Docket #0475 Date Filed: 2/16/2024

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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)
Leif M. Clark, Trustee of the Edgemere Litigation Trust Plaintiff, v Intercity Investment Properties, Inc., and Kong Capital LLC, Defendants.	Adv. Pro. No. 22-03040 (MVL)

DEFENDANTS' WITNESS AND EXHIBIT LIST FOR HEARING SCHEDULED FOR FEBRUARY 22, 2024

[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.

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Intercity Investment Properties, Inc. ("ICI") and Kong Capital LLC ("Kong") file their Witness and Exhibit List for the hearing to be held on February 22, 2024.

WITNESSES

ICI and Kong may call the following witnesses at the Hearing:

1. Any witness listed by any other party or third party; and
2. Rebuttal and foundation witnesses as necessary.

ICI and Kong reserve the right to cross-examine any witness called by any other party.

EXHIBITS

(see chart beginning on following page)

EXHIBIT	DESCRIPTION	MARK	OFFER	OBJECT	ADMIT	W/D	DISPOSITION AFTER TRIAL
1	Defendants' Omnibus Motion to Compel [AP Docket No. 363]						
2	Defendants' Supplemental Motion to Compel Production of FTI Consulting, Inc. Documents and Brief in Support [AP Docket No. 386]						
3	Appendix in Support of Defendants' Supplemental Motion to Compel Production of FTI Consulting, Inc. Documents [AP Docket No. 387]						
4	Defendants' Supplemental Brief Regarding FTI Consulting, Inc. Documents [AP Docket No. 442]						
5	Transcript of Section 341(a) Meeting of Creditors, May 24, 2022						
6	Third Amended Plan of Reorganization of the Plan Sponsors Dated December 19, 2022 [Bankr. Docket No. 933]						
7	Statement of Financial Affairs for Northwest Senior Housing Corporation, 22-30659 [Bankr. Docket No. 241]						
8	Debtors' Application for Authority to Employ and Retain FTI Consulting, Inc. as Financial Advisor to the Debtors Effective as of the Petition Date [Bankr. Docket No. 29]						
9	Order Authorizing Retention and Employment of FTI Consulting, Inc. as Financial Advisor to the Debtors Effective as of the Petition Date						
10	Notice of Deposition Subpoena to Produce Documents, Information, or Objects and to Provide Deposition Testimony to FTI Consulting, Inc. [AP Docket No. 73]						
11	Declaration of Nick Harshfield in Support of Chapter 11 Petition and First Day Pleadings [Bankr. Docket No. 7]						

EXHIBIT	DESCRIPTION	MARK	OFFER	OBJECT	ADMIT	W/D	DISPOSITION AFTER TRIAL
12	Lifespace Proof of Claim [Claim No. 145]						
13	Notice of (I) Entry of Findings of Fact, Conclusions of Law, and Order Confirming Chapter 11 Plan of Plan Sponsors, (II) Effective Date of Plan Sponsors' Chapter 11 Plan, and (III) Certain Post-Effective Date Deadlines [Bankr. Docket No. 1620]						
14	Expert Report of Chad J. Shandler dated September 15, 2022						
15	Declaration of Chad Shandler in Support of Debtors' Objection to Motion to Dismiss Chapter 11 Case under 11 U.S.C. § 1112(b) and (II) Motion of Debtors for Entry of an Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan [Bankr. Docket No. 657]						
16	Supplement to Application for Authority to Employ and Retain FTI Consulting, Inc. as Financial Advisor to the Debtors Effective as of the Petition Date [Bankr. Docket No. 164]						
17	Amended Declaration of Chad J. Shandler in Support of Debtors' Application for Authority to Employ and Retain FTI Consulting, Inc. as Financial Advisor to the Debtors Effective as of the Petition Date [Bankr. Docket No. 169]						
18	Plaintiff's Objections and Responses to Defendants' Second Set of Written Discovery dated February 9, 2024						
19	Plaintiff's Initial Disclosures						
20	First Amended Complaint [AP Docket No. 422] **[UNDER SEAL]**						
21	Transcript of January 12, 2024 Hearing **[UNDER SEAL]**						

EXHIBIT	DESCRIPTION	MARK	OFFER	OBJECT	ADMIT	W/D	DISPOSITION AFTER TRIAL
22	FTI Privilege Log dated November 18, 2022 **[UNDER SEAL]**						
23	FTI Redaction Log dated November 22, 2022 **[UNDER SEAL]**						
24	Joint FTI-Edgemere Privilege Log dated September 29, 2023 [FTI portion only] **[UNDER SEAL]**						
25	Privilege Logs – Color Coding Demonstrative **[UNDER SEAL]**						
	Any exhibits listed by any other party or filed subsequently to the submission of this list.						
	Any pleadings or documents filed in the above captioned and titled bankruptcy case or adversary proceeding.						
	Any rebuttal exhibits.						

RESERVATION OF RIGHTS

ICI and Kong reserve the right to call or to introduce one or more, or none, of the witnesses and exhibits listed above, and further reserves the right to supplement this list prior to the Hearing.

Dallas, Texas
February 16, 2024

/s/ *Ryan C. Hardy*

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Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on this 16th day of February 16, 2024, a copy of the foregoing was filed electronically with the Clerk of Court via ECF, which caused a copy of same to be transmitted to all counsel of record.

/s/ Michael S. Held
Michael S. Held

EXHIBIT 1

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Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

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)
Leif M. Clark, Trustee of the Edgemere Litigation Trust Plaintiff, v Intercity Investment Properties, Inc., and Kong Capital LLC, Defendants.	Adv. Pro. No. 22-03040 (MVL)

DEFENDANTS' OMNIBUS MOTION TO COMPEL

[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.

Come now Defendants Intercity Investment Properties, Inc. ("ICI") and Kong Capital LLC ("Kong" and, with ICI, the "Defendants") and respectfully state as follows as and for their *Omnibus Motion to Compel*, pursuant to Fed. R. Civ. P. 45.

1. The Defendants bring this Motion for entry of an order compelling compliance with discovery obligations as follows:

a. Sidley Austin LLP: Sidley Austin was served with the subpoena attached as Exhibit A (the "Sidley Austin Subpoena"). While Sidley Austin has produced documents, it also has withheld documents pending a review by Plaintiff's counsel for attorney-client privilege and work product protection issues. Sidley Austin directed Defendants to address all further inquiries regarding the issue to Plaintiff. By this Motion, Defendants seek entry of an order compelling Sidley Austin to produce *to Plaintiff* a complete copy of its files regarding its representation of the Debtor.[2]

b. Clifton Larson Allen: Clifton Larson Allen ("CLA") was served with the subpoena attached as Exhibit B (the "CLA Subpoena"). CLA has not produced documents in response to same. CLA represents that it will not do so unless and until it receives a taxpayer consent. Federal law prohibits CLA from disclosing information furnished to CLA for or in connection with the preparation of tax returns, except with taxpayer consent or pursuant to court order. Defendants

[2] Contemporaneously with this Motion, Defendants filed a motion to compel Plaintiff's discovery responses, addressed, in part, to the Sidley Austin documents Defendants understand already to be in Plaintiff's possession and control.

have requested that Plaintiff provide the necessary consent, but Plaintiff has not done so and has disclaimed authority to do so. Defendants therefore request entry of an order compelling CLA to produce all documents in its working files for Edgemere. Neither CLA nor Plaintiff expressed opposition to that relief, though CLA is not authorized to consent to same.

c. Lane Gorman: Lane Gorman was served with the subpoena attached as Exhibit C (the "Lane Gorman Subpoena") but it has not produced documents in response. As with CLA, Lane Gorman declines to produce documents without taxpayer consent. Defendants have requested that Plaintiff provide such consent, but Plaintiff has not done so and has disclaimed authority to do so. Defendants therefore request entry of an order compelling Lane Gorman to produce all documents in its working files for Edgemere. Neither Lane Gorman nor Plaintiff expressed opposition to that relief, though Lane Gorman is not authorized to consent to same.

d. Eddie Fenoglio: Mr. Fenoglio was served with the subpoena attached as Exhibit D (the "Fenoglio Subpoena"). Mr. Fenoglio, through counsel, expressed that he would produce the responsive documents in his possession and control, but more recently has not responded to his counsel's requests for the documents. Defendants request entry of a prophylactic order compelling his production of those documents.

e. The Point Group: The Point Group ("TPG") was served with the subpoena attached as Exhibit E (the "TPG Subpoena"). TPG has produced some, but not

all, responsive documents. Rather, it claimed that producing all responsive documents would be unduly burdensome, and it withheld documents based on claims of attorney-client privilege and work product protection. TPG's claims of privilege and protection were unsupported by a privilege log until October 6, 2023 and even now are inadequately supported. Defendants request entry of an order compelling TPG's production of all responsive documents.

f. Ground Floor Media: Ground Floor Media ("GFM") was served with the subpoena attached as Exhibit F (the "GFM Production"). GFM made a limited production in response thereto and GFM represented through its counsel that it would make a supplemental production and furnish a privilege log. On October 6, 2023, GFM retransmitted certain documents already produced and sent what GFM characterized as a "privilege log reflecting the objections to production asserted by Cooley LLP on behalf of their client." GFM's letter did not identify Cooley's client, nor did its accompanying privilege log identify who claimed privilege or protection, nor did GFM's letter or its accompanying privilege log identify valid bases for withholding responsive documents. Defendants request entry of an order compelling GFM's production of all responsive documents.

2. The bases for the relief requested in this Motion are more fully explained in the accompanying supporting Brief in Support, which is incorporated by reference.

3. Defendants reserve their rights to seek further relief. Without limitation, Defendants intended to seek entry of an order compelling FTI Consulting to make a full and complete production. However, Sidley Austin notified Defendants' counsel last week that it would

be representing FTI in that matter and disputed that it had sufficient time to understand the issues and meaningfully confer about them in advance of this filing.

WHEREFORE, Defendants Intercity Investments, Inc. and Kong Capital LLC respectfully request that the Court enter an order compelling compliance with discovery obligations as further set forth above, and that the Court enter such other or additional relief as it may deem just and appropriate in the circumstances.

Dated: October 16, 2023
Dallas, Texas

/s/ *Elizabeth B. Vandesteeg*

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Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Defendants conferred with the non-moving parties as follows:

Sidley Austin – Via email between Heidi Hockberger and Christina Lutz for Defendants and Mitchell Alleluia-Feinberg for Sidley Austin on August 24, 2023, August 28, 2023, September 14, 2023, and September 18, 2023, as more fully set forth in Exhibit G to the accompanying brief in support.

Clifton Larson Allen – Via email and telephone between Ryan Hardy for Defendants and Adam Matheson for CLA on October 4, 2023, October 6, 2023, and October 9, 2023 as more fully set forth on Exhibit I to the accompanying brief in support.

Lane Gorman – Via email between Ryan Hardy for Defendants and Heath Coffman for Lane Gorman on October 4, 2023 and October 5, 2023, as more fully set forth on Exhibit J to the accompanying brief in support.

Eddie Fenoglio – Via email between Ryan Hardy for Defendants and Eric Walker for Fenoglio on September 27, 2023 and October 5, 2023, as more fully set forth on Exhibit Q to the accompanying brief in support.

The Point Group – Via email and telephone between Ryan Hardy and Heidi Hockberger for Defendants and Christopher Andrews for TPG on multiple dates, the most recent of which was October 10, 2023, as more fully set forth on Exhibits L and M to the accompanying brief in support.

Ground Floor Media – Via email and telephone between Ryan Hardy for Defendants and (a) Elizabeth Wylie for GFM and (b) Christopher Andrews of Cooley LLP on behalf of Lifespace Communities, Inc. on multiple dates, the most recent of which was October 12, 2023, as more fully set forth on Exhibits N, O, and P to the accompanying brief in support.

/s/ Ryan C. Hardy

CERTIFICATE OF SERVICE

I certify that on this 16th day of October, 2023, a copy of the foregoing was filed electronically with the Clerk of Court via ECF, which caused a copy of same to be transmitted to all counsel of record. In addition, on that same date, my co-counsel and I caused a copy of the foregoing to be sent by U.S. Mail, first-class postage pre-paid as follows:

Sidley Austin, LLP
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Chicago, IL 60603
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Clifton Larson Allen
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Lane Gorman
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Eddie Fenoglio and The Point Group
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/s/ Michael Held
Michael S. Held

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)
Leif M. Clark, Trustee of the Edgemere Litigation Trust Plaintiff, v Intercity Investment Properties, Inc., and Kong Capital LLC, Defendants.	Adv. Pro. No. 22-03040 (MVL)

ORDER GRANTING DEFENDANTS' OMNIBUS MOTION TO COMPEL

[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.

CAME ON FOR CONSIDERATION Defendants Intercity Investment Properties, Inc. and Kong Capital LLC's (collectively, "Defendants") Omnibus Motion to Compel ("Motion"). The Court, having reviewed the pleadings on file and having considered the Motion, any related response, and any related reply, is of the opinion that the Motion should be granted.

IT IS THEREFORE ORDERED that the Motion is granted as follows:

Within ten (10) days of the date of this Order, Sidley Austin[2] shall produce its working file concerning the Northwest Senior Housing Corporation ("Edgemere") to the Plaintiff;

Within ten (10) days of the date of this Order, or such other time as to which Defendants may agree, CLA and Lane Gorman shall produce their respective working files concerning Edgemere to Defendants;

Within ten (10) days of the date of this Order, Eddie Fenoglio shall produce all documents in his possession and control responsive to the Fenoglio Subpoena to Defendants.

Within ten (10) days of this date of this Order, The Point Group shall produce all documents in its possession and control responsive to the TPG Subpoena to Defendants, and TPG's objections to same are overruled.

Within ten (10) days of the date of this Order, Ground Floor Media shall produce all documents in its possession and control, for the period February 1, 2021 to April 14, 2022, responsive to the GFM Subpoena to Defendants, and GFM's objections to same are overruled.

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END OF ORDER # #

[2] Capitalized terms not defined herein have the meanings ascribed to them in the Motion.

EXHIBIT 2

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In re: NORTHWEST SENIOR HOUSING CORPORATION, *et al*.[1] Debtors.	Chapter 11 Case No. 22-30659 (MVL)
Leif M. Clark, Trustee of the Edgemere Litigation Trust Plaintiff, v Intercity Investment Properties, Inc., and Kong Capital LLC, Defendants.	Adv. Pro. No. 22-03040 (MVL)

DEFENDANTS' SUPPLEMENTAL MOTION TO COMPEL PRODUCTION OF FTI CONSULTING, INC. DOCUMENTS AND BRIEF IN SUPPORT

[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.



Adversary Defendants Intercity Investment Properties, Inc. ("ICI") and Kong Capital LLC ("Kong" and, with ICI, the "Defendants") hereby file their *Supplemental Motion to Compel Production of FTI Consulting, Inc. Documents* (the "Motion") pursuant to Fed. R. Civ. P. 37 and 45. In support of the Motion, the Defendants respectfully state as follows:

I. INTRODUCTION

1. This Motion seeks the Court's intervention to compel FTI Consulting, Inc. to (a) produce subpoenaed non-privileged documents held by FTI that FTI improperly withheld for privilege; and (b) cure the deficiencies in their prior document productions. Defendants also seek the relief reserved in their Omnibus Motion to Compel, along with related relief necessitated by information Defendants learned during their conference with FTI's counsel.

II. FACTUAL BACKGROUND

2. FTI was served with the subpoena attached as **Exhibit A**, App. 002-17. FTI's responses to same are attached as **Exhibit B**, App. 019-35. Defendants' correspondence to FTI about FTI's responses are attached as **Group Exhibit C**, App. 037-45**.**

3. On October 16, 2023, Defendants filed their *Omnibus Motion to Compel* (the "Omnibus Motion," ECF 363) and their *Motion to Compel Production by Plaintiff* (the "Motion to Compel Plaintiff," ECF 362). Those motions are set for hearing on November 9, 2023.

4. As noted in paragraph 3 of the Omnibus Motion to Compel, "Defendants intended to seek entry of an order compelling [subpoena recipient] FTI Consulting[, Inc.] to make a full and complete production. However, Sidley Austin [LLP] notified Defendants' counsel last week that it would be representing FTI in that matter and disputed that it had sufficient time to understand the issues and meaningfully confer about them in advance of this filing."

5. By this Motion, Defendants seek the relief reserved in their Omnibus Motion to Compel, along with related relief necessitated by information Defendants learned during their conference with FTI's counsel.

6. More particularly, Defendants' counsel learned from FTI's counsel that while this Motion must be directed to FTI as a technical matter (FTI was the one served with a subpoena), in fact *Plaintiff* is the one who needs, and should be ordered, to take immediate action in the first instance, as further explained immediately below.

7. There are two primary defects in FTI's production:

a. Claims of Privilege and Protection – FTI withheld documents based on attorney-client privilege and work-product protection; Defendants contend that those assertions are misplaced and, at any rate, inadequately supported.[2] In conferences with Defendants' counsel, FTI's counsel clarified that FTI does not claim privilege or protection in its own right, but rather on behalf of (and at the direction of) first Edgemere and now Plaintiff. Because the underlying subpoena was directed to FTI, this Motion also is nominally directed to FTI. Defendants recognize and acknowledge, however, that Plaintiff—as the holder of the claimed privilege or protection and the one who must advance them—is the party obligated to substantiate such claims.

b. Insufficiencies in Production – The FTI production also was insufficient in that (1) various communications were produced without their attachments, while those attachments do not appear to be identified in any logs of withheld

[2] As noted in Group Exhibit C, the assertions of privilege and protection also were untimely and therefore waived.

documents; and (2) nearly all of the documents were produced as imaged-copies rather than native files, such that they were produced without important metadata and functionality that would enable a complete review of the production set. In conference with Defendants' counsel, FTI's counsel represented that it would be willing to evaluate these issues but (1) it does not have access to the production set; so (2) it requested Plaintiff's counsel to provide a copy of what FTI initially furnished for production;[3] but (3) Plaintiff's counsel has not done so and has not stated when it will do so. Defendants' counsel forwarded FTI's production set to FTI's counsel to further the investigation, but that merely enables FTI's counsel to confirm the insufficiencies, not to correct them.

8. Following that conference, Defendants' counsel reached out to Plaintiff's counsel to open a dialogue about the privilege and protection claims and to ask that Plaintiff address FTI's request to Plaintiff for information. A copy of that and related correspondence is attached as **Exhibit D**, App. at 047-49.[4] Plaintiff's counsel did not supply any substantive response (though Plaintiff's counsel did respond to a follow-up inquiry about whether this Motion could be heard on an expedited basis).

9. The Defendants therefore bring this Motion for entry of an order overruling any claims of privilege or protection advanced with respect to the FTI documents; ordering Plaintiff to

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[3] Evidently the original flow of documents was from FTI to Polsinelli, PC, with Polsinelli then issuing the production.

[4] Defendants also respectfully request that the Court take judicial notice of the hearings, conferences and orders in this proceeding, including the June 23, 2023 Order, the transcript of the August conference, and the transcript of the October conference—copies of which are attached as **Exhibits E-G**, App. 051-270.

provide to FTI the information necessary for FTI to make a full and complete production; and ordering FTI thereafter to make a full and complete production.

III. ARGUMENT

11. The relief sought here is governed by Federal Rule of Civil Procedure 45, made applicable to this proceeding by Fed. R. Bankr. P. 9016. As germane, Federal Rule of Civil Procedure 45 permits the issuance of subpoenas compelling the production of documents—like the one at issue here. It further provides that one who objects to the subpoena must serve its objections before the earlier of the time specified for compliance or fourteen days after the subpoena is served. Finally, to withhold documents based on claims of privilege or work product protection, the subpoenaed person must expressly make the claim and "describe the nature of the withheld documents . . . in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim." Fed. R. Civ. P. 45(e)(2)(A).

12. The FTI Subpoena called for FTI's production of documents on or by August 1, 2022. FTI failed timely to serve objections or responses, though it did eventually do so on or about September 14, 2022.[5] FTI's objections were untimely and therefore are waived. *Am. Fed'n of Musicians of the United States and Canada v. Skodam Films, LLC*, 313 F.R.D. 39, 57-58 (N.D. Tex. 2015). Further, FTI's claims of privilege and protection were unsupported by a privilege log and, consequently, FTI failed to show that any privilege or protection applied. *EEOC v. BDO USA, LLP*, 876 F.3d 690, 695 (5th Cir. 2017). FTI's objections are more fully set forth in Exhibit B.

13. On October 11, 2022, Defendants sent FTI a letter regarding the issues with their production, as shown at Group Exhibit C. FTI did not address those issues prior to the stay of this

[5] *See* Exhibit B.

litigation. Then, once the stay was lifted, on October 4, 2023, Defendants again sent FTI a letter outlining the various deficiencies with FTI's production, a copy of which is also included within Group Exhibit C.

14. In addition to the fact that FTI waived all objections and privileges by not responding timely, as set forth above, FTI's production was deficient in a number of other respects. For example, in many instances, attachments to documents were either missing, unidentified or otherwise unknown, leading to confusion as to whether the FTI production is complete or omits responsive, relevant documents. Additionally, nearly all of FTI's production was provided as imaged-copies of the documents requested rather than production in native format, thereby rendering a complete review of the actual documents in the FTI production set impossible.

15. FTI also tendered an incomplete privilege log with its production. FTI's privilege log included references to improperly withheld correspondence between FTI and Tom Califano and other attorneys at Sidley Austin LLP[6] as well as communications with various Lifespace attorneys including, David Grossklaus of Dorsey & Whitney and Eric Walker (then) of Perkins Coie. FTI has now clarified that it does not claim to control the privilege over those communications or to assert in its own right that the communications were privileged or protected; rather, FTI withheld them at the direction first of Edgemere and now of Plaintiff on the grounds that they are subject of privilege or protection that may be advanced by Plaintiff.

16. Even if properly preserved, those assertions of privilege and protection cannot hold. Neither the attorney-client privilege nor the work product doctrine can serve as a basis to withhold communications that do not involve legal counsel or reflect legal counsel's advice or mental

[6] In this instance, not as counsel to FTI, but rather as counsel to Edgemere.

impressions for the purpose of seeking or furthering legal representation. Rather, the attorney client privilege only applies to communications if it can be shown that (1) the communication was confidential; (2) made to a lawyer or his subordinate; and (3) for the primary purpose of securing either legal opinion or legal services, or assistance in a legal proceeding. *Jolivet v. Compass Group USA, Inc.*, 340 F.R.D. 7, 19 (N.D. Tex. 2021) (citing *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997)). FTI has not demonstrated that the withheld communications meet this criterion; rather, based on the description of the communication(s) in the privilege log, it appears that the communications were for the sole purpose of FTI's business consulting work.

17. Similarly, the work product privilege is inapplicable as the cited correspondence was clearly not prepared for or in anticipation of litigation. Many of the entries on the FTI Privilege Log date back to February 2021. The assertion that Plaintiff sought or received legal advice regarding "restructuring, bankruptcy, adversary proceeding" at that time (as stated on the privilege log) is directly at odds with Plaintiff's contention that Defendants caused their bankruptcy in December 2021. And of course, the Debtor did not actually file its bankruptcy case until April 2022. Thus, presumably, any entries throughout 2021 were strictly for business consulting work, and accordingly, such correspondence is not privileged and must be produced.

18. The language of the privilege log is particularly illustrative here. For example, row #72 of the FTI Privilege Log, which referenced a communication dated February 23, 2021, cites "[c]orrespondence between Attorney Retained Consultants containing work product regarding communications with residents and/or resident refunds" as the basis for withholding. This correspondence (like many others cited during this time period and throughout 2021) is clearly not related to legal advice or the bankruptcy, restructuring or adversary. Rather, it is plainly related to business consulting. Indeed, much of the purportedly privileged correspondence is between FTI

employees—without an attorney included. Such communications are also clearly not related to legal advice or attorney mental impressions, but rather communications for the purpose of business consulting services, which are not privileged and must be produced.

19. FTI also withheld a number of communications which include UMB based on a purported "common interest privilege." But, on February 6, 2023, this Court found that "[s]imply put, UMB and the Debtor *were not* acting in concert" and there was no common interest privilege amongst them.[7] Thus, FTI must supplement its production to include any communications including UMB or its counsel, which were previously withheld based on an improper privilege assertion.

20. Finally, a multitude of entries on FTI's Privilege Log are specifically described as correspondence but lack any other information which would enable Defendants to discern whether such documents are actually privileged. These entries lack even the most basic information, including the parties the communication was between.

21. Similarly, various documents have been withheld because they are "attachments" to purportedly privileged correspondence. Given the complete lack of description with respect to anything labeled as an "attachment", it is impossible for Defendants to ascertain whether such attachments are actually privileged.

22. Aside from privilege and protection issues, it appears also that various communications were produced without their attachments (and the omitted attachments not identified on any logs). As well, FTI's documents were produced as imaged-copies rather than native files, meaning that they were not produced with metadata necessary to fully assess the

[7] *See* February 6, 2023 Order, attached hereto as **Exhibit H**, App. 0272-94.

production or whether it was complete. As FTI's ability to analyze and rectify that issue has been hampered by Plaintiff's failure to supply necessary information. Accordingly, Defendants request that Plaintiff be ordered to furnish to FTI the information FTI reasonably requires to analyze and rectify those deficiencies.

IV. CONCLUSION

23. Accordingly, for the foregoing reasons, Defendants respectfully request that the Court enter an order overruling any and all privilege and protection claims advanced with respect to the FTI documents; compelling the production of those documents previously withheld on privilege or protection grounds; and compelling the supplemental discovery from FTI Consulting, Inc. and directing Plaintiff to provide to FTI such information as FTI reasonably requires to comply with its obligations, all as further set forth above

WHEREFORE, Defendants Intercity Investment Properties, Inc. and Kong Capital LLC respectfully request that the Court enter an order compelling FTI Consulting, Inc.'s and Plaintiff's compliance with discovery obligations as further set forth above, and that the Court enter such other or additional relief as it may deem just and appropriate in the circumstances.

Dallas, Texas
November 1, 2023

/s/ *Elizabeth B. Vandesteeg*

JACKSON WALKER LLP
Michael S. Held (State Bar 09388150)
W. Ross Forbes, Jr. (State Bar 00796564)
Edwin Buffmire (State Bar 24078283)
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Email: ebuffmire@jw.com
Email: mfuller@jw.com

Local Counsel for Defendants

LEVENFELD PEARLSTEIN, LLC
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Telephone: (312) 346-8380
Facsimile: (312) 346-7634
Email: evandesteeg@lplegal.com
Email: rhardy@lplegal.com
Email: esethna@lplegal.com

Counsel for Defendants

CERTIFICATE OF CONFERENCE

In addition to the correspondence included in Group Exhibit C, I certify that on October 23, 2023 a telephonic counsel occurred between Ryan Hardy and Jamie Burns for Defendants and Dan Rubinstein and Joanna Travalini for FTI; that on October 24, 2023 Mr. Hardy wrote Greg Taylor for Plaintiff concerning this issue; and that on October 26, 2023 Mr. Hardy wrote Mr. Taylor, Mr. Rubinstein and Ms. Travalini concerning this issue. The foregoing correspondence is included in Exhibit D. The parties have reached an impasse.

/s/ Ryan C. Hardy
Ryan C. Hardy

CERTIFICATE OF SERVICE

I certify that on this 1st day of November, 2023, a copy of the foregoing was filed electronically with the Clerk of Court via ECF, which caused a copy of same to be transmitted to all counsel of record. In addition, on that same date a copy was sent by U.S. Mail, first-class postage pre-paid to:

FTI Consulting, Inc.
c/o Mr. Matthew Bascardi
Chief Counsel, US Operations
6300 Blair Hill Lane, Suite 303
Baltimore, MD 21209
With email copies to: Matthew.Bascardi@fticonsulting.com
drubinstein@sidley.com
jtravalini@sidley.com

/s/ Michael S. Held
Michael S. Held

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)
Northwest Senior Housing Corporation, *et al*. Plaintiff, v Intercity Investment Properties, Inc., and Kong Capital LLC	Adv. Pro. No. 22-03040 (MVL)

ORDER GRANTING DEFENDANTS' SUPPLEMENTAL MOTION TO COMPEL PRODUCTION OF FTI CONSULTING, INC. DOCUMENTS

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' 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.

CAME ON FOR CONSIDERATION Defendants Intercity Investment Properties, Inc. and Kong Capital LLC's (collectively, "Defendants") Supplemental Motion to Compel Production of FTI Consulting, Inc. Documents ("Motion"). The Court, having reviewed the pleadings on file and having considered the Motion, any related response, and any related reply, is of the opinion that the Motion should be granted. Capitalized terms not defined herein have the meanings ascribed to them in the Motion.

IT IS THEREFORE ORDERED that the Motion is granted, and all objections are hereby overruled; it is further

ORDERED that (a) Plaintiff shall produce all FTI documents previously withheld on grounds of privilege or protection and (b) Plaintiff and FTI shall take such steps as necessary to supply to Defendants native copies of all documents responsive to the FTI Subpoena within ten (10) days of the date hereof.

END OF ORDER # #

EXHIBIT 3

JACKSON WALKER LLP
Michael S. Held (State Bar No. 09388150)
Jennifer F. Wertz (State Bar No. 24072822)
J. Machir Stull (State Bar No. 24070697)
2323 Ross Ave., Suite 600
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Telephone: (214) 953-6000
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Local Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

LEVENFELD PEARLSTEIN, LLC
Eileen M. Sethna, Esq. (admitted *pro hac vice*)
Ryan C. Hardy, Esq. (admitted *pro hac vice*)
Elizabeth B. Vandesteeg, Esq. (admitted *pro hac vice*)
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Facsimile: (312) 346-8634

Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

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)
Leif M. Clark, Trustee of the Edgemere Litigation Trust Plaintiff, v Intercity Investment Properties, Inc., and Kong Capital LLC, Defendants.	Adv. Pro. No. 22-03040 (MVL)

APPENDIX IN SUPPORT OF DEFENDANTS' SUPPLEMENTAL MOTION TO COMPEL PRODUCTION OF FTI CONSULTING, INC. DOCUMENTS

[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.



Exhibit No.	Description	App. No.
A	Subpoena served on FTI on July 8, 2022	002-0017
B	FTI's response to subpoena, served on September 14, 2022	0019-0035
C	Defendants' correspondence with FTI about FTI's responses, dated October 11, 2022 and October 4, 2023	0037-0045
D	Defendants' correspondence with Plaintiff regarding FTI's responses, dated October 24 and 26, 2023	0047-0049
E	June 23, 2023 Order Regarding the Production of Documents by Lifespace Communities, Inc. [ECF No. 314]	0051-0064
F	Transcript of Status Conference held on August 23, 2023	0066-0160
G	Transcript of Status Conference held on October 3, 2023	0162-0270
H	February 6, 2023 Order Regarding Court's *In Camera* Review of Certain Documents in Connection With Plaintiff and Defendants' Motions to Compel Production [ECF No. 30]	0272-0294

Dated: November 1, 2023

/s/ *Elizabeth B. Vandesteeg*

JACKSON WALKER LLP
Michael S. Held (State Bar No. 09388150)
W. Ross Forbes, Jr. (State Bar No. 00796564)
Edwin Buffmire (State Bar No. 24078283)
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Email: rforbes@jw.com
Email: ebuffmire@jw.com
Email: mfuller@jw.com

Local Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

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Telephone: (312) 346-8380
Facsimile: (312) 346-7634
Email: evandesteeg@lplegal.com
Email: rhardy@lplegal.com
Email: esethna@lplegal.com

Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November 2023 a true and correct copy of the foregoing was served electronically on all persons via the Court's CM/ECF system. In addition, on that same date a copy was sent by U.S. Mail, first-class postage pre-paid to:

FTI Consulting, Inc.
c/o Mr. Matthew Bascardi
Chief Counsel, US Operations
6300 Blair Hill Lane, Suite 303
Baltimore, MD 21209
With email copies to: Matthew.Bascardi@fticonsulting.com
drubinstein@sidley.com
jtravalini@sidley.com

/s/ *Michael S. Held*
Michael S. Held

Exhibit A

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

In re:	)	
	)	
Northwest Senior Housing Corporation, *et al.*,	)	Chapter 11
	)	
Debtors[1]	)	Case No. 22-30659 (MVL)
	)	
Northwest Senior Housing Corporation,	)	
	)	
Plaintiff	)	
	)	
v.	)	Adv. No. 22-03040 (MVL)
	)	
Intercity Investment Properties, Inc., and Kong Capital LLC,	)	
	)	
Defendants	)	

NOTICE OF DEPOSITION SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS AND TO PROVIDE DEPOSITION TESTIMONY TO FTI CONSULTING, INC.

PLEASE TAKE NOTICE that Intercity Investment Properties, Inc. and Kong Capital LLC ("Defendants") will serve FTI Consulting, Inc., by and through its registered agent, C T Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136, with the attached subpoena pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, directing FTI Consulting, Inc. to produce documents for inspection and copying at the offices of Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, Texas 75201 by July 25, 2022, and to present a corporate representative to appear for an oral and videotaped deposition on August 1, 2022 at 9:00 AM

[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 ("SQLC") (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

(CST), or at a time agreed to by the parties and their counsel, at a place and time agreed to by the parties and their counsel.

Dallas, Texas
July 8, 2022

/s/ *Michael S. Held*

JACKSON WALKER LLP
Michael S. Held (State Bar No. 09388150)
W. Ross Forbes, Jr. (State Bar No. 00796564)
Edwin Buffmire (State Bar No. 24078283)
Marc Fuller (State Bar 24032210)
2323 Ross Avenue, Suite 600
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Facsimile: (214) 953-5822
Email: mheld@jw.com
Email: rforbes@jw.com
Email: ebuffmire@jw.com
Email: mfuller@jw.com

Local Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

LEVENFELD PEARLSTEIN, LLC
Elizabeth B. Vandesteeg (admitted *pro hac vice*)
Harold D. Israel (admitted *pro hac vice*)
Eileen M. Sethna (admitted *pro hac vice*)
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Email: evandesteeg@lplegal.com
Email: hisrael@lplegal.com
Email: esethna@lplegal.com

Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

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

In re:	)	
	)	
Northwest Senior Housing Corporation, *et al.*,	)	Chapter 11
	)	
Debtors[1]	)	Case No. 22-30659 (MVL)
	)	
Northwest Senior Housing Corporation,	)	
	)	
Plaintiff	)	
	)	
v.	)	Adv. No. 22-03040 (MVL)
	)	
Intercity Investment Properties, Inc., and Kong Capital LLC,	)	
	)	
Defendants	)	

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS AND TO PROVIDE DEPOSITION TESTIMONY TO FTI CONSULTING, INC.

TO: FTI Consulting, Inc., c/o C T Corporation System,1999 Bryan St., Ste. 900, Dallas, TX 75201-3136

Attn: Chad J. Shandler, 1166 Avenue of the Americas, 15th Floor, New York, NY 10036

FROM: Intercity Investment Properties, Inc. and Kong Capital LLC, by and through its attorneys of record, W. Ross Forbes, Jr., Edwin Buffmire, and Marc Fuller, Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, TX 75201.

Intercity Investment Properties, Inc. and Kong Capital LLC ("Defendants"), pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Rule 7030 and 9016 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") as well

[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 ("SQLC") (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

as Rule 2004 and Bankruptcy Local Rule 2004, by and through its counsel, issues the attached subpoena to FTI Consulting, Inc.

YOU ARE COMMANDED to produce the documents, electronically stored information, or objects as specified in the attached Exhibit A, subject to the Definitions and Instructions contained herein, by July 25, 2022, or at such other time as agreed upon by you and counsel for Intercity and Kong, to the undersigned counsel at Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, TX 75201 or via electronic email to rforbes@jw.com, ebuffmire@jw.com, and mfuller@jw.com.

YOU ARE ALSO COMMANDED to appear for deposition, via a corporate representative, on August 1, 2022, beginning at **9:00 a.m. (CST)**, or at a time agreed to by the parties and their counsel, at a place and time agreed to by the parties and their counsel, regarding the topics and documents set forth on Exhibit A. The deposition will be taken by oral examination before a court reporter authorized by law to administer oaths and take testimony pursuant to Federal Rule of Bankruptcy Procedure 7028 and may be videotaped.

Dallas, Texas
July 8, 2022

/s/ *Michael S. Held*

JACKSON WALKER LLP
Michael S. Held (State Bar No. 09388150)
W. Ross Forbes, Jr. (State Bar No. 00796564)
Edwin Buffmire (State Bar No. 24078283)
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Email: mfuller@jw.com

Local Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

LEVENFELD PEARLSTEIN, LLC
Elizabeth B. Vandesteeg (admitted *pro hac vice*)
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Email: evandesteeg@lplegal.com
Email: hisrael@lplegal.com
Email: esethna@lplegal.com

Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

UNITED STATES BANKRUPTCY COURT

Northern District of Texas

In re Northwest Senior Housing Corporation, *et al.*
Debtor

Case No. 22-30659 (MVL)

Chapter 11

Northwest Senior Housing Corporation,
Plaintiff

v.

Intercity Investment Properties, Inc., and Kong Capital LLC,
Defendant

Adv. Proc. No. 22-03040 (MVL)

SUBPOENA TO TESTIFY AT A DEPOSITION & TO PRODUCE DOCUMENTS, INFORMATION,OR OBJECTS IN AN ADVERSARY PROCEEDING

To: **FTI Consulting, Inc., c/o C T Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136**

Testimony: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to

[X]

be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE	DATE AND TIME
LOCATION TBD at a mutually-agreed location	**August 1, 2022 at 9:00 a.m. (CST)**

The deposition will be recorded by this method:

Stenographic and/or videotape

[X] *Production*: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Exhibit A, attached

PLACE	DATE AND TIME
Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, TX 75201	**July 25, 2022 by 5:00 p.m. (CST)**

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

07/08/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk — */s/ Michael S. Held* — *Attorney's signature*

The name, address, email address, and telephone number of the attorney representing **Intercity Investment Properties, Inc. & Kong Capital LLC**, who issues or requests this subpoena, are:

Michael S. Held, Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, TX 75201 , mheld@jw.com, (214) 953-5966

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____
_____ on (*date*) _____ ; or

☐ I returned the subpoena unexecuted because: _____
_____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $_____ for services, for a total of $_____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)

(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

…

(g) Contempt. The court for the district where compliance is required – and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT A

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS AND TO PROVIDE DEPOSITION TESTIMONY TO FTI CONSULTING, INC.

I. INSTRUCTIONS

1. The requested documents are to be produced for inspection and copying, at the offices of Jackson Walker, LLP, 2323 Ross Avenue, Suite 600, Dallas, Texas 75201, unless otherwise agreed between the parties.

2. If you object to any of the following Discovery Requests, you must state the legal and factual basis for each objection. If you object to only a portion of a Discovery Request, you must identify the specific portion of the Discovery Request to which you object and must respond fully to the remainder of the Discovery Request.

3. If a requested document is a document created from any of the programs in the Microsoft Office Suite (including, but not limited to, Microsoft Word, Excel, PowerPoint, Access, Project or Outlook) that exists in its native format (e.g., .doc, .xls, .ppt, .msg, .pst) or can be readily converted into a format reasonably accessible via a program in the Microsoft Office Suite (e.g., a document created from another commercially available electronic mail, word processing, spreadsheet or database program), then produce such document in its native electronic format. Documents produced in this manner should include metadata.

4. If your answer to any Discovery Request is not within your personal knowledge, you must identify each person you know who has, or may have, personal knowledge of the matter that is addressed in the Discovery Request, and the contact information and job title of such person.

5. Each Discovery Request shall operate and be responded to independently and, unless otherwise indicated, no Discovery Request limits the scope of any other Discovery Request.

6. Documents provided in response hereto shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond with the categories in these Requests for Production of Documents.

7. If you produce Documents in addition to, or in lieu of, providing full and complete narrative responses where permitted by the Federal Rules of Civil Procedure:

    a. In producing Documents and things, indicate the paragraph and subparagraph to which a produced document or thing is responsive.

    b. In producing Documents and things, furnish all Documents or things known or available to you, regardless of whether such Documents or things are possessed directly by you or your representatives.

c. If any requested Documents or things cannot be produced in full, produce such Documents to the extent possible, specifying which Documents or things were only partially produced.

8. These Discovery Requests are deemed to be continuing. If after answering, you become aware of any further information responsive to this document, you are required to produce such additional Documents and things and/or provide such additional information.

9. If any Documents or things requested or identified were at one time in existence but are no longer in existence, then so state, specifying for each document or thing:

   a. The type of document or thing;

   b. The types of information contained thereon;

   c. The date upon which it ceased to exist;

   d. The circumstances under which it ceased to exist;

   e. The identity of all persons having knowledge of the circumstances under which it ceased to exist; and

   f. The identity of all persons now having or who, at one time, had knowledge of the contents thereof.

10. Selection of Documents from the files and other sources in the numbering, if any, of such Documents shall be performed in such a manner as to ensure that the source of each document may be determined, if necessary.

11. Documents attached to each other should not be separated.

12. In lieu of producing originals or copies thereof, you may, at your option, submit legible photographic or other reproductions of such Documents, provided that the originals or copies from which such reproductions were made are retained by you until the disposition of this litigation.

13. If you, after investigation, determine that you have no documents that are responsive to a Request, Your statement that you have no such documents constitutes a representation that you have conducted a search for the documents and represents that you have no documents that are responsive.

14. Unless otherwise stated, the time frame covered by these Discovery Requests is from **January 1, 2020 to the present (the "Relevant Time Period")**. If you seek to withhold any Document, thing, or information on the basis that it is purportedly privileged or entitled to some other limitation of discovery, you are instructed to use the following procedure:

a. You shall supply a numerical list of the Documents and things for which a privilege or other limitation of discovery is claimed, indicating:

i. the name of each author, writer, sender, or initiator of such document or thing, if any;
ii. the name of each recipient, addressee, or party to whom such document or thing was intended, if any;

iii. the date of such document or thing, if any, or an estimate thereof and so indicated as an estimate if no date appears on said document;

iv. the general subject matter as described in the document; and

v. the claimed grounds for privilege or other limitation of discovery.

II. DEFINITIONS

As used herein, the following terms have specific meanings as defined in this section:

1. "You" refers to FTI Consulting, Inc., its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

2. "Edgemere" refers to Northwest Senior Housing Corporation, its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

3. "Intercity" refers to Intercity Investment Properties, Inc., its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

4. "Kong" refers to Kong Capital LLC, its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

5. "UMB" refers to UMB Bank, N.A., its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

6. The "Lawsuit" refers to the above-captioned adversary proceeding filed by Edgemere against Intercity Kong on April 14, 2022.

7. The "Disclosure Statement" means that comprehensive document required by Tex. Health & Safety Code Ann. § 246.042 to be provided to potential residents, informing them of all aspects of living at the Edgemere, including a location and description of the community, services and fees, policies, resident qualifications, and financial information about the Edgemere, with

exhibits of the Life Care Agreement, audited financial statements, financial projections, and the resident handbook.

8. The "Property" refers to the approximately 16.25 acres that is subject to the Lease, and commonly known as 8523 Thackery Street, Dallas, Texas 75225.

9. The "Restructuring" refers to any effort to improve Edgemere's financial position, whether through modification or reorganization of Edgemere's organizational or capital structure, or otherwise addressing existing liabilities.

10. The "Bankruptcy" refers to Edgemere's Chapter 11 bankruptcy case, styled *Northwest Senior Housing Corporation, et al.*, Case No. 22-30659, currently pending in the United States Bankruptcy Court in the Northern District of Texas – Dallas Division, and related litigation, including the above-captioned adversary proceeding.

11. The "Bonds" refers to any and all outstanding bonds on which Edgemere currently owes, including, but not limited to, the bonds for which UMB Bank, N.A. is the bond trustee.

12. The "Historical Financial Condition" means the Edgemere's overall financial condition, including but not limited to assets, liabilities, income, or losses, from January 1, 2015 through present date.

13. The "Lease" refers to the Ground Lease between Intercity and Edgemere dated November 15, 1999 that covers the property and improvements where Edgemere operates.

14. The "Lease Term" refers to that term of fifty-five (55) years enumerated in the Lease.

15. The "Forbearance Agreement" refers to the December 21, 2021 Forbearance Agreement between Northwest Senior Housing Corporation, Senior Quality Lifestyle Corporation, UMB Bank, N.A., Intercity, and Lifespace.

16. "Discovery Requests" means the requests for production of Documents contained herein.

17. "Communication" or "Communications" means a communication in any form, including, without limitation, notes, complaints, diaries, journals, datebooks, reports, calendars, telephone messages, letters, email messages, instant messages (such as but not limited to Signal, Cisco Jabber, IBM Sametime, Wickr, ICQ, Kik, BBM, Gchat, iMessage, Telegram, WhatsApp, Slack, and similar types of messages), cell phone text messages (SMS messages and MMS messages), voicemail messages, Slack messages or other internal messaging system communications, social media communications or posting on sites including but not limited to Facebook, Twitter, Instagram, Gab, or Parler (including any direct messages), website postings, internet chat-room postings, lists, correspondence, drawings, designs, telegrams, manuals, summaries or records of personal conversations, logs, minutes or records of meetings, minutes of any other type, transcripts of oral testimony or statements, affidavits, or summaries of investigations. For avoidance of doubt, the term "Communications" includes internal

communications and communications with third parties. The foregoing definition is subject to any objection sustained in relation to Plaintiffs' similar definition directed at Defendants.

18. "Document" means any printed, written, typed, recorded, transcribed, taped, photographic, or graphic matter, however produced or reproduced, including, but not limited to: any letter, correspondence, or communication of any sort; electronic mail, either sent or received; file, print, negative, or photograph; sound or video recording; note, notebook, diary, calendar, minutes, memorandum, contract, agreement, or any amendment thereto; telex, telegram, or cable; summary, report, or record of any telephone conversation, personal conversation, discussion, interview, meeting, conference, investigation, negotiation, act, or activity; projection, work paper or draft; computer output or input; data processing card; opinion or report of any consultant; request, order, invoice, or bill of lading; analysis, diagram, map, index, sketch, drawing, plan, chart, manual, brochure, pamphlet, advertisement, circular, newspaper or magazine clipping; press release; receipt, journal, ledger, schedule, bill, or voucher; financial statement, statement of account, bank statement, checkbook, check stubs or register, canceled check, deposit slip, charge slip, tax return, or requisition; file, study, graph, or tabulation; and all other writings and recordings of whatever nature, whether signed, unsigned or transcribed, and any other data compilation from which information can be obtained or translated. The term "Document" also shall mean: the original and/or any non-identical original or copy, including those with any marginal note or comment or showing additions, deletions, or substitutions; drafts; attachments to or enclosures with any document; and any other documents referred to or incorporated by reference in the document. The term "Document" also specifically includes all electronic documents and other "electronically stored information" (whether stored electronically or in the form of a hard-copy, print-out, or otherwise) and all attachments thereto.

19. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

20. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all;" "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine, or neuter form shall include each of the other genders.

III. SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS

LIST OF DOCUMENTS REQUESTED

REQUEST FOR PRODUCTION NO. 1: All Documents and Communications concerning Intercity, Kong, or the Lawsuit.

REQUEST FOR PRODUCTION NO. 2: All Documents and Communications concerning the Lease, including, but not limited to, communications concerning Edgemere's obligations under the Lease as written, as well as any proposals to modify the Lease or purchase the Property.

REQUEST FOR PRODUCTION NO. 3: All Documents and Communications concerning the Forbearance Agreement.

REQUEST FOR PRODUCTION NO. 4: All Documents and Communications concerning any agreement between You and the Edgemere and/or Lifespace, including but not limited to the scope of your engagement and directions provided to you, by any party, in conjunction for the preparation of any written material or report.

REQUEST FOR PRODUCTION NO. 5: All Documents and Communications You received from Edgemere and/or Lifespace concerning Edgemere's Historical Financial Condition and/or business decisions.

REQUEST FOR PRODUCTION NO. 6: All Documents You prepared for Edgemere and/or Lifespace concerning Edgemere's Historical Financial Condition.

REQUEST FOR PRODUCTION NO. 7: All Documents and Communications You relied on in preparing Documents concerning Edgemere's Historical Financial Condition.

REQUEST FOR PRODUCTION NO. 8: All Documents and Communications concerning the Bonds from January 1, 2015 to present, including, but not limited to, refinancing the Bonds, the Bond ratings or changes thereto, and any potential or actual default on the Bonds by Edgemere.

REQUEST FOR PRODUCTION NO. 9: All Documents and Communications between You and any individual or entity with a financial interest in the Bonds.

REQUEST FOR PRODUCTION NO. 10: All Documents and Communications You reviewed in preparing Documents concerning the Edgemere's Historical Financial Condition and the Lease Term.

REQUEST FOR PRODUCTION NO. 11: All Documents and Communications concerning any analysis as to Your projections as to future financial performance versus actual financial performance over the course of your engagement related to the Edgemere.

REQUEST FOR PRODUCTION NO. 12: All Documents and Communications related to a determination as to the last date that Edgemere could responsibly, in light of its fiduciary duties

and in conjunction with the Lease Term, accept deposits from residents or potential residents for life care contracts.

REQUEST FOR PRODUCTION NO. 13: All Documents and Communications You were provided, reviewed or prepared that mentioned the Property, the Lease, or the Lease Term.

REQUEST FOR PRODUCTION NO. 14: All Documents and Communications concerning the Restructuring or Bankruptcy.

REQUEST FOR PRODUCTION NO. 15: All Documents and Communications concerning impacts of COVID-19 on Edgemere's Historical Financial Condition and residential occupancy and retention rates.

REQUEST FOR PRODUCTION NO. 16: All Communications between You and any third-party concerning Edgemere, Intercity, or Kong, including, but not limited to, Communications with regulatory agencies, media outlets, or bond rating agencies.

REQUEST FOR PRODUCTION NO. 17: All Documents and Communications regarding Your preparation, drafting, or other involvement in any materials for distribution to media outlets regarding Edgemere, Kong, Intercity, or this Lawsuit, including but not limited to the "media documents" reflected in the time log submitted with FTI's First Monthly Fee Application in the Bankruptcy.

REQUEST FOR PRODUCTION NO. 18: All Documents or Communications provided to any media outlet or entity.

IV. SUBPOENA TO PROVIDE DEPOSITION TESTIMONY

MATTERS FOR EXAMINATION

1. Your knowledge of Edgemere's Historical Financial Condition over the past five (5) years preceding, leading up to, and during the Restructuring and Bankruptcy.

2. Your knowledge of the Restructuring and Bankruptcy, including the events and circumstances leading up to the Restructuring and Bankruptcy.

3. Your knowledge of the Lease and Edgemere's ability to perform its obligations under the same.

4. Any agreements entered into by You and Edgemere and/or Lifespace.

5. Your knowledge of the development, coordination, and/or implementation of any strategy related to any potential modification of, reformation of, recharacterization of, repudiation of, or any other change in treatment of the Lease or potential purchase of the Property, and your knowledge of discussions with or disclosures of same with any third party.

6. Your knowledge of the Bonds.

7. Your knowledge of the Edgemere's ability to operate, including its ability to sell life care contracts, at the Property for the Lease Term.

8. Your understanding of any disclosure concerning Edgemere's Historical Financial Condition to any third party.

9. Your knowledge as to any analysis regarding Your projections as to future financial performance versus actual financial performance over the course of your engagement related to the Edgemere.

10. The nature of Your relationship with Edgemere and/or Lifespace.

11. Your involvement in media materials, strategy, or communications regarding the Edgemere, the Restructuring, the Bankruptcy, or the Lawsuit.

12. Your efforts search for, collect, and produce documents and communications responsive to this subpoena.

Exhibit B

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)
Northwest Senior Housing Corporation, *et al*. Debtors, v. Intercity Investment Properties, Inc. and Kong Capital, LLC, Defendants.	Adv. Pro. No. 22-03040 (MVL)

FTI CONSULTING INC.'S OBJECTIONS AND RESPONSES TO SUBPOENA

FTI Consulting Inc. ("FTI") submits the following objections and responses to Plaintiffs' subpoena (the "Subpoena"):

GENERAL OBJECTIONS

1. FTI will respond to the Discovery Requests in compliance with the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, and the Rules of this Court and will, to the extent possible, construe the Discovery Requests consistent with the ordinary use of the English language and the words used requests according to their usual and customary meaning. The information provided is based upon the information presently available to and known by FTI.

[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.

FTI will supplement its responses if necessary consistent with the Federal Rules of Civil Procedure.

2. FTI objects to the Discovery Requests to the extent they seek disclosure of communications, documents or other information that constitute communications between FTI, Edgemere and its attorneys or information protected from discovery by the common interest privilege or the work product doctrine. FTI responds to Discovery Requests assuming Defendants do not intend FTI to disclose any such communications, documents, or other information that implicates or may implicate any privilege or the work product doctrine.

3. FTI reserves all objections to the admissibility at trial of any information provided herein. The production of any information or identification or production of any document will not constitute an admission by FTI that such information or document is relevant to the pending litigation. Accordingly, FTI reserves the right to object to further inquiry with respect to the subject matter of any information or document provided. Discovery and trial preparation continue, and therefore FTI reserves the right to introduce any information or documents subsequently discovered and located and to assert additional information if necessary. Thus, to the extent consistent with the Federal Rules of Civil Procedure, the following responses are provided without prejudice to FTI's right to produce evidence, documentary or otherwise, of any subsequently discovered facts and/or documents.

4. FTI objects to the Discovery Requests to the extent they purport to create an obligation to provide information or identify or produce documents in a manner not required under the Federal Rules of Civil Procedure or other applicable law. FTI objects to any attempt to impose any greater obligation to collect documents or information beyond that imposed by law or regulation.

5. FTI objects to the Discovery Requests to the extent they are overly broad in and seek information or documents not reasonably calculated to lead to the discovery of admissible evidence or not relevant to any claim or defense.

6. FTI objects to the Discovery Requests to the extent they impose an undue or disproportionate burden on FTI or to the extent they seek information or documents already in Defendants' possession by means of Edgemere's production, or that are publicly available.

7. In a good faith effort to comply with the Federal Rules of Civil Procedure concerning discovery, and to err on the side of inclusiveness, FTI may provide information that falls within the purview of objections specifically stated herein or elsewhere. Such identification should not be deemed a waiver of these objections, and FTI expressly preserves each and every objection.

8. FTI objects to the production of documents for inspection and copying at the offices of Jackson Walker, LLP, 2323 Ross Avenue, Suite 600, Dallas, Texas 75201. It is more reasonable and practicable for FTI to produce documents in electronic format.

9. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed thereto in Edgemere's adversary complaint (the "Complaint").

10. FTI objects to the time frame covered by these Discovery Requests being from January 1, 2020 to the present (the "Relevant Time Period"). For purposes of responding to these Requests, FTI will be producing documents from February 17, 2021 to the present.

11. FTI objects to the production of a privilege log, as such production would be unduly burdensome and not proportional for FTI to produce as a non-party to this litigation.

SPECIFIC OBJECTIONS

REQUEST FOR PRODUCTION NO. 1: All Documents and Communications concerning Intercity, Kong, or the Lawsuit.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad and unduly burdensome in that it purports to seek "all Documents and Communications concerning Intercity [and] Kong." The request is not reasonably related to the allegations in the Complaint and therefore imposes a burden on FTI that is disproportionate to the needs of the case. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 2: All Documents and Communications concerning the Lease, including, but not limited to, communications concerning Edgemere's obligations under the Lease as written, as well as any proposals to modify the Lease or purchase the Property.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 3: All Documents and Communications concerning the Forbearance Agreement.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 4: All Documents and Communications concerning any agreement between You and the Edgemere and/or Lifespace, including but not limited to the scope of your engagement and directions provided to you, by any party, in conjunction for the preparation of any written material or report.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege.

Subject to and without waiving any objection, FTI states that the terms of its engagement have been publicly filed in the Chapter 11 cases in which Intercity is an active participant and are therefore already in Intercity's possession or are readily available to Intercity.

REQUEST FOR PRODUCTION NO. 5: All Documents and Communications You received from Edgemere and/or Lifespace concerning Edgemere's Historical Financial Condition and/or business decisions.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than FTI. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as FTI, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 6: All Documents You prepared for Edgemere and/or Lifespace concerning Edgemere's Historical Financial Condition.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than FTI. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as FTI, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 7: All Documents and Communications You relied on in preparing Documents concerning Edgemere's Historical Financial Condition.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than FTI. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as FTI, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 8: All Documents and Communications concerning the Bonds from January 1, 2015 to present, including, but not limited to, refinancing the Bonds, the Bond ratings or changes thereto, and any potential or actual default on the Bonds by Edgemere.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as FTI, or have previously been produced by Edgemere.

FTI also objects to this request because it seeks documents beyond the scope or the allegations in the Complaint or not relevant to a claim or defense in this lawsuit.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 9: All Documents and Communications between You and any individual or entity with a financial interest in the Bonds.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as FTI, or have previously been produced by Edgemere.

FTI also objects to this request because it seeks documents beyond the scope or the allegations in the Complaint or not relevant to a claim or defense in this lawsuit.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 10: All Documents and Communications You reviewed in preparing Documents concerning the Edgemere's Historical Financial Condition and the Lease Term.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than FTI. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as FTI, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 11: All Documents and Communications concerning any analysis as to Your projections as to future financial performance versus actual financial performance over the course of your engagement related to the Edgemere.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as vague, overly broad and unduly burdensome.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 12: All Documents and Communications related to a determination as to the last date that Edgemere could responsibly, in light of its fiduciary duties and in conjunction with the Lease Term, accept deposits from residents or potential residents for life care contracts.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than FTI. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as FTI, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 13: All Documents and Communications You were provided, reviewed or prepared that mentioned the Property, the Lease, or the Lease Term.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad and unduly burdensome. The request is not reasonably related to the allegations in the Complaint and therefore imposes a burden on FTI that is disproportionate to the needs of the case. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 14: All Documents and Communications concerning the Restructuring or Bankruptcy.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad and unduly burdensome. The request is not reasonably related to the allegations in the Complaint and therefore imposes a burden on FTI that is disproportionate to the needs of the case. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 15: All Documents and Communications concerning impacts of COVID-19 on Edgemere's Historical Financial Condition and residential occupancy and retention rates.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than FTI, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 16: All Communications between You and any third-party concerning Edgemere, Intercity, or Kong, including, but not limited to, Communications with regulatory agencies, media outlets, or bond rating agencies.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than FTI, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 17: All Documents and Communications regarding Your preparation, drafting, or other involvement in any materials for distribution to media outlets regarding Edgemere, Kong, Intercity, or this Lawsuit, including but not limited to the "media

documents" reflected in the time log submitted with FTI's First Monthly Fee Application in the Bankruptcy.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad and unduly burdensome. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 18: All Documents or Communications provided to any media outlet or entity.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as vague. FTI further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant, or have previously been produced by Edgemere.

Subject to and without waiving any objection, FTI will produce non-privileged responsive documents in FTI's possession, custody, or control.

OBJECTIONS TO DEPOSITION TESTIMONY
MATTERS FOR EXAMINATION

12. Your knowledge of Edgemere's Historical Financial Condition over the past five (5) years preceding, leading up to, and during the Restructuring and Bankruptcy.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

13. Your knowledge of the Restructuring and Bankruptcy, including the events and circumstances leading up to the Restructuring and Bankruptcy.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

14. Your knowledge of the Lease and Edgemere's ability to perform its obligations under the same.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

15. Any agreements entered into by You and Edgemere and/or Lifespace.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege.

16. Your knowledge of the development, coordination, and/or implementation of any strategy related to any potential modification of, reformation of, recharacterization of, repudiation of, or any other change in treatment of the Lease or potential purchase of the Property, and your knowledge of discussions with or disclosures of same with any third party.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

17. Your knowledge of the Bonds.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

18. Your knowledge of the Edgemere's ability to operate, including its ability to sell life care contracts, at the Property for the Lease Term.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

19. Your understanding of any disclosure concerning Edgemere's Historical Financial Condition to any third party.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

20. Your knowledge as to any analysis regarding Your projections as to future financial performance versus actual financial performance over the course of your engagement related to the Edgemere.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

21. The nature of Your relationship with Edgemere and/or Lifespace.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

22. Your involvement in media materials, strategy, or communications regarding the Edgemere, the Restructuring, the Bankruptcy, or the Lawsuit.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. FTI further objects to this request as overly broad. Subject to and without waiving the foregoing, FTI will provide testimony to the extent it does not implicate the attorney-client privilege, work product, and/or common interest privileges.

23. Your efforts search for, collect, and produce documents and communications responsive to this subpoena.

RESPONSE: FTI objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege.

Dated: September 14, 2022

Respectfully submitted,

By: */s/ Matthew M. Bacsardi*

Attorney for Non-Party FTI Consulting, Inc.

CERTIFICATE OF SERVICE

I, Matthew M. Bacsardi, an attorney for non-party FTI Consulting, Inc., hereby certify that a copy of the foregoing was served on September 14, 2022, by email to the following counsel of record who issued the Subpoena:

Levenfeld Pearlstein, LLC
Elizabeth B. Vandesteeg (evandesteeg@lplegal.com)
Harold D. Israel (hisrael@lplegal.com)
Eileen M. Sethna (esethna@lplegal.com)
2 North Lasalle Street, Suite 1300
Chicago, IL 60602

Counsel for Defendants

By: */s/ Matthew M. Bacsardi*

Attorney for Non-Party FTI Consulting, Inc.

Exhibit C

Jackson Walker LLP

W. Ross Forbes, Jr.
(214) 953-5966 (Direct Dial)
214-661-6625 (Direct Fax)
rforbes@jw.com

October 11, 2022

VIA EMAIL

FTI Consulting
Matthew Bacsardi – Chief Counsel, US Operations
6300 Blair Hill Lane – Suite 303
Baltimore, MD 21209
matthew.bacsardi@fticonsulting.com

RE: ***Northwest Senior Housing Corporation, et al. v. Intercity Investment Properties, Inc., et al.* – 22-03040 (MVL) - FTI Consulting's Objections and Responses to Subpoena**

Dear Mr. Bacsardi:

This letter is being sent as a courtesy regarding FTI Consulting, Inc.'s ("FTI") Objections and Responses to the Third-Party Subpoena (the "Response" and the "Subpoena") issued by Defendants, Intercity Investment Properties, Inc. ("ICI") and Kong Capital, LLC ("Kong," and collectively with ICI, the "Defendants") in the above-referenced matter along with FTI's proposed search terms (the "Proposed Search Terms") sent by Lisa Wilson on September 14, 2022.

As set forth more fully below, FTI waived its objections to the Subpoena by failing to timely respond. In fact, FTI has still not produced any documents in response to the Subpoena – it has only served the Response, which for the reasons set forth below, contains objections that are not only waived as untimely, but are also wholly baseless. FTI's attempts to interfere with Defendants' discovery and preparation of its defenses are impermissible. **Accordingly, before Defendants are forced to address the below issues with the Court, we request that you make yourself available for a phone call to meet and confer regarding the Response on/by October 7, 2022.**

1. *FTI's objections are waived.*

First and foremost, FTI waived any objections it may have had by failing to assert its objections for over fifty (50) days after responsive documents were due. *See* Fed. R. Civ. P. 45(d)(2)(B) ("The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served."); *Am. Fed'n of Musicians of the United States & Canada v. Skodam Films, LLC*, 313 F.R.D. 39, 57-58 (N.D. Tex. 2015) ("The failure to serve written objections to a subpoena within the time specified by Rule [45(d)(2)(B)] typically constitutes a waiver of such objections,' as does failing to file a timely motion to quash.").

2. *FTI failed to produce a privilege log.*

Remarkably, FTI repeats the following objections in response to every single Request: "FTI objects to this request to the extent it seeks materials shielded from the attorney-client privilege, the attorney work product doctrine, or the common interest privilege" (the "Privilege Objections"). However, FTI fails to produce a privilege log, and therefore it cannot meet its burden to show why the foregoing protections apply. *Employment Opportunity Comm'n v. BDO USA, L.L.P.*, 876 F. 3d 690, 695 (5th Cir. 2017).

3. *The Privilege Objections are improper.*

a. *Attorney-client privilege*

Even if FTI has retained Plaintiff's counsel, neither the attorney-client nor the work product doctrine can serve as a basis to withhold communications with Edgemere sent purely for business purposes. Nor does it allow FTI to withhold communications that do not involve legal counsel or reflect legal counsel's advice or mental impressions for the purpose of seeking or furthering legal representation. The attorney-client and work product privileges cannot, therefore, extend to the documents responsive to the Subpoena, since they involve FTI's business consulting work and there has never been a threat of litigation against FTI.

b. *Work product privilege*

The work product privilege also does not apply. It is FTI's burden to make a clear showing that the work-product privilege applies, and FTI has failed (or even attempted) to do so. FTI has made no showing at all that its responsive documents were prepared in anticipation of litigation. Nor can it – Edgemere has demonstrated that FTI was hired in 2020 as a financial advisor for purposes of the *bond* restructuring – not a bankruptcy filing, much less the instant adversary proceeding. There can be no doubt, then, that the work-product privilege does not apply to FTI. *Zenith Ins. Co. v. Tex. Inst. For Surgery, L.L.P.*, 328 F.R.D. 153, 162 (N.D. Tex. 2018).

c. *Common legal interest privilege*

The common interest privilege is also not applicable to the requested documents and communications. To be sure, the Fifth Circuit has outlined two types of communications that are generally protected under the common-interest privilege: "(1) communications between co-defendants in actual litigation and their counsel; and (2) communications between potential co-defendants and their counsel." *In re Santa Fe Int'l Corp.*, 272 F. 3d 705, 709 (5th Cir. 2011).

For a "potential" co-defendant to share the common interest privilege, "there must be a palpable threat of litigation at the time of the communication, rather than a mere awareness that one's questionable conduct might someday result in litigation [.]" *Id.*, at 711. Merely "consulting" with a third-party is not sufficient to invoke the common interest privilege, and there has never been a threat of litigation against FTI. *See e.g. Tonti Mgmt, Co. v. Soggy Doggie, LLC*, NO CV 19-13134, 2020 WL 9172077, at *1 (E.D. La. June 25, 2020).

Furthermore, the requested communications do not concern shared business interests sufficient to warrant the application of the common interest privilege. "Courts have not extended the common legal interest

privilege to generalized shared business interests. For instance, a shared business interests or sharing information in an effort to avoid litigation do not suffice for the common legal interest privilege." *Id.*, at *4.

Accordingly, the common interest privilege is inapplicable to FTI's production because FTI has never been an active or potential co-defendant or party in this litigation.

4. *FTI's unduly burdensome objections are inapplicable.*

In addition to the Privilege Objections, FTI repeats the following "unduly burdensome" objection in response to 15 Requests (**Nos. 1-3, 5-14, 17 and 18**): "this request is unduly burdensome in that it seeks documents already in Defendants' possession or control, or that equally available to Defendant or have previously been produced by Edgemere." This repeated objection is improper.

First, the documents sought in these Requests are not in Defendants' possession or otherwise publicly available. For example, Request No. 5 asks for documents and communications *you received from Edgemere and/or Lifespace;* No. 6 asks for documents *you prepared for Edgemere and/or Lifespace,* No. 7 asks for documents and communications *you relied on in preparing documents concerning Edgemere's financial condition.*

Moreover, there is no universal requirement that a party must first seek documents from an opposing party. *See Nasufi v. King Cable, Inc.,* No. 3:15-cv-3273-B, 2017 WL 3334110, at *7 (N.D. Tex. Aug 4, 2017) (holding that party should not "be required to further pursue the subpoenaed material and information" from the opposing party before seeking it from a non-party); *see also Med. Tech., Inc. v. Breg, Inc.*, 2010 WL 3734719, at *4 (E.D. Pa. Sept. 21, 2010) (subpoena to non-party was appropriate "not only to supplement [opposing party's] production but also to test the veracity of [the opposing party's] assertions that they have produced all the documents they are required to produce").

5. *FTI's relevancy objections are baseless.*

As you know, relevant information encompasses "any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Merrill v. Waffle House, Inc.*, 227 F.R.D. 467, 470 (N.D. Tex. 2005). Nonetheless, FTI objects to **Requests 1, 8, 9 and 13** on relevancy grounds, despite the foregoing being narrowly tailored to issues that are highly relevant to this proceeding. Not only are these objections waived (as set forth above), but they are illustrative of FTI's attempts to impede Defendants' ability to conduct meaningful discovery and interfere with the preparation of their defenses in this case, and such blatant interference will not be permitted.

Request No. 1 asks for all documents and communications concerning Intercity, Kong, or the Lawsuit. FTI objects that this Request is not "reasonably related to the allegations in the Complaint and therefore imposes a burden that is disproportionate to the needs of the case." This objection is baseless because any communications between Edgemere and its restructuring consultant related to Intercity, Kong or *this Lawsuit* are inherently relevant to this case, and at the very least, reasonably could lead to matters that could bear on any issues in the case.

Request Nos. 8 asks for all documents and communications concerning the Bonds from January 1, 2015 to present, including, but not limited to, refinancing the Bonds, the Bond ratings or changes thereto, and any potential or actual default on the Bonds by Edgemere. FTI objects to this Request "because it seeks documents beyond the scope or the allegations in the Complaint or not relevant to a claim or defense in this lawsuit." First, this objection runs contrary to FTI's own Proposed Search Terms which includes the term "Bond," showing that FTI understands this to be a relevant issue. Moreover, this objection is baseless because, among other reasons, Edgemere's claims in this lawsuit are premised on its inability to repay the Bonds. (Compl. ¶ 94). Edgemere also contends that Defendants' conduct "substantially contributed to Edgemere having to file for chapter 11 protection." *Id.*, at ¶ 69; *see also id.* at ¶¶ 80, 87, 96, 104. Therefore, Edgemere's repayment of the Bonds is directly relevant to whether Defendants' conduct caused Edgemere's alleged damages.

Request No. 9 asks for all documents and communications between you and any individual or entity with a financial interest in the Bonds. FTI objects to this Request "because it seeks documents beyond the scope or the allegations in the Complaint or not relevant to a claim or defense in this lawsuit." Again, since FTI was specifically engaged as a business consultant related to the bond restructuring, any communications with anyone with a financial interest in the bonds would be relevant to this matter for the reasons set forth above, or at the very least – would bear on, or reasonably could lead to a matter that could bear on any issue that may be in the case, including Edgemere's financial status in 2020 and whether Plaintiff's alleged damages were caused by Defendants, or whether, as Defendants allege, Edgemere's financial downfall began years before Defendants' alleged conduct.

Request No. 13 asks for all documents and communications you reviewed or prepared that mentioned the Property, the Lease, or the Lease Term (as those terms are defined in the Requests). FTI objects to this Request as "not reasonably related to the allegations in the Complaint and therefore imposes a burden on FTI that is disproportionate to the needs of the case." Any documents or communications that FTI has regarding the Property, Lease and/or Lease Term (all key issues in this case) would be highly relevant, and FTI has failed to provide any explanation as to how responsive documents would not bear on, or reasonably could lead to a matter that could bear on any issue that may be in this case.

6. *FTI's proposed search terms are inadequate.*

Finally, FTI never sent a hit list of documents and communications that include the Proposed Search Terms, despite our requests for same. With that said, it appears that the Proposed Search Terms and conditions are insufficient.

First, based on our review of relevant correspondence already produced, FTI's search for internal communications should include emails sent to and/or from the following emails that are not included in the Proposed Search Terms:

Alexis.Giua@fticonsulting.com
Cayla.Chen@fticonsulting.com
EdgemereCommunications@fticonsulting.com
Joey.Carmody@fticonsulting.com
Nicola.Leake@fticonsulting.com
Serena.Lightstone@fticonsulting.com

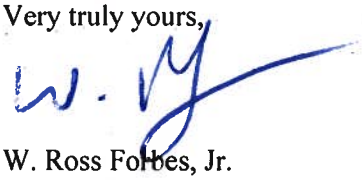
Sreesha.Sivakumar@fticonsulting.com
Victoria.Zaharoff@fticonsulting.com

Second, the following search terms should be added in order to ensure that all relevant documents and communications are produced:

1. DMN
2. Thackery
3. CapEx
4. "capital expenditure"
5. Banktupt*
6. Insol*
7. Restruck*
8. Polsinelli.com
9. Dorsey.com
10. Perkinscoie.com
11. TDI
12. Media
13. Recap*

Finally, please note that the Proposed Search Terms misspells Coe Schlicher as "coe shlicker," and we ask that you ensure it is spelled correctly in your search for responsive documents.

Very truly yours,



W. Ross Forbes, Jr.

cc: Lisa Vandesteeg (evandesteeg@lplegal.com)
Eileen Sethna (esethna@lplegal.com)
Jay Switzer (jswitzer@polsinelli.com)
Andrew Ennis (aennis@polsinelli.com)

October 4, 2023

VIA E-MAIL
FTI Consulting, Inc.
Matthew Bascardi – Chief Counsel, US Operations
6300 Blair Hill Lane – Suite 303
Baltimore, MD 21209
Matthew.bascardi@fticonsulting.com

Re: ***Northwest Senior Housing Corporation, et al. v. Intercity Investment Properties, Inc., et al.* – 22-03040 (MVL)**

Dear Counsel:

As you are aware, Levenfeld Pearlstein, LLC represents the Defendants in the above-referenced adversary proceeding (the "Adversary"). As you are also aware, the Adversary had been stayed by the Northern District of Texas Bankruptcy Court; however, the stay was recently lifted, and the Adversary is now proceeding.

You will recall that FTI Consulting, Inc. ("FTI") was served with a subpoena in the Adversary, and in response thereto, produced documents (the "FTI Production") along with a privilege log (the "FTI Privilege Log").

This letter sets forth various deficiencies regarding the FTI Privilege Log and the FTI Production. As set forth more fully below, neither the FTI Production nor the FTI Privilege Log comply with the Subpoena to Produce Documents, Information, or Objects and to Provide Deposition Testimony to FTI and dated July 8, 2022 (the "Subpoena"). I understand a supplemental production and privilege log were sent to Defendants on or about September 29. That production/privilege log is currently being reviewed and thus, this letter only discusses the deficiencies with the initial FTI Production and Privilege Log described above. Such deficiencies include, but are not limited to, the following.

The FTI Production

The FTI Production is deficient in a number of respects. First, the Subpoena called for FTI's production of documents on or by August 1, 2022, but FTI did not serve its objections or responses until on or about September 14, 2022. Consequently, any and all objections, privileges, or protections FTI may otherwise have advanced are waived because they were not timely asserted. *Am. Fed'n of Musicians of the United States and Canada v. Skodam Films, LLC*, 313 F.R.D. 39, 57-58 (N.D. Tex. 2015). Second, in many instances attachments to documents are missing, not identified, and otherwise unknown, leading to confusion as to whether the FTI Production is

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Chicago, IL 60606 USA
lplegal.com

complete or omits responsive, relevant documents. Third, nearly all of the FTI Production has been provided as imaged-copies of the documents requested rather than production of documents in native format, rendering a complete review of the actual documents in the FTI Production set impossible.

The FTI Privilege Log

- **Attorney-Client Privilege**

Certain entries on the FTI Privilege Log purport that documents were withheld on the basis of attorney-client privilege. Those entries include correspondence with Tom Califano and other attorneys at Sidley Austin LLP. Please confirm whether FTI claims it was also represented by Tom Califano/Sidley and/or any other attorneys which also represented Plaintiff and/or Lifespace Communities, Inc. ("Lifespace"). Other non-exclusive examples of improperly withheld correspondence include communications with other Lifespace attorneys, including David Grossklaus/Dorsey & Whitney LLP and Eric Walker/Perkins Coie.

Note that even if FTI had retained the same counsel as Plaintiff and/or Lifespace, neither the attorney-client privilege nor the work product doctrine can serve as a basis to withhold communications that do not involve legal counsel or reflect legal counsel's advice or mental impressions for the purpose of seeking or furthering legal representation. Rather, the attorney-client privilege only applies to communications if it can be shown that (1) the communication was confidential; (2) made to a lawyer or his subordinate; and (3) for the primary purpose of securing either legal opinion or legal services, or assistance in a legal proceeding. *Jolivet v. Compass Group USA, Inc.*, 340 F.R.D. 7, 19 (N.D. Tex. 2021) (citing *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997)).

Therefore, and as was pointed out to you by letter dated October 11, 2022, neither the attorney-client nor work product privilege can extend to documents responsive to the Subpoena since they involve FTI's business consulting work, and there has never been a threat of litigation against FTI.

- **Work Product Privilege**

The work product privilege is inapplicable as the cited correspondence was not prepared for or in anticipation of litigation. Notably, many of the entries on the FTI Privilege Log date back to February 2021. The assertion that Plaintiff sought or received legal advice regarding "restructuring, bankruptcy, adversary proceeding" at that time is directly at odds with Plaintiff's contention that Defendants caused their bankruptcy in December 2021. And of course, the Debtor did not actually file its bankruptcy case until April 2022. Thus, presumably, any entries throughout 2021 were strictly for business consulting work, and accordingly, such correspondence is not privileged and must be produced. The fact that these documents relate to business consulting work is illustrated in the comments on certain entries. For example, row #72 of the FTI Privilege Log, which referenced a communication dated February 23, 2021, cites "[c]orrespondence between Attorney Retained Consultants containing work product regarding communications with residents and/or resident refunds" as the basis for withholding. This correspondence (like many others cited

during this time period and throughout 2021) is clearly not related to legal advice or the bankruptcy, restructuring or adversary. Rather, it is plainly related to business consulting. Additionally, much of the purportedly privileged correspondence is between FTI employees (mostly, Rachel Chesley and others) without an attorney included. Such communications are also clearly not related to legal advice or attorney mental impressions, but rather business consulting services.

Again, communications regarding business consulting services performed by FTI are not privileged and must be produced.

- **Common-Interest Privilege**

Likewise, any entries which include UMB have similarly been improperly classified as privileged. On February 6, 2023, the United States Bankruptcy Court for the Northern District of Texas (the "Court") found that "[s]imply put, UMB and the Debtor *were not* acting in concert" and there was no common interest privilege amongst them.[1] Thus, entries that include UMB or reference containing legal advice from UMB or its counsel cannot be withheld as privileged. As such, the related correspondence, including but not limited to such correspondence described in rows 193, 264, 420, 425, 427, 443, 456, 592, 1128, 1130, 1138, 1148, 1252-53, 1602, 1604, 1615-16, 1618, 1647, 1909, 2106-7, 2112, 2140-41, 2142-43, 2147-48, 2230-31, 2246, 2623-24, 2668-69, 2672, 2673, 2677, 2934, 2948, 3404, 3459, 3546, 3547-48, 3805-09, 4586, 4593, and 4596 of FTI's Privilege Log. The aforementioned documents are listed based on FTI's description of said documents, and accordingly may not encompass every document being withheld on the basis of a purported "common interest privilege." Thus, if there are any documents that have been withheld on such a basis and which not been included in the foregoing, FTI must also supplement its production with such additional documents.

- **Missing Information**

Finally, certain entries on the FTI Privilege Log are missing information necessary for Defendants to discern whether such documents are actually privileged. With respect to documents described as "correspondence", the missing information includes who the correspondence was sent to/received from and any parties that were copied. These entries (which are specifically described as correspondence) include row numbers 4, 6, 8, 13, 15, 17, 23, 25, 27, 29, 31, 33, 35, 47, 48, 50, 51, 53, 55-57, 59, 61-62, 69-71, 103, 188, 212, 213, 222-23, 231-32, 234-35, 237, 239-40, 246, 250, 306, 318, 324-25, 361, 363, 367, 369, 385, 387, 400-01, 403, 430, 432-433, 448, 599, 602, 615, 645, 647, 650-51, 656-57, 682, 684, 689-90, 742, 744, 764-65, 839, 1060, 1062, 1117, 1119, 1125, 1136, 1182, 1190, 1228, 1236, 1249, 1251, 1257, 1337, 1339-40, 1382, 1480, 1523, 1549, 1551, 1553, 1558-60, 1586, 1591-95, 1661, 1665, 1724, 1965, 2097, 2137, 2150, 2152, 2154, 2217, 2219, 2229, 2231, 2291, 2303, 2326, 2328, 2330, 2339-41, 2343, 2397, 2403, 2405, 2409, 2570, 2572, 2586, 2588, 2590, 2594, 2600, 2669, 2680, 2730, 2759, 2767, 2802, 2842, 2860, 2898-99, 2950, 2964, 3020, 3091, 3097, 3122, 3124, 3181, 3249, 3273, 3281, 3322-23, 3369, 3442, 3536, 3538, 3595, 3597, 3671, 3673, 3675, 3730, 3734, 3818-19, 3859, 3867, 3924, 3965, 3971, 4210-13, 4215, 4242, 4259, 4261-4266, 4268-4270, 4383-84, 4480-4482, 4523-24, 4526, 4587,

[1] A copy of the Court's February 6, 2023 Order is enclosed herewith for your reference.

4589, 4594, 4597, 4667, 4669, 4677, 4679-80, 4790, 4792, 4794, 4796, 4798, 4800, 4812, 4819, and 4821.

Likewise, various documents have been withheld because they are "attachments" to purportedly privileged correspondence. Given the complete lack of description with respect to anything labeled as an "attachment", it is impossible for Defendants to ascertain whether such attachments are actually privileged.

Please confirm that FTI will correct each of these deficiencies on or by October 11, 2023; if FTI does not agree to do so, please advise us immediately so that we may meet and confer on or by October 6, 2023.

Regards,



Jamie L. Burns

Enclosure
cc: Ryan C. Hardy (w/enclosure)
Elizabeth B. Vandesteeg (w/enclosure)

Exhibit D

From: Greg Taylor <gtaylor@diamondmccarthy.com>
Sent: Thursday, October 26, 2023 4:08 PM
To: Ryan C. Hardy
Subject: RE: Edgemere - FTI and Document Productions [LP-ACTIVE.46317.46317-132590.FID1191903]

I can agree to expedite, if you do the same for me. I am going to get a motion on file tomorrow (or maybe Monday) seeking to have you remove attorneys-eyes-only and confidential designations from several categories of documents. I raised the issue, and gave you a list of attorneys-eyes-only documents at issue, in an email on October 10.

Let me know.

DIAMOND McCARTHY LLP

Greg Taylor | Partner
2711 North Haskell Avenue, Suite 3100
The Tower at Cityplace
Dallas, Texas 75204
214-389-5302 direct
214-389-5300 main
214-389-5399 fax
web | bio | vCard

HOUSTON | DALLAS | NEW YORK | WASHINGTON D.C.

This message and all attachments are confidential and may be protected by the attorney-client or other privileges. Any unauthorized review, use, disclosure or distribution is prohibited. If you believe this message has been sent to you in error, please notify the sender by replying to this transmission and delete the message without disclosing it. Thank you.

Pursuant to U.S. Treasury Department Regulations, we are required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purposes of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter addressed herein.

From: Ryan C. Hardy <rhardy@lplegal.com>
Sent: Thursday, October 26, 2023 3:59 PM
To: Greg Taylor <gtaylor@diamondmccarthy.com>; Travalini, Joanna R. <jtravalini@sidley.com>; Rubinstein, Daniel D. <drubinstein@sidley.com>
Cc: Jamie L. Burns <jburns@lplegal.com>
Subject: RE: Edgemere - FTI and Document Productions [LP-ACTIVE.46317.46317-132590.FID1191903]

Greg, Dan, Joanna:

I started to write to Greg to follow up on my email below but on further consideration I thought it made sense to get everyone on a single email chain so we can work through the FTI issues together. I understand from my discussion with Joanna and Dan that the Diamond McCarthy team is prepared to address the issues we've raised with respect to privilege/protection.

What I would like to do is go ahead and get a motion on file and expedite it so it can be heard 11/9 with the other motions to compel. It's not my intention to shut down further discussions but we really need to bring this issue to a close. I think that, similar to the Sidley Subpoena, if we can just get confirmation that Diamond has the universe of FTI's

responsive documents in native format (or can get it/is getting it from Polsinelli), we can avoid involving FTI in motion practice altogether if the Diamond team will agree to produce them (subject, of course, to any claims of privilege/protection that might remain following the hearing and resultant order).

Please let me know your thoughts, including whether there's any objection to setting this up for hearing 11/9.

Ryan C. Hardy
T 312 476 7548
M 773 485 4326

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From: Ryan C. Hardy
Sent: Tuesday, October 24, 2023 8:33 AM
To: 'Greg Taylor' <gtaylor@diamondmccarthy.com>
Subject: Edgemere - FTI and Document Productions [LP-ACTIVE.46317.46317-132590.FID1191903]

Greg:

I had a call with Sidley yesterday about FTI's production. Sidley indicated that your firm is still trying to get its arms around what documents it has and what documents it may be missing. I figure it probably benefits both of our clients if you and I undertook a reconciliation of the various dates of production and bates ranges. I can have a schedule of what we've received/produced put together if that's of interest. Please let me know.

Sidley also instructed that while they are taking the lead on the issues we identified with FTI's production *other than* privilege/protection, your firm would be handling privilege/protection issues with respect to the FTI production. Will you please confirm? To the extent there's further need to meet and confer, I want to be sure I'm doing it with the people who have authority, whether that's you guys or the Cooley team or someone else entirely.

Finally, we would really like to get all the outstanding subpoena issues resolved, including FTI. I understand your team has a lot on the plate, but Sidley is telling me that it can't assess the non-privilege FTI issues unless and until you guys get a copy of FTI's native docs to Sidley, so I am asking you to please do that right away. If it requires getting them from Polsinelli, that's something you are entitled to do under the Litigation Trust Agreement.

Also, on a separate topic, we should give some thought to how we want to handle foundation for the documents produced by third parties. I haven't seen business records affidavits from any of them. Chasing affidavits or doing

custodian deps seems wasteful in my view, so my preliminary inclination is to stipulate that, e.g., documents labeled UMBXXXX are authentic and accurate copies of UMB business records. Please give it some thought and I'll do the same on my end.

Exhibit E

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 23, 2023

United States Bankruptcy Judge

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

In re:	§	**Chapter 11**
NORTHWEST SENIOR HOUSING CORPORATION	§	**Case No. 22-30659**
Debtor.	§	
NORTHWEST SENIOR HOUSING CORPORATION,	§	
Plaintiff,	§	
v.	§	**Adv. Pro. No. 22-03040**
INTERCITY INVESTMENT PROPERTIES, INC. AND KONG CAPITAL, LLC,	§	
Defendants.	§	

ORDER REGARDING THE PRODUCTION OF
DOCUMENTS BY LIFESPACE COMMUNITIES, INC.

Before the Court is the *Motion to Compel Lifespace Communities, Inc.'s Production of Documents*[1] and *Brief in Support*[2] (collectively, the "**Lifespace Motion**") filed by Defendants Intercity Investment Properties, Inc. ("**Intercity**") and Kong Capital LLC ("**Kong**") (collectively, the "**Defendants**") on November 29, 2022. In the Lifespace Motion, the Defendants request the Court enter an order compelling Lifespace Communities, Inc. ("**Lifespace**"), a non-party to the above-captioned adversary proceeding (the "**Adversary Proceeding**") and the parent of the Northwest Senior Housing Corporation (the "**Debtor**" or "**Plaintiff**"),[3] to produce documents pursuant to Rule 45 of the Federal Rules of Civil Procedure (the "**Rules**"), as made applicable by Rule 9016 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"). On December 20, 2022, Lifespace filed its *Response to Defendants' Motion to Compel Production of Documents* (the "**Response**").[4] In the Response, Lifespace contends that it complied with the Defendants' subpoena for production, asserting any applicable privileges and objections, and that requests by the Defendants to further designate the production are outside the scope of Rule 45.[5] On January 3, 2023, the Defendants filed their *Reply Brief in Support of Defendants' Motion to*

[1] Dkt. No. 238.
[2] Dkt. No. 239 (filed under seal).
[3] During the pendency of these matters being under advisement, the Debtors' Plan of Reorganization has been confirmed. *See* Findings of Fact, Conclusions of Law, and Order Confirming Chapter 11 Plan of Plan Sponsors, Case No. 22-30659-MVL, Dkt. No. 1393 (Bankr. N.D. Tex. 2022). As part of the confirmed plan, the parties were to appoint a litigation trustee for the purposes of prosecuting these causes of action and managing certain assets described in the plan. *Id.* at 20. The Honorable Leif M. Clark (Ret.) (the "**Litigation Trustee**") has since been named to serve in that capacity. *See* Notice of Filing of Supplemental Information to Plan Supplement, Case No. 22-30659-MVL, Dkt. No. 1526 (Bankr. N.D. Tex. 2022). The Plan of Reorganization went effective on June 13, 2023. *See* Notice of (I) Entry of Findings of Fact, Conclusions of Law, and Order Confirming Chapter 11 Plan of Plan Sponsors; (II) Effective Date of Plan Sponsors' Chapter 11 Plan; and (III) Certain Post-Effective Date Deadlines, Case No. 22-30659-MVL, Dkt. No. 1620 (Bankr. N.D. Tex. 2022). To date, the Litigation Trustee has not substituted in as party plaintiff.
[4] Dkt. No. 260.
[5] *Id.* at 5 ("[Defendants are] asking the Court to have Lifespace go beyond what the rules require (producing responsive documents in its possession, custody and control) and designate what documents in its possession 'belong' to Lifespace, and which documents 'belong' to Edgemere. Defendants provide no authority for this heightened burden they attempt to force upon Lifespace—and none exists.").

Compel Lifespace Communities, Inc.'s Production of Documents,[6] by which the Defendants again assert that Lifespace failed to comply with Rule 45.

Carried alongside the Motion to Compel was a discrete issue arising out of the *Defendants' Motion to Compel Plaintiff's Production of Documents* (the "**Motion to Compel**"),[7] filed on November 22, 2022, by which the Defendants request the Court order production of communications between Lifespace and the Plaintiff.[8] The Plaintiff withheld communications with its parent company, Lifespace, based off the entities' corporate relatedness. The Defendants argue that no privilege exists between Lifespace and the Plaintiff and that the mere relatedness of the entities does not create a privilege.[9] In the alternative, the Defendants request that the Court conduct its own *in camera* review of the communications.[10]

On January 25, 2022, the Court held a hearing on the Lifespace Motion and the remaining issue under the Motion to Compel. Counsel for the Defendants, Lifespace, and the Plaintiff appeared. After hearing the testimony of Nick Harshfield, the Chief Financial Officer of Lifespace, and the arguments of counsel on the underlying issues, the Court took the matter under advisement. Notably, on the same day, the Court heard argument on a request by the Plaintiff to temporarily stay the Adversary Proceeding.[11] The Court granted that request to temporarily stay the Adversary Proceeding and subsequently entered an order reflecting the same.[12] Notwithstanding the stay, the

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[6] Dkt. No. 265.
[7] Dkt. No. 226–27.
[8] The Motion to Compel was subsequently ruled upon by the Court, but the Lifespace issue was carried to be resolved alongside the Lifespace Motion. Dkt. No. 262.
[9] Dkt. No. 227 at 15–17. The Plaintiff filed its *Response to Defendant's Motion to Compel Production from Plaintiff* on December 8, 2022, by which the Plaintiff asserted that it was settled law that a privilege extended over communications between these related companies. Dkt. No. 250 at 7–10.
[10] Dkt. No. 227 at 17.
[11] The Plaintiff filed its *Motion for Temporary Stay of Adversary Proceeding* on January 13, 2023. Dkt. No. 272. The Plaintiff filed its *Response in Opposition to Plaintiff's Motion for Temporary Stay of Adversary Proceeding* on January 24, 2023. Dkt. No. 280.
[12] Dkt. No. 298 (*Order Granting Temporary Stay of Adversary Proceeding*). At the time of the filing of this Order, the Adversary Proceeding is still stayed pending further order of this Court.

parties requested that the Court rule on the issues underlying this Order given the issues had been fully briefed and argued prior to the issuance of the stay.

I. Jurisdiction and Venue.

The Court has jurisdiction pursuant to 28 U.S.C. § 1334(b), and the matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B). Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

II. Factual and Procedural History.

On April 14, 2022, the Debtor filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code.[13] On the same day, the Debtor filed its Complaint alleging certain causes of action against Intercity and/or Kong.[14] Central to that Complaint were allegations that certain information disclosed in connection with a Forbearance Agreement between the parties and covered by a Non-Disclosure Agreement (the "**NDA**") was disclosed by the Defendants to various parties in an effort to further damage the business of the Plaintiff and capitalize on an alternative business opportunity.[15]

On June 30, 2022, the Defendants served a subpoena on Lifespace, the direct parent and sole member of the Plaintiff.[16] Lifespace had appeared and been heard throughout the bankruptcy

[13] Voluntary Petition for Non-Individuals Filing for Bankruptcy, Case No. 22-30659-MVL, Dkt. No. 1 (Bankr. N.D. Tex. 2022).

[14] Dkt. No. 1. Specifically, the Plaintiff asserted seven (7) causes of action, including breach of contract, promissory fraud, tortious interference with existing contractual and business relations, tortious interference with prospective contractual and business relations, civil conspiracy, equitable subornation, and reformation of the Ground Lease. *See id.* The Plaintiff has since withdrawn its cause of action for tortious interference with existing contractual and business relations. Dkt. No. 58 at 23–24. The cause of action for tortious interference with prospective contractual and business relations has also been dismissed by Order of this Court. Dkt. No. 99 at 12–15.

[15] Dkt. No. 1 at 2 ("Despite being under a non-disclosure agreement with Edgemere, and in possession of Edgemere's confidential information, *Defendants directly contacted the press* . . . all for the singular purpose of trying to manufacture an improper basis to terminate Intercity's 52-year ground lease with Edgemere and wrongfully retake the property on which the Community sits – all so that they can repurpose it to make a windfall profit.") (emphasis added). The Plaintiff has alleged a cause of action for breach of the NDA against Intercity. *Id.* at 17–19.

[16] Dkt. No. 279-1 (Ex. 13 - Defendants' sealed subpoena on Lifespace); Dkt. No. 260 at 7 ("Lifespace is the direct parent and sole member of Edgemere. Lifespace manages the operations of Edgemere pursuant a Management Agreement, through which Lifespace maintains virtually all information relating to the finances and operations of Edgemere."). The Defendants also served a nearly identical subpoena on the Plaintiff.

case, but is a non-party to the Adversary Proceeding. On August 1, 2022, Lifespace responded to the subpoena with its objections and responses asserting that it would produce documents by way of the Plaintiff.[17] The Plaintiff began its production shortly thereafter and did not distinguish between documents produced by the Plaintiff and Lifespace.[18] The Plaintiff produced its privilege log which also did not distinguish between Lifespace and Plaintiff documents, nor did it distinguish between which party held the privilege.[19] On November 29, 2022, the Defendants filed the Lifespace Motion, asserting that Lifespace had failed to comply with the subpoena because (1) the Defendants could not identify Lifespace specific documents in the Plaintiff's production, and (2) the Plaintiff's privilege log inadequately identified documents withheld based on Lifespace's privilege.

III. Analysis.

There are two primary questions before the Court. First, the Court must determine whether the parent-subsidiary relationship between Lifespace and the Plaintiff excepts any waiver of an attorney-client privilege as to communications and documents shared between them. Second, the Court must determine whether Lifespace has complied with the Defendants' subpoena pursuant to Rule 45. Specifically, the Court must answer whether Rule 45 requires Lifespace to respond separately and whether the Court should further order the designation of documents as "Debtor" or "Lifespace" documents. The following constitutes the Court's analysis.

[17] Dkt. No. 239 at 5; Dkt. No. 260 at 7 ("On August 1, 2022, Lifespace served its responses and objections to the Subpoena, in which it agreed to conduct a reasonable search and produce non-privileged documents in response to each of the document requests subject to its objections. In its response, Lifespace made it clear to Defendants that it was making its production through Edgemere for efficiency and to avoid unnecessary duplication.").

[18] The Plaintiff and Lifespace were both separately served with their own subpoenas. Those subpoenas were virtually identical.

[19] It is the Court's understanding that the Plaintiff has amended its privilege log twice but that the issues underlying this Order remain. *See* Dkt. No. 227 at 5.

A. Related Companies Exception

The Plaintiff claims that a majority or wholly-owned subsidiary shares a privilege with its parent company; accordingly, the Plaintiff has withheld communications by and between the Plaintiff, Lifespace, and their respective legal counsel.[20] The Defendants seek an order from this Court compelling production of these communications or, in the alternative, providing the communications *in camera* for the Court's review.[21] The Defendants argue that the "mere relatedness" of entities does not create a privilege and that the Plaintiff has failed to meet its burden of establishing a privilege exists.[22] The Court finds that the "related companies exception" would apply to communications between Lifespace, the Plaintiff, and counsel to the extent the underlying communications were made in furtherance of legal services or are covered by some other applicable privilege.

The attorney-client privilege applies to communications if it can be shown that: (1) the communication was confidential; (2) made to a lawyer or his subordinate; (3) for the primary purpose of securing either legal opinion or legal services, or assistance in a legal proceeding.[23] The burden of proof is on the privilege claimant.[24] Determining the applicability of the privilege is a highly fact-specific inquiry by the Court.[25] Because the effect of the attorney-client privilege is to restrict or withhold relevant information from the fact-finder, it has been interpreted narrowly by the Fifth Circuit where only necessary to achieve its purpose.[26]

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[20] Dkt. No. 250 at 7.
[21] Dkt. No. 227 at 9.
[22] *Id.* at 16.
[23] *Jolivet v. Compass Group USA, Inc.*, 340 F.R.D. 7, 19 (N.D. Tex. 2021) (citing *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997)).
[24] *King v. Healthcare System, L.C.*, 645 F.3d 714, 720–21 (5th Cir. 2011); *In re Sante Fe Intern. Corp.*, 272 F.3d 705, 710 (5th Cir. 2001).
[25] *King*, 645 F.3d at 721; *Jolivet*, 340 F.R.D. at 20–21.
[26] *Santa Fe*, 272 F.3d at 710.

The Plaintiff asserts that it is undisputed that, upon consummation of an Affiliation Agreement in 2018, Lifespace became the Plaintiff's sole member.[27] As such, the Plaintiff claims that communications between Lifespace and Plaintiff representatives, as well as their respective in-house and outside counsel, are privileged.[28] The Court has reviewed the relevant caselaw and finds that, as to this legal question, the Plaintiff is correct. Courts have found that corporations related through common ownership or control are treated as one entity for purposes of the attorney-client privilege.[29] This is commonly referred to as the "related companies exception" and applies such that "the corporation which retained the attorney, its parents, and its subsidiaries are considered the same person for purposes of the privilege."[30] This means that "the disclosure of communications between a parent and its majority-owned subsidiaries does not result in a waiver of the attorney-client privilege."[31]

However, the Court cannot determine if an exception to the waiver of the attorney-client privilege applies ***until the substantive privilege has been established***. The mere relatedness of the Plaintiff and Lifespace does not create the privilege.[32] This is particularly true in cases like the present where the entities are and were then represented by *separate* counsel.[33] Thus, if the Plaintiff cannot show that the entities share a common attorney or a common legal interest so as to come

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[27] Dkt. No. 250 at 8.
[28] *See id.*
[29] *American Airlines, Inc. v. Travelport Limited*, Civil Action No. 4:11-244, 2012 WL 12884822, at *5 (N.D. Tex. July 16, 2012) (citing *Pasadena Refining Sys. Inc. v. United States*, No. 3:10-CV-0785-K(BF), 2011 WL 1938133, at *2 (N.D. Tex. Apr. 26, 2011)). *See also Weil Ceramics & Glass, Inc. v. Work*, 110 F.R.D. 500, 503 (E.D.N.Y. 1986) (stating "the attorney-client protection provided for corporate clients, includes the corporation who retained an attorney, its parent, and its wholly-owned and majority-owned subsidiaries considered collectively").
[30] *American Airlines*, 2012 WL 12884822, at * 5 (quoting *Zapata Gulf Marine Corp. v. Puerto Rico Maritime Shipping Auth.*, No. 86-2911, 1989 WL 149227, at *2 (E.D. La. Dec. 5, 1989)). Even unrelated entities may claim the attorney-client privilege for communications they have shared with each other if they have a substantial identity of legal interests. *Pasadena*, 2011 WL 1938133, at *2.
[31] *American Airlines*, 2012 WL 12884822, at *5.
[32] *See id.* at *4.
[33] *See, e.g.*, *Bowne of New York City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 491 (S.D.N.Y. 1993).

within the joint-client rule,[34] the Plaintiff must demonstrate that the disclosure was made between the entities *for the purpose of eliciting assistance from the attorney in rendering legal advice or services*.[35] The communication must, in itself, fall within the purpose of the attorney-client privilege.[36]

Though only persuasive authority and involving affiliates, the Court finds the Defendants' citation to *Gulf Islands Leasing, Inc. v. Bombardier Cap., Inc.*[37] instructive. In *Gulf Islands*, two subsidiaries claimed communications between the entities were privileged. The court conducted an *in camera* review and found the proponent failed to meet its burden of showing the communications were made for the purpose of rendering legal advice.[38] The court found that the entities' relatedness *alone* did not provide for a privilege:

> Some cases state the broad proposition that disclosure of attorney-client privileged information to an affiliated company does not waive the privilege—thereby obviating the need to invoke the common interest rule. But it appears that in such cases no waiver was found because the entities were represented by a common attorney or shared a common legal interest. In this case, however, [the subsidiaries] utilized different attorneys and held different interests of a commercial, not legal, nature. The mere existence of an affiliate relationship does not excuse a party from demonstrating the applicability of the common interest rule. Having chosen to operate as separate entities—and to obtain whatever advantages inure from so operating—[the subsidiaries] must be held to their burden of proving the applicability of any privilege in the same manner as two unrelated entities.[39]

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[34] The Plaintiff argues that it shares a common legal interest with Lifespace and that such an interest shields production notwithstanding the Court's ruling as to the parent-subsidiary relationship. Dkt. No. 250 at 9 n.4 ("Lifespace and Edgemere plainly share a common legal interest here. To the extent this Court should hold that the parent-subsidiary relationship is insufficient to support a unity of privilege, the implicated materials are nevertheless shielded from disclosure under the common legal interest doctrine.").

[35] *Bowne*, 150 F.R.D. at 491 ("A number of courts have upheld the privilege for communications shared by the parent with its wholly-owned subsidiary, but they have done so only upon a showing that a common attorney was representing both corporate entities or that the two corporations shared a common legal interest and thus came within the joint-client rule, or that the disclosure was made to an employee of the subsidiary for the principal for sole purpose of eliciting assistance to the attorney in rendering legal advice or other legal services."); *American Airlines*, 2012 WL 12884822, at *4–5.

[36] *See generally id.*

[37] 215 F.R.D. 466, 473 (S.D.N.Y. 2003).

[38] *Id.* at 472.

[39] *Id.* at 474.

The *Gulf Islands* opinion is particularly instructive to this Court for two reasons. First, in that case, the district court conducted *in camera* review of the communications prior to ruling.[40] Second, the *Gulf Islands* court made it clear that the communications needed to be for the purpose of rendering legal services and ***of a legal, not commercial, nature***.[41] That understanding is also the prevailing standard in the Northern District of Texas.[42]

Accordingly, in order to determine whether a privilege exists as to a particular piece (or type) of communication, the Court must conduct an *in camera* review of the communications based on the substantive privileges claimed. To the extent the Plaintiff claims an attorney-client privilege inures to the benefit of its parent, or vice-versa, or more accurately that the two entities should be treated as one for privilege purposes, the Court will need to review the communications at issue to determine whether they were made for *legal* purpose.[43] If and when applicable, the Plaintiff will need to be able to show how a communication from its counsel, for example, to Lifespace's separate counsel either falls under the common interest privilege or in itself was for the purpose of rendering legal services. There were numerous examples provided to the Court of instances in which the entities diverged, including the proof of claim filed by Lifespace in the Debtors' bankruptcy case[44] and certain internal communications which appeared to evidence a strategy, in certain instances, of "distancing" Lifespace from the Edgemere's financial difficulties.[45] The Court

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[40] *See id.* at 472.
[41] *Id.* at 474.
[42] *See American Airlines*, 2012 WL 12884822, at *3–5 (whereby the court reviewed whether the attorney-client privilege applied to the exemplars before turning to whether the related companies exception barred waiver of the privilege).
[43] The Plaintiff concedes the same in its response to the Motion to Compel. *See* Dkt. No. 250 at 9 ("[E]ven under the non-precedential logic of *Bowne,* companies are not required to show that they shared a common attorney or a common legal interest to meet the 'related companies' exception ***if the communication was made between the parent and subsidiary to elicit assistance to the attorney in rendering legal advice or services***.") (emphasis added).
[44] The Court took judicial notice of Proof of Claim #145, found on the claims agent's claim register in the bankruptcy case, at the hearing on these issues. *See* Dkt. No. 294 at 103.
[45] *See, e.g.*, Dkt. No. 279 (Exs. 27–28 – sealed Lifespace emails).

must be able to ascertain the extent that a common interest prevails, particularly in light of these apparent divergences.

However, in light of this ruling,[46] the Court orders that the Litigation Trustee, the Plaintiff, Lifespace, and the Defendants confer to narrow their issues before submission *in camera* to the Court. As Plaintiff's counsel insisted at the hearing, objections should not be general to any and all claimed privileges.[47] The Court does ***not*** intend to review every document that is being withheld as privileged by Lifespace and the Plaintiff; rather the Court intends to review a reasonable subset of disputed documents or exemplars of categories thereof. Therefore, the Court hereby orders the parties to meet and confer to narrow their issues and particularize their objections prior to any submission of documents *in camera* to the Court.

B. Compliance with Rule 45

Lifespace responded to the Defendants' subpoena by producing documents "by way of Edgemere."[48] Lifespace contends that it produced all responsive and non-privileged documents to the Defendants in full compliance with Rule 45, albeit through the Plaintiff.[49] Simply put, Lifespace asserts that it maintains a cloud-based email and document management system and Edgemere does not maintain a separate system; thus, "the documents produced by Edgemere were all in Lifespace's possession, custody and control" and are in fact the "very same documents

[46] To the extent that there was an objection to the mere legal existence of a related companies exception, the Court herein has overruled that objection. This should narrow any potential *in camera* review.
[47] Dkt. No. 294 at 32 ("I think it's also important to note on this motion that Defendants have made this challenge generally. They have just said, hey, we think maybe Lifespace's presence on some of these communications could be a problem, and we think maybe generally, you know, your log is deficient because of that. They have not identified a single specific document from our privilege log that they are challenging as not actually privileged. So when we talk about this notion of *in camera* review, I think we're a little bit ahead of ourselves, because as I see it, the issue is more generally is there a unity of privilege or not. And if there is not, then we -- well, if there is, then I think the log is sufficient as it exists and there is nothing further to do. If there is not, I think then there would need to be another step before there could possibly be any kind of *in camera* review, because no particular documents have been brought forth and challenged at this point.").
[48] Dkt. No. 260 at 9.
[49] *Id.*

Lifespace would produce independently."[50] The Defendants claim this production is inadequate to comply with Rule 45.[51] The Defendants seek an order compelling Lifespace to provide: (1) information to distinguish between Lifespace documents and Plaintiff documents; (2) confirmation that Lifespace is not in possession, custody, or control of additional documents responsive to the subpoena that have not already been produced by the Plaintiff; and (3) confirmation that the records produced by Edgemere are Lifespace's records.[52] As to issues (2) and (3), Lifespace's counsel confirmed that all responsive documents have been produced, and both Lifespace and the Plaintiff's counsel confirmed that all Edgemere's records reside on Lifespace's server and that all Edgemere employees are Lifespace employees. Thus, all Edgemere records are Lifespace records. Accordingly, the remaining issue is solely whether Lifespace must distinguish "Lifespace only" records.

Rule 45 explicitly contemplates the use of subpoenas in relation to non-parties.[53] Rule 34 governs requests for production of documents and Electronically Stored Information ("**ESI**") from a party and provides that, "[a]s provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit inspection."[54] Under Rule 45, a subpoena may command production of documents, ESI, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transactions business in person.[55]

At the hearing on the Lifespace Motion, the Defendants argued that they were placed in a difficult position by Lifespace's choice to produce documents only by way of the Plaintiff's production. The Defendants hypothesized that they would be unable to defend against the

[50] *Id.*
[51] *See* Dkt. No. 239 at 4.
[52] Dkt. No. 265 at 3.
[53] *Andra Group, LP v. JDA Software Group, Inc.*, 312 F.R.D. 444, 447 (N.D. Tex. 2015) (citing *Isenberg v. Chase Bank USA, N.A.*, 661 F.Supp.2d 627, 629 (N.D. Tex. 2009)).
[54] *Id.* at 447–48 (quoting Fed. R. Civ. P. 34(c)).
[55] Fed. R. Civ. P. 45(c)(2)(A).

Plaintiff's claims and pursue their own counterclaims without knowing which statements were made by the Plaintiff and which were made by Lifespace.[56] Further, the Defendants claimed there was no reason to believe that the documents produced by the Plaintiff were the sole documents responsive to Lifespace's subpoena. While Lifespace is the custodian of all Edgemere documents, the Defendants surmised that there had to be some documents that did not fit into both "buckets", meaning documents that were non-privileged and solely belonged to Lifespace. In fact, when the Court inquired of Lifespace's counsel whether Lifespace would stipulate that all Edgemere documents were Lifespace documents, and vice-versa, **counsel would not so stipulate**. Frankly, the Court believes counsel could not stipulate as such because it is inherently conceivable that Lifespace possessed some documents to which the Plaintiff did not have access. Counsel described the relationship as a Venn diagram of sorts, and rightfully so; there is bound to be some production that falls only within the Lifespace "circle."

Lifespace did *not* file any request to quash or modify the subpoena, nor did it attempt to enter into a protective order as to the same.[57] Rather, Lifespace unilaterally chose to produce through the Plaintiff.[58] As such, Lifespace was required to comply with the subpoena. It simply did not, nor did it meet its burden to show that the requests were an undue burden.[59] The production

[56] Dkt. No. 239 at 12 ("[I]f Defendants are forced to guess whether something was being done by Lifespace, or on behalf of Lifespace, as opposed to Edgemere, Defendants could not do so. Edgemere is in the convenient position of being able to say at trial that certain statements or actions were not done by Edgemere, but rather by Lifespace, perhaps avoiding liability entirely on the counterclaims pending against it. Where Defendants not only must defend against certain claims, but also where the Landlord has alleged that Edgemere slandered title of its property in its counterclaim, it is crucial that Defendants be able to distinguish between what are purportedly separate legal entities.").

