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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.*,) Chapter 11
)
Debtors¹) Case No. 22-30659 (MVL)
)
)

**INTERCITY INVESTMENT PROPERTIES, INC. WITNESS AND EXHIBIT
LIST FOR HEARING SCHEDULED FOR FEBRUARY 21, 22, AND 23, 2023**

Intercity Investment Properties, Inc. ("Landlord") files its Witness and Exhibit List for the hearing to be held on February 21, 22, and 23, 2023 (the "Hearing") as follows:

WITNESSES

Landlord may call the following witnesses at the Hearing:

1. Nick Hannon, Executive Vice President, Intercity Investment Properties, Inc.;
2. Michael Hull, Group Manager, Facility Services, Terracon Consultants, Inc.;
3. Daniel Polsky, Getzler Henrich & Associates, LLC;

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 ("SQLC") (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.



4. Kyle DeHenau, Vice President, Plante & Moran CRESA, LLC d/b/a Plante Moran Living Forward (by deposition², unavailable witness);
5. Nick Harshfield, Chief Financial Officer, Lifespace Communities, Inc., and Vice Chair and Treasurer, Northwest Senior Housing Corporation;
6. Timothy Winnecke, Senior Project Manager, ARCH Consultants, Ltd;
7. David Lawlor, President & CEO, The Long Hill Company, and representative of Long Hill at Edgemere, LLC;
8. Kjerstin Hatch, as each of:
 - a. Managing Member, Lapis - GP LLC, as general partner of Lapis Municipal Opportunities Fund IV, LP;
 - b. President, Bay 9 Holdings LLC;
 - c. President, Grenelle Holdings LLC; and
 - d. Managing Principal, Lapis Advisers, LP;
9. Any witness designated by any other party;
10. Rebuttal witnesses as necessary;
11. Any witness necessary to authenticate a document or evidence; and
12. Landlord reserves the right to cross-examine any witness called by any other party.

EXHIBITS AND DEMONSTRATIVES

EXHIBIT	DESCRIPTION	MARK	OFFER	OBJECT	ADMIT	W/D	DISPOSITION AFTER TRIAL
1	Property Conditions Report dated January 4, 2023, prepared by Arch						

² Landlord seeks to provide Mr. DeHenau’s deposition testimony in full, including any and all objections on the record and the questioning conducted by counsel for Bay 9 Holdings LLC. For reference, the deposition transcript in its entirety is publicly filed as Exhibit 25 to this filing. Landlord will be ready and willing to read Mr. DeHenau’s deposition testimony into the record at the Hearing, as the testimony of an unavailable witness. However, for purposes of preserving the time and resources of the Court and all parties, Landlord is alternatively willing to submit Mr. DeHenau’s deposition transcript as testimony, in lieu of reading its contents in open court.

EXHIBIT	DESCRIPTION	MARK	OFFER	OBJECT	ADMIT	W/D	DISPOSITION AFTER TRIAL
	Consultants, Ltd. and attached to Appendix A of Landlord's Objection to Plan [Dkt. No. 1203] (Unsealed)						
2	Edgemere Project Business Planning Analysis dated January 6, 2023, prepared by The Long Hill Company and attached to Appendix A of Landlord's Objection to Plan [Dkt. No. 1203] (Sealed)						
3	<i>Amended Declaration³ of Daniel Polsky with exhibits [Dkt. No. _____] (Sealed) [filed with slip sheet]</i>						
<i>Exhibits attached to Amended Polsky Declaration (All Sealed) [to be filed with Amended Declaration]</i>							
3-A	Polsky Report (redacted), dated September 9, 2022						
3-B	Edgemere Project Business Planning Analysis, produced by Bay 9 at BAY000029						
3-C	Getzler Henrich Sensitivity Analysis dated as of February 17, 2023						
3-D	Getzler Henrich Business Planning Analysis dated as of February 17, 2023						
4	Bay 9 Holdings LLC Operating Agreement, attached to Appendix A of Landlord's Objection to Plan [Dkt. No. 1203] (Sealed)						
5	Declaration of Nick Hannon with exhibits, attached as Exhibit A to Landlord's Objection to Plan [Dkt. No. 1202-1] (Unsealed)						
<i>Exhibits to Hannon Declaration (All Unsealed)</i>							
5-A	June 9, 1997 Letter of Intent between Intercity Investment Properties, Inc. and						

³ The Original Declaration of Daniel Polsky with exhibits, attached to Appendix A of Landlord's Objection to Plan, is available at Dkt. No. 1203 (Sealed).

EXHIBIT	DESCRIPTION	MARK	OFFER	OBJECT	ADMIT	W/D	DISPOSITION AFTER TRIAL
	Northwest Lifecare Joint Venture, produced by ICI at ICI0000023 ⁴						
5-B	Ground Lease Option Agreement between Intercity Investment Properties, Inc. and Northwest Lifecare Joint Venture						
5-C	Assignment of Ground Lease Option Agreement between Northwest Senior Housing Corporation and Northwest Lifecare Joint Venture						
5-D	Amendment to Ground Lease Option Agreement between Intercity Investment Properties, Inc. and Northwest Senior Housing Corporation, produced by ICI at ICI0000133						
5-E	Ground Lease between Intercity Investment Properties, Inc. and Northwest Senior Housing Corporation						
5-F	Property Condition Report dated January 6, 2023, prepared by Terracon Consultants, Inc.						
5-G	Facilities Assessment Report dated October 15, 2021, prepared by Plante Moran Living Forward						
5-H	December 16, 2022 Communication re Adequate Assurance of Future Performance from Bay 9 Holdings LLC to Trustee and Edgemere, with exhibits						
6	Transcript of February 6, 2023 Hearing (Unsealed)						
7	Lapis IV Capital Commitment Letter dated February 13, 2023, attached as Exhibit C to Landlord's Objection to Plan [Dkt. No. 1202-3] (Unsealed)						
8	Transcript of January 11, 2023 Lifespace Community Bondholders Call, attached						

⁴ The Landlord hereby waives any Confidentiality markings on all exhibits listed in this filing that have a Bates stamp beginning with "ICI." These exhibits are therefore not filed under seal.

EXHIBIT	DESCRIPTION	MARK	OFFER	OBJECT	ADMIT	W/D	DISPOSITION AFTER TRIAL
	as Exhibit G to Landlord's Objection to Plan [Dkt. No. 1202-7] (Unsealed)						
9	February 3, 2023 Voluntary Notice, attached as Exhibit H to Landlord's Objection to Plan [Dkt. No. 1202-8] (Unsealed)						
10	Edgemere Continuing Disclosure Report for the year ended December 31, 2022, attached as Exhibit I to Landlord's Objection to Plan [Dkt. No. 1202-9] (Unsealed)						
11	Overview of Transaction, produced by ICI at ICI0000021 (Unsealed)						
12	Master Trust Indenture, Mortgage and Security Agreement between Northwest Senior Housing Corporation and Chase Bank, produced by ICI at ICI0000257 (Unsealed)						
13	Edgemere rent calculations, produced by ICI at ICI0000508 (Unsealed)						
14	Edgemere Revenue Bonds Preliminary Official Statement dated October 14, 1999, produced by ICI at ICI0000632 (Unsealed)						
15	Memorandum from S. Donosky to B. Jordan dated March 17, 1997, produced by ICI at ICI0004013 (Unsealed)						
16	S. Donosky notes dated May 28, 1997, produced by ICI at ICI0008548 (Unsealed)						
17	Transcript of Hearing on January 23, 2022 (Unsealed)						
18	Transcript of Hearing on January 24, 2022 (Unsealed)						
19	Bay 9 Holding LLC's Response to ICI's Objection to Adequate Assurance, filed February 9, 2023 [Dkt. No. 1175] (Unsealed)						

EXHIBIT	DESCRIPTION	MARK	OFFER	OBJECT	ADMIT	W/D	DISPOSITION AFTER TRIAL
20	Declaration of Hannah Walsh, with exhibit (Unsealed)						
Exhibit to Walsh Declaration (Unsealed)							
20-A	<i>Fitch Places Lifespace Communities, Inc. on Rating Watch</i> , published by Fitch Ratings on February 9, 2023						
21	Bay 9 Holdings, LLC's first production, produced at BAY000001–BAY000028 (Unsealed)						
22	Bay 9 Holdings, LLC's second production, produced at BAY000029–BAY0000200 (Sealed)						
23	<i>Declaration of Kyle DeHenau, with exhibit (Unsealed) [filed with slip sheet]</i>						
Exhibit to DeHenau Declaration (Unsealed) <i>[to be filed with Declaration]</i>							
23-A	Facilities Assessment Report dated October 15, 2021, prepared by Plante Moran Living Forward						
24	Amended Notice of Deposition Subpoena to Provide Evidentiary Deposition Testimony to Plante & Moran CRESA, LLC, served February 5, 2023						
25	Transcript of Deposition of Kyle DeHenau dated February 9, 2023 (Unsealed)						

Landlord asks that the Court take judicial notice of the pleadings and transcripts filed (including any and all schedules, amendments, exhibits, and other attachments thereto) in the proceedings before this Court.

RESERVATION OF RIGHTS

Landlord reserves the right to call or to introduce one, or more, or none, of the witnesses and exhibits listed above. Landlord reserves the right to use additional demonstrative exhibits as it deems appropriate in connection with the evidentiary hearing commencing on February 21,

2023, and continuing thereafter. Landlord reserves the right to use any exhibits presented by any other party. Landlord reserves the right to amend and/or supplement this exhibit list. Landlord also reserves the right to use exhibits not listed herein for impeachment purposes at the evidentiary hearing commencing on February 21, 2023, and continuing thereafter.

Dallas, Texas
February 16, 2023

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/s/ Elizabeth B. Vandesteeg

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Counsel for Intercity Investment Properties, Inc.

Certificate of Service

I hereby certify that on the 16th day of February 2023, a true and correct copy of the foregoing was served electronically on all persons via the Court's CM/ECF system.

/s/ Michael S. Held

Michael S. Held

Landlord's

Exhibit 1

for February 21-23, 2023 hearing

EDGEMERE | 
A LIFESPACE COMMUNITY®

Property Conditions Assessment



Confidential January 4, 2023



Table of Contents

Introduction	1
Executive Summary.....	2
Assessment Findings	7
East Commons	7
West Commons.....	7
Buildings 1-8.....	7
Building 9	8
Health Center	8
Parking Garage.....	9
Site	9
Key Considerations	10
Ongoing Maintenance Approach.....	11
Report Assumptions.....	12
Appendix	13
1. Forecast.....	13
2. Site Visit Photographs.....	13
3. Site Plan with Building Labels	13

Introduction

ARCH Consultants, Ltd. (ARCH) performed a property conditions assessment of the Edgemere Community buildings and systems and established a forecast of projected capital expenditures. The campus is located in Dallas, Texas on 16.25-acres, approximately 8 miles north of Downtown Dallas. The buildings date from 2002 with the addition of Building 9 in 2009 and Health Center and Performing Arts Center expansions between 2016 and 2018. There are a variety of independent living unit arrangements, assisted living, memory care and skilled care programs. The report included herein includes a five-year forecast and a listing of capital needs beyond the current annual funds to address any capital maintenance on a building and site basis. Building system conditions were categorized as good, fair, and poor with the associated repair/replacement costs identified. Due to a potential shift from a high end market tier to a mid-market rental tier for finish levels throughout the client requested that the analysis focus on building common areas, systems and exterior conditions, re-occupancy renovations are not included in the analysis but the property the assessment does take into account for other common area finish considerations.

ARCH performed the following services to complete the conditions assessment: gathered information about the campus components including all main buildings on campus and the site/grounds; investigated the type and condition of the existing facility's systems that make up the physical plant; collected data that assisted in the development of capital reserve projections; developed a five-year Capital Expense forecast; and provided recommended priority projects in this report *Key Considerations* section. The Capital Expense forecast included in the Appendix divides the campus into the following building areas as suggested by the campus: East Commons, West Commons, Buildings 1 through 9, Health Center, Parking Structure, and Site.

A site visit occurred August 16th through 18th guided by Miguel "Angel" Gallegos, Facilities Manager and a site overview provided by Jarred Richardson, Director of Plant Operations. The goal of the review was to help UMB Bank, N.A. (Client) understand the needed and projected physical plant improvements including any updates necessary to remain competitive in the market. The site visit evaluated the existing physical plant including the site, mechanical and electrical systems, roofs, building exterior elements and interior finishes. This report is based on the limited site observations of the physical characteristics of the campus; therefore, this report is an instrument of service for use solely with respect to this project and is based on information provided by the Client and gathered through sources believed to be reliable. Data provided to ARCH includes but is not limited to the following: a campus site plan; building floor plans; building square footage, age, management contract, retail food services establishment inspection reports for July 2022, program count and mix data. Health department reports for the Healthcare Center skilled nursing operation were not provided.

ARCH certifies that the Preparer of this report is qualified to assess the subject property for the purpose of preparing a property conditions assessment; did not attempt to operate any equipment or perform invasive or destructive testing; that the data contained in this Report is based solely on field observations, historical data and information provided by or through the Client and on site personnel; forecast schedules are based on recognized industry standard forecasting techniques; much of the data and the forecasting techniques are subjective in nature; and that the data was reviewed with the Client for concurrence of costing, schedules, and to best represent the Client's proposed business model. It is the intent of ARCH to provide a reasonable total average value for anticipated annual capital replacement

reserves based on a 5-year forecast of the data, but not to identify all potential costs, events, or the exact year in which they occur.

Executive Summary

The Edgemere property conditions review was developed on a per building area basis to assess the existing conditions of the campus. Refer to the attached Forecast in Appendix 1, which is summarized on a yearly basis for the costs associated for the exterior, interior and MEPFP/vertical transportation systems, respectively.

The Forecast is based on ARCH's site observation and information provided by the Client or their representatives. Site visit photographs are included in Appendix 2 and an analysis by building area is included in the *Assessment Findings*. The main buildings studied are included in the Site Plan with Building Labels in Appendix 3. Projections for costs in the Forecast were derived from site investigations, industry averages and information received from the data collection process. The 2022 capital budget which was reported at \$1.8 million, is included for reference.

Edgemere contains 504 total units: 304 Independent Living Apartments, 45 Memory Care, 68 Assisted Living and 87 Skilled Nursing units. The purpose of this study is to evaluate the current condition of the subject property to forecast a five-year strategic capital budget for proposed maintenance of the physical plant of buildings components and site-specific information. This report is not intended to be a complete annual capital replacement or operating expense budget. The intent is to identify major capital expenses and key considerations for priority needs and/or deferred maintenance items. After performing the assessment and other data accumulated during and after the site visit, the information contained in this report has the following considerations for the approximately 955,000 square foot facility, including the structured parking.

The findings indicate that the community is in overall fair condition. Renovations of the interior corridors and common areas was completed in 2017. The original buildings constructed in 2002 are generally in fair condition; a renovation of the common area interior finishes was completed in 2017 and is in generally fair condition. The Independent Living on the campus; it was reported that 95% of the units have been fully renovated once and about 40 units have been fully renovated in the past few years. The overall building façade along with the Health Center flat roof and mechanical systems have issues that have been forecast to be addressed in the near term; refer to Key Consideration of this report.

The total projected capital expenses equate to approximately \$16,138,751 from 2023 to 2027. For this analysis, an assumption for an escalation factor of 2.1% per year was applied which is in line with the 10 year Consumer Price Index (CPI) average as reported by the Federal Reserve Bank. The 'Other' expenditure sub-total is \$2,731,900 which includes the site, escalation, and Emergency Fund/Contingency. The above takes into consideration a shift from the current residence structure to a Senior Living rental structure. This would shift the property market segment from a high end market tier to a mid-market rental tier in finish levels for site and common area. Re-occupancy was not included.

Assumptions were provided by or adjusted as requested by the Client/Management based on shifting the occupancy to a mid-market rental retirement community. Assumptions for unit turnover were not

included as part of the analysis. Landscaping was projected to maintain the current level and not bring it back up to the previous award winning level the property was at. Corridor and Common Area were in fair or better condition with the latest remodel completed in 2017 and were forecast to have maintenance over the next five years with some refresh to the East and West Common Building areas.

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A summary of the findings is outlined in the chart below:

The five-year capital expenses result in a \$7,488 per unit cost including the escalation assumption and ‘other’ expenditures as identified in the report. Strategic capital budgets contained in the forecasted estimates are limited to those capital expenses for one time replacement costs consisting primarily of building systems that are needed to bring the property to par condition.

Edgemere

Dallas, TX

Data	
Total Living Units	504
Total Square Footage	955,551
Gross square footage per Unit*	1896

Total Capital Cost	
Total capital cost (5 years)	\$16,138,751
Total capital cost / Unit (5 years)	\$32,021

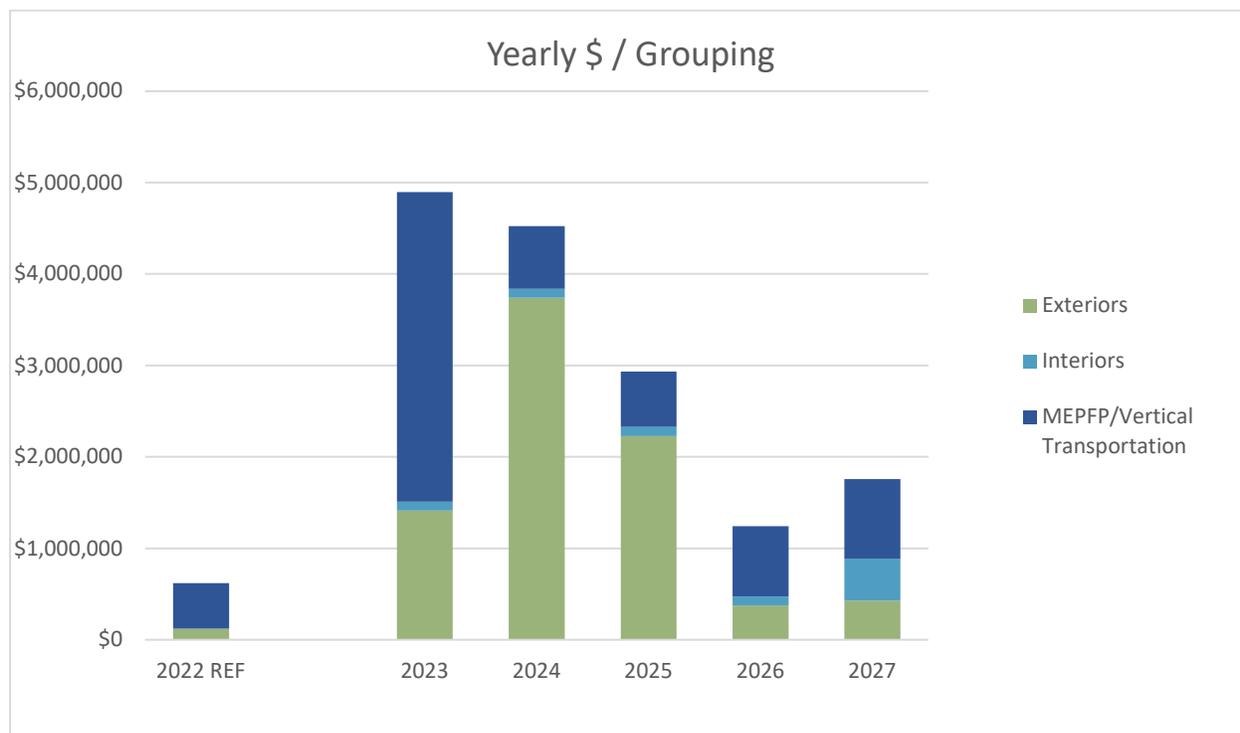
Total capital cost / Unit / year avg.		\$6,404
/ Unit / year	2022 REF	\$1,233
/ Unit / year	2023	\$9,918
/ Unit / year	2024	\$9,356
/ Unit / year	2025	\$6,193
/ Unit / year	2026	\$2,681
/ Unit / year	2027	\$3,874

Other**	\$2,731,900
Total capital cost (5 years) w/Other	\$18,870,651
Total capital cost / Unit (5 years) w/ Other	\$37,442
Total capital cost w/ Other / Unit / year (Avg.)	\$7,488

*Gross square footage per unit w/out Garage 1,507

**Re-occupancy excluded from analysis

The sub-total for building capital expenses is \$16.1M from 2023 to 2027. The allocation of capital in the forecast is approximately 49% for the exteriors, 5% for the interiors, 38% for the MEPFP/Vertical Transportation. Site and escalation accounts for the remaining. Please refer to the Forecast per area in the attached back-up material for further information. The sub-total for building capital expenses on an annual basis from 2023 to 2027 by category is as follows:

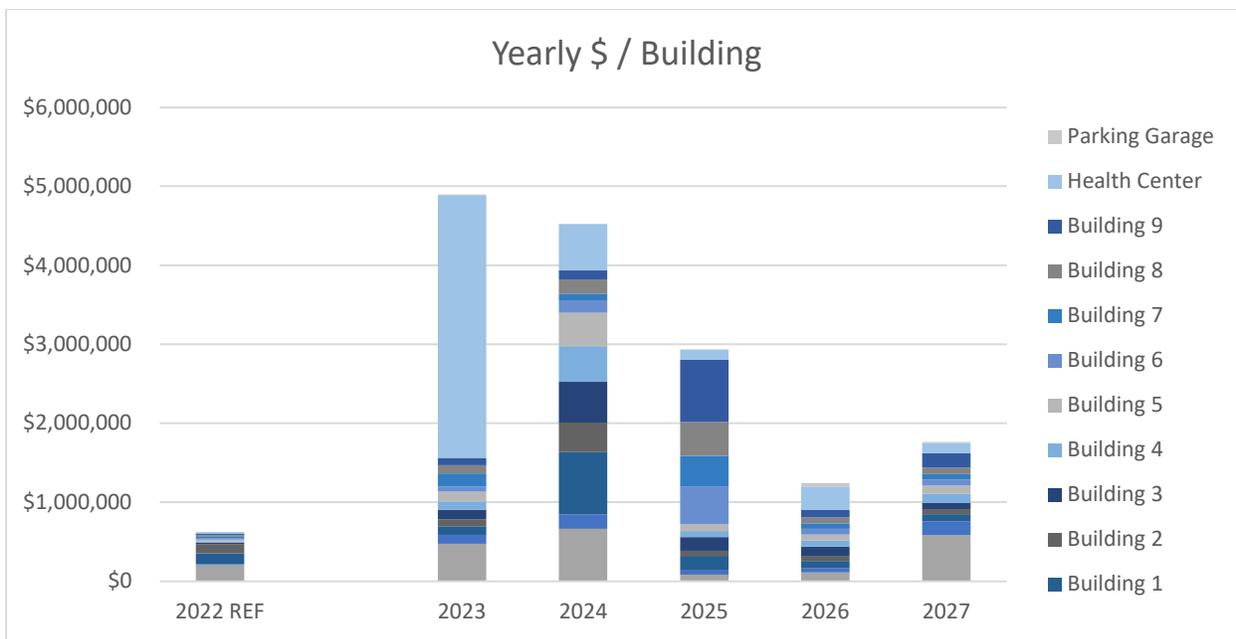


The original construction of the community is over 20 years old, leading to a peak in the Forecast over the next three years. The study also assessed 'Other' potential capital expenditures necessary such as contingency/emergency funds and site. The assumptions made are suggested figures and not direct estimates. Unit refurbishment were not taken into consideration as part of this analysis

Costs shown for 2022 show Edgemere's 2022 capital costs and are for reference only. We have not included any FF&E or Low Voltage items.

The average yearly cost of capital expenditures including 'Other' is \$3,774,130 which does not take into consideration any Occupancy Refurbishment, is consistent with the age of the community and Client's shift in market segment assumptions.

See chart below for an annual breakdown of costs by building area:



This study for the property includes a review of major building systems and a year-by-year projection of anticipated capital expenditures necessary to keep the facility in par condition and address routine maintenance. Throughout the facility Forecast of estimated costs, the physical condition of building systems and components, or overall evaluation rating is defined as being in Good, Fair, or Poor condition. The Health Center and West Commons have the highest totals at \$4,468,429 and \$1,904,534 in today's dollars respectively.

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Assessment Findings

The overall conditions of each building were found to be in generally fair condition with new tile roof reported being completed in 2021 and corridor and common area refresh reported to be completed in 2017. The Independent Living units are generally in good condition; the facilities management indicated approximately 95% of the units have been renovated once with 40 units have been renovated in the past few years. The exterior façade of the buildings are cementitious stucco and have hairline cracking with some cracks wider than a quarter of an inch in width, with staining and discoloration. The campus site and associated landscaping are in good condition with mature landscaping. The retaining walls and raised stone planting beds shows signs of deterioration and cracking and would need to be addressed. The perimeter wrought fence is also in need of repair with select sections of the fence having rusted through and needing to be mended. The Health Center flat roof and mechanical system will also need to be addressed in the near future as they are both nearing the end of their useful life.

The common area/corridor assumptions have been adjusted per the request of the Client/Management to be in line with a mid-tier rental property which is budgeted at \$30 per square foot for the IL occupancy and \$25 per square foot for the SN occupancy. The forecast scope includes paint, wall coverings and commercial carpet. The scope does not include replacement of lighting, rails, trim, replacement of all ceiling tile or maintaining the current carpet standard.

Refer to the attached back-up material for each building forecast, which is summarized on a yearly basis for the costs associated for the exterior, interior, MEPFP/vertical transportation and grounds, respectively. The following is a summary of the assessment findings by building area, which aligns with the findings in the attached Forecast.

East Commons

The East Commons serve as the main entrance to the facilities IL units and was built as part of the main campus in 2002 with the addition of the Performing Arts Center added in 2017. The building also houses the building operational staff such as administration and the sales office. Costs have been identified to address the exterior façade issues and repair/replace select windows and doors and to shift the building standard to a mid-market tier.

West Commons

The West Commons is original to the 2002 construction and serves as the main communal area of the IL facility, housing the dining areas, workout and activity facilities, the pool, mail room, salon, billiards room, the theater, among other functions. The West Commons also houses the main back of house areas including the locker room, kitchen, laundry, loading dock and other support service areas. Additionally, the main utility plant is located within the building housing the hydronic boilers, domestic boilers, chillers and pumps. Costs have been identified to address the exterior building issues, roof, equipment and to shift the building standard to a mid-market tier.

Buildings 1-8

Buildings 1-8 were part of the original construction in 2002 and have a concrete and metal framing structure. There are a total of 256 IL units between the 3 to 4 story buildings. The buildings are all interconnected and have similar unit configurations. The buildings have tile roofs, cementitious stucco façade, vinyl clad wood doors and windows in the units and metal clad doors and windows in the common areas. Heating and cooling are supplied via a two-pipe water system to heat pump in each unit, with most

located above the hall bath shower. The unit appliances are all electric based with natural gas only serving select unit fireplaces. The buildings were broken up into separate units to match how the facilities identify and operate the buildings along with helping to delineate scopes of work and phasing within a better-defined area. At the time when the data was provided, approximately 26% of the units were vacant with re-tenanting not included as part of this analysis. Costs have been identified to address the exterior building issues, roof, equipment and to shift the building standard to a mid-market tier.

Building 9

Building 9 was constructed in 2009 as a 48 unit, three story expansion having a similar concrete and metal framing structure. Building 9 has an L shaped configuration and connects to Building 3 and the West Commons. The building construction is consistent with the other buildings with tile roof, cementitious stucco façade, vinyl clad wood doors and windows in the units and metal clad doors and windows in the common areas. Heating and cooling are supplied via a two-pipe water system to heat pump in each unit, with most located above the hall bath shower. The unit appliances are all electric based with natural gas only serving select unit fireplaces. At the time when the data was provided, approximately 23% of the units were vacant with re-tenanting not included as part of this analysis. Costs have been identified to address the exterior building issues, roof, equipment and to shift the building standard to a mid-market tier.

Health Center

The Health Center is a three-story building with two internal courtyards which serves the Assisted Living, Skilled Nursing and Memory care community. The main building was constructed in 2002 and is connected to the West Commons. Two three story additions were added at the north and south sides of the building in 2016 and 2018. The building has common area dining facilities, and a memory care community area with warming kitchens and a two story rehabilitation center.

The three floor plates are of equal size with the first floor housing the memory care and skilled nursing programs, the second floor dedicated to assisted living and the third floor dedicated to skilled nursing. The corridors were updated in 2017 along with the additions to the building.

The AL units have had light refreshes over time with periodic updates to cabinets, counter tops, wood plank style vinyl flooring in the main living area, carpet in the bedrooms, fixtures, appliances and bathroom refreshes with new tile and fixtures. Most of the units have been turned at least once.

The SN and MC units consist of a bedroom and bathroom and have limited scope for refresh which includes new wood plank style vinyl flooring, bathroom floor tile, roll in showers and new fixtures. Some of the units have original floor and shower tile in the bathrooms. Refresh of the units was not included as part of this analysis.

The exterior cementitious stucco façade has been repaired on the Health Center and would need to be prepped and painted. The flat roof is nearing the end of its useful life and has previous repairs, cracking at the seams, bubbling and some soft spots. The mechanical system is an old R22 system and replacement would require bringing it up to the current standards. The pricing for the mechanical system is for replacement of a similar type system that meets today's standards but it would be recommended that an engineering study be completed to assess the mechanical system and the options for replacement. It is also recommended that the flat roof be replaced in conjunction with the replacement of the mechanical system. The existing roof has improper curbing for pipe and electrical penetrations along with some for

the mechanical equipment and performing both scopes of work simultaneously will create efficiencies and minimize patching and ease of work. New curbing costs for the roof are included with the mechanical system replacement.

Parking Garage

The parking garages total 196,219 square feet of space with garage under buildings 1-3 consisting of 101,336 square feet, under building 7-8 consisting of 29,262 square feet, under building 9 consisting of 36,760 square feet which is connected to the garage under buildings 1-3 and the garage under the Health Center consisting of 28,861 square feet. All the garages are single level and were constructed with a concrete structure. The garages have direct elevator access to the buildings with the garages in the AL having direct access to the first floor as well. The interior courtyards are drained into sump pump basins in the garages and are pumped into the city stormwater sewer system.

Site

The current campus site comprises 16.25 acres. The grounds and associated landscaping elements are mature and well maintained. The landscaping assumptions maintain the current level and departs from the current operators plan to bring the property landscaping back to previous award winning level. The water feature is in good condition and fountains are in fair condition and will require some work to get them fully functional and sealed properly which has been included in the estimate. The retaining walls and raised stone planter beds show signs of mortar wear and spalling, cracking and the walls shifting in some locations. There are many instances where the cracks are larger than a quarter inch in width. Continued repairs to address these issues have been included in the forecast. Sections of the wrought iron perimeter fence and stair rails are in poor condition with flaking paint, rust and areas of the fence/rails that have deterioration and detachment. It is recommended that an assessment be done to determine locations that may pose a safety risk and have those areas addressed in the near term. The forecast includes scope for repairing and painting the fence/rails. The site pathways are made up of brick/stone pavers, crushed rock and cement sidewalks and stairs. The brick/stone pavers are generally in fair condition with select areas of the installation that are loose or deteriorated that need to be addressed. The crushed stone paths are in good condition and would likely need some additional fill over time. The sidewalks and stairs are in fair condition with the sidewalk having cracks at about fifty percent of the expansion joints and heaving/settlement near tree roots. Ongoing maintenance for these areas have been included in the forecast. The main entrance by the East Commons is stamped colored concrete with brick accents. The brick is in good condition, but the stamped concrete is in fair condition. The concrete has signs of cracking and spalling. There have been some areas that have been previously repaired. The site post lights have been replaced within the last year and are in good condition but the remainder of the site lighting which includes low walkway lights and landscaping lights are original to the building and updating is included in the forecast. The large pergolas/trellises are mostly in good to fair condition with most recently being rebuilt or repaired. There are a few that will need to be addressed in the near term that have not recently been replaced or repaired. The forecast includes ongoing updates to the pergolas/trellises.

Key Considerations

Capital projects that were identified by ARCH Consultants and the campus as a priority over the next five include the following:

1. Medical Alert – Health Center Medical alert system is a near term issue and is projected to be addressed in the next two years in the forecast with an estimated cost of \$196,000 in today's dollars in 2023.
2. Flat Roofs – The flat roofs are nearing the end of their useful lives and will need replacement with an estimated cost of \$900K in today's dollars between 2023 and 2025. Replacement of equipment and penetration curbing has been included with the mechanical system replacement. It is recommended that a roof study be performed to determine the impact of the replacement of the roof in conjunction with the HVAC system at the Health Center.
3. Exterior Façade – The cementitious stucco façade has cracking that is projected to be addressed in the forecast with an estimated cost of \$4.7 million in today's dollars between 2023 and 2025. It is recommended that an exterior façade study be completed due to the nature and complexity of the exterior façade issue.
4. Health Center HVAC & IL Heat Pumps – The HVAC at the Health Center are R22 based which has been forecast in the next few years. About fifty percent of the IL in-unit heat pumps are original and have not been replaced. Replacements have been done as units fail/require significant repair. About two-thirds of the estimated replacements have been planned for the next five years. The total HVAC forecast estimate for these projects is \$3 million in today's dollars between 2023 and 2025.
5. Retaining Wall/Raised Planters – There are areas with large cracking and shifting that should be addressed on an ongoing basis, particularly outside of Building 9 which has a high wall.
6. Perimeter Fence – There are signs of deterioration at the fence that are projected to be addressed in the next year. It is recommended that an assessment be done to determine locations that may pose a safety risk and have those areas address in the near term.
7. Forecasted years 2023 through 2027 subtotal \$18,870,651 and does not include assumptions for unit re-occupancy/refurbishment.

See Appendix 1 Forecast for associated costs noted above.

Ongoing Maintenance Approach

An ongoing maintenance approach could be taken to continue to address more immediately identified scopes of work on an ongoing basis. This list is not exhaustive in nature or intended to identify all projects that could be approached in this manner, but merely addresses options for maintaining the identified scopes that impact building operations, safety or building envelope in fair condition until such time as the capital projects are undertaken. The outline below is only an estimate based on visual observations at the time of the survey and does not account for any potential changes since then, or underlying conditions that are not visibly observable. The estimate is based in today's dollars and does not factor in any escalation or contingency. If any projects are approached in a manner like this, there would be an impact on the scope of work cost due to escalation, remobilization, expanded scope, supply chain, required rework or other market factors that are not readily identifiable. This does not impact any other estimates contained within the report and is for analysis purposes only.

Ongoing Maintenance

Item	Description	3 Year Estimate
Flat Roof	Maintaining the roof as it approaches the end of its useful live would require additional patching as necessary. Cost would vary depending on the number of leaks and size each year.	unknown
Health Center HVAC	R22 units are no longer in production so replacement components can be difficult to source and could have long lead times. This approach would not reduce future capital project.	unknown
Health Center Medical Alert	Replacement components for the Medical Alert System are no longer being made and are difficult to source. The system is experiencing periodic failures and issues that are hard to address. This approach would not reduce future capital project.	unknown
IL Heat Pumps	IL heat pumps can be replaced on an as needed basis. Currently the site is replacing 6-8 per year. This could increase as more units age. This approach could reduce some scope from future capital project.	\$160,000
Exterior Façade	Stucco cracks larger than a quarter inch and repair the stucco exterior around the mechanical equipment at the west commons are recommended to be addressed due to potential water infiltration issues. This comprises an estimated 15% of the exterior which crack repairs could be completed without painting. This approach could reduce some scope from future capital project.	\$517,223
Perimeter Fence	There are some areas of the fence that have deteriorated and can be addressed by section. Estimating 20% of the fencing would need attention. This approach could reduce some scope from future capital project.	\$43,486
Sidewalks	Sidewalks have some areas with heaving and spalling that could be prioritized that would need to be addressed in the near term for safety and access. This approach could reduce some scope from future capital project.	\$15,000
Parking Lot	There are some areas in the parking lot that are cracked or spalled and should be addressed in the near term that comprises about 10% of the main drive area. This approach could reduce some scope from future capital project.	\$43,486
Retaining Wall	The retaining wall has areas with cracks larger than a quarter of an inch or show signs of heaving that could be addressed on an ongoing basis. This approach could reduce some scope from future capital project.	\$50,000

Total	\$829,194
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Report Assumptions

The following are this report's assumptions:

- 2022 capital projections are based on the capital projects for the physical plant as identified in the 2022 Capital Expenditure budget, less FF&E and Low Voltage and findings from ARCH's site observations.
- The buildings are assumed to be code compliant – that the facility met codes when it was built (grandfathered). Any deficiencies the facility may have in meeting current codes are not addressed. Any known, outstanding code deficiencies that implicate maintenance operations are addressed.
- Any renovation project would meet current standards and codes.
- An escalation factor was included based on the 10 year average CPI index of 2.1% as reported by the Federal Reserve Bank.
- For purposes of this report, no examinations of any buildings off campus were undertaken.
- Only physical attributes of the campus were addressed and no furniture, fixtures, low voltage upgrades, equipment, or motor vehicles.
- Independent Living Units re-occupancy was not included as part of this analysis.
- Soft costs such as professional consulting fees must be added if required for a specific project.
- No environmental study was undertaken.

The evaluation of existing structures requires certain assumptions to be made regarding the existing conditions since this evaluation was based on visual observations of portions of the existing structure and was limited in time and scope. Our evaluation and recommendations are not based on a comprehensive engineering study. As such, this report is not intended to represent a complete review of all systems or system components. Therefore, ARCH's evaluation and report do not constitute a warranty or guarantee of the existing structure or building systems or the future performance of any site improvement.

The buildings were not assessed for conformance to current area market trends for the level of care provided or capacity to provide care not within the campus' current continuum of care. This report is based on our site observations, information presented to ARCH, discussions with campus management and building maintenance staff and our experience with similar building systems. If any information becomes available that is not consistent with the observations or conclusions presented in this report, please present it to us for our evaluation.

This report by ARCH is an instrument of service for use solely with respect to this campus and is based on information provided by the Client and gathered through sources believed to be reliable; however, it must be considered relevant only as of the date of this report and preliminary in nature, warranting further investigation.

Appendix

1. Forecast
2. Site Visit Photographs
3. Site Plan with Building Labels

CONFIDENTIAL

1. Forecast

CONFIDENTIAL

Edgemere
Dallas, TX

Attorney Work Product

Confidential

Forecast Summary

4-Jan-2023

With an annual escalation of 2.1%

Grouping	2022 REF	2023	2024	2025	2026	2027	Totals
Exteriors	\$124,500	\$1,413,611	\$3,740,571	\$2,229,597	\$377,990	\$427,377	\$8,189,145
Interiors	\$0	\$97,500	\$97,500	\$97,500	\$97,500	\$458,800	\$848,800
MEPPF/Vertical Transportation	\$497,167	\$3,384,600	\$685,200	\$605,700	\$767,850	\$872,200	\$6,315,550
Grounds	\$0	\$0	\$0	\$0	\$0	\$1,330	\$1,330
Escalation	\$0	\$102,810	\$191,972	\$188,673	\$107,777	\$192,694	\$783,926
Grouping Total	\$621,667	\$4,998,521	\$4,715,243	\$3,121,470	\$1,351,116	\$1,952,401	\$16,138,751

Building/Area	2022 REF	2023	2024	2025	2026	2027	Total
West Commons	\$205,743	\$471,083	\$662,801	\$79,750	\$110,650	\$580,250	\$1,904,534
East Commons	\$8,993	\$114,975	\$179,473	\$53,150	\$56,150	\$173,150	\$576,898
Building 1	\$139,743	\$108,456	\$788,621	\$187,336	\$89,956	\$91,623	\$1,265,990
Building 2	\$115,243	\$86,756	\$374,877	\$64,456	\$64,456	\$66,898	\$657,441
Building 3	\$18,993	\$120,861	\$516,392	\$172,911	\$116,573	\$80,801	\$1,007,538
Building 4	\$18,993	\$107,550	\$451,467	\$76,150	\$76,150	\$112,753	\$824,070
Building 5	\$18,993	\$122,400	\$421,881	\$89,500	\$76,000	\$105,250	\$815,031
Building 6	\$18,993	\$66,539	\$150,739	\$471,248	\$70,739	\$73,189	\$832,454
Building 7	\$18,993	\$164,178	\$91,628	\$391,223	\$68,428	\$71,734	\$787,190
Building 8	\$18,993	\$105,233	\$181,783	\$429,042	\$75,833	\$78,387	\$870,279
Building 9	\$18,993	\$91,994	\$110,794	\$784,820	\$95,694	\$186,117	\$1,269,421
Health Center	\$18,993	\$3,326,686	\$587,815	\$128,211	\$297,711	\$128,256	\$4,468,679
Parking Garage	\$0	\$9,000	\$5,000	\$5,000	\$45,000	\$11,300	\$75,300
Escalation	\$0	\$102,810	\$191,972	\$188,673	\$107,777	\$192,694	\$783,926
Building/Area Total	\$621,667	\$4,998,521	\$4,715,243	\$3,121,470	\$1,351,116	\$1,952,401	\$16,138,751

Other	2022 REF	2023	2024	2025	2026	2027	Total
Site	\$171,967	\$239,000	\$161,700	\$327,929	\$155,200	\$73,500	\$957,329
ReOcc/Refurb's	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Emergency Fund/Contingency	\$245,957	\$344,018	\$344,018	\$344,018	\$344,018	\$344,018	\$1,720,091
Escalation*	\$0	\$5,019	\$6,863	\$21,096	\$13,453	\$8,049	\$54,480
Other Total	\$417,924	\$588,037	\$512,581	\$693,044	\$512,671	\$425,567	\$2,731,900

Totals (Build/Area & Other)	\$1,039,591	\$5,586,558	\$5,227,824	\$3,814,514	\$1,863,788	\$2,377,968	\$18,870,651
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Average per year total \$3,227,750
Average per year incl'dg Other \$3,774,130

BAY000098

Building Name	
East Commons	Confidential

Edgemere
Dallas, TX

Occupancy Classification	Construction Type	Year Constructed	Notes	ARCH Consultants, Ltd
Support	CC/MF/CMU	2002		4-Jan-2023

Number of Units	Number of Beds	Square footage	Notes	Number of Stories
		13,801		1

Year 2022 REF

Exterior	Year	2022 REF
Exterior façade	2002	
Roofing	2002	
Windows	2002	
Doors	2002	
Parapet, Fascia, Eaves	2002	
Gutters/Downspouts	2002	
Sealants	2002	
Foundation/Structural	2002	
Lighting	2002	
Building Frame	2002	
Balconies and Patios	2002	
Exterior stairs	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

							Good	Fair	Poor	Comments
2023	2024	2025	2026	2027	Totals					
\$2,400	\$93,555	\$3,600	\$3,600	\$3,600	\$106,755			x	Repair Cementous Stucco Cracking, Prep and Paint, Repair Styrofoam Cast Window Sills, Prep and Paint, Repair Styrofoam Cast Architectural Detail, Prep and Paint	
\$51,975	\$1,600	\$1,600	\$1,600	\$1,600	\$58,375			x	Tile Roof replaced in 2020/2021, flat roof is nearing the end of its useful life. Regular patching/replacements are included.	
\$6,150	\$2,000	\$2,000	\$2,000	\$2,000	\$14,150		x		Large door style windows on first floor need replacement, operable windows and doors show normal signs of wear but no reported issues	
\$5,000	\$3,000	\$3,000	\$3,000	\$3,000	\$47,000		x		Exterior Metal Frame Doors and Windows need prep and paint. Some exterior metal extrusions/mullions need replacement/repair, Sliding entrance door replacement 2027	
\$1,500	\$11,138	\$1,500	\$1,500	\$1,500	\$17,138		x		Soffit/Fascia/Decorative wood supports showing signs of aging and wear. Added to 2024 to coincide with Stucco Refinishing for efficiency	
	\$26,730		\$3,000		\$29,730	x			Gutter and downspout sections are showing signs of wear and leaking. Select gutter sections have been complete with new custom 8 inch gutter due to roof water runoff rate which is the new site standard.	
\$2,450	\$2,450	\$2,450	\$2,450	\$2,450	\$12,250		x		Select sealants need to be redone around windows and doors. Sealants around doors and windows has been replaced in select locations.	
					\$0	x			No reported issues with foundation/building structure	
\$9,000	\$2,500	\$2,500	\$2,500	\$2,500	\$19,000			x	Exterior Lighting is showing signs of wear with rust and finish deterioration	
					\$0	x			Staff reported that there are no known issues with the building structure	
					\$0	x			N/A	
					\$0	x			N/A	
					\$0	x			N/A	
					\$0					
\$78,475	\$142,973	\$16,650	\$19,650	\$46,650	\$304,398					

Interior	Year	2022 REF
Common Area Finishes	2002	
Corridor Finishes	2002	
Resident Room Finishes	2002	
Back of House Finishes	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

							Good	Fair	Poor	Comments
2023	2024	2025	2026	2027	Totals					
					\$100,000	\$100,000		x		Common Areas in fair condition, with new custom carpet in 2017/2018, doors, walls, ceiling, rails and woodwork are in fair condition. Some refresh included for high traffic areas
					\$0		x			Included in Common Area Finishes
					\$0		x			N/A
					\$0		x			N/A
\$10,000	\$10,000	\$10,000	\$10,000		\$40,000			x		Ceiling, wall and floor repair
					\$0		x			N/A
\$10,000	\$10,000	\$10,000	\$10,000	\$100,000	\$140,000					

MEFP/Vertical Transportation	Year	2022 REF
Mechanical	2002	
Roof Top Equipment	2002	
HVAC	2002	
Piping Mechanical	2002	
Electrical System	2002	
Lighting	2002	
Plumbing	2002	\$4,083
Valves	2002	\$826
Low Voltage	2002	
Equipment (Built-in)	2002	
Generator/E/M Power	2002	
Elevators	2002	
Fire Protection	2002	
Fire Alarm	2002	
Sprinklers and Standpipes	2002	\$4,083
Misc	2002	
Misc	2002	
Subtotals		\$8,993

							Good	Fair	Poor	Comments
2023	2024	2025	2026	2027	Totals					
					\$0		x			Misc
					\$0	x				N/A
\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$30,000		x			About 50% of in unit heat pumps have been replaced. The remaining are original to the building.
\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$15,000		x			Misc, normal maintenance and repair for heat pump system copper piping
\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$12,500	x				Misc, normal maintenance and repair for electrical system
\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$12,500	x				N/A
\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$20,000	x				Misc, normal maintenance and repair for plumbing and fixtures
\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$9,000	x				Normal Maintenance, Shut off valve replacement
					\$0	x				N/A
					\$0	x				N/A
					\$0	x				N/A
					\$0	x				N/A
\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$5,500	x				Normal Maintenance, no reported issues
\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000	x				Normal Maintenance, no reported issues
\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$16,000	x				Normal Maintenance, no reported issues
					\$0					
					\$0					
\$26,500	\$26,500	\$26,500	\$26,500	\$26,500	\$132,500					

Grounds	Year	2022 REF
Stoops/Pads	2002	
Sidewalks/Paths	2002	
Patios/Garden	2002	
Accessibility	2002	
Landscaping and Appurtenances	2002	
Lighting	2002	
Signage	2002	
Fencing/Screening	2002	
Drainage/Stormwater	2002	
Paving, Curbing, Parking	2002	
Utilities	2002	
Ingress and Egress	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

							Good	Fair	Poor	Comments
2023	2024	2025	2026	2027	Totals					
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0	x				Covered in Site Section
					\$0					Covered in Site Section
\$0	\$0	\$0	\$0	\$0	\$0					Covered in Site Section

Building Total All Groups \$8,993

\$114,975	\$179,473	\$53,150	\$56,150	\$173,150	\$576,898				
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Data per year	2022 REF
Exterior	25.8%
Interior	7.1%
MEFP/FP/VT	20.0%
Grounds	0.0%
All Groups	19.9%

2023	2024	2025	2026	2027
25.8%	47.0%	5.5%	6.5%	15.3%
7.1%	7.1%	7.1%	7.1%	71.4%
20.0%	20.0%	20.0%	20.0%	20.0%
0.0%	0.0%	0.0%	0.0%	0.0%
19.9%	31.1%	9.2%	9.7%	30.0%

Building Name	
West Commons	Confidential
Edgemere Dallas, TX	

Occupancy Classification	Construction Type	Year Constructed	Notes	ARCH Consultants, Ltd
Support	CC/MF/CMU	2002		4-Jan-2023
Number of Units	Number of Beds	Square Footage	Notes	Number of Stories
		62,460		2 (1 level below ground)

Year	2022 REF
Exterior	
Exterior façade	2002
Roofing	2002
Windows	2002 \$10,000
Doors	2002
Parapet, Fascia, Eaves	2002
Gutters/Downspouts	2002
Sealants	2002
Foundation/Structural	2002
Lighting	2002
Building Frame	2002
Balconies and Patios	2002
Exterior stairs	2002
Misc	2002
Misc	2002
Subtotals	\$10,000

2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
\$2,400	\$407,484	\$5,100	\$5,100	\$5,100	\$425,184			x	Repair Cementous Stucco Cracking, Prep and Paint, Repair Styrofoam Cast Window Sills, Prep and Paint, Repair Styrofoam Cast Architectural Detail, Prep and Paint
\$237,600	\$1,600	\$1,600	\$1,600	\$31,600	\$274,000			x	Tile Roof replaced in 2020/2021, flat roof is nearing the end of its useful life. Regular patching/replacements are included. Greenhouse roof in good condition with normal repair, maintenance and glass/seal replacements
\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000		x		Large door style windows on first floor need replacement, operable windows and doors show normal signs of wear but no reported issues
\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$30,000		x		Exterior Metal Frame Doors and Windows need prep and paint. Some exterior metal extrusions/mullions need replacement/repair
\$1,800	\$24,255	\$1,800	\$1,800	\$1,800	\$31,455		x		Soffit/Fascia/Decorative wood supports showing signs of aging and wear. Added to 2024 to coincide with Stucco Refinishing for efficiency
	\$58,212			\$3,000	\$61,212	x			Gutter and downspout sections are showing signs of wear and leaking. Select gutter sections have been complete with new custom 8 inch gutter due to roof water runoff rate which is the new site standard.
\$20,683	\$2,750	\$2,750	\$2,750	\$2,750	\$31,683			x	Select sealants need to be redone around windows and doors. Sealants around doors and windows has been replaced in select locations.
					\$0	x			No reported issues with foundation/building structure
\$34,200	\$2,500	\$2,500	\$2,500	\$2,500	\$44,200			x	Exterior Lighting is at the end of useful life and needs replacement.
					\$0	x			Staff reported that there are no known issues with the building structure
\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$5,500		x		Misc patio repairs
					\$0	x			N/A
					\$0	x			N/A
					\$0				N/A
\$308,783	\$508,901	\$25,850	\$25,850	\$58,850	\$928,234				

Year	2022 REF
Interior	
Common Area Finishes	2002
Corridor Finishes	2002
Resident Room Finishes	2002
Back of House Finishes	2002
Misc	2002
Loading Dock	2002
Subtotals	\$0

2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
				\$250,000	\$250,000	x			Common Areas in fair condition, with new custom carpet in 2017/2018, doors, walls, ceiling, rails and woodwork are in fair condition. Some refresh included for high traffic areas
					\$0	x			Included in common area finishes
					\$0	x			N/A
					\$0	x			N/A
\$10,000	\$10,000	\$10,000	\$10,000		\$40,000	x			Refresh tile, paint and ceiling tile replacement
				\$25,000	\$25,000	x			Ceiling, wall and floor repair
					\$0				Overhead door
\$10,000	\$10,000	\$10,000	\$10,000	\$25,000	\$315,000				

Year	2022 REF
MEPFP/Vertical Transportation	
Mechanical	2002
Roof Top Equipment	2002
HVAC	2002
Piping Mechanical	2002
Electrical System	2002
Lighting	2002
Plumbing	2002 \$4,083
Valves	2002 \$826
Low Voltage	2002
Equipment (Built-in)	2002 \$65,000
Generator/EM Power	2002
Elevators	2002
Fire Protection	2002
Fire Alarm	2002
Sprinklers and Standpipes	2002 \$4,083
Misc	2002 \$85,000
Misc	2002 \$36,750
Subtotals	\$195,743

2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
				\$0	\$0	x			Misc
\$12,500	\$12,500	\$12,500	\$35,000	\$15,000	\$87,500	x			Major part replacement for rooftop chillers and AHUs anticipated as part of regular maintenance
\$12,000	\$3,600	\$3,600	\$12,000	\$3,600	\$34,800		x		About 50% of in unit heat pumps have been replaced. The remaining are original to the building.
\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$15,000		x		Misc, normal maintenance and repair for heat pump system copper piping
\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$12,500	x			Misc, normal maintenance and repair for electrical system
\$2,750	\$2,750	\$2,750	\$2,750	\$2,750	\$13,750	x			N/A
\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$20,000	x			Kitchen area plumbing repairs and maintenance and normal system repair and maintenance
\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000	x			Normal Maintenance, Shut off valve replacement
				\$0	\$0	x			N/A
\$100,000	\$100,000			\$200,000	\$400,000	x			Replace Kitchen Equipment/Laundry. It was reported by site that some kitchen equipment was in need of replacement.
\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$12,500	x			Rebuild of Kohler 350 Generator engine/controls and regular parts as part of regular maintenance
				\$0	\$0	x			N/A
\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$6,250	x			Normal Maintenance, no reported issues
\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000	x			Normal Maintenance, no reported issues
\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$16,000	x			Normal Maintenance, no reported issues
\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$19,000				Replace 3 Hydronic Boiler, maintenance and general pipe insulation as part of site planned 2022 budget. Regular maintenance and repair
				\$0	\$0				Portable Generator Docking Station
\$152,300	\$143,900	\$43,900	\$74,800	\$246,400	\$661,300				

Year	2022 REF
Grounds	
Stoops/Pads	2002
Sidewalks/Paths	2002
Patios/Garden	2002
Accessibility	2002
Landscaping and Appurtenances	2002
Lighting	2002
Signage	2002
Fencing/Screening	2002
Drainage/Stormwater	2002
Paving, Curbing, Parking	2002
Utilities	2002
Ingress and Egress	2002
Misc	2002
Misc	2002
Subtotals	\$0

2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
				\$0	\$0	x			Covered in Site Section
\$0	\$0	\$0	\$0	\$0	\$0				

Building Total All Groups	\$205,743
Data per year	2022 REF
Exterior	33.3%
Interior	3.2%
MEP/FP/VT	23.0%
Grounds	0.0%
All Groups	24.7%

\$471,083	\$662,801	\$79,750	\$110,650	\$580,250	\$1,904,534			
2023	2024	2025	2026	2027				
33.3%	54.8%	2.8%	2.8%	6.3%				
3.2%	3.2%	3.2%	3.2%	87.3%				
23.0%	21.8%	6.6%	11.3%	37.3%				
0.0%	0.0%	0.0%	0.0%	0.0%				
24.7%	34.8%	4.2%	5.8%	30.5%				

Building Name	
Building 1	Confidential
Edgemere Dallas, TX	

Occupancy Classification	Construction Type	Year Constructed	Notes	ARCH Consultants, Ltd
IL	CC/MF/CMU	2002		4-Jan-2023
Number of Units	Number of Beds	Square footage	Notes	Number of Stories
43	0	75,380		3

Year 2022 REF

Exterior	Year	2022 REF
Exterior façade	2002	
Roofing	2002	
Windows	2002	\$10,000
Doors	2002	
Parapet, Fascia, Eaves	2002	\$17,500
Gutters/Downspouts	2002	\$7,000
Sealants	2002	
Foundation/Structural	2002	
Lighting	2002	
Building Frame	2002	
Balconies and Patios	2002	
Exterior stairs	2002	
Pergola/Trellis	2002	
Misc	2002	
Subtotals		\$34,500

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
Exterior façade	\$2,400	\$644,490	\$5,600	\$5,600	\$5,600	\$663,690			x	Repair Cementous Stucco Cracking, Prep and Paint, Repair Styrofoam Cast Window Sills, Prep and Paint, Repair Styrofoam Cast Architectural Detail, Prep and Paint
Roofing	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$16,000	x			Tile Roof replaced in 2020/2021
Windows	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000		x		Unit operable windows show normal signs of wear but no reported issues. Common Area Exterior Metal Frame Windows have faded/worn finishes. Some exterior metal extrusions/mullions need replacement/repair
Doors	\$30,000	\$8,500	\$8,500	\$8,500	\$8,500	\$64,000		x		Common Area Exterior Metal Frame Doors and have faded/worn finishes. Unit large door style windows on first floor units have cracked seams and are leaking. Unit other exterior doors in fair condition showing normal wear but no reported issues
Parapet, Fascia, Eaves	\$1,800	\$25,575	\$1,800	\$1,800	\$1,800	\$32,775		x		Soffit/Fascia/Decorative wood supports showing signs of aging and wear. Added to 2024 to coincide with Stucco Refinishing for efficiency
Gutters/Downspouts			\$61,380			\$61,380		x		Gutter and downspout sections are showing signs of wear and leaking. Select gutter sections have been complete with new custom 8 inch gutter due to roof water runoff rate which is the new site standard.
Sealants	\$6,906	\$6,906	\$6,906	\$6,906	\$3,453	\$31,075		x		Select sealants need to be redone around windows and doors. Sealants around doors and windows has been replaced in select locations.
Foundation/Structural						\$0	x			No reported issues with foundation/building structure
Lighting	\$2,700	\$2,500	\$2,500	\$2,500	\$2,500	\$12,700			x	Exterior Lighting is showing signs of wear with rust and finish deterioration
Building Frame						\$0	x			Staff reported that there are no known issues with the building structure
Balconies and Patios	\$2,200	\$2,200	\$2,200	\$2,200	\$2,200	\$11,000		x		First unit patios in fair condition and second/third floor balconies in fair condition.
Exterior stairs						\$0	x			N/A
Pergola/Trellis		\$36,000	\$36,000			\$72,000			x	Third floor units with trellises need to have wood components replaced. Wood is missing, electrical conduit is hanging unattached and wood is deteriorating
Misc						\$0				
Subtotals	\$54,206	\$734,371	\$133,086	\$35,706	\$32,253	\$989,620				

Interior	Year	2022 REF
Common Area Finishes	2002	
Corridor Finishes	2002	
Resident Room Finishes	2002	
Back of House Finishes	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
Common Area Finishes						\$0	x			Elevator lobby refurbishment with corridors
Corridor Finishes						\$0		x		Corridors in fair condition, with new custom carpet in 2017/2018, doors, walls, ceiling, rails and woodwork are in fair condition.
Resident Room Finishes						\$0	x			N/A
Back of House Finishes						\$0	x			N/A
Misc	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000		x		Floor, wall and ceiling maintenance
Misc						\$0	x			N/A
Subtotals	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000				

MEPPF/Vertical Transportation	Year	2022 REF
Mechanical	2002	
Roof Top Equipment	2002	
HVAC	2002	
Piping Mechanical	2002	
Electrical System	2002	
Lighting	2002	
Plumbing	2002	\$4,083
Piping Plumbing	2002	\$826
Low Voltage	2002	
Equipment (Built-in)	2002	
Generator/EM Power	2002	
Elevators	2002	\$96,250
Fire Protection	2002	
Fire Alarm	2002	
Sprinklers and Standpipes	2002	\$4,083
Misc	2002	
Misc	2002	
Subtotals		\$105,243

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
Mechanical						\$0		x		Misc
Roof Top Equipment						\$0	x			N/A
HVAC	\$21,500	\$21,500	\$21,500	\$21,500	\$21,500	\$107,500		x		About 50% of in unit heat pumps have been replaced. The remaining are original to the building.
Piping Mechanical	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$15,000		x		Misc, normal maintenance and repair for heat pump system copper piping
Electrical System	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$12,500	x			Misc, normal maintenance and repair for electrical system
Lighting	\$500	\$500	\$500	\$500	\$500	\$2,500	x			N/A
Plumbing	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$20,000	x			In unit fixtures replaced with unit turnover
Piping Plumbing	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$16,000	x			Normal Maintenance, Shut off valve replacement
Low Voltage						\$0		x		N/A
Equipment (Built-in)					\$5,000	\$5,000		x		Laundry Equipment
Generator/EM Power						\$0	x			N/A
Elevators	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$7,500		x		Elevator Finishes, Panel and Equipment are original and were included in the site 2022 budget to be upgraded and hydraulic pump replacement
Fire Protection	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$6,250	x			Normal Maintenance, no reported issues
Fire Alarm	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000	x			Normal Maintenance, no reported issues
Sprinklers and Standpipes	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$16,000	x			Normal Maintenance, no reported issues
Misc						\$0				
Misc	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$6,000				Pipe Insulation
Subtotals	\$44,250	\$44,250	\$44,250	\$44,250	\$49,250	\$226,250				

Grounds	Year	2022 REF
Stoops/Pads	2002	
Sidewalks/Paths	2002	
Patios/Garden	2002	
Accessibility	2002	
Landscaping and Appurtenances	2002	
Lighting	2002	
Signage	2002	
Fencing/Screening	2002	
Drainage/Stormwater	2002	
Paving, Curbing, Parking	2002	
Utilities	2002	
Ingress and Egress	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
Stoops/Pads						\$0	x			Covered in Site Section
Sidewalks/Paths						\$0	x			Covered in Site Section
Patios/Garden						\$0	x			Covered in Site Section
Accessibility					\$120	\$120	x			Covered in Site Section
Landscaping and Appurtenances						\$0	x			Covered in Site Section
Lighting						\$0	x			Covered in Site Section
Signage						\$0	x			Covered in Site Section
Fencing/Screening						\$0	x			Covered in Site Section
Drainage/Stormwater						\$0	x			Covered in Site Section
Paving, Curbing, Parking						\$0	x			Covered in Site Section
Utilities						\$0	x			Covered in Site Section
Ingress and Egress						\$0	x			Covered in Site Section
Misc						\$0				Covered in Site Section
Misc						\$0				Covered in Site Section
Subtotals	\$0	\$0	\$0	\$0	\$120	\$120				

Building Total All Groups	\$139,743
Data per year	2022 REF
Exterior	5.5%
Interior	20.0%
MEP/FP/VT	19.6%
Grounds	0.0%
All Groups	8.6%

	2023	2024	2025	2026	2027
Exterior	5.5%	74.2%	13.4%	3.6%	3.3%
Interior	20.0%	20.0%	20.0%	20.0%	20.0%
MEP/FP/VT	19.6%	19.6%	19.6%	19.6%	21.8%
Grounds	0.0%	0.0%	0.0%	0.0%	100.0%
All Groups	8.6%	62.3%	14.8%	7.1%	7.2%

Building Name	
Building 7	Confidential

Edgemere
Dallas, TX

Occupancy Classification	Construction Type	Year Constructed	Notes	ARCH Consultants, Ltd
IL	CC/MF/CMU	2002		4-Jan-2023

Number of Units	Number of Beds	Square footage	Notes	Number of Stories
30		42,486		3

Year 2022 REF

Exterior	Year	2022 REF
Exterior façade	2002	
Roofing	2002	
Windows	2002	\$10,000
Doors	2002	
Parapet, Fascia, Eaves	2002	
Gutters/Downspouts	2002	
Sealants	2002	
Foundation/Structural	2002	
Lighting	2002	
Building Frame	2002	
Balconies and Patios	2002	
Exterior stairs	2002	
Pergola/Trellis	2002	\$0
Misc	2002	
Subtotals		\$10,000

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
\$2,400	\$2,400	\$270,270	\$3,200	\$3,200	\$281,470				x	Repair Cementous Stucco Cracking, Prep and Paint, Repair Styrofoam Cast Window Sills, Prep and Paint, Repair Styrofoam Cast Architectural Detail, Prep and Paint
\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$6,000	x			Tile Roof replaced in 2020/2021
\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000			x		Unit operable windows show normal signs of wear but no reported issues. Common Area Exterior Metal Frame Windows have faded/worn
\$8,500	\$8,500	\$30,000	\$8,500	\$8,500	\$64,000			x		Common Area Exterior Metal Frame Doors and have faded/worn finishes. Unit large door style windows on first floor units have cracked seams and are leaking. Unit other exterior doors in fair condition showing normal wear but no reported issues
\$500	\$500	\$10,725	\$500	\$500	\$12,725			x		Soffit/Facia/Decorative wood supports should be refinished/painted in the next 5 years. Added to 2025 to coincide with Stucco Refinishing for efficiency
					\$0		x			Gutter and downspout sections are showing signs of wear and leaking. Select gutter sections have been complete with new custom 8 inch gutter due to roof water runoff rate which is the new site standard.
\$3,628	\$3,628	\$3,628	\$3,628	\$1,814	\$16,325				x	Select sealants need to be redone around windows and doors. Sealants around doors and windows has been replaced in select locations.
					\$0		x			No reported issues with foundation/building structure
\$1,800					\$1,800				x	Exterior Lighting is showing signs of wear with rust and finish deterioration
					\$0		x			Staff reported that there are no known issues with the building structure
\$2,200	\$2,200	\$2,200	\$2,200	\$2,200	\$11,000			x		First unit patios in fair condition and second/third floor balconies in fair condition.
					\$0		x			N/A
	\$24,000	\$24,000			\$48,000				x	Third floor units with trellises need to have wood components replaced. Wood is missing, electrical conduit is hanging unattached and wood is deteriorating
					\$0					
\$25,228	\$47,428	\$347,023	\$24,228	\$22,414	\$466,320					

Interior	Year	2022 REF
Common Area Finishes	2002	
Corridor Finishes	2002	
Resident Room Finishes	2002	
Back of House Finishes	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
						\$0	x			Elevator lobby refurbishment with corridors
						\$0		x		Corridors in fair condition, with new custom carpet in 2017/2018, doors, walls, ceiling, rails and woodwork are in fair condition.
						\$0	x			N/A
						\$0	x			N/A
\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000					Floor, wall and ceiling
					\$0		x			N/A
\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000					

MEPP/Vertical Transportation	Year	2022 REF
Mechanical	2002	
Roof Top Equipment	2002	
HVAC	2002	
Piping Mechanical	2002	
Electrical System	2002	
Lighting	2002	
Plumbing	2002	\$4,083
Valves	2002	\$826
Low Voltage	2002	
Equipment (Built-in)	2002	
Generator/EM Power	2002	
Elevators	2002	
Fire Protection	2002	
Fire Alarm	2002	
Sprinklers and Standpipes	2002	\$4,083
Misc	2002	
Misc	2002	
Subtotals		\$8,993

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
						\$0		x		Misc
						\$0	x			N/A
\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$75,000			x		About 50% of in unit heat pumps have been replaced. The remaining are original to the building. Additional replacements are included in the forecast
\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$15,000			x		Misc, normal maintenance and repair for heat pump system copper piping
\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$12,500		x			Misc, normal maintenance and repair for electrical system
\$2,750	\$2,750	\$2,750	\$2,750	\$2,750	\$13,750		x			N/A
\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$20,000		x			In unit fixtures replaced with unit turnover
\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000		x			Normal Maintenance, Shut off valve replacement
					\$0		x			N/A
					\$5,000	\$5,000		x		Laundry Equipment
					\$0		x			N/A
\$96,250	\$1,500	\$1,500	\$1,500	\$1,500	\$102,250			x		Elevator Finishes, Panel and Equipment are original and the site has begun a refresh cycle to upgrade finishes, panel and hydraulic pump replacement. No code issues were reported
\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$6,250		x			Normal Maintenance, no reported issues
\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000		x			Normal Maintenance, no reported issues
\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$16,000		x			Normal Maintenance, no reported issues
					\$0					
\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$6,000					Pipe Insulation
\$133,950	\$39,200	\$39,200	\$39,200	\$44,200	\$295,750					

Grounds	Year	2022 REF
Stoops/Pads	2002	
Sidewalks/Paths	2002	
Patios/Garden	2002	
Accessibility	2002	
Landscaping and Appurtenances	2002	
Lighting	2002	
Signage	2002	
Fencing/Screening	2002	
Drainage/Stormwater	2002	
Paving, Curbing, Parking	2002	
Utilities	2002	
Ingress and Egress	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
				\$120	\$120		x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
						\$0	x			Covered in Site Section
\$0	\$0	\$0	\$0	\$120	\$120					

Building Total All Groups \$18,993

\$164,178 \$91,628 \$391,223 \$68,428 \$71,734 \$787,190

Data per year	2022 REF
Exterior	5.4%
Interior	20.0%
MEP/FP/VT	45.3%
Grounds	0.0%
All Groups	20.9%

	2023	2024	2025	2026	2027
Exterior	5.4%	10.2%	74.4%	5.2%	4.8%
Interior	20.0%	20.0%	20.0%	20.0%	20.0%
MEP/FP/VT	45.3%	13.3%	13.3%	13.3%	14.9%
Grounds	0.0%	0.0%	0.0%	0.0%	100.0%
All Groups	20.9%	11.6%	49.7%	8.7%	9.1%

Building Name	
Building 8	Confidential

Edgemere
Dallas, TX

Occupancy Classification	Construction Type	Year Constructed	Notes	ARCH Consultants, Ltd
IL	CC/MF/CMU	2002		4-Jan-2023

Number of Units	Number of Beds	Square footage	Notes	Number of Stories
33		58,435		3

Year 2022 REF

Exterior	Year	2022 REF
Exterior façade	2002	
Roofing	2002	
Windows	2002	\$10,000
Doors	2002	
Parapet, Fascia, Eaves	2002	
Gutters/Downspouts	2002	
Sealants	2002	
Foundation/Structural	2002	
Lighting	2002	
Building Frame	2002	
Balconies and Patios	2002	
Exterior stairs	2002	
Pergola/Trellis	2002	
Misc	2002	
Subtotals		\$10,000

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
Exterior façade	\$2,400	\$2,400	\$345,114	\$4,400	\$4,400	\$358,714			x	Repair Cementous Stucco Cracking, Prep and Paint, Repair Styrofoam Cast Window Sills, Prep and Paint, Repair Styrofoam Cast Architectural Detail, Prep and Paint
Roofing	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$6,000	x			Tile Roof replaced in 2020/2021
Windows	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000		x		Unit operable windows show normal signs of wear but no reported issues. Common Area Exterior Metal Frame Windows have faded/worn finishes. Some exterior metal extrusions/mullions need replacement/repair
Doors	\$30,000	\$8,500	\$8,500	\$8,500	\$8,500	\$64,000		x		Common Area Exterior Metal Frame Doors and have faded/worn finishes. Unit large door style windows on first floor units have cracked seams and are leaking. Unit other exterior doors in fair condition showing normal wear but no reported issues
Parapet, Fascia, Eaves	\$2,400	\$2,400	\$13,695	\$1,200	\$1,200	\$20,895		x		Soffit/Fascia/Decorative wood supports should be refinished/painted in the next 5 years. Added to 2025 to coincide with Stucco Refinishing for efficiency
Gutters/Downspouts						\$0	x			Gutter and downspout sections are showing signs of wear and leaking. Select gutter sections have been complete with new custom 8 inch gutter due to roof water runoff rate which is the new site standard.
Sealants	\$5,133	\$5,133	\$5,133	\$5,133	\$2,567	\$23,100			x	Select sealants need to be redone around windows and doors. Sealants around doors and windows has been replaced in select locations.
Foundation/Structural						\$0	x			No reported issues with foundation/building structure
Lighting	\$7,200					\$7,200			x	Exterior Lighting is showing signs of wear with rust and finish deterioration
Building Frame						\$0	x			Staff reported that there are no known issues with the building structure
Balconies and Patios	\$2,200	\$2,200	\$2,200	\$2,200	\$2,200	\$11,000		x		First unit patios in fair condition and second/third floor balconies in fair condition.
Exterior stairs						\$0	x			N/A
Pergola/Trellis		\$12,000				\$12,000			x	Third floor units with trellises need to have wood structure replaced. Wood is missing, electrical conduit is hanging unattached and wood is deteriorating
Misc						\$0				
Subtotals	\$55,533	\$38,833	\$380,842	\$27,633	\$25,067	\$527,909				

Interior	Year	2022 REF
Common Area Finishes	2002	
Corridor Finishes	2002	
Resident Room Finishes	2002	
Back of House Finishes	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
Common Area Finishes						\$0	x			Elevator lobby refurbishment with corridors
Corridor Finishes						\$0		x		Corridors in fair condition, with new custom carpet in 2017/2018, doors, walls, ceiling, rails and woodwork are in fair condition.
Resident Room Finishes						\$0	x			N/A
Back of House Finishes						\$0	x			N/A
Misc	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$37,500	x			Floor, wall and ceiling
Misc						\$0	x			N/A
Subtotals	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$37,500				

MEPP/Vertical Transportation	Year	2022 REF
Mechanical	2002	
Roof Top Equipment	2002	
HVAC	2002	
Piping Mechanical	2002	
Electrical System	2002	
Lighting	2002	
Plumbing	2002	\$4,083
Valves	2002	\$826
Low Voltage Equipment (Built-in)	2002	
Generator/EM Power	2002	
Elevators	2002	
Fire Protection	2002	
Fire Alarm	2002	
Sprinklers and Standpipes	2002	\$4,083
Misc	2002	
Misc	2002	
Subtotals		\$8,993

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
Mechanical						\$0		x		Misc
Roof Top Equipment						\$0	x			N/A
HVAC	\$16,500	\$16,500	\$16,500	\$16,500	\$16,500	\$82,500		x		About 50% of in unit heat pumps have been replaced. The remaining are original to the building. Additional replacements are included in the forecast
Piping Mechanical	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$15,000		x		Misc, normal maintenance and repair for heat pump system copper piping
Electrical System	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$12,500	x			Misc, normal maintenance and repair for electrical system
Lighting	\$2,750	\$2,750	\$2,750	\$2,750	\$2,750	\$13,750	x			N/A
Plumbing	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$20,000	x			In unit fixtures replaced with unit turnover
Valves	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000	x			Normal Maintenance, Shut off valve replacement
Low Voltage Equipment (Built-in)						\$0	x			N/A
Generator/EM Power					\$5,000	\$5,000		x		Laundry Equipment
Elevators	\$3,000	\$96,250	\$1,500	\$1,500	\$1,500	\$103,750		x		Elevator Finishes, Panel and Equipment are original and the site has begun a refresh cycle to upgrade finishes, panel and hydraulic pump replacement. No code issues were reported
Fire Protection	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$6,250	x			Normal Maintenance, no reported issues
Fire Alarm	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000	x			Normal Maintenance, no reported issues
Sprinklers and Standpipes	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$16,000	x			Normal Maintenance, no reported issues
Misc						\$0				
Misc	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$6,000				Pipe Insulation
Subtotals	\$42,200	\$135,450	\$40,700	\$40,700	\$45,700	\$304,750				

Grounds	Year	2022 REF
Stoops/Pads	2002	
Sidewalks/Paths	2002	
Patios/Garden	2002	
Accessibility	2002	
Landscaping and Appurtenances	2002	
Lighting	2002	
Signage	2002	
Fencing/Screening	2002	
Drainage/Stormwater	2002	
Paving, Curbing, Parking	2002	
Utilities	2002	
Ingress and Egress	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

	2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments
Stoops/Pads						\$0	x			Covered in Site Section
Sidewalks/Paths						\$0	x			Covered in Site Section
Patios/Garden						\$0	x			Covered in Site Section
Accessibility					\$120	\$120	x			Covered in Site Section
Landscaping and Appurtenances						\$0	x			Covered in Site Section
Lighting						\$0	x			Covered in Site Section
Signage						\$0	x			Covered in Site Section
Fencing/Screening						\$0	x			Covered in Site Section
Drainage/Stormwater						\$0	x			Covered in Site Section
Paving, Curbing, Parking						\$0	x			Covered in Site Section
Utilities						\$0	x			Covered in Site Section
Ingress and Egress						\$0	x			Covered in Site Section
Misc						\$0				Covered in Site Section
Misc						\$0				Covered in Site Section
Subtotals	\$0	\$0	\$0	\$0	\$120	\$120				

Building Total All Groups \$18,993

\$105,233	\$181,783	\$429,042	\$75,833	\$78,387	\$870,279
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Data per year	2022 REF
Exterior	
Interior	
MEP/FP/VT	
Grounds	
All Groups	

	2023	2024	2025	2026	2027
Exterior	10.5%	7.4%	72.1%	5.2%	4.7%
Interior	20.0%	20.0%	20.0%	20.0%	20.0%
MEP/FP/VT	13.8%	44.4%	13.4%	13.4%	15.0%
Grounds	0.0%	0.0%	0.0%	0.0%	100.0%
All Groups	12.1%	20.9%	49.3%	8.7%	9.0%

Building Name		Occupancy Classification	Construction Type	Year Constructed	Notes	ARCH Consultants, Ltd						
Building 9		IL	CC/MF/CMU	2007		4-Jan-2023						
Edgemere Dallas, TX		48										
Year 2022 REF		2023	2024	2025	2026	2027	Totals	Good	Fair	Poor	Comments	
Number of Units		Number of Beds		Square footage		Notes		Number of Stories				
48		100,752		100,752				3				
Exterior												
Exterior façade	2007	\$2,400	\$2,400	\$673,596	\$5,400	\$5,400	\$689,196			x	Repair Cementous Stucco Cracking, Prep and Paint, Repair Styrofoam Cast Window Sills, Prep and Paint, Repair Styrofoam Cast Architectural Detail, Prep and Paint	
Roofing	2007	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$6,000	x			Tile Roof replaced in 2020/2021	
Windows	2007	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000		x		Unit operable windows show normal signs of wear but no reported issues. Common Area Exterior Metal Frame Windows have faded/worn finishes. Some exterior metal extrusions/mullions need replacement/repair	
Doors	2007	\$8,500	\$30,000	\$8,500	\$8,500	\$8,500	\$64,000		x		Common Area Exterior Metal Frame Doors and have faded/worn finishes. Unit large door style windows on first floor units have cracked seams and are leaking. Unit other exterior doors in fair condition showing normal wear but no reported issues	
Parapet, Fascia, Eaves	2007	\$2,400	\$2,400	\$26,730	\$1,800	\$1,800	\$35,130		x		Soffit/Fascia/Decorative wood supports should be refinished/painted in the next 5 years. Added to 2025 to coincide with Stucco Refinishing for efficiency	
Gutters/Downspouts	2007				\$4,000		\$4,000	x			Gutter and downspout sections are showing signs of wear and leaking. Select gutter sections have been complete with new custom 8 inch gutter due to roof water runoff rate which is the new site standard.	
Sealants	2007	\$7,894	\$7,894	\$7,894	\$7,894	\$3,947	\$35,525			x	Select sealants need to be redone around windows and doors. Sealants around doors and windows has been replaced in select locations.	
Foundation/Structural	2007						\$0	x			No reported issues with foundation/building structure	
Lighting	2007	\$2,700					\$2,700			x	Exterior Lighting is showing signs of wear with rust and finish deterioration	
Building Frame	2007						\$0	x			Staff reported that there are no known issues with the building structure	
Balconies and Patios	2007	\$2,200	\$2,200	\$2,200	\$2,200	\$2,200	\$11,000		x		First unit patios in fair condition and second/third floor balconies in fair condition.	
Exterior stairs	2007						\$0	x			N/A	
Pergola/Trellis	2007						\$0	x			Third floor units with trellises need to have wood components replaced. Wood is missing, electrical conduit is hanging unattached and wood is deteriorating	
Misc	2007						\$0					
Subtotals	\$10,000	\$32,294	\$51,094	\$725,120	\$35,994	\$28,047	\$872,551					
Interior												
Common Area Finishes	2007						\$0	x			Elevator lobby refurbishment with corridors	
Corridor Finishes	2007						\$0		x		Corridors in fair condition, with new custom carpet in 2017/2018, doors, walls, ceiling, rails and woodwork are in fair condition.	
Resident Room Finishes	2007						\$0	x			N/A	
Back of House Finishes	2007						\$0	x			N/A	
Misc	2007	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000	x			Floor, wall and ceiling	
Misc	2007						\$0	x			N/A	
Subtotals	\$0	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000					
MEPP/Vertical Transportation												
Mechanical	2007						\$0		x		Misc	
Roof Top Equipment	2007						\$0	x			N/A	
HVAC	2007	\$24,000	\$24,000	\$24,000	\$24,000	\$24,000	\$120,000		x		About 50% of in unit heat pumps have been replaced. The remaining are original to the building. Additional replacements are included in the forecast	
Piping Mechanical	2007	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$15,000		x		Misc, normal maintenance and repair for heat pump system copper piping	
Electrical System	2007	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$12,500	x			Misc, normal maintenance and repair for electrical system	
Lighting	2007	\$2,750	\$2,750	\$2,750	\$2,750	\$2,750	\$13,750	x			N/A	
Plumbing	2007	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$20,000	x			In unit fixtures replaced with unit turnover	
Valves	2007	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000	x			Normal Maintenance, Shut off valve replacement	
Low Voltage Equipment (Built-in)	2007					\$5,000	\$5,000	x			N/A	
Generator/EM Power	2007					\$0	\$0	x			N/A	
Elevators	2007	\$3,000	\$3,000	\$3,000	\$3,000	\$96,250	\$108,250		x		Elevator Finishes, Panel and Equipment are original and the site has begun a refresh cycle to upgrade finishes, panel and hydraulic pump replacement. No code issues were reported	
Fire Protection	2007	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$6,250	x			Normal Maintenance, no reported issues	
Fire Alarm	2007	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$12,000	x			Normal Maintenance, no reported issues	
Sprinklers and Standpipes	2007	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$16,000	x			Normal Maintenance, no reported issues	
Misc	2007						\$0					
Misc	2007	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$6,000				Pipe Insulation	
Subtotals	\$8,993	\$49,700	\$49,700	\$49,700	\$49,700	\$147,950	\$346,750					
Grounds												
Stoops/Pads	2007						\$0	x			Covered in Site Section	
Sidewalks/Paths	2007						\$0	x			Covered in Site Section	
Patios/Garden	2007						\$0	x			Covered in Site Section	
Accessibility	2007					\$120	\$120	x			Covered in Site Section	
Landscaping and Appurtenances	2007						\$0	x			Covered in Site Section	
Lighting	2007						\$0	x			Covered in Site Section	
Signage	2007						\$0	x			Covered in Site Section	
Fencing/Screening	2007						\$0	x			Covered in Site Section	
Drainage/Stormwater	2007						\$0	x			Covered in Site Section	
Paving, Curbing, Parking	2007						\$0	x			Covered in Site Section	
Utilities	2007						\$0	x			Covered in Site Section	
Ingress and Egress	2007						\$0	x			Covered in Site Section	
Misc	2007						\$0				Covered in Site Section	
Misc	2007						\$0				Covered in Site Section	
Subtotals	\$0	\$0	\$0	\$0	\$0	\$120	\$120					
Building Total All Groups		\$18,993	\$91,994	\$110,794	\$784,820	\$95,694	\$186,117	\$1,269,421				
Data per year		2023	2024	2025	2026	2027						
Exterior		3.7%	5.9%	83.1%	4.1%	3.2%						
Interior		20.0%	20.0%	20.0%	20.0%	20.0%						
MEPP/FP/VT		14.3%	14.3%	14.3%	14.3%	42.7%						
Grounds		0.0%	0.0%	0.0%	0.0%	100.0%						
All Groups		7.2%	8.7%	61.8%	7.5%	14.7%						

Building Name	
Health Center	Confidential

Occupancy Classification	Construction Type	Year Constructed	Notes	ARCH Consultants, Ltd
SN/AL/MC	CC/MF/CMU	2002		4-Jan-2023

Edgemere	
Dallas, TX	

Number of Units	Number of Beds	Square footage	Notes	Number of Stories
196	196	157,986		3 plus below grade parking deck

Year 2022 REF

Exterior	Year	2022 REF
Exterior façade	2002	
Roofing	2002	
Windows	2002	
Doors	2002	
Parapet, Fascia, Eaves	2002	
Gutters/Downspouts	2002	
Sealants	2002	
Foundation/Structural	2002	
Lighting	2002	
Building Frame	2002	
Balconies and Patios	2002	
Exterior stairs	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

2023 2024 2025 2026 2027 Totals						Good	Fair	Poor	Comments
\$2,500	\$504,504	\$4,900	\$4,900	\$4,900	\$521,704			x	Repair Cementus Stucco Cracking, Prep and Paint, Repair Styrofoam Cast Window Sills, Prep and Paint, Repair Styrofoam Cast Architectural Detail, Prep and Paint
\$556,875	\$3,500	\$3,500	\$3,500	\$3,500	\$570,875			X	Tile Roof replaced in 2020/2021, flat roof is nearing the end of its useful life. Regular patching/replacements are included.
\$5,000	\$5,000	\$35,000	\$5,000	\$5,000	\$55,000		x		Unit operable windows show normal signs of wear but no reported issues. Common Area Exterior Metal Frame Windows have faded/worn finishes.
					\$0		x		Exterior Metal Frame Doors and Windows need prep and paint. Some exterior metal extrusions/mullions need replacement/repair
\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$20,000		x		Parapet metal cap replaced within past few years, flashing to roof included in roofing
\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$6,000	x			Gutter and Downspouts at the end of useful life and needs replacement. Select gutter sections have been complete.
\$8,411	\$8,411	\$8,411	\$8,411	\$4,206	\$37,850			x	Select sealants need to be redone around windows and doors. Sealants around doors and windows has been replaced in select locations.
					\$0	x			No reported issues with foundation/building structure
\$2,000					\$2,000			x	Exterior Lighting is at the end of useful life and needs replacement.
					\$0	x			Staff reported that there are no known issues with the building structure
					\$0		x		First unit patios in fair condition and second/third floor balconies in good condition.
					\$0	x			N/A
					\$0			x	Third floor units with trellises need to have trellises replaced. Wood is missing, electrical conduit is hanging unattached and wood is deteriorating
					\$0				
\$579,986	\$526,615	\$57,011	\$27,011	\$22,806	\$1,213,429				

Interior		
Common Area Finishes	2002	
Corridor Finishes	2002	
Resident Room Finishes	2002	
Back of House Finishes	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

						Good	Fair	Poor	Comments
					\$0		x		Elevator lobby refurbishment with corridors
					\$0			x	Corridors in good condition, with new carpet in 2017/2018, will need to be painted/rewallpapered in 5+ years, doors and floors in good condition
					\$0	x			N/A
					\$0	x			N/A
\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000	x			Floor, wall and ceiling
					\$0	x			N/A
\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000				

MEPP/Vertical Transportation		
Mechanical	2002	
Roof Top Equipment	2002	
HVAC	2002	
Piping Mechanical	2002	
Electrical System	2002	
Lighting	2002	
Plumbing	2002	\$4,083
Valves	2002	\$826
Low Voltage	2002	
Equipment (Built-in)	2002	\$10,000
Generator/EM Power	2002	
Elevators	2002	
Fire Protection	2002	
Fire Alarm	2002	
Sprinklers and Standpipes	2002	\$4,083
Misc	2002	
Medical Alert System	2002	
Subtotals		\$18,993

						Good	Fair	Poor	Comments
					\$0			x	Misc
\$1,200,000	\$5,000	\$5,000	\$10,000	\$10,000	\$1,230,000	x	x		R22 Rooftop Condenser Units are original and need Replacement for Split System
\$1,300,000	\$3,000	\$3,000	\$5,000	\$5,000	\$1,316,000		x		Interior Units for SplitSystem are original to the building and are R22 and need to be replaced
\$4,500	\$4,500	\$4,500	\$4,500	\$4,500	\$22,500		x		Misc, normal maintenance and repair for heat pump system copper piping
\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$10,000	x			Misc, normal maintenance and repair for electrical system
\$4,500	\$4,500	\$4,500	\$4,500	\$4,500	\$22,500	x			Exterior Wall lighting is rusted and deteriorating and is at the end of its useful live
\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$30,000	x			In unit fixtures replaced with unit turnover
\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$6,000	x			Normal Maintenance, Shut off valve replacement
					\$0	x			N/A
\$10,000	\$10,000	\$20,000	\$25,000	\$50,000	\$115,000	x			Replace Kitchen Equipment
					\$0	x			N/A
\$5,000	\$5,000	\$5,000	\$192,500	\$2,000	\$209,500			x	Elevator Finishes, Panel and Equipment are original and the site has begun a refresh cycle to upgrade finishes, panel and hydrolic pump replacement. No code issues were reported
\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$7,500	x			Normal Maintenance, no reported issues
\$2,600	\$2,600	\$2,600	\$2,600	\$2,600	\$13,000	x			Normal Maintenance, no reported issues
\$3,400	\$3,400	\$3,400	\$3,400	\$3,400	\$17,000	x			Normal Maintenance, no reported issues
					\$0				
\$196,000	\$2,500	\$2,500	\$2,500	\$2,500	\$206,000			x	Phillips Lifetime Medical Alert system nearing the end of useful life with system experiencing failures and replacement components no longer being made
\$2,736,700	\$51,200	\$61,200	\$260,700	\$95,200	\$3,205,000				

Grounds		
Stoops/Pads	2002	
Sidewalks/Paths	2002	
Patios/Garden	2002	
Accessibility	2002	
Landscaping and Appurtenances	2002	
Lighting	2002	
Signage	2002	
Fencing/Screening	2002	
Drainage/Stormwater	2002	
Paving, Curbing, Parking	2002	
Utilities	2002	
Ingress and Egress	2002	
Misc	2002	
Misc	2002	
Subtotals		\$0

						Good	Fair	Poor	Comments
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
				\$250	\$250	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
					\$0	x			Covered in Site Section
\$0	\$0	\$0	\$0	\$250	\$250				

Building Total All Groups \$18,993

\$3,326,686 \$587,815 \$128,211 \$297,711 \$128,256 \$4,468,679

Data per year	2022 REF
Exterior	47.8%
Interior	20.0%
MEP/FP/VT	85.4%
Grounds	0.0%
All Groups	74.4%

2023	2024	2025	2026	2027
47.8%	43.4%	4.7%	2.2%	1.9%
20.0%	20.0%	20.0%	20.0%	20.0%
85.4%	1.6%	1.9%	8.1%	3.0%
0.0%	0.0%	0.0%	0.0%	100.0%
74.4%	13.2%	2.9%	6.7%	2.9%

Building/Area Name	
Site	
Confidential	
Edgemere	
Dallas, TX	

Acres	Impermeable Surfaces	Year Constructed	ARCH Consultants, Ltd
		2002	4-Jan-2023
Notes	Notes	Notes	

Site	Year	2022 REF	2023	2024	2025	2026	2027	Totals	Comments
Storm water / Sewer	2002		\$2,500		\$2,500		\$2,500	\$7,500	Storm water from the buildings and interior courtyards are drained into the parking garage into large sump pit areas. There are some drain connections that have separated from the downspouts from what appears to be ground settlement. Downspouts should be reconnected and areas investigated for further settlement issues.
Sanitary system	2002						\$10,000	\$10,000	
Electrical Service	2002				\$5,000			\$5,000	Utility Provided Transformers are in good condition and no reported issues
Water Service	2002			\$2,000			\$2,000	\$4,000	
Gas Service	2002						\$2,000	\$2,000	Gas Service for units is for units with fireplaces only and otherwise supports building operations for heating, laundry, kitchen, etc.
Other Utilities	2002				\$500		\$500	\$1,000	
Roadways	2002							\$0	
Concrete Walkways/Paths	2002		\$9,000	\$9,000	\$9,000	\$9,000	\$9,000	\$45,000	Concrete Sidewalks are in generally good condition. There are some repairs that have been made to sections of the sidewalk. Walkways have cracking and spalling at 50-60% of expansion joints. There is also sidewalk heaving at locations by large established trees. Area by loading dock has heaved upward of two inches and should be addressed
Paver Areas			\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$12,500	Relevel/replace pavers as they settle and heave due to tree roots
Site lighting	2002		\$5,000	\$5,000	\$25,000	\$5,000	\$5,000	\$45,000	Large light posts were replaced in 2021. Smaller accent lighting is original 120V and is near the end of its useful life.
IL Guest Parking/Entry Drive	2002		\$10,000	\$10,000	\$217,429			\$237,429	Signs of stamped concrete pitting and cracking. Sections have been previously repaired. Brick accents are in good condition will little wear or settling.
Health Center Guest Parking/Entry	2002					\$3,000		\$3,000	Parking lot and drive in good condition. Previous patched sections overlap and should be monitored for future issues. Parking restriping will need to be done in the next 5 years
Pergolas	2002	\$72,000		\$72,000		\$72,000		\$144,000	There are several pergolas throughout the site. Some are made from cedar, a combination of cedar and metal and a combination of cedar and metal with stone column enclosures.
Fencing/Screening	2002		\$97,500				\$5,000	\$102,500	Fence paint flaking with rust showing through. Sections of fence have rusted through at post connection and need to be repaired/replaced. This is particularly prevalent at the high retaining wall section behind building 9.
Retaining	2002	\$20,000	\$50,000	\$50,000	\$50,000	\$30,000	\$10,000	\$190,000	Retaining walls show areas of previous repair, cracking and deterioration of mortar. Some previous repairs have begun splitting apart again. This is particularly prevalent at two story retaining walls.
Stairs/Rails	2002		\$2,500			\$2,500		\$5,000	Stairs have signs of wear and cracking. Stair rails have flaking paint and signs of rust. Some rails have started rusting through at connection to concrete.
Landscaping	2002	\$79,967	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000	Landscaping is in good condition. Edgemere plans to undertake a \$680K investment to bring the grounds back up to previous award winning levels over several years. There are signs of site settlement and ground pitching back toward buildings in select locations that should be addressed
Signage	2002						\$10,000	\$10,000	Signage is in good condition but will need periodic maintenance over the next 5 years
Water Fountains	2002		\$25,000	\$1,200		\$1,200		\$27,400	
Water Feature/Pond	2002		\$15,000		\$5,000		\$5,000	\$25,000	
Paving & Curbing	2002					\$5,000		\$5,000	Curbs are in generally good condition. Painted sections will need to be redone in next 3-5 years in East Commons Guest lot, included in Striping
Parking/Striping	2002				\$1,000	\$5,000		\$6,000	Striping. Crosswalk and curb painting are in fair condition and will need to be redone in next 2-5 years at loading dock
Exterior Fountains	2002		\$10,000			\$10,000		\$20,000	Fountains are in overall fair condition but will require maintenance and upkeep. Some fountains in the retaining walls show signs of water seepage and not all water spouts are in working order.
Bench Replacement	2002							\$0	
Subtotals		\$171,967	\$239,000	\$161,700	\$327,929	\$155,200	\$73,500	\$957,329	

Data per year	2022 REF
Site	

2023	2024	2025	2026	2027	Totals
25.0%	16.9%	34.3%	16.2%	7.7%	100.0%

2. Site Visit Photographs

CONFIDENTIAL

Edgemere
Facility Assessment Report
Appendix 2



East Commons – Drive



East Commons – Canopy Column cladding



East Common – Parking Canopy



East Commons - Exterior



East Commons – Tile Roof



East Commons – Façade

Edgemere
Facility Assessment Report
Appendix 2



East Commons – Interior Entry



East Commons – Library



East Commons – Performing Arts Center



East Commons – Performing Arts Center Ceiling



East Commons – Corridor



East Commons – Main Entry

Edgemere
Facility Assessment Report
Appendix 2



West Commons - Exterior



West Commons - Exterior



West Commons - Exterior



West Commons - Exterior



West Commons - Exterior



West Commons - Pool Roof and Skylight

BAY000117

Edgemere
Facility Assessment Report
Appendix 2



West Commons – Gutter and Parapit



West Commons – Exterior Façade Cracking



West Commons – Flat Roof



West Commons – Flat Roof Exhaust



West Commons – Flat Roof



West Commons – Air Handler

Edgemere
Facility Assessment Report
Appendix 2



West Commons – Large Air Handler



West Commons – Built in Refrigerator and Freezer Compressors



West Commons – Greenhouse Air Handler



West Commons – Greenhouse Roof



West Commons – Greenhouse Air Handler



West Commons – Greenhouse Interior

Edgemere
Facility Assessment Report
Appendix 2



Edgemere
Facility Assessment Report
Appendix 2



West Commons – Interior – Main Stairway



West Commons – Interior – Main Stairway



West Commons – Interior – Upper Dining Room



West Commons – Interior – Upper Dining



West Commons – Interior – Upper Dining Servery



West Commons – Interior – Corridor

Edgemere
Facility Assessment Report
Appendix 2



West Commons – Interior – Kitchen



West Commons – Interior – Kitchen



West Commons – Interior – Refrigerator



West Commons – Interior – Lower Dining



West Commons – Interior – Bar



West Commons – Interior – Lower Dining BAY000122

Edgemere
Facility Assessment Report
Appendix 2



West Commons – Interior – Party Room



West Commons – Interior – Pool Room



West Commons – Interior – Crafts Room



West Commons – Interior – Conference Center



West Commons – Interior – Wine Room



West Commons – Interior – Exercise Room

Edgemere
Facility Assessment Report
Appendix 2



West Commons – Interior – Pool



West Commons – Interior – Locker Room



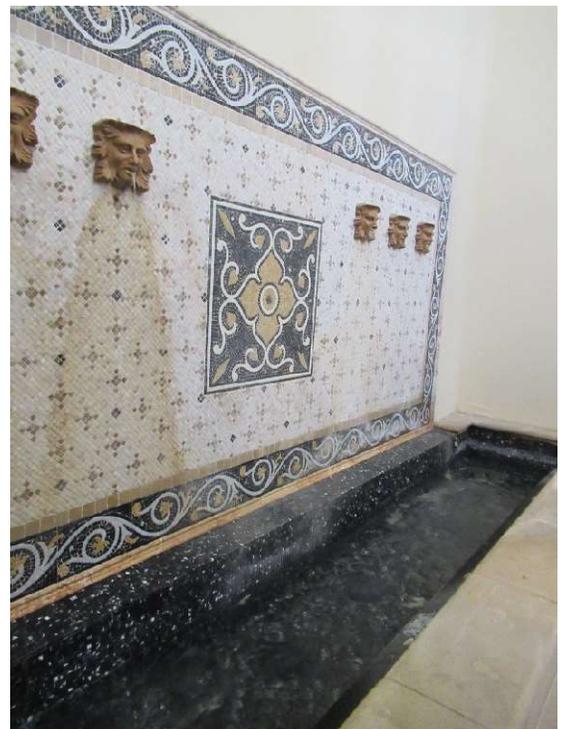
West Commons – Interior – Main Stairway Fountain



West Commons – Interior – Main Stairway



West Commons – Interior – Main Stairway Fountain



West Commons – Interior – Main Stairway Fountain

BA1000124

Edgemere
Facility Assessment Report
Appendix 2



West Commons – Interior – Back of House



West Commons – Interior – Laundry



West Commons – Interior – Main Stairway



West Commons – Interior – Main Stairway



West Commons – Interior – Main Stairway



West Commons – Interior – Main Stairway

Edgemere
Facility Assessment Report
Appendix 2



West Commons – Interior – Elevator Machine Room



West Commons – Interior – Elevator Machine Room



West Commons – Interior – Elevator Machine Room



West Commons – Interior – Electrical Room ATS



West Commons – Interior – Electrical Room ATS



West Commons – Interior – BAY 000126

Edgemere
Facility Assessment Report
Appendix 2



West Commons – Generator



West Commons – Generator



West Commons – Fire Pump Room



West Commons – Interior – Fire Pump Room



West Commons – Interior – Fire Pump Room



West Commons – Interior – BAY000127

Edgemere
Facility Assessment Report
Appendix 2



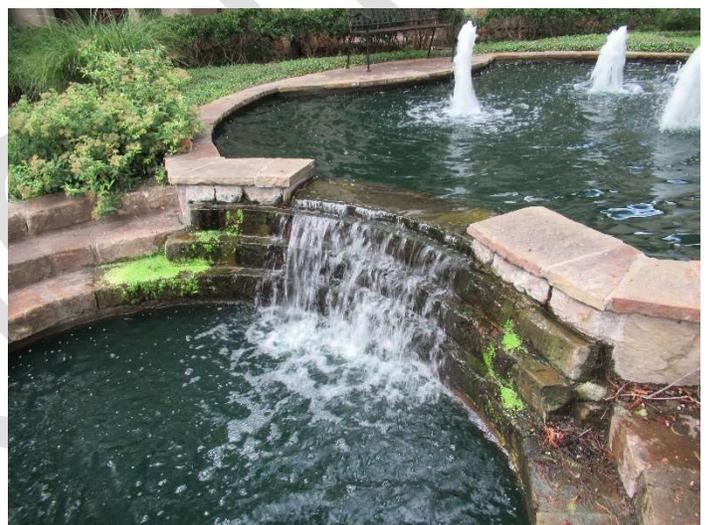
Site – Water Feature



Site – Walkway



Site – Retaining Wall



Site – Water Feature



Site – Retaining Wall



Site – Retaining Wall

Edgemere
Facility Assessment Report
Appendix 2



Site – Main Drive



Site – Main Drive



Site – Main Drive



Site – Landscaping and Walkway



Site – Pergola



Site – Landscaping and Walkway

Edgemere
Facility Assessment Report
Appendix 2



Unit – Non Renovated – Living Room



Unit – Non Renovated – Bedroom



Unit – Non Renovated – Kitchen



Unit – Non Renovated – Kitchen



Unit – Non Renovated – Bathroom



Unit – Non Renovated – Bathroom

BAY000130

Edgemere
Facility Assessment Report
Appendix 2



Unit – Model Unit – Living Room



Unit – Model Unit – Living Room/Kitchen



Unit – Model Unit – Kitchen



Unit – Model Unit – Bathroom



Unit – Model Unit – Bedroom



Unit – Model Unit – Bathroom

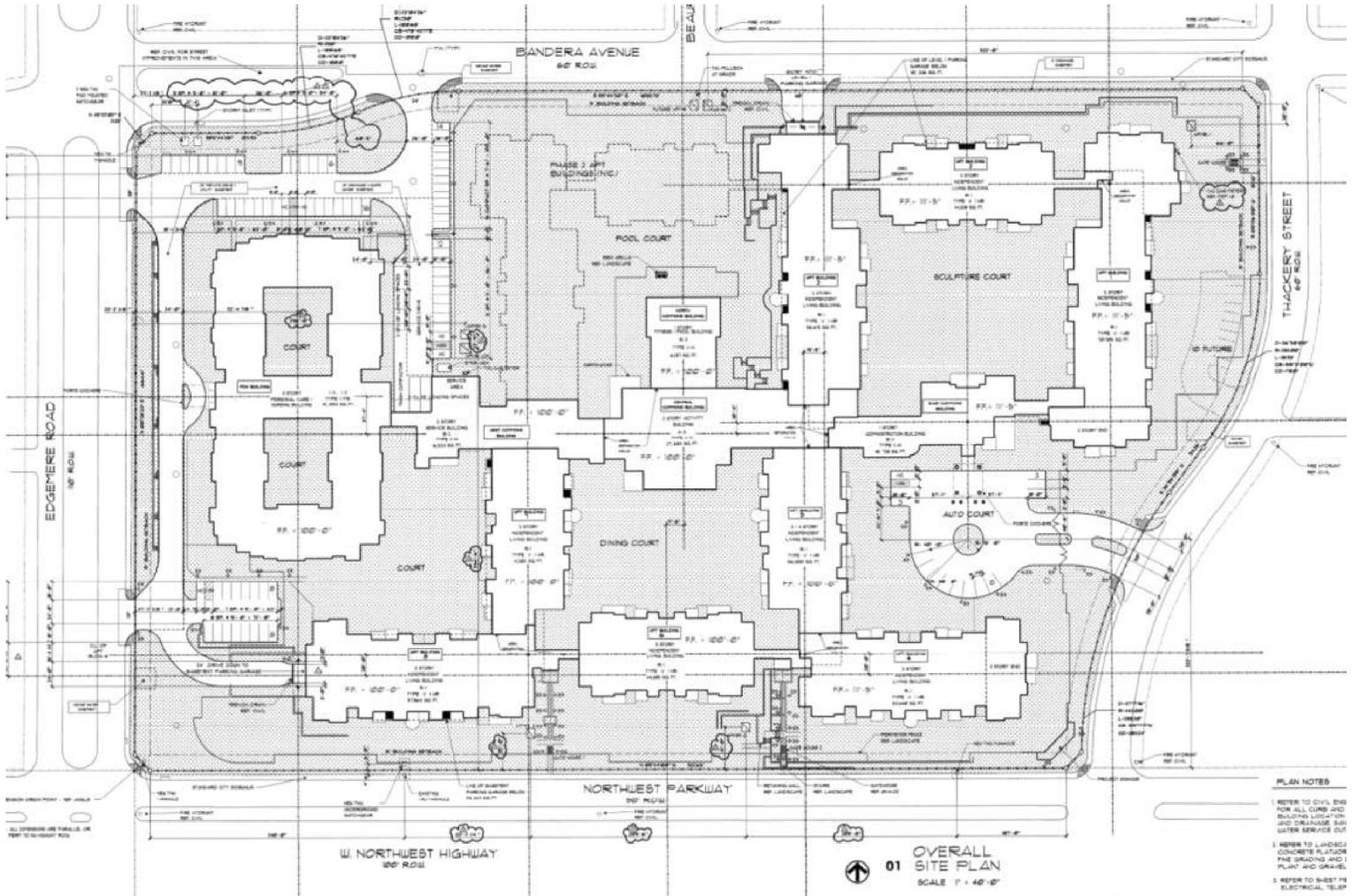
BAY000131

3. Site Plan with Building Labels

CONFIDENTIAL

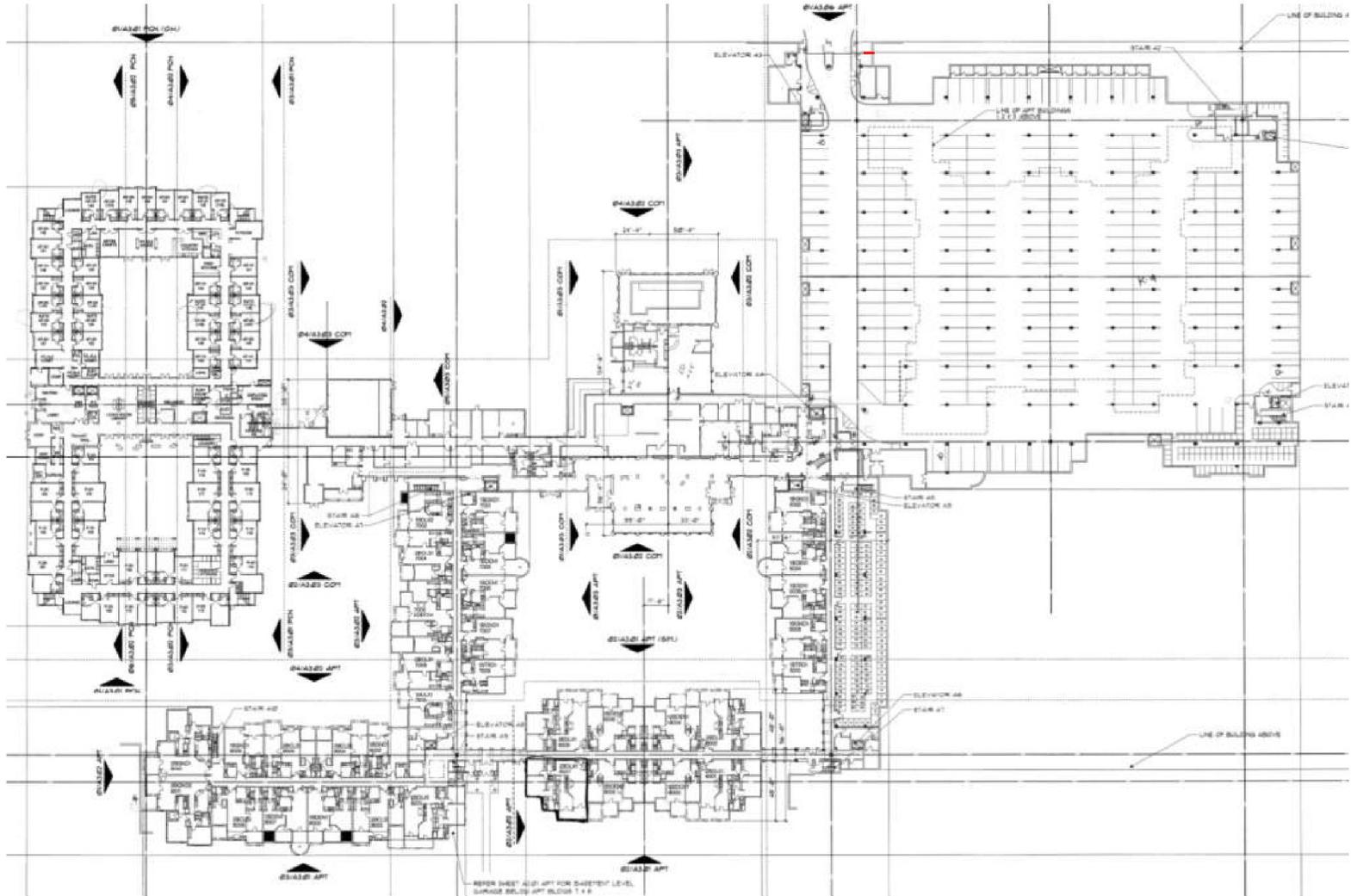
IL/AL/SNF/MC Building

Site Plan:



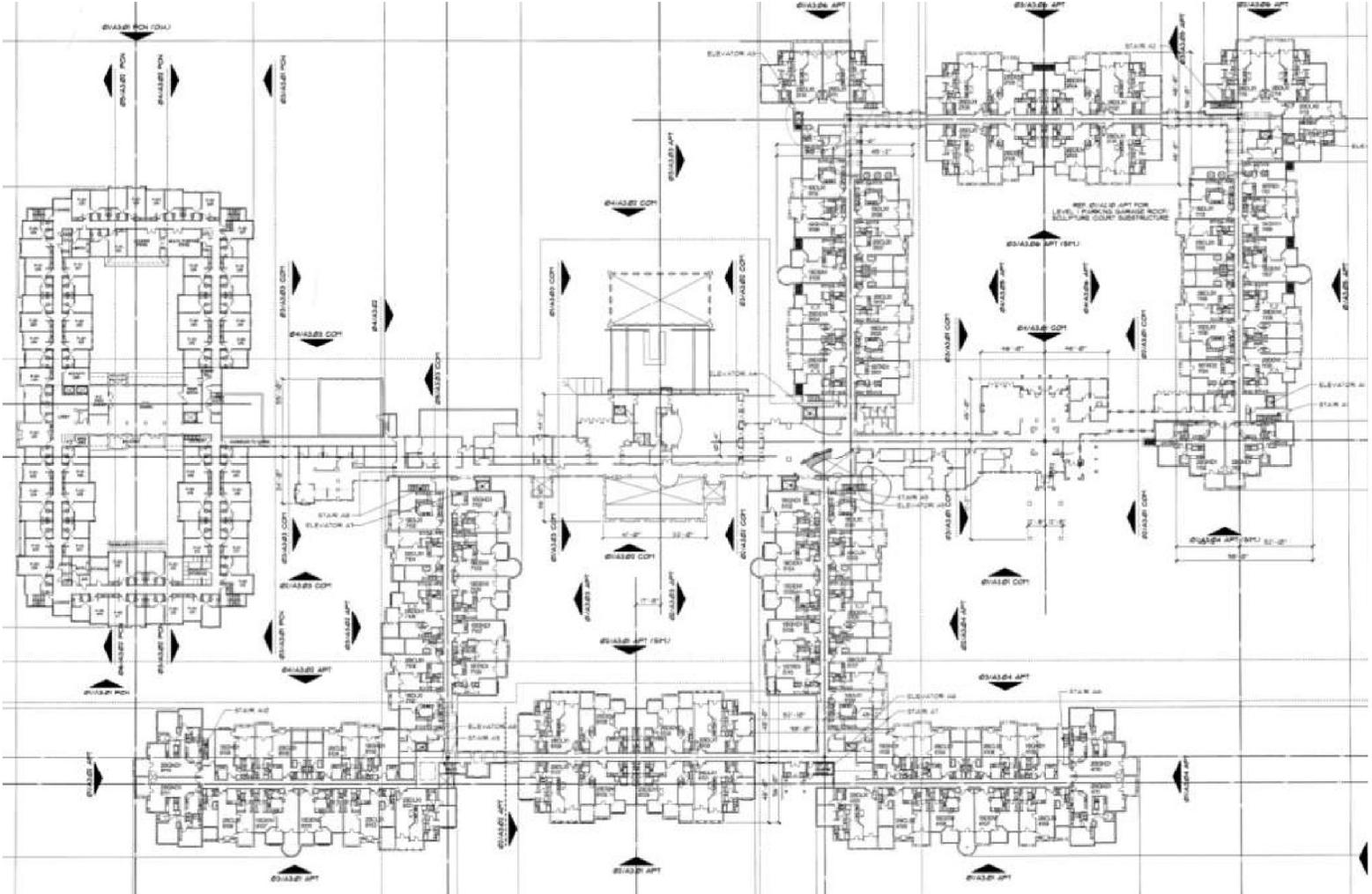
IL/AL/SNF/MC Building

Ground Level Plan:



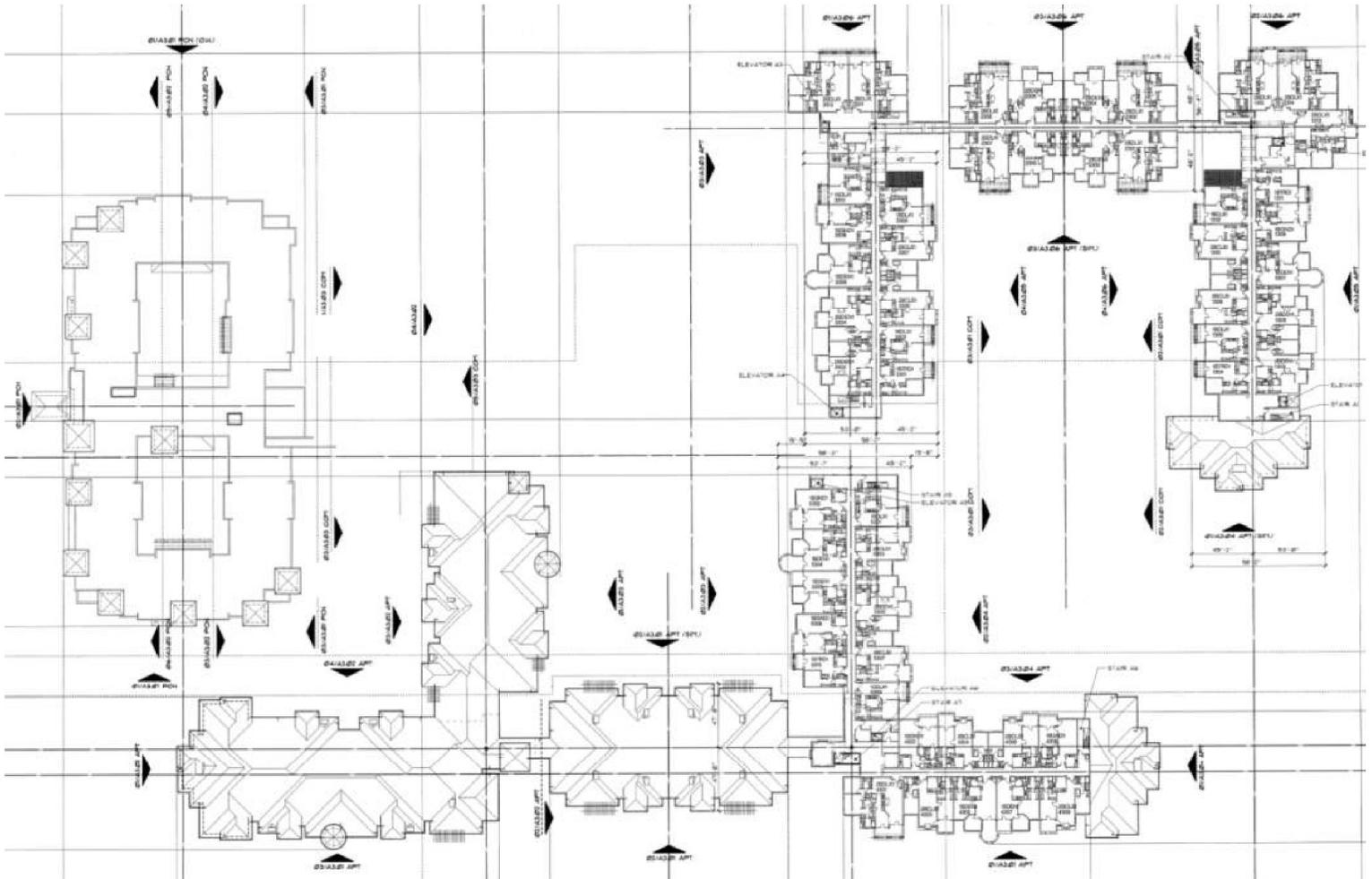
IL/AL/SNF/MC Building

2nd Level Plan:



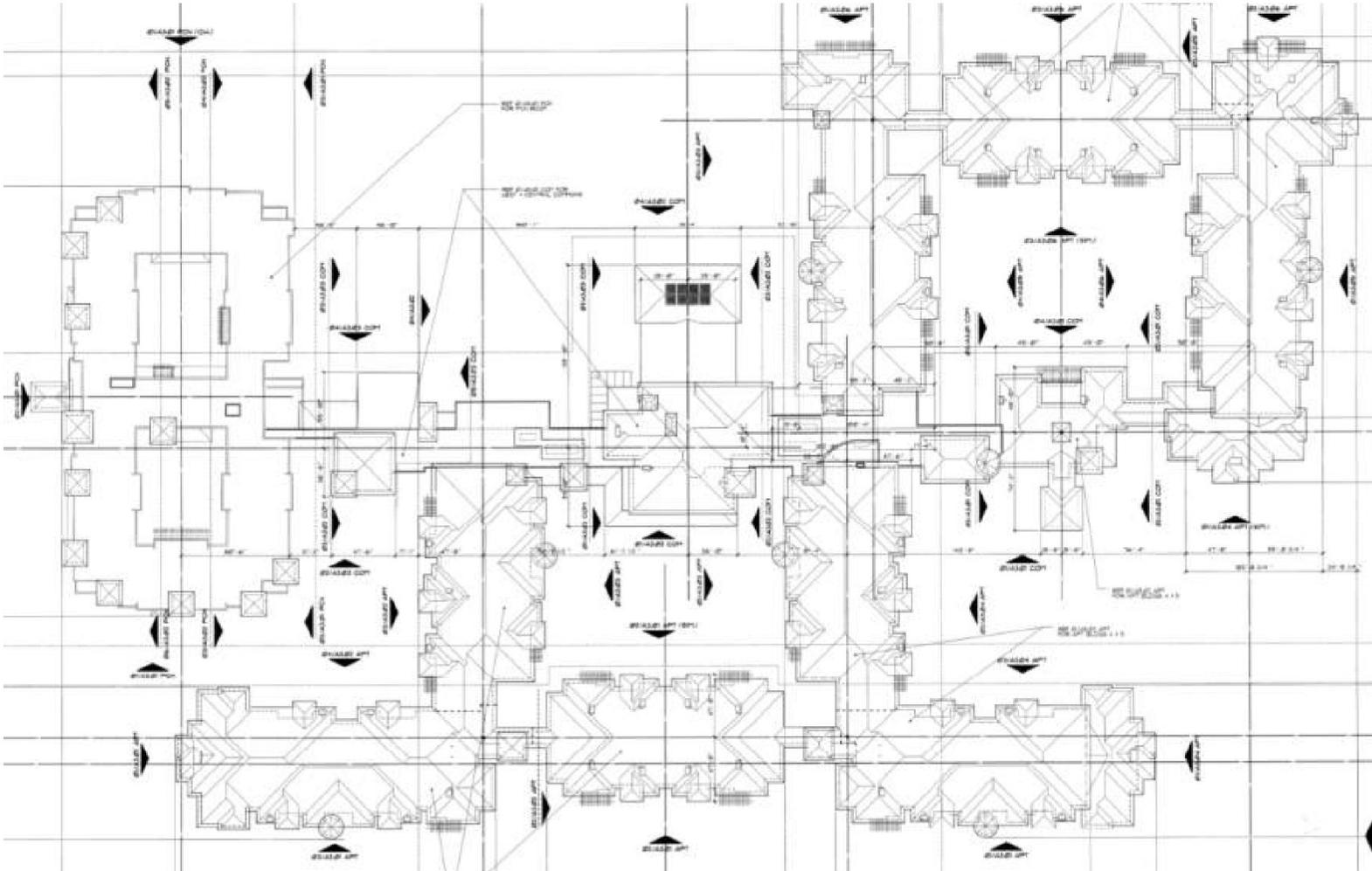
IL/AL/SNF/MC Building

4th Level Plan:



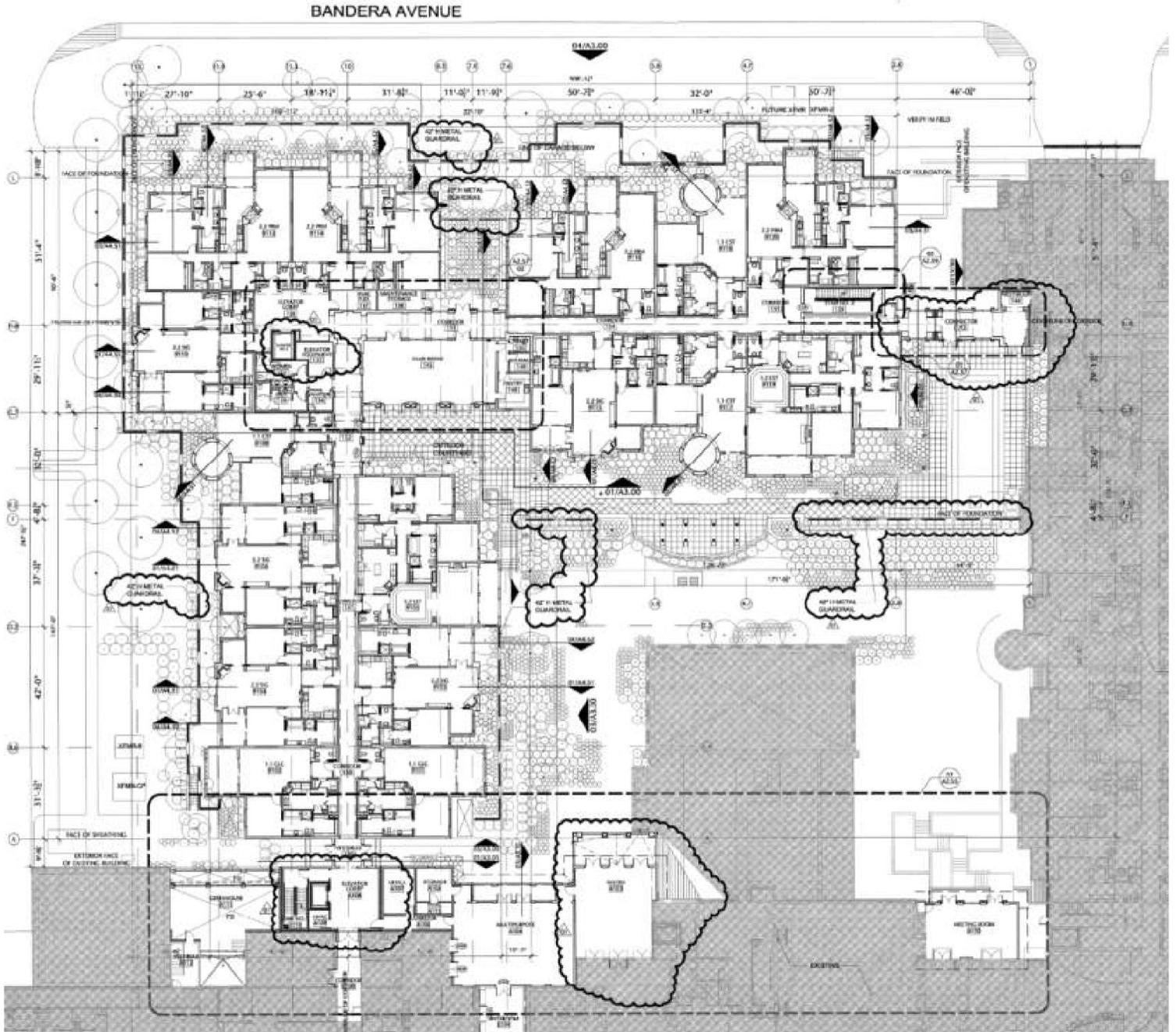
IL/AL/SNF/MC Building

Roof Plan:



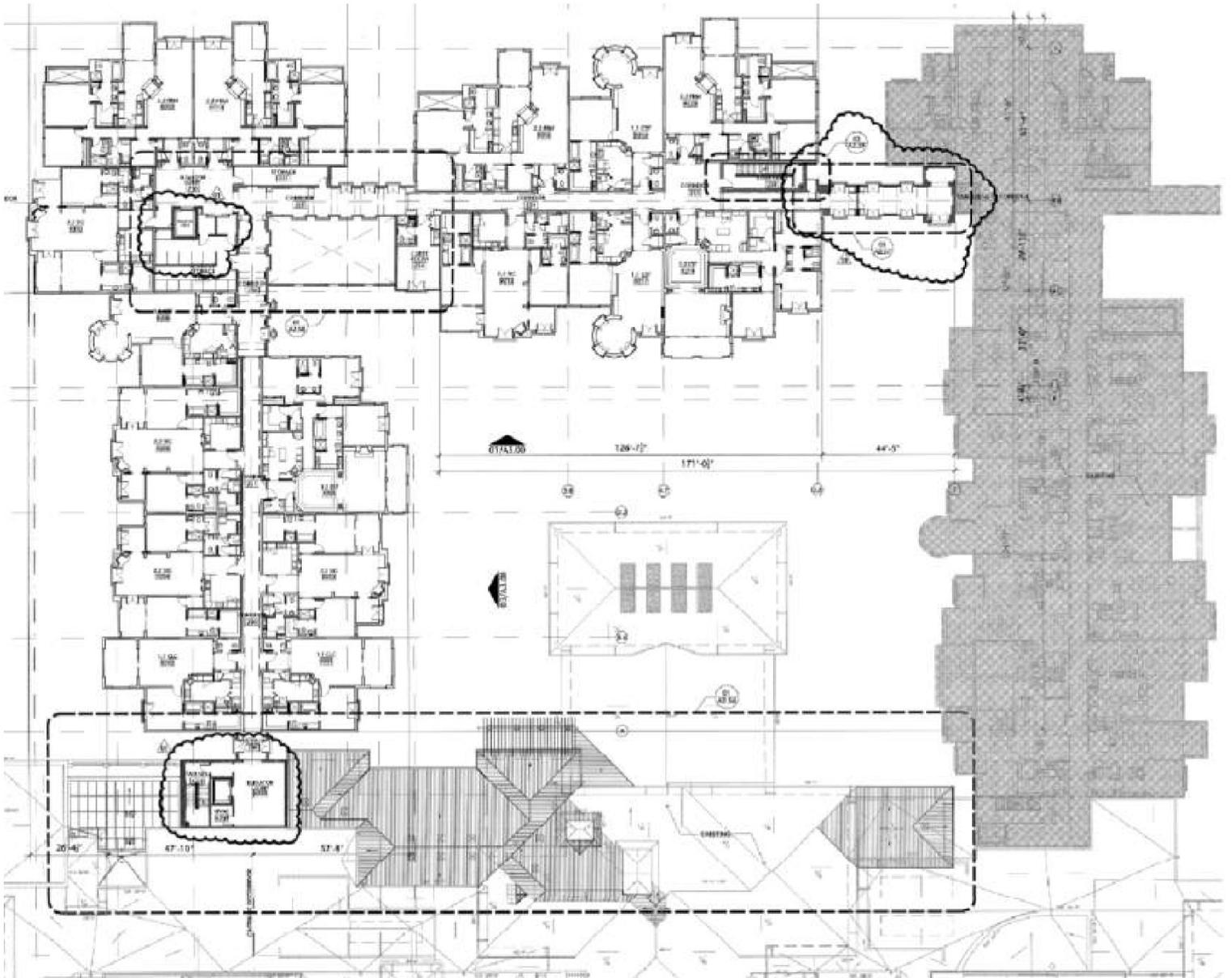
IL/AL/SNF/MC Building

Phase II IL First Level Floor Plan :



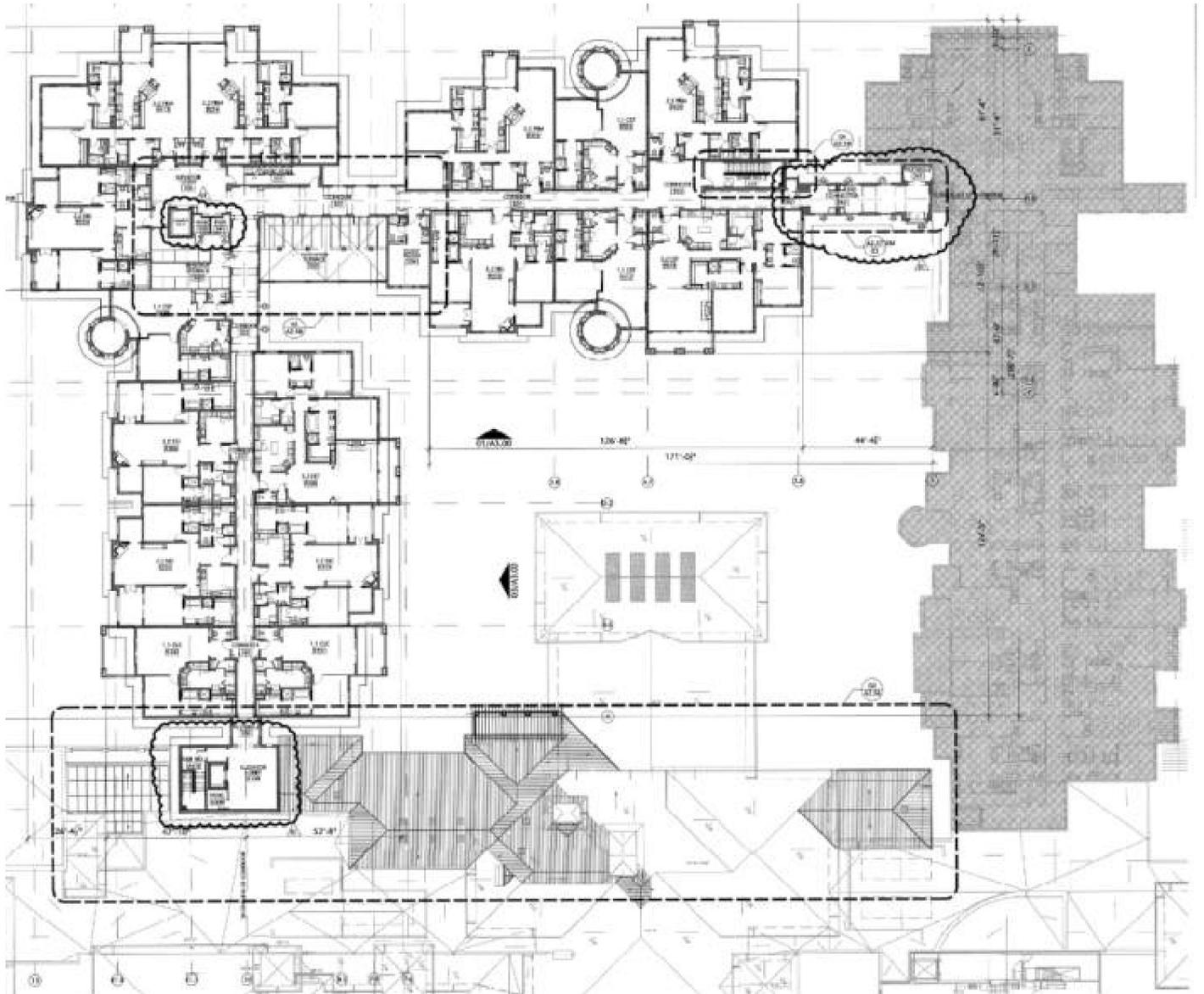
IL/AL/SNF/MC Building

Phase II IL Second Level Floor Plan :



IL/AL/SNF/MC Building

Phase II IL Third Level Floor Plan:



Landlord's

Exhibit 3

for February 21-23, 2023 hearing

Exhibit 3

(with exhibits 3-A, 3-B, 3-C, 3-D)

Amended Declaration of Daniel Polsky, dated _____, with
Exhibits A-D (WILL BE FILED UNDER SEAL)

Original Declaration of Daniel Polsky, dated February 14, 2023, is
available as Exhibit A to Dkt. No. 1203 (SEALED)

Landlord's

Exhibit 5

for February 21-23, 2023 hearing

JACKSON WALKER LLP
Michael S. Held (State Bar No. 09388150)
Jennifer F. Wertz (State Bar No. 24072822)
J. Machir Stull (State Bar No. 24070697)
2323 Ross Ave., Suite 600
Dallas, Texas 75201
Telephone: (214) 953-6000
Facsimile: (214) 953-5822

LEVENFELD PEARLSTEIN, LLC
Eileen M. Sethna, Esq. (admitted *pro hac vice*)
Harold D. Israel, Esq. (admitted *pro hac vice*)
Elizabeth B. Vandesteeg, Esq. (admitted *pro hac vice*)
120 S. Riverside Plaza, Ste. 1800
Chicago, Illinois 60606
Telephone: (312) 346-8380
Facsimile: (312) 346-8634

Counsel for Intercity Investment Properties, Inc.

Counsel for Intercity Investment Properties, Inc.

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

In re:)
) Chapter 11
)
NORTHWEST SENIOR HOUSING)
CORPORATION, *et al.*¹) Case No. 22-30659 (MVL)
)
) (Jointly Administered)
Debtors.)
)
)

DECLARATION OF NICHOLAS P. HANNON IN SUPPORT OF 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

I, Nicholas P. Hannon, hereby declare under 28 U.S.C. § 1764, as follows:

1. I make this declaration in support of 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) Plan Sponsors Third Amended Plan of Reorganization Dated December 19, 2022 (the “Objection”).

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) (the “Edgemere”) and Senior Quality Lifestyles Corporation (2669) (“SQLC”). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

2. Unless stated otherwise, the information contained in this Declaration is of my own personal knowledge or from the business records of Intercity Investment Properties, Inc. ("Intercity," or the "Landlord") maintained in the ordinary course of its business, as well as information derived from reviews of such documents performed by me or at my direction and supervision.

3. I am the Executive Vice President of Intercity, a family owned real estate asset investment and management company based in Dallas, Texas. I have served in my role as Executive Vice President of Intercity since 2012. I have approximately fifty years of experience in the commercial real estate industry. Prior to joining Intercity, I held similar roles with commercial real estate asset management and development companies. For example, from 2006-12, I was the Senior Vice President-Asset Management, Leasing, Development for Territory, Inc., a retail shopping center development, management, and brokerage company. Prior to that, I was a Vice President-Development for Montecito Companies, a real estate holdings company that transitioned to merchant building projects for portfolio sales.

4. Other relevant prior roles I have held include serving as Senior Vice President-Asset Management for NCS Commercial, Atlanta, GA a commercial real estate brokerage and consulting firm (1996-2003); Managing Director-Asset Manager for Cornerstone Realty Advisers, a major life insurance provider with significant REO holdings throughout the United States (1994-96); and Vice President-Asset Manager for Mutual of New York, another major life insurance provider with significant REO holdings (1992-94) among others.

5. In my role as Intercity's Executive Vice President, I oversee and participate in negotiating commercial and ground leases for Intercity properties with prospective tenants, and oversee management of Intercity's portfolio of properties, human resources, accounting, among

other management functions. For Intercity's leased properties, I oversee and manage lease improvements, lease enforcement and compliance, and insurance review, among other responsibilities.

6. As its Executive Vice President, I am one of the custodians of Intercity's books, records, and files relating to the use and occupancy of leased properties, including those relevant to the Lease² for the Edgemere. I am also personally familiar with the Edgemere property.

A. History of the Lease

7. The real property where the Debtor operates its continuing care retirement community business under the name "Edgemere" is an approximately 1-million square foot property situated on a 16.25-acre campus in Dallas's Highland Park neighborhood. Prior to the construction of the Edgemere, the property at which the Edgemere was constructed had been developed as multi-family residential buildings.

8. In the spring of 1997, Intercity was approached by Greystone Communities, Inc. ("Greystone"), a member in a joint venture known as "Northwest Lifecare Joint Venture," ("NLJV") proposing to demolish the existing apartment buildings at the now-site of the Edgemere and develop the land into a senior living community. Intercity and NLJV ultimately entered into non-binding letter of intent dated June 9, 1997 (attached here as **Exhibit A**) and subsequently then entered into a Ground Lease Option Agreement dated September 9, 1997 (the "Option Agreement") (attached here as **Exhibit B**).

9. The Option Agreement was specifically conditioned upon the optionee procuring \$110 million in municipal bond financing, and in addition thereto, demonstrable evidence that

² Capitalized terms not defined in this Declaration bear the meanings given to them in the Objection.

Greystone had significant and successful experience and success in raising debt, constructing a community, and managing communities in other cities.

10. On May 20, 1999, NLJV assigned the Option Agreement to debtor Northwest Senior Housing Corporation (“Debtor”). A copy of the assignment agreement is attached here as **Exhibit C**. There was a further amendment to the ground lease option agreement, dated October 1, 1999, attached hereto as **Exhibit D**. Thereafter, upon resolution of remaining conditions, the Debtor exercised its ground lease option under the Option Agreement on November 5, 1999.

11. Thereafter in November 1999, Intercity and the Debtor entered into the Lease, for a term of 55 years, under which Intercity is landlord and the Debtor is tenant. A copy of the Lease is attached here as **Exhibit E**. Prerequisites to enter into the Lease included the following, as referenced in previously-produced documents:

- a. \$3.0 million in equity capital (ICI 0000025);
- b. Completion of \$118.080 million in bond financing that included public reporting requirements (*id.*; ICI 000632);
- c. References (ICI 0003756); and
- d. Prior years audited financial statements (*Id.*).

B. Intercity’s Ordinary Course of Business Dealings with Prospective Tenants and Lease Assignees

12. In the ordinary course of its business, Intercity negotiates the terms of leases (or proposed lease assignments) for its properties with prospective tenants and assignees, and during such negotiations seeks to minimize its own risk exposure if a prospective tenant enters into a lease with Intercity and is later unable (or unwilling) to perform its monetary and nonmonetary obligations under that lease.

13. As part of this negotiation process, Intercity conducts due diligence on its prospective tenants to understand their financial and operational ability to perform under a

proposed lease, including an assessment of the prospective tenant's creditworthiness. In the event that Intercity's due diligence produces concerns regarding a tenant's financial ability to perform under a lease, Intercity ordinarily requires that the prospective tenant offer credit enhancements to mitigate potential risks to Intercity as a landlord. Common examples of credit enhancements required by Intercity include increased security deposits; irrevocable letters of credit; and third-party guaranties, and in some instances a combination of two or more credit enhancements are required.

14. One example of a case in which due diligence produces concerns regarding a prospective tenant's or assignee's financial ability to perform is when the prospective tenant is a newly-formed entity, formed for the purpose of acquiring property; particularly for a property requiring significant capital expenditure investments. In a case like this, Intercity would typically require at least one, if not multiple, credit enhancements, including requiring the tenant entity make a security deposit commensurate with the credit evaluation of the tenant; require a continuing guaranty from an adequately-financed parent, affiliate, or principal of the prospective tenant; or an irrevocable letter of credit for Intercity's benefit to cover tenant's lease obligation over the term of the lease.

15. In the case of the Edgemere, such credit enhancements are not only appropriate in my experience and opinion, but they are also absolutely necessary to ensure that the Purchaser can provide adequate assurance of future performance under the Lease, particularly because the Purchaser is a newly-formed entity seeking to acquire a distressed asset that requires significant repairs and maintenance and other capital expenditure investments now and in the future.

C. Edgemere Property Condition Issues and the Purchaser's Adequate Assurance Proposal

16. With respect to the Edgemere, Intercity is aware—after an inspection of the Edgemere premises conducted by Terracon, resulting in an inspection report dated January 6, 2023 (the “Terracon Report”) (a copy of which is attached here as **Exhibit F**), and upon review of an October 15, 2021, Facility Assessment Report (the “Plante Moran Report”) (a copy of which is attached here as **Exhibit G**) prepared by Plante Moran—that the Property has not been maintained in good condition as required under the Lease,³ and the Property requires a significant financial commitment to investigate systems at the Edgemere, make necessary immediate repairs, replacements, and remediation of failed and failing systems, structures, and surfaces.

17. On December 16, 2022, I received a copy of a 3-page letter, with 7 pages of attachments, from Bay 9 Holdings LLC (the “Purchaser”) (the “Adequate Assurance Letter”), purporting to provide evidence of adequate assurance of future performance by the Purchaser under the Lease, as I understand is required under the Bankruptcy Code. A copy of the Adequate Assurance Letter is attached here as **Exhibit H**.

18. The Adequate Assurance Letter contains stale financial commitments from Lapis Advisers, LP, who is purportedly Purchaser's sponsor or parent, as well as vague and non-committal information relative to the narrative of the Purchaser's intent to purchase the Property and identifying The Long Hill Company (“Long Hill”) as proposed operator of the Debtor's business at the Property, and offers no viable plan to go forward and operate the Property.

19. On January 6, 2023, the Purchaser provided additional information to Intercity, including projections offered by The Long Hill Company (“Long Hill”). I am not aware of any

³ See 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. 1023).

firm commitment by Long Hill to invest **any** money into the immediate- and near-term needs to repair the condition, order, and safety of the Property. Nor is the Purchaser offering any credit enhancements necessary for a lease assignment for a property (and business) in distress such as the Edgemere's where the proposed purchaser is a newly-formed entity with no financial history or standalone creditworthiness. In contrast, Debtor had at least \$3.0 million in available equity capital, as well as substantial bond financing, at the inception of the Lease.

20. Additionally, the financial projections forecasted by Long Hill are highly aggressive in their assumptions that the Debtor's operation at the Edgemere will not sustain significant attrition in labor and occupancies when it is being converted from a refundable entrance fee deposit CCRC business model to a monthly rental senior living facility business model. Nevertheless, the financial projections assume that the Purchaser's business at the Edgemere will generate positive cash flow on day one, without any firm commitment or evidence of creditworthiness, or the ability to borrow money to shore up unforeseen—and likely—financial modeling deficits and cash shortfalls.

21. In short, Intercity requires more assurance that the Purchaser will generate sufficient cash flow to perform Lease obligations over the balance of the 31 years left on the Lease until 2054, including but not limited to the ability to: (i) pay annual rent adjustments and real estate taxes; and (ii) maintain the physical condition of the Property in good repair to keep it in compliance with the Lease; and (iii) to comply with all other requirements of the Lease.

22. Based on the scant information provided in support of the Purchaser's assertion that it has provided adequate assurance of future performance under the Lease, and based on what Intercity does know about the Purchaser and its projections for its business, Intercity should be provided credit enhancements, in the form of at least the following: (a) an irrevocable letter of

credit for Intercity's benefit of no less than a range of one to two years of rent; (b) a continuing guaranty of the Purchaser's parent or other third party with demonstrable, committed liquidity to perform all obligations under the Lease; and (c) a rent escrow including a minimum of not less than one (1) year of rent payments to remain in a state of constant replenishment. Even if the Purchaser were to provide these credit enhancements to Intercity in connection with the assignment of the Lease, I believe there remains a substantial question as to whether, outside of a bankruptcy proceeding, Intercity would agree to an assignment of the Lease on such terms in the ordinary course of its business.

23. Given the foregoing, the Purchaser's proposed showing of adequate assurance of future performance would not be sufficient in a non-bankruptcy setting to assure the Landlord that Purchaser could perform under the lease. Additional security is required as neither Purchaser nor its equity sponsor has: (i) Greystone's experience in the senior living space, (ii) the committed equity capital (as increased to, at a minimum, reflect 2023 dollars), (iii) the committed debt capital, and (iv) the quality of its references compared to Greystone. Greystone was also going to be replacing the existing apartment buildings with a newly constructed updated campus of improvements, all of which would immediately belong to Intercity. As presented, however, the Purchaser has not provided Intercity with adequate assurance of its future performance under the Lease (including, but limited to, its ability to properly maintain those improvements), and as such, the Plan, as currently proposed, should not be confirmed and assignment of the Lease should not be approved.

Landlord's

Exhibit 5-A

for February 21-23, 2023 hearing

EXHIBIT A

NORTHWEST LIFECARE JOINT VENTURE
222 W. Las Colinas Blvd.
Suite 2100
Irving, Texas 75039
(972) 402-3700

June 9, 1997

Intercity Investments, Inc.
4301 Westside Drive
Dallas, Texas 75209

ATTN: Mr. Jordan

RE: The western 16.25 acres of Lot 7/5464, Preston Village Apartments,
Northwest Highway and Thackery, Dallas, Texas
(the "Site") as more specifically described on Exhibit A

Dear Mr. Jordan:

This letter constitutes a non-binding letter of intent concerning creation of a three year option agreement (the "Option Agreement") pertaining to the creation of a fifty-five (55) year ground lease of the Site. Both parties mutually agree to negotiate in good faith to achieve the objectives set forth herein. We recognize that this letter of intent cannot possibly contain all of the material terms with respect to the contemplated transactions. Neither party shall be bound until definitive agreements are signed by both parties.

We intend to develop the Site as a first class three story retirement center (the "Project").

1. Developer and Ultimate Ground Lessee

Northwest Lifecare Joint Venture (the "JV") intends to ground lease the Site. The JV is comprised of Greystone Communities, Inc. ("Greystone"), Michael B. Lanahan, President, and Northwest Lifecare Associates, Ltd., Alan T. Gregory, general partner. Prior to, or upon closing of, the Bond Financing (see section 3) the JV will convey its rights as ground lessee under the Ground Lease to a not-for-profit tax-exempt corporation (the "NFP Corp.") which will own and operate the Project, as hereinafter described. Greystone and Northwest Lifecare Associates, Ltd. will contract with the NFP Corp. for development, management and financial services and such services shall not be assigned to unrelated third parties.

2. The Project

The Project will consist of a residential component containing approximately 220 independent living units (the "Independent Living Center"), an assisted living center consisting of approximately 77 assisted living units (the "Assisted Living Center"), a health center consisting of approximately 60 skilled nursing beds (the "Health Center") and an approximately 25,000 square foot Commons Building. The foregoing unit projections are working estimates and may increase or decrease depending upon, among other things, final architectural requirements and final City of Dallas Planning and Zoning approvals. The procurement of such approvals shall be the responsibility of Greystone as the project developer, however, Intercity will provide reasonable access to the Site, and requisite authority, in connection with the performance of such pre-development activities.

The project will be operated on a "life care" concept, which recognizes that the needs of elderly residents vary along a continuum from independent living to increasing health care needs. A range of living options will be available to address the physical, social, psychological and emotional needs of residents. Levels of care to be provided will reflect the varying levels of intensity of care needed to meet changing needs of the residents. All applications for residency will be considered equally without regard to an individual's marital status, race, sex, creed or national origin. The Project will be designed to meet all applicable building codes, State of Texas health and safety codes, as well as The Fair Housing Act of 1988 and The Americans with Disabilities Act. In addition, the Project will be designed to incorporate many "senior friendly" features including, but not limited to, lever hardware, emergency alert systems, special bathing facilities and front control appliances.

3. The Option Agreement

The parties shall negotiate the terms and provisions of the Option Agreement, and execute same, within ninety (90) days from the date of this letter agreement. The Option Agreement shall include:

- a. The lease agreement (the "Ground Lease") containing the material terms set forth in paragraph 5 hereof shall be negotiated as to form and attached as an exhibit to the Option Agreement.
- b. An option payment of \$100,000 shall be paid upon execution of the Option Agreement.
- c. The initial term of the Option Agreement shall be six (6) months. The JV may extend the term of the Option Agreement for five (5) additional six (6) month terms provided that the JV shall be required to pay additional option payments of \$100,000 each, prior to the commencement of any extension.

4. Site Evaluation, Pre-Sale and Bond Financing

To facilitate the development the JV will undertake the following activities during the term of the Option Agreement:

- a. Underwrite approximately \$3 million in equity capital required for development of the Project within ninety (90) days following execution of the Option Agreement.
- b. The Bond Financing will be completed prior to exercise of the option set forth in the Option Agreement.
- c. Either before, or, upon exercise of the option the tenant under the Ground Lease shall become the NFP Corp.
- d. The JV shall pay \$25,000 upon execution of this letter of intent, which shall be applied to the consideration due under the Option Agreement or which is refundable if the parties fail to execute a mutually agreeable Option Agreement.

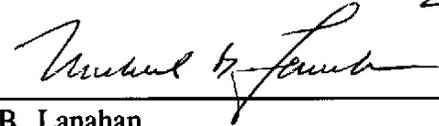
5. The Ground Lease

As you know, we would prefer the outright purchase of the Site, however, we understand that your circumstances dictate that a Ground Lease instead be initially utilized. Rent shall initially equal \$1,200,000 (the "Initial Rent"). The Initial Rent shall apply through six (6) months after issuance of the Certificate of Occupancy or similar instrument not to exceed a total of thirty (30) months after commencement of the Ground Lease at which time Rent shall escalate to \$1,600,000. Rent shall escalate to \$2,000,000 thirteen (13) months after issuance of the Certificate of Occupancy not to exceed a total of thirty-seven (37) months after commencement of the Ground Lease. At the commencement date of the Ground Lease the rent (\$1,200,000, \$1,600,000 and \$2,000,000 as the case may be) shall be adjusted upward based upon the percentage change in the Consumer Price Index (or the generally accepted inflation index at that time) since the date of the Option Agreement; not to exceed five percent (5%) per year. Once the rent stabilizes and achieves the \$2,000,000 level, then, rent shall be adjusted annually for the remainder of the lease term, based upon the percentage change in the Consumer Price Index since the last adjustment, not to exceed five percent (5%) per year.

The Ground Lease will provide that no demolition or construction shall occur at the Site until the Bond Financing has closed and the NFP Corp. has assumed the Ground Lease. The Ground Lease will provide that a real estate commission will be paid by the lessee under the Ground Lease, the terms of which will be negotiated under separate agreement between the lessee and David Stephen Donosky, as broker.

NORTHWEST LIFECARE JOINT VENTURE

By: 
Alan T. Gregory

By: 
Michael B. Lanahan

INTERCITY INVESTMENT PROPERTIES, INC.

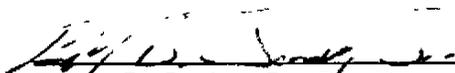
By: 
Edwin B. Jordan, Jr., President

EXHIBIT A

As indicated on the attached by outlining and cross-hatching, the property presently known as the Preston Village Apartments (the "Property") on 16.25 acres on the western end of the property containing approximately 707,850 square feet of land bounded by Northwest Highway on the south, Edgemere Road on the west, Thackery on the east and Bandera Avenue on the north in Dallas, Texas.

83853 01086 CRRIGHTS 22789

Landlord's

Exhibit 5-B

for February 21-23, 2023 hearing

EXHIBIT B

THIS GROUND LEASE OPTION AGREEMENT ("Agreement") is executed as of the latter of the two dates set above the respective signature lines of the parties ("Execution Date") and is entered into as of September 9, 1997 ("Effective Date") by and between **Intercity Investment Properties, Inc.**, a Texas corporation ("Owner") and **Northwest Lifecare Joint Venture**, a Texas joint venture, or its permitted assigns ("Optionee"), upon the terms and provisions set forth herein.

Recitals

Owner owns the real property described in Exhibit "A" attached hereto and incorporated herein for all purposes ("Land"), containing approximately 16.25 acres, and the improvements ("Improvements") generally described as a portion of the Preston Village Apartments, which include approximately 311 units of the apartment complex, which portion of the Preston Village Apartments is located on the western end of the block bounded by Northwest Highway, Thackery Road, Edgemere Road and Bandera Avenue in Dallas, Dallas County, Texas (which, together with the Land and certain appurtenances, and, if abandonment is successful and title acquired to the alleyways within the above described area and part of Beauregard Drive, the portion thereof abandoned by the City of Dallas and acquired by Owner, are together herein referred to as the "Property").

The Property is an apartment complex leased to individual tenants (each a "Tenant" and collectively, the "Tenants") under lease and rental agreements ("Existing Occupancy Agreements").

Optionee desires to undertake the development, design, marketing and pre-construction of a first-class residential lifecare retirement community containing approximately 220 independent living units, 77 assisted living units, and 60 skilled nursing care beds ("Project") on the land and, in that regard, intends to underwrite approximately Three Million Dollars (\$3,000,000) in pre-construction development, design, marketing and other costs. The Optionee will obtain all necessary development approvals and obtain and close bond financing ("Bond Financing") for the development, construction, ownership and operation of the Project.

Owner and Optionee desire to enter into this Agreement for the purpose of granting to the Optionee an exclusive option ("Option") to lease the Property under certain terms and conditions, which Option will last for a period of up to thirty-six (36) months prior to the commencement of the Lease itself, and during which time period the Optionee will be able to pursue the design, marketing, underwriting and other activities necessary to prepare for the construction of the Project.

IT IS, THEREFORE, AGREED AS FOLLOWS:

I.

Grant of Option and Initial Term.

1.1. Owner herewith grants to Optionee an exclusive option to lease the Property on the terms and conditions set out in the ground lease ("Lease"), a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference for all purposes.

1.2. The Initial Term of this Option shall be six (6) months commencing on the Effective Date.

II.

Price of Option and Extension of Term.

2.1. Prior to the date of this Agreement, Optionee has delivered to Owner payments in the amount of Fifty Thousand Dollars (\$50,000.00) and contemporaneously with the execution hereof, Optionee is delivering to Owner an additional payment in the amount of Fifty Thousand Dollars (\$50,000.00) for an aggregate initial payment to Owner in the amount of One Hundred Thousand Dollars (\$100,000.00) ("Initial Option Consideration"). By executing this Agreement, the Owner acknowledges the receipt of the said Initial Option Consideration. Optionee agrees that the Initial Option Consideration shall be non-refundable and therefore may be retained by Owner, and no part of same shall be applied or credited to the Optionee for any purpose other than as consideration for the grant of the Option for its initial term.

2.2. Optionee shall have the right to extend the term of the Option for no more than five (5) successive six-month periods ("Extension Right") providing, prior to the expiration of the existing term: (i) Optionee pays additional option consideration ("Additional Option Consideration") of One Hundred Thousand Dollars (\$100,000.00) per each such extension to the Owner; and (ii) Optionee gives written notice of its election to extend the term of the Option for such six-month period, each of such notices to be sent by Optionee to Owner.

2.3. The initial term of the Option and the Extension Rights set forth above give the ability to the Optionee to have and extend the Option granted under this Agreement for a time that may span thirty-six (36) months from the Effective Date to the expiration of the Option. In no event, without the prior additional written consent of the Owner, shall the Option be extended beyond said thirty-six (36) months. If the Optionee fails to pay the Additional Option Consideration or fails to deliver written notice of its election to extend the term, then the existing term of the Option shall terminate automatically at the end of the then six-month option term without further notice and without action on the part of the Owner.

III.

Owner's Current Representations.

Owner represents, to the best of its knowledge and belief, to Optionee the following:

a. Owner has the full right, power and authority to lease the Property to Optionee and to perform all of its obligations as provided in this Agreement without the joinder or consent of any other party and the party or parties executing this Agreement on behalf of the Owner has or have been duly authorized and empowered to bind Owner to this Agreement.

b. Owner is not a "foreign person" within the meaning of the Internal Revenue Code.

c. Other than Owner, the rights of the Optionee under this Agreement and the rights of the Tenants under the Existing Occupancy Agreements, no person, firm or entity has any right, title, interest or estate in any of the Property or has any right or option to lease, possess, occupy or acquire fee title to the Property or any part thereof, provided, however, that there may be, from time to time, holdover Tenants or those being evicted who may assert

or claim some right to interest to possession, but whom Owner believes have no legally enforceable right or interest.

d. There are no taking, condemnation, zoning, betterment or assessment actions, suits, arbitrations, claims, attachments or proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or any other litigation or proceeding, actual or threatened in writing, against Owner, which would materially and adversely affect the use, value or operation of the Land or the Project Optionee anticipates constructing or which does or will, without further action, constitute a lien, claim or obligation of any kind against the Property or affect Owner's ability to perform its obligations under this Agreement in any way.

e. No portion of the Property or its available use is subject to any actual zoning, litigation or administrative proceeding or any proposed zoning, litigation or other administrative proceeding threatened in writing.

f. There is no existing plan known to Owner to widen, modify or realign any street or highway adjoining the Property in the immediate future which would affect access thereto or any existing eminent domain proceeding that would affect the Land. Owner has not received written notice from the suppliers of water, sewage, electricity, gas or telephone services to the Property stating that such services will be curtailed in any manner and has no knowledge that any of the foregoing are not available to the Property.

g. There is access between the Property and one or more dedicated public roadways.

IV.

Owner's Disclaimer.

IT IS UNDERSTOOD AND AGREED THAT, OTHER THAN ITS OWNERSHIP OF THE PROPERTY AND ITS RIGHT TO LEASE THE PROPERTY TO OPTIONEE, OWNER IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF ZONING, TAX CONSEQUENCES; PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS (SPECIFICALLY MAKING NO WARRANTY OF COMPLIANCE WITH THE REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT OF 1990) INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY INCLUDING, WITHOUT LIMITATION: (1) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABLE OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY AND PARTICULARLY WITH REGARD TO THE PROJECT; (2) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY; AND (3) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY. OPTIONEE AGREES THAT, WITH RESPECT TO THE PROPERTY, OPTIONEE HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF OWNER OR ANY AGENT OF OWNER. OPTIONEE REPRESENTS THAT IT IS KNOWLEDGEABLE WITH RESPECT TO REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN

EXPERTISE AND THAT OF OPTIONEE'S CONSULTANTS AND THAT OPTIONEE WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAID INSPECTIONS BY OPTIONEE, AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY OPTIONEE'S INSPECTIONS AND INVESTIGATIONS. OPTIONEE FURTHER ACKNOWLEDGES THAT OWNER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING: (1) THE TRUTH OR ACCURACY OF ANY SURVEY OR STUDY AND/OR (2) THE QUALIFICATIONS OR EXPERTISE OF THE RESPECTIVE PARTIES CONDUCTING SAME AND THAT OWNER HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION WITH RESPECT THERETO. OPTIONEE ACKNOWLEDGES AND AGREES THAT, UPON CLOSING, OWNER SHALL LEASE TO OPTIONEE, AND OPTIONEE SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS" WITH ALL FAULTS, AND OPTIONEE FURTHER KNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLATERAL TO OR AFFECTING THE PROPERTY BY OWNER, ANY AGENT OF OWNER OR ANY THIRD PARTY. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE THE CLOSING AND SHALL NOT MERGE THEREIN AND SHALL BE INCORPORATED INTO THE LEASE. OWNER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN.

V.

Optionee's Current Representations.

Optionee represents, to the best of its knowledge and belief, to Owner the following:

- a. Optionee has the full right, power and authority to lease the Property from the Owner and to perform all of its obligations as provided in this Agreement without the joinder or consent of any other party and the party or parties executing this Agreement on behalf of Optionee has or have been duly authorized and empowered to bind Optionee to this Agreement.
- b. No order, writ, judgment or decree directed against Optionee exists or has been threatened in writing which prohibits or will prohibit without further action, the execution or performance of this Agreement, the Lease or any of the other agreements attached hereto.
- c. No suit or administrative proceeding is pending against or involving Optionee which requests any remedy which will prohibit the execution or performance of this Agreement, the Lease or any of the agreements attached hereto.
- d. Optionee will undertake forthwith the development activities of the Project, including underwriting approximately Three Million Dollars (\$3,000,000) in pre-construction development, design, marketing and other costs; obtaining all necessary development approvals for the Project; and obtaining and closing Bond Financing.

VI.

Title.

Optionee acknowledges the receipt from Owner, prior to the execution of this Agreement, of a commitment for title insurance ("Title Commitment") (attached as Exhibit "C") from American Title Insurance Company (Charles S. Badgett, 972-789-8400) as agent for Chicago Title Insurance Company ("Title Company") in a form which contains the Title Company's express commitment to issue a TLTA Owner's Leasehold Policy of Title Insurance ("Title Policy") to Optionee, together with true, correct, complete and legible (where possible) copies of all recorded documents affecting the Property and listed as title exceptions. By executing this Agreement, Optionee accepts any and all exceptions to the title of the Property as shown in the Title Commitment ("Permitted Exceptions").

VII.

Survey.

7.1. Within thirty (30) days after the Execution Date, Owner shall, at its sole cost and expense, deliver a currently dated survey of the Property to the Optionee. If a survey of the Property exists, Owner shall deliver a copy thereof to Optionee within five (5) days after the Execution Date and Owner, at its sole cost and expense, shall proceed to obtain an update of such existing survey, conforming to the following requirements:

- a. The survey should include a clear legend explaining any abbreviations used by the surveyor.
- b. The survey must be complete on one sheet.
- c. All surveys must be certified to Optionee, and any assignee thereof, by a registered land surveyor using the certification described below. Each survey must have the surveyor's original signature and have the surveyor's seal affixed. The survey must reflect a current date no more than thirty (30) days before being submitted. Older surveys are acceptable if updated and recertified and if they otherwise meet the requirements set out herein. The survey must show the north arrow, preferably in the upper right quadrant of the survey.
- d. The full legal (metes and bounds) description and street address of the Property must be shown. The legal description must be identical to that shown on the Title Commitment, or the Title Commitment must be revised to include and use the legal description prepared by the surveyor. If the premises are described as being on a filed or recorded plat or map, the survey should contain a legend relating the parcel to the plat or map on which it is shown, and the surveyor should certify that any land which has been platted or mapped is the same as that described on the survey.
- e. All perimeter property lines must be specifically identified.
- f. The survey should show the location by courses and distances of the parcel to be covered by the Title Policy and the relation of the point of beginning to the monument from which it is fixed.

g. All exceptions on the Title Commitment should be plotted, or identified on the face of the survey as not plotable.

h. In addition, all easements affecting the Property must be identified by recording information, if any, and listed by book and page or by document number of the instrument creating the easement.

i. Encroachments of buildings and of structural appurtenances, such as loading docks, awnings, canopies, porches, fire escapes and bay windows, by or on adjoining property, over easements, onto or from abutting streets or alleys, whether surface or a subsurface, must be indicated on the survey with the extent of such encroachments clearly defined (including the extent of the encroachment with measurements).

7.2. Optionee, at its expense, may have further or additional survey work done on the Property subject to the conditions on conducting inspections set out herein.

7.3 If, after examination of the Survey, Optionee determines that the condition of the Property on the ground as reflected in the Survey is unacceptable for any reason, Optionee shall notify Owner in writing ("Optionee's Notice") of such unacceptable conditions ("Survey Objections") within ten (10) business days after receipt by Optionee of the Survey. The failure of the Optionee to notify Owner of any Survey Objections within said ten (10) business day period shall be deemed acceptance of the Survey and the condition of the Property.

7.4 If Optionee provides Owner with Optionee's Notice of Survey Objections in a timely manner, Owner may take such actions as can be taken without cost to the Owner to eliminate or modify the Survey Objections, but Owner shall not be required to do so. If Owner elects to take action, the Owner shall notify Optionee in writing ("Owner's Notice") of Owner's election within ten (10) business days after receipt by Owner of Optionee's Notice, specifying which Survey Objections will be cured, which must be cured within ten (10) days after the giving of Owner's Notice. If Owner fails or refuses to give Owner's Notice, Owner shall be deemed to have refused to cure the Survey Objections. If the Owner elects or is deemed to have elected not to remove or cure any Survey Objections, the Optionee, at its election, shall have twenty-five (25) business days after the delivery of the Optionee's Notice to terminate this Agreement as the Optionee's sole remedy, whereupon this Agreement shall terminate and neither party shall have any obligation to the other, provided that Owner shall deliver and pay to the Optionee the Seventy-five Thousand Dollars (\$75,000.00) paid by the Optionee pursuant to Paragraph 2.1, if any was in fact paid. If Optionee fails to exercise timely its rights to terminate this Agreement, then Optionee shall be deemed to have waived the Survey Objections.

VIII.

Inspection and Reinspection of the Property and Related Documents.

8.1. During the first ninety (90) days after the Execution Date ("Inspection Period"), Optionee and its employees, agents, representatives and third parties engaged by Optionee, ("Optionee's Representatives") shall have the right and permission to enter upon any of the Property at all reasonable times, with prior notice to the Owner, which notice may be by any means agreeable to the parties, including but not limited to oral notification, to make such investigations, studies and tests of the Property including, but not limited to, conducting engineering inspections, making soil and substrata drillings and borings, and performing environmental inspections and any other inspections, tests, studies and investigations (together

"Inspections") which Optionee deems necessary or advisable, in its sole and absolute discretion. All such Inspections shall be at Optionee's sole cost, risk and expense. Optionee agrees to conduct Inspections in such manner so as not to disturb the Tenants, or to cause damage to the Property, or to interfere with the operation of the Property by the Owner during the term of the Option. Optionee further agrees to (a) repair any damage to the Property caused by such inspections, and (b) indemnify and hold Owner and the Property harmless from any and all claims and expenses arising or resulting from such Inspections, excluding, however, any of the foregoing caused by acts or omissions of Owner, its agents, representatives, employees or invitees.

8.2. Within ten (10) days after the Execution Date, Owners shall provide Optionee with copies of all of the following information:

a. Ad valorem tax and assessment statements related to the Property for the year such taxes were last paid to the most recent tax year and any information regarding any current valuation of the Land for ad valorem tax and assessment purposes, or notices relative to an anticipated change in valuation for any and all ad valorem tax and assessments.

b. Copies of all documents, instruments, certificates and affidavits evidencing Owner's authority to execute this Agreement and to consummate the transactions contemplated herein.

c. A sample of the Existing Occupancy Agreements, provided that if Owner uses or intends to use more than one form, Owner shall provide copies of all used or proposed forms.

The above documents are the "Inspection Documents."

8.3. If the Optionee determines that the title to the Property, as reflected in the Title Commitment, or the condition of the Property on the ground as reflected on the survey, or the condition of the Property as revealed by the Optionee's Inspections, or information revealed in the Inspection Documents, is unacceptable for any reason, Optionee shall notify Owner in writing ("Optionee's Notice") of such unacceptable conditions or exceptions ("Initial Objections") within thirty (30) days from the date on which the Optionee has copies of all of the Inspection Documents, the Title Commitment, and the survey (said 30th day being the "Notification Date"). The failure of Optionee to notify Owner of any Initial Objections relating to any of the foregoing items on or before 5:00 p.m. on the Notification Date shall be deemed acceptance by Optionee of the physical condition of the Property, the matters reflected in the Inspection Documents and the matters reflected on the survey.

8.4. If Optionee provides Owner with Optionee's Notice of any Initial Objections, Owner may, at its option, take such actions as can be taken without cost to the Owner as are necessary or desirable to eliminate or modify such Initial Objections to the satisfaction of the Optionee. If Optionee delivers Optionee's Notice and Owner elects not to eliminate or modify the Initial Objections, Owner shall deliver written notice to Optionee within fifteen (15) days thereafter, stating whether, prior to closing, Owner shall remove or otherwise cure in a manner satisfactory to Optionee such Initial Objections. Owner's failure to deliver notice timely of its election to remove or cure any Initial Objections as aforesaid shall be deemed Owner's election not to remove or cure. Under no circumstances shall Optionee be entitled to the return of all or any part of the Initial Option Consideration or any Additional Option Consideration.

8.5. During the Initial Inspection Period, Optionee and Optionee's Representatives may make inquiries of and to third parties, including without limitation, any governmental authorities, in order to investigate any aspect of the Property or Optionee's ability to develop the Property. Owner agrees, within reason, to cooperate with Optionee in such inquiries, provided that Owner incurs no costs in doing so or Optionee pays, in advance, the costs anticipated to be incurred by Owner in such cooperation.

8.6. When Optionee has exercised this Option, in the manner set out herein, Owner shall deliver to Optionee within ten (10) days after the date of the exercise of the Option copies of all of the following information:

a. Ad valorem tax and assessment statements related to the Property for the year such taxes were last paid to the most recent tax year and any information regarding any then current valuation of the Land for ad valorem tax and assessment purposes or notices relative to an anticipated change in valuation for any and all ad valorem tax and assessments;

b. True and legible copies of all Existing Occupancy Agreements and a certified current rent roll ("Rent Roll") for the Property, prepared as of the first day of the month of delivery of such Rent Roll, reflecting with respect to each Existing Occupancy Agreement the name of the Tenant, the apartment number, the monthly rental amount, the amount of security deposit, the expiration date, any rents or other charges in arrears or prepaid, and utilities which are furnished as part of the rent;

c. A written certification of the furniture and other furnishings, maintenance equipment and tools and all other machinery, equipment, fixtures, materials, supplies, replacement parts, and personal property of every kind and character, and all accessories and additions thereto, ("Personal Property") owned by Owner, and located in or on and used in connection with the Land or the improvements or the operations of the Property and not otherwise used in connection with the other portion of the Preston Village Apartments located to the east of the Property.

8.7. In the ninety (90) days prior to closing ("Last Inspection Period"), Optionee's Representatives shall have the right and permission to enter upon any of the Property at all reasonable times, with advance notice to Owner, which notice may be by any means agreeable to the parties, including but not limited to oral notification, to make such investigations of the Property which Optionee deems necessary or advisable, in its sole and absolute discretion. All such Inspections shall be at Optionee's sole cost, risk and expense. Optionee agrees to conduct Inspections in such manner so as not to disturb the Tenants, or to cause damage to the Property, or to interfere with the operation of the Property by the Owner during the term of the Option. Optionee further agrees to (a) repair any damage to the Property caused by such inspections, and (b) indemnify and hold Owner and the Property harmless from any and all claims and expenses arising or resulting from such Inspections, excluding, however, any of the foregoing caused by acts or omissions of Owner, its agents, representatives, employees or invitees.

8.8. During the Last Inspection Period, Optionee and Optionee's Representatives may make inquiries of and to third parties, including without limitation, any governmental authorities, in order to investigate any aspect of the Property or Optionee's ability to develop the Property. Owner agrees, within reason, to cooperate with Optionee in such inquiries, provided that Owner incurs no costs in doing so or Optionee pays, in advance, the costs anticipated to be incurred by Owner in such cooperation.

IX.

Development Approvals.

During the term of this Agreement, Optionee shall proceed to obtain, at its sole cost and expense, approval of all necessary governmental authorities for development of the Property for the Project, including, but not limited to, rezoning, building permits, site plan approvals, ordinances, confirmations of the availability of utilities to the Property at rates acceptable to the Optionee, approvals from the city, county and state, the abandonment of the alleyways within the Project area and part of Beauregard Drive, and all other such approvals and consents necessary for the development of the Project on the Property ("Development Approvals"). Owner shall reasonably cooperate with Optionee, as requested by the Optionee, in obtaining the Development Approvals and shall execute and/or cause to be executed all documentation necessary to obtain the Development Approvals, provided, however, Optionee shall bear all of the expenses (including the expense incurred by Owner and any capital expenditure required of Owner, particularly with regard to the abandonment of the alleyways within the Project area and part of Beauregard Drive) in seeking the Development Approvals. Any Development Approvals must be granted by the applicable governmental authorities subject to Closing and any Development Approvals must not interfere with Owner's current use or impose additional costs or liability upon Owner if Optionee does not close.

X.

Operations and Information Disclosure During the Term of the Option.

10.1. Owner hereby covenants and agrees with Optionee that from the Effective Date until closing that:

a. Owner will not transfer, lease or convey any of the property or enter into any agreement to transfer, lease (except as provided herein), or convey all or any part of the Property.

b. Owner will continue to lease individual apartment units to Tenants for terms not exceeding six (6) months which are terminable at any time upon not more than ninety (90) days prior notice (provided that after the twelve month notice is given by Optionee pursuant to paragraph 10.2, all leases executed thereafter will provide that they are terminable at any time upon not more than thirty (30) days prior written notice) and will observe all terms and provisions of the Existing Occupancy Agreements; as of closing, no rents due under any of the Existing Occupancy Agreements will be assigned to any party or otherwise encumbered;

c. Owner will not enter into any agreement, written or oral, that will be or purport to be binding on the Optionee or the Property subsequent to the closing. Owner will not enter into, modify, amend, extend or cancel any service and utility contracts, maintenance agreements, equipment leases, property management agreements, warranties, guaranties and bonds relating to the Land, the improvements, or the Personal Property ("Existing Service Contracts") with respect to all or any portion of the Property without the prior written consent of Optionee.

d. Owner will operate, manage and maintain the Property in the same manner, condition and state of repair as of the Effective Date. Owner will cause to be paid all trade accounts, costs and expenses of operation of the Property incurred prior to closing.

e. Except as may be requested by Optionee for the purpose of obtaining Development Approvals, Owner will not take, approve or consent to any action or omission that will change the zoning, use, permits or licenses of or for the Property or that would otherwise affect the Property in any material way. Owner will promptly give Optionee written notice of any notice or information Owner hereafter receives regarding zoning, uses, permits and licenses which would have a material impact on the ability of Optionee to operate or demolish the improvements or to develop the Project on the Property.

f. Owner shall not place on any of the Property any lien, encumbrance or other matter which would constitute an encumbrance or title exception to the Property under Schedule B of the Title Commitment, and Owner shall not take any action which will cause the Property not to be, or prevent the Property from being, in compliance with the requirement of the Title Commitment so that the Title Company is prevented from issuing to Optionee the Title Policy as provided herein, subject only to the Permitted Exceptions.

g. Owner shall deliver within ten (10) days after receipt any written information concerning changes in rates applicable to, the location of, or the accessibility of utility service to the Property, or any order, writ, judgment or decree directed against the Owner or the Property which prohibits or will prohibit, the performance of this Option or any of the agreements attached hereto; or the filing of any suit or administrative proceeding which requests any remedy which will prohibit the performance of this Agreement or any of the agreements attached herein; or the submission or filing with any governmental authority of any proposal seeking to change the use or zoning of the Property or to dedicate or acquire all or any part of the Property for public use; or the enactment, adoption or promulgation of any statute, rule, regulation or ordinance which would prevent the Project from being constructed on the Property; or any threat in writing from any governmental authority, or the filing or initiation of any suit or administrative proceeding, seeking to condemn all or any part of the Property.

10.2. The Optionee shall give notice to the Owner when the Optionee in good faith estimates that it is twelve (12) months prior to the anticipated Closing, and, in connection with that notice, the Optionee shall deposit with the Owner Four Hundred Thousand Dollars (\$400,000.00) ("Anticipated Rent Loss Deposit"). Notwithstanding the foregoing notice, nothing in the foregoing sentence shall prevent Optionee from exercising this Option at an earlier time or such that Closing occurs prior to or after the said twelve months.

XI.

Exercise of the Option.

11.1. Optionee may exercise the Option only as set out herein. No other method attempting to exercise the Option shall be binding upon or require any action on the part of the Owner. Optionee must deliver, or have delivered, to Owner, at least forty-five (45) days in advance of any anticipated Closing, which Closing must occur before the expiration of the term of this Option or any extension thereof:

a. Notice in writing to Owner and the Title Company of the Optionee's exercise of the Option ("Option Notice"); and

b. An executed original of the assignment of this Option to Lessee; and

c. Final plans and specifications of the Project, along with copies of all executed and final contracts with architects, engineers, contractors, suppliers and others whose efforts or materials will be utilized to construct the Project; and

d. A fully executed Bond Purchase Agreement from the underwriters of the bond offering for funds for the demolition of existing improvements and the construction of the Project

e. A budget for the demolition of the existing improvements on the Property and the construction of the Project, demonstrating to the reasonable satisfaction of the Owner that the Funds are sufficient to construct the Project and pay all of the expenses thereof.

11.2. In the event Owner receives the Option Notice and determines that one or more of the items of information required above have not been furnished, or are not reasonably satisfactory in the form furnished, then Owner shall, on or before the tenth (10th) business day after receipt of the Option Notice, give notice ("Deficiency Notice") to Optionee providing a specific listing of the information not received by Owner and a specific description of how the information furnished otherwise does not comply with the requirements set out above. Optionee shall have ten (10) business days ("Cure Period") after Owner sends the Deficiency Notice to provide the items of information required above that had not previously been furnished and to provide in a form reasonably satisfactory to Owner the items previously furnished and found by the Owner not to comply with the above requirements. If Optionee fails to provide the information described in the Deficiency Notice during the Cure Period, the Optionee's attempt to exercise the Option shall be of no effect.

