

**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 DISCLOSURE STATEMENT FOR THE PLAN OF  
REORGANIZATION OF THE PLAN SPONSORS DATED DECEMBER 19, 2022**

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Dated: December 19, 2022

<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.



**DISCLAIMER**

**IF YOU ARE ENTITLED TO VOTE ON THE PLAN, YOU WILL RECEIVE A BALLOT WITH A COPY OF THIS DISCLOSURE STATEMENT. THE PLAN SPONSORS RECOMMEND YOU VOTE TO ACCEPT THE PLAN.**

**EACH HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING. NO SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN MAY BE MADE EXCEPT PURSUANT TO THIS DISCLOSURE STATEMENT AND BANKRUPTCY CODE SECTION 1125. NO HOLDER OF A CLAIM SHOULD RELY ON ANY INFORMATION RELATING TO THE DEBTORS, THE DEBTORS' PROPERTY, OR THE PLAN OTHER THAN THAT CONTAINED IN THIS DISCLOSURE STATEMENT, THE PLAN SUPPLEMENT AND THE RELATED EXHIBITS.**

**THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN. ALTHOUGH THE PLAN SPONSORS BELIEVE AND HAVE MADE EVERY EFFORT TO ENSURE THAT THIS SUMMARY PROVIDES ADEQUATE INFORMATION WITH RESPECT TO THE PLAN, THE SUMMARY DOES NOT PURPORT TO BE COMPLETE AND IS QUALIFIED TO THE EXTENT IT DOES NOT SET FORTH THE ENTIRE TEXT OF THE PLAN. IF THERE IS ANY INCONSISTENCY BETWEEN THE PLAN AND THE SUMMARY OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT, THE PLAN SHALL CONTROL. ACCORDINGLY, EACH HOLDER OF A CLAIM SHOULD REVIEW THE PLAN IN ITS ENTIRETY.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016 AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAW OR OTHER APPLICABLE NONBANKRUPTCY LAW. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING CLAIMS AGAINST THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED. THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST THE DEBTORS.**

**HOLDERS OF CLAIMS AND INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.**

**THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT EXCEPT AS**

**EXPRESSLY INDICATED HEREIN. THIS DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE PLAN SPONSORS' AND THEIR PROFESSIONALS' KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED, OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.**

**AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS THE PLAN SPONSORS' STATEMENT OF THE STATUS OF THE RESPECTIVE MATTER.**

**ALL OF THE PROJECTED RECOVERIES TO CREDITORS CONTAINED IN THIS DISCLOSURE STATEMENT ARE BASED UPON THE ANALYSES PERFORMED BY THE PLAN SPONSORS AND THEIR PROFESSIONALS. ALTHOUGH THE PLAN SPONSORS HAVE MADE EVERY EFFORT TO VERIFY THE ACCURACY OF THE INFORMATION PRESENTED HEREIN AND IN THE EXHIBITS ATTACHED HERETO, THE PLAN SPONSORS CANNOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OF THE INFORMATION.**

**THE PLAN SPONSORS RECOMMEND THAT CREDITORS SUPPORT AND VOTE TO ACCEPT THE PLAN. THE PLAN SPONSORS CONTEND THAT THE TREATMENT OF CREDITORS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY THAN THAT WHICH IS LIKELY TO BE ACHIEVED UNDER OTHER ALTERNATIVES FOR THE REORGANIZATION OR LIQUIDATION OF THE DEBTORS. ACCORDINGLY, THE PLAN SPONSORS ASSERT THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS.**

**EXHIBITS**

- Exhibit 1 Third Amended Plan of Reorganization of the Plan Sponsors Dated December 19, 2022
- Exhibit 2 Liquidation Analysis
- Exhibit 3 Lifespace Settlement and Contribution Agreement
- Exhibit 4 Lifespace Resident Contribution Schedule

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## I. EXECUTIVE SUMMARY

This Executive Summary provides an overview of this Disclosure Statement and the material terms of, and the transactions proposed by, the *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**”). The Plan is supported by: (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**”).<sup>2</sup> A copy of the Plan is attached hereto as Exhibit 1.<sup>3</sup> The Plan Sponsors urge all parties to read this Executive Summary in conjunction with the remainder of this Disclosure Statement and the Plan. The rules of interpretation set forth in Section 1 of the Plan shall govern the interpretation of this Disclosure Statement.

### A. Introduction.

Edgemere is a not-for-profit corporation that owns and operates a best-in-class continuing care retirement community (the “**Community**”) on land owned by Intercity Investments Properties, Inc. (the “**Landlord**”) in Dallas, Texas.<sup>4</sup> The Community offers residents a continuum of care in a campus-style setting, providing living accommodations and related health care and support services to persons aged 62 or older.

As discussed in greater detail below, prior to the Petition Date, the Debtors experienced liquidity constraints that threatened the viability of the Community. On April 14, 2022, Edgemere and SQLC commenced their Chapter 11 Cases seeking relief under Chapter 11 of the Bankruptcy Code. Based upon a Bankruptcy Court order dated October 13, 2022, the Initial Plan Sponsors were granted authority to file a proposed plan of reorganization to resolve outstanding Claims against, and Interests in, the Debtors. On November 2, 2022, the Initial Plan Sponsors filed the *Plan of Reorganization of the Trustee and DIP Lender Dated November 2, 2022* [Docket No. 752] (the “**Initial Plan**”) and the *Disclosure Statement for the Plan of Reorganization of the Trustee and DIP Lender Dated November 2, 2022* [Docket No. 753] (the “**Initial Disclosure Statement**”). Thereafter, settlement discussions among the Initial Plan Sponsors, the Debtors, Lifespace and the Committee resulted in the filing of the Plan and this Disclosure Statement, as further described herein.

The overarching goal of the Plan is to ensure the ongoing viability of the Community such that it can successfully operate for the remainder of the Ground Lease, all while meeting Resident expectations with respect to quality of service and care. To accomplish this goal, the Plan will

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

<sup>3</sup> Copies of the Plan, this Disclosure Statement, and all other documents related to the Chapter 11 Cases are available for review without charge on the bankruptcy case website at <https://kccllc.net/edgemere>.

<sup>4</sup> SQLC is a legacy entity with no business operations but is an obligor under the Original Bonds, and thus, a member of the Obligated Group.

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

The 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 the Plan and the Litigation Trust Agreement, which will be included in the Plan Supplement.

The Plan will also include a settlement of all potential Estate, Trustee, DIP Lender and Resident claims against Lifespace in exchange for (i) a \$16.5 million payment (the "**Lifespace Bond Contribution**") to the Trustee on the Effective Date for Distribution to holders of the Original Bonds, pursuant to the terms of the Original Bond Documents, and (ii) subject to certain conditions, annual payments (the "**Lifespace Resident Contributions**") made into a trust (the "**Residents Trust**"), pursuant to the schedule attached hereto as Exhibit 4, which funds shall be used to pay participating Residents for claims relating to their Residency Agreements (the "**Participating Resident Refund Claims**") as further described herein. In exchange for the Lifespace Resident Contributions and the releases provided under the Plan, Lifespace will be entitled to a Pro Rata distribution of Litigation Trust Assets (the "**Lifespace Resident Claim**"), in accordance with the terms of the Plan and the Litigation Trust Agreement.

## **B. Overview of Financial Challenges Precipitating the Chapter 11 Filings.**

As discussed in greater detail herein, Edgemere relies on revenue generated by existing and new Residents to, among other things, maintain its day-to-day operations, service its debt obligations and honor Resident obligations. However, as has become common in the senior living industry and in particular among continuing care retirement communities ("**CCRC**"), Edgemere has faced challenges that have threatened the Debtors' ability to honor their obligations and maintain operational stability. To address certain of those issues, in June 2019, Lifespace



completed an affiliation with SQLC, and Edgemere became an affiliate of Lifespace. However, Edgemere continued to face financial pressure. The Debtors' financial distress has been further exacerbated by actions taken by the Debtors' Landlord, which led to the initiation of adversary proceeding number 22-03040 (the "**Adversary Proceeding**") against the Landlord and its consultant Kong Capital, LLC ("**Kong**"), which Adversary Proceeding is discussed further below. The Landlord and Kong deny that any of their actions contributed to the Debtors' financial distress and dispute all claims asserted in the Landlord Litigation.

**C. The Plan and Proposed Sale Transaction.**

The Plan contemplates the sale of substantially all of the property in the Estates to a Purchaser, free and clear of all Liens, Claims, charges, or other encumbrances, pursuant to the terms of an Asset Purchase Agreement. The proposed sale process will subject the initial Purchaser's bid of \$48.5 million, subject to certain adjustments set forth in the Asset Purchase Agreement, to higher and better bids, with an Auction to be conducted if a competing qualified bid is received. The Asset Purchase Agreement contemplates the rejection of all Residency Agreements, provided that 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.

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, the Diminution Claim and the U.S. Trustee Fees, shall be paid to the Trustee for Distribution to holders of the Original Bonds, pursuant to the terms of the Original Bond Documents.

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

Upon the Effective Date, a Litigation Trust will be formed, into which various Assets of the Debtors, including the Landlord Litigation, shall be transferred. 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 the Plan and the Litigation Trust Agreement; (iv) prosecuting or otherwise resolving the Retained Causes of Action, including the Landlord Litigation, for the benefit of the holders of the Litigation Trust Interests; and (v) winding down the Chapter 11 Cases as provided in the Plan and the Litigation Trust Agreement.

The Litigation Trustee will act for the benefit of holders of Litigation Trust Interests in a fiduciary capacity. Holders of Litigation Trust Interests shall consist of Holders of Allowed General Unsecured Claims. Holders of Litigation Trust Interests shall receive a Pro Rata share of the Litigation Trust Interests, and associated Distributions, in accordance with the terms of the Plan and the Litigation Trust Agreement.

**E. Lifespace Settlement and Contributions.**

Lifespace has agreed to enter into the Lifespace Settlement and Contribution Agreement (in substantially the form attached hereto as Exhibit 3), in which Lifespace shall agree to make annual payments to the Residents Trust pursuant to the schedule attached hereto as Exhibit 4. If Participating Resident Refund Claims in any year exceed the amounts available in the Residents Trust, such excess Participating Resident Refund Claims will be paid, in the order they were triggered, upon replenishment of the Residents Trust on the next Lifespace annual payment date. Participating Current Residents (defined below) with life care benefits under their current Residency Agreements shall have the option to utilize amounts owed on their Refund Claims (defined below) to pay any increases in monthly costs resulting from their moving to a higher level of care, in exchange for a dollar-for-dollar reduction in their Resident Claim. In addition, Participating Current Residents may utilize amounts owed on their Refund Claims to pay their entire monthly costs upon a determination that such Participating Current Resident is indigent and unable to pay rental obligations for a dollar-for-dollar reduction in their Resident Claim until that Resident Claim is exhausted.

Lifespace has further agreed to pay \$16.5 million 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, as a settlement of any potential claims the Trustee may have against Lifespace.

In exchange for the Lifespace Bond Contribution and the Lifespace Resident Contributions, Lifespace and the other Plan Sponsors, including the Debtors, shall be Released Parties under the Plan. In exchange for such significant contributions, and, in particular, the Lifespace Resident Contributions, the Released Parties shall receive complete and full releases of any and all prepetition claims and any and all obligations that may have arisen prior to the Petition Date, irrespective of whether a claim was asserted by or on behalf of a current or former Resident. For the avoidance of doubt, unless creditors, including Residents, affirmatively opt out of the releases under Section 8.3 of the Plan, released claims will include, without limitation, any breach of contract and or fraudulent transfer claims and, in particular, the claims listed on Attachment 7 to the Schedules filed on May 17, 2022 in these Chapter 11 Cases [Docket No. 241] (as may be amended prior to the Voting Deadline) and as set forth in the following chart:

<b>Case Title</b>	<b>Case Number</b>	<b>Nature of Case</b>	<b>Court Name</b>
Marylin B. Calloway, Christopher C. Calloway, and R.W. Calloway Jr. v. Lifespace Communities, Inc. and Northwest Senior Housing d/b/a the Edgemere	DC-22-03556	Breach of Contract; Fraudulent Transfer	101 <sup>st</sup> District Court
Northwest Senior Housing Corp. v. David Steve Donosky	DC-21-18245	Broker's Lien	68 <sup>th</sup> Civil District Court

Pamela Siviglia; Andrew Adams v. Northwest Senior Housing Corp.; John Faldine; Ann Joyce; Christopher Silasavage; Martha Holloway	DC-22-01814	Contract	68 <sup>th</sup> Civil District Court
Robert Ogden v. Northwest Senior Housing Corp.	DC-22-01993	Discovery	191 <sup>st</sup> District Court

NOTWITHSTANDING ANYTHING HEREIN, OR IN THE 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 the Plan, including but not limited to any payments or adjustments contemplated to Participating Current Residents described herein or otherwise.

Financial information with respect to Lifespace is available on the bankruptcy case website maintained by the claims, solicitation and tabulation agent in these Chapter 11 Cases. The information may be accessed for free by visiting <https://www.kccllc.net/edgemere> and selecting the “Lifespace Financials” tab on the home page. Parties in interest may contact the Voting Agent and/or the undersigned to request a copy of the Master Trust Indenture (as defined in the Lifespace Settlement and Contribution Agreement).

#### **F. Residents Trust.**

Upon the Effective Date, a Residents Trust will be formed. The Residents Trust shall be established for the purposes of receiving (i) the Lifespace Resident Contributions, and (ii) the Estates’ rights to enforce the terms of the Lifespace Settlement and Contribution Agreement (collectively, with earnings on deposits, the “**Residents Trust Assets**”); and 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 that certain Residents Trust Agreement, between the Committee and the Debtors, which will be included in the Plan Supplement (the “**Residents Trust Agreement**”).

The Residents Trust Trustee will act for the benefit of holders of the Residents Trust Interests in a fiduciary capacity. Holders of Residents Trust Interests shall consist of Participating Former Residents and Participating Current Residents. Holders of Residents Trust Interests shall receive distributions from the Residents Trust in accordance with the terms of the Plan and the Residents Trust Agreement.