[57] Fed. R. Civ. P. 45(d)(3)(A) ("On timely motion, the court for the district where compliance is required must quash or modify a subpoena that (i) fails to allow a reasonable time to comply; (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.").

[58] Dkt. No. 260 at 9 ("Lifespace timely provided complete written responses to the Subpoena and produced responsive and non-privileged documents to Defendants ***by way of Edgemere***.") (emphasis added).

[59] *See* Fed. R. Civ. P. 45(d)(3)(A). Even if Lifespace had filed a motion to quash or modify the subpoena, it would be Lifespace's burden of proof to demonstrate that compliance with the subpoena would be unreasonable and oppressive. *HCAPS Conroe Affiliation Inc. v. Angelica Textile Servs. Inc.*, No. 3:15-MC-60-N-BN, 2015 WL 3867923, at *2 (N.D. Tex. June 22, 2015) (citing *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004)).

does not comply with basic practice regarding ESI.[60] The Defendants allege that Lifespace did not provide sufficient information to identify how the documents were stored and whether the documents originated with the Plaintiff or Lifespace.[61] In practice, the failure to designate the actual source of the production improperly ties the Defendants' hands in this Adversary Proceeding. For example, the Defendants would likely be unable to properly depose certain Lifespace witnesses without knowing if the document was sent on behalf of Lifespace or the Plaintiff. Even impeachment evidence could be improper unless the Defendants could establish which entity owns the documents.

Based on the foregoing, the Court hereby orders Lifespace to remedy its production as follows. First, Lifespace shall designate which, if any, documents originated with Lifespace and not the Plaintiff, if separate servers are maintained. To the extent possible, the Defendants need to be able to determine the owner of the documents produced. Of course, this could simply mean Lifespace confirms whether certain documents are *both* Plaintiff and Lifespace documents. Nonetheless, if a Lifespace representative is responding to a communication in his capacity as a Lifespace employee, and not in his capacity as an Edgemere representative, the Defendants are entitled to know that.

The Court is sympathetic to Lifespace's concerns about the added expense of production, particularly since it is a non-party to the Adversary Proceeding. Nonetheless, much of that expense

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[60] *See, e.g., McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 322 F.R.D. 235, 250-51 (N.D. Tex. 2016) ("[T]he producing party must provide information about where the documents are kept and how they are organized. For documents stored on a computer or external storage device, this means providing system metadata indicating at least the file name and path for produced files. The files and system metadata, must be organized in a manner that 'permits systemized retrieval' of files based on the metadata. In other words, the requesting party must be able to search for and readily access files with particular characteristics….").

[61] Dkt. No. 239 at 13 ("Defendants cannot determine from Edgemere's production whether a document was stored on an Edgemere server or a Lifespace server, as all documents produced have Lifespace file paths, regardless of custodian. Based on the metadata provided, there is no way for Defendants to readily access files belonging to Lifespace, and therefore, this discovery deficiency should be remedied, yet Lifespace has dismissed Defendants' concerns.").

could have been avoided if Lifespace had sought to modify the subpoena or if the proper designations had been made in the first place. Simply put, Lifespace cannot "have its cake and eat it too." Either all documents are one in the same—Lifespace's and Edgemere's—or the production must be carved back to allow for the Defendants to ascertain which documents belonged solely to one entity. Lifespace could simply allow the Defendants to use the documents produced for all purposes, but if not, the Defendants must be able to determine to which party the document belongs. The Court takes the Defendants at their word that they are *not* seeking duplication of anything already produced. Rather, they are looking for further designation and, as detailed above, anything that would have solely belonged to Lifespace.

Accordingly, the Court finds the above remedial measures proper and sufficient to resolve the inadequacy of Lifespace's production under Rule 45 and so orders Lifespace to remedy its production as set forth above. The parties shall meet and confer as to the timing.

V. Conclusion.

The Court encourages the Defendants and Lifespace, as well as the Plaintiff and incoming Litigation Trustee, to continue to work towards a resolution of the discovery issues. Accordingly, based upon the foregoing and the record before the Court, it is hereby

ORDERED that the Motion to Compel[62] is **GRANTED, in part**; the parties shall meet and confer as to narrow the remaining disputes as to the privilege log in light of this Order; the parties shall submit the remaining disputed documents (or exemplars of categories thereof) for review by the Court *in camera*; it is further

ORDERED that the Lifespace Motion[63] is **GRANTED, in part**, as set forth above.

###END OF ORDER###

[62] Dkt. No. 226–27.
[63] Dkt. No. 238–39.

Exhibit F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

IN RE:	Case No. 22-30659-11-MVL
NORTHWEST SENIOR HOUSING CORPORATION,	Earle Cabell Federal Building 1100 Commerce Street Dallas, Texas 75242
Debtor.	
NORTHWEST SENIOR HOUSING CORPORATION, et al.,	Adv. No. 22-03040-MVL
Plaintiff,	
v.	
INTERCITY INVESTMENT PROPERTIES, INC., et al.,	
Defendants.	Wednesday, August 23, 2023 10:05 a.m.

TRANSCRIPT OF STATUS CONFERENCE
(4 ORDERS - 262, 303, 309, and 314); AND MOTION FOR LEAVE/PLAINTIFF'S MOTION FOR TEMPORARY STAY OF ADVERSARY PROCEEDING FILED BY PLAINTIFF NORTHWEST SENIOR HOUSING CORPORATION (272); AND EXPEDITED MOTION TO AMEND SCHEDULING ORDER FILED BY DEFENDANT, INTERCITY INVESTMENT PROPERTIES, INC., COUNTER-CLAIMANT INTERCITY INVESTMENT PROPERTIES, INC., COUNTER-CLAIMANT KONG CAPITAL, LLC (333)

BEFORE THE HONORABLE MICHELLE V. LARSON
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES ON NEXT PAGE.

Audio Operator: Hawaii S. Jeng

Proceedings recorded by electronic sound recording, transcript produced by a transcription service.

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APPEARANCES:

For Leif M. Clark, Litigation Trustee:	Diamond McCarthy BY: J. GREGORY TAYLOR, ESQ. DREW A. JONES, ESQ. 2711 N. Haskell Ave., Suite 3100 Dallas, Texas 75204 Diamond McCarthy BY: ALLAN B. DIAMOND, ESQ. STEPHEN T. LODEN, ESQ. CHRISTOPHER D. JOHNSON, ESQ. 909 Fannin Street, 37th Floor Houston, Texas 77010
For Intercity Investment Properties, Inc. and Kong Capital, LLC:	Levenfeld Pearlstein, LLC BY: ELIZABETH VANDESTEEG, ESQ. EILEEN SETHNA, ESQ. 120 South Riverside Pl., Ste 1800 Chicago, Illinois 60606 Jackson Walker LLP BY: ELIZABETH PITTMAN, ESQ. 2323 Ross Ave., Suite 600 Dallas, Texas 75201
For Lifespace Communities, Inc.:	Cooley, LLP BY: SAM RABUCK, ESQ. ERIC WALKER, ESQ. 110 N. Wacker Drive, Suite 4200 Chicago, Illinois 60606
For UMB Bank:	Haynes and Boone LLP BY: JAMES FRASHER MURPHY, ESQ. 2323 Victory Avenue, Suite 700 Dallas, Texas 75219 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. BY: KAITLIN R. WALSH, ESQ. 919 Third Avenue New York, New York 10022
Former Counsel for the Debtor:	Polsinelli PC BY: ANDREW ENNIS, ESQ. 900 West 48th Place, Suite 900 Kansas City, MO 64112

(Proceedings commenced at 10:05 a.m.)

THE COURT: All right. And so now I'll call the adversary, Case Number 22-3040, Leif Clark, Trustee of the Edgemere Litigation versus Intercity Investment Properties, Inc. and Kong Capital.

I'll take appearances for the record.

MR. TAYLOR: Greg Taylor for the Trustee for the Edgemere Litigation Trust. With me today is Steven Loden who will be sitting next to me, Drew Jones and Chris Johnson. We bring so many people just in case you have questions. We're still learning the case, and so we'll try to answer.

UNIDENTIFIED SPEAKER: Good morning, Your Honor.

THE COURT: Good morning. And I'll note for the record by electronic roll call Mr. Diamond is on the WebEx, as well.

MR. TAYLOR: Oh, I'm sorry. And one other thing, with us today also is the Trustee himself, Judge Clark.

THE COURT: Welcome back. I understand that there -- was your vacation fabulous?

MR. CLARK: Fabulous. Much more interesting than I intended.

THE COURT: Oh, goodness.

(Laughter)

THE COURT: Well, there's obviously a story there. Well, welcome back. As you probably know, we are one man down.

Mr. Embry essentially concludes his clerkship at the end of the week, but he has already left for his honeymoon to Europe, so.

Yes. So he is off to better places.

MS. VANDESTEEG: Well, it was a pleasure working with him, also.

THE COURT: Thank you very much.

All right, and further appearances. Ms. Vandesteeg?

MS. VANDESTEEG: Thank you, Your Honor.

Elizabeth Vandesteeg and Eileen Sethna of Levenfeld Pearlstein, and Elizabeth Pittman of Jackson Walker on behalf of both adversary defendants, Intercity Investment Properties, Inc., and Kong Capital, LLC. Thank you, Your Honor.

THE COURT: All right. Thank you very much.

All right. And, again, for the record, I'll note that there's already been an appearance made for Mr. Ennis who I assume will be here for the adversary proceeding on behalf of the former counsel for the debtors.

And also to the extent for the adversary, I have WebEx appearances for Mr. Eric Walker, Mr. Sam Rabuck with Cooley on behalf of Lifespace Communities.

And --

MS. WALSH: Hi, good morning, Your Honor.

THE COURT: Thank you, Ms. Walsh. I was just about to say the same for UMB because it's just coming to the forefront of my mind that with respect to the discovery issues,

you may be appearing for that, as well. Thank you.

MS. WALSH: Thank you, Your Honor.

THE COURT: You're welcome.

So, again, for UMB, I have Ms. Kaitlin Walsh and Mr. Frasher Murphy, as well.

All righty. Thank you guys in advance for the notice of the agenda of the matters and the detail that was put in to that given that we have four discovery orders that I understand are in various stages of address.

So with that, how should we start? Mr. Taylor? Ms. Vandesteeg? What makes sense?

MR. TAYLOR: It's your motion.

MS. VANDESTEEG: Your Honor, I think it would make the most sense to go through the issues as presented in the notice of agenda. There was a motion that was filed in terms of a scheduling order --

THE COURT: Right.

MS. VANDESTEEG: -- that defendants then sought to have heard on an expedited basis, which technically is also up today.

THE COURT: Yes.

MS. VANDESTEEG: However, I think it may make more sense to walk the Court through where we are with respect to those orders that had already been entered, figure out if there's additional assistance that may be needed from the

Court, and also just lay the stage at least with respect to compliance with those orders as I think that will feed then into a broader discussion as to what are now competing scheduling orders in front of the Court for consideration before we leave the courtroom today.

THE COURT: And I appreciate that, and I think that does make sense, Ms. Vandesteeg since a lot of the dates in the defendants' form of scheduling order cue off of when the discovery matters will conclude. So let's start there.

MS. VANDESTEEG: Excellent.

And, Your Honor, we did print out a few extra copies of the notice of agenda. Should anyone need a hard copy, we do have them.

THE COURT: I think we are good.

Do you have one, Mr. Burns?

MR. BURNS: Yes.

THE COURT: Excellent. We're good.

MS. VANDESTEEG: Excellent.

So, Your Honor, with respect to the notice of agenda, what we had done was lay out each of those four orders that came down just before and during the stay at the litigation to apprise the Court of progress that has been made and/or further compliance that may still be necessary.

The first order up for discussion is the order that was entered on December 29th, 2022 at Docket Number 262.

Pursuant to that motion to compel, the defendants were seeking production of certain, several certain discrete buckets of things that had either been withheld or redacted by plaintiff. The Court went through in order and dealt with in the order five different buckets.

The buckets were, number one, communications between plaintiff and Paddock who had been a private investigatory firm. The second bucket were documents containing personal identifying information, PII, of certain residents. The third bucket were documents regarding certain intercompany transfers between different Lifespace entities. The fourth were communications with Houlihan Lokey. And the fifth were communications between and amongst plaintiff and Lifespace Communities and their respective counsel.

The order, Your Honor, went through and addressed certain production obligations with respect to the first three buckets, and we have now confirmed that supplemental productions that had been made by plaintiff just leading up to the stay did address those three buckets. So it is our understanding that those supplemental productions that had been made in December addressed those first three issues.

With respect to issue five, I'm going to jump ahead to issue five, those Lifespace-Edgemere communications, those were addressed by subsequent court order that came down in June. So, Your Honor, the only outstanding issue still with

respect to the December 29, 2022 order is that fourth category of documents that defendants sought to have produced that had been previously withheld and/or redacted which were communications with Houlihan Lokey.

Your Honor, we had already, the parties collectively had already briefed and argued these issues. It was defendants' and is still defendants' position that any remaining Houlihan Lokey communications should be produced. Lifespace had taken the position, and obviously Mr. Walker and Mr. Rabuck are available, that any remaining communications that had been withheld are subject to a privilege between Houlihan Lokey and Lifespace.

Houlihan Lokey had been an investment banker retained in connection with the Lifespace acquisition of the Edgemere assets back in 2019-2020. We don't believe that these communications are privileged any longer even if they were at the time. In the first instance, we don't believe that there has been sufficient evidence presented to this Court to demonstrate that there was any existing privilege at the time between Lifespace and Houlihan Lokey.

Moreover, and we'll come to this again in connection with the broader order on Lifespace and Edgemere, Your Honor, at this point in time, the position has been taken that all documents are both Lifespace and Edgemere documents collectively. So, Your Honor, it's our position that to the

extent there had been any privilege that could have been asserted by Lifespace by providing these documents to Edgemere and now making them Edgemere documents and producing them to Edgemere and now protecting them by Edgemere, that privilege has been waived.

And, Your Honor, I do think there is still some pending confusion and we'll come to this in more detail again in connection with the Lifespace-Edgemere productions and any potential privileges that may apply there. But, Your Honor, we don't see that there is any remaining privilege with respect to these communications. And we'd ask that these documents now be ordered to be produced.

THE COURT: Okay. I remember the initial way that the motion came to me. As I recall, and I think this was Docket 226, and I don't have this pulled. I remember we addressed Paddock, PII, and I think the irrelevant information at the hearing by oral ruling. Correct?

MS. VANDESTEEG: No, Your Honor. It was not by oral ruling. There was a separate written ruling.

THE COURT: It was part of 262?

MS. VANDESTEEG: Correct.

THE COURT: Okay. Okay.

So all of those have been addressed. And so when you say that the Houlihan Lokey issue has been fully addressed, I seem to recall that the debtors had filed a response to that

initial 226. Has the Houlihan Lokey issue specifically been fully briefed?

MS. VANDESTEEG: Your Honor, my recollection is that the way this happened is that there were written positions taken by both defendants and by plaintiff. And then subsequently at our hearing on the issues, there was oral argument by all three parties; by defendants, by plaintiff, and by Lifespace. I do not believe that with the exception of the Lifespace position that Lifespace included in the agenda that Lifespace has further briefed this specific issue.

THE COURT: Okay. Because I remember you guys asking me to put a pin into certain of them with respect to a ruling, so I just want to make sure that if I were to expect any further briefing with respect to the Houlihan Lokey issue that we set that out.

MS. VANDESTEEG: I think, Your Honor, we'd need to defer then to Lifespace --

THE COURT: Of course.

MS. VANDESTEEG: -- to determine whether Lifespace would want a further written position on this and we could then determine whether further written rebuttal and/or hearing would be necessary, Your Honor.

THE COURT: Okay. Thank you very much.

Thank you, Ms. Vandesteeg.

So at this point, I think it probably does make sense

for me to turn to Mr. Cooley [sic] or Mr. Rabuck for their position.

MR. RABUCK: Good morning, Your Honor.

For the record, Sam Rabuck of Cooley, LLP, on behalf of Lifespace Communities, Inc.

Your Honor, what Ms. Vandesteeg said with respect to Lifespace's position is accurate. We do take the position that those communications with respect to Houlihan Lokey do remain privileged, notwithstanding their disclosure to Edgemere because of the related companies exception that Your Honor wrote about at length in the June 2023 order.

Our understanding as well is that that issue has not been fully briefed. And if Your Honor does request further briefing on it, we would be amenable to going further into those issues in writing.

THE COURT: Well, I do believe that it would probably -- I mean the question of whether or not further briefing is necessary is really a question for Lifespace. Do you want to further brief the issue or do you believe that the existing briefing and the existing evidence is sufficient for the Court to rule?

MR. RABUCK: Your Honor, I would want to confer with my co-counsel, Eric Walker, on that specific point.

THE COURT: Fair enough.

MR. RABUCK: He had been handling that as of December

29th. That predates my involvement with the case, so I wouldn't want to make a representation based on something that I might not be fully aware of at this time. But that's something that we could confer on very quickly.

THE COURT: Okay. All right. Well, I'll let you confer on that, and if we need to take a recess at some point, we will. Because I believe that that's a bit of a gating item of whether or not you as the entity that will be producing the documents is prepared for the Court to go on the face of the current briefing.

I do not recall this issue being fully briefed, but that's not to say that it wasn't and that the parties just asked me to put a pin in it for a while while there were further discussions as part of the broader Lifespace portion of that particular motion. So I'll let you confer with Mr. Cooley -- excuse me, Mr. Walker and, to the extent necessary, your client.

MR. RABUCK: Thank you, Your Honor.

THE COURT: You're welcome, Mr. Rabuck.

Is there anyone else who wishes to be heard with respect to the Houlihan Lokey documents?

MR. TAYLOR: We do not. It's not our fight.

THE COURT: Okay. Thank you, Mr. Taylor.

All right. Ms. Vandesteeg?

MS. VANDESTEEG: Thank you, Your Honor.

So I suppose a pinch I'll go back into that for the moment. I believe that Mr. Walker was on earlier, but we don't see him on WebEx now.

THE COURT: Okay.

MS. VANDESTEEG: So that may just be something that we will need to revisit in connection with --

THE COURT: I bet you Mr. Rabuck has his number.

MS. VANDESTEEG: I do too, Your Honor.

So let's move on then to our second order on the agenda, and that order, Your Honor, is the one that was entered on February 6th, 2023 at Docket Number 303. This order addressed competing motions to compel, one that was the plaintiff's motion to compel defendants to produce certain additional discovery, and that was at Docket 98, as well as then defendants' motion to compel discovery from plaintiff and also defendants' motion to compel discovery from UMB.

The thrust of all three of these motions, Your Honor, was with respect to different asserted privileges between and among the different parties involving consulting expert privileges and common legal interest privileges. The order that came down did grant in part and deny in part the different motions and required that the defendants produce certain categories of documents, one chunk that was from the outset of the relationship between the defendants through February 23rd, 2023 and subsequently then a second bucket of documents that

were in the time frame of February 202- -- I'm sorry, February 24, 2023 to the petition date and date of filing of the adversary.

In accordance with that order, Your Honor also determined that there was no common legal interest between UMB and plaintiff and Lifespace and held that those documents would also need to be produced.

We are making progress collectively on this order, Your Honor. Defendants have received a production from UMB. We understand that that production does pertain both to a supplemental production that UMB was on the cusp of producing prior to the stay as well as documents that UMB had previously withheld on the basis of that common legal interest. So that supplemental production is in hand, Your Honor. Review is underway, and we will be in communication with UMB as necessary should we believe that any further production may still be outstanding.

We have also very recently, defendants very recently received a supplemental production from plaintiff which we again believe is related to compliance with this order. Review of that is underway, as well. I believe that that supplemental production was only approximately 90 documents. So I am unclear, Your Honor, on whether plaintiff believes that that is complete compliance with now producing documents that were previously withheld under common legal interest.

And we've not had the opportunity to determine from the Lifespace perspective whether Lifespace believes that there would be any supplemental discrete Lifespace production on those grounds. That is an open issue.

With respect to the productions that defendants will be required to undertake, that is also underway. The Court's order put in place several thousand additional documents that we are working through in terms of review and compiling for production. We propose, defendants propose that all supplemental productions from any party with respect to this February 6th, 2023 order be complete by September 15th, 2023.

THE COURT: And, Ms. Vandesteeg, have the defendants produced their documents to the plaintiff that address the common legal interest with Kong?

MS. VANDESTEEG: Your Honor, that is part of the several thousand documents that I just referenced.

THE COURT: Oh, so that you're saying by the 15th --

MS. VANDESTEEG: Correct.

THE COURT: -- is what you're proposing.

MS. VANDESTEEG: We're working on complying --

THE COURT: Okay.

MS. VANDESTEEG: -- with both of those time periods that Your Honor identified under different asserted privileges --

THE COURT: Yes.

MS. VANDESTEEG: -- collectively for compliance in total by September 15th.

THE COURT: Okay. And so you said that's thousands. Okay. Those were the thousands. Gotcha.

MS. VANDESTEEG: Correct. We've identified a couple of thousand.

THE COURT: Okay.

Okay. And so now anything further on this point before I hear from the other parties?

MS. VANDESTEEG: No, Your Honor. Thank you.

THE COURT: Okay. Thank you.

So just to give a little order to it, I'll ask UMB first, any comment on the facts as Ms. Vandesteeg laid them out, Ms. Walsh?

MS. WALSH: No, Your Honor. Thank you.

We did -- as Ms. Vandesteeg pointed out, we did make a production. And my understanding is our belief is that the production is complete and we've satisfied our requirements. But we haven't had any further discussions with ICI on this point.

THE COURT: Okay. Thank you. Thank you very much, Ms. Walsh.

MS. WALSH: Thank you.

THE COURT: All right. Mr. Taylor?

MR. TAYLOR: I am new to these issues, of course. My

job has been sort of to ride herd on the whole thing just with all the people that formerly were on my side to get these documents out as quick as we can. And I know that we have produced as far as I know everything that there is on this. But it's possible that there's still some review going on, but if there's people from Polsinelli that are on the call, they would be able to fill you in better on where we are.

All I can tell you is from my perspective as the current counsel for plaintiff. We're just trying to get the documents out as quick as we can, but it is a little bit like trying to surf on a big wave --

THE COURT: Okay.

MR. TAYLOR: -- because there's a lot of stuff.

THE COURT: Okay.

MR. TAYLOR: So I'm trying my best to get on top of it.

THE COURT: Excellent.

MR. TAYLOR: But we are pushing. And like they said, the defendants have made a production. We're going through that. But I expect that if we have any issues, I'm going to try and work it out with them before we would trouble you. And hopefully we'll get the same.

THE COURT: Okay. Thank you very much, Mr. Taylor.

Mr. Ennis?

MR. ENNIS: Good morning, Your Honor.

THE COURT: Welcome back.

MR. ENNIS: Just brief -- yeah, thank you. Glad to be back. Just briefly for the plaintiff's side of this, we have -- I think there have been two rounds of a rolling production that have come out from Edgemere. We have a small set of additional documents that we need to review. When I say small, I think fewer than 150 that are left in our cue to review for Edgemere. We'll get those out certainly by September 15th and likely sooner.

In addition to the Edgemere piece of this, of course, we help coordinate the FTI and Sidley productions that were part of the process. We coordinated with those folks. And my understanding is Sidley has made an initial production and I think is complete but Sidley may have a small, again, chunk of material left to review. And FTI I believe is largely complete, as well.

And so we're sort of involved with all of those processes, but all of them are if not entirely complete, right on the cusp. So the September 15th date that Ms. Vandesteeg mentioned won't be any issue for the production. There will be some updating that we have to make to the privilege logs and redaction logs based on these productions. That will happen after the productions are complete. And so there will be another step in the process before we're all the way finished. I expect that can be done within a couple of weeks of final --

of that September 15th date.

So that's the update from me.

THE COURT: All right. Thank you very much, Mr. Ennis. Nice to see you.

MR. ENNIS: Nice to see you. Thank you, Your Honor.

THE COURT: You're welcome.

Ms. Vandesteeg?

MS. VANDESTEEG: Thank you, Your Honor.

A couple of follow-up points then on the collective input on this Docket Number, what were we at, 303. The first point of clarification raised by my team, I referenced a couple of thousand records that we have under review. I want to clarify that that includes attachments, so it's likely under a thousand entries from the privilege log.

THE COURT: Sure.

MS. VANDESTEEG: But when we talk about families and total documents, that's the larger number, just managing expectations.

THE COURT: Sure.

MS. VANDESTEEG: With respect to Sidley, yes, Your Honor, defendants did receive a production from Sidley late on Monday night.

THE COURT: Okay.

MS. VANDESTEEG: That has been loaded at this point into our Relativity database. My understanding is that is

comprised of only a couple of hundred documents, Your Honor, whereas my recollection is that the total number of Sidley documents that had previously been either withheld or redacted on their logs was substantially higher than that.

So given that this did just come in, Your Honor, we have not yet had a chance to put our eyes on it. But I suspect that we're going to have some follow-up questions with Sidley on this and, again, hopefully we won't need court intervention. But --

THE COURT: But, again, some of those obviously are privileged, right?

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: Okay.

MS. VANDESTEEG: Yes, Your Honor. How --

THE COURT: Maybe that explains the delta?

MS. VANDESTEEG: I'm not sure, Your Honor.

THE COURT: Oh, okay.

MS. VANDESTEEG: My recollection, again, and it's been in the last 48 hours, is that I had anticipated that the number would be higher. So we'll just leave it TBD.

THE COURT: So privilege log will tell the tale, I got you.

MS. VANDESTEEG: Correct.

THE COURT: Okay.

MS. VANDESTEEG: Correct. Reconciliation underway.

And on FTI, same. FTI, the bulk of the FTI production came in through Polsinelli right as we were heading into the stay period. That one is a fairly voluminous production. So if and as further follow-up is necessary, TBD on that one, Your Honor, but that one is a much more voluminous production.

THE COURT: Okay. All righty.

And do you have any issue with Mr. Ennis' estimate of updating the privilege log within a couple of weeks after the close of the delivery?

MS. VANDESTEEG: No, Your Honor. I think everyone agrees that there will need be that time in that process. And with ours actually being an even more substantial, it's going to take some time then to be able to provide an updated and cleaned up --

THE COURT: Sure.

MS. VANDESTEEG: -- privilege log from defendants, as well.

THE COURT: Okay. All righty.

Anything further on this point, Mr. Taylor?

MR. TAYLOR: Not for us. Thank you.

THE COURT: Okay. Thank you.

Ms. Vandesteeg?

MS. VANDESTEEG: Thank you, Your Honor.

I believe that brings us to Item Number 3 on our

agenda which is the order entered on April 13th, 2023 at Docket Number 309. This was the order compelling production of certain additional communications with the Monument Group.

Your Honor, I'm pleased to report that I think that compliance with this order has been completed and satisfied. We -- defendants produced documents on August 9th, and the counsel for the Monument Group itself had an additional subsequent production. I believe that was on August 14th. It was the following Monday, Tuesday, Your Honor. So it's our understanding and belief that compliance with this order has been completed in full, pending any additional questions or concerns raised by plaintiff.

THE COURT: All righty. Thank you very much.

Does anyone else wish to be heard with respect to what's noted as Agenda Item 3 which is the motion to compel production from the Monument Group which is at Docket 309?

MR. TAYLOR: We have nothing further, Your Honor.

THE COURT: Thank you very much, Mr. Taylor.

Ms. Vandesteeg?

MS. VANDESTEEG: Thank you. Thank you, Your Honor.

So this brings us to Item Number 4 on our notice of agenda, which is ECF Number 314, which was an order entered on June 23rd, 2023. And what likely comes as no surprise to anyone, this has been the most complicated. As Your Honor will recall, there was a motion to compel filed regarding a number

of issues that the defendants raised with respect to what has been a collective Edgemere/Lifespace production of documents.

As Your Honor will recall, the defendants asserted both that that was improper under the Federal Rules and also that there is no way for defendants to be able to designate and understand which documents came from which party which we believe created significant evidentiary issues for the defendants.

Your Honor's order addressed all of the arguments raised by the parties. And Your Honor identified that there were two additional then steps, and I'll distill them from my perspective. I kind of do them in reverse order. Your Honor determined that Lifespace needed to, to the extent that it did want to say that any of those documents consisted of Lifespace only documents rather than the collective Lifespace-Edgemere documents, that counsel for Lifespace must identify those that it sought to protect, withhold, or designate as Lifespace only, acknowledging that the parties, that Edgemere and Lifespace were not always fully aligned.

Step two, Your Honor addressed the related companies privilege that had been asserted by and between Edgemere and Lifespace. As Your Honor will recall, Lifespace had taken the position that all communications involving Lifespace and Edgemere and/or their respective or collective counsel and/or their internal counsel were all designated, blanket designated

as privileged under a related companies privilege.

Your Honor identified that such a privilege could exist. However, it in and of itself is not a global privilege. It is an exception to what would otherwise be a waiver of privilege between two separate parties. And Your Honor encouraged and ordered the parties to meet and confer to try to narrow the objections and come up with certain subcategories of the thousands of documents that have been withheld or redacted to then provide a subset of certain documents for in-camera review for Your Honor to determine whether there was an underlying separate privilege in that correspondence that could then be further cloaked under the circumstances under a related companies privilege.

Your Honor, we have been attempting to engage and have been engaged with counsel for Lifespace for over a month on those issues. We have tried to in the first instance focus on the designation issue thinking it to be in some ways the faster simpler issue. It took us up until last Sunday night, Your Honor, and we did attach the correspondence back and forth so Your Honor could understand that we have been trying to make progress on this for counsel to Lifespace to finally get back to us with a statement.

And, Your Honor, we attached this as Exhibit B to the notice of agenda so that everyone can be very clear now on the position that has been taken, which is -- and I'll read it:

"Counsel, as a follow-up to the Court's June 23rd, 2023 order on defendants' motion to compel and our meet and confer conference conducted on August 7th 2023, Lifespace will stipulate that for purposes of this adversary only, all of the documents produced by Edgemere on behalf of Lifespace constitute both Lifespace and Edgemere documents. Lifespace and Edgemere reserve all rights to object to the use of these documents for any purpose on any other grounds including evidentiary objections that may be appropriate."

Your Honor, we're glad that we finally have a substantive position from Lifespace and Edgemere on this. However, this position in and of itself raises some questions and concerns. If we cannot -- if we are still going to be subject to certain evidentiary objections as to whose records these are, who was speaking on behalf of whom, are we going to have impeachment issues, we still have thousands and thousands of documents that could provide some evidentiary issues.

Your Honor, we also have not yet had the chance to make any meaningful progress, unfortunately, on the second part of what must be done now in terms of actually trying to drill down into all of the documents that have been withheld or redacted on the related companies issue. So while we're a month in since we were last here on status, Your Honor, I don't

-- this one is still going to be I think slow and difficult as we continue to try to make progress.

I'd love some guidance from the Court in terms of maybe helping us put an internal benchmark by which the parties must meet and confer on this separate second step that must be taken and also how Lifespace and Edgemere would propose that we try to work within the confines of their proposed limitation while still saying that everything is one and the same. Perhaps it would make sense to try to set that for two weeks out. To the extent the parties cannot make meaningful cooperative progress, Your Honor, I know that we're back up on status then for our monthly status that I'd love to just keep a cadence in that.

Perhaps then, what the Court would like is to the extent the parties have not come to consensus, perhaps a further written report to be provided to the Court with the parties' respective positions again on these issues perhaps a week ahead of that hearing so that we can try to continue to make incremental progress with respect to what is a substantial universe of documents, Your Honor.

THE COURT: Okay. So let's take it in parts.

MS. VANDESTEEG: Thank you.

THE COURT: Without forcing me to re-read my own order again, as I recall with respect to the related companies exception, the Court essentially stated what is the course of

the law is that for the related companies exception to apply, the correspondence must be of a legal not a commercial nature.

In that way, is it really -- I mean do we jump to in-camera review? And I know you guys love that part. Does it start with a revision of the privilege log?

MS. VANDESTEEG: We requested that, Your Honor.

THE COURT: Oh, okay.

MS. VANDESTEEG: We believed that a revised privilege log both to address this issue in terms of the commercial nature or legal nature of communications overall on the related companies, as well as we thought it would also apply to, to the extent there would be anything specifically designated for Lifespace, we thought an amended privilege log would be a great place to start.

THE COURT: Okay.

MS. VANDESTEEG: We don't have agreement on that issue.

THE COURT: Unanimity on that one? Okay. Excellent. Thank you, Ms. Vandesteeg.

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: So let me go next to Mr. Rabuck, and then I'll hear from any other parties.

Mr. Rabuck or Mr. Walker, who's ever addressing?

MR. WALKER: Good morning, Your Honor.

Eric Walker for Lifespace. Can you hear me?

THE COURT: I can. Good morning.

MR. WALKER: Apologies. I had to step out of the hearing for an emergency on another matter, but I am back now and I think I caught most of Ms. Vandesteeg's production.

With respect to the one outstanding issue for Lifespace on the production of documents, we did meet and confer earlier this month and, as Ms. Vandesteeg read into the record, Lifespace has agreed to stipulate that for purposes of the adversary, just as we stated, documents can be treated as both Lifespace and Edgemere documents, which reflects as the Court may recall the fact that, of course, Lifespace was a third-party manager for Edgemere prior to closing of the sale on this bankruptcy case.

And accordingly, all the employees were Lifespace employees. Lifespace provided the cloud kind of virtual IT environment where all those documents were stored. So for all practical purposes, those documents are one and the same. Obviously, producing documents is just the first step of the discovery process. We have oral discovery depositions where defendants are free to ask questions about who was saying what in what documents and, of course, your order didn't require nor are we prepared to waive any objections we may have as we proceed down the typical discovery process. But we believe what we've done is consistent with the Court's order.

With respect to a revised privilege log --

THE COURT: But before you move on from there, Mr. Walker --

MR. WALKER: Yes.

THE COURT: -- so that I understand, so your reservation in that email to include evidentiary objections as may be appropriate are not evidentiary objections to say that's Edgemere only, not Lifespace only. This is evidentiary objections that go to essentially admission, not to whether or not they can be used for impeachment and the like? I mean, because if not, we really do need to drill down on that.

MR. WALKER: Sure. No, I understand.

I think the reservation of rights is for anything other than simply the fact that this was an Edgemere document versus this was a Lifespace only document, which was the basis of the Court's ruling. So I think we're clear on that.

And then with respect to a revised privilege log, we had understood the Court's order to require the parties to meet and confer to designate a subset of the privileged documents to be then submitted to the Court for in-camera review. We're happy to -- I think the defendants have proposed in their agenda that we conduct that meet and confer by September 15th. That's a three-person or three-party meet and confer. It's the two parties to the litigation, Edgemere, now the post-confirmation litigation trust, and the defendants but also my client, the non-party Lifespace.

We have no objection. We're happy to schedule that meet and confer. I think -- as I understand it, we have not been involved in the prior in-camera reviews. I know there have been a lot in this case. What I understand is typically the way that works is the non-producing party, so in this case, the defendants would look at the privilege log, select a sample of 50 I think is the number that has been used which sounds like a reasonable sample to me. We would pull them, package them, or I think more technically the litigation trustee would pull them and package them and submit them to the Court for review.

So that's what we understood to be the next step. We haven't been invited to a meet and confer yet. We're happy to participate in one. And I think from my reading of the Court's June 23rd order, that was my understanding of the next step. If we want to proceed down a different path, certainly, we'll do what the Court thinks is most efficient here.

THE COURT: Well, I mean I guess the question for me, Mr. Walker, would be would it not -- okay, so let's take it in parts.

Would it not make more sense for Lifespace to review the privilege log to determine which of those documents fall under the legal and not commercial nature exception to the exception or are you saying that that's already been done? You already think all of the communications were legal in nature

and so that you think that you're ready to go in terms of selecting documents for in-camera review?

MR. WALKER: We're happy to take that first step to re-review. It's been a couple of months. I can't imagine that any documents that were strictly of a commercial nature were designated as privileges because they don't meet the basic qualification as privilege in the first place. But we're happy to take that preliminary review just to make sure that we're not burdening the Court with an unnecessary in-camera review.

THE COURT: Well, I do believe that makes sense.

MR. WALKER: We're happy to do that and -- okay. And we're happy to do that and that probably makes sense to do that in advance of the meet and confer. And we're happy to proceed that way.

THE COURT: Well, I think that makes sense, Mr. Walker. I mean, look, I'm not assuming for a second that you reviewed each of these documents yourself. I don't believe that likely happened. So I mean if you can just speak with the review team to figure out what their process was, provide them a copy of the order and they can determine at that time whether they believe that they're already in compliance with this, just as it relates to the related company exception, or if an updated review or amendment to the privilege log is required.

And then I think that would make the meet and confer all the more productive.

MR. WALKER: I think that's a great idea. That makes sense to us. Thank you.

THE COURT: Okay. You're welcome.

And have you had an opportunity now that I have you, Mr. Walker, because I think that Mr. Rabuck was going to confer with you on what was set out on the first issue which was the Houlihan issue and if Lifespace wanted any further time to brief that?

I have had an opportunity since then to pull that original order, and my order says, "With respect to the defendants' request for communications with Houlihan Lokey, the motion remains under advisement by the Court and it's carried for further hearing." And, again, I know that we've punted it for lack of a better word since then. So the question for Lifespace is do you believe it's fully briefed and fully -- and that I heard every bit of evidence you have or would you like any further hearing or briefing on that?

MR. WALKER: Thank you, Your Honor.

That issue was an issue that was litigated between the plaintiff and the defendants. Lifespace wasn't part of that briefing. My recollection is it was fully briefed, and my understanding is the Court already effectively ruled on that legal issue which is the related companies exception applies which was in the Court's June 23rd order.

But if the Court would indulge me, I would like to go

back and double check. If the Court is going to enter a ruling on this and that impacts Lifespace's privilege with Houlihan Lokey, then I want to make sure that we've had an ample opportunity to make sure the appropriate arguments are made. So --

THE COURT: Well, why don't --

MR. WALKER: -- we would ask for --

THE COURT: Yeah. After this hearing, why don't you do the necessary on your end from the Lifespace perspective to take a look at what was briefed. My recollection is a good one. The briefing on the Houlihan issue was fairly minimal, and so take a look at what was already asserted by the debtors. I agree with you. I don't believe that Lifespace took a position in and of itself on those documents at the time.

And then if you require further briefing, if you require further hearing, confer with the defendants' team and then together you can get with Ms. Harden if you need a further hearing date. Okay?

MR. WALKER: Thank you. Will do.

Thank you, Your Honor.

THE COURT: All righty.

Ms. Vandesteeg?

MS. VANDESTEEG: Thank you, Your Honor.

A few follow-up points that I suspect we'll need further guidance from Court and likely from Mr. Walker, as

well. I'm still confused, and I want to get a lot of clarity around the who's documents they are and for what -- I'm still not clear on the impeachment issues.

And the reason why this is one that I want to make sure I've got clarity on is when these issues were argued back in January, we were hearing a different analysis involving Venn diagrams of documents where the majority of these, you know, we agreed that the Edgemere production lived on the Lifespace servers but everyone acknowledged that there were periods in time when the parties' interests were not fully aligned. So wouldn't there be an assumption and presumption that there would be some additional universe of documents that would really be Lifespace documents?

We now have finally again last Sunday gotten confirmation that, no, the circles are perfectly aligned. And I'm struggling again to make sure I understand then for purposes of using these documents is the only restriction on what Lifespace is proposing now is that there need not be a fight over is this a Lifespace document or an Edgemere document or can we really say that it is the position of both the parties or are there other additional issues that we're going to be wrangling with this position.

So I want to get additional clarity on that. And also, with respect to -- I think that ties then into also the Court's suggestion and now counsel's agreement to go back and

take another look at what are really substantial privilege and redaction logs. My recollection is that each of them is hundreds of pages long with thousands of entries.

So I do think that given now this new position that could impact, so I agree, Your Honor, that that would be a good first step. I hear counsel that it shouldn't have appeared there if it wasn't otherwise subject to privilege. But in light of these rulings, in light of the guidance provided by the Court, I think that's important. And given that everyone is trying to keep this process moving, I would very much like to try to keep some specific deadlines and timelines in place for how we can continue to keep moving that ball.

THE COURT: Well, I mean I do recall the hearing and Mr. Ennis and Ms. Lutz did painstakingly take me through the privilege log.

(Laughter)

THE COURT: And I do recall that the privilege log as prepared by Lifespace and Edgemere was fairly detailed. And so I do believe that there's going to be the ability to kind of take a look at it and see again if by nothing other than who the parties are on the emails, I'm hoping that things of a commercial nature wouldn't have Mr. Califano, Mr. Johnson, or Mr. Cooley on them.

MS. VANDESTEEG: Correct.

THE COURT: But I could be wrong on that. So I think

that that's number one with respect to the privilege log. So I do believe that that is the better way to go is to really understand what the process of review was to start with.

With respect to the stipulation, I understand your hesitancy. But, again, this is a decision to be made by Lifespace. And as essentially the manager of Edgemere, if Lifespace is willing to stipulate for purposes of this adversary that all the documents produced by Edgemere on behalf of Lifespace constitute both of their documents, then that's their stipulation to make.

And I agree with you it was not made at the last hearing. This is if not a change, a clarification at most. So it's theirs to make. But I agree with you that we do need to know that it is for all purposes other than the evidentiary objections that Mr. Walker described.

MS. VANDESTEEG: Correct.

THE COURT: And so, again, I mean I take Mr. Walker at his word, if that's the stipulation they're willing to make, then that's where we are. But I agree, and I think Mr. Walker having sat through that same hearing which was lengthy, understands what that means, that at that point if somebody who was a Lifespace employee only is making a statement, then that's going to be attributed to Edgemere by the defendants.

MS. VANDESTEEG: And vice versa.

THE COURT: And vice versa. So --

MS. VANDESTEEG: Okay.

MR. WALKER: Your Honor, if I may be heard on that, please?

THE COURT: Of course.

MR. WALKER: So I think there's an important distinction there, and I think we're getting a little far ahead of where we need to be. What we understood the Court's order is to allow Lifespace to either designate a subset of documents that are Lifespace only documents versus documents that were Lifespace and Edgemere. And we have stipulated that for purposes of this adversary proceeding, all of the documents that were produced can be considered a Lifespace document and an Edgemere document.

Now Lifespace may have a document that is -- that represents a communication from somebody who is not at Lifespace. It could have a document from one of its vendors, right, its food vendor, and the food vendor says we overcharged you $200. That doesn't mean that statement was made by Lifespace. It just means that document was both a Lifespace and an Edgemere document. That's why we reserve the right to make any of the evidentiary objections that we need to make, and that's precisely what the purpose of deposition discovery is.

THE COURT: Okay. Well then I --

MR. WALKER: So there is an important distinction.

Every document that was produced --

THE COURT: There is a distinction to be made, Mr. Walker, and that's why I'm pushing back a little bit because I want to give Lifespace every opportunity to draw that line for me because if you recall during the hearing, I think I understood the line that was drawn and I was given a list of who the employees are and things of that nature. But then during testimony, we realized it was a little bit more fluid than that and perhaps than the list we were provided would show.

And so I am still giving Lifespace the opportunity to take its documents that it reviewed and basically say documents 1, 20, 342, and 5,306 are Lifespace only documents. These are Lifespace directors talking about budgetary issues. This is not a document that Edgemere would have had access to and, therefore, they are Lifespace only documents. They can't be used against Edgemere, for example, for impeachment. Okay.

And I do believe you and know it to be a fact that Lifespace is going to have those documents from vendors that you're going to have thousands of documents that have nothing to do with the Edgemere at all because you run so many communities. So what I'm giving you the opportunity to do is to call those and to take the position.

And I know that's a pain in the neck sort of work, but that's your opportunity to still do that, to pull those out

and say this isn't Edgemere, this is Lifespace only. And so if you --

MR. WALKER: And --

THE COURT: Please, go ahead.

MR. WALKER: I'm sorry, I didn't mean to interrupt, Your Honor.

I understand that and I understand that that ruling relates only to who has possession of the document, and that is the stipulation that we were prepared to agree to is that Lifespace and Edgemere both in a perfect circle, concentric circles had possession of the documents that were produced.

Now just because Lifespace has possession of a document does not mean that document is a Lifespace document insofar as it represents a position of Lifespace because, again, Lifespace has a bunch of documents that relate to Edgemere and are responsive and it's in its possession because it relates to Edgemere but doesn't necessarily articulate a position of Lifespace.

And that is precisely the purpose of deposition discovery, which is they will have an opportunity to send a Lifespace representative down and say did you send this email, is this the position of Lifespace. But to pre-judge that now or to put Lifespace in a box now where we have to pre-determine which documents are not just documents in the possession of Lifespace that were produced but also reflect a position that

Lifespace is conveying in the document, that's what oral discovery is for. That's what depositions are for.

And we only understood the Court's order to clarify the possession of the document. Did Lifespace possess documents that Edgemere did not possess? Is there a subset universe of documents that Lifespace would have produced on its own and not given it to Edgemere to produce together with the Edgemere production?

And our stipulation was simply the possession of the document itself is the same for Lifespace and the same for Edgemere because of the management relationship that the two entities have. And that's what the Court's order said.

THE COURT: Give me a minute.

MS. VANDESTEEG: Your Honor, I feel like I'm having deja vu here. These were the issues that were argued in January. These issues were argued by Mr. Walker and by my partner, Ms. Lutz. This is exactly what came up. Ms. Lutz argued about how that makes no sense, we cannot be wasting all of our deposition time on this. This doesn't comply with what they must do pursuant to the Federal Rules. Of course, they need to pre-designate in advance whose documents these are. This is exactly what your order went to --

MR. WALKER: And that's what we've done. That's what we've done, Your Honor. We're stipulating that these documents are both Lifespace and Edgemere documents. That does not mean

these documents represent the position of either Lifespace or Edgemere because the documents could be third-party documents that are in the possession of both Edgemere and Lifespace.

On Page 13 of the Court's order, the Court said, "Of course, this could simply mean Lifespace confirms whether certain documents are both Lifespace plaintiff and Lifespace documents."

THE COURT: And then the next line --

MR. WALKER: And that's precisely what we intended to do --

THE COURT: And the next line says, "Nonetheless, if a Lifespace representative is responding to a communication in his capacity as a Lifespace employee and not in his capacity as an Edgemere representative, the defendants are entitled to know that."

MR. WALKER: Correct. And --

THE COURT: And so is it your position they're not going to know that until the deposition?

MR. WALKER: That's -- it depends on what document because a bunch of documents will have information that aren't necessarily a Lifespace or an Edgemere representative.

MS. VANDESTEEG: How are we supposed to be able to know that, Your Honor?

MR. WALKER: By taking a deposition. We will not object on foundation grounds, like this is not a document that

was a Lifespace document. You can ask all the questions you want. That's precisely the purpose of deposition discovery.

MS. VANDESTEEG: Your Honor, without having this basic information --

MR. WALKER: We're not going to object and say you can't ask the witness that question because that's not a Lifespace document. That is the purpose of our stipulation here, right, which is to facilitate continuing down the path of typical discovery, right. We're not going to play a game that says you can't ask the witness that question. It's a --

THE COURT: Typically in discovery, Mr. Walker, you make your production and at that time, the plaintiff would have made its own production. You guys unilaterally determined amongst yourselves to make the production together. I don't want to go any further on this because we're dangerously into motions for reconsideration, motions for clarification, all of which are unfiled.

All I will forewarn you at this juncture, Mr. Walker. is I get the line that you're reading out of my order. I suggest you start reading back at Page 10 and move forward through it and understand the import of what I ordered and not just the one line that you're reading back to me. I don't mean to be flippant in that regard. I just mean that I thought that based upon what was argued that day I issued a ruling that the parties could understand. And I'm not sure that we're on the

same page as we sit here today, Mr. Walker.

It was within your control whether to make the stipulation. Only you know your documents. I haven't looked at all of your documents, thankfully. It appears I might at some juncture. But it's within your control at this point whether to make the stipulation that the Court gave you the option to make. But I'm not sure that making it with a "provided however" or with a footnote is really in keeping with the Court's order.

So that's all I'll say today because I think we're veering towards advisory opinions, if we're not square in the middle of them.

MR. WALKER: Understood, Your Honor. Thank you.

And certainly our intent as we made very clear in the stipulation that we offered was not to waive all of the evidentiary objections that we're entitled to under the Federal Rules. So we will revisit that.

THE COURT: Okay.

MR. WALKER: We will re-review your order as we have many times very carefully and confer with defendants on the right way to proceed from here.

THE COURT: Right. And, again, and with respect to the meet and confer, I'll allow you guys to continue to kind of fluidly get to where you need to get with respect to any in-camera production if there is a disputed set, which there

very well may be. But the next time that the Court engages with it, I'll engage with it on a motion. All righty?

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: You're welcome.

MR. WALKER: Thank you, Your Honor.

MS. VANDESTEEG: Well, Your Honor, I think that's actually a fairly helpful segue into competing scheduling orders --

THE COURT: Okay.

MS. VANDESTEEG: -- unless Your Honor has more questions on point number five which I think is going to simply for the time being remain subject to further discussion between counsel and quite likely additional motion practice.

THE COURT: Okay. So let me see. So, okay, so number five is the scheduling order.

Okay. Let me get my things set for me.

(Pause)

THE COURT: All righty. Does anyone need a brief recess before we get to the scheduling portion of the hearing?

MS. VANDESTEEG: Your Honor, I'd take a five-minute recess, although I don't know that we're going to have -- well, we may. We may have a bit more back and forth for you on the scheduling order.

THE COURT: All righty. Why don't we take a five-minute recess. Does anybody need anything longer than

that?

MR. TAYLOR: No.

THE COURT: All righty. Thank you so much.

MS. VANDESTEEG: Thank you, Your Honor.

THE CLERK: All rise.

(Recess at 11:05 a.m./Reconvened at 11:14 a.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

We'll go back on the record in Case Number 22-3040.

Okay. So I believe that that takes us to the defendants' scheduling motion.

MS. VANDESTEEG: Thank you, Your Honor.

Yes. For the record, Elizabeth Vandesteeg on behalf of adversary defendants.

Your Honor, all of the discussion that we just had back and forth on just the pending orders on various different discovery disputes really helps to set the table on why the defendants believe that the proposed scheduling order from the plaintiff is simply not going to be feasible.

We've just heard Mr. Walker trying to walk back certain of the Court's orders. We suspect that further motion practice on these issues is going to be necessary, and we continue to re-tread ground that we thought we covered months ago and were met with delays.

So we also appreciate that the Diamond McCarthy team

is new to this case. We were just chatting about that on our brief break. And we appreciate that they're going to try to be framing this in a new light. But we have been living this case, both the bankruptcy and the adversary, for a long time, as has Your Honor. And we think that we've got a pretty good bead on what is feasible and realistic given the outstanding still pending issues and what is not. And we're again trying to be very pragmatic about this.

What we don't want is another situation where we put in place a scheduling order that is on an expedited basis really for no specific reason this time around, Your Honor. We don't have DIP expiration. We don't have a plan that is any way purportedly tied to this litigation. So we think that what we have proposed in accordance with the proposed schedule attached to our discovery motion which was at, where were we, Docket 333 --

THE COURT: Uh-huh.

MS. VANDESTEEG: -- Your Honor, is going to be realistic. We think that it's going to be important to still leave us sufficient time to complete written discovery as well as what is going to be necessary with additional motion practice and likely in-camera review by the Court and accordance with same. We think that it's going to be important then to provide additional sufficient time for oral discovery.

While plaintiff may be taking the position that this

is not a complicated matter, Your Honor, granted there are only three of the affirmative counts that were originally seven counts -- no, I'm sorry, five still remain. We believe that two should be knocked out at this point in time.

And while the issues raised in those allegations may be to their view not complicated. Your Honor, the allegations in play raise extraordinarily complicated issues surrounding causation and damages. We have asserted numerous affirmative defenses that go toward those complicated factual causation and damages issues. We've asserted counterclaims of our own. There has been and will be additional expert discovery.

So, again, we're trying to propose a schedule here that won't require us to come back and rewrite it in a few months. We're hoping we can all work together then towards these deadlines that we have proposed that we think would be realistic. The parties did submit competing orders for Your Honor's consideration.

There had been an additional compromise schedule circulated by the Diamond McCarthy team just ahead of this hearing. We're still standing on the schedule that we've proposed, and we're happy to discuss it with the Court in terms of additional questions as to why we think that's going to be appropriate.

We would also ask, Your Honor, that in addition to the deadlines, the more general deadlines within the scheduling

orders respectively that had been proposed that whatever order we enter today as well, Your Honor, puts in place some specific additional deadlines in terms of those additional Lifespace issues that we discussed on the record in terms of additional briefing on Houlihan Lokey, for example. I don't know, Your Honor, if we think we can get briefing done to set that for supplemental hearing on our next status. I don't know if four weeks is going to be sufficient.

I'd also ask that we make sure that we do have some specific timelines in play in terms of that supplemental review of the privilege log and other things again discussed on the record so that should further motion practice by defendants on those issues be required, we can also get those moving in short order, Your Honor, because they will take time to address.

THE COURT: All right. Thank you.

MS. VANDESTEEG: Thank you. Does the court have any questions with respect to the defendants' proposed scheduling order?

THE COURT: Not yet. So I'm doing two things. Ms. Harden is currently sending me all of my proposed -- I don't think they've been set in stone yet, but we're close to having our trial schedule set for next year so that we can talk -- I have it now.

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: She's kind of amazing. And so I've got

that. The first thing that I want to do is before we get into the nitty-gritty of comparing the scheduling orders and I want to hear from Mr. Taylor and his team, is I know based upon the last hearing or status where Ms. Sethna took the lead that there were certain months where parties had conflicts that the parties who were going to be essential to the trial had conflicts for various vacations or the like.

So I want to get those out so that we don't start working from those, because as I understand I think the plaintiffs are at May and your draft is currently -- is that December?

MS. VANDESTEEG: October, Your Honor.

THE COURT: October, okay.

MS. VANDESTEEG: We came back with a revised.

THE COURT: Okay.

MS. VANDESTEEG: Oh, and Your Honor?

THE COURT: May and October.

MS. VANDESTEEG: That --

THE COURT: Do I have that?

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: Okay, I do. Okay.

MS. VANDESTEEG: That was the one that we had submitted in redline form as Exhibit B.

THE COURT: Got it, 331.

MS. VANDESTEEG: Correct.

THE COURT: Yeah, 333-1. Gotcha.

MS. VANDESTEEG: Your Honor, there's -- thank you for that reminder. That also reminds me of another issue that came up in connection with the last status hearing that Ms. Sethna was covering, which is the Court had raised a question as to consent --

THE COURT: Oh, yes. Yes.

MS. VANDESTEEG: -- in terms of jurisdiction of the Court.

THE COURT: Exactly. Exactly.

MS. VANDESTEEG: And, Your Honor, as you may have -- I think you indicated, yes, the defendants had included a statement of non-consent in our answer and affirmative defenses.

THE COURT: Right.

MS. VANDESTEEG: And that's currently where we're sitting.

THE COURT: Okay.

MS. VANDESTEEG: So that would require further attention on that. Your Honor, that is an issue that we will talk to the Diamond McCarthy team about first also before we come back to the court. I know that both parties anticipate that there's going to be an opportunity for amended pleadings. I think it would make sense for us to discuss with Diamond McCarthy whether there would be any contested nature of whether

these are core or non-core proceedings.

So let's just put a pin in that. It would still be helpful to know the Court's trial calendar, but it may end up in district court in any event. But I think that that's a conversation that counsel still needs to undertake together collectively first.

THE COURT: Right. And, again, and we can go off of it. I mean I know that both of your firms have probably done this before in terms of the way that it's typically handled in the Northern District. What you both may or may not be familiar with is essentially this Court would prepare the case for trial. When the matter is trial ready, I would alert the district court that it is ready for trial.

And so usually what I do, and I think that you've set it out in here -- let me look, yes -- is we set our a pretrial conference and at that point the parties tell me if they are trial ready or not. I address any motions in limine and the like. And then I let the court know that it is trial ready. And so from that perspective, I am prepared to do that. But to assume that the trial court would put you on their trial schedule like that, I'm not sure what that means in terms of timing, nor will I for quite some time.

But I can certainly based off of the dates you give me make sure that we block out and don't consider if, okay, that trial week follows I think your daughter had a wedding I

want to say?

MR. TAYLOR: Correct.

THE COURT: Okay. Things of that nature. We will not --

MS. VANDESTEEG: Certainly.

THE COURT: We will not set trial during that time, things of that nature. So I just want to see if there's any kind of blackout dates in terms of both the pretrial conference and the trial week, recognizing that if the district court were to hear this, then all bets are sort of off in terms of when the trial would actually occur.

MS. VANDESTEEG: Understood, Your Honor.

I don't know that I'm aware of any specific of those blackout dates --

THE COURT: Okay.

MS. VANDESTEEG: -- that Your Honor has referenced. We're far enough out that it would be my expectation that at the very least, the legal team would be able to accommodate and plan in advance. My daughter's only 13, so if she tried to plan a wedding for next year, we'd have bigger problems.

MR. TAYLOR: We're not waiting for her to get to the right age, to be clear.

(Laughter)

MS. VANDESTEEG: So I suspect that again when it comes to counsel, we'd be able to accommodate. I still think

May is not necessarily realistic, but I'm pre-argument a little bit more on that.

THE COURT: Okay.

MS. VANDESTEEG: With respect to our client team, we'd need to then simply determine whether there are any unknown vacations or that have been planned that I'm not yet aware of.

THE COURT: Okay. And so for the record, I will give you guys these dates and we'll start in May. My trial weeks, and again this is not for me to hear it, it's just to -- in fact, I'll just give you the trial docket calls and then that may be more helpful to you guys.

So the TDCs which is essentially what we build the time from are May 7th, June 4th, July 2nd -- good luck going to trial that week -- August 6th, September 3rd, and October 1st. So, again, since we're -- at least at this juncture and likely looking at a district court trial, those are my trial docket calls. That's when essentially you would tell me that you were trial ready if not a pre-trial conference a week or so before then so --

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: -- that's the time frame that we're looking in.

MS. VANDESTEEG: May I ask not hoping that we go beyond even an October date, but if we --

THE COURT: The next one is November 5th and December 3rd.

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: Of course.

All right. So with that, does anyone have any blackout dates? I remember, Mr. Taylor, you had the wedding, is that June?

MR. TAYLOR: April 27. I don't think --

THE COURT: April. It's April.

MR. TAYLOR: I don't think it's now going to be an issue.

THE COURT: Yeah. I hope the wedding's still going forward.

(Laughter)

THE COURT: And I hope you're still invited.

MR. TAYLOR: Probably since I'm paying for it.

(Laughter)

THE COURT: That is one way to assure your invitation.

So April's a no-go, but we're beyond that.

MR. TAYLOR: At the moment, I'm not aware -- can I speak?

THE COURT: Please, Mr. Taylor, any other dates from your -- from anybody key to your team?

MR. TAYLOR: Since I've just been provided with the

dates, I'm going to have to check.

THE COURT: Yes, okay.

MR. TAYLOR: But I'm not aware of any others. And we have enough people on the team to where we should be able to accommodate.

THE COURT: Excellent.

MR. TAYLOR: So I just want to take a second --

THE COURT: Yes.

MR. TAYLOR: -- just to talk about what our perspective is.

THE COURT: To frame the plaintiff's position.

MR. TAYLOR: So the only other time I was here on this case was the last time, and we talked about dates to try it. And we wanted it to go as quick as we could. We understand that there were going to be some issues, and so we talked to the Court and they talked about October. I was probably talking about something earlier, but we started to settle on May and you had given us some dates in May.

I think this is on July 26th. So later that day, I proposed a May schedule. That's the one you have. I have another copy if you need it.

THE COURT: I have yours.

MR. TAYLOR: But -- so I have this May schedule, and I will say I do listen whenever I'm here in court and there are some document issues that I might not have been fully aware of.

But it does seem to me like we should be able to work most of them out and one some of the Lifespace stuff, well, I might have some conversations, as well, to help move that along.

But I don't think that we should try and be held hostage by thinking we'll never resolve the document issues. But here's the thing. So I sent them my May schedule on the day of our hearing, and then I didn't hear back from them for a while. I think they were busy and finally got back. And essentially what I got was their motion here which attached their October day which is what we had been talking about previously.

And so I filed a response that included the May date because that's what we had. But on the day I filed the response, I gave them another schedule that anticipated an August trial.

THE COURT: Okay.

MR. TAYLOR: And you have August 6th. I think your next one is September 3 or something.

THE COURT: Yes.

MR. TAYLOR: Okay. So based on those two dates, my August schedule still had a few things we were doing in the early part of August. So based on your dates, September 3 will be it. But I would just for whatever it is, I'd be happy to show you the compromise that I did if only to show that I'm trying to be reasonable with the other side and work this out

without having to trouble you. But --

THE COURT: Okay. Oh, so this --

MR. TAYLOR: Oh, so this is the --

THE COURT: -- that goes to August or September.

MR. TAYLOR: -- the compromise. This one goes to August because I didn't realize --

THE COURT: August.

MR. TAYLOR: -- what your August date was. Actually, the trial is to be determined. I had a docket call going August 19 on this one.

THE COURT: Okay. Yeah, I think that trial week would be August 12th, but again we're talking about preparation for --

MR. TAYLOR: Do you have that?

THE COURT: Yeah. If you have an extra one, I'll give it to Mr. Burns. Thank you.

UNIDENTIFIED SPEAKER: May I approach?

THE COURT: Of course.

All righty. So I've got that.

MR. TAYLOR: So I'm not backing off on May, I guess, but -- because that's what we --

THE COURT: Yeah.

MR. TAYLOR: -- had originally proposed. And I thought that is what we were asked to do. And when I was trying to work on May dates, the only response I got was it's

just unrealistic and we can't do it and so October it is. And I felt like I'd been here arguing about that exact issue. We got a May date, so I tried to hit it.

THE COURT: Okay.

MR. TAYLOR: And it would be aggressive.

THE COURT: Okay.

MR. TAYLOR: I grant you that it would. But it would have to be to hit a May trial. But I think if we were to split the difference and do this thing where we wound up everything in August and if we tried whether we could hit the August date or whether we could hit a September date.

To me, every additional day we don't have to do this later is better. So I don't want to wait for October if it's possible not to. And based on what I've heard right now, even with the document fights, I don't see that we can't hit a date in August.

THE COURT: Okay.

MR. TAYLOR: So our September 3 or whatever it was. So our position is that we should do a compromise on one of those lines. And here's the other thing. If you want to just take your dates that you've given us, September 3 or August whatever it is and say I would like for this to be the day, then I don't know for sure, but I mean I can certainly try to work everything else out with the other side without you having to go through all the nitty-gritty. But if we want to go

through it, I'm ready to grit some nits, so.

THE COURT: Thank you.

MR. TAYLOR: Thank you.

THE COURT: All righty.

All right. So let's -- I've got the September, the May, and the October here.

MR. TAYLOR: One more thing, Your Honor.

THE COURT: Of course.

MR. TAYLOR: I'm told that my client does have a conflict in June, so we won't --

THE COURT: June.

MR. TAYLOR: -- we won't ask for it in June.

THE COURT: Okay.

Well, and I think you guys alluded to it at the beginning, June and July are very difficult to plan trials for because of folks' vacation schedules. The glory of the school system, they give us so very little time and so many of us are still at the mercy of that, so. All righty.

Okay, let's see. So it looks like everyone is around the same time with respect to meet and confers. It looks like you're going to need the end of the month or maybe a little bit after that, supplemental disclosures.

Okay. So it looks like the plaintiff's version -- excuse me, the defendants' version has the supplemental disclosures. I do believe it's probably a good idea to put in

a date for the supplemental disclosures just to keep parties on track. But given that we've got a little bit of float in there with the Houlihan on the Lifespace issues, I'd like you to confer with them and kind of figure out what the go-forward plan is going to be before we put a date certain in that.

MS. VANDESTEEG: I think that makes sense, Your Honor. I think we could also acknowledge that the Lifespace-specific issues are ones that we may just need to acknowledge and accept may very likely go beyond September 29th.

THE COURT: Yeah. I mean and we could put a "unless the Court otherwise orders or the parties otherwise agree," something of that nature. Also, with respect to I think I may have said this at the last hearing, I'm sure that Ms. Vandesteeg's team knows this.

With respect to scheduling orders, to the extent that it doesn't already say so, I am perfectly happy for folks to agree to change deadlines and things like that by agreement without the necessity of a further court order if just put something along the lines of a Rule 11 agreement on the docket so that we can keep track, so long as you're not crunching the Court's time.

If you're going to crunch the Court's time for review and things of that nature, I may want to know about that. But other than that, anything that happens by agreement, I tend to

sign off on.

MS. VANDESTEEG: Thank you, Your Honor.

We did incorporate that in our proposed draft of order at Paragraph 18, and I believe that it has been included and copied by plaintiff's counsel in their proposed orders, as well.

THE COURT: Excellent. Excellent.

All righty. So written fact discovery, we've got --

MR. TAYLOR: Could I address that issue?

THE COURT: Of course.

MR. TAYLOR: Okay. That is one area of potential disagreement. The defendants want there to be a written discovery cutoff and that we can't do oral discovery until all of the written discovery is done. And I think what they mean by that is they want to make sure that they've gotten the full document production before they have to go take depositions, which I don't quarrel with.

But I don't like there to be a written discovery cutoff per se because sometimes as you're going through the case and you're in depositions, something will happen and you need additional written discovery. You found that there's some additional trove of evidence somewhere or maybe you want to send admissions because of things that have happened.

You shouldn't have just on discovery, all written discovery has to end by a certain date. The way I typically do

it is I have a fact discovery cutoff, and that's what it is. And so whichever version that you do --

THE COURT: Keep that in mind.

MR. TAYLOR: -- I would just want you to keep that in mind.

THE COURT: Okay. Ms. --

MR. TAYLOR: The other thing I will just offer --

THE COURT: Oh, I'm sorry. Mr. Taylor, keep going.

MR. TAYLOR: The other thing I'll just offer is I might could agree to October if they would agree that we can do it in this court. I haven't been offered that.

THE COURT: Right. And that's -- I mean obviously just in terms of timing, that would be quicker here just obviously getting on a district court's trial calendar. But that's obviously -- that's a consent issue that I won't weigh in on necessarily.

MS. VANDESTEEG: Thank you, Your Honor.

And we'll take that under consideration.

Your Honor, with respect to discovery and why it is our preference to break it out between the written and the oral, let me say this first. We're not precluding that oral discovery not be permitted to commence until after the written discovery is completed.

However, given production issues that have historically been an issue in this case, Your Honor, what we're

looking to do is put a specific deadline out there for the parties' very best efforts to have all written documents produced. We do include in ours at Paragraph 3 where we put the closing deadline of November 15 that the parties can agree to continue beyond, but it's not going to impact the trial date. So we do put that caveat in there.

Your Honor, again, given the allegations that have been raised and the affirmative defenses and counterclaims, the number of depositions in this case, fact depositions is going to be extensive, Your Honor. We've got multiple parties. As you know, we have issues that we're going to try to resolve around in what capacity are certain individuals acting at various different points in time. But it's going to be extensive.

And so we wanted to separate those to have our target deadline for completion of written to the very best of everyone's abilities with a focus then on depositions which we think is pretty aggressive from that November 15 to January 26th because it's over the holidays, as well.

THE COURT: Right.

MS. VANDESTEEG: So we're going to be scheduling likely in excess of -- I don't want to put numbers out there, Your Honor, but it's going to be a lot. So a lot of depositions during that two-and-a-half-month time frame where we need to work around travel, holidays, school schedules.

THE COURT: Well, I mean what I'll say is this is less judge, more practitioner, historically, I have always worked off of one fact discovery deadline, okay, and the reason for that is I don't want someone to argue, well, I can't go forward with this deposition because written discovery is still open or I can't -- or vice versa, because there could be witnesses where all that discovery is completed and you're ready to go, like let's example Paddock.

MS. VANDESTEEG: Sure.

THE COURT: All of the Paddock discovery is already in and if I wanted to interview anyone with respect to -- I mean, excuse me, depose anyone with respect to that, I could go right ahead. I understand the thought process around an iterative deadline for the existing production issues subject to existing court orders. That makes sense to keep that process going. Other than that, I think you only need one deadline.

And, yes, that requires a lot of backup deadlines and calendaring on your own perspective. But at the end of the day, one deadline means this. You know the date by which you will have to have proposed your written discovery so that you can get it by that deadline. So I do prefer that. If the parties want to otherwise agree, then sure you can do the two deadlines. But from the Court's perspective, I would only impose one.

MS. VANDESTEEG: Very well, Your Honor.

THE COURT: Okay.

MS. VANDESTEEG: Then we would say that that should be the January 26th deadline to give the parties sufficient time to complete all outstanding fact discovery, both written; and on written, not only those that are presently subject to court order but also other third-party subpoenas for which defendants are still working toward compliance in light of the lifting of the stay, with then all fact discovery to conclude at the end of January 2024.

THE COURT: All righty.

(Pause)

THE COURT: Okay. Let's move forward because I don't disagree with Mr. Taylor. Really, it becomes a point to where you look at the last -- you look at the end and then you build backward. So let's look at the other differences that might occur in your scheduling orders and we'll pick a date.

MS. VANDESTEEG: Excellent.

THE COURT: We'll pick some dates along them.

MS. VANDESTEEG: And, obviously, I'd welcome Mr. Taylor to come up if we want to just be able to go back and forth.

MR. TAYLOR: Sure.

MS. VANDESTEEG: I've got all three of them here in front of me. Your Honor, I think that the next point of

difference just in terms of timing is that plaintiff would propose that there be only one week -- yes, approximately one week between close of fact discovery and production of supplemental or amended expert witness lists. We thought that a three-week time period would make more sense to allow the parties to complete review of any necessary transcripts and update or prepare new expert reports as necessary. So that is a point of disagreement in terms of how much time would be necessary.

MR. TAYLOR: I think my amended one --

THE COURT: Yes, your September 1 gives between the 26th of January and February 16th.

MR. TAYLOR: Right. So I built in a little additional time there. And here's the other thing. I mean lawyers can take -- I'm guilty of it --

THE COURT: They will fill up the time allotted.

MR. TAYLOR: Exactly right.

THE COURT: Yes.

MR. TAYLOR: And so what we need to do is we just need to work quickly on those things. It's just like I appreciate the point that there will be a lot of people that want to -- that may potentially be deposed, but if you know you've got to get them all done in this period of time, that might decrease the number of the ones that are super necessary.

THE COURT: It does. But, again, I like to be

realistic when I go in. I'm looking at Thanksgiving, and --

MR. TAYLOR: And Christmas.

THE COURT: -- the Christmas holidays and, like I said, I know folks have precious little time to travel with their families.

MS. VANDESTEEG: So I think Your Honor actually given --

THE COURT: Until they have to pay for weddings.

(Laughter)

MS. VANDESTEEG: All of those things. I think that --

MR. TAYLOR: Don't remind me.

MS. VANDESTEEG: -- we are then aligned if we're going to do a single date, we're aligned on the January 26th and then February 16th. And I'm working now just between Docket 333-1 and the compromise.

THE COURT: I've got them all, yeah.

MS. VANDESTEEG: Great.

So rebuttal experts, then we have a week difference there, Your Honor.

MR. TAYLOR: Where are you? March 22?

MS. VANDESTEEG: 22nd.

MR. TAYLOR: Yeah, I was just moving it.

THE COURT: Okay. So rebuttals March 22nd versus March 15th.

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: Okay. To exchange rebuttal reports.

MR. TAYLOR: I think I was just building in more time to make sure that expert discovery was completed after we got the rebuttals, but --

MS. VANDESTEEG: I think that's right. We actually have a disagreement where we believed, defendants believed expert discovery could be completed sooner on April 5th, whereas, plaintiff --

THE COURT: Okay.

MS. VANDESTEEG: -- requested that they be completed, that all expert discovery be completed toward the end of April on April 26th.

THE COURT: Okay. So if we have -- okay, so --

MR. TAYLOR: Here's my thought on that, by the way.

THE COURT: Okay. Thank you.

MR. TAYLOR: I think that expert issues are going to be a big driver in this case. And so I wanted --

THE COURT: That was my guess from the complaint.

MR. TAYLOR: And so I wanted to make sure that we had plenty of time. But if we needed to go -- if we've got rebuttals coming in in March 15 and they want to do April 5, you said, I mean we can back it up from April 26th. Just I'd like as much time as possible because I think that those -- I'd like as much time after I get the rebuttal reports to think

about what I need to ask their experts. That's all it is.

MS. VANDESTEEG: Well --

THE COURT: Yeah. So I think it looks like ICI and Kong have like two weeks built in between the reports and the conclusion of what I assume to be the expert depositions.

MS. VANDESTEEG: Correct.

THE COURT: That does seem tight.

MS. VANDESTEEG: Correct.

THE COURT: Yeah.

MS. VANDESTEEG: Your Honor, I'm comfortable with pushing that date out a little. I think thematically we're approaching then the point where we diverge. So --

THE COURT: Okay.

MS. VANDESTEEG: -- it's important from defendants' perspective that we have a reasonable period of time between close of expert discovery and filing of dispositive motions.

THE COURT: Okay.

MS. VANDESTEEG: As this Court knows, it's our position that we think the vast majority if not all allegations raised by plaintiff are going to be resolved on summary judgment. So --

THE COURT: I do know that you think that. You've told me.

MS. VANDESTEEG: So we have baked in from our perspective a four-week period of time to be able to

meaningfully prepare for what we think should be truly dispositive motions. In our schedule, what we have done is we have also stepped and done sequentially the dispositive motion practice and then depending on ruling, the Daubert process.

Plaintiff, on the other hand, has put together a much shorter timeline to get from close of expert discovery to dispositive motions and proposes a simultaneous tracking of dispositive motion practice and Daubert motion practice. That seems inefficient.

MR. TAYLOR: Here's why I do that. Because to me, from the plaintiff's side, the Daubert stuff and motions for summary judgment are the same. You're trying to keep us from being able to go forward. And so to me, they ought to -- they already know what the issues are going to be.

They don't have to wait until the end of expert discovery to figure out what are our key things that we think that we're going to be moving for summary judgment on, and they don't even need until the end of expert discovery to figure out if I don't think these experts are qualified. So they can be working on those motions while we're still in the process.

If we had to give them another week or something like that to file dispositive motions, I guess we could, but here's how I did the dates. What I tried to do was go from -- I tried to go from what we thought would be the likely trial date and then I think you had said at the last hearing you wanted four

weeks between that date and the time that summary judgment stuff ended.

And so I thought, well, we'd give her the four weeks. We end summary judgment and Daubert and everything with that period of time. You've got the time to decide what you need to do, and then we go to trial. And so I backed it up a bit, and so I got the dates I did.

I mean all these dates could go a week or two. I mean I'm not -- but I do think that Daubert doesn't have to be after you figured out what you argued on summary judgment because it's -- I mean you might have moved for summary judgment saying you're not going to have any expert evidence because I'm going to Daubert your guy out. But then I need the Daubert motion so I can handicap that, you know.

So I think they ought to be the same, and I've done a lot of cases where they are the same. But I'm not saying I haven't done them where they were different, too. So --

THE COURT: Okay. All right.

MS. VANDESTEEG: Your Honor, and it's been my experience that it makes more sense to allow the dispositive motion practice to be completed so that we're not all spending limited time and resources on another substantive drafting hearing issue until we know what is actually at issue.

If, for example, Your Honor, one or more of the counts gets knocked out that completely obviates the need for

any expert report on that count, why undertake the expense of process of briefing and arguing? It makes more sense to know what exactly is at issue as we gear up for trial on those issues before we undertake Daubert, motions in limine, and further pretrial briefing before we know what are the issues that are going to remain to be tried.

THE COURT: I don't mind there be some staggering of the dates, but I mean let's just talk turkey. If you fully -- let's just say we hear a motion for summary judgment, looking at your October deadlines, if I hear a motion for summary judgment on June 21st, for example --

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: -- you're assuming that you have to file your Daubert motion by July 12th.

MS. VANDESTEEG: We would start working, Your Honor.

THE COURT: You would start working on it let's just say July 1.

MS. VANDESTEEG: Correct.

THE COURT: Okay. You won't have a summary judgment decision by that time.

MS. VANDESTEEG: No, Your Honor. But --

THE COURT: I can promise you that.

MS. VANDESTEEG: But what it does, Your Honor, is what we did in terms of that three weeks there was to try to, to your point to stagger.

THE COURT: Yeah.

MS. VANDESTEEG: The Court has requested four weeks.

THE COURT: Yeah.

MS. VANDESTEEG: So it keeps the process moving while not still exposing the entire universe of cost.

THE COURT: Right.

MS. VANDESTEEG: That was what we intended to be, a staggered compromise on that, Your Honor.

MR. TAYLOR: And from my perspective, it's totally up to you on how you'd like to --

THE COURT: Sure.

MR. TAYLOR: -- approach these things. But you're going to get a lot of briefing that's going to get dumped on you.

THE COURT: Sure.

MR. TAYLOR: And you're going to have several weeks to decide it. And I think we should just give it all to you. And if you're going to be able to resolve the case based on those outstanding motions, let's have you looking at all that stuff at the same time.

THE COURT: I do think it makes good sense because I mean I have had in a handful of my last adversary proceedings, there's a dispositive motion that is filed and there's some attack on the expert. So if there's going to be an attack on the expert, I would -- whether I do that under summary judgment

or I do it under -- I can barely say Daubert.

MR. TAYLOR: That's how we pronounce it.

THE COURT: I know it's --

MR. TAYLOR: That is correct.

THE COURT: I think it's actually -- I have been told that it's Daubert. I was going to say Daubert, and I'm just going to --

MS. VANDESTEEG: We'll go French. Done.

THE COURT: I'm just going to do it.

(Laughter)

MR. TAYLOR: I will not --

THE COURT: I'm just going to do it.

MR. TAYLOR: I will not tell --

THE COURT: That's not how Mr. Daubert or Ms. Daubert --

MR. TAYLOR: Right.

THE COURT: -- pronounced their child's name, but it doesn't matter.

MR. TAYLOR: Other than --

THE COURT: It's voir dire and it's Daubert. I don't know what else to say.

MS. VANDESTEEG: Done.

(Laughter)

MR. TAYLOR: I'm trying. I can't agree with you on those. But I respect you for your position.

MS. VANDESTEEG: (Indiscernible).

THE COURT: Exactly. Exactly.

(Laughter)

THE COURT: So in any event, if you want to build a little bit of time in, I think that it probably makes sense for those to come closely so that we -- at the end of the day when we're hitting that pretrial conference, that we are as close to me giving you rulings on anything that's outstanding as possible.

So I don't -- because I suspect in this case that a motion for summary judgment could involve expert testimony and whether there's an attack on an expert for any reason, it's probably good to have that laid out in the Daubert motion a little bit more fulsomely than we might otherwise see in an MSJ.

All righty. So, again, they don't have to be identical. If you want to give yourself a week or so just to be able to stagger your legal teams, but I don't think that there's any reason to space them out a month or so apart because they'll all come into probably under advisement at the same time.

MS. VANDESTEEG: Follow-up question on that, Your Honor.

THE COURT: Sure.

MS. VANDESTEEG: Thank you for the guidance. Would

the Court prefer at the very least if we're going to compress, even if stagger a little bit, one consolidated hearing then or would you prefer -- if we're only going to be a week or two apart?

THE COURT: A consolidated hearing is totally up to you guys. Again, I do like with motions of this magnitude to have a couple of weeks with all of the documents basically from the reply to the hearing. If you want to do it and you guys are prepared to, we just need to make sure that we book enough time --

MS. VANDESTEEG: Understood.

THE COURT: -- to hear everything. And, again, but if these are going to be lengthy and just kind of exhausting, I'm happy to do more than one hearing day.

Mr. Taylor?

MR. TAYLOR: Yeah, it's more of a question, really.

I have had some Daubert hearings where I mean there was evidence. We put on evidence. And, of course, at a summary judgment hearing, you would not.

THE COURT: Right.

MR. TAYLOR: And so I mean from a -- could we do it all at one time? I could. I would probably even appreciate only having to do it the one. But I'm just --

THE COURT: It is two different hearings.

MS. VANDESTEEG: Correct.

MR. TAYLOR: I'm observing --

THE COURT: Yes.

MR. TAYLOR: -- and with different rules.

MS. VANDESTEEG: Correct.

THE COURT: No, it's different hearings and different rules.

MS. VANDESTEEG: It's just trying to preserve the Court's calendar.

THE COURT: So obviously, no evidentiary -- I mean there could be objections to the evidence used in a motion for summary judgment and things of that nature, but --

MR. TAYLOR: There will be that.

THE COURT: Yeah, I suspect there will be. But at the end of the day, the summary judgment hearing is oral argument only. I know you guys are all experienced practitioners, but for this district, we typically do do oral argument on summary judgment which is different than you'll see in the district court, et cetera.

And so, again, absent consent, I would do that on a report and rec basis which is another reason that I asked for a little bit more time because report and recs take longer than just straight summary judgment orders. So based on that, if you do want to have one hearing, yes, you're right, one would be evidentiary, one would not. and we could actually take them in whatever order that you'd like to accommodate witnesses and

the like.

MR. TAYLOR: Okay.

THE COURT: All righty.

MS. VANDESTEEG: Just something for us to think about for scheduling purposes.

THE COURT: Of course.

MR. TAYLOR: Right.

MS. VANDESTEEG: So by the time we've done our different proposals on that, that brought us to our respective Paragraphs 10 which have us about a month apart --

THE COURT: Yeah.

MS. VANDESTEEG: -- in terms of filing and service of witness and exhibit lists. I think also part of what causes then the conflation here for plaintiff leading up to an August trial date versus defendants leading up to our September is the filings that come into play with Paragraphs 11, 12, and 13.

Plaintiff proposes that those additional filings be done ahead of service of witness and exhibits lists and things of that nature; whereas, defendants propose that we go in the order that we have proposed and continue to stagger those things leading up then to being trial ready by end of September.

MR. TAYLOR: From my perspective, I like to do the exhibit list and the witness list first just because the other things, the findings of fact and conclusions of law, trial

briefs, and sometimes motions in limine, they just from my perspective, they require a whole lot more effort than the witness list.

THE COURT: Yeah.

MR. TAYLOR: And while they might not require a whole lot more effort than the exhibit list, I like to get the exhibits done as quick as possible because if there's going to be objections to things, it gives you more time to work them out.

MS. VANDESTEEG: Your Honor, I agree. That's why we stagged it the way we did in our proposed schedule. The plaintiff's proposed schedule has those items coming ahead of the witness and exhibit list. So we're going back in time --

MR. TAYLOR: Oh, I see.

MS. VANDESTEEG: -- in July.

MR. TAYLOR: No, actually, I agree with her.

THE COURT: Okay.

MR. TAYLOR: I agree with her on that.

THE COURT: Okay. All righty.

All right. And I've seen these all happen at one time, and I've seen them stagger. I believe just from an allocation of bodies, it probably does make sense to kind of stagger them. And I don't disagree that culling together your various witness and exhibit list will speak to whether or not you need motions in limine. And it will also determine to some

nature whether or not there is any sort of --

MR. TAYLOR: Yeah.

MS. VANDESTEEG: Correct.

THE COURT: -- joint.

MR. TAYLOR: Looking at my proposed one, I mean I just sort of flipped those dates and used the --

THE COURT: Yeah, sure.

MR. TAYLOR: -- July 22 for the ones on the witness list and exhibit list and then go to the later July date or whatever, even August 5th for the others.

THE COURT: Okay.

MR. TAYLOR: One thing that we did have a -- well, maybe this is for us to discuss further. I did build in a mediation deadline --

THE COURT: I saw that.

MR. TAYLOR: -- just because I think it's a good idea for people to sit down beforehand. But it's up to the Court and if they don't want to do it, they don't have to do it, I guess.

THE COURT: Right.

MS. VANDESTEEG: Your Honor, I don't think that we're in a position to consent to a mandatory mediation in this scheduling order. We appreciate that counsel had raised this as something they would be interested in. It's something that we've taken under consideration and that we have discussed and

will continue to discuss. But I don't think that it's appropriate to make this a mandatory item in a scheduling order.

THE COURT: It may make sense to at least pencil in any mediation shall occur by.

MS. VANDESTEEG: I think that makes sense, Your Honor.

THE COURT: Something like that.

MR. TAYLOR: I'll just observe. I've had a lot of scheduling orders that had a mediation date.

THE COURT: No, I understand. I'm not going to impose one absent consent. I rarely do that absent, like I said, the agreement of the parties, should I say.

But do I believe mediation of this particular case might be a good idea? I do, at some point. And I recognize that it would be at a point which is I think that you've established which is -- well, after the close of discovery. Whether or not it's that date or at some point a little bit later to give parties time to see the evidence, hear the witnesses, and perhaps see dispositive motions.

I won't put my thumb down on when it should be, but I do believe that if you're going to include a mediation, just a mediation by X date is a good idea.

MR. TAYLOR: Okay.

THE COURT: And this district is full of great

mediators, so.

MR. TAYLOR: We certainly are. Some of them are sitting in this courtroom. But we can't use him.

THE COURT: You probably can't. I don't think he can do that.

MR. TAYLOR: I know we can't.

(Laughter)

MR. TAYLOR: Okay. And so then that just -- I guess that just puts us up to when would we have the pretrial conference. I was just trying to have it a few weeks before we would start, but --

THE COURT: Sure.

MR. TAYLOR: How do you want this to work? I mean we're going through all these dates. Do you want us to come back and see if we can give you an agreed one? If we did, then I guess what I would want from you is can we agree today at least on what trial date are we trying to hit? Are we trying to hit September 3 or are we trying to hit August 6th?

THE COURT: Right.

MS. VANDESTEEG: Or are we trying to hit October?

MR. TAYLOR: We're not trying to hit October.

(Laughter)

MS. VANDESTEEG: I would say this, Your Honor. Not having had the opportunity to consult with my team or with even counsel now in light of some of the guidance you've provided,

to me, it may make sense on this scheduling order to take a brief recess and allow counsel to discuss.

THE COURT: Yeah, I'm happy to allow for that. I do want to -- and I don't want to cut you off. I'll get to your last point.

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: I do want to tell Mr. Taylor with respect to the pretrial conference, in a case of this magnitude, I typically would have called for a pretrial conference about a week to two weeks ahead of the trial. I like some time with the pretrial order by that point.

And my intention would be at a pretrial conference I would give you any and all outstanding rulings. If I've got Daubert motion still under advisement, any summary judgment, any motions in limine, any objections to evidence, we'd work it out at that pretrial conference. And so that's typically the way I set it out.

Just so you know, in terms of trial docket calls in my court, that's a five-minute nothing hearing. So you'd want to set a real pretrial for something of this magnitude if we were going to do that. But that's what I use them for. I have the time with the JPO as well as the proposed findings of fact and all of that kind of good stuff. And that's the day usually that I could either -- I could hear and determine or just determine depending on how you want to do your motions in

limine.

Ms. Vandesteeg, you had another point.

MS. VANDESTEEG: Yes, but first I have one more question, Your Honor.

THE COURT: Okay.

MS. VANDESTEEG: With respect to the JPO, the final pretrial conference, and the docket call hearing, my recollection is that for that pretrial conference, the last time around, you wanted that one week before docket call because docket call is one week before trial, correct?

THE COURT: That's fine, yes.

MS. VANDESTEEG: So just to understand them going the reverse way, is one week between JPO and pretrial conference sufficient or is that where you'd look to have two weeks?

THE COURT: The JPO, I would like -- I mean a week is fine --

MS. VANDESTEEG: Okay.

THE COURT: -- before the pretrial conference.

MS. VANDESTEEG: I just wanted to make sure I understood that.

THE COURT: Yeah, I think -- I'm just looking at the September draft. It's August 5th and 12th. That deadline is fine. Oh, I see yours was TBD.

MS. VANDESTEEG: Correct.

THE COURT: But it said one week before docket call.

So, yes. And then -- yeah. So just build in a week because essentially, I would have everything that would allow me to determine the case is trial ready in my hand.

MS. VANDESTEEG: Understood.

THE COURT: And the ability to make any rulings.

MS. VANDESTEEG: So then the other question that I raise in terms of further procedure goes back to where we started which is how best to bake in then additional deadlines around Lifespace obligations in particular --

THE COURT: Sure.

MS. VANDESTEEG: -- that are specific in light of discussions had on the record today, may not be appropriate for a general scheduling order. How would the Court like to address to make sure that we can keep those issues moving with respect to Houlihan Lokey, the amendment of the privilege log, and making sure that we've got a further statement from Lifespace as to these issues as to potential designation of Lifespace-Edgemere documents?

THE COURT: I think that what you have in yours is that all the supplemental disclosures to discovery responses required by court order are due September 29th.

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: You also have the amendment deadline that day, which also ties to Mr. Taylor's draft, as well. I don't have a problem with September 29th, but if it turns out to be

short, I think you're going to need to confer with Mr. Walker specifically because we'll need to find out if there's further briefing. And hopefully, on the Houlihan issue, I could bench rule on that one and not provide a -- I mean not take that under advisement and giving more weeks of delay there.

On the issue with respect to the Lifespace designation, I don't want to pre-judge that. And with respect to if in-camera review is required, I would certainly seek to do that expeditiously. Let me look at when.

(Pause)

THE COURT: I mean I think that the Lifespace issues even if we brief and hear Houlihan and we have to address in-camera issues, I don't see why that's not done by what you would have otherwise had and here is an iterative deadline in November, because, again, your fact discovery you guys come to the same road. It's just the question of whether there's iterative deadline.

MS. VANDESTEEG: Correct.

THE COURT: If you were banking off of November 15th, I don't see why the Lifespace issues aren't fleshed out by the 15th such that you still have sufficient time to conclude all of your fact discovery by January 26th.

MS. VANDESTEEG: I would ask then that perhaps what may make further sense because what troubles me is that September 29th deadline in light of these Lifespace issues that

we are encountering, so perhaps if we could by agreement insert a footnote that would, for example, exempt potentially from that September 29th deadline that's otherwise out there in terms of amendment of pleadings, any amendment of pleadings that might otherwise involve Lifespace.

Because, Your Honor, it comes as no secret I don't think that we also have some concerns as to whether there are allegations or causes of action involving Lifespace. And to the extent that we were going to seek to amend to include some sort of a third-party claim of any sort, I would not want us to be precluded to do so because we would not yet have the documents that might give us further basis ahead of that September 29th deadline, Your Honor.

So perhaps we could simply exclude Lifespace.

THE COURT: Let's leave September 29th in there, Ms. Vandesteeg, and let's cross that bridge when we get to it.

MS. VANDESTEEG: Understood.

THE COURT: And if this deadline needs to be extended because you haven't received X or Y and you need to extend that amendment deadline, let's cross that bridge then.

MS. VANDESTEEG: Got it. Thank you. I just wanted to get the issue out there.

THE COURT: No. We're not on a clean slate every hearing. I think I'll remember.

MS. VANDESTEEG: So with that, unless the Court has

further questions, I think a brief recess to discuss may make the most sense.

THE COURT: Fair enough. All righty. The Court will take a ten-minute recess?

MS. VANDESTEEG: Yes. Thank you, Your Honor.

MR. TAYLOR: Thank you.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(Recess at 12:05 p.m./Reconvened at 12:36 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

All righty. We're going to go back on the record in Case Number 22-3040. I think when we last left, the parties were going to confer with their co-counsel and then with each other after that. My computer went to sleep. Just one moment.

(Pause)

THE COURT: All righty. Any updates?

Mr. Taylor? Ms. Vandesteeg?

MS. VANDESTEEG: Thank you, Your Honor.

For the record, Elizabeth Vandesteeg on behalf of the adversary defendants.

In great news, we've taken a moment to confer and we have now come to an agreed upon scheduling order which will have us gearing up to be trial ready for your trial docket call --

THE COURT: Okay.

MS. VANDESTEEG: -- on September 3rd.

THE COURT: Okay.

MS. VANDESTEEG: Your Honor, we could go through all of these internal dates should you like. However, we are also just as happy to take our collective notes in various different colors and come back to you with a clean draft. What's your preference?

THE COURT: Oh, I think you guys coming up with an agreed form of order would be the best.

MS. VANDESTEEG: Okay.

THE COURT: Yep.

MR. TAYLOR: Great. I just want the record to reflect that opposite sides in this case actually were able to reach an agreement today.

THE COURT: I've got each of the times this happened marked on my calendar.

(Laughter)

THE COURT: We have little internal parties.

MR. TAYLOR: This is one of those times.

THE COURT: I am kidding. I am kidding. There's been a lot of professionalism in this case, and I recognize that the way that the adversary commenced was quite trying on the parties. So I understand where people are coming from. I have represented clients in my life, so it's okay.

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: So, no, I think that's a great idea. Just prepare a form of order. Heaven forbid, and I hate to even put it into the universe, but if there is any point of contention, what I'd ask that you do is just send me the two competing forms of order. I'll pick a date and I'll fill in it. Just send them to me in Word.

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: And then I'll select the date. Okay?

MS. VANDESTEEG: As a matter of housekeeping before we go because you know we love housekeeping, can we confirm that we can set the adversary for status on our upcoming I think it might technically still be an omnibus date in the bankruptcy, but it was for September 19th?

THE COURT: Let me look. I think that Ms. Harden had sent me a note on this one. Just one second.

(Pause)

THE COURT: We do have -- okay, so she confirmed that we have September 19th at 2:00 p.m. set for an hour and a half. There is no omnibus docket, per se, set for September. And we do have another matter set at that same time. So I don't think the other matter will take --

THE CLERK: (Clearing throat).

THE COURT: -- longer than an hour. But I think Ms. Jeng is (clearing throat) me. Just one moment.

MS. VANDESTEEG: Thank you.

(Pause)

THE COURT: Okay. So, again, Ms. Harden just confirmed as well that there's no September omnibus at current. The hearing that we've set for September 19th is a special setting. We do have another matter set that afternoon.

So if the estimate is beyond an hour and a half, we may need to pick a different date.

MS. VANDESTEEG: I think my preference would be to pick a different date where we could just set the adversary for status. I suspect as we continue to get off the ground here and there are still additional --

THE COURT: Okay.

MS. VANDESTEEG: -- outstanding issues that may arise, I don't want to cut into Mr. McCartin's time on --

THE COURT: Right.

MS. VANDESTEEG: -- his resident trust issues.

THE COURT: Okay, right. And I know the motion's filed. I don't know the breadth of them to figure out how much time that will take and whether it will be contested.

So why don't you and Mr. Taylor confer and then you can just talk to Ms. Harden about a setting. We should have plenty of time to give you.

MS. VANDESTEEG: Thank you, Your Honor. I appreciate that. And then with respect to that upcoming status hearing,

date TBD, is it helpful to the Court for the parties to provide that kind of detailed notice of agenda ahead to the extent that there are specific issues that we think we'll need discussion with the Court?

THE COURT: I know that they are a lot of work. They are quite helpful to the Court. And so if you have anything detailed but, again, I mean I have to say this. I don't want to turn status conferences into unfiled motions, so I am more than happy to talk through issues with folks so that we can cut through and not extend further legal fees on motion practice. I'm happy to do that, but I don't want to impinge upon parties' otherwise rights to be able to consider issues and address them by motion.

And so what I would say is if you come to an issue and one side or the other says I think this is a motion to compel or I think this is X, I'd prefer it not to be just hoisted upon the status conference.

MS. VANDESTEEG: Understood, Your Honor. I appreciate that. And I'm sorry, one additional question.

Going back then again to some of the Lifespace discussion that we had in terms of additional briefing on the Houlihan Lokey, for example, is there a date certain by which you would like to make sure get that briefing kicked off or are we leaving that up to the parties?

THE COURT: I think I'd leave that up to the parties.

But if it becomes an issue and parties are not gelling on when that issue is going to kind of come to fore, I'll address it. You can file a motion requesting a setting or a schedule or something like that. But I'd like to allow the parties to confer.

MS. VANDESTEEG: Thank you, Your Honor. Hopefully, we'll have specific updates for you.

THE COURT: Yeah, the issue doesn't seem incredibly complicated. But, again, just re-reading that prior motion, it did say that the Houlihan issue would be set for further hearing which leads me to the assumption that it wasn't either fully adjudicated in terms of evidence and I don't know. I know Lifespace never responded independently in terms of briefing.

MS. VANDESTEEG: Correct. And, obviously, that's just one of the issues. The bigger issue is the one with respect to the designation.

THE COURT: Of course, absolutely.

MS. VANDESTEEG: So we will follow up. We will continue our meet and confers and hopefully have made progress ahead of our status hearing TBD in September.

THE COURT: Excellent. And I think we reflected on the record you've picked up your prior in-camera documents that your clients have provided.

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: And to the extent that the plaintiffs want to retrieve or for the Court to dispose of any prior in-camera documents, just let us know.

MR. TAYLOR: Okay. We will let --

THE COURT: Yeah.

MR. TAYLOR: I don't have those.

THE COURT: Exactly. Yeah, Mr. Ennis can fill you in on the prior in-camera review and whether or not anybody wants those anymore.

MS. VANDESTEEG: Excellent.

THE COURT: All righty.

MS. VANDESTEEG: Thank you so much again for your patience.

THE COURT: Thank you.

MR. TAYLOR: Thank you, Your Honor.

THE COURT: You guys have a great day. The Court will stand in recess until 1:30.

THE CLERK: All rise.

(Proceedings concluded at 12:44 p.m.)

* * * * *

C E R T I F I C A T I O N

I, DIPTI PATEL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel
DIPTI PATEL, CET-997

J&J COURT TRANSCRIBERS, INC. DATE: August 24, 2023

Exhibit G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

IN RE:	Case No. 22-30659-11-MVL
NORTHWEST SENIOR HOUSING CORPORATION,	Earle Cabell Federal Building 1100 Commerce Street Dallas, Texas 75242
Debtor.	
LEIF M. CLARK, TRUSTEE OF THE EDGEMERE LITIGATION TRUST,	Adv. No. 22-03040-MVL
Plaintiff,	
v.	
INTERCITY INVESTMENT PROPERTIES, INC., et al.,	
Defendants.	Tuesday, October 3, 2023 2:40 p.m.

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE MICHELLE V. LARSON
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES ON NEXT PAGE.

Audio Operator: Hawaii S. Jeng

Proceedings recorded by electronic sound recording, transcript produced by a transcription service.

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APPEARANCES:

For Leif M. Clark, Litigation Trustee:	Diamond McCarthy BY: J. GREGORY TAYLOR, ESQ. 2711 N. Haskell Ave., Suite 3100 Dallas, Texas 75204
For Intercity Investment Properties, Inc. and Kong Capital, LLC:	Levenfeld Pearlstein, LLC BY: ELIZABETH VANDESTEEG, ESQ. EILEEN SETHNA, ESQ. 120 South Riverside Pl., Ste 1800 Chicago, Illinois 60606

APPEARANCES VIA WEBEX:

For Lifespace Communities Inc.:	Cooley LLP BY: ERIC WALKER, ESQ. ROBERT EARLES, ESQ. SAM RABUCK, ESQ. 110 N. Wacker Drive Suite 4200 Chicago, IL 60606

- - -

(Proceedings commenced at 2:40 p.m.)

THE COURT: I'm going to go ahead and call the next matter which is Case Number 22-3040, Leif Clark, Trustee of the Edgemere Litigation versus Intercity Investment Properties and Kong Capital. And I'll take appearances for the record.

MR. TAYLOR: This is Greg Taylor for the Trustee.

MS. VANDESTEEG: Good afternoon, Your Honor. Elizabeth Vandesteeg and Eileen Sethna of Levenfeld Pearlstein on behalf of both adversary defendants, Intercity Investment Properties, Inc., and Kong Capital, LLC.

THE COURT: Good afternoon. I'll now take WebEx appearances.

MR. WALKER: Good afternoon, Your Honor.

Eric Walker of the Cooley Law Firm on behalf of Lifespace Communities, Inc. Joining me today are my colleagues Robert Earles who you met briefly earlier, and Sam Rabuck. Thank you.

THE COURT: Thank you, Mr. Walker.

And to Mr. Earles, I am sorry that I gave you a hard time there, Mr. Earles. As you guys have probably have heard, we've got new WebEx appearance guidelines for remote participation. And normally I'm in don't ask/don't tell mode.

But when I have a witness testifying of something such a sensitive nature, I was a little attune to closing off the WebEx in that particular circumstance. So again, sorry to

pick on you, Mr. Earles. Your name was new to me. So I appreciate it.

MR. EARLES: Not at all, Your Honor.

THE COURT: Thank you. Is there anyone else who wishes to make an appearance today?

(No audible response)

THE COURT: Hearing no takers. We are here on a further status conference. I did have an opportunity to review the lengthy notice of agenda matters for today. And thank you all again for your patience waiting through the early portions of the docket. Obviously, those were hard ones.

So I'm ready when you are, Ms. Vandesteeg.

MS. VANDESTEEG: Thank you, Your Honor. Again for the record, Elizabeth Vandesteeg on behalf of adversary defendants.

Your Honor, we did take you up on your offer from our last hearing at the end of August and submitted another, as you said, lengthy notice of agenda. We do think that that helps to frame the issues for the Court, and also give you a preview as to where the disputes presently lie, as well as give you some guidelines as to where you think we may still have additional disputes.

I think it makes sense to take in the order as we have it laid out and allow, then, everyone to weigh in as we have different voices to weigh in on the different issues that

we've outlined on the notice.

THE COURT: Sure.

MS. VANDESTEEG: With respect to the first matter of business, we still have outstanding, as Your Honor will recall, issues surrounding the withholding of certain documents and certain communications with Houlihan Lokey, who is an I-Banker, for certain periods of time. This particular issue was addressed but put in abeyance with the Court's December 29, 2022, order. This Court had afforded, at our August hearing, Lifespace the opportunity for further briefing.

Just to remind the Court, this was an issue that in the first instance, these documents were and still are listed on Edgemere's privilege log, as we only have a single privilege log notwithstanding this collective production of documents by both Edgemere and Lifespace. And each of the entries on that log references that the communications took place between Edgemere representatives and various different outside counsel of some sort pursuant to a key that we'll get into later this hearing.

With respect to Houlihan Lokey, again because those communications were identified as being ones that were with Edgemere representatives, the original motion to compel the production of those communications was filed and directed to, at that time, the debtor. As Your Honor will recall in connection with and leading up to the hearing on that original

motion which culminated in that December 29 order, the debtor said not ours, those are Lifespace's.

Lifespace said yeah, we're going to say that those are ours, that we, Lifespace, retained Houlihan Lokey, and determined that there would be some privilege. Lifespace did not then submit any further briefing on its own. And at our August hearing in this courtroom, Your Honor gave Lifespace the opportunity to submit that briefing.

They've not yet done so. In subsequent meet and confers, most recently then last Friday, they have now said that they do want to undertake additional briefing with respect to Houlihan Lokey. And I believe the parties are at an impasse as to what an appropriate amount of time may be.

It is our view that these issues, and I believe that the issues of the related company privilege waiver exception, will come in play with respect to Houlihan Lokey as well, Your Honor. These issues have been in place since your order was issued in June.

Lifespace was given this opportunity to file this briefing back in August. It is now October 3rd, Your Honor. We think that this briefing could be completed in a week. We understand that they would prefer to have two weeks to get this done. As you will see later in the agenda, we are trying to get all additional motion practice related to outstanding discovery disputes in front of this Court in short order and

resolved by the end of this month.

I will defer now to Mr. Earles to layer over with whatever I may have misstated or gotten wrong with respect to the parties' disputed positions on this issue.

THE COURT: Okay. Before I get to Mr. Earles, Ms. Vandesteeg, didn't you tell me at the last status conference that Lifespace didn't want to brief this, or was that your understanding at the time?

MS. VANDESTEEG: That was our understanding at the time.

THE COURT: Okay.

MS. VANDESTEEG: We learned for the first time last Friday, Your Honor, that they do now wish to take advantage of that. What we had previously been told is that Lifespace believed that Your Honor's June order agreed that the related company's privilege exception applied and that the issue had been resolved.

THE COURT: Oh, okay.

MS. VANDESTEEG: Needless to say, we think that's why we're here today, more broadly. So they have now indicated that they would like to submit further briefing.

THE COURT: Okay. Thank you very much, Ms. Vandesteeg. Mr. Earles?

MR. EARLES: You know actually, Your Honor, I'm going to hand it back to my partner Eric Walker who --

THE COURT: Okay.

MR. EARLES: -- has more context on this issue than I do. So, Eric, you can go ahead and take it.

THE COURT: Tag, Mr. Walker.

MR. WALKER: Thank you. Good afternoon again, Your Honor. Eric Walker on behalf of Lifespace. So the Court will recall this issue was initially raised as between the debtor and the defendants. Lifespace was not initially involved in the briefing.

The issue was partially resolved with a supplemental production that was more recently made by the plaintiff. And we have conferred, as Ms. Vandesteeg said, with the defendants to try to resolve the issue with respect to the remainder of the documents.

And we're talking about 52 documents here. So the volume is relatively small. And these are 52 documents that are privileged as between Lifespace and Houlihan Lokey and are from after Lifespace's affiliation with the Edgemere back in 2019.

Despite our efforts to try to resolve these issues with defendants in our meet and confer, we've been unable to resolve it. So we would like an opportunity to submit a supplemental brief on behalf of Lifespace with respect to the privilege over these remaining Houlihan Lokey documents.

Ms. Vandesteeg is correct that we had initially

proposed 14 days. They came back and asked for seven days. We're willing to meet them in the middle and agree to submit a supplemental brief by next Friday, October 13th, if that works for the Court.

THE COURT: When you are ready, Ms. Vandesteeg, I'll hear from defendants. He's proposed, I don't know if you -- oh, you did hear? Okay.

MS. VANDESTEEG: I did hear, Your Honor.

THE COURT: Excellent.

MS. VANDESTEEG: Thank you. I do think it's interesting that, again, the position is that these are documents over which Lifespace claims privilege. But we'll come back to that again in a moment.

With respect to the briefing schedule, I think that a seven-seven briefing schedule on this could work. We had proposed, in connection with broader motions to compel, that all of them be filed next Friday which would be the 13th, with any then responses due seven days thereafter. And depending on, then, the Court's availability.

We have reached out to Ms. Harden ahead of time. Appreciate her always willingness to advise as to the Court's availability. She indicated that the Court would have availability on October 24th.

THE COURT: Okay.

MS. VANDESTEEG: The afternoon thereof. So we would

propose wrapping this Houlihan briefing into any other briefing that may remain with respect to discovery disputes on that October 13, October 20, October 24 cadence.

THE COURT: Okay. So opening briefs on the 13th, responsive briefs on the 20th, hearing on the 24th.

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: Okay. That works for the Court.

Does that work for you, Mr. Walker?

MR. WALKER: I believe that does, Your Honor. I may have a conflict on the 24th, but I certainly will confer with my team. And we'll make sure someone's available to argue that motion at that time.

THE COURT: Just so you know, I just got a message from Ms. Harden that said you can call me Ms. Johnson.

(Laughter)

THE COURT: That's what they do to me during these serious hearings. So if you ever see too much dimples for the moment, that's what they do to me. But --

MS. VANDESTEEG: Keeping you on your toes.

THE COURT: -- do you need me to give you a specific time on the 24th?

MS. VANDESTEEG: Your Honor, Ms. Harden had said that you were available at 2:00 p.m.

THE COURT: 2:00 p.m.

MS. VANDESTEEG: So if that still is the case, that

is what we had proposed in the notice of agenda, and --

THE COURT: Oh, okay.

MS. VANDESTEEG: -- that works for us.

THE COURT: Okay. So 2:00 p.m. if you're available at that time, Mr. Walker.

MR. WALKER: Thank you, Your Honor. I'm sure we will make sure someone is available at that time.

THE COURT: Okay. I appreciate it. Thank you so much. So, and I'm not surprised about the request for briefing. I mean, the Houlihan Lokey point was touched very tangentially as part of the original briefing that I think at that point was hitting eight or ten things.

And I've always kind of had a pin, and I don't think this was ever resolved. So it's good to see that we'll get to that. And again, being 52 documents, I will certainly endeavor to be able to have a ruling that day.

MS. VANDESTEEG: Thank you, Your Honor. That does have a nice segue into the broader issue which is the biggest, although certainly not the last of the additional items that remain on the agenda.

And, Your Honor, this issue is the one that relates to the motion to compel, motions to compel filed by defendants against both Lifespace and Edgemere in connection with the vast number of documents withheld on the bases of privilege, redacted on the bases of privilege, and then also the documents

produced that were produced collectively by Edgemere and by Lifespace by and through Edgemere with no designation as to whose documents were whose.

We cannot believe that we are back here again on these issue. Fundamentally, from our view, Lifespace is asking this Court again to reargue and reconsider the same issues that have already been presented in detail and ruled on by this Court.

These issues were briefed over ten months ago. They were argued over nine months ago. Your order was entered over three months ago. Additional clear direction was provided by this Court right here on August 23rd. And we are still facing what we view to be a willful misunderstanding of this Court's order.

Again, Lifespace is fundamentally asking this Court for reconsideration or clarification without a motion on file, directly contrary to the guidance that this Court provided, again in August. We do now have a scheduling order in place, Your Honor.

It's time for Lifespace to stop stalling. If it needed the reconsideration, if it needed clarification of that order, it could have asked at any time in the last three and a half months, particularly after August's hearing when Lifespace was again admonished for failing to read the order holistically rather than simply picking out certain provisions.

