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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

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

**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,**

[D.E. 327]

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.

**SCHEDULING ORDER AND PRELIMINARY APPROVAL OF SETTLEMENT AND
RELEASE AGREEMENT, INCLUDING PROPOSED DISTRIBUTION PLAN AND BAR
ORDER AND JUDGMENT**

The motion before this Court (the “*Preliminary Approval Motion*”) concerns a proposed settlement (the “*Settlement*”) between, among others, the Receiver and Carr, Riggs & Ingram, LLC (“*CRIF*”), as a potential defendant on claims alleged by the Receiver on behalf of the Receivership Entities and the Bondholders. Capitalized terms not otherwise defined in this Scheduling Order shall have the meaning assigned to them in the Settlement Agreement attached to the Preliminary Approval Motion (the “*Settlement Agreement*”).

In the Preliminary Approval Motion, the Receiver seeks the Court’s approval of the terms of the Settlement as set forth in the Settlement Agreement and the entry of a Bar Order and Judgment in the form attached as Exhibit “*E*” to the Settlement Agreement. After reviewing the terms of the Settlement Agreement and considering the arguments presented in the Preliminary Approval Motion, the Court preliminarily approves the Settlement, including the proposed Distribution Plan, as adequate, fair, reasonable, and equitable. Accordingly, the Court enters this Scheduling Order to: (i) provide for notice of the terms of the Settlement, including the proposed Distribution Plan and Bar Order and Judgment; (ii) set the deadline and the procedure for filing objections to the Settlement, the Distribution Plan, the Bar Order and Judgment, and the Receiver’s request for approval of the professional fees and expenses of the Receiver’s general counsel, Waller, and special counsel, Whiteford Taylor; (iii) set the deadline for responding to any objection so filed; (iv) set the deadline and the manner for the submission of claims by those Bondholders who or which previously owned Bonds for distributions from the Net Settlement Proceeds; (v) set the date, time and location of the final approval hearing before this Court regarding the Settlement, the Distribution Plan, the Bar Order and Judgment, and the Receiver’s request for approval of the

professional fees and expenses of the Receiver's general counsel, Waller, and special counsel, Whiteford Taylor (the "*Final Approval Hearing*"), as follows:

1. **Preliminary Findings Regarding the Settlement.** Based upon the Court's review of the terms of the Settlement Agreement, the arguments presented in the Preliminary Approval Motion, and the Preliminary Approval Motion's accompanying Exhibits, the Court preliminarily finds that the Settlement, including the proposed Distribution Plan and Bar Order and Judgment, is fair, reasonable, and equitable; has no obvious deficiencies; and is the product of serious, informed, good-faith, and arm's-length negotiations and mediation. The Court further preliminarily finds that the Indenture Trustees have acted prudently, in good faith, and in the best interests of those Bondholders who or which currently own Bonds in assigning the Current Bondholder Claims to the Receiver, in entering into the Settlement, and that the Indenture Trustees have the Authority to execute the releases provided in the Settlement Agreement. The Court, however, reserves a final ruling with respect to the terms of the Settlement until after the Final Approval Hearing referenced below in Paragraph 2.

2. **Final Approval Hearing.** The Final Approval Hearing will be held before United States District Court Judge, the Honorable S. Mannion of the United States District Court for the District of New Jersey, United States Courthouse, 50 Walnut Street, P.O. Box 999, Newark, New Jersey 07101, in Courtroom 2B, at 2:00p.m. on 30 Sept, 2019, which is a date at least ninety (90) calendar days after entry of this Scheduling Order. The purposes of the Final Approval Hearing will be to: (i) determine whether the terms of the Settlement, including the Distribution Plan, should be finally approved by the Court; (ii) determine whether the Bar Order and Judgment attached as Exhibit "*E*" to the Settlement Agreement should be entered by the Court; (iii) rule upon any objections to the Settlement, the Distribution Plan, and the Bar Order and

Judgment; (iv) rule upon the Receiver's request for approval of the professional fees and expenses of its general counsel, Waller, and special counsel, Whiteford Taylor; and (v) rule upon such other matters as the Court may deem appropriate.

3. **Stay Pending Order on Final Approval or Further Order of Court.** Except to the extent necessary to address the Preliminary Approval Motion, the Court hereby preliminarily stays, bars, restrains, and enjoins, the Receiver, the Indenture Trustees, all previous, present and future Bondholders, the Claimants, the Issuers, all other Interested Parties, and all other non-governmental Persons, all and individually, from directly, indirectly, or through a third party, asserting, instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting or pursuing, against the CRI Parties and/or any of the CRI Released Parties, any demand, claim, investigation, action, lawsuit, cause of action, complaint, or proceeding of any nature in any Forum, including, without limitation, any court of first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with this case, the subject matter of this case, the Receiver, the Receivership Entities, the Bonds, the Bondholders, the Indenture Trustees, and/or any Settled Claim. The foregoing specifically includes any claim by any Person, however denominated, seeking contribution, indemnity, damages, or any other remedy where the alleged injury to such Person, or the claim asserted by such Person, is based upon such Person's liability to the Receiver, any Receivership Entity, any Bondholder, any Indenture Trustee, any Claimant, and/or any other Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to the Receiver, a Receivership Entity, a Bondholder,

an Indenture Trustee, a Claimant, and/or any other Interested Party whether pursuant to a demand, judgment, claim, agreement, settlement, or otherwise. The preliminary stay and injunction imposed by this paragraph shall remain in effect until further order of the Court.

