Docket #0496 Date Filed: 3/15/2024

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

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

DEFENDANTS' WITNESS AND EXHIBIT LIST FOR HEARING SCHEDULED FOR MARCH 20, 2024

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

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Intercity Investment Properties, Inc. ("ICI") and Kong Capital LLC ("Kong") file their Witness and Exhibit List for the hearing to be held on March 20, 2024.

WITNESSES

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

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

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

EXHIBITS

(see chart beginning on following page)

EXHIBIT	DESCRIPTION	MARK	OFFER	OBJECT	ADMIT	W/D	DISPOSITION AFTER TRIAL
1	Defendant Intercity Investment Properties, Inc.'s First Set of Written Discovery to Plaintiff dated June 28, 2022						
2	Plaintiff's Objections and Responses to Defendant's First Set of Written Discovery dated August 1, 2022						
3	Plaintiff's Supplemental Objections and Responses to Defendants' First Set of Interrogatories dated December 1, 2023						
4	Defendant Intercity Investment Properties, Inc.'s Second Set of Written Discovery to Plaintiff dated December 22, 2023						
5	Plaintiff's Objections and Responses to Defendants' Second Set of Written Discovery dated February 9, 2024 [AP Docket No. 478-4]						
6	First Amended Complaint [AP Docket No. 422] **[UNDER SEAL]**						
7	Defendants' Answer and Affirmative Defenses to Plaintiff's First Amended Complaint [AP Docket No. 429] **[UNDER SEAL]**						
8	Defendants' Amended Counterclaims [AP Docket No. 420]						
	Any exhibits listed by any other party or filed subsequently to the submission of this list.						
	Any pleadings or documents filed in the above captioned and titled bankruptcy case or adversary proceeding.						
	Any rebuttal exhibits.						

RESERVATION OF RIGHTS

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

Dallas, Texas
March 15, 2024

/s/ *Ryan C. Hardy*

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Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on this 15th day of March, 2024, a copy of the foregoing was filed electronically with the Clerk of Court via ECF, which caused a copy of same to be transmitted to all counsel of record.

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

EXHIBIT 1

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

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

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

JACKSON WALKER LLP
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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:

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– and –
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bdolphin@polsinelli.com
COUNSEL TO THE DEBTORS AND
DEBTORS IN POSSESSION

/s/ Michael S. Held
Michael S. Held

EXHIBIT 2

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

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

PLAINTIFF'S OBJECTIONS AND RESPONSES TO
DEFENDANTS' FIRST SET OF WRITTEN DISCOVERY

Plaintiff Northwest Senior Housing Corporation d/b/a The Edgemere ("Edgemere") submits the following objections and responses to Defendants' First Set of Written Discovery (the "Discovery Requests").

GENERAL OBJECTIONS

1. Edgemere 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

[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.

according to their usual and customary meaning. The information provided is based upon the information presently available to and known by Edgemere. Edgemere will supplement its responses if necessary consistent with the Federal Rules of Civil Procedure.

2. Edgemere 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. Edgemere responds to Discovery Requests assuming Defendants do not intend Edgemere to disclose any such communications, documents, or other information that implicates or may implicate any privilege or the work product doctrine.

3. Edgemere 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 Edgemere that such information or document is relevant to the pending litigation. Accordingly, Edgemere 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 Edgemere 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 Edgemere's right to produce evidence, documentary or otherwise, of any subsequently discovered facts and/or documents.

4. Edgemere 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. Edgemere objects to any attempt to

impose any greater obligation to collect documents or information beyond that imposed by law or regulation.

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

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

7. In a good faith effort to comply with the Federal Rules of Civil Procedure concerning discovery, and to err on the side of inclusiveness, Edgemere 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 Edgemere expressly preserves each and every objection.

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

OBJECTIONS AND RESPONSES TO 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.

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere also objects to this interrogatory as vague and

ambiguous insofar as it seeks information regarding professional retained to "evaluate [Edgemere's] financials."

Subject to and without waiving any objection, Edgemere states that on or around February 1, 2021, it engaged FTI Consulting, through counsel, to assist with an analysis of various financial issues, including projected financial performance. Edgemere further states that it has consulted with attorneys at DLA Piper, Sidley Austin LLP, and Polsinelli PC regarding its financials.

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.

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Edgemere further objects to the extent this interrogatory calls for Edgemere to reach a legal conclusion.

Subject to and without waiving any objection, and although Edgemere's investigation continues, Edgemere states that sections 8.2 and 9.4 of the November 1999 Ground Lease (the "Lease") are unenforceable as a result of the parties' mutual mistake or are void as against Texas public policy because they would allow for Intercity Investment Properties, Inc. ("Intercity" or "ICI"), an entity not licensed to operate a Continuing Care Retirement Community in the State of Texas, to either assume Life Care Agreements of Edgemere residents, or allow Intercity to evict Edgemere residents from the Community and deny those residents refunds of the substantial entrance fees they previously paid. As alleged in the Complaint, Edgemere was not fully aware of the mutual mistake or the public policy concerns, including the legal impediments to Intercity assuming resident contracts, evicting residents, or retaining resident entrance fees, until September

2021, when Intercity sought to terminate the Lease and threatened to invoke the remedies described in sections 8.2 and 9.4 of the Lease and transition Edgemere to a different financial model and use. Though Edgemere's investigation continues, its investigation to date reveals that those issues may have come to light more generally as early as March 2021.

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

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere also objects because this interrogatory seeks information already in Defendants' possession or that is publicly available or equally available to Defendants as it is to Edgemere.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Subject to Edgemere's forthcoming document production, Edgemere states that the following people, among others, but excluding counsel, were involved in discussions about the lease among and between Edgemere, Intercity, Lifespace, and UMB:

- Jesse Jantzen, Lifespace CEO and Edgemere Chairman, President and CEO
- Nick Harshfield, Lifespace CFO and Edgemere Vice Chairman and Treasurer
- Eddie Fenoglio, Lifespace COO and Edgemere Secretary
- Members of the Edgemere Board of Directors
- Members of the Lifespace Board of Directors
- Chris Jordan, Intercity President

- Nick Hannon, Intercity Executive Vice President
- Irina Palchuk, UMB Senior Vice President
- Virginia Housum, UMB Senior Vice President

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

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Edgemere further objects to this interrogatory because it seeks information already in Defendants' possession or that Defendants are uniquely positioned to know.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. And although Edgemere's investigation continues, Edgemere further states Intercity and Kong Capital, LLC ("Kong") disclosed Edgemere's Confidential Information, or used Edgemere's Confidential Information to wrongfully compete with Edgemere in violation of the September 7, 2021 Confidentiality and Nondisclosure Agreement (the "NDA"), in conversations or communications with The Dallas Morning News, The Texas Department of Insurance, the Texas Attorney General's Office, The Edgemere Resident Board, and Edgemere residents Jim Smith and Charles and Hilda Simmons.

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.

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this interrogatory because it seeks information already in Defendants' possession or that Defendants are uniquely positioned to know. Edgemere also objects to this interrogatory insofar as it is duplicative, in part, to Interrogatory No. 4.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. And although Edgemere's investigation continues, Edgemere further states that Defendants disclosed Edgemere's Confidential Information consisting of forward-looking financial projections and related information, including the existence and details of Edgemere's restructuring efforts, or used those categories of confidential financial information to wrongfully compete with Edgemere in violation of the NDA. Edgemere further states that on April 17, 2022, Intercity filed in the Chapter 11 cases a confidential Operational and Financial Assessment prepared by FTI Consulting (the "FTI Report"), which Edgemere had previously provided to Intercity under the terms of the NDA (Dkt No. 61). The Dallas Morning News accessed and downloaded the publicly-filed confidential report and later published certain information from that report in a May 1, 2022 article in both print and online format where it remains available to the general public. Edgemere further states that none of the confidential materials disclosed to Defendants under the terms of the NDA had been previously disclosed to third parties not also subject to a non-disclosure agreement or covered by the attorney-client or common interest privileges.

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

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Edgemere further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. And although Edgemere's investigation continues, Edgemere further states that Intercity and its representative Kong, not Edgemere, had a contractual obligation under the NDA to remedy their violations of the NDA. Nevertheless, Edgemere's counsel notified Intercity's counsel on February 23, 2022 of Intercity's and Kong's violations of the NDA and demanded that Intercity and Kong cease and desist from any additional disclosure of Edgemere's Confidential Information and immediately take the actions required under the NDA to immediately remedy their violation of the NDA. In addition, Edgemere's executive team ceased all direct interaction with Intercity and Kong, including any further dissemination of Confidential Information to Intercity or Kong, at least as early as February 22, 2022. Edgemere then filed this Adversary proceeding seeking remedies for Intercity's and Kong's wrongful conduct. And after Defendants publicly filed the FTI Report in the Chapter 11 cases, Edgemere also demanded, in a May 10, 2022 letter from Edgemere's counsel to Intercity's counsel, that Intercity immediately cease and desist from further harmful disclosures of Edgemere's Confidential Information.

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

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Edgemere further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action.

Subject to and without waiving any objection, and although Edgemere's investigation continues, Edgemere states that Kong's statements to The Dallas Morning News regarding Edgemere's financial position, future viability, and approach to new resident entrance fees were false, misleading, and disparaging.

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

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Edgemere further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Edgemere further objects to this interrogatory as vague and ambiguous because the word "interfere" is undefined. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Subject to Edgemere's forthcoming document production, and although its investigation continues, Edgemere states that Intercity's and Kong's wrongful disclosure and

misuse of Edgemere's Confidential Information interfered with contracts with Edgemere residents or otherwise improperly caused Edgemere residents to take actions damaging to Edgemere insofar as certain residents in Edgemere's Assisted Living area provided contractually required notice and moved out of the Edgemere Community.

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

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Edgemere further objects to this interrogatory insofar as it seeks to improperly narrow the scope of Edgemere's claim for tortious interference with a prospective contractual and business relations. Edgemere further objects to this interrogatory as vague and ambiguous because the word "interfere" is undefined. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. And although Edgemere's investigation continues, Edgemere further states that Intercity and Kong tortiously interfered with prospective Edgemere residents, including, but not limited to, those that had scheduled tours of the Edgemere community and canceled, those that had paid a deposit to secure residency at Edgemere but then deferred closing, and those that had demonstrated interest in or commitment to joining Edgemere but elected not to do so. Edgemere further states that Intercity's and Kong's wrongful conduct also interfered with and damaged Edgemere's relationships with key referral sources.

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.

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, or the attorney work product doctrine. Edgemere further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Edgemere also objects to this interrogatory insofar as it is compound and seeks answers on several discrete, unrelated issues.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Subject to Edgemere's forthcoming document production, Edgemere states that Lifespace, UMB, Intercity, and Edgemere entered into a Forbearance Agreement dated December 21, 2021 (the "Forbearance Agreement"), to address, among other things, certain liquidity challenges facing Edgemere. Edgemere further states that its specific financial decisions in October 2021 and December 2021, and otherwise, were undertaken openly, in consultation with its stakeholders (including ICI, and later Kong), to preserve liquidity, prioritize community operations, and protect Edgemere residents.

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.

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

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Subject to Edgemere's forthcoming document production, Edgemere states that Edgemere executives met on November 2, 2021 with representatives of UMB at UMB's counsel's offices in Boston, Massachusetts.

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.

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Edgemere also objects to this interrogatory to the extent it seeks information for the period after the Chapter 11 cases and this proceeding were filed.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Subject to Edgemere's forthcoming document production, Edgemere states that

before the Chapter 11 cases and this proceeding were filed, it generally discussed the Lease or the claims in this lawsuit at a high level with, among others, UMB, FTI Consulting, Lifespace, the Edgemere Resident Board and committees to that Board, Edgemere residents, Edgemere employees, Edgemere's auditors (CliftonLarsonAllen LLP), the Texas Department of Insurance, and the Texas Attorney General's Office. Those communications consisted of periodic town hall meetings with residents, town hall-style meetings with Edgemere employees, meetings with Edgemere management teams, and one-on-one meetings with individual residents, among other meetings, where Lifespace or Edgemere leadership provided high level information regarding the negative press campaign initiated by Intercity and Kong, Edgemere's overall financial position, and, after the Chapter 11 cases were filed, general restructuring issues. The communications with regulators and Edgemere's professionals were informational discussions regarding Edgemere's financial position and the potential restructuring.

