

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

**In re:**

**SC HEALTHCARE HOLDING, LLC *et al.*,**

**Debtors.<sup>1</sup>**

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. Docket Nos. 264, 341, 569 & 614

**DEBTORS' MOTION FOR ENTRY OF AN ORDER GRANTING  
THE DEBTORS LEAVE AND PERMISSION TO FILE DEBTORS'  
OMNIBUS REPLY TO OBJECTIONS TO SALE TRANSACTIONS**

The above-captioned debtors and debtors in possession (each, a “Debtor” and, collectively, the “Debtors”) hereby submit this motion (this “Motion”), under Rule 9006-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for the entry of an order (the “Proposed Order”), substantially in the form attached hereto as **Exhibit A**, granting the Debtors leave and permission to file a reply (the “Reply”),<sup>2</sup> attached hereto as **Exhibit B**, in response to the Objections (defined below). In support of this Motion, the Debtors respectfully state as follows:

**JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated

<sup>1</sup> The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/Petersen>.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Reply.



February 29, 2012. The Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court with respect to this Motion to the extent that it is determined that the Court, absent consent of the parties, cannot enter final orders of judgments in connection herewith consistent with Article III of the United States Constitution.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The legal predicate for the relief requested herein is Local Rule 9006-1(d).

### **BACKGROUND**

4. On March 20, 2024 (the “Petition Date”), the Debtors each commenced with the Court a voluntary case under chapter 11 of title 11 of the United States Code, §§ 101–1532 (the “Bankruptcy Code”). The Debtors, with the exception of some inactive entities, are authorized to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On or about April 9, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors [Docket No. 131] (the “Committee”). On April 16, 2024, the U.S. Trustee appointed a patient care ombudsman. No trustee or examiner has been appointed in these chapter 11 cases.

6. On May 1, 2024, the Debtors filed the *Debtors’ Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Authorizing the Debtors to Enter*

*Into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 264] (the "Bidding Procedures Motion").

7. On May 21, 2024, the Court entered an order [Docket No. 341] (the "Bidding Procedures Order")<sup>3</sup> approving the Bidding Procedures Motion.

8. On June 18, 2024, the Debtors filed the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale* [Docket No. 535] (the "Cure Notice").

9. On June 26, 2024, the Debtors filed the *Notice of Stalking Horse Bidder and Proposed Bid Protections* [Docket No. 565], thereby designating Petersen Acquisitions, LLC as the Stalking Horse Bidder for substantially all of the Assets, and a proposed form of order [Docket No. 569] for approval of the Sale(s).

10. On July 2 and July 3, 2024, an Auction for the Assets was held in accordance with the Bidding Procedures Order. Following the Auction, on July 3, 2024, the Debtors filed the *Amended Notice of Successful Bidders and Back-Up Bidder* [Docket No. 614], thereby announcing that (i) HP Developers, LLC was selected as the Successful Bidder for three facilities; (ii) Bank of Farmington was selected as the Successful Bidder for one facility; (iii) Hickory Point Bank & Trust was selected as the Successful Bidder for one facility; (iv) Petersen Acquisitions, LLC was

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<sup>3</sup> Capitalized terms used but not otherwise defined herein have the meaning given to such terms in the Reply, the Bidding Procedures Motion, or the Bidding Procedures Order, as applicable.

selected as the Successful Bidder for the remainder of the Debtors' skilled nursing facilities; and (v) Vantage Senior Care, LLC was selected as the Back-Up Bidder for three facilities.

11. Pursuant to the Bidding Procedures Order, as modified by the notices extending certain dates established by the Bidding Procedures Order [Docket Nos. 519, 545, 555 & 562], the deadline to submit objections to the Sales was July 3, 2024 at 5:00 p.m. (ET) (the "Objection Deadline"). Prior to the Objection Deadline, the Debtors received ten formal responses [Docket Nos. 601, 607, 609, 610, 611, 613, 617, 620, 621 & 633] (collectively, the "Objections")<sup>4</sup> to the Sale(s) and/or the Cure Notice from certain interested parties.

