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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.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-30659 (MLV)

(Joint Administration Requested)

**DECLARATION OF NICK HARSHFIELD IN SUPPORT OF  
CHAPTER 11 PETITION AND FIRST DAY PLEADINGS**

I, Nick Harshfield, declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a Director, Vice Chair and Treasurer (“**Treasurer**”) of Northwest Senior Housing Corporation d/b/a Edgemere (“**Edgemere**”) and its affiliate Senior Quality Lifestyles Corporation (“**SQLC**”), who are the debtors and debtors in possession (the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”).

2. I have over fifteen years of experience in elder healthcare, including with continuing care retirement communities (“**CCRCs**”). I have served as a Vice President, CFO, and

<sup>1</sup> 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.



Chief Compliance Officer for multiple CCRCs for over a decade. I have experience serving as an officer of non-profit multistate healthcare service providers that cater to senior adults. The organizations I have worked with have included CCRCs, and have offered skilled nursing, assisted living, adult day centers, home health, and multi-level retirement to seniors. I developed strategic growth and capital plans. I obtained my B.S.B.A from the University of Louisville.

3. In my capacity as Treasurer, I have personal knowledge of, and am familiar with, the business affairs, day-to-day operations, books and records, and financial condition of the Debtors, and I am authorized to submit this declaration (the “**Declaration**”) on behalf of the Debtors. I submit this Declaration to assist the Court and parties in interest in understanding the circumstances that led to the commencement of these Chapter 11 Cases and in support of: (a) the Debtors’ voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) filed on the date hereof (the “**Petition Date**”) in the United States Bankruptcy Court for the Northern District of Texas (the “**Court**”); and (b) the relief that the Debtors have requested from the Court.

4. Contemporaneously herewith, the Debtors are filing the following motions and applications (collectively, the “**First Day Motions**”):<sup>2</sup>

- i. Debtors’ Motion for Entry of an Order Pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1 (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief (the “**Joint Administration Motion**”);*
- ii. Debtors’ Application for Entry of an Order (A) Authorizing the Retention and Employment of Kurtzman Carson Consultants LLC as Claims, Noticing and Solicitation Agent, Nunc Pro Tunc to the Petition Date and (B) Granting Related Relief (the “**KCC Retention Application**”);*
- iii. Notice of Designation as Complex Chapter 11 Bankruptcy Cases;*

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<sup>2</sup> All capitalized terms not defined in this Declaration shall have the meanings ascribed to the relevant First Day Motion.

- iv. *Notice of Commencement of Chapter 11 Bankruptcy Cases and Filing of Certain First Day Pleadings;*
- v. *Request for Emergency Consideration of Certain “First Day” Matters;*
- vi. *Debtors’ Motion for Entry of an Order Authorizing the Filing of a Consolidated Mailing Matrix and a Consolidated List of Thirty Largest Unsecured Creditors (the “**Consolidated Creditor Motion**”);*
- vii. *Debtors’ Motion for Entry of an Order Extending Time to File (I) Schedules of Assets and Liabilities, (II) Statements of Financial Affairs, and (III) Reports of Financial Information Required Under Bankruptcy Rule 2015.3 (the “**Schedules Extension Motion**”);*
- viii. *Debtors’ Motion for Entry of an Order Authorizing the Implementation of Procedures to Maintain and Protect Confidential Resident and Patient Information (the “**Resident and Patient Confidentiality Motion**”);*
- ix. *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Continue (A) Escrowing Entrance Fees in the Ordinary Course and (B) Refunding Certain Entrance Fees During the Chapter 11 Cases and (II) Granting Related Relief (the “**Escrow Motion**”);*
- x. *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing (A) Continued Use of Debtors’ Existing Cash Management System (B) Maintenance of Debtors’ Existing Bank Accounts, and (C) Continued Use of Debtors’ Existing Business Forms and (II) Granting Related Relief (the “**Cash Management Motion**”);*
- xi. *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Commissions, Employee Benefits, Prepetition Payroll Taxes, and Other Obligations, (B) Maintain Compensation and Benefits Programs, and Pay Related Administrative Obligations, and (C) Make Payroll Deductions, (II) Authorizing Applicable Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers, and (III) Granting Related Relief (the “**Wage Motion**”);*
- xii. *Debtors’ Motion for Entry of Interim and Final Orders Authorizing Payment of Prepetition Taxes and Fees (the “**Tax Motion**”);*
- xiii. *Debtors’ Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Service, (II) Deeming the Utility Providers Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance (the “**Utilities Motion**”);*

- xiv. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Existing Insurance Policies and Pay All Insurance Obligations Arising Thereunder and (B) Renew, Revise, Extend, Supplement, Change or Enter Into New Insurance Policies, and (II) Granting Certain Related Relief (the "Insurance Motion"); and*
- xv. *Debtors' 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 Manner of Notice Thereof, and (VI) Granting Related Relief (the "DIP and Cash Collateral Motion").*

5. I am generally familiar with the contents of each First Day Motion and believe that the relief sought therein allows the Debtors to, among other things, fulfill their duties as debtors in possession and minimize the disruption to the Debtors' business operations that may be caused by the commencement of these Chapter 11 Cases. Additionally, I believe that the relief requested in the First Day Motions is important to ensure that the Debtors can continue to deliver necessary care and services to their residents as further described herein.

6. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, my opinion based upon my experience and knowledge of the Debtors' operations and financial condition, and information provided to me by advisors or other representatives of the Debtors. If called as a witness, I would testify consistently with the facts set forth in this Declaration.

7. The purpose of these Chapter 11 Cases is to implement a comprehensive balance sheet restructuring to address the Debtors' short- and long-term liquidity needs, as well as to resolve Edgemere's obligations under the Ground Lease (as defined below) that will in turn advance Edgemere's long-term viability, and redress damages suffered by Edgemere as a result of the Landlord's (as defined below) bad faith actions. Critically, the Debtors intend to assume all

Residency Agreements (as defined below) for existing residents and honor the refund obligations to former residents while maintaining future obligations to current and prospective residents. Entrance Fees paid by New Residents and Prospective Residents who signed their New Residency Agreements or paid their Reservation Deposit on or after September 27, 2021, have been and will continue to be maintained in escrow pending confirmation of a plan, for the benefit of each Resident.

8. To familiarize the Court with the Debtors and the relief the Debtors seek early in these Chapter 11 Cases, this Declaration is organized into three sections. Section I provides an overview of the Debtors' operations and capital structure. Section II describes the events that have led to these bankruptcy filings and an overview of the Debtors' restructuring objectives. Section III sets forth the relevant facts in support of each First Day Motions filed in connection with these Chapter 11 Cases, which the Debtors believe are critical to administering these Chapter 11 Cases and preserving and maximizing the value of the Debtors' Estates.

### **PRELIMINARY STATEMENT**

9. Edgemere was formed in 1998 as a Texas non-profit corporation to construct, own, and operate a best-in-class senior living community situated on a 16.25-acre site in Dallas, Texas (the "**Community**"). Since 2001, Edgemere has operated a Type A "life care" entrance-fee model CCRC, which offers its senior residents (the "**Residents**") a continuum of care in a campus-style setting, as well as health care and support services to its target market of seniors. Unlike other CCRC models, a life care model provides that the residents receive care and services offered by the Community throughout their lifetime at the same monthly service fee regardless of their level of care needs. Although there may be periodic increases to the monthly service fees, those increases are relatively minor and apply to all residents.

10. CCRCs enable seniors to remain on the same campus as they age and their needs change by providing various levels of support and care at the same community. Upon entering a CCRC, Residents are provided spacious apartments and a broad range of social and recreational activities creating an unmatched quality of life. With the passage of time and as Residents require additional assistance with everyday activities or health care services, they have access to assisted living, memory support, skilled nursing facilities and rehabilitation located on the same campus. As their new home, CCRC Residents entrust their health, safety, and well-being to CCRCs for the duration of their lives. In addition, CCRCs provide Residents with multiple entertainment outlets and other social benefits for all stages of their retirement living.

11. For many seniors, moving into a CCRC is an attractive option for them and their families because it minimizes the burdens and costs associated with the aging process. “Entrance fee model” CCRCs require residents to pay an entrance fee upon moving into a community, but there are other models that do not include an entrance fee and are “rental” in nature. Typically within the industry a portion of this entrance fee is refundable to the resident or the resident’s estate when the resident leaves the community or passes away. Prospective residents will often sell their homes, liquidate significant assets or invest a significant portion of their life savings to become a member of a CCRC like Edgemere.

12. CCRCs are operationally and financially complex. CCRCs require the operational framework to provide a broad range of services to seniors in varying stages of life. Additionally, there are substantial capital needs involved in building and maintaining the necessary infrastructure. Financial viability requires a stable resident population and a steady flow of new residents to generate the revenue necessary to fund day-to-day operations and to remain current on financial obligations, including obligations to current and former Residents. As has become

common in the senior living industry, and in particular among CCRCs, Edgemere has faced financial challenges. Furthermore, like many CCRCs and other providers of senior living, Edgemere has been challenged by the COVID-19 Pandemic. Occupancy rates in all levels of living have declined and the Community faces financial challenges, the effect of which threaten Edgemere's ability to honor its long-term debt obligations and maintain its operational stability.

