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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**DWAYNE EDWARDS; TODD BARKER;
SENIOR SOLUTIONS OF SOCIAL
CIRCLE, LLC; OXTON PLACE OF
DOUGLAS, LLC, d/b/a OXTON REAL
ESTATE OF DOUGLAS, LLC; ROME
ALF, LLC; SAVANNAH ALF, LLC;
GAINESVILLE ALF, LLC; WATERFORD
PLACE ALF, LLC; MONTGOMERY ALF,
LLC; COLUMBUS ALF, LLC; and
OPELIKA ALF, LLC,**

Defendants,

-and-

**OXTON SENIOR LIVING, LLC; MANOR
HOUSE SENIOR LIVING, LLC; SUSAN
EDWARDS, a/k/a SUSAN ROGERS;
SHARON NUNAMAKER, a/k/a SHARON
HADDEN; and SDH DESIGN, LLC,**

Relief Defendants.

Case No. 2:17-cv-393-ES-SCM

**DECLARATION OF DEREK PIERCE,
PURSUANT TO 28 U.S.C. § 1746, IN
SUPPORT OF RECEIVER'S MOTION
FOR ORDER: (I) AUTHORIZING AND
APPROVING BIDDING PROCEDURES
FOR THE SALE OF SUBSTANTIALLY
ALL OF THE ASSETS OF
GAINESVILLE ALF, LLC; (II)
AUTHORIZING THE SALE OF
SUBSTANTIALLY ALL OF THE
ASSETS OF GAINESVILLE ALF, LLC
FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS; (III) APPROVING
STALKING HORSE PURCHASER,
BREAK-UP FEE, AND OVERBID
PROTECTIONS; (IV) SCHEDULING A
HEARING TO APPROVE THE SALE
OF SUBSTANTIALLY ALL ASSETS
OF GAINESVILLE ALF, LLC; AND
(V) GRANTING RELATED RELIEF**

I, Derek Pierce, being an adult of sound mind, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the receiver appointed pursuant to the *Order Appointing Receiver* (Dkt. No. 7) (the “**Receiver Order**”) entered in this matter.

2. I am submitting this declaration in support of the *Receiver’s Motion for Order: (I) Authorizing and Approving Bidding Procedures for the Sale of Substantially All of the Assets of Gainesville ALF, LLC; (II) Authorizing the Sale of Substantially All of the Assets of Gainesville ALF, LLC Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (III) Approving Stalking Horse Purchaser, Break-up Fee, and Overbid Protections; (IV) Scheduling a Hearing to Approve the Sale of Substantially All Assets of Gainesville ALF, LLC; and (V) Granting Related Relief* (the “**Motion**”).¹

3. Upon my appointment, as part of my investigation of the assets of the Receivership Estate, I had title and lien searches performed to determine what liens and other encumbrances, if any, encumbered the assets of the Receivership Entities.

4. In addition, I requested that the Indenture Trustee provide true and correct copies of the documents governing the Bonds.

5. I, with counsel, have reviewed the title and lien searches and determined that, other than tax liens which will be satisfied by sale proceeds, the Indenture Trustee holds first priority, senior liens on and security interests in the Proposed Purchased Assets.

6. Attached to this declaration as **Exhibit A** is a true and correct copy of that certain Trust Indenture, dated as of March 1, 2015, by and between the Gainesville and Hall County Development Authority and BOKF, N.A.

¹ Capitalized terms used in this declaration and not otherwise defined shall have the meanings ascribed to them in the Motion.
4836-9720-4312.1

7. Attached to this declaration as **Exhibit B** is a true and correct copy of that certain Deed to Secure Debt and Security Agreement, granted by Gainesville ALF, LLC to the Gainesville and Hall County Development Authority, together with UCC financing statements filed with respect to same.

8. Attached to this declaration as **Exhibit C** is a true and correct copy of that certain Loan Agreement, dated as of March 1, 2015, by and between the Gainesville and Hall County Development Authority and Gainesville ALF, LLC.

9. Attached to this declaration as **Exhibit D** is a true and correct copy of that certain Land Use Restriction Agreement, dated as of March 1, 2015, by and between BOKF, N.A. and Gainesville ALF, LLC.

10. Since this court's entry of the *Order Approving Receiver's Application for order Approving Employment of Marcus & Millichap Investment Brokerage Company* (Dkt. No. 85), Mr. Pardoll has vigorously marketed, among other things, the Proposed Purchased Assets.