12. A hearing to consider approval of the Sales is scheduled for July 10, 2024 at 10:00 a.m. (ET) (the "Hearing").

#### **BASIS FOR RELIEF**

13. Pursuant to Local Rule 9006-1(d), "[r]eple papers . . . may be filed by 4:00 p.m. prevailing Eastern Time the day prior to the deadline for filing the agenda[,]" and, pursuant to Local Rule 9029-3, "Delaware Counsel shall file the agenda in the bankruptcy case . . . with the Bankruptcy Court on or before 12:00 p.m. prevailing Eastern Time two (2) business days before the date of the hearing." Del. Bankr. L.R. 9029-3. Accordingly, the Debtors were required to file, and filed,<sup>5</sup> the agenda for the Hearing on or before July 8, 2024 at 12:00 p.m. (ET), and, therefore, the Debtors' deadline to file a reply to the Objections was July 5, 2024 at 4:00 p.m. (ET) (the "Reply Deadline"), two days after receiving most of the Objections (and one day after the Independence Day holiday). Moreover, because the Debtors received a handful of the Objections

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<sup>4</sup> The Bank of Rantoul's Objection, filed on July 9, 2024, is not addressed by the Reply.

<sup>5</sup> [Docket No. 623].

on July 8, 2024,<sup>6</sup> including an Objection from the Committee and the United States of America (“USA”), the Debtors believed it to be efficient and practical to submit one omnibus response to aid the Court’s determination of whether to overrule the Objections and approve the Sale rather than multiple piecemeal responses.

14. By this Motion, the Debtors respectfully request that the Court enter the Proposed Order granting the Debtors leave and permission to file the Reply beyond the Reply Deadline. Sufficient cause exists to grant the relief requested in this Motion. The Auction was held on July 2 and did not conclude until July 3, 2024 – two days before the Reply Deadline. Moreover, in light of the intervening holiday, the compressed timeline, and the extension of the objection deadline for the Committee and the USA, the Debtors could not prepare the Reply in time for the Reply Deadline. In preparing for the Auction and the Hearing, the Debtors and their advisors have focused substantially all of their efforts on working with the bidders to finalize the terms of their asset purchase agreements and respective sale orders to maximize value for the benefit of the estates. On a parallel path, the Debtors have been working diligently and as expeditiously as possible under the circumstances to consensually resolve issues raised by the Objections (as evidenced through the consensual objection deadline extensions for the Committee and the USA) and to respond to the issues raised in the Objections through the Reply. The Debtors submit that the short delay in filing the Reply will not prejudice any interested party, and that the Reply will assist the Court in ruling on the Objections (to the extent not resolved prior to the Hearing).

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<sup>6</sup> The Debtors consensually extended the Committee and the USA’s objection deadlines to 10:00 a.m. on July 8, 2024.

WHEREFORE, the Debtors respectfully request entry of the Proposed Order, granting the relief requested herein and granting such other relief as is just and proper.

Dated: July 9, 2024  
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

*/s/ Shella Borovinskaya*

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Possession*

**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re:**

**SC HEALTHCARE HOLDING, LLC *et al.*,  
Debtors.<sup>1</sup>**

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. Docket No.

**ORDER GRANTING THE DEBTORS LEAVE AND PERMISSION TO FILE  
DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO SALE TRANSACTIONS**

Upon consideration of the Motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") granting the Debtors leave and permission to file a reply (the "Reply"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of an opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having determined that the legal

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are granted leave and permission, pursuant to Local Rule 9006-1(d), to file the Reply, and the Reply is deemed timely filed and a matter of record in these chapter 11 cases.
3. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**EXHIBIT B**

