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*Counsel to the Initial Plan Sponsors*

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

In re:

Northwest Senior Housing Corporation, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

**Re: Docket No. 1311**

**EMERGENCY MOTION OF INITIAL PLAN SPONSORS TO STRIKE  
INTERCITY INVESTMENT PROPERTIES, INC.'S WITNESS AND EXHIBIT LIST**

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.



Initial Plan Sponsors<sup>2</sup> respectfully move to strike Intercity Investment Properties, Inc.’s (“**ICI**”) Witness and Exhibit List for Hearing Scheduled to Commence on March 7, 2023 [Docket No. 1311]. In support of this motion, Initial Plan Sponsors state as follows:

1. ICI knows full well that there is no hearing scheduled to “commence” on March 7; as this Court is aware, the hearing to consider confirmation of the Plan<sup>3</sup> and Sale Transaction began as scheduled on February 21 (Docket No. 1056), proceeded through February 24, and was continued to March 7 (the “**Sale and Confirmation Hearing**”). Nonetheless, ICI has filed a new and untimely witness and exhibit list for an improper purpose: to recall one or more witnesses who have already concluded their testimony for another round of examination. As a matter of substantive fairness and in the interest of judicial economy, this should not be permitted.

2. Before filing its second witness and exhibit list on March 3, ICI filed a Notice of Subpoena directed to David Fields on March 2 [Docket No. 1308]. The subpoena commanded him to appear before this Court to testify on March 8 and bring with him certain documents related to the sale.

3. At the time ICI filed this notice, Mr. Fields had already completed his testimony before this Court.

4. On February 23, Mr. Fields was called as a witness to testify about the marketing process, the selection of the Stalking Horse Bidder, the interest of other potential buyers, and all other aspects of the potential sale of the Debtors’ assets. Consistent with the parties’ discussions with the Court to determine the sequence of witness testimony, Mr. Fields concluded his testimony

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<sup>2</sup> “Initial Plan Sponsors” refers to UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (the “**Trustee**”) and in its capacity as a lender under the DIP Credit Agreement (the “**DIP Lender**,” and collectively with the Trustee, the “**Initial Plan Sponsors**”).

<sup>3</sup> Capitalized terms not specifically defined herein are given the meanings ascribed to them in the Third Amended Plan of Reorganization of the Plan Sponsors dated December 19, 2022 [Docket No. 933].

that same day. His direct testimony was admitted by declaration, he was cross-examined at length, the Court further examined him, and he was dismissed.

5. ICI did not reserve a right to recall Mr. Fields for any reason. As has been the practice with other witnesses throughout this trifurcated process, his examination and his role in this Sale and Confirmation Hearing has concluded. *See* February 21 Hearing Tr. at 269:1-22 (confirming witness who has finished testifying would be excused and not subject to recall consistent with prior hearings).

6. Before ICI served the subpoena on Mr. Fields, Initial Plan Sponsors informed ICI that they objected ICI's attempt to (1) recall Mr. Fields for another round of examination where he had already been dismissed, and (2) belatedly obtain additional documents mid-trial that it could have requested before Mr. Fields testified. Initial Plan Sponsors also notified ICI that, if served, Initial Plan Sponsors would move to quash the subpoena on the grounds that: (1) ICI sought to use the subpoena for an improper purpose; (2) the subpoena placed an undue burden on Mr. Fields under the circumstances; and (3) the subpoena was procedurally defective because Mr. Fields is outside the Court's geographic subpoena power.

7. ICI indicated that it would not serve the subpoena, but it included Mr. Fields on its March 3 witness and exhibit list nonetheless because ICI believes that his testimony "regarding the diligence provided (or not provided) to potential bidders with respect to property conditions opened up substantial confirmation-related issues with respect to proposed good faith and no collusion findings."

8. This Court should strike ICI's witness and exhibit list because it is untimely, having been filed mid-hearing, and because ICI should be not permitted another opportunity to examine witnesses who have already testified and to reopen evidence that has been closed.

9. Mr. Fields has already testified about the sale process (including diligence provided to potential bidders), good faith, and lack of collusion. These issues relate to the sale—not confirmation—and ICI had every opportunity to examine him on these issues last Friday. Even if good faith and lack of collusion were confirmation issues, as ICI suggests, it makes *no* difference. All parties understood that this Court would be addressing adequate assurance, sale, and confirmation in *one* hearing, with witnesses subject to *one* examination on *all* issues. If ICI had confirmation-related issues on which to examine Mr. Fields, the time to do that was last Friday.

10. This Court should not permit ICI to unilaterally change this procedure now and take yet another opportunity to examine Mr. Fields—or any other witnesses that have already testified in the Sale and Confirmation Hearing—simply because the hearing was continued.

11. For the forgoing reasons, the Initial Plan Sponsors respectfully request that the Court enter an order (i) striking ICI’s Witness and Exhibit List for Hearing Scheduled to Commence on March 7, 2023 (Docket No. 1311); and (ii) granting such other relief that the Court may deem appropriate.

Dated: March 6, 2023

**HAYNES AND BOONE, LLP**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 6, 2023, a true and correct copy of the foregoing was served (i) via email to counsel for ICI, the Debtors, the Committee, and Lifespace and (ii) via the Court's electronic case filing (ECF) system upon all parties who receive notices in this proceeding.

/s/ J. Frasher Murphy

J. Frasher Murphy

**CERTIFICATE OF CONFERENCE**

I hereby certify that, on March 5, 2023, I conferred by email with counsel for ICI regarding the relief sought in this Emergency Motion. ICI has not agreed to the relief sought herein.

/s/ Catherine S. Lombardo

Catherine S. Lombardo