

PROPOSED TRANSACTION BETWEEN THE PROSPECT-WOODWARD HOME D/B/A HILLSIDE VILLAGE AND COVENANT LIVING OF KEENE

REPORT OF THE DIRECTOR OF CHARITABLE TRUSTS

January 21, 2022

I. Introduction

On November 24, 2021, The Prospect-Woodward Home (“PWH”) d/b/a Hillside Village submitted to the Charitable Trusts Unit of the New Hampshire Department of Justice a notice of a proposed change of control pursuant to RSA 7:19-b (“[Notice](#)”). This report describes the proposed change of control and the Charitable Trusts Unit’s review and conclusions.

A. The Entities Involved

1. The Prospect-Woodward Home d/b/a Hillside Village

PWH was established as a New Hampshire voluntary corporation in 1874. It is a charitable organization within the meaning of RSA 7:21, II (b) and is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

PWH is the surviving entity of a 2016 merger between The Prospect Hill Home, which owned and operated a 130-year old assisted living facility for seniors in Keene called “Prospect Place,” and The Woodward Home, which owned and operated a 75-year old assisted living facility for seniors in Keene. Prior to the merger, in 2015, PWH obtained probate court approval to, among other things, expand its mission to include the development and operation of a continuing care retirement community (“CCRC”). In addition, prior to the merger, the Director of Charitable Trusts reviewed the 2016 merger transaction in accordance with RSA 7:19-b and issued a no action letter on June 24, 2016, based on representations of the parties and certain conditions.

Following the merger, PWH acquired 66 acres of land on Wyman Road in Keene and constructed a facility known as Hillside Village, a CCRC offering residence and health care and other support services and activities to persons aged 62 years and older. Hillside Village is comprised of 141 independent units (77.9% of which are currently occupied), 43 assisted living units (27.9% of which are currently occupied), 20 long-term nursing care units (0% of which are currently occupied), and 18 memory care units (66.7% of which are currently occupied). The New Hampshire Insurance Department issued PWH a Certificate of Authority, and the New Hampshire Department of Health and Human Services issued PWH a supported residential care license and a nursing facility license. PWH employs 9 management staff, 31 clinical staff, and 83 additional staff. It has retained OnePoint Partners as an independent contractor to provide certain management services and personnel, including the current Chief Restructuring Officer, Executive Director, Assisted Living Administrator, and Nursing Home Administrator.

2. Covenant Living of Keene

Covenant Living of Keene (“Covenant-Keene”) is a New Hampshire voluntary corporation formed on October 4, 2021, to “establish and maintain housing, care and related services for seniors in the greater Keene, New Hampshire area, including the ownership and operation of a continuing care retirement community...on behalf of the Board of Benevolence of The Evangelical Covenant Church and Covenant Living Communities and Services.” *See* Articles of Agreement, as amended on November 19, 2021. Covenant-Keene’s sole corporate member is Covenant Living Services (“Covenant Services”), an Illinois nonprofit corporation that manages and oversees a continuing care system of retirement communities, assisted living facilities, and nursing homes operated by Covenant Living Communities and Services (“Covenant Living”), an Illinois nonprofit corporation, on behalf of the Board of Benevolence of The Evangelical Covenant Church. Covenant Living is the 8th largest nonprofit senior living organization in the United States with 17 retirement communities in 9 states serving a total of approximately 5,500 residents. Covenant Living currently operates one retirement community in New England, Covenant Living of Cromwell, Connecticut. Covenant Living has a Fitch credit rating of A-.

B. The Proposed Transaction

1. Background

PWH experienced a number of unforeseen setbacks since construction began on its Hillside Village facilities. For example, some of the buildings experienced water infiltration and damage due to balcony construction issues, and a dispute arose between PWH and the general contractor over the general contractor’s performance. After PWH withheld final payment to the general contractor, in August 2019, the general contractor brought a lawsuit against PWH, and the Cheshire County Superior Court ordered pre-judgment attachments and mechanics liens in the amount of approximately \$6.45 million on the Hillside Village property. In the meantime, PWH paid for the repairs and incurred additional debt to finance and complete construction.¹

At the same time, Hillside Village faced occupancy rates that were lower than anticipated. In January 2019, Hillside Village began opening to residents, but at that time, some of its living units and common areas were not yet completed. Hillside Village was not fully open until August 2019, and the memory care unit did not open until December 2019. The delayed opening of the facilities and the existence of the known defects and litigation had a negative impact on the number of successful closings and move-ins that first year.

