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*Counsel for Intercity Investment Properties,
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

NORTHWEST SENIOR HOUSING CORPORATION,
*et al.*¹

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

**INTERCITY INVESTMENT PROPERTIES, INC.'S EMERGENCY MOTION TO
ENFORCE COMPLIANCE WITH CURE ORDERS AND FOR RELATED RELIEF**

Comes now Intercity Investment Properties, Inc. (“ICP” or the “Landlord”) and respectfully states as follows as and for its *Emergency Motion to Enforce Compliance with Cure Orders and for Related Relief* (the “Motion”).

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



1. ICI is the lessor of the improved real property located at 8523 Thackery Street, Dallas, Texas (the “Property”), pursuant to a written lease agreement (the “Lease”). As of the Petition Date, ICI’s tenant was Debtor Northwest Senior Housing Corp. (“Edgemere”). Over ICI’s objections, the Debtor sought and ultimately received approval to assume and assign the Lease, under section 365(b) of Title 11 of the U.S. Code (the “Bankruptcy Code”),² to a newly-created entity called Bay 9 Holdings, LLC (“Bay 9”).

2. As conditions to the Court’s determination pursuant 11 USC § 365(b), the Court heard testimony and received evidence that formed the bases for rulings holding that defaults existed under the Lease. The Court therefore required that both a prompt cure and adequate assurance of future performance be performed by Edgemere and Bay 9.

3. Among ICI’s objections to the assumption and assignment of the Lease was that Edgemere had failed to maintain the Property in the condition required under the Lease, such that there were existing defaults under the Lease that had to be cured before the Lease could be assumed and assigned under section 365(b). ICI further objected that Bay 9 had no track record of meeting its contractual obligations and had no credit whatsoever.

4. The Court agreed there were existing property conditions that constituted defaults under the Lease and needed to be cured but disagreed that Bay 9 was not creditworthy because Bay 9’s performance was backed by performance and payment guaranties from its ultimate parent, Lapis Advisors, LP (“Lapis”)—a distressed investment firm. Thus, in 2023, the Court entered a series of orders and bench rulings culminating in a June 12, 2023 order that, among other things: (a) specifically identified the existing conditions that constituted present defaults to be cured

² Further citations to “sections” refer to sections of the Bankruptcy Code unless otherwise noted.

through repair or remediation; (b) established an escrow fund to fund such work (at least in part); and (c) mandated Bay 9 to complete the repairs and remediation.

5. More particularly, in the June Bench Ruling (as defined below), the Court (a) ordered the Debtors to place \$9.3 million in escrow³ to be applied to perform the necessary repairs and remediation and (b) ordered Bay 9 to pay any costs in excess of \$9.3 million to complete the repairs and remediation.

6. Now, *more than a year* after many of these hearings and orders, the Landlord's fears have become reality. Despite the Court's orders, the statute requiring that lease defaults be cured, and sworn testimony from Lapis' principal (and the President of Bay 9), Kjerstin Hatch ("Hatch") that the defaults would be cured, none of Edgemere, Bay 9, or Lapis have completed the work. The Landlord has watched its Property decline in value while Bay 9, Lapis, and Hatch do nothing. The Landlord can no longer sit idly by while its Property quite literally rots.

7. Even where it has appeared work is underway, ICI's efforts to obtain information about the work performed and to inspect the work—as permitted under the Lease—have been ignored or rejected. So far, Bay 9 has refused to confirm the scope of work being performed and refused to permit ICI to inspect the work. What is more, when ICI has questioned why transfers have been made out of the escrow accounts, including to what appears to be a Bay 9-related entity, ICI's inquiries have been met with silence.

8. By this Motion, the Landlord requests that the Court enter an order (a) requiring Bay 9 to complete the outstanding repairs by December 31, 2024 and (b) granting related relief.

³ In practice, two escrow accounts were created: the Façade Escrow (\$9 million) and the Other Repairs Escrow (\$300,000).

BACKGROUND

9. On February 6, 2023, the Court issued a bench ruling (the “February Bench Ruling”) granting in part and denying in part the Landlord’s requested cure in connection with Edgemere’s proposed assumption and assignment of the Lease. *See* Feb. 8, 2023 Hr’g Tr. pp. 1–33. In the February Bench Ruling, the Court ordered the Debtors to make certain repairs to the Property and to hire an expert to examine the building’s stucco façade. *Id.* Specifically, the Court ordered the Debtors to take the following actions to satisfy their cure obligations:

- repair the corroded copper pipe in a mechanical room (Feb. 8, 2023 Hr’g Tr. 21:13–20);
- repair the cooling tower support frame (*Id.* at 22:15–24);
- repair a severely dented gutter (*Id.* at 23:6–9);
- recalibrate certain carbon monoxide detectors (*Id.* at 25:1–12);
- retain an expert to investigate the expansion joint (*Id.* at 26:2–8);
- repair the torn roof membrane and remove sheet metal and related debris from the roof (*Id.* at 27:19–22); and
- hire an EIFS or stucco expert to examine the stucco façade of the buildings, file the resulting report with the Court, and if the estate and Bay 9 cannot reach agreement, obtain two guaranteed maximum price estimates to do the work identified in the expert report and set a follow-up hearing (*Id.* at 29:4–8, 29:17–30:3).

10. Shortly after the Court’s February Bench Ruling on the Debtors’ cure obligations, the Court heard testimony and argument on the Debtors’ proposed assignment of the Lease to Bay 9. The Landlord argued that the proposed APA between the Debtors and Bay 9 left a gap where the Debtors and Bay 9 could both shirk responsibility for certain repairs required by the Lease. During these hearings, Kjerstin Hatch, President of Bay 9, testified:

“We review property condition reports. We speak with a lot of engineers. We model out what we think the needs of any – any of our projects are going to require.” Feb. 21, 2023 Hr’g Tr. 77:22–24.

“Q [Ivan Gold]: Okay. So, hypothetically, if three years from now it’s time to replace the roof on two or three buildings, they reached the end of their useful life, and in peeling back the roof membrane there’s significant water damage, even approaching structural damage, a big-ticket item, --

A [Kjerstin Hatch]: Sounds big-ticket.

Q: -- is that on you?

A: Yes.

Q: Even though the APA says that that’s a contingent not-known condition that arose prior to your purchasing the property? Isn’t that what the APA says?

A: So, as a businessperson, my expectation is that if we have a problem with the roof that becomes very expensive, *we need to fix it.*” Feb. 21, 2023 Hr’g Tr. 213:1–14 (emphasis added).

11. Bay 9 also represented to this Court that it was well-capitalized and a creditworthy tenant. Bay 9 stated in *Bay 9 Holdings LLC’s Response to Intercity Investment Properties, Inc.’s Objection to Adequate Assurance Provided by Stalking Horse Bidder and in Support of the Sale Transaction* [Dkt. 1175] (the “Response”) that:

Bay 9’s Sponsor has invested in over 40 senior living projects, including as an equity investor. Bay 9’s Sponsor and its affiliated entities have also invested in hundreds of other real estate related projects, neither Bay 9 nor its affiliated entities have ever defaulted on any of their debts, including any ground leases . . . Bay 9 has obtained a permanent capital commitment from its Sponsor to fund up to \$15,000,000 to address capital expense needs identified to Bay 9, including any repairs to The Edgemere that impact life safety or to fund any unfunded operating expenses.

Response, ¶ 3(c), (i). Bay 9 stated in *Bay 9 Holdings LLC’s Limited Response to Intercity Investment Properties, Inc.’s Objection to: (I) Trustee and DIP Lender’s Motion for Entry of an Order Authorizing and Approving the Stalking Horse Asset Purchase Agreement; and (II) Third Amended Plan of Reorganization of the Plan Sponsors Dated December 19, 2022 and in Support of the Sale Transaction and Plan Confirmation* [Dkt. 1244] (the “Limited Response”):

Bay 9 has \$57.5 million in cash on its balance sheet, which is more than sufficient to cover the \$48.5 million purchase price while leaving approximately \$9 million in cash after the closing to address ongoing operating and capital needs. Moreover, [Lapis Municipal Opportunities Fund IV LP] has provided further capital commitments of up to \$15 million as additional assurance of Bay 9's ability to meet its operating and capital needs.

Limited Response, ¶ 10. The Confirmation Order's finding that the Debtors have provided adequate assurance of future performance under the Lease relied in part upon a capital commitment letter dated February 13, 2023 that was admitted into evidence at the confirmation hearing and provides that Bay 9 can make capital commitment requests of its sponsor and the sponsor will guaranty unpaid rent.⁴

12. Following several days of testimony and argument, the Court overruled the Landlord's objections and authorized the assignment of the Lease to Bay 9.

13. On April 6, 2023, the Court signed the *Amended Order Regarding Intercity Investment Properties Inc.'s Amended Statement of Cure Claims with Respect to Existing Defaults Under Lease Pursuant to 11 U.S.C. § 365(b)(1)(A)* [Dkt. 1392] (the "Property Condition Order").

⁴ See Confirmation Order, ¶ 21 ("Adequate Assurance Provided). As set forth in the Confirmation and Sale Ruling, the requirements of Bankruptcy Code sections 365(b)(1) and 365(f)(2) are hereby deemed satisfied with respect to the Assumed Contracts (including the Ground Lease) based on Purchaser's evidence of, among other things, its financial condition and wherewithal and without any further action by Purchaser, including but not limited to any other or further deposit; *provided, however*, that solely with respect to the Ground Lease and consistent with the Confirmation and Sale Ruling, if Purchaser makes a capital commitment request of its sponsor consistent with the terms of that certain capital commitment letter dated February 13, 2023 and admitted into evidence at the Confirmation and Sale Hearing as Bay 9 Exhibit 8 (the "**Capital Commitment Letter**"), and such request is denied by the sponsor, Purchaser shall give Landlord prompt written notice of same; provided, further that if the Purchaser shall be in default on its rent payments under the Ground Lease during the first three years from the Closing Date, and the Purchaser's sponsor declines a capital commitment request under the Capital Commitment Letter while there remain unused capital funds thereunder, then the sponsor shall guaranty the payment of such unpaid rent up to the amount of any unused capital funds under the Capital Commitment Letter. Subject to the foregoing, and as set forth in the Confirmation and Sale Ruling, pursuant to Bankruptcy Code section 365(f), Purchaser has provided adequate assurance of future performance of the obligations under the Assumed Contracts (including the Ground Lease).").

In the Property Condition Order, the Court granted in part and denied in part the Landlord's amended cure claim and ordered Edgemere to make certain additional repairs. *See* Property Condition Order. In particular, the Court ordered the Debtors to take the following actions to satisfy their cure obligations:

- replace the torn roof membrane (Property Condition Order, Ex. B);
- engage SOCOTEC (at Bay 9's cost) to prepare a report of necessary stucco repairs, as previously ordered (*Id.*);
- clean debris off the field of the roof (*Id.*); and
- repair and/or recalibrate carbon monoxide detectors (*Id.*).

14. On April 7, 2023, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Chapter 11 Plan of Plan Sponsors* [Dkt. 1394] (the "Confirmation Order") confirming the *Fourth Amended Chapter 11 Plan of the Plan Sponsors Dated February 17, 2023* [Dkt. 1241] (the "Plan").

15. On May 23, 2023, the Debtors filed the *Declaration of Kjerstin Hatch in Support of Bay 9's Estimate of Cure Escrow Amount* [Dkt. 1535, Ex. 4] (the "Hatch Declaration"), which contained estimates of the cost of the Court-ordered repairs and recommended that the Debtors escrow \$8,996,952 to cover the cost of repairs that had not yet been completed. The Hatch Declaration also states that "after the sale closes to Bay 9, the Debtors will be liquidated and Bay 9 will be undertaking the repairs determined by this Court to be defaults under the Lease relating to the Garage Expansion Joint and the Façade." Hatch Declaration at ¶ 13.

16. On June 12, 2023, the Court issued a bench ruling declaring that the Debtors had cured certain defaults under the Lease and ordering the Debtors and/or Bay 9 to cure other still-existing defaults and escrow nearly \$9 million to pay for the required repairs (the "June Bench

Ruling”). With respect to the outstanding cure obligations, the Court ordered the Debtors (and, after the assignment to Bay 9, ordered Bay 9) to take the following actions:

- repair expansion joint (June 12, 2023 Hr’g Tr. 21:8–14)
- repair phase 1 pier (*Id.* at 22:15–18);
- reseal and monitor additional expansion joint (*Id.* at 23:19–24);
- repair plaza level expansion joint (*Id.* at 25:17–21); and
- undertake significant façade repairs (*Id.* at 34:14–16).

With respect to the escrow and continuing Lease obligations post-assignment, the Court stated:

Bay 9 was comfortable that it could undertake the SOCOTEC scope of work for \$9 million. And all I can say to Bay 9 is that I’m going to hold your client to it. The cure escrow for the façade work will be \$9 million. If the cost turns out to be greater than this, again, limited to the scope of work called for by the Court, the Court will require the buyer to complete the repairs as part of its original CapEx budget as approved at confirmation By virtue of this ruling, Bay 9 will get the, quote-unquote, “benefit,” so to speak, of about \$9 million towards exterior repairs. Any remainder of the façade repair in the Court’s ordered scope of work over and above the \$9 million will be considered Bay 9’s obligation as part of its 365 obligation to provide adequate assurance of future performance.