We're going to get into some weeds on this today, Your Honor. And we're going to need some close attention to be paid to some of the shifting positions that have been taken by Lifespace that really impact where we are today and where we're going to ask the Court to go in terms of next steps.

These are complicated issues around privilege and different parties and different counsel and different periods of time. They're complicated by what has been produced versus what has been withheld versus what has been redacted. And we're going to try to keep it really simple to walk you through how Lifespace has been playing what is a complicated shell game trying to move these pieces around hoping the rest of us can't follow to track their movement in a game they're trying to stack in their favor playing with privilege.

So let's set the stage. As this Court will recall, as you've seen, Lifespace has taken the position that nearly every opportunity in these cases that Lifespace and Edgemere are separate corporate entities with Lifespace acting as nothing more than the third-party member/manager. Edgemere and Lifespace have been represented, as you have seen, by separate outside counsel, and have been at all relevant points in time.

They have taken differing legal positions. And they've asserted different legal interests in connection with important issues in these cases such as claims against one another. As you know, Lifespace filed a proof of claim against

the debtors. They've taken different legal positions with respect to things like the legal obligation to undertake the repayment of hundreds of millions of dollars in residents' deposits.

And to be clear, as you've already heard a little bit today, Lifespace and Edgemere still assert differing legal interests in some of certain, specific contested discovery issues such as Houlihan Lokey. Lifespace again today has said we retained Houlihan Lokey. And for those documents that still continue to be listed on Edgemere's privilege log, Edgemere's privilege log referring to Edgemere representative communications with Houlihan Lokey, they're saying those are Lifespace privileged communications.

We're having that issue also with respect to the Point Group, a PR firm that we understand and we have been informed was retained by Lifespace. And communications with the Point Group have been withheld on the basis of privilege. They appear on Edgemere's privilege log referencing communications that Edgemere representatives are having with the Point Group. And yet these are documents, and this is a group, that Lifespace has claimed privilege over, that Lifespace has said is directing the production or withholding of those documents.

These will continue to come up over the course of our broader discussions today. We believe that Edgemere will not

be presenting any arguments with respect to Houlihan Lokey or the Point Group, for example, because again, while Lifespace doesn't want to identify those documents as Lifespace records, which we'll come back to again in a moment. They nonetheless want to say that those are Lifespace privileged. But they've been produced to Edgemere and produced by Edgemere.

THE COURT: Correct me if I'm wrong.

MS. VANDESTEEG: Yes.

THE COURT: Did I already rule in this case that the Monument Group documents had to be produced?

MS. VANDESTEEG: You did.

THE COURT: Okay. Thank you.

MS. VANDESTEEG: And, Your Honor, because we still have this impasse on the Point Group, unfortunately while we are still meeting and conferring, and we'll come to this in our agenda, I suspect that motion practice nearly identical to that that the Court has already undertaken with respect to the Monument Group is going to be back in front of the Court again with respect to the Point Group.

But yes, you have already on this particular issue addressed the nature of whether the media-consulting privilege can apply in any instance. But the finer point we're putting on this one is who gets to claim that privilege.

THE COURT: No, and I understand that. It just came to my mind.

MS. VANDESTEEG: You are exactly correct. But this issue, we think, has been in large part already addressed from a legal perspective as to that privilege by the Monument Group ruling.

So, again, Lifespace, beyond its statements in court, has not asserted any of those privileges. We'll see what kind of argument we get with respect to this briefing to come on Houlihan Lokey. But for purposes of today, we are going to need to, like I said, come back to the over 8,000 documents that have been either withheld as privileged or redacted, purportedly on the grounds of privilege asserted by Edgemere and a related company privilege waiver exception argument raised by Lifespace.

Before we get to the privilege log that's been withheld, let's turn first to the documents that have already been produced, Your Honor, because --

THE COURT: Okay.

MS. VANDESTEEG: -- there are disputes that remain with respect to those, as well. About 9,400 documents have been produced, tens of thousands of pages, during that collective collection and production of both Lifespace and Edgemere documents by Edgemere, of which approximately 4,000, so nearly half of them do contain redactions.

These prior productions, these prior collective productions have included emails, financial information, sales

information, sure. All stuff, that kind of stuff, that is readily apparent in our review to be Edgemere-specific information and production.

However, those prior productions also include things like correspondence between Jesse Jantzen who, the Court may recall, there are a small number of very high-level individuals who held high-level positions both at Lifespace and at Edgemere. So Jesse Jantzen, for example, CEO of Lifespace, also the CEO and board member at Edgemere.

So also in the productions that have been produced are things like correspondence between Jesse Jantzen and members of the Lifespace board of directors. Not the Edgemere board of directors. That would be a conversation between Jesse and Jesse. And, Your Honor, don't get me wrong, there actually are a number of emails from Jesse to Jesse that show up on the privilege log. But that's neither here nor there. These are communications between Jesse Jantzen and Lifespace board members.

THE COURT: And these are produced.

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: Okay.

MS. VANDESTEEG: There are also some that have been withheld that we'll come down to when we talk about the privilege log.

THE COURT: Okay.

MS. VANDESTEEG: But there are some that have been produced, albeit typically with some redactions of some sort. In what capacity is Jesse corresponding with the Lifespace board? As the Edgemere CEO and board member, as the Lifespace CEO?

Indeed, from certain documents that have already been produced, it appears that Jesse himself is very aware that he sits in two different roles vis-a-vis these two purportedly separate organizations. And, Your Honor, I've got one that I wanted to read a quick excerpt for the Court.

THE COURT: Sure.

MS. VANDESTEEG: However, these productions were all scanned confidential subject to protective order. So what I'd ask is instead I approach and I can simply flag the Court to take a look at one as a demonstrative. I have a copy here to show to Counsel, as well.

THE COURT: Is there anyone in the Court that's not part of the protective orders? Oh, I guess we have ten. Is Mr. Hardy part of your team?

MS. VANDESTEEG: He is.

THE COURT: Dawn Harden, SRB, those are part of my team. Ms. Sethna is part of your team. Mr. Earles. Is there anyone, Ms. Jeng, that you don't recognize as part of --

THE CLERK: 512, the last two digits 1-0.

MR. WALKER: Your Honor, this is Eric Walker on

behalf of Lifespace. Could I be heard for a moment on this?

We don't have a copy of this document. It wasn't provided to us in advance of the hearing. Not clear to us what's contained in it and who else might be in the courtroom that isn't subject to the privilege. I know you're going through that now. But we would obviously want an opportunity to look at it before it's discussed in open court.

MS. VANDESTEEG: Mr. Walker, it is Bates stamped. It's an Edgemere document that has an Edgemere Bates stamp on it. I'm happy to provide that to you, and I'm sure you can pull it up from your production.

MR. WALKER: Yeah. We would like if someone on your team could provide it to us before we're talking about it in open court. Thank you.

THE COURT: If someone could email it to him, perhaps?

MS. VANDESTEEG: Yes.

THE COURT: Okay.

MS. VANDESTEEG: I could do that.

THE COURT: If you can give -- (indiscernible) have that Bates stamp number.

The 512 number, can you identify yourself?

MS. FORD: This is Kate Ford with Kong Capital.

THE COURT: Thank you very much, Ms. Ford, for identifying yourself. And the 773 number, is that with Reorg

Research?

MS. HOCKBERGER: This is Heidi Hockberger of Levenfeld Pearlstein.

THE COURT: Oh, okay. Thank you very much.

MS. VANDESTEEG: And I have just hit send on a copy of the PDF of this document to Mr. Walker.

THE COURT: Okay. Just one moment.

Ms. Jeng, I don't understand your last comment.

THE CLERK: I just don't know who it is. It just says Jeremy.

MS. VANDESTEEG: Can you confirm that's Jeremy Koster?

THE COURT: And, I'm sorry, there's a caller that's identified as Jeremy.

MS. VANDESTEEG: We are confirming that that is Jeremy Koster of the Kong team. Please give us one moment and we'll confirm that.

THE COURT: Sure.

MS. VANDESTEEG: Thank you.

MR. KOSTER: Jeremy Koster with the Kong Group.

THE COURT: Okay. Thank you very much, sir. I appreciate it.

And G. Jordan, that's with your team, as well?

MS. VANDESTEEG: Yes it is, Your Honor. Thank you.

THE COURT: Okay. Thank you.

Anyone else, Ms. Jeng?

THE CLERK: No.

THE COURT: Okay. Thank you very much for the exercise.

MS. VANDESTEEG: May I approach?

THE COURT: Please approach, yes.

MR. WALKER: Your Honor, this is Eric Walker again. I would just note I haven't received anything yet.

THE COURT: Okay.

MR. WALKER: And --

THE COURT: We're waiting for you to receive it to discuss it.

MR. WALKER: Thank you. I've just taken a step back. We understood this to be a status conference. We didn't realize we would be going through documents and arguing the merits of the issues as it appears that Counsel is embarking on here. So I would just note that for the record.

THE COURT: Okay. Thank you very much, Mr. Walker. I'm going to give Ms. Vandesteeg a little bit of leeway because I think she's giving me an example which will color the comments for the defendants.

MR. WALKER: Thank you, Your Honor. Still waiting to receive --

THE COURT: Yes.

MR. WALKER: -- the document.

THE COURT: We'll give it a minute.

(Pause)

THE COURT: If you could go ahead and maybe send those to Mr. Earles and Mr. Rabuck at the same time if you have their contact information.

MS. VANDESTEEG: I am not certain that I do. But I will forward it to one of my colleagues and ask that they --

THE COURT: Okay.

MS. VANDESTEEG: -- pull that up quickly and do so.

THE COURT: Okay, thank you.

(Pause)

MS. VANDESTEEG: And it appears, at least from my end, that the message has been delivered. I'm not sure if Mr. Walker can confirm that.

MR. WALKER: Correct. I just received it. I'm reading through it now.

THE COURT: Yeah. Take your time. I'll give you a moment.

(Pause)

MR. WALKER: Your Honor, this is an extensive email. It's Eric Walker again on behalf of Lifespace. I think what I've read so far gives me concern that there may be in fact privileged information in here that was inadvertently produced. And so I am particularly hesitant to discuss this in open court without a full opportunity to review it and decide whether we

need to, you know, seek to have that inadvertently produced document clawed back.

I'm not saying that's necessarily the case. I'm just reading it in real time. We were not given advanced notice of it. And it is six pages long with a lot of information that I'm reading through in real time here.

THE COURT: Okay. Well, let --

MS. VANDESTEEG: Your Honor, there is no counsel on this email.

THE COURT: Okay. Well let's take a step back.

MR. WALKER: That's not the standard for privilege, though. If they're discussing legal advice that has been provided by counsel, then it constitutes attorney/client privileged information. I'm concerned that this document contains that information, and I haven't had an opportunity to review it and was not aware that we would be discussing it in open court.

THE COURT: Why don't we talk about it more generally because maybe I was getting ahead of you, Ms. Vandesteeg, because I thought your point was going to be something different because I thought this was a point that Ms. Lutz took us through in detail as we went through the hearing. The various types of documents, the types of dialogues that were going on which is framed a part, an important part of the Court's last order back on June 23rd.

So why don't, if there is the possibility of an inadvertent production, why don't we talk about it more generally?

MS. VANDESTEEG: Let's talk about it more generally, and particularly --

MR. WALKER: Thank you, Your Honor.

MS. VANDESTEEG: -- Your Honor, there's one back-and-forth within this that is, again, Mr. Jantzen stating his position as to the different roles that the different companies take. And in explaining that to a board member upon a question, he explains that he and other members wear various hats, and that they need be careful in meetings to make sure that when conversing with one counsel they are wearing one hat, and then they turn, take that hat off, put on a different hat and then are in a different role.

And that is something that the individual business people understood. And one would think that is certainly something that their respective outside counsel would understand.

And this, again, does drive, Your Honor, it's just one more bases for why we have made the multiple requests that we did which is if there are documents or communications that are those that are made by Edgemere or people who wear two hats, which hat are they wearing, let us know. You need to tell us Edgemere or Lifespace.

We've asked. Lifespace had declined. Your June 23rd order was crystal clear on this, Your Honor. If a Lifespace representative is responding to a communication in his capacity as a Lifespace employee and not in his capacity as an Edgemere representative, the defendants are entitled to know that.

Lifespace, again, has had over three months to decide what they want to do to comply with that order. Instead they stalled. They dragged their feet on responding at all. They proposed confusing and incomplete stipulations which we addressed at the hearing on August 23rd, which they have raised again, to our view largely exactly the same, the same stipulation.

As of today, with respect to those documents that have been produced, we understand that Lifespace is resting on its position that there is a single, unified circle of documents. Remember, no Venn diagram. Just a single circle of documents that comprise both Lifespace and Edgemere documents with nothing that is Edgemere only and nothing that is Lifespace only.

And that's fine. But then the Court should order that Lifespace must be held to that stipulation on those terms without a provided however, without a footnote which adds all of that uncertainty. And Your Honor addressed that when we were here in August.

So that's the universe on the already-produced

documents. And I want to put a pin on that because now we understand in connection with the agenda that we had filed, that now they do want to file a motion for clarification on the already-produced documents.

But before we come back to that, I want to turn then to the documents that have been withheld on the privilege log, or redacted which is a slightly different but related issue. And this is where, again from our view, that the shells are moving fast.

Lifespace, despite our request, has chosen not to provide an updated or amended privilege log. Therefore, the only privilege log that the defendants have withholds documents that are between only, "Edgemere representatives and outside counsel." Edgemere representatives, outside counsel.

Now, we have a key which we got a demonstrative to go through in a minute. But there's a key that expressly makes clear that some of those outside counsel are Edgemere outside counsel. Some of them are Lifespace outside counsel.

And there are documents that have been withheld and/or redacted that are strictly between Edgemere representatives and Lifespace outside counsel, Edgemere representatives and Edgemere outside counsel, Edgemere representatives and a whole slew of other counsel, sometimes both Edgemere and Lifespace, sometimes Lifespace and another law firm that perhaps was representing individual board

members. It's tricky, Your Honor.

Yet, all of these are on Edgemere's privilege log referencing communications with Edgemere representatives over which Lifespace now is trying to claim privilege without actually identifying which of those are Lifespace privileged. No claim of privilege has been made on behalf of any Lifespace representatives.

We hear counsel saying well, those Houlihan Lokey documents, those are Lifespace privileged. But they're on Edgemere's privilege log referencing Edgemere representatives. Lifespace did not want to have to go through the exercise of designating or explaining which of these are Lifespace documents.

This Court -- only Lifespace can identify and claim its own privilege, even in connection with the related companies' privilege waiver exception. And it is nearly impossible for this Court, let alone the defendants, to determine whether the exception applies and what the scope of it may be without a better understanding of who's wearing what hat.

So pursuant to the Court's June 23rd order, defendants have sorted through the entries on the privilege log and documents that have been redacted. We did our best to parse them, as the Court requested, into subcategories, which was tricky. And some of them we think might fall into some.

And we selected representative samples from several of them for this Court to take in for in camera review to determine whether any of the claimed privileges or privilege waiver exceptions asserted by Edgemere or Lifespace may apply.

I have a demonstrative that I'd like to pass up to kind of guide the Court through some of it because the numbers are a bit confusing and the categories are a bit confusing. But this provides the basis for why we have asked what we have asked of Lifespace and Edgemere with respect to documents to be produced for in camera review.

THE COURT: Okay. So when you hand me the demonstrative, I'll hand you these documents.

MS. VANDESTEEG: Thank you very much.

MR. WALKER: Your Honor, Eric Walker again on behalf of Lifespace. We would like to see, obviously, a copy of the demonstrative. It wasn't provided to us --

MS. VANDESTEEG: We're going to be sharing this one on the screen too, Your Honor.

MR. WALKER: -- in advance of the hearing.

THE COURT: We'll be sharing this one.

MR. WALKER: Excuse me?

THE COURT: They will be sharing it on the screen. And just as a matter of housekeeping, Mr. Earles and Mr. Kutcher, I received your pro hac vice and I've signed those orders today.

MS. VANDESTEEG: I believe that everyone should now be able to see it up on the screen.

THE COURT: I think so.

MS. VANDESTEEG: Okay. Let's get started. The upper left-hand top table references counsel key. This was a key that was provided by Edgemere and Lifespace in connection with their first amended privilege log when we asked that this information be provided because prior to getting this, we had no idea who the different parties were and who represented whom.

The key indicated, as we stated, that there are multiple law firms in play for Edgemere. For example, we see outside counsel to Edgemere is Polsinelli who this Court is familiar with based upon their work here in court in connection with the Chapter 11 cases, as well as Sidley Austin and DLA who were counsel, right here it says outside counsel to Edgemere. Those were the two firms who represented the Edgemere pre-petition.

We also have multiple different firms listed specifically as outside counsel to Lifespace including, for example, Dorsey & Whitney, Perkins Coie, Mr. Walker's former firm, as well as Cooley, his current firm. We see Stewart Weigand Owens, we see Robinson Gray, we see Locke Lord. There are a number of different counsel on here, and they are clearly delineated between Lifespace and Edgemere.

We also note that there are two attorneys listed, Sandra Parker and Abdul Shakoor as in-house counsel to Lifespace, and certain professionals that appear to have a blended role like FTI potentially here with respect to attorney retained consultant of Lifespace and Edgemere.

So using this key that had been provided to us by Edgemere and Lifespace, we took a very deep dive into a very extensive privilege log, Your Honor. I think it's important to note here, as we put together the category key for privilege log entries, that there are 4,182 documents that were withheld in their entirety as privileged.

Again, each and every one of them on the long referenced Edgemere representatives. Not one referenced Lifespace representatives. And let's remember also that what we have heard from Counsel and how this collective production came to be is that Lifespace directed its IT to do the collection of documents off Lifespace's servers and turn them over in their entirety to Edgemere, with Edgemere then responsible for review, tagging, production, determining what was privileged in its entirety.

On this privilege log, the first category that we identified that we believe is troubling and indicates a waiver, and requires in camera review for the Court to determine whether there may be any waiver exception, it's category one, communications that are listed as communications between

Edgemere representatives and outside counsel. And, Your Honor, that is Lifespace outside counsel communications only.

We identified approximately 660 entries, 660 documents that were communications on Edgemere's privilege log that were communications between Edgemere representatives and Lifespace outside counsel.

THE COURT: So Edgemere only representatives and Lifespace counsel?

MS. VANDESTEEG: Correct, Your Honor, because --

THE COURT: After Edgemere has retained its own counsel?

MS. VANDESTEEG: Correct, Your Honor.

THE COURT: Okay.

MS. VANDESTEEG: The second subcategory that we identified were those communications that appear to have -- we've listed as the outside combo. Some they are listed as, again, communications that Edgemere representatives were having with outside counsel. But in using the counsel key, we were able to identify that there were counsel from outside counsel for both Edgemere and Lifespace or both for Lifespace and for independent directors, or for Edgemere outside counsel and independent directors.

For those combo outside counsel with Edgemere representatives, Your Honor, we identified approximately 750 documents listed on the privilege log which again, you know, I

suppose some of those, since they at least do involve what purport to be Edgemere counsel could also potentially be subject to the privilege waiver exception. And we believe that it's necessary for the Court to conduct an in camera review of those.

There are additional Houlihan Lokey communications, not just on the redaction log but 20 that still remain on the privilege log withheld in their entirety. We believe that an in camera review is going to be necessary on those, notwithstanding the fact that we have additional briefing coming. But if Your Honor would like to put a pin in in camera briefing on those, that's certainly something that we are more than willing to accommodate.

Your Honor, in some ways, subcategory number four -- I don't know, subcategory number one is really troubling. But number four is also troubling from our perspective in that we identified approximately 800 entries on the Edgemere privilege log that were withheld on the basis of privilege or work product on which no counsel is present on the communications, Your Honor. They are strictly communications between internal business people.

And, look, I appreciate perhaps there could be an instance in which there were a communication from counsel lower down in the chain, and it was forwarded on. Well, Your Honor, that should be on a redaction log with then the information

from counsel redacted out but still evidencing that business people were forwarding it. And we do see a number of those on the redaction log. We do see a number of those.

These are different. These have been withheld in their entirety on the grounds of privilege or work product where no attorneys are present.

THE COURT: Well, those also could be situations where hypothetically Jeremy Johnson sends them a memo and employees start discussing that legal memo inter-office, so to speak.

MS. VANDESTEEG: Of course, Your Honor.

THE COURT: Right.

MS. VANDESTEEG: Of course. However, again, I would expect those to be on a redaction log, again to at least show the inbound from counsel and then the back-and-forth, even if the privileged nature of communications therein are redacted out. If it's just someone receiving a memo, and passing it on saying FYI to another business person, the legal advice will be redacted. The memo can be redacted. But that FYI is not further sharing of legal advice.

And maybe there is still some in that 800, Your Honor. But nonetheless, that's one --

THE COURT: You're just saying the number's high.

MS. VANDESTEEG: The number's high.

THE COURT: Right.

MS. VANDESTEEG: I mean, it's 20 percent of the total privilege log. So we believe that in camera review is critical on those, Your Honor.

We were also able to identify a subcategory for other third party communications. Now, it's not a large number. It's 30. But these were a random smattering of third parties that did not appear to be counsel, that included, you know, a different PR firm, Ground Floor Media.

They included HIMS Sims -- HJMS Sims (phonetic), various different other third parties that we don't see a basis for privilege. So we think that those are going to be ripe for in camera review.

I want to put a pin in six. We're going to come back to that one. The seventh category that we were able to identify as a subcategory are Paddock (phonetic) communications that were on the privilege log. Now, as Your Honor may recall, you did produce -- you did order the production of Paddock communications that may have then been subject to further redaction.

And also, I can represent to the Court that we did, in supplemental productions, receive some additional Paddock correspondence that was redacted. However, since we have no amended privilege log, we can't know for certain whether all of these were produced or whether there is still anything that does remain outstanding or subject to privilege.

We've not called out any of those for review right now, but we may need at least further guidance from the Court in terms of a clean up order of that log to at least confirm that production is complete. Likewise, with respect to subcategory eight, UMB communications, to the extent there were communications with UMB, Your Honor did determine that there was no common legal interest that applied there.

Again, there have been supplemental productions. But there are still 55 of these that are listed on the privilege log. Not on the redaction log, but on the privilege log, and on the privilege log that still contain reference to the common interest privilege which Your Honor has held doesn't apply.

So we don't know about those. And we believe that a small sub-sampling for review of those would be appropriate to determine whether there are additional communications that should have been produced and have not yet been produced.

The next subcategory that we identified were communications with Gray Robinson only. Now --

THE COURT: Is that the board counsel?

MS. VANDESTEEG: We think, Your Honor. But we don't know. They're not listed on the counsel key.

THE COURT: Yeah.

MS. VANDESTEEG: But the Court may recall that there was an application filed --

THE COURT: I do recall.

MS. VANDESTEEG: -- to retain them. But that was denied. So we don't know. There are -- what do we have here? Oh, I'm sorry. It was 85 communications with UMB that remain outstanding.

THE COURT: Right.

MS. VANDESTEEG: And 55 with respect to Gray Robinson only. To be clear --

THE COURT: Right. If they're Gray Robinson only with those board of directors, it's going to be a hard time persuading me to produce those.

MS. VANDESTEEG: Which I understand. But --

THE COURT: Right.

MS. VANDESTEEG: -- we don't know --

THE COURT: Right.

MS. VANDESTEEG: -- Your Honor, and we also don't know which hat was being worn at the time because again, if those individual board members wanted to claim privilege over those, they shouldn't have produced them through Edgemere. But nonetheless, there is a subset there to review. And also, there's correspondence that includes Gray Robinson within that bucket number two combo counsel, Your Honor.

Subcategory number ten is the Point Group communications. We're not including any from the point group in our request for in camera review because I think that those will likely be addressed either by separate meet and confer or

by separate motion to compel. So we'd rather keep those separate because we think they have been addressed by the Monument Group order.

And finally, there are communications with the Lifespace board of directors on Edgemere's privilege log. Some of those, Your Honor, do include Lifespace outside counsel. Some of them do not. So again, we're perplexed as to how those communications could be withheld and claimed as privileged by Edgemere if they are communications by and among the Lifespace board of directors. So we believe that those are also ripe for the Court's in camera review as to whether the privilege exception, waiver exception could apply to them.

What we've done here, Your Honor, In these three columns is lay out for the Court's consideration, because we believe that we've taken a very measured view here in terms of what we've selected. The overall number may appear to be high, and then it's 300.

However, it's spread over these various categories. It comprises only 7.17 percent total. And you can see it broken down in that second column, the proposed number for review are the number that we have designated and identified of the total estimated numbers for each one of those columns.

So looking, for example, at Lifespace outside counsel communications only, category one, in our count, by our count on the privilege log, there are approximately 660 entries in

that category of which we had selected and designated 77 for in camera review which is approximately 11.67 percent of those communications.

So as this Court goes through and considers what it is we're asking, again, the total request is for 7.17 percent of the total withheld as privileged documents.

Now, when it comes to the redaction log and our requests there, it's a little more complicated. It's not quite as easy to parse it out just upon counsel key. And there are different issues that are in play that may not be as easily parseable as just email addresses back and forth.

Now, to be clear, the redaction log is 4,041 documents. We did identify some issues on the redaction log in terms of redactions in terms of correspondence with UMB which we don't believe is proper and is in violation of this Court's prior order. We don't know if all of those have now been produced in unredacted form.

We identified certain documents that the defendants had prepared and sent which were provided back to us in redacted form. We identified correspondence with third parties like insurance salespeople or individual residents that had been redacted. Lots of the logs -- well, all of the logs again had the same issue that they only identify communications by Edgemere residents with no reference to Lifespace residents or Lifespace claiming any privilege over those redacted documents.

So we think that there were a number of overreaches on the redactions, as well. And we went through and we proposed a review of redacted documents totaling 169 over three different redaction logs that had been produced, an original and two supplementals. So that constitutes a universe of only 4.18 percent of the total redacted documents.

So again, I know that Your Honor had raised a question when we were here last week about aren't we done with the documents, isn't it just designation on those that have been already produced. And no, Your Honor. It's clearly not. We're talking about a total of 8,223 documents, half of which have been completely withheld and half of which have been redacted.

And let's remember again, we're talking about Edgemere claiming privilege, Lifespace claiming an exception to the waiver of that privilege. And these are sophisticated parties who appreciate the importance of outside counsel for separate entities when separate entities' interests are in play.

Lifespace has taken the recent position in meet and confer correspondence that this Court has already agreed that the related companies' exception applies to Lifespace and Edgemere. But this is simply untrue. It is a blatant and intentional misreading of the Court's June 23rd order which I do want to bring back front and center here.

THE COURT: I have it. You don't have to -- I've lived it.

MS. VANDESTEEG: And turning the Court's attention, in particular, to the discussion on Pages 7 through 10 of that order, Your Honor correctly identified that this Court cannot determine if an exception to the waiver of the attorney/client privilege applies until the substantive privilege has been established. The mere relatedness of plaintiff and Lifespace does not create the privilege. This is particularly true in cases like the present where the entities are and were then represented by separate counsel.

That is what we have here, Your Honor. We've got separate counsel representing separate entities, this is what they continue telling us. So where they want to try to claim that there is still the sharing of a common attorney, or if they cannot show -- I'm sorry, I'm misspeaking -- that the entities share a common attorney or common legal interest so as to come to a joint client situation, the plaintiff must demonstrate that the disclosure was made between the entities for the purpose of eliciting assistance from the attorney and rendering legal advice or services.

I think it's important for the Court to consider the communications that have been withheld and the nature of the communications with the separate counsel to determine again whether this waiver can stand. Again, it cannot be claimed as

a stand alone privilege on its own.

Lifespace has been given every opportunity to try to create a record whereby it could try to assert the existence of this. Again, Your Honor pointed out on Page 9 of your order that in order to determine whether a privilege exists as to a particular piece or type of communication, the Court must conduct an in camera review of the communications based upon the substantive privileges claimed.

To the extent the plaintiff claims an attorney/client privilege inures to the benefit of its parent or vice versa or, more accurately that the two entities should be treated as one for privilege purposes, the Court will need to review the communications at issue to determine whether they were made for legal purpose.

That is where we are. Given that Lifespace has chosen to task Lifespace IT department with collecting and providing its documents wholesale to Edgemere, leaving Edgemere with the burden of reviewing, tagging, producing, and withholding, while providing a log that references only Edgemere representatives and only claiming Edgemere privilege and not any Lifespace representatives, to the extent that any correspondence or communications provided to Edgemere that may have otherwise been protected by privilege, that Lifespace privilege has been waived and all of that correspondence should be produced.

Unfortunately, this leaves the Court with the unenviable position of being asked to undertake an in camera review of a substantial quantity of documents over a number of different categories because that is how they have been presented and produced to us. And Lifespace can only hope that the in camera review will make up for its shortcomings and its privilege waiver.

Your Honor, we have in connection --

THE COURT: And you gave me seven days to do it.

MS. VANDESTEEG: Well, that is exactly where I'm going next, Your Honor. We have, in connection with our notice of agenda, proposed certain dates for the in camera review process. We took the liberty of reaching out to Ms. Harden. But needless to say, we're looking for guidance from the Court.

We are not in any way trying to impose our universe, our wish list on the court. However, we are mindful that this Court, in connection with our last hearing, set the October 31st deadline for all amendment to pleadings including what we believe could be triggered by further in camera review and supplemental production with respect to these Lifespace issues.

We're trying to balance both of those things, Your Honor. But we are obviously more than open to whatever changes in this proposed schedule the Court believes would be necessary and appropriate.

THE COURT: Well, I think it's ironic that y'all want

to give me a gift on October 6th because that's my birthday.

MS. VANDESTEEG: Happy almost birthday, Your Honor.

THE COURT: And it appears that as a gift, I will receive 500 documents in a bit of irony. No, I'm kidding with you guys.

Anything further before I turn to Mr. Walker?

MS. VANDESTEEG: Not unless the Court has questions.

THE COURT: No, I don't. I mean I do, I understand the process. And but I'll look to Mr. Walker. The one question I do have, Ms. Vandesteeg, is obviously when it comes to the various nature of the communications that you laid out in your demonstrative, well for both the privileged and the redacted documents, have you already gone through in your meet and confers with counsel, whether that be the plaintiff or Lifespace, to try to reach any sort of a --

MS. VANDESTEEG: Your Honor, what we have done is we --

THE COURT: -- of a narrowing.

MS. VANDESTEEG: We have provided our request, our requested universe to counsel. This has all been happening, as you can appreciate, very quickly. We had our most recent meet and confer Friday late afternoon. We spent the weekend putting together the exemplar and our proposed list of documents. It was provided to counsel for Lifespace on Sunday and counsel for the Trustee yesterday.

We understand that Lifespace, and obviously Mr. Walker's going to speak for himself, we understand that Lifespace believes a universe of approximately 50 documents would be more appropriate.

THE COURT: Right. I saw that in the notice.

MS. VANDESTEEG: And no, we have not had the opportunity for further meet and confer on those issues --

THE COURT: Okay.

MS. VANDESTEEG: -- which is why we prepared what we did to try to give further guidance as to why we believe what we have selected is reasonable, Your Honor.

THE COURT: Okay. With that, Mr. Walker?

MR. WALKER: Thank you, Your Honor. Eric Walker on behalf of Lifespace Communities.

THE COURT: And I would like you to address the issues in the same order. I'm kidding.

MR. WALKER: I was going to say there was a lot included in Ms. Vandesteeg's extensive presentation there. So you know, and before I begin, I do have to note for the record there are a lot of embellishments, a lot of mischaracterizations, and a lot of frankly aspersions that have been cast Lifespace's way, which we, as you might expect, categorically disagree with.

And there are a lot of I think issues that are being argued on the merits when there's no motion that's been filed

and really no relief that has been requested in the proper procedural way by the defendants here. But I do want to address the two issues that have been teed up for the status conference today.

And I think the way that I want to proceed, if it's okay with the Court, is to first address kind of the Lifespace Edgemere document issue --

THE COURT: Yes.

MR. WALKER: -- and then move onto the privilege log issue. Does that make sense?

THE COURT: Yes. Please.

MR. WALKER: Thank you, Your Honor. Okay. So starting with the Lifespace Edgemere document issue, so we have engaged in extensive back-and-forth with the defendants to try to resolve this issue. We didn't rush into court to file a motion for reconsideration or motion for clarification.

We've been trying to resolve this directly with the defendants, and we've spent an extensive amount of time trying to do that. And we've proposed several different ways to try to do that which we think is consistent with the Court's order and consistent with the Federal Rules of Civil Procedure as incorporated to this adversary proceeding by Federal Rules of Bankruptcy Procedure.

We've offered to have Lifespace make a new production of all non-privileged documents responsive to their document

subpoena with a separate Lifespace privilege log. We've offered that. They have repeatedly rejected it.

Alternatively, we've offered to stipulate that all of the documents produced by Edgemere were in the possession, custody, and control of both Lifespace and Edgemere, and thus constitute both Lifespace and Edgemere documents for purposes of this adversary proceeding to avoid the unnecessary duplication that may result from the separate production that we've also offered. We're happy to do it either way.

And we've proposed several versions of a stipulation that we think are entirely consistent with the Court's June 23rd order. And at every turn, the defendants have said that's not good enough, we want more. They keep, in our view, moving the goalpost on us.

And it's become clear that none of these options appear satisfactory to the defendants. At our last meet and confer conference late Friday afternoon, as Ms. Vandesteeg said, just on September 29th, defendants counsel told us that they believe that Lifespace is required to go through each of the thousands of documents that have been produced, and for each statement and each document identify who was making that statement on behalf of which entity or person.

Now, we've carefully reviewed many times the June 23rd order that the Court entered on this issue. We've reviewed the federal rules of civil procedure that govern this

document subpoena that the defendants issued on a third party.

And we've extensively researched the case law on this issue. And we have found no support for this extraordinary new demand that the defendants are now making on Lifespace as a third party in this litigation.

We went back and looked at their document subpoena. We went back and looked at their motion to compel. They did not seek that relief then. They are moving the goalpost to try to get additional information that is not supported by the rules, not supported by case law, and not supported by the Court's previous June 23rd order.

We asked them both during that meet and confer conference on Friday and in follow up correspondence immediately after it to identify any legal support from that position, and they've provided us with nothing. We don't believe that any such authority exists, and we don't think the Court's June 23rd order requires us to engage in that extraordinary and unprecedented exercise.

I guess at this point, Your Honor, as you saw form our position set forth in the agenda, unfortunately it appears that notwithstanding our extensive efforts, that the parties just have a fundamental disagreement on what is required under the June 23rd order. We think we have complied. We think that the alternatives that we have proposed to the defendants complies with that order. They do not think we've complied.

Defendants haven't filed a motion for any further relief from the Court. There's nothing pending for the Court to rule on. So we think instead of continuing to debate these issues at a status conference and invite the Court to make advisory opinions on this issue, we think at this point that the best path forward may be for Lifespace just to file a motion for clarification on what further action, if anything, is required for compliance with the Court's June 23rd order.

That way, the Court can have the benefit of further briefing on this issue with legal support and an opportunity to enter a written order clarifying what else, if anything, is required for Lifespace to comply with a third-party document subpoena, a subpoena asking for the production of documents.

They have the documents. We are now arguing about whose documents are whose. We've made the proposals we've made. We can reproduce it. We can enter into a stipulation regarding whose documents are whose.

At this point, that doesn't appear to be good enough for the defendants. They didn't ask for more relief in their motion to compel or in their subpoena. But now they are even though they haven't filed a motion seeking additional relief. But at this point, we've been at these status conferences now a couple times. We've gone back and forth on this issue.

Instead of trying to argue it at a status conference without the benefit of briefing or further legal support, and

without asking the Court to issue an advisory opinion on what else is required under the order or what the order means, I think that may be the best path forward at this point. And that is what we propose subject to, you know, the Court's feedback on that.

As Ms. Vandesteeg said, these are complicated issues. And when we are preparing to appear at a status conference to discuss these issues and we come to the status conference, we're seeing documents for the first time. We're hearing arguments for the first time, we're seeing demonstratives for the first time.

We feel a little bit like it's litigation by ambush. So we think instead of continuing to debate these issues in the context of a status hearing, that the most appropriate way would be to do this the right procedural way which is to give the Court further briefing on it. We're happy to file the motion for clarification. We're happy to do that relatively quickly.

We do want to move past this. This is just the beginning stage of discovery. We think that these issues are more appropriate to be debated and discussed and this information, you know, produced and further -- as we move further down the discovery path.

So I'll pause there, Your Honor, to see if the Court has any questions. And I'm happy to move into the privilege

log issues.

THE COURT: Well, Mr. Walker, I must say these issues have been going on for quite some time. And I appreciate that the parties are working together. But my ruling's now been out there since June. I now see from -- I understood from notice of the status conference, I see from the demonstrative that there are at least what appears to be 15 sub-issues within the production.

I'm trying to understand, I'm not opposed to a motion for clarification because it seems to me, and again I haven't had the benefit of your motion for clarification. But it seems to me that to date, Lifespace is asking me to tell essentially the defendants to accept the same stipulation that I declined to order back in June which is here are the documents, and then when you depose the folks you can ask them what capacity they were in.

But essentially this is again what Ms. Lutz on behalf of the defendants went through at the hearing. If Mr. Harshfield says X and we know Mr. Harshfield wears multiple hats or Mr. Jantzen says X and we know Mr. Jantzen wears a number of hats, which one of those is, for example, an admission.

And I want to be practical here, and I want to be helpful to the parties because I do understand the complexity. I do understand that Lifespace provided every employee there.

And so there is probably very few communications that would have some overlap of a Lifespace-paid employee that is providing the communication. So I want to be practical here.

But I have to recognize, as I did in my original opinions, that these are two different parties. These are two different parties that had different counsel, they took different proceedings right before me, and clearly probably took differing positions in the pre-petition conduct that led to this litigation.

So I am open to a suggestion that reaches a resolution. But I honestly say I haven't heard one yet. That's all I'll say about it. So I'm not opposed to a motion for clarification. And, again, if the defendants want to respond to that motion for clarification, but if they want to counter at all, that's fine and the plaintiffs can weigh in because at the end of the day, we need to get somewhere.

And I will hear from Ms. Vandesteeg as to whether or not it makes sene to do a new production. I realize we're fairly late in the game to start anew in terms of production, but as you can see from her list of 1 through 11, it is a lot of different folks that we're talking about just in terms of Lifespace counsel, Edgemere's counsel, board counsel, and the like, and who's on these communications and who's claiming the privilege.

So I don't know another way to kind of get through

those, but I'm open --

MR. WALKER: Understood, Your Honor.

THE COURT: -- to your motion.

MR. WALKER: Thank you. I appreciate that, and we will prepare that motion and file it and hopefully we can reach a conclusion on this issue. We are certainly -- you know, as a third party to this litigation and one who thought that the Chapter 11 bankruptcy case with the substantial contribution from Lifespace, it's successfully concluded where we would like to get this resolved as quickly as anyone else in the courtroom. So we appreciate that, and we will proceed in that fashion.

THE COURT: And I appreciate that.

MR. WALKER: Does it make sense to --

THE COURT: And I know that Lifespace has already made its $52-million initial contribution. I have heard from very happy residents. And so --

MR. WALKER: Good. We're very happy to hear that.

THE COURT: Exactly. So I'm very happy about that, but, again, we still have this serious piece of litigation that's going on.

MR. WALKER: Of course.

THE COURT: Ms. Vandesteeg has taken the podium.

Ms. Vandesteeg?

MS. VANDESTEEG: Thank you, Your Honor.

The notion of a separate production I think you're getting a little bit of gamesmanship here. We have been advised on multiple different occasions, Your Honor, that a separate production would be nothing more than a mirror image copy of the production we already have by simply putting the Bates stamp Lifespace on it. We have been told that there will be on a supplemental production, no separation or designation between Edgemere and Lifespace. They're being a little too cute with this again, Your Honor.

Again, this is about reading the June 23rd order. This is not about going back for a motion for clarification or for reconsideration. It is not about new legal support that they may want to give to you. It is about complying with the terms of an order that was entered in June of this year, Your Honor, that we continue to spin our wheels on an incessant and expensive meet-and-confer and motion practice.

And, Your Honor, I thank you for your patience with my heated response here. Your Honor has seen me here at this podium many times. This is a source of endless frustration. We see a waste of the Court's resources and time. We see a waste of our client's resources and time for an issue that was laid out in black and white in Your Court's order. If Lifespace representatives want to do this, then they must designate.

THE COURT: And I understand, Ms. Vandesteeg.

MS. VANDESTEEG: If they want to stipulate --

THE COURT: I understand your frustration. I certainly thought that this would have been worked out by now.

MS. VANDESTEEG: Yes.

THE COURT: Mr. Walker has heard me be stern before. And the answer is if there was a motion for clarification that was needed, I would have expected it before today. I recognize that.

MS. VANDESTEEG: It was 30 days, Your Honor.

THE COURT: I understand that. But the other thing is this. I do believe if -- and I realize that everyone is representing their own clients, and I've always said I appreciate zealous representation. But if the defendants' position is take your entire production and tell me who's speaking and in what voice they're speaking each time, I think that that's probably aggressive, as well. That's a liberal reading of my order, as well, because we have to accept the realities that everyone is Lifespace-Edgemere.

Now maybe they're talking in a different voice. And I mean Mr. Harshfield testified in connection with the hearing leading to this I can't tell you what hat I'm wearing right there because he would prepare, as I recall in the evidence, he would prepare a budget for Edgemere. Then that budget goes up to the board of directors that he's on, as well, okay. And then the question is so what hat are you doing, are you

advocating for Edgemere here or are you reading this as a board member.

And so I understand where that puts you guys as defendants and seeking to know what party is speaking here. I don't have the look into your legal strategies nor am I asking for them, of course, to understand why there needs to be such a black and white line at certain times on every single document.

So the reason that I'm willing to accept a motion for clarification, because I'm willing to hear reasonable minds tell me -- and, again, I'm just throwing this out, and I'm -- this is not the Court's recommendation -- that perhaps there are documents where you guys have gone through them with a fine-tooth comb and said I need to know who's talking here.

I need to know that maybe -- and I'm not trying to put a burden on the defendant, because I've issued my orders. But maybe that if the defendant says I need -- these are my documents, these are the ones where I don't know who's speaking and in what voice -- I'm not trying to put the burden on you to call those and then ask them. But, likewise, I don't think if one production was made of all the Lifespace and Edgemere documents that going through each time and saying who's talking and in what roll are they talking -- because, again, they're all Lifespace and Edgemere employees.

MS. VANDESTEEG: Well, yes and. Let me put a --

THE COURT: Okay.

MS. VANDESTEEG: -- a finer point on from our perspective. This is where privilege comes into play, Your Honor. And we are mixing a little bit right now apples and oranges in terms of those that have been produced, pursuant to which no one apparently is claiming a privilege. And for those, it's our view that if Lifespace and Edgemere want to say those that have been produced, we're going to say they're both, that's what we're going to do, there's a unity of interest there, okay.

THE COURT: No, right.

MS. VANDESTEEG: Then for those --

THE COURT: And for the related-company exception, I think that -- that's always what I understood the -- Lifespace and Edgemere to be arguing. There is a unity of interest. There is a -- the related-company exception applies. And I recognize what you said, because you have to hit that legal nature first.

I understand that. But that if a -- if either lawyers is on there, it is privileged. Now, that's their argument. But that depends on if the related-company exception applies.

MS. VANDESTEEG: And if they are agreeing to take the position definitively that there is a unity of interest. And this is, Your Honor, where both in the documents that have been produced as well as those that have been withheld there is this

constant shuffle between do we have a unity of interest or are we separate companies?

And, Your Honor, there have been arguments made to this Court, for example, that, hey, what we've done here is nothing dissimilar than, you know, what happens in the hotel industry or the restaurant industry. But, Your Honor, it is. And give me a -- indulge me for a moment to give a slightly different example that helps me clarify. Because they're flipping it. LIfespace is flipping this on its head.

Take, for example, I stay at Marriott Hotels here in Dallas every time, all Marriott all the time. So let's imagine that we have an issue with a specific Marriott hotel.

THE COURT: Marriott --

MS. VANDESTEEG: And I won't name names.

THE COURT: It's Marriott like Chariot now.

MS. VANDESTEEG: It's Marriott like Chariot now?

THE COURT: Yes. They've changed their name.

MS. VANDESTEEG: So let's say that we have a dispute with a specific hotel. And let's say that all of that hotel still uses the Marriott back end, has Marriott employees, uses Marriott email addresses, has their financials. Go up to the Marriott parent company.

We have a dispute with that specific hotel. And we say, hotel -- I'm not going to name -- well, I'll use my hotel. We stay at the Adolphus down the street. And we have a

dispute. And we say, Adolphus, you need to turn over to us all of your documents with respect to these issues. And also, Marriott, to the extent that you've got documents with respect to this particular entity that fit within the parameters of our thing, turn them over.

What we're talking about here, Your Honor, would be an -- it would be an instance in which Marriott corporate says to their IT group, just grab everything, anything that involves anything. Send it over to the Adolphus. Let them sort through it. Which includes communications that may otherwise be internal, privileged communications that go toward Marriott's broader global strategy not just with respect to this hotel.

But, belatedly, what I'm hearing with Mr. Walker now with respect to the document that we passed up is we've never seen this before. Your Honor, that document was produced last year, purportedly, in connection with the process that Lifespace put into place to produce -- to call and produce its documents by and through Edgemere.

It gave them to Edgemere. Maybe it reviewed them for privilege first. If it didn't, shame on Lifespace.

Those documents were provided to Edgemere. They were reviewed by Edgemere, I guess in accordance with both the document requests and the subpoena, which, Your Honor, were different. Lifespace likes to conflate them. They were different.

All of those documents were reviewed. Some were redacted. They were produced to us. We have gone through them and reduced them and produced them and want to be able to use them.

And now we're hearing a year after this document was produced, oh, inadvertent privilege waiver by Lifespace with respect to a privilege log that Lifespace still hasn't claimed as its own. Is this now the one document find that Lifespace is going to point to and say, just kidding, we don't have a unity of interest here; you just found the one outlier document that we weren't able to previously designate.

It's exhausting, Your Honor, because they use these tricks. They use these words. They use unity of interest here, separate corporations here. They use privilege over here, but then over here, no, no, no, it's just Edgemere.

This is what we're trying to cut through, Your Honor. And the stuff that's been produced, if they now want to stipulate that those are Edgemere and Lifespace documents, great. Let's just do that. But then you can't simultaneously be claiming separate privileges.

You can't then have a privilege log that's only on behalf of one that you want to say, no, some of those are Lifespace, not Edgemere, Lifespace privilege. Or maybe they're related companies. But there still needs to be an underlying Lifespace privilege to claim for that exception and still

simultaneously say there's no difference between the documents, there's no differences in these productions, and we're not actually a unity of interest on those, but also we're not going to tell you which of those we aren't.

So, Your Honor, do we want someone to have to go through and separately go through all of these emails to figure out whose was what? It's going to be timely and expensive, but we -- this is not a problem of our making. And yet we find ourselves consistently in front of this Court trying to get compliance with your order or, at least, a stipulation in accordance with the hearing last time that make the stipulation. They're for both of you. What's been produced?

But no provideds. No footnotes. For purposes of what the -- what's been produced, it's been produced. And then for what's been withheld or redacted -- Your Honor, you got to get through that, because -- and I agree. A week is not long to get through 500 documents. But for those documents that have been withheld, I think that cuts straight through the games that we're seeing, that we have been provided with in terms of this whole what's privileged, what's not, are we unity of interest, are we not.

Because, Your Honor, let's put a real fine point on it. Unity of interest has other legal implications. And if they want to say we have a unity of interest for the purpose of claiming privilege, Edgemere privilege over communications that

appear to be strictly related to Lifespace legal interests, well, that opens a whole different can of worms that we'd want to be able to explore.

But you can't say we have a legal interest, a unity of interest for purposes of this but then not for other issues that may arise in terms of what that may imply. That is where we find ourselves. We don't believe that any further briefing is necessary with respect to the designation.

It would be our view that the only thing that's necessary would be a rule to show cause to order compliance with that or to actually put a stipulation out there that represents the reality what -- of what I think it is that they're trying to say, which is these documents are both. If they're not both, tell us what's not.

And with respect to the privilege log, please take a look. Let us know if you think that there is any basis for this asserted related-companies privilege exception waiver.

THE COURT: Right. And I think Mr. Walker is going to get to the privilege log next.

MR. WALKER: Thank you, Your Honor.

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: Thank you, Ms. Vandesteeg.

MR. WALKER: I think I got cut off (indiscernible) on the privilege log.

THE COURT: So on the privilege log, Mr. Walker?

MR. WALKER: Thank you, Your Honor. So on the privilege log, I think the Court has it right. So in the Court's June 23rd order, it required the plaintiff, the defendants, and Lifespace to meet and confer to try to narrow the remaining issues that were related to the privilege log.

We met with the defendants to discuss this issue on Friday, September 29th. We proposed having them identify approximately 50 documents for us to review and attempt to narrow for in-camera review to determine whether or not those documents discussed legal advice or whether they were just commercial in nature. We had proposed 50 documents, because that's what we had understood had previously been approximately the scope of documents that had previously been submitted for in-camera review to the Court.

They indicated that they intended to identify hundreds of documents for potential in-camera review. We asked (sic) them, okay, we think that sounds like a lot, but please send us what you're proposing, and we'll review it. We got that Sunday afternoon. They sent us a list of approximately 500 items from the privilege log that they designated from review.

They suggested on Friday that they were also going to prepare a memorandum that they would kind of unilaterally file to the Court, kind of a quasi brief, I think, to argue what the Court should look at with respect to these documents. We had

objected to that, or we asked to at least see a copy of it before it was filed. They didn't commit to do that.

That list of about 500 items they just sent to the plaintiffs yesterday. We haven't had a chance, the three of us, to meet and confer to kind of go over those. That number, 500 documents, that seems unreasonably high. We think that should be reduced.

But I think, more importantly, in line with what the Court suggested, we think that the plaintiff and Lifespace should take whatever the number is -- if it's 500, I guess we'll have to go through 500. But if it's some more reasonable number, give the plaintiff and Lifespace, who've claimed the privileges in those different categories, give us an opportunity to review them. And for each of those documents, maybe we can reach an agreement on it. Maybe we can agree to produce it or say, you know, this one of the thousands that were reviewed was not appropriately tagged as privileged.

So let us go through and do what, you know, the parties should typically do before burdening the Court with an in-camera review. We're happy to do that. And we think the plaintiffs, who obviously have a privilege they're asserting here too, needs that opportunity as well. I won't speak for Mr. Taylor, but he can let the Court know the plaintiffs' opinion.

And then whatever is remaining that the parties can't

agree on, then those can be submitted for in-camera review for the Court to determine, you know, do these documents -- do they discuss or pertain to legal privilege? Do they meet the legal definition of privileged?

So that's what our position on it is. I think we've communicated that to defendants' counsel. We received an email shortly before the hearing from one of Ms. Vandesteeg's colleagues I think agreeing to that approach, which is go through our 500 documents and let us know which ones you think, you know, we could reach an agreement on.

Again, 500 seems unreasonably large to us. We think it should be narrow. So that's Lifespace's position. We'll defer to the court on how many of these documents you want to review on your birthday, so --

THE COURT: Well, I mean, I'm just --

MR. WALKER: With that, I'll take any questions.

THE COURT: I mean, I'm just looking at -- and I recognize it was a suggestion that the defendants were throwing out. I mean the proposition is to give them to me on the 6th.

Monday is a federal holiday. I'll be working. But, again, Monday is a federal holiday. I'm in trial at least two days next week. And I've got dockets, I think, every day that week.

So, again, I want to be helpful here. Before --

MR. WALKER: And I guess that -- right. One other

thing I would add, Your Honor, if I may interject, is if it is 500 or 400 documents, I mean, we're going to need more than three business days. I assume the plaintiffs will need more time than that too. But that -- you know, that's going to take some work to go through and see if we can narrow it down.

THE COURT: Okay. Well, let me see if Mr. Taylor wants to take any positions or add to the discussion today.

Mr. Taylor?

MR. TAYLOR: I'm beginning to have severe second thoughts about having gotten involved with this case, as you told me that I might. So just --

THE COURT: I prepared a sua sponte transfer, but I was threatened by our chief judge. No. I'm kidding.

MR. TAYLOR: Just to be clear, I mean, our -- the plaintiff is not trying to cause a problem here. We are riding along on these issues. I think that -- and the list of 500 or whatever it is that people have been talking about, I mean, we got that yesterday evening, as I recall.

THE COURT: True.

MR. TAYLOR: So I'm not ready to talk about all those. But I will say, I understand what the issues are, but I don't think that they're -- it's not as clear cut as what some arguments here show. Because I think you can have separate companies that are related for purposes and have a unity of interest for purposes.

And if they're -- and if they are sharing documents that include their counsel's advice and discussing them on the related issue, I think that would be privileged. And I don't think that it necessarily has to have a counsel on it, because the people that are both Lifespace on one half of their brain and Edgemere on the other half of their brain might be thinking about the legal issues and talking to other people that have the same brain split. And that could be privileged even though there's not a counsel on there.

I don't have a solution on how to solve the problem that the defendants feel like something super important is being withheld from them. But I also don't think that we have to start with 500 documents. They've given us the categories. They could give us a smaller number than 500 to start with to see. And then, that way, something a little more manageable could be presented to you if we're going to have to do in-camera review.

But I will say that the stipulation that has been offered -- and I say it as long -- my position is, if there's a document that we have had control over as Edgemere and Lifespace, it counts for both for me, you know? And so you can use it in a deposition however you want. And then what -- what the document contains, that'll be something that'll come up. And if there's some problem or if there's some privilege or whatever it is, it'll come up at that time.

But they've had access to the document. They can use it for all purposes going into depositions. And then we see if there's even something to argue about left. I mean, I get it.

THE COURT: Well, Mr. Taylor, let me interrupt you. I don't know if you've had an opportunity to review the transcript of the original oral argument on this particular motion. Okay?

MR. TAYLOR: I have not, but I can.

THE COURT: Okay. And so because this is the situation that I think a lack of clarity of whose document is whose provides. I've got 20 Nick Harshfield emails. I got 20 Jantzen emails. In a deposition, do you expect that the defendant will have to say, okay, Mr. Harshfield, please identify the exhibit, please tell me what hat you were wearing when you said this?

MR. TAYLOR: I --

THE COURT: I mean, because that's essentially -- without any clarity, which I think the rules provide for, because I've said so in my June 23rd order, without that clarity, that's what they have to do. Because, essentially, that was Mr. Walker's argument. And no aspersions being cast. All due respect. That was the argument, that that is what the deposition discovery does, is you go through your documents, you ask them to identify them, and then you discuss them.

And so what you're saying -- what the argument would

have to be is that with each of these employees, because they're going to be virtually all of them, you have to go letter by letter, dot for dot, and say who were you representing when you said this. That seems incredibly cumbersome.

MR. TAYLOR: It might also be impossible. They might not know who they were representing at the time.

THE COURT: And --

MR. TAYLOR: I mean, I don't -- I can't undo the fact that Lifespace employees were performing the stuff for Edgemere. I mean, that is what it is. But I will say that not every document or every issue turns on a specific thing of who were you thinking of at the time.

THE COURT: Well, no. Not every one does. But I think that the question is, if there is going to be an instance in which a Lifespace board member, director, employee says that's only at Lifespace, Edgemere would have never seen that, that's only in my role as a board member, isn't the defendants entitled to know that?

MR. TAYLOR: They --

THE COURT: What if they -- hypothetically, someone only at the Lifespace level speaking only to other Lifespace board members says something negative about Edgemere and says, oh, blah, blah, blah -- I'm not going to put it out there, because it would be my luck that it would be repeated back to

me. Just says something negative. Okay? And do you want that being held as a party admission on behalf of your client that that was Edgemere talking?

MR. TAYLOR: I guess I'm going to have to wait to see what it is. But I will say this. I've taken a lot of depositions where I had an issue about who somebody represented in the document, and I just asked what it was. And if your position is it's too cumbersome to have to do it for every document, yeah, it probably would be.

But I don't think that, in the real world, you would do it for every document, because most of the time it doesn't matter. You know, you'll just -- it'll count for both, and it'll count for both. And if there's something where somebody thinks that it should only count for one than the other, there's going to be a gillion lawyers there, so I feel sure we're going to work it -- you know, at least figure out what it is, so if there's somebody to bring a -- if a motion needs to be brought, we can come here.

But I will say this for today's sake. I've missed, I guess, the entire Rangers game that's being played right now. And we are ahead, by the way. But I've missed the entire game on a hearing where there's not even a motion. So it's a --

THE COURT: And you're getting to my end game. I do understand.

MR. TAYLOR: It's a weird thing for me. And if you

look at the rest of the agenda, we're only on item two. The rest of them really -- I mean, they're issues that you might see someday, but it's -- other than just putting them on your radar, I'm not even really sure why we're talking about them.

But I'll address those as we need to. And I've spoken too long now, because I told somebody I would only have five minutes for my whole presentation, so --

THE COURT: All right. No.

MR. TAYLOR: Thank you.

THE COURT: You're fine. You're fine. Thank you.

MR. TAYLOR: Unless you've got anything else, I -- that's what I have to say.

THE COURT: Okay. Thank you, Mr. Taylor.

MR. TAYLOR: Thank you.

THE COURT: On the point, essentially, that was raised as part of the demonstrative and -- so with this privilege and with this Lifespace versus Edgemere dichotomy, here's what I say. I'll look forward to the motion to clarify. I'll allow the defendants to respond as appropriate.

I realize how incredibly difficult this is. I realize how important it is to the defendant. And I think the defendant's -- I don't know that the goal posts are being moved. But I do believe that we need to come to some reasonable resolution here. And so I'll look forward to the motion for clarification.

In terms of the in-camera review, Ms. Vandesteeg, I actually do agree with Lifespace. The in-camera review that the Court invited was on the related company's exception. The in-camera review that I invited was to basically determine if this is legal or commercial.

I recognize that in your demonstrative you've got a number of essentially great points on here in terms of the no counsel in communication, the other third-party communications Paddock (phonetic), UMB, Pointe Group, things of that nature. But I think that where we've gotten is either reach an agreement or file a motion to compel. Okay?

MS. VANDESTEEG: Okay. Well, Your Honor, I guess I'm confused, because the categories that have been identified do go specifically to whether there can be the related-companies privilege waiver.

THE COURT: No counsel on communications, other third-party communications, Paddock, UMB, Pointe Group. All of these issues -- this is not a related-company issue. This is whether or not it's privileged at all issue. Whether or not correspondence with UMB, correspondence with third parties, all of this is whether or not those should have been produced at all.

If you have an issue with their privilege log, then bring it to me on a motion to compel. I think that's different than what we've been doing.

MS. VANDESTEEG: I agree with some point, Your Honor, where some of those specific third parties that you referenced are on there because Lifespace is trying to claim privilege over them through their related-companies privilege. So with respect to the -- I suppose the no counsel at all, we could try to parse that out as a separate. However, what we're saying is that each and every one of these has been identified, as to our knowledge, blanket designation of all of this is subject to related-companies privilege.

So we can carve out that third party. But for the Lifespace correspondence, Lifespace only correspondence --

THE COURT: No, no, no.

MS. VANDESTEEG: -- the multiple buckets --

THE COURT: And what I'm telling you is on number four, number five, number seven, number eight in your redaction list, no counsel on communications, other third-party communications, Paddock communications, UMB communications, Pointe Group communications --

MS. VANDESTEEG: That one I think we need to except out, because Lifespace has been claiming privilege over that one, much like Houlihan Lokey.

THE COURT: No, no. And that's fine if --

MS. VANDESTEEG: Yeah.

THE COURT: I mean, then file a motion to compel.

MS. VANDESTEEG: Okay.

THE COURT: Okay? And I think -- I mean, basically, put the stone in their pocket that at some point identify the documents. If they've been claimed as privilege and you don't believe that they are such, then they will either produce or they'll take the second look. Okay? I don't believe it is me to take that look right away. Let them do their diligence. Okay?

And I think the same of, in your redaction log, correspondence with UMB, correspondence with third parties, documents that you prepared and sent. Now, I can see how there's a possibility you could send a document. There could be something privileged, analyzing what you had sent them on top or something. But the redactions of communications to the recused board member, maybe that was redacted on relevance. I don't know.

But I think it's time for them to respond. Because, I mean, I don't disagree at some point that we're having a lot of status conferences. And I want to be helpful to the parties. But at some point, let's act under a motion.

So on those, I find those separate from related companies. Because if it's only the related company, then I'm going to need to think long and hard of how it's privilege just because it's between two companies. So that's what I would say on that point.

With respect to this Court's review, again, I think

the bulk of what you're asking for of the 500, the highest number was no counsel on communications. I think that's something they need to look hard at. Okay? If there is no counsel there, and they're being withheld for privilege, I certainly believe that there could be some reasons for that. But to the tune of 800 is high. It's high in my estimation.

So I don't think I need to look at 117. All right? Let's let them do their diligence first and see if they can bring that number down. Okay?

And but other than that, I thought I would be looking at 50. I thought I would be looking -- and I'm willing to -- whether it's 50 or 100 to look at on the related-company side, just to make sure that what's being withheld is legal in nature. That was my initial review.

If because of your motion to compel, which I believe that would be forthcoming, if there's another in-camera review that needs to be done, then I will do it. I can't promise it on a seven-day turnaround. I will do my best to produce them quickly.

But that's what I will say. On these other issues, all I can say to Lifespace -- and I know this is less of an issue for the plaintiff -- is, Mr. Walker, this has been going on a long time. And I realize that you're meeting and conferring.

But at some point, identify the documents. These are

the ones we have -- these were the ones we have a problem with. And I do believe that it's time the defendants get some definitive answers of how and why they are privileged. And if not, bring those to me in a motion. Okay? Bring them to me in the categories that you've brought them to me here today.

MS. VANDESTEEG: Your Honor, to put a fine point on that, because again with respect to how Lifespace might bring this forward, in the existing privilege log, Lifespace has not asserted privilege over anything. So for purposes of meeting and conferring and determining what Lifespace believes it has asserted privilege over such that then the privilege waiver could happen, I don't know without providing the Court with the documents that the Court can determine, because, again, we have so many communications that would otherwise be Lifespace privileged but for that they have not claimed it, and they're not on the privilege log.

Is that just an issue for Mr. Walker to attempt to address and elucidate in further briefing?

THE COURT: Well, I mean, if they're being withheld -- okay. So let's just take an example.

MS. VANDESTEEG: Well, would it be helpful for me just to share the privilege log --

MR. WALKER: Could I --

MS. VANDESTEEG: -- so that Your Honor could see it?

MR. WALKER: Could I be heard on this, Your Honor,

before we go down another rabbit's hole here, briefly?

THE COURT: Please.

MR. WALKER: Okay. I think the Court's direction is right, which is it's -- the in-camera review that is currently before the Court is with respect to the related-companies exception to the waiver of privilege and whether or not those documents, about 50 to 100, are concerning legal advice or whether they're strictly commercial in nature to determine whether they satisfy the privilege to begin with.

There are a bunch of other issues that are being discussed right now by counsel where there is no motion to compel that is pending. If they have a question about documents that are on the privilege log, then they should come to both the plaintiff and Lifespace and raise those issues on a document-by-document basis. We can look into them, and we could determine whether we can agree on it or not.

And with respect to the amount of time that has transpired, we got this list from them on Sunday afternoon. So we have had one business day before the hearing today to try to start that discussion.

So, you know, we've been in this hearing now for several hours. I think the issue that has been teed up that is, you know, the subject of the Court's June 23rd order, we understand that direction. That makes sense to us.

I think on the other issues, the parties should

attempt to work together to figure out what those issues are, and if they are issues for the Court to decide, then tee it up the right procedural way with a motion. Thank you.

THE COURT: Thank you, Mr. Walker.

So, Ms. Vandesteeg, looking at your list --

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: -- you've got number one and number two, Lifespace outside counsel communications only, Lifespace/Edgemere and/or board members outside counsel combo. Right there you've got, looks like, 1,410 entries. Okay?

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: And --

MS. VANDESTEEG: We sought review of 138 of those.

THE COURT: Right. Those two categories -- and, I mean, you can put the list back up for Mr. Walker's benefit. Those two categories --

MR. WALKER: Thank you, Your Honor. I was going to ask if someone from Ms. Vandesteeg's team could actually send me a copy of that, so I could follow along.

THE COURT: Okay.

MS. VANDESTEEG: We will do so.

THE COURT: Okay. Those two categories seem to me to be the heart of the related-companies exception that was laid out in the Court's June 30 order. Okay? Because Houlihan Lokey's going to be the subject of a different motion, okay?

And I think that whatever I decide there, we're going to be able to -- so if you could -- Ms. Sethna, if you could push down to where he can see that category key for the privilege log entries? And on down.

MS. SETHNA: It's just slow.

THE COURT: Oh, I'm sorry. Yeah. It's just slow. I apologize.

So, again, that nature of communication category one, category two, those seem, to me, to be related-company exception. Again, the no counsel on it, the third-party communications, that seems to be an issue of how is that privileged altogether. Then we get down, Paddock and UMB again, subject to a motion to compel.

GrayRobinson, if that's the board counsel, I don't think that's a related-company issue as has been identified to me in prior briefing. So that would probably be the subject of a motion to compel.

And then Lifespace board of director communications, again, that's a different subject.

So I'm thinking that this 138 documents that you proposed is the bulk of where I saw the June 30, excuse me, in-camera review going.

MS. VANDESTEEG: There may be one other fine point with respect to the Lifespace board of directors communications in that some of those did also involve communications then with

Lifespace outside counsel. And they are also -- even in those Lifespace board of directors communications, again, they reference correspondence between Edgemere representatives and outside counsel on the privilege log, Your Honor. So simply because there's this conflation, I -- at least to what has been given to us --

THE COURT: Right. And that's your number six. And you've got zero --

MS. VANDESTEEG: No. That would be the number 11.

THE COURT: Oh, number 11?

MS. VANDESTEEG: Correct.

THE COURT: Okay. The Lifespace board -- okay. Well, I mean, again, that's only a smaller group of --

MS. VANDESTEEG: Yes, it is.

THE COURT: And, again, so if you guys want to select a group of documents of like -- of maybe 50 to 100 there, okay, I'll take those for in-camera review. All right? And, again, the in-camera review that I'm talking about is the one that I referred to in my June 30th order. And that is to determine whether or not the nature of the correspondence in these documents is legal in nature and not commercial in nature.

And that's what I agreed already to do. But we are -- we'll determine what the go-forward process will be with respect to how, if at all, we need to separate these companies. Because if we don't, we don't. And then everyone's going to

have to -- but, again, I'll await the motion for clarification before I do something deeper on that.

MS. VANDESTEEG: Can we talk about timing then, Your Honor, with respect to how the --

THE COURT: Yes.

MS. VANDESTEEG: -- Court would prefer these things be staggered both in terms of clarification as well as provision then of documents for in-camera review as well as subsequent motions to compel, all with an eye to that October 31 deadline? And do we need at this point to recognize that perhaps vis-a-vis Lifespace, again as we raised last week, that deadline may simply not be feasible --

THE COURT: Right.

MS. VANDESTEEG: -- understanding that we can still proceed with respect to any amendments as they may need to be done between defendants and plaintiff, but appreciating that there is still a substantial amount of work to be done in terms of resolving these issues with Lifespace, Your Honor.

THE COURT: All right. So we've got the Houlihan issue. We've said 13, 20th, 24th. Okay? With respect to identifying these documents, have you identified the documents that you proposed for review to Lifespace and the plaintiff yet?

MS. VANDESTEEG: Yes, we have.

THE COURT: You have? Okay. And how long either

Lifespace or --

MR. WALKER: Well, Your Honor, if I can -- sorry. If I can jump in there. They sent us on Sunday, and I think they sent the plaintiff yesterday, the 500 documents. I think what I heard the Court say is this in-camera review is limited to 50 to 100 documents in categories one and two on this demonstrative.

THE COURT: Right. But, of course --

MR. WALKER: So I --

THE COURT: In those categories, let's -- if you look at the front numbers, there are 1,410 documents. They're asking for some subset of them. So have you already -- so what have you given to Lifespace and the plaintiff thus far?

MS. VANDESTEEG: We have provided them with a spreadsheet that lays out on a document-by-document-specific basis the entire 469 documents that we proposed be reviewed --

THE COURT: Okay.

MS. VANDESTEEG: -- in camera, both the 300 total --

THE COURT: Yep.

MS. VANDESTEEG: -- the seventy-seven sixty-one seven one-seventeen, et cetera, et cetera, as well as the 169 documents that had been redacted.

THE COURT: Okay. So I think that what -- and how long, Mr. Walker or Mr. Taylor, whoever is going to pull them, how long does it take to pull those documents to get them to

the Court?

MR. WALKER: Well, so I guess are we -- I guess I'm a little confused. So are we first identifying the subset of documents for the plaintiff and for Lifespace to review, see if we can limit them on the ones that are disputed, and then submit them to the Court for review?

MS. VANDESTEEG: Your Honor, what we could do is simply provide a -- the culled list of the 138 from number one and two which itself would be less than 10 percent. So if the Court would be willing to even accommodate the 138 that we've already identified in painstaking detail --

THE COURT: No. I'll be honest, Ms. Vandesteeg. I don't want to review documents that Lifespace and the plaintiff are going to turn around and say these are not privileged. I don't want to do that.

MR. WALKER: That's my point.

THE COURT: And I hear and you -- I see your frustration. I understand.

MS. VANDESTEEG: Because counsel was invited to do that last time and said he had already done so, and there was nothing that remained that --

THE COURT: Okay.

MS. VANDESTEEG: -- from their view was not already --

MR. WALKER: That's not true, Your Honor. That's

just not true. We got the list of the documents they specifically have questions about Sunday night. We have not had a chance to look at these documents to determine whether or not they really are a disputed document that the Court needs to rule on. So that's not true.

THE COURT: So one more time. So right now, we have got an order that says, okay, based on the facts that Lifespace and Edgemere claim to be related companies and, thus, any communication between Lifespace and Edgemere with counsel that is legal in nature is privileged. Okay? And I've already ruled that the precursor to everything is that it's legal in nature, not commercial in nature.

The defendant has asked that -- for me to do that ex parte review. So I certainly would have assumed that since June 23rd Lifespace and Edgemere would have conducted their own review to determine whether it was commercial or legal. Has that been done?

MR. WALKER: Yes. From Lifespace's --

THE COURT: Okay.

MR. WALKER: -- position, we have confirmed that nothing was intentionally withheld on a strictly commercial nature. Now, there are thousands of documents. So if one was incorrectly labeled, we would like a chance to look at it to say, oh, this was a mistake, we'll give it to you before the Court has to review it.

We have not gone through every single document in the privilege log. We have confirmed based on the process we set up that there was nothing pulled that was only commercial in nature intentionally.

THE COURT: The exasperation is about to get contagious, because I'm getting exasperated. Let's do this. They've identified the 138 documents that they would propose for the Court's review. We established that it's number one and two, right? Or was it also number 11?

MS. VANDESTEEG: I would also recommend that we include the ones from number 11, Your Honor.

THE COURT: Okay. So the 146 documents.

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: I'm going to ask that the defendants, ICI and Kong, give the list of the 146 documents to Lifespace and the plaintiff. Okay? I'm going to -- when can you give them that list?

MS. VANDESTEEG: I would imagine that we can give them that list culled list if not later tonight, tomorrow, Your Honor.

THE COURT: Okay. Okay. You'll get it to them tomorrow. That's 10/4. All right. I'm going to give the plaintiff and Lifespace seven days -- it'll be October 11th -- to do a further internal review of whether any of those 146 -- if the privilege assertion is being withdrawn, and those can be

turned over at that time.

If not, you can send -- I still only want 100 documents. Okay? You can send 100 of those documents, and I'll allow the -- ICI and Kong to pick them. And maybe less at that point if any have been narrowed. To send those to the Court on the 12th or the 13th.

Let's just say they'll be sent to me by the 13th. And those are -- that will be the plaintiffs or the -- Lifespace to send to me by the 13th. Send those in hard binders. And the Court will endeavor to have those reviewed by the 24th.

MS. VANDESTEEG: Thank you, Your Honor.

MR. WALKER: Thank you, Your Honor.

MR. TAYLOR: Thank you.

THE COURT: And that, again, is going to be on the legal versus commercial issue. I am going to -- with respect to the motion for clarification, when can you get that on file, Mr. Walker?

MR. WALKER: I'm looking at the calendar right now, Your Honor.

THE COURT: Yes.

MR. WALKER: We could do it in two weeks, if that works for the Court. We understand we don't want to drag this out any longer than it needs to be dragged out.

THE COURT: So we're on the 3rd. So you're saying

you can file it by the 17th?

MR. WALKER: Sure.

THE COURT: How long do you want to respond? Fourteen days? How long? How long do you --

MS. VANDESTEEG: Fourteen days should be fine for us too, Your Honor, so long as we can then again address the, from our perspective, looming wall --

THE COURT: Well, let --

MS. VANDESTEEG: -- of 10/31.

THE COURT: Okay. Right. Okay. So that'll be the response. And in the -- so what I'll also -- I mean, I don't like to do this. I'm going to order the -- I don't want to do a deadline. I'll order the parties to meet and confer, okay -- it'll be necessary if you're going to file a motion to compel anyway, Ms. Vandesteeg -- with respect to these other issues, the issues that are brought up by categories number four and number five, number seven, number eight, these other issues of like essentially where does the privilege come from. Okay?

So I'm not going to put a hard deadline on that, but I would like to keep these various motions, the motion for clarification, et cetera, on a similar timeline. So theoretically, if we could get any motion to compel, if there were going to be one, on file by the 17th, which again is two weeks from now, but that again kind of backs up everything else that needs to occur with respect to the motion --

MS. VANDESTEEG: Meet and confers?

THE COURT: -- to the meet and the confer. So I'm not going to order and I'm not going to put a hard deadline on that, because, again, I want to give the opportunity for people to reach agreements and consensus. But ideally we would have those on similar timelines.

MS. VANDESTEEG: Understood, Your Honor. Thank you. Would the Court want to move the Houlihan dates then also to match up with the ones that we've just proposed on these others, or maintain the faster schedule on those? Just trying to be efficient, Your Honor.

THE COURT: I'm happy to move them. I mean, again, this is -- Mr. Taylor, do you see any reason why we need that issue decided ahead of time --

MR. TAYLOR: No.

THE COURT: -- from the others? No? I didn't think so. Okay. We'll move them to accommodate the -- so that we'll use the -- we'll use Houlihan for briefing. It'll be they'll file their motion by the 17th. You'll respond by the 31st. And then we'll have a hearing thereafter. So that won't be on the 24th anymore.

MR. TAYLOR: Thank you.

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: You're welcome.

MR. TAYLOR: That makes sense to me. Thank you, Your

Honor.

THE COURT: Okay?

MS. VANDESTEEG: And, Your Honor, as we laid out in our notice of agenda, and taking into account the fact that we are at 4:42, the remainder of the -- well, let me stop there for a moment.

Your Honor, are there more issues from the Court's perspective that should be discussed with respect to the dates and the motions that we have presently set before we further address issues on the agenda and then also seek to figure out the Court's availability for an actual hearing date on this and potential other issues?

THE COURT: Okay. So you want to -- let me see if Ms. Harden can tell us what we have available probably the week of November 6th. I'm going to have -- so we have November 7th at 2:00. We've got essentially half a day available on that day. Would that day work for folks?

MS. VANDESTEEG: Your Honor, defendants can make themselves available on that day. November 7 at 2 p.m. Thank you.

THE COURT: Uh-huh.

MR. WALKER: Your Honor, that works for Lifespace. Thank you.

THE COURT: Okay.

MR. TAYLOR: We will do whatever is required.

THE COURT: Okay. Thank you, Mr. Taylor.

So we'll -- that way if there's any slippage --

MR. TAYLOR: That is election day.

THE COURT: That is election day.

MS. VANDESTEEG: That's fine.

THE COURT: Would you all prefer the 9th?

MS. VANDESTEEG: I can vote by mail.

MR. TAYLOR: I will already have voted.

MS. VANDESTEEG: We can accommodate whatever is the Court's preference, Your Honor, I believe.

THE COURT: Okay. We have the 7th and the 9th.

MR. TAYLOR I'm fine with the 7th. I just -- I didn't know if it impacted things here.

MS. VANDESTEEG: Your Honor, candidly, we would love to keep things moving. We will need to, as I mentioned, figure out how to address the Lifespace pleading deadline. But every two days --

THE COURT: Right.

MS. VANDESTEEG: -- that we can try to make further progress would be great.

THE COURT: Okay. We'll keep it on the 7th then. So we have your issues 3 through 11?

MS. VANDESTEEG: Yes, Your Honor. These --

THE COURT: Oh, wait.

MS. VANDESTEEG: Yes.

THE COURT: I say that -- we need to take a five-minute recess for a convenience break for the staff.

MS. VANDESTEEG: Thank you, Your Honor.

COURTROOM DEPUTY: All rise.

(Recess at 4:45 p.m./Reconvened at 4:51 p.m.)

COURTROOM DEPUTY: All rise.

THE COURT: Please be seated. We'll go back on the record in Case Number 22-3040.

Ms. Vandesteeg?

MS. VANDESTEEG: Thank you, Your Honor. I think that we were taking a moment to address in the first instance -- I think my preference would be to talk about the amended Lifespace pleading deadline and then go quickly through the remaining issues that were otherwise laid out on the agenda which should not, Your Honor, take very long.

THE COURT: Okay.

MS. VANDESTEEG: So where we're at today, Your Honor, there will be more motion practice.

THE COURT: Right.

MS. VANDESTEEG: There will be in-camera review. We suspect that there will be further in-camera review after the additional motion practice. We appreciate trustee's counsel's comments made in court last week that they would like to be able to move in some form in pari-passu with respect to amendments to the asserted claims and potential amendments to

the counterclaims the defendants have asserted and may need to amend with respect to the plaintiff. And we are fine with that.

And should Your Honor wish, we can keep that date on October 31st. I think we could move it up even if the Court wanted to.

With respect to Lifespace, we are challenged today much as we were when we were in front of the Court last week where we are chasing a bit of an unknown outside target. We would love to keep this moving as quickly as possible. We are going to work and continue to work our hardest to make as much progress as we can with counsel for Lifespace over these next few weeks.

October 31st, obviously, given that we're not even going to have a hearing on further motions, is not going to be plausible. I would be fine with trying to find an outside date potentially toward the end of November. I would be fine, Your Honor, also to put that amended deadline on a status for our hearing on November 7th and determine at that point if we have sufficient clarity around whether an end of November date is practical and feasible or whether instead we need to just put this one out there as a 14 days after completion of the briefing and the in-camera review and supplemental production.

I'm open to guidance from the Court on that issue. I think either would be okay so long as we recognize that through

no -- that it may need to be continued if we choose an outside-of-November deadline.

THE COURT: Mr. Taylor?

MR. TAYLOR: We are opposed to extending the deadline any further. October 31 is plenty of time. I understand if they want more time to figure out if they're going to sue Lifespace. I understand why they want it.

But I am -- even based on what I've heard today, I'm unconvinced that if they believe they have a claim they couldn't figure that out with the documents that they have available to them. Because I don't think that there's some conspiracy here to hide documents from them that would let them know if they have a claim or not.

But if they don't have enough and we have our plea deal on the 31st and then they come up with some new documents and suddenly they realize they have a claim, well then they can move to add. And how are we going to really oppose it, you know?

But I don't think that we need to keep moving to -- it seems to me like every time that we're here there's an attempt to push things back further. And this is not new to me in litigation. But I don't have to like it, and I don't. And I think that October 31, we still have the whole month to go, is plenty of time to figure out do you have a claim or do you not and to make your pleading.

THE COURT: Thank you, Mr. Taylor.

Ms. Vandesteeg?

MS. VANDESTEEG: Your Honor, first -- in the first instance, I don't particularly understand why the plaintiff is concerned about potential third-party claims that we may want to make against Lifespace.

THE COURT: Well, it is your deadline to file counterclaims as well.

MS. VANDESTEEG: It is. And that's why, Your Honor, I propose that we bifurcate.

THE COURT: Uh-huh. Okay.

MS. VANDESTEEG: And we already have pending three counterclaims. We've already drafted amendments to those counterclaims, the pending counterclaims. We were ready to go with the Court's September 29th deadline. We can absolutely proceed with plaintiff for amending pleadings by October 31st. They amend their claims. We amend our counterclaims vis-a-vis the plaintiff.

What we're talking about here, Your Honor, are the potential third-party claims against Lifespace. We raised this issue in August that we're concerned that these are two slightly different tracks. We can absolutely stay on track. We want to keep moving with respect to the claims and counterclaims with respect to the plaintiff.

But, Your Honor, we have been stalled and delayed

with respect to Lifespace. The issue is finally now, we are grateful, coming to a head, and it looks like we are going to be able to make some meaningful progress over the next few weeks.

But that's not going to happen by our hope of having supplemental documents for in-camera review and rulings by the 17th of October to allow us to make that determination as it relates to Lifespace. And what we're seeking to carve out is Lifespace and its representatives. That's all we've asked for as we've raised this issue numerous times.

THE COURT: Okay. So you're willing to stick with the 10/31 deadline with the exception of a third-party claim -- counterclaim against Lifespace?

MS. VANDESTEEG: Yes, Your Honor.

THE COURT: Okay.

MS. VANDESTEEG: With the slight caveat that should it require slight amendment then to potentially add Lifespace -- well, what -- how am I phrasing it in my head? There may -- it may also dovetail in that some of the asserted counterclaims may also be framed in the same light, but they would be against Lifespace or Lifespace representatives, which, as I'm talking myself through it, Your Honor, would indeed be third-party claims that might allege the same underlying operative facts and/or different ones. Yes.

THE COURT: Okay So, Mr. Taylor? And perhaps I

didn't have the clarity that I now do when I called you here before. Is she's proposing to maintain the deadline for counterclaims and third-party claims against anybody but Lifespace for 10/31 and move just that one out.

MR. TAYLOR: I still think that they should be the same, because let's say we get all of our pleadings done on October 31. We start taking depositions. You know they're taking a deposition on this Friday. I mean, they're starting up now.

THE COURT: Yeah.

MR. TAYLOR: And so if I'm Lifespace, I might complain if there's a bunch of discovery that's been done without me being in the case and now, all of a sudden, I'm going to be in it. So I don't -- it has the potential ripple effect. You had described it as being two tracks previously. That's probably about the best way to look at it.

But things are going to change if they bring them in. And that's why I want them to bring them in now if they're planning to do it.

And there is one other issue that they have listed on number 11, I think it is, that -- I didn't realize that they were going to put it on, because I'm starting to talk to them. And I'm still hoping that I will get to an agreement with them. But just to put it on your calendar, in the next week or two at the most, we'll probably have to file a motion on this.

There is a current protective order in the case --

THE COURT: Right.

MR. TAYLOR -- that has this attorney's eyes only stamp on it. And if I want to have a potential expert or consultant look at those documents, I have to tell them who those people are. And under the federal rules, I do not have to do that.

THE COURT: Right. And the answer to number 11 is file a motion, so --

MR. TAYLOR: And that's what we'll do.

THE COURT: Okay. That's going to be the answer to number 11. So I'll just short-circuit that.

MR. TAYLOR: Right.

THE COURT: With respect to this counterclaim, et cetera, deadline, let me look at my dates. Given where we are in the hearing date, I'm going to move that deadline to November 13th.

To be honest, I don't plan on moving it again. I'll just let you know. I mean, at some point, it's time for us to get the litigation going.

And I'm not sure that there's a -- I mean, at any regular litigation juncture, you put forth your third-party counterclaims. If you want to amend later because you get new documents, you get new documents. But I do believe we need, this far down the road, to set the stage as to who the players

are going to be. Because it also is going to change the tenor of how the depositions are taken, whether you're taking party depositions, whether you're taking third-party depositions and the like.

And so because of that and where we are and when documents will be produced, I'm going to give you a little bit of an extension here, Ms. Vandesteeg. And I'll keep the deadlines together as Mr. Taylor had asked. But I'm going to do November 13th, which is a Monday.

MS. VANDESTEEG: Thank you, Your Honor, for that accommodation.

THE COURT: Yep. And so now we have -- we're at kind of a -- it looks like a series of one-offs.

MS. VANDESTEEG: That's correct, Your Honor. We wanted to simply give the Court an overview of the additional disputes that are currently pending and brewing out there. These are all at various different stages of meet and confer. There are a number of them that we have put requests out to plaintiffs' counsel to respond to us, and we hope that we are able to get a response and make some progress on those in short order, Your Honor.

And I point you to, on that -- on those issues, number three, Sidley Austin discovery. Sidley did provide, as we updated the Court on last time, a supplemental production. However, certain documents remain outstanding that we have been

informed by Sidley have been still further withheld by the Diamond McCarthy team.

We have asked for them to provide us with an update and guidance on that. We've not yet received it. Meet and confer will continue.

However, we don't want this to be an endless meet and confer process, Your Honor. So to the extent that further motions are necessary, we are going to try to get them on file in short order to follow up on these issues.

THE COURT: Okay.

MS. VANDESTEEG: Likewise, with respect to the two accounting firms, CliftonLarsonAllen and Lane Gorman, we had issued subpoenas on these as well last year that were frozen. Those accounting firms have advised us now as we have reopened that they cannot provide us the documents that we have subpoenaed without specific taxpayer consent. That they view that that would put them in breach of certain other IRS code obligations that they have.

We have sought that consent from the Diamond McCarthy team. We have not yet received a response. Hopefully, we will. If not, motion will be filed on that issue, Your Honor.

With respect to point five, the interrogatory responses, we have identified and requested that plaintiffs' counsel update interrogatory responses to specify the business records that are identified in those various different

interrogatory responses pursuant to Federal Rule of Civil Procedure Rule 33(d). Specifically, Your Honor, we're having trouble identifying certain very limited, targeted interrogatories where the production lines up.

Let me give you an example. One of our interrogatories goes to the heart of identify those specific documents that plaintiff asserts were marked as confidential and subject to NDA that were provided to the defendants. We don't know, Your Honor. And we've got 10,000 documents that have been produced. Again, tens of thousands of pages. Plaintiff has yet to comply with the rule to provide us that clarity around what they believe constitutes their response to those specific interrogatories.

We've put this out there in writing again. We are awaiting a response. And we will meet and confer. Motion practice may be necessary to get clarity on that.

With respect to point six, the UMB discovery, UMB had withheld or redacted documents, as we said, based upon certain attorney/client privileges and work product doctrine. They identified a joint defense agreement with the individual bond holders.

We are in active meet and confer with UMB. I believe that I saw correspondence most recently yesterday or late last week. One of my colleagues is in charge. Meet and confers are in progress. And, hopefully, motion practice won't be

necessary, but if it is, we'll get there.

Eddie Fenoglio. Oh, sorry. I skipped over FTI. We are still in the meet and confer process with respect to outstanding privilege and redaction issues. We received last Friday afternoon another supplemental production both on behalf of FTI as well as on behalf of Edgemere. We have sought clarity as to what are these documents. I believe that we received also a supplemental FTI privilege log on Friday afternoon. There are outstanding issues, Your Honor, that we continue to meet and confer on, but motion practice may be necessary with respect to that outstanding discovery.

Eddie Fenoglio. Mr. Fenoglio was one of those key individuals who was both high-level Lifespace as well as high-level Edgemere. He was, to our knowledge, the former COO of Lifespace and also an officer/director of Edgemere. We believe that he, for whatever reason, was no longer employed by Lifespace as of June, so we issued a subpoena to him directly. We believe that he might have specific, relevant, responsive information on his own.

We were informed by Mr. Walker, who has claimed dominion over Mr. Fenoglio for purposes of subpoena response, that there may be additional documents that he may have and that he will reach out to him to determine whether there are such documents that may need to be produced. Meet and confer continues.

The Pointe Group discovery and also potentially GroundFloor Media are ones that I suspect the Court is going to see further motion practice on. The Pointe Group and Ground Floor Media both were issued subpoenas. LifeSpace has claimed privilege over the Pointe Group and has said that they will be representing the Pointe Group in connection with their subpoena responses and document productions.

There was a production. It did not come with a privilege log. But documents were redacted, and we believe others were withheld. We have been in correspondence.

There are also, correspondingly, documents and communications with respect to the Pointe Group that, as Your Honor is now very aware, are listed on Edgemere's privilege log. So we suspect that motion practice on this will be necessary very much in line with the motion practice that this Court has already seen with respect to The Monument Group.

Likewise, with respect to GroundFloor Media, we are still in the meet and confer process with their counsel. And you will likely be seeing a motion to compel those documents as well.

The final order, I believe, number 11 has already been addressed by the trustee. And we will await motions on that. I don't know if the Court wants to set specific deadlines or simply allow the trustee to file it. I believe within a week or two is what was stated. I don't know if we

want to put some specific deadlines around that or simply address them once we see the motion on file.

Defendants are indifferent. We will address it as necessary when it's filed.

THE COURT: Right. Again, that's something where I don't want to determine, when the operative deadline to file that is. That's something brand new. So I don't think I want to set a deadline. These others, there's reasons to set deadlines, because it's been going on for a little while.

MS. VANDESTEEG: Understood. And thank you, Your Honor. We had put out these proposed upcoming dates. These may now make more sense to be shifted more in line with some of the dates that we now have in place for other motions, and it likely makes sense --

THE COURT: Sure.

MS. VANDESTEEG: -- on these as well to just further meet and confer but, to the extent possible, perhaps try to align them with the other filing and hearing dates that we've talked about. Which would mean that, I think at least from our perspective, pending anything further from my team, I would ask that what we do then is set the matter overall for further status potentially at the upcoming hearing time that we now have blocked off on the other motions to be filed and discovery issues on November 7th.

THE COURT: Well, my gut tells me and my extensive

experience with this case tells me we're going to have a lot to do on the 7th. So I don't want to clog up the 7th with anything other than motions, because I do believe that it appears some of these motions are going to be meaty and take some time. I mean, again, experience being a guide, the original hearing on the motion to compel that resulted in the June 30th order went for a while.

MS. VANDESTEEG: It did, Your Honor.

THE COURT: So I don't want to clog it up too much. I mean, if we have related motions that have the same witnesses or evidence or argument, I'm happy to have those stacked on the 7th. But I don't want to be -- because the 7th, we have three hours that afternoon. The 9th, like I said, we have more time.

And I don't want to require travel. I don't want to bifurcate things too much. But I also want to be cognizant of what the docket can lend to.

MS. VANDESTEEG: I greatly appreciate that guidance and that insight. And from our perspective, what -- to the extent that the Court is willing to accommodate putting a hold on some time then also for the 9th either for overflow for additional motions to compel that we suspect are going to be necessary and/or for just further status overall on the adversary, defendants' team can accommodate having those two days -- the 7th -- afternoon of the 7th and whatever time works for the Court on the 9th with that gap in between. It is what

it is.

THE COURT: Right. Well, just confer amongst the parties. And if you guys want to reserve any time on the 9th -- right now, Ms. Harden tells me that we have all day on the 9th. So if you want the morning or you want the afternoon, just let us know.

But, again, let's also understand and do the ticklers on your calendars if you want the 9th, back up when you're going to have to file your motions too. Because I hear the plaintiff, and I hear Lifespace. And they're very good at their craft, and they're being subtle with the status conferences and how much we're tacking on to status conferences. And maybe they're not being so subtle. But maybe I get it.

So I'd like to proceed as much as we can by motion practice. I don't want to add to the attorney's fees ticker in this case. But I think that parties are entitled to be able to think about the legal issues, get them out in writing, respond, and -- because sometimes the motion practice itself brings folks to the table and gets things produced and what so.

So if you want some time on the 9th, just give Ms. Harden a call tomorrow and --

MS. VANDESTEEG: Or, Your Honor, while we have the parties here and with that further clarity around the three hours on the 7th or all day on the 9th -- and I believe we had

all said that we are relatively indifferent -- perhaps would be better, understanding the greater availability on the 9th and understanding that we're likely going to have more motions to be filed in the meantime, perhaps makes more sense then to turn away from the 7th and instead try to block off the 9th for as much of the time as the Court can accommodate for what we do anticipate will be further motions.

THE COURT: Okay. Mr. Taylor? Mr. Walker?

MR. TAYLOR: That sounds like a day of torture to me. I'd just as soon come in on the 7th, have the Houlihan and the clarification stuff done then. And then if we have to do the 9th, then we will.

I mean, I am going to file the motion on the protective order.

THE COURT: Okay.

MR. TAYLOR: And I'm going to do that sooner than later so that we can get it heard sooner than later. Because I need that.

THE COURT: Okay.

MR. TAYLOR: But so I'm not -- I'm not opposed to coming down on the 9th for a hearing on that. But I just don't want to commit to a whole bunch of other stuff right now. And let's just get them done.

THE COURT: Okay.

MS. VANDESTEEG: Your Honor, we will be filing the

additional motions to compel against Lifespace, so there will be more issues that will be up for hearing beyond simply those that we've identified today.

THE COURT: Okay. Mr. Walker?

MR. WALKER: Thank you, Your Honor. I guess I'm a little surprised that we're already going to file motions to compel before we've had a chance to meet and confer and try to resolve it, but I guess maybe that's part for the course.

Scheduling wise, you know, we're open. I tend to agree with Mr. Taylor. I don't know if we need to commit to a multi-day hearing before we know what's actually up and what actually we are going to need to work through at that point.

THE COURT: Well, I will -- as the parties wish, I will leave what we've got set for the 7th on the 7th. I mean, just by way of example, today's setting was an hour and a half. It has not gone only an hour and a half. And these -- we have lots of parties in these hearings, lots of great counsel, and these tend to get extended.

So let's leave what we've got on the 7th. If you file more motions and they need to be put on the 9th, so be it. But, I do believe that we need to -- I'm just hesitant to, like I said, put a status conference on top of existing motions, because we'll never get to the status conference.

Because I think that we do need to keep this case going, because, again, I'm trying to make that scheduling order

be as realistic as possible. Okay? And I know that was already hard fought. So let's do what we can to stay within that.

I think all I can say is I understand the defendants are now aggressively moving towards wrapping up these discovery issues. I know that the plaintiffs' side would like to aggressively stick to the scheduling order. And I know that Lifespace would like to aggressively get past all this.

So all I can say is work together towards your ends. Okay?

MS. VANDESTEEG: Thank you, Your Honor.

THE COURT: Anything else?

MR. TAYLOR: The Rangers did win.

THE COURT: Excellent. Excellent. That was my former client, you know?

MR. TAYLOR: Is that right?

THE COURT: Yes. I actually confirmed the Ranger case, so --

MR. TAYLOR: Oh, that's cool.

THE COURT: So back when they were debtors. But I do take credit for them, at least, I mean, that one World Series run. Because that's basically what we did in the bankruptcy, so. Anyway, anyway.

MR. TAYLOR: Cool.

THE COURT: I am diverging. I think that's all that

we have for today. Well, I thank you very much for your time today. I will see you on the 7th if not sooner, because I do think we have some other issues coming up in Edgemere. But it was good to see you guys.

And the Court will stand adjourned for the day.

MS. VANDESTEEG: Thank you, Your Honor.

MR. TAYLOR: Thank you, Your Honor.

COURTROOM DEPUTY: Thank you, Your Honor.

* * * * *

C E R T I F I C A T I O N

We, DIPTI PATEL and LIESL SPRINGER, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Dipti Patel

DIPTI PATEL

/s/ Liesl Springer

LIESL SPRINGER

J&J COURT TRANSCRIBERS, INC. DATE: October 6, 2023

Exhibit H

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Michelle V. Larson

Signed February 6, 2023

United States Bankruptcy Judge

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

In re:	§	**Chapter 11**
NORTHWEST SENIOR HOUSING CORPORATION	§	**Case No. 22-30659**
Debtor.	§	
NORTHWEST SENIOR HOUSING CORPORATION,	§	
Plaintiff,	§	
v.	§	**Adv. Pro. No. 22-03040**
INTERCITY INVESTMENT PROPERTIES, INC. AND KONG CAPITAL, LLC,	§	
Defendants.	§	

ORDER REGARDING COURT'S *IN CAMERA* REVIEW OF CERTAIN DOCUMENTS IN CONNECTION WITH PLAINTIFF AND DEFENDANTS' MOTIONS TO COMPEL PRODUCTION

This Order addresses a discovery dispute in the above-captioned adversary proceeding (the "**Adversary Proceeding**") that Northwest Senior Housing Corporation (the "**Plaintiff**" or "**Debtor**") has brought against Intercity Investment Properties, Inc. ("**Intercity**") and Kong Capital, LLC ("**Kong**") (collectively, the "**Defendants**"). On August 23, 2022, the Plaintiff filed its *Motion to Compel Defendants to Respond to Discovery Requests* ("**Plaintiff's Motion to Compel**").[1] On August 26, 2022, the Defendants filed their *Motion to Compel Discovery Compliance from Plaintiff* ("**Defendants' Motion to Compel Plaintiff**")[2] and *Brief in Support*.[3] On the same day, the Defendants filed their *Motion to Compel Discovery Compliance from UMB Bank, N.A.* (the "**Defendants' Motion to Compel UMB**")[4] and *Brief in Support*.[5] All three motions to compel were subsequently objected to by the parties subject to each respective motion.[6]

On September 12, 2022, the Court held a hearing on the motions to compel. Finding the issues underlying the motions not yet ripe for ruling or sufficiently narrowed for *in camera* review, the Court advised the parties to continue to work toward resolving the underlying disputes and therefore did not immediately rule on the motions. Subsequently, the Court thereafter held multiple status conferences regarding the parties' efforts.[7] Despite narrowing the disputes, the parties were unable to resolve all underlying issues in the motions and agreed to provide a sampling to the Court of the various productions for *in camera* review. The Court took the motions under advisement, and the parties subsequently provided the Court with a sampling of their productions. During the pendency of the Court's *in camera* review, the Plaintiff filed under seal its *Motion for Leave to*

[1] Dkt. No. 98.
[2] Dkt. No. 106.
[3] Dkt. No. 107.
[4] Dkt. No. 109.
[5] Dkt. No. 110.
[6] Dkt. Nos. 119–120, 132–133.
[7] The Court held these status conferences on September 21, September 29, and October 6, 2022.

Supplement the Record on its Motion to Compel (the "**Motion to Supplement**")[8] requesting the Court allow the Plaintiff to supplement the Court's review of the Plaintiff's Motion with certain documents. On October 26, 2022, the Court held a hearing on the Motion to Supplement. No parties objected to the relief requested, and the Court granted supplementation of the record.[9]

After considering the briefing, oral arguments of counsel, and *in camera* review of documents provided, the Court concludes that the motions to compel should be **GRANTED, in part, and DENIED, in part,** as set more fully herein. The following constitutes the Court's analysis.

I. Relevant Background.

The Debtor filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code on April 14, 2022.[10] On the same day, the Debtor filed its adversary Complaint alleging certain causes of action against Intercity, the Debtor's landlord under a lease of the property entered into in November of 1999 (the "**Ground Lease**"), and Kong, the alleged agent, business partner, and/or consulting expert of Intercity.[11] The Plaintiff alleged seven (7) causes of action against Intercity and/or Kong, including:

(1) Breach of Contract (NDA) against Intercity;

(2) Promissory Fraud against Intercity;

(3) Tortious Interference with Existing Contractual and Business Relations against both Defendants;

(4) Tortious Interference with Prospective Contractual and Business Relations against both Defendants;

[8] Dkt. No. 196.
[9] Dkt. No. 218.
[10] Voluntary Petition for Non-Individuals Filing for Bankruptcy, Case No. 22-30659-MVL, Dkt. No. 1 (Bankr. N.D. Tex. 2022).
[11] Dkt. No. 1.

(5) Civil Conspiracy against both Defendants;

(6) Equitable Subordination against Intercity; and

(7) Reformation of the Lease against Intercity.[12]

The Plaintiff subsequently withdrew its cause of action for tortious interference with existing contractual and business relations,[13] and the Court dismissed the Plaintiff's cause of action for tortious interference with prospective contractual and business relations without prejudice to repleading.[14]

Central to the instant Motions to Compel are certain essential facts. First, Intercity engaged Kong under a consulting services agreement (the "**Consulting Agreement**") dated December 13, 2021.[15] It appears, based on the representations of counsel at the status conferences on the instant motions, that communications between Intercity and Kong prior to the entry of the Consulting Agreement have been produced.[16] Second, in January 2022, Intercity chose to change its counsel and employed Levenfeld Pearlstein, LLC ("**LP**"), the Defendants' current lead legal counsel in this case.[17] LP adopted the Consulting Agreement and chose to include Kong in the control group.[18] Third, on February 22, 2022, LP sent correspondence (the "**Intercity Letter**") to

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[12] *See id.*
[13] Dkt. No. 58 at 23–24.
[14] Dkt. No. 99 at 12–15.
[15] Defs.' Ex. 8 (Consulting Agreement between ICI and Kong dated Dec. 13, 2021). The Defendants, by their argument and pleadings, used a date of December 14, 2021 for the Consulting Agreement. *See, e.g.*, Dkt. No. 120 at 8 ("ICI thus engaged Kong under the terms of a letter agreement for consulting services dated December 14, 2021[.]"). However, the Consulting Agreement produced provides for the earlier date. Defs.' Ex. 8. The December 14, 2021, date appears to come from another version of the agreement, also signed, with added "in anticipation of litigation" language. Defs.' Ex. 9-B. This version was produced as an exhibit to LP's supplement to its engagement letter, dated January 11, 2022. *Id.* For purposes of the assertion of privilege, the Court has chosen December 13, 2021, the date of the original Consulting Agreement, as the operative date. *See* Defs.' Ex. 8.
[16] The Defendants had previously not produced these documents, but it is the Court's understanding that they have since been produced and are not subject to the Court's instant ruling.
[17] Pl.'s Ex. "R" (supplement to engagement letter dated Jan. 10, 2022 and engagement letter dated Jan. 7, 2022); Dkt. No. 120 at 9. There has been no assertion that either LP or Jackson Walker LLP represented Kong prior to the adversary case, though they did begin representing both Defendants once the adversary was filed. Dkt. No. 98 at 7 n.8.
[18] Pl.'s Ex. "R" (supplement to engagement letter dated Jan. 10, 2022); Defs.' Ex. 9 (same).

Edgemere representatives and Lifespace Communities, Inc. ("**Lifespace**"), as well as their respective counsel, counsel to UMB Bank, N.A. ("**UMB**"), the Texas Attorney General's Office, the Texas Department of Insurance, and the Edgemere Residents' Association.[19] Therein, Intercity informed the various constituencies of its concerns regarding the Edgemere property, explaining that rent had not been timely paid and that the Ground Lease would terminate the following month.[20] Notably, Intercity informed the parties that it had engaged Kong as a "go-forward solution" for the residents to "convert the building from a CCRC into a senior living rental facility."[21] Fourth, the Debtors and UMB responded to the Intercity Letter almost immediately, threatening litigation based on perceived disclosures of confidential information in violation of a non-disclosure agreement between the parties entered into in connection with a forbearance agreement.[22] Less than two months later, on April 14, 2022, the Debtors filed the Chapter 11 cases and commenced the Adversary Proceeding.[23]

II. Analysis.

As a preliminary note, the Court understands that production in this case is ongoing and that certain documents at issue in these Motions to Compel have been mooted by such production. The Court only intends to rule on the distinct legal questions presented as live at the most recent substantive status conference on the motions held on October 6, 2022. Those legal questions are: (1) whether Kong was a consulting expert of Intercity; (2) whether Kong and Intercity share a common interest privilege; (3) whether certain communications with Kong are protected by the

[19] Dkt. No. 98 (Ex. 6).
[20] *See id.*
[21] *Id.*
[22] *See* Defs.' Ex. 10 (February 23, 2022 letter from Sidley Austin LLP to LP); Dkt. No. 120 at 10 ("[C]ounsel for both the Debtors and UMB sent vitriolic responses to the Stakeholder Notice Letter, asserting a breach of the NDA and placing blame on ICI, while still failing to outline a plan for resolution of the pending Lease defaults.").
[23] *See* Dkt. No. 1; Voluntary Petition for Non-Individuals Filing for Bankruptcy, Case No. 22-30659-MVL, Dkt. No. 1 (Bankr. N.D. Tex. 2022).

attorney-client privilege; and (4) whether a common interest privilege exists between UMB, Lifespace, and the Plaintiff.[24] The following shall constitute the Court's rulings thereon:

A. Kong and the Consulting Expert Privilege

The Defendants failed to meet their burden of demonstrating that Kong was a consulting expert retained in anticipation of litigation. The Defendants claim that Kong was a consulting expert retained in anticipation of litigation to provide its expert opinion as to certain impending issues, including: the accuracy and significance of the Edgemere's financials; the feasibility of a restructuring; the viability of any bankruptcy plan the Debtor would provide as part of a Chapter 11 case, and ICI's potential objections to a bankruptcy plan.[25] The Defendants point the Court to the Consulting Agreement, which explicitly notes that Kong had been engaged in anticipation of litigation.[26] The Plaintiff claims that Kong was not retained for litigation purposes; instead, the Plaintiff asserts that Kong was retained for a purely business purpose: transitioning the Edgemere to a rental-based community and maximizing the profitability of Intercity's interest in the property.[27] Additionally, the Plaintiff argues that the consulting expert privilege should not be extended to Kong since it was an actor in the factual circumstances underlying the present lawsuit.[28] The Court finds that the Defendants have failed to meet their burden of proving that Kong was engaged for anything other than the business purpose asserted by the Plaintiff. As such, the Court finds that Kong was not a consulting expert and orders production of the underlying communications.

[24] Based on the Court's understanding at the most recent status conference, the issue of whether some privilege (consulting expert) existed regarding FTI Consulting is *not* live. The Court's ruling does not reach that question.
[25] Dkt. No. 120 at 17–18.
[26] *See id.* at 8; Defs.' Ex. 9-B (Consulting Agreement dated December 14, 2021).
[27] Dkt. No. 93 at 13.
[28] *Id.* at 14–15.

The party resisting discovery has the burden to prove that the asserted privilege applies.[29] The consulting expert privilege stems from Rule 26 of the Federal Rules of Civil Procedure (the "**Federal Rules**"), made applicable to this Adversary Proceeding by Rule 7026 of the Federal Rules of Bankruptcy Procedure, which makes clear that a party ordinarily cannot discover consulting expert work product, defined as that of "an expert who has been retained or specially employed by another party *in anticipation of litigation* or to prepare for trial and who is not expected to be called as a witness at trial."[30] The Fifth Circuit has interpreted "anticipation of litigation" to mean the party had reason to anticipate litigation and "the primary motivating purpose behind the creation of the document was to aid in possible future litigation."[31]

The Court finds that Kong is not a consulting expert as it was not retained in anticipation *of litigation*. First, as a preliminary note, the Court notes that Intercity opted to *not* have a Kong or Intercity representative testify. This choice severely handicapped the Court's fact finding, particularly in light of the recognition that Kong and Intercity contemplated, from time to time, two distinct roles for Kong. For example, there was no testimony about how often Kong had worked as a litigation consultant, about its role in prior cases, or any other testimony regarding its qualifications and expertise. These are questions that the Court would have expected answered by any party seeking to assert the consulting expert privilege, let alone one that found itself a named defendant in an adversary proceeding. Yet, the limited evidence presented to the Court reflected

[29] *Hodges, Grant & Kaufmann v. United States*, 768 F.2d 719, 721 (5th Cir. 1985); *see also see also Mims v. Dallas County*, 230 F.R.D. 479, 484 (N.D. Tex. 2005) ("The burden is on the party who seeks work product protection to show that the materials at issue were prepared by its representative in anticipation of litigation or for trial.").
[30] Fed. R. Civ. P. 26(b)(4)(D) (emphasis added).
[31] *In re Kaiser Aluminum & Chem. Co.*, 214 F.3d 586, 593 (5th Cir. 2000); *see also Mims*, 230 F.R.D. at 483 ("A document need not be generated in the course of an ongoing lawsuit in order to qualify for work product protection. However, 'the primary motivating purpose' behind the creation of the document *must* be to aid in possible future litigation.") (emphasis added).

something much more akin to a business partnership or joint venture, rather than a litigant-expert relationship.[32]

The Defendants failed to meet their burden to show that the primary motivating purpose behind Kong's engagement was for *anything* more than the *business purpose* of transitioning the Edgemere into an alternative business model, if and when Intercity took control of the property. Notably, by Intercity's own admission, it was Kong who reached out initially to Intercity, which is certainly atypical of a litigant-expert relationship.[33] It appears that Kong, an "active participant in the senior living industry, with experience in both strategic investments as well as active management and operations" became aware of the Edgemere through the Office of Attorney General and took it upon itself to review the Edgemere's financials on the Electronic Municipal Market Access ("**EMMA**") system and reach out to Intercity as landlord.[34] It was only then that a partnership was formed between the parties. Did the parties enter into a consulting agreement? Yes, they did. But it should be noted that the first *signed* draft of the Agreement, dated December 13, 2021, prior to LP's retention, said nothing of "anticipation of litigation."[35] That language only appeared subsequently, produced in connection with LP's engagement as an exhibit to a January 10, 2022 engagement letter addendum.[36] In fact, the only notable difference between the consulting agreement dated December 13, 2021, and the consulting agreement dated December 14, 2021, is that "in anticipation of litigation" language was added.[37] Frankly, the addition of "in anticipation of litigation" language to the engagement letter appears more likely thoughtful creative lawyering,

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[32] *See e.g.*, Pl.'s Ex. "T" (Letter of Intent draft).
[33] Dkt. No. 120 at 8 ("Kong approached ICI in November 2021 to offer its expertise in the senior living industry and to consult with ICI in connection with the anticipated bankruptcy.").
[34] *Id.*
[35] *Compare* Defs.' Ex. 8 (Consulting Agreement dated December 13, 2021) *with* Defs.' Ex. 9-B (Consulting Agreement dated December 14, 2021).
[36] Defs.' Ex. 9.
[37] *Compare* Defs.' Ex. 8 (Consulting Agreement dated December 13, 2021) *with* Defs.' Ex. 9-B (Consulting Agreement dated December 14, 2021).

but does nothing to show the Court *factually* that Kong was anything other than the entity Intercity chose to couple with to gain back the property or gameplan in the chance that an opportunity to terminate the Ground Lease arose. It is akin to a consultant that goes into the market to find a business partner, operator, or financier. The evidence clearly reflects that Kong was to serve in one or more of those roles, not as a consultant retained in anticipation of litigation. Defendants' counsel conceded at the hearing (and the evidence substantiates) that there were discussions of a relationship more akin to a joint venture before the "pivot" to the Consulting Agreement.[38] However, correspondence subsequent to the execution of the Consulting Agreement belies that any true "pivot" took place.[39]

Further, without even considering private communications, the Defendants are somewhat hamstrung by their own public words. The Intercity Letter itself, dated February 22, 2022, puts forth that Intercity had retained Kong to assist in converting the retirement community to a rental-based community.[40] Intercity retained Kong to maximize the profitability of its interest in the Ground Lease, plain and simple. The Court sees this as undeniably nothing more than a business purpose. Any communications currently being withheld by the Defendants would go to that business purpose. Accordingly, because the Defendants have failed to establish that Kong was a consulting expert retained in anticipation of litigation, the consulting expert privilege is not applicable.

