

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

In re:

Northwest Senior Housing Corporation, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

**THIRD AMENDED PLAN OF REORGANIZATION OF THE PLAN SPONSORS**  
**DATED DECEMBER 19, 2022**

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.



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## INTRODUCTION<sup>2</sup>

On April 14, 2022, Edgemere and SQLC commenced their Chapter 11 Cases, seeking relief under Chapter 11 of the Bankruptcy Code. The major constituencies in these Chapter 11 Cases have reached a global resolution which is set forth in this *Third Amended Plan of Reorganization of the Plan Sponsors Dated December 19, 2022* (as may be further amended, supplemented, or otherwise modified from time to time, the “**Plan**”). This Plan is supported by the following parties (collectively, the “**Plan Supporters**”): (i) UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (together, the “**Trustee**”), (ii) UMB Bank, N.A., in its capacity as lender under the DIP Credit Agreement (the “**DIP Lender**” and, together with the Trustee, the “**Initial Plan Sponsors**”), (iii) Northwest Senior Housing Corporation d/b/a Edgemere (“**Edgemere**”), (iv) Senior Quality Lifestyles Corporation (“**SQLC**” and together with Edgemere, the “**Debtors**” and together with the Initial Plan Sponsors, the “**Plan Sponsors**”), (v) Lifespace Communities, Inc. (“**Lifespace**”), and (vi) the Official Committee of Unsecured Creditors (the “**Committee**”). The Plan Sponsors propose this Plan pursuant to Bankruptcy Code sections 1125 and 1129 for the resolution of outstanding Claims against, and Interests in, the Debtors.

Reference is made to the Disclosure Statement for a discussion of the Debtors’ history and assets, a summary and analysis of this Plan, and certain related matters, including the Distributions to be made under this Plan and the risk factors relating to consummation of this Plan. No materials other than the Disclosure Statement, this Plan, the Plan Supplement, and any and all exhibits and/or schedules attached thereto or hereto have been authorized by the Plan Sponsors for use in soliciting votes of acceptance with respect to this Plan.

Copies of this Plan and the Disclosure Statement and all other documents related to the Chapter 11 Cases are available for review without charge, on the website for the Chapter 11 Cases at: <https://kccllc.net/edgemere>.

This Plan will implement the Sale Transaction, pursuant to which substantially all the Debtors’ assets will be sold to a Purchaser who will continue running the Community as a going concern. An initial Purchaser has been selected by the Plan Sponsors and the parties have agreed to an Asset Purchase Agreement, with the initial Purchaser’s offer subject to higher and better bids, including through a potential Auction, pursuant to bidding and sale procedures to be filed with the Bankruptcy Court. The initial Purchaser has offered to purchase the Community for \$48.5 million, subject to certain adjustments set forth in the Asset Purchase Agreement. The remaining assets of the Estates shall be transferred to a Litigation Trust to be liquidated for the benefit of creditors.

Consultants have concluded that the Community cannot continue to operate solely as an entrance fee community. An entrance fee model, in the opinion of such consultants, is not feasible and will exacerbate the financial struggles of Edgemere. Accordingly, the Asset Purchase Agreement contemplates the conversion of the Community to a rental model. Pursuant to the Asset Purchase Agreement, all entrance-fee Residency Agreements will be rejected and, subject to regulatory approvals and/or requirements, all Current Residents will be offered a new monthly

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<sup>2</sup> Capitalized terms used but not defined shall have the meanings ascribed to them in Section 1.A or Section 8 of this Plan.

rental agreement which shall provide similar services to Current Residents as provided prior to the Closing Date.

This Plan will also establish a Litigation Trust, into which all assets of the Debtors not purchased through the Sale Transaction, including the Landlord Litigation and other Retained Causes of Action, will be transferred. The Litigation Trustee will prosecute and liquidate the Litigation Trust Assets, with the proceeds from such liquidation distributed on a Pro Rata basis to Holders of Allowed General Unsecured Claims pursuant to the terms and conditions of this Plan and the Litigation Trust Agreement, which will be included in the Plan Supplement.

This Plan includes a settlement of all potential Estate, Trustee, DIP Lender and Resident claims against Lifespace in exchange for (i) a \$16.5 million payment to the Trustee on the Effective Date for Distribution to current holders of the Original Bonds, pursuant to the terms of the Original Bond Documents, and (ii) subject to certain conditions, annual payments made into a Residents Trust, pursuant to the schedule attached to the Disclosure Statement as Exhibit 4, which funds shall be used to pay Participating Residents for Refund Claims as further described herein. In exchange for the Lifespace Resident Contributions and the releases provided under Section 8 of this Plan, Lifespace will be entitled to a Pro Rata distribution of Litigation Trust Assets, in accordance with the terms of this Plan and the Litigation Trust Agreement.

NOTWITHSTANDING ANYTHING HEREIN, OR IN THIS PLAN, OR IN ANY OTHER AGREEMENT OR DISCLOSURE TO THE CONTRARY, the Purchaser shall have no obligation, duty or other requirement to participate in any aspect of the Residents Trust, including accepting any payments from the Residents Trust, other than to provide periodic reporting to the Residents Trust as required under the Asset Purchase Agreement. Any future rental agreement with any Current Resident will not relate in any way to the Residents Trust, the Lifespace Settlement and Contribution Agreement, or any other provision of this Plan, including but not limited to any payments or adjustments contemplated to Participating Current Residents described herein or otherwise.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THIS PLAN ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT FILED CONTEMPORANEOUSLY HERewith IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

## SECTION 1. DEFINITIONS AND INTERPRETATION

### A. Definitions.

The following terms used herein shall have the respective meanings below:

1.1 “*2015 Bond Documents*” means the 2015 Bond Indenture and any bonds, loan agreement, mortgage, security agreement, document, agreement, or instrument executed or delivered in connection with the issuance of the Series 2015 Bonds, including the 2015 Loan Agreement.

1.2 “*2015 Bond Indenture*” means that certain Indenture of Trust, dated May 1, 2015, by and between the Issuer and the Bank of New York Mellon Trust Company, National Association, as initial bond trustee, pursuant to which the Series 2015 Bonds were issued.

1.3 “*2015 Loan Agreement*” means that certain Loan Agreement, dated May 1, 2015, by and between the Issuer and Edgemere, pursuant to which the Issuer loaned the proceeds of the Series 2015 Bonds to Edgemere.

1.4 “*2017 Bond Documents*” means the 2017 Bond Indenture, and any bonds, loan agreement, mortgage, security agreement, document, agreement, or instrument executed or delivered in connection with the issuance of the Series 2017 Bonds, including the 2017 Loan Agreement.

1.5 “*2017 Bond Indenture*” means that certain Indenture of Trust, dated March 1, 2017, between the Issuer and Bank of New York Mellon Trust Company, National Association, as initial bond trustee, pursuant to which the Series 2017 Bonds were issued.

1.6 “*2017 Loan Agreement*” means that certain Loan Agreement, dated March 1, 2017, by and between the Issuer and Edgemere, pursuant to which the Issuer loaned the proceeds of the Series 2017 Bonds to Edgemere.

1.7 “*Administrative Claim*” means any Claim against any Debtor for costs and expenses of administration of the Chapter 11 Cases pursuant to Bankruptcy Code sections 503(b), 507(a)(2), or 507(b), including: (i) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date, of preserving the Estates and operating the Debtors’ businesses; (ii) Allowed Professional Claims; (iii) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to Bankruptcy Code sections 503(b)(3), (4), and (5); and (iv) all fees and charges assessed pursuant to 28 U.S.C. § 1930(a)(6).

1.8 “*Administrative Claims Bar Date*” means the date by which Administrative Claims must be filed, which shall be set by separate order of the Court pursuant to a separate motion.

1.9 “*Affiliate*” means, with respect to any Entity, an “affiliate” as defined in Bankruptcy Code section 101(2) as if such entity were a debtor.

1.10 “*Allowed*” means with respect to Claims: (i) any Claim, proof of which is timely filed by the applicable Bar Date; (ii) any Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely filed; or (iii) any Claim Allowed pursuant to this Plan or a Final Order of the Bankruptcy Court; provided, that with respect to any Claim described in clauses (i) and (ii) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time, as may be extended by the Bankruptcy Court from time to time, fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely filed, is not considered Allowed and shall be expunged without further action by the Litigation Trustee and without further notice to any party or action, approval, or order of the Bankruptcy Court. An Allowed Claim (i) includes a Disputed Claim to the extent such Disputed Claim becomes Allowed after the Effective Date and (ii) shall be net of any valid setoff exercised with respect to such Claim pursuant to the provisions of the Bankruptcy Code and applicable law; provided, however, such setoff shall not otherwise be applicable to the amounts owed with respect to the Original Bonds. Unless otherwise specified in this Plan, Bankruptcy Code section 506(b), or by Final Order of the Bankruptcy Court, “Allowed” Claims shall not, for purposes of Distributions under this Plan, include interest on such Claim accruing from and after the Petition Date. For the avoidance of doubt, the Trustee shall hold an Allowed Claim in an amount of \$111,728,919.22 as of the Petition Date, plus unliquidated, accrued, and unpaid fees and expenses of the Trustee and its professionals incurred through the Petition Date.

1.11 “*Asset Purchase Agreement*” means that certain agreement, substantially in the form attached hereto in Exhibit 1, between Edgemere and Bay 9 Holdings LLC or its designee for a sale of substantially all the Debtors’ Assets.

1.12 “*Assets*” means all interests, legal or equitable, in property, real, personal, tangible and intangible, of the Debtors as defined in Bankruptcy Code section 541(a).

1.13 “*Assumption Notice*” shall have the meaning set forth in Section 5 of this Plan.

1.14 “*Auction*” has the meaning set forth in the Bidding Procedures Order.

1.15 “*Avoidance Actions*” means all actions, causes of action, suits, choses in action, and claims of the Debtors and/or the Estates against any entity or Person, whether direct, indirect, derivative, or otherwise arising under Bankruptcy Code section 510 or to avoid a transfer of property or recover property pursuant to Bankruptcy Code sections 542 through 550 or applicable non-bankruptcy law.

1.16 “*Ballot*” means the ballots upon which holders of Impaired Claims entitled to vote to accept or reject this Plan may indicate their acceptance or rejection in accordance with applicable rules and instructions regarding voting.



1.17 “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

1.18 “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, having jurisdiction over the Chapter 11 Cases or, if the Bankruptcy Court ceases to exercise jurisdiction over the Chapter 11 Cases, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases in lieu of the United States Bankruptcy Court for the Northern District of Texas.

1.19 “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

1.20 “*Bar Date(s)*” means the Claims Bar Date, the Governmental Bar Date, or the Rejection Damages Bar Date, as applicable; and “*Bar Dates*” means a collective reference to the Claims Bar Date, the Governmental Bar Date, and the Rejection Damages Bar Date.

1.21 “*Bar Date Order*” means, collectively, the Bankruptcy Court’s Order (I) Establishing Bar Dates, (II) Approving Form and Manner of Notice Thereof, and (III) Approving Procedures for Filing Proofs of Claims [Docket No. 325] and Order (I) Establishing Bar Dates, (II) Approving Form and Manner of Notice Thereof, and (III) Approving Procedures for Filing Proofs of Claims [Docket No. 386].

1.22 “*Bid Deadline*” has the meaning set forth in the Bidding Procedures Order.

1.23 “*Bidding Procedures Order*” means the Bankruptcy Court’s order establishing the sale procedures with respect to the Sale Transaction.

1.24 “*Bond Claims*” means the Series 2015 Bond Claims and the Series 2017 Bond Claims.

1.25 “*Bond Deficiency Claim*” means the Bond Claims minus the amount paid to the Trustee pursuant to the Sale Transaction.

1.26 “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” as defined in Bankruptcy Rule 9006(a).

1.27 “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

1.28 “*Causes of Action*” means any claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, offsets, or setoffs of any kind or character whatsoever, in each case now owned or hereafter acquired by the Debtors and/or their Estates, and in each case, whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim,

counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date, including the Landlord Litigation and other Retained Causes of Action.

1.29 “*Chapter 11*” means chapter 11 of the Bankruptcy Code.

1.30 “*Chapter 11 Cases*” means (i) when used with reference to a particular Debtor, the case under chapter 11 of the Bankruptcy Code commenced by such Debtor in the Bankruptcy Court, and (ii) when used with reference to both Debtors, the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court being jointly administered under Case No. 22-30659.

1.31 “*Claim*” means a “claim,” as that term is defined in Bankruptcy Code section 101(5).

1.32 “*Claims Bar Date*” means July 21, 2022 at 4:00 Prevailing Central Time, the general bar date by which entities, other than Governmental Units, shall file Proofs of Claim.

1.33 “*Class*” means a category of holders of Claims or Interests as set forth in Section 3 hereof pursuant to Bankruptcy Code section 1122(a).

1.34 “*Closing*” means the closing on the transactions contemplated by the Sale Transaction pursuant to the Asset Purchase Agreement.

1.35 “*Closing Date*” has the meaning given to such term in the Asset Purchase Agreement.

1.36 “*Committee*” means the official committee of creditors appointed by the U.S. Trustee in the Chapter 11 Cases pursuant to Bankruptcy Code section 1102 [Docket Nos. 135 and 150].

1.37 “*Committee Challenge*” shall have the meaning set forth in Section 4.8 of this Plan.

1.38 “*Community*” means the continuing care retirement community, located in Dallas, Texas, known as “Edgemere.”

1.39 “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

1.40 “*Confirmation Hearing*” means the hearing(s) before the Bankruptcy Court under Bankruptcy Code section 1128 at which the Plan Sponsors seek entry of the Confirmation Order, as such hearing(s) may be adjourned or continued from time to time.

1.41 “*Confirmation Order*” means the Bankruptcy Court order confirming this Plan pursuant to Bankruptcy Code section 1129.

1.42 “*Contract Objection*” shall have the meaning set forth in Section 5 of this Plan.

1.43 “*Creditor Released Claims*” has the meaning set forth in Section 8.3 of this Plan.

1.44 “*Cure Escrow*” means the escrow account established to hold asserted cure obligations associated with the Ground Lease pending a Bankruptcy Court determination as to the Allowed cure amount.

1.45 “*Cure and Possible Assumption and Assignment Notice*” shall have the meaning set forth in Section 5 of this Plan.

1.46 “*Cure Objection*” shall have the meaning set forth in Section 5 of this Plan.

1.47 “*Current Resident*” means a Resident that resides at the Community as of the Voting Record Date pursuant to a Residency Agreement.

1.48 “*Dallas County Claim*” means the 2022 tax claim of Dallas County in the amount of \$26,856.19 plus accrued interest.

1.49 “*Debtor Released Claims*” has the meaning set forth in Section 8.2 of this Plan.

1.50 “*Debtors*” means, collectively, Edgemere and SQLC.

1.51 “*Diminution Claim*” means the Trustee’s claim for Diminution as defined in and arising under the DIP Orders.

