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COMMITTEE OF UNSECURED CREDITORS

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

In re:	§	
	§	Chapter 11
	§	
BUCKINGHAM SENIOR LIVING	§	Case No. 25-80595 (MVL)
COMMUNITY, INC.,	§	
	§	
Debtor.	§	
<hr/>		
OFFICIAL COMMITTEE OF UNSECURED	§	
CREDITORS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	ADVERSARY NO. _____
	§	
UMB BANK, N.A.,	§	
	§	
Defendant.	§	

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS’
ORIGINAL COMPLAINT TO DETERMINE EXTENT,
PRIORITY, AND VALIDITY OF LIENS OF UMB BANK, N.A.**

The Official Committee of Unsecured Creditors (the “Committee” or “Plaintiff”) in the above-captioned chapter 11 case of Buckingham Senior Living Community, Inc. (“Buckingham” or the “Debtor”) files this *Original Complaint to Determine Extent, Priority, and Validity of Liens*

of UMB Bank, N.A. (the “Complaint”), and hereby alleges, upon its own knowledge or otherwise upon information and belief, as follows:

I. NATURE OF THIS ACTION

1. The above-captioned Chapter 11 case is the next chapter of an ongoing saga over the financial struggles surrounding the Debtor’s operation of the Buckingham facility as a Continuing Care Retirement Community (“CCRC”). The Committee brings this Adversary Proceeding to protect the interests of certain residents of the Buckingham facility, a population that is undisputedly the most vulnerable party impacted by the Bankruptcy Case, from both a financial and a health care perspective. The Debtor is responsible for hundreds of thousands of dollars in entrance fee refund obligations to each of those residents under certain of the residency contracts described below. In most instances, the entrance fees at issue represent a significant portion of the residents’ savings, a fact readily acknowledged by the Debtor.

2. The Committee brings this action against Defendant UMB Bank, N.A. (“UMB” or “Defendant”), in its capacity as the “Trustee” under the DIP Order (defined *infra*) pursuant to Rules 7001(b) and 7001(i) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), sections 105 and 506 of title 11 of the United States Code (the “Bankruptcy Code”), and the Declaratory Judgment Act (28 U.S.C. § 2201).

3. By this Complaint, the Committee seeks an order and judgment determining of the amount, extent, validity, priority, and perfection of the prepetition liens and security interests asserted by UMB, pursuant to Bankruptcy Rules 7001(b) and 7001(i) and the Declaratory Judgment Act. For the reasons set forth below, UMB’s prepetition liens are subordinate to the statutory liens in favor of the residents provided by section 246.111 of the Texas Health Safety Code.

II. JURISDICTION AND VENUE

4. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Court”), has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).

5. Venue is proper in this district under 28 U.S.C. § 1409(a).

6. The Committee has filed its *Motion for Standing to Challenge Prepetition Liens and Claims* in the Debtor’s bankruptcy case, in accordance with the DIP Order (as defined below), requesting standing to bring the causes of action asserted herein against UMB.

7. The Committee consents to the Court’s entry of a final order or judgment in this proceeding.

III. PARTIES

8. Buckingham is the debtor-in-possession in the Chapter 11 case styled *In re Buckingham Senior Living Community, Inc.*, Case No. 25-80595 (MVL), pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Case”).

9. The Committee is the Plaintiff in this Adversary Proceeding.

10. Defendant UMB is the bond trustee (in such capacity, the “Bond Trustee”) under the Bond Indenture (as defined below), and master trustee (the “Master Trustee” and together with the Bond Trustee, the “Trustee”) with respect to the Amended and Restated Master Trust Indenture, Deed of Trust and Security Agreement dated as of November 1, 2021, as supplemented by the Supplemental Indenture Number 1, dated as of November 1, 2021. *See Final Order (I) Authorizing the Debtor to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate*

Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief [ECF No. 180] (the “DIP Order”) at p. 2.¹

11. UMB is a national banking association, which may be served by serving its registered agent, United Agent Group, Inc., at its registered address located at 2595 N. Dallas Parkway, Suite 350, Frisco, Texas 75034.