June 12, 2023 Hr’g Tr. 48:21–49:3, 49:21 – 50:1.

17. The Court followed up the June Bench Ruling with the *Order Regarding Intercity Investment Properties, Inc.’s Motion to Implement, Modify, and Supplement Property Condition Order and Other Issues Stemming from This Court’s April 2023 Property Condition Order Pursuant to Section 365(b)(1)(A) of the Bankruptcy Code* [Dkt. 1605] (the “June Order,” and together with the February Bench Ruling, the Property Condition Order, and the June Bench Ruling, the “Cure Orders”), which incorporated the holdings in the June Bench Ruling by reference. In the June Bench Ruling and the June Order, the Court ordered Bay 9 to perform repairs recommended in a report completed by SOCOTEC, among other things. *See* June 12, 2023 Hr’g

Tr. 43:5–8 (“In sum, the Court determines that the scope of work to be undertaken by Bay 9 to repair the façade conditions at the Edgemere to be that recommended by the SOCOTEC report, as supplemented by the Court herein.”).

18. On June 13, 2023 (the “Effective Date”), the Plan became effective and, as pertinent here, the Lease was assigned to Bay 9. *See* Dkt. 1620.

19. Since the Effective Date, ICI and Bay 9 have been involved in extensive ongoing discussions regarding compliance with certain Lease provisions, including, in particular, the commercial property insurance coverage. In connection with those insurance discussions, ICI would occasionally also request an update regarding the status of the repair and remediation work required by the Court, and was each time given a new date in the future by which the work would commence.

20. ICI retained Terracon Consultants, Inc. (“Terracon”) to perform an inspection of the Property in early 2024. As part of its inspection, Terracon determined that none of the repair and remediation work required by the Cure Orders had been undertaken as of their site visits in January and February 2024. (*See* Terracon Post-Cure Report (as defined below), attached as part of Group Exhibit A.) Terracon was told, however, by an individual at Edgemere that they understood some sort of work was to commence in March 2024. During the course of depositions in a related adversary proceeding, various witnesses testified that Bay 9 had done little, if any, of the ordered remediation work, and that they had no knowledge of any plan to commence said work.

21. Shortly thereafter, while preparing a formal request to Bay 9 for an update, ICI observed what appeared to be the beginning of façade remediation work at the Edgemere. Accordingly, on May 8, 2024, ICI instead asked Bay 9 for confirmation that work had begun, as well as related information including when the work was due to be completed. *See* Group Exhibit

A and the Declaration of Sandra Gotterup, attached as Exhibit B. ICI further requested access to the Property to inspect the work.

22. Hatch responded by email on May 15, 2024. *See* Group Ex. A. There, Hatch confirmed that “there [was] physical repair work occurring on the stucco façade of the Plaza building at the Edgemere,” but she declined to specify the scope of work or to answer the specific questions posed to Bay 9 in the March 8, 2024 letter. Further, while she did not deny ICI’s request to inspect the work, she advised only that such access would “need to be coordinated with [Bay 9’s] third-party contractors” without furnishing contact information for them.

23. On June 21, 2024, ICI responded through counsel. *See* Group Ex. A. ICI there reiterated its request for confirmation that the work underway included “the other property conditions identified as defaults in the June 12 Order such as structural issues, and not just a limited portion of the work.” ICI further requested contact information for Bay 9’s “third-party contractors” with whom Hatch instructed ICI to coordinate for access. ICI further advised that it had recently secured access to view the transactions for the escrow accounts established under the Court’s orders, but that ICI could not “tie those transactions to any particular work.” Of particular concern was that “\$557,431.00 of the Façade Escrow has been drawn for ‘Bay Holdings LLC’ beginning in July 2023 when it appears from the Hatch Email that the façade work is just now starting,” especially since ICI had not been furnished with “any information regarding who ‘Bay Holdings LLC’ is or what materials or services it is furnishing in furtherance of the façade work.”

24. Bay 9 responded through counsel, who advised solely that Bay 9 would not respond in a timely fashion. *See* Group Ex. A. In particular, Bay 9 there advised that many “of ICI’s requests will require involvement of third parties and additional analysis.” Again, Bay 9 did not confirm the scope of work, did not identify who was performing the work, did not provide access

to inspect the work, and did not explain why hundreds of thousands of dollars had been funneled out of the Façade Escrow to “Bay Holdings LLC.”

25. In the meanwhile, Bay 9’s contractors undertook to cover and conceal the work performed on the façade. As explained in Ms. Gotterup’s declaration, Exhibit B, June 26, 2024, it appeared that Bay 9’s contractors were performing some sort of water testing under the façade, but by July 3, 2024—and despite the inspection demands—Bay 9’s contractors were undertaking to cover up and conceal the work.

26. While the façade is an important default, it is not the only one that remains. The report by Terracon, included in Group Exhibit A, accurately reflects the condition of the portions of the Property at issue here as they existed on January 24 and 25, and February 21, 2024 (the “Terracon Post-Cure Report”).

27. To date, the following conditions identified as defaults by the Cure Orders have not yet been repaired or remediated:

- Conditions related to various expansion joints set forth in the June Bench Ruling;
- Conditions related to phase 1 pier; and
- Condition of the façade and building envelope.

BASIS FOR RELIEF

28. This Court has the requisite authority to order Bay 9 to complete the required repairs by December 31, 2024 (or, in the alternative, by some other date certain). The Court certainly has jurisdiction to enforce and interpret its prior orders and also has authority under 11 U.S.C. §§ 105(a) and 365(b)(1) to impose a deadline by which Bay 9 must complete the outstanding repairs. The Court should do so, and it should order Bay 9 to itemize the work

performed to date, the amounts paid and/or owing for such work, the contractors and materialmen performing the work and/or furnishing materials, and the work and materials remaining to comply with the June 12 Order. Relatedly, the Court should require Bay 9 to account for transfers from the escrow accounts.

I. Jurisdiction to Interpret and Enforce Prior Orders

29. It is well-settled that courts have jurisdiction to interpret and enforce their prior orders. *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137, 151, 129 S. Ct. 2195, 2205, 174 L. Ed. 2d 99 (2009) (holding that, more than ten years after entry of the order in question, “the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders”) (citing *Local Loan Co. v. Hunt*, 292 U.S. 234, 239, 54 S.Ct. 695, 78 L.Ed. 1230 (1934)). See also *In re Motors Liquidation Co.*, 514 B.R. 377, 381 (Bankr. S.D.N.Y. 2014), aff’d sub nom. *In Matter of Motors Liquidation Co.*, 829 F.3d 135 (2d Cir. 2016) (“Bankruptcy courts (and when it matters, district courts) have subject matter jurisdiction to enforce their orders in bankruptcy cases and proceedings under those courts’ “arising in ” jurisdiction.”); *In re TE Holdcorp, LLC*, No. BR 20-11442-JKS, 2022 WL 951553, at *4 (D. Del. Mar. 30, 2022), aff’d sub nom. *In re TE Holdcorp LLC*, No. 22-1807, 2023 WL 418059 (3d Cir. Jan. 26, 2023) (“The Bankruptcy Court ‘enjoys core jurisdiction to construe and enforce its own orders’ and it is the proper forum to consider the dispute.”).

30. Here, the Court also expressly retained jurisdiction over the Property Condition Order,⁵ the Confirmation Order,⁶ the Plan,⁷ the June Bench Ruling,⁸ and the June Order.⁹ Accordingly, the Court has jurisdiction to interpret and enforce the Cure Orders and the Plan and Confirmation Order. Given Bay 9's non-compliance with the Court's prior orders, a further order with a defined deadline and consequences for non-compliance is both necessary and appropriate. Bay 9 cannot be permitted to flout this Court's prior orders and must be held to account.

⁵ Property Condition Order, p. 23 (“**ORDERED** that the Court retains exclusive jurisdiction to consider any further relief arising from and/or related to this Order.”).

⁶ Confirmation Order, § VV (“Retention of Jurisdiction. Notwithstanding the entry of this Confirmation Order, the occurrence of the Effective Date, or the closing of the Chapter 11 Cases, and without limiting any other retention of jurisdiction set forth in this Confirmation Order, pursuant to Bankruptcy Code sections 105 and 1142, the Court, except as otherwise explicitly provided in the Plan or this Confirmation Order, shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases to the fullest extent permitted by law, including, but not limited to, jurisdiction over the matters set forth in Section 11 of the Plan.”).

⁷ Plan, § 11 (“Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising out of or related to the Chapter 11 Cases and this Plan, including, without limitation, jurisdiction to: . . . (c) resolve any matters related to: (i) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which any Debtor is party or with respect to which the Debtors may be liable in any manner and to hear, determine, and, if necessary, liquidate any Claims arising therefrom, including Rejection Claims, cure Claims pursuant to Bankruptcy Code section 365, or any other matter related to such Executory Contract or Unexpired Lease . . .”).

⁸ June 12, 2023 Hr’g Tr. 50:2–8 (“Now, the Court recognizes that this ruling may cause some tension between the APA and the, essentially, bright line between the estate responsibilities and the buyer’s responsibilities going forward. As set forth in the Court’s prior rulings and in the confirmation order, I will therefore retain jurisdiction over my orders in this regard.”).

⁹ June Order, p. 4 (“**ORDERED** that this Court shall retain jurisdiction to hear and consider all disputes arising from the interpretation or implementation of this Order.”).

II. Authority to Impose a Cure Deadline

31. The Court also has authority to fix a deadline for the performance of cure obligations. When a contract is assumed and assigned, the Bankruptcy Code mandates that defaults must be cured “promptly.” 11 U.S.C. § 365(b)(1) (“If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—(A) cures, or provides adequate assurance that the trustee will *promptly* cure...” (emphasis added)). *See also In re Nat’l Gypsum Co.*, 208 F.3d 498, 509 (5th Cir. 2000) (“Section 365(b)(1) provides a guarantee to the non-debtor party, who may be forced to continue a relationship it would rather terminate, that as condition to the forced continuation of the contractual relationship, any losses or defaults existing at the time will be satisfied either through a timely cure or through reasonable assurances of future payment.”).

32. Courts routinely set deadlines by which the debtor must cure defaults of an executory contract or unexpired lease. *See, e.g., In re Senior Care Centers, LLC*, 607 B.R. 580, 589 (Bankr. N.D. Tex. 2019) (requiring the debtor to cure defaults by the earlier of the plan effective date and approximately two months from the date of the order); *AT&T Corp. v. Transcom Enhanced Servs., LLC*, No. 3: 05-CV-1209-B, 2006 WL 8437448, at *2 (N.D. Tex. Jan. 20, 2006) (referencing the court’s 10-day deadline to perform cure obligations); *In re PRK Enterprises, Inc.*, 235 B.R. 597, 602 (Bankr. E.D. Tex. 1999) (finding that installment payments over the course of six months constituted “prompt” cure and noting that “courts are often reluctant to find that a default is being promptly cured when the proposed period for such cure exceeds two years”); *In re Prime Motor Inns, Inc.*, 166 B.R. 993, 995 (Bankr. S.D. Fla. 1994) (referencing the court’s prior order requiring defaults to be cured within six months). Norton Bankruptcy Law and Practice states that “a period to cure extending beyond a year should not be considered prompt in most cases.” 2

Norton Bankr. L. & Prac. 3d § 46:29 (citing *In re Daugherty*, 102 B.R. 167 (Bankr. E.D. Mo. 1989); *In re Berkshire Chemical Haulers, Inc.*, 20 B.R. 454 (Bankr. D. Mass. 1982) (eighteen months was not prompt cure); and *In re Liggins*, 145 B.R. 227 (Bankr. E.D. Va. 1992) (proposal to cure default over four years not prompt cure)).

33. Here, *over a year has already passed* since the entry of the Cure Orders and the Effective Date. The Landlord's proposed deadline of December 31, 2024 is extremely generous, giving Bay 9 five additional months to complete the repairs the Court ordered on February 6, 2023, April 6, 2023, and June 12, 2023.

34. Further, the Façade Escrow and the Other Repairs Escrow were created pursuant to this Court's orders and the funds therein dedicated to certain limited purposes as more fully described in those orders. While hundreds of thousands of dollars have been transferred from those accounts—including to what appears to be a Bay 9 affiliate—Bay 9 has failed and refused to date to identify any proper purpose for those transfers. Accordingly, the Court should order Bay 9 to provide a full accounting of the transfers from the escrow accounts, including by itemizing the work performed to date, the amounts paid and/or owing for such work, the contractors and materialmen performing the work and/or furnishing materials, and the work and materials remaining to comply with the June 12 Order.

