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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)

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL PLAINTIFF TO RESPOND TO SECOND SET OF DISCOVERY REQUESTS

[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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As set forth in the Defendants' accompanying *Motion to Compel Plaintiff to Respond to Second Set of Discovery Requests* (the "Motion"), the Defendants seek entry of an order compelling plaintiff Leif M. Clark, solely as Trustee of the Edgemere Litigation Trust (the "Plaintiff," or "Trustee"), to provide substantive responses to the Defendants' second set of written discovery due to the Plaintiff's failure to comply with his discovery obligations. The Discovery Responses (defined below) are deficient in every material respect and must be immediately amended or otherwise supplemented to ensure that the Defendants are not deprived of the information, documents, and admissions to which they are entitled.

A. Background

1. The Defendants issued their *Second Set of Written Discovery* (the "Discovery Requests") on the Plaintiff on December 22, 2023, including their second set of interrogatory requests (the "Interrogatories"), second set of requests for production of documents, and first set of requests for admission (the "RFAs"). *See* Ex. A. The Interrogatories included just four additional interrogatory requests to the Plaintiff, following the seventeen interrogatory requests served on the Plaintiff and his predecessor in the Defendants' first set of written discovery. *See* Ex. B. To date, the Defendants have only served a total of twenty-two interrogatory requests on the Plaintiff.

2. On January 10, 2024, the Plaintiff asked for "an extension to answer Defendants' new second wave of discovery," from January 22, 2024 to February 9, 2024. Defendants agreed. *See* Ex. C.

3. The Plaintiff then served his responses (the "Responses") to the Discovery Requests on February 9, 2024. *See* Ex. D. Upon receipt of the Responses, the Defendants immediately identified pervasive deficiencies with the Responses and issued a letter to the Plaintiff's counsel

("Diamond McCarthy") on February 13, 2024 identifying these issues and requesting that Diamond McCarthy meet and confer with Defendants' counsel ("LP") to remedy these issues as swiftly as possible (and in any event no later than February 16, 2024), particularly because fact discovery is set to close in April 2024. *See* Ex. E.

4. Pursuant to Rule 37(a)(1), LP and Diamond McCarthy met and conferred by telephone on February 16, 2024—Diamond McCarthy's earliest availability. Despite efforts to resolve these issues, the parties are at an impasse requiring the Court's consideration and intervention.

B. Argument

5. By the Motion, the Defendants are seeking an order that overrules the unfounded objections asserted by the Plaintiff in the Responses and compels him to comply with his discovery obligations.

(1) The Plaintiff is Required to Provide Actual Responses to the Properly Issued Interrogatories

6. The Plaintiff has provided no substantive responses to the Interrogatories despite them being properly issued under Rule 33(a)(1), which permits a total of twenty-five interrogatory requests to be served on a party. Fed. R. Civ. P. 33(a)(1).

7. Rather than responding to the Interrogatories, the Plaintiff objected and refused to respond in substance, under the false assertion that Defendants have somehow exceeded the 25-interrogatory limit under Rule 33. The Responses are devoid of explanation or support for this objection, which runs contrary to the facts of discovery.

8. As stated above, the Defendants have served just two sets of interrogatory requests on the Plaintiff and his predecessor, totaling twenty-two interrogatories, while the Rules permit up

to twenty-five being served before a party must seek leave of Court to serve more. Fed. R. Civ. P. 33.

9. The Plaintiff also cannot assert that the Defendants exceeded the 25-request limit by issuing requests containing discrete subparts that should be counted as separate interrogatories. The "discrete subparts" language in Rule 33 was added as part of 1993 amendments to the Rules. In explaining the purpose of the amended language, the Rules Advisory Committee explained that it was to ensure parties could not evade the presumptive 25-interrogatory limit "through the device of joining as 'subparts' questions that seek information about discrete separate subjects." *See*, *e.g.*, *Krawczyk v. City of Dallas*, 2004 WL 614842 *2 (N.D. Tex. Feb. 27, 2004) (interrogatory subparts to be counted as "discrete" only if they "are not logically or factually subsumed within and necessarily related to the primary question"); *see also Efrindergemeinschaft Uropep GbR v. Eli Lily & Co.*, 315 F.R.D. 191, 194-97 (E.D. Tex. 2016).

10. The Plaintiff's failure to respond to the Interrogatories on this unfounded basis should be overruled, and the Plaintiff should be compelled to provide actual, substantive answers to the Interrogatories immediately.

(2) The Plaintiff Cannot Avoid Responding to the Discovery Requests by Asserting he lacks Personal Knowledge Regarding their Subject Matter

11. Instead of providing responses to the Interrogatories and specific RFAs, the Plaintiff objected—or flat out failed to respond—to these Discovery Requests on the grounds that they seek information or documents outside of the Plaintiff's personal knowledge, or outside the documents in his possession, custody, or control. The standard applicable to responding to the Discovery Requests, however, requires that the Plaintiff do more than merely rely on his own personal knowledge, and he should be compelled to conduct a reasonable investigation and inquiry to provided amended responses to the Discovery Requests.

12. Parties must conduct a reasonable inquiry and investigation of the information and documentation sought in discovery to properly comply with their obligations under the Rules. *See Jackson v. Kroblin Refrigerated Xpress, Inc.*, 49 F.R.D. 134, 137-38 (N.D. W. Va. 1970), citing *Breeland v. Bethlehem Steel Co.*, 179 F. Supp. 464, 467 (S.D.N.Y. 1959) for the commonsense proposition that parties to litigation cannot avoid answering interrogatories by alleging ignorance.

13. The Plaintiff's obvious noncompliance with the Rules is compounded by the fact that the Plaintiff is suing on behalf of an entity, and entities are obligated to respond to interrogatories based on institutional knowledge and information *available* to them, rather than just the personal knowledge of a single person. *See Thomas v. Cate*, 715 F. Supp. 2d 1012, 1032 (E.D. Cal. 2010), order clarified, No. 1:05CV01198LJOJMDHC, 2010 WL 797019 (E.D. Cal. Mar. 5, 2010) (citing *General Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1211 (8th Cir. 1973).

14. And, lest there be any doubt, litigation trustees are under the same obligation. *See, e.g.*, *Kaye v. Lone Star Fund V (US), LP*, 2012 WL 13093400 *3 (N.D. Tex. Mar. 23, 2012) (where trustee had ample time "to become acclimated" to the suit and to "learn the underlying facts," he could be required to investigate and testify to the knowledge of the entity at a deposition under Fed. R. Civ. P. 30(b)(6))

15. The Litigation Trust Agreement makes clear that the Plaintiff has access to all the information he needs to respond to the Discovery Requests. Section 1.2(b) of the Litigation Trust Agreement provides that, upon the Effective Date of the Plan, the Plaintiff received "all information necessary to investigate, prosecute, protect, and conserve all Litigation Trust Assets." Litigation Trust Agreement ("LTA"), Ex. F, Section 1.2(b). Further, Section 1.2(e) provides that by no later than thirty business days after the Effective Date, the Plaintiff was required to receive

"any and all books and records and all other documents and communications related to the Litigation Trust Assets, including those maintained in electronic format and original documents, whether held by the Debtors, or their respective current officers, directors, employees, agents, attorneys, accountants, or any other professionals." LTA Section 1.2(e). Finally, Section 3.4(b) of the Litigation Trust Agreement (among others) confirms that the Plaintiff is a representative of the Debtors and their Estates under § 1123(b)(3)(B) of the Bankruptcy Code and, as such, is an appropriate person to gather information from those with first-hand knowledge of the underlying facts and circumstances surrounding this proceeding.

16. Here, despite having knowledge of the Rules and discovery practice, and explicit rights to the information and documents necessary to provide substantive responses to the Discovery Requests, the Plaintiff admits that he has not bothered to undertake a reasonable investigation of or inquiry into that information or documentation in the Responses.

17. The Plaintiff has no basis for objecting to and failing to respond to the Discovery Requests,[2] including each and every one of the Interrogatories, and RFA Nos. 3, 10, 13, 17, 18, 20, 24, 25, 28, 29, 40, 41, 46, 48, 50, 52, 53, 58, 59, and 60.

18. For these reasons, the Plaintiff must be compelled to conduct a reasonable investigation and inquiry into the information and documentation responsive to the Interrogatories and the RFAs identified above, and to provide actual, complete, and signed written responses to the Discovery Requests so that the Defendants can adequately understand the facts and circumstances relating to the Plaintiff's claims and defenses.

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[2] The Plaintiff's other objections to these Discovery Requests are equally baseless. The Interrogatories are not vague or unduly burdensome. Nor—given that they come at this late juncture—do they require the Plaintiff to "marshal the evidence prematurely." Defendants have requested information about the factual bases for the claims that the *Plaintiff* advances. Doing so is not premature.

(3) The Plaintiff's Assertion that Documents "Speak for Themselves," is not a Valid Response to the RFAs

19. The Plaintiff also failed to provide adequate responses to numerous RFAs with respect to certain documents and communications, stating generally that such documents "speak for themselves."

20. Such a response is both inadequate and deliberately evasive, and the Plaintiff's objections should be overruled. *See, e.g.*, *Aprile Horse Transp., Inc. v. Prestige Delivery Sys., Inc.*, Case No. 5:13-CV-15-GNS-LLK, 2015 WL 4068457, at *5 (W.D. Ky. July 2, 2015) (citing *Miller v. Holzmann*, 240 F.R.D. 1, 4 (D.D.C. 2006)).

21. Specifically, the Plaintiff made this evasive, inadequate response to more than thirty RFAs, including RFA Nos. 4, 5, 6, 7, 8, 9, 12, 14, 16, 17, 18, 19, 21, 22, 23, 26, 29, 31, 33, 36, 37, 38, 40, 41, 42, 45, 46, 47, 48, 49, 50, 54, 55, and 56.

22. The Plaintiff's responses, as produced, are inadequate and must be immediately amended. The Court should compel the Plaintiff to do so without allowing for further delay in these proceedings by the Plaintiff.

C. Request for Attorneys' Fees and Costs

23. As provided under Rule 37(a)(5)(A), when a motion to compel is granted, or disclosure or requested discovery is provided after the motion was filed, "the court must, after giving an opportunity to be heard, require the [party] whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 33(a)(5)(A).

24. The Defendants hereby request that, upon the Motion being granted, they be awarded their attorney's fees and costs incurred in connection with bringing the Motion. The Plaintiff's blatant and continued action to impede the progress of this Case is unwarranted and

improper, and the Defendants should be awarded their fees and costs incurred in connection with requiring the Plaintiff to comply with his known discovery obligations.

* * *

For the foregoing reasons, Defendants request that the Court enter an order, substantially in the form attached to the Motion, compelling the discovery sought in the Motion and above, and awarding the Defendants their attorneys' fees and costs associated with bringing the Motion.

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, 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/ Ryan C. Hardy

EXHIBIT A

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

DEFENDANT INTERCITY INVESTMENT PROPERTIES, INC.'S
SECOND SET OF WRITTEN DISCOVERY TO PLAINTIFF

TO: Plaintiff, Northwest Senior Housing Corporation, d/b/a Edgemere, by and through its counsel of record, Trinitee G. Green, Polsinelli PC, 2950 N. Harwood, Suite 2100, Dallas, Texas 75201 and Jeremy R. Johnson and Brenna A. Dolphin, Polsinelli PC, 600 3rd Avenue, 42nd Floor, New York, New York 10016.

[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.

Defendants Intercity Investment Properties, Inc., and Kong Capital LLC (collectively, "Defendants") serves this First Set of Written Discovery upon Plaintiff, Northwest Senior Housing Corporation ("NSHC" or "Plaintiff"). These discovery requests are governed by Rules 33 and 34 of the Federal Rules of Civil Procedure and responses are due within 30 days of service of same. All words not defined herein shall have the meaning assigned to them in Plaintiffs' Original Complaint.

Dallas, Texas
December 22, 2023

/s/ *Ryan C. Hardy*

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

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

Unless instructed otherwise, use the following definitions when interpreting and responding to the requests:

1. "Edgemere," "You," or "Your" refers to Northwest Senior Housing Corporation, its predecessors, successors (including, without limitation, Plaintiff), and any agent, representative, employee, or other person acting or purporting to act on its behalf.

2. "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.

3. "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.

4. "Sidley Austin" refers to Sidley Austin LLP, its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

5. "DLA Piper" refers to DLA Piper, its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

6. "Lifespace" refers to Lifespace Communities, Inc., its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

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. "Property" refers to the continuing care retirement community commonly known as the Edgemere.

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

10. "Communication" or "Communications" mean 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.

11. "Document" and "Documents" mean 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 hardcopy, print-out, or otherwise) and all attachments thereto.

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

13. The term "identify" with respect to an action or thing means to state, in as much factual detail as possible, the circumstances surrounding and the substance of the action or thing including applicable dates and persons involved or participating.

14. The term "identify" with respect to documents means to give, to the extent known, the(i) type of document; (ii) general subject matter; (iii) date of the document; (iv) author(s), addressee(s), and recipient(s); (v) present location; and (vi) present custodian.

15. The term "identify" with respect to a communication means to state the identity of the persons involved or participating in the communication, the date of the communication, and the general substance and subject matter of the communication.

16. 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.

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.

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 February10, 2022 conversation referenced in the same document.

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.

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.

IV.

SECOND 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.

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.

REQUEST FOR PRODUCTION NO. 3: All insurance policies for which You are a policyholder or named beneficiary.

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.

REQUEST FOR PRODUCTION NO. 5: All Documents identified or requested to be identified by any Interrogatory.

V.

FIRST 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).

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.

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.

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."

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."

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."

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."

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."

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."

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.

REQUEST FOR ADMISSION NO. 11: Admit CliftonLarsonAllen issued its 2020 Edgemere audit before the commencement of this bankruptcy case.

REQUEST FOR ADMISSION NO. 12: Admit CliftonLarsonAllen's 2020 Edgemere audit issued before the commencement of this bankruptcy case included a "going concern" opinion.

REQUEST FOR ADMISSION NO. 13: Admit CliftonLarsonAllen's "going concern" opinion in its 2020 Edgemere audit was included in disclosure statements to prospective residents.

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."

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.

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.

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.

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.

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.

REQUEST FOR ADMISSION NO. 20: Admit that Ann Joyce's statement referenced in Request for Admission No. 19 was true when made.

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.

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.

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.

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.

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.

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.

REQUEST FOR ADMISSION NO. 27: Admit that, as of January 10, 2022, the expense reimbursement still had not been paid.

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.

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.

REQUEST FOR ADMISSION NO. 30: Admit that the NDA ("NDA") referenced in your First Amended Complaint was dated as of September 7, 2021.

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[.]"

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.

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.

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.

REQUEST FOR ADMISSION NO. 35: Admit that UMB was neither a party to the NDA nor a representative of any party to the NDA.

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.

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.

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.

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.

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.

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.

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.

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").

REQUEST FOR ADMISSION NO. 44: Admit that FTI was engaged as an Estate professional by Edgemere during its bankruptcy case.

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."

REQUEST FOR ADMISSION NO. 46: Admit that Shandler's statement identified in Request for Admission No. 45 was true.

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."

REQUEST FOR ADMISSION NO. 48: Admit that Shandler's statement identified in Request for Admission No. 47 was true.

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."

REQUEST FOR ADMISSION NO. 50: Admit that Shandler's statement identified in Request for Admission No. 49 was true.

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."

REQUEST FOR ADMISSION NO. 52: Admit that Shandler's statement identified in Request for Admission No. 51 was true.

REQUEST FOR ADMISSION NO. 53: Admit that on or around September 1, 2021, Edgemere began withholding rent payments due to ICI.

REQUEST FOR ADMISSION NO. 54: Admit that the payment defaults under the Ground Lease were not cured until on or about March 8, 2022.

REQUEST FOR ADMISSION NO. 55: Admit that, in January and February 2022, Edgemere was in payment default under the Ground Lease.

REQUEST FOR ADMISSION NO. 56: Admit that, in January and February 2022, Edgemere was in default under the Bonds.

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."

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."

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.

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.

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.

REQUEST FOR ADMISSION NO. 62: Admit that the Forbearance Agreement extended the Bondholders' time to cure defaults under the Grond Lease to March 11, 2022.

CERTIFICATE OF SERVICE

This is to certify that on this 22nd day of December, 2023, a true and correct copy of the foregoing document was served via electronic mail upon:

J. Gregory Taylor
Drew Jones
DIAMOND MCCARTHY LLP
2711 N. Haskell Ave., Ste. 3100
Dallas, TX 75204
Telephone: 214-389-5300
Facsimile: 214-389-5399
Email: greg.taylor@diamondmccarthy.com
drew.jones@diamondmccarthy.com

/s/ Ryan C. Hardy
Ryan C. Hardy

Attachment 1

Shandler Report

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.
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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 B

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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.*,	)	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	)	

DEFENDANT INTERCITY INVESTMENT PROPERTIES, INC.'S FIRST SET OF WRITTEN DISCOVERY TO PLAINTIFF

TO: Plaintiff, Northwest Senior Housing Corporation, d/b/a Edgemere, by and through its counsel of record, Trinitee G. Green, Polsinelli PC, 2950 N. Harwood, Suite 2100, Dallas, Texas 75201 and Jeremy R. Johnson and Brenna A. Dolphin, Polsinelli PC, 600 3rd Avenue, 42nd Floor, New York, New York 10016.

[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.

Defendants Intercity Investment Properties, Inc., and Kong Capital LLC (collectively, "Defendants") serves this First Set of Written Discovery upon Plaintiff, Northwest Senior Housing Corporation ("NSHC" or "Plaintiff"). These discovery requests are governed by Rules 33 and 34 of the Federal Rules of Civil Procedure and responses are due within 30 days of service of same. All words not defined herein shall have the meaning assigned to them in Plaintiffs' Original Complaint.

