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Counsel to the Plan Sponsors

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

In re:	Chapter 11
Northwest Senior Housing Corporation, <i>et al.</i> , ¹	Case No. 22-30659 (MVL)
Debtors.	(Jointly Administered)

**MOTION OF TRUSTEE AND DIP LENDER FOR ENTRY OF AN ORDER
(I) AUTHORIZING AND APPROVING THE BIDDING PROCEDURES;
(II) AUTHORIZING AND APPROVING THE STALKING HORSE ASSET PURCHASE
AGREEMENT; (III) APPROVING PROCEDURES RELATED TO THE ASSUMPTION
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES;
(IV) SCHEDULING COMBINED CONFIRMATION AND SALE HEARING;
AND (V) GRANTING RELATED RELIEF**

**A HEARING WILL BE CONDUCTED ON THE MATTERS SET FORTH
IN THIS MOTION ON NOVEMBER 30, 2022 AT 1:30 P.M. (PREVAILING
CENTRAL TIME) AT THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS, 1100 COMMERCE ST.,
14TH FLOOR, COURTROOM NO. 2, DALLAS, TEXAS 75242. THE
HEARING WILL ALSO BE CONDUCTED VIA WEBEX IN**

¹ The Debtors in 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.



**ACCORDANCE WITH INSTRUCTIONS PROVIDED IN A SEPARATE
NOTICE OF HEARING FILED ON NOVEMBER 2, 2022.**

UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (together, the “**Trustee**”) and in its capacity as a lender under the DIP Credit Agreement (the “**DIP Lender**,” and together with the Trustee, the “**Plan Sponsors**”) hereby move this Court (the “**Motion**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”) pursuant to sections 105(a), 363, 365, 503, 507, 1123(a)(5)(D), and 1123(b)(4) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1(a)(2) and 9007-1 of the Local Bankruptcy Rules for the Northern District of Texas (the “**Local Rules**”): (a) authorizing and approving the Bidding Procedures (defined herein); (b) authorizing entry into the Stalking Horse APA (defined herein); (c) approving procedures related to the assumption of certain executory contracts and unexpired leases; (d) scheduling a hearing to consider the Sale Transaction (defined herein) concurrently with consideration of approval of the *Plan of Reorganization of the Trustee and the DIP Lender Dated November 2, 2022* (as amended, modified, and supplemented, the “**Plan**”)² [Docket No. 752] (the “**Confirmation and Sale Hearing**”); (e) establishing notice and objection procedures in respect of the proposed Sale Transaction in connection with the confirmation of the Plan; and (f) granting related relief. In support of the Motion, the Plan Sponsors respectfully represent as follows:

INTRODUCTION

The Plan proposed by the Plan Sponsors represents the best possible path to maximizing the value of the Debtors’ assets for the benefit of all stakeholders. The Plan will ensure the ongoing

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

viability of the Edgemere Community such that it can successfully operate for the remainder of the Ground Lease term and meet Resident expectations with respect to quality of service and care. To accomplish this goal, the Plan will implement the Sale Transaction, pursuant to which substantially all of the Debtors' assets will be sold to a Purchaser (the "**Purchased Assets**") and remaining assets of the Estates will be transferred to a Litigation Trust to be liquidated for the benefit of, and distributed to, creditors. The Plan Sponsors have selected an initial Purchaser, Bay 9 Holdings LLC or its designee (the "**Stalking Horse Bidder**") as a starting point towards maximizing the value of the Debtors' estates. The Stalking Horse Bidder's offer will be subject to higher and better bids, including through a potential auction, pursuant to the bidding and sale procedures substantially in the form attached to the Proposed Order as **Exhibit 1** (the "**Bidding Procedures**"). The Plan Sponsors and the Stalking Horse Bidder have negotiated the terms of an Asset Purchase Agreement, a copy of which is attached to the Proposed Order as **Exhibit 2** (the "**Stalking Horse APA**"). The Plan Sponsors believe that the Stalking Horse APA represents the fair market value for the Purchased Assets. Nevertheless, the Plan Sponsors are hopeful that there will be an auction which may result in overbids, and therefore even more value to the Debtors' estates.

The Plan Sponsors submit that the best test of the value of the Debtors' assets is to determine what the market will bear through an open sale process. By approving the designation of the Stalking Horse Bidder and the sale process described herein and in the Bidding Procedures, this Court will ensure that the value of the Debtors' assets will be maximized and market-tested.

By this Motion, the Plan Sponsors respectfully request the (a) authorization and approval of the Bidding Procedures, including approval of the Stalking Horse APA, (b) the approval of the notices relating to the Sale Transaction, including regarding assumption of any non-resident

contracts, and (c) scheduling the hearing to consider approval of the Sale Transaction to occur in connection with the hearing to consider approval of the Plan (the “**Confirmation and Sale Hearing**”). It is critical that the sale process be consummated on the timeline set forth in the Bidding Procedures and in this Motion. In recognition of the fact that the Debtors’ postpetition financing matures on December 31, 2022 and that it is imperative that a plan of reorganization is consummated as quickly as possible, the Debtors and the Plan Sponsors, with this Court’s blessing, agreed to a plan confirmation timeline that serves as the framework for the sale timeline. The sale timeline has been designed to ensure adequate time for a marketing process while preserving and maximizing the value of the Debtors’ estates for the benefit of all stakeholders, including the Residents.

JURISDICTION AND VENUE

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

2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief sought herein are sections 105(a), 363, 365, 503, 507, 1123(a)(5)(D), and 1123(b)(4) of the Bankruptcy Code, 2002, 6004, 6006, 9007 and 9014 of the Bankruptcy Rules, and Local Rules 2002-1(a)(2) and 9007-1.

PROCEDURAL BACKGROUND

4. On April 14, 2022 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “**Court**”).

5. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). [Docket No. 88]. The Debtors continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. On April 28, 2022, the Office of the United States Trustee for the Northern District of Texas (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Committee**”) pursuant to Bankruptcy Code section 1102(a)(1). [Docket No. 135].

7. No trustee or examiner has been appointed in the Chapter 11 Cases.

8. Pursuant to the *Order Granting in Part and Denying in Part the Debtors’ Motion for Entry of an Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan*, dated October 13, 2022 [Docket No. 705] (the “**Exclusivity Termination Order**”), the Plan Sponsors have been granted authority to file the Plan.

RELIEF REQUESTED

9. By this Motion, the Plan Sponsors seek approval of the following:
- a. the Bidding Procedures outlining the process for submitting bids for the Debtors’ assets and conducting an auction (the “**Auction**”) in the event the Plan Sponsors receive more than one qualified bid for the purchase of the Debtors’ assets;
 - b. the Stalking Horse APA, which includes a break-up fee of \$1,455,000.00 (the “**Break Up Fee**”) (representing approximately 3% of the transaction value under the Stalking Horse APA) and an expense reimbursement not to exceed \$200,000.00 (the “**Expense Reimbursement**”, and collectively with the Break Up Fee, the “**Bid Protections**”), and directing the Debtors to enter into the Stalking Horse

APA subject to higher and better bids as set forth in the Bidding Procedures;

- c. the form of notice of the sale of the Debtors’ assets at a public auction (the “**Notice of Sale**”), substantially in the form attached to the Proposed Order as **Exhibit 3**;
- d. the form of notice to counterparties to executory contracts and unexpired leases that will be assumed or rejected pursuant to the Plan (the “**Cure and Possible Assumption and Assignment Notice**”), substantially in the form attached to the Proposed Order as **Exhibit 4**; and
- e. the establishment of the following dates and deadlines with respect to the Sale process, subject to modification as necessary:

Proposed Date³	Event
5 Days after Entry of Order approving the Bidding Procedures	Deadline for Plan Sponsors to file and Serve Cure and Possible Assumption and Assignment Notice
December 19, 2022 at 4:00 p.m.	Deadline to file objections to Cure and Possible Assumption and Assignment Notice
December 27, 2022 at 4:00 p.m.	Bid Deadline
December 28, 2022 at 10:00 a.m.	Auction (if necessary)
January 3, 2023 at 4:00 p.m.	Deadline to Object to the Plan and the Sale
January 6, 2023	Deadline to File Replies to Plan Objections
January 10, 2023 at 9:30 a.m.	Confirmation and Sale Hearing

BASIS FOR RELIEF

10. The Plan Sponsors have identified the Stalking Horse Bidder as a potential purchaser of the Debtors’ assets. The Stalking Horse Bidder has established a minimum value of \$48,500,000.00 in cash plus certain assumed liabilities, subject to certain adjustments as set forth in the Stalking Horse APA, to be provided to the Debtors’ estates upon consummation of the sale. It is the Plan Sponsors’ hope that through a robust marketing process lead by RBC, as described

³ All times are prevailing Central Time.

in detail in the Bidding Procedures, higher and better offers will be obtained for the Debtors' assets and the Debtors' estates will realize even greater value.

I. The Court Should Approve the Stalking Horse APA and the Bid Protections Contained Therein

11. Section 1121(c) of the Bankruptcy Code provides that “[a]ny party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee, may file a plan” after the expiration of a debtor’s exclusivity period. *See* 11 U.S.C. § 1121(c). Moreover, pursuant to the Exclusivity Termination Order, the Court expressly provided that “[o]n and after October 27, 2022, the Bond Trustee, the Debtors and Lifespace Communities, Inc. . . . shall each have the right to file a chapter 11 plan of reorganization”

12. Section 1123 of the Bankruptcy Code requires that a chapter 11 plan have an adequate means of implementation which may include, *inter alia*, the “sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate.” *See* 11 U.S.C. 1123(a)(5)(D); *see also* COLLIER ON BANKRUPTCY ¶ 1123.01[5][c] (Richard Levin & Henry J. Sommer eds., 16th ed. 2022) (observing that “section 1123(a)(5)(D) ‘overrides nonbankruptcy law restrictions on the distribution of collateral to satisfy a claim secured by the same.’”) (internal citation omitted). Section 1123(b)(4), in turn, explicitly provides that a chapter 11 plan may “provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests.” 11 U.S.C. § 1123(b)(4); *see also* COLLIER ON BANKRUPTCY ¶ 1123.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed. 2022) (noting that “Section 1123(b)(4) supplements section 1123(a)(5)(D), which permits the sale of all or any part of the debtor’s property as a means for the execution of the plan.

Thus, a plan may provide for sale of all or part of the property of the estate even though the plan does not provide for the distribution of the proceeds as the means of effectuating the plan.”).

13. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Corp. Assets, Inc. v. Paloian*, 368 F.3d 761, 765 (7th Cir. 2004) (in a bankruptcy sale, the “governing principle . . . is to secure the highest price for the benefit of the estate and creditors”). To that end, the sale of the Debtors’ assets through a chapter 11 plan maintains the Bankruptcy Code’s objective to maximize the value of the debtors’ estates through a sale while simultaneously balancing the rights of creditors and parties in interest to vote on the proposed sale of the debtors’ assets and reorganization. *See In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (observing that in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988) (noting that the goal of a bankruptcy sale “is to obtain the highest price or greatest overall benefit possible for the estate.”); *see also, In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (finding that “court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates.”).

14. The transaction contemplated by the Plan would achieve the goal of maximizing the value of the Debtors’ estates. Pursuant to the Plan, the Stalking Horse Bidder shall purchase substantially all of the Debtors’ assets for a cash purchase price of \$48,500,000.00 plus certain assumed liabilities, subject to certain adjustments as set forth in the Stalking Horse APA (the “**Sale Transaction**”), pursuant to the terms of the Stalking Horse APA. The Sale Transaction is subject to higher or better offers and a possible auction as set forth in detail herein, and the consummation of the Sale Transaction is conditioned upon entry the Confirmation Order. In order to conduct the

sale process contemplated by the Plan side-by-side with the solicitation of votes on the Plan, the Plan Sponsors request approval of their selection of Stalking Horse Bidder and request that this Court direct the Debtors to execute the Stalking Horse APA in order to ensure that the Stalking Horse Bidder’s offer to purchase the Debtors’ assets is binding, and to afford the Stalking Horse the Bid Protections set forth in the Stalking Horse APA and the Bidding Procedures as set forth below.

15. The key provisions of the Stalking Horse APA are as follows:

Purchase Consideration:	The consideration payable by the Stalking Horse Bidder is \$48,500,000.00 in cash, subject to certain adjustments, and the assumption of the Assumed Liabilities.
Escrow Deposit:	The Stalking Horse has agreed to deposit \$2,425,000.00 in cash with UMB Bank, N.A. as the “ Escrow Agent, ” which will be held by the Escrow Agent in accordance with the provisions of the Escrow Deposit Agreement and the Stalking Horse APA.
Holdback:	\$1,500,000.00 of the Purchase Price shall be deposited into an escrow account with an independent escrow agent to reimburse the Stalking Horse Bidder for any amounts subject to Medicare payor recoupment or setoff against the Stalking Horse Bidder’s post-Closing Accounts Receivable, but related to pre-Closing overpayments on Accounts Receivable made to Seller. Subject to any Medicare payment audit, upon the one-year anniversary of the Closing Date, any remaining and undisputed Closing Escrow Amount shall be paid to the Plan Sponsors as proceeds from the Sale.

Bid Protections:	In the event the Debtors consummate an alternative sale transaction for substantially all of the business or the Purchased Assets (as defined in the Stalking Horse APA), the Stalking Horse APA contemplates that the Debtors shall pay to the Stalking Horse Bidder the Bid Protections in the aggregate amount of no more than \$1,655,000.00. The Bid Protections shall be entitled to priority as an administrative expense in the Chapter 11 Cases under sections 503(b) and 507(a)(2) of the Bankruptcy Code.
Treatment of Residency Agreements:	The Stalking Horse APA contemplates that the Debtors will reject all Residency Agreements, and the Stalking Horse Bidder will offer all Current Residents at the Edgemere Community the option to enter into a new monthly rental agreement which shall provide similar services to each Current Resident as offered by the Debtors prior to Closing, at the then current private pay rate as advertised by the Debtors, subject to ordinary market adjustments.
Treatment of Executory Contracts and Unexpired Leases (other than Residency Agreements):	The Stalking Horse APA provides that the Debtors will assume and assign the Ground Lease to the Stalking Horse Bidder, and sets forth a notice process pursuant to which the Landlord and other counterparties to unexpired leases and executory contracts may object to proposed cure amounts and adequate protection. The Stalking Horse APA also permits the Stalking Horse Bidder to schedule additional executory contracts and unexpired leases to be assumed and assigned to the Stalking Horse Bidder.

16. In addition, the Bid Protections are appropriate and should be approved. Courts recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value realized by the estate and therefore are appropriate in the context of bankruptcy transactions. *See In re ASARCO, L.L.C.*, 650 F.3d 593, 603 (5th Cir. 2011) (affirming a bankruptcy court’s approval of bidding procedures designed to maximize the value of the

debtor's estate); *In re Energy Future Holdings Corp.*, 593 B.R. 217, 246 (Bankr. D. Del. 2018) (recognizing the appropriateness of bidding procedures where the objective at all times was to maximize value for their estates); *In re Integrated Res., Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures "encourage bidding and . . . maximize the value of the debtor's assets").

17. Here, the Bid Protections are a necessary component of the Stalking Horse APA and should be approved as in the best interests of the estates to maximize the Debtors' estates' assets. See *In re Acis Capital Mgmt., L.P.*, 604 B.R. 484, 518 (N.D. Tex. 2019), *aff'd sub nom. Matter of Acis Capital Mgmt., L.P.*, 850 Fed. Appx. 302 (5th Cir. 2021) ("the Break-Up Fee facilitated the plan confirmation process. Without the Break-Up Fee, the Trustee would have had no ready, willing, and able partner for the proposed . . . transaction . . ."). The Break Up Fee and Expense Reimbursement will only be paid if the Stalking Horse Bidder is not the Successful Bidder, and the Debtors close a sale with an alternative Successful Bidder. As additional protection to the Stalking Horse Bidder, upon the closing of any sale to an alternative Successful Bidder, the Bid Protections shall be paid directly to the Stalking Horse Bidder without further order of this Court and treated as an allowed superpriority administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code. The Break Up Fee represents approximately 3% of the transaction value under the Asset Purchase Agreement. This percentage is well within the order of magnitude of break-up fees approved in other cases, including cases within the Northern District of Texas. See, e.g., *In re Erickson Retirement Cmty., LLC*, Case No. 09-37010-SGJ11 (Bankr. N.D. Tex. 2009) [Docket No. 272] (finding break-up fee and expenses equal to 3.5% of purchase price reasonable); *In re GGI Holdings, LLC, et al.*, Case No. 20-31318-HDH11 (Bankr. N.D. Tex. 2020) [Docket No. 428] (approving break-up fee of 3%); *In re FC Background, LLC, d/b/a FC Constr. Servs.*, Case No. 19-32037-SGJ11 (Bankr. N.D. Tex.

2019) [Docket No. 83] (approving bid protections of up to \$300,000.00 or approximately 3% of the proposed purchase price, including \$200,000.00 of break-up fee and up to \$100,000.00 of expense reimbursement); *In re Bouchard Transp. Co., Inc.*, 639 B.R. 697, 721 (S.D. Tex. 2022) (affirming order allowing stalking horse bidder's administrative expense claim comprising a \$3.3 million breakup fee, equal to 3% of the stalking horse bidder's purchase price, and expense reimbursement of \$885,506.98); *In re Briggs & Stratton Corp.*, Case No. 20-43597 (BSS) (Bankr. E.D. Mo. Aug. 19, 2020) [Doc. No. 505] (approving breakup fee not exceeding \$16.5 million, representing 3% of the stalking horse bidder's purchase price, and expense reimbursement not exceeding \$2.75 million); *In re RMS Titanic, Inc.*, Case No. 16-02230 (PMG) (Bankr. M.D. Fla. Sept. 13, 2018) [Doc. No. 1201] (approving expense reimbursement and breakup fee of the greater of \$500,000.00 and 3% of the purchase price); *In re Sea Island Co.*, Case No. 10-21034 (EJC) (Bankr. S.D. Ga. Sept. 15, 2010) [Doc. No. 189] (finding a 3% breakup fee to be appropriate).

18. Approval of the Stalking Horse APA is in the best interests of the Debtors' estates. In the event no other qualified competing bid materializes, the Stalking Horse APA represents a viable path forward for the Debtors, and will ensure Current Residents the opportunity to stay in their homes and receive the same level of care they currently receive. The Court should approve the Stalking Horse APA and direct the Debtors to execute the Stalking Horse APA.

II. The Court Should Approve the Bidding Procedures

19. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be made by private sale or public auction. Good cause exists to expose the Debtors' assets to auction. The Auction conducted in accordance with the proposed Bidding Procedures will enable the Plan Sponsors, in consultation with the Debtors and the Committee

(collectively, the “**Consultation Parties**”), to solicit higher and better offers for the Debtors’ assets, thereby maximizing the value of the Debtors’ estates for the benefit of all stakeholders.

20. To be eligible to participate in the Auction, each initial Bid and each party (other than the Stalking Horse Bidder) submitting such a Bid (each, a “**Bidder**”) must be determined by the Plan Sponsors, in consultation with the Consultation Parties, to satisfy each of the following conditions, and, if so met, such Bid shall constitute a “**Qualified Bid,**” and such Bidder shall constitute a “**Qualified Bidder**”:

Purchase Price	The Bid must include a cash purchase price in an amount that is at least \$48,500,000.00, plus the amount of the Break Up Fee, plus the amount of the Expense Reimbursement, plus \$100,000.00.
Good Faith Deposit	The Bid accompanied by a deposit in an amount of five percent (5%) of the Bidder’s proposed cash purchase price to be held in an interest bearing escrow account to be held by the Escrow Agent in accordance with the Escrow Deposit Agreement.
Asset Purchase Agreement	The Bid must include a marked version of the Stalking Horse APA (the “ Bidder APA ”) to identify what, if any, modifications the Bidder proposes.
Going Concern Information	The Bidder APA shall (a) identify all Non-Resident Contract Counterparty (defined below) agreements that the Bidder wishes to have assumed and assigned to it pursuant to the Sale; (b) provide details regarding the treatment of Residency Agreements with the Debtors’ current or former residents; (c) provide details regarding the operation and management of the Purchased Assets after the Sale; and (d) provide information pertinent to the ability to obtain regulatory approvals to purchase and operate the Purchased Assets.
Corporate Authority; Financial Ability to Perform; Irrevocable Bid	Each Bid must include written evidence that the Bidder has appropriate corporate authority and financial wherewithal to consummate the Sale Transaction, and that the Bid is irrevocable until the Closing Date of the Sale

	Transaction. Each Bid must acknowledge that the Bidder waives and is not entitled to any of the Stalking Horse Bid Protections or other similar bidder protections, including as a substantial contribution under section 503 of the Bankruptcy Code.
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21. If any Bid (other than the Stalking Horse Bid) received by the Bid Deadline is determined to be a Qualified Bid, the Plan Sponsors, in consultation with the Consultation Parties, will hold an Auction in accordance with the Bidding Procedures, which are designed to ensure a competitive sale process and encourage higher and better bids, and as such should be approved.