The Lifespace Resident Contributions will be made in annual payments outlined on Exhibit 4 as necessary to pay Participating Residents Refund Claims. The Lifespace Resident Contributions may be deferred under certain financial circumstances more specifically outlined in the Lifespace Settlement and Contribution Agreement in substantially the form attached hereto as Exhibit 3, which generally provides for deferral if any portion of any annual Lifespace Resident Contribution would cause Lifespace Days Cash on Hand to fall below 250 days, in which case such portion can be deferred to the following year. If any such deferral remains outstanding after two years, then it must be paid by Lifespace in full the following year (year three). However, any portion of any payment of the Lifespace Resident Contribution that would cause Lifespace to default under that certain Lifespace Master Trust Indenture (as defined in the Lifespace Settlement and Contribution Agreement) may be deferred until such payment would not trigger a default thereunder.

The Residents Trust Trustee will distribute funds directly to Participating Former Residents and Participating Current Residents pursuant to the terms of the Residents Trust Agreement, and generally as described below.

As stated above, all existing Residency Agreements will be rejected, which triggers a rejection damages claim by both Former Residents and Current Residents against Edgemere in the amount of the contractual refund and any other obligations of Edgemere under the rejected Residency Agreements (the “**Refund Claims**”). The Residents do not need to vacate the Community for Refund Claims to arise under the rejected Residency Agreements. Refund Claims receive the following treatment under the Plan:

Former Residents who do not OPT OUT of the releases under the Plan (referred to as the “**Participating Former Residents**”), will receive payment of their Refund Claim within sixty (60) days of the Refund Trigger Date. It is estimated that after the Residents Trust is established and funded pursuant to the Lifespace Settlement and Contribution Agreement, there will be approximately \$12.8 million in refunds paid to thirty (30) Former Residents that have satisfied the conditions of the Refund Trigger Date shortly after the Plan Effective Date. There are an additional fifty-nine (59) Former Residents where the units have not yet been released, this group is owed approximately \$25.9 million.

Current Residents who do not OPT OUT of the releases under the Plan (referred to as the “**Participating Current Residents**”), will receive payment of their Refund Claim from the Residents Trust within sixty (60) days of the Refund Trigger Date.

“**Refund Trigger Date**” is defined as 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,<sup>5</sup> and (c) the Residents Trust contains sufficient funds for payment of such Resident’s Refund Claim.

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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. The Residents Trust Agreement will clarify that any unit is deemed to be re-leased if it is leased for any length of time after the Petition Date.

Participating Former Residents and Participating Current Residents are projected to receive 100% of their Refund Claims from the Residents Trust.

Residents who OPT OUT of the releases under the Plan shall receive a Class 4 General Unsecured Claim in the amount of their Refund Claim.

The new Residency Agreements will not contain life care benefits. However, Participating Current Residents with life care benefits under their existing rejected Residency Agreements will have the option of having the Residents Trust pay any future increase in their monthly fees after the Effective Date resulting from moving to a higher level of care which payments will reduce their Refund Claim dollar for dollar.

**G. 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.

**H. Purpose of this Disclosure Statement.**

The Plan Sponsors have prepared this Disclosure Statement as required by Bankruptcy Code section 1125 and Bankruptcy Rule 3016(c). It is being distributed to assist holders of Claims and Interests in evaluating the Plan, the manner in which Claims and Interests will be treated under the Plan, and whether the Plan satisfies the requirements for confirmation set forth under Bankruptcy Code section 1129. The purpose of this Disclosure Statement is to assist those entitled to vote on the Plan to make an informed judgment when choosing whether to accept or reject the Plan.

This Disclosure Statement describes the background of the Debtors and the significant events leading up to the filing of their Chapter 11 Cases on the Petition Date. It also summarizes the Plan, which divides Claims and Interests into Classes and provides for the treatment of Allowed Claims.

**THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION WITH RESPECT TO THE MERITS OF THE PLAN. ALL CREDITORS ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS EXHIBITS CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE TO ACCEPT OR REJECT THE PLAN.**

The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. To the extent that the information provided in this Disclosure Statement and the Plan (including the Plan Supplement) conflict, the terms of the Plan (including the Plan Supplement) will control.

## **I. The Solicitation Materials.**

Only record holders of Claims in Classes 2, 4, 5 and 6 (the “**Voting Classes**”) are entitled to vote on the Plan. Holders of Claims in Voting Classes will receive a solicitation package that will include the following materials (collectively, the “**Solicitation Materials**”):

- a Ballot, which will include the voting instructions, and a postage-prepaid return envelope;
- a copy of this Disclosure Statement with all exhibits, including the Plan, and any other supplements or amendments to these documents, and the Disclosure Statement Order, excluding exhibits;
- a copy of the Confirmation Hearing Notice; and
- any supplemental documents filed with the Bankruptcy Court and any documents that the Bankruptcy Court orders to be included in the Solicitation Materials, including any letters in support of the Plan.

In lieu of the foregoing Solicitation Materials, the Debtors will distribute the following to holders who are not in Voting Classes:

- a form of non-voting status (subject to Court approval);
- a form permitting Residents and other third parties to OPT OUT of the Lifespace Settlement and third-party releases and other provisions set forth under Section 8 of the Plan; and
- a copy of the Confirmation Hearing Notice.

## **J. The Plan.**

### **1. Purpose and Effect of the Plan.**

Chapter 11 of the Bankruptcy Code allows debtors to reorganize or to liquidate and wind up their affairs for the benefit of the debtors and their creditors. Upon the commencement of a chapter 11 case, an estate is created comprised of all the legal and equitable interests of a debtor as of the date the petition is filed, which typically remain in control of the debtor as a debtor-in-possession.

Pursuant to Bankruptcy Code section 362, the filing of a chapter 11 petition imposes an automatic stay of all attempts by creditors or third parties to collect or enforce prepetition claims against a debtor or otherwise interfere with its property or business, unless relief from the automatic stay is obtained from the bankruptcy court.

The Bankruptcy Code is designed to encourage the parties in interest in a chapter 11 proceeding to negotiate the terms of a chapter 11 plan so that it may be confirmed. A chapter 11 plan is the vehicle for satisfying or otherwise addressing the claims against and the interests in the

debtor. Confirmation of a chapter 11 plan makes it binding on the debtor and all of its creditors and the prior obligations owed by the debtor to such parties are compromised in exchange for the obligations specified in the plan.

## **2. Analysis of Recoveries to Holders of Claims and Interests under the Plan.**

The Plan provides for a comprehensive restructuring of the Debtors' obligations to Holders of Claims and Interests.

After a careful review of current operations and liquidity, prospects as an ongoing business, and estimated recoveries to creditors in alternative scenarios, the Plan Sponsors concluded that the Plan will maximize recoveries to the Debtors' stakeholders by effectuating the Sale Transaction and stabilizing the Community by providing for the conversion to a rental model. As set forth more fully below, the Plan Sponsors along with Lifespace and the Committee believe that the Plan provides the best recoveries possible for the Debtors' stakeholders and recommend that, if you are entitled to vote, you vote to accept the Plan.

## **3. Classification and Treatment of Claims and Interests Under the Plan.**

Section 3 of the Plan describes the Classes of Claims and Interests and their treatment under the Plan, which is summarized herein. Allowed 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 placed in the following Classes and will receive the following treatment under the Plan:

### ***Summary of Classification and Treatment of Claims Under the Plan***

<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>6</sup>	Impaired	Entitled to Vote
5	Participating Former Resident Refund Claims	\$37,101,059.29	Impaired	Entitled to Vote

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<sup>6</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.

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

#### 4. Summary of Voting Requirements for Plan Confirmation.

##### a. In General.

Creditors should refer only to this Disclosure Statement and the Plan to determine whether to vote to accept or reject the Plan. Under the Bankruptcy Code, only holders of Claims that are “impaired” are entitled to vote to accept or reject the Plan. Under Bankruptcy Code section 1124 of the, a class of claims or interests is deemed to be “impaired” unless (1) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder thereof; or (2) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan, among other things, cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default. An Impaired class of creditors votes to accept a plan if the holders of at least two-thirds (2/3) in dollar amount, and more than one-half (1/2) in number, of those creditors that actually cast ballots vote to accept such plan. *See* 11 U.S.C. § 1124. Classes that are not Impaired are not entitled to vote and are deemed to accept a plan. Classes that are not entitled to a Distribution and will not retain property under a plan are deemed to reject a plan.

A class of interest holders is deemed to accept a plan if the holders of at least two-thirds (2/3) in amount of those interest holders that actually cast ballots vote to accept such plan. A class of interest holders is Impaired, not entitled to vote, and deemed to reject the plan if the plan treats such holders by providing that they will retain no property and receive no distributions under the plan.

Pursuant to the Bankruptcy Code, only holders of Claims and Interests who *actually* vote on the Plan will be counted for purposes of determining whether the required number of acceptances have been obtained. Failure to deliver a properly completed Ballot to the Voting Agent by the Voting Deadline will result in an abstention, which means such vote will not be counted.

#### 5. Impaired Classes Entitled to Vote.

The holders of Claims in Classes 2, 4, 5 and 6 are Impaired under the Plan and, thus, such holders are entitled to vote to accept or reject the Plan. However, holders of Claims in Class 7 and holders of Interests in Class 8 will receive no Distribution under the Plan and, thus, are deemed to vote to reject the Plan, as discussed below.



**6. Unimpaired Classes Deemed to Accept the Plan.**

The holders of Claims in Classes 1 and 3 are Unimpaired under the Plan and, thus, such holders are not entitled to vote as such Class is deemed to accept the Plan.

**7. Classes Deemed to Reject the Plan and Do Not Vote.**

Holders of Claims in Class 7 and Interests in Class 8 will receive no Distributions on account of such Claims or Interests. Thus, under Bankruptcy Code section 1126(g), Classes 7 and 8 are deemed to have rejected the Plan and the vote of holders of Classes 7 and 8 Claims will not be solicited. *See* 11 U.S.C. § 1126(g).

**8. Voting Deadline.**

The Voting Agent will assist the Plan Sponsors with the transmission of the Solicitation Materials and the tabulation of votes with respect to the Plan. Holders of Claims classified in voting Classes will have the right to vote to accept or reject the Plan. To be counted, votes *must* be submitted in accordance with the voting instructions, which require such votes to be made in writing and prior to January 20, 2023 at 4:00 p.m. (prevailing Central Time) (the “**Voting Deadline**”). The record date for determining which holders may vote on the Plan is December 15, 2022 (the “**Voting Record Date**”).

**9. Voting Instructions.**

Bankruptcy Code section 1126(c) defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the allowed claims in that class, counting only those claims that actually vote to accept or to reject such plan. *See* 11 U.S.C. § 1126(c).

As stated above, to be counted as votes to accept or reject the Plan, all Ballots must be properly executed, completed, and timely delivered by the Voting Deadline.

Most holders of Claims related to the Original Bonds will submit votes by completing a Ballot and returning it to their specified bank, broker, nominee or other intermediary (a “**Nominee**”). Each Nominee may provide specific instructions to beneficial holders of Bond Claims related with respect to how to complete and submit a Ballot. Such holders will be instructed to return their Ballot to the Nominee to enable the Nominee to complete and submit a master Ballot to the Voting Agent so that it is received by the Voting Deadline. Beneficial holders of Claims related to the Original Bonds should carefully follow the instructions that accompany their Ballot to ensure that it is properly received by the Nominee with sufficient time for the Nominee to complete a master Ballot that can be delivered to the Voting Agent by the Voting Deadline. Voting instructions are more fully described in the Ballots.

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, revocation, or withdrawal of Ballots will be determined by the Plan Sponsors in their sole discretion and such determination will be final and binding unless otherwise ordered by the Bankruptcy Court. Once a party delivers a valid Ballot for the acceptance or rejection of the Plan, such party may not withdraw or revoke such acceptance

or rejection without the Plan Sponsors' written consent or an order of the Bankruptcy Court. The Plan Sponsors also reserve the right to reject any and all Ballots not in proper form, if the acceptance of which would, in the opinion of the Plan Sponsors with the advice of its counsel, be unlawful.

The Plan Sponsors further reserve the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. The interpretation (including the Ballot and the respective instructions therein) by the Plan Sponsors, unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Plan Sponsors (or the Bankruptcy Court) determines. Neither the Plan Sponsors nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until such irregularities are cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will be invalidated.

If a holder of a Claim casts more than one Ballot with respect to the same Claim prior to the Voting Deadline, the last valid Ballot timely received shall be deemed to reflect the voter's intent and shall supersede and revoke any earlier received Ballot. If a holder of a Claim simultaneously casts inconsistent duplicate Ballots with respect to the same Claim, such Ballots shall not be counted.

#### **10. Additional Information.**

If you have any questions about (i) the procedure for voting with respect to your Claim, (ii) the Solicitation Materials that you have received, or (iii) obtaining or replacing a Ballot, the Plan, this Disclosure Statement, any exhibits to such documents, or the Master Trust Indenture (as defined in the Lifespace Settlement and Contribution Agreement), please contact the Voting Agent by (a) calling (866) 967-0269 (toll free) or +1 (310) 751-2669 (international); (b) writing to Northwest Senior Housing Corporation Solicitation, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) emailing at [EdgemereInfo@kccllc.com](mailto:EdgemereInfo@kccllc.com) with a reference to "Edgemere" in the subject line.

#### **11. The Confirmation and Sale Hearing.**

The Initial Plan Sponsors filed a motion to approve this Disclosure Statement [Docket No. 754], wherein the Initial Plan Sponsors requested, among other things, that the Bankruptcy Court schedule a hearing to consider approval of the Sale Transaction and confirmation of the Plan (the "**Confirmation Hearing**") and to approve the proposed form of notice of such Confirmation Hearing. Subject to the Bankruptcy Court's approval, the Plan Sponsors will provide such notice to all necessary parties in accordance with applicable law.

The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on any master service list ordered by the Bankruptcy Court and any entities which filed objections to the Plan, without further notice to parties in interest. The Bankruptcy Court, in

its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

## **12. Effect of Confirmation and Consummation of the Plan.**

Following Confirmation, subject to the occurrences of certain conditions precedent set forth under Section 9 of the Plan, the Plan will be consummated on the Effective Date. Among other things, on the Effective Date, certain release, injunction, exculpation and discharge provisions set forth in Section 8 of the Plan will become effective and will bind any parties that do not affirmatively elect to opt out. As such, it is important to read the provisions contained in Section 8 of the Plan very carefully so that you understand how confirmation and consummation of the Plan will affect you and any Claim you may hold against the Debtors. **Regardless of whether you are entitled to vote, if you do *not* wish to be a “Releasing Party” as defined in the Plan and/or you do not wish to be bound by the releases, injunctions, and exculpation provisions under Section 8 of the Plan, you *must* affirmatively elect to opt-out.**

## **II. BACKGROUND INFORMATION**

### **A. Overview of the Debtors’ Business.**

Edgemere is an upscale and well-established CCRC that offers senior residents a continuum of care in a luxury campus-style setting, providing living accommodations and related health care and support services to a target market of seniors aged sixty-two (62) and older. Edgemere consists of approximately 304 independent living (“**IL**”) apartment-style residences in one, two and three-bedroom configurations. Edgemere also houses 68 residential-style assisted living (“**AL**”) suites, 45 memory support (“**MS**”) assisted living suites and a skilled nursing Community (“**SNF**”) with 87 skilled nursing beds, all located on a 16.25 acre campus.

