

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§	Chapter 11
	§	
EVANGELICAL RETIREMENT	§	Case No. 23-07541
HOMES OF GREATER CHICAGO,	§	
INCORPORATED d/b/a FRIENDSHIP	§	
VILLAGE OF SCHAUMBURG,	§	
	§	
FEIN: 36-2815382,	§	
	§	
Debtor.	§	Hon. Timothy A. Barnes

**NOTICE OF DEBTOR'S MOTION FOR ENTRY OF ORDER: (I) CONVERTING
DEBTOR'S CHAPTER 11 CASE TO A CASE UNDER CHAPTER 7, OR, IN THE
ALTERNATIVE, DISMISSING THE CHAPTER 11 CASE; AND (II) SHORTENING
NOTICE OF HEARING WITH RESPECT THERETO**

TO: See Attached Service List

PLEASE TAKE FURTHER NOTICE that on **Wednesday, August 26, 2024, at 9:00 a.m. (CT)**, I will appear before the **Honorable Timothy A. Barnes**, or any judge sitting in that judge's place, **either** in courtroom 744 of the Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street, Chicago, IL 60604, **or** electronically as described below, and present the *Debtor's Motion for Entry of an Order (I) Converting Debtor's Chapter 11 Case to a Case under Chapter 7, or, in the alternative, Dismissing the Chapter 1 Case; and (II) Shortening Notice with respect thereto*, a copy of which is attached.

Important: Only parties and their counsel may appear for presentment of the Motion electronically using Zoom for Government. All others must appear in person.

To appear by video, use this link: <http://www.zoom.com/>. Then enter the meeting ID and passcode.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and passcode.

Meeting ID and passcode. Meeting ID and passcode. The meeting ID for this hearing is 161 329 5276, and the passcode is 433658. The meeting ID and passcode can also be found on the judge's page on the court's web site.

If you object to this Motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of

Objection is timely filed, the Motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the Motion in advance without calling it.

Dated: August 9, 2024

EVANGELICAL RETIREMENT HOMES
OF GREATER CHICAGO, INCORPORATED,
d/b/a Friendship Village of Schaumburg, Debtor
and Debtor-in-Possession

By: /s/ Bruce Dopke
Counsel for the Debtor

Bruce Dopke, Member (ARDC # 3127052)
Dopkelaw LLC
1535 W. Schaumburg Road, Suite 204
Schaumburg, IL 60194
Tel: 847-524-4811
bd@dopkelaw.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

EVANGELICAL RETIREMENT
HOMES OF GREATER CHICAGO,
INCORPORATED d/b/a FRIENDSHIP
VILLAGE OF SCHAUMBURG,

FEIN: 36-2815382

Debtor.

Chapter 11

Case No. 23-07541

CERTIFICATE OF SERVICE

I, Sabrina G. Tu, depose and say that I am employed by Stretto, the claims and noticing agent for the Debtor in the above-captioned case.

On or before 5:00 p.m. (prevailing Pacific Time) on August 9, 2024, at my direction and under my supervision, employees of Stretto will cause to be served a complete and accurate copy of the attached Notice of Motion and the document referred to therein to be made on the parties on the service list attached hereto as **Exhibit A** and parties listed on the Resident List via first-class mail, and via electronic mail where available as set forth on **Exhibit B**.

Dated: August 9, 2024

/s/ Sabrina G. Tu

Sabrina G. Tu
STRETTO
410 Exchange, Suite 100
Irvine, CA 92602
Telephone: 855.886.6266
Email: TeamFVS@Stretto.com