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 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

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory in aggregate form or in a manner that redacts personal identifiable or confidential information of individual residents or their estates to comply with Edgemere's independent confidentiality obligations.

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

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this interrogatory as overly broad in that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Edgemere further objects to this interrogatory in that it seeks information beyond the

scope of the Complaint and not germane to any claim or defense in this action. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence. Edgemere further objects to the extent this interrogatory seeks information that is now publicly available (in redacted form) or already in Defendants' possession, custody, or control (in redacted form).

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory in aggregate form or in a manner that redacts personal identifiable or confidential information of individual residents or their estates to comply with Edgemere's independent confidentiality obligations.

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

RESPONSE: Edgemere objects to this interrogatory as overly broad in that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Edgemere further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Edgemere also objects to this interrogatory because it seeks information that is publicly available or already in Defendants' possession, custody, or control.

Subject to and without waiving any objection, Edgemere states that Edgemere already filed this information in conjunction with its Statement of Assets and Liabilities filed in the Chapter 11 cases. Edgemere further states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory.

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.

RESPONSE: Edgemere objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere also objects to this interrogatory insofar as it is duplicative, in part, to Interrogatory No 5.

Subject to and without waiving any objection, Edgemere states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Subject to that forthcoming document production, Edgemere further states that none of the confidential materials disclosed to Defendants under the terms of the NDA, including but not limited to Edgemere's confidential, forward-looking financial projections (including the FTI Report) and related confidential financial information, including the existence and details of Edgemere's restructuring efforts, had been previously disclosed to third parties not also subject to a non-disclosure agreement or covered by the attorney-client or common interest privileges.

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.

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

Edgemere also objects to this interrogatory as premature. The specific measure and amount of damages will be the subject of expert analysis and testimony in this case.

Subject to and without waiving any objection, Edgemere states that it will disclose its expert's damages analysis as specified in the Court's scheduling order.

OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

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

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

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

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.

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

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

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

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

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

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

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

available to Defendant as Edgemere. Edgemere also objects to this request because it seeks documents beyond the scope or the allegations in the Complaint or not germane to a claim or defense in this lawsuit. Edgemere further objects to the extent this request seeks materials shielded from disclosure under independent confidentiality obligations imposed by law or agreement.

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as Edgemere. Edgemere also objects to this request because it seeks documents beyond the scope or the allegations in the Complaint or not germane to a claim or defense in this lawsuit. Edgemere also objects to this request to the extent it is duplicative of Request No. 4.

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as Edgemere. Edgemere also objects to this request as overly broad and unduly burdensome in that it requests "[a]ll Documents and Communications concerning the Restructuring or the Bankruptcy." This description encompasses an undefined universe of documents and therefore lacks adequately specificity.

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere also objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this request to the extent it is duplicative of Request No.4.

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere also objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to Edgemere or unrelated to issues, claims, and defenses in this lawsuit. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control relating to in-person meetings among Edgemere, Lifespace, and/or UMB relating to Edgemere.

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.

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

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

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

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

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

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

RESPONSE: Edgemere objects to this request as unduly burdensome in that it seeks documents already in Defendants' possession, custody, or control, or that are equally available to Defendant as Edgemere.

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

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.

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

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as unduly burdensome in that

it seeks information already in Defendants' possession, custody, or control, or that is publicly available or equally available to Defendants as Edgemere.

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as unduly burdensome in that it seeks information already in Defendants' possession, custody, or control, or that is publicly available or equally available to Defendants as Edgemere.

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

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).

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

entities other than Edgemere. Edgemere further objects to this request as unduly burdensome in that it seeks information already in Defendants' possession, custody, or control, or that is publicly available or equally available to Defendants as Edgemere.

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

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.

RESPONSE: Edgemere objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to Edgemere or unrelated to issues, claims, and defenses in this lawsuit. Edgemere also objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere.

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

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.

RESPONSE: Edgemere objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to Edgemere or unrelated to issues, claims, and defenses in this lawsuit. Edgemere also objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere.

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

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.

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

common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this request as unduly burdensome in that it seeks information already in Defendants' possession, custody, or control.

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

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.

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

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

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.

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

the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this request as unduly burdensome in that it seeks information already in Defendants' possession, custody, or control.

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

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.

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

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

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.

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

common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this request as unduly burdensome in that it seeks information already in Defendants' possession, custody, or control.

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this request as unduly burdensome to the extent it seeks information already in Defendants' possession, custody, or control.

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this request as unduly burdensome to the extent it seeks information already in Defendants' possession, custody, or control.

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

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.

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

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

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

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere states that its residents' personal identifiable information sought in Interrogatory No. 13 is confidential. As a result, Edgemere will

produce documents implicated by Interrogatory 13 and this request only in aggregate form or in a manner that redacts personal identifiable or confidential information of individual residents or their estates to comply with Edgemere's independent confidentiality obligations.

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

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

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

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.

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

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

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.

RESPONSE: Edgemere objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this request because it seeks documents beyond the scope or the allegations in the Complaint or not germane to a claim or defense in this lawsuit.

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this interrogatory insofar as it is compound and seeks documents on multiple discrete, unrelated issues.

Subject to and without waiving any objection, Edgemere states that its residents' personal identifiable information sought in Interrogatory No. 13 is confidential. As a result, Edgemere will produce documents implicated by Interrogatory 13 and this request only in aggregate form or in a manner that redacts personal identifiable or confidential information of individual residents or their estates to comply with Edgemere's independent confidentiality obligations. The balance of this request is duplicative of Request No. 21.

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

RESPONSE: Edgemere objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to issues, claims, and defenses in this lawsuit. Edgemere further objects to this request as unduly burdensome to the extent it seeks to impose a burden disproportionate to the needs of the case – Defendants do not reasonably need access to individual resident Life Care Agreements to defend against the allegations in the Complaint. Edgemere objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere states that its residents' Life Care Agreements and the personal identifiable information included therein and attached thereto is confidential. As a result, Edgemere will produce documents that reveal aggregate or consolidated information regarding Edgemere residents, including aggregate financial or statistical information regarding the residents. Edgemere will not produce individual Edgemere Life Care Agreements.

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

RESPONSE: Edgemere objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to issues, claims, and defenses in this lawsuit. Defendants do not reasonably need access to individual resident Life Care Agreements to defend against the allegations in the Complaint. Edgemere objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere states that its residents' Life Care Agreements and the personal identifiable information included therein and attached thereto is confidential. As a result, Edgemere will produce documents that reveal aggregate or consolidated financial information regarding the refunds currently due to former residents. Edgemere will not produce individual Edgemere Life Care Agreements.

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

RESPONSE: Edgemere objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to issues, claims, and defenses in this lawsuit. Edgemere further objects to this request as unduly burdensome to the extent it seeks to impose a burden disproportionate to the needs of the case – Defendants do not reasonably need access to individual resident agreements to defend against the allegations in the Complaint. Edgemere also objects to

this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere.

Subject to and without waiving any objection, Edgemere will produce the materials identified in response to Request Nos. 31 and 32, which will reveal financial information regarding Edgemere's refund obligations.

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

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

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

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to issues, claims, and defenses in this lawsuit. Defendants do not reasonably need access to individual resident Life Care Agreements or individual unit cost and refund information to defend against the allegations in the Complaint.

Edgemere objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere states that its residents' Life Care Agreements and the personal identifiable information included therein and attached thereto is confidential. As a result, Edgemere will produce responsive documents, if any, that reveal aggregate or consolidated unit cost information and associated refund obligations, only if Edgemere can do so without revealing confidential or personal identifiable information. Edgemere will not produce individual Edgemere Life Care Agreements.

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, if any, in a form that redacts

resident names or other personal identifiable or otherwise Confidential Information. Edgemere will not produce documents that identify individual residents or their age.

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

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

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

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

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint. Edgemere also objects to the extent that this request seeks information that is publicly available, that is already in Defendants' possession, custody, or control, or that is equally available to Defendants as it is to Edgemere.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, if any, for the time period from January 1, 2020 through the most recent available period before the date of the Complaint.

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint. Edgemere also objects to the extent that this request seeks information that is publicly available, that is already in Defendants' possession, custody, or control, or that is equally available to Defendants as it is to Edgemere.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, if any, for the time period from January 1, 2020 through the most recent available period before the date of the Complaint

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as overly broad and unduly burdensome in that it purports to seek "all meeting minutes." The request is not reasonably related to the allegations in the Complaint and therefore imposes a burden on Edgemere that is disproportionate to the needs of the case. Edgemere also objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents related to Edgemere's Board of Directors that remain in Edgemere's possession, custody, or control, if any, for the time period from January 1, 2020 through the most recent available period before the date of the Complaint.

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.

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

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

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.

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

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

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]."

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, or the attorney work product doctrine. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint. Edgemere also objects to the extent that this request seeks information that is publicly available, that is already in Defendants' possession, custody, or control, or that is equally available to Defendants as it is to Edgemere.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, for the time period from January 1, 2020 through the present.

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."

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, or the attorney work product doctrine. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, for the time period from January 1, 2020 through the present.

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

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

Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, for the time period from January 1, 2020 through the present.

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."

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, or the attorney work product doctrine. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, for the time period from January 1, 2020 through the present.

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

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

Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, for the time period from January 1, 2020 through the present.

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."

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

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

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."

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

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

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

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

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

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

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

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

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.

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

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control for the time period from January 1, 2020 through the present.

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to issues, claims, and defenses in this lawsuit. Edgemere objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere states that its residents' Life Care Agreements and the personal identifiable information included therein and attached thereto is confidential. As a result, Edgemere will produce responsive documents that reveal aggregate or consolidated information regarding existing or prospective residents that terminated their

relationship with Edgemere, only if Edgemere can do so without revealing confidential or personal identifiable information.

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.

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to issues, claims, and defenses in this lawsuit. Edgemere objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere also objects to this interrogatory because it seeks confidential personal information that Edgemere has an independent obligation to maintain in strict confidence.

Subject to and without waiving any objection, Edgemere states that its residents' Life Care Agreements and the personal identifiable information included therein and attached thereto is confidential. As a result, Edgemere will produce responsive documents that reveal aggregate or consolidated information regarding prospective residents that terminated their relationship with Edgemere, only if Edgemere can do so without revealing confidential or personal identifiable information.

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.

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

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.

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

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

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 Stayton at Museum Way or Querencia at Barton Creek.

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

common interest privilege. Edgemere objects to this request as overly broad and unduly burdensome to the extent it seeks documents unrelated to issues, claims, and defenses in this lawsuit. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere.

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

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.

RESPONSE: Edgemere objects to this request because it is duplicative of Request No. 54. To the extent a response is required, Edgemere directs Defendants to Edgemere's response to Request No. 54.

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).

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

entities other than Edgemere. Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, for the time period from January 1, 2020 through the most recent period available prior to the date of the Complaint.

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).

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, for the time period from January 1, 2020 through the most recent period available prior to the date of the Complaint.

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).

RESPONSE: Edgemere objects to this request to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Edgemere further objects to this request as vague and overly broad to the extent it could be read to seek records or materials in the possession, custody, or control of entities other than Edgemere. Edgemere further objects to this request as overly broad because it seeks documents for a time period beyond the scope of the allegations in the Complaint.

Subject to and without waiving any objection, Edgemere will produce non-privileged responsive documents in Edgemere's possession, custody, or control, for the time period from January 1, 2020 through the most recent period available prior to the date of the Complaint.

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.

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

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

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.

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

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of August, 2022, a true and correct copy of the above and foregoing document has been served via email on all counsel of record.

Respectfully submitted,

/s/ *Trinitee G. Green*

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COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION

VERIFICATION

I, Nick Harshfield, am currently Chief Financial Officer and Treasurer of Northwest Senior Housing Corporation ("Edgemere"). I make this verification on behalf of Edgemere. The above Answers and Objections to DEFENDANT INTERCITY INVESTMENT PROPERTIES, INC.'S INTERROGATORIES were prepared with the assistance of counsel based on the information currently available and are offered subject to the objections contained therein. I do hereby state, under penalty of perjury under the laws of the United States, that the above interrogatory answers are true and correct to the best of my knowledge.

Executed on August 1, 2022.