1.52 “*DIP Credit Agreement*” means that certain Priming Superpriority Debtor-in-Possession Credit Agreement between the Debtors and the DIP Lender, together with any amendments, modifications or supplements thereto, which was approved pursuant to the DIP Orders.

1.53 “*DIP Facility Claims*” means a Claim held by the DIP Lender for all debts, indebtedness, obligations, covenants, and duties of payment and performance arising under or relating to the DIP Credit Agreement or the DIP Orders, including any and all accrued but unpaid interest and any unpaid fees or charges arising under the DIP Credit Agreement.

1.54 “*DIP Lender*” means the lender under the DIP Credit Agreement.

1.55 “*DIP Orders*” means the *Bankruptcy Court’s First Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5) Scheduling a Final Hearing* [Docket No. 112]; *Second Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5)*

*Scheduling a Final Hearing* [Docket No. 228]; *Third Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5) Scheduling a Final Hearing* [Docket No. 350]; bridge orders extending the deadline in paragraph 22(ii) of the Third Interim DIP Order [Docket Nos. 398 and 415]; and *Final Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing the Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests and Superpriority Claims* [Docket No. 421] (as may be amended, modified or supplemented).

1.56 “*Disclosure Statement*” means the Disclosure Statement, as may be modified or amended, accompanying and describing this Plan.

1.57 “*Disclosure Statement Order*” means the Bankruptcy Court’s order approving the Disclosure Statement.

1.58 “*Disputed*” means, with respect to any Claim or Interest, or any portion thereof that is not yet Allowed, including (i) any Claim evidenced by a Proof of Claim that, on its face, is contingent or unliquidated; (ii) any Claim that is subject to an objection filed by the Claims Objection Deadline or a request for estimation, in each case that has not been withdrawn, resolved, or ruled on by a Final Order of the Bankruptcy Court; (iii) any Claim or Interest scheduled by the Debtors as contingent, unliquidated or disputed, (iv) any Claim or Interest evidenced by a Proof of Claim which amends a Claim or Interest scheduled by the Debtors as contingent, unliquidated or disputed, and (v) any Claim or Interest that is not an Allowed Claim or Allowed Interest or a Disallowed Claim or a Disallowed Interest; provided, however, that Refund Claims are not Disputed on account of being scheduled by the Debtors as contingent or unliquidated and the Bond Claims are not Disputed notwithstanding any pending challenges or claims.

1.59 “*Distribution*” means Cash, property, interests in property or other value distributed to holders of Allowed Claims, or their designated agents, under this Plan.

1.60 “*Distribution Record Date*” means, other than with respect to public securities cancelled by this Plan, the Effective Date or such other date as may be designated in the Confirmation Order.

1.61 “*Edgemere*” means Northwest Senior Housing Corporation.

1.62 “*Effective Date*” means the date which is the first Business Day on which the conditions set forth in Section 9 of this Plan have been satisfied or waived.

1.63 “*Entity*” shall have the meaning set forth in Bankruptcy Code section 101(15).

1.64 “*Entrance Fee Escrow*” means the escrow account holding entrance fees received from Residents on or after September 27, 2021, which account is maintained by Regions Bank, as escrow agent, on behalf of such Residents pursuant to the Escrow Agreement.

1.65 “*Entrance Fee Escrow Order*” means the Bankruptcy Court’s Final Order (I) Authorizing the Debtors to Continue (A) Escrowing Entrance Fees in the Ordinary Course and (B) Refunding Certain Entrance Fees During the Chapter 11 Case and (II) Granting Related Relief [Docket No. 393].

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

1.67 “*Escrow Resident Claims*” means the Claims of Residents to funds in the Entrance Fee Escrow pursuant to the Escrow Agreement.

1.68 “*Estates*” means the estates of the Debtors created by the Chapter 11 Cases pursuant to Bankruptcy Code section 541.

1.69 “*Exculpated Party*” means each of: (i) the Purchaser, (ii) the Plan Sponsors, (iii) the Issuer, (iv) the Committee and the members of the Committee, (v) Lifespace and (vi) with respect to each of the foregoing Entities in clauses (i) through (v), such Entity and its current and former predecessors, successors and assigns, subsidiaries, affiliates, managed accounts or funds, and all of their respective current and former officers, directors, principals, shareholders, members, partners, managers, employees, attorneys, advisors, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals.

1.70 “*Executory Contract*” means all contracts and leases to which any Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

1.71 “*Former Resident*” a Resident that no longer resides at the Community as of the Voting Record Date.

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

1.73 “*General Unsecured Claim*” means any Claim, other than Administrative Claims, Secured Claims, Other Priority Claims, Priority Tax Claims, the Dallas County Claim, the Diminution Claim, DIP Facility Claims, and Bond Claims (other than the Bond Deficiency Claim).

1.74 “*Ground Lease*” means that certain Ground Lease, dated November 5, 1999, by and between Edgemere and the Landlord.

1.75 “*Governmental Bar Date*” means October 11, 2022 at 4:00 prevailing Central Time, the date by which Governmental Units must file Proofs of Claims.

1.76 “*Government Unit*” means a “governmental unit” as defined in Bankruptcy Code section 101(27).

1.77 “*Impaired*” means, with respect to a Claim, that such Class of Claims is “impaired” within the meaning of Bankruptcy Code section 1124.

1.78 “*Initial Plan Sponsors*” means the Trustee and the DIP Lender.

1.79 “*Insurance Policies*” means, collectively, all the Debtors’ insurance policies.

1.80 “*Interest*” means any membership interest in any Debtor, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest.

1.81 “*Issuer*” means the Tarrant County Cultural Education Facilities Finance Corporation.

1.82 “*KCC*” means Kurtzman Carson Consultants LLC.

1.83 “*Landlord*” means Intercity Investment Properties, Inc.

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

1.85 “*Lien*” means “lien,” as defined in Bankruptcy Code section 101(37).

1.86 “*Lifespace*” means Lifespace Communities, Inc.

1.87 “*Lifespace Bond Contribution*” means the \$16.5 million payment to the Trustee on the Effective Date for Distribution to holders of the Original Bonds.

1.88 “*Lifespace Resident Claim*” means Lifespace’s interest in the Litigation Trust Assets on account of the Lifespace Resident Contributions equaling \$143,910,979.78 (assuming no Residents opt out of the Lifespace Settlement and to be adjusted for opt-outs), which shall entitle Lifespace to a Pro Rata Distribution of Litigation Trust Proceeds.

1.89 “*Lifespace Resident Contribution Schedule*” means the schedule of Lifespace Resident Contributions attached to the Disclosure Statement as Exhibit 4.

1.90 “*Lifespace Resident Contributions*” means the annual payments that will be made by Lifespace into the Residents Trust, subject to certain financial conditions, pursuant to the terms of the Lifespace Settlement and Contribution Agreement, in substantially the form attached

to the Disclosure Statement as Exhibit 3, and the Lifespace Resident Contribution Schedule, attached to the Disclosure Statement as Exhibit 4.

1.91 “*Lifespace Settlement*” means the settlement set forth in the Lifespace Settlement and Contribution Agreement.

1.92 “*Lifespace Settlement and Contribution Agreement*” means that certain Lifespace Settlement and Contribution Agreement, in substantially the form attached to the Disclosure Statement as Exhibit 3.

1.93 “*Litigation Trust*” means the trust described in Section 4 of this Plan.

1.94 “*Litigation Trust Agreement*” means the agreement between the Plan Sponsors, the Debtors and the Litigation Trustee to be entered into as of the Effective Date, substantially in form set forth in the Plan Supplement, as it may be amended from time to time in accordance with its terms.

1.95 “*Litigation Trust Assets*” means from and after the Effective Date (i) all legal and equitable interests of the Debtors in Retained Causes of Action, including the Landlord Litigation, and Avoidance Actions, and the proceeds thereof; (ii) all legal and equitable defenses or counterclaims of the Debtors to Claims; and (iii) any other Assets to be vested in the Litigation Trust pursuant to this Plan and the Litigation Trust Agreement, including any Assets that are not sold in the Sale Transaction pursuant to the Asset Purchase Agreement.

1.96 “*Litigation Trust Expenses*” means reasonable and documented out-of-pocket fees, costs and expenses incurred by the Litigation Trust or the Litigation Trustee (or any professional or other Person retained by the Litigation Trustee in administering the Litigation Trust) on or after the Effective Date in connection with any of their responsive duties under this Plan and the Litigation Trust Agreement, including any administrative fees, attorneys’ fees and expenses, insurance fees, taxes and escrow expenses, all as further set forth in the Litigation Trust Agreement.

1.97 “*Litigation Trust Interests*” means an uncertificated interest in the Litigation Trust representing the rights of holders of Allowed General Unsecured Claims.

1.98 “*Litigation Trust Proceeds*” means any Cash proceeds to be distributed to the holders of the Litigation Trust Interests pursuant to the terms of the Litigation Trust Agreement.

1.99 “*Litigation Trust Oversight Committee*” means three (3) Persons identified in the Plan Supplement that shall provide oversight and direction to the Litigation Trustee in accordance with the terms of the Litigation Trust Agreement.

1.100 “*Litigation Trustee*” means the Person identified as such in the Plan Supplement or other filing with the Bankruptcy Court, agreed to by Lifespace and the Trustee, and retained as of the Effective Date pursuant to the terms of the Litigation Trust Agreement, as the fiduciary responsible for implementing the applicable provisions of this Plan and the Litigation Trust Agreement.

1.101 “*Local Rules*” means the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court, or any other court having jurisdiction over the Chapter 11 Cases.

1.102 “*Master Trustee*” means UMB Bank, N.A. as successor master trustee under the Original Master Indenture.

1.103 “*Net Sale Proceeds*” means the sale proceeds of the Sale Transaction, less any less customary transaction fees and expenses.

1.104 “*Non-Resident Contract Counterparty*” shall have the meaning set forth in Section 5 of this Plan.

1.105 “*Notice Parties*” shall have the meaning set forth in Section 5 of this Plan.

1.106 “*Obligated Group*” means Edgemere and SQLC.

1.107 “*Original Bonds*” means, collectively, the Series 2015 Bonds and the Series 2017 Bonds.

1.108 “*Original Bond Documents*” means, collectively the 2015 Bond Documents and the 2017 Bond Documents.

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

1.110 “*Other Priority Claim*” means any Claim, other than an Administrative Claim, a Priority Tax Claim, or the DIP Facility Claims, which is entitled to priority under Bankruptcy Code section 507(a).

1.111 “*Other Secured Claim*” means any Secured Claim other than a Bond Claim and the Dallas County Claim.

1.112 “*Participating Residents*” means all Participating Current Residents and Participating Former Residents.

1.113 “*Participating Current Residents*” means all Current Residents who do not opt out of the Lifespace Settlement and the releases under Section 8 of this Plan.

1.114 “*Participating Former Residents*” means all Former Residents who do not opt out of the Lifespace Settlement and the releases under Section 8 of this Plan.

1.115 “*Person*” means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization, governmental unit, government (or agency or political subdivision thereof), or other entity.



1.116 “*Petition Date*” means April 14, 2022, the date on which the Debtors filed their voluntary petitions for relief commencing the Chapter 11 Cases.

1.117 “*Plan*” means this Plan of Reorganization, dated December 19, 2022, including all exhibits, supplements, appendices, and schedules thereto, either in its present form or as the same may be amended, supplemented, or modified from time to time.

1.118 “*Plan Sponsors*” means the Debtors, the Trustee and the DIP Lender.

1.119 “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to this Plan, to be filed prior to the Confirmation Hearing, as amended, supplemented, or modified from time to time in accordance with the terms hereof, the Bankruptcy Code, and the Bankruptcy Rules.

1.120 “*Plan Supporters*” means the Plan Sponsors, Lifespace and the Committee.

1.121 “*Purchased Assets*” means the Assets of the Debtors acquired by the Purchaser pursuant to the Asset Purchase Agreement.

1.122 “*Priority Tax Claim*” means any Claim of a governmental unit of a kind entitled to priority under Bankruptcy Code section 507(a)(8).

1.123 “*Pro Rata*” means, with respect to any Claim, the proportion that the amount of a Claim in a particular Class or Classes bears to the aggregate amount of all Claims in such Class or Classes, unless this Plan otherwise provides.

1.124 “*Professionals*” means all professionals employed in these Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, and 1103.

1.125 “*Professional Claim*” means a Claim of a Professional for compensation and/or reimbursement of expenses incurred by such Professional through and including the Effective Date.

1.126 “*Proposed Assumed Contracts*” shall have the meaning given to such term in Section 5 of this Plan.

1.127 “*Purchaser*” means Bay 9 Holdings LLC or its designee, or the purchaser designated by the Initial Plan Sponsors as the prevailing bidder at the Auction, if any.

1.128 “*Proof of Claim*” means a proof of Claim filed against any Debtor in the Chapter 11 Cases.

1.129 “*Qualified Bid*” has the meaning set forth in the Bidding Procedures Order.

1.130 “*Refund Claims*” means Rejection Claims of both Former Residents and Current Residents against Edgemere in the amount of the contractual refund obligation of Edgemere under the rejected Residency Agreements.

1.131 “*Refund Trigger Date*” means the date (a) that a Resident vacates the Community, (b) the Residents Trust is informed that such Resident’s unit is re-leased to a new Resident, and (c) the Residents Trust contains sufficient funds for payment of such Resident’s Refund Claim.

1.132 “*Reinstate,*” “*Reinstated,*” or “*Reinstatement*” means with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with Bankruptcy Code section 1124.

1.133 “*Rejection Claims*” means any Claim arising from or relating to, the rejection of an Executory Contract or Unexpired Lease pursuant to Bankruptcy Code section 365(a) by any of the Debtors, as limited, in the case of a rejected Unexpired Lease, by Bankruptcy Code section 502(b)(6).

1.134 “*Rejection Damages Bar Date*” means the date by which Rejection Claims must be filed, which shall be the latest of: (i) the General Bar Date, (ii) thirty (30) days after the date of the entry of any order authorizing the rejection of the Executory Contract or Unexpired Lease, or (iii) thirty (30) days after the effective date of rejection of such Executory Contract or Unexpired Lease, including pursuant to Bankruptcy Code section 365(d)(4).

1.135 “*Released Parties*” means (i) the Committee, (ii) the Purchaser, (iii) the Issuer, (iv) the Plan Sponsors, (v) the holders of the Original Bonds (vi) Lifespace and (vii) with respect to each of the foregoing Entities in clauses (i) through (vi), such Entity and its current and former predecessors, successors and assigns, subsidiaries, affiliates, managed accounts or funds, and all of their respective current and former officers, directors, principals, shareholders, members, partners, managers, employees, attorneys, advisors, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals.