Exhibit A

**Exhibit A**

Served Via First-Class Mail

Name	Attention	Address 1	Address 2	Address 3	City	State	Zip
Cook County of Illinois	Attn Officer/Director or Legal Dept; Treasurer's Office	118 North Clark Street	Room 112		Chicago	IL	60602
Environmental Protection Agency		1200 Pennsylvania Ave. NW			Washington	DC	20460
Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg	c/o Polsinelli PC	Attn: Trinitee G. Green	150 N Riverside Plaza	Suite 3000	Chicago	IL	60606
Friendship Senior Options, NFP, an Illinois not-for- profit corporation	c/o Cooley LLP	Attn: Eric E. Walker	110 N. Wacker		Chicago	IL	60606
IL CCRC LLC	c/o Cozen O'Connor	Attn: Brian L. Shaw	123 North Wacker Drive	Suite 1800	Chicago	IL	60606
Illinois Department of Financial and Professional Regulation	Attn Officer/Director or Legal Dept	555 West Monroe Street	5th Floor		Chicago	IL	60661
Illinois Department of Human Services	Attn Officer/Director or Legal Dept	401 South Clinton Street			Chicago	IL	60607
Illinois Department of Public Health	Att. Director	69 Washington Street	35th Floor		Chicago	IL	60602
Illinois Department of Public Health	Attn Officer/Director or Legal Dept	122 S. Michigan Avenue	7th and 20th Floors		Chicago	IL	60603
Illinois Department of Public Health	c/o Office of the Illinois Attorney General	Attn: John P. Reding	100 West Randolph St	Suite 13-225	Chicago	IL	60601
Illinois Department of Revenue	Bankruptcy Unit	PO Box 19037			Springfield	IL	62794-9037
Illinois Department of Revenue	David Harris - Director	555 West Monroe Street	Suite 1100		Chicago	IL	60661
Illinois EPA Headquarters		1021 North Grand Avenue East	P.O. Box 19276		Springfield	IL	62794-9276
Illinois Finance Authority	Attn Officer/Director or Legal Dept	160 N. LaSalle St	Suite S-1000		Chicago	IL	60601
Illinois Finance Authority	c/o ArentFox Schiff LLP	Attn: Joseph Mark Fisher	233 S Wacker Drive	Suite 7100	Chicago	IL	60606
Internal Revenue Service	Attn. Centralized Insolvency Operation	P.O. Box 7346			Philadelphia	PA	19101
LEAF Capital Funding, LLC	c/o Dressler Peters LLC	101 W. Grand Ave	Suite 404		Chicago	IL	60654
Office of the United States Trustee	Jeffrey L. Gansberg	219 S. Dearborn Street	Room 873		Chicago	IL	60604
Office of the United States Trustee	Jeffrey L. Gansberg	227 W Monroe St	Ste 3350		Chicago	IL	60606
Official Unsecured Creditors' Committee	c/o Crane, Simon, Clar & Goodman	Attn: Scott R. Clar, Karen R. Goodman	135 S LaSalle	#3950	Chicago	IL	60603
Riehle Developments, LLC	c/o Huck Bouma PC	Attn: Eric J. Malnar	1755 South Naperville Road		Wheaton	IL	60189
Schaumburg Bank & Trust Company N.A.	Teresa Faidley	1180 E. Higgins Rd.			Schaumburg	IL	60173
Schaumburg Bank & Trust Company, N.A.	c/o Chuhak & Tecson, P.C.	Attn: Brandon R. Freud	120 S. Riverside Plz	Suite 1700	Chicago	IL	60606-7512
Securities & Exchange Commission		100 F Street NE			Washington	DC	20549-0213
Securities & Exchange Commission		175 W Jackson Boulevard	Suite 1450		Chicago	IL	60604
The U.S. Department of Health & Human Services	Attn Officer/Director or Legal Dept	200 Independence Avenue, S.W.			Washington	DC	20201
U.S. Centers for Medicare & Medicaid Services	Attn Officer/Director or Legal Dept	7500 Security Blvd			Baltimore	MD	21244
U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services	Attn: David H. DeCelles	219 South Dearborn Street			Chicago	IL	60604
UMB Bank	Attn: Jay Smith & Irina Palchuk	2 South Broadway			St. Louis	MO	63102
UMB Bank, N.A., as Bond Trustee and Master Trustee	c/o Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	Attn: Daniel S. Bleck, Tim McKeon	1 Financial Center		Boston	MA	02111-0000
UMB Bank, N.A., as Bond Trustee and Master Trustee	c/o Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	Attn: Megan Preusker, Daniel S. Bleck, Timothy J. McKeon	919 3rd Ave		New York	NY	10022
UMB Bank, N.A., in its capacity as Bond Trustee and Successor Master Trustee	c/o Burke, Warren, MacKay & Serritella, P.C.	Attn: David K. Welch, Brian P. Welch	330 N Wabash Ave	Suite 2100	Chicago	IL	60611
United States Attorney's Office Northern District of Illinois, Eastern Division	Attn Officer/Director or Legal Dept.	219 S. Dearborn Street	5th Floor		Chicago	IL	60604
Verdant Comm Cap Titling Trust	Attn: Officer/Director or Legal Dept	12301 Whitewater Drive, Ste. 80			Minnetonka	MN	55343
Wells Fargo Bank, National Association, as Master Trustee	Attn Officer/Director or Legal Dept	230 W. Monroe Steet	Suite 2900		Chicago	IL	60606
Wells Fargo Bank, National Association, as Master Trustee	Attn: Corbin B Connell	600 S. 4th Street, 6th Floor	MAC N9300-061		Minneapolis	MN	55479
Wells Fargo Bank, National Association, as Mortgagee	Attn Officer/Director or Legal Dept	230 W. Monroe Steet	Suite 2900		Chicago	IL	60606

In re: Evangelical Retirement Homes of Greater Chicago, Inc. dba Friendship Village of Schaumburg (FVS)

Case No. 23-07541 (TAB)