13. In addition to the strain caused by reductions in occupancy rates over the past two years, the above market Ground Lease (as defined below) and its termination date not only challenge Edgemere financially but also threaten the viability of the Community that over 400 Residents call home.

14. The Debtors have engaged and continue engaging in extensive arm's length negotiations with (a) Lifespace Communities, Inc. ("**Lifespace**"), the current not-for-profit sole corporate member of Edgemere and SQLC; and (b) UMB Bank, N.A. as successor master trustee and successor bond trustee (in either capacity, as applicable, the "**Trustee**") with the goal of achieving a global, consensual restructuring and implementing such restructuring through a restructuring support agreement and plan of reorganization. The Debtors will continue negotiating in the hopes of reaching a consensual restructuring among the Debtors, the Trustee, and Lifespace (the "**Parties**"). The Debtors' financial condition combined with the automatic stay and other protections provided under the Bankruptcy Code affords them with the opportunity to continue arm's length negotiations with key stakeholders to develop an exit strategy that preserves Residents' quality of life while maximizing the value of the Debtors' estates. The Parties are progressing toward reaching an agreement on the restructuring of the Debtors' secured debt, which includes a significant contribution from Lifespace.

15. Unfortunately, as discussed in greater detail below, the Debtors' extensive attempts to negotiate a long-term solution with Intercity Investment Properties, Inc. (the "**Landlord**"), Edgemere's landlord under that certain Ground Lease dated November 17, 1999 (as amended, the "**Ground Lease**") have failed due to the Landlord's bad faith and attempts to terminate the Ground Lease.

## **I. COMPANY HISTORY AND OPERATIONS**

### **A. Company Structure and History**

16. Debtor Northwest Senior Housing Corporation d/b/a Edgemere is a Texas nonprofit corporation and is exempt from federal income taxation as a charitable organization described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("**IRC**"). Northwest Senior Housing Corporation was formed for the purpose of developing, owning and operating a senior living community now known as Edgemere.<sup>3</sup>

17. Lifespace is Edgemere's sole member. Lifespace is an Iowa not-for-profit corporation exempt from Federal income taxes under IRC Section 501(c)(3). Lifespace is authorized to do business in Texas and other states. Lifespace's mission is to create communities that celebrate the lives of seniors. Lifespace, directly or through affiliates, owns and operates fourteen (14) other communities in seven (7) states. In addition to my roles with Edgemere, I am also the Chief Financial Officer of Lifespace. Attached hereto as Exhibit A is a demonstrative chart, which illustrates the corporate structure of the Debtors and their non-debtor affiliates.

18. In June 2019, Lifespace affiliated with and became the sole member of Debtor Senior Quality Lifestyles Corporation pursuant to that certain affiliation agreement, dated as of

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<sup>3</sup> In 2011, Edgemere and Augustine Management Texas, Inc. formed Augustine Home Health Texas, LLC ("**AHHT**"), a Texas limited liability company. AHHT operates as a licensed home and community support services agency that offers private nursing services to residents of the Community. This is a joint venture.



May 10, 2019, by and between Lifespace and SQLC (the “**Affiliation Agreement**”). SQLC was formerly the sole owner of Seniority Inc., a California corporation which specialized in developing, operating, and managing CCRCs. Previously, Seniority managed the day-to-day operations of Edgemere and other CCRCs affiliated with SQLC. Under the Affiliation Agreement Lifespace took over the management of three communities, including Edgemere.

**B. Overview of Operations**

19. Edgemere has been operating since December 2001 on an expansive 16.25-acre site located in Dallas, Texas. Specifically, on or around November 5, 1999, Edgemere entered into the Ground Lease with the Landlord. As explained more fully herein, the Ground Lease has proven to be extremely problematic and precipitated the filing of these Chapter 11 Cases. Edgemere operates a Type A “life care” entrance-fee model CCRC that offers its senior residents a continuum of care in a luxury campus-style setting, providing living accommodations and related health care and support services to a target market of seniors.

20. The Community has 504 total available units and offers ornate Mediterranean inspired architectural and design flourishes on lush grounds. The units are separated into (a) an independent living unit and (b) a Health Center (“**The Plaza**”). The Community contains two courtyards and provides a high level of staffing and specialists to the independent living building and The Plaza.

21. The Community consists of 304 independent living (“**IL**”) residences in one-, two-, and three-bedroom configurations. The IL unit functions as a prototypical retirement community where all of the residents are at similar stages of life and can engage in shared interests within the safe confines of the community.

22. The Plaza consists of three floors that offer assisted living (“**AL**”), memory care/memory support (“**MC**” or “**MS**”), and skilled nursing options (“**SNF**”). The Community houses

68 one-bedroom AL suites, 45 one-bedroom MC units, 87 SNF beds, and guest suites. AL offers more independent residents extra assistance with daily tasks. MC focuses on providing for those residents suffering from dementia, Alzheimer's or similar conditions that make more independent living impractical and potentially dangerous. Finally, the SNF provides for those who require constant monitoring or medical care. As of April 11, 2022, 232 IL units were occupied (76.3% occupancy), 43 AL units were occupied (63.2% occupancy), 24 MS units were occupied (53.3% occupancy), and 54 SNF units were occupied (62.1% occupancy).

23. A resident interested in occupying an IL unit in Edgemere must enter into a Life Care Agreement (a "**Residency Agreement**") with the Community. Under a Residency Agreement, a resident pays a one-time entrance fee and then fixed monthly fees (subject to periodic rate increases) for the community's commitment to provide assisted living, memory, or nursing care upon permanent transfer to AL, MC, or SNF, should the need for such service arise during the duration of the resident's life, regardless of whether the resident's needs change over time. The Residency Agreement is unlike the contractual arrangement used in rental retirement communities, where residents pay monthly fees for services with fees significantly increasing with the resident's need for higher levels of care.

24. Before a potential IL resident (a "**Prospective Resident**") moves into the Edgemere, the person must execute a Residency Agreement.<sup>4</sup> Among other things, the Residency Agreements set forth the Resident's obligation to pay a fee to the Debtors to occupy the Prospective Resident's unit (an "**Entrance Fee**"), which may be fully or partially refunded to the Resident,

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<sup>4</sup> Only IL residents pay Entrance Fees. Edgemere admits private pay and third-party payor related residents directly to AL, MC and SNF; however, these care options do not involve the payment of entrance fees. Residents admitted directly to AL and MC pay Monthly Service Fees only. Residents admitted directly to SNF pay per diem fees only.

and the amount of the monthly service fees (the “**Monthly Service Fees**”) which the Resident must pay while living at the Community.

25. Edgemere currently offers Prospective Residents the choice of four residency plans, each evidenced by a different Residency Agreement.<sup>5</sup> The residency plans primarily differ with regard to the required Entrance Fee, the Monthly Service Fees, and the amount that can potentially be refunded thereunder. The types of Residency Agreement are:

- a. 90% Refundable Plan. Under this plan, the Resident pays a standard Entrance Fee and a Monthly Service Fee. Ninety percent (90%) of the Entrance Fee is refunded to the Resident or to the Resident’s estate when the Resident leaves Edgemere, and the unit is re-sold, a new resident entrance fee is received by Edgemere, and the new resident has taken occupancy of the unit.
- b. 70% Refundable Plan. Under this plan, the Resident pays a standard Entrance Fee, the Monthly Service Fee is reduced by 20% for a single person (or the Monthly Service Fee for a second person removed), and the Life Care Rate<sup>6</sup> begins when residents transition to The Plaza. Seventy percent (70%) of the Entrance Fee is refunded to the Resident or to the Resident’s estate when the Resident leaves Edgemere and the unit is re-sold, a new resident entrance fee is received by Edgemere, and the new resident has taken occupancy of the unit.
- c. 50% Refundable Plan. This plan applies to one-bedroom floor plans only and is amortized (2% per month). Under this plan, the Resident’s Monthly Service Fee is reduced by \$1,000 for life (with annual increases applicable) through the continuum of care. The Monthly Service Fee for a second person remains the same through continuum of care (with annual increases applicable). Fifty percent (50%) of the entrance fee is refunded to the Resident or to the Resident’s estate when the Resident leaves Edgemere and the unit is re-sold, a new resident entrance fee is received by Edgemere, and the new resident has taken occupancy of the unit.
- d. 0% or “Traditional” Plan. The Resident receives a forty percent (40%) saving from the standard Entrance Fee. No money is refunded to the Resident or the Resident’s estate when the Resident leaves Edgemere.

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<sup>5</sup> The description of the Residency Agreement terms is a high-level summary. To the extent anything contained herein is inconsistent or conflicts with the terms of a Residency Agreement, the Residency Agreement terms shall govern. Further, the mechanics of Entrance Fee refunds are discussed at length in the Escrow Motion.

<sup>6</sup> As of January 1, 2022, the Lifecare Rate is \$6,284, which represents the current Monthly Service Fee for a two-bedroom classic IL unit.

26. Generally, the funds received from Entrance Fees are used to pay refunds to Residents upon termination of a Residency Agreement in accordance with its terms, pay certain project costs, retire debt, cover operating expenses, and generate investment income for the benefit of the CCRC and its Residents. A Prospective Resident typically pays ten percent (10%) of the Entrance Fee upon execution of a Residency Agreement (the “**Reservation Deposit**”) and the remaining balance of the Entrance Fee prior to occupancy (the “**Resident Deposit Balance**” and together, with the Reservation Deposit an Entrance Fee).

