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**COUNSEL TO THE EDMERE
 RESIDENTS TRUST**

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

In re:	§	Chapter 11
Northwest Senior Housing Corporation, <i>et al.</i> , ¹	§	Case No. 22-30659 (MVL)
Liquidating Debtors.	§	(Jointly Administered)

**NOTICE OF SECOND AMENDED PROPOSED ORDER REGARDING
 FIRST AMENDED APPLICATION OF THE EDMERE RESIDENTS TRUST TO
 RESOLVE CONFLICTING DEMANDS, FOR INTERPRETATION OF
 THE RESIDENCY AGREEMENTS, AND TO ENSURE DISTRIBUTIONS
ARE ACCOMPLISHED PURSUANT TO THE PLAN
 [Relates to Docket No. 1674]**

Stephen A. McCartin, the Trustee of the Edgemere Residents Trust,² hereby files this *Notice of Second Amended Proposed Order* regarding the *First Amended Application to Resolve Conflicting Demands, For Interpretation of the Residency Agreements and to Ensure Distributions are Accomplished Pursuant to the Plan* [Docket No. 1674] (the “**Application**”).

¹ The Liquidating Debtors in these chapter 11 cases (the “Chapter 11 Cases”), along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669).

² Capitalized terms not defined herein shall have the meaning ascribed in the Plan.



PLEASE TAKE NOTICE that the second amended proposed order to the Application is attached hereto as **Exhibit A** (the “**Second Amended Proposed Order**”). A redline of the changes against the Amended Proposed Order, filed at Docket No. 1673, is attached hereto as **Exhibit B**.

PLEASE TAKE FURTHER NOTICE that the Second Amended Proposed Order shall replace the Amended Proposed Order filed at Docket No. 1673.

Dated: September 12, 2023

Respectfully submitted,

/s/ Stephen A. McCartin

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**COUNSEL TO THE EDGEMERE
RESIDENTS TRUST**

Exhibit A

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

In re:

Northwest Senior Housing Corporation, *et al.*,¹

Liquidating Debtors.

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Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

**ORDER TO RESOLVE CONFLICTING DEMANDS, FOR INTERPRETATION OF
THE RESIDENCY AGREEMENTS, AND TO ENSURE TRUST DISTRIBUTIONS ARE
ACCOMPLISHED PURSUANT TO THE PLAN**

On the 19th day of September, 2023 (the “**Hearing**”) came on for consideration the First Amended Application of the Edgemere Residents Trust to Resolve Conflicting Demands, for Interpretation of the Residency Agreements, and to Ensure Distributions are Accomplished Pursuant to the Plan [Docket No. 1674] (the “**Application**”)², and the Court having found that

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

² Capitalized terms not defined herein shall have the meaning ascribed in the Plan.

notice of the Hearing, and an opportunity for all parties in interest to object, have been provided to all parties-in-interest and, upon consideration of the legal and factual bases set forth in the documents filed in support of the Application, the statements of counsel, all testimony and other evidence proffered, adduced and presented at the Hearing, this Court has determined that just cause exist for the relief granted herein. After due deliberation thereon and good cause appearing thereof, the Court hereby issues the following findings of fact and conclusions of law and order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

A. **Findings and Conclusions.** The findings and conclusions set forth herein and on the record during the Hearing constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

B. **Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§157 and 1334).** This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Application is a core proceeding under 28 U.S.C. § 157(b)(2)(L), and this Court has exclusive jurisdiction to consider the Application and enter a final order with respect thereto.

C. **Commencement and Joint Administration of the Chapter 11 Cases.** On April 14, 2022 (the “Petition Date”), the Debtors commenced these Chapter 11 cases by filing

voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On April 19, 2022, the Court entered that certain *Order Pursuant to Bankruptcy Rule 1015(b) and Local Rule 10015-1 (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 88].

D. **The Plan.**

(i) On April 7, 2023 this Court entered its Findings of Fact, Conclusions of Law, and Order Confirming Chapter 11 Plan of Plan Sponsors [Docket No. 1393] (the “**Confirmation Order**” and “**Plan**”). The Plan Effective Date was June 13, 2023. The Plan provides, in part:

- for the sale of substantially all of the Debtors’ assets and the liquidation of the Debtors,
- for the rejection of the Residency Agreements on the Effective Date of the Plan, creating Refund Claims against the Debtors under the rejected Residency Agreements,
- satisfaction of the Allowed Refund Claims by providing the holders of the Allowed Refund Claims with beneficial interests in the Edgemere Residents Trust (created under the Plan) (the “**Trust Interests**”) in full and final satisfaction of the Allowed Refund Claims, and
- for the settlement of all claims against Lifespace in exchange for Lifespace’s agreement to pay approximately \$145 million to the Edgemere Residents Trust for the benefit of the holders of Trust Interests, the former owners and the holders of Allowed Refund Claims arising under the rejected Residency Agreements.

