

J. Robert Arnett II  
CARTER ARNETT PLLC  
8150 N. Central Expressway, Suite 500  
Dallas, Texas 75206  
barnett@carterarnett.com  
Telephone: (214) 550-8188  
Facsimile: (214) 550-8185

Counsel for McKinney TX Associates, LLC

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

<b>In re:</b>	§	
	§	<b>Case No. 25-80121-11</b>
<b>HIGHER GROUND EDUCATION,</b>	§	<b>Chapter 11</b>
<b>INC.,</b>	§	
	§	
<b>Debtor.</b>	§	

**MCKINNEY TX ASSOCIATES, LLC’S OBJECTION TO  
SECOND NOTICE OF REJECTION OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

McKinney TX Associates, LLC (“MTA”) files its objection to the Debtors’ Notice of Rejection of Certain Executory Contracts and Unexpired Leases (the “Notice of Rejection”), pursuant to the Order (I) Authorizing and Approving Procedures to Reject Executory Contracts and Unexpired Leases and (II) Granting Related Relief, as follows:

**INTRODUCTION**

1. MTA objects to the Notice of Rejection as it relates to the Lease Agreement between MTA and Guidepost A LLC pertaining to property in McKinney, Texas (item 51 on page 9 of the Notice of Rejection), because MTA terminated the Lease in accordance with the terms of the Lease and Texas law on March 3, 2025, more than three months before the Debtors commenced these bankruptcy case, and therefore, the Lease cannot be assumed or rejected.



**FACTUAL AND PROCEDURE BACKGROUND**

2. Beginning on or about March 24, 2021, MTA was the landlord under a Lease Agreement, as amended (the “Lease”), for a parcel of real property located at 6800 Bountiful Grove, McKinney, Texas 75070, comprising a lot of approximately 1.21 acres and a building of approximately 12,423 square feet (the “Premises”), to Debtor Guidepost A LLC (“Guidepost”), as tenant for the purpose of operating a pre-school and day care facility.

3. The Lease is governed by Texas law.

4. The Lease was a triple-net lease under which Guidepost was obligated to pay Base Rent and other amounts to MTA and was obligated to pay to other parties all costs, expenses, and charges of every kind and nature relating to the Premises except MTA’s debt service. Failure to pay Base Rent or other amounts under the Lease (“Rent”) constitutes an Event of Default.

5. The Lease provided MTA with remedies in the Event of Default by Guidepost, including, “Landlord may terminate the Lease and terminate Tenant’s right of possession upon delivery of written notice.”

6. Debtor Higher Ground Education Inc. (“HGE”) as a primary obligor absolutely, unconditionally, and irrevocably guaranteed to the landlord (i) the full, timely and complete payment when due of all rent, additional rent and other sums due and payable by Guidepost to the landlord under the Lease; (ii) the timely and complete performance of all other obligations, agreements, and liabilities of Guidepost under the Lease; and (iii) all costs and expenses, including reasonable attorneys’ fees, court costs and filing fees, incurred by the landlord in enforcing or attempting to enforce the Lease or the Guaranty.

7. On or about November 22, 2024, MTA and Guidepost, with the written consent of HGE, entered into a Second Amendment to Lease. In August 2024, Guidepost had defaulted on its obligation to pay Rent due to cash flow problems and the Second Amendment provided Guidepost an opportunity to improve its cash flow situation and to cure the default by reducing Guidepost's Rent payments from December 2024 to March 2025, and allowing Guidepost to repay the unpaid Rent and deferred Rent over a 24-month period. If Guidepost failed to timely perform its obligations under the Second Amendment, however, MTA had the right to terminate the Second Amendment and all deferred Rent would become immediately due and payable, together with the additional consideration and any late fees and interest payable as a result of the prior defaults.

8. Guidepost failed to pay the Rent due on December 1, 2024 under the Second Amendment to Lease.

9. On December 6, 2024, MTA provided Guidepost and HGE written notice of default under the Lease and Guaranty for failure to pay Rent and that if the default was not cured by December 11, 2024, MTA elected to terminate the Second Amendment resulting in all delinquent Rent becoming immediately due and payable, together with late fees and interest.

10. In the same letter, MTA also made demand that Guidepost pay Apex Building Group, LLC ("Apex") to avoid Apex recording an affidavit claiming mechanic's and materialman's lien against the Premises for work Apex performed on Guidepost's behalf.

11. Guidepost and HGE failed to pay the Rent and failed to pay Apex, which resulted in Apex recording an affidavit of mechanic's lien against the Premises.

12. Guidepost and HGE failed to pay real property taxes as required under the Lease and MTA exercised its option under the Lease to pay the real property taxes and recover that payment from Guidepost.

