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**PROPOSED COUNSEL FOR THE
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

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

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| In re: Northwest Senior Housing Corporation, et al.,¹ <p style="text-align: center;">Debtors.</p> | § § § § § § § § | Chapter 11 Case No. 22-30659 (MLV) Jointly Administered |
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**OFFICIAL COMMITTEE OF UNSECURED CREDITORS’
RESPONSE TO DEBTORS’ ESCROW MOTION
[Relates to Docket Nos. 18, 100, and 219]**

The Official Committee of Unsecured Creditors (the “Committee”) hereby files this response to the *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Continue (A) Escrowing Entrance Fees in the Ordinary Course and (B) Refunding Certain Entrance Fees During the Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 18] (the “Escrow Motion”)² and states as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

² The Court entered two interim orders with respect to the Escrow Motion at Docket Nos. 100 (the “Interim Order”) and 219 (the “Second Interim Order”).



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I. PRELIMINARY STATEMENT

A. Edgemere

1. As the Court is aware, the Debtor³ operates a 504-unit continuing-care retirement community (the “**Edgemere**”) at the corner of Northwest Highway and Thackery in Dallas, Texas that provides independent living, assisted living, memory care, and skilled nursing care to residents (the “**Residents**”). Approximately 370 Residents currently reside at the Edgemere across the four levels of care.

B. Ground Lease

2. The Debtor leases real property from Intercity Investment Properties, Inc. (the “**Landlord**”) pursuant to a 55-year real-property lease (the “**Ground Lease**”) that began in 1999 and runs through 2054. The Committee understands that all permanent improvements on the property become the property of the Landlord upon termination of the Ground Lease, and the Landlord has an option to purchase all other personal property used in the operation of Edgemere upon termination of the Ground Lease.

C. Secured Indebtedness

3. The Debtor allegedly owes UMB Bank, as bond trustee (the “**Lender**”) approximately \$111.7 million in pre-petition indebtedness, which UMB asserts is secured by pre-petition liens on most of its assets other than:

- Commercial torts, and
- Resident escrow accounts (the escrow funds are not property of Edgemere while in the escrow accounts).

The Committee is still in the process of investigating the extent, validity, and priority of UMB’s

³ For the purposes of this Response, the “Debtor” means Northwest Senior Housing Corporation, lessee on the Ground Lease (defined below).

asserted liens.

D. Refundable Entrance Fee Model

4. Edgemere utilizes a refundable entrance fee (“**Entrance Fee**”) model. In summary, when a new Resident enters an independent living (“**IL**”) unit, that Resident pays an Entrance Fee.

A percentage of that Entrance Fee is refundable when:

- (i) the Resident leaves Edgemere, and
- (ii) a new Resident occupies the unit previously occupied by the former Resident, and pays his or her Entrance Fee.

5. The Debtor’s contingent and non-contingent Entrance Fee refund obligations to current and former Residents aggregate \$148.3 million.

6. It is important to note that a Resident does not own an interest in his or her IL unit, and does not have a lien or security interest in the new Entrance Fee provided by the new Resident of his or her former unit. The occupancy of his or her former unit, and the payment of the new Entrance Fee, are merely conditions precedent to Edgemere’s unsecured obligation to repay part of the Resident’s Entrance Fee.

7. It is also important to note that an IL Resident is not due a refund when he or she vacates his or her IL unit, but only when he or she vacates the Edgemere complex. It is not uncommon for an IL Resident to transition from his or her IL unit to a higher level of care unit (i.e., assisted living, memory care, or skilled-nursing, such Residents becoming “**Higher-Care Residents**”). This allows Edgemere to fill that unit with a new Resident and collect a new Entrance Fee, but to avoid (at that time) an obligation to repay the Higher-Care Resident’s Entrance Fee until much later when he or she vacates Edgemere. In this situation, Edgemere will use 100% of the new IL Resident’s Entrance Fee for general operating expenses before the Higher-Care

Resident vacates Edgemere and his or her refund obligation becomes due and owing.