- (ii) The Plan defines Refund Claims as follows:

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

- (iii) The Plan places Participating Former Resident Refund Claims and Participating Current Resident Refund Claims in Classes 5 and 6, and provides:

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 payment in an amount equal to their Refund Claim no later than sixty (60) days after the Refund Trigger Date.

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 Claim 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 Section 8 of this Plan (i.e., Participating Current Residents) shall receive Cash from the Residents Trust with sixty (60) days of the Refund Trigger Date in an amount equal to the Refund Claim.”

E. **The Residents Trust Agreement.**

(i) The Residents Trust Agreement provides:

The Residents Trust is being created on behalf of, and for the benefit of, the Residents Trust Beneficiaries, who are Participating Former Residents and Participating Current Residents of Edgemere that hold Allowed Class 5 and Class 6 Refund Claims under the Plan, and who shall hold beneficial interests in the Residents Trust ("Residents Trust Interests"). See Agreement, §D, p. 1.

(ii) The Trust Agreement provides that the Bankruptcy Court shall have exclusive jurisdiction to determine conflicting claims or demands to distributions from the Trust:

Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Class 5 or Class 6 Claim, or to a Residents Trust Interest or a distribution to a Residents Trust Beneficiary, the Trustee shall be entitled, at the direction and with the approval of the Residents Trust Advisory Board, to refuse to comply with any such conflicting claims or demands. In so refusing, the Trustee, at the direction and with the approval of the Residents Trust Advisory Board, may elect to make no payment or distribution with respect to the Residents Trust Interest subject to the claims or demands involved, or any part thereof, and the Trustee shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (ii) all differences have been resolved by a written agreement among all of such parties and the Trustee, which agreement shall (x) include a complete release of the Residents Trust and the Trustee, and (y) be subject to the approval of the Residents Trust Advisory Board if the proposed agreement results in a Class 5 or Class 6 Claim Allowed Claim equal to or in excess of \$100,000 (the occurrence of either (i) or (ii) of this Section 2.1 being referred to as a "Dispute Resolution"). Promptly after a Dispute Resolution is reached, the Trustee shall transfer the payments and distributions, in

accordance with the terms of such Dispute Resolution, the Plan and this Trust Agreement. (Emphasis added). *See* Trust Agreement, §2.1.

(iii) The Trust Agreement also provides that the Trust Interests are not transferable or assignable except by will, intestate succession, or operation of law. *See* Section 2.4(a) of the Trust Agreement.

(iv) The Trust Agreement provides the Trust Agreement may be amended by the Trustee, with the consent of all members of the Advisory Board, provided the amendment does not adversely affect distributions to the Trust beneficiaries. *See* Trust Agreement, §9.9.

F. The Residency Agreements.

(i) The Residency Agreements used by the Debtors and the Residents (the “Residency Agreements”) provide, in part:

- Resident(s) are defined “individually and/or collectively as “you” or “Resident” (See Residency Agreement, p.1),
- the Residents are required to make “non-transferable” Deposits (*See Residency Agreement, §5.7*),
- the Residency Agreement constitutes the entire agreement among the parties unless additional terms are in writing and signed by both parties (*See Residency Agreement §8.10*), and
- there are no-third party rights created under the Residency Agreement (*See Residency Agreement, §8.20*).

(ii) The Residency Agreements also provide (for 90% refundable contracts) as follows:

7.4 Refund of Resident Deposit. After termination of this Agreement in accordance with Section 7.2, or in the event of your death, or in the case of double occupancy, both occupants’ deaths, we will refund ninety percent (90%) of the Resident Deposit (without interest) that you paid for your Residence at Edgemere. (Emphasis Added).

(iii) Some, but not all, of the Residency Agreements included Addendums, which are in writing and signed by both parties. The Addendums provide, in part, as follows:

I (we) direct the refundable portion of the resident deposit to be refunded to:

The Estate of _____ ()
or

Contact person and mailing address for refund:

See Exhibit B to the Application.

G. Double Occupancy Residency Agreements.

(i) Residency Agreements executed by two (2) residents, either married or unmarried, to occupy the same unit are referred to herein as “**Double Occupancy Agreements**”.