Edgemere primarily receives revenue from entrance fee deposits and monthly service fees. Residents must enter into a Residency Agreement to move into the Community. As of the Petition Date, Edgemere offered the following types of Residency Agreements: life care agreements, assisted living residency agreements, and SNF residency agreements.

### **B. Organizational Structure of the Debtors.**

#### **1. Corporate Governance.**

The Debtors are governed by their respective Boards of Directors that are elected by Lifespace, the sole corporate member of the Debtors and a non-profit corporation chartered under the laws of the State of Iowa, a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**IRC**”). The current members of the Board of Directors for Edgemere are Stuart Walker, David Stewart, Dana Smith, Jesse Jantzen, and Nick Harshfield. The current members of the Board of Directors for SQLC are Jesse Jantzen, Nick Harshfield and Dana Smith.

## 2. Management by Lifespace.

Pursuant to that certain Management Services Agreement, dated August 15, 2019, between Edgemere and Lifespace (the “**Management Agreement**”), Lifespace serves as the exclusive manager of the day-to-day operations of Edgemere. The services provided by Lifespace include: (i) determining operating policies, procedures, and standards; (ii) developing advertising, marketing, and sales plan, (iii) establishing food and beverage policies; (iv) establishing all employment policies, including wage and salary terms, benefits, retirement plan, and bonuses; (v) hiring, promoting, supervising, directing, training, transferring, and discharging all of Edgemere’s employees; (vi) negotiating and consummating such agreements as Lifespace deems necessary or advisable for furnishing all utilities, services, supplies, food, beverages, equipment, and other materials and supplies for the maintenance and operation of the Community; (vii) establishing such bank accounts as needed for operation and maintenance of the Community according to GAAP; (viii) developing an annual business plan and an annual budget, specifically including, but not limited to, (a) capital improvements, (b) furniture, fixtures, and equipment, (c) employee compensation and taxes, (d) Community operating costs and administrative expenses, (e) taxes, insurance, bonds, and other expenses, (f) revenues, and (g) fees, rates, and other costs and charges to Residents; (ix) managing and overseeing the Community’s investment portfolio, if any, through an investment advisor selected by Lifespace; (x) providing cash management, accounting, bookkeeping and record keeping software and services for the Community, specifically including, but not limited to (a) Resident billings, (b) accounts payable, (c) accounts receivable, and (d) general ledger records; (xi) providing risk management and compliance services; and (xii) providing other services as may be required by the Community and mutually agreed to by the parties to the Management Agreement from time to time in connection with the development and operation of the Community’s business.

Pursuant to the Management Agreement, Edgemere pays to Lifespace compensation for the performance of the foregoing listed services (the “**Corporate Overhead Fee**”), as defined and set forth in the Management Agreement.

## 3. CCRC Regulators.

The CCRC industry nationwide is regulated by various state and federal agencies. Each state has a different regulatory scheme governing CCRCs. As a Medicare-certified CCRC operating in the State of Texas, Edgemere is regulated by, among others, the Centers for Medicare and Medicaid Services, the State of Texas Department of Health and the Texas Department of Insurance.

## 4. Original Bonds.

The development of the Community was financed through the issuance of bonds. At the request of Edgemere and pursuant to that certain Indenture of Trust, dated May 1, 2015 (the “**2015 Bond Indenture**”), between the Tarrant County Cultural Education Facilities Finance Corporation (the “**Issuer**”) and the Bank of New York Mellon Trust Company, National Association, as initial bond trustee, the Issuer authorized and issued the Retirement Community Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) consisting of: (a) Series 2015A bonds in the original aggregate principal amount of \$53,600,000 (the “**Series 2015A Bonds**”); and

(b) Series 2015B bonds in the original aggregate principal amount of \$40,590,000 (the “**Series 2015B Bonds**” and together with the Series 2015A Bonds, the “**Series 2015 Bonds**”).

Contemporaneously with the issuance of the Series 2015 Bonds, the Issuer loaned the proceeds of the Series 2015 Bonds to Edgemere, pursuant to a Loan Agreement between Edgemere and the Issuer (the “**2015 Loan Agreement**”), for the purpose of financing and refinancing certain costs relating to the Community, including (a) the refunding of all of the Issuer’s Retirement Community Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2006B, (b) refunding of a portion of the Issuer’s Retirement Community Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2006A, (c) funding a portion of interest during construction, (d) funding debt service reserve funds, and (e) paying a portion of the cost of the issuances.

At the request of Edgemere and pursuant to that certain Indenture of Trust, dated March 1, 2017 (the “**2017 Bond Indenture**”), between the Issuer and the Bank of New York Mellon Trust Company, National Association, as initial bond trustee, the Issuer authorized and issued the Retirement Community Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) consisting of Series 2017 bonds in the original aggregate principal amount of \$21,685,000 (the “**Series 2017 Bonds**” and together with the Series 2015 Bonds, the “**Original Bonds**”).

Contemporaneously with the issuance of the Series 2017 Bonds, the Issuer loaned the proceeds of the Series 2017 Bonds to Edgemere, pursuant to a Loan Agreement between Edgemere and the Issuer (the “**2017 Loan Agreement**”), for the purpose of financing and refinancing certain costs relating to the Community, including (a) the refunding of all of the Issuer’s Retirement Community Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2006A, (b) funding debt service reserve fund, and (c) paying a portion of the cost of the issuance.

Prior to the Petition Date, Edgemere defaulted on the Original Bonds by, among other things, failing to meet the debt service coverage covenant in 2019 and 2020. Failing to satisfy this covenant for two consecutive fiscal years constitutes an event of default on the Original Bonds. Additionally, to preserve liquidity, Edgemere ceased making payments on its obligations under the Original Bonds in October 2021.

As of the Petition Date, the outstanding principal amount owed by the Obligated Group on account of the Original Bonds as of the Petition Date is approximately \$111,728,919.22 plus unliquidated fees and expenses. As set forth in the DIP Orders, the Bond Claims are secured by first priority liens on substantially all of the Debtors’ assets, including (i) all revenue, accounts, accounts receivable, and Gross Revenues (as defined in the Original Master Indenture) of Edgemere; (ii) all general intangibles, equipment, inventory and other personal property of Edgemere; (iii) Edgemere’s leasehold interest created by Ground Lease, including Edgemere’s interests in the Premises, Land and Existing Improvements (as each are defined in the Ground Lease), and any and all appurtenances, rights and benefits relating thereto and to the use and occupancy thereof; and (v) all funds held in the various accounts established under the Original Bond Documents.

## **5. Other Debt.**

Based on filings by the Debtors in these Chapter 11 Cases, as of April 14, 2022, Edgemere had the following approximate liabilities (other than obligations relating to the Original Bonds): (i) \$1,321,000 of trade accounts payable; (ii) \$1,500,000 of non-contingent Resident refund claims; (iii) \$158,000,000 of entrance fee liabilities (including contingent and untriggered liabilities); and (iv) \$5,351,798.91 of liabilities to non-debtor Affiliates.

## **III. EVENTS LEADING TO THE CHAPTER 11 CASES**

The Debtors rely on revenue generated by existing and new residents to, among other things, maintain day-to-day operations, service debt obligations and honor Resident obligations. However, for some time Edgemere has faced challenges that have threatened its ability to honor its obligations and maintain operational stability, including optimal occupancy levels.

In June 2019, Lifespace entered into an affiliation agreement pursuant to which Lifespace became the new sole member of Edgemere.

When the COVID-19 pandemic began, it severely disrupted the senior living industry, especially because older adults are particularly vulnerable to the effects of COVID-19. As a result, Edgemere incurred significant, additional costs, including those necessary to retain qualified staff and purchase personal protective equipment. In addition to increasing costs, the pandemic caused occupancy rates to drop. In response, Edgemere engaged professionals, including restructuring counsel, who retained consultants, including FTI Consulting, Inc. (“FTI”) to assist with efforts to stabilize Edgemere’s operations and financial circumstances.

In addition to negotiating with the Trustee and the Landlord toward a restructuring of the debt under the Original Bonds and the Ground Lease, the Debtors implemented a new escrow structure to allow the Community to continue an improved marketing program while providing new Residents who choose to enter into a Residency Agreement that their deposits and entrance fees would be protected during Edgemere’s time of financial distress. As of September 27, 2021, any new entrance fees received were deposited into an escrow account pursuant to the Escrow Agreement. This change is typical among distressed “entrance fee model” CCRCs as a safeguard to protect new Resident deposits and entrance fees and encourage and promote new sales.

By the fourth quarter of 2021, the Debtors’ sales performance had improved in comparison to the fourth quarter of 2020. Nevertheless, liquidity constraints persisted, in part, because deposits and entrance fees received on or after September 27, 2021 were not available to cover operating expenses.

In September 2021, the Debtors did not make the monthly rent payment under the Ground Lease. Following the Ground Lease default, the parties agreed to commence negotiations regarding a potential Ground Lease restructuring. To evaluate such a restructuring, Edgmere provided Landlord confidential information pursuant to that certain Confidentiality and Non-Disclosure Agreement, dated September 7, 2021 (the “NDA”) which NDA restricted the Landlord’s ability to use confidential information provided pursuant to the NDA.

Over the next several months, the Debtors, Litespace, the Trustee, and the Landlord engaged in discussions regarding the Original Bonds and the Ground Lease, with the purported aim of reaching a global resolution that would permit the Community to stabilize and continue its mission while also satisfying obligations to the Landlord and the Trustee. Throughout this process, in reliance on the NDA, the Debtors shared confidential information with the Landlord. The Landlord acknowledges that certain of the information it received pursuant to the NDA was confidential and proprietary, but asserts that most of the information was available through non-confidential sources. The Debtors, Litespace, the Trustee, and the Landlord also negotiated a forbearance agreement to facilitate the restructuring discussions. This forbearance agreement required, among other things, that Edgemere would provide a Ground Lease restructuring term sheet to the Landlord and, in turn, the Landlord would provide substantive responses thereto. The Landlord denies it was required to provide a response to any term sheet related to the Ground Lease. Edgemere complied by providing the contemplated term sheet; the Landlord did not respond. The Debtors assert that the Landlord received monetary benefits under the forbearance agreement and obtained Edgemere's confidential information, subject to the NDA, after which the Landlord repudiated the forbearance agreement and refused to provide a substantive response to the term sheet; the Landlord denies these assertions or any wrongdoing.

Additionally, as alleged in the Complaint commencing the Landlord Litigation, the Landlord, directly or through its consultant Kong, improperly disclosed and otherwise used Edgemere's confidential information in violation of the NDA, including causing the Dallas Morning News ("DMN") to publish negative news articles about Edgemere based on confidential information provided by the Landlord and/or Kong.<sup>7</sup> The Landlord and Kong deny each of these statements as set forth in its answer to the Complaint. *See* Adv. Docket No. 130. Immediately after the first DMN article was published, inquiries from prospective residents completely dried up. As a result, the Debtors filed these Chapter 11 Cases.

In the lead up to the Chapter 11 Cases and thereafter, the Debtors and their advisors explored various ways to improve the Community's financial performance, including by evaluating different entrance fee and rental models. Various consultants have concluded that the Community can no longer operate as an entrance fee model and that the best way to stabilize the Community is to transition to a rental model.

#### **IV. THE CHAPTER 11 CASES**

##### **A. First Day Pleadings.**

On the Petition Date, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. In conjunction therewith, the Debtors filed certain "first day motions." Among other things, the Debtors requested that the Bankruptcy Court enter orders (i) protecting Resident and patient confidentiality; (ii) authorizing the Debtors to continue their cash management system, including intercompany accounting protocol and procedure; (iii) permitting the Debtors to pay employees on account of prepetition work and services rendered and to continue benefit and compensation programs throughout the Chapter 11 Cases; (iv) prohibiting utility companies from discontinuing services; (v) allowing the

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<sup>7</sup> The Landlord and Kong dispute the allegations in the Complaint.

Debtors to continue to escrow entrance fees and maintaining Resident refund programs; and (vi) paying prepetition taxes and fees; and (vii) maintaining insurance policies and paying related obligations. *See* Docket Nos. 10, 11, 15, 17, 18, 19, and 20. These motions were supported by the *Declaration of Nick Harshfield in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 7].

The Bankruptcy Court conducted hearings and entered Orders with respect to each of the first day motions. *See* Docket Nos. 98, 220, 221, 223, 224, 323, and 393.

#### **B. Cash Collateral and DIP Financing.**

On the Petition Date, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Use of Cash Collateral, (II) Authorizing Post-Petition Financing, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling the Final Hearing and Approving the Form and Method of Notice thereof, and (VI) Granting Related Relief* [Docket No. 35]. Thereafter, the Bankruptcy Court entered the DIP Orders, which include the *Final Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; and (4) Granting Liens, Security Interests and Superpriority Claims* (as further amended, the “**DIP Orders**”) [Docket No. 421].

The DIP Orders, among other things, allow the Debtors to (i) use the Trustee's Cash Collateral to maintain the Community and pay necessary business operations expenses, and (ii) obtain financing through the DIP Facility on the terms set forth in the DIP Credit Agreement and in the DIP Orders. The DIP Orders also granted the DIP Lender first priority security interests (senior to all other liens, including those securing the Bond Claims) on substantially all of the Debtors' assets to secure the DIP Facility Claims, and granted the Trustee Supplemental Liens on substantially all of the Debtors' assets to the extent of Diminution (as each are defined in the DIP Orders), along with a superpriority administrative expense claim to the extent of Diminution.

#### **C. Schedules, Statements, and Rule 2015.3 Reports.**

On April 19, 2022, following a hearing on the Debtors' motion requesting an extension of the filing deadline, the Bankruptcy Court entered its *Order Extending the Time to File (I) Schedules of Assets and Liabilities, (II) Statements of Financial Affairs, and (III) Reports of Financial Information Required under Bankruptcy Rule 2015.3* [Docket No. 90].