27. As of January 1, 2022, the Entrance Fees range from \$345,000 for the smallest one-bedroom apartment to \$1,454,000 for the largest three-bedroom apartment. By its terms the Residency Agreement terminates in the event of a Resident’s death or if the Resident vacates the CCRC by giving the Debtors written notice. The Debtors intend to assume all Residency Agreements in these Chapter 11 Cases, including obligations under terminated Residency Agreements.

28. The Residency Agreements also require residents to pay Monthly Service Fees. The Debtors use the Monthly Service Fees to fund their operations, service their debt obligations and make capital improvements to the Community. Monthly Service Fees are not static, they vary over time, and are fully described within individual Residency Agreements. As of January 1, 2022, the Debtors’ Monthly Service Fee is as follows:

- a. **IL**. For residents who execute Lifecare Contracts and begin their residency at the Community in IL, the Monthly Service Fees range from \$4,176 to \$8,933. Should a resident permanently transfer from IL to a higher level of care, then the resident’s Monthly Service Fee will be adjusted to the Lifecare Rate for Monthly Service Fees.
- b. **AL**. Depending on the unit type selected, direct entrants to AL are charged a Monthly Service Fee ranging from \$7,102 to \$10,486. An Entrance Fee is not required for direct entrants to AL.

- c. **MC.** Depending on the unit type selected, direct entrants to MC are charged a Monthly Service Fee of \$7,034 to \$9,402 for single occupancy of a MC unit. An Entrance Fee is not required for direct entrants to MC; however, a security deposit may be required.

29. SNF fees are calculated on a per diem basis. For SNF, private pay rates range from \$389 per day to \$475 per day. An Entrance Fee is not required for direct entrants to the SNF.

**C. Corporate Governance**

30. Edgemere and SQLC are each governed by a separate board of directors. Lifespace is the sole corporate member of Edgemere and is also the sole corporate member of SQLC.

**D. Management by Lifespace**

31. Edgemere was developed by Greystone (a full-service senior living community developer and manager) as a high-end community and in late 2017 and early 2018 management switched from Greystone to Seniority. After the execution of the Affiliation Agreement between Lifespace and SQLC in May 2019, Lifespace became the sole member and manager of Edgemere and two other CCRCs located in Texas. Pursuant to that certain Management Services Agreement, dated as of August 15, 2019 (the “MSA”), Lifespace served as the exclusive manager of its day-to-day operations. The services provided by Lifespace include: (a) determining operating policies, procedures, and standards; (b) developing and executing a sales plan; (c) establishing food and beverage policies; (d) establishing all employment policies, including wage and salary terms, benefits, retirement plans, and bonuses; (e) hiring, promoting, supervising, directing, training, transferring, and discharging all of Edgemere’s employees; (f) negotiating and consummating such agreements as Lifespace deems necessary or advisable for furnishing all utilities, services, supplies, food, beverages, equipment, and other materials and supplies for the maintenance and operation of the Community; and (g) establishing advertising and public relations policies.

32. Under the MSA, Edgemere pays Lifespace an annual fee (the “**Corporate Overhead Fee**”), which approximates eight percent (8%) of the monthly revenues. Presently, without waiving its rights to accept or demand future payment, Lifespace is voluntarily deferring the Corporate Overhead Fee owed to it under the MSA. Edgemere also pays or reimburses Lifespace for direct or allocated monthly charges such as those related to marketing, insurance, employee benefits, IT, and certain software licenses and services that support the Community. Lifespace also provides an executive management team for Edgemere, which includes an executive director, an assistant executive director, and a health care administrator, the costs of which are charged to Edgemere in addition to the Corporate Overhead Fees and direct monthly charges/reimbursements described in the previous sentence.

**E. Regulators**

33. The CCRC industry nationwide is regulated by various state and federal agencies. Each state has a different regulatory scheme governing CCRCs. As a Medicare-certified CCRC operating in the State of Texas, Edgemere is regulated by, among others, the Centers for Medicare and Medicaid Services, the State of Texas Department of Health, and the Texas Department of Insurance.

34. Prior to the Petition Date, the Debtors and Lifespace engaged with the Office of the Attorney General for the State of Texas and the Texas Department of Insurance in connection with financial issues at Edgemere.

**F. Prepetition Capital Structure**

35. As of the Petition Date, the Debtors owe a total of approximately \$112 million consisting of bond obligations and unsecured obligations (the “**Bond Obligations**”).

36. The following is an approximate overview of the Debtors' consolidated capital structure as of the Petition Date:

<b>Series</b>	<b>Principal</b>	<b>Unpaid Interest</b>
2015	\$87,500,000	\$1,987,162
2017	\$21,685,000	\$556,757
Subtotals	\$109,185,000	\$2,543,919
<b>Total Secured Debt</b>		\$111,728,919

### **1. Bond Obligations**

37. For the benefit of Edgemere, the Tarrant County Cultural Education Facilities Finance Corporation (the “**Issuer**”) issued the following bonds: (a) pursuant to the Indenture of Trust dated as of May 1, 2015 (the “**2015 Indenture**”) between the Issuer and UMB Bank, N.A., as trustee: (i) Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015 A (the “**Series 2015A Bonds**”) and (ii) Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015B (the “**Series 2015B Bonds**”); and pursuant to the Indenture of Trust dated as of March 1, 2017 (the “**2017 Indenture**”) and (b) pursuant to the Indenture of Trust dated as of March 1, 2017 (the “**2017 Indenture**”) between the Issuer and UMB Bank, N.A., as trustee, the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2017 (the “**Series 2017 Bonds**”) and together with the Series 2015A Bonds and Series 2015 Bonds, the “**Bonds**”).

### **2. Edgemere's Ground Lease**

38. As set forth above, Edgemere operates on a property that is subject to the Ground Lease. As discussed further below, Edgemere has simultaneously filed an adversary complaint against the Landlord alleging significant damages resulting from the Landlord's bad acts over the last year. Further, although the Ground Lease was executed with the intent to operate the CCRC,

its unconventional terms are unsuitable for this purpose and have proven extremely problematic for Edgemere and all constituents in these Chapter 11 Cases. For example, the Ground Lease is scheduled to expire in 2054 (the “**Lease Term**”) and does not provide for meaningful extensions of the term despite the fact that, by their nature, CCRCs need to be able to assure residents that their tenancies will not be disturbed. Furthermore, the Ground Lease gives the Landlord the right to assume the residency agreements and operate the facility as a CCRC despite not being licensed, thus violating Texas law. Additionally, the Ground Lease purports to give the Landlord the right to terminate those same agreements even though the residents and Residency Agreement counterparties have not consented to this treatment. The economic terms are similarly problematic and provide for annual rent increases of up to 5.00% per annum, subjecting Edgemere to the risk of rent increases that could outpace increases in revenue

### **3. Resident Refund Obligations**

39. As previously discussed, upon the occurrence of certain conditions, a portion of a Resident’s Entrance Fee is refundable under Residency Agreements. Refundable percentages for other plans are stated in the terms of those agreements.<sup>7</sup> Once a Residency Agreement is terminated as described above, and a new resident’s entrance fee has been received by Edgemere for the respective unit and the new resident has taken occupancy of that unit, the refund is paid ten (10) days after the later of the termination of the Residency Agreement, or receipt of the new resident’s entrance fee by Edgemere and re-occupancy of the unit (the “**Refund Condition**”). As of April 13, 2022, Edgemere had contingent entrance fee liabilities to current Residents totaling \$122,823,059. Edgemere has \$25,549,457 in untriggered Entrance Fee refund liabilities to former

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<sup>7</sup> Only IL Residents pay Entrance Fees, and therefore, only IL Residents receive refunds; residents who move directly into AL, MC, or SNF pay Monthly Service Fees or per diem, they do not pay Entrance Fees, and are not entitled to refunds.



Residents (the “**Untriggered Entrance Fee Refunds**”), which will become due upon the resale and re-occupancy of related units and after Edgemere has received the new entrance fee from the new resident.

## **II. EVENTS LEADING TO BANKRUPTCY**

### **A. Management Turnover and Employee Retention**

40. Turnover at all levels of the Edgemere organization has taken place over the last five years. Edgemere has had three different managers, five different executive directors, three reorganizations of its sales and marketing team, new department heads for dining, nursing, plant operations, and resident services, as well as turnover in dining and nursing staff. In addition, in 2017, Edgemere’s former Executive Director moved to a different CCRC as its plans to open were being developed and implemented and many employees followed him there as his new CCRC prepared to open; in July 2021, he returned to Edgemere in the Executive Director role.

41. The COVID-19 pandemic that began in the first quarter of 2020, severely disrupted most industries in our nation, and the senior living industry has been hit especially hard.<sup>8</sup> The Residents that the Debtors care for are the population at the greatest risk of this virus, and the Debtors are committed to the health and safety of all their Residents and staff. The Debtors incurred significant costs as a direct result of the COVID-19 pandemic, including but not limited

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<sup>8</sup> In March 2020, the World Health Organization declared COVID-19 to be a pandemic. The extent to which COVID-19 has affected all aspects of life cannot be understated, but older adults are acutely susceptible to its effects. The Centers for Disease Control and Prevention (“**CDC**”) has found that:

Older adults are more likely to get very sick from COVID-19. Getting very sick means that older adults with COVID-19 might need hospitalization, intensive care, or a ventilator to help them breathe, or they might even die. The risk increases for people in their 50s and increases in 60s, 70s, and 80s. People 85 and older are the most likely to get very sick.

