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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.**	§	**Chapter 11** **Case No. 22-30659 (MVL)** **Jointly Administered**
Official Committee of Unsecured Creditors, **Plaintiff,** **v.** **UMB Bank, N.A., in its capacity as bond trustee and master trustee,** **Defendant.**	§	**Adv. No. _____**

ORIGINAL COMPLAINT

[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.

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Plaintiff, the Official Committee of Unsecured Creditors in the above-enumerated bankruptcy cases ("***Plaintiff***" or the "***Committee***"), hereby files this *Original Complaint*, and would respectfully show the Court as follows:

I.
NATURE OF ACTION

1. This is an adversary proceeding filed to determine the validity, extent and priority of liens on property of the estate of the Debtors. Specifically, the Committee brings this suit to: 1) avoid the unperfected liens asserted by Defendant UMB Bank, N.A., in its capacity as Bond Trustee and Master Trustee under the Master Indenture and related Bond Documents, on the Unperfected Collateral (defined below) pursuant to 11 U.S.C. §544, and 2) seek a declaration that such Unperfected Collateral belongs to the Debtors' bankruptcy estates unencumbered by any liens in favor of Defendant.

2. The Final DIP Order (defined below) requires the Committee to bring any Challenge by July 12, 2022, to the validity, priority, and extent of any liens and security interests asserted by Defendant against the assets of the Debtors' bankruptcy estates. The Debtors have confirmed in writing they are not pursuing any such Challenge (as defined in the Final DIP Order). Accordingly, the Committee brings this suit as a Challenge pursuant to the Final DIP Order under 11 U.S.C. 544, *et al*. as a strong-arm action on behalf of the bankruptcy estates to avoid, preserve and recover the value of any unperfected liens and security interests asserted in the Debtors' assets as of the Petition Date. The Committee has filed its Motion for Standing simultaneously with the filing of this adversary proceeding. The Defendant has stipulated to the Committee's standing to file this Challenge.

3. In this adversary proceeding, the Committee seeks a judgment for the benefit of the bankruptcy estates against Defendant cutting off any liens and security interests asserted

against the Debtors' assets that were not properly perfected as of the Petition Date, including, without limitation: (a) commercial tort claims; (b) title vehicles; (c) insurance proceeds; (d) deposit accounts and deposits held therein not within Defendant's control; (e) money, cash and cash equivalents not within Defendant's possession; and (f) any other assets not currently disclosed to the Committee that are subsequently made known that do not fit within any category of assets subject to Defendant's perfected liens and security interests as of the Petition Date.

II.
JURISDICTION AND VENUE

4. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (K). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

5. This adversary proceeding is brought pursuant to Rules 7001(2) and (9) of the Federal Rules of Bankruptcy Procedure.

III.
PARTIES AND PROCEDURAL HISTORY

6. On April 14, 2022 (the "***Petition Date***"), the Debtors filed their voluntary petitions with this Court under chapter 11 of the Bankruptcy Code, thereby initiating the above-captioned jointly administered chapter 11 bankruptcy proceedings ("***Bankruptcy Cases***"). The Debtors are operating their businesses and managing their assets as debtors-in-possession pursuant to Section 1107(a) and 1108 of the Bankruptcy Code.

7. On the Petition Date, the Debtors filed the *Motion for Entry of Interim and Final Orders (I) Authorizing the Use of Cash Collateral, (II) Authorizing Post-Petition Financing, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling the Final Hearing and Approving the Form and Method of Notice Thereof, and (VI) Granting Related Relief* [Docket No. 35] (the "***DIP Motion***").

8. On April 28, 2022, the Office of the United States Trustee appointed the Committee to represent the interests of all unsecured creditors in the Bankruptcy Case pursuant to Section 1102 of the Bankruptcy Code.