III. The Bidding Procedures Relating to the Assignment and Assumption of Executory Contracts and Unexpired Leases Should Be Approved

22. Pursuant to the Plan, any of the Debtors' Executory Contracts or Unexpired Leases to be assumed under the Sale Transaction that are, or may be, alleged to be in default, shall be satisfied solely by cure or by a waiver of cure agreed upon between the Purchaser and the applicable counterparty. *See* Disclosure Statement § V.D. In order to provide counterparties with sufficient notice of the proposed cure amounts, the Bidding Procedures contemplate that within five (5) days after entry of the Bidding Procedures Order, the Plan Sponsors will file with the Court and serve the Cure and Possible Assumption and Assignment Notice to the counterparties to Executory Contracts and Unexpired Leases, other than Residents that are party to a Residency Agreement as of the Petition Date (each, a "**Non-Resident Contract Counterparty**"), setting forth the Plan Sponsors' calculation of each Non-Resident Contract Counterparty's cure amount, if any, that would be owing to such Non-Resident Contract Counterparty if the Debtors were to assume or assume and assign such Executory Contract or Unexpired Lease, and alerting such Non-Resident Contract Counterparty that its agreement may be assumed and assigned to the Purchaser. Any Non-Resident Contract Counterparty that objects to the cure amount set forth in the Cure and

Possible Assumption and Assignment Notice must file an objection (a “**Cure Objection**”) no later than December 19, 2022 at 4:00 p.m. (prevailing Central Time), which Cure Objection must be served on the following by e-mail: (a) counsel for the Plan Sponsors, Daniel Bleck, dsbleck@mintz.com, Eric Blythe, erblythe@mintz.com, and Kaitlin Walsh, krwalsh@mintz.com; (b) RBC Capital Advisors, David Fields, david.fields@rbccm.com; (c) counsel for the Debtors, Trinitee G. Green, tggreen@polsinelli.com and Jeremy Johnson, Jeremy.johnson@polsinelli.com, and (d) counsel for the Committee, Stephen A. McCartin, smccartin@foley.com, Thomas C. Scannell, tscannell@foley.com, and Mark Moore, mmoore@foley.com (collectively, the “**Notice Parties**”).

23. If a Non-Resident Contract Counterparty does not timely file and serve a Cure Objection, that party will be forever barred from objecting to the proposed cure amount. Where a Non-Resident Contract Counterparty files a timely Cure Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, and the Non-Resident Contract Counterparty and the Plan Sponsor are unable to consensually resolve the dispute, the amount to be paid under section 365 of the Bankruptcy Code (if any) or, as the case may be, the Debtors’ ability to assign the agreement to the Purchaser, will be determined at the Confirmation and Sale Hearing.

24. After the conclusion of the Auction, the Plan Sponsors shall file with the Court and serve on the Notice Parties and Contract Counterparties a further notice (the “**Assumption Notice**”) identifying the Purchaser, stating which Executory Contracts or Unexpired Leases may be assumed and assigned to the Purchaser, and providing such Contract Counterparties with the Purchaser’s assurance of future performance. Any Contract Counterparty that objects to the adequacy of the assurance set forth in the Assumption Notice must file an objection with the Court

(a “**Contract Objection**”) and serve the Contract Objection on the Notice Parties prior to the Confirmation and Sale Hearing. If a Contract Counterparty does not file a Contract Objection prior to the Confirmation and Sale Hearing, such party will be forever barred from objecting to the adequacy of the assurance to be provided by the Purchaser and assumption and assignment to the Purchaser. Where a Contract Counterparty files a Contract Objection prior to the Confirmation and Sale Hearing, and the parties are unable to consensually resolve the dispute, the adequacy of the assurance provided by the Purchaser or raised issues regarding the potential assumption and assignment will be determined at the Confirmation and Sale Hearing.

25. For the avoidance of doubt, these procedures do not address Residency Agreements although the Residency Agreements are Executory Contracts. As provided above, the Stalking Horse APA provides for the rejection of all Residency Agreements with the Debtors’ Current Residents. In order to qualify as a Qualified Bidder, all Bidders must provide detail regarding its proposed treatment of Residency Agreements with the Debtors’ current or former Residents. To the extent a potential Purchaser includes the assumption of the Residency Agreements, the potential Purchaser will be required to satisfy the related cure costs and provide adequate assurance of future performance. The Assumption Notice shall include a description of the Purchaser’s proposed treatment of Residency Agreements.

26. The Plan Sponsors assert that the aforementioned Assumption Notice and related Bidding Procedures constitute good, proper, and adequate notice of the Sale Transaction, whether accomplished through a sale to the Stalking Horse Bidder or to an alternative bidder. Therefore, the Plan Sponsors respectfully request that this Court approve the foregoing notice and objection procedures.

CONCLUSION

WHEREFORE, the Plan Sponsors request that the Court enter an Order substantially in the form attached hereto as Exhibit A, granting the relief requested herein and providing the Plan Sponsors such other and further relief as is just and proper.

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Dated: November 2, 2022

HAYNES AND BOONE, LLP

/s/ J. Frasher Murphy

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– and –

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EXHIBIT A

Proposed Order

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

In re:

Northwest Senior Housing Corporation, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

Re: Docket No. []

**ORDER (I) AUTHORIZING AND APPROVING THE BIDDING PROCEDURES;
(II) AUTHORIZING ENTRY INTO THE STALKING HORSE ASSET PURCHASE
AGREEMENT; (III) APPROVING PROCEDURES RELATED TO THE ASSUMPTION
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES;
(IV) SCHEDULING COMBINED CONFIRMATION AND SALE HEARING
AND (V) GRANTING RELATED RELIEF**

Having considered the *Motion of Trustee and DIP Lender for Entry of an Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing and Approving the Stalking*

¹ The Debtors in the 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.

Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation And Sale Hearing; and (V) Granting Related Relief [Docket No. __] (the “**Motion**”)² and the other testimony, evidence, and representations regarding the Motion, the Court finds that: (a) jurisdiction over the matters in the Motion is proper pursuant to 28 U.S.C. § 1334, (b) venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409, (c) proper and adequate notice of the Motion has been provided and no further notice is needed, (d) the relief sought in the Motion is in the best interest of the Debtors’ estates, their creditors, and all parties in interest, and (e) good and sufficient cause exists for granting the relief requested in the Motion.

THE BANKRUPTCY COURT HEREBY FINDS AND DETERMINES THAT:³

- A. Notice of the Motion complies with Bankruptcy Rule 2002.
- B. The relief requested in the Motion is **GRANTED** as provided herein.
- C. Objections to the Sale Transaction must be made by **January 3, 2023 at 4:00 p.m.** (prevailing Central Time).
- D. The Plan Sponsors have articulated good and sufficient reasons for: (i) approval of the Bidding Procedures⁴; (ii) approval of the selection of the Stalking Horse Bidder; (iii) approval of the Break Up Fee and the Expense Reimbursement; (iv) authorizing payment of the Break Up Fee and Expense Reimbursement to the Stalking Horse Bidder under the circumstances described in the Bidding Procedures and in the Stalking Horse APA;⁵ (v) approval of the form and manner

² All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

³ This Order constitutes this Court’s findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rules 7052 and 9014. Any and all findings of fact shall constitute findings of fact, even if they are stated as conclusions of law, and any and all conclusions of law shall constitute conclusions of law, even if they are stated as findings of fact.

⁴ See **Exhibit 1** hereto.

⁵ See **Exhibit 2** hereto.

of notice of all bidding procedures, bid protection and related agreements described in the Motion; (vi) scheduling of the Auction (if necessary) and approval of the manner of notice thereof; and (vii) all related relief set forth herein. The good and sufficient reasons articulated by the Plan Sponsors, which were set forth in the Motion and on the record at the hearing held before this Court on November 30, 2022, are incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

E. The Bidding Procedures, incorporated herein by reference as if fully set forth in this Order, are fair, reasonable, and appropriate, and represent the best method for maximizing the value of the Debtors' estates. The Break Up Fee and the Expense Reimbursement, on the terms set forth in the Bidding Procedures and the Stalking Horse APA: (i) shall, if triggered, be deemed actual and necessary costs and expenses of preserving the Debtors' estates, within the meaning of 503(b) and 507(a)(2) of the Bankruptcy Code treated as an allowed superpriority administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code in accordance with the Stalking Horse APA; (ii) are commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) are reasonable and appropriate, including in light of the size and nature of the sale transaction and comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Stalking Horse Bidder, notwithstanding that the proposed transaction may be subject to better and higher offers, and are necessary to induce the Stalking Horse Bidder to pursue the transaction, and (iv) were conditions to, and necessary for, the Stalking Horse Bidder to pursue the Sale and to be bound by the Stalking Horse APA and were designed to ensure the highest and best offers are attained.

F. The Bidding Procedures, the Break Up Fee, and the Expense Reimbursement were each a material inducement to, and an express condition of, the willingness of the Stalking Horse Bidder to submit a bid through the execution of the Stalking Horse APA, which will serve as a minimum floor bid on which the Plan Sponsors, the Debtors, their creditors, and other bidders, may rely. The Stalking Horse Bidder has provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible purchase price for the Purchased Assets will be realized.

G. Approval of the Stalking Horse APA with the Stalking Horse Bidder is in the best interests of the Debtors, the Debtors' estates, and creditors, and it reflects a sound exercise of business judgment. The Stalking Horse APA provides adequate opportunity to sell the Debtors' assets in order to preserve and realize their optimal value.

Accordingly,

IT IS HEREBY ORDERED, AND NOTICE IS HEREBY GIVEN, THAT:

1. The Motion is **GRANTED**.

Approval of the Asset Purchase Agreement & Bid Protections

2. The Stalking Horse APA is hereby **APPROVED**, subject to higher or better offers at the Auction.
3. The Debtors are hereby authorized and directed to execute the Stalking Horse APA.
4. The Break Up Fee in the amount of \$1,455,000.00 and the Expense Reimbursement in the amount of up to \$200,000.00 are hereby approved, and shall constitute actual and necessary costs and expenses of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code which are entitled to priority in accordance with section 507(a)(2) of the Bankruptcy Code. If the Debtors sell, transfer, lease, or otherwise dispose of, directly or indirectly,

including through an asset sale, stock sale, merger or other similar transaction, all or substantially all of the business or the Purchased Assets in a transaction or a series of transactions with one or more persons other than the Stalking Horse Bidder in accordance with the Bidding Procedures (such event being an “**Alternative Transaction**”), the Debtors shall pay, and is hereby authorized to pay, to the Stalking Horse Bidder, within two (2) Business Days after the consummation of the Alternative Transaction, (i) an amount in cash equal to the Break Up Fee and (ii) the Expense Reimbursement.

5. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up fees, “topping,” termination, substantial contribution, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of section 503(b) of Bankruptcy Code or otherwise.

Approval of the Bidding Procedures, Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases, and Form and Manner of Notice of Sale

6. The Bidding Procedures are fully incorporated herein and are hereby **APPROVED** in their entirety. The Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any Proposed Transaction. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Bidding Procedures Order. The Plan Sponsors are authorized to take any and all actions necessary to implement the Bidding Procedures, in accordance therewith and the Stalking Horse APA.

7. The Sale Notice⁶ is hereby **APPROVED** in its entirety.

⁶ See **Exhibit 3** hereto.

8. The process and requirements associated with submitting a Qualified Bid are fair, reasonable, appropriate, and designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and other parties in interest.

9. All bidders submitting a Bid are deemed to have submitted to the exclusive jurisdiction of the Court with respect to all matters related to the Bidding Procedures, the Auction, the Confirmation and Sale Hearing, and the terms and conditions of the sale or transfer of the Purchased Assets.

10. The Stalking Horse Bidder is deemed a Qualified Bidder for all purposes, and the Stalking Horse Bid as set forth in the Stalking Horse APA is deemed a Qualified Bid. In the event that no other Qualified Bids are submitted, no auction will be conducted, the Plan Sponsors shall deem the Stalking Horse Bidder to be the Successful Bidder with respect to the Purchased Assets and will seek final approval of the sale of the Purchased Assets (as defined in the Stalking Horse APA) through the Plan at the Confirmation and Sale Hearing.

11. To be eligible to participate in the Auction, each initial Bid and each party (other than the Stalking Horse Bidder that is deemed to be a Qualified Bidder in all respects) submitting such a Bid (each, a "**Bidder**") must be determined by the Plan Sponsors, in consultation with the Consultation Parties, to satisfy each of the following conditions and, if so met, such Bid shall constitute a "**Qualified Bid**," and such Bidder shall constitute a "**Qualified Bidder**":

Purchase Price	The Bid must include a cash purchase price in an amount that is at least \$48,500,000.00, plus the amount of the Break Up Fee, plus the amount of the Expense Reimbursement, plus \$100,000.00.
Good Faith Deposit	The Bid accompanied by a deposit in an amount of five percent (5%) of the Bidder's proposed cash purchase price to be held in an interest bearing escrow account to be held by

	the Escrow Agent in accordance with the Escrow Deposit Agreement.
Asset Purchase Agreement	The Bid must include a marked version of the Stalking Horse APA (the “ Bidder APA ”) to identify what, if any, modifications the Bidder proposes.
Going Concern Information	The Bidder APA shall (a) identify all Non-Resident Contract Counterparty (defined below) agreements that the Bidder wishes to have assumed and assigned to it pursuant to the Sale; (b) provide details regarding the treatment of Residency Agreements with the Debtors’ current or former residents; (c) provide details regarding the operation and management of the Purchased Assets after the Sale; and (d) provide information pertinent to the ability to obtain regulatory approvals to purchase and operate the Purchased Assets.
Corporate Authority; Financial Ability to Perform; Irrevocable Bid	Each Bid must include written evidence that the Bidder has appropriate corporate authority and financial wherewithal to consummate the Sale Transaction, and that the Bid is irrevocable until the Closing Date of the Sale Transaction. Each Bid must acknowledge that the Bidder waives and is not entitled to any of the Stalking Horse Bid Protections or other similar bidder protections, including as a substantial contribution under section 503 of the Bankruptcy Code.

12. If any Bid (other than the Stalking Horse Bid) received by the Bid Deadline is determined by the Plan Sponsors, in consultation with the Consultation Parties, to be a Qualified Bid, the Plan Sponsors will hold an Auction in accordance with the Bidding Procedures. At the Auction, the Plan Sponsors may: (a) select, in consultation with the Consultation Parties and pursuant to the Bidding Procedures, the highest or otherwise best Bid and the Successful Bid or Backup Bid; and (b) reject any Bid (regardless of whether such Bid is a Qualified Bid) that, upon consultation with the Consultation Parties is (i) inadequate, insufficient, or not the highest or best Bid, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules,

or the Bidding Procedures, or (iii) contrary to, or otherwise not in the best interests of, the Debtors' estates, affected stakeholders, or other parties in interest.

**Approval of the Bidding Procedures Relating to the Assignment and Assumption of
Executory Contracts and Unexpired Leases**

13. The Bidding Procedures regarding the assumption and assignment of the Debtors' Executory Contracts or Unexpired Leases and the Cure and Possible Assumption and Assignment Notice⁷ are hereby **APPROVED**.

14. Any Non-Resident Contract Counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice, must file an objection (a "**Cure Objection**") no later than December 19, 2022 at 4:00 p.m. (prevailing Central Time), which Cure Objection must be served on the following by e-mail:

- a. Counsel for the Plan Sponsors: Daniel S. Bleck, Eric R. Blythe, & Kaitlin R. Walsh, Mintz Levin, One Financial Center, Boston MA 02111; DSbleck@mintz.com, ERBlythe@mintz.com, KRWalsh@mintz.com;
- b. Debtors: Trinitee G. Green, Polsinelli PC, 2950 N. Harwood, Suite 2100, Dallas, TX 75201; tggreen@polsinelli.com; Jeremy R. Johnson & Brenna A. Dolphin, Polsinelli PC, 600 3rd Avenue, 42nd Floor, New York, New York 10016; jeremy.johnson@polsinelli.com, bdolphin@polsinelli.com;
- c. Counsel for the Official Committee of Unsecured Creditors of the Debtors: Stephen A. McCartin, Thomas C. Scannell, Mark C. Moore, Foley & Lardner LLP, 2021 McKinney Ave., Ste 1600, Dallas, TX 75201; smccartin@foley.com, tscannell@foley.com, mmoore@foley.com; and
- d. The Office of the United States Trustee, Attn: Lisa Lambert, 1100 Commerce St., Room 976, Dallas, TX 75242; lisa.l.lambert@usdoj.gov.

⁷ See **Exhibit 4** hereto.

15. If a Non-Resident Contract Counterparty does not timely file and serve a Cure Objection, that party shall be forever barred from objecting to the proposed cure amount. Where a Non-Resident Contract Counterparty files a timely Cure Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, and the Non-Resident Contract Counterparty and the Plan Sponsor are unable to consensually resolve the dispute, the amount to be paid under section 365 of the Bankruptcy Code (if any) or, as the case may be, the Debtors' ability to assign the agreement to the Purchaser, shall be determined at the Confirmation and Sale Hearing.

16. After the conclusion of the Auction, the Plan Sponsors shall file with the Court and serve on the Notice Parties and Contract Counterparties a further notice (the "**Assumption Notice**") identifying the Purchaser, stating which Executory Contracts or Unexpired Leases may be assumed and assigned to the Purchaser, and providing such Contract Counterparties with the Purchaser's assurance of future performance. Any Contract Counterparty that objects to the adequacy of the assurance set forth in the Assumption Notice must file an objection with the Court (a "**Contract Objection**") and serve the Contract Objection on the Notice Parties prior to the Confirmation and Sale Hearing. If a Contract Counterparty does not file a Contract Objection prior to the Confirmation and Sale Hearing, such party shall be forever barred from objecting to the adequacy of the assurance to be provided by the Purchaser and the assumption and assignment to the Purchaser. Where a Contract Counterparty files a Contract Objection prior to the Confirmation and Sale Hearing, and the parties are unable to consensually resolve the dispute, the adequacy of the assurance provided by the Purchaser or raised issues regarding the potential assumption and assignment will be determined at the Confirmation and Sale Hearing.

17. For the avoidance of doubt, the Bidding Procedures regarding the assumption and assignment of the Debtors' Executory Contracts or Unexpired Leases and the Cure and Possible Assumption and Assignment Notice shall not apply to Residency Agreements.

Approval of the Sale Notice

18. The Confirmation and Sale Hearing will be a combined evidentiary hearing on the confirmation of the Plan pursuant to Bankruptcy Rule 3018(c) and the proposed Sale Transaction, or an Alternative Transaction, as the case may be. The Confirmation and Sale Hearing shall commence before the Honorable Michelle V. Larson, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Northern District of Texas, on **January 10, 2023 at 9:30 a.m.** (prevailing Central Time). The Confirmation and Sale Hearing may be adjourned or rescheduled from time to time by the Court without further notice other than an announcement made at the hearing or at any adjourned or rescheduled hearing thereon.

19. The form of the Sale Notice provides adequate notice of the time fixed for filing objections and the hearing to consider confirmation of the Plan in accordance with Bankruptcy Rules 2002(a), 2002(b), 2002(d), and 3017(d) and is hereby **APPROVED**.

Related Relief

20. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

21. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006, 7062, and 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

22. This Court retains jurisdiction to hear and consider all disputes arising from the interpretation or implantation of this Order.

Exhibits Referenced and Incorporated Hereto

- Exhibit 1 – Bidding Procedures
- Exhibit 2 – Stalking Horse APA
- Exhibit 3 – Sale Notice
- Exhibit 4 – Cure and Possible Assumption and Assignment Notice

End of Order

Prepared by:

HAYNES AND BOONE, LLP

/s/ Draft

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– and –

**MINTZ, LEVIN, COHN, FERRIS,
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Counsel to the Plan Sponsors

Exhibit 1

Bidding Procedures

**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)

BIDDING PROCEDURES

UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (together, the “Trustee”) and in its capacity as lender under the DIP Credit Agreement (the “DIP Lender,” and collectively with the Trustee, the “Plan Sponsors”) are pursuing Court approval of the *Plan of Reorganization of the Trustee and the DIP Lender Dated November 2, 2022* [Docket No. 752] (the “Plan”).² Pursuant to the Plan, substantially all of the assets of the Debtors (the “Assets”) will be sold (the “Sale”). Bay 9 Holdings LLC, or its designee (the “Stalking Horse Bidder”) has agreed to purchase the Assets for a cash purchase price of \$48,500,000 plus assumed liabilities (the “Stalking Horse Bid”) pursuant to the terms and conditions of the Asset Purchase Agreement attached as an exhibit to the Plan (the “Stalking Horse APA”). To ensure that the maximum value is received for the Assets, the Stalking Horse APA is subject to higher or better offers. To that end, the Plan Sponsors are marketing the Assets and soliciting offers therefor in accordance with these procedures (the “Bidding Procedures”), which have been approved pursuant to an Order entered by this Court in the above-captioned bankruptcy case on November [], 2022 (the “Bidding Procedures Order”) [Docket No. []].