WHEREFORE, Intercity Investment Properties, Inc. respectfully requests entry of an order (a) requiring Bay 9 to comply with its court-ordered cure obligations by December 31, 2024, (b) requiring Bay 9 to file an affidavit evidencing the same by January 7, 2025, (c) ordering Bay 9 to itemize and file, on or by September 1, 2024, the work performed to date, the amounts paid and/or owing for such work, the contractors and materialmen performing the work and/or furnishing materials, and the work and materials remaining to comply with the June 12 Order; (d) ordering

Bay 9 to account for all the transfers from the escrow accounts; and (e) granting such other or additional relief as the Court deems just and appropriate in the circumstances.

Dallas, Texas
July 8, 2024

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Counsel for Intercity Investment Properties, Inc.

CERTIFICATE OF SERVICE

I certify that on this 8th day of July, 2024, a copy of the foregoing was filed electronically with the Clerk of Court via ECF, which caused a copy of same to be transmitted to all counsel of record.

By: /s/ Jacob Sparks
Jacob Sparks

Group Exhibit A



INTERCITY INVESTMENTS, INC.

May 8, 2024

VIA NEXT BUSINESS DAY MAIL AND EMAIL

Bay 9 Holdings LLC
811 E. 17th Avenue
Denver, CO 80218
Attn: Kjerstin Hatch
Basia Terrell
Frank Chavez

Adrienne K. Walker
Chelsey R. List
Locke Lord LLP
111 Huntington Avenue, 9th Floor
Boston, MA 02199-7613

Re: Bay 9 Holdings-Edgemere: Remediation Work

Ladies and Gentlemen:

In passing through the neighborhood recently, we observed the beginning of what appears to be some form of work occurring on the stucco façade of the Plaza building at the Edgemere. We expect that this is likely the commencement of the building envelope restoration work mandated under the bankruptcy court's bench ruling dated June 12, 2023 (the "June 12 Order"). Please confirm whether that is correct.

If the referenced façade work is part of the work required under the June 12 Order, please confirm that the entire restoration project including the other property conditions identified as defaults in the June 12 Order such as structural issues, and not just a limited portion of the work, has been scoped, contracted for and scheduled for timely completion. Please also confirm that Lessor and/or its designated representative(s) will, beginning May 21, 2024, be provided access to review the work and materials as rendered and installed, as well as all plans, shop drawings, and specifications related to the work.

Finally, we request your prompt confirmation that the funds held in escrow in accordance with the June 12 Order will be used only for the remediation and restoration projects identified in and required by that June 12 Order, and not for other projects or repairs.

We appreciate your prompt response to this letter, and we are pleased to see that the building envelope work required under the June 12 Order may have begun.

Please be advised that this letter is not intended, nor shall it be construed, to constitute a waiver of any obligations, duties, or liabilities of Lessor under any contract, at law or in equity,

Bay 9 Holdings LLC and
Locke Lord LLP
Page 2
May 8, 2024

nor a waiver or election of any rights or remedies of Lessor under any contract, at law or in equity.
Lessor hereby expressly reserves all of its rights and remedies.

Sincerely,



Nicholas P. Hannon
Executive Vice President

From: Kjerstin Hatch <khatch@lapisadvisers.com>
Sent: Wednesday, May 15, 2024 11:27 AM
To: Nick Hannon
Cc: Eileen M. Sethna; Adrienne Walker; 'Melanie Echols'; Swanson, David; Basia Terrell
Subject: RE: ICI - Letter to Bay 9 - Edgemere - Remediation Work

Nick –

In reference to your letter of May 8th, you are correct in that there is physical repair work occurring on the stucco façade of the Plaza building at the Edgemere. The facade work, and work on the garage expansion joint, is a continuation of the repair project consistent with the Court's June 12th Order and other related orders entered by the Bankruptcy Court. That project began soon after the sale closed with engineering and contracting amongst other activities, again, consistent with the Court's orders. The funds for the project are managed by the escrow agent and restricted for use per the Court's orders. Payments for work incurred since closing have been consistent with the Court's orders and coordinated with the escrow agent.

As with any reasonable inspection right pursuant to section 5.9 of the Lease, we are able to provide reasonable access to the property. Access for areas undergoing repair will need to be coordinated with our third-party contractors and comply with their requirements and safety protocols as these areas of the property are undergoing an active construction and repair process. It is further our understanding that under the façade repair escrow you are entitled to a certificate of completion after the project is done and we will provide that to you upon such completion. Would you please explain why the Lessor believes it is entitled to the plans, shop drawings, and specifications?

Further, in reference to and acknowledging receipt of your May 3 letter we want to make it clear that Bay 9 is committed to the health and safety of all residents at the Edgemere.

We are investigating the items in your letter and have good news to share on many of the items you have identified. To assist us in that process, will you please send us a copy of the January 2024 Inspection (as defined in your letter) at your earliest convenience? To the extent not contained in the January 2024 Inspection, would you also send us the following:

- Gas Sensors/Parking Garage. Identify the specific gas sensors Terracon contends are inoperable and identify all code requirements Terracon contends are not being met.
- Guardrails. Identify the specific guardrail location(s) where Terracon observed the rust-through on horizontal railings, vertical pickets, and posts.
- Sidewalks and Paths. Identify the precise sidewalk and path location(s) where Terracon observed differential movement and, for each location, please provide all measurements of the differential movement and the comparison data from June 13, 2023 to January 2024.

Thank you in advance for your prompt reply. If you have questions or want to discuss, please do not hesitate to contact us.

Kjerstin Hatch
Managing Principal
Lapis Advisers, LP
(O) 415-376-6286
(M) 510-484-6828

From: Melanie Echols <MEchols@icirealestate.com>

Sent: Wednesday, May 8, 2024 2:54 PM

To: Kjerstin Hatch <khatch@lapisadvisers.com>; Basia Terrell <bterrell@lapisadvisers.com>; Frank Chavez <fchavez@lapisadvisers.com>

Cc: Nick Hannon <NHannon@icirealestate.com>; Eileen Sethna <esethna@lplegal.com>; Adrienne Walker <awalker@lockelord.com>

Subject: ICI - Letter to Bay 9 - Edgemere - Remediation Work

On behalf of Nick Hannon, please find the attached. The original letter is being sent via FedEx Priority Overnight.

Thank you,

Melanie Echols

Intercity Investments, Inc.

4301 Westside Drive, Suite 100

Dallas, TX 75209



Levenfeld Pearlstein, LLC
120 S Riverside Plaza, Suite 1800
Chicago, IL 60606 USA
lplegal.com

Eileen M. Sethna
FSRG Attorney
esethna@lplegal.com
T +1 (312) 476-7588

June 21, 2024

VIA NEXT BUSINESS DAY MAIL AND EMAIL

Bay 9 Holdings LLC
811 E. 17th Avenue
Denver, CO 80218
Attn: Kjerstin Hatch
Basia Terrell
Frank Chavez

Adrienne K. Walker
Chelsey R. List
Locke Lord LLP
111 Huntington Avenue, 9th Floor
Boston, MA 02199-7613

Re: Bay 9 Holdings – Edgemere: Restoration Work

Ladies and Gentlemen:

As you know, this firm represents the owner and lessor of that improved real property at which the Edgemere operates. We write on behalf of our client in response to Kjerstin Hatch's May 15, 2024 email to Nick Hannon (the "Hatch Email"). Reference also is made to Mr. Hannon's letter to Mrs. Hatch and others dated May 8, 2024 (the "Hannon Letter").

The Hannon Letter requested confirmation that "the entire restoration project including the other property conditions identified as defaults in the June 12 Order such as structural issues, and not just a limited portion of the work, has been scoped, contracted for and scheduled for timely completion." The Hatch email does not supply the requested confirmation. We reiterate that request for confirmation.

The Hatch email instructs that "[a]ccess for areas undergoing repair will need to be coordinated with our third-party contractors and comply with their requirements and safety protocols as these areas of the property are undergoing an active construction and repair process." Please provide to us contact information for the referenced contractors so that we may follow Mrs. Hatch's instruction to coordinate access.

The Hatch email asks "why the Lessor believes it is entitled to the plans, shop drawings, and specifications" pertinent to the work dictated by the June 12 Order. As Mrs. Hatch notes, Section 5.9 of the Lease permits inspection of the Property. As well, Section 5.14(c) provides that during "any restoration, Lessor . . . may, upon reasonable notice and at reasonable times, inspect the Improvements in the course of such restoration and upon completion, and all work and materials as rendered and installed. Lessee shall keep copies of all

June 21, 2024
Page 2

plans, shop drawings and specifications related to such restoration on the building site and permit Lessor . . . to examine them at all reasonable times.” (Underlining added). Finally, providing same to us now affords everyone the certainty that the contemplated restoration work will, if completed in accordance with the plans and specifications, conform to the requirements of the June 12 Order.

Relatedly, while we have access to view the transactions for the escrow accounts established under the June 12 Order, the lack of information provided to us about the work performed leaves us unable to tie those transactions to any particular work. Without limitation, we are confused by the fact that \$557,413.00 of the Façade Escrow has been drawn for “Bay Holdings LLC” beginning in July 2023 when it appears from the Hatch Email that the façade work is just now starting, nor have we been supplied any information regarding who “Bay Holdings LLC” is or what materials or services it is furnishing in furtherance of the façade work. We enclose a copy of Terracon’s report, as requested by Mrs. Hatch, which clarifies that the restoration work required by the June 12 Order had not commenced as of February 2024.

We therefore ask that you please provide a list of contractors and materialmen who have undertaken work or supplied materials dictated by the June 12 Order (or otherwise), as well as invoices from each and their lien waivers.

To the extent you are unable or unwilling to furnish invoices and lien waivers, we request under section 9.14 of the Ground Lease that you provide an estoppel certificate certifying: (a) the identity of the contractors and materialmen who have undertaken work or supplied materials dictated by the June 12 Order; (b) the work and materials performed or furnished by each such contractor and materialman, as well as the dates of commencement and completion of such performance or furnishing; (c) the amounts charged by each such contractor and materialman for their work and materials; (d) that each such contractor and materialman has been fully paid and does not dispute that he has been fully paid (or, if not, the amounts outstanding or allegedly outstanding); and (e) that Bay 9 has or has unconditional and irrevocable access to sufficient funds to pay for all remaining work and materials to be performed and intends to do so.

We are similarly perplexed by transfers from the Façade Escrow of hundreds of thousands of dollars of interest income to “Trust Operations.” We request also that you furnish an explanation of the transfers of interest income to “Trust Operations.” Who and what is “Trust Operations?”

We expect to receive the information requested no later than Wednesday, June 26, 2024.

Sincerely,



Eileen M. Sethna
EMS:hnr

POST-CURE ORDER REPAIR STATUS REPORT

The Plaza at Edgemere

8523 Thackery Street

Dallas, TX

June 12, 2024 | Terracon Project No. FA246002

Prepared for:

Levenfeld Pearlstein, LLC
120 S Riverside Plaza, Ste 1800
Chicago, Illinois 60606



Prepared by:

Terracon Consultants, Inc.
Dallas, Texas



Nationwide
Terracon.com

- Facilities
- Environmental
- Geotechnical
- Materials

Post-Cure Order Repair Status Report
The Plaza at Edgemere | Dallas, TX
June 12, 2024 | Terracon Project No. FA246002



June 12, 2024
Levenfeld Pearlstein, LLC
120 S Riverside Plaza, Ste 1800
Chicago, Illinois 60606

Attn: Ms. Eileen Sethna
Phone: (312) 476-7588
E: esethna@lplegal.com

Re: Post-Cure Order Repair Status Report

The Plaza at Edgemere
8523 Thackery Street
Dallas, TX
Terracon Project No. FA246002

Dear Ms. Sethna:

Terracon is pleased to provide this Post-Cure Order Repair Status Report ("Report") of the subject improvements, known as the "Edgemere." This work was performed in general accordance with the scope of services outlined in the Terracon Proposal Number PFA246002 dated January 8, 2024, as identified in the scope section of this Report. Terracon performed site reconnaissance on January 24, 25th and February 21, 2024. This report is a summary of Terracon's observations, conclusions, and recommendations as of the dates of those on-site visits.

Sincerely,

Terracon Consultants, Inc.

A handwritten signature in black ink, appearing to read 'Michael J. Hull'.

Michael J. Hull
Department Manager I
Facilities Services

A handwritten signature in black ink, appearing to read 'Jesse H. Aguilar'.

Jesse H. Aguilar
Office Manager I
Facilities Services

Attached: Property Condition Report

Post-Cure Order Repair Status Report

The Plaza at Edgemere | Dallas, TX

June 12, 2024 | Terracon Project No. FA246002



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See Appendix A.5 Photographic Documentation – **Freeman #1 to #34**



1.0 EXECUTIVE SUMMARY

1.1 Property Description

Terracon completed this Post-Cure Order Repair Status Report of the Edgemere located at 8523 Thackery Street in Dallas, Texas (the "Property"). The Property consists of multiple one to three-story senior living and medical facilities containing approximately 964,251 square feet of building areas that are currently leased by Intercity Investment Properties, Inc., or its assignee ("Landlord") to Bay 9 Holdings LLC ("Tenant") under a ground lease assigned on June 13, 2023 ("Lease"). The buildings were constructed starting in 2001 and ending in 2016 on a 16.25-acre parcel of land with approximately 506 parking spaces. The Edgemere campus of buildings is inhabited by residential occupants and predominantly used for senior living residential and associated healthcare services.