9. On June 23, 2022, the Court entered its *Final Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests and Superpriority Claims* [Docket No. 421] ("***Final DIP Order***").[2] Among other things, the Final DIP Order authorized the Committee to investigate the Defendant's pre-Petition Date transactions with the Debtors and institute and prosecute objections and avoidance claims through this adversary proceeding to challenge the amount, validity, extent and/or priority of certain pre-Petition Date liens and claims allegedly held by Defendant against the Debtors, specifically including, without limitation, the claims asserted in this Complaint.[3] The Final DIP Order also provided a deadline of July 12, 2022, for Plaintiff to exercise such rights. The Debtors waived and released (i) any rights to object to the allowance of, and any defense with respect to, Defendant's pre-petition claims and liens, and (ii) any rights to contest the priority, perfection or validity of Defendant's alleged liens securing its prepetition claims.[4] The Debtors have confirmed in writing they are not pursuing any Challenge to Defendant's asserts claims and liens. Defendant has stipulated to Plaintiff's standing to bring this Complaint as a Challenge under the Final DIP Order. Plaintiff brings the claims and causes of action in this adversary

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[2] Unless otherwise defined herein, any capitalized terms or phrases bear the meanings assigned in the Final DIP Order.

[3] *See* Final DIP Order at pp. 29-30, ¶ 34.

[4] *See* Final DIP Order at p. 29, ¶ 33.

proceeding against Defendant in Plaintiff's capacity as the duly formed Committee, as appointed by the United States Trustee's Office.

10. Defendant is a national banking association organized and existing under the laws of the United States of America. Defendant operates as an insured financial depository institution with its principal place of business in the State of Missouri. Pursuant to Rule 7004(h)(1) of the Federal Rules of Bankruptcy Procedure, service of process in this adversary proceeding may be made on Defendant by mailing a copy of the summons and Complaint via first class mail prepaid to Defendant's attorney appearing on behalf of Defendant in the Bankruptcy Cases. Defendant is being sued in this adversary proceeding in its proper capacity as a national banking association registered with the Federal Deposit Insurance Corporation as an insured financial depository institution, and as Bond Trustee and Master Trustee under the Master Indenture and the terms of the related Bond Documents.

IV.
FACTUAL BACKGROUND

A. Master Indenture and Bond Documents.

11. Dated as of November 15, 1999, and effective as of April 1, 2006, the Debtors and JPMorgan Chase Bank, National Association (as prior Master Trustee) entered into that certain *Amended and Restated Master Trust Indenture, Deed of Trust and Security Agreement* ("***Master Indenture***").

12. The documents corresponding to, arising from, and otherwise related to the Master Indenture (collectively, the "***Bond Documents***") include the following:

(i) *Indenture of Trust* dated as of May 1, 2015, corresponding to the Series 2015A and Series 2015B bonds issued in connection therewith;

(ii) *Loan Agreement* dated as of May 1, 2015, corresponding to the Series 2015A and Series 2015B bonds issued in connection therewith;

(iii) *Series 2015A Note* in the original principal amount of $53,600,000, corresponding to the Series 2015A bonds issued in connection therewith;

(iv) *Series 2015B Note* in the original principal amount of $40,590,000, corresponding to the Series 2015B bonds issued in connection therewith;

(v) *Indenture of Trust* dated as of March 1, 2017, corresponding to the Series 2017 bonds issued in connection therewith;

(vi) *Loan Agreement* dated as of March 1, 2017, corresponding to the Series 2017 bonds issued in connection therewith;

(vii) *Series 2017 Note* in the original principal amount of $21,685,000, corresponding to the Series 2017 bonds issued in connection therewith; and

(viii) *Forbearance Agreement* dated December 21, 2021.

13. Incorporated into and funded pursuant to the terms of the Master Indenture, the Debtors obtained certain bond debt to finance the Debtors' business needs ("***Bond Financing***"). The Bond Financing consists of: (i) Series 2015A bonds issued in the original principal amount of $53,600,000; (ii) Series 2015B bonds issued in the original principal amount of $40,590,000; and (iii) Series 2017 bonds issued in the original principal amount of $21,685,000. Defendant asserts that the Debtors' pre-bankruptcy obligations under the Bond Financing are due and owing to Defendant in the total amount of $111,728,919.00, as of the Petition Date ("***Prepetition Bond Claim***").

B. UMB as Successor Master Trustee and Bond Trustee

14. JPMorgan Chase Bank, National Association was the original Master Trustee under the Master Indenture. Pursuant to Section 8.10 of the Master Indenture, any successor Master Trustee shall executed, acknowledge and deliver an instrument accepting the appointment as successor Master Trustee under the Master Indenture. Upon the successor Master Trustee's delivery of such acceptance, the resignation and removal of the retiring Master Trustee shall become effective and such successor Master Trustee, without any further act, deed, or

conveyance, shall become vested with all the rights, powers, trusts, and duties of the retiring Master Trustee under the terms of the Master

15. On March 30, 2017, the Bank of New York Mellon Trust Company, National Association executed, acknowledged and delivered its written acceptance as successor Master Trustee from JPMorgan Chase Bank, National Association under the Master Indenture. Thereafter, on August 16, 2017, Defendant executed, acknowledged and delivered its written acceptance of successor trusteeship as Master Trustee from Bank of New York Mellon Trust Company, National Association under the Master Indenture.