Exhibit B



Exhibit B

Served Via Electronic Mail

Name	Attention	Email
Cook County of Illinois	Attn Officer/Director or Legal Dept; Treasurer's Office	lbankruptcy@cookcountytreasurer.com
Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg	c/o Polsinelli PC	tggreen@polsinelli.com
Friendship Senior Options, NFP, an Illinois not-for-profit corporation	c/o Cooley LLP	ewalker@cooley.com
IL CCRC LLC	c/o Cozen O'Connor	bshaw@cozen.com
Illinois Department of Public Health	c/o Office of the Illinois Attorney General	john.reding@ilag.gov
Illinois Finance Authority	c/o ArentFox Schiff LLP	mark.fisher@afslaw.com
LEAF Capital Funding, LLC	c/o Dressler Peters LLC	kpeters@dresslerpeters.com
Office of the United States Trustee	Jeffrey L. Gansberg	jeffrey.l.gansberg@usdoj.gov
Office of the United States Trustee	Jeffrey L. Gansberg	jeffrey.l.gansberg@usdoj.gov
Official Unsecured Creditors' Committee	c/o Crane, Simon, Clar & Goodman	sclar@cranesimon.com
Riehle Developments, LLC	c/o Huck Bouma PC	kgoodman@cranesimon.com
Schaumburg Bank & Trust Company, N.A.	c/o Chuhak & Tecson, P.C.	emalnar@huckbouma.com
Securities & Exchange Commission		bfreud@chuhak.com
U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services		chicago@sec.gov
UMB Bank	Attn: David H. DeCelles	david.decelles@usdoj.gov
UMB Bank, N.A., as Bond Trustee and Master Trustee	Attn: Jay Smith & Irina Palchuk	jay.smith@umb.com
	c/o Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	irina.palchuk@umb.com
		dsbleck@mintz.com
		tjmckeon@mintz.com
		mpreusker@mintz.com
UMB Bank, N.A., as Bond Trustee and Master Trustee	c/o Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	dsbleck@mintz.com
		tjmckeon@mintz.com
UMB Bank, N.A., in its capacity as Bond Trustee and Successor Master Trustee	c/o Burke, Warren, MacKay & Serritella, P.C.	dwelch@burkelaw.com
		bwelch@burkelaw.com

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IN RE:	§	Chapter 11
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EVANGELICAL RETIREMENT	§	Case No. 23-07541
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VILLAGE OF SCHAUMBURG,	§	
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FEIN: 36-2815382,	§	
	§	
Debtor.	§	Hon. Timothy A. Barnes

**DEBTOR’S MOTION FOR ENTRY OF ORDER: (I) CONVERTING DEBTOR’S
CHAPTER 11 CASE TO A CASE UNDER CHAPTER 7, OR, IN THE ALTERNATIVE,
DISMISSING THE CHAPTER 11 CASE; AND (II) SHORTENING NOTICE OF
HEARING WITH RESPECT THERETO**

Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg (the “**Debtor**”), debtor and debtor-in-possession in the above-captioned chapter 11 case (the “**Chapter 11 Case**”), moves (the “**Motion**”) for entry of an order, in substantially similar form to the proposed order attached hereto as Exhibit A: (i) converting the Debtor’s Chapter 11 Case to a Case under Chapter 7, or, in the alternative, dismissing the Chapter 11 Case; and (ii) shortening notice of hearing with respect thereto, pursuant to sections 105, 1112(a) and 1112(b)(1) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and rule 1017 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). In support of the Motion, the Debtor respectfully states as follows:

JURISDICTION, VENUE AND STATUTORY AUTHORITY

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. The Motion is a core proceeding as defined in 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

2. The relief sought by the Debtor through this Motion is appropriate and authorized by Bankruptcy Code sections 105, 1112(a) and 1112(b)(1) and Bankruptcy Rule 1017(f).

PROCEDURAL BACKGROUND

3. On June 9, 2023, (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 with this Court (the “**Court**”), commencing this Chapter 11 Case.

4. No trustee or examiner has been appointed in this Chapter 11 Case

5. Since the Petition Date, the Debtor has operated its business as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.¹

FACTUAL BACKGROUND

I. The Sale of the CCRC and Related Sale Proceeds

6. On the Petition Date, the Debtor, an Illinois not-for-profit corporation, owned and operated a continuing care retirement community (“**CCRC**”) located in Schaumburg, Illinois known as Friendship Village of Schaumburg. As of the Petition Date, the Campus was improved with buildings which include (i) 537 independent living apartments, (ii) 84 assisted living apartments, (iii) 25 memory care apartments, (iv) 169 nursing beds, and (v) related common areas and parking. Approximately 635 senior citizens resided at the Campus (“**Residents**”). See Declaration of Mike Flynn, Docket No. 16, pp. 1-2, ¶ 4.

7. The Chapter 11 Case was filed primarily to permit the Debtor to sell substantially all its assets, including, without limitation, the CCRC described above, pursuant to a marketing and sale process authorized by the Court. See *id.* at pp. 4-5; see also Bid Procedures Order, Docket No. 291. The Debtor’s primary goals were to maximize value through a going concern sale while

¹ The Debtor’s sale of substantially all of its assets closed on December 28, 2023, and, since then, the Debtor has conducted post-closing winddown operations and activities and continued to nominally exist as a debtor-in-possession.

continuing to protect and care for the senior citizens at the CCRC consistent with the Debtor's mission.

8. On December 28, 2023, the Debtor closed the Court-approved sale transaction, selling substantially all its assets to IL CCRC LLC ("**Buyer**"), which currently owns operates the CCRC. *See* Sale Order, Docket No. 365; Notice of Sale Closing, Docket No. 441.

