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ATTORNEYS FOR
214 E HALLANDALE BEACH LLC

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

IN RE:	§	CASE NO. 25-80121-11 (MLV)
	§	
HIGHER GROUND EDUCATION, INC., et al,¹	§	Chapter 11
	§	
DEBTORS.	§	(Jointly Administered)

**214 E HALLANDALE BEACH LLC'S OBJECTION TO THE DEBTORS' MOTION
FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING ASSUMPTION
OF THE RESTRUCTURING SUPPORT AGREEMENT, AND (II) GRANTING
RELATED RELIEF**

¹ The "Debtors" in these Chapter 11 Cases, along with the last four digits of each Debtor's federal identification number, are: Higher Ground Education, Inc. (7265); Guidepost A LLC (8540); Prepared Montessorian LLC (6181); Terra Firma Services LLC (6999); Guidepost Birmingham LLC (2397); Guidepost Bradley Hills LLC (2058); Guidepost Branchburg LLC (0494); Guidepost Carmel LLC (4060); Guidepost FIC B LLC (8609); Guidepost FIC C LLC (1518); Guidepost Goodyear LLC (1363); Guidepost Las Colinas LLC (9767); Guidepost Leawood LLC (3453); Guidepost Muirfield Village LLC (1889); Guidepost Richardson LLC (7111); Guidepost South Riding LLC (2403); Guidepost St. Robert LLC (5136); Guidepost The Woodlands LLC (6101); Guidepost Walled Lake LLC (9118); HGE FIC D LLC (6499); HGE FIC E LLC (0056); HGE FIC F LLC (8861); HGE FIC G LLC (5500); HGE FIC H LLC (8817); HGE FIC I LLC (1138); HGE FIC K LLC (8558); HGE FIC L LLC (2052); HGE FIC M LLC (8912); HGE FIC N LLC (6774); HGE FIC O LLC (4678); HGE FIC P LLC (1477); HGE FIC Q LLC (3122); HGE FIC R LLC (9661); LePort Emeryville LLC (7324); and AltSchool II LLC (0403). The Debtors' mailing address is 1321 Upland Dr. PMB 20442, Houston, Texas 77043.



**TO: THE HONORABLE MICHELLE V. LARSON,
UNITED STATES BANKRUPTCY JUDGE:**

214 E Hallandale Beach LLC (the "Landlord"), a creditor in the above-captioned, jointly administered bankruptcy cases (the "Bankruptcy Cases") of the Debtors, hereby files this *Objection* (the "Objection")² to the *Debtors' Motion for Entry of an Order (I) Authorizing and Approving Assumption of the Restructuring Support Agreement, and (II) Granting Related Relief* [Docket No. 93] (the "Motion")³ seeking to approve the Restructuring Support Agreement ("RSA") attached thereto and filed by the Debtors, and respectfully states as follows:

I. CASE BACKGROUND

1. On June 17, 2025 and June 18, 2025 (the "Petition Date"), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), thereby initiating the Bankruptcy Cases.

2. On June 26, 2025, the Debtors filed the *Joint Plan of Reorganization of Higher Ground Education, Inc. and its Affiliated Debtors* [Docket No. 94] (the "Plan").

3. On June 27, 2025, the Debtors filed the *Disclosure Statement* [Docket No. 97] (the "Disclosure Statement") for the Plan and the *Debtors' Motion for Entry of an Order (I) Conditionally Approving the Disclosure Statement; (II) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (III) Establishing a Plan and Disclosure*

² The Debtors agreed that the objection deadline for the Landlord is extended until August 26, 2025.

³ All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion, as applicable.

Statement Objection Deadline and Related Procedures; (IV) Approving the Solicitation and Notice Procedures; and (V) Granting Related Relief[Docket No. 98] ("Conditional Approval Motion").⁴

4. On July 8, 2025, the Official Committee of Unsecured Creditors of the Debtors (the "Committee") was appointed. See Docket No. 158. The Landlord is one of five members of the Committee. See Docket No. 158.

