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Howard Marc Spector
TBA#00785023
Spector & Cox, PLLC
12770 Coit Road, Suite 850
Dallas, Texas 75251
(214) 365-5377
FAX: (214) 237-3380
hspector@spectorcox.com

**COUNSEL TO ALLAN METZ & GLORIA SIMON ASSIGNEES OF JOSEPH SOLOMON METZ; VD MANAGEMENT TRUST ASSIGNEE OF VIRGINIA CHANDLER DYKES; AMY H. BOUTON AND IRA HOLLANDER AND/OR THE ESTATE OF SONDRA F. HOLLANDER; AND BETTY W. SHERRILL**

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

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| **IN RE:** | § | **Chapter 11** |
| | § | |
| **Northwest Senior Housing Corporation, et al[1]** | § | **Case No. 22-30659 (MVL)** |
| | § | |
| | § | **(Jointly Administered)** |
| **Debtors** | § | |

**FORMER RESIDENTS' OBJECTIONS TO APPROVAL OF AND RESERVATION OF RIGHTS REGARDING THE DISCLOSURE STATEMENT FOR THE FIRST AMENDED JOINT PLAN OF REORGANIZATION**

## I. INTRODUCTION AND SUMMARY OF ARGUMENT

COME NOW Allan Metz & Gloria Simon Assignees of Joseph Solomon Metz; VD Management Trust Assignee of Virginia Chandler Dykes; Amy H. Bouton and Ira Hollander and/or The Estate of Sondra F. Hollander; and Betty W. Sherrill (collectively, "Objecting Residents") and object to the First Amended Disclosure Statement for the Plan of Reorganization

[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 (2699).

of the Plan Sponsors Dated December 6, 2022 (the "Disclosure Statement", [Docket No. 870]), and the solicitation of the First Amended Plan of Reorganization of the Plan Sponsors Dated December 6, 2022 (the "Plan", [Docket No. 869]). As discussed below, the Disclosure Statement should not be approved by the Court as it fails to provide adequate information as required by Section 1125 of the Bankruptcy Code. Specifically, the Disclosure Statement (i) does not contain adequate information about the merits of alleged claims against Debtors' affiliates, including LifeSpace Communities, Inc. ("Lifespace"); (ii) fails to – and likely can never – clarify the probability and timing of payments and the risks of non-payment for former residents; and (iii) obscures the effect of the injunction provisions on the opt-out settlement. Simply put, former residents are not close to being assured any payment, let alone payment in full under any timetable and there is simply no transparency about what the payment horizon is or what rights are surrendered even in the case of an opt-out decision. For these reasons, the Disclosure Statement should not be approved by this Court.

## II. STANDARD OF REVIEW

Under section 1125(b) of the Bankruptcy Code, a disclosure statement must contain "adequate information" before the debtor may solicit acceptance of a plan of reorganization. That is: information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor . . . that would enable such a hypothetical investor . . . to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1). This requirement "plays a pivotal role in the give and take among creditors and between creditors and the debtor that leads to a confirmed negotiated plan of reorganization by requiring adequate disclosure to the parties so they can make their own decisions on the plan's acceptability." *Nelson v. Dalkon Shield Claimants Trust* (*In re A.H. Robins Co.*), 216 B.R. 175, 180 (E.D. Va. 1997), *aff'd*, 163 F.3d 598

(4th Cir. 1998). Although "[a] debtor cannot be expected to unerringly predict the future," it is required to "provide information on all factors known to [it] at the time that bear upon the success or failure of the proposals set forth in the plan." *In re Walker*, 198 B.R. 476, 479-80 (E.D. Va. 1996); *see also In re Conco, Inc.*, 855 F.3d 703, 713 (6th Cir.2017).

While a disclosure statement is not the only lynchpin of the confirmation process, it is an indispensable part of it and the key to the procedural dominoes that follow—from solicitation, to voting, to the confirmation itself. *See*, *e.g.*, *In re Apex Oil Co.*, 111 B.R. 245 (Bankr. E.D. Mo. 1990).

## III. ARGUMENT

a. *The Disclosure Statement Fails to Disclose Facts Germane to the Debtor's and Residents' Claims Against Lifespace.*

One potential asset of the Debtors estates is "common-harm" type claims against Lifespace. *See e.g. In the Matter of S. I. Acquisition*, 817 F.2d 1142, 1153 (5th Cir. 1987) (under Texas law, an alter ego action was property of the bankruptcy estate, and any such suits by creditors ran afoul of the automatic stay). These claims have already been brought in state court by former residents alleging that Lifespace received fraudulent conveyances from the Debtor, and that Lifespace itself made material misrepresentations on the Debtor's behalf to former residents though the Debtor's Director of Sales and its Associate Director, both of whom were, apparently, Lifespace, and not Debtor employees working onsite at Edgemere. No disclosure of these, or similar, facts appear in the Disclosure Statement. Nor is there any analysis of the Debtor's direct claims against Lifespace. Finally, the Debtor should disclose whatever facts it is aware of that would give rise to individual claims by former residents against Lifespace.