9. On or about December 28, 2023, the Debtor received approximately \$34 million in sale proceeds (the "**Sale Proceeds**") from the Buyer for the Debtor's assets. Only those expenses authorized to be paid consistent with the Closing Statement that was approved by Debtor, Buyer and secured creditors were paid using the balance of the Sale Proceeds. In addition, pursuant to the Court's *Order Approving the Stipulation Between Debtor, Morrison Management Specialists, Inc., and UMB Bank, N.A., in its capacity as Bond Trustee, regarding Settlement Payment from Sale Proceeds and Allowance of Morrison Claim* [Docket No. 757], \$700,000 was distributed to Morrison Management Specialists, Inc.

10. Currently, the Debtor holds approximately \$33,260,871 of sale proceeds and approximately \$350,000 in endowment funds to be transferred to the Buyer. In addition, the Debtor holds \$2,288,272 in cash that consists of a combination of unencumbered cash and cash collateral.

11. To date, the estate professionals have not filed final fee applications, but through their fourth interim fee applications, set to be heard on August 26, 2024, the estate professionals have reported total fees and expenses incurred through May 31, 2024 in the following approximate amounts:

- a. DopkeLaw, \$379,439.30,
- b. Polsinelli, \$2,862,256.66,
- c. Wyse Advisors, LLC, \$295,577.25,

- d. Crane, Simon, Clar & Goodman, \$166,140, and
- e. Newpoint Advisors Corporation, \$54,591.95.

12. The Buyer's commitment and agreement to contribute \$2,000,000 to former residents is made pursuant to the approved APA and the Court's order approving the APA, and, thus, no plan is necessary to ensure that the former residents are entitled to recover their pro rata share of the \$2,000,000 contribution from the Buyer. For clarity, the \$2,000,000 is being held in escrow maintained by counsel to the Buyer and is not part of the total balances held by the Debtor and discussed in paragraphs 9-10 above.

II. Post-Sale Closing Activities in the Chapter 11 Case

A. Authorized Persons to Act on Behalf of Debtor as Debtor in Possession

13. On January 31, 2024, the Court entered the *Order Granting the Debtor's Motion to Approve the Post-Closing Consulting Agreement* that authorized the Debtor to enter into an agreement with the Buyer, pursuant to which, certain employees of the Buyer, including, without limitation, Michael Flynn and Jeff Nyberg, would be permitted to provide post-sale closing services to the Debtor. See Docket No. 507.

14. Mr. Flynn's position remains Debtor's Chief Executive Officer but, upon information and belief, Mr. Flynn has retired and/or resigned from his role with the Buyer. Mr. Nyberg continues in his role as an employee of the Buyer and has assisted the Debtor with certain required action items in this Chapter 11 Case, including, without limitation the preparation of monthly operating reports and issuing payments on behalf of the Debtor's estate.

B. The Withdrawal of the Debtor's Plan and the Filing of the Bond Trustee Plan

15. On June 17, 2024, the Court conducted a confirmation hearing with respect to the *Debtor's Fourth Amended Chapter 11 Plan of Liquidated Dated February 29, 2024* [Docket No.

570] (the “**Plan**”), which was opposed by the United States Trustee (the “**US Trustee**”) and UMB Bank, N.A, in its capacity as bond trustee and master trustee (collectively, the “**Bond Trustee**”). On June 18, 2024, the Court continued the confirmation hearing to July 29, 2024.

16. Prior to the continued confirmation hearing date, through its counsel, the Debtor contacted counsel for the Bond Trustee to discuss a potential resolution in hopes of filing a new liquidating plan, as co-plan proponents, which would retain any and all claims for a post-confirmation trustee to evaluate and, if applicable, prosecute for the benefit of all creditors.

17. Following a discussion among counsel for the Debtor and the Bond Trustee, at the Debtor’s request, on July 16, 2024, the Bond Trustee shared a plan term sheet with the Debtor just before the Debtor’s board meeting scheduled to occur on July 17, 2024 for the purpose of discussing the term sheet and the possibility of consensual plan with the Bond Trustee. Before 8:00 a.m. (CT) on July 18, 2024, to the Debtor’s surprise, the Bond Trustee filed the *Chapter 11 Plan of Liquidation Filed by UMB Bank, N.A., in its Capacity as Bond Trustee* [Docket No. 776] (the “**Bond Trustee Plan**”) and the Disclosure Statement with respect to Chapter 11 Plan of Liquidation Filed by UMB Bank, N.A., in its capacity as Bond Trustee [Docket No. 777] (the “**Bond Trustee Disclosure Statement**”). To give the Court and other parties as much notice as possible prior to the scheduled confirmation hearing, the Debtor filed a notice of withdrawal with respect to its Plan on July 19, 2024.