II. THE LANDLORD'S CLAIM

5. Prior to the Petition Date, HGE FIC I LLC (the "Tenant"), one of the Debtors, and Fortis I, LLC (the "Prior Landlord"),⁵ predecessor-in-interest to the Landlord, were parties to a certain Commercial Lease Agreement, dated March 28, 2022, as amended by that certain First Amendment to Lease Agreement by and between the Prior Landlord, predecessor-in-interest to the Landlord, and the Debtor, dated January 26, 2023, as amended by that certain Second Amendment to Lease Agreement by and between the Prior Landlord, predecessor-in-interest to the Landlord, and the Debtor, dated March 9, 2023, as amended by that certain Third Amendment to Lease Agreement by and between the Prior Landlord, predecessor-in-interest to the Landlord, and the Debtor, dated April 3, 2023 (as may or has been amended, supplemented, or modified from time to time, the "Lease"), under which the Tenant agreed to lease certain space to operate a school located at 214 E. Hallandale Beach Blvd., Hallandale Beach, Florida (the "Leased Premises").

6. In connection with the Lease, Higher Ground Education, Inc. (the "Guarantor"), one of the Debtors, executed that certain Guaranty in favor of the Prior Landlord, predecessor-in-interest to the Landlord, dated March 21, 2022 (the "Guaranty").

⁴ All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Conditional Approval Motion or the Disclosure Statement, as applicable.

⁵ Pursuant to that certain Assignment and Assumption of Leases by and between the Landlord and the Prior Landlord, dated March 1, 2023 (the "Assignment"), the Landlord is the successor-in-interest to the Prior Landlord. A copy of the Assignment is attached to the Complaint (as hereinafter defined) as **Exhibit "B"**.

7. On November 25, 2024, the Landlord filed its Complaint (the "Complaint") seeking to collect all amounts due and owing under the Lease and the Guaranty pursuant to the matter styled: *214 E Hallandale Beach LLC vs. HGE FIC I LLC and Higher Ground Education Inc.*, in the 17th Judicial Circuit in and for Broward County, Florida under Case No. CACE-24-01694 (the "State Court").

8. As described by the Complaint, prior to the Petition Date, the Guarantor and the Tenant were in default under the Lease and the Guaranty.

9. As described by the Complaint, on October 28, 2024, the Landlord obtained a final judgment against the Debtor, which removed the Debtor from the Leased Premises and awarded the Landlord possession of the Leased Premises, but **without terminating the Lease itself**.

10. As of the Petition Date, as further described by the Complaint and pursuant to the Lease and Guaranty, the Tenant and the Guarantor are indebted to the Landlord in the amount of at least **\$31,072,411.99** less all applicable credits, plus all other fees, interest, costs, and expenses incurred and that continue to accrue with respect to the Lease and/or the Guaranty, including, but not limited to, attorneys' fees⁶ and costs, in addition to the Landlord's future attorneys' fees and costs in an as-yet-to-be-determined amount, to the extent permitted by the Bankruptcy Code and applicable law (collectively, the "Pre-Petition Claim"). The Pre-Petition Claim consists of the damages asserted in the Complaint, including, but not limited to: (i) damages related to the Tenant Improvement Allowance (as defined by the Lease) in the amount of at least \$3,600,000.00 and a breach of the Lease related to the same; (ii) damages related to the Start-Up Allowance (as defined by the Lease) in the amount of at least \$1,570,000.00 and a breach of the Lease related to the same;

⁶ See Lease, ¶ 27.03.

(iii) at least \$1,880,289.17 in other damages; and (iv) Rent (as defined by the Lease) due and owing under the Lease and the Guaranty.

11. The Landlord filed its proofs of claim against the Tenant and the Guarantor related to the Pre-Petition Claim. *See* Claim Nos. 8 and 9.

12. The Debtors filed the *Second Notice of Rejection of Certain Executory Contracts and Unexpired Leases* seeking to reject the Lease. *See* Docket No. 388.

III. OBJECTION

13. Given the current status of mediation with the Committee and other parties-in-interest, it is not clear to the Landlord if the filed version of the RSA remains applicable.⁷ This is particularly concerning because certain of the Milestones have passed. To the extent the Debtors intend to go forward with the Motion, the Landlord objects to the assumption of the RSA because it does not meet the "inherent fairness standard" in connection with the assumption of an insider executory contract and attempts to dictate plan terms. Therefore, the Motion should be denied.

14. The Debtors acknowledge that the assumption of the RSA is subject to the requirements of Section 365(a) of the Bankruptcy Code, including the business judgment standard. In order to meet the "business judgment standard," the Debtors must demonstrate that the assumption of the RSA will benefit the estates. *See In re TM Vill., Ltd.*, 598 B.R. 851, 859 (Bankr. N.D. Tex. 2019) ("To satisfy the business judgment test, the debtor must show that the proposed course of action will be advantageous to the estate and the decision is based on sound business judgment"). Unless the Debtors can demonstrate some meaningful benefit to their estates from the assumption of the RSA, the Motion should be denied.

