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

**In re:** §  
§ (Chapter 11)  
**Genesis Healthcare, Inc., et al.,** §  
§  
**Debtors.** § CASE NO. 25-80185 (SGJ)  
§  
§  
§ (Jointly Administered)  
§

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**OBJECTION TO THE APPROVAL OF THE DEBTORS' AUCTION**

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Olumie Capital, LLC ("Olumie"), a party in interest in the above-captioned jointly administered bankruptcy cases (the "Bankruptcy Cases") of Genesis Healthcare, Inc. and its related entities (collectively, the "Debtors"), that were filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the "Bankruptcy Code") files this *Objection* (the "Objection") to this Court's approval of the continued auction of substantially all of the Debtors' assets. In support of this Objection, Olumie shows this Court as follows.

**I. PRELIMINARY STATEMENT**

1. This Objection is being filed because, at the Second Auction, a brand new condition was imposed on the bidders that had not been mentioned or addressed prior to that time, namely, the requirement of a financing commitment letter. In fact, in the Committee's *Supplemental Bid Guidance Memorandum*, it specifically states that it is not a requirement to have committed capital in order to make a Qualified bid! If the condition requiring a financing commitment letter had been communicated to bidders sufficiently in advance of the Second Auction, Olumie could have taken the necessary steps to comply. Instead, Olumie was specifically advised that the financing commitment letters were not a requirement to submit a Qualified Bid. In reliance on that representation, Olumie did not obtain or seek to obtain a financing commitment letter. Had Olumie been informed that a financing commitment letter would in fact be required, it may have pursued different actions.

2. Olumie acknowledges that certainty of closing is an important consideration in any auction process. However, Olumie was expressly told that providing a financing commitment letter was not a condition to having a Qualified Bid, and the imposition of the that requirement at the Second Auction placed Olumie at a material disadvantage.

3. The representative of the Estate Broker, Mr. Turnbull, told Olumie that the failure to have the financing commitment letter was valued at \$10 million but that there was no dollar amount or condition that could overcome that requirement and that Olumie would not be able to bid further without agreeing to obtain the financing commitment letter within 45 days or lose its deposit. Olumie offered to increase its cash deposit by \$10 million to offset the lack of a financing commitment letter, but that offer was declined.

4. Olumie was excluded from the bidding at the Second Auction and State Street had the winning bid.

5. With this Objection, Olumie requests that this Court not approve the Second Auction and reopen the bidding so that Olumie can participate in the bidding. Olumie's new bid is higher than State Street's ultimate winning bid at the Second Auction from which Olumie was excluded. Olumie will increase the cash component of its bid from \$250 million to \$350 million which will require Olumie to increase its deposit from \$25 million to \$35 million and offset the \$10 million deduction for not having a financing commitment letter. That, coupled with Olumie's exemplary record in owning and operating nursing facilities, should make Olumie's bid the highest and best offer.

## **II. JURISDICTION AND VENUE**

6. On July 9, 2025, the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code. This Court has jurisdiction over this Bankruptcy Case under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue the Bankruptcy Cases is proper in this Court in this district under 28 U.S.C. §§ 1408 and 1409.

## **III. AN INTRODUCTION TO OLUMIE**

7. Olumie is the acquisition and investment arm within a broader family of long-term care operating companies focused on skilled nursing. Rather than functioning as a passive capital provider, Olumie is backed by an established operating platform purpose-built for the regulatory, clinical, and operational realities unique to Skilled Nursing Facilities ("SNFs"), with the infrastructure and leadership capacity to stabilize performance while protecting resident care and compliance.

8. Within this affiliated platform, Prestige Healthcare serves as the core owner-operator, providing the administrative, clinical, and operational backbone required to run SNFs at scale. Everest Management Solutions, LLC is distinct from Prestige and fills a complementary role: it is a consulting and management organization designed for transition execution and turnaround

environments, including distressed facilities, rapid performance improvement, and operational stabilization when conditions demand heightened intervention. Together, this structure allows Olumie to pair “steady-state” operating depth with specialized transition and recovery capabilities.

9. Across its platform, Olumie helps facilitate the management and operation of approximately 160 facilities, encompassing around 9,000 beds and nearly 15,000 employees. With extensive experience in navigating challenging environments such as bankruptcy oversight, receivership, and Corporate Integrity Agreement conditions, Olumie is equipped to handle complex SNF portfolios. This operational expertise enables disciplined transitions towards long-term stability while ensuring resident safety, quality care delivery, and regulatory compliance.

10. Olumie has a documented history of success in owning and operating nursing facilities. Across multiple distressed and underperforming healthcare portfolios, the Olumie platform has delivered repeatable, quantifiable results in census recovery, regulatory stabilization, clinical outcomes, and financial performance. These results were achieved through direct operational control, disciplined governance, and coordinated execution across all interdisciplinary functions.