11.3 When Optionee has properly exercised the Option under the procedures set out in 11.1, or when the Optionee has cured any defects in the Option Notice under the procedures set out in Section 11.2, the Owner shall commence termination of Existing Occupancy Agreements and use its best efforts to deliver the Property to Optionee and/or the Lessee under the Lease with at least two (2) of the buildings located on the Property entirely vacant.

XII.

Condemnation, Eminent Domain and Casualty.

12.1. After the Optionee has given the Option Notice, the terms of this section related to condemnation or eminent domain and casualty shall apply, but they shall otherwise not apply during the term of the Option.

12.2. If the commencement of any condemnation or eminent domain proceedings with respect to all or any part of the Land for any public or quasi-public purpose, in the sole opinion of the Optionee, impairs the Optionee's ability to develop the Project on the Property, Optionee may, within ten (10) days after notice from Owner:

a. Revoke and cancel the Option Notice, which shall not have any effect on the validity of this Option or otherwise affect the rights of the Optionee to purchase extensions as set out above; or

b. Close the transaction contemplated by this Agreement, in which event the rights and duties of the parties shall be determined by the Lease, as if the term of the Lease had commenced on the date of such taking. Owner agrees not to enter into any settlement of any

condemnation proceedings or eminent domain award without the prior written consent of Optionee, which consent shall not be unreasonably withheld.

12.3. After the receipt of the Option Notice by the Owner, Owner shall maintain in full force and effect all policies of insurance, insuring the Property against loss from damage for destruction. Owner retains all risks and liability for loss, damage, destruction or injury by fire, storm, accident or other casualty to the Property from all causes until the closing has been consummated. In the event of any such damage or destruction prior to the closing, Owner shall notify Optionee thereof and Optionee shall proceed to close this transaction, in which event Owner shall be entitled to receive the full amount of any proceeds of such insurance payable on account of such loss, damage or destruction after the date herein, provided that Owner shall not be liable for any costs related to demolition, debris removal and clean up.

XIII.

Closing.

13.1. The consummation of the Lease contemplated hereby ("Closing") shall be held at the offices of the Title Company, with the Title Company acting as an escrow agent ("Escrow Agent") for the purpose of consummating such Closing, or at such other location as Owner and Optionee shall agree on or before that date ("Closing Date") which is forty-five (45) days after Owner receives the Option Notice, where no Deficiency Notice is given or where Optionee effectively cures before the end of the Cure Period. Notwithstanding the foregoing, the Closing shall occur not later than March 15, 1998, unless extended by Optionee pursuant to Sections 2.2 and 2.3 herein, but, in any and all events, Closing must take place no later than September 9, 2000.

13.2 On the Closing Date, Owner shall do the following:

a. Execute and deliver to Optionee the Lease on the Property, with the Property free and clear of any and all liens, encumbrances, conditions, easements, assessments, restrictions and other conditions, except the Permitted Exceptions.

b. Execute and deliver to Optionee the Memorandum of Lease, as defined in the Lease for recording.

c. Execute and deliver, or obtain for delivery for Optionee or the Title Company, any other instruments reasonably necessary to close this Agreement, including, by way of example and not in limitation, closing statements, releases, and evidence of the authority of the parties executing instruments on Owner's behalf.

d. Pay, as required herein, any prorated portion of the Taxes, as defined herein.

e. Deliver to Optionee an updated Rent Roll, dated and certified by Owner to be true and correct as of a date not more than five (5) days prior to Closing.

f. Deliver to Optionee a Blanket Conveyance, Bill of Sale and Assignment, without warranty, in the form set out in Exhibit "D" attached hereto, assigning all of Owner's interest in the Existing Occupancy Agreements to Optionee, with appropriate provisions for the assumption by Optionee of the obligation for any security deposits for which Optionee is given credit in the closing adjustments hereunder, conveying to Optionee title to the Personal

Property free and clear of all liens and encumbrances, except any permitted Exceptions, and assigning to Optionee the Existing Service Contracts, without warranty.

g. Deliver to Optionee the originals of the Existing Occupancy Agreements and the Existing Service Contracts.

h. Deliver to Optionee the originals of all certificates of occupancy in the possession of Owner (or where certificates of occupancy apply to the Property and other tracts or parcels owned by Owner, deliver to the Optionee copies of such certificates of occupancy).

i. Pay one-half of the Escrow Agent's escrow fees, not exceeding Three Hundred Dollars (\$300.00).

j. Deliver occupancy of the Property subject to the rights of the remaining Tenants.

13.4. On the Closing Date, Optionee shall do the following:

a. Execute and deliver to Owner the Lease on the Property.

b. Execute and deliver to the Title Company the Memorandum of Lease, as defined in the Lease, for recording by the Title Company.

c. Deliver to the Escrow Agent for disbursement to the Owner the lease consideration due and payable to Owner, which is one-twelfth (1/12th) (as allowed by Section 4.3 of the Lease) of the Initial Annual Rent (as defined in Section 4.1(a) of the Lease), adjusted as required (by Section 4.2(a) of the Lease).

d. Execute and deliver, or obtain for delivery to Optionee or the Title Company, any other instruments reasonably necessary to close this Agreement, including, by way of example and not in limitation, closing statements, releases, affidavits, evidence of the authority of the parties executing instruments on Optionee's behalf, and delivery of instruments required by the Title Company for the purpose of the issuance of the Title Policy pursuant to the Title Commitment.

e. Pay the balance of the Escrow Agent's escrow fees.

f. Pay the prorated portion of the Taxes to be paid by Optionee as of the Closing, as set out herein.

g. Pay the premium for Optionee's Title Policy and Optionee's lender's Title Policy.

h. Pay all recording fees for the Memorandum of Lease, Optionee's financing documents and other documents to be recorded.

i. Pay all other costs reflected on the Closing Statement.

j. Execute and deliver to the Owner a disclaimer in the form attached hereto as Exhibit "E".

k. Execute and deliver to Owner notice letters ("Tenant Notice Letters"), in a form reasonably acceptable to Owner and Optionee, acknowledging that the Optionee has received and is responsible for the Tenants' security deposits and directing the Tenants henceforth to make payment of all rents and other obligations under the Existing Occupancy Agreements to Optionee. Owner shall be entitled to make copies of the executed originals, fill in each respective Tenant's name and address, deliver such notices to Tenants and a copy of same to Optionee, and fill in the exact dollar amount of each respective Tenant's security deposit. For the foregoing purposes, Optionee has made, constituted and appointed Owner, and herewith makes, constitutes and appoints Owner, as the Optionee's special attorney-in-fact for the limited purpose of preparing, executing and delivering the said Tenant Notice Letters in the name of and on behalf of the Optionee. Optionee hereby agrees such copies of the Tenant Notice Letter shall carry the same force and effect as if each Tenant Notice Letter had been executed by Optionee. Therefore, Optionee agrees to indemnify Owner and hold Owner harmless from any and all claims, causes of action, damages, judgment and expenses incurred or suffered by Owner as the result of any claim made by any Tenant asserting a right to a security deposit referred to in a Tenant Notice Letter.

l. Execute and deliver to Owner an indemnity agreement in the form attached hereto as Exhibit "F", providing a separate document to survive Closing which contains the indemnity set out in the last sentence of the preceding subparagraph.

m. Pay for any and all damages and pay the amounts requested for indemnity to the Owner, as required under the provisions of this Agreement related to Inspections.

n. Pay all other costs associated with the Closing, other than the Owner's legal fees for negotiating this Agreement and the Lease.

o. Provide evidence reasonably acceptable to Owner of the removal, satisfaction or waiver of all contingencies to the Bond Financing, and an escrow agreement executed by the trustee bank (in said bond offering) acknowledging the receipt of additional funds, such that the total of the amount committed by the lender to be advanced and the amount of funds on deposit in the escrow (together the "Funds") are sufficient to pay all of the costs associated with demolition and construction (including bond and insurance premiums and development fees).

p. Deliver to Owner copies of all Development Approvals allowing the construction and operation of the Project.

q. Deliver to Owner copies of issued and outstanding payment and performance bonds in form and in amounts reasonably satisfactory to the Owner sufficient to pay all amounts for the construction of and liens that might be filed upon the Project.

13.5. General real estate taxes, assessments and any personal property taxes imposed by governmental authorities and any assessments by private covenant constituting a lien or charge on the land for the then current calendar year or other current tax period not yet due and payable as to the Property ("Taxes") shall be apportioned and prorated between Owner and Optionee as of midnight of the day preceding the Closing Date. Proration of the Taxes shall be based upon Taxes actually paid by the Owner if the Owner has paid such Taxes prior to Closing, and otherwise upon the ad valorem taxes due. If the actual amount of Taxes for the calendar year in which the Closing shall occur is not known as of the Closing Date, the proration shall be based upon the most current assessed value and tax rates then in effect with respect to the Property at the Closing Date. If the actual amount of the Taxes is not known on

the Closing Date, the proration shall be based upon the prior year's Taxes, and the parties shall adjust the Taxes prorated at Closing within ten (10) days after written demand therefor by either party when such Taxes become known. All prorations shall be based upon a fraction, the numerator being the number of days elapsed from the date the latest tax year commenced and the denominator being 365.

13.6. Rents under Existing Occupancy Agreements shall be prorated as of midnight preceding the date of Closing. Prorations shall be based upon the updated Rent Roll and shall include all Existing Occupancy Agreements. Proration shall be based upon the then current rental period. The Optionee shall receive a credit for prepaid rents for rental periods after the then current rental period. In addition to the proration of rents, at Closing, the rent loss occasioned by the Optionee shall be determined and the Anticipated Rent Loss Deposit shall be credited against that loss. The rent loss the Optionee owes to the Owner shall be the net rent not collected as a result of vacancies at the Property. The rent loss shall be computed, for each apartment, by multiplying the normal rental rate for that apartment times the number of months the apartment was vacant during the twelve months prior to Closing minus the prorated operating expenses ("POE") that would normally be attributed to each such vacant apartment if re-leased and occupied, with the rent for the last month that includes the date of Closing being prorated to Closing pursuant to the first four sentences of this section. Absent an agreement between the Optionee and the Owner on the amount of POE to attribute to each vacant apartment, the POE shall be calculated based on an assumption that the POE is \$845 per one percent (1%) of vacancy per month. If the rent loss determined in the aggregate for all of the apartments in the Project that were vacant exceeds the Anticipated Rent Loss Deposit, the Optionee and the Lessee under the Lease shall pay to the Owner the amount of such excess at Closing as additional rent under the Lease. At any time and from time to time during the twelve months prior to Closing, the Optionee shall have reasonable opportunities, not more often than monthly, at times agreeable with Owner to review the books and records of the Owner solely to the extent necessary to determine the number of vacant apartments and the rent loss as to each. The failure to pay that additional excess shall be a monetary default for which the Owner need not give any notice. If the rent loss is less than the Anticipated Rent Loss Deposit, the Owner shall refund to the Optionee the difference at Closing.

13.7. Other than utilities directly billed to Tenants, all other utilities at or with respect to the Property, other than the telephone number and telephone service, shall be transferred to the Optionee at the Closing Date. Owner and Optionee agree to cooperate with the utility service providers and with each other to effect the transition of the changeover of accounts, to get the utility meters read as of the Closing Date and to make adjustments between each other with respect to readings that occur before or after the Closing Date.

13.8. Optionee agrees that upon a Closing under this Agreement, Optionee will be obligated to pay to David Stephen Donosky ("Broker") a brokerage fee or brokerage commission ("Fee") arising in connection with this Agreement pursuant to a separate commission agreement or arrangement between Optionee and the Broker. The Fee shall be earned by the Broker only upon the Closing of this Agreement. (Attached hereto is a Receipt and Acknowledgment by Broker agreement to be signed by Broker. The execution or failure of Broker to execute same shall not affect the execution, enforceability, determination of Effective Date, or other aspects of this Agreement.) Optionee warrants that no commission is due to Mike McNeff by, through or under Optionee or any joint venturer or partner of a joint venturer of Optionee, including but not limited to Alan Gregory, and Optionee will pay any commission determined to be due to McNeff by, through or under Optionee or any joint venturer or partner of a joint venturer of Optionee. Owner warrants and represents that it has no written agreement with Mike McNeff by which Owner has agreed to pay Mike McNeff any

kind of fee or commission regarding the Property. Except for the fee, Owner and Optionee warrant and represent to each other that no real estate brokers, agents, finders' fees or commissions are due arising in connection with the Lease of the Property, from the execution of this Agreement, or the consummation of the transactions contemplated in this Agreement, and each party agrees to indemnify and hold the other party harmless from claims made by any person for any such fees, commissions or like compensation claiming to have dealt with the party so indemnifying the other. This section shall survive Closing.

XIV.

Miscellaneous.

14.1. This Agreement embodies the entire agreement between the parties and cannot be varied except by the written agreement of the parties. All prior agreements between the parties relating to the Property, including, but not limited to, the letter of intent, are hereby terminated. No representation, promise, inducement or statement of intention has been made by Owner or Optionee which is not embodied in this Agreement, or in the attached exhibits, and neither Optionee nor Owner shall be bound by or liable for any alleged representations, promises, inducements or statements of intention not so set forth herein. Except as may be specifically provided herein, none of the representations, warranties or covenants herein provided shall survive the Closing.

14.2. Time is of the essence of this Agreement.

14.3. Any notice required or permitted to be delivered in connection with this Agreement must be in writing and may be given by certified or registered mail, facsimile, hand delivery or by overnight courier. Notices sent by certified mail shall be deemed received three (3) business days after the same has been deposited in the United States mail, properly addressed and postage prepaid. Any notice sent by facsimile shall be deemed delivered when received, provided that any facsimile received on or after 5:00 p.m. of a business day, or received on a Saturday, Sunday or legal holiday, shall be deemed received at 9:00 a.m. on the next following business day. Any notice sent by hand delivery or by overnight courier or delivery service shall be deemed delivered when actually received. Notices shall be sent as follows:

If to the Owner: Intercity Investment Properties, Inc.
Attention: Edwin B. Jordan, Jr.
4301 Westside Drive, Suite 100
Dallas, Texas 75209-6546
Facsimile: 214-520-2463

with a copy to: James V. Roberts, Esq.
James V. Roberts, P.C.
8117 Preston Road, Suite 800 West
Dallas, Texas 75225
Facsimile: 214-528-3110

If to the Optionee: Northwest Lifecare Joint Venture
c/o Greystone Communities, Inc.
Attention: Michael B. Lanahan
222 West Las Colinas Blvd., Suite 2100
Irving, Texas 75039

Facsimile: 972-402-3727

with copy to: Northwest Lifecare Associates, Ltd.
Attention: Alan T. Gregory
4403 Lomo Alto
Dallas, Texas 75205
Facsimile: 214-526-0614

With additional copy to: McManemin & Smith, P.C.
Attention: Walter H. Allen
600 North Pearl Street, Suite 1600
Dallas, Texas 75201
Facsimile: 214-953-0695

14.4. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and visa versa, unless the context requires otherwise.

14.5. The captions used in connection with the article and sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language of this Agreement.

14.6. All capitalized terms shall have the meaning assigned to them in this Agreement.

14.7. Except where business days are expressly referred, reference in this Agreement to days are to calendar days, not business days. Business day means any calendar day except a Saturday, Sunday or banking holiday in Dallas County, Texas.

14.8. If the final date of any period provided for herein for the performance of an obligation or for the taking of any action falls on a day other than a business day, then the time of such period shall be deemed extended to the next business day.

14.9. If any legal action is brought in connection with this Agreement, the prevailing party shall be entitled to collect its reasonable attorneys' fees and its court costs.

14.10. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibit hereto.

14.11. If any provisions of this Agreement are held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided that both parties may still effectively realize the complete benefit of the transaction contemplated hereby.

14.12. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas. This Agreement is generally performable in Dallas County, Texas. Owner and Optionee agree that any litigation instituted in connection with this Agreement shall

be in Dallas County, Texas, or in the United States District Court for the Northern District of Texas, Dallas Division.

14.13. No modification or amendment of this Agreement shall be effective unless made in writing and executed by Owner and Optionee. If any approval or consent is required pursuant to any provision of this Agreement, such approval or consent shall be deemed given only if it is in writing and executed by the party whose approval or consent is required.

14.14. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed to be an original and all, when taken together, shall constitute one and the same instrument. A facsimile or other similar transmission of a counterpart signed by a party hereto shall be regarded as signed by such party for purposes hereof.

14.15. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

14.16. Optionee may assign its rights and obligations under this Agreement to any corporation, partnership, joint venture, limited liability company or other entity ("Optionee's Assignee") with which Greystone Communities, Inc. has an agreement for management of the Project for not less than ten (10) years after the Closing, in which event Optionee's Assignee shall become fully liable for all obligations hereunder and the Optionee shall be released from all such obligations. Optionee shall have no other right to assign this Agreement without the prior written consent of Owner, which may be withheld with or without cause.

14.17. Other than with respect to disclosures to any governmental authority, whether or not in connection with Optionee's investigation of the Property, neither Owner nor Optionee shall, without the prior written consent of the other, disclose to any person or party (except the parties hereto, their respective legal counsel, lenders, accountants, brokers, the Escrow Agent and the Title Company) the existence or terms of this Agreement. The terms of this section shall survive the Closing or the termination of this Agreement.

14.18. Upon the request of either party hereto, the other shall execute and acknowledge a memorandum of this Agreement in recordable form sufficient to identify the parties hereto, the Property and the Closing Date, or if no Closing Date has been determined, the end of the then current Option Term.

Executed by Owner on the 5 day of November, 1997.

INTERCITY INVESTMENT PROPERTIES, INC.,
a Texas corporation

By: Edwin B. Jordan, Jr.
Edwin B. Jordan, Jr., President

Executed by Optionee on the 5th day of November, 1997.

NORTHWEST LIFECARE JOINT VENTURE

By: **Greystone Communities, Inc.,** Joint Venturer

By: 

Michael B. Lanahan, President

By: **Northwest Lifecare Associates, Ltd.,** Joint Venturer

By: 

Allen T. Gregory, General Partner
ALAN

RECEIPT AND ACKNOWLEDGMENT BY BROKER

The Broker joins in the foregoing Agreement to evidence his acknowledgment and agreement to the provisions of this Agreement relating to the brokerage fee or commission owned by Optionee to the Broker which will be paid as provided in this Agreement only upon a successful Closing of this transaction. The Broker will indemnify and hold the Owner and the Optionee harmless from any and all claims made by any party for any fees, commissions or like compensation arising from any dealings any such party had with Broker arising in connection with the transaction contemplated by this Agreement. Any subsequent amendment to this Agreement by Owner and Optionee which expressly modifies the Initial Option Consideration shall automatically modify the fee accordingly without the further consent of the Broker being required. The fee shall fully compensate the Broker for its services in connection with the Lease of the Property hereunder and the undersigned is entitled to no further compensation or fees in connection with such transaction. Should, for any reason, this transaction not successfully close in connection with the terms of this Agreement, no fee or commission of any nature shall be due to the undersigned. Moreover, the undersigned has no knowledge of any other party who has or may have any claim for any brokers, finders or any other fee relative to the Property or this Agreement. Finally, Broker agrees that he will look only to Optionee or its assignee of this Option for his commission, and Broker will hold Owner harmless from any claim for Broker's commission.

Acknowledged and Agreed To by the Broker on this 5th day of November, 1997.



David Stephen Donosky

Exhibit "A"
Legal Description

EXHIBIT "A"

TRACT I

Being Lots 1 thru 7, Block 8/5464 of PRESTONVILLE, An Addition to the City of Dallas, Dallas County, Texas, according to the Plat thereof recorded in Volume 12, page 83, Map Records, Dallas County, Texas

TRACT II

Being Lots 1 thru 8, Block 9/5464 of PRESTONVILLE, An Addition to the City of Dallas, Dallas County, Texas, according to the Plat thereof recorded in Volume 12, page 83, Map Records, Dallas County, Texas

Provided, if abandonment is successful and the Owner acquires title to the alleyways and part of Beauregard Drive, both within the above described area, the portion thereof abandoned by the City of Dallas and acquired by Owner shall be a part of the Property subject to lease.

Exhibit "B"
Ground Lease

EXHIBIT (B)
TO
GROUND LEASE OPTION AGREEMENT

GROUND LEASE

Between

Intercity Investment Properties, Inc.
“Lessor”

and

_____, a _____
“Lessee”

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I - DEFINITIONS	1
1.1 “CPI Adjustment”	1
1.2 “Annual Rent”	2
1.3 “Bond Indenture”	2
1.4 “CPI”	2
1.5 “CPI Factor”	2
1.6 “Commencement Date”	2
1.7 “Default Interest Rate”	2
1.8 “Existing Improvements”	2
1.9 “Force Majeure Event”	2
1.10 “Governmental Authority” or “Governmental Authorities”	2
1.11 “Hazardous Materials” and “Hazardous Materials Laws”	3
1.12 “Improvements”	3
1.13 “Insurance Trustee”	3
1.14 “Land”	3
1.15 “Lease”	3
1.16 “Leasehold Estate”	3
1.17 “Lender”	3
1.18 “Lessee”	3
1.19 “Lessor”	3
1.20 “Option Date”	3
1.21 “Permitted Title Exceptions”	3
1.22 “Person”	3
1.23 “Premises”	4
1.24 “Project”	4
1.25 “Resident”	4
1.26 “Space Leases”	4
1.27 “Term”	4
ARTICLE II - DEMISE	4
2.1 Grant of Lease.	4
2.2 Disclaimer.	4
2.3 Quiet Enjoyment	5
2.4 Possession of the Property	5
ARTICLE III - TERM	6
ARTICLE IV - RENTAL	6
4.1 Annual Rent	6
4.2 Rent Adjustment	6
4.3 Installment Payment of Rent.	7
4.4 No Rent Reduction	7

ARTICLE V - LESSEE'S COVENANTS 7

5.1 Rent. 7

5.2 Taxes And Assessments 7

5.3 Delinquent Rent. 8

5.4 Utility and Other Governmental and Quasi - Governmental Charges 8

5.5 Use of the Land 8

5.6 Improvements Required by Law. 9

5.7 Observance of Laws. 9

5.8 Repair, Maintenance and Restoration 9

5.9 Inspection 9

5.10 Construction and Alteration of Buildings 9

5.11 Liens. 10

5.12 Setback Lines. 10

5.13 Insurance. 10

(a) Commercial Property Insurance 10

(b) Builders and Installation Risk 11

(c) Commercial General Liability. 11

(d) Worker's Compensation Insurance 12

(e) Umbrella Liability 12

(f) Payment and Performance Bonds 12

(g) Flood Insurance 12

(h) General Requirements for Insurance 13

(i) Certificates of Insurance 14

(j) Waiver of Subrogation 14

(k) Adjustment and Adequacy of Coverage 14

5.14 Loss or Damage to Improvements 14

(a) Use of Insurance Proceeds. 14

(b) Disbursement of Insurance Proceeds 15

(c) Lessor's Inspections 15

5.15 Indemnity 16

5.16 Reimbursable Expenses 16

(a) Lessor's Expenses 16

(b) Enforcement Expenses 16

5.17 Assignment. 17

(a) Consent to Assignment. 17

(b) Assumption of Lease 17

(c) "Assignment" Defined 17

(d) Assignment In Violation Of Section Is Void. 18

5.18 Subletting 18

5.19 Utilities 18

5.20 Surrender 18

5.21 Holdover 19

5.22 Waste or Unlawful Use. 19

5.23 Environmental Protection 19

(a) Hazardous Materials 19

(b)	Restriction on Use of Hazardous Materials.	20
(c)	Remediation of Release of Hazardous Materials.	20
(d)	Underground Storage Tanks	21
(e)	Compliance with Governmental Requirements	21
(f)	Permits and Approvals.	21
(g)	Notice of Actions	21
(h)	Access to Records and the Premises	22
(i)	Pre-Surrender	22
(j)	Vacating the Premises	23
(k)	Environmental Indemnification	23
(l)	Survival	23
ARTICLE VI - CONDEMNATION		24
6.1	Termination of Lease and Rights to Compensation	24
6.2	Rent Reduction	24
6.3	Election to Terminate.	24
6.4	Partial Condemnation	25
6.5	Leasehold Condemnation	25
ARTICLE VII - PERMITTED MORTGAGES		26
7.1	Lessee's Right to Mortgage Leasehold Estate	26
7.2	Lender's Rights.	26
7.3	Protection of Lender.	26
7.4	Assumption and Rejection	27
7.5	Lender's Right to a New Lease.	27
(a)	Lessor's Obligation to Enter into New Lease	27
(b)	New Lease Terms	28
(c)	New Lessee's Obligations	28
(d)	Lender's Right to Assign New Lease	28
7.6	No Merger	29
7.7	Surrender and Amendment	29
ARTICLE VIII - DEFAULTS AND REMEDIES		29
8.1	Events of Default.	29
(a)	Payment of Rent	29
(b)	Payments other than Rent.	29
(c)	Breach of Other Agreement	30
(d)	Abandonment of Premises.	30
(e)	Attachment.	30
8.2	Remedies.	30
8.3	Non-Waiver	31
ARTICLE IX - MISCELLANEOUS		31
9.1	Approval and Consent	31
9.2	Assumption of Risk.	31
9.3	Modification of Lease.	31

9.4 Cancellation Not Merger. 32

9.5 Notices 32

9.6 Construction 32

9.7 No Partnership Intended 33

9.8 Governing Law and Venue 33

9.9 Waiver of Jury Trial. 33

9.10 Time Is Of The Essence. 33

9.11 Memorandum of Lease 33

9.12 Captions and Headings. 33

9.13 Copies. 33

9.14 Estoppel Certificates 33

9.15 Lease Prior To Any Mortgages Or Security Interest On Fee 34

9.16 Lessor's Representations and Warranties. 34

9.17 Lessee's Representations and Warranties 34

9.18 Entire Agreement, Binding Effect 34

EXHIBITS

- "A" The Land
- "B" Permitted Exceptions
- "C" Ground Lease Memorandum
- "D" Essential Areas

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made and entered into as of the _____ day of _____, 19____, by and between INTERCITY INVESTMENT PROPERTIES, INC., a Texas corporation, whose principal place of business and office address is 4301 Westside Drive, Suite 100, Dallas, Texas 75209-6546, Attention: Edwin B. Jordan, Jr. ("Lessor") and _____, whose principal place of business and post office address is _____ ("Lessee").

PREAMBLE AND STATEMENT OF PURPOSE

Lessor is the owner of a fee simple absolute interest in certain real property (the "Land") containing approximately 16.25 acres and located at the Northwest Corner of the intersection of Thackery Road and Northwest Highway in the City of Dallas, Dallas County, Texas, which is further and legally described on Exhibit "A," attached hereto and by this reference incorporated herein and made a part hereof.

Lessee desires to lease the Land from Lessor for the term described herein and on the other terms and conditions hereinafter set forth in order to develop and construct a residential retirement Project thereon as provided herein.

Lessor agrees to lease the Land to Lessee on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants hereinafter set forth and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, hereby agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Lease, the terms defined in this Article and throughout the remainder of this Lease, when written with initial capital letters, shall have the meanings given to them in this Article or in such definitions throughout this Lease and no other meaning. Such terms may be used in the singular or plural or in varying tenses, but such variations shall not affect their meanings so long as such terms are written with initial capital letters. When such terms are used in this Lease but are written without initial capital letters, such terms shall have the meaning they have in common usage.

- 1.1 **"CPI Adjustment"** means each adjustment to each amount set forth in this Lease as subject to CPI Adjustment, as the same may have been previously adjusted (the "Base Amount") effective as provided herein and calculated by comparing the CPI last published prior to the

initial date specified for each such amount (the "Base Index"), with the CPI last published prior to the current date on which such amount is due to be adjusted hereunder (the "Current Index") to calculate the CPI Factor, hereinafter defined. The amount of any adjustment shall be set by multiplying the Base Amount by the CPI Factor; provided, however, that no such CPI Adjustment shall be less than two and one-half percent (2.5%) per year nor more than five percent (5%) per year. Lessor shall give written notice of any adjusted amount to Lessee within thirty (30) days after its calculation.

- 1.2 **"Annual Rent"** has the meaning set forth in Section 4.1 hereof.
- 1.3 **"Bond Indenture"** means the documents evidencing and securing Owner's indebtedness to Lender as permitted herein.
- 1.4 **"CPI"** means the Consumer Price Index for All Urban Consumers (Base Year 1986 = 100) for the Dallas/Fort Worth Standard Metropolitan Statistical Area, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is changed so that the base year differs from that used above, the index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the index is discontinued or revised during the Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued or revised.
- 1.5 **"CPI Factor"** is a fraction (carried to 4 decimal places), the numerator of which is the Current Index and the denominator of which is the Base Index.
- 1.6 **"Commencement Date"** means the date first above written and is the date on which this Lease becomes effective.
- 1.7 **"Default Interest Rate"** means an interest rate of eighteen percent (18%) per year; provided, however, that in no event shall the interest charged hereunder exceed the maximum lawful rate of interest then allowed by law.
- 1.8 **"Existing Improvements"** means a portion of the Preston Village apartment complex and all other Improvements to the Land existing as of the date hereof.
- 1.9 **"Force Majeure Event"** means and refers to all acts wholly beyond the control of Lessor and Lessee, including, without limitation, acts of God, war, riots, earthquakes, floods, hurricanes and windstorms.
- 1.10 **"Governmental Authority"** or **"Governmental Authorities"** means any federal, state, city, county, administrative or other governmental authority which now or hereafter has jurisdiction, review, approval or consent rights relating to the construction, development, ownership, control or operation of the Project on the Property or the use of the Premises for any purpose in connection with its current use, use for the Project or any other use.

- 1.11 **“Hazardous Materials” and “Hazardous Materials Laws”** have the meanings set forth in Section 5.25 hereof.
- 1.12 **“Improvements”** means and includes all buildings and other improvements, including without limitation, the Existing Improvements, and any replacement improvements, by whomsoever made, now existing or at any time hereafter during the Term placed on the Land.
- 1.13 **“Insurance Trustee”** means the trust company with principal offices in Dallas, Texas, selected by Lessor and Lessee pursuant to Section 5.13 below.
- 1.14 **“Land”** means and includes all of that certain parcel of real property described in Exhibit “A” attached hereto and incorporated herein by this reference, having a gross area of 16.25 acres, more or less and, if abandonment thereof is successful, including alleyways and that portion of Beauregard Street surrounded by the remainder of the Land.
- 1.15 **“Lease”** means this Lease and all Exhibits hereto, as the same may from time to time hereafter be amended in accordance with its terms.
- 1.16 **“Leasehold Estate”** means the leasehold estate created by the execution and delivery of this Lease.
- 1.17 **“Lender”** has the meaning provided in Section 7.1 hereof.
- 1.18 **“Lessee”** means _____, a _____, and includes any pronoun used in place thereof, the singular or plural number and its successors and permitted assigns.
- 1.19 **“Lessor”** means Intercity Investment Properties, Inc., a Texas corporation, and shall include any pronoun used in place thereof, the masculine or feminine, the singular or plural number, and its successors and assigns, according to the context thereof.
- 1.20 **“Option Date”** means the Effective Date, as defined therein, of that certain Ground lease Option Agreement (the “Option Agreement”) executed by and between Lessor, as Optionor, and Lessee, as Optionee, granting Lessee the option to enter into this Lease as provided therein, which date is September 9, 1997.
- 1.21 **“Permitted Title Exceptions”** means those encumbrances and other matters listed on Exhibit “B” attached hereto and made a part hereof and any and all additional encumbrances approved in writing by Lessee.
- 1.22 **“Person”** means any natural person, corporation, limited liability company, limited partnership, limited liability partnership, general partnership, tenancy in common, joint venture, association, business trust, real estate investment trust or other entity or organization, and any combination of any of them.

- 1.23 **“Premises”** shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) the Land and all Improvements.
- 1.24 **“Project”** means the continuing care retirement center life care concept project to be developed on the Land by Lessee, which is anticipated to provide a range of living options for elderly Residents varying along a continuum from independent living through increasing health care needs; the Project is currently anticipated to be a first class three (3) story retirement center containing approximately 220 independent living units (the “Independent Living Center”), an assisted living center consisting of approximately 77 assisted living units (the “Assisted Living Center”), a health center consisting of approximately 60 skilled nursing beds (the “Health Center”) and an approximately 25,000 square foot Commons Building.
- 1.25 **“Resident”** means a resident or prospective resident in the Project.
- 1.26 **“Space Leases”** means any and all subleases of space in the Project to be made between Lessee and any subtenants of Lessee upon completion of construction of the Project.
- 1.27 **“Term”** has the meaning set forth in Article III hereof.

ARTICLE II DEMISE

- 2.1 **Grant of Lease.** Lessor, in consideration of the rent herein reserved and of the covenants and conditions herein contained and on the part of Lessee to be observed and performed and upon and subject to the terms and conditions hereinafter set forth, does hereby demise and lease unto Lessee, and Lessee does hereby lease from Lessor, the Premises, including all of the Land and the Existing Improvements, together with any and all appurtenances, rights and benefits relating thereto and to the use and occupancy thereof.
- 2.2 **Disclaimer.** IT IS UNDERSTOOD AND AGREED THAT, OTHER THAN ITS OWNERSHIP OF THE PREMISES AND ITS RIGHT TO LEASE THE PREMISES TO LESSEE, LESSOR IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS (SPECIFICALLY MAKING NO WARRANTY OF COMPLIANCE WITH THE REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT OF 1990) INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PREMISES INCLUDING, WITHOUT LIMITATION: (1) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PREMISES AND PARTICULARLY WITH REGARD TO THE PROJECT; (2) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS

INCORPORATED INTO ANY OF THE PREMISES; AND (3) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PREMISES. LESSEE AGREES THAT, WITH RESPECT TO THE PREMISES, LESSEE HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF LESSOR OR ANY AGENT OF LESSOR. LESSEE REPRESENTS THAT IT IS KNOWLEDGEABLE WITH RESPECT TO REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF LESSEE'S CONSULTANTS AND THAT LESSEE WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PREMISES, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAID INSPECTIONS BY LESSEE, AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY LESSEE'S INSPECTIONS AND INVESTIGATIONS. LESSEE FURTHER ACKNOWLEDGES THAT LESSOR HAS NOT MADE AND DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING: (1) THE TRUTH OR ACCURACY OF ANY SURVEY OR STUDY AND/OR (2) THE QUALIFICATIONS OR EXPERTISE OF THE RESPECTIVE PARTIES CONDUCTING SAME AND THAT LESSOR HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION WITH RESPECT THERETO. LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR IS LEASING TO LESSEE, AND LESSEE IS ACCEPTING THE PREMISES "AS IS, WHERE IS" WITH ALL FAULTS, AND LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PREMISES BY LESSOR, ANY AGENT OF LESSOR OR ANY THIRD PARTY. LESSOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PREMISES FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN.

- 2.3 **Quiet Enjoyment.** Subject to the Permitted Title Exceptions and the terms and provisions of this Lease, Lessor covenants, as against the claims of all Persons whomsoever claiming by, through or under the Lessor, that Lessee shall have and enjoy throughout the Term the exclusive and undisturbed possession of the Property, without hindrance, ejection or molestation by any Person.
- 2.4 **Possession of the Property.** Actual possession of the Property under this Lease will be delivered to Lessee upon the Commencement Date, subject only to the Permitted Title Exceptions.

**ARTICLE III
TERM**

The term ("Term") of this Lease shall be a term of Fifty-five (55) years, commencing on the Commencement Date and continuing thereafter until the fifty-fifth (55th) anniversary of the Commencement Date unless extended by agreement of the parties or sooner terminated as herein provided.

**ARTICLE IV
RENTAL**

- 4.1 **Annual Rent.** Lessee shall pay over to Lessor for each and every year during the Term, net over and above all taxes, assessments and other charges hereunder payable by Lessee, Annual Rent (the "Annual Rent") as hereinafter set forth.
- (a) From the Commencement Date through that date (the "Rent Escalation Date") which is the first to occur of: six (6) months after the date (the "Occupancy Date") on which a certificate of occupancy for the Improvements constituting the Project is issued by the City of Dallas, or thirty (30) months after the Commencement Date, the Annual Rent (the "Initial Annual Rent") shall be \$1,200,000.00, subject to adjustment and payment in installments as hereinafter provided.
 - (b) Commencing on the Rent Escalation Date and continuing through that date (the "Stabilized Rent Date") which is the first to occur of : thirteen (13) months after the Occupancy Date, or thirty-seven (37) months after the Commencement Date, the Annual Rent (the "Escalated Annual Rent") shall be \$1,600,000.00, subject to adjustment and payment in installments as herein after provided.
 - (c) Commencing on the Stabilized Rent Date and continuing through the Term of this Lease, the Annual Rent (the "Stabilized Annual Rent") shall be \$2,000,000.00, subject to adjustment and payment in installments as hereinafter provided.
- 4.2 **Rent Adjustment.** The Annual Rent shall be increased as hereinafter provided:
- (a) The Initial Annual Rent shall be increased on the Commencement Date by the CPI Factor, provided that the per annum increase shall not be less than two and one-half percent (2.5%) nor more than five percent (5%).
 - (b) The Escalated Annual Rent shall be increased on the Rent Escalation Date by the CPI Factor from the Option Date to the Rent Escalation Date, provided that the per annum increase shall not be less than two and one-half percent (2.5%) nor more than five percent (5%).
 - (c) The Stabilized Annual Rent shall be increased on the Stabilized Rent Date by the CPI Factor from the Option Date to the Stabilized Rent Date, provided that the per annum increase shall not be less than two and one-half percent (2.5%) nor more than five percent (5%).

(d) Commencing on the Stabilized Rent Date and continuing for the entire Term of this Lease the Stabilized Annual Rent shall be increased for each next succeeding year of the term (a "Rent Year") on each anniversary of the Stabilized Rent Date (the "Rent Adjustment Date") based upon the lesser of : (i) five percent (5%) per year or (ii) the CPI Factor determined by comparing the CPI in effect for the previous Rent Adjustment Date to the CPI in effect on the current Rent Adjustment Date, multiplied by the Annual Rent in effect on the previous Rent Adjustment Date.

4.3 **Installment Payment of Rent.** Lessee shall pay the Annual Rent in monthly installments equal to one-twelfth (1/12) of the Annual Rent amount then in effect due and payable on or before the first (1st) day of each month during the Term, with all payments of Annual Rent pro-rated for the periods during which differing Annual Rents may apply; provided, however, that Lessee shall have a grace period for the payment of such installments of Annual Rent of five (5) business days for any two (2) monthly payments due during any calendar year, as further provided in Section 8.1(a) hereof.

4.4 **No Rent Reduction.** Except as provided elsewhere under those provisions of this Lease which specifically refer to rent reduction, Lessee shall not be entitled to any suspension, abatement or reduction of rent, nor to the recovery of any sums for any loss or damage by reason of noise, dust, or general inconvenience caused by construction or operations on other property owned by Lessor in the immediate area of the Property.

**ARTICLE V
LESSEE'S COVENANTS**

Lessee hereby covenants with Lessor as follows:

5.1 **Rent.** Lessee will pay all Annual Rent and all other and additional payments due hereunder as payments of rent (collectively, the "Rent") hereunder to Lessor in lawful money of the United States of America at the times and in the manner aforesaid, without deduction and without any notice or demand, except as provided for herein, at the principal office of Lessor provided in the preamble hereto or at such other address as Lessor shall designate in writing from time to time.

5.2 **Taxes And Assessments.** Lessee will pay to each and every taxing authority before the same become delinquent all real and personal property taxes and fees in lieu thereof and assessments of every description to which the Premises or any part thereof is now or may during the Term be assessed or become liable, whether assessed to or payable by Lessor or Lessee; provided, however, that:

(a) With respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest on unpaid balances thereof as shall become due and payable during the Term.

- (b) Such taxes and fees shall be prorated as of the Commencement Date and the date of expiration of the Term.
 - (c) Any proceeding or proceedings for contesting the validity or amount of taxes, assessments, or other public charges or impositions, or to recover back from any levying authority any tax, assessment, charge or other imposition paid by Lessee as hereinabove provided may be brought by Lessee, at Lessee's own cost and expense, in the name of Lessor or in the name of Lessee, or both of them, as Lessee may deem advisable; provided, however, that (i) any such proceeding shall be brought by Lessee only after payment by Lessee as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, (ii) Lessee shall provide notice of any such proceedings to Lessor, (iii) if such proceedings are to take place in Lessor's name, Lessee shall give Lessor an opportunity to reasonably object thereto, and (iv) Lessee shall provide Lessor with copies of all documents associated with all proceedings involving Lessors' name.
 - (d) If any such proceeding to contest taxes is brought by Lessee, Lessee shall indemnify and save harmless Lessor against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon Lessor in connection therewith.
 - (e) If Lessee elects to contest any such tax, assessment, charge or other imposition as herein set forth, then and in such event Lessor agrees to reasonably cooperate and assist Lessee in contesting the same, provided that all reasonable costs and expenses of Lessor incurred in connection therewith shall be promptly paid by Lessee upon demand, as additional Rent.
- 5.3 **Delinquent Rent.** If Lessee shall become delinquent in the payment of any Rent and the delinquency shall continue for more than five (5) days after the expiration of any grace period provided herein, Lessee shall also pay to Lessor, as additional Rent, an amount equal to five percent (5%) of the Rent that has become delinquent; provided that if the Rent continues to be delinquent and the delinquency extends beyond ten (10) days after written demand for payment of the rent, the Lessee shall pay to Lessor, as additional Rent, an additional amount equal to ten percent (10%) of the delinquent Rent.
- 5.4 **Utility and Other Governmental and Quasi - Governmental Charges.** Except as otherwise provided in this Lease, Lessee will pay, before the same become delinquent, all governmental and quasi-governmental utility charges, including, without limitation, water and sewer charges, garbage collection charges and other charges and outgoings of every description to which the Premises or any part thereof, or Lessor or Lessee in respect thereof, may during the Term be assessed or become liable, whether assessed to or payable by Lessor or Lessee.
- 5.5 **Use of the Land.** Lessee will use the Land only for the development, construction and ownership of the Project, generally described herein, and specifically only for retirement housing or a senior living community.

- 5.6 **Improvements Required by Law.** Except as otherwise provided herein, Lessee will at Lessee's own expense during the whole of the Term make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon, or on public property adjoining or in connection with or for the use of, the Premises or any part thereof.
- 5.7 **Observance of Laws.** Lessee will at all times during the Term keep the Premises in a strictly safe, clean, orderly and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any Governmental Authority and applicable to Lessee's use of the Premises and said adjacent land or any improvement thereon or use thereof, and will indemnify and hold harmless Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by Lessee of said laws, ordinances, rules and regulations or of this covenant.
- 5.8 **Repair, Maintenance and Restoration.** Except as otherwise provided for herein with respect to Lessee's rights to demolish the Existing Improvements or otherwise, Lessee will at Lessee's own expense from time to time and at all times during the Term well and substantially restore, repair, maintain, amend and keep all Improvements on the Land with all necessary reparations and amendments whatsoever in good and safe repair, order and condition, reasonable wear and tear and destruction by unavoidable casualty not herein required to be insured against excepted, provided, however, that Lessee's obligation to restore, maintain and repair the Improvements is limited to demolishing the Existing Improvements and constructing on the Land Improvements which comply with the use restriction contained in Section 5.5 hereof and maintaining such Improvements.
- 5.9 **Inspection.** Upon reasonable notice, Lessee will permit Lessor and its agents at all reasonable times during the Term to enter the Premises and examine the state of repair and condition of the Premises.
- 5.10 **Construction and Alteration of Buildings.** Lessee will not construct or place any buildings or structures, including fences and walls, or other Improvements on the Land, nor make or suffer any material additions to or structural alterations of the basic structure of any buildings thereon, nor change the grading or drainage thereof, except under the supervision of a licensed architect or structural engineer and in accordance with complete plans, specifications and detailed plot plans thereof prepared by such an architect or structural engineer and approved, as may be required, by appropriate Governmental Authorities.
- (a) Prior to commencement of construction, Lessee will provide Lessor with copies of all plans and specifications for construction of the Improvements to be constructed by Lessor, solely for Lessor's information and not for Lessor's approval.
 - (b) Lessee shall commence demolition of the Existing Improvements within the first to occur of (i) sixty (60) days after the Effective Date of this Lease or (ii) thirty (30) days after the date on which all necessary approvals have been obtained from all applicable Governmental Authorities and any and all court or administrative actions blocking any such demolition are fully resolved in Lessee's favor and not subject to

appeal, provided that Lessee shall promptly and diligently pursue all actions necessary to obtain such approvals and such favorable court action.

- (c) During the initial construction of the Improvements, Lessor and any architect, engineer and other representative whom it may select to act for it, may, upon reasonable notice and at reasonable times, inspect the Improvements in the course of such construction and upon completion, and all work and materials as rendered and installed. Lessee shall keep copies of all plans, shop drawings and specifications relating to such construction on the building site and permit Lessor, its architects, engineers and other representatives to examine them at all reasonable times. In the event that during the construction of the Improvements, Lessor, or its architects, engineers and other representatives, shall reasonably determine that the materials do not substantially conform to the specifications or that the Improvements are not being constructed substantially in accordance with the approved plans, prompt notice in writing shall be given to Lessee, specifying in detail the particular deficiency, omission or other respect in which it is claimed that the construction does not conform with the plans and specifications. Upon the receipt of any such notice and confirmation by Lessee of such non-conformance, Lessee shall take such steps as shall be necessary to cause corrections to be made as to any deficiencies, omissions or otherwise, and shall immediately remove such materials and replace such construction and materials in accordance with said plans and specifications.

5.11 **Liens.** Lessee will not commit or suffer any act or neglect by which the Premises or estate of Lessee therein shall at any time during the Term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics' and materialmen's liens, except as herein expressly provided, and will indemnify, defend, save and hold Lessor harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys' fees). If any lien for work, labor, services or materials done for or supplied to the Premises, regardless of who contracted therefor, is filed against the Premises, Lessee shall, within sixty (60) days from the date of filing thereof, cause such lien to be discharged of record, bonded off of the Land or otherwise stayed to the reasonable satisfaction of Lessor.

5.12 **Setback Lines.** Lessee will observe any setback lines affecting the Premises as now or hereafter established by any Governmental Authority having jurisdiction.

5.13 **Insurance.** At all times during the term, Lessee shall purchase and maintain, at Lessee's expense, the following insurance, in amounts not less than those specified below or such other amounts as may be required by the Bond Indenture as Lessor, Lessee and Lender may from time to time agree upon, with insurance companies and on forms reasonably satisfactory to Lessor and Lender:

- (a) **Commercial Property Insurance.** Commercial property insurance covering the Premises and all furniture, fixtures, machinery, equipment, supplies, inventory and any other personal property owned and/or used in Lessee's use and occupancy of the Premises, whether made or acquired at Lessee's or another's expense, in an amount

equal to their full replacement cost at time of loss, without deduction for depreciation, exclusive only of the replacement cost of excavation, foundations and footings, and shall contain an Agreed Value Endorsement. All policies and certificates of insurance required hereunder shall:

- (i) contain a provision specifically naming the Lessor and Lessee's Lender as additional insureds, as their interests may appear; and
 - (ii) be specifically endorsed to provide that any proceeds of any policy in excess of \$500,000.00, subject to annual CPI Adjustment as of each anniversary of the Commencement Date of this Lease, shall be payable to a trustee as required by the Bond Indenture or, if no such payment to a trustee is required by the Bond Indenture, to a trust company, qualified under the laws of the State of Texas, as shall be designated by Lessee, subject to the approval of Lessor (which approval shall not be unreasonably withheld or delayed) as trustee and escrow agent for the custody and distribution as herein provided of all proceeds of such insurance ("Insurance Trustee"); Lessee shall pay all fees and expenses of such Insurance Trustee in connection with its services.
- (b) **Builders and Installation Risk.** Builders and installation "all risk" insurance while the Premises or any part thereof are under demolition and construction and the aggregate estimated cost of construction exceeds \$100,000.00, written on the Builders Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery, materials, etc. not yet installed but to become a permanent part of the Improvements.
- (c) **Commercial General Liability.** Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an "occurrence" form covering the use, occupancy and maintenance of the Premises and all operations of Lessee, including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal Injury; Fire Legal Liability; elevator; and incidental medical malpractice liability, all pursuant to a Commercial General Liability Policy form or its equivalent. Each policy and certificate of insurance shall specifically:
- (i) contain limits for such coverage which are not less than the following for the specified categories: Bodily Injury and Property Damage Combined Single Limit - \$3,000,000 per occurrence, subject to \$3,000,000 general aggregate per policy year; \$3,000,000 products and completed operations aggregate per policy year; Personal Injury - \$1,000,000 per person/organization per policy year, subject to \$3,000,000 general aggregate per policy year; Fire Legal Liability \$250,000 per fire, subject to \$3,000,000 general aggregate per policy year; no policy shall have a deductible amount in excess of \$10,000 for any one occurrence; and

- (ii) provide the following: “This policy shall be considered to be primary liability insurance which shall apply to any loss or claim before any contribution by any insurance which Lessor, its employees and agents may have in force;” and
 - (iii) contain a provision specifically naming Lessor and Lessor's employees as additional insureds, which additional insureds shall be protected as if they were separately insured under a separate policy; provided, however, that such policy shall not require the insurer to pay any amounts in excess of the maximum limits stated herein.
- (d) **Worker's Compensation Insurance.** Worker's Compensation Insurance as required by Texas State Law.
- (e) **Umbrella Liability.** To the extent not covered by the other policies required hereunder, Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer's Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an “occurrence” form with a limit of liability of not less than \$10,000,000 per policy year, which may include coverage of multiple projects, shall provide for a self-insured retention and/or deductible no greater than \$10,000, adjusted annually based upon the CPI Adjustment for the Lease year then ending, and shall provide as follows:
- (i) The policy and certificate of insurance shall contain a provision specifically naming Lessor, and Lessor's employees and Lender as additional insureds, which additional insureds shall be protected as if they were separately insured under a separate policy; provided, however, that such policy shall not require the insurer to pay any amounts in excess of the maximum limits stated herein.
 - (ii) If and to the extent such coverage is available at commercially reasonable cost, the policy shall; (1) not specifically exclude coverage for punitive damages or claims arising out of discrimination other than employment related discrimination; (2) provide for defense expenses in addition to the limit of liability stated in the policy; and (3) provide coverage for claims resulting from alleged damage to the environment and damage or injury caused by hazardous conditions, materials or substances.
 - (iii) All exclusions endorsed on the policy are to be shown on the certificate of insurance and a copy of the exclusions attached thereto.
- (f) **Payment and Performance Bonds.** Payments and Performance Bonds in the full amount of the work to be done, as required by the Bond Indenture, for the benefit of Lessee, Lender and Lessor.
- (g) **Flood Insurance.** Flood insurance as may be required by the Bond Indenture or otherwise.

(h) **General Requirements for Insurance.**

- (i) Each policy is to be written by an insurer licensed in the State of Texas with a rating by A. M. Best Company, Inc. of A-VII or better and as otherwise required by the Bond Indenture. In the event that such rating system is altered or eliminated, then the insurer shall have a rating from a comparable rating service, comparable to such A-VII rating.
- (ii) If the limits of available liability coverage required herein become substantially reduced as a result of claim payments, Lessee immediately, at its own expense, shall purchase additional liability insurance to increase the amount of available coverage to the limits of liability coverage required by this Lease.
- (iii) If the Improvements are destroyed or damaged by a risk covered by insurance required by this Lease and the amount of the loss does not exceed FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) (subject to annual CPI Adjustment), Lessee, with the consent of Lender, may make the loss adjustment with the insurance company insuring the loss. If the loss exceeds FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), Lessee will not settle the loss without the express prior written consent of Lessor and Lender, which consent of Lessor shall not be unreasonably withheld or delayed.
- (iv) All policies are to be specifically endorsed to provide thirty (30) days' written notice of cancellation for any reason [or ten (10) days' in the case of nonpayment of premium], coverage reduction, termination, non-renewal or material change in the coverage, scope or amount of the policy, and ten (10) days' written notice prior to lapse, which notice shall be delivered to Lessor.
- (v) All Certificates of Insurance shall specifically state that "the issuing company will mail thirty (30) days' written notice of cancellation to the certificate holder."
- (vi) At Lessor's written request, not more often than one time per year, Lessee shall deliver to Lessor current copies of the insurance policies required by this Section 5.13.
- (vii) To the extent that Lessee shall be unable, at a commercially reasonable cost and with commercially reasonable exclusions and restrictions, to obtain any insurance required by this Section 5.13, it promptly shall inform Lessor in writing of that fact and of all relevant facts and circumstances and, unless Lessor shall be able either (1) to locate or obtain such insurance for Lessee at a commercially reasonable cost or (2) to devise a commercially reasonable alternative form of assurance mutually acceptable to the parties acting in

good faith and with due regard for then-prevailing business practice among prudent business persons with respect to similar risks, then Lessee shall not be required to obtain such insurance. Lessee shall continue to make reasonable, good faith efforts to obtain such insurance in connection with each policy renewal period and shall keep Lessor reasonably informed of its efforts.

- (viii) Lessee shall add as additional insureds to the insurance policies required by this Section 5.13 such other Persons as Lessor may from time to time reasonably require, if such Persons may be so added at no additional cost.
- (i) **Certificates of Insurance.** Lessee will deposit promptly with Lessor and maintain current certificates of all insurance required to be maintained by Lessee under this Lease in Accord Form 27, or such other form as may be reasonably acceptable to Lessor.
- (j) **Waiver of Subrogation.** Each of Lessor and Lessee hereby waives, on each party's behalf and on behalf of its insurance carrier, any claim for loss or damage to tangible and intangible property which one party might otherwise have against the other party or its affiliates, arising out of any loss, injury or damage whatsoever, including loss of income or other consequential loss or damage.
- (k) **Adjustment and Adequacy of Coverage.** Pursuant to the requirements of the Bond Indenture, or, if the Bond Indenture does not so provide or provides for a less frequent review, all insurance coverages required hereunder will be reviewed, adjusted and revised at least each three (3) years during the term hereof, based upon an insurance appraisal and update completed by a qualified insurance appraiser selected or approved by Lender as provided in the Bond Indenture, or, if not so provided, as may be selected by mutual agreement of Lessor and Lessee. Lessor, its agents and employees make no representation that the limits of liability required to be carried by Lessee pursuant to this Section 5.13 are adequate to protect Lessee. If Lessee believes that any of such insurance coverage is inadequate, Lessee will obtain and maintain in force such additional insurance coverage as Lessee deems adequate, at Lessee's sole expense.

5.14 **Loss or Damage to Improvements**

- (a) **Use of Insurance Proceeds.** Subject to the provisions of this Section 5.14 and the reasonable requirements of Lessee's Lender, in every case of loss or damage to the Improvements, other than the Existing Improvements, (i) Lessee shall provide Lessor with prompt written notice thereof and periodic updates as to the status of insurance settlements and repairs, and (ii) all proceeds of any property casualty insurance (excluding the proceeds of any rental value or use and occupancy insurance of Lessee) shall be used with all reasonable speed by Lessee for rebuilding, repairing or otherwise reinstating the Improvements in a good and workmanlike manner

substantially according with the original plans and elevations thereof or to a modified plan conforming to laws and regulations then in effect.

- (b) **Disbursement of Insurance Proceeds.** The Insurance Trustee shall hold any insurance proceeds payable to it, as provided in Section 5.13(a) hereof, to be applied to the cost of repair and restoration in accordance with the following:
- (i) Lessee shall furnish to the Insurance Trustee and Lessor copies of any contract or contracts which Lessee shall enter into for the making of such restoration; or, if the restoration is to be done by Lessee, a copy of all subcontracts made by Lessee in connection with such restoration and an estimate of the cost thereof, both in stages and upon completion, which shall be certified by the Lessee's architect as being reasonably accurate.
 - (ii) At the end of each month or from time to time as may be agreed upon during the progress of restoration, and upon the written request of Lessee after compliance with the conditions set forth hereinbelow, the Insurance Trustee shall pay to Lessee (or at the option of Lessee to the contractors and materialmen of Lessee for the account of Lessee) out of such award, ninety percent (90%) of the amount stated to be due. Until completion of the restoration in full, an amount equal to ten percent (10%) of the amount stated to be due shall be withheld by the Insurance Trustee unless Lessor, Lessee and Lessee's Lender jointly agree to a reduction in the retention. The amount so withheld (the "Retention") shall be paid upon the completion of the restoration.
 - (iii) At the time of each request for advance by Lessee, and as a condition precedent thereto, Lessee shall submit to the Insurance Trustee and Lessor copies of a certificate signed by Lessee and Lessee's architect not more than thirty (30) days prior to such request, in the form of AIA form G706, Certificate for Payment, or such other form as may be agreed upon by Lessee and Lessor.
 - (iv) At the completion of the restoration and following disbursement of the final advance to Lessee required to complete the payment of restoration costs, any portion of the award remaining shall be paid by the Insurance Trustee to Lessee, subject to Lessor's rights pursuant hereto and Lender's rights pursuant to the Bond Indenture. In no event, however, shall the Insurance Trustee be liable for any amount in excess of the amounts so received and held in trust.
- (c) **Lessor's Inspections.** During any restoration, Lessor and any architect, engineer and other representative whom it may select to act for it, 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 plans, shop drawings and specifications relating to such restoration on the building site and permit Lessor, its architects, engineers and other

representatives to examine them at all reasonable times. In the event that during the restoration of the Improvements, Lessor, or its architects, engineers and other representatives, shall determine that the materials do not substantially conform to the specifications or that the Improvements are not being restored substantially in accordance with the approved plans, prompt notice in writing shall be given to Lessee, specifying in detail the particular deficiency, omission or other respect in which it is claimed that the restoration does not conform with the plans and specifications. Upon the receipt of any such notice, Lessee shall take such steps as shall be necessary to cause corrections to be made as to any deficiencies, omissions or otherwise, and shall immediately remove such materials and replace such construction and materials in accordance with said plans and specifications.

- 5.15 **Indemnity.** Lessee will indemnify and hold Lessor harmless from and against any and all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the Premises by Lessee or any other person under Lessee, or any accident or fire on the Premises or any nuisance made or suffered thereon (except to the extent caused by the negligence or willful misconduct of Lessor or its agents, employees, or licensees), or any failure by Lessee to keep the Premises in a safe condition, and will reimburse Lessor for all Lessor's costs and expenses, including reasonable attorneys' fees incurred in connection with the defense of any such claims, provided, however, Lessor shall indemnify and hold Lessee harmless from and against any and all claims and demands for loss or damage, including property damage, personal injury and wrongful death, or any accident or fire on the Premises or any nuisance made or suffered thereon, arising out of or in connection with or caused by the negligence or willful misconduct of Lessor or its agents, employees, or licensees and will reimburse Lessee for all Lessee's costs and expenses, including reasonable attorneys' fees incurred in connection with the defense of any such claims.

5.16 **Reimbursable Expenses**

- (a) **Lessor's Expenses.** Lessee will pay to Lessor, within thirty (30) days after the date of the giving of notice to Lessee containing statements therefor, all reasonable costs and expenses paid or incurred by Lessor, but required to be paid by Lessee under any provision hereof or paid or incurred by Lessor in enforcing any of Lessee's covenants herein contained, in remedying any breach thereof, in recovering possession of the Premises or any part thereof pursuant hereto, in collecting or causing to be paid any delinquent Rent, taxes or other charges hereunder payable by Lessee, or in connection with any action or proceeding (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party. All of Lessor's expenses provided in this Section 5.16(a) shall constitute additional Rent and, if not paid when due, shall bear interest at the Default Interest Rate from the date due until paid in full.
- (b) **Enforcement Expenses.** Should Lessor or Lessee reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Lease, including but not limited to instituting any action or proceeding to enforce any

provision hereof for damages by reason of any alleged breach of any provision of this Lease, for a declaration of such party's rights or obligations hereunder or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the other party for all costs and expenses reasonably incurred in connection therewith, including but not limited to reasonable attorney's fees for the services rendered to such prevailing party.

5.17 **Assignment.** Except as in this Lease expressly provided, Lessee shall not assign or mortgage this Lease without the prior written consent of Lessor. Any assignment without Lessor's prior express written consent, including Lessor's consent contained herein, shall be void.

- (a) **Consent to Assignment.** Lessor shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following Lessor's receipt of all financial statements, documents or other information reasonably necessary for Lessor to make its determination. If Lessor shall fail to approve or disapprove a request for consent within such thirty (30) day period, Lessor's disapproval shall be conclusively presumed.
- (b) **Assumption of Lease.** Any permitted assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.
- (c) **"Assignment" Defined.** The term "assignment" as used in this Lease shall mean and include (i) one or more sales or transfers by operation of law or otherwise by which an aggregate of more than fifty percent (50%) of (A) the total capital stock of a corporate lessee, (B) the total partnership interests of a general partnership lessee, (C) the total beneficial interests of a trust lessee, (D) the interest in the general partner of a limited partnership lessee or, if there is more than one general partner, fifty percent (50%) of the interests in all such general partners in the aggregate, shall become vested in one or more Persons who or which are not stockholders, partners or beneficiaries thereof, either legally or equitably, as of the Commencement Date or as of the date of Lessee's subsequent acquisition of this Lease by assignment, or (ii) a transfer of the membership of a nonprofit corporation, or the creation of membership potential or units in a nonprofit corporation previously not having membership, or the issuance of stock or other certificates, units or other intangible contractual rights which provide for any type of voting power to the holders in which voting rights allow the election of all or any member of the board of directors or trustees, or allow the control of all or any part of the management or the policies of the nonprofit corporation; provided that ownership of such capital stock, partnership interests and beneficial interests shall be determined in accordance with the principles enunciated in Section 544 of the Internal Revenue Code of 1986; further provided that the foregoing definition shall not apply with respect to a corporate lessee whose capital stock is listed on a recognized stock exchange.

- (d) **Assignment In Violation Of Section Is Void.** Except as otherwise expressly provided in this Lease, no assignment or other transfer of this Lease other than in accordance with this Section 5.17, whether voluntary or involuntary, by operation of law, under legal process, through receivership or bankruptcy or otherwise, shall be valid or effective. Should Lessee attempt to make or suffer to be made any assignment or other transfer of this Lease or any interest herein except as permitted by this Section 5.17, or in Article VII herein, or should any right or interest of Lessee under this Lease be attached, levied upon or seized under legal process and the same shall not be released within sixty (60) days thereafter, or, if incapable of being released within said sixty (60) day period, action for the release thereof commence within said sixty (60) day period and thereafter diligently prosecuted, then any of the foregoing events shall be deemed a default under this Lease. Lessor's consent to an assignment or other transfer of this Lease shall not constitute a waiver or release by it of any of the provisions of this Section, all of which shall apply to each successive assignment or other transfer, if any, and be binding upon each and every encumbrancer, assignee, transferee, subtenant and other successor in interest of Lessee.
- 5.18 **Subletting.** Lessee will not, except as provided herein or without the prior written consent of Lessor, rent, sublet or part with possession of the Land or any part thereof. Notwithstanding the foregoing, Lessee may, without the consent of Lessor and without the payment of additional rent, enter into life care contracts or sublet, rent or license residential apartments, rooms, living spaces in the Improvements and ancillary commercial uses reasonably related to the occupancy thereof, provided that the purpose of any such agreement is consistent with Section 5.5 of this Lease and the form of the sublease, license, life care contract, concession or rental agreement shall be commercially reasonable and consistent in all material respects with the terms and provisions of this Lease. Lessee upon request therefor promptly shall deliver a true copy of any such sublease or rental agreement to Lessor. The fees charged from time to time to Residents of the Project in connection with the issuance of life care contracts and any maintenance fees and other periodic charges shall be reasonably calculated to be sufficient to cover Lessee's monetary obligations to the Residents, to Lessee's Lender and to Lessor.
- 5.19 **Utilities.** Lessee shall be solely responsible for obtaining all necessary electricity, sewer, water and other utility services. Lessor will, at Lessee's request and without payment of additional consideration, grant easements for the construction and installation of all necessary utility services and for drainage to the providers of such services over, across or under the Land.
- 5.20 **Surrender.** Except as otherwise provided herein, upon the expiration of the Term or earlier termination of this Lease, Lessee will peaceably deliver up to Lessor possession of the Premises, including all Improvements on or above the surface of the Land, by whomsoever made, in good and safe repair, order and condition, ordinary wear and tear excepted. Lessor may, at Lessor's option, require Lessee to remove any Improvements not in good and substantial condition and repair all damage to the Land resulting from such removal. Lessee shall leave the Premises in a clean and orderly condition free of all debris and of any

Hazardous Materials at termination. Upon the expiration of the Term or earlier termination of this Lease, Lessee may not remove or cause to be removed and shall leave all of the movable furniture, furnishings and trade fixtures installed in or on the Premises, or any other items the removal of which would result in substantial and permanent damage to the Premises. Any such property or Improvements that are not removed from the Premises within thirty (30) days after the termination or expiration of this Lease shall thereafter belong to Lessor without the payment of any consideration therefor. Upon the expiration of the Term or earlier termination of this Lease, Lessee shall execute, acknowledge and deliver to Lessor (if requested) a proper instrument in writing, releasing and quitclaiming to Lessor all right, title and interest of Lessee in and to the Premises. The foregoing covenants of Lessee shall survive the expiration of the Term.

- 5.21 **Holdover.** If Lessee, with the permission of the Lessor, remains in possession of the Premises after the expiration of the Term, Lessee shall be deemed to occupy the Premises only as a tenant from month-to-month, subject to all of the terms, covenants, conditions and provisions of this Lease, including rent, which are not inconsistent with a month-to-month tenancy. For any period during which Lessee may retain possession of the Premises without the permission of the Lessor or after receipt of notice of the cancellation of this Lease, the Rent payable by Lessee to Lessor for each month (or fraction thereof in excess of ten (10) days during such period), shall be equal to one hundred and fifty percent (150%) of the monthly Rent then in effect for the last full Rent Year prior to termination of this Lease.
- 5.22 **Waste or Unlawful Use.** The Lessee will not make or suffer any waste or any unlawful, improper or offensive use of the Premises or any act or gross negligence by which the Premises or any interest therein shall become liable to seizure, attachment or unpermitted lien. Upon Lessor's receipt of reasonably reliable information that the Premises have suffered waste not remedied by Lessee or are being used for any unlawful or illegal purposes or acts that Lessor reasonably determines could result in criminal or civil forfeiture of all or any portion of the Premises to the United States or the State of Texas, Lessor shall have the right to give notice of Lessor's demand on Lessee to cure such condition, and Lessor's intent to act if Lessee does not cure such condition, to Lessee and, if Lessee does not cure such condition within thirty (30) days after the date of such notice to Lessee, or commence to cure such condition within thirty (30) days after the date of such notice to Lessee and thereafter diligently pursue such cure to completion, Lessor may elect by a written notice delivered to Lessee and Lessee's Lender as provided herein, either (a) to take all such action as it reasonably shall deem necessary and appropriate to stop such waste or such illegal activity and secure the Premises against forfeiture, in which event all reasonable costs and expenses of Lessor's actions shall be payable by Lessee hereunder as additional Rent, or (b) to declare this Lease in default.
- 5.23 **Environmental Protection.**
- (a) **Hazardous Materials.** As used in this Lease, the term "Hazardous Materials" means any substance which:

- (i) is flammable, explosive, radioactive, toxic, corrosive, infectious, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any Governmental Authority, or,
 - (ii) contains asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, or petroleum, including crude oil or any fraction thereof, or
 - (iii) contains medical waste, including syringes, controlled substances, blood and blood products, urine and urine samples, fecal matter and other toxic, infectious, polluted or contaminated substances; or
 - (iv) is classified as a pollutant, contaminant, hazardous waste, hazardous substance, hazardous material, or toxic substance under the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. app. §§ 1801 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. H 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 to 2655; the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001 to 11050; and any similar federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to environmental conditions, industrial hygiene or Hazardous Materials in, on, under or upon the Premises, now in effect or hereafter adopted, published and/or promulgated (collectively, the “Hazardous Materials Laws”).
- (b) **Restriction on Use of Hazardous Materials.** The Lessee shall not cause or permit any Hazardous Material to be processed, used, stored in or about, or disposed of or upon, or transported to or from, the Premises unless (i) such material is used in the ordinary course of Lessee's operations on the Premises, or (ii) the Lessee has obtained the prior written consent of the Lessor, including such consents as may be contained herein, and (iii) the processing, use, storage, disposal or transporting is strictly in accordance with Hazardous Materials Laws.
- (c) **Remediation of Release of Hazardous Materials.** If any spill, leak or release of any Hazardous Materials occurs on the Premises as a result of acts or omissions of Lessee, its employees, agents, contractors or Residents which either (i) is a violation of applicable Hazardous Materials Laws or (ii) is required to be reported to Governmental Authorities having jurisdiction over Hazardous Materials releases, Lessee promptly shall notify all appropriate Governmental Authorities and Lessor, and, at no cost to Lessor, shall fully and promptly comply with all governmental orders, requirements, rules and regulations with respect thereto. Within ten (10) days after any such spill, leak or release, Lessee shall provide Lessor with a reasonably detailed written description of the event and of Lessee's investigation and remediation efforts to date. Within ten (10) days after receipt, Lessee shall provide Lessor with

a copy of any report or analytical results relating to any such spill, leak or release. Should Lessee be required to remove any portion of the Premises as having become contaminated, then, whether or not so required by Governmental Authorities, Lessee shall either replace the removed portion of the Premises (such as soil) with uncontaminated material of substantially the same character as existed prior to contamination or otherwise accommodate such removal. Lessee shall operate the Premises in a manner designed to prevent the occurrence of any such spill, leak or release. Notwithstanding the foregoing, the obligation of Lessee hereunder shall in no case apply to any Hazardous Materials spilled, leaked, released or discharged by Lessor or any agent, employee or contractor of Lessor. In the event that a discharge or release of Hazardous Materials is not discovered until after (or is to be remediated following) expiration or termination of the Term, Lessee shall coordinate, supervise and pay for all investigation and remediation efforts and shall be granted reasonable access at reasonable times to conduct such investigations, testing and remediation efforts as are required by this Section.

- (d) **Underground Storage Tanks.** Lessee shall not install or operate on the Premises, any underground storage tank, as defined by 42 U.S.C. § 6991 or any rule or regulation issued pursuant to such statute or other rules or regulations of any applicable Governmental Authority, without the prior written consent of Lessor.
- (e) **Compliance with Governmental Requirements.** Lessee shall comply with all requirements of all Governmental Authorities from time to time applicable to the handling by Lessee of any Hazardous Materials on the Premises. If any of said requirements shall be inconsistent with each other, Lessee shall comply with the most stringent requirement.
- (f) **Permits and Approvals.** Lessee shall obtain in advance and maintain without interruption, all governmental permits or approvals required for the use, storage or handling of any Hazardous Materials permitted by this Lease for Lessee's use in connection with its permitted business, use and occupation of the Premises. Within ten (10) days after receipt, Lessee shall provide Lessor with a copy of each such permit or approval. Where a plan for remediation is required, Lessee shall not commence operations or construction of any Improvements relating thereto until such remediation plan has been approved by appropriate Governmental Authorities and Lessee has provided evidence reasonably satisfactory to Lessor of its ability to fund the estimated cost of implementing such plan. Lessee shall comply with the terms and conditions of each permit or approval.
- (g) **Notice of Actions.** Lessee shall promptly advise Lessor in writing of (i) any and all enforcement, cleanup, removal, mitigation or other governmental or regulatory action of which Lessee receives written notice and which is instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises; and (ii) all claims made or threatened by any third party against Lessee or the Premises of which Lessee receives written notice and which relate to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; and

(iii) Lessee's discovery of any occurrence or condition on the Premises which reasonably could subject Lessee or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws. (As used in the preceding sentence, "discovery" shall mean actual knowledge of Lessee, its agents or employees.) Within ten (10) days after receipt, Lessee shall provide to Lessor a copy of any written notice of actual violation, complaint or other communication initiating any governmental enforcement action against Lessee for any alleged violation of law or other governmental requirement relating to the use, handling or storage of Hazardous Materials. Thereafter, within ten (10) days of receipt or transmission, Lessee shall provide Lessor with a copy of all material communications received by Lessee from, or sent by Lessee to, any Governmental Authority relating to such enforcement action.

- (h) **Access to Records and the Premises.** At reasonable times and after reasonable notice (i) Lessor may inspect any records maintained by Lessee relating to Lessee's compliance or noncompliance with the provisions of this Section 5.23 of this Lease, and (ii) if, and only if, Lessor has reasonable cause to believe Lessee has breached this Section 5.23, and provides written notice of such reasonable cause to Lessee as provided herein and Lessee does not respond in writing within thirty (30) days thereafter, Lessor may enter the Premises to conduct any reasonable test, inspection or environmental audit of the Premises or Lessee's operation or use of the Premises to determine Lessee's compliance or noncompliance with the provisions of this Section 5.23. If Lessor's test, inspection or environmental audit determines that Lessee has breached this Section 5.23, Lessee will pay the cost of any such inspection, as additional Rent.
- (i) **Pre-Surrender.** Not less than two (2) years, nor more than three (3) years prior to the end of the Term, Lessor, at Lessor's cost, may have the Premises inspected and tested as described below. Such inspection and testing shall not include tests that would cause any material damage to the Improvements or materially interfere with Lessee's conduct of its business on the Premises. Such inspection and testing shall be conducted by a qualified and experienced independent inspector (the "Independent Inspector") selected by Lessor and approved by Lessee, which approval shall not be unreasonably withheld or delayed. The Independent Inspector shall report its professional opinion concerning whether the Premises satisfies all Hazardous Materials Laws. The Independent Inspector's report shall be prepared at Lessor's expense and shall be addressed and delivered to both Lessor and Lessee. In the event that the Independent Inspector reports that the Premises does not satisfy all Hazardous Materials Laws, Lessor shall develop and submit to Lessee prior to the end of the Term a proposed written plan for any further testing desired by Lessor and for any cleanup of the Premises which Lessor believes to be required, together with a schedule for accomplishing such testing and cleanup before the end of the Term. Lessee may then retain its own independent inspector, who shall work with Lessor's Independent Inspector and any and all applicable Governmental Authorities to arrive at an agreed upon plan of remediation. Upon such agreement, Lessee, at its cost shall take such actions as are reasonably necessary to bring the Premises into material

compliance with all applicable Hazardous Materials Laws, and the Independent Inspector shall report the results of the cleanup to Lessor and Lessee. If Lessee fails to fully and timely perform or cause to be performed such cleanup, Lessor may do so at Lessee's expense. The Independent Inspector's report shall be an informed professional opinion and not a warranty or guarantee on the part of the Independent Inspector.

- (j) **Vacating the Premises.** Upon Lessee vacating the Premises: (i) Lessee shall have removed and disposed of all Hazardous Materials present on the Premises (except for reasonable quantities of ordinary and lawful supplies referred to above); All such removals, repairs and remediation shall be at Lessee's sole cost and expense; and (ii) until the Independent Inspector renders its opinion that the Premises materially satisfies all Hazardous Materials Laws and all costs therefor have been paid or reimbursed by Lessee, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered and Lessee shall continue to pay Annual Rent on the Premises as set forth in Section 5.21 hereof for occupancy of the Premises without the permission of Lessor.
- (k) **Environmental Indemnification.** Lessee shall defend with counsel reasonably approved by Lessor, indemnify and hold harmless Lessor, its agents and employees, from and against any and all claims, charges, actions, suits, liabilities, obligations, fines and penalties (including, without limitation, claims for property damage, personal injury and wrongful death, foreseeable and unforeseeable consequential damages, punitive damages to the extent permitted by law, costs of investigation, removal, response and remediation, natural and environmental resource damage, governmental administrative actions, and reasonable attorneys' and consultants' fees and expenses), by whomsoever made and howsoever asserted which arise out of, whether directly or indirectly, or relate, whether in whole or in part, to any of the following: (i) any release or discharge of Hazardous Materials on the Premises for which Lessee is responsible under the provisions of this Lease; or (ii) any violation by Lessee, its employees, agents or contractors, of Hazardous Materials Laws on the Premises; or (iii) any release or discharge, including without limitation any migration or emanation, of any Hazardous Materials from the Premises into the surrounding lands, air and water. (Collectively, "Environmental Claims") provided however that Lessee's foregoing indemnification of Lessor against Environmental Claims shall not include any such release, discharge, violation, migration or emanation attributable to any act or omission of Lessor, its agents, employees, contractors and affiliates or not at the direction or behest of Lessee (collectively, "Non Contributory Environmental Claims"), and Lessor shall indemnify, defend with counsel reasonably approved by Lessee, and hold harmless Lessee from and against any and all such Non Contributory Environmental Claims.
- (l) **Survival.** The obligations of the parties under this Section 5.23 shall survive any termination or expiration of this Lease and any conveyance by Lessor or Lessee of their respective interests in the Premises. No release of Lessee in connection with any such termination, expiration or conveyance shall effect a release of Lessee's

obligations under this Section, unless such release makes specific reference to the obligations of Lessee under this Section.

ARTICLE VI CONDEMNATION

In case at any time or times during the Term, the Premises or any part thereof shall be required, taken or condemned, other than for failure of Lessee to comply with applicable codes, statutes and regulations, by any authority having the power of eminent domain, then and in every such case the parties hereby mutually agree as follows:

- 6.1 **Termination of Lease and Rights to Compensation.** The estate and interest of Lessee in the Premises so required, taken or condemned shall at once cease and terminate and (a) Lessee shall not by reason thereof be entitled to any claim against Lessor or others for compensation or indemnity for the Land, (b) all compensation and damages payable for or on account of the Land shall be payable to and be the sole property of Lessor, (c) all compensation and damages payable with respect to the Existing Improvements shall be payable to and be the sole property of Lessor, and (d) all compensation and damages payable for or on account of any Improvements constructed by Lessee on the Land shall be divided between Lessor and Lessee as of the date when Lessee loses the right to possession thereof, according to the ratio that the then expired and unexpired portions, respectively, of the entire Term (as though continued to its natural expiration) bear to the sum of said portions, except that Lessee's share of the award as to Improvements constructed by Lessee shall not be less than the lesser of: (i) the aggregate unpaid balances of all loans secured by authorized leasehold mortgages existing as of the date of such taking, or (ii) the total award attributable to the taking, provided that Lessee pays all such sums to Lessee's Lender, to the extent of amounts owed to such Lender.
- 6.2 **Rent Reduction.** If any portion of the Essential Area of the Premises, which shall mean those areas shown as the "Essential Areas" on Exhibit "D" attached hereto and made a part hereof, is taken or condemned and this Lease is not terminated, the Annual Rent payable for the remainder of the Term shall be reduced in the ratio that the fair market value of the Land so taken bears to the fair market value of the Land existing immediately prior to such event.
- 6.3 **Election to Terminate.** If more than thirty percent (30%) of the area of the Land, or the usable area of the Improvements, is taken or condemned, or if the area so taken or condemned shall render the remaining Land unsuitable or economically impractical for the Lessee's purposes under this Lease, Lessee at its option, exercisable upon written notice to Lessor given within sixty (60) days after such taking, may surrender this Lease to Lessor, in which event (a) any and all condemnation proceeds from the condemnation of the Improvements shall be used to repay Lessee's Lender, to the extent of Lessee's obligations to such Lender, and thereafter the balance, if any, shall belong to Lessor, (b) all interest of Lessee and Lessee's Lender in the compensation and damages payable on account of any Improvements on the Land not taken or condemned shall belong to and be the sole property of Lessor, (c) Lessee may claim and recover from the condemning authority all compensation and damage to its business or property not subject to this Lease, and to any inventory,

furnishings, equipment and trade fixtures and the cost of restoration or removal of the foregoing property, (d) Lessor shall prepare and Lessee, Lessor and Lessee's Lender shall promptly execute and deliver such instruments as reasonably shall be deemed necessary by Lessor to evidence such surrender, (e) Lessee shall not be entitled to any other compensation or payment whatsoever by Lessor on account of such taking and surrender, and (f) upon such surrender of the Lease, Lessee shall be relieved of any further obligations hereunder.

6.4 **Partial Condemnation.** In all events of partial condemnation, the proceeds of any award for Improvements and/or severance damages for the Improvements, shall be allocated between Lessor and Lessee as of the date Lessee loses the right of possession to the portion of the Premises so taken or condemned. The allocation shall be according to the ratios that the then expired and unexpired portions, respectively, of the entire Term bear to the sum of such portions; provided, however, that in no event shall Lessee's share of the Improvements proceeds be less than the lesser of : (a) the amount which results from the sum of (i) the aggregate unpaid balance of all authorized leasehold mortgage loans as of the date of such partial taking multiplied by a fraction, (A) the numerator of which is the sum of (1) total value of the Improvements as of the date of such taking minus (2) the total value of the Improvements immediately following the taking, and (B) the denominator of which is the total value of the Improvements as of the date of such taking, provided that Lessee pays all such sums to Lessee's Lender, to the extent of amounts owed to such Lender; plus, (ii) the reasonable cost of any reasonable and necessary corrective work to the Improvements resulting from the taking; or (b) the total compensation or damages awarded for the Improvements and the Land.

6.5 **Leasehold Condemnation.** The condemnation of any leasehold interest in the Premises or any part thereof shall not terminate this Lease nor excuse Lessee from full performance of its covenants for the payment of money or any other obligations hereunder capable of performance by Lessee, but in such case Lessee may claim and recover from the condemning authority all compensation and damages payable on account of its leasehold interest, including such compensation and damages as may be separately awarded or recoverable by Lessee in its own right on account of any damage by reason of condemnation to its business, its business or property not subject to this Lease, any furniture, furnishings, equipment and trade fixtures on the condemned premises, and the cost of relocation or removal thereof. If the compensation payable to Lessee by the condemning authority in any such event is less than Lessee's payment obligations hereunder, such payment obligations hereunder shall be reduced to the amount of compensation payable to Lessee. In the event the condemning authority shall fail to keep the Premises in the state of repair required by this Lease, or to perform any other covenant not calling for the payment of money, Lessee shall have ninety (90) days after the restoration of possession to Lessee within which to carry out Lessee's obligations under such covenant or covenants or, if such performance cannot reasonably be completed within said ninety (90) day period, Lessee shall have a reasonable time to perform such obligations, provided that it commences promptly and diligently prosecutes such performance.

**ARTICLE VII
PERMITTED MORTGAGES**

- 7.1 **Lessee's Right to Mortgage Leasehold Estate.** Lessee may from time to time, without further consent of Lessor, assign Lessee's Leasehold Estate and this Lease by way of mortgage, which mortgage shall be an "approved" or "authorized" mortgage for the purposes hereof, to secure any mortgage loan made to Lessee by any bank, insurance company, bondholder or other established lending institution as a mortgagee or to an institutional trustee (each, a "Lender") who acts as mortgagee for the benefit of holders of public bonds issued in connection with the construction of the Improvements, additions to the Project, or the refinancing, advance refunding, defeasance or other satisfaction of the Bond Indenture or any other financing which complies herewith, provided that: (a) Lessee notifies Lessor in writing in advance as to each such proposed assignment, (b) the proceeds of the loan are used solely for investment in the Project or additions or improvements thereto and for no other purpose whatsoever, (c) upon execution of any such assignment or mortgage, a copy thereof shall be delivered promptly to Lessor, and (d) except as provided in this Article VII of this Lease, no other or further assignment of this Lease for which any provision hereof requires the written consent of Lessor shall be made without such consent.
- 7.2 **Lender's Rights.** Notwithstanding any provision of this Lease to the contrary and without the need to obtain any consent or approval from Lessor, the Lender or its assigns may enforce such an approved mortgage and acquire title to the Leasehold Estate created by this Lease in any lawful way, and pending foreclosure of an approved mortgage (or pending sale of this Lease in lieu of foreclosure of such mortgage), may take possession of and rent the Premises, and upon succeeding to the title of Lessee in the Leasehold Estate through foreclosure thereof (or upon assignment in lieu of foreclosure thereof), may without further consent of Lessor sell and assign the Leasehold Estate by assignment in which the assignee shall expressly assume and agree to observe and perform all the covenants of Lessee herein contained and such assignee may make a purchase money mortgage of this Lease to the assignor or to any bank, insurance company, other established lending institution or commercial trustee as fully as Lessee could do so hereunder, provided that upon execution of any such assignment, a copy thereof shall be delivered promptly to Lessor, that any purchase money mortgage meet the conditions contained in clauses (a) through (c) of Section 7.1 above and that except pursuant to this Article, no other or further assignment of this Lease for which any provision hereof requires the written consent of Lessor shall be made without such consent. The Lender or its assignee shall be liable to perform the obligations herein imposed on Lessee only during the period such person has possession or ownership of the Leasehold Estate. Nothing contained in any mortgage shall release or be deemed to relieve Lessee from the full and faithful observance and performance of its covenants herein contained or from any liability for the nonobservance or nonperformance thereof, nor be deemed to constitute a waiver of any rights of Lessor hereunder, and the terms, covenants and conditions of this Lease shall control in case of any conflict with the provisions of any mortgage.
- 7.3 **Protection of Lender.** During the continuance in effect of any mortgage of this Lease authorized by Section 7.1 above, Lessor will not terminate this Lease because of any default

on the part of Lessee to observe or perform any of the covenants or conditions herein contained if the Lender or its assigns, within one hundred twenty (120) days after Lessor has mailed (not earlier than the expiration of Lessee's right to cure the default under this Lease) to the Lender or its assigns at the last known address thereof a written notice of Lessor's intention to terminate this Lease for such cause, shall cure such default if the same can be cured by the payment of money, or, if such is not the case, shall undertake in writing to perform and shall thereafter pay all rent and other charges as and when due under this Lease and perform all other covenants of this Lease capable of performance by the Lender or its assigns until such time as this Lease shall be sold upon foreclosure of such mortgage commenced promptly and completed with due diligence. Any default (a) consisting of Lessee's failure promptly to discharge any lien, charge or encumbrance against the Premises junior in priority to such mortgage or (b) which is otherwise not susceptible to cure by Lender except upon obtaining possession of the Premises or foreclosure, shall be deemed to be duly cured if such mortgage shall be foreclosed by appropriate action instituted within said one hundred twenty (120) day period and thereafter prosecuted in a diligent and timely manner. Lessor agrees that, simultaneously with mailing or delivering any notice of default or breach under or with respect to this Lease to Lessee, Lessor will mail or deliver a copy thereof to each and every Lender at such address of which Lessor may be notified in writing.

7.4 **Assumption and Rejection.** In consideration of Lessor's agreement to the "New Lease" provisions in favor of Lender contained in Section 7.5 below, each Lender shall, by accepting its mortgage, be deemed to undertake and agree for the benefit of Lessor that, if at any time a bankruptcy proceeding shall be commenced concerning Lessee and/or the Leasehold Estate, such Lender shall, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of leases, use its reasonable efforts to diligently and in good faith obtain or cause Lessee/Lender and/or Lessee/Lender's trustee in bankruptcy to obtain: (a) an extension of the period during which this Lease may be assumed or rejected; or (b) an abandonment of the Leasehold Estate with the approval of the bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or (c) an assumption of this Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

7.5 **Lender's Right to a New Lease.** In the event that, notwithstanding the Lender's compliance with the provisions of Section 7.4 above, this Lease shall terminate prior to the natural expiration of the Term, as a result of an actual or deemed rejection of this Lease under any provision of the Bankruptcy Code (Title 11, United States Code) or any successor law having similar effect, then, and in any such event, such Lender (or the Lender holding a first mortgage if more than one) or its nominee or designee shall thereupon have the option to obtain a new lease ("New Lease") of the Premises in accordance with and upon the following terms and conditions:

- (a) **Lessor's Obligation to Enter into New Lease.** Within sixty (60) days after Lender has delivered to Lessor written request for a New Lease (such written request to be delivered to Lessor within sixty (60) days after Lender receives from Lessor written notice of the actual or deemed rejection of this Lease), Lessor shall enter into a New Lease of the Premises with such Lender, or its assignee or designee, as provided in

Section 7.5(b) immediately below; provided, however, that if Lessor receives no such written request within said sixty (60) day period, then all of Lender's rights to a New Lease hereunder shall automatically terminate.

- (b) **New Lease Terms.** Such New Lease shall be effective as of the date of the actual or deemed rejection of this Lease and shall be for the remainder of the Term at the same Annual Rent, additional rent and other charges herein provided and otherwise upon the same agreements, terms, covenants and conditions contained herein, except that the New Lease shall also include an additional indemnity paragraph under the terms of which Lessee shall indemnify and hold Lessor harmless from and against all claims, demands or liability whatsoever by whomsoever made for loss or damage arising out of or in connection with the issuance of the New Lease and will promptly reimburse Lessor for its costs and expenses, including reasonable attorney's fees, incurred in connection with the defense of any such claims. The New Lease issued hereunder shall have the same relative priority in time and rights as this Lease and have the benefit of and vest in the Lender (or Lender holding a first mortgage if more than one) all of the same rights, title, interest, powers and privileges of Lessee under this Lease. The New Lease shall, subject to the same agreements, terms, covenants and conditions contained herein, also demise to Lender or its designee all Improvements and appurtenances situated on the Premises, together with all equipment, fixtures and machinery therein.
- (c) **New Lessee's Obligations.** As a condition to and concurrently with delivery of such New Lease, the lessee named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for the rejection as aforesaid, shall otherwise fully remedy any existing defaults under this Lease susceptible of cure by such lessee, and shall pay to Lessor all amounts due to Lessor hereunder and all costs and expenses of Lessor incurred in connection with the enforcement of Lessor's rights hereunder, including, but not limited to, any insurance premiums paid or incurred by Lessor in order to maintain the insurance coverage required under the terms of this Lease, and the reasonable attorneys' fees, court costs and disbursements incurred by Lessor by reason of the actual or deemed rejection of this Lease and in connection with the preparation, execution and delivery of such New Lease. Any curable default which cannot be cured by such lessee until it obtains possession shall be cured by the lessee within a reasonable time, subject to extension for Force Majeure Events, after it obtains possession.
- (d) **Lender's Right to Assign New Lease.** Lender, or its affiliate, if it or its affiliate is the initial lessee under the New Lease, may assign such New Lease to any assignee of its choice which is approved by Lessor, which approval shall not be unreasonably withheld or delayed, and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such New Lease contained and on the lessee's part to be performed and observed from and after the date of such assignment, provided that a certified copy of such assignment shall be promptly provided to Lessor and that the assignee therein shall expressly assume and

agree to observe and perform all of the covenants of Lessee contained in said New Lease.

- 7.6 **No Merger.** Ownership by or for the same person of both the fee and Leasehold Estate in the Premises shall not affect the merger thereof without the prior written consent of any mortgagee of either of such estates to such merger. There shall be no merger of the Leasehold Estate with the fee estate in the Premises by reason of the fact that one Leasehold Estate may be held directly or indirectly by or for the account of any person who shall also hold directly or indirectly the fee estate, or any interest therein, nor shall there be any such merger by reason of the fact that all or any part of the Leasehold Estate may be conveyed or mortgaged to a mortgagee who shall also hold directly or indirectly the fee estate in the Premises or any interest of Lessor under this Lease.
- 7.7 **Surrender and Amendment.** No surrender (except a surrender upon the natural expiration of the Term or upon termination of this Lease by Lessor pursuant to the provisions hereof) by Lessee to Lessor, of this Lease, the Leasehold Estate or any part thereof or interest therein shall be valid or effective without the prior written consent of any then-subsisting record Lender of whose interest Lessor shall have been given written notice in accordance with the terms of this Lease. This Lease shall not be amended or modified in any way that reasonably may be deemed or construed to affect the material rights and obligations of any Lender which is a then-subsisting record mortgagee of whose interest Lessor shall have been given written notice in accordance with the terms of this Lease unless such mortgagee shall give its written consent thereto.

ARTICLE VIII DEFAULTS AND REMEDIES

- 8.1 **Events of Default.** Lessee shall be in default under this Lease upon the occurrence and continuance of any of the following events (each, an "Event of Default"):
- (a) **Payment of Rent.** If Lessee shall fail to pay any Rent or any part thereof when due, provided that Lessor shall give Lessee written notices of non-payment of said Rent with respect to each of the first two (2) occasions of such non-payment in each calendar year of the term hereof, together with a period of five (5) business days after such notice to cure any such failure, prior to the existence of an Event of Default, or
 - (b) **Payments other than Rent.** If Lessee shall fail to observe and perform faithfully any of Lessee's covenants or agreements herein contained performable by the payment of money to persons other than Lessor (other than the payment to Lessor of amounts paid by Lessor to others as provided herein, which payments shall be payments of Rent) and such default shall continue for thirty (30) days (or such other and longer applicable cure period as may be in this Lease expressly provided) after a statement therefor given by the obligee to Lessee, unless Lessee shall have taken steps in good faith in such period to remedy the same and is continuing to so act with respect thereto with diligence and continuity reasonably satisfactory to Lessor, or

- (c) **Breach of Other Agreement.** If Lessee shall fail to observe or perform faithfully any of Lessee's other covenants or agreements herein contained and such default shall continue for thirty (30) days (or such other applicable cure period as may be in this Lease expressly provided) after written notice thereof given by Lessor to Lessee unless Lessee shall have taken steps in good faith within such period to remedy the same and is continuing to act with respect thereto with diligence and continuity reasonably satisfactory to Lessor, or
- (d) **Abandonment of Premises.** If Lessee shall abandon the Premises, or
- (e) **Attachment.** If this Lease or any estate or interest of Lessee hereunder shall be sold under any attachment or execution, other than to a Lender or purchaser at foreclosure as provided herein.

8.2 **Remedies.** Upon the occurrence of any one or more of the Events of Default, Lessor may, at its election, subject to and conditioned upon the rights of any lender as provided in Article VII or any other provision hereof, terminate this Lease, or terminate Lessee's right to possession only, without terminating the Lease. Upon termination of the Lease, or upon any termination of the Lessee's right to possession without termination of the Lease, Lessee shall surrender possession and vacate the leased premises immediately, and deliver possession thereof to Lessor, and hereby grants to Lessor the full and free right, without demand or notice of any kind to Lessee (except as hereinabove expressly provided for), to enter into and upon the leased premises in such event, with or without process of law, and to repossess the leased premises at Lessor's former estate, and to expel or remove Lessee and any others who may be occupying or within the leased premises, without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom, and without relinquishing Lessor's rights to rent or any other right given to Lessor hereunder or by operation of law. Upon termination of the Lease, Lessor shall be entitled to recover, as damages, all rent and other sums due and payable to Lessor on the date of termination, plus (1) an amount equal to the rent and other sums provided herein to be paid by Lessee for the residue of the stated term hereof on the dates originally fixed herein for payment thereof, and (2) the cost of performing any other covenants to be performed by Lessee. If Lessor elects to terminate Lessee's right to possession only, without terminating the Lease, the Lessor may, at Lessor's option, enter into the leased premises, remove Lessee's signs and other evidence of tenancy, and take and hold possession thereof as hereinabove provided, without such entry and possession terminating the Lease or releasing Lessee, in whole or in part, from Lessee's obligations to pay the rent hereunder for the full term or from any other of its obligations under this Lease, subject to the offset of all sums received by Lessor from any reletting. Lessor may, but shall be under no obligation so to do, relet all or any part of the leased premises for such rent and upon such terms as shall be satisfactory to Lessor (including the right to relet the leased premises for a term greater or lesser than that remaining under the Lease term, the right to relet the leased premises as a part of a larger area, and the right to change the character or use made of the leased premises). For the purpose of such reletting, Lessor may decorate or make any repairs, changes, alterations or additions in or to the leased premises that may be necessary or convenient. If Lessor does not relet the leased premises, Lessee shall pay to Lessor on

demand damages equal to the amount of the rent and other sums provided herein to be paid by Lessee for the remainder of the Lease term. If the leased premises are relet and a sufficient sum shall not be realized from such reletting after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting, and the collection of the rent accruing therefrom (including, but not by way of limitation, attorneys' fees and broker's commissions), to satisfy the rent and other charges herein provided to be paid for the remainder of the Lease term, Lessee shall pay to Lessor on demand any deficiency, and Lessee agrees that Lessor may file suit to recover any sums falling due under the terms of this section from time to time. In no event shall Lessor or its assigns be entitled to recover any punitive, exemplary, or consequential damages against Lessee. Lessor hereby waives any right it has for the recovery of such damages.

- 8.3 **Non-Waiver.** Acceptance of rent by Lessor shall not be deemed a waiver by it of any breach by Lessee of any covenant herein contained or of Lessor's right to re-enter for breach of condition. Waiver by Lessor of any breach by Lessee shall not operate to extinguish the term, covenant or condition, the breach whereof has been waived, nor be deemed to be a waiver of Lessor's right to declare a forfeiture for any other breach thereof.

ARTICLE IX MISCELLANEOUS

- 9.1 **Approval and Consent.** Except as expressly provided herein, no approval or consent of Lessor required by any provision hereof shall be unreasonably or arbitrarily withheld, delayed or conditioned. Lessor shall use its reasonable best efforts to cooperate with Lessee in expediting all reasonable requests for approval or consent, and, if such approval or consent is refused, Lessor shall so state in writing and give its reasons therefor; provided, however, that in those instances wherein Lessor has reserved the arbitrary right to grant or withhold its consent or approval, no reason need be given. If Lessor shall fail to so approve or disapprove any request for approval or consent within thirty (30) days after the date on which notice of such request is given to Lessor as provided herein, together with documents and information reasonably necessary for Lessor to determine such matter (or within such other time as Lessor and Lessee shall mutually in writing agree), such request shall be deemed approved and such consent shall be deemed given.
- 9.2 **Assumption of Risk.** Lessee assumes all risk of loss or damage to furnishings, furniture, fixtures, equipment, supplies, merchandise and other property, by whomsoever owned, which is stored or placed on the Premises and does hereby agree that Lessor shall not be responsible for any loss or damage to any such property other than as a result of the gross negligence or wilful misconduct of Lessor or Lessor's agents, contractors, employees or affiliates and not at the direction or behest of Lessee, and Lessee hereby agrees to indemnify and save harmless Lessor from and against any and all claims for such loss or damage, except for damage attributable to Lessee as specified.
- 9.3 **Modification of Lease.** At Lessee's request, in the event a modification of this Lease is necessary to secure mortgage financing for the construction of the Improvements from any Lender, Lessor will agree to modify this Lease to the extent reasonably necessary to secure

such financing, provided that such modifications will not result in any lengthening of the Term nor adversely affect in any material respect any rights of Lessor under this Lease.

9.4 **Cancellation Not Merger.** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation hereof, or the termination hereof by Lessor pursuant to any provision contained herein, shall not work a merger, but at the option of Lessor shall either terminate any or all existing subleases or subtenancies hereunder, including, without limitation, any life care contracts, or operate as an assignment to Lessor of any or all of such subleases or subtenancies, including, without limitation, life care contracts. Nothing herein contained shall be deemed or construed to require Lessor under any circumstances to assume or accept assignment of any life care contracts nor to permit attornment or any holding over by the holders thereof.

9.5 **Notices.** Any notice, demand or other communication (in this section, collectively, "notice") to Lessor, Lessee or Lender provided for or permitted by this Lease shall be given in writing (unless otherwise expressly provided), and may be: (a) mailed by United States registered or certified mail, return receipt requested, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other; or (b) delivered personally to any officer of the party to be notified, if such party is a corporation or any general partner of a party to be notified if such is a partnership, as the case may be; or (c) sent by overnight delivery, addressed to the party to be notified at the address hereinafter specified. Any such written notice shall be deemed received at the time of such personal delivery, or at 5:00 P.M. on the third business day after being deposited with the United States mail as aforesaid, or on the business day after deposit thereof with an overnight courier delivery service, as the case may be.

Lessor: Intercity Investment Properties, Inc.
ATTN: Edwin B. Jordan, Jr.
4301 Westside Drive
Dallas, Texas 75209

Lessee: _____

Lender: _____

9.6 **Construction.** This Lease is the product of extensive negotiations in which Lessor and Lessee are represented by legal counsel of their choice. Lessor and Lessee enter into this Lease freely and after consultation with counsel and other professional advisors. Neither Lessor nor Lessee is acting under duress or compulsion. Accordingly, neither Lessor nor

Lessee shall be deemed the drafter of this Lease and neither this Lease nor any provision hereof shall be construed against either Lessor or Lessee as drafter.

- 9.7 **No Partnership Intended.** Lessor and Lessee agree that Lessor in no event and for no purpose is a partner of Lessee in the conduct of any of its businesses or other affairs or joint ventures or members of a joint enterprise with Lessee. The relationship of the parties is that of landlord and tenant.
- 9.8 **Governing Law and Venue.** This Lease and all of its provisions shall be governed by and construed in accordance with the law of the State of Texas other than that which would require reference to the law of another jurisdiction. The venue for any action with respect to this Lease shall be in Dallas County, Texas.
- 9.9 **Waiver of Jury Trial.** Lessor and Lessee each hereby voluntarily and knowingly waive and relinquish its right to a trial by jury in any action, proceeding or counterclaim brought by either against the other as to any matter whatsoever arising out of or in any way connected with this Lease.
- 9.10 **Time Is Of The Essence.** Time is expressly declared to be of the essence of this Lease and the performance and observance of all of the terms, covenants and conditions of this Lease.
- 9.11 **Memorandum of Lease.** Lessee shall not record this Lease without the prior written consent of Lessor, which consent Lessor may arbitrarily withhold; provided, however, that concurrently with the execution of this Lease, Lessor and Lessee shall join in the execution of a memorandum of this Lease (the "Memorandum") for the purpose of recordation in the form attached hereto as Exhibit "C" and made a part hereof and such Memorandum shall be promptly recorded in the Real Property Records of Dallas County, Texas in connection with the inception hereof.
- 9.12 **Captions and Headings.** The captions and headings of the Articles, Sections and subsections of this Lease are inserted only for convenience and reference and shall in no way define, expand or limit the scope or intent of any provisions of this Lease.
- 9.13 **Copies.** Wherever in this Lease it is provided that Lessor or Lessee shall provide a copy of any instrument, document or report, the copy shall be full, true and complete, with all of its exhibits, appendices and schedules. The recipient also shall be entitled to receive a copy of any matter cross-referenced or referred to in any instrument, document or report required to be given it hereunder.
- 9.14 **Estoppel Certificates.** Each party will, from time to time upon reasonable written request therefor from the other party or its Lender(s) or mortgagee(s), furnish to the other party or its Lender or mortgagee an estoppel certificate duly executed and acknowledged and certifying (a) that the Lease is unmodified and in full force and effect or if the Lease has been modified, is in full force and effect as modified and identifying the modifications; (b) whether or not there is, to such party's knowledge, then any default of this Lease by the other party or, to the party's knowledge, any condition which with the passage of time or delivery

of notice would become a default, and, if so specifying, the nature thereof, (c) the dates to which rent and any other charges payable under the Lease have been paid; and (d) such other information as may reasonably be requested. Lessor and Lessee will furnish their estoppel certificates without any charge.

9.15 **Lease Prior To Any Mortgages Or Security Interest On Fee.** At all times while this Lease remains in effect, the Lease and the Leasehold Estate established under this Lease shall be prior and superior to any mortgages or other security interests granted by Lessor on Lessor's fee simple interest in the Land.

9.16 **Lessor's Representations and Warranties.** Lessor represents and warrants to Lessee, which representations and warranties shall survive the commencement of this Lease, that the person signing this Lease on behalf of Lessor is authorized to do so, that Lessor has full right and authority to enter into this Lease, and that the execution, consent or acknowledgment of no other person is necessary in order to validate the execution of this Lease by Lessor. Upon full execution, this Lease shall be valid, legally binding and enforceable against Lessor according to the terms of this Lease.

9.17 **Lessee's Representations and Warranties.** Lessee represents and warrants to Lessor, which representations and warranties shall survive the commencement of this Lease, that the person signing this Lease on behalf of Lessee is authorized to do so, that Lessee has full right and authority to enter into this Lease, and that the execution, consent or acknowledgment of no other person is necessary in order to validate the execution of this Lease by Lessee. Upon full execution, this Lease shall be valid, legally binding and enforceable against Lessee according to the terms of this Lease.

9.18 **Entire Agreement, Binding Effect.** This Lease and those provisions of the Option Agreement continuing thereunder as provided therein and those leases and service contracts to be assumed by Lessee hereunder constitute a complete integration of all prior agreements between Lessor and Lessee and the entire agreement of Lessor and Lessee, and supersedes all oral and written agreements and understandings made and entered into by the parties or their agents. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by each of them. This Lease shall be binding upon and inure to the benefit of the Lessor and Lessee and their respective successors and assigns or permitted assigns. Whenever the term "Lessee" shall refer to more than one person or entity, the covenants and agreements of the Lessee shall be jointly and severally binding upon each such person or entity.

Lessor:

INTERCITY INVESTMENT PROPERTIES, INC.

By: _____
Edwin B. Jordan, Jr. _____

Lessee:

By: _____

Name: _____

Title: _____

**EXHIBIT "A"
TO
GROUND LEASE**

The Land

TRACT I

Being Lots 1 thru 7, Block 8/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

TRACT II

Being Lots 1 thru 8, Block 9/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

Provided, if abandonment is successful and the Owner acquires title to the alleyways and part of Beauregard Drive, both within the above described area, the portion thereof abandoned by the City of Dallas and acquired by Owner shall be a part of the Land subject to lease.

(TO BE REPLACED WHEN THE LAND IS REPLATTED)

**EXHIBIT "B"
TO
GROUND LEASE**

Permitted Exceptions

**EXHIBIT "C"
TO
GROUND LEASE**

Ground Lease Memorandum

EXHIBIT "D"
TO
GROUND LEASE

Essential Areas

DECLARATION OF RESTRICTIONS

STATE OF CALIFORNIA §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF MARIN §

WHEREAS, THE NEW HAMILTON PARTNERSHIP, L.P. a Delaware limited partnership ("Declarant"), is the owner of record of that certain tract of real property more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Restricted Property");

WHEREAS, COURTYARD MANAGEMENT CORPORATION, a Delaware corporation ("Owner"), is the owner of record of that certain tract of real property adjacent to the Restricted Property (the "Adjacent Property") which is more particularly described on Exhibit "B" attached hereto and made a part hereof; and,

WHEREAS, Owner purchased the Adjacent Property on the condition that Declarant would place certain restrictions against the Restricted Property as hereinafter set forth, which restrictions are intended to benefit Owner and its successors-in-interest as owners of the Adjacent Property.

NOW, THEREFORE, for and in consideration of the premises, the sufficiency of which is hereby acknowledged by Declarant, Declarant does hereby publish, declare and impose the following restrictions upon the Restricted Property:

1. For a period of five (5) years from and after the date on which Owner commences operation of its lodging facility on the Adjacent Property, the Restricted Property shall not be used for hotel, motel or any other type of transient lodging purposes, except any such use by Marriott International, Inc. or any subsidiaries thereof.

2. The restrictions set forth herein shall be deemed to be "covenants running with the land" and shall burden the Restricted Property for the benefit of Owner and its successors-in-interest as owners of the Adjacent Property.

EXHIBIT "A"

Exhibit "C"
Title Policy Commitment

Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA

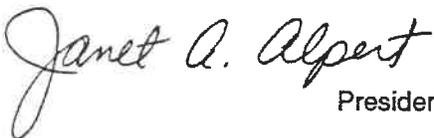
COMMITMENT FOR TITLE INSURANCE

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

We, LAWYERS TITLE INSURANCE CORPORATION will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule B and Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, expedited delivery expenses.

The Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

Lawyers Title Insurance Corporation

By: 
President

AMERICAN TITLE COMPANY
6029 Beltline Road @ Preston, Suite 250
Dallas, TX 75240

Charles S. Badgett • Carole M. Badgett
Phone: 972/789-8400 Fax: 972/789-8029

Attest: 
Secretary.

CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.
2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.

LAWYERS TITLE INSURANCE CORPORATION
COMMITMENT FOR TITLE INSURANCE
SCHEDULE A

Case No. 97 BC 445017-W (00004)

Effective Date of Commitment:
Issue Date: August 8, 1997

July 17, 1997, 8:00 o'clock a.m.

1. The Policy or policies to be issued are:

- (a) OWNER POLICY OF TITLE INSURANCE (Form T-1)
(Not applicable for improved one-to-four family residential real estate)

Policy Amount: \$ TO BE DETERMINED
Proposed Insured: TO BE DETERMINED

- (b) TEXAS RESIDENTIAL OWNER POLICY OF TITLE INSURANCE
--ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)

Policy Amount: \$
Proposed Insured:

- (c) MORTGAGEE POLICY OF TITLE INSURANCE (Form T-2)

Policy Amount: \$
Proposed Insured:

Proposed Borrower:

- (d) MORTGAGEE TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)

Binder Amount: \$
Proposed Insured:

Proposed Borrower:

- (e) OTHER:

Policy Amount: \$
Proposed Insured:

2. The interest in the land covered by this commitment is:

FEE SIMPLE

3. Record title to the land on the Effective Date appears to be vested in:

CORRIGAN PROPERTIES, INC., a Texas corporation

4. Legal description of land:

See Exhibit A attached hereto and made a part hereof for all purposes.

LAWYERS TITLE INSURANCE CORPORATION

EXHIBIT A

TRACT I

Being Lots 1 thru 7, Block 8/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

TRACT II

Being Lots 1 thru 8, Block 9/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

LAWYERS TITLE INSURANCE CORPORATION
SCHEDULE B
EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

ITEM 1 OF SCHEDULE B IS HEREBY DELETED IN ITS ENTIRETY.

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
 - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
 - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
 - c. to filled-in lands, or artificial islands, or
 - d. to statutory water rights, including riparian rights, or
 - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across the area.

(Applies to Owner Policy only.)

5. Standby fees, taxes and assessments by any taxing authority for the year 1997, and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Mortgagee Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory is evidence to us before a binder is issued.)
8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Mortgagee Policy only.)
9. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):

Rights of parties in possession. (Owner's Title Policy only)
10. Lease of laundry facilities granted to UNITED COIN METER COMPANY, INC. by instrument dated March 31, 1976, filed May 19, 1976, recorded in Volume 76097, Page 2079, Deed Records, DALLAS County, Texas.

- Affects Tract I.
11. The following easement(s) and/or building lines, as shown on plat recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas, to-wit:

(CONT. ON SCH. B, PAGE 2)

LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE B (page 2)

- a. 25 foot building line along the East property line of Lots 2, 4, 6, Block 8/5464.
 - b. 25 foot building line along the North property line of Lots 1 and 2, Block 8/5464.
 - c. 25 foot building line along the West property property line of Lots 1, 3, 5 and 7, Block 8/5464.
 - d. 25 foot building line along the South property line property line of Lots 6 and 7, Block 8/5464.
- Affects Tract I.
12. The following easement(s) and/or building lines, as shown on plat recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas, to-wit:
- a. 25 foot building line along the East property property line of Lots 2, 4, 6 and 8, Block 9/5464.
 - b. 25 foot building line along the North property property line of Lots 1 and 2, Block 9/5464.
 - c. 25 foot building line along the West property property line of Lots 1, 3, 5 and 7, Block 9/5464.
 - d. 25 foot building line along the South property property line of Lots 7 and 8, Block 9/5464.
- Affects Tract II.
13. Right of Entry granted to WARNER AMEX CABLE COMMUNICATIONS, INC. by instrument dated December 2, 1981, filed June 23, 1982, recorded in Volume 82123, Page 0112, Deed Records, DALLAS County, Texas.
- Affects both Tracts.
14. Rights of tenants in possession, as tenants only, under any unrecorded rental or lease agreements.
15. Rights of the public, the State of Texas and the municipality in and to that portion of subject property, if any, lying within the boundaries of any roadway, public or private.
16. Easements, or claims of easements, which are not recorded in the public records. (Owner's Title Policy only)
17. Any and all matters which would be shown on a current, correct survey of the property.

LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE C

Your Policy will not cover loss, costs, attorneys fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
 - no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
 - all standby fees, taxes, assessments and charges against the property have been paid,
 - all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialman's liens have attached to the property,
 - there is legal right of access to and from the land,
 - (on a Mortgagee Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. Deed of Trust executed by PRESTONVILLE APARTMENTS NO. 10, INC. to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$120,600.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated January 18, 1949, filed of record on January 19, 1949, and recorded in Volume 1971, Page 471, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract I (Lot 1).
6. Deed of Trust executed by PRESTONVILLE APARTMENTS NO. 15, INC., a corporation, to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$152,900.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated January 18, 1949, filed of record on January 19, 1949, and recorded in Volume 1971, Page 474, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract I (Lot 6).
7. Deed of Trust executed by FRANKLIN MANOR APTS. INC. NO. 8 to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$123,467.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated January 18, 1949, filed of record on January 18, 1949, and recorded in Volume 1971, Page 384, Deed of Trust Records, DALLAS County, Texas.

(CONT. ON SCH. C, PAGE 2)

LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE C (page 2)

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract II (Lot 9).

8. Deed of Trust executed by FRANKLIN MANOR APTS. INC. NO. 1 to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$125,229.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated January 18, 1949, filed of record on January 19, 1949, and recorded in Volume 1971, Page 445, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract II (Lot 1).

9. Deed of Trust executed by FRANKLIN MANOR APTS. INC. NO. 4 to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$189,921.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated February 15, 1949, filed of record on February 16, 1949, and recorded in Volume 1976, Page 587, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract II (Lot 4).

10. Deed of Trust executed by FRANKLIN MANOR APTS. INC. NO. 6 to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$189,256.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated February 15, 1949, filed of record on February 16, 1949, and recorded in Volume 1976, Page 591, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract II (Lot 9).

11. Deed of Trust executed by FRANKLIN MANOR APTS. INC. NO. 2 to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$125,391.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated February 15, 1949, filed of record on February 16, 1949, and recorded in Volume 1976, Page 594, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract II (Lot 2).

12. Deed of Trust executed by FRANKLIN MANOR APTS. INC. NO. 5 to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPASNY in the payment of one note in the principal sum of \$190,500.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated December 21, 1948, filed of record on December 22, 1948, and recorded in Volume 1966, Page 164, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The

(CONT. ON SCH. C, PAGE 3)

LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE C (page 3)

Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract II (Lot 5).

13. Deed of Trust executed by FRANKLIN MANOR APTS. INC. NO. 7 to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$125,700.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated December 21, 1949, filed of record on December 22, 1949, and recorded in Volume 1966, Page 167, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract II (Lot 7).

14. Deed of Trust executed by FRANKLIN MANOR APTS., INC. NO. 3 to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$100,370.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated December 21, 1948, filed of record on December 22, 1948, and recorded in Volume 1966, Page 170, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract II (Lot 3).

15. Deed of Trust executed by PRESTONVILLE APARTMENTS NO. 16, INC. to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$119,000.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated November 23, 1948, filed of record on November 24, 1948, and recorded in Volume 1959, Page 403, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract I (Lot 7).

16. Deed of Trust executed by PRESTONVILLE APARTMENTS NO. 11, INC. to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$118,800.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated November 23, 1948, filed of record on November 24, 1948, and recorded in Volume 1959, Page 407, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

- Affects Tract I (Lot 2).

17. Deed of Trust executed by PRESTONVILLE APARTMENTS NO. 13, INC. to T. L. BRADFORD, JR., Trustee(s), securing SOUTHWESTERN LIFE INSURANCE COMPANY in the payment of one note in the principal sum of \$183,300.00, and other indebtedness and performance as therein provided, which Deed of Trust is dated February 16, 1949, filed of record on February 16, 1949, and recorded in Volume 1977, Page 11, Deed of Trust Records, DALLAS County, Texas.

It appears the above lien may be barred by the statute of limitation. The Company requires confirmation from record owner that there is no unrecorded renewal or extension of same and that same is in fact paid and/or barred.

(CONT. ON SCH. C, PAGE 4)

LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE C (page 4)

- Affects Tract I (Lot 4).

18. Company requires submission of/and recording of proof of the passage of title (i.e. deed, name change or merger) from Corrigan Properties, Inc., a Texas corporation, grantee in Deed recorded in Volume 69194, Page 65, Deed Records, DALLAS County, Texas, into Intercity Investments Properties, which has said property rendered for taxes in its name.
19. Company requires a resolution by the Board of Directors authorizing the transaction and showing proof of authority of those acting on its behalf.
20. Company must be furnished satisfactory proof from the Secretary of State of Texas that Corrigan Properties, Inc., a Texas corporation, and Intercity Investments Properties, Inc., is a corporation in good standing and is authorized to do business in the State of Texas.

AMERICAN TITLE COMPANY

Countersigned By: 
Authorized Officer or Agent

Valid only if Schedule A And B
And Cover Page are Attached

LAWYERS TITLE INSURANCE CORPORATION
SCHEDULE D

Pursuant to the requirements of Rule P-21, Basic Manual of Rules, Rates and Forms for the writing of Title Insurance in the State of Texas, the following disclosures are made:

1. The following individuals are directors and/or officers, as indicated, of Lawyers Title Insurance Corporation, a wholly owned subsidiary of Lawyers Title Corporation:

President & Chief Operating Officer	Directors	Directors
Janet A. Alpert	Janet A. Alpert	William H. Goodwyn, Jr
	Kenneth Astheimer	Russell W. Jordan, III
	James L. Boren, Jr.	Charles W. Keith
Secretary	G. William Evans	Eugene F. Lanuzza
John M. Carter	Frederick H. Hemphill, Jr.	Charles H. Foster, Jr.
Senior Vice President, Treasurer and Chief Financial Officer		
G. William Evans		

2. The following disclosures are made by the Title Insurance Agent issuing this commitment: The following individuals are directors and/or officers, as indicated, of ATCOD, INC. dba American Title Company ("ATC").

Shareholders: American Title Group, Inc.

Officers:

Michael D. Richards	President - Dallas Division
Harvey C. Coggins	President - Fort Worth Division
Linda C. Brown	Controller
Thomas G. Naler	Executive Vice President, Corporate Counsel
Gayle Lynch	Executive Vice President
Doug Collins	Executive Vice President

3. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving any sum from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium* is:

Owners Policy	\$
Mortgagee Policy	\$
Tax Modification	\$
Survey Modification	\$
Endorsement Charges	\$
Total	\$ TO BE DETERMINED

Of this total amount: \$.00 (17.7500%) will be paid to the policy issuing Title Insurance Company; \$.00 (82.2500%) will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

AMOUNT	TO WHOM	FOR SERVICES
(.0000%)		
(.0000%)		
(.0000%)		

* The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the State Board of Insurance.

DELETION OF ARBITRATION PROVISION
(Not applicable to the Texas Residential Owner Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$1,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.

The Arbitration provision in the Policy is as follows:

"Unless prohibited by applicable law or unless this arbitration section is deleted by specific provision in Schedule B of this policy, either the Company or the Insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this Policy, and service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less SHALL BE arbitrated at the request of either the Company or the Insured, unless the insured is an individual person (as distinguished from a corporation, trust, partnership, association or other legal entity). All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this Policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the rules in effect at the Date of Policy shall be binding upon the parties. The award may include attorney's fees only if the laws of the state in which the land is located permit a court to award attorney's fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the rules may be obtained from the Company upon request."

I request the deletion of the Arbitration provision.

SIGNATURE _____

DATE _____

LAWYERS TITLE INSURANCE CORPORATION
TEXAS TITLE INSURANCE INFORMATION

<p>Title Insurance insures you against loss resulting from certain risks to your title.</p> <p>The Commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The Commitment is a legal document. You should review it carefully to completely understand it before your closing date.</p>	<p>El seguro de titulo le asegura en relacion a perdidas resultantes de ciertos riesgos que pueden afectar el titulo de su propiedad.</p> <p>El Compromiso para Segura de Titulo es la promesa de la compañía aseguradora de titulos de emitir la poliza de seguro de titulo. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y enterderlo completamente antes de la fecha para finalizar su transaccion.</p>
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Your Commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown on Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

EXCEPTIONS are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.

EXCLUSIONS are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

CONDITIONS are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the State Board of Insurance by calling the Title Insurance Company at 1-800-442-7067 or by calling the title insurance agent that issued the Commitment. The State Board of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the Policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the Policy. Some of the changes to consider are:

Request amendment of the "area and boundary" exception (Schedule B, para-

(CONTINUED ON NEXT PAGE)

LAWYERS TITLE INSURANCE CORPORATION
TEXAS TITLE INSURANCE INFORMATION
(CONTINUED)

graph 2). To get this amendment, you must furnish a survey. On the Owner Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company, your policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments, or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy.

Allow the Company to add an exception to "rights of parties in possession". If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection.

If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

IMPORTANT NOTICE	AVISO IMPORTANTE
<p>FOR INFORMATION, OR TO MAKE A COMPLAINT, CALL OUR TOLL-FREE TELEPHONE NUMBER</p> <p>1-800-442-7067</p> <p>ALSO, YOU MAY CONTACT THE TEXAS DEPARTMENT OF INSURANCE AT:</p> <p>1-800-252-3439</p> <p>to obtain information on:</p>	<p>PARA INFORMACION, O PARA SOMETER UNA QUEJA LLAME AL NUMERO GRATIS</p> <p>1-800-442-7067</p> <p>TAMBIEN PUEDE COMUNICARSE CON EL DEPARTAMENTO DE SEGUROS DE TEXAS AL:</p> <p>1-800-252-3439</p> <p>para obtener informacion sobre:</p>
<ol style="list-style-type: none"> 1. filing a complaint against an insurance company or agent, 2. whether an insurance company or agent is licensed, 3. complaints received against an insurance company or agent, 4. policyholder rights, and 5. a list of consumer publications and services available through the Department. 	<ol style="list-style-type: none"> 1. como someter una queja en contra de una compania de seguros o agente de seguros, 2. si una compania de seguros o agente de seguros tiene licencia, 3. quejas recibidas en contra de una compania de seguros o agente de seguros, 4. los derechos del asegurado, y 5. una lista de publicaciones y servicios para consumidores disponibles a traves del Departamento.
<p>YOU MAY ALSO WRITE TO:</p> <p>THE TEXAS DEPARTMENT OF INSURANCE P.O. BOX 149104 AUSTIN, TEXAS 78714-9104 FAX NO. (512) 475-1771</p>	<p>TAMBIEN PUEDE ESCRIBIR AL:</p> <p>DEPARTAMENTO DE SEGUROS DE TEXAS P.O. BOX 149104 AUSTIN, TEXAS 78714-9104 FAX NO. (512) 475-1771</p>

Exhibit "D"
Blanket Conveyance, Bill of Sale and Assignment

Exhibit "E"
Disclaimer

EXHIBIT "E"

DISCLAIMER

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

The undersigned, _____, a _____, as Lessee, in connection with the execution of the Ground Lease by and between the undersigned and **INTERCITY INVESTMENT PROPERTIES, INC.**, as Lessor, is aware that **INTERCITY INVESTMENT PROPERTIES, INC.**, is executing the Ground Lease based upon the representations contained herein and, but for these representations, Lessor would not sign the Ground Lease.

IT IS UNDERSTOOD AND AGREED THAT, OTHER THAN ITS OWNERSHIP OF THE PROPERTY AND ITS RIGHT TO LEASE THE PROPERTY TO LESSEE, LESSOR IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS (SPECIFICALLY MAKING NO WARRANTY OF COMPLIANCE WITH THE REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT OF 1990) INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY INCLUDING, WITHOUT LIMITATION: (1) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABLE OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY AND PARTICULARLY WITH REGARD TO THE PROJECT; (2) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY; AND (3) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY. LESSEE AGREES THAT, WITH RESPECT TO THE PROPERTY, LESSEE HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF LESSOR OR ANY AGENT OF LESSOR. LESSEE REPRESENTS THAT IT IS KNOWLEDGEABLE WITH RESPECT TO REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF LESSEE'S CONSULTANTS AND THAT LESSEE WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAID INSPECTIONS BY LESSEE, AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY LESSEE'S INSPECTIONS AND INVESTIGATIONS. LESSEE FURTHER ACKNOWLEDGES THAT LESSOR HAS NOT MADE AND DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING: (1) THE TRUTH OR ACCURACY OF ANY SURVEY OR STUDY AND/OR (2) THE QUALIFICATIONS OR EXPERTISE OF THE RESPECTIVE PARTIES CONDUCTING SAME AND THAT LESSOR HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION WITH RESPECT THERETO. LESSEE ACKNOWLEDGES AND AGREES THAT, UPON CLOSING, LESSOR SHALL LEASE TO

LESSEE, AND LESSEE SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS" WITH ALL FAULTS, AND LESSEE FURTHER KNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLATERAL TO OR AFFECTING THE PROPERTY BY LESSOR, ANY AGENT OF LESSOR OR ANY THIRD PARTY. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE THE CLOSING AND SHALL NOT MERGE THEREIN AND SHALL BE INCORPORATED INTO THE LEASE. LESSOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN.

SIGNED this _____ day of _____, _____.

LESSEE

a _____

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

The above instrument was personally acknowledged before me on the _____ day of _____, _____, by _____, _____ of _____, on behalf of said _____.

Notary Public

Exhibit "F"
Indemnity Agreement

EXHIBIT "F"

INDEMNITY AGREEMENT

This Agreement is made by and between **INTERCITY INVESTMENT PROPERTIES, INC.** ("Lessor") and _____, ("Lessee"). In consideration of the promises contained herein, Lessee agrees as follows:

- 1. Lessor has assigned and delivered to Lessee all Security Deposits in connection with any tenants upon the property described in Exhibit A attached hereto.
- 2. Attached hereto are the Tenant Notice Letters executed by Lessee which letters acknowledge receipt of and responsibility for the Tenant Security Deposits.
- 3. Lessee agrees to indemnify Lessor and hold Lessor harmless from any and all claims, causes of action, damages, judgments and expenses incurred or suffered by Lessor as a result of any claim made by any tenant asserting a right to a Security Deposit referred to in the attached Tenant Notice Letters.

SIGNED this _____ day of _____, _____.

LESSOR

INTERCITY INVESTMENT PROPERTIES, INC.

By: _____
Edwin B. Jordan, Jr., President

LESSEE

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
COUNTY OF DALLAS §

The above instrument was personally acknowledged before me on the _____ day of _____, _____, by Edwin B. Jordan, Jr., President of **INTERCITY INVESTMENT PROPERTIES, INC.**, as the act of said corporation.

Notary Public

STATE OF TEXAS §
COUNTY OF DALLAS §

The above instrument was personally acknowledged before me on the _____ day of _____, _____, by _____, _____ of _____, on behalf of said _____.

Notary Public

Landlord's

Exhibit 5-C

for February 21-23, 2023 hearing

EXHIBIT C

ASSIGNMENT OF GROUND LEASE OPTION AGREEMENT

THIS ASSIGNMENT OF GROUND LEASE OPTION AGREEMENT made this 20th day of May, 1999, by NORTHWEST LIFECARE JOINT VENTURE (hereinafter called "Assignor"), to NORTHWEST SENIOR HOUSING CORPORATION, a Texas not-for-profit corporation (hereinafter called "Assignee");

WITNESSETH:

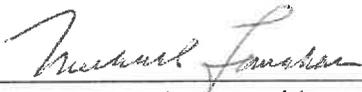
Assignor, in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable consideration paid by Assignee, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, CONVEY, ASSIGN, TRANSFER and SET OVER unto Assignee, the entire leasehold estate and option rights under that certain Ground Lease Option Agreement (hereinafter called the "Option") dated September 9, 1997 by and between Intercity Investments Properties, Inc. as owner/lessor and Assignor as optionee/lessee covering the property described in the Option, together with all rights, titles and options conferred thereby.

In consideration of the foregoing assignment, Assignee hereby expressly assumes and agrees to keep, perform and fulfill all of the terms, covenants, conditions and obligations required to be kept, performed and fulfilled by Assignor under the Option.

Assignor hereby represents and warrants unto Assignee that Assignor is the owner of, and has good and marketable title to, the option/leasehold interest assigned hereby; that Assignor has performed no act or executed any other instrument which might prevent Assignee from enjoying and exercising any of the rights under the Option; that Assignor has not executed or granted any modifications or extensions whatsoever of the Option that the Option is valid and subsisting and in full force and effect; and that there are no defaults now existing under the Option and no event has occurred and no condition exists which with the passage of time or the giving of notice, or both, would constitute such a default.

IN WITNESS WHEREOF, this Assignment of Lease is executed as of the date first above written.

NORTHWEST LIFECARE JOINT VENTURE
By: Greystone Communities, Joint Venturer

By: 
Michael B. Lanahan, President

NORTHWEST SENIOR HOUSING CORPORATION,
a Texas not-for-profit corporation

By: Charles B. Brewer
Charles B. Brewer, President

08652 00001 DALLAS 1000217.1

EXHIBIT "B"

Budget

[attached following this cover page]

Exhibit B

Edgemere:

Budget for demolition of existing improvements and construction of the Project.

Asbestos Abatement (current estimate) \$1,300,000
 Removal and disposal

Demolition (included in the GMP Contract)

- | | |
|---|------------------|
| 1. Demo and remove existing apartment building and foundation systems 2'-0" below grade | \$413,700 |
| 2. Demo and remove existing – carports and paving | 118,200 |
| 3. Load, transport and legally disperse of debris | <u>59,100</u> |
| Total Demolition | \$591,000 |

Construction

- | | |
|--------------------------------|--|
| General Requirements | \$2,727,800 |
| Site Improvements | 5,096,300 |
| Structures – I. L. and Commons | 44,955,365 |
| PCN | 7,875,300 |
| Fees, Bonds, Insurance | 2,449,500 |
| Contingency | <u>1,000,000</u> |
| Total Construction | \$64,104,265 <u>64,104,265</u> |

Total GMP Contract	<u>64,695,265</u>	<u>64,695,265</u>
--------------------	-------------------	-------------------

Total Cost of Abatement, Demolition, Construction	\$65,995,265
---	---------------------

Landlord's

Exhibit 5-D

for February 21-23, 2023 hearing

EXHIBIT D

AMENDMENT TO GROUND LEASE OPTION AGREEMENT

THIS AMENDMENT TO GROUND LEASE OPTION AGREEMENT (the "**Amendment**") is executed effective as of October 1, 1999, by and between INTERCITY INVESTMENT PROPERTIES, INC., a Texas corporation (the "**Owner**") and NORTHWEST SENIOR HOUSING CORPORATION, a Texas not for profit corporation (the "**Optionee**") upon the terms and provisions set forth herein.

RECITALS:

Owner and Northwest Life Care Joint Venture (the "**Venture**") entered into a certain Ground Lease Option Agreement (the "**Option Agreement**") dated effective as of September 9, 1997, relating to the grant of an Option on the Property, both as defined therein (all capitalized terms contained in this Amendment and not otherwise defined herein shall have the meanings ascribed to such terms in the Option Agreement).

By Assignment of Ground Lease Option Agreement dated May 20, 1999, the Venture assigned all of its right, title and interest in and to the Option Agreement to the Optionee.

Owner and Optionee desire to amend and modify the Option Agreement and the form of the Ground Lease as provided herein.

Optionee desires to exercise the option pursuant to Section 11.1 of the Option Agreement effective as of October 1, 1999.

IT IS, THEREFORE, AGREED AS FOLLOWS:

1. In satisfaction of the requirement contained in Section 11.1(a) of the Option Agreement, this Amendment constitutes the notice in writing to Owner and, by copy of this Amendment provided to the Title Company, also constitutes such notice to the Title Company that Optionee hereby exercises the Option subject to the modifications of the Option Agreement herein.
2. Pursuant to Section 11.1(b) of the Option Agreement, an executed original of the Assignment of the Option Agreement to Optionee is attached hereto as Exhibit "A" and made a part hereof.
3. Section 11.1(c) of the Option Agreement requires delivery of Final Plans and Specifications for the Project, which Final Plans and Specifications will probably not be completed prior to the anticipated Closing Date. Accordingly, prior to the effective date hereof, Optionee has delivered to Owner the Plans and Specifications for the Project in the stage of completion accomplished as of the date of such documents (the "**Interim Plans and Specifications**") together with copies of all executed contracts with architects, engineers, contractors, suppliers and others

whose efforts or materials will be utilized to construct the Project. Owner hereby agrees to accept such Interim Plans and Specifications in their current state of completion and to review and approve, or disapprove, such Interim Plans and Specifications, as provided in Section 11.2 of the Option Agreement, provided that Optionee agrees that the Final Plans and Specifications shall be substantially based upon the Interim Plans and Specifications and to deliver copies thereof to Owner when completed. Based upon such agreement of Optionee, Owner hereby waives the requirement that Optionee deliver the Final Plans and Specifications concurrently with the Option Notice.

4. Optionee has delivered to Owner a financing schedule for Optionee's development and construction of the Project, together with information regarding the sale of the bonds for the financing of the Project; however, Optionee will not be able to deliver the executed Bond Purchase Agreement to Owner until approximately fifteen (15) days prior to Closing instead of concurrently herewith, as required by Section 11.1(d) of the Option Agreement. Owner hereby agrees that the information regarding the proposed financing previously provided and to be provided to Owner prior to Closing is adequate for Owner's evaluation of the bond financing, provided that Optionee agrees that the final information regarding such bond financing shall be substantially the same in all material respects as such information previously provided to Owner. Based upon such agreement of Optionee, Owner hereby waives the requirement to provide the fully executed Bond Purchase Agreement to Owner in connection with the exercise of the Option.

5. As required by Section 11.1(e) of the Option Agreement, the budget (the "Budget") for the demolition of the existing improvements on the Property and construction of the Project is attached hereto as Exhibit "B" and made a part hereof. Owner hereby agrees that, subject to delivery to Owner prior to Closing of a copy of the fully executed Bond Purchase Agreement which includes and is based upon a budget which is substantially the same in all material respects as the Budget, Owner is reasonably satisfied that the Funds will be sufficient to construct the Project and pay all expenses thereof.

6. Subject to Owner's rights to give a Deficiency Notice to Optionee pursuant to Section 11.2 of the Agreement, Owner hereby agrees to deliver termination notices to the tenants under the Existing Occupancy Agreements on or about October 15, 1999, as required pursuant to Section 11.3 of the Agreement.

7. The Closing Date is currently anticipated to be November 17, 1999, provided that Optionee shall have the right to extend the Closing Date to a date not later than December 31, 1999 in the event that completion of the bond financing for the Project requires any delay of the Closing Date and Section 13.1 of the Option Agreement is hereby so modified.

8. Section 1.3 of the form of the Ground Lease is hereby deleted in its entirety and replaced by the following:

“*Bond Indenture*’ means collectively, the documents evidencing and securing the indebtedness incurred by or on behalf of the Lessee in connection with the acquisition, construction, improving and equipping of the Project or refinancing thereof.”

9. New Section 2.5 is hereby added to the form of the Ground Lease, as follows:

“2.5 Other Leases. Except for leases of portions of the Existing Improvements to residential leasehold tenants and as provided herein, Lessor has not leased or granted any other similar leasehold rights in the Property to others.”

10. Section 5.2(c)(iii) of the form of the Ground Lease is hereby deleted in its entirety and Section 5.2(c)(ii) of the Ground Lease is hereby replaced by the following:

“(ii) prior to any such proceedings, Lessee shall provide written notice thereof to Lessor and.”

11. Section 5.17(a) of the form of the Ground Lease is hereby modified and amended by adding the following sentence to the end thereof:

“The Lessor hereby consents to the assignment by the Lessee of its rights under this Lease to any institutional trustee who is serving as mortgagee under the Bond Indenture as the same relates to the original financing of the Project, which institutional trustee will initially be Chase Bank of Texas, N.A..”

12. Section 7.1 of the form of the Ground Lease is hereby deleted in its entirety and replaced by the following:

“7.1 Lessee’s Right to Mortgage Leasehold Estate. Lessee may from time to time, without further consent of Lessor, assign Lessee’s leasehold estate and this Lease by way of mortgage, which mortgage shall be an “approved” or “authorized” mortgage for the purposes hereof, to secure any indebtedness of the Lessee incurred to acquire, construct, improve and equip the Project or to refinance the same, including the provision of working capital, the payment of costs of issuance and the cost of any credit or liquidity enhancement related to such indebtedness. The mortgage granted by the Lessee

pursuant to the Bond Indenture is hereby deemed to be an “approved” or “authorized” mortgage. Any bank, insurance company, bondholder or other established lending institution or an institutional trustee who acts as mortgagee for the benefit of holders of, or providers of credit or liquidity enhancement with respect to, indebtedness issued in connection with the construction of the Project, any Improvements, additions to the Project, or the refinancing, advance refunding, defeasance or other satisfaction of the Bond Indenture or any other financing which complies herewith shall be deemed to be a “Lender.” Any mortgage granted subsequent to the initial mortgage granted pursuant to the Bond Indenture shall require that: (a) Lessee notify Lessor in writing in advance as to each such proposed assignment, (b) the proceeds of such subsequent financing are used solely for investment in the Project or additions or improvements thereto, including the provision of working capital, the payment of costs of issuance and the payment of costs for any credit or liquidity enhancement related thereto, and for no other purpose whatsoever, (c) upon the execution of any such assignment or mortgage, a copy thereof shall be delivered promptly to Lessor, and (d) except as provided in this Article VII of this Lease, no other or further assignment of this Lease for which any provision hereof requires the written consent of Lessor shall be made without such consent.”

13. New Section 7.8 is hereby added to the form of the Ground Lease, as follows:

“7.8 Estoppel Certificate. Upon the written request of any Lender, Lessor shall provide an estoppel certificate to such Lender in such form as may be reasonably requested by such Lender or state in writing any basis Lessor may have for being unable to provide any such estoppel certificate; provided that, in the absence of an agreement between Lessor and any such Lender as to the form of any such estoppel certificate, such a certificate which addresses the items specified in Section 9.14 of this Lease shall be deemed to satisfy this requirement.”

14. Notwithstanding any term or provision of the Option Agreement, this Amendment shall constitute the Option Notice for all purposes and the time periods for delivery of the Option Notice, for the Closing and for all other matters addressed herein are hereby amended as provided herein.

15. Except as amended and modified hereby, all terms and provisions of the Option Agreement and the form of the Ground Lease attached thereto, as modified by a certain Amendment to Ground Lease effective as of September 2, 1999, shall remain unchanged and in full force and effect. In the event of any conflict between the terms and provisions of this Amendment and the terms and provisions of the Option Agreement, the terms and provisions of this Amendment shall control.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the day and year first set forth above.

OWNER:

INTERCITY INVESTMENT PROPERTIES, INC.,
a Texas corporation

By: 
Edwin B. Jordan, Jr.,
President

OPTIONEE:

NORTHWEST SENIOR HOUSING CORPORATION,
a Texas not for profit corporation

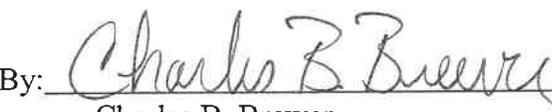
By: 
Charles B. Brewer,
President

EXHIBIT "A"

Assignment of Ground Lease Option Agreement

[attached following this cover page]

Landlord's

Exhibit 5-E

for February 21-23, 2023 hearing

EXHIBIT E

GROUND LEASE

Between

**Intercity Investment Properties, Inc.,
a Texas corporation
“Lessor”**

and

**Northwest Senior Housing Corporation,
a Texas not-for-profit corporation
“Lessee”**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I - DEFINITIONS	<u>1</u>
1.1 “CPI Adjustment”	<u>1</u>
1.2 “Annual Rent”	<u>2</u>
1.3 “Bond Indenture”	<u>2</u>
1.4 “CPI”	<u>2</u>
1.5 “CPI Factor”	<u>2</u>
1.6 “Commencement Date”	<u>2</u>
1.7 “Default Interest Rate”	<u>2</u>
1.8 “Existing Improvements”	<u>2</u>
1.9 “Force Majeure Event”	<u>2</u>
1.10 “Governmental Authority” or “Governmental Authorities”	<u>2</u>
1.11 “Hazardous Materials” and “Hazardous Materials Laws”	<u>2</u>
1.12 “Improvements”	<u>3</u>
1.13 “Insurance Trustee”	<u>3</u>
1.14 “Land”	<u>3</u>
1.15 “Lease”	<u>3</u>
1.16 “Leasehold Estate”	<u>3</u>
1.17 “Lender”	<u>3</u>
1.18 “Lessee”	<u>3</u>
1.19 “Lessor”	<u>3</u>
1.20 “Option Date”	<u>3</u>
1.21 “Permitted Title Exceptions”	<u>3</u>
1.22 “Person”	<u>3</u>
1.23 “Premises”	<u>3</u>
1.24 “Project”	<u>4</u>
1.25 “Resident”	<u>4</u>
1.26 “Space Leases”	<u>4</u>
1.27 “Term”	<u>4</u>
ARTICLE II - DEMISE	<u>4</u>
2.1 Grant of Lease	<u>4</u>
2.2 Disclaimer	<u>4</u>
2.3 Quiet Enjoyment	<u>5</u>
2.4 Possession of the Property	<u>5</u>
ARTICLE III - TERM	<u>6</u>
ARTICLE IV - RENTAL	<u>6</u>
4.1 Annual Rent	<u>6</u>
4.2 Rent Adjustment	<u>6</u>
4.3 Installment Payment of Rent	<u>7</u>
4.4 No Rent Reduction	<u>7</u>

ARTICLE V - LESSEE'S COVENANTS 7

5.1 Rent 7

5.2 Taxes And Assessments 7

5.3 Delinquent Rent. 8

5.4 Utility and Other Governmental and Quasi - Governmental Charges 8

5.5 Use of the Land 8

5.6 Improvements Required by Law. 8

5.7 Observance of Laws. 9

5.8 Repair, Maintenance and Restoration 9

5.9 Inspection 9

5.10 Construction and Alteration of Buildings 9

5.11 Liens. 10

5.12 Setback Lines. 10

5.13 Insurance. 10

 (a) Commercial Property Insurance 10

 (b) Builders and Installation Risk 11

 (c) Commercial General Liability. 11

 (d) Worker's Compensation Insurance 12

 (e) Umbrella Liability 12

 (f) Payment and Performance Bonds 12

 (g) Flood Insurance 12

 (h) General Requirements for Insurance 13

 (i) Certificates of Insurance 14

 (j) Waiver of Subrogation 14

 (k) Adjustment and Adequacy of Coverage 14

5.14 Loss or Damage to Improvements 14

 (a) Use of Insurance Proceeds. 14

 (b) Disbursement of Insurance Proceeds 15

 (c) Lessor's Inspections 15

5.15 Indemnity 16

5.16 Reimbursable Expenses 16

 (a) Lessor's Expenses 16

 (b) Enforcement Expenses 16

5.17 Assignment. 17

 (a) Consent to Assignment. 17

 (b) Assumption of Lease 17

 (c) "Assignment" Defined 17

 (d) Assignment In Violation Of Section Is Void. 18

5.18 Subletting 18

5.19 Utilities 18

5.20 Surrender 18

5.21 Holdover 19

5.22 Waste or Unlawful Use. 19

5.23 Environmental Protection 20

 (a) Hazardous Materials 20

 (b) Restriction on Use of Hazardous Materials. 20

 (c) Remediation of Release of Hazardous Materials. 20

(d)	Underground Storage Tanks	<u>21</u>
(e)	Compliance with Governmental Requirements	<u>21</u>
(f)	Permits and Approvals	<u>21</u>
(g)	Notice of Actions	<u>21</u>
(h)	Access to Records and the Premises	<u>22</u>
(i)	Pre-Surrender	<u>22</u>
(j)	Vacating the Premises	<u>23</u>
(k)	Environmental Indemnification	<u>23</u>
(l)	Survival	<u>23</u>
ARTICLE VI - CONDEMNATION		<u>24</u>
6.1	Termination of Lease and Rights to Compensation	<u>24</u>
6.2	Rent Reduction	<u>24</u>
6.3	Election to Terminate	<u>24</u>
6.4	Partial Condemnation	<u>25</u>
6.5	Leasehold Condemnation	<u>25</u>
ARTICLE VII - PERMITTED MORTGAGES		<u>26</u>
7.1	Lessee's Right to Mortgage Leasehold Estate	<u>26</u>
7.2	Lender's Rights	<u>26</u>
7.3	Protection of Lender	<u>27</u>
7.4	Assumption and Rejection	<u>27</u>
7.5	Lender's Right to a New Lease	<u>27</u>
(a)	Lessor's Obligation to Enter into New Lease	<u>28</u>
(b)	New Lease Terms	<u>28</u>
(c)	New Lessee's Obligations	<u>28</u>
(d)	Lender's Right to Assign New Lease	<u>28</u>
7.6	No Merger	<u>29</u>
7.7	Surrender and Amendment	<u>29</u>
ARTICLE VIII - DEFAULTS AND REMEDIES		<u>29</u>
8.1	Events of Default	<u>29</u>
(a)	Payment of Rent	<u>29</u>
(b)	Payments other than Rent	<u>30</u>
(c)	Breach of Other Agreement	<u>30</u>
(d)	Abandonment of Premises	<u>30</u>
(e)	Attachment	<u>30</u>
8.2	Remedies	<u>30</u>
8.3	Non-Waiver	<u>31</u>
ARTICLE IX - MISCELLANEOUS		<u>31</u>
9.1	Approval and Consent	<u>31</u>
9.2	Assumption of Risk	<u>31</u>
9.3	Modification of Lease	<u>32</u>
9.4	Cancellation Not Merger	<u>32</u>
9.5	Notices	<u>32</u>
9.6	Construction	<u>33</u>

9.7 No Partnership Intended 33
9.8 Governing Law and Venue 33
9.9 Waiver of Jury Trial. 33
9.10 Time Is Of The Essence. 33
9.11 Memorandum of Lease 33
9.12 Captions and Headings. 34
9.13 Copies. 34
9.14 Estoppel Certificates 34
9.15 Lease Prior To Any Mortgages Or Security Interest On Fee 34
9.16 Lessor's Representations and Warranties. 34
9.17 Lessee's Representations and Warranties 34
9.18 Entire Agreement, Binding Effect 35

EXHIBITS

- “A” The Land (Section 1.14)
- “B” Permitted Title Exceptions (Section 1.21)
- “C” Ordinance for Abandonment of Beauregard Drive (Section 5.6)
- “D” Essential Areas (Section 6.2)
- “E” Ground Lease Memorandum (Section 9.11)

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made and entered into as of the ____ day of November, 1999, by and between INTERCITY INVESTMENT PROPERTIES, INC., a Texas corporation, whose principal place of business and office address is 4301 Westside Drive, Suite 100, Dallas, Texas 75209-6546, Attention: Edwin B. Jordan, Jr. ("Lessor") and Northwest Senior Housing Corporation, a Texas not-for-profit corporation, whose principal place of business and post office address is Attention: Charles B. Brewer, 2711 LBJ Freeway, Suite 950, Dallas, Texas 75234 ("Lessee").

PREAMBLE AND STATEMENT OF PURPOSE

Lessor is the owner of a fee simple absolute interest in certain real property (the "Land") containing approximately 16.25 acres and located at the Northwest Corner of the intersection of Thackery Road and Northwest Highway in the City of Dallas, Dallas County, Texas, which is further and legally described on Exhibit "A," attached hereto and by this reference incorporated herein and made a part hereof.

Lessee desires to lease the Land from Lessor for the term described herein and on the other terms and conditions hereinafter set forth in order to develop and construct a residential retirement Project thereon as provided herein.

Lessor agrees to lease the Land to Lessee on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants hereinafter set forth and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINITIONS

For purposes of this Lease, the terms defined in this Article and throughout the remainder of this Lease, when written with initial capital letters, shall have the meanings given to them in this Article or in such definitions throughout this Lease and no other meaning. Such terms may be used in the singular or plural or in varying tenses, but such variations shall not affect their meanings so long as such terms are written with initial capital letters. When such terms are used in this Lease but are written without initial capital letters, such terms shall have the meaning they have in common usage.

1.1 **"CPI Adjustment"** means each adjustment to each amount set forth in this Lease as subject to CPI Adjustment, as the same may have been previously adjusted (the "Base Amount") effective as provided herein and calculated by comparing the CPI last published prior to the initial date specified for each such amount (the "Base Index"), with the CPI last published

prior to the current date on which such amount is due to be adjusted hereunder (the "Current Index") to calculate the CPI Factor, hereinafter defined. The amount of any adjustment shall be set by multiplying the Base Amount by the CPI Factor; provided, however, that no such CPI Adjustment shall be less than two and one-half percent (2.5%) per year nor more than five percent (5%) per year. Lessor shall give written notice of any adjusted amount to Lessee within thirty (30) days after its calculation.

- 1.2 **"Annual Rent"** has the meaning set forth in Section 4.1 hereof.
- 1.3 **"Bond Indenture"** means collectively, the documents evidencing and securing the indebtedness incurred by or on behalf of the Lessee in connection with the acquisition, construction, improving and equipping of the Project or refinancing thereof.
- 1.4 **"CPI"** means the Consumer Price Index for All Urban Consumers (Base Year 1986 = 100) for the Dallas/Fort Worth Standard Metropolitan Statistical Area, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is changed so that the base year differs from that used above, the index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the index is discontinued or revised during the Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued or revised.
- 1.5 **"CPI Factor"** is a fraction (carried to 4 decimal places), the numerator of which is the Current Index and the denominator of which is the Base Index.
- 1.6 **"Commencement Date"** means the date first above written and is the date on which this Lease becomes effective.
- 1.7 **"Default Interest Rate"** means an interest rate of eighteen percent (18%) per year; provided, however, that in no event shall the interest charged hereunder exceed the maximum lawful rate of interest then allowed by law.
- 1.8 **"Existing Improvements"** means a portion of the Preston Village apartment complex and all other Improvements to the Land existing as of the date hereof.
- 1.9 **"Force Majeure Event"** means and refers to all acts wholly beyond the control of Lessor and Lessee, including, without limitation, acts of God, war, riots, earthquakes, floods, hurricanes and windstorms.
- 1.10 **"Governmental Authority"** or **"Governmental Authorities"** means any federal, state, city, county, administrative or other governmental authority which now or hereafter has jurisdiction, review, approval or consent rights relating to the construction, development, ownership, control or operation of the Project on the Property or the use of the Premises for any purpose in connection with its current use, use for the Project or any other use.
- 1.11 **"Hazardous Materials"** and **"Hazardous Materials Laws"** have the meanings set forth in Section 5.25 hereof.

- 1.12 **“Improvements”** means and includes all buildings and other improvements, including without limitation, the Existing Improvements, and any replacement improvements, by whomsoever made, now existing or at any time hereafter during the Term placed on the Land.
- 1.13 **“Insurance Trustee”** means the trust company with principal offices in Dallas, Texas, selected by Lessor and Lessee pursuant to Section 5.13 below.
- 1.14 **“Land”** means and includes all of that certain parcel of real property described in Exhibit “A” attached hereto and incorporated herein by this reference, having a gross area of 16.25 acres, more or less and, if abandonment thereof is successful, including alleyways and that portion of Beauregard Street surrounded by the remainder of the Land.
- 1.15 **“Lease”** means this Lease and all Exhibits hereto, as the same may from time to time hereafter be amended in accordance with its terms.
- 1.16 **“Leasehold Estate”** means the leasehold estate created by the execution and delivery of this Lease.
- 1.17 **“Lender”** has the meaning provided in Section 7.1 hereof.
- 1.18 **“Lessee”** means Northwest Senior Housing Corporation, a Texas not-for-profit corporation, and includes any pronoun used in place thereof, the singular or plural number and its successors and permitted assigns.
- 1.19 **“Lessor”** means Intercity Investment Properties, Inc., a Texas corporation, and shall include any pronoun used in place thereof, the masculine or feminine, the singular or plural number, and its successors and assigns, according to the context thereof.
- 1.20 **“Option Date”** means the Effective Date, as defined therein, of that certain Ground lease Option Agreement (the “Option Agreement”) executed by and between Lessor, as Optionor, and Lessee, as Optionee, granting Lessee the option to enter into this Lease as provided therein, which date is September 9, 1997.
- 1.21 **“Permitted Title Exceptions”** means those encumbrances and other matters listed on Exhibit “B” attached hereto and made a part hereof and any and all additional encumbrances approved in writing by Lessee.
- 1.22 **“Person”** means any natural person, corporation, limited liability company, limited partnership, limited liability partnership, general partnership, tenancy in common, joint venture, association, business trust, real estate investment trust or other entity or organization, and any combination of any of them.
- 1.23 **“Premises”** shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) the Land and all Improvements.

- 1.24 **“Project”** means the continuing care retirement center life care concept project to be developed on the Land by Lessee, which is anticipated to provide a range of living options for elderly Residents varying along a continuum from independent living through increasing health care needs; the Project is currently anticipated to be a first class three (3) story retirement center containing approximately 220 independent living units (the “Independent Living Center”), an assisted living center consisting of approximately 77 assisted living units (the “Assisted Living Center”), a health center consisting of approximately 60 skilled nursing beds (the “Health Center”) and an approximately 25,000 square foot Commons Building.
- 1.25 **“Resident”** means a resident or prospective resident in the Project.
- 1.26 **“Space Leases”** means any and all subleases of space in the Project to be made between Lessee and any subtenants of Lessee upon completion of construction of the Project.
- 1.27 **“Term”** has the meaning set forth in Article III hereof.

ARTICLE II DEMISE

- 2.1 **Grant of Lease.** Lessor, in consideration of the rent herein reserved and of the covenants and conditions herein contained and on the part of Lessee to be observed and performed and upon and subject to the terms and conditions hereinafter set forth, does hereby demise and lease unto Lessee, and Lessee does hereby lease from Lessor, the Premises, including all of the Land and the Existing Improvements, together with any and all appurtenances, rights and benefits relating thereto and to the use and occupancy thereof.
- 2.2 **Disclaimer.** IT IS UNDERSTOOD AND AGREED THAT, OTHER THAN ITS OWNERSHIP OF THE PREMISES AND ITS RIGHT TO LEASE THE PREMISES TO LESSEE, LESSOR IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS (SPECIFICALLY MAKING NO WARRANTY OF COMPLIANCE WITH THE REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT OF 1990) INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PREMISES INCLUDING, WITHOUT LIMITATION: (1) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PREMISES AND PARTICULARLY WITH REGARD TO THE PROJECT; (2) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PREMISES; AND (3) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PREMISES. LESSEE AGREES THAT, WITH RESPECT TO THE PREMISES, LESSEE HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY

REPRESENTATION OR WARRANTY OF LESSOR OR ANY AGENT OF LESSOR. LESSEE REPRESENTS THAT IT IS KNOWLEDGEABLE WITH RESPECT TO REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF LESSEE'S CONSULTANTS AND THAT LESSEE WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PREMISES, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAID INSPECTIONS BY LESSEE, AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY LESSEE'S INSPECTIONS AND INVESTIGATIONS. LESSEE FURTHER ACKNOWLEDGES THAT LESSOR HAS NOT MADE AND DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING: (1) THE TRUTH OR ACCURACY OF ANY SURVEY OR STUDY AND/OR (2) THE QUALIFICATIONS OR EXPERTISE OF THE RESPECTIVE PARTIES CONDUCTING SAME AND THAT LESSOR HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION WITH RESPECT THERETO. LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR IS LEASING TO LESSEE, AND LESSEE IS ACCEPTING THE PREMISES "AS IS, WHERE IS" WITH ALL FAULTS, AND LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PREMISES BY LESSOR, ANY AGENT OF LESSOR OR ANY THIRD PARTY. LESSOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PREMISES FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN.

- 2.3 **Quiet Enjoyment.** Subject to the Permitted Title Exceptions and the terms and provisions of this Lease, Lessor covenants, as against the claims of all Persons whomsoever claiming by, through or under the Lessor, that Lessee shall have and enjoy throughout the Term the exclusive and undisturbed possession of the Property, without hindrance, ejection or molestation by any Person.
- 2.4 **Possession of the Property.** Actual possession of the Property under this Lease will be delivered to Lessee upon the Commencement Date, subject only to the Permitted Title Exceptions.
- 2.5 **Other Leases.** Except for leases of portions of the Existing Improvements to residential leasehold tenants and as provided herein, Lessor has not leased or granted any other similar leasehold rights in the Property to others.

ARTICLE III TERM

The term ("Term") of this Lease shall be a term of Fifty-five (55) years, commencing on the Commencement Date and continuing thereafter until the fifty-fifth (55th) anniversary of the Commencement Date unless extended by agreement of the parties or sooner terminated as herein provided.

ARTICLE IV RENTAL

4.1 **Annual Rent.** Lessee shall pay over to Lessor for each and every year during the Term, net over and above all taxes, assessments and other charges hereunder payable by Lessee, Annual Rent (the "Annual Rent") as hereinafter set forth.

- (a) From the Commencement Date through that date (the "Rent Escalation Date") which is the first to occur of: six (6) months after the date (the "Occupancy Date") on which a certificate of occupancy for the Improvements constituting the Project is issued by the City of Dallas, or thirty (30) months after the Commencement Date, the Annual Rent (the "Initial Annual Rent") shall be \$1,200,000.00, subject to adjustment and payment in installments as hereinafter provided.
- (b) Commencing on the Rent Escalation Date and continuing through that date (the "Stabilized Rent Date") which is the first to occur of: thirteen (13) months after the Occupancy Date, or thirty-seven (37) months after the Commencement Date, the Annual Rent (the "Escalated Annual Rent") shall be \$1,600,000.00, subject to adjustment and payment in installments as herein after provided.
- (c) Commencing on the Stabilized Rent Date and continuing through the Term of this Lease, the Annual Rent (the "Stabilized Annual Rent") shall be \$2,000,000.00, subject to adjustment and payment in installments as hereinafter provided.

4.2 **Rent Adjustment.** The Annual Rent shall be increased as hereinafter provided:

- (a) The Initial Annual Rent shall be increased on the Commencement Date by the CPI Factor, provided that the per annum increase shall not be less than two and one-half percent (2.5%) nor more than five percent (5%).
- (b) The Escalated Annual Rent shall be increased on the Rent Escalation Date by the CPI Factor from the Option Date to the Rent Escalation Date, provided that the per annum increase shall not be less than two and one-half percent (2.5%) nor more than five percent (5%).
- (c) The Stabilized Annual Rent shall be increased on the Stabilized Rent Date by the CPI Factor from the Option Date to the Stabilized Rent Date, provided that the per annum increase shall not be less than two and one-half percent (2.5%) nor more than five percent (5%).

- (d) Commencing on the Stabilized Rent Date and continuing for the entire Term of this Lease the Stabilized Annual Rent shall be increased for each next succeeding year of the term (a "Rent Year") on each anniversary of the Stabilized Rent Date (the "Rent Adjustment Date") based upon the lesser of : (i) five percent (5%) per year or (ii) the CPI Factor determined by comparing the CPI in effect for the previous Rent Adjustment Date to the CPI in effect on the current Rent Adjustment Date, multiplied by the Annual Rent in effect on the previous Rent Adjustment Date.
- 4.3 **Installment Payment of Rent.** Lessee shall pay the Annual Rent in monthly installments equal to one-twelfth (1/12) of the Annual Rent amount then in effect due and payable on or before the first (1st) day of each month during the Term, with all payments of Annual Rent pro-rated for the periods during which differing Annual Rents may apply; provided, however, that Lessee shall have a grace period for the payment of such installments of Annual Rent of five (5) business days for any two (2) monthly payments due during any calendar year, as further provided in Section 8.1(a) hereof.
- 4.4 **No Rent Reduction.** Except as provided elsewhere under those provisions of this Lease which specifically refer to rent reduction, Lessee shall not be entitled to any suspension, abatement or reduction of rent, nor to the recovery of any sums for any loss or damage by reason of noise, dust, or general inconvenience caused by construction or operations on other property owned by Lessor in the immediate area of the Property.

ARTICLE V LESSEE'S COVENANTS

Lessee hereby covenants with Lessor as follows:

- 5.1 **Rent.** Lessee will pay all Annual Rent and all other and additional payments due hereunder as payments of rent (collectively, the "Rent") hereunder to Lessor in lawful money of the United States of America at the times and in the manner aforesaid, without deduction and without any notice or demand, except as provided for herein, at the principal office of Lessor provided in the preamble hereto or at such other address as Lessor shall designate in writing from time to time.
- 5.2 **Taxes And Assessments.** Lessee will pay to each and every taxing authority before the same become delinquent all real and personal property taxes and fees in lieu thereof and assessments of every description to which the Premises or any part thereof is now or may during the Term be assessed or become liable, whether assessed to or payable by Lessor or Lessee; provided, however, that:
- (a) With respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments, together with interest on unpaid balances thereof as shall become due and payable during the Term.
- (b) Such taxes and fees shall be prorated as of the Commencement Date and the date of expiration of the Term.

- (c) Any proceeding or proceedings for contesting the validity or amount of taxes, assessments, or other public charges or impositions, or to recover back from any levying authority any tax, assessment, charge or other imposition paid by Lessee as hereinabove provided may be brought by Lessee, at Lessee's own cost and expense, in the name of Lessor or in the name of Lessee, or both of them, as Lessee may deem advisable; provided, however, that (i) any such proceeding shall be brought by Lessee only after payment by Lessee as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, (ii) prior to any such proceedings, Lessee shall provide written notice thereof to Lessor, and (iii) Lessee shall provide Lessor with copies of all documents associated with all proceedings involving Lessors' name.
 - (d) If any such proceeding to contest taxes is brought by Lessee, Lessee shall indemnify and save harmless Lessor against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon Lessor in connection therewith.
 - (e) If Lessee elects to contest any such tax, assessment, charge or other imposition as herein set forth, then and in such event Lessor agrees to reasonably cooperate and assist Lessee in contesting the same, provided that all reasonable costs and expenses of Lessor incurred in connection therewith shall be promptly paid by Lessee upon demand, as additional Rent.
- 5.3 **Delinquent Rent.** If Lessee shall become delinquent in the payment of any Rent and the delinquency shall continue for more than five (5) days after the expiration of any grace period provided herein, Lessee shall also pay to Lessor, as additional Rent, an amount equal to five percent (5%) of the Rent that has become delinquent; provided that if the Rent continues to be delinquent and the delinquency extends beyond ten (10) days after written demand for payment of the rent, the Lessee shall pay to Lessor, as additional Rent, an additional amount equal to ten percent (10%) of the delinquent Rent.
- 5.4 **Utility and Other Governmental and Quasi - Governmental Charges.** Except as otherwise provided in this Lease, Lessee will pay, before the same become delinquent, all governmental and quasi-governmental utility charges, including, without limitation, water and sewer charges, garbage collection charges and other charges and outgoings of every description to which the Premises or any part thereof, or Lessor or Lessee in respect thereof, may during the Term be assessed or become liable, whether assessed to or payable by Lessor or Lessee.
- 5.5 **Use of the Land.** Lessee will use the Land only for the development, construction and ownership of the Project, generally described herein, and specifically only for retirement housing or a senior living community.
- 5.6 **Improvements Required by Law.** Except as otherwise provided herein, Lessee will at Lessee's own expense during the whole of the Term make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon, or on public property adjoining or in

connection with or for the use of, the Premises or any part thereof. Attached hereto as Exhibit "C" is a proposed ordinance ("Ordinance") for the abandonment of Beauregard Drive. Lessee agrees to complete the requirements of the Ordinance, if adopted by the City of Dallas, in a timely manner and pay all costs related thereto. To the extent the Ordinance requires an indemnification of the City of Dallas, Lessee assumes the obligations of the Lessor arising during the term of this Lease. The Lessor will reasonably cooperate with the Lessee, as requested by the Lessee, in the replat, including the platting of the private drive and the street right-of-way called for in the Ordinance, provided however that the Lessee shall bear all expenses including the expenses reasonably incurred by the Lessor.

- 5.7 **Observance of Laws.** Lessee will at all times during the Term keep the Premises in a strictly safe, clean, orderly and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any Governmental Authority and applicable to Lessee's use of the Premises and said adjacent land or any improvement thereon or use thereof, and will indemnify and hold harmless Lessor against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by Lessee of said laws, ordinances, rules and regulations or of this covenant.
- 5.8 **Repair, Maintenance and Restoration.** Except as otherwise provided for herein with respect to Lessee's rights to demolish the Existing Improvements or otherwise, Lessee will at Lessee's own expense from time to time and at all times during the Term well and substantially restore, repair, maintain, amend and keep all Improvements on the Land with all necessary reparations and amendments whatsoever in good and safe repair, order and condition, reasonable wear and tear and destruction by unavoidable casualty not herein required to be insured against excepted, provided, however, that Lessee's obligation to restore, maintain and repair the Improvements is limited to demolishing the Existing Improvements and constructing on the Land Improvements which comply with the use restriction contained in Section 5.5 hereof and maintaining such Improvements.
- 5.9 **Inspection.** Upon reasonable notice, Lessee will permit Lessor and its agents at all reasonable times during the Term to enter the Premises and examine the state of repair and condition of the Premises.
- 5.10 **Construction and Alteration of Buildings.** Lessee will not construct or place any buildings or structures, including fences and walls, or other Improvements on the Land, nor make or suffer any material additions to or structural alterations of the basic structure of any buildings thereon, nor change the grading or drainage thereof, except under the supervision of a licensed architect or structural engineer and in accordance with complete plans, specifications and detailed plot plans thereof prepared by such an architect or structural engineer and approved, as may be required, by appropriate Governmental Authorities.
- (a) Prior to commencement of construction, Lessee will provide Lessor with copies of all plans and specifications for construction of the Improvements to be constructed by Lessor, solely for Lessor's information and not for Lessor's approval.
 - (b) Lessee shall commence demolition of the Existing Improvements within the first to occur of (i) sixty (60) days after the Effective Date of this Lease or (ii) thirty (30)

days after the date on which all necessary approvals have been obtained from all applicable Governmental Authorities and any and all court or administrative actions blocking any such demolition are fully resolved in Lessee's favor and not subject to appeal, provided that Lessee shall promptly and diligently pursue all actions necessary to obtain such approvals and such favorable court action.

- (c) During the initial construction of the Improvements, Lessor and any architect, engineer and other representative whom it may select to act for it, may, upon reasonable notice and at reasonable times, inspect the Improvements in the course of such construction and upon completion, and all work and materials as rendered and installed. Lessee shall keep copies of all plans, shop drawings and specifications relating to such construction on the building site and permit Lessor, its architects, engineers and other representatives to examine them at all reasonable times. In the event that during the construction of the Improvements, Lessor, or its architects, engineers and other representatives, shall reasonably determine that the materials do not substantially conform to the specifications or that the Improvements are not being constructed substantially in accordance with the approved plans, prompt notice in writing shall be given to Lessee, specifying in detail the particular deficiency, omission or other respect in which it is claimed that the construction does not conform with the plans and specifications. Upon the receipt of any such notice and confirmation by Lessee of such non-conformance, Lessee shall take such steps as shall be necessary to cause corrections to be made as to any deficiencies, omissions or otherwise, and shall immediately remove such materials and replace such construction and materials in accordance with said plans and specifications.

- 5.11 **Liens.** Lessee will not commit or suffer any act or neglect by which the Premises or estate of Lessee therein shall at any time during the Term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics' and materialmen's liens, except as herein expressly provided, and will indemnify, defend, save and hold Lessor harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys' fees). If any lien for work, labor, services or materials done for or supplied to the Premises, regardless of who contracted therefor, is filed against the Premises, Lessee shall, within sixty (60) days from the date of filing thereof, cause such lien to be discharged of record, bonded off of the Land or otherwise stayed to the reasonable satisfaction of Lessor.
- 5.12 **Setback Lines.** Lessee will observe any setback lines affecting the Premises as now or hereafter established by any Governmental Authority having jurisdiction.
- 5.13 **Insurance.** At all times during the term, Lessee shall purchase and maintain, at Lessee's expense, the following insurance, in amounts not less than those specified below or such other amounts as may be required by the Bond Indenture as Lessor, Lessee and Lender may from time to time agree upon, with insurance companies and on forms reasonably satisfactory to Lessor and Lender:
- (a) **Commercial Property Insurance.** Commercial property insurance covering the Premises and all furniture, fixtures, machinery, equipment, supplies, inventory and

any other personal property owned and/or used in Lessee's use and occupancy of the Premises, whether made or acquired at Lessee's or another's expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation, exclusive only of the replacement cost of excavation, foundations and footings, and shall contain an Agreed Value Endorsement. All policies and certificates of insurance required hereunder shall:

- (i) contain a provision specifically naming the Lessor and Lessee's Lender as additional insureds, as their interests may appear; and
 - (ii) be specifically endorsed to provide that any proceeds of any policy in excess of \$500,000.00, subject to annual CPI Adjustment as of each anniversary of the Commencement Date of this Lease, shall be payable to a trustee as required by the Bond Indenture or, if no such payment to a trustee is required by the Bond Indenture, to a trust company, qualified under the laws of the State of Texas, as shall be designated by Lessee, subject to the approval of Lessor (which approval shall not be unreasonably withheld or delayed) as trustee and escrow agent for the custody and distribution as herein provided of all proceeds of such insurance ("Insurance Trustee"); Lessee shall pay all fees and expenses of such Insurance Trustee in connection with its services.
- (b) **Builders and Installation Risk.** Builders and installation "all risk" insurance while the Premises or any part thereof are under demolition and construction and the aggregate estimated cost of construction exceeds \$100,000.00, written on the Builders Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery, materials, etc. not yet installed but to become a permanent part of the Improvements.
- (c) **Commercial General Liability.** Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an "occurrence" form covering the use, occupancy and maintenance of the Premises and all operations of Lessee, including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal Injury; Fire Legal Liability; elevator; and incidental medical malpractice liability, all pursuant to a Commercial General Liability Policy form or its equivalent. Each policy and certificate of insurance shall specifically:
- (i) contain limits for such coverage which are not less than the following for the specified categories: Bodily Injury and Property Damage Combined Single Limit - \$3,000,000 per occurrence, subject to \$3,000,000 general aggregate per policy year; \$3,000,000 products and completed operations aggregate per policy year; Personal Injury - \$1,000,000 per person/organization per policy year, subject to \$3,000,000 general aggregate per policy year; Fire Legal Liability \$250,000 per fire, subject to \$3,000,000 general aggregate per policy year; no policy shall have a deductible amount in excess of \$10,000 for any one occurrence; and

- (ii) provide the following: "This policy shall be considered to be primary liability insurance which shall apply to any loss or claim before any contribution by any insurance which Lessor, its employees and agents may have in force;" and
 - (iii) contain a provision specifically naming Lessor and Lessor's employees as additional insureds, which additional insureds shall be protected as if they were separately insured under a separate policy; provided, however, that such policy shall not require the insurer to pay any amounts in excess of the maximum limits stated herein.
- (d) **Worker's Compensation Insurance.** Worker's Compensation Insurance as required by Texas State Law.
- (e) **Umbrella Liability.** To the extent not covered by the other policies required hereunder, Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer's Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an "occurrence" form with a limit of liability of not less than \$10,000,000 per policy year, which may include coverage of multiple projects, shall provide for a self-insured retention and/or deductible no greater than \$10,000, adjusted annually based upon the CPI Adjustment for the Lease year then ending, and shall provide as follows:
- (i) The policy and certificate of insurance shall contain a provision specifically naming Lessor, and Lessor's employees and Lender as additional insureds, which additional insureds shall be protected as if they were separately insured under a separate policy; provided, however, that such policy shall not require the insurer to pay any amounts in excess of the maximum limits stated herein.
 - (ii) If and to the extent such coverage is available at commercially reasonable cost, the policy shall; (1) not specifically exclude coverage for punitive damages or claims arising out of discrimination other than employment related discrimination; (2) provide for defense expenses in addition to the limit of liability stated in the policy; and (3) provide coverage for claims resulting from alleged damage to the environment and damage or injury caused by hazardous conditions, materials or substances.
 - (iii) All exclusions endorsed on the policy are to be shown on the certificate of insurance and a copy of the exclusions attached thereto.
- (f) **Payment and Performance Bonds.** Payments and Performance Bonds in the full amount of the work to be done, as required by the Bond Indenture, for the benefit of Lessee, Lender and Lessor.
- (g) **Flood Insurance.** Flood insurance as may be required by the Bond Indenture or otherwise.

(h) **General Requirements for Insurance.**

- (i) Each policy is to be written by an insurer licensed in the State of Texas with a rating by A. M. Best Company, Inc. of A-VII or better and as otherwise required by the Bond Indenture. In the event that such rating system is altered or eliminated, then the insurer shall have a rating from a comparable rating service, comparable to such A-VII rating.
- (ii) If the limits of available liability coverage required herein become substantially reduced as a result of claim payments, Lessee immediately, at its own expense, shall purchase additional liability insurance to increase the amount of available coverage to the limits of liability coverage required by this Lease.
- (iii) If the Improvements are destroyed or damaged by a risk covered by insurance required by this Lease and the amount of the loss does not exceed FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) (subject to annual CPI Adjustment), Lessee, with the consent of Lender, may make the loss adjustment with the insurance company insuring the loss. If the loss exceeds FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), Lessee will not settle the loss without the express prior written consent of Lessor and Lender, which consent of Lessor shall not be unreasonably withheld or delayed.
- (iv) All policies are to be specifically endorsed to provide thirty (30) days' written notice of cancellation for any reason [or ten (10) days' in the case of nonpayment of premium], coverage reduction, termination, non-renewal or material change in the coverage, scope or amount of the policy, and ten (10) days' written notice prior to lapse, which notice shall be delivered to Lessor.
- (v) All Certificates of Insurance shall specifically state that "the issuing company will mail thirty (30) days' written notice of cancellation to the certificate holder."
- (vi) At Lessor's written request, not more often than one time per year, Lessee shall deliver to Lessor current copies of the insurance policies required by this Section 5.13.
- (vii) To the extent that Lessee shall be unable, at a commercially reasonable cost and with commercially reasonable exclusions and restrictions, to obtain any insurance required by this Section 5.13, it promptly shall inform Lessor in writing of that fact and of all relevant facts and circumstances and, unless Lessor shall be able either (1) to locate or obtain such insurance for Lessee at a commercially reasonable cost or (2) to devise a commercially reasonable alternative form of assurance mutually acceptable to the parties acting in good faith and with due regard for then-prevailing business practice among prudent business persons with respect to similar risks, then Lessee shall not

be required to obtain such insurance. Lessee shall continue to make reasonable, good faith efforts to obtain such insurance in connection with each policy renewal period and shall keep Lessor reasonably informed of its efforts.

- (viii) Lessee shall add as additional insureds to the insurance policies required by this Section 5.13 such other Persons as Lessor may from time to time reasonably require, if such Persons may be so added at no additional cost.
- (i) **Certificates of Insurance.** Lessee will deposit promptly with Lessor and maintain current certificates of all insurance required to be maintained by Lessee under this Lease in Accord Form 27, or such other form as may be reasonably acceptable to Lessor.
- (j) **Waiver of Subrogation.** Each of Lessor and Lessee hereby waives, on each party's behalf and on behalf of its insurance carrier, any claim for loss or damage to tangible and intangible property which one party might otherwise have against the other party or its affiliates, arising out of any loss, injury or damage whatsoever, including loss of income or other consequential loss or damage.
- (k) **Adjustment and Adequacy of Coverage.** Pursuant to the requirements of the Bond Indenture, or, if the Bond Indenture does not so provide or provides for a less frequent review, all insurance coverages required hereunder will be reviewed, adjusted and revised at least each three (3) years during the term hereof, based upon an insurance appraisal and update completed by a qualified insurance appraiser selected or approved by Lender as provided in the Bond Indenture, or, if not so provided, as may be selected by mutual agreement of Lessor and Lessee. Lessor, its agents and employees make no representation that the limits of liability required to be carried by Lessee pursuant to this Section 5.13 are adequate to protect Lessee. If Lessee believes that any of such insurance coverage is inadequate, Lessee will obtain and maintain in force such additional insurance coverage as Lessee deems adequate, at Lessee's sole expense.

5.14 **Loss or Damage to Improvements**

- (a) **Use of Insurance Proceeds.** Subject to the provisions of this Section 5.14 and the reasonable requirements of Lessee's Lender, in every case of loss or damage to the Improvements, other than the Existing Improvements, (i) Lessee shall provide Lessor with prompt written notice thereof and periodic updates as to the status of insurance settlements and repairs, and (ii) all proceeds of any property casualty insurance (excluding the proceeds of any rental value or use and occupancy insurance of Lessee) shall be used with all reasonable speed by Lessee for rebuilding, repairing or otherwise reinstating the Improvements in a good and workmanlike manner substantially according with the original plans and elevations thereof or to a modified plan conforming to laws and regulations then in effect.