1.136 “*Releasing Party*” means (i) each holder of a Claim who has not chosen, by marking the appropriate box on the Ballot and/or Opt Out Form, as appropriate, to opt out of the “Releases by Holders of Claims” provided for in Section 8.3 of this Plan, (ii) the DIP Lender, the Trustee and the Holders of Bond Claims solely to the extent set forth in Section 8.3 of this Plan, (iii) Lifespace, and (vi) the Committee.<sup>3</sup>

1.137 “*Residency Agreements*” means those certain agreements entered into by and between the Residents and the Debtors, including all assisted living residency agreements, life care agreements, skilled nursing residency agreements, memory care agreements, and any additional documents related thereto, including any amendments, supplements, or addendums.

1.138 “*Resident*” means a Current Resident or Former Resident of the Community who is or was a party to a Residency Agreement.

1.139 “*Resident Challenges*” shall have the meaning set forth in Section 4.8 of this Plan.

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<sup>3</sup> Lifespace has requested the Purchaser be added as a Releasing Party.

1.140 “*Resident Claim Cover Letter*” means that certain letter prepared by the Committee that, subject to approval of the Bankruptcy Court, will accompany each Resident Claimant’s Ballot.

1.141 “*Resident Claimants*” means the holders of Claims arising from rejected Residency Agreements.

1.142 “*Residents Trust*” means the trust established by the Residents Trust Agreement into which the Lifespace Resident Contributions shall be made.

1.143 “*Residents Trust Agreement*” means that certain Residents Trust Agreement between the Committee and the Debtors, which will be included in the Plan Supplement.

1.144 “*Residents Trust Interests*” means an uncertificated interest in the Residents Trust representing the rights of Participating Former Residents and Participating Current Residents.

1.145 “*Residents Trust Oversight Committee*” means the three-member committee of the Residents Trust appointed by the Committee.

1.146 “*Residents Trust Assets*” means (i) the Lifespace Resident Contributions, and (ii) the Estates’ rights to enforce the terms of the Lifespace Settlement and Contribution Agreement.

1.147 “*Residents Trustee*” means the Person identified as such in the Plan Supplement or other filing with the Bankruptcy Court, and retained as of the Effective Date pursuant to the terms of the Residents Trust Agreement, as the fiduciary responsible for implementing the applicable provisions of this Plan and the Residents Trust Agreement.

1.148 “*Retained Causes of Action*” means the Causes of Action, including the Landlord Litigation, that the Debtors or their Estates may hold and specifically retain and transfer to the Litigation Trust on the Effective Date. For the avoidance of doubt, Retained Causes of Action shall not include any Claims or Causes of Action against any Released Parties.

1.149 “*Sale Transaction*” means the transactions associated with the sale of substantially all the Debtors’ Assets, which transactions are described in the Asset Purchase Agreement.

1.150 “*Schedules*” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs, if any, filed by a Debtor pursuant to Bankruptcy Code section 521 and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

1.151 “*Secured Claim*” means any Claim against any Debtor: (i) secured by a Lien on property in which an Estate has an interest, which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to Bankruptcy Code section 553, to the extent of the value of the creditor’s interest in an

Estates' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (ii) Allowed as such pursuant to this Plan.

1.152 “*Series 2015 Bonds*” means, collectively, the Series 2015A Bonds and the Series 2015B Bonds.

1.153 “*Series 2015 Bond Claims*” means any and all Claims in respect of the Series 2015 Bonds.

1.154 “*Series 2015A Bonds*” means the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015A, in the original aggregate principal amount of \$53,600,000 issued pursuant to the 2015 Bond Indenture.

1.155 “*Series 2015B Bonds*” means the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015B, in the original aggregate principal amount of \$40,590,000 issued pursuant to the 2015 Bond Indenture.

1.156 “*Series 2017 Bonds*” means the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2017A, in the original aggregate principal amount of \$21,685,000 issued pursuant to the 2017 Bond Indenture.

1.157 “*Series 2017 Bond Claims*” means any and all Claims in respect of the Series 2017 Bonds.

1.158 “*SQLC*” means Senior Quality Lifestyles Corporation.

1.159 “*Taxing Authorities*” has the meaning set forth in Section 12.15 of this Plan.

1.160 “*Tax Liens*” has the meaning set forth in Section 12.15 of this Plan.

1.161 “*Trustee*” means (i) UMB Bank, N.A., in its capacity as successor Bond Trustee under the 2015 Bond Indenture and the 2017 Bond Indenture, and successor Master Trustee under the Original Master Indenture; and (ii) any successor trustee in any such capacity.

1.162 “*Unexpired Lease*” means a lease to which a Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365, including the Ground Lease.

1.163 “*Unimpaired*” means, with respect to a Claim, a Class of Claims that is “unimpaired” within the meaning of Bankruptcy Code section 1124.

1.164 “*U.S. Trustee*” means the Office of the United States Trustee for the Northern District of Texas.

1.165 “*U.S. Trustee Fees*” means all fees and charges assessed against the Estates of the Debtors under 28 U.S.C. § 1930.

1.166 “*Voting Agent*” means KCC.

1.167 “*Voting Deadline*” means the deadline to vote to accept or reject this Plan as set forth in the Disclosure Statement or an order of the Bankruptcy Court, as such deadline may be extended or modified from time to time.

B. Interpretation: Application of Definitions and Rules of Construction.

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan, as the same may be amended, waived, or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in Bankruptcy Code section 102 shall apply to this Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Unless otherwise provided, any reference in this Plan to an existing document, exhibit, or schedule means such document, exhibit, or schedule as it may have been amended, restated, revised, supplemented, or otherwise modified. If a time or date is specified for any payments or other Distribution under this Plan, it shall mean on or as soon as reasonably practicable thereafter. Further, where appropriate from a contextual reading of a term, each term includes the singular and plural form of the term regardless of how the term is stated and each stated pronoun is gender neutral.

C. Computation of Time.

In computing any period of time prescribed or allowed by the terms of this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. Any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

D. Controlling Document.

In the event of an inconsistency between this Plan and the Disclosure Statement, the terms of this Plan shall control in all respects. In the event of an inconsistency between this Plan and the Plan Supplement, the Plan Supplement shall control. In the event of an inconsistency between this Plan, the Plan Supplement and the Confirmation Order, the Confirmation Order shall control.

**SECTION 2. TREATMENT OF ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND U.S. TRUSTEE FEES**

2.1 *Administrative Claims.* Unless a holder of an Allowed Administrative Claim and the Plan Sponsors before the Effective Date agree to less favorable treatment, each holder of an Allowed Administrative Claim will be paid the full unpaid amount of such Allowed Administrative Claim in Cash: (i) if such Allowed Administrative Claim is based on liabilities that the Debtors incurred in the ordinary course of business after the Petition Date, on the Effective Date or in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, in the Plan Sponsors’ discretion, and without any further action by any holder of such Allowed Administrative Claim; (ii) if such Allowed Administrative Claim is due on the Effective Date, or, if such Allowed Administrative Claim is not due as of the Effective Date, on the date that such Allowed Administrative Claim becomes due or as soon as reasonably

practicable thereafter; (iii) if an Administrative Claim is not Allowed as of the Effective Date, on the date that is no later than thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order of the Bankruptcy Court or as soon as reasonably practicable thereafter; or (iv) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

To be eligible to receive Distributions under this Plan on account of an Administrative Claim that is not otherwise Allowed by this Plan, a request for payment of an Administrative Claim must be filed with the Bankruptcy Court on or before the Administrative Claims Bar Date. Any Administrative Claim that is not asserted in accordance herewith shall be deemed disallowed under this Plan and shall be forever barred against the Debtors, the Debtors' Estates, or any of the Debtors' Assets or property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup or recover such Claim. For the avoidance of doubt, holders of the DIP Facility Claims, the Escrow Resident Claims and the Diminution Claim shall not be required to file an Administrative Claim for the allowance and satisfaction of such Claims.

**2.2 Professional Claims.** All Professionals seeking payment of Professional Claims shall (i) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred in the Chapter 11 Cases by the date that is forty-five (45) days after the Effective Date and (ii) be paid (a) the full unpaid amount as is Allowed by the Bankruptcy Court within five (5) Business Days after the date that such Claim is Allowed by order of the Bankruptcy Court, or (b) upon such other terms as may be mutually agreed upon between the holder of such an Allowed Professional Claim and the Plan Sponsors; provided however that Professional Claims shall be cumulatively capped at \$1.5 million from the period of December 1, 2022 through the Effective Date, with holders of Professional Claims sharing Pro Rata in the \$1.5 million in the event Professional Claims exceed the cap. Any Professional Claim that is not asserted in accordance with Section 2.2 of this Plan or that exceed the cap shall be deemed disallowed under this Plan and shall be forever barred against the Plan Sponsors, the Debtors' Estates, or any of the Debtors' Assets or property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset, recoup or recover such Claim. All Professionals seeking payment of Professional Claims for amounts arising through November 30, 2022 shall file their respective interim fee applications for allowance of compensation for services rendered and reimbursement of expenses incurred in the Chapter 11 Cases through November 30, 2022 within twenty-one (21) days of entry of the Confirmation Order.

**2.3 Priority Tax Claims.** In accordance with Bankruptcy Code section 1123(a)(1), Priority Tax Claims have not been classified and are treated as described in this Section 2 of this Plan. Unless otherwise agreed by the holder of an Allowed Priority Tax Claim, any Person holding an Allowed Priority Tax Claim will receive, as determined by the Plan Sponsors in their sole discretion and in full satisfaction of such Claim, payment in Cash in full on the later of (i) the Effective Date, or as soon as reasonably practicable thereafter as determined by the Litigation Trustee, or (ii) the first Business Day after the date that is thirty (30) calendar days after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable.

2.4 ***U.S. Trustee Fees.*** U.S. Trustee Fees will be paid in full by the Debtors and the Litigation Trustee, as applicable, as they become due and owing.

2.5 ***Escrow Resident Claims.*** As of the Petition Date, the Entrance Fee Escrow held \$15,844,326. As of October 31, 2022, the Entrance Fee Escrow balance held for the benefit of Residents, which excludes interest earned, is \$16,494,326. Within ten (10) days of the Effective Date, funds in the Entrance Fee Escrow shall be returned to those respective Residents that deposited such funds, pursuant to the terms of the Escrow Agreement, in full satisfaction of the Escrow Resident Claims.

2.6 ***DIP Facility Claims.*** The DIP Facility Claims shall be deemed Allowed Secured Claims and superpriority Administrative Claims in the full amount due and owing under the DIP Credit Agreement as of the Effective Date. The DIP Facility Claims shall be satisfied in full from Cash available on the Effective Date.

2.7 ***Diminution Claim.*** The Diminution Claim shall be deemed an Allowed superpriority Administrative Claim in the full amount due and owing under the DIP Orders as of the Effective Date. The Diminution Claim shall be satisfied in full from Cash available on the Effective Date. Such Diminution Claim is at least the amount due under the DIP Facility.

2.8 ***Dallas County Claim.*** The Dallas County Claim shall be deemed an Allowed Secured Claim as of the Effective Date. The Dallas County Claim shall be satisfied in full from Cash available on the Effective Date.

### **SECTION 3. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

3.1 ***Classification and Specification of Treatment of Claims.*** Pursuant to Bankruptcy Code sections 1122 and 1123, Claims (other than Allowed Administrative Claims, Priority Tax Claims, Professional Claims, DIP Facility Claims, the Dallas County Claim, the Escrow Resident Claims, the Diminution Claim and U.S. Trustee Fees) are classified for all purposes, including, without limitation, voting, confirmation and Distribution pursuant to this Plan, as set forth herein. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving Distributions under this Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

This Plan is premised upon the substantive consolidation of the Debtors solely for the purposes of voting, determining which Classes have accepted this Plan, confirming this Plan, and the resultant treatment of Claims and Interests and Distributions under this Plan.

#### 3.2 ***Classes of Claims and Interests.***

<b>Class</b>	<b>Claim</b>	<b>Estimated Allowed Claims</b>	<b>Status</b>	<b>Voting Rights</b>

1	Other Priority Claims	\$19,182.99	Unimpaired	Deemed to Accept
2	Bond Claims	\$111,728,919.22	Impaired	Entitled to Vote
3	Other Secured Claims	\$0	Unimpaired	Deemed to Accept
4	General Unsecured Claims	\$206,313,419 <sup>4</sup>	Impaired	Entitled to Vote
5	Participating Former Resident Refund Claims	\$37,101,059.29	Impaired	Entitled to Vote
6	Participating Current Resident Refund Claims	\$106,809,920.49	Impaired	Entitled to Vote
7	Intercompany Claims	\$5,221,798.74	Impaired	Deemed to Reject
8	Interests in Debtors	N/A	Impaired	Deemed to Reject

3.2.1 Class 1 — Other Priority Claims. In accordance with the Proofs of Claim on file, there are asserted priority claims in the amount of \$19,182.99. To the extent that such Claims have been or will be Allowed, Class 1 Claims will be Unimpaired and not entitled to vote on this Plan. Except to the extent that a holder of an Allowed Other Priority Claim has agreed to a different treatment of such Claim, each such holder shall receive, in full satisfaction of such Allowed Other Priority Claim, Cash in an amount equal to such Allowed Other Priority Claim, on or as soon as reasonably practicable after the later of (i) the Effective Date; (ii) the date the Other Priority Claim becomes an Allowed Claim; or (iii) the date for payment provided by any agreement or arrangement between the Plan Sponsors and the holder of the Allowed Other Priority Claim.

3.2.2 Class 2 — Bond Claims. Class 2 is Impaired and entitled to vote on this Plan. This Class consists of all Bond Claims and includes all Claims of the holders of the Series 2015 Bonds and the Series 2017 Bonds, which Claims shall be deemed Allowed pursuant to this Plan in the aggregate principal amount of \$109,185,000, plus accrued and unpaid interest as of the Petition Date in the amount of \$2,543,919.22. On the Effective Date, the Net Sale Proceeds after payment of Allowed Administrative Claims, Priority Tax Claims, Professional Claims, DIP Facility Claims, the Dallas County Claim, the Diminution Claim and U.S. Trustee Fees, shall be paid to the Trustee, which funds shall be disbursed to holders of the Bond Claims in accordance with the Original Bond Documents. Further, the Lifespace Bond Contribution will be paid to the Trustee on the Effective Date, which funds shall be disbursed to holders of the Bond Claims in accordance with the Original Bond Documents. Assuming no competing qualified bids are received and the Sale Transaction with the initial Purchaser closes, Holders of Bond Claims are estimated to receive Distributions of approximately 40% of their Bond Claims. The Bond

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<sup>4</sup> Includes (i) an estimated Bond Deficiency Claim of \$60,902,439.22 based upon the initial Purchaser's offer and the Lifespace Bond Contribution (after payment of other amounts set forth in the Plan), (ii) the \$143,910,979.78 Lifespace Resident Claim (subject to opt-out adjustment), and (iii) vendor claims of approximately \$1,500,000.



Deficiency Claim shall be treated on a Pro Rata basis with holders of Allowed General Unsecured Claims.