2.0 PURPOSE AND SCOPE

2.1 Purpose

The purpose of this Post-Cure Order Repair Status Report was to perform a physical assessment of the Property to assess the current status of any repair or remediation efforts undertaken by the present Property tenant related to the Court Order entered by Judge Michelle Larson on June 12, 2023 regarding certain existing conditions of defaults and certain required methods and instances of cure of said defaults (the "Cure Order").

2.2 Scope

The Scope of Work was performed in conformance with Terracon Proposal Number PFA246002 dated January 19, 2024 and known as Post-Cure Order Repair Status Compliance Assessment.

Terracon performed a physical assessment of the Property to assess the current status of compliance or non-compliance with the specific repair of the defaults set forth in the Post-Cure Order Repair Status (the "Post-Cure Order Repair Status Compliance Assessment"). Terracon is presenting its findings and recommendations in this report (the "Post-Cure Order Repair Status Report").

This Report does not confirm the presence or absence of items such as mold, asbestos, environmental conditions or hazardous substances on this property. Terracon was not

Post-Cure Order Repair Status Report

The Plaza at Edgemere | Dallas, TX

June 12, 2024 | Terracon Project No. FA246002



engaged to perform these investigations but understands that the Tenant was ordered to retain an industrial hygienist to assess and investigate.

2.3 Reliance

This Report was prepared pursuant to the contract between Terracon and Levenfeld Pearlstein, LLC. This Report is for the exclusive use and benefit of, and may be relied upon by Levenfeld Pearlstein, LLC and Intercity Investment Properties, Inc., its successors and/or assigns, ("Parties") and no other party shall have any right to rely on any service provided by Terracon Consultants, Inc. without prior written consent.

The Post-Cure Order Repair Status Report may be relied upon by the Parties listed above as a description of the observed current conditions of the building and site improvements, only as of the date of this Report, and with the knowledge that there are certain limitations and exceptions within the Report that are reflective of the scope of services as defined in our contract. Any unauthorized reliance on or use of the Report, including any of its information or conclusions, will be at the third party's sole risk. For the same reasons, no warranties or representation, express or implied in this Report, are made to any such third party. Reliance on the Report by the client and all authorized parties will be subject to the terms, conditions and limitations stated in the contract Terms and Conditions. The limitation of liability defined in the Terms and Conditions is the aggregate limit of Terracon's liability to the Client and all relying parties.



3.0 ORIGINAL DEFAULTS - February 6, 2023

Below is the list of defaults originally found by the Court on February 6, 2023, and stated to be cured on April 4, 2023, and their corresponding current (January 11th/12th, 2024) findings.

3.1 Corroded Copper Pipe

Evidence of severe electrolysis corrosion in the hot water boiler system was observed.

See Appendix A.5 Photographic Documentation – Freeman #22-#29.

3.2 Corrosion to the cooling tower support beams.

A portion of the hot-rolled structural steel on the cooling tower has apparently been painted. However, during our site visit it was observed the painting was not completely done; on the rear portion, the new paint stopped approximately 2/3 of the structure frame height. We recommend complete re-painting of the entire hot-rolled structural steel using industry standards for surface preparation, proper coating selection, required number of coats, mil thickness and application, recommended by the coating manufacturer.

See Appendix A.1A Photographic Documentation – Flores #17-#21.

See Appendix A.1B Structural Photo Log Location Maps – Figure #4.

3.3 Dented and/or Damaged Gutters

Conditions consistent with observations from July 13th and 14th, 2022 exist.

See Appendix A.3 Photographic Documentation – Syedi #31-#35.

3.4 Improperly functioning carbon monoxide detectors

Terracon conducted a site visit on January 24 and 25, 2024. Mr. Brian Freeman, Terracon MEP Specialist, reviewed the current condition of the garage ventilation systems and garage ventilation control systems. **It appears that many sensors do not meet code requirements, and many of the replacement gas sensors appear to be not operational.** The following is a breakdown

Post-Cure Order Repair Status Report

The Plaza at Edgemere | Dallas, TX

June 12, 2024 | Terracon Project No. FA246002



Below is the list of defaults originally found by the Court on February 6, 2023, and stated to be cured on April 4, 2023, and their corresponding current (January 11th/12th, 2024) findings.

of that site observation:

Basement Parking Garage (Building 7 & 8):

All the carbon monoxide (CO) detection sensors for the ventilation system in the underground basement parking garage appear to have been replaced. Uncalibrated or faulty sensors could prevent the enclosed parking garage from being properly ventilated according to the International Mechanical Code and City of Dallas Code Amendments.

Reference Photographic Documentation:

- **See Appendix A.5 Photographic Documentation – Freeman #1/#2** – Replaced Wall Mounted Toxic Gas Sensor. Exterior cover notes – Model no.: TGW-ACX-A. **Not Operating/Not Dual Gas.**
- **See Appendix A.5 Photographic Documentation – Freeman #3** – Replaced Wall Mounted Toxic Gas Sensor. Exterior cover notes – Manufacture: SENVA Model: TG. **Not Operating**

Plaza Parking Garage:

All the carbon monoxide (CO) detection sensors for the ventilation system in the underground personal care/nursing parking garage appear to have been replaced. Uncalibrated or faulty sensors could prevent the enclosed parking garage from being properly ventilated according to the International Mechanical Code and City of Dallas Code Amendments.

Reference Freeman Photographic Documentation:

- **See Appendix A.5 Photographic Documentation – Freeman #4** – Operational Garage Exhaust Fan. This is the only garage exhaust fan within the entire site noted as operational.
- **See Appendix A.5 Photographic Documentation – Freeman #5** – Garage Exhaust Shaft. Note existing floor drain and large amount of organic material that has dropped into the bottom of the shaft from the grade mounted floor grate above.
- **See Appendix A.5 Photographic Documentation – Freeman #6** – Garage Exhaust Fan.
- **See Appendix A.5 Photographic Documentation – Freeman #7** – Replaced Wall Mounted CO/NO2 Sensor. Exterior cover notes – Manufacture: SENVA Model: TGW-ACN.
- **See Appendix A.5 Photographic Documentation – Freeman #8** – Replaced Wall Mounted CO/NO2 Sensor. Exterior cover notes – Manufacture: SENVA Model: TGW-ACN.

Phase I Parking Garage:

Post-Cure Order Repair Status Report

The Plaza at Edgemere | Dallas, TX

June 12, 2024 | Terracon Project No. FA246002



Below is the list of defaults originally found by the Court on February 6, 2023, and stated to be cured on April 4, 2023, and their corresponding current (January 11th/12th, 2024) findings.

All the carbon monoxide (CO) detection sensors for the ventilation system in the underground phase I parking garage appear to have been replaced. Uncalibrated or faulty sensors could prevent the enclosed parking garage from being properly ventilated according to the International Mechanical Code and City of Dallas Code Amendments.

Reference Freeman Photographic Documentation:

- **See Appendix A.5 Photographic Documentation – Freeman #9/#10** – Replaced Wall Mounted Toxic Gas Sensor. Exterior cover notes – Manufacture: SENVA Model: TG. **Not Operating.**
- **See Appendix A.5 Photographic Documentation – Freeman #11/#12** – Replaced Wall Mounted Toxic Gas Sensor. Exterior cover notes – Manufacture: SENVA Model: TG. **Not Operating.**
- **See Appendix A.5 Photographic Documentation – Freeman #13** – Replaced Wall Mounted Toxic Gas Sensor. Exterior cover notes – Manufacture: SENVA Model: TG.
- **See Appendix A.5 Photographic Documentation – Freeman #14/#15** – Replaced Wall Mounted Toxic Gas Sensor. Exterior cover notes – Model no.: TGW-ACX-A. **Not Dual Gas.**

Phase II Parking Garage:

All the carbon monoxide (CO) detection sensors for the ventilation system in the underground Phase II parking garage appear to have been replaced. As stated below, several exhaust fans and also corresponding sensors, were not operational at the time of reconnaissance. Uncalibrated or faulty sensors could prevent the enclosed parking garage from being properly ventilated according to the International Mechanical Code and City of Dallas Code Amendments.

Reference Freeman Photographic Documentation:

- **See Appendix A.5 Photographic Documentation – Freeman #16** – Garage Exhaust Fans – **Not Operating.**
- **See Appendix A.5 Photographic Documentation – Freeman #17** – Replaced Wall Mounted Toxic Gas Sensor. Exterior cover notes – Manufacture: SENVA Model: TG. **Not Dual Gas.**
- **See Appendix A.5 Photographic Documentation – Freeman #18** – Garage Exhaust Fans – **Not Operating.**
- **See Appendix A.5 Photographic Documentation – Freeman #19/#20** – Replaced Wall Mounted Toxic Gas Sensor. Exterior cover notes – Model no.: TGW-ACX-A. **Not Dual Gas.**



Below is the list of defaults originally found by the Court on February 6, 2023, and stated to be cured on April 4, 2023, and their corresponding current (January 11th/12th, 2024) findings.

- **See Appendix A.5 Photographic Documentation – Freeman #21 – Garage Exhaust Fans – Not Operating.**

Reviewing the site observation above, all the replacement wall mounted gas sensors are manufactured by SENVA. Accessing the manufacturer website (www.senvainc.com), there are downloadable manufacture cut sheets, design manuals, and specifications.

There are two types of SENVA wall mounted gas sensors:

Model number: TGW-ACX-A

Model number: TGW-ACN

Manufacture model number details:

TG – Series

W – Wall Mount

A – Analog Output

C – Carbon Monoxide (CO)

X – No Second Gas

Manufacture model number details:

TG – Series

W – Wall Mount

A – Analog Output

C – Carbon Monoxide (CO)

N – Nitrogen Dioxide (NO2)

Reviewing the model number breakdown above shows the (ACX) sensor is a single element gas sensor and only detects carbon monoxide (CO). The (ACN) sensor is a dual element gas sensor and detects both carbon monoxide (CO) and nitrogen dioxide (NO2).

According to the most recent authority – 2021 International Mechanical Code, Section 404 - Enclosed Parking Garages – Mechanical ventilation systems for enclosed parking garages shall operate continuously or shall be automatically operated by means of carbon monoxide detectors applied in conjunction with nitrogen dioxide detectors.

This section of the 2021 International Mechanical Code specifies that the wall mounted gas sensor must be a dual element sensor to detect both carbon monoxide (CO) and nitrogen dioxide (NO2).

The model (ACX) wall mounted gas sensor above does not meet the code requirement.

According to the manufacture engineering specifications, the TG Series gas sensors have an LED indicator to show the status of the device: Green for normal, Yellow for warning status and Red for alarm status. There appear to be several TG series gas sensors that are emitting a Green LED showing normal operation. **There appeared to be several TG series gas sensors that were emitting no LED light showing the sensor is not operating per manufacture specification.**

It appears that all the gas sensors were replaced throughout the enclosed parking garages.

Although, it appears that many sensors do not meet code requirements, and many of the replacement gas sensors appear to be not operational. Uncalibrated or faulty sensors could prevent the garage from being properly ventilated. **Operation of the CO/NO2 monitoring, and ventilation control system is needed immediately to prevent this from being a life safety issue.**



Below is the list of defaults originally found by the Court on February 6, 2023, and stated to be cured on April 4, 2023, and their corresponding current (January 11th/12th, 2024) findings.

3.5 Roof Membrane

Conditions consistent with observations from July 13th and 14th, 2022 exist including roof damage and debris.

See Appendix A.3 Photographic Documentation – See Syedi #1-#24.

See Appendix A.4 Photographic Documentation – See Hull #1/#2.

4.0 OUTSTANDING DEFAULTS (June 2023)

Below is a continued list of defaults ordered to be cured originally found by the Court (June 12, 2023) and in need of status update.

4.1 Expansion Joint between Building 9 and the west wall of Building 3.

Conditions consistent with observations from July 13th and 14th, 2022 exist. No evidence that any work to remediate this condition was observed during reconnaissance. Conditions remain deficient.

See Appendix A.1A Photographic Documentation – Flores #1-#11.

See Appendix A.1B Structural Photo Log Location Maps – Figure #5.

4.2 Significant water intrusion and staining at the northeast corner of Building 9, Area A, between Phase 1 and Phase 2 construction.

Conditions consistent with observations from July 13th and 14th, 2022 exist. No evidence that any work to remediate this condition was observed during reconnaissance. Conditions remain deficient.

See Appendix A.1A Photographic Documentation – Flores #12-#16.

See Appendix A.1B Structural Photo Log Location Maps – Figure #2.



Below is a continued list of defaults ordered to be cured originally found by the Court (June 12, 2023) and in need of status update.

4.3 Stucco and Façade

Conditions consistent with observations from July 13th and 14th, 2022 exist. No evidence that any work to remediate this condition was observed during reconnaissance. Conditions remain deficient.