DocuSigned by:
0FBD63BFF8124CA...
Nick Harshfield

EXHIBIT 3

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COUNSEL TO LEIF M. CLARK, SOLELY IN HIS CAPACITY AS THE 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/Counter-Defendant, v. Intercity Investment Properties, Inc., and Kong Capital, LLC, Defendants/Counter-Plaintiffs.	Adv. No. 22-03040 (MVL)

PLAINTIFF'S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES

Plaintiff Leif Clark, Trustee of the Edgemere Litigation Trust, submits the following supplemental objections and responses to Defendants' First Set of Interrogatories.

[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.

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.

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Plaintiff also objects to this interrogatory as vague and ambiguous insofar as it seeks information regarding professional retained to "evaluate [Edgemere's] financials." Subject to and without waiving any objection, Plaintiff states that on or around February 1, 2021, Edgemere's counsel engaged FTI Consulting to assist with an analysis of various financial issues, including projected financial performance. Plaintiff further states that Edgemere consulted with attorneys at DLA Piper, Sidley Austin LLP, and Polsinelli PC regarding its financials. Plaintiff will disclose his testifying experts and their opinions in this case as required by the Court's scheduling order in this case.

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.

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Plaintiff further objects to the extent this interrogatory calls for Plaintiff to reach a legal conclusion.

Subject to and without waiving any objection, and although Plaintiff's investigation continues, Plaintiff states that sections 8.2 and 9.4 of the November 1999 Ground Lease (the "Lease") should have been unenforceable as a result of the parties' mutual mistake or were void as against Texas public policy because they would allow for Intercity Investment Properties, Inc.

("Intercity" or "ICI"), an entity not licensed to operate a Continuing Care Retirement Community in the State of Texas, to either assume Life Care Agreements of Edgemere residents, or allow Intercity to evict Edgemere residents from the Community and deny those residents refunds of the substantial entrance fees they previously paid. Edgemere was not fully aware of the mutual mistake or the public policy concerns, including the legal impediments to Intercity assuming resident contracts, evicting residents, or retaining resident entrance fees, until September 2021, when Intercity sought to terminate the Lease and threatened to invoke the remedies described in sections 8.2 and 9.4 of the Lease and Edgemere realized the terms were inappropriate for a CCRC as part of its analysis and negotiations with Intercity.

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

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Plaintiff also objects because this interrogatory seeks information already in Defendants' possession or that is publicly available or equally available to Defendants as it is to Plaintiff. And Plaintiff objects to this request to the extent it requires Plaintiff to marshal the evidence. Discovery still is on-going, and Plaintiff reserves the right to supplement its responses as provided in the Federal Rules.

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production provide information responsive to this interrogatory. Plaintiff states that the following people, among others, but excluding counsel, were involved in discussions about the lease among and between Edgemere, Intercity, Lifespace, and UMB:

- Jesse Jantzen, Lifespace CEO and Edgemere Chairman, President and CEO

- Nick Harshfield, Lifespace CFO and Edgemere Vice Chairman and Treasurer
- Eddie Fenoglio, Lifespace COO and Edgemere Secretary
- Members of the Edgemere Board of Directors
- Members of the Lifespace Board of Directors
- Chris Jordan, Intercity President
- Nick Hannon, Intercity Executive Vice President
- Irina Palchuk, UMB Senior Vice President
- Virginia Housum, UMB Senior Vice President

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

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Plaintiff further objects to this interrogatory because it seeks information already in Defendants' possession or that Defendants are uniquely positioned to know. And Plaintiff objects to this request to the extent it requires Plaintiff to marshal the evidence. Plaintiff can only identify the individuals or entities contained on documents that Defendants have to produced to date, which Plaintiff continues to review and investigate. Because discovery is on-going, Plaintiff can only identify those persons or entities that it has to date identified as a wrongful user or recipient of Confidential Information from Defendants' productions. Plaintiff further clarifies that any disclosure of Confidential Information from ICI to any of its agents, affiliates, associates, or other party for a competitive purpose was a wrongful disclosure. Plaintiff continues to review the discovery exchanged to date, discovery remains open for further investigation, and Plaintiff reserves the right to supplement its responses as provided in the Federal Rules.

Based on the foregoing objections and clarifications, and without waiving any objection, Plaintiff alleges that Intercity (including Chris Jordan and Nick Hannon) or its agents (Kong and Levenfeld Pearlstein, LLC ("LP")) wrongfully disclosed Confidential Information to:

- Kong;
- The Monument Group;
- LP;
- BauPost (including its representative Taylor Banks) as described in paragraphs 111-14 and 119 of Plaintiff's First Amended Complaint
- The Dallas Morning News (including its reporter Natalie Walters and her editor),
- The Texas Department of Insurance,
- The Texas Attorney General's Office,
- The Edgemere Resident Board,
- Edgemere residents Jim Smith and Charles and Hilda Simmons,

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.

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Plaintiff further objects to this interrogatory because it seeks information already in Defendants' possession or that Defendants are uniquely positioned to know. Plaintiff also objects to this interrogatory insofar as it is duplicative, in part, to Interrogatory No. 4. Plaintiff further objects that this interrogatory's phrasing is vague and confusing and that any answer to it might be misleading or be used to mislead to the extent it suggests Confidential

Information under the NDA must be information that Edgemere did not share with a "third-party," a term it does not define. For example, Lifespace was a party to NDA, and the "Representatives" or "Affiliates" of Edgemere, Lifespace, and ICI (all of which could be classified as third parties to Edgemere) are included under the NDA. Plaintiff further objects to the extent the interrogatory suggests or requests an answer that would suggest that Kong was ICI's "Representative" under the NDA and entitled to receive or review information under it, when Plaintiff's First Amended Complaint alleges that it was not. Plaintiff further objects that this interrogatory is vague and confusing as written and that any answer to it might be misleading or used to mislead because the NDA does not limit Edgemere from sharing its own confidential information with third parties, and doing so does not remove the information from the definition of Confidential Information. Plaintiff further objects to this request to the extent it requires Plaintiff to marshal the evidence. Plaintiff Discovery still is on-going, and Plaintiff reserves the right to supplement its responses as provided in the Federal Rules.

Subject to the above clarifications and objections, and without waiving them, Plaintiff responds as follows:

- Documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory.
- Plaintiff further states that Defendants disclosed Confidential Information described in paragraphs 63- 65, 84, 89-94, 103, 108, 121, and 125-26 of Plaintiff's First Amended Complaint.
- Plaintiff further states that ICI received under the NDA certain consulting and actuarial reports, including but not limited to, FTI Operational and Financial Assessment Dated June 7, 2021; FTI Cash Flow Budget Dated October 19, 2021; FTI Cash Projection Update Dated

October 19, 2021; FTI Cash Projection Update Dated November 24, 2021; B. Riley Appraisal Dated July 7, 2021, all of which contain Confidential Information. Intercity wrongfully shared these reports or information contained therein with Kong and LP in furtherance of a competitive purpose. Intercity, Kong, and LP then wrongfully shared the reports or used information they obtained from the reports to cause and direct others to take actions in furtherance of their competitive purpose. Such actions included, but are not limited to, providing information to The Monument Group, The Dallas Morning News, Edgemere's regulators, and possibly BauPost.

- Plaintiff further states that further wrongful disclosures included forward-looking financial projections and related information, including the existence and details of Edgemere's restructuring efforts, and a confidential Operational and Financial Assessment prepared by FTI Consulting (the "FTI Report"), which Intercity later attached to a filing made in Edgemere's bankruptcy proceedings. The Dallas Morning News accessed and downloaded the publicly-filed confidential report and later published certain information from that report in a May 1, 2022 article in both print and online formats.

Plaintiff further understands that none of the confidential materials disclosed to Defendants under the terms of the NDA had been previously disclosed to third parties not also subject to a non-disclosure agreement or covered by the attorney-client or common interest privileges.

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

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Plaintiff

further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action.

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. And although Plaintiff's investigation continues, Plaintiff further states that Intercity and Kong, not Edgemere, had a contractual obligation under the NDA to remedy their violations of the NDA and that both Kong and Intercity took deliberate actions designed to prevent Edgemere from discovering the nature of their relationship and their joint behind-the-scenes effort to take over operations at the property and convert the facility to a rental facility for their own profit and gain.

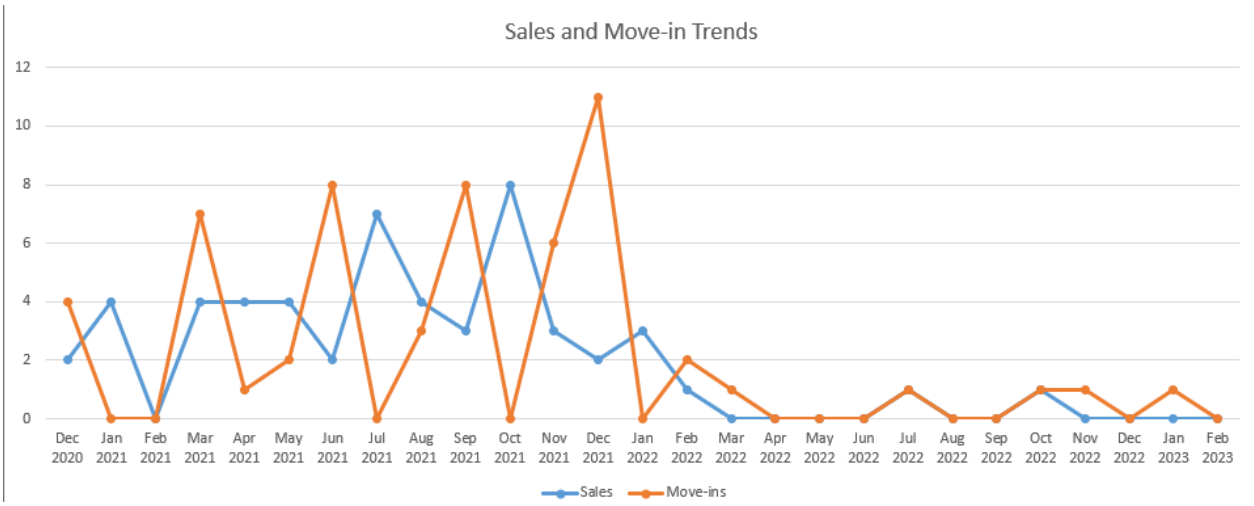
Whenever Edgemere confirmed Defendants' violations of the NDA, it took immediate action and requested that Kong and ICI take steps to remedy the violations and cease and desist from further breaches. For example, the "Intercity Letter" that LP sent on February 22, 2022 on behalf of ICI breached the NDA. The very next day, Edgemere's counsel notified counsel for Intercity and Kong that the Intercity Letter violated the NDA and demanded they cease and desist from any additional disclosure of Edgemere's Confidential Information and immediately take the actions required under the NDA to remedy their violation of the NDA. [KC0008746; KC0008748].

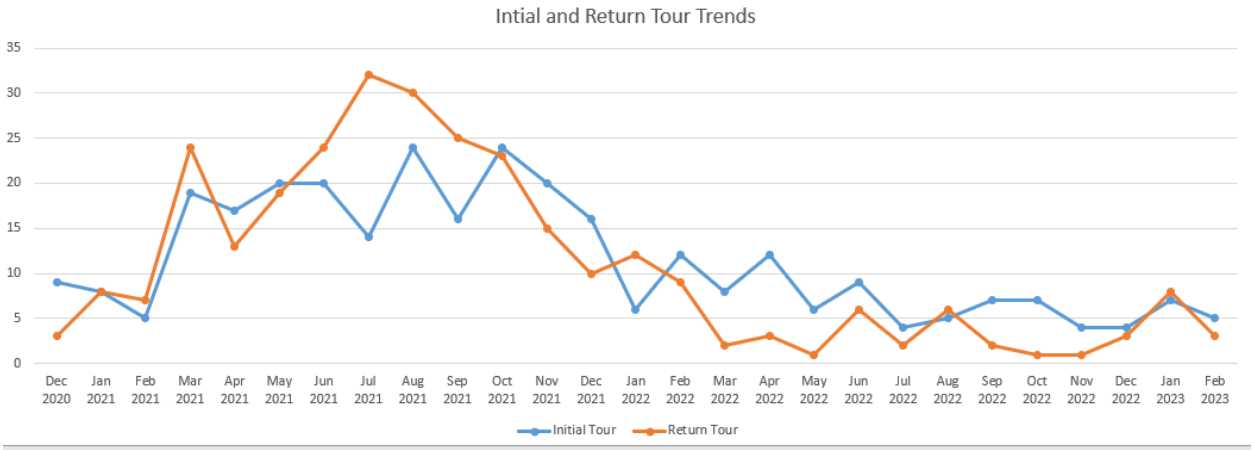
In addition, Edgemere's executive team ceased all direct interaction with Intercity and Kong, including any further dissemination of Confidential Information to Intercity or Kong, at least as early as February 22, 2022. Edgemere then filed this Adversary proceeding seeking remedies for Intercity's and Kong's wrongful conduct. And after Defendants publicly filed the FTI Report in the Chapter 11 cases, Edgemere also demanded, in a May 10, 2022 letter from Edgemere's counsel to Intercity's counsel, that Intercity immediately cease and desist from further harmful disclosures of Edgemere's Confidential Information.

