

WALLER LANSDEN DORTCH & DAVIS, LLP

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Counsel for the Receiver

**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

RECEIVER'S MOTION FOR ORDER
AUTHORIZING PARTIAL
DISTRIBUTION OF SALE PROCEEDS
TO SATISFY: (I) \$2,915,000
DEVELOPMENT AUTHORITY OF
WALTON COUNTY FIRST MORTGAGE
HEALTHCARE FACILITY REVENUE
BONDS (SENIOR SOLUTIONS OF
SOCIAL CIRCLE, LLC PROJECT),
SERIES 2014A; (II) \$335,000
DEVELOPMENT AUTHORITY OF
WALTON COUNTY FIRST MORTGAGE
HEALTHCARE FACILITY REVENUE
BONDS (SENIOR SOLUTIONS OF
SOCIAL CIRCLE, LLC PROJECT),
SERIES 2014B (TAXABLE); AND
(III) SECURED CLAIM ASSERTED BY
ASCENTIUM CAPITAL LLC

MOTION DAY:

May 7, 2018

OBJECTION DEADLINE:

April 23, 2018

Derek Pierce, as the court-appointed receiver (the "*Receiver*"), by and through his undersigned counsel, files this motion seeking entry of an order authorizing a partial distribution

of sale proceeds to satisfy (i) \$2,915,000 Development Authority of Walton County First Mortgage Healthcare Facility Revenue Bonds (Senior Solutions of Social Circle, LLC Project), Series 2014A (the “**Series 2014A Bonds**”), (ii) \$335,000 Development Authority of Walton County First Mortgage Healthcare Facility Revenue Bonds (Senior Solutions of Social Circle, LLC Project), Series 2014B (Taxable) (the “**Series 2014B Bonds**” and together with the Series 2014A Bonds, the “**Social Circle Bonds**”), and (iii) secured claim asserted by Ascentium Capital LLC (“**Ascentium**”) and, in support of this motion, states as follows:

1. On January 5, 2018, this court entered the *Order: (I) Authorizing and Approving for Senior Solutions of Social Circle, LLC (A) Stalking Horse Purchaser, Bidding Procedures, and Bid Protections and (B) the Form and Manner of Notice of the Bidding Procedures and Sale Hearing; (II) Scheduling a Hearing to Consider the Sale of Substantially All Assets of Senior Solutions of Social Circle, LLC; and (III) Granting Related Relief* (Dkt. No. 196) (the “**Social Circle Bidding Procedures Order**”).

2. On March 6, 2018, this court entered the *Order: (I) Authorizing, Approving, and Directing the Sale of Substantially All Assets of Senior Solutions of Social Circle, LLC to the Successful Bidder and Backup Bidder in Accordance With the Bidding Procedures Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (II) Authorizing and Approving the Social Circle APA; (III) Approving the Receiver’s Marketing and Sale Process; and (IV) Granting Related Relief* (Dkt. No. 250) (the “**Social Circle Sale Order**”).¹

3. Pursuant to and in accordance with the Social Circle Sale Order and Social Circle APA, on April 6, 2013, the Receiver closed the sale of the Proposed Purchased Assets to the Successful Bidder (the “**Social Circle Closing**”).

¹ Capitalized terms used in this motion and not otherwise defined shall have the meanings ascribed to them in the Sale Order or *Order Appointing Receiver* (Dkt. No. 7) (the “**Receiver Order**”), as applicable.
4810-4953-3537.7

4. After the Social Circle Closing and payment of the Break-up Fee, the Receiver received net proceeds in the amount of \$5,006,426.31 from the sale of substantially all of Senior Solutions of Social Circle, LLC's ("***Social Circle***") assets (the "***Sale Proceeds***").

5. As set forth in the Social Circle Bidding Procedures Order, UMB Bank, N.A., as indenture trustee for the Social Circle Bonds (the "***Social Circle Trustee***"), is the holder of senior, first priority liens on and security interests in the Proposed Purchased Assets. (Bidding Procedures Order, ¶ 7.)

6. In addition, on October 3, 2017, Ascentium filed a proof of claim with the Receiver, asserting a secured claim arising from a judgment against Senior Solutions of Social Circle. The Receiver has allowed Ascentium's secured claim in the amount of \$90,034.83.

7. As set forth in the Social Circle Sale Order, the Trustee's liens and security interests attached to the Sale Proceeds. (Sale Order, at 9–10.)

8. Similarly, the secured claim asserted by Ascentium attached to the Sale Proceeds on a subordinate basis to the Trustee's lien. (Sale Order, at 9–10.)

9. The Social Circle Bonds are unique in this case because there has been no payment default on the Social Circle Bonds.

10. In fact, to date, all principal and interest currently due and payable on account of the Social Circle Bonds has been timely paid.

11. As of April 12, 2018, the principal amount due and owing on the Social Circle Bonds is \$3,230,000, plus accrued and unpaid interest in the amount of \$77,019.72.

12. A redemption premium of three percent is applicable to any optional redemption of the Social Circle Bonds made during the month of June, 2018.

