Do you see that?

13 A Yes, I do, yep.

14 Q Is this -- to put it in context, you testified  
15 earlier, I believe, that in June of 2022 a small amount  
16 of ERTC tax credits were received?

17 A That's correct, yes.

18 Q And that was a small portion of the 11 million?

19 A Yes, yes.

20 Q Do you recall roughly how much?

21 A It was -- it was somewhere in the neighborhood  
22 of 200,000 in total for all entities.

23 Q And the -- When you say: "Where funds are  
24 received at the FSO level, 72 percent are allocated to

1 FVS since FVS has the percentage of labor", what did you  
2 mean by that?

3 A Basically that it's the schedule you showed, in  
4 essence, it mirrors that schedule, that number of  
5 employees -- the amount of payroll that FVS paid as a  
6 percentage of the total payroll, 72 percent of the ERT  
7 money would go to Friendship Village.

8 Q And was 72 percent of the amounts received in  
9 June of 2022 actually paid by FSO to FVS in cash?

10 A I believe we did back then. That first payment  
11 I believe we did send back to the community.

12 Q Because FSO is a pass through, so just like FVS  
13 passed through the salaries to fund the expenses of that  
14 payroll when the credit came in, you passed that back  
15 through to them to offset the expense that FVS had paid,  
16 correct?

17 A Right.

18 Q What was your answer?

19 A That's correct, correct.

20 Q So that amount was paid by FSO to FVS just as a  
21 matter of course, right?

22 A Correct, yes.

23 Q Did you have any discussion with legal counsel  
24 before making the payment from FSO to FVS of 72 percent

1 ERTC moneys for Friendship Village needs.

2 Q Not that you were going to use them, but FSO  
3 was going pass that money on to FVS and they were going  
4 to use that money to fund these capital priorities,  
5 right?

6 A Correct, correct.

7 Q Because that's what you had done with the ERTC  
8 funds that you received to date, the limited payments  
9 that had been received in June of 2022, you immediately  
10 passed them on to FVS?

11 A That is correct, yes.

12 Q And in 2022 FVS reported the ERTC credits as  
13 revenue on its 990 tax return, correct?

14 A That's correct.

15 Q You were hoping as more funds were received you  
16 would be able to pass that on to FVS and FVS would fund  
17 those capital priorities?

18 A Absolutely, yes.

19 MR. SCHOEN: If we could mark Tab 14 as an exhibit,  
20 please.

21 (Exhibit 11 marked as requested)

22 CONCIERGE: This is Exhibit 11.

23 MR. SCHOEN: Q Yes. Do you have Exhibit 11 in  
24 front of you, sir?

1 understanding of when this was prepared?

2 A It would have had to have been prepared  
3 probably end of December, early January of 2023 being we  
4 had actual results through 11-30-22.

5 Q And this is the -- this cash flow projection is  
6 for FVS only, right, not FSO, right?

7 A Yes, that is correct.

8 Q And you see where under the cash on hand  
9 category, near the bottom of that, it says: Tax credit  
10 ERTC.

11 A Yep.

12 Q So why were you and your team including ERTC  
13 credits on the cash inflows that were projected to come  
14 to FVS?

15 A Again, for the same reason we talked about  
16 before. Based on the payroll dollars, initially they  
17 were intended to be transferred back to Friendship  
18 Village.

19 Q So as of the time that this document was  
20 created in late 2022, the projection was that these ERTC  
21 credits would be the revenue of FVS once they were  
22 received, is that correct?

23 A That is correct, yes.

24 Q If we could take a look at Tab 18, please.

1 A No.

2 Q So it was only as you got closer to the  
3 bankruptcy that FSO decided it would like to keep that  
4 money for itself?

5 A That's correct. I'll just qualify, not keep  
6 for itself. Again, to use it to help us get through the  
7 bankruptcy process.

8 Q But help you, but to take money out of the  
9 bankruptcy estate where it could be used to benefit all  
10 the creditors of the estate in accordance with the  
11 bankruptcy rules and instead just keep it so FSO could  
12 administer it to itself?

13 MR. RABUCK: Objection to form.

14 MR. SCHOEN: Q Is that correct?

15 A That's correct.

16 MR. SCHOEN: If we could pull up Tab 19, please.

17 (Exhibit 16 marked as requested)

18 MR. SCHOEN: Q You have Exhibit 16 in front of you?

19 A Yes.

20 Q Do you recognize this as a Draft Asset Purchase  
21 agreement that was prepared by the Polsinelli law firm  
22 dated January 5th, 2023?

23 A Yes.

24 Q And who did Polsinelli represent at that point

**EXHIBIT 5**

Debtor's Responsive Letter to Bond Trustee regarding Potential Claims

**DOPKELAW LLC**

*Attorneys At Law*

January 9, 2024

By email

Daniel S. Bleck, Esq.  
Mintz Levin Cohn Ferris  
Glovsky and Popeo, PC  
One Financial Center  
Boston, MA 02111

Re: Evangelical Retirement Homes of Greater Chicago, Incorporated (NFP)  
d/b/a Friendship Village of Schaumburg ("FVS")

Dear Mr. Bleck:

This letter responds to your correspondence dated January 4, 2024 (the "UMB Demand Letter"), wherein UMB Bank N.A. ("UMB"), among other things, makes certain requests of the above-referenced Debtor, including: (i) confirmation that the Debtor has or will provide written notice to insurance carriers concerning potential claims against Friendship Senior Options ("FSO") and the Debtor's directors and officers; and (ii) acknowledgement that the Debtor will immediately make a demand on FSO for the turnover of certain funds commonly referred to as ERTC funds. The UMB Demand Letter requested a response on an extremely expedited timeframe (by January 5, 2024, 1 business day). In response to the Debtor's request for additional time, UMB agreed to provide an additional 1.5 business days to and through January 9, 2024 at 12:00 p.m. (CT). The Debtor is providing this written response within UMB's requested timeframe.