13. On or about March 3, 2025, MTA exercised its right to terminate the Lease and gave written notice of such termination to Guidepost and HGE.

14. On or about March 6, 2025, MTA made written demand on Guidepost and HGE for payment of the past due Rent in the amount of \$361,423.28 and payment of the real property taxes paid by MTA in the amount of \$32,847.26, reserving MTA's rights to recover additional sums under the Lease and Guaranty, including including (i) damages and costs associated with the Apex Mechanic's Lien, (ii) all future rent due for the remainder of the term of the Lease, and (iii) costs of re-letting the Premises, including without limitation, costs of any unamortized Tenant Allowance paid to Guidepost, new tenant finish for a replacement tenant, unamortized broker fees paid by MTA for the Lease, attorney's fees, repairs, and any other costs associated with the replacement tenant's lease.

15. Guidepost and HGE failed and refused to pay the amounts justly due and owing under the Lease and Guaranty.

16. On March 17, 2025, MTA filed an action in the 493rd Judicial District Court of Collin County, Texas, styled *McKinney TX Associates LLC v. Guidepost A LLC, et al.*, Cause No. 493-01938-2025, against Guidepost and HGE to collect the amounts due under the Lease and the Guaranty (the "Collin County Action").

17. MTA filed a motion for summary judgment in the Collin County Action on April 21, 2025, which motion was set for hearing on June 24, 2025.

18. On June 17, 2025, HGE, Guidepost, and related entities filed petitions for relief under chapter 11 of the United States Bankruptcy Code.

19. On July 22, 2025, MTA filed proofs of claim in the bankruptcy cases for Guidepost and HGE for amounts due under the Lease and Guaranty and specifically noted that the Lease had been terminated on March 3, 2025.

### **ARGUMENTS AND AUTHORITIES**

20. Section 365 of the Bankruptcy Code authorizes the trustee or a debtor-in-possession to assume or reject executory contracts and unexpired leases; however, that authority is subject to exceptions including where, “such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief.” 11 U.S.C. § 365(c)(3); *In re Lakes Region Donuts, LLC*, No. BR 13-11823-BAH, 2014 WL 1281507 at \*5 (Bankr. D. P.R. Mar. 27, 2014).

21. Once a lease has been terminated, the bankruptcy court cannot revive it, even by its equitable powers and despite the debtor’s ability to cure any default. *Lake Region Donuts*, 2014 WL 1281507 at \*5; *In re Neville*, 118 B.R. 14, 18 (Bankr. E.D. N.Y. 1990). This includes a pre-petition accelerated termination by default notice and subsequent termination notice in accordance with the terms of the lease. *In re Southcoast Exp., Inc.*, 337 B.R. 739 (Bankr. D. Mass. 2006); *In re Policy Realty Corp.*, 242 B.R. 121, 127-28 (S.D. N.Y. 1999), *aff’d* 213 F.3d 626 (2nd Cir. 2000).

22. Texas law recognizes and enforces lease provisions for accelerated termination of a lease upon default by the tenant and notice of termination by the landlord. *See Bloys v. Wilson*, No. 03-03-00193-CV, 2004 WL 162974 at \*10 (Tex. App.–Austin Jan. 29, 2004, pet. denied); *Taco Boy, Inc. v. Redelco Co., Inc.*, 515 S.W.2d 319 (Tex. Civ. App.–Corpus Christi 1974, no

writ); *Forest Park Lanes, Ltd. v. Keith*, 441 S.W.2d 920, 930 (Tex. Civ. App.—Fort Worth 1969, no writ).

23. MTA terminated the nonresidential real property Lease under Texas law and in accordance with the provisions of the Lease on March 3, 2025—106 days before Guidepost and HGE filed their petitions for relief under chapter 11. Accordingly, the Debtors may not assume or reject the Lease.

### **CONCLUSION**

WHEREFORE, McKinney TX Associates LLC respectfully requests this Honorable Court sustain its objection and deny the Debtors' attempt to reject the Lease and grant such other relief as the Court finds just and equitable in the premises.

Respectfully submitted, this 4<sup>th</sup> day of September 2025.

/s/ J. Robert Arnett II

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Texas State Bar No. 01332900

Email: barnett@carterarnett.com

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8150 N. Central Expressway, Suite 500

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Tel.: 214-550-8188 | Fax: 214-550-8185

**Counsel for McKinney TX Associates, LLC**

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 4, 2025, the foregoing document was electronically filed with the Clerk of Court via ECF and served upon all those who receive electronic notification.

/s/ J. Robert Arnett II

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