11. The outcomes summarized below are documented and measurable, achieved under conditions of regulatory scrutiny, labor instability, occupancy disruption, and liquidity pressure; conditions materially comparable to the Debtors’ Assets. Collectively, these outcomes evidence Olumie’s demonstrated ability to:

- Rapidly stabilize distressed assets;
- Protect resident safety and regulatory standing;
- Restore census, payer mix, and cash flow; and
- Convert operational recovery into durable financial performance.

12. In distressed healthcare transactions, the value of any bid is inseparable from the buyer’s ability to operate the assets post-closing. Absent execution capability devalues even the highest bid and risks recreating the same operational, regulatory, and liquidity failures that precipitated the restructuring. Taken together, these results materially reduce execution risk and support expected recovery, not merely headline valuation.

13. The outcomes below are representative examples of execution at the operating-unit and regional level, where clinical, regulatory, and financial risk is realized. In the aggregate, these results reflect repeatable interventions deployed concurrently across multi-facility portfolios, supported by centralized governance, standardized operating frameworks, and scaled clinical and financial oversight.

<b>Portfolio Risk Area</b>	<b>Demonstrated Execution Outcomes</b>	<b>Creditor Value</b>
<b>Census Decline &amp; Occupancy Volatility</b>	<ul style="list-style-type: none"> <li>Achieved <b>+20% census growth</b> within six months across multiple skilled nursing portfolios</li> <li>Increased ADC from <b>~399 to 436 (+9.5%)</b> within one year across multi-facility regions</li> <li>Sustained multi-year ADC growth (<b>49 → 52.5 → 54.4, 2023–2025 YTD</b>)</li> <li>Reopened previously offline capacity, including <b>24-bed units restored to &gt;90% occupancy, 17-bed units reopened</b>, and dialysis programs scaled <b>2 → 9 patients</b></li> </ul>	Demonstrates ability to stabilize occupancy at the unit level while restoring liquidity and fixed-cost absorption across larger portfolios
<b>Labor Instability &amp; Agency Dependence</b>	<ul style="list-style-type: none"> <li>Reduced agency utilization by <b>~30%</b> through wage realignment and staffing discipline</li> <li>Implemented market-aligned wage restructuring (<b>~14.5% average increase</b>) to eliminate chronic agency reliance</li> <li>Maintained controlled NHPPD (<b>~2.9</b>) while improving care outcomes</li> <li>Achieved full department-head staffing and minimal NHA turnover over a 12-month period</li> </ul>	Workforce stabilization protects margins, reduces clinical and survey risk, and supports predictable operations at scale
<b>Regulatory Exposure &amp; Survey Risk</b>	<ul style="list-style-type: none"> <li>Resolved all <b>Immediate Jeopardy</b> citations within <b>60 days</b></li> <li>Cleared <b>31 survey tags</b> on first revisit</li> <li>Achieved substantial compliance across all facilities within <b>90 days</b></li> <li>Maintained <b>zero fines</b> and <b>zero discretionary denial-of-payment days</b> post-transition</li> </ul>	Preserves licensure, reimbursement eligibility, and enterprise continuity, preventing value-destructive enforcement outcomes
<b>Quality Degradation &amp; Clinical Risk</b>	<ul style="list-style-type: none"> <li>Reduced rehospitalizations <b>33% year-over-year</b> and <b>77%</b> in targeted periods (<b>13 → 3 per month</b>)</li> </ul>	Clinical risk reduction strengthens referral