**Reply**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re**

**SC HEALTHCARE HOLDING, LLC *et al.*,**

**Debtors.<sup>1</sup>**

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

**Ref. Docket Nos. 264, 349, 535, 569, 601, 607,  
609, 611, 613, 617, 619, & 621**

**DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO SALE TRANSACTIONS**

The above-captioned debtors and debtors in possession (each, a “Debtor” and collectively, the “Debtors”) file this omnibus reply (this “Omnibus Reply”) to (i) the limited objection [Docket No. 601] of Hartford Fire Insurance Company (“Hartford” or the “Surety”) to the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* [Docket No. 535], *Notice of Sale, Bidding Procedures, Auction, and Sale Hearing* [Docket No. 349], and the *Notice of Filing of Proposed Sale Order* [Docket No. 569] (with the supplement filed at Docket No. 609, the “Hartford Objections”), (ii) the objection [Docket No. 607] (the “SumnerOne Objection”) of SumnerOne, Inc. (“SumnerOne”) to the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* [Docket No. 535] (the “Cure Notice”), (iii) the objection [Docket No. 611] (the “GMF Objection”) of GMF Petersen Note, LLC (“GMF”) to the *Debtors’ Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All*

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<sup>1</sup> The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at [www.kccllc.net/Petersen](http://www.kccllc.net/Petersen).

*Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [Docket No. 264] (the "Sale Motion"), (iv) the limited objection [Docket No. 613] (the "Berkadia Objection") of Berkadia Commercial Mortgage LLC ("Berkadia") to the Sale Motion and the [Proposed] Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors' Acquired Assets Free and Clear of All Liens, Claims, Interests, and encumbrances Other than Assumed Liabilities and Permitted Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [Docket No. 569] (the "Proposed Sale Order"), and the limited objection, reservation of rights, and joinder of Wells Fargo Bank, N.A. ("Wells Fargo") regarding the Sale Motion and the Proposed Sale Order [Docket No. 617] (the "Wells Fargo Objection"), (v) the objection of the United States of America on behalf of the Department of Housing and Urban Development ("HUD") to the Sale Motion [Docket No. 619] (the "HUD Objection"), and (vi) the objection of the Official Committee of Unsecured Creditors (the "Committee") to the Sale Motion [Docket No. 620] (the "Committee Objection," and, collectively with the Hartford Objections, the SumnerOne Objection, the GMF Objection, the Berkadia Objection, the Wells Fargo Objection,*

and the Committee Objection, the “Objections”).<sup>2</sup> In further support of the Sale Motion, the Debtors respectfully state as follows:

**PRELIMINARY STATEMENT**

1. The Debtors and their professionals worked tirelessly to facilitate a robust marketing process for the Assets and to generate the maximum return possible for the sale of those Assets at a competitive Auction. Unfortunately, despite the Debtors’ and their professionals’ best efforts, the sales process did not yield the result that all parties had hoped for. That result is not for lack of effort.

2. As described in the *Declaration of Mark L. Myers in Support of Debtors’ Selection of Successful Bidders and the Proposed Sale Transactions* [Docket No. 625] (the “Myers Declaration”), Walker & Dunlop Investment Sales, LLC (“WD”), the investment sales broker for the Debtors, has been working to market and sell certain of the Assets since as early as August 2023. Myers Decl., ¶ 17. Once these Chapter 11 Cases were commenced, the marketing and sales process for the nearly 90 facilities was broadened significantly, including outreach to nearly 500 potential buyers across the country. *Id.*, ¶ 18. That process generated approximately 20 bids as of May 2024, including bids for the entire portfolio of Assets. *Id.* Throughout the sales process, up until the start of the Auction, and throughout the Auction itself, WD, alongside the Debtors and their other professionals, diligently engaged the various potential bidders in an effort to drive competition at the Auction. *See id.*, ¶¶ 19–22.

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<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to such terms in the Sales Motion, the Proposed Sale Order, or the Objections, as applicable.

3. Despite certain potential large bids falling through in the final moments before the Auction for various reasons, WD succeeded in procuring 12 formal bids for portions of the Debtors' Assets and made efforts to combine those bids into one bid that would be competitive against the Stalking Horse Bid. Unfortunately, despite WD's and the Debtors' continued efforts, no such aggregate bid was compiled at the Auction. *See id.*, ¶¶ 22–23. In the lead up to, and during the Auction, WD and the Debtors also spent hours negotiating and facilitating a competitive bid process for the SLFs which ultimately increased the bids thereon by several million dollars. *See id.*, ¶ 23.

4. While WD and the Debtors made significant efforts to drive the bidding process, ultimately the market for the Debtors' Assets spoke and the value of the Assets is reflected in the highest and best—and only—offers received by the Debtors at the Auction.

