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required to engage CBRE to begin the sales process for the Real Property."

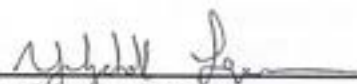
6. All other terms and conditions of the Term Sheet shall remain the same.
7. The Borrower hereby agrees with Hillmount Capital Inc. to be bound by the provisions of the Term Sheet, as amended herein.

This Amendment to Term Sheet may be executed by the parties in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

The execution and delivery of this Amendment to Term Sheet by facsimile transmission or electronic mail shall be as effective and binding on the parties hereto as if this Amendment to Term Sheet were executed and delivered in the original.

DATED the ____ day of September 2022.

HILLMOUNT CAPITAL INC.

Per: 
 Name: Yitz Levinson
 Office: President
 I have authority to bind the corporation.

ZEIFMAN PARTNERS INC.


 Zeifman Partners Inc.
 in its capacity as Receiver of Legacy Lifestyles
 Destin Property LLC,
 Legacy Lifestyles Trailwinds Property LLC,
 Legacy Lifestyles Ft. Myers Property LLC,
 Legacy Lifestyles Ocoee Property LLC and
 Legacy Lifestyles Longleaf Property LLC

Appendix “L”
to the Second Report of the Receiver



Court File No. CV-22-00674717-00CL & CV-21-00668821-00CL

Court File No. CV-21-00668821-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

)

TUESDAY, THE 20TH

)

JUSTICE KIMMEL

)

DAY OF SEPTEMBER, 2022

BETWEEN:

**BERKID INVESTMENTS LIMITED, ROBERT BARRON, THORNBRIDGE CAPITAL
INC., LUCY BER, SUSAN LATREMOILLE, JAMES MACDONALD, SCOTT
TUPLING, NADA TUPLING, TMP INVESTMENTS INC., MARK PIEROG, TARA
PIEROG, RON LAPSKER, 1392530 ONTARIO INC., LANGFORD GRAIN INC., FORE
BEARS FORENSIC SCIENCE INC., FESTIVUS HOLDINGS INC., STEVEN FREIMAN
AND GREGORY IP**

Plaintiffs

- and -

**HUNTER MILBORNE, GREGORY MARCHANT, MM REALTY PARTNERS
INTERNATIONAL, MM REALTY PARTNERS INTERNATIONAL INC., LEGACY
LIFESTYLE DESTIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE DESTIN GP
INC., LEGACY LIFESTYLE SUMMERLIN LIMITED PARTNERSHIP, LEGACY
LIFESTYLE SUMMERLIN GP INC. LEGACY LIFESTYLE TRAILWINDS LIMITED
PARTNERSHIP, LEGACY LIFESTYLE TRAILWINDS GP INC., WAVERLEY
CORPORATE FINANCE SERVICES LTD. and MORGAN MARCHANT**

Defendants

Court File No. CV-22-00674717-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**LEGACY LIFESTYLES DESTIN LP, LEGACY LIFESTYLES TRAILWINDS LP,
LEGACY LIFESTYLES SUMMERLIN LP, LEGACY LIFESTYLES OCOEE LP,
LEGACY LIFESTYLES LONGLEAF LP**

Applicants

- and -

**LEGACY LIFESTYLES DESTIN PROPERTY LLC, LEGACY LIFESTYLES
TRAILWINDS PROPERTY LLC, LEGACY LIFESTYLES FORT MYERS PROPERTY
LLC, LEGACY LIFESTYLES OCOEE PROPERTY LLC, , LEGACY LIFESTYLES
LONGLEAF PROPERTY LLC**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., C. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended

ORDER

THIS MOTION made by the Zeifman Partners Inc. as receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC and Legacy Lifestyles Longleaf Property LLC, appointed pursuant to the Amended Order of the Honourable Justice Conway, dated February 11, 2022 (the “**Receivership Order**”) for an order amending the Receivership Order to increase the Receiver’s borrowing capacity and granting certain other relief was heard this day by judicial videoconference via Zoom.

ON READING the First Report of the Receiver dated September 9, 2022 (the “**First Report**”), the Supplemental Report to the First Report of the Receiver, dated September 16, 2022 (the “**Supplemental Report**”), the Second Supplemental Report to the First Report of the Receiver, dated September 19, 2022, the Factum of the Receiver, dated September 16, 2022, the affidavit of Allan Rutman affirmed September 8, 2022, the affidavit of Sara-Ann Wilson sworn September 8, 2022, the affidavit of Farley Cohen, affirmed September 9, 2022, and the affidavit of Mark Ber, affirmed September 17, 2022, and on hearing the submissions of counsel for the Receiver, and any such other counsel and parties as were present:

FUNDING OF THE RECEIVERSHIP

1. **THIS COURT ORDERS** that paragraph 29 of the Receivership Order be and is hereby amended by deleting “\$3,600,000.00 CAD” and inserting “\$4,231,845 USD”. All other provisions of the Receivership Order shall remain in full force and effect, unamended hereby.
2. **THIS COURT ORDERS** that the Amendment to Term Sheet between Hillmount Capital Inc. and the Receiver (the “**Amendment to Term Sheet**”), attached as Appendix “C” to the Supplemental Report, be and is hereby approved and the Receiver is authorized and directed to execute the Amendment to Term Sheet with such minor amendments as the Receiver may deem necessary.

GENERAL

3. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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4. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



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Court File No. CV-22-00674717-00CL & CV-21-00668821-00C

BERKID INVESTMENTS LIMITED
Plaintiff

and

Court File No. CV-21-00668821-00C
HUNTER MILBORNE et al.
Defendant

and

Court File No. CV-22-00674717-00C
LEGACY LIFESTYLES DESTIN PROPERTY LLC, et al.
Applicants

Respondent

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) PROCEEDING COMMENCED AT TORONTO	
ORDER	
DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 Kenneth Kraft (LSO # 31919P) Tel: 416-863-4374 Fax: 416 863-4592 kenneth.kraft@dentons.com Sara-Ann Wilson (LSO # 56016C) Tel: (416) 863-4402 sara.wilson@dentons.com <i>Lawyers for Zeitfman Partners Inc., in its capacity as Court-appointed Receiver</i>	



Court File No. CV-22-00674717-00CL & CV-21-00668821-00CL

Court File No. CV-21-00668821-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	TUESDAY, THE 20TH
)	
JUSTICE KIMMEL)	DAY OF SEPTEMBER, 2022

BETWEEN:

**BERKID INVESTMENTS LIMITED, ROBERT BARRON, THORNBRIDGE CAPITAL
INC., LUCY BER, SUSAN LATREMOILLE, JAMES MACDONALD, SCOTT
TUPLING, NADA TUPLING, TMP INVESTMENTS INC., MARK PIEROG, TARA
PIEROG, RON LAPSKER, 1392530 ONTARIO INC., LANGFORD GRAIN INC., FORE
BEARS FORENSIC SCIENCE INC., FESTIVUS HOLDINGS INC., STEVEN FREIMAN
AND GREGORY IP**

Plaintiffs

- and -

**HUNTER MILBORNE, GREGORY MARCHANT, MM REALTY PARTNERS
INTERNATIONAL, MM REALTY PARTNERS INTERNATIONAL INC., LEGACY
LIFESTYLE DESTIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE DESTIN GP
INC., LEGACY LIFESTYLE SUMMERLIN LIMITED PARTNERSHIP, LEGACY
LIFESTYLE SUMMERLIN GP INC. LEGACY LIFESTYLE TRAILWINDS LIMITED
PARTNERSHIP, LEGACY LIFESTYLE TRAILWINDS GP INC., WAVERLEY
CORPORATE FINANCE SERVICES LTD. and MORGAN MARCHANT**

Defendants

Court File No. CV-22-00674717-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**LEGACY LIFESTYLES DESTIN LP, LEGACY LIFESTYLES TRAILWINDS LP,
LEGACY LIFESTYLES SUMMERLIN LP, LEGACY LIFESTYLES OCOEE LP,
LEGACY LIFESTYLES LONGLEAF LP**

Applicants

- and -

**LEGACY LIFESTYLES DESTIN PROPERTY LLC, LEGACY LIFESTYLES
TRAILWINDS PROPERTY LLC, LEGACY LIFESTYLES FORT MYERS PROPERTY
LLC, LEGACY LIFESTYLES OCOEE PROPERTY LLC, , LEGACY LIFESTYLES
LONGLEAF PROPERTY LLC**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., C. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended

ORDER

THIS MOTION made by the Zeifman Partners Inc. as receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC and Legacy Lifestyles Longleaf Property LLC, appointed pursuant to the Amended Order of the Honourable Justice Conway, dated February 11, 2022 (the “**Receivership Order**”), for an order approving certain project agreements and granting certain other relief was heard this day by judicial videoconference via Zoom.

ON READING the First Report of the Receiver dated September 9, 2022 (the “**First Report**”), the Supplemental Report to the First Report of the Receiver, dated September 16, 2022 (the “**Supplemental Report**”), the Second Supplemental Report to the First Report of the Receiver, dated September 19, 2022, the Factum of the Receiver, dated September 16, 2022, the affidavit of Allan Rutman affirmed September 8, 2022 (the “**Rutman Affidavit**”), the affidavit of Sara-Ann Wilson sworn September 8, 2022 (the “**Wilson Affidavit**”), the affidavit of Farley Cohen, affirmed September 9, 2022 (the “**Cohen Affidavit**”), and the affidavit of Mark Ber, affirmed September 17, 2022, and on hearing the submissions of counsel for the Receiver, and any such other counsel and parties as were present:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

RECEIVER’S ACTIVITIES AND R&D

2. **THIS COURT ORDERS** that the First Report and the activities and conduct of the Receiver as described therein, be and are hereby approved.

3. **THIS COURT ORDERS** that the Receiver’s interim statement of receipts and disbursements, for period from February 11, 2022 to September 7, 2022, be and is hereby approved.

FEES

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period from November 1, 2021 to August 31, 2022, and its counsel, for the period from February 2, 2022, to August 31, 2022, as set out in the First Report, the Rutman Affidavit and the Wilson Affidavit, be and are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of Cohen Hamilton Steger & Co. Inc. in its capacity as inspector, and its counsel, for the period from February 17, 2021, to August 31, 2022, as set out in the Cohen Affidavit, be and are hereby approved.

PROJECT AGREEMENTS

6. **THIS COURT ORDERS** that the following agreements (collectively, the “**Project Agreements**”) be and are hereby approved:

- (a) the Development Services Agreement to be entered into by the Receiver and N21 Group, LLC, with such amendments as may be necessary for each of the Projects (as defined in the First Report), attached as Appendix “A” to the Supplemental Report;
- (b) Financial Broker Services Engagement and Non-Disclosure Agreement, to be entered into by the Receiver and Twisted Rock LLC, attached as Confidential Appendix “1” to the Supplemental Report; and
- (c) Engagement Agreement – Preparation of Offering Memorandum, to be entered into by the Receiver and N21, attached as Confidential Appendix “2” to the Supplemental Report.

7. **THIS COURT ORDERS** the Receiver is authorized and directed to execute the Project Agreements, with such minor amendments as the Receiver may deem necessary, and take such additional steps and execute such additional documents as may be necessary or desirable to carry out its obligations set forth therein.

SEALING

8. **THIS COURT ORDERS** that the Receiver is authorized, *nunc pro tunc*, to redact the Confidential Appendices from the First Report and the Supplemental Report and that the Confidential Appendices be sealed from the public record until the closing of sale transactions or refinancing in respect of the Real Properties (as defined in the First Report) or further order of the Court.



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Court File No. CV-22-00674717-00CL & CV-21-00668821-00C

BERKID INVESTMENTS LIMITED
Plaintiff

and

Court File No. CV-21-00668821-00C
HUNTER MILBORNE et al.
Defendant

and

Court File No. CV-22-00674717-00C
LEGACY LIFESTYLES DESTIN PROPERTY LLC, et al.
Applicants

Respondent

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) PROCEEDING COMMENCED AT TORONTO	
ORDER	
DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 Kenneth Kraft (LSO # 31919P) Tel: 416-863-4374 Fax: 416 863-4592 kenneth.kraft@dentons.com Sara-Ann Wilson (LSO # 56016C) Tel: (416) 863-4402 sara.wilson@dentons.com <i>Lawyers for Zeitfinan Partners Inc., in its capacity as Court-appointed Receiver</i>	



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-21-00668821-00CL

HEARING September 20, 2022

DATE:

NO. ON LIST: 3

TITLE OF PROCEEDING: BERKID INVESTMENTS LIMITED et al v. MILBORNE et al

BEFORE JUSTICE: MADAM JUSTICE KIMMEL

PARTICIPANT INFORMATION**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Greg Roberts	Counsel for Plaintiffs	Greg.roberts@roblaw.ca

For Defendant, Respondent, Responding Party, Defence, Other:

Name of Person Appearing	Name of Party	Contact Info
Kenneth Kraft; Sara-Ann Wilson	Counsel for Receiver Zeifman Partners Inc.	Kenneth.kraft@dentons.com Sara.wilson@dentons.com
Philip Millar	Counsel for Morgan Marchant	phillip@millarslaw.com
Lorne Silver	Counsel for Court Appointed Inspector – Cohen Hamilton Steger & co	lsilver@cassels.com
Fred Tayar	Counsel for Hillmount Capital Inc.	fred@fredtayar.com
Michael Katzman	Counsel for Intervenor Investors	mkatzman@katzmanlitigation.com
Farley Cohen	Inspector	fcohen@cohenhamiltonsteger.com
Allen Rutman	Receiver	aar@zeifmans.ca

ENDORSEMENT OF JUSTICE KIMMEL:
The Motion

1. Zeifman Partners Inc. (“Zeifman” or the “receiver”) was appointed as the receiver over the assets, undertakings and properties (“Property”) of the respondent debtors and certain other affiliates (together the “debtors”) by consent order dated February 11, 2022 (the “Receivership Order”).
2. The receiver was appointed to determine the viability of refinancing and developing the debtors’ five real estate projects in Florida that were earmarked for the development of senior care facilities (“the Projects”). For this purpose, the Receivership Order authorized certain borrowing and allowed the receiver to engage consultants and request proposals with respect to refinancing, investments or joint ventures.
3. At the time of the receiver’s appointment, Conway J. stated in her endorsement, dated February 11, 2022, that it was “hoped and expected that the Receiver will be able to refinance the properties rather than sell them over the next six months resulting in enhanced value to investors.” If the receiver could not refinance and develop the Projects, it was contemplated that they would be sold.
4. The receiver is seeking approval for some additional time and increased authorized borrowing to carry through on its refinancing efforts. Otherwise, the properties upon which the Projects were intended to be constructed will have to be sold now. The receiver acknowledges that it will remain a possibility that some or all of these properties may still have to be sold if its refinancing efforts do not prove fruitful. Nonetheless, the receiver believes it is in the interests of the debtors and their stakeholders for it to pursue the refinancing efforts, even though they will take longer and cost more than had been originally contemplated.

The Receiver’s Activities Since the Receivership Order

5. The receiver secured up to \$3.6 million CAD (\$2.75 million USD) in funding from Hillmount Capital Inc. (“Hillmount”) based on the authorization it received under the Receivership Order.
6. Since the Receivership Order, the receiver has engaged in potential refinancing and development discussions with a consulting firm, N21 Group LLC (“N21”) and a financial brokerage firm, Twisted Rock LLC (“Twisted Rock”). N21 and a related firm, Lawson Group Architects, together have experience in the development and construction of senior living facilities and Florida real estate. Moreover, both N21 and Twisted Rock previously worked with the debtors in an (at the time, unsuccessful) effort to market the Projects to potential financiers. As a result, these consultants have some familiarity with the Projects.
7. The receiver’s activities and proposals are detailed in its First Report dated September 9, 2022, the Supplemental Report dated September 16, 2022 and the Second Supplemental Report dated September 19, 2022. Despite its efforts, and due to unanticipated complications, including delays in obtaining necessary title insurance, the receiver was unable to secure the necessary interim borrowing from Hillmount until May 23, 2022. Until these funds were secured, the receiver was not able to engage in meaningful discussions with potential developers and financiers (lenders or investors). This is explained

in the First Report, in which the receiver outlines amounts already expended in furtherance of its refinancing efforts (for example, to pay off substantial accrued realty taxes) and also explains what additional funds it expects it will have to expend to meet pre-conditions to closing any refinancing.

8. The receiver's initial discussions with N21/Lawson disclosed, as detailed in its First and supplemental reports, that more work than originally anticipated was necessary to prepare the Projects to be marketed to prospective financiers (both lenders and/or investors). This was due to, among other things, Florida building code changes, the lapse of time, the need to update marketing studies and the need to retain a new operator, general contractor and developer. The receiver does not propose to act as an operator for the Projects. Any eventual operator will be chosen by the new debt/equity investors.
9. The receiver determined that it could not simply reengage prospective investors that had previously submitted term sheets in respect of the Projects. Instead, the receiver now understands that funds will need to be expended to advance the Projects to a "shovel ready" condition to show commitment to the Projects, and to gain credibility with prospective financiers.