3.2.3 Class 3 — Other Secured Claims. This Class consists of all Other Secured Claims against the Debtors. In accordance with Debtors' books and records, no Class 3 Claims exist. To the extent that such Claims have been or will be asserted and Allowed, Class 3 Claims will be Unimpaired and not entitled to vote on this Plan. In full satisfaction of an Allowed Other Secured Claim, on the later of the Effective Date and the date on which the Other Secured Claim is Allowed, each holder of an Allowed Other Secured Claim shall receive, at the sole and exclusive option of the Plan Sponsors: (i) Cash equal to the amount of such Claim; (ii) return of the underlying collateral related to their Claims; or (iii) treatment of such Allowed Other Secured Claim in any other manner that renders the Claim Unimpaired, including Reinstatement.

3.2.4 Class 4 — General Unsecured Claims. Class 4 is Impaired and entitled to vote on this Plan. This Class consists of all General Unsecured Claims, including Class 5 and 6 Refund Claims of Residents who OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan, and including vendor claims of approximately \$1,500,000, the Bond Deficiency Claim and the Lifespace Resident Claim. Allowed General Unsecured Claims shall be paid a Pro Rata share of the Litigation Trust Proceeds. Holders of Allowed General Unsecured Claims are estimated to receive Distributions ranging from 0% to 50% of their Allowed General Unsecured Claims, depending on the outcome of the Landlord Litigation and the liquidation of other Litigation Trust Assets.

3.2.5 Class 5 — Participating Former Resident Refund Claims. Class 5 is Impaired and entitled to vote on this Plan. This Class consists of the Refund Claims of Participating Former Residents, who, for the avoidance of doubt, no longer reside at Edgemere as of the Voting Record Date. The Residency Agreements of Former Residents shall be rejected, and the holders of Allowed Class 5 Claims who OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan shall receive a Class 4 General Unsecured Claim in an amount equal to their Refund Claim. Former Residents who do not OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan (i.e. Participating Former Residents) shall receive Cash from the Residents Trust within sixty (60) days of the Refund Trigger Date in an amount equal to their Refund Claim.<sup>5</sup>

3.2.6 Class 6 — Participating Current Resident Refund Claims. Class 6 is Impaired and entitled to vote on this Plan. This Class consists of the Refund Claims of Participating Current Residents, who, for the avoidance of doubt, reside at Edgemere, as of the Voting Record Date. The Residency Agreements of Current Residents shall be rejected, and the holders of Allowed Class 6 Claims who OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan shall receive a Class 4 General Unsecured Claim in an amount equal to their Refund Claim. Current Residents who do not OPT OUT of the Lifespace Settlement and the releases under

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<sup>5</sup> The Residents Trust shall be informed of units which have been re-leased semi-annually by the Purchaser, which shall be the date the Residents Trust is deemed informed of units which have been re-leased for purposes of the Refund Trigger Date.

Section 8 of this Plan (i.e. Participating Current Residents) shall receive Cash from the Residents Trust within sixty (60) days of the Refund Trigger Date in an amount equal to their Refund Claim.<sup>6</sup>

3.2.7 Class 7 — Intercompany Claims. Class 7 is Impaired and not entitled to vote on this Plan. This Class consists of all Claims held by Lifespace against the Debtors. Class 7 Claims shall be waived and released and Lifespace, as holder of such Claims, shall receive no Distribution on account of Class 7 Claims.

3.2.8 Class 8 — Interests in Debtors. Class 8 is Impaired and deemed to reject this Plan. This Class consists of Interests of Lifespace in the Debtors, which Interests shall be terminated on the Effective Date.

### 3.3 *Acceptance or Rejection of this Plan.*

3.3.1 Acceptance by an Impaired Class. In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

3.3.2 Presumed Acceptance of this Plan. Classes 1 and 3 are conclusively presumed to have accepted this Plan pursuant to Bankruptcy Code section 1126(f).

3.3.3 Presumed Rejection of this Plan. Classes 7 and 8 are Impaired under this Plan and will receive no Distributions and, thus, are conclusively presumed to have rejected this Plan pursuant to Bankruptcy Code section 1126(g).

3.3.4 Voting Class. Classes 2, 4, 5 and 6 are Impaired under this Plan and are entitled to vote to accept or reject this Plan.

3.4 *Subordinated Claims.* The allowance, classification, and treatment of all Allowed Claims and Interests and the respective Distributions and treatments under this Plan take into account the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, Bankruptcy Code section 510(b), or otherwise. For purposes of Bankruptcy Rule 7001(8), this Plan provides for subordination. The Litigation Trustee, as set forth herein, shall have the right to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto under the Bankruptcy Code as long as such treatment is consistent with the terms of the Litigation Trust Agreement. Subordinated Claims shall not receive a Distribution under this Plan until any and all senior Allowed Claims are paid in full.

3.5 *Cramdown.* If all applicable requirements for confirmation of this Plan are met as set forth in Bankruptcy Code section 1129(a) except subsection (8) thereof, the Plan

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<sup>6</sup> The Residents Trust shall be informed of units which have been re-leased semi-annually by the Purchaser, which shall be the date the Residents Trust is deemed informed of units which have been re-leased for purposes of the Refund Trigger Date.

Sponsors shall request that the Bankruptcy Court confirm this Plan in accordance with Bankruptcy Code section 1129(b) on the bases that this Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims or Interests that is Impaired hereunder, and has not accepted or is deemed to reject, this Plan.

#### **SECTION 4. MEANS FOR IMPLEMENTATION OF THIS PLAN**

##### **4.1 *Sale Transaction.***

4.1.1 Sale Transaction. Consistent with the Asset Purchase Agreement, substantially all of the property in the Estates shall be sold to the Purchaser (including such Purchaser to be identified as the winning bidder following an Auction), free and clear of all Liens, Claims, charges, or other encumbrances pursuant to section 1123(a)(5)(D) of the Bankruptcy Code, with all such Liens, Claims, charges or other encumbrances attaching automatically to the Net Sale Proceeds in the same manner, extent, validity and priority as existed on the Closing Date, with the Net Sale Proceeds to be distributed pursuant to this Plan; provided, however, that ad valorem personal property tax liens arising and attaching to the subject property by operation of law on January 1, 2023 shall remain attached to the Assets and ad valorem personal property taxes for tax year 2023 shall be the responsibility of the Purchaser, subject to being Pro Rated pursuant to Section 2.6 of the Asset Purchase Agreement and subject to any defenses available under applicable Texas Law; the Taxing Authorities shall retain the right to enforce their liens and take all actions provided by applicable Texas Law. An initial Purchaser has been identified, whose purchase offer in the amount of \$48.5 million (subject to the adjustments in the Asset Purchase Agreement) is subject to higher and better bids. If a competing qualified bid is received by January 13, 2023 at 4:00 p.m. (prevailing Central Time), an Auction shall be held on January 17, 2023 at 10:00 a.m. (prevailing Central Time) to determine the ultimate Purchaser. Upon the Closing of the Sale Transaction, all Net Sale Proceeds therefrom after payments required under the Plan to pay any unpaid Allowed Administrative Claims, Priority Tax Claims, Professional Claims, DIP Facility Claims, the Dallas County Claim, Diminution Claim and the U.S. Trustee Fees, shall be paid to the Trustee for Distribution to holders of Original Bonds, pursuant to the terms of the Original Bond Documents.

4.1.2 Monthly Rental Agreements. The Asset Purchase Agreement contemplates the rejection of all Residency Agreements, provided that, subject to regulatory approvals and/or requirements, any Purchaser shall offer to all Current Residents a monthly rental agreement which, subject to regulatory approvals and/or requirements, shall provide similar services to Current Residents as provided prior to the Closing Date.

4.1.3 Transition to Purchaser. The Asset Purchase Agreement contemplates both the rejection of the Debtors' agreement with Lifespace to manage the Community, and the Purchaser receiving all regulatory approvals to operate the Purchased Assets at or prior to the Closing Date. Prior to the Closing Date, the Debtors and Lifespace shall provide prompt and reasonable assistance in connection with the approval or implementation of the Asset Purchase Agreement or any ancillary agreements, including, without limitation, providing information in connection with Purchaser's seeking of regulatory approvals necessary to own and operate the Community.

4.1.4 [Injunction Against Solicitation]. The Asset Purchase Agreement contemplates that the Purchaser will continue to operate the Community as a senior living community. In consideration for being a Released Party, Lifespace, on behalf of itself and any of its affiliates, subsidiaries, representatives, or agents, agrees that, without the prior written consent of Purchaser, (i) from the Confirmation Date and until the second anniversary of the Effective Date, Lifespace shall not hire or solicit for employment any individual that was an employee of the Community at any time from November 2, 2022 to the Effective Date; provided, however, Lifespace shall not be prohibited from hiring any individual that responds to a general public solicitation made by Lifespace regarding employment opportunities that is not specifically targeted at such persons, and (ii) shall not solicit by direct contact (as opposed to marketing to the public generally) any individuals that are or were Residents of the Community at any time from November 2, 2022 to the Closing Date for movement or relocation to any other senior living community located in Texas; provided, however, Lifespace shall not be prohibited from responding to any direct inquiry from a Resident regarding potential movement or relocation to such other senior living community in Texas.]<sup>7</sup>

4.1.5 Transfer of Assets to Litigation Trust. On the Effective Date, all of the Estates' assets not sold in the Sale Transaction shall be transferred to the Litigation Trust and administered as set forth more fully below.

**4.2 *Creation of the Litigation Trust and Appointment of the Litigation Trustee and Litigation Trust Oversight Committee.***

4.2.1 Creation of the Litigation Trust. On or prior to the Effective Date, the Debtors shall execute the Litigation Trust Agreement. On the Effective Date, the Litigation Trust shall become effective and shall be deemed to be valid, binding and enforceable in accordance with the terms and provisions of this Plan and the Litigation Trust Agreement. After the Effective Date, the Litigation Trust Agreement may be amended in accordance with its terms without further order of the Bankruptcy Court. The Litigation Trust Agreement shall be satisfactory in form and substance to the Plan Sponsors.

4.2.2 Purpose of the Litigation Trust. The Litigation Trust shall be established for the purposes of (i) liquidating any non-Cash Litigation Trust Assets; (ii) maximizing recovery of the Litigation Trust Assets for the benefit of the holders of Litigation Trust Interests; (iii) distributing the proceeds of the Litigation Trust Assets to holders of the Litigation Trust Interests in accordance with this Plan and the Litigation Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except only in the event and to the extent necessary for, and consistent with, the liquidating purpose of the Litigation Trust; (iv) prosecuting or otherwise resolving the Retained Causes of Action for the benefit of the holders of the Litigation Trust Interests; and (v) winding down the Chapter 11 Cases as provided in this Plan.

4.2.3 Funding of the Litigation Trust. On the Effective Date, Cash in the amount of \$500,000 will be funded Pro Rata by the Trustee and Lifespace. The Cash will be set

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<sup>7</sup> The Purchaser has requested this provision.

aside for the sole purpose of paying Litigation Trust Expenses to be incurred by the Litigation Trust.

4.2.4 Transfer of Litigation Trust Assets to the Litigation Trust. As of the Effective Date, pursuant to the provisions of sections 1141(b) and (c) of the Bankruptcy Code, the Debtors and the Estates shall preserve, transfer and assign all of their respective right, title and interest in and to all of the Litigation Trust Assets, which shall automatically vest in the Litigation Trust free and clear of all Claims, Liens, encumbrances, charges, Interests and other interests, subject only to the Allowed Claims of the holders of Litigation Trust Interests as set forth in this Plan and in the Litigation Trust Agreement.

4.2.5 Appointment of the Litigation Trustee. On the Effective Date, the Litigation Trustee shall be deemed the Estates' representative solely with respect to the Litigation Trust Assets in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified in this Plan and Litigation Trust Agreement solely with respect to the Litigation Trust Assets, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004.

4.2.6 Governance of Litigation Trust. The Litigation Trust shall be governed by the Litigation Trust Agreement and administered by the Litigation Trustee who shall report to the Litigation Trust Oversight Committee in accordance with the terms of this Plan and the Litigation Trust Agreement.

4.2.7 Tax Treatment. Except to the extent allocable to Disputed Claims, consistent with the principles of Revenue Procedure 94-45, 1994-2 C.B. 684, as of the Effective Date, for federal income tax purposes, (i) the Debtors will be deemed to transfer the Litigation Trust Assets to the holders of the Litigation Trust Interests, (ii) the holders of the Litigation Trust Interests will be deemed to transfer such Assets to the Litigation Trust, (iii) the Litigation Trust will be treated as a "liquidating trust," as defined in Treasury Regulation section 301.7701-4(d), and as a "grantor trust" within the meaning of Internal Revenue Code sections 671-679 and (iv) the holders of the Litigation Trust Interests will be treated as the "grantors" of the Litigation Trust.

4.2.8 Securities Registration Exemption. The Plan Sponsors intend that the Litigation Trust Interests shall not be deemed "securities" under applicable laws, but to the extent such units are deemed to be "securities," the Plan Sponsors believe the issuance of such units under this Plan is exempt, pursuant to section 1145 of the Bankruptcy Code (except with respect to an entity that is an "underwriter" as defined in section 1145(b) of the Bankruptcy Code).

4.2.9 Rights, Powers and Duties of the Litigation Trust and the Litigation Trustee. The Litigation Trustee will act for the benefit of holders of Litigation Trust Interests in a fiduciary capacity and shall have comparable authority as a bankruptcy trustee of the Debtors, as the exclusive representative of the Estates under section 1123(a)(5)(B) of the Bankruptcy Code or any corresponding federal or state laws with respect to the Litigation Trust Assets and shall succeed to all the Debtors' and the Estates' rights with respect thereto, subject to the provisions of this Plan and the Litigation Trust Agreement. The Litigation Trust is the successor to the Debtors and their Estates. The powers, rights and duties of the Litigation Trustee shall arise on the Effective Date

and shall include, all subject to the terms and conditions of the Litigation Trust Agreement, the following:

- (a) commencing, pursuing and liquidating all of the Litigation Trust Assets;
- (b) engaging attorneys, consultants, agents, employees and any other professional persons to assist the Litigation Trustee with respect to the Litigation Trustee's responsibilities;
- (c) paying the fees and expenses of the attorneys, consultants, agents, employees and other professional persons engaged by the Litigation Trust and paying all other expenses;
- (d) compromising and settling Claims without notice or Bankruptcy Court approval;
- (e) calculating and implementing Distributions of Litigation Trust Assets for the benefit of the holders of the Litigation Trust Interests;
- (f) resolving issues involving Claims and Interests in accordance with this Plan;
- (g) consulting with members of the Litigation Trust Oversight Committee regarding the prosecution and/or settlement of Retained Causes of Action and reporting to the Litigation Trust Oversight Committee regarding such matters, and seeking approval from the Litigation Trust Oversight Committee regarding the prosecution and/or settlement of each Cause of Action, to the extent set forth in the Litigation Trust Agreement;
- (h) investing Cash in accordance with section 345 of the Bankruptcy Code, and withdrawing and making Distributions of Cash to holders of Litigation Trust Interests holding and paying taxes and other obligations incurred by the Litigation Trustee in connection with winding down the Estates in accordance with this Plan;
- (i) coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any Litigation Trust Assets;
- (j) taking possession of all books, records, and files of the Debtors and their Estates; and providing for the retention and storage of such books, records, and files until such time as the Litigation Trust determines, in accordance with the Litigation Trust Agreement, that retention of same is no longer necessary or required;
- (k) overseeing compliance with the accounting, finance and reporting obligations;
- (l) paying taxes or other obligations incurred by the Litigation Trust;
- (m) preparing financial statements and U.S. Trustee post-confirmation quarterly reports, and filing such reports on the docket of the Chapter 11 Cases until such time as a final decree has been entered;

- (n) overseeing the filing of final tax returns, refund requests, audits and other corporate dissolution documents, as required;
- (o) performing any additional corporate actions as necessary to carry out the wind down and liquidation of the Estates;
- (p) exercising such other powers as may be vested in or assumed by the Litigation Trustee pursuant to this Plan, the Litigation Trust Agreement or other Order of the Bankruptcy Court or as may be needed or appropriate to carry out the provisions of this Plan; and
- (q) undertaking all administrative functions of the Chapter 11 Cases, including the payment of fees payable to the U.S. Trustee and the ultimate closing of the Chapter 11 Cases.