In January 2020, Hillside Village was prepared to reinvigorate its marketing campaign, but less than two months later, as a result of the COVID-19 pandemic, Hillside Village was faced with lockdowns and closures as well as unplanned expenses related to

¹ The Superior Court action currently is stayed due to the bankruptcy filing discussed below.

COVID-19. Its primary focus became keeping residents safe from the pandemic. The challenges related to the pandemic further exacerbated the lower-than-expected occupancy and cash flow projections, and as a result, PWH was unable to fully pay its July 1, 2020 debt service payment or make any payment toward its January 1, 2021 and July 1, 2021 debt service payments on the bonds. PWH thereafter began forbearance discussions with the bond trustee.

In October 2020, the PWH engaged OnePoint Partners (“OnePoint”), a professional consulting firm with experience advising distressed senior living facilities, to evaluate PWH’s operations and business prospects, make recommendations as to how to achieve financial stability and become a sustainable organization, and lead the forbearance discussions with the bond trustee. The board established a Task Force consisting of 4 PWH trustees who met weekly to oversee OnePoint’s efforts and make recommendations to the full board. PWH also engaged national legal counsel to provide restructuring legal advice.

In February 2021, after considering OnePoint’s analysis, the advice of its legal counsel, and the Task Force’s recommendations, the PWH board concluded that in order to carry out its charitable mission, it required an infusion of capital and a means of reducing its debt that could only be accomplished through a Chapter 11 bankruptcy filing and an auction sale of PWH’s assets. PWH engaged Grandbridge Real Estate Capital (“Grandbridge”), a commercial broker and investment banker experienced in the sale of distressed senior living facilities, to solicit and evaluate bids for the purchase of Hillside Village.

As a result of Grandbridge’s marketing efforts, PWH received 8 written letters of intent to purchase Hillside Village from 3 nonprofit organizations, 3 for-profit organizations, and 2 nonprofit financing providers. With the assistance of legal counsel and expert consultants, and after reviewing the offers and conducting interviews of the two leading candidates, the board voted on June 17, 2021, to select the bid submitted by Covenant Services, which the board concluded was the highest and best offer. The parties thereafter negotiated an asset purchase agreement (“APA”), and on August 17, 2021, the PWH board voted to approve the APA. The APA was signed by the parties on August 17, 2021.

On August 30, 2021, PWH filed in the United States Bankruptcy Court for the District of New Hampshire a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Bankruptcy Code. *See In re: The Prospect-Woodward Home dba Hillside Village*, No. 21-10523-BAH (the “Bankruptcy Case”). At the same time, PWH filed a motion with the Bankruptcy Court to sell all of its assets pursuant to an auction process established under section 363 of the Bankruptcy Code. The APA became the “stalking horse” bid.² After an opportunity for interested parties to review documents as

² A “stalking horse” bid is one made by the initial bidder to buy the assets of an entity in bankruptcy through the Section 363 auction process. The initial bid sets the “floor” for the terms of the transaction against which all other bidders must compete.

part of the auction process, no other bidders emerged. On November 22, 2021, the Bankruptcy Court issued a Sale Order, approving the APA. *See* Notice, Appendix L.

On December 15, 2021, six days after the majority of board members attended a public hearing held by the Director of Charitable Trusts regarding the transaction, the PWH board of directors voted unanimously to ratify the board's August 17, 2021 vote to approve and accept the APA. The board also voted to acknowledge and accept Covenant Service's assignment of its rights and obligations under the APA to Covenant-Keene.

2. Summary of the Transaction Terms

Under the terms of the APA, Covenant-Keene would pay PWH \$33,000,000 for the purchase of virtually all of PWH's tangible assets, including its Hillside Village real estate, buildings, equipment, intellectual property, and records pertaining to the operation of Hillside Village.³ Covenant-Keene would assume all of PWH's obligations under the residence and care agreements with prior and current residents as well as PWH's obligation to legacy residents of PWH's prior facilities in accordance with the 2015 Probate Court order. Covenant-Keene would offer at-will employment to all of PWH's employees that meet its standard screening processes and would offer the employees benefits and other terms and conditions at levels consistent with that provided to employees of other Covenant Services facilities, with credit for service time and seniority. In addition, Covenant-Keene would pay PWH up to \$200,000 in order for PWH to pay employees for any unused accrued time off as of the closing date in accordance with New Hampshire law.