The Residency Agreements provide in relevant part as follows:

Effect of Double Occupancy. If your Residency is occupied by two (2) Residents and one (1) Resident dies, this Agreement will continue in full legal force and effect as to the surviving Resident, except the Monthly Service Fee will be adjusted to reflect the then applicable single occupancy rate payable for the type of Residence occupied. No refund of the Resident Deposit will occur until the surviving Resident leaves and all conditions of Section 7.4 are met. (Emphasis added). *See* Residency Agreement, §7.3.

Refund of Resident Deposit. After termination of the Agreement in accordance with Section 7.2 or in the event of your death, or in the case of double occupancy, both occupants' deaths, we will refund ninety percent (90%) of the Resident Deposit (without interest) that you paid for your Residence at Edgemere. Except as provided in the next paragraph, the refund will be paid on the later of: (i) ten (10) days after a new resident deposit has been received from a new resident and the new resident has taken occupancy of your former Residence, or (ii) termination of this Agreement. (Emphasis added). *See* Residency Agreement, §7.4. (Emphasis Added).

H. **Declarations.**

(i) John Falldine was the Executive Director in charge of operations for the Debtors. According to the Falldine Declaration, the Debtors and the Residents intended and in fact implemented the contracts treating the Residents under Double Occupancy Residency Agreements as possessing a right of survivorship, with the last surviving resident becoming the sole owner of 100% of the right to receive the refund. The Falldine Declaration states that it was the normal custom for the Debtors to pay 100% of the refunds due under Double Occupancy Residency Agreements to the last surviving resident, or to his or her Addendum Payee if one was executed, or to his or her estate if the last surviving resident was deceased and there was no Addendum executed.

(ii) The Falldine Declaration also states it was the intent of the parties and the normal custom for the Debtors and the Residents to treat the Addendums as “pay on death” (“POD”) provisions to the contract, and not a lifetime transfer of the refund by the Resident to the Addendum Payee. The Falldine Declaration states that the Debtors would pay the refunds when due to the Residents, and not the Addendum Payees, if the refund became payable during the life

of the Resident (or during the life of the last surviving resident under Double Occupancy Agreements). The Fallaine Declaration states that the Debtors would allow the Residents to modify the Addendums, and to revoke or change the Addendum Payee, at any time prior to their deaths without the consent of the Addendum Payees.

(iii) Anwar Hussain, Myrtle Lemmon, and Betty Sherrill, living former residents of Edgemere, executed Addendums directing their refunds to be paid to third parties. The Hussain, Lemmon and Sherrill Declarations confirm that it was their intent for the Addendums to only become effective upon their deaths (a P.O.D. provision), and they are now asserting that the Trust Interest exchanged for their Refund Claims are owned by them, and that any Trust distributions must would be made to them, and not to the Addendum Payees.

I. **Industry Custom.**

(i) The Ventana, a competing CCRC in the community, expressly provides in its residency contracts that the last surviving resident has a right of survivorship under double occupancy Residency Agreements, and any designation of a beneficiary to receive the refund will be payable only upon the death of the residents. The Ventana contract provides:

- a. If the Residency is initially occupied by two (2) Residents, the Entrance Deposit shall be paid jointly to each of you, if both are alive. If only one of you is alive, the amount due will be retained for the surviving Resident. If neither of you is alive, the refund will be paid in accordance with a Designation of Beneficiary of Entrance Deposit Refund executed by the Resident who last occupied the Residence, or if no Designation of Beneficiary has been executed, to the personal representative of your estate. (Emphasis added).
- b. If the Residence is initially occupied by one (1) Resident, the amount due will be paid to you, if alive. If you are not alive, the refund will be paid in accordance with the Designation of Beneficiary of Entrance Deposit Refund executed by you, or if not, to the personal representative of your estate. (Emphasis added).

- c. No refund of your Entrance Deposit will occur until the surviving Resident ceases to reside at Ventana, and all conditions of the Agreement are met.

See Ventana Agreement, §8.4(a), (b), and (c).

J. **Judicial Notice.** The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court and considers all evidence and arguments made, proffered, or adduced at the various hearing held before this Court during the pendency of the Chapter 11 Cases.

Order

Now, THEREFORE, in view of the foregoing FINDINGS, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. **Findings of Fact and Conclusions of Law.** The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though more fully set forth herein and shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact shall be determined to be a conclusion of law, it shall be deemed so, and vice versa.

2. **Notice of Hearing.** Notice of the Hearing was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law.