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

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Plaintiff further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. And Plaintiff objects to this request to the extent it requires Plaintiff to marshal the evidence. Discovery is still ongoing, and Plaintiff reserves the right to supplement its responses as provided in the Federal Rules.

Subject to and without waiving any objection, and although Plaintiff's investigation continues, Plaintiff states that Kong's statements to The Dallas Morning News regarding Edgemere's financial position, future viability, and approach to new resident entrance fees were false, misleading, and disparaging. Further disparagement is described in paragraphs 97-98, 121, 126 and 202-11 of Plaintiff's First Amended Complaint. By way of another example, Kong was quoted in the Dallas Morning News's February 27, 2022 article as saying "Years of operating losses, mountains of debt, and an upside-down balance sheet are Edgemere's responsibility" to disparage Edgemere's operations when at the same time internal Kong documents show that Kong fully understood that increased market competition caused occupancy to begin to decline in 2018 and that in "2020, COVID exacerbate[d] the decline in occupancy and also create[d] unexpected expenses to its operating expenses." [The Monument Group 001084]. Indeed, Edgemere's records reflects that as COVID restrictions eased, Edgemere began to see improved sales until the Defendants took actions designed to prevent Edgemere from being able to restructure its balance and improve its balance sheet:





Moreover, the entire media narrative Defendants carefully curated and strategically implemented used materially misleading statements of fact and omitted material facts necessary to make others not misleading to paint Edgemere in a false light, defame it as an unscrupulous operator, and to disparage its business and operations for ICI's and Kong's own competitive financial gain. The Monument Group expressed concerns about painting Kong as a disinterested consultant and Edgemere as an unscrupulous and inept operator when the "industry as a whole [was] faltering"; and "Kong is so self-interested in the outcome" that there would "likely be ongoing features of later stories about their acquisition of the building." [The Monument Group 001036]. Defendants, however, pushed to create a false narrative that ICI hired Kong only to help find a solution for

residents that it "fear[ed] are on a sinking ship" and to ostensibly protect future residents because it was "unfair and unjust" for Edgemere to "continue to take deposits from future residents under current circumstances." All of these statements were false and misleading.

As discovery continues to show, ICI wanted "OUT" of its contractual relationship with Edgemere, Kong wanted to take over the property, and both ICI and Kong sought to benefit from "sinking the ship" by preventing Edgemere from increasing its occupancy. To accomplish those goals, Defendants financed an expensive team of media professionals that crafted and implemented a sophisticated media strategy with curated facts, materially misleading statements, and materially misleading omissions designed with the specific intent to leave the public, Edgemere's residents, and any of Edgemere's potential future residents with a false and defamatory picture of Edgemere, a false picture of Defendants, and a false understanding of the circumstances.

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

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Plaintiff further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Plaintiff further objects to this interrogatory as vague and ambiguous because the word "interfere" is undefined. Plaintiff also objects to this interrogatory because it seeks confidential personal information that Edgemere and/or Plaintiff has an independent obligation to maintain in strict confidence. And Plaintiff objects to this request to the extent it requires Plaintiff to marshal the evidence. Discovery is still ongoing, and Plaintiff reserves the right to supplement its responses as provided in the Federal Rules.

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Although its investigation continues, Plaintiff states that Kong interfered with the Ground Lease, the NDA, and the Forbearance Agreement as described in paragraphs 183-85 of Plaintiff's First Amended Complaint. Plaintiff continues to investigate and discover information related to the impact the stories the Defendants caused to be published in the Dallas Morning News affected resident contracts. Plaintiff understands that Edgemere had received a deposit from an interested resident named Ms. Linda Ullman who subsequently demanded it back and withdrew her application on account of the negative publicity that was part of Defendants' competitive plan.

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

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege or the attorney work product doctrine. Plaintiff further objects to this interrogatory insofar as it seeks to improperly narrow the scope of Plaintiff's claim for tortious interference with a prospective contractual and business relations. Plaintiff also objects to this interrogatory because it seeks confidential personal information that Edgemere and/or Plaintiff has an independent obligation to maintain in strict confidence. And Plaintiff objects to this request to the extent it requires Plaintiff to marshal the evidence. Discovery is still ongoing, and Plaintiff reserves the right to supplement its responses as provided in the Federal Rules.

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. And although Plaintiff's investigation continues, Plaintiff further states that Intercity and Kong tortiously interfered with prospective Edgemere residents, including, but not limited to,

those that had scheduled tours of the Edgemere community and canceled, those that had paid a deposit to secure residency at Edgemere but then deferred closing, and those that had demonstrated interest in or commitment to joining Edgemere but elected not to do so. Plaintiff further states that Intercity's and Kong's wrongful conduct also interfered with and damaged Edgemere's relationships with key referral sources. Additional details are provided in paragraphs 190-95 of Plaintiff's First Amended Complaint, and are in the charts included in response to Interrogatory 7.

Plaintiff continues to investigate and discover information related to the impact the stories the Defendants caused to be published in the Dallas Morning News affected Edgemere's ability to close contracts with prospective residents. So far, Plaintiff understands that Ms. Charlotte Clark had been an interested prospective resident who lost interest in making Edgemere her home on account of the Dallas Morning News articles. Furthermore, Plaintiff understands that Ms. Julie Brook had been interested until the Dallas Morning News published its articles.

Edgemere also relied heavily on various referral sources in the health care industry who would routinely invite patients to consider Edgemere their permanent home because of the services it offered. Plaintiff understands that many of Edgemere's key referral sources ceased making referrals on account of the discomfort the Dallas Morning News article caused them and that at one point or another contacts from some of the following companies did so for that reason: Ruby Care, Senior Living Specialists, Higher Standards, Cambridge Caregivers, Sunrise Senior Living Hillcrest, Silverado Hospice, VNA Hospice, Hospice Plus, and A Place Called Mom, Inc. Plaintiff continues to investigate this issue and will supplement this response with additional names if and when they become known,

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.

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, or the attorney work product doctrine. Plaintiff further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Plaintiff also objects to this interrogatory insofar as it is compound and seeks answers on several discrete, unrelated issues.

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Subject to Plaintiff's document production, Plaintiff states that Lifespace, UMB, Intercity, and Edgemere entered into a Forbearance Agreement dated December 21, 2021 (the "Forbearance Agreement"), to address, among other things, certain liquidity challenges facing Edgemere. Plaintiff further states that its specific financial decisions in October 2021 and December 2021, and otherwise, were undertaken openly, in consultation with its stakeholders (including ICI, and later Kong), to preserve liquidity, prioritize community operations, and protect Edgemere residents.

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.

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

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Plaintiff further states that Edgemere executives met on November 2, 2021 with representatives of UMB at UMB's counsel's offices in Boston, Massachusetts.

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.

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Plaintiff further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Plaintiff also objects to this interrogatory to the extent it seeks information for the period after the Chapter 11 cases and this proceeding were filed.

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Subject to Plaintiff's document production, Plaintiff states that before the Chapter 11 cases and this proceeding were filed, it generally discussed the Lease and other facts upon which some of the claims in this lawsuit are based at a high level with, among others, UMB, FTI Consulting, Lifespace, the Edgemere Resident Board and committees to that Board, Edgemere residents, Edgemere employees, Edgemere's auditors (CliftonLarsonAllen LLP), the Texas Department of Insurance, and the Texas Attorney General's Office. Those communications consisted of periodic town hall meetings with residents, town hall-style meetings with Edgemere employees, meetings with Edgemere management teams, and one-

on-one meetings with individual residents, among other meetings, where Lifespace or Edgemere leadership provided high level information regarding the negative press campaign initiated by Intercity and Kong, Edgemere's overall financial position, and, after the Chapter 11 cases were filed, general restructuring issues. The communications with regulators and Edgemere's professionals were informational discussions regarding Edgemere's financial position and the potential restructuring.

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 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

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Plaintiff further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Plaintiff also objects to this interrogatory because it seeks confidential personal information that Edgemere and/or Plaintiff has an independent obligation to maintain in strict confidence. And Plaintiff objects to this request to the extent it requires Plaintiff to marshal the

evidence. Discovery is still ongoing, and Plaintiff reserves the right to supplement its responses as provided in the Federal Rules.

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory in aggregate form or in a manner that redacts personal identifiable or confidential information of individual residents or their estates to comply with Edgemere's independent confidentiality obligations.

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

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Plaintiff further objects to this interrogatory as overly broad in that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Plaintiff also objects to this interrogatory because it seeks confidential personal information that Edgemere and/or Plaintiff has an independent obligation to maintain in strict confidence. Plaintiff further objects to the extent this interrogatory seeks information that is now publicly available (in redacted form) or already in Defendants' possession, custody, or control (in redacted form). And Plaintiff objects to this request to the extent it requires Plaintiff to marshal the evidence.

Discovery still is on-going, and Plaintiff reserves the right to supplement its responses as provided in the Federal Rules.

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory in aggregate form or in a manner that redacts personal identifiable or confidential information of individual residents or their estates to comply with Edgemere's independent confidentiality obligations.

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

RESPONSE: Plaintiff objects to this interrogatory as overly broad in that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this interrogatory in that it seeks information beyond the scope of the Complaint and not germane to any claim or defense in this action. Plaintiff also objects to this interrogatory because it seeks information that is publicly available or already in Defendants' possession, custody, or control.

Subject to and without waiving any objection, Plaintiff states that Edgemere filed this information in conjunction with its Statement of Assets and Liabilities filed in the Chapter 11 cases. Plaintiff further states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory.

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.

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, the attorney work product doctrine, or the common interest privilege. Plaintiff also objects to this interrogatory insofar as it is duplicative, in part, to Interrogatory No 5. And Plaintiff objects to this request to the extent it requires Plaintiff to marshal the evidence. Plaintiff further objects that the this interrogatory's phrasing is vague and confusing and that any answer to it might be misleading or be used to mislead to the extent it requires Plaintiff to "Identify information . . . . that contained information," and to the extent it suggests Confidential Information under the NDA must be information Edgemere disclosed only to ICI and/or Kong. Plaintiff further objects that this interrogatory's phrasing is vague and confusing and that any answer to it might be misleading or be used to mislead because it does not define "third-party." For example, Lifespace was a party to NDA, and the "Representatives" or "Affiliates" of Edgemere, Lifespace, and ICI (all of which could be classified as third parties to Edgemere) are included under the NDA. Plaintiff further objects to the extent the interrogatory suggests or requests an answer that would suggest that Kong was ICI's "Representative" under the NDA and entitled to receive or review information under it, when Plaintiff's First Amended Complaint alleges that it was not. Discovery is still ongoing, and Plaintiff reserves the right to supplement its responses as provided in the Federal Rules.

Subject to and without waiving any objection, Plaintiff states that documents produced in response to Intercity's requests for production will provide information responsive to this interrogatory. Plaintiff further states that none of the confidential materials disclosed to ICI under the terms of the NDA, including but not limited to Edgemere's confidential, forward-looking financial projections (including the FTI Report) and related confidential financial

information, including the existence and details of Edgemere's restructuring efforts, had been disclosed to any person in any manner that would cause that information to lose the protections under the NDA, or to fall outside of the NDA's definition of Confidential Information..

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.

RESPONSE: Plaintiff objects to this interrogatory to the extent it seeks materials shielded from disclosure under the attorney-client privilege, or the attorney work product doctrine. Plaintiff also objects to this interrogatory as premature. The specific measure and amount of damages will be the subject of expert analysis and testimony in this case.