With respect to donor-restricted funds, upon closing, the APA provides that PWH would transfer to Covenant-Keene the over \$1.3 million in donor-restricted funds held by PWH. Covenant-Keene would be obligated to honor the donor restrictions and to comply with its statutory duty to manage the funds in accordance with the Uniform Prudent Management of Institutional Funds Act, RSA 292-B. With respect to any resident trust funds or deposits received by Covenant-Keene in connection with the transaction, Covenant-Keene would be obligated to comply with all restrictions and requirements on their use, maintenance, and distribution. Covenant-Keene also would be required to establish a charity care policy that provides for the treatment and care of residents who are unable to afford those services.

According to the Notice, the APA is subject to a number of regulatory and governmental approvals, including the review and approval of the Director of Charitable Trusts under RSA 7:19-b and the review and approval of the New Hampshire Insurance Commissioner under RSA 420-D:13. In addition, the transaction requires Probate Court approval under RSA 547:3, II (a), RSA 547:3-d, and RSA 292-B.

³ After signing the APA, Covenant Services assigned all of its rights and obligations under the APA to Covenant-Keene in accordance with a November 22, 2021 Assignment and Assumption Agreement. (Attached as Appendix M to the Notice.) For ease of reference, this report substitutes "Covenant-Keene" for "Covenant Services" when describing provisions in the APA.

II. Review by the Charitable Trusts Unit

A. Overview

Under state law, RSA 7:19-b, the Director of Charitable Trusts of the Attorney General's office is charged with reviewing acquisition and change of control transactions involving healthcare charitable trusts and with determining compliance with the statute's provisions. In making this determination, the Director is required to accept public comment and may conduct public hearings. RSA 7:19-b, IV.

After receiving the Notice on November 24, 2021, the Charitable Trusts Unit posted the Notice on the Department of Justice [website](#). On December 8, 2021, the Charitable Trusts Unit sent to counsel for PWH a request for additional information pursuant to RSA 7:19-b, IV (a). PWH submitted its response on December 17, 2021, and Covenant-Keene submitted its response on December 21, 2021. The collection of documents submitted by the parties are included in the "Notice."

On December 9, 2021, the Charitable Trusts Unit held a public hearing to obtain input regarding the proposed plan of reorganization. Because of restrictions implemented to avoid the spread of COVID-19, the public hearing was held both in person and remotely. The in-person session was held in the theater at the Hillside Village Keene campus, and well over 130 people attended. In addition, the public hearing was broadcast via videoconference so that it could be watched within and outside of Hillside Village, and viewers could submit questions and comments through the videoconference comment function. Twenty people attended the hearing via videoconference. A video of the hearing thereafter was posted to the Department of Justice website.

It was clear based on comments and questions submitted by the residents at the public hearing that the residents have been profoundly engaged in reviewing the proposed transaction and its implications. Indeed, some residents took it upon themselves to travel to Covenant Living of Cromwell in Connecticut to meet with residents to get their feedback regarding Covenant Living.

The comments from Hillside Village residents with respect to the proposed transaction were uniformly positive and hopeful. The president of Hillside Village's Resident Advisory Council said that the resident community is a "resilient, long-suffering, adaptable, smart group of people" who followed the Chapter 11 bankruptcy process and the Covenant-Keene transaction with "careful attention," and who learned a lot because they asked a lot of questions and consulted with their own experts. The president said that the Resident Advisory Council unanimously voted to support the transaction, as the members of the Council are convinced that the proposed transaction will address the concerns of residents concerning their financial investments, their health and well-being, and the promises made when they agreed to become residents. Other residents also expressed their enthusiasm and relief for the proposed transaction with Covenant-Keene. No residents expressed any opposition to or concerns about the transaction.