Of the more than 600,000 deaths attributed to COVID-19 in the United States, it is estimated that 92% of all deaths occurred among those aged 50 or older and 31% are related to residents and employees associated with senior living. See THE NEW YORK TIMES, *Nearly One-Third of U.S. Coronavirus Deaths Are Linked to Nursing Homes*, <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html> (last visited July 23, 2021).

to those necessary to retain qualified staff. Expenses have increased due to dramatically higher labor costs and costs for additional personal protective equipment. Labor pressures not only persist but appear to be worsening.<sup>9</sup>

**B. Increased Competition**

42. There are nine CCRCs within ten miles of Edgemere. One existing CCRC is planning to expand in 2022. Two other high-end CCRCs opened within five miles of Edgemere – Ventana by Buckner opened in 2019, one and a half miles from Edgemere, and Legacy Senior Communities opened in August 2020, about four miles from Edgemere.

43. Compared to its competitors, Edgemere offers a higher-end-experience with larger units and beautiful grounds, and, accordingly, is priced higher than its competitors. Edgemere’s entrance fees range between \$345,000 for the smallest one-bedroom unit to \$1,454,000 for the largest three-bedroom unit. The average CCRC entrance fee in the Dallas market was \$435,254. Edgemere’s monthly service fees start at approximately \$4,000 per month, where other CCRC’s service fees typically fall between \$2,000 and \$3,000 per month in the Dallas market.

**C. COVID-19 Pandemic and Declining Occupancy Rates**

44. The global COVID-19 Pandemic put substantial pressure on Edgemere, drove occupancy down, and drained cash, as revenues declined and refunds paid exceeded Entrance Fees collected. IL revenue is down 9.3% from 2020 driven by declining occupancy, despite increases in Monthly Service Fees of 1% of January 1, 2021, and 3% as of January 1, 2022. Edgemere’s IL

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<sup>9</sup> According to an April 2022, American Healthcare Association and National Center for Assisted Living publication, which summarized the Bureau of Labor March 2022 Jobs Report, the entire long term care industry is facing a 15-year labor low and has lost over 400,000 jobs during the COVID-19 Pandemic. *See* Historic Workforce Crisis in the Long Term Care Industry is Only Getting Worse, AHCA/NCAL (April 2022), <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/Historic-Workforce-Crisis-In-The-Long-Term-Care-Industry-Is-Only-Getting-Worse.aspx>; *citing* BLS March 2022 Jobs Report, (March 2022) <https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/BLS-MARCH2022-JOBS-REPORT.pdf>.

occupancy rate dropped from 92% in 2018 to 73% in April 2021. Between 2017 and 2020, IL sales declined from fifty-five (55), to forty-one (41), to twenty-seven (27) to seventeen (17). IL sales rose to forty-eight (48) in 2021, but sales leads have plummeted due to negative publicity, and to date, there have only been three (3) IL sales in 2022. Further, many Residents are choosing to remain in their IL units instead of moving into AL units and are opting to hire home health aides instead of moving to The Plaza.

**D. Negotiations with the Landlord**

45. Edgemere is developed on land subject to the Ground Lease, which will expire in 2054. The pressures of the declining occupancy driven by the COVID-19 pandemic, caused Edgemere to breach certain covenants and, therefore, events of default were triggered under the Bonds and the Lease. The Landlord's bad faith actions over the last year have substantially exacerbated those factors.

46. In December 2021, the Debtors, the Trustee, the Landlord and Lifespace, solely in its capacity as manager pursuant to the MSA (collectively with the Debtors, the Trustee, and the Landlord, the "**Parties**"), entered into a Forbearance (the "**First Forbearance**"). Pursuant to the First Forbearance, Edgemere paid the Landlord the September 2021 rent and reimbursed substantial professional fee expenses. Throughout the negotiation period the Landlord would go silent for periods of time.

47. On December 28, 2021, counsel for the Trustee circulated a draft extension of the Forbearance through March 31, 2022 as the Parties had previously discussed. The Landlord did not respond. After several attempts to contact the Landlord through counsel, a conference call was held with Landlord's counsel on January 7, 2022, where counsel for the Landlord stated that his client was considering whether or not they would extend the Forbearance. On January 12, 2022,

counsel for Edgemere set forth the position that among other things, the Landlord had acted in bad faith. On January 14, 2022, the new counsel for the Landlord informed Edgemere that its client would not consider a forbearance extension, would not sell the real property, and would not negotiate the terms of the Ground Lease. At or about the same time an individual purporting to be a consultant for the Landlord reached out to at least one Resident of the Community, and subsequently began communicating with the press about Edgemere.

48. The First Forbearance terminated on December 31, 2021, due to inaction by the Landlord. On March 7, 2022, the Debtors, the Trustee, and Lifespace executed the Second Forbearance Agreement (the “**Second Forbearance**”).

49. On March 7, 2022, the Landlord executed the Ground Lessor’s Landlord Estoppel (the “**Landlord Estoppel**”) for the benefit of Edgemere and the Trustee. Pursuant to the Landlord Estoppel, the Landlord certified that as of March 7, 2022, Edgemere cured the monetary events of default under the Lease and that Landlord was unaware of any other defaults under the Lease.

### **III. FACTS IN SUPPORT OF FIRST DAY MOTIONS**

50. Contemporaneously with the filing of their chapter 11 petitions, the Debtors have filed the First Day Motions. The Debtors request that the First Day Motions described below be granted, as they constitute a critical element in ensuring the stabilization of the Debtors’ business operations at the outset of these Chapter 11 Cases. Capitalized terms not otherwise defined in this section shall have the meanings ascribed to such terms in the relevant First Day Motion.

#### **A. Joint Administration Motion**

51. Pursuant to the Joint Administration Motion, the Debtors seek the joint administration of their Chapter 11 Cases for procedural purposes only. Many of the motions, hearings and other matters involved in the Chapter 11 Cases will affect both Debtors. Therefore, I

believe that the joint administration of these Chapter 11 Cases will avoid the unnecessary time and expense of duplicative motions, applications and orders, which will thereby save considerable time and expense for the Debtors and result in substantial savings for their estates. Accordingly, I believe the Court should approve the joint administration of these Chapter 11 Cases.

**B. KCC Retention Application**

52. Pursuant to the KCC Retention Application, the Debtors seek authorization to retain KCC as their claims and noticing agent (“**Claims and Noticing Agent**”) with respect to these Chapter 11 Cases. Upon information and belief, KCC is an experienced Claims and Noticing Agent and is frequently used by debtors in large chapter 11 cases. I believe the professionals at KCC are well-qualified to provide such services, expertise, consultation and assistance to the Debtors and serve as Claims and Noticing Agent in these Chapter 11 Cases. The Debtors believe KCC is capable of handling the requisite noticing responsibilities, thereby relieving the Clerk or, in the alternative, the Debtors of such burden. The employment of KCC will provide efficient management of the claims and noticing processes in these Chapter 11 Cases, thereby allowing the Debtors’ management and advisors to focus on the Debtors’ reorganization efforts. Accordingly, I believe such experience, knowledge, and assistance will be valuable to the Debtors during these Chapter 11 Cases and the KCC Retention Application should be approved.

**C. Consolidated Creditor Motion**

53. Pursuant to the Consolidated Creditor Motion, the Debtors request entry of an order authorizing the Debtors to file one consolidated list of their thirty (30) largest unsecured creditors. Given the circumstances, the Debtors submit that it is appropriate for them to file one consolidated mailing matrix and one consolidated list of their thirty (30) largest unsecured creditors. The consolidated list of creditors will provide good and sufficient notice to all creditors

and parties in interest in an efficient manner. Accordingly, on behalf of the Debtors, I respectfully submit that the Consolidated Credit Motion should be approved.

**D. Schedules Extension Motion**

54. In the Schedules Extension Motion, the Debtors request that the Court enter an order (i) extending the time by which the Debtors must file their Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs (collectively, the “**Schedules and Statements**”) until forty-five (45) days after the Petition Date, through and including May 30, 2022 (the “**Extended Deadline**”); and (ii) extending the time by which the Debtors must file their initial reports of financial information with respect to entities in which Debtors hold a controlling or substantial interest as set forth in Bankruptcy Rule 2015.3 (the “**Rule 2015.3 Reports**”) to the later of thirty (30) days after the 341 Meeting or (b) ninety (90) days from the Petition Date.

55. The Court’s grant of an extension of time to file the Schedules and Statements through and including the Extended Deadline is necessary and appropriate under the circumstances of these Chapter 11 Cases. The Debtors have many potential creditors. The ordinary operation of the Debtors’ business requires the Debtors to maintain voluminous books and records. Substantial time would be required for the Debtors to complete the Schedules and Statements. No party in interest will be prejudiced by the Court granting the Debtors’ request for an extension through and including the Extended Deadline. Similarly, providing the Debtors with an extension of the deadline to file the Rule 2015.3 Reports, is appropriate here and permits the Debtors to coordinate with their financial advisors and the United States Trustee for the Northern District of Texas (the “**U.S. Trustee**”) to determine the appropriate nature and scope of the reports.