3. **Right of Survivorship.** In construing the Residency Agreements, the Court's primary goal is to ascertain the intent of the parties. Based on (i) a reading of all applicable provisions of the Residency Agreement, (ii) the Falldine Declaration, (iii) the Debtors' previous course of conduct, and (iv) industry custom, the Court finds that the parties to the Residency Agreements intended for the last surviving resident under Double Occupancy Residency Agreements to possess a right of survivorship to 100% of the refund claim, and the last surviving resident therefore became the owner of 100% of the refund. Accordingly, the last surviving resident in Double Occupancy Residency Agreements is hereby determined to have possessed a right of survivorship under the Residency Agreements. In addition, the Court approves the proposed amendment to the Residents Trust Agreement clarifying and specifically providing that

any Trust Interest acquired jointly by two (2) living double occupancy residents on the Effective Date of the Plan shall own their Trust Interest jointly with a right of survivorship.

4. **Pay on Death Provision.** In construing the Residency Agreements, the Court's primary goal is to ascertain the intent of the parties. The Court must harmonize and give effect to each provision so that no provision is rendered meaningless. Based on (i) a reading of all applicable provisions of the Residency Agreements, and to give meaning and effect to all provisions of the Residency Agreements, (ii) the Falldine, Hussain, Lemmon and Sherrill Declarations, (iii) the previous course of conduct of Edgemere and its Residents, and (iv) industry custom, the Court finds that the Addendums directing payment of the refunds due under the Residency Agreements to a third party or parties were effective as "pay on death" provisions, and only became effective upon the death of the resident, or both residents in a Double Occupancy Residency Agreement, prior to the Plan Effective Date. This finding that the parties intended the Addendums to be effective as "pay on death" provision gives effect to both the "non-transferable Deposit" provision of section 5.7 of the Residency Agreements, as well as the "no third-party rights" provision of section 8.20 of the Residency Agreements. If the Court were to find that the Addendums created an immediate transfer of rights to the refunds to the Addendum Payees when executed, the Addendums would be in direct conflict with the "non-transferable Deposit" and "no third-party rights" provisions of the contracts and render these provisions meaningless. Accordingly,

- (i) if the Resident (or both Residents under a Double Occupancy Agreement) died on or prior to the Effective Date of the Plan, their "pay on death" Addendum (if any) became effective on or before the Effective Date of the Plan, and their Addendum Payee(s) became the owner(s) of the Refund Claim and the Trust Interest exchanged

for the Refund Claim on the Effective Date of the Plan. If the Addendum contains numerous Addendum Payees, this Court finds that it was the intent of the parties that they would own the Refund Claim, and therefore now the Trust Interest exchanged for the Refund Claim as set forth in the applicable Addendum, and it is so ordered.

(ii) If the Resident (or both Residents under Double Occupancy Agreements) were not deceased on or prior to the Effective Date of the Plan, the “pay on death” Addendum did not become effective prior to the Debtors’ rejection of the Residency Agreementsand, accordingly, the living Resident owned the Refund Claim on the Plan Effective Date, and therefore now owns the Trust Interest exchanged for the Refund Claim pursuant to the terms of the Plan.

5. **Ownership of Trust Interests.** The Trust Interests are owned by the previous owners and holders of the Refund Claims under the Residency Agreements on the Effective Date of the Plan. Accordingly, the Trust Interests are owned by either the Resident(s) or the Addendum Payee(s) as outlined below under the following facts:

I. **Residents Entering Community in Single Occupancy**

As of Plan Effective Date	Addendum Executed Before Effective Date of Plan	Holder(s) of Trust Interest
Resident Alive	No	Resident
Resident Deceased	No	Estate of Deceased
Resident Alive	Yes	Resident
Resident Deceased	Yes	Addendum Payee(s)

II. **Residents Entering Community in Double Occupancy**

As of Effective Date of Plan	Addendum Executed Before Effective Date of Plan	Holder(s) of Trust Interests
Both Residents Alive	No	Both Residents jointly (with right of survivorship)
Both Residents Alive	Yes	Both Residents jointly (with right of survivorship)
Both Residents Deceased	Yes	Addendum Payee(s)
Both Residents Deceased	No	Estate of Last Surviving Resident
One Resident Deceased, One Alive	No	Last Surviving Resident
One Resident Deceased, One Alive	Yes	Last Surviving Resident

6. **Approval of Proposed Amendment to Trust Agreement.** This Court approves the proposed amendment to the Trust Agreement, to allow the holders of Trust Interest the right to designate the beneficiaries of their Trust Distributions upon their death (P.O.D. beneficiary designations) by executing and delivering a Designation of Beneficiary form to the Trustee of the Edgemere Residents Trust.

END OF ORDER###

Submitted by:

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Exhibit B

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

In re:

Northwest Senior Housing Corporation, *et al.*,¹

Liquidating Debtors.