Dallas, Texas
June 28, 2022

/s/ *Michael S. Held*

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

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

Unless instructed otherwise, use the following definitions when interpreting and responding to the requests:

1. "Edgemere," "You," or "Your" 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.

2. "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.

3. "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.

4. "Sidley Austin" refers to Sidley Austin LLP, its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

5. "DLA Piper" refers to DLA Piper, its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

6. "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.

7. "Lifespace" refers to Lifespace Communities, Inc., its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

8. 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.

9. 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.

10. 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.

11. The "Bankruptcy" refers to Edgemere's Chapter 11 bankruptcy case, styled *Northwest Senior Housing Corporation, et al.*, Case No. 22-30-659, 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.

12. 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.

13. The "Complaint" refers to the adversary complaint filed on April 14, 2022, styled *Northwest Senior Housing Corporation v. Intercity Investment Properties, Inc., and Kong Capital, LLC*, Adv. No. 22-30660, currently pending in the United States Bankruptcy Court in the Northern District of Texas – Dallas Division.

14. The "Bonds" refers to any and all outstanding bonds on which Edgemere currently owes, including, but not limited to, the bonds described in ¶ 13 of the Complaint.

15. The "Lawsuit" refers to *Northwest Senior Housing Corporation v. Intercity Investment Properties, Inc., and Kong Capital, LLC*, Adv. No. 22-30660, currently pending in the United States Bankruptcy Court in the Northern District of Texas – Dallas Division.

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

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

18. The "NDA" refers to the Confidentiality and Non-Disclosure Agreement between Lifespace, Edgemere, and Intercity dated September 7, 2021

19. "Confidential Information" refers to all information disclosed by Lifespace, Edgemere, or by Intercity to the other in the course of their discussions, subject to the NDA. Per the NDA, "Confidential Information" includes (i) all financial, resident, client, patient, vendor, all financial, resident, client, patient (excluding protected health information as that term is defined by HIPAA), vendor, supplier, employee or other business or personal information; (ii) information relating to trade secrets, trademarks, service marks, patents or copyrights, or any applications therefore; (iii) information relating to existing or contemplated products, services, offerings, technology, processes, manuals, computer systems and/or software; (iv) information relating to business plans, sales or marketing methods, methods of doing business, customer and vendor lists and information; (v) the existence of the NDA, or the discussions or negotiations that are currently taking place or have taken place concerning the Lease, including any proposed terms and conditions, the status of such discussions or negotiations; (vi) information relating to the financial condition of Edgemere and its negotiations with stakeholders and creditors; (vii) information relating to discussions between Edgemere and governmental authorities and regulators including the Texas Attorney General's office and the Texas Department of Insurance; (vii) all copies and reproductions of any of the foregoing. "Confidential Information" will not, however, include information that (i) was already known to the receiving party at the time that discussions between Lifespace, Edgemere, and Intercity commenced, unless the information is or was subject to a prior confidentiality agreement signed by the parties; (ii) has become publicly known through no wrongful act of the receiving party; (iii) has been received from a third party without restriction on disclosure and without breach of an obligation of confidentiality on the disclosing party; (iv) has been independently developed by the receiving party without breach of this agreement; (v) has been

approved for release by written authorization of the disclosing party; or (vi) is required to be disclosed by law, regulation, governmental proceeding, court order or similar process or otherwise.

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

21. "Communication" or "Communications" mean 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.

22. "Document" and "Documents" mean 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.

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

24. The term "identify" with respect to an action or thing means to state, in as much factual detail as possible, the circumstances surrounding and the substance of the action or thing including

applicable dates and persons involved or participating.

25. The term "identify" with respect to documents means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; (iv) author(s), addressee(s), and recipient(s); (v) present location; and (vi) present custodian.

26. The term "identify" with respect to a communication means to state the identity of the persons involved or participating in the communication, the date of the communication, and the general substance and subject matter of the communication.

27. 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.
INTERROGATORIES

INTERROGATORY NO. 1: Identify any professionals You consulted, engaged, or otherwise hired to evaluate Your financials since June 1, 2020, including but not limited to the "professionals" described in paragraph 18 of the Complaint.

INTERROGATORY NO. 2: Identify any and all terms of the Lease You allege are unenforceable or violate applicable law and when You became aware of the alleged issues.

INTERROGATORY NO. 3: Identify any individuals who participated in discussions among You and Intercity, Lifespace, and/or UMB regarding the Lease.

INTERROGATORY NO. 4: Identify any individuals or entities with whom You allege Intercity and/or Kong discussed Confidential Information.

INTERROGATORY NO. 5: Identify: (a) any Confidential Information that Intercity and/or Kong allegedly shared in violation of the NDA and (b) any third-party with whom You shared the identified Confidential Information.

INTERROGATORY NO. 6: Identify any steps that You took to address or remedy any alleged sharing of Confidential Information by Intercity and/or Kong.

INTERROGATORY NO. 7: Identify any false statement that Intercity and/or Kong allegedly made concerning You.

INTERROGATORY NO. 8: Identify all existing contracts with which Intercity and/or Kong allegedly interfered, including but not limited to any specific resident contracts.

INTERROGATORY NO. 9: Identify all prospective resident contracts with which Intercity and/or Kong allegedly interfered with and/or otherwise caused Edgemere to lose.

INTERROGATORY NO. 10: Identify the reasons You failed to pay principal of and interest on the Bonds due since October 2021 as set forth in the February 24, 2022 UMB letter and the reasons You failed to maintain a Debt Service Coverage Ratio of at least 1.0x as of December 31, 2020 and December 31, 2021.

INTERROGATORY NO. 11: Provide a list of any in-person meetings held among You, Lifespace, UMB, and/or Thomas R. Califano concerning Your financial condition, the Bonds, the Lease, the Bankruptcy, the Restructuring, the Historical Financial Condition, any Disclosure Statement, or this Lawsuit.

INTERROGATORY NO. 12: Identify any third-party, other than your legal counsel, with whom you have discussed the Lease, ICI, Kong, or the claims set forth in the Lawsuit, and describe such communications.

INTERROGATORY NO. 13: With respect to each unit at Edgemere, list: (a) the amount paid for each residential unit (last transaction); (b) the amount of the entrance fee paid in

connection with the last transaction on each residential unit, which is refundable; (c) date of entry resident moved into Edgemere; and (d) the current age of each resident residing in each residential unit at Edgemere:

Unit No.	The Amount Paid for Each Residential Unit (Last Sale)	The Amount of the Entrance Fee Paid in Connection with Last Sale of Each Residential Unit, Which is Refundable	Date of Entry Resident Moved into Edgemere	Current Age of Each Resident Residing in Each Individual Unit

INTERROGATORY NO. 14: As of the present date, list all Edgemere's resident refunds that are currently fully liquidated and not contingent and the amount thereof by individual/estate:

Individual/Estate Name	Edgemere's Current Obligation

INTERROGATORY NO. 15: Set forth Edgemere's debt schedule by CUSIP# including description, amount, rate, term, covenant(s), and payment terms.

INTERROGATORY NO. 16: Identify any information produced by Edgemere to either ICI and/or Kong under the NDA that contained information that had not been disclosed to a third-party by Edgemere.

INTERROGATORY NO. 17: State the amount of monetary damage Edgemere allegedly suffered as a result of any allegedly wrongful conduct engaged in by ICI and/or Kong, including how such purported monetary damage was calculated, i.e, the exact calculation to yield the claimed monetary damage figure and the inputs for the calculation.

IV.
REQUEST FOR PRODUCTION OF DOCUMENTS

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

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

REQUEST FOR PRODUCTION NO. 3: All Documents and Communications concerning the Forbearance Agreement or any proposed extension of the Forbearance Agreement.

REQUEST FOR PRODUCTION NO. 4: All Documents and Communications related to any other forbearance agreement(s) or other agreement(s) concerning the Bond Documents.

REQUEST FOR PRODUCTION NO. 5: All Documents and Communications from January 1, 2015 to present concerning refinancing of the Bonds, the Bond ratings or changes thereto, any potential or actual default on the Bonds by You, and any request or demand to pay the amounts due under the Bonds.

REQUEST FOR PRODUCTION NO. 6: All Documents and Communications concerning the Restructuring or Bankruptcy, including, but not limited to, the Historical Financial Condition, circumstances, and considerations leading up to the Bankruptcy filing.

REQUEST FOR PRODUCTION NO. 7: All Communications between You and UMB concerning:

a) the Bonds,
b) the Property,
c) the Lease,
d) the Forbearance Agreement or any proposed extension thereof,
e) any other forbearance agreement or other agreement concerning the Bond Documents,
f) the Bankruptcy,
g) the Restructuring,
h) the Historical Financial Condition,
i) Intercity,
j) Kong,
k) Any Dallas Morning News article,
l) the Lawsuit, or
m) any Disclosure Statement.

REQUEST FOR PRODUCTION NO. 8: All Documents and Communications concerning any in-person meeting among You, Lifespace, and/or UMB, including but not limited to emails, invitations, agendas, summaries, etc.

REQUEST FOR PRODUCTION NO. 9: All Documents and Communications concerning the impact of COVID-19 on Edgemere's financial condition and residential occupancy and retention rates.

REQUEST FOR PRODUCTION NO. 10: All Documents and Communications concerning the Historical Financial Condition, including, but not limited to, audited and unaudited financial statements.

REQUEST FOR PRODUCTION NO. 11: All Documents and Communications concerning Your Historical Financial Condition that You shared with Your residents.

REQUEST FOR PRODUCTION NO. 12: All Communications between You and any third-party concerning Intercity and/or Kong, including, but not limited to, Communications with regulatory agencies, media outlets, or bond rating agencies.

REQUEST FOR PRODUCTION NO. 13: All Documents and Communications concerning any activity of Intercity and/or Kong that You claim to be unlawful or tortious in the Complaint.

REQUEST FOR PRODUCTION NO. 14: All Documents and Communications concerning Your ability to meet Your obligations under the Lease, including, but not limited to, Your obligations to pay rent pursuant to the Lease.

REQUEST FOR PRODUCTION NO. 15: All Documents and Communications concerning Your disclosures of Your Historical Financial Condition, including, but not limited to, disclosures to regulatory agencies and to any other third-party. This request includes, but is not limited to, disclosures and/or filings made or required pursuant to 28 Tex. Admin. Code § 33.302, 28 Tex. Admin. Code § 33.303, 28 Tex. Admin. Code § 33.307(a)-(c).

REQUEST FOR PRODUCTION NO. 16: All Communications with any resident or resident association concerning:

a) the Property,
b) the Lease,
c) the Forbearance Agreement,
d) any other forbearance agreement or other agreement concerning the Bond Documents,
e) the Bankruptcy,
f) the Restructuring,
g) the Historical Financial Condition,
h) Intercity,
i) Kong,
j) Any Dallas Morning News article,
k) the Lawsuit,
l) Disclosures to residents or potential residents of the Edgemere, or
m) Complaints by residents or potential residents of the Edgemere.

REQUEST FOR PRODUCTION NO. 17: All Documents and Communications between You and any governmental or regulatory authority, including but not limited to the Texas Department of Insurance or the Office of the Attorney General for the State of Texas, concerning:

a) the Property,
b) the Lease,
c) the Forbearance Agreement,
d) any other forbearance agreement or other agreement concerning the Bond Documents.
e) the Bankruptcy,
f) the Restructuring,
g) the Historical Financial Condition,
h) Intercity,
i) Kong,
j) Any Dallas Morning News article,
k) the Lawsuit,
l) Disclosures to residents or potential residents of the Edgemere, or
m) Complaints by residents or potential residents of the Edgemere.

REQUEST FOR PRODUCTION NO. 18: All Documents and Communications supporting Your contention in paragraph 39 of the Complaint that Intercity or Kong "openly discussed Edgemere's Confidential Information obtained under the NDA, including non-public information about Edgemere's financial condition and strategic plans" with Your residents.

REQUEST FOR PRODUCTION NO. 19: All Documents and Communications supporting Your contention that Intercity or Kong released Confidential Information to *The Dallas Morning News* or other third parties in violation of the NDA.

REQUEST FOR PRODUCTION NO. 20: All Documents and Communications supporting Your contention that Intercity and/or Kong interfered with Your contracts with residents and bondholders, as described in Count 3 of the Complaint.

REQUEST FOR PRODUCTION NO. 21: All Documents and Communications concerning prospective contracts, including, but not limited to, prospective residential contracts, with which You allege Intercity and/or Kong interfered, as described in Count 4 of the Complaint. This request is inclusive, but not limited to, any Communication with any prospective resident that concerns a residential contract You allege was lost due to improper conduct by ICI or Kong.

REQUEST FOR PRODUCTION NO. 22: All Documents and Communications supporting Your contention that Intercity and/or Kong committed civil conspiracy, as described in Count 4 of the Complaint.

REQUEST FOR PRODUCTION NO. 23: All Communications between You and any attorney or law firm not representing You concerning:

a) the Bonds,
b) the Property,
c) the Lease,
d) the Forbearance Agreement or any proposed extension thereof,
e) any other forbearance agreement or other agreement concerning the Bond Documents,
f) the Bankruptcy,
g) the Restructuring,
h) the Historical Financial Condition,
i) Intercity,
j) Kong,
k) Any Dallas Morning News article,
l) the Lawsuit, or
m) any Disclosure Statement.

REQUEST FOR PRODUCTION NO. 24: All Communications between You, Thomas R. Califano, Sidley Austin, and/or DLA Piper that were disclosed to any third-party concerning

a) the Bonds,
b) the Property,
c) the Lease,
d) the Forbearance Agreement or any proposed extension thereof,
e) any other forbearance agreement or other agreement concerning the Bond Documents,
f) the Bankruptcy,
g) the Restructuring,
h) the Historical Financial Condition,
i) Intercity,
j) Kong,
k) Any Dallas Morning News article,
l) the Lawsuit, or
m) any Disclosure Statement.

REQUEST FOR PRODUCTION NO. 25: All Documents and Communications between You and Lifespace concerning:

a) the Bonds,
b) the Property,
c) the Lease,
d) the Forbearance Agreement or any proposed extension thereof,
e) any other forbearance agreement or other agreement concerning the Bond Documents,
f) the Bankruptcy,
g) the Restructuring,
h) the Historical Financial Condition,
i) Intercity,
j) Kong,
k) Any Dallas Morning News article,
l) the Lawsuit, or
m) any Disclosure Statement.

REQUEST FOR PRODUCTION NO. 26: All confidential information identified in response to Interrogatory No. 13.

REQUEST FOR PRODUCTION NO. 27: All documents concerning efforts to maintain the confidentiality of the information referenced in response to Interrogatory No. 13.

REQUEST FOR PRODUCTION NO. 28: All Communications and Documents regarding infusion of capital or borrowing of funds between January 1, 2020 to present date, including but not limited to funds received in accordance with the Paycheck Protection Program or CARES Act.

REQUEST FOR PRODUCTION NO. 29: All Communications with any potential or prospective resident concerning:

a) the Bonds,
b) the Property,
c) the Lease,
d) the Forbearance Agreement or any proposed extension thereof,
e) any other forbearance agreement or other agreement concerning the Bond Documents
f) the Bankruptcy,
g) the Restructuring,
h) the Historical Financial Condition,
i) Intercity,
j) Kong,
k) any Dallas Morning News article,
l) the Lawsuit, or
m) any Disclosure Statement.

REQUEST FOR PRODUCTION NO. 30: All Communications or Documents referenced in response to Interrogatory No. 13, and any Communications with any prospective resident that Edgemere believes it lost as a result of any alleged action by Intercity or Kong.

REQUEST FOR PRODUCTION NO. 31: All resident contracts for each Unit at Edgemere pertaining to the current resident(s).

REQUEST FOR PRODUCTION NO. 32: All resident contracts for which there is a current refund presently due and owing.

REQUEST FOR PRODUCTION NO. 33: All agreements with any resident pertaining to entrance fees and/or refunds of entrance fees.

REQUEST FOR PRODUCTION NO. 34: Any Document or Communication compiling the entrance fees paid to Edgemere by any resident.

REQUEST FOR PRODUCTION NO. 35: Any Document or Communication compiling or concerning: (a) how much was paid for each residential unit at Edgemere and/or (b) how much of the amount paid for each residential unit at Edgemere was refundable.

REQUEST FOR PRODUCTION NO. 36: Any Document or Communication compiling or concerning the age of each individual resident at Edgemere as of the date of this request.

REQUEST FOR PRODUCTION NO. 37: Any actuarial report of the resident population.

REQUEST FOR PRODUCTION NO. 38: For the period of March 31, 2018 to present, all current cash flow budget to actual variance report(s).

REQUEST FOR PRODUCTION NO. 39: In Excel format, Historical Quarterly Financial Statements from March 31, 2018 to present. To the extent that Excel format does not exist, please produce in the format that does exist.

REQUEST FOR PRODUCTION NO. 40: All meeting minutes of, or documents provided to the Board of Directors at or in advance of, any Board meeting for the period January 1, 2017 to present.

REQUEST FOR PRODUCTION NO. 41: All evidence that "as Edgemere's sales have since collapsed [due to "Defendant's improper conduct"] which directly imperils Edgemere's restructuring prospects," as stated in Dkt. 58 at p. 9 of 34.

REQUEST FOR PRODUCTION NO. 42: In Dkt. 58 at p. 9 of 34, Edgemere states "[t]ere is already strong evidence of Edgemere's claims." Produce all evidence referred to by Edgemere in this quoted sentence.

REQUEST FOR PRODUCTION NO. 43: For the period of January 1, 2017 to present, all Documents and Communications regarding or concerning Edgemere's historical trends involving "new Residency Agreement[s]."

REQUEST FOR PRODUCTION NO. 44: For the period of January 1, 2017 to present, all Documents and Communications regarding or concerning "call volume from prospective residents."

REQUEST FOR PRODUCTION NO. 45: For the period of January 1, 2017 to present, all logs of prospective tenant calls.