IV. STATEMENT OF FACTS

A. *The Debtor’s History and Operations*²

12. The Debtor owns and operates a CCRC with its principal place of business at 8580 Woodway Drive, Houston, Texas 77063 (the “Facility”). See *Voluntary Petition for Non-Individuals Filing for Bankruptcy* [ECF No. 1]. According to the *Declaration of Michael Wyse in Support of Chapter 11 Petition and First Day Pleadings* (the “Wyse Declaration”) [ECF No. 21],

The Buckingham is one of the premier senior living facilities in the state of Texas. Located in the Memorial neighborhood and approximately 12 miles from downtown Houston, The Buckingham is a continuing care retirement community (“CCRC”) offering its residents (each, a “Resident” and collectively, the “Residents”) a continuum of care in a campus-style setting on its 800,000 square foot property (the “Community”). The Community sits on 23 acres of expansive and well-manicured land with gardens and courtyards spread between walking trails. The Buckingham employs approximately 419 employees and consists of 495 independent living, assisted living, memory care, and skilled nursing units.

Wyse Declaration, ¶ 5. The Wyse Declaration is incorporated by reference into this Complaint for all purposes.

¹ A true and correct copy of the DIP Order is attached hereto as Exhibit ___, and incorporated into this Complaint for all purposes.

² The statements made in this Section IV.A of this Complaint are based on information contained in pleadings, orders, and documents filed of record in the Debtor’s bankruptcy case, including, without limitation, (i) the Debtor’s stipulations in the DIP Order, (ii) the Wyse Declaration, (iii) the Sale Order, and/or (iv) the Debtor’s Bankruptcy Schedules. The Committee does not have personal knowledge of the information contained in such pleadings, orders, or documents, and the statements made in this Section IV shall not in any way constitute admissions by the Committee.

13. The Debtor operates as a Texas nonprofit corporation and a charitable organization under section 501(c)(3) of the Internal Revenue Code. *Id.* at ¶ 6. The Buckingham was originally established as part of a senior living portfolio owned by Senior Lifestyles Corporation (“SQLC”), a nonprofit organization founded in 2002. *Id.* at ¶ 7.

14. The Facility is comprised of 303 independent living residencies (“Independent Living”), 67 assisted living residencies (“Assisted Living”), 33 secure memory care residencies (“Memory Care”), and 92 skilled nursing rooms (“Skilled Nursing”). *Id.* at ¶ 14.

15. The Facility has historically offered multiple types of residency agreements to its residents, including Life Care Agreements, Fee for Service Agreements, and Rental Agreements. *Id.* at ¶ 16. Residents that enter into either a Life Care Agreement or a Fee for Service Agreement (together, “Entrance Fee Agreements”) are required to pay an entrance fee (the “Entrance Fee”) in order to take occupancy at the Facility, and a monthly service fee (the “Monthly Service Fee”) for the Facility to provide life care services to Residents. *Id.* at ¶ 16(a), (b). According to the Debtor, recent Entrance Fees ranged from \$220,000 – \$1,200,000 under Life Care Agreements, and from \$160,000 – \$1,100,000 under Fee for Service Agreements, exclusive of all other fees required in the Residency Agreements. *Id.* Monthly Service Fees for Residents executing Life Care Agreements range from \$4,300 – \$9,000, and such fees under Fee for Service Agreements fall between \$3,300 – \$7,600. *Id.*

16. The Entrance Fee Agreements, in turn, typically contain material refund obligations with respect to the Entrance Fees, including 90%, 50% (available only to residents executing Life Care Agreements), and 0% refundable Entrance Fee plans. As set forth in the Wyse Declaration, Residents are entitled to their Entrance Fee Refunds upon certain conditions, including when (a) a Resident terminates the Residence Agreement, (b) a Resident passes away (or in the case of two

Entrance Fee Residents living in the same unit, both pass away), or (c) the Debtor terminates the Residency Agreement pursuant to the terms of the agreement. *Id.* at ¶ 21.