As provided below, the Plan Sponsors are soliciting bids (“Bids”) for the proposed acquisition of the Assets in accordance with these Bidding Procedures, which require, among other things, that potential purchasers submit an executed asset purchase agreement, along with a marked version evidencing any changes to the Stalking Horse APA. The Plan Sponsors will consider all Bids which comply with the terms of these Bidding Procedures.

Important Dates (All times are prevailing Central Time)³

December 19, 2022 at 4:00 p.m.: Deadline to file objections to the Cure and Possible Assumption and Assignment Notice

December 27, 2022 at 4:00 p.m.: Bid Deadline (as defined below).

December 28, 2022 at 10:00 a.m.: Auction date.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

³ All dates are subject to change in the Plan Sponsors’ discretion after consultation with the Debtors and Unsecured Creditors’ Committee (the “Committee” and together with the Debtors, the “Consultation Parties”).

Within Two (2) Business Days after Conclusion of Auction: Deadline for the Plan Sponsors to file a notice regarding the results of the Auction, including the selection of the Successful Bidder and the Backup Bidder (as each are defined below).

January 3, 2023 at 4:00 p.m.: Deadline to serve objections to the Sale and confirmation of the Plan Sponsors' Plan.

January 10, 2023 at 9:30 a.m.: Hearing to consider approval of the Sale and confirmation of the Plan.

Marketing Process

RBC Capital Markets, LLC ("RBC"), who will act as the investment banker for the solicitation of the purchase of the Assets, has developed a list of parties who the Plan Sponsors believe may be interested in consummating a Sale in addition to the Stalking Horse Bidder, which list includes both strategic and financial parties (each, individually, a "Contact Party", and collectively, the "Contact Parties").

RBC shall distribute to, or make available in the data room for, each Contact Party an "Information Package" that is comprised of:

- a cover letter;
- a copy of these Bidding Procedures; and
- a copy of a confidentiality agreement (the "Confidentiality Agreement"), a form of which is attached hereto as **Exhibit 1**.

To participate in the bidding process and to receive access to any confidential materials relating to the Assets (the "Diligence Materials"), each Contact Party must submit to the Plan Sponsors and the Debtors, through RBC, an executed Confidentiality Agreement, signed and transmitted by the person or entity wishing to have access to the Diligence Materials. Each Contact Party who qualifies for access to the Diligence Materials shall be a "Preliminary Potential Purchaser." All Diligence Material requests must be directed to RBC.

Bid Protections

Subject to the terms of the Bidding Procedures Order, as a component of the Stalking Horse APA, the Stalking Horse Bidder shall be entitled to a break-up fee of \$1,455,000 (*i.e.*, 3% of the cash purchase price) (the "Break Up Fee") and an expense reimbursement not to exceed \$200,000 (the "Expense Reimbursement"), payable from the proceeds of a closing of a Sale with an alternative purchaser in accordance with these Bidding Procedures, and a minimum bid increment for other bidders to submit competing bids, and other buyer protections set forth herein (collectively, the "Stalking Horse Bid Protections"). The Stalking Horse Bidder shall be entitled to credit bid the amount of its Break Up Fee plus its Expense Reimbursement at any Auction.

Qualifying Bid Process

To be eligible to participate in the auction, each initial Bid, and each party (other than the Stalking Horse Bidder) submitting such a Bid (each, a “Bidder”), must be determined by the Plan Sponsors, in consultation with the Consultation Parties, to satisfy each of the following conditions and, if so met, such Bid shall constitute a “Qualified Bid,” and such Bidder shall constitute a “Qualified Bidder”. For the avoidance of doubt, without the need for any further action, the Stalking Horse Bid is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder.

1. Minimum Bid: Each initial Bid must be greater than or equal to (i) the value offered under the Stalking Horse APA, including a minimum cash purchase price of \$48,500,000, plus (ii) the amount of the Break Up Fee, plus (iii) the amount of the Expense Reimbursement, plus (iv) \$100,000 (the “Minimum Qualified Bid”).

2. Good Faith Deposit: Each initial Bid must be accompanied by a deposit in an amount of five percent (5%) of the Bidder’s proposed cash purchase price (the “Good Faith Deposit”) to an interest bearing escrow account (the “Escrow Deposit Account”) to be held by UMB Bank, N.A. as escrow agent (the “Escrow Agent”) in accordance with the Escrow Deposit Agreement attached hereto as **Exhibit 2**.

3. Terms of Bid: To be a Qualified Bid, each Bid must include:

- Transaction Documents. All executed transaction documents pursuant to which the Bidder proposes to effectuate the Sale, including (a) an executed asset purchase agreement (the “Bidder APA”), in word and pdf format; (b) a version of such Bidder APA marked against the Stalking Horse APA; and (c) related agreements and disclosures (collectively the “Transaction Documents”). Each Bid may provide for either a for-profit or not-for-profit entity as the owner and/or operator of the Debtors’ facility.
- Going Concern Information. The Bidder APA shall also (a) identify all Non-Resident Contract Counterparty (defined below) agreements that the Bidder wishes to have assumed and assigned to it pursuant to the Sale; (b) provide detail regarding the treatment of any agreement with any of the Debtors’ current or former residents (each, a “Residency Agreement”); (c) provide detail regarding the operation and management of the Assets after the Sale; and (d) provide information pertinent to the ability to obtain regulatory approvals to purchase and operate the Assets.
- Corporate Authority. Each Bid must disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid, and the complete terms of any such participation, and provide written evidence, reasonably acceptable to the Plan Sponsors, demonstrating appropriate corporate authorization to consummate the Sale.

- Proof of Financial Ability to Perform. Each Bid must include written evidence sufficient for the Plan Sponsors to reasonably conclude, after consultation with the Consultation Parties, that the Bidder has or will have the necessary financial ability to consummate the Sale and provide adequate assurance of future performance under all executory contracts to be assumed and assigned in accordance therewith. Such information should include, *inter alia*, the following:
 - contact names and numbers for verification of financing sources, if applicable;
 - evidence of the Bidder’s internal resources and proof of any outside funding sources that are needed to close the Sale; and
 - the Bidder’s current financial statements and any such other form, financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Plan Sponsors demonstrating that such Bidder has or will have the ability to close the Sale.
 - Each Bid must acknowledge that the Bidder waives and is not entitled to any of the Stalking Horse Bid Protections or other similar bidder protections, including as a substantial contribution under section 503 of the Bankruptcy Code.

4. Contingencies. Each Bid must include a statement that there are no conditions precedent to the Bidder’s ability to close the Sale other than Court and regulatory approvals, including that there are no due diligence or financing contingencies to the Bid, and that all necessary internal and shareholder approvals have been obtained prior to the Bid. Each Bid may be subject to the satisfaction of the conditions precedent to the Sale, as set forth in the Bidder APA.

5. Irrevocable: Each Bid must be irrevocable through the entry of the Confirmation Order; provided, however, that a Bid accepted as the Successful Bid or the Backup Bid (as each are defined below) shall remain irrevocable as set forth below, subject to the terms and conditions of the Bidding Procedures.

6. Bid Deadline: The Plan Sponsors must receive each Bid, in writing, on or before December 27, 2022, or such later date as may be agreed to by the Plan Sponsors (the “Bid Deadline”). Each Bid must be sent by the Bid Deadline to (i) counsel for the Plan Sponsors by e-mail: Daniel Bleck, dsbleck@mintz.com, Eric Blythe, erblythe@mintz.com, and Kaitlin Walsh, krwalsh@mintz.com and (ii) RBC, David Fields, david.fields@rbccm.com. Counsel to the Plan Sponsors will provide the Consultation Parties with any Bid within one (1) day of receipt thereof.

Auction

If any Bid (other than the Stalking Horse Bid) received by the Bid Deadline is determined to be a Qualified Bid, the Plan Sponsors will conduct an auction (the “Auction”) to determine the highest or best Qualified Bid. This determination shall take into account any factors the Plan Sponsors, upon consultation with the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid to the Debtors’ estates. Before the Auction, the Stalking Horse Bidder and the other Qualified Bidders will be notified if any Qualified Bids have been received and will receive copies of such Qualified Bids. If no other Qualified Bid is received, the Plan Sponsors will not hold an Auction, and the Stalking Horse Bidder will be named the Successful Bidder. The Auction, if necessary, shall take place on December 28, 2022 at Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas. Unless otherwise agreed to by the Plan Sponsors, only the Plan Sponsors, the Debtors, Qualified Bidders, advisors to the Committee, representatives of holders of the Bonds, and each of their respective legal or financial professionals are eligible to attend or participate at the Auction. The Auction shall be recorded, transcribed or videotaped, and shall be conducted according to the following procedures, which may be modified by the Plan Sponsors in consultation with the Consultation Parties:

The Plan Sponsors Shall Conduct the Auction.

The Plan Sponsors and their professionals shall direct and preside over the Auction in consultation with the Consultation Parties in a manner that is consistent with these Bidding Procedures. Before the Auction, the Plan Sponsors shall describe the terms of the highest or best Qualified Bid(s) (the “Auction Baseline Bid”).

Bidding at the Auction shall begin with Auction Baseline Bid. All Bids made thereafter shall be Overbids (as defined below), and shall be made in a manner determined by the Plan Sponsors, in consultation with the Consultation Parties, and all material terms of each Overbid received shall be disclosed to all Bidders who have submitted Qualified Bids prior to any subsequent round of bidding. The Plan Sponsors shall maintain a transcript of all Bids made and announced at the Auction, including the Auction Baseline Bid and all Overbids.

Terms of Overbids.

An “Overbid” is any Bid made at the Auction subsequent to the Plan Sponsors’ announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

(1) ***Minimum Overbid Increment.***

In advance of the Auction and after a review of the Qualified Bids received, the Plan Sponsors, in consultation with the Consultation Parties, shall determine the increments of any Overbid after the Auction Baseline Bid (the “Minimum Overbid Increment”); provided, that the Plan Sponsors shall retain the right to modify the Minimum Overbid Increment at the Auction in consultation with the Consultation Parties.

(2) ***Remaining Terms are the Same as for Qualified Bids.***

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above; provided, however, that the Bid Deadline shall not apply. Upon the conclusion of the Auction, the Successful Bidder and Backup Bidder's last Bid accepted by the Plan Sponsors, in consultation with the Consultation Parties, shall remain open and binding on each such Bidder for thirty (30) days after entry of the Confirmation Order as further provided herein.

To the extent not previously provided, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure, credit-quality support information or other enhancement reasonably acceptable to the Plan Sponsors in consultation with the Consultation Parties) demonstrating such Bidder's ability to close the Sale.

(3) ***Announcing Overbids.***

Prior to each round of the Auction, the Plan Sponsors will announce the Minimum Overbid Increment for such round to all Bidders; *provided, however*, that the Plan Sponsors reserve the right to require bids submitted in the final round of the Auction to be sealed at the time of submission. Each Overbid will be made by the Qualified Bidder in the main auction room where the Auction proceedings are being transcribed such that all Qualified Bidders can hear and seek clarification from the Plan Sponsors on the terms of such Overbid.

(4) ***Consideration of Overbids.***

The Plan Sponsors reserve the right, in their reasonable business judgment in consultation with the Consultation Parties, to make one or more adjournments in the Auction to, among other things: (a) facilitate discussions among the Plan Sponsors, the Consultation Parties, and any Qualified Bidder to consider how they wish to proceed, (b) give Qualified Bidders the opportunity to provide the Plan Sponsors with such additional information as the Plan Sponsors in their reasonable business judgment, in consultation with the Consultation Parties, may require to evaluate that the Qualified Bidder's financial ability to consummate the Sale at the prevailing Overbid amount, or (c) address other reasonable concerns.

"As Is, Where Is" Sale.

Except as explicitly set forth in the Stalking Horse APA, any Sale of the Assets will be transferred on an "as is, where is" basis, with all faults, and without representations or warranties of any kind, nature or description.

Consent to Jurisdiction as Condition to Bidding.

All Qualified Bidders are deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to any Bids, the Bidding Procedures, the Transaction Documents or the Auction.

Closing the Auction.

The Auction may be adjourned from time to time by the Plan Sponsors after consultation with the Consultation Parties. Other than reasonable adjournments, the Auction shall continue until there is only one Qualified Bid that the Plan Sponsors determine, after consultation with its financial and legal advisors and the Consultation Parties, is the highest or best Qualified Bid at the Auction (the “Successful Bid” and the Qualified Bidder submitting such Successful Bid, the “Successful Bidder”). The Auction shall not close unless and until all Qualified Bidders who have submitted Qualified Bids and remain active in the Auction have been given a reasonable opportunity, as determined by the Plan Sponsors, in consultation with the Consultation Parties, to submit an Overbid at the Auction to the then-existing Overbid. Prior to the conclusion of the Auction, the Successful Bidder and Backup Bidder shall have submitted fully executed Transaction Documents memorializing the terms of the Successful Bid and Backup Bid and the Successful Bidder shall have increased the amount of its Good Faith Deposit to 5% of the cash purchase price of the Successful Bid. Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid(s) at the conclusion of the Auction, as determined by the Plan Sponsors, in consultation with the Consultation Parties, shall be required to serve as a backup bidder (the “Backup Bidder”). The Backup Bidder shall be required to keep its final Qualified Bid or last Overbid at Auction (the “Backup Bid”) open and irrevocable until the earlier of one (1) business day after the closing of the Sale with the Successful Bidder, and thirty (30) days from the entry of the Confirmation Order (the “Outside Backup Date”) unless such Backup Bidder is determined to become the Successful Bidder; *provided, however*, that if the Backup Bidder is the Stalking Horse Bidder, the Outside Backup Date shall be the earlier of (i) thirty (30) days from the entry of the Confirmation Order and (ii) March 1, 2023. Following entry of the Confirmation Order, if the Successful Bidder fails to consummate the Sale, the Plan Sponsors may designate the Backup Bidder to be the new Successful Bidder, and the Plan Sponsors will be authorized, but not required, to consummate the Sale with the Backup Bidder without further order of the Bankruptcy Court. The closing date to consummate the Sale with the Backup Bidder shall be as soon as reasonably possible after the date that the Plan Sponsors provide notice to the Backup Bidder that the Successful Bidder failed to consummate the Sale and that the Plan Sponsors desire to consummate the transaction with the Backup Bidder subject to the terms of the Bidder APA executed by the Backup Bidder (the “Backup Bidder APA”).

Procedures for Determining Cure Amounts and Adequate Assurance for Contract Counterparties to Assigned Contracts

Within five (5) days after entry of the Bidding Procedures Order, the Plan Sponsors will file with the Bankruptcy Court and serve a notice to the Debtors’ contract counterparties other than residents that are party to a Residency Agreement (each, a “Non-Resident Contract Counterparty”), setting forth the Plan Sponsors’ calculation of each Non-Resident Contract Counterparty’s cure amount, if any, that would be owing to such Non-Resident Contract Counterparty if the Debtors were to assume or assume and assign such executory contract or unexpired lease, and alerting such Non-Resident Contract Counterparty that its agreement may be assumed and assigned to the Successful

Bidder (the “Cure and Possible Assumption and Assignment Notice”).⁴ Any Non-Resident Contract Counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice, must file an objection (a “Cure Objection”) no later than December 19, 2022, which Cure Objection must be served on the following by e-mail: (a) counsel for the Plan Sponsors, Daniel Bleck, dsbleck@mintz.com, Eric Blythe, erblythe@mintz.com, and Kaitlin Walsh, krwalsh@mintz.com; (b) RBC, David Fields, david.fields@rbccm.com; (c) counsel for the Debtors, Trinitee G. Green, tggreen@polsinelli.com and Jeremy Johnson, Jeremy.johnson@polsinelli.com, and (d) counsel for the Committee: Stephen A. McCartin, smccartin@foley.com, Thomas C. Scannell, tscannell@foley.com, and Mark Moore, mmoore@foley.com (collectively, the “Notice Parties”).

If a Non-Resident Contract Counterparty does not timely file and serve a Cure Objection, that party will be forever barred from objecting to the proposed cure amount. Where a Non-Resident Contract Counterparty files a timely Cure Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, and the Non-Resident Contract Counterparty and the Plan Sponsor are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors’ ability to assign the agreement to the Successful Bidder, will be determined at the Combined Hearing (as defined below)

After the conclusion of the Auction, the Plan Sponsors shall file with the Bankruptcy Court and serve on the Notice Parties and Contract Counterparties a further notice (the “Assumption Notice”) identifying the Successful Bidder, stating which Contracts may be assumed and assigned to the Successful Bidder, and providing such Contract Counterparties with the Successful Bidder’s assurance of future performance. Any Contract Counterparty that objects to the adequacy of the assurance or assumption and/or assignment of its Contract set forth in the Assumption Notice must file an objection with the Bankruptcy Court (a “Contract Objection”) and serve the Contract Objection on the Notice Parties prior to the Combined Hearing. If a Contract Counterparty does not file a Contract Objection prior to the Combined Hearing, such party will be forever barred from objecting to the adequacy of the assurance to be provided by the Successful Bidder and assumption and assignment to the Successful Bidder. Where a Contract Counterparty files a Contract Objection prior to the Combined Hearing, and the parties are unable to consensually resolve the dispute, the adequacy of the assurance provided by the Successful Bidder or raised issues regarding the potential assumption and assignment will be determined at the Combined Hearing.

For the avoidance of doubt, this section does not address Residency Agreements although the Residency Agreements are executory contracts. As provided above, in order to constitute a Qualified Bid, each Bid must provide detail regarding the treatment of Residency Agreements with the Debtors’ current or former Residents. To the extent a Bid includes the assumption of the Residency Agreements, the Bidder will be required to satisfy the related cure costs and provide adequate assurance of future performance. The Assumption Notice shall include a description of the Successful Bidder’s proposed treatment of Residency Agreements.

⁴ For the avoidance of doubt, “Non-Resident Contract Counterparty” shall not include any resident, former resident, or other party asserting claims arising under the Residency Agreements.

Confirmation and Sale Hearing

The Successful Bid will be subject to approval by the Plan Sponsors and the Bankruptcy Court. The evidentiary hearing to consider approval of the Successful Bid will be combined with an evidentiary hearing to consider confirmation of the Plan. The combined hearing (the “Combined Hearing”) will be held before the Honorable Michelle V. Larson, United States Bankruptcy Court for the Northern District of Texas – Dallas Division, Earle Cabell Federal Building, 110 Commerce Street, Room 1254, Dallas Texas on January 10, 2023 at 9:30 a.m. (CT).

At the Combined Hearing, the Plan Sponsors will seek the entry of an order of the Bankruptcy Court (i) approving and authorizing the Sale to the Successful Bidder, and, if applicable, the Backup Bidder and (ii) confirming the Plan. The Successful Bidder shall appear at the Combined Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder’s ability to close in a timely manner.

Objections to the Sale of the Assets to the Successful Bidder or Backup Bidder must be filed and served so that they are actually received by the Notice Parties and counsel for the Office of the United States Trustee for the Northern District of Texas, Lisa Lambert, lisa.l.lambert@usdoj.gov, no later than January 3, 2023. The Combined Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court or by the Plan Sponsors with the approval of the Successful Bidder in consultation with the Consultation Parties but without further notice to creditors and parties in interest other than by announcement by the Plan Sponsors of the adjourned date at the Combined Hearing.

No later than ten (10) calendar days after entry of the Confirmation Order, the Successful Bidder, the Plan Sponsors and the Debtors shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing terms and conditions on which the Successful Bid was made and the Sale contemplated by the Successful Bid shall close contemporaneously with the effectiveness of the Plan.

Return of Good Faith Deposits

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Escrow Agent, but shall not become property of the Debtors’ estates absent further order of the Bankruptcy Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than two (2) business days after announcement of the Successful Bidder and any Backup Bidder. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder on the date that is the earlier of one (1) business day after the closing of the Sale with the Successful Bidder, and the Outside Backup Date; *provided, however*, that in the event the Successful Bidder does not consummate the Sale as described above and the Plan Sponsors provide notice to the Backup Bidder that it has been chosen as the replacement Successful Bidder and then the Backup Bidder’s Good Faith Deposit shall be held until the closing of the Sale with the Backup Bidder as set forth in the Backup Bidder APA. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder

or the Backup Bidder timely closes the Sale, its Good Faith Deposit shall be credited towards its purchase price.