C. Grant of Liens under Master Indenture.

16. As security for the Debtors' performance of the obligations arising under the Master Indenture, including the Bond Financing, Defendant was granted liens and security interests in certain personal property subject to any interest of the Debtors. To evidence this conveyance, on pages 2-4 of the Master Indenture, the Debtors pledged, assigned and granted to Defendant liens and security interests in favor of Defendant (as successor in interest) ("***Security Grant***") in the specific property set forth in **Exhibit "A"** hereto (the "***Collateral***"), as summarized below.[5]

(i) Accounts;

(ii) Chattel Paper;

(iii) Goods;

(iv) Deposit Accounts;

(v) Documents;

(vi) Equipment;

[5] The summary of Collateral herein is provided as a reference for convenience only and should not be construed to supplant or modify the exact Collateral filed of record, which are set forth in **Exhibit "A"** hereto.

(vii) General Intangibles;

(viii) Fixtures;

(ix) Instruments;

(x) Inventory;

(xi) Investment Property;

(xii) Gross Revenues;

(xiii) The Debtors' leasehold estate created by that certain ground lease dated November 17, 1999 with Intercity Investment Properties, Inc. ("***Landlord***"); and

(xiv) All sums on deposit in any collection accounts under Defendant's control.

D. Perfection of Liens.

17. In order to notify third parties of its alleged security interests in the Collateral, the Master Trustee submitted a UCC-1 Financing Statement with the Texas Secretary of State on May 1, 2006, at Filing No. 06-0014736895 (together with all amendments and continuations filed therewith, the "***Financing Statement***"). The collateral description contained in the Financing Statement is identical to the assets described in **Exhibit "A"** hereto.

18. In order to notify third parties of its alleged security interests in the Collateral, the Master Trustee recorded the Master Indenture in the Dallas County Real Property Records on April 27, 2006, at Document Number 200600155243.

E. Failure to Perfect Liens on Certain Assets.

19. Despite requests to confirm the extent of the Defendant's lien in any insurance proceeds, the Defendant has failed to provide the Committee with any evidence of its lien in the Debtors' insurance policies or the proceeds thereof. Accordingly, out of compulsion of the Challenge deadline and expiration of the Investigation Period, on the information currently known to the Committee, prior to the Petition Date, the Defendants did not take the requisite

steps to have its liens noted as "Additional Insured" or "Loss Payee" on the Debtors' insurance policies. As such, Defendant is not properly perfected in any of the Debtors' insurance policies or the proceeds thereof.

20. Prior to the Petition Date, Defendant did not take any steps to note its security interests in any of the Debtors' assets subject to a certificate of title. Prior to the Petition Date, Defendant did not take any steps to obtain possession of the original certificates to any titled vehicles. As such, Defendant is not properly perfected in any of the Debtors' titled vehicles.

21. Pursuant to the Debtors' Escrow Agreement, the Debtors have disclosed two escrow accounts maintained at Regions Bank, account numbers ending in 5305 and 0381, respectively (the "***Escrow Accounts***"). As of the Petition Date, Defendant did not take any steps to procure a deposit account control agreement or otherwise obtain control over any deposits maintained with a third party depository institution, including the Escrow Accounts.

22. Prior to the Petition Date, Defendant did not file a UCC-1 financing statement describing in sufficient detail any commercial tort claims and causes of action owned by the Debtors. Prior to the Petition Date, Defendant did not take any steps required to perfect its liens and security interests in the Debtors' commercial tort claims.

23. Prior to the Petition Date, Defendant did not take any steps to obtain control or possession of the Debtors' money, cash equivalents or cash on hand.

F. Assets of the Debtors' Bankruptcy Estates.

i. Prepetition Cash

24. On May 17, 2022, Northwest Senior Housing Corporation filed its Schedules of Assets and Liabilities at Docket No. 240 in the Bankruptcy Case ("***Schedules***").