A list of 11 items were noted in the SOCOTEC Report and order by the court to be included in the cure. (See list of defaults below)

- "Remove the stucco along the foundation, paving, balconies, and patios, and at the soffits . . ."
- "Install base flashing and new stucco drainage accessories and terminate the stucco a minimum of two inches above paving and four inches above grade earth;"
- "If the stucco termination height is not at or below the adjacent wall, or the foundation sill, a flashing system that is integrated within the WRB, the water-resistant barrier, will be required to seal the base condition;"
- "Install new control joints and/or expansion joints as required to ensure that the stucco panels control pervasive cracking and facade;"
- "Remove and replace the perimeter sealant and sealant overlay repairs at the window and door perimeters at the stucco buildings, ensuring that the stucco termination along the window and door heads is not obstructed;"
- "Remove and replace the existing building vertical seal and expansion joints;"
- "Remove and replace the existing horizontal architectural features and existing distress composite cast stone and EIFS ornamental features along the balconies and the low slope roof perimeters."
- "Remove and replace distress composite cast stone balustrade at the common balconies;"
- "Remove and replace the delaminated plaster overlay at the west face of Building 3, adjacent to the Building 9 tie-in;"
- "Root (route) and seal repair existing cracks greater than 1/8 inch in width at all buildings except Plaza North and South medical additions;"
- "Coat stucco cladding with a vapor permeable elastomeric coating capable of bridging hairline cracks."

See Appendix A.2 Photographic Documentation – Williams #1-#48.



Below is a continued list of defaults ordered to be cured originally found by the Court (June 12, 2023) and in need of status update.

4.4 Structural Investigation at the fascia and soffit conditions of the garage entrances and at the common balconies such as the balcony overlying the fitness center.

Conditions consistent with observations from July 13th and 14th, 2022 exist. No evidence that any work to remediate this condition was observed during reconnaissance. Conditions remain deficient.

Four investigation and repair items were ordered and are listed as follows:

- "Remove the stucco finishes, the water resistive barrier, and the exterior sheathings to access wall and column cavities;"
- "Remove debris and scaling to expose base materials;"
- "Clean, prime and paint the structural steel and studs that exhibit any surface corrosion;"
- "Provide structural repairs if required, where scaling and resulting section loss may have resulted in compromised support conditions".

Post-Cure Order Repair Status Report

The Plaza at Edgemere | Dallas, TX

June 12, 2024 | Terracon Project No. FA246002



5.0 REPORT QUALIFICATIONS

5.1 Limitations

The services Terracon performed were general in scope and in nature. This Report is intended to provide a general overview of the building systems and our opinion of their overall condition based solely on our visual assessment. It has been performed using that degree of skill and care normally exercised by reputable consultants performing similar work. The activities of this survey included observations of visible and readily accessible areas. The observations were performed without removing or damaging components of the existing building systems. Consequently, certain assumptions have been made regarding conditions and operating performance. Comprehensive studies to identify, document, and evaluate every existing defect or deficiency, were not conducted. In some cases, additional studies may be warranted to fully evaluate concerns noted. In addition, system checks or testing of the equipment in the operating mode is beyond the scope of this assessment. It is recommended that contractor's bids be obtained for items that may represent significant expenditures.

The observations, findings, and conclusions within this Report are based on our professional judgment and information obtained during the course of this assessment based on the scope of work authorized. The opinions and recommendations presented herein are based on our observations, evaluation of the information provided, and interviews with personnel familiar with the property. No calculations have been performed to determine the adequacy of the facility's original design. It is possible that defects and /or deficiencies exist that were not readily accessible or visible. Problems may develop with time, which were not evident at the time of this assessment. The opinions and recommendations in this Report should not be construed in any way to constitute a warranty or guarantee regarding the current or future performance of any system identified.



APPENDIX A.1A

PHOTOGRAPHIC DOCUMENTATION



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Flores #1 Overview of EJ observed from courtyard (arrow)



Flores #2 Overview of EJ observed from courtyard (arrow) near the top of the wall



Flores #3 Overview of EJ observed from courtyard. Note separation at joint (arrow)



Flores #4 Close-up view of EJ observed from courtyard. Note separation at joint.



Flores #5 Overview of distress at the pavers from courtyard observed at the courtyard.



Flores #6 Overview of distress at the pavers from courtyard observed at the courtyard.



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Flores #7 Overview of EJ at garage level (red arrow). Blue arrow indicates Flores #8 and #9.



Flores #8 Overview of active water infiltration at EJ observed during our site visit at drive aisle



Flores #9 Overview of active water infiltration at EJ observed during our site visit at drive aisle. Tile was missing and water drips were observed.



Flores #10 Storage area showing slab poured around existing pier. Note exposed rebar (arrow.)



Flores #11 Storage area showing slab poured around existing pier. Note exposed rebar (arrow.)



Flores #12 Overview of active water infiltration at EJ observed during our site visit from storage area.

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Flores #13 Overview of active water infiltration at EJ observed during our site visit from storage area.



Flores #14 Overview of active water infiltration at EJ observed during our site visit from storage area.



Flores #15 Overview of active water infiltration at EJ observed during our site visit from storage area.



Flores #16 Overview of active water infiltration at EJ observed during our site visit from storage area.



Flores #17 Overview of apparent newly painted hot-rolled steel at the cooling tower. View of the front near the access door. (arrows).



Flores #18 Overview of apparent newly painted hot-rolled steel at the cooling tower. View of the front near the access door. (arrows).



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Flores #19 Overview of apparent newly painted hot-rolled steel at the cooling tower. View of the rear steel. Arrow indicates where the fresh paint stops.



Flores #20 Close-up view of apparent newly painted hot-rolled steel at the cooling tower. View of the rear steel. Arrow indicates where the fresh paint stops. Note oxidation and rust stains to the paint above the arrow.

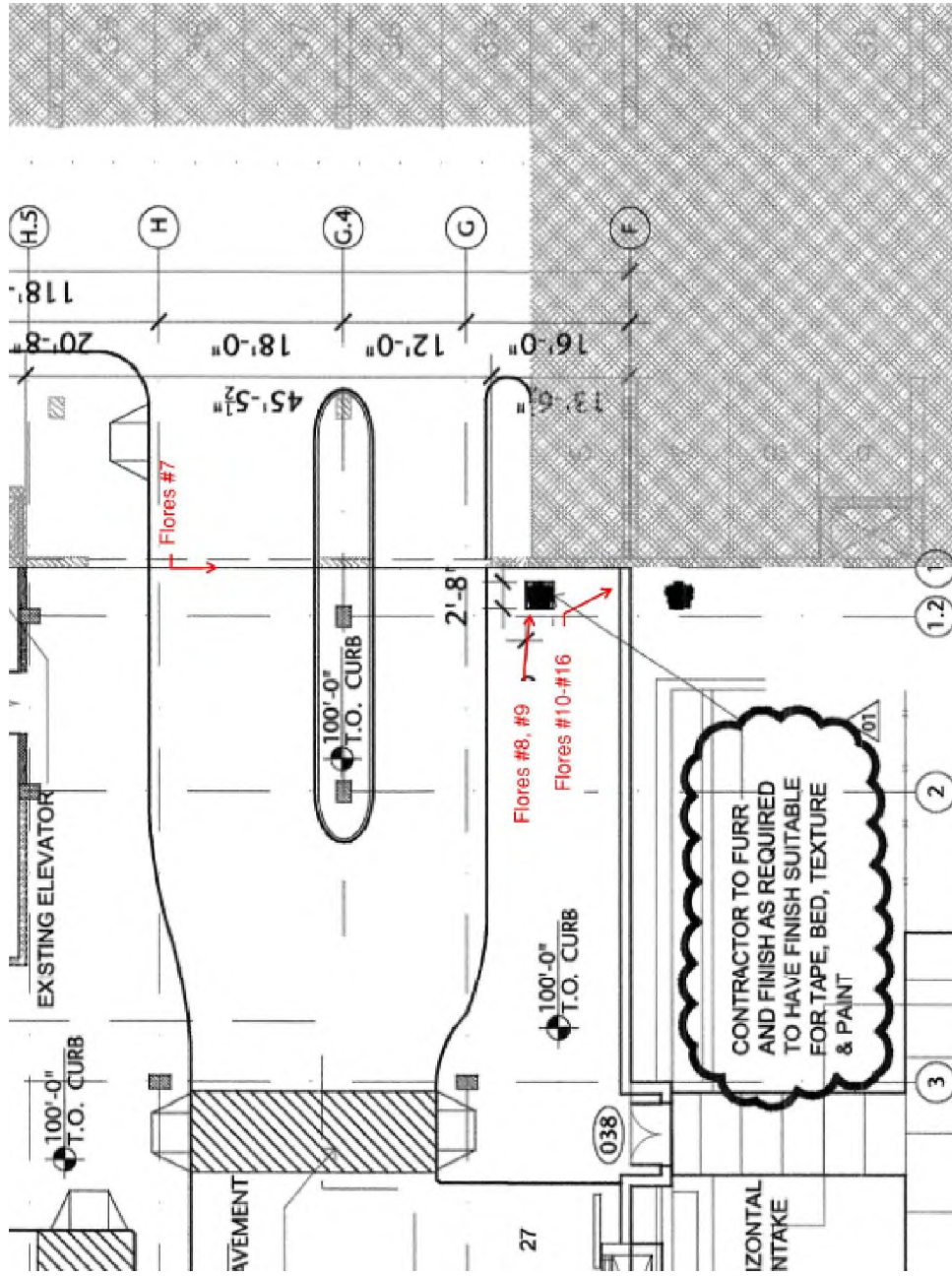


Flores #21 Overview of apparent old hot-rolled steel paint at the cooling tower. View of the rear steel. Arrow indicates heavy oxidation and rust stains.



APPENDIX A.1B

STRUCTURAL PHOTO LOG LOCATION MAPS



1 PARTIAL PLAN - PHOTO LOG LOCATION

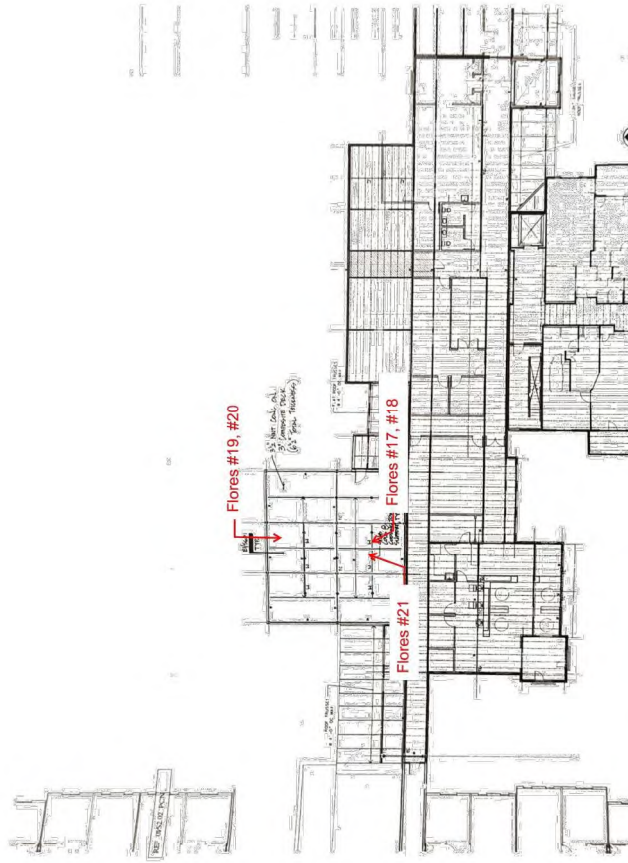
NOT TO SCALE

NOTES:
 DRAWING BACKGROUND ADAPTED FROM EDGEMERE PHASE II, THREE
 ARCHITECTURE, SHEET A2.10, PERMIT COMMENTS/REVISIONS - 100% CONSTRUCTION
 DOCUMENTS, DATED 1/30/2006
 ALL LOCATIONS ARE APPROXIMATE

| | |
|-------------|--------------|
| Project No. | R448002 |
| Scale | NOT TO SCALE |
| Drawn By | CF |
| Checked By | SL |
| Approved By | SL |
| Date | 03-28-2024 |

Terracon
 Consulting Engineers and Scientists
 8801 JOHN CARPENTER HWY. SUITE 100 DALLAS, TX 75247
 PH: 214.666.4200