17. According to the Debtor, the total Entrance Fee Refund obligations include:
 - (a) Approximately \$38 million in refunds owed to former Residents or their heirs/estates that became payable prior to the 2021 Case (as defined below);
 - (b) Approximately \$34 million in refunds owed to former Residents or their heirs/estates that arose after the effective date of the 2021 Plan; and
 - (c) Approximately \$75 million in refundable Entrance Fee obligations owed to current Residents.

See id. at ¶¶ 37 – 39 and n. 4. Notably, “[b]ecause the (Debtor) has not received sufficient Entrance Fee proceeds to fully fund the refund obligations for several years, all former Residents owed Entrance Fee Refunds since 2021 have been placed in a queue to be paid as funds are available.” *Id.* at ¶ 21, n. 2. **In other words, despite the Debtor’s unequivocal obligation to the contrary, the Debtor has failed to pay any of its matured Entrance Fee Refunds since the 2021 Case.**

B. The Buckingham’s 2021 Chapter 11 Case

18. The instant chapter 11 case is the second bankruptcy filed by the Debtor in the past five years. On June 25, 2021, the Buckingham commenced a chapter 11 case by filing a petition for relief in the Bankruptcy Court for the Southern District of Texas, Case No. 21-32155(MI) (the “2021 Case”).

19. On November 9, 2021, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming the Debtor’s First Amended Plan of Reorganization* [2021 Case ECF No. 493] (the “Confirmation Order”), confirming a chapter 11 plan (the “2021 Plan”) for the Buckingham. *See id.* A copy of the confirmed 2021 Plan and the Restructuring Term Sheet is annexed to the Confirmation Order, attached hereto as Exhibit ___.

i. *Treatment of Secured Bond Claims in 2021 Case*

20. When the Buckingham filed its 2021 case, it was then indebted under certain Series 2007 Bonds, Series 2014 Bonds, and Series 2015 Bonds (the “Secured Bonds”). The Confirmation Order (implementing the terms of the 2021 Plan) provided for the cancellation, discharge and termination of the then-existing Secured Bonds:

In accordance with Section 6.10 of the Plan, upon the Effective Date, except to the extent otherwise specifically provided in the Plan and in exchange for the consideration under the Plan, including, but not limited to the receipt of the 2021 Bonds, all notes, instruments, certificates, and other documents evidencing the Secured Bonds shall be cancelled and the obligations of the Debtor or the Reorganized Debtor thereunder or in any way related thereto shall be discharged and the Trustee shall be automatically and fully discharged from all duties and obligations thereunder. All existing security interests and/or Liens and/or any other Secured Claims related to the Secured Bonds shall also be automatically released, discharged, terminated, and of no further force and effect as of the Effective Date in consideration of the provisions of the Plan, including but not limited to the 2021 Bond Documents.

See Confirmation Order, Section 6.10, pp. 31 – 32.

21. Under the 2021 Plan, “all notes, instruments, certificates, and other documents evidencing the Secured Bonds [were] cancelled and the obligations of the Debtor or the Reorganized Debtor thereunder or in any way related thereto [were] discharged and [UMB Bank, N.A. as bond trustee was] automatically and fully discharged from all duties and obligations thereunder.” *See* Confirmation Order at ¶ 21.