REQUEST FOR PRODUCTION NO. 46: For the period of January 1, 2017 to present, all Documents and Communications regarding or concerning "tours among prospective residents."

REQUEST FOR PRODUCTION NO. 47: For the period of January 1, 2017 to present, all logs of tours of Edgemere "among prospective residents."

REQUEST FOR PRODUCTION NO. 48: For the period of January 1, 2022 to present, all Documents and Communications showing that "referrals of existing Residents to higher levels of care with the Community decreased."

REQUEST FOR PRODUCTION NO. 49: For the period of January 1, 2022 to present, all Documents and Communications showing that "individuals committed to joining the Community postponed closing on their contracts."

REQUEST FOR PRODUCTION NO. 50: All Documents showing the "48 [resident] closings" by Edgemere in 2021.

REQUEST FOR PRODUCTION NO. 51: All Documents showing the number of resident closings by Edgemere in November and December 2021.

REQUEST FOR PRODUCTION NO. 52: For the period of January 1, 2017 to present, Documents and Communications showing Edgemere's historical number of "resident closings" on an annual basis and, if available, on a monthly basis.

REQUEST FOR PRODUCTION NO. 53: For the period of January 1, 2022 to present, all Documents and Communications showing that any resident left Edgemere and/or ended his/her/its business relationship with Edgemere due to anything said or done by ICI and/or Kong.

REQUEST FOR PRODUCTION NO. 54: For the period of January 1, 2022 to present, all Documents and Communications showing that any prospective resident was "deter[red] from joining the Community" as stated in Dkt. 58 at p. 25 of 34.

REQUEST FOR PRODUCTION NO. 55: All Documents and Communications with legal counsel regarding or concerning the terms of the Lease, including but not limited to the time at which "Edgemere then discovered the mistaken and improper language within the text of the remedies provisions in Section 8.2 of the Lease" as stated in Dkt. 58 at p. 32 of 34.

REQUEST FOR PRODUCTION NO. 56: All reporting to LifeSpace regarding: (a) "new Residency Agreements"; (b) difficulty with respect to securing "new Residency Agreements" and/or the reasons therefore; (c) "tours among prospective residents"; (d) decreased "tours among prospective residents" and/or the reasons therefore; (e) "call volume from prospective residents"; and (f) decreasing "call volume from prospective residents" and/or the reasons therefore.

REQUEST FOR PRODUCTION NO. 57: All Documents and Communications concerning funds transferred between Edgemere and any other entity owned, operated, or managed by Lifespace, including but not limited to the The Stayton at Museum Way or Querencia at Barton Creek.

REQUEST FOR PRODUCTION NO. 58: For the period of January 1, 2022 to present, all Documents and Communications showing that any prospective resident was "deter[red] from joining the Community" as stated in Dkt. 58 at p. 25 of 34.

REQUEST FOR PRODUCTION NO. 59: For the period of December 31, 2019 forward, the Entrance Fee Summary (*see* example reference in the March 31, 2018 quarterly financials posted on EMMA at page 7).

REQUEST FOR PRODUCTION NO. 60: For the period of December 31, 2019 forward, the Sale and Occupancy Overview (*see* example reference in the March 31, 2018 quarterly financials posted on EMMA at pages 8-10).

REQUEST FOR PRODUCTION NO. 61: For the period of December 31, 2019 forward, the Payor Source Margin Analysis (*see* example reference in the March 31, 2018 quarterly financials posted on EMMA at page 11).

REQUEST FOR PRODUCTION NO. 62: Documents and Communications regarding or concerning Edgemere's conversion rate for "new Residency Agreements" following prospective resident contact i.e., phone calls or tours.

REQUEST FOR PRODUCTION NO. 63: Metrics and analysis regarding or concerning "new Residency Agreements," Edgemere's conversion rates in connection with prospective resident contact, "new Residency Agreement" forecasts and related variables, and/or market conditions impacting Edgemere.

CERTIFICATE OF SERVICE

This is to certify that on this 28 day of June, 2022, a true and correct copy of the foregoing document was served via electronic mail upon:

Trinitee G. Green (SBN 24081320)
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*)
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
COUNSEL TO THE DEBTORS AND
DEBTORS IN POSSESSION

/s/ Michael S. Held
Michael S. Held

EXHIBIT C

Ryan C. Hardy

From: Ryan C. Hardy
Sent: Friday, January 12, 2024 5:34 PM
To: Greg Taylor
Subject: Re: Edgemere - 1/24 Hearing [LP-ACTIVE.46317.46317-132590.FID1191903]

Shoot I'm sorry, Greg. That's fine yes. Have a good weekend.

Get Outlook for iOS

From: Greg Taylor <gtaylor@diamondmccarthy.com>
Sent: Friday, January 12, 2024 5:09:07 PM
To: Ryan C. Hardy <rhardy@lplegal.com>
Subject: Re: Edgemere - 1/24 Hearing [LP-ACTIVE.46317.46317-132590.FID1191903]

Inquiring minds want to know…

Sent from my iPhone

> On Jan 10, 2024, at 10:45 AM, Greg Taylor <gtaylor@diamondmccarthy.com> wrote:
>
> Ryan: Can we also get an extension to answer Defendants' new second wave of discovery? I would like until February 9. Let me know.
>
> Regards,
> Greg
>
> Sent from my iPhone
>
> > On Dec 20, 2023, at 4:20 PM, Ryan C. Hardy <rhardy@lplegal.com> wrote:
> >
> > I don't like doing the "confirming our discussion" emails, but under Rules 29 and 33 I'm asking you to please confirm your agreement that Kong's deadline for the second interrogatories is extended by two weeks to and including Jan. 22. Thanks, Greg.

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

Levenfeld Pearlstein, LLC
120 S Riverside Plaza
Suite 1800
Chicago, IL 60606 USA
lplegal.com

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From: Greg Taylor <gtaylor@diamondmccarthy.com>
Sent: Wednesday, December 20, 2023 11:28 AM
To: Ryan C. Hardy <rhardy@lplegal.com>; Drew A. Jones <drew.jones@diamondmccarthy.com>
Cc: Elizabeth B. Vandesteeg <evandesteeg@lplegal.com>
Subject: RE: Edgemere - 1/24 Hearing [LP-ACTIVE.46317.46317-132590.FID1191903]

Yes, we can talk then.

From: Ryan C. Hardy <rhardy@lplegal.com>
Sent: Wednesday, December 20, 2023 11:13 AM
To: Greg Taylor <gtaylor@diamondmccarthy.com>; Drew A. Jones <drew.jones@diamondmccarthy.com>
Cc: Elizabeth B. Vandesteeg <evandesteeg@lplegal.com>
Subject: RE: Edgemere - 1/24 Hearing [LP-ACTIVE.46317.46317-132590.FID1191903]

Understood. Want to talk at 4:00?

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

Levenfeld Pearlstein, LLC
120 S Riverside Plaza
Suite 1800
Chicago, IL 60606 USA
lplegal.com

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From: Greg Taylor <gtaylor@diamondmccarthy.com>
Sent: Wednesday, December 20, 2023 10:53 AM
To: Ryan C. Hardy <rhardy@lplegal.com>; Drew A. Jones <drew.jones@diamondmccarthy.com>
Cc: Elizabeth B. Vandesteeg <evandesteeg@lplegal.com>
Subject: RE: Edgemere - 1/24 Hearing [LP-ACTIVE.46317.46317-132590.FID1191903]

I was in court all day yesterday, so could not respond. We will just take the same amount of time you take. I can't do this hearing on 1/24 because I am set for trial that week in Houston. And I need some additional time after the holidays to respond to your new motions. Let me know when you want to discuss. I could talk this afternoon.

<image005.jpg>
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.

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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: Tuesday, December 19, 2023 8:15 AM
To: Greg Taylor <gtaylor@diamondmccarthy.com>; Drew A. Jones <drew.jones@diamondmccarthy.com>
Cc: Elizabeth B. Vandesteeg <evandesteeg@lplegal.com>
Subject: Edgemere - 1/24 Hearing [LP-ACTIVE.46317.46317-132590.FID1191903]

Greg, Drew:

The Court reached out to us to reach out to you for a time estimate on the motion for judgment on the pleadings. Experience in this matter teaches me it will take longer than I expect, so I'm estimating 1.5 hours for Defendants' presentation. What is your (non-binding) estimate?

As to dates, I'm planning to tee it up for 1/24 with the FTI motion and we'll just take the day. Let me know please if you feel strongly otherwise.

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

Levenfeld Pearlstein, LLC
120 S Riverside Plaza
Suite 1800

Chicago, IL 60606 USA
lplegal.com

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EXHIBIT D

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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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 E

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February 13, 2024

VIA EMAIL

Mr. Greg Taylor
Diamond McCarthy LLP
gtaylor@diamondmccarthy.com

Re: Clark v. Intercity Investment Properties Inc., & Kong Capital LLC
Adv. No. 22-03040 (MVL)

Greg:

As you know, Leif M. Clark, solely as Trustee of the Edgemere Litigation Trust (the "**Plaintiff**" or "**Trustee**") served responses and objections (the "**Discovery Responses**") to the second set of written discovery issued to him by defendants Intercity Investment Properties, Inc. ("**ICI**,") and Kong Capital LLC ("**Kong**," referred to collectively with ICI as the "**Defendants**") on February 9, 2024, in the above-referenced adversary proceeding.

After reviewing the Discovery Responses, the Defendants have identified pervasive defects with them that must immediately be cured by the Trustee. In the interest of resolving these issues consensually and avoiding the need for court intervention, the Defendants have outlined these issues below, along with the relief they will seek before the Bankruptcy Court should no agreement be reached.

We require the Trustee remedy the issues identified in this letter no later than Friday, February 16 at 5:00 p.m. (prevailing Central Time). Because fact discovery in this proceeding closes in April, we have neither the time nor the interest to further indulge your client's gamesmanship.

1. **Failure to Respond to Interrogatories**

   In its responses to the Defendants' second set of interrogatories (the "**Interrogatories**") the Trustee has failed to respond in substance to each and every Interrogatory, falsely asserting that the Defendants have already exceeded the number of interrogatory requests permitted by the Federal Rules of Civil Procedure.

Defendants have served two sets of interrogatories to the Trustee or his predecessor. The first set included seventeen interrogatories; the current set, four. That is a total of twenty-one while twenty-five are permitted under the Rules.

To be clear, the interrogatories served to date also do not include "discrete subparts" that require counting as separate interrogatories. Fed. R. Civ. P. 33(a)(1). The "discrete subparts" language in the Rule was added as part of the 1993 amendments, and in explaining the purpose of the language the Rules Advisory Committee explained that it was to ensure parties could not evade the presumptive 25-interrogatory limit "through the device of joining as 'subparts' questions that seek information about discrete separate subjects." *See also, e.g.*, *Krawczyk v. City of Dallas*, 2004 WL 614842 *2 (N.D. Tex. Feb. 27, 2004) (interrogatory subparts to be counted as "discrete" only if they "are not logically or factually subsumed within and necessarily related to the primary question"); *Efrindergemeinschaft Uropep GbR v. Eli Lily & Co.*, 315 F.R.D. 191, 194-97 (E.D. Tex. 2016). But that is not what happened here, and as a former federal judge your client well knows it.

Your client objects also that the interrogatories seek "information outside of [his] personal knowledge" or "outside the documents in [his] possession, custody or control." Your client cites no authority that he is constrained to answering based on personal knowledge or on documents in his current possession, custody or control. Indeed, it would be unusual if he were so constrained for at least two reasons. ***First***, he sues on behalf of an entity, and entities are obligated to respond to interrogatories based on institutional knowledge rather than just the personal knowledge of a single person. ***Second***, the Litigation Trust Agreement furnishes your client with access to all the information he needs. Section 1.2(b) of the Litigation Trust Agreement provides, that upon the Effective Date of the Plan, your client received "all information necessary to investigate, prosecute, protect, and conserve all Litigation Trust Assets." Section 1.2(e) provides that by no later than thirty business days after the Effective Date, your client shall receive "any and all books and records and all other documents and communications related to the Litigation Trust Assets, including those maintained in electronic format and original documents, whether held by the Debtors, or their respective current officers, directors, employees, agents, attorneys, accountants, or any other professionals." And, indeed, section 3.4(b) (among others) confirms that your client is a representative of the Debtors and their Estates under section 1123(b)(3)(B) of the Code.[1]

Your client is being paid ten thousand dollars per month to learn the facts underlying this proceeding and litigate it to conclusion. He may not avoid his discovery obligations by objecting that he does not care to do his job.

Your client's other objections are equally baseless. The interrogatories are not vague, or unduly burdensome, or whatever other nonsense your firm threw into the mix. Nor—given that they come at this late juncture—do they require your client to "marshal the evidence prematurely." Defendants

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[1] This issue is also addressed further below.

have requested information about the factual bases for the claims *your client*—not Edgemere or anybody else, but your client—advances. Doing so is not premature.

The Trustee must provide actual, complete, and signed written responses to the Interrogatories so that the Defendants can adequately understand the facts and circumstances relating to the Trustee's claims and defenses. The Trustee has no basis to refuse to answer the Interrogatories and must remedy his deficient responses immediately. We will seek our fees in connection with a motion should a motion prove necessary or advisable.

2. Failure to Make a Good Faith Attempt to Identify or Provide Information Outside of Trustee's Personal Knowledge

Numerous of the Trustee's Discovery Responses object or fail to respond to Discovery Requests on the grounds that the Defendants seek information or documents outside of the Trustee's personal knowledge. The standard applicable to responding to the Discovery Requests, however, requires that the Trustee do more than merely rely on his own personal knowledge.

Instead, the Trustee must conduct a reasonable inquiry and investigation of the information and documentation sought by the Discovery Requests to properly comply with his obligations to provide complete Discovery Responses. *See Jackson v. Kroblin Refrigerated Xpress, Inc.*, 49 F.R.D. 134, 137-38 (N.D. W. Va. 1970), citing *Breeland v. Bethlehem Steel Co.*, 179 F.Supp. 464, 467 (S.D.N.Y.1959) for the commonsense proposition that parties to litigation cannot avoid answering interrogatories by alleging ignorance.

The Defendants demand that that Trustee conduct such an inquiry and investigation and provide complete, sufficient responses to each and every one of the Interrogatories, as well as providing complete, amended responses to the following requests for admission (each an "**RFA**") issued by the Defendants as part of the Discovery Requests: RFA Nos. 3, 10, 13, 17, 18, 20, 24, 25, 28, 29, 40, 41, 46, 48, 50, 52, 53, 58, 59, and 60.

3. Asserting that Documents "Speak for Themselves," is not a Valid Response to Requests for Admission

The Trustee also failed to provide adequate responses to numerous RFAs with respect to certain documents and communications, stating generally that such documents "speak for themselves." Such a response is both inadequate and deliberately evasive. *See*, *e.g.*, *Aprile Horse Transp., Inc. v. Prestige Delivery Sys., Inc.*, Case No. 5:13-CV-15-GNS-LLK, 2015 WL 4068457, at *5 (W.D. Ky. July 2, 2015) (citing *Miller v. Holzmann*, 240 F.R.D. 1, 4 (D.D.C. 2006).

The Defendants demand that the Trustee amend his responses to RFA Nos. 4, 5, 6, 7, 8, 9, 12, 14, 16, 17, 18, 19, 21, 22, 23, 26, 29, 31, 33, 36, 37, 38, 40, 41, 42, 45, 46, 47, 48, 49, 50, 54, 55, and 56.

4. Request to Meet and Confer

The above sets forth the principal issues identified by the Defendants in their review of the Trustee's Discovery Responses. Defendants therefore request that you review this correspondence and consider how these issues can be remedied by the Trustee to **bring the Discovery Responses into compliance with the Federal Rules of Civil Procedure no later than 5:00 p.m. (prevailing Central Time) on Friday, February 16, 2024**, or Defendants will seek an order from the Bankruptcy Court compelling him to do so and ordering him to pay Defendants' fees.

To this end, we are available to meet and confer regarding these issues this week at 9:00 a.m. on February 14, and look forward to meeting with you to resolve these issues and avoid the need for further Court intervention in this matter.

Very truly yours,

/s/ Ryan C. Hardy

Ryan C. Hardy

RXH:nlb

EXHIBIT F

LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement,[1] dated as of the Effective Date (as amended, supplemented, or otherwise modified from time to time, this "Litigation Trust Agreement" or this "Agreement"), by and among (i) Northwest Senior Housing Corporation and Senior Quality Lifestyles Corporation, the debtors and debtors in possession (together, the "Debtors") in the chapter 11 cases (the "Chapter 11 Cases") currently pending in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), (ii) the undersigned Members of the Litigation Trust Oversight Committee (as defined herein), and (iii) Leif M. Clark of Leif M Clark Consulting PLLC, as trustee of the Litigation Trust referred to herein (in such capacity, the "Litigation Trustee"), creates and establishes the litigation trust (the "Litigation Trust") for the benefit of the Litigation Trust Beneficiaries (as defined herein) in connection with the Plan (defined below). Each of the parties hereto are referred to herein individually as a "Party" and, collectively, as the "Parties."

RECITALS

WHEREAS, the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on April 14, 2022 (the "Petition Date"), initiating the Chapter 11 Cases;

WHEREAS, on December 19, 2022, (i) UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (together, the "Bond 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 "Trustee"), (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 Trustee, the "Plan Sponsors") submitted the *Third Amended Disclosure Statement for the Plan of Reorganization of the Plan Sponsors dated December 19, 2022* [Docket No. 934] (as the same may be amended, modified, or supplemented from time to time in accordance with the terms and provisions thereof, the "Disclosure Statement");

WHEREAS, on December 19, 2022, the Bankruptcy Court entered an order approving the Disclosure Statement [Docket No. 936];

WHEREAS, on January 13, 2023, the Plan Sponsors filed their *Plan Supplement to the Third Amended Plan of Reorganization of the Plan Sponsors* [Docket No. 1039];

WHEREAS, on February 17, 2023, the Plan Sponsors filed the *Fourth Amended Plan of Reorganization of the Plan Sponsors dated February 17, 2023* [Docket No. 1241] (as the same may be amended, modified, or supplemented from time to time in accordance with the terms and provisions thereof, the "Plan"), which Plan is supported by Lifespace Communities, Inc. ("Lifespace") and the Official Committee of Unsecured Creditors (the "Committee");

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or, if not defined therein, in the Disclosure Statement.