- (b) **Disbursement of Insurance Proceeds.** The Insurance Trustee shall hold any insurance proceeds payable to it, as provided in Section 5.13(a) hereof, to be applied to the cost of repair and restoration in accordance with the following:
- (i) Lessee shall furnish to the Insurance Trustee and Lessor copies of any contract or contracts which Lessee shall enter into for the making of such restoration; or, if the restoration is to be done by Lessee, a copy of all subcontracts made by Lessee in connection with such restoration and an estimate of the cost thereof, both in stages and upon completion, which shall be certified by the Lessee's architect as being reasonably accurate.
 - (ii) At the end of each month or from time to time as may be agreed upon during the progress of restoration, and upon the written request of Lessee after compliance with the conditions set forth hereinbelow, the Insurance Trustee shall pay to Lessee (or at the option of Lessee to the contractors and materialmen of Lessee for the account of Lessee) out of such award, ninety percent (90%) of the amount stated to be due. Until completion of the restoration in full, an amount equal to ten percent (10%) of the amount stated to be due shall be withheld by the Insurance Trustee unless Lessor, Lessee and Lessee's Lender jointly agree to a reduction in the retention. The amount so withheld (the "Retention") shall be paid upon the completion of the restoration.
 - (iii) At the time of each request for advance by Lessee, and as a condition precedent thereto, Lessee shall submit to the Insurance Trustee and Lessor copies of a certificate signed by Lessee and Lessee's architect not more than thirty (30) days prior to such request, in the form of AIA form G706, Certificate for Payment, or such other form as may be agreed upon by Lessee and Lessor.
 - (iv) At the completion of the restoration and following disbursement of the final advance to Lessee required to complete the payment of restoration costs, any portion of the award remaining shall be paid by the Insurance Trustee to Lessee, subject to Lessor's rights pursuant hereto and Lender's rights pursuant to the Bond Indenture. In no event, however, shall the Insurance Trustee be liable for any amount in excess of the amounts so received and held in trust.
- (c) **Lessor's Inspections.** During any restoration, Lessor and any architect, engineer and other representative whom it may select to act for it, 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 plans, shop drawings and specifications relating to such restoration on the building site and permit Lessor, its architects, engineers and other representatives to examine them at all reasonable times. In the event that during the restoration of the Improvements, Lessor, or its architects, engineers and other representatives, shall determine that the materials do not substantially conform to the specifications or that the Improvements are not being restored substantially in

accordance with the approved plans, prompt notice in writing shall be given to Lessee, specifying in detail the particular deficiency, omission or other respect in which it is claimed that the restoration does not conform with the plans and specifications. Upon the receipt of any such notice, Lessee shall take such steps as shall be necessary to cause corrections to be made as to any deficiencies, omissions or otherwise, and shall immediately remove such materials and replace such construction and materials in accordance with said plans and specifications.

- 5.15 **Indemnity.** Lessee will indemnify and hold Lessor harmless from and against any and all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the Premises by Lessee or any other person under Lessee, or any accident or fire on the Premises or any nuisance made or suffered thereon (except to the extent caused by the negligence or willful misconduct of Lessor or its agents, employees, or licensees), or any failure by Lessee to keep the Premises in a safe condition, and will reimburse Lessor for all Lessor's costs and expenses, including reasonable attorneys' fees incurred in connection with the defense of any such claims, provided, however, Lessor shall indemnify and hold Lessee harmless from and against any and all claims and demands for loss or damage, including property damage, personal injury and wrongful death, or any accident or fire on the Premises or any nuisance made or suffered thereon, arising out of or in connection with or caused by the negligence or willful misconduct of Lessor or its agents, employees, or licensees and will reimburse Lessee for all Lessee's costs and expenses, including reasonable attorneys' fees incurred in connection with the defense of any such claims.

5.16 **Reimbursable Expenses**

- (a) **Lessor's Expenses.** Lessee will pay to Lessor, within thirty (30) days after the date of the giving of notice to Lessee containing statements therefor, all reasonable costs and expenses paid or incurred by Lessor, but required to be paid by Lessee under any provision hereof or paid or incurred by Lessor in enforcing any of Lessee's covenants herein contained, in remedying any breach thereof, in recovering possession of the Premises or any part thereof pursuant hereto, in collecting or causing to be paid any delinquent Rent, taxes or other charges hereunder payable by Lessee, or in connection with any action or proceeding (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party. All of Lessor's expenses provided in this Section 5.16(a) shall constitute additional Rent and, if not paid when due, shall bear interest at the Default Interest Rate from the date due until paid in full.
- (b) **Enforcement Expenses.** Should Lessor or Lessee reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Lease, including but not limited to instituting any action or proceeding to enforce any provision hereof for damages by reason of any alleged breach of any provision of this Lease, for a declaration of such party's rights or obligations hereunder or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by

the other party for all costs and expenses reasonably incurred in connection therewith, including but not limited to reasonable attorney's fees for the services rendered to such prevailing party.

- 5.17 **Assignment.** Except as in this Lease expressly provided, Lessee shall not assign or mortgage this Lease without the prior written consent of Lessor. Any assignment without Lessor's prior express written consent, including Lessor's consent contained herein, shall be void.
- (a) **Consent to Assignment.** Lessor shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following Lessor's receipt of all financial statements, documents or other information reasonably necessary for Lessor to make its determination. If Lessor shall fail to approve or disapprove a request for consent within such thirty (30) day period, Lessor's disapproval shall be conclusively presumed. Lessor hereby consents to the assignment by the Lessee of its rights under this Lease to any institutional trustee who is serving as mortgagee under the Bond Indenture as the same relates to the original financing of the Project, which institutional trustee will initially be Chase Bank of Texas, N.A.
- (b) **Assumption of Lease.** Any permitted assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.
- (c) **"Assignment" Defined.** The term "assignment" as used in this Lease shall mean and include (i) one or more sales or transfers by operation of law or otherwise by which an aggregate of more than fifty percent (50%) of (A) the total capital stock of a corporate lessee, (B) the total partnership interests of a general partnership lessee, (C) the total beneficial interests of a trust lessee, (D) the interest in the general partner of a limited partnership lessee or, if there is more than one general partner, fifty percent (50%) of the interests in all such general partners in the aggregate, shall become vested in one or more Persons who or which are not stockholders, partners or beneficiaries thereof, either legally or equitably, as of the Commencement Date or as of the date of Lessee's subsequent acquisition of this Lease by assignment, or (ii) a transfer of the membership of a nonprofit corporation, or the creation of membership potential or units in a nonprofit corporation previously not having membership, or the issuance of stock or other certificates, units or other intangible contractual rights which provide for any type of voting power to the holders in which voting rights allow the election of all or any member of the board of directors or trustees, or allow the control of all or any part of the management or the policies of the nonprofit corporation; provided that ownership of such capital stock, partnership interests and beneficial interests shall be determined in accordance with the principles enunciated in Section 544 of the Internal Revenue Code of 1986; further provided that the foregoing definition shall not apply with respect to a corporate lessee whose capital stock is listed on a recognized stock exchange.

- (d) **Assignment In Violation Of Section Is Void.** Except as otherwise expressly provided in this Lease, no assignment or other transfer of this Lease other than in accordance with this Section 5.17, whether voluntary or involuntary, by operation of law, under legal process, through receivership or bankruptcy or otherwise, shall be valid or effective. Should Lessee attempt to make or suffer to be made any assignment or other transfer of this Lease or any interest herein except as permitted by this Section 5.17, or in Article VII herein, or should any right or interest of Lessee under this Lease be attached, levied upon or seized under legal process and the same shall not be released within sixty (60) days thereafter, or, if incapable of being released within said sixty (60) day period, action for the release thereof commence within said sixty (60) day period and thereafter diligently prosecuted, then any of the foregoing events shall be deemed a default under this Lease. Lessor's consent to an assignment or other transfer of this Lease shall not constitute a waiver or release by it of any of the provisions of this Section, all of which shall apply to each successive assignment or other transfer, if any, and be binding upon each and every encumbrancer, assignee, transferee, subtenant and other successor in interest of Lessee.
- 5.18 **Subletting.** Lessee will not, except as provided herein or without the prior written consent of Lessor, rent, sublet or part with possession of the Land or any part thereof. Notwithstanding the foregoing, Lessee may, without the consent of Lessor and without the payment of additional rent, enter into life care contracts or sublet, rent or license residential apartments, rooms, living spaces in the Improvements and ancillary commercial uses reasonably related to the occupancy thereof, provided that the purpose of any such agreement is consistent with Section 5.5 of this Lease and the form of the sublease, license, life care contract, concession or rental agreement shall be commercially reasonable and consistent in all material respects with the terms and provisions of this Lease. Lessee upon request therefor promptly shall deliver a true copy of any such sublease or rental agreement to Lessor. The fees charged from time to time to Residents of the Project in connection with the issuance of life care contracts and any maintenance fees and other periodic charges shall be reasonably calculated to be sufficient to cover Lessee's monetary obligations to the Residents, to Lessee's Lender and to Lessor.
- 5.19 **Utilities.** Lessee shall be solely responsible for obtaining all necessary electricity, sewer, water and other utility services. Lessor will, at Lessee's request and without payment of additional consideration, grant easements for the construction and installation of all necessary utility services and for drainage to the providers of such services over, across or under the Land.
- 5.20 **Surrender.** Except as otherwise provided herein, upon the expiration of the Term or earlier termination of this Lease, Lessee will peaceably deliver up to Lessor possession of the Premises, including all Improvements on or above the surface of the Land, by whomsoever made, in good and safe repair, order and condition, ordinary wear and tear excepted. Lessor may, at Lessor's option, require Lessee to remove any Improvements not in good and substantial condition and repair all damage to the Land resulting from such removal. Lessee shall leave the Premises in a clean and orderly condition free of all debris and of any Hazardous Materials at termination. Upon the expiration of the Term or earlier termination

of this Lease, Lessor shall have the first right of refusal to acquire all or any part of the movable furniture, furnishings, trade fixtures and equipment for a price equal to the fair market value of any such items. In the event that Lessor and Lessee cannot agree upon the fair market value of any such item, then, they shall each select an appraiser. The two appraisers shall select a third appraiser and the fair market value shall be determined by averaging the valuations obtained from the three appraisers. Lessee may remove or cause to be removed all of the movable furniture, furnishings, trade fixtures and equipment installed in or on the Premises, or any other items the removal of which would not result in substantial and permanent damage to the Premises if Lessor has not acquired such items in accordance with the prior sentences. Any such property or Improvements that are not removed from the Premises within thirty (30) days after the termination or expiration of this Lease shall thereafter belong to Lessor without the payment of any consideration therefor. Upon the expiration of the Term or earlier termination of this Lease, Lessee shall execute, acknowledge and deliver to Lessor (if requested) a proper instrument in writing, releasing and quitclaiming to Lessor all right, title and interest of Lessee in and to the Premises. The foregoing covenants of Lessee shall survive the expiration of the Term.

- 5.21 **Holdover.** If Lessee, with the permission of the Lessor, remains in possession of the Premises after the expiration of the Term, Lessee shall be deemed to occupy the Premises only as a tenant from month-to-month, subject to all of the terms, covenants, conditions and provisions of this Lease, including rent, which are not inconsistent with a month-to-month tenancy. For any period during which Lessee may retain possession of the Premises without the permission of the Lessor or after receipt of notice of the cancellation of this Lease, the Rent payable by Lessee to Lessor for each month (or fraction thereof in excess of ten (10) days during such period), shall be equal to one hundred and fifty percent (150%) of the monthly Rent then in effect for the last full Rent Year prior to termination of this Lease.
- 5.22 **Waste or Unlawful Use.** The Lessee will not make or suffer any waste or any unlawful, improper or offensive use of the Premises or any act or gross negligence by which the Premises or any interest therein shall become liable to seizure, attachment or unpermitted lien. Upon Lessor's receipt of reasonably reliable information that the Premises have suffered waste not remedied by Lessee or are being used for any unlawful or illegal purposes or acts that Lessor reasonably determines could result in criminal or civil forfeiture of all or any portion of the Premises to the United States or the State of Texas, Lessor shall have the right to give notice of Lessor's demand on Lessee to cure such condition, and Lessor's intent to act if Lessee does not cure such condition, to Lessee and, if Lessee does not cure such condition within thirty (30) days after the date of such notice to Lessee, or commence to cure such condition within thirty (30) days after the date of such notice to Lessee and thereafter diligently pursue such cure to completion, Lessor may elect by a written notice delivered to Lessee and Lessee's Lender as provided herein, either (a) to take all such action as it reasonably shall deem necessary and appropriate to stop such waste or such illegal activity and secure the Premises against forfeiture, in which event all reasonable costs and expenses of Lessor's actions shall be payable by Lessee hereunder as additional Rent, or (b) to declare this Lease in default.

5.23 **Environmental Protection.**

- (a) **Hazardous Materials.** As used in this Lease, the term "Hazardous Materials" means any substance which:
- (i) is flammable, explosive, radioactive, toxic, corrosive, infectious, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any Governmental Authority, or
 - (ii) contains asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, or petroleum, including crude oil or any fraction thereof, or
 - (iii) contains medical waste, including syringes, controlled substances, blood and blood products, urine and urine samples, fecal matter and other toxic, infectious, polluted or contaminated substances; or
 - (iv) is classified as a pollutant, contaminant, hazardous waste, hazardous substance, hazardous material, or toxic substance under the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. app. §§ 1801 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. H 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 to 2655; the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001 to 11050; and any similar federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to environmental conditions, industrial hygiene or Hazardous Materials in, on, under or upon the Premises, now in effect or hereafter adopted, published and/or promulgated (collectively, the "Hazardous Materials Laws").
- (b) **Restriction on Use of Hazardous Materials.** The Lessee shall not cause or permit any Hazardous Material to be processed, used, stored in or about, or disposed of or upon, or transported to or from, the Premises unless (i) such material is used in the ordinary course of Lessee's operations on the Premises, or (ii) the Lessee has obtained the prior written consent of the Lessor, including such consents as may be contained herein, and (iii) the processing, use, storage, disposal or transporting is strictly in accordance with Hazardous Materials Laws.
- (c) **Remediation of Release of Hazardous Materials.** If any spill, leak or release of any Hazardous Materials occurs on the Premises as a result of acts or omissions of Lessee, its employees, agents, contractors or Residents which either (i) is a violation of applicable Hazardous Materials Laws or (ii) is required to be reported to Governmental Authorities having jurisdiction over Hazardous Materials releases, Lessee promptly shall notify all appropriate Governmental Authorities and Lessor, and, at no cost to Lessor, shall fully and promptly comply with all governmental

orders, requirements, rules and regulations with respect thereto. Within ten (10) days after any such spill, leak or release, Lessee shall provide Lessor with a reasonably detailed written description of the event and of Lessee's investigation and remediation efforts to date. Within ten (10) days after receipt, Lessee shall provide Lessor with a copy of any report or analytical results relating to any such spill, leak or release. Should Lessee be required to remove any portion of the Premises as having become contaminated, then, whether or not so required by Governmental Authorities, Lessee shall either replace the removed portion of the Premises (such as soil) with uncontaminated material of substantially the same character as existed prior to contamination or otherwise accommodate such removal. Lessee shall operate the Premises in a manner designed to prevent the occurrence of any such spill, leak or release. Notwithstanding the foregoing, the obligation of Lessee hereunder shall in no case apply to any Hazardous Materials spilled, leaked, released or discharged by Lessor or any agent, employee or contractor of Lessor. In the event that a discharge or release of Hazardous Materials is not discovered until after (or is to be remediated following) expiration or termination of the Term, Lessee shall coordinate, supervise and pay for all investigation and remediation efforts and shall be granted reasonable access at reasonable times to conduct such investigations, testing and remediation efforts as are required by this Section.

- (d) **Underground Storage Tanks.** Lessee shall not install or operate on the Premises, any underground storage tank, as defined by 42 U.S.C. § 6991 or any rule or regulation issued pursuant to such statute or other rules or regulations of any applicable Governmental Authority, without the prior written consent of Lessor.
- (e) **Compliance with Governmental Requirements.** Lessee shall comply with all requirements of all Governmental Authorities from time to time applicable to the handling by Lessee of any Hazardous Materials on the Premises. If any of said requirements shall be inconsistent with each other, Lessee shall comply with the most stringent requirement.
- (f) **Permits and Approvals.** Lessee shall obtain in advance and maintain without interruption, all governmental permits or approvals required for the use, storage or handling of any Hazardous Materials permitted by this Lease for Lessee's use in connection with its permitted business, use and occupation of the Premises. Within ten (10) days after receipt, Lessee shall provide Lessor with a copy of each such permit or approval. Where a plan for remediation is required, Lessee shall not commence operations or construction of any Improvements relating thereto until such remediation plan has been approved by appropriate Governmental Authorities and Lessee has provided evidence reasonably satisfactory to Lessor of its ability to fund the estimated cost of implementing such plan. Lessee shall comply with the terms and conditions of each permit or approval.
- (g) **Notice of Actions.** Lessee shall promptly advise Lessor in writing of (i) any and all enforcement, cleanup, removal, mitigation or other governmental or regulatory action of which Lessee receives written notice and which is instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises; and

(ii) all claims made or threatened by any third party against Lessee or the Premises of which Lessee receives written notice and which relate to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; and (iii) Lessee's discovery of any occurrence or condition on the Premises which reasonably could subject Lessee or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws. (As used in the preceding sentence, "discovery" shall mean actual knowledge of Lessee, its agents or employees.) Within ten (10) days after receipt, Lessee shall provide to Lessor a copy of any written notice of actual violation, complaint or other communication initiating any governmental enforcement action against Lessee for any alleged violation of law or other governmental requirement relating to the use, handling or storage of Hazardous Materials. Thereafter, within ten (10) days of receipt or transmission, Lessee shall provide Lessor with a copy of all material communications received by Lessee from, or sent by Lessee to, any Governmental Authority relating to such enforcement action.

(h) **Access to Records and the Premises.** At reasonable times and after reasonable notice (i) Lessor may inspect any records maintained by Lessee relating to Lessee's compliance or noncompliance with the provisions of this Section 5.23 of this Lease, and (ii) if, and only if, Lessor has reasonable cause to believe Lessee has breached this Section 5.23, and provides written notice of such reasonable cause to Lessee as provided herein and Lessee does not respond in writing within thirty (30) days thereafter, Lessor may enter the Premises to conduct any reasonable test, inspection or environmental audit of the Premises or Lessee's operation or use of the Premises to determine Lessee's compliance or noncompliance with the provisions of this Section 5.23. If Lessor's test, inspection or environmental audit determines that Lessee has breached this Section 5.23, Lessee will pay the cost of any such inspection, as additional Rent.

(i) **Pre-Surrender.** Not less than two (2) years, nor more than three (3) years prior to the end of the Term, Lessor, at Lessor's cost, may have the Premises inspected and tested as described below. Such inspection and testing shall not include tests that would cause any material damage to the Improvements or materially interfere with Lessee's conduct of its business on the Premises. Such inspection and testing shall be conducted by a qualified and experienced independent inspector (the "Independent Inspector") selected by Lessor and approved by Lessee, which approval shall not be unreasonably withheld or delayed. The Independent Inspector shall report its professional opinion concerning whether the Premises satisfies all Hazardous Materials Laws. The Independent Inspector's report shall be prepared at Lessor's expense and shall be addressed and delivered to both Lessor and Lessee. In the event that the Independent Inspector reports that the Premises does not satisfy all Hazardous Materials Laws, Lessor shall develop and submit to Lessee prior to the end of the Term a proposed written plan for any further testing desired by Lessor and for any cleanup of the Premises which Lessor believes to be required, together with a schedule for accomplishing such testing and cleanup before the end of the Term. Lessee may then retain its own independent inspector, who shall work with Lessor's Independent Inspector and any and all applicable Governmental Authorities to arrive

at an agreed upon plan of remediation. Upon such agreement, Lessee, at its cost shall take such actions as are reasonably necessary to bring the Premises into material compliance with all applicable Hazardous Materials Laws, and the Independent Inspector shall report the results of the cleanup to Lessor and Lessee. If Lessee fails to fully and timely perform or cause to be performed such cleanup, Lessor may do so at Lessee's expense. The Independent Inspector's report shall be an informed professional opinion and not a warranty or guarantee on the part of the Independent Inspector.

- (j) **Vacating the Premises.** Upon Lessee vacating the Premises: (i) Lessee shall have removed and disposed of all Hazardous Materials present on the Premises (except for reasonable quantities of ordinary and lawful supplies referred to above); All such removals, repairs and remediation shall be at Lessee's sole cost and expense; and (ii) until the Independent Inspector renders its opinion that the Premises materially satisfies all Hazardous Materials Laws and all costs therefor have been paid or reimbursed by Lessee, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered and Lessee shall continue to pay Annual Rent on the Premises as set forth in Section 5.21 hereof for occupancy of the Premises without the permission of Lessor.
- (k) **Environmental Indemnification.** Lessee shall defend with counsel reasonably approved by Lessor, indemnify and hold harmless Lessor, its agents and employees, from and against any and all claims, charges, actions, suits, liabilities, obligations, fines and penalties (including, without limitation, claims for property damage, personal injury and wrongful death, foreseeable and unforeseeable consequential damages, punitive damages to the extent permitted by law, costs of investigation, removal, response and remediation, natural and environmental resource damage, governmental administrative actions, and reasonable attorneys' and consultants' fees and expenses), by whomsoever made and howsoever asserted which arise out of, whether directly or indirectly, or relate, whether in whole or in part, to any of the following: (i) any release or discharge of Hazardous Materials on the Premises for which Lessee is responsible under the provisions of this Lease; or (ii) any violation by Lessee, its employees, agents or contractors, of Hazardous Materials Laws on the Premises; or (iii) any release or discharge, including without limitation any migration or emanation, of any Hazardous Materials from the Premises into the surrounding lands, air and water. (Collectively, "Environmental Claims") provided however that Lessee's foregoing indemnification of Lessor against Environmental Claims shall not include any such release, discharge, violation, migration or emanation attributable to any act or omission of Lessor, its agents, employees, contractors and affiliates or not at the direction or behest of Lessee (collectively, "Non Contributory Environmental Claims"), and Lessor shall indemnify, defend with counsel reasonably approved by Lessee, and hold harmless Lessee from and against any and all such Non Contributory Environmental Claims.
- (l) **Survival.** The obligations of the parties under this Section 5.23 shall survive any termination or expiration of this Lease and any conveyance by Lessor or Lessee of their respective interests in the Premises. No release of Lessee in connection with

any such termination, expiration or conveyance shall effect a release of Lessee's obligations under this Section, unless such release makes specific reference to the obligations of Lessee under this Section.

ARTICLE VI CONDEMNATION

In case at any time or times during the Term, the Premises or any part thereof shall be required, taken or condemned, other than for failure of Lessee to comply with applicable codes, statutes and regulations, by any authority having the power of eminent domain, then and in every such case the parties hereby mutually agree as follows:

- 6.1 **Termination of Lease and Rights to Compensation.** The estate and interest of Lessee in the Premises so required, taken or condemned shall at once cease and terminate and (a) Lessee shall not by reason thereof be entitled to any claim against Lessor or others for compensation or indemnity for the Land, (b) all compensation and damages payable for or on account of the Land shall be payable to and be the sole property of Lessor, (c) all compensation and damages payable with respect to the Existing Improvements shall be payable to and be the sole property of Lessor, and (d) all compensation and damages payable for or on account of any Improvements constructed by Lessee on the Land shall be divided between Lessor and Lessee as of the date when Lessee loses the right to possession thereof, according to the ratio that the then expired and unexpired portions, respectively, of the entire Term (as though continued to its natural expiration) bear to the sum of said portions, except that Lessee's share of the award as to Improvements constructed by Lessee shall not be less than the lesser of: (i) the aggregate unpaid balances of all loans secured by authorized leasehold mortgages existing as of the date of such taking, or (ii) the total award attributable to the taking, provided that Lessee pays all such sums to Lessee's Lender, to the extent of amounts owed to such Lender.
- 6.2 **Rent Reduction.** If any portion of the Essential Area of the Premises, which shall mean those areas shown as the "Essential Areas" on Exhibit "D" attached hereto and made a part hereof, is taken or condemned and this Lease is not terminated, the Annual Rent payable for the remainder of the Term shall be reduced in the ratio that the fair market value of the Land so taken bears to the fair market value of the Land existing immediately prior to such event.
- 6.3 **Election to Terminate.** If more than thirty percent (30%) of the area of the Land, or the usable area of the Improvements, is taken or condemned, or if the area so taken or condemned shall render the remaining Land unsuitable or economically impractical for the Lessee's purposes under this Lease, Lessee at its option, exercisable upon written notice to Lessor given within sixty (60) days after such taking, may surrender this Lease to Lessor, in which event (a) any and all condemnation proceeds from the condemnation of the Improvements shall be used to repay Lessee's Lender, to the extent of Lessee's obligations to such Lender, and thereafter the balance, if any, shall belong to Lessor, (b) all interest of Lessee and Lessee's Lender in the compensation and damages payable on account of any Improvements on the Land not taken or condemned shall belong to and be the sole property of Lessor, (c) Lessee may claim and recover from the condemning authority all compensation and damage to its business or property not subject to this Lease, and to any

inventory, furnishings, equipment and trade fixtures and the cost of restoration or removal of the foregoing property, (d) Lessor shall prepare and Lessee, Lessor and Lessee's Lender shall promptly execute and deliver such instruments as reasonably shall be deemed necessary by Lessor to evidence such surrender, (e) Lessee shall not be entitled to any other compensation or payment whatsoever by Lessor on account of such taking and surrender, and (f) upon such surrender of the Lease, Lessee shall be relieved of any further obligations hereunder.

- 6.4 **Partial Condemnation.** In all events of partial condemnation, the proceeds of any award for Improvements and/or severance damages for the Improvements, shall be allocated between Lessor and Lessee as of the date Lessee loses the right of possession to the portion of the Premises so taken or condemned. The allocation shall be according to the ratios that the then expired and unexpired portions, respectively, of the entire Term bear to the sum of such portions; provided, however, that in no event shall Lessee's share of the Improvements proceeds be less than the lesser of : (a) the amount which results from the sum of (i) the aggregate unpaid balance of all authorized leasehold mortgage loans as of the date of such partial taking multiplied by a fraction, (A) the numerator of which is the sum of (1) total value of the Improvements as of the date of such taking minus (2) the total value of the Improvements immediately following the taking, and (B) the denominator of which is the total value of the Improvements as of the date of such taking, provided that Lessee pays all such sums to Lessee's Lender, to the extent of amounts owed to such Lender; plus, (ii) the reasonable cost of any reasonable and necessary corrective work to the Improvements resulting from the taking; or (b) the total compensation or damages awarded for the Improvements and the Land.
- 6.5 **Leasehold Condemnation.** The condemnation of any leasehold interest in the Premises or any part thereof shall not terminate this Lease nor excuse Lessee from full performance of its covenants for the payment of money or any other obligations hereunder capable of performance by Lessee, but in such case Lessee may claim and recover from the condemning authority all compensation and damages payable on account of its leasehold interest, including such compensation and damages as may be separately awarded or recoverable by Lessee in its own right on account of any damage by reason of condemnation to its business, its business or property not subject to this Lease, any furniture, furnishings, equipment and trade fixtures on the condemned premises, and the cost of relocation or removal thereof. If the compensation payable to Lessee by the condemning authority in any such event is less than Lessee's payment obligations hereunder, such payment obligations hereunder shall be reduced to the amount of compensation payable to Lessee. In the event the condemning authority shall fail to keep the Premises in the state of repair required by this Lease, or to perform any other covenant not calling for the payment of money, Lessee shall have ninety (90) days after the restoration of possession to Lessee within which to carry out Lessee's obligations under such covenant or covenants or, if such performance cannot reasonably be completed within said ninety (90) day period, Lessee shall have a reasonable time to perform such obligations, provided that it commences promptly and diligently prosecutes such performance.

ARTICLE VII PERMITTED MORTGAGES

- 7.1 **Lessee's Right to Mortgage Leasehold Estate.** Lessee may from time to time, without further consent of Lessor, assign Lessee's leasehold estate and this Lease by way of mortgage, which mortgage shall be an "approved" or "authorized" mortgage for the purposes hereof, to secure any indebtedness of the Lessee incurred to acquire, construct, improve and equip the Project or to refinance the same, including the provision of working capital, the payment of costs of issuance and the cost of any credit or liquidity enhancement related to such indebtedness. The mortgage granted by the Lessee pursuant to the Bond Indenture is hereby deemed to be an "approved" or "authorized" mortgage. Any bank, insurance company, bondholder or other established lending institution or an institutional trustee who acts as mortgagee for the benefit of holders of, or providers of credit or liquidity enhancement with respect to, indebtedness issued in connection with the construction of the Project, any Improvements, additions to the Project, or the refinancing, advance refunding, defeasance or other satisfaction of the Bond Indenture or any other financing which complies herewith shall be deemed to be a "Lender." Any mortgage granted subsequent to the initial mortgage granted pursuant to the Bond Indenture shall require that: (a) Lessee notify Lessor in writing in advance as to each such proposed assignment, (b) the proceeds of such subsequent financing are used solely for investment in the Project or additions or improvements thereto, including the provision of working capital, the payment of costs of issuance and the payment of costs for any credit or liquidity enhancement related thereto, and for no other purpose whatsoever, (c) upon the execution of any such assignment or mortgage, a copy thereof shall be delivered promptly to Lessor, and (d) except as provided in this Article VII of this Lease, no other or further assignment of this Lease for which any provision hereof requires the written consent of Lessor shall be made without such consent.
- 7.2 **Lender's Rights.** Notwithstanding any provision of this Lease to the contrary and without the need to obtain any consent or approval from Lessor, the Lender or its assigns may enforce such an approved mortgage and acquire title to the Leasehold Estate created by this Lease in any lawful way, and pending foreclosure of an approved mortgage (or pending sale of this Lease in lieu of foreclosure of such mortgage), may take possession of and rent the Premises, and upon succeeding to the title of Lessee in the Leasehold Estate through foreclosure thereof (or upon assignment in lieu of foreclosure thereof), may without further consent of Lessor sell and assign the Leasehold Estate by assignment in which the assignee shall expressly assume and agree to observe and perform all the covenants of Lessee herein contained and such assignee may make a purchase money mortgage of this Lease to the assignor or to any bank, insurance company, other established lending institution or commercial trustee as fully as Lessee could do so hereunder, provided that upon execution of any such assignment, a copy thereof shall be delivered promptly to Lessor, that any purchase money mortgage meet the conditions contained in clauses (a) through (c) of Section 7.1 above and that except pursuant to this Article, no other or further assignment of this Lease for which any provision hereof requires the written consent of Lessor shall be made without such consent. The Lender or its assignee shall be liable to perform the obligations herein imposed on Lessee only during the period such person has possession or ownership of the Leasehold Estate. Nothing contained in any mortgage shall release or be deemed to relieve Lessee from the full and faithful observance and performance of its covenants herein

contained or from any liability for the nonobservance or nonperformance thereof, nor be deemed to constitute a waiver of any rights of Lessor hereunder, and the terms, covenants and conditions of this Lease shall control in case of any conflict with the provisions of any mortgage.

7.3 **Protection of Lender.** During the continuance in effect of any mortgage of this Lease authorized by Section 7.1 above, Lessor will not terminate this Lease because of any default on the part of Lessee to observe or perform any of the covenants or conditions herein contained if the Lender or its assigns, within one hundred twenty (120) days after Lessor has mailed (not earlier than the expiration of Lessee's right to cure the default under this Lease) to the Lender or its assigns at the last known address thereof a written notice of Lessor's intention to terminate this Lease for such cause, shall cure such default if the same can be cured by the payment of money, or, if such is not the case, shall undertake in writing to perform and shall thereafter pay all rent and other charges as and when due under this Lease and perform all other covenants of this Lease capable of performance by the Lender or its assigns until such time as this Lease shall be sold upon foreclosure of such mortgage commenced promptly and completed with due diligence. Any default (a) consisting of Lessee's failure promptly to discharge any lien, charge or encumbrance against the Premises junior in priority to such mortgage or (b) which is otherwise not susceptible to cure by Lender except upon obtaining possession of the Premises or foreclosure, shall be deemed to be duly cured if such mortgage shall be foreclosed by appropriate action instituted within said one hundred twenty (120) day period and thereafter prosecuted in a diligent and timely manner. Lessor agrees that, simultaneously with mailing or delivering any notice of default or breach under or with respect to this Lease to Lessee, Lessor will mail or deliver a copy thereof to each and every Lender at such address of which Lessor may be notified in writing.

7.4 **Assumption and Rejection.** In consideration of Lessor's agreement to the "New Lease" provisions in favor of Lender contained in Section 7.5 below, each Lender shall, by accepting its mortgage, be deemed to undertake and agree for the benefit of Lessor that, if at any time a bankruptcy proceeding shall be commenced concerning Lessee and/or the Leasehold Estate, such Lender shall, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of leases, use its reasonable efforts to diligently and in good faith obtain or cause Lessee/Lender and/or Lessee/Lender's trustee in bankruptcy to obtain: (a) an extension of the period during which this Lease may be assumed or rejected; or (b) an abandonment of the Leasehold Estate with the approval of the bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or (c) an assumption of this Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

7.5 **Lender's Right to a New Lease.** In the event that, notwithstanding the Lender's compliance with the provisions of Section 7.4 above, this Lease shall terminate prior to the natural expiration of the Term, as a result of an actual or deemed rejection of this Lease under any provision of the Bankruptcy Code (Title 11, United States Code) or any successor law having similar effect, then, and in any such event, such Lender (or the Lender holding a first mortgage if more than one) or its nominee or designee shall thereupon have the option to obtain a new lease ("New Lease") of the Premises in accordance with and upon the following terms and conditions:

- (a) **Lessor's Obligation to Enter into New Lease.** Within sixty (60) days after Lender has delivered to Lessor written request for a New Lease (such written request to be delivered to Lessor within sixty (60) days after Lender receives from Lessor written notice of the actual or deemed rejection of this Lease), Lessor shall enter into a New Lease of the Premises with such Lender, or its assignee or designee, as provided in Section 7.5(b) immediately below; provided, however, that if Lessor receives no such written request within said sixty (60) day period, then all of Lender's rights to a New Lease hereunder shall automatically terminate.
- (b) **New Lease Terms.** Such New Lease shall be effective as of the date of the actual or deemed rejection of this Lease and shall be for the remainder of the Term at the same Annual Rent, additional rent and other charges herein provided and otherwise upon the same agreements, terms, covenants and conditions contained herein, except that the New Lease shall also include an additional indemnity paragraph under the terms of which Lessee shall indemnify and hold Lessor harmless from and against all claims, demands or liability whatsoever by whomsoever made for loss or damage arising out of or in connection with the issuance of the New Lease and will promptly reimburse Lessor for its costs and expenses, including reasonable attorney's fees, incurred in connection with the defense of any such claims. The New Lease issued hereunder shall have the same relative priority in time and rights as this Lease and have the benefit of and vest in the Lender (or Lender holding a first mortgage if more than one) all of the same rights, title, interest, powers and privileges of Lessee under this Lease. The New Lease shall, subject to the same agreements, terms, covenants and conditions contained herein, also demise to Lender or its designee all Improvements and appurtenances situated on the Premises, together with all equipment, fixtures and machinery therein.
- (c) **New Lessee's Obligations.** As a condition to and concurrently with delivery of such New Lease, the lessee named therein shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for the rejection as aforesaid, shall otherwise fully remedy any existing defaults under this Lease susceptible of cure by such lessee, and shall pay to Lessor all amounts due to Lessor hereunder and all costs and expenses of Lessor incurred in connection with the enforcement of Lessor's rights hereunder, including, but not limited to, any insurance premiums paid or incurred by Lessor in order to maintain the insurance coverage required under the terms of this Lease, and the reasonable attorneys' fees, court costs and disbursements incurred by Lessor by reason of the actual or deemed rejection of this Lease and in connection with the preparation, execution and delivery of such New Lease. Any curable default which cannot be cured by such lessee until it obtains possession shall be cured by the lessee within a reasonable time, subject to extension for Force Majeure Events, after it obtains possession.
- (d) **Lender's Right to Assign New Lease.** Lender, or its affiliate, if it or its affiliate is the initial lessee under the New Lease, may assign such New Lease to any assignee of its choice which is approved by Lessor, which approval shall not be unreasonably withheld or delayed, and shall thereupon be released from all liability for the

performance or observance of the covenants and conditions in such New Lease contained and on the lessee's part to be performed and observed from and after the date of such assignment, provided that a certified copy of such assignment shall be promptly provided to Lessor and that the assignee therein shall expressly assume and agree to observe and perform all of the covenants of Lessee contained in said New Lease.

- 7.6 **No Merger.** Ownership by or for the same person of both the fee and Leasehold Estate in the Premises shall not affect the merger thereof without the prior written consent of any mortgagee of either of such estates to such merger. There shall be no merger of the Leasehold Estate with the fee estate in the Premises by reason of the fact that one Leasehold Estate may be held directly or indirectly by or for the account of any person who shall also hold directly or indirectly the fee estate, or any interest therein, nor shall there be any such merger by reason of the fact that all or any part of the Leasehold Estate may be conveyed or mortgaged to a mortgagee who shall also hold directly or indirectly the fee estate in the Premises or any interest of Lessor under this Lease.
- 7.7 **Surrender and Amendment.** No surrender (except a surrender upon the natural expiration of the Term or upon termination of this Lease by Lessor pursuant to the provisions hereof) by Lessee to Lessor, of this Lease, the Leasehold Estate or any part thereof or interest therein shall be valid or effective without the prior written consent of any then-subsisting record Lender of whose interest Lessor shall have been given written notice in accordance with the terms of this Lease. This Lease shall not be amended or modified in any way that reasonably may be deemed or construed to affect the material rights and obligations of any Lender which is a then-subsisting record mortgagee of whose interest Lessor shall have been given written notice in accordance with the terms of this Lease unless such mortgagee shall give its written consent thereto.
- 7.8 **Estoppel Certificate.** Upon the written request of any Lender, Lessor shall provide an estoppel certificate to such Lender in such form as may be reasonably requested by such Lender or state in writing any basis Lessor may have for being unable to provide any such estoppel certificate; provided that, in the absence of an agreement between Lessor and any such Lender as to the form of any such estoppel certificate, such a certificate which addresses the items specified in Section 9.14 of this Lease shall be deemed to satisfy this requirement.

ARTICLE VIII DEFAULTS AND REMEDIES

- 8.1 **Events of Default.** Lessee shall be in default under this Lease upon the occurrence and continuance of any of the following events (each, an "Event of Default"):
- (a) **Payment of Rent.** If Lessee shall fail to pay any Rent or any part thereof when due, provided that Lessor shall give Lessee written notices of non-payment of said Rent with respect to each of the first two (2) occasions of such non-payment in each calendar year of the term hereof, together with a period of five (5) business days after such notice to cure any such failure, prior to the existence of an Event of Default, or

- (b) **Payments other than Rent.** If Lessee shall fail to observe and perform faithfully any of Lessee's covenants or agreements herein contained performable by the payment of money to persons other than Lessor (other than the payment to Lessor of amounts paid by Lessor to others as provided herein, which payments shall be payments of Rent) and such default shall continue for thirty (30) days (or such other and longer applicable cure period as may be in this Lease expressly provided) after a statement therefor given by the obligee to Lessee, unless Lessee shall have taken steps in good faith in such period to remedy the same and is continuing to so act with respect thereto with diligence and continuity reasonably satisfactory to Lessor, or
- (c) **Breach of Other Agreement.** If Lessee shall fail to observe or perform faithfully any of Lessee's other covenants or agreements herein contained and such default shall continue for thirty (30) days (or such other applicable cure period as may be in this Lease expressly provided) after written notice thereof given by Lessor to Lessee unless Lessee shall have taken steps in good faith within such period to remedy the same and is continuing to act with respect thereto with diligence and continuity reasonably satisfactory to Lessor, or
- (d) **Abandonment of Premises.** If Lessee shall abandon the Premises, or
- (e) **Attachment.** If this Lease or any estate or interest of Lessee hereunder shall be sold under any attachment or execution, other than to a Lender or purchaser at foreclosure as provided herein.

8.2 **Remedies.** Upon the occurrence of any one or more of the Events of Default, Lessor may, at its election, subject to and conditioned upon the rights of any lender as provided in Article VII or any other provision hereof, terminate this Lease, or terminate Lessee's right to possession only, without terminating the Lease. Upon termination of the Lease, or upon any termination of the Lessee's right to possession without termination of the Lease, Lessee shall surrender possession and vacate the leased premises immediately, and deliver possession thereof to Lessor, and hereby grants to Lessor the full and free right, without demand or notice of any kind to Lessee (except as hereinabove expressly provided for), to enter into and upon the leased premises in such event, with or without process of law, and to repossess the leased premises at Lessor's former estate, and to expel or remove Lessee and any others who may be occupying or within the leased premises, without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom, and without relinquishing Lessor's rights to rent or any other right given to Lessor hereunder or by operation of law. Upon termination of the Lease, Lessor shall be entitled to recover, as damages, all rent and other sums due and payable to Lessor on the date of termination, plus (1) an amount equal to the rent and other sums provided herein to be paid by Lessee for the residue of the stated term hereof on the dates originally fixed herein for payment thereof, and (2) the cost of performing any other covenants to be performed by Lessee. If Lessor elects to terminate Lessee's right to possession only, without terminating the Lease, the Lessor may, at Lessor's option, enter into the leased premises, remove Lessee's signs and other evidence of tenancy, and take and hold possession thereof as hereinabove provided, without such entry and possession terminating the Lease or releasing Lessee, in whole or in part, from Lessee's obligations to pay the rent

hereunder for the full term or from any other of its obligations under this Lease, subject to the offset of all sums received by Lessor from any reletting. Lessor may, but shall be under no obligation so to do, relet all or any part of the leased premises for such rent and upon such terms as shall be satisfactory to Lessor (including the right to relet the leased premises for a term greater or lesser than that remaining under the Lease term, the right to relet the leased premises as a part of a larger area, and the right to change the character or use made of the leased premises). For the purpose of such reletting, Lessor may decorate or make any repairs, changes, alterations or additions in or to the leased premises that may be necessary or convenient. If Lessor does not relet the leased premises, Lessee shall pay to Lessor on demand damages equal to the amount of the rent and other sums provided herein to be paid by Lessee for the remainder of the Lease term. If the leased premises are relet and a sufficient sum shall not be realized from such reletting after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting, and the collection of the rent accruing therefrom (including, but not by way of limitation, attorneys' fees and broker's commissions), to satisfy the rent and other charges herein provided to be paid for the remainder of the Lease term, Lessee shall pay to Lessor on demand any deficiency, and Lessee agrees that Lessor may file suit to recover any sums falling due under the terms of this section from time to time. In no event shall Lessor or its assigns be entitled to recover any punitive, exemplary, or consequential damages against Lessee. Lessor hereby waives any right it has for the recovery of such damages.

- 8.3 **Non-Waiver.** Acceptance of rent by Lessor shall not be deemed a waiver by it of any breach by Lessee of any covenant herein contained or of Lessor's right to re-enter for breach of condition. Waiver by Lessor of any breach by Lessee shall not operate to extinguish the term, covenant or condition, the breach whereof has been waived, nor be deemed to be a waiver of Lessor's right to declare a forfeiture for any other breach thereof.

ARTICLE IX MISCELLANEOUS

- 9.1 **Approval and Consent.** Except as expressly provided herein, no approval or consent of Lessor required by any provision hereof shall be unreasonably or arbitrarily withheld, delayed or conditioned. Lessor shall use its reasonable best efforts to cooperate with Lessee in expediting all reasonable requests for approval or consent, and, if such approval or consent is refused, Lessor shall so state in writing and give its reasons therefor; provided, however, that in those instances wherein Lessor has reserved the arbitrary right to grant or withhold its consent or approval, no reason need be given. If Lessor shall fail to so approve or disapprove any request for approval or consent within thirty (30) days after the date on which notice of such request is given to Lessor as provided herein, together with documents and information reasonably necessary for Lessor to determine such matter (or within such other time as Lessor and Lessee shall mutually in writing agree), such request shall be deemed approved and such consent shall be deemed given.
- 9.2 **Assumption of Risk.** Lessee assumes all risk of loss or damage to furnishings, furniture, fixtures, equipment, supplies, merchandise and other property, by whomsoever owned, which is stored or placed on the Premises and does hereby agree that Lessor shall not be responsible for any loss or damage to any such property other than as a result of the gross

negligence or wilful misconduct of Lessor or Lessor's agents, contractors, employees or affiliates and not at the direction or behest of Lessee, and Lessee hereby agrees to indemnify and save harmless Lessor from and against any and all claims for such loss or damage, except for damage attributable to Lessee as specified.

9.3 **Modification of Lease.** At Lessee's request, in the event a modification of this Lease is necessary to secure mortgage financing for the construction of the Improvements from any Lender, Lessor will agree to modify this Lease to the extent reasonably necessary to secure such financing, provided that such modifications will not result in any lengthening of the Term nor adversely affect in any material respect any rights of Lessor under this Lease.

9.4 **Cancellation Not Merger.** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation hereof, or the termination hereof by Lessor pursuant to any provision contained herein, shall not work a merger, but at the option of Lessor shall either terminate any or all existing subleases or subtenancies hereunder, including, without limitation, any life care contracts, or operate as an assignment to Lessor of any or all of such subleases or subtenancies, including, without limitation, life care contracts. Nothing herein contained shall be deemed or construed to require Lessor under any circumstances to assume or accept assignment of any life care contracts nor to permit attornment or any holding over by the holders thereof.

9.5 **Notices.** Any notice, demand or other communication (in this section, collectively, "notice") to Lessor, Lessee or Lender provided for or permitted by this Lease shall be given in writing (unless otherwise expressly provided), and may be: (a) mailed by United States registered or certified mail, return receipt requested, addressed to such party at its post office address herein specified or the last such address designated by such party in writing to the other; or (b) delivered personally to any officer of the party to be notified, if such party is a corporation or any general partner of a party to be notified if such is a partnership, as the case may be; or (c) sent by overnight delivery, addressed to the party to be notified at the address hereinafter specified. Any such written notice shall be deemed received at the time of such personal delivery, or at 5:00 P.M. on the third business day after being deposited with the United States mail as aforesaid, or on the business day after deposit thereof with an overnight courier delivery service, as the case may be.

Lessor: Intercity Investment Properties, Inc.
ATTN: Edwin B. Jordan, Jr.
4301 Westside Drive
Dallas, Texas 75209

Lessee: Northwest Senior Housing Corporation
ATTN: Charles B. Brewer
2711 LBJ Freeway
Suite 950
Dallas, Texas 75234

With copies to: Michael B. Lanahan
Greystone Communities
222 W. Las Colinas Blvd.
Suite 2100
Irving, Texas 75039

and

Peter J. Riley, Esq.
Thompson & Knight
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201-4693

Lender: Chase Bank of Texas, N.A.
Attn: Mr. Dennis Roemelin
600 Travis Street, Suite 1150
Houston, Texas 77002

- 9.6 **Construction.** This Lease is the product of extensive negotiations in which Lessor and Lessee are represented by legal counsel of their choice. Lessor and Lessee enter into this Lease freely and after consultation with counsel and other professional advisors. Neither Lessor nor Lessee is acting under duress or compulsion. Accordingly, neither Lessor nor Lessee shall be deemed the drafter of this Lease and neither this Lease nor any provision hereof shall be construed against either Lessor or Lessee as drafter.
- 9.7 **No Partnership Intended.** Lessor and Lessee agree that Lessor in no event and for no purpose is a partner of Lessee in the conduct of any of its businesses or other affairs or joint ventures or members of a joint enterprise with Lessee. The relationship of the parties is that of landlord and tenant.
- 9.8 **Governing Law and Venue.** This Lease and all of its provisions shall be governed by and construed in accordance with the law of the State of Texas other than that which would require reference to the law of another jurisdiction. The venue for any action with respect to this Lease shall be in Dallas County, Texas.
- 9.9 **Waiver of Jury Trial.** Lessor and Lessee each hereby voluntarily and knowingly waive and relinquish its right to a trial by jury in any action, proceeding or counterclaim brought by either against the other as to any matter whatsoever arising out of or in any way connected with this Lease.
- 9.10 **Time Is Of The Essence.** Time is expressly declared to be of the essence of this Lease and the performance and observance of all of the terms, covenants and conditions of this Lease.
- 9.11 **Memorandum of Lease.** Lessee shall not record this Lease without the prior written consent of Lessor, which consent Lessor may arbitrarily withhold; provided, however, that concurrently with the execution of this Lease, Lessor and Lessee shall join in the execution of a memorandum of this Lease (the "Memorandum") for the purpose of recordation in the

form attached hereto as Exhibit "E" and made a part hereof and such Memorandum shall be promptly recorded in the Real Property Records of Dallas County, Texas in connection with the inception hereof.

- 9.12 **Captions and Headings.** The captions and headings of the Articles, Sections and subsections of this Lease are inserted only for convenience and reference and shall in no way define, expand or limit the scope or intent of any provisions of this Lease.
- 9.13 **Copies.** Wherever in this Lease it is provided that Lessor or Lessee shall provide a copy of any instrument, document or report, the copy shall be full, true and complete, with all of its exhibits, appendices and schedules. The recipient also shall be entitled to receive a copy of any matter cross-referenced or referred to in any instrument, document or report required to be given it hereunder.
- 9.14 **Estoppel Certificates.** Each party will, from time to time upon reasonable written request therefor from the other party or its Lender(s) or mortgagee(s), furnish to the other party or its Lender or mortgagee an estoppel certificate duly executed and acknowledged and certifying (a) that the Lease is unmodified and in full force and effect or if the Lease has been modified, is in full force and effect as modified and identifying the modifications; (b) whether or not there is, to such party's knowledge, then any default of this Lease by the other party or, to the party's knowledge, any condition which with the passage of time or delivery of notice would become a default, and, if so specifying, the nature thereof, (c) the dates to which rent and any other charges payable under the Lease have been paid; and (d) such other information as may reasonably be requested. Lessor and Lessee will furnish their estoppel certificates without any charge.
- 9.15 **Lease Prior To Any Mortgages Or Security Interest On Fee.** At all times while this Lease remains in effect, the Lease and the Leasehold Estate established under this Lease shall be prior and superior to any mortgages or other security interests granted by Lessor on Lessor's fee simple interest in the Land.
- 9.16 **Lessor's Representations and Warranties.** Lessor represents and warrants to Lessee, which representations and warranties shall survive the commencement of this Lease, that the person signing this Lease on behalf of Lessor is authorized to do so, that Lessor has full right and authority to enter into this Lease, and that the execution, consent or acknowledgment of no other person is necessary in order to validate the execution of this Lease by Lessor. Upon full execution, this Lease shall be valid, legally binding and enforceable against Lessor according to the terms of this Lease.
- 9.17 **Lessee's Representations and Warranties.** Lessee represents and warrants to Lessor, which representations and warranties shall survive the commencement of this Lease, that the person signing this Lease on behalf of Lessee is authorized to do so, that Lessee has full right and authority to enter into this Lease, and that the execution, consent or acknowledgment of no other person is necessary in order to validate the execution of this Lease by Lessee. Upon full execution, this Lease shall be valid, legally binding and enforceable against Lessee according to the terms of this Lease.

9.18 **Entire Agreement, Binding Effect.** This Lease and those provisions of the Option Agreement continuing thereunder as provided therein and those leases and service contracts to be assumed by Lessee hereunder constitute a complete integration of all prior agreements between Lessor and Lessee and the entire agreement of Lessor and Lessee, and supersedes all oral and written agreements and understandings made and entered into by the parties or their agents. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by each of them. This Lease shall be binding upon and inure to the benefit of the Lessor and Lessee and their respective successors and assigns or permitted assigns. Whenever the term "Lessee" shall refer to more than one person or entity, the covenants and agreements of the Lessee shall be jointly and severally binding upon each such person or entity.

Lessor:
INTERCITY INVESTMENT PROPERTIES, INC.

By: 
Edwin B. Jordan, Jr., President

Lessee:

Northwest Senior Housing Corporation

By: Charles B. Brewer
Charles B. Brewer, President

**EXHIBIT "A"
TO
GROUND LEASE**

The Land

TRACT I

Being Lots 1 thru 7, Block 8/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

TRACT II

Being Lots 1 thru 8, Block 9/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

Provided, if abandonment is successful and the Owner acquires title to the alleyways and part of Beauregard Drive, both within the above described area, the portion thereof abandoned by the City of Dallas and acquired by Owner shall be a part of the Land subject to lease.

(TO BE REPLACED WHEN THE LAND IS REPLATTED)

EXHIBIT "B"
TO
GROUND LEASE

Permitted Exceptions

1. Standby fees, taxes and assessments by any taxing authority for the year 1999, and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.
2. Lease of laundry facilities granted to UNITED COIN METER COMPANY, INC. by instrument dated March 31, 1976, filed May 19, 1976, recorded in Volume 76097, Page 2079, Deed Records, Dallas County, Texas, as noted on the Survey.
3. The following easement(s) and/or building lines, as shown on plat recorded in Volume 12, Page 83, Map Records, Dallas County, Texas, and as shown on survey prepared by John R. Piburn, RPLS No. 3689, dated November 16, 1997, hereinafter the "Survey", to-wit:
 - a. 25 foot building line along the East property line of Lots 2, 4, 6, Block 8/5464.
 - b. 25 foot building line along the North property line of Lots 1 and 2, Block 8/5464.
 - c. 25 foot building line along the West property line of Lots 1, 3, 5 and 7, Block 8/5464.
 - d. 25 foot building line along the South property line of Lots 6 and 7, Block 8/5464.
 - e. 25 foot building line along the East property line of Lots 2, 4, 6 and 8, Block 9/5464.
 - f. 25 foot building line along the North property line of Lots 1 and 2, Block 9/5464.
 - g. 25 foot building line along the West property line of Lots 1, 3, 5 and 7, Block 9/5464.
 - h. 25 foot building line along the South property line of Lots 7 and 8, Block 9/5464.
 - i. 20 foot alleys between odd and even numbered lots.
4. Right of Entry granted to WARNER AMEX CABLE COMMUNICATIONS, INC. by instrument dated December 2, 1981, filed June 23, 1982, recorded in Volume 82123, Page 0112, Deed Records, Dallas County, Texas, as noted on the Survey.
5. Rights of tenants in possession, as tenants only, under any unrecorded written rental or lease agreements.

**EXHIBIT "C"
TO
GROUND LEASE**

Ordinance for Abandonment of Beauregard Drive

Attached following this cover page



CITY OF DALLAS

October 22, 1999

Intercity Investment Properties
% H. Louis Nichols
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

Re: Log 16758 - Abandonment Request - Beauregard Drive and alley rights-of-way

Dear Mr. Nichols:

Enclosed is a copy of a proposed ordinance which, if approved by the City Council, will abandon a portion Beauregard Drive and alley rights-of-way containing approximately 79,074 square feet of land located near Northwest Highway between Thackery Street and Edgemere Road to Intercity Investment Properties. A portion of the proposed abandoned area will be exchanged for the dedication of approximately 9,125 sq. ft. land needed for street right-of-way and approximately 21,958 sq. ft. feet of land dedicated as a private drive and utility easement, totaling a dedication of 31,083 sq. ft. of land.

Please review this document and, if all is acceptable, have this letter, and the "No Conflict of Interest" statement signed by the appropriate individual where indicated below and return it, along with your **cashier's check** in the amount of \$428,390 (79,074 sq. ft. - 31,083 sq. ft. = 47,991sq. ft. X 10.50 p.s.f. X 85%, plus the \$20.00 ordinance publication fee and \$50.00 recording fees) to the attention of the undersigned.

ALL TAXES OWED MUST BE PAID AND ALL OUTSTANDING CODE VIOLATIONS MUST BE RESOLVED PRIOR TO SCHEDULING THIS ITEM FOR ANY CITY COUNCIL AGENDA.

When this letter and "No Conflict of Interest" statement are returned properly executed and said cashier's check in the amount of \$428,390 are received, this matter will be placed on the earliest possible City Council Agenda. All items must be received upon receipt, in order to make the November 10, 1999 agenda.

Thanks for your cooperation. If you have any question, please call me at 948-4086.

Sincerely,

Ernestine E. Tucker
Sr. Real Estate Specialist

enclosure:

We have reviewed the proposed ordinance attached hereto and find all of its terms and conditions acceptable and are enclosing the executed "No Conflict of Interest" statement and a **cashier's check** in the amount of \$428,390. We are still the current owners of the abutting property adjacent to the proposed abandoned area.

Intercity Investment Properties, Inc.

By:
Name: Edmund B. Jordan Jr. (print)
Title: President (print)

NO "CONFLICT OF INTEREST" STATEMENT

REVISED 5-18-92

I/we _____ agree to the following:

1. Neither I/we, nor my/our spouse(s), is/are a City of Dallas officer, employee or City Council appointed member of any board or commission.
2. The grant of this application would not violate Chapter XXII, Sec. 11 of the Dallas City charter which follows:

DALLAS CITY CHARTER CHAPTER XXII, SEC. 11.

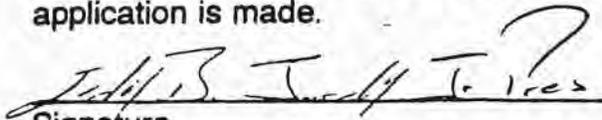
SEC. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.

(b) The alleged violations of this section shall be matters to be determined either by the trial board in the case of employees who have the right to appeal to the trial board, and by the city council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law. (Amend. of 8-12-89, Prop. No. 1; Amend. of 8-12-89, Prop. No. 15)

3. If this application is made on behalf of another person, partnership, corporation or other business entity and if the undersigned or my/our spouse(s) is/are a City of Dallas officer, employee or board or commission member, I/we swear and affirm that neither I/we, nor my/our spouse(s), have financial interest, direct or indirect, with the other person, partnership, corporation or other business on whose behalf this application is made.


Signature

Printed Name: Edwin B. Jandace, Jr.

Title: President

Signature

Printed Name: _____

Title: _____

ORDINANCE NO. _____

An ordinance providing for the abandonment of Beauregard Drive and alley rights-of-way located in and adjacent to City Block 8/5464 and 9/5464 in the City of Dallas and County of Dallas, Texas; providing for the quitclaim thereof to Intercity Investment Properties, Inc.; providing for the terms and conditions of the abandonment and quitclaim made herein; providing for barricading; providing for the indemnification of the City of Dallas against damages arising out of the abandonment herein; providing for the consideration to be paid to the City of Dallas; providing for the payment of the publication fee; and providing an effective date.

ooo0ooo

WHEREAS, the City Council of the City of Dallas, acting pursuant to law and upon the request and petition of Intercity Investment Properties, Inc., a Texas corporation, hereinafter referred to as **GRANTEE**, deems it advisable to abandon and quitclaim the hereinafter described tracts of land to **GRANTEE**, and is of the opinion that said street and alley rights-of-way are not needed for public use, and same should be abandoned and quitclaimed to **GRANTEE**, as hereinafter stated; and

WHEREAS, the City Council of the City of Dallas is of the opinion that the best interest and welfare of the public will be served by abandoning and quitclaiming the same to **GRANTEE** for the consideration hereinafter more fully set forth; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the tracts of land described in Exhibit A, which is attached hereto and made a part hereof, be and the same are abandoned, vacated and closed insofar as the right, title and interest of the public are concerned; subject, however, to the conditions hereinafter more fully set out.

SECTION 2. That for and in monetary consideration of the sum of **FOUR HUNDRED TWENTY-EIGHT THOUSAND THREE HUNDRED TWENTY AND NO/100 (\$428,320.00) DOLLARS** paid by **GRANTEE**, and the further consideration described in Sections 8, 9,

10, 11, and 12 the City of Dallas does by these presents FOREVER QUITCLAIM unto the said **GRANTEE**, subject to the conditions, reservations, and exceptions hereinafter made and with the restrictions and upon the covenants below stated, all of its right, title and interest in and to those certain tracts or parcels of land hereinabove described in Exhibit A. **TO HAVE AND TO HOLD** all of such right, title and interest in and to the property and premises, subject aforesaid, together with all and singular the rights, privileges, hereditaments and appurtenances thereto in any manner belonging unto the said **GRANTEE** forever.

SECTION 3. That upon payment of the monetary consideration set forth in Section 2, **GRANTEE** accepts the terms, provisions and conditions of this ordinance.

SECTION 4. That the City Controller is authorized to deposit the sum paid by **GRANTEE** pursuant to Section 2 above in the Property Management Fund 0001, Agency PGT, Balance Sheet 0519 and Property Management shall be reimbursed for the cost of obtaining the legal description, appraisal and other administrative costs incurred. The reimbursement proceeds shall be deposited in Fund 0001, Agency PGT, Org. 1301, Object 5011 and any remaining proceeds shall be transferred to the General Capital Reserve Fund 0525, Agency BMS, Org. 8888, Revenue Source 8416.

SECTION 5. That the abandonment and quitclaim provided for herein are made subject to all present zoning and deed restrictions, if the latter exist, and are subject to all existing easement rights of others, if any, whether apparent or non-apparent, aerial, surface, underground or otherwise, and are further subject to the conditions contained in Exhibit B, which is attached hereto and for all intents and purposes made a part hereof.

SECTION 6. That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

SECTION 7. That the abandonment and quitclaim provided for herein shall extend only to the public right, title, easement and interest, and shall be construed to extend only to that interest the Governing Body of the City of Dallas may legally and lawfully abandon and vacate.

SECTION 8. That as a condition of this abandonment and as a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE**, its successors and assigns, agree to indemnify, defend, release and hold the City of Dallas whole and harmless against any and all claims for damages, fines, penalties, costs or expenses to persons or property that may arise out of, or be occasioned by or from: (i) the use and occupancy of the property described in Exhibit A by **GRANTEE**, its successors and assigns; (ii) the presence, generation, spillage, discharge, release, treatment or disposition of any Hazardous Substance on or affecting the area set out in Exhibit A, (iii) all corrective actions concerning any discovered Hazardous Substances on or affecting the areas described in Exhibit A, which **GRANTEE** agrees to undertake and complete in accordance with applicable federal, state and local laws and regulations; and (iv) the abandonment, closing, vacation and quitclaim by the City of Dallas of the areas set out in Exhibit A. **GRANTEE** hereby agrees to defend any and all suits, claims, or causes of action brought against the City of Dallas on account of same, and discharge any judgement or judgments that may be rendered against the City of Dallas in connection therewith. For purposes hereof, "Hazardous Substance" means the following: (a) any "hazardous substance" under the Comprehensive, Environmental Response, Compensation Liability Act, 42 U.S.C. Section 9601 et seq., as amended, (b) any "hazardous substance" under the Texas Hazardous Substances Spill Prevention and Control Act, TEX. WATER CODE, Section 26.261 et seq., as amended, (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubricating oils, (d) any "hazardous chemicals" or "toxic chemicals" under the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., as amended, (e) any "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended; and (f) any "chemical substance" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended. References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated thereunder.

SECTION 9. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall:

- a) file a final replat of the adjoining properties within one year after passage of this ordinance showing the dedication of:
 - 1) not less than approximately 21, 958 square feet of land as a private drive and utility easement located in City Block 9/5464 with alignments acceptable to the Director of Public Works & Transportation. The private drive and utility easement shall expressly provide for private service easements including, but not limited to utilities, fire lanes, street lighting, government vehicle access, mail collection and delivery access and utility meter reading access; and
 - 2) approximately 8,786 square feet of land, as street rights-of-way located in City Block 9/5464; and
 - 3) three 15' X 15' corner clips at Beauregard Avenue and Thackery Street and Northwest Highway and its intersection with Edgemere Road and Thackery Street.

This final replat shall be recorded by **GRANTEE** in the Deed Records of Dallas County, Texas after its approval by the City Plan Commission of the City of Dallas. Failure to record a final replat in accordance with the term of this section shall render this ordinance null and void, and of no further effect. Further, the final replat shall be filed with the Planning and Development Department of the City of Dallas before a certified copy of this ordinance shall be delivered to **GRANTEE**; and

- b) provide and construct within two years after passage of this ordinance a private drive and utility easement containing not less than 21,958 square feet of land, adequate to serve the development as determined by the Building Official of the City of Dallas; and
 - 1) assume full responsibility for maintenance of the private drive; The private drive and utility easement is to be built within the easements to be dedicated as specified in Section 9a)1) herein, to the same specifications as a street dedicated to public use; with a minimum width of 24 feet (no curb requirement, when adjacent to parking), and a minimum width of 20 feet (with a curb requirement when not adjacent to parking). Failure by **GRANTEE**, its successors and assigns, to comply with this provision within two years from the passage of this ordinance, shall render this ordinance null and void and at no further effect; and

- 2) submit detailed plans for the private drive and utility easement to the Director of Public Works and Transportation, or his designee, for review and approval, and execute a private development contract for the construction of the proposed private drive and utility easement; and
- 3) construct the private drive and utility easement in accordance with the approved plans and executed private development contract, and have all work accepted in writing by the Director of Public Works and Transportation or his designee. Failure to construct the private drive and utility easement as set forth herein, shall render this ordinance null and void and of no further effect; and
- c) install signs denoting the private drive as "private" in accordance with plans approved by the Director of Public Works and Transportation, or his designee; and
- d) provide a means of access for sanitation collection acceptable to the Department of Street, Sanitation and Code Enforcement; and
- e) locate all utility and communication facilities, including but not limited to Southwestern Bell Telephone Company facilities prior to any construction within the abandonment area; and
- f) comply with the Uniform Fire Code and Uniform Building Code for any new construction within or adjacent to the abandoned area; and
- g) comply with Dallas Fire Department Standard No. 4, "Security Gates" of the Uniform Fire Code, Section 10.205 for any access security gates and fencing; and
- h) copies of the replat must be submitted to the Fire Department for review of any proposed new construction within or adjacent to the abandoned area during the routing of the replat; and
- i) contact the Local One Call System at 1-800/344-8377 and Lone Star Gas at 214/426-7051 at least 48 hours prior to any construction; and

SECTION 10. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, the private drive and utility easement, as set forth in Section 9a), is restricted to residential uses only, for a period of forty years from the date of

passage of this ordinance, unless such use restriction is sooner removed by ordinance duly passed by the City Council of the City of Dallas and payment of the abandonment fee calculated in accordance with the requirements of the Dallas City Code at the time of request. Upon receipt of a certified copy of this ordinance **GRANTEE** shall record this ordinance in the Deed Records of Dallas County, Texas. Failure by **GRANTEE**, its successors and assigns to comply with these restrictions shall render this ordinance null and void and of no further effect. The City shall have the exclusive right to enforce these use restrictions, by any lawful means, including filing an action in a court of competent jurisdiction at law or at equity, against **GRANTEE** or any other person violating or attempting to violate these use restrictions.

SECTION 11. That as a condition of this abandonment and as a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE** shall, keep and maintain the existing streets and alleys described in Exhibit A open and usable for emergency vehicle access (police, fire and ambulance services) and governmental vehicle access (mail collection, sanitation collection, utility meter access, etc.) during any demolition and any redevelopment of the abutting properties until the new private drive is dedicated and constructed by **GRANTEE** and accepted by the City. The governmental vehicular access reserved herein shall terminate upon the completion of construction and acceptance of the new private drive by the City.

SECTION 12. That as a condition of the abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE**, shall, upon the filing of a final replat as set forth in Section 9a) close, barricade and/or place signs in the areas described in Exhibit A in accordance with detailed plans approved by the Director of Public Works and Transportation, subject to providing for adequate access for emergency vehicles (police, fire and ambulance services). **GRANTEE's** responsibility for keeping the area described in Exhibit A closed, barricaded (except to emergency vehicles) and/or signs in place shall continue until the street improvements and intersection returns are removed by **GRANTEE**, its successors and assigns, to the satisfaction of the Director of Public Works & Transportation.

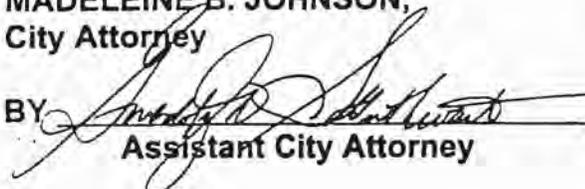
SECTION 13. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Property Management Director, or her designee. Upon receipt of the monetary consideration set forth in Section 2, plus the fee for the publishing of this ordinance, which **GRANTEE** shall likewise pay, and the filing of the final replat set forth in Section 9a), the Property Management Director, or her designee: (i) shall deliver to **GRANTEE** a certified copy of this ordinance, and (ii) is authorized to prepare and deliver a QUITCLAIM DEED with regard to the areas abandoned herein, should such be requested by **GRANTEE** hereunder, same to be executed by the City Manager on behalf of the City of Dallas, attested by the City Secretary and approved as to form by the City Attorney. The Property Management Director, or her designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

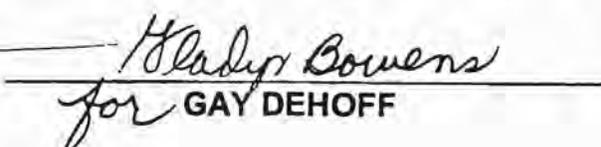
SECTION 14. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:
MADELEINE B. JOHNSON,
City Attorney

PROPERTY MANAGEMENT DIRECTOR

BY


Assistant City Attorney


for **GAY DEHOFF**

Passed _____

EXHIBIT A TRACT 1

STREET ABANDONMENT
33,206 sq. ft. (0.7623 acres)
BEAUREGARD DRIVE
between Blocks 9/5464 and 8/5464
City of Dallas
Dallas County, Texas

BEING a 33,206 square feet (0.7623 acre) tract of land situated in the J.M. McDowell Survey, Abstract No. 922, Dallas County, Texas, further being all of that portion of Beauregard Drive (50' R.O.W.) which lies between Block 9/5464 and Block 8/5464 of Prestonville Addition, an addition to the City of Dallas according to the plat thereof recorded in Volume 12, Page 83, Map Records, Dallas County, Texas, bounded on the north by the south line of Bandera Avenue (60' R.O.W.) and on the south by the north line of Northwest Highway (150' R.O.W.), and being more particularly described as follows:

BEGINNING at a brass highway monument found for corner in the north line of said northwest highway and being the southeast corner of said Block 9/5464, further being the southeast corner of Lot 8, Block 9/5464, of said addition as conveyed to Corrigan Properties, Inc. (subsequently renamed InterCity Investment Properties, Inc.) by Special Warranty Deed recorded in Volume 69194, Page 0065, Deed Records, Dallas County, Texas;

THENCE N00°28'33"E departing the north line of said Northwest Highway and along the east lines of Lots 8,6,4, and 2 of Block 9/5464 as conveyed to Corrigan Properties, Inc. by said Special Warranty Deed, a distance of 664.12 feet to a 5/8" iron rod with red cap stamped "RPLS 4625" set for corner in the south line of the aforementioned Bandera Avenue and being the northeast corner of said Block 9/5464;

THENCE S89°44'30"E along the said south line of Bandera Avenue, a distance of 50.00 feet to a 5/8" iron rod with red cap stamped "RPLS 4625" set for corner at the northwest corner of the aforementioned Block 8/5464;_{s.w.}

Am Wiley 11/15/96

EXHIBIT A - TRACT 1

THENCE S00°28'33"W departing the said south line of Bandera Avenue and along the west lines of Lots 1,3,5, and 7 of Block 8/5464 as conveyed to Corrigan Properties, Inc. by said Special Warranty Deed, a distance of 664.13 feet to a brass highway monument found for corner in the north line of the aforementioned Northwest Highway and being the southwest corner of said Block 8/5464;

THENCE N89°44'00"W along the said north line of Northwest Highway, a distance of 50.00 feet to the POINT OF BEGINNING and containing 33,206 square feet or 0.7623 acres of land, more or less.

*Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

Ann Wiley 11/15/96



BEAUREGARD DRIVE
 between Blocks 9/5464 and 8/5464
 City of Dallas
 Dallas County, Texas

100 200

SCALE: 1" = 100'

NOTES:

irs = 5/8" iron rod w/red cap stamped "RPLS 4625"

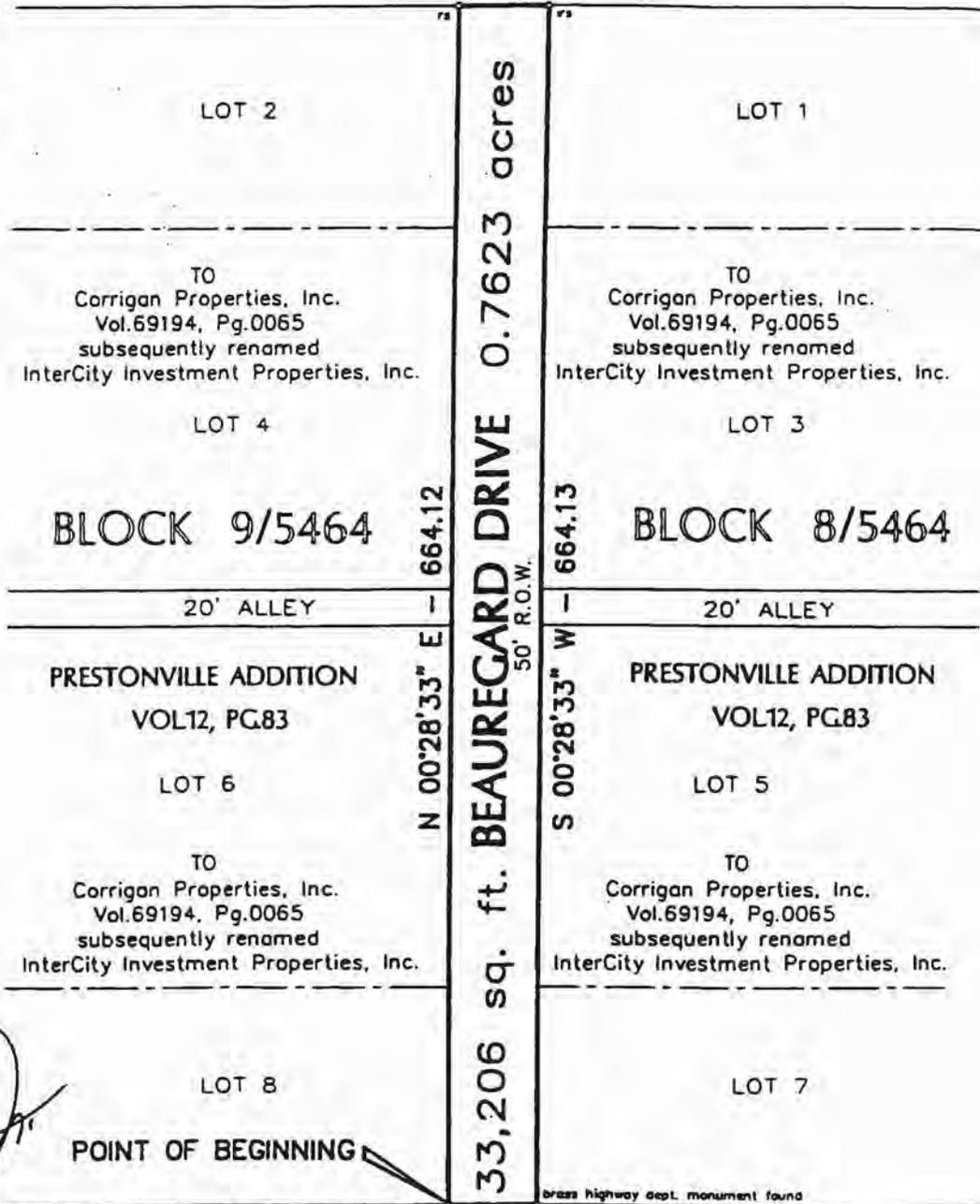
Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

From Wiley 11/15/96

BANDERA AVENUE

60' R.O.W.

S 89°44'30" E
 50.00



TO
 Corrigan Properties, Inc.
 Vol.69194, Pg.0065
 subsequently renamed
 InterCity Investment Properties, Inc.

LOT 4

BLOCK 9/5464

20' ALLEY

PRESTONVILLE ADDITION
 VOL12, PG.83

LOT 6

TO
 Corrigan Properties, Inc.
 Vol.69194, Pg.0065
 subsequently renamed
 InterCity Investment Properties, Inc.

LOT 8

POINT OF BEGINNING

TO
 Corrigan Properties, Inc.
 Vol.69194, Pg.0065
 subsequently renamed
 InterCity Investment Properties, Inc.

LOT 3

BLOCK 8/5464

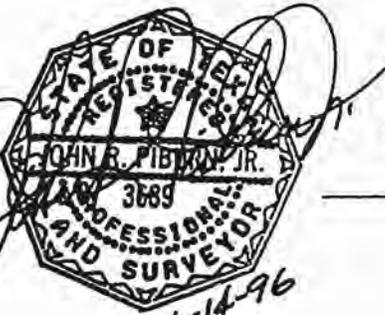
20' ALLEY

PRESTONVILLE ADDITION
 VOL12, PG.83

LOT 5

TO
 Corrigan Properties, Inc.
 Vol.69194, Pg.0065
 subsequently renamed
 InterCity Investment Properties, Inc.

LOT 7



11-14-96

NORTHWEST HIGHWAY

150' R.O.W.

EXHIBIT A TRACT 2

ALLEY ABANDONMENT
23,202 sq. ft. (0.5326 acres)
Block 9/5464
City of Dallas
Dallas County, Texas

BEING a 23,202 square feet (0.5326 acre) tract of land situated in the J.M. McDowell Survey, Abstract No. 922, Dallas County, Texas, further being all of those two 20' Alleys which lie within Block 9/5464 of Prestonville Addition, an addition to the City of Dallas according to the plat thereof recorded in Volume 12, Page 83, Map Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 60d nail set for corner in the north line of Northwest Highway (150' R.O.W.) and being the southeast corner of Lot 7, Block 9/5464;

THENCE N00°28'33"E departing the said north line of Northwest Highway and along the east lines of Lots 7 and 5 of Block 9/5464, as conveyed to Corrigan Properties, Inc. (subsequently renamed InterCity Investment Properties, Inc.) by Special Warranty Deed recorded in Volume 69194, Page 0065, Deed Records, Dallas County, Texas, a distance of 321.68 feet to a pk nail set for corner at the northeast corner of said Lot 5;

THENCE N89°44'30"W along the north line of said Lot 5, a distance of 248.00 feet to an "x" cut set for corner in the east line of Edgemere Road (100' R.O.W.);

THENCE N00°28'33"E along the said east line of Edgemere Road, a distance of 20.00 feet to an "x" cut set for corner at the southwest corner of Lot 3, Block 9/5464 as conveyed to Corrigan by the aforementioned Deed;

THENCE S89°44'30"E along the south line of said Lot 3, a distance of 248.00 feet to a pk nail set for corner at the southeast corner of said Lot 3;

THENCE N00°28'33"E along the east line of said Lot 3 and the east line of Lot 1, Block 9/5464 as conveyed to Corrigan by said Deed, a distance of 322.40 feet to an "x" cut set for corner in the south line of Bandera Avenue (60' R.O.W.) at the northeast corner of said Lot 1;

THENCE S89°44'30"E along the south line of said Bandera Avenue, a distance of 20.00 feet to an "x" cut set for corner at the northwest corner of Lot 2, Block 9/5464 as conveyed to Corrigan by said Deed;

REVIEWED
11/15/96
Anne Wolby

EXHIBIT A TRACT 2

THENCE S00°28'33"W along the west line of said Lot 2 and Lot 4 as conveyed to Corrigan by said Deed, a distance of 322.40 feet to a pk nail set for corner at the southwest corner of said Lot 4;

THENCE S89°44'30"E along the south line of said Lot 4, a distance of 248.00 feet to a pk nail set for corner in the west line of Beauregard Drive (50' R.O.W.) at the southeast corner of said Lot 4;

THENCE S00°28'33"W along the said west line of Beauregard Drive, a distance of 20.00 feet to an "x" cut set for corner at the northeast corner of Lot 6, Block 9/5464, as conveyed to Corrigan by the aforementioned Deed;

THENCE N89°44'30"W departing the said west line of Beauregard Drive and along the north line of said Lot 6, a distance of 248.00 feet to a pk nail set for corner at the northwest corner of said Lot 6;

THENCE S00°28'33"W along the west line of said Lot 6 and Lot 8 as conveyed to Corrigan by said Deed, a distance of 321.68 feet to an "x" cut set for corner in the aforementioned north line of Northwest Highway, at the southwest corner of said Lot 8;

THENCE N89°44'00"W along the said north line of Northwest Highway, a distance of 20.00 feet to the POINT OF BEGINNING and containing 23,202 square feet or 0.5326 acres of land, more or less.

*Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.



House Work 11/15/96

KEY PLAN
23,202 sq. ft. (0.5326 acres)

EXHIBIT A

TRACT 2

Block 9/5464
City of Dallas
Dallas County, Texas

100 200

SCALE: 1" = 100'

NOTES:

Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

From Wally "1/15/96"

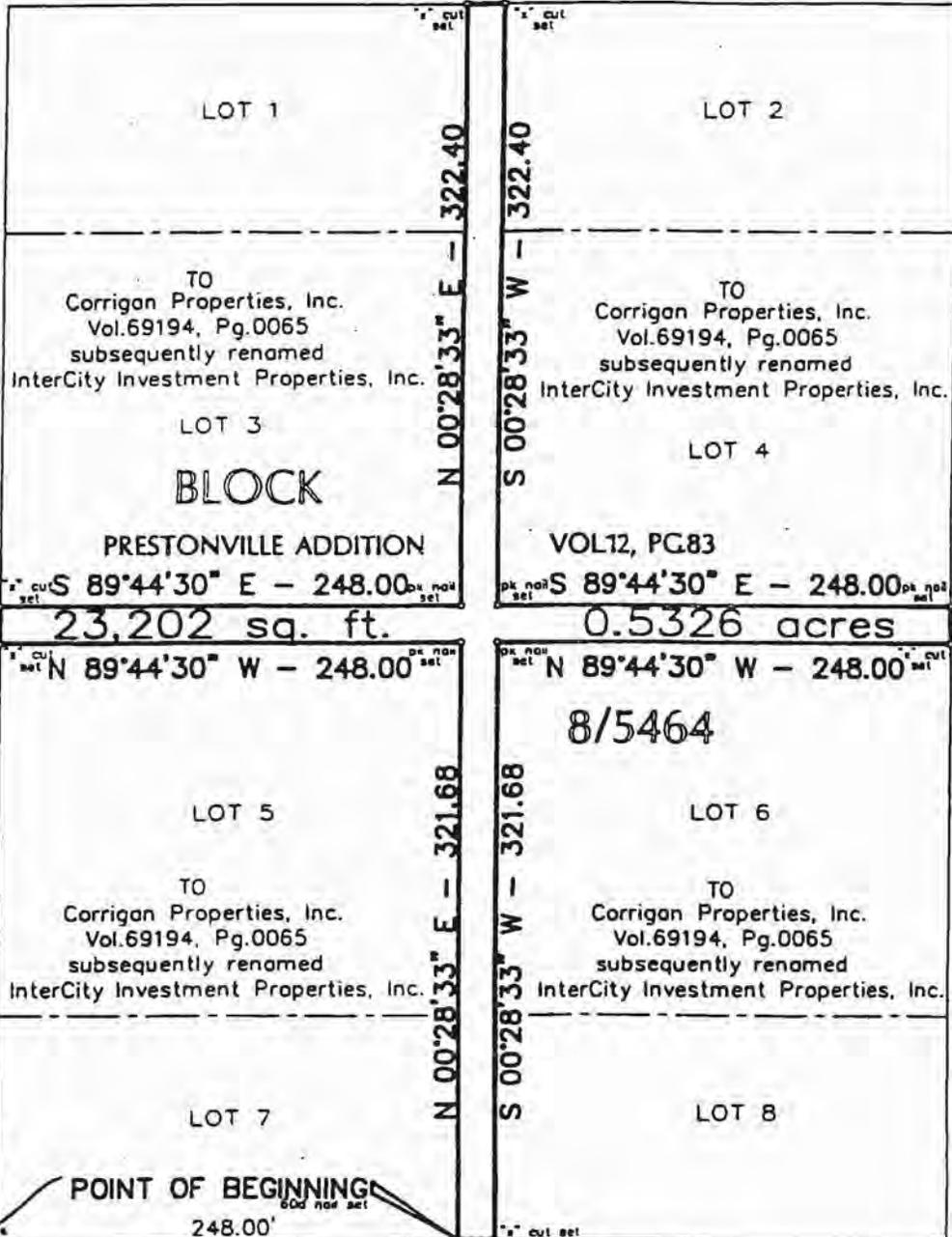
BANDERA AVENUE

60' R.O.W.

S 89°44'30" E
20.00

EDGEMERE ROAD
100' R.O.W.

N 00°28'33" E
20.00



BEAUREGARD DRIVE
50' R.O.W.

S 00°28'33" W
20.00

NORTHWEST HIGHWAY

150' R.O.W.



EXHIBIT A TRACT 3

ALLEY ABANDONMENT
22,666 sq. ft. (0.5203 acres)
Block 8/5464
City of Dallas
Dallas County, Texas

BEING a 22,666 square feet (0.5203 acre) tract of land situated in the J.M. McDowell Survey, Abstract No. 922, Dallas County, Texas, further being all of those two 20' Alleys which lie within Block 8/5464 of Prestonville Addition, an addition to the City of Dallas according to the plat thereof recorded in Volume 12, Page 83, Map Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at an "x" cut set for corner in the north line of Northwest Highway (150' R.O.W.) and being the southeast corner of Lot 7, Block 8/5464;

THENCE N00°28'33"E departing the said north line of Northwest Highway and along the east lines of Lots 7 and 5 of Block 8/5464, as conveyed to Corrigan Properties, Inc. (subsequently renamed InterCity Investment Properties, Inc.) by Special Warranty Deed recorded in Volume 69194, Page 0065, Deed Records, Dallas County, Texas, a distance of 321.76 feet to an "x" cut set for corner at the northeast corner of said Lot 5;

THENCE N89°44'30"W along the north line of said Lot 5, a distance of 248.53 feet to an "x" cut set for corner in the east line of Beauregard Drive (50' R.O.W.);

THENCE N00°28'33"E along the said east line of Beauregard Drive, a distance of 20.00 feet to a pk nail set for corner at the southwest corner of Lot 3, Block 8/5464 as conveyed to Corrigan by the aforementioned Deed;

THENCE S89°44'30"E along the south line of said Lot 3, a distance of 248.53 feet to a pk nail set for corner at the southeast corner of said Lot 3;

THENCE N00°28'33"E along the east line of said Lot 3 and the east line of Lot 1, Block 8/5464 as conveyed to Corrigan by said Deed, a distance of 322.40 feet to an "x" cut set for corner in the south line of Bandera Avenue (60' R.O.W.) at the northeast corner of said Lot 1;

THENCE S89°44'30"E along the south line of said Bandera Avenue, a distance of 20.00 feet to an "x" cut set for corner at the northwest corner of Lot 2, Block 8/5464 as conveyed to Corrigan by said Deed;

11/15/96
Ann Wiley

EXHIBIT A TRACT 3

THENCE S00°28'33"W along the west line of said Lot 2 and Lot 4 as conveyed to Corrigan by said Deed, a distance of 322.40 feet to an "x" cut set for corner at the southwest corner of said Lot 4;

THENCE S89°44'30"E along the south line of said Lot 4, a distance of 226.60 feet to an "x" cut set for corner in the curving west line of Thackery Street (60' R.O.W.) at the southeast corner of said Lot 4;

THENCE along the said west line of Thackery, with a non-tangent curve to the right which has a central angle of 04°46'33", a radius of 283.00 feet, and a chord which bears S32°15'12"W - 23.58 feet, an arc distance of 23.59 feet to an "x" cut set for corner at the northeast corner of Lot 6, Block 8/5464, as conveyed to Corrigan by the aforementioned Deed;

THENCE N89°44'30"W departing the said curving west line of Thackery Avenue and along the north line of said Lot 6, a distance of 214.18 feet to an "x" cut set for corner at the northwest corner of said Lot 6;

THENCE S00°28'33"W along the west line of said Lot 6, a distance of 321.77 feet to an "x" cut set for corner in the aforementioned north line of Northwest Highway, at the southwest corner of said Lot 6;

THENCE N89°44'00"W along the said north line of Northwest Highway, a distance of 20.00 feet to the POINT OF BEGINNING and containing 22,666 square feet or 0.5203 acres of land, more or less.

*Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.



James W. Wadley
11/15/96

EXHIBIT A
 22,666 sq. ft. (0.5203 acres)

EXHIBIT A TRACT 3

Block 8/5464
 City of Dallas
 Dallas County, Texas

100 200

SCALE: 1" = 100'

NOTES:

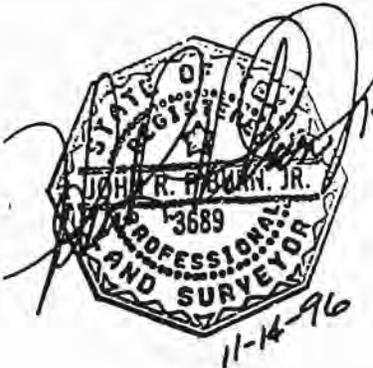
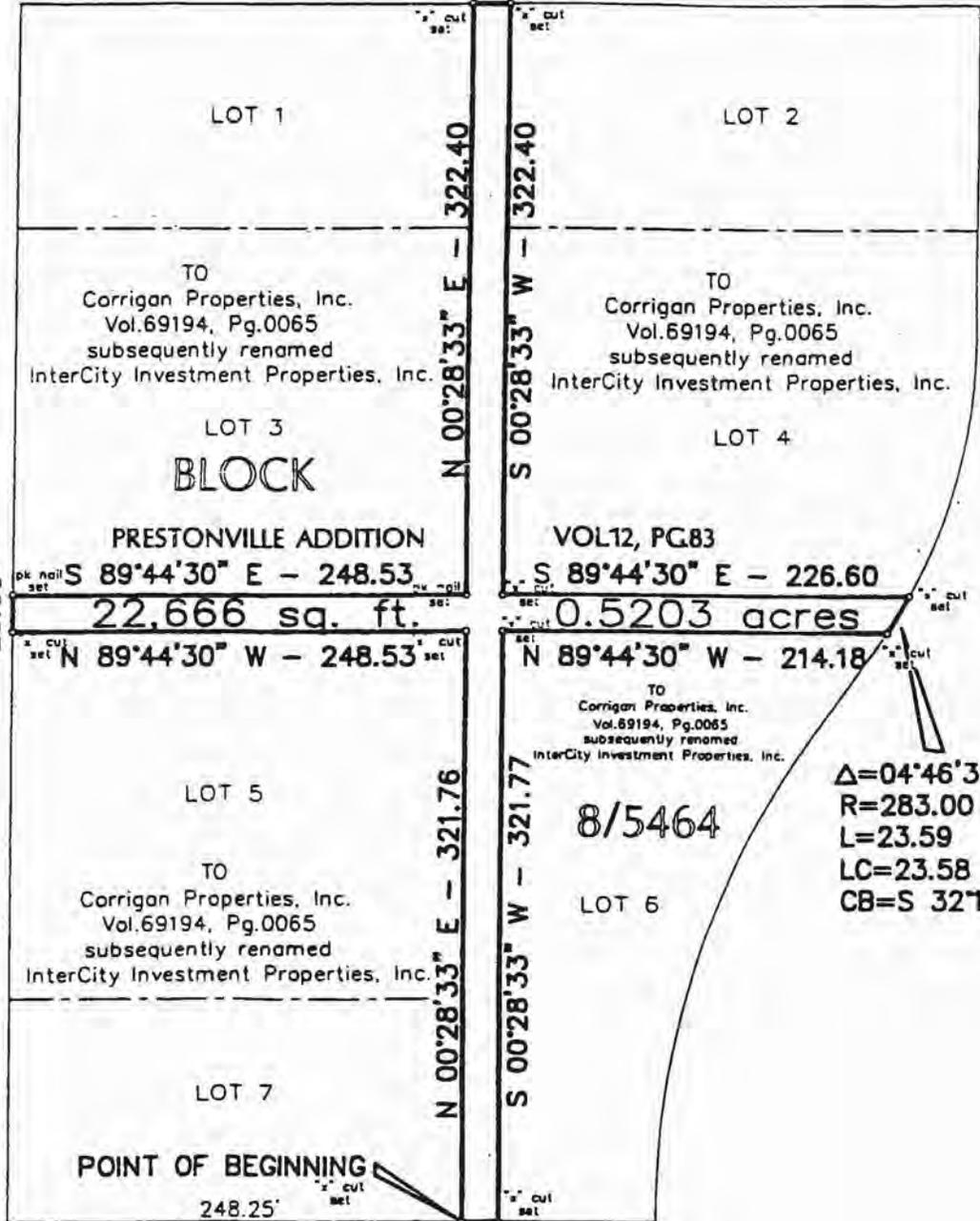
Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

John Wiley
 11/15/96

BEAUREGARD DRIVE
 50' R.O.W.
 N 00°28'33" E
 20.00

BANDERA AVENUE
 60' R.O.W.
 S 89°44'30" E
 20.00

THACKERY STREET
 60' R.O.W.



NORTHWEST HIGHWAY
 150' R.O.W.

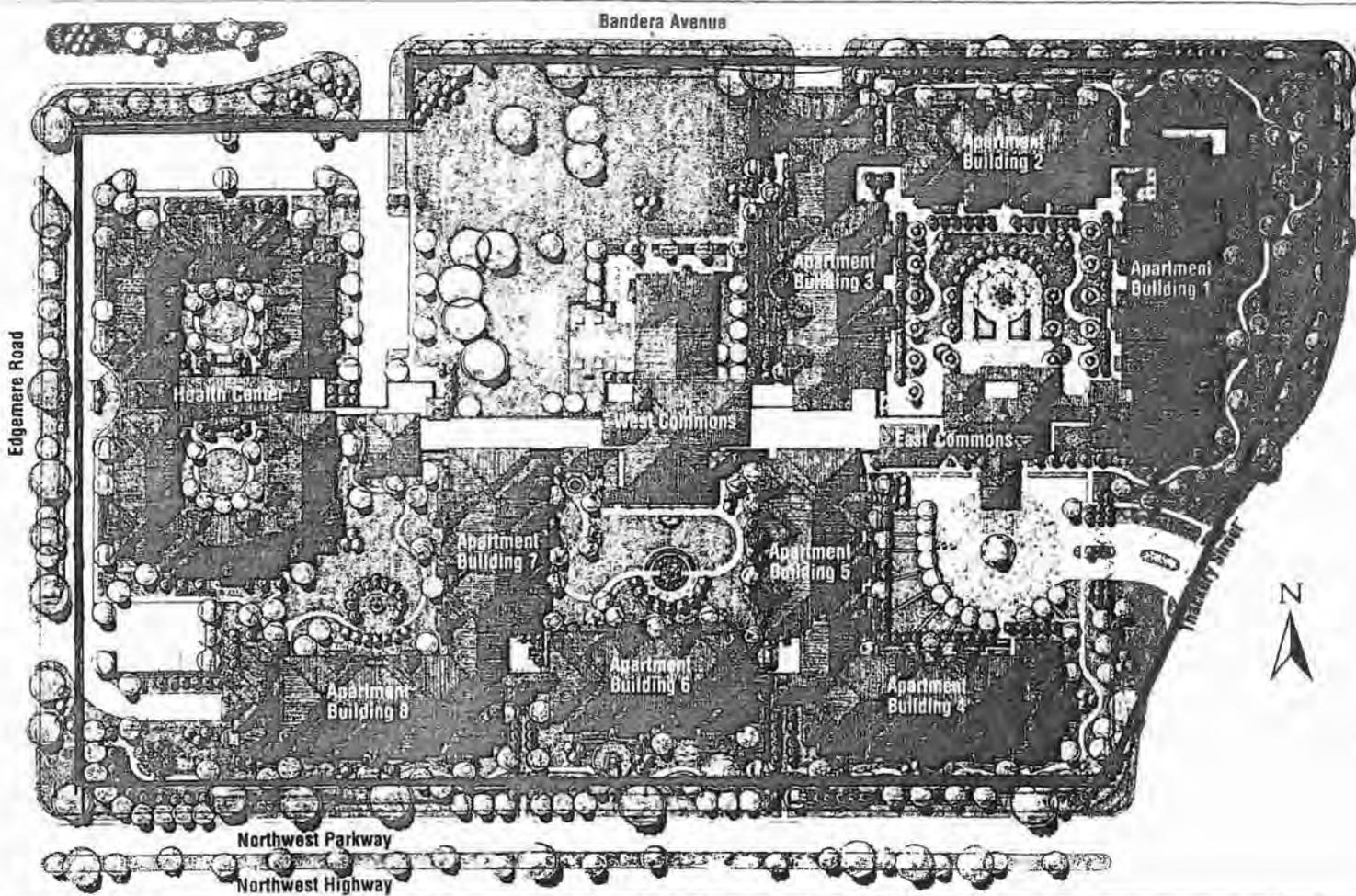
EXHIBIT B

ADDITIONAL ABANDONMENT PROVISIONS

That as a condition hereof, this abandonment is subject to any existing utilities or communication facilities, including water and wastewater lines, gas lines, and storm sewers ("Facilities"), presently located within the abandoned area, owned and/or operated by the City of Dallas or any utility or communications company, public or private, ("Utility") and to any vested rights presently owned by any Utility for the use of the abandoned area for Facilities presently located within the boundaries of said abandoned area; and the relocation, removal or adjustment of any or all such Facilities, if such relocation, removal or adjustment is made necessary by **GRANTEE's** (whether one or more natural persons or legal entities) use of said subject property, shall be at the expense of **GRANTEE** herein, or **GRANTEE's** successors and assigns. It is the intent of the foregoing that there shall be hereby reserved and excepted unto the City of Dallas, and not abandoned or conveyed hereunder, and to which the abandonment herein is made expressly subject, an easement for the Facilities, for each Utility, which, at the time of this abandonment, presently owns and/or operates Facilities over, under, through, across and along the abandoned area. No buildings shall be constructed or placed upon, over or across the easement. Any Utility shall have the right to remove and keep removed all or parts of any buildings which may in any way endanger or interfere with the construction, maintenance or efficiency of its respective Facilities lying within the easement, and each Utility shall have the full right to remove and keep removed all or parts of any buildings, fences, trees, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance and efficiency of its respective system and shall at all times have the full right of ingress and egress to or from and upon the easement for the purpose of constructing, relocating, inspecting, patrolling, maintaining and adding to or removing all or part of its Facilities without the necessity at any time of procuring the permission of anyone. All Utility easements are retained in the present owners until removal and relocation of the Facilities. Should the relocation or removal of the Facilities require the obtaining of new easements, the acquisition of same shall be at the expense of **GRANTEE, GRANTEE's** successors and assigns. If any of the Facilities (or relocations thereof) are allowed to remain on such property, such easements and building restrictions shall remain thereon. Upon removal or relocation of all of the Facilities any easements reserved or created herein, relating to such removed or relocated Facilities, shall terminate, and any building restrictions herein created shall cease.

EXHIBIT "D"
TO
GROUND LEASE

Essential Areas



Site Plan for Edgemere

— ESSENTIAL AREAS Inside boundaries

[Handwritten signature]
W.

**EXHIBIT "E"
TO
GROUND LEASE**

Ground Lease Memorandum

MEMORANDUM OF GROUND LEASE

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is made and entered into as of the ____ day of November, 1999, by and between **INTERCITY INVESTMENT PROPERTIES, INC.**, a Texas corporation, whose principal place of business and office address is 4301 Westside Drive, Suite 100, Dallas, Texas 75209-6546, Attn: Edwin B. Jordan, Jr. (the "Lessor") and **NORTHWEST SENIOR HOUSING CORPORATION**, a Texas not-for-profit corporation, whose principal place of business and office address is Attention: Charles B. Brewer, 2711 LBJ Freeway, Suite 950, Dallas, Texas 75234 (the "Lessee").

This Memorandum provides notice to the public that Lessor and Lessee have entered into a certain Ground Lease (the "Ground Lease"), of even date herewith, pursuant to the terms of which Lessor has leased to Lessee, and Lessee has accepted from Lessor, certain real property (the "Land") containing approximately 16.25 acres of land, generally located at the northwest corner of the intersection of Thackery Road and Northwest Highway in the City of Dallas, Dallas County, Texas, as further and legally described in Exhibit "A" attached hereto and made a part hereof.

The Ground Lease is for a term of fifty-five (55) years, commencing on the date hereof and continuing thereafter until the fifty-fifth (55th) anniversary of such date, unless extended by agreement of the parties or sooner terminated as provided in the Ground Lease.

All rights, duties, responsibilities and obligations of Lessor and Lessee with respect to the Land and the Leasehold Estate created therein are specified in the Ground Lease and any person having an interest in the Land is hereby notified to contact Lessor and/or Lessee with respect thereto.

EXECUTED as of the day and year first set forth above.

LESSOR:

INTERCITY INVESTMENT PROPERTIES, INC.,
a Texas corporation

By: _____
Edwin B. Jordan, Jr., President

[Executed by Lessee on the attached Signature Page]

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of November, 1999, by Edwin B. Jordan, Jr., the President of Intercity Investment Properties, Inc., a Texas corporation, on its behalf.

(SEAL)

Notary Public

Lessee's Signature Page to Memorandum of Ground Lease

LESSEE:

NORTHWEST SENIOR HOUSING CORPORATION,
a Texas not-for-profit corporation

By:

Charles B. Brewer, President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of November, 1999, by Charles B. Brewer, the President of Northwest Senior Housing Corporation, a Texas not-for-profit corporation, on its behalf.

(SEAL)

Notary Public

EXHIBIT "A"
TO
MEMORANDUM OF GROUND LEASE

The Land

TRACT I

Being Lots 1 thru 7, Block 8/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

TRACT II

Being Lots 1 thru 8, Block 9/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

Provided, if abandonment is successful and the Owner acquires title to the alleyways and part of Beauregard Drive, both within the above described area, the portion thereof abandoned by the City of Dallas and acquired by Owner shall be a part of the Land subject to lease.

(TO BE REPLACED WHEN THE LAND IS REPLATTED)

10, 11, and 12 the City of Dallas does by these presents FOREVER QUITCLAIM unto the said **GRANTEE**, subject to the conditions, reservations, and exceptions hereinafter made and with the restrictions and upon the covenants below stated, all of its right, title and interest in and to those certain tracts or parcels of land hereinabove described in Exhibit A. **TO HAVE AND TO HOLD** all of such right, title and interest in and to the property and premises, subject aforesaid, together with all and singular the rights, privileges, hereditaments and appurtenances thereto in any manner belonging unto the said **GRANTEE** forever.

SECTION 3. That upon payment of the monetary consideration set forth in Section 2, **GRANTEE** accepts the terms, provisions and conditions of this ordinance.

SECTION 4. That the City Controller is authorized to deposit the sum paid by **GRANTEE** pursuant to Section 2 above in the Property Management Fund 0001, Agency PGT, Balance Sheet 0519 and Property Management shall be reimbursed for the cost of obtaining the legal description, appraisal and other administrative costs incurred. The reimbursement proceeds shall be deposited in Fund 0001, Agency PGT, Org. 1301, Object 5011 and any remaining proceeds shall be transferred to the General Capital Reserve Fund 0525, Agency BMS, Org. 8888, Revenue Source 8416.

SECTION 5. That the abandonment and quitclaim provided for herein are made subject to all present zoning and deed restrictions, if the latter exist, and are subject to all existing easement rights of others, if any, whether apparent or non-apparent, aerial, surface, underground or otherwise, and are further subject to the conditions contained in Exhibit B, which is attached hereto and for all intents and purposes made a part hereof.

SECTION 6. That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

SECTION 7. That the abandonment and quitclaim provided for herein shall extend only to the public right, title, easement and interest, and shall be construed to extend only to that interest the Governing Body of the City of Dallas may legally and lawfully abandon and vacate.

SECTION 8. That as a condition of this abandonment and as a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE**, its successors and assigns, agree to indemnify, defend, release and hold the City of Dallas whole and harmless against any and all claims for damages, fines, penalties, costs or expenses to persons or property that may arise out of, or be occasioned by or from: (i) the use and occupancy of the property described in Exhibit A by **GRANTEE**, its successors and assigns; (ii) the presence, generation, spillage, discharge, release, treatment or disposition of any Hazardous Substance on or affecting the area set out in Exhibit A, (iii) all corrective actions concerning any discovered Hazardous Substances on or affecting the areas described in Exhibit A, which **GRANTEE** agrees to undertake and complete in accordance with applicable federal, state and local laws and regulations; and (iv) the abandonment, closing, vacation and quitclaim by the City of Dallas of the areas set out in Exhibit A. **GRANTEE** hereby agrees to defend any and all suits, claims, or causes of action brought against the City of Dallas on account of same, and discharge any judgement or judgments that may be rendered against the City of Dallas in connection therewith. For purposes hereof, "Hazardous Substance" means the following: (a) any "hazardous substance" under the Comprehensive, Environmental Response, Compensation Liability Act, 42 U.S.C. Section 9601 et seq., as amended, (b) any "hazardous substance" under the Texas Hazardous Substances Spill Prevention and Control Act, TEX. WATER CODE, Section 26.261 et seq., as amended, (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubricating oils, (d) any "hazardous chemicals" or "toxic chemicals" under the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., as amended, (e) any "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended; and (f) any "chemical substance" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended. References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated thereunder.

SECTION 9. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall:

- a) file a final replat of the adjoining properties within one year after passage of this ordinance showing the dedication of:
 - 1) not less than approximately 21, 958 square feet of land as a private drive and utility easement located in City Block 9/5464 with alignments acceptable to the Director of Public Works & Transportation. The private drive and utility easement shall expressly provide for private service easements including, but not limited to utilities, fire lanes, street lighting, government vehicle access, mail collection and delivery access and utility meter reading access; and
 - 2) approximately 8,786 square feet of land, as street rights-of-way located in City Block 9/5464; and
 - 3) three 15' X 15' corner clips at Beauregard Avenue and Thackery Street and Northwest Highway and its intersection with Edgemere Road and Thackery Street.

This final replat shall be recorded by **GRANTEE** in the Deed Records of Dallas County, Texas after its approval by the City Plan Commission of the City of Dallas. Failure to record a final replat in accordance with the term of this section shall render this ordinance null and void, and of no further effect. Further, the final replat shall be filed with the Planning and Development Department of the City of Dallas before a certified copy of this ordinance shall be delivered to **GRANTEE**; and

- b) provide and construct within two years after passage of this ordinance a private drive and utility easement containing not less than 21,958 square feet of land, adequate to serve the development as determined by the Building Official of the City of Dallas; and
 - 1) assume full responsibility for maintenance of the private drive; The private drive and utility easement is to be built within the easements to be dedicated as specified in Section 9a)1) herein, to the same specifications as a street dedicated to public use; with a minimum width of 24 feet (no curb requirement, when adjacent to parking), and a minimum width of 20 feet (with a curb requirement when not adjacent to parking). Failure by **GRANTEE**, its successors and assigns, to comply with this provision within two years from the passage of this ordinance, shall render this ordinance null and void and at no further effect; and

- 2) submit detailed plans for the private drive and utility easement to the Director of Public Works and Transportation, or his designee, for review and approval, and execute a private development contract for the construction of the proposed private drive and utility easement; and
- 3) construct the private drive and utility easement in accordance with the approved plans and executed private development contract, and have all work accepted in writing by the Director of Public Works and Transportation or his designee. Failure to construct the private drive and utility easement as set forth herein, shall render this ordinance null and void and of no further effect; and
- c) install signs denoting the private drive as "private" in accordance with plans approved by the Director of Public Works and Transportation, or his designee; and
- d) provide a means of access for sanitation collection acceptable to the Department of Street, Sanitation and Code Enforcement; and
- e) locate all utility and communication facilities, including but not limited to Southwestern Bell Telephone Company facilities prior to any construction within the abandonment area; and
- f) comply with the Uniform Fire Code and Uniform Building Code for any new construction within or adjacent to the abandoned area; and
- g) comply with Dallas Fire Department Standard No. 4, "Security Gates" of the Uniform Fire Code, Section 10.205 for any access security gates and fencing; and
- h) copies of the replat must be submitted to the Fire Department for review of any proposed new construction within or adjacent to the abandoned area during the routing of the replat; and
- i) contact the Local One Call System at 1-800/344-8377 and Lone Star Gas at 214/426-7051 at least 48 hours prior to any construction; and

SECTION 10. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, the private drive and utility easement, as set forth in Section 9a), is restricted to residential uses only, for a period of forty years from the date of

passage of this ordinance, unless such use restriction is sooner removed by ordinance duly passed by the City Council of the City of Dallas and payment of the abandonment fee calculated in accordance with the requirements of the Dallas City Code at the time of request. Upon receipt of a certified copy of this ordinance **GRANTEE** shall record this ordinance in the Deed Records of Dallas County, Texas. Failure by **GRANTEE**, its successors and assigns to comply with these restrictions shall render this ordinance null and void and of no further effect. The City shall have the exclusive right to enforce these use restrictions, by any lawful means, including filing an action in a court of competent jurisdiction at law or at equity, against **GRANTEE** or any other person violating or attempting to violate these use restrictions.

SECTION 11. That as a condition of this abandonment and as a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE** shall, keep and maintain the existing streets and alleys described in Exhibit A open and usable for emergency vehicle access (police, fire and ambulance services) and governmental vehicle access (mail collection, sanitation collection, utility meter access, etc.) during any demolition and any redevelopment of the abutting properties until the new private drive is dedicated and constructed by **GRANTEE** and accepted by the City. The governmental vehicular access reserved herein shall terminate upon the completion of construction and acceptance of the new private drive by the City.

SECTION 12. That as a condition of the abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE**, shall, upon the filing of a final replat as set forth in Section 9a) close, barricade and/or place signs in the areas described in Exhibit A in accordance with detailed plans approved by the Director of Public Works and Transportation, subject to providing for adequate access for emergency vehicles (police, fire and ambulance services). **GRANTEE's** responsibility for keeping the area described in Exhibit A closed, barricaded (except to emergency vehicles) and/or signs in place shall continue until the street improvements and intersection returns are removed by **GRANTEE**, its successors and assigns, to the satisfaction of the Director of Public Works & Transportation.

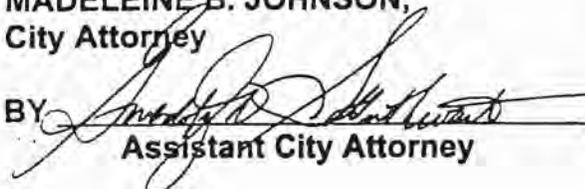
SECTION 13. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Property Management Director, or her designee. Upon receipt of the monetary consideration set forth in Section 2, plus the fee for the publishing of this ordinance, which **GRANTEE** shall likewise pay, and the filing of the final replat set forth in Section 9a), the Property Management Director, or her designee: (i) shall deliver to **GRANTEE** a certified copy of this ordinance, and (ii) is authorized to prepare and deliver a QUITCLAIM DEED with regard to the areas abandoned herein, should such be requested by **GRANTEE** hereunder, same to be executed by the City Manager on behalf of the City of Dallas, attested by the City Secretary and approved as to form by the City Attorney. The Property Management Director, or her designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

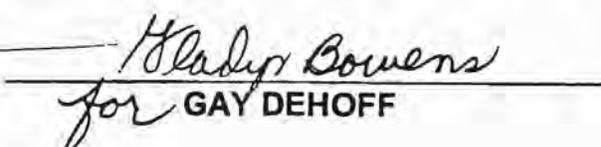
SECTION 14. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:
MADELEINE B. JOHNSON,
City Attorney

PROPERTY MANAGEMENT DIRECTOR

BY


Assistant City Attorney


for GAY DEHOFF

Passed _____

EXHIBIT A TRACT 1

STREET ABANDONMENT
33,206 sq. ft. (0.7623 acres)
BEAUREGARD DRIVE
between Blocks 9/5464 and 8/5464
City of Dallas
Dallas County, Texas

BEING a 33,206 square feet (0.7623 acre) tract of land situated in the J.M. McDowell Survey, Abstract No. 922, Dallas County, Texas, further being all of that portion of Beauregard Drive (50' R.O.W.) which lies between Block 9/5464 and Block 8/5464 of Prestonville Addition, an addition to the City of Dallas according to the plat thereof recorded in Volume 12, Page 83, Map Records, Dallas County, Texas, bounded on the north by the south line of Bandera Avenue (60' R.O.W.) and on the south by the north line of Northwest Highway (150' R.O.W.), and being more particularly described as follows:

BEGINNING at a brass highway monument found for corner in the north line of said northwest highway and being the southeast corner of said Block 9/5464, further being the southeast corner of Lot 8, Block 9/5464, of said addition as conveyed to Corrigan Properties, Inc. (subsequently renamed InterCity Investment Properties, Inc.) by Special Warranty Deed recorded in Volume 69194, Page 0065, Deed Records, Dallas County, Texas;

THENCE N00°28'33"E departing the north line of said Northwest Highway and along the east lines of Lots 8,6,4, and 2 of Block 9/5464 as conveyed to Corrigan Properties, Inc. by said Special Warranty Deed, a distance of 664.12 feet to a 5/8" iron rod with red cap stamped "RPLS 4625" set for corner in the south line of the aforementioned Bandera Avenue and being the northeast corner of said Block 9/5464;

THENCE S89°44'30"E along the said south line of Bandera Avenue, a distance of 50.00 feet to a 5/8" iron rod with red cap stamped "RPLS 4625" set for corner at the northwest corner of the aforementioned Block 8/5464;_{s.w.}

Am Wiley 11/15/96

EXHIBIT A - TRACT 1

THENCE S00°28'33"W departing the said south line of Bandera Avenue and along the west lines of Lots 1,3,5, and 7 of Block 8/5464 as conveyed to Corrigan Properties, Inc. by said Special Warranty Deed, a distance of 664.13 feet to a brass highway monument found for corner in the north line of the aforementioned Northwest Highway and being the southwest corner of said Block 8/5464;

THENCE N89°44'00"W along the said north line of Northwest Highway, a distance of 50.00 feet to the POINT OF BEGINNING and containing 33,206 square feet or 0.7623 acres of land, more or less.

*Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

Ann Wiley 11/15/96



STREET ABANDONMENT
 33,206 sq. ft. (0.7623 acres)
 BEAUREGARD DRIVE
 between Blocks 9/5464 and 8/5464
 City of Dallas
 Dallas County, Texas

100 200

SCALE: 1" = 100'

NOTES:

irs = 5/8" iron rod w/red cap stamped "RPLS 4625"

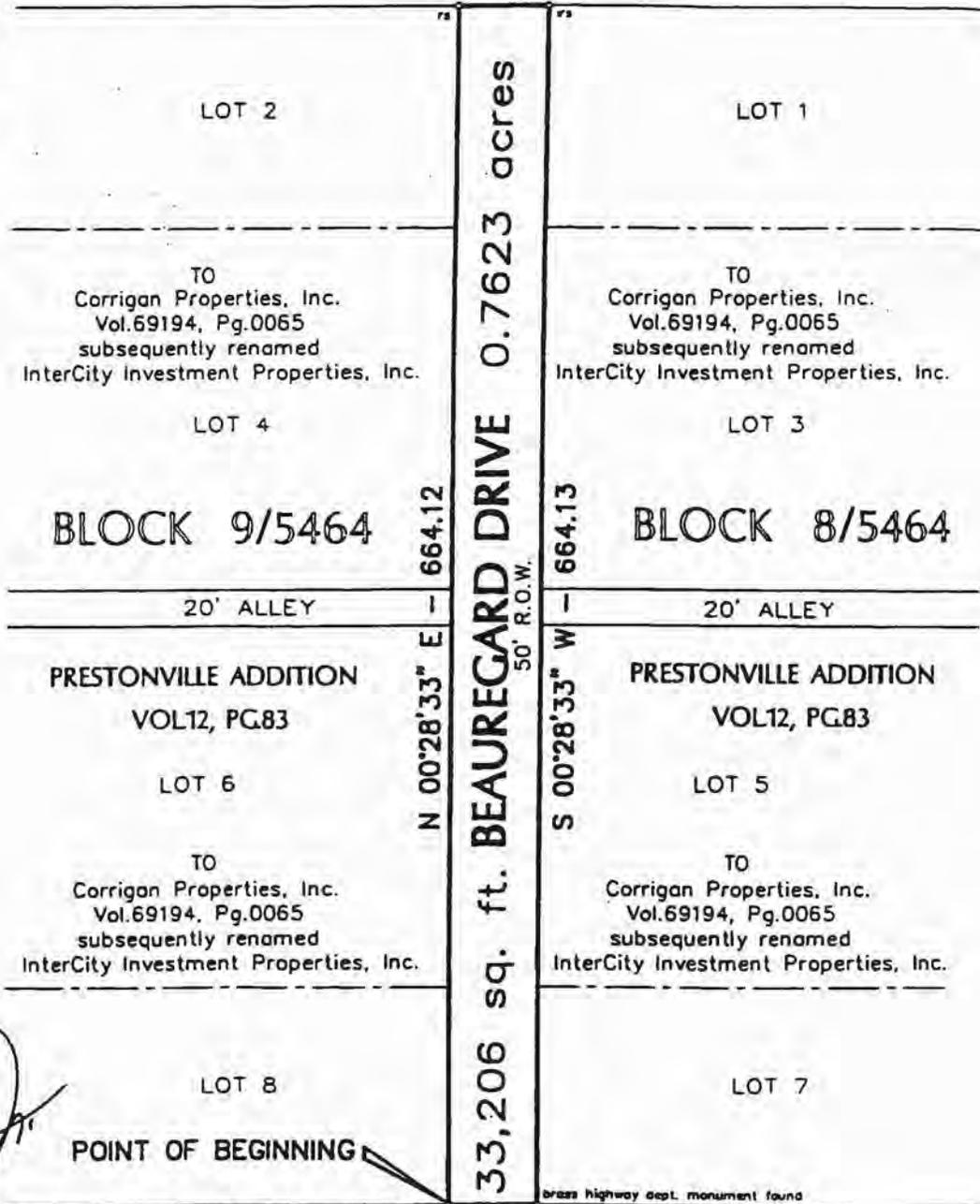
Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

From Whaley 11/15/96

BANDERA AVENUE

60' R.O.W.

S 89°44'30" E
50.00



BLOCK 9/5464

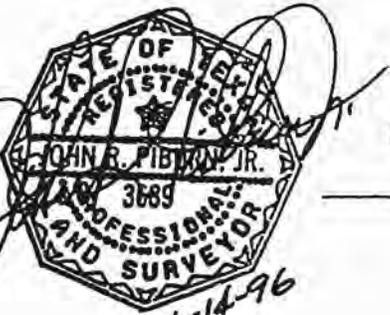
BLOCK 8/5464

TO
 Corrigan Properties, Inc.
 Vol.69194, Pg.0065
 subsequently renamed
 InterCity Investment Properties, Inc.

TO
 Corrigan Properties, Inc.
 Vol.69194, Pg.0065
 subsequently renamed
 InterCity Investment Properties, Inc.

TO
 Corrigan Properties, Inc.
 Vol.69194, Pg.0065
 subsequently renamed
 InterCity Investment Properties, Inc.

TO
 Corrigan Properties, Inc.
 Vol.69194, Pg.0065
 subsequently renamed
 InterCity Investment Properties, Inc.



11-14-96

NORTHWEST HIGHWAY

150' R.O.W.

N 89°44'00" W
50.00

EXHIBIT A TRACT 2

ALLEY ABANDONMENT
23,202 sq. ft. (0.5326 acres)
Block 9/5464
City of Dallas
Dallas County, Texas

BEING a 23,202 square feet (0.5326 acre) tract of land situated in the J.M. McDowell Survey, Abstract No. 922, Dallas County, Texas, further being all of those two 20' Alleys which lie within Block 9/5464 of Prestonville Addition, an addition to the City of Dallas according to the plat thereof recorded in Volume 12, Page 83, Map Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 60d nail set for corner in the north line of Northwest Highway (150' R.O.W.) and being the southeast corner of Lot 7, Block 9/5464;

THENCE N00°28'33"E departing the said north line of Northwest Highway and along the east lines of Lots 7 and 5 of Block 9/5464, as conveyed to Corrigan Properties, Inc. (subsequently renamed InterCity Investment Properties, Inc.) by Special Warranty Deed recorded in Volume 69194, Page 0065, Deed Records, Dallas County, Texas, a distance of 321.68 feet to a pk nail set for corner at the northeast corner of said Lot 5;

THENCE N89°44'30"W along the north line of said Lot 5, a distance of 248.00 feet to an "x" cut set for corner in the east line of Edgemere Road (100' R.O.W.);

THENCE N00°28'33"E along the said east line of Edgemere Road, a distance of 20.00 feet to an "x" cut set for corner at the southwest corner of Lot 3, Block 9/5464 as conveyed to Corrigan by the aforementioned Deed;

THENCE S89°44'30"E along the south line of said Lot 3, a distance of 248.00 feet to a pk nail set for corner at the southeast corner of said Lot 3;

THENCE N00°28'33"E along the east line of said Lot 3 and the east line of Lot 1, Block 9/5464 as conveyed to Corrigan by said Deed, a distance of 322.40 feet to an "x" cut set for corner in the south line of Bandera Avenue (60' R.O.W.) at the northeast corner of said Lot 1;

THENCE S89°44'30"E along the south line of said Bandera Avenue, a distance of 20.00 feet to an "x" cut set for corner at the northwest corner of Lot 2, Block 9/5464 as conveyed to Corrigan by said Deed;

REVIEWED BY
11/15/96
Jane Wolby

EXHIBIT A TRACT 2

THENCE S00°28'33"W along the west line of said Lot 2 and Lot 4 as conveyed to Corrigan by said Deed, a distance of 322.40 feet to a pk nail set for corner at the southwest corner of said Lot 4;

THENCE S89°44'30"E along the south line of said Lot 4, a distance of 248.00 feet to a pk nail set for corner in the west line of Beauregard Drive (50' R.O.W.) at the southeast corner of said Lot 4;

THENCE S00°28'33"W along the said west line of Beauregard Drive, a distance of 20.00 feet to an "x" cut set for corner at the northeast corner of Lot 6, Block 9/5464, as conveyed to Corrigan by the aforementioned Deed;

THENCE N89°44'30"W departing the said west line of Beauregard Drive and along the north line of said Lot 6, a distance of 248.00 feet to a pk nail set for corner at the northwest corner of said Lot 6;

THENCE S00°28'33"W along the west line of said Lot 6 and Lot 8 as conveyed to Corrigan by said Deed, a distance of 321.68 feet to an "x" cut set for corner in the aforementioned north line of Northwest Highway, at the southwest corner of said Lot 8;

THENCE N89°44'00"W along the said north line of Northwest Highway, a distance of 20.00 feet to the POINT OF BEGINNING and containing 23,202 square feet or 0.5326 acres of land, more or less.

*Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.



House Work
11/15/96

Block 9/5464
 City of Dallas
 Dallas County, Texas

100 200

SCALE: 1" = 100'

BANDERA AVENUE

60' R.O.W.

S 89°44'30" E
 20.00

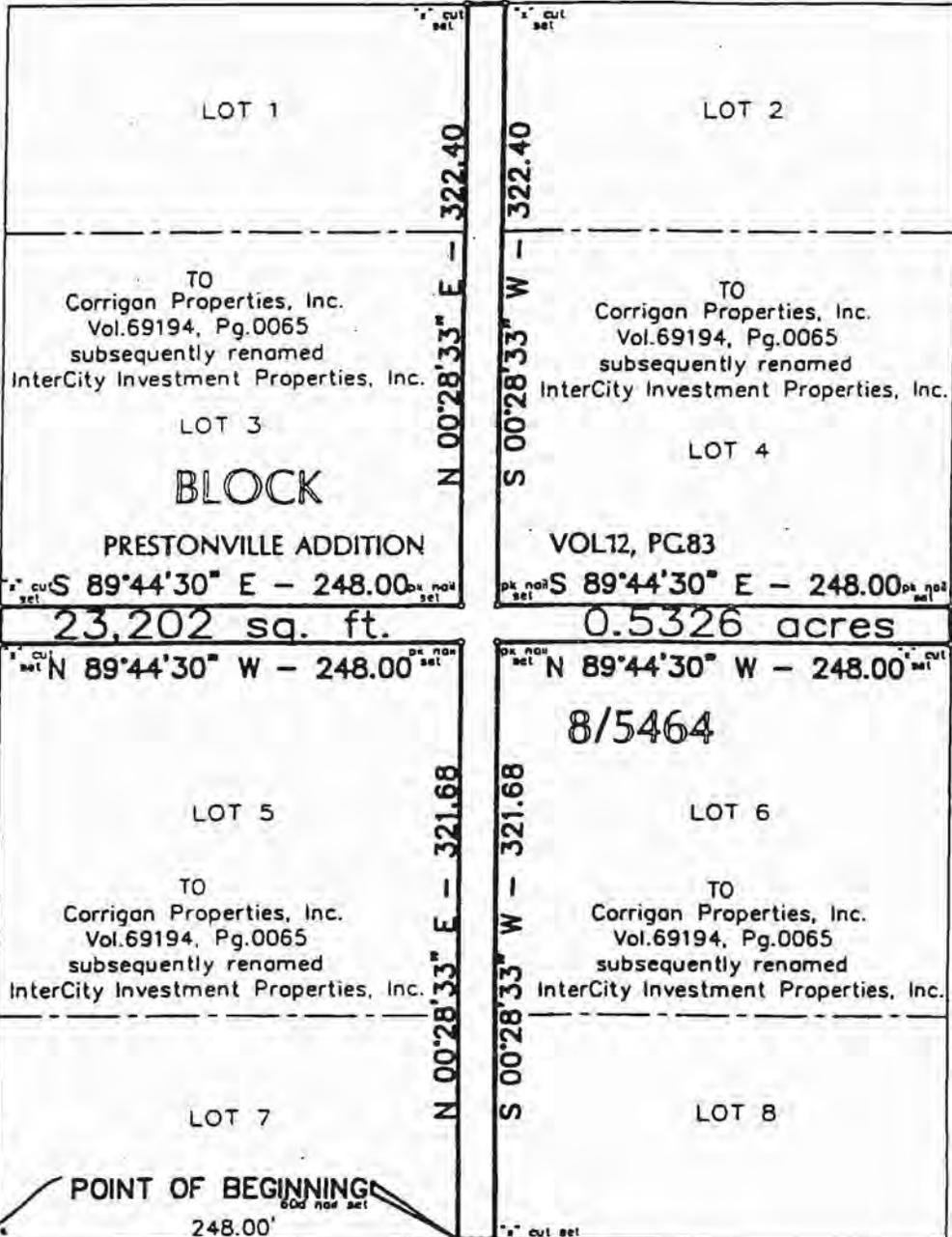
NOTES:

Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

From Wally "1/15/96"

EDGEMERE ROAD
 100' R.O.W.

N 00°28'33" E
 20.00



S 00°28'33" W
 20.00

BEAUREGARD DRIVE
 50' R.O.W.

N 89°44'00" W
 20.00

NORTHWEST HIGHWAY

150' R.O.W.



EXHIBIT A TRACT 3

ALLEY ABANDONMENT
22,666 sq. ft. (0.5203 acres)
Block 8/5464
City of Dallas
Dallas County, Texas

BEING a 22,666 square feet (0.5203 acre) tract of land situated in the J.M. McDowell Survey, Abstract No. 922, Dallas County, Texas, further being all of those two 20' Alleys which lie within Block 8/5464 of Prestonville Addition, an addition to the City of Dallas according to the plat thereof recorded in Volume 12, Page 83, Map Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at an "x" cut set for corner in the north line of Northwest Highway (150' R.O.W.) and being the southeast corner of Lot 7, Block 8/5464;

THENCE N00°28'33"E departing the said north line of Northwest Highway and along the east lines of Lots 7 and 5 of Block 8/5464, as conveyed to Corrigan Properties, Inc. (subsequently renamed InterCity Investment Properties, Inc.) by Special Warranty Deed recorded in Volume 69194, Page 0065, Deed Records, Dallas County, Texas, a distance of 321.76 feet to an "x" cut set for corner at the northeast corner of said Lot 5;

THENCE N89°44'30"W along the north line of said Lot 5, a distance of 248.53 feet to an "x" cut set for corner in the east line of Beauregard Drive (50' R.O.W.);

THENCE N00°28'33"E along the said east line of Beauregard Drive, a distance of 20.00 feet to a pk nail set for corner at the southwest corner of Lot 3, Block 8/5464 as conveyed to Corrigan by the aforementioned Deed;

THENCE S89°44'30"E along the south line of said Lot 3, a distance of 248.53 feet to a pk nail set for corner at the southeast corner of said Lot 3;

THENCE N00°28'33"E along the east line of said Lot 3 and the east line of Lot 1, Block 8/5464 as conveyed to Corrigan by said Deed, a distance of 322.40 feet to an "x" cut set for corner in the south line of Bandera Avenue (60' R.O.W.) at the northeast corner of said Lot 1;

THENCE S89°44'30"E along the south line of said Bandera Avenue, a distance of 20.00 feet to an "x" cut set for corner at the northwest corner of Lot 2, Block 8/5464 as conveyed to Corrigan by said Deed;

11/15/96
Ann Wiley

EXHIBIT A TRACT 3

THENCE S00°28'33"W along the west line of said Lot 2 and Lot 4 as conveyed to Corrigan by said Deed, a distance of 322.40 feet to an "x" cut set for corner at the southwest corner of said Lot 4;

THENCE S89°44'30"E along the south line of said Lot 4, a distance of 226.60 feet to an "x" cut set for corner in the curving west line of Thackery Street (60' R.O.W.) at the southeast corner of said Lot 4;

THENCE along the said west line of Thackery, with a non-tangent curve to the right which has a central angle of 04°46'33", a radius of 283.00 feet, and a chord which bears S32°15'12"W - 23.58 feet, an arc distance of 23.59 feet to an "x" cut set for corner at the northeast corner of Lot 6, Block 8/5464, as conveyed to Corrigan by the aforementioned Deed;

THENCE N89°44'30"W departing the said curving west line of Thackery Avenue and along the north line of said Lot 6, a distance of 214.18 feet to an "x" cut set for corner at the northwest corner of said Lot 6;

THENCE S00°28'33"W along the west line of said Lot 6, a distance of 321.77 feet to an "x" cut set for corner in the aforementioned north line of Northwest Highway, at the southwest corner of said Lot 6;

THENCE N89°44'00"W along the said north line of Northwest Highway, a distance of 20.00 feet to the POINT OF BEGINNING and containing 22,666 square feet or 0.5203 acres of land, more or less.

*Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.



John Wiley
11/15/96

Block 8/5464
City of Dallas
Dallas County, Texas

100 200

SCALE: 1" = 100'

NOTES:

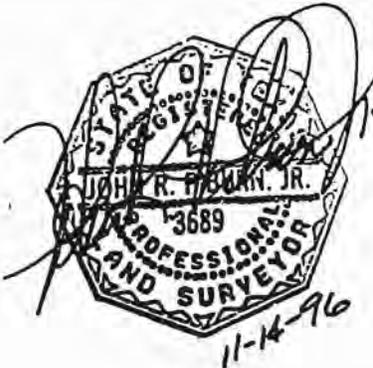
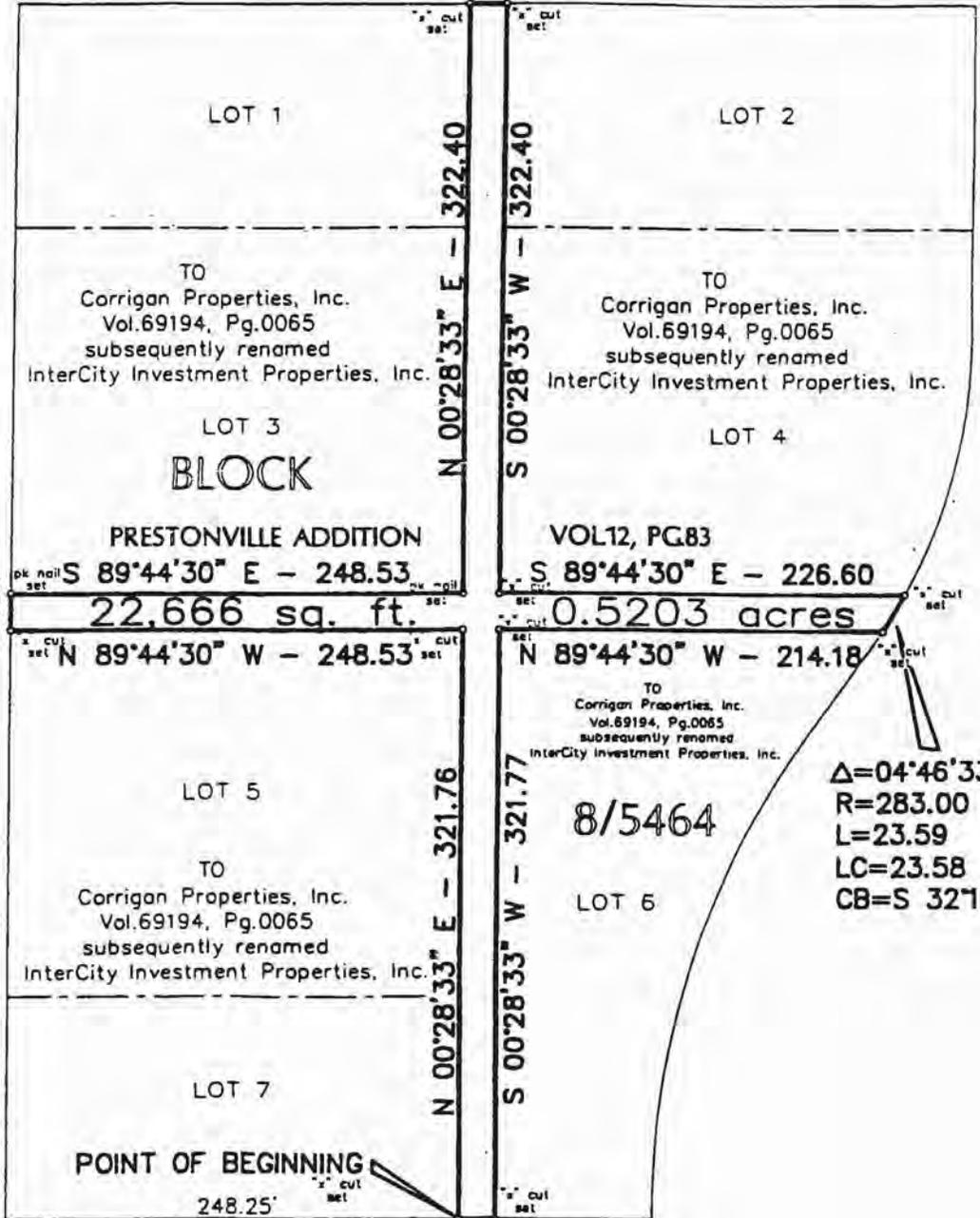
Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

John Wiley
11/15/96

BEAUREGARD DRIVE
50' R.O.W.
N 00°28'33" E
20.00

BANDERA AVENUE
60' R.O.W.
S 89°44'30" E
20.00

THACKERY STREET
60' R.O.W.



NORTHWEST HIGHWAY
150' R.O.W.

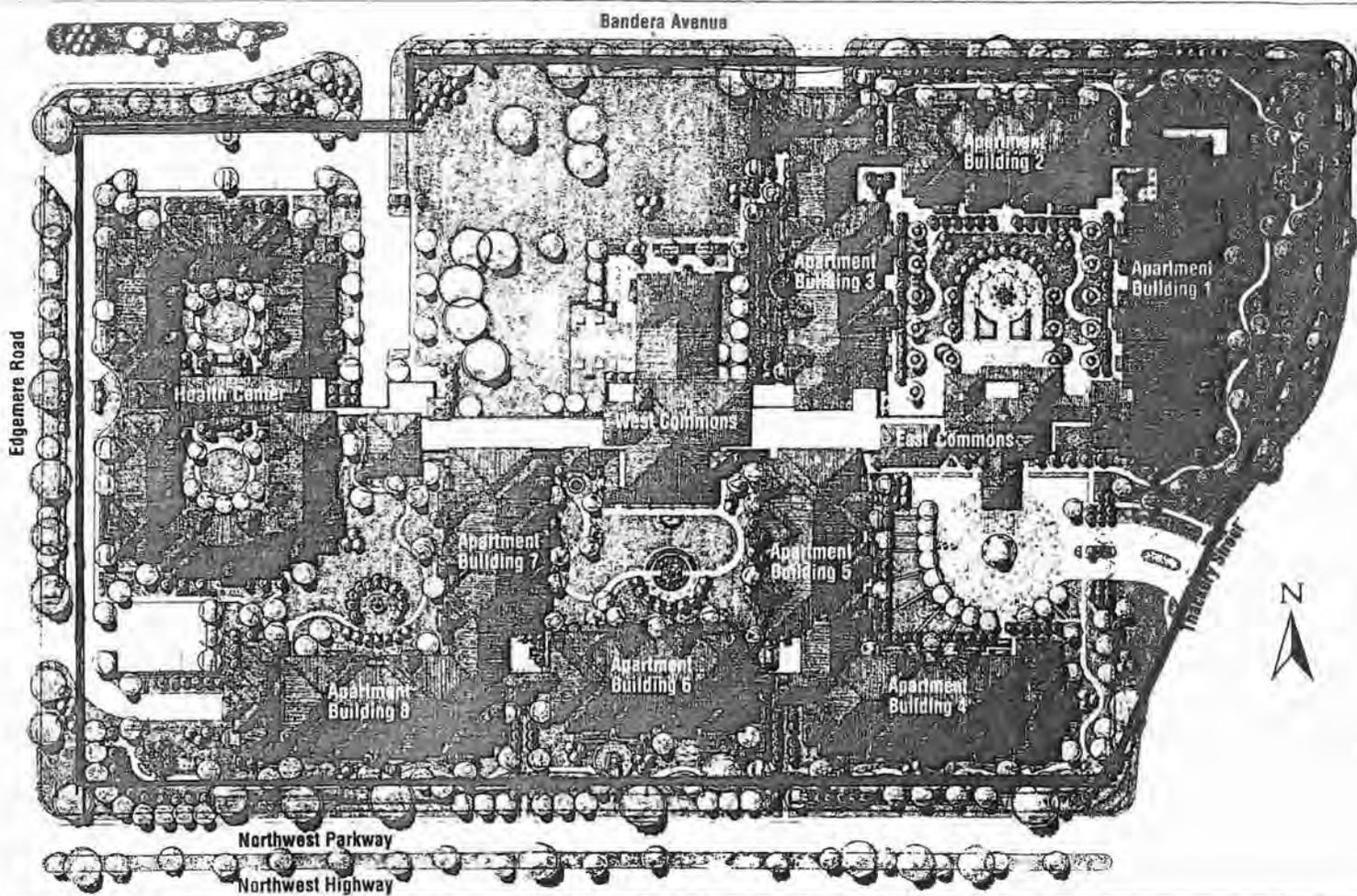
EXHIBIT B

ADDITIONAL ABANDONMENT PROVISIONS

That as a condition hereof, this abandonment is subject to any existing utilities or communication facilities, including water and wastewater lines, gas lines, and storm sewers ("Facilities"), presently located within the abandoned area, owned and/or operated by the City of Dallas or any utility or communications company, public or private, ("Utility") and to any vested rights presently owned by any Utility for the use of the abandoned area for Facilities presently located within the boundaries of said abandoned area; and the relocation, removal or adjustment of any or all such Facilities, if such relocation, removal or adjustment is made necessary by **GRANTEE's** (whether one or more natural persons or legal entities) use of said subject property, shall be at the expense of **GRANTEE** herein, or **GRANTEE's** successors and assigns. It is the intent of the foregoing that there shall be hereby reserved and excepted unto the City of Dallas, and not abandoned or conveyed hereunder, and to which the abandonment herein is made expressly subject, an easement for the Facilities, for each Utility, which, at the time of this abandonment, presently owns and/or operates Facilities over, under, through, across and along the abandoned area. No buildings shall be constructed or placed upon, over or across the easement. Any Utility shall have the right to remove and keep removed all or parts of any buildings which may in any way endanger or interfere with the construction, maintenance or efficiency of its respective Facilities lying within the easement, and each Utility shall have the full right to remove and keep removed all or parts of any buildings, fences, trees, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance and efficiency of its respective system and shall at all times have the full right of ingress and egress to or from and upon the easement for the purpose of constructing, relocating, inspecting, patrolling, maintaining and adding to or removing all or part of its Facilities without the necessity at any time of procuring the permission of anyone. All Utility easements are retained in the present owners until removal and relocation of the Facilities. Should the relocation or removal of the Facilities require the obtaining of new easements, the acquisition of same shall be at the expense of **GRANTEE, GRANTEE's** successors and assigns. If any of the Facilities (or relocations thereof) are allowed to remain on such property, such easements and building restrictions shall remain thereon. Upon removal or relocation of all of the Facilities any easements reserved or created herein, relating to such removed or relocated Facilities, shall terminate, and any building restrictions herein created shall cease.

EXHIBIT "D"
TO
GROUND LEASE

Essential Areas



Site Plan for Edgemere

— ESSENTIAL AREAS Inside boundaries

[Handwritten signature]
W.

**EXHIBIT "E"
TO
GROUND LEASE**

Ground Lease Memorandum

MEMORANDUM OF GROUND LEASE

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is made and entered into as of the ____ day of November, 1999, by and between **INTERCITY INVESTMENT PROPERTIES, INC.**, a Texas corporation, whose principal place of business and office address is 4301 Westside Drive, Suite 100, Dallas, Texas 75209-6546, Attn: Edwin B. Jordan, Jr. (the "Lessor") and **NORTHWEST SENIOR HOUSING CORPORATION**, a Texas not-for-profit corporation, whose principal place of business and office address is Attention: Charles B. Brewer, 2711 LBJ Freeway, Suite 950, Dallas, Texas 75234 (the "Lessee").

This Memorandum provides notice to the public that Lessor and Lessee have entered into a certain Ground Lease (the "Ground Lease"), of even date herewith, pursuant to the terms of which Lessor has leased to Lessee, and Lessee has accepted from Lessor, certain real property (the "Land") containing approximately 16.25 acres of land, generally located at the northwest corner of the intersection of Thackery Road and Northwest Highway in the City of Dallas, Dallas County, Texas, as further and legally described in Exhibit "A" attached hereto and made a part hereof.

The Ground Lease is for a term of fifty-five (55) years, commencing on the date hereof and continuing thereafter until the fifty-fifth (55th) anniversary of such date, unless extended by agreement of the parties or sooner terminated as provided in the Ground Lease.

All rights, duties, responsibilities and obligations of Lessor and Lessee with respect to the Land and the Leasehold Estate created therein are specified in the Ground Lease and any person having an interest in the Land is hereby notified to contact Lessor and/or Lessee with respect thereto.

EXECUTED as of the day and year first set forth above.

LESSOR:

INTERCITY INVESTMENT PROPERTIES, INC.,
a Texas corporation

By: _____
Edwin B. Jordan, Jr., President

[Executed by Lessee on the attached Signature Page]

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of November, 1999, by Edwin B. Jordan, Jr., the President of Intercity Investment Properties, Inc., a Texas corporation, on its behalf.

(SEAL)

Notary Public

Lessee's Signature Page to Memorandum of Ground Lease

LESSEE:

NORTHWEST SENIOR HOUSING CORPORATION,
a Texas not-for-profit corporation

By:

Charles B. Brewer, President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of November, 1999, by Charles B. Brewer, the President of Northwest Senior Housing Corporation, a Texas not-for-profit corporation, on its behalf.

(SEAL)

Notary Public

EXHIBIT "A"
TO
MEMORANDUM OF GROUND LEASE

The Land

TRACT I

Being Lots 1 thru 7, Block 8/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

TRACT II

Being Lots 1 thru 8, Block 9/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

Provided, if abandonment is successful and the Owner acquires title to the alleyways and part of Beauregard Drive, both within the above described area, the portion thereof abandoned by the City of Dallas and acquired by Owner shall be a part of the Land subject to lease.

(TO BE REPLACED WHEN THE LAND IS REPLATTED)

Landlord's

Exhibit 5-F

for February 21-23, 2023 hearing

EXHIBIT F

PROPERTY CONDITION REPORT

The Plaza at Edgemere
8523 Thackery Street
Dallas, TX
January 6, 2023
Terracon Project No. FA226052



Prepared For:
Intercity Investments Inc
4301 Westside Dr #100
Dallas, TX

Prepared By:
Terracon Consultants, Inc.
Dallas, TX

terracon.com

Terracon

Environmental



Facilities



Geotechnical



Materials



January 6, 2023

Intercity Investments Inc
4301 Westside Dr #100
Dallas, TX

Attn: Mr. Nick Hannon
Phone: (214) 520-2565
Cell: (702) 355-6608
E: nhannon@icirealestate.com

Re: Property Condition Report
The Plaza at Edgemere
8523 Thackery Street
Dallas, TX
Terracon Project No. FA226052

Dear Mr. Hannon:

Terracon is pleased to provide this Property Condition Report of the subject improvements. This work was performed in general accordance with the scope of services outlined in the Terracon Proposal Number PFA226052 dated April 1, 2022, as identified in the scope section of this Report.

We appreciate the opportunity to be of service to you on this project. In addition to Facilities Services, our professionals provide geotechnical, environmental, construction materials services on a wide variety of projects locally, regionally and nationally. For more detailed information on all of Terracon's services please visit our website at <http://www.terracon.com>. If you have any questions concerning this Report, or if we may be of further service, please contact us.

Sincerely,
Terracon Consultants, Inc.

Handwritten signature of Michael J. Hull in black ink.

Michael J. Hull
Group Manager
Facilities Services

Handwritten signature of Jesse H. Aguilar in black ink.

Jesse H. Aguilar
Principal/Department Manager III
Facilities Services

Attached: Property Condition Report

Terracon Consultants Inc. Dallas, TX 75247-4547
P 214-630-1010 F 214-630-7070terracon.com

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



TABLE OF CONTENTS

	<u>Page</u>
1.0 EXECUTIVE SUMMARY	1
1.1 Immediate Repairs Cost Estimate	2
1.2 Capital Expenditure & Reserve Cost Estimate	3
1.3 ADA Related Cost Estimate	4
1.4 Property Description.....	5
1.5 Historical Capital Improvements	6
1.6 Work-in-Progress Capital Improvements	6
1.7 Planned Capital Improvements	6
1.8 General Physical Condition.....	6
1.9 Tenant Responsibilities	7
1.10 Recommended Additional Evaluation	7
2.0 PURPOSE AND SCOPE	8
2.1 Purpose	8
2.2 Scope	8
2.3 Personnel Interviewed	8
2.4 Documentation	9
2.5 Reported Compliance with Code and Regulations	9
2.6 Reliance	9
3.0 DESCRIPTION AND CONDITION	11
3.1 Site Improvements	11
3.2 Building Structure and Exterior	14
3.3 Roof.....	16
3.4 Building Interior	19
3.5 Vertical Transportation	22
3.6 Mechanical / Electrical / Plumbing	23
3.7 Fire Protection / Life Safety	28
4.0 REPORT QUALIFICATIONS	31
4.1 Limitations	31
4.2 Condition Evaluation Definitions	31
4.3 Definitions of Cost Type	32
4.4 Advisory Notes	33

Appendix A – Exhibits: Aerial Photograph, Site Plan, Flood Research

Appendix B – Photographic Documentation

Property Condition Report
 The Plaza at Edgemere
 Terracon Project # FA226052 Rev6
 January 6, 2023



1.0. EXECUTIVE SUMMARY

General Property Identification Summary

Item	Description
Property Name	The Plaza at Edgemere
Property Address	8523 Thackery Street, Dallas, TX
Type of Facility	Senior Living
Site Area	16.25 Acres
Total Parking Spaces	506
Number of Buildings	12
Number of Stories	1 to 3
Number of Units	504
Building(s) Area (SF)	1,500,000 Gross
Year(s) Constructed	2001
Renovation Notes	Buildings 1 thru 8 Constructed - 2001; Building 9 Constructed - 2006; Sculpture Courtyard Renovation - 2016; The Plaza SW Expansion - 2016; The Plaza North Expansion - 2017
General Construction	The buildings are conventional steel-framed and a mixture of cast-in-place and reinforced concrete structures. The floors are grade-supported concrete slabs. Concrete flat slab framing at upper levels supported on reinforced concrete columns which are supported by drilled shaft piers. The exterior of the buildings consist of light gage steel framed peripheral walls with stucco finishes. Roof framing consists of OSB roof decks over light gage steel trusses supported by the perimeter walls. The windows consist of single-glazed operable units (single-hung and double-hung) set in vinyl frames. The front entrance doors to the dwelling units are insulated metal doors set in metal frames. Exterior doors that access rear patio spaces are solid-core wood doors with glass insets. Storefront type systems with clear insulated glass set in either anodized or mill-finished aluminum frames were observed at the front office and common areas such as the pool house and the dining area. Painted metal service doors were observed in multiple areas. The low-slope roofs consist of a modified bitumen roof system. The steep-slope roofs consist of a concrete tile.
Date of Site Visit	7/13/2022, 7/14/2022
Survey Conducted By	Michael J. Hull; Erik R. Gonzalez; Adrian Alvarez Sanchez; Al A. Syedi; Chris B. Longoria; Anil K. Garg

Summary of Recommended Expenditures

1.1 Immediate Repairs Summary

	Total Cost*
Time Period for Repair	7/2022 thru 6/2023
Total Immediate Repair Cost	\$492,000*

*The final Immediate Repair costs are contingent upon the results of the recommended additional assessments.

Immediate Repairs and Early Term Replacement Reserve Summary

	Total Cost*
Time Period for Repair	7/2022 thru 6/2025
Total Early Term Replacement Reserve Cost	\$7,235,450*

*The final Immediate Repairs and Early Term Replacement costs are contingent upon the results of the recommended additional assessments.

1.2 Replacement Reserve Summary (07/2023 thru 06/2033)

	Total Cost
Evaluation Term	10
Number of Units	504
Total Replacement Reserve Cost	\$19,049,200
Total Inflated Replacement Reserve Cost	\$24,287,260
Inflation Factor	5.0%
Total Replacement Reserve (per Unit per Year)	\$3,779.60
Total Inflated Replacement Reserve (per Unit per Year)	\$4,818.90

Terracon Project No. FA226092 Rev E January 6, 2023

Terracon
 1.1 Immediate Repairs Cost Table

Project:		The Plaza at Edgemore		
Location:		8223 Thackeray Street, Dallas, TX		
Type of Facility:		Senior Living		
No. Stories:		1 to 3		
		No. of Units:	504	
		No. of Bldgs:	12	
		Reserve Term:	10 Years	
		Property Age:	22 Years	
		Quantity	U	
		Cost	I/Totals	
		Comments		
I-1	Repair courtyard walking paths.	1,000 SF	\$15,000	Differential settlement and/or displaced sections of the stone pavers in sidewalks were observed at select locations and pose a potential trip hazard.
I-2	Replace select sections of concrete sidewalk.	5,000 SF	\$10,000	Differential settlement and/or displaced sections of the concrete sidewalks were observed at select locations and pose a potential trip hazard.
I-3	Conduct structural investigation of cooling tower framing (may include limited repairs, laboratory and/or destructive testing).	1 Allow	\$20,000.00	Structural framing of cooling tower was cracked/deteriorated at square steel tube deteriorated structural frame. Corroded wall panels were observed at select locations and pose a potential trip hazard. Note that hidden conditions should be anticipated and the final cost of assessment and mitigative repairs is unknown at this time.
I-4	Conduct investigation of Building 3 Phase III paint (may include excavation and/or limited landscaping).	1 Allow	\$100,000.00	At the garage, under Building 3, a joint on the west side with the phase III paint was observed with water intrusion in the garage and scouring in the pool court. An allowance for repairs is not included. Note that hidden conditions should be anticipated and the final cost of assessment and mitigative repairs is unknown at this time.
I-5	Investigate stucco and associated staining (may include destructive testing and/or repairs to disturbed finish materials).	1 Allow	\$100,000.00	Select exterior walls were observed to exhibit horizontal cracking at a height of 3 to 7 feet. The exterior wall of the pool court was observed. Most of the stucco finish exhibited repaired and unrepaired cracks. An allowance for repairs is not included. Note that hidden conditions should be anticipated and the final cost of assessment and mitigative repairs is unknown at this time.
I-6	Replace downspout splashguards to prevent damage to roof membrane (roof to roof)	1 Allow	\$10,000.00	Missing downspout splash blocks (roof to roof) were observed and should be added to prevent damage to modified bitumen roof membrane. Access to select roof areas is limited and may require additional work.
I-7	Repair or replacement of damaged gutters and downspouts.	2,500 LF	\$20,000	The above scope roof prepared in fair to good condition with mesh just needing maintenance items such as replacing broken roof tiles and cleaning debris off the field of the roof and roof gutters and downspouts. Damaged gutters and downspouts were observed and should be repaired or replaced to prevent damage to nearby finishings and landscaping.
I-8	Conduct deferred roof maintenance.	1 Allow	\$50,000.00	Areas of ponding were noted throughout the lower level membrane. Ponding on the roof should be addressed to water cause deterioration of the membrane, which effectively reduces the expected useful life of the roof. Therefore, roof repairs to address the ponding issues should be addressed as an immediate repair. Debris should also be removed as part of this deferred roof maintenance.
I-9	Repair of the corroded and deteriorated copper piping.	1 Allow	\$50,000.00	Copper piping for the hot water boiler system was observed with severe electrolysis (disimilar metal interface) corrosion. Failure of the piping is imminent if this is not repaired soon.
I-10	Inspect and install GFCI receptacles under select kitchen sinks in dwelling units.	1 Allow	\$25,000.00	GFCI receptacles in the dwelling units were not observed for the garbage disposal plugs under the kitchen sinks. Inspect and install GFCI receptacles where missing.
I-11	Repair fire pump motor electrical issues.	1 EA	\$10,000.00	Reported fire pump motor issues in the latest inspection report should be resolved immediately to prevent any potential life safety issues.
I-12	Modernize and upgrade of the CO monitoring and ventilation system in the garage.	1 Allow	\$12,000.00	Most of the carbon monoxide (CO) detection sensors for the ventilation system in the underground parking garage are original to the building construction. Uncalibrated faulty sensors could prevent the garage from being properly ventilated.
Total Immediate Repairs			\$699,000	
Cost per Unit			\$376.19	

Footnotes: 1) *The final immediate repair costs are contingent upon the results of the recommended additional assessments.

Jan 6, 2023



1.2 Replacement Reserve Cost Table

Terracon Project No. FA226032 Rev6

Item Description	EUL	Quantity	Units	Cost	R-Totals										Cumulative		
					Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10			
R - 1 Rotting and filling of cracks and sectional replacement of the concrete paving.	5-7	50,000	SF	\$2.50	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$1,250,000
R - 2 Localized repair and replacement of retaining walls throughout the site	-	1	ALL	\$25,000.00	\$25,000	\$25,000											\$25,000
R - 3 Allowance for replacement of the parking structure expansion joints.	-	1	ALL	\$50,000.00	\$50,000	\$50,000											\$50,000
R - 4 Resurfacing of the swimming pool and repair/replacement of selective equipment.	10	1	ALL	\$25,000.00	\$25,000				\$25,000								\$25,000
R - 5 Allowance for replacement of stucco wall panels throughout the site.	-	400,000	SF	\$9.00	\$3,600,000	\$1,800,000											\$3,600,000
R - 6 Replace the original modified bitumen roofs (includes Plaza and Commons).	20	46,600	SF	\$22.00	\$1,025,200	\$1,025,200											\$1,025,200
R - 7 Replace the original modified Concrete S Tile roofs (includes Edgemere).	30-50	201,000	SF	\$40.00	\$8,040,000										\$4,020,000		\$8,040,000
R - 8 Repair/replacement of a portion of the commercial kitchen equipment.	10-15	3	ALL	\$50,000.00	\$150,000	\$150,000											\$150,000
R - 9 Allowance for replacement of commercial washers and dryers.	15-20	1	ALL	\$25,000.00	\$25,000	\$25,000											\$25,000
R - 10 Replace common area and corridor floor finishes (~10% of IM SF).	10	100,000	SF	\$10.00	\$1,000,000		\$500,000									\$500,000	\$1,000,000
R - 11 Periodic replacement of independent living (LI) floor finishes.	10	300	EA	\$1,000.00	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
R - 12 Modernization and replacement for 12 elevators.	25	12	EA	\$200,000.00	\$2,400,000		\$1,200,000										\$2,400,000
R - 13 Cooling tower replacements.	20	1,150	TON	\$210.00	\$241,500	\$120,750											\$241,500
R - 14 Condenser water pump replacements.	15	3	EA	\$30,000.00	\$90,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$90,000
R - 15 Cooling tower pump replacements.	15	3	EA	\$30,000.00	\$90,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$90,000
R - 16 Plate-frame heat exchanger replacements.	20	2	EA	\$85,000.00	\$170,000	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000	\$170,000
R - 17 Auxiliary heating hot water boiler replacements at end of useful life.	20	3	EA	\$50,000.00	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000
R - 18 DX spill system replacements at end of useful life.	15	400	TON	\$2,500.00	\$330,000	\$330,000	\$330,000	\$330,000	\$330,000	\$330,000	\$330,000	\$330,000	\$330,000	\$330,000	\$330,000	\$330,000	\$1,000,000
R - 19 Annual infrared scans of electrical system.	1	10	EA	\$5,000.00	\$50,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$50,000
R - 20 Dectron dehumidifier (pool) replacement at end of useful life.	15	1	ALL	\$140,000.00	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000	\$140,000
R - 21 Water-source heat pump replacements at end of useful life.	15	75	TON	\$2,500.00	\$187,500	\$125,000	\$62,500										\$187,500
R - 22 Modernize and system upgrades for Energy Management System.	15	1	EA	\$80,000.00	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000
R - 23 Modernization and upgrade of fire pump controller.	20	1	EA	\$60,000.00	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000
R - 24 Refurbishment of fire pump.	20	1	EA	\$25,000.00	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Subtotal					\$19,049,200	\$4,358,450	\$4,358,450	\$387,500	\$1,868,250	\$1,247,500	\$1,247,500	\$72,500	\$47,500	\$47,500	\$4,067,500	\$4,067,500	\$19,049,200
Escalation Factor per year				6.00%	\$0	\$0	\$0	\$367.19	\$294,483	\$268,844	\$20,030	\$16,155	\$19,337	\$19,337	\$1,942,050	\$2,518,192	\$5,236,080
Total with escalation					\$19,049,200	\$4,358,450	\$4,358,450	\$387,500	\$1,868,250	\$1,247,500	\$1,247,500	\$72,500	\$47,500	\$47,500	\$4,067,500	\$4,067,500	\$19,049,200
Cost per Unit - uninfirated		\$37,796.03															\$48,189.01
Average cost per Unit per year		\$3,779.60															\$4,818.90
Cost per Unit - infirated		\$48,189.01															\$48,189.01
Average cost per Unit per year		\$4,818.90															\$4,818.90

The Plaza at Edgemere
 823 Thackeray Street, Dallas, TX
 Senior Living
 1 to 3 No. Stories

No. of Units: 504
 No. of Bldgs: 12
 Reserve Term: 10 Years
 Property Age: 22 Years

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



1.4 Property Description

Terracon completed this Property Condition Report of The Plaza at Edgemere located at 8523 Thackery Street in Dallas, Texas. The property consists of multiple one to three-story senior living and medical facilities containing approximately 1,500,000 square-feet of building area. 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 buildings are occupied by multiple residential tenants and predominantly used for senior living residential and associated healthcare services. Building information is summarized below:

Section	Building	# Stories	Year Constructed
Edgemere	Building 1	3	2001
Edgemere	Building 2	3	2001
Edgemere	Building 3	3	2001
Edgemere	Building 4	3	2001
Edgemere	Building 5	4	2001
Edgemere	Building 6	3	2001
Edgemere	Building 7	3	2001
Edgemere	Building 8	3	2001
Edgemere	Building 9	3	2006
Edgemere	West Commons	2	2001
Edgemere	East Commons	2	2001
Edgemere	Performing Arts Center (PAC)	1	2016
The Plaza	The Plaza	3	2001
The Plaza	The Plaza North Expansion	3	2016
The Plaza	The Plaza Southwest Expansion	3	2016

Parking is provided on a concrete surface parking lot and three built-under parking structures. The remainder of the site is improved with landscaped perimeter areas, three landscaped courtyards and one indoor swimming pool. The site has been graded to promote drainage to curb inlets and localized catch basins in the paved and landscaped areas. Stormwater flows into the municipal system. A detention/retention basin is not utilized to regulate the outflow from the site.

The buildings are conventional steel-framed and a mixture of cast-in-place and reinforced concrete structures. The floors are grade-supported concrete slabs. Concrete flat slab framing at upper levels supported on reinforced concrete columns which are supported by drilled shaft piers. The exterior of the buildings consists of light gage steel framed peripheral walls with stucco finishes. Roof framing consists of OSB roof decks over light gage steel trusses supported by the perimeter walls. The windows consist of single-glazed operable units (single-hung and double-hung) set in vinyl frames. The front entrance doors to the dwelling units are insulated metal doors set in metal frames. Exterior doors that access rear patio spaces are solid-core wood doors with glass insets. Storefront type systems with clear insulated glass set in either anodized or mill-finished aluminum frames were observed at the front office and common areas such as the pool house and the dining area. Painted metal service doors were observed in multiple areas. The low-slope roofs consist of a modified bitumen roof system. The steep-slope roofs consist of concrete tile.

The dwellings, corridors, and common areas for **The Plaza** are heated and cooled with approximately 300 DX split systems with interior air handler units with supplemental electric resistance heating. The dwellings, corridors, and common areas for the **Edgemere** campus are mostly provided by individual water source heat pumps (WSHPs) with DX evaporator coils in the air handling units. The condenser coils

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



transfer heat from the WSHPs with the condenser water that is supplied for each heat pump from the three condenser water pumps in the central plant.

The building's life safety systems include a wet-pipe automatic sprinkler system, an off-site monitored fire alarm system, as well as tenant-supplied and maintained portable fire extinguishers. A dry-pipe sprinkler system is provided for the parking structures. City pressure is augmented by a vertical inline 250-GPM electric motor driven fire pump and associated automatic controller.

1.5 Historical Capital Improvements

According to tenant the following items have been previously completed at this property.

Reported Capital Expenditures	Year Completed	Approximate Costs/Comments
Concrete Roof Tile Replacements	2021	Tenant Representatives Reported \$1M

1.6 Work-in-Progress Capital Improvements

No capital improvements to this property are either under construction or under contract to begin within the next six months.

1.7 Planned Capital Improvements

Tenant reported the following capital improvements are currently planned but not under contract. Expenditures considered by Terracon to be current or short-term capital needs are included in the cost tables of this Report. Improvements considered to be an upgrade or a discretionary expenditure are not included in the cost tables of this Report.

Planned Capital Expenditures	Date to Begin	Approximate Costs/Comments
Envelope Repairs	2023	Tenant Representatives Reported \$3M

1.8 General Physical Condition

The property is in generally fair to locally poor condition with significant deferred maintenance items observed.

The buildings are approximately 6 to 21 years old. Some of the major equipment and building systems have been repaired or replaced since original construction. Some additional replacements are anticipated during the evaluation period. These capital reserve items consist of ongoing repairs and predictable or cyclical replacement.

In addition, some immediate repair items have been identified that will require remedial work early in the evaluation period.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



1.9 Tenant Responsibilities

Although the review of Tenant/Owner lease agreements is not part of Terracon's scope of work, it was reported that typical existing lease agreements require the Tenant to maintain and repair all fixed building systems.

At the request of our client, costs associated with systems that are tenant responsibility are included in our cost tables.

See Advisory Note in Section 4.4 of this Report.

1.10 Recommended Additional Evaluation

Terracon recommends the following evaluation be completed as part of the due diligence for this transaction:

- Perform a structural evaluation of the cooling tower framing. The structural frame could not be assessed for cooling tower. The visible deteriorated members can be replaced, however there may be hidden damage in the frame under the tower. If the equipment is being replaced, the whole structure can be assessed. The perimeter wall cladding was observed to be delaminating and falling. A few columns were in poor condition and can potentially be strengthened if the tower is not being replaced. During repair activities of the frame, the equipment may not be functional.
- Conduct investigation of Building 3 Phase I/II joint. At the parking structure under apartment Building 3, differential movement was observed with water intrusion in the garage along the west side joint with the Phase II connection. Scouring was also observed in the pool court. The joint between Phases I and II needs to be exposed, cleaned, and treated to avoid water intrusion.
- Conduct investigation of cracked stucco and investigate associated staining. Select exterior walls were observed to exhibit horizontal cracking at a height of 3 to 7 feet. The extent and cause of the cracking is unknown.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



2.0 PURPOSE AND SCOPE

2.1 Purpose

The purpose of this Property Condition Report was to observe and document readily visible material and building system conditions, which might significantly affect the value of the property; and determine if conditions exist, which may have a significant impact on the continued operation of the facility during the evaluation period. This work is being completed in anticipation of an asset management plan for the property.

2.2 Scope

The Scope of Work was developed in general conformance with ASTM E 2018 – 15, *Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process* and Terracon Proposal Number PFA226052 dated April 1, 2022. The scope included a site visit, limited interviews with property management personnel and some tenants; and a cursory review of readily available construction documents (drawings and specifications) provided by the client. The site assessment includes visual observations of the following system components: site development, building exterior and interior, building structure, mechanical, electrical and plumbing systems; conveyance systems, life safety/fire protection, and general ADA issues. Repair/replacement items of less than \$10,000.00 may not be identified or be designated as routine maintenance in the narrative of the Report if mentioned.

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

2.3 Personnel Interviewed

In conjunction with our on-site visit and while attempting to gather pertinent information on this property, the following personnel were interviewed or have provided information, which we have relied upon in the assembly of this Report. These individuals were designated as knowledgeable about the site and related improvements.

Name	Title	Telephone / Email
Mr. Chris Soden	Site Contact National Director of Plant and Engineering Services	620.755.9504 chris.soden@lifespacecommunities.com
Mr. Jarred Richardson	Site Contact Director of Plant Operations	469.916.8954 jarred.richardson@lifespacecommunities.com
Mr. A/C	HVAC, Fridge, Pumps, Disposals Vendor	817.995.4092
Longhorn Mechanical	Mechanical Vendor	972.336.3584
Total Fire & Safety	Fire Sprinkler Vendor	214.381.6116 / (Acct# SL2069)
Cintas	Fire Panel Vendor	972.437.6773 / (Acct# 8523 Thackery St.)
Thyssen Krupp	Elevator Vendor	972.785.0505
Servpro	Emergency Restoration Vendor	972.986.7677 / (Acct# Address)

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



2.4 Documentation

Terracon was provided with the following documentation for this property, which we have relied upon in the assembly of this Report.

Documentation	Source
Limited Construction Documents	Designated Site Contact and Client-Provided
Select Certificates of Occupancy	Designated Site Contact
Fire alarm, control panel, sprinkler, and pump test and inspection reports	Designated Site Contact
Fire department inspection reports	Designated Site Contact
Boiler Certificates	Designated Site Contact
Emergency electrical generator report	Designated Site Contact
Elevator certificate(s)	Designated Site Contact

The construction documents were provided for limited on-site reference and were not made available for detailed evaluation or quantity estimates.

2.5 Reported Compliance with Code and Regulations

Item	Comment
Building Department Code Violations	FOIA Letter submitted, but no response received.
Zoning Department Code Violations	FOIA Letter submitted, but no response received.
Zoning Classification	Zoned “MF-1(A)” or “Multi-family” per the City of Dallas Zoning Map.
Certificate of Occupancy	A copy of the building’s shell certificate of occupancy, dated 04/10/2002 for the original site and 10/16/2007 for Building #9 is included in Appendix A.
Fire Code Violations	No open fire code violations were noted in the response from the Fire Department.
Flood Classification	This property is in Zone X of the FEMA flood plain map and panel #48113C0335K dated 07/07/2014.
Flood Zone Description	Zone X: Zone X is the area determined to be outside the 500-year flood and protected by levee from 100-year flood.
Seismic Zone	Zone 1, per the 1997 UBC, defined as an area of low probability of damaging ground motion.

2.6 Reliance

This Report was prepared pursuant to the contract Terracon has with Intercity Investments Inc. This Report is for the exclusive use and benefit of and may be relied upon by Intercity Investments Inc and no other party shall have any right to rely on any service provided by Terracon Consultants, Inc. without prior written consent.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



The PCA Report may be relied upon by you 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.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.0 DESCRIPTION AND CONDITION

3.1 Site Improvements

Item	Description														
Site Access	Direct vehicular access via driveway entrances from the adjacent public streets, Thackery Street (east), Bandera Avenue (north), and Edgemere Road (west).														
Topography	Generally level to slightly sloped.														
Retaining Walls	Stone masonry retaining walls are located at various locations along the perimeter as required by changes in grade. These retaining walls vary in height up to approximately 12 feet. Also, stone masonry as planters for trees. See Advisory Note in Section 4.4 of this Report.														
Site Utilities	<p>The following is a list of the utility providers for the project:</p> <table border="1"> <tr> <td>Sanitary Sewer:</td> <td>City of Dallas</td> </tr> <tr> <td>Domestic Water:</td> <td>City of Dallas</td> </tr> <tr> <td>Storm Sewer:</td> <td>City of Dallas</td> </tr> <tr> <td>Hazardous Waste</td> <td>Stericycle</td> </tr> <tr> <td>Waste Disposal</td> <td>CWD</td> </tr> <tr> <td>Gas Service:</td> <td>Atmos</td> </tr> <tr> <td>Electric Service:</td> <td>Oncor</td> </tr> </table>	Sanitary Sewer:	City of Dallas	Domestic Water:	City of Dallas	Storm Sewer:	City of Dallas	Hazardous Waste	Stericycle	Waste Disposal	CWD	Gas Service:	Atmos	Electric Service:	Oncor
Sanitary Sewer:	City of Dallas														
Domestic Water:	City of Dallas														
Storm Sewer:	City of Dallas														
Hazardous Waste	Stericycle														
Waste Disposal	CWD														
Gas Service:	Atmos														
Electric Service:	Oncor														
Sanitary Sewer Service	Wastewater drainage is provided by gravity/forced flow through subsurface piping to the municipal sewer main. Piping is observed to be Polyvinyl Chloride (PVC) where piping was observable.														
Water Service	<p>City water main is tapped to provide potable water to the buildings. Piping is observed to be ductile iron where piping was observable.</p> <p>A separate 4-inch fire suppression water service line enters the building at the main fire suppression control room.</p> <p>Backflow prevention devices were observed and are not reportedly inspected. The backflow preventor is located in the Central Plant room (conditioned space). No enclosure and no insulation was observed.</p>														
Site Drainage (Storm Sewer)	<p>Stormwater drainage is by surface flow over paved and landscaped areas to curb inlets with underground piping connecting to the municipal system.</p> <p>The type of piping used for the drainage system was not known by the Site Contact and is considered to be a hidden condition.</p>														
Site Gas Service	<p>Natural gas service is provided to the buildings.</p> <p>An automatic shutoff valve was not observed at the gas service entrance.</p>														
Site Lighting	Metal, pole-mounted parking lot fixtures on concrete bases and building-mounted security fixtures. Exterior lighting fixtures were observed to utilize Light Emitting Diode (LED) fixtures and lighting is reportedly controlled by photocells.														
Parking Type	Surface and below grade parking structure.														

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.1 Site Improvements

Item	Description				
Vehicular Pavements	Concrete pavements.				
Curbs	Concrete. Concrete wheel stops are provided at some of the parking spaces.				
Truck Court	Maneuvering space appears to be generally adequate for truck traffic.				
Carport Canopies	None present.				
Parking Structure	<p>Three single-story parking structures were observed. Parking structures are equipped with dropped ceilings; thus, the structures were not visible for observation.</p> <p>The structures consist of reinforced cast-in-place concrete with conventionally reinforced cast-in-place concrete slabs.</p> <p>The exposed facades of the structures consist of stucco finishes.</p>				
No. of Parking Spaces (Total per count)	Parking Structure	Surface Lot	Standard – Accessible	Van – Accessible	TOTAL
East Plaza / Loading Dock	0	24	1	1	26
West Plaza	0	30	1	1	32
East Commons / Lobby	0	20	0	0	20
Main Garage	256	0	3	1	260
Building #9 Garage	91	0	3	1	95
Building #7 / #8 Garage	69	0	3	1	73
TOTAL	416	74	11	5	506
Sidewalks	<p>Typically broom-finished concrete along portions of the building perimeter and limited sections leading from the parking lots to the buildings.</p> <p>There are limited areas of brick pavers adjacent to the main building entrance and at the rear patio area.</p>				
Site Ramps/Stairs	Cast-in-place concrete steps and ramps with painted metal handrails are provided at grade changes.				
Signage	Property identification signage is provided via metal letters attached to the building façade and by monument-mounted signage adjacent to the main entrance drives.				
Landscaping	Lawn turf, mature trees, shrubs, bedding plants and seasonal flowers at the entrance drives and property perimeter. Built-in planters are provided at various locations throughout the property. Paved outdoor sitting areas are provided at select locations.				
Irrigation	An automatic underground irrigation system is installed at the landscaped areas. The system is reportedly functional and under a service agreement. Irrigation water is provided by the municipality.				
Fences	Approximate 8-foot high fencing is located along the property boundaries. The fencing is constructed of wrought iron metal fencing.				

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.1 Site Improvements

Item	Description
Dumpster Areas	Dumpsters and a trash compactor were located within the loading dock area along the rear service drive of the West Commons building. This area includes a concrete pad and is not screened.
Courtyards	<p>The site has four interior courtyards:</p> <p>The Putting Green Courtyard is bounded by the west elevation of Building #7, the north elevation of Building #8, the south elevation of the West Commons, and the southeast corner of The Plaza.</p> <p>The Duck Pond Courtyard is bounded by the east elevation of Building #7, the north elevation of Building #6, the south elevation of the West Commons, and the west elevation of Building #5.</p> <p>The Fountain Courtyard is bounded by the east and south elevation of Building #9, the north elevation of West Commons and Pool Building, and the west elevation of Building #3.</p> <p>The Putting Green Courtyard is bounded by the east elevation of Building #3, the north elevation of the East Commons and Performing Arts Center, the south elevation of Building #2, and the west elevation of Building #1.</p>

Site Improvements Conditions and Recommendations

The following recent capital projects were reported:

- Although not reported, areas of patched asphalt were noted.

The site components appear to be in a condition consistent with the age and use with no significant issues except as noted below:

- Repair/replace damaged sections of concrete curb as part of routine maintenance.
- Exercise and other miscellaneous equipment replacements are considered routine maintenance.
- Resurfacing of the swimming pool and repair/replacement of selective equipment should be anticipated during the reserve term.
- Eroded areas within the landscaping beds were noted along sections of the building perimeter. Stabilizing fill and mulch and/or landscape plantings should be installed at eroded areas along the building perimeter as part of routine maintenance.
- The parking structure expansion joint assemblies are deteriorated and evidence of leaking through the joints was noted. An allowance for replacement of the expansion joints is included during the reserve term.
- Limited areas of linear cracking and settled or displaced sections of concrete paving were observed at select drive areas. An allowance for routing and filling of cracks and sectional replacement of the concrete paving is recommended during the reserve term.
- The cast concrete retaining walls throughout the site are damaged and are vertically displaced. Some of the damage is caused by large trees and localized damage also was apparent at the bridges leading to/from the parking areas. Localized repair and replacement is anticipated early in the reserve term.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



Site Improvements Conditions and Recommendations

- Differential settlement and/or displaced sections of the concrete sidewalks were observed at select locations and pose a potential trip hazard. An allowance for sectional replacement of the sidewalks is included as an immediate repair.
- The concrete patio that overlooks the pond on the adjoining property has had sectional repairs, and several additional sections have vertical displacement. At a minimum, sectional replacement as routine maintenance is recommended. However, replacement of the entire patio should be considered due to the general appearance and anticipated future maintenance due to ongoing settlement. The cost for replacement of the patio is not included in our Cost Tables.
- Cracks were observed in the stone masonry retaining wall in the perimeter of multiple building elevations and landscape. The as-built drawings show a concrete wall with 2" PVC drainpipe spaced at 20 feet with a copper screen for the weeps, weeps are shown on drawings. The drainage of the stone masonry retained soil needs to be made functional. Cracks need to be repaired and monitored.
- Differential settlement and/or displaced sections of the stone pavers in the courtyards were observed at select locations and pose a potential trip hazard. An allowance for sectional replacement of the sidewalks is included as an immediate repair.
- The porte cochere located along the south elevation of the East Commons building, with access to the lobby, was observed to be damaged likely as a result of vehicular impact. Repairs and continued observation should be performed as part of routine maintenance.