4. **Notice.** The Court approves the form of Notice attached as Exhibit “A” to the Settlement Agreement, including the Claim Form appended thereto, and finds that the distribution, dissemination and publication of Notice along with the publication of the Short Form Notice once a week for three consecutive weeks in the Wall Street Journal and U.S.A. Today described in the Settlement Agreement and the Preliminary Approval Motion: (i) constitute the best practicable notice; (ii) are reasonably calculated, under the circumstances, to apprise all Interested Parties of the Settlement, the Distribution Plan, the Bar Order and Judgment, and the Receiver’s request for approval of the professional fees and expenses of the Receiver’s general counsel, Waller, and special counsel, Whiteford Taylor; (iii) are reasonably calculated, under the circumstances, to apprise all Interested Parties of the right to object to the Settlement and the Bar Order, and to appear at the Final Approval Hearing; (iv) constitute due, adequate, and sufficient notice; (v) meet all requirements of applicable law, including the Federal Rules of Civil Procedure, the United States Code and the United States Constitution (including Due Process); and (vi) will provide to all Persons a full and fair opportunity to be heard on these matters. The Court further approves the form of Short Form Notice attached as Exhibit “B” to the Settlement Agreement and the proposal as to publication of the Short Form Notice. Therefore:

a. The Receiver is hereby directed, no later than seven (7) calendar days after entry of this Scheduling Order, to cause the Notice in substantially the form attached as Exhibit “A” to the Settlement Agreement to be sent via electronic mail, first class mail, or international delivery service to (a) all parties that appeared and requested notice in the SEC Receivership Case; (b)

counsel to the CRI Parties; (c) counsel to the Indenture Trustees; (d) the Underwriter for each Offering; (e) counsel to the Underwriter, at the time of the Offering, for each Offering; (f) the Issuer for each Offering; (g) counsel to the Issuer, at the time of the Offering, for each Offering; (h) bond counsel for each Offering; (i) the Depository Trust Company ("*DTC*"); (j) the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System ("*EMMA*"); (k) to the extent they have identified themselves to the Indenture Trustees each of the past or present Bondholders; (l) the original purchasers of the Bonds whose identity was provided to the SEC by the Underwriters in the course of the SEC's investigation of the Defendants, and (m) posted on the Receiver's website <http://oxtonseniorlivingreceivership.com>.

b. With respect to the Notice sent to DTC, the Receiver is hereby further directed to request that DTC forward the Notice to each participant of DTC who is reflected in DTC's records as a holder of the Bonds.

c. With respect to Notice sent to the Underwriters of the Offerings, the Receiver is hereby further directed to request that such Underwriters send the Notice to each past or present beneficial owner of the Bonds to the extent such beneficial owners are identifiable by the Underwriters from their records through reasonable efforts.

d. With respect to the Notice sent to EMMA, the Receiver is hereby further directed to request, or cause the Indenture Trustees to request, that EMMA publish the Notice, the Preliminary Approval Motion and all Exhibits thereto (including the Settlement Agreement and all of its Exhibits), and this Scheduling Order on its website under the CUSIP numbers for the respective Bonds issued in connection with each of the Offerings.

e. The Receiver is further hereby directed, no later than seven (7) calendar days after the entry of this Scheduling Order, to cause the Notice, the Approval Motion and all Exhibits

thereto (including the Settlement Agreement and all of its Exhibits), and this Scheduling Order to be posted on the Receiver's web site <http://oxtonseniorlivingreceivership.com/>.

f. The Receiver is hereby further directed, no later than seven (7) calendar days after entry of this Scheduling Order, to cause the Short Form Notice in substantially the same form attached as Exhibit "B" to the Settlement Agreement to be published once a week for three consecutive weeks in the national edition of *The Wall Street Journal and U.S.A. Today*.

g. The Receiver is hereby further directed promptly to provide the Notice, the Motion and all Exhibits thereto (including the Settlement Agreement and all of its Exhibits), and this Scheduling Order, to any Person who requests such documents, in writing by use of a recognized overnight mail carrier, to William F. Ryan, Jr., an attorney at Whiteford, Taylor & Preston, LLP, 7 St. Paul Street, Baltimore, Maryland 21202. The Receiver may provide such materials in the form and manner that the Receiver deems most appropriate under the circumstances of the request.

h. No less than ten (10) calendar days before the Final Approval Hearing, the Receiver shall cause to be filed with the Clerk of this Court an affidavit or declaration of compliance with subparts (a) through (g) of this Paragraph 4.