4.2.10 Litigation Trust Interests. Holders of Allowed General Unsecured Claims shall, by operation of this Plan, receive a Pro Rata share of the Litigation Trust Interests in accordance with the terms of and priorities set forth in this Plan. Litigation Trust Interests shall also be reserved for holders of Disputed Claims which, if Allowed, would be entitled to participate in Distributions from the Litigation Trust, and such reserved Litigation Trust Interests shall be held by the Litigation Trustee pending allowance or disallowance of such Claims. No other Person shall have any interest, legal, beneficial or otherwise, in the Litigation Trust Assets upon the assignment and transfer of such assets to the Litigation Trust. As set forth in the Litigation Trust Agreement, Distributions from the Litigation Trust on account of Litigation Trust Interests shall be made from the Litigation Trust Assets after paying, reserving against or satisfying, among other things, the Litigation Trust Expenses. The Litigation Trust Interests shall be uncertificated and shall be nontransferable except upon death of the holder or by operation of law. Holders of Litigation Trust Interests shall have no voting rights with respect to such interests.

4.2.11 Pending Adversary Proceedings. Without the need for filing any motion for such relief, in connection with the Litigation Trust Assets, the Litigation Trust or the Litigation Trustee (as applicable) hereby shall be deemed substituted for the applicable Debtor (i) in all pending matters including, but not limited to, motions, contested matters and adversary proceedings in the Bankruptcy Court; and (ii) with respect to any Retained Causes of Action pending before the Bankruptcy Court or any other court.

4.2.12 Preservation of Right to Conduct Investigations. The preservation for the Litigation Trust of any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 is necessary and relevant to the liquidation and administration of the Litigation Trust Assets. Accordingly, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 held by the Debtors prior to the Effective Date shall vest with the Litigation Trust and shall continue until dissolution of the Litigation Trust.

#### **4.3 *Creation of the Residents Trust and Appointment of the Residents Trust Trustee and Residents Trust Oversight Committee.***

4.3.1 Upon the Plan Effective Date, a Residents Trust will be formed. The Residents Trust shall receive and distribute the Lifespace Resident Contributions pursuant to the

terms of the Lifespace Settlement and Contribution Agreement, the Plan and the Residents Trust Agreement. Holders of Residents Trust Interests shall consist of Participating Former Residents and Participating Current Residents.

4.3.2 Creation of the Residents Trust. On or prior to the Effective Date, the Committee and the Debtors shall execute the Residents Trust Agreement. On the Effective Date, the Residents Trust shall become effective and shall be deemed to be valid, binding and enforceable in accordance with the terms and provisions of the Plan and the Residents Trust Agreement. After the Effective Date, the Residents Trust Agreement may be amended in accordance with its terms without further order of the Bankruptcy Court. The Residents Trust Agreement shall be satisfactory in form and substance to the Committee and Lifespace.

4.3.3 Purpose of the Residents Trust. The Residents Trust shall be established for the purposes of (i) receiving the Lifespace Resident Contributions and the Estates' rights to enforce the terms of the Lifespace Settlement and Contribution Agreement; and (ii) distributing the proceeds of the Residents Trust Assets to Participating Former Residents and Participating Current Residents in accordance with the terms of the Plan and the Residents Trust Agreement. The trustee of the Residents Trust (the "**Residents Trust Trustee**") will act for the benefit of holders of Residents Trust Interests in a fiduciary capacity. Holders of Residents Trust Interests shall consist of Holders of Participating Former Residents and Participating Current Residents. Holders of Residents Trust Interests shall receive a distribution from the Residents Trust in accordance with the terms of the Plan and the Residents Trust Agreement.

4.3.4 Funding of the Residents Trust. Residents Trust expenses incurred by the Residents Trust shall be paid from Residents Trust Assets.

4.3.5 Transfer of Rights under the Lifespace Settlement and Contribution Agreement to the Residents Trust. As of the Effective Date, pursuant to the provisions of sections 1141(b) and (c) of the Bankruptcy Code, the Debtors and the Estates shall preserve, transfer and assign all of their respective right, title and interest in and under the Lifespace Settlement and Contribution Agreement, which shall automatically vest in the Residents Trust and Residents Trust Trustee free and clear of all Claims, Liens, encumbrances, charges, Interests and other interests, subject only to the Allowed Claims of the holders of Residents Trust Interests as set forth in the Plan and in the Residents Trust Agreement.

4.3.6 Appointment of the Residents Trust Trustee. On the Effective Date, the Residents Trust Trustee shall be appointed by a three-member Residents Trust Oversight Board appointed by the Committee and shall be deemed the Estates' representative solely with respect to the Residents Trust Assets in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified in the Plan and Residents Trust Agreement solely with respect to the Residents Trust Assets, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004.

4.3.7 Governance of Residents Trust. The Residents Trust shall be governed by the Residents Trust Agreement and administered by the Residents Trust Trustee who shall report to the Residents Trust Oversight Committee in accordance with the terms of the Plan and the Residents Trust Agreement.



4.3.8 Tax Treatment. The Debtors and the Committee will structure the Residents Trust as either a taxable trust or as a grantor trust (and not as a qualified settlement fund within the meaning of Section 1.468B-1 of the Treasury Regulations), with the goal of minimizing the cost and expense of reporting and paying tax on net investment income of the Residents Trust. If structured as a grantors trust, except to the extent allocable to Disputed Claims, consistent with the principles of Revenue Procedure 94-45, 1994-2 C.B. 684, as of the Effective Date, for federal income tax purposes, (i) the Debtors will be deemed to transfer the Residents Trust Assets to the holders of the Residents Trust Interests, (ii) the holders of the Residents Trust Interests will be deemed to transfer such Residents Trust Assets to the Residents Trust, (iii) the Residents Trust will be treated as a “liquidating trust,” as defined in Treasury Regulation section 301.7701-4(d), and as a “grantor trust” within the meaning of Internal Revenue Code sections 671-679 and (iv) the holders of the Residents Trust Interests will be treated as the “grantors” and deemed owners of the Residents Trust.

In Revenue Procedure 94-45, the IRS states that a liquidating trust’s term is generally not more than five (5) years from the date of creation and that is reasonable based on all fact and circumstances. Although the Residents Trust’s term is expected to be eighteen (18) years or slightly longer, it is believed that such term is reasonable to carry out the intent of the Residents Trust as a liquidating trust if structured as a liquidating trust.

4.3.9 Securities Registration Exemption. The Plan Sponsors intend that the Residents Trust Interests shall not be deemed “securities” under applicable laws, but to the extent such units are deemed to be “securities,” the Plan Sponsors believe the issuance of such units under the Plan is exempt, pursuant to section 1145 of the Bankruptcy Code (except with respect to an entity that is an “underwriter” as defined in section 1145(b) of the Bankruptcy Code).

4.3.10 Rights, Powers and Duties of the Residents Trust and the Residents Trust Trustee. The Residents Trust Trustee will act for the benefit of holders of Residents Trust Interests in a fiduciary capacity and shall have comparable authority as a bankruptcy trustee of the Debtors, as the exclusive representative of the Estates under section 1123(a)(5)(B) of the Bankruptcy Code or any corresponding federal or state laws with respect to the Residents Trust Assets and shall succeed to all the Debtors’ and the Estates’ rights with respect thereto, subject to the provisions of the Plan and the Residents Trust Agreement. The Residents Trust is the successor to the Debtors and their Estates. The powers, rights and duties of the Residents Trust Trustee shall arise on the Effective Date and shall include, all subject to the terms and conditions of the Residents Trust Agreement, the following:

- (a) engaging attorneys, consultants, agents, employees and any other professional persons to assist the Residents Trust Trustee with respect to the Residents Trust Trustee’s responsibilities;
- (b) paying the fees and expenses of the attorneys, consultants, agents, employees and other professional persons engaged by the Residents Trust and paying all other expenses;
- (c) calculating and implementing Distributions of Residents Trust Assets for the benefit of the holders of the Residents Trust Interests;

- (d) consulting with members of the Residents Trust Oversight Committee regarding the administration of the Residents Trust pursuant to the terms of the Plan and the Lifespace Settlement and Contribution Agreement;
- (e) investing Cash in accordance with section 345 of the Bankruptcy Code, and withdrawing and making Distributions of Cash to holders of Residents Trust Interests holding and paying taxes and other obligations incurred by the Residents Trust Trustee in connection with winding down the Estates in accordance with the Plan;
- (f) overseeing compliance with the accounting, finance and reporting obligations;
- (g) paying taxes or other obligations incurred by the Residents Trust; and
- (h) exercising such other powers as may be vested in or assumed by the Residents Trust Trustee pursuant to this Plan, the Residents Trust Agreement or other Order of the Bankruptcy Court or as may be needed or appropriate to carry out the provisions of this Plan.

4.3.11 Residents Trust Interests. Holders of Allowed Class 5 and 6 Claims that do not OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan shall, by operation of this Plan, receive a Pro Rata share of the Residents Trust Interests in accordance with the terms of and priorities set forth in the Plan. Residents Trust Interests shall also be reserved for holders of Disputed Claims which, if Allowed, would be entitled to participate in Distributions from the Residents Trust, and such reserved Residents Trust Interests shall be held by the Residents Trust Trustee pending allowance or disallowance of such Claims. No other Person shall have any interest, legal, beneficial or otherwise, in the Residents Trust Assets upon the assignment and transfer of such assets to the Residents Trust. As set forth in the Residents Trust Agreement, Distributions from the Residents Trust on account of Residents Trust Interests shall be made from the Residents Trust Assets after paying, reserving against or satisfying, among other things, the Residents Trust expenses. The Residents Trust Interests shall be uncertificated and shall be nontransferable except upon death of the holder or by operation of law. Holders of Residents Trust Interests shall have no voting rights with respect to such interests.

4.4 ***Entrance Fee Escrow.*** As of the Petition Date, the Entrance Fee Escrow held \$15,844,326. As of October 31, 2022, the Entrance Fee Escrow balance held for the benefit of Residents, which excludes interest earned, is \$16,494,326. Within ten (10) days of the Effective Date, funds in the Entrance Fee Escrow shall be returned to those respective Residents that deposited such funds, pursuant to the terms of the Escrow Agreement, in full satisfaction of the Escrow Resident Claims.

4.5 ***Corporate Action.*** Upon the Effective Date, all actions contemplated by this Plan (whether to occur before, on, or after the Effective Date) shall be deemed authorized and approved in all respects, and all matters provided for in this Plan involving the corporate structure of the Debtors and any corporate action required by the Debtors in connection with this Plan shall be deemed to have occurred, without any requirement of further action by the directors or officers of the Debtors.

On or (as applicable) before the Effective Date, the appropriate officers of the Debtors or the Litigation Trust, as applicable, shall be authorized and directed to issue, execute, and deliver the agreements, documents, securities, certificates of incorporation, operating agreements, and instruments contemplated by this Plan (or necessary or desirable to effect the transactions contemplated by this Plan), including all documents necessary to consummate the Sale Transaction, in the name of and on behalf of the Debtors or the Litigation Trust, as the case may be, and any and all other agreements, documents, securities, and instruments relating to the foregoing.

4.6 ***Section 1146 Exemption from Certain Taxes and Fees.*** Pursuant to Bankruptcy Code section 1146(a), any transfer of property and any issuance, transfer, or exchange of a security in connection with or pursuant to this Plan shall not be subject to any stamp, mortgage recording, or other similar tax, charge, or governmental assessment in the United States, and the Confirmation Order shall direct and be deemed to direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax, charge, or governmental assessment and, as applicable, to accept for filing and recordation instruments or other documents pursuant to such transfer of property or to permit the issuance, transfer, or exchange of a security without the payment of any such tax, charge, or governmental assessment. Such exemption specifically applies, without limitation, to (i) the sale of the Assets pursuant to the Asset Purchase Agreement effectuated under this Plan; (ii) the creation and recordation of any mortgage, deed of trust, lien, or other security interest; (iii) the making or assignment of any lease or sublease; and (iv) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with this Plan, including: (a) any merger agreements; (b) agreements of consolidation, restructuring, disposition, liquidation, or dissolution; (c) deeds; or (d) assignments executed in connection with any transaction occurring under this Plan.

4.7 ***Preservation of Causes of Action of the Debtors.*** In accordance with Bankruptcy Code section 1123(b), and except where such Causes of Action have been expressly released (including, for the avoidance of doubt, the Exculpated Claims against the Exculpated Parties and the Debtor Released Claims against the Released Parties), the Litigation Trustee shall be vested with the authority to enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, whether arising before or after the Petition Date, and the Litigation Trustee's right(s) to commence, prosecute, or settle such Causes of Action shall be consistent with the terms of the Litigation Trust Agreement. The Litigation Trustee is the sole party that may pursue such Causes of Action, as appropriate, in accordance with the best interests of the holders of the Litigation Trust Interests. No Person may rely on the absence of a specific reference in this Plan or the Disclosure Statement to any Cause of Action against such Person as any indication that the Debtors or the Litigation Trustee, as applicable, will not pursue any and all available Causes of Action against such Person. Except with respect to Causes of Action as to which the Debtors have released any Person on or before the Effective Date (including pursuant to the Releases by the Debtors or otherwise), the Litigation Trustee, as applicable, expressly reserves all rights to prosecute any and all Causes of Action of the Debtors against any Person, except as otherwise expressly provided in this Plan. Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan or by an order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Causes of Action for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise),

or laches, shall apply to such Causes of Action upon, after, or as a consequence of the confirmation or consummation of this Plan. For the avoidance of doubt, nothing in this Section 4.7 shall affect the “Releases by the Debtors” provided in Section 8.2 of this Plan.

Notwithstanding anything to the contrary contained herein, the Residents Trust Trustee shall be vested with the authority to enforce the terms of the Lifespace Settlement and Contribution Agreement, which are being assigned to the Residents Trust and the Residents Trust Trustee pursuant to this Plan.