Immediate Repairs:

- Repair courtyard walking paths.
- Replace select sections of concrete sidewalk.

Replacement Reserves:

- Allowance for routing and filling of cracks and sectional replacement of the concrete paving.
- Localized repair and replacement of retaining walls throughout the site
- Allowance for replacement of the parking structure expansion joints.
- Resurfacing of the swimming pool and repair/replacement of selective equipment.
- Repair the mortar cracks in the perimeter retaining wall.

3.2 Building Structure and Exterior

Item	Description
Foundation	The foundation systems for all of the buildings were not known as structural drawings were not available for all the structures. The Phase II drawings show drill shaft piers supporting the columns on level 1 with diamond shape isolation joints with the slab-on grade. A reinforced concrete flat slab was observed at level 2.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.2 Building Structure and Exterior

Item	Description		
Ground Floor	Concrete slab-on-grade. The drawings made available for reference indicate the ground floors consist of a conventional concrete slab-on-grade.		
Superstructure	Building #9 (Phase II), per the available drawings, consists a mix of cast-in-place reinforced concrete structure, steel structure and light gauge steel structure with light gauge steel framed peripheral walls with stucco finishes. Concrete flat slab framing at Level 2 supported on reinforced concrete columns which are supported by drilled shaft piers. Roof framing consists of OSB roof decks over light gauge steel trusses supported by the perimeter walls.		
Exterior Walls	Light gauge steel framed peripheral walls with finished with stucco.		
Windows / Doors	The windows consist of single-glazed operable units (single-hung and double-hung) set in vinyl frames. The front entrance doors to the dwelling units are insulated metal doors set in metal frames. Exterior doors that access rear patio spaces are solid-core wood doors with glass insets. Storefront type systems with clear insulated glass set in either anodized or mill-finished aluminum frames were observed at front office and common areas such as the pool house and the dining area. Painted metal service doors were observed in multiple areas.		
Exterior Building Stairs/Steps	None of the buildings have exterior stairs to the unit entry doors.		
Balconies/Patios/Breezeways	Each upper floor unit has a balcony accessible from the dwelling. The balconies are constructed as part of building and no projected or cantilever structure was observed. Stucco finish on the wall of balconies was observed.		
Sealants	Elastomeric sealants are located at control joints in the stucco finish, between dissimilar materials, and around window and door penetrations.		
Loading Docks	The Edgemere building has a recessed loading dock area located at the northwest corner of the West Commons and along the east elevation of The Plaza . The docks are generally equipped with upward-acting sectional metal overhead doors.		
Overhead Doors	<table border="1" style="width: 100%;"> <tr> <td data-bbox="537 1505 862 1554">Drive-In Doors</td> <td data-bbox="862 1505 1451 1554">2 Total - 2; 8'x10'</td> </tr> </table>	Drive-In Doors	2 Total - 2; 8'x10'
Drive-In Doors	2 Total - 2; 8'x10'		
Dock Stairs	Dock stairs are concrete with painted metal handrails.		
Dock Canopies	Dock canopies are extensions of the primary structure with concrete tile roofs supported from the exterior walls.		

Building Structure and Exterior Conditions and Recommendations

The following recent capital projects were reported:

- None reported.

The building components appear to be in a condition consistent with the age and use with no significant

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



Building Structure and Exterior Conditions and Recommendations

issues except as noted below:

- At the parking structure under apartment Building 3, differential movement was observed with water intrusion in the garage along the west side joint with the Phase II connection. Scouring was also observed in the pool court. The joint between Phases I and II needs to be exposed, cleaned, and treated to avoid water intrusion.
- The structural framing of cooling tower was observed to be cracked/deteriorated at the square steel tube structural frame. Collapsed wall panels were also observed. The structure needs to be evaluated, repaired, or replaced.
- Select exterior walls were observed to exhibit horizontal cracking at a height of 3 to 7 feet. The extent and cause of the cracking is unknown. Most of the stucco finish exhibited repaired and unrepaired cracks. Staining on the stucco finish should be cleaned as part of routine maintenance along with an investigation of the cause of the staining. Cracks should be repaired to avoid water intrusion and periodically monitored for any structural issues.
- The Tenant reported a future planned capital improvement budget (reportedly \$3M) consisting of substantial repair and/or replacement work to the stucco wall panels throughout the site. Based the budgetary estimate from the Tenant and the observations documented during site reconnaissance, significant repair and/or replacement is recommended early in the reserve term and an allowance has been included in the reserve cost table.

Immediate Repairs:

- Conduct investigation of Building 3 Phase I/II joint (may include excavation and/or limited landscaping).
- Investigate stucco and associated staining (may include destructive testing and/or repairs to disturbed finish materials).
- Conduct structural investigation of cooling tower framing (may include limited repairs, laboratory and/or destructive testing).

Replacement Reserves:

- Allowance for replacement of stucco wall panels throughout the site.

3.3 Roof

Item	Description
Field of Roof	The complex consists of two roofing types, a steep-sloped roof system that consists of a concrete "S" tile over an unspecified underlayment over Oriented Strand Board (OSB) decking supported by metal framing, and a low-sloped roof system that consists of modified bitumen roof system with a granular-surfaced cap sheet with unspecified ridged insulation over the metal deck. See Advisory Note in Section 4.4 of this Report. The original roofs are approximately 20-years old.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



	The roofs on the newer additions are approximately seven years old.
Flashing / Coping	The base flashing extends up the parapet to a metal counterflashing with a prefinished metal coping or prefabricated metal roof edge. Step flashing and kick-out flashing were observed at transitions from the steep-sloped roofing to sidewalls.
Expansion Joints	Roof to wall-type expansion joints provided in the low-slope roof between the original and expansion buildings.
Equipment Screen Wall	A metal equipment screen wall was observed on the north east side of the medical building. A concrete screen wall was observed surrounding the chillers just to the east of the medical building.
Skylights	Eight curb-mounted skylights were observed at the swimming pool area.
Drainage	<p>Low Slope Roofs</p> <p>Sheet flow to primary scuppers and drain leaders with surface-mounted downspouts at the roof edge and collected by metal gutters and downspouts that are discharged to splash blocks in landscaped or onto paved areas. Overflow scuppers are not provided. On the building additions the sheet flow to internal primary drains with adjacent overflow drains and with overflow scuppers along the perimeter parapet walls of the roof.</p> <p>Steep Slope Roofs</p> <p>Sheet flow to the roof edge is collected by metal gutters and downspouts that are discharged to splash blocks in landscaped and/or onto paved areas.</p>
Reported Leaks	No active roof leaks were reported at the time of the site visit. A historical leak was observed at the expansion joint on the roof of the greenhouse dripping onto the mechanical room below. Other unrelated historical leaks were reported but have been addressed prior to site reconnaissance.

Building or Section	Roof Area (SF)	Roof System	Date Installed	General Condition	Estimated Remaining Service Life (Years)
Building 1	~32,000	Concrete S Tile	2001	Fair to Good	9 to 14
Building 2	~16,500	Concrete S Tile	2001	Fair to Good	9 to 14
Building 3	~23,500	Concrete S Tile	2001	Fair to Good	9 to 14
Building 4	~21,500	Concrete S Tile	2001	Fair to Good	9 to 14
Building 5	~17,500	Concrete S Tile	2001	Fair to Good	9 to 14
Building 6	~17,000	Concrete S Tile	2001	Fair to Good	9 to 14
Building 7	~17,500	Concrete S Tile	2001	Fair to Good	9 to 14
Building 8	~21,500	Concrete S Tile	2001	Fair to Good	9 to 14
Building 9	~45,000	Concrete S Tile	2006	Good	16 to 21
West Commons	~9,000	Modified Bitumen	2001	Poor	1 to 3
West Commons	~23,500	Concrete S Tile	2001	Fair to Good	9 to 14
East Commons	~2,000	Modified Bitumen	2001	Poor	1 to 3
East Commons	~10,500	Concrete S Tile	2001	Fair to Good	9 to 14
PAC	~4,000	Modified Bitumen	2016	Good	12 to 16
PAC	~4,200	Concrete S Tile	2016	Good	26 to 31
Plaza Main	~34,000	Modified Bitumen	2001	Poor	1 to 3
Plaza North	~9,800	Modified Bitumen	2016	Fair	12 to 16

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



Expansion					
Plaza Southwest Expansion	~2,700	Modified Bitumen	2016	Fair	12 to 16
Plaza Pyramids Main	~6,000	Concrete S Tile	2001	Fair to Good	8 to 10
Plaza Pyramids Expansion	~4,000	Concrete S Tile	2016	Good	26 to 31
Greenhouse	~1,200	Glazed Panels	2007	Good to Fair	8 to 10
Cooling Tower Well	~1,600	Modified Bitumen	2001	Poor	1 to 3
Warranty in Place	Copies of the roof warranties were not provided.				

Roof Conditions and Recommendations

Our evaluation was visual and did not include moisture surveys to evaluate the condition of unexposed roof components. Terracon recommends that the roofs be evaluated on an annual basis to determine the specific need and timing to replace them. Ongoing repairs and annual maintenance should be anticipated as part of routine operating maintenance, the cost of which will likely increase as the roofing ages. Specific timing and costs of maintenance repairs cannot be determined but should be anticipated based on the type of roof system. Making recommendations concerning specific roof replacement type and design requires in-depth testing and evaluation that is not a part of this report's scope of services. Note that some costs might be budget- or allowance-only amounts, since additional funds may be needed for hidden conditions or environmental factors for removal of existing materials. The presence of additional layers of roofing and/or asbestos containing materials could significantly increase estimated replacement costs.

The following recent capital projects were reported:

- Roof repairs were performed in 2021.

The roof components appear to be in a condition consistent with the age and use with no significant issues except as noted below:

- The original modified bitumen components appear to be in poor condition (end of their serviceable life) with evidence of severe granule loss. Significant amounts of debris were observed on the field of the roof along with evidence of ponding water in multiple areas. Replacement is recommended early in the Reserve Term. The modified bitumen roof on the newer additions appeared in fair to good condition.
- The steep slope roof appeared to be in fair to good condition with mainly just needing maintenance items such as replacing broken roof tiles and cleaning debris off the field of the roof and roof gutters and downspouts. Damaged gutters were observed and should be repaired or replaced to prevent damage to nearby finishing and landscaping as an Immediate Item. Evidence of ponding water was observed at chimneys due to a lack of crickets.
- Areas of ponding were noted throughout the low-slope membrane roofs. Ponding and the prolonged exposure to water causes deterioration of the membrane, which effectively reduces the expected useful life of the roof; therefore, roof repairs to address the ponding issues should be addressed as an immediate repair. Debris should also be removed as part of this deferred roof maintenance.
- Many primary scuppers were observed without downspouts and splashguards resulting in staining and deterioration of the exterior stucco façade.
- A number of historical roof leaks were reported and were addressed prior to site reconnaissance. Evidence of a historical leak was observed at the expansion joint on the roof of the greenhouse dripping onto the mechanical room below.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



Roof Conditions and Recommendations

- Gutters should be cleaned to allow proper drainage and the areas monitored as part of routine maintenance.
- Underlayment beneath the concrete tiles needs to be checked annually to monitor service life.
- Roofs should be cleaned of debris as routine maintenance to protect them from damage and to allow for proper drainage.
- Tree debris was observed in several locations, trimming all the trees close by the roof edges is highly recommended as part of routine maintenance.

Immediate Repairs:

- Replace downspout splashguards to prevent damage to roof membrane (roof to roof)
- Repair or replacement of damaged gutters and downspouts.
- Conduct deferred roof maintenance.

Replacement Reserves:

- Replace the original modified bitumen roofs (includes Plaza and Commons).

3.4 Building Interior

Item	Description	
Dwelling Units	Approximately 30 of the Independent Living (IL) and Assisted Care (AC) units were observed in order to establish a representative sample to gain an understanding of the overall property condition. The property has a total of 308 IL and 196 AC units. Prior to our site visit, access to approximately 10% of the units spread across all buildings and including dwellings on all floors was requested to the Property Manager.	
Independent Living (IL) Living Areas	Floors	Carpet and vinyl at unit entrance.
	Walls	Painted gypsum wallboard.
	Ceilings	Painted gypsum wallboard.
Independent Living (IL) Kitchens	Floors	Ceramic tile, wood plank, laminate
	Walls	Painted gypsum wallboard.
	Ceilings	Painted gypsum wallboard.
	Countertop	Plastic laminate with stainless steel sinks.
	Cabinets	Painted wood, stained wood.
Independent Living (IL)	Floors	Ceramic tile.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.4 Building Interior

Item	Description	
Bathrooms	Walls	Painted gypsum wallboard, Ceramic tile/
	Ceilings	Painted gypsum wallboard.
	Countertop	Stone countertop with undermount sink.
	Tub/Shower Surround	Ceramic tile surround.
Appliances	Refrigerator	Yes, various manufacturers.
	Range	Yes, various manufacturers.
	Dishwasher	Yes, various manufacturers.
	Microwave	Yes, various manufacturers.
	Disposal	Yes, 1/3-HP.
	Washer/Dryer	Washer/dryer connections in select units.
East/West Commons	Floors	Ceramic tile, carpet
	Walls	Painted gypsum wallboard, various architectural finishes.
	Ceilings	Painted gypsum wallboard.
Interior Corridors	Floors	Carpet
	Walls	Painted gypsum wallboard.
	Ceilings	Painted gypsum wallboard, suspended acoustical tile
Dining Areas	Floors	Carpet
	Walls	Painted gypsum wallboard.
	Ceilings	Painted gypsum wallboard.
Kitchen Areas	Floors	Sealed concrete
	Walls	Painted gypsum wallboard, various architectural finishes.
	Ceilings	Painted gypsum wallboard.
Fitness Center	Floors	Carpet, wood laminate.
	Walls	Painted gypsum wallboard, mirror wall panels.
	Ceilings	Painted gypsum wallboard, suspended acoustical tile
Water Intrusion	Representative observations revealed no obvious visual indications of the presence of excessive moisture infiltration. The Property Manager did not report any existing excessive moisture issues or reported complaints from tenants.	

Building Interior Conditions and Recommendations

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



Building Interior Conditions and Recommendations

The following recent capital projects were reported:

- General and custom renovations of interior finishes are performed regularly as part of resident move-in.
- The interior finishes appear to be in a condition consistent with the age and use with no significant issues except as noted below:
- Exercise and other miscellaneous equipment replacement are considered routine maintenance.
- Although no suspect microbial growth was observed on damaged lay-in ceiling tiles, they should be replaced as a part of routine maintenance.
- The commercial washers and dryers are reportedly functional. Based on an expected useful life of 10 to 15 years, replacement of the commercial washers and dryers is anticipated during the reserve term.
- The kitchen equipment located in the main kitchens and warming stations throughout the site are in fair condition and reportedly functional. Based on observed conditions and estimated useful life, an allowance for limited repair/replacement of the kitchen equipment is included during the reserve term.
- The finishes were observed to be in fair to good condition and will likely require replacement during the reserve term. Furnishings and fixtures generally were in fair condition. TVs, furnishings and soft goods likely will require replacement during the reserve term; however, only select floor finishes are included within the scope of this report. Bathroom finishes and fixtures were in fair to good condition and should function through the term. The scope of typical resident contracts were not reviewed in conjunction with this assessment.
- Some of the resident suites are in a "white box" state and will require build-out upon move in. These build-out costs are considered resident improvements and are not included during the reserve term. Resident build-out funds are reportedly provided through the initial deposit made by prospective independent living residents. The scope of typical resident contracts were not reviewed in conjunction with this assessment.

Immediate Repairs:

- None identified.

Replacement Reserves:

- Repair/replacement of a portion of the commercial kitchen equipment.
- Allowance for replacement of commercial washers and dryers.
- Replace common area and corridor floor finishes.
- Periodic replacement of independent living (IL) floor finishes.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.5 Vertical Transportation

Vertical Transportation	15 elevators provide access to all levels of their respective buildings.							
Item	Passenger Elevators				Passenger Elevators			
Manufacturer	<i>Smartrise/ThyssenKrupp</i>				<i>Schindler</i>			
# of Units / Age	# of Units	9	Age	21	# of Units	1	Age	4
Type	Hydraulic				Electric MRL			
Capacity	2,500-pounds / 125 FPM				2,500-pounds / 100 FPM			
Cab Finishes	Metal ceiling with ceiling-mounted light fixtures, metal walls, carpet flooring.				Metal ceiling with ceiling-mounted light fixtures, metal walls, carpet flooring.			
Under Service Agreement	The elevators are under a service agreement with <i>ThyssenKrupp</i> Contractor				The elevator is under a service agreement with <i>ThyssenKrupp</i> Contractor			
Last Inspection Date	January 5-7, 2022 – As noted on documents provided by the site contact.							
Item	Passenger Elevators				Passenger Elevators			
Manufacturer	<i>Smartrise/ThyssenKrupp</i>				<i>ThyssenKrupp</i>			
# of Units / Age	# of Units	3	Age	21	# of Units	2	Age	15
Type	Hydraulic				Hydraulic			
Capacity	4,500-pounds / 125 FPM				4,500-pounds / 125 FPM 2,500-pounds / 125 FPM			
Cab Finishes	Metal ceiling with ceiling-mounted light fixtures, metal walls, carpet flooring.				Metal ceiling with ceiling-mounted light fixtures, metal walls, carpet flooring.			
Under Service Agreement	The elevators are under a service agreement with <i>ThyssenKrupp</i> Contractor				The elevators are under a service agreement with <i>ThyssenKrupp</i> Contractor			
Last Inspection Date	January 5-7, 2022 – As noted on documents provided by the site contact.							

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



Vertical Transportation Conditions and Recommendations

The following recent capital projects were reported:

- Only normal maintenance activities have been performed on these elevators.

The elevators appear to be in a condition consistent with the age and use with no significant issues except as noted below:

- The passenger cab finishes appeared to be in overall fair condition. It is anticipated that elevator finishes will need only routine maintenance during the evaluation period.
- Most of the elevators are 21-years-old and generally in fair condition. Only normal maintenance activities have been performed on these elevators. Although they are currently functional, based upon a normal service life of approximately 25 years, a full or partial modernization should be anticipated during the reserve term. Third-party elevator maintenance personnel were observed during site reconnaissance.
- Full modernization for 12 of the 15 elevators (those installed in 2001) and controls is anticipated at the end of useful life during the reserve term. An allowance for this is included in the reserve cost table.
- Site personnel reported than one elevator was having frequent operational issues. Repairs for elevators should be handled as part of routine maintenance.

Immediate Repairs:

- None identified.

Replacement Reserves:

- Modernization and replacement for 12 elevators.

3.6 Mechanical / Electrical / Plumbing

Item	Descriptions
Heating and Cooling (The Plaza)	Heating and cooling in the dwelling units, corridors, and common areas are provided with approximately 300 DX split systems with interior air handler units with supplemental electric resistance heating. Many of the units appear to have been installed as part of original construction or have been replaced at various times during tenant build outs and range from 5 to 21 years of age. The units were mostly manufactured by <i>Carrier, Trane, or Peake</i> with a few <i>Gibson</i> units. The units utilize R-22 (older units) and R-410A (newer units) refrigerants.
Heating and Cooling (Edgemere)	Heating and cooling in the dwellings, corridors, and common areas are mostly provided by individual water source heat pump (WSHP) with DX evaporator coils in the air handling units. The condenser coils transfer heat from the WSHPs with the condenser water that is supplied for each heat pump from the three condenser water pumps in the central plant. There are also approximately 10 packaged DX roof-mounted units, totaling approximately 120 nominal tons of cooling that provide heating and cooling for the common

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.6 Mechanical / Electrical / Plumbing

Item	Descriptions
	<p>areas.</p> <p>The WSHPs are located in either closets within each dwelling unit or above the ceiling of a shower. The cooling capacity of the air conditioning units ranges from 2- to 3-tons depending on unit size. Air distribution is through ducting located above the ceiling space with ceiling diffusers and return air vents. The units were typically manufactured by <i>Florida Heat Pump or Bosch</i>, with a few <i>Trane</i> units. The units utilize R-22 (older units) and R-410A (newer units) refrigerants.</p> <p><u>Pool Area</u></p> <p>Heating and cooling in the pool area is provided by a <i>Dectron</i> dehumidification system that also provides supplemental heat for the pool water circulation system.</p>
<p>Heating and Cooling (Central Plant)</p>	<p><u>Cooling Tower/Plate and Frame Heat Exchanger/Boilers</u></p> <p>Two plate-frame heat exchangers located in a central plant transfer heat from the condenser water loop from the building cooling loads associated with the WSHPs. Heat rejection from the WSHPs to the outdoors is via two <i>Baltimore Aircoil Company</i> 525-ton nominal capacity cooling towers located on the roof of the central plant building between the Plaza and the Edgemere buildings. Three 1575-GPM condenser and three 1300-GPM cooling tower pumps are used to circulate water between the cooling tower loop and condenser water loop through the plate-frame heat exchangers.</p> <p>The chemical treatment station for the cooling tower systems is located in the central plant. The chemical system includes an automatic feed pump that injects corrosion and scale inhibitor chemicals and biocide treatment. A third-party vendor reportedly visits the site periodically to service the chemical treatment system and provides water analysis of the systems. The engineers are responsible for the day-to-day operation of the chemical treatment system.</p> <p>Auxiliary heating for the WSHP condenser water system is provided by three, 2,065 MBH input, <i>Lochinvar</i> natural gas-fired boilers with associated <i>Armstrong</i> circulation pumps.</p>
<p>Energy Management System (EMS)</p>	<p>A <i>Reliable Controls</i> Energy Management System (EMS) monitors central plant equipment (cooling tower, pumps, and boilers), and outdoor conditions for the Edgemere Building. All pump and fan motors operate at constant speed for the cooling tower, condenser water loop, and hot water boilers.</p> <p>The system is supposed to control central plant HVAC equipment start/stop times and stage equipment on/off; however, the facility operator was unsure how to access the control system or any of the monitoring points. The field controllers for the central plant is located on the wall adjacent to the hot water boilers in the central plant building.</p> <p>Individual WSHPs, RTUs, and DX split systems are all controlled with low voltage, wall-mounted thermostats.</p>
<p>Ventilation</p>	<p>Restrooms are provided with exhaust fans vented to the exterior. Outdoor air intake for the DX split systems and WSHPs could not be determined and should be considered a hidden condition. Typically, residential spaces with operable windows and doors that provide outdoor air into the space are used</p>

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.6 Mechanical / Electrical / Plumbing

Item	Descriptions
	for ventilation requirements.
Ventilation for Parking Structure	<p>The enclosed lower levels of the parking structure are provided with ten caged, wall-mounted exhaust fans and outdoor air intake louvers, located at various exterior walls throughout the lower-level parking structure. The fans are manufactured by <i>Loren Cook</i>, and each has a rating of 1-HP. Each fan is connected to individual carbon monoxide detection sensors.</p> <p>Carbon monoxide detectors were observed, mounted on columns in the lower levels of the parking structures, near each exhaust fan. The carbon monoxide detection system is not connected to the main fire alarm control panel.</p>
Transformer(s)	Electrical service is supplied to the property at eight pad-mounted utility-owned transformers located at grade, at various locations around the perimeter of property, adjacent to the buildings.
Main Electrical Distribution	The main switchgear is manufactured by <i>Square D</i> with rated total capacities ranging between 1600 and 3000 amps. Electrical rooms generally contain either 277/480-volt 3-phase or 208/120-volt 3-phase panels for lighting and equipment loads and dry-type, step-down transformers that feeds the 120/208-volt panels generally for plug loads.
Dwelling Electrical Distribution	<p>The electrical service to each dwelling unit is rated at an estimate of 125 or 200 amps, 120/240-volt, single-phase. Circuit panels located in each dwelling were not marked for total amp capacity rating.</p> <p>Tenants are generally provided with their own breaker panels.</p> <p>GFCI receptacles were observed in select dwellings and common areas.</p>
Branch Wiring	Copper per Site Contact. No aluminum branch wiring was observed or reported.
Interior Lighting	<p>Primarily ceiling-mounted, T-8 fluorescent tube, LED fixtures, and recessed incandescent fixtures in common areas.</p> <p>The storage areas utilize fluorescent fixtures.</p> <p>Dwelling areas were a mix of mostly LED and incandescent fixtures with some fluorescent fixtures.</p>
Security Systems	Vehicular access into the property is gated and reportedly has a camera surveillance system.
Domestic Water Distribution	<p>The domestic cold and hot water piping system supplies the dwelling areas, common area restroom plumbing fixtures, kitchen and dining areas, janitorial sinks, and service outlets. Domestic water piping was observed to consist of copper in the risers and branches in limited areas where piping could be observed.</p> <p>Domestic hot water is provided to the building by five <i>Lochinvar</i> natural gas-fired hot water heaters, with storage tanks and recirculation pumps located in mechanical room.</p> <p>The domestic and fire water service lines enter the building through ductile iron pipes that supply the domestic water demands and the fire service for the building. Backflow preventers are installed for the domestic and fire systems.</p>

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.6 Mechanical / Electrical / Plumbing

Item	Descriptions
Sanitary	PVC per management and limited observations. No ABS piping was observed or reported.

Mechanical / Electrical / Plumbing Conditions and Recommendations

The following recent capital projects were reported:

- None reported.
- The MEP systems appear to be in a condition consistent with the age and use with no significant issues except as noted below:
- No recent infrared scans of the electrical panels were reported. An allowance for infrared scans of the electrical equipment and required service is included periodically during the reserve term based on the age of the electrical equipment. Infrared scans are considered to be part of routine maintenance operations. An allowance for this has been included in the reserve cost table.
- Upgrades and modernization to the hardware and software for the EMS is anticipated and an allowance is included during the reserve term. An allowance for this has been included in the reserve cost table.
- Most of the carbon monoxide (CO) detection sensors for the ventilation system in the underground parking structures are original to the building construction. Uncalibrated or faulty sensors could prevent the garage from being properly ventilated. Modernization of the CO monitoring and ventilation control system is needed immediately to prevent this from being a life safety issue. An allowance for this had been included in the immediate cost table.
- One of the building cooling towers was reported to have been replaced circa 2016. It was reported and observed that the cooling tower water is chemically treated. Based on our observations and reported conditions, we consider the cooling tower to be in fair to poor condition and replacement during the reserve term is anticipated. Due to the configuration and location of the cooling tower, it is our opinion that the replacement should be phased during the reserve term. An estimate for this has been included in the reserve cost table.
- The chemical feed system for the cooling towers was observed to be operating out of control. A significant amount of scale build up was observed on both cooling towers. Training and adjustments for the proper amount of chemicals to be fed into the cooling tower should be conducted as part of routine maintenance to prevent the cooling towers from being replaced before end of expected useful life.
- The HVAC equipment was observed to be functional and reported to be in operating condition. Some of the DX split systems and WSHP units servicing the tenant areas and the common areas are from the original construction. A phased replacement of the units is anticipated during the reserve term. An estimate for this has been included in the reserve cost table.
- The building HVAC systems are primarily served by a total of 3 condenser water pumps and 3 cooling tower water pumps. The pumps vary in size from 1300-GPM to 1575-GPM. Reportedly the pumps and motors are original to the building construction. We recommend an allowance for the replacement of pump and motor assemblies during the reserve term. An allowance for this has been included in the reserve cost table.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



Mechanical / Electrical / Plumbing Conditions and Recommendations

- The two plate-frame heat exchangers were observed to be functional and reported to be in operating condition. The equipment is from the original construction of the building and is near end of useful life. Replacement of the equipment is anticipated in the reserve term. An allowance for this has been included in the reserve cost table for this.
- The 3 auxiliary hot water boilers for the WSHP system are original to the building construction (21 years old). Based on their age and current condition, we recommend replacing the boilers during the reserve term. An allowance for this has been included in the reserve cost table.
- GFCI receptacles in the dwelling areas were not observed for the garbage disposal plugs under the kitchen sinks. This is a life safety issue and should be verified in all locations as part of routine maintenance. An allowance for this has been provided in the immediate cost table.
- Copper piping for the hot water boiler system was observed with severe electrolysis (dissimilar metal interface) corrosion. Failure of the piping is imminent if this is not repaired soon. An allowance for this has been included in the immediate cost table.
- The sanitary sewer clean out covers on the floor near the kitchen were observed to have come loose or unfastened (hidden condition) presenting a potentially dangerous condition. Repair of the covers should be done as part of routine maintenance.
- The *Dectron* pool area dehumidification system was observed to be functional and reported to be in operating condition. The equipment is from the original construction of the building and is near end of useful life. Replacement of the unit is anticipated in the reserve term. An allowance for this has been included in the reserve cost table for this.
- The recirculation pump connections for the pool were observed to be significantly leaking water. Repair of the piping should be done as part of routine maintenance.
- A smoke dampers in the parking structures were observed to have some dampers partially opened. Repair of the smoke damper should be done as part of routine maintenance.
- Clean out covers for the sanitary sewer piping near the kitchen were observed to be loosened or not properly fastened. Repair of the covers should be done as part of routine maintenance.

Immediate Repairs:

- Repair the corrosive and deteriorated copper piping.
- Install GFCI receptacles n under kitchen sinks in dwelling units.
- Modernization and upgrade of the carbon dioxide monitoring and ventilation system in the garage.

Replacement Reserves:

- Cooling tower replacements.
- Condenser water pump replacements.
- Cooling tower pump replacements.
- Plate-frame heat exchanger replacements.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



Replacement Reserves:

- Auxiliary heating hot water boiler replacements.
- DX split system replacements.
- Annual infrared scans of electrical systems.
- *Dectron* dehumidifier replacement.
- Water-source heat pump replacements.
- Modernize and system upgrades for Energy Management System.

3.7 Fire Protection / Life Safety

Item	Descriptions
Automatic Sprinklers	<p>The buildings are protected throughout with a wet-pipe automatic sprinkler system. A dry-pipe sprinkler system is provided for the parking structures. City pressure is augmented by a vertical inline 250-GPM electric motor driven fire pump and associated automatic controller. A jockey pump maintains pressure in the wet standpipes in the building. Tamper switches, flow switches, and drain valves were observed. Shunt trips for the elevators are installed in elevator machine rooms.</p> <p>The Designated Site Contact indicated that the system is inspected and maintained under a service agreement with <i>Total Fire & Safety</i>. Current inspection tags, by <i>Total Fire & Safety</i>, were not posted. A copy of the most recent inspection report, prepared by <i>MechantekCorp for Total Fire & Safety</i>, dated June 07, 2022, identified deficiencies with the fire pump. The deficiencies included the fire pump controller displaying “locked rotor alarm” and power imbalances for the pump motor. It was also noted that the current fire pump controller is obsolete and no longer supported.</p> <p>The food preparation area had a chemical fire suppression system in the exhaust hood above the cooking equipment. The system was last inspected by <i>Guardian Services</i> in June 2022.</p> <p>Fire extinguishers are installed on each level of the building and parking structure.</p> <p>A fire department connection was noted on the building exterior and fire hydrants are located adjacent to the drive lanes.</p> <p>Municipal fire hydrants are located along public streets bordering the property and in landscape islands in the parking lots.</p>
Fire Alarm Control Panel	<p>An addressable <i>Siemens XLS</i> control panel was observed. This panel was installed in 2016. Current inspection tags were posted.</p> <p>The Designated Site Contact indicated that it is inspected and maintained under a service agreement with <i>CINTAS</i> and is remotely monitored. A copy of the most recent inspection report, prepared by <i>Total Fire & Safety</i>, dated May 24, 2022, did not identify deficiencies or failed systems.</p>
Alarm Devices	<p>Audible horns/visual strobe fixtures located in dwelling units, common areas, and restrooms.</p>

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
 January 6, 2023 ■ Terracon Project No. FA226052



3.7 Fire Protection / Life Safety

Item	Descriptions
Smoke / Heat Detectors	Hard-wired smoke detectors are provided in dwelling units, common areas, and restrooms and are connected to the fire alarm system. Hard-wired heat detectors were observed in electrical and elevator equipment rooms. Duct smoke detectors were noted in larger packaged DX RTUs.
Pull Stations	Generally located at the exits and near the main fire alarm control panel where provided.
Fire Extinguishers - Portable	Wall-mounted portable fire extinguishers are located throughout. Tags indicated they were regularly inspected by <i>Total Fire & Safety</i> , with the last inspection date of January 2022.
Emergency Lighting / Signs	Emergency lighting and exit signs with battery back-up were observed along paths of egress and adjacent to the exit doors.
Emergency Engine/Generator Set for Life Safety Equipment	Emergency power for the life safety equipment is provided by three <i>Kohler</i> diesel engine generator sets (one 350 kW, and two 150 kW). The generators have small belly tanks for minimal fuel storage that will allow emergency power to operate the fire suppression and fire alarm systems.

Fire Protection/Life Safety Conditions and Recommendations

No testing was performed by Terracon for this assessment; however, the fire protection systems appear to be functional and are routinely inspected. Terracon did not observe spare sprinkler heads in the fire protection equipment rooms (spare box was empty) to identify if there were heads that have been recalled due to high failure rates. No *Omega* or recently recalled glass bulb heads from *Central*, *Star* or *Gem* were identified among the spare heads stored on-site or were reported. A detailed study of in-place heads is beyond the scope of this assessment and should be performed by the company responsible for maintaining the system. **See Advisory Note in Section 4.4 of this Report.**

The following recent capital projects were reported:

- None reported.
- The fire suppression and life safety equipment and systems appear to be in a condition consistent with the age and use with no significant issues except as noted below:
- Reported fire pump motor issues in the latest inspection report should be resolved immediately to prevent any potential life safety issues. An allowance for this is included in the immediate cost table.
- Based on age and estimated useful life, refurbishment of the fire pump is anticipated during the reserve term. An allowance for this is included in the reserve cost table.
- Modernization and upgrade of the fire pump controller was a recommendation in the most recent inspection report since the controller is obsolete and no longer supported. An allowance for this is included in the reserve cost table.
- A smoke damper in the parking structures were observed to have some dampers partially opened. Repair of the smoke damper should be done as part of routine maintenance.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



Immediate Repairs:

- Repair fire pump motor electrical issues.

Replacement Reserves:

- Modernization and upgrade of fire pump controller.
- Refurbishment of fire pump.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



4.0 REPORT QUALIFICATIONS

4.1 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.

Costs for normal maintenance activities have not been included in this Report.

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.

The representations regarding the status of ADA Title III compliance were determined based on visual observation and without any physical measuring and, thus, are intended to be a good faith effort to assist the Client by noting nonconforming conditions along with estimates of costs to correct and are not to be considered to be based on a detailed study.

Costs and information contained in Draft Reports may be subject to additional input or further analysis prior to the issuance of the final report. This ongoing activity could ultimately alter the conclusions and data contained in the Draft Report. Draft-status information or partial release of a Report should only be utilized by interested parties with the knowledge that minor or substantial changes in the evaluations or recommendations could occur before the final Report is issued. Decisions and actions by the Client based on information contained in a Draft Report, prior to issuance of the final report should be undertaken only after careful review of this cautionary advisory.

4.2 Condition Evaluation Definitions

- Good:** Average to above-average condition for the building system or materials assessed, with consideration of its age, design, and geographical location. Generally, other than normal maintenance, no work is recommended or required.
- Fair:** Average condition for the building system evaluated. Some work is required or recommended, primarily due to normal aging and wear of the building system, to return the system to a good condition.
- Poor:** Below average condition for the building system evaluated. Significant work should be

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



anticipated to restore the building system or material to an acceptable condition.

4.3 Definitions of Cost Type

Immediate Repair Work –The Immediate Repair Cost Analysis Table is an analysis of the estimated cost for immediate repair work defined as ‘one time’ costs estimated for repairs or replacements; the repairs or replacements needed immediately to bring the property to a sound, safe, and fully habitable condition. The list includes i) any items which pose potential danger to the health, safety, or well-being of building occupants, visitors, or passersby such as structural deterioration and failures, inoperable fire alarm systems, significant tripping hazards, building code violations; ii) items affecting tenancy or marketability such as lack of running water, out of service units, extensive damage caused by storm, fire or earthquake; iii) significant deferred maintenance items or non-working building systems such as HVAC systems, parking area repairs, broken windows and/or doors, leaking roofs, pest or rodent infestations; iv) building systems or system components that have far exceeded their expected useful life and require replacement or upgrade.

Replacement Reserve (Years 1 Through Assessed Term) – The Replacement Reserve is an analysis of the estimated cost for normally anticipated replacement for the major components of the improvements during the evaluation period. Reserve costs are typically defined as predictable and in some instances to be recurring within a specified future period. Items anticipated to be less than the threshold amount to repair or replace are generally considered to be part of routine maintenance and are generally omitted from the Replacement Reserve. Unless specifically required, these costs are not intended to represent enhancements or upgrades to the existing property. The analysis is based on the physical assessment of the property, a review of maintenance logs and historical capital expenditures as well as any scheduled or in-progress capital improvement programs. The remaining life values are based on published historical performance data for comparable items with consideration for the present condition and reported service history. The cost estimates are provided in present day values. The annual costs are summed up in both present-day values and the inflated amount. The actual inflation rate may vary over the length of the term.

General Opinion of Costs - The opinions of costs presented are for the repair/replacement of readily visible materials and building system defects identified that might significantly affect the value of the property during the evaluation period. These opinions are based on approximate quantities and values. They do not constitute a warranty that all items, which may require repair or replacement, are included. Estimated cost opinions presented in this Report are from a combination of sources. The primary sources are from Means Repair and Remodeling Cost Data and Means Facilities Maintenance and Repair Cost Data; past invoices or bid documents provided by site management; as well as Terracon’s experience with costs for similar projects and city cost indexes.

Actual costs may vary significantly depending on such matters as type and design of remedy; quality of materials and installation; manufacturer of the equipment or system selected; field conditions; whether a physical deficiency is repaired or replaced in whole; phasing of the work; quality of the contractor(s); project management exercised; and the availability of time to thoroughly solicit competitive pricing. In view of these limitations, the costs presented herein should be considered “order of magnitude” and used for budgeting purposes only. Detailed design and contractor bidding is recommended to determine actual cost.

These opinions should not be interpreted as a bid or offer to perform the work. All costs are stated in present value. The recommendations and opinions of cost provided herein are based on the understanding that the facility will continue operating in its present occupancy classification and general quality level unless otherwise stated. Information furnished by site personnel or the property management, if presented, is assumed by Terracon to be reliable. A detailed inventory of quantities for cost estimating is not a part of the scope of this Report.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



4.4 Advisory Notes

The following advisory notes are provided to discuss potential issues associated with budgeting practices, presence of potential hazardous materials, constructions products that may be defective or have a shorter useful life than anticipated for similar or alternative products used for the same purpose. The list of items addressed is not intended to list all such products, but includes some that could be present at this type of development.

Product and Material Recalls – The Consumer Product Safety Commission, as well as some manufacturers, will issue alerts or recalls on products or materials that are under review or have been determined to be defective or potentially dangerous under certain conditions. From time to time, we recommend that multi-family-type occupancies, in particular, check safety and recall information that is released from agencies and testing agencies about kitchen appliances, electrical components, as well as other building components and systems typically used at low-to-mid-rise residential and hotel occupancies.

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

Existing Roof Warranties – It is recommended that the Client investigate the transferability of the any in-place roof warranties to the new Ownership prior to any property transaction.

Water Intrusion - Presence of excessive moisture infiltration and suspect mold development - Limited interior areas of the buildings to which access was provided, and where building elements were readily observable, were visually observed for the presence of excessive moisture infiltration, if included as part of the authorized scope of work. No observations were conducted within concealed locations (behind wall and ceiling finishes, and other building components considered to be hidden conditions). No sampling or testing was performed in this assessment. In addition to our visual observation efforts, our questionnaire requested information from property personnel regarding their disclosure of any known excessive moisture or mold issues. The scope of this work should not be construed as a mold assessment; Texas Mold Assessment and Remediation Rules (TMARR) require that mold assessments conducted in the State of Texas be performed by a state-licensed mold assessor. Such an assessment is beyond the scope of this PCA. If the client so desires, Terracon's state-licensed Mold Assessors will perform a mold assessment of the subject property (the scope of which shall include including a sampling and testing schedule) for an additional fee.

Retaining Walls – Although the observable face of a retaining structure may appear in good condition, quality and service life of retaining walls cannot be fully evaluated since distress in hidden components of the overall system may be a latent situation. The service life of the wall depends upon correct engineering assumptions, support soils, backfill type, drainage, proper construction techniques, and close quality control in the construction process. Various wall materials (concrete, stone, masonry, steel, wood/timber) can weather well, but concealed materials degradation can be occurring. Where such walls have the appearance of surface deterioration or exhibit an out-of-plumb characteristic, a follow-up structural-type evaluation may determine that a wall is stable; such retaining walls may continue to function for a substantial time with minor repair and without replacement.

Differences in wood species, preservative treatment (or lack of), and quality of the wall's design/construction cannot be readily ascertained in wood/timber tie retaining walls. A wood member may tend to rot from the inside, especially if wood-destroying insects are present to accelerate deterioration but without significant visual indication. Wood/timber tie retaining walls may appear in good condition and therefore not be recommended for major replacement, since a visual determination of being in good condition cannot guarantee that accelerated deterioration will not occur later. An opinion to accept the wall without major replacement during a Report's evaluation term may be a realistic choice, depending upon a site's usage and that the retained soil is protected from long-term erosion, or if other soil slope stabilization methods would now be preferable to a wood/timber wall design.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



Modular Block Retaining Walls – A common type of mechanically-stabilized earth (MSE) retaining wall utilizes modular precast concrete masonry-sized blocks as facing material, which are fastened to a stabilized soil mass. Geosynthetic grid or metal mesh is installed in many horizontal layers throughout the height of the reinforced soil mass. The base of a modular block retaining wall is intentionally designed to be forward of the wall's top (battered vertical profile). Constructing proprietary modular block systems requires adherence to specific requirements for underlying support soils, bearing pad, shear pin or interlock connections, retained soil characteristics, drainage, and soil reinforcement (geotextile, geogrid, welded wire fabric). Installation of these engineered components and the quality control during construction cannot be later evaluated visually, except for the system's apparent stability at the time of our site observation. Localized excess block movement, loss of backfill materials between blocks, or eroded locations along the base of the wall may be indications of improper backfill materials or failed geotextile fabric filters. It is recommended that modular block wall systems be regularly monitored and undergo an appropriate level of preventative maintenance, especially where the top of the wall system supports vehicular traffic or where there are tiers of modular block walls that are extensively planted. Lower height "landscape-type" decorative block walls may wholly depend on the weight of the block assembly to retain the soil, having no anchorage to or reinforcing of the retained backfill. Different methods of interlocking or pinning the blocks may be height-dependent and typically concealed from view.

Exterior Wall Applied Plaster-type Finishes – Exterior wall plaster has come to refer to the generic family of wet-applied coatings that dry to a hard finish, and which possess a wide range of weathering characteristics depending upon mix components. Regardless of the materials applied, the overall goal is protection of the wall assembly and building interior from storm moisture infiltration, air infiltration, and from moisture vapor migration in any direction within the entire wall, including in the applied finish itself. Regional climate variations and a building's interior space conditioning characteristics may influence selection of materials and the design of the underlying wall substrate, which cannot be visually evaluated. More recent applied plaster-type systems may have better moisture barriers, as well as moisture interception (drainage) layers, that can reduce the overall potential for damages to the finish, to the supporting wall assembly, and building's interior.

Exterior Insulation and Finish System (EIFS): Although generically called "synthetic stucco", EIFS is not stucco. EIFS products are typically applied over a moisture barrier material on the underlying wall assembly, which is not part of the EIF System. EIFS consists of insulation board, non-metallic mesh that is adhered either mechanically or by a plaster-type coating onto the insulation, optional intervening coats of a plaster-type layer, and a final topcoat of acrylic-based or modified (non-cement) plaster. The final coat can be integrally colored, variously textured, and possess different hardness characteristics depending upon manufacturer. The topcoat itself usually is a moisture-resistant material with elastomeric properties.

EIFS products are proprietary and utilize specified materials and installation details. The quantity and location of flashing materials depends on the EIFS product and the architectural design. Additional mesh-type materials are needed to further reinforce the coatings at wall openings and wall corners. Particular caulk-type sealants must be used at joints and openings such as windows and penetrations.

Some EIFS products have become the subject of class action lawsuits due to moisture infiltration issues that result in structural deterioration and mold growth. At this time, most litigation is specific to a manufacturer and an application (usage on one- and two-family residential dwellings only). Poorly installed EIF systems can allow water infiltration into the supporting wall's substrate, causing distress for underlying wood-type and gypsum sheathings, deterioration of light-gauge metal and wood framing systems, and degradation of interior wall finishes. Conditions for mold formation are created within the wall and the building's interior.

Moisture infiltration and resultant damage cannot always be determined visually. Extensive water and mold damage may be latent. Other substrates, such as masonry, concrete, or cement-based sheathing, will be less susceptible to damage but still trap or transmit moisture with mold formation. Like most systems, the useful life of EIFS is directly related to the original design of the system, quality of installation, and historic and current maintenance practices. Since 2003, third-party quality assurance special inspections may

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



have been code-required for some EIFS installations where no drainage layer with water-resistive barrier was used, or when installed over masonry or concrete.

When a wall's substrate possesses an intervening drainage layer and a water barrier material behind the insulation layer of the EIF System, water penetration can be intercepted and released prior to entering the substrate. The drainage layer also intercepts interior moisture vapor that is migrating outwards. Systems without drainage layers behind EIFS may be unable to reject moisture infiltration, thereby resulting in water damage and potential mold formation that will not be visually detected until after major damage has occurred. Properly installed and aggressively maintained EIFS can exceed a 30-year EUL. Regardless of current conditions, in order to prevent moisture infiltration and potential interior mold growth, we strongly recommend that the EIFS and wall's substrate be closely monitored and especially well maintained, including the sealant material at penetrations, flashing locations, and prompt repairs of finish coat cracking or damage.

Stucco: Conventional stucco consists typically of three plaster coats applied onto metal lath over a water barrier. Modern mix components vary in material composition and application procedures, but widely so in pre-1880s stucco usage. Portland cement replaced lime as the main binding ingredient commencing in a transition period from about 1880s-1920s. Stucco is not impervious to water transmission and will crack due to slight movement in a wall's substrate. Control joints in stucco are required to limit cracking. A manufactured stone or other veneer can be adhered to the second plaster coat as the final topcoat (clad stucco) in lieu of the third plaster layer. Even though stucco can greatly exceed a 50 year-plus EUL, it can suffer latent moisture damage and mold formation when the wall's substrate lacks a functioning water barrier and an intervening drainage layer. Extensive water damage may occur in wood or metal framing, and wood composition sheathing. Underlying masonry-type walls are not usually subject to comparable deterioration, but can transmit excess moisture and be subject to mold formation. Note that an adhered, thin brick veneer system is somewhat similar in application method and benefits from using both drainage and barrier layers beneath a thick layer of cementitious parging on mesh. The thin brick (or other veneer) is applied using a thin mortar layer. Due to transmitted moisture and mold formation, deterioration of an underlying wall can occur when lacking a drainage layer or when poorly installed, which can be a hidden latent condition regardless of the veneer type.

One-Coat Stucco: Note that proprietary one-coat stucco systems are neither EIFS nor stucco. A one-coat stucco system incorporates proprietary materials and chemical enhancements in its proprietary plaster-type products. One-Coat stucco is applied onto a wall substrate that might consist of building paper or sheathing and with netting or metal lath embedded in the coating product. Some One-Coat systems use insulation or exterior gypsum board as part of the substrate, or are applied over an initial water-resistant coating, depending upon manufacturer's requirements. A wall's substrate that does not include a functioning water barrier and an intervening drainage layer may be subject to extensive latent damage and mold formation but especially when there is defective installation. Underlying masonry-type walls are not usually subject to comparable accelerated deterioration, but can transmit excess moisture and be subject to mold formation.

Roofing Replacement Costs – Costs for replacement are based on using the same construction-type as the currently in place roofing, unless otherwise noted. Making recommendations concerning specific roof replacement type and design requires in-depth testing and evaluation that are not part of this Report's scope. Where an overlay-type system is already in place, or when a property's management considers using a recovery-type overlay system in lieu of a complete tear-off to expose the structural deck, the existing underlying substrate and conditions cannot be evaluated visually or within the scope of this Report. For purposes of confirming underlying conditions to accommodate an overlay-type system or replacement of only the membrane portion of an existing overlay system, additional testing is necessary, as well as verification by a manufacturer that it will accept the underlying substrate and conditions in order to fulfill Warranty requirements, achieve an estimated service life, as well as deliver performance characteristics.

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



For the purpose of estimating a replacement dollar amount, a type of re-roofing system and its cost have been assumed, although confirmation that the system will be compatible with underlying conditions at the time of actual replacement will be required. The selected re-roofing type, along with its cost assumed by this Report, may no longer apply when unacceptable conditions are later found, with consequential additional costs not included in this Report such as for significant remediation of underlying components or when a complete tear-off procedure is then deemed necessary.

Costs for roofing recommendations necessarily assume that the building and roof superstructures will accommodate the roofing's loads or change in load patterns, if any; supplemental structural engineering verification may be needed at additional cost beyond this Report. All roofing recommendations or costs are intended to be confirmed by the property's management's roofing advisors and roofing installer at time of the roofing proposal. Applicable roof design requirements (storm drainage criteria, fire ratings, Code requirements, insurance company ratings, energy criteria, zoning, etc.) need to be further verified while soliciting proposals and prior to installation, which are beyond the scope of this Report. Note that overlay systems can have a shortened service life or voided warranties where installed over existing roof conditions that do not allow rapid storm water drainage or other localized situations, and which should be understood by property management as being an acceptable economic choice between cost and long-term performance.

Roof Skylights & Fall Protection – Evaluation of the safety measures for all personnel accessing roofs and while upon roof areas is wholly the responsibility of property ownership/management. Certain roof locations and conditions may require that fall protection has been installed at roof skylights, and which are further identified by OSHA (Occupational Safety and Health Act) standards and model building codes. Determining a roof's fall protection need or specific safety measure to be installed is not within Terracon's scope of work. Safety-type inspections of the fall protection provided at skylights or other roof areas, including their adequacy or current physical condition, are outside of Terracon's responsibility or its Report. If a cost for fall protection at skylights is cited by Terracon, the cost shall be considered a budget-only amount and to be understood as Terracon's recommendation for property ownership/management to promptly commence and complete a professional analysis of the possible need and implementation of fall protection. Additional roof areas and conditions might need further evaluation than discussed in this Report. Analysis of all structural-type loads or loading conditions for skylights and their fall protection is beyond the scope of Terracon's Report.

Although fall protection at skylights and other roof areas can usually be accomplished by various means, selecting a method is the responsibility of the property ownership/management. If, in the judgment of property ownership/management, certain safety measures are needed or otherwise required by such agencies as OSHA (29 CFR Section 1910.23), or by a building code, the type and sufficiency of the specific safety measures shall be determined by a qualified party designing and installing the safety equipment as directed by property ownership/management. Websites for OSHA, roof skylight manufacturers, and the local code jurisdictions should be consulted for additional information concerning roof fall protection.

Energy Policy Act of August 2005 and Energy Independence Act of 2007 – Federal legislation has mandated that direct expansion (DX) cooling equipment, sized 1- through 5.5-nominal tons, single- and three-phase electric service, manufactured after June 19, 2008 shall have a minimum Seasonal Energy Efficiency Ratio (SEER) of 13. Within the next five years, it is speculated that minimum SEER ratings may be raised to 18 or 20. Further, due to the required reduction in the manufacture of refrigerant HCFC-22 since 2004, manufacturers began to provide SEER 13 and higher rated units in 2007 based on using refrigerant HFC-410A, the replacement for HCFC-22. Manufacturing of refrigerant HCFC-22 in 2015 will be limited to 10-percent of pre-2003 levels until final phase-out in 2020.

Air conditioning systems that use HFC-410A operate at much higher pressures than with HCFC-22. Direct conversion of in-place HCFC-22 equipment may not be practical. Consideration must be given to the age, efficiency, condition and pressure rating of the existing evaporator coils, condition of the air handlers or furnaces, length and diameter of refrigerant piping, and configuration of the mechanical ductwork and

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



plenums. Prior to replacing an individual system, or implementing a broader replacement program, a registered professional engineer or licensed air conditioning contractor should be consulted.

Terracon's cost estimates provided in this Report assume that replacement condensing units compatible with the existing systems will remain available through 2011 or longer, however, the date that the client may realize the cost impact of these regulations may be sooner or later than can be estimated. Unless stated differently elsewhere in this Report, Terracon has based replacement and conversion costs on utilizing existing refrigerant piping and evaporator coils for use with refrigerant HFC-410A. Depending on equipment in place, replacement and conversion may also require evacuation of HCFC-22 refrigerant, flushing and cleaning the existing refrigerant piping of refrigerant and oils, installing a filter-dryer, replacing the thermal expansion device if required, and charging the system with R-410A. These costs are not included in our cost estimate.

Terracon recognizes that replacement or conversion strategies may differ at each property based on equipment ages, economics, availability of HCFC-22 refrigerant, and the extent of costs associated with consequential building alterations due to air conditioning equipment and system modifications. Actual costs of maintenance, replacement, conversion, or of collateral physical renovations to unspecified building components may vary over the next several years and be additional to the cost tables; hence Terracon recommends that a client consider establishing a contingency fund within its operating budget beyond any costs already reserved in the evaluation term. Complete replacement of the split DX systems, if required, could range from \$3,000 to \$5,000 per system.

Building Electrical Systems - Recognizing that a property's electrical distribution components are a mostly hidden condition, and that these systems must be maintained on a regular basis as part of an operating budget, property managers should utilize a licensed electrician to routinely monitor electrical connections, grounding systems, and fault protection devices for signs of metallic corrosion, for overheating, such as softened, distorted, or charred insulation on a wire or of a component's casing, and for cracking of pre-1965 rubber-type wire insulation.

Reusing salvaged electrical components can require extensive prior examination and refurbishing since they may contain aluminum parts or other corroded or degraded materials that must be reconditioned or be wholly rejected by a licensed electrician; testing agency-approved // listed new replacement parts are recommended. From time to time, property managers should check recall announcements from the United States CPSC (Consumer Product Safety Commission) for in-place electrical equipment, including HVAC equipment.

When electrical equipment manufacturers go out of business, or when equipment becomes obsolete though still functional, or is being phased-out by manufacturers due to regulatory requirements, such as for T12 fluorescent lamps since July 2005 and T12 magnetic ballasts since March 2006, part shortages can occur for in-place equipment that may lead to replacing entire assemblies rather than a single component. In the case of T12 lamps and magnetic ballasts, retrofitting of existing lamp sockets and using electronic ballasts might be an option, but which would require a property's manager to determine their most cost-efficient conversion or replacement strategy.

Selecting a conversion or upgrade strategy for electrical equipment and fixtures is beyond the scope of this Report. Our cost opinions, or our assumptions of costs being a part of an annual operating budget or of a tenant's build-out activities cannot anticipate or direct a property managers' strategy to incorporate new equipment, or when to participate in utility or manufacturer incentive and tax programs.

Ground-Fault Circuit Interrupter (GFCI) and Arc-Fault Circuit Interrupter (AFCI) Circuit Breakers/Receptacles – The National Electric Code (NEC), and most State or other applicable locally adopted electrical codes, require GFCI and/or AFCI circuit breakers/receptacles (devices) in select areas such as bathrooms, garages, outdoors, unfinished basements, crawl spaces, kitchens, laundry rooms, pool/spa areas, and other wet areas. AFCI circuit breakers are generally required at circuits in multi-family apartment sleeping rooms. It is outside of ASTM E 2018 – 15, Standard Guide for Property Condition

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX
January 6, 2023 ■ Terracon Project No. FA226052



Assessments to review all the locations where GFCI and/or AFCI devices are required. No testing of the functionality of the devices are performed as part of this PCA. Unless otherwise noted in the Cost Tables, no costs are included for upgrading the existing systems to current code standards.

Swimming Pool/Spa Safety – Commencing January 1, 2009, federal legislation mandates all pools/spas (existing and new) must be retrofitted with anti-entrapment drain covers, as identified in ANSI/APSP-7, “American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins”, a voluntary, federal consensus guideline. No pool/spa can be used when any drain/inlet cover is broken or missing. Requirements governing pool/spa installations vary by state and locality, but typically concern operational safety, protective barriers, health, water circulation systems, and regular inspections, current copies of which are requested to be produced by the property owner/manager.

Additional voluntary entrapment prevention practices are outlined in ANSI/APSP-7, (American National Standards Institute) // (Association of Pool & Spa Professionals), but each state or locality may adopt the guideline in whole or part. Florida has adopted the entire ANSI/APSP-7 guideline, which addresses five recognized suction entrapment hazards (hair, limb, body, evisceration/disembowelment, and jewelry/clothing). No single entrapment mitigation strategy can protect against all five recognized entrapment hazards. The combination of mandatory anti-entrapment drain covers, along with voluntary dual suction inlets spaced 3-feet (minimum) apart, appears preeminently effective; an additive prevention practice is to limit water flow (suction) velocity. Where a pool has only a single line suction drain, an entrapment prevention practice calls for installing an atmospheric vent line or a manufactured single vent relief system (SVRS) component, either method automatically reducing suction on the “blocking” item; however, both the integral atmospheric vent line and the manufactured SVRS defends only against the single entrapment hazard of body suction. Note that both a vent relief line and a SVRS component require regular inspection. Other anti-entrapment remediation options for existing pools/spas having only a single suction drain are identified in the ANSI/APSP-7 guideline. ANSI/APSP-7 also allows the option for a new pool/spa to be built without a main floor drain, with proper circulation accomplished by design and placement of water inlets.

Terracon does not evaluate the design of pools/spas, nor can it choose from among the entrapment strategies in the ANSI/APSP-7 guideline. Implementation of entrapment prevention practices and conformance to all state and local codes are the responsibility of the property owner/management, as is the overall safety of the pool/spa; however, we recommend prompt installation of approved anti-entrapment-type drain covers. Consideration should be given to installing optional safety and entrapment mitigation practices identified by ANSI/APSP-7 where allowed by law, and as suitable. No costs for upgrades were included in this Report unless otherwise noted in Cost Tables.

NOTE: Local and state jurisdictions may have more extensive requirements for pool/spa installations. The property’s management /ownership is requested to produce documentation that their installations are in current compliance with all pertain laws and requirements.

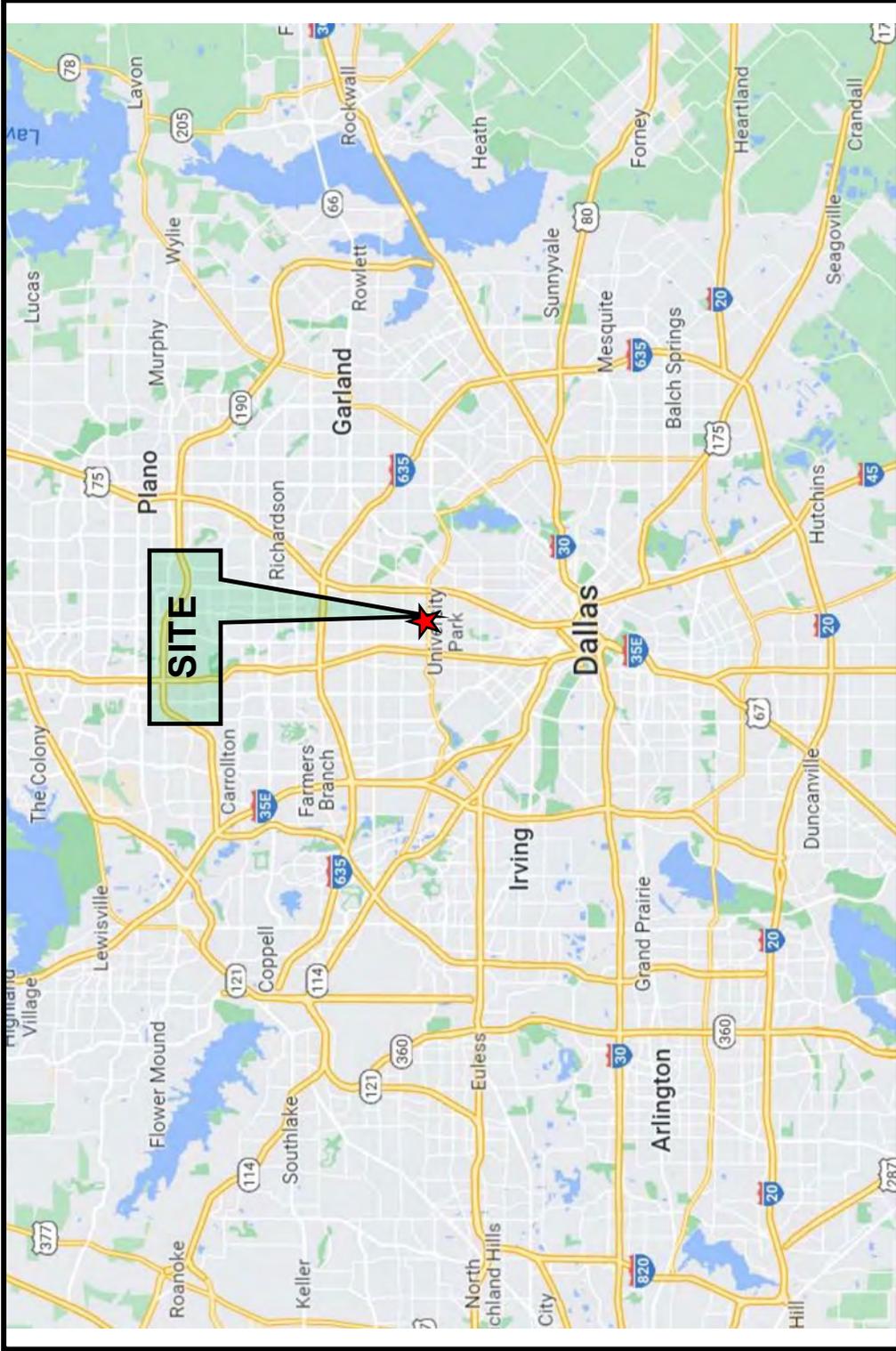
Property Condition Report

The Plaza at Edgemere ■ Dallas, TX

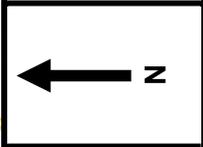
January 6, 2023 ■ Terracon Project No. FA226052



**APPENDIX A
EXHIBITS**



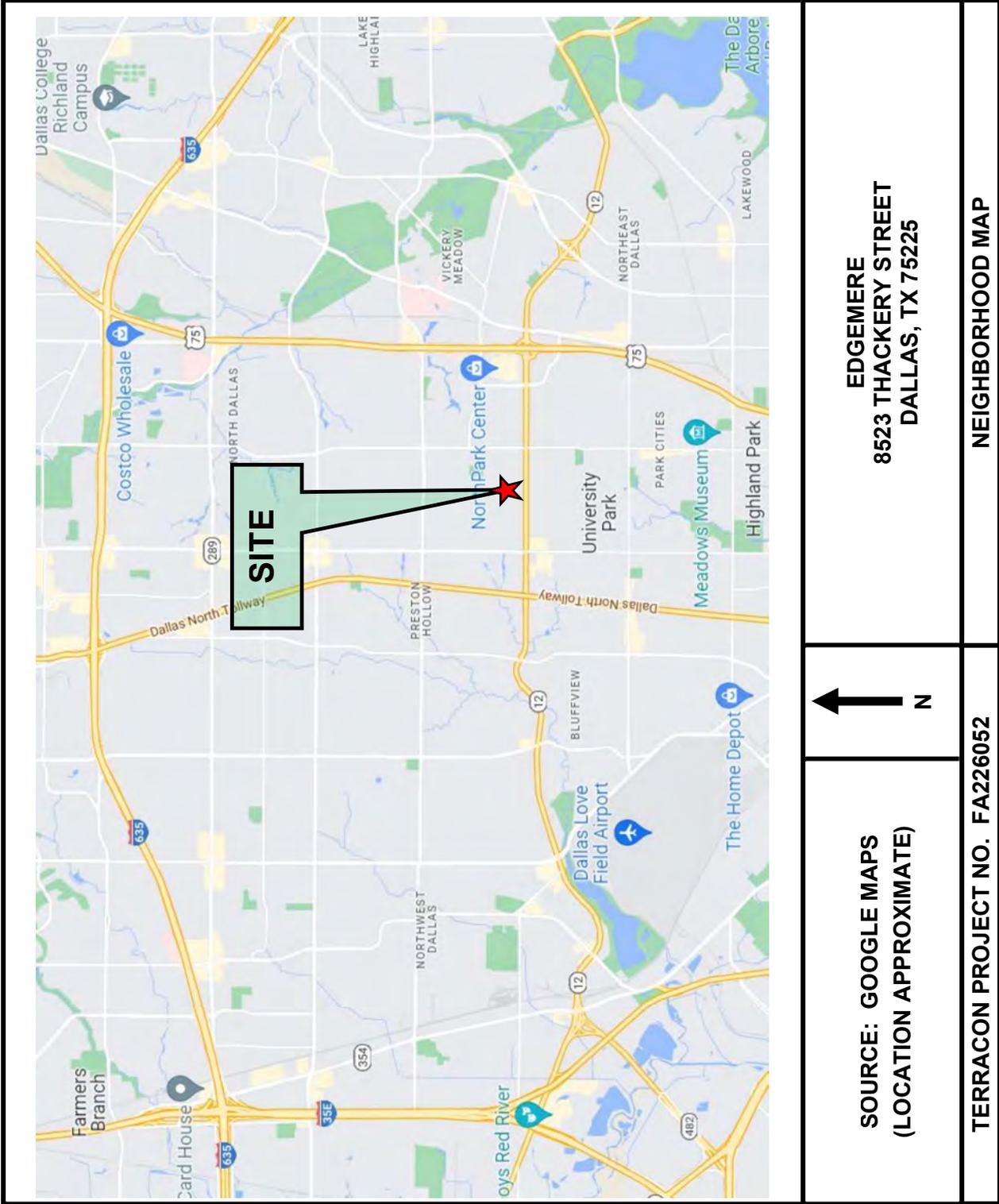
**SOURCE: GOOGLE MAPS
(LOCATION APPROXIMATE)**



**EDGEMERE
8523 THACKERY STREET
DALLAS, TX 75225**

TERRACON PROJECT NO. FA226052

REGIONAL MAP



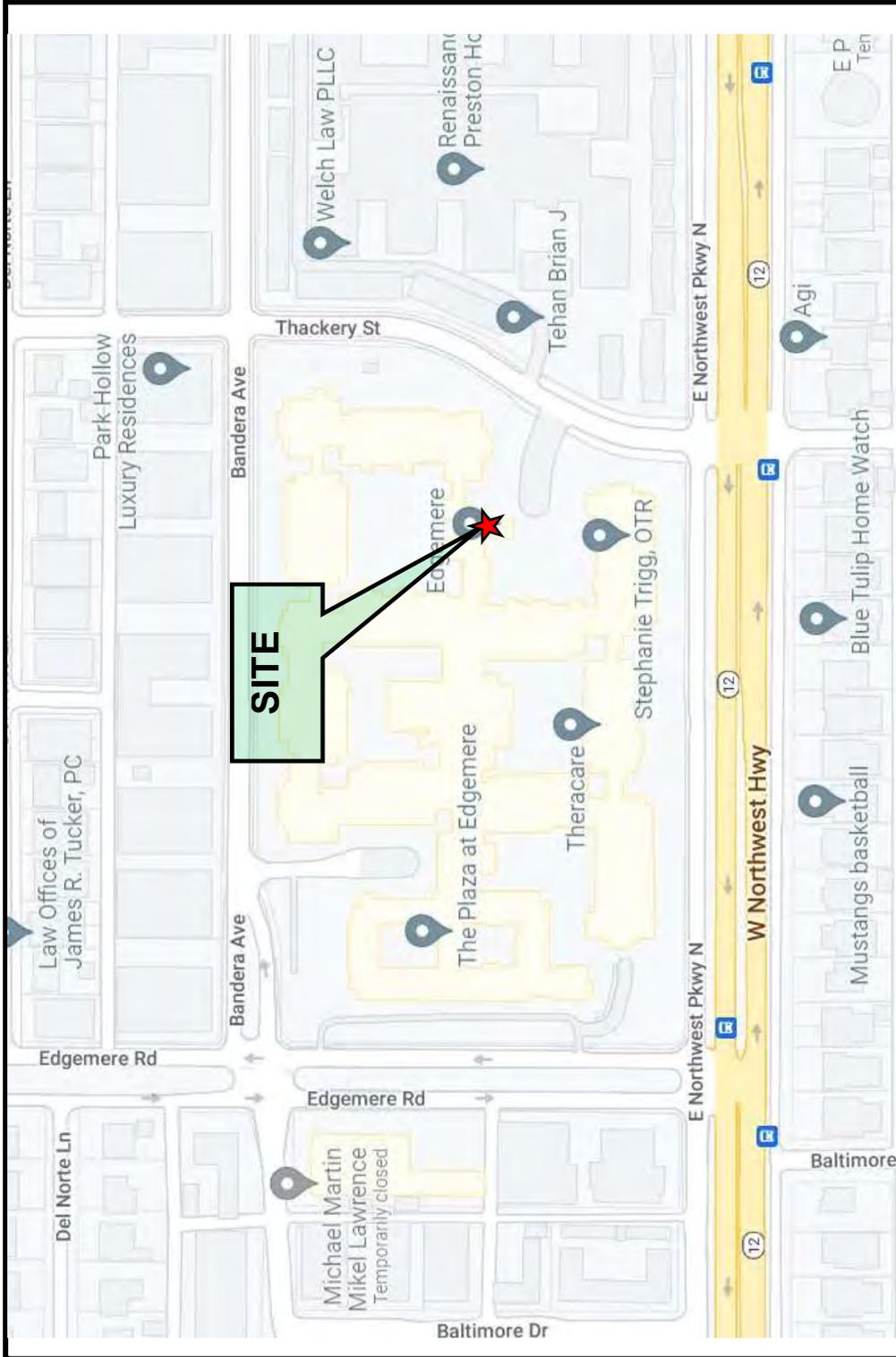
**EDGEMERE
8523 THACKERY STREET
DALLAS, TX 75225**

NEIGHBORHOOD MAP

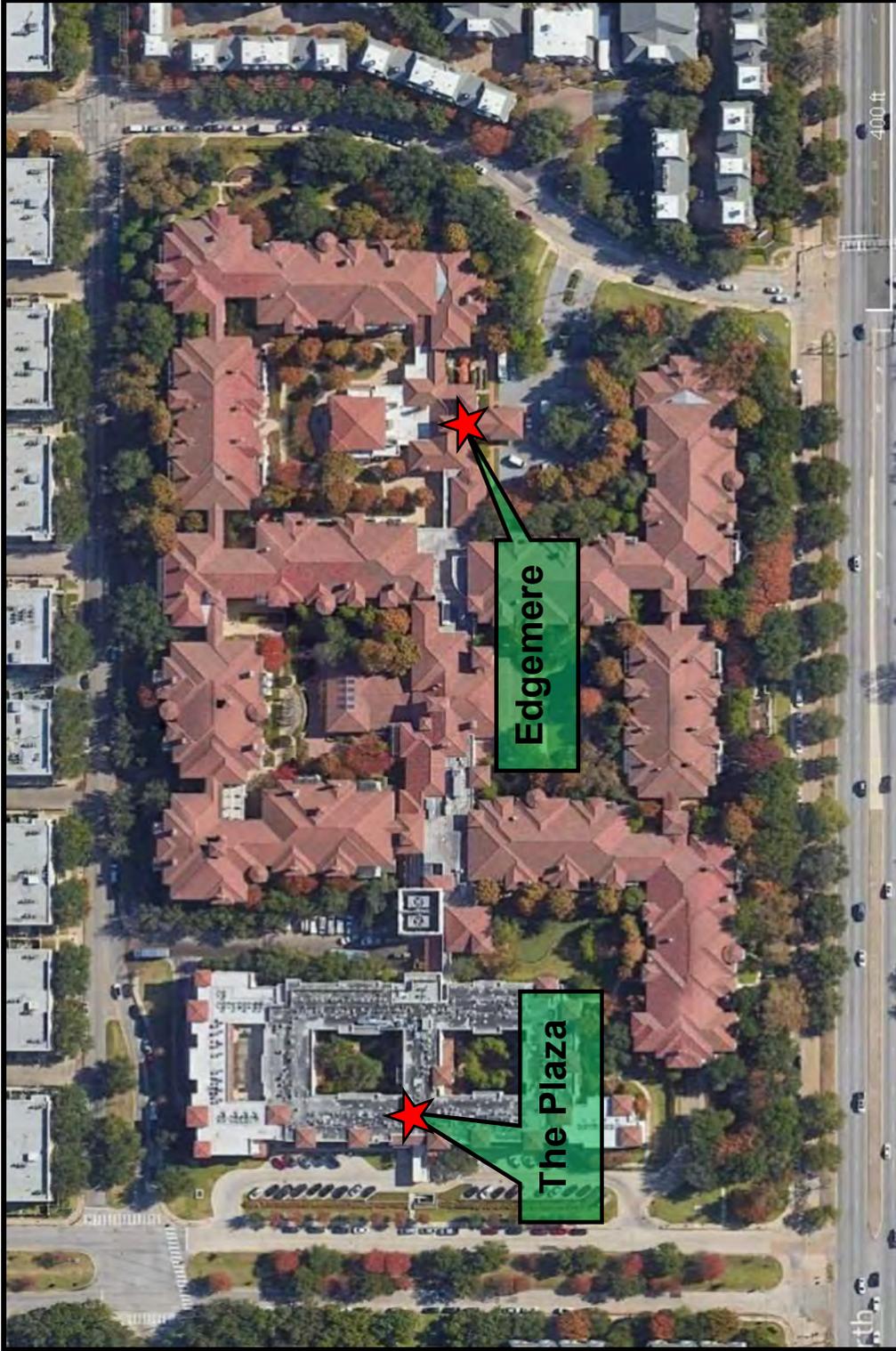


**SOURCE: GOOGLE MAPS
(LOCATION APPROXIMATE)**

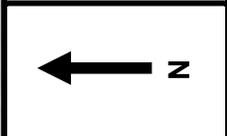
TERRACON PROJECT NO. FA226052



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<p style="text-align: center;">SOURCE: GOOGLE MAPS (LOCATION APPROXIMATE)</p>		<p style="text-align: center;">TERRACON PROJECT NO. FA226052</p>
		<p style="text-align: center;">LOCATION MAP</p>



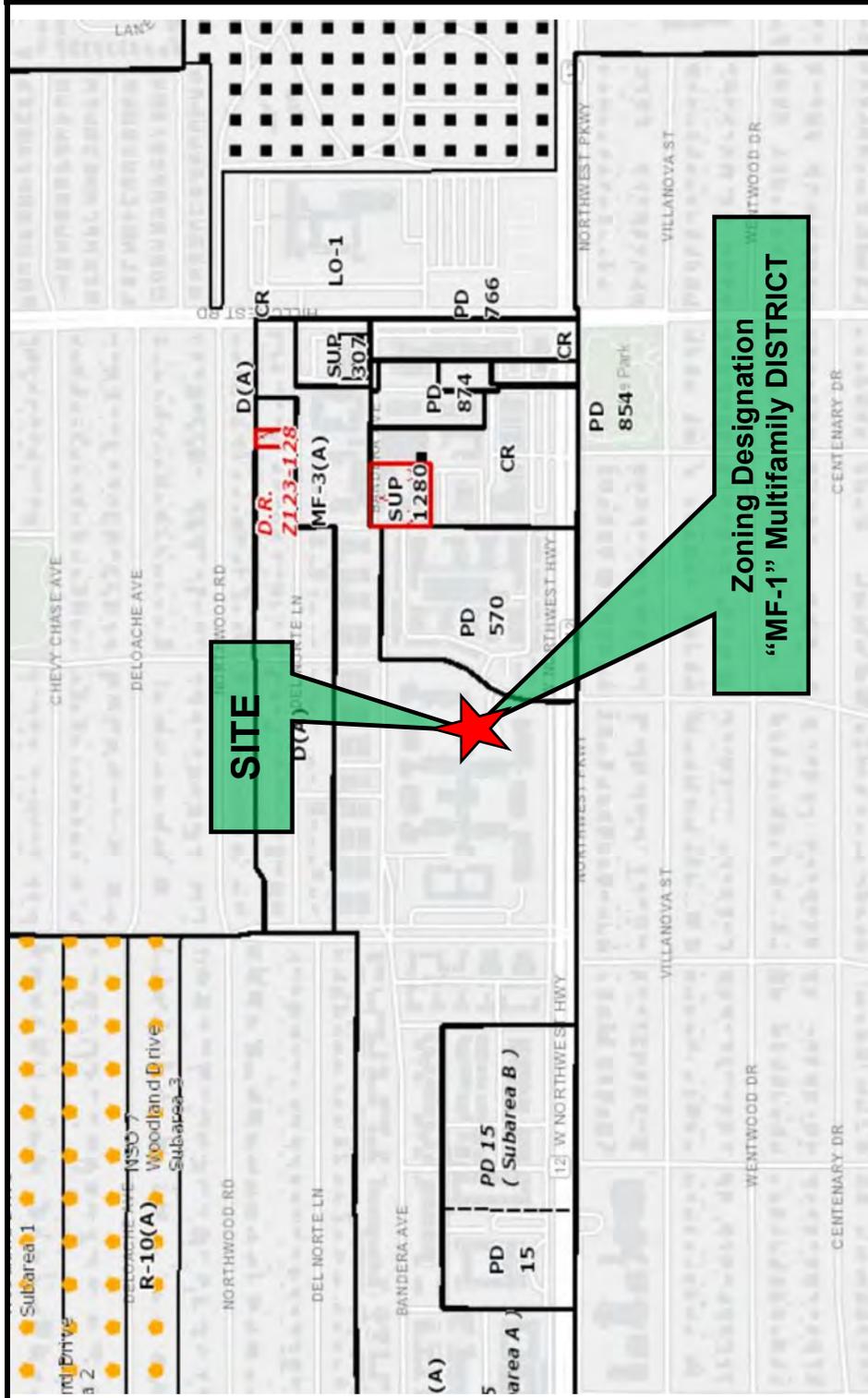
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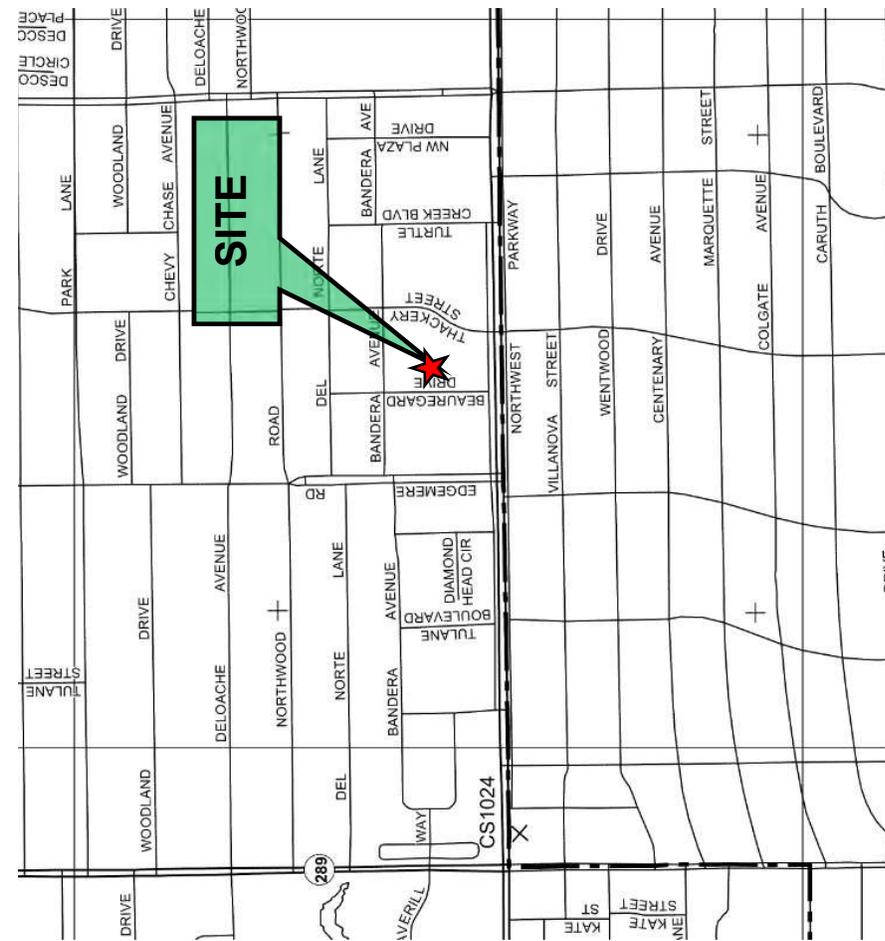
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TERRACON PROJECT NO. FA226052

AERIAL PHOTOGRAPH

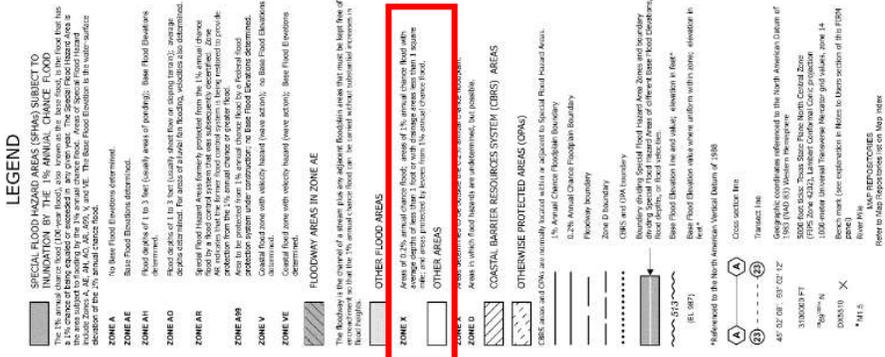


<p>SOURCE: ON-LINE MAPS AT HTTPS://DEVELOPMENTWEB.DALLASCITYHALL.COM/PUBLICZONINGWEB/</p>	<p>↑ N</p>	<p>EDGEMERE 8523 THACKERY STREET DALLAS, TX 75225</p>
<p>TERRACON PROJECT NO. FA226052</p>		<p>ZONING MAP</p>



**EDGEMERE
8523 THACKERY STREET
DALLAS, TX 75225**

FLOOD ZONE MAP



NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP
DALLAS COUNTY,
TEXAS
AND INCORPORATED AREAS

PANEL 0335K

**PANEL 335 OF 725
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)**

COMMUNITY	NUMBER	PANEL	SUFFIX
DALLAS CITY OF	480171	0335	K
HIGHLAND PARK, TOWN OF	480178	0335	K
UNIVERSITY PARK, CITY OF	480189	0335	K

CONTAINS:

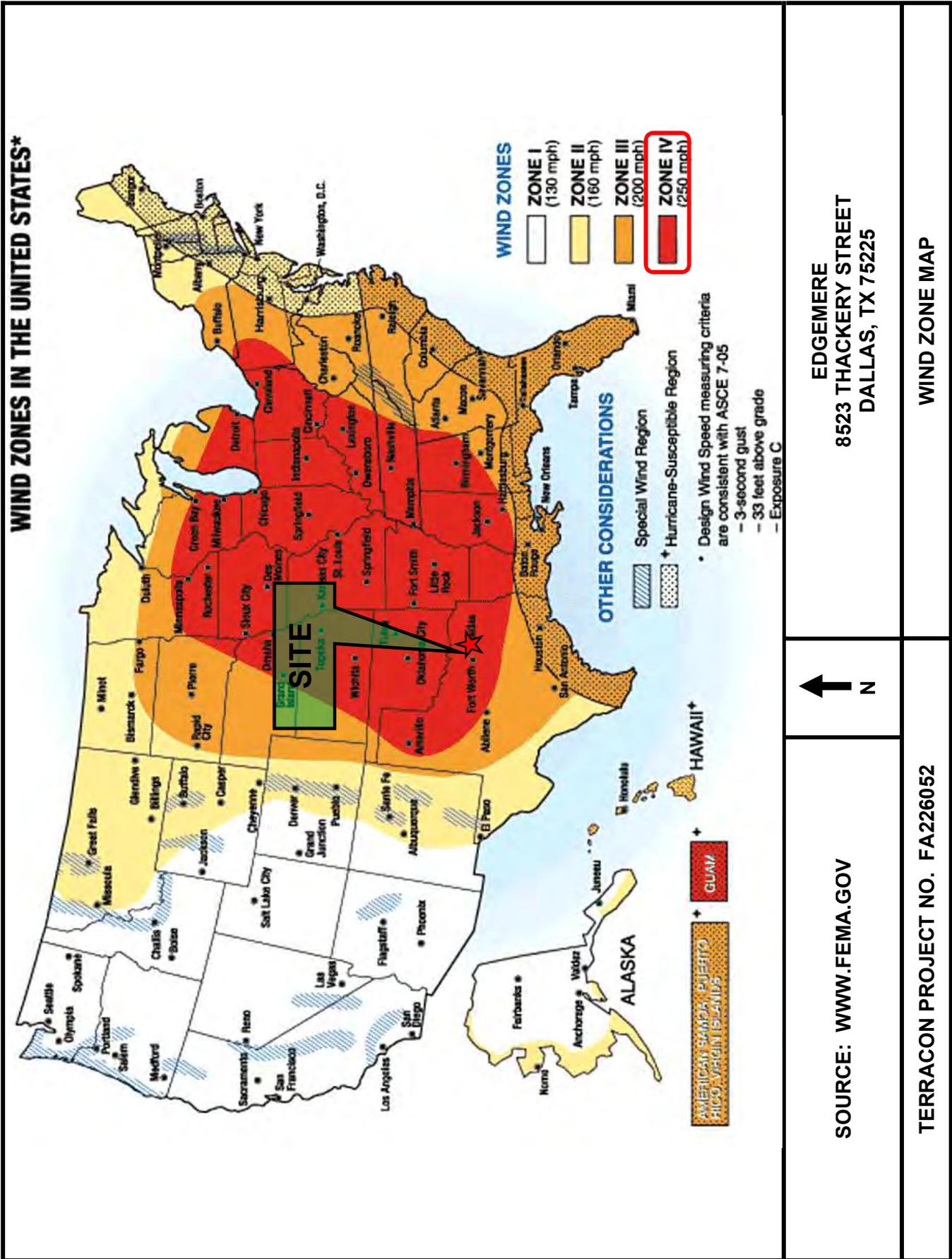
Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.

**MAP NUMBER
48143C0335K
MAP REVISED
JULY 7, 2014**

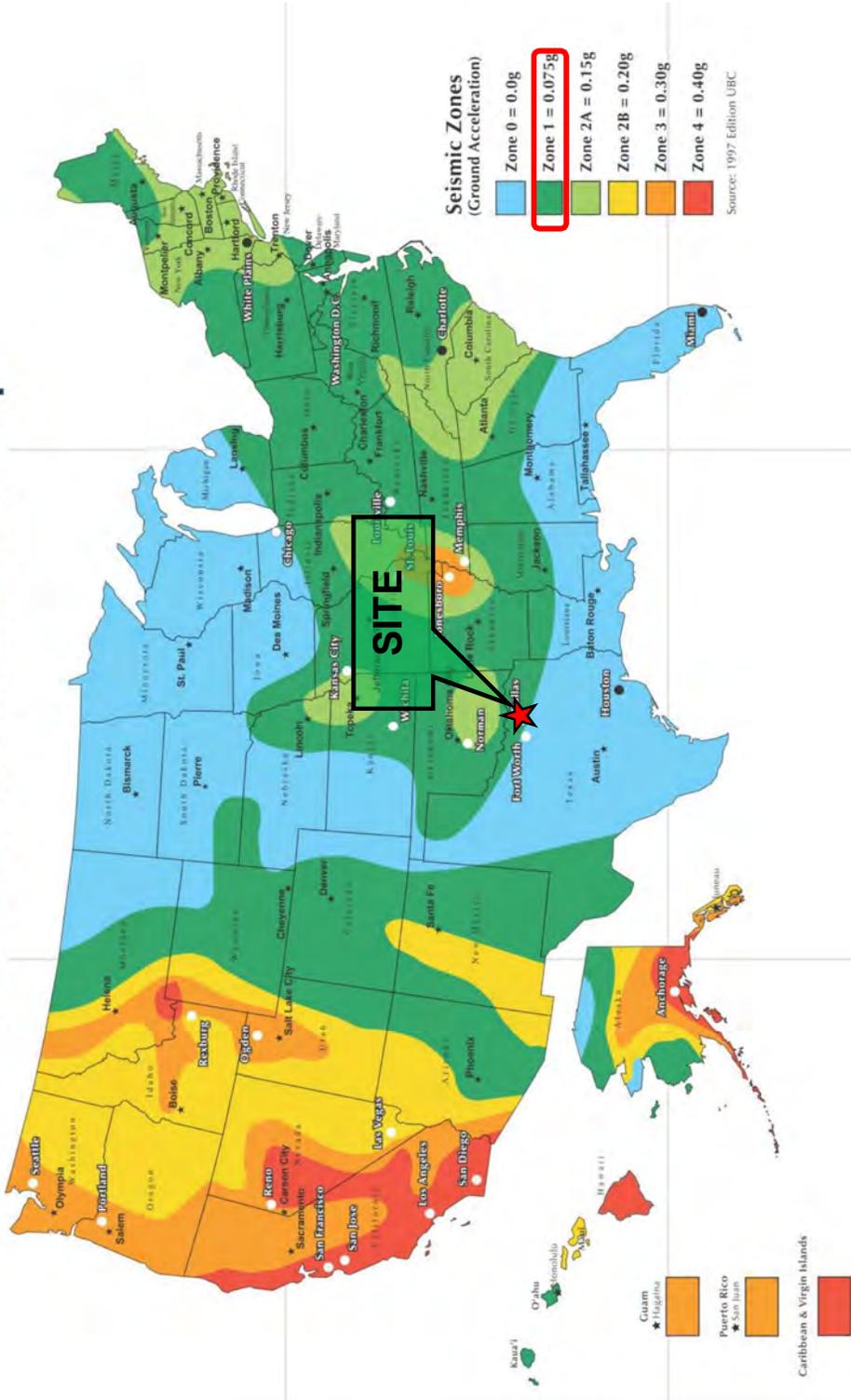
Federal Emergency Management Agency

**SOURCE: FEMA ON-LINE FLOOD MAPS AT
WWW.MSC.FEMA.GOV
FLOOD INSURANCE RATE MAP PANEL
(LOCATION APPROXIMATE)**

TERRACON PROJECT NO. FA226052



United States Seismic Zones Map



EDGEEMERE
8523 THACKERY STREET
DALLAS, TX 75225

SEISMIC HAZARD MAP - 1997



SOURCE: UBC

TERRACON PROJECT NO. FA226052

Property Condition Report

The Plaza at Edgemere ■ Dallas, TX

January 6, 2023 ■ Terracon Project No. FA226052



**APPENDIX B
PHOTOGRAPHIC DOCUMENTATION**

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #1 Monument signage at southwest corner of property.



Photo #2 East entrance and flagpole.



Photo #3 Thackery Boulevard.



Photo #4 Open courtyard and pergola located in Plaza North Expansion.



Photo #5 Fountain Courtyard, east elevation of pool building.



Photo #6 Fountain Courtyard, north elevation of pool building.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #7 Duck Pond Courtyard.



Photo #8 Putting Green Courtyard.



Photo #9 Sculpture Courtyard.



Photo #10 Duck Pond Courtyard, landscaping bridge.



Photo #11 Putting Green Courtyard.



Photo #12 Landscaping at East Parking lot. Note cracked/displaced landscaping wall.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #13 East Porte cochere.



Photo #14 Putting Green Courtyard, patio area.



Photo #15 West Porte cochere.

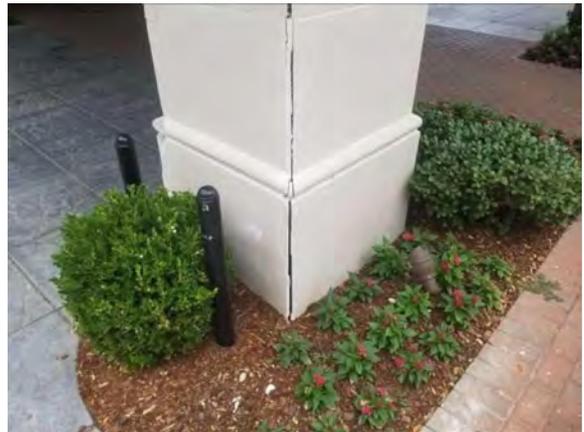


Photo #16 Damaged column at East Porte cochere.



Photo #17 Overview of the Plaza at Edgemere viewed from the North West.



Photo #18 Overview of the Plaza at Edgemere viewed from the South East.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #19 Overview of the concrete tile roofs over the residential areas.



Photo #20 Close view of concrete tile roof.



Photo #21 Close view of concrete tile roof.



Photo #22 View of OSB roof deck supported by metal framing.



Photo #23 View of broken tiles on roof. Located periodically through site.



Photo #24 View of broken tiles on roof. Located periodically through site.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #25 View of debris build up on roof. Note tree encroachment of roof.



Photo #26 View of debris build up on roof. Note tree encroachment of roof.



Photo #27 Typical gutter clogged with debris. Note tree encroachment of roof.



Photo #28 View of standing seam metal roof in roof valley.



Photo #29 Overview of modified bitumen roof over the entire Plaza building.



Photo #30 Overview of modified bitumen roof over the Plaza North Expansion.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #31 Close view of modified bitumen roof.



Photo #32 Close view of modified bitumen roof.



Photo #33 View of metal low slope roof deck.



Photo #34 View of multiple roof patches on the modified bitumen roof.

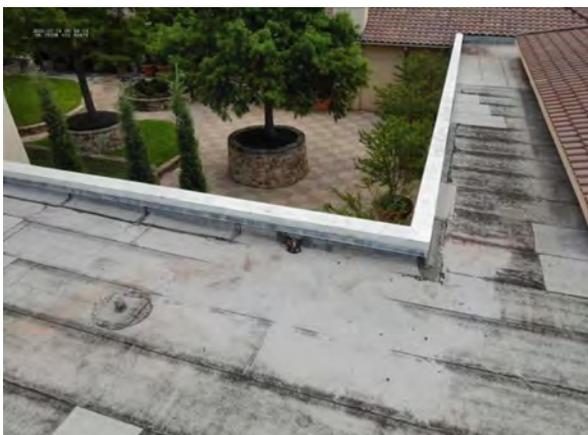


Photo #35 View of severe loss of granules on modified bitumen roof



Photo #36 View of metal debris scattered on the roof.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #37 View of staining on the modified bitumen roof.



Photo #38 View of staining on the modified bitumen roof.



Photo #39 View of staining from standing water on the modified bitumen roof.



Photo #40 View of hole in modified bitumen roof membrane base flashing.



Photo #41 View of cracking in modified bitumen membrane.

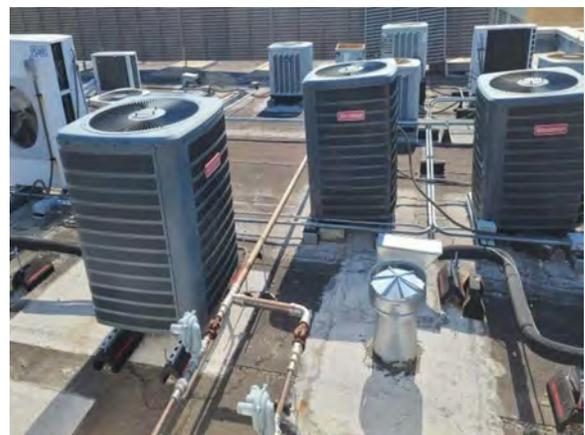


Photo #42 View of multiple roof top units.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #43 Low slope modified bitument roof drain.



Photo #44 View of water staining at the base of the chimney.



Photo #45 View of downspout with no splash block.



Photo #46 View of water staining to wall surface from scupper.



Photo #47 View of staining on gutters from overflowing water.



Photo #48 View of severely damaged gutter.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #49 View of debris clogging downspout and wall repair. Note wall repair and repainting.



Photo #50 View of staining on stucco façade.



Photo #51 View of staining on stucco façade.



Photo #52 View of damage to EIFS coping.



Photo #53 View of staining on wall.



Photo #54 View of damaged stucco façade caused by broken downspout.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #55 View of staining on ceiling.



Photo #56 View of stained ceiling tiles.



Photo #57 Joint of Phase II with Phase I in main parking structure showing crack on concrete masonry unit (CMU) wall.



Photo #58 Joint of Phase II with Phase I in main parking structure showing crack on CMU wall and water damaged. beam.



Photo #59 Crack in deck along the joint between Phase II and Phase II in main parking structure.



Photo #60 Cooling tower structure shows deterioration.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #61 Cooling tower structure shows deterioration and cracking. Close up of structural member.



Photo #62 Cooling tower structure shows deterioration.



Photo #63 Broken wall panels on floor in the cooling tower.



Photo #64 Typical cracking stucco at several locations.



Photo #65 Mortar joint crack in retaining wall.



Photo #66 Mortar joint crack in retaining wall

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #67 Repaired cracks in stucco at several locations.



Photo #68 Repaired cracks in stucco at several locations.

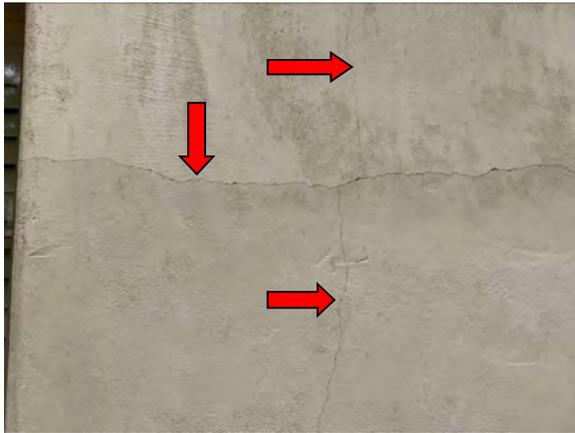


Photo #69 Random cracks in stucco.



Photo #70 Random cracks in stucco in general.



Photo #71 Scour on the joint of Phase II with Phase I above main basement.



Photo #72 Isolated crack on exterior architectural column cover in dwelling balcony.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #73 East Lobby Area, entrance to Performing Arts Center.



Photo #74 East Lobby Area, Library.



Photo #75 Typical common corridor.



Photo #76 Monument staircase.



Photo #77 Supplemental dining area.



Photo #78 Main dining room.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #79 Theater room.



Photo #80 Exercise room.



Photo #81 Overview of Cafe.



Photo #82 Kitchen area, dishwasher equipment.



Photo #83 Main kitchen area.



Photo #84 Performing Arts Center (PAC).

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #85 Typical dwelling unit interior within Edgemere independent living campus.



Photo #86 Dwelling unit interior. Isolated custom modifications reported.



Photo #87 Typical dwelling unit interior within Edgemere independent living campus. Some Custom modifications



Photo #88 Typical dwelling unit bathroom.



Photo #89 Typical dwelling unit kitchen.



Photo #90 Interior courtyard within Plaza (memory care).

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #91 Typical dwelling unit within Plaza area.



Photo #92 Typical dwelling unit kitchen within Plaza area.



Photo #93 Cooling Tower for water source heat pump system.



Photo #94 Excessive scale built-up on cooling tower fill and louvers. Note: "Cooling Tower Fill" is media (plastic typically) used to exchange heat between the entering and leaving cooling tower water with the air being blown across it



Photo #95 Original to construction electrical disconnect for cooling tower fan.

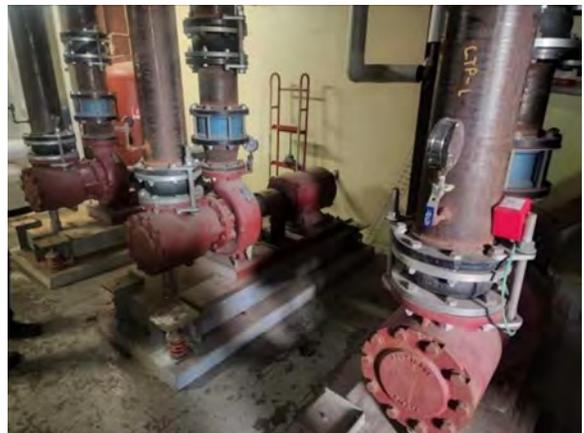


Photo #96 Cooling tower water pumps.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #97 Auxiliary heating hot water boilers for water source heat pump system.



Photo #98 Electrolysis corrosion on copper water distribution piping.



Photo #99 Close-up of excessive electrolysis corrosion that may lead to leaking pipe soon.



Photo #100 Domestic hot water heaters.



Photo #101 Storage tank for domestic hot water.



Photo #102 Plate-frame heat exchanger.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052

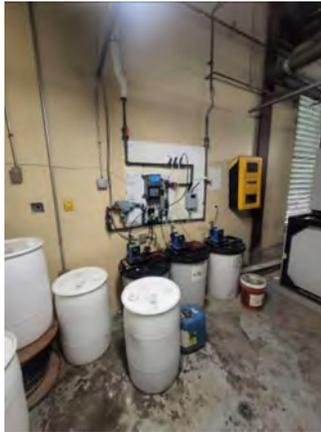


Photo #103 Automated chemical feed system for cooling tower.



Photo #104 Motor control center in central plant.



Photo #105 Backflow preventer for main water distribution.



Photo #106 One of eight main electrical service gear panel boards.



Photo #107 Pool area.



Photo #108 Pool circulation system.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #109 Leaking pool circulation pump.



Photo #110 Pool water heater.



Photo #111 Dectron dehumidification system for pool area.



Photo #112 Ceiling hung water source heat pumps (WSHPs) for dining and other common areas.



Photo #113 Older DX split system condensing units on the roof.



Photo #114 Older condensing unit with missing condenser fan and motor.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #115 Newer DX split system condensing units.



Photo #116 Packaged DX roof-mounted unit (RTU) for Greenhouse.



Photo #117 Newer WSHP (horizontal orientation) in ceiling space above shower of dwelling unit.



Photo #118 Newer WSHP (vertical orientation) in mechanical closet for dwelling unit.



Photo #119 Older WSHP (vertical orientation) in mechanical closet for dwelling unit.



Photo #120 Condenser water piping and auto balancing valves for WSHP.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #121 Close-up view of auto balancing valve for WSHP.



Photo #122 Stand-alone thermostat for WSHP and DX split systems in dwelling units.



Photo #123 Typical dwelling shower.



Photo #124 Typical dwelling bathtub with accessibility hand rails.



Photo #125 Typical dwelling bathtub drain.



Photo #126 Typical dwelling kitchen dual-drain sink with garbage disposal.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #127 Typical dwelling bathroom sink.



Photo #128 Typical single-drain kitchen sink.



Photo #129 Typical dwelling kitchen exhaust system with built-in to over range microwave.



Photo #130 Typical exhaust fan in dwelling bathroom.



Photo #131 Typical lighting control switches.



Photo #132 Typical dwelling electrical distribution panel.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #133 Typical natural gas-fired fire place.



Photo #134 Typical plumbing connections for dwelling washer.



Photo #135 GFCI receptacles not provided under typical dwelling kitchen sink for garbage disposal.



Photo #136 Typical hydraulic elevator equipment.



Photo #137 Typical elevator.



Photo #138 Dry-type fire suppression riser for parking garage.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #139 Fire sprinkler suppression pump.



Photo #140 Fire pump controller.



Photo #141 Spare fire sprinkler head storage case.



Photo #142 Fire alarm control panel.



Photo #143 Typical fire extinguisher.



Photo #144 Typical electrical distribution panels for common areas.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #145 Typical step-down transformer for lighting and plug loads.



Photo #146 Reliable Controls field controllers for central plant.



Photo #147 Typical audio/visual strobe and speaker.

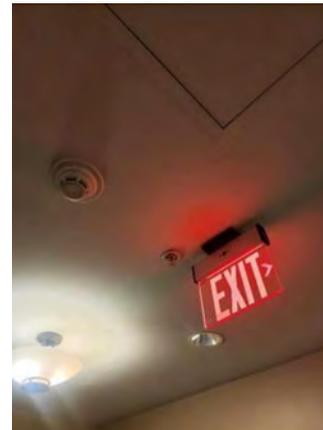


Photo #148 Path of egress exit sign with smoke detector and fire sprinkler head.



Photo #149 Typical utility transformer and electric meter for electrical service to the building.



Photo #150 Main natural gas meter.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #151 Typical fire department connections for building.



Photo #152 Emergency generator for fire and life safety systems.



Photo #153 Water meter access.



Photo #154 Typical sanitary sewer clean out for building.

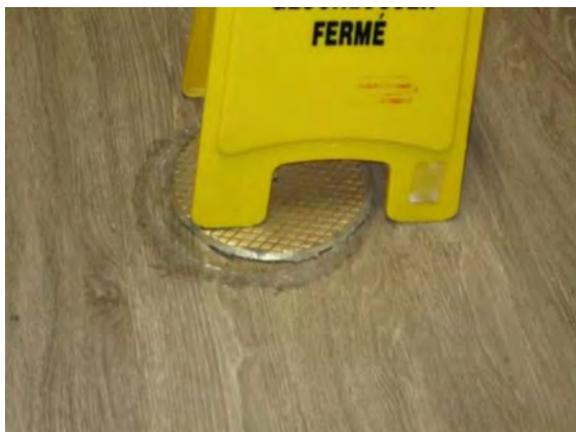


Photo #155 Loose sanitary clean out cover near kitchen.



Photo #156 Cooking area exhaust hood with fire suppression system nozzles.

Photographic Documentation

The Plaza at Edgemere ■ Dallas, Texas

Date Taken: July 13th & 14th, 2022 ■ Terracon Project No. FA226052



Photo #157 Kitchen fire suppression system.



Photo #158 Typical area pole-lighting found on site.



Photo #159 Typical parking structure exhaust fans.



Photo #160 Typical parking structure CO sensor for ventilation system.



Photo #161 Smoke damper stuck open in parking structure.



Photo #162 Outside air intake for parking structure ventilation.

Landlord's

Exhibit 5-G

for February 21-23, 2023 hearing

EXHIBIT G



plante moran | LIVINGforward

2021 Facility Assessment Report

LifeSpace - Edgemere

October 15, 2021



Nick Harshfield
CFO
Lifespace Communities, Inc.
4201 Corporate Drive
West Des Moines, IA 50266

October 15, 2021

Dear Mr. Harshfield,

Plante Moran Living Forward (PMLF) was engaged by Lifespace Communities (Lifespace) to conduct a facility assessment of the Edgemere Community in Dallas, TX. The goal of this assessment is to provide Lifespace with a summary of the condition of the community and develop a capital planning template with three major categories: critical need/life-safety, deferred maintenance, and property enhancements.

This assessment was intended to be at a high level; it was not exhaustive, nor did it include any destructive investigation. We conducted our assessment through an on-site visit, interviews with Edgemere staff, and review of Lifespace-provided documentation. We wish to acknowledge the Lifespace staff for their time, assistance, and cooperation in providing information for the preparation of this assessment.

The following report details these findings and their associated preliminary budgets. It is our sincerest hope that this document is found to be beneficial to Lifespace.

I would be happy to answer any questions that may arise as well as provide clarifications to any items found herein. Please feel free to contact me with any questions or concerns regarding this report.

Sincerely,

Plante Moran Living Forward

A handwritten signature in black ink that reads "Kyle DeHenau".

Kyle DeHenau
Vice President



Table of Contents

Executive Summary Section A

Overview	5
Summary of Findings	5
Condition Summary	5
Summary of Costs by Priority	6
Summary of Costs by Category	7

Approach Section B

Information Gathering	9
Purpose	9
Scope	9
Condition/Priority Definitions	10
Opinion of Probable Cost	11
Statement of Limitations	12

Property Overview Section C

Building Location Map	14
Property Listing	14

Building Assessment Section D

IL/AL/SNF/MC	
Building Information	16
Floor Plans	17-28
Current Conditions	29-86
Cost Detail	87

EDGEMERE

Facility Assessment

8523 Thackery St.
Dallas, TX 75225

Nick Harshfield, CFO
Nick.Harshfield@lifespacecommunities.com

Plante Moran Living Forward
10 S. Riverside Plaza, 9th Floor
Chicago, IL 60606



Section A

Executive Summary



SECTION A

Executive Summary

Overview

Plante Moran Living Forward (PMLF) performed this property assessment at the request of **Lifespace Communities (Lifespace)** for the **Edgemere Community**.

Date(s) of Assessment: 7/20/2021 & 7/21/2021

Community Staff Present: James Oates, Chris Soden

PMLF Staff Present: Kyle DeHenau

Architect/Engineer Staff Present: NA

Number of Buildings: 1

Year Built: 2002

Summary of Findings

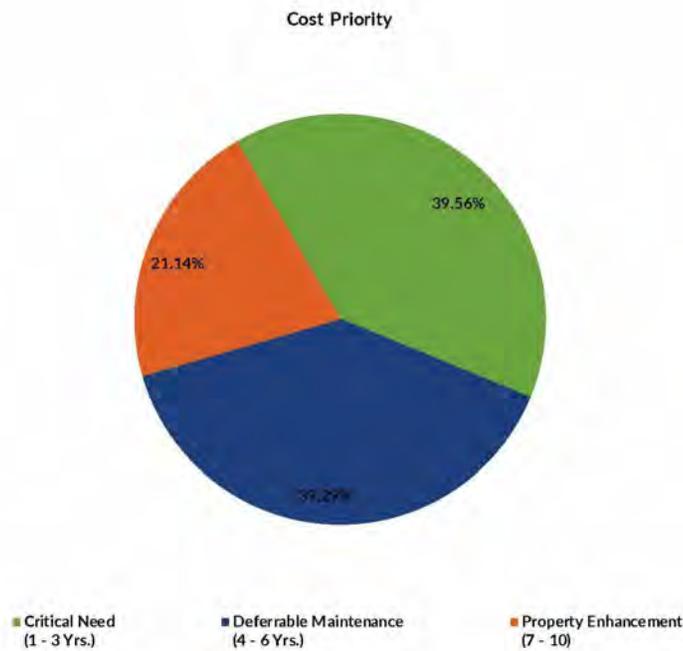
Overall, The Edgemere Community was found to be in **FAIR** condition as many building envelope materials, interior finishes, and mechanical systems would require a significant investment over a 10-year capital improvement effort. The building was well maintained, and most expenditures included are due to building age and specific materials reaching the end of their useful life expectancy. Various recommendations have been made throughout this report and are accounted for within the facility assessment capital planning improvement budget that is to be implemented over a period of 1-10 years.

Condition Summary

EDGEMERE SUMMARY OF CONDITION								
Bldg #	Name of Facility	1.0 Site Work	2.0 Building Envelope	3.0 Interior Renovations	4.0 Plumbing Systems	5.0 HVAC Systems	6.0 Electrical Systems	9.0 Furniture & Equipment
1	Edgemere	Good	Poor	Good	Fair	Fair	Good	Good

SECTION A | Executive Summary

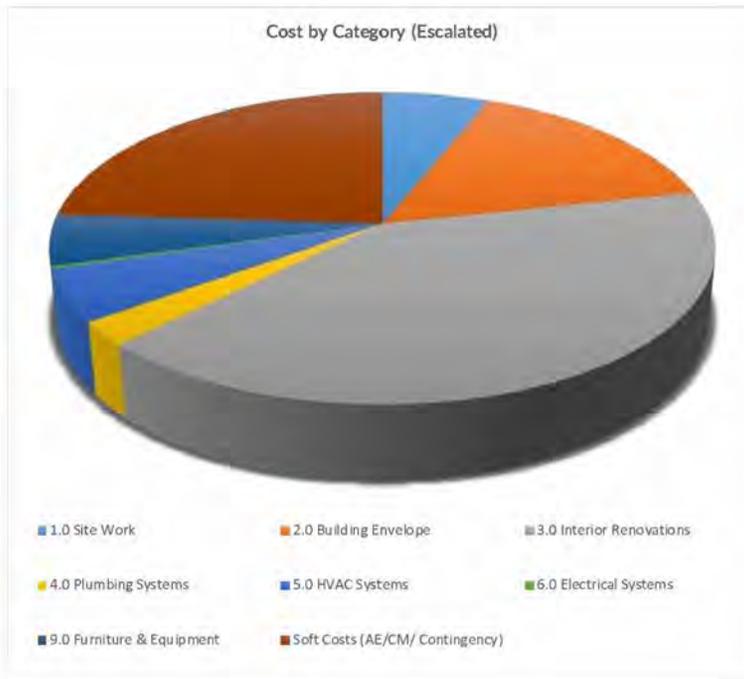
Summary of Costs by Priority – Edgemere



EDGEMERE SUMMARY OF COSTS BY PRIORITIZATION FACILITY ASSESSMENT					
Bldg #	Name of Facility	Critical Need (1 - 3 Yrs.)	Deferrable Maintenance (4 - 6 Yrs.)	Property Enhancement (7 - 10)	Complete Cost with Escalation
1	Edgemere	\$20,784,403	\$20,642,848	\$11,107,965	\$52,535,217
	TOTAL BUILDINGS BUDGET	\$20,784,403	\$20,642,848	\$11,107,965	\$52,535,217

SECTION A | Executive Summary

Summary of Costs by Category - Edgemere



EDGEMERE											
SUMMARY OF COSTS BY SCOPE OF WORK (ESCALATED)											
Bldg #	Name of Facility	Net Present Value	1.0 Site Work	2.0 Building Envelope	3.0 Interior Renovations	4.0 Plumbing Systems	5.0 HVAC Systems	6.0 Electrical Systems	9.0 Furniture & Equipment	Soft Costs (AE/CM/Contingency)	Total Cost (Escalated)
1	Edgemere	\$44,476,923	\$3,178,077	\$8,158,892	\$21,528,063	\$1,289,736	\$2,847,960	\$143,752	\$2,774,431	\$12,614,304	\$52,535,217
	TOTAL	\$44,476,923	\$3,178,077	\$8,158,892	\$21,528,063	\$1,289,736	\$2,847,960	\$143,752	\$2,774,431	\$12,614,304	\$52,535,217



Section B

Approach

SECTION B | Approach

Information Gathering

To facilitate the development of this assessment, PMC completed the following tasks:

- Conducted interviews with James Oates on July 20th, 2021
- Walked the facilities with James Oates and Chris Soden on July 20th and 21st, 2021
- Photographed the buildings' general conditions and to illustrate the specific observed deficiencies
- Reviewed the Lifespace-provided floor plans and documents.

Purpose

The purpose of this assessment is as follows:

- Observe and document readily visible potential site, materials, and building system defects that might significantly affect the value of the buildings and properties
- Communicate conditions identified that may have a significant impact on the future operation of the buildings
- Assist Lifespace's leadership in identifying the buildings' critical needs in order to provide a rough order of magnitude of potential costs for capital improvement planning

Scope

This assessment report is based on community-provided information and site visit during which PMLF performed a visual, nonintrusive, and nondestructive evaluation of various external and internal building components. This assessment is not a building code, safety, regulatory, or environmental compliance inspection. An opinion of probable cost was developed based on the floor plans provided by Lifespace. Quantities and assumptions on construction methods and details are based off select building plans dated 11/16/99 and 1/30/06.

PMLF observed representative samples of the major building components and the physical conditions of the following:

- Site conditions
- Building structure
- Architectural (interior finishes)
- Mechanical and electrical systems
- Plumbing system – Observations did not include collection or testing of water samples
- Fire protection

SECTION B | Approach

Condition Definitions

Good (G)

Observed to be of average to above-average condition for the building system or material assessed, with consideration of its age, design, and geographical location. Generally, other than normal maintenance, no work is recommended or required.

Fair (F)

Observed to be of average condition for the building system evaluated. Satisfactory; however, some short-term and/or immediate attention is required or recommended (primarily due to normal aging and wear of the building system) to return the system to a good condition.

Poor (P)

Observed to be of below average condition for the building system evaluated. Requires immediate repair, significant work, or replacement is anticipated to return the building system or material to an acceptable condition.

Priority Definitions

Critical Need (CN)

Items that through our observations or discussions with the community may require capital expenditure **within the next 1 to 3 years** by virtue of current condition, remaining useful life, or the community's priorities.

Deferred Maintenance (DM)

These are items that through our observations or discussions with the community may require capital expenditure **within the next 4 to 6 years** by virtue of current condition, remaining useful life, or the community's priorities.

Property Enhancement (PE)

These are items that through our observations or discussions with the community may require capital expenditure **within the next 7 to 10 years** by virtue of current condition, remaining useful life, or the community's priorities.

SECTION B | Approach

Opinion of Probable Cost

Based upon observations during our site visit and information received from our interviews with building users, which for the purpose of this report was deemed reliable, PMLF prepared general scope opinions of probable cost based on appropriate remedies for the deficiencies noted. Such remedies and their associated cost were considered commensurate with the subject's position in the market and prudent expenditures. These opinions are for components of systems exhibiting significant deferred maintenance and existing deficiencies requiring major repairs or replacement. Repairs or improvements that could be classified as cosmetic, a decorative part or parcel of a building renovation program, routine, or normal preventative maintenance were included as property enhancements. Costs provided are based on mid-level commercial pricing.

Our intent in this report is to outline material physical deficiencies and the corresponding opinion of probable costs that are commensurate with the complexity and age of the buildings. Opinions of probable costs that are a threshold amount of approximately \$1,000 or less are omitted from our review.

Replacement and repair preliminary budgets are based on approximate quantities. Specific building square footages are estimates based on the information provided by LifeSpace. A detailed inventory of quantities for cost estimating is not part of the scope of this report. Budgets were derived using Metro Detroit area material and labor costs. As this report projects costs over the next 10 years, PMLF utilized a reasonable cost escalation factor for these costs based on the anticipated time of improvement implementation.

Please note that since the budget values in this report are conceptual values only, and do not represent hard-bid market pricing, our opinions of probable costs will likely vary from actual market conditions. These conceptual budget values are intended for a high-level planning approach by LifeSpace in consideration for future renovations of the aforementioned buildings. We highly recommend that, if any of the recommendations are to move forward accordingly, LifeSpace (a) have a formal design completed by a registered architectural or engineering firm; (b) in conjunction with its registered architectural or engineering firm and construction professional, develop a refined cost estimate; and (c) undergo the formal competitive bid process per the requirements set forth.

SECTION B | Approach

Statement of Limitations

This assessment report represents a statement of the physical condition of the buildings and properties based upon visual site observation. It applies only to those portions of the property, items, and equipment that PMLF staff were able to visually observe. Walls and ceilings were not opened to observe covered, hidden, or concealed conditions. PMLF's assessment of plumbing systems did not include the collection or testing of water samples to determine water quality. The assessment of mechanical systems and equipment is based on general observations of condition and age, and not a full diagnostic or inspection by a certified maintainer. In addition, PMLF did not sample any property components or test nonfunctioning equipment at the time the assessment was conducted. Minimal as-built or record drawings and specifications were available only to the extent described in this report. PMLF's assessment, analysis, and recommendations are, in whole or in part, dependent on the information provided by LifeSpace and other third parties. PMLF cannot provide an opinion on the reliability of such information, and inaccuracies in such information may impact our assessment, analysis, and recommendations.

This assessment may identify items by third-party architects that do not appear to be in general conformance with the Title III requirements; correction of these reported items may not bring the property into total compliance with the Americans with Disabilities Act (ADA). While opinions of cost to correct or remove noted barriers are provided herein, they do not constitute an opinion that elimination of the barriers is "readily achievable" and not an "undue burden" as defined by the ADA. The owner must determine this issue. Such opinions are subject to the limitations on opinions of probable cost set forth in the section titled "Opinion of Probable Cost." While PMLF will communicate items of concern regarding compliance with Title III or other codes our staff has observed, PMLF makes no representation that the identified items of concern are actual code violations or are inclusive of any and all potential code violations. This assessment is not a building code, safety, regulatory, or environmental compliance inspection.

This assessment does not include any services (including the collection or testing of samples) related to known or unknown "Constituents of Concern." Constituents of Concern shall include: (i) asbestos, (ii) petroleum, (iii) radioactive material, (iv) polychlorinated biphenyls (PCBs), (v) hazardous waste, (vi) lead, or (vii) any substance, product, waste, or other material listed under any other federal, state, or local (meaning any applicable jurisdiction) statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material. PMLF is not and shall not be required to be an "owner," "arranger," "operator," "generator," or "transporter" of any Constituents of Concern.

This report was prepared for and intended solely for the informational use of LifeSpace and may not be used or relied upon by another party without the express written authorization of PMLF.

The contents of the report are based on the relevant information available and the condition observed at the time of issuance. Information and conditions are subject to change, and PMLF assumes no responsibility to update this report in the event of such change.

This assessment report should be read in its entirety. Information provided in the various sections is complementary and in some instances provides additional explanation of information concerning the assessment. Therefore, interpretations and conclusions drawn by reviewing only specific sections are the sole responsibility of the user.

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Site): GOOD



Interior Courtyard Pond



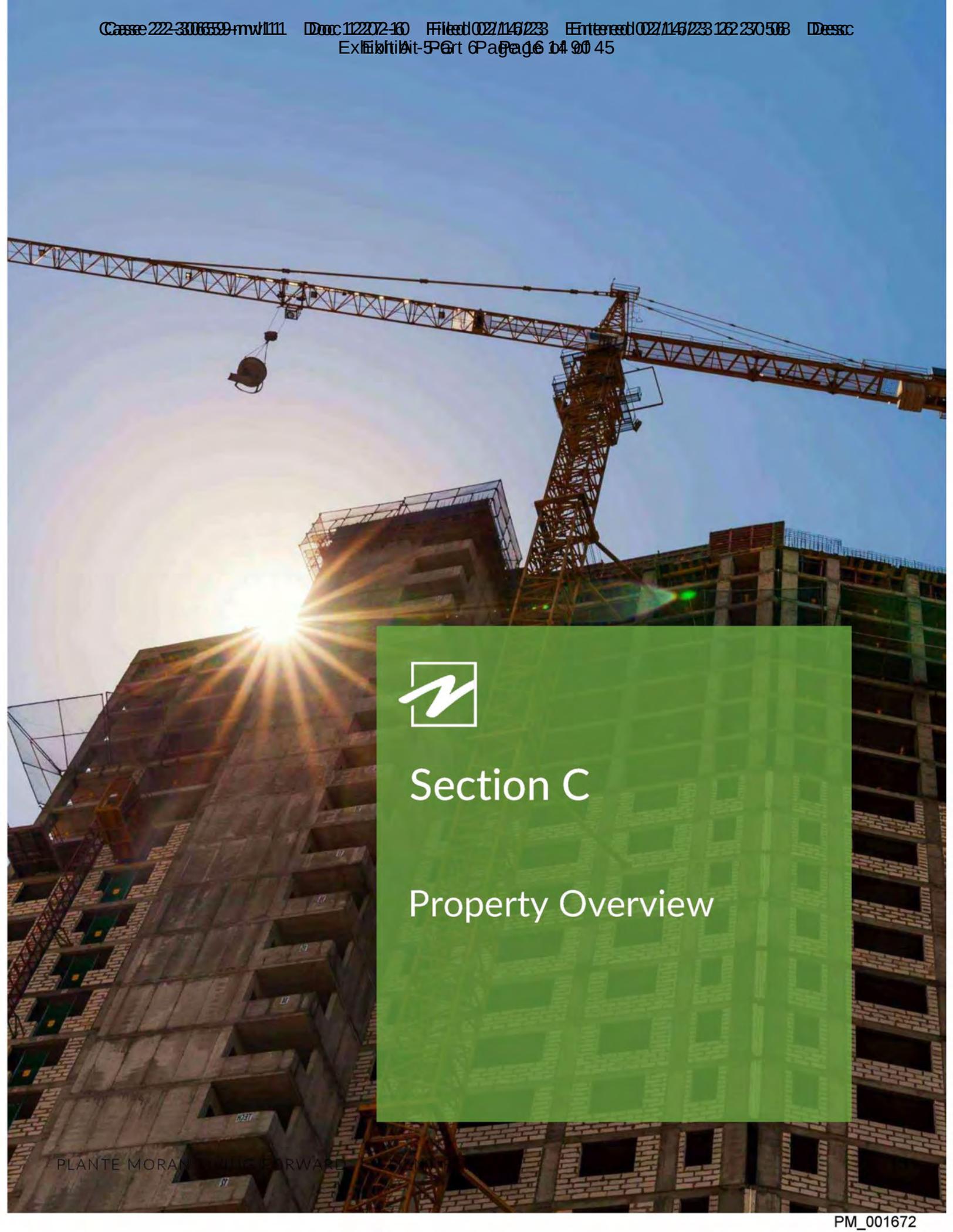
Interior Courtyard Putting Green



Example of Raised Tree Planter



Cracking Tree Planter Due to Expansion



Section C

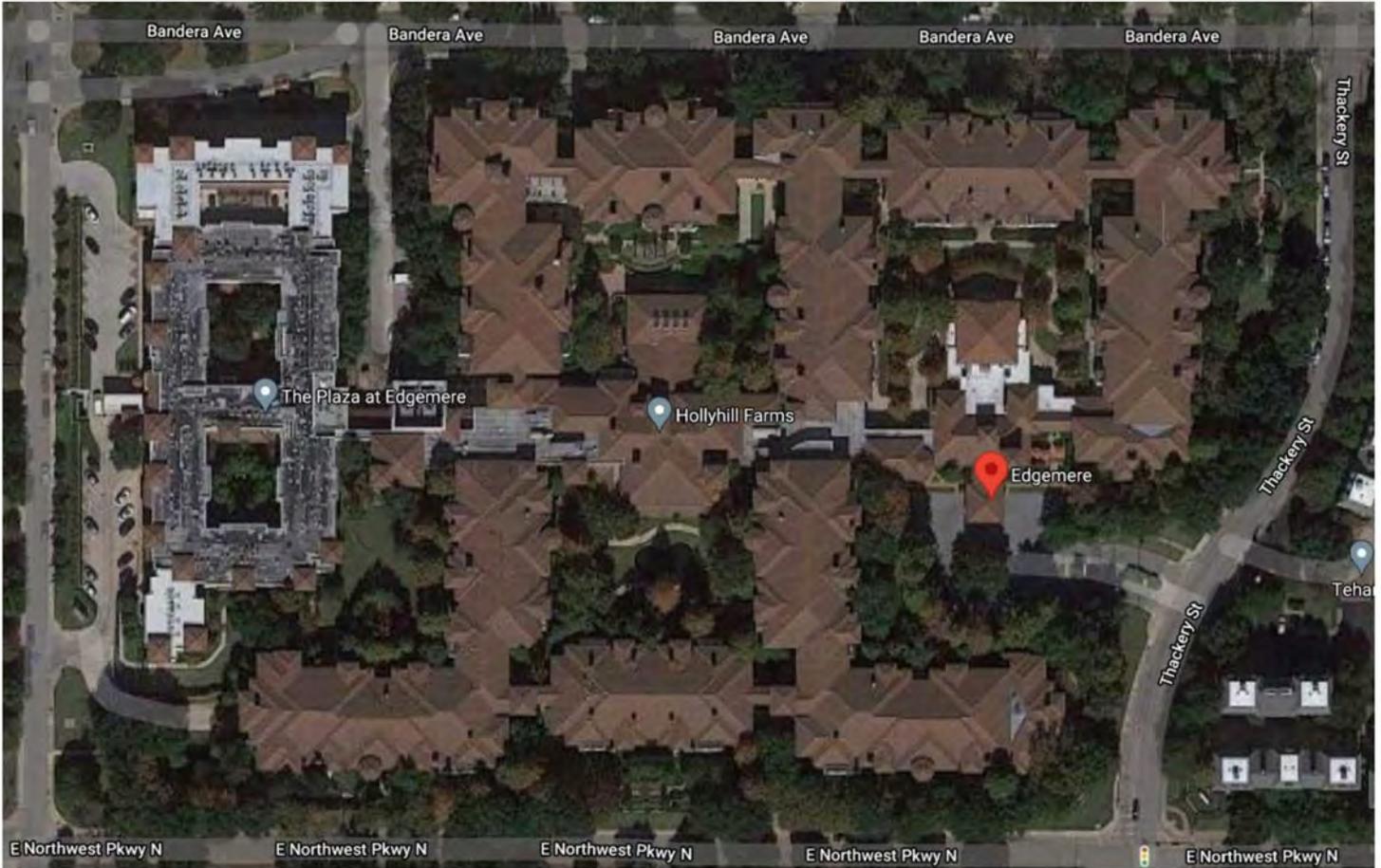
Property Overview



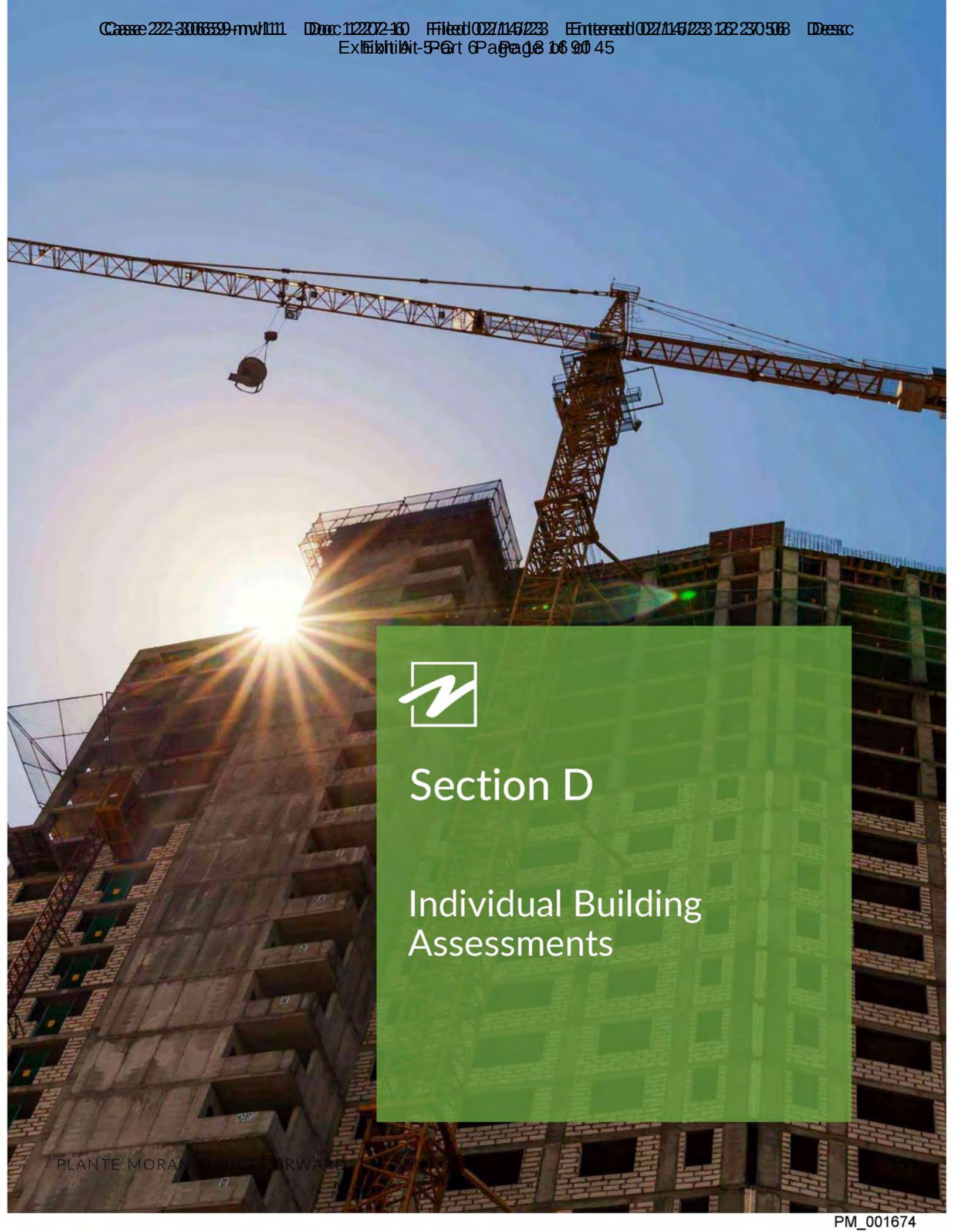
SECTION C

Property Overview

Building Location Map



Property Listing



Section D

Individual Building Assessments



SECTION D

Building Assessment

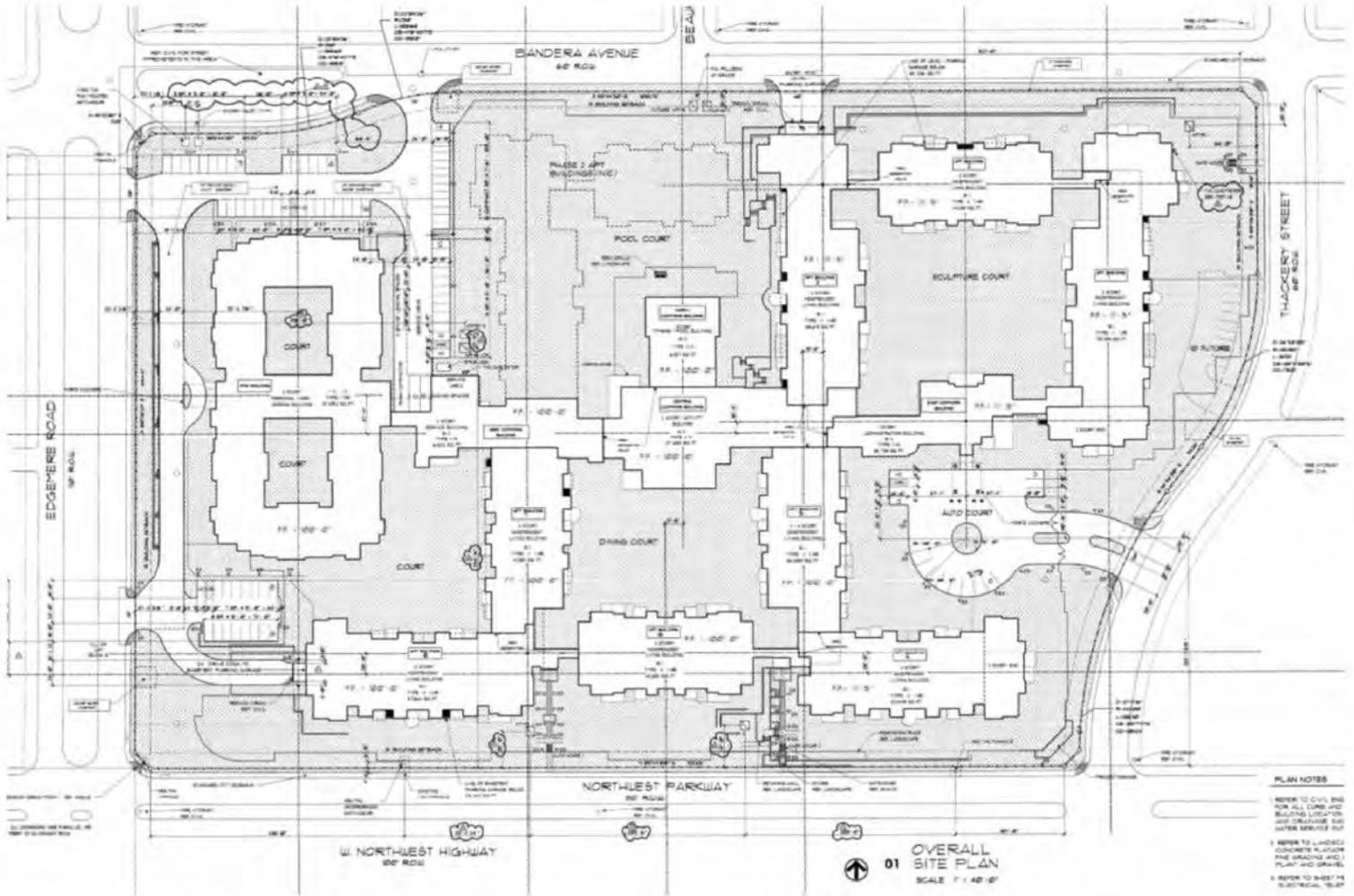
IL/AL/SNF/MC Building

Address:	8523 Thackery St., Dallas, TX 75225
Year Built:	2002
Site Area	15.8 Acres
Square Footage:	1,200,000 SF (Estimated)
Stories:	4
Basement:	Yes - Parking Garage
Current Usage:	IL/AL/SNF/MC
Number of Rooms:	304 IL, 68 AL, 45 MC, 87 SNF
Current Occupancy:	Unknown
Parking Spaces:	First Level Garage Parking + Site Parking
Elevator(s):	15 (Dover and Schindler)
Exterior Façade:	Stucco 7 EIFS
Structure:	CIP Concrete Structure w/ Metal Deck and Concrete Decks
Roof:	Tile and built up bituminous
Fire Protection:	Yes
Type of Heating	FCU's, Chillers, Boilers, Water Source Heat Pumps
Type of Cooling	Forced air
Electrical Service	440 V 3 Phase
Water Service	Municipal Provided
Hot Water	4 Domestic Hot Water Boilers

SECTION D | Building Assessment

IL/AL/SNF/MC Building

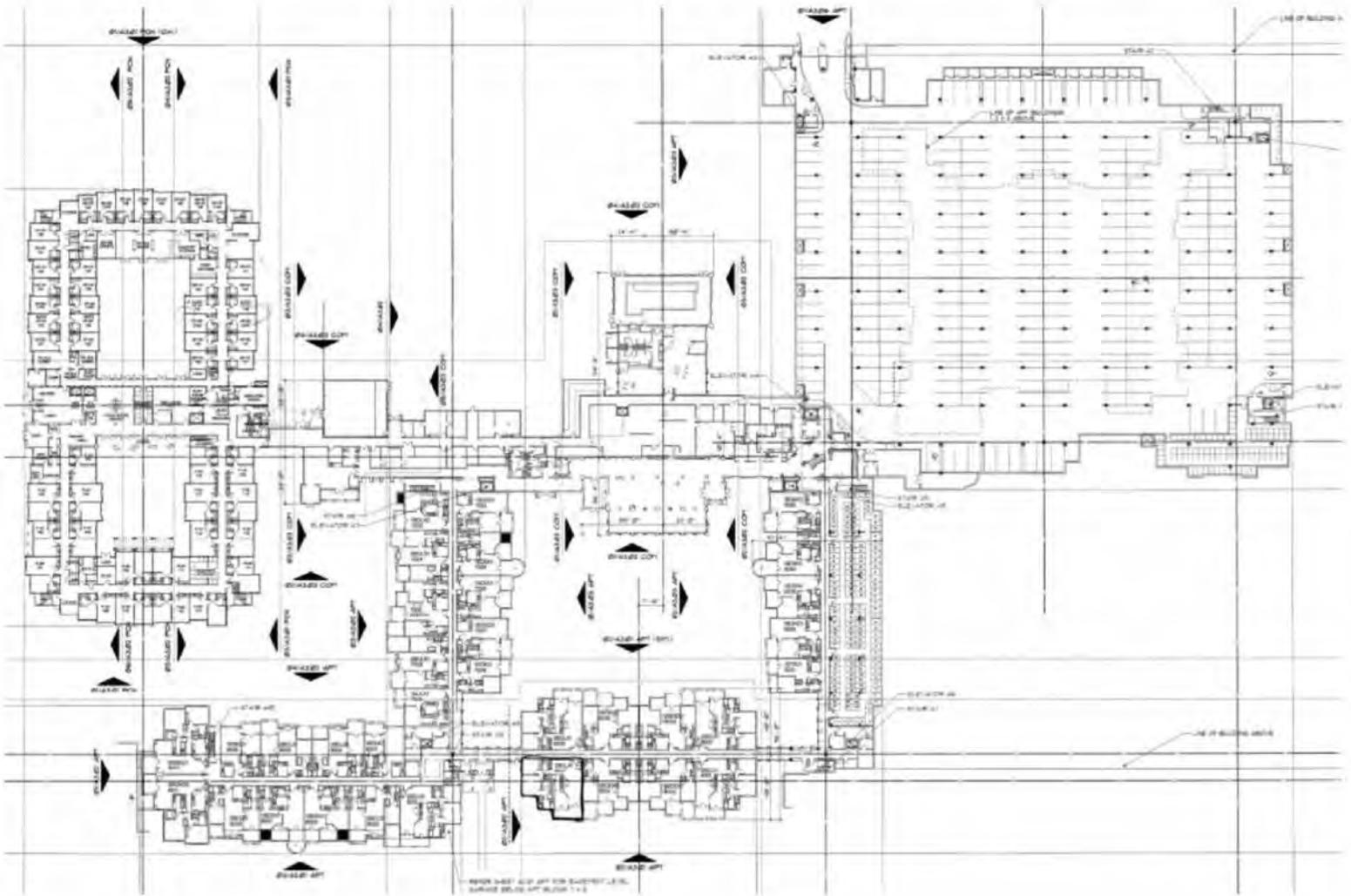
Site Plan:



SECTION D | Building Assessment

IL/AL/SNF/MC Building

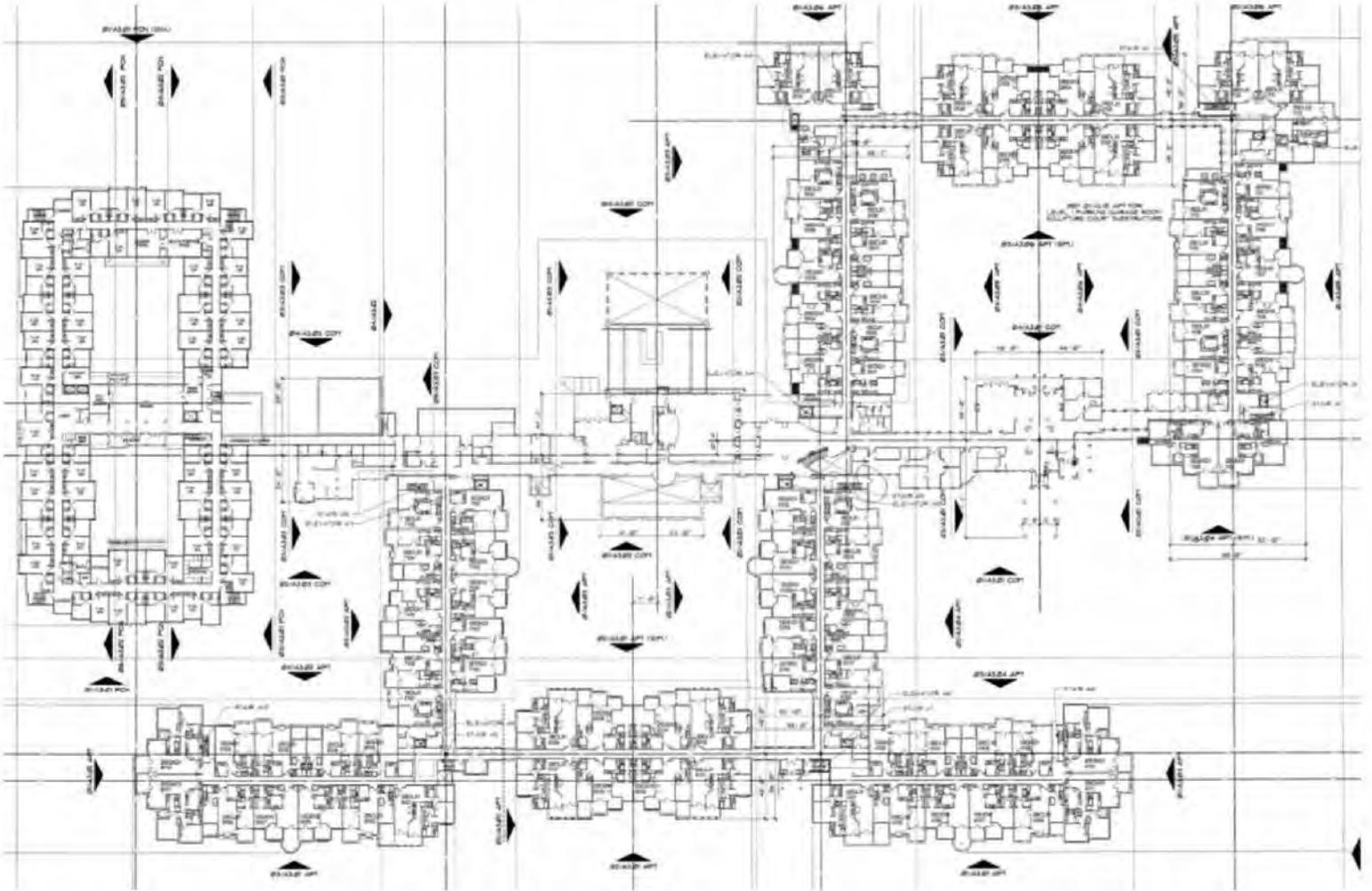
Ground Level Plan:



SECTION D | Building Assessment

IL/AL/SNF/MC Building

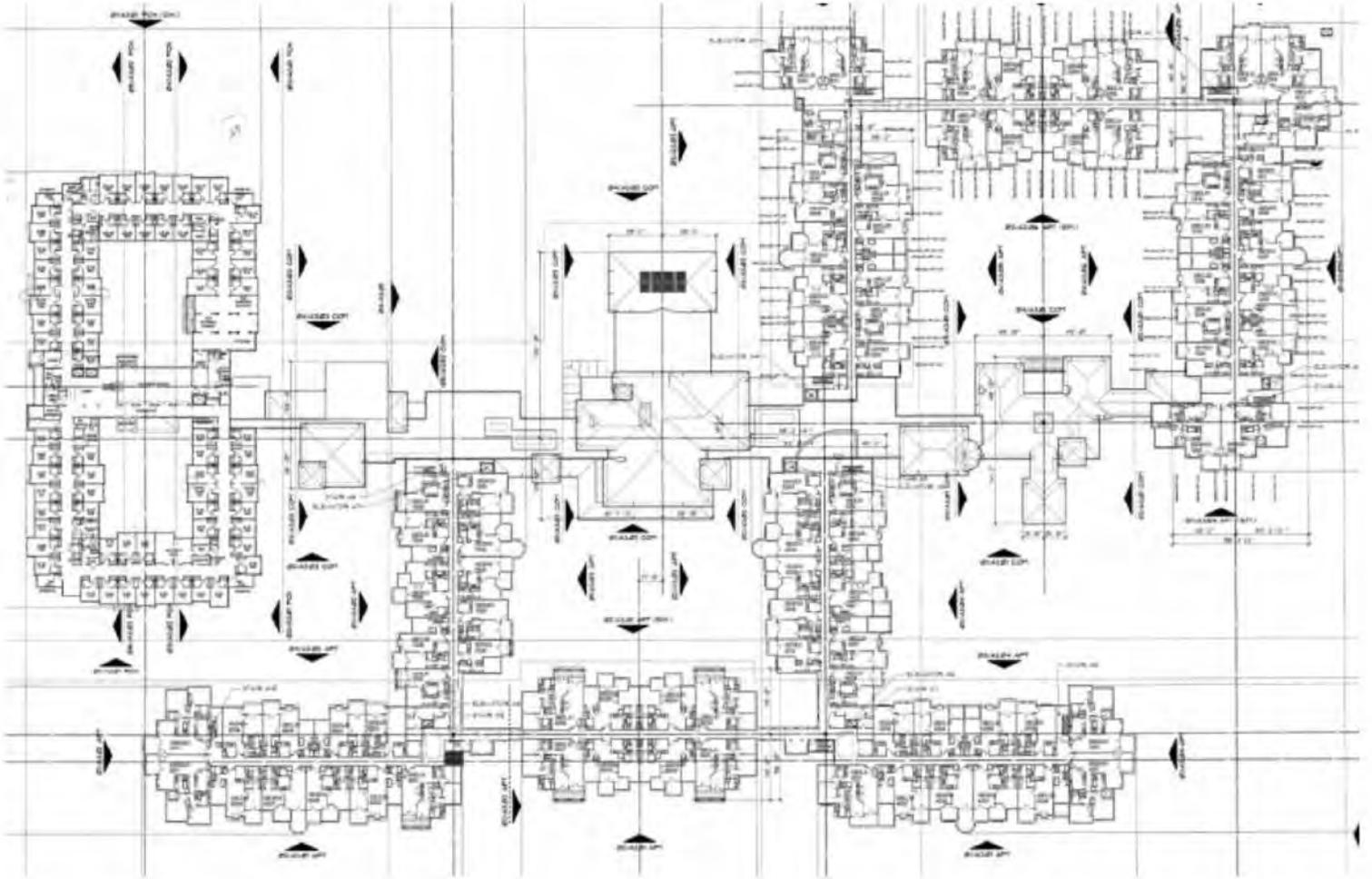
2nd Level Plan:



SECTION D | Building Assessment

IL/AL/SNF/MC Building

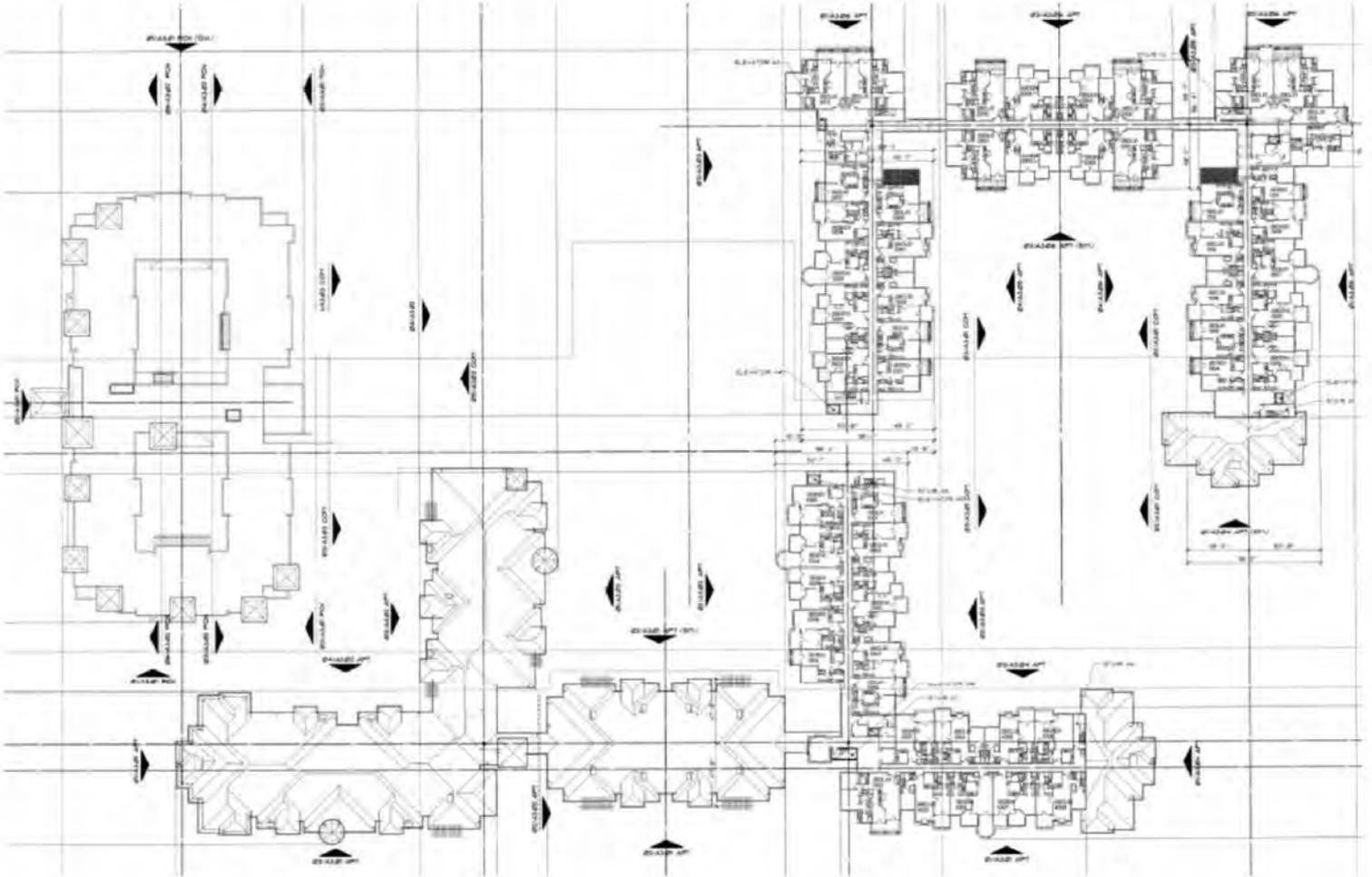
3rd Level Plan:



SECTION D | Building Assessment

IL/AL/SNF/MC Building

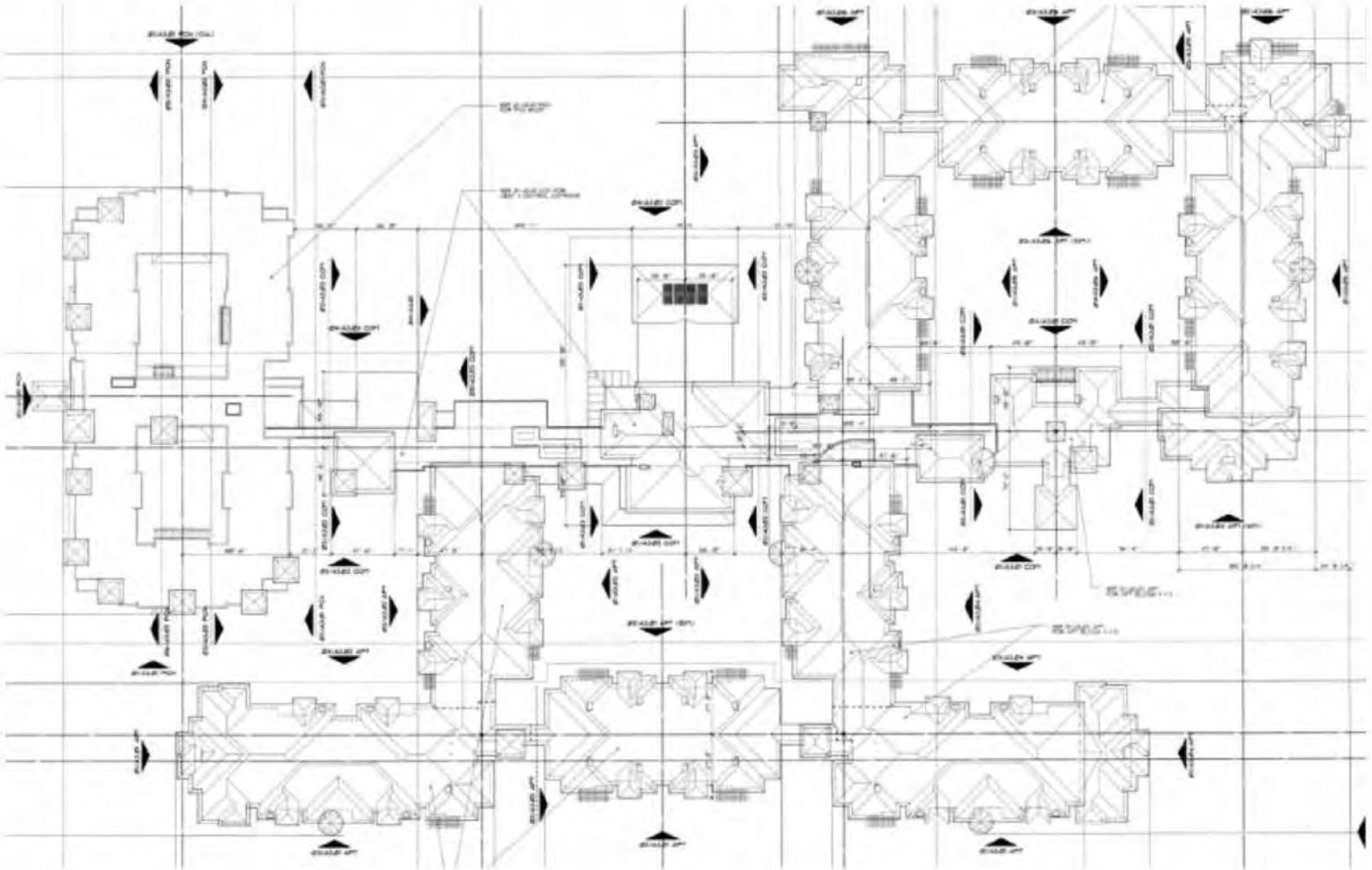
4th Level Plan:



SECTION D | Building Assessment

IL/AL/SNF/MC Building

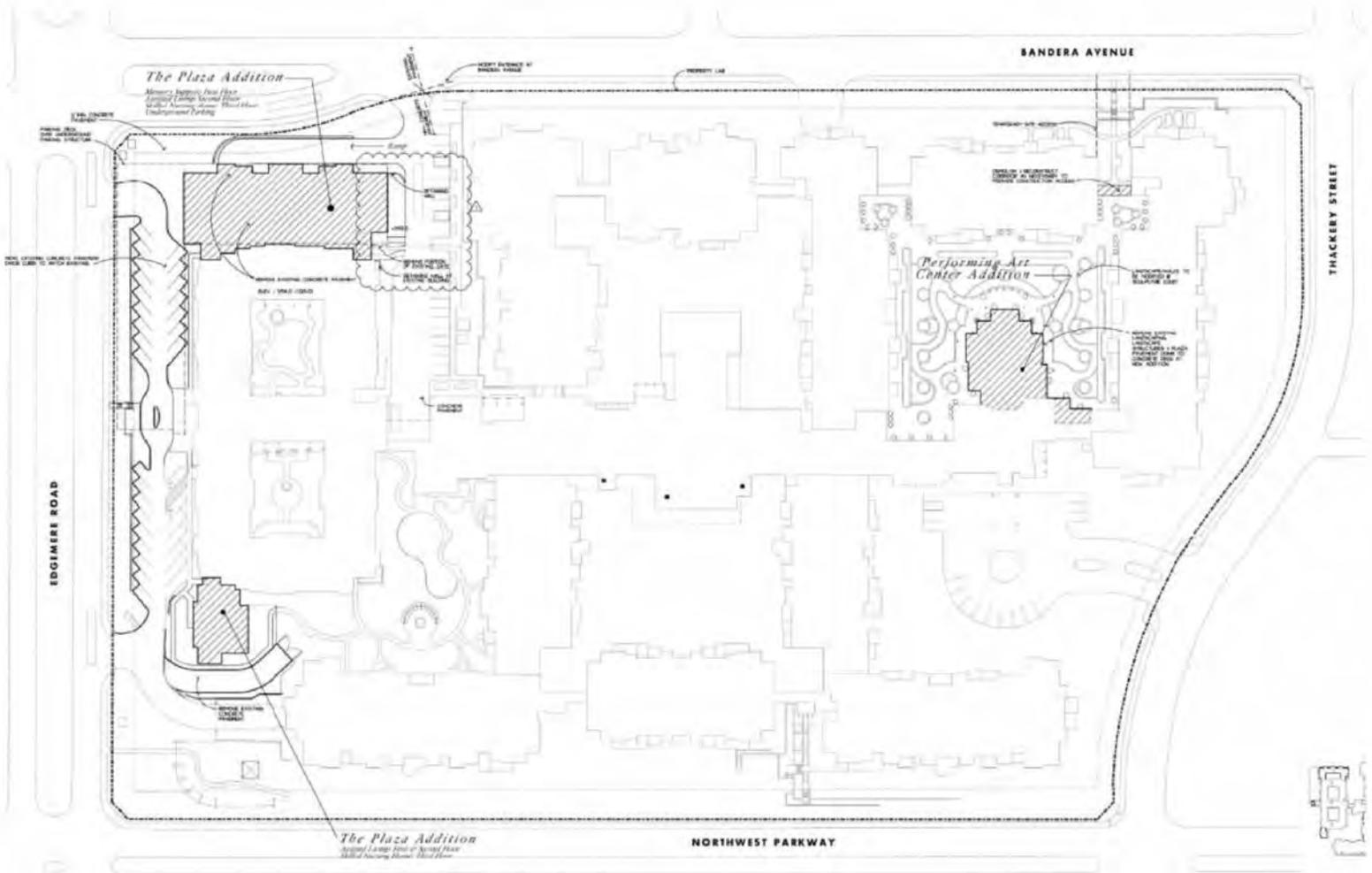
Roof Plan:



SECTION D | Building Assessment

IL/AL/SNF/MC Building

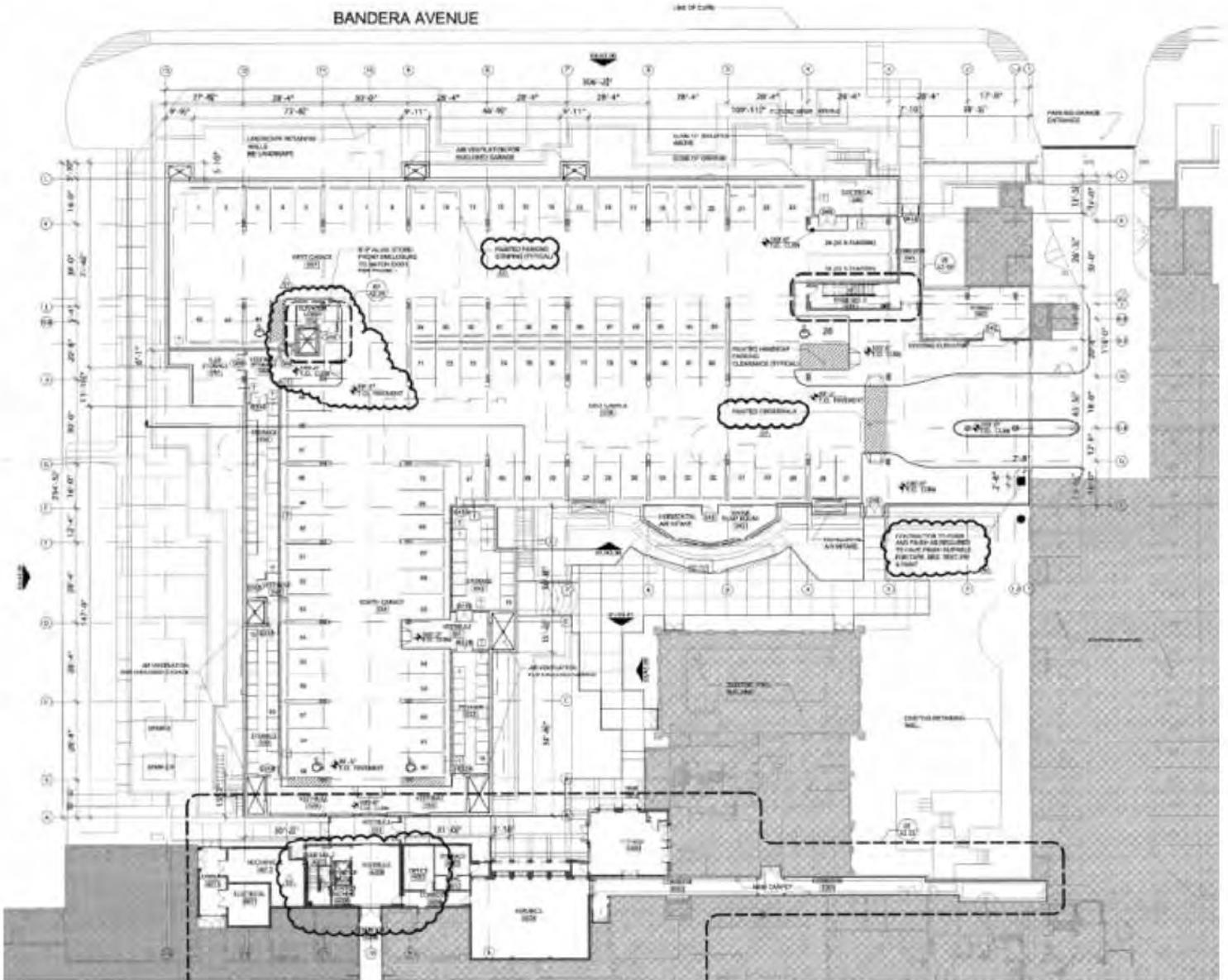
Overall Additions Plan:



SECTION D | Building Assessment

IL/AL/SNF/MC Building

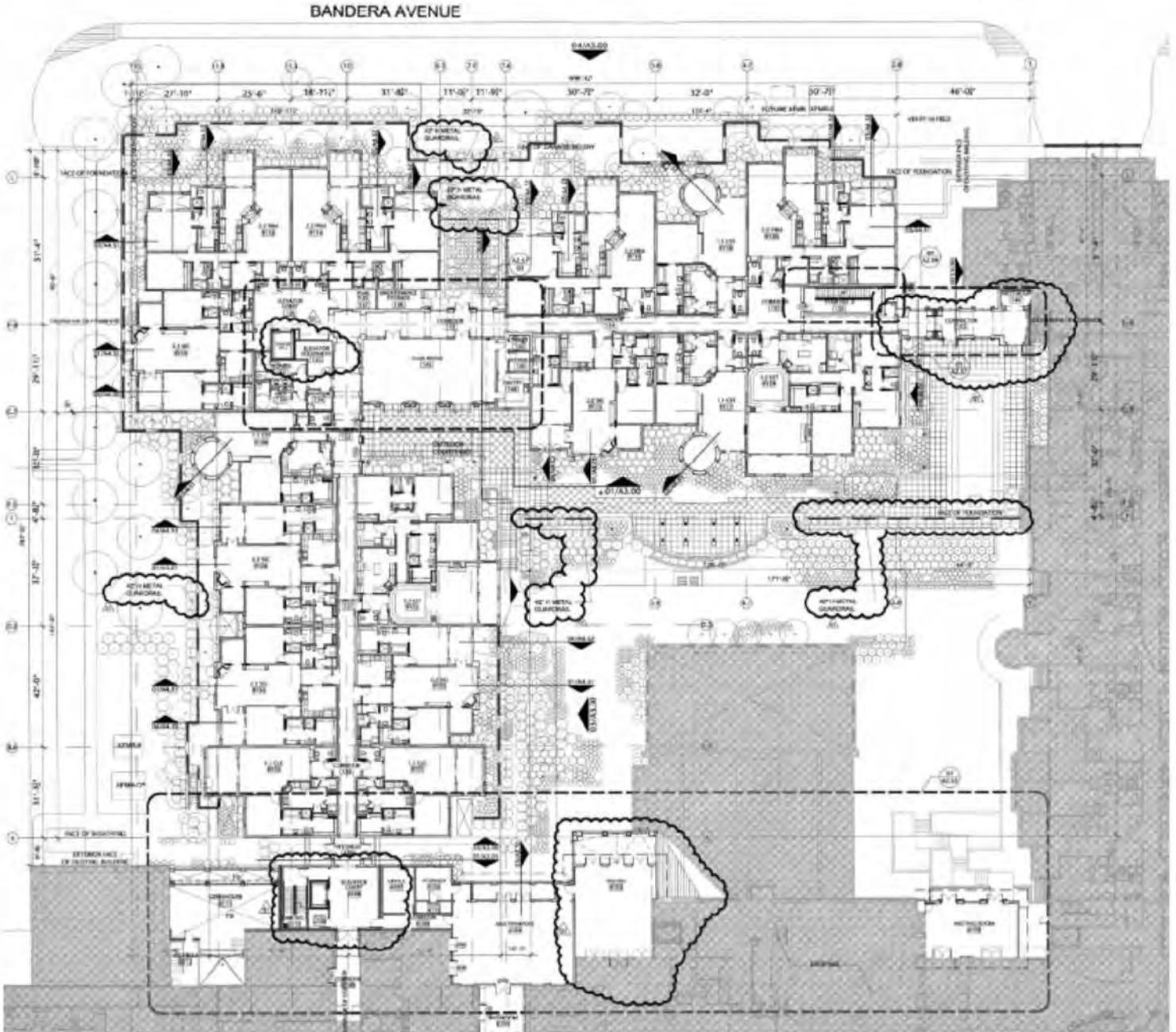
Phase II IL Basement Floor Plan:



SECTION D | Building Assessment

IL/AL/SNF/MC Building

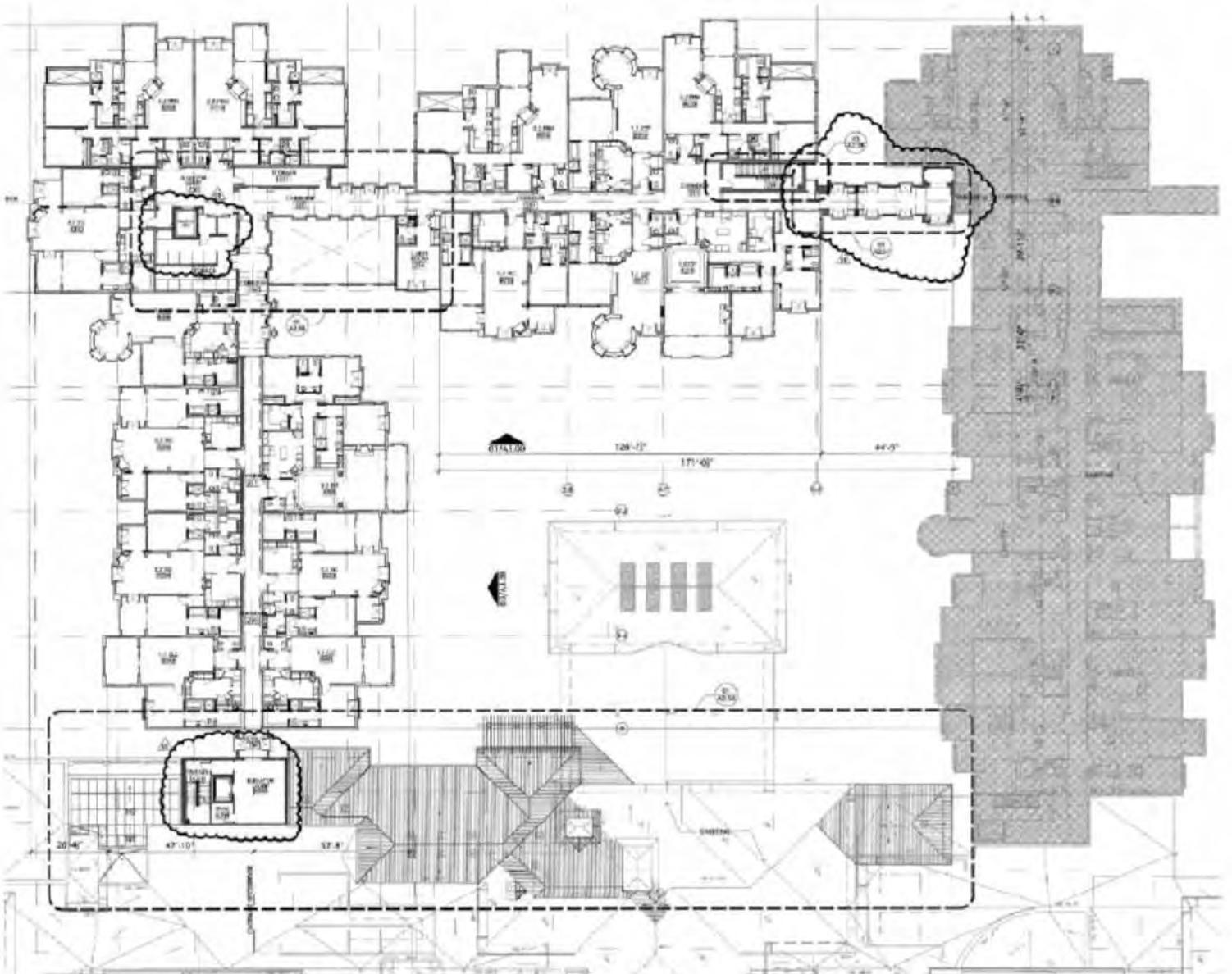
Phase II IL First Level Floor Plan :



SECTION D | Building Assessment

IL/AL/SNF/MC Building

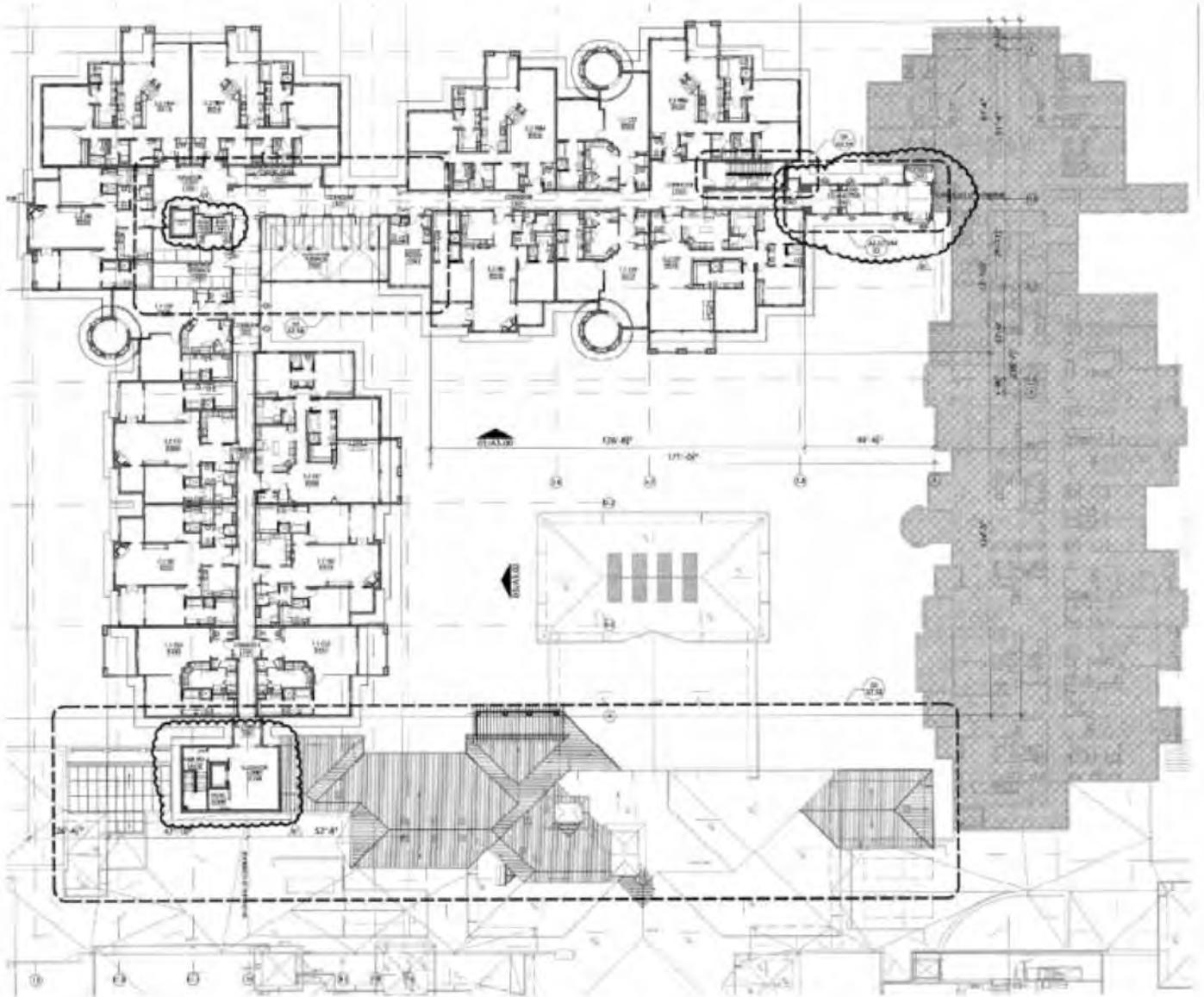
Phase II IL Second Level Floor Plan :



SECTION D | Building Assessment

IL/AL/SNF/MC Building

Phase II IL Third Level Floor Plan:



SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Site): GOOD

- The building is situated on roughly 15.8 acres with two gated entrances surrounding the perimeter. Grade slopes down from the southern property line to the northern property line.
- The main entrance to the IL wing is located off of Thackery Street and has a secured gate, visitor parking, and canopy over the entrance to the building.
- An entrance to the health center wing is located off of Edgemere Rd and has 31 visitor parking spaces and a canopy over the entrance to the building.
- At the main building entrances, brick and stone pavers were found to be in good condition.
- There are four entrances to parking garages located under the building. One entrance is located off of Edgemere Road and three are located off of Bandera Ave.
- A service drive off of Bandera Ave which provides access to an at-grade loading area is located to the east of the health center. Dumpsters, a compactor and two generators are located adjacent to the service drive. The compactor is provided by the waste management company and is not owned by the community.
- A perimeter fence with pedestrian gates surround the property and were found to be in good condition.
- Stone retaining walls surround the perimeter of the site and are utilized at interior courtyards. The retaining walls are taller on the north side of the property adjacent to Bandera Ave. The mortar joints at some areas of the retaining walls are beginning to crack and separate. There is also evidence of previous patching. It is recommended that a mason tuckpoint areas where mortar joints are damaged. In the future, if walls continue to crack, it is recommended that a structural engineer review and provide an engineered solution such as tie-backs.
- There are 38 raised masonry stone tree planters at various locations in both the interior and exterior courtyards. As the trees grow, the roots expand the planters causing the masonry joints to crack and separate. It is recommended that the trees be removed and replaced with smaller landscaping elements.
- PVC drains are installed to direct storm water from the interior side of the retaining walls to the street. At the outfall of the drains, some were found to be blocked. The drain lines should be rodded annually to ensure proper drainage.
- Areas of concrete pavement were found to be in good condition.
- The campus has mature landscaping that is well maintained. An irrigation system was found in most areas.
- The campus has various exterior common areas such as patios, benches, trellises, and a putting green. The trellises are made of cedar wood and are damaged or deteriorated. At many locations, the horizontal trellis members have been removed. It is recommended that the trellises be rebuilt.