22. All existing security interests and/or liens and/or any other secured claims related to the Secured Bonds were also “automatically released, discharged, terminated, and of no further force and effect as of the Effective Date.” *See id.*

23. Secured Bond Claims were classified in Class 2 of the 2021 Plan and were impaired. *See* 2021 Plan, § 4.02.

24. Secured Bond Claims were fixed in the allowed aggregate principal amount of \$140,340,000. *Id.*

25. Holders of Secured Bond Claims received their pro rata share of new Series 2021B Bonds that were issued by the reorganized Debtor in full and complete settlement, satisfaction, release and discharge of their allowed Secured Bond claims against the Debtor. *Id.*

26. New liens and security interests were granted under the 2021 Bonds, but the Debtor's property vested in the reorganized Debtor "free and clear of all Liens, Claims, charges, or other encumbrances" associated with the old Secured Bonds. Confirmation Order at ¶ 18.

27. As such, the Series 2021B Bonds do not represent a loan to construct, acquire, replace, or improve the Debtor's facility, nor were Series 2021B Bonds a refinancing of an earlier loan used to construct, acquire, replace, or improve the facility. Rather, the earlier loans giving rise to the Secured Bond Claims issued by the prepetition Debtor were cancelled, discharged and terminated, while the Series 2021B Bonds were issued by the reorganized Debtor as a plan distribution to holders of Secured Bond Claims.

ii. Treatment of Current Resident Claims

28. Under the 2021 Plan, claims held by current residents at the Buckingham as of the Effective Date of the 2021 Plan were classified as Class 5 Current Resident Claims. *See* 2021 Plan at § 4.05.

29. Under the 2021 Plan, the Class 5 Current Resident Claims were "unaltered and unaffected" by the 2021 Plan. *Id.*

30. Moreover, "[t]he Current Resident Agreements and all obligations thereunder" were assumed by the Buckingham. *Id.*

31. Claims in Class 5 were therefore treated as “unimpaired,” because, in accordance with section 1124(1) of the Bankruptcy Code and Section 4.05 of the 2021 Plan, the 2021 Plan did not alter the legal, equitable, and contractual rights of the current residents.

32. As a result of this treatment, any statutory lien rights of such current residents were unaffected by the entry of the Confirmation Order and confirmation of the 2021 Plan, and remained in full force and effect thereafter.

C. Prepetition Claims and Liens Asserted by UMB³

33. UMB’s prepetition claims in this chapter 11 case arise from the issuance of the new Series 2021A Bonds and Series 2021B Bonds under the 2021 Plan following the discharge, cancellation and extinguishment of UMB’s previous secured claims administered under the 2021 Plan.

34. The Debtor has stipulated in the DIP Order that UMB holds a prepetition secured claim in the amount of \$168,840,000 plus accrued interest, fees, and expenses, for the benefit of the beneficial holders of the Retirement Facility Revenue Bonds (Buckingham Senior Living Facility, Inc. Project) Series 2021A-1 and Series 2021A-2 (Federally Taxable) (together, the “Series 2021A Bonds”) in the original aggregate principal amount of \$28.5 million and Series 2021B in the original aggregate principal amount of \$140,340,000 (collectively, the “Series 2021 Bonds”). DIP Order, ¶¶ H, I.

³ The statements made in this Section IV.B of this Complaint are based on information contained in pleadings, orders, and documents filed of record in the Debtor’s bankruptcy case, including, without limitation, (i) the Debtor’s stipulations in the DIP Order, (ii) the First Day Declaration, (iii) the Sale Order, and/or (iv) the Debtor’s Bankruptcy Schedules. The Committee does not have personal knowledge of the information contained in such pleadings, orders, or documents, and the statements made in this Section IV.C shall not in any way constitute admissions by the Committee.