The Receiver's Recommendations

10. The receiver seeks court approval to work with N21 in bringing the Projects to a marketable condition. N21 has advised the receiver about the considerable work is required to prepare the Projects to be marketed to potential financiers in "shovel ready" condition. With court approval, the necessary work to bring the Projects to a "shovel ready" and marketable condition would be completed under Phase 1 of the proposed "Development Services Agreements" with N21. The receiver believes, based on its experience and the advice it has received, that once the Projects are "shovel ready" they will be far more attractive to financiers as there will be significantly reduced uncertainty with respect to the Projects' ultimate construction.
11. Phase 2 construction of the Projects will only proceed if acceptable debt or equity financing is secured. Hillmount is prepared to enter into an amended term sheet and provide additional financing needed for the receiver to complete Phase 1 and has provided a proposed "Amendment to Term Sheet" that the receiver seeks the court's approval of.
12. The receiver has recommended that the court authorize it to enter into the proposed Project agreements with N21, a financial broker services agreement with Twisted Rock, and to increase its borrowing capacity and enter into the amended term sheet with Hillmount for the additional financing needed to meet the current budget for past and forecasted expenses that have or will be incurred in connection with the Projects and the receivership up to the completion of Phase 1. This is what the receiver says it needs to do to make an informed recommendation to the stakeholders and the court as to whether the Projects can, and should, be refinanced and developed, or sold.
13. The Phase 1 budgets appended to the receiver's First Report detail the anticipated funds necessary to bring the Projects to the "shovel ready" condition. They exceed the currently authorized borrowing limit under the Receivership Order by nearly \$1.5 million USD (up to a maximum of \$4,231,845 USD from the receiver's initial loan request of \$2,750,000 USD). These budgets also contemplate an 18 month loan term (as opposed to the originally proposed 12), with up front spending to extinguish additional expenses not previously budgeted for. For example, N21's retainer requires reimbursement for disbursements previously incurred by it for the benefit of the Projects.
14. The receiver considers the Projects to be potentially viable development sites. As such, it is recommending that it be authorized to enter into the necessary agreements and attempt to secure the

necessary additional financing. This will also take additional time, beyond the six months originally anticipated to refinance the properties at the time of the Receivership Order. Some of that additional time takes into account the delays already experienced in securing the initial financing from Hillmount and securing the Amendment to Term Sheet. The receiver also notes that each Project will take varying times to complete Phase 1, varying from as little as two months to more than six additional months.

The Opposing Positions

15. The plaintiffs oppose the receiver's motion. They are investors in three of the five Projects. They represent 56% of the invested value in the Destin Project, 25.2 % of the value invested in the Summerlin Project and 28.4% of the invested value in the Trailwinds Project. They are not investors in either the Ocoee or Longleaf Projects. The plaintiffs assert that the receiver is simply re-engaging the team that was unsuccessful in assisting the debtors pre-receivership and implementing a flawed development plan that is doomed to fail; in other words, throwing good money after bad, and in the process further dissipating their equity.
16. The receiver disagrees with the plaintiffs' characterization. It believes the additional work and cost of completing Phase 1, bringing the Projects to "shovel ready" condition and closer to construction, could significantly enhance the recoveries for investors upon a successful refinancing.
17. The receiver sees long-term value for investors by bringing the Projects to completion. Rather than selling the properties now at a significant loss to investors, the receiver argues that spending the proposed amount of additional time and money will yield a benefit to investors. This was the benefit the receiver hoped to achieve but was unable to within the six months afforded by the Receivership Order.
18. In any event, the receiver expects that the Phase 1 work will enhance the marketability of the properties as senior care facility sites. In other words, the receiver believes that, even if it is ultimately determined that the Projects have to be sold before development because they cannot be refinanced, the time and money invested into the Phase 1 work will still enhance the value of the properties and lead to higher recoveries for investors than they would receive if the properties are sold now in their current condition, at a guaranteed loss. If no suitable financing proposals are received, the receiver has indicated it will list the properties for sale.
19. The plaintiffs argue that the receiver's "belief" is not grounded in any new information or facts. They contend that, at a minimum, the receiver should have obtained current appraisals of what the incremental increase in value of each of the properties will be if they are brought to a "shovel ready" state, rather than sold in their existing ("as is") state. The plaintiffs want to be assured that the incremental value to investors will exceed the incremental cost in the worst case scenario, where the properties still end up having to be sold because refinancing cannot be secured.
20. The receiver's assessment is that an appraisal commissioned now of the expected value of the properties after Phase 1 would be too speculative and could not provide the assurance that the plaintiffs seek. The receiver expects that appraisals obtained now would contain qualifications and be subject to a level of uncertainty that would not meaningfully contribute to its current assessment and recommendations. In such circumstances, the receiver does not consider the cost of obtaining such an appraisal for each Project to be justified.
21. As a court officer, and drawing on its own experience and the experience of the consultants that it proposes to engage, the receiver considers the additional time and expense of the now proposed authorizations it

seeks (to enter into the Project Agreements and increase its authorized borrowing) to be in the best interests of the investors of the Projects.

22. Aside from the plaintiffs, the other investors who the receiver has heard from have expressed support for the receiver's recommendations and approvals sought on this motion. They comprise 29% of the value invested in the Destin Project, 48% of the value invested in the Summerlin Project, 54% of the value invested in the Trailwinds Project, 62% of the value invested in the Ocoee Project and 62% of the value invested in the Longleaf Project.

Analysis

23. The court gives significant deference to decisions and recommendations of a court appointed receiver.
24. As noted by the Court of Appeal in *Re Ravelston Corp.*, 2005 CanLII 63802 (ON CA), para. 40: "If the receiver's decision is within the broad bounds of reasonableness, and if it proceeds fairly, having considered the interests of all stakeholders, the court will support the receiver's decision." This was the conclusion of the Court of Appeal after reviewing the challenges often faced by receiver's in situations such as this:

Receivers will often have to make difficult business choices that require a careful cost/benefit analysis and the weighing of competing, if not irreconcilable, interests. Those decisions will often involve choosing from among several possible courses of action, none of which may be clearly preferable to the others. Usually, there will be many factors to be identified and weighed by the receiver. Viable arguments will be available in support of different options. The receiver must consider all of the available information, the interests of all legitimate stakeholders, and proceed in an evenhanded manner. That, of course, does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver.

25. The court generally is "...reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations." See *Re Regal Constellation Hotel Ltd.* (2004), 71 O.R. (3d) 355 (C.A.), at para. 23. The receiver's decisions and recommendations are reinforced in this case by the support of the majority of investors (by value and number) on all but one of the Projects, which gives the court even further cause to defer to the receiver's recommendations, despite the increased time and cost.
26. Although the Projects are not being dealt with together, there are other investors in each Project, including in the one Project in which the plaintiffs have invested a majority of the value, and there is a commonality of interests in other Projects as well. It would not be efficient, nor in the interests of all stakeholders, for the one Project to be treated differently from the others in the analysis of the viability of its refinancing and development. This is not a situation where the plaintiffs can simply be carved out of the proposed course of action without impacting other investors.
27. The plaintiffs appear to want some hard evidence (such as new future-oriented appraisals) or some other sort of a guarantee that the additional funds borrowed and invested in Phase 1 will be recouped under all possible eventual outcomes. That is not a realistic perspective, nor one that could be met in most receivership situations, if that was the test. But it is not the test. The receiver has completed the analysis, weighed the options and prioritized the potential outcomes, recommending the continued exploration of the financing option before the investors' collective losses are crystalized through a sale of the underlying Project properties.

28. Upon hearing the parties' submissions and after careful consideration, I agree that requiring the receiver to spend money now on appraisals that will be even more speculative and qualified than appraisals normally are, and that will likely have to be re-done at the end of Phase 1 to support the next recommendations of the receiver (whatever they may be), will only add to the delay and expense and is unlikely to meaningfully add to the analysis. Thus, I am not requiring that those appraisals be done now, although I do note that the next time the court is asked to consider further recommendations updated appraisals might be expected or required. I understand that the cost of updated appraisals is part of the Phase 1 budget in any event.
29. The receiver's decision and recommendations to the court in support of this motion have been informed by its own experience and that of experienced consultants. The fact that the consultants previously dealt with the debtors does not render them unqualified, nor does it taint the receiver's objectivity. The receiver has explained why it is more economic and efficient to deal with consultants with knowledge of the Projects, rather than starting from scratch and why it considers them to be sufficiently qualified and experienced to provide the necessary consulting advice.
30. The court defers to the receiver's advice and recommendations regarding the proposed Project Agreements and proposed increase in its authorized borrowing, and these are approved.

Sealing Order

31. A time limited and limited scope sealing order is sought in respect of specific confidential appendices that contain commercially sensitive information that, if disclosed, could materially and negatively impact the marketing and sale of the properties and, in turn, negatively impact the debtors and their stakeholders.
32. Consistent with this, none of the stakeholders oppose granting the requested sealing order. It would not be in any of their interests for the information contained in the proposed confidential exhibits to be prematurely available in the public domain until the receiver has had the opportunity to explore the various options under consideration without giving third-parties with which it may be negotiating access to the confidential information that, but for the receivership, would not necessarily be readily available to them.
33. The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality in a receivership where various options are being considered. It is necessary to avoid any interference with subsequent attempts to market and sell the properties, and any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of any potential refinancing or sale transaction. These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings.
34. The analysis of the temporary sealing order requested in respect of the Project Agreements is different, but ultimately leads to the same conclusion. The fact that the parties to the Developments Agreements and Twisted Rock Agreement have agreed that they be kept confidential and have agreed that the court be asked to seal them is not a justification, in and of itself, for granting the requested sealing order over those agreements. However, since much of what is covered by these agreements is not being implemented now, and may never be depending on what the receiver ultimately recommends in the Phase 1 process, there is a public interest in allowing a receiver the flexibility to pursue and keep "in play" various potential commercial alternatives while the potential value maximizing opportunities are explored.

35. Given the current commercial uncertainty, the court favours allowing these agreements to be sealed on the proposed temporary basis while Phase 2 is kept “on hold” pending the receiver’s ongoing work in Phase 1.
36. The fact that this is not a permanent sealing order factors prominently in the analysis. By the express terms of the revised order presented to the court, the confidential appendices shall only remain sealed until the closing of a sale transaction or refinancing transaction in respect of the properties, or until further order of the court. The receiver has represented that it will be back in court seeking approval for its next recommended steps. The question of whether it is appropriate for the current confidential exhibits, or any new evidence filed, to be sealed will need to be revisited at that time.
37. In the meantime, for the immediate purposes I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and meets the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2005] 2 S.C.R. 188 requirements, as reformulated in *Sherman Estate v. Donovan*, 2021 SCC 25, 458 D.L.R. (4th) 361, at para. 38. Granting this order is consistent with the court’s practice in these types of proceedings of granting limited partial sealing orders and I find it to be in the interest of justice to do so.
38. Over the course of this motion it was discovered that some of the confidential information contained in the confidential exhibits was inadvertently disclosed elsewhere in what will become the public record once the materials are filed. In addition to the sealing provided for in the signed order, the court orders and directs the following further proviso to permit these inadvertent disclosures to be redacted from what will be the publicly filed version of the motion record:

The receiver is authorized and directed to redact from Appendix “O” to the First Report of the Receiver, dated September 9, 2022, the appraised values and market values of the Real Properties and the loan to value calculations, and file its redacted Motion Record, dated September 9, 2022 with this Court. The previously filed Motion Record of the Receiver, dated September 9, 2022, shall be sealed and not form part of the public record until the closing of any the sales transactions or refinancing in respect of the subject real properties or further order of the court.

39. The receiver is directed to ensure that the sealed confidential exhibits are provided to the court clerk at the filing office in an envelope with a copy of this endorsement and the signed order with the relevant provisions highlighted so that the confidential exhibits can be physically sealed.

Fee Approval

40. The professional fees for which approval is sought are supported by affidavits, detailing the work done and hourly rates charged, as well as disbursements, of the receiver and the inspector and their respective legal counsel. None of these have been challenged. These fees are reasonable, commensurate with the work and activities outlined and they are approved.

Final Disposition and Costs

41. Orders are to go in the forms signed by me today, dated September 20, 2022, with immediate effect and without the necessity of formal issuance and entry. Any party may take out a formal order if so advised by following the procedure under Rule 59.

42. The court was not asked to make any order as to the costs of this motion, and no order as to costs is made.

A handwritten signature in black ink, appearing to read "Kimmel J.", written in a cursive style.

KIMMEL J.

September 30, 2022

Appendix “M”
to the Second Report of the Receiver

Court File No. CV-22-00674717-00CL & CV-21-00668821-00CL

Court File No. CV-21-00668821-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

**BERKID INVESTMENTS LIMITED, ROBERT BARRON, THORNBRIDGE CAPITAL
INC., LUCY BER, SUSAN LATREMOILLE, JAMES MACDONALD, SCOTT
TUPLING, NADA TUPLING, TMP INVESTMENTS INC., MARK PIEROG, TARA
PIEROG, RON LAPSKER, 1392530 ONTARIO INC., LANGFORD GRAIN INC., FORE
BEARS FORENSIC SCIENCE INC., FESTIVUS HOLDINGS INC., STEVEN FREIMAN
AND GREGORY IP**

Plaintiffs

- and -

**HUNTER MILBORNE, GREGORY MARCHANT, MM REALTY PARTNERS
INTERNATIONAL, MM REALTY PARTNERS INTERNATIONAL INC., LEGACY
LIFESTYLE DESTIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE DESTIN GP
INC., LEGACY LIFESTYLE SUMMERLIN LIMITED PARTNERSHIP, LEGACY
LIFESTYLE SUMMERLIN GP INC. LEGACY LIFESTYLE TRAILWINDS LIMITED
PARTNERSHIP, LEGACY LIFESTYLE TRAILWINDS GP INC., WAVERLEY
CORPORATE FINANCE SERVICES LTD. and MORGAN MARCHANT**

Defendants

Court File No. CV-22-00674717-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**LEGACY LIFESTYLES DESTIN LP, LEGACY LIFESTYLES TRAILWINDS LP,
LEGACY LIFESTYLES SUMMERLIN LP, LEGACY LIFESTYLES OCOEE LP,
LEGACY LIFESTYLES LONGLEAF LP**

Applicants

- and -

**LEGACY LIFESTYLES DESTIN PROPERTY LLC, LEGACY LIFESTYLES
TRAILWINDS PROPERTY LLC, LEGACY LIFESTYLES FORT MYERS PROPERTY
LLC, LEGACY LIFESTYLES OCOEE PROPERTY LLC, LEGACY LIFESTYLES
LONGLEAF PROPERTY LLC**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., C. B-3,
as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended

FIRST REPORT OF THE RECEIVER
SEPTEMBER 9, 2022

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APPENDICES

- A** Amended Order of Justice Conway dated February 11, 2022
- B** Corporate structure charts of the Debtors (prepared by Debtors)
- C** Corporate Jurisdictions of the Debtors and related entities (prepared by Debtors)
- D** First Report of the Inspector, dated September 8, 2022
- E** Receiver's First Report to Creditors, dated April 18, 2022
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- G** Order of U.S. Court Granting Provisional Relief, dated April 14, 2022
- H** Recognition Order, dated May 9, 2022
- I** Hillmount Term Sheet, dated May 9, 2022
- J** N21's development experience
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- L** Development Services Agreements
- M** N21 Estimated Phase 1 Budgets
- N** Amendment to Term Sheet between Hillmount and the Receiver
- O** Receiver's Revised Costs to Closing
- P** Receiver's R&D, for the period between February 11, 2022, and September 7, 2022
- Q** Affidavit of Allan Rutman, affirmed September 8, 2022
- R** Affidavit of Sara-Ann Wilson, sworn September 8, 2022

CONFIDENTIAL APPENDICES

- 1 Twisted Rock Agreement
- 2 N21 OM Agreement
- 3 Summary of Appraisals and Realtor Estimated Sale Prices
- 4 CBRE Appraisal re 10653 Marsha Drive, New Port Richey, FL
- 5 CBRE Appraisal re 20161 Summerlin Road, Ford Myers, FL
- 6 CBRE Appraisal re 307 Beach Drive, Destin, FL
- 7 CBRE Appraisal re The Roberson, Ocoee, FL
- 8 CBRE Appraisal re 5578 County Road 466A, Wildwood, FL
- 9 CBRE Proposal, dated July 25, 2022 (containing estimated sale prices)

INTRODUCTION

1. On the consent of the parties, pursuant to the Amended Order of this Honourable Court, dated February 11, 2022 (the “**Receivership Order**”), Zeifman Partners Inc., was appointed as receiver (the “**Receiver**”) over the assets, properties and undertakings (the “**Property**”) of Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC and Legacy Lifestyles Longleaf Property LLC (collectively, the “**Debtors**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**.