Portfolio Risk Area	Demonstrated Execution Outcomes	Creditor Value
	<ul style="list-style-type: none"> <li>• Recorded only <b>two major-injury falls</b> over ten months, with no recurrence following intervention</li> <li>• Eliminated facility-acquired pressure injuries for consecutive reporting periods</li> <li>• Achieved a <b>+240-point improvement in CMS Quality Measures</b></li> </ul>	confidence, supports star-rating improvement, and protects long-term revenue integrity
<b>Payer Mix Erosion &amp; Rate Compression</b>	<ul style="list-style-type: none"> <li>• Improved skilled and quality mix by <b>71% within six months</b></li> <li>• Achieved <b>5.5% Medicaid rate recovery</b> following quality stabilization</li> <li>• Secured private-room add-ons generating <b>\$434,350+ annual revenue</b></li> <li>• Executed regulatory-driven reclassification strategies producing <b>\$525,699 annual tax savings and revenue uplift</b></li> </ul>	Enhances revenue durability and margin quality without reliance on unsustainable volume growth
<b>Margin Compression &amp; Cost Leakage</b>	<ul style="list-style-type: none"> <li>• Increased EBITDAR <b>71% over a 15-month period</b></li> <li>• Expanded EBITDAR per patient day <b>84% (\$18.87 → \$34.67)</b></li> <li>• Reduced operating expense per patient day by <b>3.25%</b> during inflationary labor conditions• Generated <b>\$586,000+ net income improvement</b> within six months</li> </ul>	Demonstrates ability to rebuild earnings power while controlling cost leakage under distressed conditions
<b>Capital Inefficiency &amp; Deferred Maintenance Risk</b>	<ul style="list-style-type: none"> <li>• Avoided unnecessary capital expenditure through alternative remediation strategies</li> <li>• Delivered <b>\$439,750 in verified savings</b> versus original contractor scope</li> <li>• Reopened closed units without capital-intensive rebuilds</li> </ul>	Preserves cash and enhances creditor recoveries through disciplined capital deployment
<b>Liquidity Constraints &amp; Revenue Cycle Weakness</b>	<ul style="list-style-type: none"> <li>• Reduced Days Sales Outstanding by <b>13 days</b></li> <li>• Resolved <b>8 high-balance Medicaid pending cases</b></li> <li>• Implemented standardized billing controls and payer escalation protocols</li> </ul>	Improves near-term cash predictability and reduces transition-period liquidity risk
<b>Execution Risk (Sponsor Capability)</b>	<ul style="list-style-type: none"> <li>• Delivered <b>repeatable outcomes across multiple states and portfolios</b></li> <li>• Executed <b>concurrent stabilization</b> across census, labor, clinical, regulatory, and financial domains</li> <li>• Achieved <b>sustained improvements</b>, not short-term remediation</li> </ul>	Indicates materially lower execution risk and higher probability of preserving and enhancing enterprise value post-closing

14. Olumie is supported by an affiliated ecosystem of healthcare operating and advisory entities with a long history of management, restructuring, and turnaround work across the post-acute continuum. Collectively, the platform has extensive experience across diverse engagements

nationwide, including stable portfolios, distressed assets, multi-state operators, and court-involved transitions.

15. The operating platform is anchored by two established healthcare organizations that together provide both stable enterprise-level operations and specialized transition capability. Prestige Healthcare serves as a long-standing operator with a mature operational infrastructure across multiple states. Everest Management Solutions provides complementary expertise in complex transitions, distressed operations, and performance stabilization, including engagements involving regulatory scrutiny and court-involved processes.

16. These entities operate independently but are aligned through shared standards, operating disciplines, and execution protocols. Their combined experience provides immediate operating capacity, transition discipline, and risk containment during ownership change—key factors in preserving enterprise value and protecting creditor recoveries.

17. Affiliated entities have a demonstrated record of providing:

- Direct management and interim operatorship in connection with ownership, tenant, and operator transitions;
- Operational and regulatory restructuring for distressed and high-risk facilities, including management of facilities subject to CIAs (Corporate Integrity Agreements), service as receiver, and operation of facilities under court-appointed receivership;
- Lender-and REIT-facing diligence, transition support, and operational oversight; and
- Board-level reporting and fiduciary engagement in complex, multi-stakeholder environments.

18. Olumie's operating platform is staffed with individuals who possess direct, hands-on experience at both the facilities and enterprise levels across the full range of clinical, operational, regulatory ,and financial disciplines required to operate and stabilize skilled nursing facilities in

highly regulated environments. This capability is not conceptual; it reflects existing leadership depth and operating infrastructure actively deployed across the platform.

#### **IV. PROCEDURAL BACKGROUND OF THE DEBTORS' AUCTION**

19. On January 15, 2025, the Debtors filed their *Debtors' Motion For Entry of an Order (I) Approving Bidding Procedures and Expense Reimbursement, (II) Approving the Debtors' Entry Into the Stalking Horse APA, (III) Scheduling Certain Dates and Deadlines, (IV) Approving the Form and Manner of Notice Thereof, (V) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (VI) Authorizing the Assumption and Assignment of Assumed Contracts, and (VII) Authorizing the Sale of Assets* [D.E. 117] (the "Sale Motion").

20. On August 28, 2025, this Court entered its *Order (I) Approving Bidding Procedures and Reimbursement, (II) Approving the Debtors' Entry Into the Stalking Horse APA With Stalking Horse Bidder and Subject to Higher and Otherwise Better Offers at the Auction in Accordance with the Bidding Procedures, (III) Scheduling Certain Dates and Deadlines, (IV) Approving the Form and Manner of Notice Thereof, and (V) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases* [D.E. 685] (the "Bidding Procedures Order") where this Court approved, among other things, the bidding and sale procedures (the "Bidding Procedures") to be used in connection with the Debtors' sale of substantially all of their assets (the "Assets").