#### **OMNIBUS REPLY**

5. As a general matter, the Debtors have received multiple formal and informal responses from various lenders regarding the Buyer Allocations. To be clear, application of the Buyer Allocations is an issue to be determined after the Sale Transactions have been approved and, thus, is not a ripe issue for the Court's consideration at the July 10, 2024 hearing. Notwithstanding that the Buyer Allocation issue is not yet ripe, the Debtors address certain issues related to the Buyer Allocations in this Omnibus Reply as they relate to the GMF Objection and the Committee Objection in an effort to address such issues as they are raised. The Debtors' response to such issues at this juncture does not constitute an admission by the Debtors that such issues should be adjudicated at this time and the Debtors reserve all rights to address any issues raised in connection with the Buyer Allocations at the appropriate time.

## **I. The Hartford Objections**

6. By their filings, Hartford argues (i) that the Indemnity Agreement and Surety Bonds cannot be assumed or assigned without consent, (ii) that Hartford's cure costs include payments on a utility bond and attorney's fees and expenses, and (iii) requests certain language be added to the Proposed Sale Order. The Debtors have been informed that Petersen Acquisitions, LLC (the "Successful Stalking Horse Bidder") will not require the Debtors' assumption and assignment of either the Surety Bonds or the Indemnity Agreement. The Successful Stalking Horse Bidder is the only Successful Bidder whose Successful Bid contemplates purchasing facilities that currently have Surety Bonds with Hartford that would be subject to the Indemnity Agreement. Accordingly, Hartford has agreed that certain of its requests regarding assumption and assignment of the Surety Bonds and/or the Indemnity Agreement and its arguments related to cure costs are moot and are therefore no longer seeking language in the Proposed Sale Order related thereto.

7. The Debtors, alongside counsel to the Stalking Horse Bidder, have come to an agreement with Hartford on language to be included in the Proposed Sale Order resolving the remaining issues in the Hartford Objection.

## **II. The SumnerOne Objection**

8. SumnerOne objects to the Debtors' recitation of their Assigned Contracts and the calculation of the related Cure Costs in the Cure Notice. With respect to the Assigned Contracts, SumnerOne contends that it has four Lease Agreements with the Debtors that should be accounted for in a revised assumption schedule. With respect to the Cure Costs, SumnerOne contends that its Cure Costs should be \$275,228.29 related to the aforementioned Lease Agreements rather than the \$108,600.16 that the Debtors have listed on the Cure Notice.

9. After further review of their books and records, the Debtors agree with the four Lease Agreements cited in the SumnerOne Objection and are reconciling the alleged increased Cure Costs. Upon completing the reconciliation, the Debtors will coordinate with SumnerOne to revise the Cure Notice as applicable.<sup>3</sup>

### **III. The GMF Objection**

10. GMF (a) objects to the process carried out to reach a successful Sale Transaction and (b) argues that the price the Debtors ultimately secured with the Stalking Horse Bid is not as high as compared to the initial valuation offered by the Debtors at the outset of these Chapter 11 Cases. The Debtors dispute these positions.

#### **A. The Debtors Carried Out a Proper Sale Process.**

11. On the procedural front, despite GMF's claims to the contrary, the Debtors adhered to the Bidding Procedures. The Bidding Procedures, as is typical, provided the Debtors with flexibility to move deadlines as needed. *See* Bidding Procedures, p. 2. More than that, as the Court is well aware, bankruptcy sale processes are dynamic, with many moving parts and many involved stakeholders. The sales in these Chapter 11 Cases were no different. In fact, the Debtors assert that the process was uniquely complex, given the need to market and auction nearly 90 facilities owned and/or operated by more than 140 entities, and engaging with potential buyers across the country—all while continuing to operate their business to ensure that its value would be maximized. *See* Myers Decl., ¶¶ 17–24. The Debtors noticed the Buyer Allocation at 8:15 a.m. prevailing Eastern Time on July 1, 2024, as soon as reasonably practicable after receiving the Buyer Allocation from the Stalking Horse Bidder and having an opportunity to

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<sup>3</sup> The Debtors, the Stalking Horse Bidder, and SumnerOne have agreed to adjourn the SumnerOne Objection to a later hearing while the parties try to consensually resolve the SumnerOne Objection.



review and analyze it themselves. That timing left potential bidders with ample time to review it and familiarize themselves with it if they were considering submitting a Bid.