On May 17, 2022, the Debtors filed their *Schedules and Statements of Financial Affairs*. *See* Docket Nos. 240 and 241; Case No. 22-30660, Docket Nos. 19 and 20. On June 1, 2022, Edgemere filed its *Initial Periodic Report of Debtors pursuant to Bankruptcy Rule 2015.3* [Docket No. 346]. On June 24, 2022, SQLC filed its *Initial Periodic Report of Debtor Senior Quality Lifestyles Corporation pursuant to Bankruptcy Rule 2015.3* [Case No. 22-30660, Docket No. 23].

#### **D. Retention of Debtors' Professionals.**

The Bankruptcy Court has approved the Debtors' retention and employment of the following Professionals in these Chapter 11 Cases: (i) Polsinelli PC, as restructuring counsel [Docket No. 226]; (ii) FTI, as financial advisor [Docket No. 227]; (iii) Kurtzman Carson



Consultants LLC as claims, noticing, and solicitation agent [Docket Nos. 110]; and (iv) Assessment Technologies, Ltd. d/b/a A.T. Tax Advisory, as property tax consultant [Docket No. 434].

#### **E. Patient Care Ombudsman.**

The U.S. Trustee appointed Susan N. Goodman as the Patient Care Ombudsman (the “PCO”) in these Chapter 11 Cases pursuant to Bankruptcy Code section 333. *See* Docket No. 137. On June 2, 2022, the PCO filed the *Patient Care Ombudsman’s First Interim Report*. *See* Docket No. 364. On August 2, 2022, the PCO filed the *Patient Care Ombudsman’s Second Interim Report*. *See* Docket No. 504. On October 4, 2022, the PCO filed the *Patient Care Ombudsman’s Third Interim Report*. *See* Docket No. 681.

#### **F. Appointment of the Committee.**

The U.S. Trustee appointed an official committee of unsecured creditors (the “Committee”) pursuant to Bankruptcy Code section 1102(a)(1). *See* Docket Nos. 135, 142, and 150. The Committee is comprised of the following: Donald R. Trice, James Eckelberger, James A. Smith, Erle A. Nye, Jane Sommerhalder Wilson, and Steve Helbing.<sup>8</sup> The Bankruptcy Court has approved the Committee’s retention and employment of the following Professionals in these Chapter 11 Cases: (i) Foley & Lardner LLP, as Committee counsel [Docket No. 429]; and (ii) Ankura Consulting Group, LLC, as the Committee’s financial advisor [Docket No. 514].

#### **G. The Adversary Proceeding**

As noted above, the Debtors allege their financial distress has been further exacerbated by actions taken by the Landlord. As a result, on the Petition Date Edgemere filed its complaint (the “Complaint”) against the Landlord and its consultant Kong, commencing the Adversary Proceeding in the Chapter 11 Cases. Edgemere alleges in the Complaint that the Landlord and Kong engaged in an unlawful scheme to destroy the Community. The Complaint alleges causes of action against the Landlord and Kong for breach of contract, promissory fraud, tortious interference with existing and prospective contractual and business relations, civil conspiracy, equitable subordination, and reformation of the Ground Lease. On September 7, 2022, the Landlord and Kong answered the Complaint denying the allegations, asserting affirmative defenses, and asserting three counterclaims: fraudulent inducement, slander of title, and breach of lease. The Landlord Litigation remains ongoing and will be transferred to the Litigation Trust under the Plan.

#### **H. 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

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<sup>8</sup> Pamela Siviglia is no longer a member of the Committee.

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.

**I. Termination of Exclusivity.**

Pursuant to the *Motion of Debtors for Entry of an Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan* [Docket No. 534], the Debtors sought to extend the period by which only the Debtors could file a chapter 11 plan to February 8, 2023. Such motion was objected to by the Landlord [Docket No. 602], the Committee [Docket No. 634] and the Initial Plan Sponsors [Docket No. 639]. Following a hearing on the motion, the Bankruptcy Court held the Debtors’ exclusivity period would terminate on October 26, 2022, and that, beginning on October 27, 2022, the Initial Plan Sponsors and/or Lifespace could each file chapter 11 plans.

**J. Competing Plans.**

On November 2, 2022, the Initial Plan Sponsors filed the Initial Plan and the Initial Disclosure Statement, along with other supporting documents. Also on November 2, 2022, the Debtors and the Committee filed the *Joint Plan of Reorganization Proposed by the Committee and the Debtors* [Docket No. 750] (the “**Debtors’ Plan**”) and the *Disclosure Statement in Support of Joint Plan of Reorganization Proposed by the Committee and the Debtors* [Docket No. 751] (the “**Debtors’ Disclosure Statement**”).

**K. Global Resolution Resulting in Third Amended Plan and Disclosure Statement.**

Since the filing of the competing plans, the Plan Sponsors, Lifespace and the Committee have worked to reach a global resolution that would allow for a largely consensual plan process. Following a series of negotiations, the Plan Sponsors, Lifespace and the Committee agreed to modify the Initial Plan Sponsors’ Plan and Disclosure Statement as set forth herein, including to incorporate the Lifespace Bond Contribution and the Lifespace Resident Contributions, and the Debtors and Committee agreed to withdraw the Debtors’ Plan and Debtors’ Disclosure Statement.

**L. Initial Purchaser Disclosures**

Bay 9 Holdings LLC has been identified as the initial Purchaser under the Plan. The initial Purchaser is ultimately owned, directly or indirectly, by one or more funds managed or advised by Lapis Advisers, LP (“**Lapis**”), who is also a holder of the Original Bonds. Lapis is a San Francisco based investment firm with over a decade of experience in successful healthcare turnarounds in the municipal bond space, having raised over \$1.2 billion in aggregate investor commitments. Since its inception in 2009, Lapis has invested in over forty life plan and rental senior living communities, including several communities located in Texas. Through its equity ownership, Lapis has significant experience in investing in, operating, and turning around senior living special situations and is uniquely situated to ensure the Community maintains its quality of care to Residents and meets its obligations under the Plan, including as to employees, assumed Executory Contracts and assumed liabilities pursuant to the Asset Purchase Agreement.

Backed by Lapis, the initial Purchaser has the committed financial resources necessary to both close on an all-cash purchase of the Community as contemplated by the Asset Purchase Agreement, and to maintain and successfully operate the Community on a go-forward basis. More specifically, the initial Purchaser has access to committed funds in excess of the \$48.5 million purchase price for acquisition of the Community. Additionally, the initial Purchaser is committed to maintaining and improving the Community. The initial Purchaser is in the process of developing a detailed capital improvement plan to advance those goals, which plan has been informed by an extensive assessment of the Community undertaken by Arch Consultants, Ltd. While details of its capital improvement plan continue to be developed, if the initial Purchaser is the ultimate Purchaser, it anticipates dedicating several million dollars to capital expenditure improvements over time, such as HVAC improvements, roofing, exterior and interior updates, and system updates. These capital improvements are in addition to typical apartment refurbishments and upgrades made when a unit is leased to a new resident.

As part of its commitment to ensuring that the Community will thrive if purchased by the initial Purchaser, the initial Purchaser has identified The Long Hill Company (“**Long Hill**”) to serve as the third-party manager of the Community. The initial Purchaser and Long Hill have dedicated significant resources to jointly develop appropriately conservative financial projections to ensure a successful transition to new ownership and management for the Community. Long Hill specializes in turnaround management and, for over twenty years, has served as a traditional full-service manager, court-appointed receiver, and advisory consultant. Long Hill’s management team has a long track record of stabilizing troubled situations in skilled nursing, assisted living, hospice, and continuing care communities. Long Hill’s transactions have ranged from single-site projects to large portfolios across multiple states.

Long Hill and its subsidiaries provide full-service management services to seventeen senior living communities, eleven of which are located in Texas and are comprised of 1,262 units of independent living, assisted living and memory care. A member of Long Hill’s key management team has served as a board member for a chain of twenty-two skilled nursing facilities in Texas. Another key management team member has served as the CEO of a hospice organization with multiple Texas sites of care. While review of the future needs of the Community is ongoing, Long Hill anticipates retaining many of the on-site leadership team members at the Community to provide continuity in care and programming to current and future Residents. Based upon Long Hill’s track record, commitment to quality patient care and the depth and knowledge of its team, the initial Purchaser is confident that Long Hill will provide a reliable and successful management of the Community.

## **V. THE CHAPTER 11 PLAN**

**THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT 1.**

The Claims against the Debtors are divided into Classes according to their seniority and other criteria. The Classes of Claims and Interests against the Debtors and their Estates and the funds and other property to be distributed under the Plan are described more fully below.

**THE PLAN SPONSORS BELIEVE THAT THE PLAN AFFORDS CREDITORS THE POTENTIAL FOR THE GREATEST REALIZATION OF THE VALUE OF THE DEBTORS' ASSETS.**

**A. Treatment of Claims and Interests Under the Plan.**

**1. Unclassified Administrative and Priority Claims.**

**a. 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 the Plan on account of an Administrative Claim that is not otherwise Allowed by the 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 the 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.

**b. 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 the Plan or that exceed the cap shall be deemed disallowed under the 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.

c. **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 Section 2 of the 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.

d. **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.

e. **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.

f. **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.

g. **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.

h. **Dallas County Claim.**

The 2022 tax claim of Dallas County, in the amount of \$26,856.19 (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.

**2. Classification of Claims and Interests.**

Except as set forth in the Plan, all Claims against and Interests in the Debtors are placed in a particular Class. The Debtors have not classified Administrative Claims, Priority Tax Claims, Professional Claims, DIP Facility Claims, the Dallas County Claim, the Escrow Resident Claims, the Diminution Claim or U.S. Trustee Fees.

Subject to all other applicable provisions of the Plan (including its Distribution provisions), classified Claims shall receive the treatment described in Section 3 of the Plan. The Plan will not provide any Distributions on account of a Claim to the extent that such Claim has been disallowed, released, withdrawn, waived, or otherwise satisfied or paid as of the Effective Date, including, without limitation, payments by third parties.

The following table designates the Classes of Claims against and Interests in the Debtors and specifies which of those Classes are: (i) Impaired or Unimpaired by the Plan; (ii) entitled to vote to accept the Plan; (iii) deemed to reject the Plan; or (iv) deemed to accept the Plan.

<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>9</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

<sup>9</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.

8	Interests in Debtors	N/A	Impaired	Deemed to Reject
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### 3. Treatment of Claims and Interests.

#### a. Other Priority Claims (Class 1).

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 the 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.

#### b. Bond Claims (Class 2).

Class 2 is Impaired and entitled to vote on the 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 the 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 Deficiency Claim shall be treated on a Pro Rata basis with holders of Allowed General Unsecured Claims.

#### c. Other Secured Claims (Class 3).

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 the 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.

d. **General Unsecured Claims (Class 4).**

Class 4 is Impaired and entitled to vote on the 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 the 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.

e. **Participating Former Resident Refund Claims (Class 5).**

Class 5 is Impaired and entitled to vote on the 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 the 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 the 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.

f. **Participating Current Resident Refund Claims (Class 6).**

Class 6 is Impaired and entitled to vote on the 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 the 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 Section 8 of the Plan (i.e. Participating Current Residents) shall receive payment of their Refund Claim from the Residents Trust within sixty (60) days of the Refund Trigger Date in an amount equal to their Refund Claim.

g. **Intercompany Claims (Class 7).**

Class 7 is Impaired and not entitled to vote on the 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.

h. **Interest in Debtors (Class 8).**

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



#### **4. Subordinated Claims.**

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective Distributions and treatments under the 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), the 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 the Plan until any and all senior Allowed Claims are paid in full.

#### **B. Cramdown.**

If all applicable requirements for confirmation of the Plan are met as set forth in Bankruptcy Code section 1129(a) except subsection (8) thereof, the Plan Sponsors shall request that the Bankruptcy Court confirm the Plan in accordance with Bankruptcy Code section 1129(b) on the bases that the 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, the Plan.

#### **C. Means for Implementation of the Plan.**

##### **1. Sale Transaction.**

a. 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 the 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.

b. 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 shall provide similar services to Current Residents as provided prior to the Closing Date.

c. Transition to Purchaser. The Asset Purchase Agreement contemplates both the rejection of the Management Agreement, 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.

d. [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>10</sup>

e. 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.

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

Upon the Plan Effective Date, a Litigation Trust will be formed, into which various Causes of Action of the Debtors, including all Retained Causes of Action, shall be transferred. The Litigation Trust shall commence, pursue and liquidate all of the Litigation Trust Assets, including the Landlord Litigation, for the benefit of holders of Litigation Trust Interests. Holders of Litigation Trust Interests shall consist of Holders of an Allowed General Unsecured Claim.

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<sup>10</sup> The Purchaser has requested this provision.

a. 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 the 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.

b. 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 the 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 the Plan.

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

d. 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 the Plan and in the Litigation Trust Agreement.

e. 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 the 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.

f. 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 the Plan and the Litigation Trust Agreement.

g. 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.

h. 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 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).

i. 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 of the Debtors’ and the Estates’ rights with respect thereto, subject to the provisions of the 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:

- i. commencing, pursuing and liquidating all of the Litigation Trust Assets;
- ii. engaging attorneys, consultants, agents, employees and any other professional persons to assist the Litigation Trustee with respect to the Litigation Trustee’s responsibilities;
- iii. 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;
- iv. compromising and settling Claims without notice or Bankruptcy Court approval;
- v. calculating and implementing Distributions of Litigation Trust Assets for the benefit of the holders of the Litigation Trust Interests;
- vi. resolving issues involving Claims and Interests in accordance with the Plan;
- vii. 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;

- viii. 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 the Plan;
- ix. coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any Litigation Trust Assets;
- x. 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;
- xi. overseeing compliance with the accounting, finance and reporting obligations;
- xii. paying taxes or other obligations incurred by the Litigation Trust;
- xiii. 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;
- xiv. overseeing the filing of final tax returns, refund requests, audits and other corporate dissolution documents, as required;
- xv. performing any additional corporate actions as necessary to carry out the wind down and liquidation of the Estates;
- xvi. exercising such other powers as may be vested in or assumed by the Litigation Trustee pursuant to the 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 the Plan; and
- xvii. 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..

j. Litigation Trust Interests. Holders of Allowed General Unsecured Claims shall, by operation of the Plan, receive a Pro Rata share of the Litigation Trust Interests in accordance with the terms of and priorities set forth in the 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.

k. 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.

l. 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.

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

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.

a. 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.

b. 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.