56. Accordingly, I believe that the additional extension until forty-five (45) days after the Petition Date will provide sufficient time to prepare and file the Schedules and Statements. I also believe the requested extension of time to file the Bankruptcy Rule 2015.3 will provide the Debtors sufficient time to prepare and file these periodic reports. Extending these deadlines is in the best interests of the Debtors. Therefore, I believe the Schedules Extension Motion should be approved.

**E. Resident and Patient Care Confidentiality Motion**

57. By the Resident and Patient Confidentiality Motion, the Debtors request entry of an order 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 ("**HIPPA**").

58. As detailed herein, the Debtors are in the business of operating a CCRC. In the ordinary course of providing care for their Residents and Patients, the Debtors have access to and receive "protected health information" related to the Residents and Patients and the Debtors are required to maintain the confidentiality of patient information pursuant to HIPPA. However, the Debtors recognize that such requirements may conflict with their duty to disclose certain information under the Bankruptcy Code.

59. To comply with both federal statutes, the Debtors propose certain procedures to maintain Resident and Patient confidentiality during the pendency of these Chapter 11 Cases (the "**Resident and Patient Confidentiality Procedures**"). I believe the Resident and Patient Confidentiality Procedures and the relief requested in the Resident and Patient Confidentiality Motion appropriately balance the need to maintain confidential patient information under HIPPA with the need for adequate disclosure under the Bankruptcy Code.

**F. Cash Management Motion**

60. By the Cash Management Motion, the Debtors seek entry of an order authorizing, but not directing, the Debtors to (a) continue to use the Debtors' existing Cash Management System, including existing bank accounts, (b) honor certain prepetition obligations related thereto, (c) continue intercompany transactions, and (d) maintain the Debtors' existing business forms.

61. The Debtors maintain an integrated Cash Management System to collect, transfer and disburse funds generated by their operations. The Cash Management System facilitates the Debtors' cash monitoring, forecasting and reporting functions, enabling the Debtors to administer cash through two (2) bank accounts (together with any other bank accounts that the Debtors may open in the ordinary course of their business or in connection with the Chapter 11 Cases, the "**Bank Accounts**"). The Bank Accounts are maintained at Bankers Trust Company.

62. Pursuant to the MSA, Lifespace maintains daily oversight of the Cash Management System and implements controls for the collection, management and disbursement of funds. Through the Debtors' Cash Management System, the Debtors process a large number of transactions and, in connection therewith, maintain current and accurate records. The Cash Management System is similar to other cash management systems commonly employed by continuing care retirement communities.

63. The Debtors maintain (a) a Revenue Account (as defined below) at Bankers Trust to receive funds from governmental, private pay, and insurance payors, and (b) a Disbursement Account (as defined below), which is used to make substantially all disbursements for the Debtors. Together, the Revenue and Disbursement Accounts function as the Debtors' operating account. The Debtors' Bank Accounts are summarized below.



Accounts	Description of Accounts
<p><b><u>Revenue Account</u></b></p> <p>Bankers Trust account ended 6121</p>	<p>The Debtors maintain a deposit account at Bankers Trust (the “<b>Revenue Account</b>”) that is used to receive payment of the monthly and ancillary charges to Residents, including private payments, Medicare reimbursements, Hospice payments, and private insurance reimbursements.</p>
<p><b><u>Disbursement Account</u></b></p> <p>Bankers Trust account ended 1479</p>	<p>The Debtors maintain a disbursement account at Bankers Trust (the “<b>Disbursement Account</b>”) that is used to pay all of the Debtors’ ordinary business disbursements, including, without limitation, payroll obligations, operating disbursements, taxes, and employee deductions and benefits. The Disbursement Account is funded from the Revenue Account via manual transfer on an as-needed basis.</p>

64. The main components of the Cash Management System are the receipt of cash by the Debtors in the Revenue Account, the funding of the Disbursement Account from the Revenue Account, and the disbursement of cash from the Disbursement Account. In the ordinary course of their businesses, the Debtors receive payments and reimbursements from Residents, private pay insurance, Medicare and hospice on account of the goods and services the Debtors render to Residents. All such received payments are deposited into the Revenue Account.

65. The Debtors make substantially all payments out of the Disbursement Account including, without limitation, rent payments to the Landlord, payments to vendors, payment of Insurance Obligations, payroll obligations, benefits program obligations, debt service payments, payments to affiliates, Taxes and Fees, and other obligations and expenses. Disbursements are made by check, ACH transfer, or wire transfer. Most disbursements are initiated by Lifespace, although certain ACH transfers are initiated automatically or by third parties, including, without limitation, payroll obligations and payments to certain utilities.

66. The Debtors currently use software from SAP Concur to manage most invoices. Invoices are uploaded to the system by the Debtors or vendors, after which such invoices are routed

for payment approval by the appropriate Lifespace and Debtors' team members. Once approved, SAP Concur initiates the check writing or ACH transfer process from the Disbursement Account. ACH transfers can also be initiated, and checks written, outside of the SAP Concur system by Lifespace as needed to, among other things, satisfy refund obligations and/or meet emergency timetables for payment. Lifespace is in the process of transitioning itself and the communities it manages from the SAP Concur system to as system provided by Coupa Software Inc. The Debtors request authority to move to the Coupa system before the Debtors' contract with SAP Concur is terminated, in accordance with the Debtors' and Lifespace's pre-restructuring intent.

67. Under the MSA, Lifespace provides administrative services to Edgemere. Similarly, pursuant to substantially similar management services agreements, Lifespace provides administrative services to non-Debtor affiliates (such non-Debtor affiliates, collectively with Lifespace and the Debtors, the "**Lifespace Group**"). Edgemere pays Lifespace an annual Corporate Overhead Fee under the MSA. The aggregate amount of the annual Corporate Overhead Fee across the Lifespace Group is determined on an annual basis by Lifespace based on its historical and anticipated operating costs. Lifespace then allocates the Corporate Overhead Fee to Lifespace Group members based on such entity's projected revenue for the upcoming year. The members of the Lifespace Group then pay their portion of the annual Corporate Overhead Fee to Lifespace on a monthly basis. At the end of each year, if Lifespace is under budget for such year, the allocation is adjusted to reflect the difference and payments are made among the Lifespace Group to account for such adjustment.

68. Lifespace also procures certain goods and services for the entirety of the Lifespace Group. In turn, the members of the Lifespace Group reimburse or prepay Lifespace for the cost of such goods and services using various methodologies based on the particular goods or services

procured, or in some cases directly pay their allocated share to the third-party providing goods or services (such allocation and payment system, collectively with the determination, allocation, and payment of the Corporate Overhead Fee, the “**Intercompany Accounting Protocol**”). Lifespace allocates the:

- Salaries and related obligations for the Debtors’ Executive Director, Associate Director, and Administrator to such entity at cost;
- Cost of certain third-party vendors for the Lifespace Group, including marketing, audit, and cost reporting vendors that invoice by entity, to the applicable entity at cost;
- Cost of the Lifespace Group’s network security, crime, fiduciary, environmental, and workers’ compensation insurance by the employee head count at each community;
- Cost of the Lifespace Group’s property, and auto insurance by the relative value of the property covered by the insurance;
- Cost of accounts payable-related software based on the number of invoices processed for such member of the Lifespace Group in the rolling prior 12 months;
- Cost of software charged by the vendor based on the number of communities covered, evenly among such communities;
- Cost of software charged by the vendor based on the number of residents covered, based on the number of units in each community;
- Cost of all other software based on the number of budgeted full time employees for each member of the Lifespace Group;
- Cost of certain IT and HR services, including IT support and retirement plan administration, by the number of budgeted full-time employees for each member of the Lifespace Group;
- Cost of the marketing department maintained by Lifespace for the Lifespace Group by the number of budgeted closings for Lifespace Group members; and
- Cost of internet service to Lifespace Group members based on an estimate of usage completed by Lifespace’s IT team.

69. Under the Intercompany Accounting Protocol, each member of the Lifespace Group (a) directly pays third-party vendors that invoice by specific Lifespace Group entity for the amounts invoiced to it by such third-party vendor, and (b) reimburses or prepays Lifespace for the remainder of costs allocated to such member of the Lifespace Group. The Debtors make such payments from the Disbursement Account.

70. The Cash Management System is an ordinary course, customary, and essential business practice, the continued use of which is essential to the Debtors' business operations during the Chapter 11 Cases and their goal of maximizing value for the benefit of all parties in interest. Given the nature of the Debtors' businesses, I believe that any disruption of the accounting and cash management procedures would be enormously burdensome and disruptive, and could adversely impact the Debtors' efforts to transition into chapter 11 smoothly and operations during the pendency of the Chapter 11 Cases, which would impact the Debtors' ability to provide the necessary care to Residents. Any disruption in the collection of funds as currently implemented would adversely affect the Debtors' ability to maximize estate value. Moreover, such a disruption would be wholly unnecessary because the Cash Management System provides a valuable and efficient means for the Debtors to address their cash management requirements. Each of the Bank Accounts is maintained at a bank that is an authorized depository under the UST Guidelines, and the Bank Accounts are each insured by the Federal Deposit Insurance Corporation. For the aforementioned reasons, I believe that maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and all interested parties. Accordingly, the Debtors request that they be allowed to maintain and continue to use the Cash Management System including maintenance of their existing Debtor Bank Accounts.