On December 10, 2021, the Director and Assistant Director of Charitable Trusts and representatives of the New Hampshire Insurance Department met via videoconference with members of the PWH board. Based on questioning, it was clear that in fulfilling their governance responsibilities and considering a path forward for Hillside Village, the members of the board were deeply engaged, informed, conscientious, and attentive to the needs and best interests of residents as well as PWH. They were unanimous in their support for the transaction with Covenant-Keene.

In accordance with RSA 7:19-b, IV (b), the Charitable Trusts Unit sought input and advice from the Commissioner of the Department of Health and Human Services and the Insurance Commissioner. The Insurance Commissioner has provided helpful input to the Charitable Trusts Unit.

In conducting its review under RSA 7:19-b, IV, the Charitable Trusts Unit has reviewed the Notice, the information provided at the public hearing, and comments and other documentation submitted to and solicited by the Charitable Trusts Unit. After considering all of the evidence, the Charitable Trusts Unit has determined that the Notice complies with RSA 7:19-b and will take no action to oppose the proposed transaction between PWH and Covenant-Keene, subject to the representations and conditions set forth in this report.

B. Application of the Review Standards under RSA 7:19-b

The proposed transaction constitutes a change of control under the change of control statute, RSA 7:19-b, because PWH proposes to sell all of its assets to Covenant-Keene. RSA 7:19-b, II requires that a governing body of a health care charitable trust ensure that a change of control transaction complies with seven minimum standards. The following sets forth the Charitable Trust Unit's analysis and conclusions with respect to each of the standards.

1. RSA 7:19-b, II (a): Permitted by Law

RSA 7:19-b, II (a) provides:

- (a) The proposed transaction is permitted by applicable law, including, but not limited to, RSA 7:19-32, RSA 292, and other applicable statutes and common law;...

The proposed transaction would transfer the assets of one charitable entity, PWH, to another charitable entity, Covenant-Keene. Covenant-Keene's purpose as set forth in its articles of agreement is substantially similar to PWH's purpose. Nevertheless, the transaction requires judicial review and approval under the doctrines of *cy pres* and deviation.

The sale of PWH's assets is not expressly authorized by its charitable purpose because it no longer will remain the entity that operates Hillside Village. The proposed transaction is not a statutory merger or member substitution and does not implicate

PWH's dissolution provision in its articles of agreement, as PWH intends to remain in existence for a period of time following the closing of the transaction. Thus, the sale and transfer of substantially all of PWH's assets to Covenant-Keene requires judicial approval under the doctrine of *cy pres*. See RSA 547:3-d, I.

In addition to approving the sale of the unrestricted charitable assets of PWH, court approval under the doctrine of *cy pres* or deviation is required for the distribution of donor restricted funds to Covenant-Keene to hold those funds as institutional funds pursuant to RSA 292-B. See RSA 292-B:6, II and III. Such court approval is required even though the intent is for Covenant-Keene to honor the original restrictions applicable to use of each fund. See RSA 292-B:6, II and III.

Finally, the Director of Charitable Trusts' no action letter issued on June 24, 2016, in connection with the Prospect-Woodward merger required that PWH obtain court approval for the valuation of certain of its donor-restricted funds. As PWH has not yet obtained such approval, PWH must seek and obtain court approval for the valuation of those particular funds.

PWH is licensed by the New Hampshire Insurance Department as a continuing care retirement community under RSA 420-D, and the proposed transaction with Covenant-Keene is subject to review and approval by the Commissioner of Insurance pursuant to RSA 420-D:13. This no-action report therefore is subject to the conditions that the Probate Court and the Commissioner of Insurance approve the proposed transaction.

2. RSA 7:19-b, II (b) Due Diligence in Structuring the Reorganization

RSA 7:19-b, II (b) provides:

(b) Due diligence has been exercised in selecting the acquirer, in engaging and considering the advice of expert assistance, in negotiating the terms and conditions of the proposed transaction, and in determining that the transaction is in the best interest of the health care charitable trust and the community which it serves;...

a. Use of Expert Assistance and Negotiating the Terms and Conditions

The Notice demonstrates that in considering the transaction with Covenant-Keene, the PWH board engaged a number of expert consultants and advisors. As discussed above, the board retained OnePoint, which not only provided the PWH board with an assessment of PWH's operations and recommendations with respect to its strategy to achieve financial stability, it provided staffing, including PWH's chief restructuring officer. In addition, the PWH board retained Grandbridge to solicit bids for the acquisition of Hillside Village; Hinkley, Allen & Snyder to provide legal counsel to the board and assist the board in negotiating the terms and conditions of the APA; the Polsinelli law firm to provide legal counsel regarding restructuring and bankruptcy; Silverbloom Consulting, LLC to provide accounting services; Attorney James Callahan

to provide the board with legal advice regarding the Board’s fiduciary duties and to assist the board in evaluating conflicts of interest; and Ann Carter of ACcommunication Partners to assist in strategic communications with the media, Hillside Village residents, and other constituents.