2. The Property includes the following five real properties in Florida (collectively, the “**Real Properties**” and each a “**Real Property**”):
 - (a) 401 Beach Drive, Destin, Florida (“**Destin**”);
 - (b) 5578 County Road, 466A, Wildwood, Florida (“**Trailwinds/Wildwood**”);
 - (c) 10653 Marsha Drive, New Port Richey, Florida (“**Longleaf**”);
 - (d) 20161 Summerlin Road, Fort Myers, Florida (“**Summerlin**”); and
 - (e) 934 Roberson Road, Ocoee, Florida (“**Ocoee**”).

3. Corporate structure charts prepared by the Debtors are attached hereto as **Appendix “B”**. The jurisdictions of the various entities are set out in the chart prepared by the Debtors attached hereto as **Appendix “C”**. The limited partnerships are Manitoba entities and the general partners are Ontario entities. The LLCs are incorporated in Delaware. The Real Properties are separately owned by each of the LLCs.

PURPOSE OF THE REPORT

4. The purpose of this First Report of the Receiver (the “**First Report**”) is to report to the Court on the Receiver’s activities since the date of its appointment and request the relief as set out in its Notice of Motion, dated September 9, 2022.

TERMS OF REFERENCE

5. In preparing this First Report, the Receiver has been provided with, and has relied upon unaudited, draft and/or internal financial information, the Debtors’ books and records, discussions with employees, principals and representatives of the Debtors and information from third-party sources (collectively, the “**Information**”). Except as described in this First Report:
 - (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - (b) the Receiver has prepared this First Report in connection with the discharge of the Receiver’s duties and responsibilities pursuant to the Receivership Order and under statute and in support of the relief described herein. Parties using the First Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes.
6. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

BACKGROUND

7. The parties to this proceeding include various creditors (the “**Investors**”) who loaned funds to the Debtors for the purposes of developing senior care facilities (the “**Projects**”) on each of the Real Properties.
8. At the time of the Receiver’s appointment the Projects were in various stages of pre-development and the subject of litigation amongst the parties. No construction activities had commenced.
9. Based on its review of the Debtors’ books and records, the Receiver understands that approximately US\$33.7 million (plus interest) is owed by the Debtors to the Investors on an unsecured basis. The Investors loaned funds to the Manitoba limited partnerships, who in turn loaned funds on a secured basis to the project limited partnerships and the Delaware LLCs (the title holders to the Real Properties).
10. Pursuant to the Receivership Order, the Receiver engaged Cohen Hamilton Steger & Co. Inc. as inspector (the “**Inspector**”) to investigate the affairs, business and financial dealings of the Debtors and their affiliates, any entities controlled by the Debtors and any other entities that control the Real Properties.
11. The Inspector issued its First Report, dated September 8, 2022, a copy of which is attached hereto as **Appendix “D”**.

RECEIVER’S ACTIVITIES

12. The activities of the Receiver since the date of its appointment include:
 - (a) obtaining appraisals in respect of each of the Real Properties;
 - (b) reviewing documentation (including legal documentation) in respect of initial project funding, land acquisition and complex structure of such transactions;

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- (c) reviewing marketing materials provided to Investors, detailed construction cost projections in respect of the Projects, revenue/costs of operations as senior care facilities during lease up period, projected sales upon full occupancy and anticipated distributions to Investors;
- (d) reviewing original project agreements with contractors/suppliers and term sheets submitted by debt/equity financiers;
- (e) discussions with Greg Marchant, principal of the Debtors, with respect to costs projections, original contractors, project budgets and status of Projects;
- (f) appearing before the U.S. Court (defined below) at the preliminary hearing on April 13, 2022 and the final recognition hearing on May 9, 2022;
- (g) appearing before the U.S. Court at a status hearing on August 9, 2022;
- (h) responding to inquiries from Investors;
- (i) negotiating the terms of the Receiver's financing with Hillmount Capital Inc. ("**Hillmount**") and Hillmount's title insurer, and instructing Canadian and U.S. counsel with respect to the closing of such financing;
- (j) paying realty tax arrears on the Real Properties;
- (k) engaging in discussions with N21 Group, LLC ("**N21**") and Twisted Rock LLC ("**Twisted Rock**") in respect of the potential development and refinancing of the Projects;
- (l) negotiating the terms of the Development Services Agreements and Success Fee Agreements (defined below);
- (m) requesting and reviewing updated budgets in respect of the work required to bring the Projects to "shovel-ready" condition to be marketed to potential debt/equity financiers;

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- (n) obtaining proposed list prices and estimated sale prices from CBRE in respect of the Real Properties;
- (o) negotiating the terms of increased funding from Hillmount and the Amendment to Term Sheet (defined below);
- (p) drafting and sending out the Receiver's First Report to Creditors, dated April 18, 2022 and Second Report to Creditors, dated August 24, 2022, which are attached hereto as **Appendices "E" and "F"** (without schedules);
- (q) facilitating access by the Inspector to the records of the Debtors and communicating with the Inspector with respect to the status of its report; and
- (r) drafting this First Report.

U.S. RECOGNITION

13. The Receiver did not initially intend to seek formal recognition of the receivership proceedings in the United States. However, after its appointment the Receiver was advised by the Florida taxing authorities that significant realty arrears were owing in respect of the Real Properties and tax sales in respect of certain of the Real Properties could be commenced imminently. Furthermore, as detailed below, the title insurer in respect of the Receiver's financing required the issuance of a formal recognition order.
14. Accordingly, the Receiver, in its capacity as Foreign Representation of the Debtors, brought an urgent motion before the U.S. Bankruptcy Court for the Middle District of Florida (the "**U.S. Court**") for recognition of the Receivership Order under Chapter 15 of the United States Bankruptcy Code (the "**Bankruptcy Code**").
15. The preliminary hearing was held on an expedited basis on April 13, 2022 before the U.S. Court. The U.S. Court granted provisional relief and set May 9, 2022 as the date for the final hearing. A copy of the Order granting provisional relief, dated April 14, 2022, is attached hereto as **Appendix "G"**.

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16. On May 9, 2022, pursuant to the Order Granting Foreign Representative's Motion for Order Granting Recognition of Foreign Main Proceeding pursuant to §§ 1517 and 1520 of the Bankruptcy Code and Related Relief, dated May 9, 2022 (the "**Recognition Order**"), issued by the U.S. Court, the Canadian receivership proceedings were recognized in the United States. A copy of the Recognition Order is attached hereto as **Appendix "H"**.
17. The Receiver expects that prospective lender/equity investors in the Projects will be U.S. based and, as a result, recognition of the Canadian receivership proceedings will likely facilitate any future refinancing transactions.
18. A status hearing was held before the U.S. Court on August 9, 2022 to provide the U.S. Court with an update on the status of the proceedings. The U.S. Court scheduled the next status hearing for January 10, 2023.

HILLMOUNT FINANCING

19. Pursuant to paragraph 29 of the Receivership Order, the Receiver is authorized to borrow such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$3,600,000.00 CAD in the aggregate (or such greater amount as this Court may by further Order authorize), for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Receivership Order, including interim expenditures.
20. Upon its appointment, the Receiver expeditiously obtained appraisals from CBRE in respect of the Real Properties and negotiated the terms of its financing with its preferred lender, Hillmount. The financing was complicated due to the cross-border nature of the financing, the fact that the Real Properties are located internationally in Florida and the Debtors' complex corporate structure. As a result, and there are a limited number of lenders who would be interested in providing the funding to the Receiver. Hillmount was prepared to quickly provide the requested financing, subject to certain conditions.
21. Pursuant to the Term Sheet, dated May 9, 2022, between Hillmount and the Receiver (the "**Hillmount Term Sheet**") financing conditions included the registration of first-ranking

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mortgages against the Real Properties and the provision of title insurance. A copy of the Hillmount Term Sheet is attached hereto as **Appendix "I"**.

22. The title insurer required formal recognition of the Receivership Order pursuant to the Bankruptcy Code. Accordingly, as described above, the Receiver brought an urgent motion for recognition of the Receivership Order by the U.S. Court. The Recognition Order was granted on May 9, 2022 and the Receiver successfully completed its financing with Hillmount on May 23, 2022.
23. The Receiver's initial draw request of US\$1,490,000 was funded. Below is a breakdown of the Receiver's Certificates, dated May 10, 2022, issued in respect of each Real Property:

Property	Amount (USD)
Longleaf	\$550,000
Destin	\$250,000
Ocoee	\$230,000
Summerlin	\$230,000
Trailwinds/Wildwood	\$230,000
Total	\$1,490,000

24. Initial funds were utilized by the Receiver to:
- (a) pay outstanding realty tax arrears on the Real Properties for the period up to and including 2021 totaling US\$460,424, as required by the title insurer and Hillmount and to prevent any further tax sale proceedings;
 - (b) pay fees to maintain proper corporate registrations of relevant corporate entities under both Florida and Delaware law;
 - (c) maintain liability insurance coverage for the Real Properties and pay premiums in respect thereto;

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- (d) maintain and renew U.S. agency registrations; and
 - (e) pay professional accounts of the Receiver and its counsel.
25. The financing is secured pursuant to Receiver's Certificates issued by the Receiver and mortgages registered in favour of Hillmount against the Real Properties.

PROJECT AGREEMENTS

26. Pursuant to the Receivership Order, the Receiver was authorized to, among other things:
- (a) request proposals with respect to refinancing, investments or joint ventures in respect of the Projects and negotiate such terms and conditions thereof that the Receiver in its discretion may deem appropriate; and
 - (b) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by the Receivership Order.
27. Prior to the receivership the Debtors engaged N21 and the related firm, Lawson Group Architects, to provide various services in respect of the Projects including preparing architectural drawings, developing projections in respect of feasibility, development costs, and senior care operations once completed, and creating marketing materials. In addition, both N21 and Twisted Rock were engaged to market the Projects to investors/financiers. That financing was never completed as a result of the litigation in respect of the Debtors and inability to meet pre-conditions to funding. The Receiver entered into discussions with both parties with respect to the potential development and refinancing of the Projects.
28. Donald Lawson ("Lawson"), the principal of N21, advised the Receiver that a considerable amount of work was required to prepare the Projects to be marketed to potential financiers and secure construction financing. The scope of work was significantly more than the Receiver originally understood, ie. refreshing term sheets with prospective investors/financiers and expending limited funds to satisfy the preconditions to funding. In Lawson's view, the Projects must be in "shovel-ready" condition within 60 days of

finalizing refinancing commitments and, to demonstrate that progress has been made since the development process halted in November 2021, expenditures and professional time are necessary to gain sufficient credibility with prospective lenders/investors.

29. N21 and Lawson, have significant experience in the development and construction of senior living facilities and Florida real estate. A summary of N21's development experience is attached hereto as **Appendix "J"**. A summary of Lawson's experience is attached hereto as **Appendix "K"**. The Receiver contacted a reference provided by N21 and they provided very positive feedback in respect of their experience with N21. The Receiver understands that N21 was previously introduced to the Investors at meetings scheduled by the Debtors as well as in correspondence and reporting.
30. The Receiver recommends the engagement of N21 to provide development services to the Projects, including the initial work necessary to revive the Projects and bring them to "shovel-ready" condition. The terms of retaining N21 as developer for each of the Projects are set out in the Development Services Agreements to be entered into by the Receiver and N21 in respect of each of the Projects (the "**Development Services Agreements**"). The terms of the Development Services Agreements remain subject to ongoing discussion between the parties and counsel. Attached hereto as **Appendix "L"** is a the most recent draft of the form of Development Services Agreement in respect of one of the Projects (once the terms are finalized the agreements will be substantially duplicated with necessary changes for each of the Projects). The Receiver expects to file revised and final versions of the Development Services Agreements in a supplemental report in advance of the motion return date.
31. The work is broken into two phases – Phase 1 is the work required to prepare the Projects to be marketed to potential financiers and Phase 2 is the construction of the Projects and turnover to a designated operator. Phase 1 will involve bringing the Projects to a "shovel ready" position, including engaging an architect to update architectural plans to comply with revised Florida building code requirements, engaging building and civil/site engineers to update engineering reports, updating market feasibility studies and paying governmental fees. It will also entail the identification of a general contractor to construct the projects

and an operator to manage the facility when built, and updating cash flow projections based on updated construction costs, operator input on facility revenue and expense modelling. Phase 1 work is highlighted in Exhibit "A" of the Development Services Agreements.

32. The commencement of Phase 2 work, and the ultimate construction of the Projects, is conditional upon the receipt of a debt/equity funding proposal satisfactory to the Receiver in its sole discretion and the closing of such financing.
33. As each Project is at a different stage of development, the work required, and timeline for completion of Phase 1 work is different for each Project. Each Project requires re-engagement with each jurisdiction to ascertain the status of the Project and the process required to move forward with permitting and other governmental approvals. With the current information available, N21 projects the following approximate time frame for the completion of the Phase 1 services:

Project	Projected Phase 1 Services Timeline
Longleaf	60-90 days
Destin	60-100 days
Summerlin	60-120 days
Ocoee	60-120 days
Trailwinds/Wildwood	150-180 days

34. The Trailwinds/Wildwood Project, which was the last Project acquired pre-receivership, requires a substantial amount of Phase 1 work. This is reflected in the longer timeline and the higher cost of the Phase 1 work. As noted below, the Receiver's financier is not prepared to advance additional funds against the Trailwinds/Wildwood Project at this time and, accordingly, unless alternative financing becomes available to the Receiver, no Phase 1 work will be undertaken in respect of that Project.
35. As set out in the Development Services Agreements, N21's total work fee for development services is US\$850,000 per Project. The cost of the development services was not originally included in the Receiver's budget forecasts as the Receiver understood that such

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services were provided pre-receivership without charge and compensated upon the closing of refinancing.

36. Lawson advised the Receiver that his firms undertook a significant amount of work in respect of the Projects prior to the Receiver's appointment without remuneration only to see the Projects halted after the receipt of term sheets. Accordingly, N21 is not prepared to provide further services without a work fee to show commitment to the Projects and maintain its own credibility in the market. The developer costs for the Phase 1 work are included in each of the budgets and range from US\$60,000-\$85,000.
37. The Receiver recommends the engagement of N21 to provide development services to the Projects. Lawson is of the view that the Projects remain viable and potential financiers remain interested in the Projects, however the Florida market is dynamic and subject to change due to rising construction costs and interest rates.

PROJECT FINANCING

38. Prior to the receivership, Twisted Rock, based in Bradenton, Florida, was engaged to secure debt and/or equity financing for the Projects from potential lenders and investors. The marketing process resulted in proposals from interested parties. None of the proposals were consummated due to the litigation and a lack of funds to meet pre-conditions required by potential lenders/investors. Those pre-conditions included the payment of outstanding realty tax arrears, the updating of marketing studies, the renewal of lapsed building permits and the preparation of certain valuations.
39. The Receiver recommends the engagement of Twisted Rock and N21 to market the Projects to potential lenders and investors and also assist with the completion of due diligence and the satisfaction of conditions to financing. It is anticipated that Twisted Rock will contact parties previously interested in the opportunity as well as other parties with a view to requesting term sheets on an expedited basis. The financing process for the Projects can resume within approximately 30-45 days of retaining N21 as developer and be undertaken contemporaneously with the Phase 1 work.

40. The terms of the engagements with Twisted Rock and N21 to market the Projects to potential financiers are set out in the Financial Broker Services Engagement and Non-Disclosure Agreement, to be entered into by the Receiver and Twisted Rock (the “**Twisted Rock Agreement**”) and the Engagement Agreement – Preparation of Offering Memorandum, to be entered into by the Receiver and N21 (the “**N21 OM Agreement**”). Copies of the most recent drafts of the Twisted Rock Agreement and N21 OM Agreement (together, the “**Success Fee Agreements**”) are attached hereto as **Confidential Appendices “1” and “2”**. The Success Fee Agreements remain subject to ongoing discussions amongst the parties and, in the event there are further material changes, the Receiver will file revised Success Fee Agreements (on a confidential basis) in a supplementary report prior to the return date of the motion.
41. The Success Fee Agreements provide for the payment of a total success fee on closing of a financing transaction of 3.75% broken down as follows:
- (a) Twisted Rock - 2% of total funds raised; and
 - (b) N21 – 1.75% of total funds raised (this amount is in addition to the developer fee set out in the Development Services Agreement).
42. Greg Marchant advised the Receiver that the potential funding sources for the Projects have existing relationships with N21 and Twisted Rock. The Receiver understands that Mr. Marchant has no relationship with any of the potential funding sources. The retention of N21 is a pre-condition to engaging Twisted Rock and the Receiver has been advised that Twisted Rock will not market the projects to lenders/investors without N21’s involvement. The development costs and financing commissions were built into cash flow project forecasts.
43. The Receiver recommends the retention of both Twisted Rock and N21 on the terms as set out in the Success Fee Agreements.