Reservation of Rights

THE PLAN SPONSORS RESERVE THEIR RIGHTS TO MODIFY THESE BIDDING PROCEDURES IN ANY MANNER, IN CONSULTATION WITH CONSULTATION PARTIES, THAT WILL BEST PROMOTE THE GOALS OF THE BIDDING PROCESS AND TO IMPOSE, AT OR PRIOR TO THE AUCTION, ADDITIONAL OR DIFFERENT CUSTOMARY TERMS AND CONDITIONS ON THE SALE OF THE ASSETS, INCLUDING, WITHOUT LIMITATION, EXTENDING THE DEADLINES SET FORTH IN THESE BIDDING PROCEDURES, ADJOURNING THE AUCTION AT OR PRIOR TO THE AUCTION AND/OR ADJOURNING THE COMBINED HEARING PRIOR TO SUCH HEARING OR IN OPEN COURT WITHOUT FURTHER NOTICE, AND REJECTING ANY OR ALL QUALIFIED BIDS IF, IN THE PLAN SPONSORS' REASONABLE, GOOD-FAITH BUSINESS JUDGMENT DETERMINED THAT SUCH QUALIFIED BID IS (I) INADEQUATE OR INSUFFICIENT, (II) NOT IN CONFORMITY WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE OR ANY RELATED RULES OR THE TERMS SET FORTH HEREIN, OR (III) CONTRARY TO THE BEST INTERESTS OF THE DEBTORS; PROVIDED THAT NOTHING HEREIN SHALL PERMIT THE MODIFICATION OF THE REQUIREMENT THAT ANY QUALIFIED BID MUST PROVIDE FOR THE PAYMENT OF THE STALKING HORSE BID PROTECTIONS. THE PLAN SPONSORS RESERVE THE RIGHT, AT ANY TIME, FOR ANY REASON AND IN THEIR REASONABLE, GOOD-FAITH BUSINESS JUDGMENT, IN CONSULTATION WITH THE CONSULTATION PARTIES, TO DECLINE TO PURSUE THE SALE AND TO WITHDRAW ANY MOTION FILED IN THE COURT SEEKING TO APPROVE THE SALE.

Dated: November 2, 2022

HAYNES AND BOONE, LLP

/s/ J. Frasher Murphy

J. Frasher Murphy
State Bar No. 24013214
Thomas J. Zavala
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– and –

**MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY, AND POPEO, PC**

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Counsel to the Plan Sponsors

Exhibit 2

Stalking Horse APA

ASSET PURCHASE AGREEMENT

DATED AS OF NOVEMBER [•], 2022

BY AND BETWEEN

**NORTHWEST SENIOR HOUSING CORPORATION,
A TEXAS NOT-FOR-PROFIT CORPORATION, as Seller**

AND

BAY 9 HOLDINGS LLC or its designee, as Purchaser

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of November [•], 2022 (the “**Execution Date**”), by and between Northwest Senior Housing Corporation, a Texas not-for-profit corporation (“**Seller**” or the “**Debtor**”), and Bay 9 Holdings LLC, a Delaware limited liability company, or its designee (“**Purchaser**”). The Seller and the Purchaser are sometimes individually referred to as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, Seller has filed a voluntary petition for relief under the Bankruptcy Code as Case Number 22-30659 (the “**Chapter 11 Case**”) with the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”);

WHEREAS, Seller is a not-for-profit corporation that owns and operates a best-in-class continuing care retirement community (the “**Edgemere Community**”) on land owned by Intercity Investments Properties, Inc. (the “**Landlord**”) located at 8523 Thackery St, Dallas, Texas 75225 and leased to Seller pursuant to that certain Ground Lease dated November 5, 1999 (the “**Ground Lease**”). The Edgemere Community offers residents a continuum of care in a campus-style setting, providing living accommodations and related health care and support services to persons aged 62 or older.

WHEREAS, UMB Bank, N.A., in its capacity as successor Bond Trustee under the 2015 Bond Indenture and the 2017 Bond Indenture, and successor Master Trustee under the Original Master Indenture (the “**Trustee**”) and in its capacity as DIP Lender (as defined below) (UMB Bank, N.A. in each such capacity, collectively, the “**Plan Sponsors**”), have filed a proposed a Plan of Reorganization under Chapter 11 of the Bankruptcy Code (including all related supplements and documents, the “**Plan**”) that contemplates the sale of the Edgemere Community and related assets to Purchaser, or another purchaser that submits a higher and better offer for the assets in accordance with the Sale Transaction Procedures (as defined below);

WHEREAS, Purchaser desires to acquire the Edgemere Community, including Edgemere’s leasehold interest in the Premises (as defined below) created by the Ground Lease, and the assets owned by Seller and used or useful to Seller’s operation of the Edgemere Community (the “**Business**”, and, together with Seller’s interests in the Ground Lease, the “**Assets**”) on the terms and conditions contained in this Agreement, subject to higher and better bids, as well as confirmation of the Plan;

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Defined Terms. As used herein, the following terms have the meanings set forth below:

“2015 Bond Indenture” means that certain Indenture of Trust, dated May 1, 2015, by and between the Issuer and the Bank of New York Mellon Trust Company, National Association, as initial bond trustee, pursuant to which the Series 2015 Bonds were issued.

“2017 Bond Indenture” means that certain Indenture of Trust, dated March 1, 2017, between the Issuer and Bank of New York Mellon Trust Company, National Association, as initial bond trustee, pursuant to which the Series 2017 Bonds were issued.

“Accounts Receivable” means all accounts, accounts receivable, contractual rights to payment, notes, notes receivable, negotiable instruments, chattel paper, and vendor and supplier rebates of Seller in connection with, or relating to, the Business other than intercompany obligations by and among Seller, Lifespace and any Affiliates thereof.

“Accrued PTO” means accrued but unused paid time off (including any sick time) for each employee as of the Closing Date.

“Action” means any action, claim, proceeding, litigation, arbitration, mediation, suit, investigation or regulatory inquiry (whether civil, criminal, administrative or judicial), or any appeal therefrom or any material demand letter threatening the initiation of any of the foregoing, including, but not limited to, the Landlord Litigation and any all causes of action arising from Chapter 5 of the Bankruptcy Code.

“Affiliate” shall mean, as to the entity in question, any person or entity that directly or indirectly controls, is controlled by or is under common control with, the entity in question and the term **“control”** means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity whether through ownership of voting securities, by contract or otherwise. For the avoidance of doubt, Lifespace shall not be deemed an affiliate of the Seller at the time of Closing.

“Agreement” has the meaning set forth in the recitals.

“Alternative Transaction” has the meaning set forth in Section 7.1(f).

“Approvals” means all consents and approvals from any Governmental Authority, including without limitation any Governmental Authority with regulatory oversight of healthcare organizations, which are necessary for the transfer of the Purchased Assets or the operation of the Business.

“Assets” has the meaning set forth in the recitals.

“Assumed Contracts” means all of the rights and interests of Seller in and to the executory contracts and unexpired leases that Purchaser designates for assumption and assignment, as listed on Schedule 5.5(b) (as may be supplemented or modified prior to Closing), but explicitly excluding all of the Residency Agreements and the Residency Escrow Agreement.

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“**Assignment and Assumption Agreement**” has the meaning set forth in Section 2.8(a)(ii) and substantially in the form set forth in **Exhibit B** hereto.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy”, as now in effect.

“**Bankruptcy Court**” has the meaning set forth in the recitals.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure as now in effect.

“**Bidding Procedures Motion**” means that certain motion filed by the Plan Sponsors on November 2, 2022 seeking Bankruptcy Court approval of the bidding procedures attached thereto and this Agreement, and granting related relief.

“**Bidding Procedures Order**” means that certain order of the Bankruptcy Court dated [•], 2022 granting the relief sought in the Bidding Procedures Motion.

“**Bills of Sale**” has the meaning set forth in Section 2.8(a)(i) and substantially in the form set forth in **Exhibit A** hereto.

“**Bond Trustee**” means UMB Bank, N.A., in its capacity as successor Bond Trustee under (i) that certain Indenture of Trust, dated as of May 1, 2015 and (ii) that certain Indenture of Trust, dated March 1, 2017, each issued by the Tarrant County Cultural Education Facilities Finance Corporation for the benefit of the Seller.

“**Books and Records**” means the books and records of Seller relating to the Purchased Assets, to the greatest extent assignable; provided, however, that “Books and Records” shall not include the originals of Seller’s minute books, stock books and Tax returns.

“**Break-Up Fee**” has the meaning set forth in Section 7.1(f).

“**Business**” has the meaning set forth in the recitals.

“**Business Day**” means any day other than any Saturday, Sunday or legal holiday in Dallas, Texas.

“**Chapter 11 Case**” has the meaning set forth in the recitals.

“**Closing**” has the meaning set forth in Section 2.7.

“**Closing Date**” has the meaning set forth in Section 2.7.

“**Closing Escrow**” has the meaning set forth in Section 2.5(h).

“**Closing Escrow Agent**” has the meaning set forth in Section 2.5(h).

“**Closing Escrow Amount**” has the meaning set forth in Section 2.5(h).

“**Closing Escrow Objection**” has the meaning set forth in Section 2.5(h).

“**Closing Escrow Release Date**” has the meaning set forth in Section 2.5(h).

“**Closing Escrow Release Notice**” has the meaning set forth in Section 2.5(h).

“**Closing Statement**” has the meaning set forth in Section 2.8.

“**Confirmation Order**” means the order of the Bankruptcy Court in form and substance acceptable to the Plan Sponsors and Purchaser, confirming the Plan and approving the Sale pursuant to section 1129 of the Bankruptcy Code.

“**Contract Party**” has the meaning set forth in Section 5.5.

“**Cure Amounts**” means the amount necessary pursuant to 11 U.S.C. § 365 to cure defaults under Assumed Contracts.

“**Debtor**” has the meaning set forth in the recitals.

“**Deposit**” has the meaning set forth in Section 2.5(b) and shall include any interest earned thereon.

“**DIP Credit Agreement**” means that certain Priming Superpriority Debtor-in-Possession Credit Agreement between the Debtors and the DIP Lender as approved by the Bankruptcy Court.

“**DIP Lender**” means UMB Bank, N.A., in its capacity as lender under the DIP Credit Agreement.

“**Edgemere Community**” has the meaning set forth in the recitals.

“**Effective Time**” has the meaning set forth in Section 2.7.

“**Encumbrance**” means any charge, claim (as defined at Bankruptcy Code section 101(5)), community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership.

“**Equipment**” means the furniture, tangible property and equipment owned by Seller and used or useful to the Business, including the property identified on Schedule 1(w).

“**Escrow Agent**” means UMB Bank, N.A.

“**Escrow Deposit Agreement**” means that certain agreement between Purchaser, Seller and Escrow Agent substantially in the form set forth in **Exhibit G** hereto.

“**Excluded Assets**” has the meaning set forth in Section 2.2.

“**Excluded Contracts**” has the meaning set forth in Section 5.5(b).

“**Execution Date**” has the meaning set forth in the recitals.

“**Existing Improvements**” shall have the meaning set forth in the Ground Lease.

“**Expense Reimbursement**” has the meaning set forth in Section 7.1(f).

“**Final Order**” means an order or judgment of the Bankruptcy Court entered by the Clerk of the Bankruptcy Court on the docket in the Chapter 11 Case that has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending and stayed, or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought and a stay of the order or judgment has been granted, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, to petition for certiorari, or to move for a new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rules 9023 or 9024, may be filed relating to such order shall not cause such order to not be a Final Order.

“**Governmental Authority**” means the Bankruptcy Court, any tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision.

“**Ground Lease**” has the meaning set forth in the recitals.

“**Ground Lease Assignment and Assumption Agreement**” has the meaning set forth in Section 2.8(a)(iii) and substantially in the form set forth in **Exhibit C** hereto.

“**Intangible Personal Property**” means all intangible property rights related to the Businesses or the Premises, including any warranties and guaranties, zoning approvals, building permits, and systems used or useful to the Business. .

“**Intellectual Property**” means all intellectual property and industrial property rights and assets, and any other similar or equivalent type of proprietary right or intellectual property right anywhere in the world, and all rights to sue, obtain damages or other remedies, including for past, present, and future infringement or misappropriation, and other administrative rights arising from or relating to any of the foregoing, and any interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, fictitious names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all

registrations, applications and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or governmental authority, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; (e) patents (including all reissues, divisional, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other governmental-authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); (f) software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation; (g) semiconductor chips and mask works; (h) royalties, fees, income, payments and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and (i) all rights to any Actions of any nature available to or being pursued by Seller to the extent related to the foregoing, whether accruing before, on, or after the Execution Date, including all rights to and claims for damages, restitution and injunctive relief for infringement, dilution, misappropriation, violation, misuse, breach or default, with the right but no obligation to sue for such legal and equitable relief, and to collect, or otherwise recover, any such damages.

"Intellectual Property Assets" means all Intellectual Property that is owned or licensed by Seller, to the greatest extent assignable, and used or useful to the Business. Intellectual Property Assets shall exclude computer software used by Seller in operation of the Assets which Seller has no right to sell, including computer software which can be purchased through retail outlets, and Matrix software used by Seller for minimum data set tabulation.

"Intellectual Property Assignment and Assumption Agreement" has the meaning set forth in Section 2.8(a)(iv) and substantially in the form set forth in **Exhibit D** hereto.

"Intellectual Property Registrations" means all Intellectual Property Assets that are subject to any issuance, registration, application, or other filing by, to or with any governmental authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

"Inventory" means all Seller's inventory used or useful to the Business.

"Issuer" means Tarrant County Cultural Education Facilities Finance Corporation.

"IT Assets" means IT Inventories, technical documentation, software contracts and computer equipment, in each case related to the Business.

"IT Inventories" means (i) computer software code (in all media) and materials, including all software programs; (ii) computer software documentation, including user materials;

and (iii) all other unused or reusable materials, stores, and supplies related to computer software, in each case to the extent used in, relating to, or arising out of the Business

“**Land**” shall have the meaning set forth in the Ground Lease.

“**Landlord**” has the meaning set forth in the recitals.

“**Landlord Litigation**” means that certain adversary proceeding commenced in the Bankruptcy Court on April 14, 2022 (Adv. No. 22-03040-mvl) and captioned *Northwest Senior Housing Corporation v. Intercity Investment Properties, Inc., et al.*

“**Liabilities**” means liabilities, obligations, or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute, or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“**Lien**” shall have the meaning set forth in section 101(37) of the Bankruptcy Code, including any security interest, pledge, mortgage, lien, charge, adverse claim of ownership or use, restriction on transfer (such as a right of first refusal or other similar right), defect of title, encroachments, or other encumbrance of any kind or character.

“**Lifespace**” shall mean Lifespace Communities, Inc.

“**MAC**” shall mean either (i) if there has been a reduction of seventeen and a half percent (17.5%) or more, for any reason, when comparing the occupancy for independent living, memory care, and assisted living Residents, collectively, in the Edgemere Community during the month in which the Execution Date occurs to the monthly occupancy for such Residents over any one month period from the Execution Date to the Closing Date or (ii) the loss, revocation, or termination of any Permits necessary or material to operate the Business in the manner operated on the Execution Date, or the cessation of any material part of the Business.

“**Medicare**” means Title XVIII of the Social Security Act.

“**Modified Residency Agreement**” has the meaning set forth in Section 5.5(d).

“**Necessary Consent**” has the meaning set forth in Section 5.5(c).

“**Original Master Indenture**” means that certain Amended and Restated Master Trust Indenture, Deed of Trust and Security Agreement, dated November 15, 1999 and effective as of April 1, 2006, by and between the Obligated Group and JP Morgan Chase Bank, National Association, as initial master trustee and UMB Bank, N.A., as successor Master Trustee, as supplemented by that certain Supplemental Indenture Number 6, dated March 1, 2017, which shall be further amended on and after the Effective Date.

“**Outside Closing Date**” has the meaning set forth in Section 2.7.

“**Permits**” means to the greatest extent transferrable, all licenses, permits (including occupancy permits), certificates, registrations, approvals, franchises, consents and other

authorizations of Seller obtained from or filed with a Governmental Authority and used or useful to the Business, including Seller's Medicare provider agreements.

"Permitted Liens" means (i) statutory Liens for Taxes, assessments or other governmental charges not yet due and payable, (ii) workers', repairers', landlords' and similar Liens which arose or were incurred in the ordinary course of business and which secure obligations which are not yet due and payable and which do not exceed \$10,000 in the aggregate, (iii) Liens which are expressly assumed or consented to by Purchaser herein (including, without limitation, liens included in the Assumed Liabilities), (iv) Liens which are created by Purchaser, (v) easements, restrictions, covenants, and all other matters of record and legal highways with respect to the Premises, and (vi) matters which would be shown on an accurate survey of the Premises.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, sole proprietorship, trust, union, association, Governmental Authority or other business organization.

"Plan" has the meaning set forth in the recitals.

"Plan Sponsors" has the meaning set forth in the recitals.

"Premises" has the meaning set forth in the Ground Lease, consisting of, without limitation, approximately 16.2 acres of land located in Dallas, Texas.

"Proration Time" means 12:01 on the Closing Date.

"Purchase Price" has the meaning set forth in Section 2.5(a).

"Purchased Assets" has the meaning set forth in Section 2.1.

"Purchaser" has the meaning set forth in the recitals.

"Purchaser Closing Certificate" has the meaning set forth in Section 6.3(e) and substantially in the form set forth in **Exhibit F** hereto.

"Rejected Contracts" has the meaning set forth in Section 5.5(b).

"Related Agreements" means the Bill of Sale, the Assignment Assumption Agreement, Ground Lease Assumption Agreement, the Intellectual Property Assignment and Assumption Agreement, and other agreements, documents, and instruments related to the transactions contemplated herein.

"Residency Agreements" means those certain agreements entered into by and between any Resident and the Seller, including all independent living residency agreements, assisted living residency agreements, life care agreements, skilled nursing residency agreements, memory care agreements, and any additional documents related thereto, including any amendments, supplements, or addendums.

“**Residency Escrow Agreement**” means that certain Escrow Agreement dated as of September 27, 2021, by and among Edgemere, the Trustee, and Regions Bank as escrow agent.

“**Resident**” means a present or former occupant of the Edgemere Community who is a party to a Residency Agreement.

“**Sale**” shall have the meaning ascribed to it in the Sale Transaction Procedures.

“**Sale Transaction Procedures**” shall mean the procedures, in form and substance acceptable to Purchaser, and set forth in those certain bidding procedures as filed and served pursuant to the Bidding Procedures Motion, which set forth the procedures in connection with the sale of substantially all of the Seller’s assets pursuant to Sections 105(a), 363, 363, 365, 1123, 1125(a)(5)(D) and 1129 of the Bankruptcy Code.

“**Seller**” has the meaning set forth in the recitals.

“**Seller Closing Certificate**” has the meaning set forth in Section 6.2(e) and substantially in the form set forth in **Exhibit E** hereto.

“**Tangible Personal Property**” means all tangible personal property owned by Seller and used or useful to the Business.

“**Taxes**” means any and all taxes, fees, levies, duties, tariffs, import charges and other charges imposed by any taxing authority, together with any related interest, penalties or other additions thereto, or additional amounts imposed by any taxing authority, and without limiting the generality of the foregoing, shall include net income alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, value added, franchise, profits, license, transfer, recording, escheat, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profit, environmental, custom, duty, or other tax, governmental fee or other like assessment or charge of any kind whatsoever.

“**Threshold**” has the meaning set forth in Section 2.10.

“**Transferred Employee**” shall have the meaning set forth in Section 5.4(b).

ARTICLE 2

PURCHASE AND SALE OF ASSETS

2.1 Sale of Assets to Purchaser. Upon the terms and subject to the conditions contained in this Agreement, at the Closing, the Seller shall sell, assign, transfer, deliver and convey to Purchaser, and Purchaser shall purchase, acquire and accept from Seller pursuant to Sections 363, 365, 1123, 1125(a)(5)(D) and 1129 of the Bankruptcy Code, all of Seller’s right, title and interest in and to all assets, properties, rights, titles and interests of every kind and nature of Seller whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired, which relate to, or are used or useful to the Business other than Excluded Assets, free and clear of all Encumbrances and Liens, except Permitted Liens, including, without limitation (collectively, the “**Purchased Assets**”):

- (a) the Ground Lease;
- (b) all of Seller's interest in the Land and Existing Improvements pursuant to the Ground Lease;
- (c) the Accounts Receivable;
- (d) the Books and Records;
- (e) the Equipment;
- (f) the Inventory;
- (g) to the greatest extent transferable under applicable law, the Permits, including Seller's Medicare provider agreement;
- (h) the Intellectual Property Assets;
- (i) the Tangible Personal Property, only to the extent assignable;
- (j) the Intangible Personal Property;
- (k) the IT Assets;
- (l) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums, and fees which pertain to the Purchased Assets and are not Excluded Assets;
- (m) Seller's attorney-client and work-product privileges which pertain to the Purchased Assets; and
- (n) the Assumed Contracts.