⁷ Previously, the Court approved the Plan Sponsor Protections contained in the RSA Motion. *See* Docket No. 273.

15. In addition to the business judgment standard, the RSA Motion must meet the heightened scrutiny standard. The RSA should be subject to heightened scrutiny because certain of the parties to the RSA are insiders (as defined by the Bankruptcy Code) or affiliates (as defined by the Bankruptcy Code).⁸ See *In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020) ("[C]ourts apply a 'heightened scrutiny' test in assessing the *bona fides* of a transaction among a debtor and an insider of the debtor. . . . [A]n insider's dealings with the debtor are subject to rigorous scrutiny by the court, with the insider bearing the burden of showing the 'entire fairness' of the transaction at issue."); see also *Multiple Energy Techs., LLC v. Hologenix, LLC (In re Hologenix, LLC)*, No. CV 22-7510-FMO, 2024 U.S. Dist. LEXIS 59741, at *12-15 (C.D. Cal. Mar. 29, 2024) (concluding that a bankruptcy court should have applied the "inherent fairness standard" in connection with the assumption of an insider executory contract and citing *Pepper v. Litton*, 308 U.S. 295, 306-07 (1939)). The Debtors have not asserted in the Motion that the RSA meets the heightened standard. The inherent standard is of particular importance here because there have been questions raised about the Debtors' pre-petition business dealings with certain of the parties to the RSA and the Debtors' likely misuse of funds received the Landlord, in violation of the Lease. Absent evidence that the RSA Motion meets the "entire fairness" standard, the Motion should be denied.

16. Additionally, the RSA seeks to bind the Debtors to certain plan terms in contravention of Fifth Circuit authority. In *Braniff*, the Fifth Circuit stated, "the debtor and the Bankruptcy Court should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa*." See *Pension*

⁸ The Debtors' interim President, Jon McCarthy, is a board member and the founder/managing partner of Venn Capital. Venn Growth GP Limited, LLC is a party to the RSA. Jon McCarthy is the signatory for the Debtors on the RSA. Nearly all of the other parties to the RSA had representatives of their companies on the Debtors' pre-petition board.

Benefit Guar. Corp. v. Braniff Airways, Inc. (In re Braniff Airways, Inc.), 700 F.2d 935, 940 (5th Cir. 1983). Here, the RSA requires the Debtors to take certain action, particularly with respect to releases and limitations and Alternative Transactions. The "fiduciary out" contained in Section 10 of the RSA with respect to an Alternative Transaction is not sufficient to allow the Debtors to exercise their business judgment. Essentially, the "fiduciary out" does not permit a marketing process, but rather, the Debtors may respond to an Alternative Transaction so long as they provide the discussions to certain of the Consenting Parties. This effectively negates any ability for the Debtors to solicit Alternative Transactions and impermissibly seeks to dictate the provisions of a plan.

17. As the Motion does not meet the heightened standard of a related party transaction and impermissibly seeks to dictate plan terms, the Motion should be denied.

IV. JOINDER AND RESERVATION OF RIGHTS

18. To the extent not inconsistent with the foregoing, the Landlord joins all other objections to the Motion, including those filed at Docket Nos. 309 and 391.

19. The Landlord reserves all rights with respect to the Disclosure Statement, the Plan (as may be modified or amended), and all other pending pleadings in these Bankruptcy Cases, and as against the Debtors. The Landlord also reserves the right to amend or supplement this Objection at any time prior to any hearing on the Motion, and to assert further arguments as the evidence may allow.

20. The Landlord also reserves the right to object to the Plan or vote against the Plan. The Landlord reserves all rights to decline to participate in any third-party release provided by the Plan.

V. PRAYER

The Landlord respectfully requests that this Court (i) sustain this Objection; (ii) deny the Motion; and (iii) grant the Landlord such other and further relief as is appropriate and just under the circumstances.

DATED: August 26, 2025

Respectfully submitted,

By: /s/ Annmarie Chiarello

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**ATTORNEYS FOR 214 E HALLANDALE
BEACH LLC**

CERTIFICATE OF SERVICE

The undersigned certifies that on August 26, 2025, a true and correct copy of the foregoing will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

/s/ Annmarie Chiarello

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