IL Building Entrance



IL Entrance Canopy

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Site): GOOD



IL Visitor Parking Area



IL Visitor Parking



IL Property Entrance



IL Gate

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Site): GOOD



Health Center Entrance



Health Center Building Entrance



Health Center Entrance Canopy



Health Center Visitor Parking

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Site): GOOD



Campus Signage



Perimeter Fencing



Pedestrian Gate



Pedestrian Gate with Fobbed Access

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Site): GOOD



Entrance to Health Center Parking Garage



IL Northwest Garage Entrance



IL Northeast Garage Entrance



IL West Garage Entrance

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Site): GOOD



Typical Retaining Wall



Retaining Wall Previously Patched



Cracked Mortar Joint in Retaining Wall



Blocked Drain Outfall

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Site): GOOD



Generator Enclosure



Service Drive



Service Drive



Loading Area

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR

Facade:

- The original building façade consists of a cementitious stucco finish over a Densglass substrate and weather barrier building wrap. Decorative EIFS protrusions are used at window head and sill locations as well as other miscellaneous architectural details.
- At the north and south health center additions, the exterior façade consists of EIFS utilizing 3/4" polystyrene rigid insulation. Similar to the original building, EIFS protrusions are utilized for window and other architectural details.
- Multiple areas of cracking stucco or EIFS were observed as well as façade staining from improper roof flashing, parapet flashing, scupper flashing, sill flashing, or other exterior protrusions such as light fixtures.
- It is recommended that the building be patched, power washed, and repainted only after roof, window, and miscellaneous flashing is repaired.
- The health center wings have already been patched and the community received a proposal to wash and repaint the building. The main building is still in need of flashing repair, exterior façade patching, and paint.
- At select areas around the building, ceramic tile is utilized as an architectural element. The tile is in good condition and the staff has not experienced any issues.

Windows:

- Exterior windows are vinyl Pella windows that are mostly original to the building. The community has been experiencing water and air infiltration and has re-caulked the windows as needed.
- Per a façade investigation conducted by: "The Building Consultant" in 2020, the head of the windows are improperly flashed. Additionally, weep holes were blocked with caulking installed by a previous contractor.
- It is recommended that the windows be replaced since they are at the end of their useful life expectancy. During the replacement of the window, the head flashing can be corrected. The community should also consider installing a light gauge metal sill pan to further prevent water infiltration into the building and/or behind the exterior façade.
- The community should consider utilizing "The Building Consultant" report as a bid document for façade repairs and window replacement and allocate an allowance in addition to the selected bidder's price for unforeseen damages and repairs.

Roofs:

- The perimeter portions of the roof consists of clay tiles over a membrane. Per the community representative, the clay tile roof was replaced and repaired on all areas of the campus except the health center wing and the phase II IL wing. Kickout flashing details were also corrected as part of the roof replacement project.
- Water drains to perimeter gutters which connect at grade to the underground storm system. Various downspouts were found to be separated from the underground storm system. It is recommended that these be reconnected.
- The staff noted that during heavy storms, water runs down the pitched tiled roof and past the gutters. This results in the rainwater running down the façade which may cause future issues with staining and leaking. It is recommended that the gutter widths be increase in areas where the water is not captured.
- It is recommended that the gutters are kept clean to minimize any leaking or blockages.

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR

Roofs (Continued):

- The interior roof system on both the IL and health center wings are a built-up bituminous membrane system. All flat roofs are original to the building and are showing signs of wear, cracking, improper flashing, and delaminated caulking. The parapet flashing details at the flat roofs are also damaged in several areas.
- A majority of the flat roofs drain to scupper openings and downspouts at the perimeter. The north addition of the health center wing utilizes interior roof conductors with an adjacent overflow conductor.
- It is recommended that all areas of flat roof be removed and replaced with the exception of the north and south health center additions which were found to be in good condition.
- On the health center wing flat roof mechanical units and electrical penetrations utilized improper curbs and were improperly flashed. As part of the roof replacement project, the community should consider replacing curbs and MEP penetration flashing.

Misc.

- Cedar wood trellis are utilized at multiple balconies and were found to be damaged or deteriorated. At many locations, the horizontal trellis members have been removed. It is recommended that the trellises be rebuilt
- Horizontal wood supports are utilized underneath perimeter soffits. The supports should be monitored for signs of cracking or deterioration and repaired or replaced as needed.



Stained Facade Under Architectural Ledge



Stained Facade Under Windowsill

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR



Stained Facade At Balcony and Supper



Cracked Facade



Stained Facade At Balcony



Cracked Facade At Soffit

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR



Stained Façade at Light Fixture



Stained Façade at Architectural Ledge



Stained Façade at Architectural Ledge and Vent



Stained Façade at Louver

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR



Damaged Gutter



Debris In Gutter



Typical Downspout Connection



Missing Downspout Connection

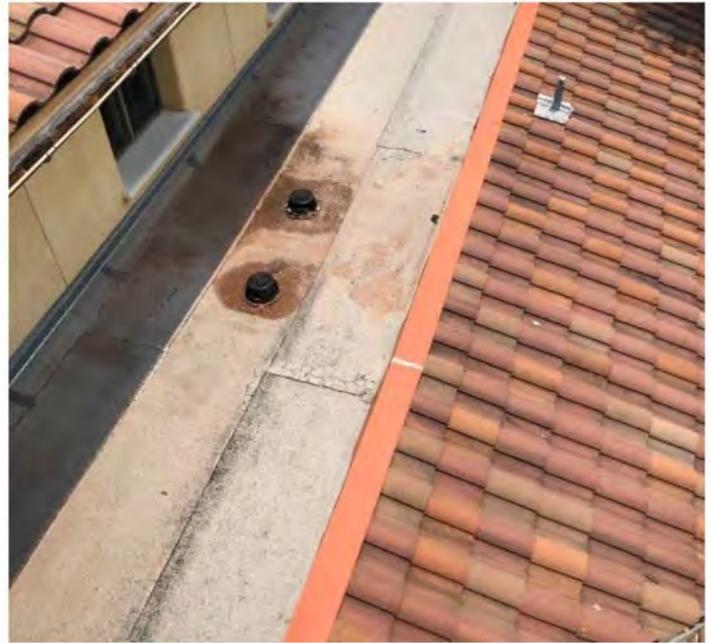
SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR



Primary and Overflow Conductor



Primary and Overflow Conductor



Scupper and Downspout On Exterior Facade



Scupper Opening On Interior Parapet Wall

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR



Patched Health Center Façade



Patched Health Center Façade



Patched Health Center Façade



Patched Health Center Façade

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR



Trellis Members Removed



Trellis Members Removed



Trellis Members Removed



Trellis Members Removed

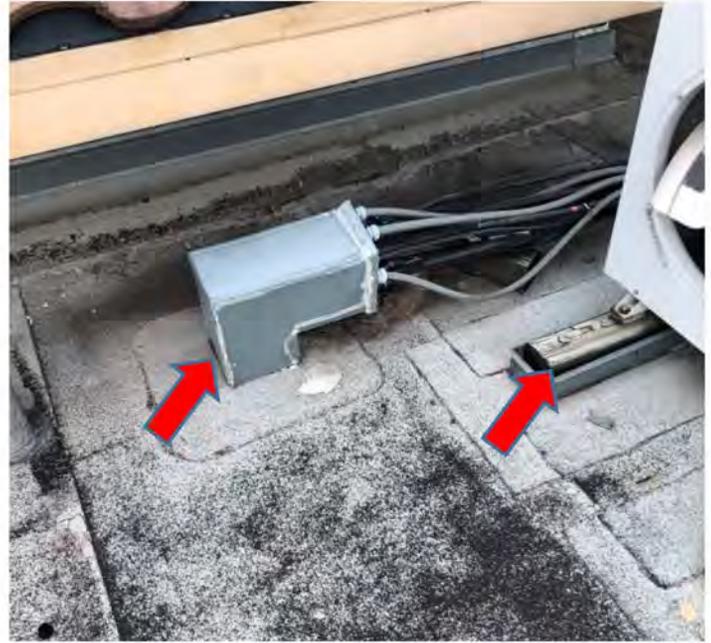
SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR



Typical Flat Roof



RTU Flashing and Conduit Flashing



Deteriorating Protection Layer



Deteriorating Flashing

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Building Envelope): POOR



Damaged Parapet Coping



Damaged Parapet Coping



Delaminating Caulking



Damaged Parapet Coping

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD

General Building Information:

- The majority of the building was built in 2002.
- The phase II IL addition on the northwest side of the IL wings was constructed in roughly 2005 to 2007.
- The commons link was renovated, and the performing art center was built in roughly 2015.
- A south addition to the health center was constructed in roughly 2016
- A north addition to the health center was constructed in roughly 2018.

Structure:

- All residential wings are three levels with underground parking in portions of the building.
- The building has cast in place concrete piers to various depths with cast-in-place concrete slabs.
- An underground parking garage is located below portions of the independent living building and the north health center building addition.
- The above grade structure is a combination of CMU and light gauge metal framing with metal decks and concrete slabs. Roof trusses are framed with light gauge metal members. The commons link utilizes structural steel beams and columns. The pool room utilizes heavy timber roof trusses.
- The staff has not experienced any issues with settlement or cracking.

Commons/Amenities:

- Interior common areas include:
 - Library
 - Pool
 - Movie theatre
 - Dance center
 - Performing arts
 - Multiple Dining Rooms
 - Fitness/Wellness
 - PT/OT
 - 2 Bars
 - Salon
- Common areas were found to be in good condition; however, upgrades to furniture, paint, and carpet will be required in 4 to 6 years.
- Some damage to ceilings was observed in the main lobby and corridors at supply air grilles indicating issues with ductwork condensation.

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD

Residential Units:

IL Units

- There are 304 IL units on campus which are a collection of 1-bedroom, 2-bedroom, and 3-bedroom units.
- The typical IL unit contains the following:
 - Carpet flooring in the bedrooms, tile flooring in bathrooms, and engineered hardwood flooring in the kitchens and living rooms.
 - Granite or quartz countertops
 - Tiled showers
 - Stainless steel appliances with stove/range, refrigerator, dishwasher, garbage disposal, electric washer/dryer
 - Balcony
- Major unit upgrades typically include eliminating the shower threshold, painting or replacing cabinets, new paint, new flooring, new heat pump, new appliances, and new fixtures. Typical unit turn budgets are:
 - 1 Bedroom: \$35,000 to \$45,000
 - 2 Bedroom: \$50,000
 - 3 Bedroom: \$70,000 to \$80,000

AL Units:

- There are 68 AL rooms located on the 1st and 2nd floors of the southern health center wing.
- The typical AL unit contains the following:
 - Vinyl flooring in the living and kitchen areas and carpet in the bedrooms.
 - An appliance package consisting of a mini fridge, countertop microwave.
 - Tiled showers and bathrooms

SNF Units:

- There are 87 skilled nursing rooms located on the third floor of the health center wing.
- The typical SNF unit contains the following:
 - Vinyl Flooring
 - Full private en-suite bathroom with ceramic tile and shower.

Memory Care Units:

- There are 45 memory care units located on the first floor of the northern health center wing.
- The typical MC unit contains the following:
 - Vinyl Flooring
 - Full private en-suite bathroom with ceramic tile and shower.

SECTION D | Building Assessment

IL/AL/SNF/MC Building

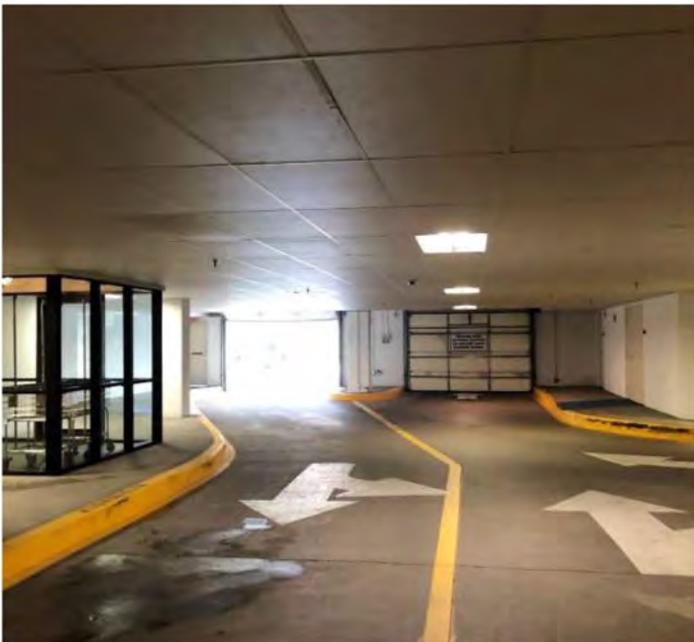
Condition Summary (Interior Finishes): GOOD



Parking Garage



Entry Vestibule from Parking Garage



Vehicle Entrance to Parking Garage



Parking Garage

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



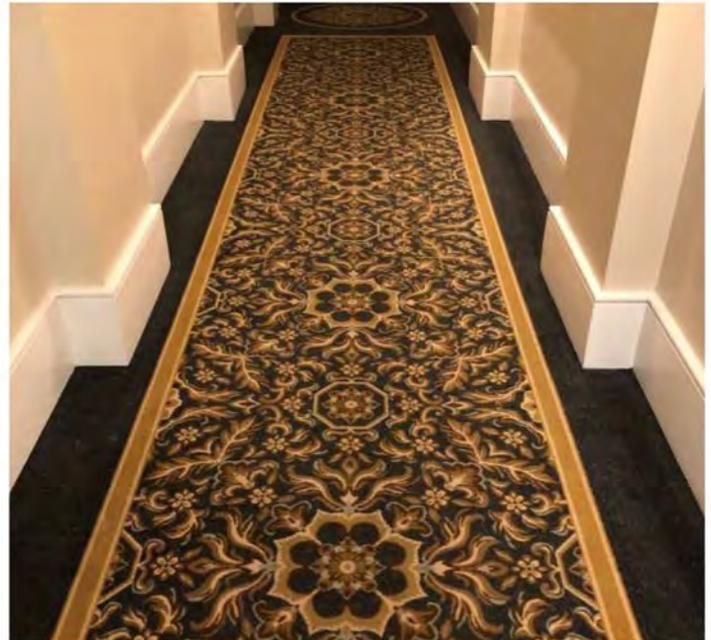
Typical IL Corridor Finishes



Common Area Corridor



Main Building Lobby



Typical IL Corridor Carpet

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



Common Area Link



Common Area Link



Common Area Interior Fountain



Common Area Link

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



IL Library



IL Lobby



IL Billiards Room



IL Billiards Room

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



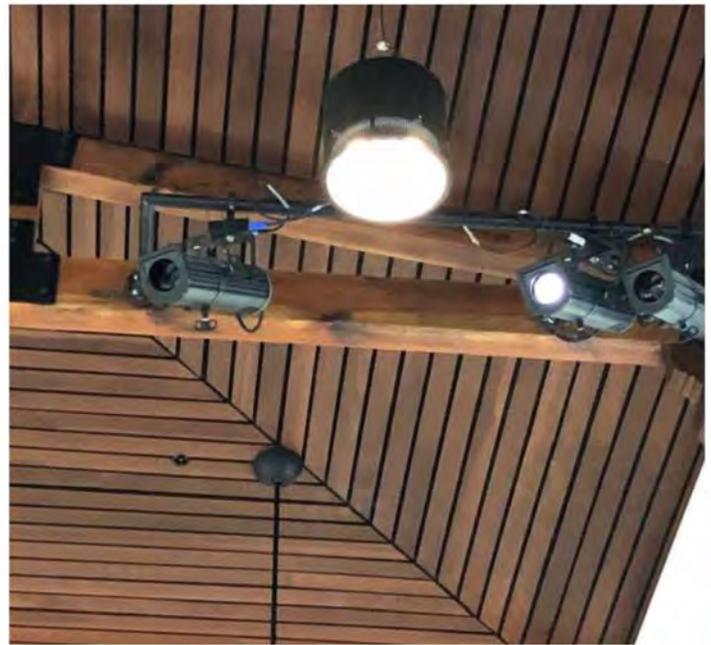
Performing Arts Center



Performing Arts Center



Performing Arts Center



Performing Arts Center

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



Pub



Pub



Media Room



Media Room

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



Fitness Area



Fitness Area



Locker Room



Locker Room

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



IL Dining Room



IL Dining Room



IL Dining Room



IL Dining Room

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



IL Dining



IL Dining



IL Dining



IL Dining

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



Damaged Ceiling – IL Corridor



Damaged Ceiling – IL Lobby



Damaged Ceiling – IL Corridor



Damaged Ceiling – IL Lobby

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



Typical IL Unit Living Room



Typical IL Unit Kitchen



Typical IL Unit Bedroom



Typical IL Unit Closets

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



Typical IL Unit Shower



Typical IL Unit Bathroom



Typical IL Unit Powder Room



Stacked Washer/Dryer

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



IL Model Unit



IL Model Unit



IL Model Unit



IL Model Unit

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



IL Model Unit



IL Model Unit



IL Model Unit



IL Model Unit

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



IL Model Unit Balcony



IL Model Unit Balcony



IL Model Unit Balcony



IL Model Unit Balcony

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



AL Dining Room



AL Theatre Room



Health Center Lobby



AL Corridor

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



Typical AL Unit Kitchenette



Typical AL Unit Bedroom



Typical AL Unit Shower



Typical AL Unit Bathroom

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



Memory Care Interior Courtyard



Memory Care Dining Room



Memory Care Lounge



Memory Care Corridor

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Interior Finishes): GOOD



Typical SNF/MC Unit



Typical SNF/MC Unit



Typical SNF/MC Unit



Typical SNF/MC Unit

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Plumbing): FAIR

Plumbing:

- Domestic water supply enters the building via a single service from Bandera. House pumps are utilized for water distribution. All pumps are in good condition and no issues were reported by the staff; however, the community should expect to replace the pumps in the 7-10 year range.
- Four boilers are utilized for hot water, one of which is dedicated to the commercial laundry equipment. The three domestic boilers were replaced in September of 2020 and the laundry boiler was replaced in roughly 2018. All boilers are operating without issue.
- The staff is beginning to experience issues with minor leaking and failing valves, particularly on the 3" distribution piping. The staff also noted not having an adequate amount of isolation/shut-off valves. In some instances, entire wings must be shut off in order to make a repair. It is recommended that leaking pipes and failing valves be replaced. Isolation valves should be added at riser locations where feasible.
- Fixtures were found to be in good condition. The community replaces fixtures as part of the ongoing unit turnover renovations.

Water Management:

- Multiple sump pits and pumps are located in the garage and eject storm water collected around the foundation. The staff noted that the pumps are in good condition and have not experienced any issues.
- Storm water from the roofs drain by gravity to via roof conductors or gutters and downspouts to the municipal storm system.

Fire Protection:

- The building is fully sprinklered with a traditional wet system. Four fire pumps are utilized and are connected to emergency power.
- The mains are cast iron and the branch lines are CPVC.
- Under normal weather conditions, the staff has not experienced any issues. In February of 2021, when temperatures were abnormally cold and power was lost to the building, some of the fire suppression lines froze causing leaking and flooding.

Pool:

- An indoor chlorine pool is located in the fitness area. The staff noted no issues with the pool equipment or managing temperature in the pool room.
- The pool decking and perimeter drainage system was found to be in good condition.

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Plumbing): FAIR



Domestic Water Pumps



Domestic Water Pumps



Hot Water Boilers



Hot Water Boilers

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Plumbing): FAIR



Pool



Exterior Post Indicator Valve and Stand Pipe



Traditional Wet Fire Suppression System Viewed In the Parking Garage



Traditional Wet Fire Suppression System Viewed In the Parking Garage

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (HVAC): FAIR

Heating and Cooling:

- In IL common areas, typically heating and cooling is provided by fan coil units and a VAV system located above the ceiling with condensing units placed on the roof.
- Four make up air units are utilized for the health center wing.
- IL units utilize a water sourced heat pump system with heat pumps located within the residential units. Most heat pumps are located above the ceiling; however, some are located in closets within the units. Roughly 60 heat pumps have been replaced and all others are original to the building. It is recommended that the remaining heat pumps be replaced between 1-6 years.
- Heat is provided by three boilers which are all original to the building. The staff has experienced issues with the boilers with one boiler completely failing. It is recommended that the boilers be replaced.
- Cooling is provided by two cooling towers located on the roof. The east cooling tower was replaced in February of 2021. The west cooling tower was replaced in 2016. The staff has not experienced any issues.
- Make up air units are utilized for all kitchen areas and are functioning without issues.
- The health center units are tempered by fan coil units located in the ceilings. Outside air is drawn from exterior louvers located on the building façade. Condensers are located on the roof. All fan coil units are original to the building and condensers have been replaced as needed. It is recommended that all fan coil units and condensers be replaced due to the large volume of issues the staff experiences.
- The parking garages are not tempered.
- The performing arts center and pool area have units that are less than five years old and are in good condition.

Controls:

- A building automation system was installed during the original construction to control and manage common area heating and cooling. The system currently does not function properly. Each floor of each wing has stand-alone controls with a thermostat at each end of the corridor. Staff must manually adjust temperatures as needed. It is recommended that a retrofitted BAS control be considered.
- All residential units have independent control of the heating/cooling unit.

Exhaust:

- Exhaust fans located on the roofs are utilized for the commercial laundry room, residential laundry and bathrooms, and the commercial kitchen hoods.
- The parking garages also have an exhaust system that only operate to expel carbon monoxide when alarmed. Outside air is drawn in from exterior louvers.
- IL units have recirculating exhaust hoods above ranges.
- The staff did not note any issues related to the exhaust fans; however, the community should anticipate replacing fans in the 7-10 year range.

Miscellaneous:

- Roughly 30% of the IL units have a gas fireplace, all of which are functioning.

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (HVAC): FAIR



Heating Boilers



Heating Boilers



Incoming Gas Service



Cooling Tower Location

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (HVAC): FAIR



Common Area RTU



Common Area RTU



IL Unit Heat Pump



Typical IL Unit Controls

SECTION D | Building Assessment

IL/AL/SNF/MC Building

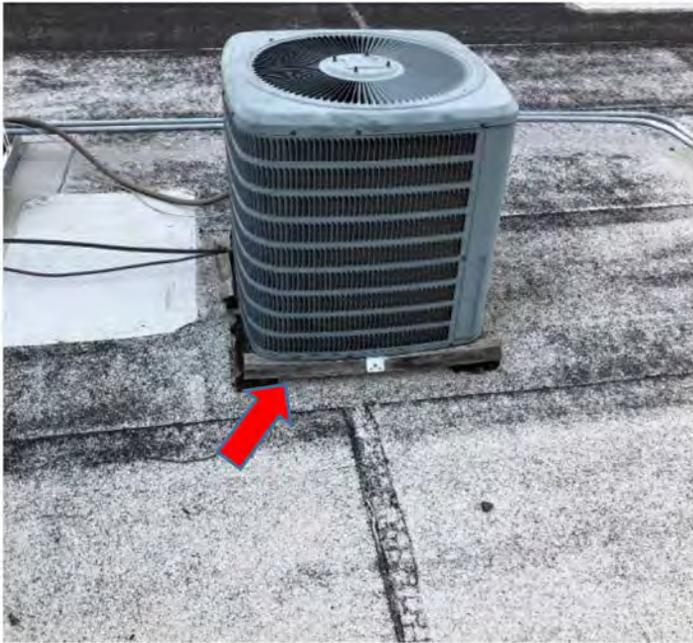
Condition Summary (HVAC): FAIR



Various Condensers Installed As Replacements



Improper Curbing and Flashing



Improper Curbing and Flashing



Various Condensers Installed As Replacements

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (HVAC): FAIR



Typical Exhaust Fan



Kitchen Exhaust



Garage Exhaust Fan



Garage Intake Louver

SECTION D | Building Assessment

IL/AL/SNF/MC Building

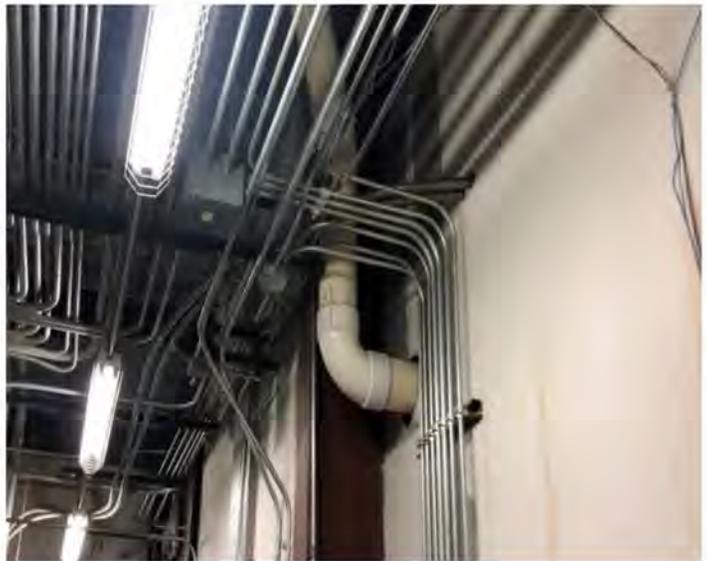
Condition Summary (Electrical): GOOD

Electrical

- Electrical gear, panels, and switches appeared to be in good working order and the staff has not experienced any issues.
- Multiple services enter the building at various locations, The utility provider does not have a vault within the building; however, transformers are located around the perimeter of the building
- Three generators are located on campus. Two generator serve the health center and a single generator serves the IL wings.
- IL functions on emergency power include commercial kitchen coolers and freezers, commercial kitchen stovetops, emergency lighting, and elevators.
- It is recommended that a docking station be installed on all three generators so that a portable generator can be utilized during long power outages.
- All generators are tested weekly
- All electrical fixtures have been switched to LED.

Fire Alarm

- A Siemens alarm system is utilized in the building. The staff noted that they are experiencing more and more false alarms and trouble notifications. It is recommended that a new fire alarm control panel.



Main Switchgear Room. Recommend Eliminating Stored Material

EMT Conduit Distribution

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Electrical): GOOD



IL Generator Enclosure



Health Center Generator 1



Health Center Generator 2 Enclosure



Health Center Generator 2

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Electrical): GOOD



Utility Provided Transformer



Utility Provided Transformer



Utility Provided Transformer



Utility Provided Transformer

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Furniture, Equipment, Technology): GOOD

Elevators:

- The building has 15 elevators, 14 of which are Dover and 1 of which is Schindler.
- Thyssen Krupp performs the inspections and service on all elevators
- The community is in the process of upgrading the cab materials and mechanical equipment. Roughly 4 elevators have already been upgraded at an average cost of \$100,000 each.

Commercial Kitchens:

- The community has a total of four commercial kitchens:
 - 2 kitchens in the IL wings
 - 1 kitchen in the health center
 - 1 finishing kitchen outside of the performing arts center
- The kitchen is managed by a third-party vendor.
- The staff estimates that roughly 50% of all kitchen equipment has been replaced and 50% is original to the building. It is recommended that the community allocate funds to continue to replace equipment over 10 years.

Laundry:

- A commercial laundry room is located in the IL commons corridor link. All laundry is performed on site with the exception of the dining room linens.
- There are 3 commercial washers, 2 commercial dryers, and 2 residential sized washers. Two washers have been replaced, but one washer and two dryers are original to the building. The community should anticipate replacing the remaining units.
- In the health center, there are four laundry rooms each with two small washers and two small dryers.
- Each IL unit has an electric stacked washer/dryer unit. All units have been replaced from the original build. Units continued to be replaced during unit turns as need.

Internet/Data:

- Common areas and back of house areas are served via wireless access points.
- IL residents are responsible for obtaining their own in-unit internet access. AT&T and Spectrum are vendors that have access to the building

TV:

- Cable TV is run to each common area TV location.
- A standard cable TV package is included with each resident's rent. Residents have the option to upgrade directly with the cable TV vendor.

POS System:

- The current POS system is being replaced as of July 2021 to MatrixCare.

Nursecall/Wanderguard:

- Wireless pendants and call boxes are utilized in the IL and AL residential units.
- The Nursecall system was recently replaced in the SNF units.
- A wanderguard system with a wearable is utilized in the memory care units. All exit doors have delayed egress.

Door Access & Security Cameras:

- Assa Abloy electronic locksets are installed on all residential unit doors, back of house doors, and perimeter entry gates.
- Roughly 250 cameras are placed at entrances, corridors, stairwells, and common areas.

Trash:

- Trash rooms are located on each floor. Trash is collected by staff and transferred to the main dumpsters located in the service/loading area.
- A compactor is also placed in the service/loading area and is rented from the waste management company.

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Furniture, Equipment, Technology): GOOD



Typical Upgrade Elevator Cab



Typical Upgrade Elevator Cab



Commercial Washers



Commercial Dryers

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Furniture, Equipment, Technology): GOOD



Residential Washers in Main Laundry Room



Health Center Washers and Dryers



Typical Trash Room



Dumpsters and Trash Compactor

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Furniture, Equipment, Technology): GOOD



Main Kitchen Cooler



Main Kitchen Freezer



Main Kitchen Cooking Line



Main Kitchen Prep Line

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Furniture, Equipment, Technology): GOOD



Main Kitchen Cooking Line



Main Kitchen Cooking Line



Main Kitchen Dishwashing Area



Main Kitchen Dishwashing Area

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Furniture, Equipment, Technology): GOOD



Demo Kitchen Adjacent to Dining



Demo Kitchen Adjacent to Dining



Demo Kitchen Adjacent to Dining



Demo Kitchen Adjacent to Dining

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Furniture, Equipment, Technology): GOOD



Health Center Kitchen



Health Center Kitchen



Health Center Kitchen



Health Center Kitchen

SECTION D | Building Assessment

IL/AL/SNF/MC Building

Condition Summary (Furniture, Equipment, Technology): GOOD



Typical Wireless Access Point



Typical Nursecall Alert Push Button



Typical Unit Entry Electronic Lockset



Typical Exterior Gate with Fobbed Access Control

SECTION D | Cost Analysis

IL/AL/SNF/MC Building

Summary of Budgets

Program Area	Quantity		Total Units	Base Unit Cost (\$)	Net Present Value Cost (\$)	As % of Total Cost	Critical Needs Cost (1-3 years)	Deferrable Maintenance Cost (4-6 years)	Property Enhancement Cost (7-10 years)
	Per Unit	Unit							
1.0 SITE									
Tree Removal from Interior Courtyard Raised Planters	1	EA	20	\$4,000.00	\$84,000	0.19%	x	\$84,000	\$0
Tree Removal from Raised Planters (Outside of Interior Courtyards)	1	EA	18	\$2,000.00	\$37,800	0.08%	x	\$37,800	\$0
Replace Landscaping in Raised Planters	1	EA	38	\$1,000.00	\$39,900	0.09%	x	\$39,900	\$0
Landscaping Maintenance	1	Year	10	\$200,000.00	\$2,100,000	4.72%	x	\$700,000	\$893,397
Patch Mortar Joints in Retaining Walls	1	Allowance	1	\$200,000.00	\$210,000	0.47%	x	\$70,000	\$89,340
Correct Raised Masonry Planters	1	Allowance	1	\$10,000.00	\$0	0.00%		\$0	\$0
Rebuild Damaged Cedar Trellis In Courtyards	1	EA	6	\$20,000.00	\$126,000	0.28%	x	\$126,000	\$0
SITE SUBTOTAL					\$2,597,700	5.84%		\$1,057,700	\$982,737
2.0 BUILDING ENVELOPE									
Replace Built-Up Roof System	1	SF	65,000	\$22.00	\$1,501,500	3.38%	x	\$1,501,500	\$0
Increase Gutter Size and Areas Where Rain Water is Not Captured	1	Allowance	1	\$20,000.00	\$21,000	0.05%	x	\$21,000	\$0
Clean Gutters Annually	1	Year	10	\$30,000.00	\$315,000	0.71%	x	\$105,000	\$134,010
Reconnect PVC Downspouts To UG Storm System	1	Allowance	1	\$10,000.00	\$10,500	0.02%	x	\$10,500	\$0
Replace Wood Soffit Supports As Needed	1	Allowance	1	\$50,000.00	\$52,500	0.12%	x	\$52,500	\$0
Rebuild Wood Trellis Structures	1	EA	20	\$20,000.00	\$420,000	0.94%	x	\$420,000	\$0
Replace Windows & Exterior Doors	1	EA	2100	\$550.00	\$1,212,750	2.73%	x	\$1,212,750	\$0
Patch EIFS, Correct Flashing, Powerwash, & Repaint Building (Exclude HC)	1	Allowance	1	\$4,000,000.00	\$4,200,000	9.44%	x	\$4,200,000	\$0
Powerwash and Paint Heath Center Wing (Edgemere Provided Estimate)	1	Allowance	1	\$330,000.00	\$346,500	0.78%	x	\$346,500	\$0
BUILDING ENVELOPE SUBTOTAL					\$8,079,750	18.17%		\$7,869,750	\$134,010
3.0 INTERIOR/FINISHES									
IL Unit Turns (1-Bedroom) (Assumes 75%)	1	EA	92	\$40,000.00	\$3,864,000	8.69%	x	\$1,288,000	\$1,643,851
IL Unit Turns (2-Bedroom) (Assumes 75%)	1	EA	132	\$45,000.00	\$6,237,000	14.02%	x	\$2,079,000	\$2,653,389
IL Unit Turns (3-Bedroom) (Assumes 75%)	1	EA	5	\$75,000.00	\$393,750	0.89%	x	\$131,250	\$167,512
AL Unit Turns (Assumes 75%)	1	EA	51	\$8,000.00	\$428,400	0.96%	x	\$142,800	\$182,253
SNF & MC Units Turns (Assumes 75%)	1	EA	99	\$8,000.00	\$831,600	1.87%	x	\$277,200	\$353,785
Update IL Corridor Paint, Ceiling Tile, Flooring, and Furniture	1	SF	90000	\$35.00	\$3,307,500	7.44%	x	\$0	\$4,221,301
Correct Above Ceiling Condensation, Patch and Paint Damage	1	Allowance	1	\$50,000.00	\$52,500	0.12%	x	\$52,500	\$0
Update IL Common Area Finishes	1	Allowance	1	\$500,000.00	\$525,000	1.18%	x	\$0	\$670,048
Update Health Center Common Area and Corridor Finishes and Furniture	1	Allowance	1	\$1,400,000.00	\$1,470,000	3.31%	x	\$0	\$1,876,134
INTERIOR/FINISHES SUBTOTAL					\$17,109,750	38.47%		\$3,970,750	\$11,768,273
4.0 PLUMBING SYSTEMS									
Misc. Maintenance of Fire Suppression System	1	SF	120000	\$0.35	\$441,000	0.99%	x	\$147,000	\$187,613
Replace Domestic Water Pumps	1	EA	4	\$12,000.00	\$50,400	0.11%	x	\$0	\$74,464
Add Isolation Valves (Estimate 100)	1	EA	100	\$850.00	\$89,250	0.20%	x	\$29,750	\$37,969
Replace Piping / Valves and Unions	1	SF	1,200,000	\$0.35	\$441,000	0.99%	x	\$147,000	\$187,613
PLUMBING SYSTEMS SUBTOTAL					\$1,021,650	2.30%		\$323,750	\$413,196
5.0 HVAC SYSTEMS									
Replace Boilers	1	EA	3	\$30,000.00	\$94,500	0.21%	x	\$94,500	\$0
Replace IL Unit Heat Pumps	1	EA	244	\$5,000.00	\$1,281,000	2.88%	x	\$640,500	\$817,458
Replace Health Center FCUs and Condensers	1	EA	120	\$6,000.00	\$756,000	1.70%	x	\$756,000	\$0
Replace Exhaust Fans	1	EA	50	\$3,500.00	\$183,750	0.41%	x	\$0	\$271,482
Retrofit BAS	1	Allowance	1	\$200,000.00	\$210,000	0.47%	x	\$0	\$268,019
HVAC SYSTEMS SUBTOTAL					\$2,525,250	5.68%		\$1,491,000	\$1,085,477
6.0 ELECTRICAL SYSTEMS									
Replace FACP	1	EA	1	\$25,000.00	\$26,250	0.06%	x	\$0	\$33,502
Install Portable Generator Docking Station	1	Allowance	3	\$35,000.00	\$110,250	0.25%	x	\$110,250	\$0
ELECTRICAL SYSTEMS SUBTOTAL					\$136,500	0.31%		\$110,250	\$33,502
Replace Commerical Washer	1	Allowance	1	\$25,000.00	\$26,250	0.06%	x	\$0	\$33,502
Replace Commerical Dryers	1	Allowance	2	\$15,000.00	\$31,500	0.07%	x	\$0	\$40,203
Replace Small Washers/Dryers	1	Allowance	18	\$3,000.00	\$56,700	0.13%	x	\$0	\$72,365
Replace Food Service Equipment	1	Allowance	1	\$1,000,000.00	\$1,050,000	2.36%	x	\$350,000	\$446,699
Replace Elevator Equipment and Upgrade Cabs	1	EA	11	\$100,000.00	\$1,155,000	2.60%	x	\$577,500	\$737,053
FURNITURE & EQUIPMENT SUBTOTAL					\$2,319,450	5.21%		\$927,500	\$1,329,822
Building Infrastructure Improvement Total:				\$28.16	\$33,790,050	75.97%		\$15,750,700	\$15,747,017
Project Contingency:	10.00%				\$3,147,060	7.08%		\$1,441,720	\$790,609
Permits, Testing & Printing:	2.50%				\$865,442	1.95%		\$396,473	\$217,417
Professional Fees & Costs:	9.00%				\$3,480,892	7.83%		\$1,639,561	\$874,474
Construction Manager Fee & Costs:	9.00%				\$3,193,479	7.18%		\$1,504,184	\$802,270
PROJECT TOTAL					\$44,476,923	100.00%		\$20,784,403	\$11,107,965



plante moran | LIVINGforward

PMLIVINGFORWARD.COM | 312.207.1040

Plante Moran Living Forward
10 South Riverside Plaza, 9th Floor
Chicago, IL 60606

Landlord's

Exhibit 5-H

for February 21-23, 2023 hearing

EXHIBIT H

BAY 9 HOLDINGS LLC

December 16, 2022

Via Email

Irina Palchuk, Senior Vice President
UMB Bank, N.A., as Trustee
100 William Street, Suite 1850
New York, NY 10038
Irina.Palchuk@umb.com

Edgemere
John Falldine, Executive Director
8523 Thackery Street
Dallas, Texas 75225

Re: Adequate Assurance of Future Performance

Gentlepersons,

This letter is provided to you by Bay 9 Holdings LLC, the stalking horse bidder (the “**Stalking Horse Bidder**”) approved by that certain *Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing Entry into the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation and Sale Hearing and (V) Granting Related Relief* [Docket No. ___] (the “**Bidding Procedures Order**”), in connection with the sale of substantially all of the assets of Northwest Senior Housing Corporation (the “**Debtor**”), pursuant to that certain Asset Purchase Agreement (the “**APA**”), by and between the Stalking Horse Bidder and the Debtor. The APA is subject to court approval in that certain chapter 11 case commenced by the Debtor in the United States Bankruptcy Court for the Northern District of Texas, Case No. 22-30659 (MVL) (the “**Bankruptcy Court**”).

As set forth in the APA, if the Stalking Horse Bidder becomes the successful purchaser under sections 105, 363, 365 and 1129 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) pursuant to the confirmed Plan of Reorganization of the Plan Sponsors Dated December 6, 2022 (the “**Plan**”), the Debtor intends to assume and assign certain executory contracts and unexpired leases to the Stalking Horse Bidder. Pursuant to the APA and the Bidding Procedures Order, the Stalking Horse Bidder is required to deliver adequate assurances of future performance with respect to the Assumed Contracts (as defined in the APA¹), including the Ground Lease. The

¹ Pursuant to Section 5.5 of the APA, at any time prior to the Closing, the Stalking Horse Bidder will have the right to provide written notice to the Plan Sponsors of the Stalking Horse Bidder’s election to designate an executory contract or an unexpired lease as an Assumed Contract, or as a contract that will not be assumed by the Stalking Horse Bidder. Delivery of this letter to any contract counterparty shall not waive any right by the Stalking Horse Bidder to exclude such contract from the list of Assumed Contracts at any time prior to Closing.

December 16, 2022

Page 2

Stalking Horse Bidder is pleased to submit this letter to UMB Bank, N.A., as trustee and the Debtor (together, the “**Plan Sponsors**”), providing adequate assurance of its future performance in accordance with section 365(b)(1)(C) of the Bankruptcy Code. Upon receipt of a written request for the Stalking Horse Bidder’s adequate assurance information from any contract counterparties to executory contracts or unexpired leases with the Debtor (other than residents that are party to a Residency Agreement (as defined in the Plan), the Plan Sponsors are authorized by the Stalking Horse Bidder to deliver this letter to such requesting contract counterparties. To the extent any contract counterparty requests any additional relevant information that the Stalking Horse Bidder determines in its sole discretion to be confidential, the Stalking Horse Bidder will require the counterparty to execute a confidentiality and nondisclosure agreement in form and substance acceptable to the Stalking Horse Bidder.

By way of background, the Stalking Horse Bidder is a newly formed Delaware limited liability company that is ultimately owned, directly or indirectly, by one or more funds managed or advised by Lapis Advisers, LP (“**Lapis**”). Lapis is a registered investment adviser, headquartered in the San Francisco area and enjoys over a decade-long record in successful healthcare turnarounds in the municipal bond space, having raised over \$1.2 billion in aggregate investor commitments. Since its inception in 2009, Lapis has invested in over forty life plan and rental senior living communities, including several communities located in Texas. As a registered investment adviser with the Securities and Exchange Commission (SEC#:801-71696; FINRA CRD# 153710), Lapis submits periodic reports regarding, among other things, its management services to securities portfolios. A copy of Lapis’ most recent annual summary statement may be found at <https://adviserinfo.sec.gov/firm/summary/153710> (the “**Annual Statement**”). Additional information concerning Lapis is available at <https://lapisadvisers.com/>.

The Stalking Horse Bidder intends to acquire the Community through an all-cash purchase with funds made available to it from funds or other capital made available through Lapis. As set forth in the Annual Statement, Lapis has significant assets under management and has the financial wherewithal to honor its capital commitment to the Stalking Horse Bidder. A true and accurate copy of Lapis’ letter agreement with the Stalking Horse Bidder to make a sufficient capital commitment (the “**Capital Commitment Letter**”) is attached hereto as Exhibit A. As set forth in the Capital Commitment Letter, the Stalking Horse Bidder, through Lapis, has access to committed funds in excess of the \$48,500,000.00 purchase price for acquisition of the Community upon the closing of the APA.

Lapis has significant experience in investing, operating, and turning around senior living special situations and, through the Stalking Horse Bidder, is uniquely situated to ensure the senior living community (the “**Community**”) owned and operated by the Debtor d/b/a Edgemere maintains its quality of care to residents and meets its obligations under the APA. In addition to having sufficient capital to fund the purchase price under the APA, the Stalking Horse Bidder is committed to maintaining and improving the Community. The Stalking Horse Bidder is in the process of developing a detailed capital improvement plan to advance those goals, which plan has been informed by an extensive assessment of the Community undertaken by Arch Consultants, Ltd. While details of its capital improvement plan continue to be developed, if the Stalking Horse

December 16, 2022

Page 3

Bidder is the purchaser of the Debtors' assets, it anticipates dedicating several million dollars to capital expenditure improvements such as HVAC improvements, roofing, exterior and interior updates, and system updates. These capital improvements are in addition to typical apartment refurbishments and upgrades made when a unit is leased to a new resident. As set forth in the Capital Commitment Letter, Lapis is prepared to meet the operating and capital needs of the Community.

As part of its commitment to ensuring that the Community would thrive if purchased by the Stalking Horse Bidder, the Stalking Horse Bidder has identified The Long Hill Company ("**Long Hill**") to serve as the independent third-party manager of the Community. Long Hill specializes in turnaround management, and, for over 20 years has served as a traditional full-service manager, court-appointed receiver, and advisory consultant. Long Hill's management team has a long track record of stabilizing troubled situations in skilled nursing, assisted living, hospice, and continuing care communities. For the avoidance of doubt, Lapis and Long Hill are not affiliates and do not share common directors or management. Prior to being authorized as the stalking horse, the Stalking Horse Bidder and Long Hill have dedicated significant resources to jointly develop appropriately conservative financial projections to ensure a successful transition to new ownership and management for the Community. Attached hereto as Exhibit B is a statement from Long Hill in support of the Stalking Horse Bidder's abilities to perform the Assumed Contracts due, in part, to Long Hill's plans to successfully manage the Community through this important transition to new ownership and management.

Should you have further questions, we request that you contact our attorneys, Adrienne Walker and Chelsey List of Locke Lord LLP. Adrienne may be reached at awalker@lockelord.com or 617.239.0211, and Chelsey may be reached at Chelsey.List@lockelord.com or 212.912.2824.

Yours truly,

Kjerstin Hatch
President

Cc: Daniel Bleck, Esq. (counsel to UMB Bank, N.A.)
Jeremy Johnson, Esq. (counsel to Edgemere)

Exhibit A

(Capital Commitment Letter)

LAPIS ADVISERS, LP
265 Magnolia Avenue, Suite 100
Larkspur, CA 94939

November 2, 2022

Bay 9 Holdings LLC
265 Magnolia Avenue, Suite 100
Larkspur, CA 94939

Re: Capital Commitment Letter

Gentlepersons:

Lapis Advisers, LP, for and on behalf of certain managed funds (together with its affiliates, the "Fund"), is pleased to offer this commitment to make a capital contribution to Bay 9 Holdings LLC, a newly-formed Delaware limited liability company ("Purchaser") subject to the terms and conditions contained herein and pursuant to that certain Asset Purchase Agreement, dated as of November __, 2022, by and between Northwest Senior Housing Corporation, a Texas not-for-profit corporation (the "Debtor"), and Purchaser (as amended, restated, supplemented or otherwise modified from time to time, the "Purchase Agreement" and such transactions contemplated thereby, the "Transaction"). Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Purchase Agreement.

1. Commitments. The Fund hereby agrees to contribute, or cause to be contributed, as an equity capital contribution to Purchaser, cash in an aggregate amount equal to the Purchase Price plus the expenses for which Purchaser is responsible in connection with the Transaction, subject to the terms and conditions in the Purchase Agreement for any upwards or downwards adjustments thereto (the "Purchase Contribution"). The proceeds from the Purchase Contribution shall be used by Purchaser to pay (a) the Deposit to be held by the Escrow Agent, (b) the balance of the Purchase Price at Closing, and (c) the Transaction expenses, and for no other purpose. The Fund currently has cash on hand, access to existing credit facilities and/or existing capital commitments from its investors sufficient to fund the Purchase Contribution in full in cash at the Closing.

The Fund further agrees to contribute, or cause to be contributed, as an additional equity capital contribution to Purchaser, cash in an amount necessary to meet the reasonably anticipated unfunded operating expenses and capital expenses of Purchaser (the "Additional Contributions"; and together with the Purchase Price Contribution, the "Contributions"). The undersigned has sufficient funds to make the Additional Contributions in full in cash.

2. Closing Conditions. The Fund's obligation to make the Contributions pursuant to this letter agreement is subject to the following conditions (the "Closing Conditions"): (a) the satisfaction or waiver at the Closing of all conditions precedent to the obligations of Purchaser to consummate the Transactions contemplated by Article 6 to the Purchase Agreement, (b) the substantially contemporaneous consummation of the Closing in accordance with the terms of the

Purchase Agreement, and (c) the entry of an order of the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") in the Debtor's chapter 11 case at Case No. 22-30659 (MVL) authorizing the Debtor to consummate the Purchase Agreement (pursuant to a plan of reorganization or otherwise).

3. Expiration. All obligations under this letter agreement shall expire and terminate automatically and immediately upon the termination of the Purchase Agreement in accordance with its terms.

4. No Assignment. The commitment evidenced by this letter agreement shall not be assignable by Purchaser without the Fund's prior written consent, and the granting of such consent in any given instance shall be in the sole discretion of the Fund and, if granted, shall not constitute a waiver of this requirement as to any subsequent assignment. Any purported assignment of this commitment in contravention of this Section 4 shall be void.

5. Representations and Warranties. The Fund hereby represents and warrants to Purchaser that (a) it has all requisite power and authority to execute, deliver and perform this letter agreement; (b) the execution, delivery and performance of this letter agreement by the Fund has been duly and validly authorized and approved by all necessary action, and no other proceedings or actions on the part of the Fund are necessary therefor; (c) this letter agreement has been duly and validly executed and delivered by it and constitutes a valid and legally binding obligation of it, enforceable against the Fund in accordance with its terms (subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law)); and (d) the execution, delivery and performance by the Fund of this letter agreement do not and will not violate the organizational documents of the Fund or any applicable law.

6. Jurisdiction. Each party to this letter agreement, by its execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any Federal Court of the United States of America sitting in the State of Delaware), and any appellate court from any thereof, for the purpose of any action between the parties arising in whole or in part under or in connection with this letter agreement, (b) hereby waives to the extent not prohibited by applicable Law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such action brought in one of the above-named courts should be dismissed on grounds of *forum non conveniens*, should be transferred or removed to any court other than one of the above-named courts, or should be stayed by reason of the pendency of some other proceeding in any other court other than one of the above-named courts, or that this letter agreement or the subject matter hereof may not be enforced in or by such court, and (c) hereby agrees not to commence any such action other than before one of the above-named courts.

7. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, THE PARTIES HEREBY WAIVE, AND COVENANT THAT THEY WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR

OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS LETTER AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY IN ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS LETTER AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THAT ANY SUCH PROCEEDING WILL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

8. No Third Party Beneficiaries. This letter agreement shall inure to the benefit of and be binding upon Purchaser and the Fund and their respective permitted successors and assigns. Nothing in this letter agreement, express or implied, is intended to nor does it confer upon any person other than Purchaser and the Fund any rights or remedies under, or by reason of, or any rights to enforce or cause Purchaser to enforce, the Contributions or any provisions of this letter agreement or to confer upon any person any rights or remedies against any person other than the Fund under or by reason of this letter agreement.

9. Headings. The headings contained in this letter agreement are for convenience purposes only and will not in any way affect the meaning or interpretation hereof.

10. Governing Law. This letter agreement and the obligations hereunder shall be governed by and construed in accordance with the laws of the State of Delaware.

11. Entire Agreement. This letter agreement and the Purchase Agreement constitute the entire agreement with respect to the subject matter hereof, and supersede all prior agreements, understandings and statements, both written and oral, between or among Purchaser or any of its affiliates and the Fund or any of its affiliates.

12. Amendments. This letter agreement may not be amended, and no provision hereof waived or modified, except by an instrument in writing signed by the Fund and Purchaser.

13. Counterparts. This letter agreement may be executed in counterparts (including by means of facsimile or electronically transmitted signature pages), each of which, when so executed, shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Very truly yours,

Lapis Advisers, LP



By: _____

Name: Kjerstin Hatch

Title: Managing Principal

Exhibit B

(Long Hill Letter)



December 16, 2022

Kjerstin Hatch
Bay 9 Holdings LLC
265 Magnolia Avenue
Suite 100
Larkspur, CA 94939

Re: Long Hill Experience and Credentials

Dear Ms. Hatch:

This letter is provided to you by Long Hill at Edgemere, LLC a wholly owned subsidiary of The Long Hill Company (“**Long Hill**”), the proposed independent third party manager for the senior living community known as The Edgemere in Dallas, Texas (the “**Community**”), subject to, among other things, approval of that certain Asset Purchase Agreement (the “**APA**”), by and between the Bay 9 Holdings LLC (the “**Stalking Horse Bidder**”) and Northwest Senior Housing Corporation (the “**Debtor**”) by the United States Bankruptcy Court for the Northern District of Texas, Case No. 22-30659 (MVL) (the “**Bankruptcy Court**”). Additional information concerning Long Hill is available at www.longhillcompany.com.

Long Hill understands that if the Stalking Horse Bidder becomes the successful purchaser under sections 105, 363, 365 and 1129 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) pursuant to the confirmed Plan of Reorganization of the Plan Sponsors Dated December 6, 2022, the Debtor intends to assume and assign certain executory contracts and unexpired leases to the Stalking Horse Bidder. Pursuant to the APA and that certain *Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing Entry into the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation and Sale Hearing and (V) Granting Related Relief* [Docket No. ___], the Stalking Horse Bidder is required to deliver adequate assurances of future performance with respect to the Assumed Contracts (as defined in the APA), including the Ground Lease. Long Hill is pleased to submit this letter to the Stalking Horse Bidder in support of its statement of adequate assurances of future performance in accordance with section 365(b)(1)(C) of the Bankruptcy Code.

As you know from our prior disclosures, Long Hill has an extensive history of serving as a traditional full-service manager, court-appointed receiver, and advisory consultant, and its management team has a long track record of stabilizing troubled situations in skilled nursing, assisted living, hospice, and continuing care communities. The Long Hill Company was established in 1999 as a for-profit subsidiary of United Methodist Homes, Inc. (“**UMH**”) to provide third-party management and consulting support to post-acute providers. The Long Hill

December [16], 2022

Page 2

Company is wholly owned by UMH, and UMH appoints its independent board of directors. UMH is a 501c(3) non-profit organization that was chartered in 1874 and has been serving older adults for over 140 years. Both organizations are headquartered in Shelton, CT. David M. Lawlor serves as the President and CEO of both UMH and Long Hill and Gregory S. Thome serves as the Compliance Officer for UMH and as COO of Long Hill. Detailed biographies of Long Hill's executive team may be found at www.longhillcompany.com/team.

Long Hill's transactions have ranged from single-site projects to large portfolios across multiple states. Long Hill deploys a tailored approach for each project and find great satisfaction working with facility teams to implement the best practices necessary for success.

The Long Hill Company through its subsidiaries currently provide full-service management services to 17 senior living communities, 11 of which are located in Texas and are comprised 1,262 units of independent living, assisted living and memory care. A member of Long Hill's key management team has served as a board member for a chain of 22 skilled nursing facilities in Texas. Another key management team member has served as the CEO of a hospice organization with multiple Texas sites of care.

In light of our extensive representative experience, commitment to quality resident care and depth of knowledge of the Long Hill team, we believe we are extremely well situated to serve as the third party manager of the Community. While review of the future needs of the Community is ongoing, Long Hill anticipates retaining many of the on-site leadership team members and employees at the Community to provide continuity in care and programming to current and future residents.

Should you have any questions or require any additional information, please call us to discuss.

Yours truly,



David Lawlor,
President and CEO

cc: Victor Milione, Esq. (counsel to Long Hill)
Adrienne K. Walker, Esq. (counsel to Bay 9 Holdings)
Chelsey Rosenbloom List, Esq. (counsel to Bay 9 Holdings)

Landlord's

Exhibit 6

for February 21-23, 2023 hearing

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

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)	Case No. 22-30659-mvl-11
In Re:)	Jointly Administered Ch. 11
)	
NORTHWEST SENIOR HOUSING CORPORATION, et al.,)	Dallas, Texas
	)	February 6, 2023
	)	3:30 p.m. Docket
Debtors.)	
	)	BENCH RULING ON PROPERTY
	)	CONDITION CURE
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHELLE V. LARSON,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtors:		Jeremy R. Johnson POL SINELLI, P.C. 600 Third Avenue, 42nd Floor New York, NY 10016 (646) 289-6507
For the Debtors:		Trinitee G. Green POL SINELLI, P.C. 2950 N. Harwood, Suite 2100 Dallas, TX 75201 (214) 397-0030
For Intercity Investment Properties, Inc.:		Elizabeth B. (Lisa) Vandesteeg Eileen M. Sethna LEVENFELD PEARLSTEIN, LLC 2 N. LaSalle Street, Suite 1300 Chicago, IL 60602 (312) 476-7650
For the Official Committee of Unsecured Creditors:		Stephen A. McCartin FOLEY & LARDNER, LLP 2021 McKinney Avenue, Suite 1600 Dallas, TX 75201 (214) 999-4289
For Pamela Siviglia and Estate of Patricia Adams:		Benton Williams, II BENTON WILLIAMS, PLLC 100 Crescent Court, Suite 700 Dallas, TX 75201 (214) 549-4854

1 WEBEX APPEARANCES, cont'd.:

2 For UMB Bank, N.A.: J. Frasher Murphy
3 HAYNES AND BOONE, LLP
4 2323 Victory Avenue, Suite 700
5 Dallas, TX 75219
6 (214) 651-5246

7 For UMB Bank, N.A.: Emily Kanstroom Musgrave
8 Daniel S. Bleck
9 Eric C. Blythe
10 Catherine S. Lombardo
11 MINTZ LEVIN COHN FERRIS GLOVSKY
12 POPEO
13 One Financial Center
14 Boston, MA 02111
15 (617) 348-4407

16 For UMB Bank, N.A.: Kaitlin R. Walsh
17 MINTZ LEVIN COHN FERRIS GLOVSKY
18 POPEO
19 Chrysler Center
20 666 Third Avenue
21 New York, NY 10017
22 (212) 692-6770

23 For Bay 9 Holdings, LLC: Adrienne K. Walker
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25 111 Huntington Avenue,
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(617) 239-0211

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23
24
25 Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - FEBRUARY 6, 2023 - 3:30 P.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, The Honorable Michelle Larson presiding.

5 THE COURT: Please. Be seated. Good afternoon,
6 everyone. We are here in Case No. 22-30659, Northwest Senior
7 Housing Corporation. I'll go ahead and take appearances for
8 anyone that wishes to make an appearance today. We're
9 obviously primarily here just for the Court to issue its oral
10 bench ruling with respect to cure. But to the extent that
11 anyone does want to make an appearance today, I'm happy to
12 take them.

13 I do have an electronic roll which I'll start with. On
14 behalf of the Debtors, with the firm of Polsinelli, I have Ms.
15 Trinitee Green and Mr. Jeremy Johnson.

16 On behalf of UMB Bank, as one of the Plan Sponsors, with
17 the Mintz Levin firm, I have Mr. Daniel Bleck, Mr. Eric
18 Blythe, Ms. Kaitlin Walsh, Ms. Emily Musgrave, and Ms.
19 Catherine Lombardo.

20 Also on behalf of UMB Bank, with the firm of Haynes and
21 Boone, I have Mr. Frasher Murphy.

22 On behalf of the Creditors' Committee, with the Foley law
23 firm, I have Mr. Steve McCartin.

24 On behalf of Bay 9 Holdings, LLC, with the firm of Locke
25 Lord, I have Ms. Adrienne Walker.

1 And on behalf of Ms. Pamela Siviglia and the Estate of
2 Patricia Adams, I have Mr. Benton Williams.

3 Is there anyone else who wishes to make an appearance
4 today?

5 (No response.)

6 THE COURT: Okay.

7 (Court confers with Clerk.)

8 THE COURT: Okay. I think you're on mute, Ms.
9 Vandesteeg.

10 MS. VANDESTEEG: Hello, Your Honor. Can you hear me
11 now?

12 THE COURT: Yes, I can.

13 MS. VANDESTEEG: Excellent. Sorry. I was, you know,
14 battling with the (audio cuts out) speakers and microphones.
15 Elizabeth Vandesteeg of Levenfeld Pearlstein, also on the line
16 is Eileen Sethna, on behalf of Intercity Investment
17 Properties, Inc.

18 THE COURT: Okay. Good afternoon. Thank you.

19 All right. Is there anyone else who wishes to make an
20 appearance?

21 (No response.)

22 THE COURT: Okay. With that, right before I proceed
23 to my bench ruling, I do want to let those of you who are
24 interested know that I have also signed the order in the
25 adversary proceeding with respect to the first of the motions

1 to compel that is under advisement. I'm not sure that that's
2 hit the docket yet, but that will be hitting the docket later
3 today.

4 Okay. So the following will constitute the Court's ruling
5 on property condition cure. And, again, I certainly
6 appreciate the parties' time joining today.

7 Before the Court is the Amended Statement of Cure Claims
8 with Respect to Existing Defaults Under the Lease Pursuant to
9 11 U.S.C. 365(b)(1)(A) that can be found at Docket 1023, which
10 was filed by the Debtors' Landlord, Intercity Investment
11 Properties, Inc., on January 10, 2023.

12 As you will recall, I had initially had hoped to rule on
13 cure prior to the bid deadline, but after the hearing, for
14 reasons that I'll discuss during the ruling, the evidence
15 proffered and the arguments presented weren't necessarily
16 cohesively married to the prior briefing. Thus, the Court was
17 forced to parse very carefully back through the lease, the
18 evidence, and the ultimate argument by the Landlord.

19 I rule today specifically to give the parties the guidance
20 sought, primarily for bidders in connection with the auction
21 set for tomorrow. Note that I reserve the right to write a
22 more fulsome opinion on this issue, and in fact plan to do so
23 in connection with the Court's larger ruling on assumption and
24 assignment and the sale and confirmation process.

25 In the Cure Statement, ICI requested that the Debtors be

1 ordered to cure existing defaults on the property -- alleged
2 deferred maintenance and capital expenditures -- to the tune
3 of approximately \$15.6 million. That number was brought down
4 from the Landlord's original request for \$52 million at Docket
5 965 after the Plan Sponsors brought a motion to strike.

6 I will further note that the Landlord admitted in closing
7 that there was no evidence to support the catch-all categories
8 of Inflation, Contingency, Permits, Testing, Printing,
9 Professional Fees and Costs, and Construction Manager's Fees
10 at the end of the chart, which accordingly brings the cure
11 number sought by the Landlord down to \$11.573 million.

12 The Plan Sponsors, as well as the Debtors in their own
13 capacity, objected to the cure. Bay 9 Holdings, the stalking
14 horse, also received leave from the Court to file its own
15 response, which it did at Docket 1081.

16 Generally, the Objecting Parties alleged that ICI had
17 failed to prove the existence of any existing defaults under
18 the ground lease warranting cure pursuant to 11 U.S.C.
19 365(b)(1)(A). Even if ICI had proven a default under the
20 ground lease, the Objecting Parties claim that any default
21 would not warrant the alleged cure amount as filed.

22 On January 23rd and 24th, the Court held a hearing on the
23 cure. Counsel for ICI, the Debtors, UMB -- the DIP Lender and
24 principal Plan Sponsor -- the Committee, and Bay 9 appeared.
25 For sake of clarity, this hearing only pertained to the

1 alleged cure of certain property conditions. The cure hearing
2 did not relate to any pecuniary loss or adequate assurance
3 under 365, which has been separately set for future hearings
4 before this Court and will not be part of this ruling.

5 At the cure hearing, ICI put on four witnesses in support
6 of its cure amount. Those witnesses include, in the order
7 called, Nick Hannon, a representative of ICI, who testified
8 about the ground lease, ICI's business, the historical
9 relationship between ICI and the Debtor leading up to the
10 bankruptcy, his tours of the property in or around January
11 2022 and March 2022, his retention of Terracon, the existence
12 of a slip-and-fall complaint, and the circumstances
13 surrounding the preparation of the cure amount filed with the
14 Court.

15 Secondly, Michael Hull, the representative of ICI's
16 expert, Terracon Consultants, Inc. Mr. Hull testified that
17 he's an engineer who was on a six-person team of four
18 engineers and two envelope and roofing specialists, one of
19 which who was also a drone operator. This team conducted a
20 property condition assessment authorized by this Court in mid-
21 July 2022 pursuant to my ruling on adequate protection.

22 His testimony indicated that the scope of the property
23 condition assessment is pretty much limited to an interview
24 with site contacts, being escorted if site contacts are
25 available, and is only a visual assessment. There was no

1 destructive testing or investigative testing, which the Court
2 would take to include, among other things, in-depth
3 environmental testing, corrosion testing, testing for water
4 infiltration, mold or mildew testing, hardness or fatigue
5 testing, thermographic testing or nuclear moisture surveys on
6 roofs, or other advanced testing of the structural,
7 electrical, or mechanical fitness of the improvements on the
8 property.

9 He testified that his six-man group had access to the
10 greater portion of the property, including a sampling of the
11 independent living units, the plaza, the healthcare center,
12 the roofs, the parking garage, and the courtyard for two days
13 in July.

14 He prepared a report, which ultimately was not sought to
15 be admitted into evidence by ICI, absent a handful of
16 photographs about which Mr. Hull testified as part of his
17 description of the condition of the property. I will discuss
18 Terracon's specific observations and how they underpin the
19 Court's ruling shortly.

20 There was also a great deal of testimony about the timing
21 of the Terracon report, which the Court will also address
22 later.

23 Mr. Hull was ICI's only expert, and more specifically, the
24 only expert to testify. Bay 9 sought to examine its own
25 expert to distinguish cure versus adequate assurance of future

1 performance as part of the APA, which the Court ultimately
2 denied, given, among other things, that it is a landlord's
3 obligation to prove the existence of a default and the Court
4 had predetermined that this particular hearing was not the
5 appropriate time to litigate any dispute between the estate
6 and a bidder.

7 The third witness was Nick Harshfield. Mr. Harshfield is
8 the primary Debtors' representative in these bankruptcy cases.
9 He is both an officer and a director of the Debtor, and also
10 the CFO of Lifespace Communities, Inc. Mr. Harshfield
11 testified primarily about the Debtors' capital budgeting
12 process, including about The Edgemere's historical budgeting
13 for façade and roof repairs.

14 Finally, the fourth witness was Chris Soden. Mr. Soden is
15 the National Director of Plant Operations and Engineering for
16 Lifespace Communities. Similar to Mr. Harshfield, he
17 testified on a more in depth basis about the Debtor's capital
18 budgeting process with Lifespace, including The Edgemere's
19 historical budgeting for façade, building envelope, HVAC and
20 roof repairs, as well as maintenance and inspections with
21 regard to the property.

22 At the conclusion of the hearing, the Court took the
23 matter under advisement. The following constitutes the
24 Court's initial ruling thereon:

25 The Court has jurisdiction over this matter pursuant to 28

1 U.S.C. Sections 157 and 1334. This matter is a core
2 proceeding within the meaning of 28 U.S.C. 157(b) (2).

3 Section 365(b) (1) provides three distinct requirements for
4 a debtor to assume an unexpired lease. First, Section
5 365(b) (1) (A) requires that all present defaults be cured prior
6 to assumption, meaning that the contract or lease must be
7 brought back into compliance with its terms.

8 Second, the debtor must provide appropriate compensation
9 for such defaults, but only to the extent that the lease
10 expressly provides. That's (b) (1) (B).

11 Third, 365(b) (1) (C) provides that the debtor must provide
12 adequate assurance of future performance of the lease.

13 The requirement to cure an existing default under
14 (b) (1) (A) is distinct from the requirement to provide adequate
15 assurance of future performance pursuant to (b) (1) (C).

16 And finally, Section 365(b) (1) (A) singularly focuses on
17 the cure of present contractual defaults.

18 Section 365(b) (1) (C) focuses on the debtor or the
19 assignee's ability to provide continued future performance
20 under the existing terms of the unexpired lease. For example,
21 in *Senior Care Centers*, a case before our now Chief Judge
22 Stacey Jernigan, the debtors were obligated under the express
23 terms of their lease to fund a minimum escrow for ongoing
24 capital expenditures for the benefit of their landlord. The
25 Court found that the debtors were required to cure any

1 outstanding escrow amounts prior to assuming their lease
2 because such amounts were presently due and owing under the
3 express terms of the lease. The landlord also argued that, as
4 a cure obligation, the debtors should be required to fund
5 additional amounts over and beyond the amounts required under
6 the lease. The court disagreed. Notwithstanding the
7 landlord's concerns about whether debtors were adequately
8 addressing deferred maintenance and whether escrowed funds
9 were large enough to cover deferred maintenance in the coming
10 months, the Court ultimately found that the cure of the
11 outstanding escrow amounts due under the lease, paired with
12 the debtors' intention to spend additional amounts on future
13 capital expenditures, was sufficient to permit assumption of
14 the lease pursuant to Section 365(b)(1) of the Bankruptcy
15 Code.

16 Here, unlike *Senior Care Centers*, the lease does not
17 contemplate any capital expense reserve fund. Therefore, the
18 Court agrees with the Plan Sponsors that ICI had no basis to
19 demand one as part of the cure obligation *per se*.

20 This case is further complicated by the fact that the
21 responsibility for cure and adequate assurance has been
22 bifurcated under the stalking horse APA. Section 2.5(d) of
23 the APA, approved as part of this Court's bidding procedures,
24 provides that the Seller shall pay the amounts necessary to
25 cure defaults under the ground lease, whereas the Buyer will

1 provide adequate assurance of future performance under the
2 lease. So the question remains what, if any, defaults exist.

3 ICI relies heavily on *In re Old Market Grp. Holdings*, 647
4 B.R. 104, and *Northwest Territorial Mint*, 2017 WL 3841750,
5 which is an unreported decision coming out of the Bankruptcy
6 Court for the Western District of Washington. I have read
7 each of these opinions in detail. *Old Market* stands primarily
8 for the proposition that a landlord's cure statement can be
9 its notice of a default under the lease, and (b) that
10 unperformed repair obligations are defaults requiring cure.
11 The Court accepts these propositions of law.

12 *Northwest Territorial*, on the other hand, deals more with
13 what repairs are necessary in order to cure and what ICI
14 referred to as the continuum of cure obligations to either pay
15 for or actually perform cure obligations.

16 Now, it can't go without saying that the lease in
17 *Northwest Territorial* is much different than the lease before
18 the Court. I won't read the entirety of the provision, but it
19 is very specific. The *Northwest Territorial* lease provides
20 that the lessee shall keep the premises and every part thereof
21 in good order, condition, and repair, and virtually every
22 piece of the property is listed. And then it says the lessee,
23 in keeping the premises in good order, condition, and repair,
24 shall exercise and perform good maintenance practices.
25 Lessee's obligations shall include restorations, replacements,

1 or renewals when necessary to keep the premises and all
2 improvements thereon or a part thereof in good order,
3 condition, and state of repair.

4 The instant ground lease is a bit different. The Landlord
5 asks the Court to focus on primarily four provisions of the
6 lease. One was improvements required by law which required
7 the Lessee, at its own expense, during the whole of the term,
8 to make, build, maintain, and repair all fences, sewers,
9 drains, roads, curbs, sidewalks, and parking areas.

10 Second was the "Observance of Law" section, 5.7, which
11 required the Lessee, at all times during the term, to keep the
12 premises in a strictly safe, clean, orderly, and sanitary
13 condition, and to observe and perform all laws.

14 Then there was Section 5.8, which was the primarily-
15 litigated section herein, which is "Repair, Maintenance, and
16 Restoration," which provides that a Lessee will, at the
17 Lessee's own expense, from time to time and at all times
18 during the term, well and substantially restore, repair,
19 maintain, amend, and keep all improvements on the land, with
20 all necessary reparations and amendments whatsoever, in good
21 and safe repair, order, and condition, with reasonable wear
22 and tear and destruction by unavoidable casualty excepted.

23 Finally, there is also Section 5.9 of the lease, which
24 allows the Lessor at all reasonable times to enter the
25 premises and examine the state of repair and condition of the

1 property.

2 Back to *Northwest Territorial*. The Court finds it
3 important to note that the *Northwest Territorial* court
4 required a list of 21 extremely specific repairs based on --
5 and this is critical -- years of state court litigation, the
6 trustee's acknowledgement in both documentary and oral
7 testimony, and on the court's review of photographic evidence,
8 the requirement to make 21 separate repairs.

9 For example, in *Northwest Territorial*, the trustee had
10 agreed to at least 14 or more defaults. The trustee in that
11 case simply wished to cap the repairs at a specific dollar
12 amount.

13 The *Northwest Territorial* decision should be compared on
14 an evidentiary basis to what this Court was presented with.
15 Although the pleadings were exceptionally well done, they were
16 based on a great deal of evidence that was not admitted at the
17 hearing. Accordingly, the Court was forced to pivot from what
18 it expected to see to what was actually put into evidence.

19 As the parties are aware, four reports were discussed in
20 the papers prior to the hearing, reports prepared by The
21 Building Consultant, Plante Moran, Terracon, and ARCH
22 Consulting. No witnesses were put on to support the admission
23 of The Building Consultant or Plante Moran reports. A
24 Terracon representative testified, but ICI did not seek to
25 admit his report, which greatly hamstrung the Court's fact-

1 finding ability. Finally, the Plan Sponsors chose not to call
2 their potential rebuttal expert, ARCH Consulting.

3 The Court is also guided, of course, by the Fifth
4 Circuit's decision in *Nadler*. However, once again, the Court
5 will note that both the factual dispute and the lease
6 provision in *Nadler* were again somewhat different than the
7 case at hand. *Nadler* involved a barely-functioning HVAC unit
8 and a lease that required the lessee to promptly make all
9 repairs and to keep the premises in good order and condition.
10 Nevertheless, the Fifth Circuit engaged directly with the
11 repair covenant and specifically what a lessee must do to fall
12 within it.

13 In giving guidance to the lower court on remand, the Fifth
14 Circuit stated that a lessee must repair or replace property
15 that a reasonably prudent owner would repair or replace.
16 Accordingly, if a reasonably prudent owner would have repaired
17 or replaced the HVAC system before the end of the lease term,
18 the lessee must compensate the landlord for the cost of such
19 repairs or replacements.

20 Now, I turn to the evidence the Court considered in
21 reaching its ruling.

22 First, the Court will note that it gave very little weight
23 to the chart of alleged defaults and repairs in ICI's Cure
24 Statement. First, no persuasive evidentiary basis was given
25 for the various line items, each purportedly referenced

1 reports not in evidence, nor could any witness put dollars to
2 specific alleged defaults.

3 Second, the Cure Statement is not based on any expert's
4 testimony or report. Rather, it is compilation of cherry-
5 picked line items from various unadmitted reports, some of
6 which were years old, that were modified upward if and when
7 the Landlord thought that they should be increased from
8 experience.

9 Lastly, the Court would note that the Landlord all but
10 abandoned the Cure Statement in closing, likely based on the
11 evidence actually adduced, in favor of asking the Court to
12 simply have the estate cure in the abstract, without putting
13 any number to that cure.

14 Next, the Court will address the various capital
15 expenditure budgets prepared by Lifespace and Debtor
16 representatives about which Mr. Harshfield and Mr. Soden were
17 called to testify.

18 First, it should be recognized that a capital expenditure
19 or CAPEX budget is primarily a financial budgeting tool
20 utilized to support financial projections. Capital
21 expenditures are allocations of funds projected to be used to
22 purchase, maintain, or upgrade assets. I believe they were
23 described by the Debtor or Lifespace representatives as wish
24 list items for best-case scenario, budgets that are prepared
25 to "shoot for the moon." These budgets include repair and

1 replacement items as well as refurbishments and facelifts.
2 Mr. Soden testified that often everything in a CAPEX budget is
3 not done because repairs are done to prolong the life of the
4 asset.

5 The Landlord asked the Court to determine that everything
6 on that list was an admission by the Debtor of critical
7 priority, but the evidence did not bear that out. As the
8 Court made clear back in June 2022 in this case during an
9 adequate protection fight specific to CAPEX, the existence of
10 a line item in a CAPEX budget is not evidence of default
11 without more.

12 Quoting from the transcript, "ICI elicited a great deal of
13 evidence about capital expenditures, but could not point the
14 Court to any actual issues of maintenance on the property,
15 particularly one which would constitute a breach of the
16 aforementioned lease terms. In short, ICI asks the Court to
17 make a leap from a prior projected budget for CAPEX to an
18 impending maintenance problem during these cases. The Court
19 declines to make that leap."

20 This Court gave the Landlord the opportunity to conduct an
21 inspection specifically tailored to inspecting the property to
22 ensure it was being maintained in good and safe repair,
23 without prejudice to requesting further inspections for cause.
24 The language the Court chose was purposeful and specifically
25 tied to Section 5.8 of the lease. I even stated at that time

1 that, if critical defaults were discovered, to bring those to
2 the Court's attention. That inspection occurred in July 2022.
3 Nothing was ever brought to the Court after that. Rather, in
4 a flatly bewildering set of circumstances that Mr. Hull
5 chalked up to "client proclivities," the report on that
6 inspection took almost six months, rather than the twenty days
7 or so detailed in the engagement letter, to be prepared and
8 finalized in January 2023.

9 Now, Mr. Hull was clear that the report was done prior to
10 that time, although he had virtually no idea when. But
11 piecing together what was fuzzy testimony on this point, the
12 Court finds that Terracon in all likelihood brought its
13 findings to ICI's attention close in time to the site visit
14 and that ICI asked that Terracon not finalize its report until
15 January. Nevertheless, Mr. Hannon nor Mr. Hull were very
16 clear in their testimony.

17 Again, the Court does not deem this a notice of default
18 issue, but finds it relevant to any assertion that certain
19 property conditions are life safety concerns or critical risks
20 to other building systems. These assertions are belied by the
21 factual timeline that I just outlaid, along with the testimony
22 of Mr. Soden that repairs were made to The Edgemere that were
23 not part of any CAPEX budget because they were immediate or
24 necessary. Specifically, he testified that they responded to
25 emergencies, handled significant matters immediately, without

1 regard to the capital planning budget.

2 I'll now turn to the Mr. Hull's testimony. Mr. Hull
3 testified that Terracon's overall assessment was Terracon's
4 standard breakdown for property condition reports. "The
5 subsystems consist of: Site Improvement; Building Structure
6 and Exterior; Roofing; Interiors; Conveyance, which is moving
7 sidewalks and elevators, its vertical transportation; MEP,
8 which combines both mechanical, which is HVAC, air
9 conditioning, electrical systems and plumbing; and then Fire
10 Protection and Safety."

11 He testified that, "They are typically broken into two
12 buckets. The first and most critical bucket is more of an
13 immediate concern, and those conditions are observed to be a
14 threat to life safety or other building systems." The other
15 bucket, he testified, is where they place items in the reserve
16 term. "So items aren't necessarily identified as risks to
17 life safety and other building systems, but they are critical
18 for capital planning." That's the end of that quote.

19 Now, again, Terracon's report was not offered into
20 evidence, but Mr. Hull did testify that Terracon recommended
21 only approximately \$270,000 in actual critical repairs, along
22 with another \$220,000 of critical investigations. But
23 unfortunately, no one established what the \$270,000 of
24 critical repairs were. Instead, Mr. Hull was asked to testify
25 more generally about his visual inspection and the condition

1 of the various building structures and what that condition was
2 back in July 2022 from memory, with the help of a few
3 photographs that were taken by the Terracon team and admitted
4 in evidence.

5 In fairness, the Court found Mr. Hull generally credible.
6 The Court's critiques are with the gaps in evidence and the
7 lack of a cohesive picture of exactly what defaults the Court
8 is being asked to call.

9 Before I get to the individual structures, I think it
10 important to remind the parties of the specific definitions
11 that Mr. Hull employed, as they are determinative of his
12 viewpoints.

13 He considered something to be in poor condition if
14 "something is approaching the end of its useful life. Not
15 necessarily a threat to life safety issues, but it could be.
16 But typically approaching the end of its useful life." That's
17 a quote.

18 Fair condition was defined as "Likely halfway through its
19 useful life, receiving regular maintenance."

20 Good condition was quoted as "likely recently installed or
21 receiving above average maintenance. It would have to be
22 quite new. Within the first few years of its useful life.
23 Depending on the building system."

24 And then a failed state is where "it ceases to be
25 functional in its intended purpose. And it also has the

1 potential to damage other systems or to be a threat to life
2 safety."

3 So, to be clear, using Mr. Hull's definitions, nothing on
4 a property that is, let's say, twenty years old can be in good
5 condition because it won't have been recently installed or be
6 quite new, within the first few years of its useful life.

7 Accordingly, the Court noted that these definitions do not
8 easily equate to the lease term "good condition," as that term
9 is not defined in the lease, but, again, the Court found them
10 instructive of Terracon's overall findings.

11 There were nine primary issues in the testimony of Mr.
12 Hull.

13 First, the corroded copper pipe. Photos 98 and 99 were
14 admitted into evidence as Exhibit 30. The Court considers the
15 existence of this pipe at 98 and 99, which was not
16 definitively described on the property except as being in a
17 mechanical room, nevertheless, the Court finds that pipe to be
18 a default under Section 5.8 of the lease. The Court does not
19 deem this pipe to be in good and safe repair and will require
20 it to be repaired as part of cure.

21 Second, the cooling tower. Mr. Hull testified that the
22 cooling towers as a functional mechanical system are in a poor
23 state. They function, but they are at the very near end of
24 their useful life. They are not in a state of failure because
25 the cooling towers themselves still function.

1 Regarding structural failure, states, "We observed the
2 cooling tower support frame, which is a steel frame that
3 supports the cooling tower within a light well, that was
4 observed to have severe rust in some locations, and our
5 structural engineer documented that as a critical matter." If
6 the cooling tower supports continue to rust, Mr. Hull's team
7 found that it would be possible that it would result in a
8 catastrophic failure of the cooling tower, because the cooling
9 tower would no longer be supported, and it would either damage
10 other building materials or cease operation, likely, if it was
11 no longer supported in accordance with the way it was built.
12 End quote.

13 Photos 60 through 63 were admitted as part of Exhibit 30,
14 showing the rusting on the structural support beams of the
15 cooling tower. The Court finds that the lease requires that
16 the estate address the rusting on the structural support beams
17 to the cooling tower by restoring or repairing the same, as
18 Section 5.8 provides.

19 The Court fully recognizes that in certain cases the beams
20 may not have to be replaced in order to be repaired. There
21 may be instances where sanding and coating or painting the
22 beams may be sufficient, but the Court will require these
23 beams be restored or repaired as part of the cure to bring
24 them to good and safe condition.

25 Third were gutters and splash guards. Mr. Hull testified

1 that there were missing splash guards in certain places on the
2 property. The Court does not determine these to be defaults
3 under the lease. The Court recognizes that the absence of
4 splash guards could eventually cause damage to the roofs or
5 façade, but does not deem their absence to be a default.

6 As to the severely dented gutter depicted at Photo 48,
7 which was admitted into evidence, the Court will order it to
8 be replaced or repaired in accordance with Section 5.8 of the
9 lease as part of the cure.

10 The fourth major topic was sidewalks. Mr. Hull and Mr.
11 Hannon testified as to the existence of uneven sidewalks at
12 The Edgemere. No photos of uneven sidewalks were provided to
13 the Court. No quantification was provided to the Court to
14 determine if there was an uneven sidewalk, three, several?
15 Likewise, although Mr. Hull deemed them critical and a life
16 safety issue to residents with mobility issues, yet there is
17 no evidence that they were ever brought to the Debtors'
18 attention as a default over the many months between July 2022
19 and January 2023, nor was the Court alerted as to a life
20 safety issue.

21 Accordingly, the Landlord failed to bring forth both
22 qualitative and quantitative evidence to carry its burden to
23 prove a lease default as to sidewalks pursuant to Section 5.6
24 of the lease.

25 The next major category was the retaining wall. Mr. Hull

1 and Mr. Hannon testified as to the existence of retaining
2 walls with significant cracking at The Edgemere. No photos of
3 problems with retaining walls were provided to the Court.
4 Likewise, although Mr. Hull deemed one or more of the
5 retaining walls to be in a failure state, there is no evidence
6 that they were ever brought to the Debtors' attention as a
7 default over the many months between July '22 and January
8 2023, nor was the Court alerted as to the life safety issue.

9 The Court will further note that the Cure Statement didn't
10 even rely upon Terracon for this point, but rather cited to
11 the Plante Moran report. Again, the Landlord failed to bring
12 forth both qualitative and quantitative evidence to carry its
13 burden to prove a lease default as to the retaining walls
14 pursuant to Sections 5.6 and 5.8 of the lease.

15 The next issue was carbon monoxide detectors in the
16 garage. Mr. Hull testified that the carbon monoxide detectors
17 in the garage were not properly calibrated. It hopefully goes
18 without saying that the Court must assume that the detectors
19 are not in a failure state, given that that would certainly
20 have risen to something that would immediately have been
21 brought to the Debtors' or the Court's attention, rather than
22 simply placed in a cure statement six months later.

23 The testimony of Mr. Soden reflected that, after the
24 Terracon visit in July 2022, there have been a number of
25 inspections by Fire and City of Dallas officials, among

1 others. If the carbon monoxide detectors were not inspected
2 and/or cleared by the appropriate officials subsequent to
3 those inspections, or if the carbon monoxide detectors have
4 not otherwise been recalibrated, the Court hereby orders the
5 Debtor to ascertain whether such detectors are properly
6 calibrated, and if they are not, to have them repaired so as
7 to be in accordance with Sections 5.7 and 5.8 of the lease as
8 part of its cure. Given the passage of time since the
9 Terracon visit, the Court recognizes that any frailty in the
10 carbon monoxide detection system may have since been repaired.
11 But if it has not been so, that will be part of the estate's
12 cure.

13 The next issue was the garage expansion joint. Mr. Hull
14 testified that the expansion joint in the garage was in a
15 failure state. He testified that in 2016 there was an
16 expansion of the campus, and where these two phases meet there
17 is an expansion joint that his team observed from grade from
18 above. He testified that the soil has been eroded, exposing
19 this joint, and that you could see deterioration above and
20 below from the garage, and that water intrusion and staining
21 could be observed from the garage level.

22 Specifically, Photos 49, 57, 58, 59, 67, and 71 were
23 admitted, showing horizontal cracking in the garage and an
24 exposed joint where soil had eroded.

25 The Court will note that Bay 9 did not take a position on

1 this garage expansion joint being a default under the lease.

2 The Court is persuaded that a reasonably prudent owner
3 would cause an expert to investigate this expansion joint to
4 ascertain next steps, if any. I'm going to allow for the
5 option of the Debtor or the winning bidder to retain such an
6 expert. The Court will review a copy of the expert's findings
7 and determine if a default exists under the lease or if this
8 is perhaps an adequate assurance issue.

9 The eighth issue was the roofing systems at The Edgemere.
10 Mr. Hull testified that certain of the roofs on the property
11 were in poor condition. Specifically, Photos 31 and 40 were
12 admitted. Photo 31 showed a singular modified bitumen roof
13 that may be in the later stages of useful life, showing a loss
14 of roofing granules. Photo 40 showed what the Court
15 ascertained might be a three-inch tear in the membrane of a
16 singular roof. Finally, Mr. Hull testified that at least one
17 roof had debris on it, including sheet metal, tools, and
18 fasteners. No photos were provided to the Court of the
19 debris.

20 Notably, Mr. Hull did not testify that the roofing systems
21 were leaking. Mr. Soden testified that some ponding existed
22 from time to time and that the roofs had been repaired from
23 time to time, but never replaced.

24 Again, the Court will note that the stalking horse, Bay 9,
25 who had every reason to argue that any roofing system was a

1 default and needed to be cured under the APA, did not believe
2 that the roofing systems were a default under the lease.

3 Now, the Court assumes that ICI would like this Court to
4 accept Mr. Hull's definition of "poor condition" -- *i.e.*,
5 functioning, but toward the end of the useful life -- and
6 compare that with the lease term "good condition." As stated
7 before, the Court does not believe the two equate. A mod bit
8 roof may well have a quoted lifespan of twenty years, but that
9 doesn't mean that that roof will fail at twenty years plus one
10 day. That does not mean that they are failing. And that does
11 not mean that a reasonably prudent owner would take immediate
12 action and replace a roof, such that there is a default today.

13 ICI had the time and the ability to come to this Court and
14 ask for a roofing expert to look at these roofs and to
15 determine whether the roofs needed immediate repair or
16 replacement. The Landlord failed to carry its burden to prove
17 that the whole of the roofing systems on the property are in
18 poor condition in order to call a default under the lease.

19 But with that said, the Court will order, as part of cure,
20 that the Debtor repair the torn membrane and remove the sheet
21 metal and related debris from the roofs on The Edgemere
22 property.

23 The final issue was with regard to the stucco or façade of
24 various buildings at The Edgemere. We heard a great deal of
25 argument about the building envelope or the façade of the

1 building. This is the area where Bay 9 and the Plan Sponsors
2 diverge. Mr. Hannon and Mr. Hull both testified as to cracks
3 in exterior walls, staining, and evidence of past repairs.
4 Mr. Hull testified that "Cracking, however small, in stucco
5 can permit water intrusion behind the scenes, and that
6 condition can affect other conditions." He went on to say,
7 "And like I defined earlier with an immediate concern, it's
8 not necessarily a threat to life safety, but a threat to other
9 building systems. So it may impact structural components in
10 addition to jeopardizing the condition of the stucco panels."

11 Photos 49, 50, 67, and 68 were admitted, showing staining,
12 cracking, and patched repairs to the stucco façade. Mr. Hull
13 testified honestly that he could not see any water
14 infiltration, but Terracon observed enough cracking and
15 repairs to make a recommendation for destructive testing.

16 Mr. Soden testified that the stucco is not in good
17 condition, and that despite the pervasive cracking and
18 staining the Debtor has not done anything to investigate the
19 issues with the stucco to ascertain water intrusion. He
20 further testified that the building envelope would need to be
21 addressed if there were water intrusion.

22 Again, the Court is frankly frustrated with the quality of
23 the evidence brought to me. Parties had more than adequate
24 time to bring me an actual stucco expert. The Landlord had
25 the time to ask for this level of inspection and testing when

1 their expert deemed the investigation an immediate concern
2 months ago. Yet the Court is asked to use its discretion and
3 fill in the holes, no pun intended.

4 I'm going to order the Debtor to hire an EIFS or stucco
5 expert to examine the stucco façade of each building on the
6 property and investigate the cause of the cracking and
7 staining and to determine whether there is any delamination,
8 soil shifting, or water intrusion.

9 Given the bifurcated nature of cure and adequate assurance
10 under the APA, given the *Nadler* "reasonably prudent owner"
11 standard, and the admission by Mr. Soden, the Debtors' Plant
12 and Operations Director, that the façade is not in good
13 condition, the Court cannot allow the Debtor to kick the can
14 down the road any longer as it pertains to the façade. This
15 investigation shall include destructive testing if the expert
16 finds it appropriate and necessary.

17 Once that investigation is performed, the Court would like
18 to see a summary of the expert's findings so as to ascertain
19 if the issues are simply cosmetic or symptomatic of more
20 serious problems. At that point, if an agreement cannot be
21 reached between the estate and the winning bidder as to next
22 steps and/or an appropriate reserve for repairs or
23 restoration, the Court will order the parties to get two or
24 more guaranteed maximum price estimates from contractors to do
25 the work based on the expert report. The parties can then set

1 a follow-up hearing and I will decide whether a default exists
2 such that a cure reserve is appropriate and the amount of any
3 reserve for the façade repair or restoration.

4 This concludes the Court's ruling on cure. I recognize
5 that I did not address every element of cure listed in ICI's
6 Cure Statement at Docket 1023. In short, if I did not address
7 it, I find that the Landlord failed to carry its burden to
8 substantiate my calling a default under the lease such that
9 the Debtor would be required to cure that default as part of
10 Section 365(b).

11 Again, the Court plans on issuing a more fulsome written
12 ruling on this issue as part of the sales process, but hopes
13 this ruling today will give the parties guidance as they
14 prepare for an auction.

15 Are there any questions?

16 (No response.)

17 THE COURT: All righty. Hearing no questions, the
18 Court will --

19 MS. WALKER: Your Honor?

20 THE COURT: Yes? Ms. Walker?

21 MS. WALKER: Thank you, and I'm trying to get my
22 video on.

23 THE COURT: Fair enough.

24 MS. WALKER: Your Honor, if you could just -- thank
25 you -- a clarification on the façade testing with the Debtor.

1 Is the Debtor to propose suggestions to the winning bidder who
2 might be their examiner of the façade so there could be a
3 collaboration with that?

4 THE COURT: Okay. I don't think I understood your
5 question. Could you ask that again, Ms. Walker?

6 MS. WALKER: I apologize, Your Honor. So, you've
7 asked the Debtor to get another examination of the façade.
8 The question I have is, who is going to make that selection?
9 Is it just the Debtor, or will there be a collaboration with
10 the winning bidder so that -- because the winning bidder might
11 be, you know, invested in this -- in this -- whoever they
12 select.

13 THE COURT: Having the Debtors or the estate work in
14 conjunction with the winning bidder, given that we are one day
15 away from the auction -- which I assume we're having an
16 auction tomorrow. Are we still proceeding to auction, Ms.
17 Walker?

18 MS. WALKER: No, Your Honor.

19 THE COURT: We are not? Okay. Then, in that
20 instance, then, yes, the estate can work in conjunction with
21 the winning bidder in the selection of an expert. Rather than
22 have competing experts, if the parties can agree on one
23 essentially stucco or EIFS expert, I think makes sense.

24 MS. WALKER: Understood and agree, Your Honor.

25 THE COURT: Any other questions, ladies and

1 gentlemen?

2 (No response.)

3 THE COURT: Okay. With that, the Court will stand
4 adjourned for the remainder of the day. Thank you.

5 THE CLERK: All rise.

6 (Proceedings concluded at 4:13 p.m.)

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CERTIFICATE

20 I certify that the foregoing is a correct transcript from
21 the electronic sound recording of the proceedings in the
above-entitled matter.

22 **/s/ Kathy Rehling**

02/08/2023

23

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

24

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INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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PROCEEDINGS

3

WITNESSES

-none-

EXHIBITS

-none-

RULINGS

3

Bench Ruling on Property Condition Cure Re: Notice of Intercity Investment Properties, Inc.'s Statement Regarding Lease Cure Amount filed by Creditor Intercity Investment Properties, Inc. (965) and Notice of 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) filed by Creditor Intercity Investment Properties, Inc. (1023)

END OF PROCEEDINGS

32

INDEX

33

Landlord's

Exhibit 7

for February 21-23, 2023 hearing

LAPIS MUNICIPAL OPPORTUNITIES FUND IV LP
811 East 17th Avenue
Denver, Colorado 80218

February 13, 2023

Bay 9 Holdings LLC
811 E. 17th Avenue
Denver, Colorado 80218

Re: Capital Commitment Letter

Gentlepersons:

Lapis Municipal Opportunities Fund IV LP (the “Sponsor”) as the sole member of Grenelle Holding LLC, which is the sole member of Bay 9 Holdings LLC, a Delaware limited liability company (“Bay 9”), is pleased to offer this commitment to make capital contributions to Bay 9, subject to the terms and conditions contained herein.

The Sponsor understands from Bay 9 that Bay 9 will acquire that certain senior living community offering residents living accommodations and related health care and support services (the “Edgemere Community”) on land owned by Intercity Investment Properties, Inc. (“Landlord”) and located at 8523 Thackery St., Dallas, Texas 75225 (the “Property”), subject to authorization of that certain Asset Purchase Agreement, between Bay 9 and Northwest Senior Housing Corporation (the “Debtor”) dated as of December 16, 2022 (as amended from time to time, including that certain First Amendment to Asset Purchase Agreement, dated January 13, 2023, the “Purchase Agreement”), by the United States Bankruptcy Court for the Northern District of Texas, and subject to certain regulatory approvals, and closing the sale in accordance with the Purchase Agreement (the “Transaction”).

1. Commitments. Subject only to closing the Transaction, the Sponsor hereby agrees to contribute cash as an equity capital contribution to Bay 9, as follows (together, the “Contributions”):

(a) **Rent Commitment**. For a period of three (3) years from the closing date of the Transaction, if Bay 9 determines that it does not have sufficient cash on hand to timely fund its obligations under that certain Lease between the Debtor and Landlord (as assigned to Bay 9 under the Purchase Agreement), then Bay 9 shall make written demand to the Sponsor to fund one or more capital contributions in an aggregate amount of up to \$1,000,000 (the “Rent Commitment”). Upon written demand from Bay 9 to the Sponsor to make a Rent Commitment in accordance with the foregoing sentence, the Sponsor shall within five (5) business days fund the capital contribution demand; and

(b) **Capital Expense Commitment**. Bay 9 has and in the future may identify capital expense projects or unfunded working capital needs for the Edgemere Community, including any repairs that may impact life safety. Upon written demand from Bay 9 to the Sponsor to make a capital contribution in accordance with the

foregoing sentence, the Sponsor shall within five (5) business days fund the capital contribution demand up to an aggregate amount of \$15,000,000 (the "Capital Expense Commitment").

The Sponsor currently has cash on hand, marketable securities, access to existing credit facilities and/or existing capital commitments from its investors sufficient to fund the Contributions in full in cash upon Bay 9's demand therefor in accordance with the terms herein. After closing of the Transaction, the obligation to fund the Contributions is not subject to any conditions; except that the Rent Commitment is subject to the durational limitation set forth in clause (a) above.

2. No Assignment. The commitment evidenced by this letter agreement shall not be assignable by Bay 9 without the Sponsor's prior written consent, and the granting of such consent in any given instance shall be in the sole discretion of the Sponsor and, if granted, shall not constitute a waiver of this requirement as to any subsequent assignment. Any purported assignment of this commitment in contravention of this Section 2 shall be void.

3. Representations and Warranties. The Sponsor hereby represents and warrants to Bay 9 that (a) it has all requisite power and authority to execute, deliver and perform this letter agreement; (b) the execution, delivery and performance of this letter agreement by the Sponsor has been duly and validly authorized and approved by all necessary action, and no other proceedings or actions on the part of the Sponsor are necessary therefor; (c) this letter agreement has been duly and validly executed and delivered by it and constitutes a valid and legally binding obligation of it, enforceable against the Sponsor in accordance with its terms (subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law)); and (d) the execution, delivery and performance by the Sponsor of this letter agreement do not and will not violate the organizational documents of the Sponsor or any applicable law.

4. Jurisdiction. Each party to this letter agreement, by its execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any Federal Court of the United States of America sitting in the State of Delaware), and any appellate court from any thereof, for the purpose of any action between the parties arising in whole or in part under or in connection with this letter agreement, (b) hereby waives to the extent not prohibited by applicable Law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such action brought in one of the above-named courts should be dismissed on grounds of *forum non conveniens*, should be transferred or removed to any court other than one of the above-named courts, or should be stayed by reason of the pendency of some other proceeding in any other court other than one of the above-named courts, or that this letter agreement or the subject matter hereof may not be enforced in or by such court, and (c) hereby agrees not to commence any such action other than before one of the above-named courts.

5. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, THE PARTIES HEREBY WAIVE, AND COVENANT THAT THEY WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS LETTER AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY IN ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS LETTER AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THAT ANY SUCH PROCEEDING WILL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

6. No Third Party Beneficiaries. This letter agreement shall inure to the benefit of and be binding upon Bay 9 and the Sponsor and their respective permitted successors and assigns. Nothing in this letter agreement, express or implied, is intended to nor does it confer upon any person other than Bay 9 and the Sponsor any rights or remedies under, or by reason of, or any rights to enforce or cause Bay 9 to enforce, the Contributions or any provisions of this letter agreement or to confer upon any person any rights or remedies against any person other than the Sponsor under or by reason of this letter agreement.

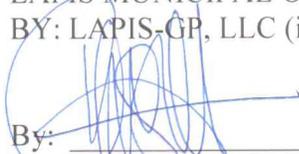
7. Headings. The headings contained in this letter agreement are for convenience purposes only and will not in any way affect the meaning or interpretation hereof.

8. Governing Law. This letter agreement and the obligations hereunder shall be governed by and construed in accordance with the laws of the State of Delaware.

9. Entire Agreement. This letter agreement and the Purchase Agreement constitute the entire agreement with respect to the subject matter hereof, and supersede all prior agreements, understandings and statements, both written and oral, between or among Bay 9 or any of its affiliates and the Sponsor or any of its affiliates.

10. Amendments. This letter agreement may not be amended, and no provision hereof waived or modified, except by an instrument in writing signed by the Sponsor and Bay 9.

LAPIS MUNICIPAL OPPORTUNITIES FUND IV LP
BY: LAPIS-GP, LLC (its general partner)

By: 
Name: Kerstin Hatch
Title: Managing Principal

Landlord's

Exhibit 8

for February 21-23, 2023 hearing

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IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

IN RE: NORTHWEST SENIOR HOUSING CORPORATION,
22-30659

TRANSCRIPT OF AUDIO-RECORDED
LIFESPACE COMMUNITY BONDHOLDERS' CALL
January 11, 2023

HOSTED BY:

MR. AARON RULNICK, HJ SIMS
MR. NICK HARSHFIELD, CFO, LIFESPACE COMMUNITIES

TRANSCRIBED BY:

VERITEXT LEGAL SOLUTIONS
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<p style="text-align: right;">Page 2</p> <p>1 MR. RULNICK: Great, Lynn. You're 2 recording. Terrific. 3 Good afternoon, or morning, depending on 4 where you are. My name is Aaron Rulnick, with HJ 5 Sims. 6 I'm going to ask that you please put 7 yourself on mute. I can still hear some people 8 talking. So if you're on the phone, please put 9 yourself on mute. 10 My name is Aaron Rulnick, with HJ Sims. 11 Today is Wednesday, January 11, 2023. And I want to 12 emphasize that this is a voluntary continuing 13 disclosure call for Lifespace. This is not meant to 14 replace, nor will we be addressing those items that 15 are typically covered on the regularly scheduled 16 continuing disclosure calls. 17 And having said that, this call is being 18 recorded for future playback. And the replay 19 information will be posted later today or tomorrow on 20 EMMA. 21 Joining the call today is Nick 22 Harshfield, CFO of Lifespace. Certain statements 23 made on this call should be considered for looking 24 statements concerning the operations facilities and 25 financial condition of Lifespace, meaning they refer</p>	<p style="text-align: right;">Page 4</p> <p>1 contribution by Lifespace that is part of the 2 reorganization plan. Second is the settlement and 3 contribution agreement currently proposed between 4 Edgemere and Lifespace, for which I expect we'll 5 spend most of our time outlining and discussing. 6 The reorganization plan, itself, 7 includes the contribution of \$16.5 million by 8 Lifespace in support of the plan. This contribution 9 is made -- will be made on the effective date of the 10 Edgemere Chapter 11 plan, currently anticipated to be 11 early April 2023. 12 The plan also contemplates the sale of 13 Edgemere through a defined sell process, in which 14 Lifespace will not participate. Upon emergence from 15 bankruptcy, we anticipate that Edgemere will no 16 longer be part of the Lifespace community. 17 The settlement and contribution 18 agreement between Edgemere and Lifespace, Inc., is an 19 agreement to provide funds over a 19-year period to 20 support the payment of resident entrance fee refunds, 21 generally under the terms outlined by their current 22 residency agreements with Edgemere. 23 With a predefined annual payment 24 schedule, the agreement calls for Lifespace to fund 25 approximately 143 million through annual payments</p>
<p style="text-align: right;">Page 3</p> <p>1 to possible future events or conditions. The 2 achievement of certain results or other expectations 3 contained in such statements involve risks, 4 uncertainties and other factors that may cause the 5 actual results to be materially different from those 6 discussed on this call. 7 Lifespace does not expect or intend to 8 issue any updates or revisions to those statements, 9 if or when such matters change. 10 We ask that you hold any questions you 11 may have for Nick until he completes his formal 12 remarks. We ask that you place your phones on mute 13 until you have a question, to minimize background 14 noise. 15 With that, I'm pleased to turn the call 16 over to Nick Harshfield, CFO of Lifespace. 17 Nick. 18 MR. HARSHFIELD: Thank you, Aaron. And I 19 like to thank everyone for joining us on this call. 20 We scheduled this call as a proactive 21 measure to communicate with you regarding the recent 22 developments relative to two components of the 23 current reorganization plan for Edgemere and their 24 impact upon Lifespace, Inc. 25 First of the -- is the proposed</p>	<p style="text-align: right;">Page 5</p> <p>1 spread over a 19-year period. These payments will be 2 deposited to a non-affiliated trust and administered 3 by a third-party trustee. 4 We anticipate that these annual payments 5 will be funded through a mix of subordinated debt and 6 excess cash flows over the 19-year period. The first 7 payment will total approximately 52 million and would 8 be made upon the effective date of Edgemere's 9 Chapter 11 plan. We currently plan to fund this 10 initial payment with subordinated debt. 11 The second payment will total 12 approximately \$11 million and will be made December 13 2023, which we also plan to fund with subordinated 14 debt. We anticipate funding all future annual 15 payments from excess cash flows. 16 The settlement and the contribution 17 agreement contains two key protections for Lifespace 18 to mitigate the financial impact of these payment 19 obligations upon the strength of Lifespace's balance 20 sheet. 21 First there's a debt service coverage -- 22 no, I'm sorry, a days cash-on-hand-floor of 250 days. 23 If in a given year payment will case Lifespace cash 24 on hand to drop below 250 days, that payment may be 25 deferred. And these deferrals can occur for up to</p>

<p style="text-align: right;">Page 6</p> <p>1 two consecutive years. 2 Second, if any payment obligation would 3 cause a default under the Lifespace master trust 4 indenture, that payment will be deferred. 5 As I mentioned, we plan to issue 6 subordinated debt to fund the first two payments into 7 the trust. This new funding will qualify as 8 subordinated as defined within the Lifespace master 9 trust indenture. 10 Combined with the reorganization 11 contribution, we anticipate borrowing up to 12 approximately \$80 million of subordinated debt in 13 2023. 14 I'll now hand it off the to Aaron 15 Rulnick of HJ Sims to provide a high level overview 16 of the subordinated debt issuance. 17 MR. RULNICK: Great. Thank you, Nick. 18 As Nick indicated, the intent is to 19 issue tax exempt subordinate bonds. These tax exempt 20 bonds will be done through a private placement and 21 only sold to institutional investors and to QIBs. 22 These bonds will not be offered to any retail 23 investors, even if they meet the qualifications to be 24 an accredited investor. 25 It is currently anticipated that these</p>	<p style="text-align: right;">Page 8</p> <p>1 catch-up payment in those subsequent years when there 2 are excess cash. But again, limiting that floor to 3 250 days cash on hand, as it is currently 4 anticipated. 5 This structure may change. The 6 expectation is that this first tranch would be 7 issued by the end of the -- of the first quarter of 8 this year. 9 And so with that, Nick, I'll turn it 10 back over to you. 11 And we will be happy to address any 12 questions. 13 MR. HARSHFIELD: Okay. Thank you, Aaron. 14 I just want to wrap up our overview to 15 provide some explanation as to why Lifespace has 16 agreed to enter into this contribution and settlement 17 agreement to support the residents of Edgemere. 18 First, the facts and circumstances 19 surrounding the Edgemere is very unique because the 20 property is subject a third-party land lease that the 21 landlord claims will expire with no option to extend, 22 renew or buy out. 23 As a result, Edgemere is not able to 24 sustain a life-care contract of this model. 25 Therefore, Lifespace has agreed to provide this</p>
<p style="text-align: right;">Page 7</p> <p>1 bonds would have a maturity of up to 25 years, but 2 would be similar to a turbo structure. So as Nick 3 described, to the extent that there is excess cash 4 flow, these subordinate bonds would be repaid more 5 quickly; more likely with an average life of 6 approximately six or seven years. Again, that is 7 subject to change. 8 These subordinate bonds will not have 9 any acceleration rights and obviously are subordinate 10 to the payment of principal and interest on the 11 senior obligations. The interest on the subordinate 12 bonds would be paid, and then, as Nick described, 13 excess cash would be used for the payment of the 14 refund obligations under the plan of reorganization. 15 And to the extent that there is excess cash flow 16 after those payments, there would be annual payments 17 up to approximately \$5 million from access cash flow; 18 again, using that liquidity floor that is consistent 19 with the plan of reorganization that currently we do 20 not intend that payments would be made if Lifespace, 21 liquidity drops below 250 days cash on hand. 22 To the extent that there is a year in 23 which there's not sufficient excess cash to make any 24 payment on the principle of those subordinate 25 obligations, there would be a deferral and be a</p>	<p style="text-align: right;">Page 9</p> <p>1 extraordinary solution in support of the Edgemere's 2 residents. 3 The Lifespace has no other communities 4 that are subject to a land lease that would threaten 5 the viability of the life-care model like Edgemere. 6 Second, while Lifespace is not legally 7 obligated to satisfy the obligations of Edgemere, 8 this is a proactive measure by Lifespace to settle 9 any potential claims that may arise as a result of 10 the current plan of reorganization for Edgemere, 11 avoiding the potential of years of various legal 12 actions. 13 Finally, the key component of 14 Lifespace's mission is to act in the best interests 15 of its residents, and this course of action is 16 consistent with that message -- with that mission. 17 Now I'd like to open it up for any 18 questions. 19 MR. SCHLICHTER: Hi. This is Eric 20 Schlichter with Baird. 21 What did Edgemere have on the balance 22 sheet for not -- for refundable entry fees? And is 23 some of that being used to fund this \$143 million? 24 And how much of the entry fees were discharged in the 25 bankruptcy? Thank you.</p>

Page 10

1 MR. HARSHFIELD: So I don't have all those
 2 details at my fingertips. All I can tell you is that
 3 the 143 million is to satisfy all the interest fee
 4 refunds that are currently on the balance sheet of
 5 Edgemere and owed to residents, or will eventually be
 6 triggered over time to residents.
 7 MR. SCHLICHTER: So none of the balance
 8 sheet -- so none of the refundable entry fees on the
 9 balance sheet are being used to fund this \$143
 10 million? They're essentially gone, if they had any?
 11 Because I thought they had about 120 million.
 12 MR. HARSHFIELD: Yes, that -- that's
 13 exact- -- that's true. That is true.
 14 There is also -- there is a segment of
 15 entrance fees that are currently held in escrow for
 16 all Edgemere residents that moved in since September
 17 of 2021, approximately 16 million. Those entrance
 18 fee deposits will be fully refunded back to residents
 19 upon the conclusion of the reorganization plan.
 20 MR. SCHLICHTER: And is the 16-and-a-half
 21 million contribution part of the 143 million, or is
 22 that separate?
 23 And that's it for me. Thanks.
 24 MR. HARSHFIELD: That -- yeah, that is
 25 separate. The 16 and a half is a contribution to the

Page 11

1 plan itself. And the 143 is supporting the resident
 2 refunds.
 3 MR. RULNICK: Any other questions at this
 4 time?
 5 MR. DYER: Hey, how's it going? It's Brett
 6 Dyer from AllianceBernstein.
 7 Can you talk about the nature of these
 8 obligations for the Edgemere bankruptcy plan? To my
 9 understanding, they are for Lifespace's parent, not
 10 the obligated group.
 11 And then, you know, what exists on the
 12 balance sheet of Lifespace's parent to pay some of
 13 these obligations currently versus what will be
 14 funded from the obligated group going forward via
 15 transfers?
 16 MR. HARSHFIELD: So no, this is a settlement
 17 of Lifespace, Inc., which includes the obligated
 18 group. So it's a settlement agreement that includes
 19 that.
 20 And we've worked closely with bond
 21 counsel to make sure that the way this structured
 22 works within the master trust indenture.
 23 And I'm not -- hopefully that answers
 24 your question.
 25 MR. MUNDELL: This is John Mundell at

Page 12

1 Aberdeen to follow up on an earlier question.
 2 Any transparency as to what happened to
 3 the balance sheet assets for the refundable deposits
 4 at Edgemere, if they're not being used to refund?
 5 MR. HARSHFIELD: I would have to point you
 6 back to the disclosures of Edgemere, itself.
 7 Certainly, Edgemere, the reason it -- primarily the
 8 reason it went in to file for bankruptcy in April was
 9 to preserve the liquidity. But to give you those
 10 details, I'd have to point you to those Edgemere
 11 disclosures.
 12 MR. MUNDELL: Okay. Thank you.
 13 MR. RULNICK: Any -- any final questions?
 14 Oh, go ahead.
 15 MR. SCHLICHTER: Are you retaining any
 16 ownership of Edgemere with the sale?
 17 MR. HARSHFIELD: No, Lifespace will no
 18 longer --
 19 MR. SCHLICHTER: Any (inaudible)?
 20 MR. HARSHFIELD: No, Lifespace will no
 21 longer have any ownership interest in Edgemere.
 22 MR. SCHLICHTER: So when we looked at this,
 23 we said, okay, Lifespace has a \$20 million potential
 24 liability with the -- the liquidity support agreement
 25 and the cash upfront. And it turns out to be, you

Page 13

1 know, quite a bit more than that. Just doesn't seem
 2 like a great trade for bondholders. Thanks.
 3 MR. RULNICK: Any -- any final questions?
 4 (Inaudible crosstalk.)
 5 MR. RULNICK: I'm sorry, I think Lord Abbett
 6 first. So go ahead.
 7 MR. STEPHAN: I'm sorry. This is Matt
 8 Stephan from Columbia.
 9 I'm just curious with respect to the
 10 sale of Edgemere, what exactly would come of the
 11 proceeds from that sale? Would that just sit on
 12 Lifespace's balance sheet and potentially be used to
 13 pay down any of those refund liabilities, or what's
 14 sort of the plan there?
 15 MR. HARSHFIELD: So there -- I wanted to go
 16 on ahead and discuss, But to answer your question,
 17 proceeds from the sale of Edgemere will primarily go
 18 toward recovery to the Edgemere bondholders.
 19 They also, like, you know -- and this is
 20 public information, that the litigation with --
 21 between Edgemere and the landlord continues. And
 22 that litigation will go into a litigation trust. And
 23 any proceeds from that will -- Lifespace is entitled
 24 to a pro rata share of any -- any result of that
 25 litigation activity.

Page 14

1 MR. RULNICK: Thank you, Nick.
 2 And any other questions?
 3 MR. HEMMY: Yes. Hello. This is Ryan Hemmy
 4 from Prudential.
 5 I'm just curious. You know, now that
 6 this excess cash flow is going to come from the
 7 obligated group in an amount that was probably a lot
 8 higher than most of us on this call expected, is
 9 Lifespace going to scale back any of their capital
 10 plans, now that they're going to lose some excess
 11 cash over, you know, the next 19 years?
 12 MR. HARSHFIELD: So the analysis that we
 13 have today, we don't anticipate any scaling back,
 14 because we feel like there'd be more than adequate
 15 excess cash flows to support this, as well as our
 16 continued capital reinvestment.
 17 But certainly we will continue to, you
 18 know, continue to stay close to that, and we'll do
 19 what's prudent to ensure that we maintain the
 20 strength of the Lifespace balance sheet.
 21 MR. HEMMY: And then one -- one additional
 22 question. Has this -- has this -- you know, this
 23 plan been disclosed to -- to Fitch at all?
 24 MR. HARSHFIELD: Yeah.
 25 MR. HEMMY: Because, again, you know, this

Page 15

1 is much higher than what the original LSA was.
 2 MR. HARSHFIELD: Yeah, we actually had a
 3 call with Fitch a couple of days ago. They --
 4 they -- probably, Aaron, I'll let you maybe discuss
 5 more about how that conversation --
 6 MR. RULNICK: Yeah, I mean, I think what I
 7 would say is that we are giving you -- again, this is
 8 a voluntary disclosure call to provide an update.
 9 Obviously, there's a lot of information
 10 that is out there in the -- in the public domain, so
 11 we wanted to ensure that there was the opportunity
 12 for Lifespace to provide some additional information,
 13 to be available to answer questions. But again, the
 14 plan of reorganization has not yet been confirmed.
 15 And we do not anticipate any definitive
 16 action until there is a plan of confirmation that has
 17 been affirmed. But they -- they have been informed,
 18 and we would expect them to provide some comment once
 19 a definitive plan has been affirmed.
 20 MR. HARSHFIELD: And we, of course, Nick, we
 21 expect that confirmation to occur in around mid
 22 February.
 23 MR. HEMMY: Great. Thank you.
 24 MR. MUNDELL: This is John Mundell from
 25 Aberdeen. Just to follow up on that question.

Page 16

1 Was the commitment to investment grade
 2 rating at Lifespace part of the decision-making
 3 process that went into this, or was it not?
 4 And then a follow-up question to that.
 5 This extraordinary level of support for someone from
 6 a not obligated group outside of Lifespace and this
 7 management decision, is this, albeit extraordinary
 8 support, is this something that we can expect from
 9 management on a go-forward basis, to support all of
 10 your business (inaudible) outside of the Lifespace
 11 obligated?
 12 MR. HARSHFIELD: So what I'd like to do is
 13 point to the fact that what's extraordinary about
 14 this situation is that Edgemere cannot continue as a
 15 life care business model. And that's the difference
 16 with this. And the cause of that is the underlying
 17 land lease. And those are the two extraordinary
 18 factors that caused us to decide that this was the
 19 best course of action.
 20 I'm not -- I wasn't sure I was following
 21 the first question.
 22 MR. MUNDELL: So given the additional debt
 23 that will have to be taken on by Lifespace, given the
 24 commitment of cash-flow support or the needs of this
 25 endeavor, is management committed to maintaining a

Page 17

1 credit quality rating at those rating agencies or at
 2 the Fitch rating agency? And was that part of the
 3 decision-making process or not part of the
 4 decision-making process?
 5 MR. HARSHFIELD: Well, I'd say, maybe back
 6 up a little bit. You know, our decision-making
 7 process is to ensure that Lifespace maintains a
 8 strong balance sheet and has a long term, strong,
 9 sustainable financial future.
 10 So I think that goes hand in hand with
 11 an investment grade credit rating. We certainly have
 12 structured this -- assuming that this plan is
 13 approved, we have structured this in a way that we
 14 feel maintains the strength of the balance sheet and
 15 minimizes the risk to the financial strength of
 16 Lifespace. At least mitigates, put it that way.
 17 MR. MUNDELL: Okay. Thank you very much.
 18 And thank you for the update on this call. Really
 19 appreciate it.
 20 MR. HARSHFIELD: Yes. You're very welcome.
 21 MR. DENNEHY: Hi. This is Matt Dennehy with
 22 MFS. Thanks for the phone call.
 23 Just thinking about the Lifespace debt
 24 service coverage calculation, and because Lifespace
 25 is going to be paying -- you know, using some funds

Page 18

1 to pay these refunds, granted, they're not, you know,
 2 to an entity that's part of the obligated group,
 3 because the funds are paying refunds, will they --
 4 will that -- will those payments be included on the
 5 Lifespace cash flow statement, as well as in the debt
 6 service coverage calculation?
 7 MR. HARSHFIELD: It will not impact the
 8 coverage. This is a settlement agreement, so it is a
 9 settlement that they -- that our bond counsel
 10 indicated to us will not impact our debt service
 11 coverage ratio. Yes, it will show up on the cash
 12 flow statement, but it will not have an impact on
 13 debt service coverage ratio calculation.
 14 MR. DENNEHY: And what's the rationale
 15 behind that?
 16 MR. HARSHFIELD: That this is a
 17 extraordinary, non-recurring charge that Lifespace
 18 will incur in 2023.
 19 MR. RULNICK: I -- I think -- I think, Matt,
 20 though, I think that structure of the subordinate
 21 obligation is still being crafted. But I think the
 22 current thought process would be that payment of the
 23 subordinate bonds outside of the interest would not
 24 cause a situation where we would be below the rate
 25 covenant under the master trust indenture.

Page 19

1 MR. DENNEHY: No, I'm not worried about the
 2 subordinate, that necessarily. I'm just thinking if
 3 these -- these refunds are being paid to an entity
 4 outside the obligated group, they're still refunds.
 5 And I'm just wondering if they'll be
 6 netted with the -- you know, the net entrance fee
 7 cash flow that we use to calculate the debt service
 8 coverage ratio. Doesn't sound like it will be.
 9 MR. HARSHFIELD: That's correct. It will
 10 not be.
 11 MR. DENNEHY: Okay. Thank you.
 12 MR. HARSHFIELD: Now, again, understand the
 13 structure, that this is a payment plan toward a
 14 settlement. The refund of entrance fees is something
 15 that's going to happen within trust, with which
 16 Lifespace will not have any -- have responsibility or
 17 interaction with. The settlement agreement is simply
 18 providing annual payments into a trust.
 19 MR. RULNICK: Great questions. Any
 20 additional questions at this time?
 21 MR. SCHLICHTER: Hi. I read somewhere that
 22 the sale of Edgemere may take place with one of the
 23 bondholders of Edgemere. Could you expand on that a
 24 little bit?
 25 MR. HARSHFIELD: Again, I'd have to point

Page 20

1 you to the disclosures on Edgemere. I really
 2 wouldn't want to go through that process on our
 3 Lifespace call. That's more of an Edgemere matter.
 4 MS. NEWMAN: Hi. This --
 5 MR. HARSHFIELD: (Inaudible).
 6 MS. NEWMAN: -- is Maureen Newman. Sorry.
 7 You said that there is going to be an
 8 \$80 million bond -- subordinated bond deal, and the
 9 first tranch would be 32 million this quarter; is
 10 that correct?
 11 MR. HARSHFIELD: So the first tranch, well,
 12 it could be up to the full 80 million. But we expect
 13 it to be between 60 and 80 million, would be the
 14 first tranch.
 15 MS. NEWMAN: Okay. And so when you say the
 16 first tranch on the 60 to 80, it's open for more,
 17 just in case you need to issue more?
 18 MR. HARSHFIELD: Yes. We're just -- we're
 19 just providing a range of determining when -- we
 20 think the full borrowing for the year, for 2023, will
 21 be up to \$80 million. We haven't completed sizing
 22 what we think the first tranch will be.
 23 MS. NEWMAN: Okay. But if you meet
 24 covenants, you could issue additional subordinated
 25 debt after 2023?

Page 21

1 MR. HARSHFIELD: Yes.
 2 MS. NEWMAN: Okay.
 3 MR. RULNICK: And I'll pause one more time
 4 for any additional questions.
 5 Okay. I, again, want to thank all of
 6 you for participating in the call today. I
 7 especially want to thank Nick Harshfield from
 8 Lifespace for hosting this voluntary continuing
 9 disclosure call.
 10 Again, we will -- very committed to
 11 transparency. We'll continue to host calls as
 12 appropriate to update the bondholders.
 13 So, again, Nick, thank you for hosting.
 14 And we will post this replay on EMMA. Thank you,
 15 everybody.
 16 MR. HARSHFIELD: All right. Thank you.
 17 Bye.
 18 (Conclusion of recording.)
 19
 20
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 25

1 IN RE: NORTHWEST SENIOR HOUSING, CORPORATION,
22-30659

2

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1	8	affiliated 5:2	appropriate
11 1:13 2:11 4:10 5:9,12	80 6:12 20:8,12 20:13,16,21	affirmed 15:17 15:19	21:12
112 22:4,19	a	afternoon 2:3	approved
12/31/23 22:19	aaron 1:20 2:4 2:10 3:18 6:14 8:13 15:4	agencies 17:1	17:13
120 10:11	abbett 13:5	agency 17:2	approximately
143 4:25 9:23 10:3,9,21 11:1	aberdeen 12:1 15:25	ago 15:3	4:25 5:7,12 6:12 7:6,17 10:17
16 10:17,20,25	ability 22:10	agreed 8:16,25	april 4:11 12:8
16.5 4:7	able 8:23	agreement 4:3 4:18,19,24 5:17 8:17 11:18 12:24 18:8 19:17	assets 12:3
19 4:19 5:1,6 14:11	acceleration 7:9	agreements 4:22	assuming 17:12
2	access 7:17	ahead 12:14 13:6,16	attorneys 22:14
20 12:23	accredited 6:24	albeit 16:7	audio 1:11 22:6 22:6,10
2021 10:17	achievement 3:2	allianceberns... 11:6	available 15:13
2023 1:13 2:11 4:11 5:13 6:13 18:18 20:20,25	act 9:14	amount 14:7	average 7:5
22-30659 1:4 22:1	action 9:15 15:16 16:19	analysis 14:12	avoiding 9:11
25 7:1	actions 9:12	annual 4:23,25 5:4,14 7:16 19:18	b
250 5:22,24 7:21 8:3	activity 13:25	answer 13:16 15:13	baca 22:4,18
28943 22:18	actual 3:5	answers 11:23	back 8:10 10:18 12:6 14:9,13 17:5
3	actually 15:2	anticipate 4:15 5:4,14 6:11 14:13 15:15	background 3:13
32 20:9	additional 14:21 15:12 16:22 19:20 20:24 21:4	anticipated 4:10 6:25 8:4	baird 9:20
5	address 8:11	appreciate 17:19	balance 5:19 9:21 10:4,7,9 11:12 12:3 13:12 14:20 17:8,14
5 7:17	addressing 2:14		bankruptcy 1:1 4:15 9:25 11:8 12:8
52 5:7	adequate 14:14		basis 16:9
6	administered 5:2		
60 20:13,16			

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<p>best 9:14 16:19 22:9 bit 13:1 17:6 19:24 bond 11:20 18:9 20:8,8 bondholders 1:12 13:2,18 19:23 21:12 bonds 6:19,20 6:22 7:1,4,8,12 18:23 borrowing 6:11 20:20 brett 11:5 business 16:10 16:15 buy 8:22 bye 21:17</p>	<p>case 5:23 20:17 cash 5:6,15,22 5:23 7:3,13,15 7:17,21,23 8:2 8:3 12:25 14:6 14:11,15 16:24 18:5,11 19:7 catch 8:1 cause 3:4 6:3 16:16 18:24 caused 16:18 ccr 22:4,19 certain 2:22 3:2 certainly 12:7 14:17 17:11 certificate 22:3 certify 22:4,12 cfo 1:21 2:22 3:16 change 3:9 7:7 8:5 chapter 4:10 5:9 charge 18:17 circumstances 8:18 claims 8:21 9:9 close 14:18 closely 11:20 columbia 13:8 combined 6:10 come 13:10 14:6 comment 15:18</p>	<p>commission 22:19 commitment 16:1,24 committed 16:25 21:10 communicate 3:21 communities 1:21 9:3 community 1:12 4:16 completed 20:21 completes 3:11 component 9:13 components 3:22 concerning 2:24 conclusion 10:19 21:18 condition 2:25 conditions 3:1 confirmation 15:16,21 confirmed 15:14 consecutive 6:1 considered 2:23 consistent 7:18 9:16</p>	<p>contained 3:3 contains 5:17 contemplates 4:12 continue 14:17 14:18 16:14 21:11 continued 14:16 continues 13:21 continuing 2:12,16 21:8 contract 8:24 contracted 22:13 contribution 4:1,3,7,8,17 5:16 6:11 8:16 10:21,25 conversation 15:5 corporation 1:4 22:1 correct 19:9 20:10 22:8 counsel 11:21 18:9 couple 15:3 course 9:15 15:20 16:19 court 1:1 covenant 18:25 covenants 20:24</p>
c			
<p>calculate 19:7 calculation 17:24 18:6,13 call 1:12 2:13 2:17,21,23 3:6 3:15,19,20 14:8 15:3,8 17:18,22 20:3 21:6,9 calls 2:16 4:24 21:11 capital 14:9,16 care 8:24 9:5 16:15</p>			

<p>coverage 5:21 17:24 18:6,8 18:11,13 19:8 covered 2:15 crafted 18:21 credit 17:1,11 crosstalk 13:4 curious 13:9 14:5 current 3:23 4:21 9:10 18:22 currently 4:3 4:10 5:9 6:25 7:19 8:3 10:4 10:15 11:13</p>	<p>defined 4:13 6:8 definitive 15:15 15:19 dennehy 17:21 17:21 18:14 19:1,11 depending 2:3 deposited 5:2 deposits 10:18 12:3 described 7:3 7:12 details 10:2 12:10 determining 20:19 developments 3:22 difference 16:15 different 3:5 discharged 9:24 disclosed 14:23 disclosure 2:13 2:16 15:8 21:9 disclosures 12:6,11 20:1 discuss 13:16 15:4 discussed 3:6 discussing 4:5 disposition 22:16</p>	<p>district 1:2 domain 15:10 drop 5:24 drops 7:21 dyer 11:5,6</p>	<p>entrance 4:20 10:15,17 19:6 19:14 entry 9:22,24 10:8</p>
<p>d</p>		<p>e</p>	<p>eric 9:19</p>
<p>date 4:9 5:8 days 5:22,22,24 7:21 8:3 15:3 deal 20:8 debt 5:5,10,14 5:21 6:6,12,16 16:22 17:23 18:5,10,13 19:7 20:25 december 5:12 decide 16:18 decision 16:2,7 17:3,4,6 default 6:3 deferral 7:25 deferrals 5:25 deferred 5:25 6:4</p>		<p>earlier 12:1 early 4:11 edgemere 3:23 4:4,10,13,15,18 4:22 8:17,19 8:23 9:5,7,10 9:21 10:5,16 11:8 12:4,6,7 12:10,16,21 13:10,17,18,21 16:14 19:22,23 20:1,3 edgemere's 5:8 9:1 effective 4:9 5:8 emergence 4:14 emma 2:20 21:14 emphasize 2:12 employed 22:12 endeavor 16:25 ensure 14:19 15:11 17:7 enter 8:16 entitled 13:23 entity 18:2 19:3</p>	<p>escrow 10:15 especially 21:7 essentially 10:10 events 3:1 eventually 10:5 everybody 21:15 exact 10:13 exactly 13:10 excepted 22:13 excess 5:6,15 7:3,13,15,23 8:2 14:6,10,15 exempt 6:19,19 exists 11:11 expand 19:23 expect 3:7 4:4 15:18,21 16:8 20:12 expectation 8:6 expectations 3:2 expected 14:8 expire 8:21 expires 22:19 explanation 8:15</p>

[extend - includes]

Page 4

<p>extend 8:21 extent 7:3,15 7:22 extraordinary 9:1 16:5,7,13 16:17 18:17</p>	<p>flow 7:4,15,17 14:6 16:24 18:5,12 19:7 flows 5:6,15 14:15 follow 12:1 15:25 16:4 following 16:20 foregoing 22:5 22:8 formal 3:11 forward 11:14 16:9 full 20:12,20 fully 10:18 fund 4:24 5:9 5:13 6:6 9:23 10:9 funded 5:5 11:14 funding 5:14 6:7 funds 4:19 17:25 18:3 further 22:12 future 2:18 3:1 5:14 17:9</p>	<p>go 12:14 13:6 13:15,17,22 16:9 20:2 goes 17:10 going 2:6 11:5 11:14 14:6,9 14:10 17:25 19:15 20:7 good 2:3 grade 16:1 17:11 granted 18:1 great 2:1 6:17 13:2 15:23 19:19 group 11:10,14 11:18 14:7 16:6 18:2 19:4</p>	<p>19:25 20:5,11 20:18 21:1,7 21:16 hear 2:7 hearing 22:10 held 10:15 hello 14:3 hemmy 14:3,3 14:21,25 15:23 hey 11:5 hi 9:19 17:21 19:21 20:4 high 6:15 higher 14:8 15:1 hj 1:20 2:4,10 6:15 hold 3:10 hopefully 11:23 host 21:11 hosted 1:19 hosting 21:8,13 housing 1:4 22:1 how's 11:5</p>
<p>f</p>	<p>g</p>	<p>h</p>	<p>i</p>
<p>facilities 2:24 fact 16:13 factors 3:4 16:18 facts 8:18 fair 22:11 february 15:22 fee 4:20 10:3,18 19:6 feel 14:14 17:14 fees 9:22,24 10:8,15 19:14 file 12:8 final 12:13 13:3 22:16 finally 9:13 financial 2:25 5:18 17:9,15 fingertips 10:2 first 3:25 5:6 5:21 6:6 8:6,7 8:18 13:6 16:21 20:9,11 20:14,16,22 fitch 14:23 15:3 17:2 floor 5:22 7:18 8:2</p>	<p>gallegos 22:7 generally 4:21 give 12:9 given 5:23 16:22,23 giving 15:7</p>	<p>half 10:20,25 hand 5:22,24 6:14 7:21 8:3 17:10,10 happen 19:15 happened 12:2 happy 8:11 harshfield 1:21 2:22 3:16,18 8:13 10:1,12 10:24 11:16 12:5,17,20 13:15 14:12,24 15:2,20 16:12 17:5,20 18:7 18:16 19:9,12</p>	<p>impact 3:24 5:18 18:7,10 18:12 inaudible 12:19 13:4 16:10 20:5 included 18:4 includes 4:7 11:17,18</p>

<p>incur 18:18 indenture 6:4,9 11:22 18:25 indicated 6:18 18:10 information 2:19 13:20 15:9,12 informed 15:17 initial 5:10 institutional 6:21 intend 3:7 7:20 intent 6:18 interaction 19:17 interest 7:10,11 10:3 12:21 18:23 22:15 interests 9:14 investment 16:1 17:11 investor 6:24 investors 6:21 6:23 involve 3:3 issuance 6:16 issue 3:8 6:5,19 20:17,24 issued 8:7 items 2:14</p>	<p>john 11:25 15:24 joining 2:21 3:19</p>	<p>8:15,25 9:3,6,8 11:17 12:17,20 12:23 13:23 14:9,20 15:12</p>	<p>maintains 17:7 17:14 make 7:23 11:21</p>
<p>information 2:19 13:20 15:9,12 informed 15:17 initial 5:10 institutional 6:21 intend 3:7 7:20 intent 6:18 interaction 19:17 interest 7:10,11 10:3 12:21 18:23 22:15 interests 9:14 investment 16:1 17:11 investor 6:24 investors 6:21 6:23 involve 3:3 issuance 6:16 issue 3:8 6:5,19 20:17,24 issued 8:7 items 2:14</p>	<p>k kelli 22:7 key 5:17 9:13 know 11:11 13:1,19 14:5 14:11,18,22,25 17:6,25 18:1 19:6 knowledge 22:10</p>	<p>16:2,6,10,23 17:7,16,23,24 18:5,17 19:16 20:3 21:8 lifespace's 5:19 9:14 11:9,12 13:12 likely 7:5 limiting 8:2 liquidity 7:18 7:21 12:9,24</p>	<p>making 16:2 17:3,4,6 management 16:7,9,25 master 6:3,8 11:22 18:25 materially 3:5 matt 13:7 17:21 18:19 matter 20:3 22:15,16</p>
<p>interest 7:10,11 10:3 12:21 18:23 22:15 interests 9:14 investment 16:1 17:11 investor 6:24 investors 6:21 6:23 involve 3:3 issuance 6:16 issue 3:8 6:5,19 20:17,24 issued 8:7 items 2:14</p>	<p>l land 8:20 9:4 16:17 landlord 8:21 13:21 lease 8:20 9:4 16:17 legal 1:23 9:11 legally 9:6 level 6:15 16:5 liabilities 13:13 liability 12:24 life 7:5 8:24 9:5 16:15 lifespace 1:12 1:21 2:13,22 2:25 3:7,16,24 4:1,4,8,14,16 4:18,24 5:17 5:23 6:3,8 7:20</p>	<p>litigation 13:20 13:22,22,25 little 17:6 19:24 long 17:8 longer 4:16 12:18,21 looked 12:22 looking 2:23 lord 13:5 lose 14:10 lot 14:7 15:9 lsa 15:1 lynn 2:1</p>	<p>matters 3:9 maturity 7:1 maureen 20:6 mean 15:6 meaning 2:25 meant 2:13 measure 3:21 9:8 meet 6:23 20:23 mentioned 6:5 message 9:16 mexico 22:19</p>
<p>j january 1:13 2:11</p>	<p>land 8:20 9:4 16:17 landlord 8:21 13:21 lease 8:20 9:4 16:17 legal 1:23 9:11 legally 9:6 level 6:15 16:5 liabilities 13:13 liability 12:24 life 7:5 8:24 9:5 16:15 lifespace 1:12 1:21 2:13,22 2:25 3:7,16,24 4:1,4,8,14,16 4:18,24 5:17 5:23 6:3,8 7:20</p>	<p>m made 2:23 4:9 4:9 5:8,12 7:20 maintain 14:19 maintaining 16:25</p>	<p>mfs 17:22 mid 15:21 million 4:7,25 5:7,12 6:12 7:17 9:23 10:3 10:10,11,17,21 10:21 12:23</p>

20:8,9,12,13,21 minimize 3:13 minimizes 17:15 mission 9:14,16 mitigate 5:18 mitigates 17:16 mix 5:5 model 8:24 9:5 16:15 morning 2:3 moved 10:16 mundell 11:25 11:25 12:12 15:24,24 16:22 17:17 mute 2:7,9 3:12	21:7,13 noise 3:14 non 5:2 18:17 northern 1:2 northwest 1:4 22:1	original 15:1 outlined 4:21 outlining 4:5 outside 16:6,10 18:23 19:4 overview 6:15 8:14 owed 10:5 ownership 12:16,21	payments 4:25 5:1,4,15 6:6 7:16,16,20 18:4 19:18 people 2:7 period 4:19 5:1 5:6 phone 2:8 17:22 phones 3:12 place 3:12 19:22 placement 6:20 plan 3:23 4:2,6 4:8,10,12 5:9,9 5:13 6:5 7:14 7:19 9:10 10:19 11:1,8 13:14 14:23 15:14,16,19 17:12 19:13 plans 14:10 playback 2:18 please 2:6,8 pleased 3:15 point 12:5,10 16:13 19:25 possible 3:1 post 21:14 posted 2:19 potential 9:9 9:11 12:23 potentially 13:12
n	o	p	
name 2:4,10 nature 11:7 necessarily 19:2 need 20:17 needs 16:24 neither 22:12 net 19:6 netted 19:6 new 6:7 22:19 newman 20:4,6 20:6,15,23 21:2 nick 1:21 2:21 3:11,16,17 6:17,18 7:2,12 8:9 14:1 15:20	obligated 9:7 11:10,14,17 14:7 16:6,11 18:2 19:4 obligation 6:2 18:21 obligations 5:19 7:11,14 7:25 9:7 11:8 11:13 obviously 7:9 15:9 occur 5:25 15:21 offered 6:22 oh 12:14 okay 8:13 12:12,23 17:17 19:11 20:15,23 21:2,5 once 15:18 open 9:17 20:16 operations 2:24 opportunity 15:11 option 8:21	pages 22:8 paid 7:12 19:3 parent 11:9,12 part 4:1,16 10:21 16:2 17:2,3 18:2 participate 4:14 participating 21:6 parties 22:14 party 5:3 8:20 paul 22:4,18 pause 21:3 pay 11:12 13:13 18:1 paying 17:25 18:3 payment 4:20 4:23 5:7,10,11 5:18,23,24 6:2 6:4 7:10,13,24 8:1 18:22 19:13	

<p>predefined 4:23</p> <p>prepared 22:5</p> <p>preserve 12:9</p> <p>primarily 12:7 13:17</p> <p>principal 7:10</p> <p>principle 7:24</p> <p>private 6:20</p> <p>pro 13:24</p> <p>proactive 3:20 9:8</p> <p>probably 14:7 15:4</p> <p>proceedings 22:9</p> <p>proceeds 13:11 13:17,23</p> <p>process 4:13 16:3 17:3,4,7 18:22 20:2</p> <p>property 8:20</p> <p>proposed 3:25 4:3</p> <p>protections 5:17</p> <p>provide 4:19 6:15 8:15,25 15:8,12,18</p> <p>provided 22:6</p> <p>providing 19:18 20:19</p> <p>prudent 14:19</p> <p>prudential 14:4</p>	<p>public 13:20 15:10</p> <p>put 2:6,8 17:16</p> <p style="text-align: center;">q</p> <p>qibs 6:21</p> <p>qualifications 6:23</p> <p>qualify 6:7</p> <p>quality 17:1 22:11</p> <p>quarter 8:7 20:9</p> <p>question 3:13 11:24 12:1 13:16 14:22 15:25 16:4,21</p> <p>questions 3:10 8:12 9:18 11:3 12:13 13:3 14:2 15:13 19:19,20 21:4</p> <p>quickly 7:5</p> <p>quite 13:1</p> <p style="text-align: center;">r</p> <p>range 20:19</p> <p>rata 13:24</p> <p>rate 18:24</p> <p>rating 16:2 17:1,1,2,11</p> <p>ratio 18:11,13 19:8</p> <p>rationale 18:14</p> <p>read 19:21</p>	<p>really 17:18 20:1</p> <p>reason 12:7,8</p> <p>recent 3:21</p> <p>recorded 1:11 2:18 22:9</p> <p>recording 2:2 21:18 22:6</p> <p>recovery 13:18</p> <p>recurring 18:17</p> <p>reduced 22:6</p> <p>refer 2:25</p> <p>refund 7:14 12:4 13:13 19:14</p> <p>refundable 9:22 10:8 12:3</p> <p>refunded 10:18</p> <p>refunds 4:20 10:4 11:2 18:1 18:3 19:3,4</p> <p>regarding 3:21</p> <p>regularly 2:15</p> <p>reinvestment 14:16</p> <p>related 22:13</p> <p>relative 3:22</p> <p>remarks 3:12</p> <p>renew 8:22</p> <p>reorganization 3:23 4:2,6 6:10 7:14,19 9:10 10:19 15:14</p>	<p>repaid 7:4</p> <p>replace 2:14</p> <p>replay 2:18 21:14</p> <p>reporter's 22:3</p> <p>residency 4:22</p> <p>resident 4:20 11:1</p> <p>residents 8:17 9:2,15 10:5,6 10:16,18</p> <p>respect 13:9</p> <p>responsibility 19:16</p> <p>result 8:23 9:9 13:24</p> <p>results 3:2,5</p> <p>retail 6:22</p> <p>retaining 12:15</p> <p>revisions 3:8</p> <p>right 21:16</p> <p>rights 7:9</p> <p>risk 17:15</p> <p>risks 3:3</p> <p>rules 22:14</p> <p>rulnick 1:20 2:1,4,10 6:15 6:17 11:3 12:13 13:3,5 14:1 15:6 18:19 19:19 21:3</p> <p>ryan 14:3</p>
--	---	--	--

<p style="text-align: center;">s</p> <p>sale 4:12 12:16 13:10,11,17 19:22</p> <p>satisfy 9:7 10:3</p> <p>scale 14:9</p> <p>scaling 14:13</p> <p>schedule 4:24</p> <p>scheduled 2:15 3:20</p> <p>schlichter 9:19 9:20 10:7,20 12:15,19,22 19:21</p> <p>second 4:2 5:11 6:2 9:6</p> <p>seem 13:1</p> <p>segment 10:14</p> <p>sell 4:13</p> <p>senior 1:4 7:11 22:1</p> <p>separate 10:22 10:25</p> <p>september 10:16</p> <p>service 5:21 17:24 18:6,10 18:13 19:7</p> <p>settle 9:8</p> <p>settlement 4:2 4:17 5:16 8:16 11:16,18 18:8 18:9 19:14,17</p> <p>seven 7:6</p>	<p>share 13:24</p> <p>sheet 5:20 9:22 10:4,8,9 11:12 12:3 13:12 14:20 17:8,14</p> <p>show 18:11</p> <p>signature 22:18</p> <p>similar 7:2</p> <p>simply 19:17</p> <p>sims 1:20 2:5 2:10 6:15</p> <p>sit 13:11</p> <p>situation 16:14 18:24</p> <p>six 7:6</p> <p>sizing 20:21</p> <p>sold 6:21</p> <p>solution 9:1</p> <p>solutions 1:23</p> <p>sorry 5:22 13:5 13:7 20:6</p> <p>sort 13:14</p> <p>sound 19:8</p> <p>spend 4:5</p> <p>spread 5:1</p> <p>statement 18:5 18:12</p> <p>statements 2:22,24 3:3,8</p> <p>states 1:1</p> <p>stay 14:18</p> <p>stephan 13:7,8</p> <p>strength 5:19 14:20 17:14,15</p>	<p>strong 17:8,8</p> <p>structure 7:2 8:5 18:20 19:13</p> <p>structured 11:21 17:12,13</p> <p>subject 7:7 8:20 9:4</p> <p>subordinate 6:19 7:4,8,9,11 7:24 18:20,23 19:2</p> <p>subordinated 5:5,10,13 6:6,8 6:12,16 20:8 20:24</p> <p>subsequent 8:1</p> <p>sufficient 7:23</p> <p>support 4:8,20 8:17 9:1 12:24 14:15 16:5,8,9 16:24</p> <p>supporting 11:1</p> <p>sure 11:21 16:20</p> <p>surrounding 8:19</p> <p>sustain 8:24</p> <p>sustainable 17:9</p>	<p>talk 11:7</p> <p>talking 2:8</p> <p>tax 6:19,19</p> <p>tell 10:2</p> <p>term 17:8</p> <p>terms 4:21</p> <p>terrific 2:2</p> <p>texas 1:2</p> <p>thank 3:18,19 6:17 8:13 9:25 12:12 14:1 15:23 17:17,18 19:11 21:5,7 21:13,14,16</p> <p>thanks 10:23 13:2 17:22</p> <p>think 13:5 15:6 17:10 18:19,19 18:20,21 20:20 20:22</p> <p>thinking 17:23 19:2</p> <p>third 5:3 8:20</p> <p>thought 10:11 18:22</p> <p>threaten 9:4</p> <p>time 4:5 10:6 11:4 19:20 21:3</p> <p>today 2:11,19 2:21 14:13 21:6</p> <p>tomorrow 2:19</p> <p>total 5:7,11</p>
		t	
		<p>take 19:22</p> <p>taken 16:23</p>	

[toward - years]

Page 9

<p>toward 13:18 19:13 trade 13:2 transcribed 1:22 transcript 1:11 22:5,7 transcription 22:9 transfers 11:15 transparency 12:2 21:11 traunch 8:6 20:9,11,14,16 20:22 triggered 10:6 true 10:13,13 22:8 trust 5:2 6:3,7 6:9 11:22 13:22 18:25 19:15,18 trustee 5:3 turbo 7:2 turn 3:15 8:9 turns 12:25 two 3:22 5:17 6:1,6 16:17 typewritten 22:7 typically 2:15</p>	<p>under 4:21 6:3 7:14 18:25 underlying 16:16 understand 19:12 understanding 11:9 unique 8:19 united 1:1 update 15:8 17:18 21:12 updates 3:8 upfront 12:25 use 19:7 used 7:13 9:23 10:9 12:4 13:12 using 7:18 17:25</p>	<p>we've 11:20 wednesday 2:11 welcome 17:20 went 12:8 16:3 whatsoever 22:15 wondering 19:5 worked 11:20 works 11:22 worried 19:1 wrap 8:14 www.veritext... 1:24</p>
u	v	y
<p>uncertainties 3:4</p>	<p>various 9:11 veritext 1:23 versus 11:13 viability 9:5 voluntary 2:12 15:8 21:8</p>	<p>yeah 10:24 14:24 15:2,6 year 4:19 5:1,6 5:23 7:22 8:8 20:20 years 6:1 7:1,6 8:1 9:11 14:11</p>
w	<p>want 2:11 8:14 20:2 21:5,7 wanted 13:15 15:11 way 11:21 17:13,16</p>	

Landlord's

Exhibit 9

for February 21-23, 2023 hearing

VOLUNTARY NOTICE

February 3, 2023

Lifespace Communities, Inc. (“Lifespace” or the “Sponsor”)

This notice is being sent to the Municipal Securities Rulemaking Board via the Electronic Municipal Market Access system voluntarily.

Event Information:

This notice is being provided by Lifespace as a voluntary notification of an anticipated subordinate financing by Lifespace. Lifespace is the sole member of Northwest Senior Housing Corporation d/b/a Edgemere (“Edgemere”) and Senior Quality Lifestyles Corporation (“SQLC”, and together with Edgemere, the “Debtors”). The anticipated financing is in connection with certain bankruptcy proceedings related to the Debtors.

The United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) has been considering a plan of reorganization and disclosure statements related to the Debtors (the “Plan”).

Pursuant to the Plan, Lifespace has agreed to provide certain limited financial support if the Plan is confirmed by the Bankruptcy Court. The Plan currently provides for a Lifespace contribution in an amount of approximately \$160,000,000 payable during approximately 19 years. As part of its limited financial support, Lifespace anticipates initially borrowing an amount not to exceed \$100,000,000 with an issuance of tax-exempt and/or taxable subordinate revenue bonds (the “Series 2023 Subordinate Revenue Bonds”), which will be subordinate to debt secured by Lifespace Master Notes issued pursuant to the Master Trust Indenture dated as of November 1, 2010, among the Corporation, the other Members (as therein defined) and U.S. Bank Trust Company, National Association, as master trustee, as supplemented and modified in accordance with its terms.

THE LIFESPACE CONTRIBUTION IS CONDITIONED UPON, AMONG OTHER THINGS, CONFIRMATION OF THE PLAN BY THE BANKRUPTCY COURT. THERE CAN BE NO ASSURANCE THE PROPOSED PLAN WILL BE APPROVED IN ITS CURRENT FORM, IF AT ALL, BY THE BANKRUPTCY COURT.

THIS NOTICE DOES NOT CONSTITUTE NOR DOES IT FORM PART OF AN OFFER TO SELL OR PURCHASE, OR THE SOLICITATION OF AN OFFER TO SELL OR PURCHASE, THE SERIES 2023 SUBORDINATE REVENUE BONDS. NOTHING CONTAINED IN THIS NOTICE OBLIGATES LIFESPACE TO ISSUE THE SERIES 2023 SUBORDINATE REVENUE BONDS OR PROVIDE ANY FINANCIAL SUPPORT THROUGH ANY PLAN NOT APPROVED BY THE BANKRUPTCY COURT. IN ADDITION, THE CONTEMPLATED FINANCING DEPENDS ON FLUID MARKET CONDITIONS AND A NUMBER OF OTHER FACTORS THAT COULD AFFECT THE DECISION WHETHER OR NOT TO PROCEED.

Landlord's

Exhibit 10

for February 21-23, 2023 hearing

**CONTINUING DISCLOSURE REPORT
for the year ended December 31, 2022**



OBLIGATED GROUP

**Abbey Delray
Abbey Delray South
Beacon Hill
Claridge Court
Friendship Village of Bloomington
Friendship Village of South Hills
Harbour's Edge
Oak Trace
Querencia
The Waterford
Village on the Green**

The information contained herein is being filed by the Corporation for the purposes of complying with the Corporation's obligations under SEC Rule 15c2-12. The information contained herein is as of the date of this report.

February 14, 2023

US Bank
Stephanie Cox
Vice President
2 Concourse Parkway NE, Suite 800
Atlanta, GA 30328

RE: Certificate in accordance with Section 415 (a) (ii) of the Master Trust Indenture dated November 1, 2010

The undersigned, Senior Vice President and Chief Financial Officer for Lifespace Communities, Incorporated, hereby certifies that the attached financial statements for:

Lifespace Communities Obligated Group

Are complete, correct and fairly present the financial conditions and results of operations for the year ended December 31, 2022, subject to the year-end audit adjustments.

LIFESPACE COMMUNITES, INC.

DocuSigned by:

0FBD63BFF8124CA...

Nick Harshfield

Cc: Bankers Trust, Kristy Olesen
Cc: US Bank, Anita Malmgren



Lifespace Communities, Inc.
Obligated Group
Management's Discussion and Analysis

Overview:

Lifespace Communities, Inc. (“Lifespace” or the “Corporation”) is an Iowa nonprofit corporation organized for the purpose of owning and operating continuing care retirement communities (“CCRCs”).

The Corporation owned eleven CCRCs in six states that made up the Obligated Group. On August 1, 2021, the Corporation sold Grand Lodge at the Preserve (“Grand Lodge”) located in Lincoln, Nebraska.

Lifespace is the sole member of Barton Creek Senior Living Center, Inc., d/b/a Querencia (“Querencia”) located in Austin, Texas. On August 31, 2021, concurrent with the issuance of the Series 2021 bonds, Querencia became part of the Obligated Group.

The Obligated Group consists of the above communities. The financial information and covenants presented herein set forth the information for these communities. Prior period information has been restated to include Querencia and reclass Grand Lodge activity to discontinued operations.

The Corporation is the sole member of Northwest Senior Housing Corporation, d/b/a Edgemere (“Edgemere”) located in Dallas, Texas and Tarrant County Senior Living Center, Inc., d/b/a The Stayton at Museum Way (“The Stayton”) located in Ft. Worth, Texas. On July 1, 2021, Lifespace acquired Newcastle Place, LLC (“Newcastle Place”) located in Mequon, Wisconsin. On July 19, 2022, Lifespace acquired Meadow Lake located in Tyler, Texas, Wesley Court located in Abilene, Texas and The Craig located in Amarillo, Texas. On February 1, 2023, Lifespace became the sole member of Friendship Village of Mill Creek, NFP, d/b/a GreenFields of Geneva (“GreenFields”) located in Geneva, IL. Edgemere, The Stayton, Newcastle Place, Meadow Lake, Wesley Court, The Craig and GreenFields are separately financed and are not members of the Obligated Group.

The corporation was sole member of Deerfield Retirement Community, Inc. (“Deerfield”) a nonprofit organization that was organized to own and operate a CCRC in suburban Des Moines, Iowa. On August 1, 2021, Deerfield was sold to the same third party as Grand Lodge. Deerfield was separately financed and not part of the Obligated Group. While outside the Obligated Group, the Obligated Group had previously guaranteed certain outstanding long-term indebtedness of Deerfield. These guarantees were discharged in connection with the sale of Deerfield and the Obligated Group has no further outstanding long-term indebtedness or guarantee obligations with respect to Deerfield.

The Corporation and its affiliates operate 18 CCRCs in seven states from corporate offices located in West Des Moines, Iowa and Dallas, Texas. References to the “Communities” herein are to the 11 CCRCs owned and operated by the Corporation that make up the Obligated Group.

Lifespace Communities, Inc.
Obligated Group
Management's Discussion and Analysis

Calendar year-end financial information for December 31, 2021 and prior is provided from audited financial statements. All other financial information is obtained from unaudited financial statements.

Summary of Units Operated per Community

	Independent Living Apartments	Villas, Carriage or Town Homes	Assisted Living	Health Center Private Room	Health Center Semi- Private Room	Memory Support	Total	CMS 5- Star Rating *
Abbey Delray	299	28	48	30	70	30	505	4
Abbey Delray South	240	44		28	46		358	4
Beacon Hill	372			26	84		482	5
Claridge Court (1)	127			17	28		172	4
Friendship Village of Bloomington (2)	368	12	42	66		32	520	5
Friendship Village of South Hills (3)	270	18	50	35	54	32	459	3
Harbour's Edge	266			50	4		320	4
Oak Trace (4)	215	16	66	84	20	28	429	5
Querencia	157	10	40	38	4	23	272	5
The Waterford (5)	247	18		30	30		325	3
Village on the Green	204	58	36	40	8	18	364	4
Total	2,765	204	282	444	348	163	4,206	

* The CMS 5-Star ratings are as of February 2023.

Change in units from December 31, 2021

(1) Claridge Court combined smaller apartments which reduced inventory by one in the second quarter 2022.

(2) Friendship Village of Bloomington has combined smaller apartments which reduced inventory by one in the first quarter and two more in second quarter 2022. The new health center opened in third quarter 2022 with private rooms.

(3) Friendship Village of South Hills has combined smaller apartments which reduced inventory by three in the third quarter 2022.

(4) Oak Trace has combined smaller apartments which reduced inventory by one in the fourth quarter 2022.

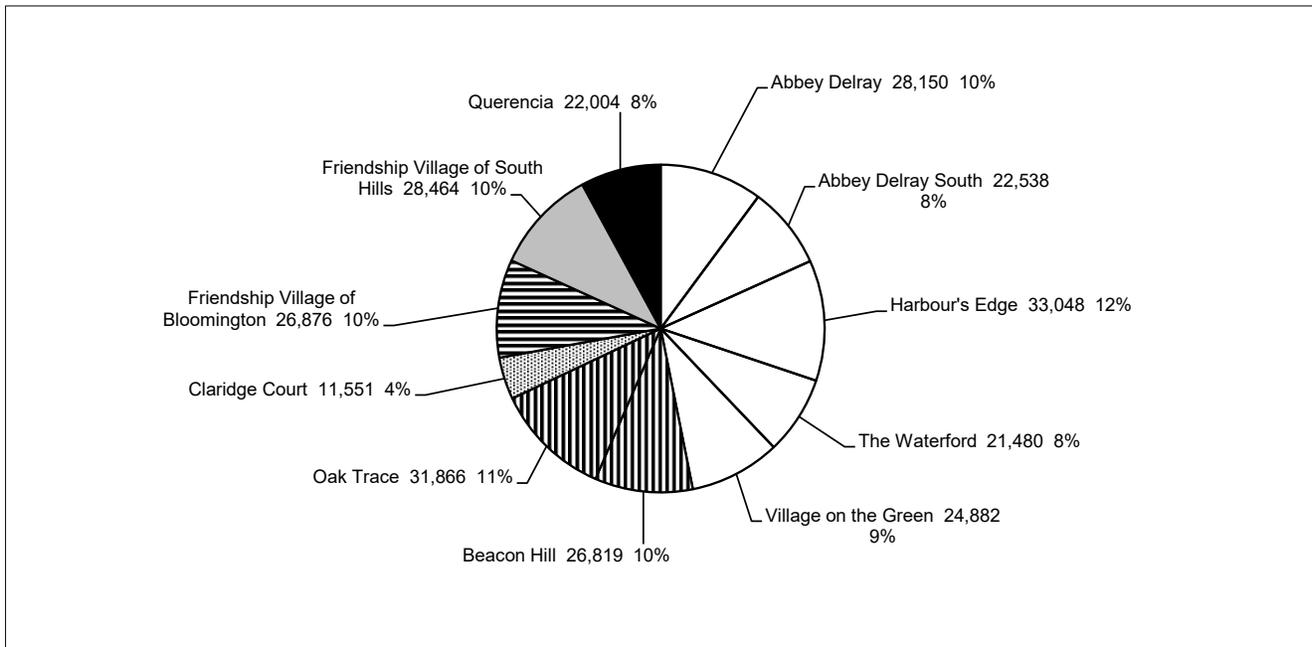
(5) The Waterford has combined smaller apartments which reduced inventory by one and demolished seven villas as a result of the redevelopment efforts in the third quarter 2022.

Lifespace Communities, Inc.
Average Occupancy of the Communities

Community	2019				2020				2021				2022			
	Living Units	Health Center	ALUs	Memory Support	Living Units	Health Center	ALUs	Memory Support	Living Units	Health Center	ALUs	Memory Support	Living Units	Health Center	ALUs	Memory Support
Abbey Delray, FL (a)	71.6%	88.1%	85.7%	N/A	67.6%	92.5%	59.8%	36.0%	60.1%	92.4%	74.1%	60.6%	58.7%	92.5%	92.1%	77.7%
Abbey Delray South, FL	80.6%	82.9%	N/A	N/A	76.0%	73.4%	NA	NA	66.3%	75.5%	NA	NA	66.8%	90.0%	NA	NA
Beacon Hill, IL	94.1%	92.7%	N/A	N/A	92.4%	91.5%	NA	NA	87.0%	89.6%	NA	NA	80.7%	87.5%	NA	NA
Claridge Court, KS	89.2%	89.6%	N/A	N/A	87.3%	82.0%	NA	NA	81.2%	89.3%	NA	NA	84.5%	95.6%	NA	NA
Friendship Village of Bloomington, MN (b)	96.3%	85.6%	86.8%	N/A	93.3%	82.0%	89.5%	NA	81.2%	79.6%	55.2%	91.6%	77.1%	89.3%	89.5%	93.4%
Friendship Village of South Hills, PA (c)	95.5%	94.4%	12.5%	20.0%	87.6%	81.2%	44.7%	63.8%	81.3%	76.6%	75.4%	90.0%	78.8%	82.1%	94.4%	97.8%
Grand Lodge, NE (d)	92.7%	N/A	90.0%	N/A	86.2%	NA	80.1%	NA	85.2%	NA	85.4%	NA	NA	NA	NA	NA
Harbour's Edge, FL	89.8%	91.7%	N/A	N/A	86.8%	92.4%	NA	NA	83.3%	92.3%	NA	NA	89.7%	92.8%	NA	NA
Oak Trace, IL (e)	88.6%	78.9%	72.1%	43.8%	83.6%	92.8%	83.2%	57.5%	86.2%	93.4%	64.8%	88.1%	84.2%	94.1%	86.7%	97.9%
Querencia, TX (f)	98.8%	92.4%	99.5%	97.4%	98.0%	82.9%	96.1%	83.3%	97.9%	81.3%	96.0%	90.1%	96.3%	95.5%	95.8%	87.8%
The Waterford, FL	90.0%	96.3%	N/A	N/A	86.8%	86.2%	NA	NA	79.5%	83.3%	NA	NA	77.4%	89.2%	NA	NA
Village on the Green, FL (g)	83.9%	93.3%	N/A	N/A	82.4%	80.0%	NA	NA	72.2%	78.2%	46.2%	72.6%	71.1%	92.7%	95.6%	96.7%
Obligated Group	88.3%	88.8%	79.5%	59.1%	85.0%	85.8%	75.2%	59.6%	78.7%	85.0%	69.7%	82.8%	77.3%	90.5%	91.8%	91.7%

- (a) The new assisted living and memory support opened in February 2020.
- (b) The new assisted living and memory support opened in February 2021. The new apartments opened in July 2021. The new health center opened in June 2022.
- (c) The new assisted living and memory support opened in November 2019.
- (d) Grand Lodge was disposed as of August 1, 2021.
- (e) The new health center, assisted living and memory support opened in June 2019.
- (f) Querencia joined the Lifespace Obligated Group as of August 31, 2021 in conjunction of the Series 2021 financing. Lifespace affiliated with Querencia on June 20, 2019. Occupancy prior to this date is not reflected above.
- (g) The new assisted living opened in March 2021. The memory support and new independent villas opened in April 2021. The replacement health center opened in May 2021.

**Comparative Analysis of Gross Revenues
Year Ended December 31, 2022
(\$ in Thousands)**



Gross revenues include independent living fees, skilled nursing, assisted living fee and memory support fees, entrance fees earned, and investment income.



Skilled Nursing Payer Mix and Occupancy

Payer	Year-ended			
	2019	2020	2021	2022
Lifecare	15.1%	13.9%	11.6%	11.7%
Private Pay	25.9%	24.5%	24.0%	27.0%
Medicare	42.6%	44.6%	48.2%	45.0%
Medicaid	10.9%	10.1%	8.5%	6.6%
Other	5.6%	6.9%	7.8%	9.7%
Total Patient Mix	100%	100%	100%	100%
Year-To-Date Average Service Units Available				
	807	818	809	792
Year-To-Date Average Occupancy Percentage				
	88.8%	85.8%	85.0%	90.5%

Lifespace Communities, Inc.
Obligated Group Balance Sheets
As of December 31 (Unaudited)
(Thousands of \$)

	2022	2021
Assets		
Current Assets:		
Cash and Cash Equivalents	\$38,775	\$20,422
Investments	116,691	159,745
Accounts Receivable	16,497	12,184
Inventories	701	850
Prepaid Insurance & Other	5,500	5,752
Assets whose use is limited	120,833	112,962
Total Current Assets	298,997	311,915
Assets whose use is limited	79,900	87,860
Property and equipment, at cost:		
Land and improvements	71,958	71,115
Buildings and improvements	1,221,108	1,117,426
Furniture and equipment	93,360	85,992
	1,386,426	1,274,533
Less accum. deprec.	(587,187)	(533,188)
Net property and equipment	799,239	741,345
Net goodwill	35,730	41,824
Net deferred assets	2,833	1,861
Net intangible assets	9,369	10,839
TOTAL ASSETS	\$1,226,068	\$1,195,644

Lifespace Communities, Inc.
Obligated Group Balance Sheets
As of December 31 (Unaudited)
(Thousands of \$)

	2022	2021
Liabilities and net assets		
Current liabilities:		
Accounts payable:		
Trade	\$32,899	\$24,509
Intercompany	3,662	1,885
	36,561	26,394
Accrued liabilities:		
Employee compensation expense	10,868	9,011
Interest	3,468	3,081
Property taxes	2,368	2,094
Other	4,130	4,422
	20,834	18,608
Entrance fee refunds	8,975	10,557
Reserve for health center refunds	32,635	27,830
Long-term debt due within one year	10,485	12,704
Obligation under cap lease due within one yr	426	655
Total current liabilities	109,916	96,748
Entrance fee deposits	7,104	5,888
Wait list deposits	1,215	1,201
Long-term debt due after one year	642,994	567,332
Obligation under cap lease due after one year	1,219	623
Deferred entrance fees	183,468	165,153
Refundable entrance and membership fees	543,116	512,943
Total liabilities	1,489,032	1,349,888
Net assets without donor restrictions	(262,964)	(154,244)
TOTAL LIABILITIES AND NET ASSETS	\$1,226,068	\$1,195,644

Lifespace Communities, Inc.
Obligated Group Statements of Operations and Changes in Unrestricted Assets
For the Years Ended December 31 (Unaudited)
(Thousands of \$)

	2022	2021
Revenues		
Independent Living Fees	\$139,021	129,744
Entrance fees earned/cancellation penalties	33,521	29,804
Skilled nursing, assisted living and memory support fees	129,208	115,176
Investment Income (Expense)	(24,387)	18,328
Other	315	1,127
	<u>277,678</u>	<u>294,179</u>
Expenses		
Operating expenses:		
Salaries and benefits	149,346	122,914
General and administrative	70,291	65,700
Plant operations	19,694	17,861
Housekeeping	1,266	1,499
Dietary	24,868	21,737
Medical and other resident care	12,918	14,406
Depreciation	54,526	52,224
Amortization	12,429	12,225
Interest	18,815	17,468
Loss on disposal of fixed assets	5	12
Loss on extinguishment of debt	-	214
	<u>364,158</u>	<u>326,260</u>
(Deficit) Excess of revenues over expenses from continuing operations	(86,480)	(32,081)
Discontinued operations		
Gain from operations of discontinued operations	-	985
Gain on sale of Property and Equipment	-	11,921
Loss on sale of Related Party Investments	-	(14,648)
Total Discontinued Operations	<u>-</u>	<u>(1,742)</u>
Contributions to Lifespace Communities, Inc.	<u>(22,240)</u>	<u>(18,705)</u>
Changes in net assets	(108,720)	(52,528)
Net assets at beginning of year	<u>(154,244)</u>	<u>(101,716)</u>
Net assets at end of the period	<u><u>(\$262,964)</u></u>	<u><u>(\$154,244)</u></u>

Lifespace Communities, Inc.
Obligated Group Statements of Cash Flow
For the Years Ended December 31 (Unaudited)
(Thousands of \$)

	2022	2021
Operating activities		
Changes in unrestricted net assets	(\$108,720)	(\$52,528)
Adjustments to reconcile changes in net asset to net cash provided (used) in operating activities:		
Reconciling items included in discontinued ops	-	(6,718)
Entrance fees earned	(33,521)	(29,802)
Proceeds from nonrefundable entrance fees and deposits	54,670	51,372
Refunds of entrance fees	(2,003)	(4,354)
Depreciation and Amortization	66,955	64,449
Amortization of Financing Costs	577	474
Net accretion of original issue premium/discounts	(1,975)	(1,498)
Change in unrealized appreciation of investments	27,006	(14,953)
Net sales of trading investments	16,137	(38,761)
Contributions to Lifespace Communities, Inc.	22,240	18,705
Loss on disposal of property and equipment	5	12
Change in wait lists and deposits	1,230	(6,646)
Loss on extinguishment of debt	-	214
Gain on sale of Property and Equipment	-	(11,921)
Loss on sale of Related Party Investments	-	14,648
Changes in operating assets and liabilities:		
Accounts receivables, inventories, and prepaid insurance and other	(6,103)	(3,150)
Accounts payables and accrued liabilities	12,393	7,598
Net cash provided (used) in operating activities	<u>48,891</u>	<u>(12,859)</u>
Investing activities		
Purchases of property and equipment	(112,235)	(87,242)
Proceeds from sale of property and equipment	-	32
Net cash used in investing activities	<u>(112,235)</u>	<u>(87,210)</u>
Financing activities		
Financing cost incurred	(821)	(2,896)
Repayment of long-term debt	(18,420)	(33,826)
Proceeds from line of credit	9,082	2,837
Proceeds from New Financing	85,000	132,520
Extinguishment of Prior Debt	-	(39,642)
Proceeds on disposal of a community	-	14,117
Contributions to Lifespace Communities, Inc.	(22,240)	(18,705)
Payments on Finance Leases	178	(381)
Proceeds from refundable entrance fees and deposits	87,843	99,562
Refunds of entrance fees	(58,925)	(50,288)
Net cash provided in financing activities	<u>81,697</u>	<u>103,298</u>
Net increase in cash and cash equivalents	18,353	3,229
Cash and cash equivalents at beginning of year	20,422	17,193
Cash and cash equivalents at end of period	<u>\$38,775</u>	<u>\$20,422</u>

Lifespace Communities, Inc.
Obligated Group
Management's Discussion and Analysis

Year Ended December 31, 2022 versus Year Ended December 31, 2021:

The average year-to-date independent living occupancy through December 31, 2022, was 2,299 independent living homes (77.3% of the 2,975 average available homes). The average year-to-date occupancy, excluding Grand Lodge which is disclosed as a discontinued operations, through December 31, 2021 was 2,312 independent living homes (78.7% of the 2,943 average available homes). The decline in occupancy for 2022 was primarily driven by unusually high attrition throughout the year. While independent living sales and move-ins remained strong, occupancy was outpaced by a second consecutive year of high attrition rates. The increase in average available homes from December 31, 2021 to the same period in 2022 is due to opening independent living apartments at two communities to support the redevelopment efforts discussed under Liquidity and Capital Requirements. In addition, offsetting the additions were five communities that combined smaller apartments and one community demolishing townhomes to support future redevelopment efforts.

Revenues from independent living monthly fees and related charges amounted to \$139,021,000 in 2022, a 7.2% increase over the \$129,744,000 from the same revenue sources in 2021. Monthly fees increased in the range of 3.8% to 6.0% on January 1, 2022 and again on August 1, 2022, with a range of 2.5% to 6.2%. High attrition rates impacted revenues by approximately \$1,488,000.

Revenues from the health center, assisted living, and memory support fees were \$129,208,000 in 2022 compared to \$115,176,000 in 2021, an increase of 12.2%. This increase is the result of the monthly fee increases effective January 1, 2022, the mid-year monthly fee increase effective August 1, 2022, and improved occupancies with these higher levels of living. The Friendship Village of Bloomington redevelopment project opened in February of 2021. This added assisted living and memory support rooms while eliminating boarding care. The Village on the Green redevelopment project opened over several months. Village on the Green added assisted living rooms which opened at the end of March of 2021, added and opened memory support in April of 2021 and opened the replacement health center in May of 2021. The monthly fee increases effective January 1, 2022 range from 2.7% to 6.1% and the mid-year monthly fee increases were 5.0%.

As of December 31, 2022, the Obligated Group received a total of \$315,000 in COVID relief related funding compared to \$1,127,000 for the same period in 2021. During 2022, the Obligated Group received \$75,000 from the State of Texas and \$240,000 from The Department of Health and Human Services. During 2021, the Obligated Group received \$1,036,000 from Department of Health and Human Services in infection quality control payments and relief under the CARES Act's Public Health and Social Services Relief Fund, \$78,000 in stimulus funds from third party payors that is in accordance with their contract with Commonwealth of Pennsylvania's Department of Human Services and an additional \$13,000 in other COVID relief funds. The Department of Health and Human Services continues to update guidance regarding the distribution of these funds.

Total operating expenses, excluding depreciation, amortization, interest expense, and loss on disposal of property were \$278,383,000 in 2022, an increase of \$34,266,000 or 14.0% from

Lifespace Communities, Inc.
Obligated Group
Management's Discussion and Analysis

comparable expenses of \$244,117,000 in 2021. Salaries and benefits increased \$26,432,000 or 21.5% due primarily to substantial wage increases for culinary, nursing and housekeeping team members that took effect November 1, 2021 and for all remaining team members that took effect January 1, 2022. In addition, further wage increases for culinary, nursing, and housekeeping team members took effect August 1, 2022. These market driven wage increases exceeded the combined January and August resident rate increases by approximately \$4,542,000. General and administrative expense increased \$4,591,000 or 7.0% due primarily to additional legal reserves for prior year claims (totaling approximately \$1,645,000) and higher real estate taxes (primarily a result of the redevelopment projects). Plant expense increased \$1,833,000 or 10.3% due primarily to higher costs in consulting and outsourcing services, security services and equipment, utilities, and costs from Hurricane Ian in September 2022 (totaling approximately \$773,000). Dietary costs increased \$3,131,000 or 14.4% due primarily to higher raw food costs. Medical and other resident care expenses decreased \$1,488,000 or 10.3%, due primarily to less agency costs. Agency costs were \$5,804,000 as of December 31, 2022 compared to \$7,785,000 in the same period of 2021. While a decrease of \$1,981,000, agency usage persisted during the first several months of 2022 substantially above pre-pandemic levels. However, during 2022, agency expenses declined from over \$1,100,000 for the month of January 2022 to below \$100,000 for the month of December 2022. 2022 also continued to see high levels of expenses related to COVID-19. Primarily incurred during the first half of 2022, direct COVID-19 expenses total approximately \$2,408,000 compared to approximately \$3,760,000 in 2021. However, as noted above, in 2021 \$1,127,000 of COVID relief funds were received which helped offset that year's expenses, while only \$315,000 was received in 2022.

During 2020, the World Health Organization declared the spread of Coronavirus Disease (COVID-19) a worldwide pandemic. The COVID-19 pandemic is having significant effects on global markets, supply chains, businesses, and communities.

COVID-19 is impacting each of the communities in the Obligated Group at different levels which change on a daily basis. At any point in time, a given community can experience a resident or team member with a positive COVID-19 test. Lifespace has established protocols to comply with all federal, state and local requirements. Any suspected COVID-19 cases are subject to self-isolation and monitored. All communities have seen an increase in costs for personal protection equipment and inventories of these supplies have been increased in anticipation of their continued need. As of the date of this disclosure, there are 28 positive resident cases.

Lifespace Communities, Inc.
Obligated Group
Management's Discussion and Analysis

Year Ended December 31, 2022 Actual versus Budget

The Lifespace Board of Directors annually approves the budget that results in an accepted net operating margin, net entrance fees and capital expenditures. The chart below shows line-item comparisons to the board approved net operating margin, net entrance fees and capital expenditures, along with the favorable and unfavorable variances.

(in thousands)	Actual	Budget	Favorable/ (Unfavorable)
Revenues			
Independent Living Fees	\$139,021	\$136,843	\$2,178
Skilled nursing, assisted living and memory support fees	129,208	122,244	6,964
Other	315	382	(67)
	268,544	259,469	9,075
Expenses			
Operating expenses:			
Salaries and benefits	149,346	144,759	(4,587)
General and administrative	70,291	64,713	(5,578)
Plant operations	19,694	17,240	(2,454)
Housekeeping	1,266	1,347	81
Dietary	24,868	22,038	(2,830)
Medical and other resident care	12,918	6,693	(6,225)
	278,383	256,790	(21,593)
Net operating margin	(9,839)	2,679	(12,518)
Net entrance fees, including initial entrance fees	81,585	62,879	18,706
Capital expenditures, financed with bond proceeds	71,523	93,577	22,054
Capital expenditures, routine and community projects	40,712	62,853	22,141

Net operating margin is unfavorable to budget by \$12,518,000. As noted above, several areas of costs were incurred in 2022 that were either unusual in nature and/or levels of expenditures that negatively impacted the financial performance compared to budget. Most notable 2022 expenses impacting the net operating margin are COVID-19 expenses (approximately \$2,408,000), agency usage (approximately \$2,250,000, premium paid), unusually high attrition (approximately \$1,488,000), prior year claims adjustments (approximately \$1,645,000), and expenses related to Hurricane Ian (approximately \$773,000).

Independent living fees are favorable to budget by \$2,178,000, which is related to occupancy and a mid-year monthly fee increase. The year to date average occupancy budgeted for the year ended December 31, 2022 was 76.5% while actual year to date ended higher at 77.3%.