2.2 Excluded Assets. Notwithstanding Section 2.1, the Parties acknowledge that Seller shall not sell, assign, transfer or convey to Purchaser, and Purchaser shall not purchase, acquire or accept from Seller, the assets consisting of the following (all such assets, the "**Excluded Assets**"):

- (a) the Purchase Price and all rights under this Agreement and the Related Agreements;
- (b) all cash and cash equivalents;
- (c) the contracts that are not Assumed Contracts (including the Residency Agreements and the Residency Escrow Agreement, which, for the avoidance of doubt, are Rejected Contracts);

(d) all set-off rights to claims filed or asserted in the Chapter 11 Case (except to the extent arising in connection with (i) an Assumed Contract which is subject to cure, (ii) Assumed Liabilities, or (iii) Accounts Receivable);

(e) all Actions;

(f) all intercompany-related obligations between and among Lifespace, the Seller and their respective Affiliates;

(g) hold-backs and escrows for any prorations or Taxes (except real estate Taxes for tax year 2023 relating to the Premises and paid by Seller prior to the Closing) being paid by Seller in connection with the Closing or afterward, if applicable;

(h) all insurance policies of Seller, any prepaid insurance premiums and any rights or claims or proceeds arising from such policies;

(i) all Tax refunds and rebates which are related to Seller's operation of the Business prior to the Closing;

(j) all (i) corporate seals, corporate organizational records, minute books, charter documents, record books, and stock transfer books pertaining to Seller, (ii) original Tax, accounting and financial records which pertain exclusively to the Excluded Assets, and (iii) such other files, books and records which pertain exclusively to the Excluded Assets or to the formation, existence or capitalization of Seller or of any other Person;

(k) all Inventory and Assets disposed of or exhausted prior to Closing in the ordinary course of business;

(l) any records which Seller is legally required to retain in its possession and any records related to Excluded Assets or Excluded Liabilities (as hereinafter defined);

(m) all equipment and tangible property located at the Premises but not owned by Seller, and all other assets, properties and rights not related to or used in the Business;

(n) personnel records for Employees who are not Transferred Employees and, to the extent the transfer of such records (whether directly or by means of the sale of the Purchased Assets) to Purchaser or its affiliates is prohibited by applicable Law, for Transferred Employees;

(o) all board designated, self-insurance trusts, workers compensation trusts, working capital trust assets, and assets and investments restricted as to use), donor restricted assets, beneficial interests in charitable trusts and accrued earnings on all of the foregoing;

(p) Employee Retention Tax Credit on qualified wages for the period from March 27, 2020 to December 31, 2021 provided by the Coronavirus Aid, Relief, and Economic Security Act (CARES ACT), the Consolidated Appropriations Act, 2021 (CAA), and the American Rescue Plan Act (ARPA); and

(q) any reserve or bond funds in possession of the Trustee, including, without limitation, any restricted and trustee-held or other escrowed funds (such as the debt service reserves, operating reserves and rent reserves).

2.3 Assumed Liabilities. Upon the terms and subject to the conditions contained in this Agreement, at the Closing, Purchaser shall assume or otherwise be responsible for, which amounts shall be in addition to the Purchase Price, for (collectively, the “**Assumed Liabilities**”):

(a) all liabilities and obligations under the Purchased Assets accruing or arising after the Closing (except real estate Taxes for tax year 2023 relating to the Premises and paid by Seller prior to the Closing) and all Cure Amounts associated with the Assumed Contracts (other than the Ground Lease for which the Cure Amounts, if any, shall be paid by Seller at Closing);

(b) all liabilities and obligations arising under or related to the Assumed Contracts, from and after Closing; and

(c) all liabilities required to be paid by Purchaser pursuant to this Agreement (such as, without limitation, stamp and recording Tax, solely to the extent not exempt under 11 U.S.C. § 1146).

2.4 Excluded Liabilities. Except for the Assumed Liabilities, Purchaser shall not assume or be liable to pay, perform or discharge any liability, obligation, debt, claim against or contract of the Seller or any of its Affiliates which, in any case, pertain to the ownership, operation or conduct of the Business or the ownership of the Purchased Assets prior to the Closing Date, at any time existing or asserted, whether or not accrued, fixed, contingent or otherwise, whether known or unknown, and whether or not recorded on the books and records of Seller or any of its Affiliates. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any liabilities with respect to the transactions contemplated hereunder arising under the federal Worker Adjustment and Retraining Notification Act and any similar foreign, state, or local plant closing or collective dismissal Laws (collectively, the “WARN Act”);

(b) any Liability for Taxes of Seller (or any member or affiliate of Seller) or relating to the Business, the Purchased Assets, or the Assumed Liabilities for any accruing or arising prior to the Closing (except real estate Taxes for tax year 2023 relating to the Premises and paid by Seller prior to the Closing);

(c) any Liabilities relating to or arising out of the Excluded Assets, whether arising prior to, or from and after the Closing,

(d) any Liabilities related to or arising out of any Rejected Contracts, Accrued PTO, or any pension, deferred compensation or retirement plan, whether arising prior to, or from and after the Closing;

(e) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the ownership or operation of the Business or the Purchased Assets to the extent such Action relates to such operation on or prior to the Closing Date; and

(f) any liabilities related to cost report settlements, fines, penalties, overpayments or recoupments.

2.5 Closing Proceedings.

(a) The Purchase Price under this Agreement is Forty Eight Million and Five Hundred Thousand Dollars (\$48,500,000.00) (“**Purchase Price**”), as adjusted in accordance with this Section 2.5.

(b) Upon the entry of the Bidding Procedures Order by the Bankruptcy Court, Two Million and Four Hundred Thousand Dollars (\$2,425,000) (the “**Deposit**”) shall be paid to Escrow Agent, which will be held by Escrow Agent in accordance with the terms and conditions of this Agreement, the Escrow Deposit Agreement substantially in the form set forth in **Exhibit G** hereto, the Bidding Procedures Order and further orders of the Bankruptcy Court which have been reviewed and approved by the Purchaser. The Deposit will be credited against the Purchase Price at Closing, subject to Section 2.5(c), or, in the event an Alternative Transaction is consummated, returned to Purchaser in accordance with the terms of this Agreement.

(c) Notwithstanding anything to the contrary contained herein, if the Closing does not occur, the Deposit, including any interest earned thereon, shall be paid to the party entitled thereto pursuant to the terms of this Agreement.

(d) At the Closing, Purchaser shall assume the Assumed Liabilities (which shall be in addition to, and not a credit against, the Purchase Price), *provided, however*, with regard to Assumed Contracts other than the Ground Lease, the Purchaser shall pay to each Contract Party any Cure Amounts, in cash, by wire transfer of immediately available funds, necessary to assume and assign any Assumed Contract, at such time as may be designated by the Court in the Confirmation Order; *provided, further, however*, the Seller shall pay any Cure Amounts due in connection with the Ground Lease to permit the assumption and assignment of the Ground Lease to Purchaser free and clear of any Encumbrances and Liens effective as of the Closing Date.

(e) At the Closing, Purchaser shall pay all escrow fees, recording costs or fees, transfer Taxes (if applicable), and conveyance fees (if applicable). The provisions of this Section 2.5(e) shall survive the Closing.

(f) At the Closing, payment of the Purchase Price, minus the Deposit (and any interest earned thereon) and plus or minus prorations or adjustments as set forth herein, shall be paid by the Purchaser by wire transfer to Escrow Agent.

(g) At the Closing, the Parties will execute and deliver the Related Agreements.

(h) At the Closing, \$1,500,000 of the Purchase Price (the “**Closing Escrow Amount**”) shall be deposited into an escrow account (the “**Closing Escrow**”) with an independent escrow agent acceptable to the Plan Sponsors (the “**Closing Escrow Agent**”) upon terms and conditions consistent with this section. On or prior to the Closing Escrow Release Date (defined below), any portion of the Closing Escrow Amount shall only be released to Purchaser from the Closing Escrow upon fourteen (14) days’ notice by Purchaser to Closing Escrow Agent and Plan Sponsors for release of the amount (only up to the available Closing Escrow Amount) credited by

Medicare/CMS payor pursuant to a notice of recoupment or setoff against the Purchaser's post-Closing Medicare Accounts Receivable on account of pre-Closing Medicare/CMS payor overpayments on Seller's Accounts Receivable (each, a "**Closing Escrow Release Notice**"). The Plan Sponsors may assert any objection to a Closing Escrow Release Notice on or before seven (7) days from receipt of a Closing Escrow Release Notice (each, a "**Closing Escrow Objection**"). The Plan Sponsors and Purchaser shall meet and confer in good faith to discuss the Closing Escrow Objection. To the extent the Plan Sponsors fail to reach an agreement with Purchaser and continue(s) all or part of the Closing Escrow Objections, the Plan Sponsors shall (a) provide instruction to the escrow agent to release any undisputed amounts from the Closing Escrow (up to the available Closing Escrow Amount), and (b) seek further order of the Bankruptcy Court to resolve the Closing Escrow Objection. Upon the later of (i) the one (1) year anniversary of the Closing Date, or (ii) resolution of any payment audit relating to Seller's pre-Closing Medicare payments or Accounts Receivable that is pending at or initiated prior to the one (1) year anniversary of the Closing (the "**Closing Escrow Release Date**"), any remaining and undisputed Closing Escrow Amount shall be paid to Plan Sponsors as proceeds from the Sale, with any disputed remaining amounts being disbursed upon final resolution of any then pending Closing Escrow Objections.

2.6 Prorations. The following items shall be prorated as of the Proration Time and paid or credited at Closing, as shall be set forth on the Closing Statement. In the event any amounts at Closing cannot be accurately determined, such amounts shall be estimated and adjusted as promptly as practicable thereafter but in no event later than sixty (60) days after the Closing Date. Seller shall be responsible for such items prior to the Proration Time and Purchaser shall be responsible for such items after the Proration Time.

(a) All state, county, city, school, ad valorem, and other local real and personal property taxes and assessments and business personal property taxes relating to or assessed against the Purchased Assets shall be prorated as of the Proration Time.

(b) To the extent all utilities and other periodic charges cannot be changed to Purchaser's designee's account by the Closing Date, the same shall be prorated as of the Proration Time.

(c) Seller shall credit to Purchaser at Closing a pro-rata portion of the payments received by Seller for residents and patients, as well as other services to be provided after the Proration Time. Seller shall be credited at Closing with all prepayments made by Seller for services relating to Purchased Assets to be provided after the Proration Time (except real estate Taxes for tax year 2023 relating to the Premises and paid by Seller prior to the Closing).

(d) Provider taxes, privilege taxes or so-called bed taxes or similar taxes or fees (howsoever designated) shall be prorated as of the Proration Time.

2.7 Time and Place of Closing. Subject to the terms of this Agreement, the closing of the transactions contemplated hereby (the "**Closing**") shall be held by electronic exchange of executed documents (or, if the parties elect to hold a physical Closing, at the offices of the Plan Sponsors' legal counsel at Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219), prior to the close of business on a date which is not later than ten (10) days after all

of the conditions to Closing set forth in Article VI are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date) (the “**Closing Date**”), but in no event later than forty-five (45) days after the entry of the Confirmation Order so long as an operation transition agreement is in place that enables Purchaser to operate the Business in the manner Seller was operating the Business as of the Execution Date (the “**Outside Closing Date**”) (unless otherwise mutually agreed by the Parties). The transactions contemplated hereby shall take place pursuant to, and in accordance with, the terms and conditions hereof. The Closing shall be effective as of 11:59 p.m. on the Closing Date or such other date and time as the parties may agree in writing (the “**Effective Time**”).

2.8 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Purchaser or its designees the following:

(i) bills of sale in the form of **Exhibit A** (the “**Bills of Sale**”) duly executed by Seller, transferring the Existing Improvements, the Intellectual Property Assets, the Intangible Personal Property the Tangible Personal Property, and the IT Assets to Purchaser or its designees;

(ii) assignment and assumption agreements in the form of **Exhibit B** (the “**Assignment and Assumption Agreement**”) duly executed by Seller, effecting the assignment to and assumption by Purchaser’s designees of the Assumed Contracts (other than the Ground Lease);

(iii) assignment and assumption agreement in the form of **Exhibit C** (“**Ground Lease Assignment and Assumption Agreement**”) duly executed by Seller, effecting the assignment to and assumption by Purchaser’s designees of the Ground Lease;

(iv) assignment and assumption agreements in the form of **Exhibit D** (the “**Intellectual Property Assignment and Assumption Agreement**”) duly executed by Seller, effecting the assignment to and assumption by Purchaser’s designees of the Intellectual Property Assets;

(v) a closing certificate duly executed by Seller in the form of **Exhibit E** (the “**Seller Closing Certificate**”);

(vi) a closing statement setting forth all prorations and adjustments (the “**Closing Statement**”);

(vii) a certified copy of the Confirmation Order;

(viii) physical possession of the Purchased Assets, including, without limitation, all access codes and keys to the Edgemere Community and Premises and all other things reasonably necessary in order for Purchaser to commence Business;

(ix) upon approval of the Bankruptcy Court, evidence of assumption of the Ground Lease; and

(x) all other documents and instruments contemplated to be delivered by Seller pursuant to this Agreement.

(b) At the Closing, Purchaser and/or its designees shall deliver to Seller the following:

(i) the Assignment and Assumption Agreements duly executed by Purchaser or its designees;

(ii) a closing certificate duly executed by the Purchaser in the form of **Exhibit F** (the “**Purchaser Closing Certificate**”);

(iii) the Closing Statement duly executed by Purchaser; and

(iv) all other documents and instruments contemplated to be delivered by Purchaser pursuant to this Agreement.

(c) On the Closing Date, Purchaser shall cause the Escrow Agent to deliver the Deposit to Seller and shall transfer to Seller the balance of the Purchase Price, less the \$1,500,000 escrow as described in Section 2.5(h).

2.9 Purchase Price Allocation. Purchaser shall allocate the Purchase Price (together with Assumed Liabilities properly included, if any) among the Purchased Assets in a manner consistent with the fair market values determined in good faith and on a reasonable basis by Purchaser prior to the Closing Date. Such allocation shall be consistent with Section 1060 of the Internal Revenue Code and the Treasury Regulations thereunder. Purchaser and Seller covenant and agree that all filings with Governmental Authorities regarding Taxes will be consistent with such allocation.

2.10 Casualty and Condemnation. If any material part of the Purchased Assets is condemned, damaged or destroyed (whether by fire, theft, or other casualty event) prior to the Closing, Seller shall immediately notify Purchaser of such condemnation, damage or destruction. In the event Seller’s reasonable estimate of such damage or destruction is in excess of \$2,500,000.00 (“**Threshold**”), then Purchaser shall have the option to: (x) terminate this Agreement by written notice delivered to Seller within ten (10) days after Purchaser’s receipt of notice of such damage or destruction, in which case the Deposit shall be returned to Purchaser and the Parties shall have no further obligations hereunder, or (y) proceed with the transaction contemplated in this Agreement without abatement of the Purchase Price, in which case (i) all insurance proceeds relating to such damage or casualty shall be deemed to have been absolutely and irrevocably assigned to and be payable directly to Purchaser from and after the Closing (and held by the Seller in trust for the Purchaser if received prior to the Closing), less any amounts reasonably expended by Seller with the written consent of the Purchaser prior to Closing, (ii) Purchaser shall have the right to conduct all settlement proceedings with respect to such insurance claims, and (iii) Seller shall deliver to Purchaser through escrow an unconditional assignment of all such insurance proceeds. If prior to Closing a material portion, but not all of the

Premises, is taken through any power of eminent domain, whether by condemnation or conveyance in lieu of condemnation, Seller shall promptly provide Purchaser written notice of such action and Purchaser shall have the option before the date of the Closing to terminate this Agreement by written notice to Seller delivered within ten (10) days after receipt of Seller's written notice to Purchaser, and Seller shall promptly return the Deposit to Purchaser in immediately available funds. In order to constitute a "material" portion of the Premises for purposes of this Section 2.10, there must be a decrease in the value of the Premises in excess of the Threshold. If this Agreement is not terminated, Seller shall not be obligated to repair any damage or destruction unless requires by law, regulation or Government Authority. Any documents provided pursuant to this Section shall be provided by the disclosing Party to counsel for the Bond Trustee within one (1) Business Day of such disclosure.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Purchaser to enter into this Agreement, Seller makes the representations and warranties set forth below which are true, correct and complete on the date hereof and shall be true, correct and complete as of the Closing.

3.1 Organization and Qualification of Seller. Seller is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted.

3.2 Authority, Execution and Delivery. Subject to entry of the Confirmation Order and to the extent limited thereby, Necessary Consents, and the Approvals, Seller has full power, authority and capacity to execute and deliver this Agreement and the Related Agreements and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby, and this Agreement has been duly and validly executed and delivered by Seller and constitutes, and upon the execution and delivery by the Seller of the Related Agreements, the Related Agreements shall constitute, legal, valid and binding obligations of Seller enforceable against Seller in accordance with their terms.

3.3 Broker. Except for the engagement of RBC Capital Markets, LLC, whose fee shall be paid from the proceeds of the sale at Closing, neither Seller nor any of its Affiliates has incurred any liability for any fee or commission to any broker, finder, investment banker or other intermediary in connection with the transactions contemplated by this Agreement that would result in any liability, fee, expense or obligation being imposed on Purchaser.

3.4 Title to Purchased Assets. Seller has good and valid title to all the Purchased Assets. All such Purchased Assets are free and clear of Liens and Encumbrances except for the Permitted Liens.

3.5 Accuracy of Representations and Warranties. All representations and warranties of Seller contained in this Agreement are true and correct as of the Execution Date and shall be true and correct as of the Closing Date.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF PURCHASER

In order to induce Seller to enter into this Agreement, Purchaser makes the representations and warranties set forth below which are true, correct and complete on the date hereof and shall be true, correct and complete as of the Closing.

4.1 **Organization.** Purchaser has full power, authority and capacity to execute and deliver this Agreement and the Related Agreements and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

4.2 **Authority, Execution and Delivery.** This Agreement has been duly and validly executed and delivered by Purchaser and constitutes and, upon the execution and delivery by Purchaser of the Related Agreements, the Related Agreements shall constitute, legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms.

4.3 **Brokers.** Neither Purchaser nor any of its Affiliates has incurred any liability for any fee or commission to any broker, finder, investment banker or other intermediary in connection with the transactions contemplated by this Agreement that would result in any liability, fee, expense or obligation being imposed on Seller.

4.4 **Adequate Funds.** As of the Execution Date, Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price and other funds needed to consummate the transaction and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transaction contemplated herein.

4.5 **Condition of Assets; Disclaimers.** Purchaser expressly acknowledges and warrants that Purchaser is accepting the Purchased Assets, and taking assignment of the Ground Lease in an "AS IS" "WHERE IS" "WITH ALL FAULTS CONDITION". PURCHASER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE PROVIDED FOR IN THE REPRESENTATIONS AND WARRANTIES IN ARTICLE 3 OF THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PURCHASED ASSETS.

The representations and warranties in this Section 4 shall not survive Closing.

ARTICLE 5

COVENANTS

5.1 **Access to Books and Records.** Seller shall, commencing on the Execution Date, provide reasonable access to Purchaser of all of Seller's assets, books, accounting records, correspondence and files of Seller (to the extent related to the operation of the Assets) for examination by Purchaser (and its representatives), with the right to make copies of such books, records and files or extracts therefrom. Such access will be available to Purchaser during normal business hours, upon reasonable notice, in such manner as will not unreasonably interfere with the

conduct of the Business. Those books, records and files which relate to Seller's assets that are not transferred to Purchaser shall be maintained pursuant to the terms of and in accordance with the Confirmation Order. In addition, from the Execution Date until the Closing Date, Seller shall provide to Purchaser copies of the reports provided to the US Trustee and/or DIP Lender at Section 5.1(a), (c) and (d) of the DIP Credit Agreement [ECF #72] and paragraph 21(ii) of the Final Order approving entry into the DIP Credit Agreement [ECF #421].