12. More to the point, even if the Buyer Allocation was not expressly included as an exhibit to the Stalking Horse APA when the APA was filed, GMF would have had notice of the expected proportional allocation of the Stalking Horse Bid based on the allocation of the initial valuation. Specifically, as discussed in the Myers Declaration, approximately \$91.2 million of the lower-bound \$177.5 million initial valuation was allocated to GMF collateral, making up approximately 51% of the lower-bound initial valuation. *See* Myers Decl., ¶ 29. Once the Stalking Horse Bid of \$118 million became public knowledge, GMF could have calculated that approximately 51% of the Stalking Horse Bid, or \$60.6 million, was likely allocated to GMF collateral. *See id.* In other words, there was no need for GMF to have a copy of the Buyer Allocation to have a sense or expectation of how the Stalking Horse Bid was allocated, and therefore how the entities that comprise its collateral package were valued. The information that the Debtors provided to potential bidders was sufficient, and it was provided with adequate notice. Accordingly, GMF's request that the Court "reject" the Buyer Allocation should be denied.<sup>4</sup>

13. Similarly, GMF's argument that the Debtors' adjournments of key dates inhibited GMF's ability to make a Bid is hard to believe for, among other reasons, the simple fact that two other lenders (Bank of Farmington and Hickory Point Bank) were successfully able to submit Credit Bids for the properties comprising their collateral. *See Amended Notice of Successful Bidders and Back-Up Bidder* [Docket No. 614]. GMF's arguments should bear no weight, especially considering the length of the marketing process (which really began before the

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<sup>4</sup> With respect to GMF's request that the Buyer Allocation be "rejected," the Debtors are not certain as to what GMF means by "reject." The Buyer Allocation is not intended to be binding on third parties, as provided in the Bidding Procedures and discussed elsewhere herein.

commencement of the Chapter 11 Cases), the ample information that has been provided to potential bidders, and the engagement of the Debtors' investment sales broker and Chief Restructuring Officer with all parties that expressed interest in the Debtors' assets. As described in the Myers Declaration, the Debtors continued discussion with all potential Bidders until the very beginning of the Auction—and throughout the Auction itself. *See id.*, ¶ 21.

14. More than that, it was GMF that requested—and was granted by the Debtors—multiple extensions to submit a Bid. In fact, the only reason the Debtors kept the Auction open overnight on July 2 was so that GMF could formulate its Bid. *See id.*, ¶ 25. However, a Bid from GMF never materialized. Indeed, up until the day before the Auction, GMF had not given the Debtors any indication that it was interested in submitting a Bid. *See id.*

**B. The Market is the Ultimate Indicator of Value.**

15. Building on its process-based objections, GMF also argues that the Auction was not robust enough because the price the Debtors secured for their assets—\$130.5 million in total comprised of the Stalking Horse Bid, the Credit Bids, and the SLF Bids—is lower than the estimated valuation the Debtors shared at the outset of these Chapter 11 Cases in the Myers DIP Declaration.<sup>5</sup> GMF also complains that the Auction involved “just a single party.” *See* GMF Objection, ¶ 5.

16. It is understandable that GMF wishes that the sale price of the Debtors' assets was higher. The Debtors and their advisors, and presumably all parties in interest, wish the same.

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<sup>5</sup> The “Myers DIP Declaration” is the *Amended Declaration of Mark L. Myers in Support of Debtors' (X) Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay, (V) Authorizing the Debtors to Enter Into Agreements with JMB Capital Partners Lending, LLC (VI) Authorizing Non-Consensual Use of Cash Collateral, (VII) Scheduling a Final Hearing, and (VIII) Granting Related Relief; and (Y) Omnibus Objection to (A) the Emergency Motion for an Order (I) Dismissing the Subject Chapter 11 Cases, (II) For Abstention, or (III) Appointment of Receiver as the Chapter 11 Trustee and (B) The Emergency Motion to Excuse Receiver's Compliance with 11 U.S.C. § 543(a) & (b)* [Docket No. 288].