21. On August 29, 2025 the Debtors filed their *Notice of Sale by Auction and Sale Hearing* [D.E. 705] which, among other things, scheduled the Auction for the Assets on November 13, 2025, at 10 a.m. prevailing Central Time.

22. On October 27, 2025, the Debtors filed their *Notice of Rescheduled Auction to November 12 2025 and Sale Hearing to December 10, 2025 at 9:30 a.m. (CT)* [D.E. 1402] which, among other things, rescheduled the Auction to November 12, 2025 at 10 a.m. prevailing Central Time.

23. The Bid Deadline for the Assets occurred on November 7, 2025 at 4 p.m. prevailing Central Time and, in furtherance of ongoing discussions with the Consultation Parties and potential bidders, the Debtors rescheduled their Auction to November 18, 2025 at 10 a.m. Prevailing Central Time.<sup>1</sup>

24. The Auction commenced on November 18, 2025 at approximately 9:30 a.m. Prevailing Central Time and continued through multiple rounds of bidding until approximately 1 a.m. Prevailing Central Time on November 19, 2025, at which point the Auction was adjourned.

25. The Auction continued on November 19, 2025 at approximately 12:30 p.m. Prevailing Central Time. Following additional bidding, the Debtors and the Committee jointly requested that all bidders submit their best and final bids to the Debtors in sealed envelopes (the “Sealed Bids”) by 6 p.m. Prevailing Central Time.

26. In accordance with this Court’s directions set forth on the record at the hearings conducted on December 10-11, 2025, and then continued to December 17, 2025, the Court entered the *Agreed Order (I) Approving Amended and Restated Bidding Procedures for the Submission, Receipt, and Analysis of Bids in Connection With the Sale of the Debtors’ Assets and (II) Scheduling Certain Auction Dates and Deadlines* [D.E. 1989] (the “Revised Bidding Procedures Order”).

27. On December 24, 2025, following the entry of the Revised Bidding Procedures Order, the Debtors filed the *Notice of Renewed Auction and Sale Hearing* [D.E. 2002], setting the renewed auction (the “Second Auction”) for January 13, 2026 and the sale hearing for January 20, 2026 (the “Sale Hearing”).

28. On January 13, 2026, the Second Auction was held, and based on the results of the Second Auction following five rounds of bidding and more than \$100 million in additional consideration as compared to the Replacement Stalking Horse Bid, the Estate Broker, acting at the joint direction of the

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<sup>1</sup> See D.E. 1569.

Debtors and the Committee and in consultation with the Consultation Parties, designated 101 West State Street, LLC (“State Street”) as the Successful Bidder and Genie 3 Partners, LLC (“Genie 3”) as the Back-Up Bidder.

V. WHAT TOOK PLACE AT THE SECOND AUCTION

29. Although the parties in interest arrived at the Second Auction early in the morning along with their investors, operators, financing partner, and proof of funds that were verified with Mr. Turnbull, the actual auction itself did not begin until 3:55 p.m. later that afternoon, as the Committee requested several changes to Olumie’s APA or else Olemie would not be qualified, including bulk sale rules, material adverse effect definitions, concerns regarding special focus facilities, and changes requiring Olemie to agree to be a backup bidder. Until the Second Auction actually began, the bidders continued their negotiations with the representatives of the Debtor and the Committee. The Second Auction was presided over by Andrew Turnbull (“Mr. Turnbull”), from Houlihan Lokey, which was acting as the Estate Broker. A copy of the Transcript of the Auction (the “Transcript”) is attached as **Exhibit A**.

30. The Second Auction began with an opening statement by Mr. Turnbull, where he said, among other things:

...As set forth in the bidding procedures, **the estate reserves the right to modify the auction rules or impose such other terms or conditions** with respect to the auction as is determined will be in the best interest of the matter of the estate and is contemplated as in the bidding procedure and is contemplated by the bidding procedures.<sup>2</sup>

31. In conformance with this reservation of rights new terms and conditions were imposed on the bidders. These new terms and conditions originated with the Stalking Horse, and were the following:

Buyer has agreed to add a new covenant stating that Buyer agrees that it will deliver to sellers customary market debt commitment letters that are no more conditional than the APA in form and substance reasonably acceptable to sellers covering the full purchase price, cash, and any

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<sup>2</sup> Transcript, **Exhibit A** herein, 8/15-21 (emphasis added).

refinance debtor liabilities which will be defined as the committed financing letters no later than 45 days after the entry of the sale order.

If buyer increases the deposit by 15 million, buyer may extend such deadline to no later than 76 days after entry of the sale order. If buyer increases its deposit by an additional 7 million together with the additional 15 million increase 22 million, buyer may extend such deadline to no later than 85 days after entry of the sale order.