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

d. 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.

e. Appointment of the Residents Trust Trustee. On the Effective Date, the Residents Trust Trustee shall be appointed by a three-member committee appointed by the Committee (the “**Residents Trust Oversight 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.

f. 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.

g. 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 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 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 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.

h. 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).

i. 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 of 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:

- i. 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;
- ii. 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;
- iii. calculating and implementing Distributions of Residents Trust Assets for the benefit of the holders of the Residents Trust Interests;
- iv. 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;
- v. 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;
- vi. overseeing compliance with the accounting, finance and reporting obligations;
- vii. paying taxes or other obligations incurred by the Residents Trust; and
- viii. exercising such other powers as may be vested in or assumed by the Residents Trust Trustee pursuant to the 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 the Plan.

j. 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 the Plan shall, by operation of the 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. 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.

#### **5. 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 the 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 the 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 the 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 the Plan.

**6. 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 the Plan or this 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 the Plan. Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the 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 the Plan. For the avoidance of doubt, nothing in Section 4.7 of the Plan shall affect the "Releases by the Debtors" provided in Section 8.2 of the Plan.

**D. Assumption and Rejection of 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 the 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 the Plan are effective as of the Closing Date. Each Executory Contract or Unexpired Lease assumed pursuant to the 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 the 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 the 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.

## 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 (the “**Resident Claimants**”) 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 the 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.

## 2. **Assumption and Rejection of Executory Contracts and Unexpired Leases; Cure Provisions.**

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 the 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. 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.

### **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 the 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 issues concerning the cure and the adequate assurance of future performance with respect to the Ground Lease shall be governed by the Bidding Procedures Order. 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.

Stephen Donosky asserts that the assumption of the Ground Lease also requires assumption of the Northwest Lifecare Commission Agreement, dated November 5, 1997. The Plan Sponsors dispute this assertion and the parties have agreed this will be resolved as part of the confirmation process.

### **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 General Unsecured Claims and shall be treated in accordance with the Plan.

### **5. 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.

**6. 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 the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith, unless such Executory Contract or Unexpired Lease has been previously assumed by the Debtors.

**7. Reservation of Rights.**

Nothing contained in the 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.

**8. 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.

**E. Conditions Precedent to Confirmation and the Effective Date.**

**1. Conditions Precedent to Confirmation.**

It shall be a condition precedent to the confirmation of the 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 the 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. The 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.

## **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 the 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 the 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 the 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 this 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 the 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 the Plan shall have been obtained; and

g. All other actions, documents and agreements necessary to implement the Plan shall be in form and substance acceptable to the Plan Sponsors, and shall have been effected or executed.

## **3. Effect of Failure of Conditions.**

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or this 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.

**F. Effect of Confirmation.**

**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 the Plan, the provisions of the 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 the 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.

**2. Releases by the Debtors.**

**PURSUANT TO BANKRUPTCY CODE SECTION 1123(B), AS OF THE EFFECTIVE DATE, AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE 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 THE 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 THE PLAN, THIS 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 THE PLAN OR ANY DOCUMENT, INSTRUMENT, OR AGREEMENT (INCLUDING THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THE 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 THE PLAN AND, AS SUCH, DO NOT AND WILL NOT CONSTITUTE LITIGATION TRUST OR RESIDENTS TRUST ASSETS.**

**3. Releases by Holders of Claims.**

**AS OF THE EFFECTIVE DATE AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE 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 THE 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 THE 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.**

#### **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 THE 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 THE 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 THE PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN, THE FILING OF THE CHAPTER 11 CASES, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE ADMINISTRATION AND IMPLEMENTATION OF THE PLAN, THE DISTRIBUTION OF PROPERTY UNDER THE 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, THE 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 THE PLAN AGAINST ANY EXCULPATED PARTY.**

**5. Discharge of Claims.**

**PURSUANT TO BANKRUPTCY CODE SECTION 1141(D), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE BAR DATE ORDER, IN THE PLAN, OR IN ANY CONTRACT, INSTRUMENT, OR OTHER AGREEMENT OR DOCUMENT CREATED PURSUANT TO THE PLAN, THE DISTRIBUTIONS, RIGHTS, AND TREATMENT THAT ARE PROVIDED IN THE 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 THE 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 THE 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 THE PLAN.**

**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 THE PLAN OR THE CONFIRMATION ORDER.**

**FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN THE 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 THE PLAN.**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT, OR RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THE 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 THE PLAN.**

**THE RIGHTS AFFORDED IN THE 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 THE PLAN).**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THE PLAN OR IN OBLIGATIONS ISSUED PURSUANT TO THE 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 THE 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 THE PLAN.**

#### **7. 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. Term of Injunctions or Stays.**

Unless otherwise provided in the 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 the 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 the Plan or the Confirmation Order shall be in full force and effect in accordance with their terms.

**9. Release of Liens.**

Except as otherwise provided in the Plan or any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the 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 the 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.

**G. Modification, Revocation or Withdrawal of the Plan.**

**1. Modification and Amendments.**

Except as otherwise specifically provided herein, the Plan Sponsors reserve the right to modify the 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 the Plan, the Plan Sponsors expressly reserve their rights to alter, amend, or modify materially the 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 the Plan or remedy any defect or omission, or reconcile any inconsistencies in the Plan, this Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. For the avoidance of doubt, nothing in Section 10.1 of the Plan shall be deemed to supplant or supersede the requirements of Bankruptcy Rule 3019.

**2. Effect of Confirmation on Modifications.**

Entry of the Confirmation Order shall mean that all modifications or amendments to the 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.

### **3. Revocation or Withdrawal of the Plan.**

The Initial Plan Sponsors reserve the right to revoke or withdraw the Plan before the Effective Date. If the Initial Plan Sponsors revoke or withdraw the Plan, or if confirmation does not occur, then: (i) the Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in the 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 the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (iii) nothing contained in the 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.

### **H. 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 the Plan, including, without limitation, jurisdiction to:

- i. 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;
- ii. 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 the Plan;
- iii. 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;
- iv. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

- v. 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;
- vi. adjudicate, decide, or resolve any and all matters related to any Cause of Action;
- vii. adjudicate, decide, or resolve any and all matters related to the Asset Purchase Agreement;
- viii. adjudicate, decide, or resolve any and all matters related to Bankruptcy Code section 1141;
- ix. resolve any avoidance or recovery actions under Bankruptcy Code sections 105, 502(d), 542 through 551, and 553;
- x. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the consummation of the Plan or any Person's obligations incurred in connection with the Plan;
- xi. 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 the Plan;
- xii. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the discharge, releases, injunctions, exculpations, indemnifications, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;
- xiii. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
- xiv. adjudicate any and all disputes arising from or relating to Distributions under the Plan;
- xv. adjudicate any and all disputes arising from or relating to the Lifespace Settlement and Contribution Agreement;
- xvi. consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
- xvii. determine requests for the payment of Claims entitled to priority pursuant to Bankruptcy Code section 507;
- xviii. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;



- xix. hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;
- xx. 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;
- xxi. enforce all orders previously entered by the Bankruptcy Court;
- xxii. hear any other matter not inconsistent with the Bankruptcy Code; and
- xxiii. enter an order concluding or closing the Chapter 11 Cases.

## **I. Miscellaneous Provisions.**

### **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 the 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 the Plan), all Persons that are parties to or are subject to the settlements, compromises, releases, exculpation, discharges, and injunctions described in the Plan, each Person acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

### **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 the Plan, subject to the consent of the Trustee. The Debtors and all holders of Claims receiving Distributions pursuant to the 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 the Plan.

### **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.

### **4. Reservation of Rights.**

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the Plan, any statement or provision contained in the Plan, or any action taken or not taken by the Plan Sponsors or other Person with

respect to the Plan, this 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.

**5. Successors and Assigns.**

The rights, benefits, and obligations of any Person named or referred to in the 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.

**6. Votes Solicited in Good Faith.**

Upon entry of the Confirmation Order, the Plan Sponsors will be deemed to have solicited votes on the 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 the Plan, and, therefore, will have no liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan.

**7. Closing of the 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.

**8. Notices.**

All notices or requests in connection with the 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 Section 12.8 of the Plan, which designation will be effective upon receipt by the Plan Sponsors.

**9. Headings.**

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

**10. Severability.**

If, prior to confirmation, any term or provision of the 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 the Plan will remain in full force and effect and will in no way be affected, Impaired, or invalidated by such holding, alteration, or interpretation.

**11. Validity and Enforceability.**

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the 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 the 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 the Plan.

**12. Plan Supplement.**

Any exhibits or schedules not filed with the 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.

**13. Tax Consequences for Holders of Claims.**

Generally, a Holder of a Claim should in most, but not all circumstances, recognize gain or loss equal to the difference between the “amount realized” by such Holder in exchange for its Claim and such Holder’s adjusted tax basis in the Claim. The “amount realized” is equal to the sum of the Cash and the fair market value of any other consideration received under a plan of reorganization in respect of a Holder’s Claim. The tax basis of a Holder in a Claim will generally

be equal to the Holder's cost. To the extent applicable, the character of any recognized gain or loss (e.g., ordinary income, or short-term or long-term capital gain, or loss) will depend upon the status of the Holder, the nature of the Claim in the Holder's hands, the purpose and circumstances of its acquisition, the Holder's holding period of the Claim, and the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the Holder's hands, any gain or loss realized generally will be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the Holder has held such Claim for more than one year.

A Holder who received Cash (or potentially other consideration) in satisfaction of its Claims may recognize ordinary income or loss to the extent that any portion of such consideration is characterized as accrued interest. A Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a distribution on account of its Claim pursuant to the Plan, will be treated as having received interest income to the extent that any consideration received is characterized for United States federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain or loss as a result of the distribution it may receive under the Plan on account of its Claim.

#### **14. 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 the Plan and the restructuring transactions consummated or to be consummated in connection therewith.

#### **15. 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).

#### **16. 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 the 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 added to the 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 Debtors 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 Debtors or the Purchaser, as applicable, without further recourse to the Bankruptcy Court.”

## **VI. RISK FACTORS IN CONNECTION WITH THE PLAN**

The Holders of Claims and Interests against the Debtors should read and carefully consider the following risk factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith), before deciding whether to vote to accept or reject the Plan. These risk factors should not, however, be regarded as constituting the only risks associated with the Plan and its implementation.

**A. Bankruptcy Considerations.**

Although the Plan Sponsors believe the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will confirm the Plan as proposed. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate the re-solicitation of votes.

In addition, the occurrence of the Effective Date is conditioned on the satisfaction (or waiver) of the conditions precedent set forth in Section 9 of the Plan, including conditions relating to the Asset Purchase Agreement and other documents related to the Sale Transaction, and there can be no assurance that such conditions will be satisfied or waived. In the event the conditions precedent described in the Plan have not been satisfied, or waived (to the extent possible) by the Plan Sponsors or applicable parties (as provided for in the Plan) as of the Effective Date, including the failure of the Closing Date to occur, then the Confirmation Order will be vacated, no Distributions will be made pursuant to the Plan, and the Plan Sponsors and all holders of Claims and Interests will be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred.

Bankruptcy Code section 1122 provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Plan Sponsors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because each Class of Claims and Interests encompass Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

**B. Risks Related to the Sale.**

The Plan contemplates that the Sale Transaction will be consummated with the Purchaser and that the Net Sale Proceeds from the Sale Transaction will be distributed to certain Holders of Claims in accordance with the Plan. Although the Initial Plan Sponsors and initial Purchaser have agreed on the form Asset Purchase Agreement, there is no guarantee that the initial or any other Purchaser will close on the transaction. Moreover, there is no guarantee that the Purchaser will obtain the requisite approval from regulatory authorities in connection with the Sale Transaction.

**C. Litigation Risks.**

The Plan contemplates recoveries by the Litigation Trust with respect to the Retained Causes of Action. Litigation, by its nature, is uncertain and the Plan Sponsors cannot predict or guaranty that the Litigation Trustee will be successful.

**D. Additional Factors.**

**1. No Duty to Update Disclosures.**

The Plan Sponsors have no duty to update the information contained in this Disclosure Statement as of the date hereof, unless otherwise specified herein, or unless the Plan Sponsors are

required to do so pursuant to an order of the Bankruptcy Court. Delivery of this Disclosure Statement after the date hereof does not imply that the information contained herein has remained unchanged.

## **2. Representations Outside this Disclosure Statement.**

This Disclosure Statement contains representations concerning or related to the Debtors and the Plan that are subject to approval by the Bankruptcy Court. Please be advised that any representations or inducements outside this Disclosure Statement and any related documents which are intended to secure your acceptance or rejection of the Plan should not be relied upon by Holders of Claims that are entitled to vote to accept or reject the Plan.

## **3. No Admission.**

The information and representations contained herein shall not be construed to constitute an admission of, or be deemed evidence of, any legal effect of the Plan on the Plan Sponsors or Holders of Claims and Interests.

## **4. Tax and Other Related Considerations.**

A discussion of potential tax consequences of the Plan is provided in Section IX hereof; however, the content of this Disclosure Statement is not intended and should not be construed as tax, legal, business or other professional advice. Holders of Claims and/or Interests should seek advice from their own independent tax, legal or other professional advisors based on their own individual circumstances.

# **VII. PLAN CONFIRMATION AND CONSUMMATION**

## **A. The Confirmation Hearing.**

Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after appropriate notice, to hold a Confirmation Hearing. On, or as promptly as practicable after the filing of the Plan and this Disclosure Statement, the Plan Sponsors will request, pursuant to the requirements of the Bankruptcy Code and the Bankruptcy Rules, that the Bankruptcy Court schedule the Confirmation Hearing. Notice of the Confirmation Hearing (the “**Confirmation Hearing Notice**”) will be provided to all known Creditors or their representatives. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Pursuant to Bankruptcy Code section 1128(b), any party in interest may object to confirmation of a plan of reorganization or liquidation. Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the Plan Sponsors, the basis for the objection and the specific grounds of the objection, and must be filed with the Bankruptcy Court, together with proof of service thereof, and served upon: (i) counsel for the Initial Plan Sponsors, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts 02111, Attn: Daniel Bleck; (ii) counsel for the Committee, Foley



& Lardner, 2021 McKinney Avenue, Ste. 1600, Dallas, Texas 75201, Attn: Stephen A. McCartin, Thomas C. Scannell, and Mark C. Moore; (iii) counsel for the Debtors, Polsinelli PC, 2950 N. Harwood, Suite 2100, Dallas, TX 75201, Attn: Trinitee G. Green and 600 3rd Avenue, 42nd Floor, New York, NY 10016, Attn: Jeremy R. Johnson; (iv) counsel for Lifespace, Cooley LLP, 110 North Wacker Drive, Suite 4200, Chicago, Illinois 60606, Attn: Eric. E. Walker; (v) the Office of the United States Trustee, 1100 Commerce St, Room 976, Dallas, Texas 75242-1699, Attn: Lisa Lambert; and (vi) such other parties as the Bankruptcy Court may order, so as to be actually received no later than the date and time designated in the Confirmation Hearing Notice.