35. According to the Restructuring Term Sheet incorporated into the 2021 Plan and approved by the Confirmation Order, “[t]he Series 2021A Bonds shall be issued as current paying bonds in the principal amount of \$28,500,000.” 2021 Plan, p. 128. Of that amount, \$3.450 million was designated for “lobby refurbishment and capital expenditures[.]” *Id.* The remaining amount received by the Reorganized Debtor from the issuance of the Series 2021A bonds was designated for working capital, a debt service reserve, a distribution to the Pre-Effective Date Refund Queue, and costs of issuance. *Id.*

36. The issuance of the Series 2021B Bonds resulted in no additional proceeds provided to the Reorganized Debtor. Instead, “[o]n the Effective Date, the holders of the Existing Bonds shall exchange the then outstanding Existing Bonds for Series 2021B Bonds . . . The principal amount of the Series 2021B Bonds is equal to 100% of the principal amount of the Existing Bonds.” *Id.*

37. The Debtor additionally stipulated that pursuant to the Bond Documents (as defined in the DIP Order), including liens and security interests granted therein, UMB holds valid and perfected first priority liens and security interests in substantially all of the Debtor’s real and personal property as security for the Bonds. *Id.* at ¶ K. A copy of the Bond Documents (ECF No. 459-3 (Plan Supplement Exhibit C) in the 2021 Case) is attached as Exhibit ____.

38. On information and belief, UMB asserts that its prepetition liens attach to and are perfected in all or substantially all of the Debtor’s assets (the “Prepetition Collateral”). Schedule D of the Debtor’s Bankruptcy Schedules (as defined below) reflect four prepetition secured claims held by UMB⁴ totaling \$182,514,629.38 and secured by “substantially all of the Debtors’ (sic) assets” (the “Prepetition Claim”). *See* ECF No. 175, pp. 21 – 23.

⁴ Schedule D identifies “UMB Financial, NA” as the creditor holding the Prepetition Claim, however, the DIP Order reflects UMB Bank, N.A., as Trustee to whom the Debtor is obligated under the Bond Documents (as defined in the

D. The Buckingham's 2025 Chapter 11 Case

39. On November 17, 2025 (the “Petition Date”), the Debtor filed a voluntary petition for relief in this Court under Chapter 11 of the Bankruptcy Code. The Debtors are operating as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code. The U.S. Trustee appointed the Committee on December 3, 2025, under section 1102(a)(1) of the Bankruptcy Code. *See Notice of Appointment of the Official Unsecured Creditors' Committee* [ECF No. 102]. No trustee or examiner has been appointed in the Debtor’s bankruptcy cases.

40. The events leading to the Debtor’s bankruptcy filing are detailed in the Wyse declaration filed by the Debtors on the Petition Date.

41. As noted in the Wyse Declaration, the Buckingham’s funded debt in the instant case stems from the prior 2021 Case. Wyse Declaration at ¶ 31.

42. The funded debts include \$140.3 million in principal amount owed under the Series 2021B Bonds that were issued under the 2021 Plan. *See id.*

43. As noted above, the Buckingham also entered into its second chapter 11 case with significant obligations to current residents as of the effective date of the 2021 Plan and individuals who became residents thereafter (collectively, the “Current Residents”).

44. On December 22, 2025, the Debtor filed its schedules A/B and D-H (the “Bankruptcy Schedules”) [ECF No. 175]. The Bankruptcy Schedules are incorporated by reference into this Complaint for all purposes.

45. On December 29, the Court entered the DIP Order.

DIP Order). DIP Order at pp. 2, 5 – 6.

46. On February 3, 2026, the Court entered its *Order (I) Approving Asset Purchase Agreement Between the Debtor and the Successful Bidder; (II) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, Except for Certain Permitted Liens and Assumed Liabilities; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* (the "Sale Order") [ECF No. 266]. The Sale Order authorized the Debtor to sell substantially all of its assets (the "Sale") to Focus SH Acquisitions LLC (the "Purchaser") under the terms of an Asset Purchase Agreement (the "APA") attached as Exhibit 1 to the Sale Order. The Sale Order and the APA are incorporated by reference into this Complaint for all purposes.

47. Under the Sale Order, the assets were sold to the Purchaser free and clear of liens and claims, with such liens and claims attaching to the proceeds of the sale in the same order of priority, with the same validity, force, and effect that such liens and claims had prior to the closing of the sale. *See id.* at ¶¶ GG, JJ, 8, and 10.