25. Section 2 in Schedule A/B indicate that, as of the Petition Date, the Debtor had $1,000.00 in petty cash on hand.

26. The specific money described above, together with all other cash and money subject to any interest of the Debtors held outside of an account maintained with Defendant and not otherwise subject to Defendant's possession, is collectively referred to herein as the "***Prepetition Cash.***"

27. As of the Petition Date, the Prepetition Cash was not under Defendant's possession or control.

28. Defendant does not hold a perfected lien in the Prepetition Cash to secure its Prepetition Bond Claim.

ii. Titled Vehicles

29. Under Section 47.1 to Schedule A/B and the Schedule A/B 47 Attachment on page 36 of the Schedules, the Debtors list 15 automobiles, vans, trucks, motorcycles, trailers and titled farm vehicles ("***Vehicles***"). One or more of the Vehicles may be subject to a certificate of title. Any and all of the Debtors' assets that are subject to a certificate of title, including, without limitation, the Vehicles, as applicable, are referred to herein as the "***Titled Assets***."

30. As of the Petition Date, Defendant did not take the requisite action to obtain possession of the original certificates of title to the Vehicles to perfect its lien on Titled Assets. As of the Petition Date, Defendant did not take the requisite action to have its liens and security interests noted on the certificates of title to the Vehicles and record the same with the Texas Department of Motor Vehicles. Defendant does not hold a perfected lien in the Titled Assets to secure its Prepetition Bond Claim.

iii. Insurance Proceeds

31. Section 74.2 in Schedule A/B lists $638,985.77 in insurance proceeds corresponding to an insurance damage claim from the "2021 Winter Storm". Further, in

Schedule A/B 73 attachment on page 37 of the Schedules, the Debtors disclose nine insurance policies subject to the Debtors' interests (the "***Insurance Policies***"). The specific insurance policies and the proceeds thereof listed in Section 74.2 in the Debtor's Schedule A/B, together with the Insurance Policies and all other interests in insurance policies and proceeds thereof owned by the Debtor prior to the Petition Date, are collectively referred to herein as the "***Insurance Proceeds***".

32. Prior to the Petition Date, Defendant did not take the requisite steps to have the Defendant noted as "Additional Insured" or "Loss Payee". Accordingly, the Defendant does not hold a perfected lien in the Insurance Policies or the Insurance Proceeds to secure its Prepetition Bond Claim.

iv. Commercial Torts

33. In Section 74.1 of the Schedules, the Debtors list from certain commercial tort claims and causes of action against the Landlord. Those commercial tort claims and causes of action against the Landlord remain pending before the Bankruptcy Court at Adversary Case Number 22-03040 ("***Landlord Litigation***"). The Landlord Litigation, together with all other legal proceedings involving the Debtor, specifically including, without limitation, all of the Debtors' commercial tort claims, if any, are collectively referred to herein as the "***Litigation.***"

34. Prior to the Petition Date, Defendant did not file a UCC-1 financing statement containing a sufficient description of any of the legal proceedings comprising the Litigation properly to perfect its lien on the Landlord Litigation. Prior to the Petition Date, Defendant did not take any steps to amend the Financing Statement to properly describe with sufficient detail any commercial tort claims to properly perfect its lien on commercial tort claims belonging to the Debtor.

35. Defendant does not hold a perfected lien in the Litigation to secure its Prepetition Bond Claim.

v. Escrow Accounts / Third Party Deposits

36. Pursuant to the Debtors' Escrow Agreement, the Debtors have listed the existence of the Escrow Accounts with deposits held therein. As of the Petition Date, Defendant did not take any steps to procure a deposit account control agreement or otherwise obtain control over any deposits maintained with any third party depository institution, including the Escrow Accounts. Any and all funds held on deposit in the Escrow Accounts and with any other third party depository institution not subject to a deposit account control agreement with Defendant (or otherwise under Defendant's control) are collectively referred to herein as the "***Third Party Deposits***". Defendant does not hold a properly perfected lien in any Third Party Deposits to secure its Prepetition Bond Claim.

vi. Undisclosed Assets

37. Defendant does not hold perfected liens or security interests in any assets currently in existence and undisclosed to the Committee that do not otherwise fit into category of Collateral that Defendant properly perfected its liens as of the Petition Date (the "***Undisclosed Assets***").