If byer fails to deliver the committed financing letters by such deadline, sellers have the right to terminate the APA and keep the full deposit including any increased deposit . . .<sup>3</sup>

Under these new terms and conditions the Stalking Horse was going to provide the Debtors with financing commitment letters from the Stalking Horse's lender. Prior to the beginning of the Second Auction on January 13, 2026, Mr. Turnbull discussed this financing commitment letter requirement with the representatives of all three of the bidders: Genie 3, State Street and Olumie. This was the first time that this financing commitment letter requirement had ever been broached with Olumie; which had never seen or heard of anything like that pertaining to the Second Auction until that time.

32. The representatives of Olumie told this to Mr. Turnbull in order to demonstrate to him that these new terms and conditions of having a "lender commitment" within 45 days were a surprise to Olumie, and that Olumie was not able to prepare for those new terms and conditions prior to that date. The representatives of Olumie informed Mr. Turnbull that Olumie would not be able to agree to these new terms and conditions at that time. When the Second Auction actually began and the financing commitment letter was still required, Olumie was excluded from the bidding and withdrew.

MR. SPECTOR: Howard Marc Spector. Olumie can't – Olumie declines to up its bid at this time. We believe that the financing requirement that was only presented to us yesterday is impossible for bidders to meet, at least for us. And we think it was, with all due respect to the professionals, inappropriate to bring this up on the day of the auction.<sup>4</sup>

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<sup>3</sup> Transcript, Exhibit A herein, 15/5-24.

<sup>4</sup> Transcript, Exhibit A herein, 26/5-11.

33. The net result of Olumie not being able to agree to provide a financing commitment letter when presented with that newly imposed requirement on the day of the Auction was that Mr. Turnbull deducted \$10 million from Olumie's bid. Olumie had offered to increase the cash portion of its bid by \$10 million in order to offset this deduction, but that offer was declined.

So we had inserted a \$10 million deduct from a bid scoring perspective in the Olumie bid, which makes Olumie's bid relative to the other two the lowest of the three, that is not a bid that can be – or that is not a \$10 million item that can be overcome by increasing another attribute of consideration. We will not be accepting overbids without a provision committing to financing inside of the 90-day window.

So with that said with the modifications we have identified as the estate the opening bid here is State Street. The next bid is Genie 3. And the Olumie bid is the third from a relative perspective.<sup>5</sup>

34. Because of the deduction of \$10 million from the Olumie bid, Mr. Turnbull was putting a value on the newly imposed financing commitment letter requirement of \$10 million.

MR. SPECTOR: I have a question. Howard Marc Spector for Olumie.

S your \$10 million – your \$10 million plug number really is just a number. And if we did satisfy the financing commitments that others have made, that just would go away, and our bid would be adjusted?

MR. TURNBULL: Correct.<sup>6</sup>

Olumie offered to increase its deposit by \$10 million to offset this \$10 million discount, but that offer was declined.

35. At the end of the Second Auction, State Street was the winning bidder. The *Second Auction Scorecard Summary* (the "Scorecard") from the Second Auction, showing this, is set forth below.

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<sup>5</sup> Transcript, Exhibit A herein, 22/22-23/8.

<sup>6</sup> Transcript, Exhibit A herein, 23/15-21.

Genesis Healthcare		
Second Auction Scorecard - Summary		1/13/2026
(\$ in millions)		
	Final Bids	
	Genie 3	101 W State St
<b>Purchase Consideration</b>		
Cash	\$ 341	\$ 343
Promissory Note - Illustrative Values	78	100
Assumed Liabilities	572	572
<b>Sale Transaction Value</b>	<b>991</b>	<b>1,015</b>
<b>Bid Protection Adjustments</b>		
Break Up Fee/Expense Reimbursement	-	(11)
White Oak Termination Fees	-	(8)
<b>Bid Value</b>	<b>\$ 991</b>	<b>\$ 996</b>
<b>Memo:</b>		
Cash Deposit	\$ 54.1	\$ 54.3

36. During the Second Auction, Mr. Turnbull mentioned that the reason for the new imposed requirement of finance commitment letters was to provide for certainty which was important because lives were at stake.

MR. TURNBULL: So we sit here right now, this a very important attribute of the process for the – for the estate in general. There’s uncertainty associated with the financing. And it’s – this process has been long. **There are people’s lives at stake in these facilities.** And we want to make sure we are driving towards a closing.<sup>7</sup>

Despite the fact that Mr. Turnbull pointed out that people’s lives were at stake in the facilities being sold as part of the Debtors’ Assets, there is no indication on the Scorecard that how those facilities would be operated by the winning bidder in the future, who would be operating those facilities, and/or their past operating and compliance history factored into the decision on who the ultimate winning bidder was.