Bankruptcy Rule 9014 governs objections to confirmation of the Plan.

**UNLESS AN OBJECTION TO CONFIRMATION OF THE PLAN IS TIMELY SERVED UPON THE PARTIES LISTED ABOVE AND FILED WITH THE BANKRUPTCY COURT, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT IN DETERMINING CONFIRMATION OF THE PLAN.**

**B. Plan Confirmation Requirements Under the Bankruptcy Code.**

In order for the Plan to be confirmed, the Bankruptcy Code requires that the Bankruptcy Court determine that the Plan complies with the technical requirements of Chapter 11 and that the disclosures concerning the Plan have been adequate and have included information concerning all payments made or promised in connection with the Plan and the Chapter 11 Cases. The Bankruptcy Code also requires that: (1) the Plan be accepted by the requisite votes of Creditors except to the extent that confirmation despite dissent is available under Bankruptcy Code section 1129(b); (2) the Plan is feasible (that is, there is a reasonable probability that the Debtors will be able to perform their obligations under the Plan without needing further reorganizations not contemplated by the Plan); and (3) the Plan is in the “best interests” of all Creditors (that is, Creditors will receive at least as much under the Plan as they would receive in a hypothetical liquidation case under chapter 7 of the Bankruptcy Code). To confirm the Plan, the Bankruptcy Court must find that all of the above conditions are met, unless the applicable provisions of Bankruptcy Code section 1129(b) are employed to confirm the Plan, subject to satisfying certain conditions, over the dissent or deemed rejections of Classes of Claims.

**1. Best Interests of Creditors.**

The Bankruptcy Code requires that, with respect to an Impaired class of claims or interests, each holder of an Impaired claim or interest in such class either (i) accepts the plan or (ii) receives or retains under the plan property of a value, as of the effective date of the plan, that is not less than the amount (value) such holder would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date.

The Plan Sponsors, with the assistance of their professionals, have prepared the Liquidation Analysis attached hereto as Exhibit 2. The Liquidation Analysis is based upon a hypothetical liquidation in a chapter 7 case. In preparing the Liquidation Analysis, the Plan Sponsors have taken into account the nature, status and underlying value of its Assets, the ultimate realizable value of its Assets, and the extent to which such Assets are subject to liens and security interests. In addition, the Liquidation Analysis also reflects the required time and resources necessary to

effectuate an orderly wind down of the Community, which provides critical care to residents and must comply with numerous federal and state regulations.

Based upon the Liquidation Analysis, the Plan Sponsors believe that liquidation under chapter 7 would result in smaller distributions, if any, being made to Creditors than those provided for in the Plan because of: (a) the likelihood that the Debtors' Assets would have to be sold or otherwise disposed of in an orderly fashion; (b) additional administrative expenses attendant to the appointment of a trustee and the trustee's employment of attorneys and other professionals; and (c) additional expenses and Claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtors' operations. In the opinion of the Plan Sponsors, the recoveries projected to be available in a chapter 7 liquidation are not likely to afford the holders of Claims as great a realization potential as afforded to them under the Plan.

Accordingly, the Plan Sponsors believe that in a chapter 7 liquidation, holders of Claims would receive less than such holders would receive under the Plan. There can be no assurance, however, as to values that would actually be realized in a chapter 7 liquidation, nor can there be any assurance that a Bankruptcy Court would accept the Plan Sponsors' conclusions or concur with such assumptions in making its determinations under section 1129(a)(7) of the Bankruptcy Code.

## **2. Feasibility of the Plan.**

Pursuant to section 1129(a)(11) of the Bankruptcy Code, a plan proponent must demonstrate that a bankruptcy court's confirmation of a plan is not likely to be followed by the liquidation or need for further financial reorganization of the debtor or its successor under the plan, unless such liquidation or reorganization is proposed under the plan. The Plan contemplates the sale of substantially all of the Debtors' Assets to a Purchaser and transfer of remaining Assets, including the Retained Causes of Action, to the Litigation Trust to be liquidated and distributed to Holders of Litigation Trust Interests in accordance with the Plan and Litigation Trust Agreement. Therefore, the Bankruptcy Court's confirmation of the Plan is not likely to be followed by liquidation or the need for any further reorganization.

## **3. Acceptance by Impaired Classes.**

The Bankruptcy Code requires, as a condition to confirmation, that, except as described below, each class of claims or equity interests that is Impaired under a plan, accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. As a general matter under the Bankruptcy Code, a class is "impaired," unless the plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; (b) cures any default and reinstates the original terms of such claim or equity interest; or (c) provides that, on the consummation date, the holder of such claim or equity interest receives Cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled to any fixed price at which the debtor may redeem the security.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of Impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds (2/3) in amount and a majority in number actually voting cast their ballots in favor of acceptance. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

Any Class of Claims that is not occupied as of the commencement of the Confirmation Hearing by an Allowed Claim or a Claim temporarily Allowed under Bankruptcy Rule 3018 shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code. If no votes to accept or reject the Plan are received with respect to a Class whose votes have been solicited under the Plan (other than a Class that is deemed eliminated under the Plan), such Class shall be deemed to have voted to accept the Plan.

#### **4. Additional Requirements for Nonconsensual Confirmation.**

The Bankruptcy Code permits confirmation of a plan even if it is not accepted by all Impaired classes, as long as: (a) the plan otherwise satisfies the requirements for confirmation; (b) at least one Impaired class of claims has accepted it without taking into consideration the votes of any insiders in such class; and (c) the plan is “fair and equitable” and does not “discriminate unfairly” as to any Impaired class that has not accepted the plan. These so called “cramdown” provisions are set forth in Bankruptcy Code section 1129(b).

#### **5. No Unfair Discrimination.**

The “no unfair discrimination” test requires that the plan not provide for unfair treatment with respect to classes of claims or interests that are of equal priority, but are receiving different treatment under the plan.

#### **6. Fair and Equitable.**

The fair and equitable requirement applies to classes of claims of different priority and status, such as secured versus unsecured. The plan satisfies the fair and equitable requirement if no class of claims receives more than 100% of the allowed amount of the claims in such class. Further, if a class of claims is considered a dissenting class (“**Dissenting Class**”), i.e., a Class of Claims that is deemed to reject the Plan because the required majorities in amount and number of votes is not received from the Class, the following requirements apply:

##### **a. Class of Secured Claims.**

Each holder of an Impaired secured claim either: (i) retains its liens on the subject property, to the extent of the allowed amount of its secured claim and receives deferred Cash payments having a value, as of the effective date of the plan, of at least the allowed amount of such claim; (ii) has the right to credit bid the amount of its claim if its property is sold and retains its liens on

the proceeds of the sale (or if sold, on the proceeds thereof); or (iii) receives the “indubitable equivalent” of its allowed secured claim.

**b. Class of Unsecured Creditors.**

Either (i) each holder of an Impaired unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the Dissenting Class will not receive any property under the plan.

**c. Class of Interests.**

Either (i) each interest holder will receive or retain under the plan property of a value equal to the greater of (a) the fixed liquidation preference or redemption price, if any, of such stock and (b) the value of the stock, or (ii) the holders of interests that are junior to the interests of the Dissenting Class will not receive any property under the plan.

The Plan Sponsors believe the Plan does not “discriminate unfairly” and will satisfy the “fair and equitable” requirement notwithstanding that certain Classes of Interests are deemed to reject the Plan because no Class that is junior to such Class will receive or retain any property on account of the Claims and Interests in such Class and the Plan does not provide for unfair treatment with respect to Classes of Claims or Interests that are of equal priority.

## **VIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Plan Sponsors believe the Plan is in the best interests of its Creditors and should accordingly be accepted and confirmed. If the Plan as proposed, however, is not confirmed, the following alternatives may be available to the Plan Sponsors: (i) a liquidation of the Debtors’ Assets pursuant to chapter 7 of the Bankruptcy Code; or (ii) an alternative plan of reorganization or liquidation may be proposed and confirmed; there can be no assurance that the terms of any such alternative would be similar or as favorable to the Holders of Allowed Claims as those proposed in the Plan.

### **A. Chapter 7 Liquidation.**

If a plan pursuant to chapter 11 of the Bankruptcy Code is not confirmed by the Bankruptcy Court, the Debtors’ Chapter 11 Cases may be converted to liquidation cases under chapter 7 of the Bankruptcy Code, in which a trustee would be elected or appointed, pursuant to applicable provisions of chapter 7 of the Bankruptcy Code, to liquidate the Assets of the Debtors for Distribution in accordance with the priorities established by the Bankruptcy Code. The Plan Sponsors believe that such a liquidation would result in smaller distributions being made to the Debtors’ creditors than those provided for in the Plan because of: (a) the likelihood that other Assets of the Debtors would have to be sold or otherwise disposed of in an orderly fashion; (b) additional administrative expenses attendant to the appointment of a trustee and the trustee’s employment of attorneys and other professionals; and (c) additional expenses and Claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtors’ operations. The Plan Sponsors have concluded that confirmation of the Plan will provide each

holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

**B. Alternative Plan Pursuant to Chapter 11 of the Bankruptcy Code.**

If the Plan is not confirmed, the Plan Sponsors may propose a different plan, which might involve an alternative means for the reorganization or liquidation of the Debtors' Assets. However, the Plan Sponsors believe that the terms of the Plan provide for an orderly and efficient restructuring of the Debtors' obligations and will result in the realization of the most value for holders of Claims against the Debtors' Estates.

**IX. RECOMMENDATION AND CONCLUSION**

The Plan Sponsors believe the Plan is in the best interests of the Estates, creditors and other interested parties and urge the holders of Claims entitled to vote to accept the Plan and to evidence such acceptance by properly voting and timely returning their Ballots.

*[Remainder of page intentionally left blank.]*

Dated: December 19, 2022

**HAYNES AND BOONE, LLP**

/s/ J. Frasher Murphy

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# EXHIBIT 1



**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**

**HAYNES AND BOONE, LLP**

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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 prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith, unless such Executory Contract or Unexpired Lease has been previously assumed by the Debtors.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SECTION 12. MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

J. Frasher Murphy  
State Bar No. 24013214  
Thomas J. Zavala  
State Bar No. 24116265  
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– and –

**MINTZ, LEVIN, COHN, FERRIS,  
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*Counsel to the Debtors and Debtors in  
Possession*

# EXHIBIT 2

# LIQUIDATION ANALYSIS

The Liquidation Analysis presents the hypothetical liquidation of the Estate under Chapter 7. Actual values shown below are estimates as of November 2, 2022, unless otherwise noted, and actual values are presented before any potential adjustments under Generally Accepted Accounting Principals ("GAAP"). The Actual Chapter 7 and Chapter 11 Administrative Claims, Secured Claims, and General Unsecured Claims, including Claims from the rejection of Executory Contracts or Unexpired Leases arising from a Chapter 7 liquidation, may be materially different from the estimates presented herein. The Liquidation Analysis should be reviewed in conjunction with the associated notes.

Edgemere  
Liquidation Analysis  
000s

		Actual			Liquidation Recovery Percentage		Chapter 7 Liquidation	
		Notes	09/30/2022	Adjustment	Total	Low	High	Low
Asset Liquidation								
Cash and Cash Equivalents	A	\$2,030		\$2,030	100%	100%	\$2,030	\$2,030
Escrow Entrance Fees and Reservation Deposits	B	212		212	0%	0%	0	0
Net A/R & Resident Receivables	C	511		511	30%	70%	153	358
Other Receivables	D	0		0	100%	100%	0	0
Inventory	E	85		85	0%	5%	0	4
Prepaid Expenses and Deposits	F	755		755	0%	0%	0	0
CIP	G	0		0	15%	40%	0	0
Fixed Assets, net	H	220,938	(91,895)	129,043	15%	20%	19,356	25,809
Intangible Assets	I	9,958		9,958	0%	0%	0	0
Restricted Assets	J	2,255		2,255	0%	100%	0	2,255
Total Proceeds Available		\$236,744	(\$91,895)	\$144,849	15%	21%	\$21,540	\$30,456
Professional Fee Carve Out								
Professional Fees	K						(\$3,000)	(\$3,000)
US Trustee Fees	L						(100)	(100)
Chapter 7 Trustee Fees	M						(150)	(150)
Total Professional Fee Carve-Out							(\$3,250)	(\$3,250)
Net Proceeds for Available Wind Down / Closure Cost and Secured Claims							\$18,290	\$27,206
Wind Down/Closure Cost								
Wind Down/Closure	N						(\$500)	(\$1,000)
Ground Lease Payment (Cure)	O						(\$2,255)	(\$2,255)
Accrued Property Taxes	P						\$1,763	\$1,763
Chapter 7 Trustee Commission	Q						(650)	(1,100)
Total Wind Down/ Closure Cost							(\$5,168)	(\$2,592)
Net Proceeds for Available Secured Claims							\$13,122	\$24,614
Estimated Senior Secured Claims								
Long Term Debt - Series 2015 & Series 2017	R	\$111,000		\$111,000			(\$111,000)	(\$111,000)
Subtotal Senior Secured Claims		\$111,000		\$111,000			(\$111,000)	(\$111,000)
Average Recovery on Senior Secured Claims							11.8%	22.2%
Net Proceeds Available for Administrative Claims							\$0	\$0
Administrative Claims								
Payroll Liabilities	S						(\$1,186)	(\$950)
Accrued Expenses / Post-Petition Trade / AP	T						(2,673)	(2,272)
Total Administrative Claims							(\$3,859)	(\$3,222)
Average Recovery on Administrative Claims							0.0%	0.0%
Net Proceeds for Unsecured Claims							\$0	\$0
Unsecured Claims								
Trade Creditors	U						(\$500)	(\$500)
Refundable Entrance Fees	V						(145,935)	(145,935)
Litigation Claims	W						unknown	unknown
Rejection Damages / Other (Contingency)	X						unknown	unknown
Due To Affiliate	Y	\$6,656		\$6,656			(6,656)	(6,656)
Total Unsecured Claims							(\$153,091)	(\$153,091)
Average Recovery on Total Unsecured Claims							0.0%	0.0%
Shortfall							(\$254,828)	(\$242,699)

**SPECIFIC NOTES TO THE LIQUIDATION ANALYSIS**

Current Assets

A. Cash and cash equivalents as of September 30, 2022.

B. Escrow Entrance Fees and Reservation Deposits represents escrowed entrance fees, wait list depositors or 10% deposits made by potential residents. Escrowed entrance fees are fully refundable during the bankruptcy period resulting in 0% recovery. Waitlist deposits and 10% deposits are fully refundable, with interest accruing to the depositors prior to occupancy and would be returned to residents resulting in 0% recovery.