5.2 Conduct of Business. From the Execution Date until the Closing Date, except as otherwise contemplated by this Agreement, authorized by the Bankruptcy Court or to the extent Purchaser otherwise consents in writing, and subject to the requirements of the Chapter 11 Case, Seller shall: (i) conduct the Business in the ordinary course, (ii) make no transfers of any Purchased Assets, (iii) use commercially reasonable efforts to maintain and preserve intact the organization and advantageous business relationships of the Business, and (iv) take no action which would materially adversely affect or materially delay the ability of Purchaser to obtain any Approvals for the transactions contemplated hereby or to perform its covenants under this Agreement.

5.3 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at Purchaser's reasonable request and at the Purchaser's sole cost and expense, the Seller will execute and deliver to Purchaser such other instruments of sale, transfer, conveyance and assignment, provide such materials and information and take such other actions as Purchaser may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to Purchaser, and to confirm Purchaser's title to, all of the Purchased Assets. Additionally, Purchaser shall undertake all commercially reasonable efforts to obtain Permits and regulatory approvals as are needed to consummate the transaction described in this Agreement, and shall file any necessary applications within fifteen (15) days of entry of the Confirmation Order.

5.4 Employees.

(a) Not more than ten (10) days after the Execution Date, Seller shall provide Purchaser with a list of all employees of Seller working at the Edgemere Community, including, for each listed employee, his or her name, date of hire, job title, full-time/part-time status, exempt/non-exempt status, bonus eligibility, commission eligibility, current compensation and status (*e.g.*, leave of absence, disability, layoff, active, temporary).

(b) As of the Closing Date, Purchaser may, but shall not be obligated to, offer employment to such of the hourly and salaried employees of the Seller in its sole discretion (all such employees that accept the employment offer are collectively, the "**Transferred Employees**"). For the avoidance of doubt, Purchaser shall have no liability to Seller or any Transferred Employee for any accrued and unpaid obligations owing from Seller to such employee.

(c) As of the Closing Date, all such Transferred Employees shall be deemed to be the employees of Purchaser and no longer to be the employees of Seller. Effective as of the Closing, Seller agrees to terminate the employment of all of the Transferred Employees. Seller agrees to use its commercially reasonable efforts to make employment records and other related information reasonably requested by Purchaser available to Purchaser.

(d) Nothing herein, express or implied, shall confer upon any other Persons (including any current or former employee or contractor of Seller, Purchaser or any of their respective Affiliates) any rights or remedies hereunder, including any right to employment or continued employment for any specified period or continued participation in any benefit plan or other benefit plan, or any nature or kind whatsoever under or by reason of this Agreement. Nothing herein restricts or precludes the right of Purchaser to terminate the employment of any Transferred Employee after the Closing Date.

5.5 Assumed and Assigned Contracts.

(a) Cure Process. Purchaser shall pay cash or other acceptable consideration to the third party (or parties) to the applicable Assumed Contract (each, a “**Contract Party**”) in order to cure the monetary defaults and satisfy any pecuniary obligations of Seller (or obtain waivers with respect thereto) with respect to the Business. Notwithstanding anything to the contrary herein, Seller shall pay cash or other acceptable consideration to the Landlord in order to cure the monetary defaults and satisfy any pecuniary obligations of Seller in connection with the Ground Lease, with such consideration to permit the assumption and assignment of the Ground Lease to Purchaser free and clear of any Encumbrances and Liens, effective as of the Closing Date. The Purchaser shall provide adequate assurance of future performance under the Assumed Contracts. Further, Purchaser shall assume all obligations from and after the Closing Date under Assumed Contracts.

(b) Identification of Assumed Contracts. Schedule 5.5(b)(i) identifies all executory contracts and unexpired leases Purchaser wishes to be assumed by Seller and assigned by the Seller to Purchaser at Closing (the “**Assumed Contracts**”). At any time prior to the Closing, Purchaser will have the right to provide written notice to Seller of Purchaser’s election to designate an executory contract or an unexpired lease as an Assumed Contract or as a contract that will not be assumed by Purchaser (such contracts, the “**Excluded Contracts**”). Schedule 5.5(b)(ii) identifies all executory contracts and unexpired leases Purchaser wishes to be Excluded Contracts. Upon such designation of a contract as an Assumed Contract, such contract will constitute a Purchased Asset and will be conveyed to Purchaser under this Agreement at Closing. Upon such designation of a contract as an Excluded Contract, such contract will constitute an Excluded Asset. All executory contracts and unexpired leases that are not Assumed Contracts, including, the Excluded Contracts, shall be deemed to be rejected by Seller under Section 365(a) of the Bankruptcy Code as of the Closing Date (the “**Rejected Contracts**”). For the avoidance of doubt, the Residency Agreements, the Residency Escrow Agreement and the management agreement between the Seller and Lifespace are Rejected Contracts and Excluded Contracts. The Confirmation Order shall provide for the assumption and assignment to Purchaser, effective as of the Effective Time, of any Assumed Contract, and, to the extent not included in a prior order of the Bankruptcy Court, for the rejection, effective as of the Effective Time, of the Rejected Contracts. After the Closing Date, the Seller shall be released from any further liability under such Assumed Contracts as provided for under Sections 365(k) and 1141 of the Bankruptcy Code.

(c) Non-Assignment of Assets. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not affect the assignment or transfer of any Purchased Asset if (a) notwithstanding the rights and remedies available under the Bankruptcy Code, an attempted assignment thereof,

without the approval, authorization or consent of, or granting or issuance of any license or permit by, any Government Authority thereto would constitute a breach thereof or (b) the Bankruptcy Court shall not have approved assumption and assignment of any Assumed Contract for any reason (each such action in (a) and (b), a “**Necessary Consent**”). In such event, Seller and Purchaser shall use their commercially reasonable efforts, to obtain the Necessary Consents with respect to any such Assumed Contract after the Closing; provided that the failure to obtain any Necessary Consent shall not delay the Closing or give rise to a reduction in the Purchase Price. Nothing in this Section 5.5 shall in any way diminish or enlarge (x) Purchaser’s obligations hereunder to obtain the Approvals, or (y) the Parties’ obligations hereunder to obtain the Necessary Consents.

(d) Modified Residency Agreements. Purchaser will offer all current Residents at the Edgemere Community the option to enter into a new rental agreement which shall provide similar services to each current Resident as offered by Seller prior to Closing, at the then current private pay rate as advertised by Seller, subject to ordinary market adjustments (the “**Modified Residency Agreement**”).

5.6 Cost Reports. Seller shall prepare and file any Medicare cost reports for the Edgemere Community related to the period prior to Closing. Following the Closing, Seller shall be authorized to contact the business office manager or other persons with access to the information at the Edgemere Community during normal business hours in order to obtain information needed to prepare the final Medicare cost reports with respect to claims filed with Medicare for the Facilities prior to the Closing, and Purchaser shall provide Seller with such Edgemere Community records as Seller reasonably requests to complete such final cost reports.

ARTICLE 6

CONDITIONS TO CLOSING

6.1 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No governmental authority shall have enacted, issued, promulgated, enforced, or entered any governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) The Bankruptcy Court shall have entered the Confirmation Order on terms reasonably acceptable to the Parties approving the sale to the Purchaser, and the Confirmation Order shall have become a Final Order.

(c) Purchaser or its designees shall have received all Permits and regulatory approvals that are material to operation of the Purchased Assets as such Purchased Assets are currently owned and operated by Seller.

6.2 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Purchaser's waiver, at or prior to the Closing, of each of the following conditions:

(a) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Related Agreements to be performed or complied with by it prior to or on the Closing Date; provided, with respect to agreements, covenants and conditions that are qualified by materiality, Seller shall have performed such agreements, covenants, and conditions, as so qualified, in all respects.

(b) The representations and warranties of Seller contained in this Agreement, the other Related Agreements and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the Execution Date and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(c) No injunction or restraining order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) Seller shall have delivered to Purchaser duly executed counterparts to the Related Agreements and such other documents and deliveries set forth in Section 2.8(a).

(e) Purchaser shall have received a certificate, dated the Closing Date, and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 6.2(a) and Section 6.2(b) have been satisfied (the "**Seller Closing Certificate**").

(f) No MAC has occurred that Purchaser has not waived by written notice to Seller.

6.3 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Purchaser contained in this Agreement, the other Related Agreements and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality or) on and as of the Execution Date and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Purchaser shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other

Related Agreements to be performed or complied with by it prior to or on the Closing Date; provided, with respect to agreements, covenants and conditions that are qualified by materiality, Purchaser shall have performed such agreements, covenants, and conditions, as so qualified, in all respects.

(c) No injunction or restraining Order shall have been issued by any governmental authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) Purchaser shall have delivered to Seller duly executed counterparts to the Related Agreements (other than this Agreement) and such other documents and deliveries set forth in Section 2.8(b).

(e) Seller shall have received a certificate, dated the Closing Date, and signed by a duly authorized officer of Purchaser, that each of the conditions set forth in Section 6.3(a) and Section 6.3(b) have been satisfied (the “**Purchaser Closing Certificate**”).

(f) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Purchaser certifying that attached thereto are true and complete copies of all resolutions adopted by the officers of Purchaser authorizing the execution, delivery and performance of this Agreement and the other Related Agreements and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(g) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Purchaser certifying the names and signatures of the officers of Purchaser authorized to sign this Agreement, the Related Agreements, and the other documents to be delivered hereunder and thereunder.

(h) Purchaser shall have delivered to Seller such other documents or instruments as Seller reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE 7

TERMINATION

7.1 Termination. This Agreement may be terminated, or enforced in accordance with Section 7.2(c), at any time before the Closing by written notice to the applicable Party:

(a) by mutual written agreement of Purchaser and Seller;

(b) by Purchaser upon written notice to Seller of Seller’s material breach or default of any provision of this Agreement, which breach or default is not cured (only if capable of curing) within ten (10) Business Days after written notice thereof is received, provided, however, that the Purchaser is not then in material breach or default of this Agreement;

(c) by Seller with consent of Plan Sponsors, upon written notice to Purchaser of Purchaser's material breach or default of any provision of this Agreement, which breach or default is not cured within ten (10) Business Days after written notice thereof is received, provided, however, that the Seller is not then in material breach or default of this Agreement;

(d) by either Purchaser, or Seller with consent of Plan Sponsors, if the sale is not approved by the Bankruptcy Court, or there is an Alternative Transaction;

(e) by Purchaser, or Seller with consent of Plan Sponsors, if the Closing has not occurred by the Outside Closing Date by no fault of the Party terminating; and

(f) by either Purchaser with consent of Plan Sponsors, or Seller, if, prior to Closing, the Confirmation Order, after being entered by the Bankruptcy Court, has subsequently been reversed, revoked, or voided by an order of a court of competent jurisdiction.

(g) by Purchaser if any of the conditions set forth in Section 6.1(c) or 6.2 shall have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Closing Date, unless such failure shall be due to the failure of Purchaser to perform with any of the covenants, agreements or conditions hereof to be performed or complied with prior to the Closing; or

(h) by Seller if any of the conditions set forth in Section 6.3 shall have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Closing Date, unless such failure shall be due to the failure of Seller to perform with any of the covenants, agreements or conditions hereof to be performed or complied with prior to the Closing;

(i) If Seller sells, transfers, leases or otherwise disposes of, directly or indirectly, including through an asset sale, stock sale, merger or other similar transaction, all or substantially all of the Business or the Purchased Assets in a transaction or a series of transactions with one or more Persons other than Purchaser in any circumstance, including in accordance with the Sale Transaction Procedures (such event being an "**Alternative Transaction**"), Seller shall pay to Purchaser, within two (2) Business Days after the consummation of the Alternative Transaction, an amount in cash equal to (i) three percent (3%) of the Purchase Price (the "**Break-Up Fee**") and (ii) Purchaser's actual, out of pocket costs and expenses, not to exceed \$200,000 (the "**Expense Reimbursement**");

(j) by Purchaser if Seller fails to comply with Section 5.1(a), (c) or (d) of the DIP Credit Agreement [ECF #72] or paragraph 21(ii) of the Final Order approving entry into the DIP Credit Agreement [ECF #421] or if there is an Event of Default under Section 8.1 (k), or (l) under the DIP Credit Agreement; or

(k) by Purchaser if the Bidding Procedures Order is not in form and substance acceptable to the Purchaser, which order must include approval of the Break-Up Fee and Expense Reimbursement.

7.2 Remedies.

(a) If the Closing does not occur as a result of an Alternative Transaction, the payment of the Break-Up Fee and the Expense Reimbursement as set forth in Section 7.1(f) shall be Purchaser's sole and exclusive remedy.

(b) Upon termination by Seller in accordance with Section 7.1 due to Purchaser's default or breach, provided the Seller has not defaulted under or breached this Agreement, Purchaser will be deemed to have forfeited the Deposit as liquidated damages. The Parties intend that the remedy in Section 7.2(b) constitutes compensation, and not a penalty and shall be the sole and exclusive remedy to Seller for any such default or breach by Purchaser of this Agreement. The Parties acknowledge and agree that Seller's harm caused by Purchaser's default or breach of this Agreement would be impossible or very difficult to accurately estimate as of the date of this Agreement, and that upon termination due to Purchaser's breach or default pursuant to Section 7.1, the Deposit is a reasonable estimate of the anticipated or actual harm that might arise from such a default or breach.

(c) Upon default or breach by Seller in accordance with Section 7.1, provided the Purchaser has not defaulted under or breached this Agreement, Purchaser shall elect (1) and only one (1) of the following remedies:

(i) Purchaser may terminate this Agreement by written notice given to Seller and Plan Sponsors, in which event the Deposit will be refunded to Purchaser; or

(ii) Purchaser may demand specific performance of this Agreement by Seller and, if necessary, have a right to entry of an order enforcing the terms hereunder.

(d) Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except as set forth in Section 7.2 hereof.

Article 7 shall survive any termination of this Agreement.

ARTICLE 8

MISCELLANEOUS

8.1 Expenses. Except as specifically set forth in this Agreement, the Parties shall bear their own expenses, including, without limitation, fees, disbursements and other costs of any attorneys, accountants and other advisors, in connection with this Agreement, the Related Agreements, and the transactions contemplated hereby and thereby. This Section shall not apply, if the Closing does not occur, to any existing or future litigation, if a right to attorneys' fees and expenses otherwise exists.

8.2 Notices. All notices, requests, demands and other communications made in connection with this Agreement shall be in writing and shall be (a) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, (b) transmitted by hand delivery, (c)

sent by electronic means, or (d) sent by nationally recognized overnight courier for next Business Day delivery, addressed as follows:

Seller:

John Falldine, Executive Director
Edgemere
8523 Thackery Street
Dallas, Texas 75225

With a simultaneous copy to:

Jeremy R. Johnson & Trinitee G. Green
POLSINELLI PC
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
jeremy.johnson@polsinelli.com
tggreen@polsinelli.com

Purchaser:

Bay 9 Holdings LLC
265 Magnolia Avenue
Suite 100
Larkspur, CA 94939

With a simultaneous copy to:

Adrienne K. Walker
Chelsey Rosenbloom List
Locke Lord LLP
111 Huntington Avenue
9th Floor
Boston, MA 02199-7613
awalker@lockelord.com
chelsey.list@lockelord.com

And with a simultaneous copy to counsel for the Plan Sponsors:

Daniel S. Bleck
Eric Blythe
Kaitlin R. Walsh
Mintz Levin Cohn Ferris Glovsky
and Popeo, PC
One Financial Center
Boston, Massachusetts 02111
dsbleck@mintz.com
erblythe@mintz.com

krwalsh@mintz.com

or, in each case, such other address as may be specified in writing to the other Party. All such notices, requests, demands, waivers and other communications shall be deemed to have been received (w) if by first-class, registered or certified mail, on the fifth Business Day after the mailing thereof, (x) if by hand delivery, on the day after such delivery, (y) if by electronic means and the transmitting Party receives a transmission receipt dated the day of transmission, on the same day as the transmission, and (z) if by nationally recognized overnight courier, on the next Business Day after deposit with such courier.

8.3 Amendment; Waivers, Etc. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time.

8.4 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

8.5 Assignment. Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned by either Party without the prior written consent of the other Party, except that Purchaser may assign its rights under this Agreement to an Affiliate.

8.6 Parties in Interest. This Agreement and the Related Agreements shall be binding upon and inure solely to the benefit of the Parties and their successors and permitted assigns, and nothing in this Agreement or any Related Agreement, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature under or by reason of this Agreement or any Related Agreement.

8.7 No Personal Liability. No individual officer, director, employee, manager, agent, or representative shall have personal liable for any of the obligations hereunder or claims of any kind in connection herewith.

8.8 Counterparts; Facsimile Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the Parties. Any Party may execute this Agreement by facsimile (or .pdf copy) signature and the other Parties will be entitled to rely upon such facsimile (or .pdf copy) signature as conclusive evidence that this Agreement has been duly executed by such Party.

8.9 Governing Law. Except to the extent inconsistent with the Bankruptcy Code, this Agreement and the Related Agreements shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to its conflicts of law rules.

8.10 Jurisdiction. Each of the Parties agrees that any proceeding brought to enforce the rights or obligations of any Party under this Agreement or any Related Agreement shall be commenced and maintained in the Bankruptcy Court, and the Bankruptcy Court shall have

exclusive jurisdiction over any such proceeding. Each of the Parties consents to the exercise of jurisdiction over it and its properties, in accordance with the terms of this Section, with respect to any proceeding arising out of or in connection with this Agreement, any Related Agreement or the transactions contemplated hereby or thereby, or the enforcement of any rights under this Agreement or any Related Agreement. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDINGS BROUGHT BY ANY OTHER PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE PROPERTY OR THE RELATIONSHIP OF THE PARTIES HEREUNDER. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT.

8.11 Severability. If any provision of this Agreement is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever, so long as this Agreement, taken as a whole, still expresses the material intent of the Parties. The invalidity of any one or more phrases, sentences, clauses, sections or subsections of this Agreement shall not affect the remaining portions of this Agreement.

8.12 Entire Agreement. This Agreement and the Related Agreements constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. There are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as set forth specifically herein.

8.13 Employees Not Third-Party Beneficiaries. Nothing in this Agreement or the Related Agreements is intended to confer upon any past, present or future employee of Seller or its Affiliates or his or her legal representatives or heirs any rights as a third-party beneficiary or otherwise or any other rights or remedies of any nature or kind whatsoever under or by reason of the transactions contemplated by this Agreement or by the Related Agreements, including, without limitation, any rights of employment, continued employment or any rights under or with respect to any employee benefit, welfare benefit, pension or other fringe benefit plan, fund, program or arrangement.

8.14 Bulk Sales or Transfer Laws. Purchaser hereby waives compliance by Seller with the provisions of the bulk sales or transfer laws of all applicable jurisdictions; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar laws of any jurisdiction which would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

8.15 No Inferences. Inasmuch as this Agreement is the result of negotiations between sophisticated parties of equal bargaining power represented by counsel, no inference in favor of, or against, either party shall be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such party.

8.16 Interpretation. In this Agreement, unless the context otherwise requires: (a) references to this Agreement are references to this Agreement and to the Schedules and Exhibits hereto; (b) references to Articles and Sections are references to articles and sections of this Agreement; (c) references to any party to this Agreement shall include references to its respective successors, its designees, and permitted assigns; (d) references to a judgment shall include references to any order, writ, injunction, decree, determination or award of any court or tribunal; (e) the terms “hereof,” “herein,” “hereby,” and any derivative or similar words will refer to this entire Agreement; (f) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced by the parties thereof from time to time; (g) references to any law are references to that law as of the Closing Date, unless the context requires otherwise, and shall also refer to all rules and regulations promulgated thereunder, unless the context requires otherwise; (h) the word “including” shall mean including without limitation; and (i) references to time are references to Central Standard or Daylight time (as in effect on the applicable day) unless otherwise specified herein. The representations, warranties, and schedules will be deemed supplemented and amended by any Disclosure Update in order to cause the representations and warranties of Seller to be true as of the Closing.

8.17 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY UNCONDITIONALLY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE DOCUMENTS RELATED HERETO, ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR ANY RELATED TRANSACTIONS.

8.18 Time of the Essence. Time is of the essence for purposes of this Agreement and the rights and obligations of the Parties hereunder.


[Signatures Follow on Next Page]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the date first above written.

