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PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION

**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)

(Joint Administration Requested)

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE IMPLEMENTATION OF
PROCEDURES TO MAINTAIN AND PROTECT
CONFIDENTIAL RESIDENT AND PATIENT INFORMATION**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move (the “**Motion**”), for entry of an order (the “**Proposed Order**”), substantially in the form attached hereto as Exhibit A, pursuant to Sections 105(a), 107, and 521(a)(1) of title 11 of the United States Code (the “**Bankruptcy Code**”) Rules 1007, 9018, and 9037 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), (i) authorizing the implementation of procedures to protect confidential information of current and former residents and patients of the Debtors (collectively,

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 (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.



the “**Residents and Patients**”) and (ii) granting certain related relief. In support of the Motion, the Debtors rely upon the *Declaration of Nick Harshfield in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),² filed concurrently herewith. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over these cases pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm they consent to the entry of a final order or judgment by the Court in connection with this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and other predicates for the relief requested herein are Bankruptcy Code Sections 105(a), 107, and 521(a)(1) and Bankruptcy Rules 1007, 9018, and 9037.

BACKGROUND

4. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “**Court**”).

5. The Debtors continue to operate and manage their business as debtors in possession pursuant to Bankruptcy Code Sections 1107(a) and 1108.

6. No trustee, examiner, or official committee of unsecured creditors has been appointed.

² Capitalized terms used but not defined in this Motion shall have the meanings given to them in the First Day Declaration.

7. The factual background regarding the Debtors and the events leading to the filing of the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”) is set forth in the First Day Declaration, which is incorporated herein by reference.

RELIEF REQUESTED

8. By this Motion, the Debtors request entry of the Proposed Order, substantially in the form of Exhibit A, (a) authorizing the implementation of procedures to protect confidential information of the Debtors’ Residents and Patients as may be required by the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and (b) granting related relief.

**PROPOSED PROCEDURES TO MAINTAIN AND PROTECT CONFIDENTIAL
RESIDENT AND PATIENT INFORMATION**

9. In the ordinary course of providing care for their Residents and Patients, the Debtors are required to maintain the confidentiality of patient information pursuant to HIPAA and applicable privacy regulations. However, the Debtors recognize that such requirements may conflict with the duty to disclose certain information under the Bankruptcy Code, including, without limitation, the duty to file a list of creditors under Bankruptcy Code Section 521(a)(1)(A) and, if necessary, a list of schedules of assets and liabilities under Section 521(a)(1)(B)(i).

10. To comply with applicable statutes, the Debtors propose the following procedures to maintain Resident and Patient confidentiality during the pendency of the Chapter 11 Cases (the “**Resident and Patient Confidentiality Procedures**”):

- a. The Debtors, with the assistance of their professionals, are authorized to prepare and maintain (i) a separate creditor matrix of the Residents and Patients (the “**Resident and Patient Matrix**”), and, if necessary, (ii) separate schedules of claims that may be asserted by and against the Residents and Patients (the “**Resident and Patient Schedules**”);
- b. The Debtors are not required to file the Resident and Patient Matrix and the Resident and Patient Schedules but are permitted to file a redacted version of the Resident and Patient Schedules that redacts the names and addresses

of the Residents and Patients and assigns a unique identification number to each of the Residents and Patients, provided however, that the Resident and Patient Matrix and the Resident and Patient Schedules may be reviewed by (i) this Court, (ii) the Office of the United States Trustee, (iii) any applicable state regulatory agency (through the respective state attorney general), and (iv) any other party in interest that obtains, after notice and a hearing, an order directing the Debtors to disclose the Resident and Patient Matrix and Resident and Patient Schedules to such party;