C. Net A/R Residents consists of A/R due from Medicare, Medicaid, Co-insurance, Private Pay, and other.

D. Other Receivables represent interest receivable on Trustee-Held Funds, however, the funds have been set-off and are not available per the Indenture of Trust of the Series 2015 and Series 2017 Bond Issues.

E. Inventory consists of food. A recovery of 0% to 5% is assumed due to the perishable nature of food inventory.

F. Prepaid expenses include prepaid insurance, prepaid payroll, and prepaid taxes. Deposits include utility deposits of \$53,000.

G. Construction in progress (CIP) has been adjusted to exclude deferred financing costs which has a 0% recovery.

H. Fixed assets includes land, buildings, equipment, furniture and fixtures, and vehicles. Recoveries are estimated at a blended rate. Recoveries on all other fixed assets are estimated at 15% - 20% due to limited life and high cost of Lease. Recovery on Land Lease is made in the Adjustment for assumption of the Obligation under the Operating Lease

I. Intangible assets represent capitalized marketing and other costs.

J. Restricted Assets include the Ground Lease Escrow

Professional Fee Carve-Out

K. Professional Fees estimated through January, 2023.

L. US Trustee Fees reflect estimated fees for the US Trustee through January, 2023.

M. Chapter 7 Trustee Fees (including counsel) projected to be \$150,000 for fees and expenses.

Wind Down / Closure Cost

N. Wind Down / Closure is an estimate of the operating costs and wind down costs incurred during the wind down period.

O. Ground Lease Cure Payment is estimated as to make the Operating lease Payment Current as of Closing.

P. Accrued Unpaid Taxes as indicated on the MOR as of September 30, 2022.

Q. Chapter 7 Trustee estimated to receive 3% of proceeds available per statutory default.

Estimated Senior Secured Claims

R. Long Term Debt includes outstanding principal amounts and accrued interest due on the Series 2015 and Series 2017 Bonds at \$111,728,919 as specified in the Final DIP Order June 23, 2022 for amounts being calculated on April 14, 2022. (Does not take into account any set-off of Trustee-Held Funds)

Administrative Claims

S. Payroll Liabilities represents two weeks of accrued payroll liabilities accrued post-petition and due as of the liquidation date.

T. Accrued Expenses / Post-Petition Trade / AP / Accrued Property Taxes estimated to be post-petition trade vendors that are unpaid as of the liquidation date per the financial prc

Trade Creditors

U. Trade creditors represents pre-petition amounts owed to vendors or other third parties.

Refundable Entrance Fees

V. Refundable Entrance Fees represents pre-petition amounts owed to residents and former residents, and the refundable portion of entrance fees only (balance as of 9/30/22) less Escrowed entrance fees noted in B above.

Litigation Claims

W. Litigation Claims represents the estimated cost of medical malpractice and other litigation to settle claims.

Rejection Damages / Other (Contingency)

X. All contracts are assumed to be rejected under a liquidation scenario.

Due to Affiliate

Y. There is a \$6.430 million Due to Affiliate obligation between the Edgemere and Lifespace as of 9/30/22.

**CONCLUSION**

The estimated recoveries under the Plan are based on a number of estimates and assumptions that are inherently subject to significant uncertainties and contingencies and that are beyond the control of the Plan Sponsor. There can be no assurances that the recoveries assumed would be realized if the Plan was, in fact, confirmed. Accordingly, actual recovery values and recovery percentages could vary from the amounts set forth in the Plan and such variances could be material.

# EXHIBIT 3



**SETTLEMENT AND CONTRIBUTION AGREEMENT**

This SETTLEMENT AND CONTRIBUTION AGREEMENT (“Agreement”) is executed by and entered into between Northwest Senior Housing Corporation d/b/a Edgemere (“Edgemere” and Lifespace Communities, Inc. (“Lifespace”) (each individually a “Party”, and collectively the “Parties”) effective as of December 16, 2022.

**RECITALS<sup>1</sup>**

**A. Overview of Edgemere’s Business.**

1. Edgemere is an upscale and well-established continuing care retirement community (“CCRC”) that offers senior residents a continuum of care in a luxury campus-style setting, providing living accommodations and related health care and support services to a target market of seniors aged sixty-two (62) and older. Edgemere consists of approximately 304 independent living (“IL”) apartment-style residences in one, two and three-bedroom configurations. Edgemere also houses 68 residential-style assisted living (“AL”) suites, 45 memory support (“MS”) assisted living suites and a skilled nursing Community (“SNF”) with 87 skilled nursing beds, all located on a 16.25 acre campus.

2. As of October 19, 2022, 219 IL units were occupied (72.04% occupancy), 39 AL units were occupied (57.35% occupancy), 21 MS units occupied (46.67% occupancy), and 54 SNF units were occupied (62.07% occupancy). The Community is currently the home of approximately 376 residents.

3. As is common practice in the CCRC industry, Edgemere primarily receives revenue from entrance fees and monthly service fees. Historically, the residents have been required to enter

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

into one of the following types of Residency Agreements to move into the Community: Life Care Agreements, Assisted Living Residency Agreements, and SNF Residency Agreements.

**B. Current, Former and Escrow Residents**

1. There are three (3) categories of Edgemere residents:
  - a. Former residents of Edgemere (“Former Residents”);
  - b. Current residents of Edgemere, excluding the Escrow Residents (“Current Residents”); and
  - c. Residents that currently reside at Edgemere under the terms and conditions of an Escrow Agreement dated September 27, 2021, by and among Edgemere, the Trustee, and Regions Bank as escrow agent (the “Escrow Residents” and, together with the Current and Former Residents, the “Residents”).

**C. Lifespace Affiliation Agreement**

1. In June 2019, Lifespace entered into an Affiliation Agreement pursuant to which Lifespace became the new sole member of Edgemere.
2. Edgemere relies on revenue generated by existing and new residents to, among other things, maintain day-to-day operations, service debt obligations and honor Resident obligations. However, for some time Edgemere has faced challenges that have threatened its ability to honor its obligations and maintain operational stability, including optimal occupancy levels.

**D. The Chapter 11 Cases**

1. On April 14, 2022 (the “Petition Date”), Edgemere filed a voluntary petition in this Court jointly with affiliate Senior Quality Lifestyles Corporation (together with Edgemere, the “Debtors”) commencing a case for relief under chapter 11 of the Bankruptcy Code in the United

States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) [Lead Case No. 22-30659] (the “Chapter 11 Cases”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Nick Harshfield in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 7] (“First Day Declaration”) and fully incorporated herein by reference.

2. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). The Debtors continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

3. On April 28, 2022, the Office of the United States Trustee for the Northern District of Texas (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) pursuant to Bankruptcy Code section 1102(a)(1).

**E. Joint Chapter 11 Plan**

1. On December 6, 2022, Edgemere, the Trustee and the DIP Lender filed their *First Amended Joint Plan of Reorganization* [Docket No. 870] (the “Plan”), which is supported by Lifespace and the Committee. The Plan incorporates the terms of this Agreement.

**F. Resident Refund Obligations**

1. The Plan proposes to reject all Residency Agreements with Current, Former, and Escrow Residents, and provides for the purchaser of Edgemere’s assets pursuant to the Sale Procedures Motion to offer the Current Residents new residency agreements. Accordingly, the Residents will have rejection damages claims against Edgemere, including claims for the refund of their entrance fees due and owing under the rejected Residency Agreements, in the following approximate amounts:

- a. Escrow Residents: \$16,494,326 is currently held in escrow for the benefit of Escrow Residents (the “Entrance Fee Escrow Deposits”). The Plan provides for Entrance Fee Escrow Deposits to be returned to the Escrow Residents in full and final satisfaction of their claims within ten (10) days of the Effective Date of the Plan.
- b. Former Residents: Former Residents shall have allowed entrance fee refund obligation claims against Edgemere of approximately \$40,705,569.67 (individually, an “Allowed Former Resident Claim” and in the aggregate, “Allowed Former Resident Claims”).
- c. Current Residents: Current Residents shall have allowed entrance fee refund obligation claims against Edgemere of approximately \$101,130,040.00 (individually, an “Allowed Current Resident Claim” and in the aggregate, “Allowed Current Resident Claims” and together with the Allowed Former Resident Claims, the “Allowed Resident Claims”).

**G. Settlement**

1. Pursuant to the terms of the Plan and this Agreement, Lifespace has agreed to fund contributions to the Plan as a settlement of any potential claims the Debtors, the Trustee and/or Residents (who do not OPT OUT under the terms of the Plan) may have against Lifespace pursuant to the Residency Agreements, the Affiliation Agreement, under the Bankruptcy Code, at law or in equity and in exchange for full releases and exculpations provided under the Plan (the “Plan Releases”).

2. The Committee actively participated in the negotiation of this Agreement with Lifespace, both supports and endorses its approval and has encouraged Edgemere to likewise support and endorse this Agreement.

3. After considering the Committee's recommendation, Edgemere has evaluated this Agreement and has concluded it represents the best outcome presented to Edgemere for the Residents.

### **AGREEMENT**

**NOW, THEREFORE,** in consideration of the foregoing recitals, reliance upon the Committee's negotiations and support, and the promises and mutual covenants herein contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree and stipulate, contingent upon Bankruptcy Court confirmation of the Plan, to the terms set forth below:

1. The Residents Trust. On the Effective Date of the Plan, a trust (the "Residents Trust") shall be formed for the benefit of Former Residents and Current Residents who do not OPT OUT of the settlement and the releases in the Plan (the "Participating Former Residents" and "Participating Current Residents," respectively) pursuant to the terms of the Plan and a Residents Trust Agreement in form and substance satisfactory to Lifespace and the Committee.

2. Lifespace Contributions to the Residents Trust. Lifespace hereby agrees to contribute to the Residents Trust an amount equal to the sum of (i) the total Allowed Former Resident Claims of Participating Former Residents, (ii) the total Allowed Current Resident Claims of Participating Current Residents, and (iii) the total projected Residents Trust expenses (the

“Lifespace Trust Contribution”), in annual payments in the amounts listed on the Contribution Schedule attached hereto as **Exhibit 1**.<sup>2</sup> Beginning in year 2025:

(a) If any portion of any required annual payment of the Lifespace Trust Contribution would result in Lifespace failing to maintain at least 250 days cash on hand (the “Lifespace Minimum DCOH”) then such portion of the annual payment may be deferred to the following year (the “Lifespace Deferral”);

(b) Any Lifespace Deferral that has accrued for two years is due to be paid in full the following year unless it may be deferred under the following paragraph.

(c) If any portion of any Lifespace Trust Contribution would trigger an event of default (an “MTI Default”) under the Lifespace Master Trust Indenture dated November 1, 2010, (as amended, and as may be further amended, the “Master Trust Indenture”), then any such portion may be deferred until payment in full would not trigger an MTI Default.

(d) The annual Lifespace Trust Contributions listed on Exhibit 1 shall be made on December 31 of each year for the subsequent calendar year (the “Payment Date”). By way of example, the Lifespace Trust Contribution for 2024 shall be made on December 31, 2023.

(e) On December 15 of each year, Lifespace shall prepare and deliver to the Trustee a statement setting forth its good faith estimate of the Lifespace Minimum DCOH projection as of the Payment Date for the following year to determine if any portion of the required Lifespace Trust Contribution for that year will cause the Lifespace days cash on hand (“DCOH”) to go below the Lifespace Minimum DCOH or cause an MTI Default as

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<sup>2</sup> Exhibit 1 currently assumes that all Residents will participate in the settlement and releases in the Plan. If any Resident elects to OPT OUT of the settlement and releases in the Plan, such Resident will not participate in any distributions under this Agreement or the Residents Trust, and the Lifespace Trust Contribution set forth on Exhibit 1 will be reduced by an amount equal to such Resident’s Allowed Resident Claim.

of the Payment Date (the "Financial Threshold Estimate"). The Financial Threshold Estimate shall contain a certificate of the Chief Financial Officer of Lifespace certifying that the Financial Threshold Estimate was prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Financial Threshold Estimate was being prepared and audited as of a fiscal year end.

3. Post-Payment Date Adjustment.

(a) Within 150 days after the Payment Date, Lifespace shall deliver to the Trustee a statement certified by the Lifespace auditor setting forth the final calculation of the Lifespace DCOH as of the Payment Date (the "Final DCOH Calculations") and final determination of whether an MTI Default would have in fact occurred from the payment due on the Payment Date (the "MTI Default Calculation" and together with the Final DCOH Calculation the "Final Audited Certification").

(b) Lifespace shall pay any underpayment, and the Trustee shall return any overpayment, within 30 days of delivery of the Final Audited Certification.

4. Examination and Review.

(a) After receipt of the Final Audited Certification, the Trustee shall have 30 days (the "Review Period") to review the Final Audited Certification. During the Review Period, the Trustee shall have reasonable access to Lifespace information relating to the Final Audited Certification. The Trustee may object to the Final Audited Certification by delivering to Lifespace before the expiration of the Review Period a written objection

setting forth in reasonable detail the basis for the Trustee's objection (the "Objection"). If the Trustee does not deliver an Objection before the expiration of the Review Period, the Trustee shall be deemed to have accepted and agreed to the Final Audited Certification.

(b) If the Trustee delivers an Objection before the expiration of the Review Period, Lifespace and the Trustee shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Objection, which Resolution Period may be extended upon the written mutual agreement of Lifespace and the Trustee (the "Resolution Period"). If any part of the Objection is not resolved by the expiration of the Resolution Period, the unresolved portion of the Objection shall be submitted to KPMG (the "Independent Accountant") for resolution. The decision of the Independent Accountant (the "Independent Accountant Decision") shall be final and binding on the Parties. Any payments required to be made under this Agreement shall be consistent with the Independent Accountant Decision and shall be made within 30 days after the Independent Accountant Decision. The costs of the Independent Accountant shall be paid by the losing Party.