WHEREAS, on April 7, 2023, the Bankruptcy Court entered its order confirming the Plan (the "Confirmation Order") [Docket No. 1393];

WHEREAS, the Effective Date of the Plan occurred on June 13, 2023;

WHEREAS, pursuant to and as provided in the Plan, as of the Effective Date of the Plan the Parties hereby seek to effectuate (a) the creation and establishment of the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, (b) the transfer to the Litigation Trust of the Litigation Trust Assets, the Litigation Trust Causes of Action (as defined herein), free and clear of all Claims and Interests other than those of the Litigation Trust Beneficiaries, (c) the prosecution and settlement of the Litigation Trust Causes of Action by the Litigation Trustee, and (d) the distribution of the proceeds therefrom or from any of the Litigation Trust Assets (collectively, the "Litigation Trust Proceeds") to the Litigation Trust Beneficiaries, in each case as set forth in the Plan, the Confirmation Order, and this Agreement;

WHEREAS, pursuant to and as provided in the Plan, the Litigation Trust shall be funded and vested with that certain Litigation Trust Fund[2] (as defined herein);

WHEREAS, the Litigation Trust is established hereunder for the sole purpose of prosecuting the Litigation Trust Causes of Action and liquidating and distributing the Litigation Trust Assets to or for the benefit of the holders of the Litigation Trust Beneficiaries, with no objective or authority to continue or engage in the conduct of a trade or business;

WHEREAS, the Holders of Allowed General Unsecured Claims under the Plan (collectively referenced herein as the "Litigation Trust Beneficiaries") are the beneficiaries of the Litigation Trust;

WHEREAS, for the avoidance of any doubt, and pursuant to and consistent with the Plan, only those parties granted interests in the Litigation Trust pursuant to the Plan and Confirmation Order (or any transferee thereof made in accordance with this Agreement) shall be considered Litigation Trust Beneficiaries;

WHEREAS, the Litigation Trust is intended to qualify as a "liquidating trust" pursuant to the Internal Revenue Code of 1986, as amended (the "IRC"), and the regulations promulgated thereunder ("Treasury Regulations") including Treasury Regulation section 301.7701-4(d), and thus as a "grantor trust" within the meaning of sections 671 through 679 of the IRC, with the Litigation Trust Beneficiaries treated for U.S. federal income tax purposes as the grantors and owners of their respective shares of the Litigation Trust Assets;

WHEREAS, the Litigation Trustee shall have all powers necessary to implement the provisions of the Plan, the Confirmation Order, and this Agreement and to administer the Litigation Trust as provided herein; and

[2] For the avoidance of doubt, Section 4.2.3 of the Plan provides for the funding of $500,000, on a Pro Rata basis by the Trustee and Lifespace, into the Litigation Trust Fund for the payment of Litigation Trust Expenses to be incurred by the Litigation Trust.

NOW, **THEREFORE**, pursuant to the Plan and the Confirmation Order, in consideration of the mutual agreements of the Parties contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the Parties hereby agree as follows:

ARTICLE I

ESTABLISHMENT OF THE LITIGATION TRUST

1.1 Establishment of the Litigation Trust and Appointment of the Litigation Trustee and the Litigation Trust Oversight Committee.

(a) The Parties, pursuant to the Plan and the Confirmation Order, and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish this Litigation Trust on behalf of the Litigation Trust Beneficiaries, which shall be known as the "Edgemere Litigation Trust," on the terms set forth herein. In connection with the exercise of the Litigation Trustee's powers hereunder, which powers are only effective as of the Effective Date of the Plan, the Litigation Trustee may use this name or such variation thereof as the Litigation Trustee sees fit.

(b) Litigation Trustee. Leif M. Clark of Leif M Clark Consulting PLLC is hereby appointed as Litigation Trustee of the Litigation Trust effective solely as of the Effective Date of the Plan (such date for purposes hereof, referenced herein as the "Effective Date") and agrees to accept and hold the assets of the Litigation Trust in trust for the Litigation Trust Beneficiaries subject to the terms of the Plan, the Confirmation Order, and this Agreement. As of the Effective Date of the Plan, the Litigation Trustee (and each successor trustee serving from time to time, as duly appointed hereunder) shall have all the rights, powers and duties set forth herein.

(c) Litigation Trust Oversight Committee. A committee is hereby appointed to oversee the Litigation Trust and the activities of the Litigation Trustee (the "Litigation Trust Oversight Committee"). The Litigation Trust Oversight Committee shall consist of one (1) Person appointed by the Trustee, one (1) Person appointed by Lifespace, and one (1) Person mutually agreeable to the Trustee and Lifespace (each, a "Member"). The initial Members are identified on Exhibit B attached hereto.

(d) Any action(s) undertaken by the Litigation Trustee under this Agreement that require direction by the Litigation Trust Oversight Committee shall be in writing approved by a majority in number of the Members of the Litigation Trust Oversight Committee in accordance with Article V hereof (a "Direction").

(e) The Litigation Trustee and the Members shall serve without bond and shall have no obligation to file any accountings with any state court.

(f) For the avoidance of doubt, neither the Litigation Trustee nor any Member of the Litigation Trust Oversight Committee is or shall be deemed an officer, director, or fiduciary of any of the Debtors.

1.2 Transfer and Vesting of the Litigation Trust Assets.

(a) On the Effective Date of the Plan, the Debtors shall contribute or otherwise transfer to the Litigation Trust all Claims and Retained Causes of Action, including but not limited to the Landlord Litigation, as provided by the Plan (together with any additional causes of action or Litigation Trust Assets described in the Plan that may be assigned by any party to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, referenced herein collectively as the "Litigation Trust Causes of Action"). Litigation Trust Causes of Action may also include any additional claims and causes of action that may be assigned by any party to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries. The contribution or transfer of the Litigation Trust Causes of Action to the Litigation Trust shall (i) be deemed to occur automatically on the Effective Date of the Plan, (ii) be deemed to include the rights and powers of each Debtor and Litigation Trust Beneficiary, as applicable, in such Litigation Trust Causes of Action, and (iii) be free and clear of all Claims and Interests other than the interests of the Litigation Trust Beneficiaries.

(b) Pursuant to section 4.2.4 of the Plan, on the Effective Date, the Debtors shall be deemed to transfer all of the Litigation Trust Assets (including the rights and powers of the Debtors' Estates applicable to the Litigation Trust Assets in accordance with section 1141 of the Bankruptcy Code) and the Litigation Trust Causes of Action, to the Litigation Trust, including all information necessary to investigate, prosecute, protect, and conserve all Litigation Trust Assets, free and clear of all Liens, Claims, encumbrances, and Interests (legal, beneficial, or otherwise) for the benefit of the Litigation Trust Beneficiaries. For the avoidance of doubt, upon the transfer of the Litigation Trust Assets, the Litigation Trust shall succeed to all of the Debtors' rights, title, and interest in the Litigation Trust Assets, and the Debtors shall have no further interest in or with respect to the Litigation Trust or the Litigation Trust Assets. The Plan shall be considered a motion pursuant to sections 105 and 363 of the Bankruptcy Code for such relief.

(c) Upon the Effective Date of the Plan, the Litigation Trustee shall be authorized to obtain, liquidate, and collect all of the Litigation Trust Assets in the possession of third parties, if any, and commence, litigate, and/or settle all of the Litigation Trust Causes of Action. The Litigation Trust acting through the Litigation Trustee shall serve as the successor-in-interest with respect to any action that was or could have been commenced by any of the Debtors prior to the Effective Date that is a Litigation Trust Asset and shall be deemed and entitled to be substituted for the same as the party in all such litigation. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Plan, the Confirmation Order or this Agreement, the Debtors, as applicable, shall, on and after the Effective Date, cause to be executed such other and further documents as are reasonably necessary to effectuate all of the foregoing in connection with the administration of the Litigation Trust Assets by the Litigation Trustee. In no event shall any part of the Litigation Trust Causes of Action (including, without limitation, Litigation Trust Proceeds) revert to or be distributed to the Debtors or any other third parties other than as expressly provided for herein.

(d) [Reserved.]

(e) As soon as is reasonably practicable on or after the Effective Date (and under no circumstances later than thirty (30) Business Days following the Effective Date), the

Debtors shall have collected and retained and then deliver or cause to be delivered, as necessary and as requested by the Litigation Trustee, to the Litigation Trust any and all books and records and all other documents and communications related to the Litigation Trust Assets, including those maintained in electronic format and original documents, whether held by the Debtors, or their respective current officers, directors, employees, agents, advisors, attorneys, accountants, or any other professionals.

(f) The Litigation Trustee agrees to execute any documents or other instruments and take any other steps as are reasonably necessary to cause title to the Litigation Trust Assets to be transferred to the Litigation Trust on the Effective Date.

(g) The Litigation Trust shall be authorized to use Bankruptcy Rule 2004 and any other bankruptcy or other tools of discovery available to the Debtors and the Debtors' Estates. Any and all such rights in connection with Rule 2004 discovery, examinations, orders, and agreements related thereto concerning the Debtors and the Litigation Trust Assets shall vest in the Litigation Trustee and its representatives, and the Debtors and the Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of such rights and privileges.

(h) The transfer of the Litigation Trust Assets to the Litigation Trust shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code.

1.3 Funding of the Litigation Trust. On the Effective Date, pursuant to section 4.2.3 of the Plan, the Litigation Trust shall be funded Pro Rata by the Trustee and Lifespace in an amount of $500,000 (the "Litigation Trust Fund") which amount shall be used to fund Litigation Trust Expenses to be incurred by the Litigation Trust. The Litigation Trust Fund shall also constitute a Litigation Trust Asset. The Litigation Trust Fund shall be funded in the manner described on Exhibit A attached hereto.

1.4 Acceptance by Litigation Trustee. The Litigation Trustee hereby accepts the trust imposed upon it by this Litigation Trust Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Litigation Trust, the Litigation Trustee hereby accepts the transfer of the Litigation Trust Assets.

1.5 Payment of Litigation Trust Fees and Expenses.

(a) The Litigation Trustee may incur on behalf of the Litigation Trust any reasonable, documented, and necessary fees and expenses in pursuing the Litigation Trust Assets, administering the Litigation Trust, managing the Litigation Trust Assets, and making distributions thereof and of proceeds thereof on account of Litigation Trust Interests. All necessary, reasonable and documented fees, expenses, and costs incurred by the Litigation Trust or the Litigation Trustee on the Litigation Trust's behalf before and after the Effective Date, including fees and expenses incurred by counsel and other professionals retained by the Litigation Trust and/or the Litigation Trustee (all such fees, expenses, and costs, the "Litigation Trust Expenses")[3] shall be paid by, and

[3] As set forth in the Litigation Trustee's compensation summary attached hereto as Exhibit C, for any anticipated expense to be incurred by the Litigation Trustee that shall exceed ten thousand dollars ($10,000.00), the Litigation

shall solely be the obligation of, the Litigation Trust. On and after the Effective Date, the Litigation Trust Expenses shall be paid solely from the Litigation Trust Fund. Except as otherwise ordered by the Bankruptcy Court, on or after the Effective Date of the Plan, the Litigation Trust Expenses shall be paid in accordance with this Agreement without the necessity for any further order of the Bankruptcy Court. Notwithstanding anything to the contrary in the foregoing, the Litigation Trustee shall be entitled to retain counsel to advise the Litigation Trustee on the performance of his fiduciary duties, on the appropriate terms for insurance coverage for the Litigation Trustee, on the terms of retention of professionals assisting the Litigation Trustee in the performance of his fiduciary duties, and further to represent the Litigation Trustee in the event a conflict should arise between the Litigation Trustee and the Litigation Trust Oversight Committee or the Litigation Trustee and the beneficiaries of the Litigation Trust and the Litigation Trustee shall be entitled to compensate said counsel out of Litigation Trust Assets, at an hourly rate of no more than $890.00 per hour, plus reasonably incurred expenses; provided, however, that the Litigation Trustee shall provide notice pursuant to Section 10.7 herein of any such fees that are expected to exceed or do exceed $5,000 in any month.

(b) The Litigation Trust Oversight Committee may incur reasonable and necessary expenses in connection with the performance of its duties under the Plan, the Confirmation Order, and this Agreement. No fees and expenses incurred by any individual Member of the Litigation Trust Oversight Committee shall be reimbursable as to such Member, unless otherwise provided herein. Each Member shall be entitled to an annual fee of $10,000, paid forty-five (45) days after the Effective Date, and each year thereafter on such date so long as the Litigation Trust is in existence.

(c) Neither the Debtors nor the Litigation Trust Beneficiaries shall have any obligation, nor shall they be required, to pay any of the Litigation Trust Expenses, other than from the Litigation Trust Fund.

(d) The amounts held in the Litigation Trust Fund shall be subject to periodic review by the Litigation Trust Oversight Committee at any time upon reasonable request.

(e) Any failure or inability of the Litigation Trustee to obtain additional funding for the Litigation Trust will not affect the enforceability of this Agreement.

1.6 Title to the Litigation Trust Assets. The transfer of the Litigation Trust Assets to the Litigation Trust pursuant to Section 1.2 hereof is being made for the sole benefit, and on behalf, of the Litigation Trust Beneficiaries. Upon the transfer of the Litigation Trust Assets to the Litigation Trust, the Litigation Trust shall succeed to all of the Debtors' rights, title, and interest in and to the Litigation Trust Assets, and no other Person shall have any interest, legal, beneficial, or otherwise, in the Litigation Trust or the Litigation Trust Assets (other than as provided in the Plan, the Confirmation Order, or this Agreement).

Trustee is required to first consult with the Litigation Trust Oversight Committee for approval in advance of incurring such expense.

1.7 Nature and Purpose of the Litigation Trust.

(a) Purpose. The Litigation Trust is organized and established as a trust, subject to the terms and conditions contained herein, the Plan and the Confirmation Order, for the sole purpose of liquidating the Litigation Trust Assets in an expeditious but orderly manner for the benefit of the Litigation Trust Beneficiaries, including the investigation and prosecution of the Litigation Trust Causes of Action, with no objective to continue or engage in the conduct of a trade or any other business, except to the extent reasonably necessary to effectuate, and consistent with, the purpose of the Litigation Trust.

(b) Relationship. This Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Litigation Trust is not intended to be, and shall not be deemed to be, or be treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company, or association, nor shall the Litigation Trustee, the Litigation Trust Oversight Committee (or any Member thereof), or the Litigation Trust Beneficiaries for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Litigation Trust Beneficiaries, on the one hand, to the Litigation Trust, the Litigation Trustee and the Litigation Trust Oversight Committee (and each Member thereof), on the other hand, shall be solely that of a beneficiary of a trust and shall not be deemed a principal and agency relationship, and their rights shall be limited to those conferred upon them by the Plan, the Confirmation Order, and this Agreement.

(c) No Waiver of Claims. Except as provided in, and unless expressly released, compromised, or settled in the Plan, the Confirmation Order, or in any contract, instrument, release, or other agreement entered into or delivered in connection with the Plan, the Litigation Trustee, upon the Direction of the Litigation Trust Oversight Committee, shall investigate, pursue and enforce the Litigation Trust Causes of Action, and the Litigation Trustee shall be deemed the representative of the Debtors' Estates with respect to the Litigation Trust Causes of Action in accordance with sections 1123(a)(5)(B) and (D) and 1123(b)(3) of the Bankruptcy Code. No Person or entity may rely on the absence of a specific reference in the Plan to any claim against them as any indication that the Litigation Trustee will not pursue any and all available Litigation Trust Causes of Action against them. 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 Litigation Trust Causes of Action as a consequence of the confirmation of the Plan, the occurrence of the Effective Date, or the transfer and vesting of the Litigation Trust Causes of Action in the Litigation Trust. Notwithstanding the foregoing, nothing herein shall permit the Litigation Trustee or Litigation Trust from pursuing claims and causes of action against Released Parties.

(d) Relationship to and Incorporation of the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and the Confirmation Order, and therefore this Agreement incorporates the provisions thereof by reference; provided, however, that if any provisions of this Agreement are found to be inconsistent with the provisions of the Plan or the Confirmation Order, then each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Agreement.

1.8 Appointment as Representative. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Litigation Trustee shall be the duly appointed representative of the Debtors and their Estates with respect to the Litigation Trust Causes of Action and, as such, to the extent provided herein, the Litigation Trustee succeeds to the rights and powers of a trustee in bankruptcy solely with respect to the Litigation Trust Assets, including prosecution of the Litigation Trust Causes of Action for the benefit of the Litigation Trust Beneficiaries. To the extent that any of the Litigation Trust Causes of Action cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Litigation Trust Assets shall be deemed to have been retained by the Debtors (other than for tax purposes), and the Litigation Trustee shall be deemed to have been designated as a representative of the Debtors and their Estates to the extent provided herein pursuant to section 1123(b)(3)(B) of the Bankruptcy Code solely to enforce and pursue such Litigation Trust Causes of Action on behalf of the Debtors and their Estates. Notwithstanding the foregoing, all net proceeds of the Litigation Trust Assets shall be distributed to the Litigation Trust Beneficiaries consistent with the provisions of this Agreement, the Plan, and the Confirmation Order. For the avoidance of doubt, any of the Litigation Trust Causes of Action subject to this Section 1.8 shall be treated by the Parties for U.S. federal, state, and local income tax purposes as a disposition of the Litigation Trust Causes of Action by the Debtors as described in Section 7.1 hereof.