Lifespace Communities, Inc.**Obligated Group****Management's Discussion and Analysis**

As mentioned earlier, a mid-year monthly fee increase was implemented August 1, 2022 which ranged from 2.5% to 6.2% and was not budgeted.

Skilled nursing, assisted living and memory support fees are favorable to budget by \$6,964,000 due primarily to higher occupancy than budgeted and a mid-year fee increase that was not budgeted. The health center budgeted an average year to date occupancy of 87.7% and has actual occupancy of 90.5%. Assisted Living budgeted an average year to date occupancy of 87.3% and has actual occupancy of 91.8%. Memory Support budgeted an average year to date occupancy of 89.9% and has actual occupancy of 91.7%. The mid-year increase was 5% and effective August 1, 2022.

Salaries and benefits are \$4,587,000, or 3.2%, unfavorable to budget due primarily to wage increases that took effect on August 1, 2022 for culinary, nursing and housekeeping team members. This increase in wage was offset by the monthly fee mid-year increases however was not budgeted.

General and administrative expense is unfavorable to budget by \$5,578,000, or 8.6%, due primarily to real estate taxes, continued COVID costs and additional reserves related to prior years that were not budgeted.

Plant operations expense is unfavorable to budget by \$2,454,000, or 14.2%, due primarily to higher consulting and outsourcing services, security services and equipment, utilities, garbage and hazardous waste disposal, repair and maintenance, and natural disaster costs from Hurricane Ian than budgeted.

Dietary expense is unfavorable to budget by \$2,830,000, or 12.8%, due primarily to higher raw food costs than budgeted.

Medical and other resident care expense is unfavorable to budget by \$6,225,000, or 93.0%, due primarily to higher use of agency than budgeted. Agency costs for 2022 are \$5,804,000, of which \$30,000 was budgeted.

Net entrance fees are favorable to budget by \$18,706,000. The budget for the year ended December 31, 2022 had 339 closings compared to the actual closings of 336. The slight shortfall in closings was offset by a higher average net entrance fees than budgeted.

Capital expenditures financed with bond proceeds are approximately \$22,054,000 less than budgeted. This is the result of timing. Approximately \$22,141,000 less was spent on routine capital expenditures than budgeted.

Ratios:

The Net Operating Margin Ratio decreased from 0.8% at December 31, 2021 to (3.7%) at December 31, 2022. The Net Operating Margin, Adjusted Ratio decreased from 18.8% at December 31, 2021 to 15.9% at December 31, 2022. The annual debt service coverage ratio decreased from 2.3 at December 31, 2021 to 2.0 at December 31, 2022. The Net Operating Margin,

Lifespace Communities, Inc.
Obligated Group
Management's Discussion and Analysis

Adjusted and the Debt Service Coverage Ratio are impacted by the increase in net entrance fees excluding the initial entrance fees. However, that increase is offset by the decrease in net operating margin. Further details on net entrance fees are stated in the Liquidity and Capital Requirements section below.

Investment income decreased when comparing the year ended December 31, 2022 to the same period in 2021. Excluding the unrealized gain/loss, investment income represents a decrease of \$9,800,000, which impacts the debt service coverage ratio in a negative manner. However, that decrease is offset by the increase in entrance fees when excluding the initial redevelopment entrance fees which are not included in the debt service coverage ratio. The following chart shows the components of investment income in thousands of dollars.

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
Interest and Dividend Income	\$3,560	\$4,415
Realized Gain/(Loss)	(941)	8,004
Unrealized Gain/(Loss)	<u>(27,006)</u>	<u>5,909</u>
Total	(\$24,387)	\$18,328

The Adjusted Debt to Capitalization increased from 98.2% at December 31, 2021 to 113.8% at December 31, 2022. Both periods are above the benchmark of 54.0%.

Liquidity and Capital Requirements – Year Ended December 31, 2022 versus Year Ended December 31, 2021:

Cash proceeds from entrance fees and deposits (refundable and non-refundable), net of refunds and including initial entrance fees, were \$81,585,000 for the year ended December 31, 2022 compared to \$96,292,000 for the same period in 2021. The number of closings decreased to 336 in the year ended December 31, 2022 from 348 reoccupancies in the year ended December 31, 2021. There were initial entrance fees at two communities of \$19,202,000 (28 closings) in the year ended December 31, 2022 and \$41,862,000 (64 closings) for the same period in 2021.

Daily operating expenses for 2022 increased to \$811,000 from \$712,000 in 2021, an increase of 13.9%, due primarily to market wage adjustments. The overall unrestricted cash position decreased from \$214,073,000 at December 31, 2021 to \$188,338,000 at December 31, 2022, a change of 12.0%. The Days Cash on Hand Ratio decreased from 301 days at December 31, 2021 to 232 days at December 31, 2022. The reduction in unrestricted cash and investments was due primarily to \$27.0 million of unrealized investment losses, resulting in a decline of 33 days cash on hand.

Capital expenditures for the communities for the year ended December 31, 2022 were \$112,235,000, while depreciation expense for the same period was \$54,526,000. The remaining redevelopment projects mentioned below account for \$56,166,000 of this year-to-date 2022 expenditure balance. In addition, various community projects were funded by the Series 2021 and Series 2022 financings in the amount of \$15,357,000 for the year ended December 31, 2022. Capital expenditures for the communities for the year ended December 31, 2021 were

Lifespace Communities, Inc.
Obligated Group
Management's Discussion and Analysis

\$87,242,000, while depreciation expense for the same period was \$52,224,000. As stated below, the five redevelopment projects account for \$52,874,000 of this year-to-date 2021 expenditure balance. In addition, various community projects were funded by the Series 2021 financing in the amount of \$4,939,000 for the year ended December 31, 2021.

To evaluate the financial aspect of the needed re-investment in the communities, management targets capital expenditures as a percentage of depreciation in the range of 70% to 130%. This ratio is monitored on a 5-year historical view and a 10-year forecast period to assist with the annual capital expenditure decisions. The 5-year historical ratio for the Obligated Group at December 31, 2021 is 167% which is higher than the range as a result of the redevelopment projects. The redevelopment projects are mostly funded with long-term debt and internal cash. Routine capital projects are expected to be funded from internal cash flows.

On August 1, 2021 Lifespace sold Grand Lodge to a third party. The proceeds from this sale were used to pay outstanding bonds of \$13,956,000.

Lifespace Communities completed tax-exempt bond financings in 2016, 2018, and 2019 of which the proceeds support five redevelopment construction projects. On August 31, 2021, Lifespace completed the fourth and final bond financing to assist in the completion of five redevelopment projects. Lifespace received proceeds from issuing \$120.4 million of Series 2021 bonds. The bonds sold at a premium generating \$132.5 million of proceeds. The proceeds from these bonds will pay redevelopment costs of \$85.0 million at Friendship Village of Bloomington and Oak Trace, fund cost of issuance of \$2.4 million and funded interest of \$5.9 million. In addition, several communities are receiving proceeds to assist with community projects. The Series 2010 bonds were refinanced with the issuance of the Series 2021 financing.

On November 16, 2022, Lifespace Communities completed a privately placed tax-exempt bond financing that will support The Waterford's redevelopment construction project and smaller projects at the other four Florida communities of Abby Delray, Abbey Delray South, Harbour's Edge and Village on the Green. Lifespace received proceeds from issuing \$85.0 million of Series 2022 bonds. The proceeds from these bonds will pay redevelopment costs of \$54.1 million at The Waterford, fund cost of issuance of \$0.8 million and funded interest of \$3.7 million. In addition, several Florida communities received proceeds of \$26.4 million to assist with community projects.

Initial entrance fees collected at two of the redevelopment communities have been used to pay down the Series 2019A-2 debt issuance. As of December 15, 2021, the principal amount of \$26,850,000 has been fully retired.

Lifespace has secured a line of credit with a bank for \$25 million to support the redevelopment efforts. The line of credit is to be used for the redevelopment projects when bond project funds are depleted and prior to the issuance of additional bonds as described below. The terms and covenants of the line of credit follow the master trust indenture. As of December 31, 2022, \$16.7 million has been drawn on this line of credit and has \$3.4 million outstanding.

Lifespace Communities, Inc.
Obligated Group
Management's Discussion and Analysis

Three communities are in the process of significant construction at December 31, 2022. All three of the communities are using proceeds from the Series 2021 and Series 2022 Bonds. As with any construction project, the timing of expenditures and the project budget can change through the passage of time or as the project advances in development. The monthly Redevelopment Project Status Report filed on EMMA provides additional details regarding the construction projects.

Management continuously reviews and prioritizes the needs at each of the Communities to determine what is needed to enhance the Community, fill service gaps, stay competitive in the market place and grow. There is no guarantee that the Lifespace will complete all the projects listed above, that the scope will not be materially altered or that additional Communities will not be added.

On September 13, 2022, Fitch affirmed its rating for the outstanding revenue bonds of Lifespace at 'BBB' with a stable outlook. On February 9, 2023, Fitch issued a press release stating Lifespace Communities, Inc. has been placed on Rating Watch Negative.

In conjunction with the acquisition of The Stayton in June 2019, Lifespace provided a Liquidity Support Agreement ("LSA") to the Stayton trustee. Pursuant to the LSA, Lifespace made a deposit of \$3,000,000 to be held by the Stayton trustee in a liquidity support account. This was funded from sources other than the Obligated Group. Lifespace has an unfunded commitment in the amount of up to \$3,000,000 which may be drawn upon in accordance with the LSA. This \$3,000,000 would likely come from the Obligated Group. In October 2022, the Obligated Group funded The Stayton with \$600,000 as part of the unfunded commitment amount in the LSA. On January 13, 2023, the BOKF, N.A. and The Stayton entered into a Forbearance Agreement. In conjunction with the Forbearance Agreement, BOKF, N.A., The Stayton, and Lifespace entered into the First Amendment to Liquidity Support Agreement. Pursuant to the First Amendment to Liquidity Support Agreement, the Trustee shall be permitted to withdraw up to \$900,000 previously deposited by Lifespace and held by the Trustee in the Liquidity Support Account to pay fees and expenses of the Trustee's counsel and advisors. No other substantive changes were made to the Liquidity Support Agreement.

In conjunction with the acquisition of Newcastle Place on July 1, 2021, Lifespace made an \$8,000,000 equity contribution and provided a Liquidity Support Agreement for the Newcastle Place long-term indebtedness which is currently outstanding in the aggregate principal amount of approximately \$5,000,000. At December 31, 2022 the Liquidity Support Agreement remains unfunded. Lifespace also holds approximately \$8,000,000 million of subordinated bonds issued by Newcastle Place.

As stated within the EMMA notice filed July 28, 2022, effective July 19, 2022, an unfunded Liquidity Support Agreement has been entered into between Lifespace and UMB Bank, National Association (the "Bond Trustee"), as trustee under the Bond Trust Indenture dated as of July 1, 2022 between Tarrant County Cultural Education Facilities Finance Corporation (the "issuer") and the Bond Trustee related to Senior Series 2022 Bonds. The Liquidity Support Agreement provides for an aggregate maximum support amount of \$7,412,300. At December 31, 2022 the Liquidity Support Agreement remains unfunded.

Lifespace Communities, Inc.
Obligated Group
Management's Discussion and Analysis

As stated within the EMMA notice filed January 9, 2023, Lifespace has agreed to provide certain limited financial support relative to the plan of reorganization contained within the Third Amended Disclosure Statement filed in December 2022 by Edgemere (collectively the “Plan”), pending final confirmation of the Bankruptcy Court. Specifically, the Plan provides for a settlement of all potential Estate, Trustee, DIP Lender and Resident claims against Lifespace in exchange for (a) a \$16.5 million payment to the Trustee on the Effective Date for Distribution to holders of the Original Bonds, pursuant to the terms of the Original Bond Documents (the “Lifespace Bond Contribution”), and (b) subject to certain conditions, annual payments (the “Lifespace Resident Contributions”) made into a trust, pursuant to the schedule attached to the Third Amended Disclosure Statement, which funds shall be used to pay participating Residents for claims relating to their Residency Agreements. The anticipated Lifespace Resident Contributions will be paid over approximately 19 years in an aggregate amount of approximately \$143,000,000, subject to certain contribution deferral provisions. In exchange for the Lifespace Resident Contributions and the releases provided under the Plan, Lifespace will be entitled to a Pro Rata distribution of Litigation Trust Assets, in accordance with the terms of the Plan and the Litigation Trust Agreement. The Lifespace Bond Contribution and Lifespace Resident Contributions are collectively referred to as the “Lifespace Contribution”.

On February 10, 2023, Lifespace posted an event notice on EMMA as notification of the inurrence of a financial obligation. In conjunction with the Member Substitution Agreement of GreenFields of Geneva, Lifespace has provided financial support and entered into unfunded Liquidity Support Agreements.

Forward-Looking Statements:

This document contains various “forward-looking statements”. Forward-looking statements represent our expectations or beliefs concerning future events. The words “plan”, “expect” “estimate” “budget” and similar expressions are intended to identify forward-looking statements. We caution that these statements are further qualified by important factors that could cause actual results to differ materially from those in the forward-looking statements, including without limitations the factors described in this document.

We ask you not to place undue reliance on such forward-looking statements because they speak only of our views as of the statement dates. Although we have attempted to list the important factors that presently affect the Obligated Group’s business and operating results, we further caution you that other factors may in the future prove to be important in affecting the Obligated Group’s results of operations. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

Lifespace Communities, Inc.
Obligated Group Selected Historical Financial Information
(Thousands of \$)

Historical Debt Service Coverage	Year Ended	Year Ended December 31 (Audited)		
	December 31 (Unaudited) 2022	2021	2020	2019
Excess (deficit) of revenues over expenses	(86,480)	(32,081)	(7,071)	(57)
Less:				
Entrance fees earned	(33,521)	(29,802)	(31,694)	(30,468)
Initial redevelopment entrance fee and/or redevelopment deposits	(19,202)	(41,862)	1,290	(7,653)
Add:				
Depreciation	54,526	52,224	47,028	43,778
Amortization	12,429	12,225	15,873	6,609
Interest Expense	18,815	17,468	14,781	7,595
Expenses paid by long-term debt issuances	1,234	1,719	1,273	2,305
Unrealized (gain) loss on securities	27,006	(14,953)	(3,298)	(15,243)
Realized loss on sale of assets	5	12	616	2,923
Loss on extinguishment of debt	-	214	-	-
Entrance fee proceeds (less refunds)	81,585	96,292	15,215	48,353
Income available for debt service	<u>56,397</u>	<u>61,456</u>	<u>54,013</u>	<u>58,142</u>
Annual debt service payment	27,717	27,213	25,926	20,372
Annual debt service coverage (b)(c)(d)	2.0	2.3	2.1	2.9
Maximum annual debt service payment	40,586	34,748	32,614	31,917
Maximum annual debt service coverage (d)	1.4	1.8	1.7	1.8
Cash to Debt				
Unrestricted cash and investments (a)	188,338	214,073	212,456	194,906
Debt service reserve fund	<u>32,359</u>	<u>34,245</u>	<u>37,847</u>	<u>37,867</u>
	<u>220,697</u>	<u>248,318</u>	<u>250,303</u>	<u>232,773</u>
Bonds outstanding long-term	642,994	567,332	510,743	519,389
Annual debt service	27,717	27,213	25,926	20,372
Maximum annual debt service	40,586	34,748	32,614	31,917
Ratio of total unrestricted cash & investments with debt service reserve to bonds outstanding	0.3	0.4	0.5	0.4
Ratio of total unrestricted cash & investments with debt service reserve to annual debt service	8.0	9.1	9.7	11.4
Ratio of total unrestricted cash & investments with debt service reserve to maximum annual debt service	5.4	7.1	7.7	7.3
Department operating expenses (excluding expenses paid by long-term debt issuances) plus interest	295,964	259,866	236,958	219,134
Daily expenses	811	712	647	600
Days of unrestricted cash & investments on hand (b)(c)(d)	232	301	328	325
Other Ratios				
Net operating margin (c)(d)	-3.7%	0.8%	7.5%	2.1%
Net operating margin, adjusted (c)(d)	15.9%	18.8%	13.4%	17.5%
Adjusted debt to capitalization (c)(d)	113.8%	98.2%	91.7%	88.0%

(a) The balances include the Cash & Cash Equivalents, Investments, and the Florida operating and renewal and replacement reserve funds.

(b) The financial ratios that are required by the financing documents.

(c) The financial ratios that are monitored monthly by Lifespace.

(d) Latest FITCH for Investment Grade medians used as benchmarks are as follows: net operating margin of 6.5%, net operating margin, adjusted of 22.5%, maximum annual debt service of 2.5 times, days cash on hand of 528 and adjusted debt to capitalization of 54.0%. The latest "BBB" ratings are as follows: net operating margin of 6.7%, net operating margin, adjusted of 23.0%, maximum annual debt service of 2.2 times, days cash on hand of 496 and adjusted debt to capitalization of 61.1%.

Landlord's

Exhibit 11

for February 21-23, 2023 hearing

OVERVIEW OF TRANSACTION

In 1997, Intercity Investment Properties, Inc., acting through Edwin B. Jordan, Jr., began negotiations with Northwest Lifecare Joint Venture, represented by Alan T. Gregory and Michael B. Lanahan. On June 9, 1997, the parties executed a Letter of Intent. That Letter of Intent was amended in September of the same year.

Pursuant to the Letter of Intent, the parties worked toward and ultimately executed a Ground Lease Option Agreement dated effective September 9, 1997. Pursuant to that Option Agreement, Northwest Lifecare Joint Venture proceeded to gather the funding necessary for the project.

The overall objective of the joint venture was to create a nonprofit organization that would take over the Ground Lease that Northwest Lifecare Joint Venture had the option to obtain. The nonprofit organization would issue bonds for financing. With that money, the nonprofit would demolish the portion of the Preston Village Apartments on the leased property and construct a continuing care retirement center. The center would provide a range of living options for elderly residents from independent living through increased health care needs. The project was intended to have 220 independent living units, 77 assisted living units, a health center of approximately 60 skilled nursing beds, and an approximately 25,000 square foot commons building.

On May 20, 1999, the Ground Lease Option Agreement was assigned to Northwest Senior Housing Corporation, the nonprofit organization, which ultimately was to be the Lessee. Effective October 1, 1999, the Lessee and Intercity entered into an Amendment to Ground Lease Option Agreement. On November 17, 1999, the Ground Lease Option Agreement was closed, the Ground Lease executed, and financing put in place for the construction to follow. At the time of Closing on November 17, 1999, a few residents were left in the apartments existing on the site. A Management Agreement was executed between the Lessee and Intercity Investments, Inc. for the purpose of continuing management until all of the residents had vacated the premises. The last resident left on December 1, 1999.

Landlord's

Exhibit 12

for February 21-23, 2023 hearing

2

TYPE OR PRINT

RECORDERS RECEIPT

GF NO. 445017-W CLOSER Charles Budgett

RECEIVED OF American TITLE COMPANY Master Trust Indenture,

Mortgage and Security Agreement dated Nov 15, 1999

from Chase Bank of Texas, Northwest Senior Housing Corporation
Mat'l. Assoc.

() _____ dated _____

from _____ to _____

PROPERTY: ABST #/LOT _____ BLOCK _____ ADDITION Prestonville

to the City of Dallas, Dallas Cty, Tx.

Above DESIGNATED instrument is properly executed, acknowledged and filed for record in the office of the County Clerk,
_____ County, Texas, on the date and time shown stamped hereon.

County Clerk, _____

By: _____

Deputy

RETURN TO:

Return to (Closer 04):
AMERICAN TITLE COMPANY
6020 Bellline Road Suite 250
Dallas, TX 75200

X
(Staple to instrument at X only with one staple)

FILED
NOV 7 AM 11:19
COUNTY CLERK
DALLAS COUNTY
TX

05000 52766
99225 00050

FILE STAMPED COPY

MASTER TRUST INDENTURE,
MORTGAGE AND SECURITY AGREEMENT



between

NORTHWEST SENIOR HOUSING CORPORATION,
as the Initial Obligated Group Member

and

CHASE BANK OF TEXAS, NATIONAL ASSOCIATION,
as Master Trustee

Dated as of

November 15, 1999

c:\myfiles\1789.019\MasterInd.wpd

99225/0050 11:19am

TABLE OF CONTENTS

	<u>Page</u>
Parties	1
Recitals	1
Granting Clauses	1

ARTICLE I

**DEFINITION OF TERMS, CONSTRUCTION
AND CERTAIN GENERAL PROVISIONS**

Section 1.01. Definition of Terms	4
Section 1.02. Compliance Certificates and Reports	26
Section 1.03. Form of Documents Delivered to Master Trustee	27
Section 1.04. Acts of Holders of Obligations	28
Section 1.05. Notices, etc., to Master Trustee and Obligated Group Members; Notice to Bank	29
Section 1.06. Notices to Holders of Obligations; Waiver	29
Section 1.07. Consent of Bank Required	30
Section 1.08. Notices to Rating Agencies	30
Section 1.09. Effect of Headings and Table of Contents	30
Section 1.10. Successors and Assigns	30
Section 1.11. Separability Clause	30

ARTICLE II

THE OBLIGATIONS

Section 2.01. Series and Amount of Obligations	31
Section 2.02. Appointment of Obligated Group Representative	31
Section 2.03. Execution and Authentication of Obligations	31
Section 2.04. Supplement Creating Obligations	32
Section 2.05. Conditions to Issuance of Obligations Hereunder	32
Section 2.06. List of Holders of Obligations	33
Section 2.07. Optional and Mandatory Redemption	33

ARTICLE III

FUNDS AND ACCOUNTS

Section 3.01. Creation of Funds	34
Section 3.02. Application of Entrance Fees	34
Section 3.03. Entrance Fees Fund	34
Section 3.04. Operating Account of the Special Reserve Fund; Application of Moneys	37
Section 3.05. Leasehold Account of the Special Reserve Fund; Application of Moneys	37
Section 3.06. Investment of Funds	38
Section 3.07. Allocation and Transfers of Investment Income	38

ARTICLE IV

COVENANTS OF THE OBLIGATED GROUP MEMBERS

Section 4.01.	Title to Mortgaged Trust Estate and Lien of this Instrument	39
Section 4.02.	Further Assurances	39
Section 4.03.	Recording and Filing	39
Section 4.04.	Payment of Principal, Premium and Interest; Receipts	39
Section 4.05.	Payment of Ground Lease Rentals, Taxes and Other Claims	39
Section 4.06.	Maintenance of Properties	39
Section 4.07.	Corporate Existence	40
Section 4.08.	Preservation of Qualifications	40
Section 4.09.	Additions to Facilities	40
Section 4.10.	Limitation on Disposition of Assets	40
Section 4.11.	Obligor to Provide Information; Stable Occupancy	41
Section 4.12.	Statement as to Compliance	41
Section 4.13.	Annual Audit of Obligated Group; Quarterly and Monthly Financial Reports; Marketing and Occupancy Reports	42
Section 4.14.	(Intentionally Omitted)	42
Section 4.15.	Rate Covenant	42
Section 4.16.	Obligations Not to be Impaired	45
Section 4.17.	Required Insurance; Insurance Consultant; Self Insurance; Independent Actuary	45
Section 4.18.	(Intentionally Omitted)	47
Section 4.19.	Limitations on Additional Indebtedness	47
Section 4.20.	Liens and Encumbrances	51
Section 4.21.	Obligated Group Representative to Prepare Budget	51
Section 4.22.	Operating Ratio Covenant; Liquidity Ratio Covenant	51
Section 4.23.	Marketing and Occupancy Targets	54
Section 4.24.	Trade Payables Covenant	57
Section 4.25.	Management Consultant; Marketing Consultant	57
Section 4.26.	Management and Marketing Reports and Plans	58
Section 4.27.	Residency Agreements	58
Section 4.28.	Waiver of Certain Covenants	59
Section 4.29.	Insurance and Condemnation Proceeds	59
Section 4.30.	Leasehold Mortgage Provisions	60
Section 4.31.	No Merger	62
Section 4.32.	Holder of Obligations as Ground Lessee	63
Section 4.33.	No Assignment	63

ARTICLE V

CONSOLIDATION, MERGER, CONVEYANCE AND TRANSFER

Section 5.01.	Consolidation, Merger, Conveyance, or Transfer Only on Certain Terms	64
Section 5.02.	Successor Corporation Substituted	65

ARTICLE VI

MEMBERSHIP IN THE OBLIGATED GROUP

Section 6.01.	Admission of Obligated Group Members	66
Section 6.02.	Obligated Group Members	67
Section 6.03.	Withdrawal of Obligated Group Members	67
Section 6.04.	Successor Obligated Group Representative	68

ARTICLE VII

REMEDIES OF THE MASTER TRUSTEE AND HOLDERS OF SECURED OBLIGATIONS IN EVENT OF DEFAULT

Section 7.01.	Events of Default	69
Section 7.02.	Acceleration of Maturity; Rescission and Annulment	70
Section 7.03.	Entry	71
Section 7.04.	Powers of Sale, Transfer, Assignment, Lease, and Other Dispositions; Suits for Enforcement	71
Section 7.05.	Incidents of Sale	73
Section 7.06.	Collection of Indebtedness and Suits for Enforcement by Master Trustee	75
Section 7.07.	Master Trustee May File Proofs of Claim	75
Section 7.08.	Master Trustee May Enforce Claims Without Possession of Obligations	76
Section 7.09.	Application of Money Collected	76
Section 7.10.	Limitation on Suits	77
Section 7.11.	Unconditional Right of Holders of Obligations to Receive Principal, Premium and Interest	77
Section 7.12.	Restoration of Rights and Remedies	77
Section 7.13.	Rights and Remedies Cumulative	77
Section 7.14.	Delay or Omission Not Waiver	78
Section 7.15.	Control by Holders of Obligations	78
Section 7.16.	Waiver of Past Defaults	78
Section 7.17.	Undertaking for Costs	78
Section 7.18.	Waiver of Stay or Extension Laws	79

ARTICLE VIII

CONCERNING THE MASTER TRUSTEE

Section 8.01.	Duties and Liabilities of Master Trustee	80
Section 8.02.	Notice of Defaults	81
Section 8.03.	Certain Rights of Master Trustee	81
Section 8.04.	Not Responsible For Recitals or Issuance of Obligations	82
Section 8.05.	Master Trustee or Registrar May Own Obligations	83
Section 8.06.	Money to Be Held in Trust	83
Section 8.07.	Compensation and Expenses of Master Trustee	83

Page

Section 8.08.	Corporate Master Trustee Required; Eligibility	83
Section 8.09.	Resignation and Removal; Appointment of Successor	84
Section 8.10.	Acceptance of Appointment by Successor	85
Section 8.11.	Merger or Consolidation	85
Section 8.12.	Master Trustee as Related Bond Trustee	85

Page

ARTICLE IX

SUPPLEMENTS AND AMENDMENTS

Section 9.01.	Supplements Without Consent of Holders of Obligations	86
Section 9.02.	Supplements With Consent of Holders of Obligations	87
Section 9.03.	Execution of Supplements	87
Section 9.04.	Effect of Supplement	88
Section 9.05.	Obligations May Bear Notation of Changes	88

ARTICLE X

SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS

Section 10.01.	Satisfaction and Discharge of Indenture	89
Section 10.02.	Obligations Deemed Paid	89
Section 10.03.	Application of Trust Money	89
Section 10.04.	Payment of Related Bonds	90

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.01.	No Personal Liability	91
Section 11.02.	Texas Contract	91
Section 11.03.	Legal Holidays	91
Section 11.04.	Benefits of Provisions of Indenture and Obligations	91
Section 11.05.	Execution in Counterparts	91
Signatures		92
Acknowledgment		93

**MASTER TRUST INDENTURE,
MORTGAGE AND SECURITY AGREEMENT**

THIS MASTER TRUST INDENTURE, MORTGAGE AND SECURITY AGREEMENT, dated as of November 15, 1999, between NORTHWEST SENIOR HOUSING CORPORATION, as the obligor and the initial Obligated Group Member (the "Obligor"), and CHASE BANK OF TEXAS, NATIONAL ASSOCIATION, a national banking association, as trustee (the "Master Trustee")

WITNESSETH:

WHEREAS, the Obligor is authorized and deems it necessary and desirable to enter into this Indenture for the purpose of providing for the issuance from time to time by the Obligor or other Persons electing to become Obligated Group Members (as defined herein) of Obligations (as defined herein) to finance or refinance the acquisition or betterment of health care facilities or other facilities, or for other lawful and proper purposes; and

WHEREAS, all acts and things necessary to constitute this Indenture a valid indenture and agreement according to its terms have been done and performed, the Obligor has duly authorized the execution and delivery of this Indenture, and the Obligor, in the exercise of the legal right and power invested in it, executes this Indenture and proposes to make, execute, issue and deliver Obligations hereunder; and

WHEREAS, the Master Trustee agrees to accept and administer the trusts created hereby,

GRANTING CLAUSES

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Obligations (hereinafter defined) and the performance of the covenants therein and herein contained and to declare the terms and conditions on which the Outstanding Obligations is secured, and in consideration of the premises, of the purchase of the Obligations by the Holders thereof, and of the sum of One Dollar (\$1.00) to the Obligated Group Members in hand paid by the Master Trustee at or before the execution and delivery hereof, the receipt and sufficiency of which are hereby acknowledged, the Obligated Group Members by these presents does grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over, and confirm to the Master Trustee, forever, all and singular the following described properties, and grant a security interest therein for the purposes herein expressed, to-wit:

GRANTING CLAUSE FIRST

All revenue, accounts receivable, and Receipts of the Obligated Group Members, including without limitation rights to receive payments from third party payors such as Medicare and Medicaid, but except and excluding all such items, whether now owned or hereafter acquired by the Obligated Group Members, which by their terms or by reason of applicable law would become void or voidable if granted, assigned, or pledged hereunder by the Obligated Group Members, or which cannot be granted, pledged, or assigned hereunder without the consent of other parties whose consent is not secured, or without subjecting the Master Trustee to a liability not otherwise contemplated by the provisions hereof, or which otherwise may not be, or are not, hereby lawfully and effectively granted, pledged, and assigned by the Obligated Group Members, provided that the Obligated Group Members may subject to the lien hereof any such excepted property, whereupon the same shall cease to be excepted property; and

GRANTING CLAUSE SECOND

All of the rights, titles, interests and estates, now owned or hereafter acquired by the Obligated Group Members in the land described on Exhibit "A" hereto and incorporated herein for all purposes, including, without limitation, all of the Obligated Group Members' rights, title, estate and interest in and to the land described on Exhibit "A" hereto, and all rights, title, estate and interest in and to that certain ground lease dated November 17, 1999 (the "Ground Lease") between Intercity Investment Properties, Inc., a Texas corporation (together with any successors or assigns thereof, the "Ground Lessor") and the Obligor, which Ground Lease (or a memorandum thereof) was recorded on November 17, 1999, in Vol. 94225 Page 0245 of the Real Property Records of Dallas County, Texas, subject to the terms thereof and any and all other, further or additional title, estates, interests or rights that may at any time be acquired by the Obligated Group Members in or to the premises demised by the Ground Lease, all options and rights now existing or hereafter arising thereunder, all of the Obligated Group Members' right to waive, excuse, release or consent to any waiver, excuse or release of any provision of the Ground Lease or to consent to subordination of the Ground Lease to any mortgage or estate superior to the Ground Lease or to consent to the subordination of the Ground Lease to any other estate, and all deposits made by the Obligated Group Members pursuant to the Ground Lease, with all buildings, structures, fixtures, additions, enlargements, extensions, improvements, modifications or repairs now or hereafter located thereon or therein and with the tenements, hereditaments, servitudes, appurtenances, rights, privileges and immunities thereunto belonging or appertaining which may from time to time be owned by the Obligated Group Members, and all claims or expectancy, of, in and to the land described on Exhibit "A" hereto, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by the Obligated Group Members, and is affixed or attached or annexed to the land described on Exhibit "A" hereto, shall be and remain or become and constitute a portion of the land described on Exhibit "A" hereto, and the security covered by and subject to the lien of this Indenture; and

GRANTING CLAUSE THIRD

All of the rights, titles, interests and estates, now owned or hereafter acquired by the Obligated Group Members in and to any and all equipment, inventory, fixtures, and any and all other personal property of any kind or character defined in and subject to the provisions of the Texas Business and Commerce Code, including the proceeds and products of and from any and all of such personal property used in connection with or arising out of the operation and use of the improvements located on the land described in Exhibit "A" and any substitutions or replacements therefor; and

GRANTING CLAUSE FOURTH

Any amounts on deposit from time to time in the Entrance Fee Fund, the Special Reserve Fund or the Revenue Fund, or any account therein, subject to the provisions of this Master Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

GRANTING CLAUSE FIFTH

Any and all property that may, from time to time hereinafter, by delivery or by writing of any kind, be subjected to the lien and security interest hereof by the Obligated Group Members or by anyone in its behalf (and the Master Trustee is hereby authorized to receive the same at any time as additional security hereunder), which subjection to the lien and security interest hereof of any such property as additional security may be made subject to any reservations, limitations, or conditions which shall be set forth in a written instrument

executed by the grantor or the person so acting in its behalf or by the Master Trustee respecting the use and disposition of such property or the proceeds thereof;

TO HAVE AND TO HOLD all said property, rights, privileges, and franchises of every kind and description, real, personal, or mixed, hereby and hereafter (by supplemental instrument or otherwise) granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, mortgaged, hypothecated, pledged, set over, or confirmed as aforesaid, or intended, agreed, or covenanted so to be, together with all the appurtenances thereto appertaining (said properties, rights, privileges, leasehold, and franchises including any cash and securities hereafter deposited or required to be deposited with the Master Trustee (other than any such cash which is specifically stated herein not to be deemed part of the Trust Estate) being herein collectively referred to as the "Trust Estate") unto the Master Trustee and its successors and assigns forever;

SUBJECT AND SUBORDINATE, HOWEVER, to any and all mortgages, liens, charges, encumbrances, pledges, and security interests granted, created, assumed, incurred, or existing pursuant to the provisions of Section 4.20 hereof and all revenue, accounts receivable, and Receipts derived from such property;

BUT IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of the Holders from time to time of all the Outstanding Obligations without any priority of any such Obligations over any other such Obligations except as herein otherwise expressly provided;

UPON CONDITION that, if the Obligated Group Members or their successors or assigns shall well and truly pay, or cause to be paid, the principal of (and premium, if any) and interest on the Outstanding Obligations according to the true intent and meaning thereof, or there shall be deposited with the Master Trustee such amounts in such form in order that none of the Obligations shall remain Outstanding as herein defined and provided, and shall pay or cause to be paid to the Master Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon the full and final payment of all such sums and amounts secured hereby or upon such deposit, the rights, titles, liens, security interests, and assignments herein granted shall cease, determine, and be void and this grant shall be released by the Master Trustee in due form at the expense of the Obligated Group Members, except only as herein provided; otherwise this grant to be and shall remain in full force and effect;

UPON FURTHER CONDITION as to any property included in the Trust Estate that, upon Request of the Obligated Group Members accompanied by an Officer's Certificate and an Opinion of Counsel to the effect that the conditions precedent for the disposition of such property set forth in Section 4.10 hereof (other than the condition precedent set forth in Section 4.10(a) hereof) have been satisfied, the rights, title, liens, security interests and assignments herein granted shall cease, determine and be void as to such property only and this grant shall be released by the Master Trustee as to such property in due form at the expense of the Obligated Group Members;

ALL THINGS NECESSARY to make this Indenture a valid agreement and contract for the security of the Obligations in accordance with the terms of such Obligations and this Indenture have been done;

IT IS HEREBY COVENANTED AND DECLARED that the Trust Estate is to be held and applied by the Master Trustee, subject to the further covenants, conditions, and trusts hereinafter set forth, and the Obligated Group Members do hereby covenant and agree to and with the Master Trustee, for the equal and proportionate benefit of all Holders of the Obligations except as herein otherwise expressly provided, and

THIS INDENTURE FURTHER WITNESSETH and it is expressly declared that all Obligations issued and secured hereunder are to be issued, authenticated and delivered and all said rights hereby pledged and assigned are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed and the Obligated Group Members have agreed and covenanted, and do hereby agree and covenant, with the Master Trustee for the equal and proportionate benefit of the respective holders from time to time of the Obligations as follows:

ARTICLE I

DEFINITION OF TERMS, CONSTRUCTION AND CERTAIN GENERAL PROVISIONS

Section 1.01. Definition of Terms. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) “this Indenture” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof;

(2) all references in this instrument designated “Articles,” “Sections,” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, or other subdivision;

(3) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular number; and

(4) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles applied in accordance with Section 1.02 of this Indenture.

“Act” when used with respect to any Holder of Obligations has the meaning specified in Section 1.04.

“Additional Facilities” means any project undertaken by an Obligated Group Member that is financed or refinanced pursuant to this Indenture by such Obligated Group Member by the issuance of Obligations, including (without limitation) any addition to or expansion of the Facilities on a site contiguous to or part of the same campus.

“Additional Indebtedness” shall mean any Indebtedness incurred or assumed by an Obligated Group Member subsequent to the date of this Indenture.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Agency Obligations” means direct obligations of any agency or instrumentality of the United States of America and obligations on which the timely payment of principal and interest is fully guaranteed by any such agency or instrumentality when such obligations are backed by the full faith and credit of the United States of America and obligations of the Federal Home Loan Mortgage Corporation, Federal Credit System, Federal Home Loan Banks, Federal National Mortgage Association, Financing Corp. and Resolution Funding Corp.

“Annual Rent” means the Annual Rent as defined and described in the Ground Lease, calculated in accordance with the provisions of the Ground Lease.

“Assisted Living Units” means the assisted living beds that are part of the Facility and any assisted living beds in Additional Facilities.

“Authorized Denomination” means (a) for the Series 1999C Bonds, \$100,000 or any integral multiple thereof and (b) for all other Series 1999 Bonds, \$5,000 or any integral multiple of \$1,000 in excess thereof.

“Authorized Newspaper” means a newspaper of general circulation in the relevant area, printed in the English language and customarily published on each business day, whether or not published on Saturdays, Sundays or holidays. Whenever successive weekly publications are required hereunder, they may be made (unless otherwise expressly provided herein) on the same or different days of the week and in the same or different Authorized Newspapers.

“Authorized Representative” shall mean, with respect to the Obligated Group Representative and each Obligated Group Member, its respective chief executive officer, or any other person or persons designated an Authorized Representative thereof by an Officer’s Certificate of the Obligated Group Representative or the Obligated Group Member, signed by the respective Designated Officer and filed with the Master Trustee.

“Balloon Indebtedness” means Long-Term Indebtedness, 25% or more of the original principal amount of which matures during any consecutive twelve month period (the “Balloon Portion”), if such maturing principal amount is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such twelve month period. Balloon Indebtedness does not include Indebtedness that otherwise would be classified as Put Indebtedness.

“Bank” means the Credit Provider as defined in the Variable Rate Bond Indenture, initially being LaSalle Bank National Association.

“Bank Obligations” means the fees, expenses and reimbursement obligations of the Obligor to the Bank under the Reimbursement Agreement.

“Board Resolution” of any specified Person means a copy of a resolution certified by the Person responsible for maintaining the records of the Governing Body of such Person to have been duly adopted by the Governing Body of such Person and to be in full force and effect on the date of such certification, and delivered to the Master Trustee.

“Budget” means the annual budget required to be prepared by the Obligated Group Representative pursuant to Section 4.21 of the Indenture, as amended from time to time in accordance with such Section.

“Business Day” means any day other than (i) a Saturday, Sunday or legal holiday in the State of Texas observed as such by the Master Trustee, or (ii) a day on which the New York Stock Exchange is closed.

“Capital Improvements” means any Additional Facilities or any other capital project undertaken by an Obligated Group Member.

“Certificate of Occupancy” means the final certificate of occupancy issued by the appropriate local governmental unit relating to all units and beds in the Facility.

“Closing Date” means the date of the initial delivery of the Series 1999 Notes.

“Code” means the Internal Revenue Code of 1986, as amended from time to time and the corresponding provisions, if any, of any successor internal revenue laws of the United States.

“Commitment Indebtedness” shall mean the obligation of any Person to repay amounts disbursed pursuant to a commitment from a financial institution to pay or refinance when due other Indebtedness of such Person, which other Indebtedness would be classified as Short-Term, Balloon or Put Indebtedness hereunder and was incurred in accordance with the provisions of this Indenture.

“Completion Indebtedness” shall mean any Long-Term Indebtedness incurred by any Obligated Group Member for the purpose of financing, without materially changing the scope thereof, the completion of Capital Improvements for which Long-Term Indebtedness, Balloon Indebtedness or Put Indebtedness has been incurred.

“Consent,” “Order,” and “Request” of any specified Person mean, respectively, a written consent, order, or request signed in the name of such Person by the Chairman of the Governing Body, the President, a Vice President, the Treasurer, an Assistant Treasurer or the Chief Financial Officer of such Person, and delivered to the Master Trustee.

“Construction Disbursement Agreement” means the Construction Disbursement and Monitoring Agreement dated as of November 15, 1999 among the Obligor, the Bond Trustee and the Credit Provider.

“Cost” or “Costs” as applied to the Initial Project means and includes any and all costs of the Initial Project and, without limiting the generality of the foregoing, shall include the following:

- (a) the cost of the acquisition of all land, rights-of-way, options to purchase land, easements, leasehold estates in land, and interests of all kinds in land related to the Initial Project;
- (b) the cost of the acquisition, construction, repair, renovation, remodeling, or improvement of all buildings and structures to be used as or in conjunction with the Initial Project;
- (c) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which is necessary or incident to providing the Initial Project;
- (d) the cost of architectural, engineering, legal, and related services; the cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of the Initial Project;

(e) the cost of all machinery, equipment, furnishings, and facilities necessary or incident to the equipping of the Initial Project so that it may be placed in operation;

(f) the cost of financing charges and interest prior to and during construction and for a maximum of two years after completion of construction and the start-up costs of the Initial Project during construction and for a maximum of two years after completion of construction;

(g) any and all costs paid or incurred in connection with the financing of the Initial Project, including without limitation the cost of financing, legal, accounting, financial advisory, and appraisal fees, expenses, and disbursements; the cost of any blue sky and legal investment survey; the cost of any policy or policies of title insurance; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent; and

(h) the cost of financing, establishing, and funding a reserve fund or reserve funds for a program of self-insurance and/or risk management and further including, without limitation, the cost of the preparation of studies, surveys, and estimates of cost, revenue, risk, and liability and all other costs and expenses necessary or incident to the planning, providing, or determining the feasibility and practicability and the continuing program and operating costs of such program of self-insurance and/or risk management.

“Credit Enhancement Debt” has the meaning give such term in Section 4.22(o)

“Credit Facility” means any Liquidity Facility, letter of credit, bond insurance policy, bond purchase agreement, guaranty, line of credit, surety bond or similar credit or liquidity facility securing any Indebtedness of any Obligated Group Member.

“Credit Facility Agreement” means any agreement between the Obligated Group Representative and the provider of a Credit Facility relating to the issuance of a Credit Facility.

“Cross-over Date” means the date on which Cross-over Refunded Indebtedness is paid from the proceeds of the earnings on Cross-over Refunding Indebtedness.

“Cross-over Refunded Indebtedness” shall mean Indebtedness of a Person that is refunded by the proceeds of and the earnings on Cross-over Refunding Indebtedness.

“Cross-over Refunding Indebtedness” shall mean Indebtedness of a Person issued for the purpose of refunding other Indebtedness of such Person if the proceeds of such Cross-over Refunding Indebtedness are irrevocably deposited in escrow to secure the payment on the applicable Cross-over Date of the Cross-over Refunded Indebtedness and earnings on such escrow deposit are required to be applied to pay interest on either or both such Cross-over Refunding Indebtedness or such Cross-over Refunded Indebtedness until the Cross-over Date.

“Days' Cash on Hand” means, as of the date of calculation, the amount determined by dividing (a) the sum of the amount of cash, cash equivalents and marketable securities plus (without duplication) the amount of any board-designated assets consisting of cash, cash equivalents and marketable securities (excluding trustee-held funds and donor-restricted funds but including the Special Reserve Fund and the Entrance Fees Fund), as shown on the most recent audited or unaudited financial statements of such person, by (b) the quotient obtained by dividing the operating expenses (excluding depreciation and amortization expense and

other non-cash items) as shown on such financial statements by the number of days covered by such financial statements.

“Debt Service” shall mean the aggregate principal (whether at maturity or pursuant to mandatory redemption requirements), interest payments and other payments of the Obligated Group on Long-Term Indebtedness during the period in question, including but not limited to any Balloon Indebtedness and Put Indebtedness that constitutes Long-Term Indebtedness for the period of time for which calculated; provided, however, that for purposes of calculating such amount:

(a) The amount of such payments for any future period shall be calculated in accordance with the assumptions contained in the provisions pertaining to restrictions as to the incurrence of Additional Indebtedness and the calculation of Debt Service Requirements contained in this Indenture;

(b) Principal and interest shall be excluded from the determination of Debt Service to the extent that such principal and interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Master Trustee or another person approved by the Master Trustee; and

(c) In the case of Long-Term Indebtedness incurred in connection with the issuance of any Related Bonds with a Related Bonds Debt Service Reserve Fund created and funded upon the date of issuance of the Related Bonds, Debt Service in the Fiscal Year in which the final maturity of such series of Related Bonds occurs shall be reduced by an amount equal to the Related Bonds Debt Service Reserve Fund Requirement for such series of Related Bonds.

“Debt Service Coverage Ratio” shall mean, with respect to any Rate Calculation Year, the ratio of Net Income Available for Debt Service for the Obligated Group for the Rate Calculation Year in question to the Maximum Annual Debt Service on all Outstanding Long-Term Indebtedness for the Obligated Group during such Rate Calculation Year.

“Debt Service Requirements” means, when used with respect to any Long-Term Indebtedness of the Obligated Group for any period, as of any particular date of calculation, the amount required to pay the sum of (a) the interest on such Long-Term Indebtedness payable during such period, and (b) the principal of or any sinking fund installment or other amount required to effect any mandatory redemption of such Long-Term Indebtedness, if any, during such period, less any amount of such interest or principal for the payment of which moneys or Investment Obligations, the principal of and interest on which when due will provide for such payment, are irrevocably held in trust, including (without limitation) any accrued interest and capitalized interest. For the purpose of calculating the Debt Service Requirements:

(a) with respect to any Variable Rate Indebtedness, interest on such Variable Rate Indebtedness shall be computed by assuming that the rate of interest is equal to the average annual rate of interest (calculated in the manner in which the rate of interest then borne by such Variable Rate Indebtedness is to be calculated) that was or would have been in effect for the twelve (12)-month period immediately preceding the date on which such calculation is made; provided, however, that if such average annual rate of interest cannot be calculated for such entire twelve (12)-month period but can be calculated for a shorter period, then the assumed interest rate shall be the average annual rate of interest that was or would

have been in effect for such shorter period; and provided, further, that if such average annual rate of interest cannot be calculated for any preceding period of time, then the assumed interest rate shall be the Projected Rate.

(b) with respect to any Balloon Indebtedness, Debt Service shall be calculated in accordance with Section 4.22(i) hereof.

(c) with respect to any Put Indebtedness, such Indebtedness shall be assumed to bear interest on the unpaid principal balance thereof at the Projected Rate and payable on a level debt service basis over a twenty-five (25) year amortization;

(d) with respect to any Commitment Indebtedness, no Debt Service shall be deemed payable until such time as funding occurs under the commitment that gave rise to such Commitment Indebtedness. From and after such funding, the amount of such Debt Service shall be calculated in accordance with the actual amount required to be repaid on such Commitment Indebtedness and the actual interest rate and amortization schedule applicable thereto, utilizing the various assumptions contained herein. No Additional Indebtedness shall be deemed to arise when any funding occurs under any such commitment or when any such commitment is renewed upon terms that provide for substantially the same terms of repayment of amounts disbursed pursuant to such commitment as obtained prior to such renewal.

(e) with respect to Extendable Indebtedness, Debt Service shall be deemed payable in accordance with the terms of such Indebtedness.

(f) no Debt Service shall be deemed payable with respect to Non-Recourse Indebtedness; provided that no Revenues of any Obligated Group Member have been applied to any payment thereof other than Revenues derived from the Trust Estate securing the Non-Recourse Indebtedness on the date of the calculation. For any period in which funds or Revenues of any Obligated Group Member other than those derived from the property financed with the proceeds of the Non-Recourse Indebtedness are applied to Debt Service on the Non-Recourse Indebtedness, Debt Service on the Non-Recourse Indebtedness shall be included in Debt Service.

(g) with respect to any Guarantee of any Indebtedness that would constitute Long-Term Indebtedness if incurred directly by an Obligated Group Member, so long as (i) no default shall have occurred with respect to such Indebtedness; (ii) no demand for payment shall have been made with respect to such Guarantee and (iii) no payment shall have been made by such Obligated Group Member with respect to the debt service on such guaranteed indebtedness, twenty percent (20%) of the Debt Service Requirements of such guaranteed Indebtedness shall be taken into account in the calculation of the Obligated Group's Debt Service Requirement with respect to such guaranteed Indebtedness; provided, however, if a default shall have occurred with respect to such guaranteed Indebtedness, a demand for payment shall have been made on such Guarantee or a payment shall have been made by such Obligated Group Member with respect to the debt service on such guaranteed Indebtedness, then 100% of Debt Service Requirements of such Indebtedness shall be taken into account in such calculation;

(h) If a Qualified Swap Agreement with a Swap Provider has been entered into requiring payment of a fixed interest rate or a variable interest rate on a notional amount and the Obligated Group Representative shall have provided written notice to the Master Trustee that such Qualified Swap Agreement was entered into for the purpose of providing substitute interest payments (or a portion thereof) for Indebtedness of a particular maturity or maturities in a principal amount equal to the notional amount of such Qualified Swap Agreement, then, during the term of such Qualified Swap Agreement and so long as the Swap Provider under such Qualified Swap Agreement is not in default under such Qualified Swap Agreement, for purposes of any calculation of interest on Long-Term Indebtedness, the interest rate (or portion thereof) on the Indebtedness of such maturity or maturities shall be determined as if such Indebtedness bore interest at the fixed interest rate or the variable interest rate, as the case may be, payable by an Obligated Group Member after giving effect to such Qualified Swap Agreement. Any obligations under such Qualified Swap Agreement, whether or not secured by an Obligation, shall not be separately included in any calculation of interest on Long-Term Indebtedness. No Additional Indebtedness shall be deemed to arise when any Qualified Swap Agreement is entered into or terminated. An Obligation may be issued in a notional amount to secure any Qualified Swap Agreement and shall not be deemed to be Outstanding under this Indenture for any purpose other than entitlement to the interest payments and any termination payments thereunder, secured equally and ratably with all other interest payments on Obligations.

“Defeasance Obligations” means:

(1) Direct obligations of the United States of America or obligations to the full and prompt payment of which the full faith and credit of the United States of America is pledged or evidences of ownership of proportionate interests in future interest and principal payments on such obligations held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on such obligations, and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, and

(2) Obligations issued or guaranteed by the following instrumentalities or agencies of the United States of America:

- (i) Federal Home Loan Bank System;
- (ii) Export-Import Bank of the United States,
- (iii) Federal Financing Bank;
- (iv) Government National Mortgage Association;
- (v) Farmers Home Administration;
- (vi) Federal Home Loan Mortgage Company;
- (vii) Federal Housing Administration;

(viii) Federal National Mortgage Association;

(ix) Any other agency or instrumentality of the United States of America created by an Act of Congress which is substantially similar to the foregoing in its legal relationship to the United States of America; and

(3) Obligations described in Section 103(a) of the Code, provision for the payment of the principal of (and premium, if any) and interest on which shall have been made by the irrevocable deposit at least 123 days preceding the date of determination with a bank or trust company acting as a trustee or escrow agent for holders of such obligations of money, or obligations described in clause (1) above, the maturing principal of and interest on which, when due and payable, without reinvestment will provide money, sufficient to pay when due the principal of (and premium, if any) and interest on such obligations, and which money, or obligations described in clause (1) above, are not available to satisfy any other claim, including any claim of the trustee or escrow agent or any claim of any Person claiming through the trustee or escrow agent or any claim of any Person to whom the Person on whose behalf such irrevocable deposit was made, the trustee, or the escrow agent may be obligated, whether arising out of the insolvency of the Person on whose behalf such irrevocable deposit was made, the trustee or escrow agent or otherwise.

“Dissemination Agent” means Chase Bank of Texas, National Association, or any successor or assign under the Continuing Disclosure Agreement dated as of November 15, 1999 between the Dissemination Agent and the Obligated Group Representative.

“Designated Officer” means the Chairman of the Governing Body, President, any Vice President, the Treasurer, Assistant Treasurer, Secretary or Assistant Secretary of the Obligated Group Representative.

“Entrance Fee” means (a) all initial admission fees received by the Obligor pursuant to any agreement with respect to the granting of rights to the exclusive use of a unit in the Facility not required to be held in escrow under the laws of the State of Texas and net of any amount that has been refunded, provided, however, that deposits for admission to the Facility shall not be “Entrance Fees” until the prospective resident has a right to take possession of such unit pursuant to such agreement, and (b) all admission fees received by the Obligor pursuant to any agreement with respect to the granting of rights to exclusive use of any unit in the Facility previously occupied by another resident less any refunds paid to such prior resident upon regranteeing of rights to exclusive use of such unit.

“Entrance Fees Fund” means the Entrance Fees Fund established pursuant to Section 3.01 hereof.

“Entrance Fee Redemption Date” means each February 15, May 15, August 15 and November 15 following an Entrance Fee Transfer Date.

“Entrance Fee Transfer Date” means the first Business Day of each January, April, July and October prior to the termination of the Entrance Fees Fund pursuant to Section 3.02(b) hereof.

“Event of Default” has the meaning set forth in Article VII hereof.

“Expenses” means the aggregate of all expenses of the Obligated Group for the applicable period calculated under generally accepted accounting principles, minus (a) interest on Long-Term Indebtedness of

the Obligated Group, (b) depreciation and amortization and other non-cash expenses, (c) extraordinary expenses (including without limitation losses on the sale of assets other than in the ordinary course of business and losses on the extinguishment of debt), (d) any expenses resulting from a forgiveness of or the establishment of reserves against Indebtedness of an Affiliate that does not constitute an extraordinary expense, (e) losses resulting from any reappraisal, revaluation or write-down of assets and (f) development fees owed by the Obligor after the receipt of the Certificate of Occupancy.

“Extendable Indebtedness” shall mean Long-Term Indebtedness which is payable at the option of the holder thereof, prior to its stated maturity; provided, however, that (a) such option may not be exercised more frequently than once a year and (b) the obligation by the obligor thereon to purchase tendered bonds is subject to the availability of funds for such purpose.

“Facility” means the senior living community consisting of: (a) the Facility Site, (b) 256 Independent Living Units, 84 Assisted Living Units, 44 skilled nursing beds, and 20 specialty care (dementia) beds, and attendant common areas, (c) necessary or useful furnishings, equipment and machinery, and (d) such interests in land as may be necessary or suitable for the foregoing, including roads and rights of access, utilities and other necessary site preparation facilities.

“Facility Site” means the parcel of land containing approximately 16.5 acres located in the City of Dallas, Texas and more particularly described in Exhibit A hereto.

“Fees” means all fees charged to each and every resident of the Facility and any Additional Facilities, including, without limitation, all fees paid on a daily basis, all Monthly Service Charges and all Entrance Fees.

“Fiscal Quarter” means each three month period ending March 31, June 30, September 30 and December 31; provided that if the Fiscal Year of the Obligated Group is changed, Fiscal Quarter shall mean any one of the four three-consecutive month periods during such new Fiscal Year.

“Fiscal Year” means the period of 12 consecutive months beginning on January 1 in any calendar year and ending on December 31 of the same calendar year, or such other fiscal year as the Obligated Group Representative, with prior written notice to the Master Trustee, shall establish as the fiscal year of the Obligated Group.

“Fixed Rate Indenture” means the Indenture of Trust dated as of November 15, 1999 between the Issuer and the Fixed Rate Bond Trustee relating to the Series 1999A Bonds and the Series 1999B Bonds.

“Fixed Rate Bond Trustee” means Chase Bank of Texas, National Association, or any successor or assign thereof pursuant to the Fixed Rate Bond Indenture.

“Governing Body” of any specified Person means the board of directors or board of trustees of such Person or any duly authorized committee of that board, or if there be no board of trustees or board of directors, then the person or body which pursuant to law or the Organizational Documents of such Person is vested with powers similar to those vested in a board of trustees or a board of directors.

“Government Obligations” means direct obligations of the United States of America or obligations the full and timely payment of the principal of and interest on which is unconditionally guaranteed by the United States of America.

“Ground Lease” means the Ground Lease dated November 17, 1999 between the Ground Lessor, and the Obligor, as Lessee relating to the Facility Site.

“Ground Lease Rentals” means any payment of any installment of the Annual Rent under the Ground Lease.

“Ground Lessor” means Intercity Investment Properties, Inc., or any successors or assigns.

“Guarantee” shall mean, as applied to any Indebtedness for borrowed money, (a) a guarantee (other than by endorsement of negotiating instruments for collection in the ordinary course of business), direct or indirect, in any manner, of any part or all of such Indebtedness or (b) an agreement, direct or indirect, contingent or otherwise, providing assurance of the payment or performance (or payment of damages in the event of non-performance) of any part or all of such Indebtedness, including, without limiting the foregoing, the payment of amounts drawn down by letters of credit. Notwithstanding anything in this Indenture to the contrary, a guarantee shall not include any agreement solely because such agreement creates a lien on assets of any Person or any agreement providing for indemnification. The amount of a guarantee shall be deemed to be the maximum amount of the Indebtedness so guaranteed, subject to the provisions hereof relating to the calculation of Debt Service Requirements.

“Hedge Agreement” means an interest rate swap, collar-floor forward or other hedging agreement, arrangement or security, however denominated, with respect to a series of Obligations

“Holder of Obligations” means a bearer of any Obligation issued in bearer form, and the registered Owner of any Obligation issued in registered form.

“Indebtedness” means any indebtedness or liability for borrowed money, any installment sale obligation or any obligation under any lease that is capitalized under generally accepted accounting principles and any Guarantee of any of the foregoing

“Independent Accountant” means an Independent Person engaged in the accounting profession, either entitled to practice, or having members or officers entitled to practice, as a certified public accountant under the laws of the State of Texas, employed by the Obligated Group Representative from time to time to pass upon those matters required by this Indenture to be passed upon by an Independent Accountant. The firm of PricewaterhouseCoopers LLP is recognized as constituting Independent Accountants, subject to further action by the Obligor.

“Independent Actuary” means an Independent Person that is a registered professional actuary (a) having a favorable reputation for skill and experience in actuarial work relating to life care and continuing care retirement communities, and (b) employed by the Obligor from time to time pursuant to Section 4.17 of the Indenture.

“Independent Living Units” means the independent living units that are part of the Facility and any similar independent living units in Additional Facilities.

“Independent Person” means a Person who (a) is in fact independent, (b) does not have any direct financial interest or any material indirect financial interest in any Obligated Group Member or in any Affiliate of any Obligated Group Member, and (c) is not connected with any Obligated Group Member or with any

Affiliate of any Obligated Group Member as an officer, employee, promoter, trustee, partner, director, or person performing similar functions.

"Initial Entrance Fees" shall mean Entrance Fees received upon the initial occupancy of any Independent Living Unit in the Initial Project not previously occupied until such time as the Facility has attained Stable Occupancy.

"Initial Project" shall mean the Facility.

"Initial Supplemental Indenture Number 1" means Supplemental Indenture Number 1 dated as of November 15, 1999 between the Obligated Group Representative and the Master Trustee.

"Insurance Consultant" means a firm of Independent professional insurance consultants knowledgeable in the operations of retirement facilities and having a favorable reputation for skill and experience in the field of retirement facilities insurance consultation.

"Interest Payment Date" means the Stated Maturity of an installment of interest on the Obligations.

"Investment Securities" means:

- (a) Government Obligations;
- (b) Agency Obligations;
- (c) evidences of ownership of a proportionate interest in specified Government Obligations or Agency Obligations, which Government Obligations or Agency Obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$50,000,000;
- (d) savings accounts, time deposits and certificates of deposit, both domestic and euro, in any bank, including the Master Trustee or any affiliate thereof, if such accounts or certificates are fully insured by Federal Deposit Insurance Corporation insurance or, to the extent not so insured, collateralized in the manner set forth for repurchase obligations in clauses (k)(i) and (k)(ii) below;
- (e) savings accounts and certificates of savings and loan associations that are under supervision of the State and federal associations organized under the laws of the United States of America and under federal supervision, but only to the extent that such accounts and certificates of state or federal associations are fully insured by the Federal Deposit Insurance Corporation or any successor federal agency or, to the extent not so insured, collateralized in the manner set forth for repurchase obligations in clauses (k)(i) and (k)(ii) below;
- (f) bankers' acceptances guaranteed by any bank having a combined capital, surplus and undivided profits of not less than \$50,000,000 and whose credit is rated by at least one of the Rating Agencies in one of its two highest rating categories without regard to any refinement or gradation of such rating categories by numerical modifier or otherwise;

(g) corporate obligations with a maturity of ten (10) years or less, including commercial paper maturing within 270 days of issue, upon which there is no default, rated by at least one of the Rating Agencies in its two highest rating categories without regard to any refinement or gradation of such rating category by numerical modifier or otherwise;

(h) guaranteed investment agreements with a commercial bank or trust company (including the Master Trustee, any related guarantors or an affiliate thereof) organized under the laws of any state of the United States of America or any national banking association or a branch of a foreign bank duly licensed under the laws of the United States of America or any state or territory thereof, provided that the bonds or debentures of such commercial bank or trust company or national banking association or branch of a foreign bank or any related guarantors are rated by Moody's at the time of the investment not lower than Moody's "Aa3" or are rated by S&P at such time not lower than S&P's "AA-" or are rated by Fitch at such time not lower than Fitch's "AA-";

(i) guaranteed investment agreements with any insurance company or any related guarantors whose bonds or debentures or claims paying ability is rated by Moody's at the time of the investment not lower than Moody's "Aa3" or by S&P at such time not lower than S&P's "AA-" or by Fitch at such time not lower than Fitch's "AA-";

(j) investments in money market funds restricted primarily to Government Obligations and/or Agency Obligations including those for which the Master Trustee receives compensation with respect to such investment;

(k) repurchase agreements with: (A) a registered broker/dealer that is subject to Securities Investor's Protection Corporation liquidation in the event of insolvency or (B) any insurance company or bank, including the Master Trustee or an affiliate thereof, having a combined capital, surplus and undivided profits of not less than \$50,000,000, provided that:

(i) the obligation of the registered broker/dealer, insurance company or bank to repurchase is collateralized by Government Obligations or Agency Obligations, which must have on the date of the repurchase agreement and at all times thereafter, as valued on a monthly basis, a fair market value equal to at least 103% of the amount of the repurchase obligation, including interest;

(ii) the securities are free from any lien, claim or interest of any parties other than the registered broker/dealer, insurance company or bank and the Trustee; and

(iii) the repurchase agreement provides for early repurchase upon the failure of the securities to maintain the required fair market value;

and provided further that either (A) title to and/or possession of such securities is transferred to the Master Trustee in its capacity as Master Trustee, (B) the securities are held by a third party (not as agent for the registered broker/dealer, insurance company or bank) for the benefit of the Master Trustee and segregated from securities owned generally by such third party, (C) a perfected security interest under the Uniform Commercial Code of the state where the

securities are located or book-entry procedures prescribed at 31 C.F.R. 306.1 *et seq.* or 31 C.F.R. 350.0 *et seq.* in such securities is created for the benefit of the holders, (D) if the repurchase agreement is with the bank serving as the Master Trustee or related to the trust company serving as the Master Trustee, the third party holding such securities holds them as agent for the Master Trustee as fiduciary for the holders and not as agent for the bank serving as the Master Trustee or related to the trust company serving as the Master Trustee in its commercial capacity or any other party; or (E) the securities are, to the knowledge of the Master Trustee, free and clear of all third-party claims;

(l) obligations of any state of the United States of America or any political subdivision thereof, the payment of the principal of and interest on which is secured by a letter of credit, bond insurance or other credit facility; and

(m) Investment agreements with banks that at the time such agreement is executed are rated in either of the two highest rating categories by a Rating Agency (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) or investment agreements with non-bank financial institution (1) all of the unsecured, direct long-term debt of either the non-bank financial institution or the related guarantor of such non-bank financial institution is at the time such agreement is executed rated by a Rating Agency in one of the two highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) for obligations of that nature; or (2) if neither such non-bank financial institution nor the related guarantor has outstanding long-term debt which is rated, then all of the short-term debt of such non-bank financial institution or related guarantor is, at the time such agreement is executed, rated by a Rating Agency in the highest rating category (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned to short-term indebtedness by such Rating Agency.

“Leasehold Account” means the Leasehold Account of the Special Reserve Fund established pursuant to Section 3.01 hereof.

“Leasehold Reserve Account Requirement” means an amount equal to the Annual Rent payable in the current Rent Year (as defined and described in the Ground Lease); provided that the Leasehold Reserve Account Requirement shall never be less than \$1,200,000.

“Liquidity Facility” means a written commitment to provide money to purchase or retire any Indebtedness if (i) on the date of delivery of such Liquidity Facility, the unsecured Long-Term Indebtedness or claims paying ability of the provider of such Liquidity Facility or its parent holding company or other controlling entity is rated at least “A” by a least one of the Rating Agencies and (ii) as of any particular date of determination, no amount realized under such Liquidity Facility for the payment of the principal or the purchase or redemption price of such Indebtedness (exclusive of amounts realized for the payment of accrued interest on such Indebtedness) shall be required to be repaid by the obligor on such Long-Term Indebtedness for a period of at least one year.

“Liquidity Ratio” has the meaning given such term in Section 4.22(b) hereof.

“Liquidity Ratio Covenant” means the covenant set forth in Section 4.22(b) hereof.

“Long-Term Indebtedness” means all Obligations, together with all of the following Indebtedness incurred or assumed by any Obligated Group Member, including without limitation:

- (a) any obligation for the payment of principal and interest with respect to money borrowed for an original term, or renewable at the option of the obligor thereon for a period from the date originally incurred, longer than one year;
- (b) any obligation for the payment of money under leases that are required to be capitalized under generally accepted accounting principles;
- (c) any obligation for the payment of money under installment purchase contracts having an original term in excess of one year;
- (d) any obligation that would constitute Short-Term Indebtedness if a Liquidity Facility were not in effect with respect thereto; and
- (e) any Guarantee of any Indebtedness that would be described in item (a), (b), (c) or (d) above if such Indebtedness were incurred directly by such Obligated Group Member.

“Management Consultant” means a nationally recognized firm of Independent professional management consultants or an Independent retirement facilities management organization knowledgeable in the operation of retirement facilities and having a favorable reputation for skill and experience in the field of retirement facilities management consultation.

“Marketing Consultant” means an Independent Person that is qualified to pass upon questions relating to the marketing of continuing care retirement communities of similar size, type and scope of operations to the Facility, and having a favorable national reputation for skill and experience in such areas.

“Marketing Target” means the marketing targets set forth in Section 4.20(b) hereof.

“Master Trustee” means Chase Bank of Texas, National Association, a national banking association, as trustee hereunder, and any successor in trust appointed pursuant to Article VIII hereof.

“Maturity” when used with respect to any Indebtedness means the date on which the principal of such Indebtedness or any installment thereof becomes due and payable as therein provided, whether at the Stated Maturity thereof or by declaration of acceleration, call for redemption, or otherwise.

“Maximum Annual Debt Service Requirement” shall mean the maximum Debt Service Requirement on any Long-Term Indebtedness of the Obligated Group as computed for the then current, or any future, Fiscal Year

“Monthly Service Charges” means the monthly service fees required to be paid pursuant to the Residency Agreements.

“Net Income Available for Debt Service” shall mean, as to any period of time, all Revenues of the Obligated Group minus Total Expenses of the Obligated Group other than interest (including any component of rental payment treated as a payment of interest) net of Other Non-Cash Expenses of the Obligated Group,

all as determined in accordance with generally accepted accounting principles (unless otherwise specifically required).

“Non-Recourse Indebtedness” means Long-Term Indebtedness incurred by an Obligated Group Member subsequent to the date of execution and delivery of this Indenture for the purpose of financing the purchase or acquisition of real or tangible personal property secured by a lien on, or security interest in, the property being purchased or acquired and evidenced by an instrument which expressly provides that upon default in the payment of the principal thereof or interest thereon the obligee thereof may look only to property securing the same and not to the credit of any Obligated Group Member nor to any other Trust Estate of any Obligated Group Member; provided that on the date of incurrence no revenues or funds of any Obligated Group Member are expected to be applied to any payment on the Non-Recourse Indebtedness other than revenues or funds derived from the property securing such Indebtedness.

“Obligated Group” means, collectively, all of the Obligated Group Members.

“Obligated Group Member” means the Obligor and any other Person who has satisfied the requirements set forth in this Indenture for becoming an Obligated Group Member and its successors until any such Person or a successor or transferee Person satisfies the requirements set forth in this Indenture for ceasing to be an Obligated Group Member.

“Obligated Group Representative” means Northwest Senior Housing Corporation, a Texas non-profit corporation, or any successor Obligated Group Representative appointed pursuant to Section 6.04 hereof.

“Obligation” means any promissory note, guaranty, lease, contractual agreement to pay money or other obligation of any Obligated Group Member which is authenticated and delivered pursuant to this Indenture and which is entitled to the benefits of this Indenture.

“Obligation Register” means the register of ownership of the Obligations to be maintained pursuant to this Indenture.

“Obligor” means Northwest Senior Housing Corporation, a Texas non-profit corporation, and any and all successors thereto in accordance with this Indenture.

“Occupancy Target” means the occupancy target set forth in Section 4.22(a) hereof.

“Occupied Units” means Independent Living Units occupied by residents who have paid or are obligated to pay their Entrance Fees in full and are paying or obligated to pay their Monthly Service Charges.

“Officer’s Certificate” means a certificate signed by a Designated Officer of the Obligated Group Representative and delivered to the Master Trustee.

“Operating Account” means the Operating Account of the Special Reserve Fund established pursuant to Section 3.01 hereof.

“Operating Ratio” has the meaning given to that term in Section 4.22(a) hereof.

“Operating Reserve Account Requirement” means an amount equal to \$4,000,000.

“Operating Revenues” shall mean the sum of gross resident and patient service revenues less contractual allowances and provisions for uncollectible accounts, free care, and discounted care, plus other operating income.

“Opinion of Counsel” means a written opinion of counsel who may (except as otherwise expressly provided herein) be counsel to any Obligated Group Member and shall be acceptable to the Master Trustee.

“Organizational Documents” of any corporation means the articles of incorporation, certificate of incorporation, corporate charter or other document pursuant to which such corporation was organized, and its bylaws, each as amended from time to time, and as to any other Person, means the instruments pursuant to which it was created and which govern its powers and the authority of its representatives to act on its behalf.

“Other Non-Cash Expenses” shall mean provision for bad debts, depreciation and amortization expense, and any other expense not requiring the payment of cash in any period, and any non-cash adjustment to any expense made with respect to the Ground Lease.

“Outstanding” when used with respect to Obligations means, as of the date of determination, all Obligations theretofore authenticated and delivered under this Indenture, except:

(1) Obligations theretofore cancelled and delivered to the Master Trustee or delivered to the Master Trustee for cancellation;

(2) Obligations for whose payment or redemption money (or Defeasance Obligations to the extent permitted by Section 10.02 of this Indenture) shall have theretofore been deposited with the Master Trustee or any Paying Agent for such Obligations in trust for the Holders of such Obligations pursuant to this Indenture; provided, that, if such Obligations are to be redeemed, notice of such redemption has been duly given or waived pursuant to this Indenture or irrevocable provision for the giving of such notice satisfactory to the Master Trustee has been made pursuant to this Indenture; and

(3) Obligations upon transfer of or in exchange for or in lieu of which other Obligations have been authenticated and delivered pursuant to this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Obligations have given any request, demand, authorization, direction, notice, consent, or waiver hereunder, Obligations owned by any Obligated Group Member or any Affiliate of any Obligated Group Member shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Master Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Obligations that the Master Trustee knows to be so owned shall be so disregarded. Obligations so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Master Trustee the pledgee’s right so to act with respect to such Obligations and that the pledgee is not an Obligated Group Member or an Affiliate of any Obligated Group Member.

“Paying Agent” means any Person authorized by the Obligated Group Representative to pay the principal of (and premium, if any) or interest on any Obligations on behalf of the Obligated Group

“Permitted Encumbrance” with respect to any Obligated Group Member means:

(a) any lien arising by reason of any good faith deposit with such Person in connection with any lease of real estate, bid or contract (other than any contract for the payment of money), any deposit by such Person to secure any public or statutory obligation, or to secure, or in lieu of, any surety, stay or appeal bond, and any deposit as security for the payment of taxes or assessments or other similar charges;

(b) any lien arising by reason of any deposit with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license or to enable such Person to maintain self-insurance or to participate in any funds established to cover any insurance risk or in connection with workers' compensation, unemployment insurance, any pension or profit-sharing plan or other social security, or to share in the privileges or benefits required for the participation of the Obligor in such arrangements;

(c) any judgment lien against such Person in an amount of less than \$250,000; and any judgment lien against such Person which equals or exceeds \$250,000, so long as such judgment is being contested in good faith and is fully bonded, fully covered by a letter of credit or other surety, or covered by insurance;

(d) any right reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license, permit or provision of law affecting any property of such Person; any lien on any property of such Person for taxes, assessments, levies, fees, water and sewer rents or charges and other governmental and similar charges and any lien of any mechanic, materialman, laborer, supplier or vendor for work or services performed or materials furnished in connection with such property that is not due and payable or that is not delinquent or the amount or validity of which is being contested and execution thereon stayed;

(e) this Indenture; and any lien or encumbrance disclosed in the title insurance policy delivered in connection with the issuance of the Series 1999 Bonds, provided that such lien or encumbrance is not extended, renewed or modified to apply to any property of such Person not subject to such lien or encumbrance on the date such policy is delivered, unless the lien or encumbrance, as so extended, renewed or modified, otherwise qualifies as a Permitted Encumbrance without reference to this clause;

(f) any lien or encumbrance on the Trust Estate securing any Indebtedness permitted by Section 4.22 of this Indenture, provided that such lien or encumbrance is subordinate to the lien of this Indenture;

(g) any lien with respect to moneys deposited by residents or others with such Person as security for, or as prepayment of, the cost of resident or other client care and any lien arising under law or by contract with respect to any deposit made by a prospective resident under a Residency Agreement prior to occupancy;

(h) any lien on property received by such Person through any gift, grant or bequest constituting a restriction imposed by the donor, grantor or testator on such gift, grant or bequest or the income therefrom;

(i) any lien (other than a lien on the Facility Site) of any third-party payor for recoupment of amounts paid to such Person for resident care;

(j) any lien, security interest or pledge that is senior to the lien, security interest and pledge of this Indenture in such Person's accounts receivable to secure Short-Term Indebtedness in an amount of not more than fifteen percent (15%) of such accounts receivable; provided that Short-Term Indebtedness secured by such Person's accounts receivable shall not exceed ten (10%) of Total Operating Revenues of the Obligated Group for the most recent Fiscal Year,

(k) any lien, security interest or pledge that is senior to the lien, security interest or pledge of this Indenture in such Person's accounts receivable that is granted or created solely to secure Short Term Indebtedness in an amount that does not exceed the amount of the accounts receivable subject to a delay in payment from third party payors;

(l) any lien granted for the benefit of all holders of Obligations in accordance with this Indenture;

(m) leases whereunder such Person is lessor which relate to property that is of a type that is customarily the subject of such leases, including without limitation office space for physicians and educational institutions, food service facilities, parking facilities, barber shops, beauty shops, flower shops, gift shops, radiology, pathology or other specialty services and pharmacy and similar departments, and leases of or licenses to use buildings or portions thereof located on the Facility Site which leases or licenses do not impair the operations being conducted in connection with the Facility (or, if no operations are being conducted therein, the operations for which the Facility was designed or last modified);

(n) any mortgage or lien placed upon any tangible real or tangible personal property being acquired by such Person to secure all or a portion of the purchase price thereof and any landlord's lien under any lease permitted under this Indenture; provided that the purchase price of the property being acquired by all Obligated Group Members in any Fiscal Year does not exceed in the aggregate ten percent (10%) of the book value (or, at the option of the Obligated Group Representative, current value) of the property, plant and equipment of the Obligated Group;

(o) any lien or encumbrance on any property existing on the date on which such property was acquired by such Person, including (without limitation) any acquisition as a result of a merger or consolidation permitted by Section 5.01 of this Indenture, involving the owner of such property, provided that such lien is not extended, renewed or modified to apply to any property of such Person not subject to such lien on such date, unless the lien, as so extended, renewed or modified, otherwise qualifies as a Permitted Encumbrance without reference to this clause,

(p) such easements, rights-of-way, servitudes, restrictions and other defects, liens and encumbrances which shall not materially impair the use of the Facility for its intended purposes or the value of the Facility as evidenced by a certificate of an Independent engineer delivered to the Master Trustee;

(q) such easements, servitudes, restrictions, licenses, restrictive covenants, rights-of-way (including the dedication of public highways or public or private utility easements) as may be required by governmental authorities or utility providers in connection with the construction of, or the furnishing of utilities to, the Facility as described in an Officer's Certificate;

(r) any banker's lien arising in connection with the establishment and maintenance of depository bank accounts in the ordinary course of business; and

(s) the Ground Lease.

"Person" means any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or any other entity.

"Place of Payment" for a series of Obligations means a city or political subdivision designated as such pursuant to this Indenture or a Supplement.

"Principal Underwriters" means B.C. Ziegler and Company and The Chapman Company.

"Projected Rate" means the projected yield at par of an obligation, as set forth in a report of the Principal Underwriter or other investment banking firm appointed by the Obligated Group Representative (the scope, form, substance and other aspects thereof to be acceptable to the Master Trustee), which report shall state that in determining the Projected Rate the Principal Underwriter or other Person appointed by the Obligated Group Representative to determine such rate reviewed the yield evaluations at par of not less than five (5) obligations selected by the Principal Underwriter or other Person, which obligations the Principal Underwriter or other Person states in its report are reasonable comparators to be utilized in developing such Projected Rate and which obligations: (a) were Outstanding on a date selected by the Principal Underwriter or other Person which date so selected occurred during the forty-five (45) day period proceeding the date of the calculation utilizing the Projected Rate in question, (b) to the extent practicable, are obligations of persons engaged in operations similar to those of the Obligated Group Members and having on credit rating similar to that of the Obligated Group, (c) are entitled to the benefit of credit enhancement, if any, substantially the same as the obligation with respect to which such Projected Rate is being determined; and (d) to the extent practicable, have a remaining term and amortization schedule substantially the same as the obligation with respect to which such Projected Rate is being determined.

"Put Indebtedness" shall mean Indebtedness, which is payable or required to be purchased or redeemed, at the option of the holder thereof, prior to its stated maturity date.

"Qualified Swap Agreement" shall mean an agreement between an Obligated Group Member and a Swap Provider under which the Obligated Group Member agrees to pay the Swap Provider an amount calculated at an agreed-upon rate or index based upon a notional amount and the Swap Provider agrees to pay such Obligated Group Member for a specified period of time an amount calculated at an agreed-upon rate or index based upon the same notional amount, where each Rating Agency then rating any Related Bonds has assigned to the unsecured long-term obligations of the Swap Provider, or of any Person who guarantees the obligation of the Swap Provider to make its payments to such Obligated Group Member, as of the date the Swap Provider to make its payments to such Obligated Group Member as of the date the swap agreement is entered into, a rating that is within the three highest rating categories (without regard to modifiers) of such Rating Agency

“Rate Calculation Year” will mean each twelve month period ending on March 31, June 30, September 30 and December 31 for which a calculation of the Debt Service Coverage Ratio shall be made pursuant to Section 4.15.

“Rate Covenant” means the covenant set forth in Section 4.15 of this Indenture.

“Rating Agency” shall mean any national rating agency which then rates any series of Related Bonds.

“Receipts” means all receipts, revenues, rentals, income, insurance proceeds (including, without limitation, all Medicaid, Medicare and other third-party payments), condemnation awards and other moneys received by or on behalf of any Obligated Group Member, including (without limitation) revenues derived from (a) the ownership, operation or leasing of any portion of the Facility (including, without limitation, Fees and any other fees payable by or on behalf of residents of the Facility) and all rights to receive the same (other than the right to receive Medicaid and Medicare payments), whether in the form of accounts, general intangibles or other rights, and the proceeds of such accounts, general intangibles and other rights, whether now existing or hereafter coming into existence or whether now owned or held or hereafter acquired, and (b) gifts, grants, bequests, donations and contributions heretofore or hereafter made that are legally available to meet any of the obligations of the Obligated Group Member incurred in the financing, operation, maintenance or repair of any portion of the Facility; provided, however, that there shall be excluded from Receipts (x) any moneys received by any Obligated Group Member from prospective residents or commercial tenants in order to pay for customized improvements to those independent Living Units or other areas of the Facility to be occupied or leased to such residents or tenants, (y) all deposits made pursuant to Residency Agreements to be held in escrow until construction of the Facility is completed, a Certificate of Occupancy has been issued and appropriate licenses, if required, have been issued, and (z) all deposits and/or advance payments made in connection with any leases of the Independent Living Units and received prior to receipt of such certificate and licenses.

“Refunds” means, for any period, the aggregate amount paid by an Obligated Group Member during such period, pursuant to the Residency Agreements, to residents or to the estates of deceased residents by reason of termination of any such Residency Agreements pursuant to the terms thereof or termination of such resident’s occupancy in the Facility.

“Reimbursement Agreement” means the Letter of Credit Agreement dated as of November 15, 1999 between the Bank of the Obligor.

“Related Bond Indenture” means any indenture, bond resolution or other comparable instrument pursuant to which a series of Related Bonds is issued.

“Related Bonds” means the revenue bonds or other obligations issued by any state, territory or possession of the United States or any municipal corporation or political subdivision formed under the laws thereof or any constituted authority or agency or instrumentality of any of the foregoing empowered to issue obligations on behalf thereof (“governmental issuer”), pursuant to a single Related Bond Indenture, the proceeds of which are loaned or otherwise made available to any Obligated Group Member in consideration of the execution, authentication and delivery of an Obligation to or for the order of such governmental issuer.

“Related Bonds Debt Service Fund” means any bond fund, debt service fund, redemption fund or other similar fund or account for Related Bonds established under a Related Bond Indenture

“Related Bonds Debt Service Reserve Fund” means any debt service reserve fund or other similar bond for Related Bonds established under a Related Bond Indenture.

“Related Bonds Debt Service Reserve Fund Requirement” means the amount required to be on deposit in a Related Bonds Debt Service Reserve Fund pursuant to a Related Bond Indenture.

“Related Bond Trustee” means the trustee and its successor in the trusts created under any Related Bond Indenture.

“Related Loan Agreement” means any loan agreement, financing agreement, credit agreement or other comparable instrument entered into in connection with a series of Related Bonds.

“Reserved Units” means Independent Living Units for which residents have executed Residency Agreements and paid a deposit of at least 5% toward the Entrance Fees for such Independent Living Units.

“Residency Agreement” means each and every contract, including without limitation any “Reservation Agreement” or “Residency Agreement”, as amended from time to time, between an Obligated Group Member and a resident of the Facility giving the resident certain rights of occupancy in the Facility, including, without limitation, the Independent Living Units, Assisted Living Units, skilled nursing beds, specialty care (dementia) beds and providing for certain services to such resident, which contract shall be in one of the forms previously delivered to the Principal Underwriters, as such forms may from time to time be amended, modified or supplemented in accordance with Section 4.24 of this Indenture.

“Responsible Officer” when used with respect to the Master Trustee means the chairman and vice chairman of the board of directors, the chairman and vice chairman of the executive committee of the board of directors, the president, the chairman of the trust committee, any vice president (whether or not designated by a number or a word or words added before or after the title “vice president”), the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any trust officer, or assistant trust officer, the controller and any assistant controller or any other officer of the Master Trustee customarily performing functions similar to those performed by any of the above designated officers and also means with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with a particular subject.

“Revenue Fund” means the Revenue Fund created by Section 3.06 hereof.

“Revenues” shall mean for the Obligated Group for any period the sum of (a) gross service revenues less contractual allowances and provisions for uncollectible accounts, discounted care, and free care (to the extent related revenue is booked) plus (b) other operating revenues (excluding amortized Entrance Fees), plus (c) non-operating revenues, all as determined in accordance with generally accepted accounting principles consistently applied, and plus (d) Entrance Fees actually received net of refunds and excluding Initial Entrance Fees, provided, however, that no determination thereof shall take into account (v) unrealized gains or losses on investments, (w) income derived from the investment of the proceeds of Cross-over Refunding Indebtedness prior to the Cross-over Date, (x) any gain or loss resulting from the early extinguishment of Indebtedness or the sale, exchange or other disposition of Trust Estate not in the ordinary course of business, (y) gifts, grants, bequests or donations restricted as to use for a purpose inconsistent with the payment of Debt Service or operating expenses, and (z) insurance (other than business interruption) and condemnation proceeds. For purposes of any calculation that is made with reference to both Revenues and Total Expenses, any deduction from gross patient service revenues otherwise required by the preceding provisions of this definition shall not be made if and to the extent that the amount of such deduction is included in Total Expenses.

“Series 1999A Bonds” means the North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Series 1999A.

“Series 1999B Bonds” means the North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Series 1999B Extendable Rate Adjustable SecuritiesSM (EXTRASSM)

“Series 1999CBonds” means the North Central Texas Health Facilities Development Corporation Variable Rate Demand Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Series 1999C

“Series 1999 Master Notes” means the Series 1999A Note, the Series 1999B Note, the Series 1999C Note and the Series 1999D Note issued by the Obligated Group Representative pursuant to the Initial Supplemental Indenture Number 1.

“Short-Term Indebtedness” means any Indebtedness (a) incurred or assumed by an Obligated Group Member for a term not exceeding 365 days, except any such Indebtedness with respect to which a Liquidity Facility is then in effect, and (b) any Guarantee of any Indebtedness that would be described in clause (a) above if such Indebtedness were incurred directly by an Obligated Group Member. Put Indebtedness shall not be deemed to constitute Short-Term Indebtedness for the purposes of this Indenture solely by reason of the option of the holder thereof to require the redemption or purchase thereof or any required redemption or purchase thereof in connection with the termination of the Liquidity Facility securing such Put Indebtedness prior to the stated maturity thereof.

“Significant Bondholder” means any holder of Related Bonds or Obligations in a principal amount equal to or greater than \$500,000.

“Special Reserve Fund” means the Special Reserve Fund established pursuant to Section 3.01 hereof.

“Stable Occupancy” shall mean (a) with respect to the Initial Project, an average occupancy of all units and beds in the Facility during the preceding twelve-month period ending on the last day of a Fiscal Quarter equal to or greater than ninety percent (90%) and (b) with respect to any Additional Facilities, the occupancy level for the Additional Facilities defined as stable utilization or occupancy in the report of the Management Consultant or Marketing Consultant, as the case may be, issued in connection with the incurrence of Additional Indebtedness.

“Stated Maturity” when used with respect to any Indebtedness or any installment of interest thereon means any date specified in the instrument evidencing such Indebtedness or such installment of interest as a fixed date on which the principal of such Indebtedness or any installment thereof or the fixed date on which such installment of interest is due and payable.

“Subordinated Indebtedness” means any promissory note, guaranty, lease, contractual agreement to pay money or other obligation the terms of the documents providing for the issuance of which expressly provide that all payments on such Subordinated Indebtedness shall be subordinated to the timely payment of all Obligations, whether currently Outstanding or subsequently issued.

“Suspension Notice” has the meaning given such term in Section 3.03 hereof.

“Supplement” means an indenture supplemental to, and authorized and executed pursuant to the terms of, this Indenture.

“Swap Provider” shall mean the counterparty with whom an Obligated Group Member enters into a Qualified Swap Agreement.

“Total Expenses” means the total operating and non-operating expenses of the Obligated Group determined in accordance with generally accepted accounting principles consistently applied; provided, however, that no determination thereof shall take into account (a) any loss resulting from the extinguishment of indebtedness or the sale, exchange or other disposition of investments or capital assets not in the ordinary course of business, (b) any unrealized loss on investments or (c) any development fees paid by the Obligor after receipt of the Certificate of Occupancy.

“Total Operating Expenses” means the sum of all Expenses of the Obligated Group for any applicable period, exclusive of (i) depreciation and amortization, (ii) interest expense, determined in accordance with generally accepted accounting principles consistently applied, (iii) operating expenses incurred to the extent such expenses were funded from proceeds of such Person’s Long-Term Indebtedness, Additional Indebtedness or Subordinate Indebtedness as the case may be and such proceeds are still available for use during such period.

“Total Operating Revenues” means the sum of all operating revenues of the Obligated Group for any applicable period, determined in accordance with generally accepted accounting principles consistently applied.

“Trade Payable Covenant” means the covenant set forth in Section 4.21 hereof.

“Transfer Notice” has the meaning given such term in Section 3.03 hereof.

“Trust Estate” has the meaning given such term in the Granting Clauses hereof.

“Variable Rate Bond Indenture” means the Bond Trust Indenture dated as of November 15, 1999 between the Issuer and the Variable Rate Bond Trustee relating to the Series 1999C Bonds.

“Variable Rate Bond Trustee” means Chase Bank of Texas, National Association, or any successor or assign thereof pursuant to the Variable Rate Bond Indenture.

“Variable Rate Indebtedness” means, as of any particular date, Long-Term Indebtedness (other than Extendable Indebtedness) the interest rate on which is not established at a fixed rate or rates for the remaining term thereof.

Section 1.02 Compliance Certificates and Reports. Whenever the amount or date of any of the following is a condition to the taking of any action permitted hereby,

(a) estimated Revenues, Operating Revenues, Total Operating Revenues, Expenses, Total Expenses, Total Operating Expenses, Other Non-Cash Expenses and Net Income Available for Debt Service of any Person for any future Fiscal Year shall be established by a certificate or report of a Management Consultant stating the amount of such estimated item based upon assumptions provided by such Person and stating that such assumptions are, in the opinion of the Management Consultant, reasonable.

(b) any of:

(1) Revenues, Operating Revenues, Total Operating Revenues, Expenses, Total Expenses, Total Operating Expenses, Other Non-Cash Expenses and Net Income Available for Debt Service of any Person for any prior Fiscal Year or period,

(2) Maximum Annual Debt Service of any Person,

(3) principal of and interest on any Indebtedness, and

(4) book value of any assets,

shall be established by an Officer's Certificate of the Obligated Group Representative stating the amount of such item and that such amounts have been derived from either the most recent financial statements of the Obligated Group delivered to the Master Trustee pursuant to Section 4.13 hereof or, for any period other than a prior Fiscal Year, from the internally prepared financial statements of the Obligated Group for such period, and

(c) the current value of the properties of any Person shall be established by an Officer's Certificate of the Obligated Group Representative that (1) states the appraised value of the properties of such Person, (2) is accompanied by one or more written appraisals made by Independent Persons experienced in appraising the value of similar properties stating such Person's opinion of value of such property as of a date not more than three years preceding the date such Officer's Certificate is delivered to the Master Trustee and (3) states the aggregate book value of all other properties of such Person; and

(d) the anticipated date of completion of any construction project of any Person shall be established by an Officer's Certificate of the Obligated Group Representative; and

(e) securities shall include any amounts invested in marketable securities, whether classified as short-term or long-term assets.

All calculations required to be made hereunder with respect to the Obligated Group shall be made after elimination of inter-company items on a combined basis. The character or amount of any asset, liability or item of income or expense required to be determined or any consolidation, combination or other accounting computation required to be made for the purposes hereof, shall be determined or made in accordance with generally accepted accounting principles in effect on the date hereof, or at the option of the Obligated Group Representative, at the time in effect (provided that such generally accepted accounting principles are applied consistently with the requirements existing either on the date hereof or at the time in effect) except that assets, liabilities, items of income and expenses of Affiliates which are not included in the Obligated Group shall not be taken into account, and except where such principles are inconsistent with the requirements of this Indenture; provided, however, that there shall not be included in any calculation of any item otherwise required to be included in such calculation with respect to any Person which has withdrawn or is withdrawing from the Obligated Group.

Section 1.03. Form of Documents Delivered to Master Trustee In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or

covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of any officer of a Person may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, in so far as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of a specified Person stating that the information with respect to such factual matters is in the possession of such Person, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04 Acts of Holders of Obligations. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Obligations may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders of Obligations in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Master Trustee, and, where it is hereby expressly required, to the Obligated Group Representative. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders of Obligations signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of Unregistered Obligations, shall be sufficient for any purpose of this Indenture and conclusive in favor of the Master Trustee and the Obligated Group Members, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or a member of a partnership, on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority.

The amount of Obligations held in bearer form held by any Person executing any such instrument or writing as a Holder of Obligations, the numbers of such Obligations, and the date of his holding the same, may be proved by the production of such Obligations or by a certificate executed, as depository, by any trust company, bank, banker or member of a National Securities Exchange (wherever situated), if such certificate is in form satisfactory to the Master Trustee, showing that at the date therein mentioned such Person had on deposit with such depository, or exhibited to it, the Obligations held in bearer form therein described; or such facts may be proved by the certificate or affidavit of the Person executing such instrument or writing as a Holder of Obligations, if such certificate or affidavit is in form satisfactory to the Master Trustee. The Master Trustee and the Obligated Group Members may assume that such ownership of any Obligation held in bearer form continues until (1) another certificate bearing a later date issued in respect of the same Obligation is produced, or (2) such Obligation is produced by some other Person, or (3) such Obligation is registered as to principal or is surrendered in exchange for an Obligation in registered form, or (4) such Obligation is no longer Outstanding.

(c) The fact and date of execution of any such instrument or writing and the amount and numbers of Obligations held in bearer form held by the Person so executing such instrument or writing may also be proved in any other manner which the Master Trustee deems sufficient; and the Master Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(d) The ownership of Obligations in registered form shall be proved by the Obligation Register.

(e) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Obligation shall bind every future Holder of the same Obligation and the Holder of every Obligation issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Master Trustee or the Obligated Group Members in reliance thereon, whether or not notation of such action is made upon such Obligation.

Section 1.05. Notices, etc., to Master Trustee and Obligated Group Members. Notice to Bank.

(a) Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders of Obligations or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Master Trustee by any Holder of Obligations or by any specified Person shall be sufficient for every purpose hereunder if actually received by the Master Trustee at its Dallas, Texas, corporate trust office,

(2) the Obligated Group Members by the Master Trustee or by any Holder of Obligations shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, to the Obligated Group Representative addressed to it at Northwest Senior Housing Corporation, 8201 Preston Road, Suite 265, Dallas, Texas 75225, Attention: President or at any other address previously furnished in writing to the Master Trustee by the Obligated Group Representative, with a copy to Thompson & Knight L.L.P., 1700 Pacific Ave., Suite 3300, Dallas, Texas 75201, Attention: Peter Riley; or

(3) any Obligated Group Member by the Master Trustee or by any Holder of Obligations shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, to the Obligated Group Member addressed to it at the address specified in the Supplement executed by such Obligated Group Member or at any other address previously furnished in writing to the Master Trustee by such Obligated Group Member.

(b) Until such time as all Series 1999C Bonds have been redeemed and all Bank Obligations have been paid in full, a copy of all requests, demands, authorizations, directions, notices, consents, waivers or Acts of Holders of Obligations or other documents provided or permitted by this Indenture to be made upon, given or furnished to, or filed with the Master Trustee or any Obligated Group Member shall also be sent by first class mail to the Bank at 135 South LaSalle Street, Chicago, Illinois 60603.

Section 1.06. Notices to Holders of Obligations; Waiver. Where this Indenture provides for publication of notice to Holders of Obligations of any event, if all the Obligations affected by such event are Registered Obligations, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder of such Obligations, at his address as it appears on the Obligation Register, not later than the latest date, and not earlier than the earliest date, prescribed for the first publication of such notice. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders of Obligations shall be

filed with the Master Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of publication of any Authorized Newspaper, or by reason of any other cause, it shall be impossible to make publication of any notice in an Authorized Newspaper or Authorized Newspapers as required by this Indenture, then such method of publication or notification as shall be made with the approval of the Master Trustee shall constitute a sufficient publication of such notice.

Section 1.07. Consent of Bank Required. Until such time as all Series 1999C Bonds entitled to the benefit of a Credit Facility issued by the Bank have been redeemed or otherwise cease to be entitled to such benefit and all Bank Obligations have been paid in full, no amendment, approval, consent, waiver, institution of any action or direction of any remedy shall be effective without the written consent of the Bank.

Section 1.08. Notices to Rating Agencies. The Obligated Group Representative shall give notice prompt notice to each Rating Agency of any of the following events:

- (a) any Event of Default hereunder;
- (b) the incurrence by any Obligated Group Member of any Funded Debt;
- (c) any addition to or withdrawal from the Obligated Group; and
- (d) any Hedge Agreement entered into by any Obligated Group Member.

Section 1.09. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.10. Successors and Assigns. All covenants and agreements in this Indenture by the Obligated Group Members shall bind their respective successors and assigns, whether so expressed or not.

Section 1.11. Separability Clause. In case any provision in this Indenture or in the Obligations shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

ARTICLE II

THE OBLIGATIONS

Section 2.01. Series and Amount of Obligations. (a) Obligations shall be issued under this Indenture in series created by Supplements permitted hereunder. Each series shall be designated to differentiate the Obligations of such series from the Obligations of any other series. No Obligation issued hereunder shall be secured on a basis senior to other Obligations, provided, however, that the provision of a Hedge Agreement, letter or line of credit, standby bond purchase agreement, bond insurance policy or other similar instrument or obligation issued by a financial institution or municipal bond insurer or the establishment of a debt service reserve fund or account for the benefit of the Holders of certain Obligations, shall not be considered as the providing of security for such Obligations. The number of series of Obligations that may be created under this Indenture is not limited. The aggregate principal amount of Obligations of each series that may be created under this Indenture is not limited except as restricted by Supplement and the provisions of Article IV of this Indenture. Each Obligated Group Member is jointly and severally liable for each and every Obligation.

(b) Any Obligated Group Member proposing to incur Indebtedness, other than the Series 1999 Notes, whether evidenced by Obligations issued pursuant to a Supplement or by evidences of Indebtedness issued pursuant to documents other than this Master Indenture, shall give written notice of its intention to incur such Indebtedness, including in such notice the amount of Indebtedness to be incurred, to the Obligated Group Representative and the other Obligated Group Members. The Obligated Group Representative shall provide the Master Trustee with a copy of any such notice it receives prior to the date such Indebtedness is to be incurred. Any such Obligated Group Member, other than the Obligated Group Representative, proposing to incur such Indebtedness other than the Series 1999 Notes, shall obtain the written consent of the Obligated Group Representative, which consent shall be evidenced by an Officer's Certificate of the Obligated Group Representative filed with the Master Trustee or an endorsement to such Indebtedness signed by the Obligated Group Representative. Each Obligated Group Member is and shall be jointly and severally liable for each and every Obligation. The Series 1999 Notes are issued simultaneously with the execution and delivery hereof.

Section 2.02. Appointment of Obligated Group Representative. Each Obligated Group Member, by becoming a Obligated Group Member, irrevocably appoints the Obligated Group Representative as its agent and true and lawful attorney in fact and grants to the Obligated Group Representative (a) full and exclusive power to execute Supplements authorizing the issuance of Obligations or series of Obligations, (b) full and exclusive power to execute Obligations for and on behalf of the Obligated Group and each Obligated Group Member, (c) full and exclusive power to execute Supplements on behalf of the Obligated Group and each Obligated Group Member pursuant to Sections 9.01 and 9.02 hereof and (d) full power to prepare, or authorize the preparation of, any and all documents, certificates or disclosure materials reasonably and ordinarily prepared in connection with the issuance of Obligations hereunder, or Related Bonds associated therewith, and to execute and deliver such items to the appropriate parties in connection therewith.

Section 2.03. Execution and Authentication of Obligations. All Obligations shall be executed for and on behalf of the Obligated Group and the Obligated Group Members by an Authorized Representative of the Obligated Group Representative. The signature of any such Authorized Representative may be manual or may be mechanically or photographically reproduced on the Obligation. If any Authorized Representative whose signature appears on any Obligation ceases to be such Authorized Representative before delivery thereof, such signature shall remain valid and sufficient for all purposes as if such Authorized Representative had remained in office until such delivery. Each Obligation shall be manually authenticated by an authorized officer of the Master Trustee, without which authentication no Obligation shall be entitled to the benefits hereof.

The Master Trustee's authentication certificate shall be substantially in the following form.

MASTER TRUSTEE'S AUTHENTICATION CERTIFICATE

The undersigned Master Trustee hereby certifies that this is one of the Obligations described in the within-mentioned Master Indenture.

Master Trustee

By: _____
Authorized Signature

Section 2.04. Supplement Creating Obligations. The Obligated Group Representative (on behalf of the Obligated Group Members) and the Master Trustee may from time to time enter into a Supplement in order to create Obligations hereunder. Each Supplement authorizing the issuance of Obligations shall specify and determine the date of the Obligations, the principal amount thereof, the purposes for which such Obligations are being issued, the form, title, designation, and the manner of numbering or denominations, if applicable, of such Obligations, the date or dates of maturity of such Obligations, the rate or rates of interest (or method of determining the rate or rates of interest) and premium, if any, borne by such Obligations, the arrangement for place and medium of payment, and any other provisions deemed advisable or necessary. Each Obligation shall be issuable, shall be transferable and exchangeable and shall be subject to redemption as specified in this Master Indenture and in the Supplement. Any Obligation to be held by a Related Bond Trustee in connection with the issuance of Related Bonds shall be in the principal amount equal to the aggregate principal amount of such Related Bonds and shall be registered in the name of the Related Bond Trustee as assignee of the authority of the Related Bonds. Unless an Obligation has been registered under the Securities Act of 1933, as amended (or similar legislation subsequently enacted), each such Obligation shall be endorsed with a legend which shall read substantially as follows: "This [describe Obligation] has not been registered under the Securities Act of 1933 or any state securities law (or any such similar subsequent legislation);" provided, however, such legend shall not be required if the Master Trustee is provided with an Opinion of Counsel to the effect that such legend is not required.

A Supplement and the Obligations issued thereunder may contain, as applicable, provisions relating to bond insurance or other forms of credit enhancement, as well as any and all compatible provisions necessary in order to make the Obligations meet the requirements of an issuer of any credit enhancement. Similarly, a Supplement may provide for Obligations to be issued in fixed or variable rate forms, as the case may be, with such tender and redemption provisions as may be deemed necessary for the issuance thereof and provide for the execution of required documents necessary for such purposes, and may specifically subordinate payment, remedies and any other provisions of the Obligations issued thereunder to the provisions of any other Obligations

Section 2.05 Conditions to Issuance of Obligations Hereunder. With respect to Obligations created hereunder, simultaneously with or prior to the execution, authentication and delivery of Obligations pursuant to this Master Indenture:

- (a) The Obligated Group Representative (on behalf of the Obligated Group Members) and the Master Trustee shall have entered into a Supplement as provided in Section 2.04 hereof, and all requirements and conditions to the issuance of such Obligations

set forth in the Supplement and in this Master Indenture, including, without limitation, the provisions of Section 4.16 hereof, shall have been complied with and satisfied, as provided in an Officer's Certificate of the Obligated Group Representative, a certified copy of which shall be delivered to the Master Trustee;

(b) The Obligated Group Representative shall have delivered to the Master Trustee an Opinion of Counsel to the effect that (1) registration of such Obligations under the Securities Act of 1933, as amended, and qualification of this Master Indenture or the Supplement under the Trust Indenture Act of 1939, as amended, is not required, or, if such registration or qualification is required, that all applicable registration and qualification provisions of said acts have been complied with, and (2) the Master Indenture and the Obligations are valid, binding and enforceable obligations of each of the Obligated Group Members in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance and other laws affecting creditors' rights generally, usual equity principles and other customary exclusions; and

(c) The Governing Body of each Obligated Group Member shall have adopted a resolution authorizing the Obligated Group Representative to enter into the Supplement.

Section 2.06. List of Holders of Obligations. The Master Trustee shall keep on file at its office the Obligation Register which shall consist of a list of the names and addresses of the Holders of all Obligations. At reasonable times and under reasonable regulations established by the Master Trustee, the Obligation Register may be inspected and copied by any Obligated Group Member, the Holder of any Obligation or the authorized representative thereof, provided that the ownership by such Holder and the authority of any such designated representative shall be evidenced to the satisfaction of the Master Trustee.

Section 2.07. Optional and Mandatory Redemption. Obligations of each series shall be subject to optional and mandatory redemption in whole or in part and may be redeemed prior to maturity, as provided in the Supplement creating such series, but not otherwise.

ARTICLE III

FUNDS AND ACCOUNTS

Section 3.01. Creation of Funds. The following funds are hereby created under this Indenture and shall be held and maintained by the Master Trustee:

Entrance Fees Fund
Series B Account
Series C Account
Special Reserve Fund
Leasehold Account
Operating Account
Revenue Fund

For the purposes of internal accounting, the funds and accounts created pursuant to this Section may contain one or more accounts and sub-accounts, as the Master Trustee, in its discretion, shall determine.

Section 3.02. Application of Entrance Fees. (a) Until the conditions described in paragraph (b) below have been satisfied, the Obligor agrees that all Entrance Fees received shall be transferred to the Master Trustee within five Business Days of the receipt thereof. All such amounts received by the Master Trustee shall be deposited into the applicable account of the Entrance Fees Fund and applied as set forth in Section 3.03 hereof.

(b) At such time as (i) the Series 1999B Bonds have been paid at maturity, redeemed or irrevocably called for redemption, and (ii) no Event of Default has occurred and is continuing, the Obligor shall no longer be required to transfer Entrance Fees to the Master Trustee, the Master Trustee shall terminate the Entrance Fees Fund, and the Master Trustee shall disburse any balance therein as directed in writing by an Authorized Representative.

(c) After the conditions described in paragraph (b) above have been satisfied, the Obligor may use all Entrance Fees received for any lawful purpose; provided that (i) first, if the full Operating Reserve Account Requirement is not on deposit in the Operating Account of the Special Reserve Fund, the Obligor shall transfer all Entrance Fees received within five Business Days of the receipt thereof to the Master Trustee for deposit into the Operating Account until such deficiency is cured and (ii) second, if the full Leasehold Reserve Account Requirement is not on deposit in the Leasehold Account of the Special Reserve Fund, the Obligor shall transfer all Entrance Fees received within five Business Days of the receipt thereof to the Master Trustee for deposit into the Leasehold Account until such deficiency is cured.

Section 3.03. Entrance Fees Fund (a) The Master Trustee shall deposit all Entrance Fees received from time to time from the Obligor pursuant to Section 3.02(a) of this Indenture as follows:

(i) into the Series C Account of the Entrance Fees Fund until such time as all Series 1999C Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity and all Bank Obligations have been paid or duly provided for, then

(ii) into the Series B Account of the Entrance Fees Fund until such time as all Series 1999B Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity.

(b) Entrance Fees received by the Master Trustee and on deposit in the Entrance Fees Fund shall be transferred by the Master Trustee, to the extent of moneys on deposit therein, first from the Series B Account, and then from the Series C Account, as follows:

FIRST, to the Obligor to pay refunds required by Residency Agreements, with such disbursements to be made by the Master Trustee within five Business Days of receipt by the Master Trustee of an Officer's Certificate stating (i) that (A) the Obligor is required by Residency Agreements to pay refunds within the next 15 days and (B) no other moneys are available nor will be reasonably available to pay such refunds, and (ii) the amount of such refunds.

SECOND, on the first Business Day of each month into the Operating Account of the Special Reserve Fund, the amount, if any, needed to increase the amount on deposit in the Operating Account to an amount equal to the Operating Reserve Account Requirement, and

THIRD, on the first Business Day of each month into the Leasehold Account of the Special Reserve Fund, the amount, if any, needed to increase the amount on deposit in the Leasehold Account to an amount equal to the Leasehold Reserve Account Requirement.

Any such transfer that takes place on an Entrance Fee Transfer Date shall be made prior to any transfer made pursuant to Sections 3.03(c) or (d) to the Fixed Rate Bond Trustee or Variable Rate Bond Trustee.

(c) On each Entrance Fee Transfer Date an amount equal to the largest Authorized Denomination on deposit in the Series C Account shall be transferred to the Variable Rate Bond Trustee and shall be used by the Variable Rate Bond Trustee to redeem Series 1999C Bonds on the next Entrance Fee Redemption Date.

(d) So long as no Suspension Notice has been delivered by the Obligor to the Master Trustee, on each Entrance Fee Transfer Date an amount equal to the largest Authorized Denomination on deposit in the Series B Account shall be transferred to the Fixed Rate Bond Trustee and shall be used by the Fixed Rate Bond Trustee to redeem Series 1999B Bonds on the next Entrance Fee Redemption Date.

(e) At the election of the Obligor, and upon compliance with the provisions described below, amounts on deposit in the Series B Account that are otherwise available to be used to redeem Series 1999B Bonds may be used to pay the costs of constructing Additional Facilities. To exercise such election, the Obligor must file with the Master Trustee an Officer's Certificate (a "Suspension Notice") stating its intention to undertake construction of an Additional Facility, directing the Master Trustee to suspend the special mandatory redemption of the Series 1999B Bonds, specifying the principal amount of the Series 1999B Bonds subject to the Suspension Notice, and the next Rate Change Date (including the Initial Rate Change Date) applicable to the Series 1999B Bonds. The Suspension Notice also shall state: (i) that the percentage of Independent Living Units in the Facility and in all prior Additional Facilities constituting Occupied Units is at least 90%, (ii) the percentage of Independent Living Units in the Facility and in all prior Additional Facilities constituting Reserved Units and Occupied Units is at least 95%; and (iii) no Event of Default has occurred and is continuing under this Indenture.

(f) Following receipt of a Suspension Notice, the Master Trustee shall suspend the transfer of moneys from the Series B Account to the Fixed Rate Bond Trustee and shall retain Entrance Fees in the Series B Account, subject to the provisions described in Section 3.03(i), until the Obligor files with the Master Trustee an Officer's Certificate (a "Transfer Notice") stating that (i) the percentage of Independent Living Units in the Facility and in all prior Additional Facilities constituting Occupied Units for the three full calendar months prior to the date of the Transfer Notice was at least 90% and the percentage of Independent Living Units in the Facility and in all prior Additional Facilities constituting Reserved Units and Occupied Units was at least 95% (provided, that in calculating Occupied Units for the purposes of this clause (i) the Obligor shall disregard any Independent Living Unit to be constructed in the Additional Facility for which the resident has paid an Entrance Fee); (ii) the percentage of Reserved Units in the Additional Facility to be constructed is at least 70%; (iii) a guaranteed maximum price construction contract for the Additional Facility has been executed by the Obligor and the contractor for the Additional Facility, a copy of which shall accompany the Transfer Notice, and the amount available in the Series B Account subject to the Transfer Notice, together with other funds available to the Obligor at the time of filing the Transfer Notice, will be sufficient to pay the total construction costs of the Additional Facility (without causing the Obligor to fall below the then required Liquidity Ratio); (iv) a building permit for the Additional Facility has been issued, a copy of which shall accompany the Transfer Notice; (v) construction on the Additional Facility shall commence at least 18 months prior to the Rate Change Date identified in the Suspension Notice and is expected to be completed prior to such date; and (vi) no Event of Default has occurred and is continuing under this Indenture. Upon receipt of the Transfer Notice, the Master Trustee shall transfer Entrance Fees in the amount specified in the prior Suspension Notice on deposit in the Series B Account to the Fixed Rate Bond Trustee for deposit to the Construction Fund established in the Fixed Rate Bond Indenture.

(g) Notwithstanding the foregoing, if the Master Trustee has not received a Transfer Notice at least 18 months prior to the Rate Change Date identified in the Suspension Notice, the Master Trustee shall again commence to apply the Entrance Fees on deposit in the Series B Account to the purposes specified in this Section 3.03.

(h) Any transfer by the Master Trustee to a Related Bonds Trustee pursuant to Sections 3.03(c) or (d) shall be accompanied by a notice specifying the Account within the Entrance Fees Fund from which such transfer was made.

Section 3.04. Operating Account of the Special Reserve Fund; Application of Moneys. (a) The Master Trustee shall deposit in the Operating Account of the Special Reserve Fund moneys from the Entrance Fees Fund pursuant to Section 3.03 of this Indenture or any Entrance Fees received from time to time from the Obligor pursuant to Section 3.02(c) hereof for deposit to the Operating Account until the amount on deposit therein equals the Operating Reserve Account Requirement.

(b) Moneys in the Operating Account shall be disbursed by the Master Trustee to or for the account of the Obligor within seven days of receipt by the Master Trustee of an Officer's Certificate to the effect that (i) such moneys will be used to pay (A) Costs of the Initial Project, (B) operating expenses of the Facility, including without limitation Ground Lease Rentals, (C) the costs of needed repairs to the Facility, (D) the costs of capital improvements to the Facility required by law or regulation, (E) judgements against the Obligor, or (F) amounts due on any Indebtedness of the Obligor, including any Bank Obligations, (ii) such moneys are anticipated to be expended in the calendar month following the month in which such Officers' Certificate is submitted, together with an itemized budget describing the uses for which such moneys are needed and the amount needed for each such use, and (iii) no other funds are available or will reasonably be available to make such payments.

(c) At such time as (i) no Event of Default has occurred and is continuing, (ii) the Series 1999B Bonds have been paid at maturity, redeemed or irrevocably called for redemption, (iii) the Obligor has complied with the Rate Covenant for each of the prior two consecutive Fiscal Years and (iv) the Obligor is then in compliance with the Operating Ratio and Liquidity Ratio Covenants as set forth in an Officer's Certificate, all amounts on deposit in the Operating Account shall be disbursed to the Obligor. Upon such disbursement to the Obligor, the Master Trustee shall terminate the Operating Account and the Operating Reserve Account Requirement.

Section 3.05. Leasehold Account of the Special Reserve Fund, Application of Moneys. (a) The Master Trustee shall deposit in the Leasehold Account of the Special Reserve Fund moneys from the Entrance Fees Fund pursuant to Section 3.03 of this Indenture or any Entrance Fees received from time to time from the Obligor pursuant to Section 3.02(c) hereof for deposit to the Leasehold Account until the amount on deposit therein equals the Leasehold Reserve Account Requirement.

(b) Moneys in the Leasehold Account shall be disbursed by the Master Trustee to or for the account of the Obligor within seven days of receipt by the Master Trustee of an Officer's Certificate to the effect that (i) such moneys will be used to pay (A) Costs of the Initial Project, (B) operating expenses of the Facility, including without limitation Ground Lease Rentals, (C) the costs of needed repairs to the Facility, (D) the costs of capital improvements to the Facility required by law or regulation, (E) judgements against the Obligor, or (F) amounts due on any Indebtedness of the Obligor, including any Bank Obligations, (ii) such moneys are anticipated to be expended in the calendar month following the month in which such Officers' Certificate is submitted, together with an itemized budget describing the uses for which such moneys are needed and the amount needed for each such use, and (iii) no other funds are available or will reasonably be available to make such payments.

(c) At such time as (i) no Event of Default has occurred and is continuing, (ii) the Series 1999B Bonds have been paid at maturity, redeemed or irrevocably called for redemption, (iii) the Obligor has complied with the Rate Covenant for each of the prior two consecutive Fiscal Years and (iv) the Obligor is then in compliance with the Operating Ratio and Liquidity Ratio Covenants as set forth in an Officer's Certificate, all amounts on deposit in the Leasehold Account shall be disbursed to the Obligor. Upon such disbursement to the Obligor, the Master Trustee shall terminate the Leasehold Account and the Leasehold Account Reserve Account Requirement.

(d) The Leasehold Reserve Account Requirement for each Rent Year shall be evidenced by an Officers' Certificate delivered to the Master Trustee on or before the first day of such Rent Year stating the amount of the Leasehold Reserve Account Requirement and showing the calculation thereof.

Section 3.06. Revenue Fund (a) If an Event of Default under Section 7.01(a) of this Indenture shall occur and continue for a period of 5 days, each Obligated Group Member shall deposit with the Master Trustee all revenue and Receipts of such Obligated Group Member (except to the extent otherwise provided by or inconsistent with any instrument creating any mortgage, lien, charge, encumbrance, pledge or other security interest granted, created, assumed, incurred or existing in accordance with the provisions of Section 4.20 of this Indenture) during each succeeding month, beginning on the first day thereof and on each day thereafter, until no default under Section 7.01(a) of this Indenture or in the payment of any other Obligations then exists.

(b) On the fifth business day preceding the end of each month in which any Obligated Group Member has made payments to the Master Trustee for deposit into the Revenue Fund, the Master Trustee shall withdraw and pay or deposit from the amounts on deposit in the Revenue Fund the following amounts in the order indicated:

First. To the payment of all amounts due the Master Trustee under this Indenture;

Second: To the payment of the amounts then due and unpaid upon the Obligations, other than Obligations constituting subordinated indebtedness, for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Obligations for principal (and premium, if any) and interest, respectively;

Third: To the payment of the amounts then due and unpaid upon the Obligations constituting subordinated indebtedness for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Obligations for principal (and premium, if any) and interest, respectively.

Fourth: To the Obligated Group Representative.

(c) Any amounts remaining on deposit in the Revenue Fund on the last day of any Fiscal Year, or on the day following the end of the month in which all defaults in the payment of any Obligation have been cured or waived shall be paid to the Obligated Group Representative upon request to be used for any lawful purpose.

(d) The money deposited to the Revenue Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in this Section and in Section 7.19 hereof. Pending disbursements of the amounts on deposit in the Revenue Fund, the Master Trustee shall promptly invest and reinvest such amounts in accordance with Section 3.07 hereof. All such investments shall have a maturity not greater than 91 days from date of purchase.

Section 3.07. Investment of Funds. Any moneys held by the Master Trustee hereunder as part of any fund or account established under this Indenture shall be invested or reinvested by the Master Trustee upon the receipt of a written direction from the Obligated Group Representative (upon which the Master Trustee is entitled to rely) in Investment Securities. Any such investments shall be held by or under the control of the Master Trustee and shall mature, or be redeemable at the option of the Master Trustee at such times as it is anticipated that moneys from the particular fund will be required for the purposes of this Indenture. For the purpose of any investment or reinvestment under this Section, investments shall be deemed to mature at the earliest date on which the obligor is, on demand, obligated to pay a fixed sum in discharge of the whole of such obligation. Any Investment Securities may be purchased from or sold to the Master Trustee or any of its respective affiliates.

Section 3.08. Allocation and Transfers of Investment Income. Any investments in any fund or account shall be held by or under the control of the Master Trustee and shall be deemed at all times a part of the fund or account from which the investment was made. Any loss resulting from such investments shall be charged to such fund or account. Any interest or other gain from any fund or account from any investment or reinvestment pursuant to Section 3.07 hereof shall be allocated and transferred as described in Article III hereof. The Master Trustee shall not be responsible for any loss resulting from Investment Obligations made in accordance with Section 3.07 hereof.

ARTICLE IV

COVENANTS OF THE OBLIGATED GROUP MEMBERS

Section 4.01. Title to Mortgaged Trust Estate and Lien of this Instrument. The Obligor has good and indefeasible title to the Trust Estate free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the encumbrances permitted by Section 4.20 hereof. The Obligor represents that it has the right to mortgage the Trust Estate and will warrant and defend to Master Trustee, the title and the lien of this Indenture as a valid and enforceable mortgage thereon. This Indenture constitutes a valid and subsisting lien on the Trust Estate, all in accordance with the terms hereof.

Section 4.02. Further Assurances. The Obligor, upon the request of Trustee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of this Indenture and to subject the Trust Estate to the liens and security interests hereof.

Section 4.03. Recording and Filing. The Obligor will cause this Indenture and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and refiled in such manner and in such places as are necessary to protect the lien on the Trust Estate and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

Section 4.04. Payment of Principal, Premium and Interest; Receipts. Each Obligated Group Member is jointly and severally liable for, and will duly and punctually pay, the principal of (and premium, if any) and the interest on each Obligation in accordance with the terms thereof and hereof. So long as no Event of Default exists and is continuing hereunder, each Obligated Group Member shall be entitled to full possession and use of the Receipts other than Entrance Fees transferred to the Master Trustee as required by Section 3.02 hereof.

Section 4.05. Payment of Ground Lease Rentals, Taxes and Other Claims. Each Obligated Group Member will pay or discharge or cause to be paid or discharged before the same shall become delinquent, (1) Ground Lease Rentals, (2) all taxes, assessments, and other governmental charges lawfully levied or assessed or imposed upon it or upon its income, profits, or property, and (3) all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien upon its property; provided, however, that no such Person shall be required to pay and discharge or cause to be paid and discharged any such tax, assessment, governmental charge, or claim to the extent that the amount, applicability, or validity thereof shall currently be contested in good faith by appropriate proceedings and such Person shall have established and shall maintain adequate reserves on its books for the payment of the same.

Section 4.06. Maintenance of Properties. Each Obligated Group Member will cause all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair, and working order and supplied with all necessary equipment, ordinary wear and tear, casualty, condemnation, and acts of God excepted. Each Obligated Group Member will cause to be made all necessary repairs, renewals, replacements, betterments, and improvements thereof, all as in the judgment of the Obligated Group Representative may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent any such Person from discontinuing the operation and maintenance of any of its properties if such discontinuance is, in the judgment of such Person (and in the opinion of the Governing Body of such Person if the property involved is any substantial part of the properties of such Person taken in the aggregate), desirable in the conduct of its business and not disadvantageous in any material respect to the Holders of the Obligations.

Section 4.07. Corporate Existence. Subject to Sections 5.01 and 5.02, each Obligated Group Member will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory), and franchises; provided, however, that no Person shall be required to preserve any right or franchise if the Governing Body of such Person shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Holders of the Obligations.

Section 4.08 Preservation of Qualifications. Each Obligated Group Member will not allow any permit, right, franchise or privilege so long as it is necessary for the ownership or operation of the Trust Estate as a continuing care retirement community to lapse or be forfeited. If an Obligated Group Member becomes a provider of services under and a participant in the Medicare program or any successor program thereto or any program by a federal, state or local government providing for payment or reimbursement for services rendered for health care, such Obligated Group Member shall use its reasonable best efforts to remain fully qualified as a provider of services and a participant in such program; provided, however, that no Obligated Group Member shall be required to maintain any such qualification if (i) the Governing Board of such Person shall determine that the maintenance of such qualification is not in the best economic interest of such Person and (ii) at least 30 days prior to the discontinuance of such qualification, such Person shall notify the Principal Underwriters of such proposed discontinuance and shall provide the Principal Underwriters with a written explanation of the basis for such determination.

Section 4.09. Additions to Facilities. Any additions, improvements and extensions to the Facilities and repairs, renewals and replacements thereof, including (without limitation) any Capital Improvements, shall upon their acquisition become part of the Facilities.

Section 4.10. Limitation on Disposition of Assets. Except as permitted by Sections 5.01 and 5.02, each Obligated Group Member will not convey, sell, or otherwise dispose of any properties of such Person unless:

(a) Ordinary Course or Intercompany. Such conveyance, sale, or disposition shall be in the ordinary course of business or to a member of the Obligated Group; or

(b) Nonproductive Assets. Such property is an operating asset and is obsolete, worn out, or unnecessary, or, in the opinion of the Obligated Member Representative, unprofitable or undesirable; or

(c) Fair Market Value. Such conveyance, sale, lease or disposition is, in the reasonable opinion of the Obligated Group Representative, for fair market value, or

(d) In Kind Gifts. Such property consists of property received by an Obligated Group Member as a gift or bequest that constitutes property other than cash or property used in the operation of the residential retirement facilities operated by the Obligated Group; or

(e) Basket. The aggregate fair market value of all property disposed of by the Obligated Group pursuant to this subparagraph (e) in any Fiscal Year does not exceed three percent (3%) of the aggregate book value (or, at the option of the Obligated Group Representative, current value) of all of the assets of the Obligated Group as of the last day of the most recent Fiscal Year for which audited financial statements have been filed with the Master Trustee as required by this Indenture and the Obligated Group is and shall remain in compliance with the Rate Covenant and the Liquidity Ratio Covenant after giving effect to the

sale, transfer or disposition of assets; provided however, that such total value percentage may be increased to:

- (i) 5% if the Obligated Group is and shall remain in compliance with the Rate Covenant and the Liquidity Ratio is not less than .45 after giving effect to the sale, transfer or disposition of assets; or
- (ii) 7.5% if the Obligated Group is and shall remain in compliance with the Rate Covenant and the Liquidity Ratio is not less than .60 after giving effect to the sale, transfer or disposition of assets; or
- (iii) 10% if the Obligated Group is and shall remain in compliance with the Rate Covenant and the Liquidity Ratio is not less than .75 after giving effect to the sale, transfer or disposition of assets; or
- (iv) 100% if (A) the Obligated Group is and shall remain in compliance with the Rate Covenant, (B) the Liquidity Ratio is not less than 1.00 after giving effect to the sale, transfer or disposition of assets and (C) all Series 1999C Bonds have been redeemed or otherwise paid in full and all Bank Obligations have been paid in full.

Section 4.11. Obligor to Provide Information; Stable Occupancy (a) Upon the written request of the Principal Underwriters or the Master Trustee, the Obligated Group Representative shall provide and certify, at the Obligated Group Representative's expense, such information concerning the Facility, the Trust Estate, the Obligated Group, its finances and other topics as the Principal Underwriters or the Master Trustee may reasonably request.

(b) Within 30 days after Stable Occupancy has occurred, the Obligor shall deliver to the Master Trustee and the Principal Underwriters an Officer's Certificate to that effect.

Section 4.12. Statement as to Compliance The Obligated Group Representative will deliver to the Master Trustee, within 120 days after the end of each Fiscal Year, a written statement signed by a Designated Officer stating that

(a) a review of the activities of the Obligated Group Members during such year and of performance hereunder has been made under his supervision, and

(b) to the best of his knowledge, based on such review, each Obligated Group Member has fulfilled all its material obligations hereunder throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

The Obligated Group Representative will deliver to the Master Trustee promptly upon the discovery thereof a written statement describing any default which has not been cured or waived known to any executive officer of any Obligated Group Member under any instrument creating any material Indebtedness of such Obligated Group Member, specifying such default and the nature and status thereof.

Section 4.13. Annual Audit of Obligated Group; Monthly Financial Reports; Marketing and Occupancy Reports. (a) Within 120 days of the end of each Fiscal Year, the Obligated Group Representative shall cause financial statements of the Obligated Group to be prepared with respect to such Fiscal Year in

accordance with generally accepted accounting principles, consistently applied, which financial statements shall be audited by, and accompanied by a report of, an Independent Accountant. Such financial statements and reports shall be delivered upon completion to the Master Trustee, the Principal Underwriter and, upon request, to any Significant Bondholder.

(b) During the course of performing such audit, such Independent Accountant will perform a review of the provisions of this Indenture, all Supplements hereto, the Related Indentures and the Related Loan Agreements to determine whether any Event of Default has occurred and shall provide a report to the Master Trustee, either stating that no Event of Default has occurred or, if an Event of Default has occurred, describing the nature and extent of such Event of Default. Any Significant Bondholder who so requests shall be entitled to a copy of such report.

(c) Commencing with the first month following the Closing Date and ending with the month in which the Certificate of Occupancy is issued, the Obligated Group Representative shall submit within 35 days of the last day of each month to the Master Trustee, the Dissemination Agent and any Significant Bondholder who so requests copies of the unaudited financial reports on the development costs of the Initial Project to date and marketing reports of the Obligated Group for such month, which report shall contain the computations establishing the Obligated Group's compliance with the covenant set forth in Section 4.23(a) hereof.

(d) Commencing with the first month following month in which the Certificate of Occupancy is issued, the Obligated Group Representative shall submit within 35 days of the last day of each month to the Master Trustee, the Dissemination Agent and any Significant Bondholder who so requests copies of the unaudited financial statements of the Obligated Group for such month and marketing and occupancy reports of the Obligated Group for such month, which reports shall include computations establishing the Obligated Group's compliance with the covenants set forth in Sections 4.15, 4.22 and 4.23 hereof.

(e) Until completion of construction of the Facility, the Obligated Group Representative will, as soon as practicable after receipt, submit to the Master Trustee and any Significant Bondholder who so requests any report by the Construction Monitor given pursuant to the Construction Disbursement Agreement.

(f) The Master Trustee shall act only as a repository for, and shall have no obligation to review, any financial statements or other reports submitted by the Obligated Group Representative pursuant to this Section 4.13. The Master Trustee shall, upon request of any Significant Bondholder, make available to such Significant Bondholder any notice, report or other communication delivered to the Master Trustee or given by the Master Trustee pursuant to the terms hereof.

Section 4.14. (Intentionally Omitted).

Section 4.15. Rate Covenant. (a) Each Obligated Group Member shall fix, charge and collect, or cause to be fixed, charged and collected, fees, rentals, rates and charges in each Rate Calculation Year for the use of the Facility and any other facilities of the Obligated Group and services provided or to be provided in connection therewith by the Obligated Group that shall be at least sufficient to produce in (i) the earlier of (A) the first full Rate Calculation Year ending on the last day of the fourth full Fiscal Quarter following the occurrence of Stable Occupancy or (B) the Rate Calculation Year ending December 31, 2005, a Debt Service Coverage Ratio as of the last day of such Rate Calculation Year that is not less than 1.10 and (ii) each Rate Calculation Year thereafter, a Debt Service Coverage Ratio as of the last day of such Rate Calculation Year that is not less than (A) 1.20 or (B) if the Liquidity Ratio for such Fiscal Year is at least .40, 1.15.

(b) There shall be excluded from the calculation of the Debt Service Coverage Ratio required by paragraph (a) hereof:

(i) the Debt Service Requirements of any Additional Indebtedness, together with all Revenues and Total Expenses of any Additional Facilities financed with such Additional Indebtedness, until the later of:

(A) the first full Fiscal Year in which the completion of the acquisition, construction, renovation or replacement being paid for with the proceeds of such Additional Indebtedness occurs; or

(B) the first full Fiscal Year in which Stable Occupancy in the case of the acquisition, construction, renovation, or replacement of revenue producing facilities being financed with the proceeds of such Additional Indebtedness occurs, provided that such Stable Occupancy occurs no later than during the fourth full Fiscal Year following the incurrence of such Additional Indebtedness.

(ii) The Debt Service Requirements of any Additional Indebtedness if the following conditions are met:

(A) The Obligated Group Representative shall have delivered to the Master Trustee a report of a Management Consultant to the effect that the Debt Service Coverage Ratio for each of the two Fiscal Years following the later of (1) the Fiscal Year in which completion of the acquisition, construction, renovation or replacement being paid for with the proceeds of such Additional Indebtedness is estimated, or (2) the Fiscal Year in which Stable Occupancy in the case of the acquisition, construction, renovation, or replacement of revenue producing facilities being financed with the proceeds of such Additional Indebtedness is projected, provided that such Stable Occupancy is projected to occur in the Management Consultant's Report to occur no later than during the fourth full Fiscal Year following the incurrence of such Additional Indebtedness, or (3) the Fiscal Year in which Additional Indebtedness for other purposes is incurred, will not be less than 1.20 after giving effect to the incurrence of such Additional Indebtedness and the application of the proceeds thereof; provided, however, in the event the Management Consultant delivers a report stating that state or federal laws do not permit the Obligated Group to maintain the 1.20 ratio, then such ratio shall be reduced to that permitted by law, provided that if the Days' Cash on Hand of the Obligor as of the last day of such Fiscal Year is less than 60, such ratio shall not be less than 1.00. In the event that a Management Consultant's report is not required or utilized to incur Additional Indebtedness, an Officer's Certificate may be used in lieu of the Management Consultant's report for the purposes of this Section;

(B) The interest on such Additional Indebtedness and any projected start-up losses during such periods is funded from the proceeds thereof or other funds designated by the Obligated Group Representative, and continues to be available for such purposes during such periods; and

(C) No principal of such Additional Indebtedness shall be payable during such period, excluding any Additional Indebtedness which may become due as a result of the collection of entrance fees during such period.

(c) If the annual audit or monthly financial statements and reports submitted pursuant to Section 4.13 hereof reflect a violation of the Rate Covenant described in paragraph (a) of this Section, then and in every such case (i) each Obligated Group Member shall (and shall cause each Obligated Group Affiliate to), within 60 days from receipt by the Obligated Group Representative of such annual audit, take all action necessary to cause the fees, rentals, rates and charges imposed and collected in connection with the operation of the Facility to produce the amount required by paragraph (a) of this Section and (ii) the Obligated Group Representative shall immediately employ, in accordance with Section 4.25, a Management Consultant to prepare and submit a written report and recommendations within 60 days with respect to the fees, rentals, rates and charges imposed and collected by the Obligated Group Members in connection with the operation of the Facility and with respect to improvements or changes in the operations or management of or the services rendered by the Obligated Group Members; provided, however, the Management Consultant shall not be required to submit an additional written report if the Management Consultant shall have submitted a written report in compliance with this Section during the preceding five months. The Obligated Group Representative shall require any Management Consultant employed hereunder to file its report and recommendations within 60 days from the Obligated Group Representative's receipt of the annual audit reflecting a violation of the Rate Covenant with the Master Trustee and the Principal Underwriters. Notwithstanding the foregoing, in the event the Management Consultant delivers a report stating that state or federal laws do not permit the Obligated Group Members to maintain the 1.20 ratio, then such ratio shall be reduced to that permitted by law; provided that if the Days' Cash on Hand of the Obligor as of the last day of such Fiscal Year is less than 60, such ratio shall not be less than 1.00.

(d) Any Management Consultant retained pursuant to this Indenture may recommend (with respect to the fees, rentals, rates or other charges imposed by the Obligated Group Members and with respect to improvements or changes in the operations or management of or the services rendered by the Obligated Group Members) that the Obligated Group Members either (i) make no change, or (ii) make some change, even though such recommendation is not calculated to result in compliance with the provisions of paragraph (a) of this Section if, in the opinion of such Management Consultant, compliance with such recommendation should result in compliance with such provisions to the maximum extent feasible. Nothing set forth in this Section shall be construed to excuse the Obligated Group Members from (i) the payment in timely manner of all the payments required by this Indenture and all Supplements thereto and all other obligations of the Obligated Group Members as such payments become due and payable, and (ii) the requirement to employ a Management Consultant annually in the event that the fees, rentals, rates and charges imposed, collected and received by the Obligated Group Members in connection with its operation of the Facility fail to satisfy the requirements of paragraph (a) of this Section.

(e) Each Obligated Group Member shall promptly revise or cause to be revised the fees, rentals, rates and charges for use of the Facility and any other facilities owned or operated by the Obligated Group Members and services provided or to be provided in connection therewith by the Obligated Group Members in conformity with any lawful recommendation of the Management Consultant retained pursuant to this Indenture and shall otherwise follow the recommendations of such Management Consultant. If the Obligated Group Members shall revise such fees, rentals, rates and charges in conformity with the recommendations of the Management Consultant and otherwise follow such recommendations of the Management Consultant, then such failure to meet the requirements of paragraph (a) of this Section for such Fiscal Year shall not constitute an Event of Default under this Indenture. If approvals of any regulatory or supervisory authority are required

in order to fix, charge, collect and otherwise implement any fees, rentals, rates and charges required by the operation of this Section, the Obligated Group Members shall take all action within its power to obtain such approvals in an expeditious manner.

Section 4.16. Obligations Not to be Impaired. While the covenants of the Obligated Group Members set forth in Section 4.15 are subject to applicable requirements imposed by law or lawfully imposed by federal, state or local regulatory authorities, nothing therein shall be construed or applied so as to permit any federal, state or local authority to impair the obligation of the Obligated Group Members to fix, charge and collect fees, rentals, rates and other charges in the amounts required by such Sections.

Section 4.17. Required Insurance; Insurance Consultant; Self Insurance; Independent Actuary.
(a) The Obligated Group Members shall keep the Facilities adequately insured at all times and maintain with responsible insurers with respect to its facilities and operations insurance of such types, in such amounts and against such risks as are customarily maintained by persons in similar circumstances having facilities of a comparable type and size and offering comparable services as those of the Obligated Group Members, including (without limitation) the following insurance to the extent that such insurance is commercially available and customarily maintained by such persons or similar subject matter. (i) full fire, earthquake and extended coverage insurance on the Facilities providing for not less than full recovery of the insurable value (less reasonable deductibles and exclusions) of any damaged property; (ii) public liability and property damage insurance, including (without limitation) business automobile liability insurance and medical and professional liability insurance in amounts estimated to fully indemnify (less reasonable deductibles and exclusions) the Obligated Group Members and the Master Trustee, against the estimated loss or damage; and (iii) fidelity, comprehensive dishonesty, disappearance and destruction insurance. In addition, the Obligated Group Members shall (and shall cause the Obligated Group Affiliates to) obtain and maintain "use and occupancy" insurance, "business interruption" insurance or "additional expenses" insurance covering the loss of revenues by reason of the total or partial suspension of or interruption in the operation of the Facilities caused by damage to or destruction of the Facilities and additional expenses incurred in complying with the Residency Agreements in an amount not less than the amount required to meet the Debt Service Requirements of Outstanding Long-Term Indebtedness for a period of not less than 18 months.

(b) Except with respect to paragraph (a)(i) of this Section concerning Facilities, and any plant or equipment related to the Facilities which must be commercially insured, the Obligated Group Members may satisfy the requirements of paragraph (a)(ii) and paragraph (a)(iii) of this Section by (i) during any period in which 95% of the Independent Living Units in the Facility are Occupied Units, establishing and maintaining a self-insurance plan or (ii) participation in a group self-insurance trust insurance pool, in either case, protecting the Obligated Group Members against the risks required to be insured against by paragraphs (a)(ii) and (a)(iii) of this Section. Any group self-insurance trust must be approved by the Master Trustee. Any self-insurance plan shall provide for (i) establishment by the Obligated Group Members of a segregated fund of cash or marketable securities for the defense and payment of claims arising from such risks, (ii) funding of such fund in initial and subsequent amounts determined annually by an Independent Actuary employing accepted actuarial techniques customarily employed by the casualty insurance industry, such actuarial determination to be submitted to the Master Trustee within 60 days from the end of each Fiscal Year, (iii) annual reporting to the Master Trustee of the current fund balance of such fund as of the end of each Fiscal Year and an evaluation of the aggregate potential effect on the fund balance of claims asserted and pending that could ultimately be payable from such fund, such reports to be submitted within 60 days after the end of each Fiscal Year, and (iv) establishment and operation of a claims processing and risk management program. In connection with any such self-insurance plan, the Obligated Group Representative shall furnish to the Master Trustee, annually within 60 days after the end of each Fiscal Year, (A) a letter from an Independent Actuary

to the effect that the self-insurance plan is maintaining adequate reserves and has been adequately funded and (B) a report with respect to the claims processing and risk management program referred to in item (iv) above.

(c) Not less frequently than every two years, within 60 days after the end of the Fiscal Year, the Obligated Group Representative shall employ an Insurance Consultant to review the insurance coverage of, and the insurance required by this Section for, the Obligated Group Members and shall furnish to the Master Trustee signed copies of the report of such Insurance Consultant. Such report shall state whether, in the opinion of such Insurance Consultant, the Obligated Group Members have satisfied the requirements of this Section as of the last day of such Fiscal Year and make recommendations, if any, respecting the types, amounts and provisions of insurance that should be carried with respect to the Obligated Group Members, the Facilities, the construction and acquisition of any Capital Improvements and the operation, maintenance and administration of the Facilities. The Obligated Group Members shall increase or otherwise modify the kinds and amounts of insurance maintained by the Obligated Group Members to the extent that such increase or modification is recommended by the Insurance Consultant and results in substantially the same coverage as is customarily maintained by persons in similar circumstances having facilities of a comparable size and offering comparable services as those of the Obligated Group Members.

(d) The Obligated Group Representative shall furnish to the Master Trustee complete copies of all policies of insurance carried with respect to the Obligated Group Members, the Facilities and the operation, maintenance and administration of the Facilities, and all certificates of insurance reflecting such policies. If any material change occurs in any such insurance coverage, including without limitation an increase in the amount of any deductible or a decrease in the amount of coverage, the Obligated Group Representative shall so notify the Master Trustee at the time of such change. The Obligated Group Representative shall deliver to the Master Trustee certificates of renewal of any insurance at least 30 days prior to the expiration of any policy of insurance.

(e) Annually, within 60 days after the end of each Fiscal Year, the Obligated Group Representative shall employ, at the expense of the Obligated Group Representative, an Independent Actuary for the purposes of reviewing any self-insurance plan that may be established and operated pursuant to this Section and of making recommendations concerning the appropriate level of funding and soundness of reserves maintained by such self-insurance plan. The Obligated Group Representative shall cause a signed copy of any report of such an Independent Actuary to be filed with the Master Trustee for such action as may be deemed appropriate.

(f) Policies of insurance with respect to the Facilities and the operation of the Facilities shall specifically name the Master Trustee as mortgagee and shall contain standard non-contributing mortgagee clauses. Public liability insurance policies shall specifically name the Master Trustee as additional insured. All policies described in this subparagraph (f) shall provide that the insurer shall give at least 30 days' notice in writing to the Master Trustee of cancellation, termination or modification. 1

(g) In connection with the construction, maintenance, use, operation and repair of the Facilities, the Obligor shall comply with all reasonable requirements of any insurer writing any policy of insurance.

(h) Except as expressly provided herein, neither the Master Trustee nor the Principal Underwriters shall have any responsibility with respect to any insurance required under this Section, except that the Master Trustee shall receive the letters and opinions required to be delivered in accordance with this Section and shall hold the same for inspection by any Significant Bondholder. The Principal Underwriters and the Master Trustee shall be entitled to rely upon any opinions, letters, certifications, recommendations and reports provided in accordance with this Section and shall have no responsibility or duty to conduct any independent inquiry or

investigation as to the adequacy or enforceability of any insurance procured or maintained by the Obligated Group Members or as to whether the Obligated Group Members have in fact procured and maintained the insurance required under this Section. No acceptance or approval of any insurance policy by the Master Trustee shall relieve or release the Obligated Group Members from any liability, duty or obligation under the provisions of this Indenture.

Section 4.18. (Intentionally Omitted).

Section 4.19. Limitations on Additional Indebtedness. Each Obligated Group Member shall not incur or permit to exist any Additional Indebtedness, except as follows:

(a) Indebtedness of an Obligated Group Member owed to another Obligated Group Member;

(b) Completion Indebtedness if an Officer's Certificate is delivered to the Master Trustee stating that (i) the amount of such Completion Indebtedness does not exceed the amount (including financing costs, reserve funds and capitalized interest) necessary to provide a completed and equipped facility of the type and scope contemplated at the time that such Long-Term Indebtedness was originally incurred and (ii) that such other Long-Term Indebtedness was estimated when incurred to be sufficient to provide such a completed and equipped facility;

(c) Short-Term Indebtedness in an aggregate principal amount that shall not exceed 10% of the Total Operating Revenues of the Obligated Group for the most recent Fiscal Year of the Obligated Group for which audited financial statements have been filed with the Master Trustee as required by this Indenture; provided, however, that the Obligated Group Members shall have no such Short-Term Indebtedness Outstanding on any day unless during the 12-calendar month period immediately preceding such day there has been a period of at least 20 consecutive days during which the total principal amount of all such Short-Term Indebtedness Outstanding has not exceeded 5% of the Total Operating Revenues of the Obligated Group for such 12-month period, unless there is delivered to the Master Trustee and the Principal Underwriters an Officer's Certificate to the effect that such Short-Term Indebtedness was incurred or continues to exist as a result of a temporary delay in the receipt by the Obligated Group Members of amounts due from third-party payors, governmental agencies or grantors and that the outstanding amount of such Short-Term Indebtedness has been reduced to the minimum amount practicable under the circumstances;

(d) Long-Term Indebtedness issued for the purpose of refunding (whether in advance or otherwise) any Outstanding Indebtedness of the Obligor, if the Master Trustee and the Principal Underwriters shall have received an Officer's Certificate to the effect that, after giving effect to the proposed refunding, the Maximum Annual Debt Service on all Outstanding Long-Term Indebtedness will not be increased by more than 10%;

(e) Non-Recourse Indebtedness, without limit;

(f) Subordinated Indebtedness, without limit;

(g) any other Long-Term Indebtedness, if

(i) the Master Trustee and the Principal Underwriters shall have received (A) an Officer's Certificate to the effect that the Debt Service Coverage Ratio for each of the two most recent Fiscal Years for which audited financial statements have been filed with the Master Trustee as required by the Indenture was not less than 1.20 for all Outstanding Long-Term Indebtedness (exclusive of any Outstanding Long-Term Indebtedness that is to be refunded or redeemed with proceeds of the Long-Term Indebtedness proposed to be incurred) and the Long-Term Indebtedness then proposed to be incurred, or (B) an Officer's Certificate to the effect that for the most recent Fiscal Year for which audited financial statements have been filed with the Master Trustee as required by this Indenture, the Debt Service Coverage Ratio was not less than 1.40 for all Outstanding Long-Term Indebtedness (exclusive of any Outstanding Long-Term Indebtedness that is to be refunded or redeemed with proceeds of the Indebtedness proposed to be incurred) and the Long-Term Indebtedness then proposed to be incurred; or

(ii) the Master Trustee shall have received (A) an Officer's Certificate to the effect that for the most recent Fiscal Year for which audited financial statements have been filed with the Master Trustee as required by this Indenture, the Debt Service Coverage Ratio was not less than 1.20 for all Outstanding Long-Term Indebtedness (excluding Debt Service with respect to the Long-Term Indebtedness then proposed to be incurred), and (B) a written report of a Management Consultant to the effect that the estimated Debt Service Coverage Ratio will be not less 1.20 after giving effect to the incurrence of such additional Long-Term Indebtedness and the application of the proceeds thereof for each of the first two full Fiscal Years following the later of (1) the estimated completion of the development, marketing, acquisition, construction, renovation or replacement being paid for with the proceeds of such additional Long-Term Indebtedness or (2) the first full Fiscal Year following Stable Occupancy in the case of construction, renovation or replacement of elderly housing facilities being financed with the proceeds of such additional Long-Term Indebtedness, provided that such Stable Occupancy is projected to occur no later than during the fourth full Fiscal Year following the incurrence of such Long-Term Indebtedness, or (3) following the incurrence of Long-Term Indebtedness for other purposes; provided, however, that in the event that a Management Consultant shall deliver a report to the Master Trustee to the effect that state or Federal laws or regulations or administrative interpretations of such laws or regulations then in existence do not permit or by their application make it impracticable for the Obligor to produce the required ratios, then such ratios shall be reduced to the highest practicable ratios then permitted by such laws or regulations.

(h) Long-Term Indebtedness to finance costs of construction of Additional Facilities upon delivery to the Master Trustee of an Officer's Certificate stating (i) the intended uses of the proceeds of such Long-Term Indebtedness and the estimated cost and the other requirements with respect to such Additional Facilities, (ii) at least 90% of the Independent Living Units in the Facility and any prior Additional Facilities will be Reserved

Units, (iii) at least 60% of the Independent Living Units in the proposed Additional Facilities are Reserved Units, (iv) the Obligated Group Representative has delivered a report to the Master Trustee establishing compliance with Section 4.19(g), (v) the Additional Facilities are subject to the mortgage lien hereof, (vi) the Additional Facilities are subject to a guaranteed maximum price contract, which contract shall be subject to a performance and payment bond in an amount not less than the contract price and shall include a liquidated damages provision with a penalty bond in an amount not less than the contract price and shall include a liquidated damages provision with a penalty equal to one day's Debt Service for delays beyond the scheduled completion date, subject to customary extensions, and (vii) no Event of Default shall have occurred and be continuing hereunder.

(i) Balloon Indebtedness is permitted:

(i) Provided the requirements of Section 4.19(g) are met in any year in which the Balloon Portion of such Balloon Indebtedness matures and provided that a binding take-out commitment is in place at the time of incurrence to pay off the Balloon Indebtedness when the Balloon Portion matures, or

(ii) The aggregate principal amount outstanding of Balloon Indebtedness does not exceed 10% of Operating Revenues, or

(iii) If the Balloon Portion of the Balloon Indebtedness has a remaining term of five years or greater, and the Obligated Group Representative establishes an amortization schedule and related sinking fund for the Balloon Debt by delivering an Officer's Certificate to the Master Trustee to the effect that:

(A) the amortization schedule provides for principal and interest payments that are not less than the amounts required to be paid by the terms of the Balloon Indebtedness;

(B) the Obligated Group Representative agrees to deposit the amount of principal reflected in the amortization schedule with a bank or trust company pursuant to an agreement acceptable to the Master Trustee and such payments are made to any required actual payments; and

(C) the requirements of Section 4.19(g) are met when it is assumed that the Balloon Portion is payable in accordance with the amortization set forth in such Officer's Certificate.

If permitted under (i) or (ii) above, Debt Service is then assumed to be due on a level debt basis, computed as 25-year debt at the Projected Rate. Debt Service on Balloon Indebtedness referenced in (iii) above will be computed in accordance with the terms of the amortization schedule referenced therein.

(j) Put Indebtedness is permitted:

(1) in a principal amount that does not exceed ten percent (10%) of the Obligated Group's Operating Revenues for the immediately preceding Fiscal Year, if the requirements of Section 4.19(g) are met; or

(2) it is in a principal amount of greater than 10% of the Obligated Group's Operating Revenues for the immediately preceding Fiscal Year and there is in place at the time such Put Indebtedness is incurred a binding commitment by a financial institution, which commitment and institution are acceptable to the Master Trustee, to provide financing sufficient to pay such Put Indebtedness on any date on which such Put Indebtedness may be tendered by the holder thereof occurring during the term of such commitment, and the requirements of Section 4.19(g) are met.

(k) Extendable Indebtedness is permitted if the requirements of Section 4.19(g) are met.

(l) Indebtedness incurred in connection with contributions to self-insurance or shared or pooled risk insurance programs required or permitted to be maintained under this Indenture, without limit.

(m) Guarantees to the extent the related Indebtedness subject to the Guarantee could be incurred as Additional Indebtedness under this Section 4.19.

(n) Any other Long-Term Indebtedness; provided that the aggregate principal amount of such Long-Term Indebtedness, together with the aggregate principal amount of all other Indebtedness then outstanding under clause (c) above and this clause (n), shall not exceed 15% of the Operating Revenues of the Obligated Group for the most recent Fiscal Year for which audited financial statements have been filed with the Master Trustee pursuant to this Indenture; provided however, if the Indebtedness is outstanding under clause (c) above and is attributable to temporary delays in the receipt of funds from third-party payors, governmental agencies or grantors it shall be excluded from the computation of the maximum amount of such Indebtedness;

(o) Any Indebtedness under any Credit Facility Agreement pursuant to which a Credit Facility shall have been issued with respect to any other Indebtedness (herein referred to as "Credit-Enhanced Debt"), provided that, if any amount shall have been drawn under such Credit Facility for the purchase or payment of such Credit-Enhanced Debt (i) amounts payable under such Credit Facility Agreement shall constitute Indebtedness in determining whether any additional Indebtedness may be incurred by an Obligated Group Member in accordance with this Section, and (ii) if such Credit-Enhanced Debt shall have been retired by the application of amounts realized under such Credit Facility, the aggregate principal amount of such Credit-Enhanced Debt shall be excluded in the calculation of the Debt Service Requirements under this Indenture.

Section 4.20. Liens and Encumbrances. Except for Permitted Encumbrances and as otherwise specifically permitted by this Indenture, each Obligated Group Member shall not create any lien or encumbrance nor allow any lien to remain against any portion of the Trust Estate.

Section 4.21. Obligated Group Representative to Prepare Budget. Annually, at least 30 days after the beginning of each of its Fiscal Years occurring after receipt of the Certificate of Occupancy, the Obligated Group Representative shall prepare and cause to be delivered to the Master Trustee, the Principal Underwriters and, upon request, any Significant Bondholder a written Budget in connection with the operation of the Facility, which Budget shall contain an estimate for each such Fiscal Year of expenses, capital requirements and cash flow of the Obligated Group Members with respect to the Facility and its obligations with respect to outstanding indebtedness of the Obligated Group Members. Such Budgets shall designate separately payments in respect of the Debt Service Requirements on all outstanding Obligations and all amounts due on any other indebtedness permitted under this Indenture during such Fiscal Year. The amount of fees, rentals, rates and charges set forth in each Budget for each Fiscal Year thereafter shall be sufficient to meet the Rate Covenant to the maximum extent feasible.

Section 4.22. Operating Ratio Covenant; Liquidity Ratio Covenant.

(a) Operating Ratio Covenant. The Obligor covenants that during the period commencing with the first full Fiscal Quarter following the issuance of the Certificate of Occupancy and each full Fiscal Quarter thereafter (an "Occupancy Quarter") and ending on the last day of the first Fiscal Year in which Stable Occupancy has occurred, for any Occupancy Quarter in which the percentage of the total number of Independent Living Units in the Facility constituting Occupied Units is not at least equal to the "Feasibility Study Occupancy Target" set forth below as of the end of such Occupancy Quarter, it shall maintain the Operating Ratio for such Occupancy Quarter as shown below:

<u>Occupancy Quarters</u>	<u>Feasibility Study Occupancy Target</u>	<u>Operating Ratios</u>
1	19%	0.20
2	30%	0.30
3	41%	0.35
4	50%	0.40
5	58%	0.45
6	66%	0.50
7	73%	0.55
8	79%	0.60
9	84%	0.65
10	89%	0.70
11	93%	0.75
12	95%	0.80

(i) Definitions. For the purposes of this paragraph (a):

(A) the "Operating Ratio" for any Occupancy Quarter shall be the ratio of (1) Cash Available (defined below) to (2) the sum of Total Operating Expenses incurred during such Occupancy Quarter, excluding the sum of all Debt Service Requirements plus letter of credit and remarketing fees due in such Occupancy Quarter and all Refunds paid in such Occupancy Quarter;

(B) "Cash Available" for such Occupancy Quarter shall mean Monthly Service Charges and other operating revenues earned from the Facility during such Occupancy Quarter (other than Entrance Fees); and

(C) for the purposes of calculating Total Operating Expenses incurred for any Occupancy Quarter under this Section, Ground Lease Rentals shall be excluded.

(ii) Failure to Maintain Operating Ratio.

(A) If the actual Operating Ratio for any Occupancy Quarter is less than the Operating Ratio required above, as shown in the unaudited financial statements required by Section 4.13(c) or (d), the Obligor shall, within 30 days of receipt by the Master Trustee of the monthly unaudited financial statements disclosing such deficiency (unless such deficiency has since been cured), prepare a written report setting forth in detail the reasons for such deficiency and shall adopt a specific plan setting forth steps designed to correct such deficiency as quickly as practicable; or

(B) If the actual Operating Ratios for two successive Occupancy Quarters are less than the Operating Ratios required above, as shown in the unaudited financial statements required by Section 4.13(c), the Obligor shall, within 30 days of receipt by the Master Trustee of the unaudited financial statements disclosing such deficiency (unless such deficiency has since been cured), obtain a written report prepared by a Management Consultant setting forth in detail the reasons for such deficiency and shall adopt a specific plan prepared by the Management Consultant setting forth steps designed to achieve the required Operating Ratio for the six months ending on the last day of the second full Occupancy Quarter following the date of such report and plan; provided, however, if the failure to achieve the required Operating Ratios for two successive Occupancy Quarters occurs during the last three Occupancy Quarters, such report and plan shall be designed to achieve the Operating Ratio required for the last Occupancy Quarter for the six months following the date of such report and plan.

(C) Notwithstanding the foregoing, if a Management Consultant's report and plan has been prepared and implemented within the five months preceding an Occupancy Quarter for which a deficiency exists, no new report and plan need be prepared or implemented.

(b) Liquidity Ratio Covenant. The Obligor covenants that it shall maintain a Liquidity Ratio as of the last day of each Fiscal Quarter of at least (i) .30 commencing with earlier of (A) the first full Fiscal Quarter following the Fiscal Quarter in which Stable Occupancy has occurred and all of the Series 1999C Bonds have been redeemed and all Bank Obligations have been paid in full or (B) December 31, 2005, and (ii) .35 commencing with the first full Fiscal Quarter of the second full Fiscal Year following redemption of all Series 1999D Bonds and the payment of all Bank Obligations in full. The "Liquidity Ratio," as of any date of calculation, is the ratio of (y) unrestricted cash and investments (exclusive of all moneys in any Related Bonds Debt Service Fund, but including all moneys held in any Related Bonds Debt Service Reserve Fund, the Special Reserve Fund and the Entrance Fees Fund), to (z) the aggregate principal amount of Long-Term

Indebtedness Outstanding, excluding the Series 1999C Bonds, but including all other Related Bonds, on such date, but excluding deferred management fees, if any, and the then-current portion of the Debt Service Requirements of Long-Term Indebtedness.

(i) Testing Compliance. Compliance with the Liquidity Ratio Covenant shall be tested on each June 30 and December 31 commencing with the earlier of

(A) the June 30 or December 31 following the Fiscal Quarter in which Stable Occupancy has occurred, and

(B) December 31, 2005, based on the unaudited financial statements required by Section 4.13(c) or (d).

(ii) Failure to Maintain Liquidity Ratio.

(A) If the actual Liquidity Ratio is less than .35, but greater than .30, the Obligor shall within 30 days after receipt of the financial statements disclosing such deficiency deliver a report to the Master Trustee and the Principal Underwriters setting forth in detail the reasons for such deficiency and adopt a specific plan setting forth steps designed to achieve the required Liquidity Ratio as quickly as practicable. Such report and plan shall be prepared and implemented pursuant to Section 4.26.

(B) If the Liquidity Ratio is less than .30 for any testing date, or the Obligor has not achieved a Liquidity Ratio of .35 pursuant to the report delivered in accordance with (A) above by the end of the third full Fiscal Quarter following the violation, the Obligor shall, within 60 days after receipt of the financial statements disclosing such deficiency, obtain a Management Consultant's report setting forth in detail the reasons for such deficiency and recommendations with respect to rates, fees, charges and Obligor's methods of operation and other factors affecting its financial condition in order to return the Liquidity Ratio to the required level.

(c) Failure to Maintain Ratios Not a Default. Notwithstanding anything to the contrary herein contained, the failure of the Obligor to maintain an Operating Ratio or a Liquidity Ratio required by this Section shall not be deemed to constitute an Event of Default, so long as the Obligor takes all action within its control to comply with the procedures set forth in this Section and Section 4.26 for preparing or obtaining a report and implementing a plan for correcting such deficiency.

Section 4.23. Marketing and Occupancy Targets.

(a) Marketing Targets. The Obligor covenants that commencing on December 31 following the Closing Date and continuing for each Fiscal Quarter thereafter (a "Marketing Quarter"), it shall market the Independent Living Units in the Facility, execute Residency Agreements and collect deposits of at least 5% of the Entrance Fees payable on execution of the Residency Agreements, so that the percentage of the total number of Independent Living Units in the Facility constituting Reserved Units is at least equal to the "Marketing Target" set forth below as of the end of each "Marketing Quarter" set forth below:

Marketing Targets

<u>Marketing Quarters</u>	<u>Number of Independent Living Units</u>	<u>Percentage of Independent Living Units</u>
1	166	65%
2	174	68%
3	182	71%
4	189	74%
5	197	77%
6	205	80%
7	212	83%
8	220	86%
9	225	88%

Each Marketing Quarter shown above shall consist of a Fiscal Quarter ending on the date shown above. For the purpose of determining the number of Reserved Units, any Residency Agreement covering two Independent Living Units shall count as two Reserved Units.

(i) Marketing Reports. So long as the Obligor is required to meet the Marketing Targets pursuant to this Section, including any extended period owing to the failure to meet any Marketing Target as provided for in subparagraph (ii) below, the Obligor shall deliver to the Master Trustee and the Principal Underwriters monthly reports on the marketing of the Facility. Such marketing reports shall be sent by the tenth Business Day of each month, commencing on December 14, 1999, and shall show for the preceding month: (A) the number of Reserved Units at the beginning and at the end of the month, (B) the number of Residency Agreements executed during the month, net of the number of Residency Agreements for which Refunds have been paid, and (C) the number of Residency Agreements terminated during the month, specifying the reason for each termination.

(ii) Failure to Meet Marketing Target.

(A) If at the end of any Marketing Quarter, the percentage of Reserved Units in the Facility is less than the Marketing Target specified for such Marketing Quarter, the Obligor shall, within 30 days of the end of such Marketing Quarter, prepare a written report setting forth in detail the reasons for such deficiency and shall prepare and adopt a specific plan setting forth steps designed to cause the number of Reserved Units to be at least equal to the Marketing Target specified above at the end of the first Marketing Quarter following the Marketing Quarter in which the deficiency occurred, provided, however, if the failure to achieve the Marketing Target occurs during the last Marketing Quarter, such plan shall be designed to achieve the Marketing Target required for the last Marketing Quarter at the end of the three months following the last Marketing Quarter.

(B) If the Obligor fails to meet the Marketing Target for any two successive Marketing Quarters, the Obligor shall, within 30 days of the end of the most recent Marketing Quarter, obtain a written report prepared by a Marketing Consultant setting forth in detail the reasons for such failure and shall adopt a specific plan prepared by the Marketing Consultant setting

forth steps designed to cause the number of Reserved Units to be at least equal to the Marketing Targets specified above at the end of the first full Marketing Quarter following the date of such report and plan; provided, however, if the failure to achieve the required Marketing Targets for two successive Marketing Quarters occurs during the last three Marketing Quarters, such report and plan shall be designed to achieve the Marketing Target required for the last Marketing Quarter at the end of the three month period following the date of such report and plan.

(C) Notwithstanding the foregoing, if a Management Consultant's report and plan has been prepared and implemented within the five months preceding an Occupancy Quarter for which a deficiency exists, no new report and plan need be prepared or implemented.

(b) Occupancy Targets - Independent Living Units. The Obligor covenants that during the period commencing with the first full Fiscal Quarter following the issuance of the Certificate of Occupancy and ending on the last day of the first Fiscal Year in which Stable Occupancy has occurred, it shall market the Independent Living Units in the Facility and execute Residency Agreements so that the number and percentage of the total number of Independent Living Units in the Facility constituting Occupied Units is at least equal to the "Occupancy Target" set forth below as of the end of each "Occupancy Quarter" set forth below:

<u>Occupancy Quarters</u>	<u>Occupancy Targets</u>	
	<u>Number of Independent Living Units</u>	<u>Percentage of Independent Living Units</u>
1	13	5%
2	38	15%
3	69	27%
4	95	37%
5	120	47%
6	141	55%
7	161	63%
8	179	70%
9	197	77%
10	210	82%
11	223	87%
12	230	90%

(i) Occupancy Reports. The Obligor shall deliver to the Master Trustee and the Principal Underwriters (A) until 90% of the Independent Living Units in the Facility are Occupied Units, monthly reports on the occupancy of the Independent Living Units and (B) thereafter, annual reports on the occupancy of the Independent Living Units in the Facility. Such reports shall be sent on the tenth Business Day of each month or year, as the case may be, commencing with the first month following the date of issuance of the Certificate of Occupancy, and shall show for the preceding month or year, as the case may be: (A) the number of Independent Living Units in the Facility constituting Occupied Units occupied at the beginning and at the end of the month or year, as the case may be; and (B) the actual occupancy of the Independent Living Units in the Facility, as the case may be, as a percentage of capacity by level of care.

(ii) Failure to Meet Occupancy Target.

(A) If at the end of any Occupancy Quarter, the percentage of Independent Living Units in the Facility constituting Occupied Units is less than the Occupancy Target specified for such Occupancy Quarter, the Obligor shall, within 30 days of the end of such Occupancy Quarter, prepare a written report setting forth in detail the reasons for such deficiency and shall prepare and adopt a specific plan setting forth steps designed to cause the number of Occupied Units in the Facility to be at least equal to the Occupancy Target specified above at the end of the first Occupancy Quarter following the Occupancy Quarter in which the deficiency occurred; provided, however, if the failure to achieve the Occupancy Target occurs during the last Occupancy Quarter, such plan shall be designed to achieve the Occupancy Target required for the last Occupancy Quarter at the end of the three months following the last Occupancy Quarter.

(B) If the Obligor fails to meet the Occupancy Targets for any two successive Occupancy Quarters, the Obligor shall, within 30 days of the end of the most recent Occupancy Quarter, obtain a written report prepared by a Marketing Consultant setting forth in detail the reasons for such deficiency and shall adopt a specific plan prepared by the Marketing Consultant setting forth steps designed to cause the number of Occupied Units in the Facility to be at least equal to the Occupancy Target specified above at the end of the first full Occupancy Quarter following the date of such report and plan; provided, however, if the failure to achieve the required Occupancy Targets for two successive Occupancy Quarters occurs during the last three Occupancy Quarters, such report and plan shall be designed to achieve the Occupancy Targets for the last Occupancy Quarter at the end of the three-month period following the date of such report and plan.

(C) Notwithstanding the foregoing, if a Management Consultant's report and plan has been prepared and implemented within the five months preceding an Occupancy Quarter for which a deficiency exists, no new report and plan need be prepared or implemented.

(c) Failure to Meet Targets Not a Default. Notwithstanding anything to the contrary contained herein, the failure of the Obligor to achieve a Marketing Target or an Occupancy Target required by this Section shall not be deemed to constitute an Event of Default, so long as the Obligor takes all action within its control to comply with the procedures set forth in this Section and Section 4.26 for preparing or obtaining a report and implementing a plan for correcting such deficiency.

Section 4.24. Trade Payables Covenant. (a) Commencing with the first full Fiscal Quarter following receipt of the Certificate of Occupancy, each Obligated Group Member covenants that it shall at all times maintain at least 90% of its undisputed trade accounts payable at less than 60 days and that not more than \$50,000 of the undisputed trade accounts payable of the Obligated Group will be payable at more than 90 days, provided that any trade accounts payable that is the subject of a bona fide dispute, the dispute of which is being diligently pursued by the Obligated Group Representative, shall be excluded from such computation. Compliance shall be tested (i) quarterly based on unaudited financial statements for each of the Fiscal Quarters and (ii) annually based on the annual audited financial statements.

(b) If the Trade Payable Covenant is not met for any Fiscal Quarter and it is not remedied within 30 days, the Obligated Group Representative shall prepare a report, within 60 days of such deficiency, setting forth in detail the reasons for the deficiency and a plan to comply with the Trade Payables Covenant by the end of the second Fiscal Quarter following the Fiscal Quarter in which the deficiency occurred. If the Obligated Group fails to meet the Trade Payables Covenant for two consecutive Fiscal Quarters, the Obligated Group Representative shall obtain a report from an Management Consultant, within 60 days of such deficiency, setting forth the reasons for the deficiency and a plan to comply with the covenant by the end of the second Fiscal Quarter following the date of the report.

(c) Notwithstanding anything to the contrary contained herein, the failure of the Obligated Group to meet the Trade Payables Covenant required by this Section shall not be deemed to constitute an Event of Default, so long as the Obligated Group Representative takes all action within its control to comply with the procedures set forth in this Section and Section 4.26 for preparing or obtaining a report and implementing a plan for correcting such deficiency.

Section 4.25. Management Consultant; Marketing Consultant. For the purpose of performing the duties imposed on the Management Consultant and the Marketing Consultant by the Indenture, the Obligated Group Representative shall employ from time to time as required by the provisions of the Indenture a Management Consultant or a Marketing Consultant, as appropriate.

Except as set forth in the immediately succeeding paragraph, the Obligated Group Representative shall notify the Principal Underwriters and the Master Trustee of its intention to employ a consultant as Management Consultant or Marketing Consultant pursuant to this Section and the name of such consultant at least 30 days prior to such employment.

Whenever the Obligor is required pursuant to Section 4.22(a)(ii)(B), 4.22(b)(i)(B), 4.23(a)(ii)(B) or 4.23(b)(ii)(B) to employ a Management Consultant or Marketing Consultant, the Obligated Group Representative shall notify the Principal Underwriters and the Master Trustee of the name of such consultant within seven Business Days of the event giving rise to such employment.

Whenever the Obligated Group Representative shall notify the Master Trustee and the Principal Underwriters of the name of a Management Consultant or Marketing Consultant that it intends to employ pursuant to this Section, the Obligated Group Representative shall also notify the Principal Underwriters and the Master Trustee of the scope of the services and terms of employment of such Management Consultant or Marketing Consultant; provided, however, that the determination of the scope of services and terms of employment of the Management Consultant or Marketing Consultant shall always be within the sole discretion of the Obligated Group Representative, and the Principal Underwriters shall have no right to object to the scope of services or terms of employment of the Management Consultant or Marketing Consultant so long as such scope of services is in accordance with the requirements of this Indenture.

Any agreement or contract between a Management Consultant or a Marketing Consultant and the Obligated Group Representative pursuant to this Section shall include an acknowledgment by such Management Consultant or a Marketing Consultant, as appropriate, that the Master Trustee will rely upon the recommendations made by such Management Consultant or Marketing Consultant.

Notwithstanding anything to the contrary contained herein or in the Indenture, no Obligated Group Member shall be required to concur with a recommendation contained in the report of a Management Consultant or Marketing Consultant that (i) conflicts with law or existing contracts or (ii) the Governing Body of such Obligated Group Member has determined by resolution to be unreasonable, impractical or unfeasible,

nor shall any Obligated Group Member be obliged to implement any such recommendation, if, in the reasonable judgment of the Management Consultant or the Marketing Consultant, as applicable, such failure to concur with or to implement such recommendation will not prevent the implementation of other recommendations that are sufficient in the aggregate to enable such Obligated Group Member to rectify, within a reasonable period of time, the circumstance giving rise to employment of such Management Consultant or Marketing Consultant.

Section 4.26. Management and Marketing Reports and Plans. Whenever the Obligor is required pursuant to Section 4.22(a)(ii), 4.22(b)(ii), 4.23(a)(ii) or 4.23(b)(ii) to prepare or obtain a report and plan for correcting a deficiency under such Sections, the Governing Body of the Obligor shall cause such report and plan to be prepared or obtained and shall adopt such plan within the applicable time limit prescribed by such Sections. If required by such Sections, such report and plan shall be prepared by a Management Consultant or a Marketing Consultant, as appropriate, employed by the Obligor in accordance with Section 4.25. Each such report and plan, regardless of whether prepared by the Obligor, a Management Consultant or a Marketing Consultant, must be in writing and contain sufficient detail to support the conclusions made concerning the reasons for the deficiency and the steps to be taken for its correction. Each report and plan prepared by a Management Consultant or a Marketing Consultant must be acknowledged in writing by the Obligor (although its concurrence in every conclusion or recommendation in the report and plan shall not be required). Each such report and plan, regardless of whether prepared by the Obligor, a Management Consultant or a Marketing Consultant, shall be implemented immediately upon its adoption, except to the extent limited by law or existing contracts. Copies of each such report and plan shall be sent to the Master Trustee and the Principal Underwriters. Any such report and plan shall be prepared or obtained at the expense of the Obligor.

Section 4.27. Residency Agreements. Each Obligated Group Member shall carry out all of its obligations under each and every Residency Agreement. Each Obligated Group Member shall enter into with each resident of the Facility a Residency Agreement.

Except as otherwise expressly provided herein, the Obligated Group Representative may make such changes in the forms of Residency Agreement as it deems appropriate in the exercise of its business judgment.

Notwithstanding the foregoing, the rights, privileges and benefits of the residents under the Residency Agreements (except the right to a refund of the Entrance Fee prior to occupancy or where the Obligated Group Representative terminates a Residency Agreement) shall at all times be subordinate to this Indenture.

Nothing in this Section shall be construed to prohibit any amendment to the forms of the Residency Agreements previously delivered to the Principal Underwriters.

Section 4.28 Waiver of Certain Covenants. Each Obligated Group Member may omit in any particular instance to comply with any covenant or condition set forth in Sections 4.05 through 4.26 hereof if before or after the time for such compliance the Holders of the same percentage in principal amount of all Obligations then Outstanding the consent of which would be required to amend the provisions hereof to permit such noncompliance shall either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived and, until such waiver shall become effective, the obligations of each Obligated Group Member and the duties of the Master Trustee in respect of any such covenant or condition shall remain in full force and effect.

Section 4.29. Insurance and Condemnation Proceeds. (a) The Obligated Group Representative agrees to notify the Master Trustee immediately in the case of the destruction or damage of any portion of the

property, plant or equipment of any Obligated Group Member as a result of fire or other casualty, which are estimated to exceed \$1,000,000.

(b) Net proceeds of any insurance relating to such damage or destruction not exceeding \$1,000,000 may be paid directly to the applicable Obligated Group Member. If such net proceeds exceed \$1,000,000, the Master Trustee shall retain and apply such net proceeds as set forth herein.

(c) The Obligated Group Members hereby assign to the Master Trustee all right, title and interest of the Obligated Group Members in and to any net proceeds of any award, compensation or damages payable in connection with any condemnation.

(d) The net proceeds of any condemnation shall be initially paid to the Master Trustee for disbursement or use. If net proceeds do not exceed \$1,000,000, such net proceeds shall upon the Obligated Group Representative's request be paid by the Master Trustee to the applicable Obligated Group Member.

(e) Each Obligated Group Member covenants that it will expend an amount not less than the amount of such net proceeds to (i) repair, replace or restore the damaged or destroyed property, plant and equipment, (ii) acquire or construct additional capital assets, or (iii) prepay the principal portion of any Obligations.

(f) In the event such net proceeds exceed \$1,000,000 the Obligated Group Representative shall as soon as practicable after the date on which the net proceeds are finally determined, elect by written notice to the Master Trustee one of the following three options:

(i) Option 1-Repair and Restoration. The Obligated Group Representative may elect to replace, repair, reconstruct, restore or improve any of the property, plant and equipment or acquire additional property, plant and equipment. If the Obligated Group is not in default, any net proceeds of insurance relating to such damage or destruction received by the Master Trustee shall be released by the Master Trustee to the applicable Obligated Group Member upon the receipt of an Officer's Certificate of the applicable Obligated Group Member specifying the expenditures made or to be made or the Debt incurred in connection with such repair, reconstruction, restoration, improvement or acquisition and stating that such net proceeds, together with any other moneys legally available for such purposes, will be sufficient to complete such replacement, repair, reconstruction, restoration, improvement or acquisition.

(ii) Option 2-Prepayment. The Obligated Group Representative may elect to have all or a portion of the net proceeds applied to the prepayment of any Obligation and may select which such Obligation will be so prepaid. The Obligated Group Representative shall, in its notice of election to the Master Trustee, direct the Master Trustee to apply such net proceeds when and as received, to the prepayment of such Obligation; provided that such net proceeds must aggregate at least \$1,000,000.

(iii) Option 3-Partial Restoration and Partial Prepayment. The Obligated Group Representative may elect to have a portion of such net proceeds applied to the replacement, repair, reconstruction, restoration and improvement of the property, plant and equipment or the acquisition of additional property, plant and equipment with the remainder of such net proceeds to be applied to prepay such Obligation; provided that if this Option 3 is elected at

least \$1,000,000 must be applied to prepay such Obligation. The Obligated Group Representative may comply with the notice and approval requirements of Options 1 and 2.

(g) Amounts received by the Master Trustee in respect of any insurance or condemnation awards shall, at the written request of the Obligated Group Representative, be deposited within the Master Trustee in Investment Securities (as defined in the Related Loan Agreements) subject to the applicable Obligated Group Member's right to receive the same pursuant to this Section 4.29. If the applicable Obligated Group Representative elects to proceed under either Option 1 or 3, any amounts in respect of such net proceeds not so paid to the applicable Obligated Group Member shall be transferred to the Related Bond Trustee for deposit into the debt service fund for the Related Bonds.

Section 4.30. Leasehold Mortgage Provisions. The Obligor hereby covenants and agrees as follows:

(a) The Obligor will promptly pay, when due and payable, the net rent, additional rent, taxes and all other sums and charges mentioned in and made payable pursuant to the Ground Lease.

(b) The Obligor will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by the Obligor as lessee under the Ground Lease, within the period (exclusive of grace periods) provided in the Ground Lease, or such lesser periods (exclusive of grace periods) as are provided in this Indenture, and will do all things necessary to preserve and to keep unimpaired its rights under the Ground Lease.

