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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	Case No. 25-80595 (MVL)
BUCKINGHAM SENIOR LIVING	§	
COMMUNITY, INC.	§	Chapter 11
Debtor	§	

LEE ADCOCK HUNNELL, THOMAS	§	
WILLETT, MANUEL ARIEL	§	
PAYAN, STEVEN DYER,	§	
THOMAS C. RYAN AND	§	
OTHER SIMILARLY	§	
SITUATED FORMER	§	
AND CURRENT RESIDENTS	§	
OF THE BUCKINGHAM	§	ADVERSARY NO. _____
SENIOR LIVING	§	
COMMUNITY, INC.	§	
Plaintiffs	§	
	§	
vs.	§	
	§	
UMB BANK, N.A.	§	
Defendant	§	

LEE ADCOCK HUNNELL, THOMAS A. WILLETT, MANUEL ARIEL PAYAN, STEVEN DYER FOR THEMSELVES AND OTHER SIMILARLY SITUATED CURRENT AND FORMER RESIDENTS OF THE BUCKINGHAMM SENIOR LIVING COMMUNITY, INC.
ORIGINAL COMPLAINT TO DETERMINE EXTENT, PRIORITY, AND VALIDITY OF LIENS OF UMB BANK, N.A.

NOTICE: To the knowledge of the Plaintiffs, most of the current and former Residents were not provided notice of the deadline to object to the DIP Order. As a result the Plaintiffs seek to include in this Adversary Proceeding the rights of all individuals who did not receive notice of the DIP Order deadline, which include current and former residents of the Buckingham, the Debtor.

Lee Adcock Hunnell ("Hunnell"), Thomas A. Willett ("Willett") as trustee of the Prillman Living Trust for Eleanor W. Prillman (deceased), Manuel Ariel Payan ("Payan") as co-executor for the estate of Margaret Payan, Steven Dyer ("Dyer") for the estate of Robert Dyer, and Thomas C. Ryan ("Ryan") for themselves and other similarly situated former and current residents of Buckingham Senior Living Community, Inc. ("Buckingham")(Hunnell, Willett, Payan, Dyer, Ryan and other similarly situated former and current residents collectively, the "Plaintiffs") in the above-captioned chapter 11 case of Buckingham Senior Living Community, Inc. ("Buckingham" or the "Debtor") file this *Original Complaint to Determine Extent, Priority, and Validity of Liens of UMB Bank, N.A.* (the "Complaint"), and hereby allege 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 Plaintiffs bring this Adversary Proceeding to protect the interests of Plaintiffs and other similarly situated current and former 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 to reimburse

hundreds of thousands of dollars in entrance fee refund obligations to the Plaintiffs and many other residents under the residency contracts described below. The entrance fees at issue represent a significant portion of the savings of the Plaintiffs and others similarly situated, a fact readily acknowledged by the Debtor.

2. A DIP Order (as more fully described and identified below) was entered in this case in December of 2025 and set a date for any objections to the liens of Defendant UMB Bank, N.A. ("UMB" or "Bank" or "Defendant") in its capacity as the "Trustee" under the DIP Order. For reasons unknown, no notice of the deadline in the DIP Order was provided to the current and former residents. As a result, most of the current and former residents are not aware of a critical deadline in this case that may have a significant and adverse effect on the money owed to the current and former residents as more fully explained below.

3. The Plaintiffs bring this action against UMB 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).

4. By this Complaint, the Plaintiffs for themselves and for other similarly situated current and former residents of the Buckingham facility seek 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 current and former residents provided by section 246.111 of the Texas Health Safety Code.

II. JURISDICTION AND VENUE

5. 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).

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

7. The Plaintiffs have filed their *Motion to Determine Standing or, Alternatively, for Order Granting Standing to Pursue Claims and Motion for Additional Time* 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.

8. The Plaintiffs consent to the Court's entry of a final order or judgment in this proceeding.

III. PARTIES

9. 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").

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. 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.

11. The Plaintiffs, Hunnell, Willett, Payan, Dyer, and Ryan are either residents of the Buckingham Senior Living Community, Inc. or represent former residents of the Buckingham. Each of them may be served at their addresses for the unsecured creditors committee.

IV. STATEMENT OF FACTS

A. The Debtor's History and Operations

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.

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").

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.

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). The Plaintiffs paid Entrance Fees as follows: Ryan $1,187,500; Hunnell $490,000; Payan $1,140,000; Willett $338,322; and Dyer $775,105. Just for 5 members of the Committee, the Entrance Fees were approximately $3,930,937. According to the Debtor, recent Entrance Fees for Residents 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*.

17. The Entrance Fee Agreements for other residents, 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, the Plaintiffs and other 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.