- c. To the extent the Debtors are required to list Residents and Patients on any document filed with the Court, including, the list of the top 30 unsecured creditors, the Debtors are authorized to list such Residents and Patients by their assigned unique identification number on such document;
- d. If the Debtors' HIPAA-certified noticing and claims agent, Kurtzman Carson Consultants LLC ("**KCC**"), serves any document upon any person listed on the Resident and Patient Matrix, KCC is authorized to note in the certificate of service that the parties served include individuals listed on the Resident and Patient Matrix;
- e. KCC shall process Residents' Proofs of Claim ("**Proofs of Claim**") and, upon request, make available a summary of the total number and amount of all claims filed by Residents and Patients against the Debtors, which summary shall exclude any information subject to HIPAA, its associated regulations, and other privacy requirements;
- f. KCC shall make copies of any Proofs of Claim filed by Residents and Patients available to the Court for in camera review, and any such Proofs of Claim shall otherwise be maintained by KCC and the Debtors on a confidential basis and not subject to public dissemination or disclosure; and
- g. To the extent any Resident or Patient discloses his or her own "protected health information" ("**PHI**") (as such term is defined in HIPAA) in any pleading, proof of claim, notice, or other publicly available document, the Debtors and their professionals shall be permitted, and to the extent required by the Bankruptcy Code, the Bankruptcy Rules, or any other applicable law, rule, or court order, directed to include such PHI in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Cases, and such disclosure shall not be deemed to be a "wrongful disclosure" within the meaning of HIPAA or any regulation promulgated thereunder.

BASIS FOR RELIEF

11. HIPAA creates a duty for health care providers to maintain the confidentiality of patient information. These and other regulations impose stringent standards on health care

providers and also establish significant penalties for any health care provider that uses or discloses patient information. 45 C.F.R. § 164.502 (addressing the use and disclosure of PHI by a “covered entity.”)³

12. Because the Debtors provide health care services and transmit health information in electronic form, it is a “covered entity” under 45 C.F.R. §160.103. Such requirements prevent the Debtors from disclosing, except in limited circumstances, “protected health information.” 45 C.F.R. § 164.502. “Protected health information” means “individually identifiable health information . . . that is (i) [t]ransmitted by electronic media; (ii) [m]aintained in electronic media; or (iii) [t]ransmitted or maintained in any other form or medium.” 45 C.F.R. § 164.103.

13. “Individually identifiable health information” is:

[I]nformation that is a subset of health information, including demographic information collected from an individual, and

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) [t]hat identifies the individual; or (ii) [w]ith respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Id.

14. The Debtors could be subjected to significant monetary penalties for the unauthorized disclosure of protected health information. *See* 45 C.F.R. § 160.402.⁴

³ These regulations also apply to “business associates,” which includes persons who provide management, legal, accounting, and consulting services for a covered entity. 45 C.F.R. § 160.103.

⁴ Under 45 C.F.R. § 160.404, monetary penalties of up to \$50,000 could be imposed for each violation, up to an aggregate of \$1,500,000 for identical violations occurring during a calendar year. Such penalties can be imposed even if a person “did not know and, by exercising reasonable diligence, would not have known” that a violation occurred. 45 C.F.R. § 160.404(b)(2)(i).

15. The Debtors believe that the requirements to maintain Resident and Patient confidentiality under HIPAA and other statutes conflict with the requirements to disclose information under the Bankruptcy Code, specifically the duty to file a list of all creditors under Bankruptcy Code Section 521(a)(1)(A) and the duty to file schedules of all assets and liabilities under Section 521(a)(1)(B)(i). The Debtors, therefore, respectfully request that such Resident and Patient information be protected through the proposed Resident and Patient Confidentiality Procedures described herein pursuant to Bankruptcy Code Section 107(c)(1), which provides that, “[t]he bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property: (A) Any means of identification . . . contained in a paper filed, or to be filed, in a case under this title.” 11 U.S.C § 107(c)(1).

16. This Court may also approve the proposed Resident and Patient Confidentiality Procedures pursuant to Bankruptcy Code Section 105(a), which empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The Debtors believe that the relief requested herein appropriately balances the need to maintain confidential patient information under HIPAA and applicable law with the need for adequate disclosure under the Bankruptcy Code.

17. Relief similar to that requested in this Motion has been granted in this District and others in comparable chapter 11 cases. *See, e.g., In re Tarrant County Senior Living Center, Inc.*, Case No. 19-33756-SGJ (Bankr. N.D. Tex Nov. 19, 2019) [Docket No. 51] (authorizing the implementation of similar procedures to protect confidential information of current and former Residents in compliance with HIPAA); *In re American Eagle Delaware Holdings Company LLC*,

Case No. 22-10028 (Bankr. D. Del. Jan. 18, 2022) [Docket No. 45] (same); *In re Promise Healthcare Grp., LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Nov. 6, 2018) [Docket No. 41] (same); *In re EBH TOPCO, LLC*, Case No. 18-11212 (BLS) (Bankr. D. Del. May 24, 2018) [Docket No. 40] (same).