4.8 ***Dismissal of Challenges.*** On July 12, 2022, the Committee filed the *Original Complaint*, commencing Case No. 22-03073-mvl and challenging the Bond Claims and related Liens under Bankruptcy Code section 544 (the “**Committee Challenge**”). The Committee Challenge has been abated on multiple occasions, most recently on November 29, 2022 for an additional sixty days. Furthermore, challenges were filed by certain Former Residents and their estates against the Initial Plan Sponsors’ Liens, security interests, and adequate protection granted under the DIP Orders and the Entrance Fee Escrow Order (collectively, the “**Resident Challenges**”). See Docket Nos. 448, 449, 456, 457, 467, 544. On September 2, 2022, the Court abated the Resident Challenges pending further notice of the parties. See Docket No. 605. Upon the Effective Date, the Committee Challenge and the Resident Challenges will be dismissed with prejudice.

## **SECTION 5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in this Plan or the Plan Supplement, all pursuant to Bankruptcy Code sections 365(a) and 1123. Unless otherwise indicated, all assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to this Plan are effective as of the Closing Date. Each Executory Contract or Unexpired Lease assumed pursuant to this Plan or by Bankruptcy Court order and assigned to a Purchaser shall vest in and be fully enforceable by the Purchaser in accordance with its terms, except as such terms may have been modified by such order. Notwithstanding anything to the contrary in this Plan, the Plan Sponsors reserve the right to alter, amend, modify, or supplement the list of Executory Contracts and Unexpired Leases identified in the Plan Supplement at any time before the Effective Date. After the Effective Date, the Purchaser shall have the right to terminate, amend, or modify any contracts, leases, or other agreements without approval of the Bankruptcy Court, subject to the terms thereof. For the avoidance of doubt, Section 5 of this Plan shall apply to all Executory Contracts and Unexpired Leases except as otherwise provided herein and to the extent addressed and decided by an order of the Bankruptcy Court.

5.1 ***Rejection of Residency Agreements.*** On the Closing Date and as set forth in the Asset Purchase Agreement, the Debtors shall reject the Residency Agreements of all Residents. Any Current Resident that desires to remain at the Community may do so, subject to regulatory approvals and/or requirements, by entering into a new monthly rental agreement which agreements will provide similar services to such Current Resident as provided under their prior Residency Agreement.

Notwithstanding anything herein to the contrary, for the sake of clarity and to avoid confusion, upon the rejection of the Residency Agreements, the holders of Refund Claims are not required to file Rejection Claims if such Resident Claimants agree with the proposed amount of the respective Resident Claimant's Refund Claim, as set forth in the Resident Claim Cover Letter accompanying the Resident Claimant's Ballot. Unless an additional Rejection Claim is filed by any Resident Claimants, all Resident Claimants shall be deemed to hold Allowed Class 5 or Class 6 Claims (unless they OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan, in which case they would hold Allowed Class 4 Claims) in the amount of their Refund Claim, as set forth in the Resident Claim Cover Letter accompanying each Resident Claimant's respective Ballot and/or solicitation materials, without the need to file a Rejection Claim for such Refund Claim. If any Resident Claimants disagree with the amount of their respective Refund Claim, as set forth in the Resident Claim Cover Letter accompanying each Resident Claimant's respective Ballot, then the Resident Claimants shall be required to file a Rejection Claim on or before the Rejection Damages Bar Date.

**5.2 Assumption and Rejection of Executory Contracts and Unexpired Leases.**

Unless assumed and assigned under the Asset Purchase Agreement, on the Closing Date the Debtors shall reject all Executory Contracts and Unexpired Leases. Resulting Rejection Claims will be treated as Class 4 General Unsecured Claims.

**5.3 Assumption of the Ground Lease.**

On the Closing Date and as set forth in the Asset Purchase Agreement, the Ground Lease shall be assumed, subject to the rights of the Litigation Trustee as set forth in this Plan and assigned to the Purchaser. The Landlord shall have an Allowed Administrative Claim for the amounts due and owing from the Petition Date through the Effective Date, subject to final approval of the Bankruptcy Court and the rights of parties in interest to challenge the asserted Administrative Claim amount. Nothing herein shall be construed as a waiver of the Litigation Trustee, the Plan Sponsors, the Committee or any third parties to pursue any and all Claims against the Landlord. The cure amount associated with the Ground Lease shall be funded from the Net Sale Proceeds into the Cure Escrow pending further order of the Bankruptcy Court as to the Allowed amount of such cure amount, with any balance following such order being distributed to the Trustee for distribution to holders of Bond Claims.

**5.4 Claims Based on Rejection of Executory Contracts or Unexpired Leases.**

All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed no later than the Rejection Damages Bar Date; *provided, that* any such Claims arising from the rejection of an Unexpired Lease shall be subject to the cap on rejection damages imposed by Bankruptcy Code section 502(b)(6). Any Claims arising from the rejection of an Executory Contract or Unexpired Lease that is not timely filed with the Bankruptcy Court (other than Refund Claims) will be automatically disallowed and forever barred from assertion and shall not be enforceable against the Debtors, the Estates, or the Debtors' property, without the need for any objection by any party or further notice to, action by, or order or approval of the Bankruptcy Court. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases, other than with respect to Resident Claimants, shall be classified as Class 4 Claims and shall be treated in accordance with this Plan.

**5.5 Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.**

Any provisions or terms of the Debtors' Executory Contracts or Unexpired Leases to be

assumed under the Sale Transaction that are, or may be, alleged to be in default, shall be satisfied solely by cure or by a waiver of cure agreed upon between the Purchaser and the applicable counterparty. Except with respect to Executory Contracts or Unexpired Leases in which the Purchaser and the applicable counterparties have stipulated in writing to payment of cure or with respect to Residency Agreements or the Ground Lease, the following procedures shall be established for determining cure with respect to the proposed assumed Executory Contracts or Unexpired Leases (the “**Proposed Assumed Contracts**”):

- (a) Within five (5) days after entry of the Bidding Procedures Order, the Plan Sponsors will file with the Bankruptcy Court and serve a notice to the counterparties to Executory Contracts and Unexpired Leases, other than Residents that are party to a Residency Agreement as of the Petition Date, (each, a “**Non-Resident Contract Counterparty**”), setting forth the Plan Sponsors’ calculation of each Non-Resident Contract Counterparty’s cure amount, if any, that would be owing to such Non-Resident Contract Counterparty if the Debtors were to assume or assume and assign such Executory Contract or Unexpired Lease, and alerting such Non-Resident Contract Counterparty that its agreement may be assumed and assigned to the Purchaser (the “**Cure and Possible Assumption and Assignment Notice**”). Any Non-Resident Contract Counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice, must file an objection (a “**Cure Objection**”) no later than January 10, 2023 at 4:00 p.m. (prevailing Central Time), which Cure Objection must be served on the following by e-mail: (a) counsel for the Initial Plan Sponsors, Daniel Bleck, dsbleck@mintz.com, Eric Blythe, erblythe@mintz.com, and Kaitlin Walsh, krwalsh@mintz.com; (b) RBC Capital Advisors, David Fields, david.fields@rbccm.com; (c) counsel for the Debtors, Trinitee G. Green, tggreen@polsinelli.com and Jeremy Johnson, jeremy.johnson@polsinelli.com, and (d) counsel for the Committee, Stephen A. McCartin, smccartin@foley.com, Thomas C. Scannell, tscannell@foley.com, and Mark Moore, mmoore@foley.com (collectively, the “**Notice Parties**”).
- (b) If a Non-Resident Contract Counterparty does not timely file and serve a Cure Objection, that party will be forever barred from objecting to the proposed cure amount. Where a Non-Resident Contract Counterparty files a timely Cure Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, and the Non-Resident Contract Counterparty and the Plan Sponsor are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors’ ability to assign the agreement to the Purchaser, will be determined at the Confirmation Hearing.
- (c) After the conclusion of the Auction, the Plan Sponsors shall file with the Bankruptcy Court and serve on the Notice Parties and Contract Counterparties a further notice (the “**Assumption Notice**”) identifying the Purchaser, stating which Executory Contracts or Unexpired Leases may be assumed and assigned to the Purchaser, and providing such Contract Counterparties with the Purchaser’s assurance of future performance. Any Contract Counterparty that objects to the adequacy of the assurance or assumption and/or assignment of its Executory Contract or Unexpired

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

- (d) For the avoidance of doubt, this section does not address Residency Agreements although the Residency Agreements are Executory Contracts. As provided above, any Purchaser must provide detail regarding the treatment of Residency Agreements with the Debtors’ Current Residents. To the extent a potential Purchaser includes the assumption of the Residency Agreements, the potential Purchaser will be required to satisfy the related cure costs and provide adequate assurance of future performance. The Assumption Notice shall include a description of the Purchaser’s proposed treatment of Residency Agreements.
- (e) Except as specified herein, assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults on the part of the Debtors or the Estates, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assumed and assignment Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assumption and assignment.

5.6 **Insurance Policies.** Notwithstanding anything herein to the contrary, as of the Closing Date, and unless specifically rejected by the Purchaser, the Debtors shall assume all of the Insurance Policies, including director and officer and general liability policies, identified by the Plan Sponsors in the Plan Supplement pursuant to Bankruptcy Code section 365(a). Entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the Debtors’ foregoing assumption of each of the Insurance Policies.

5.7 **Modifications, Amendments, Supplements, Restatements, or Other Agreements.** Unless otherwise provided, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated, or is rejected or repudiated under this Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11

Cases shall not be deemed to alter the perpetuation nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith, unless such Executory Contract or Unexpired Lease has been previously assumed by the Debtors.

5.8 **Reservation of Rights.** Nothing contained in this Plan or the Plan Supplement shall constitute an admission that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors have any liability thereunder.

5.9 **Nonoccurrence of Effective Date.** If the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases under Bankruptcy Code section 365(d)(4), unless such deadline(s) have expired.

## **SECTION 6. PROVISIONS GOVERNING DISTRIBUTIONS**

6.1 **Timing and Calculation of Amounts to Be Distributed.** Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such a Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each holder of an Allowed Claim against the Debtors shall receive the full amount of the Distributions that this Plan provides for Allowed Claims in the applicable Class and in the manner provided herein. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, Distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in this Plan. Except as otherwise provided for in this Plan, holders of Claims shall not be entitled to interest, dividends, or accruals on the Distributions provided for herein, regardless of whether such Distributions are delivered on or at any time after the Effective Date.

6.2 **Disbursements.** Except as otherwise provided in this Plan, all Distributions under this Plan shall be made by the Litigation Trustee.

6.3 **Rights and Powers of Litigation Trustee regarding Disbursements.** The Litigation Trustee shall be empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (ii) make all Distributions contemplated hereby; (iii) employ professionals to represent it with respect to its responsibilities; and (iv) exercise such other powers as may be vested in the Litigation Trustee by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Litigation Trustee to be necessary and proper to implement the provisions of this Plan.

6.4 **Payments and Distributions on Disputed Claims.** Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed Claims as of the Effective Date (but that later become Allowed Claims), shall be deemed to have been made on the Effective Date.

6.5 **Special Rules for Distributions to Holders of Disputed Claims.** Notwithstanding any other provision of this Plan and except as may be agreed to by the Plan



Sponsors or the Litigation Trustee, on the one hand, and the holder of a Disputed Claim, on the other hand, no partial payments and no partial Distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

6.6 ***Delivery of Distributions in General.*** Except as otherwise provided in this Plan, Distributions to holders of Allowed Claims shall be made to holders of record as of the Distribution Record Date by the Litigation Trustee, including the Distribution to the Trustee of the Net Sale Proceeds as provided in this Plan. Distributions to holders of Allowed Claims will be made at the address of each such holder as set forth in the Debtors' books and records, except that, in the case of holders of the Original Bonds, Distributions will be made by means of book-entry exchange through the facilities of the Depository Trust Company in accordance with the customary practices of the Depository Trust Company, as and to the extent practicable. Distributions under this Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each holder of an Allowed Claim shall have and receive the benefit of the Distributions in the manner set forth in this Plan. The Litigation Trustee shall not incur any liability whatsoever on account of any Distributions under this Plan except for gross negligence, willful misconduct, or fraud.

6.7 ***Undeliverable Distributions and Unclaimed Property.*** If any Distribution to any holder is returned as undeliverable, the Litigation Trustee shall use reasonable efforts to determine the current address of such holder. No Distribution to such holder shall be made unless and until the Litigation Trustee has determined such holder's then current address, at which time such Distribution shall be made as soon as practicable; *provided, however*, that such Distributions shall be deemed unclaimed property under Bankruptcy Code section 347(b) and forfeited at the expiration of six months from the later of (i) the Effective Date and (ii) the date of the initial attempted Distribution. After such date, all "unclaimed property" or interests in property shall revert to the Litigation Trust (notwithstanding any applicable federal or state escheat or abandoned or unclaimed property laws to the contrary), and the Claim of any holder to such property shall be discharged and forever barred.

6.8 ***Withholding and Reporting Requirements.*** In connection with this Plan and all instruments issued in connection therewith, the Litigation Trustee shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions under this Plan shall be subject to any such withholding or reporting requirements.

6.9 ***Setoffs.*** Except as otherwise provided herein and subject to applicable law, the Debtors shall, pursuant to the Bankruptcy Code (including Bankruptcy Code section 553), applicable non-bankruptcy law, or as may be agreed to by the holder of a Claim, setoff against any Allowed Claim (which setoff shall be made against the Allowed Claim, not against any Distributions to be made under this Plan with respect to such Allowed Claim), any claims, rights, and Causes of Action of any nature that the Debtors may hold against the holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action against such holder have not been otherwise released, waived, relinquished, exculpated, compromised, or settled on or prior to the Effective Date (whether pursuant to this Plan or otherwise), and any Distribution to which a holder is entitled under this Plan shall be made on account of the Claim, as reduced after application of

the setoff described above. In no event shall any holder of a Claim be entitled to setoff any Claim against any claim, right, or Cause of Action of the Debtors unless such holder obtains entry of a Final Order authorizing such setoff or unless such setoff is otherwise agreed to in writing by the Debtors and a holder of a Claim; *provided, that*, where there is no written agreement between the Debtors and a holder of a Claim authorizing such setoff, nothing herein shall prejudice or be deemed to have prejudiced the Debtors' right(s) to assert that any holder's setoff rights were required to have been asserted by motion to the Bankruptcy Court prior to the Effective Date. This Section 6.9 shall not be applicable to any Distributions to be made to or for the benefit of the beneficial holders of the Original Bonds.

6.10 ***Insurance Claims.*** No Distributions under this Plan shall be made on account of an Allowed Claim until the holder of such Allowed Claim has exhausted all remedies with respect to the Debtors' Insurance Policies. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim, then immediately upon such agreement, such Claim may be expunged without an objection to such Claim having to be filed and without any further notice to, action by, or order or approval of the Bankruptcy Court.