**G. Escrow Motion**

71. By the Escrow Motion, the Debtors seek entry of an order (i) authorizing the Debtors to continue (a) escrowing Entrance Fees paid by Residents who move into the Community in the Debtors' escrow accounts during the pendency of these Chapter 11 Cases in the ordinary course and (b) refunding certain entrance fees during these Chapter 11 Cases. All Entrance Fees and Reservation Deposits the Debtors receive after September 27, 2021 (respectively, "**New Entrance Fees**" and "**New Reservation Deposits**"), including those received after the Petition Date, will remain in the escrow accounts during the pendency of these Chapter 11 Cases; they are not property of the Debtors' estates. Under the Escrow Agreement dated September 27, 2021 (the "**Escrow Agreement**"), New Entrance Fees cannot be disbursed to the Debtors until the date on which a restructuring or refinancing of substantially all of the Bonds and a restatement of the Ground Lease is consummated (the "**Trigger Date**").

72. Further, the Debtors seek approval from the Court to permit the escrow agent to make refunds in accordance with the Residency Agreements of those Residents who join the Community on or after September 27, 2021. The Escrow Agreement provides New Residents with the ability to terminate their Residency Agreements and receive a refund of New Entrance Fees, less costs incurred, held in the escrow accounts (a "**Refund Event**").

73. Entrance Fees are critical to the Debtors' operations and any negative publicity suggesting that a CCRC is in bankruptcy will necessarily deter prospective residents from entering into a Residency Agreement. Additionally, the Entrance Fees are relatively large sums of money paid by each individual resident and would likely be necessary for the resident to secure alternative housing upon a Refund Event. If prospective residents were not certain that their New Entrance Fees would be returned upon a Refund Event, such resident would be discouraged from choosing

to reside at the Community. However, the Debtors are hopeful that the relief sought in this Motion will provide New Residents with comfort that, should a Refund Event occur, such Residents will receive a refund of their New Entrance Fees. The Debtors believe that the relief requested is critical to obtaining New Entrance Fees during these Chapter 11 Cases.

74. The deposit of New Entrance Fees in the escrow accounts during the pendency of these Chapter 11 Cases is necessary to protect New Residents' interests in their New Entrance Fees. However, after the Trigger Date, such protection will no longer be necessary because the Debtors will no longer be chapter 11 debtors. New Residents will receive the Pre-Trigger Date Notice, which will provide them an opportunity to terminate their Residency Agreements before the escrowed funds are released by the Escrow Agent to the control of the Debtors. The Debtors also propose to continue escrowing and refunding Reservation Deposits and Entrance Fees consistent with the prepetition practices described in the Escrow Motion.

75. I believe that the Escrow Motion provides a practical approach to protect the interests of prospective residents in their New Reservation Deposits and New Residents in their New Entrance Fees during the pendency of these Chapter 11 Cases, while providing for the proper refund of the New Reservation Deposit or New Entrance Fee under certain circumstances. Accordingly, I believe the Escrow Motion should be granted.

**H. Wage Motion**

76. Pursuant to the Wage Motion, the Debtors request entry of interim and final orders authorizing, but not directing, the Debtors to (a) pay all prepetition wages, salaries, commissions, certain other compensation, and related administration obligations to third parties in connection therewith and other costs incidental to the foregoing (the "**Compensation Obligations**"), (b) maintain all prepetition employee benefits, including paid time off, health and medical benefits

and insurance, retirement savings accounts, workers' compensation, reimbursable business expenses, and other welfare benefits, and related administration obligations to third parties in connection therewith and other costs incidental to the foregoing (the "**Employee Benefit Obligations**"), (c) pay all employment, unemployment, Social Security, and similar federal, state, and local taxes relating to the Compensation Obligations and Employee Benefit Obligations, whether withheld from wages or paid directly by the Debtors to governmental authorities (the "**Payroll Taxes**"), and make other payroll deductions, including retirement and other employee benefit plan contributions, garnishments, child support, and voluntary (the "**Payroll Deduction Obligations**"), as well as authorizing (d) applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on and transfers made from the Debtors' accounts to the extent such checks or transfers relate to any of the foregoing.

77. The Debtors employ approximately 283 employees (the "**Employees**"), of which approximately 250 are full-time Employees, 9 are part-time Employees, and 22 are per diem Employees. None of the Employees are union employees. Approximately 25 Employees are salaried and 258 are paid hourly.

78. The Employees are critical to the Debtors' businesses, and their value cannot be overstated. Indeed, the loss of the Employees would not only impede the Debtors' business operations and the Debtors' ability to successfully implement their bankruptcy strategy but would seriously threaten the Debtors' ability to provide critical care to Residents.

79. In the ordinary course of business, the Debtors incur payroll and other compensation obligations to the Employees. They also provide other benefits to their Employees for the performance of services. Employees are compensated two (2) weeks in arrears. On average, per pay date, the Debtors' gross payroll obligations total approximately \$470,000, which includes

applicable employer payroll taxes of approximately \$43,000. The Debtors estimate that as of the Petition Date approximately \$413,000 is accrued and unpaid, which includes gross wages and compensation earned, as well as employer payroll taxes related thereto. The Debtors do not request authority to pay – and will not pay – any Employee more than \$13,650 in accordance with Bankruptcy Code section 507(a)(4) on account of prepetition amounts owed pursuant to salaries, wages, commissions, PTO and/or any similar policy or program.

80. The Debtors use ADP, LLC (“**ADP**”) as their third-party payroll administrator to coordinate and transmit payment to Employees. One day prior to the Employees receiving compensation on a given Friday, ADP initiates an automated clearing house deposit to the Debtors’ operating account for the net payroll amount due to the Employees.

81. The Debtors maintain a sales incentive program (the “**Sales Incentive Program**”) for approximately eight (8) Employees who work in the Debtors’ sales and marketing department, and none of whom are directors or C-suite executives. The Sales Incentive Program is based on established criteria and sales metrics and is an important aspect of sales and marketing Employees’ overall compensation. Maintaining historical prepetition practices is essential to ensuring that the Debtors can retain their Employees and continue to operate the businesses and maximize value through the duration of the Chapter 11 Cases. As of the Petition Date, the Debtors estimate that they owe approximately \$30,000 in earned but unpaid commissions under the Sales Incentive Program.

82. In 2021, certain Employees earned a short-term incentive that is scheduled to be paid no sooner than April 22, 2022, and the Debtors estimate that the amount due and owing is \$5,500. In connection with the services provided by ADP, as discussed above, the Debtors pay ADP approximately \$20,000 per month.



83. The Debtors withhold approximately \$36,400 per month in the aggregate from Employees' wages related to pre- and after-tax deductions payable pursuant to certain of the Employees' benefit plans, policies and arrangements, including, but not limited to, those discussed herein, including an Employee's share of health care benefits and insurance premiums, court-ordered deductions, and other miscellaneous deductions. Accordingly, ADP, on behalf of the Debtors, withholds amounts from certain Employees' paychecks related to Garnishments and remits approximately \$6,400 to the appropriate governmental authorities on a monthly basis.

84. With respect to Payroll Taxes, the Debtors withhold an average of \$148,000 per month related to Medicare, Social Security, federal, state, and local taxes and on average the Debtors contribute \$86,000 per month to fund the Debtors' employer portion of Social Security, Medicare and state unemployment taxes. The Debtors estimate that they are obligated to remit to taxing authorities approximately (a) \$35,000 for the Debtors' employer portion of the Payroll Taxes and (b) \$60,000 for the Employees' portion of the Payroll Taxes, which are withheld by ADP.

85. The Debtors provide eligible Employees PTO, which is essential to the Employees and any failure to provide PTO benefits could harm Employee morale and encourage the premature departure of Employees. The Debtors offer vacation PTO, sick PTO, flexible holidays, bereavement leave, jury and witness duty, and voluntary community service benefits. In total, the Debtors estimate that as of the Petition Date the value of accrued PTO hours is \$436,000, consisting of vacation and sick PTO in the amount of approximately \$300,000 and \$136,000, respectively.

86. Further, the Debtors offer Employees Health Benefits, including Medical Plans, a Dental Plan, a Vision Plan, a Life Insurance Plan, Short-Term Disability Insurance Plan, and a

Long-Term Disability Plan. As of the Petition Date, the Debtors estimate that approximately \$103,000 is outstanding on account of the Medical Plans, \$6,000 is outstanding on account of their obligations under the Dental Plan, \$1,000 in obligations under the Life Insurance Plan, approximately \$2,100 in obligations under the Short-Term Disability Insurance Plan, and approximately \$275 in obligations under the Long-Term Disability Insurance Plan. Although the Debtors believe no amount is outstanding at this time related to the Vision Plan, they seek the authority to pay any amounts that may arise and become due and payable in the ordinary course of business.

87. The Debtors offer eligible Employees an opportunity to participate in a 401(k) plan and they estimate their average monthly contributions on account of the 401(k) Plan are approximately \$6,000. The Debtors seek authority to continue to maintain the 401(k) Plan and pay any accrued but unpaid matching contributions and any fees and costs associated with the 401(k) Plan.

88. The Debtors provide Workers' Compensation Program through Sentry Casualty Corporation, and the insurance carrier is Security Casualty Company. As of the Petition Date, the Debtors estimate that approximately \$6,200 is due and owing under the Workers' Compensation Program.