However, as set forth in detail above and in the Myers Declaration, the Debtors conducted a comprehensive and robust marketing and sale process. *See generally* Myers Decl. The Debtors contacted numerous operators of nursing homes nationwide and explored multiple configurations of portfolio packages as they engaged with all possible buyers. Myers Decl., ¶ 18. While the Debtors' estimated valuation at the beginning of these Chapter 11 Cases was higher, they also set clear expectations with the Court and all stakeholders that the valuation estimates were just that—estimates. The Debtors' investment sales broker expressly stated that the valuation figures were estimates and forecasts, that they involved numerous and significant subjective assumptions, and that no outcome was guaranteed. Myers DIP Decl., ¶ 27. In the context of a well-run process, the market is the ultimate check on value, and estimates cannot compare with the price determined by the market.

17. Further, as explained in the Myers Declaration, and as is normal in every sale process, estimates developed at the beginning of a Chapter 11 sale process (or any marketing and sale process, for that matter) are informed and fine-tuned as the process gets underway and sellers actually engage with their potential buyers. That is exactly what happened here.

18. Specifically, in the course of engaging more closely with Bidders after May 2024 and in the weeks leading up to the Auction, including with the Stalking Horse Bidder and the Bidders for individual and smaller portfolio subsets, the Debtors learned that the cost of revamping and revitalizing certain of these facilities would be higher than what had originally been expected and what we had been factored into the valuation. Myers Decl., ¶ 33. Further, and more significantly, many of the potential buyers informed the Debtors that they expected it would be necessary to close 15-25 of the facilities included in the portfolio because they were

located primarily in rural areas, and their growth could not be supported by the current rural population dynamics of those areas. *Id.*

19. The potential closure of facilities necessarily changes the valuation of the portfolio and the price that can be secured in the market. *Id.* ¶ 34. With this background, the Stalking Horse Bidder offered the Debtors the option of closing certain facilities themselves before agreeing on a final sale price. *Id.* However, after consultation with their advisors, the Debtors determined that this was not a viable option because of the cost and time it would take to close facilities. *Id.* Closing facilities is a time-consuming and costly process in and of itself because it requires an operator to apply for closure with the government and to gradually find alternative placements for residents. *Id.* The closure process could take approximately 60–90 days, although the facilities would still be required to maintain the same or similar levels of staffing for the duration of the process. *Id.* It goes without saying that this would be an expensive and costly endeavor. *Id.* In the context of the expensive Chapter 11 Cases, the Debtors did not have the time or the resources to explore the potential closure of facilities before consummating a sale. *Id.* Accordingly, the price secured at the Auction factors in the potential closure of certain facilities by the Successful Bidders, which was not anticipated at the outset of the Chapter 11 Cases and explains the lower price secured at the Auction as compared to the valuation offered at the outset of the Chapter 11 Cases. *See id.*

20. Finally, based upon the feedback received from Bidders in the course of the sales and marketing process, the Debtors learned that the current financing conditions are still challenging and that many Bidders were finding it difficult to access credit. *Id.* ¶ 35. Consequently, the current economic context weighed heavily on the marketing process and the price that could be secured at the Auction. *Id.*

21. For these reasons, the objections by GMF to the price the Debtors secured at the Auction for the sale of their assets should be wholly disregarded and the Debtors' proposed Sale Transactions should be allowed to proceed.

#### **IV. The Berkadia and Wells Fargo Objections**

22. The Berkadia Objection argues that the Court lacks jurisdiction to order the sale of the Illini Facility free and clear of Berkadia's Encumbrances because the real property upon which the Illini Facility sits is not owned by a Debtor entity and the relevant loan is between non-Debtors. As a resolution, Berkadia requests language for the Proposed Sale Order that would carve out the sale of the Illini Facility free and clear of Encumbrances and directing that all such Encumbrances are unaffected by the entry of the Proposed Sale Order: Berkadia's proposed language notes that it shall not limit the parties' right or ability to secure or grant a release of the Encumbrances from any holder thereof in connection with the Sale Transactions.