[1.9 Valuation. As soon as reasonably practicable following the Effective Date, but in no event later than sixty (60) days thereafter, the Litigation Trustee shall inform, in writing, the Litigation Trust Oversight Committee and the Litigation Trust Beneficiaries of the fair market value of the Litigation Trust Assets (other than the Litigation Trust Causes of Action), based on the good-faith determination of the Litigation Trustee. Such determined fair market value shall be used consistently by all parties to the Agreement (including, without limitation, the Litigation Trustee, the Debtors, and the Litigation Trust Beneficiaries) for all U.S. federal income tax purposes, and the Litigation Trustee shall make such valuation available from time to time to all parties to the Litigation Trust, to the extent relevant to such parties for tax purposes.]

ARTICLE II

LITIGATION TRUST INTERESTS

2.1 Litigation Trust Interests.

(a) Issuance of Litigation Trust Interests. The Litigation Trust Beneficiaries shall have interests issued in accordance with the terms and priorities set forth in the Plan (the "Litigation Trust Interests"). The Litigation Trust Interests shall entitle the Litigation Trust Beneficiaries to receive distributions from Litigation Trust, as provided in Article IV of this Agreement.

(b) Allocation of Litigation Trust Interests. On the Effective Date of the Plan, the Litigation Trust Interests shall be allocated to the Litigation Trust Beneficiaries. Notwithstanding anything in this Agreement to the contrary, any subsequent reallocation of Litigation Trust Interests or recoveries from Litigation Trust Causes of Action or Litigation Trust

Assets, if any, shall be allowed solely upon the unanimous consent of the Litigation Trust Oversight Committee.

(c) The Litigation Trust Interests will be represented by the recording of such ownership in an electronic book-entry system (the "Book Entry System") maintained by the Registrar (as defined herein).

(d) The Litigation Trustee may serve as or appoint a registrar for the purpose of recording ownership of the Litigation Trust Interests (the "Registrar"). The Registrar, if other than the Litigation Trustee, shall be a third-party institution selected upon the Direction of the Litigation Trust Oversight Committee. To the extent that the Registrar is not the Litigation Trustee then the Registrar shall be entitled to receive reasonable and documented compensation as an expense of the Litigation Trust as determined by the Litigation Trustee in consultation with the Litigation Trust Oversight Committee.

(e) The Litigation Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated from time to time, a registry of the Litigation Trust Beneficiaries of the Litigation Trust (the "Trust Register") and their respective holdings of Litigation Trust Interests, which shall be maintained pursuant to such reasonable regulations as the Litigation Trustee and the Registrar may prescribe. The Litigation Trustee shall, upon the written request of any holder of Litigation Trust Interests, provide reasonably adequate documentary evidence of such holder's Litigation Trust Interests, as indicated by the Book Entry System. The expense of providing such documentation shall be borne by the requesting holder.

2.2 Interests Beneficial Only. The ownership of the Litigation Trust Interests shall not entitle the Litigation Trust Beneficiaries to any title in or to or right to control the Litigation Trust Assets as such (which title shall be vested in the Litigation Trust) or to any right to call for a partition or division of the Litigation Trust Assets or to require an accounting.

2.3 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Litigation Trust Beneficiary during the term of the Litigation Trust shall not (i) operate to terminate the Litigation Trust; (ii) entitle the representatives or creditors of the deceased party to an accounting; (iii) entitle the representatives or creditors of the deceased party to take any action in the Bankruptcy Court or elsewhere for the distribution of the Litigation Trust Assets or for a partition thereof; or (iv) otherwise affect the rights and obligations of any of the Litigation Trust Beneficiaries under this Agreement.

2.4 Change of Address. Any Litigation Trust Beneficiaries may, after the Effective Date, select an alternative distribution address by providing notice to the Litigation Trustee identifying such alternative distribution address in accordance with Section 10.7. Such notification shall be effective only upon receipt by the Litigation Trustee. The Trust Register shall thereafter be updated accordingly. Absent actual receipt of such notice by the Litigation Trustee, the Litigation Trustee shall not recognize any such change of distribution address.

ARTICLE III

RIGHTS, POWERS, AND DUTIES OF LITIGATION TRUSTEE; THE LITIGATION TRUSTEE GENERALLY

3.1 Role of the Litigation Trustee. In furtherance of and consistent with the purpose of the Litigation Trust and the Plan, subject to the terms and conditions contained in the Plan, the Confirmation Order, and this Agreement, the Litigation Trustee shall have the authority to and shall, as necessary and in consultation with the Litigation Trust Oversight Committee, and with respect to the Litigation Trust Assets or Claims related to the Litigation Trust Assets: (i) receive, manage, supervise, and protect the Litigation Trust Assets upon its receipt of same on behalf of and for the benefit of the Litigation Trust Beneficiaries; (ii) investigate, analyze, commence, prosecute, and, if necessary and appropriate, release, settle, and compromise the Litigation Trust Causes of Action and any objections to Claims related to the Litigation Trust Causes of Action; (iii) prepare and file all required tax returns, information returns, and other documents, and pay taxes and all other obligations of the Litigation Trust; (iv) liquidate and convert the Litigation Trust Assets to cash and make timely distributions to the Litigation Trust Beneficiaries in accordance with this Agreement, the Plan, and the Confirmation Order; (v) pursuant to Section 4.2.9 of the Plan, (a) file, withdraw, or litigate to judgment objections to Claims against the Debtors, (b) settle or compromise any Disputed Claim against the Debtors, (c) amend the Bankruptcy Schedules in accordance with the Bankruptcy Code, and (d) administer and adjust the claims register to reflect any such settlements or compromises arising out of the Litigation Trust Assets, and (vi) have all such other powers and responsibilities as may be vested in the Litigation Trustee pursuant to, or as may be necessary and proper to carry out the provisions of, the Plan, the Confirmation Order, this Agreement, and all other orders of the Bankruptcy Court. In all circumstances, the Litigation Trustee shall act in the best interests of all the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust. The Litigation Trustee shall consult in good faith with and provide information to the Litigation Trust Oversight Committee in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Litigation Trust Oversight Committee to meet its obligations hereunder.

3.2 Authority of the Litigation Trustee. Without limiting the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Litigation Trust Agreement, the Litigation Trustee shall, in consultation with the Litigation Trust Oversight Committee (unless Direction of the Litigation Trust Oversight Committee is required as set forth below), and without further Bankruptcy Court approval, be expressly authorized to, with respect to the Litigation Trust and the Litigation Trust Assets, and may cause the Litigation Trust to:

(a) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken, by any officer, director, shareholder or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised and taken by unanimous action of such officers, directors and shareholders or other party;

(b) Open and maintain bank accounts on behalf of or in the name of the Litigation Trust, calculate and make transfers of Litigation Trust Proceeds to the Litigation Trust Beneficiaries, and take other actions consistent with the Plan and the implementation thereof,

including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves (including the Litigation Trust Reserve (as hereinafter defined)), in the name of the Litigation Trust;

(c) Receive, manage (including, for the avoidance of doubt, use the proceeds, products and income of the Litigation Trust to fund ongoing fees, costs and expenses of the Litigation Trust), invest, supervise, protect, collect, liquidate and distribute the Litigation Trust Assets and moneys held as part of the Litigation Trust in accordance with the terms hereof, and, subject to Article IV hereof and the parameters therein, determine the amount and timing of distributions of the Cash proceeds of the Litigation Trust Assets to the Litigation Trust Beneficiaries;

(d) Hold legal title to any and all rights of the holders of the Litigation Trust Interests in or arising from the Litigation Trust Assets, including, without limitation, collecting and receiving any and all money and other property belonging to the Litigation Trust and the right to vote any claim or interest relating to a Litigation Trust Asset in a case under the Bankruptcy Code and receive any distribution thereon;

(e) Upon Direction of the Litigation Trust Oversight Committee, commence, prosecute, compromise, adjust, settle, sue on or defend, dismiss, release, waive, withdraw, abandon, or resolve any or all Litigation Trust Causes of Action, or otherwise protect and enforce the rights to the Litigation Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(f) Upon Direction of the Litigation Trust Oversight Committee, engage in, intervene in, join, compromise, adjust, release, mediate, arbitrate, sue on or defend, counterclaim, recoup, pursue, prosecute, abandon, or otherwise deal with and settle any actions, suits, proceedings, disputes, claims, controversies, demands, causes of action, or other litigation in favor of or against the Litigation Trust, to enter into agreements relating to the foregoing, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof, all in the name of the Litigation Trust if necessary or appropriate, and institute or continue actions that were or could have been commenced by any of the Debtors prior to the Effective Date that is a Litigation Trust Asset, and prosecute or defend all related litigation or appeals, and, when appropriate, settle such actions and claims;

(g) Perform the duties, exercise the powers, and assert the rights of a trustee under sections 704 and 1106 of the Bankruptcy Code, including, without limitation, commencing, prosecuting or settling causes of action, enforcing contracts or asserting claims, defenses, offsets and privileges, but only as such duties and powers relate to the Litigation Trust Assets;

(h) Protect and enforce the rights to the Litigation Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(i) Upon the Direction of the Litigation Trust Oversight Committee (which Direction shall not be unreasonably withheld), purchase and carry all insurance policies and pay all insurance premiums and costs (i) of the Litigation Trustee as the Litigation Trustee deems reasonably necessary or advisable for coverage for the Litigation Trustee, and (ii) that the Litigation Trust Oversight Committee deems reasonably necessary or advisable for coverage for the Litigation Trustee and/or any Litigation Trust Oversight Committee Members;

(j) Subject to Section 1.2(d) hereof, preserve, assert, or waive any privilege or any defense on behalf of the Litigation Trust or the Debtors, as applicable, with respect to the Litigation Trust Assets;

(k) Conduct discovery or seek the examination of any Entity or Person, including pursuant to Bankruptcy Rule 2004 and any other bankruptcy or other tools of discovery available to the Debtors and their Estates, subject in all events to the provisions of the Federal Rules of Evidence, Bankruptcy Rule 2004 or any other applicable law or rule;

(l) Pay all valid and lawful expenses, debts, charges, taxes and liabilities of the Litigation Trust, including those incurred by the Litigation Trust under any financing entered into at the Direction of the Litigation Trust Oversight Committee;

(m) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Litigation Trust Agreement, including to take all other actions not inconsistent with the provisions of the Plan that the Litigation Trustee deems reasonably necessary or desirable to administer the Litigation Trust and perform all duties and obligations thereunder;

(n) At the Direction of the Litigation Trust Oversight Committee, enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Agreement;

(o) If any of the Litigation Trust Assets are situated in any state or other jurisdiction in which the Litigation Trustee is not qualified to act as trustee, nominate and appoint an Entity duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the Litigation Trustee in its reasonable discretion; confer upon such trustee all the rights, powers, privileges, and duties of the Litigation Trustee hereunder, subject to the conditions and limitations of this Litigation Trust Agreement, except as modified or limited by the Litigation Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such trustee to be answerable to the Litigation Trustee for all monies, assets and other property that may be received in connection with the administration of all property; and, remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Litigation Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal, which notice shall be promptly served on the Litigation Trust Beneficiaries;

(p) Employ and compensate professionals and other agents subject to the consent by Direction of the Litigation Trust Oversight Committee. Nothing in this Litigation Trust Agreement shall limit the Litigation Trustee from engaging counsel or other professionals, including the Litigation Trustee itself or former counsel to the ultimate economic parties and/or the Litigation Trust Beneficiaries in these cases to do work for or represent the Litigation Trust;

(q) At the Direction of the Litigation Trust Oversight Committee, obtain financing on behalf of and for the benefit of the Litigation Trust to assist in the pursuit of all Litigation Trust Assets, including financing for purpose of establishing the Litigation Trust Fund as set forth on Exhibit A;

(r) Enter into any joint prosecution and/or common interest agreement(s) as may be required by or consistent with the Plan, the Confirmation Order or this Agreement or as is otherwise advisable;

(s) At the Direction of the Litigation Trust Oversight Committee, purchase assignments of any claims or causes of action related to any of the Litigation Trust Assets; and

(t) Exercise such other powers as may be vested in or assumed by the Litigation Trustee pursuant to the Plan, this Agreement, the Confirmation Order, or other applicable orders of the Bankruptcy Court, and to take all other actions not inconsistent with the provisions of the Plan and the Confirmation Order which the Litigation Trustee deems reasonably necessary or desirable with respect to implementing the Plan.

3.3 Fiduciary Duties. Subject to the provisions of Article VI below, the Litigation Trustee shall have fiduciary duties hereunder and to the Litigation Trust Beneficiaries to the same extent that a director or officer of a Texas corporation owes fiduciary duties to such corporation. Subject to the provisions of Article VI below, the Litigation Trustee shall act in good faith and in consideration of (i) the best interests of the Litigation Trust Beneficiaries, and (ii) the fiduciary obligations the Litigation Trustee owes the Litigation Trust Beneficiaries.

3.4 Prosecution of Litigation Trust Causes of Action. The Litigation Trust Oversight Committee shall have the absolute right to provide Direction to the Litigation Trustee to prosecute, pursue, commence, object to, seek to estimate, seek to subordinate, compromise, settle, or take any other action concerning any and all Litigation Trust Causes of Action as it determines in good faith to be in the best interests of the Litigation Trust Beneficiaries, and consistent with the purposes of the Litigation Trust.

(a) Any determinations by the Litigation Trust Oversight Committee with regard to the amount or timing of settlement or other disposition of any Litigation Trust Causes of Action settled in accordance with the terms of this Agreement shall be conclusive and binding on the Litigation Trust Beneficiaries and all other parties in interest.

(b) To the extent that any action has been taken to prosecute or otherwise resolve any Litigation Trust Causes of Action prior to the Effective Date, the Litigation Trustee shall be substituted for the applicable Party in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable to such Litigation Trust Cause of Action by Bankruptcy Rule 7025, and the caption for such pending Litigation Trust Cause of Action shall be

changed to the following: "[•], as Trustee for the Edgemere Litigation Trust v. [Defendant]" or "Edgemere Litigation Trust v. [Defendant]." Without limiting the foregoing, the Litigation Trustee shall, upon the Direction of the Litigation Trust Oversight Committee, take any and all actions necessary or prudent to intervene as plaintiff, movant, or additional party, as appropriate, in any applicable Litigation Trust Cause of Action. For purposes of exercising its powers, the Litigation Trustee shall be deemed to be a representative of the Debtors and their Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

3.5 Collection of Income. The Litigation Trustee shall collect all income earned with respect to the Litigation Trust Assets, which shall thereupon become Litigation Trust Assets and held as a part of the Litigation Trust (and which title shall be vested in the Litigation Trust). Any and all proceeds generated from the Litigation Trust Assets shall be the property of the Litigation Trust.

3.6 Liquidation of Litigation Trust Assets. The Litigation Trustee shall, upon the Direction of the Litigation Trust Oversight Committee, in an expeditious but orderly manner, and subject to the other provisions of the Plan, the Confirmation Order, and this Agreement, liquidate and convert to Cash the Litigation Trust Assets, make timely distributions, and not unduly prolong the duration of the Litigation Trust. The Litigation Trustee shall use commercially reasonable efforts to resolve the Litigation Trust Causes of Action and to make timely distributions of any Litigation Trust Proceeds and to otherwise monetize the Litigation Trust Assets and not unreasonably prolong the duration of the Litigation Trust. The Litigation Trustee shall take into consideration the likelihood of success, risks, timing, and costs of potential actions in exercising its reasonable business judgment to maximize net recoveries to the Litigation Trust Beneficiaries. Such liquidations may be accomplished through the prosecution, compromise and settlement, abandonment, or dismissal of any or all Litigation Trust Causes of Action or otherwise or through the sale or other disposition of the Litigation Trust Assets (in whole or in combination). Consistent with an agreed-upon budget in accordance with Section 3.12(c) of this Agreement, if any, the Litigation Trustee may incur any reasonable and necessary expenses in connection with liquidating and converting the Litigation Trust Assets to Cash and distribution of the proceeds thereof.

3.7 Litigation Trust Reserve. Notwithstanding anything in this Agreement to the contrary, the Litigation Trustee may withhold from amounts transferrable to the Litigation Trust Beneficiaries on account of their respective Litigation Trust Interests as required pursuant to this Agreement, and supplement from time to time, a reserve (the "Litigation Trust Reserve") in such amount as the Litigation Trustee, with the Direction of the Litigation Trust Oversight Committee, determines is or may be reasonably necessary: (i) to meet contingent liabilities and to maintain the value of the Litigation Trust Assets during the term of the Litigation Trust; (ii) to administer the Litigation Trust and pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs, fees, and expenses (including attorneys' fees and expenses, financial advisor fees and expenses of the Litigation Trustee in connection with the performance of their duties in connection with this Litigation Trust Agreement); (iii) to wind-up the affairs of the Litigation Trust; and (iv) to satisfy all other liabilities of the Litigation Trust incurred or assumed in respect of the Litigation Trust, or to which the Litigation Trust Assets are otherwise subject, including repayment of any financing incurred with respect to the Litigation Trust Fund, but other than Claims, in accordance with the Plan, the Confirmation Order and this Agreement.

3.8 Retention of Counsel and Other Professionals. The Litigation Trustee may, without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various professionals, including, but not limited to, counsel, experts, consultants, and financial advisors, as needed to assist the Litigation Trustee in fulfilling its obligations under the Plan. Such employment agreements shall be approved by Direction of the Litigation Trust Oversight Committee. Professionals engaged by the Litigation Trustee shall not be required to file applications with the Bankruptcy Court in order to receive compensation for services rendered and reimbursement of actual out-of-pocket expenses incurred. For the avoidance of doubt, unless an alternative fee arrangement has been agreed to (either by order of the Bankruptcy Court or by the Litigation Trustee upon the Direction of the Litigation Trust Oversight Committee, as applicable), professionals retained by the Litigation Trustee shall be compensated solely by the Litigation Trust Fund.