89. The Debtors reimburse certain Employees for expenses incurred in connection with their employment and limited to activities related to the operations of the Debtors' businesses. As of the Petition Date, there was no outstanding balance on account of any business expenses, however the Debtors seek the authority to pay any amounts that may arise and become due and payable in the ordinary course of business. Approximately fourteen (14) Employees are authorized to use Lifespace credit cards for travel and other business expenses. Lifespace pays the credit card

bills associated with such expenses and is reimbursed by the Debtors. As of the Petition Date, the Debtors estimate that \$106,000 is owing on account of credit card charges and, thus, request authority to pay such amount and any additional amounts that may arise and become due and payable in the ordinary course of business.

90. Although as of the Petition Date there are no amounts outstanding on account of the Education/Tuition Assistance program, out of an abundance of caution, the Debtors request authority to pay any such amounts that may arise and become due and payable in the ordinary course of business. They also seek authorization to pay any prepetition amounts owed in connection with these *De Minimus* Employee Benefits and to continue such benefits post-petition in the ordinary course, consistent with prepetition practices.

91. Continuing to honor Compensation Obligations and Employee Benefit Obligations is critical to the Debtors' ability to retain their Employees and continue providing high quality services to the Residents. Similarly, it is essential to the success of these Chapter 11 Cases that the Debtors be able to remit payment to ADP and honor Payroll Taxes and Payroll Deduction Obligations. Accordingly, on behalf of the Debtors, I respectfully submit that the Wages Motion should be approved.

**I. Tax Motion**

92. Pursuant to the Tax Motion, the Debtors request entry of interim and final orders authorizing the Debtors to pay any prepetition property taxes, sales and use taxes, business license fees, provider fees, and other similar taxes and fees subsequently determined to be owed (collectively, the "**Taxes and Fees**") that accrued or that arose before the Petition Date that will become due during the pendency of these Chapter 11 Cases to the applicable federal, state, provincial, and local governmental entities in the United States (collectively, the "**Taxing**

**Authorities**”) in the ordinary course of business, without prejudice to the Debtors’ right to contest the amounts and/or priority of any Taxes and Fees on any grounds they deem appropriate.

93. The Debtors, in the ordinary course of business, incur various tax and fee liabilities. Although as of the Petition Date, the Debtors were substantially current in the payment of assess and undisputed Taxes and Fees, certain of Taxes and Fees attributable to the prepetition period may not yet have become due. Certain Taxes and Fees may not become due until the applicable, monthly, quarterly, or annual payment dates.

94. As of the Petition Date, the Debtors estimate that there is less than \$1,000 in prepetition Taxes and Fees that will become due and payable within the first twenty-one (21) days of these Chapter 11 Cases. Similarly, as of the Petition Date, the Debtors estimate that there is approximately \$5,000 of Taxes and Fees relating to the prepetition period that have accrued and will become payable to the Taxing Authorities during the pendency of these Chapter 11 Cases, which the Debtors also seek to pay.

95. The Debtors are subject to the following Taxes and Fees:

- a. **Sales and Use Taxes:** In the ordinary course of business, the Debtors collect sales and use taxes (“**Sales and Use Taxes**”) from the (i) sale of food and beverage to customers (usually visiting guests of Residents) sold on the premises and (ii) occupancy of guest rooms on the premises by the Residents’ visitors. The Debtors typically pay Sales and Use Taxes to the Applicable Taxing Authorities on a monthly basis which average less than \$1,000 per month. The Debtors estimate that less than \$1,000 in prepetition Sales and Use Taxes will become due and payable following the Petition Date.
- b. **Property Taxes:** The Ground Lease requires the Debtors to pay real and personal property taxes and fees and assessments assessed during the term of the Ground Lease. In January 2022, the Debtors paid \$1,925,733.43 related to the property taxes, which accrued during 2021, but did not become payable until January 2022. The 2022 Property Taxes will become due in 2023.

- c. **Licensing Fees and Other Taxes.** Due to the nature of the Debtors' business, the Debtors incur licensing and permit fees to various government and regulatory agencies which are *de minimis* in amount. The Debtors do not believe that any such fees are due, but, out of an abundance of caution, seek to pay such fees if due with the first twenty-one (21) days of the Petition Date and thereafter as necessary in the ordinary course of business.
- d. **Provider Fees.** Every four (4) years, the Debtors pay a re-validation fee (the "**Provider Fees**") calculated by the number of Medicare-certified beds at its Community. The last payment was made in 2020 (so the next payment is not anticipated to become due until 2024), but out of an abundance of caution, to the extent the Debtors any unexpected Provider Fees that must be paid post-petition, the Debtors seek authority to do so.

96. The continued payment of Taxes and Fees on their normal due dates will ultimately preserve the resources of the Debtors' estates. If such obligations are not timely paid, the Debtors will be required to expend time and money to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority' applicable laws, including (i) whether the obligations are priority, secured, or unsecured in nature, (ii) whether they should be prorated or treated as fully prepetition or post-petition, and (iii) whether penalties, interest, attorneys' fees, and costs can continue to accrue on a post-petition basis, and if so, whether such penalties, interest, attorneys' fees and costs are priority, secured, or unsecured in nature. The Debtors' desire to avoid unnecessary disputes with the Taxing Authorities – and expenditures of time and money resulting from such disputes – over a myriad of issues that are typically raised by such entities as they attempt to enforce their rights to collect taxes.

97. The Debtors may suffer immediate and irreparable harm if the prepetition Taxes and Fees are not paid when they become due and payable. If the Debtors do not pay such amounts in a timely manner, the Taxing Authorities may attempt to revoke the Debtors' licenses, suspend their operation, impose fees and penalties, or pursue other remedies that will harm the estates. In

all cases, the Debtors' failure to pay Taxes and Fees could have a material adverse impact on their ability to operate in the ordinary course of business.

98. Failure to pay the Taxes and Fees to the Taxing Authorities in full and on time, thereby risking the cessation of normal relations between the Taxing Authorities and the Debtors, will make these estates worse off than they will be having paid the Taxes and Fees. It is in the best interests of the Debtors' estates that the Taxes and Fees be paid on time so as to avoid administrative difficulties. Failure to timely pay, or a precautionary withholding by the Debtors of payment of, the Taxes and Fees may cause the Taxing Authorities to take precipitous action, including an increase in audits, a flurry of lien filings, and significant administrative maneuvering at the expense of the Debtors' time and resources. Prompt and regular payment of the Taxes and Fees will avoid this unnecessary governmental action and allow the Debtors to focus on their reorganization efforts.

99. Any disputes that could impact their ability to conduct business could have a wide-ranging and adverse effect on the Debtors' operations as a whole. Accordingly, I respectfully submit that the Tax Motion should be granted.

**E. Utilities Motion**

100. By the Utilities Motion, the Debtors request interim and final order (i) prohibiting Utility Providers (as defined below) from altering, refusing or discontinuing service to the Debtors, (ii) deeming the Utility Providers adequately assured of future performance, and (iii) establishing procedures for determining requests for additional adequate assurance by the Utility Providers.

101. In the ordinary course of business, the Debtors obtain various utility services, including, but not limited to electricity, gas, water, sewer, telephone, other telecommunications services such as cable, and other similar types of services (each, a "**Utility Service**" and

collectively, the “**Utility Services**”) from approximately nine (9) utility providers (each, a “**Utility Provider**” and collectively, the “**Utility Providers**”). A list of the Utility Providers is attached to the proposed interim and final orders as Schedule 1 (the “**Utilities Services List**”). On average, the Debtors spend approximately \$105,700 in the aggregate each month on account of Utility Services.

102. At all relevant times, the Debtors have attempted to remain current with regard to their utility bills. Furthermore, to the best of my knowledge, the Debtors are current on all amounts owing to the Utility Providers, other than payment interruptions that may be caused by the commencement of these Chapter 11 Cases.

103. I believe that uninterrupted utility services are essential to the ongoing operations of the Debtors, and therefore, to the successful resolution of these Chapter 11 Cases. Any interruption of Utility Services, even for a brief period of time would put the health, safety and welfare of the Residents at risk. It is, therefore, critical that utility services continue uninterrupted during these Chapter 11 Cases.

104. The Debtors propose to put an amount equal to \$52,850 (the “**Deposit**”) into a separate account (the “**Utility Deposit Account**”), which is equal to two weeks’ worth of payments to each Utility Provider, to be held for the exclusive purpose of paying the Utility Services. They have also budgeted for post-petition obligations of the Utility Providers. The Debtors submit that the establishment of the Utility Deposit Account, in conjunction with the Debtors’ ability to pay for future Utility Services in the ordinary course of business, constitutes adequate assurance of payment to the Utility Providers.

105. Further, the Debtors propose to protect the Utility Providers by establishing the procedures provided in the Utilities Motion, whereby any Utility Provider can request additional

adequate assurance in the event that it believes there are facts and circumstances with respect to its providing post-petition services to the Debtors that would merit greater protection.

106. Therefore, I believe that the Utility Providers have adequate assurance of future performance, and the relief sought in the Utility Motion is in the best interests of the Debtors, their estates, their residents, and all stakeholders, and, therefore, should be approved.

**F. Insurance Motion**

107. By the Insurance Motion, the Debtors seek entry of an order authorizing the Debtors (a) to maintain existing insurance policies and pay all obligations arising thereunder, (b) renew, revise, extend, supplement, change or enter into new insurance policies as needed in their business judgment, and (c) pay brokerage fees arising on account of their insurance policies. The Debtors further request that financial institutions be directed to receive, process, honor and pay all checks presented for payment and electronic payment requests related to the Insurance Obligations, whether such checks were presented, or electronic requests submitted prior to or after the Petition Date.