INCREASE OF RECEIVER'S BORROWING

44. N21 provided to the Receiver estimated budgets for the completion of Phase 1 on a per Project basis. Copies of the budgets are attached hereto as **Appendix "M"**.
45. The Phase 1 budgets and costs of obtaining development approvals from municipalities are significantly higher than anticipated and exceed the budgeted sums that formed the basis of the Receiver's initial loan request of CA \$3.6 million (US \$2.75 million).
46. There are two main reasons for the increased costs. First, a number of the building plans need to be revised due to several recent building code changes in Florida. Second, certain of the original service providers need to be replaced at the recommendation of N21 and because some of the contractors, for example the landscape architect and interior designer, are no longer in business. In addition, as noted above, the Receiver did not originally budget for the payment of N21's development services prior to project financing.
47. The Receiver estimates an additional USD \$1 million of funding will be required to retain N21, complete the Phase 1 work and bring the Projects to a shovel ready condition. On a per project basis the estimated costs are set out below:

Project	Phase 1 Budget (USD)
Longleaf	\$231,835
Destin	\$269,870
Summerlin	\$236,125
Ocoee	\$285,425
Trailwinds/Wildwood	\$457,425
Total	\$1,480,680

48. The Receiver approached Hillmount to discuss the financing required to complete the Phase 1 work. At the outset of these proceedings the Receiver obtained appraisals of the five Real Properties to support its initial request for financing. As part of its due diligence to determine whether it was prepared to provide the funding for Phase 1 work, Hillmount

requested a realtor's opinion of value and marketability analysis indicating "as is" sales value for the Real Properties in the event they are sold in their current condition. The Receiver requested this information from CBRE and it provided proposed list prices for the Real Properties and estimated sale prices.

49. Based on such valuations, subject to certain conditions, Hillmount is prepared to advance up to the maximum principal amount of US\$4,231,845 to fund the Phase 1 costs and ongoing costs of the receivership. The exception is Trailwinds/Wildwood as Hillmount is not prepared at this time to advance any additional funds against that Project.
50. The terms of the increased loan are set out in the Amendment to Term Sheet between Hillmount and the Receiver (the "**Amendment to Term Sheet**"), which allocates the principal amount of the loan across the five Projects and increases the interest rate from 12% to 12.25% per annum. A copy of the Amendment to Term Sheet is attached hereto **Appendix "N"**.
51. The increased funding is expected to be sufficient to cover the costs of the Phase 1 work and the ongoing expenses of the receivership, including professional fees, interest costs and property taxes. The Receiver's original budget for certain costs were projected over a one year period. Due to unforeseen higher expenses, the need to seek the U.S. Recognition Order, delays closing the Receiver's funding, and the time required to complete the Phase 1 work, the revised projections, which now include the ongoing payment of property taxes (previously only arrears were budgeted) are over the full 18 month term of the Hillmount loan. Attached hereto as **Appendix "O"** is the Receiver's revised calculations of costs to closing on a per Project basis.
52. The Hillmount funding conditions include certain milestones in respect of preparation of the Projects and obtaining project financing, failing which the Real Properties must be listed for sale. These milestones are:
 - (a) evidence that Destin, Longleaf, Summerlin and Ocoee are site plan approved and building permit ready within 150 days of providing funds for the services budget to Lawson Group Architects;

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- (b) evidence of satisfactory letters of interest with respect to project financing in respect of Destin, Longleaf, Summerlin and Ocoee within 5 months of Court approval of the Amendment to Term Sheet; and
 - (c) evidence of completion of financing with respect to Destin, Longleaf, Summerlin and Ocoee within 8 months of Court approval of the Amendment to Term Sheet.
53. With respect to the Trailwinds/Wildwood Project, without an alternative funding source, the Receiver is currently not a position to undertake the Phase 1 work. Hillmount advised that it would consider financing the Trailwinds/Wildwood Project in the future if the other four Projects are successfully brought to shovel-ready condition and refinanced. The Receiver has been advised by Lawson that Trailwinds/Wildwood has great long term potential if developed as it can accommodate several phases but his advice is to defer development at this time and prioritize development of the other four Projects which are much closer to construction and involve significantly less to bring to a shovel ready condition.
54. The Receiver recommends that this Honourable Court approve the Amendment to Term Sheet and increase the Receiver's borrowing capacity to US\$4,231,845 to provide the funding necessary to undertake the Phase 1 work and fund the ongoing costs of the receivership while that work is completed.

REAL PROPERTIES VALUATIONS

55. Pursuant to the Receivership Order, the Receiver was authorized to obtain appraisals in respect of the Real Properties. In addition, as noted above, prior to committing to providing any additional funding, Hillmount required the Receiver to obtain indications of market value from a Florida realtor.
56. Attached hereto as **Confidential Appendix "3"** is a summary of the appraisals by CBRE in respect of the Real Properties, dated March 1-9, 2022 (the "Appraisals") and the CBRE estimated sale prices as of July 25, 2022. The Receiver cautions parties that the estimated sale prices, which are higher than the appraised values, are not formal appraisals and were not provided by a qualified appraiser. Furthermore there are no workups to support the

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suggested pricing. Accordingly, it is unclear how much weight should be given to the estimated sale prices.

57. Copies of the Appraisals are attached hereto as **Confidential Appendices “4” to “8”**. A copy of the CBRE proposal, dated July 25, 2022, which contains proposed listed prices and estimated sales prices is attached hereto as **Confidential Appendix “9”**.
58. If the Real Properties are sold in their present condition, it is anticipated that the Investors will suffer a substantial shortfall. The Receiver understands, based on its discussions with Greg Marchant and Lawson, that term sheets originally submitted in respect of the Projects for project financing provided a return to Investors of approximately 85% of principal paid on closing with a remaining carried interest in the Projects.
59. There are no guarantees the Projects will be successfully refinanced and developed. However, based on its business judgment, the Receiver recommends that additional time and funding be provided to undertake the Phase 1 work and market the Projects to prospective lenders/investors. The additional costs are primarily interest, taxes and professional fees. If a refinancing on terms similar to the proposals received pre-receivership is successfully closed, the Investors will receive substantially higher recovery (including an immediate 85% return, before costs, plus a carried interest with potential long term value on a subsequent sale or refinancing) than if the Real Properties are sold in their current condition. If, however, no suitable financing proposals are received within the timeframes set out in the Amendment to Term Sheet, the Real Properties will be listed for sale. In the event that occurs, the Receiver expects that the Phase 1 work will enhance the marketability of the Real Properties as the appraiser and realtor are of the view that the properties will be marketed and sold as senior care facility sites.

RECEIPTS & DISBURSEMENTS

60. Attached hereto as **Appendix “P”** is a copy of the Receiver’s R&D, for the period between February 11, 2022, and September 7, 2022.

PROFESSIONAL FEES

61. The Receiver seeks approval of its fees and disbursements and those of its legal counsel, Dentons Canada LLP ("**Dentons**").
62. The Receiver and Dentons have maintained separate accounts for each of the five Real Properties.

Receiver's Fees

63. Below is a summary of the Receiver's fees and disbursements for the period from November 2, 2021, to August 31, 2022:

Property	Fees	Disbursements	HST	Total
Longleaf Property	\$38,567.50	\$530.33	\$5,082.72	\$44,180.55
Summerlin Property	\$38,698.75	\$530.33	\$5,099.78	\$44,328.86
Destin Property	\$38,565.00	\$530.32	\$5,802.39	\$44,177.71
Ocoee Property	\$38,483.75	\$530.34	\$5,071.83	\$44,085.92
Trailwinds/Wildwood Property	\$38,418.75	\$530.33	\$5,063.38	\$44,012.46
Total:	\$192,733.75	\$2,651.65	\$26,120.10	\$220,785.50

64. The fees and disbursements of the Receiver are more particularly described in the Affidavit of Allan Rutman, affirmed September 8, 2022, attached hereto as **Appendix "Q"**.

Dentons' Fees

65. Dentons has acted as counsel to the Receiver since its appointment. Below is a summary of Dentons' fees and disbursements for the period from February 2, 2022, to August 31, 2022:

Property	Fees	Disbursements	HST	Total
Longleaf Property	\$33,848.00	\$16,582.15	\$6,555.93	\$56,986.08

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Summerlin Property	\$33,716.00	\$16,578.19	\$6,538.26	\$56,832.45
Destin Property	\$33,940.00	\$16,719.91	\$6,585.79	\$57,245.70
Ocoee Property	\$33,628.00	\$16,575.55	\$6,526.47	\$56,730.02
Trailwinds/Wildwood Property	\$33,628.00	\$16,575.55	\$6,526.47	\$56,730.02
Total:	\$168,760.00	\$83,031.35	\$32,732.92	\$284,524.27

66. The fees and disbursements of Dentons are more particularly described in the Affidavit of Sara-Ann Wilson, sworn September 8, 2022, attached hereto as **Appendix “R”**.

67. In the Receiver’s view the professional fees are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

SEALING

68. The Confidential Appendices to this First Report, contain commercially sensitive information which, if publicly disclosed, could negatively affect the Receiver’s ability to market the Real Properties if necessary. Accordingly, the Receiver requests an order that the Confidential Appendices be sealed until the closing of a sale transaction in respect of the Real Properties or further order of this Honourable Court.

RECOMMENDATIONS OF THE RECEIVER

69. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief as set out in its Notice of Motion, dated September 9, 2022.

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All of the foregoing is respectfully submitted this 9th day of September, 2022.

ZEIFMAN PARTNERS INC., in its capacity as Receiver and Manager of Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC and Legacy Lifestyles Longleaf Property LLC, and not in its personal or corporate capacity

Per:

Name: 
Allan Rutman

Title: President

BERKID INVESTMENTS LIMITED

Plaintiff

and

Court File No. CV-21-00668821-00CL

HUNTER MILBORNE et al
Defendants

LEGACY LIFESTYLES DESTIN LP, et al.

Applicants

and

Court File No. CV-22-00674717-00CL

LEGACY LIFESTYLES DESTIN PROPERTY LLC, et al.
Respondents

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

FIRST REPORT OF THE RECEIVER

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*Lawyers for Zeifman Partners Inc., in its capacity as Court-
appointed Receiver*

Appendix “N”
to the Second Report of the Receiver

Court File No. CV-22-00674717-00CL & CV-21-00668821-00CL

Court File No. CV-21-00668821-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

**BERKID INVESTMENTS LIMITED, ROBERT BARRON, THORNBRIDGE CAPITAL
INC., LUCY BER, SUSAN LATREMOILLE, JAMES MACDONALD, SCOTT
TUPLING, NADA TUPLING, TMP INVESTMENTS INC., MARK PIEROG, TARA
PIEROG, RON LAPSKER, 1392530 ONTARIO INC., LANGFORD GRAIN INC., FORE
BEARS FORENSIC SCIENCE INC., FESTIVUS HOLDINGS INC., STEVEN FREIMAN
AND GREGORY IP**

Plaintiffs

- and -

**HUNTER MILBORNE, GREGORY MARCHANT, MM REALTY PARTNERS
INTERNATIONAL, MM REALTY PARTNERS INTERNATIONAL INC., LEGACY
LIFESTYLE DESTIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE DESTIN GP
INC., LEGACY LIFESTYLE SUMMERLIN LIMITED PARTNERSHIP, LEGACY
LIFESTYLE SUMMERLIN GP INC. LEGACY LIFESTYLE TRAILWINDS LIMITED
PARTNERSHIP, LEGACY LIFESTYLE TRAILWINDS GP INC., WAVERLEY
CORPORATE FINANCE SERVICES LTD. and MORGAN MARCHANT**

Defendants

Court File No. CV-22-00674717-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**LEGACY LIFESTYLES DESTIN LP, LEGACY LIFESTYLES TRAILWINDS LP,
LEGACY LIFESTYLES SUMMERLIN LP, LEGACY LIFESTYLES OCOEE LP,
LEGACY LIFESTYLES LONGLEAF LP**

Applicants

- and -

**LEGACY LIFESTYLES DESTIN PROPERTY LLC, LEGACY LIFESTYLES
TRAILWINDS PROPERTY LLC, LEGACY LIFESTYLES FORT MYERS PROPERTY
LLC, LEGACY LIFESTYLES OCOEE PROPERTY LLC, LEGACY LIFESTYLES
LONGLEAF PROPERTY LLC**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., C. B-3,
as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended

**SUPPLEMENTAL REPORT TO THE FIRST REPORT OF THE RECEIVER
SEPTEMBER 16, 2022**

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APPENDICES

- A Revised Development Services Agreement
- B Blackline of Revised Development Services Agreement showing the changes to the version appended to the First Report
- C Corrected Amendment to Term Sheet

CONFIDENTIAL APPENDICES

- 1 Revised Twisted Rock Agreement and a blackline showing the changes from the version appended to the First Report
- 2 Revised N21 OM Agreement and a blackline showing the changes from the version appended to the First Report

PURPOSE OF THE REPORT

1. This Supplemental Report to the First Report of the Receiver (the “**Supplemental First Report**”) is filed in respect of the Receiver’s motion returnable September 20, 2022.
2. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Receiver’s First Report to the Court, dated September 9, 2022.

PROJECT AGREEMENTS AND PROJECT FINANCING

3. Subsequent to the filing of the First Report, the Receiver continued its discussions with the counterparties to each of the Project Agreements. Those discussions resulted in certain amendments to each of the Project Agreements.
4. Attached hereto as Appendix “A” is the revised Development Services Agreement in respect of the Longleaf Project. A blackline showing the changes to the version appended to the First Report is attached hereto as Appendix “B”. If the revised Development Services Agreement is approved, the agreement will be substantially duplicated with necessary changes for each of the Projects.
5. Attached hereto as Confidential Appendix “1” is the revised Twisted Rock Agreement and a blackline showing the changes from the version appended to the First Report.
6. Attached hereto as Confidential Appendix “2” is the revised N21 OM Agreement and a blackline showing the changes from the version appended to the First Report.
7. The subject line of the Amendment to Term Sheet to be entered into with Hillmount, attached as Appendix “N” to the First Report, contained a typographical error in defining “Loan”. Attached hereto as Appendix “C” is the corrected Amendment to Term Sheet.

RECOMMENDATIONS OF THE RECEIVER

8. Based on the foregoing and as set out the First Report, the Receiver respectfully recommends that the Court make an order granting the relief as set out in its Notice of Motion, dated September 9, 2022.

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All of the foregoing is respectfully submitted this 16th day of September, 2022.

ZEIFMAN PARTNERS INC., in its capacity as
Receiver and Manager of Legacy Lifestyles Destin LP,
Legacy Lifestyles Destin GP Inc., Legacy Lifestyles
Summerlin LP, Legacy Lifestyles Summerlin GP Inc.,
Legacy Lifestyles Trailwinds LP, Legacy Lifestyles
Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy
Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP,
Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles
Destin Property LLC, Legacy Lifestyles Trailwinds
Property LLC, Legacy Lifestyles Ft. Myers Property LLC,
Legacy Lifestyles Ocoee Property LLC and Legacy
Lifestyles Longleaf Property LLC, and not in its personal
or corporate capacity

Per:

Name:  Allan Rutman

Title: President

BERKID INVESTMENTS LIMITED
Plaintiff

and

Court File No. CV-21-00668821-00CL
HUNTER MILBORNE et al.
Defendants

LEGACY LIFESTYLES DESTIN LP, et al.
Applicants

and

Court File No. CV-22-00674717-00CL
LEGACY LIFESTYLES DESTIN PROPERTY LLC, et al.
Respondents

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTAL REPORT TO THE
FIRST REPORT OF THE RECEIVER**

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*Lawyers for Zeifman Partners Inc., in its capacity as Court-
appointed Receiver*

Appendix “O” to the Second Report of the Receiver

Court File No. CV-22-00674717-00CL & CV-21-00668821-00CL

Court File No. CV-21-00668821-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

**BERKID INVESTMENTS LIMITED, ROBERT BARRON, THORNBRIDGE CAPITAL
INC., LUCY BER, SUSAN LATREMOILLE, JAMES MACDONALD, SCOTT
TUPLING, NADA TUPLING, TMP INVESTMENTS INC., MARK PIEROG, TARA
PIEROG, RON LAPSKER, 1392530 ONTARIO INC., LANGFORD GRAIN INC., FORE
BEARS FORENSIC SCIENCE INC., FESTIVUS HOLDINGS INC., STEVEN FREIMAN
AND GREGORY IP**

Plaintiffs

- and -

**HUNTER MILBORNE, GREGORY MARCHANT, MM REALTY PARTNERS
INTERNATIONAL, MM REALTY PARTNERS INTERNATIONAL INC., LEGACY
LIFESTYLE DESTIN LIMITED PARTNERSHIP, LEGACY LIFESTYLE DESTIN GP
INC., LEGACY LIFESTYLE SUMMERLIN LIMITED PARTNERSHIP, LEGACY
LIFESTYLE SUMMERLIN GP INC. LEGACY LIFESTYLE TRAILWINDS LIMITED
PARTNERSHIP, LEGACY LIFESTYLE TRAILWINDS GP INC., WAVERLEY
CORPORATE FINANCE SERVICES LTD. and MORGAN MARCHANT**

Defendants

Court File No. CV-22-00674717-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**LEGACY LIFESTYLES DESTIN LP, LEGACY LIFESTYLES TRAILWINDS LP,
LEGACY LIFESTYLES SUMMERLIN LP, LEGACY LIFESTYLES OCOEE LP,
LEGACY LIFESTYLES LONGLEAF LP**

Applicants

- and -

**LEGACY LIFESTYLES DESTIN PROPERTY LLC, LEGACY LIFESTYLES
TRAILWINDS PROPERTY LLC, LEGACY LIFESTYLES FORT MYERS PROPERTY
LLC, LEGACY LIFESTYLES OCOEE PROPERTY LLC, LEGACY LIFESTYLES
LONGLEAF PROPERTY LLC**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., C. B-3,
as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended

**SECOND SUPPLEMENTAL REPORT TO THE FIRST REPORT OF THE
RECEIVER
SEPTEMBER 19, 2022**

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APPENDICES**A Top 80 Senior Living Facility Architecture + AE Firms for 2022**

PURPOSE OF THE REPORT

1. This Second Supplemental Report to the First Report of the Receiver (the “**Second Supplemental First Report**”) is filed in respect of the Receiver’s motion returnable September 20, 2022 and in response to the Affidavit of Mark Ber, affirmed September 17, 2022 (the “**Ber Affidavit**”).
2. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Receiver’s First Report to the Court, dated September 9, 2022 (the “**First Report**”).