3.9 Investment of Cash. The right and power of the Litigation Trustee to invest Litigation Trust Assets, the proceeds thereof, or any income earned by the Litigation Trust shall be limited to the right and power to invest such Litigation Trust Assets only in Cash and U.S. Government securities as defined in section 2(a)(16) of the Investment Company Act; provided, however, that (a) the scope of any such permissible investments shall be further limited to include only those investments that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise; (b) the Litigation Trustee may retain any Litigation Trust proceeds received that are not Cash only for so long as may be required for the prompt and orderly liquidation of such assets; and (c) the Litigation Trustee may expend the assets of the Litigation Trust (i) as reasonably necessary to meet contingent liabilities and maintain the value of the assets of the Litigation Trust during liquidation; (ii) to pay reasonable administrative expenses (including any taxes imposed on the Litigation Trust or reasonable fees and expenses in connection with litigation); and (iii) to satisfy other liabilities incurred or assumed by the Litigation Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement.

3.10 Limitations on Power and Authority of the Litigation Trustee. Notwithstanding anything in this Agreement to the contrary, the Litigation Trustee will not have the authority to do any of the following:

(a) take any action in contravention of the Plan, the Confirmation Order, or this Agreement;

(b) take any action that would make it impossible to carry on the activities of the Litigation Trust;

(c) possess property of the Litigation Trust or assign the Litigation Trust's rights in specific property for any purpose other than as provided herein;

(d) cause or permit the Litigation Trust to engage in any trade or business;

(e) permit the Litigation Trust to retain Cash or Cash equivalents in excess of a reasonable amount necessary to meet claims and contingent liabilities (including expected expenses) or to maintain the value of the Litigation Trust Assets during liquidation;

(f) receive transfers of any listed stocks or securities or any readily marketable assets or any operating assets of a going business, except as is necessary or required under the Plan, the Confirmation Order, or this Agreement; provided, however, that in no event shall the Litigation Trustee receive any such investment that would jeopardize treatment of the Litigation Trust as a "liquidating trust" for U.S. federal income tax purposes under Treasury Regulation section 301.7701-4(d), or any successor provision thereof;

(g) exercise investment power beyond what is provided in Section 3.9 hereof; or

(h) take any other action or engage in any investments or activities that would jeopardize treatment of the Litigation Trust as a liquidating trust for U.S. federal income tax purposes under Treasury Regulation section 301.7701-4(d), or any successor provision thereof.

3.11 Books and Records. The Litigation Trustee shall maintain good and sufficient books and records of accounts relating to the Litigation Trust Assets, the management thereof, all transactions undertaken by the Litigation Trustee, all expenses incurred by or on behalf of the Litigation Trustee, and all distributions to Litigation Trust Beneficiaries contemplated or effectuated under the Plan, in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof and in accordance with Texas law. The Litigation Trustee shall also maintain separate books and records for the Litigation Trust Assets of each Debtor. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Trust. Nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust or as a condition for managing any payment or distribution out of the Litigation Trust Assets.

3.12 Periodic Reports.

(a) Financial and Status Reports. The fiscal year of the Litigation Trust shall be the calendar year. Within sixty (60) days after the end of each calendar year during the term of the Litigation Trust, and within thirty (30) days after the end of each calendar quarter during the term of the Litigation Trust and as soon as practicable upon termination of the Litigation Trust, the Litigation Trustee shall, upon request by the Litigation Trust Oversight Committee, the Litigation Trust Beneficiaries, or the ultimate economic parties, make available a written report including: (i) financial statements of the Litigation Trust for such period, and, if the end of a calendar year, a report (which may be prepared by an independent certified public accountant employed by the Litigation Trustee at the Direction of the Litigation Trust Oversight Committee) reflecting the result of such agreed-upon procedures relating to the financial accounting administration of the Litigation Trust as proposed by the Litigation Trustee; (ii) a summary description of any action taken by the Litigation Trust that, in the judgment of the Litigation Trustee, materially affects the Litigation Trust and of which notice has not previously been given to the Litigation Trust Beneficiaries and ultimate economic parties; and (iii) a description of the progress of liquidating

the Litigation Trust Assets and making distributions to the Litigation Trust Beneficiaries and any other material information relating to the Litigation Trust Assets and the administration of the Litigation Trust. In addition, on a quarterly basis, the Litigation Trustee shall provide unaudited financial statements to the Litigation Trust Oversight Committee and, upon request by an Ultimate Economic Party, to such party. No such reports shall be made public given the confidential nature of such reports and information contained therein; *provided, however*, that such confidential reports and information may be shared under an appropriate confidentiality agreement. The Litigation Trustee may not post any such report on any website maintained by the Litigation Trustee or otherwise due to the confidential nature of such reports and the information contained therein. To the extent of any reports required to be filed with the Bankruptcy Court, if any, they shall be filed under seal (unless otherwise required by the Bankruptcy Court or Confirmation Order) due to the confidential nature of such reports and the information contained therein.

(b) The Litigation Trustee will prepare and make available to the Litigation Trust Beneficiaries, the Indenture Trustee, and the Litigation Trust Oversight Committee, on a quarterly basis, a written report detailing, among other things, the litigation status of the Litigation Trust Causes of Action, any settlements entered into by the Litigation Trust, the proceeds recovered to date from the Litigation Trust Assets, and the distributions made by the Litigation Trust. Such written reports will be made available by the Litigation Trustee within thirty (30) days of the end of the preceding calendar quarter. No such reports shall be made public given the confidential nature of such reports and information contained therein; *provided, however*, that such confidential reports and information may be shared under an appropriate confidentiality agreement.

(c) Annual Plan and Budget. Upon Direction by the Litigation Trust Oversight Committee, the Litigation Trustee shall prepare and submit to the Litigation Trust Oversight Committee for approval an annual plan and budget in such detail as is reasonably requested, which approval shall not be unreasonably withheld. The initial budget shall be presented to and approved by the Litigation Trust Oversight Committee as of the Effective Date, which initial budget shall be subject to modification by the Litigation Trustee, with approval of the Litigation Trust Oversight Committee. Thereafter, each annual plan and budget shall be presented to and approved by the Litigation Trust Oversight Committee on or before the annual anniversary of the Effective Date. No such plan and budget shall be made public given the confidential nature of such information; provided, however, if the Litigation Trustee is required to share such budget on a confidential basis with a party under any financing entered into by the Litigation Trust, the Litigation Trustee may do so to discharge the Litigation Trust's obligations under such financing. The Litigation Trustee may rely on any approved budget in incurring the reasonable fees and expenses projected thereon.

3.13 Independent Litigation Trustee. The Litigation Trustee may not be a Member of the Litigation Trust Oversight Committee, unless otherwise provided herein pursuant to section 3.17 of this Agreement.

3.14 Litigation Trustee's Compensation and Reimbursement.

(a) Compensation. The Litigation Trustee shall receive reasonable compensation as provided on Exhibit C attached hereto.

(b) Payment of Expenses. All actual, reasonable, and documented out-of-pocket expenses incurred by the Litigation Trustee in connection with the performance of its duties hereunder or under the Confirmation Order or the Plan shall be eligible for reimbursement from the Litigation Trust Fund. The expenses payable to the Litigation Trustee shall be subject to review and approval by the Litigation Trust Oversight Committee, which approval shall be deemed granted if the Litigation Trust Oversight Committee does not object to an expense within fourteen (14) days after receipt of an invoice from the Litigation Trustee, and paid to the Litigation Trustee without necessity for review or approval by the Bankruptcy Court or any other Person. Any objection to payment of expenses incurred by the Litigation Trustee shall be in writing, set forth in reasonable detail the specific expense(s) objected to and the basis for each objection, and be delivered to the Litigation Trustee in accordance with Section 10.7 hereof. The uncontested portion of each invoice shall be deemed authorized and the Litigation Trustee may pay the full amount of such fees and expenses after the fourteen (14) day review period for the Litigation Trust Oversight Committee. Any dispute between the Litigation Trustee and the Litigation Trust Oversight Committee regarding the payment of any expenses that remains unresolved fourteen (14) days after delivery of an objection to the Litigation Trustee shall be adjudicated before the Bankruptcy Court.

3.15 Resignation. The Litigation Trustee may resign by giving not less than ninety (90) days' prior written notice thereof to the Litigation Trust Oversight Committee. Such resignation shall become effective on the later to occur of: (a) the day specified in such notice; and (b) the appointment of a successor as provided herein and the acceptance by such successor of such appointment; provided, however, that if a successor Litigation Trustee is appointed (and such appointment is accepted) pursuant to Section 3.18 hereof prior to the expiration of the ninety (90) day notice period referenced above, then the Litigation Trust Oversight Committee may in its sole discretion determine that the resignation of the resigning Litigation Trustee shall be deemed to become effective on a date that is earlier than the day specified in such notice. If a successor Litigation Trustee is not appointed or does not accept its appointment within ninety (90) days following delivery of notice of resignation, the Litigation Trustee may file a motion with the Bankruptcy Court, upon notice and a hearing, for the appointment of a successor Litigation Trustee, during which time the Litigation Trustee shall be entitled to receive the fees provided for in Section 3.14 hereof. Notwithstanding the foregoing, upon the Termination Date (as defined in Section 8.1 herein), the Litigation Trustee shall be deemed to have resigned, except as otherwise provided in Section 8.2 hereof.

3.16 Removal.

(a) The Litigation Trustee may be removed by the Litigation Trust Oversight Committee for Cause (as defined in Section 5.7 herein), immediately upon notice thereof, or without Cause, upon thirty (30) days' prior written notice.

(b) Notwithstanding the foregoing, the Litigation Trustee will continue to serve as the Litigation Trustee after his removal until the earlier of (i) the time when appointment of a successor Litigation Trustee becomes effective in accordance with Section 3.18 of this Agreement or (ii) the appointment of an Interim Trustee pursuant to Section 3.17 hereof, during which time the Litigation Trustee shall be entitled to receive the fees provided for in Section 3.14 hereof.

3.17 Interim Trustee. In the event of any period in which there is a vacancy in the position of Litigation Trustee, the Litigation Trust Oversight Committee shall appoint one of its Members to serve as interim Litigation Trustee (the "Interim Trustee"). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the Litigation Trust Oversight Committee merely by such Person's appointment as Interim Trustee.

3.18 Appointment of Successor Litigation Trustee. In the event of the death (in the case of a Litigation Trustee that is a natural person), dissolution (in the case of the Litigation Trustee that is not a natural person), resignation, incompetency, or removal of the Litigation Trustee, the Litigation Trust Oversight Committee shall designate a successor Litigation Trustee by majority vote. If the Litigation Trust Oversight Committee is unable to secure a majority vote, one or more Members of the Litigation Trust Oversight Committee may file a motion with the Bankruptcy Court, upon notice and a hearing, for the appointment of a successor Litigation Trustee. Any such appointment shall specify the date on which such appointment shall be effective. Every successor Litigation Trustee appointed hereunder shall execute, acknowledge, and deliver to the Litigation Trust Oversight Committee an instrument accepting the appointment under this Agreement and agreeing to be bound as Litigation Trustee thereto, and thereupon the successor Litigation Trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring Litigation Trustee. The successor Litigation Trustee shall not be personally liable for any act or omission of the predecessor Litigation Trustee, nor shall any Litigation Trustee be liable for acts or omissions by the successor Litigation Trustee or its professionals that occur subsequent to the cessation of its role as Litigation Trustee. Unless requested by Direction of the Litigation Trust Oversight Committee, a successor Litigation Trustee shall have no duty to examine or inquire into the acts or omissions of any predecessor Litigation Trustee.

3.19 Effect of Resignation or Removal. The death, dissolution, bankruptcy, resignation, incompetency, incapacity, or removal of the Litigation Trustee, as applicable, shall not operate to terminate the Litigation Trust created by this Agreement or to revoke any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Litigation Trustee or any prior Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee, such Litigation Trustee will promptly (a) execute and deliver such documents, instruments, and other writings as may be ordered by the Bankruptcy Court or reasonably requested by the Litigation Trust Oversight Committee, any Interim Trustee or the successor Litigation Trustee to effect the termination of such Litigation Trustee's capacity under this Agreement; (b) deliver to the Litigation Trust Oversight Committee, any Interim Trustee and/or the successor Litigation Trustee all documents, instruments, records, and other writings related to the Litigation Trust as may be in the possession of such Litigation Trustee (provided, however, that such Litigation Trustee may retain one copy of such documents for archival purposes); and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Litigation Trustee, all without cost or expense to the predecessor Litigation Trustee. A Litigation Trustee that has resigned or been removed shall promptly execute and deliver an instrument or instruments conveying and transferring to such successor Litigation Trustee all the estates, properties, rights, powers, and trusts of such predecessor Litigation Trustee

and otherwise assist and cooperate, without cost or expense to the predecessor Litigation Trustee, in effectuating the assumption of its obligations and functions by the successor Litigation Trustee.

3.20 Confidentiality. The Litigation Trustee shall, during the period that the Litigation Trustee serves as Litigation Trustee under this Agreement and following the termination of this Agreement or following such Litigation Trustee's removal or resignation hereunder, hold strictly confidential and not use for personal gain any non-public information of or pertaining to any Person to which any of the Litigation Trust Assets relates or of which the Litigation Trustee has become aware in the Litigation Trustee's capacity as Litigation Trustee, except as otherwise required by law.

ARTICLE IV

DISTRIBUTIONS

4.1 Distributions.

(a) On any date determined by the Litigation Trustee in consultation with the Litigation Trust Oversight Committee, or on any date directed by unanimous consent of the Litigation Trust Oversight Committee (any such date upon which a distribution is made, referenced herein as a "Distribution Date"), the Litigation Trustee shall distribute or cause to be distributed to each Litigation Trust Beneficiary its share of the Litigation Trust Assets, in accordance with this Section 4.1; provided, however, that the distributions shall be made not less than annually to the extent necessary for this Litigation Trust to maintain its status as a "liquidating trust" for U.S. federal income tax purposes.

(b) Timing and Amount of Distributions. The Litigation Trust Beneficiaries shall receive distributions of proceeds of the Litigation Trust Assets as monetized pursuant to this Agreement that are remaining after payment of amounts in accordance with Section 4.1(c) hereof and funding the Litigation Trust Reserve as required in this Agreement. For the avoidance of doubt, the Litigation Trustee shall not be deemed to be an "underwriter" in connection with its distribution of any Litigation Trust Assets, as such term is defined in section 1145(b) of the Bankruptcy Code, and no employees, agents, or representatives of the Litigation Trustee shall be deemed to be a "broker-dealer" as such term is defined in the Securities Exchange Act of 1934, as amended, or any rules promulgated thereunder.

(c) Priority of Distribution of Litigation Trust Assets and Proceeds. Any Litigation Trust Assets or Litigation Trust Proceeds available for distribution shall be applied as follows: (i) first, to pay or reimburse, as applicable, the reasonable, documented out-of-pocket fees, costs, expenses, and liabilities of the Litigation Trust, the Litigation Trustee (and any professionals retained by the Litigation Trustee), and the Litigation Trust Oversight Committee as provided in this agreement; (ii) second, to fund the Litigation Trust Reserve as set forth in Section 3.7 hereof; and (iii) third, to make distributions to holders of Litigation Trust Interests on a Pro Rata basis, which shall be made in accordance with the terms of the Plan.

(d) Distribution of Litigation Trust Assets and Proceeds Upon Termination. Promptly upon the complete liquidation of the Litigation Trust Assets, the Litigation Trustee shall

distribute any Litigation Trust Assets available for distribution not yet distributed from the Litigation Trust in the same manner as described in paragraph (c) of this Section 4.1 and in accordance with the terms of this Agreement and the Plan.

(e) After the settlement or compromise or resolution of any Litigation Trust Causes of Action, or otherwise in advance of any Distribution, the Litigation Trustee shall provide the Litigation Trust Oversight Committee with an accounting showing the allocation of any recoveries among those Litigation Trust Causes of Action.

(f) Distributions of Cash on account of the Litigation Trust Interests shall, to the extent reasonably practicable, be made on the Distribution Date after the net proceeds of the Litigation Trust Causes of Action are received by the Litigation Trust.

(g) Subject to the requirements of Revenue Procedure 94-45, 1994-2 C.B. 684, the Litigation Trustee shall distribute all Cash on hand (including the net income and net proceeds, if any, from any disposition of Litigation Trust Assets, any Cash received on account of or representing proceeds, and treating as Cash for purposes of this Section 4.1(g) and any permitted investments under Section 3.9 hereof).

(h) The Litigation Trustee shall make or cause to be made distributions to each Litigation Trust Beneficiary (i) through its authorized designee for purposes of distributions to be made under the Plan; or (ii) at its last-known address, as indicated on the Debtors' or Litigation Trust's records as of the applicable Distribution Date.

(i) In the event that any distribution to any Litigation Trust Beneficiary is returned as undeliverable, no distribution to such holder shall be made unless and until the Litigation Trustee has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; provided, however, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one-hundred twenty (120) days from date of the attempted undeliverable payment. After such date, all unclaimed distributions shall be distributed on a *pro rata* basis to all Litigation Trust Beneficiaries whose initial distributions were not returned as undeliverable. Nothing contained herein shall require the Litigation Trustee to attempt to locate any holder of a Litigation Trust Interest.

(j) The Litigation Trustee may, in its reasonable discretion, withhold from amounts otherwise distributable to any Person any and all amounts required to be withheld by any law, regulation, rule, ruling, directive, treaty, or other governmental requirement. Any party issuing any instrument or making any distribution under this Agreement shall comply with all applicable withholding and reporting requirements imposed by any U.S. federal, state, or local tax law or taxing authority, and all distributions under this Agreement shall be subject to any such withholding or reporting requirements.