The Notice, including the minutes of board meetings, and the information obtained during the public hearing and the interview with board members demonstrate that the board was actively engaged in (1) developing a strategy to address the myriad of issues faced by PWH; (2) selecting Covenant Services as the purchaser; and (3) negotiating the terms of the APA.

b. Best Interest of the Health Care Charitable Trust and the Community it Serves

RSA 7:19-b, II (b) requires that the board of trustees of a health care charitable trust exercise due diligence in determining that the transaction is in the best interests of the health care charitable trust. This requirement is consistent with the board’s fiduciary duty of loyalty under common law to “act in good faith and in a manner the fiduciary reasonably believes to be in the best interests of the charity in light of its purposes.” *See Restatement of Charitable Nonprofit Organizations* § 2.02 (Am. Law Inst. 2021);⁴ *see also* [Opinion of the Attorney General](#), Fiduciary Duty of Corporate Members of Charitable Organizations, at 3 (Feb. 13, 2017). It is important to note that unlike corporate law, the “duty of loyalty of charitable fiduciaries is to the charity’s purposes and thus by extension to the indefinite beneficiaries of those purposes.”⁵ *Id.* (emphasis supplied).

In reviewing whether a board exercised due diligence in determining whether the transaction is in the best interests of the charity, a court will not substitute its own judgment unless the exercise was not reasonably informed or objectively reasonable in light of the charity’s purposes and the fact they have perpetual existence. *See Restatement of Charitable Nonprofit Organizations* § 2.02 cmt. c. By comparison, the Charitable Trusts Unit’s review requires a determination that the board achieved compliance with the specific due diligence requirements of RSA 7:19-b, II (b). RSA 7:19-b, IV.

The Notice and other information obtained by the Charitable Trusts Unit related to the proposed transaction demonstrate that after consultation and advice from experts, the PWH board members concluded that Hillside Village could not sustain operations without an infusion of capital and without the protection that Chapter 11 bankruptcy could offer. The board members unanimously chose to accept Covenant-Keene’s bid to purchase Hillside Village because of Covenant-Keene’s financial strength, the plan to enhance Hillside Village’s health center, the promise to make the necessary repairs to the infrastructure, Covenant-Keene’s nonprofit status, Covenant-Keene’s highest monetary

⁴ The draft of the Restatement of Charitable Nonprofit Organizations, which ultimately was adopted by the American Law Institute, was cited with approval in *In re Trust of Mary Baker Eddy*, 172 N.H. 266, 274 (2019).

⁵ “In some instances, advancing the charitable purposes may be to the detriment of the charitable entity and thus result in the discontinuation of that entity.” Restatement of Charitable Organizations § 2.02 cmt. a.

bid, and Covenant-Keene's commitments to honor resident contracts, hire Hillside Village employees, and sustain PWH's mission. In addition, the board members considered that Covenant-Keene did not intend to change Hillside Village's culture, philosophy, or programs to fit a particular model. Instead, Covenant-Keene made it clear that it did not intend to impose on Hillside Village any programming or changes in its culture without the support of Hillside Village residents.⁶

The Charitable Trusts Unit believes that the board's decision was well-informed, within the bounds of reasonable judgment, and consistent with the board's understanding of what was in PWH's best interest in light of its purpose. Thus, the decision was in compliance with the board's specific due diligence requirements of RSA 7:19-b, II.

3. RSA 7:19-b, II (c) Conflicts of Interest

RSA 7:19-b, II (c) provides:

Any conflict of interest, or any pecuniary benefit transaction as defined in this chapter, has been disclosed and has not affected the decision to engage in the transaction; ...