38. The Prepetition Cash, the Titled Assets, the Insurance Proceeds, the Litigation, the Third Party Deposits and the Undisclosed Assets are collectively referred to herein as the "***Unperfected Collateral***."

G. The Unperfected Collateral Belongs to the Bankruptcy Estates Free and Clear of Defendant's Prepetition Bond Claim.

39. Prior to the Petition Date, Defendant did not take the steps required under applicable non-bankruptcy law to perfect its alleged liens and security interests in the Unperfected Collateral to secure its Prepetition Bond Claim.

40. As a consequence, as outline in Article VI herein below, Plaintiff is requesting a judgment against Defendant that all liens in the Unperfected Collateral are cutoff as of the Petition Date pursuant to 11 U.S.C. §544.

41. Upon the cutoff of Defendant's alleged liens and security interests in the Unperfected Collateral, under 11 U.S.C. 544, 550, and 551, the value of those avoided liens must be preserved and recovered for the benefit of the bankruptcy estates.

42. Accordingly, as of the Petition Date, title and ownership of the Unperfected Collateral were deemed to be transferred to the Debtors' bankruptcy estates.

43. On and after the Petition Date, Defendant is prohibited from taking any steps to perfect any alleged security interests in the Unperfected Collateral to secure its Prepetition Bond Claim.

44. The Unperfected Collateral are owned by the Debtors' bankruptcy estates.

45. The Unperfected Collateral are not subject to any security interests in favor of Defendant to secure Defendant's Prepetition Bond claim.

46. The Unperfected Collateral must be considered for distribution and treatment of the claims held by the bankruptcy estates' creditors other than Defendant.

V.
DECLARATORY JUDGMENT

47. Plaintiff restates and re-alleges the above facts, allegations, and averments as if fully set forth herein.

48. Plaintiff petitions the Court, pursuant to 28 U.S.C. §§ 2201 *et seq.*, for a declaration of the parties' rights, duties and legal relations in connection with the Unperfected Collateral. Plaintiff petitions the Court for a declaration that Defendant does not possess any lien or security interest in the Unperfected Collateral to secure the payment or performance of Defendant's Prepetition Bond Claim.

49. A judicial declaration of the parties' rights, duties and legal relations in connection with the Unperfected Collateral is necessary in order to determine the extent to which the Unperfected Collateral may be administered by the Debtors' bankruptcy estate for treatment of claims held by creditors other than Defendant.

50. A real and justiciable controversy exists to the extent Defendant asserts a lien in the Unperfected Collateral to secure the payment and performance of its Prepetition Bond Claim. Under the posture of the Final DIP Order, the Committee is compelled to file this Complaint as a Challenge by the July 12, 2022 deadline in order to preserve any rights and avoid being estopped from disputing any future assertion the Defendant may make against any assets of the Debtors' estates.

51. Plaintiff disputes that Defendant possesses a lien in the Unperfected Collateral to secure the payment and performance of its Prepetition Bond Claim. Unless this controversy is herein determined, Plaintiff and the Debtors' bankruptcy estates will be deprived of the value of the Unperfected Collateral.

52. The legal relations of the parties and the circumstances of the Bankruptcy Case establish the bankruptcy estates' rights to administer the Unperfected Collateral for treatment of claims held by creditors other than Defendant. A determination of the parties' rights, duties and

legal relations in connection with the Unperfected Collateral is required to preserve the bankruptcy estates' interests in the Unperfected Collateral.

53. Pursuant to Rule 57 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201 *et seq.*, Plaintiff seeks a declaration that Defendant does not possess any lien or security interest in the Unperfected Collateral to secure the payment or performance of Defendant's Prepetition Bond Claim.

54. All conditions precedent to the brining of this action have been performed or have occurred.

VI.
AVOIDANCE/PRESERVATION/RECOVERY

55. Plaintiff restates and re-alleges the above facts, allegations, and averments as if fully set forth herein.

56. Plaintiff petitions the Court, pursuant to 11 U.S.C. §§ 544(a), 550 and 551, seeking to avoid, recover and preserve Defendant's alleged liens and security interests in the Unperfected Collateral.

57. Upon the commencement of the Bankruptcy Cases, the Debtors' bankruptcy estates were created pursuant to the Bankruptcy Code. The bankruptcy estates are comprised of all property subject to any interest of the Debtors, including, without limitation, any interest in property recovered and preserved pursuant to 11 U.S.C. §§ 550, 551.