Subject to and without waiving any objection, Plaintiff states that it will disclose its expert's damages analysis as specified in the Court's scheduling order.

Dated: December 1, 2023

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 counsel for Defendants on December 1, 2023 by email.

/s/ J. Gregory Taylor

EXHIBIT 4

JACKSON WALKER LLP
Michael S. Held (State Bar No. 09388150)
Jennifer F. Wertz (State Bar No. 24072822)
J. Machir Stull (State Bar No. 24070697)
W. Ross Forbes, Jr. (State Bar No. 00796564)
Edwin Buffmire (State Bar No. 24078283)
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Counsel for Intercity Investment Properties, Inc. and Kong Capital LLC

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

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

JACKSON WALKER LLP
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Jennifer F. Wertz (State Bar No. 24072822)
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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
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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 5

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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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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 8

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

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

DEFENDANTS' AMENDED COUNTERCLAIMS

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

Come now Defendants/Counter-Plaintiffs Intercity Investment Properties, Inc. ("ICI") and Kong Capital LLC ("Kong" and, with ICI, the "Counter-Plaintiffs") and respectfully state as follows as and for their *Amended Counterclaims* against Counter-Defendant Leif M. Clark, solely in his capacity as Trustee of the Edgemere Litigation Trust ("Counter-Defendant" or "Edgemere").[2]

The Parties and Other Key Entities

1. Edgemere was a Texas non-profit corporation that is the operator of a CCRC located in Dallas, Texas. Edgemere operated its business at the leased premises, which are located at 8523 Thackery Street, Dallas, Texas 75225 (the "Property") pursuant to a Ground Lease, effective November 17, 1999 (the "Lease"), by and between Edgemere and the Landlord. A true and correct copy of the Lease is attached here as Exhibit 1.

2. ICI is a Texas corporation, with its primary office in Dallas, Texas. It owns and leases the Property and other properties.

3. Lifespace Communities, Inc. ("Lifespace"), an Iowa non-profit corporation, was at all times material the sole member of Edgemere. Lifespace managed the Property pursuant to a Management Services Agreement executed by Edgemere and Lifespace. Edgemere and Lifespace shall be referred to collectively as the "Obligated Group."

4. UMB Bank, N.A., is the: (a) successor master trustee (the "Master Trustee", and collectively with the hereinafter defined Bond Trustee, the "Trustee") under an Amended and Restated Master Trust Indenture, Deed of Trust and Security Agreement, dated November 15,

[2] The Court's *Order Substituting Leif M. Clark, Trustee of the Edgemere Litigation Trust, as Party-Plaintiff and Counter-Defendant* (ECF 327) specifies that the "counter-defendant in this adversary proceeding is Leif M. Clark, Trustee of the Edgemere Litigation Trust."

1999 and effective April 1, 2006, by and between JPMorgan Chase Bank, National Association, in its capacity as initial master trustee (the "Prior Master Trustee") and Edgemere and SQLC, as supplemented by that certain Supplemental Indenture Number 4, dated as of May 1, 2015, and as further supplemented by that certain Supplemental Indenture Number 6, dated as of March 1, 2017 (collectively, as amended and supplemented, the "Master Indenture"); (b) the successor bond trustee (the "2015 Bond Trustee") under an Amended and Restated Master Trust Indenture, Deed of Trust and Security Agreement, dated as of May 1, 2015, (the "2015 Bond Indenture") by and between the Tarrant County Cultural Education Facilities Finance Corporation (the "Issuer") and The Bank of New York Mellon Trust Company, National Association, in its capacity as initial bond trustee; and (c) successor bond trustee (the "2017 Bond Trustee," and together with the 2015 Bond Trustee, the "Bond Trustee") under that certain Indenture of Trust, dated as of March 1, 2017, (the "2017 Bond Indenture") by and between the Issuer and The Bank of New York Mellon Trust Company, National Association, in its capacity as initial bond trustee. Lifespace is successor to SQLC. The forgoing, along with any document executed in connection with the foregoing, shall be referred to collectively as the "Bond Documents" and Edgemere's historical obligations to pay the Bond Trustee under the Bond Documents shall be referred to collectively as the "Bond Obligations."

Jurisdiction

5. Pursuant to 28 U.S.C. § 1334, jurisdiction properly lies within the United States District Court for the Northern District of Texas, as this case is related to but does not arise out of title 11. As stated above, ICI denies that this is a core proceeding, and that the bankruptcy court has jurisdiction over this matter. ICI does not consent to the bankruptcy court entering final judgment on the merits of this case.

Venue

6. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Factual Background

A. The Lease Is Executed and Amended by the Parties.

7. ICI (together with its predecessors) has owned the Property for nearly seventy-five (75) years, since 1948.

8. On September 9, 1997, ICI and Northwest Lifecare Joint Venture ("Optionee") entered into a Ground Lease Option Agreement (the "Option Agreement"). A true and correct copy of the Option Agreement is attached here as Exhibit 2.

9. On May 20, 1999, pursuant to an Assignment of Ground Lease Option Agreement (attached here as Exhibit 3), the Optionee assigned its rights under the Option Agreement to Edgemere.

10. On September 2, 1999, ICI and Edgemere signed an Amendment to the Ground Lease, attached here as Exhibit 4. This amendment clarified that upon termination the Property reverts to ICI, deleting the original § 5.20 and replacing it with the following (the "Surrender Provision"):

> Except as otherwise provided herein, **upon the expiration of the Term or earlier, termination of this Lease, Lessee will peaceably deliver up to Lessor possession of the Premises, including all Improvements on or above the surface of the Land**, by whomsoever made, in good and safe repair, order and condition, ordinary wear and tear excepted. Lessor may, at Lessor's option, require Lessee to remove any Improvements not in good and substantial condition and repair all damage to the Land resulting from such removal. Lessee shall leave the Premises in a clean and orderly condition free of all debris and of any Hazardous Materials at termination. **Upon the expiration of the Term or earlier termination of this Lease, Lessor shall have the first right of refusal to acquire all or any part of the movable furniture, furnishings, trade fixtures and equipment for a price equal to the fair market value of any such items**. In the event that Lessor and

> Lessee cannot agree upon the fair market value of any such item, then, they shall each select an appraiser. The two appraisers shall select a third appraiser and the fair market value shall be determined by averaging the valuations obtained from the three appraisers. Lessee may remove or cause to be removed all of the movable furniture, furnishings, trade fixtures and equipment installed in or on the Premises, or any other items the removal of which would not result in substantial and permanent damage to the Premises if Lessor has not acquired such items in accordance with the prior sentences. Any such property or improvements that are not removed from the Premises within thirty (30) days after the termination or expiration of this Lease shall thereafter belong to Lessor without the payment of any consideration therefor. Upon the expiration of the Term or earlier termination of this Lease, Lessee shall execute, acknowledge and deliver to Lessor (if requested) a proper instrument in writing, releasing and quitclaiming to Lessor all right, title and interest of Lessee in and to the Premises. The foregoing covenants of Lessee shall survive the expiration of the Term. (Emphases added).

11. ICI and Edgemere were each represented by their own separate counsel to negotiate the Lease and the Surrender Provision. The Surrender Provision was the only modification the Amendment made to the Lease.

12. On November 5, 1999, ICI and Edgemere executed the Lease. The Landlord and Edgemere caused a Memorandum of Ground Lease to be recorded with the County of Dallas on November 17, 1999. A true and correct copy of the Memorandum of Ground Lease is attached here as Exhibit 5.

13. The Lease granted Edgemere the right to demolish the Existing Improvements (as defined by the Lease—a portion of the Preston Village Apartment Complex) and construct new Improvements, subject to the terms and conditions set forth in § 5.10 of the Lease. The Lease executed by Edgemere also contains the Surrender Provision at § 5.20. Thus, the parties expressly intended in 1999 that the Property and its Improvements would be returned to ICI at the conclusion or termination of the Lease.

14. Edgemere has reaffirmed the Surrender Provision in public statements. For example, in a Disclosure Statement dated February 4, 2022 (the "February 4, 2022 Disclosure

Statement," attached here as Exhibit 6) provided to residents pursuant to Tex. Health & Safety Code Ann. § 246.042, Edgemere stated that the Property "has been leased from an unrelated third-party for a term of 55 years."

B. Additional Lease Terms

15. Edgemere represented and warranted to ICI in the Lease that the Lease terms are valid and enforceable against it. The Lease provides the following:

> 9.17 **Lessee's Representations and Warranties**. Lessee represents and warrants to Lessor, which representations and warranties shall survive the commencement of this Lease, that the person signing this Lease on behalf of Lessee is authorized to do so, that Lessee has full right and authority to enter into this Lease, and that the execution, consent or acknowledgment of no other person is necessary in order to validate the execution of this Lease by Lessee. Upon full execution, this Lease shall be valid, legally binding and enforceable against Lessee according to the terms of this Lease.

16. Edgemere also agreed to abide by all regulations of any Governmental Authority regarding its use of the Property. Specifically, the Lease stated:

> 5.7 **Observance of Laws.** Lessee will at all times during the Term keep the Premises in a strictly safe, clean, orderly and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any Governmental Authority and applicable to Lessee's use of the Premises and said adjacent land or any improvement thereon or use thereof, and will indemnify and hold harmless Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by Lessee of said laws, ordinances, rules and regulations or of this covenant.

17. Additionally, the Lease provided certain remedies if a default by Edgemere went uncured, including ICI's right to terminate Edgemere's possession of the Property.

18. Specifically, the Lease provided:

(lease language begins on next page)

8.2 **Remedies.** Upon the occurrence of any one or more of the Events of Default, Lessor may, at its election, subject to and conditioned upon the rights of any lender as provided in Article VII or any other provision hereof, terminate this Lease, or terminate Lessee's right to possession only, without terminating the Lease. Upon termination of the Lease, or upon any termination of the Lessee's right to possession without termination of the Lease, Lessee shall surrender possession and vacate the leased premises immediately, and deliver possession thereof to Lessor, and hereby grants to Lessor the full and free right, without demand or notice of any kind to Lessee (except as hereinabove expressly provided for), to enter into and upon the leased premises in such event, 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 damage resulting therefrom, and without relinquishing Lessor's rights to rent or any other right given to Lessor hereunder or by operation of law. Upon termination of the Lease, Lessor shall be entitled to recover, as damages, all rent and other sums due and payable to Lessor on the date of termination, plus (1) an amount equal to the rent and other sums provided herein to be paid by Lessee for the residue of the stated term hereof on the dates originally fixed herein for payment thereof, and (2) the cost of performing any other covenants to be performed by Lessee. If Lessor elects to terminate Lessee's right to possession only, without terminating the Lease, the Lessor may, at Lessor's option, enter into the leased premises, remove Lessee's signs and other evidence of tenancy, and take and hold possession thereof as hereinabove provided, without such entry and possession terminating the Lease or releasing Lessee, in whole or in part, from Lessee's obligations to pay the rent hereunder for the full term or from any other of its obligations under this Lease, subject to the offset of all sums received by Lessor from any reletting. Lessor may, but shall be under no obligation so to do, relet all or any part of the leased premises for such rent and upon such terms as shall be satisfactory to Lessor (including the right to relet the leased premises for a term greater or lesser than that remaining under the Lease term, the right to relet the leased premises as a part of a larger area, and the right to change the character or use made of the leased premises). For the purpose of such reletting, Lessor may decorate or make any repairs, changes, alterations or additions in or to the leased premises that may be necessary or convenient. If Lessor does not relet the leased premises, Lessee shall pay to Lessor on demand damages equal to the amount of the rent and other sums provided herein to be paid by Lessee for the remainder of the Lease term. If the leased premises are relet and a sufficient sum shall not be realized from such reletting after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting, and the collection of the rent accruing therefrom (including, but not by way of limitation, attorneys' fees and broker's commissions), to satisfy the rent and other charges herein provided to be paid for the remainder of the Lease term, Lessee shall pay to Lessor on demand any deficiency, and Lessee agrees that Lessor may file suit to recover any sums falling due under the terms of this section from time to time. In no event shall Lessor or its assigns be entitled to recover any punitive, exemplary, or consequential damages against Lessee. Lessor hereby waives any right it has for the recovery of such damages.

19. In addition to providing that the Lease could be involuntarily terminated by ICI according to its terms in § 8.2, the Lease also references the potential for termination of the Lease by ICI in §§ 8.3 and 9.4 in specific instances.