(c) The Obligor will promptly notify the Master Trustee in writing of any default by the Obligor in the performance or observance of any of the terms, covenants or conditions on the part of the Obligor to be performed or observed under the Ground Lease.

(d) The Obligor will (i) promptly notify the Master Trustee in writing of the receipt by the Obligor of any notice from the Ground Lessor and of any notice noting or claiming any default by the Obligor in the performance or observance of any of the terms, covenants or conditions on the part of the Obligor to be performed or observed under the Ground Lease; (ii) promptly notify the Master Trustee in writing of the receipt by the Obligor of any notice from the Ground Lessor to the Obligor of termination of the Ground Lease pursuant to the provisions of the Ground Lease; (iii) promptly cause a copy of each such notice received by the Obligor from the Ground Lessor under the Ground Lease to be delivered to the Master Trustee, provided, however, that no such delivery by the Obligor to the Master Trustee of any such notices shall be deemed to waive, release, or modify any obligation of the Ground Lessor to separately provide such notice to the Master Trustee pursuant to the terms of the Ground Lease; and (iv) promptly notify the Master Trustee in writing of any default by the Ground Lessor in the performance or observance of any of the terms, covenants or conditions on the part of the Ground Lessor to be performed or observed.

(e) The Obligor will promptly notify the Master Trustee in writing of any request made by the other party to the Ground Lease for arbitration proceedings pursuant to the Ground Lease and the institution of any arbitration proceedings, as well as all proceedings thereunder, and will promptly deliver to the Master Trustee a copy of the determination of the arbitrators in each such arbitration proceeding. The Master Trustee shall have the right, at the Obligor's sole cost and expense, to participate in any such arbitration proceedings in association with the Obligor or on their own behalf as interested parties and no determination

made in such arbitration proceeding or settlement or agreement in connection therewith shall be binding upon the Master Trustee unless and until the Master Trustee have participated in such proceeding and/or consented to such settlement or agreement.

(f) The Obligor will not, without the prior written consent of the Master Trustee (which may be granted or withheld in the sole and absolute discretion of the Master Trustee), terminate, modify or surrender or suffer or permit any termination, modification or surrender of the Ground Lease.

(g) The Obligor will, within twenty (20) days after written demand from the Master Trustee, obtain from the Ground Lessor and deliver to the Master Trustee a certificate setting forth the name of the tenant thereunder and stating that such Ground Lease is in full force and effect, is unmodified or, if the Ground Lease has been modified, the date of each modification (together with copies of each such modification), that no notice of termination thereon has been served on the Obligor, stating that no default or event which with notice or lapse of time (or both) would become a default is existing under the Ground Lease, stating the date to which net rent has been paid, and specifying the nature of any defaults, if any, and containing such other statements and representations as may be requested by Master Trustee.

(h) The Obligor will furnish to the Master Trustee, upon demand, proof of payment of all items that are required to be paid by the Obligor pursuant to the Ground Lease and proof of payment which is required to be given to the Ground Lessor

(i) The Obligor shall not consent to any waiver or modification or cancellation of any provision of the Ground Lease nor to the subordination of the Ground Lease to any mortgage of the fee interest of the Ground Lessor.

(j) The Obligor shall execute and deliver, on request of the Master Trustee, such instruments as the Master Trustee may deem useful or required to permit the Master Trustee to cure any default under the Ground Lease or permit the Master Trustee to take such other action as the Master Trustee considers desirable to cure or remedy the matter in default and preserve the interest of the Master Trustee and in the Trust Estate.

(k) The Obligor shall not treat the Ground Lease as terminated by any election made under Section 355(h) of the Bankruptcy Code or under any similar law or right of any nature, and hereby assigns to the Master Trustee any right to acquiesce in any such termination.

(l) If the Obligor defaults in the performance of any of its obligations under the Ground Lease, including, without limitation, any default on the payment of rent and other charges and impositions made payable by the tenant under the Ground Lease, then, in each and every case, the Master Trustee may, at its option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all the rights of the Obligor thereunder in the name of and on behalf of the Obligor. The Obligor shall, on demand, reimburse the Master Trustee for all advances made and expenses incurred by the Master Trustee in curing any such default (including, without limitation, attorneys' fees, costs and expert witness fees), together with interest thereon computed at the maximum rate permitted by applicable law from the date that an advance is made or expense is incurred, to and including the date the same is paid.

(m) The Obligor shall give the Master Trustee notice of its intention to exercise each and every option to extend the term of the Ground Lease, at least twenty (20) but not more than sixty (60) days prior to the expiration of the time to exercise such option under the terms thereof. If the Obligor intends to extend the term of the Ground Lease, it shall deliver to the Master Trustee, contemporaneously with the notice of such decision, a copy of the notice of extension delivered to the landlord thereunder. If the Obligor does not intend to extend the term of the Ground Lease, the Master Trustee may, at their option, exercise the option to extend in the name and on behalf of the Obligor. In any event, the Obligor hereby appoints the Master Trustee as its attorney-in-fact to execute and deliver, for and in the name of the Obligor, all instruments and agreements necessary under the Ground Lease or otherwise to cause an extension of the term thereof. This power, being coupled with an interest, shall be irrevocable as long as the Secured Debt remains unpaid.

The generality of the provisions of this section relating to Ground Lease shall not be limited by other provisions of this Indenture setting forth particular obligations of the Obligor which are also required by the Obligor as the lessee under the Ground Lease.

Section 4.31. No Merger. So long as any of the obligation secured by this Indenture shall remain unpaid or unperformed, the fee title to and the leasehold estate in the premises subject to the Ground Lease shall not merge but shall always be kept separate and distinct notwithstanding the union of such estates in the Ground Lessor or the Obligor, or in a third party, by purchase or otherwise. If the Obligor acquires the fee title or any other estate, title or interest in the property demised by the Ground Lease, or any part thereof, the lien of this Indenture shall attach to, cover and be a lien upon such acquired estate, title or interest and the same shall thereupon be and become a part of the Trust Estate with the same force and effect as if specifically encumbered herein. The Obligor agrees to execute all instruments and documents which the Master Trustee may reasonably require to ratify, confirm and further evidence the Master Trustee's lien on the acquired estate, title or interest. Furthermore, the Obligor hereby appoints the Master Trustee as its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of the Obligor. This power, being coupled with an interest, shall be irrevocable as long as any of the Obligations remains unpaid.

Section 4.32. Holders of Obligations as Ground Lessee. If the Ground Lease shall be terminated prior to the natural expiration of its term due to default by the Obligor or any tenant thereunder, and if, pursuant to the provisions of the Ground Lease, the Master Trustee or its designee shall acquire from the Ground Lessor a new lease of the premises subject to the Ground Lease, the Obligor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

Section 4.33. No Assignment. Notwithstanding anything to the contrary contained herein, this Indenture shall not constitute an assignment of the Ground Lease within the meaning of any provision thereof prohibiting its assignment and the Master Trustee shall have no liability or obligation thereunder by reason of its acceptance of this Indenture. The Master Trustee shall be liable for the obligations of the tenant arising out of the Ground Lease for only that period of time for which the Master Trustee are in possession of the Premises or has acquired, by foreclosure or otherwise, and is holding all of the Obligor's right, title and interest therein.

ARTICLE V

CONSOLIDATION, MERGER, CONVEYANCE AND TRANSFER

Section 5.01. Consolidation, Merger, Conveyance, or Transfer Only on Certain Terms. No Obligated Group Member shall consolidate with or merge into any corporation or convey or transfer its properties substantially as an entirety to any Person, unless

(a) such consolidation, merger, or transfer (1) is between Obligated Group Members and (2) the surviving Person is an Obligated Group Member, or

(b) all of the following conditions exist:

(i) the Person formed by such consolidation or into which the Obligated Group Member merges or the Person which acquires substantially all of the properties of the Obligated Group Member as an entirety shall be a Person organized and existing under the laws of the United States of America or any State or the District of Columbia and shall expressly assume by indenture supplemental hereto executed and delivered to the Master Trustee, in form satisfactory to the Master Trustee, the due and punctual payment of the principal (and premium, if any) and interest on the Obligations and the performance and observance of every covenant and condition hereof on the part of the Obligated Group Member to be performed or observed;

(ii) the Person formed by such consolidation or into which the Obligated Group Member merges or the Person which acquires substantially all of the properties of the Obligated Group Member as an entirety would be permitted to incur at least \$1.00 of additional Funded Debt pursuant to Section 4.19(g) hereof;

(iii) immediately after giving effect to such transaction, no default hereunder shall have occurred and be continuing;

(iv) the Person formed by such consolidation or into which the Obligated Group Member merges or the Person which acquires substantially all of the properties of the Obligated Group Member as an entirety will be an organization described in Section 501(c)(3) of the Code;

(v) the Obligated Group Member shall have delivered to the Master Trustee an Officer's Certificate which shall state that such consolidation, merger, conveyance, or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with; and

(vi) the Obligated Group Member shall have delivered to the Master Trustee an Opinion of Counsel which shall state that such consolidation, merger, conveyance, or transfer and such supplemental indenture comply with this Article, that such consolidation, merger,

conveyance, or transfer will not adversely affect the status of interest under the Code on any Related Bonds or other indebtedness secured by Outstanding Obligations and that all conditions precedent contained in this Indenture relating to such transaction have been complied with.

Section 5.02. Successor Corporation Substituted. Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of an Obligated Group Member substantially as an entirety in accordance with Section 5.01, the successor Person formed by such consolidation or into which such Obligated Group Member is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, such Obligated Group Member hereunder with the same effect as if such successor Person had been named as such Obligated Group Member, herein; provided, however, that no such conveyance or transfer shall have the effect of releasing any other Person, which shall theretofore have become an Obligated Group Member in the manner described in this Article from its liability as obligor and maker on any of the Obligations.

ARTICLE VI

MEMBERSHIP IN THE OBLIGATED GROUP

Section 6.01. Admission of Obligated Group Members. A Person may become an Obligated Group Member only if:

(a) the Person proposing to become an Obligated Group Member shall expressly assume by indenture supplemental hereto, executed and delivered to the Master Trustee, in form satisfactory to the Master Trustee, jointly and severally with every other Obligated Group Member, the due and punctual payment of the principal of (and premium, if any) and interest on all the Obligations and the performance of the covenants of the Obligated Group Members set forth in this Indenture;

(b) the Obligated Group Representative has consented to the inclusion of such Person as an Obligated Group Member as evidenced by a Consent of the Obligated Group Representative;

(c) the Obligated Group as constituted following the admission of such Person as an Obligated Group Member would be permitted to incur at least \$1.00 of additional Funded Debt pursuant to Section 4.19(g) hereof,

(d) immediately after giving effect to such admission, no default hereunder shall have occurred and be continuing;

(e) the Master Trustee shall have received evidence from each Rating Agency that such admission will not adversely affect the then current rating on any series of Related Bonds;

(f) the Obligated Group Representative shall have delivered to the Master Trustee an Officer's Certificate which shall state that the admission and such supplemental indenture comply with this Article, that the supplemental indenture required by subsection (a) of this Section 6.01 and this Indenture as so supplemented each constitute legal, valid and binding obligations of such Person enforceable in accordance with their respective terms subject to customary exceptions, that the admission of such Person as an Obligated Group Member will not adversely affect the enforceability of this Indenture against any Obligated Group Member, and that all conditions precedent provided in this Section relating to such transaction have been complied with; and

(g) the Obligated Group Representative shall have delivered to the Master Trustee an Opinion of Counsel which shall state that the admission and such supplemental indenture comply with this Article, that such admission will not affect the status of interest under the Code on any Related Bonds or other indebtedness secured by Outstanding Obligations, that the supplemental indenture required by subsection (a) of this Section 6.01 and this Indenture as so supplemented each constitute legal, valid and binding obligations of such Person enforceable in accordance with their respective terms subject to customary exceptions, that the admission of such Person as an Obligated Group Member will not adversely affect the enforceability of this Indenture against any Obligated Group Member, and that all

conditions precedent provided in this Section relating to such transaction have been complied with.

Section 6.02. Obligated Group Members. (a) No Person shall be admitted to the Obligated Group and the Obligor shall be the sole Obligated Group Member until such time as (i) the Obligor has complied with the Rate Covenant for each of the prior two consecutive Fiscal Years, (ii) the Obligor is then in compliance with the Operating Ratio and Liquidity Ratio Covenants and (iii) no Event of Default has occurred and is continuing, all as set forth in an Officer's Certificate of the Obligated Group Representative.

(b) Upon any Person's becoming an Obligated Group Member as provided in Section 6.01:

(i) the Master Trustee may pursue any remedies consequent upon an Event of Default against any Obligated Group Member, or all of them, without notice to, demand upon or joinder of (and without in any way releasing) any of the others, or against any one or more or all of them at the same time or at different times;

(ii) any right of contribution or right acquired by subrogation by any Obligated Group Member against any other Obligated Group Member arising out of the payment of Debt shall be subordinated to the rights of the Master Trustee and the Holders of Obligations; and

(iii) each Obligated Group Member shall designate the Obligated Group Representative as its attorney in fact with full power of substitution to perform, satisfy, and discharge every obligation, covenant, duty or liability to be performed on the part of the Obligated Group Member hereunder.

Section 6.03. Withdrawal of Obligated Group Members. Any Obligated Group Member may, upon 30 days' prior written notice to the Master Trustee, withdraw as an Obligated Group Member, and the Master Trustee, upon Request of such Obligated Group Member and at such withdrawing Obligated Group Member's expense, shall execute and deliver an appropriate instrument releasing such Obligated Group Member from any liability or obligation under the provisions of this Indenture provided that:

(a) the withdrawing Obligated Group Member has requested such release by Board Resolution;

(b) either, the withdrawing Obligated Group Member does not have any Obligations Outstanding, or the Obligated Group Representative confirms the obligation of each remaining Obligated Group Member to repay any Obligations of such withdrawing Obligated Group Member Outstanding after such withdrawal;

(c) the Combined Group as constituted following the withdrawal of such Person as an Obligated Group Member would be permitted to incur at least \$1.00 of additional Funded Debt pursuant to Section 4.19(g) hereof;

(d) immediately after giving effect to such withdrawal, no default hereunder shall have occurred and be continuing;

(e) the Master Trustee shall have received evidence from each Rating Agency that such withdrawal will not adversely affect the then current rating on any series of Related Bonds;

(f) the Obligated Group Representative shall have delivered to the Master Trustee an Officer's Certificate which shall state that all conditions precedent provided in this Section relating to such withdrawal have been complied with, and

(g) the Obligated Group Representative shall have delivered to the Master Trustee an Opinion of Counsel which shall state that such withdrawal will not adversely affect the status of interest under the Code on any Related Bonds or indebtedness secured by Outstanding Obligations and that all conditions precedent provided in this Section relating to such withdrawal have been complied with.

Any Person that has withdrawn from the Obligated Group may again become a member of the Obligated Group in accordance with the provisions of Section 6.01 hereof.

Section 6.04. Successor Obligated Group Representative. Northwest Senior Housing Corporation shall serve as the Obligated Group Representative until such time as Northwest Senior Housing Corporation either (i) withdraws from the Obligated Group in accordance with this Article VI or (ii) delivers to the Master Trustee its resignation as the Obligated Group Representative. Northwest Senior Housing Corporation covenants to fulfill all of the duties of the Obligated Group Representative under this Indenture. Northwest Senior Housing Corporation agrees that it shall not withdraw from the Obligated Group or resign as Obligated Group Representative until Northwest Senior Housing Corporation has appointed another Obligated Group Representative and such successor Obligated Group Representative has accepted its duties in writing. Each Obligated Group Member by becoming an Obligated Group Member acknowledges that the Obligated Group Representative has certain powers and duties under this Master Indenture and authorizes the Obligated Group Representative to exercise such powers and carry out such duties.

ARTICLE VII

REMEDIES OF THE MASTER TRUSTEE AND HOLDERS OF
SECURED OBLIGATIONS IN EVENT OF DEFAULT

Section 7.01. Events of Default. Event of Default, as used herein, shall mean any of the following events, whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

(a) default in the payment of the principal of (or premium, if any) or interest on any Obligation when it becomes due and payable at its Maturity and the continuance of such default beyond the period of grace, if any, provided in the instrument creating such Obligation; or

(b) any Obligated Group Member shall fail duly to observe or perform any other covenant or agreement (other than a covenant or agreement whose performance or observance is elsewhere in this Section specifically dealt with) on the part of such Person contained in this Indenture for a period of 45 days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Obligated Group Representative by the Master Trustee, or to the Obligated Group Representative and the Master Trustee by the Holders of at least 25% in aggregate principal amount of Obligations then Outstanding; provided that if any such default can be cured by such Obligated Group Member but cannot be cured within the 45-day curative period described above, it shall not constitute an Event of Default if corrective action is instituted by such Obligated Group Member within such 45-day period and diligently pursued until the default is corrected; or

(c) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging any Obligated Group Member a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization or arrangement of any Obligated Group Member under the Federal Bankruptcy Code or any other similar applicable Federal or state law, and such decree or order shall have continued undischarged and unstayed for a period of 90 days; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of any Obligated Group Member or of its property, or for the winding up or liquidation of its affairs, shall have been entered, and such decree or order shall have remained in force undischarged and unstayed for a period of 90 days; or

(d) any Obligated Group Member shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the institution of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization or arrangement under the Federal Bankruptcy Code or any other similar applicable Federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of it or of its Trust Estate, or shall make assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or action shall be taken by the Governing Body of any Obligated Group Member in furtherance of any of the aforesaid purposes; or

(e) any Obligated Group Member shall fail to pay or make provision for payment of any recourse Debt having a principal balance of not less than \$100,000 and the continuance of such failure beyond the applicable grace period, if any;

(f) an event of default, as therein defined, under any instrument under which Obligations may be incurred or secured, or under any Related Bond Indenture, occurs and is continuing beyond the applicable period of grace, if any; or

(g) Obligor fails to observe or perform any of the terms, conditions or covenants contained in the Ground Lease, or the breach of any provisions herein relating to the Ground Lease, or the breach by the Obligor of any of the representations and warranties contained herein or in the Ground Lease, or the occurrence of any other event or condition which immediately, or with notice or lapse of time or both, would constitute a default pursuant to the terms of the Ground Lease or would otherwise entitle the Ground Lessor to exercise any of its rights or remedies under the Ground Lease.

Section 7.02. Acceleration of Maturity, Rescission and Annulment. If an Event of Default occurs and is continuing, then and in every such case the Master Trustee or the Holders of not less than 25% in principal amount of the Outstanding Obligations (or, in the case of any Event of Default described in subparagraph (f) of Section 7.01 above resulting in the loss of any exclusion from gross income of interest on, or the invalidity of, any Debt secured by a pledge of Obligations, the Holders of not less than 25% in principal amount of the Outstanding Obligations of the affected series) may declare the principal of all the Obligations to be due and payable immediately, by a notice in writing to the Obligated Group Representative and all of the Holders of Obligations (and to the Master Trustee if given by Holders of Obligations), and upon any such declaration such principal shall become immediately due and payable.

At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Master Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the affected Outstanding Obligations, by written notice to the Obligated Group Representative and the Master Trustee, may rescind and annul such declaration and its consequences if

(a) one or more Obligated Group Members has paid or deposited with the Master Trustee a sum sufficient to pay

(1) all overdue installments of interest on all Obligations,

(2) the principal of (and premium, if any, on) any Obligations which have become due otherwise than by such declaration of acceleration and interest thereon at the rate borne by the Obligations, and

(3) all sums paid or advanced by the Master Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Master Trustee, its agents and counsel; and

(b) all Events of Default, other than the non-payment of the principal of Obligations which have become due solely by such acceleration, have been cured or waived as provided in Section 7.16.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 7.03. Entry. As to all real property and fixtures included in the Trust Estate, the Obligor agrees that upon the occurrence of an Event of Default the Obligor, upon demand of the Master Trustee during the continuance thereof, shall forthwith surrender to the Master Trustee or its agent (or to a receiver appointed by a court) the actual possession of, and it shall be lawful for the Master Trustee by such officers or agents as it may appoint (or by receiver appointed by a court) to enter and take possession of, the Trust Estate (and the books, papers, and accounts of the Obligated Group Members) and to hold, operate, and manage the Trust Estate (including the managing of all needful repairs, and such alterations, additions, and improvements as to the Master Trustee shall seem wise) and to receive the rents, issues, tolls, profits, revenues, and other income thereof, and, after deducting the costs and expenses of entering, taking possession, holding, operating, and managing the Trust Estate, as well as payments for taxes, insurance, and other proper charges upon the Trust Estate including without limitation, reasonable compensation to itself, its agents, and counsel, to apply the same as provided in Section 7.09.

Section 7.04. Powers of Sale, Transfer, Assignment, Lease, and Other Dispositions: Suits for Enforcement. In case an Event of Default shall occur and be continuing, the Master Trustee, in its discretion may, subject to the provisions of Section 7.18:

(a) as to all of the real property and fixtures included in the Trust Estate, enforce this trust and sell such property as an entirety or in parcels, by one sale or by several sales, held at one time or at different times as the Master Trustee may elect (all rights to a marshalling of the assets of the Obligated Group Members, including the Trust Estate, or to a sale in inverse order of alienation, being for the Obligated Group Members and their respective successors and assigns, expressly and specifically hereby waived), at the County Courthouse in any County in which a part of the real properties included in the Trust Estate are situated in the area in such Courthouse designated for real property foreclosure sales in accordance with applicable law, each such sale to be made on the first Tuesday of some month between the hours of 10:00 o'clock a.m. and 4:00 o'clock p.m., prevailing local time, to the highest bidder for cash at public auction, after the Master Trustee (or a Person or Persons selected by the Master Trustee) shall have given notices of the proposed sale in the manner hereinafter set forth, and may make due conveyance to the purchaser or purchasers, with general warranty of title to such purchaser or purchasers binding upon the Obligated Group Members and their respective successors and assigns. The Master Trustee (or a Person or Persons selected by the Master Trustee) shall give notice of such proposed sale by posting written notice of the time, place, and terms of sale at the Courthouse door and, by filing a copy of such written notice in the office of the County Clerk, of the County in which the sale is to be made for at least 21 consecutive days preceding the date of the sale. Where such real properties to be sold are situated in more than one County, one notice shall be posted at the Courthouse door, and a copy of such notice shall be filed with the County Clerk, of each County in which a part of said real properties to be sold is situated, and such notices shall designate the county where such real properties will be sold, which may be any County in which a part of said real properties is situated. In addition to the foregoing notice or notices to be posted and filed by the Master Trustee (or by a Person or Persons selected by the Master Trustee), the Master Trustee shall, at least 21 days preceding the date of sale, serve written notice of the proposed sale by certified mail on each debtor obligated to pay the Obligations according to the records of the Master Trustee. The service of such shall be completed upon deposit of the notice, enclosed in a post-paid wrapper, properly addressed to each such debtor at the most recent address as shown by the records of the Master Trustee, in a post office or

an official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. In this respect and to the full extent that it may legally do so, the Obligor also expressly covenants, stipulates, and agrees that (a) the address of the Obligor set out in Section 1.05 of this Indenture shall be deemed and considered conclusively to be and remain at all times the most recent address of such debtor obligated to pay the Master Trustee as shown by the records of the Master Trustee, provided such address may be changed from time to time only by express written notice of change thereof signed by the Obligor and actually delivered to and received by the Master Trustee and setting forth a new address with such new address for such debtor and the most recent addresses for other debtors then held by the Master Trustee being deemed and considered conclusively to be and remain at all times thereafter, until changed in the manner herein provided, the most recent address of all debtors, including, without limitation, the Obligated Group Members, obligated to pay the Obligations as shown by the records of the Master Trustee, (b) the records of the Master Trustee shall not be deemed to reflect any change in the respective names or identities of the Obligated Group Members or others obligated or to become obligated to pay the Obligations (to whom notice of a proposed sale shall be required to be mailed as above provided) unless and until express written notice of such change signed by all such debtors obligated to pay the Obligations shall have been actually delivered to and received by the Master Trustee, and (c) no notice of such sale or sales other than the notices hereinabove provided and as hereinafter provided in this Subsection (a) shall be required to be given to the Obligor, or any other Person and any other notice is expressly waived. At any sale conducted under this instrument, credit upon all or any part of the Obligations shall be deemed cash paid for the purpose of this paragraph. The proceeds arising from such sale or sales shall be applied by the Master Trustee as provided in Section 7.09. The provision hereof with respect to posting and giving notices of sale are intended to comply with the provisions of the Texas Property Code, and in the event the requirement for any notice under the Texas Property Code shall be eliminated or the prescribed manner of giving same is modified by future amendment to the Texas Property Code, the requirement for such particular notice shall be stricken from or modified in this instrument in conformity with such amendment. The manner prescribed in this Subsection (a) for serving or giving any notice, other than notice to be posted or caused to be posted by the Master Trustee, shall not be deemed exclusive, but such notice or notices may be given in any manner which may be permitted by applicable law, or

(b) to protect and enforce its rights and the rights of the Master Trustee under this Indenture by sale pursuant to judicial proceedings or by a suit, action, or proceeding in equity or at law or otherwise, whether for the specific performance of any covenant or agreement contained in this Indenture or in aid of the execution of any power granted in this Indenture or for the foreclosure of this Indenture or for the enforcement of any other legal, equitable, or other remedy, as the Master Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of the rights of the Master Trustee, or

(c) to all or part of the personal property (tangible or intangible) and fixtures included in the Trust Estate (such portion of the Trust Estate herein referred to as the "Collateral"),

(i) proceed under the Texas Uniform Commercial Code and exercise with respect to the Collateral all the rights, remedies, and powers of

a secured party under the Texas Uniform Commercial Code, including, without limitation, the right and power to sell, at public or private sale or sale, or otherwise dispose of, lease, or utilize, the Collateral and any part or parts thereof in any manner authorized or permitted under the Texas Uniform Commercial Code after default by a debtor, and, to the extent permitted by law, the Obligor expressly waives any notice of sale or other disposition of the Collateral and any other rights and remedies of a debtor or formalities prescribed by law relative to sale or disposition of the Collateral or exercise of any other right or remedy of the Master Trustee existing after default hereunder, and, to the extent any such notice is required and cannot be waived, the Obligor agrees that if such notice is mailed, postage prepaid, to the Master Trustee at its address stated in the first paragraph hereof at least five days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice,

(ii) take possession of the Collateral and enter upon any premises where the same may be situated for such purpose without being deemed guilty of trespass and without liability for damages thereby occasioned and take any action deemed necessary or appropriate or desirable by the Master Trustee, at its option and in its discretion, to repair, refurbish, or otherwise prepare the Collateral for sale, lease, or other use or disposition as herein authorized,

(iii) transfer at any time to itself or to its nominee the Collateral, or any part thereof, and receive the money, income proceeds, or benefits attributable or accruing thereto and hold the same as security for the Outstanding Obligations or apply same as herein provided, and

(iv) require the Obligor to assemble the Collateral and make it available to the Trustee at a place to be designated by the Trustee that is reasonably convenient to both parties.

The Master Trustee shall be fully subrogated to the rights of all vendor's lienholders and other lienholders whose indebtedness is paid in whole or in part from proceeds of Obligations.

The filing of a suit to foreclose any lien, mortgage, or security interest hereunder shall never be considered an election so as to preclude foreclosure under any power of sale herein contained after dismissal of such a suit.

Section 7.05. Incidents of Sale. Upon any sale of any of the Trust Estate, whether made under the power of sale hereby given or pursuant to judicial proceedings, to the extent permitted by law:

(a) any Holder or Holders of Obligations or the Master Trustee may bid for and purchase the property offered for sale, and upon compliance with the terms of sale may hold, retain, and possess and dispose of such property, without further accountability, and may, in paying the purchase money therefor, deliver any Outstanding Obligations or claims for interest thereon in lieu of cash to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon, and such Obligations, in case the amounts so payable thereon shall

be less than the amount due thereon, shall be returned to the Holders thereof after being appropriately stamped to show partial payment;

(b) the Master Trustee may make and deliver to the purchaser or purchasers a good and sufficient deed, bill of sale, and instrument of assignment and transfer of the property sold;

(c) the Master Trustee is hereby irrevocably appointed the true and lawful attorney of the Obligor, in its name and stead, to make all necessary deeds, bills of sale, and instruments of assignment and transfer of the property thus sold; and for that purpose it may execute all necessary deeds, bills of sale, and instruments of assignment and transfer, and may substitute one or more persons, firms, or corporation with like power, the Obligor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof; but if so requested by the Master Trustee or by any purchaser, the Obligor shall ratify and confirm any such sale or transfer by executing and delivering the Master Trustee or to such purchaser or purchasers all proper deeds, bills of sale, instruments of assignment and transfer, and release as may be designated in any such request;

(d) rights, titles, interests, claims, and demands whatsoever, either at law or in equity or otherwise, of the Obligated Group Members of, in, and to the property so sold shall be divested and such sale shall be a perpetual bar both at law and in equity against each of the Obligated Group Members and their respective successors and assigns, and against any and all persons claiming or who may claim the property sold or any part thereof by, through, or under the Obligated Group Members or their respective successors and assigns: and

(e) receipt of the Master Trustee or of the officer making such sale shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchaser money and such purchaser or purchasers and his or their assigns or personal representative shall not, after paying such purchase money and receiving such receipt, be obligated to see to the application of such purchase money, or be in anywise answerable for any loss, misapplication, or non-application thereof

Upon a sale of substantially all the Trust Estate, whether made under the power of sale hereby granted or pursuant to judicial proceedings, the Obligated Group Representative will permit, to the extent permitted by law, the purchaser thereof and its successors and assigns to take and use the name of the Obligor and to carry on business under such name or any variant thereof and to use and employ any and all other trade names, brands, and trade marks of the Obligor; and in such event, upon written request of such purchaser, its successors, or its assigns, the Obligor will, at the expense of the purchaser, change its name in such manner as to eliminate any similarity.

Section 7.06. Collection of Indebtedness and Suits for Enforcement by Master Trustee The Obligated Group Members covenant that if

(a) default is made in the payment of any installment of interest on any Obligation when such interest becomes due and payable, or

(b) default is made in the payment of the principal of (or premium, if any, on) any Obligation at the maturity thereof,

each Obligated Group Member will, upon demand of the Master Trustee, pay to it, for the benefit of the Holders of such Obligations, the whole amount then due and payable on such Obligations for principal (and premium, if any) and interest, with interest at the rate borne by the Obligations upon the overdue principal (and premium, if any); and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Master Trustee, its agents and counsel.

If the Obligated Group Members fail to pay any of the foregoing amounts forthwith upon demand, the Master Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Obligated Group Members or any other obligor upon the Obligations and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Obligated Group Members or any other obligor upon the Obligations, wherever situated.

If an Event of Default occurs and is continuing, the Master Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Obligations by such appropriate judicial proceedings as the Master Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 7.07. Master Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceeding relative to the Obligated Group Members or any other obligor upon the Obligations or the property of the Obligated Group Members or of such other obligor or their creditors, the Master Trustee (irrespective of whether the principal of the Obligations shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Master Trustee shall have made any demand on the Obligated Group Members for the payment of overdue principal, premium, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(i) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Obligations and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Master Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Master Trustee, its agents and counsel which shall be deemed an administrative claim) and of the Holders of Obligations allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator, custodian, or other similar official in any such judicial proceeding is hereby authorized by each Holder of Obligations to make such payments to the Master Trustee, and in the event that the Master Trustee shall consent to the making of such payments directly to the Holders of Obligations, to pay to the Master Trustee any amount due to it for the reasonable compensation, expenses, disbursements, and advances of the Master Trustee, its agents and counsel, and any other amounts due the Master Trustee under this Indenture which shall be deemed an administrative claim.

Nothing herein contained shall be deemed to authorize the Master Trustee to authorize or consent to or accept or adopt on behalf of any Holder of Obligations any plan of reorganization, arrangement, adjustment

or composition affecting the Obligations or the rights of any Holder thereof, or to authorize the Master Trustee to vote in respect of the claim of any Holder of Obligations in any such proceeding.

Section 7.08 Master Trustee May Enforce Claims Without Possession of Obligations. All rights of action and claims under this Indenture or the Obligations may be prosecuted and enforced by the Master Trustee without the possession of any of the Obligations or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Master Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements, and advances of the Master Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Obligations in respect of which such judgment has been recovered.

Section 7.09. Application of Money Collected. Any money collected by the Master Trustee pursuant to this Article and any proceeds of any sale (after deducting the costs and expenses of such sale, including a reasonable compensation to the Master Trustee, its agents and counsel, and any taxes, assessments, or liens prior to the lien of this Indenture, except any thereof subject to which such sale shall have been made, whether made under any power of sale herein granted or pursuant to judicial proceedings, together with, in the case of any entry or sale as otherwise provided herein, any other sums then held by the Master Trustee as part of the Trust Estate, shall be deposited in the Revenue Fund created by this Indenture, shall be applied in the order specified in Section 3.06, at the date or dates fixed by the Master Trustee and, in case of the distribution of such money on account of principal (or premium, if any), upon presentation of the Obligations and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid.

In the event the Master Trustee incurs expenses or renders services in any proceedings which result form the occurrence or continuance of an Event of Default under Section 7.01(c) or 7.01(d) hereof, or from the occurrence of any event which, by virtue of the passage of time, would become such Event of Default, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the United States Bankruptcy Code or equivalent law.

Section 7.10. Limitation on Suits. No Holder of any Obligation shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (a) such Holder has previously given written notice to the Master Trustee of a continuing Event of Default;
- (b) the Holders of not less than 25% in principal amount of the Outstanding Obligations shall have made written request to the Master Trustee to institute proceedings in respect of such Event of Default in its own name as Master Trustee hereunder;
- (c) such Holder or Holders have offered to the Master Trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Master Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (e) no direction inconsistent with such written request has been given to the Master Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Obligations;

it being understood and intended that no one or more Holders of Obligations shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Obligations, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders of Obligations.

Section 7.11. Unconditional Right of Holders of Obligations to Receive Principal, Premium and Interest Notwithstanding any other provision in this Indenture, the Holder of any Obligation shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and (subject to Section 2.07) interest on such Obligation on the respective Stated Maturities expressed in such Obligation (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 7.12 Restoration of Rights and Remedies. If the Master Trustee or any Holder of Obligations has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Master Trustee or to such Holder of Obligations, then and in every such case the Obligated Group Members, the Master Trustee and the Holders of Obligations shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Master Trustee and the Holders of Obligations shall continue as though no such proceeding had been instituted.

Section 7.13. Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Master Trustee or to the Holders of Obligations is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 7.14. Delay or Omission Not Waiver. No delay or omission of the Master Trustee or of any Holder of any Obligation to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Master Trustee or to the Holders of Obligations may be exercised from time to time, and as often as may be deemed expedient, by the Master Trustee or by the Holders of Obligations, as the case may be.

Section 7.15. Control by Holders of Obligations. The Holders of a majority in principal amount of the Outstanding Obligations shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Master Trustee or exercising any trust or power conferred on the Master Trustee, provided that

- (a) such direction shall not be in conflict with any rule of law or with this Indenture,
- (b) Master Trustee may take any other action deemed proper by the Master Trustee which is not inconsistent with such direction; and

(c) Master Trustee shall not be required to act on any direction given to it pursuant to this Section until indemnity as set forth in Section 8.03(e) hereof is provided to it by such Holders.

Section 7.16. Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the Outstanding Obligations may on behalf of the Holders of all the Obligations waive any past default hereunder and its consequences, except a default

(a) in the payment of the principal of (or premium, if any) or interest on any Obligation, or

(b) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Obligation affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 7.17. Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Obligation by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Master Trustee for any action taken or omitted by it as Master Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Master Trustee, to any suit instituted by any Holder of Obligations, or group of Holders of Obligations, holding in the aggregate more than 10% in principal amount of the Outstanding Obligations, or to any suit instituted by any Holder of Obligations for the enforcement of the payment of the principal of (or premium, if any) or interest on any Obligation on or after the respective Stated Maturities expressed in such Obligation (or, in the case of redemption, on or after the redemption date).

Section 7.18. Waiver of Stay or Extension Laws. Each Obligated Group Member covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and each Obligated Group Member (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay, or impede the execution of any power herein granted to the Master Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VIII

CONCERNING THE MASTER TRUSTEE

Section 8.01. Duties and Liabilities of Master Trustee. (a) Except during the continuance of an Event of Default, the Master Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Master Trustee.

(b) In case any Event of Default has occurred and is continuing, the Master Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a reasonably prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Master Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except, that:

(1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;

(2) the Master Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Master Trustee was negligent in ascertaining the pertinent facts;

(3) the Master Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in aggregate principal amount of Obligations then Outstanding relating to the time, method, and place of conducting any proceeding for any remedy available to the Master Trustee, or exercising any trust or power conferred upon the Master Trustee, under this Indenture;

(4) no provision of this Indenture shall require the Master Trustee to expend or risk its funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have grounds for believing that the repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it; and

(5) in the absence of bad faith on its part, the Master Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Master Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Master Trustee, the Master Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Master Trustee shall be subject to the provisions of this Section.

Section 8.02. Notice of Defaults. Within 60 days after the occurrence of any default hereunder of which the Master Trustee is deemed to have knowledge as provided in Section 8.03(h) hereof, the Master Trustee shall transmit by mail to all Registered Owners of Obligations, notice of such default, unless such default shall have been cured or waived; provided, however, that except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Obligations or in the payment of any sinking or purchase fund installment, the Master Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Master Trustee in good faith determine that the withholding of such notice is in the interest of the Holders of Obligations; and provided, further, that in the case of any default of the character specified in Section 7.01(b) no such notice to Holders of Obligations shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

Section 8.03. Certain Rights of Master Trustee. Except as otherwise provided in Section 8.01:

(a) Master Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture, coupon, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties and shall not be required to verify the accuracy of any information or calculations required to be included therein or attached thereto;

(b) Any request or direction of any Person mentioned herein shall be sufficiently evidenced by a Request of such Person; and any resolution of the Governing Body of any Person may be evidenced to the Master Trustee by a Board Resolution of such Person;

(c) Whenever in the administration of this Indenture the Master Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering, or omitting any action hereunder, the Master Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(d) The Master Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) The Master Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Obligations pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Master Trustee security or indemnity satisfactory to it against the costs, expenses, and liabilities which might be incurred by it in connection with such request or direction,

(f) The Master Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture, coupon, or other paper or document but the Master Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Master Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the

books, records, and premises of the Obligated Group Members and each other obligor on the Obligations, personally or by agent or attorney;

(g) The Master Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Master Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care hereunder;

(h) The Master Trustee shall not be deemed to have knowledge of any default (as defined in Section 8.02 hereof) hereunder, except an Event of Default under Section 7.01(a) hereof, unless it has actually received notice of such default in writing from any Obligated Group Member or the Holder of any Obligation, referencing the Obligations and describing such default;

(i) The permissive right of the Master Trustee to do things enumerated in this Indenture shall not be construed as a duty (except as otherwise herein provided). It shall not be the duty of the Master Trustee, except as herein provided, to see that any duties or obligations herein imposed upon any Obligated Group Member or any other Person are performed, and the Master Trustee shall not be liable or responsible for the failure of any Obligated Group Member or any other Person to perform any act required of it or them by this Indenture;

(j) The Master Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture;

(k) In the event the Master Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Obligations, each representing less than a majority in aggregate principal amount of the Obligations Outstanding, the Master Trustee, in its sole discretion, may determine what action, if any, shall be taken;

(l) The Master Trustee's immunities and protections from liability in connection with the performance of its duties under this Indenture shall extend to the Master Trustee's officers, directors, agents and employees. Such immunities and protections, together with the Master Trustee's right to compensation, shall survive the Master Trustee's resignation or removal and final payment of the Obligations; and

(i) Except for information provided by the Master Trustee concerning the Master Trustee, the Master Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Obligations, and the Master Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Obligations.

Section 8.04. Not Responsible For Recitals or Issuance of Obligations. The recitals contained herein and in the Obligations (other than the certificate of authentication on such Obligations) shall be taken as the statements of the Obligated Group Members, and the Master Trustee assumes no responsibility for their correctness. The Master Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Obligations. The Master Trustee shall not be accountable for the use or application by the Obligated Group Members of any of the Obligations or of the proceeds of such Obligations. The Master Trustee is not a party to, and is not responsible for, and makes no representation with respect to matters set forth in any

preliminary official statement, official statement, or similar document prepared and distributed in connection with the transactions contemplated in this Indenture.

Section 8.05. Master Trustee or Registrar May Own Obligations. The Master Trustee, any Paying Agent, registrar, or any other agent of the Obligated Group Members, in its individual or any other capacity, may become the owner or pledgee of Obligations and may otherwise deal with the Obligated Group Members with the same rights it would have if it were not Master Trustee, Paying Agent, Obligation registrar, or such other agent.

Section 8.06. Money to Be Held in Trust. All money received by the Master Trustee shall, until used or applied as herein provided (including payment of monies to the Obligated Group Representative under the last paragraph of Section 4.03), be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Master Trustee shall be under no liability for interest on any money received by it hereunder other than such interest as it expressly agrees to pay.

Section 8.07. Compensation and Expenses of Master Trustee. The Obligated Group Members agree

(a) to pay to the Master Trustee from time to time reasonable compensation for all services rendered by it hereunder;

(b) to reimburse the Master Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Master Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements, of its agents and counsel) except any such expense, disbursement, or advance as may arise from its negligence or bad faith; and

(c) each Obligated Group Member shall indemnify the Master Trustee for, and hold it harmless against any loss, liability or expense incurred by it without negligence or bad faith on its part, arising out of and in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

Section 8.08. Corporate Master Trustee Required; Eligibility. There shall at all times be a Master Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or State banking authority, and having its principal office in the State of Texas, or in New York, New York. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Master Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 8.09. Resignation and Removal; Appointment of Successor. (a) No resignation or removal of the Master Trustee and no appointment of a successor Master Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Master Trustee under Section 8.10.

(b) The Master Trustee may resign at any time by giving written notice thereof to the Obligated Group Representative. If an instrument of acceptance by a successor Master Trustee shall not have been delivered to the Master Trustee within 30 days after the giving of such notice of resignation, the resigning Master Trustee may petition any court of competent jurisdiction for the appointment of a successor Master Trustee.

(c) The Master Trustee may be removed (i) if no Event of Default has occurred and is continuing under this Indenture, then by act of the Obligated Group Representative delivered to the Master Trustee and (ii) at any time by act of the Holders of a majority in principal amount of the Outstanding Obligations delivered to the Master Trustee and to the Obligated Group Representative.

(d) If at any time:

(1) the Master Trustee shall cease to be eligible under Section 8.08 and shall fail to resign after written request therefor by the Obligated Group Representative or by any such Holder of Obligations, or

(2) the Master Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Master Trustee or of its property shall be appointed or any public officer shall take charge or control of the Master Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Obligated Group Representative by written request may remove the Master Trustee, or (B) subject to Section 7.17, any Holder of Obligations who has been a bona fide Holder of a Obligation for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Master Trustee and the appointment of successor Master Trustee.

(e) If the Master Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Master Trustee for any cause, the Obligated Group Representative, by an Obligated Group Representative Request, shall promptly appoint a successor Master Trustee. If, within 1 year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Master Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Obligations delivered to the Obligated Group Representative and the retiring Master Trustee, the successor Master Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Master Trustee and supersede the successor Master Trustee appointed by the Obligated Group Representative. If no successor Master Trustee shall have been so appointed by the Obligated Group Representative or the Holders of Obligations and accepted appointment in the manner hereinafter provided, any Holder of Obligations who has been a bona fide Holder of a Obligation for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Master Trustee.

(f) The Obligated Group Representative shall give notice of each resignation and each removal of the Master Trustee and each appointment of a successor Master Trustee by publishing notice of such event once in an Authorized Newspaper in each place of payment and by mailing written notice of such event by first-class mail, postage prepaid, to the registered Holders of Obligations at their addresses as shown in the Obligation Register. Each notice shall include the name and address of the principal corporate trust office of the successor Master Trustee.

Section 8.10. Acceptance of Appointment by Successor. Every successor Master Trustee appointed hereunder shall execute, acknowledge and deliver to the Obligated Group Representative and to the retiring Master Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Master Trustee shall become effective and such successor Master Trustee, without any further act, deed, or conveyance, shall become vested with all the rights, powers, trusts, and duties of the retiring Master Trustee; but, on request of the Obligated Group Representative or the successor Master Trustee, such retiring Master Trustee shall, upon payment of its charges and the amounts due to it hereunder, execute and deliver an instrument transferring to such successor Master Trustee all the rights, powers, and trusts of the retiring Trustee, and shall duly assign, transfer, and deliver to the successor Master Trustee all property and money held by such retiring Master Trustee hereunder. Upon request of any such successor Master Trustee, the Obligated Group Representative shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Master Trustee all such rights, powers, and trusts.

No successor Master Trustee shall accept its appointment unless at the time of such acceptance such successor Master Trustee shall be qualified and eligible under this Article. The indemnity provided for in Section 8.07(c) herein shall continue to be binding upon the Members of the Obligated Group for the benefit of the retiring or removed Master Trustee.

Section 8.11. Merger or Consolidation. Any corporation into which the Master Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Master Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Master Trustee, shall be the successor Master Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Obligations shall have been authenticated, but not delivered, by the Master Trustee then in office, any successor by merger or consolidation to such authenticating Master Trustee may adopt such authentication and deliver the Obligations so authenticated with the same effect as if such successor Master Trustee had itself authenticated such Obligations.

Section 8.12. Master Trustee as Related Bond Trustee. The Master Trustee may serve as Related Bond Trustee under any Related Bond Indenture so long as the Master Trustee is the Related Bond Trustee for all outstanding Related Bonds. If an entity other than the Master Trustee becomes a Related Bond Trustee, the Master Trustee hereby agrees to promptly resign from its role as Master Trustee or Related Bond Trustee, at its option, on its own motion and a successor Master Trustee or Related Bond Trustee, as appropriate, shall be appointed and qualified as set forth in Section 8.09 hereof or in the Related Bond Indenture.

ARTICLE IX

SUPPLEMENTS AND AMENDMENTS

Section 9.01. Supplements Without Consent of Holders of Obligations Without the consent of the Holders of any Obligations, each Obligated Group Member, when authorized by a Board Resolution, and the Master Trustee at any time may enter into one or more Supplements for any of the following purposes:

(a) to evidence the succession of another Person to an Obligated Group Member, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of an Obligated Group Member as permitted by this Indenture or to evidence additions to, or withdrawals from, membership in the Obligated Group in accordance with the provisions of Article VI hereof;

(b) to add to the covenants of the Obligated Group Members for the benefit of the Holders of Obligations, or to surrender any right or power herein conferred upon the Obligated Group Members, or to add to the Events of Default enumerated in Section 7.01;

(c) to cure any ambiguity or to correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Indenture that shall not be inconsistent with this Indenture, provided such action shall not adversely affect the interests of the Holders of Obligations;

(d) to modify or supplement this Indenture in such manner as may be necessary or appropriate to qualify this Indenture under the Trust Indenture Act of 1939 as then amended, or under any similar Federal or State statute or regulation, including provisions whereby the Master Trustee accepts such powers, duties, conditions and restrictions hereunder and the Obligated Group Members undertake such covenants, conditions or restrictions additional to those contained in this Indenture as would be necessary or appropriate so to qualify this Indenture; provided, however, that nothing herein contained shall be deemed to authorize inclusion in this Indenture or in any Supplements provisions referred to in Section 316(a)(2) of the said Trust Indenture Act or any corresponding provision provided for in any similar statute hereafter in effect;

(e) in connection with any other change herein that, in the judgment of an Independent Management Consultant, a copy of whose report shall be filed with the Master Trustee, (1) is in the best interest of the Obligated Group and (2) does not materially adversely affect the Holder of any Obligation; provided that no such change shall be made if within 30 days of its receipt of such Independent Management Consultant's report, the Master Trustee shall have obtained a report from another Independent Management Consultant indicating that in its opinion either clause (1) or clause (2) of this subsection (e) is not satisfied, provided further, that the Master Trustee shall be under no duty to retain another such Independent Management Consultant;

(f) to create and provide for the issuance of Obligations as permitted hereunder;

(g) to increase or maintain any credit rating assigned to any Series of Related Bonds by a Rating Agency so long as no Obligation issued hereunder shall be secured on a basis senior to other Obligations;

(h) to change Section 4.13 hereof to permit the financial statements required therein to more accurately reflect the financial position and operations of the Obligated Group; and

(i) to make any amendment to any provision of this Indenture or to any Supplemental Indenture which is only applicable to Obligations issued thereafter or which will not apply so long as any Obligation then Outstanding remains Outstanding.

Section 9.02. Supplements With Consent of Holders of Obligations. With the consent of the Holders of not less than a majority in principal amount of the Outstanding Obligations, by Act of said Holders delivered to the Obligated Group Representative and the Master Trustee, each Obligated Group Member, when authorized by a Board Resolution, and the Master Trustee may enter into Supplements for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of the Obligations under this Indenture; provided, however, that no such Supplement shall, without the consent of the Holder of each Outstanding Obligations affected thereby,

(a) change the Stated Maturity of the principal of, or any installment of interest on, any Obligations or any date for mandatory redemption thereof, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, or change any Place of Payment where, or the coin or currency in which, any Obligations or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the redemption date), or

(b) reduce the percentage in principal amount of the Outstanding Obligations, the consent of whose Holders is required for any such Supplement, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(c) modify any of the provisions of this Section or Section 7.16, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Obligation affected thereby.

It shall not be necessary for any Act of Holders of Obligation under this Section to approve the particular form of any proposed Supplement, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.03. Execution of Supplements. In executing, or accepting the additional trusts created by, any Supplement permitted by this Article or the modifications thereby of the trusts created by this Indenture the Master Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such Supplemental is authorized or permitted by this Indenture and that all conditions precedent thereto have been complied with. In connection with the execution and delivery of a Supplement pursuant to Section 9.01(c), the Master Trustee, in its discretion, may determine whether or not

in accordance with such Section the holders of the Bond Obligations would be affected by such Supplement, and any such determination shall be binding and conclusive on the Members of the Obligated Group, and the Holders of the Obligations. The Master Trustee may receive and be entitled to rely upon an Opinion of Counsel as conclusive evidence as to whether the Holders of the Obligations would be so affected by any such Supplement. The Master Trustee may, but shall not (except to the extent required in the case of a Supplement entered into under Section 9.01(d)) be obligated to, enter into any such Supplement which affects the Master Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.04. Effect of Supplement. Upon the execution of any Supplement under this Article, this Indenture shall, with respect to each series of Obligations to which such Supplement applies, be modified in accordance therewith, and such Supplement shall form a part of this Indenture for all purposes, and every Holder of Obligations thereafter or (except to the extent provided pursuant to Section 9.01(g)) theretofore authenticated and delivered hereunder shall be bound thereby.

Section 9.05. Obligations May Bear Notation of Changes. Obligations authenticated and delivered after the execution of any Supplement pursuant to this Article may bear a notation in form approved by the Master Trustee as to any matter provided for in such Supplement. If the Obligated Group Representative or the Master Trustee shall so determine, new Obligations so modified as to conform, in the opinion of the Master Trustee and the Obligated Group Representative, to any such Supplement may be prepared and executed by the applicable Obligated Group Member and authenticated and delivered by the Master Trustee in exchange for Obligations then Outstanding.

ARTICLE X

SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS

Section 10.01. Satisfaction and Discharge of Indenture If at any time the Obligated Group Members shall have paid or caused to be paid the principal of (and premium, if any) and interest on all the Obligations Outstanding hereunder, as and when the same shall have become due and payable, and if the Obligated Group Members shall also pay or provide for the payment of all other sums payable hereunder by each Obligated Group Member then this Indenture shall cease to be of further effect (except as to (1) rights of registration of transfer and exchange, (2) substitution of mutilated, defaced, or apparently destroyed, lost or stolen Obligations, (3) rights of Holders to receive payments of principal thereof (and premium, if any) and interest thereon, (4) the rights, remaining obligations, if any, and immunities of the Master Trustee hereunder and (5) the rights of the Holders as beneficiaries hereof with respect to the property so deposited with the Master Trustee payable to all or any of them) and the Master Trustee, on the Obligated Group Representative's Request accompanied by an Officer's Certificate and an Opinion of Counsel (both to the effect that all conditions precedent in this Indenture relating to the satisfaction and discharge of this Indenture have been satisfied) and at the cost and expense of the Obligated Group Representative, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Obligated Group Members to the Master Trustee under Section 8.07 and, if funds shall have been deposited with the Master Trustee pursuant to Section 10.02, the obligations of the Master Trustee under Section 10.03 and the last paragraph of Section 4.06 shall survive.

Section 10.02. Obligations Deemed Paid. Obligations of any series shall be deemed to have been paid if (1) in case said Obligations are to be redeemed on any date prior to their Stated Maturity, the Obligated Group Representative by Obligated Group Representative Request shall have given to the Master Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of such Obligations on said redemption date, (2) there shall have been deposited with the Master Trustee either money sufficient, or Defeasance Obligations the principal of and the interest on which will provide money sufficient without reinvestment (as established by an Officer's Certificate delivered to the Master Trustee accompanied by a report of an Independent Accountant setting forth the calculations upon which such Officer's Certificate is based), to pay when due the principal of (and premium, if any) and interest due and to become due on said Obligations on and prior to the redemption date or Stated Maturity thereof, as the case may be, and (3) in the event said Obligations are not by their terms subject to redemption within the next 45 days, the Obligated Group Representative by Obligated Group Representative Request shall have given the Master Trustee in form satisfactory to it irrevocable instructions to give a notice to the Holders of such Obligations that the deposit required by (2) above has been made with the Master Trustee and that said Obligations are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which money is to be available for the payment of the principal of (and premium, if any) and interest on said Obligations.

Section 10.03. Application of Trust Money. Subject to the last paragraph of Section 4.06, the Defeasance Obligations and money deposited with the Master Trustee pursuant to Section 10.02 and principal or interest payments on any such Defeasance Obligations shall be held in trust, shall not be sold or reinvested, and shall be applied by it, in accordance with the provisions of the Obligations and this Indenture, to the payment, either directly or through any Paying Agent (including the Obligated Group Representative acting as Paying Agent) as the Master Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money or Defeasance Obligations were deposited;

provided that, upon delivery to the Master Trustee of an Officer's Certificate (accompanied by the report of an Independent Accountant setting forth the calculations upon which such Officer's Certificate is based) establishing that the money and Defeasance Obligations on deposit following the taking of the proposed action will be sufficient for the purposes described in clause (2) of Section 10.02, any money received from principal or interest payments on Defeasance Obligations deposited with the Master Trustee or the proceeds of any sale of such Defeasance Obligations, if not then needed for such purpose, shall, upon Obligated Group Representative Request be reinvested, to the extent practicable, in other Defeasance Obligations or disposed of as requested by the Obligated Group Representative. For purposes of any calculation required by this Article, any Defeasance Obligation which is subject to redemption at the option of its issuer, the redemption date for which has not been irrevocably established as of the date of such calculation, shall be assumed to cease to bear interest at the earliest date on which such obligation may be redeemed at the option of the issuer and the principal of such obligation shall be assumed to be received at its stated maturity.

Section 10.04. Payment of Related Bonds. Notwithstanding any other provision of this Article X, no Obligation will be considered paid or deemed to have been paid unless the Related Bonds, if any, have been paid or deemed paid pursuant to the Related Bond Indenture.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.01. No Personal Liability. No recourse under this Indenture or any Obligations shall be had against any officer, director, agent or employee, as such, past, present, or future, of any Obligated Group Member, any Affiliate, the Master Trustee or of any successor corporation; it being expressly understood that this Indenture and the obligations incurred hereunder are solely obligations of the entities named herein as obligors, and that no personal liability whatever shall attach to such persons or any of them, under this Indenture or any Obligations; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants, or agreements contained in this Indenture or in any Obligations are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of such Obligations.

Section 11.02. Texas Contract. This Indenture and the Obligations shall be deemed to be contracts made under the laws of the State of Texas, and for all purposes shall be construed in accordance with the laws of said State applicable to contracts made and to be performed in said State.

Section 11.03. Legal Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall be a legal holiday or a day on which banking institutions in Houston, Texas are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed with the same force and effect as if done on the nominal date provided in this Indenture.

Section 11.04. Benefits of Provisions of Indenture and Obligations. Nothing in this Indenture or in the Obligations, expressed or implied, shall give or be construed to give any Person, other than the parties hereto and the Holders of such Obligations, any legal or equitable right, remedy, or claim under or in respect of this Indenture, or under any covenant, condition, and provision herein contained; all its covenants, conditions, and provisions being for the sole benefit of the parties hereto and of the Holders of such Obligations.

Section 11.05. Execution in Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed by persons thereunto duly authorized, as of the day and year first above written.

NORTHWEST SENIOR HOUSING CORPORATION,
as the initial Obligated Group Member

By: Charles B. Brewer
President

CHASE BANK OF TEXAS, NATIONAL
ASSOCIATION, as Master Trustee

By: _____
Authorized Signatory

Signature Page for Master Trust Indenture, Mortgage and Security Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed by persons thereunto duly authorized, as of the day and year first above written.

NORTHWEST SENIOR HOUSING CORPORATION,
as the initial Obligated Group Member

By: _____
President

CHASE BANK OF TEXAS, NATIONAL
ASSOCIATION, as Master Trustee

By:  _____
Authorized Signatory

Signature Page for Master Trust Indenture, Mortgage and Security Agreement

STATE OF TEXAS

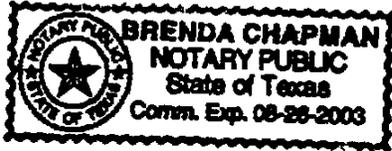
COUNTY OF DALLAS

This instrument was acknowledged before me on November 16, 1999 by Charles B. Brewer, who is President of Northwest Senior Housing Corporation, a Texas not for profit corporation, for and on behalf of said corporation.

Brenda Chapman
Notary Public

My Commission Expires: 8-26-2003

(SEAL)



Return to (Closer 04):
AMERICAN TITLE COMPANY
6029 Beltline Road, Suite 177
Dallas, TX 75240

**EXHIBIT "A"
TO
MASTER INDENTURE**

The Land

TRACT I

Being Lots 1 thru 7, Block 8/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

TRACT II

Being Lots 1 thru 8, Block 9/5464 of PRESTONVILLE, an Addition to the City of DALLAS, DALLAS County, Texas, according to the Plat thereof recorded in Volume 12, Page 83, Map Records, DALLAS County, Texas.

Provided, if abandonment is successful and the Owner acquires title to the alleyways and part of Beauregard Drive, both within the above described area, the portion thereof abandoned by the City of Dallas and acquired by Owner shall be a part of the Land subject to lease.

(TO BE REPLACED WHEN THE LAND IS REPLATTED)

Landlord's

Exhibit 13

for February 21-23, 2023 hearing

	<u>Year</u>	<u>Annual Rent</u>		
1	2000	2,000,000		
2	2001	2,060,000		
3	2002	2,121,800		
4	2003	2,185,454		
5	2004	2,251,018		
6	2005	2,318,549		
7	2006	2,388,105		
8	2007	2,459,748		
9	2008	2,533,540		
10	2009	2,609,546		
11	2010	2,687,832		
12	2011	2,768,467		
13	2012	2,851,521		
14	2013	2,937,067		
15	2014	3,025,179		
16	2015	3,115,934		
17	2016	3,209,412		
18	2017	3,305,694		
19	2018	3,404,865		
20	2019	3,507,011		
21	2020	3,612,221		
22	2021	3,720,588		
23	2022	3,832,206		
24	2023	3,947,172		
25	2024	4,065,587		
26	2025	4,187,555		
27	2026	4,313,182		
28	2027	4,442,577		
29	2028	4,575,854		
30	2029	4,713,130		
31	2030	4,854,524		
32	2031	5,000,160		
33	2032	5,150,165		
34	2033	5,304,670		
35	2034	5,463,810		
36	2035	5,627,724		
37	2036	5,796,556		
38	2037	5,970,453		
39	2038	6,149,567		
40	2039	6,334,054		
41	2040	6,524,076		
42	2041	6,719,798		
43	2042	6,921,392		
44	2043	7,129,034		
45	2044	7,342,905		
46	2045	7,563,192		
47	2046	7,790,088		
48	2047	8,023,791	3% Increase Annually	
49	2048	8,264,505		
50	2049	<u>8,512,440</u>	Discount Rate	8%
	Total	<u>225,593,718</u>	Net Present Value	<u>36,261,186</u>

Edgeacre Ground Lease

Landlord's

Exhibit 14

for February 21-23, 2023 hearing

PRELIMINARY OFFICIAL STATEMENT DATED OCTOBER 14, 1999

**NEW ISSUE
BOOK-ENTRY ONLY**

Ratings: Series 1999A Bonds: Unrated
 Series 1999B Bonds: Unrated
 Series 1999C Bonds: Unrated
 Series 1999D Bonds: S&P AA-/A-1 +
 Series 1999E Bonds: Unrated
 (See "RATINGS" herein)

In the opinion of McCall, Parkhurst & Horton L.L.P., Dallas, Texas, Bond Counsel, interest on the Series 1999 Bonds (other than the Taxable Series 1999E Bonds) is, except as set forth under "TAX MATTERS" herein, excludable from gross income for federal income taxation purposes under existing statutes, regulations, published rulings and judicial decisions and is not subject to the alternative minimum tax on individuals. Interest on the Taxable Series 1999E Bonds is includable in gross income for purposes of federal income taxation. See the caption "TAX MATTERS" herein for a description of Bond Counsel's opinion, including a discussion of the alternative minimum tax consequences.

\$118,080,000*

**EDGEMERE North Central Texas Health Facilities Development Corporation
 Retirement Facility Revenue Bonds
 (Northwest Senior Housing Corporation - Edgemere Project)**

	\$7,335,000*	\$5,000,000*		\$250,000*
	Series 1999B	Series 1999C		Taxable Series 1999E
	Extendable Rate	Extendable Rate		Extendable Rate
\$50,495,000*	Adjustable Securities.	Adjustable Securities.	\$55,000,000*	Adjustable Securities.
Series 1999A	(EXTRAS.)	(EXTRAS.)	Series 1999D	(EXTRAS.)
Fixed Rate Bonds			Variable Rate Demand	
			Bonds	

Dates, Interest Rates, Prices and Yields and Maturities as Shown on the Inside of the Front Cover

The Series 1999 Bonds are initially issuable in fully registered form without coupons and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Series 1999 Bonds. Purchases of beneficial interests in the Series 1999 Bonds will be made in book-entry only form, as more fully described under the caption "BOOK-ENTRY SYSTEM."

The proceeds of the sale of the Series 1999 Bonds will be used to provide funds for the construction and equipping of, and the start-up costs in connection with the construction of, a senior living community (the "Project") to be known as Edgemere, consisting of 256 independent living units, 84 assisted living units and 64 skilled nursing beds together with common areas, located in Dallas, Texas, to be owned and operated by NORTHWEST SENIOR HOUSING CORPORATION, a Texas nonprofit corporation (the "Obligor").

The Series 1999 Bonds are being issued pursuant to Chapter 221, Texas Health and Safety Code, as amended (the "Act"), in conformity with the provisions, restrictions and limitations thereof. Additionally, the Series 1999 Bonds, other than the Series 1999D Bonds, are being issued pursuant to the Indenture of Trust (the "Bond Indenture") described herein, between the North Central Texas Health Facilities Development Corporation (the "Issuer") and Chase Bank of Texas, National Association, as bond trustee (the "Bond Trustee"), and the Series 1999D Bonds are being issued pursuant to the Bond Trust Indenture described herein (the "Variable Rate Bond Indenture"), between the Issuer and the Bond Trustee.

The Series 1999 Bonds and the interest payable thereon are limited obligations of the Issuer and are payable solely from and secured exclusively by the funds pledged thereto under the Bond Indenture and the Variable Rate Bond Indenture, as appropriate, including the payments to be made by the Obligor pursuant to the related Loan Agreement, as described herein.

The Series 1999D Bonds, and only the Series 1999D Bonds, will be additionally secured by an irrevocable letter of credit (the "Series 1999D Credit Facility") issued by LaSalle Bank National Association (the "Series 1999D Credit Provider") in a stated amount equal to the principal amount of the Series 1999D Bonds plus 54 days' interest thereon at the rate of 10% per annum. See "THE SERIES 1999D CREDIT PROVIDER" herein. **The Series 1999D Credit Facility does not secure any other Series of the Series 1999 Bonds.**

An investment in the Series 1999 Bonds involves a certain degree of risk related to, among other things, the nature of the Obligor's business, the regulatory environment, and the provisions of the principal documents. A prospective Series 1999 Bondholder is advised to read "SECURITY FOR THE SERIES 1999 BONDS" and "BONDOWNERS' RISKS" herein for a discussion of certain risk factors which should be considered in connection with an investment in the Series 1999 Bonds.

NEITHER THE STATE OF TEXAS NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TEXAS, INCLUDING DALLAS COUNTY, WILL BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE SERIES 1999 BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, DALLAS COUNTY, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 1999 BONDS. THE ISSUER HAS NO TAXING POWER.

The Series 1999 Bonds are being offered, subject to prior sale and withdrawal of such offer without notice, when, as and if issued by the Issuer and accepted by the Underwriters subject to the approving opinions of McCall Parkhurst & Horton L.L.P., Dallas, Texas, Bond Counsel, and the Attorney General of the State of Texas. Certain legal matters will be passed upon for the Issuer by its counsel, Law Offices of Robert Luna, P.C., for the Obligor by its counsel, Thompson & Knight, L.L.P., Dallas, Texas, for the Series 1999D Credit Provider by its counsel, Gardner Carton & Douglas, Chicago, Illinois, and for the Underwriters by their counsel, Vinson & Elkins L.L.P. It is expected that the Series 1999 Bonds will be available for delivery via DTC in New York, New York, against payment therefor on or about November 17, 1999.

B.C. ZIEGLER AND COMPANY

THE CHAPMAN COMPANY

The date of this Official Statement is _____, 1999.

* Preliminary, subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of any jurisdiction.

MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES AND PRICES OR YIELDS
\$50,495,000* Series 1999A

Dated: November 15, 1999

Due: November 15, as shown below

\$ _____ * _____ % Term Bonds due November 15, 20__ -- Price _____ %
 \$ _____ * _____ % Term Bonds due November 15, 20__ -- Price _____ %
 \$ _____ * _____ % Term Bonds due November 15, 2029 -- Price _____ %

\$7,335,000* Series 1999B
Extendable Rate Adjustable Securities. (EXTRAS.)

Dated: November 15, 1999

Due: November 15, as shown below

The Series 1999B Bonds initially will bear interest at the rate set forth below until the Initial Rate Change Date set forth below.

<u>Amount</u>	<u>Due November 15,</u>	<u>Initial Interest Rate</u>	<u>Price</u>	<u>Initial Rate Change Date</u>
\$7,335,000*	2029			

From and after the Initial Rate Change Date and each subsequent Rate Change Date thereafter, the Series 1999B Bonds will bear interest at a rate and for a period determined in accordance with the Bond Indenture. On each Rate Change Date, the holders of outstanding Series 1999B Bonds may tender such Series 1999B Bonds to the Trustee for purchase at a price equal to the principal amount thereof, subject to the availability of sufficient moneys therefor. The maximum rate payable on the Series 1999B Bonds will be 15%.

\$5,000,000* Series 1999C
Extendable Rate Adjustable Securities. (EXTRAS.)

Dated: November 15, 1999

Due: November 15, as shown below

The Series 1999C Bonds initially will bear interest at the rate set forth below until the Initial Rate Change Date set forth below.

<u>Amount</u>	<u>Due November 15,</u>	<u>Initial Interest Rate</u>	<u>Price</u>	<u>Initial Rate Change Date</u>
\$5,000,000*	2029			

From and after the Initial Rate Change Date and each subsequent Rate Change Date thereafter, the Series 1999C Bonds will bear interest at a rate and for a period determined in accordance with the Bond Indenture. On each Rate Change Date, the holders of outstanding Series 1999C Bonds may tender such Series 1999C Bonds to the Trustee for purchase at a price equal to the principal amount thereof, subject to the availability of sufficient moneys therefor. The maximum rate payable on the Series 1999C Bonds will be 15%.

\$55,000,000* Series 1999D
Variable Rate Demand Bonds

\$ _____ * Term Bonds due November 15, 2029—Price 100%

Dated: Date of Issuance

The Series 1999D Bonds initially will bear interest at the initial Variable Rate determined in accordance with the Variable Rate Bond Indenture.

\$250,000* Taxable Series 1999E
Extendable Rate Adjustable Securities. (EXTRAS.)

Dated: November 15, 1999

Due: November 15, as shown below

The Series 1999E Bonds initially will bear interest at the rate set forth below until the Initial Rate Change Date set forth below.

<u>Amount</u>	<u>Due November 15,</u>	<u>Initial Interest Rate</u>	<u>Price</u>	<u>Initial Rate Change Date</u>
\$250,000*				

From and after the Initial Rate Change Date and each subsequent Rate Change Date thereafter, the Series 1999E Bonds will bear interest at a rate and for a period determined in accordance with the Bond Indenture. On each Rate Change Date, the holders of outstanding Series 1999E Bonds may tender such Series 1999E Bonds to the Trustee for purchase at a price equal to the principal amount thereof, subject to the availability of sufficient moneys therefor. The maximum rate payable on the Series 1999E Bonds will be 15%.

The Series 1999 Bonds will be issued in authorized denominations of (1) \$5,000 or any integral multiple of \$1,000 in excess thereof, in the case of the Series 1999A Bonds, the Series 1999B, Series 1999C and Series 1999E Bonds; and (2) \$100,000 or any integral multiple thereof, in the case of the Series 1999D Bonds.

* Preliminary, subject to change.
 . Servicemark of B.C. Ziegler and Company.



E D G E M E R E

Artist's renderings of Edgemere, a Continuing Care Retirement Community to be located in Dallas, Texas



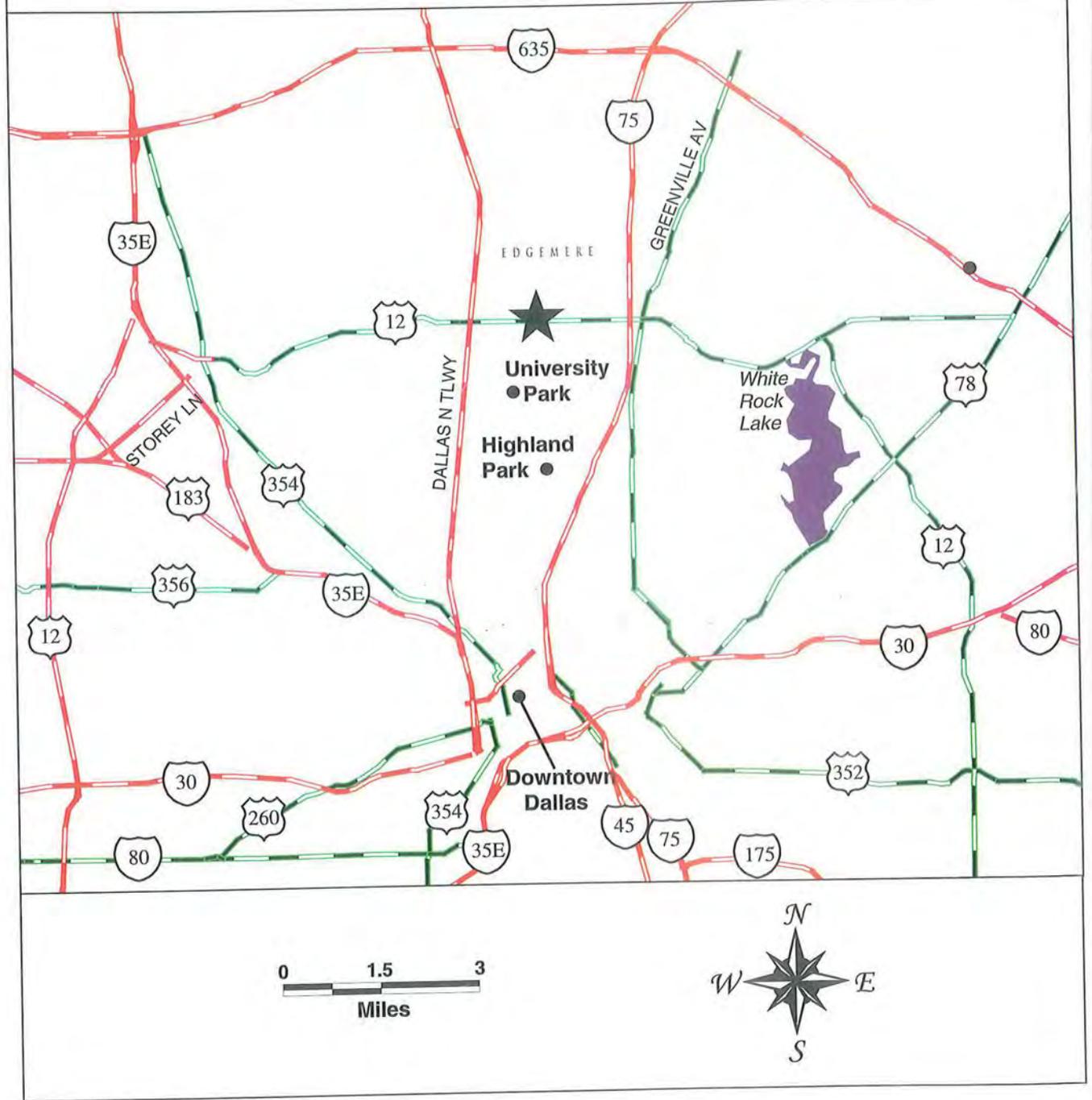


Architect's Model of Edgemere



Site Plan for Edgemere

Edgemere Vicinity Map



SUMMARY STATEMENT

*The information set forth in this Summary Statement is subject in all respects to more complete information set forth elsewhere in this Official Statement, which should be read in its entirety. The offering of the Series 1999 Bonds to potential investors is made only by means of this entire Official Statement. No person is authorized to detach this Summary Statement from this Official Statement or otherwise to use it without this entire Official Statement. For the definitions of certain words and terms used in this Summary Statement, see **APPENDIX C—“DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS.”***

The Issuer and the Series 1999 Bonds

The North Central Texas Health Facilities Development Corporation (the “*Issuer*”), a nonprofit corporation organized by the Commissioners Court of Dallas County, Texas (the “*County*”), pursuant to Chapter 221, Texas Health and Safety Code, inclusive (the “*Act*”), is authorized by the Act to sell and deliver its bonds for the purpose of financing the cost of qualifying health facilities. The Issuer proposes to issue the Series 1999 Bonds pursuant to the Act and, in the case of the Series 1999 Bonds other than the Series 1999D Bonds, an Indenture of Trust, dated as of November 15, 1999 (the “*Bond Indenture*”), between the Issuer and Chase Bank of Texas, National Association, as trustee (the “*Bond Trustee*”), and in the case of the Series 1999D Bonds, a Bond Trust Indenture, also dated November 15, 1999 (the “*Variable Rate Bond Indenture*”), between the Issuer and the Bond Trustee.

The proceeds of the Series 1999 Bonds, together with funds provided from Entrance Fees and earnings thereon, will be applied to pay the costs of the Project, to pay interest on the Series 1999 Bonds for the time periods described below, to fund a separate debt service reserve account relating to each series of the Series 1999 Bonds and to pay certain costs of issuance. See “**THE CORPORATION AND THE PROJECT—The Project**” and “**ESTIMATED SOURCES AND USES OF FUNDS**” herein.

NEITHER THE STATE OF TEXAS NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TEXAS, INCLUDING THE COUNTY, WILL BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE SERIES 1999 BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, THE COUNTY, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 1999 BONDS. THE ISSUER HAS NO TAXING POWER.

The Obligor

The Obligor is a Texas nonprofit corporation formed in 1998. The Obligor has received a determination from the Internal Revenue Service (the “*IRS*”) that it is exempt from federal income taxation as provided in Section 501(a) of the Internal Revenue Code of 1986, as amended (the “*Code*”), because it is an organization described in Section 501(c)(3) of the Code.

A Texas business corporation, unrelated to the Obligor, owns the land on which the Community will be constructed, and will lease the land to the Obligor pursuant to a long-term ground lease agreement. For more information, see **APPENDIX A**.

The Project

The Project, to be known as “*Edgemere*,” is the construction and equipping of, and the start-up costs in connection with the construction of, a senior living community consisting of 256 independent living units, 84 assisted living units, and 64 skilled nursing beds, together with common areas on approximately 16.25 acres of land in Dallas, Texas. The senior living community is referred to herein as the “*Community*.” Residents of the property on which the Community is to be constructed (the “*Property*”) are expected to begin vacating the Property immediately after delivery of the Series 1999 Bonds. Demolition of current structures existing on the Property is expected to begin in January of 2000, and construction of the Community is expected to commence in March 2000. The first independent living units in the Community are scheduled to be available for occupancy beginning in September of 2001, and the first assisted living units and skilled nursing beds are expected to be available for occupancy beginning in November of 2001. See **APPENDIX A—“THE COMMUNITY”** herein for more information and see “**BONDOWNERS’**

RISKS—Construction-Related Risks” for a discussion of factors potentially affecting timing and completion of the Project. As of October 12, 1999, prospective residents have paid 5% Entrance Fee deposits and have executed Reservation Agreements with respect to 173 Independent Living Units. These reservations represent 68% of the 256 total Independent Living Units.

Development of the Project and Management of the Community

The Obligor entered into a development agreement (the “*Development Agreement*”) with Greystone Development Services V Joint Venture (the “*Developer*”) dated February 27, 1998, to provide certain development services to the Obligor. In addition, the Obligor entered into a management agreement with Greystone Management Services Company, LLC (the “*Manager*”) dated February 27, 1998 (the “*Management Agreement*”) to provide certain management-related services to the Obligor. The Developer is the developer of the Project pursuant to the Development Agreement and the Manager will be the day-to-day manager of the Community pursuant to the Management Agreement. The Developer is a Texas joint venture composed of GCI Edgemere, Ltd., a Texas limited partnership (the “*Investment Limited Partnership*”) and Greystone Development Company, LLC (“*Greystone Development*”), a Texas partner of the Investment Limited Partnership. See **APPENDIX A** herein for more information.

Security and Sources of Payment for the Series 1999 Bonds

General. Each series of Series 1999 Bonds, other than the Series 1999D Bonds, will be issued under and will be equally and ratably secured under the Bond Indenture, pursuant to which the Issuer will assign and pledge to the Bond Trustee, (1) the hereinafter-described Series 1999 Notes (other than the Series 1999D Note), (2) certain rights of the Issuer under the hereinafter-described Loan Agreement, (3) the funds and accounts (excluding the Extendables Purchase Fund and the Rebate Fund), including the money and investments in them, which the Bond Trustee holds under the terms of the Bond Indenture, and (4) such other property as may from time to time be pledged to the Bond Trustee as additional security for such Series 1999 Bonds or which may come into possession of the Bond Trustee pursuant to the terms of the Loan Agreement or the Series 1999 Notes. The Series 1999D Bonds will be issued under and will be equally and ratably secured under the Variable Rate Bond Indenture, pursuant to which the Issuer will assign and pledge to the Bond Trustee, (1) certain rights of the Issuer under the hereinafter-described Loan Agreement relating to only the Series 1999D Bonds (the “*Variable Rate Loan Agreement*”) (2) the hereinafter-described Series 1999D Note, (3) the funds and accounts (excluding the Rebate Fund and the Purchase Fund), including the money and investments in them, that the Bond Trustee holds under the terms of the Variable Rate Bond Indenture, and (4) such other property as may from time to time be pledged to the Bond Trustee as additional security for the Series 1999D Bonds or which may come into possession of the Bond Trustee pursuant to the terms of the Variable Rate Loan Agreement or the Series 1999D Note.

Pursuant to the Loan Agreement and the Variable Rate Loan Agreement, each dated as of November 15, 1999, and each between the Issuer and the Obligor (together, the “*Loan Agreements*”), the Obligor has agreed to make loan payments sufficient, among other things, to pay in full when due all principal and purchase price of, premium, if any, and interest on the Series 1999 Bonds and the administrative fees of the Bond Trustee, and, to make payments as required to restore any deficiencies in the separate accounts of the debt service reserve funds with respect to the Series 1999 Bonds. See “**SECURITY FOR THE SERIES 1999 BONDS—The Loan Agreements.**” See also “**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Loan Agreement**” and “**—The Variable Rate Loan Agreement**” in **APPENDIX C**.

The obligation of the Obligor to repay the loans from the Issuer will be evidenced by promissory notes of the Obligor, issued under and entitled to the benefit and security of a Master Trust Indenture, Mortgage and Security Agreement (the “*Master Indenture*”), dated as of November 15, 1999, between the Obligor and Chase Bank of Texas, National Association, as master trustee (the “*Master Trustee*”). See “**SECURITY FOR THE SERIES 1999 BONDS—The Master Indenture.**” See also “**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Master Indenture**” in **APPENDIX C**. Each Series 1999 Note (other than the Series 1999F Note) will constitute an unconditional promise by each Obligated Group Member to pay amounts sufficient to pay principal of (whether at maturity, by acceleration or call for redemption) and premium, if any, and interest on the Series 1999 Bonds and will be secured on a parity basis with any other Obligations hereafter issued under the Master Indenture, by a lien on the Mortgaged Properties granted to the Master Trustee pursuant to the Master Indenture and a security interest in the equipment of the Obligated Group.

In addition, LaSalle Bank National Association (the "*Series 1999D Credit Provider*") will hold a note (the "*Series 1999F Note*") issued under and entitled to the benefit of the Master Indenture. The Series 1999F Note will be on a parity with all other Series 1999 Notes and is being issued for the purpose of collateralizing the obligations of the Obligor under the Reimbursement Agreement (as described herein) in connection with the issuance and sale of the Series 1999D Bonds.

Credit Facility for the Series 1999D Bonds. Concurrently with the delivery of the Series 1999D Bonds, the Obligor will cause to be delivered to the Bond Trustee a transferable irrevocable direct-pay letter of credit (the "*Series 1999D Credit Facility*") of the Series 1999D Credit Provider, which will expire on November 15, 2004 (approximately 5 years from the date of issuance) unless (i) the stated termination date is extended, or (ii) the Series 1999D Credit Facility is terminated earlier upon the occurrence of certain events as described herein and in the Series 1999D Credit Facility. Under the Series 1999D Credit Facility, the Bond Trustee is permitted to draw thereon to pay (i) the principal of the Series 1999D Bonds (other than Series 1999D Bonds operating in a Fixed Rate Mode, Pledged Bonds and Obligor Bonds) when due whether at stated maturity, redemption or acceleration, (ii) the portion of the principal amount of Series 1999D Bonds tendered for optional or mandatory purchase and not remarketed, and (iii) interest accrued on the Series 1999D Bonds, calculated at a maximum rate of 10% per annum on the number of days required by Standard & Poor's to rate the Series 1999D Bonds. See "**THE SERIES 1999D CREDIT PROVIDER**" and "**THE SERIES 1999D CREDIT FACILITY.**"

Under certain circumstances the Series 1999D Credit Facility may be replaced by an Alternate Credit Facility. No Alternate Credit Facility may have a stated expiration date less than 15 days after the immediately preceding Interest Payment Date or less than 364 days from the date of issuance thereof, unless the final maturity of the Series 1999D Bonds will occur sooner, in which case the stated expiration date of such Alternate Credit Facility will be not earlier than the final maturity of the Series 1999D Bonds. See "**ALTERNATE CREDIT FACILITIES**" herein. For any Series 1999D Bonds other than 1999D Bonds bearing interest at a Fixed Rate, if an Alternate Credit Facility to replace the Series 1999D Credit Facility is not delivered at least 45 days prior to the stated termination date of the Series 1999D Credit Facility, such Series 1999D Bonds will be called for mandatory redemption at par, without premium, on the last Interest Payment Date preceding such stated termination date. In addition, after receiving notice of the occurrence of an Event of Default under the Letter of Credit Agreement, which notice directs the Bond Trustee to cause an acceleration of the Series 1999D Bonds, the Bond Trustee will accelerate the Series 1999D Bonds and draw on the Series 1999D Credit Facility to pay the principal of and accrued interest on the Series 1999D Bonds. See "**THE SERIES 1999D CREDIT PROVIDER,**" "**THE SERIES 1999D CREDIT FACILITY**" and "**THE SERIES 1999D BONDS—Redemption**" herein.

Pledge of Receipts. In order to secure the payment of the principal of, premium, if any, and interest on the Series 1999 Notes, the Obligated Group Members have pledged, assigned, confirmed and granted a security interest unto the Master Trustee in the Receipts of the Obligated Group Members as well as all moneys and securities from time to time held by the Master Trustee under the terms of the Master Indenture.

Debt Service Reserve Funds. As additional security for the Series 1999A Bonds, the Series 1999B Bonds and the Series 1999C Bonds, separate accounts will be established within the Reserve Fund pursuant to the Bond Indenture and will be funded from the proceeds of the related series of Series 1999 Bonds. The Reserve Account for the Series 1999A Bonds is required to be funded in an amount equal to the Maximum Annual Debt Service Requirement on the Series 1999A Bonds outstanding. The Reserve Account for the Series 1999B Bonds is required to be funded in an amount equal to one year's interest on the Series 1999B Bonds calculated at the then current interest rate on the Series 1999B Bonds. The Reserve Account for the Series 1999C Bonds is required to be funded in an amount equal to one year's interest on the Series 1999C Bonds calculated at the then current interest rate on the Series 1999C Bonds. For purposes of calculating debt service on the Series 1999B Bonds and the Series 1999C Bonds, an interest rate of 5.75% per annum is assumed. See "**SECURITY FOR THE SERIES 1999 BONDS—Reserve Fund**" and **APPENDIX C—DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Bond Indenture.**"

As additional security for the Series 1999D Bonds, the Variable Rate Bond Indenture establishes a Debt Service Reserve Fund that is required to be funded in an amount equal to one year's interest on the Series 1999D Bonds outstanding. For purposes of calculating debt service on the Series 1999D Bonds, an interest rate of 4.5% per annum is assumed. See "**SECURITY FOR THE SERIES 1999 BONDS—Series**

(iii)

1999D Reserve Fund” and APPENDIX C—“DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Variable Rate Bond Indenture.”

Operating and Leasehold Reserve Accounts of the Special Reserve Fund

Pursuant to the Master Indenture, the Obligor is required to deposit moneys from the Entrance Fees Fund into an Operating Reserve Account of the Special Reserve Fund in an amount equal to \$4,000,000 and a Leasehold Reserve Account of the Special Reserve Fund in an amount equal to at least \$1,200,000. Moneys on deposit in the Operating Reserve Account and the Leasehold Reserve Account are required to be used to pay construction costs, operating expenses (including Ground Lease Rentals), costs of needed repairs, costs of capital improvements required by law or regulations, judgments against the Obligor or indebtedness of the Obligor, in each case, to the extent that other funds are not available for such purposes. The Operating Reserve Account and the Leasehold Reserve Account may be terminated and the balances may be disbursed to the Obligor if no Event of Default is then in effect, all Series 1999 Bonds (other than the Series 1999A Bonds) have been paid at maturity, redeemed or irrevocably called for redemption, the Obligor has complied with the rate covenant for the preceding two years and the Obligor is in compliance with the operating ratio and the liquidity ratio covenants contained in the Master Indenture. See **“DEFINITION OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Master Indenture,” “—Operating Account” and “—Leasehold Account.”**

Certain Covenants of the Obligor

Debt Service Coverage Ratio. The Master Indenture requires each Obligated Group Member to charge and collect fees and charges in each Fiscal Year that will be at least sufficient to produce in (i) the earlier of (A) the Fiscal Year that follows the first Fiscal Year in which Stable Occupancy has been attained, or (B) the Fiscal Year ending December 31, 2005, a Debt Service Coverage Ratio as of the last day of such Fiscal Year that is not less than 1.10, and (ii) each Fiscal Year thereafter, a Debt Service Coverage Ratio as of the last day of such Fiscal Year that is not less than (A) 1.20 or (B) if the Liquidity Ratio for such Fiscal Year is at least .40, 1.15. The Master Indenture permits, under certain circumstances, the Debt Service Requirements for Long-Term Indebtedness issued to finance Capital Improvements to be excluded from the calculation of the Coverage Ratio. See **“DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—Master Indenture—Rate Covenant”** in **APPENDIX C**. See also that section for information about actions to be taken if the Obligor fails to meet these Debt Service Coverage Ratio Requirements.

Liquidity Ratio Covenant. The Obligor covenants in the Master Indenture that it will maintain a Liquidity Ratio as of the last day of each Fiscal Quarter of at least (i) .30 commencing with the earlier of: (A) the first full Fiscal Quarter following the Fiscal Quarter in which Stable Occupancy has occurred, all of the Series 1999D Bonds have been redeemed and all Bank Obligations have been paid in full, or (B) December 31, 2005, and (ii) .35 commencing with the first full Fiscal Quarter of the second full Fiscal Year following redemption of all the Series 1999D Bonds and payment in full of all Bank Obligations. The **“Liquidity Ratio,”** as of any date of calculation, is the ratio of (y) unrestricted cash and investments (exclusive of all moneys in any Debt Service Fund, but including all moneys held in all separate accounts of any Debt Service Reserve Fund, the Special Reserve Fund and the Entrance Fees Fund), to (z) the aggregate principal amount of Long-Term Indebtedness Outstanding, excluding the Series 1999D Bonds but including the other Series 1999 Bonds, on such date, but excluding deferred management fees, if any, and the then-current portion of the Debt Service Requirements of Long Term Indebtedness. For more information as well as remedial actions required if the Liquidity Ratio is not maintained, see **“DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—Master Indenture—Liquidity Ratio Covenant”** in **APPENDIX C** herein.

Marketing and Occupancy Targets. The Obligor covenants in the Master Indenture that commencing on December 31, 1999 and continuing for each fiscal quarter (a **“Marketing Quarter”**) thereafter, it will market the Independent Living Units in the Community, execute Residency Agreements and collect deposits of at least five percent (5%) of the Entrance Fees payable on execution of the Residency Agreements, so that the percentage of the total number of Independent Living Units in the Community constituting Reserved Units is at least equal to the **“Marketing Targets”** set forth herein under the caption **“SECURITY FOR THE SERIES 1999 BONDS—The Master Indenture—Marketing Targets for Independent Living Units.”** For more information as well as remedial actions required if the Marketing Targets are not maintained, see such section and **“—Failure to Meet Marketing Targets; Consultant.”**

The Obligor further covenants in the Master Indenture that during the period commencing with the first full Fiscal Quarter following the issuance of the Certificate of Occupancy for any of the Independent Living Units in the Community and ending on the last day of the first Fiscal Year in which Stable Occupancy has occurred, it will market the Independent Living Units in the Community and execute Residency Agreements so that the number and percentage of the total number of Independent Living Units in the Community constituting Occupied Units is at least equal to the "*Occupancy Targets*" set forth herein under the caption "**SECURITY FOR THE SERIES 1999 BONDS—The Master Indenture—Occupancy Targets for Independent Living Units.**" For more information as well as remedial actions required if the Occupancy Targets are not maintained, see such section and "**—Failure to Meet Occupancy Targets; Consultant.**"

Operating Ratio Covenant. The Obligor covenants that during the period commencing with the first full Fiscal Quarter following issuance of the Certificate of Occupancy and each full Fiscal Quarter thereafter (an "*Occupancy Quarter*") and ending on the last day of the first Fiscal Year in which Stable Occupancy has occurred, for any Occupancy Quarter in which the percentage of the total number of Independent Living Units in the Community constituting Occupied Units is not at least equal to the "*Feasibility Study Occupancy Target*" as shown herein under "**SECURITY FOR THE SERIES 1999 BONDS—The Master Indenture—Operating Ratio Covenant,**" it will maintain the Operating Ratio for such Occupancy Quarter as shown herein under "**SECURITY FOR THE SERIES 1999 BONDS—The Master Indenture—Operating Ratio Covenant.**" For more information as well as remedial actions required if the Operating Ratios are not maintained, see such section and "**—Failure to Maintain Operating Ratio.**"

Trade Payables Covenant. Commencing with the first full Fiscal Quarter following receipt of the Certificate of Occupancy for the Community, each Obligated Group Member covenants that it will at all times maintain at least 90% of its undisputed trade accounts payable at less than 60 days and that not more than \$50,000 of its undisputed trade accounts payable will be payable at more than 90 days, provided that any trade accounts payable that is the subject of a bona fide dispute, the dispute of which is being diligently pursued by the Obligor, will be excluded from such computation. Compliance will be tested (i) quarterly based on unaudited financial statements for each of the Fiscal Quarters, and (ii) annually based on the annual audited financial statements. See "**SECURITY FOR THE SERIES 1999 BONDS—The Master Indenture—Trade Payables Covenant**" herein.

The Financial Feasibility Study

KPMG LLP, independent certified public accountants, has prepared a Financial Feasibility Study, dated October 13, 1999 (the "*Feasibility Study*") which is included as **APPENDIX B—“Financial Feasibility Study”** hereto. The Feasibility Study includes management's financial forecast of the Obligor for the three months and five (5) years ending December 31, 2004. As stated in the Financial Feasibility Study, there will usually be differences between the forecasted and actual results because events and circumstances frequently do not occur as expected, and those differences may be material. The Financial Feasibility Study should be read in its entirety, including all notes and assumptions set forth therein. See **APPENDIX B—“Financial Feasibility Study”** hereto.

Financial Information of the Obligor

The tables below reflect the debt service coverage ratio and other cash ratios for the year ending December 31, 2005. The tables below have been extracted from the section titled "Supplementary Disclosure—Period Beyond the Forecast" that is included in the Financial Feasibility Study in APPENDIX B hereto. As stated in the Financial Feasibility Study, the financial data relating to year 2005 does not constitute a financial forecast, and has been included for analysis purposes only in order for users to make a meaningful analysis of the forecasted results. The information relating to 2005 has not been examined by KPMG LLP, and there is no assurance that the events and circumstances relating to the year 2005 information will occur. For purposes of calculating debt service requirements in the table below, the Series 1999 Bonds were assumed to be issued in the principal amount of \$118,080,000 with an average annual interest rate of 7.43% on the Series 1999A Bonds, an average annual interest rate of 5.75% on the Series 1999B Bonds and the Series 1999C Bonds, an average annual interest rate of 4.50% on the Series 1999D Bonds (after an anticipated interest rate swap transaction) and an average annual interest rate of 8.00% on the Series 1999E Bonds. All amounts in the tables, except the ratios, are expressed in thousands of dollars.

The tables below should be considered in conjunction with the entire Financial Feasibility Study, included herein as APPENDIX B, to understand the Obligor's financial requirements and the assumptions upon which the Financial Feasibility Study is based. In particular, the section titled "Supplementary Disclosure—Period Beyond the Forecast" that is included in the Financial Feasibility Study in APPENDIX B relates to the extracted tables above. As stated in the Financial Feasibility Study, the financial data relating to year 2005 does not constitute a financial forecast, and has been included for analysis purposes only in order for users to make a meaningful analysis of the forecasted results. The achievement of any financial forecast is dependent upon the future events, the occurrence of which cannot be assured. Therefore, the actual results achieved may vary from the forecast. Such variation could be material. See the Financial Feasibility Study in APPENDIX B hereto.

SCHEDULE OF DEBT SERVICE COVERAGE, DAYS CASH ON HAND AND RESERVE RATIO
(In Thousands of Dollars)

Debt Service Coverage Ratio

For the Year Ending December 31	2005
(in thousands of dollars, except ratios)	
Change in unrestricted net assets (deficit)	\$1,393
Deduct:	
Entrance fee amortization	2,953
Add:	
Depreciation	2,460
Amortization	526
Interest expense	3,640
Entrance fees and deposits received, net of refunds ⁽¹⁾	3,199
Funds available for debt service ⁽¹⁾	8,265
Maximum annual debt service	4,346
Maximum annual debt service coverage ratio ⁽¹⁾	1.90x

⁽¹⁾ Pursuant to the Residency Agreement, refunds of entrance fees upon death or withdrawal of a resident are subject to reoccupancy of the resident's vacated independent living unit. During the initial years of operations, residents will transfer to either assisted living or nursing, generating vacancies of independent living units, which in turn generate new entrance fees upon their resale, with no associated refund due to the resident that transferred until their death or withdrawal. The Actuary (as described in the Financial Feasibility Study) has calculated a refund equal to \$2,472,000 in 2005 based upon these assumptions. If Management had paid a refund upon the vacating of a unit (as opposed to death or withdrawal of the resident), refunds in 2005 would approximate \$4,671,000 and the net entrance fees received, net of the refund amount would approximate \$1,000,000. Funds available for debt service would therefore decrease to approximately \$6,180,000 and the maximum annual debt service coverage ratio would approximate 1.40x.

Days Cash on Hand

At December 31	2005
(in thousands of dollars, except ratios)	
Cash	\$ 1,379
Long-term investments	13,718
Special Reserve Fund - Operating Account	4,000
Special Reserve Fund - Leasehold Account	2,699
Total	21,796
Daily operating expenses	49
Days Cash on Hand	445

Reserve Ratio

At December 31	2005
(in thousands of dollars, except ratios)	
Cash and cash equivalents	\$ 1,379
Long-term investments	13,718
Debt Service Reserve Fund	4,346
Operating Reserve Fund	4,000
Leasehold Reserve Fund	2,699
Total	26,142
Long-term debt, less current portion	48,950
Reserve Ratio	53%

Financial Reporting and Continuing Disclosure

Financial Reporting Under the Master Indenture. The Master Indenture requires that, commencing with the first month following delivery of the Series 1999 Bonds and ending on the last month of the first Fiscal Year in which Stable Occupancy has occurred, the Obligor will submit, within 35 days of the last day of each month to the Master Trustee, the Dissemination Agent and any Significant Bondholder who so requests, copies of the unaudited financial reports on the development costs of the Initial Project (as defined in the Master Indenture) to date and marketing and occupancy reports of the Obligated Group for such month, which reports will include computations establishing the Obligated Group's compliance with certain covenants set forth in the Master Indenture. Commencing with the first month of the Fiscal Year following the Fiscal Year in which Stable Occupancy has occurred, the Obligor will submit within 35 days of the last day of each month to the Master Trustee, the Dissemination Agent and any Significant Bondholder who so requests copies of the unaudited financial statements of the Obligated Group for such month. The Master Indenture additionally requires that within 120 days of the end of each Fiscal Year, the Obligor cause financial statements of the Obligated Group to be prepared with respect to such Fiscal Year in accordance with generally accepted accounting principles, consistently applied, which financial statements will be audited by, and accompanied by a report of, an Independent Accountant. Such financial statements and reports will be delivered upon completion to the Master Trustee, the Principal Underwriter and, upon request, to any Significant Bondholder.

Continuing Disclosure. Given the sources of repayment for the Series 1999 Bonds and the Issuer's limited obligation in respect thereof, the Issuer has determined that its financial and operating data is not material to a decision to purchase, hold or sell the Series 1999 Bonds. Consequently, the Issuer will not provide any such information. The Obligor, however, has agreed to make certain financial information and operating data available to holders of the Series 1999 Bonds through information repositories during the time that the Series 1999 Bonds are outstanding. The Obligor is solely responsible for providing such disclosure, and the Issuer will have no responsibility or liability to the holders of the Series 1999 Bonds or any other person for the making, monitoring or content of such disclosures. See "**CONTINUING DISCLOSURE**" herein for further information.

Bondowners' Risks

AN INVESTMENT IN THE SERIES 1999 BONDS INVOLVES RISK. A BONDOWNER IS ADVISED TO READ "**SECURITY FOR THE SERIES 1999 BONDS**" and "**BONDOWNERS' RISKS**" HEREIN FOR A DISCUSSION OF CERTAIN RISK FACTORS WHICH SHOULD BE CONSIDERED IN CONNECTION WITH AN INVESTMENT IN THE SERIES 1999 BONDS. Careful consideration should be given to these risks and other risks described elsewhere in this Official Statement. Among other things, because the Series 1999 Bonds are payable solely from the revenues of the Obligor and other moneys pledged to such payment, careful evaluation should be made of management's assumptions and rationale described in the Financial Feasibility Study, and certain factors that may adversely affect the ability of the Obligor to generate sufficient revenues to pay expenses of operation, including the principal and purchase price of, and premium, if any, and interest on the Series 1999 Bonds. See "**BONDOWNERS' RISKS**."

The Principal Documents

THE EXECUTED COPIES OF THE BOND INDENTURE, THE VARIABLE RATE BOND INDENTURE, THE LOAN AGREEMENTS, THE REIMBURSEMENT AGREEMENT, THE MASTER INDENTURE AND THE OTHER PRINCIPAL DOCUMENTS MAY CONTAIN CERTAIN CHANGES FROM THE DESCRIPTIONS AND SUMMARIES THEREOF WHICH ARE SET FORTH IN THIS PRELIMINARY OFFICIAL STATEMENT RELATING TO THE SERIES 1999 BONDS. PROSPECTIVE PURCHASERS OF THE SERIES 1999 BONDS SHOULD EXAMINE THE DESCRIPTIONS AND SUMMARIES CONTAINED IN THE FINAL OFFICIAL STATEMENT BEFORE MAKING ANY INVESTMENT DECISIONS.

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY STATEMENT	i
INTRODUCTION	1
THE ISSUER	2
ESTIMATED SOURCES AND USES OF FUNDS	3
ANNUAL DEBT SERVICE REQUIREMENTS	3
THE SERIES 1999 BONDS	5
THE SERIES 1999A BONDS	5
Introduction	5
Mandatory and Optional Redemption	6
THE EXTRAS sm	8
Introduction	8
Interest	8
Optional Tender	9
Purchase on Optional Tender Dates	10
Redemption	11
THE SERIES 1999D BONDS	14
Introduction	14
Modes of Operation	14
Interest Payments	18
Payment of Series 1999D Bonds	19
Tenders and Purchases	19
Redemption Provisions	20
Transfers and Exchanges; Persons Treated as Owners	24
REMARKETING AGENT	25
BOOK-ENTRY SYSTEM	25
General	25
Year 2000	27
Limitations	27
SECURITY FOR THE SERIES 1999 BONDS	28
General	28
Limited Obligations	28
Debt Service Reserve Fund for the Series 1999A Bonds, the Series 1999B Bonds and the Series 1999C Bonds	28
Series 1999D Debt Service Reserve Fund	29
The Loan Agreements	30
The Master Indenture	30
Application of Entrance Fees	35
THE SERIES 1999D CREDIT FACILITY	37
THE LETTER OF CREDIT AGREEMENT	38
ALTERNATE CREDIT FACILITIES	40
THE SERIES 1999D CREDIT PROVIDER	40

	<u>Page</u>
BONDOWNERS' RISKS	40
General Risk Factors	40
Possible Consequences of a Reimbursement Agreement Event of Default	41
Insolvency of the Series 1999D Credit Provider or Obligor	41
Absence of a Bond Rating on the Series 1999A Bonds and the EXTRAS SM	41
Lack of Marketability	41
General Risk Factors	42
Construction-Related Risks	42
Failure to Achieve Sufficient Occupancy and to Maintain Turnover or Occupancy	43
No Operating History; Uncertainty of Revenues	43
Development and Management	44
Utilization Demand	44
Competition	44
Forecast	44
Malpractice Claims	45
Sale of Personal Residences	45
Certain Matters Relating to Security for the Series 1999 Bonds	45
Parity Debt	45
Amendments to Documents	45
Legislation and Regulations Governing Continuing Care Retirement Communities	46
Third-Party Payments and Managed Care	46
Other Legislation	46
Enforceability of Remedies	47
Maintenance of Tax-Exempt Status	47
Other Possible Risk Factors	48
Continuing Legal Requirements Regarding Series 1999 Bonds/Pending Tax Legislation	48
Year 2000 Issues	48
FINANCIAL REPORTING AND CONTINUING DISCLOSURE	49
Financial Reporting Under the Master Indenture	49
Continuing Disclosure	49
LITIGATION	51
Issuer	51
Obligor	52
FINANCIAL FEASIBILITY STUDY	52
RATING	52
LEGAL MATTERS	52
TAX MATTERS	53
The Tax-Exempt Series 1999 Bonds	53
The Series 1999E Bonds	55
UNDERWRITING	56
MISCELLANEOUS	56
APPENDIX A - Edgemere	A-1
APPENDIX B - Financial Feasibility Study	B-1
APPENDIX C - Definitions of Certain Terms and Summary of Certain Provisions of Certain Principal Documents	C-1
APPENDIX D - Proposed Form of Bond Counsel Opinion	D-1

No dealer, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement, and if given or made, such information or representations must not be relied upon as having been authorized by the Obligor, the Issuer, or the Underwriters. The information set forth herein concerning the Obligor has been furnished by the Obligor and is believed to be reliable, but is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the Issuer or the Underwriters. This Official Statement does not constitute an offer to sell or a solicitation of an offer to buy any of the securities offered hereby in any state to any person to whom it is unlawful to make such offer in such state. Except where otherwise indicated, this Official Statement speaks as of the date hereof. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale hereunder will under any circumstances create any implication that there has been no change in the affairs of the Obligor since the date hereof.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 1999 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS IN THIS OFFICIAL STATEMENT

Certain statements included or incorporated by reference in this Official Statement constitute "*forward-looking statements*" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as "*plan*," "*expect*," "*estimate*," "*budget*" or other similar words. Such forward-looking statements include, but are not limited to, certain statements contained in the information under the captions "**SUMMARY STATEMENT—Forecasted Financial Information of the Obligor**," "**BONDOWNERS' RISKS—Year 2000 Issues**" and "**BOOK-ENTRY SYSTEM—General**" herein and under the captions in APPENDIX A and APPENDIX B to this Official Statement.

OFFICIAL STATEMENT

relating to the

\$118,080,000*

**North Central Texas Health Facilities Development Corporation
Retirement Facility Revenue Bonds
(Northwest Senior Housing Corporation - Edgemere Project)**

	\$7,335,000*	\$5,000,000*	\$55,000,000*	\$250,000*
	Series 1999B	Series 1999C	Series 1999D	Taxable Series 1999E
	Extendable Rate	Extendable Rate	Variable Rate Demand	Extendable Rate
\$50,495,000*	Adjustable Securities SM	Adjustable Securities SM	Bonds	Adjustable Securities SM
Series 1999A	(EXTRAS SM)	(EXTRAS SM)		(EXTRAS SM)
Fixed Rate Bonds				

INTRODUCTION

Purpose of this Official Statement. This Official Statement, including the cover page and Appendices hereto, is provided to furnish information with respect to the issuance, sale and delivery by the North Central Texas Health Facilities Development Corporation (the "Issuer") of its Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Series 1999.

The Series 1999 Bonds are being issued pursuant to Chapter 221, Texas Health and Safety Code, as amended (the "Act"). Additionally, the Series 1999 Bonds other than the Series 1999D Bonds are being issued pursuant to an Indenture of Trust dated as of November 15, 1999 (the "Bond Indenture"), between the Issuer and Chase Bank of Texas, National Association, as trustee (the "Trustee" or "Bond Trustee"). The Series 1999D Bonds are being issued pursuant to a Bond Trust Indenture (the "Variable Rate Bond Indenture") dated as of November 15, 1999, between the Issuer and the Bond Trustee. Certain capitalized terms used herein are defined in **APPENDIX C—"DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS."**

All capitalized terms used in this Official Statement and not otherwise defined herein have the same meaning as in the Master Indenture, the Loan Agreement, the Bond Indenture and the Variable Rate Bond Indenture. The descriptions and summaries of various documents hereinafter set forth do not purport to be comprehensive or definitive, and reference is made to each document for the complete details of its terms and conditions. All statements herein are qualified in their entirety by reference to each document.

Purpose of the Series 1999 Bonds. The proceeds of the sale of the Series 1999 Bonds together with certain other moneys will be used to (i) finance the start-up costs in connection with, as well the construction and equipping of, a senior living community (the "Project") to be known as Edgemere located in Dallas, Texas (the "Community"); (ii) fund the separate accounts of separate debt service reserve funds to secure the Series 1999 Bonds; (iii) fund, for a period of 30 months, credit facility and remarketing agent fees related to the Series 1999D Bonds; (iv) fund interest on the Series 1999 Bonds during construction and fill-up of the Project; and (v) pay a portion of the costs of issuance of the Series 1999 Bonds. For a further description of the uses of the proceeds of the Series 1999 Bonds, see "**THE COMMUNITY AND THE PROJECT—The Project**" and "**ESTIMATED SOURCES AND USES OF FUNDS.**"

Risks. Certain risks are inherent in the successful operation of facilities such as the Community on a basis such that sufficient cash will be available to pay interest on and to retire indebtedness. See "**BONDOWNERS' RISKS**" below for a discussion of certain of these risks.

Delivery of the Series 1999 Bonds is contingent upon the approval of the Issuer and Dallas County, Texas, which are expected to be received on October 18, 1999 and October 19, 1999, respectively.

THE ISSUER

The Issuer is a Texas nonstock, nonprofit health facilities development corporation established for the purposes set forth in Chapter 221, Texas Health and Safety Code, as amended (the "Act"). The Issuer was incorporated pursuant to the Act on November 12, 1981. The purpose of the Issuer under the Act is to provide, expand and improve health facilities (as defined in the Act) determined by the Issuer to be needed

for the purpose of improving the adequacy, cost and accessibility of health care, research and education within the State of Texas.

The Issuer is governed by a board of directors, consisting of five members, appointed by the Commissioners Court of Dallas County, Texas.

The Issuer, under the terms of the Act, has, among other powers, the power to make contracts and incur liabilities; to borrow money at such rates of interest as it may determine; to issue its bonds in accordance with the provisions of the Act; and to secure any of its bonds or obligations by mortgage or pledge of all or any of its property, franchises and income for the purpose of financing or refinancing all or a portion of the cost of any health facility (as defined in the Act).

The responsibility for the operation and use of the Community, including any additions or improvements thereto, rests entirely with the Obligor and not with the members of the Issuer. The members of the Issuer are not personally liable in any way for any act or omission committed or suffered in the performance of the functions of the Issuer.

Neither the Issuer nor Dallas County has undertaken to review this Official Statement or has assumed any responsibility for the matters contained herein except solely as to matters relating to the Issuer. All findings and determinations by the Issuer and Dallas County, respectively, are and have been made by each for its own internal uses and purposes in performing its duties under the Articles of Incorporation and Bylaws of the issuer and under the Local Regulations of the Issuer. Notwithstanding its approval of the Series 1999 Bonds for purposes of Section 147(f) of the Code, Dallas County does not endorse or in any manner, directly or indirectly, guarantee or promise to pay the Series 1999 Bonds from any source of funds of Dallas County or guarantee, warrant or endorse the creditworthiness or credit standing of the Obligor or in any manner guarantee, warrant or endorse the investment quality or value of the Series 1999 Bonds. The Series 1999 Bonds are payable solely as described in this Official Statement and are not in any manner payable wholly or partially from any funds or properties otherwise belonging to the Issuer. By its issuance of the Series 1999 Bonds, the Issuer does not in any manner, directly or indirectly, guarantee, warrant or endorse the creditworthiness of the Obligor or the investment quality or value of the Series 1999 Bonds.

ESTIMATED SOURCES AND USES OF FUNDS

The following table sets forth the estimated sources and uses of funds:

Sources of Funds (000's omitted):

Series 1999A Bonds	\$ 50,495
Less: Original issue discount	(1,398)
Net Series 1999A Bonds	49,097
Series 1999B Bonds	7,335
Series 1999C Bonds	5,000
Series 1999D Bonds	55,000
Series 1999E Bonds	250
Net Total Series 1999 Bonds	116,682
Interest earned on funds held by Trustee ⁽¹⁾	8,575
Accrued interest	24
Total Sources of Funds	\$ 125,281

Uses of Funds (000's omitted):

Project Costs:

Construction, ground lease-related and other costs related to the Project	\$ 72,984
Architectural and engineering fees	2,486
Furniture, fixtures and equipment	2,478
Development costs	7,873
Marketing costs	5,425
Contingency	2,384
Total Project Related Costs:	93,630
Other Costs	1,782
Debt Service Reserve Fund - Series 1999A	4,346
Debt Service Reserve Fund - Series 1999B	422
Debt Service Reserve Fund - Series 1999C	287
Debt Service Reserve Fund - Series 1999D	2,475
Funded Interest ⁽²⁾	19,215
Bond issuance and related costs ⁽³⁾	3,124
Total Uses of Funds	\$ 125,281

- (1) Interest to be earned on Trustee-held funds, assuming annual rates on: (i) the Debt Service Reserve Fund account for the Series 1999A Bonds at 6.25%, (ii) the Debt Service Reserve Fund accounts for the remaining Series 1999 Bonds at 5.75%, (iii) the Project Fund at 5.75% and (iv) funded interest at 5.75%.
- (2) Funded interest represents interest on the Series 1999 Bonds during approximately the first 30 months and assumes the funded interest will be net-funded and that interest earnings on trustee-held funds will be credited to the funded interest account. Includes letter-of-credit and remarketing agent fees.
- (3) Bond issuance costs include legal fees, accounting fees, underwriter fees and other costs associated with the issuance of the Series 1999 Bonds as well as the fee paid to the Developer pursuant to the Development Agreement (described in APPENDIX A hereto) between the Developer and the Obligor and the issuance fee for the letter of credit and the first annual letter of credit fee.

ANNUAL DEBT SERVICE REQUIREMENTS

The following table sets forth, for each year as indicated, the amounts required in each Bond Year commencing November 15, 2000 for the payment of principal at maturity or by mandatory redemption of the Series 1999 Bonds through the Bond Fund and the payment of interest on the Series 1999 Bonds. The Series 1999 Bonds, other than the Series 1999A Bonds, are expected to be redeemed by November 15, 2004 from the proceeds of Entrance Fees in the following order: the Series 1999E Bonds, the Series 1999D Bonds, the Series 1999C Bonds and the Series 1999B Bonds.

**Schedule of Principal and Interest Payments
on the Series 1999 Bonds⁽¹⁾⁽²⁾**

Nov 15	Series 1999A Bonds		Series 1999B Bonds ⁽⁵⁾		Series 1999C Bonds ⁽⁵⁾		Series 1999D Bonds ⁽⁵⁾		Series 1999E Bonds ⁽⁵⁾		Total Principal	Total Interest	Total
	Principal	Interest ⁽³⁾	Principal	Interest ⁽³⁾⁽⁴⁾	Principal	Interest ⁽³⁾⁽⁴⁾	Principal	Interest ⁽³⁾⁽⁶⁾	Principal	Interest ⁽³⁾⁽⁷⁾			
2000	\$ 0	\$ 3,592,844	\$ 0	\$ 421,763	\$ 0	\$ 287,500	\$ 0	\$ 2,461,250	\$ 0	\$ 20,000	\$ 0	\$ 6,783,356	\$ 6,783,356
2001	0	3,592,844	0	421,763	0	287,500	0	2,475,000	0	20,000	0	6,797,106	6,797,106
2002	0	3,592,844	0	421,763	0	287,500	0	2,475,000	0	20,000	0	6,797,106	6,797,106
2003	0	3,592,844	0	421,763	0	287,500	0	2,475,000	0	20,000	0	6,797,106	6,797,106
2004	0	3,592,844	0	421,763	0	287,500	0	2,475,000	0	20,000	0	6,797,106	6,797,106
2005	750,000	3,592,844	140,000	421,763	95,000	287,500	1,235,000	2,475,000	5,000	20,000	2,225,000	6,797,106	9,022,106
2006	795,000	3,547,844	145,000	413,713	100,000	282,038	1,290,000	2,419,425	5,000	19,600	2,335,000	6,682,619	9,017,619
2007	845,000	3,500,144	155,000	405,375	105,000	276,288	1,350,000	2,361,375	5,000	19,200	2,460,000	6,562,381	9,022,381
2008	895,000	3,449,444	165,000	396,463	110,000	270,250	1,410,000	2,300,625	5,000	18,800	2,585,000	6,435,581	9,020,581
2009	950,000	3,395,744	175,000	386,975	120,000	263,925	1,470,000	2,237,175	5,000	18,400	2,720,000	6,302,219	9,022,219
2010	1,005,000	3,338,744	185,000	376,913	125,000	257,025	1,540,000	2,171,025	5,000	18,000	2,860,000	6,161,706	9,021,706
2011	1,075,000	3,267,138	195,000	366,275	130,000	249,838	1,605,000	2,101,725	5,000	17,600	3,010,000	6,002,575	9,012,575
2012	1,155,000	3,190,544	205,000	355,063	140,000	242,363	1,680,000	2,029,500	5,000	17,200	3,185,000	5,834,669	9,019,669
2013	1,235,000	3,108,250	215,000	343,275	145,000	234,313	1,755,000	1,953,900	5,000	16,800	3,355,000	5,656,538	9,011,538
2014	1,320,000	3,020,256	230,000	330,913	155,000	225,975	1,835,000	1,874,925	5,000	16,400	3,545,000	5,468,469	9,013,469
2015	1,415,000	2,926,206	240,000	317,688	165,000	217,063	1,915,000	1,792,350	5,000	16,000	3,740,000	5,269,306	9,009,306
2016	1,515,000	2,825,388	255,000	303,888	175,000	207,575	2,005,000	1,706,175	10,000	15,600	3,960,000	5,058,625	9,018,625
2017	1,625,000	2,717,444	270,000	289,225	185,000	197,513	2,090,000	1,615,950	10,000	14,800	4,180,000	4,834,931	9,014,931
2018	1,740,000	2,601,663	285,000	273,700	195,000	186,875	2,185,000	1,521,900	10,000	14,000	4,415,000	4,598,138	9,013,138
2019	1,865,000	2,477,688	300,000	257,313	205,000	175,663	2,285,000	1,423,575	10,000	13,200	4,665,000	4,347,438	9,012,438
2020	2,000,000	2,342,475	320,000	240,063	220,000	163,875	2,390,000	1,320,750	10,000	12,400	4,940,000	4,079,563	9,019,563
2021	2,145,000	2,197,475	340,000	221,663	230,000	151,225	2,495,000	1,213,200	10,000	11,600	5,220,000	3,795,163	9,015,163
2022	2,300,000	2,041,963	360,000	202,113	245,000	138,000	2,610,000	1,100,925	15,000	10,800	5,530,000	3,493,800	9,023,800
2023	2,470,000	1,875,213	380,000	181,413	260,000	123,913	2,725,000	983,475	15,000	9,600	5,850,000	3,173,613	9,023,613
2024	2,645,000	1,696,138	400,000	159,563	275,000	108,963	2,850,000	860,850	15,000	8,400	6,185,000	2,833,913	9,018,913
2025	2,840,000	1,504,375	425,000	136,563	290,000	93,150	2,975,000	732,600	15,000	7,200	6,545,000	2,473,888	9,018,888
2026	3,045,000	1,298,475	445,000	112,125	305,000	76,475	3,110,000	598,725	15,000	6,000	6,920,000	2,091,800	9,011,800
2027	3,265,000	1,077,713	475,000	86,538	325,000	58,938	3,250,000	458,775	20,000	4,800	7,335,000	1,686,763	9,021,763
2028	3,500,000	841,000	500,000	59,225	340,000	40,250	3,395,000	312,525	20,000	3,200	7,755,000	1,256,200	9,011,200
2029	8,100,000	587,250	530,000	30,475	360,000	20,700	3,550,000	159,750	20,000	1,600	12,560,000	799,775	13,359,775
	\$50,495,000	\$80,385,631	\$7,335,000	\$8,777,088	\$5,000,000	\$5,987,188	\$55,000,000	\$50,087,450	\$250,000	\$431,200	\$118,080,000	\$145,668,556	\$263,748,556

(1) Preliminary, subject to change.
 (2) All figures have been rounded to the nearest whole dollar.
 (3) Includes accrued interest.
 (4) Assumes an Initial Interest Rate of 5.75% on the Series 1999B Bonds and the Series 1999C Bonds remains in effect until final maturity.
 (5) It is expected that the Series 1999B Bonds, the Series 1999C Bonds, the Series 1999D Bonds and the Series 1999E Bonds will be redeemed prior to their stated maturities by November 15, 2004, from Initial Entrance Fees and earnings thereon.
 (6) Assumes a 4.5% rate per annum on the Series 1999D Bonds. The rate does not include fees with respect to the Series 1999D Credit Facility or remarketing of the Series 1999D Bonds.
 (7) Assumes an 8.00% rate per annum on the Series 1999E Bonds.

THE SERIES 1999 BONDS

Specific information about each series of Series 1999 Bonds, unique to that series, is contained in the applicable section below. Information about security for the Series 1999 Bonds is contained in **"SECURITY FOR THE SERIES 1999 BONDS."** Also see **"THE REIMBURSEMENT AGREEMENT"** for additional information affecting the Series 1999D Bonds and, if an event of default under the Reimbursement Agreement occurs under certain circumstances, possibly affecting all of the Series 1999 Bonds.

The Series 1999 Bonds provide that no recourse under any obligation, covenant or agreement contained in the Bond Indenture or the Variable Rate Bond Indenture, or in any Series 1999 Bond, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of the Bond Indenture or the Variable Rate Bond Indenture, will be had against any past, present or future director, incorporator, agent, representative, member, officer or employee of the Issuer or the Obligor, as such, either directly or through the Issuer or the Obligor, respectively, for the payment for or to the Issuer or for or to the registered owner of any Series 1999 Bond, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being by the acceptance of the Series 1999 Bonds and, as a material part of the consideration for the issue of the Series 1999 Bonds, expressly waived and released.

So long as DTC acts as securities depository for the Series 1999 Bonds, as described under the **"BOOK-ENTRY SYSTEM"** herein, all references herein to *"Owner," "owner," "Holder" or "holder"* of any Series 1999 Bonds or Series 1999 *"Bondowner," "Bondholder," "bondowner" or "bondholder"* are deemed to refer to Cede & Co., as nominee for DTC, and not to Participants, Indirect Participants or Beneficial Owners (as defined herein).

THE SERIES 1999A BONDS

Introduction

The information in this section applies only to the Series 1999A Bonds.

So long as the Series 1999A Bonds are registered in the name of Cede & Co., as nominee of DTC, principal of, premium, if any, and interest on the Series 1999A Bonds will be paid as described herein under **"BOOK-ENTRY ONLY SYSTEM."** The following information is subject in its entirety to the provisions described below under the caption **"BOOK-ENTRY ONLY SYSTEM."**

The Series 1999A Bonds will be issued only in fully registered form without coupons in the denominations of \$5,000 and any integral multiple of \$1,000 in excess thereof. The Series 1999A Bonds will be dated November 15, 1999, except as otherwise provided in the Bond Indenture. The Series 1999A Bonds will bear interest (based on a 360-day year of twelve 30-day months) at the rate set forth on the inside cover hereof, payable semiannually on May 15 and November 15 of each year, commencing May 15, 2000 (each an *"Interest Payment Date"*), and mature on the date set forth on the inside cover page hereof.

On each Interest Payment Date, the interest on each Series 1999A Bond will be paid by (i) check or draft mailed to the Owner at his or her address as it appears on the bond register or at such other address as is furnished to the Bond Trustee in writing at the close of business on the last day of the calendar month (whether or not a business day) preceding each regularly scheduled Interest Payment Date (the *"Regular Record Date"*), or (ii) as to any Owner of \$1,000,000 or more in aggregate principal amount of Series 1999A Bonds as of the commencement of business of the Bond Trustee on the Record Date who so elects, by electronic transfer within the continental United States and upon compliance with the reasonable requirements of the Bond Trustee. In the event of any default in the payment of interest due on such Interest Payment Date, defaulted interest will be payable to the person in whose name such Series 1999A Bond is registered at the close of business on a special record date (a *"Special Record Date"*) established by the Bond Trustee for the payment of such defaulted interest established by notice mailed by the Trustee to the Owners of such Series 1999A Bonds entitled to such notice not less than 10 days preceding such Special Record Date.

Mandatory and Optional Redemption Provisions

Mandatory Sinking Fund Redemption. The Series 1999A Bonds maturing on November 15, _____ and on November 15, _____ are subject to mandatory sinking fund redemption from amounts deposited to the Principal Account of the Bond Fund by the Obligor, at a redemption price of 100% of the principal amount to be redeemed, together with accrued interest to the date fixed for redemption, on November 15 in each of the years and amounts as follows:

Maturing on November 15, _____		Maturing on November 15, _____	
Year	Sinking Fund Installment	Year	Sinking Fund Installment

*Final Maturity.

The Obligor may reduce the principal amount of the Series 1999A Bonds of the maturity so required to be redeemed on any such date by the principal amount of the Series 1999A Bonds of such maturity either (i) purchased by or on behalf of the Obligor and surrendered to the Bond Trustee for cancellation not later than forty-five days prior to the redemption date; or (ii) redeemed other than through sinking fund redemption and cancelled by the Bond Trustee not later than forty-five days prior to the redemption date, which in either case have not been previously made the basis for a reduction of the principal amounts of the Series 1999A Bonds to be redeemed by operation of the sinking fund redemption. Any excess will be credited against the next sinking fund redemption obligation to redeem Series 1999A Bonds.

Optional Redemption. Series 1999A Bonds are subject to redemption prior to maturity by the Issuer at the written direction of the Obligated Group Representative in whole or in part on November 15, _____ or on any date thereafter, at the redemption prices set forth below (expressed as percentages of principal amount), together with accrued interest to the redemption date:

Redemption Dates (Both Dates Inclusive)	Redemption Price
November 15, _____ through November 14, _____	
November 15, _____ through November 14, _____	
November 15, _____ and thereafter	

Extraordinary Optional Redemption. The Series 1999A Bonds will be subject to optional redemption by the Issuer at the direction of the Obligor prior to their scheduled maturities, in whole or in part at a redemption price equal to the principal amount thereof plus accrued interest from the most recent interest payment date to the redemption date on any date following the occurrence of any of the following events:

- (a) in case of damage or destruction to, or condemnation of, any property, plant, and equipment of any Obligated Group Member, to the extent that the net proceeds of insurance or condemnation award exceed \$1,000,000, and the Obligor has determined not to use such net proceeds or award to repair, rebuild or replace such property, plant, and equipment; or

(b) as a result of any changes in the Constitution or laws of the State of Texas or of the United States of America or of any legislative, executive, or administrative action (whether state or federal) or of any final decree, judgment, or order of any court or administrative body (whether state or federal), the obligations of the Obligor under the Agreement have become, as established by an Opinion of Counsel, void or unenforceable in each case in any material respect in accordance with the intent and purpose of the parties as expressed in the Agreement.

Mandatory Redemption from Surplus Construction Fund Moneys. The Series 1999A Bonds are subject to mandatory redemption in whole or in part on any date for which timely notice of redemption can be given by the Bond Trustee following the Completion Date at a redemption price equal to the aggregate principal amount of the Series 1999A Bonds to be redeemed plus accrued interest to the redemption date, without premium, to the extent Surplus Construction Fund Moneys are transferred to the Principal Account of the Bond Fund.

Partial Redemption. In the event that less than all of the Series 1999 Bonds or portions thereof are to be redeemed, the Series 1999 Bonds to be redeemed will be selected first, from any outstanding Series 1999E Bonds; second, from any outstanding Series 1999D Bonds; third, from any outstanding Series 1999C Bonds; fourth, from any outstanding Series 1999B Bonds; and fifth, from any outstanding Series 1999A Bonds.

In the event that less than all of the Series 1999 Bonds or portions thereof of a series are to be redeemed, the Obligor may select the particular maturities of such series to be redeemed. If less than all Series 1999 Bonds or portions thereof of a single maturity are to be redeemed, they will be selected by the Securities Depository or by lot in such manner as the Bond Trustee may determine.

If a Series 1999 Bond is of a denomination larger than the minimum Authorized Denomination, a portion of such Series 1999 Bond may be redeemed, but Series 1999 Bonds will be redeemed only in the principal amount of an Authorized Denomination and no Series 1999 Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination.

Notice of Redemption. In case of every redemption, the Bond Trustee will cause notice of such redemption to be given by mailing by first-class mail, postage prepaid, a copy of the redemption notice to the owners of the Series 1999A Bonds designated for redemption in whole or in part, at their addresses as the same will last appear upon the registration books, in each case not more than 60 nor less than 30 days prior to the redemption date. In addition, notice of redemption will be sent by first class or registered mail, return receipt requested, or by over night delivery service (1) contemporaneously with such mailing: (A) to any owner of \$1,000,000 or more in principal amount of Series 1999A Bonds and (B) to at least two or more information services of national recognition that disseminate redemption information with respect to municipal bonds; and (2) to any securities depository registered as such pursuant to the Securities Exchange Act of 1934, as amended, that is an owner of Series 1999A Bonds to be redeemed so that such notice is received at least two days prior to such mailing date. An additional notice of redemption will be given by certified mail, postage prepaid, mailed not less than 60 nor more than 90 days after the redemption date to any owner of Series 1999A Bonds selected for redemption that has not surrendered the Series 1999A Bonds called for redemption, at the address as the same will last appear upon the registration books.

Provided, however, that failure to give any such notice, or any defect therein, will not affect the validity of any proceedings for the redemption of such Series 1999A Bonds.

Transfers and Exchanges; Persons Treated as Owners. The Series 1999A Bonds are exchangeable for an equal aggregate principal amount of fully registered Series 1999A Bonds of the same maturity of other authorized denominations at the Houston, Texas office of the Bond Trustee but only in the manner and subject to the limitations and on payment of the charges provided in the Bond Indenture.

The Series 1999A Bonds are fully transferable by the registered owner in person or by his or her duly authorized attorney on the registration books kept at the principal office of the Bond Trustee upon surrender of the Series 1999A Bond together with a duly executed written instrument of transfer satisfactory to the Bond Trustee. Upon such transfer a new fully registered Series 1999A Bond of authorized denomination or denominations for the same aggregate principal amount and maturity will be issued to the transferee in

exchange herefor, all upon payment of the charges and subject to the terms and conditions set forth in the Bond Indenture.

The Bond Trustee will not be required to transfer or exchange any Series 1999A Bond after the mailing of notice calling such Series 1999A Bond or any portion thereof for redemption has been given as herein provided, nor during the period beginning at the opening of business 15 days before the day of mailing by the Bond Trustee of a notice of prior redemption and ending at the close of business on the day of such mailing.

The Issuer and the Bond Trustee may deem and treat the person in whose name the Series 1999A Bond is registered as the absolute owner hereof for the purpose of making payment (except to the extent otherwise provided hereinabove and in the Bond Indenture with respect to Regular and Special Record Dates for the payment of interest) and for all other purposes, and neither the Issuer nor the Bond Trustee will be affected by any notice to the contrary.

THE EXTRASsm

Introduction

The information in the following section applies only to the Series 1999B Bonds, the Series 1999C Bonds and the Series 1999E Bonds (collectively, the "EXTRASsm")

So long as the EXTRASsm are registered in the name of Cede & Co., as nominee of DTC, principal of, premium, if any, and interest on the EXTRASsm will be paid as described herein under "**BOOK-ENTRY ONLY SYSTEM.**" The following information is subject in its entirety to the provisions described below under the caption "**BOOK-ENTRY ONLY SYSTEM.**"

See "**BOOK-ENTRY ONLY SYSTEM**" herein for information relating to presentation of Tendered EXTRASsm while the EXTRASsm are in the Book-Entry Only System.

The EXTRASsm will be issued as fully registered bonds without coupons in denominations of \$5,000 and any integral multiple of \$1,000 in excess thereof. Each EXTRASsm will be dated November 15, 1999, except as otherwise provided in the Bond Indenture. Each series of the EXTRASsm will mature on November 15 in each of the years and in the principal amounts set forth on the inside front cover hereof and interest will be payable on May 15 and November 15 of each year, commencing May 15, 2000 (each an "Interest Payment Date"), to the person in whose name such EXTRASsm is registered on the bond register at the close of business on the regular record date for such interest, such interest to be calculated on the basis of a year of 360 days and twelve 30-day months. Interest will be paid by (i) check or draft mailed to the Owner at his or her address as it appears on the bond register or at such other address as is furnished to the Trustee in writing at the close of business on the last day of the calendar month next preceding such Interest Payment Date (the "Regular Record Date"), or (ii) as to any Owner of \$1,000,000 or more in aggregate principal amount of EXTRASsm as of the commencement of business of the Trustee on the Record Date who so elects, by electronic transfer within the continental United States and upon compliance with the reasonable requirements of the Trustee. In the event of any default in the payment of interest due on such interest payment date, defaulted interest will be payable to the person in whose name such EXTRASsm is registered at the close of business on a Special Record Date for the payment of such defaulted interest.

Interest

Each maturity and each series of the EXTRASsm will initially bear interest at the respective rate set forth on the inside cover page hereof until the earlier of their maturity or their initial Rate Change Date and will mature at their respective maturity dates as set forth on the inside cover page hereof. Thereafter, the applicable interest rate on each maturity and each series of the EXTRASsm (the "Reset Rate") will be established for each Rate Period (described below) by the Remarketing Agent under the Remarketing Agreement. The Remarketing Agreement provides for the appointment of a successor Remarketing Agent by and at the option of the Obligated Group.

Not less than 75 days prior to each Rate Change Date, the Obligated Group will deliver to the Bond Trustee and the Remarketing Agent written notice of the Obligated Group's determination of the next

succeeding Rate Change Date, which Rate Change Date will be an November 15, or will specify that the EXTRASsm are to bear a Reset Rate to maturity; provided, however, that if the Obligated Group Representative fails to specify the next succeeding Rate Change Date, such date will be an November 15 in such year as will enable the term between the current Rate Change Date and such next succeeding Rate Change Date to equal the preceding term or the final maturity, whichever is earlier.

The Adjusted Rate applicable to the EXTRASsm from and after any Rate Change Date will be the Reset Rate determined by the Remarketing Agent on a date not more than 75 days nor less than 65 days prior to the Rate Change Date. The Reset Rate applicable to the EXTRASsm will be the lowest rate that would, in the judgment of the Remarketing Agent (having due regard to the prevailing market conditions), be necessary to enable the EXTRASsm to be sold at par on the Rate Change Date; provided that the Reset Rate will not exceed the Maximum Rate. Upon such determination of the Reset Rate, the Remarketing Agent will promptly notify the Bond Trustee and the Obligor of the Reset Rate. Not less than 60 days prior to the Rate Change Date, the Bond Trustee will promptly notify each owner of the EXTRASsm in writing by first class mail, postage prepaid, of the Reset Rate that will be applicable to such EXTRASsm on and after the Rate Change Date and provide instructions in the form specified in the Bond Indenture for the procedure to be followed by any Bondowner wishing to tender EXTRASsm for purchase as hereinafter provided. If for any reason the Reset Rate for the EXTRASsm (other than the Series 1999E Bonds) cannot be determined by the Remarketing Agent in the manner specified above, the Reset Rate determined by the Remarketing Agent will be equal to the annual interest rate equal to the yield of The Bond Buyer 25-Bond Revenue Index (as published in The Bond Buyer or any successor publication thereto) for the most recent period for which such information is available prior to the giving of notice of the Reset Rate by the Bond Trustee to the owners of the EXTRASsm, or if such index or its equivalent is no longer published, the interest rate currently in effect, provided that such rate may not exceed the Maximum Rate.

If for any reason the Reset Rate for the Series 1999E Bonds cannot be determined by the Remarketing Agent in the manner specified above or give the required notice, the Reset Rate for such period will be equal to the interest rate equal to the sum of (i) the yield of United States Treasury Bills, Notes or Bonds or STRIPS of a maturity closest to the next succeeding Rate Change Date or final maturity of the Series 1999E Bonds, as the case may be, as most recently published in *The Wall Street Journal* (Midwest Edition) or any successor publication thereto before the date 65 days prior to the Rate Change Date plus (ii) two percent (2%) per annum, or if such index or its equivalent is no longer published, the interest rate currently in effect.

The interest rate on the EXTRASsm (other than the Series 1999E Bonds) will not be reset on any Rate Change Date unless (a) at least 75 days prior to such Rate Change Date and (b) on such Rate Change Date, the Obligated Group Representative causes to be delivered at its expense to the Issuer, the Bond Trustee and the Remarketing Agent an Opinion of Bond Counsel, to the effect that such reset in interest rate and change in the Rate Period will not have an adverse effect on any exemption from federal income taxation to which the interest on the EXTRASsm would otherwise be entitled. In the event such Opinion of Bond Counsel is not delivered, the interest rate on the EXTRASsm in effect will remain in effect as the interest rate for the next Rate Period, and the next Rate Period will be equal in duration to the preceding Rate Period but will not in any event extend beyond the date of final maturity of the Series EXTRASsm.

Optional Tender

The EXTRASsm of each Series are subject to optional tender for purchase by the Bond Trustee on behalf of the Obligor on each applicable Rate Change Date. The EXTRASsm tendered for purchase are subject for purchase solely from (i) funds provided by the Remarketing Agent derived from the remarketing of such Bonds and (ii) moneys deposited by the Obligated Group Representative in the Extendables Purchase Fund pursuant to the Loan Agreement; provided, however, that the Obligated Group Representative need deposit such funds only to the extent that such deposit will not reduce the Unrestricted Cash and Investments of the Obligated Group to (a) an amount less than 100 Days' Cash on Hand or (b) an amount less than the amount of Days' Cash on Hand necessary to maintain any then current rating on the Bonds; and provided further, that the Obligor may deposit such funds only if the Bond Trustee has received a certificate of the Series 1999D Credit Provider to the effect that the Series 1999D Bonds have been redeemed and all Bank Obligations have been paid in full. The Bond Trustee will give written notice of the next applicable Rate Change Date in respect of the each Series of EXTRASsm to the Owner of such EXTRASsm when delivering notice of the new Reset Rate applicable to such EXTRASsm. The Owner of such EXTRASsm may exercise such option, and such Owner's EXTRASsm will be purchased by the Bond Trustee

on behalf of the Obligated Group in accordance with and subject to the terms of the Bond Indenture. In order to exercise this option, the Owner will deliver a notice (the "Optional Tender Notice") to the Bond Trustee as Tender Agent not less than 30 and not more than 60 calendar days prior to the applicable Optional Tender Date. The Optional Tender Notice must state the principal amount of the tendered EXTRASsm (which amount will be \$5,000 and multiples of \$1,000 in excess thereof). The delivery of the Optional Tender Notice by the registered owner in connection with an Rate Change Date will be irrevocable and binding on the owner and any successor owner of such Bond and cannot be withdrawn. Failure of any Owner of EXTRASsm to give an Optional Tender Notice not less than 30 days nor more than 60 days prior to an Rate Change Date, or the failure of such Owner to comply with the procedures described in the immediately preceding sentence, will result in such Owner's loss of the right to tender EXTRASsm for purchase on such Rate Change Date.

So long as the Series 1999 Bonds are in the Book-Entry System, the Bond Trustee will deliver notices of tender dates only to The Depository Trust Company and Beneficial Owners of EXTRASsm must exercise their option to have EXTRASsm purchased by the Bond Trustee on behalf of the Obligor by giving notices to the applicable Direct or Indirect Participants and tendering EXTRASsm through the Book-Entry Only System. See "BOOK-ENTRY SYSTEM."

Purchase on Optional Tender Dates

The Remarketing Agent will offer for sale and use its best efforts to remarket the tendered EXTRASsm to third parties for purchase at their principal amount on each Rate Change Date. In the event that any tendered EXTRASsm cannot be remarketed, amounts on deposit in the Extendables Purchase Fund will be applied, to the extent that such funds are available to purchase such EXTRASsm. In the event that there are not sufficient funds to purchase all tendered EXTRASsm, the Trustee will apply such funds as are available in the Extendables Purchase Fund to the purchase of tendered EXTRASsm in the order in which the Optional Tender Notice with respect to each tendered EXTRASsm was received and, to the extent the Trustee cannot purchase all the EXTRASsm for which an Optional Tender Notice was received on the same day, as determined by lot in such equitable manner as the Trustee will determine until such available funds have been exhausted. The Obligated Group Representative is not required to deposit any moneys in the Extendables Purchase Fund if such deposit will reduce the Unrestricted Cash and Investments of the Obligated Group to (a) an amount less than 100 Days' Cash on Hand or (b) an amount less than the amount of Days' Cash on Hand necessary to maintain any then current rating on the Bonds; provided, however, that the Obligor may deposit such funds only if the Bond Trustee has received a certificate of the Series 1999D Credit Provider to the effect that the Series 1999D Bonds have been redeemed and all Bank Obligations have been paid in full. The Owners of tendered but unpurchased EXTRASsm will continue to hold such EXTRASsm from and after the Rate Change Date; however, such EXTRASsm will be given priority for redemption on each succeeding redemption date, including sinking fund payment dates, over any untendered EXTRASsm. EXTRASsm that are not purchased on a Rate Change Date will bear interest from and after the Rate Change Date at the Reset Rate determined by the Remarketing Agent as described above.

THERE CAN BE NO ASSURANCE THAT SUFFICIENT FUNDS WILL BE AVAILABLE TO PURCHASE ANY OR ALL EXTRASsm TENDERED FOR PURCHASE ON ANY RATE CHANGE DATE. THE FAILURE OF THE CORPORATION TO PURCHASE ALL EXTRASsm TENDERED FOR PURCHASE ON AN RATE CHANGE DATE GENERALLY SHALL NOT CONSTITUTE AN EVENT OF DEFAULT UNDER THE LOAN AGREEMENT OR THE BOND INDENTURE.

Preceding each Rate Change Date, the Remarketing Agent will attempt to remarket the EXTRASsm duly tendered for purchase. On or before each Rate Change Date, the Remarketing Agent will deliver to the Bond Trustee the proceeds of the remarketing of such EXTRASsm. Based on information supplied by the Remarketing Agent and otherwise available to it, the Bond Trustee will authenticate and deliver new EXTRASsm to the registered owners thereof. The Remarketing Agent, as a condition of serving in that capacity, will contract with the Obligated Group to, among other things, use its best efforts to remarket all EXTRASsm tendered for purchase at a price equal to 100% of the principal amount thereof, in accordance with the provisions of the Bond Indenture and the Remarketing Agreement. **THERE CAN BE NO ASSURANCE THAT THE REMARKETING AGENT WILL BE ABLE TO SUCCESSFULLY REMARKET ANY TENDERED EXTRASsm.**

Redemption

Selection for Redemption. In the event less than a full maturity of the EXTRASsm are to be redeemed, the EXTRASsm to be redeemed will be selected by the Bond Trustee by lot or in such equitable manner as the Trustee may determine; provided that in the case of EXTRASsm of any maturity, they will be redeemed in the following order of priority: (i) any EXTRASsm that have been tendered for purchase on any Rate Change Date but not so purchased, and (ii) any other EXTRASsm. See "THE EXTRASsm—Purchase on Optional Tender Dates" herein.

Mandatory Sinking Fund Redemption. The Series 1999B Bonds are subject to mandatory redemption (except that Series 1999B Bonds that have been tendered for purchase on any Rate Change Date but were not so purchased will be redeemed prior to any other Series 1999B Bonds) from sinking fund installments at a redemption price of 100% of the principal amount thereof, together with accrued interest, on November 15 in each of the years and in the amounts as follows:

Year Principal Amount

*Final Maturity.

The Series 1999C Bonds are subject to mandatory redemption (except that the Series 1999C Bonds that have been tendered for purchase on any Rate Change Date but were not so purchased will be redeemed prior to any other Series 1999C Bonds) from sinking fund installments at a redemption price of 100% of the principal amount thereof, together with accrued interest, on November 15 in each of the years and in the amounts as follows:

Year Principal Amount

*Final Maturity.

The Series 1999E Bonds are subject to mandatory redemption (except that the Series 1999E Bonds that have been tendered for purchase on any Rate Change Date but were not so purchased will be redeemed prior to any other Series 1999E Bonds) from sinking fund installments at a redemption price of 100% of the principal amount thereof, together with accrued interest, on November 15 in each of the years and in the amounts as follows:

Year Principal Amount

*Final Maturity.

The Obligor may reduce the principal amount of the EXTRASsm of the maturity so required to be redeemed on any such date by the principal amount of the EXTRASsm of such maturity either (i) purchased by or on behalf of the Obligor and surrendered to the Bond Trustee for cancellation not later than forty-five days prior to the redemption date; or (ii) redeemed other than through sinking fund redemption and cancelled by the Bond Trustee not later than forty-five days prior to the redemption date, which in either case have not been previously made the basis for a reduction of the principal amounts of the EXTRASsm to be redeemed

by operation of the sinking fund redemption. Any excess will be credited against the next sinking fund redemption obligation to redeem EXTRASsm.

Optional Redemption. The EXTRASsm are subject to optional redemption in whole or in part at any time during a Rate Period by the Issuer, upon direction of the Obligor, at a redemption price equal to the principal amount of the EXTRASsm or portions thereof so redeemed on the applicable redemption date plus accrued interest to the redemption date as follows:

- (a) Prior to the Initial Series 1999B Rate Change Date, the Series 1999B Bonds are not subject to optional redemption until November 15, _____;
- (b) Prior to the Initial Series 1999C Rate Change Date, the Series 1999C Bonds are not subject to optional redemption until November 15, _____;
- (c) Prior to the Initial Series 1999E Rate Change Date, the Series 1999E Bonds are not subject to optional redemption until November 15, _____;
- (d) If the Rate Period is three years or less, the EXTRASsm are not subject to optional redemption until the May 15 that is at least one and one-half years after the beginning of the Rate Period;
- (e) If the Rate Period is more than three years but less than or equal to five years, the EXTRASsm are not subject to optional redemption until the November 15 two years after the beginning of the Rate Period;
- (f) If the Rate Period is more than five years but less than or equal to eight years, the EXTRASsm are not subject to optional redemption until the May 15 two and one-half years after the beginning of the Rate Period;
- (g) If the Rate Period is more than eight years but less than or equal to 10 years, the EXTRASsm are not subject to optional redemption until the November 15 three years after the beginning of the Rate Period;
- (h) If the Rate Period is more than 10 years, the EXTRASsm are not subject to optional redemption until the November 15 four years after the beginning of the Rate Period.

The EXTRASsm tendered for purchase on any Rate Change Date but not so purchased will be given priority for redemption on each succeeding redemption date until redeemed prior to the redemption of any other EXTRASsm. EXTRASsm so given priority will be selected by the Bond Trustee, by lot or in such other equitable manner as the Bond Trustee will deem appropriate, in the event of insufficient funds to redeem all such EXTRASsm on any particular redemption date.

The EXTRASSM will be subject to optional redemption by the Issuer at the direction of the Obligor prior to their scheduled maturities, in whole or in part at a redemption price equal to the principal amount thereof plus accrued interest from the most recent interest payment date to the redemption date on any date following the occurrence of any of the following events:

- (1) in case of damage or destruction to, or condemnation of, any property, plant, and equipment of any Obligated Group Member, to the extent that the net proceeds of insurance or condemnation award exceed \$1,000,000, and the Obligor has determined not to use such net proceeds or award to repair, rebuild or replace such property, plant, and equipment; or
- (2) as a result of any changes in the Constitution or laws of the State of Texas or of the United States of America or of any legislative, executive, or administrative action (whether state or federal) or of any final decree, judgment, or order of any court or administrative body (whether state or federal), the obligations of the Obligor under the Agreement have become, as established by an Opinion of Counsel, void or unenforceable in each case in any material respect in accordance with the intent and purpose of the parties as expressed in the Agreement.

Mandatory Entrance Fee Redemption. The EXTRASSM are also subject to mandatory redemption at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date on each February 15, May 15, August 15 and November 15, to the extent monies are on deposit in the Entrance Fee Redemption Account of the Bond Fund as provided in the Bond Indenture.

Mandatory Redemption from Surplus Construction Fund Moneys. The EXTRASSM are subject to mandatory redemption in whole or in part on any date for which timely notice of redemption can be given by the Bond Trustee following the Completion Date at a redemption price equal to the aggregate principal amount of the EXTRASSM to be redeemed plus accrued interest to the redemption date, without premium, to the extent Surplus Construction Fund Moneys are transferred to the Principal Account of the Bond Fund.

Partial Redemption. In the event that less than all of the Series 1999 Bonds or portions thereof are to be redeemed, the Series 1999 Bonds to be redeemed will be selected first, from any outstanding Series 1999E Bonds; second, from any outstanding Series 1999D Bonds; third, from any outstanding Series 1999C Bonds; fourth, from any outstanding Series 1999B Bonds; and fifth, from any outstanding Series 1999A Bonds.

In the event that less than all of the Series 1999 Bonds or portions thereof of a series are to be redeemed, the Obligor may select the particular maturities of such series to be redeemed. If less than all Series 1999 Bonds or portions thereof of a single maturity are to be redeemed, they will be selected by the Securities Depository or by lot in such manner as the Bond Trustee may determine.

If a Series 1999 Bond is of a denomination larger than the minimum Authorized Denomination, a portion of such Series 1999 Bond may be redeemed, but Series 1999 Bonds will be redeemed only in the principal amount of an Authorized Denomination and no Series 1999 Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination.

Notice of Redemption. In case of every redemption, the Bond Trustee will cause notice of such redemption to be given by mailing by first-class mail, postage prepaid, a copy of the redemption notice to the owners of the EXTRASSM designated for redemption in whole or in part, at their addresses as the same will last appear upon the registration books, in each case not more than 60 nor less than 30 days prior to the redemption date. In addition, notice of redemption will be sent by first class or registered mail, return receipt requested, or by over night delivery service (1) contemporaneously with such mailing: (A) to any owner of \$1,000,000 or more in principal amount of EXTRASSM and (B) to at least two or more information services of national recognition that disseminate redemption information with respect to municipal bonds; and (2) to any securities depository registered as such pursuant to the Securities Exchange Act of 1934, as amended, that is an owner of EXTRASSM to be redeemed so that such notice is received at least two days prior to such mailing date. An additional notice of redemption will be given by certified mail, postage prepaid, mailed not less than 60 nor more than 90 days after the redemption date to any owner of EXTRASSM selected for redemption that has not surrendered the EXTRASSM called for redemption, at the address as the same will last appear upon the registration books.

Provided, however, that failure to give any such notice, or any defect therein, will not affect the validity of any proceedings for the redemption of such EXTRASSM.

Notwithstanding the foregoing, no Series 1999B Bonds or Series 1999C Bonds will be redeemed pursuant to Mandatory Entrance Fee Redemption until the Bond Trustee has received written notice from the Series 1999D Credit Provider that all Series 1999D Bonds have been redeemed and all outstanding Bank Obligations have been paid in full.

Transfers and Exchanges; Persons Treated as Owners. The EXTRASSM are fully transferable by the registered owner hereof in person or by his or her duly authorized attorney on the registration books kept at the principal office of the Bond Trustee upon surrender of such EXTRASSM together with a duly executed written instrument of transfer satisfactory to the Bond Trustee. Upon such transfer a new fully registered EXTRASSM of authorized denomination or denominations for the same aggregate principal amount, series and maturity will be issued to the transferee in exchange herefor, all upon payment of the charges and subject to the terms and conditions set forth in the Bond Indenture.

The Bond Trustee will not be required to transfer or exchange any EXTRASSM after the mailing of notice calling such EXTRASSM or any portion thereof for redemption has been given as herein provided, nor during the period beginning at the opening of business 15 days before the day of mailing by the Bond Trustee of a notice of prior redemption and ending at the close of business on the day of such mailing.

The Issuer and the Bond Trustee may deem and treat the person in whose name the EXTRASSM are registered as the absolute owner hereof for the purpose of making payment (except to the extent otherwise provided hereinabove and in the Bond Indenture with respect to Regular and Special Record Dates for the payment of interest) and for all other purposes, and neither the Issuer nor the Bond Trustee will be affected by any notice to the contrary.

THE SERIES 1999D BONDS

Introduction

The information in the following section applies only to the Series 1999D Bonds that are in a Floating Rate Mode or an Adjustable Rate Mode with an Adjustable Rate Period of 365 days or less and secured by a Credit Facility.

So long as the Series 1999D Bonds are registered in the name of Cede & Co., as nominee of DTC, principal of, premium, if any, and interest on the Series 1999D Bonds will be paid as described herein under "**BOOK-ENTRY ONLY SYSTEM.**" The following information is subject in its entirety to the provisions described below under the caption "**BOOK-ENTRY ONLY SYSTEM.**" See "**BOOK-ENTRY ONLY SYSTEM**" herein for information relating to presentation of tendered Series 1999D Bonds while the Series 1999D Bonds are in the Book-Entry Only System.

The Series 1999D Bonds, as initially issued, will be dated the date of issuance and will mature, subject to prior redemption and purchase, on the due date shown on the inside cover page of this Official Statement.

The Series 1999D Bonds will be available only in fully registered form in Authorized Denominations. "Authorized Denomination" means: (i) for any Series 1999D Bond in the Floating Rate Mode or the Adjustable Rate Mode, the denomination of \$100,000 or any integral multiple thereof; and (ii) for any Series 1999D Bond in the Fixed Rate Mode, the denomination of \$5,000 or any integral multiple thereof.

While the Series 1999D Bonds are held in a book-entry only system, it will be the duty of the Remarketing Agent to effect transfers and exchanges of beneficial interests in the Series 1999D Bonds.

The Trustee will keep the registration books for the Series 1999D Bonds at its principal office, initially located in Houston, Texas. Subject to further conditions contained in the Variable Rate Bond Indenture, the Series 1999D Bonds may be transferred or exchanged for one or more Series 1999D Bonds in different Authorized Denominations.

No Tender Agent will be appointed in connection with the issuance and delivery of the Series 1999D Bonds. Until such time as a Tender Agent is appointed in accordance with the Variable Rate Bond Indenture, all duties and responsibilities of the Tender Agent described herein and in the Variable Rate Bond Indenture will be performed by the Bond Trustee.

Modes of Operation

General. Under the Variable Rate Bond Indenture, the Series 1999D Bonds may operate in one or more of three Modes of operation, provided that the requirements of the Variable Rate Bond Indenture, certain of which are described below, for entering into such Mode or Modes have been satisfied. The three Modes of operation are the Floating Rate Mode, the Adjustable Rate Mode, and the Fixed Rate Mode. While any single Series 1999D Bond may operate in only one Mode at any given time, other Series 1999D Bonds may operate in different Modes at the same time. Generally all Series 1999D Bonds in the Floating Rate Mode will bear interest at the same interest rate. Series 1999D Bonds operating in the Adjustable Rate Mode may bear interest at different rates for different Adjustable Rate Periods. Series 1999D Bonds bearing interest at a Fixed Rate will not be secured by the Credit Facility and are not subject to mandatory tender for

purchase. See **“THE SERIES 1999D BONDS—Modes of Operation—Fixed Rate Mode.”** Generally, the Modes have different operating features, including different demand features, purchase features, redemption provisions, Interest Periods and Interest Payment Dates. Except as otherwise described below, once a Mode is designated for any particular Series 1999D Bond, such Series 1999D Bond will remain in that Mode until a new Mode for such Series 1999D Bond is designated as described below; provided, however, that Series 1999D Bonds converted to bear interest at a Fixed Rate will remain in such Mode until maturity or redemption thereof prior to maturity.

The Series 1999D Bonds will be initially issued in a Floating Rate Mode. Thereafter, except in the instances where a Series 1999D Bond is in the Fixed Rate Mode, a different Mode for each Series 1999D Bond may be designated, provided the requirements of the Variable Rate Bond Indenture for changing Modes are satisfied. A Conversion Date from one Mode to another Mode may be designated to occur with respect to any Series 1999D Bond during a Floating Rate Mode on any Floating Rate Interest Payment Date, and, with respect to any Series 1999D Bond during an Adjustable Rate Mode, on the last Adjustable Rate Interest Payment Date of the then current Adjustable Rate Period, all subject to the limitations set forth in the Variable Rate Bond Indenture. However, once a Series 1999D Bond is converted to a Fixed Rate Mode, it will remain in the Fixed Rate Mode until maturity or redemption thereof prior to maturity. Any such Conversion Date for any Series 1999D Bond in a particular Mode (other than a Fixed Rate Mode) will be a mandatory purchase date for such Series 1999D Bond. If a subsequent Mode is designated, the Bond Trustee will give written notice to the owner of each affected Series 1999D Bond that such Series 1999D Bond will be subject to mandatory tender for purchase on such Conversion Date. Series 1999D Bonds in such Mode are required to be tendered for purchase on such Conversion Date at 100% of the principal amount thereof, plus accrued interest to the date of purchase. See **“THE SERIES 1999D BONDS—Tenders and Purchases—Mandatory Purchase.”**

Under certain circumstances described in the Variable Rate Bond Indenture, Bond Counsel opinions are required to be delivered to the Trustee when a conversion is: (i) from a Floating Rate Mode or an Adjustable Rate Mode with an Adjustable Rate Period of 365 days or less in duration to an Adjustable Rate Mode with an Adjustable Rate Period in excess of 365 days in duration; or (ii) from an Adjustable Rate Mode with an Adjustable Rate Period in excess of 365 days in duration to a Floating Rate Mode or an Adjustable Rate Mode with an Adjustable Rate Period of 365 days or less in duration; or (iii) from a Floating Rate Mode or an Adjustable Rate Mode to a Fixed Rate Mode.

In the event that, with respect to any Series 1999D Bond, any condition precedent to the conversion from one Mode to another Mode, or from an Adjustable Rate Period of one duration to an Adjustable Rate Period of another duration, is not fulfilled (including, but not limited to, the establishment of the appropriate interest rate for such Mode or the Adjustable Rate Period, as the case may be), after the mandatory tender date such Series 1999D Bond will continue in its then current Mode for the same period and bear the same interest rate as was last borne by such Series 1999D Bond in such Mode; provided, however, in the case when the then current Mode is the Adjustable Rate Mode, such Series 1999D Bond will: (i) if it is in an Adjustable Rate Period of 365 days or less, convert to a Floating Rate Mode; (ii) if it is in an Adjustable Rate Period of 366 days or more and an opinion of Bond Counsel is furnished to the Bond Trustee stating that such change is authorized or permitted by the Variable Rate Bond Indenture, the Variable Rate Loan Agreement and the Act and that such change will not adversely affect the exclusion from gross income for purposes of federal income taxation of the interest on the Series 1999D Bonds, convert to a Floating Rate Mode; or (iii) if it is in an Adjustable Rate Period of 366 days or more and such Bond Counsel opinion is not so furnished, remain in an Adjustable Rate Mode with an Adjustment Rate Period of 366 days; provided, however, if the period of time between the applicable Adjustable Rate Reset Date and the maturity date of such Series 1999D Bond is less than 366 days, the new Adjustable Rate Period will end on the maturity date of such Series 1999D Bond.

Floating Rate Mode. During each Floating Rate Period, each Series 1999D Bond in the Floating Rate Mode will bear interest at a weekly rate of interest (the *“Floating Rate”*). The Floating Rate will be set each Wednesday (unless Wednesday is not a Business Day, in which case the Floating Rate will be set on the next preceding Business Day) by the Remarketing Agent at the lesser of the Maximum Rate or the lowest rate of interest which would, in the sole judgment of the Remarketing Agent having due regard for prevailing financial market conditions, be necessary to permit the Series 1999D Bonds to be remarketed on the following Thursday (or the current Thursday if such rate setting day is Thursday) at par.

The Floating Rate determined each week during a Floating Rate Period will be effective for the period from and including Thursday of each week through and including the following Wednesday, whether or not such days are Business Days (the "*Floating Rate Interest Period*"). In the event the Floating Rate is not determined for any Floating Rate Interest Period, the Floating Rate for that Floating Rate Interest Period will be the Floating Rate in effect for the immediately preceding Floating Rate Interest Period. In the event any such Series 1999D Bond will commence to bear interest at a Floating Rate as a result of the provisions described in "**THE SERIES 1999D BONDS—Modes of Operation—Adjustable Rate Mode,**" on the date that the Floating Rate is so established, the Remarketing Agent will follow the procedures for establishing a Floating Rate for such Series 1999D Bond set forth in the preceding paragraph.

The Floating Rate for the initial Floating Rate Interest Period will be set by the Remarketing Agent on or prior to the Closing Date at the lesser of the Maximum Rate or the lowest rate of interest which would, in the sole judgment of the Remarketing Agent having due regard for prevailing financial market conditions, permit the Series 1999D Bonds to be sold on the Closing Date at par. Each determination of the Floating Rate by the Remarketing Agent will be conclusive and binding upon the Issuer, the Obligor, the Bond Trustee, the Credit Provider, the Tender Agent and the registered owners of the Series 1999D Bonds.

The Variable Rate Bond Indenture permits the Remarketing Agent to designate another day for determining the interest rate on the Series 1999D Bonds or initiating a new Floating Rate under certain circumstances described therein.

Adjustable Rate Mode. During each Adjustable Rate Period (which Adjustable Rate Period will be a period of not less than 30 days in duration, unless the provisions described below apply, and will end on a Conversion Date or Adjustable Rate Reset Date), each Series 1999D Bond in the Adjustable Rate Mode will bear interest at an Adjustable Rate from an Adjustable Rate Conversion Date or Adjustable Rate Reset Date, as appropriate, to the earlier of its redemption, the following Conversion Date or the following Adjustable Rate Reset Date or its maturity date (unless and until the Company elects and effects a conversion of such Series 1999D Bonds from the Adjustable Rate Mode to another Mode, or a change in the duration of the Adjustable Rate Period). If, at the end of the then current Adjustable Rate Period, the Obligor does not elect and effect a conversion of any Series 1999D Bond in an Adjustable Rate Mode from the Adjustable Rate Mode to another Mode, or elect to change or continue the duration of the Adjustable Rate Period, that Series 1999D Bond will: (i) if it is in an Adjustable Rate Period of 365 days or less, convert to a Floating Rate Mode; (ii) if it is in an Adjustable Rate Period of 366 days or more and an opinion of Bond Counsel is furnished to the Trustee stating that such change is authorized or permitted by the Variable Rate Bond Indenture, the Variable Rate Loan Agreement and the Act and that such change will not adversely affect the exclusion from gross income for purposes of federal income taxation of the interest on the Series 1999D Bonds, convert to a Floating Rate Mode; or (iii) if it is in an Adjustable Rate Period of 366 days or more and such Bond Counsel opinion is not so furnished, remain in an Adjustable Rate Mode with an Adjustable Rate Period of 366 days; provided, however, if the period of time between the applicable Adjustable Rate Reset Date and the maturity date of such Series 1999D Bond is less than 366 days, the new Adjustable Rate Period will end on the maturity date of such Bond.

The Adjustable Rate will be established by the Remarketing Agent no later than 11:00 a.m., Chicago time, on the first day of each Adjustable Rate Period in its sole judgment having due regard for prevailing financial market conditions at the lowest rate which will permit the Series 1999D Bonds to be sold at par on the first day of such Adjustable Rate Period. Notwithstanding the foregoing, the Adjustable Rate so established will not be more than the Maximum Rate. In the event no Adjustable Rate is determined by the Remarketing Agent for an Adjustable Rate Period the duration of which has been established as provided above, the Adjustable Rate for such Adjustable Rate Period will be the Adjustable Rate in effect for the immediately preceding Adjustable Rate Period. Each determination of an Adjustable Rate by the Remarketing Agent will be conclusive and binding upon the Issuer, the Obligor, the Trustee, the Credit Provider, the Tender Agent and the registered owners of the Series 1999D Bonds.

Fixed Rate Mode. Series 1999D Bonds in a Fixed Rate Mode will bear interest at a Fixed Rate until maturity or prior redemption or acceleration of such Series 1999D Bonds. Owners of Series 1999D Bonds operating in such Fixed Rate Mode will not be entitled to demand purchase of their Series 1999D Bonds, and the Series 1999D Bonds bearing interest at a Fixed Rate will not be entitled to the benefit of the Credit Facility.

The Fixed Rate will be established in accordance with the firm commitment underwriting or purchase contract required to be delivered to the Trustee pursuant to the Variable Rate Bond Indenture and as described under the caption "**Conversion Features**" below. Notwithstanding the foregoing, the Fixed Rate so established will not be more than the Maximum Rate. The determination of the Fixed Rate will be conclusive and binding upon the Issuer, the Obligor, the Bond Trustee, the Credit Provider, the Tender Agent and the registered owners of the Series 1999D Bonds.

Conversion Features. The Series 1999D Bonds will be converted from one Mode to another Mode, or from an Adjustable Rate Period of one duration to an Adjustable Rate Period of another duration within the Adjustable Rate Mode, if the Obligor will notify in writing the Trustee, the Authority, the Tender Agent, the Credit Provider and the Remarketing Agent of its irrevocable election to effect such conversion, and together with such notice specifies the Interest Payment Date on which such conversion is to take place, and, if such conversion is to or within the Adjustable Rate Mode, the Adjustable Rate Interest Payment Date upon which such Adjustable Rate Period is to terminate, and when a conversion is: (i) from a Floating Rate Mode or an Adjustable Rate Mode with an Adjustable Rate Period of 365 days or less in duration to an Adjustable Rate Mode with an Adjustable Rate Period in excess of 365 days in duration; or (ii) from an Adjustable Rate Mode in excess of 365 days in duration to a Floating Rate Mode or an Adjustable Rate Mode of 365 days or less in duration; or (iii) from a Floating Rate Mode or an Adjustable Rate Mode to a Fixed Rate Mode, delivers an opinion of Bond Counsel (which opinion will be confirmed on the Conversion Date or Adjustable Rate Reset Date, as appropriate) stating that such conversion is authorized or permitted by the Variable Rate Bond Indenture, the Variable Rate Loan Agreement and the Act, and will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Series 1999D Bonds.

If the conversion is from the Floating Rate Mode, the conversion date will be the Floating Rate Interest Payment Date specified by the Obligor, not less than 45 days succeeding receipt by the Authority, the Bond Trustee, the Tender Agent, the Credit Provider and the Remarketing Agent of such notice of the Obligor's election to effect such conversion. If the conversion is from or within the Adjustable Rate Mode, the conversion date will be the last Adjustable Rate Interest Payment Date of the then current Adjustable Rate Period; provided that the Obligor has given the Authority, the Trustee, the Tender Agent, the Credit Provider and the Remarketing Agent 45 days' notice of its election to effect such conversion.

In the event the Obligor fails to make an election to convert a Series 1999D Bond from the Adjustable Rate Mode to another Mode or from an Adjustable Rate Period of one duration to an Adjustable Rate Period of another duration within the Adjustable Rate Mode, that Series 1999D Bond will: (i) if it is in an Adjustable Rate Period of 365 days or less, convert to a Floating Rate Mode; (ii) if it is in an Adjustable Rate Period of 366 days or more and an opinion of Bond Counsel is furnished to the Trustee stating that such change is authorized or permitted by the Variable Rate Bond Indenture, the Variable Rate Loan Agreement and the Act and that such change will not adversely affect the exclusion from gross income for purposes of federal income taxation of the interest on the Series 1999D Bonds, convert to a Floating Rate Mode; or (iii) if it is in an Adjustable Rate Period of 366 days or more and such Bond Counsel opinion is not so furnished, remain in an Adjustable Rate Mode with an Adjustable Rate Period of 366 days; provided, however, if the period of time between the applicable Adjustable Rate Reset Date and the maturity date of such Series 1999D Bonds is less than 366 days, the new Adjustable Rate Period will end on the maturity date of such Series 1999D Bonds.

The Series 1999D Bonds will be subject to mandatory tender for purchase on each Conversion Date or Adjustable Rate Reset Date, as appropriate. The Series 1999D Bonds will not be converted from one Mode to another Mode, or from an Adjustable Rate Period of one duration to an Adjustable Rate Period of another duration, if an Event of Default will have occurred and be continuing under the Indenture.

In the event any condition precedent to the conversion from one Mode to another Mode, or from an Adjustable Rate Period of one duration to an Adjustable Rate Period of another duration within the Adjustable Rate Mode, is not fulfilled (including, but not limited to, the establishment of the appropriate interest rate for such Mode or Adjustable Rate Period, as the case may be), after the mandatory tender date the Series 1999D Bonds will continue in their then current Mode, for the same period (in the case where the then current Mode is the Adjustable Rate Mode) and bear the same interest rate as was last borne by the Series 1999D Bonds in such Mode; provided, however, in the case when the then current Mode is the Adjustable Rate Mode, such Series 1999D Bond will be in the Mode and at the interest rate established as described in the second preceding paragraph. In the event Series 1999D Bonds are not remarketed on the mandatory tender

date and become Obligor Bonds or Pledged Bonds, the Remarketing Agent will be entitled to determine a new and higher Floating Rate or Adjustable Rate with respect to such Series 1999D Bonds (under the conditions and subject to the limitations provided above), effective on such date as the Remarketing Agent is able to remarket all such Obligor Bonds or Pledged Bonds in whole at a price of par plus accrued interest to the delivery date; but in any event such new rate with respect to such Series 1999D Bonds will not be in excess of the Maximum Rate. The determination of the new Floating Rate or Adjustable Rate with respect to such Series 1999D Bonds, as appropriate, by the Remarketing Agent will be conclusive and binding on the Authority, the Obligor, the Bond Trustee, the Credit Provider, the Tender Agent and the registered owners of the Series 1999D Bonds.

Notices. At least 30 days prior to each Conversion Date or Adjustable Rate Reset Date, as appropriate, notice will be given to each affected owner of Series 1999D Bonds by the Bond Trustee by first class mail stating: (a) the Conversion Date or Adjustable Rate Reset Date, as appropriate; and (b) that on the Conversion Date or Adjustable Rate Reset Date, as appropriate, beneficial interests in the Series 1999D Bonds are subject to mandatory purchase.

After receipt by the Bond Trustee of written notice from the Credit Provider that an event of default has occurred under a Reimbursement Agreement, which notice directs the Bond Trustee to cause a mandatory tender of any Series 1999D Bonds, the Bond Trustee will, within one Business Day, give to each affected Bondholder notice by first class mail stating that on any Business Day selected by the Bond Trustee, which Business Day is specified in such notice and is not later than five (5) days after the date of such notice, such Series 1999D Bond is subject to mandatory tender and purchase (or, if such Series 1999D Bond is held in a book-entry system, that the beneficial interests in such Series 1999D Bond are subject to mandatory purchase).

Interest Payments

During the initial Floating Rate Period, interest on the Series 1999D Bonds will be payable on the first Business Day of each month, commencing December 1, 1999.

During each Floating Rate Period occurring subsequent to an Adjustable Rate Period, with respect to any Series 1999D Bond in such Mode interest on such Series 1999D Bonds will be payable on the first Business Day of each month, commencing with the first Business Day of the month following the Floating Rate Conversion Date, and on the maturity date of the Series 1999D Bonds (if such Series 1999D Bonds are in the Floating Rate Mode at such time).

During each Adjustable Rate Period of 365 days or less with respect to any Series 1999D Bond, the interest on such Series 1999D Bond will be payable the day following the earlier of the last day of such Adjustable Rate Period or the maturity date of such Series 1999D Bond. During each Adjustable Rate Period of more than 365 days and the Fixed Rate Period with respect to any Series 1999D Bond, interest on such Series 1999D Bond will be payable on each May 15 and November 15, and on the maturity date of such Series 1999D Bond, commencing with the first May 15 or November 15 following the Adjustable Rate Conversion Date, the Adjustable Rate Reset Date or the Fixed Rate Conversion Date, as appropriate.

Interest on the Series 1999D Bonds will be payable to the nominee of DTC, while all of the Series 1999D Bonds are registered in the name of such nominee.

The Series 1999D Bonds will initially bear interest from the Closing Date, and thereafter will bear interest from the Interest Payment Date next preceding the date of authentication, unless (i) authenticated prior to the first Interest Payment Date, in which event such Series 1999D Bonds will bear interest from the Closing Date, (ii) authenticated on an Interest Payment Date, in which event such Series 1999D Bonds will bear interest from the date of authentication, or (iii) authenticated after a Record Date and before the following Interest Payment Date, in which event such Series 1999D Bonds will bear interest from the following Interest Payment Date. If interest on the Series 1999D Bonds is in default, the Series 1999D Bonds will thereafter bear interest from the date to which interest has been paid in full, or, if no interest has been paid on the Series 1999D Bonds, from the Closing Date.

Interest on the Series 1999D Bonds is computed, while a Series 1999D Bond is in the Floating Rate Mode or an Adjustable Rate Mode of 365 days or less, on the basis of a 365- or 366-day year, for the actual

number of days elapsed; and, while a Series 1999D Bond is in an Adjustable Rate Mode of more than 365 days or the Fixed Rate Mode, on the basis of a 360-day year, composed of twelve 30-day months, payable on each Interest Payment Date.

All Series 1999D Bonds need not be in the same Mode simultaneously; however, each Series 1999D Bond may be in only one Mode at any one time.

In no event will interest accrue on Series 1999D Bonds at a rate greater than the lesser of (i) 15% per annum or (ii) the assumed per annum interest rate used in determining the interest portion of the Credit Facility, if any, or (iii) the maximum rate permitted by law. Upon the issuance of the Series 1999D Bonds and the concurrent delivery of the Series 1999D Credit Facility, the Maximum Rate will be 10% for the Series 1999D Bonds secured by such Series 1999D Credit Facility.

THE TRUSTEE HAS NO OBLIGATION TO INFORM THE BONDHOLDER OF THE INTEREST RATE APPLICABLE IN ANY RATE PERIOD WHILE SERIES 1999D BONDS BEAR INTEREST AT A FLOATING RATE. Should any Bondholder or Beneficial Owner request in writing the Floating Rate applicable to its Series 1999D Bonds for any particular Interest Period during a Floating Rate Period, the Trustee (if such Series 1999D Bonds are not held in a book-entry only system) or the Remarketing Agent (if such Series 1999D Bonds are held in a book-entry only system) will furnish notice (by first class mail, postage prepaid) of the Floating Rate for such Interest Period to such requesting Bondholder or Beneficial Owner, respectively.

Payment of Series 1999D Bonds

Principal of and premium, if any, on each Series 1999D Bond will be payable by the Bond Trustee to the holder thereof upon presentation and surrender of such Series 1999D Bond as the same become due at the principal corporate trust office of the Bond Trustee. Interest on the Series 1999D Bonds will be paid by the Bond Trustee by check or draft drawn upon the Bond Trustee and mailed by first class mail on the respective Interest Payment Dates to the holders thereof at their addresses shown on the Registration Books of the Bond Trustee as of the close of business on the Record Date with respect to such Interest Payment Date, or to such other addresses as are furnished to the Bond Trustee (in form satisfactory to the Bond Trustee) by such holders prior to such Record Date; provided that payment of interest will be made by the Bond Trustee by wire transfer to the Owner of \$1,000,000 or more in aggregate principal amount of Series 1999D Bonds upon such Owner providing the Bond Trustee with written wire transfer instructions before the applicable Record Date. If the last day for making any payment falls on a day other than a Business Day, such payment may be made on the next succeeding Business Day, and, if so made, will have the same effect as if made on the required date, and the amount of any payment due will not be affected because payment is made on a date other than the required date.

Tenders and Purchases

Optional Tenders.

Floating Rate Mode. During each Floating Rate Period, each beneficial owner of a beneficial interest in the Series 1999D Bonds may give written notice to the Remarketing Agent of a demand for purchase of such beneficial owner's beneficial interest (or portion thereof; provided that the portion thereof tendered is in the amount of \$100,000 or any integral multiple thereof; and provided, further, that the portion thereof retained is itself in the amount of \$100,000 or any integral multiple thereof) at a price equal to the principal amount of such beneficial interest (or authorized portion thereof) plus accrued and unpaid interest, without premium. Each such beneficial interest (or authorized portion thereof) will be purchased on the date designated by the beneficial owner, which date must be a Business Day not prior to the seventh day next succeeding the date of delivery of such notice; delivery of notice will be effective only if accomplished on a Business Day. Any such notice will be irrevocable. Beneficial interests subject to tender notices will be deemed to have been surrendered on the purchase date specified in the notice.

No Optional Tender - Adjustable Rate Period and Fixed Rate Period. A Beneficial Owner will not have the right to optionally tender its beneficial interest in its Series 1999D Bonds for purchase during an Adjustable Rate Period or the Fixed Rate Period with respect to such Series 1999D Bonds.