48. The Sale Order further provides that the Net Proceeds (as defined in the Sale Order) from the Sale are not to be distributed until any Challenge (as defined in the DIP Order), including the claims and causes of action asserted in this Complaint, are resolved. Specifically, the Sale Order states:

With the exception of the payment of the DIP Obligations and the payment of the amounts due in accordance with the Allocation Agreement, no other distributions of the Net Proceeds shall be made by the Debtor to the Trustee until (a) the Investigation Period (as defined in the order entered by the Court at Docket No. 180, the "**DIP Order**") expires without a Challenge (as defined in the DIP Order) having been brought at which point the Net Proceeds, less reasonable and necessary winddown costs agreed to by the Debtor, the Committee, and Bond Trustee or otherwise ordered by the Court, will be distributed to the Bond Trustee without further order of the Court), or (b) any Challenge has been resolved by final order of this Court or any other applicable court.

Sale Order, ¶ 22.

49. The sale is currently expected to close on or about _____, 2026.

E. Committee's Standing and Authority to File Suit

50. The DIP Order provides parties in interest, including the Committee but excluding the Debtor, the right file an adversary proceeding or contested matter to (i) challenge the amount, validity, extent, enforceability, perfection or priority of the Bond Claim or the Prepetition Liens in respect thereof or (ii) otherwise assert any claims or causes of action against the Trustee and/or Bondholders on behalf of the Debtor's estate. DIP Order, ¶ 34. The DIP Order further provides:

Nothing in this Final Order shall be deemed to confer standing on the Committee or any other non- Debtor party in interest to commence a Challenge, and the Committee or other non-Debtor party in interest shall be required to move for standing within the Investigation Period, with a draft complaint attached to such motion or other pleading, and satisfy the applicable standard for obtaining standing to pursue estate causes of action; *provided, that* the filing of a standing motion (with draft complaint) shall toll the Investigation Period but only (a) as to the party that timely filed the standing motion (with draft complaint), (b) until such motion is resolved or ruled upon by the Court and (c) with respect to the claims asserted in the draft complaint.

Id.

51. In accordance with the DIP Order, the Committee filed its *Motion for Standing to Challenge Prepetition Claims and Liens* [Dkt. No. ____] on _____, 2026, prior to filing this Complaint, requesting standing to Challenge UMB's Prepetition Claim and the Prepetition Liens and Prepetition Collateral asserted by UMB in respect thereof.

**V. STATUTORY LIENS IN FAVOR OF BUCKINGHAM RESIDENTS
TAKE PRIORITY OVER SERIES 2021B BONDS**

52. Section 246.111 of the Texas Health and Safety Code grants the residents of a CCRC a lien on all real and personal property of the provider to secure the provider's obligations to the resident. Specifically, the statute provides:

Sec. 246.111. LIEN. (a) To secure the obligations of the provider under any continuing care contract, a lien attaches on the date a resident first occupies a facility or receives services under a continuing care contract. The lien covers the real and personal property of the provider located at the facility. The provider shall prepare a written notice sworn to by an officer of the provider for each county where the provider has a facility. The notice must contain the name of the provider, the legal description of each facility of the provider, and a statement that the facility is subject to this chapter and the lien provided by this section. The provider shall file for record the notice in the real property records of each county where the provider has a facility on or before the later of January 1, 1994, or the date of the execution of the first continuing care contract relating to the facility.

(b) The commissioner may remove a lien under this section if requested by a provider to obtain secondary financing or refinancing of a facility if:

- (1) the facility is financially sound; and
- (2) removal of the lien does not adversely affect the residents.

(c) A lien under this section is subordinate to any liens on the property of the facility if the proceeds of the loan secured by the liens were used in whole or in part to:

- (1) construct, acquire, replace, or improve the facility; or
- (2) refinance an earlier loan used to construct, acquire, replace, or improve the facility.

(d) A lien under this section is effective for 10 years.