18. The Bond Trustee’s Plan, as proposed, is not confirmable. The Debtor believes it includes provisions and terms that benefit only the Bond Trustee and are unsupported by the Bankruptcy Code or applicable law, and, as such, the Debtor cannot support the Bond Trustee’s Plan. Because the Chapter 11 Case cannot afford another contested plan process, and because the Debtor agrees that all claims should be retained for the benefit of all creditors, the Debtor files this

Motion, requesting that a chapter 7 trustee be appointed to evaluate and pursue all potential claims, or in the alternative, that the Chapter 11 Case be dismissed.²

RELIEF REQUESTED

19. By this Motion, the Debtor requests entry of an order, in substantially similar form to the proposed order attached hereto as Exhibit A: (a) converting its Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code pursuant to Bankruptcy Code section 1112(a); or (b) dismissing its Chapter 11 Case pursuant to Bankruptcy Code section 1112(b)(1) because, without dismissal, there will be a substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.

BASES FOR RELIEF

I. The Court Should Convert the Chapter 11 Case to Chapter 7 pursuant to Bankruptcy Code Section 1112(a).

20. Under the circumstances, the most efficient and cost-effective path forward for the Debtor's estate is conversion pursuant to Bankruptcy Code section 1112(a), which provides that a "debtor may convert a case under [chapter 11] to a case under chapter 7 . . . unless (1) the debtor is not a debtor in possession; (2) the case originally was commenced as an involuntary under [chapter 11]; or (3) the case was converted to a case under [chapter 11] other than on the debtor's request." 11 U.S.C. § 1112(a).

21. Because (a) the Debtor is a debtor in possession, (b) the Chapter 11 Case was not originally commenced as an involuntary case, (c) the Chapter 11 Case was not converted to chapter

² On June 13, 2024, the U.S. Trustee filed a motion requesting, among other things, dismissal of the Chapter 11 Case. See Docket No. 737. Prior to filing this Motion, the Debtor consulted with the U.S. Trustee and understands that the U.S. Trustee does not oppose the Debtor's request for conversion but may object to the Debtor's request for dismissal. The Debtor believes conversion is in the best interest of the estate, but to the extent that the Court disagrees and finds dismissal is appropriate, the Debtor includes the request out of an abundance of caution.

11, and (d) no chapter 11 plan has been confirmed, the Debtor has the right to convert its Chapter 11 Case to a case under chapter 7. *See In re Kearney*, 619 B.R. 487, 492 (Bankr. D. N.M. 2020) (agreeing with courts holding that “a chapter 11 debtor loses the ‘absolute’ right to convert once a creditor plan has been **confirmed**, even if [the debtor] remains a debtor in possession.”) (emphasis added) (aff’d 625 B.R. 83 (B.A.P. 10th Cir. 2021)); *but see, e.g., Monroe Bank & Trust v. Pinnock*, 2006 WL 2367350 (E.D. Mich. Aug. 15, 2006) (“[T]he statutory language [of § 1112(a)] clearly states that a debtor ‘may’ convert his case, but does not state that the Court ‘shall’ honor his request.”) (quoting *In re Adler*, 329 B.R. 406, 408-09 (Bankr. S.D.N.Y. 2005)).

22. Even if this Court does not adopt the view that chapter 11 debtors have the absolute right to convert pursuant to section 1112(a), the Court should convert the Chapter 11 Case because conversion is in the best interest of the estate. Indeed, the Debtor requests approval of shortened notice so that this Motion may be heard before the Bond Trustee solicits the Bond Trustee’ Plan, which will permit all parties in interest, including the Bond Trustee, to preserve resources to the extent possible.

23. In *In re Modern Metal Products Co.*, the debtor moved to convert one day before a hearing to consider a creditor committee’s disclosure statement, and the committee objected, arguing among other things that the plan would be supported by a majority of the creditors, a liquidating trustee would recover more than a chapter 7 trustee would recover, and conversion would have meant that the committee had wasted its time and resources. *See* 422 B.R. 118, 120 (Bankr. N.D. Ill. 2009). The *Modern Metal* court explained that a bankruptcy court can deny a motion to convert from chapter 11 to chapter 7 when the “granting of the motion . . . would serve no other purpose than to waste time and resources” or the debtor’s “only purpose in filing the motion was to delay.” *Id.* at 122. However, the disclosure statement had not been approved and

until the plan was confirmed, the *Modern Metal* court held the debtor had the statutory right to request conversion. *Id.* at 123. Because the plan had not been confirmed and no party had moved to dismiss, as in *Pinnock* or *Adler*, the *Modern Metal* court converted the case. The court reasoned, among other things, that:

- “[T]here is no certainty as to when or if the Plan could be confirmed, or how many revisions will be required” and “time and efforts already expended [preparing the Plan] should not really affect the decision of what is the best path to follow at this moment.” [*In re Modern Metal*, 422 B.R. at 124-25];
- “[B]oth a liquidating trustee and a Chapter 7 Trustee will have the same fiduciary duty to maximize the repayment of creditors” and “there are also safeguards in the Code to protect creditors from a trustee that does not fulfill its duties.” [*Id.*]; and
- “Section 1112(a) does not mandate that the Court make an independent evaluation of what is in the best interests of creditors in granting a debtor’s request to convert” and the “Court is loathe to overturn [the Debtor’s] choice without a strong showing of an abuse of the system or clear detriment to parties in interest.” [*Id.*]