NOTICE

18. Notice of this Motion will be provided to (a) the U.S. Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors on an aggregate basis, (c) UMB Bank, N.A., as Trustee and counsel thereto, (d) Lifespace Communities, Inc. and counsel thereto, (e) the United States Attorney's Office for the Northern District of Texas, (f) the Internal Revenue Service, (g) the United States Department of Justice, (h) the Texas State Attorney General, (i) the United States Securities and Exchange Commission, and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002.

19. The Debtors respectfully submit that such notice is sufficient and that no further notice of this Motion is required.

NO PRIOR REQUEST

20. No previous request for the relief sought herein has been made to this Court or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: April 14, 2022
Dallas, Texas

POLSINELLI PC

/s/ Trinitee G. Green

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PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION

Exhibit A

Proposed Order

**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)

**ORDER AUTHORIZING THE IMPLEMENTATION OF
PROCEDURES TO MAINTAIN AND PROTECT
CONFIDENTIAL RESIDENT AND PATIENT INFORMATION**

Upon the motion (the “**Motion**”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Debtors**”) for entry of an order (this “**Order**”), pursuant to Bankruptcy Code Sections 105(a), 107, and 521(a)(1) and Bankruptcy Rules 1007, 9018, and 9037 (i) authorizing the implementation of procedures to protect confidential information of current and former residents and patients of the Debtors (collectively, the “**Residents and Patients**”) and (ii)

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 (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

² All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

granting related relief; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and the 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; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED as set forth herein.
2. The following Resident and Patient Confidentiality Procedures are hereby approved:
 - a. The Debtors, with the assistance of their professionals, are authorized to prepare and maintain (i) a separate creditor matrix of the Residents and Patients (the "**Resident and Patient Matrix**"), and, if necessary, (ii) separate schedules of claims that may be asserted by and against the Residents and Patients (the "**Resident and Patient Schedules**");
 - b. The Debtors are not required to file the Resident and Patient Matrix and the Resident and Patient Schedules but is permitted to file a redacted version of the Resident and Patient Schedules that redacts the names and addresses of the Residents and Patients and assigns a unique identification number to each of the Residents and Patients, provided however, that the Resident and Patient Matrix and the Resident and Patient Schedules may be reviewed by

(i) this Court, (ii) the Office of the United States Trustee, (iii) any applicable state regulatory agency (through the respective state attorney general), and (iv) any other party in interest that obtains, after notice and a hearing, an order directing the Debtors to disclose the Resident and Patient Matrix and Resident and Patient Schedules to such party;

- c. To the extent the Debtors are required to list Residents and Patients on any document filed with the Court, including, the list of the top 30 unsecured creditors, the Debtors are authorized to list such Residents and Patients by their assigned unique identification number on such document;
- d. If the Debtors' HIPAA-certified noticing and claims agent, Kurtzman Carson Consultants LLC ("**KCC**"), serves any document upon any person listed on the Resident and Patient Matrix, KCC is authorized to note in the certificate of service that the parties served include individuals listed on the Resident and Patient Matrix;
- e. KCC shall process Residents' Proofs of Claim ("**Proofs of Claim**") and, upon request, make available a summary of the total number and amount of all claims filed by Residents and Patients against the Debtors, which summary shall exclude any information subject to HIPAA, its associated regulations, and other privacy requirements;
- f. KCC shall make copies of any Proofs of Claim filed by Residents and Patients available to the Court for in camera review, and any such Proofs of Claim shall otherwise be maintained by KCC and the Debtors on a confidential basis and not subject to public dissemination or disclosure; and
- g. To the extent any Resident or Patient discloses his or her own "protected health information" ("**PHI**") (as such term is defined in HIPAA) in any pleading, proof of claim, notice, or other publicly available document, the Debtors and their professionals shall be permitted, and to the extent required by the Bankruptcy Code, the Bankruptcy Rules, or any other applicable law, rule, or court order, directed to include such PHI in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Cases, and such disclosure shall not be deemed to be a "wrongful disclosure" within the meaning of HIPAA or any regulation promulgated thereunder.

3. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice or waived.

4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

End of Order

Submitted by:

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