13. Assuming a June 20, 2018, redemption date, after payment of the Social Circle Bonds and Ascentium claim, Sale Proceeds in the approximate amount of \$1,461,277.50 will remain. Therefore, the Sale Proceeds are more than sufficient to satisfy the Social Circle Bonds and Ascentium's secured claim in full, even after taking into account resolution of the commingling-related claims (as discussed below), and estimated professional fees and expenses incurred with respect to Social Circle in this receivership case.

14. The Social Circle Bonds continue to accrue interest at the rate of \$754.20 per day and are subject optional redemption if called by the Issuer under the Trust Indenture securing the Social Circle Bonds.

15. Satisfaction of the Social Circle Bonds at this time is in the best interests of creditors of Social Circle and other creditors of the Receivership Estate, because satisfaction of the Social Circle Bonds avoids the incurrence of additional interest and other costs, which would be payable from the Sale Proceeds.

16. In addition, satisfaction of the Social Circle Bonds and Ascentium's claim at this time preserves the excess Sale Proceeds for other uses by the Receiver.

17. Because the Social Circle Bonds and Ascentium's claims are secured by the Sale Proceeds and no other creditors hold claims secured by the Sale Proceeds, no party in interest will be harmed by permitting a partial distribution to satisfy the Social Circle Bonds at this time.

RELIEF FROM CERTAIN PROVISIONS OF THE RECEIVER ORDER

18. The Receiver seeks relief from certain provisions of the Receiver Order, to make the partial distribution for the satisfaction of the Social Circle Bonds and secured claim asserted by Ascentium.

19. In particular, paragraphs 45-46 of the Receiver Order direct the Receiver to "conduct an investigation into the commingling of funds by and between the Receivership

Entities with respect to the Facilities . . . to determine the net gain or loss to each Facility as a result of the commingling,” and “to seek and obtain Court approval as to the Receiver’s proposal to resolve the commingling-related claims between and among the Facilities and Offerings” before the Receiver disburses any funds to bondholders. (Receiver Order, ¶¶ 45-46.)

20. The Receiver’s commingling analysis indicates that the reimbursements payable by Social Circle total \$241,602.

21. The relief sought by this motion will not prejudice the ability of the Receiver to effectuate this reimbursement if approved by the Court.

22. At the same time, the failure to satisfy the Social Circle Bonds costs the Receivership Estate approximately \$754.20 (\$22,626 per month), plus fees and expenses of the Receiver and Trustee, for each day that the Social Circle Bonds remain unpaid.

23. Accordingly, the Receiver submits that relief from the Receiver Order for the limited purposes requested in this motion is just and proper.

NOTICE

24. The Receiver is providing notice of this motion to the parties to this receivership and all known creditors of Social Circle.

25. Given the relief sought in this motion, the Receiver submits that no other or further notice is necessary or required.

WHEREFORE the Receiver respectfully requests that this court enter an order, substantially in the form attached to this motion as **Exhibit A**, authorizing the Receiver to make a distribution to the Trustee and Ascentium in an amount sufficient to satisfy the Social Circle Bonds and Ascentium's secured claim and granting such other and further relief as this court deems just and proper.

Dated: April 13, 2018

Respectfully submitted,

/s/ Blake D. Roth

Blake D. Roth
Ryan K. Cochran (admitted *pro hac vice*)
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Counsel for the Receiver

EXHIBIT A
PROPOSED FORM OF ORDER

WALLER LANSDEN DORTCH & DAVIS, LLP

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PLACE ALF, LLC; MONTGOMERY ALF, LLC;
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Defendants,

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EDWARDS, a/k/a SUSAN ROGERS; SHARON
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SERIES 2014B (TAXABLE); AND
(III) SECURED CLAIM ASSERTED BY
ASCENTIUM CAPITAL LLC

Upon consideration of the *Receiver's Motion for Order Authorizing Partial Distribution of Sale Proceeds to Satisfy: (I) \$2,915,000 Development Authority of Walton County First Mortgage Healthcare Facility Revenue Bonds (Senior Solutions of Social Circle, LLC Project),*

*Series 2014A; (II) \$335,000 Development Authority of Walton County First Mortgage Healthcare Facility Revenue Bonds (Senior Solutions of Social Circle, LLC Project), Series 2014B (Taxable); and (III) Secured Claim Asserted by Ascentium Capital LLC (the “**Motion**”);*¹ and upon consideration of any and all filings with respect to the Motion; and upon finding this court has jurisdiction over the relief sought in the Motion and venue is proper in this court; and upon finding that due and sufficient notice of the Motion and relief sought in the Motion has been given and no other or further notice is necessary or required; and upon due deliberation and finding sufficient cause for the relief sought in the Motion, it is hereby

1. **ORDERED** that the Motion is GRANTED; and it is further

2. **ORDERED** that the Receiver is authorized and directed to disburse Sale Proceeds to the Trustee and Ascentium in an amount sufficient to satisfy the Social Circle Bonds and pay Ascentium’s secured claim in the amount of \$90,034.83; and it is further

3. **ORDERED** that this court shall retain jurisdiction over any and all matters relating to or arising out of this order or its enforcement.