E. Debtor's Request for Authority to Pay Select Prepetition Resident Refund Claims

8. The Debtor has requested authority to pay from its general operating funds the prepetition refund obligations owed to Higher-Care Residents which become due and payable during the pendency of these bankruptcy proceedings. This request has nothing to do with the Debtor's escrow arrangement described in more detail below, but is merely a request to pay a prepetition refund obligation to a limited class of Residents.

9. The Committee objects to the preferential payment of this limited class of Residents from general operating funds. Upon information and belief, these payments are projected to include [REDACTED]

[REDACTED] As addressed in more detail in the Committee's response to the Debtor's Postpetition Financing Motion, in order to avoid incurring large unpaid administrative expenses, the funds earmarked for these requested refund payments should be used to: (i) increase the Committee's professional fee budget to assure the Residents are adequately represented in these complex proceedings, (ii) establish an emergency liquidity fund to protect the health and welfare of the Residents and to ensure Edgemere has sufficient liquidity to fund its operations during these bankruptcy proceedings.

F. Debtor's Request for Authority to Continue Use and Release of Escrow Funds

10. Due to its financial difficulties, and to provide assurances to new Residents entering the Edgemere, on and after September 27, 2021, new IL Resident Entrance Fees were escrowed, with an agreement to refund the escrowed Entrance Fee if that Resident vacated the Edgemere before an Edgemere reorganization.

11. The Debtor has requested authority to continue escrowing new IL Residents Entrance Fees and to refund those Entrance Fees pursuant to the terms of the escrow agreements.

The Committee has no objection and fully supports this request. Continuing the escrow arrangement for new Resident Entrance Fees provides security to new Residents and is essential to attracting new Residents at this time.

G. No Liens on Escrow Funds

12. The Court should not enter any order, whether in connection with the Postpetition Financing Motion⁴ or the Escrow Motion, that purports to grant a lien on the Debtor’s contractual rights to eventually receive funds currently held in escrow or that modifies any provisions of the escrow agreements with Residents. Specifically, the Committee objects to the language in the proposed order that could be construed to *grant* UMB “a continuing first priority lien on Edgemere interest in [the escrowed funds] and all proceeds thereof...” or ratify that such a lien already exists. This language involves debtor-in-possession financing issues that should be addressed in that context, not here. The Committee requests that this language be stricken from any order granting the Escrow Motion. As this is really a postpetition-financing issue disguised as an escrow issue, the Committee will address this objection in more detail in its Objection to the Debtor’s Postpetition Financing Motion.

II. ARGUMENT

13. The Committee objects to the relief sought in the Escrow Motion on two grounds. First, the secondary relief seeking authority to pay *certain* resident-refund claims—those owed to Higher-Care Residents—but not others, has nothing to do with continuing the Debtor’s escrow arrangement with respect to new Residents. Rather than merely taking money out of escrow to give back to the Residents that paid it in, paying claims of Higher-Care Residents instead requires

⁴ *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Use of Cash Collateral, (II) Authorizing Post-Petition Financing, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling the Final Hearing and Approving the Form and Method of Notice Thereof, and (VI) Granting Related Relief* [Docket No. 35].

taking money out of the Debtor's operating funds, depleting the Debtor's estate for the benefit of some over others.

14. Aside from the fact that this proposed treatment elevates some claimants over others, violating a foundational principle of bankruptcy law,⁵ the Committee understands that the projected refunds to Higher-Care Residents over the course of these bankruptcy cases could be significant. The most-recent budget filed by the Debtors contemplates the payment of \$1.52 million in such claims in June 2022 alone.⁶ At this stage in these bankruptcy cases, where liquidity is at a premium and the outcome is not yet certain, it is not appropriate to use estate funds this way. The Debtors have not offered any real justification for preferring some Resident claims over others, particularly where, by necessity, the prepetition claimant being preferred would be paid because they are *exiting*, not because they are *staying*.