18. 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;

(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, on information and belief, the Debtor has failed to pay *any* of its matured Entrance Fee Refunds since the 2021 Case; and

(d) Approximately $3,930,937 in refundable Entrance Fee obligations owed to the Plaintiffs.

B. The Buckingham's 2021 Chapter 11 Case and thereafter

19. 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").

20. 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.

i. Treatment of Secured Bond Claims in 2021 Case.

21. 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.

22. 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.

23. 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.*

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

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

26. 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.*

27. 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.

28. 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

29. 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.

30. Under the 2021 Plan, the Class 5 Current Resident Claims were "unaltered and unaffected" by the 2021 Plan. *Id.* In other words, the Resident Claims continued to have the statutory lien rights.

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

32. 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.

33. 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.

34. Further, statements were made to residents and potential residents that the terms of the leases, the prices, and other matters could not be changed unless the Bond Holders approved any changes. As such, on information and belief, the Bond Holders may have been directing material actions that may have caused the collapse of the Buckingham, and may have culpability in the downfall of the Buckingham.

35. For sales made after the 2021 Bankruptcy, the sales representative for the Buckingham on at least one occasion (possibly many more) represented that the Entrance Fees of the residents were to be paid before any amounts were paid to any lender. Whether those statements were authorized or not, the Plaintiffs do not yet know. Now the lender wants to claim that it gets paid its amounts before any Entrance Fees are paid to the residents. If the residents were told they would be paid after funds to the lenders, would the residents have agreed to pay the Entrance Fees after the first bankruptcy?

36. Following the confirmation of the 2021 Plan, the Debtor operated at a loss and continued to operate at a loss. Fundamentally, the Debtor was undercapitalized from the outset following confirmation, and the Bank upon information and belief was aware, or should have been aware, that the Debtor lacked adequate cash flow and capital.

37. The Debtor defaulted in payment of interest to the Series 2021 Bonds. The Bank began a course of exercising control over the Debtor's finances, expenditures and business decisions, implemented through a series of forbearance agreements (the "Forbearance Agreements"). Pursuant to the Forbearance Agreements, among other things:

a. The Debtors were required to reduce Entrance Fees in an attempt to spur sales;

b. The Debtors were placed on essentially a cash collateral budget, limiting expenditures and requiring Bank consent;

c. Entrance Fees were required to be placed in an escrow account for 12 months (which provision was renewed throughout the Forbearance Agreements);

and

d. Set unrealistic milestones of a sale of the Debtor's property.

38. Fundamentally, the Bank embarked on a course of conduct which placed it in control of the Debtor's operations and finances, while limiting access to both reserve funds and the ability to fund operations (and repayments to Current Residents) from cash flow. The actions required by the Bank were self-defeating and worsened the Debtor's precarious financial position. Fundamentally, the Bank both agreed to and caused this bankruptcy filing, resulting in a substantial loss of the Current Residents' ability to recover the amounts due to them and payment of other creditor claims. These actions were not a reasonable exercise of the Bank's rights under its agreements with the Debtor and, when taken as a whole, an overreaching exercise in Debtor control.

C. Prepetition Claims and Liens Asserted by UMB

39. 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.

40. 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.

41. The stipulations of the Debtor in the DIP Order, however, are not binding or enforceable against the Current and former Residents.

42. 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 Plaintiffs do not have personal knowledge of some 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 Plaintiffs.

43. 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.*

44. 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*.

45. 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 is located at ECF No. 459-3 (Plan Supplement Exhibit C) in the 2021 Case.

46. 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 UMB 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. 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.

D. The Buckingham's 2025 Chapter 11 Case

47. 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. No trustee or examiner has been appointed in the Debtor's bankruptcy cases.

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

49. 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.

50. 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.*

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

52. 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.

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

54. 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.

55. 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.

56. 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.

57. The sale is currently expected to close in the near future.

E. Authority to File Suit

58. The DIP Order provides parties in interest, including the Plaintiffs 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*.

59. In accordance with the DIP Order, the Plaintiffs for themselves **and all other Residents similarly situated** (who for reasons unknown to the Plaintiffs had no notice of the DIP Order deadlines) filed its *Motion for Standing to Challenge Prepetition Claims and Liens*, 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. **To the knowledge of the Plaintiffs, most of the current and former Residents were not provided notice of the deadline to object to the DIP Order. As a result the Plaintiffs seek to include in this Adversary Proceeding the rights of all individuals who did not receive notice of the DIP Order deadline.**

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

60. 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.

61. As detailed above, the Plaintiffs as members of Class 5 "Allowed Current Resident Claims" 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 the Plaintiffs and other residents living at the Buckingham continue to secure the Debtor's obligations to the Plaintiffs

and those residents and former residents, including any Entrance Fee Refunds that may become payable to the Plaintiffs and such residents. Any residents who took occupancy of the Facility after 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, the Plaintiffs and any other residents 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. 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 the Plaintiffs and all other residents is effective for 10 years after the date the residents first occupied living space at the Buckingham.