20. Section 8.3 specifically allows ICI to execute a remedy to repossess the Property even if rent is paid but other defaults remain:

> 8.3 **Non-Waiver.** Acceptance of rent by Lessor shall not be deemed a waiver by it of any breach by Lessee of any covenant herein contained or of Lessor's right to re-enter for breach of condition. Waiver by Lessor of any breach by Lessee shall not operate to extinguish the term, covenant or condition, the breach whereof has been waived, nor be deemed to be a waiver of Lessor's right to declare a forfeiture for any other breach thereof.

21. Moreover, § 9.4 expressly provides that the termination of the Lease by ICI shall either, at the option of ICI, terminate any subtenancies (specifically including life care contracts) or operate as an assignment of life care contracts to ICI.

> 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.

22. In the event of termination of the Lease, pursuant to § 9.4 of the Lease, ICI has the option, but not the obligation, to assume the Life Care Contracts as assignee.

23. Upon information and belief, despite publicly disclosing the existence of the Lease, Edgemere intentionally excluded the terms of § 9.4 of the Lease in its Disclosure Statements to residents or potential residents.

C. Edgemere Makes Fraudulent Misrepresentations Regarding the Lease.

24. Edgemere timely paid rent pursuant to the Lease for approximately 22 years (the "Timely Payment Term"), during which period Edgemere never indicated that it believed any of § 5.2 (the Surrender Provision), § 8.2, § 8.3, or § 9.4 (or any other Section) was unenforceable.

25. During the Timely Payment Term, Edgemere at no point advised ICI or raised any argument that ICI made a material misrepresentation in the Lease when it represented in the Lease that "this Lease shall be valid, legally binding and enforceable against Lessee according to the terms of this Lease." Ex. 1, § 9.16.

26. During the Timely Payment Term, Edgemere repeatedly reaffirmed in its public filings that 1) the Lease existed, and 2) upon its termination, possession of all Property Improvements reverted to ICI.

27. ICI's first indication that there was any financial trouble with Edgemere was when ICI's principal was asked to attend a meeting with certain Lifespace principals (Nick Harshfield and Eddie Fenoglio) in the summer of 2021 to discuss financial difficulties that the Edgemere was experiencing, at which time Edgemere first expressed a desire to make a proposal regarding modification of the Lease or purchase of the Property outright.

28. Subsequent to that meeting, ICI's principal received a call from one of Edgemere's principals and its former counsel, in which ICI was threatened that Edgemere believed the Lease was "illegal."

29. Edgemere then chose not to pay rent for the month of September 2021, citing its need to "preserve liquidity." As a result of that payment default and consistent with the terms of the Lease, on September 7, 2021, ICI sent a Notice of Nonpayment (the "September Notice") to

the Obligated Group indicating a default under § 8.1(a) of the Lease on account of the Obligated Group's failure to pay September rent.

30. On September 17, 2021, ICI sent a Notice of Lessor's Intention to Terminate Lease to the Bond Trustee, notifying the Bond Trustee of its intention to terminate the Lease and starting the 120-day clock in § 7.3 of the Lease for the Bond Trustee to cure the default (the "Lender Cure Period").

31. Edgemere and ICI executed a non-disclosure agreement ("NDA") and began to negotiate a forbearance agreement.

32. The NDA provided,

> 7. No Obligation to Close the Transaction. Nothing in this Agreement shall be construed to create a binding obligation on any party to consummate the Transaction. The parties will only become legally obligated to proceed with a Transaction in accordance with the terms and conditions of a definitive agreement that the parties may enter into following the date of this Agreement.

A true and correct copy of the NDA is attached here as Exhibit 7.

33. Edgemere stopped paying rent altogether, failing to remit rent payments for October 2021, November 2021, and December 2021.

34. On December 21, 2021, Edgemere, Lifespace, the Bond Trustee, and ICI entered into a forbearance agreement (the "Forbearance Agreement"). A true and correct copy of the Forbearance Agreement is attached here as Exhibit 8. The Forbearance Agreement defined Edgemere as the "Obligated Group Representative."

35. At the time it executed the Forbearance Agreement, Edgemere retracted its position that the Lease was not enforceable or legal and instead made repeated representations in the Forbearance Agreement that the Lease was valid and binding on Edgemere.

36. Edgemere expressly represented in the Forbearance Agreement that the "*the Lease continues a valid and binding obligation*" of Edgemere, and stated that "The parties acknowledge that, subject to the terms of this Forbearance Agreement and the Landlord's agreement to forbear as more particularly set forth herein, *all terms of the Lease remain in full force and effect* . . . ." Ex. 8, § 5(c)(1)-(2) (emphasis added).

37. In the December 2021 Forbearance Agreement, Edgemere represented that the Lease was valid, binding, and enforceable—an accurate statement directly contradictory to its position, advanced here, that the Lease contains mutual mistakes and needs to be reformed. Moreover, the statement in the Forbearance Agreement that the Lease was valid and binding was negotiated and expressly included. In October 2021, Edgemere's then-counsel attempted (unsuccessfully) to excise that statement from an early draft of the Forbearance Agreement.

38. In the December 2021 Forbearance Agreement, Edgemere represented that the Lease was valid, binding, and enforceable which also constitutes a waiver of any purported mutual mistake allegedly discovered in September 2021.

39. Section V(b) [mislabeled as (a)] of the Forbearance Agreement extended the Lender Cure Period to March 11, 2022, as it provided as follows:

> Remedies Upon Termination. Upon the expiration or termination of the Forbearance Period, the forbearance granted in this Forbearance Agreement shall immediately and automatically terminate, all deferred amounts hereunder shall be due and payable in full and the Forbearing Parties shall have available to them all rights and remedies specified under this Forbearance Agreement, any of the Bond Documents, the Lease, or under applicable law. **Absent payment in full of all unpaid Rent and other amounts due under the Lease on or before such expiration or termination, the rescission of the Notice to Terminate shall be immediately and automatically reinstated without the need for any further notice from Landlord and the new cure period, which shall run for 70 calendar days, shall commence simultaneously with the reinstatement of the Notice of Termination.**

Ex. 8, § V(b) [mislabeled as (a)].

40. The Forbearance Agreement also expressly stated that "[n]otwithstanding anything herein, nothing in this Forbearance Agreement is intended to impose any obligation on Landlord to enter into a lease restructuring with [Edgemere]." Ex 8, § 2(e)(2).

41. The Forbearance Agreement does not contain any affirmative obligation or requirement that it be extended.

42. The Forbearance Agreement expired on December 31, 2021 and it was not extended.

43. From the time of the execution of the Forbearance Agreement until the time of its expiration, ICI did temporarily forbear from exercising its remedies under the Lease.

44. Edgemere, Lifespace, and the Bond Trustee received the benefits provided to them by ICI pursuant to the Forbearance Agreement, including but not limited to an additional seventy (70) days following expiration of the Forbearance Agreement in which to cure all payment defaults prior to termination of the Lease.

45. Edgemere failed to pay rent for January 2022. On January 10, 2022, consistent with the terms of the Lease, ICI sent Edgemere a Notice of Nonpayment—Rent and Forbearance Agreement indicating that Edgemere and Lifespace failed to: (a) pay rent due January 1, 2022; and (b) comply with its obligations set forth in section IV of the Forbearance Agreement.

46. Subsequently, on January 19, 2022, consistent with the terms of the Lease, ICI sent Edgemere a Notice of Default and Reservation of Rights indicating that a default occurred pursuant to § 8.1(c) of the Lease due to the existence of a broker's lien and reserving its rights with respect to the defaults set forth in the January 10 Notice. The broker's lien was disclosed in Exhibit A to

the Forbearance Agreement under "Specified Defaults and Known Anticipated Defaults." Ex. 8, at App. 327.

47. Edgemere failed to pay rent for February 2022. On February 4, 2022, consistent with the terms of the Lease, ICI sent Edgemere a Notice of Default with respect to its failure to pay February Rent. On February 22, 2022, consistent with the terms of the Lease, ICI sent its Notice of Default and Reservation of Rights, indicating a default due to the existence of the Broker's Lien.

48. The Lease was set to terminate on March 11, 2022 (70 days after expiration of the Forbearance Agreement). The Bond Trustee informed ICI of its intention to pay all past due Lease obligations prior to the due date for March Rent. Approximately 72 hours before the Lease termination, ICI received the cure payment from Bond Trustee just within the Lender Cure Period.

49. ICI later learned that the payment default cure was actually paid with funds from Lifespace, not the Bond Trustee. The real source of funds for the cure payment was intentionally concealed until KCC made available Lifespace's Proof of Claim No. 145 filed on July 21, 2022, which provides that on March 7, 2022, Lifespace transferred $3,500,000 to the Bond Trustee to stage the appearance that the Bond Trustee, which had the only cure remedy left, had exercised the cure within the Lender Cure Period to avoid termination of the Lease.

50. Correspondence between Lifespace, Edgemere, and the Bond Trustee—of which ICI learned only later—also brought to light that Edgemere's contention that the Lease was "illegal" was a sham all along. During pre-petition negotiations for a "restructuring transaction," Lifespace, Edgemere, and the Bond Trustee contemplated that the Bond Trustee and certain bondholders would support Edgemere's efforts in chapter 11 provided that either the Lease was

recharacterized with the land becoming part of the bankruptcy estate or that the Lease was extended and the rent due thereunder reduced.

51. In other words, Edgemere's feigned concern for the law and the residents was just that; in fact, its goal from day one was to team up with the Bond Trustee to shift the financial fallout from Edgemere's abysmal operations record from Edgemere, Lifespace, and the bondholders to ICI.

52. Ultimately, in this bankruptcy case, Edgemere assumed and assigned the Lease, *cum onere*, under Bankruptcy Code § 365. Thus, Edgemere's efforts to leave ICI holding the bag largely failed; the claims advanced against Defendants in this proceeding are nothing more than a relic of an abandoned, failed strategy.

D. Edgemere's Public Filings Demonstrate Its Financial Deterioration.

53. Edgemere's financial problems date back multiple years. Edgemere had only 62 days of cash on hand as of December 31, 2021, despite the fact that Edgemere covenanted to have over twice that amount, 150 days cash on hand, in the Bond Documents. *See* February 17, 2022 Material Event Notice, attached here as Exhibit 9 (the "Cash Material Event Notice"). As a result of multiple events of default, on February 24, 2022, the Bond Trustee declared the principal amount and all unaccrued and unpaid interest on the Bonds immediately due and payable. *See* February 24, 2022 Notice of Acceleration and Set Off of Indenture Funds, attached here as Exhibit 10 (the "Acceleration Notice").

54. A summary review of Edgemere's recent net revenues (losses) after expenses shows:

(chart follows on next page)

Year	Net Loss
2017	($6,210,360)
2018	($9,074,275)
2019	($13,993,830)
2020	($24,347,830)
2021	($29,051,000)

See 2017 Form 990, attached here as Exhibit 11, at App. 368; 2018 Form 990, attached here as Exhibit 12, at App. 428; 2019 Form 990, attached here as Exhibit 13, at App. 490; 2020 Form 990, attached here as Exhibit 14, at App. 543; and Quarterly Report for the Year Ended December 31, 2021, attached here as Exhibit 15, at App. 649. Collectively, these Form 990s shall be referred to as the "Form 990s."

55. Edgemere's dwindling assets were are also documented in its publicly available Form 990s, as follows:

	2017	2018	2019	2020
Current Assets				
Cash	$1,020,720	$4,310,241	$4,539,051	$165,707
Savings and Temporary Investments	$22,103,587	$13,060,999	$0	$0
Accounts Receivable	$4,221,690	$4,184,994	$759,538	$377,644
Notes and Loans Receivable	$23,644,888	$23,283,118	$0	$0
Investments	$49,076,992	$36,856,857	$31,206,634	$29,396,230
Total Cash, Receivables and Investments	**$100,067,877**	**$81,696,209**	**$36,505,223**	**$29,939,581**

56. By its own admissions, Edgemere's financial problems were further exacerbated by massive, ongoing changes in leadership and management of both Edgemere and Lifespace.

57. Since 2017, Edgemere has had rampant management turnover (13 executives), including four different CEOs, six different Executive Directors, and three different CFOs. Lifespace, on the other hand, appears to have had a turnover of nearly its entire C-suite since 2020, with additional changes or departures as recently as June or July of 2022.