5. Distributions of Trust Assets. The Residents Trust shall receive the Lifespace Trust Contributions and distribute the trust funds as set forth below:

(a) Participating Former Residents shall receive a distribution in the amount of their Allowed Former Resident Claims sixty (60) days after (a) the Residents Trust has been informed that the Participating Former Resident's independent living unit has been re-leased to a new resident, and (b) the Residents Trust has sufficient funds, after reasonable reserves, to make such distribution (the Trustee shall reserve sufficient funds in



the Residents Trust for reasonable Trust expenses and the future payments of the projected Life Care Subsidy (defined below) to Participating Current Residents).

(b) Participating Current Residents shall receive a distribution in the amount of their Allowed Current Resident Claims within sixty (60) days after (a) vacating the Edgemere facility, either through death or by moving out of the facility, (b) the Residents Trust has been informed that the Participating Current Resident's independent living unit has been re-leased to a new resident, and (c) the Trust has sufficient funds, after reasonable reserves, to make such distribution (the Trustee shall reserve sufficient funds in the Residents Trust for reasonable Trust expenses and the future payments of the projected Life Care Subsidy to Participating Current Residents).

(c) If there are insufficient funds in the Residents Trust to fully pay an Allowed Resident Claim, such Resident shall receive whatever portion of the Allowed Resident Claim is available at that time, with the remaining portion of the Allowed Resident Claim payable in subsequent years as funds become available. If there is more than one Resident who is not fully paid their Allowed Resident Claim when due under this Agreement, the Residents Trust shall pay those Participating Residents in the chronological order as funds are available to the Residents Trust.

(d) Participating Current Residents who advance to higher levels of care within the community may request, and the Residents Trust shall pay directly to such Participating Current Resident (subject to the availability of funds in the Residents Trust), the portion of such Resident's monthly fee for the elevated level of care that exceeds the then-current monthly fee charged for independent living services. All payments made directly to any

Participating Current Resident hereunder shall be deducted from such Participating Current Resident's Allowed Current Resident Claim.

(e) In addition, Participating Current Residents that are able to establish to the satisfaction of the Residents Trust Trustee that he or she is indigent and unable to pay their monthly fee may request, and the Residents Trust shall pay directly to such Participating Current Resident (subject to the availability of funds in the Residents Trust) such Participating Current Resident's monthly fee (in any level of care) until such Participating Current Resident's Allowed Current Resident Claim has been exhausted. Requests for distribution of Residents Trust assets directly to such Participating Current Resident in accordance with this paragraph and the preceding paragraph (referred to herein as the "Life Care Subsidy") shall be given priority in timing of payment to distributions to residents who vacate the community.<sup>2</sup>

(f) Residents who OPT OUT of the Plan Releases pursuant to the terms of the Plan shall receive no distributions from the Residents Trust and shall not be entitled to payment of Life Care Benefits from the Residents Trust.

6. Condition Precedent to Effectiveness. The effectiveness of this Agreement is subject to and conditioned upon (i) entry of a Final Order confirming the Plan by the Bankruptcy Court in a form satisfactory to Lifespace on or before February 15, 2023, and (ii) the Effective Date of the Plan occurring on or before May 15, 2023. If either of these conditions does not occur (unless waived by all of the Parties), then this Agreement shall become null and void *ab initio*, and no settlement, contribution or distributions will be made to any party pursuant to this Agreement.

7. Non-Admission. All Parties agree that by entering into this Agreement, no Party acknowledges, admits, concedes, confesses, or recognizes any wrongdoing, liability, or fault

whatsoever. Nothing contained herein shall be construed as an admission of liability and neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with the Agreement, shall be deemed or construed in any judicial, non-judicial, arbitration or other proceeding, to be evidence of, or a presumption, concession, or admission by any Party of the truth of any fact alleged or the validity of any claim that has been, could have been or in the future might be asserted against any of the Parties, or of any liability, fault, wrongdoing or otherwise.

8. Successors and Assigns. The Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns. The Trustee of the Residents Trust shall be a third part beneficiary of this Agreement. **Edgemere is expressly allowed, and shall assign all of its rights under this Agreement, to the Residents Trust, including the right to enforce Litespace's contribution obligations under this Agreement.**

9. Arms Length Transaction. The Parties along with the Committee acknowledge and agree that this Agreement is the product of arms-length negotiations, and that it is entered into in good faith, and in the best interests of each of the Parties and the Residents. Each Party along with the Committee has carefully read the Agreement and the contents thereof are known and understood by each of the Parties along with the Committee. Each Party along with the Committee has had the opportunity to receive and has received independent legal advice from attorneys of its choice with respect to the advisability of making this settlement and the releases provided herein and with respect to the advisability of executing the Agreement.

10. Entire Agreement. The Parties acknowledge and agree that this Agreement together with the Plan constitute the entire agreement between and among the Parties and

supersedes all prior agreements and understandings, both written and oral, among the Parties or between any of them with respect to the subject matter hereof; provided that the Agreement shall not be interpreted inconsistently with the terms of the Plan and that the Plan Releases shall not be impaired, diminished or otherwise affected by the terms of the Agreement.

11. Specific Performance/Covenant Not to Sue/Injunction. The Parties acknowledge that money damages are an inadequate remedy for breach of this Agreement. Therefore, the Parties agree that each of them has the right, in addition to any other right that they may have under the Agreement or otherwise (including the right to seek money damages), to specific performance of the Agreement in the event of any breach hereof by any Party.

12. Waiver. The failure of any Party to insist on strict adherence to any term of the Agreement shall not be considered a waiver of, or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement. Any waiver (express or implied) of any default or breach of the Agreement shall not constitute a waiver of any other or subsequent default or breach.

13. Further Assurances, Best Efforts, Exclusive Jurisdiction. Each Party agrees to use its reasonable best efforts to take or cause to be taken all actions and to do or cause to be done all things necessary, proper or advisable under applicable laws and regulations to implement and make effective the settlement transactions contemplated by this Agreement. Each Party further agrees that the Bankruptcy Court shall retain exclusive jurisdiction to enforce this Agreement in connection with the Plan.

14. Amendment or Modification. The Agreement may be amended, modified, altered or supplemented only upon written agreement of all of the Parties.

15. Binding Effect. The Agreement is intended to and shall confer upon the Resident Trust and its Trustee all rights to enforce this Agreement and the remedies hereunder. The Agreement is binding upon and is for the benefit of the Parties, the Residents, the Residents Trust, and the Trustee of the Residents Trust and their respective successors, assigns and legal representatives.

16. Warranty of Authority. Each Party and the Committee in its respective representative capacity represents and warrants that it is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf its signature is affixed.

(a) Edgemere represents that it is duly organized, validly existing and in good standing under the laws of the State of Texas and has the requisite power to enter into and perform the Agreement, subject to confirmation of the Plan. The Agreement has been duly authorized by all necessary actions on the part of Edgemere, has been duly executed, and, constitutes a binding agreement, enforceable in accordance with its terms.

(b) Lifespace represents that it is duly organized, validly existing and in good standing under the laws of Iowa and has the requisite power to enter into and perform the Agreement. The Agreement has been duly authorized by all necessary action on the part of Lifespace, has been duly executed by Lifespace and constitutes a binding agreement of Lifespace, enforceable against Lifespace in accordance with its terms.

(c) The Parties represent that there are no other persons or entities whose consent is required in order to give full force and effect to the terms of this Agreement.

17. No Representations or Warranties. The Parties acknowledge that they are entering into this Agreement without any representations, warranties, express or implied (other than those expressly set forth herein).

18. Headings. The headings contained in the Agreement are for convenience of reference purposes only and do not form a part of the Agreement and in no way modify, interpret or construe the agreements and understandings of the Parties contained in the Agreement.

19. Notices. All notices, requests, claims, or demands hereunder shall be in writing and shall be delivered by electronic mail or by Federal Express mail, and addressed as follows:

**IF TO THE LIFESPACE:**

Cooley LLP  
110 North Wacker Drive  
42nd Floor  
Chicago, IL 60606  
Attention: Eric Walker  
ewalker@cooley.com

-and-

Lifespace Communities, Inc.  
3501 Olympus Blvd, Suite 300  
Dallas, TX 75019  
Attention: Tim Gorman, General Counsel  
Tim.Gorman@lifespacecommunities.com

**IF TO EDGEMERE RELATED PARTIES:**

Polsinelli PC  
2950 N. Harwood, Suite 2100  
Dallas, TX 75201  
Attention: Jeremy Johnson and Trinitee Green  
[Jeremy.johnson@polsinelli.com](mailto:Jeremy.johnson@polsinelli.com)  
[Tggreen@polsinelli.com](mailto:Tggreen@polsinelli.com)

**IF TO RESIDENTS TRUST:**

Foley & Lardner LLP  
2021 McKinney Avenue, Suite 1600  
Dallas, TX 75201  
Attention: Stephen McCartin, Mark Moore and Tom Scannell  
[smccartin@foley.com](mailto:smccartin@foley.com)  
[mmoore@foley.com](mailto:mmoore@foley.com)  
[tscannell@foley.com](mailto:tscannell@foley.com)

20. Counterparts. The Agreement may be signed in counterparts and delivered by electronic mail, and so executed, shall constitute one agreement. The Agreement shall be considered executed and binding on all Parties when all signatories designated herein have executed the Agreement.


21. Severability. If one or more of the provisions contained in the Agreement is determined by a court of jurisdiction to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of the Agreement shall not be affected or impaired, and the Parties will in good faith agree upon a valid and enforceable provision that shall be a reasonable substitute for such invalid or unenforceable provision.

22. Governing Law. The Agreement, and the rights and obligations of the Parties under this agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles, and the Parties consent to jurisdiction in the State of Texas.

23. Jurisdiction. Any dispute, difference or controversy arising under the Agreement may be settled and finally determined by the Bankruptcy Court. The Bankruptcy Court shall retain jurisdiction for purposes of enforcing this Agreement and the Parties consent to the jurisdiction of the Bankruptcy Court for such purpose. Each Party waives any right to request or obtain a trial by jury in any judicial proceeding pertaining to the matters governed by the Agreement.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the date first above written.

**NORTHWEST SENIOR HOUSING  
CORPORATION:**

By: 

as: Director and Chairperson of the  
Restructuring Committee of the Board of  
Directors, and not Individually

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**LIFESPACE COMMUNITIES, INC.:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Agreed, Acknowledged and Approved as  
Set Forth Above:**

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF THE  
DEBTORS**

By: \_\_\_\_\_

Its Chairperson



**NORTHWEST SENIOR HOUSING  
CORPORATION:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LIFESPACE COMMUNITIES, INC.:**

By:  \_\_\_\_\_

Its: President + CEO \_\_\_\_\_

**Agreed, Acknowledged and Approved as  
Set Forth Above:**

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF THE  
DEBTORS**

By:  \_\_\_\_\_

Its Chairperson

**Exhibit 1**

**Lifespace Trust Contribution Schedule**

<b>Date</b>	<b>Lifespace Contribution Payment</b>	<b>Administrative Expense Payment</b>	<b>Annual Payment</b>
<b>Effective Date Payment</b>	\$52,385,094.00	\$75,000.00	\$52,460,094.00
2024	\$11,395,234.00	\$75,000.00	\$11,470,234.00
2025	\$10,839,105.00	\$75,000.00	\$10,914,105.00
2026	\$9,968,057.00	\$75,000.00	\$10,043,057.00
2027	\$9,005,741.00	\$75,000.00	\$9,080,741.00
2028	\$7,901,979.00	\$75,000.00	\$7,976,979.00
2029	\$6,889,084.00	\$75,000.00	\$6,964,084.00
2030	\$5,966,775.00	\$75,000.00	\$6,041,775.00
2031	\$5,134,098.00	\$75,000.00	\$5,209,098.00
2032	\$4,359,664.00	\$75,000.00	\$4,434,664.00
2033	\$3,674,660.00	\$75,000.00	\$3,749,660.00
2034	\$3,078,130.00	\$75,000.00	\$3,153,130.00
2035	\$2,562,942.00	\$75,000.00	\$2,637,942.00
2036	\$2,129,252.00	\$75,000.00	\$2,204,252.00
2037	\$1,761,542.00	\$75,000.00	\$1,836,542.00
2038	\$1,446,837.00	\$75,000.00	\$1,521,837.00
2039	\$1,173,589.00	\$75,000.00	\$1,248,589.00
2040	\$931,568.00	\$75,000.00	\$1,006,568.00
2041	\$734,281.00	\$75,000.00	\$809,281.00
2042	\$572,976.00	\$75,000.00	\$647,976.00
	<b>\$141,910,608.00</b>	<b>\$1,500,000.00</b>	<b>\$143,410,608.00</b>

# EXHIBIT 4

**Lifespace Trust Contribution Schedule**

<b>Date</b>	<b>Lifespace Contribution Payment</b>	<b>Administrative Expense Payment</b>	<b>Annual Payment</b>
Effective Date Payment	\$52,385,094.00	\$75,000.00	\$52,460,094.00
2024	\$11,395,234.00	\$75,000.00	\$11,470,234.00
2025	\$10,839,105.00	\$75,000.00	\$10,914,105.00
2026	\$9,968,057.00	\$75,000.00	\$10,043,057.00
2027	\$9,005,741.00	\$75,000.00	\$9,080,741.00
2028	\$7,901,979.00	\$75,000.00	\$7,976,979.00
2029	\$6,889,084.00	\$75,000.00	\$6,964,084.00
2030	\$5,966,775.00	\$75,000.00	\$6,041,775.00
2031	\$5,134,098.00	\$75,000.00	\$5,209,098.00
2032	\$4,359,664.00	\$75,000.00	\$4,434,664.00
2033	\$3,674,660.00	\$75,000.00	\$3,749,660.00
2034	\$3,078,130.00	\$75,000.00	\$3,153,130.00
2035	\$2,562,942.00	\$75,000.00	\$2,637,942.00
2036	\$2,129,252.00	\$75,000.00	\$2,204,252.00
2037	\$1,761,542.00	\$75,000.00	\$1,836,542.00
2038	\$1,446,837.00	\$75,000.00	\$1,521,837.00
2039	\$1,173,589.00	\$75,000.00	\$1,248,589.00
2040	\$931,568.00	\$75,000.00	\$1,006,568.00
2041	\$734,281.00	\$75,000.00	\$809,281.00
2042	\$572,976.00	\$75,000.00	\$647,976.00
	<b>\$141,910,608.00</b>	<b>\$1,500,000.00</b>	<b>\$143,410,608.00</b>