<sup>7</sup> Transcript, **Exhibit A** herein, 22/3-9 (emphasis added).

The Scorecard makes it clear that the decision on who was the winning bidder at the Second Auction was a decision that was strictly mathematical and monetary.

37. Had Olumie not been constructively excluded from the bidding at the Second Auction, the Scorecard would have looked as follows:

PURCHASE CONSIDERATION	GENIE 3 (\$)	101 W STATE STREET (\$)	OLUMIE (\$)
Cash	341	343	350
Promissory Note-Illustrative Values	78	100	126*
Assumed Liabilities	572	572	572
Sale Transaction Value	991	1,015	1,048

BID PROTECTION ADJUSTMENTS	GENIE 3 (\$)	101 W STATE STREET (\$)	OLUMIE (\$)
Break Up Fee/Expense Reimbursement		(11)	(11)
White Oak Termination Fees		(08)	
Bid Value	991	996	1,037**

\* Assumes the face value of the note multiplied by 0.63 to illustrate the value the Committee placed on these notes or that was how it was explained to Olumie.

\*\* On the note, Olumie would give \$10 million priority per year on the note at 12% interest translating to a net present value of \$30.38 million which should be noted in the discount on the face value of the note.

## **VI. LEGAL POINTS AND AUTHORITIES**

38. Conducting an auction of a debtor's assets involves walking a tightrope as the court balances competing interests.

. . . the difficult balancing act a bankruptcy court must perform when it conducts an auction of a debtor's assets. It walks a tightrope between, on the one hand, providing for an orderly bidding process, recognizing the danger that absent such a fixed and fair process bidders may decline to participate in the auction; and, on the other hand, retaining the liberty to respond to differing circumstances so as to obtain the greatest return for the bankrupt estate.<sup>8</sup>

39. There is a continuum along which a bankruptcy court's discretion to reopen bidding in the pursuit of estate maximization diminishes as the sale gets closer to becoming a done deal and as the expectations of the participants solidify. Once a court has confirmed the sale of a debtor's assets to the auction's winner, the public interest in finality is high and the parties reasonable expect that the bidding

will finally be over. At that point in time, only a very narrow range of circumstances will support a court's decision to vacate the sale order and reopen the bidding. When that happens, the fact that a late bid offers the estate more money than the bid previously approved by the court will not be enough; only if the late bid reveals the sale price to so grossly inadequate as to shock the conscience of the court or if the original auction was tainted by fraud, mistake, or some comparable defect will a court be justified in setting aside a confirmed sale. But, on the other hand, where the auction sale has not progressed to a comparable point, the bankruptcy court has a broader discretion to decide whether to entertain a late bid, and the bankruptcy court's judgment is entitled to commensurate deference by reviewing court. For example, where the bidding for the debtor's assets is "complex and fluid" or where it is "informal and flexible" and where the court has not yet approved the sale to a particular bidder, the court might be justified in concluding that consideration of a late bid would not unduly frustrate the reasonable expectations of the participants or compromise the integrity of the auction process. Under that scenario, the financial gain for the estate and its creditors might be enough as a reason for reopening the bidding without an additional showing that the initial bids were grossly inadequate or that the original bidding was tainted by fraud or some other irregularity.<sup>9</sup>

40. Bankruptcy courts that walk this tightrope and that are faced with a request to reopen the bidding in the judicial sale process in order to ensure the greatest return to creditors have considered the following factors: (a) the applicable bidding procedures and the reasonable expectations of bidders based

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<sup>8</sup> In re Financial News Network Inc., 980 F.2d 165, 166 (2<sup>nd</sup> Cir. 1992) ("Financial News").

<sup>9</sup> Corporate Assets, Inc. v. Paloian, 368 F.3d 761, 768 (7<sup>th</sup> Cir. 2004) ("Corporate Assets"). In re Food Barn Stores, Inc., 107 F.3d 558, 565, 567 (8<sup>th</sup> Cir. 1997) ("Food Barn"). In re Hart's MFG Co., Inc., 383 B.R. 720, 723-724 (Bankr. W.D.Tenn. 2008) ("Hart's") ("The court's discretion is significantly broader when deciding whether to confirm a sale than it would be were the court considering setting aside a sale that was previously confirmed by the court . . . **Although the sale was conducted pursuant to a previously confirmed plan, this Court still has the discretion, if not the obligation, to examine the reasonableness of the sale**, including whether the sale is in the best interest of creditors and whether the purchase price is adequate . . .") (emphasis added).

on those procedures; (b) the amount of the overbid and the impact on the creditors; (c) whether the bidder acted in good faith; and (d) whether a sale order has been entered.<sup>10</sup>

41. An application of these factors should lead to the conclusion that the Second Auction should be reopened and Olumie allowed to participate in the auction process. *First*, Olumie had a reasonable expectation that it would not be blindsided by a new bidding requirement that was imposed on it at the Second Auction and for which Olumie had no time to prepare for. In the Committee's *Supplemental Bid Guidance Memorandum* (the "Bid Memorandum"), a copy of which is attached as Exhibit B, there is a specific provision that says that committed capital will not be a requirement.