STRUCTURAL PHOTO LOG LOCATION MAPS
 EDGEMERE
 8523 THACKERY STREET
 DALLAS, TEXAS 75225



PLAN
NORTH

1 PARTIAL PLAN - PHOTO LOG LOCATION

NOT TO SCALE

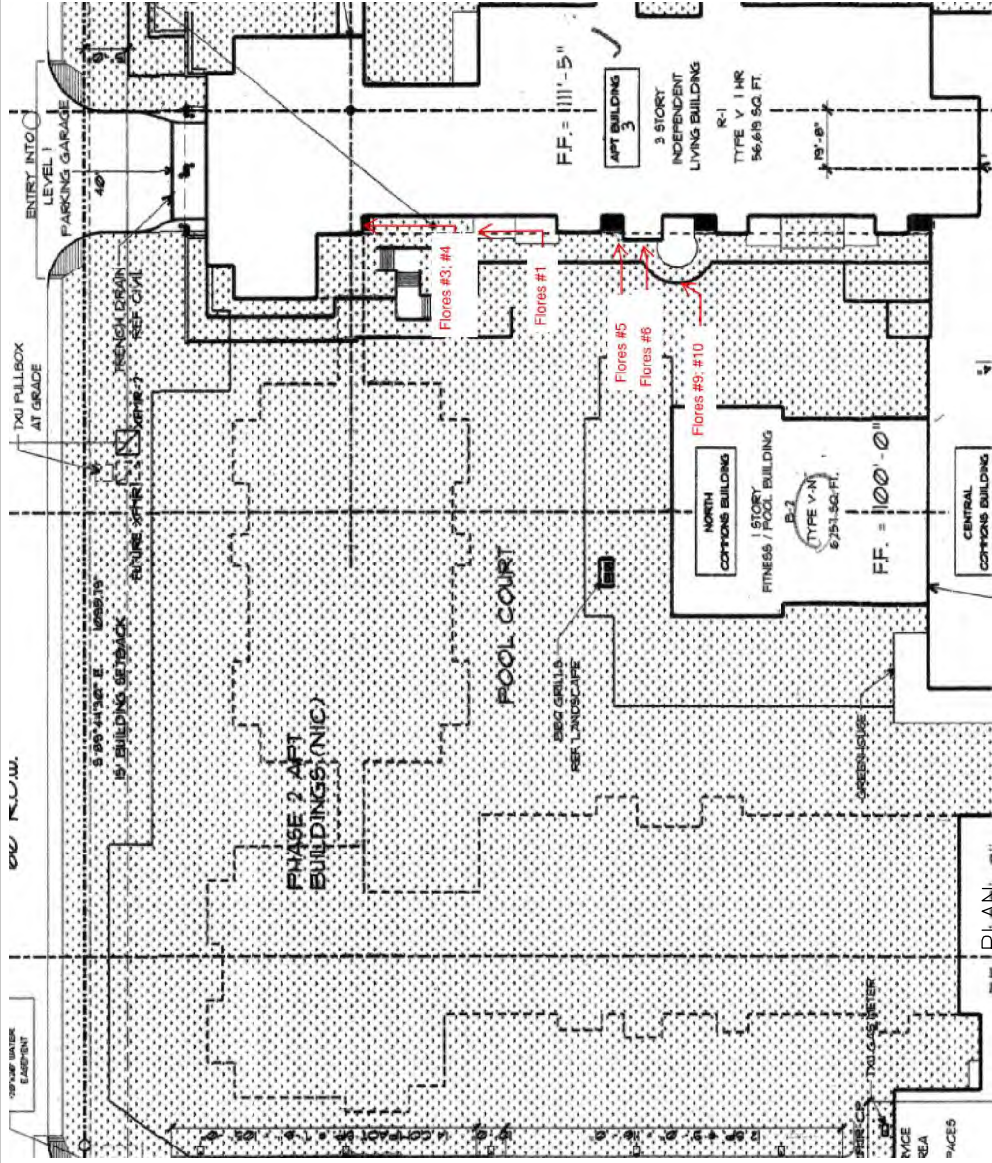
NOTES:
 DRAWING BACKGROUND ADAPTED FROM EDGEEMERE, SHEET S2.03 COM, THREE
 ARCHITECTURE, PROGRESS SET/NOT FOR CONSTRUCTION, DATED 9/10/1999
 ALL LOCATIONS ARE APPROXIMATE

| | |
|-------------|--------------|
| Project No. | FACELOG |
| Scale | NOT TO SCALE |
| Drawn By | CF |
| Checked By | SL |
| Approved By | SL |
| Date | 03/28/2024 |

Terracon
 Consulting Engineers and Scientists
 8801 JOHN A. COOPER Fwy, SUITE 100 DALLAS, TX 75227
 Ph: (214) 696-6200

STRUCTURAL PHOTO LOG LOCATION MAPS
 EDGEEMERE
 8523 THACKERY STREET
 DALLAS, TEXAS 75225

Fig No. 4
 Desc



1 PARTIAL PLAN - PHOTO LOG LOCATION

NOT TO SCALE



NOTES:
 DRAWING BACKGROUND ADAPTED FROM EDGEEMERE SHEET A1.01, THREE
 ARCHITECTURE, FOUNDATION ISSUE, DATED 1/20/2000
 ALL LOCATIONS ARE APPROXIMATE

| | |
|-------------|--------------|
| Project No. | FACEBOOK |
| Scale | NOT TO SCALE |
| Drawn By | CF |
| Checked By | SL |
| Approved By | SL |
| Date | 03-28-2024 |

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STRUCTURAL PHOTO LOG LOCATION MAPS
 EDGEEMERE
 8523 THACKERY STREET
 DALLAS, TEXAS 75225



APPENDIX A.2

PHOTOGRAPHIC DOCUMENTATION

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Williams #1 Wet wall, Building #1



Williams #2 Wet Wall Building #1



Williams #3 Wet wall, Building #2



Williams #4 Wet wall, Building #3



Williams #5 Wet wall, Building #1 PAC Courtyard



Williams #6 Wet walls, Building #1 PAC Courtyard

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Williams #7 Wet walls, Building #3 PAC Courtyard



Williams #8 Wet walls, Building #3 & Commons PAC Courtyard



Williams #9 Wet walls, Building #3 Fountains Courtyard



Williams #10 Wet walls, Building #9 Fountains Courtyard



Williams #11 Wet walls, Building #9 Fountains Courtyard



Williams #12 Wet walls, Building #9 north elevation Courtyard

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Williams #13 Wet walls, Building #9 north elevation Courtyard



Williams #14 Wet walls, Building #9 west elevation Courtyard



Williams #15 Wet Walls, Mechanical Room & Terrace (Chiller Enclosure) north elevation



Williams #16 Wet Walls Plaza & Loading Dock



Williams #17 Wet walls, Plaza east courtyard



Williams #18 Wet Walls, Plaza west elevation

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Williams #19 Wet Walls, Plaza Putting Green Courtyard, south elevation



Williams #20 Wet Walls, Plaza Putting Green Courtyard, east elevation



Williams #21 Wet Walls, Plaza Putting Green Courtyard, east elevation



Williams #22 Wet walls, Building 7, west elevation Putting Green Courtyard



Williams #23 Wet wall, Building #8 Garage Entrance, west elevation at planter



Williams #24 Wet walls, Building #8 south elevation

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Williams #25 Wet walls, Building #6, north elevation, duck Pond Courtyard



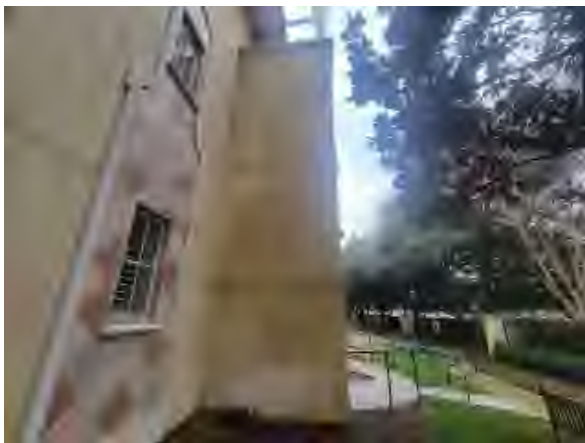
Williams #26 Wet Walls, Building #6 south elevation



Williams #27 Wet Walls, Building #6 south elevation



Williams #28 Wet Walls, Building #6 south elevation



Williams #29 Wet Walls, Building #4 south elevation



Williams #30 Wet Walls, Building #4 south elevation

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Williams #31 Wet Walls, Building #4 south elevation



Williams #32 Wet Walls, Building #4 south elevation



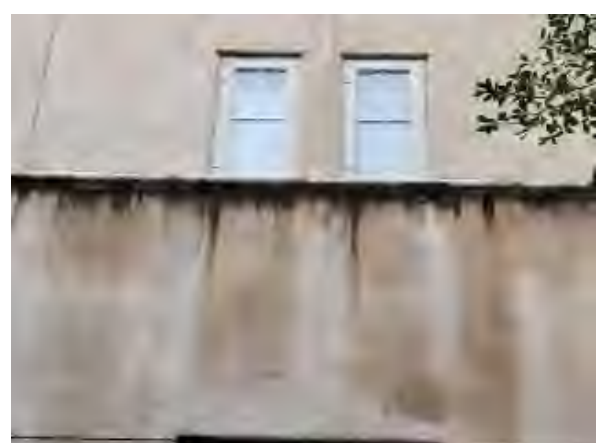
Williams #33 Damaged and deteriorated EPS windowsill with cracked finish coat on east elevation at Building #1



Williams #34 Hail damaged and cracked finish coat EPS windowsill on east elevation at Building #1



Williams #35 Deteriorated EPS molding with cracked finish coat on north elevation at Building #3



Williams #36 Badly deteriorated EPS belt course in the east courtyard at Plaza Building. Typical condition this building. .



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Williams #37 Close-up of badly deteriorated EPS belt course in the east courtyard at Plaza Building. Typical condition this building. .



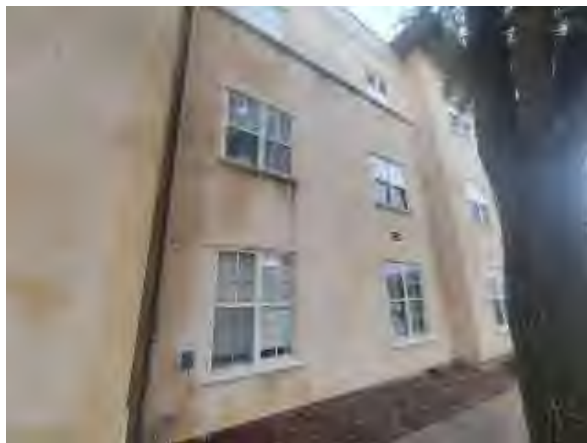
Williams #38 Badly deteriorated EPS windowsill condition in the east courtyard at the Plaza Building. Typical condition this building. .



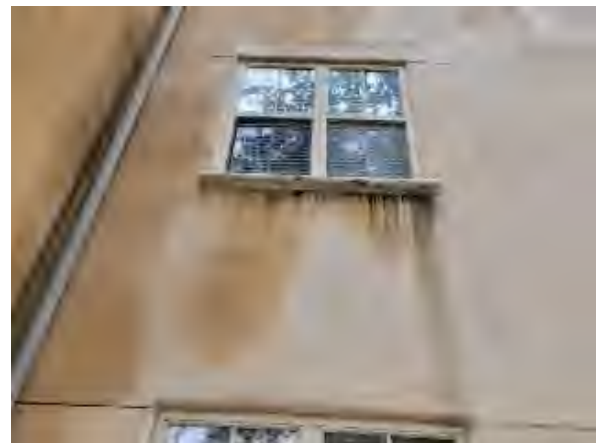
Williams #39 Overview of badly deteriorated EPS windowsill condition in the west courtyard at the Plaza Building. Typical condition this building. .



Williams #40 Close-up of hail damaged and deteriorated windowsill on west elevation of the Plaza Building.



Williams #41 Overview of deteriorated EPS windowsills, belt coursing, and EPS molding on the west elevation of The Plaza Building. .



Williams #42 Close-up of deteriorated EPS windowsills on the west elevation of The Plaza Building. Typical condition .



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Williams #43 Overview of deteriorated EPS molding below tile on the west elevation of The Plaza Building. .



Williams #44 Close-up of deteriorated EPS belt course and molding below tile on the west elevation of The Plaza Building. .



Williams #45 Close-up of hail damaged windowsill on the south elevation at The Plaza in the Putting Green Courtyard



Williams #46 Close-up of badly deteriorated EPS belt course and molding below tile on the east elevation of The Plaza Building. .



