HAYNES AND BOONE, LLP

J. Frasher Murphy (State Bar No. 24013214)
Thomas J. Zavala (State Bar No. 24116265)
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: (214) 651-5000
frasher.murphy@haynesboone.com
tom.zavala@haynesboone.com

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY, AND POPEO, PC

Daniel S. Bleck (Admitted *Pro Hac Vice*)
Eric Blythe (Admitted *Pro Hac Vice*)
One Financial Center
Boston, MA 02111
Telephone: (617) 546-6000
dsbleck@mintz.com
erblythe@mintz.com

Counsel for UMB Bank, N.A., as Trustee and DIP Lender

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

In re: Northwest Senior Housing Corporation, *et al.,*[1] Debtors.	Chapter 11 Case No. 22-30659 (MVL) (Jointly Administered) **Re: Docket No. 541**

THE TRUSTEE'S OBJECTION TO INTERCITY INVESTMENT PROPERTIES, INC.'S MOTION TO DISMISS CHAPTER 11 CASES UNDER 11 U.S.C. § 1112(b)

UMB Bank, N.A., as successor master trustee and successor bond trustee (together, the "**Trustee**") and debtor-in-possession lender (the "**DIP Lender**") to the above-captioned debtors and debtors in possession (the "**Debtors**"), through its undersigned counsel, hereby files this objection (this "**Objection**") to *Intercity Investment Properties, Inc.'s Motion to Dismiss Chapter*

[1] The Debtors in these 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.

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11 Cases Under 11 U.S.C. § 1112(b) [Docket No. 541] (the "**Motion to Dismiss**") and respectfully states as follows:[2]

PRELIMINARY STATEMENT

The Motion to Dismiss is a colorful, performative pleading that exemplifies the Landlord's "scorched-earth" approach in these cases. The primary justification for dismissal is the Debtors' "fairy tale" Plan and a variety of premature confirmation objections associated therewith. The secondary justification is the oft-repeated, yet debunked, assertion of administrative insolvency. Neither argument constitutes "cause" to dismiss these cases or otherwise justifies the "drastic" relief the Landlord seeks.

Even if "cause" did exist, Section 1112(b)(1) requires dismissal be "in the best interests of creditors and the estate." Yet the Landlord dedicates a mere four sentences of its nineteen page motion to this issue. And instead of demonstrating dismissal would benefit all creditors, the Landlord acknowledges the opposite – that dismissal would permit it to "pursue [its] state law rights and remedies outside of bankruptcy" to the detriment of the Debtors' residents, creditors, and other stakeholders. Further, dismissal may undermine the Adversary Proceeding, allowing the Landlord to evade liability to the detriment of all other parties in interest. Unsurprisingly, the Landlord is the ***only*** creditor that supports, and that would benefit from, dismissal of these cases, which in and of itself justifies denial of the Motion to Dismiss. "

Accordingly, the Trustee and DIP Lender respectfully request that the Court deny the Motion to Dismiss to allow these cases to continue to a conclusion that would benefit all of the Debtors' creditors.

[2] Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Motion to Dismiss.

ARGUMENT

A. The Landlord Has Not Established Cause to Dismiss these Cases.

1. The starting point for whether the Landlord is entitled to relief under Section 1112(b) is whether "cause" exists for the dismissal. *See* 11 U.S.C. § 1112(b). Because "cause" is undefined, courts have evaluated the issue by balancing the equities and weighing the benefits and prejudices of dismissal. *See In re Krueger*, 812 F.3d 365, 371 (5th Cir. 2016) (citing *Matter of Atlas Supply Corp.*, 857 F.2d 1061, 1063 (5th Cir. 1988)). In doing so, courts have recognized that "dismissal of a Chapter 11 case is a drastic measure and the burden is on the movant to prove the relief requested is warranted and not premature." *In re Dark Horse Tavern*, 189 B.R. 576, 580 (Bankr. N.D.N.Y. 1995); *see also Carolin Corp. v. Miller*, 886 F.2d 693, 700 (4th Cir. 1989) ("We begin consideration of this question by observing that this power [pursuant to section 1112], while essential to proper administration of Code policies and implicit in the statute itself, is obviously one to be exercised with great care and caution.").

2. Here, the Landlord has not met its burden to prove its "drastic" relief is appropriate. Dismissing these cases before a disclosure statement has been approved or a plan has been solicited is premature and would strip the Debtors and its creditors of the opportunity to negotiate and advance a viable path forward. Plans are regularly subject to negotiation and revision after initially proposed, and other plans can emerge that are beneficial to all parties in interest. There is no justification for short-circuiting the process at this early stage due to one disgruntled creditor's objection, especially when the proposed alternative only benefits that one creditor.