In the alternative, even if the Court were to find that Kong was a consulting expert, the Court finds that exceptional circumstances exist that warrant production pursuant to Federal Rule

[38] *See, e.g.*, Pl.'s Ex. "V" (Feb. 11, 2022 email exchange between Kong and ICI representatives).
[39] By one correspondence, for example, a Kong representative refers to Kong as the future lessee, rather than the Debtors. *See id.* (email between Kong and ICI dated February 11, 2022). Likewise, even the fee under the Consulting Agreement is identical to the $250,000.00 fee described in an ICI draft of a Letter of Intent to be paid only if Kong was successful in taking possession of the Edgemere property. Pl.'s Ex. "T" (Letter of Intent draft).
[40] Dkt. No. 98 (Ex. 6) ("ICI has determined that its expert industry consultant, Kong Capital LLC, has the necessary expertise and personnel to convert the building from a CCRC into a senior living rental facility.").

26(b)(4)(D)(ii). Under the Federal Rules, documents and communications protected under the consulting expert privilege may be discovered upon "showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means."[41] It is a high burden, which has been interpreted in practice to mean showing an inability to obtain equivalent information from other sources.[42]

As already stated, the Defendants failed to meet their burden of proving that Kong was a consulting expert retained in anticipation of litigation. However, even if the Defendants had met that burden, exceptional circumstances in this Adversary Proceeding warrant production. Kong is a named defendant in this Adversary Proceeding. It is undeniable that Kong had its "hands" in all facts related to this case. Without taking any position on the viability of any causes of action, Kong had a distinct role in the factual allegations related to the Plaintiff's cause of action for breach of the NDA, the Intercity Letter, and the retention of Monument as a public relations firm to facilitate conversations with the Dallas Morning News ("**DMN**").[43] All relevant facts in this case appear to run through and around Kong.[44] Kong was not just a mere observer, but an active participant in the events preceding the bankruptcy cases and the Adversary Proceeding.[45] The Advisory Committee Notes to Federal Rule 26(b)(4) clarify that the rule "does not address itself to the expert whose information was not acquired in preparation for trial but rather because he was an actor or viewer with respect to transactions or occurrences that are part of the subject matter of the lawsuit,"

[41] Fed. R. Civ. P. 26(b)(4)(D)(ii).
[42] *See Mercury Luggage Manufacturing Company v. Domain Protection, LLC*, No. 3:19-CV-1939-M-BN, 2022 WL 171295, at *2 (N.D. Tex. Jan. 19, 2022).
[43] Defendant's Ex. 10 (Feb. 23, 2022 letter from Sidley Austin to LP alleging breaches of the NDA by both ICI and Kong, including Kong's communications with a reporter of the DMN).
[44] *See also In re Taxotere (Docetaxel) Products Liab. Litig.*, No. MDL 16-2740, 2018 WL 5669019, at *3 (E.D. La. Nov. 1, 2018) (noting the Rule 26(b)(4) does not address information obtained because the individual was an actor or viewer of the circumstances surrounding the lawsuit).
[45] *Id.* at *4.

in which case, "[s]uch an expert should be treated as an ordinary witness."[46] As one court aptly put, "A person is not a consulting expert if he is an actor with regard to the occurrences from which the tapestry of the lawsuit was woven, whose opinion about causation is premised on personal knowledge and observations made in the course of treatment. An expert whose opinion testimony arises not from his enlistment as an expert but, rather, from his ground-level involvement in the events giving rise to the litigation is not a consulting expert."[47] It would be difficult, *if not impossible*, for the Plaintiff to adequately discover "motive" without such discovery,[48] a crucial aspect of the Plaintiff's case.[49] As such, even if the Court had found that Kong was a consulting expert, the Plaintiff has established exceptional circumstances that would warrant production pursuant to Federal Rule 26(b)(4)(D)(ii).

In sum, the Defendants failed to meet their burden of establishing that Kong was retained in anticipation of litigation, and as such, the Court finds that Kong was not a consulting expert. Even if the Defendants had met their burden, the Court finds exceptional circumstances warrant production. Accordingly, the Defendants are ordered to produce the related discovery absent applicability of a separate privilege or confidentiality assertion.

B. Common Interest Privilege Between Kong and Intercity

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[46] Fed. R. Civ. P. 26 advisory committee's note.
[47] *Taxotere*, 2018 WL 5669019, at *4 (internal quotations omitted).
[48] *Compare Pride Centric Resources, Inc. v. LaPorte*, Civ. Action No. 19-10163, 2020 WL 13608067, at *4 (E.D. La. Nov. 10, 2020) (failure to find exceptional circumstances warranting production when movant had ability to review financial records itself through own expert), and *Galley v. ZOLL Medical Corporation*, 2:18-CV-223-BR, 2019 WL 13193899, at *4 (N.D. Tex. May 21. 2019) (failure to find exceptional circumstances warranting production when movant only provided "speculative" arguments that evidence had been lost or destroyed), *with Willis v. Cent. Mut. Ins. Co.*, No. 08-127, 2009 WL 1787679, at *3–4 (W.D. La. June 17, 2009) (finding exceptional circumstances warranting production when expert's raw data was necessary for interpretation of later tests).
[49] Dkt. No. 1 at 20–22 (asserting promissory fraud cause of action against Intercity); *see also* Dkt. No. 99 at 9–12 (Court's order denying the Defendants' Motion to Dismiss as to Plaintiff's promissory fraud cause of action against Intercity).

The Court finds that the common legal interest privilege applies between Kong and Intercity from February 23, 2022 until April 14, 2022. The Plaintiff asserts that Kong and Intercity had no common interest for which their communications could be privileged; rather, the Plaintiff asserts that the Defendants had nothing more than a "rooting" interest insufficient to trigger the privilege.[50] The Defendants, however, assert that the privilege protects communications and documents from February 23, 2022 until the filing of the Adversary Proceeding on April 14, 2022.[51] During this period, the Defendants assert that they had identical interests, and that they were on notice that litigation was imminent.[52] The Court is persuaded that a palpable threat of litigation existed as of February 23, 2022. Accordingly, the Court finds the common interest privilege applies from that date until the filing of the Adversary Proceeding, *so long as* such communications were made in furtherance of a joint defense.

The common interest or common legal interest privilege, an extension of the attorney-client privilege, has been recognized by the Fifth Circuit but applies narrowly to two types of communications: (1) communications between co-defendants in actual litigation and their counsel; and (2) communications between potential co-defendants and their counsel.[53] For the privilege to apply to potential co-defendants and their counsel, there must be a "*palpable threat of litigation* at the time of the communication, rather than a mere awareness that one's questionable conduct might some day result in litigation[.]"[54] The privilege must be narrowly construed to those parties and

[50] Dkt. No. 98 at 10–11.
[51] Dkt. No. 120 at 23.
[52] *Id.*
[53] *In re Sante Fe Intern. Corp.*, 272 F.3d 705, 710 (5th Cir. 2001); *see also BCR Safeguard Holdings, L.L.C. v. Morgan Stanley Real Estate Advisor, Inc.*, 614 Fed. App'x 690, 703 (5th Cir. 2015).
[54] *Santa Fe*, 272 F.3d at 711 (emphasis added).

their counsel that share a common interest.[55] A shared business interest or rooting interest is insufficient to trigger the privilege.[56]

In the present case, the Plaintiff asserts that any interest shared between the Defendants was a merely a business interest. The Plaintiff points the Court to the Intercity Letter, which sets forth that Kong had been retained by Intercity to "convert the building from a CCRC into a senior living facility."[57] To the Plaintiff, this shows there was nothing more than a shared commercial interest, not a litigation interest subject to the privilege.[58] However, the Defendants do not assert that the common interest privilege applies until *after* the receipt of the Intercity Letter. Specifically, the Defendants claim that, in response to the Intercity Letter, former counsel for the Debtors threatened litigation against both Kong and Intercity.[59] At this time, February 23, 2022, Intercity and Kong claim the common interest privilege was triggered as they were now on notice of an impending lawsuit.[60]

The Court is persuaded by the Defendants' argument on this point. First, it is without question that on February 23, 2022, both Intercity and Kong had been put on notice of a palpable threat of litigation. Counsel for the Edgemere undeniably threatened lawsuits against both Intercity

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[55] *See Nieman v. Hale*, Case No. 3:12-CV-2433-L-BN, 2013 WL 6814789, at *2 (N.D. Tex. Dec. 26, 2013); *see also Santa Fe*, 272 F.3d at 710 ("With respect to [potential co-defendants and their counsel], the term 'potential' has not been clearly defined. However, because the privilege is 'an obstacle to truthseeking,' it must 'be construed narrowly to effectuate necessary consultation between legal advisers and clients.") (citing *In re LTV Sec. Litig.*, 89 F.R.D. 595, 606 (N.D. Tex. 1981)).

[56] *See Tonti Mgmt. Co. v. Soggy Doggie, LLC*, No. CV 19-13134, 2020 WL 9172077, at *4 (E.D. La. June 25, 2020) (citing Santa Fe, 272 F.3d at 713); *United States v. Ocwen Loan Servicing, LLC*, No. 4:12-CV-543, 2016 WL 1031157, at *6 (E.D. Tex. Mar. 15, 2016).

[57] Dkt. No. 98 (Ex. 6).

[58] *Id.* at 10 ("[T]he requested communications among Kong, Intercity, and either party's attorneys must be produced because communications among Kong, Intercity, and either party's attorneys concerning their shared business interests do not constitute a common legal interest sufficient to warrant application of the CLI privilege.").

[59] Dkt. No. 120 at 24 ("The start date of the 'palpable threat of litigation' against both Kong and ICI as codefendants is clearly established. On February 23, 2022, in response to the Resident Letter, counsel for Plaintiff sent a letter to counsel for Defendants accusing both Kong and ICI of numerous breaches of contract.").

[60] *See id.*

and Kong in response to the Intercity Letter,[61] and, in fact, followed through on these threats by filing the Adversary Proceeding on April 14, 2022.[62] The Complaint in this case contains a cause of action for breach of the non-disclosure agreement between the parties, specifically alleging that sending the Intercity Letter was a breach.[63] Second, the Court's review of the documents *in camera* establishes that the relationship between Kong and Intercity during the time period in question had somewhat altered. Though it admittedly appears that the relationship was *initially* formed for the commercial purpose of transitioning the Edgemere property, the receipt of the letter from Edgemere's counsel effectively put both parties in fear of impending litigation.[64] Of course, the Court readily concedes that there was no joint defense agreement between Kong and Intercity. However, this absence in not dispositive in finding whether the privilege is triggered.[65]

Accordingly, the Court finds that the common interest privilege applies from February 23, 2022 until the filing of the Adversary Proceeding to all communications ***in furtherance of the defense of future litigation***.[66] The Court, as required by Fifth Circuit precedent, interprets the privilege narrowly only to extend this privilege to those documents or communications related to the threat of litigation by the Edgemere's counsel. Any communications related to the now

[61] Defendant's Ex. 10 (Feb. 23, 2022 letter from Sidley Austin to LP alleging breaches of the NDA by both ICI *and* Kong); *see also* Defendant's Ex. 11 (Feb. 24, 2022 letter from Sidley Austin to LP).
[62] Dkt. No. 1.
[63] *Id.* at 18 (citing the Intercity Letter as one of the disclosures of confidential information in breach of the NDA).
[64] Dkt. No. 120 at 24 ("Directly accusing Kong and ICI of these violations creates a palpable anticipation of litigation that similarly placed both Defendants on shared ground to defend against those allegations.").
[65] *See, e.g.*, *Santa Fe*, 272 F.3d at 709 n.5 ("The defendants did nothing to show that the communications to third persons were made in anticipation of a common defense. On the contrary, the age of the communications, the lack of evidence of any common defense agreement, and Santa Fe's answers to plaintiffs' requests for admissions made a strong case against the common interest privilege claim."); *Vacco v. Harrah's Operating Co.*, No. 1:07-CV-0663, 2008 U.S. Dist. LEXIS 88158, at *27 (N.D.N.Y. Oct. 29, 2008) ("[I]t is *not necessary* that a formal written common interest agreement have been entered into in order to invoke the common interest privilege; it is enough that there is an oral understanding between the parties toward mutual cooperation.") (emphasis added).
[66] *See In re Harwood P-G, Inc.*, 403 B.R. 445, 460 (Bankr. W.D. Tex. 2009) ("[B]ecause the Fifth Circuit requires (at least) pending litigation for the common interest doctrine to apply, the application of the common interest doctrine is likely *limited to encouraging open communications to assist the lawyer in providing legal advice in the face of pending or existing litigation*.") (emphasis added).

"busted" consulting expert purpose—transitioning the property, marketing, etc.—during this period should be produced.

C. Attorney-Client Privilege

The Defendants assert that the attorney-client privilege protects communications between ICI, Kong, and counsel from discovery, for the period beginning January 7, 2022, the date of LP's engagement, until the present. The Defendants specifically claim they made Kong part of their "control group," and as such, all communications were privileged from the onset of the engagement.[67] The Plaintiff, however, claims that this broad, sweeping assertion of the attorney-client privilege is inappropriate as the doctrine does not apply to protect communications with a purely business purpose or communications that do not reflect legal counsel's advice or mental impression for the purpose of furthering legal representation.[68] As a limiting note to this issue, the Court notes that it has already found that the common legal interest privilege, merely an extension of the attorney-client privilege, applies to communications between Intercity and Kong from February 23, 2022, until the present, so long as they were made in furtherance of a palpable threat of litigation.[69] Thus, the question before the Court is only whether the attorney-client privilege extends backwards from February 23, 2022 to LP's engagement and Intercity's placement of Kong in the "control group."[70] The Court finds it does not.

The attorney-client privilege applies to communications, if it can be shown that: (1) the communication was confidential; (2) made to a lawyer or his subordinate; and (3) for the primary purpose of securing either legal opinion or legal services, or assistance in a legal proceeding.[71] The

[67] Dkt. No. 120 at 9 ("ICI asked LP to include Kong within the control group of client representatives who would be involved in attorney-client privileged communications with respect to such anticipated litigation.").
[68] Dkt. No. 98 at 6.
[69] *Santa Fe*, 272 F.3d at 710.
[70] *See* Dkt. No. 120 at 12 (chart demonstrating the Defendants' blanket assertions of overlapping privileges).
[71] *Jolivet v. Compass Group USA, Inc.*, 340 F.R.D. 7, 19 (N.D. Tex. 2021) (citing *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997)).

burden of proof is on the privilege claimant.[72] Determining the applicability of the privilege is a highly fact-specific inquiry by the Court.[73] Because the effect of the attorney-client privilege is to restrict or withhold relevant information from the fact-finder, it has been interpreted narrowly by the Fifth Circuit where only necessary to achieve its purpose.[74]

Here, the Defendants' principal argument as to attorney-client privilege was that LP placed Kong in the control group after LP's engagement and therefore the communications fall within the privilege.[75] Admittedly, as noted by the Defendants, the Fifth Circuit applies the subject matter test in the context of attorney-client privilege in regard to corporate clients.[76] Under this test, communications between counsel and a client's employee or its control group are privileged. Yet, the Defendants ignore the pertinent question of whether the *primary purpose* of the communications was for legal opinion or legal services.[77] Here, for many of the reasons already stated, the Court finds it was not.

Frankly, after *in camera* review, the Court was not persuaded by the evidence presented that the Defendants' primary purpose underlying the communications was anything more than a business purpose. It was the Defendants' burden to show how the attorney-client privilege applied,[78] but as already discussed in relation to the discussion of the consulting expert privilege, the evidence shows that Intercity retained Kong to maximize the profitability of its interest in the

[72] *King v. Healthcare System, L.C.*, 645 F.3d 714, 720–21 (5th Cir. 2011); *Santa Fe*, 272 F.3d at 710.
[73] *King*, 645 F.3d at 721; *Jolivet*, 340 F.R.D. at 20–21.
[74] *Santa Fe*, 272 F.3d at 710.
[75] Dkt. No. 120 at 9. The Defendants, citing to *In re Bieter Co.*, 16 F.3d 929, 938 (8th Cir. 1994), also argue that Kong was the functional equivalent of an employee and thus should be protected under the subject matter test. Dkt. No. 120 at 18. However, upon review of the exhibits and the production *in camera*, it is clear to the Court that Kong was *not* the functional equivalent of an employee so as to be protected from production. The Defendants set out to form a lessor-lessee relationship, not an employer-employee relationship. Pl.'s Ex. "V". Additionally, it is clear that Kong did not take orders from Intercity, nor were such orders given. Rather, the relationship resembles that of a joint venture. *See e.g.*, Pl.'s Ex. "T" (Letter of Intent draft).
[76] *See In re Avantel*, 343 F.3d 311, 321 (5th Cir. 2003).
[77] *See Slocum v. Int'l Paper Co.*, 549 F.Supp.3d 519, 524 (E.D. La. 2021).
[78] *King*, 645 F.3d at 720–21; *Santa Fe*, 272 F.3d at 710.

Ground Lease. Kong itself reached out to Intercity initially in regard to this commercial interest.[79] The services contemplated, as evidenced by the Intercity Letter itself, were specifically for transitioning the property and setting up a go-forward solution for the Edgemere community.[80] During this time period, after LP's engagement and prior to the threat of litigation made by then-counsel for the Debtors, the Court is not persuaded as to how any communications with Kong, ***a real estate private equity firm***, were for the *primary* purpose of legal services. The Court will not extend the attorney-client privilege, a privilege meant to be narrowly tailored under Fifth Circuit precedent,[81] to a party engaged for business purposes, particularly in the face of such little evidence to the contrary.[82]

Accordingly, for the reasons herein, the Court finds the Defendants have failed to meet their burden of establishing the attorney-client privilege extends to Kong during the period after LP's engagement up to February 23, 2022. Accordingly, these documents and communications must be produced.

D. Common Interest Privilege Between Lifespace, UMB and the Debtors

Lifespace, UMB, and the Debtors have failed to meet their burden to establish that the common interest privilege applies to shield production of certain documents related to their preparation for a potential Chapter 11 filing.[83] The Plaintiff and UMB separately assert that a common interest arose between the parties as early as September 1, 2021 in relation to their

[79] Dkt. No. 120 at 8.
[80] Dkt. No. 98 (Ex. 6).
[81] *Santa Fe*, 272 F.3d at 710.
[82] The Defendants also did not argue or present caselaw establishing that a false belief that communications are privileged, specifically as to a party within a "control group", somehow serves to protect these communications, nor does the Court believe it so.
[83] The Plaintiff, in the Court's understanding, does not assert common interest privilege as to certain documents unrelated to the restructuring and has produced these documents to the Defendants. To the extent such documents have not yet been produced, they are hereby ordered to be produced.

preparation for the instant bankruptcy and the Adversary Proceeding.[84] Thus, they claim that documents and communications related to this strategy are privileged. In response, the Defendants assert that no such common interest privilege existed between the parties.[85] The Defendants claim that no unity of interest existed between the parties, that the privilege cannot attach to a nonparty, and that there was no palpable threat of litigation.[86] For the reasons following, the Court finds no privilege applies to communications between UMB and Plaintiff or UMB and Lifespace and orders production.

As stated above, communications between potential co-defendants and their counsel can be protected by the common interest privilege so long as there has been a "palpable threat of litigation at the time of the communication[.]"[87] For the purposes of the common interest privilege, a possible restructuring is "litigation,"[88] particularly in the sense of weighing the competing rights of the debtor against the rights of unsecured creditors.[89] Further, there does not need to be a complete unity of interest *per se*.[90]

Upon a review of those documents produced *in camera*, the arguments of counsel, and the caselaw provided, the Court finds that the common legal interest privilege does not apply to the communications at issue. First, as a preliminary note, the Court was not persuaded by the Defendants' arguments related to UMB's previously denied Motion to Intervene in the Adversary Proceeding.[91] The Court does not consider UMB's Motion to Intervene as persuasive evidence of

[84] Dkt. Nos. 132–133.
[85] Dkt. Nos. 107, 110.
[86] *See* Dkt. No. 107 at 10–16; Dkt. No. 110 at 7–15.
[87] *Santa Fe*, 272 F.3d at 710–11.
[88] *See, e.g.*, *Harwood*, 403 B.R. at 460–62.
[89] *Id.* at 460.
[90] *See, e.g.*, *In re Leslie Controls, Inc.*, 437 B.R. 493, 497 (Bankr. D. Del. 2010); *Harwood*, 403 B.R. at 460–61.
[91] Dkt. No. 107 at 10 ("Plaintiff and UMB have already admitted that they have distinct legal interests—that was the entire basis of UMB's proposed intervention—rendering common interest privilege inapplicable and the Court need not go further."); Dkt. No. 110 at 8.

a distinct or contrary interest between UMB and the Debtor.[92] In fact, *each party* necessarily took the opposite position it had previously taken with regard to the Motion to Intervene as it pertains to Defendants' Motions to Compel.[93] The Court does not give any weight to this argument.

Second, as to UMB and the Debtor or UMB and Lifespace, it is noteworthy that these parties did not enter into a joint defense agreement. Again, the lack of any formal agreement is not necessarily dispositive in determining whether a common interest privilege exists; however, the Court would have expected to see such an agreement, particularly in this instance where UMB, Lifespace and the Plaintiff claim an interest *many* months before the Defendants' conduct at issue in this Adversary Proceeding or the filing of the Chapter 11 cases.[94] The parties claim an overarching strategy to work together towards a restructuring, but oddly *never* formalized this strategy. This is somewhat noteworthy given that the evidence reflected that UMB *did* enter into a joint defense agreement with its noteholders.[95] The lack of such an agreement is at least *some* evidence against finding a common interest exists.

Third, and most importantly, the Court finds that the Plaintiff and UMB have failed to meet their burden, by virtue of the evidence presented and documents submitted *in camera*, that there was such an overarching strategy between the parties so that all communications would be privileged. The Debtors and UMB, its secured lender, are distinct and separate parties with their own sets of counsel and independent advisors addressing often distinct, separate legal and business

[92] *See* Dkt. No. 14 (Trustee's Motion for Leave to Intervene and File Complaint in Intervention and Brief in Support); Dkt. No. 61 (order denying intervention).
[93] *See, e.g.*, Dkt. No. 31 (Defendants' Joint Objection to Motion to Intervene).
[94] *Santa Fe*, 272 F.3d at 709 n.5 ("The defendants did nothing to show that the communications to third persons were made in anticipation of a common defense. On the contrary, the age of the communications, the lack of evidence of any common defense agreement, and Santa Fe's answers to plaintiffs' requests for admissions made a strong case against the common interest privilege claim.").
[95] Dkt. No. 110 at 13 n.3 ("Interestingly, UMB represented that it *does* have a formal joint representation agreement between it and the bondholders, indicating that UMB recognizes the significance of a written agreement for privilege assertions.") (emphasis in original).

issues. Though obviously not dispositive in determining these parties' relationship pre-petition, their actions post-filing are at least somewhat indicative of the reality of their relationship. What has been described as a common interest in these cases, an overarching strategy and unity of interests in regard to the bankruptcy, dissolved significantly for a time post-petition. UMB quickly determined that litigation was not a feasible "reorganization strategy," that the initial plan proposed by the Debtors (and approved by UMB) could not possibly go forward on a timely basis, and that exclusivity should terminate so that UMB could file its own plan.[96] UMB then followed through and filed its own plan, a sale plan pivoting vastly from the proposed strategy of the Debtors in the original plan of restructuring.[97]

More importantly, the evidence provided to the Court reflects that the ebbs and flows of the relationship between these parties also was a reality pre-petition. Perhaps UMB and the Debtors both believed and anticipated that they would need to work in concert to convince Intercity to restructure the Ground Lease, to stave off bankruptcy or proceed with a consensual bankruptcy; nonetheless, the evidence reflected that while these parties were allegedly working in concert, UMB declared a default on the bonds (without discussing it with the Debtors) and took other similar actions in its own interest as well.[98] Simply put, UMB and the Debtor *were not* acting in concert. A common "enemy" or common "adversary," at least under these facts, does not equate

[96] *See, e.g.*, Objection of the Trustee and DIP Lender to the Motion of Debtors for Entry of an Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan, Case No. 22-30659-MVL, Dkt. No. 639 (Bankr. N.D. Tex. 2022).
[97] Plan of Reorganization of the Trustee and DIP Lender Dated November 2, 2022, Case No. 22-30659-MVL, Dkt. No. 752 (Bankr. N.D. Tex. 2022).
[98] *See* Dkt. No. 107 at 13; Dkt. No. 108 at 79–80 (Ex. D - Notice of Default letter from UMB to Plaintiff on October 18, 2021).

to a common interest. The Court is wary to extend the privilege to parties whose relationship appears to be so consistently (and understandably) in flux without more evidence to the contrary.[99]

The Court reviewed the authority presented by UMB and the Debtors and recognizes that some bankruptcy courts have found a common interest privilege between a debtor and its creditor from time to time. The Court does not find these rulings on par to the facts in the present case.[100] For example, the Debtors cite to *Harwood*.[101] In *Harwood*, the bankruptcy court found a common interest between the debtors, lenders, and the committee when those parties agreed to work together for the ultimate purpose of confirming a plan to recover/distribute the assets of the debtor by pursuing the debtor's causes of action against a third party.[102] That common interest was the pursuit of certain causes of action, not necessarily an overarching bankruptcy strategy like alleged here.[103] Likewise, UMB cites to *Mortgage & Realty Trust*.[104] In *Mortgage & Realty Trust*, while the bankruptcy court did extend the common interest privilege to a creditors committee and a debtor, the interest itself regarded the claim of a third party, which eventually turned into litigation.[105] The interest was *not* some overarching strategy in how to proceed in bankruptcy, but rather a common interest in opposing a specific claim made in the bankruptcy case, which ripened into the litigation.[106]

The Court concedes that UMB and the Debtor might have had compatible and even somewhat similar *financial* goals, but they did not have a *common interest*. Put simply, a "rooting

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[99] Dkt. No. 107 at 5 ("UMB's legal interests in this bankruptcy are diametrically adverse to Plaintiff's legal interests, which is no more perfectly illustrated than by UMB's Notice of Acceleration and Set Off of all amounts due from Plaintiff on February 24, 2022.").
[100] *See, e.g.*, *Harwood*, 403 B.R. at 460–62; *Value Prop. Tr. v. Zim Co. (In re Mortg. & Realty Tr.)*, 212 B.R. 649, 453–54 (Bankr. C.D. Cal. 1997).
[101] Dkt. No. 132 at 6.
[102] *Harwood*, 403 B.R. at 460–62.
[103] *See id.*
[104] Dkt. No. 133 at 20.
[105] *In re Mortg. & Realty Tr.*, 212 B.R. at 453–54.
[106] *See id.*

interest" against the Landlord, or better said, in support of a restructured lease, is not enough to trigger the privilege *under these facts*.[107] Expanding this privilege to a secured lender/creditor, with no joint defense agreement in place and *minimal* evidence presented, is unjustified on these facts. There are certainly instances in which parties to an impending bankruptcy proceeding could have a common interest as to trigger the privilege. This is not one of those instances.

The Plaintiff, UMB, and Lifespace have failed to meet their burden to show the common interest privilege applies to their prepetition communications. Accordingly, any documents related thereto must be produced.

III. Conclusion.

A wise, but fictional, Montana rancher, John Dutton, once said, "Lawyers are the swords of this century." These discovery disputes and the impressive skill of the attorneys that litigated them prove that quote true. These are complex issues, and the Court took great pain in its review of the *in camera* discovery and related caselaw in reaching what it believes to be the correct decision on these facts. The Court hopes this ruling provides clarity for the parties as they continue forward to the resolution of the Adversary Proceeding. Accordingly, it is hereby

ORDERED that Plaintiff's *Motion to Compel Defendants to Respond to Discovery Requests* [Dkt. No. 98] should be **GRANTED, in part, and DENIED, in part,** as set forth herein; it is further

ORDERED that Defendants' *Motion to Compel Discovery Compliance from Plaintiff* [Dkt. No. 106] should be **GRANTED**, as set forth herein; and it is further

ORDERED that Defendants' *Motion to Compel Discovery Compliance from UMB Bank, N.A.* [Dkt. No. 109] should be **GRANTED**, as set forth herein.

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[107] In the Plaintiff's Motion to Compel, the Plaintiff itself readily admits that a rooting interest is insufficient to form a common interest. Dkt. No. 98 at 10 (collecting cases); *see also Ocwen*, 2016 WL 1031157, at *6.

###END OF ORDER###

EXHIBIT 4

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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)
Leif M. Clark, Trustee of the Edgemere Litigation Trust Plaintiff, v Intercity Investment Properties, Inc., and Kong Capital LLC, Defendants.	Adv. Pro. No. 22-03040 (MVL)

DEFENDANTS' SUPPLEMENTAL BRIEF REGARDING
FTI CONSULTING, INC. DOCUMENTS

[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.

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Adversary Defendants Intercity Investment Properties, Inc. ("ICI") and Kong Capital LLC ("Kong" and, with ICI, the "Defendants") hereby file their *Supplemental Brief Regarding FTI Consulting, Inc. Documents*.

I. PRELIMINARY STATEMENT

Defendants' *Omnibus Motion to Compel* (the "Omnibus Motion," ECF 363), *Motion to Compel Production by Plaintiff* (the "Motion to Compel Plaintiff," ECF 362), and *Supplemental Motion to Compel Production of FTI Consulting, Inc. Documents* (the "FTI Motion," ECF 386) sought to compel the Plaintiff and FTI Consulting, Inc. ("FTI") to produce non-privileged documents. The referenced motions were initially heard on November 9, 2023, with certain matters continued for further hearing on November 29, 2023. During the November 29, 2023 hearing, the Court directed supplemental briefing on the matters advanced here.

There are three remaining defects regarding FTI's production:[2]

a. Rachel Chesley Communications: The Plaintiff has already agreed that any communications from or to FTI's Rachel Chesley (the "Chesley Communications") are due to be produced. To the extent there is any disagreement on this issue, the Defendants submit that because Ms. Chesley was responsible for FTI's public relations functions, any communications with her were primarily public relations-related in nature, not legal.

b. Communications with FTI and Third Parties (Other than GrayRobinson): The Plaintiff has already agreed that any communications with FTI that also include third parties other than GrayRobinson (the "Third-Party Communications") are due to be produced.[3]

[2] When we reference "FTI's production," we mean the production of documents produced or withheld by FTI in response to a subpoena served on that entity. The FTI Motion was resolved by FTI furnishing all of its responsive documents—non-privileged and purportedly privileged alike—to Plaintiff so that Plaintiff, as the party advancing that certain documents were due to be withheld, would be the one to make those arguments.

[3] For the avoidance of doubt, Plaintiff also has not agreed that communications between FTI and Lifespace or Lifespace's representatives are due to be produced. As explained below, however, they are.

c. Pre-Petition Communications with FTI: The Plaintiff asserts that pre-petition communications with FTI's Chad Shandler and FTI's other finance professionals (the "FTI Communications") are privileged and/or are entitled to work-product protection. The Defendants submit that neither privilege nor work-product protection applies.

II. BACKGROUND

A. Procedural Background

The Defendants seek production of the Chesley Communications, the Third-Party Communications, and the FTI Communications. As noted on the record at the November 29, 2023 hearing, the Plaintiff agreed to produce the Chesley Communications and the Third-Party Communications. This brief therefore focuses on the FTI Communications. At the November 29, 2023 hearing, the Court instructed the parties to submit supplemental briefing and to meet and confer regarding the issues raised in this brief.

Defendants reached out to on December 5, 2023 to outline the issues raised here, to solicit further discussion, and to establish an agreed briefing schedule. Plaintiff did not respond. Defendants therefore submit the parties have reached an impasse with respect to the FTI Communications. The remainder of this brief will set forth why the FTI Communications are neither privileged nor entitled to work-product protection.

B. Factual Background

Generally speaking, Plaintiff alleges that in or around November 2021 Defendants hatched a plan under which ICI would terminate its Ground Lease with Edgemere, and Kong would assume management of the Edgemere community with an eye to converting it from its failed entrance fee model to a rental fee model.[4] As part of that plan, Plaintiff alleges, Defendants publicly disclosed

[4] For the avoidance of doubt, Defendants here are describing the allegations of the operative Complaint, not agreeing with them.

Edgemere's confidential—albeit publicly available—financial information through the *Dallas Morning News* in late February 2022, which in turn caused Edgemere's bankruptcy filing because potential residents were not interested in living in a CCRC in the midst of financial collapse.

FTI's engagement letters tell a different story. Edgemere's former counsel engaged FTI in February 2021—some seven months before Defendants are alleged to have even formed their plan, much less acted on it—to perform a variety of services for Edgemere's former counsel.[5] Those services included assessing Edgemere's books and records, its financial statements, its operations, and its facilities. The services included also forward-looking consulting services, including the formulation of "recapitalization and debt restructuring alternatives, if necessary."

On February 1, 2022—before the publication of any of the *Dallas Morning News* articles—FTI's scope of services was expanded to include bankruptcy-specific tasks, such as analyzing "proposed transactions for which Bankruptcy Court approval is sought" and preparing Edgemere's "Schedules of Assets and Liabilities, Statements of Financial Affairs and Monthly Operating Reports."[6] In other words, by February 2021 Edgemere already was exploring financial restructuring, and had started planning its bankruptcy case by February 1, 2022 before the publication of the *Dallas Morning News* article that forms the basis of Plaintiff's chief allegations in this proceeding.

FTI's Chad Shandler told yet another story in his September 2022 declaration.[7] Shandler averred that FTI was engaged in 2021 *not* by Edgemere's attorneys, but rather by Edgemere. He

5 FTI Engagement Letter, available at Bankr. Dkt. 29.

6 Addendum to FTI Engagement Letter, available at Bankr. Dkt. 29.

7 Bankr. Dkt. 657.

further expressed that since his February 2021 engagement, he became "familiar with the Debtors' day-to-day operations, business, financial affairs, and books and records" because he had "reviewed the financial statements, observed management in their daily business, and discussed the business with employees, Debtors' counsel, and boards of directors." And indeed, since "well before the Petition Date," Edgemere already had "evaluated various business models and explored multiple alternatives for reorganizing in Chapter 11." Thus, in Shandler's telling, he was engaged by Edgemere as a turnaround consultant, not as an adjunct to Edgemere's outside counsel.[8]

FTI's privilege log tells a fourth story. While Plaintiff alleges that Defendants caused Edgemere's bankruptcy through their acts beginning in or around November 2021, FTI's privilege log shows those allegations to be false. Indeed, the very first entry on that log is a February 3, 2021 email from FTI's Chad Shandler to Edgemere's former outside counsel that, according to the description in the log, related to Edgemere's "restructuring, bankruptcy, adversary proceeding, and/or communications regarding the same." Thus, according to FTI (or Plaintiff—it is not entirely clear who prepared the privilege log), Edgemere's plans to restructure long pre-dated anything Defendants did or failed to do. Indeed, according to the log, FTI and Edgemere were *preparing for this very adversary proceeding in February 2021—nearly a year before Defendants are alleged even to have met one another*.

In short, FTI, Plaintiff and Edgemere evidently cannot agree on precisely what FTI did or when or why. But what is clear is that FTI undertook a wide-ranging and long-running examination of Edgemere's finances and operations. What is equally clear is that FTI, in doing so, communicated with Edgemere, Lifespace, and others by email—indeed, such emails comprise the

[8] Shandler was not alone in that understanding. Documents produced by Lifespace's PR firm, Ground Floor Media, similarly show that Jesse Jantzen considered *Edgemere*, not Edgemere's counsel, to be FTI's client.

vast majority of the FTI Communications. Edgemere's emails, however, did not reside on Edgemere servers. Rather, they resided on Lifespace servers and were, at all times, accessible by Lifespace. Indeed, as has been explained to the Court myriad times, when the time came for Lifespace and Edgemere to produce documents in this proceeding, Lifespace compiled all of them and furnished them to Edgemere's counsel for review and production because it was *Lifespace* that had access to them.

Ultimately, of course, Edgemere commenced this bankruptcy case and engaged FTI as an Estate professional. FTI—and Chad Shandler in particular—served as a testifying expert for Edgemere and furnished a report with respect to same. As made clear from Mr. Shandler's report and his declaration, Mr. Shandler's expressed opinions relied heavily on the information gleaned from his firm's longstanding pre-petition engagement.

III. ARGUMENT

The Federal Rule of Evidence apply to this adversary proceeding. *See* Fed. R. Evid. P. 101 (The Federal Rules of Evidence apply to proceedings in United States courts.); Fed. R. Evid. 1101(a) (the Federal Rules of Evidence "apply to proceedings before . . . United States bankruptcy and magistrate judges."); Fed. R. Evid. 1101(b) (the Federal Rules of Evidence "apply in . . . civil cases and proceedings, including bankruptcy . . . cases."); Fed. R. Bankr. P. 9017 ("The Federal Rules of Evidence and Rules 43, 44, and 44.1 F. R. Civ. P. apply in cases under the Code.").

Under Federal Rule of Evidence 501, "[i]n a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision." The claims advanced in this proceeding are governed by the substantive law of Texas; consequently, Federal Rule of Evidence 501 dictates application of Texas law concerning attorney-client privilege.

A. The FTI Communications Are Not Entitled to Attorney-Client Privilege.

1. Texas Law on Attorney-Client Privilege.

"If a party asserts attorney-client privilege under Texas law, they must prove that there was: '(a) a confidential communication; (b) made for the purpose of facilitating the rendition of professional legal services; (c) between or among the client, lawyer and their representatives; and (d) the privilege has not been waived.'" *In re Lopez*, No. 21-10098, 2022 WL 2080187, at *8 (Bankr. E.D. Tex. June 9, 2022); *Hall Phoenix/Inwood v. Hallwood Group Inc. (In re Hallwood Energy, L.P.)*, No. 09-31253-11, 2010 WL 3211688, at *4 (Bankr. N.D. Tex. Aug. 11, 2010); *see also* Tex. R. Evid. 503(b). The party asserting the privilege has the burden to prove it applies. *Peeples v. Honorable Fourth Supreme Judicial Dist.*, 701 S.W.2d 635, 637 (Tex. 1985) ("Any party who seeks to deny the production of evidence must claim a specific privilege against such production. The burden is on the party asserting a privilege from discovery to produce evidence concerning the applicability of a particular privilege"). "If the matter for which a privilege is sought has been disclosed to a third party, thus raising the question of waiver of the privilege, the party asserting the privilege has the burden of proving that no waiver has occurred." *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 649 (Tex. 1985).

Thus, FTI must prove—with evidence—that the FTI Communications were (a) confidential communications, (b) made for the purpose of facilitating the rendition of professional legal services, (c) between or among the client, the lawyer and/or their representatives, and (d) the privilege has not been waived. *In re Lopez*, No. 21-10098, 2022 WL 2080187, at *8 (Bankr. E.D. Tex. June 9, 2022).

Aside from the foregoing, there is another wrinkle in the analysis that independently warrants a determination that the FTI Communications are not privileged: under Edgemere's

confirmed plan, the corporation dissolved on the plan effective date.[9] Although Defendants find no Texas authority holding that dissolution does or does not affect the attorney-client privilege, the "weight of authority . . . holds that a dissolved or defunct corporation retains no privilege." *S.E.C. v. Carrillo Huettel LLP*, No. 13 CIV. 1735 GBD, 2015 WL 1610282, at *2 (S.D.N.Y. Apr. 8, 2015). Consequently, Plaintiff must also establish that Edgemere's dissolution did not, as a matter of law, serve effectively to waive the attorney-client privilege.

2. The FTI Communications Were Not Legal in Nature.

Taking Plaintiff's allegations at face value, vast swathes of the FTI Communications were financial or operational in nature, rather than to facilitate the rendition of legal services. As alleged, Defendants' activities beginning in November 2021 caused Edgemere's bankruptcy. But the FTI Communications long pre-date November 2021. If, as Plaintiff alleges, Edgemere was not considering bankruptcy until November 2021 at the earliest, it stands to reason that the FTI Communications were chiefly financial or operational. What is more, Shandler averred that FTI was engaged by Edgemere to assess and consult on Edgemere's finances and its business operations. It therefore appears that many of the FTI Communications are business communications, not privileged attorney-client communications.

3. The Inclusion of Lifespace on the FTI Communications Either Foreclosed Privilege from Attaching or Waived Privilege.

Under Texas law, the holder of a privilege waives the privilege if he or she "voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged." Tex. R. Evid. 511(a)(1); *see also, e.g., Paxton v. City of Dallas,*

[9] *See* Fourth Amended Plan, Bankr. Dkt. 1241, § 4.6 ("The Plan shall constitute a decree of dissolution with respect to each of the Debtors"); Notice of Effective Date, Bankr. Dkt. 1620 ("Therefore, June 13, 2023, is the Effective Date of the Plan").

509 S.W.3d 247, 263 (Tex. 2017); *Univ. of Tex. Sys. v. Franklin Ctr. for Gov't & Pub. Integrity*, 675 S.W.3d 273, 287 (Tex. 2023), *reh'g denied* (Oct. 20, 2023).

Substantially all of the FTI Communications were directed not only to or from Edgemere's outside counsel, but also to Lifespace.[10] But FTI was not engaged by Lifespace, nor has there been (nor will there be) any showing that Lifespace's input was necessary for FTI or Edgemere's counsel to furnish their services. Consequently, the inclusion of Lifespace on the vast majority of the FTI Communications constituted a third-party disclosure that served either to prevent privilege from attaching in the first place, or to waive it.[11]

While there is a narrow "common-interest" exception to this general rule in Texas Rule of Evidence 503(b)(1)(C) for communications by a client, the client's representative, the client's lawyer, or the lawyer's representative "to a lawyer representing another party in a pending action or that lawyer's representative," application of that exception requires that the communication be "to a lawyer," "made to facilitate the rendition of professional legal services to the client," and the communication must "concern a matter of common interest in the *pending action*." The FTI Communications do not satisfy these requirements because, among other things, there was no pending action during the pre-petition period.

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10 A small handful of the FTI Communications were exclusively between FTI and Edgemere's outside counsel.

11 As explained by the district court: although "the attorney-client privilege extends to communications between 'representatives of the client,' a party invoking the privilege must show that ***each*** person privy to the communication: (1) had the authority to obtain professional legal services on behalf of the client; (2) had authority to act on legal advice rendered to the client; or (3) made or received the confidential communication while acting within the scope of his employment for the purpose of effectuating legal representation to the client." *Navigant Consulting, Inc. v. Wilkinson*, 220 F.R.D. 467, 475 (N.D. Tex. 2004) (emphasis added).

B. The FTI Communications Are Not Entitled to Work-Product Protection.

Work-product protection "works to protect the mental process of an attorney from inquiry by an opposing party" when documents are prepared in anticipation of litigation. *Smith v. Diamond Offshore Drilling, Inc., et al.,* 168 F.R.D. 582, 583 (S.D. Tex.1996) (citing *Hickman v. Taylor,* 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947)); Fed. R. Civ. P. 26(b)(3); *In re Kaiser Alum. & Chem. Co.,* 214 F.3d 586, 593 (5th Cir. 2000), *cert. denied* 532 U.S. 919 (2001). Work-product protection attaches when a document is created "for use in or in anticipation of litigation." *Hodges, Grant & Kaufmann v. U.S. Govt., Dept. of the Treasury, I.R.S.,* 768 F.2d 719, 721 (5th Cir. 1985).

Here, work-product protection is inapplicable as the FTI Communications were not prepared for or in anticipation of litigation. Many of the entries on the FTI Privilege Log date back to February 2021. The assertion that Plaintiff sought or received legal advice regarding "restructuring, bankruptcy, adversary proceeding" at that time (as stated on the privilege log) is directly at odds with Plaintiff's contention that Defendants caused their bankruptcy by way of a plan hatched in November 2021. And of course, the Debtor did not actually file its bankruptcy case until April 2022. Thus, presumably, any entries throughout 2021 were strictly for business consulting work, and accordingly, such correspondence is not privileged and must be produced.

For work-product protection to attach, adversarial litigation must have been reasonably anticipated at the time the communications were made. *See In re Sealed Case*, 146 F.3d 881, 884 (D.C. Cir. 1998) (for work product protection to apply, an attorney must have "had a subjective belief that litigation was a real possibility, and that belief must have been objectively reasonable."). Here, it is unlikely that Edgemere reasonably believed litigation was possible over a year before the chapter 11 case was even filed, and FTI has made no showing to the contrary.

What is more, Federal Rule of Civil Procedure 26(b)(4)(C) excepts from work-product protection communications between a party's attorney and any testifying expert witness required

to provide a report to the extent the communications identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed or identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed. Fed. R. Civ. P. 26(b)(4)(C) ("Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications: (i) relate to compensation for the expert's study or testimony; (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.").

Here, Mr. Shandler provided an expert report pursuant to Rule 26(a)(2)(B). He also provided a declaration (Bankr. ECF 657) (the "Shandler Declaration"). The scope of Mr. Shandler's opinions is broad and, the Defendants submit, encompasses virtually every element of the Debtor's financial condition and specifically the impact (if any) of Defendants' alleged acts and omissions on the Debtor's business. FTI cannot claim work-product protection for communications that form the basis of Mr. Shandler's opinions.

The opinions contained in Mr. Shandler's expert report and the Shandler Declaration include:

- analysis of the ground lease;
- the impact of the Defendants' alleged acts and omissions on the Debtor's business operations;
- adequacy of the DIP budget to finance the chapter 11 cases;
- description of the Debtors' business;

- the Debtors' communications with bondholders;
- factors driving the Edgemere's depressed occupancy rates; and
- alternatives to chapter 11 that the Debtors considered.

Accordingly, communications related to the above topics are not protected from disclosure under the work-product doctrine.

Even if the FTI Communications were once protected, they no longer are. Work-product protection is waived when an attorney (a) voluntarily discloses protected information to the court or does not object when it is offered, or (b) discloses protected information to an adversary or substantially increases the opportunity for an adversary to obtain the information. *Shields v. Sturm, Ruger & Co.*, 864 F.2d 379, 382 (5th Cir. 1989) ("[T]he work-product privilege is waived when the attorney requests the witness to disclose the information or when the attorney discloses the information to the court voluntarily or makes no objection when it is offered."); 34 A.L.R. Fed. 3d Art. 5 (Originally published in 2018) ("Since using the protection to keep documents from one adversary but disclosing the documents to another adversary when it is advantageous does not serve the function for which the protection was established, a disclosure of the work-product to one adversary also operates as a waiver of the protection as to other adversaries."); *Ecuadorian Plaintiffs v. Chevron Corp.*, 619 F.3d 373, 378 (5th Cir. 2010) ("Although work-product immunity is not automatically waived by disclosure of protected material to third parties, disclosure does waive protection if it 'has substantially increased the opportunities for potential adversaries to obtain the information.'").

Any protection afforded the FTI Communications was waived because there was no effort made to keep them from the hands of potential adversaries, namely Lifespace. Lifespace was a creditor by November 2021 yet Lifespace at all times had access to all of Edgemere's

communications. But Edgemere took *no steps* either to claw back FTI Communications already available to Lifespace prior to that point *or* to ensure that from that point forward Lifespace did not have access to new FTI Communications. Thus, no protection attached in the first place and, to the extent one did, it was waived.

IV. CONCLUSION

Accordingly, for the foregoing reasons, Defendants respectfully request that the Court enter an order (a) overruling any and all privilege and protection claims advanced with respect to the FTI Communications and (b) compelling Plaintiff immediately to produce the FTI Communications to Defendants.

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Dated: December 15, 2023

/s/ *Ryan C. Hardy*

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December 2023 a true and correct copy of the foregoing was filed electronically with the Clerk of Court via ECF, which caused a copy of same to be sent by email to all counsel of record.

/s/ *Ryan C. Hardy*
Ryan C. Hardy

EXHIBIT 5

IN THE UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

NORTHWEST SENIOR HOUSING CORPORATION, et al. Debtor.	)	CASE NO. 22-30659-mvl11 DALLAS, TEXAS TUESDAY, MAY 24, 2022 11:38 A.M. CT
NORTHWEST SENIOR HOUSING CORPORATION, Plaintiff, v. SENIOE QUALITY LIFESTYLES CORPORATION, ET AL., Defendants.	)	ADV. NO. 22-30660-mvl11 DALLAS, TEXAS TUESDAY, MAY 24, 2022 11:38 A.M. CT

SECTION 341(a) MEETING OF CREDITORS

UNITED STATES BANKRUPTCY COURT

TRANSCRIPTION SERVICE: ACORN TRANSCRIPTS, LLC
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FOR ANN ADAMS, RESIDENT

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FOR DMB SERVICES

IRA SILVERMAN
FOR ESTATE OF LINDA STEINBERG

MR. CRAFTON
FOR THE CALLAWAYS

WITNESS: MR. HARSHFIELD
VICE CHAIR, TREASURER AND
BOARD MEMBER OF DEBTOR

TUESDAY, MAY 24, 2022; 11:38 A.M.

MR. BUBLICK: We are now on the record. It is 11:38 a.m., Central Time, May 24th, 2022. This is the Section 341 meeting for case numbers 22-30659-mvl11 as well as the jointly administered case 22-30660, and those cases are Senior Housing Corporation, et al., as well as Senior Quality Lifestyles Corporation.

My name is Asher Bublick. I am a trial attorney with the Office of the United States Trustee and the presiding officer of this meeting. This meeting is being is being recorded and parties in interest may request a copy after the meeting today.

At this time, I ask parties to please announce themselves and on whose behalf they are appearing.

I'm sorry to make everyone re-announce themselves. I had done that earlier so I can write you all down, but now I need this for the record.

MR. DUNCAN: John R. Duncan for Carolyn and Johnny Duncan (ph.).

MS. RYAN: Abigail Rushing Ryan with the Office of the Texas Attorney General on behalf of the Texas Department of Insurance.

MR. WILLIAMS: Benton Williams on behalf of the Estate of Patricia Adams.

MR. ISRAEL: Good morning. Harold Israel, Elizabeth

Vanesteeg, and Eileen Sethna on behalf of Intercity Investments, the landlord.

MR. THOMAS: Good morning. My name is Stuart Thomas representing the Estate of Robert Milden.

MS. SMILEY: Rachael Smiley on behalf of Phillimore Family Holdings, LP, and Richard and Jean Huff.

MR. TIBBLES: Michael Tibbles for Marylou Love.

MR. BREWER: Jim Brewer on behalf of Bonnielyn Francis.

MR. CINCLAIR: Richard Cinclair on behalf of the Estate of Margareta Sudbrink.

MR. WINNUBST: Mark Winnubst on behalf of the Lynn Legge Trust.

MS. HARRISON: Janelle Harrison, we have a claim for Lagniappe National Construction.

MR. ADAMS: James Adams on behalf of Ann Adams, the resident.

MS. SHUM: Jennifer Shum (Ph.) on behalf on Phyllis Lisdal (Ph.), current resident.

MR. FRIEDMAN: Alan Friedman (Ph.) on behalf of Betty Jo Mobily Estate (ph).

MS. WILSON: Jane Wilson with the Unsecured Creditors Committee.

MR. BUBLICK: Has everyone announced themselves?

MR. LEWIS: No, Peter Lewis of Scheef & Stone on

behalf of Julia Peavy.

MS. ECKLEBURGER: Kathleen Eckleburger (Ph.) for Jim Eckleburger, both residents of Edgemere.

MR. HARDING: Arthur Harding with Evelyn Tippet (Ph.). Evelyn is the resident of Edgemere. I'm the son-in-law.

MR. CHANDLER: Josh Chandler from FTI Consulting representing the debtor.

MR. GILLIS: Randall Gillis (Ph.), a retired attorney monitoring the proceedings as a member of the public.

MR. DELUISE: Kevin DeLuise from FTI Consulting representing the debtor.

UNIDENTIFIED SPEAKER: (Indiscernible) from FTI with the debtor.

MS. DOLPHIN: Brenna Dolphin of Polsinelli representing the debtors and debtors-in-possession.

MR. BLYTHE: Eric Blythe of Mintz Levin representing UMB Bank.

MR. HARSHFIELD: Nich Harshfield representing Edgemere.

MR. MCCARTIN: Steve McCartin, Foley & Lardner counsel for the Official Unsecured Creditors Committee.

MR. MOORE: Mark Moore, Foley & Lardner also for the Committee.

MR. BUBLICK: Okay. Has everyone announced

themselves. All right.

MR. QUINTO: Rocky Quinto (Ph.) for DMB Services.

MR. SILVERMAN: Ira Silverman (Ph.) for the Estate of Linda Steinberg (Ph.).

MR. BUBLICK: Okay. Is that everyone?

Okay. I just wanted to give a quick introduction to what this meeting is for parties that are on this call that are unfamiliar with what this is. This is the Section 341(a) meeting of creditors. At this meeting -- the meeting is a meeting that debtors -- that Chapter 11 debtors must attend in any bankruptcy proceeding. It's held outside of the presence of a judge and it permits the trustee or in this case the representative of the United States Trustee the chance to review the debtors' petition and schedules with the debtor.

The debtor is required to answer questions under penalty of perjury, and any other matter that may affect the administration of the case or the debtors' right to a discharge. In addition, the United States Trustee's representative may ask questions to ensure that the debtor understands the bankruptcy process.

With that, we will proceed. Okay, so Mr. Harshfield can you please -- what is your title with the debtor?

MR. HARSHFIELD: With the debtor, I'm the vice chair and treasurer.

MR. BUBLICK: Okay. Can you --

MR. HARSHFIELD: As well as a board member.

MR. BUBLICK: -- please. Okay. Very good. And I recognize your name is the name that signed the petition -- oh, excuse me, the schedules and statement of financial affairs. So I appreciate that. So you will be the -- will you be the only person appearing as -- to testify here today?

MR. HARSHFIELD: Yes.

MR. BUBLICK: Okay. Can you please raise your right hand?

MR. HARSHFIELD: Okay.

(Oath Administered; witness sworn)

MR. BUBLICK: Thank you. Okay. I'm just going to quickly note from -- from the outset, I noticed that there were some global notes written that tried to include language about omissions and errors that may exist in the schedules. But I just want to make it clear here that -- did you review the schedules before signing them -- I'm going to repeat my question.

Sir, did you review the schedules before signing them under penalty of perjury?

MR. HARSHFIELD: Yes, I did.

MR. BUBLICK: Okay. Did you list everything in the world that the debtor owns and everyone to whom the debtor owes money?

MR. HARSHFIELD: To the best of my knowledge.

MR. BUBLICK: Are there any -- and are there any amendments necessary at this time?

MR. HARSHFIELD: None that I'm aware of.

MR. BUBLICK: Okay. Did you review the statement of financial affairs before signing them under penalty of perjury?

MR. HARSHFIELD: Yes, I did.

MR. BUBLICK: Okay. Are there any amendments necessary at this time?

MR. HARSHFIELD: None that I'm aware of.

MR. BUBLICK: Okay. So -- so we can both agree that regardless of what those -- what's written in those global notes, you signed those schedules and those statement of financial affairs under penalty -- under penalty of perjury, correct?

MR. HARSHFIELD: Yes, I did.

MR. BUBLICK: Okay. Thank you.

Okay. So I just want to quickly go over some administrative items and then we can go ahead and review these -- the schedules here.

Okay. Okay, so I do see here that counselors did serve -- did file their certificate of service for today's meeting and that's reflected on docket number 151.

Okay. Is the debtor currently operating at the moment, sir?

MR. HARSHFIELD: Yes.

MR. BUBLICK: Okay. And how many employees does the debtor have at the moment, approximately?

MR. HARSHFIELD: Approximately 200.

MR. BUBLICK: Are those all full time?

MR. HARSHFIELD: It would typically be a mix of full time and part time.

MR. BUBLICK: Okay. What would you say is --

MR. HARSHFIELD: Primarily. Primarily full time, though.

MR. BUBLICK: So what's the breakdown, then? Like, two-thirds full time or -- roughly?

MR. HARSHFIELD: Oh, I don't recall that at this point. It's -- that's something -- information we can follow up with.

MR. BUBLICK: Okay. All right.

I'll just note right now that it's -- you said it's mostly full time of the 200?

MR. HARSHFIELD: Yes.

MR. BUBLICK: Okay. Is your payroll current?

MR. HARSHFIELD: Yes, it is.

MR. BUBLICK: Okay. Are your payroll taxes current?

MR. HARSHFIELD: Yes, they are.

MR. BUBLICK: Okay. Is your post-petition debt current?

MR. HARSHFIELD: I'm not sure of the definition of post-position -- post-petition debt. Is that --

MR. BUBLICK: Debt that --

MR. HARSHFIELD: Is your debt payable or what it is it you're --

MR. BUBLICK: Debt that you've accrued after filing.

MR. HARSHFIELD: I believe -- to my understanding, the only debt would be --

MS. DOLPHIN: Mr. Bublick, I'm sorry.

MR. BUBLICK: Yep.

MS. DOLPHIN: This is Brenna Dolphin. Mr. Bublick, I apologize. I don't, I don't want to get off to the wrong foot but I -- I do believe you're asking for a legal conclusion in your question.

MR. BUBLICK: I'm just asking the simple question, whether, you know, if the debtor has taken out debt post-petition and whether it's current or not. It's -- it's part of our routine questions. I don't know what's at issue here.

MR. HARSHFIELD: So the -- correct me if I'm wrong, Brenna, the only new debt that would be involved would be what was approved by the court under the debtor-in-possession financing.

MR. BUBLICK: Mm-hmm.

MR. HARSHFIELD: Am I thinking correctly?

MS. DOLPHIN: Yes, Mr. Harshfield. You're the fact

witness, so absolutely. If that is -- if that is your testimony, then thank you for that.

MR. BUBLICK: Okay.

MR. HARSHFIELD: Yes. I just want to make sure that I'm understanding the definition of debt. Not the -- it's not just straight payables but it's true financial debt. So that would be the -- that would be the only new debt and it is current since there's no -- no payments are required on it at this time.

MR. BUBLICK: Okay. Very good. And -- okay, so I'll note for the record here that you're attorney -- is the lead attorney on this case Ms. Trinitee Green?

MR. HARSHFIELD: Yes.

MR. BUBLICK: Okay. And there was a retainer of $400,000 and then it looks like another one of $300,000 pre-petition; is that right?

MR. HARSHFIELD: Yes, that's what we have.

MR. BUBLICK: Okay. Have you made any -- made any post-petition payments to your attorney?

MR. HARSHFIELD: I don't recall. You know, as far as -- as far as timing of those payments. That's something I'll have to get back with you on that.

MR. BUBLICK: Okay. I -- I could imagine without court's permission -- the court's permission, you wouldn't have -- you would have not made any payments after the filing

to your attorney but --

MR. HARSHFIELD: Oh, right. I just --

MR. BUBLICK: That's fine. If you're -- if you're not certain --

MR. HARSHFIELD: Again, we -- we have -- we have the interim debt approved.

MR. BUBLICK: Mm-hmm.

MR. HARSHFIELD: But again, I just -- I don't know the most payments that we may or may not have made --

MR. BUBLICK: Okay.

MR. HARSHFIELD: -- to the attorney.

MR. BUBLICK: All right. I'll note that the motion to employ the Polsinelli firm is at docket entry number 39. Do you anticipate needing to hire -- hire any professionals in this case? Like, special counsel or an accountant?

MR. HARSHFIELD: None beyond what the -- the advisors that we already have in place which would be FTI Consulting and Polsinelli.

MR. BUBLICK: Right. Okay.

MS. DOLPHIN: There is the retention application pending -- this is Brenna Dolphin of Polsinelli -- related to Gray Robinson, counsel for the board of the debtor.

MR. HARSHFIELD: Yes.

MR. BUBLICK: Mm-hmm.

MS. DOLPHIN: Just to be clear.

MR. HARSHFIELD: Yes, that is correct.

Thank you, Brenna.

MR. BUBLICK: For board of the debtor. Okay. All right.

So now we're just going to go over a few of the administrative requirements that you probably received an email for from the analyst at our office. So that would be right here.

Okay. So first, for the insurance -- for the outstanding insurance items, I note that we are still waiting on a general liability insurance policy. We've received a certificate of insurance but that's not sufficient for our purposes. We need a binder of the declaration policies. We -- we provide -- we received some auto insurance information. But again, we need the actual declaration pages that show the coverage amounts and the vehicles covered.

For workman's compensation --

MR. HARSHFIELD: Okay.

MR. BUBLICK: -- we need the declaration pages as well, there. Professional liability, we need -- again, we need a sufficient proof of the insurance. And if you have any cyber liability policy, you know, please provide a sufficient proof of that as well. So again, you know, sufficient proof doesn't -- consist of the binder or the declaration pages and a certificate of insurance is not sufficient.

MR. HARSHFIELD: Okay.

MR. BUBLICK: For the bank accounts, have you closed your existing bank accounts and transferred those to a debtor-in-possession account?

MR. HARSHFIELD: No, we have not. We still have our operating accounts in place.

MR. BUBLICK: Okay. Do you have an -- do you have an -- an idea of how soon you may get that converted?

MR. HARSHFIELD: I believe our cash management petition was approved.

Brenna, again, I might need some help on insight on that process.

MS. DOLPHIN: A cash management request is approved on an interim basis. We're still working through some issues. This is Brenna Dolphin for the record. We're still working through some issues raised by counsel for the Committee. So the cash management motion has not -- the relief requested there, has not been granted on a final basis at this time.

MR. BUBLICK: Okay. So does that -- okay, so does that -- did the court grant permission then to not open a debtor-in-possession account? I just -- I'm not familiar with that -- with that order provides in relation to that.

MR. HARSHFIELD: Again, with my unfamiliarity with -- with this process, what we have on an interim basis is the use of our current operating cash accounts.

MR. BUBLICK: Oh, okay. Okay, and I'm pulling that up here now. Okay. I see that now. Okay. Okay, and for the monthly operating reports, those were due -- and the first monthly operating report was in fact due yesterday. Do you -- who will be preparing those?

MR. HARSHFIELD: With the assistance of FTI Consulting, preparing those with my accounting staff.

MR. BUBLICK: Okay. Yeah, so just, you know, be aware that the -- the first one was due yesterday for the period of May -- April 14th through April 30th. And we're also -- in addition, you're also required to file periodic reports as required by Rule 2015.3. And that report should be filed no later than seven days from now. And just be aware that --

MR. CHANDLER: Sorry. This is Chad Chandler from FTI. Just so -- just so you're aware, while the -- and this -- well, the first monthly offering report was technically due yesterday. We did get an extension until the end of the month.

MR. BUBLICK: Oh, okay. Thank you for noting that.

And the last thing I'll note here is that your quarterly -- United States Trustee quarterly fees will be delinquent as of July 31st, 2022. Okay. Okay, so I'm just going to -- do you have your schedules and statement of financial affairs in front of you?

MR. HARSHFIELD: Yes, I do.

MR. BUBLICK: Okay. So there's a lot of parties online. So in the interest of everyone's time, I'm going to try and go through my questions very quickly, and leave enough time for everyone to ask their questions. Again, we're going to -- we have a hard stop at two hours, but if there's still plenty of questions and stuff to go through, we will definitely continue the meeting.

So with that, if you could please, for the record, note -- what was the reason for filing bankruptcy?

MR. HARSHFIELD: Liquidity. Lack of liquidity for operations.

MR. BUBLICK: Okay. All right.

So now turning to your schedules, I'm looking at Schedule A/B. So actually, for everyone's convenience, let me actually provide a page number and all that. Okay, so that's going to be docket 240 -- question -- so that'd be -- okay, so I'm looking at docket 240, page 16, accounts receivable.

How much of that 1.2 million, that's 90 days old or less, do you expect will be collectible?

MR. HARSHFIELD: We expect all of it to be collectible. We have third-party payers that at times the -- the claims require resubmittal but -- but we do -- we do expect to collect.

MR. BUBLICK: Okay. And for the amounts that are

over 90 days old?

MR. HARSHFIELD: I'm sorry. What's the question?

MR. BUBLICK: So there's about $1,000 that are in accounts receivable that are over 90 days old. How likely is that to be collectible?

MR. HARSHFIELD: Yes. Yes, we expect to collect that.

MR. BUBLICK: Okay. Okay, so now I'm turning to page 17 of docket 240. So that's referring to the non-publicly traded stock. So for the Augustine Home Health and the Ziegler Link-Age, so you noted a -- you provided a book value of 186,000 for Augustine and 316,000 for Ziegler Link as book value. When you say book value, what is that? Is it, like, the face value of the stock?

MR. HARSHFIELD: So the -- for the Ziegler Link-Age, that would be the amount that has been invested in that equity fund. And then for the Augustine, that would be -- primarily be the earnings that that joint venture has accumulated over the life of the joint venture.

MR. BUBLICK: Okay. So that's not the value -- the current -- it's not -- that's not, like, a market value. That's just what you've earned in that joint venture up till now with Augustine -- in that Augustine joint venture?

MR. HARSHFIELD: That's correct.

MR. BUBLICK: Okay. Okay, so now I'm looking at

page -- let's see, so that -- I'm looking at the -- the vehicles referred to in response to question number 47. So those are all the vehicles listed on page 36. So you got, like, a bunch of Cadillacs. What are those vehicles typically used for?

MR. HARSHFIELD: Resident transportation.

MR. BUBLICK: Okay. And the values -- it says the valuation method is book value, but the valuation -- the value of the debtors' interest is unknown. Was it not possible to use Kelley Blue Book to derive the values?

MR. HARSHFIELD: Quite possibly. We just -- we did not go through that exercise.

MR. BUBLICK: Okay. I would ask that you amend because, I mean, it just seems, you know, that there's stuff here that -- you know, I don't know what the value is, for instance, of a President Bus or a motor -- it looks like a motorcoach. But mostly of these seem like they're readily ascertainable through Kelley Blue Book, these Cadillacs and these personal vehicles. Do we have a deal on that?

MR. HARSHFIELD: I'm sorry, the question. Or I just made a note, that yes, if you would like us to amend -- you would like to amend?

MR. BUBLICK: Yeah, you know to -- you know, to provide, you know, actual values for, you know, it looks like these --

MR. HARSHFIELD: Okay.

MR. BUBLICK: -- dozen cars and busses and motorcoaches. I'm not really sure what that is. Some very large -- a very large bus?

MR. HARSHFIELD: Okay.

MR. BUBLICK: Okay.

MR. HARSHFIELD: Yes.

MR. BUBLICK: And -- okay. So now I'm looking at -- okay, so I'm looking at page 23, of docket 240. So you have resident contracts of $10.8 million here. How did you determine that value?

MR. HARSHFIELD: So that was a value that was determined prior to my appointment with -- with Lifespace and Edgemere. That was -- that was an entry that was recorded as a part of the purchase accounting back in 2019 when Edgemere was acquired. And I don't have -- I don't know the methodology that the ten million was used to arrive at. I do know that that amount has been audited by our independent auditors for a couple years now. So it's been affirmed by them. But I -- I'm not able to tell you exactly how that number was arrived at.

MR. BUBLICK: Huh? Okay. I guess, what's your best definition then of what resident contract denotes?

MR. HARSHFIELD: So it is essentially the -- the future economic value to Edgemere for those agreements. And

that amount is amortized annually over -- for a straight-line method. But if you need more details, that's something I would have to follow up with.

MR. BUBLICK: That's fine. I just wanted to have it clear on the record what that -- what that meant. Okay. Okay, so for -- okay, so I'm looking now at Schedule D. So that's going to be page 27. I'm looking at this $101 million secured claim. It says here that the value of the collateral that supports this claim is unknown. So why is that amount unknown?

MR. HARSHFIELD: We have not had a recent appraisal done on the property.

MR. BUBLICK: Okay. Okay, I'm going to pull up the statement of financial affairs now. So that's going to be docket 241. And we're still on the lead case for Northwest. Okay. And oh, actually, one quick -- other question back to the schedule. So I'm looking at Schedules E/F, that's docket 240 and I'm looking at page 39. And so referring to line 3.66. So for Lifespace Communities, there was a -- there's an unsecured claim for 1.8 million. When was that claim incurred?

MR. HARSHFIELD: So that is the result of since October of 2021, Lifespace has not been collecting the home office allocation. So that's an accumulation of -- over the month of the home office allocation that has not been paid by

Edgemere to Lifespace.

MR. BUBLICK: Okay. So that's accumulated for -- since October of 2021, you said?

MR. HARSHFIELD: Correct.

MR. BUBLICK: Okay. And what does home office allocation comprise?

MR. HARSHFIELD: So home office allocation is -- so Lifespace is not a management company. So there isn't -- there isn't a management fee. Lifespace is the parent company. So for the services rendered by the home office, which is everything you can think of from -- the corporate office would provide. Those expenses are allocated across all the communities that Lifespace owns and -- and that allocation is simply an allocation of the corporate office expenses.

MR. BUBLICK: Okay. Okay, so back to the statement of financial affairs and then we will move on to -- I'll open the floor to questions. So looking here at the -- go to SOFA 2. Okay, so I'm looking at the -- at the sources of income and that's on page 14. And what is -- what are the -- sorry. What is the source of the non-operating income for the debtor?

MR. HARSHFIELD: So those are the results of the resident contracts. There is a refundable portion and a nonrefundable portion. So if you have say a 90 percent return on capital contract, 90 percent of that is refundable to the resident when contingencies are triggered. The nonrefundable

portion which would be the 10 percent is amortized over the life of the resident.

And so the non -- the other non-operating income is the -- is the amortization of the nonrefundable portion of all the resident contracts on an annual basis.

MR. BUBLICK: Okay. Okay, and I'm looking at the transfers now that occurred within 90 days before filing this case. And that's going to be on page 36 of docket 241. So for all of these contractors and providers, are any of those people -- insiders or affiliates of the debtors or its officers or directors?

MR. HARSHFIELD: No, I wouldn't say any persons -- obviously the Lifespace -- transfers to Lifespace are transfers to the parent for reimbursement of expenses. But all other vendors there would not be any insiders or related parties.

MR. BUBLICK: Okay.

MR. HARSHFIELD: That I'm aware of.

MR. BUBLICK: Okay. So I'm going to pull up the -- okay. So then, I don't think I saw any further 90 days to Lifespace, but I did see within the one year.

MR. HARSHFIELD: That is correct.

MR. BUBLICK: Okay. So then the next question -- same thing for the -- for the next question, which is starting on page 53, for the transfers made within one year. Are any

of those transfers made to -- well, clearly the -- like you said the Lifespace. But aside from Lifespace, are any of those transfers made to any affiliates or insiders of the debtors or its officers or directors?

MR. HARSHFIELD: Yes. So towards the -- no officers, directors, towards the end of that schedule, you'll see some transfers to Querencia and Stayton. Those are affiliates.

MR. BUBLICK: Querencia?

MR. HARSHFIELD: Yeah, right after Lifespace Communities in the last page, you'll see -- it starts with Q. Querencia.

MR. BUBLICK: Oh, okay. With a Q, okay.

MR. HARSHFIELD: Yeah. Seniority and Stayton. Those transfers are the result of our cash management --

MR. BUBLICK: Oh, okay.

MR. HARSHFIELD: -- system. So we -- we originally had a policy -- we still do have a policy across our communities that quarterly, any of those inner-company payables are cleared quarterly. But then in September for Edgemere, we started clearing those inner-company transactions on a monthly basis. That's why you see there's no longer any -- of course, there's a little $30. It looks like it may have been -- been an error. But those inner companies are now cleared on a monthly basis.

MR. BUBLICK: Okay. So for the amounts that are

going to Lifespace, are those part of the -- what did we call those? The home office fees, or is that something different?

MR. HARSHFIELD: So the home office fee -- yeah, so the Lifespace it's going to be a combination of home office allocation, salary reimbursement, which is -- there's two employees of Edgemere that are Lifespace employees that are reimbursed from Edgemere, back to Lifespace.

And then there's the shared services reimbursement. And what those are is for any consolidated billing that we would have at the corporate office. Some good examples would be insurance policies, software subscriptions, our benefits program, are all billed and managed at the corporate level. And then we allocate -- it's not even allocation, it's a direct charge to the communities for their portion of those expenses.

MR. BUBLICK: Okay. Okay, so in the interest of time, I'm going to reserve any other questions I have at the end, if there are -- and see where we're at with time. So I want to make sure that we give people who are not represented a chance to ask questions. Otherwise, they'll drop off.

But I also want to make sure the Committee has -- so I guess, let me start like this. For people that are on this call that are not represented on the -- on the Committee, or on the Residents Committee -- can anyone identify themselves who are on the call right now that qualify in that situation,

that are just on this call, and they're not represented by the -- well, actually, there's only one secured party. So I guess everyone qualifies for the presence on the Committee.

All right. So you know what? Let's just start off -- I just talked myself through that. Okay. Let's just start off with -- I'm going to give the Committee 30 minutes first. And then we'll give the Residents Committee 30 minutes. And then we'll -- then we'll open up the floor.

Okay, so again, the Unsecured Creditors Committee, if that person could just identify themselves and you can proceed with questions for 30 minutes.

MR. MCCARTIN:: Yeah. This is Steve McCartin on behalf of the Unsecured Creditors Committee. We actually have retained a financial advisor, Ankura, to assist the Committee and Ankura has been engaged with FTI the financial advisor for the debtor. And they are -- FTI's working with Ankura to provide Ankura with the benefit of this previous learning curve at Edgemere. So we're getting a data dump, if you will, by FTI, that's helping our financial advisors get up the learning curve much quicker.

And we've been in constant contact with Edgemere's counsel, Polsinelli. So we don't really have a lot of questions for today. We really have been asking our questions informally and getting information informally from the debtor or from FTI and its counsel right now.

We do -- I would like to tell people on the call, the Unsecured Creditors Committee, is -- includes, I think, almost exclusively former residents and current residents. There are -- there are -- so the Unsecured Creditors Committee does in fact, represent anyone with an unsecured claim, and that would include a resident refund claim, or a trade creditor.

The vast majority of the unsecured creditor claims listed by the debtor on the schedules filed recently are, of course, resident related claims. I think out of proximately $160 million worth of claims, you know, 156 million-ish are resident claims. A little less than 2 million or insider related claims of Lifespace. And then less than $2 million are trade creditors, you know, people that provided goods and services to Edgemere.

And so there is no separate official residence committee in the case. There's really one Committee, and it represents all unsecured creditors, whether you have a resident refund claim or someone that cut the grass and didn't get paid. But clearly 99.9 percent of the claims are resident claims. And so I wanted to clear that up, if that helps.

MR. BUBLICK: Thank you.

MR. MCCARTIN:: We intend -- we do intend to have a town hall meeting at the Edgemere pretty soon, where the Committee will make itself available to the residents to explain what our role in the case is and what we in fact are

doing to represent the interest of residents and unsecured -- other unsecured creditors, and to answer any questions about the bankruptcy process, the probable timeline, any financial questions that we can answer.

We hope to do that in the next couple of weeks, which I think will be pretty helpful to people to really provide a forum to informally ask questions and get our responses. But having said that, I don't really want to take everyone's time up today with asking questions that quite honestly, we're -- we think we're getting answers to on a cooperative basis right now.

MR. BUBLICK: Okay. Well, that -- okay, that helps a lot. Like, that -- hopefully, we can get through with today's meeting then.

All right. So I guess before I open up the floor, one question I just saw on my list that I wanted to ask the representative was -- so I'm looking back again, sir, at the -- at your schedules document, docket 240.

So you know, you've got assets of about 15 million, liabilities of 261 million. And where are the deposits from the current and past residents?

MR. HARSHFIELD: I'm not -- not sure of the question. I have to maybe walk you through the business model of the CCRC. But you know, the deposits are -- contingent liabilities are on the liability side. How far do you want me

to go explaining how the economic model of the CCRC?

MR. BUBLICK: I guess --

MR. HARSHFIELD: Or --

MR. BUBLICK: Maybe this will -- this will help. So when I'm looking at your -- at the amount -- at the monies you have on hand that your bank account, you know, it's almost $800,000. Does that represent any deposits from these residents past or -- or current?

MR. HARSHFIELD: So there are deposits in escrow that are currently not on the balance sheet for residents that have moved in since September 27th. And that's sitting in an escrow account at Regions Bank. And that is separate from -- like I said, it's separate from the balance sheet of Edgemere. The deposits -- and again, I'm trying to work through -- I was trying through my mind how far you want me to go as far as explaining the business model of the CCRC to actually walk you through the cash flows of the deposits.

But, you know, typically, the deposits or entrance fees, particularly when CCRC was originally built, a substantial portion of those entrance fees are used to help capitalize the construction. And then the business model of the CCRC is intended that there is an ongoing new residents moving in, and a part of -- a big portion of their new deposits is used to fund the refund of the resident that either has moved out or to their estate for residents who have

passed away.

MR. BUBLICK: So I --

MR. HARSHFIELD: I don't know if that fully answers your question or not but I'm just trying to --

MR. BUBLICK: It sounds like it's kind of like a squishy answer then. So in terms of, you know, the $800,000 that are, you know, listed here in the schedules for North -- for Northwest Senior Housing Corporation, so are some of -- does some of that money represent deposits from residents past or current?

MR. HARSHFIELD: It's -- I mean, it's operating funds that would be the result of -- yes, net. What we call net entrance fees received from residents. And then cash flow from other revenues whether it's monthly service fees or third-party fees that we earn. It all factors into our operating cash flow.

MR. BUBLICK: Mm-hmm. Okay. So I guess, whenever a resident leaves --

MR. HARSHFIELD: No, so actually the --

MR. BUBLICK: -- the money --

MR. HARSHFIELD: -- 800,000, none of that is actually, you know, designated as a resident deposit. I'm not sure if that answers your question or not.

MR. BUBLICK: So I guess, if a resident were to leave, you know, in the good times, monies would be paid to

them from one of these accounts to refund them their deposit?

MR. HARSHFIELD: The way the resident contracts work is that a resident refund is triggered when two conditions are met. One condition is that the resident has either passed away or has left the community. And their independent living apartment has been repurchased by a new resident and a new deposit has been received. So once the new deposit's been received by the new resident, that triggers the refund amount to the former resident.

MR. BUBLICK: Uh-huh. And those will typically be taken out of one of these accounts, right?

MR. HARSHFIELD: Yes, it all flows through the --

MR. BUBLICK: Okay.

MR. HARSHFIELD: -- operating account.

MR. BUBLICK: Okay. All right. I pass the witness.

MR. HARSHFIELD: Okay.

MR. LEWIS: So this is Peter Lewis. Can I ask a question?

MR. BUBLICK: Yes, please.

MR. LEWIS: Yeah. So if I understand the testimony, so if there is a current resident at Edgemere who became a resident prior to September 27th of 2021 and they pass away or leave and there is a new resident that shows up and pays an entrance deposit for that unit that the prior resident had, is your testimony that that resident -- that former resident's

estate would in fact receive the refund that I think was provided for in their contract?

MR. HARSHFIELD: Once the funds are received by Edgemere?

MR. LEWIS: Yes.

MR. HARSHFIELD: We could only have escrow -- we currently have an escrow agreement in place. So no new deposits have been received by Edgemere since September 27.

MR. LEWIS: Got it. My question is, if one -- if someone who paid their deposit prior to September 27th, 2021, passes away or leaves, and let's say, tomorrow they leave or they pass away and somebody next week buys or pays the entrance fee or entrance deposit for that unit, would the prior resident get the entrance fee refund?

Again, we're talking about somebody that was there prior to September 27th of 2021.

MR. HARSHFIELD: So the escrow is for new deposits, and those new deposits are in the escrow account held at Regions Bank and is not the property of Edgemere.

MR. LEWIS: Okay.

MR. HARSHFIELD: So those new deposits -- those new deposits have not been received, which was what would trigger a refund.

MR. LEWIS: Not talking about what's been received. I was just proposing a hypothetical, if you will. That's what

I was talking about.

You had mentioned there were two conditions for an entrance fee refund or entrance deposit refund. And so I think I posited that we have both those conditions satisfied, but it was with respect to somebody who had moved in prior to September 27th of 2021. So that's what I'm referring to.

I understand that you've got an escrow arrangement for people post-September 27th.

MR. HARSHFIELD: Right.

MR. LEWIS: But what I was focused on were people that were -- became residents and paid their --

MS. DOLPHIN: Mr. Lewis? It's --

MR. LEWIS: Yes?

MS. DOLPHIN: -- Brenna Dolphin of Polsinelli. Let me help you out.

Mr. Harshfield, just answer in a yes or a no to Mr. Lewis' question.

MR. LEWIS: Thank you.

MS. DOLPHIN: If someone paid their entrance fee before September 27th lived at Edgemere, tomorrow they pass away or they leave the community. Next week a new person pays an entrance fee for that same independent living unit into the escrow account, would the entrance fee occur -- or the refund to the prior resident occur?

MR. HARSHFIELD: No, it would not.

MR. LEWIS: Thank you.

MS. DOLPHIN: Why not?

MR. LEWIS: Because the new deposit is held in escrow and is not the property of Edgemere. The refund --

MR. LEWIS: So what would happen --

MS. DOLPHIN: It's Brenna Dolphin again. Was that your -- was that -- does that address your question, Mr. Lewis? I'm trying to help you, sir.

MR. LEWIS: Yeah. Appreciate it. Thank you.

So the new deposit is not -- as I understand it, the reason is because the new deposit would not be Edgemere's property. Is that what I understood.

MR. HARSHFIELD: That is correct. While it's still in escrow, it is not Edgemere's property.

MR. LEWIS: Okay. Okay. Thank you.

MR. BUBLICK: Any other questions?

MR. TIBBLES: This is Mike Tibbles. I had a couple of questions. Do you have a copy of the current escrow agreement and what its terms are in terms of disposition of those funds?

MS. DOLPHIN: Mr. Tibble, this is Brenna Dolphin of Polsinelli. I am more than willing to email you a copy of the escrow agreement. It is an exhibit that's attached to docket number 18. It is on the docket, but if I can find your email address -- I don't know if you've entered a notice of

appearance, I will handle giving it to you directly, sir.

MR. TIBBLES: Thank you. It's not necessary. I can find it with that.

MS. DOLPHIN: Oh, absolutely.

MR. TIBBLES: Thanks.

The other question that I had just for clarification of something that you just said earlier. Prior to September 27th '21, did you say that new resident deposits were put into your operating account and not in an escrow account of any kind?

MR. HARSHFIELD: So the way the process worked prior to September 27th is that the new resident deposits were actually placed into an escrow for a rescission period of seven days. And at the end of the seven days, the rescission period would expire and those funds would be transferred to the operating account of Edgemere. And then once that occurred, the refund would be triggered to the former resident.

MR. TIBBLES: So I've looked at the resident agreement, and it appeared that those funds were -- Edgemere was entitled to use those funds for purposes but until the use was necessary, they were to be held in escrow. Either that's wrong, or I misunderstood the way you did it. You're saying immediately --

MR. HARSHFIELD: So -- yeah, I really can't speak to

a specific resident agreement. My statement is the general way that the entrance fee deposits and the refunds, our process operates.

MR. TIBBLES: Which is to be clear on the eighth day, it went straight into operating to be used as any ordinary revenue.

MR. HARSHFIELD: Yes.

MR. TIBBLES: And when a new resident, again prior to 9/27/21 arrived, who directed them to which particular unit they would be placed in? In other words, was there any effort to place them into a residence that matched up with the oldest deceased claimant, I'll call them, nonresident estate?

MR. HARSHFIELD: Not that I'm aware of.

MR. TIBBLES: Do you chronologically treat them or did they just randomly, I'd like this unit because of where it is? And even though that might have been the last resident to pass away, that resident would get the money ahead of someone else is my question.

MR. HARSHFIELD: I am not aware of any directing based on chronology. My understanding is that the units are sold based upon the customer preference.

MR. TIBBLES: That's the only questions I have.

MR. BUBLICK: Okay. Next person, please identify yourself and ask your question.

MR. THOMAS: So this is Stuart Thomas, on behalf of

the Milden Estate. How many units are empty and not occupied currently?

MR. HARSHFIELD: I don't have that exact number.

MR. THOMAS: I'll take an approximation.

MS. DOLPHIN: Mr. Thomas, this is Brenna Dolphin of Polsinelli. Can we please connect with you and provide you with accurate information than just to speculate?

MR. THOMAS: For sure. I'm just -- yeah, that's fine. I'm trying to get a sense for how many are in the same boat that my client's in where they're waiting for -- the resident died. They're waiting for someone to buy the unit and move into it in order to receive their deposit back. And I'd like to know how many -- what's the supply and demand like? Are there applications out there with available inventory, or do we have inventory and no demand? Can you give us a sense of that?

MR. HARSHFIELD: So --

MS. DOLPHIN: Mr. Harshfield, if you're prepared to answer that, go ahead, please.

MR. HARSHFIELD: Yeah. I certainly am not. I'd prefer to provide more specific information if we can as a follow up.

MR. TIBBLES: This is Mike Tibbles. When you do, please copy me on that. I'll give you my information.

MR. ADAMS: This is James Adams -- this is James

Adams, please copy on me.

MR. WILLIAMS: This is Benton Williams. Please copy Benton Williams as well. Thank you.

MR. LEWIS: And Peter Lewis -- and Peter Lewis.

MR. CRAFTON: And Michael Crafton for the Callaways (Ph.) Brenna, I think you have my information.

MS. DOLPHIN: I certainly do, sir. Nice to see you again.

MR. CRAFTON: Nice to hear from you.

MR. FRIEDMAN: And Alan Friedman.

MR. BUBLICK: The United States Trustee would also like to copied on this.

MS. DOLPHIN: Wouldn't dream of leaving you out.

MR. BUBLICK: Thank you.

MR. THOMAS: So this is Stuart Thomas, just a follow-up question. What is the triggering event under the new escrow agreement that would allow the deposit once it's been sold to a new resident who has moved in and their money has gone to the escrow agreement, what allows the money to be released to the prior owner under the deposit refund program?

MR. HARSHFIELD: I would say -- so I don't misspeak on the, you know, the legal language of the escrow agreement, I would certainly prefer to have everyone directed back the escrow agreement as it is provided so you can actually see the language itself instead of me interpreting.

MR. THOMAS: Okay.

MS. SHUM: This is Jennifer Shum on behalf of the current resident Phyllis Lisdal. Just a general question. Why are the deposits of a tenants considered unsecured when they have individual contracts that are already in place?

MR. HARSHFIELD: I believe that's a legal question that, frankly, I'm not prepared to answer.

MR. ADAMS: This is James Adams. Mr. Harshfield, does Edgemere currently intend to accept or reject the residents' contracts?

MR. HARSHFIELD: I don't know that I'm in a place to answer that question.

MS. DOLPHIN: Mr. Adams, this is Brenna Dolphin of Polsinelli. I would ask that you review the first day declaration that was submitted on the first day of the case. I will give you the docket number in a moment. It is docket number 7. Within the first day declaration, there's representations related to Edgemere's intentions related to the residency agreement.

MR. ADAMS: Is that the declaration of Mr. Harshfield?

MS. DOLPHIN: Yes, it is, sir.

MR. ADAMS: Thank you.

MR. ISRAEL: Good afternoon, Mr. Harshfield. Before -- this is Harold Israel on behalf of Intercity.

Before I ask my questions, I want to make sure all the residents have had the opportunity to ask their questions.

Okay, I'm hearing none. Again, my name is Harold Israel, of Levenfeld & Pearlstein. My firm represents Intercity Investments. I have a few follow-up questions on the schedules and SOFA. Starting with the schedules, I'd ask you to please turn to page 9 of Schedule A/B, which I believe is 22 of 54, where it lists buildings and improvements. And please let me know once you're there.

MR. HARSHFIELD: I'm there.

MR. ISRAEL: Thank you.

You see item 55.1 which states that the debtor owns 100 percent of the buildings and improvements?

MR. HARSHFIELD: Yes.

MR. ISRAEL: That's not true, is it?

MR. HARSHFIELD: I'm not sure why that wouldn't be true but --

MR. ISRAEL: Well, who owns the building?

MR. HARSHFIELD: Edgemere owns the buildings.

MR. ISRAEL: The Edgemere owns the buildings. My understanding was my client Intercity owns the buildings, owns the property and the Edgemere leases the property; isn't that correct?

MR. HARSHFIELD: So my understanding is that Edgemere leases the land from Intercity.

MR. ISRAEL: But if the -- what happens to the building in the event of a default under the lease?

MR. HARSHFIELD: Well, in an event of default, I really -- frankly I'm not prepared to interpret the lease for this call.

MR. ISRAEL: Okay. Have the debtors determined whether they were going -- are going to assume or reject the lease?

MR. HARSHFIELD: That is not an answer I'm prepared to answer or a question that I'm prepared to answer at this time.

MR. ISRAEL: Okay. That's all. That's all I have on the schedules.

Turning to the SOFA, can you please turn to page 1 where you see that the SOFA states that revenues for the period of January 1, 2022, through the petition date are about 9.2 million?

MR. HARSHFIELD: Yes.

MS. DOLPHIN: Mr. Israel, this is Brenna Dolphin. Would you mind -- which page of 57 is that? I apologize for being slow.

MR. ISRAEL: Oh, I'm sorry. We're on page 1 of the SOFA, Ms. Dolphin. Or whatever the PDF -- the first page after the note, page 13 of the --

MS. DOLPHIN: Sorry. I apologize. Thank you.

MR. ISRAEL: No, no worries. So we're on page 13 of 57 and the income year to date before the bankruptcy was 9.2 million. And annualized, that would be about 32.3 million, correct?

MR. HARSHFIELD: I'm going to trust your math. I did not annualize that number.

MR. ISRAEL: Okay. Assuming my math is correct, 2021 revenues were 29.2 million, correct?

MR. HARSHFIELD: Yes.

MR. ISRAEL: What accounts for the increase in revenues on an annualized basis between 2021 and 2022?

MR. HARSHFIELD: So I would say generally -- I don't have the specifics of that, but generally we have seen some improvement in our sales, in occupancy.

MR. ISRAEL: Has the monthly rent been increased?

MR. HARSHFIELD: And what I would say is that most of that improvement occurred during the fourth quarter of 2021 and had some improvement in January. Yes, there was a rate increase January 1st.

MR. ISRAEL: Can you tell us about the approximate percentage increase?

MR. HARSHFIELD: The approximate was three percent.

MR. ISRAEL: Okay. Thank you.

Now, I would like to turn to PDF pages -- page 55 of 57. And please let me know once you're there.

MR. HARSHFIELD: I'm there.

MR. ISRAEL: Thank you. All right.

I want to make sure I understand the answer you told to the U.S. Trustee on this to make sure I have it right. The payments to the affiliates, Querencia and Stayton, did you say they were pursuant to a policy regarding inner companies? Did I understand that right?

MR. HARSHFIELD: Well, the policy is a result of the timing. So these amounts are due to -- and again, it's part of our cash management and that we have consolidated cash management. And on an interim period, prior to September, there could be funds going from one community to the next to help us with our cash management process. And that those inner companies would be cleared on a quarterly basis.

So these are -- what these would represent -- and so for instance, you look at Querencia, 7/15 there was a transfer of $1.1 million. That's because at June 30, there was money owed from Querencia -- or by Edgemere to Querencia. So in July that was money was paid back to Querencia from Edgemere.

MR. ISRAEL: Okay, and then I think I think I heard you say that the policy changed from quarterly to monthly; is that right?

MR. HARSHFIELD: Yes.

MR. ISRAEL: When did that change?

MR. HARSHFIELD: I believe it changed in September or

October of '21.

MR. ISRAEL: And -- and why did it change?

MR. HARSHFIELD: That was something that I asked my accounting team to make sure that we had inner companies cleared on a monthly basis.

MR. ISRAEL: Was there a particular reason or just a change in policy?

MR. HARSHFIELD: It was a change of direction, frankly. I would prefer the inner companies to be cleared and trued up on a monthly basis regardless of the community.

MR. ISRAEL: Understood. Is this -- is there a written policy?

MR. HARSHFIELD: Honestly, I'm not sure if there is a written policy.

MR. ISRAEL: If there is a written policy, we would appreciate a copy of the policy.

MR. HARSHFIELD: Okay.

MR. ISRAEL: At the time of the repayments, were either Querencia or Stayton aware of Edgemere's pending bankruptcy?

MR. HARSHFIELD: I'm not sure you would -- I'm not sure how to answer that, frankly.

MS. DOLPHIN: Mr. Israel, it's Brenna Dolphin of Polsinelli. So Mr. Harshfield's here today in his capacity as the treasurer of Edgemere. He's testifying on Edgemere's

behalf. I would -- it's a little uncomfortable because Mr. Harshfield wears a number of hats and his counsel who represents him when he wears his other hats is not here on the call. So can we please stick to the personal knowledge he has in his capacity as a representative of Edgemere?

MR. ISRAEL: Sure. Can you just describe what other hats he's wearing? What other -- what his -- what his other positions are?

MS. DOLPHIN: Mr. Harshfield, what is your position with Lifespace Community?

MR. HARSHFIELD: With Lifespace Communities I'm the chief financial officer and treasurer and secretary.

MS. DOLPHIN: Mr. Harshfield, do you have a relationship with the Stayton?

MR. HARSHFIELD: Yes, with the Stayton, I'm a board member, vice chair and treasurer.

MS. DOLPHIN: Mr. Harshfield, with respect to Querencia -- no, I apologize, Mr. Israel, I'll pass the virtual podium over to you.

MR. ISRAEL: Okay. That's okay. You can go ahead, Ms. Dolphin.

MS. DOLPHIN: Okay. Mr. Harshfield, would you describe your relationships with each of the affiliates here?

MR. HARSHFIELD: Yes, I'm -- for the affiliates, the current CEO of the Stayton. I'm the -- again, the vice chair,

treasurer, and board member of those affiliates.

MR. ISRAEL: And just so I'm clear, you're not prepared to testify about what Querencia knew in certain circumstances nor about the Stayton. Is that what Ms. Dolphin was referring to?

MR. HARSHFIELD: Correct.

MR. BUBLICK: Well, we also don't want to turn this into a 2004 examination, right? Let's keep this within the scope.

MR. ISRAEL: Understood. Understood.

Do you, Mr. Harshfield, have a position with Seniority?

MR. HARSHFIELD: So Seniority is essentially a disregarded entity. This amount in Seniority was a legacy inner company that needed to be cleared since Seniority is not even an operating entity any longer.

MR. ISRAEL: Okay. The last subject to completion -- the last thing I'd like to go to the very last page of the SOFA, page 57 of 57. You can let me know when you're ready for -- when you're there.

MR. HARSHFIELD: I'm there.

MR. ISRAEL: Okay, so these relate to payments made by the debtor related to bankruptcy; is that correct?

MR. HARSHFIELD: Yes.

MR. ISRAEL: And there are payments to FTI Consulting

dating back to April 26th, 2021, correct?

MR. HARSHFIELD: Correct.

MR. ISRAEL: And payments related -- made to Sidley Austin dating back to September 25th, 2021, correct?

MR. HARSHFIELD: Correct.

MR. ISRAEL: It looks to me that over $1.4 million in bankruptcy fees were paid before January 1st, 2022; is that correct?

MR. HARSHFIELD: I did not total the numbers.

MR. ISRAEL: From an eyeball, does that look pretty close?

MR. HARSHFIELD: I would have to trust your math.

MR. ISRAEL: Okay. Thank you. I've got nothing further.

MR. BUBLICK: Okay. Are there any other parties that would like to ask a question?

MR. TIBBLES: This is Mike Tibbles, I just wanted one clarification regarding an apparent distinction between use of post 9/27 funds. Did I understand you correctly, that the initial resident deposit is in escrow, but the monthly rent or fees that each of those post-27 new residents pays is going into the operating account and now into the debtor-in-possession account?

MR. HARSHFIELD: So for residents who have moved in since September 27th, their entrance fee deposit is in escrow.

Their monthly service fees are paid directly into our operating account. And we do not have a debtor-in-possession account established at this point since we do have an interim approval from the court (indiscernible).

MR. TIBBLES: And the intention is that those revenues will go into the DIP account when it's created, correct?

MR. HARSHFIELD: Whatever we are instructed to do by the court is how we'll do that.

MR. TIBBLES: Thank you.

MR. ISRAEL: Mr. Harshfield --

MR. BUBLICK: Go ahead.

MR. ISRAEL: I'm sorry. Were you done? Okay.

MR. BUBLICK: Identify yourself, though. I'm sorry, whoever's speaking now, just identify yourself for the record.

MR. ISRAEL: I'm sorry. Harold Israel on behalf of Levenfeld & Pearlstein.

MR. BUBLICK: And if someone has background music going on, if you could just mute that or mute yourselves because it's -- okay. Go ahead, sir.

MR. ISRAEL: Okay. I'd like to just pick one of the payments for right now, just to make sure I understand. And I'm, again, going back to the payments to the affiliates just so I can understand where we are at.

So on April 25th, the Edgemere repaid the Stayton 1.2

million, correct?

MR. HARSHFIELD: April 25?

MR. ISRAEL: July -- July 15th. I'm sorry. I misspoke.

MR. HARSHFIELD: Yes. Yes.

MR. ISRAEL: And that was that was a repayment of services provided, correct? Bookkeeping entry?

MR. HARSHFIELD: No, it was not a payment of services provided as it says repayment of short-term advance. Again, it's part of our cash management process. If there was an advance from the Stayton to the Edgemere at the end of June, that was repaid by Edgemere back to the Stayton in July.

MR. ISRAEL: Was there interest?

MR. HARSHFIELD: Not that I'm aware of.

MR. ISRAEL: Okay. And was there a set due date? In other words, did the Stayton have an obligation to repay the 1.2 million on July 15th, 2021?

MR. HARSHFIELD: Well, the Stayton did not repay. Edgemere repaid it to the Stayton.

MR. ISRAEL: Edgemere repaid. Guys, I read it wrong. Did the Edgemere have an obligation to repay the Stayton on July 15th.

MR. HARSHFIELD: Not that I'm aware of. There's no financial instrument in place that outlines terms and conditions of the advances.

MR. ISRAEL: Okay. And what was the source of the repayment?

MR. HARSHFIELD: I can't tell you exactly, but generally it would be cash.

MR. ISRAEL: Okay. And -- okay, and then who makes the decision to request an advance from the other entities?

MR. HARSHFIELD: It's our cash management team and finance team just essentially on a daily basis.

MR. ISRAEL: So it's done at Lifespace?

MR. HARSHFIELD: Yes.

MR. ISRAEL: And did -- does, for example, does Stayton ever make a demand to repay the Edgemere repay -- loan? The advance?

MR. HARSHFIELD: I'm -- frankly, I'm not sure how that -- they do that but --

MR. ISRAEL: Or is it just made by --(crosstalk)?

MR. BUBLICK: Because again, these are temporary cash advances so I'm not real sure how to answer your question.

MR. ISRAEL: Okay. Did the Stayton have the right to say, Edgemere, I advanced you 1.2 million in June, you need to repay it back to me today?

MS. DOLPHIN: Mr. Israel, this is Brenna Dolphin of Polsinelli. You asked this question once already.

MR. ISRAEL: I'll pass. What's the current amount available to the Edgemere to borrow from its affiliates?

MR. HARSHFIELD: There is no -- there is no set amount. And again, these are -- these are -- these transactions you're seeing here are really a process. It's not we're lending money. It's not a fact of lending money, because there's an immediate cash need. It's a process of our cash management system.

MR. ISRAEL: Okay. So could these advances back and forth happen during the bankruptcy?

MR. HARSHFIELD: We are not doing any advances back and forth at this time.

MR. ISRAEL: And there's no -- is there an intention to do so in the future?

MR. HARSHFIELD: Not that I'm aware of.

MR. ISRAEL: Okay. And I think my last question is going to be, did the Edgemere make advances to any of the other entities during the year prior to bankruptcy?

MR. HARSHFIELD: I'm not aware of any, but I would have to go back to our accounting records to validate that.

MR. ISRAEL: Okay. Nothing further. Thank you.

MR. CRAFTON: This is Michael Crafton of behalf of the Callaways. I just had a couple of questions related to the definitions on the Lifespace Communities' reason for payment or transfer on page 53 and 54 of the SOFA.

Can you please define, whenever you get there, what the shared services reimbursement would be?

MR. HARSHFIELD: Yes, so the shared services portion is what I had mentioned earlier that -- typically that is for consolidated billing. A good examples of that would be insurance policies, software subscriptions, employee benefits programs, where those are built and managed at the corporate level. And then each community is charged directly for their share of those billings.

MR. CRAFTON: Okay. And can you define the home office allocation?

MR. HARSHFIELD: Yes. So the home office allocation is simply an allocation of the corporate office expense that is allocated across all communities of Lifespace.

MR. CRAFTON: All right, and last one, the salary reimbursement, please?

MR. HARSHFIELD: Yes. There are two -- I believe two, maybe three leaders at Edgemere that are employees of Lifespace. And they are directly reimbursed for their salaries and benefits back to Lifespace.

MR. CRAFTON: Okay. Thank you. I have nothing further at this time.

MR. BUBLICK: Awesome. This is Asher Bublick again with the U.S. Trustee's Office. I had a couple of questions that came to mind real quick.

When -- are units ever sold for less than what the previous owner bought it for?

MR. HARSHFIELD: I would say typically no, but I could not affirmatively say that it never happens.

MR. BUBLICK: Okay. So -- so I guess my next question is -- so it -- so there are times then when a unit is sold for more than what the previous owner paid, right?

MR. HARSHFIELD: That is the typical case. Yes.

MR. BUBLICK: Okay. And in an ideal world before bankruptcy, whenever the right things would occur to entitle that former resident to a refund, it would go into that account. And then 90 percent of that amount that you received from the sale -- or I guess 90 percent that that former resident is entitled to base on their contract, they would just -- so money would go into your account and money would go out as soon as it would be received essentially, right?

MR. HARSHFIELD: Yes. I mean, there would be some days -- we do have days to issue the refund, but essentially what you're saying is true.

MR. BUBLICK: Okay. Okay. So it's kind of like a one-and-one transactions, like you get paid for the sale of the unit and then it's only then that you can actually refund the amount that is owed for that unit to the former resident; is that right?

MR. HARSHFIELD: That's correct.

MR. BUBLICK: Okay. Are there any other questions?

MS. DOLPHIN: Mr. Bublick, this Brenna Dolphin of

Polsinelli.

MR. BUBLICK: Okay. We have the time everyone.

MS. DOLPHIN: I have to clarify something.

MR. WILLIAMS: (Indiscernible) from the Estate of Patricia Adams.

MR. BUBLICK: We still have time everyone so let's --

MS. DOLPHIN: I have to clarify.

MR. BUBLICK: Please, go ahead --

MS. DOLPHIN: Yeah.

MR. BUBLICK: -- if there's any clarification.

MS. DOLPHIN: Sorry. Mr. Harshfield, this is Brenna Dolphin of Polsinelli. Do new residents purchase units from Edgemere? Do they actually buy the unit from Edgemere?

MR. HARSHFIELD: No, it's not a few simple transactions.

MS. DOLPHIN: So just now with Mr. Bublick, you were using shorthand, correct, when you're discussing --

MR. HARSHFIELD: That's true. That is true.

MS. DOLPHIN: Okay.

MR. HARSHFIELD: Thank you for clarifying.

MR. TIBBLES: This is Mike Tibbles. Going back to your last answer from the U.S. Trustee, as I understand it there's a -- as much as a 37-day period from the time you receive a new resident deposit to the time that you are obligated to use those funds to repay a deceased or departed

resident. During that time, is it your practice to use those funds for normal operating expenses and possibly deplete those funds?

MR. HARSHFIELD: I would say, no. Normally we -- our practice is generally to repay the refund as soon as practical once the dollars are released from escrow.

MR. TIBBLES: Thank you.

MR. WILLIAMS: This is Benton Williams for the Estate of Patricia Adams. Mr. Harshfield, who are the three employees you mentioned, the Lifespace employees that work at Edgemere?

MR. HARSHFIELD: So the two that I know for sure, would be the executive director, and the administrator.

MR. WILLIAMS: Who are they -- what are their names?

MR. HARSHFIELD: So John Faldeen (Ph.) is the executive director. And Bobby Jo -- I think her name is Cocker or Coker is the healthcare administrator.

MR. WILLIAMS: Is Ann Joyce (Ph.) a former --

MR. HARSHFIELD: Oh, yes.

MR. WILLIAMS: -- Lifespace employee?

MR. HARSHFIELD: Yes. I knew there's a third. Thank you. So Ann Joyce with Edgemere, but yes, that would have been the third person. That would have been a reimbursement back to Lifespace. That -- she has now been replaced with a new person in frankly, her name escapes me, who the new

assistant executive director is at Edgemere.

MR. WILLIAMS: No further questions.

MR. BUBLICK: Okay. I just wanted to confirm, again, whether there are other questions. Okay, I'm hearing none. So I just wanted to, again, Mr. Harshfield, make you aware of the outstanding administrative items, mainly the insurance documents that we are waiting on.

MR. HARSHFIELD: Yes.

MR. BUBLICK: Are you able to -- do you think a week would be enough time to get that done? Or do you need more time?

MR. HARSHFIELD: Oh, sure. Sure, absolutely. I'm -- I'll follow up with my team. Getting the document -- those documents should not be a problem.

MR. BUBLICK: Okay. So one week from today would be the 31st of May. So we have an agreement on that. And if you need more time to get us those insurance documents, you know, just please be in touch and we can certainly work with you.

So again, thank you, everyone. We finished early, so I'm just going to open the floor one last time. Are there any other questions before I conclude this meeting?

(No audible response.)

Okay, hearing nothing, that will conclude this meeting. Thank you, everyone. Have a great day.

(Whereupon these proceedings were concluded at 1:08 p.m.)

C E R T I F I C A T I O N

I, Lynda Standlee, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



August 24, 2022

LYNDA STANDLEE, CET-1489 DATE

AAERT Certified Transcriber

ACORN TRANSCRIPTS, LLC



August 24, 2022

NANCY B. GARDELLI DATE

OPERATING MANAGER

EXHIBIT 6

Docket #933 Date Filed: 12/19/2022

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*,[1]	Case No. 22-30659 (MVL)
Debtors.	(Jointly Administered)

THIRD AMENDED PLAN OF REORGANIZATION OF THE PLAN SPONSORS DATED DECEMBER 19, 2022

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Dated: December 19, 2022

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

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INTRODUCTION[2]

On April 14, 2022, Edgemere and SQLC commenced their Chapter 11 Cases, seeking relief under Chapter 11 of the Bankruptcy Code. The major constituencies in these Chapter 11 Cases have reached a global resolution which is set forth in this *Third Amended Plan of Reorganization of the Plan Sponsors Dated December 19, 2022* (as may be further amended, supplemented, or otherwise modified from time to time, the "**Plan**"). This Plan is supported by the following parties (collectively, the "**Plan Supporters**"): (i) UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (together, the "**Trustee**"), (ii) UMB Bank, N.A., in its capacity as lender under the DIP Credit Agreement (the "**DIP Lender**" and, together with the Trustee, the "**Initial Plan Sponsors**"), (iii) Northwest Senior Housing Corporation d/b/a Edgemere ("**Edgemere**"), (iv) Senior Quality Lifestyles Corporation ("**SQLC**" and together with Edgemere, the "**Debtors**" and together with the Initial Plan Sponsors, the "**Plan Sponsors**"), (v) Lifespace Communities, Inc. ("**Lifespace**"), and (vi) the Official Committee of Unsecured Creditors (the "**Committee**"). The Plan Sponsors propose this Plan pursuant to Bankruptcy Code sections 1125 and 1129 for the resolution of outstanding Claims against, and Interests in, the Debtors.

Reference is made to the Disclosure Statement for a discussion of the Debtors' history and assets, a summary and analysis of this Plan, and certain related matters, including the Distributions to be made under this Plan and the risk factors relating to consummation of this Plan. No materials other than the Disclosure Statement, this Plan, the Plan Supplement, and any and all exhibits and/or schedules attached thereto or hereto have been authorized by the Plan Sponsors for use in soliciting votes of acceptance with respect to this Plan.

Copies of this Plan and the Disclosure Statement and all other documents related to the Chapter 11 Cases are available for review without charge, on the website for the Chapter 11 Cases at: https://kccllc.net/edgemere.

This Plan will implement the Sale Transaction, pursuant to which substantially all the Debtors' assets will be sold to a Purchaser who will continue running the Community as a going concern. An initial Purchaser has been selected by the Plan Sponsors and the parties have agreed to an Asset Purchase Agreement, with the initial Purchaser's offer subject to higher and better bids, including through a potential Auction, pursuant to bidding and sale procedures to be filed with the Bankruptcy Court. The initial Purchaser has offered to purchase the Community for $48.5 million, subject to certain adjustments set forth in the Asset Purchase Agreement. The remaining assets of the Estates shall be transferred to a Litigation Trust to be liquidated for the benefit of creditors.