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Chapter 11

Case No. 22-30659 (~~MLV~~MVL)

(Jointly Administered)

**ORDER ~~GRANTING APPLICATION OF THE EDGEMERE RESIDENTS TRUST TO~~
RESOLVE CONFLICTING DEMANDS, FOR INTERPRETATION OF THE
RESIDENCY AGREEMENTS, AND TO ENSURE TRUST DISTRIBUTIONS ARE
ACCOMPLISHED PURSUANT TO THE PLAN**

~~Upon~~On the 19th day of September, 2023 (the “Hearing”) came on for consideration ~~of~~
the First Amended Application of the Edgemere Residents Trust to Resolve Conflicting
Demands, for Interpretation of the Residency Agreements, and to Ensure Distributions ~~Are~~are

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

[Different first page setting changed from off in original to on in modified.]

Accomplished Pursuant to the Plan [Docket No. 1674] (the “**Application**”)²~~of Stephen A. McCartin, the Trustee of the Edgemere Residents Trust,~~³~~pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), the Confirmation Order and the Edgemere Trust Agreement,~~ and the Court having found that notice of the Hearing, and an opportunity for all parties in interest to object, have been provided to all parties-in-interest and, upon consideration of the legal and factual bases set forth in the documents filed in support of the Application, the statements of counsel, all testimony and other evidence proffered, adduced and presented at the Hearing, this Court has determined that just cause exist for the relief granted herein. After due deliberation thereon and good cause appearing thereof, the Court hereby issues the following findings of fact and conclusions of law and order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

A. **Findings and Conclusions.** The findings and conclusions set forth herein and on the record during the Hearing constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

² Capitalized terms not ~~otherwise~~ defined herein shall have the ~~meanings~~meaning ascribed ~~to such terms~~ in the ~~Application~~Plan.

³ ~~Capitalized terms not defined herein shall have the meaning ascribed in the Plan.~~

[Different first page setting changed from off in original to on in modified.]

B. ~~;~~ ~~and the Court having~~ Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§157 and 1334). This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334; ~~and the Application being a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and venue being.~~ Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; ~~and due and sufficient notice of.~~ The Application is a core proceeding under 28 U.S.C. § 157(b)(2)(L), and this Court has exclusive jurisdiction to consider the Application and ~~the hearing on same having been provided and it appearing that no other or further notice need be provided; and after due deliberation and good cause appearing therefor, it is~~ ~~HEREBY ORDERED THAT:~~ enter a final order with respect thereto.

C. Commencement and Joint Administration of the Chapter 11 Cases. On April 14, 2022 (the “Petition Date”), the Debtors commenced these Chapter 11 cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On April 19, 2022, the Court entered that certain Order Pursuant to Bankruptcy Rule 1015(b) and Local Rule 10015-1 (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief [Docket No. 88].

D. ~~1. The Application is GRANTED~~ Plan.

(i) On April 7, 2023 this Court entered its Findings of Fact, Conclusions of Law, and Order Confirming Chapter 11 Plan of Plan Sponsors [Docket No. 1393] (the “**Confirmation Order**” and “**Plan**”). The Plan Effective Date was June 13, 2023. The Plan provides, in part:

- for the sale of substantially all of the Debtors’ assets and the liquidation of the Debtors,

[Different first page setting changed from off in original to on in modified.]

- for the rejection of the Residency Agreements on the Effective Date of the Plan, creating Refund Claims against the Debtors under the rejected Residency Agreements,
- satisfaction of the Allowed Refund Claims by providing the holders of the Allowed Refund Claims with beneficial interests in the Edgemere Residents Trust (created under the Plan) (the “Trust Interests”) in full and final satisfaction of the Allowed Refund Claims, and
- for the settlement of all claims against Lifespace in exchange for Lifespace’s agreement to pay approximately \$145 million to the Edgemere Residents Trust for the benefit of the holders of Trust Interests, the former owners and the holders of Allowed Refund Claims arising under the rejected Residency Agreements.

~~2. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.~~

~~3. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.~~

(ii) The Plan defines Refund Claims as follows:

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

(iii) The Plan places Participating Former Resident Refund Claims and Participating Current Resident Refund Claims in Classes 5 and 6, and provides:

[Different first page setting changed from off in original to on in modified.]

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 payment in an amount equal to their Refund Claim no later than sixty (60) days after the Refund Trigger Date.

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 Claim 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 Section 8 of this Plan (i.e., Participating Current Residents) shall receive Cash from the Residents Trust with sixty (60) days of the Refund Trigger Date in an amount equal to the Refund Claim.”