POSITIONS OF INVESTORS

3. Mr. Ber and the other plaintiffs represented by Mr. Roberts and opposing the Receiver’s motion invested in three of the five Projects.
4. Based on the Receiver’s review of the Debtors’ records, the Investors represented by Mr. Roberts and opposing the Receiver’s motion make up the following percentage in value of Investors:

Project	Value of Investors Opposed
Destin	56.0%
Summerlin	25.1%
Trailwinds	28.4%
Ocoee	0.0%
Longleaf	0.0%

5. The Receiver has been advised by Mr. Katzman, counsel for a group of Investors, that his clients’ “unanimously, unreservedly and emphatically support the Receiver's Motion”. In addition, the Receiver has been independently advised by a number of Investors that they support the Receiver’s motion. The Investors who have communicated their support for the Receiver’s motion, including the Investors represented by Mr. Katzman, are as follows:

Project	Value of Investors in Support
Destin	29.0%
Summerlin	48.0%
Trailwinds	54.0%
Ocoee	62.0%
Longleaf	62.0%

RECEIVER IS INDEPENDENT COURT OFFICER

6. The Receiver makes no comment on the legitimacy of Mr. Ber's complaints with respect to the management of the Projects pre-receivership as such issues are not relevant to the Receiver's motion and current recommendation.
7. The Receiver is an independent court officer. It does not take direction from Greg Marchant, the principal of the Debtors, or any other party in this proceeding. The allegations in the Ber Affidavit that the Receiver is "allowing Marchant and Lawson to control the receivership" are entirely without merit. The Receiver's recommendations in its First Report are based on the Receiver's discussions with the professionals and its independent review of the documents and financial information provided to the Receiver by the Debtors and third parties.
8. The Receiver's counsel, Dentons, was independently retained by the Receiver. It was not retained upon the advice or suggestion of Mr. Marchant.

REFINANCING AND DEVELOPMENT OF THE PROJECTS

Refinancing

9. At the time of the Receiver's appointment, as stated by the Honourable Justice Conway in her endorsement, dated February 11, 2022, it was "hoped and expected that the Receiver will be able to refinance the properties rather than sell them over the next six months resulting in enhanced value to investors." A copy of Her Honour's Endorsement, which

was issued based on the affidavit evidence before the Court at the time and in respect of the consent order appointing the Receiver, is attached as Exhibit B to the Ber Affidavit.

10. As detailed in the First Report, without financing for the receivership in place, including funds to meet pre-conditions to closing any refinancing and pay off substantial accrued realty taxes, the Receiver did not have the ability to enter into meaningful discussions with potential developers and financiers. The Receiver moved quickly to obtain financing; however, for the reasons stated in the First Report, the Receiver's financing proved more complicated than originally anticipated and the Receiver's financing closed on May 23, 2022.
11. After securing its financing, the Receiver entered into discussions with Lawson/N21, parties that provided certain services to the Projects pre-receivership. Based on these discussions, it became clear to the Receiver that, due to Florida building code changes, the lapse of time, the need to update marketing studies and the need to retain a new operator, general contractor and developer, more work than originally anticipated was necessary to prepare the Projects to be marketed to lenders/investors. The Receiver could not simply reengage prospective investors that had previously submitted term sheets in respect of the Projects. Instead, funds must be expended to advance the Projects to a "shovel ready" condition in order to show commitment to the Projects, gain credibility with financiers and be marketed to lenders/investors. The Phase 1 budgets appended to the First Report show the funds necessary to bring the Projects to that condition.

Development of the Projects

12. The Receiver recommends undertaking the development process originally conceived for the Projects, on certain terms and under the purview of new professionals. The only other alternative is the immediate sale of the Real Properties. Contrary to the assertions in the Ber Affidavit, the Receiver is not proposing to reengage the original "team", nor is the Receiver "simply trying to implement Marchant's failed plan."
13. With limited funding and limited time, it was not feasible for the Receiver to restart the entire refinancing process. Accordingly it entered into discussions with N21 and Twisted

Rock, parties familiar with the Projects who had successfully solicited term sheets from lenders/investors pre-receivership. Once its funding was in place, the Receiver worked expeditiously to reengage these professionals.

14. With respect to the “team” to be engaged in respect of the Projects, the Receiver recommends the retention of N21 as developer. While N21 provided architectural and other services to the Projects pre-receivership, it was not the original developer for the Projects. As set out in the First Report, in the Receiver’s view N21 and Lawson have the requisite skill and expertise required to take on this role. Lawson Group Architects was recently listed in the top 6 senior living facility architecture and architecture/engineering (AE) firms for 2022 as ranked by Perkins Eastman, Hord Coplan Macht, Ryan A+E, and Stantec. A copy of the article reported in Building Design+Construction's 2022 Giants 400 Report is attached hereto as **Appendix “A”**. At the recommendation of Lawson, the general contractor, operator and landscape designer for the Projects will be replaced with reputable professionals.
15. The Receiver is in agreement that the real value in the Projects is in the operating cash flow upon full construction and lease up. The first step towards the development and lease up of the Projects is to bring them to “shovel ready” condition. At this stage, the Projects are far more attractive to investors/lenders as there is significantly reduced uncertainty with respect to the Projects’ ultimate construction.
16. The Receiver does not propose to act as an operator in respect of the Projects. Any eventual operator will be chosen by the new debt/equity investors.

Terms of Refinancing

17. The terms of any refinancing and return to the Investors is unknown. The Receiver cannot make any guarantees that the terms of any debt/equity refinancing proposals will be the same or similar to the term sheets submitted pre-receivership. The Debtors’ refinancing efforts were halted due to the Projects’ insolvency, resulting in a lack of resources to complete the pre-conditions to funding, and the litigation amongst the parties. The Projects

remain potentially viable development sites. It is the Receiver's expectation that N21 and Twisted Rock will procure refinancing term sheets from reputable sources.

18. With respect to any potential requirement to post a covenant/guarantee in favour of an eventual construction lender, the Receiver spoke with N21 and Twisted Rock with respect to this concern. The Receiver was advised that performance and completion bonds are often an acceptable substitute for a guarantee and, in any event, the original term sheets required a non-recourse guarantee.
19. The Ber Affidavit claims that the Projects will have insufficient equity to support a construction loan, however that ignores the potential new equity in the Projects and the terms of the pre-receivership term sheets.

ADDITIONAL BORROWING

20. The quantum of the funding necessary to undertake the Phase 1 work, bring the Projects to shovel-ready condition and maintain the receivership proceedings over the 18 month term of the Hillmount loans are set out at Appendix "O" of the First Report. The largest single expenditure is realty taxes (US \$711,800), which need to be paid irrespective of whether the Projects are developed or immediately sold.
21. The proposed borrowings to facilitate the five (5) months to provide satisfactory evidence of financing include additional approximate costs not previously budgeted of:
 - (a) Realty taxes - \$50,000;
 - (b) N21 - \$930,000 in unbudgeted costs;
 - (c) Interest and finance fees - \$100,000; and
 - (d) Professional fees - no increase in budgeted amount.
22. The Real Properties are development lands. The Receiver expects that the Phase 1 work, which will bring the Projects closer to development, will enhance the value of the Real Properties and as such disputes the characterization in the Ber Affidavit of these expenditures as a "dissipation of equity."

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23. The Receiver's recommendation is to fund the Phase I work and bring the Projects to a position where they can be marketed to investors/lenders. In the event the Projects are not refinanced, the expenditure of funds to undertake the Phase I work to bring the Projects closer to construction is likely to enhance the value of the Real Properties in the event they are sold. However, the Receiver cannot guarantee the amount of any return on the Investors' loans or whether the completion of the Phase I work will ultimately increase their recoveries and any "appraisal" in respect of such values would be completely speculative.

RECOMMENDATIONS OF THE RECEIVER

24. Based on the foregoing and as set out the First Report, and the Supplemental Report, dated September 16, 2022 the Receiver respectfully recommends that the Court make an order granting the relief as set out in its Notice of Motion, dated September 9, 2022.
25. The Receiver is requests that its motion proceed on September 20, 2022. Any additional delay will further prolong the process and result in the continued accrual of interest and costs.

All of the foregoing is respectfully submitted this 19th day of September, 2022.

ZEIFMAN PARTNERS INC., in its capacity as Receiver and Manager of Legacy Lifestyles Destin LP, Legacy Lifestyles Destin GP Inc., Legacy Lifestyles Summerlin LP, Legacy Lifestyles Summerlin GP Inc., Legacy Lifestyles Trailwinds LP, Legacy Lifestyles Trailwinds GP Inc., Legacy Lifestyles Ocoee LP, Legacy Lifestyles Ocoee GP Inc., Legacy Lifestyles Longleaf LP, Legacy Lifestyles Longleaf GP Inc., Legacy Lifestyles Destin Property LLC, Legacy Lifestyles Trailwinds Property LLC, Legacy Lifestyles Ft. Myers Property LLC, Legacy Lifestyles Ocoee Property LLC and Legacy Lifestyles Longleaf Property LLC, and not in its personal or corporate capacity

Per: 

Name: Allan Rutman

Title: President

Court File No. CV-21-00668821-00CL
HUNTER MILBORNE et al.
Defendants

BERKID INVESTMENTS LIMITED
Plaintiff

and

Court File No. CV-22-00674717-00CL
LEGACY LIFESTYLES DESTIN PROPERTY LLC, et al.
Respondents

LEGACY LIFESTYLES DESTIN LP, et al.
Applicants

and

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

SECOND SUPPLEMENTAL REPORT TO
THE FIRST REPORT OF THE RECEIVER

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Lawyers for Zeifman Partners Inc., in its capacity as Court-
appointed Receiver

Appendix “P”
to the Second Report of the Receiver

DEVELOPMENT SERVICES AGREEMENT

THIS DEVELOPMENT SERVICES AGREEMENT is made and entered into as of November 1, 2022 (the "Effective Date"), by and between Legacy Lifestyles Destin Property LLC, ("Owner"), and N21 Group, LLC, a Delaware limited liability company ("Developer").

WHEREAS, Owner is desirous of engaging Developer as an independent contractor for the purpose of managing, arranging, supervising and coordinating the planning, design, construction and completion of the Project (defined herein) upon the terms, conditions and covenants herein described; and

WHEREAS, Developer is desirous of performing the services described herein as an independent contractor of Owner.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by each party to the other, and the mutual promises, obligations and agreements contained herein, Owner and Developer, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 ENGAGEMENT OF DEVELOPER

1.1 Engagement. Owner hereby engages Developer and authorizes Developer, subject to the terms and conditions hereof, to provide services relating to the management of the planning and development of a senior assisted-living complex (the "Project") set forth in Exhibit A hereto (the "Services"). Developer hereby accepts such engagement and hereby agrees to diligently perform its duties and the Development Functions hereunder. Developer shall cause the Services to be performed using reasonable skill and care, and shall use reasonable efforts to cause the Project to be completed in an efficient, orderly manner, consistent with and subject to the terms and conditions of this Agreement. The Services do not include, and Developer shall have no responsibility for or authority over, control of cash inflows and outflows relating to the Project.

1.2 Relationship. With respect to Owner, Developer shall at all times be an independent contractor. No provision hereof shall be construed to constitute Developer or any of its officers or employees as an employee or employees of Owner, nor shall any provision of this Agreement be construed as creating a partnership or joint venture between Developer and Owner. Neither Owner nor Developer shall have the power to bind the other party except pursuant to the terms of this Agreement. This Agreement is not intended to provide or create any agency relationship between Owner and Developer, and Developer shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever, except as expressly provided herein, and Developer agrees that it shall not hold itself out as having authority to act on behalf of Owner in any manner, except as expressly provided herein.

ARTICLE 2 RESPONSIBILITIES OF DEVELOPER

2.1 General Responsibility. Developer's general responsibility hereunder shall be to manage, arrange, supervise and coordinate the planning, design, construction, and completion of the Project pursuant to the terms of this Agreement.

2.2 Development Functions. In discharging its general responsibility hereunder, Developer shall perform and discharge the specific responsibilities set forth in Exhibit "A", subject to the terms of this Agreement.

ARTICLE 3 DEVELOPMENT BUDGET

3.1 Implementation of Development Budget. Developer is hereby authorized and directed to implement the Development Budget as approved by the Owner pursuant to this Agreement. Developer shall use reasonable efforts to ensure that the actual Development Costs (excluding Excluded Costs) shall not exceed the aggregate amount of the Development Budget. All expenses shall be charged to the proper Line Item in the Development Budget.

ARTICLE 4 AUTHORITY OF DEVELOPER

4.1 General Authority. Developer shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever except to the extent specifically provided herein or specifically authorized in writing by Owner.

4.2 Certain Owner Approvals. Without limiting the other restrictions on Developer's authority contained in this Agreement, except as expressly permitted, Developer shall not take any of the following actions unless and until the same have been approved in writing by Owner:

4.2.1 Take any action, or make any expenditure, decision, commitment or agreement, that would constitute a Major Decision. A "Major Decision" is defined as any significant decisions in respect of the design, construction or operation of the Project and includes, without limitation, any capital improvements, the retention of a contractor, architect, manager/operator, consultant or supplier, making or approving any modifications or changes to plans, specifications or designs (unless such changes are minor or required by a governmental authority), leasing or renting any portion of the Project, entering into any contract of insurance in respect of the Project and such other decisions as may be advised by Owner; or

4.2.2 Incur any cost which will result in aggregate expenditures under any one Line Item in the Development Budget exceeding the amount budgeted therefor.

4.2.3 Owner shall respond to requests from Developer for approval of Major Decisions and other significant decisions in respect of the Project within four (4) Business Days of a written request for same from Developer. A "Business Day" is defined as a day on which banks are open for business in Toronto, Ontario, Canada but excludes Saturday, Sunday and any other day which is a legal holiday in Toronto, Ontario, Canada.

4.3 Authority to Reallocate Line Items. Notwithstanding any provision herein, Developer shall have the authority to reallocate between Line Items in the Development Budget (including but not limited to "contingency" Line Items).

4.4 Authority to Make Minor Field and Other Changes. Developer shall have the authority to make any modification or deviation to the Plans and Specifications and the Construction Contract to the extent the same constitutes a Minor Field Change or is required by any governmental authority or otherwise. A "Minor Field Change" is defined as changes to the Plans and Specifications and Construction Contract that do not materially deviate from or affect the design or construction of the Project as approved by the Owner.

ARTICLE 5 MONTHLY REPORTING AND PAYMENT OF DEVELOPMENT COSTS

5.1 Monthly Reports. No later than the 10th day of each calendar month during the Development Period, Developer shall prepare and submit a report (the "Monthly Report") with respect to the Project as of the last day of the preceding calendar month. Neither the giving of notice by Developer to Owner of excess expenditures in any month nor the payment of such excess expenditures shall act to amend or otherwise modify the Development Budget unless such modification is permitted pursuant to the terms hereof or approved by Owner in writing.

ARTICLE 6 OWNER'S FUNDS

6.1 Owner's Duty to Provide Funds. Owner agrees that Owner will provide, as and when necessary, all such amounts as are required to pay when due all current obligations of Owner in connection with the development of the Project, including all obligations of Owner to Developer hereunder. Notwithstanding anything in this Agreement to the contrary, Owner shall be under no obligation to provide any amounts for the payment of the Development Costs, including all obligations of Owner to Developer hereunder, unless the Monthly Report is accompanied by lien waivers from Contractor and all other contractors, subcontractors and material suppliers set forth therein. Lien waivers will be accepted not more than one month in arrears. Developer shall promptly notify Owner with a reasonably detailed explanation if there are insufficient funds in the account.

ARTICLE 7 ACCOUNTING AND RECORDS

7.1 Books of Account. Owner shall maintain or cause to be maintained for a period of not less than three years after the Final Completion Date, complete records and books of account which shall fully and accurately reflect the planning, design, construction and completion of the Project. All entries to such books of account shall be supported by sufficient documentation.