58. Under 11 U.S.C. § 544(a), the bankruptcy estates are accorded legal status as hypothetical lienholders in all assets of the bankruptcy estates perfected as of the Petition Date. Section 544(a) provides in part that the bankruptcy estates may avoid any transfers of property, including liens and security interests, to the extent such alleged liens and security interests are not perfected as of the date the bankruptcy petition is filed.

59. Defendant did not have a perfected lien or security interest in the Unperfected Collateral as of the Petition Date. Accordingly, the bankruptcy estates possess interests in the Unperfected Collateral superior to Defendant in all respects.

60. Title 11 U.S.C. § 550 provides in part that, to the extent any transfer is avoided under 11 U.S.C. § 544, the bankruptcy estates may recover the liens, security interests or other property unlawfully transferred, or, if the Court so orders, the value of such property, from (i) the initial transferee of such transfers, or the entity for whose benefit such transfer was made, or (ii) any intermediate or immediate transferee of such initial transferee.

61. Title 11 U.S.C. § 551 provides in part that any avoided transfer under 11 U.S.C. § 544 is preserved for the benefit of the estate.

62. To the extent Defendant claims any lien or security interest in the Unperfected Collateral, such liens and security interests are avoidable pursuant to the bankruptcy estates' strong arm powers under 11 U.S.C. § 544(a). Defendant's avoided liens and security interests in the Unperfected Collateral shall be returned to the bankruptcy estates and preserved for the benefit of the bankruptcy estates pursuant to 11 U.S.C. §§ 550 and 551.

63. All conditions precedent to the brining of this action have been performed or have occurred.

VII.
RESERVATION OF RIGHTS

64. This Complaint is filed out of compulsion of the Investigation Period and Challenge deadline contained in Paragraph 34 of the Final DIP Order. The contents of this Complaint are based on all information currently known and provided to the Committee. The Committee reserves all rights to supplement and amend this Complaint based on any new information discovered by the Committee after the date of this Complaint, including any

additional assets disclosed by the Debtors, with any such amendments relating back to the date of this original Complaint. Specifically, the Committee reserves all rights to amend this Complaint to Challenge any additional assets currently undisclosed by the Debtors and subsequently made known to the Committee that do not fit within or otherwise qualify into any category of Collateral properly perfected by Defendant as of the Petition Date.

VIII.
ATTORNEYS' FEES

65. Plaintiff is entitled to recover its reasonable attorneys' fees and legal expenses incurred in bringing and prosecuting this action.

IX.
PRAYER FOR RELIEF

For the reasons stated herein, Plaintiff, The Official Committee of Unsecured Creditors, prays for the following, upon final hearing of this cause,

(a) That the Court issue a declaratory judgment finding that:

(1) Defendant does not possess any lien or security interest in the Unperfected Collateral to secure any payment or performance of Defendant's Prepetition Bond Claim;

(2) The Unperfected Collateral are owned by the Debtors' bankruptcy estate free and clear of any interest in favor of securing the Defendant's Prepetition Bond Claim against the Debtors' bankruptcy estates;

(b) That the Court enter a judgment in favor of Plaintiff that any liens and security interests in favor of Defendant asserted in the Unperfected Collateral are avoided pursuant to 11 U.S.C. § 544(a);

(c) That the Court enter a judgment in favor of Plaintiff that the value of any liens and security interests in favor of Defendant asserted in the Unperfected Collateral is returned to the bankruptcy estate from Defendant or Defendant's intermediate or immediate transferee pursuant to 11 U.S.C. § 550;

(d) That the Court enter a judgment in favor of Plaintiff that the value of any liens and security interests in favor of Defendant asserted in the Unperfected Collateral is preserved for the benefit of the bankruptcy estate pursuant to 11 U.S.C. § 551;

(e) That Plaintiff be awarded its reasonable attorneys' fees and costs of court; and

(f) All other relief, either general or special, at law or in equity, to which Plaintiff may be justly entitled.