Without this information, former residents cannot make an informed decision about whether to opt-in to the Lifespace Settlement or vote in favor of the Plan.

b. *The Disclosure Statement and Plan Obscure the Uncertainty of Payments by Lifespace to the Residents' Trust and its Effect on Distributions.*

Payments to Current Residents and Former Residents are dependent on Lifespace funding those payments over a term of years. Specifically, Lifespace is to enter into the as-yet-unfiled Lifespace Settlement and Contribution Agreement, under which Lifespace makes as-yet-unspecified annual payments to the Residents Trust pursuant to an also as-yet-unfiled schedule (Disclosure Statement Exhibit 4). No analysis of the number of expected Participating Resident Claims in any given year – not even the first year – is provided. Yet. if at any time Participating Resident Claims exceed the amounts then available in the Residents Trust, excess Participating Resident Claims will be paid, in the order they were triggered, upon replenishment of the Residents Trust when the next Lifespace payment is made.

While this construct is comprehensible on a theoretical basis, the Plan says simply that former residents' claims will be paid within 60 days of the Effective Date or "as soon as practicable" making no mention that the "practicability" of such payments is wholly dependent on (i) claims by other Residents; (ii) the frequency of rental of the Residents' units by the new operator; (iii) the ability of Residents to determine whether their vacated units have, in fact, been rented; and (iv) other factors not known at this time because the Lifespace Settlement and Contribution Agreement has not been filed. Compounding these uncertainties is the fact that Lifespace is permitted to defer contributions if, *inter alia*, any portion of any annual Lifespace Resident Contribution would cause "Lifespace Days Cash on Hand to fall below 250 days, in which case such portion can be deferred to the following year" and for up to two more years

thereafter. Creditors are also not made privy to whether Lifespace is participating, directly or indirectly, in the new operator's rental stream, and if not, the rationale for tying payments to the Liquidating Trust to the lease-up of the facility. Contributions by Lifespace are apparently also dependent on the terms of that certain Lifespace Master Trust Indenture, but former residents have no visibility into this document either. Finally, there are apparently no guardrails around Lifespace's use of funds while it is obligated to make these contributions, leaving open the distinct possibility that Lifespace can time equity distributions, capital expenses, or other expenditures so as to avoid making the promised distributions.

Given all of these risks, the Court should require nothing less than dissemination of detailed financials from Lifespace as an exhibit to the Disclosure Statement, together with access to the Lifespace Master Trust Indenture, so that Current Residents and Former Residents can make an informed decision about accepting or rejecting the Plan and opting into the Lifespace Settlement. Additionally, to the extent they exist, the Disclosure Statement should contain actuarial tables and pro-forma leasing information which will provide Current Residents and Former Residents some way to analyze when and whether they will be able to recover money from the Liquidating Trust. To the extent that these documents are to be provided in plan supplement documents as late as Monday, January 16, 2023, that is too little and too late because it does not provide sufficient time for Current Residents and Former Residents to vote and make the opt-out decision.

c. *The Disclosure Statement Is Misleading Because It Does Not Reveal that the Plan Injunction Precludes Current Residents and Former Residents from Pursuing Claims Against Lifespace Without Regard to Whether They Have Opted Out of the Settlement.*

The concluding paragraph of Section 8.6 of the Plan provides:

> **ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, THE LITIGATION TRUST, ALL OTHER RELEASED PARTIES AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS, AND OTHER PROFESSIONAL ADVISORS, AGENTS AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.**

Even a cursory reading of this provision makes clear its unlimited scope and breadth – no person may ever bring any claim against "Released Parties" (which includes Lifespace) for "any act or omission, transaction, or other activity of any kind or nature that occurred before the Effective Date." Notably, this injunction is not dependent on whether a Resident has opted in or out of the Lifespace Settlement. Thus, it appears that opting out of the Lifespace Settlement does not actually preserve rights against Lifespace since all creditors are enjoined from pursuing them. The Disclosure Statement omits these material facts and will inevitably mislead Residents since it fails to highlight the contradiction between the injunction terms and the opt out decision.

## IV. CONCLUSION

Based on the foregoing, the Objecting Residents respectfully request that an order be entered (i) denying approval of the Disclosure Statement, and (ii) granting such other and further relief as the Court deems just and proper.

December 12, 2022.

/s/ *Howard Marc Spector*
Howard Marc Spector
TBA#00785023
Spector & Cox, PLLC
12770 Coit Road, Suite 850
Dallas, Texas 75251
(214) 365-5377
FAX: (214) 237-3380
hspector@spectorcox.com

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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing pleading was served via electronic means to all parties who receive ECF notice in this case on December 12, 2022.

/s/ *Howard Marc Spector*
Howard Marc Spector