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

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

In re:

**Northwest Senior Housing Corporation, *et*
al.,¹**

Debtors.

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Chapter 11

Case No. 22-30659 (MVL)

Jointly Administered

**EMERGENCY MOTION FOR AN ORDER: (1) AUTHORIZING THE COMMITTEE
TO ENGAGE IN PLAN FORMULATION AND CONTINGENCY-PLANNING
NEGOTIATIONS WITH THE LANDLORD AND RELATED PARTIES, AND (2)
HOLDING SUCH PARTIES HARMLESS PURSUANT TO SECTIONS 105(A) AND
1103(C)(3) OF THE BANKRUPTCY CODE**

The Official Committee of Unsecured Creditors (the “**Committee**”) of the above-captioned debtors and debtors in possession (the “**Debtors**”), hereby files this *Emergency Motion* (the “**Motion**”) seeking entry of an order pursuant to sections 105(a) and 1103(c)(3) of the Bankruptcy Code authorizing the Committee, the Landlord (defined below), and parties related to the Landlord

¹ The Debtors in these chapter 11 cases (the “**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 commence negotiations of a potential alternative plan of reorganization and a “safety net” contingency plan to provide for the continued operations of the facility in the event of a worst case scenario (described below) to ensure residents are not forced to vacate their homes and to protect the health and welfare of the residents. In support of the Motion, the Committee respectfully represents as follows:

I. **DISCUSSION**

A. Landlord Plan A

1. As outlined in the Committee’s Objection to the Debtors’ Motion to Extend Exclusivity (“**Exclusivity Objection**”),² the Debtors will not be able to confirm the Debtors’ Plan before the DIP Loan matures on December 31, 2022. Even if the Debtors are able to locate a new DIP lender to provide additional financing to the estates that would allow the Debtors to try the Landlord Litigation in February 2023, all litigation is uncertain and contains risks, and the Debtors may not achieve a “Successful Outcome” in the Landlord Litigation, which is a condition precedent to the confirmation of the Debtors Plan.

2. If exclusivity terminates, the Bondholders and the Landlord may file competing plans of reorganization (the “**Bondholder Plan**” and “**Landlord Plan**”). Those Plans may or may not be confirmed.

3. If no plan of reorganization is confirmed, and if the DIP Lenders refuse to advance more funds after the December 31, 2022 maturity of the DIP Loan, what happens to Edgemere’s ability to operate? What will the Landlord do with the facility and the 300 plus current residents

² Pursuant to Fed. R. Civ. P. 10(c), the contents of the Exclusivity Objection are incorporated herein as if set forth verbatim. Capitalized terms not defined herein shall have the meanings ascribed to them in the Exclusivity Objection.

if, in a worst-case scenario, the Court finds that it has no choice but to allow the Landlord to terminate the Ground Lease and to re-take possession of the property?

4. The Committee believes it has a fiduciary duty to “hope for the best, but plan for the worst.” In the Committee’s opinion, the Committee must begin negotiations with the Landlord to develop a contingency “safety net” plan to ensure the continued operations of the facility in the event such a worst case scenario becomes a reality.

5. The Landlord is also interested in discussing and formulating a contingency plan with the Committee, but is concerned that the Debtors will accuse it of improper conduct in doing so. Accordingly, the Landlord has conditioned its willingness to negotiate the terms and provisions of a Landlord Plan and/or a contingency plan with the Committee on first obtaining the consent and agreement of the Debtors to hold the Landlord harmless for engaging in those discussions.

6. After repeated requests by the Committee, the Debtors have refused to provide their consent. Accordingly, the Committee requests this Court enter an order allowing the parties to discuss alternative and contingency plans in good faith and consistent with the spirit of the chapter 11 bankruptcy process without fear of additional litigation.

II.

JURISDICTION AND VENUE

7. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are sections 105(a) and 1103(c)(3) of the Bankruptcy Code and Rule 9013-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the “Local Rules”).

III. **DISCUSSION**

8. Through this Motion, the Committee seeks entry of an order, substantially in the form attached hereto: 1) authorizing the Committee, the Landlord, and related parties to begin negotiations surrounding a potential Landlord Plan and a contingency plan for a worst-case scenario, and 2) holding the Landlord and related parties harmless for engaging in such negotiations and discussions. The relief sought is necessary and appropriate for the Committee to fulfill its fiduciary responsibilities to unsecured creditors and to exercise its responsibilities under the Bankruptcy Code as a key constituency in the Plan-negotiation process.

A. The Bankruptcy Process

9. A bankruptcy proceeding is a process designed to facilitate negotiations in order to build consensus across competing creditor interests. This unique process is simply not available in other proceedings. Judge Brendon Shannon stated that “the filing of a Chapter 11 petition is an invitation to negotiate,” and the Bankruptcy Code provisions often “provide stakeholders with leverage or bargaining chips to advance their respective agendas.”³ These negotiations often culminate into a consensual plan of reorganization.