24. As in *Modern Metal*, the Debtor believes conversion to chapter 7 will allow the estate to accomplish what a liquidating plan without releases should accomplish but without the additional delay and expenses of another plan process, which will be contested based on the proposed Bond Trustee Plan. The Bond Trustee Plan has numerous provisions that would need to be briefed, argued and decided before the Court could confirm the Bond Trustee’s Plan. For purposes of illustration only, the following is a non-exhaustive list of fundamental flaws with the Bond Trustee’s Disclosure Statement and/or the Bond Trustee’s Plan:

- (a) inappropriately suggests that the Bond Trustee is providing \$2,000,000 to unsecured creditors, which they would not otherwise be entitled to receive, simply because the Bond Trustee is waiving the right to argue that funds the Buyer has agreed to contribute to former residents are part of the sale proceeds given in exchange for the assets the Buyer purchased and, thus, the Bond Trustee’s collateral (Bond Trustee Disclosure Statement, § I.C.3., pp. 55-56);
- (b) attempts to subordinate claims of Friendship Senior Options, Inc., which will require an evidentiary hearing and cause delay, when the Bond Trustee Plan should be bypassing litigation to permit closure in this Chapter 11 Case;

- (c) attempts to place a lien on the intercompany claim and the ERTC claim, which would ensure that any recoveries on account of either claim would be received solely for the benefit of bondholders and no other unsecured creditors (Bond Trustee Plan, §§ 3.1.2 and 4.3.12);
- (d) permits the Bond Trustee to unilaterally select the Litigation Trustee, without giving the Committee or Debtor consent rights;
- (e) provides insufficient challenge mechanisms, including insufficient funding, and an insufficient challenge period with respect to the liens the Bond Trustee's Plan provides will attach to certain claims that the Bond Trustee has been focused on throughout this Chapter 11 Case (*id.*, 4.4);
- (f) prematurely concludes or directs that the Litigation Trustee "will be objecting to FSO's claim", even though no proposed Litigation Trustee has been identified much less appointed (*id.*, § 3.1, n.7);
- (g) provides the Litigation Trustee and the Bond Trustee the right to evaluate and object to claims against the Debtor's estate (*id.*, § 3.1, n.2);
- (h) provides consent rights to the Bond Trustee with respect to settlements and compromises to be reached by the Litigation Trustee and other parties in interest (*id.*, §§ 2.1.3, 2.1.4, 2.2.3, and 7.2);
- (i) attempts to make the Bond Trustee and the Litigation Trustee an estate representative with control over the Litigation Trust Assets, including retained causes of action, by, among other things, stating that the Bond Trustee can pursue any claims the Litigation Trustee decides not to pursue and by stating that claims will be transferred to the Litigation Trust to be pursued by the Litigation Trustee or the Bond Trustee (*id.*, § 4.2.4); and
- (j) attempts to take away legal rights and defenses of parties, including potential defendants, with respect to Retained Causes of Action by stating that "no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial equitable or otherwise), or laches, shall apply to such Causes of Action." (*id.*, § 4.2).

25. The Debtor could oppose confirmation and the Plan could be modified, but the Debtor does not believe another contested confirmation process is necessary to preserve the value of estate claims for unsecured creditors. The Bond Trustee has instructed counsel for the Debtor on more than one occasion that neither firm should be doing any work in this Chapter 11 Case

going forward. The Debtor and its counsel have fiduciary duties which they must exercise; however, the Debtor has not had an approved budget since May 31, 2024. And in prior budgets, the Bond Trustee inappropriately attempted to exercise control over the Chapter 11 Case by refusing to agree to appropriate carve outs and protections.³ Now, through the Bond Trustee Plan, the Bond Trustee, once again, is attempting to take control of this Chapter 11 Case by, effectively, acting like a secured creditor in possession, asserting total control over the Litigation Trustee and the entire process.

26. Because the Debtor believes the Bond Trustee's Plan, as drafted, is not in the best interest of all creditors, the Debtor believes that conversion is in the best interest of the estate. The Debtor is properly exercising its fiduciary duties by requesting conversion, as this will preserve the value of the remaining assets, including any causes of action, and will provide a truly independent party to step in, evaluate claims, and take control of such assets in a manner that will benefit all creditors in accordance with the chapter 7 trustee's fiduciary duties established under the Bankruptcy Code.

27. Accordingly, the Debtor respectfully requests that the Court enter an order converting the Chapter 11 Case to a case under chapter 7.

II. If the Court Does Not Convert the Chapter 11 Case to Chapter 7, the Court Should Dismiss the Chapter 11 Case Pursuant to 11 U.S.C. § 1112(b)(4)(a).