E. The Residents Trust Agreement.

(i) The Residents Trust Agreement provides:

The Residents Trust is being created on behalf of, and for the benefit of, the Residents Trust Beneficiaries, who are Participating Former Residents and Participating Current Residents of Edgemere that hold Allowed Class 5 and Class 6 Refund Claims under the Plan, and who shall hold beneficial interests in the Residents Trust (“Residents Trust Interests”). See Agreement, §D, p. 1.

(ii) The Trust Agreement provides that the Bankruptcy Court shall have exclusive jurisdiction to determine conflicting claims or demands to distributions from the Trust:

Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Class 5 or Class 6 Claim, or to a Residents Trust Interest or a distribution to a Residents Trust Beneficiary, the Trustee shall be entitled, at the direction and with the approval of the Residents Trust Advisory Board, to refuse to comply with any such conflicting claims or demands. In so refusing, the Trustee, at the direction and with the approval of the Residents Trust Advisory Board, may elect to make no payment or distribution with respect to the Residents Trust Interest subject to the claims or demands involved, or any part thereof, and the Trustee shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (ii) all differences have been resolved by a written agreement among all of such parties and the Trustee, which agreement shall (x) include a complete release of the Residents Trust and the Trustee, and (y) be subject to the approval of the Residents Trust Advisory Board if the proposed agreement results in a Class 5 or Class 6 Claim Allowed Claim equal to or in excess of \$100,000 (the occurrence of either (i) or (ii) of this Section 2.1 being referred to as a "Dispute Resolution"). Promptly after a Dispute Resolution is reached, the Trustee shall transfer the payments and distributions, in accordance with the terms of such Dispute Resolution, the Plan and this Trust Agreement. (Emphasis added). See Trust Agreement, §2.1.

(iii) The Trust Agreement also provides that the Trust Interests are not transferable or assignable except by will, intestate succession, or operation of law. See Section 2.4(a) of the Trust Agreement.

(iv) The Trust Agreement provides the Trust Agreement may be amended by the Trustee, with the consent of all members of the Advisory Board, provided the amendment does not adversely affect distributions to the Trust beneficiaries. See Trust Agreement, §9.9.

F. The Residency Agreements.

(i) The Residency Agreements used by the Debtors and the Residents (the “Residency Agreements”) provide, in part:

- Resident(s) are defined “individually and/or collectively as “you” or “Resident” (See Residency Agreement, p.1),
- the Residents are required to make “non-transferable” Deposits (See Residency Agreement, §5.7),
- the Residency Agreement constitutes the entire agreement among the parties unless additional terms are in writing and signed by both parties (See Residency Agreement §8.10), and
- there are no-third party rights created under the Residency Agreement (See Residency Agreement, §8.20).

(ii) The Residency Agreements also provide (for 90% refundable contracts) as follows:

7.4 Refund of Resident Deposit. After termination of this Agreement in accordance with Section 7.2, or in the event of your death, or in the case of double occupancy, both occupants’ deaths, we will refund ninety percent (90%) of the Resident Deposit (without interest) that you paid for your Residence at Edgemere. (Emphasis Added).

(iii) Some, but not all, of the Residency Agreements included Addendums, which are in writing and signed by both parties. The Addendums provide, in part, as follows:

I (we) direct the refundable portion of the resident deposit to be refunded to:

The Estate of _____ ()
or

Contact person and mailing address for refund:

See Exhibit B to the Application.

G. Double Occupancy Residency Agreements.

(i) Residency Agreements executed by two (2) residents, either married or unmarried, to occupy the same unit are referred to herein as “Double Occupancy Agreements”.

The Residency Agreements provide in relevant part as follows:

Effect of Double Occupancy. If your Residency is occupied by two (2) Residents and one (1) Resident dies, this Agreement will continue in full legal force and effect as to the surviving Resident, except the Monthly Service Fee will be adjusted to reflect the then applicable single occupancy rate payable for the type of Residence occupied. No refund of the Resident Deposit will occur until the surviving Resident leaves and all conditions of Section 7.4 are met. (Emphasis added). *See Residency Agreement, §7.3.*

Refund of Resident Deposit. After termination of the Agreement in accordance with Section 7.2 or in the event of your death, or in the case of double occupancy, both occupants’ deaths, we will refund ninety percent (90%) of the Resident Deposit (without interest) that you paid for your Residence at Edgemere. Except as provided in the next paragraph, the refund will be paid on the later of: (i) ten (10) days after a new resident deposit has been received from a new resident and the new resident has taken occupancy of your former Residence, or (ii) termination of this Agreement. (Emphasis added). *See Residency Agreement, §7.4. (Emphasis Added).*