10. The Committee owes fiduciary duties to general unsecured creditors (holding approximately \$159 million of claims), which include a duty to explore and negotiate all plan options in order to maximize creditor recoveries and to ensure Edgemere has the financial stability to continue operating. The Committee feels strongly that this bankruptcy process must consider and protect the health and welfare of its residents.

³ *In re Indianapolis Downs, LLC, et al.*, 486 B.R. 286, 297 (Bankr. D. Del. 2013).

11. Bankruptcy is designed to encourage negotiations, compromises, and collaboration among parties holding competing interests in the hopes of building a consensus. Included among the express powers and duties of statutory committees in chapter 11 cases is the power to “participate in the formulation of a plan, [and] advise those represented by such committee of such committee’s determinations as to any plan formulated.”⁴ Indeed, “[t]he best interests of an estate may also dictate that the creditors and equity security holders devote their resources to the active pursuit of a viable plan of reorganization.”⁵ “An official committee of unsecured creditors is one of the key players in the Chapter 11 bankruptcy process... The committee works with the debtor to administer the case, to investigate claims, and—most importantly—to write the Chapter 11 reorganization plan.”⁶ It is often a challenge to build consensus on an exit strategy, but the parties should not be prevented or discouraged from negotiating and discussing the various options by the threat of litigation.

12. Each of the major constituents in these cases is represented by sophisticated and experienced bankruptcy professionals. The Committee must be allowed to explore and negotiate various plan options and exit strategies with each major constituent party in order to achieve the best result for creditors.

⁴ 11 U.S.C. § 1103(c)(3). See *In re Texas Extrusion Corp.*, 844 F.2d 1142, 1163 (5th Cir. 1988) (“A representative of a creditors’ committee is authorized to consult with those creditors represented by the committee and to apprise those creditors of the committee’s recommendations as to a plan of reorganization.”); *In re Financial Oversight and Mgmt. Board for Puerto Rico*, 361 F.Supp. 3d 203, 232 (D. P.R. 2019) (“Under section 1103(c)(3) of the Bankruptcy Code... participation in the formulation of a plan is a function of a statutory committee...”).

⁵ *In re Southmark Corp.*, 113 B.R. 280, 282 (Bankr. N.D. Tex. 1990) (discussing the statutory powers of a committee in chapter 11 cases).

⁶ *In re Lehman Bros. Holdings Inc.*, 508 B.R. 283, 287 (S.D.N.Y. 2014) (discussing the role of a committee in chapter 11 cases).

B. The Debtors Refuse to Formulate a Contingency Plan

13. The Debtors are in the middle of hotly contested litigation with the Landlord and, accordingly, are reluctant to negotiate with “the enemy,” or are concerned any negotiations might make the Debtors’ case against the Landlord appear weak. That is exactly why the Committee must be allowed to negotiate potential plan options and exit strategies with the Landlord. In addition, it is only prudent and responsible for the Committee to formulate and negotiate a worst-case scenario plan with the Landlord to ensure continued operations to avoid displacing residents, and to protect the health and welfare of the residents. The Debtors should not be allowed to prevent the Committee from fulfilling its fiduciary duty to creditors by implicitly threatening litigation against the Landlord for engaging in discussions with the Committee that the Bankruptcy Code was designed to encourage and foster.

14. As this Court knows, the Committee has become increasingly concerned about administrative insolvency (and still cannot obtain a solvency analysis from the Debtors, after many requests), and is frustrated with the Debtors’ reluctance and refusal to share information with the Committee.⁷ The Debtors cite confidentiality concerns, but in truth the Committee believes the Debtors are attempting to prevent the Committee from exploring alternative and contingency plans with other parties.

15. The Debtors should not be allowed to prevent any discussions and negotiations between the Committee and creditor constituents, which the Bankruptcy Code was designed to foster and encourage, by the threat of litigation.

⁷ See, for example, the Committee’s Objection to the Debtors’ Motion for Protective Order [Docket No. 141].

C. The Court's Section 105(a) Authority

16. Pursuant to Section 105(a) of the Bankruptcy Code, a bankruptcy court may “issue any order, process or judgment that is necessary or appropriate the carry out the provisions of this title.”⁸ While not unfettered, the “broad authority to take necessary or appropriate action”⁹ is fundamental to a bankruptcy court’s “equitable power and the duty ‘to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate.’ ”¹⁰ By its plain terms, “[section] 105(a) encompasses *any* type of order, whether injunctive, compensative or punitive, as long as it is necessary or appropriate to carry out the provisions of the Bankruptcy Code.”¹¹ The fact that the statute is written in the disjunctive—requiring only that the order or judgment be necessary *or* appropriate—underscores the deference and discretion Congress gave bankruptcy courts in exercising this authority.¹² Courts in the Fifth Circuit have utilized this authority to, among other things, issue orders for civil contempt,¹³ enforce the discharge injunction,¹⁴ and order disgorgement of moneys improperly received.¹⁵

17. Here, the Committee requests that the Court utilize its equitable authority under § 105(a) to enter the attached proposed order, which is necessary and appropriate under the

⁸ 11 U.S.C. § 105(a).