Consultants have concluded that the Community cannot continue to operate solely as an entrance fee community. An entrance fee model, in the opinion of such consultants, is not feasible and will exacerbate the financial struggles of Edgemere. Accordingly, the Asset Purchase Agreement contemplates the conversion of the Community to a rental model. Pursuant to the Asset Purchase Agreement, all entrance-fee Residency Agreements will be rejected and, subject to regulatory approvals and/or requirements, all Current Residents will be offered a new monthly

[2] Capitalized terms used but not defined shall have the meanings ascribed to them in Section 1.A or Section 8 of this Plan.

rental agreement which shall provide similar services to Current Residents as provided prior to the Closing Date.

This Plan will also establish a Litigation Trust, into which all assets of the Debtors not purchased through the Sale Transaction, including the Landlord Litigation and other Retained Causes of Action, will be transferred. The Litigation Trustee will prosecute and liquidate the Litigation Trust Assets, with the proceeds from such liquidation distributed on a Pro Rata basis to Holders of Allowed General Unsecured Claims pursuant to the terms and conditions of this Plan and the Litigation Trust Agreement, which will be included in the Plan Supplement.

This Plan includes a settlement of all potential Estate, Trustee, DIP Lender and Resident claims against Lifespace in exchange for (i) a $16.5 million payment to the Trustee on the Effective Date for Distribution to current holders of the Original Bonds, pursuant to the terms of the Original Bond Documents, and (ii) subject to certain conditions, annual payments made into a Residents Trust, pursuant to the schedule attached to the Disclosure Statement as Exhibit 4, which funds shall be used to pay Participating Residents for Refund Claims as further described herein. In exchange for the Lifespace Resident Contributions and the releases provided under Section 8 of this Plan, Lifespace will be entitled to a Pro Rata distribution of Litigation Trust Assets, in accordance with the terms of this Plan and the Litigation Trust Agreement.

NOTWITHSTANDING ANYTHING HEREIN, OR IN THIS PLAN, OR IN ANY OTHER AGREEMENT OR DISCLOSURE TO THE CONTRARY, the Purchaser shall have no obligation, duty or other requirement to participate in any aspect of the Residents Trust, including accepting any payments from the Residents Trust, other than to provide periodic reporting to the Residents Trust as required under the Asset Purchase Agreement. Any future rental agreement with any Current Resident will not relate in any way to the Residents Trust, the Lifespace Settlement and Contribution Agreement, or any other provision of this Plan, including but not limited to any payments or adjustments contemplated to Participating Current Residents described herein or otherwise.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THIS PLAN ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT FILED CONTEMPORANEOUSLY HEREWITH IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

SECTION 1. DEFINITIONS AND INTERPRETATION

A. Definitions.

The following terms used herein shall have the respective meanings below:

1.1 "*2015 Bond Documents*" means the 2015 Bond Indenture and any bonds, loan agreement, mortgage, security agreement, document, agreement, or instrument executed or delivered in connection with the issuance of the Series 2015 Bonds, including the 2015 Loan Agreement.

1.2 "*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.

1.3 "*2015 Loan Agreement*" means that certain Loan Agreement, dated May 1, 2015, by and between the Issuer and Edgemere, pursuant to which the Issuer loaned the proceeds of the Series 2015 Bonds to Edgemere.

1.4 "*2017 Bond Documents*" means the 2017 Bond Indenture, and any bonds, loan agreement, mortgage, security agreement, document, agreement, or instrument executed or delivered in connection with the issuance of the Series 2017 Bonds, including the 2017 Loan Agreement.

1.5 "*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.

1.6 "*2017 Loan Agreement*" means that certain Loan Agreement, dated March 1, 2017, by and between the Issuer and Edgemere, pursuant to which the Issuer loaned the proceeds of the Series 2017 Bonds to Edgemere.

1.7 "*Administrative Claim*" means any Claim against any Debtor for costs and expenses of administration of the Chapter 11 Cases pursuant to Bankruptcy Code sections 503(b), 507(a)(2), or 507(b), including: (i) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date, of preserving the Estates and operating the Debtors' businesses; (ii) Allowed Professional Claims; (iii) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to Bankruptcy Code sections 503(b)(3), (4), and (5); and (iv) all fees and charges assessed pursuant to 28 U.S.C. § 1930(a)(6).

1.8 "*Administrative Claims Bar Date*" means the date by which Administrative Claims must be filed, which shall be set by separate order of the Court pursuant to a separate motion.

1.9 "*Affiliate*" means, with respect to any Entity, an "affiliate" as defined in Bankruptcy Code section 101(2) as if such entity were a debtor.

1.10 "*Allowed*" means with respect to Claims: (i) any Claim, proof of which is timely filed by the applicable Bar Date; (ii) any Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely filed; or (iii) any Claim Allowed pursuant to this Plan or a Final Order of the Bankruptcy Court; provided, that with respect to any Claim described in clauses (i) and (ii) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time, as may be extended by the Bankruptcy Court from time to time, fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely filed, is not considered Allowed and shall be expunged without further action by the Litigation Trustee and without further notice to any party or action, approval, or order of the Bankruptcy Court. An Allowed Claim (i) includes a Disputed Claim to the extent such Disputed Claim becomes Allowed after the Effective Date and (ii) shall be net of any valid setoff exercised with respect to such Claim pursuant to the provisions of the Bankruptcy Code and applicable law; provided, however, such setoff shall not otherwise be applicable to the amounts owed with respect to the Original Bonds. Unless otherwise specified in this Plan, Bankruptcy Code section 506(b), or by Final Order of the Bankruptcy Court, "Allowed" Claims shall not, for purposes of Distributions under this Plan, include interest on such Claim accruing from and after the Petition Date. For the avoidance of doubt, the Trustee shall hold an Allowed Claim in an amount of $111,728,919.22 as of the Petition Date, plus unliquidated, accrued, and unpaid fees and expenses of the Trustee and its professionals incurred through the Petition Date.

1.11 "*Asset Purchase Agreement*" means that certain agreement, substantially in the form attached hereto in Exhibit 1, between Edgemere and Bay 9 Holdings LLC or its designee for a sale of substantially all the Debtors' Assets.

1.12 "*Assets*" means all interests, legal or equitable, in property, real, personal, tangible and intangible, of the Debtors as defined in Bankruptcy Code section 541(a).

1.13 "*Assumption Notice*" shall have the meaning set forth in Section 5 of this Plan.

1.14 "*Auction*" has the meaning set forth in the Bidding Procedures Order.

1.15 "*Avoidance Actions*" means all actions, causes of action, suits, choses in action, and claims of the Debtors and/or the Estates against any entity or Person, whether direct, indirect, derivative, or otherwise arising under Bankruptcy Code section 510 or to avoid a transfer of property or recover property pursuant to Bankruptcy Code sections 542 through 550 or applicable non-bankruptcy law.

1.16 "*Ballot*" means the ballots upon which holders of Impaired Claims entitled to vote to accept or reject this Plan may indicate their acceptance or rejection in accordance with applicable rules and instructions regarding voting.

1.17 "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

1.18 "*Bankruptcy Court*" means the United States Bankruptcy Court for the Northern District of Texas, having jurisdiction over the Chapter 11 Cases or, if the Bankruptcy Court ceases to exercise jurisdiction over the Chapter 11 Cases, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases in lieu of the United States Bankruptcy Court for the Northern District of Texas.

1.19 "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

1.20 "*Bar Date(s)*" means the Claims Bar Date, the Governmental Bar Date, or the Rejection Damages Bar Date, as applicable; and "Bar Dates" means a collective reference to the Claims Bar Date, the Governmental Bar Date, and the Rejection Damages Bar Date.

1.21 "Bar Date Order" means, collectively, the Bankruptcy Court's Order (I) Establishing Bar Dates, (II) Approving Form and Manner of Notice Thereof, and (III) Approving Procedures for Filing Proofs of Claims [Docket No. 325] and Order (I) Establishing Bar Dates, (II) Approving Form and Manner of Notice Thereof, and (III) Approving Procedures for Filing Proofs of Claims [Docket No. 386].

1.22 "*Bid Deadline*" has the meaning set forth in the Bidding Procedures Order.

1.23 "*Bidding Procedures Order*" means the Bankruptcy Court's order establishing the sale procedures with respect to the Sale Transaction.

1.24 "*Bond Claims*" means the Series 2015 Bond Claims and the Series 2017 Bond Claims.

1.25 "*Bond Deficiency Claim*" means the Bond Claims minus the amount paid to the Trustee pursuant to the Sale Transaction.

1.26 "*Business Day*" means any day, other than a Saturday, Sunday or "legal holiday" as defined in Bankruptcy Rule 9006(a).

1.27 "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

1.28 "*Causes of Action*" means any claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, offsets, or setoffs of any kind or character whatsoever, in each case now owned or hereafter acquired by the Debtors and/or their Estates, and in each case, whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim,

counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date, including the Landlord Litigation and other Retained Causes of Action.

1.29 "*Chapter 11*" means chapter 11 of the Bankruptcy Code.

1.30 "*Chapter 11 Cases*" means (i) when used with reference to a particular Debtor, the case under chapter 11 of the Bankruptcy Code commenced by such Debtor in the Bankruptcy Court, and (ii) when used with reference to both Debtors, the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court being jointly administered under Case No. 22-30659.

1.31 "*Claim*" means a "claim," as that term is defined in Bankruptcy Code section 101(5).

1.32 "*Claims Bar Date*" means July 21, 2022 at 4:00 Prevailing Central Time, the general bar date by which entities, other than Governmental Units, shall file Proofs of Claim.

1.33 "*Class*" means a category of holders of Claims or Interests as set forth in Section 3 hereof pursuant to Bankruptcy Code section 1122(a).

1.34 "*Closing*" means the closing on the transactions contemplated by the Sale Transaction pursuant to the Asset Purchase Agreement.

1.35 "*Closing Date*" has the meaning given to such term in the Asset Purchase Agreement.

1.36 "*Committee*" means the official committee of creditors appointed by the U.S. Trustee in the Chapter 11 Cases pursuant to Bankruptcy Code section 1102 [Docket Nos. 135 and 150].

1.37 "*Committee Challenge*" shall have the meaning set forth in Section 4.8 of this Plan.

1.38 "*Community*" means the continuing care retirement community, located in Dallas, Texas, known as "Edgemere."

1.39 "*Confirmation Date*" means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

1.40 "*Confirmation Hearing*" means the hearing(s) before the Bankruptcy Court under Bankruptcy Code section 1128 at which the Plan Sponsors seek entry of the Confirmation Order, as such hearing(s) may be adjourned or continued from time to time.

1.41 "*Confirmation Order*" means the Bankruptcy Court order confirming this Plan pursuant to Bankruptcy Code section 1129.

1.42 "*Contract Objection*" shall have the meaning set forth in Section 5 of this Plan.

1.43 "*Creditor Released Claims*" has the meaning set forth in Section 8.3 of this Plan.

1.44 "*Cure Escrow*" means the escrow account established to hold asserted cure obligations associated with the Ground Lease pending a Bankruptcy Court determination as to the Allowed cure amount.

1.45 "*Cure and Possible Assumption and Assignment Notice*" shall have the meaning set forth in Section 5 of this Plan.

1.46 "*Cure Objection*" shall have the meaning set forth in Section 5 of this Plan.

1.47 "*Current Resident*" means a Resident that resides at the Community as of the Voting Record Date pursuant to a Residency Agreement.

1.48 "*Dallas County Claim*" means the 2022 tax claim of Dallas County in the amount of $26,856.19 plus accrued interest.

1.49 "*Debtor Released Claims*" has the meaning set forth in Section 8.2 of this Plan.

1.50 "*Debtors*" means, collectively, Edgemere and SQLC.

1.51 "*Diminution Claim*" means the Trustee's claim for Diminution as defined in and arising under the DIP Orders.

1.52 "*DIP Credit Agreement*" means that certain Priming Superpriority Debtor-in-Possession Credit Agreement between the Debtors and the DIP Lender, together with any amendments, modifications or supplements thereto, which was approved pursuant to the DIP Orders.

1.53 "*DIP Facility Claims*" means a Claim held by the DIP Lender for all debts, indebtedness, obligations, covenants, and duties of payment and performance arising under or relating to the DIP Credit Agreement or the DIP Orders, including any and all accrued but unpaid interest and any unpaid fees or charges arising under the DIP Credit Agreement.

1.54 "*DIP Lender*" means the lender under the DIP Credit Agreement.

1.55 "*DIP Orders*" means the *Bankruptcy Court's First Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5) Scheduling a Final Hearing* [Docket No. 112]; *Second Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5)*

Scheduling a Final Hearing [Docket No. 228]; *Third Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5) Scheduling a Final Hearing* [Docket No. 350]; bridge orders extending the deadline in paragraph 22(ii) of the Third Interim DIP Order [Docket Nos. 398 and 415]; and *Final Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests and Superpriority Claims* [Docket No. 421] (as may be amended, modified or supplemented).

1.56 "*Disclosure Statement*" means the Disclosure Statement, as may be modified or amended, accompanying and describing this Plan.

1.57 "*Disclosure Statement Order*" means the Bankruptcy Court's order approving the Disclosure Statement.

1.58 "*Disputed*" means, with respect to any Claim or Interest, or any portion thereof that is not yet Allowed, including (i) any Claim evidenced by a Proof of Claim that, on its face, is contingent or unliquidated; (ii) any Claim that is subject to an objection filed by the Claims Objection Deadline or a request for estimation, in each case that has not been withdrawn, resolved, or ruled on by a Final Order of the Bankruptcy Court; (iii) any Claim or Interest scheduled by the Debtors as contingent, unliquidated or disputed, (iv) any Claim or Interest evidenced by a Proof of Claim which amends a Claim or Interest scheduled by the Debtors as contingent, unliquidated or disputed, and (v) any Claim or Interest that is not an Allowed Claim or Allowed Interest or a Disallowed Claim or a Disallowed Interest; provided, however, that Refund Claims are not Disputed on account of being scheduled by the Debtors as contingent or unliquidated and the Bond Claims are not Disputed notwithstanding any pending challenges or claims.

1.59 "*Distribution*" means Cash, property, interests in property or other value distributed to holders of Allowed Claims, or their designated agents, under this Plan.

1.60 "*Distribution Record Date*" means, other than with respect to public securities cancelled by this Plan, the Effective Date or such other date as may be designated in the Confirmation Order.

1.61 "*Edgemere*" means Northwest Senior Housing Corporation.

1.62 "*Effective Date*" means the date which is the first Business Day on which the conditions set forth in Section 9 of this Plan have been satisfied or waived.

1.63 "*Entity*" shall have the meaning set forth in Bankruptcy Code section 101(15).

1.64 "*Entrance Fee Escrow*" means the escrow account holding entrance fees received from Residents on or after September 27, 2021, which account is maintained by Regions Bank, as escrow agent, on behalf of such Residents pursuant to the Escrow Agreement.

1.65 "*Entrance Fee Escrow Order*" means the Bankruptcy Court's Final Order (I) Authorizing the Debtors to Continue (A) Escrowing Entrance Fees in the Ordinary Course and (B) Refunding Certain Entrance Fees During the Chapter 11 Case and (II) Granting Related Relief [Docket No. 393].

1.66 "*Escrow Agreement*" means that certain Escrow Agreement, dated September 27, 2021, by and among Edgemere, the Trustee, and Regions Bank, as escrow agent.

1.67 "*Escrow Resident Claims*" means the Claims of Residents to funds in the Entrance Fee Escrow pursuant to the Escrow Agreement.

1.68 "*Estates*" means the estates of the Debtors created by the Chapter 11 Cases pursuant to Bankruptcy Code section 541.

1.69 "*Exculpated Party*" means each of: (i) the Purchaser, (ii) the Plan Sponsors, (iii) the Issuer, (iv) the Committee and the members of the Committee, (v) Lifespace and (vi) with respect to each of the foregoing Entities in clauses (i) through (v), such Entity and its current and former predecessors, successors and assigns, subsidiaries, affiliates, managed accounts or funds, and all of their respective current and former officers, directors, principals, shareholders, members, partners, managers, employees, attorneys, advisors, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals.

1.70 "*Executory Contract*" means all contracts and leases to which any Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

1.71 "*Former Resident*" a Resident that no longer resides at the Community as of the Voting Record Date.

1.72 "*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 Cases 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.

1.73 "*General Unsecured Claim*" means any Claim, other than Administrative Claims, Secured Claims, Other Priority Claims, Priority Tax Claims, the Dallas County Claim, the Diminution Claim, DIP Facility Claims, and Bond Claims (other than the Bond Deficiency Claim).

1.74 "*Ground Lease*" means that certain Ground Lease, dated November 5, 1999, by and between Edgemere and the Landlord.

1.75 "*Governmental Bar Date*" means October 11, 2022 at 4:00 prevailing Central Time, the date by which Governmental Units must file Proofs of Claims.

1.76 "*Government Unit*" means a "governmental unit" as defined in Bankruptcy Code section 101(27).

1.77 "*Impaired*" means, with respect to a Claim, that such Class of Claims is "impaired" within the meaning of Bankruptcy Code section 1124.

1.78 "*Initial Plan Sponsors*" means the Trustee and the DIP Lender.

1.79 "*Insurance Policies*" means, collectively, all the Debtors' insurance policies.

1.80 "*Interest*" means any membership interest in any Debtor, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest.

1.81 "*Issuer*" means the Tarrant County Cultural Education Facilities Finance Corporation.

1.82 "*KCC*" means Kurtzman Carson Consultants LLC.

1.83 "*Landlord*" means Intercity Investment Properties, Inc.

1.84 "*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*.

1.85 "*Lien*" means "lien," as defined in Bankruptcy Code section 101(37).

1.86 "*Lifespace*" means Lifespace Communities, Inc.

1.87 "*Lifespace Bond Contribution*" means the $16.5 million payment to the Trustee on the Effective Date for Distribution to holders of the Original Bonds.

1.88 "*Lifespace Resident Claim*" means Lifespace's interest in the Litigation Trust Assets on account of the Lifespace Resident Contributions equaling $143,910,979.78 (assuming no Residents opt out of the Lifespace Settlement and to be adjusted for opt-outs), which shall entitle Lifespace to a Pro Rata Distribution of Litigation Trust Proceeds.

1.89 "*Lifespace Resident Contribution Schedule*" means the schedule of Lifespace Resident Contributions attached to the Disclosure Statement as Exhibit 4.

1.90 "*Lifespace Resident Contributions*" means the annual payments that will be made by Lifespace into the Residents Trust, subject to certain financial conditions, pursuant to the terms of the Lifespace Settlement and Contribution Agreement, in substantially the form attached

to the Disclosure Statement as Exhibit 3, and the Lifespace Resident Contribution Schedule, attached to the Disclosure Statement as Exhibit 4.

1.91 "*Lifespace Settlement*" means the settlement set forth in the Lifespace Settlement and Contribution Agreement.

1.92 *"Lifespace Settlement and Contribution Agreement*" means that certain Lifespace Settlement and Contribution Agreement, in substantially the form attached to the Disclosure Statement as Exhibit 3.

1.93 "*Litigation Trust*" means the trust described in Section 4 of this Plan.

1.94 "*Litigation Trust Agreement*" means the agreement between the Plan Sponsors, the Debtors and the Litigation Trustee to be entered into as of the Effective Date, substantially in form set forth in the Plan Supplement, as it may be amended from time to time in accordance with its terms.

1.95 "*Litigation Trust Assets*" means from and after the Effective Date (i) all legal and equitable interests of the Debtors in Retained Causes of Action, including the Landlord Litigation, and Avoidance Actions, and the proceeds thereof; (ii) all legal and equitable defenses or counterclaims of the Debtors to Claims; and (iii) any other Assets to be vested in the Litigation Trust pursuant to this Plan and the Litigation Trust Agreement, including any Assets that are not sold in the Sale Transaction pursuant to the Asset Purchase Agreement.

1.96 "*Litigation Trust Expenses*" means reasonable and documented out-of-pocket fees, costs and expenses incurred by the Litigation Trust or the Litigation Trustee (or any professional or other Person retained by the Litigation Trustee in administering the Litigation Trust) on or after the Effective Date in connection with any of their responsive duties under this Plan and the Litigation Trust Agreement, including any administrative fees, attorneys' fees and expenses, insurance fees, taxes and escrow expenses, all as further set forth in the Litigation Trust Agreement.

1.97 "*Litigation Trust Interests*" means an uncertificated interest in the Litigation Trust representing the rights of holders of Allowed General Unsecured Claims.

1.98 "*Litigation Trust Proceeds*" means any Cash proceeds to be distributed to the holders of the Litigation Trust Interests pursuant to the terms of the Litigation Trust Agreement.

1.99 "*Litigation Trust Oversight Committee*" means three (3) Persons identified in the Plan Supplement that shall provide oversight and direction to the Litigation Trustee in accordance with the terms of the Litigation Trust Agreement.

1.100 "*Litigation Trustee*" means the Person identified as such in the Plan Supplement or other filing with the Bankruptcy Court, agreed to by Lifespace and the Trustee, and retained as of the Effective Date pursuant to the terms of the Litigation Trust Agreement, as the fiduciary responsible for implementing the applicable provisions of this Plan and the Litigation Trust Agreement.

1.101 "*Local Rules*" means the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court, or any other court having jurisdiction over the Chapter 11 Cases.

1.102 "*Master Trustee*" means UMB Bank, N.A. as successor master trustee under the Original Master Indenture.

1.103 "*Net Sale Proceeds*" means the sale proceeds of the Sale Transaction, less any less customary transaction fees and expenses.

1.104 "*Non-Resident Contract Counterparty*" shall have the meaning set forth in Section 5 of this Plan.

1.105 "*Notice Parties*" shall have the meaning set forth in Section 5 of this Plan.

1.106 "*Obligated Group*" means Edgemere and SQLC.

1.107 "*Original Bonds*" means, collectively, the Series 2015 Bonds and the Series 2017 Bonds.

1.108 "*Original Bond Documents*" means, collectively the 2015 Bond Documents and the 2017 Bond Documents.

1.109 "*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.

1.110 "*Other Priority Claim*" means any Claim, other than an Administrative Claim, a Priority Tax Claim, or the DIP Facility Claims, which is entitled to priority under Bankruptcy Code section 507(a).

1.111 "*Other Secured Claim*" means any Secured Claim other than a Bond Claim and the Dallas County Claim.

1.112 "*Participating Residents*" means all Participating Current Residents and Participating Former Residents.

1.113 "*Participating Current Residents*" means all Current Residents who do not opt out of the Lifespace Settlement and the releases under Section 8 of this Plan.

1.114 "*Participating Former Residents*" means all Former Residents who do not opt out of the Lifespace Settlement and the releases under Section 8 of this Plan.

1.115 "*Person*" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization, governmental unit, government (or agency or political subdivision thereof), or other entity.

1.116 "*Petition Date*" means April 14, 2022, the date on which the Debtors filed their voluntary petitions for relief commencing the Chapter 11 Cases.

1.117 "*Plan*" means this Plan of Reorganization, dated December 19, 2022, including all exhibits, supplements, appendices, and schedules thereto, either in its present form or as the same may be amended, supplemented, or modified from time to time.

1.118 "*Plan Sponsors*" means the Debtors, the Trustee and the DIP Lender.

1.119 "*Plan Supplement*" means the compilation of documents and forms of documents, schedules, and exhibits to this Plan, to be filed prior to the Confirmation Hearing, as amended, supplemented, or modified from time to time in accordance with the terms hereof, the Bankruptcy Code, and the Bankruptcy Rules.

1.120 "*Plan Supporters*" means the Plan Sponsors, Lifespace and the Committee.

1.121 "*Purchased Assets*" means the Assets of the Debtors acquired by the Purchaser pursuant to the Asset Purchase Agreement.

1.122 "*Priority Tax Claim*" means any Claim of a governmental unit of a kind entitled to priority under Bankruptcy Code section 507(a)(8).

1.123 "*Pro Rata*" means, with respect to any Claim, the proportion that the amount of a Claim in a particular Class or Classes bears to the aggregate amount of all Claims in such Class or Classes, unless this Plan otherwise provides.

1.124 "*Professionals*" means all professionals employed in these Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, and 1103.

1.125 "*Professional Claim*" means a Claim of a Professional for compensation and/or reimbursement of expenses incurred by such Professional through and including the Effective Date.

1.126 "*Proposed Assumed Contracts*" shall have the meaning given to such term in Section 5 of this Plan.

1.127 "*Purchaser*" means Bay 9 Holdings LLC or its designee, or the purchaser designated by the Initial Plan Sponsors as the prevailing bidder at the Auction, if any.

1.128 "*Proof of Claim*" means a proof of Claim filed against any Debtor in the Chapter 11 Cases.

1.129 "*Qualified Bid*" has the meaning set forth in the Bidding Procedures Order.

1.130 "*Refund Claims*" means Rejection Claims of both Former Residents and Current Residents against Edgemere in the amount of the contractual refund obligation of Edgemere under the rejected Residency Agreements.

1.131 "*Refund Trigger Date*" means the date (a) that a Resident vacates the Community, (b) the Residents Trust is informed that such Resident's unit is re-leased to a new Resident, and (c) the Residents Trust contains sufficient funds for payment of such Resident's Refund Claim.

1.132 "*Reinstate*," "*Reinstated*," or "*Reinstatement*" means with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with Bankruptcy Code section 1124.

1.133 "*Rejection Claims*" means any Claim arising from or relating to, the rejection of an Executory Contract or Unexpired Lease pursuant to Bankruptcy Code section 365(a) by any of the Debtors, as limited, in the case of a rejected Unexpired Lease, by Bankruptcy Code section 502(b)(6).

1.134 "*Rejection Damages Bar Date*" means the date by which Rejection Claims must be filed, which shall be the latest of: (i) the General Bar Date, (ii) thirty (30) days after the date of the entry of any order authorizing the rejection of the Executory Contract or Unexpired Lease, or (iii) thirty (30) days after the effective date of rejection of such Executory Contract or Unexpired Lease, including pursuant to Bankruptcy Code section 365(d)(4).

1.135 "*Released Parties*" means (i) the Committee, (ii) the Purchaser, (iii) the Issuer, (iv) the Plan Sponsors, (v) the holders of the Original Bonds (vi) Lifespace and (vii) with respect to each of the foregoing Entities in clauses (i) through (vi), such Entity and its current and former predecessors, successors and assigns, subsidiaries, affiliates, managed accounts or funds, and all of their respective current and former officers, directors, principals, shareholders, members, partners, managers, employees, attorneys, advisors, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals.

1.136 "*Releasing Party*" means (i) each holder of a Claim who has not chosen, by marking the appropriate box on the Ballot and/or Opt Out Form, as appropriate, to opt out of the "Releases by Holders of Claims" provided for in Section 8.3 of this Plan, (ii) the DIP Lender, the Trustee and the Holders of Bond Claims solely to the extent set forth in Section 8.3 of this Plan, (iii) Lifespace, and (vi) the Committee.[3]

1.137 "*Residency Agreements*" means those certain agreements entered into by and between the Residents and the Debtors, including all 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.

1.138 "*Resident*" means a Current Resident or Former Resident of the Community who is or was a party to a Residency Agreement.

1.139 "*Resident Challenges*" shall have the meaning set forth in Section 4.8 of this Plan.

[3] Lifespace has requested the Purchaser be added as a Releasing Party.

1.140 "*Resident Claim Cover Letter*" means that certain letter prepared by the Committee that, subject to approval of the Bankruptcy Court, will accompany each Resident Claimant's Ballot.

1.141 "*Resident Claimants*" means the holders of Claims arising from rejected Residency Agreements.

1.142 "*Residents Trust*" means the trust established by the Residents Trust Agreement into which the Lifespace Resident Contributions shall be made.

1.143 "*Residents Trust Agreement*" means that certain Residents Trust Agreement between the Committee and the Debtors, which will be included in the Plan Supplement.

1.144 "*Residents Trust Interests*" means an uncertificated interest in the Residents Trust representing the rights of Participating Former Residents and Participating Current Residents.

1.145 "*Residents Trust Oversight Committee*" means the three-member committee of the Residents Trust appointed by the Committee.

1.146 "*Residents Trust Assets*" means (i) the Lifespace Resident Contributions, and (ii) the Estates' rights to enforce the terms of the Lifespace Settlement and Contribution Agreement.

1.147 "*Residents Trustee*" means the Person identified as such in the Plan Supplement or other filing with the Bankruptcy Court, and retained as of the Effective Date pursuant to the terms of the Residents Trust Agreement, as the fiduciary responsible for implementing the applicable provisions of this Plan and the Residents Trust Agreement.

1.148 "*Retained Causes of Action*" means the Causes of Action, including the Landlord Litigation, that the Debtors or their Estates may hold and specifically retain and transfer to the Litigation Trust on the Effective Date. For the avoidance of doubt, Retained Causes of Action shall not include any Claims or Causes of Action against any Released Parties.

1.149 "*Sale Transaction*" means the transactions associated with the sale of substantially all the Debtors' Assets, which transactions are described in the Asset Purchase Agreement.

1.150 "*Schedules*" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs, if any, filed by a Debtor pursuant to Bankruptcy Code section 521 and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

1.151 "*Secured Claim*" means any Claim against any Debtor: (i) secured by a Lien on property in which an Estate has an interest, which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to Bankruptcy Code section 553, to the extent of the value of the creditor's interest in an

Estates' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (ii) Allowed as such pursuant to this Plan.

1.152 "*Series 2015 Bonds*" means, collectively, the Series 2015A Bonds and the Series 2015B Bonds.

1.153 "*Series 2015 Bond Claims*" means any and all Claims in respect of the Series 2015 Bonds.

1.154 "*Series 2015A Bonds*" means the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015A, in the original aggregate principal amount of $53,600,000 issued pursuant to the 2015 Bond Indenture.

1.155 "*Series 2015B Bonds*" means the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015B, in the original aggregate principal amount of $40,590,000 issued pursuant to the 2015 Bond Indenture.

1.156 "*Series 2017 Bonds*" means the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2017A, in the original aggregate principal amount of $21,685,000 issued pursuant to the 2017 Bond Indenture.

1.157 "*Series 2017 Bond Claims*" means any and all Claims in respect of the Series 2017 Bonds.

1.158 "*SQLC*" means Senior Quality Lifestyles Corporation.

1.159 "*Taxing Authorities*" has the meaning set forth in Section 12.15 of this Plan.

1.160 "*Tax Liens*" has the meaning set forth in Section 12.15 of this Plan.

1.161 "*Trustee*" means (i) 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; and (ii) any successor trustee in any such capacity.

1.162 "*Unexpired Lease*" means a lease to which a Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365, including the Ground Lease.

1.163 "*Unimpaired*" means, with respect to a Claim, a Class of Claims that is "unimpaired" within the meaning of Bankruptcy Code section 1124.

1.164 "*U.S. Trustee*" means the Office of the United States Trustee for the Northern District of Texas.

1.165 "*U.S. Trustee Fees*" means all fees and charges assessed against the Estates of the Debtors under 28 U.S.C. § 1930.

1.166 "*Voting Agent*" means KCC.

1.167 "*Voting Deadline*" means the deadline to vote to accept or reject this Plan as set forth in the Disclosure Statement or an order of the Bankruptcy Court, as such deadline may be extended or modified from time to time.

B. Interpretation: Application of Definitions and Rules of Construction.

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan, as the same may be amended, waived, or modified from time to time. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in Bankruptcy Code section 102 shall apply to this Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Unless otherwise provided, any reference in this Plan to an existing document, exhibit, or schedule means such document, exhibit, or schedule as it may have been amended, restated, revised, supplemented, or otherwise modified. If a time or date is specified for any payments or other Distribution under this Plan, it shall mean on or as soon as reasonably practicable thereafter. Further, where appropriate from a contextual reading of a term, each term includes the singular and plural form of the term regardless of how the term is stated and each stated pronoun is gender neutral.

C. Computation of Time.

In computing any period of time prescribed or allowed by the terms of this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. Any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

D. Controlling Document.

In the event of an inconsistency between this Plan and the Disclosure Statement, the terms of this Plan shall control in all respects. In the event of an inconsistency between this Plan and the Plan Supplement, the Plan Supplement shall control. In the event of an inconsistency between this Plan, the Plan Supplement and the Confirmation Order, the Confirmation Order shall control.

SECTION 2. TREATMENT OF ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND U.S. TRUSTEE FEES

2.1 ***Administrative Claims***. Unless a holder of an Allowed Administrative Claim and the Plan Sponsors before the Effective Date agree to less favorable treatment, each holder of an Allowed Administrative Claim will be paid the full unpaid amount of such Allowed Administrative Claim in Cash: (i) if such Allowed Administrative Claim is based on liabilities that the Debtors incurred in the ordinary course of business after the Petition Date, on the Effective Date or in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, in the Plan Sponsors' discretion, and without any further action by any holder of such Allowed Administrative Claim; (ii) if such Allowed Administrative Claim is due on the Effective Date, or, if such Allowed Administrative Claim is not due as of the Effective Date, on the date that such Allowed Administrative Claim becomes due or as soon as reasonably

practicable thereafter; (iii) if an Administrative Claim is not Allowed as of the Effective Date, on the date that is no later than thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order of the Bankruptcy Court or as soon as reasonably practicable thereafter; or (iv) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

To be eligible to receive Distributions under this Plan on account of an Administrative Claim that is not otherwise Allowed by this Plan, a request for payment of an Administrative Claim must be filed with the Bankruptcy Court on or before the Administrative Claims Bar Date. Any Administrative Claim that is not asserted in accordance herewith shall be deemed disallowed under this Plan and shall be forever barred against the Debtors, the Debtors' Estates, or any of the Debtors' Assets or property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup or recover such Claim. For the avoidance of doubt, holders of the DIP Facility Claims, the Escrow Resident Claims and the Diminution Claim shall not be required to file an Administrative Claim for the allowance and satisfaction of such Claims.

2.2 ***Professional Claims***. All Professionals seeking payment of Professional Claims shall (i) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred in the Chapter 11 Cases by the date that is forty-five (45) days after the Effective Date and (ii) be paid (a) the full unpaid amount as is Allowed by the Bankruptcy Court within five (5) Business Days after the date that such Claim is Allowed by order of the Bankruptcy Court, or (b) upon such other terms as may be mutually agreed upon between the holder of such an Allowed Professional Claim and the Plan Sponsors; provided however that Professional Claims shall be cumulatively capped at $1.5 million from the period of December 1, 2022 through the Effective Date, with holders of Professional Claims sharing Pro Rata in the $1.5 million in the event Professional Claims exceed the cap. Any Professional Claim that is not asserted in accordance with Section 2.2 of this Plan or that exceed the cap shall be deemed disallowed under this Plan and shall be forever barred against the Plan Sponsors, the Debtors' Estates, or any of the Debtors' Assets or property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup or recover such Claim. All Professionals seeking payment of Professional Claims for amounts arising through November 30, 2022 shall file their respective interim fee applications for allowance of compensation for services rendered and reimbursement of expenses incurred in the Chapter 11 Cases through November 30, 2022 within twenty-one (21) days of entry of the Confirmation Order.

2.3 ***Priority Tax Claims***. In accordance with Bankruptcy Code section 1123(a)(1), Priority Tax Claims have not been classified and are treated as described in this Section 2 of this Plan. Unless otherwise agreed by the holder of an Allowed Priority Tax Claim, any Person holding an Allowed Priority Tax Claim will receive, as determined by the Plan Sponsors in their sole discretion and in full satisfaction of such Claim, payment in Cash in full on the later of (i) the Effective Date, or as soon as reasonably practicable thereafter as determined by the Litigation Trustee, or (ii) the first Business Day after the date that is thirty (30) calendar days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable.

2.4 ***U.S. Trustee Fees***. U.S. Trustee Fees will be paid in full by the Debtors and the Litigation Trustee, as applicable, as they become due and owing.

2.5 ***Escrow Resident Claims.*** As of the Petition Date, the Entrance Fee Escrow held $15,844,326. As of October 31, 2022, the Entrance Fee Escrow balance held for the benefit of Residents, which excludes interest earned, is $16,494,326. Within ten (10) days of the Effective Date, funds in the Entrance Fee Escrow shall be returned to those respective Residents that deposited such funds, pursuant to the terms of the Escrow Agreement, in full satisfaction of the Escrow Resident Claims.

2.6 ***DIP Facility Claims***. The DIP Facility Claims shall be deemed Allowed Secured Claims and superpriority Administrative Claims in the full amount due and owing under the DIP Credit Agreement as of the Effective Date. The DIP Facility Claims shall be satisfied in full from Cash available on the Effective Date.

2.7 ***Diminution Claim***. The Diminution Claim shall be deemed an Allowed superpriority Administrative Claim in the full amount due and owing under the DIP Orders as of the Effective Date. The Diminution Claim shall be satisfied in full from Cash available on the Effective Date. Such Diminution Claim is at least the amount due under the DIP Facility.

2.8 ***Dallas County Claim***. The Dallas County Claim shall be deemed an Allowed Secured Claim as of the Effective Date. The Dallas County Claim shall be satisfied in full from Cash available on the Effective Date.

SECTION 3. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

3.1 ***Classification and Specification of Treatment of Claims***. Pursuant to Bankruptcy Code sections 1122 and 1123, Claims (other than Allowed Administrative Claims, Priority Tax Claims, Professional Claims, DIP Facility Claims, the Dallas County Claim, the Escrow Resident Claims, the Diminution Claim and U.S. Trustee Fees) are classified for all purposes, including, without limitation, voting, confirmation and Distribution pursuant to this Plan, as set forth herein. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving Distributions under this Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

This Plan is premised upon the substantive consolidation of the Debtors solely for the purposes of voting, determining which Classes have accepted this Plan, confirming this Plan, and the resultant treatment of Claims and Interests and Distributions under this Plan.

3.2 ***Classes of Claims and Interests***.

Class	Claim	Estimated Allowed Claims	Status	Voting Rights

1	Other Priority Claims	$19,182.99	Unimpaired	Deemed to Accept
2	Bond Claims	$111,728,919.22	Impaired	Entitled to Vote
3	Other Secured Claims	$0	Unimpaired	Deemed to Accept
4	General Unsecured Claims	$206,313,419[4]	Impaired	Entitled to Vote
5	Participating Former Resident Refund Claims	$37,101,059.29	Impaired	Entitled to Vote
6	Participating Current Resident Refund Claims	$106,809,920.49	Impaired	Entitled to Vote
7	Intercompany Claims	$5,221,798.74	Impaired	Deemed to Reject
8	Interests in Debtors	N/A	Impaired	Deemed to Reject

3.2.1 Class 1 — Other Priority Claims. In accordance with the Proofs of Claim on file, there are asserted priority claims in the amount of $19,182.99. To the extent that such Claims have been or will be Allowed, Class 1 Claims will be Unimpaired and not entitled to vote on this Plan. Except to the extent that a holder of an Allowed Other Priority Claim has agreed to a different treatment of such Claim, each such holder shall receive, in full satisfaction of such Allowed Other Priority Claim, Cash in an amount equal to such Allowed Other Priority Claim, on or as soon as reasonably practicable after the later of (i) the Effective Date; (ii) the date the Other Priority Claim becomes an Allowed Claim; or (iii) the date for payment provided by any agreement or arrangement between the Plan Sponsors and the holder of the Allowed Other Priority Claim.

3.2.2 Class 2 — Bond Claims. Class 2 is Impaired and entitled to vote on this Plan. This Class consists of all Bond Claims and includes all Claims of the holders of the Series 2015 Bonds and the Series 2017 Bonds, which Claims shall be deemed Allowed pursuant to this Plan in the aggregate principal amount of $109,185,000, plus accrued and unpaid interest as of the Petition Date in the amount of $2,543,919.22. On the Effective Date, the Net Sale Proceeds after payment of Allowed Administrative Claims, Priority Tax Claims, Professional Claims, DIP Facility Claims, the Dallas County Claim, the Diminution Claim and U.S. Trustee Fees, shall be paid to the Trustee, which funds shall be disbursed to holders of the Bond Claims in accordance with the Original Bond Documents. Further, the Lifespace Bond Contribution will be paid to the Trustee on the Effective Date, which funds shall be disbursed to holders of the Bond Claims in accordance with the Original Bond Documents. Assuming no competing qualified bids are received and the Sale Transaction with the initial Purchaser closes, Holders of Bond Claims are estimated to receive Distributions of approximately 40% of their Bond Claims. The Bond

[4] Includes (i) an estimated Bond Deficiency Claim of $60,902,439.22 based upon the initial Purchaser's offer and the Lifespace Bond Contribution (after payment of other amounts set forth in the Plan), (ii) the $143,910,979.78 Lifespace Resident Claim (subject to opt-out adjustment), and (iii) vendor claims of approximately $1,500,000.

Deficiency Claim shall be treated on a Pro Rata basis with holders of Allowed General Unsecured Claims.

3.2.3 Class 3 — Other Secured Claims. This Class consists of all Other Secured Claims against the Debtors. In accordance with Debtors' books and records, no Class 3 Claims exist. To the extent that such Claims have been or will be asserted and Allowed, Class 3 Claims will be Unimpaired and not entitled to vote on this Plan. In full satisfaction of an Allowed Other Secured Claim, on the later of the Effective Date and the date on which the Other Secured Claim is Allowed, each holder of an Allowed Other Secured Claim shall receive, at the sole and exclusive option of the Plan Sponsors: (i) Cash equal to the amount of such Claim; (ii) return of the underlying collateral related to their Claims; or (iii) treatment of such Allowed Other Secured Claim in any other manner that renders the Claim Unimpaired, including Reinstatement.

3.2.4 Class 4 — General Unsecured Claims. Class 4 is Impaired and entitled to vote on this Plan. This Class consists of all General Unsecured Claims, including Class 5 and 6 Refund Claims of Residents who OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan, and including vendor claims of approximately $1,500,000, the Bond Deficiency Claim and the Lifespace Resident Claim. Allowed General Unsecured Claims shall be paid a Pro Rata share of the Litigation Trust Proceeds. Holders of Allowed General Unsecured Claims are estimated to receive Distributions ranging from 0% to 50% of their Allowed General Unsecured Claims, depending on the outcome of the Landlord Litigation and the liquidation of other Litigation Trust Assets.

3.2.5 Class 5 — Participating Former Resident Refund Claims. Class 5 is Impaired and entitled to vote on this Plan. This Class consists of the Refund Claims of Participating Former Residents, who, for the avoidance of doubt, no longer reside at Edgemere as of the Voting Record Date. The Residency Agreements of Former Residents shall be rejected, and the holders of Allowed Class 5 Claims who OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan shall receive a Class 4 General Unsecured Claim in an amount equal to their Refund Claim. Former Residents who do not OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan (i.e. Participating Former Residents) shall receive Cash from the Residents Trust within sixty (60) days of the Refund Trigger Date in an amount equal to their Refund Claim.[5]

3.2.6 Class 6 — Participating Current Resident Refund Claims. Class 6 is Impaired and entitled to vote on this Plan. This Class consists of the Refund Claims of Participating Current Residents, who, for the avoidance of doubt, reside at Edgemere, as of the Voting Record Date. The Residency Agreements of Current Residents shall be rejected, and the holders of Allowed Class 6 Claims who OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan shall receive a Class 4 General Unsecured Claim in an amount equal to their Refund Claim. Current Residents who do not OPT OUT of the Lifespace Settlement and the releases under

[5] The Residents Trust shall be informed of units which have been re-leased semi-annually by the Purchaser, which shall be the date the Residents Trust is deemed informed of units which have been re-leased for purposes of the Refund Trigger Date.

Section 8 of this Plan (i.e. Participating Current Residents) shall receive Cash from the Residents Trust within sixty (60) days of the Refund Trigger Date in an amount equal to their Refund Claim.[6]

3.2.7 Class 7 — Intercompany Claims. Class 7 is Impaired and not entitled to vote on this Plan. This Class consists of all Claims held by Lifespace against the Debtors. Class 7 Claims shall be waived and released and Lifespace, as holder of such Claims, shall receive no Distribution on account of Class 7 Claims.

3.2.8 Class 8 — Interests in Debtors. Class 8 is Impaired and deemed to reject this Plan. This Class consists of Interests of Lifespace in the Debtors, which Interests shall be terminated on the Effective Date.

3.3 ***Acceptance or Rejection of this Plan***.

3.3.1 Acceptance by an Impaired Class. In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

3.3.2 Presumed Acceptance of this Plan. Classes 1 and 3 are conclusively presumed to have accepted this Plan pursuant to Bankruptcy Code section 1126(f).

3.3.3 Presumed Rejection of this Plan. Classes 7 and 8 are Impaired under this Plan and will receive no Distributions and, thus, are conclusively presumed to have rejected this Plan pursuant to Bankruptcy Code section 1126(g).

3.3.4 Voting Class. Classes 2, 4, 5 and 6 are Impaired under this Plan and are entitled to vote to accept or reject this Plan.

3.4 ***Subordinated Claims***. The allowance, classification, and treatment of all Allowed Claims and Interests and the respective Distributions and treatments under this Plan take into account the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, Bankruptcy Code section 510(b), or otherwise. For purposes of Bankruptcy Rule 7001(8), this Plan provides for subordination. The Litigation Trustee, as set forth herein, shall have the right to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto under the Bankruptcy Code as long as such treatment is consistent with the terms of the Litigation Trust Agreement. Subordinated Claims shall not receive a Distribution under this Plan until any and all senior Allowed Claims are paid in full.

3.5 ***Cramdown***. If all applicable requirements for confirmation of this Plan are met as set forth in Bankruptcy Code section 1129(a) except subsection (8) thereof, the Plan

[6] The Residents Trust shall be informed of units which have been re-leased semi-annually by the Purchaser, which shall be the date the Residents Trust is deemed informed of units which have been re-leased for purposes of the Refund Trigger Date.

Sponsors shall request that the Bankruptcy Court confirm this Plan in accordance with Bankruptcy Code section 1129(b) on the bases that this Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims or Interests that is Impaired hereunder, and has not accepted or is deemed to reject, this Plan.

SECTION 4. MEANS FOR IMPLEMENTATION OF THIS PLAN

4.1 ***Sale Transaction***.

4.1.1 Sale Transaction. Consistent with the Asset Purchase Agreement, substantially all of the property in the Estates shall be sold to the Purchaser (including such Purchaser to be identified as the winning bidder following an Auction), free and clear of all Liens, Claims, charges, or other encumbrances pursuant to section 1123(a)(5)(D) of the Bankruptcy Code, with all such Liens, Claims, charges or other encumbrances attaching automatically to the Net Sale Proceeds in the same manner, extent, validity and priority as existed on the Closing Date, with the Net Sale Proceeds to be distributed pursuant to this Plan; provided, however, that ad valorem personal property tax liens arising and attaching to the subject property by operation of law on January 1, 2023 shall remain attached to the Assets and ad valorem personal property taxes for tax year 2023 shall be the responsibility of the Purchaser, subject to being Pro Rated pursuant to Section 2.6 of the Asset Purchase Agreement and subject to any defenses available under applicable Texas Law; the Taxing Authorities shall retain the right to enforce their liens and take all actions provided by applicable Texas Law. An initial Purchaser has been identified, whose purchase offer in the amount of $48.5 million (subject to the adjustments in the Asset Purchase Agreement) is subject to higher and better bids. If a competing qualified bid is received by January 13, 2023 at 4:00 p.m. (prevailing Central Time), an Auction shall be held on January 17, 2023 at 10:00 a.m. (prevailing Central Time) to determine the ultimate Purchaser. Upon the Closing of the Sale Transaction, all Net Sale Proceeds therefrom after payments required under the Plan to pay any unpaid Allowed Administrative Claims, Priority Tax Claims, Professional Claims, DIP Facility Claims, the Dallas County Claim, Diminution Claim and the U.S. Trustee Fees, shall be paid to the Trustee for Distribution to holders of Original Bonds, pursuant to the terms of the Original Bond Documents.

4.1.2 Monthly Rental Agreements. The Asset Purchase Agreement contemplates the rejection of all Residency Agreements, provided that, subject to regulatory approvals and/or requirements, any Purchaser shall offer to all Current Residents a monthly rental agreement which, subject to regulatory approvals and/or requirements, shall provide similar services to Current Residents as provided prior to the Closing Date.

4.1.3 Transition to Purchaser. The Asset Purchase Agreement contemplates both the rejection of the Debtors' agreement with Lifespace to manage the Community, and the Purchaser receiving all regulatory approvals to operate the Purchased Assets at or prior to the Closing Date. Prior to the Closing Date, the Debtors and Lifespace shall provide prompt and reasonable assistance in connection with the approval or implementation of the Asset Purchase Agreement or any ancillary agreements, including, without limitation, providing information in connection with Purchaser's seeking of regulatory approvals necessary to own and operate the Community.

4.1.4 [Injunction Against Solicitation. The Asset Purchase Agreement contemplates that the Purchaser will continue to operate the Community as a senior living community. In consideration for being a Released Party, Lifespace, on behalf of itself and any of its affiliates, subsidiaries, representatives, or agents, agrees that, without the prior written consent of Purchaser, (i) from the Confirmation Date and until the second anniversary of the Effective Date, Lifespace shall not hire or solicit for employment any individual that was an employee of the Community at any time from November 2, 2022 to the Effective Date; provided, however, Lifespace shall not be prohibited from hiring any individual that responds to a general public solicitation made by Lifespace regarding employment opportunities that is not specifically targeted at such persons, and (ii) shall not solicit by direct contact (as opposed to marketing to the public generally) any individuals that are or were Residents of the Community at any time from November 2, 2022 to the Closing Date for movement or relocation to any other senior living community located in Texas; provided, however, Lifespace shall not be prohibited from responding to any direct inquiry from a Resident regarding potential movement or relocation to such other senior living community in Texas.][7]

4.1.5 Transfer of Assets to Litigation Trust. On the Effective Date, all of the Estates' assets not sold in the Sale Transaction shall be transferred to the Litigation Trust and administered as set forth more fully below.

4.2 ***Creation of the Litigation Trust and Appointment of the Litigation Trustee and Litigation Trust Oversight Committee***.

4.2.1 Creation of the Litigation Trust. On or prior to the Effective Date, the Debtors shall execute the Litigation Trust Agreement. On the Effective Date, the Litigation Trust shall become effective and shall be deemed to be valid, binding and enforceable in accordance with the terms and provisions of this Plan and the Litigation Trust Agreement. After the Effective Date, the Litigation Trust Agreement may be amended in accordance with its terms without further order of the Bankruptcy Court. The Litigation Trust Agreement shall be satisfactory in form and substance to the Plan Sponsors.

4.2.2 Purpose of the Litigation Trust. The Litigation Trust shall be established for the purposes of (i) liquidating any non-Cash Litigation Trust Assets; (ii) maximizing recovery of the Litigation Trust Assets for the benefit of the holders of Litigation Trust Interests; (iii) distributing the proceeds of the Litigation Trust Assets to holders of the Litigation Trust Interests in accordance with this Plan and the Litigation Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except only in the event and to the extent necessary for, and consistent with, the liquidating purpose of the Litigation Trust; (iv) prosecuting or otherwise resolving the Retained Causes of Action for the benefit of the holders of the Litigation Trust Interests; and (v) winding down the Chapter 11 Cases as provided in this Plan.

4.2.3 Funding of the Litigation Trust. On the Effective Date, Cash in the amount of $500,000 will be funded Pro Rata by the Trustee and Lifespace. The Cash will be set

[7] The Purchaser has requested this provision.

aside for the sole purpose of paying Litigation Trust Expenses to be incurred by the Litigation Trust.

4.2.4 Transfer of Litigation Trust Assets to the Litigation Trust. As of the Effective Date, pursuant to the provisions of sections 1141(b) and (c) of the Bankruptcy Code, the Debtors and the Estates shall preserve, transfer and assign all of their respective right, title and interest in and to all of the Litigation Trust Assets, which shall automatically vest in the Litigation Trust free and clear of all Claims, Liens, encumbrances, charges, Interests and other interests, subject only to the Allowed Claims of the holders of Litigation Trust Interests as set forth in this Plan and in the Litigation Trust Agreement.

4.2.5 Appointment of the Litigation Trustee. On the Effective Date, the Litigation Trustee shall be deemed the Estates' representative solely with respect to the Litigation Trust Assets in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified in this Plan and Litigation Trust Agreement solely with respect to the Litigation Trust Assets, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004.

4.2.6 Governance of Litigation Trust. The Litigation Trust shall be governed by the Litigation Trust Agreement and administered by the Litigation Trustee who shall report to the Litigation Trust Oversight Committee in accordance with the terms of this Plan and the Litigation Trust Agreement.

4.2.7 Tax Treatment. Except to the extent allocable to Disputed Claims, consistent with the principles of Revenue Procedure 94-45, 1994-2 C.B. 684, as of the Effective Date, for federal income tax purposes, (i) the Debtors will be deemed to transfer the Litigation Trust Assets to the holders of the Litigation Trust Interests, (ii) the holders of the Litigation Trust Interests will be deemed to transfer such Assets to the Litigation Trust, (iii) the Litigation Trust will be treated as a "liquidating trust," as defined in Treasury Regulation section 301.7701-4(d), and as a "grantor trust" within the meaning of Internal Revenue Code sections 671-679 and (iv) the holders of the Litigation Trust Interests will be treated as the "grantors" of the Litigation Trust.

4.2.8 Securities Registration Exemption. The Plan Sponsors intend that the Litigation Trust Interests shall not be deemed "securities" under applicable laws, but to the extent such units are deemed to be "securities," the Plan Sponsors believe the issuance of such units under this Plan is exempt, pursuant to section 1145 of the Bankruptcy Code (except with respect to an entity that is an "underwriter" as defined in section 1145(b) of the Bankruptcy Code).

4.2.9 Rights, Powers and Duties of the Litigation Trust and the Litigation Trustee. The Litigation Trustee will act for the benefit of holders of Litigation Trust Interests in a fiduciary capacity and shall have comparable authority as a bankruptcy trustee of the Debtors, as the exclusive representative of the Estates under section 1123(a)(5)(B) of the Bankruptcy Code or any corresponding federal or state laws with respect to the Litigation Trust Assets and shall succeed to all the Debtors' and the Estates' rights with respect thereto, subject to the provisions of this Plan and the Litigation Trust Agreement. The Litigation Trust is the successor to the Debtors and their Estates. The powers, rights and duties of the Litigation Trustee shall arise on the Effective Date

and shall include, all subject to the terms and conditions of the Litigation Trust Agreement, the following:

(a) commencing, pursuing and liquidating all of the Litigation Trust Assets;

(b) engaging attorneys, consultants, agents, employees and any other professional persons to assist the Litigation Trustee with respect to the Litigation Trustee's responsibilities;

(c) paying the fees and expenses of the attorneys, consultants, agents, employees and other professional persons engaged by the Litigation Trust and paying all other expenses;

(d) compromising and settling Claims without notice or Bankruptcy Court approval;

(e) calculating and implementing Distributions of Litigation Trust Assets for the benefit of the holders of the Litigation Trust Interests;

(f) resolving issues involving Claims and Interests in accordance with this Plan;

(g) consulting with members of the Litigation Trust Oversight Committee regarding the prosecution and/or settlement of Retained Causes of Action and reporting to the Litigation Trust Oversight Committee regarding such matters, and seeking approval from the Litigation Trust Oversight Committee regarding the prosecution and/or settlement of each Cause of Action, to the extent set forth in the Litigation Trust Agreement;

(h) investing Cash in accordance with section 345 of the Bankruptcy Code, and withdrawing and making Distributions of Cash to holders of Litigation Trust Interests holding and paying taxes and other obligations incurred by the Litigation Trustee in connection with winding down the Estates in accordance with this Plan;

(i) coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any Litigation Trust Assets;

(j) taking possession of all books, records, and files of the Debtors and their Estates; and providing for the retention and storage of such books, records, and files until such time as the Litigation Trust determines, in accordance with the Litigation Trust Agreement, that retention of same is no longer necessary or required;

(k) overseeing compliance with the accounting, finance and reporting obligations;

(l) paying taxes or other obligations incurred by the Litigation Trust;

(m) preparing financial statements and U.S. Trustee post-confirmation quarterly reports, and filing such reports on the docket of the Chapter 11 Cases until such time as a final decree has been entered;

(n) overseeing the filing of final tax returns, refund requests, audits and other corporate dissolution documents, as required;

(o) performing any additional corporate actions as necessary to carry out the wind down and liquidation of the Estates;

(p) exercising such other powers as may be vested in or assumed by the Litigation Trustee pursuant to this Plan, the Litigation Trust Agreement or other Order of the Bankruptcy Court or as may be needed or appropriate to carry out the provisions of this Plan; and

(q) undertaking all administrative functions of the Chapter 11 Cases, including the payment of fees payable to the U.S. Trustee and the ultimate closing of the Chapter 11 Cases.

4.2.10 Litigation Trust Interests. Holders of Allowed General Unsecured Claims shall, by operation of this Plan, receive a Pro Rata share of the Litigation Trust Interests in accordance with the terms of and priorities set forth in this Plan. Litigation Trust Interests shall also be reserved for holders of Disputed Claims which, if Allowed, would be entitled to participate in Distributions from the Litigation Trust, and such reserved Litigation Trust Interests shall be held by the Litigation Trustee pending allowance or disallowance of such Claims. No other Person shall have any interest, legal, beneficial or otherwise, in the Litigation Trust Assets upon the assignment and transfer of such assets to the Litigation Trust. As set forth in the Litigation Trust Agreement, Distributions from the Litigation Trust on account of Litigation Trust Interests shall be made from the Litigation Trust Assets after paying, reserving against or satisfying, among other things, the Litigation Trust Expenses. The Litigation Trust Interests shall be uncertificated and shall be nontransferable except upon death of the holder or by operation of law. Holders of Litigation Trust Interests shall have no voting rights with respect to such interests.

4.2.11 Pending Adversary Proceedings. Without the need for filing any motion for such relief, in connection with the Litigation Trust Assets, the Litigation Trust or the Litigation Trustee (as applicable) hereby shall be deemed substituted for the applicable Debtor (i) in all pending matters including, but not limited to, motions, contested matters and adversary proceedings in the Bankruptcy Court; and (ii) with respect to any Retained Causes of Action pending before the Bankruptcy Court or any other court.

4.2.12 Preservation of Right to Conduct Investigations. The preservation for the Litigation Trust of any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 is necessary and relevant to the liquidation and administration of the Litigation Trust Assets. Accordingly, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 held by the Debtors prior to the Effective Date shall vest with the Litigation Trust and shall continue until dissolution of the Litigation Trust.

4.3 ***Creation of the Residents Trust and Appointment of the Residents Trust Trustee and Residents Trust Oversight Committee***.

4.3.1 Upon the Plan Effective Date, a Residents Trust will be formed. The Residents Trust shall receive and distribute the Lifespace Resident Contributions pursuant to the

terms of the Lifespace Settlement and Contribution Agreement, the Plan and the Residents Trust Agreement. Holders of Residents Trust Interests shall consist of Participating Former Residents and Participating Current Residents.

4.3.2 Creation of the Residents Trust. On or prior to the Effective Date, the Committee and the Debtors shall execute the Residents Trust Agreement. On the Effective Date, the Residents Trust shall become effective and shall be deemed to be valid, binding and enforceable in accordance with the terms and provisions of the Plan and the Residents Trust Agreement. After the Effective Date, the Residents Trust Agreement may be amended in accordance with its terms without further order of the Bankruptcy Court. The Residents Trust Agreement shall be satisfactory in form and substance to the Committee and Lifespace.

4.3.3 Purpose of the Residents Trust. The Residents Trust shall be established for the purposes of (i) receiving the Lifespace Resident Contributions and the Estates' rights to enforce the terms of the Lifespace Settlement and Contribution Agreement; and (ii) distributing the proceeds of the Residents Trust Assets to Participating Former Residents and Participating Current Residents in accordance with the terms of the Plan and the Residents Trust Agreement. The trustee of the Residents Trust (the "**Residents Trust Trustee**") will act for the benefit of holders of Residents Trust Interests in a fiduciary capacity. Holders of Residents Trust Interests shall consist of Holders of Participating Former Residents and Participating Current Residents. Holders of Residents Trust Interests shall receive a distribution from the Residents Trust in accordance with the terms of the Plan and the Residents Trust Agreement.

4.3.4 Funding of the Residents Trust. Residents Trust expenses incurred by the Residents Trust shall be paid from Residents Trust Assets.

4.3.5 Transfer of Rights under the Lifespace Settlement and Contribution Agreement to the Residents Trust. As of the Effective Date, pursuant to the provisions of sections 1141(b) and (c) of the Bankruptcy Code, the Debtors and the Estates shall preserve, transfer and assign all of their respective right, title and interest in and under the Lifespace Settlement and Contribution Agreement, which shall automatically vest in the Residents Trust and Residents Trust Trustee free and clear of all Claims, Liens, encumbrances, charges, Interests and other interests, subject only to the Allowed Claims of the holders of Residents Trust Interests as set forth in the Plan and in the Residents Trust Agreement.

4.3.6 Appointment of the Residents Trust Trustee. On the Effective Date, the Residents Trust Trustee shall be appointed by a three-member Residents Trust Oversight Board appointed by the Committee and shall be deemed the Estates' representative solely with respect to the Residents Trust Assets in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified in the Plan and Residents Trust Agreement solely with respect to the Residents Trust Assets, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004.

4.3.7 Governance of Residents Trust. The Residents Trust shall be governed by the Residents Trust Agreement and administered by the Residents Trust Trustee who shall report to the Residents Trust Oversight Committee in accordance with the terms of the Plan and the Residents Trust Agreement.

4.3.8 Tax Treatment. The Debtors and the Committee will structure the Residents Trust as either a taxable trust or as a grantor trust (and not as a qualified settlement fund within the meaning of Section 1.468B-1 of the Treasury Regulations), with the goal of minimizing the cost and expense of reporting and paying tax on net investment income of the Residents Trust. If structured as a grantors trust, except to the extent allocable to Disputed Claims, consistent with the principles of Revenue Procedure 94-45, 1994-2 C.B. 684, as of the Effective Date, for federal income tax purposes, (i) the Debtors will be deemed to transfer the Residents Trust Assets to the holders of the Residents Trust Interests, (ii) the holders of the Residents Trust Interests will be deemed to transfer such Residents Trust Assets to the Residents Trust, (iii) the Residents Trust will be treated as a "liquidating trust," as defined in Treasury Regulation section 301.7701-4(d), and as a "grantor trust" within the meaning of Internal Revenue Code sections 671-679 and (iv) the holders of the Residents Trust Interests will be treated as the "grantors" and deemed owners of the Residents Trust.

In Revenue Procedure 94-45, the IRS states that a liquidating trust's term is generally not more than five (5) years from the date of creation and that is reasonable based on all fact and circumstances. Although the Residents Trust's term is expected to be eighteen (18) years or slightly longer, it is believed that such term is reasonable to carry out the intent of the Residents Trust as a liquidating trust if structured as a liquidating trust.

4.3.9 Securities Registration Exemption. The Plan Sponsors intend that the Residents Trust Interests shall not be deemed "securities" under applicable laws, but to the extent such units are deemed to be "securities," the Plan Sponsors believe the issuance of such units under the Plan is exempt, pursuant to section 1145 of the Bankruptcy Code (except with respect to an entity that is an "underwriter" as defined in section 1145(b) of the Bankruptcy Code).

4.3.10 Rights, Powers and Duties of the Residents Trust and the Residents Trust Trustee. The Residents Trust Trustee will act for the benefit of holders of Residents Trust Interests in a fiduciary capacity and shall have comparable authority as a bankruptcy trustee of the Debtors, as the exclusive representative of the Estates under section 1123(a)(5)(B) of the Bankruptcy Code or any corresponding federal or state laws with respect to the Residents Trust Assets and shall succeed to all the Debtors' and the Estates' rights with respect thereto, subject to the provisions of the Plan and the Residents Trust Agreement. The Residents Trust is the successor to the Debtors and their Estates. The powers, rights and duties of the Residents Trust Trustee shall arise on the Effective Date and shall include, all subject to the terms and conditions of the Residents Trust Agreement, the following:

(a) engaging attorneys, consultants, agents, employees and any other professional persons to assist the Residents Trust Trustee with respect to the Residents Trust Trustee's responsibilities;

(b) paying the fees and expenses of the attorneys, consultants, agents, employees and other professional persons engaged by the Residents Trust and paying all other expenses;

(c) calculating and implementing Distributions of Residents Trust Assets for the benefit of the holders of the Residents Trust Interests;

(d) consulting with members of the Residents Trust Oversight Committee regarding the administration of the Residents Trust pursuant to the terms of the Plan and the Lifespace Settlement and Contribution Agreement;

(e) investing Cash in accordance with section 345 of the Bankruptcy Code, and withdrawing and making Distributions of Cash to holders of Residents Trust Interests holding and paying taxes and other obligations incurred by the Residents Trust Trustee in connection with winding down the Estates in accordance with the Plan;

(f) overseeing compliance with the accounting, finance and reporting obligations;

(g) paying taxes or other obligations incurred by the Residents Trust; and

(h) exercising such other powers as may be vested in or assumed by the Residents Trust Trustee pursuant to this Plan, the Residents Trust Agreement or other Order of the Bankruptcy Court or as may be needed or appropriate to carry out the provisions of this Plan.

4.3.11 Residents Trust Interests. Holders of Allowed Class 5 and 6 Claims that do not OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan shall, by operation of this Plan, receive a Pro Rata share of the Residents Trust Interests in accordance with the terms of and priorities set forth in the Plan. Residents Trust Interests shall also be reserved for holders of Disputed Claims which, if Allowed, would be entitled to participate in Distributions from the Residents Trust, and such reserved Residents Trust Interests shall be held by the Residents Trust Trustee pending allowance or disallowance of such Claims. No other Person shall have any interest, legal, beneficial or otherwise, in the Residents Trust Assets upon the assignment and transfer of such assets to the Residents Trust. As set forth in the Residents Trust Agreement, Distributions from the Residents Trust on account of Residents Trust Interests shall be made from the Residents Trust Assets after paying, reserving against or satisfying, among other things, the Residents Trust expenses. The Residents Trust Interests shall be uncertificated and shall be nontransferable except upon death of the holder or by operation of law. Holders of Residents Trust Interests shall have no voting rights with respect to such interests.

4.4 ***Entrance Fee Escrow***. As of the Petition Date, the Entrance Fee Escrow held $15,844,326. As of October 31, 2022, the Entrance Fee Escrow balance held for the benefit of Residents, which excludes interest earned, is $16,494,326. Within ten (10) days of the Effective Date, funds in the Entrance Fee Escrow shall be returned to those respective Residents that deposited such funds, pursuant to the terms of the Escrow Agreement, in full satisfaction of the Escrow Resident Claims.

4.5 ***Corporate Action***. Upon the Effective Date, all actions contemplated by this Plan (whether to occur before, on, or after the Effective Date) shall be deemed authorized and approved in all respects, and all matters provided for in this Plan involving the corporate structure of the Debtors and any corporate action required by the Debtors in connection with this Plan shall be deemed to have occurred, without any requirement of further action by the directors or officers of the Debtors.

On or (as applicable) before the Effective Date, the appropriate officers of the Debtors or the Litigation Trust, as applicable, shall be authorized and directed to issue, execute, and deliver the agreements, documents, securities, certificates of incorporation, operating agreements, and instruments contemplated by this Plan (or necessary or desirable to effect the transactions contemplated by this Plan), including all documents necessary to consummate the Sale Transaction, in the name of and on behalf of the Debtors or the Litigation Trust, as the case may be, and any and all other agreements, documents, securities, and instruments relating to the foregoing.

4.6 ***Section 1146 Exemption from Certain Taxes and Fees***. Pursuant to Bankruptcy Code section 1146(a), any transfer of property and any issuance, transfer, or exchange of a security in connection with or pursuant to this Plan shall not be subject to any stamp, mortgage recording, or other similar tax, charge, or governmental assessment in the United States, and the Confirmation Order shall direct and be deemed to direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax, charge, or governmental assessment and, as applicable, to accept for filing and recordation instruments or other documents pursuant to such transfer of property or to permit the issuance, transfer, or exchange of a security without the payment of any such tax, charge, or governmental assessment. Such exemption specifically applies, without limitation, to (i) the sale of the Assets pursuant to the Asset Purchase Agreement effectuated under this Plan; (ii) the creation and recordation of any mortgage, deed of trust, lien, or other security interest; (iii) the making or assignment of any lease or sublease; and (iv) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with this Plan, including: (a) any merger agreements; (b) agreements of consolidation, restructuring, disposition, liquidation, or dissolution; (c) deeds; or (d) assignments executed in connection with any transaction occurring under this Plan.

4.7 ***Preservation of Causes of Action of the Debtors***. In accordance with Bankruptcy Code section 1123(b), and except where such Causes of Action have been expressly released (including, for the avoidance of doubt, the Exculpated Claims against the Exculpated Parties and the Debtor Released Claims against the Released Parties), the Litigation Trustee shall be vested with the authority to enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, whether arising before or after the Petition Date, and the Litigation Trustee's right(s) to commence, prosecute, or settle such Causes of Action shall be consistent with the terms of the Litigation Trust Agreement. The Litigation Trustee is the sole party that may pursue such Causes of Action, as appropriate, in accordance with the best interests of the holders of the Litigation Trust Interests. No Person may rely on the absence of a specific reference in this Plan or the Disclosure Statement to any Cause of Action against such Person as any indication that the Debtors or the Litigation Trustee, as applicable, will not pursue any and all available Causes of Action against such Person. Except with respect to Causes of Action as to which the Debtors have released any Person on or before the Effective Date (including pursuant to the Releases by the Debtors or otherwise), the Litigation Trustee, as applicable, expressly reserves all rights to prosecute any and all Causes of Action of the Debtors against any Person, except as otherwise expressly provided in this Plan. Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or by an order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Causes of Action for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise),

or laches, shall apply to such Causes of Action upon, after, or as a consequence of the confirmation or consummation of this Plan. For the avoidance of doubt, nothing in this Section 4.7 shall affect the "Releases by the Debtors" provided in Section 8.2 of this Plan.

Notwithstanding anything to the contrary contained herein, the Residents Trust Trustee shall be vested with the authority to enforce the terms of the Lifespace Settlement and Contribution Agreement, which are being assigned to the Residents Trust and the Residents Trust Trustee pursuant to this Plan.

4.8 ***Dismissal of Challenges.*** On July 12, 2022, the Committee filed the *Original Complaint*, commencing Case No. 22-03073-mvl and challenging the Bond Claims and related Liens under Bankruptcy Code section 544 (the "**Committee Challenge**"). The Committee Challenge has been abated on multiple occasions, most recently on November 29, 2022 for an additional sixty days. Furthermore, challenges were filed by certain Former Residents and their estates against the Initial Plan Sponsors' Liens, security interests, and adequate protection granted under the DIP Orders and the Entrance Fee Escrow Order (collectively, the "**Resident Challenges**"). *See* Docket Nos. 448, 449, 456, 457, 467, 544. On September 2, 2022, the Court abated the Resident Challenges pending further notice of the parties. *See* Docket No. 605. Upon the Effective Date, the Committee Challenge and the Resident Challenges will be dismissed with prejudice.

SECTION 5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in this Plan or the Plan Supplement, all pursuant to Bankruptcy Code sections 365(a) and 1123. Unless otherwise indicated, all assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to this Plan are effective as of the Closing Date. Each Executory Contract or Unexpired Lease assumed pursuant to this Plan or by Bankruptcy Court order and assigned to a Purchaser shall vest in and be fully enforceable by the Purchaser in accordance with its terms, except as such terms may have been modified by such order. Notwithstanding anything to the contrary in this Plan, the Plan Sponsors reserve the right to alter, amend, modify, or supplement the list of Executory Contracts and Unexpired Leases identified in the Plan Supplement at any time before the Effective Date. After the Effective Date, the Purchaser shall have the right to terminate, amend, or modify any contracts, leases, or other agreements without approval of the Bankruptcy Court, subject to the terms thereof. For the avoidance of doubt, Section 5 of this Plan shall apply to all Executory Contracts and Unexpired Leases except as otherwise provided herein and to the extent addressed and decided by an order of the Bankruptcy Court.

5.1 ***Rejection of Residency Agreements***. On the Closing Date and as set forth in the Asset Purchase Agreement, the Debtors shall reject the Residency Agreements of all Residents. Any Current Resident that desires to remain at the Community may do so, subject to regulatory approvals and/or requirements, by entering into a new monthly rental agreement which agreements will provide similar services to such Current Resident as provided under their prior Residency Agreement.

Notwithstanding anything herein to the contrary, for the sake of clarity and to avoid confusion, upon the rejection of the Residency Agreements, the holders of Refund Claims are not required to file Rejection Claims if such Resident Claimants agree with the proposed amount of the respective Resident Claimant's Refund Claim, as set forth in the Resident Claim Cover Letter accompanying the Resident Claimant's Ballot. Unless an additional Rejection Claim is filed by any Resident Claimants, all Resident Claimants shall be deemed to hold Allowed Class 5 or Class 6 Claims (unless they OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan, in which case they would hold Allowed Class 4 Claims) in the amount of their Refund Claim, as set forth in the Resident Claim Cover Letter accompanying each Resident Claimant's respective Ballot and/or solicitation materials, without the need to file a Rejection Claim for such Refund Claim. If any Resident Claimants disagree with the amount of their respective Refund Claim, as set forth in the Resident Claim Cover Letter accompanying each Resident Claimant's respective Ballot, then the Resident Claimants shall be required to file a Rejection Claim on or before the Rejection Damages Bar Date.

5.2 ***Assumption and Rejection of Executory Contracts and Unexpired Leases***. Unless assumed and assigned under the Asset Purchase Agreement, on the Closing Date the Debtors shall reject all Executory Contracts and Unexpired Leases. Resulting Rejection Claims will be treated as Class 4 General Unsecured Claims.

5.3 ***Assumption of the Ground Lease***. On the Closing Date and as set forth in the Asset Purchase Agreement, the Ground Lease shall be assumed, subject to the rights of the Litigation Trustee as set forth in this Plan and assigned to the Purchaser. The Landlord shall have an Allowed Administrative Claim for the amounts due and owing from the Petition Date through the Effective Date, subject to final approval of the Bankruptcy Court and the rights of parties in interest to challenge the asserted Administrative Claim amount. Nothing herein shall be construed as a waiver of the Litigation Trustee, the Plan Sponsors, the Committee or any third parties to pursue any and all Claims against the Landlord. The cure amount associated with the Ground Lease shall be funded from the Net Sale Proceeds into the Cure Escrow pending further order of the Bankruptcy Court as to the Allowed amount of such cure amount, with any balance following such order being distributed to the Trustee for distribution to holders of Bond Claims.

5.4 ***Claims Based on Rejection of Executory Contracts or Unexpired Leases***. All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed no later than the Rejection Damages Bar Date; *provided, that* any such Claims arising from the rejection of an Unexpired Lease shall be subject to the cap on rejection damages imposed by Bankruptcy Code section 502(b)(6). Any Claims arising from the rejection of an Executory Contract or Unexpired Lease that is not timely filed with the Bankruptcy Court (other than Refund Claims) will be automatically disallowed and forever barred from assertion and shall not be enforceable against the Debtors, the Estates, or the Debtors' property, without the need for any objection by any party or further notice to, action by, or order or approval of the Bankruptcy Court. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases, other than with respect to Resident Claimants, shall be classified as Class 4 Claims and shall be treated in accordance with this Plan.

5.5 ***Cure of Defaults for Assumed Executory Contracts and Unexpired Leases***. Any provisions or terms 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. Except with respect to Executory Contracts or Unexpired Leases in which the Purchaser and the applicable counterparties have stipulated in writing to payment of cure or with respect to Residency Agreements or the Ground Lease, the following procedures shall be established for determining cure with respect to the proposed assumed Executory Contracts or Unexpired Leases (the "**Proposed Assumed Contacts**"):

(a) 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 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 (the "**Cure and Possible Assumption and Assignment Notice**"). 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 January 10, 2023 at 4:00 p.m. (prevailing Central Time), which Cure Objection must be served on the following by e-mail: (a) counsel for the Initial 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**").

(b) 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 Purchaser, will be determined at the Confirmation Hearing.

(c) 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 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 or assumption and/or assignment of its Executory Contract or Unexpired

Lease 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 Confirmation Hearing. If a Contract Counterparty does not file a Contract Objection prior to the Confirmation 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 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 Hearing.

(d) For the avoidance of doubt, this section does not address Residency Agreements although the Residency Agreements are Executory Contracts. As provided above, any Purchaser must provide detail regarding the treatment of Residency Agreements with the Debtors' Current 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.

(e) Except as specified herein, assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults on the part of the Debtors or the Estates, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assumed and assignment Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assumption and assignment.

5.6 ***Insurance Policies***. Notwithstanding anything herein to the contrary, as of the Closing Date, and unless specifically rejected by the Purchaser, the Debtors shall assume all of the Insurance Policies, including director and officer and general liability policies, identified by the Plan Sponsors in the Plan Supplement pursuant to Bankruptcy Code section 365(a). Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each of the Insurance Policies.

5.7 ***Modifications, Amendments, Supplements, Restatements, or Other Agreements***. Unless otherwise provided, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated, or is rejected or repudiated under this Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11

Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith, unless such Executory Contract or Unexpired Lease has been previously assumed by the Debtors.

5.8 ***Reservation of Rights***. Nothing contained in this Plan or the Plan Supplement shall constitute an admission that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors have any liability thereunder.

5.9 ***Nonoccurrence of Effective Date***. If the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases under Bankruptcy Code section 365(d)(4), unless such deadline(s) have expired.

SECTION 6. PROVISIONS GOVERNING DISTRIBUTIONS

6.1 ***Timing and Calculation of Amounts to Be Distributed***. Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such a Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each holder of an Allowed Claim against the Debtors shall receive the full amount of the Distributions that this Plan provides for Allowed Claims in the applicable Class and in the manner provided herein. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, Distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in this Plan. Except as otherwise provided for in this Plan, holders of Claims shall not be entitled to interest, dividends, or accruals on the Distributions provided for herein, regardless of whether such Distributions are delivered on or at any time after the Effective Date.

6.2 ***Disbursements***. Except as otherwise provided in this Plan, all Distributions under this Plan shall be made by the Litigation Trustee.

6.3 ***Rights and Powers of Litigation Trustee regarding Disbursements***. The Litigation Trustee shall be empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (ii) make all Distributions contemplated hereby; (iii) employ professionals to represent it with respect to its responsibilities; and (iv) exercise such other powers as may be vested in the Litigation Trustee by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Litigation Trustee to be necessary and proper to implement the provisions of this Plan.

6.4 ***Payments and Distributions on Disputed Claims***. Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed Claims as of the Effective Date (but that later become Allowed Claims), shall be deemed to have been made on the Effective Date.

6.5 ***Special Rules for Distributions to Holders of Disputed Claims***. Notwithstanding any other provision of this Plan and except as may be agreed to by the Plan

Sponsors or the Litigation Trustee, on the one hand, and the holder of a Disputed Claim, on the other hand, no partial payments and no partial Distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

6.6 ***Delivery of Distributions in General***. Except as otherwise provided in this Plan, Distributions to holders of Allowed Claims shall be made to holders of record as of the Distribution Record Date by the Litigation Trustee, including the Distribution to the Trustee of the Net Sale Proceeds as provided in this Plan. Distributions to holders of Allowed Claims will be made at the address of each such holder as set forth in the Debtors' books and records, except that, in the case of holders of the Original Bonds, Distributions will be made by means of book-entry exchange through the facilities of the Depository Trust Company in accordance with the customary practices of the Depository Trust Company, as and to the extent practicable. Distributions under this Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each holder of an Allowed Claim shall have and receive the benefit of the Distributions in the manner set forth in this Plan. The Litigation Trustee shall not incur any liability whatsoever on account of any Distributions under this Plan except for gross negligence, willful misconduct, or fraud.

6.7 ***Undeliverable Distributions and Unclaimed Property***. If any Distribution to any holder is returned as undeliverable, the Litigation Trustee shall use reasonable efforts to determine the current address of such holder. No Distribution to such holder shall be made unless and until the Litigation Trustee has determined such holder's then current address, at which time such Distribution shall be made as soon as practicable; *provided*, *however*, that such Distributions shall be deemed unclaimed property under Bankruptcy Code section 347(b) and forfeited at the expiration of six months from the later of (i) the Effective Date and (ii) the date of the initial attempted Distribution. After such date, all "unclaimed property" or interests in property shall revert to the Litigation Trust (notwithstanding any applicable federal or state escheat or abandoned or unclaimed property laws to the contrary), and the Claim of any holder to such property shall be discharged and forever barred.

6.8 ***Withholding and Reporting Requirements***. In connection with this Plan and all instruments issued in connection therewith, the Litigation Trustee shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions under this Plan shall be subject to any such withholding or reporting requirements.

6.9 ***Setoffs***. Except as otherwise provided herein and subject to applicable law, the Debtors shall, pursuant to the Bankruptcy Code (including Bankruptcy Code section 553), applicable non-bankruptcy law, or as may be agreed to by the holder of a Claim, setoff against any Allowed Claim (which setoff shall be made against the Allowed Claim, not against any Distributions to be made under this Plan with respect to such Allowed Claim), any claims, rights, and Causes of Action of any nature that the Debtors may hold against the holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action against such holder have not been otherwise released, waived, relinquished, exculpated, compromised, or settled on or prior to the Effective Date (whether pursuant to this Plan or otherwise), and any Distribution to which a holder is entitled under this Plan shall be made on account of the Claim, as reduced after application of

the setoff described above. In no event shall any holder of a Claim be entitled to setoff any Claim against any claim, right, or Cause of Action of the Debtors unless such holder obtains entry of a Final Order authorizing such setoff or unless such setoff is otherwise agreed to in writing by the Debtors and a holder of a Claim; *provided, that*, where there is no written agreement between the Debtors and a holder of a Claim authorizing such setoff, nothing herein shall prejudice or be deemed to have prejudiced the Debtors' right(s) to assert that any holder's setoff rights were required to have been asserted by motion to the Bankruptcy Court prior to the Effective Date. This Section 6.9 shall not be applicable to any Distributions to be made to or for the benefit of the beneficial holders of the Original Bonds.

6.10 ***Insurance Claims***. No Distributions under this Plan shall be made on account of an Allowed Claim until the holder of such Allowed Claim has exhausted all remedies with respect to the Debtors' Insurance Policies. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim, then immediately upon such agreement, such Claim may be expunged without an objection to such Claim having to be filed and without any further notice to, action by, or order or approval of the Bankruptcy Court.

6.11 ***Applicability of Insurance Policies***. Except as otherwise provided in this Plan, Distributions to holders of Allowed Claims shall be made in accordance with the provisions of any applicable Insurance Policy. Except as expressly provided in this Plan, nothing contained in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Person may hold against any other Person, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

6.12 ***Allocation of Distributions Between Principal and Unpaid Interest***. With the exception of any Distributions on account of the Original Bonds, which shall be treated as provided in Class 2 herein (other than the Bond Deficiency Claim), to the extent that any Claim entitled to a Distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for U.S. federal income tax purposes, be allocated on the Debtors' books and records to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the accrued but unpaid interest.

6.13 ***Interest on Claims***. Unless otherwise specifically provided for in this Plan, postpetition interest will not accrue or be paid on Claims, and no Claim holder will be entitled to interest accruing on or after the Petition Date on any Claim. Similarly, unless otherwise specifically provided for in this Plan, postpetition interest will not accrue or be paid on any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

SECTION 7. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

7.1 ***Prosecution of Objections to Claims***. The Litigation Trustee shall have the exclusive authority to file, settle, compromise, withdraw, or litigate to judgment any objections to Claims as permitted under this Plan and the Litigation Trust Agreement. From and after the Effective Date, the Litigation Trustee may settle or compromise any Disputed Claim without

approval of the Bankruptcy Court, but subject to the terms and conditions of the Litigation Trust Agreement. The Litigation Trustee reserves all rights to resolve any Disputed Claim outside the Bankruptcy Court under applicable governing law.

7.2 ***Allowance of Claims***. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), the Litigation Trustee after the Effective Date will have and retain any and all rights and defenses held by the Debtors with respect to any Claim as of the Petition Date. All Claims of any Person against the Debtors shall be disallowed unless and until such Person pays, in full, the amount it owes the Debtors. For the avoidance of doubt, this section is not applicable to the Trustee or the beneficial holders of the Original Bonds.

7.3 ***Distributions After Allowance***. As soon as practicable following the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Litigation Trustee shall provide to the holder of such Claim the Distribution (if any) to which such holder is entitled under this Plan, without any interest to be paid on account of such Claim.

7.4 ***Estimation of Claims***. The Plan Sponsors (before the Effective Date) or the Litigation Trustee (on or after the Effective Date) may, at any time, and from time to time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to Bankruptcy Code section 502(c) regardless of whether an objection was previously filed with the Bankruptcy Court with respect to such Claim, or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any Disputed Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim against any party or Person, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Litigation Trustee may elect to pursue any supplemental proceedings to object to any ultimate Distribution on such Claim. All of the objection, estimation, settlement, and resolution procedures set forth in this Plan are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, objected to, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court. This Section of this Plan shall not be applicable to the Trustee or the beneficial holders of the Original Bonds.

SECTION 8. SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS

8.1 ***Compromise and Settlement of Claims, Interests and Controversies***. Pursuant to Bankruptcy Code section 1123 and Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided pursuant to this Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, including with respect to any challenges to the Bond Claims, or any Distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy

Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of this Plan, pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019(a), without any further notice to, action by, or order or approval of the Bankruptcy Court, after the Effective Date, the Litigation Trustee may compromise and settle Claims against the Debtors and Causes of Action against other Persons.

8.2 ***Releases by the Debtors***. **PURSUANT TO BANKRUPTCY CODE SECTION 1123(b), AS OF THE EFFECTIVE DATE, AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PLAN, THE PLAN SUPPLEMENT, OR THE CONFIRMATION ORDER, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE INVESTMENT AND SERVICE OF THE RELEASED PARTIES TO FACILITATE THE EXPEDITIOUS REORGANIZATION OF THE DEBTORS AND THE IMPLEMENTATION OF THE RESTRUCTURING CONTEMPLATED BY THIS PLAN, THE RELEASED PARTIES ARE DEEMED RELEASED AND DISCHARGED BY THE DEBTORS, THE REORGANIZED DEBTOR, AND THE ESTATES FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, SETOFFS, RECOUPMENTS, REMEDIES, ENFORCEMENT RIGHTS AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT THE DEBTORS, THE REORGANIZED DEBTOR, THE ESTATES, OR THE RELEASED PARTIES WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST, OR OTHER PERSON, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, ANY ACT, REPRESENTATION, OMISSION, TRANSACTION, AFFILIATION, EVENT OR OTHER CIRCUMSTANCE TAKING PLACE OR EXISTING ON OR BEFORE THE EFFECTIVE DATE (INCLUDING BEFORE THE PETITION DATE) IN CONNECTION WITH OR RELATED TO THE DEBTORS, OR THEIR RESPECTIVE ASSETS, OPERATIONS, FINANCES, PROPERTY AND ESTATES, THE CHAPTER 11 CASES OR THE NEGOTIATION, FORMULATION, OR PREPARATION OF THIS PLAN, THE DISCLOSURE STATEMENT, THE PLAN SUPPLEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, THE DIP FACILITY, OR THE SALE TRANSACTION (COLLECTIVELY, THE "DEBTOR RELEASED CLAIMS"), OTHER THAN CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION OF A RELEASED PARTY OR A FORMER OFFICER OR DIRECTOR OF THE DEBTORS THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD) OR GROSS NEGLIGENCE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE RELEASE SET FORTH ABOVE DOES NOT RELEASE ANY PARTY WITH POST-EFFECTIVE DATE OBLIGATIONS UNDER THIS PLAN OR ANY DOCUMENT, INSTRUMENT, OR AGREEMENT (INCLUDING THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THIS PLAN FROM THOSE POST-EFFECTIVE DATE OBLIGATIONS. FOR THE AVOIDANCE OF DOUBT, THE LITIGATION TRUSTEE AND THE RESIDENTS TRUST TRUSTEE SHALL NOT HAVE AUTHORITY TO**

PURSUE ANY DEBTOR RELEASED CLAIM(S) FOR THE BENEFIT OF ANY PARTY AS SUCH CLAIMS ARE RELEASED PURSUANT TO THIS PLAN AND, AS SUCH, DO NOT AND WILL NOT CONSTITUTE LITIGATION TRUST OR RESIDENTS TRUST ASSETS.

8.3 ***Releases by Holders of Claims***. **AS OF THE EFFECTIVE DATE AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PLAN, THE PLAN SUPPLEMENT, OR THE CONFIRMATION ORDER, FOR GOOD AND VALUABLE CONSIDERATION, EACH RELEASING PARTY SHALL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED THE DEBTORS, THE REORGANIZED DEBTOR, THE ESTATES, LIFESPACE, THE INITIAL PLAN SPONSORS, AND ALL OTHER RELEASED PARTIES FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, ENFORCEMENT RIGHTS, SETOFFS, RECOUPMENTS, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT SUCH PERSON WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN ITS OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF ANY OTHER PERSON, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, ANY ACT, REPRESENTATION, OMISSION, TRANSACTION, AFFILIATION, EVENT OR OTHER CIRCUMSTANCE TAKING PLACE OR EXISTING ON OR BEFORE THE EFFECTIVE DATE (INCLUDING BEFORE THE PETITION DATE) IN CONNECTION WITH OR RELATED TO THE DEBTORS, OR THEIR RESPECTIVE ASSETS, OPERATIONS, FINANCES, PROPERTY AND ESTATES, THE CHAPTER 11 CASES OR THE NEGOTIATION, FORMULATION, OR PREPARATION OF THIS PLAN, THE DISCLOSURE STATEMENT, ANY PLAN SUPPLEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, THE DIP FACILITY, OR THE SALE TRANSACTION (COLLECTIVELY, "CREDITOR RELEASED CLAIMS"), OTHER THAN CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION OF A RELEASED PARTY OR A FORMER OFFICER OR DIRECTOR OF THE DEBTORS THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD) OR GROSS NEGLIGENCE. FOR THE AVOIDANCE OF DOUBT, THE LITIGATION TRUSTEE AND THE RESIDENTS TRUST TRUSTEE SHALL NOT HAVE AUTHORITY TO PURSUE CREDITOR RELEASED CLAIMS.**

NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS PLAN, THE DIP LENDER, THE TRUSTEE AND HOLDERS OF THE ORIGINAL BONDS SHALL ALL BE RELEASING PARTIES SOLELY WITH RESPECT TO ANY AND ALL CLAIMS RELATING TO THE DEBTORS (OTHER THAN CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD) OR GROSS NEGLIGENCE), BUT NOT WITH RESPECT TO ANY OTHER CLAIMS SUCH HOLDERS MAY HAVE UNRELATED TO THE DEBTORS, INCLUDING BUT NOT LIMITED TO ANY

OBLIGATIONS OWED TO BONDHOLDERS IN CONNECTION WITH BONDS ISSUED BY LIFESPACE.

8.4 ***Exculpation***. **UPON THE EFFECTIVE DATE, THE PLAN SPONSORS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS, AND OTHER PROFESSIONAL ADVISORS AND AGENTS WILL BE DEEMED TO HAVE SOLICITED ACCEPTANCES OF THIS PLAN IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING BANKRUPTCY CODE SECTION 1125(E).**

EXCEPT WITH RESPECT TO ANY ACTS OR OMISSIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THIS PLAN, THE PLAN SUPPLEMENT, OR ANY RELATED DOCUMENTS, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH, OR RELATED TO FORMULATING, NEGOTIATING, PREPARING, DISSEMINATING, IMPLEMENTING, ADMINISTERING, CONFIRMING, OR EFFECTING THIS PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THIS PLAN, THE FILING OF THE CHAPTER 11 CASES, THE PURSUIT OF CONFIRMATION OF THIS PLAN, THE ADMINISTRATION AND IMPLEMENTATION OF THIS PLAN, THE DISTRIBUTION OF PROPERTY UNDER THIS PLAN, OR ANY OTHER RELATED AGREEMENT OR ANY OTHER PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR IN CONTEMPLATION OF THE RESTRUCTURING OF THE DEBTORS; PROVIDED, THAT THE FOREGOING "EXCULPATION" SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (INCLUDING FRAUD); PROVIDED FURTHER, THAT EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING HIS, HER, OR ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH, THIS PLAN OR ANY OTHER RELATED DOCUMENT, INSTRUMENT, OR AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THE LITIGATION TRUSTEE AND THE RESIDENTS TRUST TRUSTEE SHALL NOT HAVE AUTHORITY TO PURSUE ANY CLAIMS DESCRIBED IN SECTION 8 OF THIS PLAN AGAINST ANY EXCULPATED PARTY.

8.5 ***Discharge of Claims***. **PURSUANT TO BANKRUPTCY CODE SECTION 1141(D), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE BAR DATE ORDER, IN THIS PLAN, OR IN ANY CONTRACT, INSTRUMENT, OR OTHER AGREEMENT OR DOCUMENT CREATED PURSUANT TO THIS PLAN, THE DISTRIBUTIONS, RIGHTS, AND TREATMENT THAT ARE PROVIDED IN THIS PLAN SHALL BE IN FULL AND FINAL SATISFACTION, SETTLEMENT, RELEASE, AND DISCHARGE, EFFECTIVE AS OF THE EFFECTIVE DATE, OF ALL CLAIMS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE,**

WHETHER KNOWN OR UNKNOWN, AGAINST, LIABILITIES OF, LIENS ON, OBLIGATIONS OF, AND RIGHTS AGAINST THE DEBTORS OR ANY OF THEIR ASSETS OR PROPERTIES, REGARDLESS OF WHETHER ANY PROPERTY SHALL HAVE BEEN DISTRIBUTED OR RETAINED PURSUANT TO THIS PLAN ON ACCOUNT OF SUCH CLAIMS, INCLUDING DEMANDS, LIABILITIES, AND CAUSES OF ACTION THAT AROSE BEFORE THE EFFECTIVE DATE, ANY CONTINGENT OR NON-CONTINGENT LIABILITY ON ACCOUNT OF REPRESENTATIONS OR WARRANTIES ISSUED ON OR BEFORE THE EFFECTIVE DATE, AND ALL DEBTS OF THE KIND SPECIFIED IN BANKRUPTCY CODE SECTIONS 502(G), 502(H), OR 502(I), IN EACH CASE WHETHER OR NOT: (I) A PROOF OF CLAIM BASED UPON SUCH CLAIM, DEBT, OR RIGHT IS FILED OR DEEMED FILED PURSUANT TO BANKRUPTCY CODE SECTION 501; (II) A CLAIM BASED UPON SUCH CLAIM, DEBT, OR RIGHT IS ALLOWED PURSUANT TO BANKRUPTCY CODE SECTION 502; OR (III) THE HOLDER OF SUCH A CLAIM HAS ACCEPTED THIS PLAN. EXCEPT AS OTHERWISE PROVIDED HEREIN, ANY DEFAULT BY THE DEBTORS WITH RESPECT TO ANY CLAIM THAT EXISTED BEFORE OR ON ACCOUNT OF THE FILING OF THE CHAPTER 11 CASES SHALL BE DEEMED CURED ON THE EFFECTIVE DATE. THE CONFIRMATION ORDER SHALL BE A JUDICIAL DETERMINATION OF THE DISCHARGE OF ALL CLAIMS SUBJECT TO THE EFFECTIVE DATE OCCURRING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN.

8.6 ***Injunction***. **FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY SUIT, ACTION, OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, ENFORCEMENT RIGHT, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED AGAINST ANY RELEASED PARTY PURSUANT TO THIS PLAN OR THE CONFIRMATION ORDER.**

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN THIS PLAN, ALL RELEASING PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, ENFORCEMENT RIGHT, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO THIS PLAN.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN, THE PLAN SUPPLEMENT, OR RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THIS PLAN, ALL PERSONS WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED, DISCHARGED, OR ARE SUBJECT TO EXCULPATION, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING

ACTIONS: (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY SUCH RIGHTS, CLAIMS OR INTERESTS; (II) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, RELIEF OR ORDER AGAINST SUCH PERSONS ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (III) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH PERSONS OR THE PROPERTY OR ESTATE OF SUCH PERSONS ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (IV) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, SETTLED, OR DISCHARGED PURSUANT TO THIS PLAN.

THE RIGHTS AFFORDED IN THIS PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THE DEBTORS' ASSETS, PROPERTY, OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN).

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS PLAN OR IN OBLIGATIONS ISSUED PURSUANT TO THIS PLAN FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND ALL INTERESTS SHALL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER BANKRUPTCY CODE SECTION 502(g).

ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, THE LITIGATION TRUST, ALL OTHER RELEASED PARTIES AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS, AND OTHER PROFESSIONAL ADVISORS, AGENTS AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, HOLDERS OF CLAIMS THAT OPT OUT OF THE RELEASES UNDER SECTION 8.3 OF THIS PLAN WILL NOT BE SUBJECT TO THE INJUNCTION WITH RESPECT TO PREPETITION CLAIMS AGAINST NON-DEBTOR ENTITIES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO RELEASES OR EXCULPATIONS CONTAINED HEREIN SHALL RELEASE LIFESPACE FROM ITS OBLIGATIONS TO THE RESIDENTS TRUST CONTAINED IN THE LIFESPACE SETTLEMENT AND CONTRIBUTION AGREEMENT, WHICH SHALL BE PRESERVED AND ASSIGNED TO THE RESIDENTS TRUST AND THE RESIDENTS TRUST TRUSTEE PURSUANT TO THE TERMS OF THIS PLAN.

8.7 ***Term of Injunctions or Stays***. Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to Bankruptcy Code sections 105 or 362 or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. Upon the Effective Date, all injunctions or stays contained in this Plan or the Confirmation Order shall be in full force and effect in accordance with their terms.

8.8 ***Protection Against Discriminatory Treatment***. Consistent with Bankruptcy Code section 525 and the Supremacy Clause of the U.S. Constitution, all Persons, including Governmental Units, shall not discriminate against the Litigation Trustee or the Purchaser or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, the Litigation Trustee, the Purchaser or another Person with whom the Litigation Trustee or Purchaser have been associated, solely because the Debtors have been debtors under Chapter 11, have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

8.9 ***Release of Liens***. Except as otherwise provided in this Plan or any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to this Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Litigation Trustee. For the avoidance of doubt, except as otherwise provided in this Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

SECTION 9. CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE

9.1 ***Conditions Precedent to Confirmation***. It shall be a condition precedent to the confirmation of this Plan, such that the Confirmation Order shall not be entered, until each of the following conditions precedent have been satisfied or waived pursuant to the provisions of this Plan:

(a) The proposed Confirmation Order shall be in form and substance reasonably satisfactory in all respects to the Plan Sponsors, Lifespace and the Purchaser; and

(b) This Plan and the Plan Supplement, including any schedules, documents, supplements and exhibits thereto shall be, in form and substance acceptable in all respects to the Plan Sponsors and Lifespace.

9.2 ***Conditions Precedent to the Effective Date***. It shall be a condition precedent to the Effective Date that each of the following provisions, terms, and conditions shall have been satisfied or waived pursuant to the provisions of this Plan:

(a) The Bankruptcy Court shall have entered the Confirmation Order containing findings of fact and conclusions of law satisfactory to the Plan Sponsors, Lifespace and Purchaser, which Confirmation Order shall not be subject to any stay, and which Confirmation Order shall include or provide, among other things:

(i) all provisions, terms and conditions of this Plan and related documents are approved; and

(ii) all Executory Contracts or Unexpired Leases assumed and assigned by the Debtors during the Chapter 11 Cases including under this Plan shall remain in full force and effect for the benefit of the Purchaser or their assignee(s) notwithstanding any provision in such contract or lease (including those described in Bankruptcy Code sections 365(b)(2) and (f)) that prohibits such assignment or transfer or that enables, permits, or requires termination of such contract or lease;

(b) The Bankruptcy Court shall have entered a Final Order approving the Disclosure Statement as containing adequate information within the meaning of Bankruptcy Code section 1125;

(c) On the occurrence of the Effective Date, the conditions to effectiveness of the Sale Transaction shall have been satisfied or waived and the Closing Date has occurred;

(d) All actions, documents, certificates, and agreements necessary to implement this Plan, including, without limitation, the Asset Purchase Agreement and documents related to the Sale Transaction, shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws;

(e) All payments and transfers to be made on the Effective Date shall be made or duly provided for;

(f) All authorizations, consents, and regulatory approvals required, if any, in connection with the consummation of this Plan shall have been obtained; and

(g) All other actions, documents and agreements necessary to implement this Plan shall be in form and substance acceptable to the Plan Sponsors, and shall have been effected or executed.

9.3 ***Effect of Failure of Conditions***. If the Effective Date does not occur, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any claims by the Plan Sponsors or Claims by or against the Debtors or Lifespace; (ii) prejudice in any manner the rights of the Plan Sponsors, any holders of Claims, or any other Person; or (iii) constitute an admission, acknowledgment, offer, or undertaking by the Plan Sponsors or any other Person in any respect.

SECTION 10. MODIFICATION, REVOCATION OR WITHDRAWAL OF THIS PLAN

10.1 ***Modification and Amendments***. Except as otherwise specifically provided herein, the Plan Sponsors reserve the right to modify this Plan and seek confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in Bankruptcy Code section 1127 of the and Bankruptcy Rule 3019 and those restrictions on modifications set forth in this Plan, the Plan Sponsors expressly reserve their rights to alter, amend, or modify materially this Plan one or more times, after confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify this Plan or remedy any defect or omission, or reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of this Plan. For the avoidance of doubt, nothing in this Section 10.1 shall be deemed to supplant or supersede the requirements of Bankruptcy Rule 3019.

10.2 ***Effect of Confirmation on Modifications***. Entry of the Confirmation Order shall mean that all modifications or amendments to this Plan occurring after the solicitation thereof are approved pursuant to Bankruptcy Code section 1127(a) and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

10.3 ***Revocation or Withdrawal of this Plan***. The Initial Plan Sponsors reserve the right to revoke or withdraw this Plan before the Effective Date. If the Initial Plan Sponsors revoke or withdraw this Plan, or if confirmation does not occur, then: (i) this Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of any Executory Contract or Unexpired Lease effected by this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void, and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Plan Sponsors or any other Person; or (c) constitute

an admission, acknowledgement, offer or undertaking of any sort by the Plan Sponsors or any other Person.

SECTION 11. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising out of or related to the Chapter 11 Cases and this Plan, including, without limitation, jurisdiction to:

(a) allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims;

(b) decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or this Plan;

(c) resolve any matters related to: (i) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which any Debtor is party or with respect to which the Debtors may be liable in any manner and to hear, determine, and, if necessary, liquidate any Claims arising therefrom, including Rejection Claims, cure Claims pursuant to Bankruptcy Code section 365, or any other matter related to such Executory Contract or Unexpired Lease, (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed, (iii) the Litigation Trust or Purchaser amending, modifying, or supplementing, after the Effective Date, any Executory Contracts or Unexpired Leases on the list of Executory Contracts and Unexpired Leases to be assumed or rejected, and (iv) any dispute regarding whether a contract or lease is or was executory or unexpired;

(d) ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;

(e) adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

(f) adjudicate, decide, or resolve any and all matters related to any Cause of Action;

(g) adjudicate, decide, or resolve any and all matters related to the Asset Purchase Agreement;

(h) adjudicate, decide, or resolve any and all matters related to Bankruptcy Code section 1141;

(i) resolve any avoidance or recovery actions under Bankruptcy Code sections 105, 502(d), 542 through 551, and 553;

(j) resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the consummation of this Plan or any Person's obligations incurred in connection with this Plan;

(k) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of this Plan;

(l) resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the discharge, releases, injunctions, exculpations, indemnifications, and other provisions contained in this Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

(m) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

(n) adjudicate any and all disputes arising from or relating to Distributions under this Plan;

(o) adjudicate any and all disputes arising from or relating to the Lifespace Settlement and Contribution Agreement;

(p) consider any modifications of this Plan, cure any defect or omission, or reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

(q) determine requests for the payment of Claims entitled to priority pursuant to Bankruptcy Code section 507;

(r) hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan;

(s) hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;

(t) hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;

(u) enforce all orders previously entered by the Bankruptcy Court;

(v) hear any other matter not inconsistent with the Bankruptcy Code; and

(w) enter an order concluding or closing the Chapter 11 Cases.

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 ***Immediate Binding Effect***. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or any other Bankruptcy Rule, upon the occurrence of the Effective Date, the terms of this Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors and any and all holders of Claims or Interests (irrespective of whether such holders of Claims or Interests are deemed to have accepted this Plan), all Persons that are parties to or are subject to the settlements, compromises, releases, exculpation, discharges, and injunctions described in this Plan, each Person acquiring property under this Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

12.2 ***Additional Documents***. On or before the Effective Date, the Plan Sponsors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan, subject to the consent of the Trustee. The Debtors and all holders of Claims receiving Distributions pursuant to this Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

12.3 ***Dissolution of the Committee***. On the Effective Date, the Committee shall dissolve, and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases.

12.4 ***Reservation of Rights***. Except as expressly set forth in this Plan, this Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of this Plan, any statement or provision contained in this Plan, or any action taken or not taken by the Plan Sponsors or other Person with respect to this Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Plan Sponsors or other Person with respect to the holders of Claims or Interests before the Effective Date.

12.5 ***Successors and Assigns***. The rights, benefits, and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiary, or guardian, if any, of such Person.

12.6 ***Votes Solicited in Good Faith***. Upon entry of the Confirmation Order, the Plan Sponsors will be deemed to have solicited votes on this Plan in good faith and in compliance with the Bankruptcy Code and any applicable non-bankruptcy law, and pursuant to Bankruptcy Code section 1125(e), the Plan Sponsors and their respective affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of securities offered and sold under this Plan, and, therefore,

will have no liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on this Plan.

12.7 ***Closing of Chapter 11 Cases***. The Litigation Trustee shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

12.8 ***Notices***. All notices or requests in connection with this Plan shall be in writing and given by mail and email addressed to:

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

Daniel S. Bleck
Eric Blythe
Kaitlin R. Walsh
One Financial Center
Boston, MA 02111
Telephone: (617) 546-6000
dsbleck@mintz.com
erblythe@mintz.com
krwalsh@mintz.com

-and-

HAYNES AND BOONE, LLP

J. Frasher Murphy
Thomas J. Zavala
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-and-

POLSINELLI PC

Jeremy Johnson
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and

Trinitee G. Green
2950 N. Harwood Street, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
tggreen@polsinelli.com

-and-

Northwest Senior Housing Corporation
d/b/a Edgemere
Attn: Nick Harshfield
4201 Corporate Drive
West Des Moines, IA 50266

All notices and requests to Persons holding any Claim in any Class shall be sent to them at their last known address or to the last known address of their attorney of record in these Chapter 11 Cases. Any such holder of a Claim may designate in writing any other address for purposes of this Section 12.8, which designation will be effective upon receipt by the Plan Sponsors.

12.9 ***Headings***. The headings used in this Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the construction of the provisions of this Plan.

12.10 ***Severability***. If, prior to confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation.

12.11 ***Validity and Enforceability***. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms. Should any provision in this Plan be determined by the Bankruptcy Court or any appellate court to be unenforceable following the Effective Date, such determination shall in no way limit the enforceability and operative effect of any and all other provisions of this Plan.

12.12 ***Plan Supplement***. Any exhibits or schedules not filed with this Plan may be contained in the Plan Supplement and the Plan Sponsors reserve the right to alter, modify, or amend the Plan Supplement through and to the Confirmation Hearing.

12.13 ***Governing Law***. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Texas, without giving effect to the principles of conflicts of laws, shall govern the rights, obligations, construction, and implementation of this Plan and the restructuring transactions consummated or to be consummated in connection therewith.

12.14 ***Request for Confirmation***. The Plan Sponsors request entry of a Confirmation Order under Bankruptcy Code section 1129(a) and, to the extent necessary, Bankruptcy Code section 1129(b).

12.15 ***Reservation of Rights in Favor of Governmental Units***.

Governmental Units, Texas Health and Human Services Commission and Texas Department of Insurance, have indicated that they will object to any Order confirming this Plan that does not include the following language:

> "Nothing in this Order or the Plan discharges, releases, precludes, or enjoins: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) ("**Governmental Unit**") that is not a "claim" as defined in 11 U.S.C. § 101(5) ("**Claim**"); (ii) any Claim of a Governmental Unit arising on or after the Confirmation Date: (iii) any police or regulatory liability to a Governmental Unit that any entity would be subject to as the owner or operator of property after the Confirmation Date; or (iv) any liability to a Governmental Unit on the part of any non-debtor. Nor shall anything in this Order or the Plan enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Notwithstanding any provision of the Plan, this Order, or any implementing or supplementing plan documents, Governmental Units' setoff rights under federal law as recognized in section 553 of the Bankruptcy Code, and recoupment rights, shall be preserved and are unaffected. Nothing in this Order or the Plan divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or the Plan to adjudicate any defense asserted under this Order or the Plan."

Dallas County has also requested the following language be included in this Plan:

> "Notwithstanding any other provisions of this Plan, any agreements approved hereby, or any other orders in these Chapter 11 Cases, any statutory liens (collectively, the "**Tax Liens**") held by Dallas County or any other ad valorem tax authority (the "**Taxing Authorities**") for prepetition and postpetition taxes shall not be primed nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Taxing Authorities are fully preserved. With respect to the Tax Authorities' prepetition Secured Claims for ad valorem property Taxes for the 2022 tax year, to the extent such Claims are Allowed, the Taxing Authorities' prepetition Claims shall be paid in full with all applicable and accrued interest no later than the earlier of the Closing of the Sale Transaction or the Effective Date or otherwise in the ordinary course of business unless an objection to the Claim has been filed. The Taxing Authorities' Claims shall be paid with interest from the Petition Date through the Effective Date and from the Effective Date through the date of payment in full at the applicable state statutory rate of 1% per month pursuant to 11 U.S.C. §§ 506(b), 511, and 1129. In the event of a claim objection, the Taxing Authorities' Claims shall be entitled to interest that accrues while the Claim objection is pending. The Taxing Authorities shall retain their Liens until all Taxes and related interest, penalties, and fees (if any) have been paid in full. In the event of a default under this Plan, the Taxing Authorities shall send notice of default to counsel for the Debtors/Reorganized Debtor and the Purchaser, as applicable, via facsimile or electronic mail, and the Debtors and/or Purchaser shall have 15 days from the date of such notice to cure said default. After the Effective Date, in the event of failure to cure the default timely, the Taxing Authorities shall be entitled to pursue collection of all amounts owed pursuant to

applicable nonbankruptcy law from the Debtors/Reorganized Debtor or the Purchaser, as applicable, without further recourse to the Bankruptcy Court."