H. Declarations.

(i) John Falldine was the Executive Director in charge of operations for the Debtors. According to the Falldine Declaration, the Debtors and the Residents intended and in fact implemented the contracts treating the Residents under Double Occupancy Residency Agreements as possessing a right of survivorship, with the last surviving resident becoming the sole owner of 100% of the right to receive the refund. The Falldine Declaration states that it was the normal custom for the Debtors to pay 100% of the refunds due under Double Occupancy Residency Agreements to the last surviving resident, or to his or her Addendum Payee if one was executed, or to his or her estate if the last surviving resident was deceased and there was no Addendum executed.

(ii) The Falldine Declaration also states it was the intent of the parties and the normal custom for the Debtors and the Residents to treat the Addendums as “pay on death” (“POD”) provisions to the contract, and not a lifetime transfer of the refund by the Resident to the Addendum Payee. The Falldine Declaration states that the Debtors would pay the refunds when due to the Residents, and not the Addendum Payees, if the refund became payable during the life of the Resident (or during the life of the last surviving resident under Double Occupancy Agreements). The Falldine Declaration states that the Debtors would allow the Residents to modify the Addendums, and to revoke or change the Addendum Payee, at any time prior to their deaths without the consent of the Addendum Payees.

(iii) Anwar Hussain, Myrtle Lemmon, and Betty Sherrill, living former residents of Edgemere, executed Addendums directing their refunds to be paid to third parties. The Hussain, Lemmon and Sherrill Declarations confirm that it was their intent for the Addendums to only become effective upon their deaths (a P.O.D. provision), and they are now asserting that the

Trust Interest exchanged for their Refund Claims are owned by them, and that any Trust distributions must would be made to them, and not to the Addendum Payees.

I. **Industry Custom.**

(i) The Ventana, a competing CCRC in the community, expressly provides in its residency contracts that the last surviving resident has a right of survivorship under double occupancy Residency Agreements, and any designation of a beneficiary to receive the refund will be payable only upon the death of the residents. The Ventana contract provides:

- a. If the Residency is initially occupied by two (2) Residents, the Entrance Deposit shall be paid jointly to each of you, if both are alive. If only one of you is alive, the amount due will be retained for the surviving Resident. If neither of you is alive, the refund will be paid in accordance with a Designation of Beneficiary of Entrance Deposit Refund executed by the Resident who last occupied the Residence, or if no Designation of Beneficiary has been executed, to the personal representative of your estate. (Emphasis added).
- b. If the Residence is initially occupied by one (1) Resident, the amount due will be paid to you, if alive. If you are not alive, the refund will be paid in accordance with the Designation of Beneficiary of Entrance Deposit Refund executed by you, or if not, to the personal representative of your estate. (Emphasis added).
- c. No refund of your Entrance Deposit will occur until the surviving Resident ceases to reside at Ventana, and all conditions of the Agreement are met.

See Ventana Agreement, §8.4(a), (b), and (c).

J. **Judicial Notice.** The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court and considers all evidence and arguments made, proffered, or adduced at the various hearing held before this Court during the pendency of the Chapter 11 Cases.

Order

Now, THEREFORE, in view of the foregoing FINDINGS, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Findings of Fact and Conclusions of Law. The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though more fully set forth herein and shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact shall be determined to be a conclusion of law, it shall be deemed so, and vice versa.

2. Notice of Hearing. Notice of the Hearing was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law.

3. Right of Survivorship. In construing the Residency Agreements, the Court's primary goal is to ascertain the intent of the parties. Based on (i) a reading of all applicable provisions of the Residency Agreement, (ii) the Falldine Declaration, (iii) the Debtors' previous course of conduct, and (iv) industry custom, the Court finds that the parties to the Residency Agreements intended for the last surviving resident under Double Occupancy Residency Agreements to possess a right of survivorship to 100% of the refund claim, and the last surviving resident therefore became the owner of 100% of the refund. Accordingly, the last surviving resident in Double Occupancy Residency Agreements is hereby determined to have possessed a right of survivorship under the Residency Agreements. In addition, the Court approves the proposed amendment to the Residents Trust Agreement clarifying and specifically providing that

any Trust Interest acquired jointly by two (2) living double occupancy residents on the Effective Date of the Plan shall own their Trust Interest jointly with a right of survivorship.