58. In 2019, SQLC and Lifespace announced an affiliation agreement, which made Lifespace the sole owner of Edgemere, as well as the Stayton at Museum Way in Fort Worth, Texas and Querencia at Barton Creek in Austin, Texas.

59. Shortly thereafter, in November of 2019, The Stayton at Museum Way filed for Chapter 11 bankruptcy protection. The Stayton at Museum Way emerged from bankruptcy on January 3, 2020, but approximately 18 months later it again failed to satisfy its debt service coverage ratio, further increasing pressure on Lifespace to shore up the financial condition of Edgemere.

60. As part of the affiliation agreement, Lifespace also collected an 8% "revenue management fee," double the acceptable CCRC industry standard, which further siphoned the Edgemere's limited resources by millions of dollars. Also, as a part of the Lifespace transition, approximately $7.7 million in accounts receivable from affiliates was written-off from Edgemere's balance sheet and $18.7 million in goodwill was removed from Edgemere's balance sheet.

61. Edgemere's public filings as of February 2022 showed a dire financial situation:

- The Quarterly Financial Report for the year ended December 31, 2021 showed approximately $6.6 MM dollars in cash and cash equivalents, with a monthly burn rate of approximately $1 MM (Edgemere's Quarterly Disclosure for the quarter ended 12/31/2021: https://emma.msrb.org/P11563437-P11207029-P11626463.pdf);
- As of December 31, 2021, Edgemere had only 62 days cash (Edgemere - Days Cash on Hand covenant as of 12/31/2021: https://emma.msrb.org/P11567001-P11209753-P11629647.pdf);

- There was approximately $124 million accrued to be paid in current and future resident refunds (Edgemere's Quarterly Disclosure for the year ended 12/31/2021: https://emma.msrb.org/P11563437-P11207029-P11626463.pdf);
- There was no money for capital expenditures (Edgemere - Days Cash on Hand covenant as of 12/31/2021: https://emma.msrb.org/P11567001-P11209753-P11629647.pdf and Edgemere's Quarterly Disclosure for the quarter ended 12/31/2021: https://emma.msrb.org/P11563437-P11207029-P11626463.pdf);
- Edgemere owed approximately $110 million on the bond debt (Edgemere's Quarterly Disclosure for the quarter ended 12/31/2021, p. 14: https://emma.msrb.org/P11563437-P11207029-P11626463.pdf);
- Edgemere failed to meet its debt service covenant for the years ending December 31, 2019 and December 31, 2020, and bond payment default occurred in the fourth quarter of 2021 (2021 covenant default: https://emma.msrb.org/P11567001-P11209753-P11629647.pdf; 2020 covenant default: https://emma.msrb.org/P11471602-P11140720-P11553953.pdf; Bond Payment Default: https://emma.msrb.org/P11541376-P11190814-P11608164.pdf);
- Edgemere failed to post or otherwise publish audited financial information for the year ending December 31, 2020 (Filings available at: https://emma.msrb.org/IssueView/Details/EP367591);
- Bondholders were selling their bonds at prices more than seventy percent below original purchase price (Trade Activity: https://emma.msrb.org/IssueView/Details/EP367591);
- Residency had declined to a staggering low – with overall occupancy at only 64.5% (Edgemere's Quarterly Disclosure for the year ended 12/31/2021, p. 5: https://emma.msrb.org/P11563437-P11207029-P11626463.pdf).

62. Edgemere's declining financial performance led to multiple violations of the financial covenants under the Bond Documents in the years leading up to the bankruptcy filing, resulting in the Bond Trustee posting various disclosures and notices to EMMA over the course of 2020, 2021, and 2022:

- January 14, 2022: the Bond Trustee posted a Notice from Edgemere that the Forbearance Agreement (as defined herein) had terminated, misleadingly stating that the termination was due to "the result of inaction by the Landlord with respect to repeated attempts and desire by the Obligated Group Representative, Obligated Group Member, Trustee and the Manager to provide for an extension of the previously noticed Forbearance Agreement." *See* Material Event Notice, attached here as Exhibit 16.

- February 17, 2022: the Bond Trustee posted the Cash Material Event Notice, indicating that Edgemere had only 62 days cash on hand as of December 31, 2021. *See* Ex. 9.

- February 24, 2022: the Bond Trustee posted the Acceleration Notice, declaring that the Bond Obligations are "immediately due and payable in full" and applying funds in the Debt Service Fund to the Bond Obligations. *See* Ex. 10.

The foregoing notices shall be referred to collectively as the "Bondholder Notices."

63. In addition to the Bondholder Notices, the Fitch ratings on Edgemere's bonds were downgraded as follows:

- March 30, 2020: Downgraded from BB- to B+ (*Fitch Downgrades Edgemere's (TX) Revenue Bonds to 'B+'; Outlook Negative*, Fitch Ratings (Mar. 30, 2020), https://www.fitchratings.com/research/us-public-finance/fitch-downgrades-edgemere-tx-revenue-bonds-to-b-outlook-negative-30-03-2020);

- March 19, 2021: Downgraded from B+ to CC (*Fitch Downgrades Edgemere to 'CC'*, Fitch Ratings (Mar. 19, 2021), https://www.fitchratings.com/research/us-public-finance/fitch-downgrades-edgemere-to-cc-19-03-2021); and

- November 2, 2021: Downgraded from CC to D (*Fitch Downgrades Edgemere, TX to 'D'*, Fitch Ratings (Nov. 2, 2021), https://www.fitchratings.com/research/us-public-finance/fitch-downgrades-edgemere-tx-to-d-02-11-2021).

64. Finally, on March 14, 2022, Fitch withdraw its rating on Edgemere's Bonds. *See Fitch Withdraws Rating on Edgemere, TX*, Fitch Ratings (Mar. 14, 2022), https://www.fitchratings.com/research/us-public-finance/fitch-withdraws-rating-on-edgemere-tx-14-03-2022.

E. ICI Discovers that Edgemere Publicly Misrepresented the Terms of the Lease.

65. Edgemere was required to provide a "Disclosure Statement" to all incoming residents, under Tex. Health & Safety Code Ann. § 246.042. Such Disclosure Statements are intended to be a comprehensive document informing potential residents of all aspects of living at Edgemere, including a location and description of the community, services and fees, policies,

resident qualifications, and financial information about Edgemere, with exhibits of the Life Care Agreement, audited financial statements, financial projections, and the resident handbook.

66. Item 12 of the December 31, 2020 Disclosure Statement (the "December 2020 Disclosure Statement," attached here as Exhibit 17) states, "[t]he provider may include in the disclosure statement any other material information concerning the Community or the provider that the provider wishes to include." In the December 2020 Disclosure Statement, Edgemere included the following in response:

> Edgemere failed to meet its Historical Debt Service Coverage Ratio Covenant in 2019 and 2020. The failure to satisfy the Historical Debt Service Coverage Ratio covenant for two consecutive fiscal years constitutes an event of default under the bond documents. Edgemere has retained FTI Consulting, Inc. to, among other things, (i) evaluate Edgemere's operations and marketing strategies; and (ii) provide strategic advice on addressing Edgemere's financial issues. The Trustee and Edgemere have initiated discussions to address the event of default and underlying issues.

See Ex. 17 at App. 677.

67. Upon information and belief, the December 2020 Disclosure Statement was modified at some time later in 2021 (titled "October 1, 2021 Disclosure Statement") and Item 12 was expanded to include the following additional paragraphs:

> Edgemere's occupancy is subject to a Ground Lease with Inter-City [sic] Property Investments, Inc. ("Inter-City") dated November__ 1999 ("the Ground Lease"). The Ground Lease is for a term of 55 years and at the end of the stated term, in November, 2054, **Inter-City** [sic] **has the contractual right, but not the contractual obligation, to purchase the Edgemere's building and improvements for then fair market value.** Additionally, upon the termination of the Ground Lease either because it reaches term or there is a default and termination Inter-City has the option to either continue the Residency Agreements and Life Care Contracts of the residents at the time of termination or to cancel the Residency Agreements and Life Care Contracts. Edgemere takes no position as to the enforceability of this lease or its provisions.

> In order to preserve liquidity for the benefit of its residents, the Edgemere ceased making payments on its bond obligations and the Ground Lease as of October 1, 2021. The Edgemere is engaged in discussions with all parties to resolve the financial situation of the Edgemere for the best outcome of the Edgemere residents; however, a forbearance agreement between the parties was allowed to expire on December 31, 2021 as the result of inaction by the landlord with respect to repeated attempts and desire by Edgemere, the bond trustee, and Lifespace to provide for an extension of the forbearance agreement.

The October 2021 Disclosure Statement is attached here as Exhibit 18, at App. 802–03 (emphasis added).

68. The bolded sentence in the first paragraph above is entirely untrue. The Surrender Provision of the Lease (§ 5.20) is unambiguous – the building and the non-movable improvements revert to ICI upon termination of the Lease.

69. Edgemere's October 2021 Disclosure Statement misrepresented ICI's ownership interests in the Property.

70. When ICI brought this blatantly false statement to Lifespace's attention, Lifespace caused Edgemere to provide in its February 4, 2022 Disclosure Statement: "[t]he Ground Lease is for a term of 55 years and at the end of the stated term, in November, 2054, all buildings and improvements will transfer to Inter-City [sic]." Ex. 6, ¶ 4.

71. The October 2021 Disclosure Statement also incorrectly stated that Edgemere "takes no position as to the enforceability of this lease or its provisions" in reference to the Lease. Ex. 18, at App. 802.

72. On the contrary, Edgemere represented in the Lease itself that "this Lease shall be valid, legally binding and enforceable against Lessee according to the terms of this Lease" and that such representation would continue throughout the duration of the Lease. Ex. 1, § 9.16

73. Additionally, Edgemere represented in the Forbearance Agreement the "the Lease continues a valid and binding obligation" of Edgemere, and stated that "The parties acknowledge that, subject to the terms of this Forbearance Agreement and the Landlord's agreement to forbear as more particularly set forth herein, all terms of the Lease remain in full force and effect…." Ex. 8, § 5(c)(1)–(2).

74. The foregoing representations in the Lease and the Forbearance Agreement expressly contradict Edgemere's claim in the October 2021 Disclosure Statement that Edgemere took no position as to the enforceability of the Lease or its terms. Ex. 18, at App. 802–03.

75. Upon information and belief, the October 2021 Disclosure Statement was given to potential residents and/or new residents starting in September 2021 and continuing through early 2022.

76. Upon information and belief, the October 2021 Disclosure Statement was distributed in 2021 and 2022, but it included only the 2019 and 2018 audited financial statements.

77. Given Edgemere's significant financial deterioration from 2018 to 2022, the failure to provide more recent audited financial statements to the public grossly misrepresented Edgemere's financial status.

78. The Texas Department of Insurance, which has regulatory and supervisory authority over entrance fee deposit models of CCRCs, ultimately required Edgemere to provide current financial information to prospective residents when it learned of Edgemere's failure to do so for years.

79. Edgemere's 2020 Financial Statement, attached here as Exhibit 19, also contained a misleading statement that Edgemere's plans to solve its financial difficulties included "[r]estructure of existing land lease." Ex. 19, at App. 939. However, the 2020 Financial Statement

was filed by Edgemere in early 2022. By that time, the Forbearance Agreement had terminated and ICI had advised Edgemere it would not renegotiate the terms of the Lease. The statement that Edgemere would be "restructur[ing] the existing land lease" contained in the 2020 Financial Statement was and is false.

80. Moreover, on information and belief, Edgemere's agent, FTI Consulting Inc., at the direction of Edgemere, advised the Dallas Morning News in early 2022 that the building and improvements on the Property were owned by *Edgemere*, not the Landlord. Again, this is a blatant misrepresentation of the terms of the Lease.

COUNT ONE – FRAUDULENT INDUCEMENT

81. The Landlord restates and reincorporates the allegations contained in paragraphs 1-80 as if set forth fully in this paragraph 81.

82. Edgemere, through its principals and agents, made material misrepresentations to the Landlord regarding the enforceability of the Lease and its financial condition.