1. Committed Capital – The strength of commitment of capital, debt and equity, is an important consideration in the evaluation of bids. **It is not a requirement to have committed capital to have a Qualified Bid**, however, progress to committed capital, timelines to commitment, possibly milestones to committed capital, etc. are important attributes for consideration as it relates to certainty of closing and the determination of which bid is "better" if not higher.<sup>11</sup>

But, because this bidding requirement was imposed on the day of the Second Auction, in contradiction to the Bid Memorandum, and not sufficiently before the Second Auction, Olumie could not obtain a financing commitment letter at that time. Olumie tried to offset its lack of a financing commitment letter by agreeing to increase its deposit by \$10 million, to offset the \$10 million discount attributed to its lack of a financing commitment letter, but that offer was rejected.

42. *Second*, if the Second Auction is reopened, Olumie will offer should be a highest bid. Olumie's bid should result in a positive impact on this bankruptcy estate's creditors.

43. *Third*, Olumie has acted in good faith at all times during the auction process.

44. *And, fourth*, no sale order has been entered yet. This means that this Court has a greater range of discretion than if a sale order had been entered.

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<sup>10</sup> In re Sunland, 507 B.R. 753, 760 (Bankr. D.N.M. 2014) ("Sunland").

45. A case on point is Corporate Assets. In that case, at an auction that was sanctioned by the Bankruptcy Court, Corporate Assets, Inc. (“CAI”) submitted the high bid for assets belonging to the debtors. A higher upset bid was offered to the debtors after the close of the auction and it convinced the debtors, with the approval of the Bankruptcy Court, to reopen the bidding. As it turns out, CAI won the second auction as well. CAI appealed the Bankruptcy Court’s decision to reopen the bidding and to confirm the sale to CAI at the higher price that was established at the second auction. The District Court affirmed the Bankruptcy Court and so did the Court of Appeals.

46. The draft purchase agreement that the bidders were to execute in advance of the auction had a provision which reserved to Goss Holdings, Inc. and Goss Graphic Systems, Inc. (collectively, “Goss”), the debtors in that case, which reserved to Goss the right to require the removal of assets prior to a June 1<sup>st</sup> date in the event the property was sold. After becoming aware of the concerns that prospective bidders had about the early-removal provision, Goss decided that it would delete that provision from the asset purchase agreement.<sup>12</sup>

47. One of the bidders at the auction in that case was Myron Bolling Auctioneers (“MBA”), which ultimately secured the second-place slot. The day after the auction, MBA contacted Goss and informed Goss that it wanted to increase its bid to an amount that would have been almost 9% higher than Corporate Assets’ winning bid. MBA had not know prior to the auction that Goss had decided to remove the purchase agreement language permitting Goss to require early removal. Following the auction, MBA became aware of the change and that is why MBA increased its bid.<sup>13</sup>

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<sup>11</sup> Bid Memorandum, **Exhibit B** herein, ¶ 1, p. 1 (emphasis added).

<sup>12</sup> Corporate Assets, 368 F.3d at 764.

<sup>13</sup> Corporate Assets, 368 F.3d at 765.

48. Presented with this higher offer from MBA, Goss requested that the Bankruptcy Court continue to sale hearing so that a second auction could be conducted. The Bankruptcy Court acceded to that request.<sup>14</sup> When faced with CAI's appeal, the Court of Appeals ruled that:

Confronted with these circumstances, the bankruptcy court did not abuse its discretion in deciding to permit a second auction and to confirm the sale of the Cedar Rapids assets to CAI based on the results of the second auction rather than the first. The bankruptcy court carefully weighed the relevant considerations and reasonably concluded that the prospect of additional remuneration for the estate and its creditors outweighed concerns about the finality and regularity of the sale proceeding. **As the court had not yet conducted a sale hearing when MBA made its upset bid, the interest in the finality of the sale had not yet ascended to a point demanding that a gross shortcoming in the first auction be shown in order to justify renewed bidding.** Although the first auction had come to a close and none of the parties had expected bidding to resume, CAI's high bid had not been formally accepted, and Goss was still empowered to reject that bid and/or to burden it with additional considerations until such time as the court approved the sale to CAI. CAI's expectation that it had won the right to purchase the Cedar Rapids assets was therefore not without qualification. **On these facts, the bankruptcy court was entitled to conclude that CAI's expectations as the high bidder, and the public's interest in finality of the sale proceedings, were not so solidified as to preclude a second auction. At the same time, the bankruptcy court was rightfully concerned that MBA's lack of foreknowledge about the excision of the early-removal provision from the asset purchase agreement had placed it at a disadvantage at the first auction. A second auction offered the means of redressing the inequity as well as securing a higher price on the Cedar Rapids assets for the estate . . .** CAI, of course, was able to and did participate in the second auction along with the other qualified bidders; so as far as the record reveals, it was prejudiced only in the sense of having to pay more for the right to purchase the assets.<sup>15</sup>