5. **Objections and Appearances at the Final Approval Hearing.** Any Person who wishes to object to the terms of the Settlement, the Distribution Plan, the Bar Order and Judgment, or Receiver's request for approval of Receiver's attorneys' fees and costs, or who wishes to appear at the Final Approval Hearing, must do so by filing an objection, in writing, with this Court in this case by ECF or by mailing the objection to the Clerk of the United States District Court for the District of New Jersey, United States Courthouse, 50 Walnut Street, P.O. Box 999, Newark, New Jersey 07101, so that it is received no later than ten (10) calendar days before the Final Approval Hearing. All objections filed with the Court must:

- a. contain the name, address, telephone number, and (if applicable) an email address of the Person filing the objection;
- b. contain the name, address, telephone number, and email address of any attorney representing the Person filing the objection;
- c. be signed by the Person filing the objection, or his or her attorney;
- d. state, in detail, the basis for any objection;
- e. attach any document the Court should consider in ruling on the Settlement, the Bar Order and Judgment, or the Receiver's request for approval of Receiver's attorneys' fees and costs; and
- f. if the Person filing the objection wishes to appear at the Final Approval Hearing, make a request to do so.

No Person will be permitted to appear at the Final Approval Hearing without filing a written objection and request to appear at the Final Approval Hearing as set forth in subparts a. through f. of this Paragraph 5. Copies of any objections filed must be contemporaneously served by ECF, or by email or first class mail, upon each of the following:

Counsel to the Receiver:

Ryan K. Cochran
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
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William F. Ryan, Jr.
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Phone: (410) 347-8741
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Counsel to Trustee BOKF:

Nora R. O'Neill
Frederic Dorwart, Lawyers PLLC
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Counsel to Trustee U.S. Bank:

George M. Taylor III
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Counsel to Trustee UMB:

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Counsel to the CRI Parties:

Thomas B.K. Ringe, III
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Lee H. Copeland
Copeland, Franco, Screws & Gill, P.A.
P.O. Box 347
Montgomery, AL 36101-0347
Phone: (334) 834-1180
E-mail: Copeland@copelandfranco.com

Any Person filing an objection shall be deemed to have submitted to the jurisdiction of this Court for all purposes of that objection, the Settlement, and the Bar Order and Judgment. Potential objectors who do not present opposition by the time and in the manner set forth above shall be deemed to have waived the right to object (including any right to appeal, seek reconsideration or other review) and to appear at the Final Approval Hearing and shall be forever barred from raising such objections in this action or any other action or proceeding. Persons do not need to appear at the Final Approval Hearing or take any other action to indicate their approval, but if they desire to claim entitlement to distributions from the Net Settlement Proceeds, they must comply with Paragraph 7 of this Scheduling Order regarding submission of claims.

6. **Responses to Objections.** Any Party to the Settlement Agreement may respond to an objection filed pursuant to Paragraph 5 by filing a response with the Clerk of the Court in this case no later than two (2) calendar days before the Final Approval Hearing. To the extent any Person filing an objection cannot be served by the Court's CM/ECF system, a response must be served to the email and/or mailing address provided by that Person.

7. **Submission of Claims.** Any previous Bondholder claiming entitlement to a distribution from the Net Settlement Proceeds must submit a Claim Form in the form appended to the Notice attached as Exhibit "A" to the Settlement Agreement to the Receiver at the address set forth on the Claim Form and as described in the Notice, so that it is received by the Receiver on or before 4:00 p.m. (Eastern), ninety (90) days from the date of entry of this Scheduling Order. Any previous Bondholder's failure to timely and properly submit a Claim Form, duly providing the information and documentation called for by the Claim Form, shall preclude such previous Bondholder from receiving any distribution from the Net Settlement Proceeds. Current Bondholders are exempt from the requirement of submitting a Claim Form.

8. **Adjustments Concerning Hearing and Deadlines.** The date, time, and place for the Final Approval Hearing, and the deadlines and date requirements in this Scheduling Order, shall be subject to adjournment or change by this Court without further notice other than that which may be posted by means of ECF in this case.

9. **Retention of Jurisdiction.** This Court shall retain jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

10. **Entry of Injunction.** If the Settlement is approved by the Court, the Court will enter the Bar Order and Judgment in this case. If entered, the Bar Order and Judgment will permanently bar, restrain, and enjoin, among others, Interested Parties, including Bondholders and Claimants, from asserting, bringing, encouraging, assisting, continuing, prosecuting, or pursuing against CRI or any of the CRI Released Parties, any claim, action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including, without limitation, contribution or indemnity claims, constituting a Settled Claim.

11. **Use of Order.** Under no circumstances shall this Scheduling Order be construed, deemed, or used as an admission, concession, or declaration by or against the CRI Released Parties of any fault, wrongdoing, breach or liability. Nor shall the Order be construed, deemed, or used as an admission, concession, or declaration by or against the Receiver or the Indenture Trustees that their claims lack merit or that the relief requested is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she or it may have. Neither this Scheduling Order, nor the proposed Settlement Agreement, or any other settlement document, shall be filed, offered, received in evidence, or otherwise used in these or any other actions or proceedings, except to approve, give effect to, implement or enforce the Settlement or the terms of this Scheduling Order.

IT IS SO ORDERED.

SIGNED on 27 JUNE, 2019.



STEVEN C. MANNION, USMJ