With respect to your request for confirmation concerning notice to insurance carriers, I write to confirm that FSO provided Hudson Insurance Company, QBE Insurance, and Allied World Specialty Insurance Company (collectively, the "Insurance Carriers") with notice of potential claims, including copies of written correspondence, dated November 16, 2023, from the Official Committee of Unsecured Creditors (the "UCC Letter") and the UMB Demand Letter. I have personally reviewed the email communications from FSO to the Insurance Carriers, as well as acknowledgements of receipt from the Insurance Carriers with respect to the UCC Letter. Notice of the UMB Demand Letter was provided by FSO to the Insurance Carriers on January 5, 2024.

The Debtor disagrees with UMB's position concerning the ERTC funds. In the UMB Demand Letter, you generally refer to and describe testimony of Mike Flynn and, without providing any legal analysis or authority, you conclude that Mr. Flynn's testimony "unquestionably demonstrates that more than \$7 million in ERTC Funds attributable to more than \$17 million in salaries funded by the Debtor are property of the Debtor's bankruptcy estate."

Based on the analysis conducted by the Debtor's professionals, the Debtor does not agree with UMB's position. Although the Bond Trustee's view is that purported "claims" have been "pending" for some time, we disagree. As discussed in connection with UMB's objection to the Debtor's disclosure statement, to date, the Bond Trustee has only made assertions but has taken no action with respect to any purported claims. No claims are pending. Moreover, UMB has not

**DOPKELAW LLC**

provided the Bond Trustee with any legal analysis in connection with any claims concerning ERTC funds (or otherwise). Accordingly, we would appreciate it if you could provide further information on the alleged claims against FSO and/or the Debtor's directors and officers. We request that this information be provided via written response within seven (7) calendar days of the date of this letter.

We do not consent to UMB or any party bringing claims on behalf of the estate, especially at this critical juncture in the case.

The Debtor reserves all rights with respect to this matter.

Sincerely,



Bruce Dopke, Esq.

cc: Jeremy Johnson, Esq. (via email)  
Trinitee Green, Esq. (via email)  
Tim McKeon (via email)  
Larry Schoen (via email)  
Scott Clar (via email)

**EXHIBIT 6**

UCC Letter regarding Potential Claims

**LAW OFFICES**

**CRANE, SIMON, CLAR & GOODMAN**

**ARTHUR G. SIMON  
SCOTT R. CLAR  
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November 16, 2023

|                |                  |                                                                                  |
|----------------|------------------|----------------------------------------------------------------------------------|
| Bruce Dopke    | <b>Via Email</b> | <a href="mailto:bd@dopkelaw.com">bd@dopkelaw.com</a>                             |
| Trinitee Green | <b>Via Email</b> | <a href="mailto:Tggreen@polsinelli.com">Tggreen@polsinelli.com</a>               |
| Jeremy Johnson | <b>Via Email</b> | <a href="mailto:Jeremy.johnson@polsinelli.com">Jeremy.johnson@polsinelli.com</a> |
| Eric Walker    | <b>Via Email</b> | <a href="mailto:ewalker@cooley.com">ewalker@cooley.com</a>                       |

Re: Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a  
Friendship Village of Schaumburg (the "Debtor")/  
Written Demand Against Friendship Senior Options, Michael Flynn, and other  
Unknown Directors, Officers and Other Employees of the Debtor

Dear Counsel:

This represents the Official Committee of Unsecured Creditors of the Debtor (the "Committee") in the Debtor's Chapter 11 case pending in the United States Bankruptcy Court for the Northern District of Illinois, under case no. 23-07541. On behalf of the Committee, we hereby demand payment for all losses sustained by the Debtor's estate, and in particular, current and former residents of the Debtor, which totals an amount in excess of \$15 million. The Committee contents to comply with all applicable provisions of Title 11 of the United States Code (the "Bankruptcy Code") and will seek appropriate authority, if necessary, before filing any cause of action in connection with this demand.

The damages arise from, among other things, the pre-bankruptcy actions of the Debtor's officers, directors and management team, including, but not limited to: i) causing or authorizing the Debtor to overpay or otherwise improperly transfer funds to the Debtor's parent, Friendship Senior Options ("FSO") and possibly to transfer funds to certain of the Debtor's officers, directors, other employees, or insiders; ii) failing to properly oversee, monitor or supervise the Debtor's operations and finances; and iii) possible misleading of current and former residents with respect to the financial health of the Debtor.

The Committee and the Debtor's estate may have additional factual bases, and this letter does not purport to identify and describe each cause of action the Committee and the Debtor's estate may have against one or more of the potential defendants referenced in this letter. The Committee reserves all rights, remedies and claims it may have.

If necessary, we request that you enter into a written agreement tolling any applicable statutes of limitations.

**LAW OFFICES OF CRANE, SIMON, CLAR & GOODMAN**

Bruce Dopke  
Trinitee Green  
Jeremy Johnson  
Eric Walker  
November 16, 2023  
Page 2

Your prompt attention to this matter is requested. In addition, please provide me with contact information for the insurer in connection with the Directors & Officers' insurance policy maintained by FSO, so that I may give proper notice to them as well.

Very truly yours,

CRANE, SIMON, CLAR & GOODMAN

By: /s/Scott R. Clar

SRC/mjo