23. The Debtors are currently in negotiations with the various parties to resolve the issues raised by Berkadia and allow the Debtors to convey the real property associated with the Illini Facility free and clear of Encumbrances. The Debtors will coordinate with Berkadia on appropriate language for the Proposed Sale Order to effectuate any eventual solution.

24. The Berkadia Objection also asserts, along with the Wells Fargo Objection, that the APA does not contemplate a sale of any interest of the Debtors in escrows and reserves held by the Debtors' various secured lenders and requests language in the Proposed Sale Order to make that explicit. *See* Berkadia Objection, ¶ 16, Wells Fargo Objection, ¶ 18. The Berkadia Objection and the Wells Fargo Objection seek, as additional adequate protection of the secured lenders' interest, language in the Proposed Sale Order authorizing such secured lenders to apply escrows and reserves held thereby to the Debtors' obligations on such lenders' respective loans

upon closing of the Sale Transactions. *See* Berkadia Objection, ¶ 17, Wells Fargo Objection, ¶ 18.

25. The Debtors agree that the APA does not contemplate a sale of the Debtors' interest in escrows and reserves held by their secured lenders. The Debtors support applying the reserves to reduce interest expense but given that the Committee has not completed its lien investigation and are not agreeing to release of escrows, the Debtors cannot agree to language permitting such applications of reserves. Notwithstanding, all parties' right to seek such relief by appropriate motion are fully preserved and the Debtors will work with the secured parties and the Committee to attempt to reach an agreement on the release of the escrows and reserves in the near term.

#### **V. HUD Objection**

26. The HUD Objection is resolved in principle. The Debtors will agree that the Buyer Allocation is not binding, and HUD will preserve its right to seek the release of escrows and reserves related to its loans.

#### **VI. Committee Objection**

27. The Committee Objection (i) requests that the Debtors provide evidence that administrative expense claims will be paid by the buyers or from the DIP loan, (ii) argues that HP Developers, LLC's ("HPD") and Petersen Acquisitions, LLC's (the "Stalking Horse Bidder") proposed Buyer Allocations should not be approved at this time, (iii) reserves the Committee's rights with respect to the final version of the Credit Bidders' purchase agreements, (iv) objects to the requests of Berkadia, Wells Fargo, and any other Prepetition Secured Party seeking authorization to apply reserves and/or escrows to their respective outstanding balances

upon the closing of the Sale Transactions, and (v) reserves all rights to raise objections to the terms of the various sale documents.

28. As an initial matter, the Debtors do not take issue with the Committee's reservations of rights with respect to the opportunity to object to the Credit Bidders' purchase agreements or to the terms of the sale documents.

29. With respect to the Committee's request for evidence that administrative expense claims will be paid by the buyers or from the DIP loan, the Debtors are currently finalizing a winddown budget and will provide that to the Committee once complete. The sale process yielded the highest and best offers for the Assets that the market will bear. Rejecting or delaying these Sale Transactions could add uncertainty to potential recoveries, recoveries which are essential to avoid the Committee's very concerns. The Debtors' bankruptcy estates, and ultimately the concerns of the Committee, are best served by the efficient closing of the Sale Transactions.

30. Regarding HPD's and the Stalking Horse Bidder's proposed Buyer Allocations, the Debtors are not seeking authority to distribute proceeds at this time and, as noted above, it is the Debtors' position that application of the Buyer Allocations should be determined after the Sale Transactions have been approved, is an issue that is not ripe at this time, and thus, should not be adjudicated by the Court at the July 10, 2024 hearing.<sup>6</sup>

*[Remainder of page intentionally left blank]*

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<sup>6</sup> The Debtors continue to evaluate and discuss their response to the issues raised relating to escrows and reserves with the various parties.

WHEREFORE, the Debtors respectfully request that the Court overrule the Objections and grant the relief requested in the Sale Motion, to the extent such objections are not consensually resolved by the parties or withdrawn.

Dated: July 9, 2024  
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT & TAYLOR,  
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*/s/ Shella Borovinskaya*

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