Williams #47 Close-up of hail damaged/deteriorated windowsill on south elevation of Building #8. Several on L1 along this elevation



Williams #48 Close-up of damaged windowsill on west elevation of building #5 at Duck Pond Courtyard



APPENDIX A.3

PHOTOGRAPHIC DOCUMENTATION

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Syedi #1 Original Plaza Bldg.: Roof is in very poor condition, with signs of granule loss at most of the roof membranes



Syedi #2 Original Plaza Bldg.: Many patches/repairs have been noticed



Syedi #3 Original Plaza Bldg.: Many patches/repairs



Syedi #4 Original Plaza Bldg.: Many patches/repairs



Syedi #5 Original Plaza Bldg.: Many patches/repairs



Syedi #6 Original Plaza Bldg.: Many patches/repairs



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Syedi #7 West Commons Corridor: Many patches/repairs



Syedi #8 West Commons Corridor: Many patches/repairs



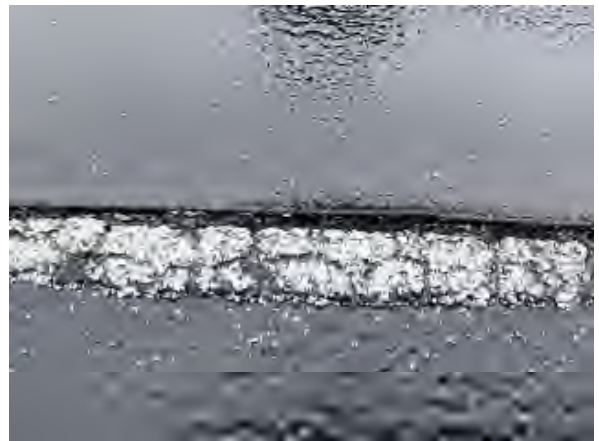
Syedi #9 East Commons Corridor: Many patches/repairs have been noticed



Syedi #10 East Commons Corridor: Many patches/repairs have been noticed



Syedi #11 Original Plaza Bldg.: Patches/repairs along the seams



Syedi #12 Original Plaza Bldg.: Separation/defects seams



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Syedi #13 Original Plaza Bldg.: Separation/defects seams



Syedi #14 Original Plaza Bldg.: Separation/defects seams



Syedi #15 Original Plaza Bldg.: Shrinkage/separation at the side lap seams



Syedi #16 Original Plaza Bldg.: View of blisters (raised surface areas over voids in the roof system) and separation/defects at the end lap seams



Syedi #17 Original Plaza Bldg.: View of blisters (raised surface areas over voids in the roof system) and separation/defects at the end lap seams



Syedi #18 Original Plaza Bldg.: View of blisters (raised surface areas over voids in the roof system)



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Syedi #19 Original Plaza Bldg.: View of blisters (raised surface areas over voids in the roof system)



Syedi #20 East Commons Corridor: View of blisters (raised surface areas over voids in the roof system)



Syedi #21 Original Plaza Bldg.: View of cracking in modified bitumen membrane



Syedi #22 Original Plaza Bldg.: View of cracking in modified bitumen membrane



Syedi #23 West Commons Corridor: View of cracking in modified bitumen flashing membrane



Syedi #24 East Commons Corridor: View of cracking in modified bitumen flashing membrane

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Syedi #25 View of broken tiles on roof. Located periodically through site



Syedi #26 View of broken tiles on roof. Located periodically through site



Syedi #27 View of broken tiles on roof. Located periodically through site



Syedi #28 View of broken tiles on roof. Located periodically through site



Syedi #29 View of broken tiles on roof and typical gutter clogged with debris. Located periodically through site



Syedi #30 View of broken tiles on roof. Located periodically through site

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Syedi #31 View of gutter with no downspout and splash block



Syedi #32 View of damaged gutter



Syedi #33 View of severely damaged gutter



Syedi #34 View of missing gutter piece and gutter clogged with debris



Syedi #35 View of gutter with standing water



Syedi #36 View of water staining to wall surface from gutter

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Syedi #37 View of water staining to wall surface from gutter



Syedi #38 View of water staining to wall surface from gutter



Syedi #39 View of water staining to wall surface from scupper



Syedi #40 View of water staining to wall surface from conductor head



Syedi #41 Not a proper pipe flashing detail



Syedi #42 The height of existing vent stack pipes doesn't meet the international plumbing code (IPC) requirements (8" min. flashing height)

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Syedi #43 Improper flashing repair at the base of chimney



Syedi #44 View of roof drain clogged with debris



Syedi #45 Cooling Tower: Separation/defects seams



Syedi #46 Cooling Tower: Separation/defects seams



Syedi #47 Cooling Tower: Pitch pan shows rusting/deterioration



Syedi #48 Greenhouse-RTU room: Roof in poor condition



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Syedi #49 Greenhouse: Sealant starts deterioration



Syedi #50 Greenhouse: Close-up view of deteriorated sealant



Syedi #51 View of damage to EIFS coping



Syedi #52 View of damage to EIFS coping



Syedi #53 North addition to original plaza: No expansion joint was noticed



Syedi #54 South addition to original plaza: No expansion joint was noticed.

Post-Cure Order Repair Status Report

The Plaza at Edgemere | Dallas, TX

June 12, 2024 | Terracon Project No. FA246002



APPENDIX A.4

PHOTOGRAPHIC DOCUMENTATION

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Hull #1 Building materials and debris observed on the roof.



Hull #2 Building materials and debris observed on the roof.

Post-Cure Order Repair Status Report

The Plaza at Edgemere | Dallas, TX

June 12, 2024 | Terracon Project No. FA246002



APPENDIX A.5

PHOTOGRAPHIC DOCUMENTATION



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Freeman #1 Basement Parking Area, Wall Mounted Toxic Gas Sensor. **Not Operating**



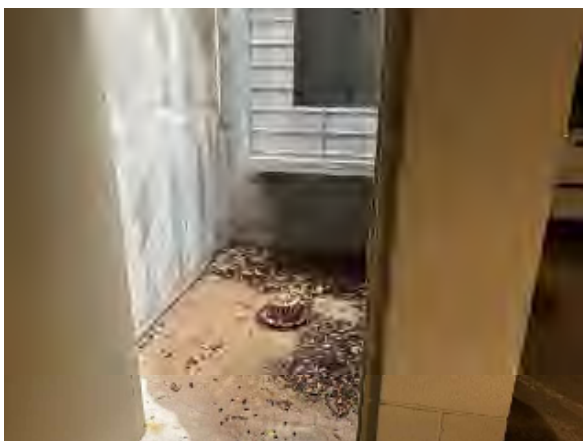
Freeman #2 Basement Parking Area, Wall Mounted Toxic Gas Sensor, Model No. TGW-ACX-A – **Not Dual Gas / Not Operating** (Continuation of #1)



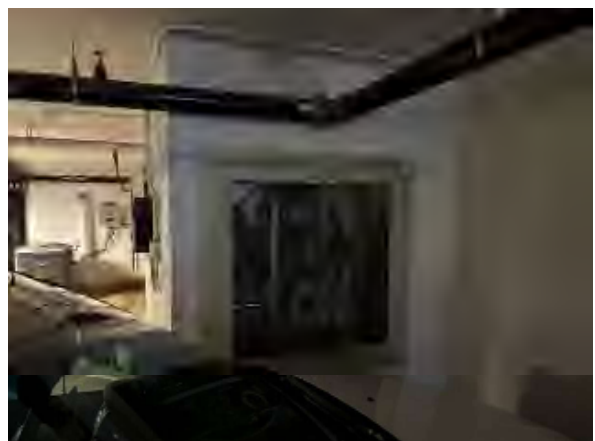
Freeman #3 Basement Parking Area. Wall Mounted Toxic Gas Sensor. **Not Operating**



Freeman #4 Plaza Parking Area, Operational Garage Exhaust Fan



Freeman #5 Plaza Parking Area, Garage Exhaust Shaft



Freeman #6 Plaza Parking Area, Garage Exhaust Fan



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Freeman #7 Plaza Parking Area, Wall Mounted CO/ NO2 Sensor, Model No. TGW-ACN



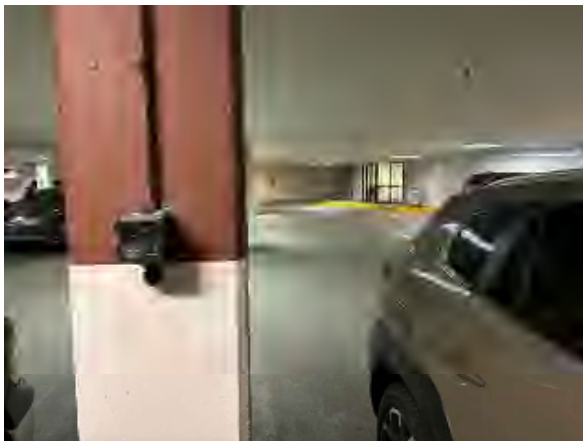
Freeman #8 Plaza Parking Area, Wall Mounted CO/ NO2 Sensor, Model No. TGW-ACN



Freeman #9 Phase I Parking Area, Wall Mounted Toxic Gas Sensor



Freeman #10 Phase I Parking Area, Wall Mounted Toxic Gas Sensor. **Not Operating** (Continuation of #9)



Freeman #11 Phase I Parking Area Wall Mounted Toxic Gas Sensor



Freeman #12 Phase I Parking Area, Wall Mounted Toxic Gas Sensor. **Not Operating** (Continuation of #11)

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Freeman #13 Phase I Parking Area, Wall Mounted Toxic Gas Sensor



Freeman #14 Phase I Parking Area, Wall Mounted Toxic Gas Sensor



Freeman #15 Phase I Parking Area, Wall Mounted Toxic Gas Sensor, Model No. TGW-ACX-A – **Not Dual Gas** (Continuation of #14)



Freeman #16 Phase II Parking Area, Garage Exhaust Fans – **Not Operating**



Freeman #17 Phase II Parking Area, Wall Mounted Toxic Gas Sensor. – **Not Dual Gas**



Freeman #18 Phase II Parking Area, Garage Exhaust Fans – **Not Operating**

Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Freeman #19 Phase II Parking Area, Wall Mounted Toxic Gas Sensor



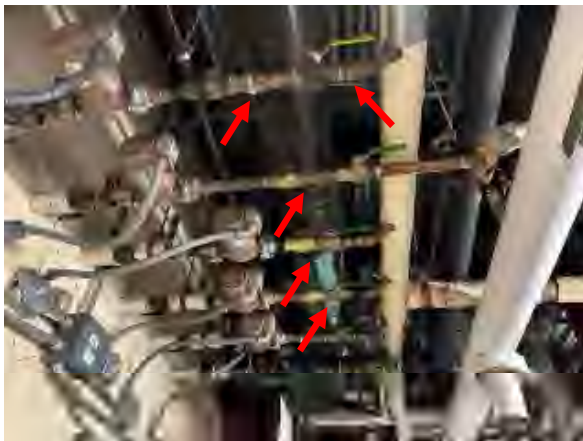
Freeman #20 Phase II Parking Area, Wall Mounted Toxic Gas Sensor, Model No. TGW-ACX-A **Not Dual Gas** (Continuation of #19)



Freeman #21 Phase II Parking Area, Garage Exhaust Fans – **Not Operating**



Freeman #22 Copper Piping, severe electrolysis corrosion



Freeman #23 Copper Piping, severe electrolysis corrosion



Freeman #24 Copper Piping, severe electrolysis corrosion



Photographic Documentation

The Edgemere ■ Dallas, Texas

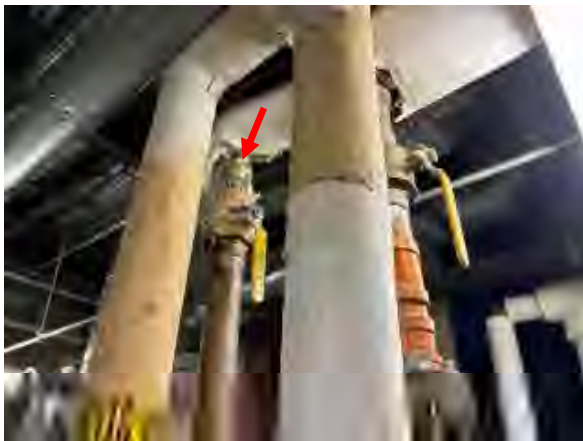
Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Freeman #25 Copper Piping, severe electrolysis corrosion



Freeman #26 Copper Piping, severe electrolysis corrosion



Freeman #27 Copper Piping, severe electrolysis corrosion



Freeman #28 Copper Piping, severe electrolysis corrosion



Freeman #29 Copper Piping, Leaking joint. Appeared to be repaired with silver tape.



Freeman #30 Central Plant, Existing auxiliary hot water boiler



Photographic Documentation

The Edgemere ■ Dallas, Texas

Date Taken: January 24th and 25th, 2024 ■ Terracon Project No. FA246002



Freeman #31 Central Plant, Existing auxiliary hot water boiler leaking from equipment case.



Freeman #32 Central Plant, Existing auxiliary hot water boiler leaking from equipment case.



Freeman #33 Central Plant, Existing auxiliary hot water boiler leaking from copper piping.



Freeman #34 Central Plant, Existing auxiliary hot water boiler leaking from copper piping.

From: Walker, Adrienne <awalker@lockelord.com>
Sent: Wednesday, June 26, 2024 5:02 PM
To: Eileen M. Sethna
Cc: Elizabeth B. Vandesteeg; Ryan C. Hardy; khatch@lapisadvisers.com; Haleigh N. Roberts; Swanson, David; List, Chelsey; bterrell@lapisadvisers.com; fchavez@lapisadvisers.com
Subject: RE: Bay 9 Holdings - Edgemere: Correspondence and Reports [LP-ACTIVE.47780.47780-138154.FID1394679]

Hi Eileen,

We are in receipt of your letters and related attachments sent on June 21, 2024 with links updated on Monday. We are in the process of reviewing ICI's requests, the Terracon report, and the other materials attached to the letters. As with all prior correspondence from ICI, we intend to fully respond; however, the arbitrary deadlines stated in your letters are not reasonable given the magnitude of ICI's requests made to Bay 9. Many of ICI's requests will require involvement of third parties and additional analysis. We will continue to diligently attend to the matters raised in the letters and will respond on a rolling basis when reasonably able. Glad to discuss.