15. Second, any grant or ratification of a lien to UMB on escrowed funds, either now or at the time when those funds are distributed, is inappropriate. The Court should strike any language referencing any liens on funds in escrow from any final order entered in connection with the Escrow Motion. The Court's own hesitance with respect to such language is evident from additional language inserted in both interim orders that prevented the assertion of any "new liens against the Escrow Accounts or proceeds being released from the Escrow Accounts."⁷ Rather than simply extend this language indefinitely in the context of a Final Order on the Escrow Motion, the

⁵ See, e.g., *In re Pilgrim's Pride*, 421 B.R. 231, 236 (Bankr. N.D. Tex. 2009) ("One of the cardinal rules of bankruptcy law is that similarly situated claims should receive the same treatment.") (citing *Till v. SCS Credit Corp.*, 541 U.S. 465, 477 (2004)); *In re Pioneer Health Serv's, Inc.*, 570 B.R. 228 233 n.6 (Bankr. S.D. Miss. 2017) (describing the circumstances where courts depart "from the Bankruptcy Code's principal tenets of equality of treatment" and noting that "Section 507 fixes the priority order of claims and expenses against the bankruptcy estate and does not carve out a priority status for prepetition, general unsecured claims based on the 'critical' status of the creditor. "). .

⁶ See Docket No. 243-1 (page 41 of the filed PDF).

⁷ See Interim Order at Docket No. 100, ¶ 2; Second Interim Order at Docket No. 219, ¶ 2.

Court should instead strike any language granting or ratifying any liens on the escrowed funds or any funds later distributed from escrow.

16. Whether or not UMB has a lien on the currently escrowed funds (or the Debtor’s contractual rights to the proceeds of such funds, if any) will likely become extremely important later in these bankruptcy cases, if or when the Debtors confirm a plan. If UMB has a lien—or, as the Escrow Agreement is written, simply receives a distribution directly⁸—on assets that would otherwise go to the Debtor, the Debtor will be unable to use those funds in operations or to pay other claims absent UMB’s consent, which it is under no obligation to give. Considering this future, post-escrow distribution may be the largest source of unencumbered assets available to the estate, and, potentially, an important source of potential recovery for all unsecured claimants, safeguarding these assets for the benefit of the bankruptcy estates is critical. In any event, there is no reason to include any language in a final order on the Escrow Motion that implicates any lien issues.

III. CONCLUSION

17. For the foregoing reasons, the Court should grant the Escrow Motion in part and deny it in part. Specifically, the Court should authorize: 1) the continued escrow of entrance fees from new Residents as they enter the Edgemere, and 2) the payment to any Resident that departs the Edgemere any funds held for their benefit in escrow now or in the future. However, the Court should deny the request to pay refund claims to Higher-Care Residents from operating funds and

⁸ See Exhibit C to the Escrow Motion (beginning page 25 of 57 of Docket No. 18) at 3(ii) (“All Escrowed Funds on deposit on the Trigger Date, other than those credited in the name of a [Terminating Resident], shall be disbursed in accordance with the directions set forth in Attachment D [to the Escrow Agreement].”); Attachment D to the Escrow Agreement (page 45 of 57 of Docket No. 18) (“The Company directs the Escrow Agent to transfer all Escrowed Funds other than the Escrowed Funds credited to the [Terminating Residents] in accordance with the instructions attached hereto [directing payment to UMB].”)

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strike any language from any final order on the Escrow Motion that grants or ratifies any alleged liens on the Debtor's contractual or other rights in the escrow funds or any proceeds thereof.

Dated: May 19, 2022

Respectfully submitted,

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**PROPOSED COUNSEL OF THE OFFICIAL
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served electronically by the Court's PACER system on May 19, 2022.

/s Mark C. Moore

Mark C. Moore