62. The Plaintiffs recognize 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.

63. 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

the statutory liens of the Plaintiffs and other Residents as subordinated to the Series B Bonds.

VI. CAUSES OF ACTION

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

64. The Plaintiffs for themselves and other similarly situated Residents and former residents incorporate by reference the allegations in each of the foregoing and following paragraphs with the same force and effect as if fully set forth herein.

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

66. An actual, justiciable controversy has arisen and exists between the Plaintiffs and other current and former Residents and UMB, in its capacity as bond trustee for the Series 2021B Bonds, regarding whether the Plaintiffs and other current and former 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.

67. An actual, justiciable controversy has arisen and exists between the Plaintiffs and other current and former Residents and UMB, in its capacity as bond trustee for the Series 2021B Bonds, regarding whether the current and former 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.

68. Based on the foregoing, the Plaintiffs for themselves and other similarly situated Residents and former residents respectfully request that the Bankruptcy Court determine and declare that:

(a) The statutory liens held by the Plaintiffs and other similarly situated Residents or former 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 Plaintiffs and other similarly situated Residents or former 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 – Equitable Subordination

69. The Plaintiffs for themselves and other similarly situated Residents and former residents incorporate by reference the allegations in each of the foregoing and following paragraphs with the same force and effect as if fully set forth herein.

70. Equitable subordination is allowed where (1) the defendant engaged in inequitable conduct; (2) the conduct resulted in harm to the creditors or conferred an unfair advantage to the defendant; and (3) subordination is not inconsistent with the Bankruptcy Code. *Wooley v. Faulkner (In re SI Restructuring, Inc.),* 532 F.3d 355, 360 (5th Cir. 2008). Control by a third party to the detriment of other creditors can give rise to equitable subordination. *In re Cajun Elec. Coop., Inc*., 119 F.3d 349, 357. This can include actions by a lender that amount to improper control of a debtor's finances or other actions that harm a debtor. *See In re Lois/USA, Inc.,* 264 B.R. 68, 136 (Bankr. S.D.N.Y. 2001)(lender's exercise of control over a debtor's operations can form the basis for equitable subordination). Fraud is not required to support equitable subordination, and instead only requires inequitable conduct that results in harm to the debtor or other creditors. *Capitol Bank & Trust Co. v. 604 Columbus Avenue Realty Trust (In re 604 Columbus Avenue Realty Trust),* 968 F.2d 1332, (1st Cir. 1992)(relying

upon the Fifth Circuit's test articulated in *In re Mobile Steel Co*., 563 F.2d 692 (5th Cir. 1977); *Faulkner v. AimBank (In re Reagor-Dykes Motors, LP)*, No. 20-05039, 2021 WL 1219537 at *10-11 (Bankr. N.D. Tex. March 30, 2021).

71. The Bank's liens should be subordinated to the claims of Current Residents and other unsecured creditors pursuant to 11 U.S.C. Sec. 510(c) for inequitable conduct including, but not limited to, the conduct described herein.

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

72. The Plaintiffs for themselves and other similarly situated Residents and former residents incorporate by reference the allegations in each of the foregoing and following paragraphs with the same force and effect as if fully set forth herein.

73. The Plaintiffs for themselves and other similarly situated Residents and former residents request that they be awarded all attorneys' fees, expenses, and costs of court incurred in connection with this adversary proceeding to the fullest extend allowable by law.

74. 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, the Plaintiffs for themselves and other similarly situated Residents and former residents also seek the recovery of its attorneys' fees and costs pursuant to 28 U.S.C. § 2202.

VII. Copy of Complaint

75. As required a copy of the complaint that the Plaintiffs seek to file is attached as an exhibit to this motion.

VIII. RESERVATION

76. The Plaintiffs for themselves and other similarly situated Residents and former residents reserve (i) the right to supplement or amend their claims and causes of action against UMB for any reason, (ii) the right to introduce additional facts or arguments supporting their claims and causes of action against UMB, whether raised in this Complaint or in any supplements or amendments hereto, and (iii) all of their 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 Plaintiffs and other similarly situated Residents and former residents rights or any of the estate's claims or causes of action against UMB.

IX. PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, the Plaintiffs for themselves and other similarly situated Residents and former residents respectfully requests that upon final hearing, that the Plaintiffs for themselves and other similarly situated Residents and former residents 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 of the Plaintiffs and other similarly situated Residents and former residents as provided 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 Plaintiffs and other similarly situated Residents and former residents all attorneys' fees, expenses, and costs of court incurred in connection with this proceeding; and

(d) Granting the Plaintiffs and other similarly situated Residents and former residents such other and further relief to which it is justly entitled.

Respectfully submitted,

By: *<u>/s/ Reese W. Baker</u>*
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