49. Our case here has a lot in common with what transpired in Corporate Assets. Just as MBA had no foreknowledge of the excision of the early removal provision from Goss' asset purchase agreement with respect to its auction, Olumie had no foreknowledge of the requirement of a financing commitment letter that Olumie first learned about at the Second Auction. This placed Olumie at a

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<sup>14</sup> Corporate Assets, 368 F.3d at 765.

<sup>15</sup> Corporate Assets, 368 F.3d at 772-773 (emphasis added).

disadvantage. Had Olumie been given sufficient notice of the financing commitment letter requirement, Olumie could have undertaken the necessary steps to obtain that. A reopening of the bidding of the Second Auction offers the means of redressing this inequity as well as securing a higher price for the Debtors' Assets. In addition, Olumie's new bid is offering more money to buy the Debtors' Assets. The other bidders at the Second Auction, Genie 3 and State Street, will be able to participate at any new reopening of the Auction.

50. There are two other factors that this Court should also consider with respect to this Objection. *First*, as Mr. Turnbull pointed out during the Second Auction, “[T]here are people’s lives at stake in these facilities.”<sup>16</sup> And, yet, the Scorecard does not appear to take into account the ability of the bidders to care for the very people whose lives are at stake in the Debtors' facilities. Olumie has an exemplary record in owning and operating nursing facilities. That should be a factor that should not be ignored and should elevate Olumie ahead of the other two bidders.

51. *Second*, Olumie has identified what it considers to be a contradiction in State Street's APA documentation (the “State Street APA”), a copy of which is attached as **Exhibit C**. Olumie did not have the chance to review to the State Street APA until after the Second Auction. For example, in the summary of the State Street APA, which is entitled Bid for All Assets of Genesis Healthcare, Inc., under No. 8 Contingencies, it says that the Bidder confirms **no financing, diligence, or other contingencies**, and that the Bidder confirms all due diligence completed before Bid submission. However, there appears to be a contingency in the following provision.

### ARTICLE III PURCHASE PRICE

**Section 3.01 Purchase Price.** As full consideration for the sale of the Purchased Assets by Sellers to Buyer, at the Closing, Buyer shall assume the Assumed Liabilities as provided in Section 2.03 and shall pay to the Sellers the following amounts (the “Purchase Price”):

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<sup>16</sup> Transcript, **Exhibit A** herein, 22/7-8 (emphasis added).

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(c) \$135,000,000.00 in additional cash proceeds, subject to reduction by the Bold Quail Purchase Amount **if the Bold Quail Purchase Amount is exercised**, payable pursuant to a payment installment agreement, to be paid over five (5) years in equal annual installments of \$27,000,000.00 on the anniversary of the Closing Date . . .<sup>17</sup>

Olumie is continuing to review State Street's APA for additional inconsistencies.

## VII. CONCLUSION

52. This objection could have been avoided had the Bid Memorandum been followed and a financing commitment letter not been required, had Olumie been provided with sufficient notice before the Second Auction of the requirement of a financing commitment letter or had Olumie been allowed to increase its deposit by \$10 million to offset the discount to its bid in that amount for the failure to have a financing commitment letter. The failure to abide by the Bid Memorandum advising that committed capital was not a requirement, Olumie's lack of foreknowledge of the financing commitment letter and the prevention of Olumie trying to make up for that with an increase in its deposit to offset the discount to its bid are reasons enough to reopen the bidding of the Second Auction. Olumie's bid and Olumie's stellar performance and reputation in the skilled nursing facility industry also require that result.

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<sup>17</sup> State Street APA, **Exhibit B** herein, Section 3.10(c), pp. 39-40 (emphasis added).

**VIII. PRAYER**

Olumie prays that this Court grant this Objection, as requested herein, and award Olumie such other and further relief, special or general, at law or in equity, as this Court may deem just and proper.

Respectfully submitted,  
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**ATTORNEYS FOR OLUMIE CAPITAL, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2026 a true and correct copy the foregoing was served via this Court's ECF notification system.

/s/ Seymour Roberts  
Seymour Roberts