DATED: July 12, 2022

Respectfully submitted by:

FOLEY & LARDNER LLP

/s/ Thomas C. Scannell

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COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

EXHIBIT A

All revenue, accounts receivable, and Gross Revenues of the Debtor, including without limitation rights to receive payments from third party payors such as Medicare and Medicaid, but except and excluding all such items, whether now owned or hereafter acquired by the Debtor, which by their terms or by reason of applicable law would become void or voidable if granted, assigned, or pledged hereunder by the Debtor, or which cannot be granted, pledged, or assigned hereunder without the consent of other parties whose consent is not secured, or without subjecting the Secured Party to a liability not otherwise contemplated by the provisions hereof, or which otherwise may not be, or are not, hereby lawfully and effectively granted, pledged, and assigned by the Debtor, provided that the Secured Party may subject to the lien hereof any such excepted property, whereupon the same shall cease to be excepted property; and

The lease hold estate created by that certain ground lease dated November 17, 1999 (the "Ground Lease") between Intercity Investment Properties, Inc., a Texas corporation (together with any successors or assigns thereof, the "Ground Lessor") and the Debtor (hereinafter defined), which Ground Lease (or a memorandum thereof) was recorded on November 17, 1999, in Volume 99225, Page 149 of the Real Property Records of Dallas County, Texas, subject to the terms thereof concerning the land described on Exhibit "A" hereto and incorporated herein for all purposes, including without limitation, any and all other, further or additional title, estates, interests or rights that may at any time be acquired by the Debtors in or to the premises demised by the Ground Lease, all options and rights now existing or hereafter arising thereunder, all of the Debtors' right to waive, excuse, release or consent to any waiver, excuse or release of any provision of the Ground Lease or to consent to subordination of the Ground Lease to any mortgage or estate superior to the Ground Lease or to consent to the subordination of the Ground Lease to any other estate, and all deposits made by the Debtors pursuant to the Ground Lease, with all buildings, structures, fixtures, additions, enlargements, extensions, improvements, modifications or repairs now or hereafter located thereon or therein and with the tenements, hereditaments, servitudes, appurtenances, rights, privileges and immunities thereunto belonging or appertaining which may from time to time be owned by the Debtors, and all claims or expectancy, of, in and to the land described on Exhibit "A" hereto, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by the Debtors, and is affixed or attached or annexed to the land described on Exhibit "A" hereto, shall be and remain or become and constitute a portion of the land described on Exhibit "A" hereto, and the security covered by and subject to the lien of the Master Indenture; and

All of the rights, titles, interests and estates, now owned or hereafter acquired by the Debtors in and to any and all accounts, chattel paper, goods, documents, instruments, general intangibles, deposit accounts, investment property, equipment, inventory, fixtures, and any and all other personal property of any kind or character defined in and subject to the provisions of the Texas Business and Commerce Code, including the supporting obligations thereof, proceeds and products of and from any and all of such personal property used in connection with or arising out of the operation and use of the improvements located on the Premises and any substitutions or replacements therefor; and

Any amounts on deposit from time to time in any fund or account created hereunder, subject to the provisions of the Master Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

Any and all property that may, from time to time hereinafter, by delivery or by writing of any kind, be subjected to the lien and security interest hereof by the Debtors or by anyone in its behalf (and the Secured Party is hereby authorized to receive the same at any time as additional security hereunder), which subject to the lien and security interest hereof of any such property as additional security may be made subject to any reservations, limitations, or conditions which shall be set forth in a written instrument executed by the grantor or the person so acting in its behalf or by the Secured Party respecting the use and disposition of such property or the proceeds thereof;

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Official Committee of Unsecured Creditors	UMB Bank, N.A., as bond trustee and master trustee
ATTORNEYS (Firm Name, Address, and Telephone No.) Foley & Lardner LLP 2021 McKinney Avenue, Suite 1600, Dallas, TX 75201 214-999-4289	**ATTORNEYS** (If Known) Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center, Boston, MA 02111 617-348-4913
PARTY (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin ☒ Creditor ☒ Other □ Trustee	**PARTY** (Check One Box Only) □ Debtor □ U.S. Trustee/Bankruptcy Admin ☒ Creditor □ Other □ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Strong arm action to avoid unperfected liens as of petition date. 544, 550, 551
Declaratory judgment.

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☒ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☒ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☒ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

□ Check if this case involves a substantive issue of state law	□ Check if this is asserted to be a class action under FRCP 23
□ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Northwest Senior Housing Corporation	BANKRUPTCY CASE NO. 22-30659	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Larson
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) ***/s/ Thomas C. Scannell*** Foley & Lardner LLP Counsel to Committee/Plaintiff		
DATE July 12, 2022	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Thomas C. Scannell Foley & Lardner LLP	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.