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**ATTORNEY FOR TRUSTEES EDWARD
C. CERNY III, SUZAN KUMAR, AND
GALE SWANSON AND THE MARTHA
P. CERNY TRUST**

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

IN RE: §
§
Northwest Senior Housing Corporation, § **Chapter 11**
et al.¹, §
§ **CASE NO. 22-30659 (MVL)**
§
DEBTORS. § **(Jointly Administered)**

**EDWARD C. CERNY III, SUZAN KUMAR, GALE SWANSON, AND MARTHA P. CERNY
TRUST’S (1) CHALLENGE TO DIP FINANCING ORDER AND (2) JOINDER WITH
FORMER RESIDENTS’ JOINT CHALLENGE TO DIP FINANCING ORDER**

(Related to ECF Nos. 448, 449, 456, and 457)

COME NOW Edward C. Cerny III, Suzan Kumar, Gale Swanson, and Martha P. Cerny Trust (collectively, “Cerny Trust”) hereby file this (1) Challenge to DIP Financing Order and (2) Joinder With Former Residents’ Challenges to DIP Financing Order (“Challenge”) and challenge the liens, security interests, and other adequate protection granted to UMB (as defined below) pursuant to that certain *Final Order (1) Authorizing Debtors in Possession*

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.



to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests, and Superpriority Claims [ECF No. 421] and paragraph 7 of that certain *Final Order (I) Authorizing the Debtors to Continue (A) Escrowing Entrance Fees in the Ordinary Course of Business and (B) Refunding Certain Entrance Fees During the Chapter 11 Cases and (II) Granting Related Relief* [ECF. No. 393]. In support of this Challenge, the Challenger respectfully states as follows:

1. On April 14, 2022 (“Petition Date”), Northwest Senior Housing Corporation (“Edgemere”) commenced the above styled bankruptcy case by filing a Voluntary Petition for Non-Individuals under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (“Bankruptcy Code”) in the above styled court.

2. On June 9, 2022, the Court entered that certain *Final 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* [ECF No. 393] (“Escrow Order”).

3. On June 23, 2022, the Court entered that certain *Final Order (I) Authorizing Debtors in Possession to Obtain Post-Petition Financing: (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests and Super Priority Claims* [ECF No. 421] (“DIP Order”). Pursuant to the DIP Order, UMB Bank, N.A. as the successor bond trustee under the Bond Indentures (as defined in the DIP Order) and/or as a lender under the Dip Order, was granted certain liens (“Liens”) as detailed in the DIP Order which included, upon information and belief, New Entrance Fees (as defined in the Escrow Order) paid under the Escrow Order (by new Edgemere residents under the Escrow Order who did not exercise their rights thereunder for a return of their escrowed entrance fees) subject to the right of any party in interest to file an adversary or contested matter “challenging the amount,

validity, extent, enforceability, perfection or priority of the Bond Claim or the Pre-Petition Liens in respect of.” See DIP Order, ¶34.

4. Upon information and belief, New Entrance Fees paid under a New Residency Agreement (as defined in the Escrow Order) would be subject to Liens afforded UMB Bank under the DIP Order upon the release of same from the Escrow Accounts (as defined in the Escrow Order) to Edgemere.

5. On July 11, 2022, certain former residents filed their Former Residents’ Joint Challenge to DIP Financing Order [ECF No. 448] (“Former Residents Challenge”) which asserted that “New Residents Entry Fees” should be subject to the superior rights a former resident has under equitable title, earmarking, equitable lien, statutory liens per Section 246.111(a) and (c) of the Texas Health & Safety Code and/or equitable subordination statutes and/or caselaw.

6. On or around January 7, 2002, Martha P. Cerny entered into the *Edgemere Life Care Agreement* (“Agreement”) with Edgemere for apartment 1308. Section 7.4 of the Agreement state that upon Martha P. Cerny’s death 90% of her resident deposit (\$269,910.00) (“Entry Fee”) would be refunded “on the later of the date of termination of [the] Agreement or the date a New Resident Deposit has been received from a new Resident and the new Resident has taken occupancy of an Apartment Home.” It is important to note that unlike many, if not all, of the Former Residents’ agreement terms, a refund under Ms. Cerny’s Agreement was triggered when a new Resident took occupancy of *any* Apartment Home. It was not a requirement that a New Resident take occupancy of Ms. Cerny’s Apartment Home.

7. Ms. Cerny moved out of her Apartment Home on February 17, 2021 and passed away ten days later on February 27, 2021. Edgemere represented to Cerny Trust that a New Resident moved into an Edgemere Apartment Home following Ms.Cerny’s death. Even though Section 7.4 of the Agreement was triggered upon these events, Edgemere failed and refused to

turn over Cerny Trust's Entry Fee as specifically mandated.

8. Like the experiences of the Former Residents concerning Edgemere's justification as to the Edgemere's failure to turn over the Entry Fees, Counsel for Cerny Trust has been provided varying and inconsistent reasons by Edgemere. Cerny Trust therefore joins the Former Residents' Challenges and asserts any New Entrance Fees paid under the Escrow Order, or any future version of same, should not be subject to the lien claims of UMB Bank, N.A. in any capacity, but rather be deemed held for the exclusive benefit of a current or former resident whose Edgemere unit was vacated but backfilled, based on some, if not all of the legal theories asserted under the Challenges.

RESERVATION OF RIGHTS AND JOINDER

9. Cerny Trust expressly reserves all rights, including to: (i) amend, supplement, revise, or withdraw this Challenge, (ii) raise other objections to the DIP Order, and (iii) file responsive pleadings in accordance with applicable rules and/or deadlines.

PRAYER

WHEREFORE, Cerny Trust respectfully requests this Court (a) recognize superior equitable liens to the New Resident Entry Fees, (b) alternatively, recognize superior equitable lien rights in the New Resident Entry Fees, (c) alternatively, recognize superior lien rights over UMB Bank, N.A.'s Supplemental and Post-Petition Liens, (d) alternatively, grant adequate protection, (e) extend the deadline to request subordination of UMB Bank, N.A.'s liens under § 510(c) of the Bankruptcy Code, and (b) grant such other and further relief as this Court deems proper at law or equity.

Dated: July 20, 2022

Respectfully submitted,

WADDELL SERAFINO GEARY RECHNER JENEVEIN, P.C.

By: /s/ Beverly Cahill
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CERTIFICATE OF SERVICE

The undersigned certifies that on July 20, 2022, a true and correct copy of the foregoing Challenge was served electronically on all parties registered to receive electronic notice of filings in this case via this Court's ECF notification system, including the Debtor and its counsel.

/s/Beverly Cahill
Beverly Cahill Rice