Dated: December 19, 2022

HAYNES AND BOONE, LLP

/s/ J. Frasher Murphy

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– and –

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Counsel to the Debtors and Debtors in Possession

EXHIBIT 7

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*[1]	Case No. 22-30659 (MVL)
Debtors.	(Jointly Administered)

STATEMENT OF FINANCIAL AFFAIRS FOR
NORTHWEST SENIOR HOUSING CORPORATION, 22-30659

[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.

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*,[1]	Case No. 22-30659 (MVL)
Debtors.	(Jointly Administered)

GLOBAL NOTES, METHODOLOGY, AND SPECIFIC DISCLOSURES REGARDING THE DEBTORS' SCHEDULES OF ASSETS AND LIABILITIES AND STATEMENTS OF FINANCIAL AFFAIRS

Introduction

Northwest Senior Housing Corporation d/b/a Edgemere ("**Edgemere**") and its affiliate Senior Quality Lifestyles Corporation ("**SQLC**"), as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), with the assistance of their advisors, have filed their respective Schedules of Assets and Liabilities (the "**Schedules**") and Statements of Financial Affairs (the "**Statements**," and together with the Schedules, the "**Schedules and Statements**") with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, (the "**Bankruptcy Court**"), under section 521 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rule 1007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 1007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**").

These *Global Notes, Methodology, and Specific Disclosures Regarding the Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs* (the "**Global Notes**") pertain to, are incorporated by reference in, and comprise an integral part of all of the Debtors' Schedules and Statements. The Global Notes should be referred to, considered, and reviewed in connection with any review of the Schedules and Statements.

The Schedules and Statements do not purport to represent financial statements prepared in accordance with Generally Accepted Accounting Principles in the United States ("**GAAP**"), nor are they intended to be fully reconciled with the financial statements of each Debtor. Additionally, the Schedules and Statements contain unaudited information that is subject to further review and potential adjustment and reflects the Debtors' reasonable efforts to report the assets and liabilities of each Debtor on an unconsolidated basis.

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

The Debtors and their agents, attorneys, and advisors do not guarantee or warrant the accuracy or completeness of the data that is provided herein and shall not be liable for any loss or injury arising out of or caused in whole or in part by the acts, errors, or omissions, whether negligent or otherwise, in procuring, compiling, collecting, interpreting, reporting, communicating, or delivering the information contained herein. While reasonable efforts have been made to provide accurate and complete information herein, inadvertent errors or omissions may exist. The Debtors and their agents, attorneys, and advisors expressly do not undertake any obligation to update, modify, revise, or re-categorize the information provided herein, or to notify any third party should the information be updated, modified, revised, or re-categorized. In no event shall the Debtors or their agents, attorneys, and advisors be liable to any third party for any direct, indirect, incidental, consequential, or special damages (including damages arising from the disallowance of a potential claim against the Debtors or damages to business reputation, lost business, or lost profits), whether foreseeable or not and however caused, even if the Debtors or their agents, attorneys, and advisors are advised of the possibility of such damages.

Mr. Nick Harshfield signed each set of the Schedules and Statements. Mr. Harshfield is a Director, Vice Chair and Treasurer of the Debtors and is an authorized signatory for each Debtor. In reviewing and signing the Schedules and Statements, Mr. Harshfield necessarily relied upon the efforts, statements, and representations of various personnel employed by the Debtors and their advisors. Mr. Harshfield has not (and could not have) personally verified the accuracy of each statement and representation contained in the Schedules and Statements, including statements and representations concerning amounts owed to creditors, classification of such amounts, and creditor addresses.

Global Notes and Overview of Methodology

1. **Reservation of Rights**. Reasonable efforts have been made to prepare and file complete and accurate Schedules and Statements, but inadvertent errors or omissions may exist. The Debtors reserve all rights to: (a) amend or supplement the Schedules and Statements from time to time, in all respects, as may be necessary or appropriate, including the right to amend the Schedules and Statements with respect to the description, designation, or Debtor against which any claim against a Debtor ("**Claim**")[2] is asserted; (b) dispute or otherwise assert offsets or defenses to any Claim reflected in the Schedules and Statements as to amount, liability, priority, status, or classification; (c) subsequently designate any Claim as "disputed," "contingent," or "unliquidated;" or (d) object to the extent, validity, enforceability, priority, or avoidability of any Claim (regardless of whether of such Claim is designated in the Schedules and Statements as "disputed," "contingent," or "unliquidated"). Any failure to designate a Claim in the Schedules and Statements as "disputed," "contingent," or "unliquidated" does not constitute an admission by the Debtors that such Claim or amount is not "disputed," "contingent," or "unliquidated."

[2] For the purposes of these Global Notes, the term Claim shall have the meaning as defined under Bankruptcy Code section 101(5).

Listing a Claim does not constitute an admission of liability by the Debtor against which the Claim is listed or against any of the Debtors. Furthermore, nothing contained in the Schedules and Statements shall constitute a waiver of rights with respect to the Debtors' chapter 11 cases, including, issues involving Claims, substantive consolidation, defenses, equitable subordination, and/or causes of action arising under the provisions of chapter 5 of the Bankruptcy Code and any other relevant non-bankruptcy laws to recover assets or avoid transfers. Any specific reservation or rights contained elsewhere in the Global Notes does not limit in any respect the general reservation of rights contained in this paragraph. Notwithstanding the foregoing, the Debtors shall not be required to update the Schedules and Statements.

2. **Description of Cases and "As Of" Information Date**. On April 14, 2022 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

The asset information provided herein represents the asset data of the Debtors as of the Petition Date, except as otherwise noted. The liability information provided herein represents the outstanding pre-petition liabilities as of the Petition Date.

3. **Net Book Value of Assets.** It would be prohibitively expensive, unduly burdensome, and an inefficient use of estate resources for the Debtors to obtain current market valuations for all of their assets. Unless otherwise indicated, the asset data contained in the Schedules and Statements reflect net book value as of the Petition Date. Book values of assets prepared in accordance with GAAP generally do not reflect the current performance of the assets and may differ materially from the actual value of the underlying assets. Furthermore, values for assets that have been fully depreciated or were expenses for accounting purposes may not appear in these Schedules and Statements as they have no net book value.

4. **Recharacterization**. Notwithstanding the Debtors' reasonable efforts to properly characterize, classify, categorize, or designate certain Claims, assets, executory contracts, unexpired leases, and other items reported in the Schedules and Statements, the Debtors may nevertheless have improperly characterized, classified, categorized, designated, or omitted certain items due to the complexity and size of the Debtors' businesses. Accordingly, the Debtors reserve all of their rights to recharacterize, reclassify, recategorize, redesignate, add, or delete items reported in the Schedules and Statements at a later time as is necessary or appropriate as additional information becomes available, including, whether contracts or leases listed herein were deemed executory or unexpired as of the Petition Date and remain executory and unexpired postpetition.

5. **Liabilities**. The Debtors have sought to allocate liabilities between the prepetition and postpetition periods and by Debtor based on the information and research conducted in connection with the preparation of the Schedules and Statements. As additional information becomes available and further research is conducted, the allocation of liabilities between the prepetition and postpetition periods may change. Accordingly, the Debtors reserve all of their rights to amend, supplement, or otherwise modify the Schedules and Statements as is necessary or appropriate.

6. **Excluded Assets and Liabilities**[3]. The Debtors have excluded certain categories of assets, tax accruals, and liabilities from the Schedules and Statements, including, employee benefit accruals, and in some instances accrued accounts payable. In addition, certain immaterial assets and liabilities may have been excluded.

   The Bankruptcy Court has authorized (but not directed) the Debtors to pay, in their discretion, certain outstanding Claims on a postpetition basis. As discussed below, prepetition liabilities that the Debtors have paid postpetition pursuant to relief granted by the court may not be listed in the Schedules and Statements.

7. **Insiders**. For purposes of the Schedules and Statements, the Debtors defined "insiders" pursuant to section 101(31) of the Bankruptcy Code as: (a) directors; (b) officers; (c) persons in control of the Debtors; (d) relatives of the Debtors' directors, officers, or persons in control of the Debtors; and (e) debtor/non-debtor affiliates of the foregoing. Persons listed as "insiders" have been included for informational purposes only and by including them in the Schedules, shall not constitute an admission that those persons are insiders for purposes of section 101(31) of the Bankruptcy Code. Moreover, the Debtors do not take any position with respect to: (a) any insider's influence over the control of the Debtors; (b) the management responsibilities or functions of any such insider; (c) the decision making or corporate authority of any such insider; or (d) whether the Debtors or any such insider could successfully argue that he or she is not an "insider" under applicable law or with respect to any theories of liability or for any other purpose.

8. **Intellectual Property Rights**. Exclusion of certain intellectual property shall not be construed as an admission that such intellectual property rights have been abandoned, terminated, assigned, expired by their terms, or otherwise transferred pursuant to a sale, acquisition, or other transaction. Conversely, inclusion of certain intellectual property shall not be construed to be an admission that such intellectual property rights have not been abandoned, have not been terminated or otherwise expired by their terms, or have not been assigned or otherwise transferred pursuant to a sale, acquisition, or other transaction. The Debtors have made every effort to attribute intellectual property to the rightful Debtor owner. However, in some instances intellectual property owned by one Debtor may, in fact, be owned by another. Accordingly, the Debtors reserve all of their rights with respect to the legal status of any and all such intellectual property rights.

9. **Executory Contracts**. Although the Debtors made reasonable efforts to attribute an executory contract to its rightful Debtor, in certain instances, the Debtors may have inadvertently failed to do so due to the complexity and size of the Debtors' businesses. Accordingly, the Debtors reserve all of their rights with respect to the named parties of any and all executory contracts, including the right to amend Schedule G.

10. **Classifications**. Listing (a) a Claim on Schedule D as "secured," (b) a Claim on Schedule E/F as "priority," (c) a Claim on Schedule E/F as "unsecured," or (d) a contract

[3] Personal property of Residents situated on the Debtors' premises, is not the property of the Debtors' estates, and is, therefore, a category of an excluded asset.

on Schedule G as "executory" or "unexpired," does not constitute an admission by the Debtors of the legal rights of the claimant or a waiver of the Debtors' rights to recharacterize or reclassify such Claims or contracts or to setoff of such Claims.

11. **Claims Description**. Schedules D and E/F permit each of the Debtors to designate a Claim as "disputed," "contingent," and/or "unliquidated." Any failure to designate a Claim on a given Debtor's Schedules and Statements as "disputed," "contingent," or "unliquidated" does not constitute an admission by that Debtor that such amount is not "disputed," "contingent," or "unliquidated," or that such Claim is not subject to objection. The Debtors reserve all of their rights to dispute, or assert offsets or defenses to, any Claim reflected on their respective Schedules and Statements on any grounds, including liability or classification. Additionally, the Debtors expressly reserve all of their rights to subsequently designate such Claims as "disputed," "contingent," or "unliquidated." Moreover, listing a Claim does not constitute an admission of liability by the Debtors.

12. **Causes of Action**. Despite their reasonable efforts to identify all known assets, the Debtors may not have listed all of their causes of action or potential causes of action against third parties as assets in the Schedules and Statements, including causes of action that are required to be kept confidential and causes of action arising under the provisions of chapter 5 of the Bankruptcy Code and any other relevant non-bankruptcy laws to recover assets or avoid transfers. The Debtors reserve all of their rights with respect to any cause of action (including avoidance actions), controversy, right of setoff, cross claim, counterclaim, or recoupment, and any claim on contracts or for breaches of duties imposed by law or in equity, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law (collectively, "**Causes of Action**") they may have, and neither these Global Notes nor the Schedules and Statements shall be deemed a waiver of any claims or Causes of Action or in any way prejudice or impair the assertion of such claims or Causes of Action.

13. **Summary of Significant Reporting Policies**. The following is a summary of significant reporting policies:

    a. Undetermined Amounts. The description of an amount as "unknown," "TBD," "NA", or "undetermined" is not intended to reflect upon the materiality of such amount.

    b. Totals. All totals that are included in the Schedules and Statements represent totals of all known amounts. To the extent there are unknown or undetermined amounts, the actual total may be different than the listed total.

    c. Paid Claims. The Debtors were authorized (but not directed) to pay certain outstanding prepetition Claims pursuant to various orders entered by the

Bankruptcy Court. Accordingly, certain outstanding liabilities may have been reduced or satisfied by post-petition payments made on account of prepetition liabilities. The Debtors reserve all of their rights to amend or supplement the Schedules and Statements or take other action as is necessary or appropriate to avoid over-payment of or duplicate payments for any such liabilities.

d. Liens. Property and equipment listed in the Schedules and Statements are presented without consideration of any liens that may attach (or have attached) to such property and equipment.

14. **Currency**. All amounts are reflected in U.S. dollars.

15. **Intercompany Payables and Receivables**. Intercompany payables between the Debtors and non-Debtor affiliates as of the Petition Date are set forth on Schedule E/F.

The listing by the Debtors of any account between a Debtor and another Debtor or between a Debtor and a non-Debtor affiliate is a statement of what appears in a particular Debtor's books and records and does not reflect any admission or conclusion of the Debtors regarding the allowance, classification, characterization, validity, or priority of such account. The Debtors take no position in these Schedules and Statements as to whether such accounts would be allowed as a Claim, an Interest, or not allowed at all. The Debtors reserve all rights with respect to such accounts and reserve all rights with respect to the treatment or characterization of such items.

16. **Setoffs**. The Debtors periodically incur certain setoffs in the ordinary course of business. Setoffs in the ordinary course can result from various items including, but not limited to, intercompany transactions, pricing discrepancies, returns, warranties, credits, refunds, negotiations, and/or disputes between the Debtors and their vendors or customers, and other disputes between the Debtors and their customers and/or suppliers. These normal setoffs are consistent with the ordinary course of business in the Debtors' industry and can be particularly voluminous, making it unduly burdensome and costly for the Debtors to list such ordinary course setoffs. Therefore, although such setoffs and other similar rights may have been accounted for when scheduling certain amounts, these ordinary course setoffs are not independently accounted for, and as such, are or may be excluded from the Debtors' Schedules and Statements.

17. **Global Notes Control**. In the event that the Schedules and Statements differ from these Global Notes, the Global Notes shall control.

Specific Disclosures with Respect to the Debtors' Schedules

Schedules Summary. Except as otherwise noted, the asset and liability information provided herein represents the Debtors' assets and liabilities as of the Petition Date.

For financial reporting purposes, the Debtors and certain of their non-Debtor affiliates ordinarily prepare consolidated financial statements. Unlike the consolidated financial statements, the Schedules reflect the assets and liabilities of each Debtor on a nonconsolidated basis. Accordingly, the totals listed in the Schedules will likely differ, at times materially, from the

consolidated financial reports prepared by the Debtors for financial reporting purposes or otherwise.

The Schedules do not purport to represent financial statements prepared in accordance with GAAP, nor are they intended to be fully reconciled with the financial statements of each Debtor. Certain write-downs, impairments, and other accounting adjustments may not be reflected in the Schedules. Additionally, the Schedules contain unaudited information that is subject to further review and potential adjustment and reflect the Debtors' reasonable best efforts to report the assets and liabilities of each Debtor on an unconsolidated basis. Moreover, given, among other things, the uncertainty surrounding the collection and ownership of certain assets and the valuation and nature of certain liabilities, to the extent that a Debtor shows more assets than liabilities, this is not an admission that the Debtor was solvent as of the Petition Date or at any time before the Petition Date. Likewise, to the extent a Debtor shows more liabilities than assets, this is not an admission that the Debtor was insolvent as of the Petition Date or at any time before the Petition Date.

Schedule A/B – Real and Personal Property

Part 1 – Cash and Cash Equivalents. Amounts listed reflect the bank balance as of April 14, 2022, and not the net book value. Accounts listed as Restricted are not part of the Debtor's general operating funds and cash collateral. The restricted cash in the Trustee-held accounts is held in trust by the Trustee as collateral for the benefit of the holders of the secured claims listed in Schedule D. The parties holding those claims have a validly perfected possessory security interest in the Trustee-held funds and, as such, the Trustee-held accounts are not property of the Debtors' bankruptcy estate.

Part 2 – Deposits and Prepayments. The Bankruptcy Court, pursuant to the *Final Order (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Service, (II) Deeming the Utility Providers Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance* [Docket No. 224], has authorized the Debtors to provide adequate assurance of payment for postpetition utility services, including a deposit in the amount of approximately $52,850. Such deposit is not listed on Schedule A/B 7, which reflects deposits as of the Petition Date.

Part 3 – Accounts Receivable. Gross accounts receivable is stated as of April 14, 2022. The allowance for doubtful accounts is estimated based on the aging of accounts receivable, historical collections data, review of specific accounts and other factors. Other Receivables where noted are as of the Petition Date.

Part 4 – Investments. Investment in subsidiary represents a 50% membership interest as of March 31, 2022. Investment in the private equity fund holding is valued at cost as of December 31, 2021. Nothing in these Schedules is an admission by or conclusion of the Debtors regarding the value of such subsidiary or other investment holdings, which, under certain fair market or enterprise valuation analyses, may differ materially from the value than what is presented.

Part 5 – Inventory. The Debtors hold inventory, which is turned over on a frequent basis, including perishables, such as raw food, and medical supplies. The Debtors perform periodic physical reviews of inventory.

Parts 7, 8 and 9 – Fixed Assets. Fixed Assets are presented at book value and are presented net of accumulated depreciation and other adjustments pursuant to the Debtors' books as of March 31, 2022. For purposes of these Schedules, accumulated depreciation has been allocated to fixtures, furniture, and office equipment due to the Debtors' financial recordkeeping practices. The Debtors have not completed a physical inventory or appraisal of their owned equipment, medical supply inventory or other physical assets. Further, nothing in the Schedules or SOFAs (including, without limitation, the failure to list leased property or equipment as owned property or equipment) is or shall be construed as an admission as to the determination of legal status of any lease (including whether any lease is a true lease or financing arrangement), and the Debtors reserve all their rights with respect to such issues.

Debtor Northwest Senior Housing Corporation reserves all rights, claims and causes of action against Intercity Investment Properties, Inc. and Kong Capital, LLC in the Adversary Proceeding (22-30660-MVL).

Part 10 – Intangibles and Intellectual Property. Intangibles and intellectual property are presented at book value, net of accumulated amortization and other adjustments pursuant to the Debtors' books as of April 14, 2022.

Part 11 – All Other Assets. Despite exercising their reasonable efforts to identify all known assets, the Debtors may not have listed all of their causes of action or potential causes of action against third parties as assets in their Schedules including, but not limited to, avoidance actions arising under chapter 5 of the Bankruptcy Code and actions under other relevant non-bankruptcy laws to recover assets. Unless otherwise noted on specific responses, items reported on Schedule A/B are reported from the Debtors' book and records as of the Petition Date. The Debtors reserve all of their rights with respect to any claims and causes of action they may have. Neither these Global Notes nor the Schedules shall be deemed a waiver of any such claims or causes of action or to prejudice or impair the assertion thereof in any way.

Schedule D – Creditors Who Have Claims Secured by Property. Except as otherwise agreed pursuant to a stipulation or order entered by the Bankruptcy Court, the Debtors reserve their rights to dispute or challenge the validity, perfection or immunity from avoidance of any lien purported to be granted or perfected in any specific asset to a secured creditor listed on Schedule D. Moreover, although the Debtors have schedule claims of various creditors as secured, the Debtors reserve all rights to dispute or challenge the secured nature of any such creditor's claim or the characterization of the structure of any such transaction or any document or instrument related to such creditor's claim.

The Debtors have not included parties that may believe their Claims are secured through setoff rights, inchoate statutory lien rights, or other lien rights created by the laws of the various jurisdictions in which the Debtors operate.

While reasonable efforts have been made, determination of the date upon which each claim in Schedule D was incurred or arose would be unduly burdensome or cost prohibitive, and therefore the Debtor may not list a date for each claim listed on Schedule D. Finally, the Debtor is taking no position on the extent or priority of any particular creditor's lien in this document.

The amounts outstanding under the Debtors' prepetition secured debt reflect approximate principal and interest amounts as of the Petition Date.

Descriptions provided on Schedule D are intended only to be a summary. Reference to the applicable loan agreements and related documents is necessary for a complete description of the collateral and the nature, extent, and priority of any liens.

Schedule E/F – Creditors Who Have Unsecured Claims. The listing by the Debtors of any account between a Debtor and a non-debtor affiliate is a statement of what appears in a particular Debtor's books and records and does not reflect any admission or conclusion of the Debtors regarding the allowance, classification, characterization, validity, or priority of such account. The Debtors take no position in these Schedules and Statements as to whether such accounts would be allowed as a Claim, an Interest, or not allowed at all. The Debtors and all parties in interest reserve all rights with respect to such accounts. Various Debtors are borrowers, and certain of the other Debtors are guarantors, under prepetition funded obligations.

The claims of individual creditors for, among other things, goods, products, services, customer refunds, or taxes are listed as the amounts entered on the Debtors' books and records and may not reflect credits, allowances, or other adjustments due from such creditors to the Debtors. The Debtors reserve all of their rights with regard to such credits, allowances, and other adjustments, including the right to assert claims objections and/or setoffs with respect to the same.

Schedule E/F does not include certain deferred charges, deferred liabilities, accruals, or general reserves. Such amounts are, however, reflected on the Debtors' books and records as required in accordance with GAAP. Such accruals are general estimates of liabilities and do not represent specific Claims as of the Petition Date. The Debtors have made every effort to include as contingent, unliquidated, or disputed the Claim of any vendor not included on the Debtors' open accounts payable that is associated with an account that has an accrual.

Under the *Final Order Authorizing Payment of Prepetition Taxes and Fees* [Docket No. 220] (the "**Tax Order**"), the Bankruptcy Court granted the Debtors authority to pay the prepetition Claims of regulatory authorities on account of taxes and fees.

Under the *Final Order (I) Authorizing the Debtors to (A) Maintain Existing Insurance Policies and Pay All Obligations Arising Thereunder, (B) Renew, Revise, Extend, Supplement, Change or Enter into New Insurance Policies, (C) Pay Brokerage Fees and (II) Granting Certain Related Relief* [Docket No. 221] (the "**Insurance Order**"), the Bankruptcy Court granted the Debtors authority to pay the prepetition Claims of insurers on account of insurance premiums, claims and other related obligations.

Under the *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Commissions, Employee Benefits, Prepetition Payroll Taxes, and Other Obligations, (B) Maintain Compensation and Benefits Programs, and Pay Related Administrative Obligations,*

and (C) Make Payroll Deductions, (II) Authorizing Applicable Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers, and (III) Granted Related Relief [Docket No. 223] (the "**Wages Order**"), the Bankruptcy Court granted the Debtors authority to pay or honor certain prepetition obligations for employee wages, salaries, and other compensation, reimbursable employee expenses, and employee medical and similar benefits. The Debtors have not listed on Schedule E/F any wage or wage-related obligations that the Debtors have paid postpetition pursuant to relief granted by court order entered by the Bankruptcy Court.

Schedule G – Executory Contracts and Unexpired Leases. Although reasonable efforts have been made to ensure the accuracy of Schedule G regarding executory contracts and unexpired leases, inadvertent errors, omissions or over-inclusion may have occurred in preparing Schedule G. Additionally, as it would be prohibitively expensive, unduly burdensome, and an inefficient use of estate resources for the Debtors to list the term length of each executory contract, only selected contracts' terms have been disclosed. The Debtors hereby expressly reserve the right to revise the expiration date disclosed. Certain of the instruments reflected on Schedule G may contain renewal options, guarantees of payments, options to purchase, rights of first refusal, and other miscellaneous rights. Such rights, powers, duties, and obligations are not separately set forth on Schedule G. The Debtors hereby expressly reserve the right to assert that any instrument listed on Schedule G is an executory contract within the meaning of section 365 of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to claims associated with any contracts and agreements listed on Schedule A/B, including their right to dispute or challenge the characterization or the structure of any transaction, document, or instrument (including any intercompany agreement) related to a creditor's claim.

Certain confidentiality, hold harmless, and non-compete agreements may not be listed on Schedule G. In addition, agreements and underlying documentation related to the Debtors' prepetition debt is not included in Schedule G. The Debtors reserve all of their rights with respect to such agreements.

Certain of the contracts and agreements listed on Schedule G may consist of several parts, including purchase orders, amendments, restatements, waivers, letters, and other documents that may not be listed on Schedule G or that may be listed as a single entry.

The contracts, agreements, and leases listed on Schedule G may have expired or may have been modified, amended, or supplemented from time to time by various amendments, restatements, waivers, estoppel certificates, letters, memoranda, and other documents, instruments, and agreements that may not be listed therein despite the Debtors' use of reasonable efforts to identify such documents. Further, unless otherwise specified on Schedule G, each executory contract or unexpired lease listed thereon shall include all exhibits, schedules, riders, modifications, declarations, amendments, supplements, attachments, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without respect to whether such agreement, instrument, or other document is listed thereon. In some cases, the same supplier or provider appears multiple times on Schedule G. This multiple listing is intended to reflect distinct agreements between the applicable Debtor and such supplier or provider.

Debtor Northwest Senior Housing Corporation reserves all rights, claims and causes of action against Intercity Investment Properties, Inc. and Kong Capital, LLC in the Adversary Proceeding (22-30660-MVL).

Specific Disclosures with Respect to the Debtors' Statements

Statement 3. In Statement 3, disbursements made on account of multiple invoices may be reflected as a single payment.

All disbursements listed in Statement 3 are made through the Debtors' cash management system, more fully described in the Cash Management Motion. Dates listed in Statement 3 reflect the dates upon which the Debtor transferred funds to the relevant payee or disbursing agent. Certain disbursements may be excluded from Statement 3, including disbursements to insiders and disbursements to certain retained professionals (reported elsewhere).

Statement 4. Transfers of cash or assets are listed on a transfer basis between Debtors. Intercompany payable balances as of the Petition Date can be found on Schedule E/F.

Statement 26. In addition to the Debtors' issuing financial statements to the specific entities disclosed, in the ordinary course of their business, the Debtors have posted their financial statements on the Electronic Municipal Market Access website and have provided financial statements or certain financial information to various parties for business, statutory, credit, financing and other commercial purposes.

Statement 28. Membership interests listed in Statement 28 are directly held.

[*Remainder of page intentionally left blank*]

Fill in this information to identify the case:

Debtor Name: In re : Northwest Senior Housing Corporation

United States Bankruptcy Court for the: Northern District Of Texas

Case number (if known): 22-30659 (MVL)

☐ Check if this is an amended filing

Official Form 207

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy 04/22

The debtor must answer every question. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and case number (if known).

Part 1: Income

1. Gross revenue from business

☐ None

Identify the beginning and ending dates of the debtor's fiscal year, which may be a calendar year					Sources of revenue Check all that apply		Gross revenue (before deductions and exclusions)
From the beginning of the fiscal year to filing date:	From	1/1/2022 MM / DD / YYYY	to	Filing date	☑ Operating a business ☐ Other		$ 9,219,527.11
For prior year:	From	1/1/2021 MM / DD / YYYY	to	12/31/2021 MM / DD / YYYY	☑ Operating a business ☐ Other		$ 29,212,197.46
For the year before that:	From	1/1/2020 MM / DD / YYYY	to	12/31/2020 MM / DD / YYYY	☑ Operating a business ☐ Other		$ 33,888,486.33

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

2. Non-business revenue

Include revenue regardless of whether that revenue is taxable. Non-business income may include interest, dividends, money collected from lawsuits, and royalties. List each source and the gross revenue for each separately. Do not include revenue listed in line 1.

☐ None

				Description of sources of revenue	**Gross revenue from each source** (before deductions and exclusions)
From the beginning of the fiscal year to filing date:	From 1/1/2022 MM / DD / YYYY	to Filing date	Other non-operating income		$ 375,953.95
			Interest income		$ 27,729.05
			Gain on sale of investments		$ 161,375.97
For prior year:	From 1/1/2021 MM / DD / YYYY	to 12/31/2021 MM / DD / YYYY	Other non-operating income		$ 1,992,336.00
			Interest income		$ 318,114.82
			Gain on sale of investments		$ 2,930,373.94
For the year before that:	From 1/1/2020 MM / DD / YYYY	to 12/31/2020 MM / DD / YYYY	Other non-operating income		$ 2,596,008.51
			Interest income		$ 753,317.85
			Gain on sale of investments		$ 5,384,515.76

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 2: List Certain Transfers Made Before Filing for Bankruptcy

3. Certain payments or transfers to creditors within 90 days before filing this case

List payments or transfers-including expense reimbursements-to any creditor, other than regular employee compensation, within 90 days before filing this case unless the aggregate value of all property transferred to that creditor is less than $7,575 . (This amount may be adjusted on 4/01/25 and every 3 years after that with respect to cases filed on or after the date of adjustment.)

☐ None

	Creditor's name and address	Dates	Total amount or value	Reasons for payment or transfer Check all that apply
3.1	See SOFA 3 Attachment Creditor's Name Street City State ZIP Code Country		$ 6,169,449.10	☐ Secured debt ☐ Unsecured loan repayments ☐ Suppliers or vendors ☐ Services ☐ Other

4. Payments or other transfers of property made within 1 year before filing this case that benefited any insider

List payments or transfers, including expense reimbursements, made within 1 year before filing this case on debts owed to an insider or guaranteed or cosigned by an insider unless the aggregate value of all property transferred to or for the benefit of the insider is less than $7,575. (This amount may be adjusted on 4/01/25 and every 3 years after that with respect to cases filed on or after the date of adjustment.) Do not include any payments listed in line 3. Insiders include officers, directors, and anyone in control of a corporate debtor and their relatives; general partners of a partnership debtor and their relatives; affiliates of the debtor and insiders of such affiliates; and any managing agent of the debtor. 11 U.S.C. § 101(31).

☐ None

	Insider's Name and Address	Dates	Total amount or value	Reason for payment or transfer
4.1	See SOFA 4 Attachment Insider's Name Street City State ZIP Code Country **Relationship to Debtor**		$ 8,333,307.62	

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

5. Repossessions, foreclosures, and returns

List all property of the debtor that was obtained by a creditor within 1 year before filing this case, including property repossessed by a creditor, sold at a foreclosure sale, transferred by a deed in lieu of foreclosure, or returned to the seller. Do not include property listed in line 6.

☑ None

Creditor's Name and Address	Description of the Property	Date	Value of property
5.1 Creditor's Name Street City State ZIP Code Country			$

6. Setoffs

List any creditor, including a bank or financial institution, that within 90 days before filing this case set off or otherwise took anything from an account of the debtor without permission or refused to make a payment at the debtor's direction from an account of the debtor because the debtor owed a debt.

☑ None

Creditor's Name and Address	Description of the action creditor took	Date action was taken	Amount
6.1 Creditor's Name Street City State ZIP Code Country	Last 4 digits of account number: XXXX–		$

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 3: Legal Actions or Assignments

7. Legal actions, administrative proceedings, court actions, executions, attachments, or governmental audits

List the legal actions, proceedings, investigations, arbitrations, mediations, and audits by federal or state agencies in which the debtor was involved in any capacity—within 1 year before filing this case.

☐ None

	Case title	Nature of case	Court or agency's name and address	Status of case
7.1	See SOFA 7 Attachment		Name Street City State ZIP Code Country	☐ Pending ☐ On appeal ☐ Concluded

Case number

8. Assignments and receivership

List any property in the hands of an assignee for the benefit of creditors during the 120 days before filing this case and any property in the hands of a receiver, custodian, or other court-appointed officer within 1 year before filing this case.

☑ None

	Custodian's name and address	Description of the Property	Value
8.1	Custodian's name Street City State ZIP Code Country	Case title Case number Date of order or assignment	$ Court name and address Name Street City State ZIP Code Country

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 4: Certain Gifts and Charitable Contributions

9. List all gifts or charitable contributions the debtor gave to a recipient within 2 years before filing this case unless the aggregate value of the gifts to that recipient is less than $1,000

☑ None

	Recipient's name and address	Description of the gifts or contributions	Dates given	Value
9.1	Creditor's Name Street City State ZIP Code Country **Recipient's relationship to debtor**			$

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 5: Certain Losses

10. All losses from fire, theft, or other casualty within 1 year before filing this case.

☑ None

	Description of the property lost and how the loss occurred	Amount of payments received for the loss If you have received payments to cover the loss, for example, from insurance, government compensation, or tort liability, list the total received. List unpaid claims on Official Form 106A/B (*Schedule A/B: Assets – Real and Personal Property*).	Date of loss	Value of property lost
10.1				$

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 6: Certain Payments or Transfers

11. Payments related to bankruptcy

List any payments of money or other transfers of property made by the debtor or person acting on behalf of the debtor within 1 year before the filing of this case to another person or entity, including attorneys, that the debtor consulted about debt consolidation or restructuring, seeking bankruptcy relief, or filing a bankruptcy case.

☐ None

	Who was paid or who received the transfer?	If not money, describe any property transferred	Dates	Total amount or value
11.1	See SOFA 11 Attachment			$

Address

Street

City State ZIP Code

Country

Email or website address

Who made the payment, if not debtor?

12. Self-settled trusts of which the debtor is a beneficiary

List any payments or transfers of property made by the debtor or a person acting on behalf of the debtor within 10 years before the filing of this case to a self-settled trust or similar device.
Do not include transfers already listed on this statement.

☑ None

	Name of trust or device	Describe any property transferred	Dates transfers were made	Total amount or value
12.1				$

Trustee

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

13. Transfers not already listed on this statement

List any transfers of money or other property - by sale, trade, or any other means - made by the debtor or a person acting on behalf of the debtor within 2 years before the filing of this case to another person, other than property transferred in the ordinary course of business or financial affairs. Include both outright transfers and transfers made as security. Do not include gifts or transfers previously listed on this statement.

☑ None

	Who received transfer?	Description of property transferred or payments received or debts paid in exchange	Date transfer was made	Total amount or value
13.1				$

Address

Street

City State ZIP Code

Country

Relationship to Debtor

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 7: Previous Locations

14. Previous addresses

List all previous addresses used by the debtor within 3 years before filing this case and the dates the addresses were used.

☑ Does not apply

	Address	Dates of occupancy
14.1	Street City State ZIP Code Country	From To

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 8: Health Care Bankruptcies

15. Health Care bankruptcies

Is the debtor primarily engaged in offering services and facilities for:
— diagnosing or treating injury, deformity, or disease, or
— providing any surgical, psychiatric, drug treatment, or obstetric care?

☐ No. Go to Part 9.

☑ Yes. Fill in the information below.

	Facility Name and Address	Nature of the business operation, including type of services the debtor provides	If debtor provides meals and housing, number of patients in debtor's care
15.1	Northwest Senior Housing Corporation Facility Name 8523 Thackery St. Street Dallas TX 75225 City State ZIP Code Country	Skilled Nursing, Assisted Living	121

Location where patient records are maintained (if different from facility address). If electronic, identify any service provider.

PointClickCare

How are records kept?

Check all that apply:

☑ Electronically

☑ Paper

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 9: Personally Identifiable Information

16. Does the debtor collect and retain personally identifiable information of customers?

☐ No.

☑ Yes. State the nature of the information collected and retained. Insurance, financial and medical

Does the debtor have a privacy policy about that information?

☐ No

☑ Yes

17. Within 6 years before filing this case, have any employees of the debtor been participants in any ERISA, 401(k), 403(b), or other pension or profit-sharing plan made available by the debtor as an employee benefit?

☐ No. Go to Part 10.

☑ Yes. Does the debtor serve as plan administrator?

☑ No. Go to Part 10.

☐ Yes. Fill in below:

	Name of plan	Employer identification number of the plan
17.1	SQLC 401(K) Plan	EIN: 2669

Has the plan been terminated?

☑ No

☐ Yes

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 10: Certain Financial Accounts, Safe Deposit Boxes, and Storage Units

18. Closed financial accounts

Within 1 year before filing this case, were any financial accounts or instruments held in the debtor's name, or for the debtor's benefit, closed, sold, moved, or transferred?
Include checking, savings, money market, or other financial accounts; certificates of deposit; and shares in banks, credit unions, brokerage houses, cooperatives, associations, and other financial institutions.

☑ None

	Financial institution name and address	Last 4 digits of account number	Type of account	Date account was closed, sold, moved, or transferred	Last balance before closing or transfer
18.1	Name Street City State ZIP Code Country	XXXX-	☐ Checking ☐ Savings ☐ Money market ☐ Brokerage ☐ Other		$

19. Safe deposit boxes

List any safe deposit box or other depository for securities, cash, or other valuables the debtor now has or did have within 1 year before filing this case.

☑ None

	Depository institution name and address	Names of anyone with access to it	Description of the contents	Does debtor still have it?
19.1	Name Street City State ZIP Code Country	Address		☐ No ☐ Yes

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

20. Off-premises storage

List any property kept in storage units or warehouses within 1 year before filing this case. Do not include facilities that are in a part of a building in which the debtor does business.

☑ None

	Facility name and address	Names of anyone with access to it	Description of the contents	Does debtor still have it?
20.1	Name Street City State ZIP Code Country	Address		☐ No ☐ Yes

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 11: Property the Debtor Holds or Controls That the Debtor Does Not Own

21. Property held for another

List any property that the debtor holds or controls that another entity owns. Include any property borrowed from, being stored for, or held in trust. Do not list leased or rented property.

☑ None

	Owner's name and address	Location of the property	Description of the property	Value
21.1	Name Street City State ZIP Code Country			$

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 12: Details About Environmental Information

For the purpose of Part 12, the following definitions apply:

- *Environmental law* means any statute or governmental regulation that concerns pollution, contamination, or hazardous material, regardless of the medium affected (air, land, water, or any other medium).
- *Site* means any location, facility, or property, including disposal sites, that the debtor now owns, operates, or utilizes or that the debtor formerly owned, operated, or utilized.
- *Hazardous material* means anything that an environmental law defines as hazardous or toxic, or describes as a pollutant, contaminant, or a similarly harmful substance.

Report all notices, releases, and proceedings known, regardless of when they occurred.

22. Has the debtor been a party in any judicial or administrative proceeding under any environmental law? Include settlements and orders.

☑ No

☐ Yes. Provide details below.

	Case title	Court or agency name and address	Nature of the case	Status of case
22.1		Name Street City State ZIP Code Country		☐ Pending ☐ On appeal ☐ Concluded

Case Number

23. Has any governmental unit otherwise notified the debtor that the debtor may be liable or potentially liable under or in violation of an environmental law?

☑ No

☐ Yes. Provide details below.

	Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice
23.1	Name Street City State ZIP Code Country	Name Street City State ZIP Code Country		

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

24. Has the debtor notified any governmental unit of any release of hazardous material?

☑ No

☐ Yes. Provide details below.

	Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice
24.1	Name Street City State ZIP Code Country	Name Street City State ZIP Code Country		

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Part 13: Details About the Debtor's Business or Connections to Any Business

25. Other businesses in which the debtor has or has had an interest

List any business for which the debtor was an owner, partner, member, or otherwise a person in control within 6 years before filing this case.Include this information even if already listed in the Schedules.

☐ None

	Business name and address	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN.
25.1	Augustine Home Health Texas LLC Name 8523 Thackery Street Street Dallas TX 75225 City State ZIP Code Country	Home health	EIN: 90-0801215 **Dates business existed** From 1/1/2012 To Present

26. Books, records, and financial statements

26a. List all accountants and bookkeepers who maintained the debtor's books and records within 2 years before filing this case.

☐ None

	Name and Address	Dates of service
26a.1	HEIDI LEAVENGOOD Name c/o Lifespace Communities Street 4201 Corporate Drive West Des Moines IA 50266 City State ZIP Code Country	From 2013 To Present
26a.2	NICK HARSHFIELD Name c/o Lifespace Communities Street 4201 Corporate Drive West Des Moines IA 50266 City State ZIP Code Country	From 6/29/2020 To Present
26a.3	TIM NEVINS Name c/o Lifespace Communities Street 4201 Corporate Drive West Des Moines IA 50266 City State ZIP Code Country	From 2015 To Present

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

26b. List all firms or individuals who have audited, compiled, or reviewed debtor's books of account and records or prepared a financial statement within 2 years before filing this case.

☐ None

	Name and Address	Dates of service
26b.1	CliftonLarsenAllen Name 220 S Sixth St, Unit 300 Street Minneapolis / MN / 55401 City / State / ZIP Code Country	From 2019 To Present

26c. List all firms or individuals who were in possession of the debtor's books of account and records when this case is filed.

☐ None

	Name and address	If any books of account and records are unavailable, explain why
26c.1	HEIDI LEAVENGOOD Name c/o Lifespace Communities Street 4201 Corporate Drive West Des Moines / IA / 50266 City / State / ZIP Code Country	

	Name and address	If any books of account and records are unavailable, explain why
26c.2	LIFESPACE COMMUNITIES Name 4201 Corporate Drive Street West Des Moines / IA / 50266 City / State / ZIP Code Country	

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

Name and address	If any books of account and records are unavailable, explain why

26c.3 NICK HARSHFIELD
Name

c/o Lifespace Communities
Street

4201 Corporate Drive

West Des Moines | IA | 50266
City | State | ZIP Code

Country

Name and address	If any books of account and records are unavailable, explain why

26c.4 TIM NEVINS
Name

c/o Lifespace Communities
Street

4201 Corporate Drive

West Des Moines | IA | 50266
City | State | ZIP Code

Country

26d. List all financial institutions, creditors, and other parties, including mercantile and trade agencies, to whom the debtor issued a financial statement within 2 years before filing this case.

☐ None

Name and address

26d.1 Refer to Global Notes
Name

Street

City | State | ZIP Code

Country

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

27. Inventories

Have any inventories of the debtor's property been taken within 2 years before filing this case?

☐ No

☑ Yes. Give the details about the two most recent inventories.

	Name of the person who supervised the taking of the inventory	Date of Inventory	The dollar amount and basis (cost, market, or other basis) of each inventory
	Anna Bailey	12/31/2022	$ 39,491.89

	Name and address of the person who has possession of inventory records
27.1	Anna Bailey Name c/o Unidine Street PO BOX 102289 Atlanta / GA / 30368-2289 City / State / ZIP Code Country

	Name of the person who supervised the taking of the inventory	Date of Inventory	The dollar amount and basis (cost, market, or other basis) of each inventory
	Bobbi Jo Cocker	3/31/2022	$ 44,520.68

	Name and address of the person who has possession of inventory records
27.2	Bobbi Jo Cocker Name c/o Lifespace Communities Street 4201 Corporate Drive West Des Moines / IA / 50266 City / State / ZIP Code Country

28. List the debtor's officers, directors, managing members, general partners, members in control, controlling shareholders, or other people in control of the debtor at the time of the filing of this case.

	Name	Address	Position and Nature of any interest	% of interest, if any
28.1	Curtis Gielow	c/o Lifespace Communities, 4201 Corporate Drive, West Des Moines, IA 50266	Director	
28.2	David Stewart	c/o Lifespace Communities, 4201 Corporate Drive, West Des Moines, IA 50266	Director	
28.3	Eddie Fenoglio	c/o Lifespace Communities, 4201 Corporate Drive, West Des Moines, IA 50266	Secretary	
28.4	Jesse Jantzen	c/o Lifespace Communities, 4201 Corporate Drive, West Des Moines, IA 50266	Chairman, President and CEO	
28.5	Lifespace Communities	4201 Corporate Drive, West Des Moines, IA 50266	Membership interest	100%
28.6	Nick Harshfield	c/o Lifespace Communities, 4201 Corporate Drive, West Des Moines, IA 50266	Vice Chairman and Treasurer	

Debtor: Northwest Senior Housing Corporation Case number *(if known)*: 22-30659

Name

29. Within 1 year before the filing of this case, did the debtor have officers, directors, managing members, general partners, members in control of the debtor, or shareholders in control of the debtor who no longer hold these positions?

☐ No

☑ Yes. Identify below.

	Name	Address	Position and Nature of any interest	Period during which position or interest was held	
				From	To
29.1	Abdul Shakoor	3150 W Salt Creek Ln, Arlington Heights, IL 60005-5024	Deputy GC and Director	Aug 2020	June 2021

30. Payments, distributions, or withdrawals credited or given to insiders

Within 1 year before filing this case, did the debtor provide an insider with value in any form, including salary, other compensation, draws, bonuses, loans,credits on loans, stock redemptions, and options exercised?

☐ No

☑ Yes. Identify below.

	Name and address of recipient	Amount of money or description and value of property	Dates	Reason for providing the value
30.1	REFER TO PART 2 QUESTION 4 Name Street City State ZIP Code Country **Relationship to debtor**			

31. Within 6 years before filing this case, has the debtor been a member of any consolidated group for tax purposes?

☑ No

☐ Yes. Identify below.

	Name of the parent corporation	Employer Identification number of the parent corporation
31.1		EIN:

32. Within 6 years before filing this case, has the debtor as an employer been responsible for contributing to a pension fund?

☑ No

☐ Yes. Identify below.

	Name of the pension fund	Employer Identification number of the pension fund
32.1		EIN:

Part 14: Signature and Declaration

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both.

18 U.S.C.§§ 152, 1341, 1519, and 3571.

I have examined the information in this *Statement of Financial Affairs* and any attachments and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 05/17/2022
MM / DD / YYYY

✘ / s / Nick Harshfield
Signature of individual signing on behalf of the debtor

Printed name Nick Harshfield

Position or relationship to debtor Director, Vice Chair and Treasurer

Are additional pages to *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* (Official Form 207) attached?

☐ No

☑ Yes

In re: Northwest Senior Housing Corporatio

Case No. 22-30659

Attachment 3

Certain payments or transfers to creditors within 90 days before filing this case

Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	1/19/2022	$4,733.37	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	1/26/2022	$518.40	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	1/26/2022	$2,240.00	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	2/2/2022	$1,679.36	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	2/9/2022	$7,475.04	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	2/16/2022	$5,976.32	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	3/2/2022	$4,702.56	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	3/2/2022	$6,456.32	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	3/16/2022	$3,004.48	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	3/21/2022	$4,784.32	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	3/23/2022	$2,860.80	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	3/30/2022	$3,528.96	Professional and Contracted Services
A+ Staffing	4100 Harry Hines BlvdSte 350	Dallas	TX	75219	4/6/2022	$2,579.52	Professional and Contracted Services
					A+ Staffing Total:	**$50,539.45**	
Access Systems	PO Box 8366	Des Moines	IA	50301	1/13/2022	$10,533.00	Information Technology
Access Systems	PO Box 8366	Des Moines	IA	50301	1/27/2022	$3,254.54	Information Technology
Access Systems	PO Box 8366	Des Moines	IA	50301	2/25/2022	$3,254.54	Information Technology
Access Systems	PO Box 8366	Des Moines	IA	50301	3/28/2022	$9,249.34	Information Technology
					Access Systems Total:	**$26,291.42**	
Andrew Croom Custom Builders LLC	13747 Montfort Dr Ste 344	Dallas	TX	75240-4454	1/14/2022	$14,210.22	CapEx
Andrew Croom Custom Builders LLC	13747 Montfort Dr Ste 344	Dallas	TX	75240-4454	1/14/2022	$20,817.99	CapEx
Andrew Croom Custom Builders LLC	13747 Montfort Dr Ste 344	Dallas	TX	75240-4454	1/14/2022	$20,817.99	CapEx
Andrew Croom Custom Builders LLC	13747 Montfort Dr Ste 344	Dallas	TX	75240-4454	2/11/2022	$20,817.99	CapEx
Andrew Croom Custom Builders LLC	13747 Montfort Dr Ste 344	Dallas	TX	75240-4454	3/1/2022	$13,700.00	CapEx
					Andrew Croom Custom Builders LLC Total:	**$90,364.19**	
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	1/20/2022	$500.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/1/2022	$878.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/8/2022	$800.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/8/2022	$870.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/8/2022	$1,022.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/8/2022	$1,050.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/8/2022	$1,200.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/8/2022	$1,200.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/8/2022	$1,200.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/8/2022	$1,560.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/8/2022	$3,136.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/28/2022	$140,192.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/28/2022	$1,000.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/28/2022	$1,000.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/28/2022	$3,241.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	2/28/2022	$4,400.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/4/2022	$1,908.00	Contractor Services

In re: Northwest Senior Housing Corporatio

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Attachment 3

Certain payments or transfers to creditors within 90 days before filing this case

Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/8/2022	$300.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/11/2022	$690.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/11/2022	$800.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/11/2022	$800.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/15/2022	$65,252.50	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/22/2022	$345.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/22/2022	$2,200.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/22/2022	$6,518.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/22/2022	$4,100.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/22/2022	$15,417.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	3/29/2022	$14,421.00	Contractor Services
ARC Waterproofing Sealant LLC	1819 Brook Terrace Trl	Dallas	TX	75232	4/8/2022	$144,032.50	Contractor Services
					ARC Waterproofing Sealant LLC Total:	**$420,033.00**	
Assembly	One World Trade Center 67th Fl	New York	NY	10007	1/13/2022	$33,834.31	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	1/13/2022	$428.53	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	1/18/2022	$1,500.00	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	1/18/2022	$1,800.00	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	2/9/2022	$43,399.65	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	2/9/2022	$36,641.00	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	2/9/2022	$13,618.00	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	2/10/2022	$13,618.00	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	2/10/2022	$13,618.00	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	2/17/2022	$77,495.00	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	3/14/2022	$428.53	Sales and Marketing Expenses
Assembly	One World Trade Center 67th Fl	New York	NY	10007	3/17/2022	$428.53	Sales and Marketing Expenses
					Assembly Total:	**$236,809.55**	
Atmos	P.O Box 790311	St. Louis	MO	63179	1/27/2022	$1,047.78	Utilities
Atmos	P.O Box 790311	St. Louis	MO	63179	2/4/2022	$9,973.80	Utilities
Atmos	P.O Box 790311	St. Louis	MO	63179	2/28/2022	$1,130.47	Utilities
Atmos	P.O Box 790311	St. Louis	MO	63179	3/1/2022	$12,436.18	Utilities
Atmos	P.O Box 790311	St. Louis	MO	63179	3/25/2022	$943.78	Utilities
Atmos	P.O Box 790311	St. Louis	MO	63179	3/29/2022	$11,148.32	Utilities
					Atmos Total:	**$36,680.33**	
Caremerge Inc	PO BOX 95302	Chicago	IL	60694	1/18/2022	$2,097.00	Information Technology
Caremerge Inc	PO BOX 95302	Chicago	IL	60694	1/18/2022	$2,097.00	Information Technology
Caremerge Inc	PO BOX 95302	Chicago	IL	60694	2/28/2022	$2,097.00	Information Technology
Caremerge Inc	PO BOX 95302	Chicago	IL	60694	3/31/2022	$2,097.00	Information Technology
					Caremerge Inc Total:	**$8,388.00**	
Cintas Fire	PO Box 636525	Cincinnati	OH	45263-6525	1/18/2022	$2,511.91	Building, Grounds & Maintenance
Cintas Fire	PO Box 636525	Cincinnati	OH	45263-6525	2/8/2022	$1,795.00	Building, Grounds & Maintenance
Cintas Fire	PO Box 636525	Cincinnati	OH	45263-6525	2/11/2022	$456.00	Building, Grounds & Maintenance
Cintas Fire	PO Box 636525	Cincinnati	OH	45263-6525	2/15/2022	$509.00	Building, Grounds & Maintenance

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Certain payments or transfers to creditors within 90 days before filing this case

Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
Cintas Fire	PO Box 636525	Cincinnati	OH	45263-6525	2/17/2022	$595.00	Building, Grounds & Maintenance
Cintas Fire	PO Box 636525	Cincinnati	OH	45263-6525	3/22/2022	$835.00	Building, Grounds & Maintenance
Cintas Fire	PO Box 636525	Cincinnati	OH	45263-6525	3/22/2022	$5,710.87	Building, Grounds & Maintenance
					Cintas Fire Total:	**$12,412.78**	
CMMI Solutions LLC	2517 Myers Park Ct	Brentwood	TN	37027	4/13/2022	$23,493.49	Professional and Contracted Services
					CMMI Solutions LLC Total:	**$23,493.49**	
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	1/14/2022	$4,650.48	Utilities
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	1/18/2022	$4,911.36	Utilities
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	1/18/2022	$5,149.24	Utilities
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	1/19/2022	$153.10	Utilities
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	1/27/2022	$152.98	Utilities
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	1/27/2022	$5,245.84	Utilities
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	2/15/2022	$152.98	Utilities
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	2/15/2022	$4,957.01	Utilities
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	3/17/2022	$345.37	Utilities
Community Waste Disposal LP	PO BOX 208939	Dallas	TX	75320-8939	3/21/2022	$4,901.69	Utilities
					Community Waste Disposal LP Total:	**$30,620.05**	
Cura Laboratory Services	4122 GUS THOMASSON RD	MESQUITE	TX	75150	1/19/2022	$6,095.49	Laboratory
Cura Laboratory Services	4122 GUS THOMASSON RD	MESQUITE	TX	75150	1/25/2022	$3,144.10	Laboratory
					Cura Laboratory Services Total:	**$9,239.59**	
Darwill, Inc	PO Box 6243	Carol Stream	IL	60197	1/14/2022	$5,746.87	Sales and Marketing Expenses
Darwill, Inc	PO Box 6243	Carol Stream	IL	60197	2/10/2022	$740.85	Sales and Marketing Expenses
Darwill, Inc	PO Box 6243	Carol Stream	IL	60197	2/18/2022	$8,752.57	Sales and Marketing Expenses
Darwill, Inc	PO Box 6243	Carol Stream	IL	60197	3/9/2022	$8,837.18	Sales and Marketing Expenses
Darwill, Inc	PO Box 6243	Carol Stream	IL	60197	3/21/2022	$4,500.00	Sales and Marketing Expenses
Darwill, Inc	PO Box 6243	Carol Stream	IL	60197	3/23/2022	$3,749.41	Sales and Marketing Expenses
Darwill, Inc	PO Box 6243	Carol Stream	IL	60197	3/23/2022	$3,749.41	Sales and Marketing Expenses
Darwill, Inc	PO Box 6243	Carol Stream	IL	60197	4/12/2022	$39.06	Sales and Marketing Expenses
					Darwill, Inc Total:	**$36,115.35**	
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	1/18/2022	$113,490.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	1/24/2022	$580.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	1/24/2022	$865.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	1/24/2022	$880.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	1/28/2022	$2,310.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	1/28/2022	$2,420.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	1/28/2022	$2,735.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	1/28/2022	$12,290.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	1/28/2022	$44,795.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	2/1/2022	$395.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	2/1/2022	$527.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	2/1/2022	$990.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	2/1/2022	$1,210.00	CapEx

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Certain payments or transfers to creditors within 90 days before filing this case

Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	2/1/2022	$2,825.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	2/1/2022	$21,641.35	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	2/1/2022	$48,745.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	2/8/2022	$390.00	CapEx
DBM Services LP	3111 Executive Boulevard	Mesquite	TX	75149	3/25/2022	$2,300.00	CapEx
				DBM Services LP Total:		**$259,388.35**	
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	2/4/2022	$113.99	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	2/4/2022	$279.98	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	2/4/2022	$387.92	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	2/7/2022	$891.00	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	2/7/2022	$2,994.50	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	2/8/2022	$291.91	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	2/8/2022	$1,030.00	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	2/8/2022	$5,203.98	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	2/25/2022	$833.94	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	3/3/2022	$2,024.75	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	3/8/2022	$606.86	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	3/29/2022	$484.90	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	4/5/2022	$51.65	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	4/5/2022	$28.98	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	4/5/2022	$173.88	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	4/5/2022	$202.86	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	4/5/2022	$1,619.80	Supplies
Direct Supply Inc	PO Box 88201	Milwaukee	WI	53288	4/8/2022	$78.98	Supplies
				Direct Supply Inc Total:		**$17,299.88**	
Dude Solutions	P.O. BOX 936580	ATLANTA	GA	31193-6580	2/28/2022	$2,810.61	Information Technology
Dude Solutions	P.O. BOX 936580	ATLANTA	GA	31193-6580	2/28/2022	$4,928.39	Information Technology
				Dude Solutions Total:		**$7,739.00**	
Ford Audio-Video Systems, LLC	4800 West I-40 Service Rd	Oklahoma City	OK	73128-1208	3/10/2022	$16,199.00	Building, Grounds & Maintenance
Ford Audio-Video Systems, LLC	4800 West I-40 Service Rd	Oklahoma City	OK	73128-1208	3/29/2022	$800.00	Building, Grounds & Maintenance
Ford Audio-Video Systems, LLC	4800 West I-40 Service Rd	Oklahoma City	OK	73128-1208	3/31/2022	$16,199.00	Building, Grounds & Maintenance
				Ford Audio-Video Systems, LLC Total:		**$33,198.00**	
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	1/28/2022	$118.80	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	1/28/2022	$127.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	1/28/2022	$156.10	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	1/28/2022	$157.90	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	1/28/2022	$313.14	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/3/2022	$1,154.64	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/21/2022	$218.80	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$361.08	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$530.40	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$530.40	CapEx

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Certain payments or transfers to creditors within 90 days before filing this case

Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$530.40	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$530.40	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$530.40	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$530.40	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$530.40	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$743.58	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$743.58	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$743.58	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$743.58	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$743.58	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$743.58	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$743.58	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$743.58	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$743.58	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$1,303.56	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$1,921.68	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$1,921.68	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$1,921.68	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$1,921.68	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$2,312.34	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$2,452.08	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$3,195.66	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$3,195.66	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$4,238.10	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/22/2022	$4,471.68	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/28/2022	$158.25	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$360.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	3/29/2022	$740.00	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	4/5/2022	$1,657.82	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	4/5/2022	$4,818.48	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	4/5/2022	$4,818.48	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	4/5/2022	$4,818.48	CapEx
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	4/5/2022	$4,818.48	CapEx

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Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
GE Appliances	PO Box 733572	Dallas	TX	75373-3572	4/5/2022	$4,818.48	CapEx
				GE Appliances Total:		**$72,116.75**	
Gielow Ventures, LLC	3412 W Clubview Ct	Mequon	WI	53092	4/6/2022	$22,500.00	Professional and Contracted Services
				Gielow Ventures, LLC Total:		**$22,500.00**	
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/14/2022	$43.26	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/14/2022	$57.68	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/14/2022	$254.14	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/14/2022	$468.26	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/14/2022	$687.63	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/18/2022	$30.36	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/18/2022	$278.88	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/21/2022	$37.94	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/24/2022	$19.64	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/25/2022	$37.94	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/25/2022	$125.92	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/25/2022	$256.17	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/26/2022	$79.68	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	1/26/2022	$79.68	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/3/2022	$95.76	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/3/2022	$103.00	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/3/2022	$162.58	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/3/2022	$486.58	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/3/2022	$759.46	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/11/2022	$16.74	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/11/2022	$90.03	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/11/2022	$143.40	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/11/2022	$151.23	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/11/2022	$245.59	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/11/2022	$356.89	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/11/2022	$449.25	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/11/2022	$522.70	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/11/2022	$1,234.88	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/17/2022	$12.22	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/17/2022	$92.11	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/17/2022	$128.40	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/17/2022	$133.00	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/18/2022	$27.20	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/18/2022	$279.84	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	2/18/2022	$955.14	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/1/2022	$76.16	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/1/2022	$136.80	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/1/2022	$157.50	Supplies

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HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/1/2022	$434.43	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/1/2022	$616.85	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/2/2022	$11.16	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/2/2022	$75.94	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/2/2022	$241.04	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/2/2022	$2,659.35	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/7/2022	$24.94	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/16/2022	$76.02	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/16/2022	$851.52	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/21/2022	$79.77	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/22/2022	$116.50	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/22/2022	$227.87	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/22/2022	$18.72	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/22/2022	$19.56	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/22/2022	$45.60	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/22/2022	$107.75	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/22/2022	$805.74	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/22/2022	$76.93	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/30/2022	$58.25	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/30/2022	$102.78	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/30/2022	$199.36	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/30/2022	$266.30	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/30/2022	$940.35	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/30/2022	$2,029.43	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	3/30/2022	$284.90	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	4/7/2022	$194.68	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	4/8/2022	$13.70	Supplies
HD Supply Facilities Maintenance	PO Box 509058	San Diego	CA	92150	4/8/2022	$30.00	Supplies
		HD Supply Facilities Maintenance Total:				**$19,883.08**	
Intercity Investments, Inc.	4301 Westside Dr. #100	Dallas	TX	75209-6546	4/1/2022	$341,612.34	Ground Lease Payment
		Intercity Investments, Inc. Total:				**$341,612.34**	
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	1/14/2022	$280.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	1/14/2022	$1,100.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	1/14/2022	$1,100.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	1/14/2022	$1,350.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	1/14/2022	$2,200.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	1/14/2022	$2,200.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	1/14/2022	$2,480.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	1/14/2022	$2,760.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	3/16/2022	$2,200.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	3/16/2022	$2,450.00	Building, Grounds & Maintenance
IRJ Glass & Mirrors	1607 Garza Avenue	Dallas	TX	75216	4/8/2022	$2,200.00	Building, Grounds & Maintenance

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Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
					IRJ Glass & Mirrors Total:	**$20,320.00**	
Jewish Federation of Greater Dallas	7800 Northaven Rd	Dallas	TX	75230	2/7/2022	$10,000.00	Sales and Marketing Expenses
					Jewish Federation of Greater Dallas Total:	**$10,000.00**	
Kim-Ngan P. Fellman M.D PA	4931 WEST AMHERST AVE	DALLAS	TX	75209	1/19/2022	$3,500.00	Medical Director Fees
Kim-Ngan P. Fellman M.D PA	4931 WEST AMHERST AVE	DALLAS	TX	75209	2/22/2022	$3,500.00	Medical Director Fees
Kim-Ngan P. Fellman M.D PA	4931 WEST AMHERST AVE	DALLAS	TX	75209	3/11/2022	$3,500.00	Medical Director Fees
Kim-Ngan P. Fellman M.D PA	4931 WEST AMHERST AVE	DALLAS	TX	75209	3/29/2022	$3,500.00	Medical Director Fees
					Kim-Ngan P. Fellman M.D PA Total:	**$14,000.00**	
Lagniappe National Construction, LLC	1526 E. Pass Rd	Gulfport	MS	39507-3524	1/26/2022	$30,000.00	CapEx
Lagniappe National Construction, LLC	1526 E. Pass Rd	Gulfport	MS	39507-3524	3/1/2022	$71,414.60	CapEx
Lagniappe National Construction, LLC	1526 E. Pass Rd	Gulfport	MS	39507-3524	3/3/2022	$19,311.45	CapEx
Lagniappe National Construction, LLC	1526 E. Pass Rd	Gulfport	MS	39507-3524	3/3/2022	$58,020.25	CapEx
Lagniappe National Construction, LLC	1526 E. Pass Rd	Gulfport	MS	39507-3524	3/4/2022	$103,214.60	CapEx
					Lagniappe National Construction, LLC Total:	**$281,960.90**	
Leading Age Texas	2205 HANCOCK DRIVE	AUSTIN	TX	78756	2/17/2022	$32,895.73	Professional and Contracted Services
					Leading Age Texas Total:	**$32,895.73**	
Let's Roll Promo	6940 LAKEVIEW CIRCLE	ROWLETT	TX	75089	1/27/2022	$971.43	Sales and Marketing Expenses
Let's Roll Promo	6940 LAKEVIEW CIRCLE	ROWLETT	TX	75089	2/7/2022	$823.00	Sales and Marketing Expenses
Let's Roll Promo	6940 LAKEVIEW CIRCLE	ROWLETT	TX	75089	2/9/2022	$774.64	Sales and Marketing Expenses
Let's Roll Promo	6940 LAKEVIEW CIRCLE	ROWLETT	TX	75089	2/9/2022	$1,078.57	Sales and Marketing Expenses
Let's Roll Promo	6940 LAKEVIEW CIRCLE	ROWLETT	TX	75089	2/18/2022	$3,464.47	Sales and Marketing Expenses
Let's Roll Promo	6940 LAKEVIEW CIRCLE	ROWLETT	TX	75089	3/30/2022	$1,311.39	Sales and Marketing Expenses
Let's Roll Promo	6940 LAKEVIEW CIRCLE	ROWLETT	TX	75089	3/30/2022	$1,038.21	Sales and Marketing Expenses
					Let's Roll Promo Total:	**$9,461.71**	
Longhorn Mechanical Inc	P.O.Box 909	Van Alstyne	TX	75495	1/18/2022	$1,288.81	Professional and Contracted Services
Longhorn Mechanical Inc	P.O.Box 909	Van Alstyne	TX	75495	1/25/2022	$3,933.64	Professional and Contracted Services
Longhorn Mechanical Inc	P.O.Box 909	Van Alstyne	TX	75495	2/4/2022	$237.00	Professional and Contracted Services
Longhorn Mechanical Inc	P.O.Box 909	Van Alstyne	TX	75495	2/8/2022	$772.00	Professional and Contracted Services
Longhorn Mechanical Inc	P.O.Box 909	Van Alstyne	TX	75495	3/4/2022	$468.00	Professional and Contracted Services
Longhorn Mechanical Inc	P.O.Box 909	Van Alstyne	TX	75495	3/17/2022	$366.00	Professional and Contracted Services
Longhorn Mechanical Inc	P.O.Box 909	Van Alstyne	TX	75495	3/22/2022	$1,250.55	Professional and Contracted Services
Longhorn Mechanical Inc	P.O.Box 909	Van Alstyne	TX	75495	3/28/2022	$3,243.10	Professional and Contracted Services
					Longhorn Mechanical Inc Total:	**$11,559.10**	
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/7/2022	$51.00	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/8/2022	$48.80	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/8/2022	$259.14	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/8/2022	$1,638.44	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/8/2022	$2,047.31	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/8/2022	$2,350.21	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/8/2022	$19.20	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/8/2022	$53.90	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/8/2022	$61.72	Supplies

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McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/8/2022	$3,379.54	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/9/2022	$16.58	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/10/2022	$27.60	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	2/15/2022	$101.28	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/3/2022	$51.29	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/7/2022	$35.44	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/7/2022	$305.84	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/7/2022	$2,960.65	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/11/2022	$33.90	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/11/2022	$4,461.93	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/14/2022	$37.92	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/15/2022	$14.49	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/21/2022	$291.10	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/21/2022	$4,090.86	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/22/2022	$135.22	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/29/2022	$78.07	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	3/30/2022	$36.36	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	4/1/2022	$33.90	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	4/1/2022	$45.04	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	4/1/2022	$50.41	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	4/1/2022	$72.67	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	4/1/2022	$88.85	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	4/1/2022	$2,954.72	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	4/4/2022	$82.65	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	4/4/2022	$931.05	Supplies
McKesson Medical-Surgical	PO BOX 630693	Cincinnati	OH	45263-0693	4/4/2022	$2,519.84	Supplies
				McKesson Medical-Surgical Total:		**$29,366.92**	
Mono Advertising, LLC	1350 Lagoon Ave Mozaic West 1000	Minneapolis	MN	55408	1/14/2022	$40,000.00	Sales and Marketing Expenses
Mono Advertising, LLC	1350 Lagoon Ave Mozaic West 1000	Minneapolis	MN	55408	1/14/2022	$1,714.00	Sales and Marketing Expenses
Mono Advertising, LLC	1350 Lagoon Ave Mozaic West 1000	Minneapolis	MN	55408	2/22/2022	$8,048.00	Sales and Marketing Expenses
Mono Advertising, LLC	1350 Lagoon Ave Mozaic West 1000	Minneapolis	MN	55408	3/25/2022	$18,129.71	Sales and Marketing Expenses
				Mono Advertising, LLC Total:		**$67,891.71**	
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	1/14/2022	$680.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/2/2022	$580.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/2/2022	$727.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/4/2022	$495.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/4/2022	$1,770.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/8/2022	$285.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/8/2022	$420.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/8/2022	$2,845.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/11/2022	$880.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/14/2022	$540.00	Professional and Contracted Services

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Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/15/2022	$420.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/15/2022	$490.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/15/2022	$707.70	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/16/2022	$240.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/16/2022	$360.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/16/2022	$450.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/16/2022	$450.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/17/2022	$4,797.17	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/17/2022	$6,110.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/22/2022	$1,052.40	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/22/2022	$1,294.60	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/25/2022	$953.40	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	2/25/2022	$1,247.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	3/1/2022	$8,580.59	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	3/10/2022	$1,560.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	3/10/2022	$6,057.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	3/10/2022	$6,057.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	3/11/2022	$811.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	3/29/2022	$495.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	3/29/2022	$720.00	Professional and Contracted Services
Mr. AC Heating & Cooling LLC	5016 Eastcreek Dr	Arlington	TX	76018-1328	4/5/2022	$1,668.00	Professional and Contracted Services
		Mr. AC Heating & Cooling LLC Total:				**$53,742.86**	
Omnicare of Fort Worth	DEPT 781668 PO BOX 78000	DETROIT	MI	48278-1668	2/8/2022	$27,636.05	Medical Supplies - Drugs
Omnicare of Fort Worth	DEPT 781668 PO BOX 78000	DETROIT	MI	48278-1668	2/18/2022	$340.00	Medical Supplies - Drugs
Omnicare of Fort Worth	DEPT 781668 PO BOX 78000	DETROIT	MI	48278-1668	3/18/2022	$20,628.67	Medical Supplies - Drugs
			Omnicare of Fort Worth Total:			**$48,604.72**	
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	1/18/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	1/18/2022	$4,382.47	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	1/28/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	1/28/2022	$2,822.85	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	1/28/2022	$4,075.76	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	1/28/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	1/28/2022	$4,758.52	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	2/1/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	2/1/2022	$3,931.09	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	2/8/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	2/8/2022	$4,261.29	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	2/11/2022	$622.05	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	2/15/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	2/15/2022	$4,547.35	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	2/22/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	2/22/2022	$4,866.61	Professional and Contracted Services

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Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	3/1/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	3/1/2022	$4,250.27	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	3/8/2022	$609.00	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	3/8/2022	$2,231.96	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	3/15/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	3/15/2022	$3,269.09	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	3/22/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	3/22/2022	$2,726.77	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	4/1/2022	$3,434.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	4/6/2022	$761.25	Professional and Contracted Services
On Demand Staffing	P.O. BOX 59307	DALLAS	TX	75229	4/6/2022	$806.40	Professional and Contracted Services
					On Demand Staffing Total:	**$59,969.48**	
PADIC INC	1609 East Broadway Street	Gainesville	TX	76240-4407	4/11/2022	$10,560.39	Professional and Contracted Services
					PADIC INC Total:	**$10,560.39**	
Phillips Lifeline Systems Inc	PO Box 403109	Atlanta	GA	30384-3109	1/18/2022	$1,190.00	Medical Supplies
Phillips Lifeline Systems Inc	PO Box 403109	Atlanta	GA	30384-3109	1/28/2022	$3,297.45	Medical Supplies
Phillips Lifeline Systems Inc	PO Box 403109	Atlanta	GA	30384-3109	1/31/2022	$3,414.90	Medical Supplies
Phillips Lifeline Systems Inc	PO Box 403109	Atlanta	GA	30384-3109	1/31/2022	$6,794.90	Medical Supplies
Phillips Lifeline Systems Inc	PO Box 403109	Atlanta	GA	30384-3109	2/1/2022	$533.95	Medical Supplies
Phillips Lifeline Systems Inc	PO Box 403109	Atlanta	GA	30384-3109	2/1/2022	$2,248.73	Medical Supplies
Phillips Lifeline Systems Inc	PO Box 403109	Atlanta	GA	30384-3109	2/18/2022	$105.00	Medical Supplies
Phillips Lifeline Systems Inc	PO Box 403109	Atlanta	GA	30384-3109	3/15/2022	$1,638.58	Medical Supplies
					Phillips Lifeline Systems Inc Total:	**$19,223.51**	
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	1/13/2022	$42.03	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	1/27/2022	$676.32	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	1/27/2022	$963.60	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	1/27/2022	$2,914.29	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	2/7/2022	$1,692.70	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	2/23/2022	$61.04	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	2/23/2022	$198.94	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	2/23/2022	$43.92	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	2/23/2022	$567.89	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	2/23/2022	$28.65	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/7/2022	$3,045.45	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/7/2022	$1,006.97	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/7/2022	$706.78	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/7/2022	$1,768.86	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/14/2022	$706.78	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/14/2022	$1,006.97	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/14/2022	$1,768.86	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/22/2022	$3,045.45	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/25/2022	$198.94	Information Technology

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Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/25/2022	$61.04	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/25/2022	$43.92	Information Technology
PointClickCare Technologies Inc	PO Box 674802	Detroit	MI	48267-4802	3/25/2022	$567.89	Information Technology
		PointClickCare Technologies Inc Total:				**$21,117.29**	
ProMatura Group LLC	19 County Road 168	Oxford	MS	38655	3/10/2022	$11,079.50	Sales and Marketing Expenses
ProMatura Group LLC	19 County Road 168	Oxford	MS	38655	3/16/2022	$9,134.43	Sales and Marketing Expenses
			ProMatura Group LLC Total:			**$20,213.93**	
ProSource of Dallas Market Center	PO BOX 105525	Atlanta	GA	30348	1/21/2022	$6,127.46	CapEx
ProSource of Dallas Market Center	PO BOX 105525	Atlanta	GA	30348	2/11/2022	$2,561.74	CapEx
ProSource of Dallas Market Center	PO BOX 105525	Atlanta	GA	30348	2/11/2022	$7,293.37	CapEx
ProSource of Dallas Market Center	PO BOX 105525	Atlanta	GA	30348	2/25/2022	$4,145.74	CapEx
ProSource of Dallas Market Center	PO BOX 105525	Atlanta	GA	30348	2/25/2022	$6,127.46	CapEx
		ProSource of Dallas Market Center Total:				**$26,255.77**	
Reliant	P.O. Box 1532	Houston	TX	77251	1/20/2022	$17,549.12	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	1/20/2022	$2,124.17	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	1/20/2022	$2,237.71	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	1/20/2022	$2,789.57	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	1/20/2022	$3,456.95	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	1/20/2022	$3,630.22	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	1/20/2022	$8,988.56	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	2/22/2022	$2,264.50	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	2/22/2022	$2,487.91	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	2/22/2022	$3,055.44	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	2/22/2022	$3,758.27	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	2/22/2022	$4,082.47	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	2/22/2022	$10,334.92	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	2/22/2022	$18,401.76	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	3/23/2022	$760.36	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	3/23/2022	$760.36	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	3/23/2022	$926.90	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	3/23/2022	$1,267.26	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	3/23/2022	$1,375.89	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	3/23/2022	$3,524.20	Utilities
Reliant	P.O. Box 1532	Houston	TX	77251	3/23/2022	$5,376.54	Utilities
					Reliant Total:	**$99,153.08**	
Resident 113136	Address Redacted				1/26/2022	$8,795.26	Resident Refund
				Resident 113136 Total:		**$8,795.26**	
Resident 113339	Address Redacted				2/21/2022	$63,226.16	Resident Refund
				Resident 113339 Total:		**$63,226.16**	
Select Rehabilitation LLC	PO BOX 71985	CHICAGO	IL	60694-1985	1/13/2022	$112,085.90	Professional and Contracted Services
Select Rehabilitation LLC	PO BOX 71985	CHICAGO	IL	60694-1985	2/9/2022	$80,624.13	Professional and Contracted Services
Select Rehabilitation LLC	PO BOX 71985	CHICAGO	IL	60694-1985	3/7/2022	$218.16	Professional and Contracted Services

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Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
Select Rehabilitation LLC	PO BOX 71985	CHICAGO	IL	60694-1985	3/10/2022	$5,787.87	Professional and Contracted Services
Select Rehabilitation LLC	PO BOX 71985	CHICAGO	IL	60694-1985	3/10/2022	$97,324.36	Professional and Contracted Services
Select Rehabilitation LLC	PO BOX 71985	CHICAGO	IL	60694-1985	3/25/2022	$81,571.79	Professional and Contracted Services
			Select Rehabilitation LLC Total:			**$377,612.21**	
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	1/14/2022	$692.17	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	1/20/2022	$126.24	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	1/27/2022	$1,145.48	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	2/3/2022	$1,533.46	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	2/10/2022	$1,208.98	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	2/18/2022	$909.61	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	2/21/2022	$1,136.64	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	2/23/2022	$870.43	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	3/3/2022	$1,650.46	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	3/10/2022	$2,543.70	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	3/17/2022	$2,804.43	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	3/24/2022	$972.12	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	3/29/2022	$2,378.39	Dietary & Related Supplies
Sigels Beverages, LP	2960 ANODE LANE	Dallas	TX	75220	4/7/2022	$671.92	Dietary & Related Supplies
				Sigels Beverages, LP Total:		**$18,644.03**	
Spinutech Inc	115 E 2nd St	Cedar Falls	IA	50613	2/4/2022	$33,685.00	Sales and Marketing Expenses
Spinutech Inc	115 E 2nd St	Cedar Falls	IA	50613	2/4/2022	$2,320.00	Sales and Marketing Expenses
Spinutech Inc	115 E 2nd St	Cedar Falls	IA	50613	2/4/2022	$2,320.00	Sales and Marketing Expenses
Spinutech Inc	115 E 2nd St	Cedar Falls	IA	50613	2/4/2022	$33,685.00	Sales and Marketing Expenses
Spinutech Inc	115 E 2nd St	Cedar Falls	IA	50613	2/10/2022	$36,064.00	Sales and Marketing Expenses
Spinutech Inc	115 E 2nd St	Cedar Falls	IA	50613	3/14/2022	$36,065.00	Sales and Marketing Expenses
Spinutech Inc	115 E 2nd St	Cedar Falls	IA	50613	3/24/2022	$34,815.00	Sales and Marketing Expenses
Spinutech Inc	115 E 2nd St	Cedar Falls	IA	50613	3/29/2022	$4,726.28	Sales and Marketing Expenses
					Spinutech Inc Total:	**$183,680.28**	
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/18/2022	$82.14	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/20/2022	$378.05	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$7.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$13.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$17.34	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$19.79	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$23.58	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$28.11	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$30.47	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$32.91	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$33.22	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$33.22	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$35.85	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$36.40	Supplies

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Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$36.46	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$39.89	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$41.74	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$45.24	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$45.24	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$55.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$56.09	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$57.47	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$57.76	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$58.64	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$59.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$60.52	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$64.42	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$70.47	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$75.16	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$82.98	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$85.86	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$87.94	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$90.47	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$91.55	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$92.00	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$92.00	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$157.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$224.00	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$234.00	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$512.94	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$1,123.65	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$1,220.07	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$1,357.87	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/25/2022	$1,459.67	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/27/2022	$20.61	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/27/2022	$215.37	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/28/2022	$9.49	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/28/2022	$238.24	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	1/28/2022	$341.68	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$62.98	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$147.49	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$372.15	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$40.98	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$44.89	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$83.48	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$148.99	Supplies

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Certain payments or transfers to creditors within 90 days before filing this case

Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$213.37	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$269.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$13.67	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$31.44	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$73.70	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$99.96	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$13.98	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$14.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$29.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$47.50	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$47.50	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$47.50	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$55.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$94.94	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$99.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$114.81	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$164.34	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$219.12	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$912.39	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$1,280.56	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$1,296.82	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$1,331.16	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$1,450.33	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$48.89	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$65.93	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	2/25/2022	$85.02	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$9.88	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$60.39	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$68.04	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$173.88	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$373.71	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$46.97	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$132.02	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$190.76	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$15.72	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$27.84	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$43.16	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$49.98	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$15.29	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$17.79	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$20.49	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$24.99	Supplies

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Certain payments or transfers to creditors within 90 days before filing this case

Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$31.49	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$32.05	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$32.49	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$32.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$46.49	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$177.90	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$188.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$190.42	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$949.61	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$26.07	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$34.76	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$43.45	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$47.50	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$47.50	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$47.63	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$95.00	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$1,373.98	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$1,417.82	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$1,445.01	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$1,617.16	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$148.00	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$471.26	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$431.99	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$599.96	Supplies
Staples Advantage	PO Box 660409	Dallas	TX	75266-0410	3/25/2022	$1,163.99	Supplies
				Staples Advantage Total:		**$30,325.78**	
Steve Donosky Company	Suite 100-228 25 Highland Park Village	Dallas	TX	75205	3/7/2022	$58,751.90	Professional and Contracted Services
Steve Donosky Company	Suite 100-228 25 Highland Park Village	Dallas	TX	75205	4/1/2022	$8,540.31	Professional and Contracted Services
				Steve Donosky Company Total:		**$67,292.21**	
Taxes - Dallas County	500 Elm Street, Suite 3300	Dallas	TX	75202	1/20/2022	$1,925,733.43	Taxes
				Taxes - Dallas County Total:		**$1,925,733.43**	
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	1/18/2022	$828.66	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	1/18/2022	$13,755.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	1/25/2022	$4,117.11	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	1/28/2022	$173.29	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	1/28/2022	$1,034.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	1/28/2022	$3,166.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	2/1/2022	$340.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	2/1/2022	$510.25	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	2/1/2022	$1,035.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	2/18/2022	$1,035.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	2/23/2022	$431.07	Building, Grounds & Maintenance

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Certain payments or transfers to creditors within 90 days before filing this case

Payee's name	Address 1	City	State	Zip	Date	Total amount or value	Reason for payment or transfer (e.g. Secured debt, Unsecured loan repayments, Suppliers or vendors, Services, or Other)
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	3/11/2022	$819.59	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	3/11/2022	$1,035.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	3/11/2022	$3,174.81	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	3/11/2022	$13,755.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	3/22/2022	$13,755.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	3/31/2022	$581.61	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	3/31/2022	$679.83	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	3/31/2022	$936.58	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	4/4/2022	$7,860.00	Building, Grounds & Maintenance
Techscape Inc	9800 Brockbank Dr	Dallas	TX	75220	4/4/2022	$9,989.76	Building, Grounds & Maintenance
					Techscape Inc Total:	**$79,012.56**	
Thyssenkrupp Elevator Co	PO BOX 3796	CAROL STEAM	IL	60132-3796	2/11/2022	$664.50	Building, Grounds & Maintenance
Thyssenkrupp Elevator Co	PO BOX 3796	CAROL STEAM	IL	60132-3796	2/14/2022	$204.05	Building, Grounds & Maintenance
Thyssenkrupp Elevator Co	PO BOX 3796	CAROL STEAM	IL	60132-3796	3/21/2022	$2,345.85	Building, Grounds & Maintenance
Thyssenkrupp Elevator Co	PO BOX 3796	CAROL STEAM	IL	60132-3796	3/21/2022	$2,499.00	Building, Grounds & Maintenance
Thyssenkrupp Elevator Co	PO BOX 3796	CAROL STEAM	IL	60132-3796	3/22/2022	$10,144.37	Building, Grounds & Maintenance
Thyssenkrupp Elevator Co	PO BOX 3796	CAROL STEAM	IL	60132-3796	3/25/2022	$492.00	Building, Grounds & Maintenance
Thyssenkrupp Elevator Co	PO BOX 3796	CAROL STEAM	IL	60132-3796	3/31/2022	$270.50	Building, Grounds & Maintenance
Thyssenkrupp Elevator Co	PO BOX 3796	CAROL STEAM	IL	60132-3796	3/31/2022	$492.00	Building, Grounds & Maintenance
					Thyssenkrupp Elevator Co Total:	**$17,112.27**	
Total Fire And Safety Inc	7909 Carr Street	Dallas	TX	75227	1/13/2022	$464.00	Building, Grounds & Maintenance
Total Fire And Safety Inc	7909 Carr Street	Dallas	TX	75227	1/25/2022	$5,800.00	Building, Grounds & Maintenance
Total Fire And Safety Inc	7909 Carr Street	Dallas	TX	75227	2/15/2022	$104.00	Building, Grounds & Maintenance
Total Fire And Safety Inc	7909 Carr Street	Dallas	TX	75227	2/15/2022	$1,024.65	Building, Grounds & Maintenance
Total Fire And Safety Inc	7909 Carr Street	Dallas	TX	75227	3/1/2022	$1,142.73	Building, Grounds & Maintenance
Total Fire And Safety Inc	7909 Carr Street	Dallas	TX	75227	3/4/2022	$1,476.00	Building, Grounds & Maintenance
Total Fire And Safety Inc	7909 Carr Street	Dallas	TX	75227	3/15/2022	$715.45	Building, Grounds & Maintenance
Total Fire And Safety Inc	7909 Carr Street	Dallas	TX	75227	3/15/2022	$3,679.90	Building, Grounds & Maintenance
Total Fire And Safety Inc	7909 Carr Street	Dallas	TX	75227	3/25/2022	$2,500.00	Building, Grounds & Maintenance
					Total Fire And Safety Inc Total:	**$16,906.73**	
Unidine Corporation	PO BOX 102289	Atlanta	GA	30368-2289	1/28/2022	$320,902.49	Professional and Contracted Services
Unidine Corporation	PO BOX 102289	Atlanta	GA	30368-2289	2/18/2022	$225,243.81	Professional and Contracted Services
Unidine Corporation	PO BOX 102289	Atlanta	GA	30368-2289	3/18/2022	$243,940.18	Professional and Contracted Services
					Unidine Corporation Total:	**$790,086.48**	
					Grand Total:	**$6,169,449.10**	

In re: Northwest Senior Housing Corporation

Case No. 22-30659

Attachment 4

Payments or other transfers of property made within 1 year before filing this case that benefited any insider

Insider's name	Address 1	City	State	Zip	Date	Total amount or value	Reasons for payment or transfer	Relationship to debtor
Friendship Village of Bloomington	8100 Highwood Drive	Bloomington	MN	55438	7/15/2021	$100,000.00	Intercompany Transfer	Affiliated Entity
		Friendship Village of Bloomington Total:				**$100,000.00**		
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/22/2021	$5,582.13	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/22/2021	$19,231.72	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/22/2021	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/22/2021	$5,589.27	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/22/2021	$60,936.79	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/22/2021	$236,215.33	Home Office Allocation	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/26/2021	$56,813.91	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/26/2021	$4,756.67	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/30/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/1/2021	$35,648.63	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/4/2021	$56,498.25	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/20/2021	$19,068.22	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/20/2021	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/20/2021	$64,240.52	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/20/2021	$245,552.02	Home Office Allocation	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/24/2021	$4,039.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/27/2021	$86,068.69	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/31/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	6/1/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	6/2/2021	$56,498.25	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	6/24/2021	$4,003.09	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/1/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/1/2021	$5,589.27	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/1/2021	$59,738.81	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/2/2021	$56,498.25	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/21/2021	$18,901.74	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/21/2021	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/21/2021	$26,895.94	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/21/2021	$223,213.18	Home Office Allocation	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/21/2021	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/21/2021	$228,139.02	Home Office Allocation	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/21/2021	$18,716.98	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/21/2021	$257,393.05	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/21/2021	$18,244.00	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/23/2021	$2,358.35	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/27/2021	$80,493.67	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	7/31/2021	$35,648.63	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/1/2021	$141.32	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/1/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/1/2021	$1,781.40	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/3/2021	$56,498.25	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/17/2021	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/17/2021	$228,535.12	Home Office Allocation	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/17/2021	$19,047.93	Shared Services Reimbursement	Parent

In re: Northwest Senior Housing Corporation

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Attachment 4

Payments or other transfers of property made within 1 year before filing this case that benefited any insider

Insider's name	Address 1	City	State	Zip	Date	Total amount or value	Reasons for payment or transfer	Relationship to debtor
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/17/2021	$8,027.48	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/17/2021	$30,296.26	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/23/2021	$146.27	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/24/2021	$2,357.86	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	8/27/2021	$70,544.70	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/1/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/1/2021	$90,789.63	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$2,147.20	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$2,703.24	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$2,715.89	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$2,273.01	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$2,135.04	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$2,140.25	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$2,241.42	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$2,524.20	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$228,142.81	Home Office Allocation	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$19,191.61	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$1,290.03	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$292.86	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$1,419.15	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$314.75	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$9,038.46	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/20/2021	$45,367.07	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	9/24/2021	$14,511.00	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	10/1/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	10/25/2021	$5,944.72	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	10/26/2021	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	10/26/2021	$18,967.65	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	10/26/2021	$56,276.26	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	10/27/2021	$81,033.69	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/1/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/1/2021	$37,030.73	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/1/2021	$14,631.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/4/2021	$195.61	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/4/2021	$35,648.63	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/16/2021	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/16/2021	$228,181.51	Home Office Allocation	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/16/2021	$19,145.93	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/16/2021	$58,950.30	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	11/27/2021	$85,564.13	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/1/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/1/2021	$29,712.17	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/1/2021	$33,260.71	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/3/2021	$5,559.94	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/13/2021	$2,150.58	Shared Services Reimbursement	Parent

In re: Northwest Senior Housing Corporation

Case No. 22-30659

Attachment 4

Payments or other transfers of property made within 1 year before filing this case that benefited any insider

Insider's name	Address 1	City	State	Zip	Date	Total amount or value	Reasons for payment or transfer	Relationship to debtor
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/17/2021	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/17/2021	$19,011.33	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/17/2021	$4,085.27	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/17/2021	$2,010.00	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/17/2021	$54,487.79	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/27/2021	$68,070.83	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	12/31/2021	$2,097.00	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	1/1/2022	$29,712.17	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	1/1/2022	$36,600.75	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	1/12/2022	$337.78	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	1/14/2022	$14,119.57	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	1/14/2022	$18,910.74	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	1/14/2022	$66,440.20	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	1/24/2022	$5,683.88	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	1/25/2022	$95,656.98	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	2/1/2022	$29,712.17	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	2/4/2022	$173.77	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	2/23/2022	$28,967.70	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	2/23/2022	$19,825.91	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	2/23/2022	$69,550.16	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	2/25/2022	$58,763.90	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	2/25/2022	$5,047.95	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	3/1/2022	$29,712.17	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	3/9/2022	$1,600.04	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	3/22/2022	$28,967.70	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	3/22/2022	$38,006.35	Salary Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	3/28/2022	$47,649.14	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/1/2022	$29,712.17	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	4/1/2022	$36,600.86	Shared Services Reimbursement	Parent
Lifespace Communities	4201 Corporate Drive	West Des Moines	IA	50266	5/3/2022	$29,712.17	Shared Services Reimbursement	Parent
					Lifespace Communities Total:	**$4,599,784.70**		
Querencia	2500 Barton Creek Blvd	Austin	TX	78735	7/15/2021	$1,129,355.00	Repayment short term advance	Affiliated Entity
Querencia	2500 Barton Creek Blvd	Austin	TX	78735	8/30/2021	$764,960.00	Repayment short term advance	Affiliated Entity
					Querencia Total:	**$1,894,315.57**		
Seniority	4201 Corporate Drive	West Des Moines	IA	50266	4/20/2021	$39,177.35	Repayment short term advance	Affiliated Entity
					Seniority Total:	**$39,177.35**		
Stayton	2501 Museum Way	Fort Worth	TX	76107	4/22/2021	$400,000.00	Repayment short term advance	Affiliated Entity
Stayton	2501 Museum Way	Fort Worth	TX	76107	7/15/2021	$1,200,000.00	Repayment short term advance	Affiliated Entity
Stayton	2501 Museum Way	Fort Worth	TX	76107	8/30/2021	$100,000.00	Repayment short term advance	Affiliated Entity
Stayton	2501 Museum Way	Fort Worth	TX	76107	12/23/2021	$30.00	Repayment short term advance	Affiliated Entity
					Stayton Total:	**$1,700,030.00**		
					Grand Total:	**$8,333,307.62**		

In re: Northwest Senior Housing Corporation

Case No. 22-30659

Attachment 7

Legal actions, administrative proceedings, court actions, executions, attachments, or governmental audits

Case Title	Case number	Nature of case	Court name	Court address 1	Court address 2	Court City	Court State	Court Zip	Status of case (e.g. Pending, On appeal, Concluded)
Maryln B. Calloway, Christopher C. Calloway, and R.W. Calloway Jr. v. LifeSpace Communities, Inc. and Northwest Senior Housing d/b/a the Edgemere	DC-22-03556	Breach of Contract, Fraudulent Transfer.	101st District Court	George L. Allen, Sr. Courts Building	600 Commerce Street PO Box 685	Dallas	TX	75202	Pending
Northwest Senior Housing Corp. v. David Steve Donsky	DC-21-18245	Broker's lien	68th Civil District Court	George L. Allen, Sr. Courts Building	600 Commerce Street 6th Floor New Tower	Dallas	TX	75202	Concluded
Pamela Siviglia; Andrew Adams v. Northwest Senior Housing Corp.; John Faldine; Ann Joyce; Christopher Silasavage; Martha Holloway	DC-22-01814	Contract	68th Civil District Court	George L. Allen, Sr. Courts Building	600 Commerce Street 5th Floor New Tower	Dallas	TX	75202	Pending
Robert Ogden v.Northwest Senior Housing Corp.	DC-22-01993	Discovery	191st District Court	George L. Allen, Sr. Courts Building	600 Commerce Street PO Box 740	Dallas	TX	75202	Concluded

In re: Northwest Senior Housing Corporation

Case No. 22-30659

Attachment 11

Payments related to bankruptcy

Who was paid or who received the transfer?	Address 1	Address 2	City	State	Zip	Email or website address	Dates	Total amount or value
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	4/26/2021	$92,801.12
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	6/8/2021	$111,380.00
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	8/9/2021	$214,122.70
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	9/1/2021	$53,531.30
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	10/12/2021	$40,041.37
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	11/3/2021	$74,164.20
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	12/13/2021	$112,588.45
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	2/4/2022	$175,000.00
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	2/8/2022	$303,271.20
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	2/11/2022	$225,629.90
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	2/24/2022	$99,422.37
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	3/11/2022	$108,026.50
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	3/25/2022	$270,561.45
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	4/11/2022	$350,895.92
FTI Consulting Inc.	1166 Avenue of the Americas		New York	NY	10036	https://fticonsulting.com/	4/13/2022	$59,740.85
Kurtzman Carson Consultants LLC	222 N. Pacific Coast Highway	Suite 300	El Segundo	CA	90245	https://www.kccllc.com/	2/10/2022	$30,000.00
Kurtzman Carson Consultants LLC	222 N. Pacific Coast Highway	Suite 300	El Segundo	CA	90245	https://www.kccllc.com/	4/12/2022	$13,000.00
Polsinelli	600 3rd Avenue	42nd Floor	New York	NY	10016	https://www.polsinelli.com/	3/3/2022	$400,000.00
Polsinelli	600 3rd Avenue	42nd Floor	New York	NY	10016	https://www.polsinelli.com/	4/11/2022	$563,574.51
Polsinelli	600 3rd Avenue	42nd Floor	New York	NY	10016	https://www.polsinelli.com/	4/12/2022	$200,000.00
Sidley Austin LLP	767 Seventh Avenue		New York	NY	10019	https://www.sidley.com/en/us/	9/15/2021	$37,941.53
Sidley Austin LLP	767 Seventh Avenue		New York	NY	10019	https://www.sidley.com/en/us/	10/25/2021	$55,004.72
Sidley Austin LLP	767 Seventh Avenue		New York	NY	10019	https://www.sidley.com/en/us/	11/17/2021	$144,280.00
Sidley Austin LLP	767 Seventh Avenue		New York	NY	10019	https://www.sidley.com/en/us/	12/17/2021	$182,816.51
Sidley Austin LLP	767 Seventh Avenue		New York	NY	10019	https://www.sidley.com/en/us/	3/1/2022	$400,004.44
Sidley Austin LLP	767 Seventh Avenue		New York	NY	10019	https://www.sidley.com/en/us/	3/7/2022	$407,735.92

EXHIBIT 8

Trinitee G. Green (SBN 24081320)
Polsinelli PC
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
Facsimile: (214) 397-0033
tggreen@polsinelli.com

Jeremy R. Johnson (*Pro Hac Vice* Pending)
Brenna A. Dolphin (*Pro Hac Vice* Pending)
Polsinelli PC
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
Facsimile: (212) 684-0197
jeremy.johnson@polsinelli.com
bdolphin@polsinelli.com

PROPOSED COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*,[1]	Case No. 22-30659 (MVL)
Debtors.	(Joint Administration Requested)

DEBTORS' APPLICATION FOR AUTHORITY TO EMPLOY AND RETAIN FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE

A HEARING WILL BE CONDUCTED ON THIS MATTER AT THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, 1100 COMMERCE ST., 14TH FLOOR, COURTROOM NO. 2, DALLAS, TEXAS 75242.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE (21) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

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

The above-captioned debtors and debtors in possession (the "**Debtors**") hereby submit this application (the "**Application**") for entry of an order, substantially in the form of Exhibit A attached hereto (the "**Proposed Order**"), pursuant to sections 327(a), 328(a), and 1107 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "**Local Rules**"), authorizing the employment and retention of the consulting firm of FTI Consulting, Inc., together with its wholly-owned subsidiaries ("**FTI**"), as financial advisor to the Debtors, effective as of the Petition Date (as defined below). In support of this Application, the Debtors rely on and incorporate by reference the *Declaration of Chad J. Shandler in Support of the Debtors' for Authority to Employ and Retain FTI Consulting, Inc. as Financial Advisor to the Debtors Effective as of the Petition Date* (the "**Shandler Declaration**"), attached hereto as Exhibit B, and respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over these cases pursuant to 28 U.S.C. § 1334 and the District Court for the Northern District of Texas' *Miscellaneous Order No. 33, Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent to the entry of a final order or judgment by the Court in connection with this Application 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 predicates for the relief requested herein are Bankruptcy Code sections 327(a), 328(a), and 1107, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1.

BACKGROUND

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

5. The factual background regarding the Debtors and the events leading to the filing of these chapter 11 cases (the "**Chapter 11 Cases**") is set forth in the *Declaration of Nick Harshfield in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**") [Docket No. 7], which is incorporated herein by reference.

6. The Debtors continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

RELIEF REQUESTED

7. By this Application, the Debtors request entry of an order, authorizing the Debtors to employ and retain FTI, effective as of the Petition Date, to provide financial advisory services during the Chapter 11 Cases, pursuant to and in accordance with the terms and conditions set forth in that certain engagement agreement (the "**Engagement Agreement**"), a copy of which is attached hereto as Exhibit C; and that certain addendum to the Engagement Agreement (the "**Addendum**"), a copy of which is attached hereto as Exhibit D.

BASIS FOR RELIEF

8. By this Application, the Debtors seek to employ and retain FTI effective as of the Petition Date to represent the Debtors as financial advisor in connection with the Chapter 11 Cases, pursuant to Bankruptcy Code sections 327(a) and 328(a).

9. The Debtors have determined, in the exercise of their business judgment, that the services of experienced financial advisors will substantially enhance their attempts to maximize the value of their estates. FTI is well qualified to provide these services in light of their extensive knowledge and expertise with respect to chapter 11 proceedings. The Debtors are familiar with the professional standing and reputation of FTI.

10. As set forth in the Shandler Declaration, FTI has extensive experience in providing financial advisory services in restructurings and reorganizations and enjoys an excellent reputation for services it has rendered in chapter 11 cases on behalf of debtors and creditors throughout the United States.

11. The services of FTI are deemed necessary to enable the Debtors and their professional advisors to maximize the value of the bankruptcy estates and to reorganize successfully. Further, FTI is well qualified and able to represent the Debtors in a cost-effective, efficient and timely manner.

SCOPE OF SERVICES

12. Copies of the Engagement Agreement and the Addendum are attached hereto as Exhibit C and Exhibit D respectively, and the terms thereunder shall govern the Debtors' retention of FTI except as explicitly set forth herein or in any order granting this Application.

13. FTI will provide such financial advisory services to the Debtors and their legal advisor as deemed appropriate and feasible in order to advise the Debtors in the course of the Chapter 11 Cases, including, but not limited to, the following:

- Prepare or assist the Debtors' management with the preparation of projected financial statements and/or 13-week cash flow forecast;
- Formulate recapitalization and debt restructuring alternatives, if necessary;

- Prepare presentations to lender(s) relating to restructuring of obligations, if necessary;

- Assist the Debtors and their counsel in negotiations with the Debtors' lender(s) regarding restructuring alternatives, if necessary

- Assist the Debtors and their counsel in negotiations and/or discussions with federal or state regulators, if necessary;

- Assist the Debtors and their counsel in negotiations with the Debtors' personal property lessors regarding improved lease terms or return of property;

- Consult with management and if necessary, assist in the preparation of reports to the Debtors' lenders (and other creditors, as required) regarding the Debtors' financial performance;

- Participate in meetings and telephone calls with management, counsel, lenders and other parties, as necessary;

- Assist in the preparation of financial information for distribution to creditors and others, including, without limitation, cash flow projections and budgets, cash receipts and disbursement analysis, analysis of various asset and liability accounts, and analysis of proposed transactions for which Bankruptcy Court approval is sought;

- Assist the Debtors with the preparation of financial related disclosures required by the Bankruptcy Court, including the Schedules of Assets and Liabilities, Statements of Financial Affairs and Monthly Operating Reports;

- Assist the Debtors with information and analyses required pursuant to the Debtors' use of cash collateral including, without limitation, preparation for hearings regarding the use of cash collateral;

- Assist with the identification of executory contracts and leases and performance of cost/benefit evaluations with respect to the affirmation or rejection of each;

- Assist with the evaluation of the present level of operations and identification of areas of potential cost savings, including overhead and operating expense reductions and efficiency improvements;

- Assist in the evaluation and analysis of avoidance actions, including fraudulent conveyances and preferential transfers;

- Assist with the coordination of resources related to the Debtors' reorganization efforts;

- Attend meetings and assist in discussions with potential secured lenders, any official committee(s) appointed in the Chapter 11 Cases, the United States Trustee, other parties in interest and professionals hired by same, as requested;

- Develop strategy, including communications, relating to residents, former residents, vendors, and employees;

- Analysis of creditor claims by type, entity, and individual claim, including assistance with development of databases, as necessary, to track such claims;

- Assist in the preparation of information and analysis necessary for the confirmation of a plan of reorganization in the Chapter 11 Cases, including information contained in the disclosure statement;

- Provide testimony as necessary or appropriate at the request of the Debtors; and

- Render such other general business consulting or such other assistance as Debtors' management or counsel may deem necessary consistent with the role of a financial advisor to the extent that it would not be duplicative of services provided by other professionals.

FTI'S ELIGIBILITY FOR EMPLOYMENT

14. FTI has informed the Debtors that, except as may be set forth in the Shandler Declaration, it does not hold or represent any interest adverse to the estates, and therefore believes it is eligible to represent the Debtors. To the best of the Debtors' knowledge and based upon the Shandler Declaration, (a) FTI's connections with the Debtors, Debtors' creditors, any other party-in-interest, or their respective attorneys are disclosed on Exhibit 2 to the Shandler Declaration; and (b) the FTI professionals working on this matter are not relatives of the United States Trustee or of any known employee in the office thereof, or any United States Bankruptcy Judge of the District of Northern District of Texas, Dallas Division. FTI has not provided, and will not provide, any

professional services to any of the Debtors' creditors, other parties-in-interest, or their respective attorneys and accountants on any matter related to the Debtors or the Chapter 11 Cases.

15. FTI will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new material facts or relationships are discovered, FTI will supplement its disclosures to the Court.

16. FTI has agreed not to share with any person or firm the compensation to be paid for professional services rendered in connection with the Chapter 11 Cases.

TERMS OF RETENTION

17. In accordance with the terms of the Engagement Letter, FTI will be paid for the services provided by its professionals at hourly rates as set forth below. FTI will also be reimbursed for reasonable out-of-pocket expenses incurred in connection with the Chapter 11 Cases, which would include reasonable legal fees incurred by FTI related to FTI's retention in the Chapter 11 Cases, subject to Court approval.

18. The customary hourly rates, subject to periodic adjustments, charged by FTI professionals anticipated to be assigned to the Chapter 11 Cases are as follows

	Per Hour (USD)
Senior Managing Directors	$920 - $1,325
Directors / Senior Directors / Managing Directors	$590 - $960
Consultants/Senior Consultants	$370 - $695
Administrative / Paraprofessionals	$130 - $300

FEES

19. FTI is not owed any amounts with respect to pre-petition fees and expenses.

20. The Debtors understand that FTI intends to apply to the Court for allowance of compensation and reimbursement of expenses for its financial advisory services in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, corresponding local

rules, orders of this Court and the guidelines established by the United States Trustee. Further, FTI understands that interim and final fee awards are subject to approval by the Court.

21. FTI received $75,000, as a retainer at the time of engagement in connection with preparing for and conducting the filing of the Cases, as described in the Engagement Agreement. In the ninety (90) days prior to the Petition Date, the Debtors paid FTI $1,592,548.19 (inclusive of an additional retainer payment of $175,000) for professional services performed and expenses incurred. As of the Petition Date, there is an unapplied retainer of $250,000.

22. Given the numerous issues that FTI may be required to address in the performance of the services contemplated by the Engagement Agreement, FTI's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for such services for engagements of this nature in an out-of-court context, as well as in chapter 11 proceedings, the Debtors submit that the fee arrangements set forth herein and more specifically under the Engagement Agreement are reasonable under the standards set forth under Bankruptcy Code section 328(a).

INDEMNIFICATION

23. In addition to the foregoing, and as a material part of the consideration for the agreement of FTI to furnish services to the Debtors pursuant to the terms of this Application, FTI believes that the following indemnification terms are customary and reasonable for financial advisors in chapter 11 cases:

- subject to the provisions of subparagraphs (b) and c), *infra*, the Debtors are authorized to indemnify, and shall indemnify, FTI in accordance with the Engagement Agreement for any claim arising from related to or in connection with the services provided for, whether pre-petition or post-petition, in the Engagement Agreement;

- the Debtors shall have no obligation to indemnify FTI for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from FTI's gross negligence, willful misconduct,

breach of fiduciary duty (if any), bad faith, or fraud unless the Court determines that indemnification would be permissible under applicable law or (ii) settled prior to a judicial determination as to FTI's gross negligence, willful misconduct, breach of fiduciary duty (if any), bad faith, or fraud, but determined by this Court, after notice and a hearing pursuant to subparagraph (c), *infra*, to be a claim or expense for which FTI should not receive indemnification, contribution, or reimbursement under the terms of the Engagement Agreement; and

- if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing the Chapter 11 Cases, FTI believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtors may not pay any such amounts to FTI before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by FTI for indemnification, and not as a provision limiting the duration of the Debtors' obligation to indemnify FTI.

24. The Debtors submit that the foregoing indemnification provisions are customary and reasonable for financial advisors in chapter 11 cases. *See, e.g., In re Joan & David Halpern, Inc.*, 248 B.R. 43 (Bankr. S.D.N.Y. 2000).

APPLICABLE AUTHORITY

25. The Debtors submit that the retention of FTI under the terms described herein is appropriate under of the Bankruptcy Code sections 327(a), 328, and 1107(b). Section 327(a) of the Bankruptcy Code empowers the trustee, with the Court's approval, to employ professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). Section 101(14) of the Bankruptcy Code defines a "disinterested person" as a person that: (i) is not a creditor, an equity security holder, or an insider; (ii) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and (iii) does not have an interest materially adverse to the interest of the estate or of any class of

creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason. 11 U.S.C. § 101(14).

26. Further, Bankruptcy Code section 1107(b) provides that "a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b). FTI's pre-petition relationship with Debtors is therefore not an impediment to FTI's retention as Debtors' post-petition financial advisor.

27. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person "on any reasonable terms and conditions of employment, including on a retainer . . ." 11 U.S.C. § 328(a). Debtors submit that the terms and conditions of FTI's retention as described herein, including the proposed compensation terms, are reasonable and in keeping with the terms and conditions typical for engagements of this size and character. Since Debtors will require substantial assistance with the reorganization process, it is reasonable for Debtors to seek to employ and retain FTI to serve as their financial advisor on the terms and conditions set forth herein.

NOTICE

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

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

NO PRIOR REQUEST

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

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WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially similar to the form of order attached hereto as Exhibit A, granting the relief requested in this Application and such other and further relief as the Court deems just and proper.

Dated: April 14, 2022
Dallas, Texas

Respectfully submitted,

DocuSigned by:
Nick Harshfield
Nick Harshfield
Treasurer
Northwest Senior Housing Corporation

EXHIBIT A

Proposed Order

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*,[2]	Case No. 22-30659 (MVL)
Debtors.	

ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE

Upon the application (the "**Application**")[3] of the Debtors for entry of an order (the "**Order**") authorizing the retention and employment of FTI Consulting, Inc., together with its wholly-owned subsidiaries ("**FTI**"), as financial advisor to the Debtors effective as of the Petition Date, as more fully described in the Application; the Court having reviewed the Application, the First Day Declaration, and the declaration of Chad J. Shandler attached to the Application as

[2] 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.
[3] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

Exhibit B (the "**Shandler Declaration**"); and the Court being satisfied, based on the representations made in the Application and the Shandler Declaration that FTI is "disinterested: as such term is defined in Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b), and as required under Bankruptcy Code section 327(a), and that FTI represents no interest adverse to the Debtors' estates; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b); and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Application in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the relief requested in the Application is in the best interests of the Debtors, the Debtors' estates, the Debtors' creditors, and other parties in interest; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Application is GRANTED as set forth herein.