NORTHWEST SENIOR HOUSING CORPORATION:

By: _____
Name: _____
Title: _____

BAY 9 HOLDINGS LLC:


By: _____
Name: Kierstin Hatch
Title: Managing Member of HP

SCHEDULE 1(w) – EQUIPMENT

SCHEDULE 3.7 – PERMITS

SCHEDULE 5.5(b)(i) – ASSUMED CONTRACTS

SCHEDULE 5.5(b)(ii) – EXCLUDED CONTRACTS

EXHIBIT A

FORM OF BILL OF SALE

BILL OF SALE

Northwest Senior Housing Corporation, a Texas not-for-profit corporation (“**Seller**”), for good and valuable consideration received from Bay 9 Holdings LLC, a Delaware limited liability company, or its designee (“**Purchaser**”), except as limited by that certain Asset Purchase Agreement, dated as of November [•], 2022 between Seller and Purchaser (as modified, amended, or supplemented, the “**Asset Purchase Agreement**”) and the Confirmation Order (as defined in the Asset Purchase Agreement), does hereby sell, convey, transfer, assign and deliver the Purchased Assets (as defined in the Asset Purchase Agreement) “AS-IS”, “WHERE-IS”, “WITH ALL FAULTS”, and Seller does not make any express or implied representations, statements, warranties or conditions of any kind or nature whatsoever concerning the Purchased Assets being sold, conveyed, transferred, assigned and delivered hereunder.

Seller hereby covenants that it will, from time to time upon written request therefor, execute and deliver to Purchaser, its nominees, successors and/or assigns, any new or confirmatory instruments which Purchaser, its nominees, successors and/or assigns, may reasonably request in order to assign and transfer to Purchaser its rights, title and interest in, such Purchased Assets.

IN WITNESS WHEREOF, the undersigned, being duly authorized, has executed and delivered this instrument effective as of January [•], 2023.

NORTHWEST SENIOR HOUSING CORPORATION,
a Texas not-for-profit corporation

By: _____
Name:
Title:

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Assignment**”), dated as of January [•], 2023, is between Northwest Senior Housing Corporation, a Texas not-for-profit corporation (“**Assignor**”), and Bay 9 Holdings LLC, a Delaware limited liability company, or its designee (“**Assignee**”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Asset Purchase Agreement (as defined below).

RECITALS

A. This Assignment is executed pursuant to that certain Asset Purchase Agreement dated as of November [•], 2022, by and between Assignor as Seller and Assignee as Purchaser (the “**Purchase Agreement**”).

B. Subject to the terms and conditions set forth in the Purchase Agreement, Assignor has agreed to assign to Assignee the Assumed Contracts, and Assignee has agreed to assume the Assumed Liabilities.

AGREEMENT

NOW, THEREFORE, in consideration of the above promises and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Assignor does hereby assign transfer, convey, and deliver to Assignee, as of the Effective Time, all of its right, title, and interest in all Assumed Contracts.

2. Assignee, as of the Effective Time, hereby assumes and agrees to pay and perform in due course the Assumed Liabilities. For avoidance of doubt, Assignee is not assuming any of the Excluded Liabilities set forth in Section 2.4 of the Purchase Agreement.

3. This Assignment is binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

4. This Assignment may be executed in any number of counterparts (including by facsimile, .PDF, or email), each of which will be deemed to be an original and all of which, together, will constitute one and the same instrument.

5. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING AS TO MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE.

6. THE PARTIES AGREE THAT THE BANKRUPTCY COURT SHALL HAVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (i) THE

INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT TO THIS AGREEMENT; OR (ii) THE ASSUMED CONTRACTS AND TRANSFERRED RIGHTS ASSIGNED PURSUANT TO OR ARISING OUT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT TO THIS AGREEMENT, AND THE PARTIES EXPRESSLY CONSENT TO AND AGREE NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION; PROVIDED THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTES AND OTHER MATTERS, THEN THE COURTS OF THE STATE OF TEXAS AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA SITTING IN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER SUCH DISPUTES AND OTHER MATTERS EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

7. Nothing in this Assignment, express or implied, is intended to or shall be construed to modify, expand, or limit in any way the terms and conditions of the Purchase Agreement. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede, and prevail.

8. None of the provisions of this Assignment may be amended or waived unless such amendment or waiver is in writing and is signed, in the case of an amendment, by both parties, or in the case of a waiver, by the party against whom the waiver is to be effective.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed as of the date first written above.

ASSIGNOR

**NORTHWEST SENIOR HOUSING
CORPORATION**

By: _____

ASSIGNEE

BAY 9 HOLDINGS LLC

By: _____

EXHIBIT C

FORM OF GROUND LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this “Assignment Agreement”) is made and entered into this [•] day of January, 2023 (the “Effective Date”) by and among Northwest Senior Housing Corporation, a Texas not-for-profit corporation (“Assignor”), and Bay 9 Holdings LLC, a Delaware limited liability company, or its designee (“Assignee”). Assignor and Assignee may be referred to individually herein as a “Party” and, collectively, as the “Parties” to this Assignment Agreement.

WHEREAS, Assignor is a party to the Ground Lease (as it may be amended, the “Lease Agreement”) dated as of November 1999 by and between Intercity Investment Properties, Inc., a Texas corporation (“Landlord”) and Assignor with respect to certain real property in the City and County of Dallas more specifically described in the Lease Agreement (the “Premises”); and

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of November [•], 2022 (the “Purchase Agreement”), Assignor desires to assign the Lease Agreement to Assignee effective as of the Closing Date (as defined in the Purchase Agreement) and Assignee desires to assume the Lease Agreement in accordance with, and subject to the terms hereof.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the Parties agree as follows:

1. Effective as of the Effective Date, Assignor hereby irrevocably contributes, assigns, transfers, conveys and delivers to Assignee, and Assignee hereby accepts from Assignor, the entire right, title, and interest of Assignor in, to and under the Lease Agreement.

2. Notwithstanding anything to the contrary contained in the Lease Agreement and subject to the terms and conditions of the Purchase Agreement and Confirmation Order (as defined in the Purchase Agreement), effective as of the Effective Date, Assignee hereby assumes and agrees to be bound by the terms and conditions, pay, defend, discharge, and perform all of the liabilities and obligations of the tenant arising under the Lease Agreement on and after the Effective Date as if Assignee were the tenant named therein. Assignor shall remain responsible for all of the liabilities and obligations of the tenant arising under the Lease Agreement prior to the Effective Date subject to any limitations in the Purchase Agreement and the Confirmation Order.

3. Assignor represents that the Lease Agreement represents the entire agreement with respect to the Premises between Landlord and Assignor.

4. Effective as of the Effective Date, notice is hereby given that all notices and other communications to Assignor and Assignee under the Lease Agreement should be delivered to the addresses set forth below in lieu of (or, with respect to Assignee, in addition to) the addresses for notices set forth in the Lease Agreement. Notice to Landlord shall be given to the address set forth in the Lease Agreement. Any notice, demand, request, consent, approval or communication that a Party desires or is required to give to any other Party related to this Assignment Agreement shall be in writing and either served personally or sent by prepaid, certified or registered mail, return receipt requested, and addressed to such Party at the address set forth below. A Party may change its address by notifying the other Parties of the change of address. Notice shall be deemed

communicated on the date shown on the receipt card (or if no date is shown, on the date of the postmark) if mailed as provided in this paragraph, and upon receipt if served personally.

Assignor:

John Falldine, Executive Director
Edgemere
8523 Thackery Street
Dallas, Texas 75225

With a simultaneous copy to:

Jeremy R. Johnson & Trinitee G. Green
POLSINELLI PC
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
jeremy.johnson@polsinelli.com
tggreen@polsinelli.com

Assignee:

Bay 9 Holdings LLC
265 Magnolia Avenue
Suite 100
Larkspur, CA 94939

With a simultaneous copy to:

Adrienne K. Walker
Chelsey Rosenbloom List
Locke Lord LLP
111 Huntington Avenue
9th Floor
Boston, MA 02199-7613
awalker@lockelord.com
chelsey.list@lockelord.com

Except as specifically amended or modified by this Assignment Agreement, the Lease Agreement shall remain unchanged and in full force and effect.

5. Assignee warrants and represents it has not contacted any broker regarding the Premises or this Assignment Agreement.

6. This Assignment Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective executors, administrators, successors and assigns.

7. This Assignment Agreement shall be governed by and construed in accordance with federal bankruptcy law, to the extent applicable, and where state law is implicated this Assignment

Agreement, shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

8. THE PARTIES AGREE THAT THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (THE "BANKRUPTCY COURT") SHALL HAVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO THE INTERPRETATION AND ENFORCEMENT OF THIS ASSIGNMENT AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT TO THIS ASSIGNMENT AGREEMENT AND THE PARTIES EXPRESSLY CONSENT TO AND AGREE NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION; PROVIDED THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTES AND OTHER MATTERS, THEN THE COURTS OF THE STATE OF TEXAS AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA SITTING IN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER SUCH DISPUTES AND OTHER MATTERS EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. This Assignment Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which counterparts when taken together will constitute one and the same agreement. The exchange of copies of this Assignment Agreement and of signature pages by facsimile transmission or electronic mail transmission (e.g., in .PDF format) will constitute effective execution and delivery of this Assignment Agreement as to the parties and may be used in lieu of the original Assignment Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic mail (e.g., in .PDF format) will be deemed to be their original signatures for any purpose whatsoever. Without limiting the foregoing, the words "execution," "execute," "signed," "signature," and words of like import in or related to this Assignment Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures (e.g., through DocuSign or other similar electronic e-signature application), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act.

[Signature Page Follows]

EXECUTED under seal as of the date first above written.

ASSIGNOR:

Northwest Senior Housing Corporation

By: _____

Name: []

Title: []

Hereunto Duly Authorized

ASSIGNEE:

Bay 9 Holdings, LLC

By: _____

Name: []

Title: []

Hereunto Duly Authorized

EXHIBIT D

**FORM OF INTELLECTUAL PROPERTY
ASSIGNMENT AND ASSUMPTION AGREEMENT**

INTELLECTUAL PROPERTY ASSIGNMENT

This INTELLECTUAL PROPERTY ASSIGNMENT (this “**Agreement**”), is executed and delivered as of January [•], 2023, by and among Northwest Senior Housing Corporation, a Texas not-for-profit corporation (“**Assignor**”) and Bay 9 Holdings LLC, a Delaware limited liability company, or its designee (“**Assignee**”) pursuant to the Asset Purchase Agreement (as hereinafter defined). Assignor and Assignee are each referred to individually as a “**Party**,” and collectively as the “**Parties**.”

WHEREAS, on the terms and subject to the conditions of the Asset Purchase Agreement, dated as of November [•], 2022, by and between Assignor (the “**Seller**”), and Assignee (the “**Purchaser**”) (as modified, amended, or supplemented, the “**Asset Purchase Agreement**”), Seller agreed to, on the Closing Date and at the Closing, sell, convey, transfer, assign, and deliver to Purchaser the Purchased Assets free and clear of all Claims and Encumbrances (other than Permitted Liens).

WHEREAS, Assignor is the owner of the Intellectual Property Assets as defined in the Asset Purchase Agreement, including as set forth on **Schedule 1** hereto; and

NOW, THEREFORE, for the consideration set forth in the Asset Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Defined Terms.** All initially capitalized terms used but not defined herein have the meaning given them in the Asset Purchase Agreement.

2. **Assignment.** On the terms and subject to the conditions set forth in the Asset Purchase Agreement and the Confirmation Order, Assignor hereby sells, conveys, transfers, assigns, and delivers to Assignee, and Assignee’s successors and assigns,

i) all right, title and interest in and to the Intellectual Property Assets, including all rights therein provided by international conventions and treaties, and the right to sue for past, present and future infringement thereof (“**Transferred Rights**”);

ii) any and all rights to sue at law or in equity for any infringement, imitation, impairment, distortion, dilution or other unauthorized use or conduct in derogation of the Transferred Rights occurring prior to the Closing, including the right to receive all proceeds and damages therefrom;

iii) any and all rights to royalties, profits, compensation, license fees or other payments or remuneration of any kind relating to the Transferred Rights arising from and after the date of this Agreement;

iv) any and all rights to obtain renewals, reissues, and extensions of registrations or other legal protections pertaining to the Transferred Rights; and

v) all goodwill and other intangible assets associated with the Intellectual Property Assets.

Assignee, its successors and assigns, shall hold the rights to the foregoing for and during the existence of such Transferred Rights, and all renewals, reissues and extensions thereof, as fully and as entirely as the same would have been held and enjoyed by Assignor had this Agreement not been made.

3. Asset Purchase Agreement. This Agreement is in accordance with and is subject to the terms of the Asset Purchase Agreement and Confirmation Order. Nothing contained herein shall be deemed to supersede, enlarge on, limit or modify any of the obligations, agreements, covenants or warranties of Seller contained in the Asset Purchase Agreement and Confirmation Order. If any conflict or other difference exists between the terms of this Agreement and the Asset Purchase Agreement or Confirmation Order, then the terms of the Asset Purchase Agreement and Confirmation Order shall govern and control. Except as set forth in the Asset Purchase Agreement and Confirmation Order, the Transferred Rights are being sold, conveyed, transferred, assigned and delivered hereunder “AS-IS”, “WHERE-IS”, “WITH ALL FAULTS”, and Seller does not make any express or implied representations, statements, warranties or conditions of any kind or nature whatsoever concerning the Transferred Rights being sold, conveyed, transferred, assigned and delivered hereunder.

4. Further Assurances. At the request and cost (if any) of Assignee, Assignor shall timely execute and deliver any additional documents and perform such additional acts reasonably necessary or desirable to record and perfect the interest of Assignee in and to the Intellectual Property Assets (including, without limitation, the Transferred Rights), and shall not enter into any agreement in conflict with this Agreement.

5. Binding on Successors; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and the respective successors in interest and permitted assigns of such parties. This Agreement is not intended to confer any rights or remedies upon any Person or entity other than the Parties hereto.

6. Counterparts. This Agreement may be executed in two (2) or more counterparts (including by DocuSign, or other electronic delivery by electronic mail), each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party hereto and delivered to the other parties, it being understood that each party need not sign the same counterpart. No Party shall assert that the use of an electronic transmission to deliver a signature or the fact that any signature was transmitted or communicated through the use of an electronic transmission, constitutes a defense to the formation or delivery of a contract or a document, and each party hereto forever waives any such defenses.

7. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

8. Amendments, Etc. Any amendment, modification or waiver of any term or provision of this Agreement must be in writing and signed by Assignor and Assignee. Any waiver will be effective only in the specific instance and for the specific purpose for which it is given.

9. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING AS TO MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE.

10. Bankruptcy Court Jurisdiction. THE PARTIES AGREE THAT THE BANKRUPTCY COURT SHALL HAVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (i) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT TO THIS AGREEMENT; OR (ii) THE INTELLECTUAL PROPERTY ASSETS, AND TRANSFERRED RIGHTS ASSIGNED PURSUANT TO OR ARISING OUT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT TO THIS AGREEMENT, AND THE PARTIES EXPRESSLY CONSENT TO AND AGREE NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION; PROVIDED THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTES AND OTHER MATTERS, THEN THE COURTS OF THE STATE OF TEXAS AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA SITTING IN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER SUCH DISPUTES AND OTHER MATTERS EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Signature Page Follows]

IN WITNESS WHEREOF, the party hereto has executed this Agreement as of the day and year first above written.

ASSIGNEE:

ASSIGNOR:

BAY 9 HOLDINGS LLC

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name:

Its:

By: _____

Name:

Its:

Schedule 1 - Intellectual Property Assets

EXHIBIT E

FORM OF SELLER CLOSING CERTIFICATE

SELLER CLOSING CERTIFICATE

Pursuant to Section 6.2(e) of the Asset Purchase Agreement (the “**Agreement**”), dated as of November [•], 2022 between Northwest Senior Housing Corporation, a Texas not-for-profit corporation (“**Seller**”) and Bay 9 Holdings LLC, a Delaware limited liability company, or its designee (“**Purchaser**”), the undersigned, being a duly authorized executive officer of Seller, does hereby certify that (i) all the covenants and obligations of the Agreement to be complied with and performed by Seller at or before the Closing Date (as defined in the Agreement) have been complied with and performed in all material respects, and (ii) the representations and warranties made by Seller in the Agreement (other than those that speak as of a specified date or time) are true and correct in all respects, as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent such failure to be true and correct has not had, and would not reasonably be expected to have, a material effect.

Northwest Senior Housing Corporation,
a Texas not-for-profit corporation

By: _____
Name:
Title:

EXHIBIT F

FORM OF PURCHASER CLOSING CERTIFICATE

PURCHASER CLOSING CERTIFICATE

Pursuant to Section 6.3(e) of the Asset Purchase Agreement (the “**Agreement**”), dated as of November [•], 2022 between Northwest Senior Housing Corporation, a Texas not-for-profit company (“**Seller**”) and Bay 9 Holdings LLC, a Delaware limited liability company or its designee (“**Purchaser**”), the undersigned, being a duly authorized executive officer of Purchaser, does hereby certify that (i) all of the covenants and obligations of the Agreement to be complied with and performed by Purchaser at or before the Closing Date (as defined in the Agreement) have been complied with and performed in all material respects, and (ii) the representations and warranties made by Purchaser in the Agreement (other than those that speak as of a specified date or time) are true and correct in all respects, as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent such failure to be true and correct has not had, and would not reasonably be expected to have, a material effect.

Bay 9 Holdings LLC
a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT G

FORM OF ESCROW DEPOSIT AGREEMENT

ESCROW AGREEMENT

THIS Escrow Agreement (this “**Agreement**”) made and entered into as of this [•] day of November, 2022 by and among Northwest Senior Housing Corporation, a Texas not-for-profit corporation (“**Seller**”), Bay 9 Holdings LLC, a Delaware limited liability company or its designee (“**Purchaser**”), and UMB Bank, N.A., as Escrow Agent, a national banking association organized and existing under the laws of the United States of America (the “**Escrow Agent**”).

RECITALS

A. Seller has filed a voluntary petition for relief under the Bankruptcy Code as Case Number 22-30659 with the United States Bankruptcy Court for the Northern District of Texas;

B. Seller is a not-for-profit corporation that owns and operates a best-in-class continuing care retirement community located at 8523 Thackery St, Dallas, Texas 75225 (the “**Edgemere Community**”) on land owned by Intercity Investment Properties, Inc. pursuant to that certain Ground Lease dated November 5, 1999 (the “**Ground Lease**”). The Edgemere Community offers residents a continuum of care in a campus-style setting, providing living accommodations and related health care and support services to persons aged 62 or older.

C. UMB Bank, N.A., as the Bond Trustee under the 2015 Bond Indenture and the 2017 Bond Indenture, and successor Master Trustee under the Original Master Indenture (the “**Trustee**”) and in its capacity as DIP Lender, have filed a proposed a Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the “**Plan**”) that contemplates the sale of the Edgemere Community and related assets to Purchaser, or another purchaser that submits a higher and better offer for the assets in accordance with the Sale Transaction Procedures;

D. Purchaser desires to acquire the Edgemere Community, including Edgemere’s leasehold interest in the Premises created by the Ground Lease, and the assets owned by Seller and used or useful to Seller’s operation of the Edgemere Community (the “**Business**”, and, together with Seller’s interests in the Ground Lease, the “**Assets**”) on the terms and conditions contained in this Agreement, subject to higher and better bids, as well as confirmation of the Plan;

E. Seller and Purchaser have entered into that certain Asset Purchase Agreement dated November [•], 2022 (the “**APA**”)¹.

F. Seller and Purchaser desire that UMB Bank, N.A. act as Escrow Agent to hold the Deposit for the Sale described in the APA, and Escrow Agent is willing to act in such capacity. Seller and Purchaser acknowledge that UMB Bank, N.A. also serves as Bond Trustee and DIP Lender. Seller and Purchaser assert that no conflict exists, nor does Seller or Purchaser assert any objection thereto.

¹ Terms not defined herein shall have the meanings ascribed to them in the APA.

AGREEMENT

NOW, THEREFORE, Seller, Purchaser, and Escrow Agent agree to the terms of this Agreement as follows:

1. Commencement of Duties. Purchaser, subject to entry of the Bidding Procedures Order, simultaneously with the execution and delivery of this Agreement, shall transfer to the Escrow Agent the aggregate sum of Two Million and Four Hundred Thousand Dollars (\$2,425,000) (the “**Escrowed Funds**”). Upon receipt of the Escrowed Funds and after the parties’ submission of all documentation required by the Escrow Agent to comply with the Bank Secrecy Act, the duties and obligations of each of the parties to this Agreement will commence.

2. Operation of the Escrow. With respect to any requested disbursement, Seller and Purchaser (i) certify they have reviewed any wire instructions set forth in such written disbursement direction to confirm such wire instructions are accurate, (ii) agree to indemnify and hold harmless the Escrow Agent from and against any and all claim, demand, loss, liability, or expense sustained, including but not limited to attorney fees, and expenses resulting directly or indirectly as a result of making the disbursement requested up to the amount of the Escrowed Funds, and (iii) agree they will not seek recourse from the Escrow Agent as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction.