Dated: _____, 2018

Hon. Steven C. Mannion
United States Magistrate Judge

¹ Capitalized terms used in this order and not otherwise defined shall have the meanings ascribed to them in the Motion.
4810-4953-3537.7

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COLUMBUS ALF, LLC; and OPELIKA ALF,
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Defendants,

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OXTON SENIOR LIVING, LLC; MANOR
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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 SERVICE

I, the undersigned, declare that on the date set forth below, I caused a true and correct copy of the following documents to be filed with this court's CM/ECF system, and this court's

CM/ECF system electronically served all parties entitled to receive notice of the following documents:

1. *Receiver's Motion for Order Authorizing Partial Distribution of Sale Proceeds to Satisfy: (I) \$2,915,000 Development Authority of Walton County First Mortgage Healthcare Facility Revenue Bonds (Senior Solutions of Social Circle, LLC Project), Series 2014A; and (II) \$335,000 Development Authority of Walton County First Mortgage Healthcare Facility Revenue Bonds (Senior Solutions of Social Circle, LLC Project), Series 2014B (Taxable); and*
2. this Declaration of Service.

In addition, I caused true and correct copies of the foregoing to be served by regular United States mail, postage prepaid, and electronic mail on the following parties:

Dwayne Edwards
411 Georgia Avenue
North Augusta, South Carolina 29841
edwards1687@gmail.com

Joseph Schramm
FisherBroyles, LLP
100 Overlook Center, 2nd Floor
Princeton, NJ 08540
Email: joseph.schramm@fisherbroyles.com
(for defendant Todd Barker)

Development Authority of Walton County
132 E. Spring Street
Monroe, Georgia 30655
Attn: W. Morris Jordan, Chairman

Chris H. Atkinson, Esq.
Atkinson Ferguson, LLC
118 Court Street
Monroe, Georgia 30655

Department of Labor
State of Georgia
Employer Accounts Section
Sussex Place—Room 738
148 Andrew Young International Blvd., NE
Atlanta, Georgia 30303-1751

American Security Safe & Lock, LLC
2569 Iris Drive SE, Suite A
Conyers, Georgia 30013

Amerimed EMS
P.O. Box 1853
Buford, Georgia 30515

ARM Solutions Inc.
P.O. Box 3666
Camarillo, California 93011-3666

Baccus Pest Control
P.O. Box 1208
Monroe, Georgia 30655

Brian Trent
202 Joshua Ct.
Social Circle, Georgia 30025

Carr Riggs & Ingram
4360 Chamblee Dunwoody Road
Atlanta, Georgia 30341

Covington Newspaper Company, Inc.
1166 Usher Street NW
Covington, Georgia 30014

Darling International
1283 College Park Dr.
Dover, Delaware 19904

Destiny Fire & Safety, LLC
P.O. Box 233
McDonough, Georgia 30253

Freshway Market
1261 North Cherokee Road
Social Circle, Georgia 30025

Georgia Department of Labor
7249 Industrial Blvd. NE
Covington, Georgia 30014

Guarantee Insurance Company
P.O. Box 630694
Cincinnati, Ohio 45263-0694

Instructional Dietetic Associates, Inc.
P.O. Box 796
Vidalia, Georgia 30475

Matrixcare
P.O. Box 1414
Minneapolis, Minnesota 55480-1414

Miguel Cossio
1075 South Main Street, Ste. 400
Madison, Georgia 30650

Performance Food Service
3501 Old Oakwood Road
Oakwood, Georgia 30566-2802

Print Logic Inc.
2016 Leroy Anderson Road
Monroe, Georgia 30655

Quill.com
P.O. Box 37600
Philadelphia, Pennsylvania 19101-0600

Sherwin Williams
6230 Shiloh Road, Suite 230
Alpharetta, Georgia 30005

Simpson, Uchitel & Wilson, L.L.P.
3490 Piedmont Rod, NE
Atlanta, Georgia 30305

Social Circle Ace Home Center
181 S. Cherokee Rd.
Social Circle, Georgia 30025

Stellar Private Cable Systems, Inc.
975 E. Tallmadge Ave.
Akron, Ohio 44310

UMB Bank, N.A.
P.O. Box 414589
Kansas City, Missouri 64141-4589

US Foods
P.O. Box 281945
Atlanta, Georgia 30384-1945

Utility Management Services, Inc.
P.O. Box 890134
Charlotte, North Carolina 28289

Wayne Moon
P.O. Box 904
Oxford, Georgia 30054

Georgia Department of Revenue
1800 Century Blvd. NE
Atlanta, Georgia 30345

City of Social Circle
PO Box 310
Social Circle, Georgia 30025

Walton County Tax Commissioner
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Walton County Government Building
Monroe, Georgia 30655

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United States Attorney's Office
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Ascentium Capital LLC
c/o Kevin A. Stine
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Dated: April 13, 2018

/s/ Blake D. Roth

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