83. Edgemere, through its President and CEO, expressly represented in the Forbearance Agreement that the "*the Lease continues a valid and binding* obligation" of Edgemere, and stated that "The parties acknowledge that, subject to the terms of this Forbearance Agreement and the Landlord's agreement to forbear as more particularly set forth herein, *all terms of the Lease remain in full force and effect* . . . ." Ex. 8, § 5(c)(1)–(2).

84. Additionally, Edgemere purposefully omitted facts regarding its current financial status in its disclosure statements to residents in violation of Tex. Health & Safety Code Ann. § 246.050.

85. Edgemere's violation of Tex. Health & Safety Code Ann. § 246.050 also breached § 5.7 of the Lease, which provided that Edgemere would "perform all laws, ordinances, rules and

regulations now or hereafter made by any Governmental Authority and applicable to Lessee's use of the Premises . . . ."

86. Edgemere knew at the time it entered into the Forbearance Agreement that it had not complied with its obligations to provide audited financial statements to prospective residents. In fact, on information and belief, the Texas Department of Insurance admonished Edgemere to update its disclosure statement with more recent financial information prior to the execution of the Forbearance Agreement.

87. The Landlord reasonably relied on Edgemere's statement in the Forbearance Agreement that the Lease was enforceable in entering into that agreement.

88. However, Edgemere knew at the time that it represented that the Lease was fully enforceable in the Forbearance Agreement that it intended to take a contrary position and seek to have the Lease declared unenforceable.

89. The Landlord also reasonably relied on the completeness of the Specified Defaults and Known Anticipated Defaults. Edgemere expressly provided that it "represents and warrants that as of the date hereof there is no other default or Event of Default . . . other than the Specified Defaults and Known Anticipated Defaults" in the Forbearance Agreement. Ex. 8, § I(b)(4).

90. Edgemere knew at the time that it disclosed certain "Specified Defaults and Known Anticipated Defaults" in the Forbearance Agreement that it was omitting its breach of Section 5.7 of the Lease due to its failure to disclose its audited financial statements for a two-year period in violation of Tex. Health & Safety Code Ann. § 246.050.

91. But for Edgemere's misrepresentations regarding its position on the enforceability of the Lease and the Specified Defaults and Known Anticipated Defaults, the Landlord would not have entered into the Forbearance Agreement.

92. Upon information and belief, Edgemere knew or should have known at the time that it disclosed certain "Specified Defaults and known Anticipated Defaults" in the Forbearance Agreement that it was omitting its breach of § 5.8 of the Lease due to its failure to properly maintain and keep all Improvements in "good and safe repair, order and condition."

93. But for Edgemere's misrepresentations, the Landlord would have initiated enforcement of its rights and remedies to terminate the Lease and collect overdue payments earlier. As a direct and proximate result of Edgemere's misrepresentations, the Landlord has been damaged in an amount to be determined at trial.

COUNT TWO – DECLARATION OF LEASE VALIDITY AND OWNERSHIP OF PROPERTY

94. ICI restates and reincorporates the allegations contained in paragraphs 1-80 as if set forth fully in this paragraph 94.

95. The Landlord owns the Property.

96. The Landlord leased the Property to Edgemere pursuant to the terms of the Lease.

97. Plaintiff has contested, and continues here to contest, both the validity of the Lease and ICI's ownership of the Property:

a. Plaintiff advanced, falsely, that the Lease was "illegal" and therefore unenforceable;

b. Plaintiff advanced and continues to advance, falsely, that the Lease was the result of a mutual mistake of law and therefore subject to reformation;

c. Plaintiff falsely stated to potential residents and the public that the Landlord "has the contractual right, but not the contractual obligation, to purchase Edgemere's building and improvements for then fair market value" in its October 2021 Disclosure Statement;

d. Plaintiff misrepresented to potential residents and the public that it was restructuring the Lease after the Landlord informed Edgemere it would not renegotiate the terms of the Lease;

e. On information and belief, Plaintiff, through its agent, FTI Consulting, Inc., misrepresented to the Dallas Morning News that Edgemere owned the building and improvements on the Property in contradiction of the express terms of the Lease; and

f. In filings in both the Chapter 11 Cases and this Adversary Proceeding, Plaintiff has asserted that the Landlord only "purportedly" owns the Property.

98. The foregoing statements were and are false and frivolous. Nonetheless, they demonstrate the existence of a live and justiciable dispute between the parties to this proceeding.

99. The Court therefore may, and should, declare the respective rights and obligations of the parties by entering judgment declaring that ICI is the owner of the Property and that the Lease was, at all times material, valid and enforceable against Edgemere.[3]

COUNT THREE – DEFAMATION

100. ICI restates and reincorporates the allegations contained in paragraphs 1-80 as if set forth fully in this paragraph 100.

101. ICI owns and leases not only the Property at issue in this proceeding, but also other properties. Indeed, leasing property is a key component of ICI's business.

[3] ICI believes that Edgemere's determination to assume and assign the Lease should moot any controversy over whether the Lease was valid. But Plaintiff continues to advance its position here and, at any rate, continues to try to sow doubt—without any proper basis in law or fact—over ICI's ownership of the Property and the validity of the Lease.

102. Naturally, then, it is vital that ICI maintain its reputation as a lessor that honors its lawful leases and contracts and does not interfere wrongfully with tenant operations and relationships.

103. As part of a campaign to pressure ICI into making financial concessions, Edgemere made false statements about ICI, including as follows:

a. Upon information and belief, Edgemere represented to the Bond Trustee—and to the directing bondholders, either directly or indirectly—that ICI sought to destroy the Edgemere community and the rights of its residents;

b. Upon information and belief, Edgemere represented to the Bond Trustee—and to the directing bondholders, either directly or indirectly—that it believed the Lease to be illegal or unenforceable when, in fact, it did not believe the Lease to be either illegal or unenforceable;

c. Upon information and belief, Edgemere represented to the Bond Trustee—and also to the directing bondholders, either directly or indirectly—that the Lease was in fact illegal or unenforceable but that ICI refused to amend it all the same;

d. Edgemere, through its President and CEO, represented to *Bloomberg* on or about April 14, 2022 that ICI's dispute with Edgemere's false characterizations of ICI's acts and omissions represented the "only outstanding piece" remaining in its restructuring efforts, lending the false impression that ICI was the sole obstacle to a restructuring that fully preserved resident rights;

e. Edgemere, through its agent FTI Consulting, Inc., represented to *The Dallas Morning News* on or about April 18, 2022 that ICI's denial of Edgemere's frivolous allegation that ICI sought to terminate the Lease in order to "make a windfall profit"

was "without merit." Edgemere similarly charged ICI with lying about Edgemere's false representations to Edgemere residents, stating falsely that Edgemere's representations to its residents about the Lease were made "with accuracy and transparency;" and

f. Edgemere, through its agent FTI Consulting, Inc., represented to *McKnight's Senior Living* on or about April 20, 2022 that ICI made false statements to this Court about Edgemere.

104. At or around the time Edgemere made the above false statements, Edgemere commenced its bankruptcy case; the limitations period for bringing these counterclaims therefore was tolled.

105. Edgemere made those statements maliciously and with knowledge of their falsity or with reckless disregard to their truth or falsity. Alternatively, Edgemere was negligent in assessing whether its statements were true or false.

106. Edgemere's statements were not privileged.

107. ICI sustained damages, in an amount to be proven at trial, as a direct and proximate result of Edgemere's statements. Such damages include:

a. Costs incurred to address demands and litigation threats from the Bond Trustee premised, in whole or in part, on Edgemere's false representations; and

b. Costs incurred to respond effectively to Edgemere's public misstatements about ICI.

108. Moreover, because Edgemere's statements were of a type to prejudice ICI in its profession or trade, ICI is entitled to prevail and receive an award of nominal damages even if, counterfactually, ICI sustained no compensable actual or special damages.

109. Finally, because Edgemere's statements were made maliciously and with knowledge of their falsity, ICI is entitled to an award of exemplary damages in an amount sufficient to deter Edgemere and those similarly situated from similar future conduct.

WHEREFORE, Counter-Plaintiff Intercity Investment Properties, Inc. respectfully requests judgment be entered in its favor and against Counter-Defendant Leif M. Clark, solely in his capacity as Trustee of the Edgemere Litigation Trust and, in such capacity, as successor to the Debtor **(a)** declaring that the said Counter-Plaintiff is the owner of the Property and that the Lease was valid and enforceable against the said Counter-Defendant; **(b)** awarding to the said Counter-Plaintiff from the said Counter-Defendant in an amount to be determined at trial, including prejudgment and post-judgment, attorneys' fees and costs, and actual and exemplary damages, in an amount to be determined at trial; and **(c)** awarding to the said Counter-Plaintiff from the said Counter-Defendant any additional and further relief this Court deems equitable and just.

REQUEST FOR FEES AND COSTS

110. ICI is entitled to reasonable attorneys' fees and costs in this action under the Lease and NDA, and under Texas law including, in particular, Tex. Civ. Prac. & Rem. Code § 38.001. When fee-shifting is authorized by contact or statute, the prevailing party, upon a showing of reasonable and necessary fees, can recover its fees and costs. *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 484 (Tex. 2019).

111. ICI requests its reasonable and necessary attorneys' fees and costs pursuant to (1) the Lease and (2) the Confidentiality and Non-Disclosure Agreement Lifespace, Edgemere, and Intercity entered into on or about September 7, 2021 (the "NDA"). Kong also is entitled to recover its reasonable and necessary attorneys' fees under the NDA.

112. The Lease requires that Edgemere reimburse ICI for fees and expenses incurred in connection with the Lease, stating in relevant part:

> Lessee will pay to Lessor, within thirty (30) days after the date of the giving of notice to Lessee containing statements therefor, *all reasonable costs and expenses paid or incurred by Lessor […] in enforcing any of Lessee's covenants herein contained, in remedying any breach thereof, in recovering possession of the Premises or any part thereof pursuant hereto, in collecting or causing to be paid any delinquent Rent, taxes or other charges hereunder payable by Lessee*, or in connection with any action or proceeding (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party. All of Lessor's expenses provided in this Section 5.16(a) shall constitute additional Rent and, if not paid when due, shall bear interest at the Default Interest Rate from the due date until paid in full.

Ex. 1, § 5.16 (emphasis added).

113. ICI has incurred, and will continue to incur, substantial fees and expenses in connection with its efforts to enforce its rights under the Lease.

114. The Lease also contains a prevailing party attorneys' fees provision, stating in relevant part,

> Should Lessor or Lessee reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Lease, including but not limited to instituting any action or proceeding to enforce any provision hereof for damages by reason of any alleged breach of any provision of this Lease, for declaration of such party's rights or obligation hereunder or for any other judicial remedy, then *the prevailing party shall be entitled to be reimbursed by the other party for all costs and expenses reasonably incurred* in connection therewith, including but not limited to *reasonable attorney's fees* for the services rendered to such prevailing party.

Id.

115. Plaintiff's claim for reformation of lease seeks specifically to have the Court remove remedies available to ICI in the Lease in the event of default by Plaintiff or to alternatively to have the Court declare express terms of the Lease are unenforceable. Because there was no

mutual mistake when the parties to Lease negotiated it with the advice of counsel, agreed to it, executed it, and ratified it by their more than 20 years of performing under it, ICI should prevail on Plaintiff's claims relating to the Lease. Accordingly, ICI is entitled to recovery of its attorneys' fees under this provision of the Lease.

116. ICI and Kong are also entitled to attorneys' fees under the NDA pursuant to the following provision: "The parties agree that the prevailing party in any suit to enforce this Agreement shall be entitled to recover its reasonable costs and attorneys' fees." Ex. 7, § 12. Upon prevailing here, ICI and Kong will be entitled to recovery of their attorneys' fees under this provision of the NDA.

WHEREFORE, Defendants/Counter-Plaintiff Intercity Investment Properties, Inc. and Kong Capital LLC respectfully request that the Court enter judgment in their favor and against Counter-Defendant Leif M. Clark, solely in his capacity as Trustee of the Edgemere Litigation Trust and, in such capacity, as successor to the Debtor, that the Court award to the said Counter-Plaintiffs from the said Counter-Defendant their reasonable costs and attorneys' fees, and that the Court enter such other or additional relief as the Court deems just and appropriate in the circumstances.

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Dated: November 13, 2023
Dallas, Texas

/s/ *Ryan C. Hardy*

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November 2023, a true and correct copy of the foregoing was served electronically on all persons via the Court's CM/ECF system.

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