3. Escrowed Funds. Upon receipt of the Escrowed Funds, the Escrow Agent shall hold the Escrowed Funds in escrow pursuant to the terms of this Agreement. Until such time as the Escrowed Funds shall be distributed by the Escrow Agent as provided herein, unless the Escrow Agent is otherwise directed in writing in a joint written investment direction signed by the Seller and the Purchaser, the Escrowed Funds shall be invested and reinvested by the Escrow Agent in the an interest-bearing money market deposit account. The parties hereto acknowledge that the Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice.

(a) The Escrow Agent shall be entitled to sell or redeem any such investment as necessary to make any distributions required under this Agreement and shall not be liable or responsible for any loss resulting from any such sale or redemption.

(b) Income, if any, resulting from the investment of the Escrowed Funds shall be retained by the Escrow Agent and shall be considered, for all purposes of this Agreement, to be part of the Escrowed Funds.

4. Disbursement of the Escrowed Funds. The Parties shall act in accordance with, and the Escrow Agent shall hold and release the Escrowed Funds as provided in this Section:

(a) Upon receipt of a joint written instruction executed by each of Seller and Purchaser with respect to the Escrowed Funds, the Escrow Agent shall promptly, but in any event within two (2) business days after receipt of such joint written instruction, disburse all or part of the Escrowed Funds in accordance with such joint written instruction;

(b) Upon receipt by the Escrow Agent of a copy of a final, non-appealable order of any court of competent jurisdiction which may be issued, together with (i) a certificate executed by an authorized representative of the prevailing party, to the

effect that such order is final and non-appealable and from a court of competent jurisdiction having proper authority and (ii) the written payment instructions executed by an authorized representative of the prevailing party to effectuate such order (a “Final Determination”) (a copy of which shall be delivered simultaneously to the Escrow Agent and the no-presenting party), the Escrow Agent shall, on the fifth (5th) business day following receipt of such Final Determination, disburse as directed, part of all, as the case may be, of the Escrowed Funds in accordance with such Final Determination; or

(c) the Escrow Agent shall release the Escrowed Funds in a manner consistent with the terms of the Bidding Procedures Order.

5. Duties of the Escrow Agent. The Escrow Agent shall have no duties or responsibilities other than those expressly set forth in this Agreement, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent has no fiduciary or discretionary duties of any kind. The Escrow Agent is not a party to, or bound by, the Purchase Agreement or any other agreement among the other parties hereto, and the Escrow Agent’s duties shall be determined solely by reference to this Agreement. The Escrow Agent shall have no duty to enforce any obligation of any person, other than as provided herein. The Escrow Agent shall be under no liability to anyone by reason of any failure on the part of any party hereto or any maker, endorser or other signatory of any document or any other person to perform such person’s obligations under any such document.

6. Liability of the Escrow Agent; Indemnification. The Escrow Agent acts hereunder as a depository only. The Escrow Agent is not responsible or liable in any manner for the sufficiency, correctness, genuineness or validity of this Escrow Agreement or with respect to the form of execution of the same. The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person(s). The Escrow Agent shall not be held liable for any error in judgment made in good faith by an officer or employee of the Escrow Agent unless it shall be proved that the Escrow Agent was grossly negligent in ascertaining the pertinent facts or acted intentionally in bad faith. The Escrow Agent shall not be bound by any notice of demand, or any waiver, modification, termination or rescission of this Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto. In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. The Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, pandemics, governmental regulations, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. The Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the

Escrowed Funds, any account in which Escrowed Funds are deposited, this Agreement or any other agreement, or to appear in, prosecute or defend any such legal action or proceeding.

The Escrow Agent may consult legal counsel in the event of any dispute or question as to the construction of any provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion or instructions of such counsel.

The Escrow Agent shall not be responsible, may conclusively rely upon and shall be protected, indemnified and held harmless by Seller and Purchaser, acting jointly and severally, for the sufficiency or accuracy of the form of, or the execution, validity, value or genuineness of any document or property received, held or delivered by it hereunder, or of the signature or endorsement thereon, or for any description therein; nor shall the Escrow Agent be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any document, property or this Agreement.

In the event that the Escrow Agent shall become involved in any arbitration or litigation relating to the Escrowed Funds, the Escrow Agent is authorized to comply with any decision reached through such arbitration or litigation.

Seller and Purchaser, jointly and severally, hereby agree to indemnify the Escrow Agent and each direction, officer, employee, attorney, agent and affiliate of the Escrow Agent for, and to hold it harmless against any loss, liability or expense incurred in connection herewith up to the amount of the Escrowed Funds without gross negligence or willful misconduct on the part of the Escrow Agent, including without limitation legal or other fees arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including without limitation the costs and expenses of defending itself against any claim of liability in the premises or any action for interpleader. The Escrow Agent shall be under no obligation to institute or defend any action, suit, or legal proceeding in connection herewith, unless first indemnified and held harmless to its satisfaction in accordance with the foregoing, except that the Escrow Agent shall not be indemnified against any loss, liability or expense arising out of its own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction, subject to no further appeal. Such indemnity shall survive the termination or discharge of this Agreement or resignation of the Escrow Agent.

7. The Escrow Agent's Fee. Escrow Agent shall be entitled to fees and expenses for its regular services as Escrow Agent as set forth in Exhibit A. Additionally, Escrow Agent is entitled to fees for extraordinary services and reimbursement of any out of pocket and extraordinary costs and expenses, including, but not limited to, attorneys' fees. Escrow Agent shall have a first lien upon all Escrowed Funds for the purposes of paying its fees and expenses. All of the Escrow Agent's compensation, costs and expenses shall be paid by Seller. Any fees and expenses shall be payable from and may be deducted by Escrow Agent from interest and/or principal of any monies held in Escrowed Funds by Escrow Agent.

8. Security Interests. No party to this Escrow Agreement shall grant a security interest in any monies or other property deposited with the Escrow Agent under this Escrow Agreement, or otherwise create a lien, encumbrance or other claim against such monies or borrow against the same.

9. Dispute. In the event of any disagreement between the undersigned or the person or persons named in the instructions contained in this Agreement, or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein, or affected hereby, the Escrow Agent shall be entitled to refuse to comply with any demand or claim, as long as such disagreement shall continue, and in so refusing to make any delivery or other disposition of any money, papers or property involved or affected hereby, the Escrow Agent shall not be or become liable to the undersigned or to any person named in such instructions for its refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to refuse and refrain to act until: (a) The rights of the adverse claimants shall have been fully and finally adjudicated in a Court assuming and having jurisdiction of the parties and money, papers and property involved herein or affected hereby, or (b) All differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing, signed by all the interested parties.

10. Resignation of Escrow Agent. Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least 30 days before the date specified for such resignation or removal to take effect; upon the effective date of such resignation or removal:

(a) All cash and other payments and all other property then held by the Escrow Agent hereunder shall be delivered by it to such successor Escrow Agent as may be designated in writing by the Seller and the Purchaser, whereupon the Escrow Agent's obligations hereunder shall cease and terminate;

(b) If no such successor Escrow Agent has been designated by such date, all obligations of the Escrow Agent hereunder shall, nevertheless, cease and terminate, and the Escrow Agent's sole responsibility thereafter shall be to keep all property then held by it and to deliver the same to a person designated in writing by the Seller and the Purchaser or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.

(c) Further, if no such successor Escrow Agent has been designated by such date, the resigning or removed Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor agent. In such instance, the resigning or removed Escrow Agent may pay into court all monies and property deposited with Escrow Agent under this Agreement.

11. Notices. All notices, demands and requests required or permitted to be given under the provisions hereof must be in writing and shall be deemed to have been sufficiently given, upon receipt, if (i) personally delivered, (ii) sent by telecopy or electronic mail and confirmed by phone or (iii) mailed by registered or certified mail, with return receipt requested, delivered as follows:

(1) If to Seller: John Falldine, Executive Director
Edgemere
8523 Thackery Street
Dallas, Texas 75225
John.Falldine@lifespacecommunities.com

with a copy to:

Jeremy Johnson & Trinitee Green
POLSINELLI PC
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
jeremy.johnson@polsinelli.com
tggreen@polsinelli.com

(2) If to Purchaser:

Bay 9 Holdings LLC
265 Magnolia Avenue
Suite 100
Larkspur, CA 94939

with a copy to:

Adrienne K. Walker

Chelsey Rosenbloom List
Locke Lord LLP
111 Huntington Avenue, 9th Floor
Boston, MA 02199-7613
awalker@lockelord.com
chelsey.list@lockelord.com

(3) If to Escrow Agent:

Irina Palchuk, Senior Vice President
UMB Bank, N.A.
100 William Street, Suite 1850
New York, NY 10038
Irina.Palchuk@umb.com

with a copy to:

Daniel S. Bleck
Eric Blythe
Kaitlin R. Walsh
Mintz Levin Cohn Ferris Glovsky
and Popeo, PC
One Financial Center
Boston, Massachusetts 02111
dsbleck@mintz.com
erblythe@mintz.com
krwalsh@mintz.com

12. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri without regard to the principles of conflicts of law.

13. Binding Effect; Benefit. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto.

14. Modification. This Agreement may be amended, modified or terminated at any time by a writing executed by Seller, Purchaser, and the Escrow Agent; provided the party making such assignment provides written notice to the other parties hereto.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

16. Headings. The section headings contained in this Agreement are inserted for convenience only, and shall not affect in any way, the meaning or interpretation of this Agreement.

17. Severability. This Agreement constitutes the entire agreement among the parties and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection herewith. No failure or delay of the Escrow Agent in exercising any right, power or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power or remedy preclude any other or further exercise of any right, power or remedy. In the event that any one or more of the provisions contained in this Agreement, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

18. Earnings Allocation; Tax Matters; Regulatory Compliance. The parties hereto agree that, for tax reporting purposes, all interest or other income, if any, attributable to the Escrowed Funds or any other amount held in escrow by the Escrow Agent pursuant to this Agreement shall be allocable to the Seller. The Seller agrees to provide the Escrow Agent completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that the Escrow Agent may reasonably request (collectively, "Tax Reporting Documentation") at the time of execution of this Agreement. Additionally, the parties hereto agree that they will provide any information reasonably requested by the Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time, and the Bank Secrecy Act of 1970, as amended from time to time (together the "Acts"), which information will be used to verify the identities of the parties to ensure compliance with the terms of such Acts. The parties hereto understand that if such Tax Reporting Documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Escrow Agreement.

[SIGNATURE PAGES FOLLOW]

SELLER:

Northwest Senior Housing Corporation,
a Texas not-for-profit corporation

By: _____
Name:
Title:

PURCHASER:

Bay 9 Holdings LLC,
a Delaware limited liability company

By: _____
Name:
Title:

ESCROW AGENT:

UMB BANK, N.A., solely as Escrow Agent

By: _____
Name: Irina Palchuk
Title: Senior Vice President

EXHIBIT A

ESCROW FEES AND EXPENSES

Acceptance Fee

Review escrow agreement and establish account \$1,250.00

Annual Fee (per year or part thereof)

Maintain account \$1,250.00

Fees specified are for the regular, routine services contemplated by the Escrow Agreement, and any additional or extraordinary services, including, but not limited to disbursements involving a dispute or arbitration, or administration while a dispute, controversy or adverse claim is in existence, will be charged based upon time required at the then standard hourly rate. In addition to the specified fees, all expenses related to the administration of the Escrow Agreement (other than normal overhead expenses of the regular staff) such as, but not limited to, travel, postage, shipping, courier, telephone, facsimile, supplies, legal fees, accounting fees, etc., will be reimbursable. Acceptance and first year annual fees will be payable at the initiation of the escrow and annual fees will be payable in advance thereafter. Other fees and expenses will be billed as incurred.

Exhibit 3

Sale Notice

HAYNES AND BOONE, LLP

J. Frasher Murphy
State Bar No. 24013214
Thomas J. Zavala
State Bar No. 24116265
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: (214) 651-5000
frasher.murphy@haynesboone.com
tom.zavala@haynesboone.com

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GLOVSKY, AND POPEO, PC**

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Eric Blythe (Admitted *Pro Hac Vice*)
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dsbleck@mintz.com
erblythe@mintz.com
krwalsh@mintz.com

Counsel to the Plan Sponsors

**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)

NOTICE OF SALE

PLEASE TAKE NOTICE THAT:

1. Pursuant to the *Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing and Approving the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation And Sale Hearing; and (V) Granting Related Relief* [Docket No. ___] (the “**Bidding Procedures Order**”) entered by the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”) on [____], 2022, the Bankruptcy Court approved entry into that certain Asset Purchase Agreement, dated as of November [•], 2022 (the “**Stalking Horse APA**”) with Bay 9 Holdings LLC or its designee (the “**Stalking Horse Bidder**”) for the sale of substantially all of the Debtors’ assets subject to a competitive bidding process as set forth in the Bidding Procedures Order. Capitalized terms used but not otherwise

¹ The Debtors in the 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.

defined in this notice have the meanings ascribed to them in the Bidding Procedures Order or the Stalking Horse APA, as applicable.

2. Copies of (i) the Stalking Horse APA, (ii) the Bidding Procedures, and (iii) the Bidding Procedures Order can be obtained by contacting the Plan Sponsors' financial advisor, RBC Capital Advisors ("RBC"), Attn: David B. Fields, Telephone: 610-729-3658, E-mail: david.fields@rbccm.com or by download from the Debtors' claims and noticing agent KCC website at: <https://www.kccllc.net/edgemere>.

3. Once filed with the Bankruptcy Court, which will be at least [_____] (___) days prior to the Confirmation and Sale Hearing, copies of the proposed order approving the Plan Sponsors' Plan, which order will effectuate the sale of the Debtors' assets (the "**Confirmation Order**") may be obtained by contacting RBC or KCC as set forth in paragraph 2 above.

4. All interested parties are invited to make an offer to purchase the Purchased Assets in accordance with the terms and conditions approved by the Bankruptcy Court (the "**Bidding Procedures**") by **DECEMBER 27, 2022 at 4:00 P.M. (prevailing Central Time)**. Pursuant to the Bidding Procedures, the Plan Sponsors may conduct an auction for the Purchased Assets (the "**Auction**") on **DECEMBER 28, 2022 BEGINNING PROMPTLY AT 10:00 A.M. (prevailing Central Time)** at the offices of the Plan Sponsors' counsel, Haynes & Boone LLP, 2323 Victory Avenue, Suite 700 Dallas, TX 75219 or such other location as may be announced prior to the Auction to the Auction Participants. Contact the Plan Sponsors' financial advisor, RBC, Attn: David B. Fields, Telephone: 610-729-3658, E-mail: david.fields@rbccm.com for further information regarding the Debtors' assets and/or making a bid.

5. Participation at the Auction is subject to the Bidding Procedures and the Bidding Procedures Order.

6. A hearing to approve the sale of the Purchased Assets to the highest and best bidder will be held on **JANUARY 10, 2023 at 9:30 A.M. (prevailing Central Time)** at the Bankruptcy Court. The hearing on the sale may be adjourned without notice other than an adjournment in open court.

7. Objections, if any, to the proposed sale must be filed and served in accordance with the Bidding Procedures Order, and **actually received** no later **JANUARY 3, 2023 AT 4:00 P.M. (prevailing Central Time)**.

8. This notice is qualified in its entirety by the Bidding Procedures Order.

[Remainder of page intentionally left blank.]

Dated: [_____], 2022

HAYNES AND BOONE, LLP

/s/ DRAFT

J. Frasher Murphy
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Thomas J. Zavala
State Bar No. 24116265
2323 Victory Avenue, Suite 700
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Telephone: (214) 651-5000
frasher.murphy@haynesboone.com
tom.zavala@haynesboone.com

– and –

**MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY, AND POPEO, PC**

Daniel S. Bleck (Admitted *Pro Hac Vice*)
Eric Blythe (Admitted *Pro Hac Vice*)
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dsbleck@mintz.com
erblythe@mintz.com
krwalsh@mintz.com

Counsel to the Plan Sponsors

Exhibit 4

Cure and Possible Assumption and Assignment Notice

HAYNES AND BOONE, LLP

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krwalsh@mintz.com

Counsel to the Plan Sponsors

**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)

**NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES
THAT MAY BE ASSUMED, PURSUANT TO SECTIONS 365 AND 1123 OF THE
BANKRUPTCY CODE, IN CONNECTION WITH THE PLAN AND THE
PROPOSED CURE AMOUNTS WITH RESPECT THERETO**

PLEASE TAKE NOTICE THAT:

1. On April 14, 2022 (the “**Petition Date**”), Northwest Senior Housing Corporation and Senior Quality Lifestyles Corporation (collectively, the “**Debtors**”) commenced bankruptcy cases (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the Northern District

¹ The Debtors in 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.

of Texas, Dallas Division, by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

2. On November 2, 2022, UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (together, the “**Trustee**”) and in its capacity as a lender under the DIP Credit Agreement (the “**DIP Lender**,” and collectively with the Trustee, the “**Plan Sponsors**”) filed, among other things, the *Plan of Reorganization of the Trustee and the DIP Lender Dated November 2, 2022* (as amended, modified, and supplemented, the “**Plan**”) and the *Motion of Trustee and DIP Lender for Entry of an Order (I) Authorizing and Approving the Bidding Procedures;(II) Authorizing and Approving the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation And Sale Hearing; and (V) Granting Related Relief* [Docket No. ___] (the “**Motion**”).² On [_____], 2022, the Bankruptcy Court entered an order granting the relief requested in the Motion [Docket No. ___] (the “**Bidding Procedures Order**”).

3. Pursuant to the Bidding Procedures Order, the Plan Sponsors are delivering this notice (the “**Cure and Possible Assumption and Assignment Notice**”) identifying (a) those executory contracts and unexpired leases which may be assumed on the Effective Date and assigned to a Purchaser (the “**Executory Contracts and Unexpired Leases**”); and (b) the proposed cure amount for each Executory Contract and Unexpired Lease identified herein. For the avoidance of doubt, this Cure and Possible Assumption and Assignment Notice shall not apply to the Residency Agreements, which are contemplated to be rejected pursuant to the Plan.

² All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

4. An Executory Contract and/or Unexpired Lease with respect to which you have been identified as a counterparty, and the corresponding proposed cure amount, if any, is set forth on the attached Exhibit A.

Objections

5. Any objections to the assumption and/or assumption and assignment of any Executory Contract or Unexpired Lease, including any objection to a proposed cure amount (each a “**Cure Objection**”), must (a) be in writing; (b) state with specificity the nature of such objection; and (c) comply with the Bankruptcy Rules.

6. Additionally, any Cure Objection must be filed with the Court no later than **DECEMBER 19, 2022 at 4:00 P.M. (prevailing Central Time)**.

7. UNLESS YOU FILE A CURE OBJECTION AND SERVE SUCH OBJECTION IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE FOREVER BARRED FROM (A) OBJECTING TO THE DEBTORS’ ASSUMPTION, ASSIGNMENT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A; AND (B) ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE PURCHASER, OR ANY OTHER ASSIGNEE OF THE RELEVANT EXECUTORY CONTRACT OR UNEXPIRED LEASE; PROVIDED, HOWEVER, THAT ANY COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE SUBJECT TO ASSUMPTION MAY RAISE AN OBJECTION TO THE ASSUMPTION AND ASSIGNMENT THEREOF SOLELY WITH RESPECT TO THE ABILITY OF THE SUCCESSFUL BIDDER TO PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE UNDER THE ASSUMED CONTRACT AT

**THE CONFIRMATION AND SALE HEARING, OR AT ANY TIME BEFORE THE
CONFIRMATION AND SALE HEARING.**

Confirmation and Sale Hearing

8. Any Cure Objection that is timely filed and served regarding any Executory Contract or Unexpired Lease listed on **Exhibit A**, shall be heard at a hearing to be held before the Honorable Michelle V. Larson, United States Bankruptcy Court for the Northern District of Texas, 1100 Commerce Street, 14th Floor, Courtroom No. 2, Dallas, Texas 75242 on **January 10, 2023 at 9:30 a.m. (prevailing Central Time)** or such other date and time as may be fixed by the Court.

Reservation of Rights

9. The presence of an Executory Contract or Unexpired Lease on **Exhibit A** does not constitute an admission that such any listed Executory Contract or Unexpired Lease is an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code, or that such Executory Contract or Unexpired Lease will be assumed by the Debtors and assigned to the Purchaser. The Plan Sponsors reserve all of their rights to send out additional notices concerning additional or other Executory Contracts and Unexpired Leases subject to the provisions of any order by the Court.

[Remainder of page intentionally left blank.]

DATED: _____, 2022
Dallas, Texas

HAYNES AND BOONE, LLP

By: /s/ Draft

J. Frasher Murphy
State Bar No. 24013214
Thomas J. Zavala
State Bar No. 24116265
2323 Victory Avenue, Suite 700
Dallas, TX 75219
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Counsel to the Plan Sponsors