108. Under the MSA, Lifespace provides certain risk management, insurance administration, and other administrative services to the Debtors the Lifespace Group. In turn, the members of the Lifespace Group reimburse or prepay Lifespace for the cost of such goods and services using various methodologies based on the particular good or service procured, or in some cases directly pay their allocated share to the third-party providing goods or services (such allocation and payment system, collectively with the determination, allocation, and payment of a corporate overhead fee to Lifespace, the “**Intercompany Accounting Protocol**”).

109. In the ordinary course of the Lifespace Group’s businesses, Lifespace procures various insurance policies (each, an “**Insurance Policy**,” and, collectively, the “**Insurance**



**Policies**”) through several third-party insurance carriers (each an “**Insurance Carrier**,” and, collectively, the “**Insurance Carriers**”). The Debtors are covered under the applicable Insurance Policies as additional named insureds. The Debtors participate in and are covered by the Lifespace-procured property, commercial auto, cyber liability, directors and officers, fiduciary, crime, terrorism and sabotage, environmental, wind, and commercial general liability Insurance Policies.

110. Lifespace pays insurance premiums for each Insurance Policy, then allocates the cost to the members of the Lifespace Group and seeks reimbursement in the allocated amount under the Intercompany Accounting Protocol. The Premiums for the Lifespace Group’s all-risk property Insurance Policy are financed through a premium financing agreement, (the “**Premium Financing Agreement**”) with IPFS Corporation (“**IPFS**”). As of the Petition Date, there is approximately \$612,000 outstanding on account of the Premium Financing Agreement, of which approximately \$148,000 is attributable to Edgemere.

111. With respect to non-financed premiums, those are paid in advance by Lifespace and reimbursed under the Intercompany Accounting Protocol by the members of the Lifespace Group on either a monthly or quarterly basis. The total cost of the non-financed premiums for Insurance Policies purchased by Lifespace for 2022 is approximately \$2,824,000, of which approximately \$153,000 is attributable to Edgemere.

112. Lifespace obtains the Insurance Policies through a broker (the “**Insurance Broker**”) who assists Lifespace in obtaining comprehensive insurance coverage for the Lifespace Group’s operations. Lifespace’s total Brokerage Fees for 2021 were approximately \$385,000, of which approximately \$20,000 was allocated to the Debtors.

113. The Debtors seek authority to pay any premiums, intercompany reimbursements, or other obligations incidental to the Insurance Policies, including the Brokerage Fees (the

“**Insurance Obligations**”). To protect and safeguard the Debtors’ ongoing operations and ensure compliance with the United States Trustee’s Guidelines, it is critical that the Debtors be allowed to pay their Insurance Obligations on an ongoing and uninterrupted basis and renew, revise, extend, supplement, or change its existing Insurance Policies and enter into new insurance policies as needed in the Debtors’ business judgment.

114. Failure to timely pay amounts due under the Insurance Policies will harm the Debtors’ estates as non-payment of premiums may cause an insurance company to terminate coverage. Such termination would (a) cause the Debtors to be out of compliance with UST Guidelines as well as applicable regulatory requirements to maintain insurance, (b) place additional strains on the Debtors’ relationships with employees and Residents who benefit from the Debtors’ insurance coverage, and (c) eviscerate the Debtors’ ability to prevent loss in value

115. The continuation of the Debtors’ Insurance Policies is especially important because if any of the Insurance Policies are discontinued, the Debtors would be exposed to substantial liability, to the detriment of Residents, creditors, and all interested parties. In the event of termination of insurance coverage, the Debtors would need to obtain replacement insurance, likely at higher prices than they currently pay. Therefore, I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors, their estates, their residents, and all stakeholders and should, therefore, be approved.

**G. DIP and Cash Collateral Motion**

116. As set forth in detail within the DIP and Cash Collateral Motion, the Debtors seek authority to use Cash Collateral, obtain post-petition financing, on a priming, super-priority basis, by entering into the DIP Facility, grant adequate protection to the Trustee, modify the automatic stay to the extent necessary, and schedule a Final Hearing and approval of the form and method of

notice of the Final Hearing. Although the Debtors intend to restructure or refinance their existing Bond Obligations, they do not have sufficient unencumbered assets to satisfy all of their financial obligations while continuing to provide the exceptional service and high-quality care to their Residents. Similarly, if they are consistently unable to maintain their business and demonstrate financial stability, they may lose current Residents and Employees and struggle to attract new Residents. The DIP Facility will enable the Debtors to pay the administrative costs of the Chapter 11 Cases while continuing to provide Residents, Employees, vendors, creditors, Bondholders, and other stakeholders with assurances that the Debtors will emerge from these Chapter 11 Cases successfully. The Debtors have an immediate need for Cash Collateral; without the use of the Trustee's Cash Collateral, the Debtors would be unable to continue to operate their businesses and administer their estates. The DIP Facility and immediate use of Cash Collateral are necessary to avoid immediate and irreparable harm to the Debtors, their estates, and their stakeholders.

117. As of the Petition Date, the Bond Obligations are approximately \$112 million. The Debtors are in default of the Bonds. Ample cause exists for entry of the proposed DIP Order approving the Debtors' request to use Cash Collateral and enter into the DIP Facility. The Debtors need to be able to use Cash Collateral and post-petition financing; both are essential to the success of the Chapter 11 Cases and to the Residents who depend on the Debtors for personal and healthcare services. The requests for relief contained in the DIP and Cash Collateral Motion should be approved. They are essential to the Debtors' operations and will enhance the Debtors' ability to emerge successfully from these Chapter 11 Cases.

### **CONCLUSION**

118. For all the foregoing reasons, I respectfully request that the Court grant the relief requested in the First Day Motions and such other and further relief as is appropriate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

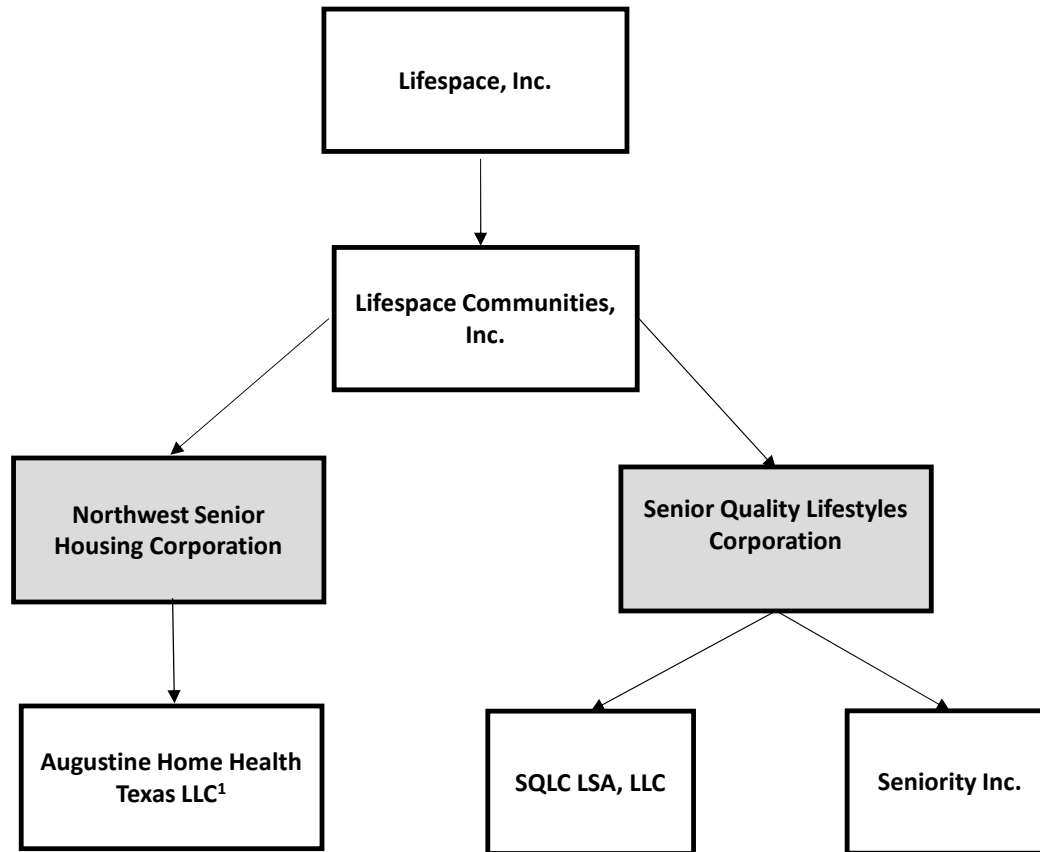
Dated: April 14, 2022  
Dallas, Texas

/s/ Nick Harshfield  
Nick Harshfield  
Director, Vice Chair and Treasurer  
Northwest Senior Housing Corporation and  
Senior Quality Lifestyles Corporation

**EXHIBIT A**

**Northwest Senior Housing Corporation and Senior Quality Lifestyles Corporation  
Organizational Chart**

**Debtor Entity**



<sup>1</sup>Augustine is a 50/50 joint venture with Augustine Management Texas, Inc.