Thank you.

Adrienne Walker

Partner

Locke Lord LLP

111 Huntington Avenue

Boston, MA 02199

O: 617-239-0211

M: 508-654-9550

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From: Eileen M. Sethna <esethna@lplegal.com>

Sent: Monday, June 24, 2024 12:09 AM

To: Walker, Adrienne <awalker@lockelord.com>; List, Chelsey <Chelsey.List@lockelord.com>; khatch@lapisadvisers.com; bterrell@lapisadvisers.com; fchavez@lapisadvisers.com

Cc: Elizabeth B. Vandesteeg <evandesteeg@lplegal.com>; Ryan C. Hardy <rhardy@lplegal.com>; Haleigh N. Roberts <hroberts@lplegal.com>

Subject: Bay 9 Holdings - Edgemere: Correspondence and Reports [LP-ACTIVE.47780.47780-138154.FID1394679]

**** External Email -- Sender: esethna@lplegal.com ****

Good Evening,

We discovered that the requested reports from Terracon Consultants, Inc. were inadvertently omitted from the initial letters delivered on Friday, June 21, 2024. Please find a separate ShareFile link for each letter and the corresponding report. Hard copies of the same will follow tomorrow.

[Post-Cure Order](#)

[Post-Close Lease Compliance](#)

Please let us know if you have any problems opening the ShareFile link.

Thank you,
Eileen



Eileen M. Sethna
(she/her/hers)
T 312 476 7588
M 312 342 9137

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awalker@lockelord.com

July 3, 2024

VIA EMAIL AND OVERNIGHT MAIL

Intercity Investment Properties, Inc.
Attn: Nicholas P. Hannon
4301 Westside Drive, Suite 100
Dallas, TX 75209-6546
NHannon@icirealestate.com

Eileen M. Sethna, Esq.
Levenfeld Pearlstein, LLC
120 S. Riverside Plaza, Suite 1800
Chicago, IL 60606
esethna@llegal.com

Re: Response to ICI Letter Dated June 21, 2024 (Excess Insurance Premium)

Ladies and Gentlemen,

This letter is in response to the letter of Intercity Investment Properties, Inc. (“Lessor”), dated June 21, 2024 (Re: Bay 9 Holdings – Edgemere Provision of Information Require Under Ground Lease) (the “Letter”). As noted in my email to you on June 26, 2024, Bay 9 Holdings LLC (“Bay 9” or “Lessee”) will be responding to your numerous requests on a rolling basis.

Insurance Reimbursement.

Bay 9 continues to dispute the Lessor’s unsupported allegations that Bay 9 failed to secure commercial property insurance in compliance with the *Ground Lease* dated November 5, 1999 (the “Lease”) between Lessor and Lessee, as successor (the “Lessee”), pursuant to the *Assignment and Assumption of Lease* dated June 13, 2023 (the “Closing Date”). Bay 9 incorporates herein by reference its several prior correspondences to Lessor setting forth its factual and legal arguments. Without waiving any of Bay 9’s claims or arguments and reserving all rights to same, Bay 9 offered to pay to Lessor the premium associated with the excess policy through March 31, 2024. We have reviewed the materials you enclosed in your Letter supporting the Reconciled Premium Amount (as defined in the Letter), but we did not see evidence of Lessor’s payment of the policy premium. Section 5.16(a) of the Lease addresses payment of reimbursable expenses. At your earliest convenience, please provide us with a canceled check or other evidence of Lessor’s payment of the Reconciled Premium Amount (the “Proof of Payment”). Upon receipt of same, Bay 9 will deliver payment of the Reconciled Premium Amount to Lessor, under full reservation of rights. Further, your

Intercity Investment Properties, Inc.

July 3, 2024


Page 2

Letter makes demand for payment of the Reconciled Premium Amount as Additional Rent on July 1, 2024. As your Letter was delivered on June 21, 2024, Lessor appears to only provide Lessee with nine (9) days' notice for payment. Section 5.16(a) requires thirty (30) days' notice to make payment of reimbursable expenses to Lessor. If Lessor contends that a shorter time period is required under the Lease, please advise at your earliest. To be clear, subject to receipt of Proof of Payment, Bay 9 will pay the Reconciled Premium Amount on or before July 21, 2024, which is consistent with the notice period under the Lease.

This letter (together with the prior letters and any other communication concerning the Lease) is not intended, nor shall it be construed, to constitute a waiver of any right, claim, or remedy of Lessee under the Lease, at law or in equity. Lessee hereby expressly reserves all rights and remedies it may have under the Lease, at law or in equity.

Should you have any questions regarding the foregoing, we welcome the opportunity to discuss.

Very truly yours,



Adrienne K. Walker

cc: Kjerstin Hatch
Basia Terrell

Exhibit B

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

In re:

NORTHWEST SENIOR HOUSING CORPORATION,
*et al.*¹

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

DECLARATION OF SANDRA GOTTERUP

Comes now Sandra Gotterup and respectfully states to the Court as follows:

1. My name is Sandra Gotterup. I am an adult resident of the State of Texas of sound mind. I have personal knowledge of the facts set forth in this declaration and could and would testify to them if called to do so.

2. I am the Vice President for Intercity Investments, Inc.—a property management company affiliated with Intercity Investment Properties, Inc. (“ICI”). I have over 38 years of experience in property management, including with respect to the maintenance of physical buildings, including and not limited to oversight of construction projects.

3. In my capacity as Vice President, I am also responsible for some property management tasks relating to the improved real property located at 8523 Thackery St. in Dallas,

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

Texas, commonly known as the Edgemere (“Edgemere”) and the lease related thereto (the “Lease”).

4. I am aware that the Bankruptcy Court found there to be significant deficient physical conditions constituting defaults under the Lease throughout the campus of buildings at the Edgemere. As I understand it, this Court entered an order on June 12, 2023 (the “June 2023 Cure Order”), requiring that Bay 9 Holdings, LLC (“Bay 9”) undertake specific restoration and investigation efforts of the buildings at the Edgemere to cure the defaults and comply with the Lease.

5. Despite ICI’s requests, Bay 9 has not furnished to ICI any reports or plans for restoration or investigation undertaken or to be undertaken at the Edgemere to comply with the June 2023 Cure Order.

6. As permitted under the Lease, ICI exercised its inspection rights and engaged a consulting firm called Terracon Consultants, Inc. (“Terracon”) to investigate the condition of the Edgemere to determine—among other things—whether the repair and remediation work that this Court ordered to be performed June 2023 Cure Order had been or was being performed.

7. Terracon undertook its investigation in January and February 2024. I personally accompanied Terracon on each and every day of its onsite inspections. A copy of its report regarding the status of work required by the June 2023 Cure Order is included as part of Group Exhibit A filed herewith. Terracon concluded, in sum and substance, that the repair and remediation work ordered by the Court had not been commenced or completed.

8. I drive by the Edgemere on my way to work on most weekdays.

9. On April 29 and 30, 2024, I observed some work being performed on the exterior of The Plaza, the skilled nursing facility at the Edgemere. On April 29th, I observed contractors

making saw cuts into the building façade. On April 30th, it appeared sealant had been applied to the saw cuts and I observed the contractors applying caulking around windows and other details. These instances comprised the first time I saw remediation or repair work being performed at Edgemere since Bay 9 took assignment of the Lease. I took photographs of the work I observed from the nearby public sidewalk. Those photographs accurately show what I personally observed and some of them are reproduced here:²

(remainder of page left intentionally blank)

² The red arrows on the first picture show where the saw cuts were made.









10. On May 6, 2024, I observed further work being performed, which appeared to include removal of portions of the lower stucco façade. I again took photographs from the sidewalk. One of those photographs is reproduced here, and it accurately shows what I personally observed (note the plastic covering visible behind the landscaping and caution tape):



11. On May 8, 2024, ICI reached out to Bay 9 and Bay 9's counsel to request information about the work being performed and to coordinate ICI's entrance onto the Property to inspect the work in accordance with its rights under the Ground Lease—all as more fully set forth in Group Exhibit A to the accompanying motion.

12. On May 15, 2024, Bay 9's Kjerstin Hatch responded by email—a copy of which is included in Group Exhibit A. Mrs. Hatch declined to confirm the scope of work being performed. She further advised that ICI would need to coordinate with Bay 9's "third-party contractors and comply with their requirements and safety protocols" to obtain "[a]ccess for areas undergoing repairs."

13. On June 21, 2024, ICI's counsel wrote to Bay 9 and Bay 9's counsel (a copy of that correspondence, too, is included in Group Exhibit A). ICI's counsel reiterated ICI's request for both information and confirmation that the scope of work being undertaken is consistent with this Court's June 2023 Cure Order. ICI further directed Bay 9 and Bay 9's counsel to "provide contact information for the referenced contractors so that we may follow Mrs. Hatch's instruction to coordinate access." ICI asked also for information about draws against transfers from the escrow accounts established to fund the remediation and repair work ordered by this Court.

14. As more fully set forth in Group Exhibit A, on June 26, 2024, Bay 9's counsel entirely failed to provide any substantive response to ICI's inquiries. As particularly germane here, Bay 9 declined to furnish contact information for its contractors; declined again to confirm the scope of work being performed; and declined to respond ICI's inquiries about the transfers out of the escrow accounts. Bay 9's counsel further advised that responding to ICI's inquiries would require consultation with unnamed third parties.

15. On the morning of June 26, 2024, I again observed further work being performed on the western façade of the Plaza building at the Edgemere. Specifically, I observed work taking place where the stucco previously had been cut away. In particular, contractors appeared to be looking at the section of the wall where the stucco previously had been cut away and these contractors were dressed differently from the uniformed workers I had seen previously. The exterior stucco walls in the area they were examining had recently been made wet. Since there had been no rain that day or in the immediately prior days, this wet stucco led me to infer there was some type of water testing taking place. I took photographs of what I observed from the sidewalk that accurately show what I observed; they are reproduced here:³

(remainder of page left intentionally blank)

³ The circled contractor in the second photograph is one of the ones I noted as not being in the uniform worn by the others. The circled portion of the wall in the third photograph shows the referenced wet stucco.









16. On July 3, 2024, I drove by Edgemere again. Despite ICI's demands to inspect the work in the course of restoration, I observed that Bay 9's contractors were re-applying stucco to portions of the façade previously removed to inspect the integrity of the building envelope material underneath the existing stucco. Bay 9's delays have now allowed Bay 9's contractors to cover up

and conceal the work so it could not be inspected by ICI while in progress to verify compliance with the Court's orders. I again took photographs that accurately show what I personally observed, and they are reproduced here:

(remainder of page left intentionally blank)







I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 8, 2024


Sandra Gotterup

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

In re:

NORTHWEST SENIOR HOUSING CORPORATION,
*et al.*¹⁰

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

**ORDER GRANTING INTERCITY INVESTMENT PROPERTIES, INC.'S EMERGENCY
MOTION TO ENFORCE COMPLIANCE WITH CURE ORDERS**

This matter came before the Court on Intercity Investment Properties, Inc.'s *Emergency Motion to Enforce Compliance with Cure Orders*. Having considered the said Motion and the bases for relief advanced therein, the Court finds that cause exists to grant the relief requested in the said Motion. Accordingly,

IT IS HEREBY ORDERED THAT the said Motion is **GRANTED** as follows:

¹⁰ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

2. Bay 9 shall perform the following actions on or before December 31, 2024:

- Repair or replace corroded copper piping;
- Complete repair or remediation of corrosion to cooling tower support beams;
- Repair or replace dented or damaged gutters;
- Properly connect or calibrate improperly functioning carbon monoxide detectors;
- Repair damage to and remove debris on roof membrane;
- Complete investigation and remediation related to various expansion joints set forth in the June Bench Ruling;
- Complete investigation and remediation related to phase 1 pier set forth in the June Bench Ruling; and
- Commence and complete the building envelope and façade repair and restoration project as set forth in the June Bench Ruling.

3. Bay 9 shall itemize and file, on or by September 1, 2024, the work performed to date, the amounts paid and/or owing for such work, the contractors and materialmen performing the work and/or furnishing materials, and the work and materials remaining to comply with the June 12 Order

4. Bay 9 shall file a sworn affidavit signed by a representative of Bay 9 on or before January 7, 2025 that states that the actions listed in paragraph 2 hereof were completed on or before December 31, 2024. Failure to file such affidavit on or before January 7, 2025 shall constitute conclusive evidence of Bay 9's contempt of this Court.

5. The Court shall retain jurisdiction to hear and consider all disputes arising from the interpretation or implementation of this Order.

END OF ORDER

SUBMITTED BY:

LEVENFELD PEARLSTEIN, LLC

Eileen M. Sethna, Esq. (admitted *pro hac vice*)
Ryan C. Hardy, Esq. (admitted *pro hac vice*)
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