2. All objections to the entry of this Order, to the extent not withdrawn or settled, are overruled.

3. Pursuant to Bankruptcy Code sections 327(a) and 328(a), the Debtors are authorized to employ and retain FTI as financial advisor in the Chapter 11 Cases effective as of the Petition Date.

4. FTI shall apply for compensation earned for professional services rendered and reimbursement of expenses incurred in connection with the Chapter 11 Cases in accordance with

the procedures set forth in the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, this Order and any other applicable orders of this Court.

5. The following indemnification provisions are approved:

a. subject to the provisions of subparagraphs (b) and c), *infra*, the Debtors are authorized to indemnify, and shall indemnify, FTI in accordance with the Engagement Agreement for any claim arising from related to or in connection with the services provided for, whether pre-petition or post-petition, in the Engagement Agreement;

b. the Debtors shall have no obligation to indemnify FTI for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from FTI's gross negligence, willful misconduct, breach of fiduciary duty (if any), bad faith, or fraud unless the Court determines that indemnification would be permissible under applicable law or (ii) settled prior to a judicial determination as to FTI's gross negligence, willful misconduct, breach of fiduciary duty (if any), bad faith, or fraud, but determined by this Court, after notice and a hearing pursuant to subparagraph (c), *infra*, to be a claim or expense for which FTI should not receive indemnification, contribution, or reimbursement under the terms of the Engagement Agreement; and

c. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing the Chapter 11 Cases, FTI believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtors may not pay any such amounts to FTI before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by FTI for indemnification, and not as a provision limiting the duration of the Debtors' obligation to indemnify FTI.

6. The Debtors and FTI are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

7. Notice of the Application as provided therein is deemed to be good and sufficient notice of such Application, and the requirements of the Bankruptcy Local Rules are satisfied by the contents of the Application.

8. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

9. To the extent there is any inconsistency between the terms of the Engagement Agreement, the Application, and this Order, the terms of this Order shall govern.

10. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Order.

 # # # End of Order # # #

Submitted by:

Trinitee G. Green (SBN 24081320)
Polsinelli PC
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
Facsimile: (214) 397-0033
tggreen@polsinelli.com

and

Jeremy R. Johnson (*Pro Hac Vice* Pending)
Brenna A. Dolphin (*Pro Hac Vice* Pending)
Polsinelli PC
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
Facsimile: (212) 684-0197
jeremy.johnson@polsinelli.com
bdolphin@polsinelli.com

Proposed Counsel to Debtors and Debtors-in-Possession

Exhibit B

Shandler Declaration

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*,[1]	Case No. 22-30659 (MVL)
Debtors.	

DECLARATION OF CHAD J. SHANDLER IN SUPPORT OF THE DEBTORS' APPLICATION FOR AUTHORITY TO EMPLOY AND RETAIN FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE

Pursuant to 28 U.S.C. § 1746, Chad J. Shandler declares as follows:

1. I am a Senior Managing Director with FTI Consulting, Inc., together with its wholly-owned subsidiaries ("**FTI**"), an international consulting firm. I submit this declaration (the "**Declaration**") on behalf of FTI in support of the application (the "**Application**") of the above-captioned debtors and debtors in possession (the "**Debtors**"), for entry of an order authorizing the retention and employment of FTI as financial advisor under the terms and conditions set forth in the Application; and the Engagement Agreement and the Addendum attached thereto as Exhibit C[2]and Exhibit D respectively. I am generally familiar with the Bankruptcy Code and Bankruptcy Rules, and FTI will comply with them and orders issued by the Court. Except as otherwise noted,[3] I have personal knowledge of the matters set forth herein and, if called as a witness, I would testify thereto.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.
[2] All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.
[3] Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at FTI and are based on information provided by them.

Disinterestedness and Eligibility

2. In connection with the preparation of this Declaration, FTI conducted a review of its contacts with the Debtors, their affiliates and certain entities holding large claims against or interests in the Debtors that were made reasonably known to FTI. A listing of the parties reviewed is reflected on Exhibit 1 to this Declaration. FTI's review, completed under my supervision, consisted of a query of the Exhibit 1 parties within an internal computer database[4] containing names of individuals and entities that are present or recent former clients of FTI. A listing of such relationships that FTI identified during this process is set forth in Exhibit 2 to this Declaration.

3. Based on the results of its review, except as otherwise discussed herein, FTI does not have a relationship with any of the parties on Exhibit 1 in matters related to these proceedings. FTI has provided and could reasonably expect to continue to provide services unrelated to the Chapter 11 Cases for the various entities shown on Exhibit 2. FTI's assistance to these parties has been related to providing various financial restructuring, litigation support, technology, strategic communications, and economic consulting services. To the best of my knowledge and except as otherwise disclosed herein, no services have been provided to these parties in interest that involve any rights related to the Debtors and the Chapter 11 Cases, nor does FTI does not hold or represent any interest adverse to the bankruptcy estates, nor does FTI's involvement in these chapter 11 cases compromise its ability to continue such consulting services.

4. In addition to the relationships disclosed on Exhibit 2 to this Declaration, FTI discloses the following:

- Before the Petition Date, FTI was retained by Debtors Northwest Senior Housing Corporation and its affiliate Tarrant County Senior Living Center, Inc. to provide certain financial advisory and consulting services.

[4] FTI's computer database covers FTI Consulting, Inc. and its wholly owed subsidiaries globally.

- Between March 17, 2021 and June 18, 2021, FTI was retained by Lifespace Communities, Inc., an affiliate of the Debtors, to provide certain human resource due diligence in connection with the acquisition of New Castle Place LLC.

5. As part of its diverse practice, FTI appears in numerous cases, proceedings and transactions that involve many different professionals, including attorneys, accountants and financial consultants, who may represent claimants and parties-in-interest in the Chapter 11 Cases. Also, FTI has performed in the past, and may perform in the future, advisory consulting services for various attorneys and law firms, and has been represented by several attorneys, law firms and financial institutions, some of whom may be involved in these proceedings.

6. In addition, FTI has in the past, may currently and will likely in the future be working with or against other professionals involved in this case in matters unrelated to the Debtors and the Chapter 11 Cases. Based on our current knowledge of the professionals involved, and to the best of my knowledge, none of these relationships create interests adverse to the Debtors in matters upon which FTI is to be employed and none are in connection with the Chapter 11 Cases.

7. FTI is not a "creditor" of the Debtors within the meaning of Bankruptcy Code section 101(10). Further, neither I nor any other member of the FTI engagement team serving the Debtors, to the best of my knowledge (a) is a creditor, equity security holder, or insider of any of the Debtors; (b) is or has been within two years before the Petition Date, a director, officer, or employee of any of the Debtors; or (c) has any interest materially adverse to the interests of the Debtors' estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason. As such, to the best of my knowledge and based upon the results of the relationship search described above and disclosed herein, FTI (i) is a "disinterested person" as defined in Bankruptcy Code section 101(14) and (ii)

neither holds nor represents an interest adverse to the Debtors or their estates. Therefore, FTI believes it is eligible to represent the Debtors under Bankruptcy Code section 327(a).

8. It is FTI's policy and intent to update and expand its ongoing relationship search for additional parties-in-interest in an expedient manner. If any new material relevant facts or relationships are discovered or arise, FTI will file a supplemental declaration pursuant to Bankruptcy Rule 2014(a).

Professional Compensation

9. Subject to Court approval and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of this District, orders of this Court, and applicable U.S. Trustee guidelines, FTI will seek payment for compensation on an hourly basis, plus reimbursement of actual and necessary expenses incurred by FTI, including legal fees related to this retention application and future fee applications as approved by the Court. FTI's customary hourly rates as charged in bankruptcy and non-bankruptcy matters of this type by the professionals assigned to this engagement are outlined in the Application for the employment of FTI. These hourly rates are adjusted periodically, typically on an annual basis. I believe that the fee structure as set forth in the Application is reasonable and comparable to those generally charged by financial advisors and consultants of similar stature to FTI for comparable engagements, both in and out of chapter 11.

10. According to FTI's books and records, during the ninety (90) days before the Petition Date, FTI received $175,000 from the Debtors for professional services performed and expenses incurred. Further, FTI's current estimate is that it has received unapplied advance payments from the Debtors in excess of pre-petition billings in the amount of $250,000. The Debtors and FTI have agreed that any portion of the advance payments not used to compensate

FTI for its pre-petition services and expenses will be held and applied against its final post-petition billing and will not be placed in a separate account.

11. To the best of my knowledge, (a) no commitments have been made or received by FTI with respect to compensation or payment in connection with this case other than in accordance with the provisions of the Bankruptcy Code and (b) FTI has no agreement with any other entity to share with such entity any compensation received by FTI in connection with the Cases.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2022

/s/ Chad J. Shandler
Chad J. Shandler
Senior Managing Director, FTI Consulting, Inc.

EXHIBIT C

Engagement Agreement

Chad J. Shandler
FTI Consulting, Inc.
3 Times Square, 10th Floor
New York, New York 10036
212 836 4194
Chad.Shandler@FTIconsulting.com

PRIVATE & CONFIDENTIAL

February 17, 2021

Thomas Califano
Partner
DLA Piper LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, New York 10020-1104

Re: Northwest Senior Housing Corporation

Dear Mr. Califano:

1. **Introduction**

This letter confirms that we, FTI Consulting, Inc. ("FTI"), have been retained by you, DLA Piper LLP (US) (the "Firm"), to provide certain financial advisory and consulting services (the "Services") as set forth below in relation to your representation of Northwest Senior Housing Corporation ("Edgemere" or the "Company"). This letter of engagement and the related Standard Terms and Conditions constitute the engagement contract (the "Engagement Contract") pursuant to which the Services will be provided.

2. **Scope of Services**

The Services, to be performed at your direction and at the direction of the Company to assist you in the provision of advice and legal services to the Company, are expected to include the following:

Assessment Services

- Gain an understanding of the Company's business, books and records and reporting systems;
- Assessment of the Company's operations and financial performance and recommendations for improvement, including but not limited to:
  - Revenue, billing, and cash collection procedures;
  - Operating expenses;
  - Management and staffing;
  - Marketing function and programs; and
  - Organizational structure;
- Assessment of the Company's liquidity and working capital, including sources of cash, accounts receivable and accounts payable;
- Assessment of the Company's reported results of operations;
- Assessment of prior consultants' reports, if any; and
- General overall assessment of the Company's facilities.

DLA Piper LLP (US)
February 17, 2021

Consulting Services

- Prepare/or assist the Company's management with the preparation of projected financial statements and/or 13week cash flow forecast;
- Formulate recapitalization and debt restructuring alternatives, if necessary;
- Preparation of presentations to lender(s) relating to forbearance and/or restructuring of obligations, if necessary;
- Assist the Company and its counsel in negotiations with the Company's lender(s) regarding forbearance terms and/or other restructuring alternatives, if necessary;
- Assist the Company and its counsel in negotiations and/or discussions with Federal or state regulators, if necessary;
- Assist the Company and its counsel in negotiation with the Company's personal property lessors regarding improved lease terms or return of property;
- Assist the Company with an affiliation or the sale of its assets, including data room support and negotiations with prospective interested parties and purchasers of the Company's assets;
- Consult with management, and where necessary assist in the preparation of reports to the Company's lender(s) (and other creditors as required) regarding its financial performance; and
- Participate in meetings and telephone calls with management, counsel, lenders and other parties, as necessary.

The Services may be performed by FTI or by any subsidiary of FTI, as FTI shall determine. FTI may also provide Services through its or its subsidiaries' agents or independent contractors. References herein to FTI and its employees shall be deemed to apply also, unless the context shall otherwise indicate, to employees of each such subsidiary and to any such agents or independent contractors and their employees.

The Services, as outlined above, are subject to change as mutually agreed between us.

FTI is engaged by you to provide financial advisory and consulting services only. Accordingly, while we may from time to time suggest options which may be available to you or the Company, and further give our professional evaluation of these options, the ultimate decision as to which, if any, of these options to implement rests with the Company, its management and board of directors. FTI and its employees will not make any management decisions for the Company and will not be responsible for communicating information concerning the Company to the public, the Company's shareholders or others.

As part of the Services, FTI may be requested to assist you or the Company (and its other legal or other advisors) in negotiating with the Company's creditors and equity holders and with other interested parties. In the event that we participate in such negotiations, the representations made and the positions advanced will be those of the Company and its management, not FTI or its employees.

3. **Privileged and Confidential Work Product**

To the extent possible, written reports, memoranda or status summaries that we prepare under this Engagement Contract will be maintained in accordance with our retention procedures and shall be prominently labeled "Privileged and Confidential". Except as may be required by law, regulation or valid judicial or administrative process, we will not disclose to anyone, without your permission, the content of any oral or written confidential communication

received during the course of the Engagement or any information gained from the inspection or review of any records or documents provided by you that are identified as confidential.

4. **Fees**

We understand that we are being retained by You in connection with your provision of legal services to the Company. Accordingly, we will not look to the Firm for payment of our fees but rather will look solely to the Company. We acknowledge that the Firm will have no obligation for our fees. Fees in connection with this Engagement will be based upon the time incurred providing the Services, multiplied by our standard hourly rates, summarized as follows:

	Per Hour (USD)
Senior Managing Directors	$950 – 1,295
Directors / Senior Directors / Managing Directors	715 – 935
Consultants/Senior Consultants	385 – 680
Administrative / Paraprofessionals	155 – 290

Hourly rates are generally revised periodically. We will notify you of any changes to our rates. To the extent this engagement requires services of our International divisions or personnel, the time will be multiplied by our standard hourly rates applicable for the International divisions or personnel. Note that we do not provide any assurance regarding the outcome of our work and our fees will not be contingent on the results of such work.

In addition to the fees outlined above, FTI will bill for reasonable direct expenses which are likely to be incurred on your behalf during this Engagement. Direct expenses include reasonable and customary out-of-pocket expenses which are billed directly to the engagement such as internet access, telephone, overnight mail, messenger, travel, meals, accommodations and other expenses specifically related to this engagement. Further, if FTI and/or any of its emloyees are required to testify or provide evidence at or in connection with any judicial or administrative proceeding relating to this matter, FTI will be compensated by you at its regular hourly rates and reimbursed for reasonable allocated and direct expenses (including counsel fees) with respect thereto.

Cash on Account

Initially, the Company will forward to us the amount of $75,000, which funds will be held "on account" to be applied to our professional fees, charges and disbursements for the Engagement (the "Initial Cash on Account"). To the extent that this amount exceeds our fees, charges and disbursements upon the completion of the Engagement, we will refund any unused portion. The Company agrees to increase or supplement the Initial Cash on Account from time to time during the course of the Engagement in such amounts as the Company and we mutually shall agree are reasonably necessary to increase the Initial Cash on Account to a level that will be sufficient to fund Engagement fees, charges, and disbursements to be incurred.

We will send the Company periodic invoices (not less frequently than monthly) for services rendered and charges and disbursements incurred on the basis discussed above, and in certain circumstances, an invoice may be for estimated fees, charges and disbursements through a date certain. Each invoice constitutes a request for an interim payment against the fee to be determined at the conclusion of our Services. Upon transmittal of the invoice, we may

immediately draw upon the Initial Cash on Account (as replenished from time to time) in the amount of the invoice. The Company agrees that invoices are due upon receipt and will promptly wire the invoice amount to us as replenishment of the Initial Cash on Account (together with any supplemental amount to which we and the Company mutually agree), without prejudice to the Company's right to advise us of any differences it may have with respect to such invoice. We have the right to apply to any outstanding invoice (including amounts billed prior to the date hereof), up to the remaining balance, if any, of the Initial Cash on Account (as may be supplemented from time to time) at any time subject to (and without prejudice to) the Company's opportunity to review our statements.

The Company agrees to promptly notify FTI if the Company or any of its subsidiaries or affiliates extends (or solicits the possible interest in receiving) an offer of employment to a principal or employee of FTI involved in this Engagement and agrees that it will pay FTI has earned and will be entitled to a cash fee, upon hiring, equal to 150% of the aggregate first year's annualized compensation, including any guaranteed or target bonus and equity award, to be paid to FTI's former principal or employee that the Company or any of it subsidiaries or affiliates hires at any time up to one year subsequent to the date of the final invoice rendered by FTI with respect to this Engagement.

If a dispute develops about our fees, the Company may be entitled under Part 137 of the Rules of the Chief Administrator of the New York Courts to arbitration of that dispute if it involves more than $150,000.

5. **Terms and Conditions**

The attached Standard Terms and Conditions set forth the duties of each party with respect to the Services. Further, this letter and the Standard Terms and Conditions attached comprise the entire Engagement Contract for the provision of the Services to the exclusion of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations, and shall supersede all previous proposals, letters of engagement, undertakings, agreements, understandings, correspondence and other communications, whether written or oral, regarding the Services.

6. **Conflicts of Interest**

Based on the list of interested parties (the "Potentially Interested Parties"), provided by you, we have undertaken a limited review of our records to determine FTI's professional relationships with the Company, the Master Trustee, as defined in the Master Trust Indenture between the Company and UMB Bank, N.A. dated as of November 15, 1999, effective as of Aprril 1, 2006 and the Supplemental Indenture #6 dated March 1, 2017, and its counsel. As you may be aware, FTI is regularly retained by the Master Trustee (or law firms retained by the Master Trustee). However, such representations are in matters unrelated to this engagement.

From the results of such review, we were not made aware of any conflicts of interest or additional relationships that we believe would preclude us from performing the Services. However, as you know, we are a large consulting firm with numerous offices throughout the United States. We are regularly engaged by new clients, which may include one or more of the Potentially Interested Parties. The FTI professionals providing services hereunder will not

accept an engagement that directly conflicts with this Engagement without your prior written consent.

7. **Acknowledgement and Acceptance**

Please acknowledge your acceptance of the terms of this Engagement Contract by signing both the confirmation below and the attached Standard Terms and Conditions and returning a copy of each to us at the above address.

If you have any questions regarding this letter or the attached Standard Terms and Conditions, please do not hesitate to contact Chad J. Shandler at 212 841 9349.

Yours faithfully,

FTI CONSULTING, INC.

By: _____
Chad J. Shandler
Senior Managing Director

Attachment – As stated

DLA Piper LLP (US)
February 17, 2021

Confirmation of Terms of Engagement

We agree to engage FTI Consulting, Inc. upon the terms set forth herein and in the attached Standard Terms and Conditions.

DLA Piper LLP (US)

By: _____
Thomas Califano
Partner

Date: 2/19/2021

Northwest Senior Housing Corporation

By: _____
Nick Harshfield
CFO, Treasurer, and Secretary

Date: _____

DLA Piper LLP (US)
February 17, 2021

Confirmation of Terms of Engagement

We agree to engage FTI Consulting, Inc. upon the terms set forth herein and in the attached Standard Terms and Conditions.

DLA Piper LLP (US)

By: _____
Thomas Califano
Partner

Date: _____

Northwest Senior Housing Corporation

By: _____
Nick Harshfield
CFO, Treasurer, and Secretary

Date: 02/17/2021

FTI CONSULTING, INC.

STANDARD TERMS AND CONDITIONS

The following are the Standard Terms and Conditions on which we will provide the Services to you set forth within the attached letter of engagement dated February 17, 2021. The engagement letter and the Standard Terms and Conditions (collectively the "Engagement Contract") form the entire agreement between us relating to the Services and replace and supersede any previous proposals, letters of engagement, undertakings, agreements, understandings, correspondence and other communications, whether written or oral, regarding the Services. The headings and titles in the Engagement Contract are included to make it easier to read but do not form part of the Engagement Contract.

1. Reports and Advice

1.1 **Use and purpose of advice and reports** – Any advice given or report issued by us is provided solely for the use and benefit of you and the Company and only in connection with the purpose in respect of which the Services are provided. Unless required by law, neither you nor the Company shall provide any advice given or report issued by us to any third party, or refer to us or the Services, without our prior written consent. In no event, regardless of whether consent has been provided, shall we assume any responsibility to any third party to which any advice or report is disclosed or otherwise made available.

2. Information and Assistance

2.1 **Provision of information and assistance** – Our performance of the Services is dependent upon you and the Company providing us with such information and assistance as we may reasonably require from time to time.

2.2 **Punctual and accurate information** – You and Company personnel shall use reasonable skill, care and attention to ensure that all information we may reasonably require is provided on a timely basis and is accurate and complete and relevant for the purpose for which it is required. You and the Company shall also notify us if you subsequently learn that the information provided is incorrect or inaccurate or otherwise should not be relied upon.

2.3 **No assurance on financial data** – While our work may include an analysis of financial and accounting data, the Services will not include an audit, compilation or review of any kind of any financial statements or components thereof. Company management will be responsible for any and all financial information they provide to us during the course of this Engagement, and we will not examine or compile or verify any such financial information. Moreover, the circumstances of the Engagement may cause our advice to be limited in certain respects based upon, among other matters, the extent of sufficient and available data and the opportunity for supporting investigations in the time period. Accordingly, as part of this Engagement, we will not express any opinion or other form of assurance on financial statements of the Company.

2.4 **Prospective financial information** - In the event the Services involve prospective financial information, our work will not constitute an examination or compilation, or apply agreed-upon procedures, in accordance with standards established by the American Institute of Certified Public Accountants or otherwise, and we will express no assurance of any kind on such information. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We will take no responsibility for the achievability of results or events projected or anticipated by the management of the Company.

3. Additional Services

3.1 **Responsibility for other parties** – You and the Company shall be solely responsible for the work and fees of any other party engaged by you or the Company to provide services in connection with the engagement regardless of whether such party was introduced to you by us. Except as provided in this Engagement Contract, we shall not be responsible for providing or reviewing the advice or services of any such third party, including advice as to legal, regulatory, accounting or taxation matters. Further, we acknowledge that we are not authorized under our Engagement Contract to engage any third party to provide services or advice to you or the Company, other than our agents or independent contractors engaged to provide Services, without your or the Company's written authorization.

4. Confidentiality

4.1 **Restrictions on confidential information** – All parties to this Engagement Contract agree that any confidential information received from the other parties shall only be used for the purposes of providing or receiving Services under this or any other contract between us. Except as provided below, no party will disclose other contracting party's confidential information to any third party without such party's consent. Confidential information shall not include information that:

4.1.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 4.1;

4.1.2 is acquired from a third party who, to the recipient party's knowledge, owes no obligation of confidence in respect of the information; or

4.1.3 is or has been independently developed by the recipient.

4.2 **Disclosing confidential information** – Notwithstanding Clause 1.1 or 4.1 above, all parties will be entitled to disclose confidential information to a third party to the extent that this is required by valid legal process, provided that (and without breaching any legal or regulatory requirement) where reasonably practicable not less than 2 business days' notice in writing is first given to the other parties.

4.3 **Citation of engagement** – Without prejudice to Clause 4.1 and Clause 4.2 above, to the extent our engagement is or becomes known to the public, we may cite the performance of the Services to our clients and prospective clients as an indication of our experience, unless we and you specifically agree otherwise in writing.

4.4 **Internal quality reviews** – Notwithstanding the above, we may disclose any information referred to in this Clause 4 to any other FTI entity or use it for internal quality reviews.

4.5 **Maintenance of workpapers** – Notwithstanding the above, we may keep one archival set of our working papers from the Engagement, including working papers containing or reflecting confidential information, in accordance with our internal policies.

5. Termination

5.1 **Termination of Engagement with notice** – All parties (you, the Company and FTI) may terminate the Engagement Contract for whatever reason upon written notice to the other party. Upon receipt of such notice, we will stop all work immediately. Regardless of the terminating party, the Company will be responsible for all fees and expenses incurred by us through the date termination notice is received.

5.2 **Continuation of terms** – The terms of the Engagement that by their context are intended to be performed after termination or expiration of this Engagement Contract, including but not limited to, Clauses 3 and 4 of the Engagement letter, and Clauses 1.1, 4, 6 and 7 of the Standard Terms and Conditions, are intended to survive such termination or expiration and shall continue to bind all parties.

6. Indemnification and Liability Limitation

6.1 **Indemnification** - The Company agrees to indemnify and hold harmless FTI and any of its subsidiaries and affiliates, officers, directors, principals, shareholders, agents, independent contactors and employees (collectively "Indemnified Persons") from and against any and all third party claims, liabilities, damages, obligations, costs and expenses (including reasonable attorneys' fees and expenses and costs of investigation) arising out of or relating to the retention of FTI, the execution and delivery of this Engagement Contract, the provision of Services or other matters relating to or arising from this Engagement Contract, except to the extent that any such claim, liability, obligation, damage, cost or expense shall have been determined by final non-appealable order of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Indemnified Person or Persons in respect of whom such liability is asserted (an "Adverse Determination"). The Company shall pay damages and expenses, including reasonable legal fees and disbursements of counsel as incurred in advance. FTI agrees that it will reimburse any amounts paid in advance to the extent they relate directly to an Adverse Determination. FTI agrees to indemnify and hold harmless the Company and any of its subsidiaries and affiliates, officers, directors, principals, shareholders, agents, independent contactors and employees from and against any and all third party claims, liabilities, damages, obligations, costs and expenses (including reasonable attorneys' fees and expenses and costs of investigation) arising out of or relating to an Adverse Determination.

6.2 **Limitation of liability -** Excluding a party's indemnification obligations for third party claims, neither party shall be liable to the other party, or a party's successors, affiliates or assigns for (a) damages in excess of the total amount of the fees paid and payable to FTI under this Engagement Contract, or (b) consequential, indirect or punitive damages, damages for lost profits or opportunities or other like damages or claims of any kind.

7. Governing Law, Jurisdiction and WAIVER OF JURY TRIAL

7.1 **Governing Law -** The Engagement Contract shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to the choice of law provisions thereof.

7.2 **Jurisdiction** - The United States District Court for the Southern District of New York and the appropriate Courts of the State of New York sitting in the Borough of Manhattan, City of New York shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the Engagement Contract and any matter arising from it. The parties submit to the jurisdiction of such Courts and irrevocably waive any right they may have to object to any action being brought in these Courts, to claim that the action has been brought in an inconvenient forum or to claim that those Courts do not have jurisdiction.

7.3 **WAIVER OF JURY TRIAL** – TO FACILITATE JUDICIAL RESOLUTION AND SAVE TIME AND EXPENSE, THE COMPANY AND FTI IRREVOCABLY AND UNCONDITIONALLY AGREE TO WAIVE A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE SERVICES OR THIS ENGAGEMENT CONTRACT.

FTI CONSULTING, INC

Confirmation of Standard Terms and Conditions

We agree to engage FTI Consulting, Inc. upon the terms set forth in these Standard Terms and Conditions as outlined above.

DLA Piper LLP (US)

By: _____
Thomas Califano
Partner

Date: _____

Northwest Senior Housing Corporation

By: _____
Nick Harshfield
CFO, Treasurer, and Secretary

Date: _____

Confirmation of Standard Terms and Conditions

We agree to engage FTI Consulting, Inc. upon the terms set forth in these Standard Terms and Conditions as outlined above.

DLA Piper LLP (US)

By: _____
Thomas Califano
Partner

Date: 2/19/2021

Northwest Senior Housing Corporation

By: _____
Nick Harshfield
CFO, Treasurer, and Secretary

Date: _____

EXHIBIT D

Addendum

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FTI CONSULTING

Chad J. Shandler
FTI Consulting, Inc.
1166 Avenue of the Americas
15th Floor
New York, New York 10036
212 841 9349

PRIVATE & CONFIDENTIAL

February 1, 2022

Thomas Califano
Partner
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019

Re: Northwest Senior Housing Corporation

Dear Mr. Califano:

1. **Introduction**

This letter is an addendum to the engagement contract between FTI Consulting, Inc. ("FTI") and you, Sidley Austin LLP (the "Firm") dated May 1, 2021 (the "May 2021 LOE") (this "Addendum Letter"), to provide certain financial advisory and consulting services (the "Services") as set out in the May 2021 LOE in relation to your representation of Northwest Senior Housing Corporation ("Edgemere" or the "Company"). Pursuant to this Addendum Letter, the Services shall be amended to include the additional services as outlined in Section 2, and consistent with Section 4 of the May 2021 LOE, effective January 1, 2022, standard hourly rates shall be revised as outlined in Section 3. Additionally, pursuant to Section 3 of the May 2021 LOE, the Company agrees that the Initial Cash on Account will increase by $150,000, or an aggregate amount of $250,000.

2. **Scope of Services**

The Services, to be performed at your direction, are expected to include the following:

(a) assistance in the preparation of financial information for distribution to creditors and others, including, but not limited to, cash flow projections and budgets, cash receipts and disbursement analysis, analysis of various asset and liability accounts, and analysis of proposed transactions for which Banktrupcy Court approval is sought;

(b) assistance to the Company in the preparation of financial-related disclosures required by the Bankruptcy Court, including the Company' Schedules of Assets and Liabilities, Statements of Financial Affairs and Monthly Operating Reports;

(c) assistance to the Company with information and analyses required pursuant to the Company' use of cash collateral including, but not limited to, preparation for hearings regarding the use of cash collateral;

(d) assistance with the identification of executory contracts and leases and performance of cost/benefit evaluations with respect to the affirmation or rejection of each;

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(e) assistance regarding the valuation of the present level of operations and identification of areas of potential cost savings, including overhead and operating expense reductions and efficiency improvements;

(f) assistance in the evaluation and analysis of avoidance actions, including fraudulent conveyances and preferential transfers;

(g) assistance to Company' management team and the Firm focused on the coordination of resources related to the reorganization effort;

(h) attendance at meetings and assistance in discussions with potential secured lenders, any official committee(s) appointed in these Chapter 11 Cases, the United States Trustee, other parties in interest and professionls hired by same, as requested; other communications with the Company's creditors and governmental authorities (the general direction for which will be determined by the Board);

(i) develop strategy, including communications, relating to residents, former residents, vendors, and employees;

(j) analysis of creditor claims by type, entity, and individual claim, including assistance with development of databases, as necessary, to track such claims;

(k) assistance in the preparation of information and analysis necessary for the confirmation of a plan of reorganization in these Chapter 11 Cases, including information contained in the disclosure statement; and

(l) provide testimony in these Chapter 11 Cases as necessary or appropriate at the Company's request; and

(m) rendering such other general business consulting or such other assistance as Company' management or counsel may deem necessary consistent with the role of a financial advisor to the extent that it would not be duplicative of services provided by other professionals.

3. **Fees**

Fees in connection with this Engagement will be based upon the time incurred providing the Services, multiplied by our standard hourly rates, summarized as follows:

United States

	Per Hour (USD)
Senior Managing Directors	$920 – 1,325
Directors / Senior Directors / Managing Directors	590 – 960
Consultants/Senior Consultants	370 – 695
Administrative / Paraprofessionals	130 – 300

Hourly rates are generally revised periodically. To the extent this engagement requires services of our International divisions or personnel, the time will be multiplied by our standard hourly rates applicable on International engagements. Note that we do not provide any assurance regarding the outcome of our work and our fees will not be contingent on the results of such work.

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In addition to the fees outlined above, FTI will bill for reasonable direct expenses which are likely to be incurred on your behalf during this Engagement. Direct expenses include reasonable and customary out-of-pocket expenses which are billed directly to the engagement such as certain telephone, overnight mail, messenger, travel, meals, accommodations and other expenses specifically related to the engagement. Further, if FTI and/or any of its employees are required to testify or provide evidence at or in connection with any judicial or administrative proceeding relating to this matter, FTI will be compensated by you at its regular hourly rates and reimbursed for reasonable allocated and direct expenses (including counsel fees) with respect thereto.

6. **Acknowledgement and Acceptance**

Please acknowledge your acceptance of the terms of this Engagement Contract by signing both the confirmation below and the attached Standard Terms and Conditions and returning a copy of each to us at the above address.

If you have any questions regarding this letter, please do not hesitate to contact Chad J. Shandler at (212) 841-9349.

Yours faithfully,

FTI CONSULTING, INC.

DocuSigned by:

By: _____
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Chad J. Shandler
Senior Managing Director

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Confirmation of Terms of Engagement

We agree to engage FTI Consulting, Inc. upon the terms set forth herein and in the attached Standard Terms and Conditions.

Sidley Austin LLP

DocuSigned by:
By: Thomas R. Califano
C200D3F1EC05432...
Thomas Califano
Partner

Date: 2/7/2022 | 1:05 PM CST

Northwest Senior Housing Corporation

DocuSigned by:
By:
0FBD63BFF8124CA...
Nick Harshfield
Treasurer, and Secretary

Date: 2/7/2022 | 1:06 PM CST

Chad J. Shandler
FTI Consulting, Inc.
1166 Avenue of the Americas
15th Floor
New York, New York 10036
212 841 9349

PRIVATE & CONFIDENTIAL

April 6, 2022

Bobby Guy
Sharholder
Polsinelli PC
401 Commerce Street
Suite 900
Nashville, TN 37219

Re: Senior Quality Lifestyles Corporation

Dear Mr. Guy:

1. **Introduction**

This letter is an addendum to the engagement contract between FTI Consulting, Inc. ("FTI") and you, Polsinelli (the "Firm") dated March 3, 2022 (the "March 2022 LOE") (this "Addendum Letter"), to provide certain financial advisory and consulting services (the "Services") as set out in the March 2022 LOE in relation to your representation of Northwest Senior Housing Corporation ("Edgemere" or the "Company"). Pursuant to this Addendum Letter, work is expanded to include providing the Services as detailed in the March 2022 LOE to Senior Quality Lifestyles Corporation ("SQLC"), an affiliate of the Company.

2. **Acknowledgement and Acceptance**

Please acknowledge your acceptance of the terms of this Amendment by signing both the confirmation below and the attached Standard Terms and Conditions and returning a copy of each to us at the above address.

If you have any questions regarding this letter, please do not hesitate to contact Chad J. Shandler at (212) 841-9349.

Yours faithfully,

FTI CONSULTING, INC.

By: _____
Chad J. Shandler
Senior Managing Director

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Confirmation of Terms of Engagement

We agree to engage FTI Consulting, Inc. upon the terms set forth herein and in the attached Standard Terms and Conditions.

Polsinelli PC

By: _____
Bobby Guy
Sharholder

Date: 4/6/22

Senior Quality Lifestyles Corporation

By: DocuSigned by: _____
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Nick Harshfield
Treasurer

Date: 4/7/2022 | 8:26 AM CDT

EXHIBIT 1

List of Potential Parties in Interest

EXHIBIT 1

Listing of Parties-in-Interest Reviewed for Current and Recent Former Relationships

Debtor
Northwest Senior Housing Corporation
Senior Quality Lifestyles Corporation

Affiliated Parties
LifeSpace, Inc.
Abbey Delray
Abbey Delray South
AON CCRC LLC (Iowa LLC)
Augustine Home Health Texas LLC
Barton Creek Senior Living Center, Inc. (Querencia)
Beacon Hill
Claridge Court
Friendship Village of Bloomington
Friendship Village of South Hills
Harbour's Edge
Lifespace Communities, Inc.
Lifespace Management, Inc.
Lifespace Services, Inc.
Newcastle Place LLC
Oak Trace
Prairie View Club of Kansas
Seniority Inc.
SQLC LSA, LLC
Tarrant County Senior Living Center, Inc. dba The Stayton at Museum Way
The Lifespace Foundation
The Waterford
Village on the Green

Former, Assumed and Trade Names of the Debtor
d/b/a Edgemere

Current and Former Directors and Officers (2019 & 2020 Form 990)
Abdul Shakoor
Ann Joyce
Chris Hutfless
Christopher Santuae
Eddie Fenoglio
Elizabeth White
Jesse Jantzen
Keri McAnally
Larry Smith
Leslie Brownlee
Martha Holloway
Nick Harshfield
Scott Collier
Susan Carter
Thomas Brod

Lifespace Managers
John B. Falldine
Teresa E. Bates

Professionals (Law Firms; Accountants; Appraisers; Tax Preparers; etc)
AJ Gallagher
DLA Piper LLP
FTI Consulting, Inc.
Kurtzman Carson Consultants, LLC
Marsh & McLennan Agency, LLC
Power Taylor Law Firm
Sidley Austin LLP

Current & Former Banking Institutions
Bankers Trust
Regions Bank
UMB Bank, NA

Restructuring Professionals
Polsinelli

Bondholders
Alliance Bernstein LP
First Trust Advisors LP
FMR LLC
Holloway Wealth Management LLC
Lapis Advisers, LP
Massachusetts Financial Services Co.
Nuveen Asset Management, LLC as investment adviser for certain funds/accounts
Olive Street Investment Advisers LLC
Royal Bank of Canada
Silvercrest Asset Management Group LLC
State Street Corp.
T Rowe Price Group Inc.
Teachers Insurance & Annuity Association of America
USAA Mutual Funds on behalf of its USAA Tax

Exempt Long-Term Fund and its USAA Growth and Tax Strategy Fund
Van Eck Associates Corp
Victory Capital Management Inc.

Insurance Providers
Argonaut Insurance Company
Ascot Insurance Company
Beazley Insurance Company
Beazley Insurance Company
Caring Communities
Ironshore Specialty Insurance Company
Liberty Mutual Fire Insurance Company
Liberty Mutual Insurance Company
Life Insurance Company of North America
National Casualty Company
RSUI Indemnity Company
Sentry Casualty Company
Sentry Insurance
Underwriters at Lloyds, London (Hiscox)

Government Regulatory & Taxing Authorities
Centers for Medicare and Medicaid Services
City of Dallas
Dallas County Tax Office, John R. Ames, CTA
Tax Assessor/Collector
Department of the Treasury
Texas Comptroller of Public Accounts
Texas Department of Insurance
Texas Department of Labor
Texas Department of Licensing & Regulation
Texas Health & Human Services
Texas Workforce Commission
United States Treasury

Unsecured Creditors
Andrew Croom Custom Builders LLC
ARC Waterproofing Sealant LLC
Direct Supply Inc
McKesson Medical-Surgical
Mr. AC Heating & Cooling LLC
Omnicare of Fort Worth
On Demand Staffing
Select Rehabilitation LLC
Unidine Corporation

Top 30 Largest Unsecured Creditors

Residents – Move outs -Triggered and Untriggered

Utility Companies
AT&T
AT&T Mobility
Atmos Energy
City of Dallas
Community Waste Disposal LP
Fusion LLC
Reliant Energy Services
Spectrum
Spectrum (f/k/a Time Warner Cable)
Verizon

Employee Benefit Administrators
ADP, LLC
Delta Dental
Eyemed
Metlife
OptumRx
Symetra Life Insurance Company
Wellmark BCBS of Iowa

Judges in the United States Bankruptcy Court for the Northern District of Texas Dallas Division
Judge Harlin D. Hale
Judge Robert L. Jones
Judge Stacey G. C. Jernigan
Judge Mark X. Mullin
Judge Edward L. Morris
Judge Michelle V. Larson

Office of the United States Trustee – Region 6 Dallas Office
Lisa L. Lambert
Assistant United States Trustee

U.S. Trustee Employees – Region 6 Dallas Office
Asher Bublick
Kara Croop
Christi C. Flanagan
C. Marie Goodier
Meredyth Kippes
Felicia P. Palos
Bradley D. Perdue
Nancy S. Resnick
Kendra M. Rust
Erin Schmidt
Lisa Smoot
Joseph W. Speranza
Rafay Suchedina

Steven Whitehurst
Cheryl H. Wilcoxson
Cindy Worthington
Elizabeth Young

Lenders to Non-Debtor Affiliates
N/A

Litigants / Litigation Parties
Cherry Petersen Landy Albert LLP
Intercity Investment Properties, Inc.

Other Parties As Known
Credit Agricole Group
DLA Piper LLP
Dorsey & Whitney LLP
Holland & Knight LLC
Invesco Ltd
Locke Lord LLP
Lumen (f/k/a Level 3)
Reliant Energy Services
Waste Connections
Alliance Bernstein LP

EXHIBIT 2

Listing of Parties-in-Interest Noted for Court Disclosure

Relationships in Matters Related to These Proceedings

None

Relationships in Unrelated Matters - Current

Affiliated Parties
Tarrant County Senior Living Center, Inc. dba The Stayton at Museum Way

Professionals (Law Firms; Accountants; Appraisers; Tax Preparers; etc)
AJ Gallagher
Sidley Austin LLP

Current & Former Banking Institutions
Regions Bank
UMB Bank, NA

Bondholders
First Trust Advisors LP
Nuveen Asset Management, LLC as investment adviser for certain funds/accounts
Royal Bank of Canada
State Street Corp.
T Rowe Price Group Inc.

Insurance Providers
Beazley Insurance Company
Ironshore Specialty Insurance Company
Liberty Mutual Insurance Company
Underwriters at Lloyds, London (Hiscox)

Government Regulatory & Taxing Authorities
Department of the Treasury
United States Treasury

Top 30 Unsecured Creditors
McKesson Medical-Surgical

Utility Companies
AT&T
AT&T Mobility
Atmos Energy
City of Dallas
Community Waste Disposal LP
Fusion LLC
Reliant Energy Services
Spectrum
Spectrum (f/k/a Time Warner Cable)
Verizon

Employee Benefit Administrators
ADP, LLC
Delta Dental
Metlife
OptumRx

Other Parties As Known
Credit Agricole Group
DLA Piper LLP
Dorsey & Whitney LLP
Holland & Knight LLC
Invesco Ltd
Locke Lord LLP
Lumen (f/k/a Level 3)
Reliant Energy Services
Waste Connections
Alliance Bernstein LP

Relationships in Unrelated Matters – Former Clients (Last Two Years)

Affiliated Parties
LifeSpace, Inc.
Lifespace Communities, Inc.

Bondholders
Alliance Bernstein LP

EXHIBIT 9

Docket #0227 Date Filed: 5/13/2022

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 12, 2022

United States Bankruptcy Judge

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*,[1]	Case No. 22-30659 (MVL)
Debtors.	(Jointly Administered)

ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE

Upon the application (the "**Application**")[2] of the Debtors for entry of an order (the "**Order**") authorizing the retention and employment of FTI Consulting, Inc., together with its wholly-owned subsidiaries ("**FTI**"), as financial advisor to the Debtors effective as of the Petition

[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 not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

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Date, as more fully described in the Application; the Court having reviewed the Application, the First Day Declaration, and the declaration of Chad J. Shandler attached to the Application as Exhibit B (the "**Shandler Declaration**"); and the Court being satisfied, based on the representations made in the Application and the Shandler Declaration that FTI is "disinterested: as such term is defined in Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b), and as required under Bankruptcy Code section 327(a), and that FTI represents no interest adverse to the Debtors' estates; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b); and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Application in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the relief requested in the Application is in the best interests of the Debtors, the Debtors' estates, the Debtors' creditors, and other parties in interest; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Application is GRANTED as set forth herein.

2. All objections to the entry of this Order, to the extent not withdrawn or settled, are overruled.

3. Pursuant to Bankruptcy Code sections 327(a) and 328(a), the Debtors are authorized to employ and retain FTI as financial advisor in the Chapter 11 Cases effective as of the Petition Date.

4. FTI shall apply for compensation earned for professional services rendered and reimbursement of expenses incurred in connection with the Chapter 11 Cases in accordance with the procedures set forth in the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, this Order and any other applicable orders of this Court.

5. The following indemnification provisions are approved:

a. subject to the provisions of subparagraphs (b) and c), *infra*, the Debtors are authorized to indemnify, and shall indemnify, FTI in accordance with the Engagement Agreement for any claim arising from related to or in connection with the services provided for, whether pre-petition or post-petition, in the Engagement Agreement;

b. the Debtors shall have no obligation to indemnify FTI for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from FTI's gross negligence, willful misconduct, breach of fiduciary duty (if any), bad faith, or fraud unless the Court determines that indemnification would be permissible under applicable law or (ii) settled prior to a judicial determination as to FTI's gross negligence, willful misconduct, breach of fiduciary duty (if any), bad faith, or fraud, but determined by this Court, after notice and a hearing pursuant to subparagraph (c), *infra*, to be a claim or expense for which FTI should not receive indemnification, contribution, or reimbursement under the terms of the Engagement Agreement; and

c. if, before the entry of an order closing the Chapter 11 Cases, FTI believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtors may not pay any such amounts to FTI before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by FTI for indemnification, and not as a provision limiting the duration of the Debtors' obligation to indemnify FTI.

6. Notwithstanding anything to the contrary in the Engagement Agreement, any indemnification provisions and related rights and obligations shall comply with and be subject to

In re Pacific Lumber Co., 584 F.3d 229 (5th Cir. 2009) and, under no circumstances, shall the Debtors be obligated to pay any fees incurred by FTI in defense of any fee applications filed in these Chapter 11 Cases.

7. Any dispute arising from or relating to the Debtors engagement of FTI, notwithstanding any provision in the Engagement Agreement, shall be subject to the exclusive jurisdiction and venue of the Bankruptcy Court so long as these Chapter 11 Cases remain pending.

8. The Debtors and FTI are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

9. Notice of the Application as provided therein is deemed to be good and sufficient notice of such Application, and the requirements of the Bankruptcy Local Rules are satisfied by the contents of the Application.

10. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

11. To the extent there is any inconsistency between the terms of the Engagement Agreement, the Application, and this Order, the terms of this Order shall govern.

12. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Order.

 # # # End of Order # # #

Submitted by:

Trinitee G. Green (SBN 24081320)
Polsinelli PC
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
Facsimile: (214) 397-0033
tggreen@polsinelli.com

and

Jeremy R. Johnson (Admitted *Pro Hac Vice*)
Brenna A. Dolphin (Admitted *Pro Hac Vice*)
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Proposed Counsel to Debtors and
Debtors-in-Possession

EXHIBIT 10

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

In re:	)	
	)	
Northwest Senior Housing Corporation, *et al.*,	)	Chapter 11
	)	
Debtors[1]	)	Case No. 22-30659 (MVL)
	)	
Northwest Senior Housing Corporation,	)	
	)	
Plaintiff	)	
	)	
v.	)	Adv. No. 22-03040 (MVL)
	)	
Intercity Investment Properties, Inc., and Kong Capital LLC,	)	
	)	
Defendants	)	

NOTICE OF DEPOSITION SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS AND TO PROVIDE DEPOSITION TESTIMONY TO FTI CONSULTING, INC.

PLEASE TAKE NOTICE that Intercity Investment Properties, Inc. and Kong Capital LLC ("Defendants") will serve FTI Consulting, Inc., by and through its registered agent, C T Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136, with the attached subpoena pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, directing FTI Consulting, Inc. to produce documents for inspection and copying at the offices of Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, Texas 75201 by July 25, 2022, and to present a corporate representative to appear for an oral and videotaped deposition on August 1, 2022 at 9:00 AM

[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 ("SQLC") (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

(CST), or at a time agreed to by the parties and their counsel, at a place and time agreed to by the parties and their counsel.

Dallas, Texas
July 8, 2022

/s/ *Michael S. Held*

JACKSON WALKER LLP
Michael S. Held (State Bar No. 09388150)
W. Ross Forbes, Jr. (State Bar No. 00796564)
Edwin Buffmire (State Bar No. 24078283)
Marc Fuller (State Bar 24032210)
2323 Ross Avenue, Suite 600
Dallas, Texas 75201
Telephone: (214) 953-6000
Facsimile: (214) 953-5822
Email: mheld@jw.com
Email: rforbes@jw.com
Email: ebuffmire@jw.com
Email: mfuller@jw.com

Local Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

LEVENFELD PEARLSTEIN, LLC
Elizabeth B. Vandesteeg (admitted *pro hac vice*)
Harold D. Israel (admitted *pro hac vice*)
Eileen M. Sethna (admitted *pro hac vice*)
2 North LaSalle Street, Suite 1300
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Telephone: (312) 346-8380
Facsimile: (312) 346-7634
Email: evandesteeg@lplegal.com
Email: hisrael@lplegal.com
Email: esethna@lplegal.com

Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

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

In re:	)	
	)	
Northwest Senior Housing Corporation, *et al.*,	)	Chapter 11
	)	
Debtors[1]	)	Case No. 22-30659 (MVL)
	)	
Northwest Senior Housing Corporation,	)	
	)	
Plaintiff	)	
	)	
v.	)	Adv. No. 22-03040 (MVL)
	)	
Intercity Investment Properties, Inc., and Kong Capital LLC,	)	
	)	
Defendants	)	

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS AND TO PROVIDE DEPOSITION TESTIMONY TO FTI CONSULTING, INC.

TO: FTI Consulting, Inc., c/o C T Corporation System,1999 Bryan St., Ste. 900, Dallas, TX 75201-3136

Attn: Chad J. Shandler, 1166 Avenue of the Americas, 15th Floor, New York, NY 10036

FROM: Intercity Investment Properties, Inc. and Kong Capital LLC, by and through its attorneys of record, W. Ross Forbes, Jr., Edwin Buffmire, and Marc Fuller, Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, TX 75201.

Intercity Investment Properties, Inc. and Kong Capital LLC ("Defendants"), pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Rule 7030 and 9016 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") as well

[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 ("SQLC") (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

as Rule 2004 and Bankruptcy Local Rule 2004, by and through its counsel, issues the attached subpoena to FTI Consulting, Inc.

YOU ARE COMMANDED to produce the documents, electronically stored information, or objects as specified in the attached Exhibit A, subject to the Definitions and Instructions contained herein, by July 25, 2022, or at such other time as agreed upon by you and counsel for Intercity and Kong, to the undersigned counsel at Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, TX 75201 or via electronic email to rforbes@jw.com, ebuffmire@jw.com, and mfuller@jw.com.

YOU ARE ALSO COMMANDED to appear for deposition, via a corporate representative, on August 1, 2022, beginning at **9:00 a.m. (CST)**, or at a time agreed to by the parties and their counsel, at a place and time agreed to by the parties and their counsel, regarding the topics and documents set forth on Exhibit A. The deposition will be taken by oral examination before a court reporter authorized by law to administer oaths and take testimony pursuant to Federal Rule of Bankruptcy Procedure 7028 and may be videotaped.

Dallas, Texas
July 8, 2022

/s/ *Michael S. Held*

JACKSON WALKER LLP
Michael S. Held (State Bar No. 09388150)
W. Ross Forbes, Jr. (State Bar No. 00796564)
Edwin Buffmire (State Bar No. 24078283)
Marc Fuller (State Bar 24032210)
2323 Ross Avenue, Suite 600
Dallas, Texas 75201
Telephone: (214) 953-6000
Facsimile: (214) 953-5822
Email: mheld@jw.com
Email: rforbes@jw.com
Email: ebuffmire@jw.com
Email: mfuller@jw.com

Local Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

LEVENFELD PEARLSTEIN, LLC
Elizabeth B. Vandesteeg (admitted *pro hac vice*)
Harold D. Israel (admitted *pro hac vice*)
Eileen M. Sethna (admitted *pro hac vice*)
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Telephone: (312) 346-8380
Facsimile: (312) 346-7634
Email: evandesteeg@lplegal.com
Email: hisrael@lplegal.com
Email: esethna@lplegal.com

Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

B2560 (Form 2560 – Subpoena to Testify at a Deposition in a Bankruptcy Case or Adversary Proceeding) (12/15)

UNITED STATES BANKRUPTCY COURT

Northern District of Texas

In re Northwest Senior Housing Corporation, *et al.*
Debtor

Case No. 22-30659 (MVL)

Chapter 11

Northwest Senior Housing Corporation,
Plaintiff

v.

Intercity Investment Properties, Inc., and Kong Capital LLC,
Defendant

Adv. Proc. No. 22-03040 (MVL)

SUBPOENA TO TESTIFY AT A DEPOSITION & TO PRODUCE DOCUMENTS, INFORMATION,OR OBJECTS IN AN ADVERSARY PROCEEDING

To: **FTI Consulting, Inc., c/o C T Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136**

Testimony: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to

[X]

be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE	DATE AND TIME
LOCATION TBD at a mutually-agreed location	**August 1, 2022 at 9:00 a.m. (CST)**

The deposition will be recorded by this method:

Stenographic and/or videotape

[X] *Production*: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Exhibit A, attached

PLACE	DATE AND TIME
Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, TX 75201	**July 25, 2022 by 5:00 p.m. (CST)**

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

07/08/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk | ***/s/ Michael S. Held*** *Attorney's signature*

The name, address, email address, and telephone number of the attorney representing **Intercity Investment Properties, Inc. & Kong Capital LLC**, who issues or requests this subpoena, are:

Michael S. Held, Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, TX 75201 , mheld@jw.com, (214) 953-5966

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____
_____ on (*date*) _____ ; or

☐ I returned the subpoena unexecuted because: _____
_____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $_____ for services, for a total of $_____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)

(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

…

(g) Contempt. The court for the district where compliance is required – and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT A

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS AND TO PROVIDE DEPOSITION TESTIMONY TO FTI CONSULTING, INC.

I. INSTRUCTIONS

1. The requested documents are to be produced for inspection and copying, at the offices of Jackson Walker, LLP, 2323 Ross Avenue, Suite 600, Dallas, Texas 75201, unless otherwise agreed between the parties.

2. If you object to any of the following Discovery Requests, you must state the legal and factual basis for each objection. If you object to only a portion of a Discovery Request, you must identify the specific portion of the Discovery Request to which you object and must respond fully to the remainder of the Discovery Request.

3. If a requested document is a document created from any of the programs in the Microsoft Office Suite (including, but not limited to, Microsoft Word, Excel, PowerPoint, Access, Project or Outlook) that exists in its native format (e.g., .doc, .xls, .ppt, .msg, .pst) or can be readily converted into a format reasonably accessible via a program in the Microsoft Office Suite (e.g., a document created from another commercially available electronic mail, word processing, spreadsheet or database program), then produce such document in its native electronic format. Documents produced in this manner should include metadata.

4. If your answer to any Discovery Request is not within your personal knowledge, you must identify each person you know who has, or may have, personal knowledge of the matter that is addressed in the Discovery Request, and the contact information and job title of such person.

5. Each Discovery Request shall operate and be responded to independently and, unless otherwise indicated, no Discovery Request limits the scope of any other Discovery Request.

6. Documents provided in response hereto shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond with the categories in these Requests for Production of Documents.

7. If you produce Documents in addition to, or in lieu of, providing full and complete narrative responses where permitted by the Federal Rules of Civil Procedure:

    a. In producing Documents and things, indicate the paragraph and subparagraph to which a produced document or thing is responsive.

    b. In producing Documents and things, furnish all Documents or things known or available to you, regardless of whether such Documents or things are possessed directly by you or your representatives.

c. If any requested Documents or things cannot be produced in full, produce such Documents to the extent possible, specifying which Documents or things were only partially produced.

8. These Discovery Requests are deemed to be continuing. If after answering, you become aware of any further information responsive to this document, you are required to produce such additional Documents and things and/or provide such additional information.

9. If any Documents or things requested or identified were at one time in existence but are no longer in existence, then so state, specifying for each document or thing:

a. The type of document or thing;

b. The types of information contained thereon;

c. The date upon which it ceased to exist;

d. The circumstances under which it ceased to exist;

e. The identity of all persons having knowledge of the circumstances under which it ceased to exist; and

f. The identity of all persons now having or who, at one time, had knowledge of the contents thereof.

10. Selection of Documents from the files and other sources in the numbering, if any, of such Documents shall be performed in such a manner as to ensure that the source of each document may be determined, if necessary.

11. Documents attached to each other should not be separated.

12. In lieu of producing originals or copies thereof, you may, at your option, submit legible photographic or other reproductions of such Documents, provided that the originals or copies from which such reproductions were made are retained by you until the disposition of this litigation.

13. If you, after investigation, determine that you have no documents that are responsive to a Request, Your statement that you have no such documents constitutes a representation that you have conducted a search for the documents and represents that you have no documents that are responsive.

14. Unless otherwise stated, the time frame covered by these Discovery Requests is from **January 1, 2020 to the present (the "Relevant Time Period")**. If you seek to withhold any Document, thing, or information on the basis that it is purportedly privileged or entitled to some other limitation of discovery, you are instructed to use the following procedure:

a. You shall supply a numerical list of the Documents and things for which a privilege or other limitation of discovery is claimed, indicating:

i. the name of each author, writer, sender, or initiator of such document or thing, if any;
ii. the name of each recipient, addressee, or party to whom such document or thing was intended, if any;

iii. the date of such document or thing, if any, or an estimate thereof and so indicated as an estimate if no date appears on said document;

iv. the general subject matter as described in the document; and

v. the claimed grounds for privilege or other limitation of discovery.

II. DEFINITIONS

As used herein, the following terms have specific meanings as defined in this section:

1. "You" refers to FTI Consulting, Inc., its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

2. "Edgemere" refers to Northwest Senior Housing Corporation, its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

3. "Intercity" refers to Intercity Investment Properties, Inc., its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

4. "Kong" refers to Kong Capital LLC, its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

5. "UMB" refers to UMB Bank, N.A., its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

6. The "Lawsuit" refers to the above-captioned adversary proceeding filed by Edgemere against Intercity Kong on April 14, 2022.

7. The "Disclosure Statement" means that comprehensive document required by Tex. Health & Safety Code Ann. § 246.042 to be provided to potential residents, informing them of all aspects of living at the Edgemere, including a location and description of the community, services and fees, policies, resident qualifications, and financial information about the Edgemere, with

exhibits of the Life Care Agreement, audited financial statements, financial projections, and the resident handbook.

8. The "Property" refers to the approximately 16.25 acres that is subject to the Lease, and commonly known as 8523 Thackery Street, Dallas, Texas 75225.

9. The "Restructuring" refers to any effort to improve Edgemere's financial position, whether through modification or reorganization of Edgemere's organizational or capital structure, or otherwise addressing existing liabilities.

10. The "Bankruptcy" refers to Edgemere's Chapter 11 bankruptcy case, styled *Northwest Senior Housing Corporation, et al.*, Case No. 22-30659, currently pending in the United States Bankruptcy Court in the Northern District of Texas – Dallas Division, and related litigation, including the above-captioned adversary proceeding.

11. The "Bonds" refers to any and all outstanding bonds on which Edgemere currently owes, including, but not limited to, the bonds for which UMB Bank, N.A. is the bond trustee.

12. The "Historical Financial Condition" means the Edgemere's overall financial condition, including but not limited to assets, liabilities, income, or losses, from January 1, 2015 through present date.

13. The "Lease" refers to the Ground Lease between Intercity and Edgemere dated November 15, 1999 that covers the property and improvements where Edgemere operates.

14. The "Lease Term" refers to that term of fifty-five (55) years enumerated in the Lease.

15. The "Forbearance Agreement" refers to the December 21, 2021 Forbearance Agreement between Northwest Senior Housing Corporation, Senior Quality Lifestyle Corporation, UMB Bank, N.A., Intercity, and Lifespace.

16. "Discovery Requests" means the requests for production of Documents contained herein.

17. "Communication" or "Communications" means a communication in any form, including, without limitation, notes, complaints, diaries, journals, datebooks, reports, calendars, telephone messages, letters, email messages, instant messages (such as but not limited to Signal, Cisco Jabber, IBM Sametime, Wickr, ICQ, Kik, BBM, Gchat, iMessage, Telegram, WhatsApp, Slack, and similar types of messages), cell phone text messages (SMS messages and MMS messages), voicemail messages, Slack messages or other internal messaging system communications, social media communications or posting on sites including but not limited to Facebook, Twitter, Instagram, Gab, or Parler (including any direct messages), website postings, internet chat-room postings, lists, correspondence, drawings, designs, telegrams, manuals, summaries or records of personal conversations, logs, minutes or records of meetings, minutes of any other type, transcripts of oral testimony or statements, affidavits, or summaries of investigations. For avoidance of doubt, the term "Communications" includes internal

communications and communications with third parties. The foregoing definition is subject to any objection sustained in relation to Plaintiffs' similar definition directed at Defendants.

18. "Document" means any printed, written, typed, recorded, transcribed, taped, photographic, or graphic matter, however produced or reproduced, including, but not limited to: any letter, correspondence, or communication of any sort; electronic mail, either sent or received; file, print, negative, or photograph; sound or video recording; note, notebook, diary, calendar, minutes, memorandum, contract, agreement, or any amendment thereto; telex, telegram, or cable; summary, report, or record of any telephone conversation, personal conversation, discussion, interview, meeting, conference, investigation, negotiation, act, or activity; projection, work paper or draft; computer output or input; data processing card; opinion or report of any consultant; request, order, invoice, or bill of lading; analysis, diagram, map, index, sketch, drawing, plan, chart, manual, brochure, pamphlet, advertisement, circular, newspaper or magazine clipping; press release; receipt, journal, ledger, schedule, bill, or voucher; financial statement, statement of account, bank statement, checkbook, check stubs or register, canceled check, deposit slip, charge slip, tax return, or requisition; file, study, graph, or tabulation; and all other writings and recordings of whatever nature, whether signed, unsigned or transcribed, and any other data compilation from which information can be obtained or translated. The term "Document" also shall mean: the original and/or any non-identical original or copy, including those with any marginal note or comment or showing additions, deletions, or substitutions; drafts; attachments to or enclosures with any document; and any other documents referred to or incorporated by reference in the document. The term "Document" also specifically includes all electronic documents and other "electronically stored information" (whether stored electronically or in the form of a hard-copy, print-out, or otherwise) and all attachments thereto.

19. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

20. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all;" "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine, or neuter form shall include each of the other genders.

III. SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS

LIST OF DOCUMENTS REQUESTED

REQUEST FOR PRODUCTION NO. 1: All Documents and Communications concerning Intercity, Kong, or the Lawsuit.

REQUEST FOR PRODUCTION NO. 2: All Documents and Communications concerning the Lease, including, but not limited to, communications concerning Edgemere's obligations under the Lease as written, as well as any proposals to modify the Lease or purchase the Property.

REQUEST FOR PRODUCTION NO. 3: All Documents and Communications concerning the Forbearance Agreement.

REQUEST FOR PRODUCTION NO. 4: All Documents and Communications concerning any agreement between You and the Edgemere and/or Lifespace, including but not limited to the scope of your engagement and directions provided to you, by any party, in conjunction for the preparation of any written material or report.

REQUEST FOR PRODUCTION NO. 5: All Documents and Communications You received from Edgemere and/or Lifespace concerning Edgemere's Historical Financial Condition and/or business decisions.

REQUEST FOR PRODUCTION NO. 6: All Documents You prepared for Edgemere and/or Lifespace concerning Edgemere's Historical Financial Condition.

REQUEST FOR PRODUCTION NO. 7: All Documents and Communications You relied on in preparing Documents concerning Edgemere's Historical Financial Condition.

REQUEST FOR PRODUCTION NO. 8: All Documents and Communications concerning the Bonds from January 1, 2015 to present, including, but not limited to, refinancing the Bonds, the Bond ratings or changes thereto, and any potential or actual default on the Bonds by Edgemere.

REQUEST FOR PRODUCTION NO. 9: All Documents and Communications between You and any individual or entity with a financial interest in the Bonds.

REQUEST FOR PRODUCTION NO. 10: All Documents and Communications You reviewed in preparing Documents concerning the Edgemere's Historical Financial Condition and the Lease Term.

REQUEST FOR PRODUCTION NO. 11: All Documents and Communications concerning any analysis as to Your projections as to future financial performance versus actual financial performance over the course of your engagement related to the Edgemere.

REQUEST FOR PRODUCTION NO. 12: All Documents and Communications related to a determination as to the last date that Edgemere could responsibly, in light of its fiduciary duties

and in conjunction with the Lease Term, accept deposits from residents or potential residents for life care contracts.

REQUEST FOR PRODUCTION NO. 13: All Documents and Communications You were provided, reviewed or prepared that mentioned the Property, the Lease, or the Lease Term.

REQUEST FOR PRODUCTION NO. 14: All Documents and Communications concerning the Restructuring or Bankruptcy.

REQUEST FOR PRODUCTION NO. 15: All Documents and Communications concerning impacts of COVID-19 on Edgemere's Historical Financial Condition and residential occupancy and retention rates.

REQUEST FOR PRODUCTION NO. 16: All Communications between You and any third-party concerning Edgemere, Intercity, or Kong, including, but not limited to, Communications with regulatory agencies, media outlets, or bond rating agencies.

REQUEST FOR PRODUCTION NO. 17: All Documents and Communications regarding Your preparation, drafting, or other involvement in any materials for distribution to media outlets regarding Edgemere, Kong, Intercity, or this Lawsuit, including but not limited to the "media documents" reflected in the time log submitted with FTI's First Monthly Fee Application in the Bankruptcy.

REQUEST FOR PRODUCTION NO. 18: All Documents or Communications provided to any media outlet or entity.

IV. SUBPOENA TO PROVIDE DEPOSITION TESTIMONY

MATTERS FOR EXAMINATION

1. Your knowledge of Edgemere's Historical Financial Condition over the past five (5) years preceding, leading up to, and during the Restructuring and Bankruptcy.

2. Your knowledge of the Restructuring and Bankruptcy, including the events and circumstances leading up to the Restructuring and Bankruptcy.

3. Your knowledge of the Lease and Edgemere's ability to perform its obligations under the same.

4. Any agreements entered into by You and Edgemere and/or Lifespace.

5. Your knowledge of the development, coordination, and/or implementation of any strategy related to any potential modification of, reformation of, recharacterization of, repudiation of, or any other change in treatment of the Lease or potential purchase of the Property, and your knowledge of discussions with or disclosures of same with any third party.

6. Your knowledge of the Bonds.

7. Your knowledge of the Edgemere's ability to operate, including its ability to sell life care contracts, at the Property for the Lease Term.

8. Your understanding of any disclosure concerning Edgemere's Historical Financial Condition to any third party.

9. Your knowledge as to any analysis regarding Your projections as to future financial performance versus actual financial performance over the course of your engagement related to the Edgemere.

10. The nature of Your relationship with Edgemere and/or Lifespace.

11. Your involvement in media materials, strategy, or communications regarding the Edgemere, the Restructuring, the Bankruptcy, or the Lawsuit.

12. Your efforts search for, collect, and produce documents and communications responsive to this subpoena.

EXHIBIT 11

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PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*[1]	Case No. 22-30659 (MLV)
Debtors.	(Joint Administration Requested)

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

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

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

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

[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.

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

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

4. Contemporaneously herewith, the Debtors are filing the following motions and applications (collectively, the "**First Day Motions**"):[2]

i. *Debtors' Motion for Entry of an Order Pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1 (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* (the "**Joint Administration Motion**");

ii. *Debtors' Application for Entry of an Order (A) Authorizing the Retention and Employment of Kurtzman Carson Consultants LLC as Claims, Noticing and Solicitation Agent, Nunc Pro Tunc to the Petition Date and (B) Granting Related Relief* (the "**KCC Retention Application**");

iii. *Notice of Designation as Complex Chapter 11 Bankruptcy Cases;*

[2] All capitalized terms not defined in this Declaration shall have the meanings ascribed to the relevant First Day Motion.

iv. *Notice of Commencement of Chapter 11 Bankruptcy Cases and Filing of Certain First Day Pleadings;*

v. *Request for Emergency Consideration of Certain "First Day" Matters;*

vi. *Debtors' Motion for Entry of an Order Authorizing the Filing of a Consolidated Mailing Matrix and a Consolidated List of Thirty Largest Unsecured Creditors* (the "**Consolidated Creditor Motion**");

vii. *Debtors' Motion for Entry of an Order Extending Time to File (I) Schedules of Assets and Liabilities, (II) Statements of Financial Affairs, and (III) Reports of Financial Information Required Under Bankruptcy Rule 2015.3* (the "**Schedules Extension Motion**");

viii. *Debtors' Motion for Entry of an Order Authorizing the Implementation of Procedures to Maintain and Protect Confidential Resident and Patient Information* (the "**Resident and Patient Confidentiality Motion**");

ix. *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Continue (A) Escrowing Entrance Fees in the Ordinary Course and (B) Refunding Certain Entrance Fees During the Chapter 11 Cases and (II) Granting Related Relief* (the "**Escrow Motion**");

x. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing (A) Continued Use of Debtors' Existing Cash Management System (B) Maintenance of Debtors' Existing Bank Accounts, and (C) Continued Use of Debtors' Existing Business Forms and (II) Granting Related Relief* (the "**Cash Management Motion**");

xi. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Commissions, Employee Benefits, Prepetition Payroll Taxes, and Other Obligations, (B) Maintain Compensation and Benefits Programs, and Pay Related Administrative Obligations, and (C) Make Payroll Deductions, (II) Authorizing Applicable Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers, and (III) Granting Related Relief* (the "**Wage Motion**");

xii. *Debtors' Motion for Entry of Interim and Final Orders Authorizing Payment of Prepetition Taxes and Fees* (the "**Tax Motion**");

xiii. *Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Service, (II) Deeming the Utility Providers Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance* (the "**Utilities Motion**");

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

xv. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Use of Cash Collateral; (II) Authorizing Post-Petition Financing, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling the Final Hearing and Approving the Form and Manner of Notice Thereof, and (VI) Granting Related Relief (the "**DIP and Cash Collateral Motion**").

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

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

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

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

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

PRELIMINARY STATEMENT

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

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

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

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

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

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

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

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

I. COMPANY HISTORY AND OPERATIONS

A. Company Structure and History

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

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

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

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

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

B. Overview of Operations

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

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

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

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

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

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

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

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

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

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

a. 90% Refundable Plan. Under this plan, the Resident pays a standard Entrance Fee and a Monthly Service Fee. Ninety percent (90%) of the Entrance Fee is refunded to the Resident or to the Resident's estate when the Resident leaves Edgemere, and the unit is re-sold, a new resident entrance fee is received by Edgemere, and the new resident has taken occupancy of the unit.

b. 70% Refundable Plan. Under this plan, the Resident pays a standard Entrance Fee, the Monthly Service Fee is reduced by 20% for a single person (or the Monthly Service Fee for a second person removed), and the Life Care Rate[6] begins when residents transition to The Plaza. Seventy percent (70%) of the Entrance Fee is refunded to the Resident or to the Resident's estate when the Resident leaves Edgemere and the unit is re-sold, a new resident entrance fee is received by Edgemere, and the new resident has taken occupancy of the unit.

c. 50% Refundable Plan. This plan applies to one-bedroom floor plans only and is amortized (2% per month). Under this plan, the Resident's Monthly Service Fee is reduced by $1,000 for life (with annual increases applicable) through the continuum of care. The Monthly Service Fee for a second person remains the same through continuum of care (with annual increases applicable). Fifty percent (50%) of the entrance fee is refunded to the Resident or to the Resident's estate when the Resident leaves Edgemere and the unit is re-sold, a new resident entrance fee is received by Edgemere, and the new resident has taken occupancy of the unit.

d. 0% or "Traditional" Plan. The Resident receives a forty percent (40%) saving from the standard Entrance Fee. No money is refunded to the Resident or the Resident's estate when the Resident leaves Edgemere.

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

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

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

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

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

a. **IL**. For residents who execute Lifecare Contracts and begin their residency at the Community in IL, the Monthly Service Fees range from $4,176 to $8,933. Should a resident permanently transfer from IL to a higher level of care, then the resident's Monthly Service Fee will be adjusted to the Lifecare Rate for Monthly Service Fees.

b. **AL**. Depending on the unit type selected, direct entrants to AL are charged a Monthly Service Fee ranging from $7,102 to $10,486. An Entrance Fee is not required for direct entrants to AL.

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

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

C. Corporate Governance

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

D. Management by Lifespace

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

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

E. Regulators

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

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

F. Prepetition Capital Structure

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

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

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

1. Bond Obligations

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

2. Edgemere's Ground Lease

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

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

3. Resident Refund Obligations

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

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

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

II. EVENTS LEADING TO BANKRUPTCY

A. Management Turnover and Employee Retention

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

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

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

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

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

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

B. Increased Competition

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

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

C. COVID-19 Pandemic and Declining Occupancy Rates

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

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

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

D. Negotiations with the Landlord

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

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

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

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

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

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

III. FACTS IN SUPPORT OF FIRST DAY MOTIONS

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

A. Joint Administration Motion

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

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

B. KCC Retention Application

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

C. Consolidated Creditor Motion

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

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

D. Schedules Extension Motion

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

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

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

E. Resident and Patient Care Confidentiality Motion

57. By the Resident and Patient Confidentiality Motion, the Debtors request entry of an order authorizing the implementation of procedures to protect confidential information of the Debtors' Residents and Patients as may be required by the Health Insurance Portability and Accountability Act of 1996 ("**HIPPA**").

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

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

F. Cash Management Motion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. Escrow Motion

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

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

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

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

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

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

H. Wage Motion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Tax Motion

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

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

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

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

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

a. **Sales and Use Taxes:** In the ordinary course of business, the Debtors collect sales and use taxes ("**Sales and Use Taxes**") from the (i) sale of food and beverage to customers (usually visiting guests of Residents) sold on the premises and (ii) occupancy of guest rooms on the premises by the Residents' visitors. The Debtors typically pay Sales and Use Taxes to the Applicable Taxing Authorities on a monthly basis which average less than $1,000 per month. The Debtors estimate that less than $1,000 in prepetition Sales and Use Taxes will become due and payable following the Petition Date.

b. **Property Taxes:** The Ground Lease requires the Debtors to pay real and personal property taxes and fees and assessments assessed during the term of the Ground Lease. In January 2022, the Debtors paid $1,925,733.43 related to the property taxes, which accrued during 2021, but did not become payable until January 2022. The 2022 Property Taxes will become due in 2023.

c. **Licensing Fees and Other Taxes.** Due to the nature of the Debtors' business, the Debtors incur licensing and permit fees to various government and regulatory agencies which are *de minimis* in amount. The Debtors do not believe that any such fees are due, but, out of an abundance of caution, seek to pay such fees if due with the first twenty-one (21) days of the Petition Date and thereafter as necessary in the ordinary course of business.

d. **Provider Fees.** Every four (4) years, the Debtors pay a re-validation fee (the "**Provider Fees**") calculated by the number of Medicare-certified beds at its Community. The last payment was made in 2020 (so the next payment is not anticipated to become due until 2024), but out of an abundance of caution, to the extent the Debtors any unexpected Provider Fees that must be paid post-petition, the Debtors seek authority to do so.

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

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

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

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

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

E. Utilities Motion

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

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

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

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

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

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

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

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

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

F. Insurance Motion

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

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

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

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

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

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

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

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

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

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

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

G. DIP and Cash Collateral Motion

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

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

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

CONCLUSION

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

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

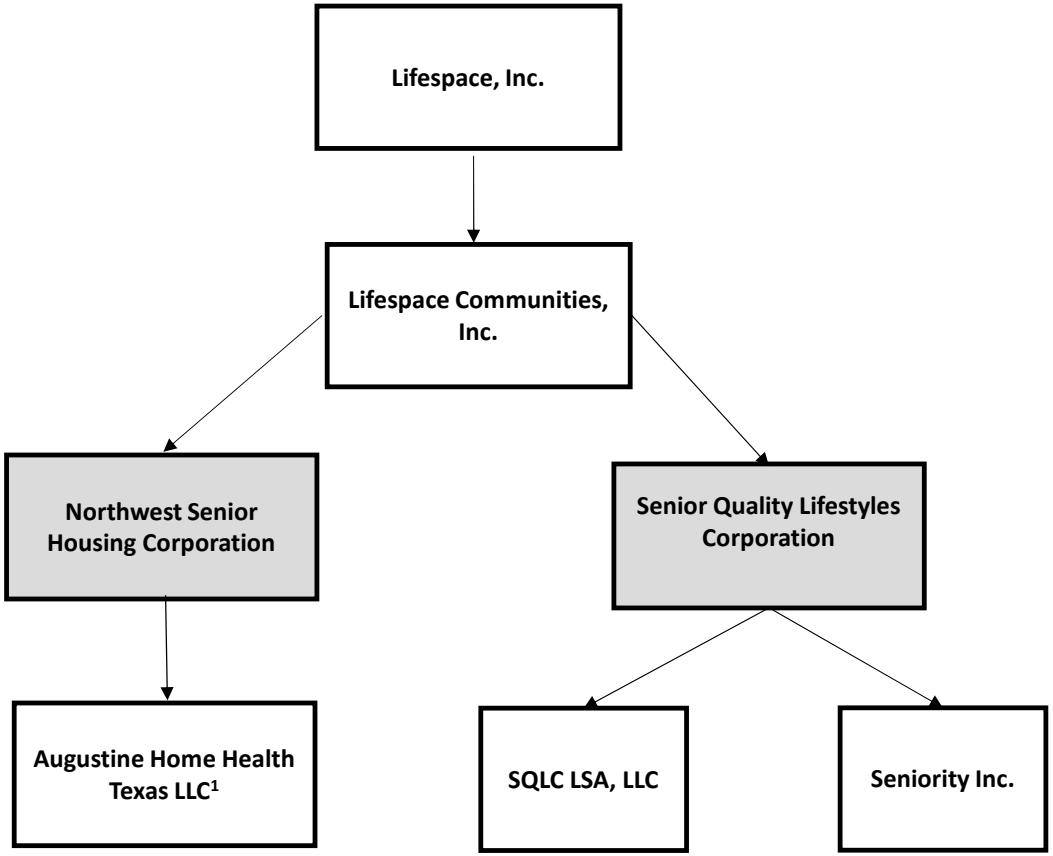
Dated: April 14, 2022
Dallas, Texas

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

EXHIBIT A

Debtor Entity

Northwest Senior Housing Corporation and Senior Quality Lifestyles Corporation
Organizational Chart



[1]Augustine is a 50/50 joint venture with Augustine Management Texas, Inc.

EXHIBIT 12

Fill in this information to identify the case:

Debtor Northwest Senior Housing Corporation

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 22-30659

Official Form 410
Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Lifespace Communities, Inc.
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Lifespace Communities, Inc.
   c/o Perkins Coie LLP, Attn: Eric Walker
   110 N. Wacker Dr., Suite 3400
   Chicago, IL 60606, USA

   Contact phone 312-324-8659
   Contact email EWalker@perkinscoie.com

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

2306592207210000000000023

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 5,348,565.73 . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See Addendum, attached.

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____



2230659220721000000000023

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
☑ No	
☐ Yes. *Check all that apply:*	
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/21/2022
MM / DD / YYYY

/s/Nicholas Harshfield
Signature

Print the name of the person who is completing and signing this claim:

Name: Nicholas Harshfield
First name Middle name Last name

Title: Chief Financial Officer

Company: Lifespace Communities, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 4201 Corporate Drive, West Des Moines, IA, 50266, USA

Contact phone: 515-288-5805 Email: nick.harshfield@lifespaceco



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0269 | International 001-310-823-9000

Debtor:
22-30659 - Northwest Senior Housing Corporation
District:
Northern District of Texas, Dallas Division

Creditor:
Lifespace Communities, Inc.
c/o Perkins Coie LLP, Attn: Eric Walker
110 N. Wacker Dr., Suite 3400

Chicago, IL, 60606
USA
Phone:
312-324-8659
Phone 2:
Fax:
Email:
EWalker@perkinscoie.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See Addendum, attached.

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
5,348,565.73

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
Nicholas Harshfield on 21-Jul-2022 4:52:51 p.m. Eastern Time
Title:
Chief Financial Officer
Company:
Lifespace Communities, Inc.

Optional Signature Address:
Nicholas Harshfield
4201 Corporate Drive

West Des Moines, IA, 50266
USA
Telephone Number:
515-288-5805
Email:
nick.harshfield@lifespacecommunities.com

ATTACHMENT TO PROOF OF CLAIM OF LIFESPACE COMMUNITIES, INC.

In Re: Northwest Senior Housing Corporation, et al.

Case No. 22-30659

This proof of claim, including this rider, is filed on behalf of Lifespace Communities, Inc. ("Lifespace" or "Claimant"). Lifespace asserts a claim in the amount of $4,998,413.08, comprised of (i) unpaid amounts owed by Northwest Senior Housing Corporation ("Edgemere" or the "Debtor") to Lifespace as reflected on Lifespace's books and records, and (ii) payments made on behalf of Edgemere related to cure of the Ground Lease, each as more fully set forth below.

INTERCOMPANY TRANSACTIONS

Lifespace provides general administrative and corporate services to Edgemere pursuant to that certain Management Services Agreement dated August 15, 2019 (the "MSA").[1] Under the MSA, Edgemere is obligated to pay Lifespace an annual fee (the "Corporate Overhead Fee"), which reflects Lifespace's estimated annual operating allocatable to Edgemere. Lifespace collects the assessed Corporate Overhead Fee on a monthly basis and records those transactions in Lifespace's books and records as the "Home Office Allocation."

As described in the Debtor's Cash Management Motion,[2] Edgemere and Lifespace are party to an integrated cash management system. As part of the cash management system, Lifespace frequently pays or prepays certain expenses for Edgemere related to marketing, insurance, employee benefits, IT, certain software licenses and other services that support Edgemere's operations. Lifespace either directly charges Edgemere or seeks reimbursement from

[1] The Management Agreement has been omitted from this proof of claim to protect confidential and commercially sensitive information. Lifespace will provide the Management Agreement upon request to the Debtor, the United States Trustee, or the Bankruptcy Court.

[2] *See* Docket No. 19.

Edgemere for such services. Lifespace also pays the salaries and related obligations for Edgemere's Executive Director, Associate Director, and Administrator, and then allocates those costs to Edgemere.

Lifespace also pays for corporate credit cards used by Edgemere employees for business and travel expenses. Lifespace then seeks reimbursement for those charges from Edgemere on a monthly basis.

GROUND LEASE CURE

Edgemere is party to that certain Ground Lease dated November 17, 1999, with Intercity Investment Properties (the "Ground Lease"). Prior to the Petition Date, defaults occurred under the Ground Lease. On March 7, 2022, Lifespace transferred $3,500,000 to UMB Bank, N.A. (the "Bond Trustee") on behalf of and for the benefit of Edgemere and then the Bond Trustee provided for a cure of the default pursuant to the terms of the Ground Lease. Following the cure of the Ground Lease, the Bond Trustee refunded $473,409.83 of unused funds to Lifespace. Accordingly, Lifespace asserts a claim for $3,026,591.17 for funds used to cure the Ground Lease. In addition to curing the default under the Ground Lease, Lifespace also paid unpaid brokerage fees that Edgemere was liable for under the Ground Lease in the amount of $58,751.90. On March 31, 2022, Lifespace transferred an additional $341,612.34 for additional amounts due under the Ground Lease and an additional $8,540.31 for amounts due on related brokerage fees.

CALCULATION OF CLAIM

In summary, the amounts owed by Edgemere to Lifespace as of the Petition Date are as follows:

Intercompany Transactions		
Home Office Allocation		
Date	**Description**	**Amount**
10/1/2021	Home Office Allocation - EDGE	$228,181.51 [3]
11/1/2021	Home Office Allocation - EDGE	$227,244.77
12/1/2021	Home Office Allocation - EDGE	$232,440.15
1/1/2022	Home Office Allocation - EDGE	$238,996.80
2/1/2022	Home Office Allocation - EDGE	$223,577.65
3/1/2022	Home Office Allocation - EDGE	$238,996.80
4/1/2022	Home Office Allocation - EDGE	$231,287.22
Allocated and Reimbursable Expenses		
12/31/2021	Reallocation from HO Prjct Code 1912 - IT Equipment	$8,269.00
12/31/2021	Arthur J Gallagher Risk Mgmet-4013516-Crime	$427.76
12/31/2021	Mono Advertising LLC-151004974 10/18/21	$299.00
3/1/2022	HO Line Item Allocation[4]	$28,967.70
3/28/2022	March ADP Pmt-E	$19,303.69
3/31/2022	February ADP Pmt-E	$19,762.73
3/31/2022	Reclass Texas Payroll	$35,605.45
4/1/2022	HO Line Item Allocation	$28,967.70
4/30/2022	Apr ADP Pmt-E	$19,909.44 [5]
4/30/2022	Reclass Texas Payroll - EDGE	$35,647.16 [6]
Credit Card		
	March – JP Morgan Credit Card	$52,630.15
	April – JP Morgan Credit Card	$42,555.33 [7]
Lease Cure		
3/7/2022	Lease Payment	$3,026,591.17
3/7/2022	Brokerage Fees	$58,751.90
3/31/2022	Lease Payment	$341,612.34
3/31/2022	Brokerage Fees	$8,540.31
	Total	**$5,348,565.73**

[3] The October Home Office Allocation was initially assessed in October and collected from Edgemere in November 2021. The charge was reversed on December 2, 2021, and $228,181.51 was refunded to Edgemere on account of the October Home Office Allocation.

[4] "HO Line Item Allocation" relates to direct monthly charges attributed to Lifespace's Accounts Payable and General Ledger system.

[5] ADP is the Debtor's third-party payroll administrator. Administrative fees owed to ADP are paid by Lifespace and allocated to Edgemere on a monthly basis.

[6] Salaries of the Debtor's Executive Director, Associate Director, and Administrator are paid by Lifespace on a bi-weekly basis and allocated to Edgemere on a monthly basis.

[7] Certain charges on the April Credit Card bill may relate to the post-petition period.

RESERVATION OF RIGHTS

The filing of this proof of claim does not constitute:

1. a waiver or release of any security held by Claimant, any right to claim specific assets, any right of setoff, recoupment or counterclaim, any right arising by operation of law or equity or Claimant's rights against any other person, entity or property;

2. a waiver or release of any right or claim of Claimant arising out of, or in respect of, any order entered in this case, or any other claim, of any nature whatsoever, which Claimant has against the Debtor, its estate or any other person or entity;

3. a waiver of the right of Claimant to further amend its Proof of Claim;

4. a waiver of a right to move to withdraw the reference, have final judgments and orders entered by the District Court, to challenge the jurisdiction of this Court; or

5. an election of any remedy to the exclusion, express or implied, of any other remedy.

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EXHIBIT 13

Trinitee G. Green (SBN 24081320)
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NOTICE OF (I) ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING CHAPTER 11 PLAN OF PLAN SPONSORS; (II) EFFECTIVE DATE OF PLAN SPONSORS' CHAPTER 11 PLAN; AND (III) CERTAIN POST-EFFECTIVE DATE DEADLINES

PLEASE TAKE NOTICE that an order (the "Confirmation and Sale Order") of the Honorable Michelle V. Larson, United States Bankruptcy Judge for the Northern District of Texas (the "Bankruptcy Court"), confirming the *Fourth Amended Chapter 11 Plan of the Plan Sponsors Dated February 17, 2023* [Docket No. 1241] (the "Plan") was entered on April 7, 2023 in the above captioned cases at Docket No. 1393.[1]

PLEASE TAKE FURTHER NOTICE that, pursuant to Section 9.2 of the Plan, all conditions precedent to the effectiveness of the Plan have been satisfied or waived. Therefore, June 13, 2023, is the Effective Date of the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan and its provisions, including the releases, exculpation, and injunction provisions, are binding on, among others, the Debtors, all Holders of Claims and Interests (irrespective of whether such Claims or Interests are impaired under the Plan or whether the Holders of such Claims have voted to accept or reject the Plan), each person or entity acquiring property under the Plan, and any and all non-Debtor parties to executory

[1] All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan and the Confirmation and Sale Order.

contracts and unexpired leases with the Debtors, as provided in the Plan; *provided, however*, that any party that timely submitted a proper opt-out form shall not be deemed to have consented to or be bound by the third party releases granted under Section 8 of the Plan.

PLEASE TAKE FURTHER NOTICE all Professional final fee applications (the "Final Fee Applications") must be filed no later than **July 28, 2023** (*i.e.*, the first business day that is forty-five (45) days after the Effective Date). The procedures for processing Final Fee Applications are set forth in the Plan. If a Professional does not timely submit a Final Fee Application, such Professional shall be forever barred from seeking payment of such Professional Claim from the Debtors or their Estates.

PLEASE TAKE FURTHER NOTICE that, except with respect to Professional Claims and Claims arising under section 503(b)(9) of the Bankruptcy Code, or as otherwise set forth in the Plan, requests for payment of Administrative Claims against the Debtors that arose between the Petition Date and June 13, 2023 (the "Administrative Claims Period") must be filed with the Bankruptcy Court and served on the Debtors no later than **July 13, 2023** (the "Administrative Claims Bar Date" (*i.e.*, the first business day that is thirty (30) days after the Effective Date). Holders of Administrative Claims that arose, accrued, or otherwise became due during the Administrative Claims Period who do not timely file requests for the allowance and payment thereof shall forever be barred from asserting such Administrative Claim(s) against the Debtors or their Estates. For the avoidance of doubt, the Administrative Claims Bar Date applies to any and all claims arising on or after the Petition Date, in contract or in tort, including, without limitation, professional or medical liability claims, and common liability claims, in law or in equity, or pursuant to any other theory of law.

PLEASE TAKE FURTHER NOTICE that as set forth in Section 5 of the Plan, except as otherwise provided in the Plan or in a motion, pleading or notice filed by the Debtors before the Effective Date, each of the Executory Contracts of the Debtors not previously assumed, assumed and assigned, or rejected pursuant to an Order of the Bankruptcy Court, shall be deemed rejected as of the Effective Date. Under the Plan, any counterparty to an Executory Contract that is rejected by the Debtors must file and serve a proof of claim for any Rejection Claim no later than **July 13, 2023** (*i.e.*, the first business day that is thirty (30) days after the Effective Date).

PLEASE TAKE FURTHER NOTICE that after the Effective Date, to continue to receive notice pursuant to Bankruptcy Rule 2002, all creditors and other parties in interest must file a renewed notice of appearance with the Bankruptcy Court requesting receipt of documents pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that copies of the Plan and the Confirmation and Sale Order may be obtained by: (a) calling (866) 967-0269 (toll free) or +1 (310) 751-2669 (international); (b) writing to Northwest Senior Housing Corporation Solicitation, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; (c) emailing EdgemereInfo@kccllc.com with a reference to "Edgemere" in the subject line; or (d) visiting the case website at http://www.kccllc.net/edgemere. You may also obtain such information for a fee via PACER at http://www.txnb.uscourts.gov.

***CURRENT RESIDENTS*, PLEASE TAKE FURTHER NOTICE** that your Residency Agreements signed before the Effective Date of the Plan have been rejected and are no longer in force. For the avoidance of doubt, you no longer have a Residency Agreement with Edgemere. You have been or will be provided new proposed Residency Agreements by the new management company, Long Hill at Edgemere, LLC ("Long Hill"), which will replace Lifespace as the manager of the community for the new owner Bay 9 Holdings LLC. Any questions you have about the new Residency Agreements being offered by Long Hill should be directed to Long Hill, which now operates the community.

Dated: June 20, 2023
Dallas, Texas

POLSINELLI PC

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EXHIBIT 14

IN RE: NORTHWEST SENIOR HOUSING CORPORATION, *ET AL.*

EXPERT REPORT OF CHAD J. SHANDLER
SENIOR MANAGING DIRECTOR
FTI CONSULTING

SEPTEMBER 15, 2022

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)
Northwest Senior Housing Corporation, Plaintiff, v. Intercity Investment Properties, Inc., and Kong Capital, LLC, Defendants.	Adv. No. 22-03040 (MVL)

I. Qualifications

I am a Senior Managing Director with FTI Consulting, Inc. ("FTI"), a consulting firm that maintains offices at 1166 Avenue of the Americas, New York, New York 10036, with other offices at various locations throughout the United States and in 30 countries around the world. I am a Certified Public Accountant, licensed by the State of New York and the State of New Jersey and a Certified Turnaround Professional. Over the course of my career, I have been directly involved in over 75 senior living restructurings, including continuing care retirement communities, and independent living, assisted living, memory care, and skilled nursing facilities. My curriculum vitae, along with a list of my prior expert testimony and expert reports, is attached hereto as Exhibit A.

[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.

II. Nature of Engagement

FTI was retained by counsel to Northwest Senior Housing Corporation ("Edgemere" or the "Community" or the "Facility") as its expert witness in connection to the bankruptcy proceedings for Edgemere and the material terms of FTI's retention, including compensation, are set forth in the engagement agreement that has been approved by the *Court's Order Authorizing Retention and Employment of FTI Consulting, Inc. as Financial Advisor to the Debtors Effective as of the Petition Date* [Dkt. No. 227]. Edgemere's counsel asked me to opine on issues related to:

1. The rarity of non-related party ground leases in the Continuing Care Retirement Community ("CCRC") sector (except involving related parties or not-for-profit ("NFP") landlords), especially leases that do not provide renewal rights or purchase options and the impact of a strict ground lease termination date on the CCRC business model, specifically the interest or willingness of new residents to enter the CCRC prior the ground lease termination date.
2. The impact of Sections 8.2 and 9.4 of the Ground Lease (defined below) on the interest or willingness of new residents to enter the Facility to the extent that such sections provide, among other things, that upon any termination of the Ground Lease the Landlord may terminate the life care contracts and residency agreements of the Facility's residents, evict the residents, and deny the return of the residents' entrance fee deposits.

III. Information Considered

This report is based upon, but not limited to:

- Ground lease executed between Intercity Investment Properties, Inc., a Texas corporation, *Lessor*, and Northwest Senior Housing Corporation, a Texas not-for-profit corporation, *Lessee* on or about November 5, 1999.
- American Senior Housing Associate (ASHA) data present in "The State of Senior Housing 2010"
- American Senior Housing Associate (ASHA) data present in "The State of Senior Housing 2021"
- Comprehensive Actuarial Study dated June 24, 2021 prepared by Continuing Care Actuaries, LLC

- Draft Closed Group Refund Projections dated February 7, 2022 prepared by Continuing Care Actuaries, LLC
- Edgemere Lifecare Agreement
- Declaration of Nick Harshfield in Support of Chapter 11 Petition and First Day Pleadings [Dkt. 7]
- Tex. Health & Safety Code Chapter 246
- Holder, J., & Jolley, D. (2012). Forced relocation between nursing homes: Residents' health outcomes and potential moderators. Reviews in Clinical Gerontology, 22(4), 301-319. doi:10.1017/S0959259812000147
- The Company source information, including:
    - Report Name: Edgemere - IL, Detailed Census Report - By Payer, Monthly Census - Ending September 2022 as of: September 6, 2022
    - Report Name: Edgemere - AL, Detailed Census Report - By Payer, Monthly Census - Ending September 2022 as of: September 6, 2022
    - Report Name: Edgemere - MC, Detailed Census Report - By Payer, Monthly Census - Ending September 2022 as of: September 6, 2022
    - Report Name: Edgemere - SN, Detailed Census Report - By Payer, Monthly Census - Ending September 2022 as of: September 6, 2022
    - Report Name: Member Financial Information, Current Residents Only, Total Fees Paid as of: August 31, 2022
    - Report Name: Member Demographic Information, Current & Past Residents as of: September 6, 2022
    - Report Names: EF Turn. 22 and Pending Refunds as of: August 31, 2022
    - Report Name: Member Financial Information, Current & Past Residents as of: August 31, 2022

The nature and scope of this engagement did not require an audit of this information in accordance with Generally Accepted Auditing Standards, a review, or compilation in accordance with Statements on Standards for Accounting and Review Services established by the American Institute of Certified Public Accountants (“AICPA”). Moreover, I did not (and was not required to) issue any compilation or examination reports in accordance with the AICPA’s Guide for Prospective Financial Statements.

I, or persons working under my supervision, have performed various procedures as I considered appropriate. The selection of documents used and the resulting analyses performed were made based on my independent judgment, experience, and expertise. My findings are based on these procedures.

The opinions and conclusion presented in this report are based on the information reviewed to date. Should additional relevant information or documents be produced, my opinions and conclusions could be influenced by that information.

IV. Background - Continuing Care Retirement Community

To understand the senior living product, it is necessary to understand fundamentals of this healthcare subsector, primarily the types of units, types of communities, types of CCRC contracts, and CCRC fees.

There are primarily four types of units which comprise senior housing: independent living, assisted living, memory care, and skilled nursing.

- Independent living units ("IL") are designed for seniors who pay for some services as part of a monthly fee or rental rate, and who require little, if any, assistance with Activities of Daily Living, such as bathing, eating, dressing, toilet, transfer in/out of bed, etc. Independent living residents may receive home health care services. Additionally, the community must contain a common dining facility that provides at least one daily meal as part of the monthly fee.[2]
- Assisted Living Beds ("AL") are designed for frail seniors who need assistance with Activities of Daily Living, but do not require continuous skilled nursing care. These beds can be offered in a separate wing, separate floor (or part of a floor), or a separate building.[3]

[2] American Senior Housing Associate (ASHA) data present in "The State of Senior Housing 2021" p. 29.

[3] Ibid. p. 29 – 30.

- Memory Care Beds ("MC") are designed for residents with significant cognitive impairment because of having been diagnosed with some type of dementia. MC beds are not licensed as nursing beds.[4]

- Skilled Nursing Beds ("SNF") are operational nursing beds and may be licensed nursing beds.[5]

CCRCs or Life Plan Communities feature a combination of independent living units and skilled nursing beds, as well as properties that combine independent living units, assisted living beds, memory care beds, and skilled nursing beds[6]. The implied length of stay for a CCRC resident, excluding SNF, is 9.2 years[7].

CCRCs are typically divided into two types - *rental* or *entrance fee*[8].

- *Rental CCRC*: Residents pay no up-front entry fee at the time of occupancy of an IL, and the resident pays the prevailing market rate for the level of care provided[9].

- *Entrance Fee CCRC*: Typically offers one of three types of contracts to its residents[10].

    - Extensive Care Contract (Type A): resident pays an up-front fee ("Entrance Fee") and an on-going monthly fee ("Monthly Service Fee") in exchange for the right to lifetime occupancy of an IL and certain services and amenities. Residents who require AL, MC or SNF care may transfer to the appropriate level and continue to pay essentially the same monthly fee they had been paying for IL.

    - Modified Contract (Type B): resident pays an Entrance Fee and an on-going monthly service fee for the right to stay in an IL and receive certain services and amenities. A modified contract obligates a CCRC to provide the appropriate level of AL, MC and SNF care to residents who entered IL but only for a specified period of time at a specified rate that may or may not be tied directly to the IL rate.

[4] Ibid. p. 30.
[5] Ibid.
[6] Ibid. p. 31.
[7] Ibid. p. 67.
[8] Ibid. p. 31.
[9] Ibid.
[10] American Senior Housing Associate (ASHA) data present in "The State of Senior Housing 2010, p. 10.

- Fee-For-Service Contract (Type C): Requires an Entrance Fee but does not include any discounted health care of AL, MC or SNF services.

The Entrance Fee paid by a resident upon the execution a Resident Agreement ("RA") and occupancy of an IL is generally based on the following factors – size of the resident's IL and location within the community, characteristics of the CCRC's primary market area and target resident base, including real estate market, income and savings levels, size of and competition within the primary market area, level of services provided by the CCRC, actuarial analysis, and Entrance Fee refund level paid to the resident upon his/her departure from the CCRC (the "Entrance Fee Refund").

As it relates to an Entrance Fee CCRC, there is a direct relationship between the Entrance Fee paid by the resident and the Entrance Fee Refund. The Entrance Fee Refund, typically a percentage of the Entrance Fee, will range from 0%, known as a traditional or fully amortizing contract, up to 100%, known as a return of capital contract. Typically, the greater the refund percentage, the larger the Entrance Fee paid related to the same respective IL space. An Entrance Fee Refund, if due, would be paid to the "former" resident or his/her estate upon such resident's departure from the CCRC based on the terms detailed in the RA and consistent with the respective state regulations, if any. Typical payment terms of the Entrance Fee Refund are: (1) re-occupancy of the resident's respective IL and receipt by the CCRC of a new Entrance Fee from a new resident; (2) the earlier of the re-occupancy of the resident's respective IL and receipt by the CCRC of a new Entrance Fee from a new resident or time period (i.e. twelve months); or (3) based on a queue whereby the next Entrance Fee Refund is paid from the next Entrance Fee received by the CCRC irrespective of which IL unit is reoccupied.

Given the expectation of resident care through the continuum and his/her anticipated length of stay and the payment of the Entrance Fee Refund and that the funds available for the payment of the Entrance Fee Refund would be from future Entrance Fees received, conceptually this would mean that the CCRC would continue in perpetuity or have a successor operator that would continue to honor the existing CCRC's obligations.

V. Northwest Senior Housing Corporation

Northwest Senior Housing Corporation d/b/a Edgemere is a Texas nonprofit corporation formed for the purpose of developing, owning and operating a senior living community now known as Edgemere. Since December 2001, Edgemere has operated a CCRC on an expansive 16.25-acre site located in Dallas, Texas. Edgemere operates a Type A "life care" entrance-fee model CCRC.

The Community is a luxury CCRC with 504 total available units separated into (a) an independent living and (b) a Health Center ("The Plaza"). The Community consists of 304 independent living units. The Plaza consists of three floors that offer assisted living, memory care/memory support, and skilled nursing options. The Community houses 68 one-bedroom AL suites, 45 one-bedroom MC units, 87 SNF beds, and guest suites.[11]

As described above, for a Type A Entrance Fee CCRC, residents pay an Entrance Fee upon executing a RA and occupancy of an IL. Edgemere offers four Entrance Fee Refund options for its residents:

- 90% Refundable Plan. Under this plan, the resident pays a standard Entrance Fee and a Monthly Service Fee. Ninety percent (90%) of the Entrance Fee is refunded to the Resident or to the Resident's estate when the Resident leaves Edgemere, and the unit is re-sold, a new resident entrance fee is received by Edgemere, and the new resident has taken occupancy of the unit.
- 70% Refundable Plan. Under this plan, the resident pays a standard Entrance Fee, the Monthly Service Fee is reduced by 20% for a single person (or the Monthly Service Fee for a second person is removed), and the lifecare rate begins when residents transition to The Plaza. Seventy percent (70%) of the Entrance Fee is refunded to the resident or to the resident's estate when the resident leaves Edgemere and the unit is re-sold, a new resident entrance fee is received by Edgemere, and the new resident has taken occupancy of the unit.
- 50% Refundable Plan. This plan applies to one-bedroom floor plans only and is amortized (2% per month). Under this plan, the resident's Monthly Service Fee is reduced by $1,000 for life (with annual increases applicable) through the continuum of care. The Monthly Service Fee for a second person remains the

[11] Declaration of Nick Harshfield in Support of Chapter 11 Petition and First Day Pleadings [Dkt. 7]

same through continuum of care (with annual increases applicable). Fifty percent (50%) of the entrance fee is refunded to the resident or to the resident's estate when the resident leaves Edgemere and the unit is re-sold, a new resident entrance fee is received by Edgemere, and the new resident has taken occupancy of the unit.

- 0% or "Traditional" Plan. The resident receives a forty percent (40%) saving from the 90% Refundable Plan Entrance Fee. No money is refunded to the resident or to the resident's estate when the resident leaves Edgemere.

As of September 6, 2022, Edgemere's occupancy by level of care is as follows[12]:

Level of Care	Lifecare Residents	Non-Lifecare Residents	Total Residents
Independent Living	265	0	265
Assisted Living	15	30	45
Memory Care	6	16	22
Skilled Nursing	13	35	48
Total	**299**	**81**	**380**

As of August 31, 2022, the mix of Edgemere's Entrance Fee contract refund obligations is as follows[13]:

Refund Percentage	Number of Lifecare Contracts	% of Total
90%	214	87.7%
70%	27	11.1%
50%	1	0.4%
0%	2	0.8%
Total	244	100.0%

[12] Report Name: Edgemere - IL, Detailed Census Report - By Payer, Monthly Census - Ending September 2022 as of: September 6, 2022; Report Name: Edgemere - AL, Detailed Census Report - By Payer, Monthly Census - Ending September 2022 as of: September 6, 2022; Report Name: Edgemere – MC; Detailed Census Report - By Payer, Monthly Census - Ending September 2022 as of: September 6, 2022; Report Name: Edgemere - SN, Detailed Census Report - By Payer, Monthly Census - Ending September 2022 as of: September 6, 2022.

[13] Report Name: Member Financial Information, Current Residents Only, Total Fees Paid as of: August 31, 2022; Report Name: Member Demographic Information, Current & Past Residents as of: September 6, 2022.

As of August 31, 2022, Edgemere's Entrance Fee Refund obligations to its current and former residents is as follows[14]:

	Obligation
IL	$ 108,073,478
AL	4,751,585
MS	1,542,786
SNF	4,429,585
Total Current	**118,797,435**
Untriggered Refunds	28,373,053
Triggered and Unpaid Refunds	1,896,008
Untriggered Refunds - Funds in Escrow	10,209,130
Total Former	**40,478,191**
Total	**$ 159,275,626**

As of September 6, 2022, the implied average length of stay for an Edgemere lifecare resident was between 10.8 and 11.5 years[15].

VI. Intercity Investment Properties, Inc. Ground Lease

On or around November 5, 1999, a ground lease was executed between Intercity Investment Properties, Inc., a Texas corporation, *Lessor*, and Northwest Senior Housing Corporation, a Texas not-for-profit corporation, *Lessee*, for the use of "certain real property [the "Land"] containing approximately 16.25 acres and located at the Northwest Corner of the intersection of Thackery Road and Northwest Highway in the City of Dallas, Dallas County Texas" (the "Ground Lease"). This Land would become the site of Edgemere.

I have been asked by counsel to Northwest Senior Housing Corporation to address three aspects of the Ground Lease:

[14] Report Name: Member Financial Information, Current Residents Only, Total Fees Paid as of: August 31, 2022; Report Name: Member Demographic Information, Current & Past Residents as of: September 6, 2022; Report Names: EF Turn. 22 and Pending Refunds as of: August 31, 2022; Report Name: Member Financial Information, Current & Past Residents as of: August 31, 2022

[15] Report Name: Member Demographic Information, Current & Past Residents as of: September 6, 2022; Draft Closed Group Refund Projections dated February 7, 2022 prepared by Continuing Care Actuaries, LLC.

- Article III - The term of the Ground Lease would be fifty-five (55) years from the commencement date of the Ground Lease unless extended by agreement of the Lessor and Lessee or sooner terminated.
- Section 8.2 **Remedies**. Specifically, "Upon termination of the Lease, or upon any termination of the Lessee's right to possession without termination of the Lease . . . Lessee . . . grants to Lessor . . . with or without process of law, and to repossess the leased premises at Lessor's former estate, and ***to expel or remove*** Lessee and ***any others who may be occupying or within the leased premises***, without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damages resulting therefrom . . ."
- Section 9.4 **Cancellation Not Merger**. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation hereof, or the termination hereof by Lessor pursuant to any provision contained herein, shall not work a merger, but at the option of Lessor shall either terminate any or all existing subleases or subtenancies hereunder, ***including, without limitation, any life care contracts***, or operate as an assignment to Lessor of any or all of such subleases or subtenancies, including, without limitation, life care contracts. ***Nothing herein contained shall be deemed or construed to require Lessor under any circumstances to assume or accept assignment of any life care contracts*** nor to permit attornment or any holding over by the holders thereof.

VII. Opinions

1. **The rarity of non-related party ground leases in the Continuing Care Retirement Community sector (except involving related parties or not-for-profit landlords), especially leases that do not provide renewal rights or purchase options and the impact of a strict ground lease termination date on the CCRC business model, specifically the interest or willingness of new residents to enter the facility prior the ground lease termination date.**

In my opinion and experience, non-related party ground leases are extremely rare[16]. In fact, Edgemere is the only CCRC that I have experienced that operates pursuant to a non-related party, for-profit ground lease and one with a strict termination date. When a CCRC has a fixed life, as in the case of Edgemere due to the Ground Lease termination date, prospective residents have a significant disincentive to choose that CCRC in which to live.

CCRC residents have an expectation that (1) he/she will be cared for as outlined in the RA for his/her length of stay and (2) he/she will receive payment of his/her Entrance Fee Refund. Conceptually this would mean that a CCRC would need to continue in perpetuity or have a successor operator that would continue to honor the existing CCRC's obligations. Considering the national average length of stay for a CCRC resident is 9.2 years, or for the Edgemere approximately 11 years, a prospective lifecare resident would have no reason to choose a CCRC with less than 9 to 10 years remaining in its operational life as there exists a strong likelihood that he/she may outlive the CCRC. Further, it is unlikely funds will be available to pay the Entrance Fee Refund as funds are available from future Entrance Fees. Considering these two factors Entrance Fees will diminish more than a decade prior to the Ground Lease termination date, therefore effectively causing the CCRC winddown operations well prior to the Ground Lease termination date and in conflict with the Entrance Fee CCRC business model. When a CCRC operates pursuant to a ground lease, it is with a similar mission-based organization or related party. In these cases, the goals and mission of the related party and

[16] To confirm this opinion, I, or those working under my direct supervision, conducted a search for information regarding CCRC's subject to a ground lease using public sources and paid-for subscriptions services, including, but not limited to: American Senior Housing Association, National Investment Center for Seniors Housing & Care, Inc., Levin Associates, McKnights Long-Term Care and Senior Living. No specific information was available to determine the number, or proportion, of CCRC's with a ground lease.

the CCRC are aligned. A third-party lease with a strict termination date and no ability to renew or extend is inconsistent with the continuity concept.

2. **The impact of Sections 8.2 and 9.4 of the Ground Lease (defined below) on the interest or willingness of new residents to enter the Facility to the extent that such sections provide, among other things, that upon any termination of the Ground Lease the Landlord may terminate the life care contracts and residency agreements of the Facility's residents, evict the residents, and deny the return of the residents' entrance fee deposits.**

As stated above, CCRC residents have two paramount expectations that (1) he/she will be cared for as outlined in the RA for his/her length of stay and (2) he/she will receive payment of his/her Entrance Fee Refund. Sections 8.2 and 9.4 of the Ground Lease are diametrically opposed to these two priorities. As written, upon termination of the Ground Lease (whether upon expiration of the term of the lease or an earlier termination resulting from an uncured breach thereof), to which the resident is not a party and therefore has no ability to influence, the Lessor has the unilateral right to evict the residents and terminate their lifecare contracts (aka RA) without liability to the residents for doing so. These Ground Lease provisions are entirely contradictory to the lifecare CCRC business model designed provide a stable long-term healthcare environment to reduce the risks and concerns for aging seniors.