ARTICLE 8 INDEMNITY: LIABILITY

8.1 Indemnity of Owner. Developer hereby agrees to indemnify, defend and hold harmless Owner, its directors, officers, representatives, agents and employees (collectively, "Owner Indemnified Party") from and against any and all claims, demands, losses, damages, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses

(including, without limitation, reasonable out-of-pocket attorneys' fees and court costs incurred in connection with the enforcement of this indemnity or otherwise) suffered or incurred by such Owner Indemnified Party caused by (i) any material breach of this Agreement by Developer, or (ii) fraud, gross negligence or willful misconduct of any Developer Indemnified Party in connection with this Agreement or Developer's services or work hereunder. In any case where indemnity is sought by an Owner Indemnified Party, such Owner Indemnified Party shall give notice of the request for indemnification to Owner and shall give Owner the opportunity, to the extent reasonably possible, to participate in the defense of the claim giving rise to the claim for indemnity. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Developer be liable for consequential, punitive, or special damages including, without limitation, lost profits.

8.2 Indemnity of Developer. Owner hereby agrees to indemnify, defend and hold harmless Developer, its members, employees, and officers (collectively, "Developer Indemnified Party"), from and against any and all claims, demands, losses, damages, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including, without limitation, reasonable out-of-pocket attorneys' fees and court costs incurred in connection with the enforcement of this indemnity or otherwise) suffered or incurred by such Developer Indemnified Party caused by (i) any material breach of this Agreement by Owner or (ii) fraud, gross negligence or willful misconduct of any Owner Indemnified Party in connection with this Agreement. In any case where indemnity is sought by a Developer Indemnified Party, such Developer Indemnified Party shall give notice of the request for indemnification to Developer and shall give Developer the opportunity, to the extent reasonably possible, to participate in the defense of the claim giving rise to the claim for indemnity. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Owner be liable for consequential, punitive, or special damages including, without limitation, lost profits.

ARTICLE 9 COMPENSATION OF DEVELOPER

9.1 Developer Fee. During the Term, for and in consideration of the services rendered by Developer pursuant to the terms of this Agreement, Owner shall pay to Developer a total fee (the "Developer Fee") of **Eight Hundred Fifty Thousand Dollars (\$850,000.00)**. An initial payment of \$25,000.00 shall be paid upon execution of this Agreement. Specific services identified in Exhibit A (Phase 1 Services) shall be rendered prior to Owner's Closing on construction financing. The fee for Phase 1 Services shall be \$60,000.00. The initial payment of \$25,000.00 shall be credited to the final invoice for Phase 1 Services. If the Owner, in its sole and absolute discretion, elects to proceed with the completion of the Project the Developer shall proceed with the balance of the services identified in Exhibit A and the balance of the total Developer Fee shall be paid in monthly installments as invoiced by the Developer. If the Owner elects to proceed with the completion of the Project (Phase 2 Services) an initial payment of \$50,000.00 shall be paid upon commencement of Phase 2 Services. The initial payment of \$50,000.00 for Phase 2 Services shall be credited to the Owner's account in the final invoice for Phase 2 Services.

9.2 Reimbursement of Expenses and Advances. Reimbursable expenses are in addition to the Developer Fee and include reasonable expenses incurred by the Developer directly related to the Project. The reimbursable expenses shall include reasonable expenses for out of town travel including transportation expenses, overnight accommodations, and meals. In addition Developer shall not be required to advance any of its own funds for the payment of any costs and expenses incurred by or on behalf of Owner in connection with the development of the Project, but if Developer, pursuant to authority granted to Developer by Owner in writing, advances Developer's own funds in payment of any of such costs and expenses covered by the Development Budget or that Developer is permitted to incur hereunder, Owner agrees to reimburse Developer for such costs and expenses.

ARTICLE 10 TERM AND TERMINATION

10.1 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until the 30th day following the Final Completion Date, unless this Agreement is earlier terminated pursuant to the provisions contained in this Agreement.

10.2 Termination by Owner with Cause. Owner shall have the absolute unconditional right to terminate this Agreement for cause ("Cause") upon the occurrence of an Event of Default (defined below) by giving five (5) days written notice to Developer of such termination at any time, without prejudice to its other rights or remedies under this Agreement, at law or in equity, and take possession of all work performed hereunder by Developer and perform the Services by whatever means Owner may deem expedient effective upon such termination.

For purposes of this Agreement, the term "Event of Default" shall mean the occurrence of any one or more of the following:

- i. if Developer shall fail to comply with or perform in any respect any of the material terms and provisions to be complied with or any of the obligations to be performed by Developer under this Agreement;
- ii conviction of any principal of Developer, or plea by any principal of Developer of guilty or *nolo contendere* to, a felony or any crime;
- iii Developer's or any of its Affiliates' commission of an act, or omission to act, that constitutes fraud or embezzlement against Owner;
- iiii a material breach by Developer of this Agreement which has a material adverse effect on the Project, which Developer has not cured within thirty (30) days following Developer's receipt of written notice from Owner stating the particular action(s) or inaction(s) that constitute the breach; or
- iv. if any of the Milestones described in Exhibit "B" hereto are not completed on or prior to the deadline for completion.

In the event this Agreement is terminated for Cause pursuant to Article 10, the Owner shall

be required to pay Developer (i) any unpaid portion of the Developer Fee earned but unpaid through the effective date of such termination, and (ii) any Reimbursable Costs payable pursuant to this Agreement, incurred prior to the effective date of such termination.

10.3 Termination by Owner without Cause. Upon sixty (60) days prior written notice to Developer, Owner may terminate this Agreement at any time without Cause. In the event this Agreement is terminated without Cause Owner shall be required to pay Developer (i) any unpaid portion of the Developer Fee and (ii) any Reimbursable Costs payable, in each case for the period through the effective date of such termination and (iii) a termination fee equal to twenty-five thousand dollars (\$25,000.00).

10.4 Termination by Developer. Developer may terminate this Agreement in the event of an Owner Default. The following shall constitute an "Owner Default": (i) failure of Owner to pay to Developer any amount becoming due and payable hereunder, within five (5) days after written notice from Developer of such failure; and (ii) failure of Owner to comply with any material provision of this Agreement, and the continuation of such failure for fifteen (15) days after written notice thereof from Developer to Owner; provided, however, that if the time required to cure and remedy such default shall exceed fifteen (15) days, Owner shall not be in default hereunder if Owner commences to cure such failure as soon as reasonably practicable in view of all circumstances and thereafter diligently prosecutes such curative efforts to completion. In addition to the right to terminate this Agreement, upon the occurrence of any Owner Default (after any applicable notice and cure periods), Developer may, at any time while such Owner Default continues, exercise any other remedies that may be provided at law or in equity. During the continuance of any Owner Default, Developer, at its sole discretion, may also suspend Developer's performance under this Agreement, and any such suspension by Developer shall not constitute a breach of the Agreement. In the event of Developer's termination, the Developer shall have no liability or responsibility to the Owner for delay or damage caused the Owner because of such termination of services.

10.5 Termination by Owner after completion of Phase I Services. After completion of the Phase I Services, in the event that the Owner, in its sole and absolute discretion, elects not to proceed with the completion of the Project, the Owner may terminate this Agreement upon written notice to the Developer. In the event this Agreement is terminated pursuant to this Section 10.5, no termination fee, or other amount is payable by the Owner to the Developer (with the exception of reimbursement for any reimbursable expenses incurred in accordance with Section 9.2 prior to the date of termination) and the Owner shall have no further obligations to Developer hereunder.

ARTICLE 11 MISCELLANEOUS

11.1 Counterparts; Execution by Facsimile/Email. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same Agreement. Executed counterparts of this Agreement exchanged by facsimile or email (.pdf format) transmission shall be fully enforceable.

11.2 Entire Agreement; Exhibits. This Agreement contains the entire understanding among the parties and supersedes any prior understanding and agreements between them respecting the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. All Exhibits attached hereto are made a part hereof by this reference.

11.3 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any Person or circumstance, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

11.4 No Partnership; Competition. Owner shall not and does not by this Agreement in any way or for any purpose become a partner of Developer in the conduct of its business, or otherwise, or a joint venturer of or a member of a joint enterprise with Developer, but rather Developer is and shall, for all purposes of this Agreement and the development of the Project, be deemed an "independent contractor" of Owner. It is expressly understood and agreed by the parties hereto that either party may engage in any other business or investment, including the ownership of, or investment in, real estate and the development, operation, leasing and management of senior living facilities and that the other party hereto shall have no rights in and to any such business or investment or the income or profit derived therefrom.

11.5 Assignment. Neither party hereto shall have the right to assign this Agreement or any of its rights hereunder without the prior written consent of the other party, and any such assignment in the absence of such written consent shall for all purposes be deemed null and void. Notwithstanding the foregoing, this Agreement may be collaterally assigned by Owner to Construction Lender if and when required by the terms of the construction financing.

11.6 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Whenever the terms "Owner" and "Developer" are used herein, they shall be deemed to mean and include Owner and Developer and their respective successors and permitted assigns in the same manner and to the same extent as if specified each time said terms appear herein.

11.7 Amendment. This Agreement may not be amended, altered or modified except by an instrument in writing and signed by the parties hereto.

11.8 No Waiver. No waiver by either party of any default of any other party or of any event, circumstance or condition permitting a party to terminate this Agreement shall constitute a waiver of any other default of the other party or of any other event, circumstance or condition permitting such termination, whether of the same or of any other nature or type and whether preceding, concurrent or succeeding; and no failure on the part of either party to exercise any right it may have by the terms hereof or by law upon the default of the other party and no delay in the exercise of such right shall prevent the exercise thereof by the non-defaulting party at any time when the other party may continue to be so in default, and no such failure or delay and no waiver

of default shall operate as a waiver of any other default, or as a modification in any respect of the provisions of this Agreement. The subsequent acceptance of any payment or performance pursuant to this Agreement shall not constitute a waiver of any preceding default by a defaulting party or of any preceding event, circumstance or condition permitting termination hereunder, other than default in the payment of the particular payment or the performance of the particular matter so accepted, regardless of the non-defaulting party's knowledge of the preceding default or the preceding event, circumstance or condition, at the time of accepting such payment or performance, nor shall the non-defaulting party's acceptance of such payment or performance after termination constitute a reinstatement, extension or renewal of this Agreement or revocation of any notice or other act by the non-defaulting party.

11.9 Legal Action. In any dispute or legal action arising out of this Agreement, the exclusive venue and jurisdiction shall lie in the Circuit Court for Sarasota County, Florida. The prevailing party or parties shall be entitled to an award of attorney's fees, expenses, and court costs from the non-prevailing party or parties, in addition to any other relief granted by the court.

11.10 Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement, to the maximum extent permitted by law Developer shall not be liable to Owner for any damage or destruction of the Project or property, or any action or failure to act of an architect, engineer or other third-party contractors or any subcontractor working on the Project, unless such action or failure to act is a result of Developer's negligence or willful misconduct. Each party hereby waives its rights to consequential and punitive damages.

11.11. No Personal Liability. In no event shall any member, manager, director, officer, employee, representative, attorney, or agent of a party hereto or their respective Affiliates have any personal liability for the performance of such party's obligations under this Agreement.

11.12. Insurance. Owner shall carry commercial general liability insurance, on an occurrence form, adequate to protect the interest of the parties hereto, which shall name Developer as an additional insured; and shall be the primary liability insurance for all claims or liabilities arising from, or incidental to this Agreement. General liability risks and key exposures to be covered shall include, but not be limited to, the Property and Developer's Services in connection with the Property, blanket contractual, personal injury, and completed operations. The limits of each policy shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage and subject to a \$2,000,000 annual aggregate. Owner shall also carry builder's risk insurance in an amount at least equal to the replacement cost of the improvements being constructed for the Project. Owner waives and releases all claims against Developer for any damage to the Project that is covered by Owner's insurance.

11.13. Cumulative Remedies. The rights and remedies of either party under this Agreement with respect to the occurrence of a Consultant Default or Owner Default (as applicable) are cumulative with, and in addition to, any other right or remedy available to such party at law, in equity, or both.

11.14. Ratification. Owner hereby ratifies and approves all actions taken by Developer in connection with the development of the Project prior to the effective date of this Agreement to the extent such actions were taken in accordance with the terms and conditions contained herein. For

the purposes of this Agreement, all such actions shall be deemed to be part of the Services.

11.15. Assignment. Neither party shall assign its rights under this Agreement without the prior written consent of the other party.

11.16. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given when personally delivered, one day after sent by a reputable national overnight courier service to the address set forth below, or three (3) days after mailing if sent by registered or certified mail, return receipt requested, first class, postage prepaid to the address sent below, or when sent by e-mail at the e-mail address shown below provided that such e-mail is sent during the normal business hours of the party to whom it was sent, and electronic confirmation of the successful transmission of such e-mail is obtained:

If to Owner:

Legacy Lifestyles Destin Property LLC
c/o Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario M6A 1Y7
Attn: Allan Rutman
aar@zeifmans.ca

If Developer:

N21 Group LLC
4910 Lakewood Ranch Blvd. N,
Suite 100
Sarasota, FL 34240
don@n21group.net

Each party may change its foregoing notice addresses at any time by notice given to the other party.

11.17. No Third-Party Beneficiary. This Agreement is intended for the benefit of, and shall be enforceable by, the parties hereto, their respective permitted successors and assigns, and not by any third parties.

11.18. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

11.19. Burden: Benefit. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors and permitted assigns.

11.20. Entire Agreement. This Agreement, together with any certificates, documents, instruments and writings that are delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof. The section headings contained in this

Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

11.21. Force Majeure. In discharging its duties as set forth in this Agreement, Developer shall be held to a standard of reasonableness and shall not be liable to Owner for matters outside its control, including but not limited to acts of God, civil riot, war, strikes, labor unrest and material shortages.

11.22. Amendment; Extension; Waiver. No amendment, modification, waiver, replacement, termination or cancellation of any provision of this Agreement will be valid, unless the same is in writing and signed by the parties hereto. Each waiver of a right hereunder does not extend beyond the specific event or circumstance giving rise to the right. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence. Neither the failure nor any delay on the part of any party to exercise any right or remedy under this Agreement will operate as a waiver thereof, nor does any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy.

11.23. Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via facsimile, e-mail or otherwise shall be deemed an original for all intents and purposes.

11.24. Developer is not the Architect of Record, engineer or design professional and will not perform design services.

11.25. Developer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction of the Project, as these will solely be contractors' rights and responsibilities.

11.26. Developer shall not be responsible for any contractor's failure to perform its work in accordance with the requirements of its contract with Owner. Developer shall not be required to make exhaustive or continuous on-site inspections to check the quality of the work performed by contractors. However, Developer shall visit the site at intervals appropriate to the stage of the contractors' operations and shall endeavor to guard the Owner against defects and deficiencies in the Work. Developer shall inform Owner of any contractor's failure to perform work as required by the contractor's contract of which Developer becomes aware.

IN WITNESS WHEREOF, Owner and Developer have caused this Agreement to be executed on the day, month and year first above written.