⁹ *See Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007); *see also, U.S. v. Sutton*, 786 F.2d 1305, 1307 (5th Cir. 1986) (noting the broad authority granted by § 105(a)).

¹⁰ *In re Multiponics, Inc.*, 622 F.2d 709, 714 (5th Cir. 1980) (quoting *Pepper v. Litton*, 308 U.S. 295, 308 (1939)).

¹¹ *Jove Eng’g, Inc. v. I.R.S.*, 92 F.3d 1539, 1554 (11th Cir. 1996) (emphasis added).

¹² *See In re Rodriguez*, 396 B.R. 436, 458 (Bankr. S.D. Tex. 2008) (discussing the broad range of cases where courts appropriate utilized § 105(a) authority to “further the purposes of the substantive provisions of the Bankruptcy Code.”) (quoting *Sutton*, 786 F.2d at 1307).

¹³ *See Placid Ref. Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108 F.3d 609 613 (5th Cir. 1997).

¹⁴ *See In re National Gypsum*, 118 F.3d 1056, 1063 (5th Cir.1997)).

¹⁵ *See Rodriguez*, 396 B.R. at 460.

circumstances of these Chapter 11 Cases to allow the Committee to exercise its statutory powers and fulfill its fiduciary responsibilities. Absent entry of this order (or a similar order) granting the relief requested, the Landlord has refused to engage with the Committee out of fear of the Debtors and Bondholders. The Court should not allow that fear to influence potentially negative outcomes for the Debtors' Residents, in particular, and its creditors by granting the Debtors and/or Bondholders *de facto* control over the Plan process and preventing contingency or alternative planning. The Court has the authority to issue *any* order or judgment that it deems necessary or appropriate to further the purposes underlying the Bankruptcy Code. The Committee believes that the relief requested is appropriately tailored to the circumstances of these Chapter 11 Cases and will facilitate the very discussions between constituent groups that bankruptcy is designed to promote.

IV.
REQUEST FOR RELIEF

18. Accordingly, the Committee requests this Court enter an order under 11 U.S.C. §§ 105(a) and 1103(c)(3) authorizing and approving the Landlord and the Committee to enter into good faith negotiations to explore plan of reorganization options and worst case scenario contingency plans to ensure the continued operations of Edgemere as necessary to protect the health and welfare of the residents.

[Signature page to follow]

Dated: September 22, 2022

Respectfully submitted,

FOLEY & LARDNER LLP

/s/ Stephen A. McCartin

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically by
the Court's PACER system on September 22, 2022.

/s/ Stephen A. McCartin

Stephen A. McCartin

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

In re:

Northwest Senior Housing Corporation, *et*
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Debtors.

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Chapter 11

Case No. 22-30659 (MLV)

(Jointly Administered)

**ORDER: (1) AUTHORIZING THE COMMITTEE TO ENGAGE IN
PLAN FORMULATION AND CONTINGENCY-PLANNING NEGOTIATIONS
WITH THE LANDLORD AND RELATED PARTIES, AND (2) HOLDING
SUCH PARTIES HARMLESS PURSUANT TO SECTIONS 105(A) AND
1103(C)(3) OF THE BANKRUPTCY CODE**

Upon the Motion (the “**Motion**”)² of the Official Committee of Unsecured Creditors (the “**Committee**”) seeking entry of an order pursuant to sections 105(a) and 1103(c)(3) of the Bankruptcy Code authorizing the Committee, the Landlord (defined in the Motion), and parties

¹ The Debtors in these chapter 11 cases (the “**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) (together, the “**Debtors**”). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

related to the Landlord to commence negotiations of a potential alternative plan of reorganization and, potentially, a contingency plan to provide for the continued operations of the facility; and the Court having jurisdiction pursuant to sections 157 and 1334 of title 28 of the United States Code to consider the Application and the relief requested therein; and venue being proper in this Court pursuant to sections 1408 and 1409 of title 28 of the United States Code; and the Court being satisfied that notice of this Motion and the opportunity for a hearing on this application was appropriate under the particular circumstances and no further or other notice need be given; and the Court having determined that the relief sought in the Motion is in the best interests of the Committee, the Debtors, their creditors, and all parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. The Committee is authorized to commence negotiations with the Landlord and related parties regarding a potential alternative plan of reorganization and/or a contingency plan for the continued operations of the Debtors' facility pursuant to Bankruptcy Code §§ 105(a) and 1103(c)(3).
3. The Landlord and any related parties thereto shall have no liability to the Debtors, their estates, or any other parties arising from or relating to any negotiations or discussions with the Committee.
4. The Committee is authorized to take all actions it deems necessary and appropriate to effectuate the relief granted pursuant to this Order in accordance with the Motion.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

End of Order

Order submitted by:

FOLEY & LARDNER LLP

/s/ Mark C. Moore

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