The members of the PWH board certified that "[a]ny conflict of interest has been disclosed and has not affected the decision to enter into the Transaction, and the Transaction does not constitute or establish any pecuniary benefit transaction as defined in RSA Chapter 7." *See* Notice, Exhibit AA (Certification of Trustees under RSA 7:19-b, III). Pecuniary benefits are financial conflict of interest transactions involving charitable organization directors, their family members, their employers, or their businesses. RSA 7:19-a. Although some of the board members are also residents of Hillside Village, they do not have a "financial interest" in the proposed transaction as defined in RSA 7:19-a, and there is no evidence or suggestion to contradict the certification provided by the board members with respect to conflicts of interest and pecuniary benefit transactions.

4. RSA 7:19-b, II (d) Fair Value of Transaction

RSA 7:19-b, II (d) provides:

(d) The proceeds to be received on account of the transaction constitute fair value therefor;...

The APA sets forth a purchase price of \$33 million plus other consideration in exchange for substantially all of the assets of PWH. The bid submitted by Covenant Services was the highest bid submitted to PWH prior to filing for bankruptcy protection.

⁶ Covenant-Keene's parent, Covenant Living, is a ministry of the Board of Benevolence of The Evangelical Covenant Church. PWH is a secular charitable organization. Both the directors of PWH and the residents of Hillside Village appear satisfied with Covenant-Keene's statements that there will be no changes to culture or programming without the residents' assent.

During the section 363 auction sale, Covenant Service’s stalking horse bid was the only bid submitted.

An auction is considered to be an excellent measure of fair value.⁷ While the Charitable Trusts Unit has the right to obtain a fairness opinion as to the asset purchase price, in light of the Section 363 process supervised by the Bankruptcy Court, no fairness opinion is necessary. PWH has conducted sufficient due diligence to obtain fair value for its assets.

5. RSA 7:19-b, II (e) Use of Charitable Assets

RSA 7:19-b, II (e) provides:

(e) The assets of the health care charitable trust and any proceeds to be received on account of the transaction shall continue to be devoted to charitable purposes consistent with the charitable objects of the health care charitable trust and the needs of the community which it serves;

The proposed transaction involves a transaction between two charitable organizations with substantially similar charitable missions. As described in Section B.1. above, the sale and the distribution of the unrestricted and restricted assets of PWH will require Probate Court approval, and the Probate Court order will assure that the charitable assets will continue to be used consistent with PWH’s charitable purpose. As discussed above and below, a condition to this no-action report is that PWH obtain judicial approval.

6. RSA 7:19-b, II (f) Control of the Proceeds

RSA 7:19-b, II (f) provides:

(f) If the acquirer is other than another New Hampshire health care charitable trust, control of the proceeds shall be independent of the acquirer; ...

The proposed plan of reorganization does not involve a non-New Hampshire health care charitable trust, and RSA 7:19-b, II (f) therefore is inapplicable.

7. RSA 7:19-b, II (g) Notice and Hearing

RSA 7:19-b, II (g) provides:

⁷ See *SB Bldg. Assocs. Ltd. P’ship v. Atkinson (In re 388 Route 22 Readington Holdings, LLC)*, 2020 U.S. Dist. LEXIS 132217 at *10-11 (D. N.J. July 27, 2020); *In re Pub. Serv. Co.*, 114 B.R. 820, 823-24 (Bankr. D. N.H. 1990) (“This bankruptcy has been in effect an auction of PSNH, which has been highly publicized and generated national attention and several substantial and serious bidders The liquidation value of the company in a chapter 7 would not be as high as it is for this chapter 11 Reorganization”). Note that fair value measures may be different in an antitrust analysis.

(g) Reasonable public notice of the proposed transaction and its terms has been provided to the community served by the health care charitable trust, along with reasonable and timely opportunity for such community, through public hearing or other similar methods, to inform the deliberations of the governing body of the health care charitable trust regarding the proposed transaction.

The statute is clear that the public notice and opportunity for the community served by the health care charitable trusts to provide information is intended to “inform the deliberations” of the board of directors. RSA 7:19-b, II (g). In this case, however, PWH did not provide “reasonable public notice” before entering into the proposed transaction with Covenant-Keene as the “stalking horse” bidder because this matter involved a planned bankruptcy proceeding, and PWH was not in a position to solicit comments until after the parties entered into the APA, and the bankruptcy proceedings commenced.