(e) A lien under this section may be foreclosed on application of the board if the facility is liquidated or the provider is insolvent or bankrupt. The proceeds from a foreclosed lien shall be used for full or partial satisfaction of the provider's obligations under continuing care contracts in effect on the date of the foreclosure.

53. As detailed above, Class 5 "Allowed Current Resident Claims"⁵ under the 2021 Plan are unimpaired. 2021 Plan, Section 4.05; *see also, id.* (Introduction) ("Current Resident Claims shall be paid in the ordinary course of business as they become due as provided under the applicable Residence Agreement and shall otherwise be unimpaired."). Because such claims are "unaltered and unaffected by the Plan" and the Current Residence Agreements were assumed by the Debtor under the 2021 Plan, the statutory liens held by residents living at the Buckingham continue to secure the Debtor's obligations to those residents, including any Entrance Fee Refunds that may become payable to such residents. And residents who took occupancy of the Facility after

⁵ The 2021 Plan defines "Current Resident Claims" as "Refund Claims of Current Residents that become due and owing after the Effective Date pursuant to an Assumed Residence Agreement."

the Effective Date of the 2021 Plan were granted a lien under Section 246.111 of the Texas Health and Safety Code immediately upon the date of such occupancy. Taken together, any resident living at the Buckingham under an Entrance Fee Agreement upon the Effective Date of the 2021 Plan and any resident occupying a unit at the Buckingham under an Entrance Fee Agreement entered into since then are afforded the benefit of the statutory lien above. And the proceeds of the lien must be used for full or partial satisfaction of the provider's obligations under continuing care contracts in effect as of the date of the foreclosure. Finally, the lien in favor of all such residents is effective for 10 years after the date the residents first occupied living space at the Buckingham.

54. The Committee recognizes and acknowledges that Section 246.111(c) above provides that a lien under Section 246.111(a) of the statute is subordinate to any liens on the property of the facility if the proceeds of the loan secured by the liens were used in whole or in part to (i) construct, acquire, replace, or improve the facility; or (ii) refinance an earlier loan used to construct, acquire, replace, or improve the facility. UMB also recognized this, and plainly attempted to use artful drafting to describe the Series 2021B Bonds issued in satisfaction of UMB's Secured Bond Claims under the 2021 Plan as "refinancing" of such debt, rather than an exchange of bonds that resulted in the discharge of UMB's Secured Bond Claims. By way of example, in the Indenture of Trust ("Indenture") included as part of the 2021 Bond Documents, the second recital reflects that the bonds are being sold and delivered "for the purpose of financing or refinancing the cost of a health facility, as defined in Chapter 221, Texas Health and Safety Code." *See* 2021 Bond Documents, p. 1. Likewise, the Indenture defines the Series 2021B Bonds as the "New Hope Cultural Education Facilities Finance Corporation Retirement Facility Revenue Bonds (Buckingham Senior Living Community, Inc. Project) Series 2021B" and provides that that they are being issued "for the purpose of refinancing the Existing Bonds." *Id.* at p. 17. The Bond

Documents are in fact replete with references to the Series 2021B Bonds as “refinancing” of the Existing Bonds.

55. But artful drafting cannot overcome the reality that the Secured Bonds were discharged, extinguished, and cancelled during the first chapter 11 case and the assets of the Debtor vested in the reorganized Debtor free and clear of that old debt under the 2021 Plan. In satisfaction of the bondholder’s secured claims, the reorganized Debtor issued new secured debt, but this was a new debt instrument issued by a new legal entity (the reorganized Debtor). Because the Series B Bonds do not fall within the statutory parameters of a loan entitled to seniority, the residents’ statutory liens are not subordinated to them. Indeed, the issuance of the Series 2021B Bonds did not provide any new money in conjunction with the Series 2021B Bonds to be used for construction projects or for refinancing of existing debt used for such projects. The Restructuring Term Sheet approved by the Court in the Confirmation Order makes this clear, as described in paragraph 20, *infra*. There were no additional funds to “refinance” the Series 2021B Bonds; indeed, given the discharge provisions of the 2021 Plan, there was nothing to refinance. Put simply, a new legal entity issued new bonds to UMB in satisfaction of claims asserted for existing bonds that were cancelled, discharged, and extinguished. Under the facts of the 2021 chapter 11 case, there is no basis for treating residents’ statutory liens as subordinated to the Series B Bonds.

