Docket #0510 Date Filed: 4/16/2024

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)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS TO PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

TO: Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Eric J. Sekler, Chief Operating Officer, 1285 Avenue of the Americas, New York, NY 10019-6064.

FROM: Intercity Investment Properties, Inc. and Kong Capital LLC, by and through one of their attorneys of record, Ryan C. Hardy, Levenfeld Pearlstein, LLC, 120 S. Riverside Plz., Suite 1800, Chicago, IL 60606.

Intercity Investment Properties, Inc. and Kong Capital LLC ("Defendants"), pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Rule 7030 and 9016 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") as well as Rule 2004 and Bankruptcy Local Rule 2004, by and through its counsel, issue the

[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.

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attached subpoena to Paul, Weiss, Rifkind, Wharton & Garrison LLP.

YOU ARE COMMANDED to produce the documents, electronically stored information, or objects as specified in the attached Exhibit A, subject to the Definitions and Instructions contained herein, by April 23, 2024, or at such other time as agreed upon by you and counsel for Intercity and Kong, to the undersigned counsel at Levenfeld Pearlstein, LLC, 120 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 or via electronic email to rhardy@lplegal.com.

Dallas, Texas
April 10, 2024

/s/ *Ryan C. Hardy*

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

UNITED STATES BANKRUPTCY COURT

Northern District of Texas

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

Case No. 22-30659 (MVL)

Chapter 11

Northwest Senior Housing Corporation,
Plaintiff

v.

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

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

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS

To: **Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Eric J. Sekler, Chief Operating Officer, 1285 Avenue of the Americas, New York, NY 10019-6064**

☐ *Testimony*: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE	DATE AND TIME

The deposition will be recorded by this method:

Stenographic and/or videotape

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

Those documents identified on Exhibit A hereto.

PLACE	DATE AND TIME
Levenfeld Pearlstein, LLC 120 S. Riverside Plaza, Suite 1800, Chicago, IL 60606	April 23, 2024

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

April 10, 2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Ryan C. Hardy
Attorney's signature

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

Ryan C. Hardy, Levenfeld Pearlstein, LLC, 120 S. Riverside Plz., Suite 1800, Chicago, IL 60606, 312-476-7548

Notice to the person who issues or requests this subpoena

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

PROOF OF SERVICE

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

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

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____on (*date*)_____; or

☐ I returned the subpoena unexecuted because: _____

_____

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

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

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

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

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

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

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

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

(iv) subjects a person to undue burden.

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

(i) expressly make the claim; and

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

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

…

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

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

EXHIBIT A

I. DEFINITIONS

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

1. "You" refers to Paul, Weiss, Rifkind, Wharton & Garrison LLP, and any agent, representative, employee, or other person acting or purporting to act on its behalf.

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

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

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

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

6. 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.

7. 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.

8. The "Bonds" refers to any and all bonds on which Edgemere owed as of April 14, 2022, including, but not limited to, the bonds for which UMB Bank, N.A. was the bond trustee.

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

10. "Lifespace" refers to Lifespace Communities, Inc.

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

12. "Communication" or "Communications" means a communication in any form, including, without limitation, notes, complaints, diaries, journals, datebooks, reports, calendars, telephone messages, letters, email messages, instant messages (such as but not limited to Signal, Cisco Jabber, IBM Sametime, Wickr, ICQ, Kik, BBM, Gchat, iMessage, Telegram, WhatsApp, Slack, and similar types of messages), cell phone text messages (SMS messages and MMS messages), voicemail messages, Slack messages or other internal messaging system

communications, social media communications or posting on sites including but not limited to Facebook, Twitter, Instagram, Gab, or Parler (including any direct messages), website postings, internet chat-room postings, lists, correspondence, drawings, designs, telegrams, manuals, summaries or records of personal conversations, logs, minutes or records of meetings, minutes of any other type, transcripts of oral testimony or statements, affidavits, or summaries of investigations. For avoidance of doubt, the term "Communications" includes internal communications and communications with third parties. The foregoing definition is subject to any objection sustained in relation to Plaintiffs' similar definition directed at Defendants.

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

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

15. 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.

II. DOCUMENTS TO BE PRODUCED

1. Your Communications with Lifespace about Edgemere, the Property, the Lease, ICI, Kong, the Bankruptcy, and/or the Lawsuit.
2. Your Communications with Edgemere about the Property, the Lease, ICI, Kong, the Bankruptcy, and/or the Lawsuit.
3. Your Communications with Sidley Austin LLP about Edgemere, the Property, the Lease, ICI, Kong, the Bankuptcy, and/or the Lawsuit.
4. Your Communications with Perkins Coie LLP about Edgemere, the Property, the Lease, ICI, Kong, the Bankuptcy, and/or the Lawsuit.
5. Your Communications with Cooley LLP about Edgemere, the Property, the Lease, ICI, Kong, the Bankuptcy, and/or the Lawsuit.
6. Your Communications with Polsinelli, P.C. about Edgemere, the Property, the Lease, ICI, Kong, the Bankuptcy, and/or the Lawsuit.
7. Your Communications with DLA Piper LLP about Edgemere, the Property, the Lease, ICI, Kong, the Bankuptcy, and/or the Lawsuit.
8. Your Communications with Haynes & Boone, LLP about Edgemere, the Property, the Lease, ICI, Kong, the Bankuptcy, and/or the Lawsuit.