11. Mr. Pardoll of Marcus & Millichap Real Estate Investment Brokerage Company and I collaborated to compile an offering memorandum describing all nine facilities and substantially all of the assets comprising the Receivership Estate.

12. A true and correct copy of the offering memorandum is attached to this declaration as **Exhibit E** and is incorporated in this paragraph by reference.

13. In addition, Mr. Pardoll and I collaborated in establishing a data room containing financial and other information regarding the nine assisted living facilities that would be of interest to potential purchasers.

14. As a result of Mr. Pardoll's marketing efforts, I have received multiple offers from interested parties.

15. More specifically, as a result of Mr. Pardoll's marketing efforts, ten (10) bidders have made forty-one (41) separate stalking horse offers to purchase all or some portion of the assets of the Receivership Estate.

16. With respect to the Proposed Purchased Assets, I have received six (6) offers from bidders.

17. I have evaluated the offers with Mr. Pardoll and my counsel.

18. Mr. Pardoll, my counsel, and I have negotiated price and sale terms with certain of the parties who have submitted bids.

19. As a result, with respect to the Proposed Purchased Assets, I have identified the Proposed Stalking Horse as a prospective buyer.

20. The Proposed Stalking Horse made the highest or otherwise best offer for the Gainesville Facility.

21. As a result, my counsel and I have negotiated the terms of the Gainesville APA, which has been executed but remains subject to this court's approval.

22. Nevertheless, I, in consultation with my counsel, Mr. Pardoll, and the Indenture Trustee, have determined that it is in the best interests of the Receivership Estate to continue marketing the Proposed Purchased Assets in an effort to locate additional interested parties and subject the Proposed Stalking Horse's initial bid to the market.

23. Accordingly, I intend to market test the Proposed Stalking Horse's initial bid for the Gainesville Facility to assure it is the highest or otherwise best offer reasonably attainable.

24. To that end, I will continue marketing the Gainesville Facility, in accordance with and pursuant to the bidding procedures proposed in the Motion.

25. As a result, the Gainesville APA contains certain: (a) protections to incentivize and compensate the Proposed Stalking Horse for continuing to expend money, time, and effort in connection with purchasing the Gainesville Facility, notwithstanding that the Proposed Stalking Horse's initial bid will remain subject to higher or otherwise better offers; and (b) bidding and auction procedures to enable me to continue marketing the Gainesville Facility for sale, qualify additional interested parties as bidders, govern the submission of additional competing bids, and establish a date and time for the ultimate auction of the Gainesville Facility.

26. Given the time constraints posed by, among other things, the Proposed Stalking Horse's desire to close expeditiously and the financial condition of the Gainesville Facility, the protections and procedures sought to be established by the Motion fairly balance the need to market the Proposed Purchased Assets and market test the Gainesville APA with the desire to minimize the risk of operating losses during any marketing and sale process.

27. In my experience and based upon my reasonable business judgment, the Bidding Procedures will assure that I receive the best offer for the Proposed Purchased Assets or any portion of the Proposed Purchased Assets, because the Bidding Procedures will expose the Proposed Purchased Assets to the market and competition amongst all parties sufficiently interested to bid for the purchase of the Proposed Purchased Assets (or any portion of the Proposed Purchased Assets).

28. In particular, the Minimum Overbid was specifically negotiated with the Proposed Stalking Horse and is designed to: (a) reasonably protect the Proposed Stalking Horse by encouraging only serious additional and higher bids; and (b) protect the Receivership Estate by ensuring that any overbid covers the cost of the Break-up Fee and results in additional proceeds material enough to justify the risk of closing with a new buyer.

29. Similarly, the Break-up Fee was specifically negotiated by the Proposed Stalking Horse and is reasonably calculated to reimburse the Proposed Stalking Horse for the Proposed Stalking Horse's reasonable out of pocket expenses incurred conducting due diligence.

30. As a result, I believe the Bid Protections benefit the Receivership Estate, because they: (a) enable the Receiver to maintain the commitment of the Proposed Stalking Horse to continue expending money, time, and effort in connection with purchasing the Proposed Purchased Assets, notwithstanding that its offer is subjected to higher and better offers; and (b) guarantee a minimum bid for the auction process.

Under penalty of perjury, I declare that the foregoing is true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.



Derek Pierce