3. "[P]reserving going concerns" and "maximizing property available to satisfy creditors" are valid bankruptcy purposes that should be stringently protected. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 No. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999). Where, as here, a debtor seeks relief under chapter 11 "to preserve or create some value that would otherwise be lost outside

of bankruptcy . . . it is not bad faith to seek to gain an advantage from declaring bankruptcy." *In re Costa Bonita Beach Resort Inc.*, 479 B.R. 14, 39-40 (Bankr. D.P.R. 2012) (citing *Fields Station LLC v. Capitol Food Corp. (In re Capitol Food Corp.)*, 490 F.3d 21, 25 (1st Cir. 2007)). The Debtors sought chapter 11 relief "to implement a comprehensive balance sheet restructuring to address the Debtors' short- and long-term liquidity needs, as well as to resolve Edgemere's obligations under the Ground Lease . . . that will in turn advance Edgemere's long-term viability, and redress damages suffered by Edgemere as a result of the Landlord's . . . bad faith actions." *Declaration of Nick Harshfield in Support of Chapter 11 Petition and First Day Pleadings*, Docket No. 7 at ¶ 20. The Debtors' proposed restructuring of obligations is an essential purpose of the Bankruptcy Code, and the parties should have an opportunity to continue their efforts to reorganize under chapter 11 and the oversight of this Court. *See, e.g., In re Northshore Mainland Servs., Inc.*, 537 B.R. 192, 203 (Bankr. D. Del. 2015) (holding that using the rights and protections offered by the Bankruptcy Code to reorganize financial affairs are valid reorganization purposes).[3]

B. Dismissal of these Cases is Not in the Best Interests of Creditors.

4. Even if "cause" to dismiss did exist, Section 1112(b)(1) requires dismissal be "in the best interests" of all of the Debtors' creditors and constituents—not just the Landlord. *See* 11 U.S.C. § 1112(b)(1); *see also In re Biolitec, Inc.*, 528 B.R. 261, 270 (Bankr. D.N.J. 2014) (citing *In re Buffet Partners, L.P.*, No. 14-30699, 2014 WL 3735804, at *2 (Bankr. N.D. Tex. July 28, 2014) (observing that "the best interests of creditors test [under § 1112(b)] focuses on the interest of the *entire creditor body*; it does not focus on individual creditor interest") (emphasis added); *Rollex Corp. v. Assoc. Materials, Inc., (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243

[3] While the DIP Lender and Trustee do not believe these cases are administratively insolvent, the Debtors are in a better position to dispute the Landlord's assertions to the contrary, thus those arguments are not addressed in this Objection.

(4th Cir. 1994) (noting that the "'best interests of creditors' under § 1112(b), . . . is not served by merely tallying the votes of the unsecured creditors and yielding to the majority interest.")). Indeed, in determining "best interests," courts "must consider the interests of *all the creditors*." *In re Superior Siding & Window*, 14 F.3d at 243 (emphasis added).

5. Here, the Debtors, the Committee, the Trustee, and the DIP Lender oppose dismissal. This fact alone, regardless of the asserted "cause" for dismissal, undermines the Landlord's requested relief. *See In re TMT Procurement Corp.*, 534 B.R. 912, 921 (Bankr. S.D. Tex. 2015) (denying a motion to convert a chapter 11 case to chapter 7 under Section 1112(b)(4) of the Bankruptcy Code because, notwithstanding "cause" present, "[t]he Debtors, the Committee, the DIP lender, and other creditors are united in their opposition to conversion. It is difficult to understand how conversion would be in the best interest of the creditors if the vast majority of creditors oppose the relief.").

6. Further, the Landlord's pre-petition and post-petition conduct demonstrate that the Landlord is self-interested and has not and will not take any other stakeholder into account. Dismissing these cases would harm the Debtors' business and its residents, creditors and other parties in interest, solely for the benefit of the Landlord. *But see, In re Capra*, 614 B.R. 291, (Bankr. N.D. Ill. 2020) (observing that "protecting the best interests of the estate includes protecting the bankruptcy process under which the estate is administered.") (*quoting In re Fleetstar LLC*, 614 BR.767 (Bankr. E.D. La. 2020)). Dismissal may also undermine the Adversary Proceeding, another benefit that would accrue solely to the Landlord to the detriment of the Debtors and all other parties in interest.

7. Finally, the Debtors and other parties in interest should have the opportunity to develop and negotiate a viable exit to these cases. While the Trustee and DIP Lender are supportive

of the Debtors' pursuit of a Successful Outcome in the Adversary Proceeding and believe that the Debtors have asserted meritorious claims against the Landlord, the dismissal of these cases at this juncture will foreclose the Debtors and their creditors from exploring options that will benefit the estates and all other parties in interest. Therefore, dismissal of these cases is premature and not in the best interests of the vast majority of the Debtors' stakeholders.

CONCLUSION

8. For the forgoing reasons, the DIP Lender and the Trustee respectfully request that the Court enter an order (i) denying the relief requested in the Motion to Dismiss and (ii) grant such other relief that the Court may deem appropriate.

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Dated: September 13, 2022

HAYNES AND BOONE, LLP

/s/ J. Frasher Murphy
J. Frasher Murphy
State Bar No. 24013214
Thomas J. Zavala
State Bar No. 24116265
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: (214) 651-5000
frasher.murphy@haynesboone.com
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Daniel S. Bleck (Admitted *Pro Hac Vice*)
Eric Blythe (Admitted *Pro Hac Vice*)
One Financial Center
Boston, MA 02111
Telephone: (617) 546-6000
dsbleck@mintz.com
erblythe@mintz.com

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 13, 2022, a true and correct copy of the foregoing Objection was served via electronic notification upon all parties that are registered or otherwise entitled to receive electronic notices in these cases pursuant to the ECF procedures in this District.

/s/ J. Frasher Murphy
J. Frasher Murphy