In the State of Texas, entrance fee CCRCs are regulated.[17] Oversight is provided by the Texas Department of Insurance ("TDI"). TDI reviews and approves the disclosures entrance fee CCRCs make to prospective residents and assesses the financial condition of entrance fee CCRCs through periodic financial reporting by CCRCs and discussions with respective CCRC operators. TDI is a key regulator for this sector, in part, because of the obligations of the CCRC to provide long-term healthcare to its residents pursuant to the entrance fee lifecare contract, is considered akin to an insurance instrument. Collectively, Sections 8.2 and 9.4 of the Ground Lease, not only create the potential significant Entrance Fee Refund financial loss for current Edgemere residents of approximately $119 million, but would also deprive residents of their long-term healthcare coverage for which, in part, their Entrance Fee was intended to provide. Further, the potential eviction from the Edgemere would require residents at all levels of care

[17] Tex. Health & Safety Code Chapter 246.

to find and transition to new residences, regardless of their means and ability to do so, especially considering their financial loss, and with a likely detrimental impact on their health and wellbeing[18].

September 15, 2022

Respectfully Submitted,



Chad J. Shandler, CPA
Senior Managing Director
FTI Consulting, Inc.

[18] Holder, J., & Jolley, D. (2012). Forced relocation between nursing homes: Residents' health outcomes and potential moderators. Reviews in Clinical Gerontology, 22(4), 301-319. doi:10.1017/S0959259812000147

EXHIBIT A

Chad J. Shandler
FTI Consulting, Inc.
1166 Avenue of the Americas
15th Floor
New York, New York 10036
212 841 9349

Chad J. Shandler

Senior Managing Director



Chad Shandler is a Senior Managing Director in the Turnaround & Restructuring Services practice and serves as Co-Leader of Healthcare Restructuring Services. For over 25 years, Mr. Shandler has specialized in leading restructuring efforts as the Chief Restructuring Officer or Financial Advisor on behalf of financially troubled companies, indenture trustees, secured creditors and creditor groups.

With deep expertise in developing financial and operating plans, evaluating restructuring alternatives and analyzing solvency issues, Mr. Shandler works diligently and expeditiously to aid organizations and their stakeholders to restructure and transform operations, drive enterprise value and maximize recovery.

Mr. Shandler's vast industry expertise spans healthcare, higher education, non- and not-for-profit, telecommunications, retail, manufacturing and distribution, publishing, real estate and sports and entertainment, among others.

With regard to the healthcare sector, Mr. Shandler's expertise includes serving as a Chief Restructuring Officer and advising stakeholders with an emphasis in continuing care retirement communities, assisted living facilities, skilled nursing facilities, free standing emergency rooms, physician practices, and hospitals. He has assessed their financial performance, compared their operating results to industry norms, developed "bottoms-up" multi-year financial forecasts, prepared business valuations, supported their asset sales and due diligence processes, arranged financing and evaluated their marketing plans, marketing efforts, and demographics of their primary market areas.

A representative list of Mr. Shandler's previous clients includes Neighbors Health, Adeptus Health, Arlington of Naples, Hygea Holdings, Walker County Hospital District, Kingswood Retirement Community, Inverness Village, Dowling College, St. Francis Hospital and Health Centers, UGHS Senior Living, Erickson Retirement Communities and Tarragon Corporation. Known as a leading expert in the industry, Mr. Shandler has been appointed as a Special Fiscal Agent in the Superior Court of New Jersey and has been appointed in numerous fiduciary roles, including as the Liquidating Trustee of multiple companies. In addition, Mr. Shandler is a frequent lecturer on bankruptcy, restructuring and accounting matters and has appeared on FOX Business News.

Prior to joining FTI Consulting, Mr. Shandler was Partner and the National Director of Restructuring & Insolvency Advisory and Dispute Resolution Services at CohnReznick LLP. Mr. Shandler is active in his community, serving as a member of the Olin Alumni Board of the Olin School of Business at Washington University at St. Louis, the JFNA Emergency Committee and the UJA-Federation of New York's Accountability Committee. He served as a past chair of the Jewish Federations of North American National Young Leadership Cabinet and is a past member of the UJA-Federation of New York's Finance Committee.

Location
New York

Certifications
Certified Public Accountant

Certified Turnaround Professional

Chartered Global Management Accountant

Education
B.S.B.A., Accounting, Olin School of Business, Washington University in St. Louis

Mr. Shandler's testimony, affidavits and expert reports:

- In re: Northwest Senior Housing Corporation, *et al*., United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 222-30659 (MVL), testimony given 2022.
- In re: Henry Ford Village, Inc., United States Bankruptcy Court for the Eastern District of Michigan, Southern Division, Case No. 20-51066-MAR, testimony given 2020 and 2021.
- In re: Neighbors Legacy Holdings, Inc. et al., United States Bankruptcy Court for the Southern District of Texas, Case No. 18-33836-MI, testimony given 2018 and 2019.
- In re: UpLift Rx, LLC et al., United States Bankruptcy Court for the Southern District of Texas, Case No. 17-32186-MI, testimony given 2018.
- In re: Westport Holdings Tampa, Limited Partnership and Westport Holdings Tampa II, Limited Partnership, United States Bankruptcy Court for the Middle District of Florida (Tampa Division), abbreviated expert report and testimony given 2018.
- In re: Zerga Phin-Ker, LP, United States Bankruptcy Court for the Eastern District of Texas, Case No. 15-42087, testimony given 2016.
- In re: UGHS Senior Living, Inc. et al., United States Bankruptcy Court for the Southern District of Texas, Case No. 15-80399, testimony given 2015 and 2016.
- In re: St. Francis' Hospital, Inc. et al., United States Bankruptcy Court for the Southern District of New York, Case No. 13-37725, testimony given 2013 and 2014.
- In re: Advanced Living Technologies, Inc., United States Bankruptcy Court for the District of Texas, Case No. 13-10313-HCM, testimony given 2013.
- RP Baldwin Residential LLC et al., v Travelers Property Casualty Company of America et al., (FL State Court), expert report issued and deposition given 2012.
- CC-Aventura, Inc., et al. v.The Weitz Company, et al., (FL State Court), expert report issued.
- In re: Atlantis Plastics, Inc., et al,. United States Bankruptcy Court for the Northern District of Georgia (Atlanta Division), Case No. 08-75473; deposition and testimony given 2008.
- In re: Lakeview Subacute Care Center, Inc., et al., United States Bankruptcy Court for the District of New Jersey, Case No. 04-43311; deposition and testimony given 2006.
- In re: Insilco Technologies, Inc., at al., United States Bankruptcy Court for the District of Delaware, Case No. 02-13672; deposition given 2003, testimony given 2006.
- In the Matter: Savage & Associates, P.C. v. Time Warner Communications, et al., United States Bankruptcy Court Southern District of New York, Adv. Pro. No. 03-03320-smb, Chapter 11 Case No. 01-12974; expert report issued March 1, 2004.

EXHIBIT 15

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*,[1]	Case No. 22-30659 (MVL)
Debtors.	(Jointly Administered)

DECLARATION OF CHAD SHANDLER IN SUPPORT OF (I) DEBTORS' OBJECTION TO MOTION TO DISMISS CHAPTER 11 CASES UNDER 11 U.S.C. § 1112(b) AND (II) MOTION OF DEBTORS FOR ENTRY OF AN ORDER EXTENDING THE EXCLUSIVITY PERIOD FOR THE FILING OF A CHAPTER 11 PLAN

Under 28 U.S.C. § 1764, Chad Shandler, declares as follows under the penalty of perjury:

1. I am a Senior Managing Director with FTI Consulting, Inc., together with its wholly-owned subsidiaries ("**FTI**"), an international consulting firm that has been retained in the above-captioned cases to serve as the financial advisors of the above-captioned debtors and debtors in possession (the "**Debtors**"). FTI has served as financial advisor to the Debtors and certain of the Debtors non-debtor affiliates since February 2021. Since that time, I have become familiar with the Debtors' business, including all financial functions, while leading the efforts to explore strategic alternatives for the Debtors.

2. I submit this declaration (the "**Declaration**") in support of the *Debtors' Objection to Motion to Dismiss Chapter 11 Cases under 11 U.S.C. § 1112(B)* [Docket No. 624] (the "**Objection**") and Motion of Debtors for Entry of an Order Extending the Exclusivity Period for

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



the Filing of a Chapter 11 Plan [Docket No. 534] (the "**Exclusivity Motion**").[2] I am over 18 years of age and competent to make this Declaration and testify to the facts set forth herein.

3. In my role, I have worked closely with the Debtors' management and professionals. I am generally familiar with the Debtors' day-to-day operations, business, financial affairs, and books and records. Since February 2021, I have reviewed the financial statements, observed management in their daily business, and discussed the business with employees, Debtors' counsel, and boards of directors. Except as otherwise indicated, all facts as set forth in the Declaration are based upon my personal knowledge, my discussions with current and former employees and other members of the Debtors' management team, senior personnel, and advisors, my review of relevant documents and information concerning the Debtors' operations and financial affairs, as well as the Debtors' books and records, or my opinions based upon my experience and knowledge. If called as a witness to testify in this matter, I could and would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtors.

A. The Debtors proposed DIP budget, as amended, appropriately provides financing for actual operating expenses to date.

4. Prior to the Petition Date, FTI worked with the Debtors to appropriately determine the necessary financing to finance these Chapter 11 Cases from the Petition Date through December 31, 2022. In negotiating the size of the commitment for post-petition financing, $2,000,000 on an interim basis and up to $8,100,000 on a final basis for a total of up to $10,100,000 (the "**DIP Facility**"), the Debtors anticipated postpetition operating losses, in part, as a result of prepetition actions and misconduct of Intercity Investment Properties, Inc. and Kong Capital, LLC (collectively, the "**Defendants**") as alleged in Edgemere's adversary complaint against

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Objection and the Exclusivity Motion, as appropriate.

Defendants. FTI worked with the Debtors' management and management company to prepare the initial 13-week budget (the "**Initial DIP Budget**") attached as Exhibit 1 to the *Final Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests and Superpriority Claims* [Docket No. 421] (the "**Final DIP Order**") entered by the Court on June 23, 2022. FTI also worked with the Debtors' management and management company to prepare the amended DIP Budget that was filed in these Chapter 11 Cases on August 15, 2022. *See* Docket No. 546 (the "**Amended DIP Budget**") (collectively, the "**DIP Budgets**").

5. After the expiration of the Initial DIP Budget, as is customary, FTI and the Debtors re-forecasted the DIP Budget and provided a subsequent budget through November 13, 2022. Attached hereto as Exhibit A is an analysis of the Debtors performance under the Initial DIP Budget and the Amended DIP Budget.

6. The analysis of the Initial DIP Budget reflects, among other things: (a) the forecasted receipts have been accurate within a 1% variance and (b) the forecasted operating disbursements were nearly 18% lower than anticipated. The reduced disbursements are a result of, among other things, obtaining favorable credit terms with trade creditors (typically, budgeting assumes no credit terms) and timing differences related to certain payments.

7. The analysis of the Amended DIP Budget reflects, among other things: (a) the forecasted receipts have been accurate within a 1% variance and (b) the forecasted operating disbursements were within 3% of projected amounts. Simply put, the Debtors are paying their obligations as they come due while in bankruptcy pursuant to the DIP Budgets, and the Debtors are unaware of any defaults related to the DIP Budgets.

B. The Debtors have sufficient availability under the DIP Budget to pay expenses through December 31, 2022.

8. As discussed above, the DIP Budgets have reasonably estimated the receipts and disbursements associated with the postpetition operations of the Debtors.

9. Attached hereto as Exhibit B are the Debtors' cashflow projections (the "**Cashflow Projections**") through December 31, 2022.

10. The Cashflow Projections show that there is sufficient cash available to pay budgeted disbursements during these Chapter 11 Cases through December 31, 2022. In addition, based upon current estimates, the Debtors would have approximately $800,000 of cash on hand *and* $800,000 in unused availability under the DIP Facility at December 31, 2022.

C. Other Facts Supporting Exclusivity

11. Upon information and belief, the Debtors are seeking additional financing to provide funding for these Chapter 11 Cases after the December 31, 2022 DIP Facility maturity date.

12. Northwest Senior Housing Corporation d/b/a Edgemere ("**Edgemere**") is a luxury continuing care retirement community ("**CCRC**") that offers a continuum of care in a campus style setting located on a 16.25 acre campus in Dallas, Texas, providing living accommodations and related health care and support services to persons aged 62 and older. Nearly 400 seniors reside at Edgemere, relying on Edgemere to provide high standard levels of healthcare and satisfy their wellbeing needs for the duration of their lives.

13. As of the Petition Date, Edgemere employed approximately 283 individuals, including approximately 250 full-time employees, 9 part-time employees and 22 per diem employees.

14. CCRCs are operationally and financially complex businesses. Edgemere's financial and business problems are particularly intricate and nuanced.

15. As of the Petition Date, Edgemere's total secured and unsecured liabilities exceeded $261 million.

16. Significant drivers of the depressed occupancy rates at Edgemere include: (a) increased competition in Dallas and surrounding areas; and (b) the prepetition campaign and misconduct, as alleged in Edgemere's adversary complaint, by the Defendants against Edgemere. In my experience, based on escrow arrangements offered to new residents while a CCRC in financial uncertainty and/or bankruptcy, CCRCs continue to execute new sales despite being in distress and/or bankruptcy. However, since the Petition Date, the Debtor has only closed one new independent living sale and the entrance fee deposit has been received and deposited into the Debtors' entrance fee escrow account for the resident's protection.

17. Before the Petition Date and during these Chapter 11 Cases, FTI has assisted the Debtors in the assessment of alternative business models and evaluating various options for restructuring and, ultimately, exiting bankruptcy as reorganized Debtors.

18. Since the Petition Date, the Debtors have shared confidential information with the Trustee, as Trustee and the DIP Lender, and the official committee of unsecured creditors appointed in these Chapter 11 Cases. I have participated in multiple meetings with all three stakeholders, including an in-person meeting at the Dallas office of Polsinelli PC. The Debtors have provided the bondholders and Committee with significant financial information, including financial models, and have responded to follow up requests for information.

19. Since well before the Petition Date, the Debtors have evaluated various business models and explored multiple alternatives for reorganizing in Chapter 11. The Debtors are continuing to evaluate and further develop alternative options that may result in an amended plan of reorganization or the filing of a completely new and different plan. Although groundwork has

been laid, the Debtors need additional time to determine if and when to propose such an alternative path to emergence.

20. I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information, and belief, and respectfully request that all relief requested in the Motion be denied, together with such other further relief as is just.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 28, 2022

/s/ Chad J. Shandler
Chad J. Shandler
Senior Managing Director, FTI Consulting, Inc.

Exhibit A

Edgemere

Budget v. Actual

Period	Initial DIP Budget - For the 14-Week Period Ended 8/7[1]			Amended DIP Budget - For the 6-Week Period Ended 9/18[2]		
	Actual	Budget	Variance ($)	Actual	Budget	Variance ($)
Total Operating Receipts	$ 8,309,314	$ 8,391,450	$ (82,137)	$ 3,877,274	$ 3,917,950	$ (40,677)
Operating Disbursements						
Salaries & Wages	3,149,593	3,441,000	291,407	1,319,245	1,438,830	119,586
Employee Benefits & Taxes	948,849	894,021	(54,828)	399,569	512,202	112,633
Culinary	706,162	697,353	(8,809)	270,823	271,392	569
Environmental Services	24,638	89,584	64,946	16,254	13,668	(2,586)
General & Administration	433,250	1,069,839	636,589	558,968	403,868	(155,100)
Leisure Services	41,355	93,256	51,901	37,085	28,571	(8,513)
Plant	458,673	750,368	291,695	382,242	251,159	(131,083)
Skilled Nursing	192,937	485,158	292,221	267,620	218,440	(49,180)
Ground Lease	1,503,094	1,537,256	34,161	375,774	384,314	8,540
Other Disbursements[3]	13,250	15,706	2,455	16,084	18,362	2,278
Total Operating Disbursements	7,471,800	9,073,540	1,601,740	3,643,663	3,540,806	(102,857)
Net Cash from Operations	**837,513**	**(682,090)**	**1,519,603**	**233,611**	**377,144**	**(143,533)**
Non-Operating/Bankruptcy Receipts/(Disbursements)						
Capital Expenditures	(446,180)	(557,295)	111,115	(102,800)	(325,364)	222,565
Restructuring Professional Fees - Company	(116,091)	(1,803,000)	1,686,909	(1,029,562)	(2,387,833)	1,358,272
Restructuring Professional Fees - DIP Lenders	-	(450,000)	450,000	(600,000)	(600,000)	-
Restructuring Professional Fees - UCC	-	(350,000)	350,000	-	(411,667)	411,667
Independent Director Fees	(45,000)	(45,000)	-	-	(15,000)	15,000
Ombudsman Fees	-	(25,000)	25,000	(14,427)	(17,737)	3,310
UST Fees	(43,710)	(86,520)	42,810	(180)	-	(180)
Other Non-Operating Receipts/(Disbursements)	(66,627)	-	(66,627)	-	-	-
Total Non-Operating Receipts/(Disbursements)	(717,607)	(3,316,815)	2,599,207	(1,746,968)	(3,757,602)	2,010,633
Net Cash Flow	**$ 119,906**	**$ (3,998,904)**	**$ 4,118,810**	**$ (1,513,358)**	**$ (3,380,458)**	**$ 1,867,100**
Cash Rollforward						
Beginning Cash and Investments[4]	$ 1,904,933	$ 1,904,933	$ -	$ 3,623,249	$ 3,623,249	$ -
Net Cash Flow	119,906	(3,998,904)	4,118,810	(1,513,358)	(3,380,458)	1,867,100
DIP Borrowing	1,600,000	2,900,000	(1,300,000)	1,700,000	1,700,000	-
Ending Cash and Investments	**$ 3,624,838**	**$ 806,029**	**$ 2,818,810**	**$ 3,809,892**	**$ 1,942,792**	**$ 1,867,100**
DIP Rollforward						
Beginning Balance	$ 1,000,000	$ 1,000,000	$ -	$ 2,600,000	$ 2,600,000	$ -
Borrowing	1,600,000	2,900,000	(1,300,000)	1,700,000	1,700,000	-
Ending Balance	**$ 2,600,000**	**$ 3,900,000**	**$ (1,300,000)**	**$ 4,300,000**	**$ 4,300,000**	**$ -**

[1] Budget relates to Dkt. 421 filed on June 23, 2022.

[2] Budget relates to Dkt. 546 filed on August 15, 2022.

[3] Other Disbursements include assisted living, memory support, taxes, and COVID related disbursements.

[4] Beginning Cash and Investments for the budget was trued up based on actual beginning cash balance. Beginning cash for the Amended DIP Budget was adjusted by $1,589 due to reconciliation.

Exhibit B

Edgemere

Cash Flow through 12/31/2022

US $ (unless specified otherwise) Month Ended:	Projected Aug-22	Projected Sep-22	Projected Oct-22	Projected Nov-22	Projected Dec-22	8/1/2022 - 12/31/2022 Projected Total
Total Operating Receipts	$ 2,479,845	$ 2,445,762	$ 2,459,319	$ 2,471,821	$ 2,459,315	$ 12,316,061
Operating Disbursements						
Salaries & Wages	976,175	1,038,510	980,957	1,417,551	976,438	5,389,631
Employee Benefits & Taxes	206,987	209,872	207,764	250,606	208,797	1,084,025
Culinary	267,562	266,892	262,306	265,464	261,819	1,324,043
Environmental Services	13,631	13,563	13,610	13,556	13,605	67,965
General & Administration	358,827	315,183	271,311	392,596	214,887	1,552,805
Leisure Services	24,041	24,041	24,041	24,041	24,041	120,205
Plant	226,587	230,699	231,476	217,149	209,043	1,114,954
Skilled Nursing	205,038	145,631	153,980	149,875	159,989	814,514
Ground Lease	768,628	384,314	-	801,810	-	1,954,752
Other Disbursements[1]	3,651	3,650	3,656	3,654	3,665	18,275
Total Operating Disbursements	3,051,127	2,632,356	2,149,100	3,536,302	2,072,283	13,441,169
Net Cash from Operations	**(571,283)**	**(186,594)**	**310,219**	**(1,064,482)**	**387,032**	**(1,125,107)**
Non-Operating/Bankruptcy Receipts/(Disbursements)						
Capital Expenditures	(364,050)	(170,217)	(170,217)	(230,217)	(230,217)	(1,164,918)
Restructuring Professional Fees - Company	(2,387,833)	(1,094,100)	(580,000)	(590,000)	(525,000)	(5,176,933)
Restructuring Professional Fees - DIP Lenders	(600,000)	(150,000)	(150,000)	(150,000)	(150,000)	(1,200,000)
Restructuring Professional Fees - UCC	(411,667)	(164,583)	(61,667)	(61,667)	(61,667)	(761,250)
Independent Director Fees	(30,000)	(15,000)	-	(30,000)	-	(75,000)
Ombudsman Fees	(17,737)	-	(25,000)	-	-	(42,737)
UST Fees	-	-	(107,548)	-	-	(107,548)
Net Cash Flow	**$ (4,382,570)**	**$ (1,780,494)**	**$ (784,214)**	**$ (2,126,365)**	**$ (579,852)**	**$ (9,653,494)**
Cash Rollforward						
Beginning Cash and Investments	$ 3,752,979	$ 770,409	$ 789,915	$ 805,701	$ 779,336	$ 3,752,979
Net Cash Flow	(4,382,570)	(1,780,494)	(784,214)	(2,126,365)	(579,852)	(9,653,494)
DIP Borrowing	1,400,000	1,800,000	800,000	2,100,000	600,000	6,700,000
Ending Cash and Investments	$ 770,409	$ 789,915	$ 805,701	$ 779,336	$ 799,484	$ 799,484
DIP Rollforward						
Beginning Balance	$ 2,600,000	$ 4,000,000	$ 5,800,000	$ 6,600,000	$ 8,700,000	$ 2,600,000
Borrowing	1,400,000	1,800,000	800,000	2,100,000	600,000	6,700,000
Ending Balance	$ 4,000,000	$ 5,800,000	$ 6,600,000	$ 8,700,000	$ 9,300,000	$ 9,300,000

1. Other Disbursements includes assisted living, memory support, taxes, and COVID related disbursements.

EXHIBIT 16

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PROPOSED COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*,[1]	Case No. 22-30659 (MVL)
Debtors.	(Jointly Administered)

NOTICE OF FILING OF SUPPLEMENT TO APPLICATION FOR AUTHORITY TO EMPLOY AND RETAIN FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE

PLEASE TAKE NOTICE that on April 14, 2022, the above-captioned debtors and debtors in possession (the "**Debtors**") filed the *Debtors' Application for Authority to Employ and Retain FTI Consulting, Inc. as Financial Advisor to the Debtors Effective as of the Petition Date* [Docket No. 29] (the "**Application**") with the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**").

PLEASE TAKE FURTHER NOTICE attached hereto as Exhibit 1 and Exhibit 2 are true and correct copies the engagement agreement and addendum, respectively, that shall substitute and

[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.

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replace Exhibits C and D to the Application. Notice of this filing is being served in accordance with the Application.

Dated: May 4, 2022
Dallas, Texas

POLSINELLI PC

/s/ Trinitee G. Green

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– and –

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PROPOSED COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION

EXHIBIT 1

Chad J. Shandler
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New York, New York 10036
212 841 9349

PRIVATE & CONFIDENTIAL

March 3, 2022

Bobby Guy
Sharholder
Polsinelli PC
401 Commerce Street
Suite 900
Nashville, TN 37219

Re: Northwest Senior Housing Corporation

Dear Mr. Guy:

1. **Introduction**

This letter confirms that we, FTI Consulting, Inc. ("FTI"), have been retained by you, Polsinelli PC (the "Firm"), to provide certain financial advisory and consulting services (the "Services") as set forth below in relation to your representation of Northwest Senior Housing Corporation ("Edgemere" or the "Company"). This letter of engagement and the related Standard Terms and Conditions constitute the engagement contract (the "Engagement Contract") pursuant to which the Services will be provided. This letter reflects the Company's change is counsel from Sidley Austin LLP ("Sidley") and FTI's retention pursuant to a letter of engagement dated May 1, 2021 and addendum to that letter of engagement dated February 1, 2022.

2. **Scope of Services**

The Services, to be performed at your direction and at the direction of the Company to assist you in the provision of advice and legal services to the Company, are expected to include the following:

Assessment Services

- Gain an understanding of the Company's business, books and records and reporting systems;
- Assessment of the Company's operations and financial performance and recommendations for improvement, including but not limited to:
  - Revenue, billing, and cash collection procedures;
  - Operating expenses;
  - Management and staffing;
  - Marketing function and programs; and
  - Organizational structure;
- Assessment of the Company's liquidity and working capital, including sources of cash, accounts receivable and accounts payable;

- Assessment of the Company's reported results of operations;
- Assessment of prior consultants' reports, if any; and
- General overall assessment of the Company's facilities.

Consulting Services

- Prepare/or assist the Company's management with the preparation of projected financial statements and/or 13week cash flow forecast;
- Formulate recapitalization and debt restructuring alternatives, if necessary;
- Preparation of presentations to lender(s) relating to forbearance and/or restructuring of obligations, if necessary;
- Assist the Company and its counsel in negotiations with the Company's lender(s) regarding forbearance terms and/or other restructuring alternatives, if necessary;
- Assist the Company and its counsel in negotiations and/or discussions with Federal or state regulators, if necessary;
- Assist the Company and its counsel in negotiation with the Company's personal property lessors regarding improved lease terms or return of property;
- Assist the Company with an affiliation or the sale of its assets, including data room support and negotiations with prospective interested parties and purchasers of the Company's assets;
- Consult with management, and where necessary assist in the preparation of reports to the Company's lender(s) (and other creditors as required) regarding its financial performance; and
- Participate in meetings and telephone calls with management, counsel, lenders and other parties, as necessary.

Other Services

- Assistance in the preparation of financial information for distribution to creditors and others, including, but not limited to, cash flow projections and budgets, cash receipts and disbursement analysis, analysis of various asset and liability accounts, and analysis of proposed transactions for which Banktrupcy Court approval is sought;
- Assistance to the Company in the preparation of financial-related disclosures required by the Bankruptcy Court, including the Company' Schedules of Assets and Liabilities, Statements of Financial Affairs and Monthly Operating Reports;
- Assistance to the Company with information and analyses required pursuant to the Company' use of cash collateral including, but not limited to, preparation for hearings regarding the use of cash collateral;
- Assistance with the identification of executory contracts and leases and performance of cost/benefit evaluations with respect to the affirmation or rejection of each;
- Assistance regarding the valuation of the present level of operations and identification of areas of potential cost savings, including overhead and operating expense reductions and efficiency improvements;
- Assistance in the evaluation and analysis of avoidance actions, including fraudulent conveyances and preferential transfers;
- Assistance to Company' management team and the Firm focused on the coordination of resources related to the reorganization effort;
- Attendance at meetings and assistance in discussions with potential secured lenders, any official committee(s) appointed in these Chapter 11 Cases, the United States Trustee, other parties in interest and professionls hired by same, as requested; other communications

with the Company's creditors and governmental authorities (the general direction for which will be determined by the Board);

- Develop strategy, including communications, relating to residents, former residents, vendors, and employees;
- Analysis of creditor claims by type, entity, and individual claim, including assistance with development of databases, as necessary, to track such claims;
- Assistance in the preparation of information and analysis necessary for the confirmation of a plan of reorganization in these Chapter 11 Cases, including information contained in the disclosure statement; and
- Provide testimony in these Chapter 11 Cases as necessary or appropriate at the Company's request; and
- Rendering such other general business consulting or such other assistance as Company' management or counsel may deem necessary consistent with the role of a financial advisor to the extent that it would not be duplicative of services provided by other professionals.

The Services may be performed by FTI or by any subsidiary of FTI, as FTI shall determine. FTI may also provide Services through its or its subsidiaries' agents or independent contractors. References herein to FTI and its employees shall be deemed to apply also, unless the context shall otherwise indicate, to employees of each such subsidiary and to any such agents or independent contractors and their employees.

The Services, as outlined above, are subject to change as mutually agreed between us.

FTI is engaged by you to provide financial advisory and consulting services only. Accordingly, while we may from time to time suggest options which may be available to you or the Company, and further give our professional evaluation of these options, the ultimate decision as to which, if any, of these options to implement rests with the Company, its management and board of directors. FTI and its employees will not make any management decisions for the Company and will not be responsible for communicating information concerning the Company to the public, the Company's shareholders or others.

As part of the Services, FTI may be requested to assist you or the Company (and its other legal or other advisors) in negotiating with the Company's creditors and equity holders and with other interested parties. In the event that we participate in such negotiations, the representations made and the positions advanced will be those of the Company and its management, not FTI or its employees.

3. **Privileged and Confidential Work Product**

To the extent possible, written reports, memoranda or status summaries that we prepare under this Engagement Contract will be maintained in accordance with our retention procedures and shall be prominently labeled "Privileged and Confidential". Except as may be required by law, regulation or valid judicial or administrative process, we will not disclose to anyone, without your permission, the content of any oral or written confidential communication received during the course of the Engagement or any information gained from the inspection or review of any records or documents provided by you that are identified as confidential.

4. **Fees**

Polsinelli PC
March 3, 2022

We understand that we are being retained by You in connection with your provision of legal services to the Company. Accordingly, we will not look to the Firm for payment of our fees but rather will look solely to the Company. We acknowledge that the Firm will have no obligation for our fees. Fees in connection with this Engagement will be based upon the time incurred providing the Services, multiplied by our standard hourly rates, summarized as follows:

	Per Hour (USD)
Senior Managing Directors	$920 – 1,325
Directors / Senior Directors / Managing Directors	590 – 960
Consultants/Senior Consultants	370 – 695
Administrative / Paraprofessionals	130 – 300

Hourly rates are generally revised periodically. We will notify you of any changes to our rates. To the extent this engagement requires services of our International divisions or personnel, the time will be multiplied by our standard hourly rates applicable for the International divisions or personnel. Note that we do not provide any assurance regarding the outcome of our work and our fees will not be contingent on the results of such work.

In addition to the fees outlined above, FTI will bill for reasonable direct expenses which are likely to be incurred on your behalf during this Engagement. Direct expenses include reasonable and customary out-of-pocket expenses which are billed directly to the engagement such as internet access, telephone, overnight mail, messenger, travel, meals, accommodations and other expenses specifically related to this engagement. Further, if FTI and/or any of its emloyees are required to testify or provide evidence at or in connection with any judicial or administrative proceeding relating to this matter, FTI will be compensated by you at its regular hourly rates and reimbursed for reasonable allocated and direct expenses (including counsel fees) with respect thereto.

Cash on Account

Initially, the Company will forward to us the amount of $250,000, which funds will be held "on account" to be applied to our professional fees, charges and disbursements for the Engagement (the "Initial Cash on Account"). To the extent that this amount exceeds our fees, charges and disbursements upon the completion of the Engagement, we will refund any unused portion. The Company agrees to increase or supplement the Initial Cash on Account from time to time during the course of the Engagement in such amounts as the Company and we mutually shall agree are reasonably necessary to increase the Initial Cash on Account to a level that will be sufficient to fund Engagement fees, charges, and disbursements to be incurred.

We will send the Company periodic invoices (not less frequently than monthly) for services rendered and charges and disbursements incurred on the basis discussed above, and in certain circumstances, an invoice may be for estimated fees, charges and disbursements through a date certain. Each invoice constitutes a request for an interim payment against the fee to be determined at the conclusion of our Services. Upon transmittal of the invoice, we may immediately draw upon the Initial Cash on Account (as replenished from time to time) in the amount of the invoice. The Company agrees that invoices are due upon receipt and will promptly wire the invoice amount to us as replenishment of the Initial Cash on Account (together with any supplemental amount to which we and the Company mutually agree),

without prejudice to the Company's right to advise us of any differences it may have with respect to such invoice. We have the right to apply to any outstanding invoice (including amounts billed prior to the date hereof), up to the remaining balance, if any, of the Initial Cash on Account (as may be supplemented from time to time) at any time subject to (and without prejudice to) the Company's opportunity to review our statements.

The Company agrees to promptly notify FTI if the Company or any of its subsidiaries or affiliates extends (or solicits the possible interest in receiving) an offer of employment to a principal or employee of FTI involved in this Engagement and agrees that it will pay FTI has earned and will be entitled to a cash fee, upon hiring, equal to 150% of the aggregate first year's annualized compensation, including any guaranteed or target bonus and equity award, to be paid to FTI's former principal or employee that the Company or any of it subsidiaries or affiliates hires at any time up to one year subsequent to the date of the final invoice rendered by FTI with respect to this Engagement.

If a dispute develops about our fees, the Company may be entitled under Part 137 of the Rules of the Chief Administrator of the New York Courts to arbitration of that dispute if it involves more than $150,000.

5. **Terms and Conditions**

The attached Standard Terms and Conditions set forth the duties of each party with respect to the Services. Further, this letter and the Standard Terms and Conditions attached comprise the entire Engagement Contract for the provision of the Services to the exclusion of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations, and shall supersede all previous proposals, letters of engagement, undertakings, agreements, understandings, correspondence and other communications, whether written or oral, regarding the Services.

6. **Conflicts of Interest**

Based on the list of interested parties (the "Potentially Interested Parties"), provided by you, we have undertaken a limited review of our records to determine FTI's professional relationships with the Company, the Master Trustee, as defined in the Master Trust Indenture between the Company and UMB Bank, N.A. dated as of November 15, 1999, effective as of Aprril 1, 2006 and the Supplemental Indenture #6 dated March 1, 2017, and its counsel. As you may be aware, FTI is regularly retained by the Master Trustee (or law firms retained by the Master Trustee). However, such representations are in matters unrelated to this engagement.

From the results of such review, we were not made aware of any conflicts of interest or additional relationships that we believe would preclude us from performing the Services. However, as you know, we are a large consulting firm with numerous offices throughout the United States. We are regularly engaged by new clients, which may include one or more of the Potentially Interested Parties. The FTI professionals providing services hereunder will not accept an engagement that directly conflicts with this Engagement without your prior written consent.

Polsinelli PC
March 3, 2022

7. **Acknowledgement and Acceptance**

Please acknowledge your acceptance of the terms of this Engagement Contract by signing both the confirmation below and the attached Standard Terms and Conditions and returning a copy of each to us at the above address.

If you have any questions regarding this letter or the attached Standard Terms and Conditions, please do not hesitate to contact Chad J. Shandler at 212 841 9349.

Yours faithfully,

FTI CONSULTING, INC.

By: 

Chad J. Shandler
Senior Managing Director

Attachment – As stated

Polsinelli PC
March 3, 2022

Confirmation of Terms of Engagement

We agree to engage FTI Consulting, Inc. upon the terms set forth herein and in the attached Standard Terms and Conditions.

Polsinelli PC

By: _____
Bobby Guy
Shareholder

Date: _____

Northwest Senior Housing Corporation

By: _____
Nick Harshfield
CFO, Treasurer, and Secretary

Date: _____

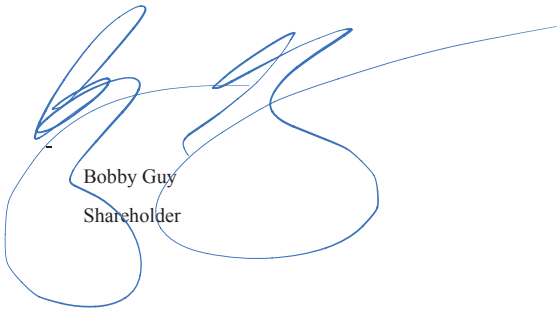
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Attachment – As stated

Confirmation of Terms of Engagement

We agree to engage FTI Consulting, Inc. upon the terms set forth herein and in the attached Standard Terms and Conditions.

Polsinelli PC

By: 

Bobby Guy

Shareholder

Date:

Northwest Senior Housing Corporation

By: DocuSigned by:
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Nick Harshfield

CFO, Treasurer, and Secretary

Date: 3/7/2022 | 9:31 PM CST

FTI CONSULTING, INC.

STANDARD TERMS AND CONDITIONS

The following are the Standard Terms and Conditions on which we will provide the Services to you set forth within the attached letter of engagement dated March 3, 2022. The engagement letter and the Standard Terms and Conditions (collectively the "Engagement Contract") form the entire agreement between us relating to the Services and replace and supersede any previous proposals, letters of engagement, undertakings, agreements, understandings, correspondence and other communications, whether written or oral, regarding the Services. The headings and titles in the Engagement Contract are included to make it easier to read but do not form part of the Engagement Contract.

1. Reports and Advice

1.1 **Use and purpose of advice and reports** – Any advice given or report issued by us is provided solely for the use and benefit of you and the Company and only in connection with the purpose in respect of which the Services are provided. Unless required by law, neither you nor the Company shall provide any advice given or report issued by us to any third party, or refer to us or the Services, without our prior written consent. In no event, regardless of whether consent has been provided, shall we assume any responsibility to any third party to which any advice or report is disclosed or otherwise made available.

2. Information and Assistance

2.1 **Provision of information and assistance** – Our performance of the Services is dependent upon you and the Company providing us with such information and assistance as we may reasonably require from time to time.

2.2 **Punctual and accurate information** – You and Company personnel shall use reasonable skill, care and attention to ensure that all information we may reasonably require is provided on a timely basis and is accurate and complete and relevant for the purpose for which it is required. You and the Company shall also notify us if you subsequently learn that the information provided is incorrect or inaccurate or otherwise should not be relied upon.

2.3 **No assurance on financial data** – While our work may include an analysis of financial and accounting data, the Services will not include an audit, compilation or review of any kind of any financial statements or components thereof. Company management will be responsible for any and all financial information they provide to us during the course of this Engagement, and we will not examine or compile or verify any such financial information. Moreover, the circumstances of the Engagement may cause our advice to be limited in certain respects based upon, among other matters, the extent of sufficient and available data and the opportunity for supporting investigations in the time period. Accordingly, as part of this Engagement, we will not express any opinion or other form of assurance on financial statements of the Company.

2.4 **Prospective financial information** - In the event the Services involve prospective financial information, our work will not constitute an examination or compilation, or apply agreed-upon procedures, in accordance with standards established by the American Institute of Certified Public Accountants or otherwise, and we will express no assurance of any kind on such information. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We will take no responsibility for the achievability of results or events projected or anticipated by the management of the Company.

3. Additional Services

3.1 **Responsibility for other parties** – You and the Company shall be solely responsible for the work and fees of any other party engaged by you or the Company to provide services in connection with the engagement regardless of whether such party was introduced to you by us. Except as provided in this Engagement Contract, we shall not be responsible for providing or reviewing the advice or services of any such third party, including advice as to legal, regulatory, accounting or taxation matters. Further, we acknowledge that we are not authorized under our Engagement Contract to engage any third party to provide services or advice to you or the Company, other than our agents or independent contractors engaged to provide Services, without your or the Company's written authorization.

4. Confidentiality

4.1 **Restrictions on confidential information** – All parties to this Engagement Contract agree that any confidential information received from the other parties shall only be used for the purposes of providing or receiving Services under this or any other contract between us. Except as provided below, no party will disclose other contracting party's confidential information to any third party without such party's consent. Confidential information shall not include information that:

4.1.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 4.1;

4.1.2 is acquired from a third party who, to the recipient party's knowledge, owes no obligation of confidence in respect of the information; or

4.1.3 is or has been independently developed by the recipient.

4.2 **Disclosing confidential information** – Notwithstanding Clause 1.1 or 4.1 above, all parties will be entitled to disclose confidential information to a third party to the extent that this is required by valid legal process, provided that (and without breaching any legal or regulatory requirement) where reasonably practicable not less than 2 business days' notice in writing is first given to the other parties.

4.3 **Citation of engagement** – Without prejudice to Clause 4.1 and Clause 4.2 above, to the extent our engagement is or becomes known to the public, we may cite the performance of the Services to our clients and prospective clients as an indication of our experience, unless we and you specifically agree otherwise in writing.

4.4 **Internal quality reviews** – Notwithstanding the above, we may disclose any information referred to in this Clause 4 to any other FTI entity or use it for internal quality reviews.

4.5 **Maintenance of workpapers** – Notwithstanding the above, we may keep one archival set of our working papers from the Engagement, including working papers containing or reflecting confidential information, in accordance with our internal policies.

5. Termination

5.1 **Termination of Engagement with notice** – All parties (you, the Company and FTI) may terminate the Engagement Contract for whatever reason upon written notice to the other party. Upon receipt of such notice, we will stop all work immediately. Regardless of the terminating party, the Company will be responsible for all fees and expenses incurred by us through the date termination notice is received.

5.2 **Continuation of terms** – The terms of the Engagement that by their context are intended to be performed after termination or expiration of this Engagement Contract, including but not limited to, Clauses 3 and 4 of the Engagement letter, and Clauses 1.1, 4, 6 and 7 of the Standard Terms and Conditions, are intended to survive such termination or expiration and shall continue to bind all parties.

6. Indemnification and Liability Limitation

6.1 **Indemnification** - The Company agrees to indemnify and hold harmless FTI and any of its subsidiaries and affiliates, officers, directors, principals, shareholders, agents, independent contactors and employees (collectively "Indemnified Persons") from and against any and all third party claims, liabilities, damages, obligations, costs and expenses (including reasonable attorneys' fees and expenses and costs of investigation) arising out of or relating to the retention of FTI, the execution and delivery of this Engagement Contract, the provision of Services or other matters relating to or arising from this Engagement Contract, except to the extent that any such claim, liability, obligation, damage, cost or expense shall have been determined by final non-appealable order of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Indemnified Person or Persons in respect of whom such liability is asserted (an "Adverse Determination"). The Company shall pay damages and expenses, including reasonable legal fees and disbursements of counsel as incurred in advance. FTI agrees that it will reimburse any amounts paid in advance to the extent they relate directly to an Adverse Determination. FTI agrees to indemnify and hold harmless the Company and any of its subsidiaries and affiliates, officers, directors, principals, shareholders, agents, independent contactors and employees from and against any and all third party claims, liabilities, damages, obligations, costs and expenses (including reasonable attorneys' fees and expenses and costs of investigation) arising out of or relating to an Adverse Determination.

6.2 **Limitation of liability -** Excluding a party's indemnification obligations for third party claims, neither party shall be liable to the other party, or a party's successors, affiliates or assigns for (a) damages in excess of the total amount of the fees paid and payable to FTI under this Engagement Contract, or (b) consequential, indirect or punitive damages, damages for lost profits or opportunities or other like damages or claims of any kind.

7. Governing Law, Jurisdiction and WAIVER OF JURY TRIAL

7.1 **Governing Law -** The Engagement Contract shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to the choice of law provisions thereof.

7.2 **Jurisdiction** - The United States District Court for the Southern District of New York and the appropriate Courts of the State of New York sitting in the Borough of Manhattan, City of New York shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the Engagement Contract and any matter arising from it. The parties submit to the jurisdiction of such Courts and irrevocably waive any right they may have to object to any action being brought in these Courts, to claim that the action has been brought in an inconvenient forum or to claim that those Courts do not have jurisdiction.

7.3 **WAIVER OF JURY TRIAL** – TO FACILITATE JUDICIAL RESOLUTION AND SAVE TIME AND EXPENSE, THE COMPANY AND FTI IRREVOCABLY AND UNCONDITIONALLY AGREE TO WAIVE A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE SERVICES OR THIS ENGAGEMENT CONTRACT.

FTI CONSULTING, INC

Confirmation of Standard Terms and Conditions

We agree to engage FTI Consulting, Inc. upon the terms set forth in these Standard Terms and Conditions as outlined above.

Polsinelli PC

By: _____
Bobby Guy
Shareholder

Date: _____

Northwest Senior Housing Corporation

By: _____
Nick Harshfield
CFO, Treasurer, and Secretary

Date: _____

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Confirmation of Standard Terms and Conditions

We agree to engage FTI Consulting, Inc. upon the terms set forth in these Standard Terms and Conditions as outlined above.

Polsinelli PC

By: _____

Bobby Guy

Shareholder

Date:

Northwest Senior Housing Corporation

By: DocuSigned by: 0FBD63BFF8124CA...

Nick Harshfield

CFO, Treasurer, and Secretary

Date: 3/7/2022 | 9:31 PM CST

EXHIBIT 2

Chad J. Shandler
FTI Consulting, Inc.
1166 Avenue of the Americas
15th Floor
New York, New York 10036
212 841 9349

PRIVATE & CONFIDENTIAL

April 6, 2022

Bobby Guy
Sharholder
Polsinelli PC
401 Commerce Street
Suite 900
Nashville, TN 37219

Re: Senior Quality Lifestyles Corporation

Dear Mr. Guy:

1. **Introduction**

This letter is an addendum to the engagement contract between FTI Consulting, Inc. ("FTI") and you, Polsinelli (the "Firm") dated March 3, 2022 (the "March 2022 LOE") (this "Addendum Letter"), to provide certain financial advisory and consulting services (the "Services") as set out in the March 2022 LOE in relation to your representation of Northwest Senior Housing Corporation ("Edgemere" or the "Company"). Pursuant to this Addendum Letter, work is expanded to include providing the Services as detailed in the March 2022 LOE to Senior Quality Lifestyles Corporation ("SQLC"), an affiliate of the Company.

2. **Acknowledgement and Acceptance**

Please acknowledge your acceptance of the terms of this Amendment by signing both the confirmation below and the attached Standard Terms and Conditions and returning a copy of each to us at the above address.

If you have any questions regarding this letter, please do not hesitate to contact Chad J. Shandler at (212) 841-9349.

Yours faithfully,

FTI CONSULTING, INC.

By: _____
Chad J. Shandler
Senior Managing Director

DocuSign Envelope ID: 3DBC6EFB-618A-40F2-B704-F381DA1E2097

Confirmation of Terms of Engagement

We agree to engage FTI Consulting, Inc. upon the terms set forth herein and in the attached Standard Terms and Conditions.

Polsinelli PC

By: _____
Bobby Guy
Sharholder

Date: 4/6/22

Senior Quality Lifestyles Corporation

By: DocuSigned by: _____
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Nick Harshfield
Treasurer

Date: 4/7/2022 | 8:26 AM CDT

EXHIBIT 17

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

In re:	Chapter 11
Northwest Senior Housing Corporation, *et al.*,[1]	Case No. 22-30659 (MVL)
Debtors.	

AMENDED DECLARATION OF CHAD J. SHANDLER IN SUPPORT OF THE DEBTORS' APPLICATION FOR AUTHORITY TO EMPLOY AND RETAIN FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE

Pursuant to 28 U.S.C. § 1746, Chad J. Shandler declares as follows:

1. I am a Senior Managing Director with FTI Consulting, Inc., together with its wholly-owned subsidiaries ("**FTI**"), an international consulting firm. I submit this declaration (the "**Declaration**") on behalf of FTI in support of the application (the "**Application**") of the above-captioned debtors and debtors in possession (the "**Debtors**"), for entry of an order authorizing the retention and employment of FTI as financial advisor under the terms and conditions set forth in the Application; and the Engagement Agreement and the Addendum attached thereto as Exhibit C and Exhibit D, respectively, as supplemented on May 4, 2022 at Docket No. 164.[2] I am generally familiar with the Bankruptcy Code and Bankruptcy Rules, and FTI will comply with them and orders issued by the Court. Except as otherwise noted,[3] I have personal knowledge of the matters set forth herein and, if called as a witness, I would testify thereto.

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

[2] All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

[3] Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at FTI and are based on information provided by them.

Disinterestedness and Eligibility

2. FTI represents the Debtors in these chapter 11 cases, notwithstanding its Engagement Agreement with Polsinelli PC. In connection with the preparation of this Declaration, FTI, including its wholly-owned subsidiaries, conducted a review of its contacts with the Debtors, their affiliates and certain entities holding large claims against or interests in the Debtors that were made reasonably known to FTI . A listing of the parties reviewed is reflected on Exhibit 1 to this Declaration. FTI's review, completed under my supervision, consisted of a query of the Exhibit 1 parties within an internal computer database[4] containing names of individuals and entities that are present or recent former clients of FTI. A listing of such relationships that FTI identified during this process is set forth in Exhibit 2 to this Declaration.

3. Based on the results of its review, except as otherwise discussed herein, FTI does not have a relationship with any of the parties on Exhibit 1 in matters related to these proceedings. FTI has provided and could reasonably expect to continue to provide services unrelated to the Chapter 11 Cases for the various entities shown on Exhibit 2. FTI's assistance to these parties has been related to providing various financial restructuring, litigation support, technology, strategic communications, and economic consulting services. To the best of my knowledge, no entity listed on Exhibit 2 accounted for 1% or more of FTI's annual revenue for fiscal year 2021. To the best of my knowledge and except as otherwise disclosed herein, no services have been provided to these parties in interest that involve any rights related to the Debtors and the Chapter 11 Cases, nor does FTI hold or represent any interest adverse to the bankruptcy estates, nor does FTI's involvement in these Chapter 11 Cases compromise its ability to continue such consulting services.

[4] FTI's computer database covers FTI Consulting, Inc. and its wholly owned subsidiaries globally.

4. In addition to the relationships disclosed on Exhibit 2 to this Declaration, FTI discloses the following:

- Before the Petition Date, FTI was retained by Debtors, Northwest Senior Housing Corporation, and its affiliate Tarrant County Senior Living Center, Inc. to provide certain financial advisory and consulting services.

- Between March 17, 2021 and June 18, 2021, FTI was retained by Lifespace Communities, Inc., an affiliate of the Debtors, to provide certain human resource due diligence in connection with the acquisition of New Castle Place LLC.

5. As part of its diverse practice, FTI appears in numerous cases, proceedings and transactions that involve many different professionals, including attorneys, accountants and financial consultants, who may represent claimants and parties-in-interest in the Chapter 11 Cases. Also, FTI has performed in the past, and may perform in the future, advisory consulting services for various attorneys and law firms, and has been represented by several attorneys, law firms and financial institutions, some of whom may be involved in these proceedings.

6. In addition, FTI has in the past, may currently and will likely in the future be working with or against other professionals involved in these cases in matters unrelated to the Debtors and the Chapter 11 Cases. Based on our current knowledge of the professionals involved, and to the best of my knowledge, none of these relationships create interests adverse to the Debtors in matters upon which FTI is to be employed and none are in connection with the Chapter 11 Cases.

7. FTI is not a "creditor" of the Debtors within the meaning of Bankruptcy Code section 101(10). Further, neither I nor any other member of the FTI engagement team serving the Debtors, to the best of my knowledge (a) is a creditor, equity security holder, or insider of any of the Debtors; (b) is or has been within two years before the Petition Date, a director, officer, or employee of any of the Debtors; or (c) has any interest materially adverse to the interests of the Debtors' estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship

to, connection with, or interest in, the Debtors, or for any other reason. As such, to the best of my knowledge and based upon the results of the relationship search described above and disclosed herein, FTI (i) is a "disinterested person" as defined in Bankruptcy Code section 101(14) and (ii) neither holds nor represents an interest adverse to the Debtors or their estates. Therefore, FTI believes it is eligible to represent the Debtors under Bankruptcy Code section 327(a).

8. It is FTI's policy and intent to update and expand its ongoing relationship search for additional parties-in-interest in an expedient manner. If any new material relevant facts or relationships are discovered or arise, FTI will file a supplemental declaration pursuant to Bankruptcy Rule 2014(a). Additionally, to the extent that any subsidiary of FTI will provide professional services in these Chapter 11 Cases, FTI will cause an additional search to be conducted for disclosure purposes if such search was not previously conducted by the applicable subsidiary.[5] Similarly, under this scenario, FTI will file a supplemental declaration.

Professional Compensation

9. Subject to Court approval and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of this District, orders of this Court, and applicable U.S. Trustee guidelines, FTI will seek payment for compensation on an hourly basis, plus reimbursement of actual and necessary expenses incurred by FTI, including legal fees related to this retention application and future fee applications as approved by the Court. FTI's customary hourly rates as charged in bankruptcy and non-bankruptcy matters of this type by the professionals assigned to this engagement are outlined in the Application for the employment of FTI. These hourly rates are adjusted periodically, typically on an annual basis. I believe that the fee structure

[5] As noted above, FTI caused a comprehensive search of Debtors' contacts to be conducted that included FTI's wholly-owned subsidiaries' databases and relationships.

as set forth in the Application is reasonable and comparable to those generally charged by financial advisors and consultants of similar stature to FTI for comparable engagements, both in and out of chapter 11.

10. FTI received $75,000, as a retainer at the time of engagement in connection with preparing for and conducting the filing of the Chapter 11 Cases, as described in the Engagement Agreement. In the 90-day period preceding the Petition Date, FTI received $1,592,548.19 (inclusive of an additional retainer payment of $175,000) for professional services performed and expenses incurred. As of the Petition Date, FTI holds an unapplied retainer of $250,000. The Debtors and FTI have agreed that any portion of the advance payments not used to compensate FTI for its pre-petition services and expenses will be held and applied against its final post-petition billing and will not be placed in a separate account.

11. To the best of my knowledge, (a) no commitments have been made or received by FTI with respect to compensation or payment in connection with this case other than in accordance with the provisions of the Bankruptcy Code and (b) FTI has no agreement with any other entity to share with such entity any compensation received by FTI in connection with the Chapter 11 Cases.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 5, 2022

/s/ Chad J. Shandler
Chad J. Shandler
Senior Managing Director, FTI Consulting, Inc.

EXHIBIT 1

Listing of Parties-in-Interest Reviewed for Current and Recent Former Relationships

Debtor
Northwest Senior Housing Corporation
Senior Quality Lifestyles Corporation

Affiliated Parties
LifeSpace, Inc.
Abbey Delray
Abbey Delray South
AON CCRC LLC (Iowa LLC)
Augustine Home Health Texas LLC
Barton Creek Senior Living Center, Inc. (Querencia)
Beacon Hill
Claridge Court
Friendship Village of Bloomington
Friendship Village of South Hills
Harbour's Edge
Lifespace Communities, Inc.
Lifespace Management, Inc.
Lifespace Services, Inc.
Newcastle Place LLC
Oak Trace
Prairie View Club of Kansas
Seniority Inc.
SQLC LSA, LLC
Tarrant County Senior Living Center, Inc. dba The Stayton at Museum Way
The Lifespace Foundation
The Waterford
Village on the Green

Former, Assumed and Trade Names of the Debtor
d/b/a Edgemere

Current and Former Directors and Officers (2019 & 2020 Form 990)
Abdul Shakoor
Ann Joyce
Chris Hutfless
Christopher Santuae
Eddie Fenoglio
Elizabeth White
Jesse Jantzen
Keri McAnally
Larry Smith
Leslie Brownlee
Martha Holloway
Nick Harshfield
Scott Collier
Susan Carter
Thomas Brod

Lifespace Managers
John B. Falldine

Teresa E. Bates

Professionals (Law Firms; Accountants; Appraisers; Tax Preparers; etc)
AJ Gallagher
DLA Piper LLP
FTI Consulting, Inc.
Kurtzman Carson Consultants, LLC
Marsh & McLennan Agency, LLC
Power Taylor Law Firm
Sidley Austin LLP

Current & Former Banking Institutions
Bankers Trust
Regions Bank
UMB Bank, NA

Restructuring Professionals
Polsinelli

Bondholders
Alliance Bernstein LP
First Trust Advisors LP
FMR LLC
Holloway Wealth Management LLC
Lapis Advisers, LP
Massachusetts Financial Services Co.
Nuveen Asset Management, LLC as investment adviser for certain funds/accounts
Olive Street Investment Advisers LLC
Royal Bank of Canada
Silvercrest Asset Management Group LLC
State Street Corp.
T Rowe Price Group Inc.
Teachers Insurance & Annuity Association of America
USAA Mutual Funds on behalf of its USAA Tax Exempt Long-Term Fund and its USAA Growth and Tax Strategy Fund
Van Eck Associates Corp
Victory Capital Management Inc.

Insurance Providers
Argonaut Insurance Company
Ascot Insurance Company
Beazley Insurance Company
Beazley Insurance Company
Caring Communities
Ironshore Specialty Insurance Company
Liberty Mutual Fire Insurance Company
Liberty Mutual Insurance Company
Life Insurance Company of North America
National Casualty Company
RSUI Indemnity Company
Sentry Casualty Company

Sentry Insurance
Underwriters at Lloyds, London (Hiscox)

Government Regulatory & Taxing Authorities
Centers for Medicare and Medicaid Services
City of Dallas
Dallas County Tax Office, John R. Ames, CTA Tax Assessor/Collector
Department of the Treasury
Texas Comptroller of Public Accounts
Texas Department of Insurance
Texas Department of Labor
Texas Department of Licensing & Regulation
Texas Health & Human Services
Texas Workforce Commission
United States Treasury

Unsecured Creditors
Andrew Croom Custom Builders LLC
ARC Waterproofing Sealant LLC
Direct Supply Inc
McKesson Medical-Surgical
Mr. AC Heating & Cooling LLC
Omnicare of Fort Worth
On Demand Staffing
Select Rehabilitation LLC
Unidine Corporation

Top 30 Largest Unsecured Creditors

Residents – Move outs -Triggered and Untriggered

Utility Companies
AT&T
AT&T Mobility
Atmos Energy
City of Dallas
Community Waste Disposal LP
Fusion LLC
Reliant Energy Services
Spectrum
Spectrum (f/k/a Time Warner Cable)
Verizon

Employee Benefit Administrators
ADP, LLC
Delta Dental
Eyemed
Metlife
OptumRx
Symetra Life Insurance Company
Wellmark BCBS of Iowa

Judges in the United States Bankruptcy Court for the Northern District of Texas Dallas Division
Judge Harlin D. Hale
Judge Robert L. Jones
Judge Stacey G. C. Jernigan
Judge Mark X. Mullin
Judge Edward L. Morris
Judge Michelle V. Larson

Office of the United States Trustee – Region 6 Dallas Office
Lisa L. Lambert, Assistant United States Trustee
William T. Neary - United States Trustee

U.S. Trustee Employees – Region 6 Dallas Office
Asher Bublick
Kara Croop
Christi C. Flanagan
C. Marie Goodier
Meredyth Kippes
Felicia P. Palos
Bradley D. Perdue
Nancy S. Resnick
Kendra M. Rust
Erin Schmidt
Lisa Smoot
Joseph W. Speranza
Rafay Suchedina
Steven Whitehurst
Cheryl H. Wilcoxson
Cindy Worthington
Elizabeth Young

Lenders to Non-Debtor Affiliates
N/A

Litigants / Litigation Parties
Cherry Petersen Landy Albert LLP
Intercity Investment Properties, Inc.
Maryln B. Calloway
Christopher C. Calloway
R.W. Calloway Jr.
Pamela Siviglia
Andrew Adams
Robert Frost
Julianne Frost
David Steve Donsky
Robert Ogden

Other Parties As Known
Credit Agricole Group

DLA Piper LLP
Dorsey & Whitney LLP
Holland & Knight LLC
Invesco Ltd
Locke Lord LLP
Lumen (f/k/a Level 3)
Reliant Energy Services
Waste Connections
Alliance Bernstein LP

EXHIBIT 2

Listing of Parties-in-Interest Noted for Court Disclosure

Relationships in Matters Related to These Proceedings

None

Relationships in Unrelated Matters - Current

Affiliated Parties
Tarrant County Senior Living Center, Inc. dba The Stayton at Museum Way

Professionals (Law Firms; Accountants; Appraisers; Tax Preparers; etc)
AJ Gallagher
Sidley Austin LLP

Current & Former Banking Institutions
Regions Bank
UMB Bank, NA

Bondholders
First Trust Advisors LP
Nuveen Asset Management, LLC as investment adviser for certain funds/accounts
Royal Bank of Canada
State Street Corp.
T Rowe Price Group Inc.

Insurance Providers
Beazley Insurance Company
Ironshore Specialty Insurance Company
Liberty Mutual Insurance Company
Underwriters at Lloyds, London (Hiscox)

Government Regulatory & Taxing Authorities
Department of the Treasury
United States Treasury

Unsecured Creditors
McKesson Medical-Surgical

Utility Companies
AT&T
AT&T Mobility
Atmos Energy
City of Dallas
Community Waste Disposal LP
Fusion LLC
Reliant Energy Services
Spectrum
Spectrum (f/k/a Time Warner Cable)
Verizon

Employee Benefit Administrators
ADP, LLC
Delta Dental
Metlife
OptumRx

Other Parties As Known
Credit Agricole Group
DLA Piper LLP
Dorsey & Whitney LLP
Holland & Knight LLC
Invesco Ltd
Locke Lord LLP
Lumen (f/k/a Level 3)
Reliant Energy Services
Waste Connections
Alliance Bernstein LP

Relationships in Unrelated Matters – Former Clients (Last Two Years)

Affiliated Parties
LifeSpace, Inc.
Lifespace Communities, Inc.

Bondholders
Alliance Bernstein LP

EXHIBIT 18

Allan B. Diamond (SBN 05801800)
Stephen T. Loden (SBN 24002489)
Christopher D. Johnson (SBN 24012913)
Diamond McCarthy LLP
909 Fannin, Suite 3700
Houston, Texas 77010
Telephone: (713) 333-5100

J. Gregory Taylor (SBN 19706100)
Mark A. Sales (SBN 17532050)
Drew Jones (SBN 24083269)
Diamond McCarthy LLP
2711 N. Haskell Avenue, Suite 3100
Dallas, Texas 75204
Telephone: (214) 389-5300

COUNSEL TO LEIF M. CLARK, TRUSTEE OF THE EDGEMERE LITIGATION TRUST

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)
Leif M. Clark, Trustee of the Edgemere Litigation Trust, Plaintiff, v. Intercity Investment Properties, Inc., and Kong Capital, LLC, Defendants.	Adv. No. 22-03040 (MVL)

PLAINTIFF'S OBJECTIONS AND RESPONSES TO
DEFENDANTS' SECOND SET OF WRITTEN DISCOVERY

[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.

Plaintiff Leif M. Clark, Trustee of the Edgemere Litigation Trust ("Plaintiff") submits the following objections and responses to Defendants' Second Set of Written Discovery (the "Discovery Requests").

GENERAL OBJECTIONS

1. Plaintiff objects to Defendants' definition of the term "You" as overbroad. Plaintiff is only responding to the Discovery Requests as the Trustee of the Litigation Trust and only responding based on the documents and information in the care, custody, or control of the Trustee. Plaintiff will respond to the Discovery Requests in compliance with the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, and the Rules of this Court and will, to the extent possible, construe the Discovery Requests consistent with the ordinary use of the English language and the words used in the interrogatories and requests for production according to their usual and customary meaning. The information provided is based upon the information presently available to and known by Plaintiff. Plaintiff will supplement its responses if necessary consistent with the Federal Rules of Civil Procedure.

2. Plaintiff objects to Defendants' purported interrogatories as they exceed the limit permitted under the Federal Rules of Civil Procedure. Defendants previously propounded, served and signed joint interrogatories, and with their interrogatories and discrete subparts, they have already exceeded their limit of 25 interrogatories per party.

3. Plaintiff objects to the Discovery Requests to the extent they seek disclosure of communications, documents or other information that constitute communications between Edgemere and its attorneys or information protected from discovery by the common interest privilege or the work product doctrine. Plaintiff responds to the Discovery Requests assuming Defendants do not intend Plaintiff to disclose any such communications, documents, or other information that implicates or may implicate any privilege or the work product doctrine.

4. Plaintiff reserves all objections to the admissibility at trial of any information provided herein. The production of any information or identification or production of any document will not constitute an admission by Plaintiff that such information or document is relevant to the pending litigation. Accordingly, Plaintiff reserves the right to object to further inquiry with respect to the subject matter of any information or document provided. Discovery and trial preparation continue, and therefore Plaintiff reserves the right to introduce any information or documents subsequently discovered and located and to assert additional information if necessary. Thus, to the extent consistent with the Federal Rules of Civil Procedure, the following responses are provided without prejudice to Plaintiff's right to produce evidence, documentary or otherwise, of any subsequently discovered facts and/or documents.

5. Plaintiff objects to the Discovery Requests to the extent they purport to create an obligation to provide information or identify or produce documents in a manner not required under the Federal Rules of Civil Procedure or other applicable law. Plaintiff objects to any attempt to

impose any greater obligation to collect documents or information beyond that imposed by law or regulation.

6. Plaintiff objects to the Discovery Requests to the extent they seek information or documents not reasonably calculated to lead to the discovery of admissible evidence and/or not germane to any claim or defense.

7. Plaintiff objects to the Discovery Requests to the extent they impose an undue or disproportionate burden on Plaintiff to the extent they seek information or documents already in Defendants' possession or that are publicly available.

8. In a good faith effort to comply with the Federal Rules of Civil Procedure concerning discovery, and to err on the side of inclusiveness, Plaintiff may provide information that falls within the purview of objections specifically stated herein or elsewhere. Such identification should not be deemed a waiver of these objections, and Plaintiff expressly preserves each and every objection.

9. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed thereto in Plaintiff's amended adversary complaint (the "Complaint").

10. Plaintiff objects to the extent these requests seek rolling supplemental responses and ask for documents and/or information after Edgemere was sold in Bankruptcy.

OBJECTIONS AND RESPONSES TO
SECOND SET OF INTERROGATORIES

INTERROGATORY NO. 1: During the Relevant Time Period, identify the (i) date and author of any version of the Disclosure Statement(s), (ii) the date(s) any such version was disseminated to third parties, (iii) the disseminating party and the person(s) to whom or entity(ies) to which such version was disseminated, and (iv) all documents related to same.

RESPONSE: Plaintiff objects to this interrogatory as Defendants have already exceeded the limit (25) permitted under the Federal Rules of Civil Procedure. Defendants previously propounded joint interrogatories, and with their interrogatories and discrete subparts, they have already exceeded their limit of 25 interrogatories per party. Further, Plaintiff objects to this interrogatory as it is vague, ambiguous, and to the extent it seeks information outside of the Trustee's personal knowledge or outside the documents in the Trustee's possession, custody or control. Plaintiff objects to the extent this interrogatory seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Plaintiff also objects because this interrogatory seeks information that is equally available in the documents previously produced to Defendants as it is to Plaintiff.

INTERROGATORY NO. 2: Identify any and all individuals who participated in (a) the February 7, 2022 conversation referenced in the document bates labeled "UMB_0005620" and/or (b) the February 10, 2022 conversation referenced in the same document.

RESPONSE: Plaintiff objects to this interrogatory as Defendants have already exceeded the limit (25) permitted under the Federal Rules of Civil Procedure. Defendants previously propounded joint interrogatories, and with their interrogatories and discrete subparts, they have already exceeded their limit of 25 interrogatories per party. Further, Plaintiff objects to this interrogatory as it is vague, ambiguous, and to the extent it seeks information outside the personal knowledge of the Trustee and the documents and information in the possession, custody, or control of the Trustee. Plaintiff objects to the extent this interrogatory seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine.

INTERROGATORY NO. 3: State the date(s) on which "representatives of the Texas Department of Insurance . . . raised concerns regarding the ability of Intercity to take possession of and operate the Community upon any default under the Lease" as alleged at paragraph 121 of your Original Complaint and, for each identify the participants to such communications, the mode of such communications (e.g. written, oral), what specifically was said or written during such communications, and all documents related to the foregoing.

RESPONSE: Plaintiff objects to this interrogatory as Defendants have already exceeded the limit (25) permitted under the Federal Rules of Civil Procedure. Defendants previously propounded joint interrogatories, and with their interrogatories and discrete subparts, they have already exceeded their limit of 25 interrogatories per party. Further, Plaintiff objects to this interrogatory to the extent it seeks information outside the personal knowledge of the Trustee and the documents and

information in the possession, custody, and control of Trustee. Plaintiff also incorporates General Objection No. 1 to the definition of the term "You".

INTERROGATORY NO. 4: For any Request for Admission to which your response was anything other than an unqualified admission, state the factual basis for your denial or qualification and identify all documents related to same.

RESPONSE: Plaintiff objects to this interrogatory as Defendants have already exceeded the limit (25) permitted under the Federal Rules of Civil Procedure. Defendants previously propounded joint interrogatories, and with their interrogatories and discrete subparts, they have already exceeded their limit of 25 interrogatories per party. Plaintiff objects to this interrogatory as overbroad, harassing and unduly burdensome upon Plaintiff. Plaintiff further objects to this interrogatory to the extent it requires Plaintiff to marshal the evidence prematurely. Plaintiff also objects to this interrogatory to the extent it seeks information outside of the Trustee's personal knowledge or outside the documents in the Trustee's possession, custody or control. Plaintiff also incorporates General Objection No. 1 to the definition of the term "You".

OBJECTIONS AND RESPONSES TO
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: All versions of the Disclosure Statement(s) disseminated to any third party during the Relevant Time Period by You or anyone acting or purporting to act on Your behalf, including, but not limited to Sidley Austin or DLA Piper.

RESPONSE: Plaintiff objects to this request as Plaintiff will not have disseminated the requested materials to any third party during the Relevant Time Period. Plaintiff also incorporates General Objection No. 1 to the definition of the term "You". Plaintiff also objects to this Request to the extent the term "versions" seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving any objection, and after a diligent search, Plaintiff has produced the non-privileged documents responsive to this Request and in its care, custody or control. As discovery still is ongoing, Plaintiff reserves the right to supplement this response as provided by the Federal Rules, if necessary.

REQUEST FOR PRODUCTION NO. 2: All drafts of the Disclosure Statement during the Relevant Time Period, whether such drafts were ultimately disseminated outside of Edgemere or not.

RESPONSE: Plaintiff objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving any objection, and after a diligent search, Plaintiff has already produced the non-privileged documents responsive to this Request and in its care, custody or control. As discovery still is ongoing, Plaintiff reserves the right to supplement its responses as provided by the Federal Rules.

REQUEST FOR PRODUCTION NO. 3: All insurance policies for which You are a policyholder or named beneficiary.

RESPONSE: Plaintiff objects as this Request as vague and ambiguous. Plaintiff incorporates General Objection No. 1 to the definition of the term "You". Plaintiff also objects to this interrogatory as it fails to specify with particularity the policy that Defendants are seeking and is not relevant or reasonably likely to lead to the discovery of admissible evidence. Further, Plaintiff objects as this Request is overbroad in that it seeks insurance policies not relevant to the claims or defenses in this matter, and thus seeks information beyond the scope of permissible discovery.

Subject to and without waiving any objection, Plaintiff will conduct a search and produce responsive materials related to any policies in the Trustee's possession, custody or control that relate to the claims and defenses in this matter.

REQUEST FOR PRODUCTION NO. 4: All agendas, minutes, and packets (as well as, for each, any documents appended thereto or furnished contemporaneously to board members therewith) for or from any meeting of the Edgemere's Board of Directors (or any committee thereof) during the Relevant Time Period.

RESPONSE: Plaintiff objects to this request as it is overbroad, vague and ambiguous. Further Plaintiff objects to this request as harassing and unduly burdensome as it involves a request for documents previously produced. Plaintiff also objects to this request to the extent it seeks the production of materials covered by the attorney client privilege or work product doctrine.

Subject to and without waiving any objection, Plaintiff states that non-privileged documents responsive to this request were previously produced. As discovery is still on-going, Plaintiff reserves the right to supplement this response by the Federal Rules, if necessary.

REQUEST FOR PRODUCTION NO. 5: All Documents identified or requested to be identified by any Interrogatory.

RESPONSE: Plaintiff objects to this request as it is grossly overbroad, harassing and unduly burdensome. As drafted, this request would require Plaintiff to look back and review every interrogatory and every document among the voluminous amount of documents previously produced in order to respond to this request. Plaintiff further objects to this request to the extent that it calls for the production of privileged materials. Plaintiff also objects to this request as irrelevant or not reasonably likely to lead to the discovery of admissible evidence, as many thousands of documents have been produced to date. Plaintiff also objects to this request as it fails to specify with particularity which documents Defendants are seeking.

OBJECTIONS AND RESPONSES TO
FIRST SET OF REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that each document you or Lifespace produced during this proceeding is a record of a regularly conducted activity as that term is used in Fed. R. Evid. 803(6).

RESPONSE: Plaintiff objects to this request as it is grossly overbroad, harassing and unduly burdensome. Plaintiff also incorporates General Objection No. 1 to the definition of the term "You". Subject to and without waiving any objection: **denied**.

REQUEST FOR ADMISSION NO. 2: Admit that the Forbearance Agreement referenced in your First Amended Complaint did not obligate ICI to agree to sell the Property or to restructure the Ground Lease.

RESPONSE: Plaintiff **admits** that the Forbearance Agreement did not obligate ICI to agree to sell the Property or to restructure the Ground Lease, but it did require ICI to negotiate in good faith for a potential restructure of the Ground Lease or any other matter covered in the Forbearance Agreement. To the extent further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 3: Admit that without ICI's entry into the Forbearance Agreement referenced in your First Amended Complaint, Edgemere would have sought bankruptcy relief sooner than it in fact did.

RESPONSE: Plaintiff objects to this request as not relevant and unlikely to lead to the discovery of admissible evidence. Plaintiff further objects to this request as it calls for speculation. As worded, Plaintiff is unable to admit the request based on his personal knowledge or the documents and information in its possession, custody, and control, and therefore it is **denied**.

REQUEST FOR ADMISSION NO. 4: Admit that Edgemere, as explained by Nick Harshfield in his March 1, 2022 email produced beginning at bates label Edgemere0015570, instructed its independent auditor, CliftonLarsonAllen, to "delay[] the completion of the Edgemere audit for 2020."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 5: Admit that Edgemere, as explained by Nick Harshfield in his March 1, 2022 email produced beginning at bates label Edgemere0015570, instructed its independent auditor, CliftonLarsonAllen, to "delay[] the completion of the Edgemere audit for

2020" because "as a result of" Edgemere's "events of default, all bond debt" needed to "be recorded as current, thus creating a going-concern opinion from the auditors."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 6: Admit that, as explained by Nick Harshfield in his March 1, 2022, email produced beginning at bates label Edgemere0015570, the Texas Department of Insurance and the Texas Office of Attorney General advised Edgemere and required Edgemere "to complete the Edgemere audit for 2020 and include it in the resident disclosure packets."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 7: Admit that, as explained by Nick Harshfield in his March 1, 2022 email produced beginning at bates label Edgemere0015570, the Texas Department of Insurance and the Texas Office of Attorney General advised Edgemere that they considered Edgemere's failure to disclose the 2020 Edgemere audit a failure to "fully inform[] prospective residents of Edgemere's financial condition."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 8: Admit that, as expressed in the document beginning at bates label Edgemere0056505, a "going concern in the 2020 audit would be fatal to sales and occupancy growth."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 9: Admit that in Jesse Jantzen's note dated February 17, 2021 produced beginning at bates label Edgemere0015281, Mr. Jantzen expressed his consideration of a "[n]eed to extend audit due date so that we can work through waiver / forbearance to avoid a going concern."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 10: Admit that the "due date" referenced in Mr. Jantzen's note referenced in Request For Admission No. 9 above was the due date for Edgemere's 2020 audit.

RESPONSE: Plaintiff objects to this request as it is vague and ambiguous. As worded, Plaintiff is unable to admit the request based on his personal knowledge or the documents and information in its possession, custody, and control, and therefore it is **denied**.

REQUEST FOR ADMISSION NO. 11: Admit CliftonLarsonAllen issued its 2020 Edgemere audit before the commencement of this bankruptcy case.

RESPONSE: Plaintiff **admits** that the referenced document's date predates the commencement of this matter.

REQUEST FOR ADMISSION NO. 12: Admit CliftonLarsonAllen's 2020 Edgemere audit issued before the commencement of this bankruptcy case included a "going concern" opinion.

RESPONSE: Plaintiff **admits** that the referenced document speaks for itself. To the extent further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 13: Admit CliftonLarsonAllen's "going concern" opinion in its 2020 Edgemere audit was included in disclosure statements to prospective residents.

RESPONSE: Plaintiff objects to this request as it is vague and ambiguous. As worded, Plaintiff is unable to admit this request based on his personal knowledge or the documents and information in his possession, custody, and control, and it is therefore **denied**.

REQUEST FOR ADMISSION NO. 14: Admit CliftonLarsonAllen's "going concern" opinion in its 2020 Edgemere audit was "fatal" to Edgemere's "sales and occupancy growth."

RESPONSE: Plaintiff objects to this request as vague and ambiguous in its use of the term "fatal" and that the document speaks for itself. To the extent further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 15: Admit that, effective on or about September 27, 2021, Edgemere agreed to escrow all Entrance Fees received from new residents.

RESPONSE: Plaintiff objects to this request as vague and ambiguous. Subject to and without waiving any objection, **admitted**.

REQUEST FOR ADMISSION NO. 16: Admit that, under the terms of the Escrow Agreement referenced above, Entrance Fees received from new residents on or after September 27, 2021 were not immediately available to fund operations.

RESPONSE: Plaintiff **admits** that the referenced document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 17: Admit that, under the terms of the Escrow Agreement referenced above, Entrance Fees received from new residents on or after September 27, 2021 were not immediately available to pledge to a lender as part of a restructuring transaction.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge of the Trustee. Subject to and without waiving this objection, Plaintiff **admits** that the referenced document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 18: Admit that, under the terms of the Escrow Agreement referenced above, Entrance Fees received from new residents on or after September 27, 2021 were not immediately available to fund deposit refunds owed to former residents and/or their estates.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge of the Trustee. Subject to and without waiving this objection, Plaintiff **admits** that the referenced document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 19: Admit that, on or about November 29, 2021, Edgemere's Ann Joyce wrote that "some prospective residents have deposited and then canceled or delayed their decision to pay the entrance fee due to the current financial report for Edgemere," as stated in the document produced beginning at bates label Edgemere0013591.

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 20: Admit that Ann Joyce's statement referenced in Request for Admission No. 19 was true when made.

RESPONSE: Plaintiff objects to this request as it seeks information beyond the Trustee's personal knowledge. Subject to and without waiving this objection, Plaintiff is unable to admit the request based on the documents and information in his possession, custody, and control and it is therefore **denied**.

REQUEST FOR ADMISSION NO. 21: Admit that on December 29, 2021, ICI's counsel advised Edgemere's counsel that ICI believed the expense reimbursement due from Edgemere to ICI under the Forbearance Agreement was $310,004.35, as stated in the document produced beginning at bates label Edgemere0004096.

RESPONSE: Plaintiff **admits** that the referenced document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 22: Admit that on December 29, 2021, after receiving the correspondence referenced in Request for Admission No. 21, Edgemere's counsel responded that they would "process the wire asap," as stated in the document produced beginning at bates label Edgemere0004096.

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 23: Admit that on January 7, 2021, Edgemere's counsel requested documentation supporting the amount of the expense reimbursement, as shown in the document produced beginning at bates label Edgemere0004191.

RESPONSE: Plaintiff **admits** that the referenced document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 24: Admit that Edgemere's counsel's January 7, 2021 request for documentation supporting the amount of the expense reimbursement was the first request Edgemere or anyone acting on Edgemere's request made for documentation supporting the amount of the expense reimbursement.

RESPONSE: Plaintiff is unable to admit based on his personal knowledge or the documents and information in his possession, custody, and control, and it is therefore **denied**.

REQUEST FOR ADMISSION NO. 25: Admit that on January 7, 2021, ICI's counsel furnished invoices supporting the expense reimbursement, as shown in the documents produced beginning at bates label Edgemere0004198 and continuing through bates label Edgemere0004207.

RESPONSE: Plaintiff is unable to admit the request based on his personal knowledge or the documents and information in his possession, custody, and control, and it is therefore **denied**.

REQUEST FOR ADMISSION NO. 26: Admit that on January 7, 2021, Edgemere's counsel solicited additional detail regarding the expense reimbursement and that ICI's counsel furnished the requested documentation the same day, all as shown in the documents produced beginning at bates label Edgemere0004216 and continuing through bates label Edgemere0004221.

RESPONSE: Plaintiff objects to this request as it contains compound questions, and is vague and ambiguous. Subject to and without waiving any objection, Plaintiff **admits** that the referenced documents speak for themselves. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 27: Admit that, as of January 10, 2022, the expense reimbursement still had not been paid.

RESPONSE: Plaintiff objects to this request as its use of the term "expense reimbursement" is vague. Subject to and without waiving any objection, **admitted**.

REQUEST FOR ADMISSION NO. 28: Admit that, as of the date and time of the email from Edgemere's counsel to ICI's counsel produced beginning at bates label Edgemere0004237, Edgemere had all the information necessary to pay the expense reimbursement.

RESPONSE: Plaintiff is unable to admit based on his personal knowledge or the documents and information in his possession, custody, and control, and it is therefore **denied**.

REQUEST FOR ADMISSION NO. 29: Admit that the statement by Edgemere's counsel in his January 10, 2022 email referenced in Request for Admission No. 28—that the "delay" in paying the expense reimbursement was "solely due to the fact that we were waiting for invoices from your firm"—was false when made.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge of the Trustee. Subject to and without waiving this objection, Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 30: Admit that the NDA ("NDA") referenced in your First Amended Complaint was dated as of September 7, 2021.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 31: Admit that the NDA defined "Confidential Information" to include "the existence of this Agreement or the discussions or negotiations that are currently taking place or have taken place concerning the Transaction, including any proposed terms and conditions, the status of such discussions or negotiations[.]"

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 32: Admit that the Texas Department of Insurance was neither a party to the NDA nor a representative of any party to the NDA.

RESPONSE: Plaintiff admits that the Texas Department of Insurance was not a party to the NDA. The assertion that the Texas Department of Insurance was not a representative of any party to the NDA, or whether the NDA applies to the Texas Department of Insurance is **denied**.

REQUEST FOR ADMISSION NO. 33: Admit that on or about September 28, 2021, Sandra Parker disclosed to TDI that ICI "agreed to withdraw the notice of termination of the lease" and that "all parties have mutually agreed that payments for the bond and the lease will stop on October 1" and that the parties "will enter into a three way forbearance agreement . . . during which time the parties will work to resolve the lease issues," all as shown in the document produced beginning at bates label Edgemere0000070.

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 34: Admit that Sandra Parker made the disclosure referenced in Request for Admission No. 33 in her capacity as counsel to Lifespace or Edgemere.

RESPONSE: Plaintiff objects to this request as it contains compound questions and is vague and ambiguous. Subject to and without waiving any objection, Plaintiff **admits** that the referenced document identifies Sandra Parker as General Counsel to Lifespace. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 35: Admit that UMB was neither a party to the NDA nor a representative of any party to the NDA.

RESPONSE: Plaintiff objects to this request to the extent that it calls for a legal conclusion. Subject to and without waiving any objection, Plaintiff **admits** that the referenced document reflects that UMB was not a party to the NDA. Whether or not UMB was a representative of any party to the NDA is **denied**.

REQUEST FOR ADMISSION NO. 36: Admit that on or by September 15, 2021, Edgemere's counsel had disclosed to UMB's counsel the existence of the NDA and/or the status of discussions or negotiations under the NDA, as shown in the document produced beginning at bates label Edgemere063778.

RESPONSE: Plaintiff objects to this request as it is vague and ambiguous. Plaintiff also objects to this request as it is confusing and misleading, by not specifying the NDA being referenced. Subject to and without waiving any objection, Plaintiff **admits** that the referenced document speaks for itself, with the alluded to NDA in the document differing from the NDA otherwise referenced throughout the Discovery Requests. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 37: Admit that Edgemere's counsel drafted a letter to ICI's counsel dated January 12, 2022 referencing, among other things, Edgemere's "offer to purchase the property for $90 million" and a "breakdown in discussions" between Edgemere and ICI, all as shown in the document produced beginning at bates label Edgemere0004580.

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 38: Admit that, on or about February 9, 2022, Edgemere's counsel sent a copy of the letter referenced in Request for Admission No. 37 to Abigail Ryan of the Texas Attorney General's Office, as shown in the document produced beginning at bates label Edgemere0004509.

RESPONSE: Plaintiff objects to this request as it is confusing and misleading. Defendants have purposefully omitted that they instigated and caused the Attorney General's Office to ask for the information subject to this request. Subject to and without waiving any objection, Plaintiff **admits** that the referenced document was sent and that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 39: Admit that neither Abigail Ryan nor the Texas Attorney General's Office was a party to the NDA or a representative of a party to the NDA.

RESPONSE: Plaintiff **admits** that neither Abigail Ryan nor the Texas Attorney General's Office was a party to the NDA. The assertion that Abigail Ryan or the Texas Attorney General's Office was not a representative of any party to the NDA, or whether the NDA applies to these individuals is **denied**.

REQUEST FOR ADMISSION NO. 40: Admit that the documents produced beginning at bates label Edgemere0003762 and continuing through bates label Edgemere0003763 comprise the "term sheet" referenced at paragraph 49 of your First Amended Complaint and the December 6, 2021 email from Edgemere's counsel to ICI's counsel transmitting same.

RESPONSE: Plaintiff objects to this request as it is vague, ambiguous, and overbroad and to the extent it seeks information beyond the personal knowledge of the Trustee. Subject to and without waiving any objection, Plaintiff **admits** that the referenced documents speak for themselves. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 41: Admit that the "term sheet" referenced in Request for Admission No. 40 contemplates a reduction in rent but does not propose any amount of rent due.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge of the Trustee. Subject to and without waiving this objection, Plaintiff **admits** that the referenced document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 42: Admit that as of December 6, 2021, ICI and Edgemere had not yet entered into a forbearance agreement with one another.

RESPONSE: Plaintiff **admits** that the referenced document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 43: Admit that the document enclosed as Attachment 1 is a true and correct copy of an expert report produced by Chad J. Shandler of FTI Consulting and dated September 15, 2022 (the "Shandler Report").

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 44: Admit that FTI was engaged as an Estate professional by Edgemere during its bankruptcy case.

RESPONSE: Plaintiff objects to this request as it is vague and ambiguous in its use of the term "Estate professional". Subject to and without waiving any objection, Plaintiff **admits** that FTI provided professional services during the bankruptcy case. To the extent further response is required, **denied**.

REQUEST FOR ADMISSION NO. 45: Admit that in the Shandler Report, Shandler stated that when "a CCRC has a fixed life, as in the case of Edgemere due to the Ground Lease termination date, prospective residents have a significant disincentive to choose that CCRC in which to live."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 46: Admit that Shandler's statement identified in Request for Admission No. 45 was true.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge and expertise of the Trustee. Subject to and without waiving this objection, Plaintiff **admits** that the statement contained identified in Request for Admission No. 45 was the expert professional opinion of Chad Shandler, and the report speaks for itself.

REQUEST FOR ADMISSION NO. 47: Admit that in the Shandler report, Shandler stated that the average length of stay for an Edgemere resident was "approximately 11 years."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 48: Admit that Shandler's statement identified in Request for Admission No. 47 was true.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge and expertise of the Trustee. Subject to and without waiving this objection, Plaintiff **admits** that the statement contained identified in Request for Admission No. 47 was the expert professional opinion of Chad Shandler, and the report speaks for itself.

REQUEST FOR ADMISSION NO. 49: Admit that in the Shandler Report, Shandler stated that "a prospective lifecare resident would have no reason to choose a CCRC with less than 9 to 10 years remaining in its operational life as there exists a strong likelihood that he/she may outlive the CCRC."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 50: Admit that Shandler's statement identified in Request for Admission No. 49 was true.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge and expertise of the Trustee. Subject to and without waiving this objection, Plaintiff admits that the statement contained identified in Request for Admission No. 49 was the expert professional opinion of Chad Shandler, and the report speaks for itself.

REQUEST FOR ADMISSION NO. 51: Admit that in the Shandler Report, Shandler stated that in instances in which a CCRC has "less than 9 to 10 years remaining in its operational life," it is "unlikely funds will be available to pay the Entrance Fee Refund as funds are available from future Entrance Fees."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 52: Admit that Shandler's statement identified in Request for Admission No. 51 was true.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge and expertise of the Trustee. Subject to and without waiving this objection, Plaintiff **admits** that the statement contained identified in Request for Admission No. 51 was the expert professional opinion of Chad Shandler, and the report speaks for itself.

REQUEST FOR ADMISSION NO. 53: Admit that on or around September 1, 2021, Edgemere began withholding rent payments due to ICI.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge of the Trustee. Subject to and without waiving any objection and based on the documents and information in the Trustee's care, custody or control, **admitted**.

REQUEST FOR ADMISSION NO. 54: Admit that the payment defaults under the Ground Lease were not cured until on or about March 8, 2022.

RESPONSE: Plaintiff objects to the terms "payment default" and "cured" as vague, ambiguous and undefined. Plaintiff further objects to this request as being confusing and misleading. Plaintiff also objects to this request to the extent it calls for a legal conclusion. Plaintiff admits that the terms of the Ground Lease speak for themselves. To the extent that any further response is required, **denied**.

REQUEST FOR ADMISSION NO. 55: Admit that, in January and February 2022, Edgemere was in payment default under the Ground Lease.

RESPONSE: Plaintiff objects to the term "payment default" as vague, ambiguous and undefined. Plaintiff further objects to this request as being confusing and misleading. Plaintiff also objects to the extent it calls for a legal conclusion. Plaintiff admits that the terms of the Ground Lease speak for themselves. To the extent that any further response is required, **denied**.

REQUEST FOR ADMISSION NO. 56: Admit that, in January and February 2022, Edgemere was in default under the Bonds.

RESPONSE: Plaintiff objects to the terms "default" and "Bonds" as vague, ambiguous and undefined. Plaintiff further objects to this request as being confusing and misleading. Plaintiff also objects to the extent it calls for a legal conclusion. Plaintiff admits that the terms of the referenced Bond documents speak for themselves. To the extent that any further response is required, **denied**.

REQUEST FOR ADMISSION NO. 57: Admit that, as summarized by Sandra Parker in her December 2, 2021 email produced beginning with bates label Edgemere065616, Lifespace was aware at the time of its affiliation with SQLC of "the risks related to the Edgemere ground lease," including that Lifespace "was purchasing a building on land which had a limited time for use . . . and which at the end, the landlord could choose to terminate the residency agreements and there may be no recourse by [Lifespace] for that action."

RESPONSE: Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 58: Admit that, as shown in the documents produced beginning with bates label Edgemere064457 and continuing through Edgemere064478, Edgemere's counsel advised Edgemere in December 2021 that an action for equitable reformation of the Ground Lease was unlikely to succeed (indeed, that the "[a]vailable facts may not satisfy the pleading standard for elements of reformation"), but that pursuing such an action may nonetheless be worthwhile because the "lengthy discovery process may pressure Lessor to accept certain terms for a re-negotiated lease to avoid a trial."

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge of the Trustee. Subject to and without waiving this objection, Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 59: Admit that, as of January 15, 2022, Edgemere knew that it did not have "a path for purchase of the land" or for "lease modification," as stated in Jesse Jantzen's January 15, 2022 email produced as part of the document beginning with bates label Edgemere0014858.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge of the Trustee. Subject to and without waiving this objection, Plaintiff **admits** that the quoted language is contained in the referenced document, but objects on the basis that the document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 60: Admit that, in light of Edgemere's then-ongoing default under the Ground Lease, its then-ongoing default under the Bonds, Edgemere's knowledge that the Ground Lease was not the product of mistake, Edgemere's counsel's opinion that litigation to obtain judicial reformation of the Lease was unlikely to succeed, and Edgemere's knowledge that it had no "path for purchase of the land" or "lease modification," it would have been unfair and unjust for Edgemere to accept new Entrance Fees from Residents in January and February 2022.

RESPONSE: Plaintiff objects to this request to the extent it seeks information beyond the personal knowledge of the Trustee. Subject to and without waiving this objection, **Denied**.

REQUEST FOR ADMISSION NO. 61: Admit that the Forbearance Agreement did not require ICI to continue to forbear on exercising its remedies after December 31, 2021.

RESPONSE: Plaintiff **admits** that the referenced document speaks for itself. To the extent any further answer is required, **denied**.

REQUEST FOR ADMISSION NO. 62: Admit that the Forbearance Agreement extended the Bondholders' time to cure defaults under the Ground Lease to March 11, 2022.

RESPONSE: Plaintiff objects to the term "cure" as vague, ambiguous and undefined. Plaintiff further objects to this request as being confusing and misleading. Plaintiff also objects to the extent it calls for a legal conclusion. Plaintiff **admits** that the referenced document speaks for itself. To the extent any further answer is required, **denied**.

Dated: February 9, 2024

Respectfully submitted,

DIAMOND McCARTHY LLP

/s/ J. Gregory Taylor

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– and –

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COUNSEL TO LEIF M. CLARK, SOLELY IN HIS CAPACITY AS THE TRUSTEE OF THE EDGEMERE LITIGATION TRUST

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on February 9, 2024, via electronic service to all registered parties in this case.

/s/ J. Gregory Taylor

EXHIBIT 19

Trinitee G. Green (SBN 24081320)
Polsinelli PC
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
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COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION

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

In re: Northwest Senior Housing Corporation, *et al.*, Debtor.	Chapter 11 Case No. 22-03040 (MLV)
Northwest Senior Housing Corporation, Plaintiff, v. Intercity Investment Properties, Inc., and Kong Capital, LLC, Defendants.	Adv. No. 22-30660 (MLV)

PLAINTIFF'S INITIAL DISCLOSURES

Plaintiff Northwest Senior Housing Corporation ("Edgemere")[1] submits its initial disclosures pursuant to Federal Rule of Civil Procedure 26:

[1] Unless otherwise indicated, capitalized terms herein have the same meaning as set forth in Edgemere's Complaint.

The following initial disclosures are based on information reasonably available to Edgemere as of this date. By making these initial disclosures, Edgemere neither represents that it is identifying every document, tangible thing, or witness possibly relevant to this lawsuit, nor is Edgemere waiving any right to object to the production of any document or tangible thing disclosed on the basis of any applicable privilege, work-product doctrine, relevancy, undue burden, confidentiality, or any other valid objection. Rather, Edgemere has made a good-faith effort to identify information subject to the disclosure requirements of Federal Rule of Civil Procedure 26(a)(1). Edgemere's identification of any individual who may have knowledge relating to a particular topic shall not be deemed an admission that the identified individual possesses knowledge relating to the identified topic.

Edgemere's initial disclosures are made without waiving: (1) the right to object on the grounds of competency, privilege, relevancy and materiality, hearsay, confidentiality, or any other proper grounds; (2) the right to object to the use of any such information for any purpose, or in part, at any subsequent stage of the proceeding in this or any other action; (3) the right to object on any ground, at any time, to any other discovery proceeding involving or relating to the subject matter of these disclosures. Edgemere's investigation of this case is ongoing, and Edgemere therefore reserves the right to supplement, amend, modify, or alter these disclosures as new information becomes available.

All of the disclosures set forth below are made subject to the above reservations and qualifications. Subject to and without waiving the above reservations and qualifications, Edgemere discloses as follows:

(A) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.

Based on the information presently available, Edgemere identifies the following entities and individuals who may have discoverable information that Edgemere may use to support its claims, along with the subjects of such information. In addition, Edgemere identifies all individuals disclosed by Defendants Intercity Investment Properties, Inc. ("Intercity"), and Kong Capital, LLC ("Kong") and reserves the right to call any such individuals as witnesses. Identification of any individual below is not a consent by Edgemere to search for and produce information from email or other messaging accounts for any such individual. It is further not a waiver of any attorney-client or other privilege or objection that may apply.

1. Edgemere

The below persons of Edgemere may be contacted through Edgemere's counsel of record, Jerry L. Switzer, Jr., 150 N. Riverside Plaza, Suite 3000, Chicago IL 60606, (312) 873-8626, or Trinitee Green, 2950 N. Harwood Street, Suite 2100 Dallas, Texas 75201, (713) 679-4455. Lifespace Communities Inc. is the current manager of Northwest Senior Housing d/b/a Edgemere, and can be contacted through their counsel, Perkins Coie LLP, Eric Walker, 110 North Wacker, Suite 3400, Chicago, Illinois 60606, (31) 324-8659.

a. Jesse Jantzen, President and CEO

Mr. Jantzen has knowledge regarding the negotiations of the NDA and the Forbearance Agreement, as well as the corresponding communications with the Intercity. He executed the Forbearance Agreement on behalf of Edgemere. He also has general knowledge of Intercity's wrongful conduct and Edgemere's resulting damages.

b. Nick Harshfield, CFO

Mr. Harshfield has knowledge regarding the negotiations of the NDA and the Forbearance Agreement, as well as the corresponding communications with the Intercity. He executed the NDA on behalf of Edgemere and the Escrow Agreement attached to the Forbearance Agreement on behalf of Edgemere. He also has general knowledge of Intercity's wrongful conduct and Edgemere's resulting damages.

c. John Falldine, Executive Director

Mr. Falldine has knowledge regarding Intercity and Kong's wrongful conduct and Edgemere's resulting damages, including, but not limited to, Intercity and Kong's communications with Edgemere residents and their families and Intercity and Kong's dissemination of Edgemere's Confidential Information.

d. Chris Silsavage, Martha Holloway, and Leslie Doran-Spavaciano

Mr. Silsavage, Ms. Holloway, and Ms. Doran-Spavaciano are part of the sales team at Edgemere and have knowledge pertaining to the number of inquiries, tours, and agreements executed with potential and existing Edgemere residents, as well as the drop-off in inquiries, tours, and contracts following Intercity and Kong's wrongful conduct. They also have general knowledge regarding the financial impact on Edgemere's business following Intercity and Kong's wrongful conduct.

e. Charles B. Brewer, Former President

Edgemere believes that Mr. Brewer has general knowledge regarding the Lease, the Lease Option, the Commission Agreement, and the original bond financing, including, but not limited to, the corresponding communications. He executed the Lease on behalf of Edgemere and also executed the Northwest Lifecare Commission Agreement on behalf of Edgemere.

f. Chad Shandler and Rachel Chesley, FTI Consulting

Mr. Shandler and Ms. Chesley are consultants with FTI Consulting, Inc. hired by Edgemere. Mr. Shandler has general knowledge regarding the negotiations of the NDA and the Forbearance Agreement, as well as the corresponding communications with the Intercity. He also has general knowledge of Intercity's wrongful conduct and Edgemere's resulting damages. Specifically, Mr. Shandler has knowledge regarding the financial impact of Intercity's wrongful conduct on Edgemere's business operations. Ms. Chesley has general knowledge regarding the Dallas Morning News reporting about Edgemere and specific quotes on information on which the Dallas Morning News requested comment from Edgemere. She also has general knowledge of Intercity's and Kong's wrongful conduct vis-à-vis the Dallas Morning News.

g. Thomas Califano, Juliana Hoffman, and Charles Persons, Sidley Austin LLP (former counsel to Edgemere)

Mr. Califano,Ms. Hoffman, and Mr. Parsons were former counsel to Edgemere. They have knowledge of NDA, the Forbearance Agreement, and Intercity and Kong's wrongful conduct and dissemination of Edgemere's Confidential Information.

h. David Grossklaus, Joseph Acosta, and Michael Jenkins, Dorsey & Whitney LLP (General Counsel Role and Bankruptcy and Board/Governance).

Mr. Grossklaus and Mr. Acosta are counsel to Lifespace Communities Inc., the current manager of Northwest Senior Housing d/b/a Edgemere. Mr. Jenkins served as Lifespace's outside General Counsel.

2. Intercity

Upon information and belief, the below persons are associated with Intercity may be contacted through their counsel of record, Levenfeld Pearlstein, LLC, Elizabeth Vandesteeg, Harold D. Israel, Eileen M. Sethna, 2 North LaSalle Street, Suite 1300, Chicago Illinois 60602,

(312) 476-7650; Jackson Walker LLP, Michael S. Held, Jennifer F. Wertz, J. Machir Stull, W. Ross Forbes, Jr., Edwin Buffmire, and Marc Fuller, 2323 Ross Ave., Suite 600, Dallas Texas 75201, (214) 953-5859.

a. Chris Jordan, President

Mr. Jordan has knowledge regarding the negotiations of the NDA and the Forbearance Agreement, as well as the corresponding communications with Edgemere. He executed the Forbearance Agreement on behalf of Intercity. He also presumably has knowledge regarding Kong and Intercity's plans and conspiracy to terminate the Lease and to repurpose the Property, as well as Kong and Intercity's wrongful dissemination of Edgemere's Confidential Information to third parties and Intercity's and Kong's other wrongful conduct.

b. Nick Hannon, Executive Vice President

Mr. Jordan has knowledge regarding the negotiations of the NDA and the Forbearance Agreement, as well as the corresponding communications with Edgemere. He executed the NDA on behalf of Intercity. He also presumably has knowledge regarding Kong and Intercity's plans and conspiracy to terminate the Lease and to repurpose the Property, as well as Kong and Intercity's wrongful dissemination of Edgemere's Confidential Information to third parties and Intercity's and Kong's other wrongful conduct.

c. Harold Israel, Elizabeth Vandesteeg, Eileen Sethna, Levenfeld Pearlstein, LLC

Levenfeld Pearlstein is Intercity's counsel and presumably have knowledge regarding Intercity's dissemination of Edgemere's Confidential Information. They also presumably have knowledge regarding Kong and Intercity's plans and conspiracy to terminate the Lease and to repurpose the Property, as well as Kong and Intercity's wrongful dissemination of Edgemere's Confidential Information to third parties.

d. Rick Miller, Bryan Cave Leighton Paisner LLP

Mr. Miller is former counsel of Intercity and presumably has knowledge regarding the NDA, the Forbearance Agreement, Intercity's attempts to terminate the Lease, and corresponding relevant communications. He also presumably has knowledge regarding Kong and Intercity's plans and conspiracy to terminate the Lease and to repurpose the Property, as well as Kong and Intercity's wrongful dissemination of Edgemere's Confidential Information to third parties.

e. H. Louis Nichols, Nichols, Jackson, Dillard, Hager & Smith, L.L.P.

Mr. Nichols is believed to be former counsel of Intercity, and presumably has knowledge regarding the Lease, the negotiation of the Lease, and the bond financing.

3. Kong Capital, LLC ("Kong)

Upon information and belief, the below persons are associated with Kong and may be contacted through their counsel of record, Levenfeld Pearlstein, LLC, Elizabeth Vandesteeg, Harold D. Israel, Eileen M. Sethna, 2 North LaSalle Street, Suite 1300, Chicago Illinois 60602, (312) 476-7650; Jackson Walker LLP, Michael S. Held, Jennifer F. Wertz, J. Machir Stull, W. Ross Forbes, Jr., Edwin Buffmire, and Marc Fuller, 2323 Ross Ave., Suite 600, Dallas Texas 75201, (214) 953-5859.

a. Coe Schlicker, CEO

Mr. Schlicker presumably has knowledge pertaining to Kong and Intercity's plans and conspiracy to terminate the Lease and to repurpose the Property, as well as Kong and Intercity's wrongful dissemination of Edgemere's Confidential Information to third parties, communications with Edgemere's residents and the press, and Intercity's and Kong's other wrongful conduct.

b. Cory Wolfenbarger, Vice President of Operations

Mr. Wolfenbarger presumably has knowledge pertaining to Kong and Intercity's plans and conspiracy to terminate the Lease and to repurpose the Property, as well as Kong and Intercity's wrongful dissemination of Edgemere's Confidential Information to third parties, communications with Edgemere's residents and the press, and Intercity's and Kong's other wrongful conduct.

4. UMB Bank, N.A.

UMB Bank, N.A. can be contacted by and through their counsel of record Daniel S. Bleck, Emily Kanstroom Musgrave, Eric Blythe, Caitlin Hill, Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, PC, One Financial Center Boston, Massachusetts 02111, (617) 348-4407.

a. Irina Palchuk, Senior Vice President

Ms. Palchuk executed the Forbearance Agreement on behalf of UMB and presumably has knowledge about the negotiations and communications leading to its execution.

b. Virginia Housum, Senior Vice President

Ms. Housum executed the Escrow Agreement attached to the Forbearance Agreement on behalf of UMB Bank. She presumably has knowledge about the negotiations and communications leading up to its execution.

c. Daniel Bleck, Poonam Patidar, and Eric Blythe, Mintz Levin Cohn Ferris Glovsky & Popeo, PC

Mr. Bleck, Ms. Patidar, and Mr. Blythe are counsel for UMB and have knowledge regarding the negotiations and execution of the Forbearance Agreement, as well as Intercity's and Kong's disclosure of Edgemere's Confidential Information to third parties and accompanying wrongful conduct.

5. Natalie Walters, The Dallas Morning News

Ms. Walters is the journalist that wrote the articles about Edgemere in the Dallas Morning News. She can be contacted at 1954 Commerce Street Dallas, Texas 75201, (214) 745-8383. Ms. Walters corresponded with Intercity and Kong pertaining to Edgemere and its financial status. She presumably has knowledge regarding Intercity and Kong's use and disclosure of Edgemere's Confidential Information.

6. David Steve Donosky d/b/a Steve Donosky Company

Mr. Donosky can be contacted at 12221 Merit, Suite 1750, Dallas Texas 75251, (214) 637-6660. He executed the Notice of Broker's lien dated 12/13/2021 that is recorded against the Property. He has knowledge about the original lease option, the assignment of the Lease option and the Lease, as well as the recording of a Notice of Broker's Lien against the Property on or about December 16, 2021, and communications with Intercity regarding same. He also executed the Northwest Lifecare Commission Agreement dated November 5, 1997 that was attached to the Notice of Broker's Lien and presumably has knowledge regarding the same.

7. Cherry Peterson Landry Albert LLP

Mr. Albert is with Cherry Peterson Landry Albert, LLP and can be contacted at 8350 North Central Expressway, Suite 1500, Dallas Texas 75206, (214) 265-7007. He issued the letter dated December 16, 2021 to Intercity covering the Notice of Broker's Lien, and presumably has knowledge regarding the same.

8. Ben Gonzales, Texas Department of Insurance

Mr. Gonzales is with the Texas Department of Insurance and can be contacted at 333 Guadalupe, Austin TX 78701, P.O. Box 12030, Austin Texas 87811, (512) 676-6000. He was

an addressee on the February 22, 2022 letter from Intercity's counsel disclosing Edgemere's Confidential Information and presumably has knowledge regarding same.

9. Abigail Ryan, Ester Chavez, Texas Attorney General

Ms. Ryan and Ms. Chavez are with the Texas Attorney General and can be contacted at 300 W. 15th Street, Floor 8, Austin Texas 78701. They were addressees of the February 22, 2022 letter from Intercity's counsel disclosing Edgemere's Confidential Information and presumably have knowledge regarding same as well as further communications with Intercity and Kong.

10. Edgemere Residents Association

The Edgemere Residents Association can be contacted at 8523 Thackery Street, Dallas Texas 75225. They were addressees of the February 22, 2022 letter from Intercity's counsel disclosing Edgemere's Confidential Information and presumably have knowledge regarding same.

11. Jim Smith

Mr. Smith is a resident of Edgemere and can be contacted at 8523 Thackery Street, Dallas Texas 75225. A Kong representative, Cory Wolfenberger, reached out to Mr. Smith, asking him about his experience with Edgemere. Mr. Smith has knowledge about his communications with Mr. Wolfenberger as well as Intercity and Kong's use and disclosure of Confidential Information.

12. Charles and Hilda Simmons

Charles and Hilda Simmons may be contacted at 8523 Thackery Street, Dallas Texas 75225. A Kong representative, Cory Wolfenberger, reached out to Mr. and Mrs. Simmons, asking inquiring about Edgemere. Mr. and Mrs. Simmons have knowledge about their

communications with Mr. Wolfenberger as well as Intercity and Kong's use and disclosure of Confidential Information.

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

Based on information currently available, Edgemere expects it may use the following categories of documents, electronically stored information, and tangible things in its possession, custody, or control to support its defenses:

Edgemere will likely use the contracts between it and Intercity, including, but not limited to, the Ground Lease, the Forbearance Agreement, and the Non-Disclosure Agreement, as well as all accompanying drafts, negotiations, and correspondence between Intercity, Edgemere, and/or any Third Parties.

Edgemere will likely use communications between Intercity, Kong, and/or Third Parties discussing Edgemere's Confidential Information subject to the Non-Disclosure agreement between Intercity and Edgemere.

Edgemere will likely use communications between Intercity, Kong, and Edgemere Residents and/or their family and Representatives regarding Edgemere, the Property, and/or the Community to further show Intercity and Kong's wrongful conduct.

Edgemere will likely use all documents and communications showing the financial impact that Intercity and Kong's wrongful conduct had on its business operations, including, but not limited to, financial reports and other business records from before and after Intercity and Kong's wrongful conduct.

Edgemere also intends to use any documents produced in this adversary proceeding by Intercity, Kong, and/or any Third Parties, that Edgemere will later produce in this adversary proceeding, as well as deposition transcripts and all communications between Edgemere, Intercity, Kong, and/or any Third Parties regarding the Lease, the Forbearance Agreement, the Non-Disclosure Agreement, the Property, Edgemere, and/or Intercity and Kong's wrongful conduct.

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered;

Edgemere seeks monetary damages, compensatory damages, exemplary damages, and punitive damages as a result of Intercity and Kong's wrongful conduct. Edgemere's investigation of its damages is ongoing, and Edgemere will supplement this Response in a timely manner accordingly.

Edgemere also seeks an award of its reasonable attorney's fees and costs, which at this time, are not final and unascertained. Edgemere will disclose redacted copies of its attorneys' invoices near the time of trial at a date agreed upon by the Court and by the Parties.

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Edgemere is not currently aware of any applicable insurance policy. If Edgemere's continuing investigation reveals applicable insurance, Edgemere will promptly supplement these disclosures.

Dated: June 29, 2022.

Respectfully submitted,

POLSINELLI PC

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COUNSEL TO PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2022 a true and correct copy of the foregoing was served upon Defendants Intercity Investment Properties, Inc. and Kong Capital, LLC, *via* e-mail and U.S. Mail, upon Eileen M. Sethna, Harold D. Israel, and Elizabeth Vandesteeg, Levenfeld Pearlstein, LLC, 2 North LaSalle St., Suite 1300, Chicago, Illinois 60602, esethna@lplegal.com, hisrael@lplegal.com, evandesteeg@lplegal.com, and Michael S. Held, Jennifer F. Wertz, and J. Machir Stull, Jackson Walker LLP, 2323 Ross Ave., Suite 600, Dallas, Texas 75201, mheld@jw.com, jwertz@jw.com, mstull@jw.com.

/s/ Trinitee G. Green
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