Although the board did not have a public hearing for members of the community before the board entered into the APA, the board provided the residents of Hillside Village with a number of opportunities to learn more about the transaction and its implications for them. For example, on August 30, 2021, the day that PWH initiated the bankruptcy proceedings, the board sent a letter to the residents, notifying them about the transaction with Covenant-Keene and announcing a meeting to be held on September 1. The board and representatives of Covenant-Keene then met with residents on 3 separate occasions: (1) on September 1, 2021, the board met with residents to present the proposed transaction and information pertaining to the bankruptcy proceed; (2) on September 13, the Chief Executive Officer of Covenant Services met with residents to answer their questions; and (3) on November 13, 2021, the board of Covenant Services met with residents to answer their questions. Information about the transaction was also provided by the board and Covenant-Keene in resident newsletters on November 19, December 2, and December 9.

In addition, the Hillside Village residents established their own task force to analyze the transaction and hired their own attorney to protect their interests. The attorney for the residents obtained confidential information during discussions with Covenant-Keene and shared the information with members of the Resident Task Force.

The Charitable Trusts Unit recognizes that the parties required confidentiality in their negotiations and that a public listening process may not have been conducive to consummation of a deal with Covenant-Keene. To remedy its deficiency in obtaining public input prior to entering into the transaction, the majority of members of the PWH board attended the December 9, 2021 public hearing held by the Charitable Trusts Unit and listened to the comments and questions submitted by residents and other members of the public. On December 15, 2021, the PWH board voted to ratify its earlier vote to enter into the APA in light of the comments and questions submitted at the public hearing. While generally, ratification is not a substitute for robust outreach to the community before the execution of a definitive agreement, in light of the bankruptcy proceeding, the Charitable Trusts Unit concludes that the terms of RSA 7:19-b, II (g) have been satisfied.

III. Conclusions and Determination

Based on the evidence, it is clear that in determining the best course of action for PWC and in entering into the APA with Covenant-Keene, the members of the PWH board seriously, carefully, and thoroughly undertook their responsibilities as fiduciaries. They spent an extraordinary amount of time meeting with experts, conducting research, reviewing proposals, interviewing candidates, and communicating with residents. The board ultimately arrived at the well-informed and reasonable conclusion that the proposed transaction is in the best interests of Hillside Village and the community it serves.

Although the Charitable Trusts Unit has concluded that PWH has substantially complied with the minimum standards for changes of control set forth in RSA 7:19-b, II, the Charitable Trusts Unit's decision to take no action to oppose the plan of reorganization is subject to the following representations and conditions:

Representations

1. Completeness of the Notice and APA: PWH represents that the statements made by the PWH board and documents provided in the Notice are true and correct and that the sale of PWH's assets will be consistent with the APA.
2. Conflicts of Interest: There are no conflicts of interest or pecuniary benefit transactions involving directors or officers of PWH contemplated as part of the plan of reorganization.

Conditions

1. Judicial Approval: The sale and transfer of substantially all of PWH's assets to Covenant-Keene and the distribution of PWH's donor-restricted funds to Covenant-Keene shall be approved by the Probate Court. In addition, the valuation of certain funds held by PWH shall be approved by the Probate Court in accordance with the Director of Charitable Trusts' no action letter issued on June 24, 2016, in connection with the Prospect-Woodward merger.
2. Approval by the Commissioner of Insurance: The plan of reorganization shall be approved by the Commissioner of Insurance pursuant to RSA 420-D:13.
3. Culture and Programming: Covenant-Keene shall not without the assent of the Resident Council impose changes to programs, activities, or policies applicable to residents in order to comply with the religious tenets of the Evangelical Covenant Church. It is expressly understood that the foregoing shall not limit Covenant-Keene's ability to appoint a minister ordained by The Evangelical Covenant Church to serve as a chaplain for Covenant-Keene.

This no further action report concerns the review of the Charitable Trusts Unit pursuant to RSA 7:19-b and does not implicate the jurisdiction of any other bureau of the New Hampshire Department of Justice or any other state agency that may have a role in reviewing the proposed plan of reorganization.