(k) Notwithstanding the above, each holder of a Litigation Trust Interest that is to receive a distribution under this Agreement shall have the sole and exclusive responsibility for the satisfaction and payment of any income taxes imposed on such holder by any governmental unit on account of such distribution. Any party issuing any instrument or making any distribution

under this Agreement has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations. The Litigation Trustee may require, as a condition to the receipt of a distribution, that the holder complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each holder. If the holder fails to comply with such a request within one-hundred twenty (120) days, such distribution shall be deemed an unclaimed distribution and treated in accordance with section 4.1(j) of this Agreement and section 6.7 of the Plan.

(l) Notwithstanding anything herein to the contrary, the Litigation Trustee shall not be required to make on account of any Litigation Trust Interest (i) partial distributions or payments of fractions of dollars; (ii) partial distributions or payments of fractions of Litigation Trust Interests; or (iii) a distribution if the amount to be distributed is or has an economic value of less than one hundred dollars ($100.00). Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all Cash shall be distributed in the final distribution of the Litigation Trust.

(m) Any check issued by the Litigation Trust on account of any Litigation Trust Interest shall be null and void if not negotiated within one-hundred twenty (120) days after the issuance of such check. Requests for reissuance of any check shall be made directly to the Litigation Trustee by the holder of the relevant Litigation Trust Interest with respect to which such check originally was issued. If any holder of a Litigation Trust Interest holding an un-negotiated check does not request reissuance of that check within one year after the date the check was mailed or otherwise delivered to the holder, such holder's claim to such particular check/distribution shall be released, and the holder thereof shall be forever barred, estopped, and enjoined from asserting any Claim against any of the Debtors, the Litigation Trust, or the Litigation Trustee for such particular check/distribution. In such cases, any Cash held for payment on account of such Claims shall be property of the Litigation Trust, free of any Claims of such holder with respect thereto. No later than one-hundred twenty (120) days after the issuance of such checks, the Litigation Trustee shall file with the Bankruptcy Court a list of the holders of any un-negotiated checks; provided, however, that if at such time the Chapter 11 Cases have been closed, the Litigation Trustee shall not be required to re-open or seek to re-open the Chapter 11 Cases solely for purposes of effectuating the filing described in the immediately preceding sentence and instead shall furnish such notice to the Litigation Trust Beneficiaries and the ultimate economic parties instead. Nothing contained herein shall require the Litigation Trustee to attempt to locate any holder of any Litigation Trust Interest.

(n) For the avoidance of doubt, the Litigation Trust shall have no obligation to pay any amounts in respect of prepetition deductibles or self-insured retention amounts with respect to Claims covered by the Debtors' insurance policies.

ARTICLE V

LITIGATION TRUST OVERSIGHT COMMITTEE

5.1 Authority and Responsibilities of Litigation Trust Oversight Committee. (a) The Litigation Trust Oversight Committee shall, as and when requested by the Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the

Plan, the Confirmation Order, or this Agreement, consult in good faith with and advise the Litigation Trustee as to the administration and management of the Litigation Trust in accordance with (i) the Plan, the Confirmation Order, and this Agreement, and (ii) the Litigation Trustee's and the Litigation Trust Oversight Committee's fiduciary duties, and shall have the other responsibilities and powers as set forth herein. The Litigation Trust Oversight Committee shall have the authority and responsibility to provide Direction with respect to the activities of the Litigation Trust and the performance of the Litigation Trustee and shall have the authority to remove the Litigation Trustee in accordance with Section 3.16 hereof; provided, however, that the Litigation Trust Oversight Committee may not (i) provide Direction to the Litigation Trustee or the Members to act inconsistently with their duties under the Plan, the Confirmation Order, this Agreement, or their fiduciary obligations to the Litigation Trust Beneficiaries; (ii) be authorized to engage in any trade or business; (iii) take any action inconsistent with the orderly liquidation of the assets of the Litigation Trust as is required or contemplated by applicable law, the Confirmation Order, this Agreement, or the Plan; or (iv) be authorized to engage in any investments or activities inconsistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d) and in accordance with Revenue Procedure 94-45, 1994-2 C.B. 684.

5.2 Meetings of the Litigation Trust Oversight Committee. Meetings of the Litigation Trust Oversight Committee are to be held not less often than quarterly. Special meetings of the Litigation Trust Oversight Committee may be held whenever and wherever called for by the Litigation Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than forty-eight (48) hours prior to such meeting (such notice being subject to waiver by the Members). Any action required or permitted to be taken by the Litigation Trust Oversight Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent by Direction of the Litigation Trust Oversight Committee as evidenced by one or more writings describing the action taken, signed by all Members and recorded in the minutes, if any, or other transcript, if any, of proceedings of the Litigation Trust Oversight Committee. Unless the Litigation Trust Oversight Committee decides otherwise (which decision shall rest in the reasonable discretion of the Litigation Trust Oversight Committee), the Litigation Trustee and the Litigation Trustee's advisors may, but are not required to, attend meetings of the Litigation Trust Oversight Committee.

5.3 Manner of Acting. (a) All meetings of the Litigation Trust Oversight Committee shall consist of all Members. The affirmative vote of a majority of the Members present at a duly called and noticed meeting (on not less than one week notice unless such notice is otherwise waived by all Members) at which all Members are present throughout shall be the act of the Litigation Trust Oversight Committee except as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of video conference, conference telephone or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any Member participating in a meeting by these means is deemed to be present in person at the meeting. Voting (including on negative notice) may, if approved by the Members at a meeting, be conducted by electronic mail or individual communications by each Member.

5.4 Notwithstanding anything to the contrary herein, if a Member lacks authority to provide Direction to the Litigation Trustee of this Agreement pursuant to this Article V, a meeting of the Litigation Trust Oversight Committee may be held with a quorum consisting of those Members who have authority to provide Direction; provided, however, that all Members must be provided notice of and a reasonable opportunity to attend all meetings of the Litigation Trust Oversight Committee.

(a) Any Member who is present and entitled to vote at a meeting of the Litigation Trust Oversight Committee (including any meeting of the Litigation Trustee and the Litigation Trust Oversight Committee) when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Litigation Trust Oversight Committee, unless: (i) such Member of the Litigation Trust Oversight Committee objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Litigation Trust Oversight Committee before its adjournment. The right of dissent or abstention is not available to any Member of the Litigation Trust Oversight Committee who votes in favor of the action taken.

(b) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Litigation Trust Oversight Committee any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Litigation Trust Interests). With respect to a Member who, has or may have a conflict of interest whereby such Member's interests are adverse to the interests of the Litigation Trust (a "Conflicted Member"): (i) such Member shall not be entitled to vote or take part in any action with respect to such matter or issue; (ii) the vote or action with respect to such matter or issue shall be undertaken only by Members of the Litigation Trust Oversight Committee who are not Conflicted Members; and (iii) notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Litigation Trust Oversight Committee; provided, however, that a conflict or potential conflict will not exist merely because (i) a Member has an economic interest in, or business or commercial relationship with, the party who appointed that Member, or has an economic interest in the outcome of such matter or issue; or (ii) a Member, or a party who appoints a Member (or one of their affiliates, units, groups, divisions, or desks), in the ordinary course of business has trading, lending, commercial banking, investment banking, asset management, brokerage activities, or other similar relationships with parties who may be the subject of Litigation Trust Causes of Action, provided that appropriate barriers are put in place to protect against the sharing of confidential information and potential conflicts of interest, and to maintain compliance with any applicable securities laws.

5.5 Tenure of the Members of the Litigation Trust Oversight Committee. The authority of the Members will be effective as of the Effective Date and will remain and continue in full force and effect until the Litigation Trust is terminated in accordance with Section 8.1 hereof. Each Member will serve until such Member's successor is duly appointed or until such

Member's earlier death or resignation pursuant to Section 5.6 below, or removal pursuant to Section 5.7 below.

5.6 Resignation. A Member may resign for any reason, including by giving not less than thirty (30) days' prior written notice thereof to the Litigation Trustee and the other Members. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; and (ii) the appointment of a successor in accordance with Section 5.8 below. Notwithstanding the foregoing, upon the occurrence of the Termination Date (as defined in Section 8 herein), all of the Members shall be deemed to have resigned. In the event of a Member resignation that results from a transfer of Litigation Trust Interests pursuant to Section 2.3 hereof, the prior written notice period may be less than the thirty (30) days required herein.

5.7 Removal. A majority of the Litigation Trust Oversight Committee may remove any Member for Cause. "Cause" shall mean (i) a Person's willful failure to perform his material duties hereunder (including with respect to a Member or, to the extent applicable, the Litigation Trustee, regular attendance at meetings of the Litigation Trust Oversight Committee) that is not remedied within thirty (30) days' notice; (ii) a finding by the Bankruptcy Court or other court of competent jurisdiction that a Person committed an act of fraud, theft, or embezzlement during the performance of his duties hereunder; (iii) a Person's conviction of a felony with all appeals having been exhausted or appeal periods lapsed; or (iv) a finding by the Bankruptcy Court or other court of competent jurisdiction that a Person engaged in gross negligence, fraud willful misconduct, or a knowing violation of law in the performance of his or her duties hereunder. Subject to the provisions of Section 5.8, a Member of the Litigation Trust Oversight Committee may be removed without Cause at any time by its respective appointing party and replaced with a successor Member in accordance with Section 5.8 below.

5.8 Appointment of a Successor Member.

(a) In the event of a vacancy on the Litigation Trust Oversight Committee (whether by removal, death or resignation), a new Member may be appointed by the applicable appointing party to fill such position. In the event the applicable Appointing Party fails to fill a vacancy within thirty (30) days, the Litigation Trustee may appoint the successor Member to fill such vacancy, which appointment shall be effective immediately. The appointment of a successor Member shall be evidenced in the following manner: (i) in the event that the Chapter 11 Cases have not been closed as of the date of such appointment, the Litigation Trustee shall file with the Bankruptcy Court a notice of appointment, which notice shall include the name, address, and telephone number of the successor Member; or (ii) in the event that the Chapter 11 Cases have been closed as of the date of such appointment, the Litigation Trustee shall provide to the Litigation Trust Beneficiaries and the ultimate economic parties a notice of appointment, which notice shall include the name, address, and telephone number of the successor Member (at the addresses provided in the Trust Register).

(b) Immediately upon the appointment of any successor Member, all rights, powers, duties, authority, and privileges of the predecessor Member hereunder will be vested in and undertaken by the successor Member without any further act, and such successor Member will not be liable personally for any act or omission of the predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge and deliver to the Litigation Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring Member.

(d) Any action taken by the Litigation Trust Oversight Committee during the period of a vacancy on the Litigation Trust Oversight Committee shall be deemed valid unless subsequently revoked or modified by the unanimous vote of the Litigation Trust Oversight Committee within thirty (30) days of the vacancy being filled.

5.9 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Litigation Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member, except as otherwise required by law.

ARTICLE VI

LIABILITY AND INDEMNIFICATION

6.1 No Further Liability. Each of the Litigation Trustee, the Members, and their representatives shall have no liability for any actions or omissions in accordance with this Agreement or with respect to the Litigation Trust unless arising out of each such Person's own fraud, willful misconduct, or gross negligence. In performing its duties under this Agreement, the Litigation Trustee, the Members and their representatives (as applicable) shall have no liability for any action taken by each such Person in accordance with the advice of counsel, accountants, appraisers, and/or other professionals retained by the Members or the Litigation Trustee. Without limiting the generality of the foregoing, the Litigation Trustee, the Members, and their representatives may rely without independent investigation on copies of orders of the Bankruptcy Court reasonably believed by such Person to be genuine and shall have no liability for actions taken in reliance thereon. None of the provisions of this Agreement shall require the Litigation Trustee, the Members, or their representatives to expend or risk their own funds or otherwise incur personal financial liability in the performance of any of their duties hereunder or in the exercise of any of their rights and powers. Each of the Litigation Trustee, the Members, and their representatives may rely without inquiry upon writings delivered to such Person pursuant to the Plan or the Confirmation Order that such Person reasonably believes to be genuine and to have been properly given. Notwithstanding the foregoing, nothing in this Section 6.1 shall relieve the Litigation Trustee, the Members, or their representatives from any liability for any actions or omissions arising out of such Person's fraud, willful misconduct, or gross negligence. Any action taken or omitted to be taken in the case of the Litigation Trustee or the Litigation Trust Oversight Committee with the express approval of the Bankruptcy Court will conclusively be deemed not to constitute fraud, willful misconduct, or gross negligence. No termination of this Agreement or amendment, modification, or repeal of this Section 6.1 shall adversely affect any right or protection of the Litigation Trustee, the Members of the Litigation Trust Oversight Committee, or their

respective designees, professional agents, or representatives that exist at the time of such amendment, modification, or repeal.

6.2 Indemnification of the Litigation Trustee and Litigation Trust Oversight Committee.

(a) From and after the Effective Date, each of the Litigation Trustee, and the Litigation Trust Oversight Committee and its Members (each, a "Litigation Trust Indemnified Party" and collectively, the "Litigation Trust Indemnified Parties") shall be, and hereby is, indemnified by the Litigation Trust, to the fullest extent permitted by applicable law, from and against any and all Claims, debts, dues, accounts, actions, suits, Litigation Trust Causes of Action, bonds, covenants, judgments, damages, attorneys' fees, defense costs, and other assertions of liability arising out of any such Litigation Trust Indemnified Party's exercise of what such Litigation Trust Indemnified Party reasonably understands to be its powers or the discharge of what such Litigation Trust Indemnified Party reasonably understands to be its duties conferred by the Plan, the Confirmation Order, or this Agreement, any order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Plan, applicable law, or otherwise (except only for actions or omissions to act to the extent ultimately determined by a Final Order to be due to such Litigation Trust Indemnified Party's own fraud, willful misconduct, or gross negligence, on and after the Effective Date). The foregoing indemnification shall also extend to matters directly or indirectly in connection with, arising out of, arising from, based on, or in any way related to: (i) this Agreement; (ii) the services to be rendered pursuant to this Agreement; (iii) any document or information, whether oral or written, referred to herein or supplied to the Litigation Trustee; or (iv) proceedings against any Litigation Trust Assets or any Litigation Trust Indemnified Party by or on behalf of any creditor. The Litigation Trustee shall, on demand, advance or pay promptly, at the election of the Litigation Trust Indemnified Party, solely out of the Litigation Trust Assets, on behalf of each Litigation Trust Indemnified Party, attorneys' fees and other expenses and disbursements to which such Litigation Trust Indemnified Party would be entitled pursuant to the foregoing indemnification provision; provided, however, that any Litigation Trust Indemnified Party receiving any such advance shall execute a written undertaking to repay such advance if a court of competent jurisdiction ultimately determines, by Final Order, that such Litigation Trust Indemnified Party is not entitled to indemnification hereunder due to such Person's own fraud, willful misconduct, gross negligence. Any indemnification Claim of a Litigation Trust Indemnified Party shall be entitled to a priority distribution from the Litigation Trust Assets, ahead of the Litigation Trust Interests and any other Claim to or Interest in such assets. In any matter covered by the first two sentences of this subsection, any party entitled to indemnification shall have the right to employ such party's own separate counsel, at the Litigation Trust's expense, subject to the foregoing terms and conditions. In addition, at the Direction of the Litigation Trust Oversight Committee, the Litigation Trustee shall purchase insurance coverage, including liability insurance covering the Litigation Trustee and/or any Litigation Trust Oversight Committee Members using funds from the Litigation Trust Assets for the benefit of the Litigation Trustee. The indemnification provided under this Section 6.2 shall survive the death, dissolution, resignation, or removal, as may be applicable, of the Litigation Trustee, the Litigation Trust Oversight Committee, any Member, or any other Litigation Trust Indemnified Party and shall inure to the benefit of the Litigation Trustee's, each Member, and each other Litigation Trust Indemnified Party's respective heirs, successors, and assigns.

(b) The foregoing indemnity in respect of any Litigation Trust Indemnified Party shall survive the termination of such Litigation Trust Indemnified Party from the capacity for which such party is indemnified. Termination or modification of this Agreement shall not affect any indemnification rights or obligations set forth herein.

(c) The Litigation Trustee may, at the Direction of the Litigation Trust Oversight Committee, indemnify any Person who is not a Litigation Trust Indemnified Party for any loss, cost, damage, expense, or liability for which a Litigation Trust Indemnified Party would be entitled to mandatory indemnification under this Section 6.2.

(d) Any Litigation Trust Indemnified Party may waive the benefits of indemnification under this Section 6.2, but only by an instrument in writing executed by such Litigation Trust Indemnified Party.

(e) The rights to indemnification under this Section 6.2 are not exclusive of other rights which any Litigation Trust Indemnified Party may otherwise have at law or in equity, including common law rights to indemnification or contribution. Nothing in this Section will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under any other agreement or instrument to which that Person is a party. For the avoidance of doubt, each Litigation Trust Indemnified Party shall be entitled, subject to the terms hereof, to indemnification for any costs and attorneys' fees such Litigation Trust Indemnified Party may incur in connection with enforcing any of its rights under this Article VI.

6.3 Litigation Trust Liabilities. All liabilities of the Litigation Trust, including indemnity obligations under Section 6.2 of this Agreement, will be liabilities of the Litigation Trust as an Entity and will be paid or satisfied from the Litigation Trust Assets and paid on a priority basis. No liability of the Litigation Trust will be payable in whole or in part by any Litigation Trust Beneficiary individually or in such Litigation Trust Beneficiary's capacity as a Litigation Trust Beneficiary, by the Litigation Trustee individually or in the Litigation Trustee's capacity as Litigation Trustee, by any Member individually or in the Member's capacity as Member, or by any representative, member, partner, shareholder, director, officer, professional, employees, agent, affiliate, or advisor of any Litigation Trust Beneficiary, any Member, the Litigation Trustee, or their respective affiliates.