OWNER:

Legacy Lifestyles Destin Property LLC

By: 

Zeifman Partners Inc., in its capacity as court-appointed Receiver of Legacy Lifestyles Destin Property LLC, and not in its personal or corporate capacity

Name:

Allan Rubman

Title:

President

DEVELOPER:

N21 Group, LLC, a Delaware limited liability company

By: 

Name:

Donald Lauss

Title:

MSE

Responsibility		DEVELOPMENT SERVICES TASKS- EXHIBIT "A"	
	N21		
1/1A		1	Locate site that represents the best opportunity for the development of a Senior Living facility.
1/1A		2	Consult, communicate, and negotiate with the property Owner for the acquisition of the property.
1/1A		3	Communicate with Owner during Due Diligence period through the acquisition of the property.
1/1A		4	Evaluate and analyze the property to determine its suitability for development of a Senior Living facility.
1/1A		5	Investigate the conditions and issues affecting the development of the property.
1/1A		6	Review current and future land use designations to determine if the zoning classifications are suitable for the Project. Identify the required zoning class/region for the Project. Identify process and timetable to achieve required zoning classification.
1/1A		7	Investigate future Land Use designations surrounding the property to ascertain the anticipated future development types, intensities, and uses.
1/1A		8	Undertake analysis of demographics trends, identify other similar existing projects in the marketplace to ascertain any potential impact on the Project.
1/1A		9	Select and cause to be executed an independent (third party market) analysis and feasibility study.
1/1A		10	Consult with local officials to determine the issues impacting development of the property.
1/1A		11	Complete a constructability review of the property to identify the issues affecting the project and development of the Site.
1/1A		12	Render recommendations and course on the development of an economically viable and sustainable Project.
1/1A		13	Consult with and obtain competitive Proposals for surveying services, civil engineering services, and planning consultation services required for the permitting of the Project.
1/1A		14	Visit the site and evaluate the Primary Market Area and surrounding demographics.
1/1A		15	Compile a list of comparable sites in the general vicinity to verify the reasonableness of the acquisition price of the Project site.
	•	16	Obtain the preparation of civil/land/development plans for the construction of the Project and related documents for use in the procurement of site construction permits.
	•	17	Coordinate the services of the Consultants retained for the procurement of all site improvements and permits.
	•	18	Represent the Project in all aspects associated with local government departments and all proceedings.
	•	19	Represent the Project before all state governmental jurisdictions having authority over the Project.
	•	20	Maintain records of all governmental fees associated with the development of the Project.
	•	21	Coordinate documentation and submissions for all governmental impact fees, utility fees, and construction permits.
	•	22	Serve as liaison between the Project and any community groups/organizations.
	•	23	Participate in the meetings/conference calls pertaining to the Development's responsibilities.
	•	24	Prepare and maintain the Development's programs for the Project.
	•	25	Coordinate documentation required for submission of construction permits.
	•	26	Render recommendations and advice on strategies to achieve cost effective construction.
	•	27	Provide monthly updates for the procurement of the site construction permits and construction of the Project.
	•	28	Select, interview, and recommend the selection of General Contractor for the Project.
	•	29	Select, interview, and recommend the selection of Managing Operator.
	•	30	Coordinate with Manager/Operator to facilitate the performance of their Pre-Design services related to the development of the Project.
	•	31	Negotiate and cause to be executed in the name of the Project any agreements for professional services, including consulting for the Project, and agreements for the construction of the Project.
	•	32	Provide administration of construction contracts on behalf of the Project.
	•	33	Review and make recommendations for actual approval of all Requests for Payments under any agreements or financing agreements with any lending institution providing funds for the benefit of the Project.
	•	34	Review and make recommendations on any issue which could improve or enhance the Project.
	•	35	Manage the application and the submission of any and all governmental permits and approvals required for the construction of the Project.
	•	36	Obtain all terms and conditions applicable to the Project contained in any governmental permit or approval required for the development of the Project.
	•	37	Oversee requirements for compliance with all terms and conditions applicable to any governmental permit or approval required for the development of the Project.
	•	38	Oversee requirements for compliance with all terms and conditions applicable for any insurance policy affecting or covering the Project, or in any surety bond obtained in connection with the Project.
	•	39	Implement appropriate protocols for the administrative systems for the completion of the Project.
	•	40	Manage the responsibilities for all obligations associated with the Project, including but not limited to professional consultants, legal counsel, accounting and financial consultants, general contractor, other contractors, vendors or service providers, payables, receivables, and lender requirements.
	•	41	Maintain and distribute the monthly reports, progress and cost of construction, and recommendations as to the drawing of funds from any loans and the distribution of funds to meet the Project's financial obligations.
	•	42	Manage the responsibilities for the filing of any documents required for the occupancy of the Project.
	•	43	Oversee the progress throughout the course of the development of the Project, and attend to the daily requirements of the Project's obligations.
	•	44	Manage on behalf of the Project all obligations of the Project with respect to the design and construction of the Project contained in any loan agreement or security agreement entered into in connection with the financing of the Project, or in any agreement entered into with any governmental body or agency.
	•	45	Regularly distribute updates to reflect the status of the development.
	•	46	Administer and manage appropriate insurance coverage for the Project, including but not limited to general public liability and property damage/earthquake coverage.
	•	47	Assemble and retain all contracts, agreements, and other records and data as necessary to manage the construction and operation of the Project.
	•	48	Coordinate and administer the opening of the development.
	•	49	Manage and oversee the completion of the Project, the opening and the turnover of the Project to the Operator/Manager.
	•	50	Manage the transition of the Project to the Operator/Manager and administer all services related to the Project's obligations.

Exhibit "B" – Milestones

Milestone	Deadline for Completion
Project is site plan approved and building permit ready	150 days from execution of this Agreement
Receipt of letters of intent for project financing in respect of the Project	5 months from date of Court approval of this Agreement
Execution of unconditional project financing agreement in respect of the Project	8 months from date of Court approval of this Agreement

Phase 1 Services Budget

8/1/2022

Legacy Destin

Based upon our knowledge and understanding of the status of the Project we have compiled this budget for the Phase 1 Services

	<u>Amount</u>
<u>Governmental Fees</u>	
Entitlements (estimate)	12,000
<u>Professional Fees</u>	
Developer	60,000
Architect	40,000
Building Engineers	31,600
Civil/Site Engineers	57,845
Landscape Architect	20,000
Interior Designer	23,000
Market Study	9,200
Operator	13,225
Reimbursable Expenses	3,000
Total	269,870

DEVELOPMENT SERVICES AGREEMENT

THIS DEVELOPMENT SERVICES AGREEMENT is made and entered into as of November 1, 2022 (the “Effective Date”), by and between Legacy Lifestyles Longleaf Property LLC, (“Owner”), and N21 Group, LLC, a Delaware limited liability company (“Developer”).

WHEREAS, Owner is desirous of engaging Developer as an independent contractor for the purpose of managing, arranging, supervising and coordinating the planning, design, construction and completion of the Project (defined herein) upon the terms, conditions and covenants herein described; and

WHEREAS, Developer is desirous of performing the services described herein as an independent contractor of Owner.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by each party to the other, and the mutual promises, obligations and agreements contained herein, Owner and Developer, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 ENGAGEMENT OF DEVELOPER

1.1 Engagement. Owner hereby engages Developer and authorizes Developer, subject to the terms and conditions hereof, to provide services relating to the management of the planning and development of a senior assisted-living complex (the “Project”) set forth in Exhibit A hereto (the “Services”). Developer hereby accepts such engagement and hereby agrees to diligently perform its duties and the Development Functions hereunder. Developer shall cause the Services to be performed using reasonable skill and care, and shall use reasonable efforts to cause the Project to be completed in an efficient, orderly manner, consistent with and subject to the terms and conditions of this Agreement. The Services do not include, and Developer shall have no responsibility for or authority over, control of cash inflows and outflows relating to the Project.

1.2 Relationship. With respect to Owner, Developer shall at all times be an independent contractor. No provision hereof shall be construed to constitute Developer or any of its officers or employees as an employee or employees of Owner, nor shall any provision of this Agreement be construed as creating a partnership or joint venture between Developer and Owner. Neither Owner nor Developer shall have the power to bind the other party except pursuant to the terms of this Agreement. This Agreement is not intended to provide or create any agency relationship between Owner and Developer, and Developer shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever, except as expressly provided herein, and Developer agrees that it shall not hold itself out as having authority to act on behalf of Owner in any manner, except as expressly provided herein.

ARTICLE 2 RESPONSIBILITIES OF DEVELOPER

2.1 General Responsibility. Developer’s general responsibility hereunder shall be to manage, arrange, supervise and coordinate the planning, design, construction, and completion of the Project pursuant to the terms of this Agreement.

2.2 Development Functions. In discharging its general responsibility hereunder, Developer shall perform and discharge the specific responsibilities set forth in Exhibit "A", subject to the terms of this Agreement.

ARTICLE 3 DEVELOPMENT BUDGET

3.1 Implementation of Development Budget. Developer is hereby authorized and directed to implement the Development Budget as approved by the Owner pursuant to this Agreement. Developer shall use reasonable efforts to ensure that the actual Development Costs (excluding Excluded Costs) shall not exceed the aggregate amount of the Development Budget. All expenses shall be charged to the proper Line Item in the Development Budget.

ARTICLE 4 AUTHORITY OF DEVELOPER

4.1 General Authority. Developer shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever except to the extent specifically provided herein or specifically authorized in writing by Owner.

4.2 Certain Owner Approvals. Without limiting the other restrictions on Developer's authority contained in this Agreement, except as expressly permitted, Developer shall not take any of the following actions unless and until the same have been approved in writing by Owner:

4.2.1 Take any action, or make any expenditure, decision, commitment or agreement, that would constitute a Major Decision. A "Major Decision" is defined as any significant decisions in respect of the design, construction or operation of the Project and includes, without limitation, any capital improvements, the retention of a contractor, architect, manager/operator, consultant or supplier, making or approving any modifications or changes to plans, specifications or designs (unless such changes are minor or required by a governmental authority), leasing or renting any portion of the Project, entering into any contract of insurance in respect of the Project and such other decisions as may be advised by Owner; or

4.2.2 Incur any cost which will result in aggregate expenditures under any one Line Item in the Development Budget exceeding the amount budgeted therefor.

4.2.3 Owner shall respond to requests from Developer for approval of Major Decisions and other significant decisions in respect of the Project within four (4) Business Days of a written request for same from Developer. A "Business Day" is defined as a day on which banks are open for business in Toronto, Ontario, Canada but excludes Saturday, Sunday and any other day which is a legal holiday in Toronto, Ontario, Canada.

4.3 Authority to Reallocate Line Items. Notwithstanding any provision herein, Developer shall have the authority to reallocate between Line Items in the Development Budget (including but not limited to "contingency" Line Items).

4.4 Authority to Make Minor Field and Other Changes. Developer shall have the authority to make any modification or deviation to the Plans and Specifications and the Construction Contract to the extent the same constitutes a Minor Field Change or is required by any governmental authority or otherwise. A "Minor Field Change" is defined as changes to the Plans and Specifications and Construction Contract that do not materially deviate from or affect the design or construction of the Project as approved by the Owner.

ARTICLE 5

MONTHLY REPORTING AND PAYMENT OF DEVELOPMENT COSTS

5.1 Monthly Reports. No later than the 10th day of each calendar month during the Development Period, Developer shall prepare and submit a report (the "Monthly Report") with respect to the Project as of the last day of the preceding calendar month. Neither the giving of notice by Developer to Owner of excess expenditures in any month nor the payment of such excess expenditures shall act to amend or otherwise modify the Development Budget unless such modification is permitted pursuant to the terms hereof or approved by Owner in writing.

ARTICLE 6

OWNER'S FUNDS

6.1 Owner's Duty to Provide Funds. Owner agrees that Owner will provide, as and when necessary, all such amounts as are required to pay when due all current obligations of Owner in connection with the development of the Project, including all obligations of Owner to Developer hereunder. Notwithstanding anything in this Agreement to the contrary, Owner shall be under no obligation to provide any amounts for the payment of the Development Costs, including all obligations of Owner to Developer hereunder, unless the Monthly Report is accompanied by lien waivers from Contractor and all other contractors, subcontractors and material suppliers set forth therein. Lien waivers will be accepted not more than one month in arrears. Developer shall promptly notify Owner with a reasonably detailed explanation if there are insufficient funds in the account.

ARTICLE 7

ACCOUNTING AND RECORDS

7.1 Books of Account. Owner shall maintain or cause to be maintained for a period of not less than three years after the Final Completion Date, complete records and books of account which shall fully and accurately reflect the planning, design, construction and completion of the Project. All entries to such books of account shall be supported by sufficient documentation.

ARTICLE 8

INDEMNITY; LIABILITY

8.1 Indemnity of Owner. Developer hereby agrees to indemnify, defend and hold harmless Owner, its directors, officers, representatives, agents and employees (collectively, "Owner Indemnified Party") from and against any and all claims, demands, losses, damages, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses

(including, without limitation, reasonable out-of-pocket attorneys' fees and court costs incurred in connection with the enforcement of this indemnity or otherwise) suffered or incurred by such Owner Indemnified Party caused by (i) any material breach of this Agreement by Developer, or (ii) fraud, gross negligence or willful misconduct of any Developer Indemnified Party in connection with this Agreement or Developer's services or work hereunder. In any case where indemnity is sought by an Owner Indemnified Party, such Owner Indemnified Party shall give notice of the request for indemnification to Owner and shall give Owner the opportunity, to the extent reasonably possible, to participate in the defense of the claim giving rise to the claim for indemnity. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Developer be liable for consequential, punitive, or special damages including, without limitation, lost profits.

8.2 Indemnity of Developer. Owner hereby agrees to indemnify, defend and hold harmless Developer, its members, employees, and officers (collectively, "Developer Indemnified Party"), from and against any and all claims, demands, losses, damages, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including, without limitation, reasonable out-of-pocket attorneys' fees and court costs incurred in connection with the enforcement of this indemnity or otherwise) suffered or incurred by such Developer Indemnified Party caused by (i) any material breach of this Agreement by Owner or (ii) fraud, gross negligence or willful misconduct of any Owner Indemnified Party in connection with this Agreement. In any case where indemnity is sought by a Developer Indemnified Party, such Developer Indemnified Party shall give notice of the request for indemnification to Developer and shall give Developer the opportunity, to the extent reasonably possible, to participate in the defense of the claim giving rise to the claim for indemnity. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Owner be liable for consequential, punitive, or special damages including, without limitation, lost profits.

ARTICLE 9 COMPENSATION OF DEVELOPER

9.1 Developer Fee. During the Term, for and in consideration of the services rendered by Developer pursuant to the terms of this Agreement, Owner shall pay to Developer a total fee (the "Developer Fee") of **Eight Hundred Fifty Thousand Dollars (\$850,000.00)**. An initial payment of \$25,000.00 shall be paid upon execution of this Agreement. Specific services identified in Exhibit A (Phase 1 Services) shall be rendered prior to Owner's Closing on construction financing. The fee for Phase 1 Services shall be \$65,000.00. The initial payment of \$25,000.00 shall be credited to the final invoice for Phase 1 Services. If the Owner, in its sole and absolute discretion, elects to proceed with the completion of the Project the Developer shall proceed with the balance of the services identified in Exhibit A and the balance of the total Developer Fee shall be paid in monthly installments as invoiced by the Developer. If the Owner elects to proceed with the completion of the Project (Phase 2 Services) an initial payment of \$50,000.00 shall be paid upon commencement of Phase 2 Services. The initial payment of \$50,000.00 for Phase 2 Services shall be credited to the Owner's account in the final invoice for Phase 2 Services.

9.2 Reimbursement of Expenses and Advances. Reimbursable expenses are in addition to the Developer Fee and include reasonable expenses incurred by the Developer directly related to the Project. The reimbursable expenses shall include reasonable expenses for out of town travel including transportation expenses, overnight accommodations, and meals. In addition Developer shall not be required to advance any of its own funds for the payment of any costs and expenses incurred by or on behalf of Owner in connection with the development of the Project, but if Developer, pursuant to authority granted to Developer by Owner in writing, advances Developer's own funds in payment of any of such costs and expenses covered by the Development Budget or that Developer is permitted to incur hereunder. Owner agrees to reimburse Developer for such costs and expenses.

ARTICLE 10 TERM AND TERMINATION

10.1 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until the 30th day following the Final Completion Date, unless this Agreement is earlier terminated pursuant to the provisions contained in this Agreement.

10.2 Termination by Owner with Cause. Owner shall have the absolute unconditional right to terminate this Agreement for cause ("Cause") upon the occurrence of an Event of Default (defined below) by giving five (5) days written notice to Developer of such termination at any time, without prejudice to its other rights or remedies under this Agreement, at law or in equity, and take possession of all work performed hereunder by Developer and perform the Services by whatever means Owner may deem expedient effective upon such termination.

For purposes of this Agreement, the term "Event of Default" shall mean the occurrence of any one or more of the following:

- i. if Developer shall fail to comply with or perform in any respect any of the material terms and provisions to be complied with or any of the obligations to be performed by Developer under this Agreement;
- ii conviction of any principal of Developer, or plea by any principal of Developer of guilty or *nolo contendere* to, a felony or any crime;
- iii Developer's or any of its Affiliates' commission of an act, or omission to act, that constitutes fraud or embezzlement against Owner;
- iiii a material breach by Developer of this Agreement which has a material adverse effect on the Project, which Developer has not cured within thirty (30) days following Developer's receipt of written notice from Owner stating the particular action(s) or inaction(s) that constitute the breach; or
- iv. if any of the Milestones described in Exhibit "B" hereto are not completed on or prior to the deadline for completion.

In the event this Agreement is terminated for Cause pursuant to Article 10, the Owner shall

be required to pay Developer (i) any unpaid portion of the Developer Fee earned but unpaid through the effective date of such termination, and (ii) any Reimbursable Costs payable pursuant to this Agreement, incurred prior to the effective date of such termination.

10.3 Termination by Owner without Cause. Upon sixty (60) days prior written notice to Developer, Owner may terminate this Agreement at any time without Cause. In the event this Agreement is terminated without Cause Owner shall be required to pay Developer (i) any unpaid portion of the Developer Fee and (ii) any Reimbursable Costs payable, in each case for the period through the effective date of such termination and (iii) a termination fee equal to twenty-five thousand dollars (\$25,000.00).