28. Bankruptcy Code section 1112(b) provides that "on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested . . . dismissal is not in the best interests of creditors and the estate,

³ Indeed, the Bond Trustee continues to do so by attempting to coordinate service of the Bond Trustee Disclosure Statement and Plan with the Debtor's claims agent, despite there being no court- (or Bond Trustee-) approved budget for those fees and expenses.

the court shall . . . dismiss a case under [chapter 11 of the Bankruptcy Code] . . . if the movant establishes cause.” 11 U.S.C. § 1112(b)(1). The determination of cause and the decision to dismiss a chapter 11 bankruptcy case pursuant to section 1112(b) rests within the sound discretion of the court. *See In re AMC Mortgage Co., Inc.*, 213 F.3d 917, 920 (6th Cir. 2000) (“[a] bankruptcy court has broad discretion to dismiss a chapter 11 case under 11 U.S.C. § 1112(b).”); *In re Nugelt, Inc.*, 142 B.R. 661, 665 (Bankr. D. Del. 1992) (stating that “[c]ourts have wide latitude in determining whether cause exists to convert or dismiss” a chapter 11 bankruptcy case).

29. 25. Section 1112(b)(4) of the Bankruptcy Code identifies certain examples of “cause” for dismissal of a chapter 11 case, including “substantial and/or continuous losses” “absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A). To demonstrate the first prong, continuing and/or continuing losses or diminution to the estate, all that is required is to show negative cash flow. *See In re Horned Dorset Primavera, Inc.*, 606 B.R. 117, 125 (Bankr. D. P.R. 2019). The second prong, no reasonable likelihood of rehabilitation, focuses on a debtor’s ability to reestablish or restore a business, and “rehabilitation does not include liquidation.” *See, e.g., In re Costa Bonita Beach Resort, Inc.*, 513 B.R. 184 (Bankr. D. P.R. 2014) (citations omitted). A bankruptcy court, however, is not constrained by the enumerated examples under section 1112(b)(4) and may find “cause” based on the facts and circumstances of the particular case. *See In re Nugelt, Inc.*, 142 B.R. at 665. The legislative history of section 1112(b) also indicates that the list set forth in Bankruptcy Code sections 1112(b)(4)(A)-(P) is nonexclusive, such that a bankruptcy court has the ability to dismiss a Chapter 11 case for any reason cognizable to its equity powers. *See* H.R. Rep. No. 595, 95th Cong., 2d. Sess. 405-06 (1978); *see also Official Comm. of Unsecured Creditors v. Nucor Corp. (In re SGL Carbon Corp.)*, 200 F.3d 154, 160 (3d Cir. 1999); *Carolin Corp. v. Miller*, 886 F.2d 693, 699 (4th Cir. 1993). Additionally, Bankruptcy Code section

105(a) provides, in pertinent part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

30. The facts and circumstances of this Chapter 11 Case are like those in *In Berwick Black Cattle Co.*, 405 B.R. 907 (Bankr. C.D. Ill. 2009), wherein the court denied a motion to appoint a chapter 11 trustee and granted the debtors motion to dismiss for cause based on “a continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” As in *Berwick Black Cattle*:

- the Debtor has no business left to operate or manage and has liquidated its assets such that the only remaining assets include potential causes of action, including potential claims based on alleged misconduct of a principal of the Debtor;
- the Debtor’s estate has insufficient funds to cover the additional expenses of a chapter 11 trustee, and the only source of funding to pay for a chapter 11 trustee or other continuing administrative expenses, would be “the chance of recovery from litigation claims at some point in the future, probably easily more than a year in the future, and probably only after substantial costs have been advanced, and with no certainty of success”;
- the Debtor is a nonprofit, making the appointment of a chapter 11 trustee inappropriate because such appointment would constitute a de facto conversion in violation of section 1112(c); and
- there have been no allegations of ongoing fraud or dishonesty that need to be stopped by a chapter 11 trustee.

31. Importantly, the Debtor, through its board of directors, reasonably believed that the FSO Settlement was a fair compromise and that the Plan, which was based on the FSO Settlement, could be confirmed. However, the Debtor’s board of directors no longer supports the FSO Settlement and the Plan, which has been withdrawn.

32. Because the Debtor has already liquidated its assets and maximized the value of such assets and the Debtor’s Plan has been or will be withdrawn, sufficient cause exists for the dismissal of the Chapter 11 Case. All or substantially all of the Debtor’s employees were employed by the

Buyer. The Debtor's remaining assets consist primarily of claims, which may be pursued outside of this Chapter 11 Case, with the exception of potential preference actions estimated to have a value of approximately \$150,000. There are no estate funds to be distributed to general unsecured creditors. Before the Chapter 11 Case is dismissed, the Debtor can distribute the sale proceeds and unencumbered funds consistent with the dismissal order, which will consist primarily of payment to the Bond Trustee.⁴

33. Dismissal will eliminate the further accrual of any administrative expense obligations and bring closure to this Chapter 11 Case in the most efficient manner, as argued in the U.S. Trustee's dismissal motion.

III. The Request to Shorten Notice with respect to the Motion

34. Bankruptcy Rule 2002(a)(4) requires 21 days' notice of a hearing on approval of a motion to dismiss or convert, but bankruptcy courts may shorten this required notice period. *See* Fed. R. Bankr. P. 2002(a)(4); Fed. R. Bankr. P. 9006(c)(1). The Debtor believes it is in the best interest of all parties in interest to have this Motion heard before or in conjunction with the Bond Trustee's Disclosure Statement, which is set for hearing on August 26, 2024. If the Court sets this Motion for hearing on August 26, 2024, parties in interest the 21-day notice period will have been shortened by only four (4) days and parties will receive seventeen (17) days' notice of the Motion. The shortened notice period will not prejudice any party and will promote efficiency and preservation of resources, including the resources of the Bond Trustee.