6.4 Limitation of Liability. None of the Litigation Trust Indemnified Parties shall be liable for indirect, punitive, exemplary, consequential, special, or other damages for a breach of this Agreement under any circumstances.

6.5 Burden of Proof. In making a determination with respect to entitlement to exculpation or indemnification hereunder, the court, Person, or Entity making such determination shall presume that any Litigation Trust Indemnified Party is entitled to exculpation and indemnification under this Agreement and any Person seeking to overcome such presumption shall have the burden of proof to overcome that presumption.

ARTICLE VII

TAX MATTERS

7.1 Treatment of Litigation Trust Assets Transfer. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trust shall be treated as a "liquidating trust" within the meaning of Treasury Regulation section 301.7701-4(d) and thus as a "grantor trust" within the meaning of sections 671 through 677 of the IRC, and all parties to the Litigation Trust (including, without limitation, the Litigation Trustee, the Debtors, and the Litigation Trust Beneficiaries) shall report consistently therewith for U.S. federal income tax purposes. Accordingly, for U.S. federal income tax purposes, the Litigation Trust Assets shall be treated by all parties as (i) having been transferred (subject to any obligations relating to such assets), pursuant to and consistent with the Plan, by the Debtors to the Litigation Trust Beneficiaries and (ii) immediately thereafter contributed by the holders of the Litigation Trust Assets to the Litigation Trust in exchange for Litigation Trust Interests. Accordingly, the Litigation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Litigation Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local tax purposes.

7.2 Tax Reporting. The Litigation Trustee shall file returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with Section 7.1 hereof. The Litigation Trustee shall, in its discretion, make any applicable tax elections on behalf of the Litigation Trust. The Litigation Trustee shall annually send to each Litigation Trust Beneficiary a separate statement setting forth such Litigation Trust Beneficiary's share of items of income, gain, loss, deduction, or credit (including the receipts and expenditures of the Litigation Trust), in accordance with applicable Treasury Regulations and Revenue Procedure 94-45, 1994-2 C.B. 684, file (or cause to be filed) any other statements, returns (including any information returns) or disclosures relating to the Litigation Trust that is required by any governmental authority or applicable law, and pay taxes, if any, properly payable by the Litigation Trust.

7.3 Trust Taxable Income and Allocations. Allocations of Litigation Trust taxable income among the Litigation Trust Beneficiaries shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (were such cash permitted to be distributed at such time, and without regard to any restrictions on distributions set forth in the Plan or this Agreement) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all its assets (valued for this purpose at their tax book value) to the Litigation Trust Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust. Similarly, taxable loss of the Litigation Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for purposes of this Section 7.3 shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations, and other applicable

administrative and judicial authorities and pronouncements. The Litigation Trustee shall be responsible for payment, out of the Litigation Trust Assets, of any Taxes imposed on the Litigation Trust or the Litigation Trust Assets.

7.4 Withholding of Taxes. The Litigation Trustee shall withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the IRC or any provision of any foreign, state, or local tax law with respect to any payment or distribution to the Litigation Trust Beneficiaries. All such amounts withheld and paid to the appropriate Tax Authority shall be treated as amounts distributed to such Litigation Trust Beneficiaries for all purposes of this Agreement. The Litigation Trustee shall be authorized to collect such tax information from the Litigation Trust Beneficiaries (including social security numbers or other tax identification numbers) as it, in its sole discretion, deems necessary to effectuate the Plan, the Confirmation Order, and this Agreement. In order to receive distributions under the Plan, all Litigation Trust Beneficiaries will need to identify themselves to the Litigation Trustee and provide tax information and the specifics of their holdings, to the extent the Litigation Trustee deems appropriate, including a taxpayer identification number ("TIN") as assigned by the IRS or, in the case of Litigation Trust Beneficiaries that are not United States persons for U.S. federal income tax purposes, certification of foreign status on IRS Form W-8BEN, W-8BEN-E, or W-8ECI. This identification requirement may, in certain cases, extend to holders who hold their securities in street name. The Litigation Trustee may refuse to make a distribution to any Litigation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered.

7.5 Expedited Determination of Taxes. The Litigation Trustee may request an expedited determination of taxes of the Litigation Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Litigation Trust for all taxable periods through the termination of the Litigation Trust.

7.6 Foreign Tax Matters. The Litigation Trustee shall duly comply on a timely basis with all obligations, and satisfy all liabilities, imposed on the Litigation Trustee or the Litigation Trust under non-United States law relating to Taxes. The Litigation Trustee, or any other legal representative of the Litigation Trust, shall not distribute the Litigation Trust Assets or proceeds thereof without having first obtained all certificates required to have been obtained under applicable non-United States law relating to Taxes.

ARTICLE VIII

TERMINATION OF LITIGATION TRUST

8.1 Termination. The Litigation Trust Oversight Committee and the Litigation Trust shall be dissolved at such time as (i) all of the Litigation Trust Assets have been distributed pursuant to the Plan and this Agreement; or (ii) the Litigation Trust Oversight Committee determines that the administration of any remaining Litigation Trust Assets is not likely to yield sufficient additional Litigation Trust proceeds to justify further pursuit; provided, however, that in no event shall the Litigation Trust be dissolved later than five (5) years from the Effective Date; provided, further, that the Bankruptcy Court, upon motion by the Litigation Trustee, on notice with an opportunity for hearing, within six (6) months before the expiration of the original term or any extended term, may extend, for a fixed period, the term of the Litigation Trust if it is necessary to

facilitate or complete the liquidation of the assets of the Litigation Trust, and not unduly extend the term of the Litigation Trust; provided further, however, that the Litigation Trustee must receive a favorable private letter ruling from the IRS or an opinion of counsel satisfactory to the Litigation Trustee and the Litigation Trust Oversight Committee that any extension would not adversely affect the status of the Litigation Trust as a "liquidating trust" for U.S. federal income tax purposes. The Bankruptcy Court may approve multiple extensions of the term of the Litigation Trust. If at any time the Litigation Trust Oversight Committee determines, in reliance upon such professionals as the Litigation Trust Oversight Committee may retain, that the expense of administering the Litigation Trust so as to make a final distribution to the Litigation Trust Beneficiaries is likely to exceed the value of the assets remaining in the Litigation Trust, the Litigation Trustee, at the Direction of the Litigation Trust Oversight Committee, may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Litigation Trust; (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the IRC, (B) exempt from U.S. federal income tax under section 501(a) of the IRC, (C) not a "private foundation," as defined in section 509(a) of the IRC, and that is unrelated to the Debtors, the Litigation Trust, and any insider of the Litigation Trustee; and (iii) dissolve the Litigation Trust. Such date upon which the Litigation Trust shall finally be dissolved shall be referred to herein as the "Termination Date."

8.2 Continuance of Litigation Trust for Winding Up. After the termination of the Litigation Trust and solely for the purpose of liquidating and winding up the affairs of the Litigation Trust, the Litigation Trustee shall continue to act as such until its duties have been fully performed and shall continue to be entitled to receive the fees called for by Section 3.14 hereof. Upon distribution of all the Litigation Trust Assets, the Litigation Trustee shall retain the books, records, and files that shall have been delivered or created by the Litigation Trustee. At the Litigation Trust Oversight Committee's discretion, all of such records and documents may be destroyed no earlier than two years following the date of final distribution of Litigation Trust Assets as the Litigation Trust Oversight Committee deems appropriate (unless such records and documents are necessary to fulfill the Litigation Trustee's obligations hereunder) subject to the terms of any joint prosecution and common interest agreement(s) to which the Litigation Trustee may be a party. Except as otherwise specifically provided herein, upon the final distribution of Litigation Trust Assets, the Litigation Trustee shall be deemed discharged and have no further duties or obligations hereunder, except to account to the Litigation Trust Beneficiaries as may be provided herein, the Litigation Trust Interests shall be cancelled, and the Litigation Trust will be deemed to have dissolved. The Litigation Trustee shall provide notice to the ultimate economic parties and the Litigation Trust Beneficiaries (which can be achieved by filing such notice on the docket of the Chapter 11 Cases or such other manner determined by the Litigation Trustee in consultation with the Litigation Trust Oversight Committee) of the termination of the Litigation Trust and final distribution of Litigation Trust Assets.

ARTICLE IX

AMENDMENT AND WAIVER

9.1 Amendment. This Agreement may from time to time be amended, supplemented, or modified without the approval of the Bankruptcy Court by the Litigation Trustee, at the Direction of the Litigation Trust Oversight Committee, provided, however, that no such

amendment, supplement, or modification shall, except as otherwise provided herein: (a) adversely affect the payments and/or distributions to be made under this Agreement; (b) adversely affect the U.S. federal income tax status of the Litigation Trust as a "liquidating trust"; (c) be inconsistent with the purpose and intention of the Litigation Trust to liquidate in an expeditious but orderly manner the Litigation Trust Assets in accordance with Treasury Regulation section 301.7701-4(d); or (d) negate any fiduciary obligations established in this Agreement.

9.2 Waiver. No failure by the Litigation Trust or the Litigation Trustee to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without reference to principles of conflicts of law thereof).

10.2 Jurisdiction. The Parties agree that the Bankruptcy Court shall have exclusive jurisdiction over disputes arising out of the formation or implementation of the Litigation Trust Agreement and to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, or the transfer of the Litigation Trust Assets to the Litigation Trust on the Effective Date; provided, however, that notwithstanding the foregoing, the Litigation Trustee, at the Direction of the Litigation Trust Oversight Committee, shall have power and authority to bring any action in any court of competent jurisdiction to prosecute any of the Litigation Trust Causes of Action. For the avoidance of doubt, nothing in Article XII of the Plan shall be deemed to confer a broader grant of jurisdiction on the Bankruptcy Court than that set forth in this Section 10.2.

10.3 Dispute Resolution. In the event of any dispute between the Litigation Trustee, the Litigation Trust Beneficiaries, and/or the Litigation Trust Oversight Committee with respect to (a) the allocation of Litigation Trust Interests pursuant to Section 2.1(b) hereof or (b) the making of distributions by the Litigation Trustee pursuant to Article IV hereof (the occurrence of either (a) or (b) being referred to herein as a "Dispute"), the Parties hereby agree that any such Dispute shall, in the first instance, be resolved by referral of such Dispute to mediation for resolution thereof. In the event that mediation is not successful in resolving any such Dispute, any Party to such Dispute may petition the Bankruptcy Court for resolution thereof.

10.4 Reimbursement of Fees and Costs. In any action or proceeding initiated by a Litigation Trust Beneficiary against (a) the Litigation Trustee, (b) any Member(s) of the Litigation Trust Oversight Committee, or (c) any other current or former fiduciary of the Litigation Trust, the prevailing party in any such action or proceeding shall be entitled to reimbursement of its incurred attorneys' fees and other costs from the non-prevailing party in such action or proceeding; provided, however, that in the case that the non-prevailing party is one of the parties

listed in clauses (a) through (c) of this Section 10.4 then such reimbursement shall be paid solely from the Litigation Trust Assets except as otherwise provided in Article VI hereof.

10.5 Closing of Chapter 11 Cases. In the event that the Chapter 11 Cases are closed prior to the occurrence of the Termination Date hereunder and any approvals, reporting or filing is required hereunder by the Trustee, the Trustee, in consultation first with the Litigation Trust Oversight Committee, may, pursuant to the terms herein, petition the Bankruptcy Court to re-open the Chapter 11 Cases. If the Chapter 11 Cases are not reopened then any approval, report or filing required pursuant to this Agreement shall be provided by the Litigation Trustee directly to the Litigation Trust Beneficiaries and the ultimate economic parties.

10.6 Severability. In the event any provision of this Agreement or the application thereof to any person or circumstances shall be determined by Final Order to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.7 Notices. Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, by facsimile, by electronic communication, or by nationally recognized overnight delivery service or mailed by first-class mail. The date of receipt of such notice shall be the earliest of (a) the date of actual receipt by the receiving party; (b) the date of personal delivery (or refusal upon presentation for delivery); (c) the date of the transmission confirmation; or (d) three (3) Business Days after service by first-class mail, to the receiving party's below address(es):

(i) if to the Litigation Trustee, to:

Leif M Clark Consulting PLLC
Attn: Leif M. Clark
1105 Bonner
Houston, TX 77007
Office: (210) 663-5183
E-mail: lmclark@leifmclark.com

(ii) if to any Litigation Trust Beneficiary, (i) to its authorized designee for purposes of distributions to be made under the Plan; (ii) to its last-known address according to the Litigation Trustee's records as set forth in the Trust Register.

(iii) if to the Litigation Trust Oversight Committee, to:

Michael Wyse
Wyse Advisors LLC
51 JFK Parkway
First Floor West
Short Hills, NJ 07078
Mobile: (917) 553-5883

Timothy Gorman
c/o Eric E. Walker
110 N. Wacker Suite 4200
Chicago, IL 60606
Attn: Eric E. Walker
Office: 312-881-6375
E-mail: ewalker@cooley.com

Virginia A. Housum
c/o Daniel S. Bleck, Esq. & Eric Blythe, Esq.
One Financial Center
Boston, MA 02111
Telephone: (617) 546-6000
dsbleck@mintz.com
erblythe@mintz.com

with a copy to:

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY, AND POPEO, PC
Attn: Daniel S. Bleck, Esq. & Eric Blythe, Esq.
One Financial Center
Boston, MA 02111
Telephone: (617) 546-6000
dsbleck@mintz.com
erblythe@mintz.com

-and-

COOLEY LLP
Attn: Eric E. Walker
110 North Wacker Drive, Suite 4200
Chicago, IL 60606-1511
Telephone: 312-881-6375
Facsimile: 312-881-6598 (fax)
ewalker@cooley.com

(iv) if to the Debtors, to:

POLSINELLI PC
Jeremy R. Johnson
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
Facsimile: (212) 684-0197
jeremy.johnson@polsinelli.com

-and-

Trinitee G. Green
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
Facsimile: (214) 397-0033
tggreen@polsinelli.com

Counsel to the Debtors

10.8 Headings. The headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

10.9 Entire Agreement. This Agreement and the exhibits attached hereto, together with the Plan and Confirmation Order, contain the entire agreement between the Parties and supersede all prior and contemporaneous agreements or understandings between the Parties with respect to the subject matter hereof.

10.10 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, and other entities. All references herein to Articles, Sections, and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute, or regulation, refer to the corresponding Articles, Sections, and other subdivisions of this Agreement, and the words "herein," "hereof," or "herewith" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. The term "including" shall mean "including, without limitation."

10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one and the same instrument. A facsimile or electronic mail signature of any party shall be considered to have the same binding legal effect as an original signature.

10.12 Intention of Parties to Establish a Liquidating Trust. This Agreement is intended to create a "liquidating trust" for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Agreement may be amended in accordance with Section 9.1 hereof to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

10.13 Other Activities. The Litigation Trustee shall be entitled to perform services for and be employed by third parties on matters not related to this Litigation Trust and the Litigation Trust Causes of Action; provided, however, that such performance or employment affords the Litigation Trustee sufficient time to carry out the Litigation Trustee's responsibilities and duties as Litigation Trustee and such performance or employment does not conflict with or otherwise prohibit the Litigation Trustee from performing its responsibilities or duties with respect

to the Litigation Trust as required under this Agreement free of conflict or interruption.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective officers, representatives, or agents, effective as of the date first above written.

NORTHWEST SENIOR HOUSING CORPORATION

DocuSigned by:
By: _____
0FBD63BFF8124CA...
Name: Nick Harshfield
Title: CFO

SENIOR QUALITY LIFESTYLES CORPORATION

DocuSigned by:
By: _____
0FBD63BFF8124CA...
Name: Nick Harshfield
Title: CFO

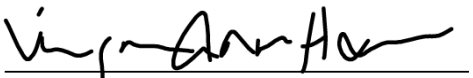
LITIGATION TRUST OVERSIGHT COMMITTEE MEMBER

By: _____
Name: Michael Wyse

LITIGATION TRUST OVERSIGHT COMMITTEE MEMBER

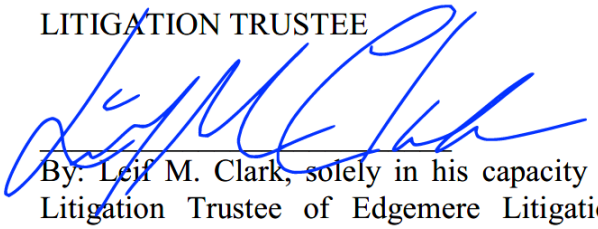
By: _____
Name: Timothy Gorman

LITIGATION TRUST OVERSIGHT COMMITTEE MEMBER



Name: Virginia Housum

LITIGATION TRUSTEE



By: Leif M. Clark, solely in his capacity as Litigation Trustee of Edgemere Litigation Trust

EXHIBIT A

Funding of Litigation Trust Fund

Funding Party	Funding Obligation in connection with Litigation Trust Fund[1]
Lifespace Communities, Inc.	$305,933.68
UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds	$194,066.32

[1] The calculation of these funding obligations is subject to reconciliation and final agreement between Lifespace Communities, Inc. and UMB Bank, N.A.

EXHIBIT B

Initial Members of the Litigation Trust Oversight Committee

Name	Representative
Virginia Housum	Trustee Member Representative
Timothy Gorman	Lifespace Member Representative
Michael Wyse	Joint Member Representative

EXHIBIT C

Compensation of Litigation Trustee

The Litigation Trustee shall be paid a flat fee of ten thousand dollars ($10,000.00) per month during the term of the Litigation Trust, plus an additional 3% of the gross recoveries from the Landlord Litigation; *provided, however*, under no circumstances shall the total compensation of the Litigation Trustee exceed $2,000,000.00 in the aggregate. For any anticipated expense to be incurred by the Litigation Trustee that shall exceed ten thousand dollars ($10,000.00), excluding the Litigation Trustee's monthly compensation, the Litigation Trustee is required to first consult with the Litigation Trust Oversight Committee for approval in advance of incurring such expense.

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