VI. CAUSES OF ACTION

Count I – Declaratory Judgment as to the Validity, Priority and Extent of Liens

56. The Committee incorporates by reference the allegations in each of the foregoing and ensuing paragraphs with the same force and effect as if fully set forth herein.

57. This is a claim for declaratory relief under 28 U.S.C. §§ 2201 and 2202 and Bankruptcy Rules 7001(2) and (9).

58. An actual, justiciable controversy has arisen and exists between the Current Residents and UMB, in its capacity as bond trustee for the Series 2021B Bonds, regarding whether the Current Residents' statutory liens have priority over the Series 2021B Bonds or whether such statutory liens are subordinated under section 246.111(c) of the Texas Health and Safety Code.

59. An actual, justiciable controversy has arisen and exists between the Current Residents and UMB, in its capacity as bond trustee for the Series 2021B Bonds, regarding whether the Current Residents' statutory liens must be paid in cash and in full from Net Proceeds (as defined in the Sale Order) before the Series 2021B Bonds may receive any recovery from the Debtor's estate.

60. Based on the foregoing, Plaintiff respectfully requests that the Bankruptcy Court determine and declare that:

- (a) The statutory liens held by Current Residents are not subordinated to the Series 2021B Bonds under section 246.111(c) of the Texas Health and Safety Code; and
- (b) The claims of the Current Residents against the Debtor must be paid in full in cash from Net Proceeds of the Sale before the Series 2021B Bonds are entitled to any recovery from the Debtor's estate.

Count II – Request for Attorneys' Fees, Expenses, and Costs of Court

61. The Committee incorporates by reference the allegations in each of the foregoing and ensuing paragraphs with the same force and effect as if fully set forth herein.

62. The Committee requests that it be awarded all attorneys' fees, expenses, and costs of court incurred in connection with this adversary proceeding to the fullest extent allowable by law.

63. Necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. 28 U.S.C. § 2202. Such further relief can include an award of attorneys' fees. Accordingly, Plaintiff also seeks the recovery of its attorneys' fees and costs pursuant to 28 U.S.C. § 2202.

VII. RESERVATION

64. The Committee reserves (i) the right to supplement or amend its claims and causes of action against UMB for any reason, (ii) the right to introduce additional facts or arguments supporting its claims and causes of action against UMB, whether raised in this Complaint or in any supplements or amendments hereto, and (iii) all of its other rights, claims, and defenses under applicable law and/or any Orders entered by the Court in the Debtors' bankruptcy cases. Nothing contained in or omitted from this Complaint shall be deemed or construed as a waiver of any of the Committee's rights or any of the Committee's or the estate's claims or causes of action against UMB.

VIII. PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiff respectfully prays that upon final hearing, Plaintiff recover judgment against UMB as follows:

- (a) Determining the extent, validity, perfection, enforceability, and priority of UMB's asserted Prepetition Liens with respect to the Net Proceeds, pursuant to Bankruptcy Rule 7001(b);
- (b) Declaring that UMB's asserted Prepetition Secured Claims are subordinate to statutory liens provided for in Section 246.111 of the Texas Health and Safety Code, pursuant to Bankruptcy Rule 7001(9) and the Declaratory Judgment Act;
- (c) Awarding the Committee all attorneys' fees, expenses, and costs of court incurred in connection with this proceeding; and
- (d) Granting the Committee such other and further relief to which it is justly entitled.

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

By: /s/ DRAFT

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