⁴The Debtor reserves the right to object to the amount of the Bond Trustee's secured claim based on the value of the Bond Trustee's collateral.

NOTICE

35. Notice of this Motion has been served on the following parties or, in lieu thereof, to their counsel, if known: (i) the United States Trustee for the Northern District of Illinois; (ii) the United States Attorney for the Northern District of Illinois; (iii) counsel for the Bond Trustee; (iv) the Debtor's secured creditors, if any; (v) the Internal Revenue Service; (vi) the Illinois Department of Revenue; (vii) the United States Department of Health and Human Services; (viii) the Illinois Department of Human Services; (ix) the Illinois Finance Authority; (x) the Centers for Medicare and Medicaid Services; (xi) the Illinois Department of Financial and Professional Regulation; (xii) the Illinois Department of Public Health; (xiii) the holders of the twenty largest unsecured claims against the Debtor; and (xiv) those who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST

36. No prior request for the relief sought in the Motion has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that this Court enter an order, substantially in the form attached hereto as Exhibit A, which grants: (a) the relief requested in this Motion; and (b) such other relief to the Debtor as the Court deems appropriate under the circumstances.

[Signature on following page]

Dated: August 9, 2024

EVANGELICAL RETIREMENT HOMES
OF GREATER CHICAGO, INCORPORATED,
d/b/a Friendship Village of Schaumburg, Debtor
and Debtor-in-Possession

By: /s/ Bruce Dopke
Counsel for the Debtor

Bruce Dopke, Member (ARDC # 3127052)
Dopkelaw LLC
1535 W. Schaumburg Road, Suite 204
Schaumburg, IL 60194
Tel: 847-524-4811
bd@dopkelaw.com

EXHIBIT A

(Proposed Order)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§	Chapter 11
	§	
EVANGELICAL RETIREMENT	§	Case No. 23-07541
HOMES OF GREATER CHICAGO,	§	
INCORPORATED d/b/a FRIENDSHIP	§	
VILLAGE OF SCHAUMBURG,	§	
	§	
FEIN: 36-2815382,	§	
	§	
Debtor.	§	Hon. Timothy A. Barnes

**ORDER GRANTING THE MOTION FOR ENTRY OF ORDER: (I) CONVERTING
DEBTOR’S CHAPTER 11 CASE TO A CASE UNDER CHAPTER 7, OR, IN THE
ALTERNATIVE, DISMISSING THE CHAPTER 11 CASE; AND (II) SHORTENING
NOTICE OF HEARING WITH RESPECT THERETO**

Upon the motion (the “**Motion**”) of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of an order (this “**Order**”) (i) converting the Debtor’s Chapter 11 Case or, in the alternative, dismissing the Chapter 11 Case, and (ii) shortening notice with respect to the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interest of the Debtor’s estate, its creditors, and other parties in interest; and this Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for

the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is GRANTED, as set forth herein.
2. The Chapter 11 Case shall be [dismissed/converted].
3. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.
4. The Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Order.
5. The Court finds, as permitted by Fed. R. Bankr. P. 2002(a)(4) and Fed. R. Bankr. P. 9006(c)(1) that the notice of the hearing on the Motion given to parties in interest was reasonable and sufficient under the circumstances.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:)
EVANGELICAL RETIREMENT HOMES)
OF GREATER CHICAGO,)
INCORPORATED d/b/a FRIENDSHIP)
VILLAGE OF SCHAUMBURG)
Debtor(s))

Case Number: 23-7541

Chapter: 11

Honorable Timothy A. Barnes

**ORDER GRANTING THE MOTION FOR ENTRY OF ORDER: (I) CONVERTING
DEBTOR'S CHAPTER 11 CASE TO A CASE UNDER CHAPTER 7, OR, IN THE
ALTERNATIVE, DISMISSING THE CHAPTER 11 CASE; AND (II) SHORTENING NOTICE
OF HEARING WITH RESPECT THERETO**

Upon the motion (the "Motion") of the above-captioned debtor and debtor in possession (the "Debtor") for entry of an order (this "Order") (i) converting the Debtor's Chapter 11 Case or, in the alternative, dismissing the Chapter 11 Case, and (ii) shortening notice with respect to the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interest of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is GRANTED, as set forth herein.
2. The Chapter 11 Case shall be [dismissed/converted].
3. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.
4. The Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Order.
5. The Court finds, as permitted by Fed. R. Bankr. P. 2002(a)(4) and Fed. R. Bankr. P. 9006(c)(1) that the notice of the hearing on the Motion given to parties in interest was reasonable and sufficient under the circumstances.

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

Bruce Dopke, Member (ARDC # 3127052)

Dopkelaw LLC

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Schaumburg, IL 60194

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