6.11 ***Applicability of Insurance Policies.*** Except as otherwise provided in this Plan, Distributions to holders of Allowed Claims shall be made in accordance with the provisions of any applicable Insurance Policy. Except as expressly provided in this Plan, nothing contained in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Person may hold against any other Person, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

6.12 ***Allocation of Distributions Between Principal and Unpaid Interest.*** With the exception of any Distributions on account of the Original Bonds, which shall be treated as provided in Class 2 herein (other than the Bond Deficiency Claim), to the extent that any Claim entitled to a Distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for U.S. federal income tax purposes, be allocated on the Debtors' books and records to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the accrued but unpaid interest.

6.13 ***Interest on Claims.*** Unless otherwise specifically provided for in this Plan, postpetition interest will not accrue or be paid on Claims, and no Claim holder will be entitled to interest accruing on or after the Petition Date on any Claim. Similarly, unless otherwise specifically provided for in this Plan, postpetition interest will not accrue or be paid on any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

## **SECTION 7. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS**

7.1 ***Prosecution of Objections to Claims.*** The Litigation Trustee shall have the exclusive authority to file, settle, compromise, withdraw, or litigate to judgment any objections to Claims as permitted under this Plan and the Litigation Trust Agreement. From and after the Effective Date, the Litigation Trustee may settle or compromise any Disputed Claim without

approval of the Bankruptcy Court, but subject to the terms and conditions of the Litigation Trust Agreement. The Litigation Trustee reserves all rights to resolve any Disputed Claim outside the Bankruptcy Court under applicable governing law.

7.2 ***Allowance of Claims.*** Except as expressly provided in this Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), the Litigation Trustee after the Effective Date will have and retain any and all rights and defenses held by the Debtors with respect to any Claim as of the Petition Date. All Claims of any Person against the Debtors shall be disallowed unless and until such Person pays, in full, the amount it owes the Debtors. For the avoidance of doubt, this section is not applicable to the Trustee or the beneficial holders of the Original Bonds.

7.3 ***Distributions After Allowance.*** As soon as practicable following the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Litigation Trustee shall provide to the holder of such Claim the Distribution (if any) to which such holder is entitled under this Plan, without any interest to be paid on account of such Claim.

7.4 ***Estimation of Claims.*** The Plan Sponsors (before the Effective Date) or the Litigation Trustee (on or after the Effective Date) may, at any time, and from time to time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to Bankruptcy Code section 502(c) regardless of whether an objection was previously filed with the Bankruptcy Court with respect to such Claim, or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any Disputed Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim against any party or Person, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Litigation Trustee may elect to pursue any supplemental proceedings to object to any ultimate Distribution on such Claim. All of the objection, estimation, settlement, and resolution procedures set forth in this Plan are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, objected to, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court. This Section of this Plan shall not be applicable to the Trustee or the beneficial holders of the Original Bonds.

## **SECTION 8. SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS**

8.1 ***Compromise and Settlement of Claims, Interests and Controversies.*** Pursuant to Bankruptcy Code section 1123 and Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided pursuant to this Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, including with respect to any challenges to the Bond Claims, or any Distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy

Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of this Plan, pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019(a), without any further notice to, action by, or order or approval of the Bankruptcy Court, after the Effective Date, the Litigation Trustee may compromise and settle Claims against the Debtors and Causes of Action against other Persons.

**8.2 *Releases by the Debtors.* PURSUANT TO BANKRUPTCY CODE SECTION 1123(b), AS OF THE EFFECTIVE DATE, AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PLAN, THE PLAN SUPPLEMENT, OR THE CONFIRMATION ORDER, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE INVESTMENT AND SERVICE OF THE RELEASED PARTIES TO FACILITATE THE EXPEDITIOUS REORGANIZATION OF THE DEBTORS AND THE IMPLEMENTATION OF THE RESTRUCTURING CONTEMPLATED BY THIS PLAN, THE RELEASED PARTIES ARE DEEMED RELEASED AND DISCHARGED BY THE DEBTORS, THE REORGANIZED DEBTOR, AND THE ESTATES FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, SETOFFS, RECOUPMENTS, REMEDIES, ENFORCEMENT RIGHTS AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT THE DEBTORS, THE REORGANIZED DEBTOR, THE ESTATES, OR THE RELEASED PARTIES WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST, OR OTHER PERSON, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, ANY ACT, REPRESENTATION, OMISSION, TRANSACTION, AFFILIATION, EVENT OR OTHER CIRCUMSTANCE TAKING PLACE OR EXISTING ON OR BEFORE THE EFFECTIVE DATE (INCLUDING BEFORE THE PETITION DATE) IN CONNECTION WITH OR RELATED TO THE DEBTORS, OR THEIR RESPECTIVE ASSETS, OPERATIONS, FINANCES, PROPERTY AND ESTATES, THE CHAPTER 11 CASES OR THE NEGOTIATION, FORMULATION, OR PREPARATION OF THIS PLAN, THE DISCLOSURE STATEMENT, THE PLAN SUPPLEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, THE DIP FACILITY, OR THE SALE TRANSACTION (COLLECTIVELY, THE “DEBTOR RELEASED CLAIMS”), OTHER THAN CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION OF A RELEASED PARTY OR A FORMER OFFICER OR DIRECTOR OF THE DEBTORS THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD) OR GROSS NEGLIGENCE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE RELEASE SET FORTH ABOVE DOES NOT RELEASE ANY PARTY WITH POST-EFFECTIVE DATE OBLIGATIONS UNDER THIS PLAN OR ANY DOCUMENT, INSTRUMENT, OR AGREEMENT (INCLUDING THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THIS PLAN FROM THOSE POST-EFFECTIVE DATE OBLIGATIONS. FOR THE AVOIDANCE OF DOUBT, THE LITIGATION TRUSTEE AND THE RESIDENTS TRUST TRUSTEE SHALL NOT HAVE AUTHORITY TO**

**PURSUE ANY DEBTOR RELEASED CLAIM(S) FOR THE BENEFIT OF ANY PARTY AS SUCH CLAIMS ARE RELEASED PURSUANT TO THIS PLAN AND, AS SUCH, DO NOT AND WILL NOT CONSTITUTE LITIGATION TRUST OR RESIDENTS TRUST ASSETS.**

**8.3 *Releases by Holders of Claims.* AS OF THE EFFECTIVE DATE AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PLAN, THE PLAN SUPPLEMENT, OR THE CONFIRMATION ORDER, FOR GOOD AND VALUABLE CONSIDERATION, EACH RELEASING PARTY SHALL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED THE DEBTORS, THE REORGANIZED DEBTOR, THE ESTATES, LIFESPACE, THE INITIAL PLAN SPONSORS, AND ALL OTHER RELEASED PARTIES FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, ENFORCEMENT RIGHTS, SETOFFS, RECOUPMENTS, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT SUCH PERSON WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN ITS OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF ANY OTHER PERSON, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, ANY ACT, REPRESENTATION, OMISSION, TRANSACTION, AFFILIATION, EVENT OR OTHER CIRCUMSTANCE TAKING PLACE OR EXISTING ON OR BEFORE THE EFFECTIVE DATE (INCLUDING BEFORE THE PETITION DATE) IN CONNECTION WITH OR RELATED TO THE DEBTORS, OR THEIR RESPECTIVE ASSETS, OPERATIONS, FINANCES, PROPERTY AND ESTATES, THE CHAPTER 11 CASES OR THE NEGOTIATION, FORMULATION, OR PREPARATION OF THIS PLAN, THE DISCLOSURE STATEMENT, ANY PLAN SUPPLEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, THE DIP FACILITY, OR THE SALE TRANSACTION (COLLECTIVELY, "CREDITOR RELEASED CLAIMS"), OTHER THAN CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION OF A RELEASED PARTY OR A FORMER OFFICER OR DIRECTOR OF THE DEBTORS THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD) OR GROSS NEGLIGENCE. FOR THE AVOIDANCE OF DOUBT, THE LITIGATION TRUSTEE AND THE RESIDENTS TRUST TRUSTEE SHALL NOT HAVE AUTHORITY TO PURSUE CREDITOR RELEASED CLAIMS.**

**NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS PLAN, THE DIP LENDER, THE TRUSTEE AND HOLDERS OF THE ORIGINAL BONDS SHALL ALL BE RELEASING PARTIES SOLELY WITH RESPECT TO ANY AND ALL CLAIMS RELATING TO THE DEBTORS (OTHER THAN CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD) OR GROSS NEGLIGENCE), BUT NOT WITH RESPECT TO ANY OTHER CLAIMS SUCH HOLDERS MAY HAVE UNRELATED TO THE DEBTORS, INCLUDING BUT NOT LIMITED TO ANY**

**OBLIGATIONS OWED TO BONDHOLDERS IN CONNECTION WITH BONDS ISSUED BY LIFESPACE.**

8.4 *Exculpation.* UPON THE EFFECTIVE DATE, THE PLAN SPONSORS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS, AND OTHER PROFESSIONAL ADVISORS AND AGENTS WILL BE DEEMED TO HAVE SOLICITED ACCEPTANCES OF THIS PLAN IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING BANKRUPTCY CODE SECTION 1125(E).

EXCEPT WITH RESPECT TO ANY ACTS OR OMISSIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THIS PLAN, THE PLAN SUPPLEMENT, OR ANY RELATED DOCUMENTS, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH, OR RELATED TO FORMULATING, NEGOTIATING, PREPARING, DISSEMINATING, IMPLEMENTING, ADMINISTERING, CONFIRMING, OR EFFECTING THIS PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THIS PLAN, THE FILING OF THE CHAPTER 11 CASES, THE PURSUIT OF CONFIRMATION OF THIS PLAN, THE ADMINISTRATION AND IMPLEMENTATION OF THIS PLAN, THE DISTRIBUTION OF PROPERTY UNDER THIS PLAN, OR ANY OTHER RELATED AGREEMENT OR ANY OTHER PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR IN CONTEMPLATION OF THE RESTRUCTURING OF THE DEBTORS; PROVIDED, THAT THE FOREGOING "EXCULPATION" SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (INCLUDING FRAUD); PROVIDED FURTHER, THAT EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING HIS, HER, OR ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH, THIS PLAN OR ANY OTHER RELATED DOCUMENT, INSTRUMENT, OR AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THE LITIGATION TRUSTEE AND THE RESIDENTS TRUST TRUSTEE SHALL NOT HAVE AUTHORITY TO PURSUE ANY CLAIMS DESCRIBED IN SECTION 8 OF THIS PLAN AGAINST ANY EXCULPATED PARTY.

8.5 *Discharge of Claims.* PURSUANT TO BANKRUPTCY CODE SECTION 1141(D), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE BAR DATE ORDER, IN THIS PLAN, OR IN ANY CONTRACT, INSTRUMENT, OR OTHER AGREEMENT OR DOCUMENT CREATED PURSUANT TO THIS PLAN, THE DISTRIBUTIONS, RIGHTS, AND TREATMENT THAT ARE PROVIDED IN THIS PLAN SHALL BE IN FULL AND FINAL SATISFACTION, SETTLEMENT, RELEASE, AND DISCHARGE, EFFECTIVE AS OF THE EFFECTIVE DATE, OF ALL CLAIMS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE,

**WHETHER KNOWN OR UNKNOWN, AGAINST, LIABILITIES OF, LIENS ON, OBLIGATIONS OF, AND RIGHTS AGAINST THE DEBTORS OR ANY OF THEIR ASSETS OR PROPERTIES, REGARDLESS OF WHETHER ANY PROPERTY SHALL HAVE BEEN DISTRIBUTED OR RETAINED PURSUANT TO THIS PLAN ON ACCOUNT OF SUCH CLAIMS, INCLUDING DEMANDS, LIABILITIES, AND CAUSES OF ACTION THAT AROSE BEFORE THE EFFECTIVE DATE, ANY CONTINGENT OR NON-CONTINGENT LIABILITY ON ACCOUNT OF REPRESENTATIONS OR WARRANTIES ISSUED ON OR BEFORE THE EFFECTIVE DATE, AND ALL DEBTS OF THE KIND SPECIFIED IN BANKRUPTCY CODE SECTIONS 502(G), 502(H), OR 502(I), IN EACH CASE WHETHER OR NOT: (I) A PROOF OF CLAIM BASED UPON SUCH CLAIM, DEBT, OR RIGHT IS FILED OR DEEMED FILED PURSUANT TO BANKRUPTCY CODE SECTION 501; (II) A CLAIM BASED UPON SUCH CLAIM, DEBT, OR RIGHT IS ALLOWED PURSUANT TO BANKRUPTCY CODE SECTION 502; OR (III) THE HOLDER OF SUCH A CLAIM HAS ACCEPTED THIS PLAN. EXCEPT AS OTHERWISE PROVIDED HEREIN, ANY DEFAULT BY THE DEBTORS WITH RESPECT TO ANY CLAIM THAT EXISTED BEFORE OR ON ACCOUNT OF THE FILING OF THE CHAPTER 11 CASES SHALL BE DEEMED CURED ON THE EFFECTIVE DATE. THE CONFIRMATION ORDER SHALL BE A JUDICIAL DETERMINATION OF THE DISCHARGE OF ALL CLAIMS SUBJECT TO THE EFFECTIVE DATE OCCURRING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN.**

**8.6 *Injunction.* FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY SUIT, ACTION, OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, ENFORCEMENT RIGHT, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED AGAINST ANY RELEASED PARTY PURSUANT TO THIS PLAN OR THE CONFIRMATION ORDER.**

**FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN THIS PLAN, ALL RELEASING PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, ENFORCEMENT RIGHT, INTEREST, OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO THIS PLAN.**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN, THE PLAN SUPPLEMENT, OR RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THIS PLAN, ALL PERSONS WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED, DISCHARGED, OR ARE SUBJECT TO EXCULPATION, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING**

**ACTIONS: (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY SUCH RIGHTS, CLAIMS OR INTERESTS; (II) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, RELIEF OR ORDER AGAINST SUCH PERSONS ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (III) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH PERSONS OR THE PROPERTY OR ESTATE OF SUCH PERSONS ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (IV) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF, IN CONNECTION WITH, OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, SETTLED, OR DISCHARGED PURSUANT TO THIS PLAN.**

**THE RIGHTS AFFORDED IN THIS PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THE DEBTORS' ASSETS, PROPERTY, OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN).**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS PLAN OR IN OBLIGATIONS ISSUED PURSUANT TO THIS PLAN FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND ALL INTERESTS SHALL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER BANKRUPTCY CODE SECTION 502(g).**

**ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, THE LITIGATION TRUST, ALL OTHER RELEASED PARTIES AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS, AND OTHER PROFESSIONAL ADVISORS, AGENTS AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS, OR ANY ACT OR OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, HOLDERS OF CLAIMS THAT OPT OUT OF THE RELEASES UNDER SECTION 8.3 OF THIS PLAN WILL NOT BE SUBJECT TO THE INJUNCTION WITH RESPECT TO PREPETITION CLAIMS AGAINST NON-DEBTOR ENTITIES.**



**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO RELEASES OR EXCULPATIONS CONTAINED HEREIN SHALL RELEASE LIFESPACE FROM ITS OBLIGATIONS TO THE RESIDENTS TRUST CONTAINED IN THE LIFESPACE SETTLEMENT AND CONTRIBUTION AGREEMENT, WHICH SHALL BE PRESERVED AND ASSIGNED TO THE RESIDENTS TRUST AND THE RESIDENTS TRUST TRUSTEE PURSUANT TO THE TERMS OF THIS PLAN.**

8.7 ***Term of Injunctions or Stays.*** Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to Bankruptcy Code sections 105 or 362 or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. Upon the Effective Date, all injunctions or stays contained in this Plan or the Confirmation Order shall be in full force and effect in accordance with their terms.