10.4 Termination by Developer. Developer may terminate this Agreement in the event of an Owner Default. The following shall constitute an "Owner Default": (i) failure of Owner to pay to Developer any amount becoming due and payable hereunder, within five (5) days after written notice from Developer of such failure; and (ii) failure of Owner to comply with any material provision of this Agreement, and the continuation of such failure for fifteen (15) days after written notice thereof from Developer to Owner; provided, however, that if the time required to cure and remedy such default shall exceed fifteen (15) days, Owner shall not be in default hereunder if Owner commences to cure such failure as soon as reasonably practicable in view of all circumstances and thereafter diligently prosecutes such curative efforts to completion. In addition to the right to terminate this Agreement, upon the occurrence of any Owner Default (after any applicable notice and cure periods), Developer may, at any time while such Owner Default continues, exercise any other remedies that may be provided at law or in equity. During the continuance of any Owner Default, Developer, at its sole discretion, may also suspend Developer's performance under this Agreement, and any such suspension by Developer shall not constitute a breach of the Agreement. In the event of Developer's termination, the Developer shall have no liability or responsibility to the Owner for delay or damage caused the Owner because of such termination of services.

10.5 Termination by Owner after completion of Phase I Services. After completion of the Phase I Services, in the event that the Owner, in its sole and absolute discretion, elects not to proceed with the completion of the Project, the Owner may terminate this Agreement upon written notice to the Developer. In the event this Agreement is terminated pursuant to this Section 10.5, no termination fee, or other amount is payable by the Owner to the Developer (with the exception of reimbursement for any reimbursable expenses incurred in accordance with Section 9.2 prior to the date of termination) and the Owner shall have no further obligations to Developer hereunder.

ARTICLE 11 MISCELLANEOUS

11.1 Counterparts; Execution by Facsimile/Email. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same Agreement. Executed counterparts of this Agreement exchanged by facsimile or email (.pdf format) transmission shall be fully enforceable.

11.2 Entire Agreement; Exhibits. This Agreement contains the entire understanding among the parties and supersedes any prior understanding and agreements between them respecting the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. All Exhibits attached hereto are made a part hereof by this reference.

11.3 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof to any Person or circumstance, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

11.4 No Partnership; Competition. Owner shall not and does not by this Agreement in any way or for any purpose become a partner of Developer in the conduct of its business, or otherwise, or a joint venturer of or a member of a joint enterprise with Developer, but rather Developer is and shall, for all purposes of this Agreement and the development of the Project, be deemed an "independent contractor" of Owner. It is expressly understood and agreed by the parties hereto that either party may engage in any other business or investment, including the ownership of, or investment in, real estate and the development, operation, leasing and management of senior living facilities and that the other party hereto shall have no rights in and to any such business or investment or the income or profit derived therefrom.

11.5 Assignment. Neither party hereto shall have the right to assign this Agreement or any of its rights hereunder without the prior written consent of the other party, and any such assignment in the absence of such written consent shall for all purposes be deemed null and void. Notwithstanding the foregoing, this Agreement may be collaterally assigned by Owner to Construction Lender if and when required by the terms of the construction financing.

11.6 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Whenever the terms "Owner" and "Developer" are used herein, they shall be deemed to mean and include Owner and Developer and their respective successors and permitted assigns in the same manner and to the same extent as if specified each time said terms appear herein.

11.7 Amendment. This Agreement may not be amended, altered or modified except by an instrument in writing and signed by the parties hereto.

11.8 No Waiver. No waiver by either party of any default of any other party or of any event, circumstance or condition permitting a party to terminate this Agreement shall constitute a waiver of any other default of the other party or of any other event, circumstance or condition permitting such termination, whether of the same or of any other nature or type and whether preceding, concurrent or succeeding; and no failure on the part of either party to exercise any right it may have by the terms hereof or by law upon the default of the other party and no delay in the exercise of such right shall prevent the exercise thereof by the non-defaulting party at any time when the other party may continue to be so in default, and no such failure or delay and no waiver

of default shall operate as a waiver of any other default, or as a modification in any respect of the provisions of this Agreement. The subsequent acceptance of any payment or performance pursuant to this Agreement shall not constitute a waiver of any preceding default by a defaulting party or of any preceding event, circumstance or condition permitting termination hereunder, other than default in the payment of the particular payment or the performance of the particular matter so accepted, regardless of the non-defaulting party's knowledge of the preceding default or the preceding event, circumstance or condition, at the time of accepting such payment or performance, nor shall the non-defaulting party's acceptance of such payment or performance after termination constitute a reinstatement, extension or renewal of this Agreement or revocation of any notice or other act by the non-defaulting party.

11.9 Legal Action. In any dispute or legal action arising out of this Agreement, the exclusive venue and jurisdiction shall lie in the Circuit Court for Sarasota County, Florida. The prevailing party or parties shall be entitled to an award of attorney's fees, expenses, and court costs from the non-prevailing party or parties, in addition to any other relief granted by the court.

11.10 Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement, to the maximum extent permitted by law Developer shall not be liable to Owner for any damage or destruction of the Project or property, or any action or failure to act of an architect, engineer or other third-party contractors or any subcontractor working on the Project, unless such action or failure to act is a result of Developer's negligence or willful misconduct. Each party hereby waives its rights to consequential and punitive damages.

11.11. No Personal Liability. In no event shall any member, manager, director, officer, employee, representative, attorney, or agent of a party hereto or their respective Affiliates have any personal liability for the performance of such party's obligations under this Agreement.

11.12. Insurance. Owner shall carry commercial general liability insurance, on an occurrence form, adequate to protect the interest of the parties hereto, which shall name Developer as an additional insured; and shall be the primary liability insurance for all claims or liabilities arising from, or incidental to this Agreement. General liability risks and key exposures to be covered shall include, but not be limited to, the Property and Developer's Services in connection with the Property, blanket contractual, personal injury, and completed operations. The limits of each policy shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage and subject to a \$2,000,000 annual aggregate. Owner shall also carry builder's risk insurance in an amount at least equal to the replacement cost of the improvements being constructed for the Project. Owner waives and releases all claims against Developer for any damage to the Project that is covered by Owner's insurance.

11.13. Cumulative Remedies. The rights and remedies of either party under this Agreement with respect to the occurrence of a Consultant Default or Owner Default (as applicable) are cumulative with, and in addition to, any other right or remedy available to such party at law, in equity, or both.

11.14. Ratification. Owner hereby ratifies and approves all actions taken by Developer in connection with the development of the Project prior to the effective date of this Agreement to the extent such actions were taken in accordance with the terms and conditions contained herein. For

the purposes of this Agreement, all such actions shall be deemed to be part of the Services.

11.15. Assignment. Neither party shall assign its rights under this Agreement without the prior written consent of the other party.

11.16. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given when personally delivered, one day after sent by a reputable national overnight courier service to the address set forth below, or three (3) days after mailing if sent by registered or certified mail, return receipt requested, first class, postage prepaid to the address sent below, or when sent by e-mail at the e-mail address shown below provided that such e-mail is sent during the normal business hours of the party to whom it was sent, and electronic confirmation of the successful transmission of such e-mail is obtained:

If to Owner:

Legacy Lifestyles Longleaf Property LLC
c/o Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario M6A 1Y7
Attn: Allan Rutman
aar@zeifmans.ca

If Developer:

N21 Group LLC
4910 Lakewood Ranch Blvd. N,
Suite 100
Sarasota, FL 34240
don@n21group.net

Each party may change its foregoing notice addresses at any time by notice given to the other party.

11.17. No Third-Party Beneficiary. This Agreement is intended for the benefit of, and shall be enforceable by, the parties hereto, their respective permitted successors and assigns, and not by any third parties.

11.18. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

11.19. Burden; Benefit. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors and permitted assigns.

11.20. Entire Agreement. This Agreement, together with any certificates, documents, instruments and writings that are delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof. The section headings contained in this

Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

11.21. Force Majeure. In discharging its duties as set forth in this Agreement, Developer shall be held to a standard of reasonableness and shall not be liable to Owner for matters outside its control, including but not limited to acts of God, civil riot, war, strikes, labor unrest and material shortages.

11.22. Amendment; Extension; Waiver. No amendment, modification, waiver, replacement, termination or cancellation of any provision of this Agreement will be valid, unless the same is in writing and signed by the parties hereto. Each waiver of a right hereunder does not extend beyond the specific event or circumstance giving rise to the right. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence. Neither the failure nor any delay on the part of any party to exercise any right or remedy under this Agreement will operate as a waiver thereof, nor does any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy.

11.23. Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via facsimile, e-mail or otherwise shall be deemed an original for all intents and purposes.

11.24. Developer is not the Architect of Record, engineer or design professional and will not perform design services.

11.25. Developer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction of the Project, as these will solely be contractors' rights and responsibilities.

11.26. Developer shall not be responsible for any contractor's failure to perform its work in accordance with the requirements of its contract with Owner. Developer shall not be required to make exhaustive or continuous on-site inspections to check the quality of the work performed by contractors. However, Developer shall visit the site at intervals appropriate to the stage of the contractors' operations and shall endeavor to guard the Owner against defects and deficiencies in the Work. Developer shall inform Owner of any contractor's failure to perform work as required by the contractor's contract of which Developer becomes aware.

IN WITNESS WHEREOF, Owner and Developer have caused this Agreement to be executed on the day, month and year first above written.

OWNER:

Legacy Lifestyles Longleaf Property LLC

By: 

Zeifman Partners Inc., in its capacity as court-appointed Receiver of Legacy Lifestyles Longleaf Property LLC, and not in its personal or corporate capacity

Name: Allan Rybman

Title: President

DEVELOPER:

N21 Group, LLC, a Delaware limited liability company

By: 

Name: Dan Laws

Title: MBP

Responsibility	DEVELOPMENT SERVICES TASKS- EXHIBIT "A"	
	N/A	
N/A		1. Locate site that represents the best opportunity for the development of a Senior Living facility
N/A		2. Consult, confirm date, and negotiate with the Property Owner for the acquisition of the property
N/A		3. Communicate with Owner during Due Diligence period through the acquisition of the property
N/A		4. Evaluate and analyze the property to determine its suitability for development of a Senior living facility
N/A		5. Investigate the conditions and issues affecting the development of the property
N/A		6. Review current and future land use designations to determine if the zoning classifications are suitable for the Project. Identify the required zoning classification for the Project. Identify process and timetable to achieve required zoning classification
N/A		7. Investigate future land use designations surrounding the property to ascertain the anticipated future development types, intensities, and uses
N/A		8. Undertake analysis of demographic trends, identify other similar existing projects in the marketplace to ascertain any potential impact on the Project
N/A		9. Select and cause to be executed an independent third-party market analysis and feasibility study
N/A		10. Consult with local officials to determine the issues impacting development of the property
N/A		11. Complete a constructability review of the property to identify the issues affecting the Project and development of the Site
N/A		12. Render recommendations and counsel on the development of an economically viable and sustainable Project
N/A		13. Consult with and obtain competitive Proposals for surveying services, engineering services, and planning consultation services required for the permitting of the Project
N/A		14. Visit the site and evaluate the Primary Market Area and surrounding demographics
N/A		15. Compile a list of comparable sites in the general vicinity to verify the reasonableness of the acquisition price of the Project site
		16. Obtain the preparation of Unified Development Plans for the construction of the Project and related documents for which the procurement of site construction permits
		17. Coordinate the services of the Consultants required for the procurement of all site construction permits
		18. Present the Project in all aspects associated with local governmental jurisdictions and all permitting
		19. Represent the Project before all state governmental jurisdiction having authority over the Project
		20. Monitor schedules of all governmental fees associated with the development of the Project
		21. Coordinate documentation and applications for all governmental impact fees, utility fees, and construction permits
		22. Serve as liaison between the Project and any community groups/organizations
		23. Participate in any meetings, conferences, etc., pertaining to the Owner's requirements
		24. Prepare and maintain the Development Schedule for the Project
		25. Coordinate documentation required for submission of construction permits
		26. Render recommendations and advice on strategies to achieve cost efficient construction
		27. Provide monthly updates for the procurement of the site construction permits and construction of the Project
		28. Select, interview, and recommend the selection of General Contractor for the Project
		29. Select, interview, and recommend the selection of Manager/Operator
		30. Collaborate with Manager/Operator to facilitate the performance of their Pre-Design services related to the development of the Project
		31. Negotiate and cause to be executed in the name of the Project any agreements for professional services, including or consulting for the Project, and agreements for the construction of the Project
		32. Provide administration of construction contracts on behalf of the Project
		33. Review and make recommendations for action/ approval of all Requests for Payments under any agreements of financing agreements with any lending institution providing funds for the benefit of the Project
		34. Review and make recommendations on any issue which could improve or enhance the Project
		35. Manage the application and submission of any and all governmental permits and approvals required for the construction of the Project
		36. Obtain all terms and conditions applicable to the Project contained in the governmental permit or approval required for the development of the Project
		37. Oversee requirements for compliance with all terms and conditions applicable to any governmental permit or approval required for the development of the Project
		38. Oversee requirements for compliance with all terms and conditions applicable for any insurance policy affecting or covering the Project, or its surety bond obtained in connection with the Project
		39. Implement appropriate protocols for the administrative systems for the completion of the Project
		40. Manage the responsibility for all obligations associated with the Project, including but not limited to professional consultants, legal counsel, accounting and financial consultants, general contractor, other contractors, vendors or service providers, payables, receivables, and other requirements
		41. Maintain and distribute the monthly reports, progress and cost of construction, and recommendations as to the drawing of funds from investors and the distribution of funds to meet the Project's financial obligations
		42. Manage the responsibility for the filing of any documents required for the occupancy of the Project
		43. Oversee the progress throughout the course of the development of the Project, and attend to the daily requirements of the Project's obligations
		44. Manage on behalf of the Project all obligations of the Project with respect to the design and construction of the Project contained in any loan agreement or security agreement entered into in connection with the financing of the Project, or in any agreement entered into with any governmental body or agency
		45. Regularly distribute updates to reflect the status of the development
		46. Administer and manage appropriate insurance coverages for the Project, including but not limited to general public liability and property damage insurance coverage
		47. Assemble and retain all contracts, agreements, and other records and data as necessary to manage the construction and operation of the Project
		48. Coordinate and administer the opening of the development
		49. Manage and oversee the completion of the Project, the opening and the turn over of the Project to the Operator/ Manager
		50. Manage the transition of the Project to the Operator/ Manager and administer all services related to the Project's obligations

Exhibit "B" – Milestones

Milestone	Deadline for Completion
Project is site plan approved and building permit ready	150 days from execution of this Agreement
Receipt of letters of intent for project financing in respect of the Project	5 months from date of Court approval of this Agreement
Execution of unconditional project financing agreement in respect of the Project	8 months from date of Court approval of this Agreement

Phase 1 Services Budget

8/1/2022

Legacy Longleaf

Based upon our knowledge and understanding of the status of the Project we have compiled this budget for the Phase 1 Services

	<u>Amount</u>
<u>Governmental Fees</u>	
Entitlements (estimate)	15,000
<u>Professional Fees</u>	
Developer	65,000
Architect	45,000
Building Engineers	29,210
Civil/Site Engineers	9,200
Landscape Architect	20,000
Interior Designer	23,000
Market Study	9,200
Operator	13,225
Reimbursable Expenses	3,000
Total	231,835

DEVELOPMENT SERVICES AGREEMENT

THIS DEVELOPMENT SERVICES AGREEMENT is made and entered into as of November 1, 2022 (the "Effective Date"), by and between Legacy Lifestyles Ocoee Property LLC, ("Owner"), and N21 Group, LLC, a Delaware limited liability company ("Developer").

WHEREAS, Owner is desirous of engaging Developer as an independent contractor for the purpose of managing, arranging, supervising and coordinating the planning, design, construction and completion of the Project (defined herein) upon the terms, conditions and covenants herein described; and

WHEREAS, Developer is desirous of performing the services described herein as an independent contractor of Owner.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by each party to the other, and the mutual promises, obligations and agreements contained herein, Owner and Developer, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 ENGAGEMENT OF DEVELOPER

1.1 Engagement. Owner hereby engages Developer and authorizes Developer, subject to the terms and conditions hereof, to provide services relating to the management of the planning and development of a senior assisted-living complex (the "Project") set forth in Exhibit A hereto (the "Services"). Developer hereby accepts such engagement and hereby agrees to diligently perform its duties and the Development Functions hereunder. Developer shall cause the Services to be performed using reasonable skill and care, and shall use reasonable efforts to cause the Project to be completed in an efficient, orderly manner, consistent with and subject to the terms and conditions of this Agreement. The Services do not include, and Developer shall have no responsibility for or authority over, control of cash inflows and outflows relating to the Project.

1.2 Relationship. With respect to Owner, Developer shall at all times be an independent contractor. No provision hereof shall be construed to constitute Developer or any of its officers or employees as an employee or employees of Owner, nor shall any provision of this Agreement be construed as creating a partnership or joint venture between Developer and Owner. Neither Owner nor Developer shall have the power to bind the other party except pursuant to the terms of this Agreement. This Agreement is not intended to provide or create any agency relationship between Owner and Developer, and Developer shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever, except as expressly provided herein, and Developer agrees that it shall not hold itself out as having authority to act on behalf of Owner in any manner, except as expressly provided herein.

ARTICLE 2 RESPONSIBILITIES OF DEVELOPER

2.1 General Responsibility. Developer's general responsibility hereunder shall be to manage, arrange, supervise and coordinate the planning, design, construction, and completion of the Project pursuant to the terms of this Agreement.