4. **Pay on Death Provision.** In construing the Residency Agreements, the Court’s primary goal is to ascertain the intent of the parties. The Court must harmonize and give effect to each provision so that no provision is rendered meaningless. Based on (i) a reading of all applicable provisions of the Residency Agreements, and to give meaning and effect to all provisions of the Residency Agreements, (ii) the Falldine, Hussain, Lemmon and Sherrill Declarations, (iii) the previous course of conduct of Edgemere and its Residents, and (iv) industry custom, the Court finds that the Addendums directing payment of the refunds due under the Residency Agreements to a third party or parties were effective as “pay on death” provisions, and only became effective upon the death of the resident, or both residents in a Double Occupancy Residency Agreement, prior to the Plan Effective Date. This finding that the parties intended the Addendums to be effective as “pay on death” provision gives effect to both the “non-transferable Deposit” provision of section 5.7 of the Residency Agreements, as well as the “no third-party rights” provision of section 8.20 of the Residency Agreements. If the Court were to find that the Addendums created an immediate transfer of rights to the refunds to the Addendum Payees when executed, the Addendums would be in direct conflict with the “non-transferable Deposit” and “no third-party rights” provisions of the contracts and render these provisions meaningless. Accordingly,

- (i) if the Resident (or both Residents under a Double Occupancy Agreement) died on or prior to the Effective Date of the Plan, their “pay on death” Addendum (if any) became effective on or before the Effective Date of the Plan, and their Addendum Payee(s) became the owner(s) of the Refund Claim and the Trust Interest exchanged

for the Refund Claim on the Effective Date of the Plan. If the Addendum contains numerous Addendum Payees, this Court finds that it was the intent of the parties that they would own the Refund Claim, and therefore now the Trust Interest exchanged for the Refund Claim as set forth in the applicable Addendum, and it is so ordered.

(ii) If the Resident (or both Residents under Double Occupancy Agreements) were not deceased on or prior to the Effective Date of the Plan, the “pay on death” Addendum did not become effective prior to the Debtors’ rejection of the Residency Agreementsand, accordingly, the living Resident owned the Refund Claim on the Plan Effective Date, and therefore now owns the Trust Interest exchanged for the Refund Claim pursuant to the terms of the Plan.

5. **Ownership of Trust Interests.** The Trust Interests are owned by the previous owners and holders of the Refund Claims under the Residency Agreements on the Effective Date of the Plan. Accordingly, the Trust Interests are owned by either the Resident(s) or the Addendum Payee(s) as outlined below under the following facts:

I. Residents Entering Community in Single Occupancy

<u>As of Plan Effective Date</u>	<u>Addendum Executed Before Effective Date of Plan</u>	<u>Holder(s) of Trust Interest</u>
<u>Resident Alive</u>	<u>No</u>	<u>Resident</u>
<u>Resident Deceased</u>	<u>No</u>	<u>Estate of Deceased</u>
<u>Resident Alive</u>	<u>Yes</u>	<u>Resident</u>
<u>Resident Deceased</u>	<u>Yes</u>	<u>Addendum Payee(s)</u>

II. Residents Entering Community in Double Occupancy

<u>As of Effective Date of Plan</u>	<u>Addendum Executed Before Effective Date of Plan</u>	<u>Holder(s) of Trust Interests</u>
<u>Both Residents Alive</u>	<u>No</u>	<u>Both Residents jointly (with right of survivorship)</u>
<u>Both Residents Alive</u>	<u>Yes</u>	<u>Both Residents jointly (with right of survivorship)</u>
<u>Both Residents Deceased</u>	<u>Yes</u>	<u>Addendum Payee(s)</u>
<u>Both Residents Deceased</u>	<u>No</u>	<u>Estate of Last Surviving Resident</u>
<u>One Resident Deceased, One Alive</u>	<u>No</u>	<u>Last Surviving Resident</u>
<u>One Resident Deceased, One Alive</u>	<u>Yes</u>	<u>Last Surviving Resident</u>

6. Approval of Proposed Amendment to Trust Agreement. This Court approves the proposed amendment to the Trust Agreement, to allow the holders of Trust Interest the right to designate the beneficiaries of their Trust Distributions upon their death (P.O.D. beneficiary designations) by executing and delivering a Designation of Beneficiary form to the Trustee of the Edgemere Residents Trust.

~~End of Order~~ END OF ORDER

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~~Order submitted~~[Submitted](#) by:

FOLEY & LARDNER LLP

~~/s/ Stephen A. McCartin~~

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Modified DMS: nd://4891-4707-6219/10/Edgemere - Proposed Order - First Amended Applicaiton to Resolve Conflicting Demands.docx	
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<u>Table Insert</u>	2
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Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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