8.8 ***Protection Against Discriminatory Treatment.*** Consistent with Bankruptcy Code section 525 and the Supremacy Clause of the U.S. Constitution, all Persons, including Governmental Units, shall not discriminate against the Litigation Trustee or the Purchaser or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, the Litigation Trustee, the Purchaser or another Person with whom the Litigation Trustee or Purchaser have been associated, solely because the Debtors have been debtors under Chapter 11, have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

8.9 ***Release of Liens.*** Except as otherwise provided in this Plan or any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to this Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Litigation Trustee. For the avoidance of doubt, except as otherwise provided in this Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

## **SECTION 9. CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE**

9.1 ***Conditions Precedent to Confirmation.*** It shall be a condition precedent to the confirmation of this Plan, such that the Confirmation Order shall not be entered, until each of the following conditions precedent have been satisfied or waived pursuant to the provisions of this Plan:

- (a) The proposed Confirmation Order shall be in form and substance reasonably satisfactory in all respects to the Plan Sponsors, Lifespace and the Purchaser; and
- (b) This Plan and the Plan Supplement, including any schedules, documents, supplements and exhibits thereto shall be, in form and substance acceptable in all respects to the Plan Sponsors and Lifespace.

9.2 ***Conditions Precedent to the Effective Date.*** It shall be a condition precedent to the Effective Date that each of the following provisions, terms, and conditions shall have been satisfied or waived pursuant to the provisions of this Plan:

- (a) The Bankruptcy Court shall have entered the Confirmation Order containing findings of fact and conclusions of law satisfactory to the Plan Sponsors, Lifespace and Purchaser, which Confirmation Order shall not be subject to any stay, and which Confirmation Order shall include or provide, among other things:
  - (i) all provisions, terms and conditions of this Plan and related documents are approved; and
  - (ii) all Executory Contracts or Unexpired Leases assumed and assigned by the Debtors during the Chapter 11 Cases including under this Plan shall remain in full force and effect for the benefit of the Purchaser or their assignee(s) notwithstanding any provision in such contract or lease (including those described in Bankruptcy Code sections 365(b)(2) and (f)) that prohibits such assignment or transfer or that enables, permits, or requires termination of such contract or lease;
- (b) The Bankruptcy Court shall have entered a Final Order approving the Disclosure Statement as containing adequate information within the meaning of Bankruptcy Code section 1125;
- (c) On the occurrence of the Effective Date, the conditions to effectiveness of the Sale Transaction shall have been satisfied or waived and the Closing Date has occurred;
- (d) All actions, documents, certificates, and agreements necessary to implement this Plan, including, without limitation, the Asset Purchase Agreement and documents related to the Sale Transaction, shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws;

- (e) All payments and transfers to be made on the Effective Date shall be made or duly provided for;
- (f) All authorizations, consents, and regulatory approvals required, if any, in connection with the consummation of this Plan shall have been obtained; and
- (g) All other actions, documents and agreements necessary to implement this Plan shall be in form and substance acceptable to the Plan Sponsors, and shall have been effected or executed.

9.3 ***Effect of Failure of Conditions.*** If the Effective Date does not occur, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any claims by the Plan Sponsors or Claims by or against the Debtors or Lifespace; (ii) prejudice in any manner the rights of the Plan Sponsors, any holders of Claims, or any other Person; or (iii) constitute an admission, acknowledgment, offer, or undertaking by the Plan Sponsors or any other Person in any respect.

## **SECTION 10. MODIFICATION, REVOCATION OR WITHDRAWAL OF THIS PLAN**

10.1 ***Modification and Amendments.*** Except as otherwise specifically provided herein, the Plan Sponsors reserve the right to modify this Plan and seek confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in Bankruptcy Code section 1127 of the and Bankruptcy Rule 3019 and those restrictions on modifications set forth in this Plan, the Plan Sponsors expressly reserve their rights to alter, amend, or modify materially this Plan one or more times, after confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify this Plan or remedy any defect or omission, or reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of this Plan. For the avoidance of doubt, nothing in this Section 10.1 shall be deemed to supplant or supersede the requirements of Bankruptcy Rule 3019.

10.2 ***Effect of Confirmation on Modifications.*** Entry of the Confirmation Order shall mean that all modifications or amendments to this Plan occurring after the solicitation thereof are approved pursuant to Bankruptcy Code section 1127(a) and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

10.3 ***Revocation or Withdrawal of this Plan.*** The Initial Plan Sponsors reserve the right to revoke or withdraw this Plan before the Effective Date. If the Initial Plan Sponsors revoke or withdraw this Plan, or if confirmation does not occur, then: (i) this Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of any Executory Contract or Unexpired Lease effected by this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void, and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Plan Sponsors or any other Person; or (c) constitute

an admission, acknowledgement, offer or undertaking of any sort by the Plan Sponsors or any other Person.

## **SECTION 11. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising out of or related to the Chapter 11 Cases and this Plan, including, without limitation, jurisdiction to:

- (a) allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims;
- (b) decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or this Plan;
- (c) resolve any matters related to: (i) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which any Debtor is party or with respect to which the Debtors may be liable in any manner and to hear, determine, and, if necessary, liquidate any Claims arising therefrom, including Rejection Claims, cure Claims pursuant to Bankruptcy Code section 365, or any other matter related to such Executory Contract or Unexpired Lease, (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed, (iii) the Litigation Trust or Purchaser amending, modifying, or supplementing, after the Effective Date, any Executory Contracts or Unexpired Leases on the list of Executory Contracts and Unexpired Leases to be assumed or rejected, and (iv) any dispute regarding whether a contract or lease is or was executory or unexpired;
- (d) ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;
- (e) adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving the Debtors that may be pending on the Effective Date;
- (f) adjudicate, decide, or resolve any and all matters related to any Cause of Action;
- (g) adjudicate, decide, or resolve any and all matters related to the Asset Purchase Agreement;
- (h) adjudicate, decide, or resolve any and all matters related to Bankruptcy Code section 1141;

- (i) resolve any avoidance or recovery actions under Bankruptcy Code sections 105, 502(d), 542 through 551, and 553;
- (j) resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the consummation of this Plan or any Person's obligations incurred in connection with this Plan;
- (k) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of this Plan;
- (l) resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the discharge, releases, injunctions, exculpations, indemnifications, and other provisions contained in this Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;
- (m) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
- (n) adjudicate any and all disputes arising from or relating to Distributions under this Plan;
- (o) adjudicate any and all disputes arising from or relating to the Lifespace Settlement and Contribution Agreement;
- (p) consider any modifications of this Plan, cure any defect or omission, or reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
- (q) determine requests for the payment of Claims entitled to priority pursuant to Bankruptcy Code section 507;
- (r) hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan;
- (s) hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;
- (t) hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;
- (u) enforce all orders previously entered by the Bankruptcy Court;

- (v) hear any other matter not inconsistent with the Bankruptcy Code; and
- (w) enter an order concluding or closing the Chapter 11 Cases.

## **SECTION 12. MISCELLANEOUS PROVISIONS**

12.1 ***Immediate Binding Effect.*** Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or any other Bankruptcy Rule, upon the occurrence of the Effective Date, the terms of this Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors and any and all holders of Claims or Interests (irrespective of whether such holders of Claims or Interests are deemed to have accepted this Plan), all Persons that are parties to or are subject to the settlements, compromises, releases, exculpation, discharges, and injunctions described in this Plan, each Person acquiring property under this Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

12.2 ***Additional Documents.*** On or before the Effective Date, the Plan Sponsors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan, subject to the consent of the Trustee. The Debtors and all holders of Claims receiving Distributions pursuant to this Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

12.3 ***Dissolution of the Committee.*** On the Effective Date, the Committee shall dissolve, and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases.

12.4 ***Reservation of Rights.*** Except as expressly set forth in this Plan, this Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of this Plan, any statement or provision contained in this Plan, or any action taken or not taken by the Plan Sponsors or other Person with respect to this Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Plan Sponsors or other Person with respect to the holders of Claims or Interests before the Effective Date.

12.5 ***Successors and Assigns.*** The rights, benefits, and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiary, or guardian, if any, of such Person.

12.6 ***Votes Solicited in Good Faith.*** Upon entry of the Confirmation Order, the Plan Sponsors will be deemed to have solicited votes on this Plan in good faith and in compliance with the Bankruptcy Code and any applicable non-bankruptcy law, and pursuant to Bankruptcy Code section 1125(e), the Plan Sponsors and their respective affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of securities offered and sold under this Plan, and, therefore,

will have no liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on this Plan.

12.7 ***Closing of Chapter 11 Cases.*** The Litigation Trustee shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

12.8 ***Notices.*** All notices or requests in connection with this Plan shall be in writing and given by mail and email addressed to:

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

Daniel S. Bleck  
Eric Blythe  
Kaitlin R. Walsh  
One Financial Center  
Boston, MA 02111  
Telephone: (617) 546-6000  
[dsbleck@mintz.com](mailto:dsbleck@mintz.com)  
[erblythe@mintz.com](mailto:erblythe@mintz.com)  
[krwalsh@mintz.com](mailto:krwalsh@mintz.com)

-and-

**HAYNES AND BOONE, LLP**

J. Frasher Murphy  
Thomas J. Zavala  
2323 Victory Avenue, Suite 700  
Dallas, TX 75219  
Telephone: (214) 651-5000  
[frasher.murphy@haynesboone.com](mailto:frasher.murphy@haynesboone.com)  
[tom.zavala@haynesboone.com](mailto:tom.zavala@haynesboone.com)

-and-

**POLSINELLI PC**

Jeremy Johnson  
600 3rd Avenue, 42nd Floor  
New York, New York 10016  
Telephone: (212) 684-0199  
[jeremy.johnson@polsinelli.com](mailto:jeremy.johnson@polsinelli.com)

and

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

-and-



Northwest Senior Housing Corporation  
d/b/a Edgemere  
Attn: Nick Harshfield  
4201 Corporate Drive  
West Des Moines, IA 50266

All notices and requests to Persons holding any Claim in any Class shall be sent to them at their last known address or to the last known address of their attorney of record in these Chapter 11 Cases. Any such holder of a Claim may designate in writing any other address for purposes of this Section 12.8, which designation will be effective upon receipt by the Plan Sponsors.

12.9 **Headings.** The headings used in this Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the construction of the provisions of this Plan.

12.10 **Severability.** If, prior to confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation.

12.11 **Validity and Enforceability.** The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms. Should any provision in this Plan be determined by the Bankruptcy Court or any appellate court to be unenforceable following the Effective Date, such determination shall in no way limit the enforceability and operative effect of any and all other provisions of this Plan.

12.12 **Plan Supplement.** Any exhibits or schedules not filed with this Plan may be contained in the Plan Supplement and the Plan Sponsors reserve the right to alter, modify, or amend the Plan Supplement through and to the Confirmation Hearing.

12.13 **Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Texas, without giving effect to the principles of conflicts of laws, shall govern the rights, obligations, construction, and implementation of this Plan and the restructuring transactions consummated or to be consummated in connection therewith.

12.14 **Request for Confirmation.** The Plan Sponsors request entry of a Confirmation Order under Bankruptcy Code section 1129(a) and, to the extent necessary, Bankruptcy Code section 1129(b).

12.15 *Reservation of Rights in Favor of Governmental Units.*

Governmental Units, Texas Health and Human Services Commission and Texas Department of Insurance, have indicated that they will object to any Order confirming this Plan that does not include the following language:

“Nothing in this Order or the Plan discharges, releases, precludes, or enjoins: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) (“**Governmental Unit**”) that is not a “claim” as defined in 11 U.S.C. § 101(5) (“**Claim**”); (ii) any Claim of a Governmental Unit arising on or after the Confirmation Date; (iii) any police or regulatory liability to a Governmental Unit that any entity would be subject to as the owner or operator of property after the Confirmation Date; or (iv) any liability to a Governmental Unit on the part of any non-debtor. Nor shall anything in this Order or the Plan enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Notwithstanding any provision of the Plan, this Order, or any implementing or supplementing plan documents, Governmental Units' setoff rights under federal law as recognized in section 553 of the Bankruptcy Code, and recoupment rights, shall be preserved and are unaffected. Nothing in this Order or the Plan divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or the Plan to adjudicate any defense asserted under this Order or the Plan.”

Dallas County has also requested the following language be included in this Plan:

“Notwithstanding any other provisions of this Plan, any agreements approved hereby, or any other orders in these Chapter 11 Cases, any statutory liens (collectively, the “**Tax Liens**”) held by Dallas County or any other ad valorem tax authority (the “**Taxing Authorities**”) for prepetition and postpetition taxes shall not be primed nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties’ rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Taxing Authorities are fully preserved. With respect to the Tax Authorities’ prepetition Secured Claims for ad valorem property Taxes for the 2022 tax year, to the extent such Claims are Allowed, the Taxing Authorities’ prepetition Claims shall be paid in full with all applicable and accrued interest no later than the earlier of the Closing of the Sale Transaction or the Effective Date or otherwise in the ordinary course of business unless an objection to the Claim has been filed. The Taxing Authorities’ Claims shall be paid with interest from the Petition Date through the Effective Date and from the Effective Date through the date of payment in full at the applicable state statutory rate of 1% per month pursuant to 11 U.S.C. §§ 506(b), 511, and 1129. In the event of a claim objection, the Taxing Authorities’ Claims shall be entitled to interest that accrues while the Claim objection is pending. The Taxing Authorities shall retain their Liens until all Taxes and related interest, penalties, and fees (if any) have been paid in full. In the event of a default under this Plan, the Taxing Authorities shall send notice of default to counsel for the Debtors/Reorganized Debtor and the Purchaser, as applicable, via facsimile or electronic mail, and the Debtors and/or Purchaser shall have 15 days from the date of such notice to cure said default. After the Effective Date, in the event of failure to cure the default timely, the Taxing Authorities shall be entitled to pursue collection of all amounts owed pursuant to

applicable nonbankruptcy law from the Debtors/Reorganized Debtor or the Purchaser, as applicable, without further recourse to the Bankruptcy Court.”

Dated: December 19, 2022

**HAYNES AND BOONE, LLP**

/s/ J. Frasher Murphy

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