Mandatory Purchase. Beneficial interests in the Series 1999D Bonds, other than Pledged Bonds, Company Bonds or Series 1999D Bonds bearing interest at a Fixed Rate, are subject to mandatory tender for purchase on each Conversion Date and Adjustable Rate Reset Date (see “**THE SERIES 1999D BONDS—Modes of Operation—Conversion Features**”) and on the effective date of an Alternate Credit Facility. The Series 1999D Bonds will also be subject to mandatory tender and purchase after receipt by the Bond Trustee of written notice from the Credit Provider that an event of default has occurred under a Reimbursement Agreement, which notice directs the Bond Trustee to cause either a mandatory tender or acceleration of any Series 1999D Bonds. The purchase price on each mandatory tender date will be par plus accrued interest to the mandatory tender date. The Bond Trustee will give the required notice to holders of Series 1999D Bonds affected thereby: (i) no later than 30 days prior to each Conversion Date and Adjustable Rate Reset Date or effective date of an Alternate Credit Facility; or (ii) within one Business Day after receiving notice from the Credit Provider that the Series 1999D Bonds are subject to mandatory tender as a result of the occurrence of an event of default under the Reimbursement Agreement on a Business Day specified in such notice, which Business Day will be no later than 5 days after the date of such notice. See “**THE SERIES 1999D BONDS—Modes of Operation—Notices.**”

Bondholder’s Failure to Deliver the Series 1999D Bonds. In the event of a failure by an owner of Series 1999D Bonds to deliver its Series 1999D Bonds on or prior to the required delivery date, said owner will not be entitled to any payment (including interest to accrue subsequent to the purchase date) other than the purchase price for such Undelivered Series 1999D Bonds, and any such Undelivered Series 1999D Bonds will no longer be entitled to the benefit and security of the Variable Rate Bond Indenture, except for the purpose of the payment of the purchase price thereof; and the Bond Trustee will not register any further transfers of such Undelivered Series 1999D Bonds.

Redemption Provisions

Mandatory Sinking Fund Redemption In All Modes. The Series 1999D Bonds are subject to mandatory redemption from sinking fund installments, at a redemption price of 100% of the principal amount thereof, together with accrued interest, without any premium, on November 15 in each of the years and amounts as follows:

<u>Year</u>	<u>Sinking Fund Installment</u>	<u>Year</u>	<u>Sinking Fund Installment</u>
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* Final Maturity.

During Floating Rate Period. Each Series 1999D Bond in a Floating Rate Period will be subject to redemption prior to maturity only as follows:

Optional Redemption. Each Series 1999D Bond in a Floating Rate Period is subject to optional redemption at the direction of the Obligor in whole or in part on any date upon 15 days’ prior written notice from the Obligor to the Issuer, the Bond Trustee, the Credit Provider and the Remarketing Agent, at a redemption price equal to the aggregate principal amount of such Series 1999D Bonds to be redeemed plus

accrued interest thereon to the redemption date, without premium, to the extent of optional prepayments of the loan in accordance with the Variable Rate Loan Agreement.

Mandatory Redemption Upon Expiration of a Credit Facility. Each Series 1999D Bond in a Floating Rate Period is subject to mandatory redemption in whole on the last Floating Rate Interest Payment Date prior to the Expiration of the Term of the Credit Facility, at a redemption price equal to the aggregate principal amount of such Series 1999D Bond plus accrued interest thereon to the redemption date, without premium.

Mandatory Redemption from Surplus Project Fund Proceeds. The Series 1999D Bonds in a Floating Rate Period are subject to mandatory redemption in whole or in part on any date for which timely notice of redemption can be given by the Bond Trustee following the Completion Date at a redemption price equal to the aggregate principal amount of the Series 1999D Bonds to be redeemed plus accrued interest thereon to the redemption date, without premium, to the extent Surplus Construction Fund Moneys are transferred to the Revenue Account of the Bond Fund.

Mandatory Entrance Fee Redemption. The Series 1999D Bonds in a Floating Rate Period are subject to mandatory redemption in whole or in part at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date on each February 15, May 15, August 15 and November 15, to the extent monies are on deposit in the Entrance Fee Redemption Account of the Bond Fund as provided in the Variable Rate Bond Indenture.

During Adjustable Rate Period or Fixed Rate Period. Each Series 1999D Bond in an Adjustable Rate Period or the Fixed Rate Period will be subject to redemption prior to maturity only as follows:

Extraordinary Optional Redemption. The Series 1999D Bonds in an Adjustable Rate Period or a Fixed Rate Period are subject to extraordinary optional redemption at the direction of the Obligor in whole or in part on any date at a redemption price equal to the aggregate principal amount of the Series 1999D Bonds to be redeemed plus accrued interest thereon to the redemption date, without premium, upon the occurrence of certain events described in the Variable Rate Loan Agreement if the Obligor elects to prepay a like amount under the Variable Rate Loan Agreement.

Optional Redemption. Each Series 1999D Bond in an Adjustable Rate Period or a Fixed Rate Period is subject to optional redemption in whole or in part on any date upon forty-five (45) days' prior written notice by the Obligor to the Bond Trustee, the Issuer, the Credit Provider and (during an Adjustable Rate Period) the Remarketing Agent, as set forth below, to the extent of optional prepayments of the loan in accordance with the Variable Rate Loan Agreement, at the applicable redemption price (expressed as a percentage of the principal amount to be redeemed) relating to the length of the applicable Adjustable Rate Period or Fixed Rate Period set forth below, plus accrued interest thereon to the date of redemption:

Length of Period (expressed in whole years)*	Dates on Which Redemption is Allowed and Redemption Prices**
greater than 12	after 10 years at 102%, declining by 1% annually to 100%
less than or equal to 12 and greater than 4	noncallable until 2 years prior to the end of the Adjustable Rate Period, or, if the Bond is in Fixed Rate Period, until 2 years prior to the maturity date, then 102%, declining by 1% annually to 100%
less than or equal to 4	NOT SUBJECT TO OPTIONAL REDEMPTION

* The Adjustable Rate Period or the Fixed Rate Period will be rounded up to the next whole year if otherwise a partial year.

** Measured from the first day of the Adjustable Rate Period or the Fixed Rate Period, as appropriate.

The foregoing schedule may be modified, in accordance with the Variable Rate Bond Indenture, upon any Adjustable Rate Conversion Date, Adjustable Rate Reset Date or Fixed Rate Conversion Date if the Obligor delivers to the Issuer, the Bond Trustee and the Credit Provider: (i) a modified schedule; (ii) with respect to either an Adjustable Rate Conversion Date or an Adjustable Rate Reset Date, a certification of the Remarketing Agent that such modification is necessary for the Remarketing Agent to remarket the Series 1999D Bonds on such Adjustable Rate Conversion Date or Adjustable Rate Reset Date, as appropriate, at a price of par plus accrued interest, if any; (iii) with respect to a Fixed Rate Conversion Date, a certification of the party purchasing Fixed Rate Bonds that such modification is necessary for such party to remarket such Series 1999D Bonds on such Fixed Rate Conversion Date at a price of par plus accrued interest, if any; and (iv) an opinion of Bond Counsel stating that such modification is authorized or permitted by the Variable Rate Bond Indenture, the Variable Rate Loan Agreement and the Act, and that such modification will not adversely affect the exclusion from gross income of interest on the Series 1999D Bonds for purposes of federal income taxation.

Mandatory Redemption Upon Expiration of a Credit Facility. Each Series 1999D Bond in an Adjustable Rate Period is subject to mandatory redemption in whole on the last Adjustable Rate Interest Payment Date prior to the Expiration of the Term of the applicable Credit Facility at a redemption price equal to the aggregate principal amount of such Series 1999D Bond plus accrued interest thereon to the redemption date, without premium.

Mandatory Redemption from Surplus Project Fund Proceeds. The Series 1999D Bonds in an Adjustable Rate Period or a Fixed Rate Period are subject to mandatory redemption in whole or in part on any date for which timely notice of redemption can be given by the Bond Trustee following the Completion Date at a redemption price equal to the aggregate principal amount of such Series 1999D Bonds to be redeemed plus accrued interest to the redemption date, without premium, to the extent Surplus Construction Fund Moneys are transferred to the Revenue Account of the Bond Fund.

Mandatory Entrance Fee Redemption. The Series 1999D Bonds are subject to mandatory redemption in whole or in part at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date on each February 15, May 15, August 15 and November 15, to the extent monies are on deposit in the Entrance Fee Redemption Account of the Bond Fund as provided in the Variable Rate Bond Indenture.

The payment of any premium upon the optional redemption of Series 1999D Bonds after the Conversion Date or Adjustable Rate Reset Date, as appropriate, if such Series 1999D Bonds are secured by a Credit Facility, will be made from (i) Seasoned Funds deposited by the Obligor with the Bond Trustee, or (ii) if permitted by the terms of the Credit Facility, a draw on such Credit Facility.

Notice of Redemption; Effect of Redemption. Not less than 30 nor more than 45 days (except for Series 1999D Bonds bearing interest at a Floating Rate, in which case not less than seven (7) days) prior to any redemption date, the Trustee will, upon receipt of written consent from the Credit Provider, cause notice of the call for redemption, identifying each Series 1999D Bond or portion thereof to be redeemed, to be sent by first-class mail, postage prepaid, to the Tender Agent, the Credit Provider, the Remarketing Agent, the Obligor and the Owner of each Series 1999D Bond to be redeemed at the address of such Owner shown on the Registration Books; provided, however, that neither the failure to give any such notice nor any defect in any notice so given with respect to any Series 1999D Bond will affect the sufficiency or the validity of any proceedings for the redemption of the other Series 1999D Bonds; and provided, further, that if such notice by mail will not have been given with respect to a Series 1999D Bond delivered for purchase pursuant to the Variable Rate Bond Indenture and if such Series 1999D Bond will be deemed to have been selected for redemption pursuant to the Variable Rate Bond Indenture, such notice may be given by the Bond Trustee by telephone, telecopy (receipt confirmed by telephone) or telegram, confirmed in writing, as promptly as practicable to the registered owner of such Series 1999D Bond, but failure to duly give such notice by telephone, telecopy or telegram or any defect therein will not affect the validity of proceedings for the redemption of other Series 1999D Bonds. If (i) any Series 1999D Bonds to be redeemed are secured by a Credit Facility, (ii) upon redemption of such Series 1999D Bonds, any optional redemption premium not payable from a draw under such Credit Facility will be due and (iii) Seasoned Funds available to pay such optional redemption are not on deposit with the Bond Trustee on the date of the giving of such notice of redemption, then such notice will state that such redemption is subject to the condition precedent that

Seasoned Funds available to pay such optional redemption premium are on deposit with the Bond Trustee on the date of such redemption.

On the date fixed for redemption of any Series 1999D Bond, funds for the payment thereof will be on deposit with the Bond Trustee representing (a) during a Floating Rate Period or an Adjustable Rate Period, the proceeds of draws under the Credit Facility, or (b) during a Floating Rate Period or an Adjustable Rate Period, (i) if such Series 1999D Bond is secured by a Credit Facility, the proceeds of draws under the Credit Facility and Seasoned Funds (with respect to any optional redemption premium not paid with a draw under the Credit Facility) deposited by the Obligor with the Bond Trustee, and (ii) if such Series 1999D Bond is not secured by a Credit Facility, moneys deposited by the Obligor with the Bond Trustee.

Interest will not accrue after the redemption date on any Series 1999D Bond called for redemption if notice has been given and if sufficient moneys have been deposited with the Trustee to pay principal of, premium, if any, and interest on such Series 1999D Bonds to the redemption date.

Partial Redemption. If fewer than all of the Series 1999D Bonds will be called for redemption, the portion of Series 1999D Bonds to be redeemed will be selected by the Securities Depository or by lot by the Bond Trustee in such manner as the Bond Trustee may determine from among all outstanding Series 1999D Bonds eligible for redemption. If a Series 1999D Bond is of a denomination larger than the minimum Authorized Denomination, a portion of such Series 1999D Bond may be redeemed, but Bonds will be redeemed only in the principal amount of an Authorized Denomination and no Series 1999D Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination. If it is determined that one or more, but not all, of the Authorized Denomination increments of principal amount represented by any Series 1999D Bond are to be called for redemption, then, upon notice of intention to redeem such Authorized Denomination increments of principal amount of such Series 1999D Bond, the Owner of such Series 1999D Bond, upon surrender of such Series 1999D Bond to the Bond Trustee for payment to such Owner of the redemption price or the principal amount of such Series 1999D Bond called for redemption, will be entitled to receive a new Series 1999D Bond or Series 1999D Bonds in the aggregate principal amount of the unredeemed balance of the principal amount of such Series 1999D Bond and in the same Mode. New Series 1999D Bonds representing the unredeemed balance of the principal amount of such Series 1999D Bonds will be issued to the Owner thereof without charge therefor.

If the owner of any Series 1999D Bond of a denomination greater than an Authorized Denomination will fail to present such Series 1999D Bond to the Trustee for payment and exchange as aforesaid, such Series 1999D Bond will, nevertheless, become due and payable on the date fixed for redemption to the extent of the Authorized Denomination increments of principal amount called for redemption (and to that extent only).

Notwithstanding the foregoing provisions; the Bond Trustee will first redeem Pledged Bonds and Obligor Bonds (in that order of priority).

While the Series 1999D Bonds are held in a book-entry only system, it will be the duty of the Remarketing Agent to effect a partial redemption of the beneficial interests in the Series 1999D Bonds in accordance with the foregoing provisions.

Obligor's Option to Purchase Series 1999D Bonds in Lieu of Certain Redemptions. The Obligor may elect, in lieu of an optional redemption of all of the Series 1999D Bonds, to cause a mandatory tender of all of the Series 1999D Bonds on what would have otherwise been the optional redemption date thereof. In such event, the mandatory tender date will be the date specified by the Obligor, but, in any event, not less than forty-five (45) days succeeding receipt by the Issuer, the Bond Trustee, the Tender Agent, the Credit Provider and the Remarketing Agent of written notice of the Obligor's election to effect such a mandatory tender of all of the Series 1999D Bonds. Each such election will specify whether the Obligor elects such mandatory tender date to constitute a Floating Rate Conversion Date, an Adjustable Rate Conversion Date, an Adjustable Rate Reset Date or a Fixed Rate Conversion Date, in which event the appropriate requirements relating to Mode changes will apply. The purchase price of the Series 1999D Bonds on any mandatory tender date under this paragraph will be the optional redemption price otherwise payable upon expiration of a Credit Facility.

The Obligor may also elect, in lieu of a mandatory redemption of all of the Series 1999D Bonds upon expiration of a Credit Facility, to cause a mandatory tender of all of the Series 1999D Bonds on the last Interest Payment Date prior to the Expiration of the Term of the Credit Facility. To effect such an election, the Obligor must give written notice, not less than forty-five (45) days prior to such Interest Payment Date, to the Issuer, the Bond Trustee, the Tender Agent, the Credit Provider and the Remarketing Agent. Each such election will specify whether the Obligor elects such mandatory tender date to constitute a Floating Rate Conversion Date, an Adjustable Rate Conversion Date, an Adjustable Rate Reset Date or a Fixed Rate Conversion Date, in which event the appropriate requirements relating to Mode changes will apply. The purchase price of the Series 1999D Bonds on any mandatory tender date under this paragraph will be the mandatory redemption price otherwise payable.

It will be a condition prerequisite to the Obligor's election to purchase Series 1999D Bonds in lieu of a redemption: (i) that the Credit Provider consent thereto in writing (a copy of such written consent must accompany the Obligor's notice of election); and (ii) if the Series 1999D Bonds are then secured by a Credit Facility, that the Credit Facility permit the drawing thereon by the Bond Trustee of the purchase price of the Series 1999D Bonds to be paid on the mandatory tender date.

Transfers and Exchanges; Persons Treated as Owners

The ownership of a Series 1999D Bond may be transferred (in the amount of any Authorized Denomination, provided that any portion thereof retained is itself in an Authorized Denomination) only upon surrender thereof at the principal corporate trust office of the Bond Trustee or, in the case of tenders, at the principal office of the Tender Agent (as agent of the Bond Trustee), accompanied by an assignment, duly executed by the Owner of such Series 1999D Bond or its duly authorized attorney-in-fact, in such form as is satisfactory to the Bond Trustee or the Tender Agent, as the case may be. Upon the due presentation of any Series 1999D Bond for transfer and on request of the Bond Trustee, the Authority will execute in the name of the transferee, and the Bond Trustee or the Tender Agent (as agent of the Bond Trustee) will authenticate and deliver, a new fully registered Series 1999D Bond or Series 1999D Bonds, in any Authorized Denomination, in an aggregate principal amount equal to the unmatured and unredeemed principal amount of such transferred fully registered Series 1999D Bond, and bearing interest at the same rate and in the same Mode, and maturing on the same date, as such transferred Series 1999D Bond.

Series 1999D Bonds may be exchanged at the principal corporate trust office of the Bond Trustee for a like aggregate principal amount of Series 1999D Bonds of Authorized Denominations and of the same Mode. Neither the Authority nor the Bond Trustee will be required to make any such transfer or exchange of any Series 1999D Bond during the three Business Days immediately preceding the selection of the Series 1999D Bonds for redemption or, with respect to a Series 1999D Bond, after such Series 1999D Bond or any portion thereof has been selected for redemption. Notwithstanding the foregoing, the Bond Trustee or the Tender Agent (as agent of the Bond Trustee) will authenticate and make available for receipt by the purchaser or purchasers of any Series 1999D Bond tendered or deemed to be tendered against payment therefor, a new fully registered Series 1999D Bond or Series 1999D Bonds, in any Authorized Denomination, in an aggregate principal amount equal to the principal amount of the Series 1999D Bond so deemed to be tendered and in the same Mode.

In all cases of the transfer of a Series 1999D Bond, the Bond Trustee will register at the earliest practicable time, on the Registration Books, such Series 1999D Bond in accordance with the Variable Rate Bond Indenture. The Authority, the Tender Agent or the Bond Trustee may make a charge to the Series 1999D Bond Owner for every such transfer and every exchange of a Series 1999D Bond sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and may demand that such charge be paid before any new Series 1999D Bond is delivered.

As to any Series 1999D Bond, the person in whose name the ownership of such Series 1999D Bond is registered on the Registration Books will be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and premium, if any, and interest on any such Series 1999D Bond will be made only to or upon the order of the registered Owner thereof or its legal representative.

While the Series 1999D Bonds are held in a book-entry only system, it will be the duty of the Remarketing Agent to effect transfers and exchanges of beneficial interests in the Series 1999D Bonds in accordance with the foregoing provisions.

REMARKETING AGENT

B.C. Ziegler and Company will serve as the initial "Remarketing Agent" for the EXTRASSM and the Series 1999D Bonds. The Remarketing Agent will designate to the Bond Trustee its principal office and signify its acceptance of the duties and obligations imposed upon it under the Bond Indenture by a written instrument of acceptance or a remarketing agent agreement delivered to the Issuer under which the Remarketing Agent will also agree to keep such books and records as will be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer, the Bond Trustee, the Series 1999D Credit Provider (as hereinafter defined) the Tender Agent and the Obligor at all reasonable times.

The Remarketing Agent will be a recognized municipal bond dealer, will have a "net capital" of greater than \$10,000,000 and will be authorized by law to perform all the duties imposed upon it by the Variable Rate Bond Indenture. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by the Bond Indenture by giving at least 30 days' written notice to the Obligor, the Tender Agent, the Series 1999D Credit Provider and the Bond Trustee.

A Remarketing Agent (whether initial or successor) may be removed (i) at any time at the direction of the Obligor, with the consent of the Series 1999D Credit Provider, and (ii) at any time during any period in which any Series 1999D Bond is held as a Pledged Bond, at the direction of the Series 1999D Credit Provider, filed, in either case, at least thirty (30) days prior to such removal with the Remarketing Agent, the Tender Agent, all Bondholders and the Bond Trustee. No removal or resignation hereunder shall become effective prior to the acceptance of appointment of a successor Remarketing Agent hereunder.

BOOK-ENTRY SYSTEM

When the Series 1999 Bonds are issued, ownership interests will be available to purchasers only through a book-entry-only system (the "*Book-Entry System*") maintained by DTC. DTC will act as securities depository for the Series 1999 Bonds. Initially, the Series 1999 Bonds will be issued as fully-registered bonds, registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered bond for each series of the Series 1999 Bonds will be issued in the aggregate original principal amount of such series of the Series 1999 Bonds and will be deposited with DTC. The following discussion will not apply to Series 1999 Bonds of either series if issued in certificate form due to the discontinuance of the DTC Book-Entry system, as described below.

THE INFORMATION PROVIDED IMMEDIATELY BELOW UNDER THIS CAPTION "**BOOK-ENTRY SYSTEM—GENERAL**," HAS BEEN OBTAINED FROM DTC. NO REPRESENTATION IS MADE BY THE UNDERWRITERS, THE ISSUER OR THE CORPORATION AS TO THE ACCURACY OR ADEQUACY OF SUCH INFORMATION PROVIDED BY DTC OR TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF.

General

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds securities that its participants (the "*Participants*") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges in deposited securities through electronic computerized book-entry changes in Participants' accounts thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations (the "*Direct Participants*"). DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (the "*Indirect Participants*"). The Rules applicable to DTC and its Participants are on file with the Securities and Exchange Commission.

Purchases of the Series 1999 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 1999 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 1999 Bond (the "Beneficial Owner") is, in turn, to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 1999 Bonds will be accomplished by entries made on the books of Participants acting on behalf of the Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 1999 Bonds, except in the event that use of the book-entry system for the Series 1999 Bonds is discontinued.

To facilitate subsequent transfers, all Series 1999 Bonds deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Series 1999 Bonds with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 1999 Bonds. DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 1999 Bonds are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices will be sent to Cede & Co. If less than all of the Series 1999 Bonds of either series are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. will consent or vote with respect to the Series 1999 Bonds. Under its usual procedures, DTC mails an Omnibus Proxy to the Bond Trustee as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 1999 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

So long as any Series 1999 Bond is registered in the name of DTC's nominee, principal and interest payments on the Series 1999 Bonds will be made to DTC. DTC's practice is to credit Direct Participants' accounts on payable dates in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on payable date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Bond Trustee, the Members of the Obligated Group or the Issuer, subject to any statutory and regulatory requirements as may be in effect from time to time. Payment of principal and interest to DTC is the responsibility of the Issuer or the Bond Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 1999 Bonds of either series at any time by giving reasonable notice to the Issuer or the Bond Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, Series 1999 Bonds of such series are required to be printed and delivered as described in the Bond Indenture for such series.

The Bond Trustee or the Issuer may discontinue use of the system of book-entry transfers through DTC (or a successor securities depository) for the Series 1999 Bonds of either series as described in the Bond Indenture for such series. In that event, Series 1999 Bonds of such series will be printed and delivered as described in the Bond Indenture for such series.

Year 2000

DTC management is aware that some computer applications, systems, and the like for processing data ("*Systems*") that are dependent upon calendar dates, including dates before, on and after January 1, 2000, may encounter "Year 2000 problems." DTC has informed its Participants and other members of the financial community (the "*Industry*") that it has developed and is implementing a program so that its Systems, as the same relate to the timely payment of distributions (including principal and income payments) to securityholders, book-entry deliveries, and settlement of trades within DTC ("*DTC Services*"), continue to function appropriately. This program includes a technical assessment and a remediation plan, each of which is complete. Additionally, DTC's plan includes a testing phase, which is expected to be completed within appropriate time frames.

However, DTC's ability to perform properly its services is also dependent upon other parties, including but not limited to issuers and their agents, as well as third-party vendors from whom DTC licenses software and hardware, and third-party vendors on whom DTC relies for information or the provision of services, including telecommunication and electrical utility service providers, among others. DTC has informed the Industry that it is contacting (and will continue to contact) third-party vendors from whom DTC acquires services to: (i) impress upon them the importance of such services being Year 2000 compliant; and (ii) determine the extent of their efforts for Year 2000 remediation (and, as appropriate, testing) of their services. In addition, DTC is in the process of developing such contingency plans as it deems appropriate.

According to DTC, the foregoing information with respect to DTC has been provided to the Industry for informational purposes only and is not intended to serve as a representation, warranty, or contract modification of any kind.

Limitations

For so long as the Series 1999 Bonds are registered in the name of DTC or its nominee, Cede & Co., the Issuer and the Bond Trustee will recognize only DTC or its nominee, Cede & Co., as the registered owner of the Series 1999 Bonds for all purposes, including payments, notices and voting.

Under the Bond Indenture and the Variable Rate Bond Indenture, payments made by the Bond Trustee to DTC or its nominee will satisfy the Issuer's respective obligations under the Bond Indenture and the Variable Rate Bond Indenture and the Obligor's respective obligations under the Loan Agreement and the Variable Rate Loan Agreement to the extent of the payments so made.

None of the Issuer, the Underwriters nor the Bond Trustee will have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, its nominee or any DTC Participant or Indirect Participant with respect to any beneficial ownership interest in any Series 1999 Bond, (ii) the delivery to any DTC Participant or Indirect Participant or any other Person, other than an owner, as shown in the Bond Register, of any notice with respect to any Series 1999 Bond including, without limitation, any notice of redemption, tender, purchase or any event which would or could give rise to a tender or purchase right or option with respect to any Series 1999 Bond, (iii) the payment to any DTC Participant or Indirect Participant or any other Person, other than an owner, as shown in the Bond Register, of any amount with respect to the principal of, premium, if any, or interest on, or the purchase price of, any Series 1999 Bond or (iv) any consent given by DTC as registered owner.

Prior to any discontinuation of the book-entry only system described above, the Issuer and the Bond Trustee may treat DTC as, and deem DTC to be, the absolute owner of the Series 1999 Bonds for all purposes whatsoever, including, without limitation, (i) the payment of principal of, premium, if any, and interest on the Series 1999 Bonds, (ii) giving notices of redemption and other matters with respect to the Series 1999 Bonds, (iii) registering transfers with respect to the Series 1999 Bonds and (iv) the selection of Series 1999 Bonds for redemption.

SECURITY FOR THE SERIES 1999 BONDS

General

Each series of Series 1999 Bonds, other than the Series 1999D Bonds, will be issued under and will be equally and ratably secured under the Bond Indenture, pursuant to which the Issuer will assign and pledge to the Bond Trustee (1) the Series 1999 Notes (other than the Series 1999D Note), (2) certain rights of the Issuer under the Loan Agreement, (3) the funds and accounts (excluding the Extendables Purchase Fund and the Rebate Fund), including the money and investments in such funds, which the Bond Trustee holds under the terms of the Bond Indenture, and (4) such other property as may from time to time be pledged to the Bond Trustee as additional security for such Series 1999 Bonds or which may come into possession of the Bond Trustee pursuant to the terms of the Loan Agreement or the Series 1999 Notes.

The Series 1999D Bonds will be issued under and will be equally and ratably secured under the Variable Rate Bond Indenture, pursuant to which the Issuer will assign and pledge to the Bond Trustee, (1) certain rights of the Issuer under the Variable Rate Loan Agreement, (2) the hereinafter-described Series 1999D Note, (3) the funds and accounts (excluding the Rebate Fund and the Purchase Fund), including the money and investments in them, that the Bond Trustee holds under the terms of the Variable Rate Bond Indenture, and (4) such other property as may from time to time be pledged to the Bond Trustee as additional security for the Series 1999D Bonds or which may come into possession of the Bond Trustee pursuant to the terms of the Variable Rate Loan Agreement or the Series 1999D Note.

The proceeds of each series of the Series 1999 Bonds will be loaned to the Obligor, and the obligation of the Obligor to repay that loan will be evidenced by promissory notes of the Obligor issued pursuant to, and entitled to the benefit and security of, the Master Indenture.

Limited Obligations

The Series 1999 Bonds of each series and the interest thereon are limited obligations of the Issuer, payable solely from and secured exclusively by certain payments to be made by the Obligor under the Loan Agreements and certain other funds held by the Bond Trustee under the Bond Indenture and Variable Rate Bond Indenture for such series and not from any other fund or source of the Issuer.

THE SERIES 1999 BONDS WILL NOT BE DEEMED TO CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF TEXAS OR OF ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE STATE OF TEXAS NOR THE ISSUER WILL BE OBLIGATED TO PAY THE PRINCIPAL OF THE SERIES 1999 BONDS, OR THE INTEREST THEREON, EXCEPT FROM THE FUNDS PROVIDED UNDER THE BOND INDENTURE, THE VARIABLE RATE BOND INDENTURE AND THE LOAN AGREEMENTS. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 1999 BONDS. THE ISSUER HAS NO TAXING POWER.

Debt Service Reserve Fund for the Series 1999A Bonds, the Series 1999B Bonds and the Series 1999C Bonds

The Bond Indenture creates and establishes with the Bond Trustee a Debt Service Reserve Fund (the "*Reserve Fund*") with respect to the Series 1999A Bonds, the Series 1999B Bonds and the Series 1999C Bonds. Moneys on deposit in the Reserve Fund will be used to provide a reserve for the payment of the principal of and interest on such series of Bonds. See "**APPENDIX C—DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Bond Indenture—Reserve Fund.**"

The Bond Indenture creates within the Reserve Fund three separate Reserve Accounts: (i) the Series 1999A Reserve Account; (ii) the Series 1999B Reserve Account and (iii) the Series 1999C Reserve Account. Moneys on deposit in the Series 1999A Reserve Account will be used solely to provide a reserve for the payment of the principal of and interest on the Series 1999A Bonds. Moneys on deposit in the Series 1999B Reserve Account will be used solely to provide a reserve for the payment of the principal of and interest on the Series 1999B Bonds. Moneys on deposit in the Series 1999C Reserve Account will be used solely to provide a reserve for the payment of the principal of and interest on the Series 1999C Bonds.

Payments Into the Reserve Fund. In addition to the deposits required by the Bond Indenture, there will be deposited into the appropriate Reserve Account of the Reserve Fund any Reserve Fund Obligations delivered by the Obligor to the Bond Trustee pursuant to the Loan Agreement. In addition, there will be deposited into the appropriate Reserve Account of the Reserve Fund all moneys required to be transferred thereto pursuant to the Bond Indenture, and all other moneys received by the Bond Trustee when accompanied by directions that such moneys are to be paid into such Reserve Account of the Reserve Fund. There will also be retained in each Reserve Account of the Reserve Fund all interest and other income received on investments of Reserve Fund moneys in such Reserve Account to the extent provided in the Bond Indenture.

Use of Moneys in the Reserve Fund. Except as provided in the Bond Indenture, moneys in the Reserve Fund will be used solely for the payment of the principal of and interest on the Series 1999 Bonds in the event moneys in the Bond Fund are insufficient to make such payments when due, whether on an interest payment date, redemption date, maturity date, acceleration date or otherwise; provided that no moneys on deposit in the Reserve Fund will be used to pay the purchase price of Adjustable Rate Bonds on an Optional Tender Date; and provided further that moneys on deposit in a Reserve Account of the Reserve Fund will be used only to make such payments with respect to the related series of Bonds.

Effect of Event of Default. Upon the occurrence of an Event of Default of which the Bond Trustee is deemed to have notice under the Bond Indenture and the election by the Bond Trustee of the remedy specified in the Bond Indenture, any Reserve Fund Obligations in the Reserve Fund will, subject to the provisions of Bond Indenture, be transferred by the Bond Trustee to the Principal Account and applied in accordance with the provisions of the Bond Indenture. In the event of the redemption of any series of Bonds in whole, any Reserve Fund Obligations on deposit in the applicable Reserve Account of the Reserve Fund in excess of the Reserve Fund Requirement on the Bonds of such series to be Outstanding immediately after such redemption will, subject to the provisions of the Bond Indenture, be transferred to the Principal Account and applied to the payment of the principal of the series of Bonds to be redeemed in whole. On May 1 and November 1 in each year, any earnings on the Reserve Fund Obligations on deposit in a Reserve Account of the Reserve Fund that are in excess of the Reserve Fund Requirement for such Reserve Account will be transferred during the construction period for any Project into the Construction Fund created in connection with the issuance of Bonds for such Project or, if after the completion of such construction period, into the Interest Account of the Bond Fund.

Remaining Funds. On the final maturity date of any series of Bonds, any moneys in the Reserve Account of the Reserve Fund relating to such series of Bonds may be used to pay the principal of and interest on such series of Bonds on the final maturity date of that series.

Series 1999D Debt Service Reserve Fund

The Variable Rate Bond Indenture directs the Bond Trustee to establish and maintain a Debt Service Reserve Fund (the "*Series 1999D Reserve Fund*") so long as any of the Series 1999D Bonds are outstanding. See "**APPENDIX C—DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Variable Rate Bond Indenture—Debt Service Reserve Fund.**"

Payments into the Series 1999D Reserve Fund. Pursuant to the Variable Rate Bond Indenture, the Bond Trustee will deposit in the Series 1999D Reserve Fund an amount equal to one year's interest on the Series 1999D Bonds, with an interest rate of 4.50% per annum assumed for purposes of calculation.

Use of Moneys in the Series 1999D Reserve Fund. Funds on deposit in the Series 1999D Reserve Fund will be used to make up any deficiencies related to the Series 1999D Bonds in the Revenue Account of the Bond Fund, including deficiencies related to the reimbursement of the Series 1999D Credit Provider. Permitted Investments in the Series 1999D Reserve Fund will be evaluated by the Bond Trustee as of April 30 and October 31 of each year at fair market value. In the event the amount of moneys on deposit in the Series 1999D Reserve Fund is less than the Series 1999D Reserve Requirement due to a withdrawal therefrom or is less than ninety percent (90%) of the Series 1999D Reserve Requirement upon the annual valuation of assets therein, notification of the amount of such shortfall will promptly be delivered by the Bond Trustee to the Obligor and such deficiency will be reimbursed from payments received under the Variable Rate Loan Agreement. In the event the amount of moneys on deposit in the Series 1999D Reserve Fund is

more than one hundred ten percent (110%) of the Series 1999D Reserve Requirement, any such excess will be transferred by the Bond Trustee to the Project Fund during construction of the Project and thereafter to the Revenue Account of the Bond Fund. If at any time any Series 1999D Bonds are to be redeemed, amounts on deposit in the Series 1999D Reserve Fund in excess of the Series 1999D Reserve Requirement (giving effect to such redemption) may at the direction of the Obligor be transferred to the Revenue Account of the Bond Fund and applied to the redemption price of such Series 1999D Bonds.

The Loan Agreements

Under the Loan Agreements, the Obligor is required duly and punctually to pay the principal of, premium, if any, and interest on the Series 1999 Bonds, and to make payments to the Bond Trustee to maintain the Reserve Fund and the Series 1999D Reserve Fund at their respective required amounts and to make certain other payments. See "**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—Loan Agreement**" and "**—Variable Rate Loan Agreement**" in **APPENDIX C** hereto.

The Master Indenture

General. The Master Indenture is intended to provide assurance for the repayment of obligations entitled to its benefits by imposing financial and operating covenants which restrict the Obligor and any other future Obligated Group Members and by the appointment of the Master Trustee to enforce such covenants for the benefit of the holders of such obligations. The Series 1999 Notes are the only debt presently entitled to the benefits of the Master Indenture. The holders of all obligations entitled to the benefit of the Master Indenture will be on a parity with respect to the benefits of the Master Indenture. Pursuant to the Master Indenture, the Obligor and any future Obligated Group Members have pledged and granted to the Master Trustee (a) a lien on the Obligor's leasehold interest in the Community, (b) a security interest in all personal property owned or hereafter acquired by the Obligated Group, (c) a security interest in all revenues, accounts receivable and Receipts of the Obligated Group, with certain limited exceptions and (d) a security interest in any other property from time to time subjected to the lien of the Master Indenture. See "**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Master Indenture**" in **APPENDIX C**.

Each Series 1999 Note will constitute an unconditional promise by each Obligated Group Member to pay amounts sufficient to pay principal of (whether at maturity, by acceleration or call for redemption) and premium, if any, and interest on the Series 1999 Bonds and will be secured on a parity basis with any other Obligations hereafter issued under the Master Indenture, by a lien on the Mortgaged Properties granted to the Master Trustee pursuant to the Master Indenture and a security interest in the equipment of the Obligated Group. In addition, the Series 1999D Credit Provider will hold the Series 1999F Note issued under and entitled to the benefit of the Master Indenture. The Series 1999F Note is being issued for the purpose of collateralizing the obligations of the Obligor under the Reimbursement Agreement described herein in connection with the issuance and sale of the Series 1999D Bonds.

Only the Obligor and the Master Trustee are parties to the Master Indenture and currently only the Obligor is an Obligated Group Member. The Obligor and each Obligated Group Member admitted in the future will be jointly and severally liable for the payment for all debt entitled to the benefits of the Master Indenture and will be subject to the financial and operating covenants thereunder. See "**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Master Indenture—Admission of Obligated Group Members**" and "**—Withdrawal of Obligated Group Members**" in **APPENDIX C** for a description of the limitations on admission and release of Obligated Group Members.

Covenants. The Master Indenture contains provisions requiring the Obligor to maintain certain Debt Service Coverage Ratios, Operating Ratios and Liquidity Ratios and provides for remedial actions in the event such ratios are not maintained. See the captions "**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Master Indenture—Rate Covenant**," "**—Operating Ratio Covenant**" and "**—Liquidity Ratio Covenant**" in **APPENDIX C** hereto.

The Master Indenture also contains certain restrictions on the Obligor's ability to incur debt, transfer assets, encumber its property and undertake other substantial actions. For more information, see "DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—Master Indenture—Limitation on Disposition of Assets," "—Limitations on Additional Indebtedness," "—Liens and Encumbrances," and "—Limitations on Consolidation, Merger, Conveyance and Transfer of Assets" in APPENDIX C hereto.

Liquidity Ratio Covenant. The Obligor covenants that it will maintain a Liquidity Ratio as of the last day of each Fiscal Quarter of at least (i) .30 commencing with earlier of (A) the first full Fiscal Quarter following the Fiscal Quarter in which Stable Occupancy has occurred and all of the Series 1999D Bonds have been redeemed and all Bank Obligations have been paid in full or (B) December 31, 2005, and (ii) .35 commencing with the first full Fiscal Quarter of the second full Fiscal Year following redemption of all Series 1999D Bonds and the payment of all Bank Obligations in full. The "Liquidity Ratio," as of any date of calculation, is the ratio of (y) unrestricted cash and investments (exclusive of all moneys in any Related Bonds Debt Service Fund, but including all moneys held in any Related Bonds Debt Service Reserve Fund, the Special Reserve Fund and the Entrance Fees Fund), to (z) the aggregate principal amount of Long-Term Indebtedness Outstanding, excluding the Series 1999D Bonds, but including all other Related Bonds, on such date, but excluding deferred management fees, if any, and the then-current portion of the Debt Service Requirements of Long-Term Indebtedness.

Compliance with the Liquidity Ratio Covenant will be tested on each June 30 and December 31, commencing with the earlier of (i) the June 30 or December 31 following the Fiscal Quarter in which Stable Occupancy has occurred, or (ii) December 31, 2005, based on the unaudited financial statements required by the Master Indenture.

Failure to Maintain Liquidity Ratio; Consultant. If the actual Liquidity Ratio is less than .35, but greater than .30, the Obligor will within 30 days after receipt of the financial statements disclosing such deficiency deliver a report to the Master Trustee and the Principal Underwriters setting forth in detail the reasons for such deficiency and adopt a specific plan setting forth steps designed to achieve the required Liquidity Ratio as quickly as practicable. Such report and plan will be prepared and implemented pursuant to the requirements set forth in the Master Indenture.

If the Liquidity Ratio is less than .30 for any testing date, or the Obligor has not achieved a Liquidity Ratio of .35 pursuant to the required report by the end of the third full Fiscal Quarter following the violation, the Obligor will, within 60 days after receipt of the financial statements disclosing such deficiency, obtain a Management Consultant's report setting forth in detail the reasons for such deficiency and recommendations with respect to rates, fees, charges and Obligor's methods of operation and other factors affecting its financial condition in order to return the Liquidity Ratio to the required level.

Marketing Targets for Independent Living Units. The Obligor covenants in the Master Indenture that commencing on December 31, 1999, and continuing for each Fiscal Quarter thereafter (a "Marketing Quarter"), it will market the Independent Living Units in the Community, execute Residency Agreements and collect deposits of at least five percent (5%) of the Entrance Fees payable on execution of the Residency Agreements, so that the percentage of the total number of Independent Living Units in the Community constituting Reserved Units is at least equal to the "Marketing Target" set forth below as of the end of each "Marketing Quarter" set forth below:

Marketing Quarter	Marketing Targets	
	Percentage of Independent Living Units	Number of Independent Living Units
1	65%	166
2	68%	174
3	71%	182
4	74%	189
5	77%	197
6	80%	205
7	83%	212
8	86%	220
9	88%	225

Failure to Achieve Marketing Targets; Consultant. If at the end of any Marketing Quarter, the percentage of Reserved Units in the Community is less than the Marketing Target specified for such Marketing Quarter, the Obligor will, within 30 days of the end of such Marketing Quarter, prepare a written report setting forth in detail the reasons for such deficiency and will prepare and adopt a specific plan setting forth steps designed to cause the number of Reserved Units to be at least equal to the Marketing Target specified above at the end of the first Marketing Quarter following the Marketing Quarter in which the deficiency occurred; provided, however, if the failure to achieve the Marketing Target occurs during the last Marketing Quarter, such plan will be designed to achieve the Marketing Target required for the last Marketing Quarter at the end of the three months following the last Marketing Quarter.

If the Obligor fails to meet the Marketing Target for any two successive Marketing Quarters, the Obligor will, within 30 days of the end of the most recent Marketing Quarter, obtain a written report prepared by a Marketing Consultant setting forth in detail the reasons for such failure and will adopt a specific plan prepared by the Marketing Consultant setting forth steps designed to cause the number of Reserved Units to be at least equal to the Marketing Targets specified above at the end of the first full Marketing Quarter following the date of such report and plan; provided, however, if the failure to achieve the required Marketing Targets for two successive Marketing Quarters occurs during the last three Marketing Quarters, such report and plan will be designed to achieve the Marketing Target required for the last Marketing Quarter at the end of the three-month period following the date of such report and plan. However, if a Management Consultant's report and plan has been prepared and implemented within the five months preceding an Occupancy Quarter for which a deficiency exists, no new report and plan will be required.

Occupancy Targets for Independent Living Units. The Obligor covenants that during the period commencing with the first full Fiscal Quarter following the issuance of the Certificate of Occupancy and ending on the last day of the first full Fiscal Year in which Stable Occupancy has occurred, it will market the Independent Living Units in the Community and execute Residency Agreements so that the percentage of the total number and percentage of Independent Living Units in the Community constituting Occupied Units is at least equal to the "Occupancy Target" set forth below as of the end of each "Occupancy Quarter" set forth below:

Occupancy Targets

Occupancy Quarter	Percentage of Independent Living Units	Number of Independent Living Units
1	5%	13
2	15%	38
3	27%	69
4	37%	95
5	47%	120
6	55%	141
7	63%	161
8	70%	179
9	77%	197
10	82%	210
11	87%	223
12	90%	230

Failure to Achieve Occupancy Targets; Consultant. If at the end of any Occupancy Quarter, the percentage of Independent Living Units in the Community constituting Occupied Units is less than the Occupancy Target specified for such Occupancy Quarter, the Obligor will, within 30 days of the end of such Occupancy Quarter, prepare a written report setting forth in detail the reasons for such deficiency and will prepare and adopt a specific plan setting forth steps designed to cause the number of Occupied Units in the Community to be at least equal to the Occupancy Target specified above at the end of the first Occupancy Quarter following the Occupancy Quarter in which the deficiency occurred; provided, however, if the failure to achieve the Occupancy Target occurs during the last Occupancy Quarter, such plan will be designed to achieve the Occupancy Target required for the last Occupancy Quarter at the end of the three months following the last Occupancy Quarter.

If the Obligor fails to meet the Occupancy Targets for any two successive Occupancy Quarters, the Obligor will, within 30 days of the end of the most recent Occupancy Quarter, obtain a written report prepared by a Marketing Consultant setting forth in detail the reasons for such deficiency and will adopt a specific plan prepared by the Marketing Consultant setting forth steps designed to cause the number of Occupied Units in the Community to be at least equal to the Occupancy Target specified above at the end of the first full Occupancy Quarter following the date of such report and plan; provided, however, if the failure to achieve the required Occupancy Targets for two successive Occupancy Quarters occurs during the last three Occupancy Quarters, such report and plan will be designed to achieve the Occupancy Targets for the last Occupancy Quarter at the end of the three-month period following the date of such report and plan. However, if a Management Consultant's report and plan has been prepared and implemented within the five months preceding an Occupancy Quarter for which a deficiency exists, no new report and plan will be required.

Operating Ratio Covenant. The Obligor covenants that during the period commencing with the first full Fiscal Quarter following the issuance of the Certificate of Occupancy and each full Fiscal Quarter thereafter (an "Occupancy Quarter") and ending on the last day of the first Fiscal Year in which Stable Occupancy has occurred, for any Occupancy Quarter in which the percentage of the total number of Independent Living Units in the Facility constituting Occupied Units is not at least equal to the "Feasibility Study Occupancy Target" set forth below as of the end of such Occupancy Quarter, it will maintain the Operating Ratio for such Occupancy Quarter as shown below:

Occupancy Quarter	Feasibility Study Occupancy Targets	Operating Ratios
1	19%	0.20
2	30%	0.30
3	41%	0.35
4	50%	0.40
5	58%	0.45
6	66%	0.50
7	73%	0.55
8	79%	0.60
9	84%	0.65
10	89%	0.70
11	93%	0.75
12	95%	0.80

Each Occupancy Quarter will be a period of three calendar months, except that the first Occupancy Quarter will end on the last day of the first Fiscal Quarter following the issuance of the Certificate of Occupancy for all of the Independent Living Units in the Community.

Failure to Maintain Operating Ratio. If the Obligor fails to maintain its required Operating Ratio, it must take one of the following courses of action:

(a) If the actual Operating Ratio for any Occupancy Quarter is less than the Operating Ratio required above, as shown in the monthly unaudited financial statements required by the Master Indenture, the Obligor will, within 30 days of receipt by the Master Trustee of the monthly unaudited financial statements disclosing such deficiency (unless such deficiency has since been cured), prepare a written report setting forth in detail the reasons for such deficiency and will adopt a specific plan setting forth steps designed to correct such deficiency as quickly as practicable; or

(b) If the actual Operating Ratios for two successive Occupancy Quarters are less than the Operating Ratios required above, as shown in the unaudited financial statements required by the Master Indenture, the Obligor will, within 30 days of receipt by the Master Trustee of the unaudited financial statements disclosing such deficiency (unless such deficiency has since been cured), obtain a written report prepared by a Management Consultant setting forth in detail the reasons for such deficiency and will adopt a specific plan prepared by the Management Consultant setting forth steps designed to achieve the required Operating Ratio for the six months ending on the last day of the second full Occupancy Quarter following the date of such report and plan; provided, however, if the failure to achieve the required Operating Ratios for two successive Occupancy Quarters occurs during the last three Occupancy Quarters, such report and plan will be designed to achieve the Operating Ratio required for the last Occupancy Quarter for the six months following the date of such report and plan.

However, if a Management Consultant's report and plan has been prepared and implemented within the five months preceding an Occupancy Quarter for which a deficiency exists, no new report and plan will be required.

Trade Payables Covenant. Commencing with the first full Fiscal Quarter following receipt of a Certificate of the Occupancy for the Community, each Obligated Group Member covenants that it will at all times maintain at least 90% of its undisputed trade accounts payable at less than 60 days and that not more than \$50,000 of its undisputed trade accounts payable will be payable at more than 90 days, provided that any trade accounts payable that are the subject of a bona fide dispute, the dispute of which is being diligently pursued by the Obligor, will be excluded from such computation. Compliance with the Trade Payables Covenant will be tested quarterly beginning with the first full Fiscal Quarter following the receipt of a Certificate of Occupancy for the Community. Compliance will be tested (i) quarterly based on unaudited financial statements for each of the Fiscal Quarters and (ii) annually based on the annual audited financial statements.

If the Trade Payable Covenant is not met for any Fiscal Quarter and such deficiency is not remedied within 30 days, the Obligor will prepare a report, within 60 days of such deficiency, setting forth in detail the reasons for the deficiency and a plan to comply with the Trade Payables Covenant by the end of the second quarter following the quarter in which the deficiency occurred. If the Obligor fails to meet the Trade Payables Covenant for two consecutive quarters, the Obligor will obtain a report from a Management Consultant, within 60 days of such deficiency, setting forth the reasons for the deficiency and a plan to comply with the covenant by the end of the second quarter following the date of the report.

Deficiency Not Deemed Event of Default. The failure of the Obligor to meet Marketing Targets or Occupancy Targets or maintain an Operating Ratio or a Liquidity Ratio required by the Master Indenture will not be deemed to constitute an Event of Default, so long as the Obligor takes all action within its control to comply with the procedures set forth in the Master Indenture for preparing or obtaining a report and implementing a plan for correcting such deficiency.

If the annual audit reflects a violation of the Rate Covenant set forth in the Master Indenture, the Master Indenture provides that (i) each Obligated Group Member will (and will cause each Obligated Group Affiliate to), within 60 days from receipt by the Obligor of such annual audit, take all action necessary to cause the fees, rentals, rates and charges imposed and collected in connection with the operation of the Community to comply with the Rate Covenant, and (ii) the Obligor will immediately employ a Management Consultant to prepare and submit a written report and recommendations within sixty (60) days with respect to the fees, rentals, rates and charges imposed and collected by the Obligated Group Members in connection with the operation of the Community and with respect to improvements or changes in the operations or management of or the services rendered by the Obligated Group Members. To the extent the Obligated Group Members revise such fees, rentals, rates and charges in conformity with the recommendations of the Management Consultant and otherwise follow such recommendations of the Management Consultant, then such failure to meet the requirements of the Rate Covenant for such Fiscal Year will not constitute an Event of Default under the Master Indenture.

Application of Entrance Fees

Until such time as (i) the Series 1999B Bonds have been paid at maturity, redeemed or irrevocably called for redemption, and (ii) no Event of Default has occurred and is continuing, the Obligor agrees that all Entrance Fees received will be transferred to the Master Trustee within five Business Days of the receipt thereof. All such amounts received by the Master Trustee will be deposited into the applicable account of the Entrance Fees Fund and applied as set forth below. At such time as the conditions described in clauses (i) and (ii) above have been met, (A) the Obligor will no longer be required to transfer Entrance Fees to the Master Trustee, the Master Trustee will terminate the Entrance Fees Fund and the Master Trustee will disburse any balance therein as directed in writing by an Authorized Representative, and (B) the Obligor may use all Entrance Fees received for any lawful purpose; provided that (y) first, if the full Operating Reserve Account Requirement is not on deposit in the Operating Account of the Special Reserve Fund, the Obligor will transfer all Entrance Fees received within five Business Days of the receipt thereof to the Master Trustee for deposit into the Operating Account until such deficiency is cured, and (z) second, if the full Leasehold Reserve Account Requirement is not on deposit in the Leasehold Account of the Special Reserve Fund, the Obligor will transfer all Entrance Fees received within five Business Days of the receipt thereof to the Master Trustee for deposit into the Leasehold Account until such deficiency is cured.

The Master Trustee will deposit all Entrance Fees received from time to time from the Obligor pursuant to the Master Indenture as follows:

(a) into the Series E Account of the Entrance Fees Fund until such time as all Series 1999E Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity, then

(b) into the Series D Account of the Entrance Fees Fund until such time as all Series 1999D Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity and all Bank Obligations have been paid or duly provided for, then

(c) into the Series C Account of the Entrance Fees Fund until such time as all Series 1999C Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity, then

(d) into the Series B Account of the Entrance Fees Fund until such time as all Series 1999B Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity.

Entrance Fees received by the Master Trustee and on deposit in the Entrance Fees Fund will be transferred by the Master Trustee, to the extent of moneys on deposit therein, first from the Series B Account, then from the Series C Account, then from the Series D Account and finally from the Series E Account, as follows:

FIRST, to the Obligor to pay refunds required by Residency Agreements, with such disbursements to be made by the Master Trustee within two Business Days of receipt by the Master Trustee of an Officer's Certificate stating (i) that (A) the Obligor is required by Residency Agreements to pay refunds within the next 15 days and (B) no other moneys are available nor will be reasonably available to pay such refunds, and (ii) the amount of such refunds;

SECOND, on the first Business Day of each month into the Operating Account of the Special Reserve Fund, the amount, if any, needed to increase the amount on deposit in the Operating Account to an amount equal to the Operating Reserve Account Requirement; and

THIRD, on the first Business Day of each month into the Leasehold Account of the Special Reserve Fund, the amount, if any, needed to increase the amount on deposit in the Leasehold Account to an amount equal to the Leasehold Reserve Account Requirement.

On each Entrance Fee Transfer Date (i) an amount equal to the largest Authorized Denomination on deposit in the Series E Account will be transferred to the Fixed Rate Bond Trustee and will be used by the Fixed Rate Bond Trustee to redeem Series 1999E Bonds on the next Entrance Fee Redemption Date, (ii) an amount equal to the largest Authorized Denomination on deposit in the Series D Account will be transferred to the Variable Rate Bond Trustee and will be used by the Variable Rate Bond Trustee to redeem Series 1999D Bonds on the next Entrance Fee Redemption Date, and (iii) an amount equal to the largest Authorized Denomination on deposit in the Series C Account will be transferred to the Bond Trustee and will be used by the Bond Trustee to redeem Series 1999C Bonds on the next Entrance Fee Redemption Date.

So long as no Suspension Notice has been delivered by the Obligor to the Master Trustee, on each Entrance Fee Transfer Date an amount equal to the largest Authorized Denomination on deposit in the Series B Account will be transferred to the Fixed Rate Bond Trustee and will be used by the Fixed Rate Bond Trustee to redeem Series 1999B Bonds on the next Entrance Fee Redemption Date.

At the election of the Obligor, and upon compliance with the provisions described below, amounts on deposit in the Series B Account that are otherwise available to be used to redeem Series 1999B may be used to pay the costs of constructing Additional Facilities. To exercise such election, the Obligor must file with the Master Trustee an Officer's Certificate (a "Suspension Notice") stating its intention to undertake construction of an Additional Facility, directing the Master Trustee to suspend the special mandatory redemption of the Series 1999B, specifying the principal amount of the Series 1999B subject to the Suspension Notice, and the next Rate Change Date (including the Initial Rate Change Date) applicable to the Series 1999B Bonds. The Suspension Notice also will state: (i) that the percentage of Independent Living Units in the Community and in all prior Additional Facilities constituting Occupied Units is at least 90%; (ii) the percentage of Independent Living Units in the Community and in all prior Additional Facilities constituting Reserved Units and Occupied Units is at least 95%; and (iii) no Event of Default has occurred and is continuing under the Master Indenture.

Following receipt of a Suspension Notice, the Master Trustee will suspend the transfer of moneys from the Series B Account to the Fixed Rate Bond Trustee and will retain Entrance Fees in the Series B Account, subject to the provisions described in the Master Indenture, (i) until the Obligor files with the Master Trustee an Officer's Certificate (a "Transfer Notice") stating that (i) the percentage of Independent Living Units in the Community and in all prior Additional Facilities constituting Occupied Units for the three full calendar

months prior to the date of the Transfer Notice was at least 90% and the percentage of Independent Living Units in the Community and in all prior Additional Facilities constituting Reserved Units and Occupied Units was at least 95% (provided, that in calculating Occupied Units for the purposes of this clause (i) the Obligor will disregard any Independent Living Unit to be constructed in the Additional Facility for which the resident has paid an Entrance Fee); (ii) the percentage of Reserved Units in the Additional Facility to be constructed is at least 70%; (iii) a guaranteed maximum price construction contract for the Additional Facility has been executed by the Obligor and the contractor for the Additional Facility, a copy of which will accompany the Transfer Notice, and the amount available in the Series B Account, subject to the Transfer Notice, together with other funds available to the Obligor at the time of filing the Transfer Notice, will be sufficient to pay the total construction costs of the Additional Facility (without causing the Obligor to fall below the then required Liquidity Ratio); (iv) a building permit for the Additional Facility has been issued, a copy of which will accompany the Transfer Notice; (v) construction on the Additional Facility will commence at least 18 months prior to the Rate Change Date identified in the Suspension Notice and is expected to be completed prior to such date; and (vi) no Event of Default has occurred and is continuing under the Master Indenture. Upon receipt of the Transfer Notice, the Master Trustee will transfer Entrance Fees in the amount specified in the prior Suspension Notice on deposit in the Series B Account to the Bond Trustee for deposit to the Construction Fund established in the Fixed Rate Bond Indenture.

Notwithstanding the foregoing provisions, if the Master Trustee has not received a Transfer Notice at least 18 months prior to the Rate Change Date identified in the Suspension Notice, the Master Trustee will again commence to apply the Entrance Fees on deposit in the Series B Account to the purposes specified in the Master Indenture.

THE SERIES 1999D CREDIT FACILITY

The Series 1999D Credit Facility will be issued pursuant to the Reimbursement Agreement, as herein defined. The following is a summary of certain provisions of the Series 1999D Credit Facility, to which document, in its entirety, reference is made for the complete provisions thereof.

The Series 1999D Bonds, and only the Series 1999D Bonds, will be secured by an irrevocable Letter of Credit (the "Series 1999D Credit Facility") to be issued by the Series 1999D Credit Provider. The Series 1999D Credit Facility does not secure the Series 1999A Bonds, the Series 1999B Bonds, the Series 1999C Bonds or the Series 1999E Bonds.

The Series 1999D Credit Facility is an irrevocable obligation of the Series 1999D Credit Provider. Additional information regarding the Series 1999D Credit Provider is contained in "**THE SERIES 1999D CREDIT PROVIDER**" herein.

The Series 1999D Credit Facility will be issued by the Series 1999D Credit Provider in an amount not exceeding _____, of which (i) an amount not exceeding \$_____ may be drawn upon with respect to the payment of principal or the principal component of the tender price of the Series 1999D Bonds, and (ii) an amount not exceeding \$_____ may be drawn upon with respect to the payment of up to 54 days' accrued interest on or the interest component of the tender price of the Series 1999D Bonds, computed at an assumed maximum interest rate of 10% per annum.

The Series 1999D Credit Facility will permit the Bond Trustee to draw thereunder to pay, in the amounts set forth in the preceding paragraph, the tender price of and principal and interest on the Series 1999D Bonds upon maturity, upon acceleration, on any Interest Payment Date, upon mandatory redemption, upon tender and upon optional redemption (but with respect to redemption only upon the prior written consent of the Series 1999D Credit Provider). Drawings under the Series 1999D Credit Facility will reduce that portion of the amount available thereunder for subsequent drawings, subject to reinstatement as to interest and amounts equal to the tender price as provided in the following sentences. The amount of any interest drawing under the Series 1999D Credit Facility will be automatically reinstated effective the 11th calendar day from the date of payment of any interest drawing, unless within ten (10) calendar days of the date of payment of any interest drawing, the Bond Trustee will have received an event of default notice, indicating that an event of default has occurred under the Reimbursement Agreement, together with instructions to cause a tender or acceleration of all Series 1999D Bonds then outstanding (other than Fixed Rate Bonds and Unenhanced Bonds, as such terms are defined in the Reimbursement Agreement). After payment by the Series 1999D Credit Provider of a liquidity drawing the obligation of the Series 1999D Credit Provider to honor drawings

under the Series 1999D Credit Facility will be automatically reduced by an amount equal to the Original Purchase Price (as that term is defined below) of any Series 1999D Bonds (or portions thereof) purchased with the proceeds of said drawing. The obligation of the Series 1999D Credit Provider to honor drawings under the Series 1999D Credit Facility will be automatically reinstated, concurrently with the receipt by the Series 1999D Credit Provider, or the Bond Trustee or Tender Agent on behalf of the Series 1999D Credit Provider, of the purchase price of Series 1999D Bonds (or portions thereof) previously purchased with the proceeds of a Liquidity Drawing plus the amount of accrued interest thereon paid with the proceeds of a Liquidity Drawing upon said purchase (the "Original Purchase Price").

The termination date of the Series 1999D Credit Facility will be the earliest of (i) the close of business of the Series 1999D Credit Provider on November 15, 2004, or such later date to which the Series 1999D Credit Provider will have agreed to extend the term of the Series 1999D Credit Facility; (ii) the close of business of the Series 1999D Credit Provider on the fifth calendar day following the date on which the interest rate on the Series 1999D Bonds has been converted to the Fixed Rate; (iii) the close of business of the Series 1999D Credit Provider on the fifth calendar day following receipt by the Series 1999D Credit Provider of a certificate from the Bond Trustee to the effect that (x) no Series 1999D Bonds remain outstanding within the meaning of the Variable Rate Bond Indenture and (y) all drawings required to be made under the Variable Rate Bond Indenture and available under the Series 1999D Credit Facility have been made and honored and, accordingly, the amount available under the Series 1999D Credit Facility has been permanently reduced to zero; (iv) the close of business of the Series 1999D Credit Provider on the date five calendar days following receipt by the Series 1999D Credit Provider of a certificate of the Bond Trustee stating that the Bond Trustee is in receipt of an Alternate Credit Facility in accordance with the terms of the Reimbursement Agreement and the Variable Rate Bond Indenture; (v) the close of business of the Series 1999D Credit Provider on the eighteenth calendar day following the date the Series 1999D Credit Provider gives the Bond Trustee notice of the occurrence of an "event of default" pursuant to the Reimbursement Agreement; or (vi) the close of business of the Series 1999D Credit Provider on the date on which a drawing is made as a result of an acceleration of all of the Series 1999D Bonds.

THE LETTER OF CREDIT AGREEMENT

The following, in addition to information provided elsewhere in this Official Statement, summarizes certain provisions of the Letter of Credit Agreement, dated as of November 15, 1999, between the Series 1999D Credit Provider and the Obligor (the "Reimbursement Agreement"), to which document in its entirety, reference is made for the complete provisions thereof.

The Series 1999D Credit Facility will be issued pursuant to the Reimbursement Agreement that provides for, among other things, repayment by the Obligor of amounts drawn under the Series 1999D Credit Facility. Under the Reimbursement Agreement, the Series 1999D Credit Provider will also agree to provide term loans to the Obligor, following any drawing for which the Series 1999D Credit Provider has not been reimbursed that is used to pay the tender price.

Under the occurrence of an "event of default" under the Reimbursement Agreement, the Series 1999D Credit Provider will be able to exercise various rights and remedies, including notification to the Bond Trustee of such event in order that the Bond Trustee may effect a mandatory tender of all Series 1999D Bonds as described under "**THE SERIES 1999D BONDS—Tenders and Purchases.**" In addition, acceleration or the exercise of other remedies pursuant to the Reimbursement Agreement could result in a cross-default under the Master Indenture and the Variable Rate Bond Indenture.

Each of the following events will constitute an "event of default" under the Reimbursement Agreement:

- (a) any representation or warranty made by the Obligor in the Reimbursement Agreement, the Bond Documents (as defined in the Reimbursement Agreement), or any certificate, agreement, instrument or statement contemplated by or made or delivered pursuant to or in connection with the Reimbursement Agreement will prove to have been false or misleading in any material respect, either on the date of the Reimbursement Agreement, on the date of any drawing under the Series 1999D Credit Facility, or on the date when made (or deemed made), and will not be made good within 30 days after written notice thereof to the Obligor by the Series 1999D Credit Provider;

(b) an "event of default" will have occurred and be continuing under any of the Bond Documents;

(c) default in the payment of (A) any fees under the Reimbursement Agreement when and as due, (B) any other amounts required to be paid or reimbursed under the Reimbursement Agreement to the Series 1999D Credit Provider when and as the same will become due and payable, and continuance of such default for five days after written notice thereof to the Obligor by the Series 1999D Credit Provider or election by the Series 1999D Credit Provider not to reinstate the amount of any Interest Drawing under the Series 1999 Credit Facility within eleven days of such Interest Drawing because the Series 1999D Credit Provider has not been reimbursed;

(d) default in the due observance or performance of certain covenants in the Reimbursement Agreement including, among others, maintenance of the Debt Service Coverage Ratio requirement, maintenance of tax-exempt status and maintenance of corporate existence;

(e) default in the due observance or performance of any other term, covenant or agreement set forth in the Reimbursement Agreement, and such default has not been remedied within 30 days after written notice thereof to the Obligor by the Series 1999D Credit Provider;

(f) the Obligor makes an assignment for the benefit of creditors, files a petition in bankruptcy (other than a petition against third parties), is unable generally to pay its debts as they come due, is adjudicated insolvent or bankrupt, or there is entered any order or decree granting relief in any involuntary case commenced against the Obligor under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or if the Obligor petitions or applies to any tribunal for any receiver, trustee, liquidator, assignee, custodian, sequestrator or other similar official for the Obligor of any substantial part of the properties thereof, or commences any proceeding in a court of law for a reorganization, readjustment of debt, dissolution, liquidation or other similar procedure under the law or statutes of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the Obligor any such proceeding in a court of law which remains undismissed or will not be discharged, vacated or stayed, or such jurisdiction will not be relinquished, within 60 days after commencement, or the Obligor, by any act, indicates its consent to, approval of, or acquiescence in any such proceeding in a court of law, or to an order for relief in an involuntary case commenced against the Obligor under any such law, or to the appointment of any receiver, trustee, liquidator, assignee, custodian, sequester or other similar official for the Obligor or a substantial part of its property, or if the Obligor suffers any such receivership, trusteeship, liquidation, assignment, custodianship, sequestration or other similar procedure to continue undischarged for a period of 60 days after commencement.

(g) any material provision of the Reimbursement Agreement, the Master Indenture, the Series 1999D Bank Master Note, the Ground Lease, the Construction Disbursement and Monitoring Agreement or any of the Bond Documents will cease to be valid and binding.

(h) any "Event of Default" under, and as defined in, the Master Indenture will occur and be continuing.

BONDHOLDERS SHOULD NOTE THAT THE SERIES 1999 CREDIT PROVIDER IS ENTITLED TO EXERCISE ANY OR ALL OF A BROAD RANGE OF REMEDIES AVAILABLE TO IT UNDER THE REIMBURSEMENT AGREEMENT IF AN EVENT OF DEFAULT OCCURS THEREUNDER WITHOUT NOTICE TO OR CONSENT OF THE BONDHOLDERS AND WITHOUT A RESULTING DECLARATION OF ACCELERATION, REDEMPTION OR MANDATORY TENDER OF THE BONDS. NO ASSURANCE CAN BE GIVEN THAT ANY SUCH EXERCISE OF REMEDIES WILL NOT RESULT IN ADVERSE CONSEQUENCES TO THE BONDHOLDERS AS A RESULT OF THE EFFECT OF SUCH EXERCISE ON THE OBLIGOR.

ALTERNATE CREDIT FACILITIES

The Obligor may, at any time, obtain an Alternate Credit Facility to replace the Credit Facility upon compliance with the conditions contained in the Variable Rate Bond Indenture and the Variable Rate Loan Agreement. The Series 1999D Bonds will be subject to mandatory tender for purchase on the effective date of an Alternate Credit Facility. See "**THE SERIES 1999D BONDS—Tenders and Purchases—Mandatory Purchase.**"

THE SERIES 1999D CREDIT PROVIDER

The Series 1999D Credit Facility has been issued by the Series 1999D Credit Provider. The Series 1999D Credit Provider, with executive offices in Chicago, Illinois, is a wholly-owned subsidiary and a principal asset of LaSalle National Corporation, a Delaware corporation ("**LNC**"). LNC is a wholly-owned subsidiary of ABN AMRO North America, Inc., a Delaware corporation. The Series 1999D Credit Provider is a commercial bank offering a wide range of banking and trust services to its customers in the Chicago metropolitan area, throughout the United States and around the world. As of June 30, 1999, the Series 1999D Credit Provider had total assets of \$28.689 billion, total deposits of \$17.407 billion, total loan and lease finance assets net of the reserve for possible credit losses of \$17.732 billion and total equity capital of \$2.333 billion. The Series 1999D Credit Provider had net income for the six months ended June 30, 1999 of \$161.036 million.

The Series 1999D Credit Provider's Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices - Office 031, as of the close of business on June 30, 1999, as submitted to the Federal Reserve Bank of Chicago, are incorporated by reference in this Official Statement and shall be deemed to be a part hereof.

In addition, all reports filed by the Series 1999D Credit Provider pursuant to 12 U.S.C. §324 after the date of this Official Statement shall be deemed to be incorporated in this Official Statement by reference and shall be deemed to be a part hereof from the date of filing of any such report.

The Series 1999D Credit Provider will provide, without charge to each person to whom a copy of this Official Statement has been delivered, on the written request of any such person, a copy of any or all of the documents referred to above which have been or may be incorporated in this Official Statement by reference, other than exhibits to such documents. Written requests for such copies should be delivered to LaSalle Bank National Association, 181 West Madison, Suite 3203, Chicago, Illinois 60602, Attention: Capital Markets.

The information above has been furnished by the Series 1999D Credit Provider. No representations as to the accuracy or completeness of such information is made by the Issuer, the Obligor or the Underwriter.

BONDOWNERS' RISKS

General Risk Factors

The Series 1999 Bonds are special and limited obligations of the Issuer, payable solely from and secured exclusively by the funds pledged thereto, including the payments to be made by the Obligor under the Master Indenture.

A BONDOWNER IS ADVISED TO READ THE ENTIRE OFFICIAL STATEMENT, INCLUDING THE APPENDICES HERETO, AND SPECIAL REFERENCE IS MADE TO THE SECTION "**SECURITY FOR THE SERIES 1999 BONDS**" AND THIS SECTION FOR A DISCUSSION OF CERTAIN RISK FACTORS WHICH SHOULD BE CONSIDERED IN CONNECTION WITH AN INVESTMENT IN THE SERIES 1999 BONDS.

Certain risks are inherent in the successful development and operation of facilities such as the Community. Such risks should be considered in evaluating the Community's ability to generate sufficient revenues to pay principal of, premium, if any, and interest on the Series 1999 Bonds when due. This section discusses some of these risks but is not intended to be a comprehensive listing of all risks associated with the construction and operation of the Community or the payment of the Series 1999 Bonds.

Possible Consequences of a Reimbursement Agreement Event of Default

At the option of the Series 1999D Credit Provider, an event of default under the Reimbursement Agreement may also constitute both: (i) an Event of Default under the Variable Rate Bond Indenture, for which the Series 1999D Credit Provider can require the Bond Trustee to accelerate the Series 1999D Bonds, and (ii) an Event of Default under the Variable Rate Loan Agreement, for which all principal and interest payments thereunder are accelerated. The Series 1999D Credit Provider can also choose to have the Series 1999D Bonds subject to mandatory purchase. Upon such acceleration or mandatory purchase, the principal of and accrued interest on the Series 1999D Bonds will be paid from the proceeds of a draw on the Credit Facility.

Under the Master Indenture, if the accelerated amounts due under the Series 1999D Master Note are not paid in a timely manner, such failure would be an Event of Default under the Master Indenture. Upon an Event of Default under the Master Indenture, the Master Trustee may exercise remedies available under the Master Indenture. Such remedies include acceleration of all outstanding Notes and foreclosure of the Master Indenture.

Insolvency of the Series 1999D Credit Provider or Obligor

In the event of its bankruptcy, insolvency, reorganization, moratorium or similar laws or, if for any other reason the Series 1999D Credit Provider failed to honor payment under the Series 1999D Credit Facility, the Owners of the Series 1999D Bonds would have to depend entirely on the ability of the Obligor to pay the principal and purchase price of, premium, if any, and interest on the Series 1999D Bonds.

Selected financial information with respect to the Series 1999D Credit Provider is set forth under the caption "**THE SERIES 1999D CREDIT PROVIDER.**" Such information has been furnished by the Series 1999D Credit Provider. No representation is made herein as to the accuracy or adequacy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof.

If the Obligor were to file a petition for relief under the Federal Bankruptcy Code, such filing would constitute an Event of Default under the Master Indenture permitting the Master Trustee, under the terms set forth in the Master Indenture, to accelerate the payment of principal and interest on the Series 1999 Master Notes.

Absence of a Bond Rating on the Series 1999A Bonds and the EXTRASSM

The Series 1999A Bonds and the EXTRASSM are unrated. Should any Bondholder attempt to resell his Series 1999A Bonds or EXTRASSM, this absence of a rating could adversely affect the market price and marketability thereof.

Lack of Marketability

Although the Underwriters intend, but are not obligated, to make a market for the Series 1999A Bonds, there can be no assurance that there will be a secondary market for the Series 1999A Bonds and the absence of such a market for the Series 1999A Bonds could result in investors not being able to resell the Series 1999A Bonds should they need to or wish to do so.

With respect to purchase of the EXTRASSM, see "**THE EXTRASSM—Tender and Purchase of EXTRASSM.**" The Bondowners of the EXTRASSM have the option to tender their EXTRASSM to the Bond Trustee for purchase on each Optional Tender Date. The only sources of monies available to make payments of the purchase price of the EXTRASSM on each Optional Tender Date are the proceeds of the remarketing thereof and the amounts deposited into the Series 1999B Purchase Account by the Obligor. The Obligor is only required to deposit monies in the Series 1999B Purchase Account to the extent the Obligor's Days' Cash on Hand as of the end of its most recent Fiscal Year is not less than 180 Days' Cash on Hand. Therefore, if Bondowners of the EXTRASSM exercise their option to tender EXTRASSM on any Optional Tender Date applicable to such EXTRASSM, the Bond Trustee may not have available funds with which to purchase such EXTRASSM. In the event funds are not available, the Bondowners of such EXTRASSM will be required to retain their EXTRASSM at the new interest rate determined by the Remarketing Agent. THERE CAN BE NO ASSURANCE THAT SUFFICIENT FUNDS WILL BE AVAILABLE TO PURCHASE ANY OR ALL

SERIES 1999B BONDS TENDERED FOR PURCHASE ON ANY OPTIONAL TENDER DATE. Failure to purchase any EXTRASSM tendered for purchase on any Optional Tender Date does not constitute an event of default under the Bond Indenture or the Loan Agreement. In addition, there can be no assurance that any interest rate adjustment with respect to the EXTRASSM will not cause a material burden on the financial condition of the Obligor.

With respect to purchase of the Series 1999D Bonds, see “**THE SERIES 1999 BONDS—Optional and Mandatory Tender**” and “**BONDOWNERS’ RISKS—Insolvency of Series 1999D Credit Provider or Obligor.**”

General Risk Factors

The Series 1999 Bonds are special and limited obligations of the Issuer, payable solely from and secured exclusively by the funds pledged thereto, including the payments to be made by the Obligor under the Loan Agreements.

A BONDOWNER IS ADVISED TO READ THE ENTIRE OFFICIAL STATEMENT, INCLUDING THE APPENDICES HERETO, AND SPECIAL REFERENCE IS MADE TO THE SECTION “**SECURITY FOR THE SERIES 1999 BONDS**” AND THIS SECTION FOR A DISCUSSION OF CERTAIN RISK FACTORS WHICH SHOULD BE CONSIDERED IN CONNECTION WITH AN INVESTMENT IN THE SERIES 1999 BONDS.

Certain risks are inherent in the successful development and operation of facilities such as the Community. Such risks should be considered in evaluating the Community’s ability to generate sufficient revenues to pay principal of, premium, if any, and interest on the Series 1999 Bonds when due. This section discusses some of these risks but is not intended to be a comprehensive listing of all risks associated with the construction and operation of the Community or the payment of the Series 1999 Bonds.

Construction-Related Risks

In order for construction of the Community to commence, the Developer must obtain a building permit from the City of Dallas (the “City”), the issuance of which requires final plat approval from the City. In order for the Developer to receive such plat approval, the City Council of the City must vote to abandon a street that currently runs across the Property. In addition, certain structures currently existing on the Property are occupied by residents who occupy these structures as tenants under month-to-month leases. In order to commence construction of the Community, the Developer must relocate residents displaced by such construction; and additionally, the Developer must secure a demolition permit from the City. Based upon preliminary discussions with members of the City’s staff, the Developer believes at this time that it will receive in a timely matter all of the permits from the City necessary to commence, proceed with and complete construction of the Community. In addition, the Developer believes that all of the current residents on the Property will be successfully relocated.

It has been determined, based upon an environmental assessment of the Property, that structures currently existing on the Property were constructed with building materials containing asbestos fibers. In order that demolition of these structures may begin, state and federal environmental regulations require that any asbestos-containing material be abated in accordance with certain specified procedures. The Developer expects that the required abatement procedures will begin as soon as current residents vacate the affected structures, and that such procedures will not materially affect the timing of the Project as described under the caption “**THE COMMUNITY—General Description**” in **APPENDIX A** hereto. However, there can be no assurance that the asbestos abatement procedures will not cause material delays in Project construction.

Although the Developer believes that construction of the Community will commence and proceed according to its current schedule, the factors discussion above, as well as other variables such as weather, availability of parts and labor and unforeseen changes in conditions could materially affect construction plans, causing significant delays in completion of the Community.

As indicated in the forecast of the management of the Obligor as contained in the Financial Feasibility Study included as **APPENDIX B**, the Obligor’s ability to make the Loan Payments necessary to pay the principal of, and premium, if any, and interest on the Series 1999 Bonds and purchase price, if any, on the EXTRASSM and the Series 1999D Bonds is dependent upon its receipt of revenues from Entrance Fees and

Monthly Service Fees from residents of completed units in the Community. Thus, a significant delay in completion of the Community, or a failure to complete the Community, could potentially render the Obligor unable to make the payments necessary for the Issuer to make debt service payments on the Series 1999 Bonds on a timely basis or at all.

Failure to Achieve Sufficient Occupancy and to Maintain Turnover or Occupancy

The economic feasibility of the Community depends in large part upon the ability of the Obligor to attract sufficient numbers of residents to the Community to achieve and then to maintain substantial occupancy throughout the term of the Series 1999 Bonds. The ability of the Obligor to achieve and then to maintain substantial occupancy depends to some extent on factors outside its control, such as the residents' right to terminate their Residency Agreements. In most cases, a resident who terminates a Residency Agreement prior to occupancy will receive a refund of the amount of the Entrance Fee already paid, less \$2,500 and less any costs specifically incurred at the resident's request, without interest. In certain limited circumstances a full refund is made. The Residency Agreements generally provide that if a resident dies or terminates residency at the Community, the Obligor will refund 100% of the Entrance Fee less any amounts owed to the Obligor. Under the Residency Agreement the resident (or resident's estate) will be entitled to a refund of the balance of the Entrance Fee, without interest, upon termination of the Residency Agreement and reoccupancy of the living unit. If the Obligor fails to achieve substantial occupancy and maintain substantial occupancy in the Community, there may be insufficient funds to pay the Series 1999 Bonds. Moreover, market changes require a reduction in the amount of the Entrance Fees payable by new residents, the receipt of additional Entrance Fees would be curtailed, with a consequent reduction in the revenues of the Community. Such reduction would also result if the Obligor is unable to remarket units becoming available when residents die, withdraw, or are permanently transferred to assisted living, skilled nursing beds or any other facility.

No Operating History; Uncertainty of Revenues

The Obligor is a development stage company and has not previously built or operated a project. Additionally, the Obligor has no assets other than the Community and is not expected to have any revenues except those derived from operations of the Community. The Series 1999 Bonds are secured by the Bond Indenture, the Variable Rate Bond Indenture and the Loan Agreements and are payable solely from and secured exclusively by the funds pledged thereto, including moneys paid by the Obligor under the Loan Agreements. The ability of the Obligor to make the loan payments is dependent upon the generation of revenues by the Community in the amounts necessary to pay the principal of, premium, if any, and interest on the Series 1999 Bonds, as well as other operating and capital expenses. The success of the Community will be dependent on the following factors, among others: the timely completion of the Project within budget and receipt of all necessary approvals to begin operation of the Community, the maintenance of high future occupancy levels at the Community by eligible residents who will be able to pay the Entrance Fees, Monthly Service Fees and health care fees (all of which are projected to increase on a regular basis in subsequent years), the capabilities of the management of the Obligor and future economic and other conditions, which are all unpredictable. In addition, the availability of Entrance Fees to pay debt service on the Series 1999 Bonds is dependent upon the amount of refunds paid pursuant to the Residency Agreements. Any of these factors may affect revenues and payment of debt service on the Series 1999 Bonds. No assurance can be made that revenues will be realized by the Obligor in amounts sufficient to make the required payments on the Series 1999 Bonds.

The Obligor may fail to meet the Debt Service Coverage Ratio, the Operating Ratio and the Liquidity Ratio tests described under "**APPENDIX C—DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—Debt Service Coverage Ratio,**" "**—Operating Ratio Covenant**" and "**—Liquidity Ratio Covenant.**" Failure to meet such requirements will require the Obligor to formulate and implement a plan of corrective action as described under "**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Master Indenture—Rate Covenant**" and "**—Liquidity Ratio Covenant**" in **APPENDIX C**. In addition, the Master Indenture imposes certain marketing and occupancy targets and certain operating ratio requirements; if any such targets or requirements are not met, the Obligor must take remedial action as specified in the Master Indenture. For more information, see "**SECURITY FOR THE SERIES 1999 BONDS—The Master Indenture—Marketing Targets for Independent Living Units,**" "**—Failure to Achieve Marketing Targets; Consultant,**" "**—Occupancy Targets for Independent Living**

Units,” “—Failure to Achieve Occupancy Targets; Consultant,” “—Operating Ratio Covenant,” and “—Failure to Maintain Operating Ratio.” In certain circumstances, failure to satisfy such requirements may also give rise to an Event of Default under the Master Indenture. While these covenants are intended to require the Obligor to take corrective action in order to avert a payment default, no assurance can be given that such corrective action, if required, will be successful. If the forecast set forth by management is not achieved, there can be no assurance that funds established under the Bond Indenture will be sufficient for payment of operating deficits, interest on the Series 1999 Bonds and any refunds to be paid to residents. If an Event of Default occurs under the Bond Indenture, the Trustee may declare an acceleration or take any of the remedies provided in the Bond Indenture. Following an acceleration there may be no moneys in the funds established under the Bond Indenture for payment of the Series 1999 Bonds. See **APPENDIX C—“DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—Indenture of Trust—Remedies on Default.”**

Development and Management

The successful operation of Community is heavily dependent upon the efforts of its management. The Obligor has contracted for management services with Greystone Management Company, LLC for the day-to-day operations of the Community. For more information, see **APPENDIX A—“Development and Management of the Community.”**

Utilization Demand

Demand for services of the Community could be affected by many factors, including: (i) efforts by insurers and governmental agencies to reduce utilization of skilled nursing home and long-term care facilities by such means as preventive medicine and home health care programs; (ii) advances in scientific and medical technology; (iii) increased or more effective competition from nursing home and long-term care facilities, assisted living facilities, and apartment complexes which target elderly residents now or hereafter located in the service area of the Community; and (iv) impact of managed care, which cannot be predicted.

Competition

The Community is located in an area where other competitive facilities exist (see Management's financial forecast contained in **APPENDIX B**) and it may face additional competition in the future as a result of the construction of new housing for the elderly or continuing care facilities or assisted living facilities in their primary market area. There may also arise in the future competition from other forms of housing for the elderly or continuing care facilities, some of which may be designed to offer similar facilities, but not necessarily similar services, at lower prices.

Forecast

The Obligor's financial forecast contained in the Feasibility Study attached hereto as **APPENDIX B** is based upon assumptions made by management of the Obligor and the Developer. As stated in such financial forecast, events and circumstances frequently do not occur as expected, and there will usually be differences between the forecasted and actual results, and those differences may be material. In addition, the financial forecast only covers the three months and five years ending December 31, 2004 and consequently does not cover the entire period during which the Series 1999 Bonds may be outstanding. See the Financial Feasibility Study included herein as **APPENDIX B**, which should be read in its entirety.

BECAUSE THERE IS NO ASSURANCE THAT ACTUAL EVENTS WILL CORRESPOND WITH THE ASSUMPTIONS MADE, NO GUARANTEE CAN BE MADE THAT THE FINANCIAL FORECAST IN THE FEASIBILITY STUDY WILL CORRESPOND WITH THE RESULTS ACTUALLY ACHIEVED IN THE FUTURE. ACTUAL OPERATING RESULTS MAY BE AFFECTED BY MANY UNCONTROLLABLE FACTORS, INCLUDING BUT NOT LIMITED TO, INCREASED COSTS, FAILURE BY MANAGEMENT OF THE CORPORATION TO EXECUTE ITS PLANS, LOWER THAN ANTICIPATED REVENUES, EMPLOYEE REGULATIONS, TAXES, GOVERNMENTAL CONTROLS, CHANGES IN APPLICABLE GOVERNMENTAL REGULATION, CHANGES IN DEMOGRAPHIC TRENDS, CHANGES IN THE RETIREMENT LIVING AND HEALTH CARE INDUSTRIES AND GENERAL ECONOMIC CONDITIONS.

Units,” “—Failure to Achieve Occupancy Targets; Consultant,” “—Operating Ratio Covenant,” and “—Failure to Maintain Operating Ratio.” In certain circumstances, failure to satisfy such requirements may also give rise to an Event of Default under the Master Indenture. While these covenants are intended to require the Obligor to take corrective action in order to avert a payment default, no assurance can be given that such corrective action, if required, will be successful. If the forecast set forth by management is not achieved, there can be no assurance that funds established under the Bond Indenture will be sufficient for payment of operating deficits, interest on the Series 1999 Bonds and any refunds to be paid to residents. If an Event of Default occurs under the Bond Indenture, the Trustee may declare an acceleration or take any of the remedies provided in the Bond Indenture. Following an acceleration there may be no moneys in the funds established under the Bond Indenture for payment of the Series 1999 Bonds. See **APPENDIX C—“DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—Indenture of Trust—Remedies on Default.”**

Development and Management

The successful operation of Community is heavily dependent upon the efforts of its management. The Obligor has contracted for management services with Greystone Management Company, LLC for the day-to-day operations of the Community. For more information, see **APPENDIX A—“Development and Management of the Community.”**

Utilization Demand

Demand for services of the Community could be affected by many factors, including: (i) efforts by insurers and governmental agencies to reduce utilization of skilled nursing home and long-term care facilities by such means as preventive medicine and home health care programs; (ii) advances in scientific and medical technology; (iii) increased or more effective competition from nursing home and long-term care facilities, assisted living facilities, and apartment complexes which target elderly residents now or hereafter located in the service area of the Community; and (iv) impact of managed care, which cannot be predicted.

Competition

The Community is located in an area where other competitive facilities exist (see Management’s financial forecast contained in **APPENDIX B**) and it may face additional competition in the future as a result of the construction of new housing for the elderly or continuing care facilities or assisted living facilities in their primary market area. There may also arise in the future competition from other forms of housing for the elderly or continuing care facilities, some of which may be designed to offer similar facilities, but not necessarily similar services, at lower prices.

Forecast

The Obligor’s financial forecast contained in the Feasibility Study attached hereto as **APPENDIX B** is based upon assumptions made by management of the Obligor and the Developer. As stated in such financial forecast, events and circumstances frequently do not occur as expected, and there will usually be differences between the forecasted and actual results, and those differences may be material. In addition, the financial forecast only covers the three months and five years ending December 31, 2004 and consequently does not cover the entire period during which the Series 1999 Bonds may be outstanding. See the Financial Feasibility Study included herein as **APPENDIX B**, which should be read in its entirety.

BECAUSE THERE IS NO ASSURANCE THAT ACTUAL EVENTS WILL CORRESPOND WITH THE ASSUMPTIONS MADE, NO GUARANTEE CAN BE MADE THAT THE FINANCIAL FORECAST IN THE FEASIBILITY STUDY WILL CORRESPOND WITH THE RESULTS ACTUALLY ACHIEVED IN THE FUTURE. ACTUAL OPERATING RESULTS MAY BE AFFECTED BY MANY UNCONTROLLABLE FACTORS, INCLUDING BUT NOT LIMITED TO, INCREASED COSTS, FAILURE BY MANAGEMENT OF THE CORPORATION TO EXECUTE ITS PLANS, LOWER THAN ANTICIPATED REVENUES, EMPLOYEE REGULATIONS, TAXES, GOVERNMENTAL CONTROLS, CHANGES IN APPLICABLE GOVERNMENTAL REGULATION, CHANGES IN DEMOGRAPHIC TRENDS, CHANGES IN THE RETIREMENT LIVING AND HEALTH CARE INDUSTRIES AND GENERAL ECONOMIC CONDITIONS.

rd **Malpractice Claims**

ay to The operations of the Community may also be affected by increases in the incidence of malpractice
en lawsuits against physicians, nursing homes and continuing care facilities in general and increases in the
ot dollar amount of patient damage recoveries, resulting in increased insurance premiums and an increased
or difficulty in obtaining malpractice insurance at reasonable rates or at all. It is not possible at this time to
If determine either the extent to which malpractice coverage will continue to be available to the Obligor or the
ry premiums at which such coverage can be obtained.

re **Sale of Personal Residences**

ae It is anticipated that a number of prospective residents of the Community will be required to sell their
)F current homes to pay the Entrance Fee prior to occupancy or to meet other financial obligations under their
Residency Agreements. Should prospective residents encounter difficulties in selling their current homes due
to local or national economic conditions affecting the sale of residential real estate, such prospective
rd residents may not have sufficient funds to pay the Entrance Fee or to meet other obligations under their
rd Residency Agreements, thereby causing a delay in scheduled occupancy of the Community or the
rd remarketing of vacated units, either of which could have an adverse effect on the revenues of the Obligor.

Certain Matters Relating to Security for the Series 1999 Bonds

oy The Obligor enters into a Residency Agreement with each resident. The Residency Agreement gives
as to each resident a contractual right to use space but no ownership rights in the Community. Pursuant to the
rd Residency Agreement, a resident's possessory rights are subordinate to the rights of a holder of
re indebtedness of the Obligor. In the event of a proceeding against the Obligor upon the occurrence of an
er Event of Default, it is impossible to predict how a court might rule in the face of a claim for possession by one
d or more residents of the Community.

Parity Debt

's The Master Indenture permits the Obligor to issue Obligations on a parity with the Series 1999 Notes.
ill See "**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN
s/r PRINCIPAL DOCUMENTS—The Master Indenture**" and "**The Bond Indenture— Authorization of
re Additional Bonds**" in **APPENDIX C**. In the future the issuance of such Obligations could increase the
ot Obligor's debt service and repayment requirements in a manner which would adversely affect the Obligor's
ability to make debt service payments on the Series 1999 Bonds.

Amendments to Documents

B Certain amendments to the Master Indenture, the Bond Indenture, the Variable Rate Bond Indenture
;h and the Loan Agreements may be made without notice to or the consent of the holders of the Series 1999
re Bonds and other amendments may be made with the consent of the holders of a majority in aggregate
n principal amount of all outstanding Series 1999 Bonds. In addition, to the extent that the Credit Provider is
rd not in default of its obligations with respect to the Series 1999D Bonds, the Credit Provider provides any
e requested consents with respect to the Series 1999D Bonds. Such amendments could affect the security for
E the Series 1999 Bonds. Certain amendments, however, are not permitted without the consent of the holder
E of each outstanding Series 1999 Bond affected thereby, including (1) extensions in the stated maturity of the
E principal, or any installment of interest on, any Series 1999 Bond, or (2) any reduction in the principal amount
F of or interest on any Series 1999 Bond. See "**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF
L CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS—The Master Indenture— Amendments
and Waivers; The Bond Indenture—Supplemental Bond Indenture; The Loan
J Agreement—Amendments, Changes and Modifications; The Variable Rate Bond Indenture—
Supplemental Indentures**" in **APPENDIX C**.

Legislation and Regulations Governing Continuing Care Retirement Communities

The Obligor must comply with extensive federal, state and local regulations as they apply to continuing care retirement communities and nursing care and assisted living facilities. Failure to comply with any of these regulations may have a material adverse effect on the operations of the Obligor.

Third-Party Payments and Managed Care

General. In the environment of increasing managed care, the Obligor can expect additional challenges in maintaining its resident population and attendant revenues. Third-party payors, such as health maintenance organizations, direct their subscribers to providers who have agreed to accept discounted rates or reduced per diem charges. CCRCs are less sensitive to this directed utilization than stand alone SNFs; however, the risk may increase and the Obligor may be required to accept residents under such conditions should managed care cost reduction measures now pervasive in the health care industry continue to grow.

Medicare and Medicaid Programs. At this time, the Obligor does not intend to pursue certification with respect to either of the Medicare or Medicaid programs.

Other Legislation

Section 7872 of the Code (Treatment of Loans with Below-Market Interest Rates), provides for, in certain circumstances, the imputation of interest income to a lender when the rate of interest charged by the lender is below prevailing market rates (as determined under a formula) or, even if the below market interest rate loan would otherwise be exempt from the provisions of Section 7872, when one of the principal purposes for such below-market rate loan is the avoidance of federal income taxation.

A refundable entrance fee payment made by a resident to certain continuing care facilities has been determined under Section 7872 to constitute a below market interest rate loan by the resident to the facility to the extent that the resident is not receiving a market rate of interest on the refundable portion of the entrance fee. Section 7872(g) provides a "safe harbor" exemption for certain types of refundable entrance fees. The statutory language of Section 7872 does not permit a conclusive determination as to whether the Residency Agreements come within the scope of the continuing care facility safe harbor or within the statute itself. Section 7872 is applicable only to "loans" in excess of \$137,000. Current Entrance Fees for some units are in excess of the applicable threshold of Section 7872, and it will have to be determined whether the Residency Agreements involve a "loan" for purposes of Section 7872. Any determination of applicability of Section 7872 could have the effect of discouraging potential residents from becoming or remaining residents of the Community.

Retirement facilities, such as the Community, are subject to a wide variety of federal, state and local environmental and occupational health and safety laws and regulations relating to pollution control and hazardous materials. In their role as owners and operators of properties or facilities, continuing care retirement facilities may be subject to liability for investigating and remedying any hazardous substances that have come to be located on the real property upon which the Community is to be constructed (the "Property"), including any such substances that may have migrated off of the Property. Operations of the Community may include or result in the use or release of various hazardous materials and pollutants. Such use or release may produce risks of damage to individuals, property or the environment; interruption of operations or increased cost or both; legal liability, damages, injunctions or fines, or the triggering of investigations, administrative proceedings, penalties or other government agency actions. There can be no assurance that the Obligor will not encounter such risks in the future, and such risks may result in material adverse consequences to the operations or financial condition of the Obligor.

Enforceability of Remedies

The remedies available upon an event of default under the Bond Indenture and the Variable Rate Bond Indenture are in many respects dependent upon regulatory and judicial actions that are often subject to discretion and delay. Under existing law and judicial decisions the remedies provided for under the Bond Indenture and Variable Rate Bond Indenture may not be readily available or may be limited. The Series 1999 Bonds may be subject to general principles of equity which may permit the exercise of judicial discretion; are subject to the reasonable exercise in the future by the State of Texas and its governmental bodies of the

police power inherent in the sovereignty of the State of Texas; are subject, in part, to the provisions of the United States Bankruptcy Act and other applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; and are subject to the exercise by the United States of the powers delegated to it by the federal Constitution. The various legal opinions to be delivered concurrently with the delivery of the Series 1999 Bonds will be qualified to the extent that the enforceability of certain legal rights related to the Series 1999 Bonds is subject to limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally and by equitable remedies and proceedings generally.

Maintenance of Tax-Exempt Status

The maintenance by the Obligor of its tax-exempt status under Section 501(c)(3) of the Code is contingent upon compliance with regulations promulgated under the Code that govern tax-exempt organizations generally. These regulations require that tax-exempt organizations operate for charitable, religious, scientific or educational purposes and avoid transactions that may cause their assets to inure, directly or indirectly, to the benefit of private individuals.

The IRS has also issued Revenue Rulings dealing specifically with the manner in which a long-term care facility must operate in order to maintain its exemption under Section 501(c)(3). Revenue Rulings 61-72 and 72-124 hold that, if otherwise qualified, a long-term care facility is exempt under Section 501(c)(3) if the organization (1) is dedicated to providing, and in fact provides, care and housing to aged individuals who otherwise would be unable to provide for themselves without hardship, (2) to the extent of its financial ability, renders services to all or a reasonable proportion of its residents at substantially below actual cost, (3) renders services that minister to the needs of the elderly and relieve hardship or distress. Revenue Ruling 79-18 holds that a long-term care facility may admit only those tenants who are able to pay full rental charges, provided that those charges are set at a level that is within the financial reach of a significant segment of the community's elderly persons. The Ruling also holds that the organization must be committed, by established policy, to maintaining persons as residents, even if they become unable to pay the monthly charges after being admitted to the facility.

In recent years, the IRS has increased the frequency and scope of its audit and other enforcement activity regarding tax-exempt organizations. Currently, the primary penalty available to the IRS under the Code is the revocation of tax-exempt status. Although the IRS has not frequently revoked the 501(c)(3) tax-exempt status of nonprofit corporations, it could do so in the future. Loss of tax-exempt status by the Obligor could potentially result in loss of tax exemption of the Bonds, and defaults in covenants regarding the Bond would be triggered. Loss of tax-exempt status could also result in substantial tax liabilities on income of the Obligor.

In certain cases, the IRS has imposed substantial monetary penalties and future charity care or public benefit obligations on tax-exempt organizations in lieu of revoking their tax-exempt status, as well as requiring that certain transactions be altered, terminated or avoided in the future and/or requiring governance or management changes. Given the wide range of transactions which may be entered into by the Obligor and uncertainty with respect to how the exemption requirements may be applied by the IRS in specific situations, the Obligor is at risk for incurring monetary liabilities imposed by the IRS process. These penalties and obligations could be substantial, and in some cases could be materially adverse.

Also, with the 1996 enactment of the Taxpayers Bill of Rights 2 (the "Act"), the IRS was given "intermediate" tax enforcement tools to combat violations by tax-exempt organizations of the private inurement prohibition of the Code. Intermediate sanctions may be imposed where there is an "excess benefit transaction" defined to include a disqualified person (i.e., an insider) (i) engaging in a non-fair market transaction with the tax-exempt organization; (ii) receiving unreasonable compensation from the tax-exempt organization; or (iii) receiving payment in an arrangement that violates the private inurement proscription. Organizational managers who participate in an excess benefit transaction knowing it to be improper are subject to a "first tier" penalty excise tax of 10% of the amount of the excess benefit, subject to a maximum penalty of \$10,000. The Act is effective retroactive to September 14, 1995.

Other Possible Risk Factors

The occurrence of any of the following events, or other unanticipated events, could adversely affect the operations of the Obligor:

- (a) Inability to control increases in operating costs, including salaries, wages and fringe benefits, supplies and other expenses, without being able to obtain corresponding increases in revenues from residents of the Community, some of whose incomes may be fixed.
- (b) Unionization, employee strikes and other adverse labor actions which could result in a substantial increase in expenditures without a corresponding increase in revenues.
- (c) Adoption of federal, state or local legislation or regulations having an adverse effect on the future operating or financial performance of the Obligor.
- (d) A decline in the population, a change in the age composition of the population or a decline in the economic conditions of the Community's market area.
- (e) The possible modification or repeal of certain existing federal income or state tax laws or other loss by the Obligor of the present advantages of certain provisions of the federal income or state tax laws or the failure of the Obligor to remain qualified as an exempt organization.

Continuing Legal Requirements Regarding Series 1999 Bonds/Pending Tax Legislation

In the event that the Issuer and the Obligor fail to comply with the requirements of the Code, interest on the Tax-Exempt Series 1999 Bonds may become includable in gross income for purposes of Federal income taxation retroactively to the date of issuance of the Tax-Exempt Series 1999 Bonds.

There is tax legislation pending in the United States House of Representatives which, if enacted into law, could affect the tax-exempt status of the interest on the Tax-Exempt Series 1999 Bonds. For more information, see "TAX EXEMPTION" herein.

In either event, the Bond Indenture does not contain any specific provision for acceleration of the Tax-Exempt Series 1999 Bonds nor provide that any additional interest will be paid to the owners of the Tax-Exempt Series 1999 Bonds.

Year 2000 Issues

The year 2000 issue is the result of computer programs being written using two digits rather than four to define the applicable year. Any of the Obligor's equipment, software and systems that have time-sensitive embedded systems may recognize a date using "00" as the year 1900 rather than the year 2000 and may experience other date recognition problems. This could result in a system failure or miscalculations causing disruptions of operations, including, among other things, malfunctioning equipment and devices, or a temporary inability to process transactions, bill patients or other payers, or engage in similar normal business activities. Additionally, vendors and clients of the Obligor may experience temporary inability or delays in processing payments or delivering goods to the Obligor as a result of year 2000 issues. Further risks associated with year 2000 issues include the inability or delays in processing payments by the Bond Trustee to Bondholders. See also "BOOK-ENTRY SYSTEM—Year 2000" for more information about how DTC is addressing the year 2000 issue.

For a description of the specific steps the Obligor is taking to address the year 2000 issue, see APPENDIX A—"GOVERNANCE AND MANAGEMENT—Year 2000 Program" herein.

FINANCIAL REPORTING AND CONTINUING DISCLOSURE

Financial Reporting Under the Master Indenture

The Master Indenture requires that, commencing with the first month following delivery of the Series 1999 Bonds and ending on the last month of the first Fiscal Year in which Stable Occupancy has occurred, the Obligor will submit within 35 days of the last day of each month to the Master Trustee, the Dissemination Agent and any Significant Bondholder (as defined in the Master Indenture) who so requests copies of the unaudited financial reports on the development costs of the Initial Project (as defined in the Master Indenture) to date and marketing and occupancy reports of the Obligated Group for such month, which reports will include computations establishing the Obligated Group's compliance with certain covenants set forth in the Master Indenture. Commencing with the first month of the Fiscal Year following the Fiscal Year in which Stable Occupancy has occurred, the Obligor will submit within 35 days of the last day of each month to the Master Trustee, the Dissemination Agent and any Significant Bondholder who so requests copies of the unaudited financial statements of the Obligated Group for such month.

The Master Indenture additionally requires that within 120 days of the end of each Fiscal Year, the Obligor cause financial statements of the Obligated Group to be prepared with respect to such Fiscal Year in accordance with generally accepted accounting principles, consistently applied, which financial statements will be audited by, and accompanied by a report of, an Independent Accountant. Such financial statements and reports will be delivered upon completion to the Master Trustee, the Principal Underwriter and, upon request, to any Significant Bondholder.

Continuing Disclosure

General. The Obligor has covenanted for the benefit of the Series 1999 Bondowners and the Beneficial Owners (as hereinafter defined under this caption), pursuant to a Continuing Disclosure Agreement (the "*Disclosure Agreement*") to be executed and delivered by the Obligor, to provide or cause to be provided (i) each year, certain financial information and operating data relating to the Obligated Group (the "*Annual Report*") by not later than the date 120 days after the last day of the fiscal year of the Obligated Group, commencing with the Annual Report for the fiscal year ended December 31, 1999; provided, however, that if the audited financial statements of the Obligated Group are not available by such date, unaudited financial statements will be included in the Annual Report and audited financial statements will be provided when and if available; and (ii) timely notices of the occurrence of certain enumerated events, if material. Currently the fiscal year of the Obligated Group commences on January 1. "Beneficial Owners" means, under this caption only, any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

The Annual Report will be filed by or on behalf of the Obligor with each Nationally Recognized Municipal Securities Information Repository and with any Texas state information depository, in each case as designated from time to time by the Securities and Exchange Commission (the "SEC"). The notices of material events will be filed with the Municipal Securities Rulemaking Board or each Nationally Recognized Municipal Securities Information Repository, and with any Texas state information depository, in each case as designated from time to time by the SEC. These covenants have been made in order to assist the Underwriter and registered brokers, dealers and municipal securities dealers in complying with the requirements of the Rule.

Notice of Certain Events, If Material. The Obligor covenants to provide, or cause to be provided, notice of the occurrence of any of the following events with respect to the Series 1999 Bonds, if material, in a timely manner and in accordance with the Rule:

- (a) Principal and interest payment delinquencies;
- (b) Non-payment related defaults;
- (c) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) Unscheduled draws on credit enhancements reflecting financing difficulties;

- (e) Substitution of credit or liquidity providers, or their failure to perform;
- (f) Adverse tax opinions or events adversely affecting the tax-exempt status of the Tax-Exempt Series 1999 Bonds;
- (g) Modifications to rights of the security holders;
- (h) Bond calls;
- (i) Defeasances;
- (j) Release, substitution, or sale of property securing repayment of the securities; and
- (k) Rating changes.

Annual Report. The Annual Report will contain or incorporate by reference at least the following items:

(a) The audited financial statements of the Members of the Obligated Group for the fiscal year ending immediately preceding the due date of the Annual Report; provided, however, that if such audited financial statements are not available by the deadline for filing the Annual Report, they will be provided when and if available, and unaudited financial statements will be included in the Annual Report. The financial statements will be audited and prepared pursuant to accounting and reporting policies conforming in all material respects to generally accepted accounting principles.

(b) The following financial information and operating data:

(i) commencing with the first Fiscal Year in which such ratio or covenant is required to be complied with pursuant to the terms of the Master Indenture and continuing through the Fiscal Year in which compliance with such ratio or covenant is no longer required under the terms of the Master Indenture, a calculation establishing in reasonable detail the Obligor's compliance with the required Operating Ratio, the Debt Service Coverage Ratio, the Liquidity Ratio, and the Trade Payables covenant, all in accordance with the terms, conditions and requirements of the Master Indenture.

(ii) until the first Fiscal Year following completion of the Community, a marketing report for the Community, showing for each fiscal quarter during the preceding Fiscal Year (A) the number of Reserved Units at the beginning of such quarter, (B) the number of Residency Agreements executed during such quarter, net of any Refunds, (C) the number of Residency Agreements terminated during such quarter, specifying the reason for each termination, and (D) the Marketing Target established under the Master Indenture for such quarter;

(iii) following completion of the Community, a report of the occupancy of the Community showing for each fiscal quarter the preceding Fiscal Year, (A) the number and type of units occupied and services provided with respect to each type of unit at the beginning of such quarter, (B) the number and type of units vacated and the number of units occupied and services provided with respect to each type of unit during such quarter, (C) the number of units occupied at the end of such quarter, (D) the average occupancy, by number and type of unit, during such quarter, and (E) the Occupancy Target established under the Master Indenture for such quarter; and

(iv) if the manager of the Community ceases to be Greystone Management Services Company, LLC, the name and a description of the experience of the new manager of the Community and a description of the key terms and conditions of the management contract.

The Obligor may modify from time to time the specific types of information provided to the extent necessary to conform to changes in legal requirements, provided that any such modification will be done in a manner consistent with the Rule and will not materially impair the interests of the Bondowners.

Any or all of the items listed above may be included by specific reference to other documents which previously have been provided to each of the repositories described above or filed with the SEC. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Obligor will clearly identify each such other document as included by reference. If the Obligor's fiscal year changes, the Obligor will give notice of such change.

Failure to Comply. In the event of a failure of the Obligor to comply with any provision of the Disclosure Agreement, any Series 1999 Bondowner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Obligor to comply with the obligations under the Disclosure Agreement. A failure to comply with the Disclosure Agreement will not be deemed an Event of Default under the Series 1999 Bond Indenture. The sole remedy under the Disclosure Agreement in the event of any failure of the Obligor to comply with the Disclosure Agreement will be an action to compel performance, and no person or entity will be entitled to recover monetary damage thereunder under any circumstances.

This will be the first Disclosure Agreement to which the Obligor will be a party, and consequently, there have been no previous instances of the Obligor's failure to comply with the Rule.

Amendment of the Disclosure Agreement. The provisions of the Disclosure Agreement, including but not limited to the provisions relating to the accounting principles pursuant to which the financial statements are prepared, may be amended as deemed appropriate by an authorized officer of the Obligor; but any such amendment must be adopted procedurally and substantively in a manner consistent with the Rule, including any interpretation thereof made from time to time by the SEC. Such interpretations currently include the requirements that (a) the amendment may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the Obligor or the type of activities conducted thereby, (b) the undertaking, as amended, would have complied with the requirements of the Rule at the time of the primary offering of the Series 1999 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, and (c) the amendment does not materially impair the interests of Series 1999 Bondowners, as determined by parties unaffiliated with the Obligor (such as independent legal counsel). The foregoing interpretations may be changed in the future.

LITIGATION

Issuer

There is not now pending or, to the Issuer's knowledge, threatened any litigation restraining or enjoining the issuance or delivery of the Series 1999 Bonds or the execution and delivery by the Issuer of the Bond Indenture, the Variable Rate Bond Indenture or the Loan Agreements or questioning or affecting the validity of the Series 1999 Bonds or the security therefor or the proceedings or Issuer under which they are or are to be issued, respectively.

Obligor

There is no litigation pending or, to the Obligor's knowledge, threatened against the Obligor, wherein an unfavorable decision would (i) adversely affect the ability of the Obligor to construct the Project or to operate its facilities or to carry out its obligations under the Master Indenture or the Loan Agreements, or (ii) would have a material adverse impact on the financial position or results of operations of the Obligor.

FINANCIAL FEASIBILITY STUDY

The Financial Feasibility Study dated October 13, 1999 included in **APPENDIX B** hereto, has been prepared by KPMG LLP to evaluate the ability of the Corporation to generate sufficient funds to meet its operating expenses, working capital needs and other financial requirements during the three months and five years ending December 31, 2004. The Obligor's forecasted financial statements included in the study have been examined by KPMG LLP, as stated in their financial feasibility study report. The Financial Feasibility Study included in **APPENDIX B** should be read in its entirety. The Financial Feasibility Study is based on assumptions that were provided by, or reviewed with and approved by management of the Obligor and management of the Developer. There will usually be differences between the forecasted and actual results because events and circumstances frequently do not occur as expected, and those differences may be material.

RATING

Standard & Poor's Ratings Services, a Division of McGraw Hill Companies has issued a rating on the Series 1999D Bonds of "AA-/A-1+" based on and assuming the issuance and delivery of the Series 1999D Credit Facility by LaSalle Bank National Association, concurrently with the issuance and delivery of the Series 1999D Bonds.

This rating reflects only the view of such rating agency and is not a recommendation to buy, sell, or hold the Series 1999D Bonds. There is no assurance that the rating will continue for any given period of time or that the rating will not be revised downward or withdrawn entirely, if in the judgment of the rating agency that granted such rating the circumstances so warrant. Any such downward revision or withdrawal of the rating may have an adverse effect on the market price or marketability of the Series 1999D Bonds. A further explanation of the significance of the rating may be obtained from the rating agency that granted that rating.

THE SERIES 1999A BONDS AND THE EXTRASSM ARE NOT RATED.

LEGAL MATTERS

Legal matters incident to the authorization, issuance and sale of the Series 1999 Bonds are subject to the unqualified approval of the Attorney General of the State of Texas and of Bond Counsel. McCall, Parkhurst & Horton L.L.P. has acted in the capacity of Bond Counsel for the purpose of rendering an opinion with respect to the authorization, issuance, delivery, legality and validity of the Series 1999 Bonds and for the purpose of rendering an opinion on the exclusion of the interest on the Series 1999 Bonds (other than the Series 1999E Bonds) from gross income for federal income tax purposes and certain other tax matters. Such firm has not been requested to examine, and has not investigated or verified, any statements, records, material or matters relating to the financial condition or capabilities of the Obligated Group, and has not assumed responsibility for the preparation of this Preliminary Official Statement, except that, in its capacity as Bond Counsel, such firm has reviewed the information in this Preliminary Official Statement under the captions "THE ISSUER," "THE SERIES 1999 BONDS," "THE SERIES 1999A BONDS," "THE EXTRASSM," "THE SERIES 1999D BONDS," "SECURITY FOR THE SERIES 1999 BONDS" and "TAX MATTERS" and **APPENDIX C—DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF CERTAIN PRINCIPAL DOCUMENTS.** Certain matters will be passed upon for the Issuer by its special counsel, Robert E. Luna, P.C., for the Obligor by its counsel, Thompson & Knight, L.L.P., Dallas, Texas, for the Series 1999D Credit Provider by its counsel, Gardner, Carton & Douglas, Chicago, Illinois and for the Underwriters by their counsel, Vinson & Elkins L.L.P., Dallas, Texas.

TAX MATTERS

The Tax-Exempt Series 1999 Bonds

Opinion. On the date of initial delivery of the Series 1999A Bonds, the Series 1999B Bonds, the Series 1999C Bonds and the Series 1999D Bonds (the "Tax-Exempt Series 1999 Bonds"), McCall, Parkhurst & Horton L.L.P., Bond Counsel, will render its opinion on the Tax-Exempt Series 1999 Bonds that, in accordance with statutes, regulations, published rulings and court decisions existing on the date thereof, (1) interest on the Tax-Exempt Series 1999 Bonds for federal income tax purposes will be excludable from the "gross income" of the holders thereof and (2) the Tax-Exempt Series 1999 Bonds will not be treated as

“specified private activity bonds” the interest on which would be included as an alternative minimum tax preference item under section 57(a)(5) of the Internal Revenue Code of 1986 (the “Code”). Except as stated above, Bond Counsel will express no opinion as to any other federal, state or local tax consequences of the purchase, ownership or disposition of the Tax-Exempt Series 1999 Bonds. See “**APPENDIX D—FORM OF BOND COUNSEL OPINION.**”

In rendering its opinion, Bond Counsel will rely upon (a) the opinion of Thompson & Knight LLP, counsel to the Obligor, relating to the qualification of the Obligor as an organization described in Section 501(c)(3) of the Code, (b) information furnished by the Obligor, and particularly written representations of officers and agents of the Obligor with respect to certain material facts that are solely within their knowledge relating to the use of the proceeds of the Tax-Exempt Series 1999 Bonds, and (c) covenants of the Issuer and the Obligated Group with respect to arbitrage, the application of the proceeds to be received from the issuance and sale of the Tax-Exempt Series 1999 Bonds and certain other matters. Failure of the Issuer or the Obligated Group to comply with these representations or covenants could cause the interest on the Tax-Exempt Series 1999 Bonds to become includable in gross income retroactively to the date of issuance of the Tax-Exempt Series 1999 Bonds.

The law upon which Bond Counsel has based its opinion is subject to change by Congress and to subsequent judicial and administrative interpretation by the courts and the Department of the Treasury. There can be no assurance that such law or the interpretation thereof will not be changed in a manner which would adversely affect the tax treatment of the purchase, ownership or disposition of the Tax-Exempt Series 1999 Bonds.

Federal Income Tax Accounting Treatment of Original Issue Discount. The initial public offering price to be paid for one or more maturities of the Tax-Exempt Series 1999 Bonds (the “*Original Issue Discount Bonds*”) may be less than the principal amount thereof or one or more periods for the payment of interest on the Tax-Exempt Series 1999 Bonds may not be equal to the accrual period or be in excess of one year. In such event, the difference between (i) the “stated redemption price at maturity” of each Original Issue Discount Bond, and (ii) the initial offering price to the public of such Original Issue Discount Bond would constitute original issue discount. The “stated redemption price at maturity” means the sum of all payments to be made on the Tax-Exempt Series 1999 Bonds less the amount of all periodic interest payments. Periodic interest payments are payments which are made during equal accrual periods (or during any unequal period if it is the initial or final period) and which are made during accrual periods which do not exceed one year.

Under existing law, any owner who has purchased such Original Issue Discount Bond in the initial public offering is entitled to exclude from gross income (as defined in section 61 of the Code) an amount of income with respect to such Original Issue Discount Bond equal to that portion of the amount of such original issue discount allocable to the accrual period. For a discussion of certain collateral federal tax consequences, see discussion set forth below.

In the event of the redemption, sale or other taxable disposition of such Original Issue Discount Bond prior to stated maturity, however, the amount realized by such owner in excess of the basis of such Original Issue Discount Bond in the hands of such owner (adjusted upward by the portion of the original issue discount allocable to the period for which such Original Issue Discount Bond was held by such initial owner) is includable in gross income.

Under existing law, the original issue discount on each Original Issue Discount Bond is accrued daily to the stated maturity thereof (in amounts calculated as described below for each six-month period ending on the date before the semiannual anniversary dates of the date of the Tax-Exempt Series 1999 Bonds and ratably within each such six-month period) and the accrued amount is added to an initial owner’s basis for such Original Issue Discount Bond for purposes of determining the amount of gain or loss recognized by such owner upon the redemption, sale or other disposition thereof. The amount to be added to basis for each accrual period is equal to (a) the sum of the issue price and the amount of original issue discount accrued in prior periods multiplied by the yield to stated maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period) less (b) the amounts payable as current interest during such accrual period on such Original Issue Discount Bond.

The federal income tax consequences of the purchase, ownership, redemption, sale or other disposition of Original Issue Discount Bonds which are not purchased in the initial offering at the initial offering

price may be determined according to rules which differ from those described above. **ALL OWNERS OF ORIGINAL ISSUE DISCOUNT BONDS SHOULD CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE DETERMINATION FOR FEDERAL, STATE AND LOCAL INCOME TAX PURPOSES OF THE TREATMENT OF INTEREST ACCRUED UPON REDEMPTION, SALE OR OTHER DISPOSITION OF SUCH ORIGINAL ISSUE DISCOUNT BONDS AND WITH RESPECT TO THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP, REDEMPTION, SALE OR OTHER DISPOSITION OF SUCH ORIGINAL ISSUE DISCOUNT BONDS.**

Collateral Federal Income Tax Consequences. The following discussion is a summary of certain collateral federal income tax consequences resulting from the purchase, ownership or disposition of the Tax-Exempt Series 1999 Bonds. This discussion is based on existing statutes, regulations, published rulings and court decisions, all of which are subject to change or modification, retroactively.

The following discussion is applicable to investors, other than those who are subject to special provisions of the Code, such as financial institutions, property and casualty insurance companies, life insurance companies, owners of interests in a FASIT, individual recipients of Social Security or Railroad Retirement benefits, individuals allowed an earned income credit, certain S corporations with Subchapter C earnings and profits and taxpayers who may be deemed to have incurred or continued indebtedness to purchase tax-exempt obligations.

INVESTORS, INCLUDING THOSE WHO ARE SUBJECT TO SPECIAL PROVISIONS OF THE CODE, SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX TREATMENT WHICH MAY BE ANTICIPATED TO RESULT FROM THE PURCHASE, OWNERSHIP AND DISPOSITION OF TAX-EXEMPT OBLIGATIONS BEFORE DETERMINING WHETHER TO PURCHASE THE SERIES 1999 BONDS.

Interest on the Tax-Exempt Series 1999 Bonds will be includable as an adjustment for "adjusted current earnings" to calculate the alternative minimum tax imposed on corporations by section 55 of the Code. Section 55 of the Code imposes a tax equal to 20 percent for corporations, or 26 percent for noncorporate taxpayers (28 percent for taxable income exceeding \$175,000), of the taxpayer's "alternative minimum taxable income," if the amount of such alternative minimum tax is greater than the taxpayer's regular income tax for the taxable year.

Interest on the Tax-Exempt Series 1999 Bonds may be subject to the "branch profits tax" imposed by section 884 of the Code on the effectively-connected earnings and profits of a foreign corporation doing business in the United States.

Under the Code, holders of tax-exempt obligations, such as the Tax-Exempt Series 1999 Bonds, may be required to disclose interest received or accrued during each taxable year on their returns of federal income taxation.

Section 1276 of the Code provides for ordinary income tax treatment of gain recognized upon the disposition of a tax-exempt obligation, such as the Tax-Exempt Series 1999 Bonds, if such obligation was acquired at a "market discount" and if the fixed maturity of such obligation is equal to, or exceeds, one year from the date of issue. Such treatment applies to "market discount bonds" to the extent such gain does not exceed the accrued market discount of such Tax-Exempt Series 1999 Bonds; although for this purpose, a de minimis amount of market discount is ignored. A "market discount bond" is one which is acquired by the holder at a purchase price which is less than the stated redemption price at maturity or, in the case of a bond issued at an original issue discount, the "revised issue price" (i.e., the issue price plus accrued original issue discount). The "accrued market discount" is the amount which bears the same ratio to the market discount as the number of days during which the holder holds the obligation bears to the number of days between the acquisition date and the final maturity date.

State, Local and Foreign Taxes. Investors should consult their own tax advisors concerning the tax implications of the purchase, ownership or disposition of the Tax-Exempt Series 1999 Bonds under applicable state or local laws. Foreign investors should also consult their own tax advisors regarding the tax consequences unique to investors who are not United States persons.

The Series 1999E Bonds

The following discussion is a summary of certain expected material federal income tax consequences of the purchase, ownership and disposition of the Series 1999E Bonds. It is based in part on an opinion of McCall, Parkhurst & Horton L.L.P., Bond Counsel, and on the Code, the regulations promulgated thereunder, published revenue rulings and court decisions currently in effect, all of which are subject to change. The IRS has not yet issued regulations or rulings relating to the treatment of obligations such as the Series 1999E Bonds, and as such said opinion and this summary of federal income tax consequences are subject to modification by the eventual issuance of regulations or rulings or by subsequent administrative or judicial interpretation, which could apply retroactively.

The following discussion is applicable to investors other than those investors who are subject to special provisions of the Code, such as life insurance companies, tax-exempt organizations, foreign taxpayers and taxpayers who may be subject to the alternative minimum tax or personal holding company provisions of the Code. This summary is further limited to investors who will hold the Series 1999E Bonds as "capital assets" (generally, property held for investment) within the meaning of Section 1221 of the Code. INVESTORS WHO ARE SUBJECT TO SPECIAL PROVISIONS OF THE CODE SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX TREATMENT WHICH MAY BE ANTICIPATED TO RESULT FROM THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE SERIES 1999E Bonds IN THEIR PARTICULAR CIRCUMSTANCES BEFORE DETERMINING WHETHER TO PURCHASE BONDS.

Periodic Interest Payments and Original Issue Discount With Respect to the Series 1999E Bonds. On the date of issue, McCall, Parkhurst & Horton L.L.P., Bond Counsel, will render an opinion that the Series 1999E Bonds are not obligations described in section 103(a) of the Code. Accordingly, the stated interest paid on the Series 1999E Bonds or original issue discount, if any, accruing on the Series 1999E Bonds will be included in "gross income" within the meaning of section 61 of the Code of the owners and be subject to federal income taxation when received or accrued, depending upon the tax accounting method applicable to the owner thereof.

Disposition of Series 1999E Bonds. An owner will recognize gain or loss on the redemption, sale or exchange of a Series 1999E Bond equal to the difference between the redemption or sale price (exclusive of any amount paid for accrued interest) and the owner's tax basis in the Series 1999E Bond. Generally, the owner's tax basis in the Series 1999E Bond will be the owner's initial cost. Any gain or loss generally will be a capital gain or loss and either will be long-term or short-term depending on whether the Series 1999E Bond has been held for more than one year.

Under current law, purchasers of the Series 1999E Bonds who do not purchase the Series 1999E Bonds in the initial public offering at the initial public offering price (a "subsequent purchaser") will generally be required, on the disposition of a Series 1999E Bond, to recognize as ordinary income a portion of the gain, if any, to the extent of the accrued "market discount." Market discount is the amount by which the price paid for a Series 1999E Bond by a subsequent purchaser is less than the Series 1999E Bond's "stated redemption price at maturity" (or, in the case of a Series 1999E Bond issued at an original issue discount, if any, the Series 1999E Bond's "revised issue price"). In such instances, section 1277 of the Code also may apply so as to defer the deductibility of all or a portion of the interest incurred by a subsequent purchaser with respect to amounts borrowed to acquire a Series 1999E Bond with market discount.

Other Federal Income Tax Consequences. The Code requires debt obligations, such as the Series 1999E Bond, to be issued in registered form and denies certain tax benefits to the issuer and the holders of obligations failing this requirement. The Issuer will issue the Series 1999E Bonds in registered form.

Interest paid to an owner of a Series 1999E Bond ordinarily will not be subject to withholding of federal income tax if such owner is a United States person. A United States person, however, will be subject to withholding of such tax at a rate of 20% (31% for taxable years beginning after December 31, 1992) under certain circumstances. This withholding generally applies if the owner of a Series 1999E Bond (i) fails to furnish to the issuer such owner's social security number or other taxpayer identification number ("TIN"), (ii) furnishes the issuer an incorrect TIN, (iii) fails to report properly interest, dividends or other "reportable payments" as defined in the Code, or (iv) under certain circumstances, fails to provide the issuer or such owner's broker with a certified statement, signed under penalty of perjury, that the TIN provided to the issuer is correct and that such owner is not subject to backup withholding.

State and Local Taxes and Foreign Persons. Investors should consult their own tax advisors concerning the tax implications of holding and disposing of the Series 1999E Bonds under applicable state or local laws. Foreign investors should also consult their own tax advisors regarding the tax consequences unique to investors who are not United States persons.

Required Reporting to Internal Revenue Service. Subject to certain exceptions, interest payments made to the owners with respect to the Series 1999E Bonds will be reported to the IRS. Such information will be filed each year with the IRS on Form 1099 which will reflect the name, address and taxpayer identification number of the registered owner. A copy of Form 1099 will be sent to each registered owner of a Series 1999E Bonds for federal income tax reporting purposes.

Defeasance. Holders of the Series 1999E Bonds should be aware that the deposit by the Obligated Group of monies or Government Obligations with the Bond Trustee and the release of the Bond Indenture (a "defeasance") for federal income tax purposes could result in the recognition by the holder of taxable income (or loss), without any corresponding receipt of monies by the holder. In addition, for federal tax purposes, the character and time of receipt of payments on the Series 1999E Bonds subsequent to any such defeasance also could be affected. Holders are advised to consult their own tax advisors with respect to the tax consequences resulting from such events.

UNDERWRITING

The Series 1999 Bonds are being purchased by B.C. Ziegler and Company and The Chapman Company as Underwriters for a purchase price of \$_____ (representing the principal amount of the Series 1999 Bonds minus an underwriter's discount of \$_____ and an original issue discount of \$_____), plus accrued interest on the Series 1999 Bonds, pursuant to a Contract of Purchase, entered into by and between the Issuer and the Underwriters as approved by the Obligor (the "Contract of Purchase"). Pursuant to a Letter of Representation and Indemnification delivered concurrently with the Contract of Purchase, the Obligor has agreed to indemnify the Underwriters and the Issuer against certain liabilities. The Underwriters reserve the right to join with dealers and other underwriters in offering the Series 1999 Bonds to the public. The obligations of the Underwriters to accept delivery of the Series 1999 Bonds are subject to various conditions contained in the Contract of Purchase. The Contract of Purchase provides that the Underwriters will purchase all of the Series 1999 Bonds if any Series 1999 Bonds are purchased.

B.C. Ziegler and Company is a limited partner in GCI Edgemere, Ltd., a Texas limited partnership that has provided the capital necessary for development of the Community prior to delivery of the Series 1999 Bonds. See "**APPENDIX A—HISTORY AND BACKGROUND—Interested Party Transactions**" and "**—DEVELOPMENT AND MANAGEMENT OF THE COMMUNITY—GCI-Edgemere.**"

MISCELLANEOUS

The references herein to the Act, the Bond Indenture, the Variable Rate Bond Indenture, the Loan Agreements, the Master Indenture, the Reimbursement Agreement and other materials are only brief outlines of certain provisions thereof and do not purport to summarize or describe all the provisions thereof. Reference is hereby made to such instruments, documents and other materials, copies of which will be furnished by the Bond Trustees upon request for further information.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact.

The attached **APPENDICES A through D** are integral parts of this Official Statement and should be read in their entirety together with all of the foregoing statements.

It is anticipated that CUSIP identification numbers will be printed on the Series 1999 Bonds, but neither the failure to print such numbers on any Series 1999 Bond nor any error in the printing of such numbers will constitute cause for a failure or refusal by the purchaser thereof to accept delivery of or pay for any Series 1999 Bonds.

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The information assembled in this Official Statement has been supplied by the Obligor and other sources believed to be reliable, and, except for the statements under the heading "THE ISSUER" herein and information relating to the Issuer under the heading "LITIGATION—Issuer," the Issuer makes no representations with respect to nor warrants the accuracy of such information. The Obligor has agreed to indemnify the Issuer and the Underwriters against certain liabilities relating to the Official Statement.

NORTH CENTRAL TEXAS HEALTH FACILITIES DEVELOPMENT CORPORATION

By: _____
President

NORTHWEST SENIOR HOUSING CORPORATION

By: _____
President

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APPENDIX A

EDGEMERE

TABLE OF CONTENTS

	<u>Page</u>
THE OBLIGOR	
HISTORY AND BACKGROUND	
History and Background	1
Board of Directors	1
Interested Party Transactions	2
THE COMMUNITY	
General Description	2
Independent Living Apartments	3
Assisted Living Center	4
Health Center	4
Ground Lease	5
Approvals and Permits	5
RESERVATION AGREEMENT	
RESIDENCY AGREEMENT	
Entrance Fees and Monthly Service Fees	7
Services to Lifecare Residents	8
Termination and Refunds	8
MARKETING	
Marketing Program	9
Reservation of Independent Living Units	9
DEVELOPMENT AND MANAGEMENT OF THE COMMUNITY	
The Developer	10
GCI Edgemere, Ltd.	11
Greystone Development Company, LLC	11
Development Agreement	15
Greystone Management Services Company, LLC	16
Management Agreement	17
OTHER PROFESSIONAL SERVICES	
The General Contractor	18
Construction Contract	19
The Architects	19
Construction Oversight Manager	21

THE OBLIGOR

Page

Northwest Senior Housing Corporation (the "Obligor"), a Texas nonprofit corporation, was established in March 1998. The Internal Revenue Service issued a letter, dated September 8, 1999, stating its determinations that (i) the Obligor is a charitable organization described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and therefore exempt from federal income taxation under Section 501(a) of the Code and (ii) the Obligor is not a private foundation within the meaning of Section 509(a) of the Code.

HISTORY AND BACKGROUND

History and Background

The Obligor was formed for the purpose of construction, ownership and operation of a new, upscale senior living community known as Edgemere (the "Community") on a site in Dallas, Texas. The Obligor has secured an option to lease a parcel of real estate in one of the most affluent areas of Dallas on which to develop the Community.

The Obligor has selected Greystone Development Services V Joint Venture (the "Developer"), including all affiliated entities, to act as the development, marketing, finance and management consultants for the Edgemere project. Together with the Developer, the selected project team consists of the firms of Three Architecture and Aldrian Guskowski, as the architectural team; Andres Construction Services, the general contractor; KPMG, LLP, the feasibility consultants; and Thompson and Knight, LLP, as counsel to the Obligor. See "DEVELOPMENT AND MANAGEMENT OF THE COMMUNITY" herein.

The Obligor is a start-up corporation with no initial assets. As part of the Development Services Agreement between the Developer and the Obligor, GCI-Edgemere, Ltd., a Texas limited partnership, (the "Investment Limited Partnership") raised approximately \$4.8 million to fund pre-finance development costs prior to delivery of the Series 1999 Bonds, and the Developer advanced these funds to the Obligor. All advances made for pre-finance project costs will be reimbursed to the Investment Limited Partnership from the proceeds of the Series 1999 Bonds. See "DEVELOPMENT AND MANAGEMENT OF THE COMMUNITY" herein.

Board of Directors

The business affairs and property of the Obligor are governed by a board of directors (the "Board"). The Board currently consists of five (5) directors (the "Directors"), each of whom serves without compensation. The By-Laws of the Obligor require that the Board consist of at least three Directors. Directors are elected by the Board and each serves for a term of two years and may be nominated for additional terms without limit.

The following descriptions identify each Director and provide a brief description of his or her relevant background, experience and present and past affiliations:

Charles B. Brewer (Chairman)—Chairman, President and Chief Executive Officer of Southmark Corporation since August 1996. In July 1989, Mr. Brewer was named Chief Operating Officer, Executive Vice President, General Counsel and Secretary of Southmark Corporation. He was recruited by the Board of Directors of Southmark to supervise and coordinate a bankruptcy-related reorganization process with the responsibility of confirmation of a court approved plan of reorganization and implementation of a claims resolution process to resolve creditor claims.

Henry S. Miller, Jr.—Life-long resident of Dallas who has served on numerous boards for organizations and corporations within the city, where he is a prominent real estate developer.

Bernie Francis—25-year resident of Carrollton, Texas and currently the Chief Executive Officer of Business Control Systems, Inc. an information technology services firm with 160 employees.

Delores R. Rodgers—Retired Managing Director of the Financial Advisory Services practice for the Central Region of PricewaterhouseCoopers. Ms. Rodgers is a certified public accountant with a variety of interests in the Dallas area.

C. Scott Sykes, Jr.—Current President of SureQuest Systems, Inc., a publicly traded dietary and nutritional software firm located in Dallas, as well as Chairman/CEO of the Helix Group, Inc., a start-up communications/language translation services company. From 1988 to 1994 Mr. Sykes was Senior Vice President and General Counsel of Voluntary Hospitals of America, Inc., at that time the country's largest health care provider. From June 1994 to June 1998, Mr. Sykes served as counsel to Gardner, Carton & Douglas, the law firm serving as counsel to the Series 1999D Credit Provider.

Interested Party Transactions

The Obligor has not entered into any related party transactions. However, prior to Mr. Miller's joining the Board, his grandson served as broker in connection with negotiating the Community ground lease (the "Ground Lease") for which a negotiated, market-rate commission is to be paid upon execution of the Ground Lease.

B.C. Ziegler and Company (the "Managing Underwriter" of the Series 1999 Bonds) and Greystone Development Company, LLC, including officers, directors and employees of both organizations, are participating as limited partners in the Investment Limited Partnership. (See "**DEVELOPMENT AND MANAGEMENT OF THE COMMUNITY—GCI-Edgemere**" for further information.)

It is anticipated that upon delivery of the Series 1999 Bonds the Developer will receive a return of, and return on, the capital that it has advanced to the Obligor to pay certain development costs.

THE COMMUNITY

General Description

The Community is a new continuing care retirement community to be located on an approximately 16.25-acre tract of land in Dallas, Texas on Northwest Highway between Thackery and Edgemere Streets. The site is located in the Preston Hollow area of Dallas, an affluent area of the city just north of the towns of University Park and Highland Park. Currently, the site contains approximately 310 existing apartments, approximately 60% of which are occupied. However, it is anticipated that the remaining residents will vacate the apartments within three months after delivery of the Series 1999 Bonds, allowing for timely demolition of the existing structures. Occupants of the apartments have been made aware of plans for development of the Community and by November 1, 1999 all tenants will be under month-to-month leases.

Residents on the property on which the Community is to be constructed (the "Property") are expected to begin vacating immediately after delivery of the Series 1999 Bonds. Demolition of current structures existing on the Property is expected to begin in December, 1999, and construction of the Community is expected to commence in February 2000. The first independent living units in the Community are scheduled to be available for occupancy beginning in September 2001, and the first assisted living units and skilled nursing beds are expected to be available for occupancy beginning in November 2001.

Based upon an environmental assessment of the Property, it has been determined that structures currently existing on the Property were constructed with building materials containing asbestos fibers. Based upon the assessment of an independent hazardous materials consultant engaged to advise on asbestos abatement procedures, the Developer estimates that the cost of such procedures will be between \$900,000 and \$1,400,000; the Obligor has budgeted \$2,000,000 for such procedures. For a discussion of this determination and its possible effects on the Project, see "**BONDOWNERS' RISKS—Construction-Related Risks**" in the body of the Official Statement.

The Community will consist of a residential component including independent living units (the "Independent Living Units"), an Assisted Living Center including assisted living suites (the "Assisted Living Units") and memory support (dementia) assisted living suites (the "Memory Support Units"), and a health center (the "Health Center") comprised of nursing beds and memory support nursing beds. Each level of care will have its own commons and support areas; however, all residents of the Community will be served by a common kitchen.

The Community is being developed by the Obligor, which has retained professional assistance in the planning, development, marketing and management of the Community. See "**DEVELOPMENT AND MANAGEMENT OF THE COMMUNITY**" herein. The Community is planned to be constructed pursuant to the construction contract described under "**OTHER PROFESSIONAL SERVICES—The General Contractor**" herein. Preliminary site approval to develop the Community was received on February 4, 1999 from the City of Dallas Planning Commission. Such approval was given subject to certain conditions that are expected to be met in the Final Plat issued prior to construction, but after delivery of the Series 1999 Bonds. See "**APPROVALS AND PERMITS**" herein for a description of the other approvals received and those still required with respect to development of the Community.

Independent Living Apartments

The 256 Independent Living Units in the Community will be located in eight connected residential buildings in two-, three- and four-story configurations designed around large courtyards. There will also be three resident guest rooms located within these buildings. The common areas, located in a central one- and two-story building, will include a main dining room, two private dining rooms, a café, living room and lounge areas, a fitness center with pool and exercise rooms, a health and beauty spa, a fully-equipped business center, a convenience store, a card lounge, a billiard room/men's lounge, a multi-screen media center, a library, a creative arts center, a 250-seat auditorium and administrative offices. Each Independent Living Unit will be assigned an underground, secured garage parking space, with a limited number of additional spaces available for an additional fee.

The following schedule summarizes the unit types and approximate square footage of the Independent Living Units.

Type of Unit	Number of Units	Approximate Square Footage
One Bedroom Traditional	16	800
One Bedroom Deluxe	27	896
One Bedroom Grand	32	1,007
One Bedroom Den	32	1,129
One Bedroom Classic	48	1,236
Two Bedroom Den	42	1,376
Two Bedroom Deluxe	45	1,500
Two Bedroom Grand	14	1,724
TOTAL/AVERAGE	256	1,227

Each Independent Living Unit will be furnished with window treatments; wall-to-wall carpeting, except in the kitchen and bath; a full kitchen with refrigerator/freezer, range with oven, microwave oven and dishwasher; utility room with full-size washer/dryer; fire and smoke alarms; fire sprinkler system; individually controlled heating and air conditioning; and a balcony or patio. Telephone and cable television jacks will also be installed. All utilities, except telephone and expanded cable television services, are included within the monthly service fee (the "Monthly Service Fee"). By entering into a Residency Agreement, a resident (the "Lifecare Resident") is entitled to lifecare services provided by the Obligor at the Community. See "**RESIDENCY AGREEMENT—Services to Lifecare Residents**" herein for a further description of the services provided to Lifecare Residents of the Community and "**RESIDENCY AGREEMENT—Entrance Fees and Monthly Service Fees**" for a description of the types of fees paid by Lifecare Residents.

Assisted Living Center

The Assisted Living Center will consist of 60 Assisted Living Units and 24 secured Memory Support Units located on the first and second floors of a three-story building shared with the Health Center. The Assisted Living Units have been designed to foster the continued independence of Lifecare Residents who require varying amounts of assistance with activities of daily living. The Assisted Living Units (not including Memory Support Units) will be private apartments with kitchenettes and full baths and will be furnished with amenities similar to the Independent Living Units, but will not include the kitchen range, dishwasher, washer and dryer or balcony/patio. The Assisted Living Center's common areas will include a lobby, lounge, arts and crafts area, multipurpose room, dining room and administrative and support areas.

The Memory Support Units will be private alcoves and suites with full baths and will be furnished with amenities similar to the assisted living units, but without kitchenettes. The Memory Support Units will have secured access and will have separate common areas which will include similar amenities as the Assisted Living Center commons.

Summarized below are the types of Assisted Living Units and Memory Support Units planned for the Assisted Living Center and approximate square footage of each:

Type of Unit	Number of Units	Approximate Square Footage
Alcove Standard	10	400
Alcove Traditional	16	400
Alcove Deluxe	24	450
One Bedroom	10	500
Memory Support Alcove	18	267
Memory Support Suite	6	533
TOTAL/AVERAGE	84	410

Admission to the Assisted Living Center will be provided for Lifecare Residents of the Community in accordance with the terms of the Residency Agreement. The Assisted Living Center will also be available for occupancy by persons other than Lifecare Residents of the Community ("*Non-Lifecare Residents*"). Non-Lifecare Residents will be admitted, pursuant to the terms of a separate admissions agreement, on an as-available basis to the extent the units are not required to accommodate Lifecare Residents of the Community. Non-Lifecare Residents will pay a higher monthly service fee but no entrance fee and will not receive lifecare benefits.

There will be a separate entrance, shared with the Health Center, from a parking area to the Assisted Living Center as well as access from the Independent Living Units through building connections.

Health Center

The Health Center will be located on the third level of the building shared with the Assisted Living Center. The Health Center will contain a total of 64 nursing beds – 44 private nursing beds and a 20-bed memory support nursing unit with all private rooms. The rooms will be approximately 300 to 500 square feet in size. Health Center common areas will include administrative, service and support areas, resident dining, activity, lounge, therapy and bathing areas. The memory support unit will be a secured-nursing unit with all private rooms and separate, but similar, common areas as the other area of the Health Center. There will be a separate entrance, shared with the Assisted Living Center, from a parking area to the Health Center as well as access to and from the Independent Living Units through building connections.

The Health Center will be available for occupancy by Lifecare Residents of the Community when their physical or mental condition so requires as described under "**Residency Agreement—Health Care Services**." The Health Center will also be available for occupancy by Non-Lifecare Residents of the Community. Non-Lifecare Residents will be admitted on a per-diem basis directly to the Health Center to

the extent that the nursing beds are not required to accommodate Lifecare Residents of the Community. The Obligor expects to begin marketing the Health Center to the general public when construction of the Community is near completion. The beds in the Health Center may eventually be licensed for Medicare, but will not be licensed for Medicaid. At this time, however, the Obligor does not intend to seek certification with respect to the Medicare program.

Ground Lease

Intercity Investment Properties, Inc. ("*Intercity*"), an unrelated third party, has owned the project site since 1949. Intercity entered into an option to lease (the "*Option*") in 1997 with Northwest Lifecare Joint Venture, a third party unaffiliated with the Obligor. The Option was assigned to the Obligor in May of 1999 for no consideration other than the assumption of certain obligations. The Obligor intends to execute the Ground Lease contemporaneously with delivery of the Series 1999 Bonds.

The Ground Lease has a term of 55 years and initially provides for an annual rent of \$1,200,000 with incremental contractual increases to \$2,000,000 per annum within the first three years; provided, however, that annual rents will be increased by the Dallas-Fort Worth Metropolitan Statistical Consumer Price Index factor with a minimum increase of 2.5% and a maximum increase of 5% annually.

Pursuant to the Ground Lease, the Obligor has the right to mortgage the leasehold estate to secure the Series 1999 Bonds, but the Obligor does not have the right to encumber the underlying fee simple estate. Further, the holder of such leasehold mortgage (i.e. the Master Trustee) is granted the right to foreclose and take possession of the leased premises. Additionally, Intercity has agreed that it will not terminate the Ground Lease due to Obligor default thereunder without providing 120 days prior notice and opportunity to cure such default to the holder of the leasehold mortgage.

The Ground Lease contains detailed provisions regarding the use and application of insurance and condemnation proceeds in the event of casualty or condemnation. In essence, the Obligor has the right to rebuild so long as it is economically practical and the remaining land is suitable.

Approvals and Permits

The various approvals and permits necessary in order for the Obligor to begin construction and commence operations are outlined below. The Obligor believes that all such approvals and permits will be obtained in a timely manner so that construction of the Project may be completed as scheduled.

Abandonment. An abandonment ordinance will be necessary because the Obligor is requesting that the City of Dallas (the "*City*") abandon (i) Beauregard Street, a street located on the Property, and (ii) the interior alleys running between existing structures on the Property. In order for the City to consider the request for abandonment, the requesting party must make a payment equal to the fair market value of the land that will be abandoned. The Obligor intends to make such a payment in the amount of approximately \$400,000 in November 1999, prior to delivery of the Series 1999 Bonds.

The abandonment ordinance has been negotiated with City property management staff and prepared by City legal staff. It is required to be presented to the City Council ("*Council*") along with the payment for the abandonment three weeks prior to the Council meeting at which it is to be approved. This ordinance is expected to be adopted by December 1, 1999.

Final Plat. Upon receiving Council approval of the abandonment ordinance, the final plat, including the abandoned acreage, can be filed. The preliminary plat was submitted in February 1999 and all comments from City staff have been incorporated into the final plat. The final plat is expected to be filed within one week after Council approval of the Abandonment Ordinance and the Obligor anticipates no difficulties in receiving final plat approval.

Demolition and Building Permits. Demolition and Building Permits will be applied for on October 29, 1999 and will be released upon approval of the final plat. The demolition permit may be issued prior to receiving approval of the abandonment ordinance. Demolition is expected to begin in January 2000 and be completed in March 2000.

Certificate of Authority. Texas law requires that continuing care providers that require payment of an entrance fee obtain a Certificate of Authority ("COA") from the Texas Department of Insurance prior to entering into a contract to provide continuing care (or lifecare). However, the COA application cannot be submitted until documentation is received evidencing commitment to the Obligor for any permanent mortgage loan or other long-term financing arrangement. Therefore, prior to the Community's receiving a COA, prospective residents are required to sign a Reservation Agreement. (See "**Reservation Agreement**" herein). Once the COA is received from the Texas Department of Insurance, the prospective residents who have executed a Reservation Agreement and placed a 5% deposit will execute a Residency Agreement. Subsequent to receiving a COA, the Reservation Agreement will no longer be utilized.

RESERVATION AGREEMENT

In order to reserve an Independent Living Unit at the Community, a prospective Lifecare Resident must execute a Reservation Agreement, provide a self-disclosure of health and finances, and place a deposit equal to 5% of the Entrance Fee on the selected Independent Living Unit. (See "**MARKETING—Reservation of Independent Living Units**"). The Reservation Agreement reserves the right of the prospective Lifecare Resident to the chosen selected Independent Living Unit and indicates his or her intent to execute a Residency Agreement upon the Obligor's receiving final approval and Certificate of Authority from the Texas State Insurance Commission. The Reservation Agreement also provides Lifecare Residents guaranteed direct admission, upon payment of the full Entrance Fee due, to the Assisted Living Units or Health Center under the Lifecare program should their health needs change prior to the opening of the Community. Once the Certificate of Authority is received, the Reservation Agreement will no longer be utilized (See "**Approvals and Permits**" herein).

RESIDENCY AGREEMENT

The Residency Agreement is a contract under which the Obligor is obligated, if a prospective Lifecare Resident establishes occupancy, to provide certain services during the lifetime of the prospective Lifecare Resident (see "**Services to Residents**" below). Under Texas law, the Obligor can begin the process of having prospective Lifecare Residents execute Residency Agreements upon the receipt of the COA.

The Obligor considers applications for lifetime residence at the Community based upon the guidelines for the acceptance of Lifecare Residents described below and maintains sole discretion regarding whether to accept an applicant for Lifecare Resident. An application for residence at the Community will be accepted only if the applicant demonstrates the ability to live independently at the time the Residency Agreement is executed and meet the financial obligations as a Lifecare Resident of the Independent Living Unit. Each Lifecare Resident must be 62 years of age or older at the time of establishing occupancy. No dependent children may reside in the Community unless otherwise agreed by the Obligor.

Non-Lifecare Residents of the Independent Living Units may be admitted to the Health Center or Assisted Living Center as Non-Lifecare Residents if there are beds available in the Health Center or Assisted Living Center, as the case may be, in excess of those needed to satisfy the requirements of Lifecare Residents. Lifecare Residents requiring care in the Health Center or Assisted Living Center will have priority utilization of the Health Center and Assisted Living Center over Non-Lifecare Residents.

Entrance Fees and Monthly Service Fees

There are two types of fees required by all Lifecare Residents executing Residency Agreements—an Entrance Fee and Monthly Service Fees. The Entrance Fee is a lump sum, one-time payment based on the

type of Independent Living Unit to be occupied by the Lifecare Resident. The Entrance Fee is 90% refundable to the Lifecare Resident or his estate upon termination of the Residency Agreement and reoccupancy by a new resident and payment of a new Entrance Fee. Currently, in order to reserve a unit, a prospective Lifecare Resident must make an initial deposit equal to 5% of the Entrance Fee prior to or upon the execution of the Reservation Agreement (or Residency Agreement once the Certificate of Authority is received), and the remaining 95% of the Entrance Fee is payable on or before the date of occupancy.

The Entrance Fee and Monthly Service Fee are based on the type of Independent Living Unit selected by the Lifecare Resident. In addition to the first-person Monthly Service Fee, an additional monthly charge is payable for a second Lifecare Resident living in an Independent Living Unit. There is no additional Entrance Fee required for a second Lifecare Resident in an Independent Living Unit. Monthly Service Fees expected to be in effect at the time of the Community opening through December 31, 2002 are shown below.

Type of Unit	Number	Standard Entrance Fee	Charter Entrance Fee	Monthly Service Fee	Second Person Monthly Fee
One Bedroom Traditional	16	\$199,900	\$189,900	\$1,995	\$795
One Bedroom Deluxe	27	\$273,600	\$259,900	\$2,295	\$795
One Bedroom Grand	32	\$315,700	\$299,900	\$2,495	\$795
One Bedroom Den	32	\$363,300	\$349,900	\$2,695	\$795
Two Bedroom Classic	48	\$410,400	\$389,900	\$2,995	\$795
Two Bedroom Den	42	\$442,000	\$419,900	\$3,295	\$795
Two Bedroom Deluxe	45	\$484,100	\$459,900	\$3,595	\$795
Two Bedroom Grand	14	\$526,200	\$499,900	\$3,995	\$795
WEIGHTED TOTAL					
AVERAGE	256	\$389,600	\$370,700	\$2,970	\$795

Charter Resident Benefit. To qualify as a Charter Resident, an applicant must sign a Reservation Agreement within five days of the sales presentation. As a Charter Resident, the applicant will be entitled to benefits, including, but not limited to, the following: (i) a five percent discount on his or her Entrance Fee ("Charter Entrance Fee"); (ii) no increase in Monthly Service Fees through December 2002; (iii) 7% interest earned on the Entrance Fee deposit to the occupancy date; (iv) \$100 discount on second-person Monthly Service Fees; and (v) two-months waiver of the Monthly Service Fee from the date the Independent Living Unit is available for occupancy.

Financial Assistance. If a Lifecare Resident of the Community can no longer pay the Monthly Service Fee in full due to lack of funds for reasons beyond the control of the Lifecare Resident, the Obligor will subsidize, in whole or in part, the Monthly Service Fees and other charges, provided the ability of the Community to meet required covenants and operate on a sound financial basis for all Lifecare Residents is not impaired. In the event that financial assistance is provided by the Obligor, such amounts, plus interest, may be charged against the refund of the Entrance Fee owed to a Lifecare Resident upon termination of the Residency Agreement. The Obligor may also require a Lifecare Resident receiving financial assistance to move to a smaller Independent Living Unit. As a means of providing financial assistance to Lifecare Residents, the Obligor intends, but is not required, to establish a separate endowment fund for donations, the principal and income from which may be used to provide financial assistance in accordance with the subsidy policies described above.

Services to Lifecare Residents

The Monthly Service Fee along with payment of the Entrance Fee will cover the following basic services: (i) one meal credit per Lifecare Resident for each day of the month; (ii) all utilities, except telephone and premium cable television; (iii) weekly housekeeping of the Independent Living Unit; (iv) weekly cleaning and changing of bed and bath linens; (v) maintenance of all community areas and equipment, and repair, maintenance or replacement of furnishings provided in the Independent Living Units; (vi) valet parking service; (vii) concierge service (viii) regularly scheduled local transportation; (ix) 24-hour

security; (x) a variety of social, recreational, educational, cultural, and health wellness programs; and (xi) use of dining rooms, lounges, surface parking, storage lockers, social and recreational rooms and other common activity facilities.

Lifecare Benefit. In addition, the Obligor will provide Lifecare Residents with nursing services that are available in the Health Center or assisted living services that are available in the Assisted Living Center when a determination is made by the Lifecare Resident's physician, and approved by the Medical Director, that the Lifecare Resident needs nursing care or assisted living care. The Obligor will pay for routine assisted living and skilled nursing care to the extent that it is not covered by the Lifecare Resident's insurance, Medicare or other governmental programs or entitlements that Lifecare Residents are required to possess and maintain under the Residency Agreement.

Assisted living services will be provided in an Alcove Traditional Suite and are designed to assist Lifecare Residents with the activities of daily living, such as dressing, eating, bathing, toileting, and ambulating, which are approved by the Community's medical director and covered by the Monthly Service Fee then in effect for an alcove suite. Skilled nursing services will be provided in a private room and delivered in accordance with the routine care included in the basic private nursing room rate then in effect. Residents will be billed for non-routine care and ancillary services at the then-current rate for such items.

For single occupancy, upon permanent transfer to the Health Center or Assisted Living Center and release of the Independent Living Unit, the Lifecare Resident's Monthly Service Fee will be adjusted to the then-current Monthly Service Fee for a Two Bedroom Classic Independent Living Unit. In the case of double occupancy, in the event of a permanent transfer of both Lifecare Residents and release of the Independent Living Unit, the Monthly Service Fee will be adjusted to the then-current Monthly Service Fee for a Two Bedroom Classic Independent Living Unit, plus the second person Monthly Service Fee. If space is not available in the Health Center or Assisted Living Center, the Obligor will arrange and pay for a Lifecare Resident's temporary care in another facility of comparable quality to the same extent as if it were provided by the Obligor until space becomes available in the Community.

Additional services may be available on a fee-for-service basis including, but not limited to, additional housekeeping, laundry services for personal items, catering for special occasions, tray service when medically advisable, additional Lifecare Resident and guest meals, barber and beauty services, spa services and temporary guest quarters.

Termination and Refunds

Termination Prior to Occupancy. Prior to occupancy, prospective Lifecare Residents may terminate the Residency Agreement and withdraw their deposit in full within seven days of executing the Residency Agreement (or, prior to the Obligor receiving a Certificate of Authority, the Reservation Agreement) or seven days from the date the project description was delivered, whichever is later, as prescribed by Texas State Law.

After the seven day recision period, prospective Lifecare Residents terminating the Reservation or Residency Agreement for reasons other than death or a change in health status preventing them from living independently, will receive a refund of all monies paid, including interest earned to date, less a \$500 processing fee.

Termination After Occupancy. The Residency Agreement may be terminated by the Lifecare Resident at any time subject to the provision of sixty days written notice to the Obligor. Upon termination of the Residency Agreement, release of the Independent Living Unit and occupancy of the Independent Living Unit by a new Lifecare Resident, the Obligor will refund 90% of the Entrance Fee paid by the departing Lifecare Resident upon receipt of an Entrance Fee from a new Lifecare Resident.

The Obligor may terminate the Residency Agreement if (i) the Lifecare Resident fails to pay any amount owed to the Obligor under the Residency Agreement, provided the Lifecare Resident will have 30

days to cure any such default, or (ii) the Lifecare Resident (a) is or becomes infected with a dangerous or contagious disease or a disease for which the Community is not licensed to provide care; (b) becomes mentally or emotionally disturbed to the degree that their presence in the Community is deemed by the medical advisor to be detrimental to the health, safety or welfare of the Lifecare Resident or to other Lifecare Residents of the Community; (c) is determined by a court of competent jurisdiction to be legally incapacitated or incompetent, (d) creates a disturbance within the Community which is detrimental to the health, safety or peaceful enjoyment of the other Lifecare Residents; or (e) files for protection under bankruptcy laws or conveys all of the Lifecare Resident's assets for the benefit of creditors. The Residency Agreement will automatically terminate when a Lifecare Resident dies.

In the case of two Lifecare Residents occupying an Independent Living Unit, if one of the Lifecare Residents terminates the Residency Agreement as to himself or herself and the other Lifecare Resident determines to remain in the Independent Living Unit, the Monthly Service Fee will be adjusted for single occupancy. No refund of the Entrance Fee will be made until termination by both Lifecare Residents.

Residents may elect to move to another Independent Living Unit, at their own expense, subject to availability. In such event, the Residency Agreement in force will be terminated and a new Residency Agreement executed. The Lifecare Resident will receive a refund of the original Entrance Fee and pay appropriate fees for the new Independent Living Unit at the then-current Entrance Fee and Monthly Service Fee amounts.

MARKETING

Marketing Program

Marketing efforts for the Community began in June 1998 with a "Priority Program." Greystone Development Company, LLC conducted a direct mail campaign, on behalf of the Obligor, including a business reply card to age- and income-qualified seniors in the Dallas area. Prospective Lifecare Residents who made a deposit ("Priority Members") were placed on a priority list and given a priority number. Approximately 75 Priority Members placed a fully refundable \$1,000 deposit for top priority and approximately 725 additional Priority Members placed a fully refundable \$100 deposit. Priority Members are entitled to receive "Charter Resident Benefits" including, but not limited to, a five percent discount on the Entrance Fee, 7% interest on their Reservation Deposit until Community opening, two months' free Monthly Service Fees from the date the prospective Lifecare Resident's Independent Living Unit is available for occupancy, a \$100 discount on second-person Monthly Service Fees and no increase in the Monthly Service Fee through December 2002. All of the current prospective Lifecare Residents who have executed Reservation Agreements have qualified to receive Charter Resident Benefits.

Reservation of Independent Living Units

A prospective Lifecare Resident may reserve an Independent Living Unit at the Community by submitting a Confidential Data Profile, including health and financial disclosure, executing a Reservation Agreement and submitting payment of a deposit equal to five percent (5%) of the Entrance Fee for the Independent Living Unit selected. The execution of a Reservation Agreement does not constitute a binding commitment to establish occupancy at the Community on the part of any prospective Lifecare Resident. Prospective Lifecare Residents may terminate their Reservation Agreements from time to time and receive refunds of all amounts paid to the Obligor, less a processing fee under certain circumstances. See "RESIDENCY AGREEMENT—Termination and Refunds"

The Obligor began a program to convert Priority Members to 5% depositors and having prospective Lifecare Residents sign Reservation Agreements beginning on May 25, 1999. As part of the conversion process, a prospective Lifecare Resident is provided a disclosure statement that includes a complete Residency Agreement. The following table shows the number of executed Reservation Agreements and 5% Entrance Fee deposits received, evidencing "pre-sales," on a monthly basis, through October 8, 1999:

1999:	Number of Units Reserved	Number of Cancellations	Net Reservations for Month	Cumulative Units Reserved	Cumulative Percentage of Total Units
May ⁽¹⁾	26	0	26	26	10%
June	45	1	44	70	27%
July	54	7	47	117	46%
August	33	2	31	148	58%
September	21	3	18	166	65%
October ⁽²⁾	7	0	7	173	68%
Total	186	13	173	173	68%

Source: Management

Note: ⁽¹⁾ The Facility began marketing the Project by taking priority deposits of \$100 and \$1,000 in October 1998. Management began converting the priority deposits to five percent deposits in May, 1999.
⁽²⁾ As of October 12, 1999.

Through October 12, 1999, 173 of the 256 available Independent Living Units (representing approximately 68% of the total available Independent Living Units of the Community) are reserved by prospective Lifecare Residents who have paid a 5% refundable deposit and tendered an executed Reservation Agreement. Of this number of reserved units, 154 have been accepted as Lifecare Residents by the Obligor, and the remaining applications are in the process of review by the Obligor.

The data submitted by applicants for residency is evaluated and reviewed by the Developer and the Obligor to determine the suitability of accepting applicants for admission to the Community as a Lifecare Resident. A description of the criteria used to evaluate prospective Lifecare Residents' applications is set forth in "**RESIDENCY AGREEMENT—General**" herein. Applicants are subsequently notified of the decision to accept or reject their application. In the case of applicants accepted for admission, a Residency Agreement is executed by the prospective Lifecare Resident and the Obligor; in the case of applicants rejected for admission, their initial 5% Entrance Fee deposit is refunded within ten (10) days. No Residency Agreement can be executed until the Corporation receives its COA. See "**THE COMMUNITY—Approvals and Permits—Certificate of Authority.**"

The Obligor has not yet marketed any of the services contemplated for the Assisted Living Center or the Health Center, but will initiate, approximately six months prior to opening, a comprehensive health-care-oriented training of marketing personnel, direct marketing and presentations to the network of senior care givers in the greater Dallas area and personal contact with hospital discharge planners and physicians.

DEVELOPMENT AND MANAGEMENT OF THE COMMUNITY

The Developer

Greystone Development Services V Joint Venture (the "*Developer*") is responsible for the development of the Community. The Developer is a Texas joint venture comprised of the Investment Limited Partnership and Greystone Development Company, LLC ("*Greystone Development*") a Texas partner in the Investment Limited Partnership. Pursuant to the joint venture agreement, the Investment Limited Partnership's role is as an investor funding the pre-finance development costs (the "*Prefinance Capital*") associated with providing pre-finance development services required to be provided to the Obligor pursuant to the Development Agreement (as hereinafter defined). Greystone Development's role in the joint venture is to manage the joint venture and to provide all services, on behalf of the Developer, which are required to be performed pursuant to the Development Agreement. See "**Development Agreement**" herein.

GCI Edgemere, Ltd.

The Investment Limited Partnership was formed to fund the Prefinance Capital. GCI Preston Hollow, Inc., a Texas corporation and a wholly-owned subsidiary of Greystone, is the General Partner in the Investment Limited Partnership. The \$4,825,000 of partnership capital was funded through an initial subscription of 40¼ partnership units, of \$100,000 each, by 39 individual investors plus an additional \$800,000 funded by 19 of those investors in July 1999. The funded Prefinance Capital, along with the return thereon, will be repaid upon delivery of the Series 1999 Bonds. See "**Development Agreement**" herein.

The Managing Underwriter is a limited partner in the Investment Limited Partnership, in which it has made a total investment of \$400,000. In addition, an investment banker employed by the Managing Underwriter and working on the transaction involving the Series 1999 Bonds has invested in the Managing Underwriter's limited partnership share.

Greystone Development Company, LLC

Greystone Development, a Delaware limited liability company, specializes in providing planning, development, marketing, management and certain consulting services related to senior living communities on a fee-for-service basis, primarily to not-for-profit clients. Greystone currently has a staff of approximately 85 persons, and senior management averages more than twenty years of experience related to senior living communities. Management services are provided through Greystone Management Services Company, LLC (the "*Manager*"), a wholly owned subsidiary of Greystone Development.

An affiliate of Greystone Development, Greystone Communities, Inc. ("*GCI*") is the operating predecessor of Greystone Development and was formed in 1989 as the successor to VHA Development Company, Inc., which was formed in 1982. Both Greystone Development and GCI are owned by Greystone Partners, Ltd. (a partnership including employees of Greystone), Brown & Root, USA, Inc. and Chase Manhattan Corporation, Concorde Senior Living, LLC and Westport Realty Advisors, Ltd. The officers of GCI are identical to the officers of Greystone Development and the directors of GCI are the managers of Greystone Development. For purposes of this "**DEVELOPMENT AND MANAGEMENT OF THE COMMUNITY**" section, Greystone Development and GCI are together referred to as "*Greystone*."

Greystone Development is a special limited partner in the Westport Senior Living Investment Fund, L.P. which was formed in September, 1998 with an initial capitalization of \$500,000,000. The purpose of the fund is the (i) strategic acquisitions of senior living communities, and (ii) development of new communities in conjunction with local affinity groups such as hospitals, military organizations and nursing homes. Greystone Development is the exclusive development and management company to the Westport Senior Living Investment Fund, L.P.

Greystone Development Experience:

The Westport Senior Living Investment Fund, L.P. currently owns the University Village (Tampa, Florida) and Freedom Village (Bradenton, Florida) communities as well as development sites in Palm Beach Gardens, Florida and Tampa, Florida with the intent to own up to four more sites. Greystone is the developer for these sites. Other communities, both completed and in progress, for which Greystone has provided development and advisory services include:

Community	Unit Mix	Status
Redstone Village Huntsville, AL	120 Residential Units 42 Assisted Living Apartments 50 Nursing Beds	Winter 2001, estimated construction start
Mequon Village Mequon, WI	100 Residential Units 50 Assisted Living Apartments 47 Nursing Beds	Fall 2000, estimated construction start
Regency Pointe Rainbow City, AL	69 Residential Units 48 Assisted Living Units	Summer 2000, estimated construction start
The Covenant Mt. Lebanon, PA	132 Residential Units 57 Assisted Living Apartments 39 Nursing Beds	Spring 2000, estimated construction start
Glenmoor Jacksonville, FL	133 Residential Units 30 Assisted Living Apartments 30 Nursing Beds	Fall 1999, estimated construction start
Aberdeen Village Olathe, KS	90 Residential Units 44 Assisted Living Apartments 60 Nursing Beds	Winter 2000, estimated construction start
Ferris Hills of West Lake Canandaigua, NY	84 Residential Units 48 Assisted Living Apartments	Fall 1999, estimated construction start
Milwaukee Protestant Home Milwaukee, WI	50 Assisted Living Apartments	Fall 1999, estimated construction start
Asbury Point Amherst, NY	66 Residential Units	Opening January 2000
Maplewood Clarksburg, WV	84 Residential Units 44 Assisted Living Apartments	Opening November 1999
The Village at Heritage Point Morgantown, WV	90 Residential Units 40 Assisted Living Apartments	Opened July 1999
Glenwood Marietta, OH	69 Residential Units 48 Assisted Living Apartments	Opened February 1999
Hartsfield Village Munster, IN	103 Residential Units 50 Assisted Living Apartments 106 Nursing Beds	Opened January 1999
Lambeth House New Orleans, LA	118 Residential Units 51 Assisted Living Apartments 39 Nursing Beds	Opened October 1998
Mission Ridge Billings, MT	86 Residential Units 40 Assisted Living Apartments	Opened December 1997

Community	Unit Mix	Status
Silver Maples Chelsea, MI	48 Residential Units 62 Assisted Living Apartments	Opened October 1997
Gulf Coast Village Cape Coral, FL	Phase II: 24 Alzheimer's Phase III: 25 Nursing Beds	Phase II: Opened June 1996 Phase III: Opened August 1998
Blakeford at Green Hills Nashville, TN	132 Residential Units 48 Assisted Living Apartments 40 Nursing Beds	Opened January 1996
Pennsylvania Place Ottumwa, IA	81 Residential Units 34 Assisted Living Apartments	Opened December 1995
Judson Park Seattle, WA	138 Residential Units 48 Assisted Living Apartments	Opened November 1995 (Redevelopment)
Edgewood Summit Charleston, WV	Phase I: 90 Residential Units 40 Assisted Living Apartments Phase II: 37 Residential Units	Opened April 1995 Construction to begin early 2000
The Highlands at Pittsford Rochester, NY	135 Residential Units 60 Assisted Living Apartments	Phase I Opened December 1994 Phase II Opened December 1997
Royal Oaks Dalton, GA	72 Residential Units 40 Assisted Living Apartments	Opened October 1994
NorthPark Terrace Sioux City, IA	48 Residential Units 62 Assisted Living Apartments	Opened November 1993
Chancellor's Village Fredericksburg, VA	82 Residential Units 40 Assisted Living Apartments Existing Nursing Home	Opened November 1991
Westwood Oaks Kankakee, IL	96 Residential Units 48 Assisted Living Apartments Existing Nursing Home	Opened June 1991
Oakbrook Common Dearborn, MI	150 Residential Units 30 Assisted Living Apartments 200 Nursing Beds	Opened May 1991
Springhill Erie, PA	129 Residential Units 34 Assisted Living Apartments 120 Nursing Beds	Opened November 1990
The Village at Park Ridge Rochester, NY	150 Residential Units 30 Assisted Living Apartments Existing Nursing Home	Opened May 1990
The Village at Woods Edge Franklin, VA	55 Residential Units 42 Assisted Living Apartments Existing Nursing Home	Opened April 1990
The McAuley Hartford, CT	175 Residential Units Existing Nursing Home	Opened May 1989
La Posada Green Valley, AZ	174 Residential Units 60 Assisted Living Apartments 60 Nursing Beds	Opened November 1987
Larksfield Place Wichita, KS	175 Residential Units 60 Nursing Beds	Opened September 1986

The senior officers of Greystone include the following six individuals:

Michael B. Lanahan, Chairman – Mr. Lanahan founded Greystone in 1982 and is its Chief Executive Officer. Since that time he has served as the Company's President, and then Chairman. Formerly, Mr. Lanahan was a Senior Vice President at Blyth Eastman Paine Webber Health Care Funding, Inc. ("Blyth"), where in addition to financing hospitals, in 1977 he initiated the firm's activities financing retirement centers and long-term care projects using conventional debt, tax-exempt and taxable revenue bonds and FHA programs. Before joining Blyth, Mr. Lanahan was an Account Officer in the commercial real estate area at Citibank in New York. He has authored numerous articles on the subject of elderly housing and is a frequent speaker at national conferences. Mr. Lanahan received a B.A. from Syracuse University and an M.B.A. from the University of Virginia.

Paul F. Steinhoff, Jr., President – Mr. Steinhoff is the Chief Operating Officer of Greystone. He has primary responsibility for overseeing the planning, finance, marketing, development and management divisions of the Company. Prior to joining Greystone in 1984, Mr. Steinhoff was a Partner at Touche Ross & Co., where he specialized in financial consulting for a wide range of projects that included health care, elderly housing, real estate and other developments. Mr. Steinhoff was a National Director of Touche Ross' Life Care Consulting Practice and conducted the feasibility study for the first life care community to be financed with tax-exempt debt in 1974. Mr. Steinhoff is a frequent speaker at national conferences. Mr. Steinhoff received his B.B.A. in Business Statistics and his M.B.A. in Accounting and Finance from the University of Texas. Mr. Steinhoff is a Certified Public Accountant.

Mark P. Andrews, Senior Vice President of Planning/Finance, is responsible for planning, financing and coordinating certain development activities of new project development and acquisitions. He also has overall responsibility for Greystone's consulting services including strategic planning, financial advisory, mergers and acquisitions, management consulting and troubled-project advisory services. He has been involved with the planning, development and financing of more than \$1 billion of senior living projects. Mr. Andrews has been with Greystone since 1984. Prior to Greystone he was with Deloitte & Touche in the management consulting practice. He has an MBA in finance from the A.B. Freeman School of Business at Tulane University.

John Spooner, Senior Vice President of Marketing, has primary responsibility for the occupancy development of senior living communities developed by Greystone. This includes all national marketing efforts, staff recruitment, marketing plans and budgets, coordination of advertising and ongoing sales and marketing activities of projects. Prior to joining Greystone in 1986, Mr. Spooner spent eight years in the sales and marketing of retirement housing projects. Mr. Spooner's responsibilities included sales, marketing, recruitment, advertising and market evaluation. His prior corporate affiliations have been with LeGan, Inc. of Denver, Colorado; Life Care Services for Des Moines, Iowa and American Invesco of Chicago, Illinois. Mr. Spooner received a B.A. in Public Administration/Economics from Drake University, an Advanced Fellowship in Economics from University of London, and did his graduate work in marketing at the University of Pittsburgh.

Kimball Watson, Senior Vice President of Development, is responsible for the real estate development activities of Greystone. This involves responsibility for supervising and coordinating all outside consultants including architects, contractors, engineers, land planners, interior designers and local planning agencies. Prior to joining Greystone in 1988, Mr. Watson was Managing Partner of the Southwest Region for Oxford Development Enterprises, Inc., Bethesda, Maryland, where he developed two senior living communities in Dallas and Houston. Before joining Oxford, he was General Manager for Drexel Properties, Inc., the multi-family division of Vantage Companies in Dallas, where he was responsible for the creation and development of over 25 multi-family projects in a five state area. He also has extensive experience in the areas of real estate brokerage and mortgage brokerage. He is a member of the National Association of Home Builders, the National Council on Seniors Housing, and for more than 10 years served on the advisory board of a for-profit hospital in Dallas. Mr. Watson received his B.S. from the University of Texas at Austin.

Dave McDowell, Senior Vice President of Development, is responsible for the delivery of the full range of development services to Greystone clients. In addition, he is responsible for reviewing and coordinating the design efforts of outside architectural, interior design and land planning consultants to insure consistency of product design with Greystone's senior living philosophy. Prior to joining Greystone in 1994, Mr. McDowell was a Partner in the architectural firm of Fusch-Serold and Partners, Inc., based in Dallas. In this capacity he was responsible for client relations, project coordination and design, and was the principal architect for the firm's senior living work. He has designed over 3,500 independent living, assisted living and skilled care units encompassing more than 30 projects. His twenty plus years of experience consists of both commercial and residential developments. Prior to joining Fusch-Serold and Partners, Mr. McDowell was with several of Dallas' leading architectural firms. Mr. McDowell received his B.Arch. from Texas Tech University, is a registered Architect in numerous states and has NCARB certification.

Other Officers. In addition, other officers of Greystone and the Manager who are actively involved or will be involved in the development or management of the Community are: Burtis L. Derr, Vice President; Michael D. Gilliam, Vice President; Leslie Groom, Vice President; and James D. Knox, Vice President.

Development Agreement

The Obligor entered into a Development Services Agreement ("*Development Agreement*"), dated February 20, 1998 and as amended December 4, 1998 and May 19, 1999, with the Developer to make provisions regarding certain development services for the Community as well as the pre-finance capital required to finance construction of the Community. Under the Development Agreement, the Developer, as an independent contractor, will make available to the Obligor the services of Greystone personnel and such financial, accounting and informational services as may be necessary to provide the development services; and convene development meetings with the Obligor at least once a month to review progress and coordinate development activities. The Obligor has agreed, pursuant to the Development Agreement, to cooperate with Developer and use its best efforts to assist the Developer throughout the planning, development, pre-marketing and construction of the Community.

Among the development services specified to be provided by the Developer under the Development Agreement are the following: (a) all necessary planning to implement the Development Plan approved by the Obligor, including any revisions thereto; (b) preparation of detailed budgets for each phase of development activity, which are to be submitted for Obligor approval; (c) assistance in obtaining all necessary governmental approvals required for development of the Community; (d) coordinating preparation of all design and construction plans and specifications by the Community architect and other design consultants; (e) development of a Lifecare Resident services program; (f) development and supervision of the marketing plan for the Community to prospective Lifecare Residents; (g) assistance in securing financing for the Community; (h) assistance in negotiating and awarding a construction contract for the Community, and thereafter monitoring the progress of construction; and (i) assistance with marketing and pre-opening management services for the Community.

Pursuant to the Development Agreement, the Developer is responsible for the marketing of the Community until 90% overall occupancy is achieved, which is planned to be approximately 32 months after opening. Upon attainment of 90% occupancy, marketing will become the responsibility of the Manager. In connection therewith, the Developer will (a) coordinate and manage the marketing staff to implement the overall marketing program; (b) develop and supervise implementation of a marketing and sales program, including promotional, advertising and media campaigns in connection with an advertising firm; (c) recruit, train and monitor the marketing and sales staff; (d) coordinate the design, construction and equipping of an information center; (e) develop a program for responding to public inquiries; (f) assist the Obligor in preparing Lifecare Resident disclosure documents; (g) develop Lifecare Resident admission criteria and coordinate the process for approving execution of Residency Agreements with prospective Lifecare Residents.

The Obligor will exercise final authority on the following matters: selection and engagement of architect, other design professionals, engineering professionals and pre-construction consultants;

negotiation and execution of a design contract for preparation of plans and specifications; approval of final working drawings; selection and engagement of a source of permanent financing and the execution of all commitments with respect to financing; selection and engagement of a general contractor for construction; negotiation and execution of a construction contract; and final approval of all budgets for planning, development, construction and marketing required to be prepared by Developer.

As compensation for services rendered pursuant to the Development Agreement, the Obligor will pay the Developer a fee of \$8,511,111, to be paid as follows:

<u>Prefinance Capital Program</u>		
Return on Prefinance Capital		\$5,111,111
<u>Fees for Development Services</u>		
Prior to Close on Series 1999 Bonds		\$375,000
At Closing on Series 1999 Bonds		1,150,000
Construction Period		725,000
Obtain Certificate of Occupancy		500,000
Pro-Rata Payments for Occupancy		<u>650,000</u>
Total Fees for Development Services		\$3,400,000

In addition, upon achieving an accelerated fill-up of the Community, Greystone is eligible to receive additional compensation if overall 90% occupancy is achieved between 18 (\$650,000) and 30 (\$150,000) months after opening. Pursuant to the terms of the Development Agreement, the Obligor will also reimburse the Developer for all reasonable out-of-pocket travel expenses for personnel employed by the Developer, and a 3.5% administrative fee (of Greystone fees for Development Services) to cover miscellaneous office expenses.

As of October 8, 1999, the Developer has advanced to the Obligor approximately \$4,800,000 for expenses related to the pre-development phase of the Community from Prefinance Capital provided by the Investment Limited Partnership. These advances and any additional advances will be reimbursed to the Developer from the proceeds of the Series 1999 Bonds. The Obligor has no obligation to reimburse advances made by the Developer unless and until delivery of the Series 1999 bonds. All risk for such advances associated with the failure to achieve a closing on the Community financing will be borne by the Developer.

Greystone Management Services Company, LLC

The Obligor also entered into a Management Services Agreement (the "Management Agreement") in March of 1998, as amended May 19, 1999, with the Manager to provide day-to-day supervision and management of the Community, beginning approximately twelve months prior to the anticipated receipt by the Obligor of a certificate of occupancy for the Community and continuing for an initial term of one hundred eighty months, but is terminable by either party after 36 months with sixty days' written notice. In addition to the Community, the Manager has executed management agreements with the following retirement communities:

<u>Community</u>	<u>Unit Mix</u>	<u>Status</u>
Stratford House Danville, VA	57 Residential Units 16 Assisted Living Apartments 60 Nursing Beds	In operation
The Highlands at Pittsford Rochester, NY	135 Residential Units 60 Assisted Living Apartments	Developed by Greystone; in operation
Edgewood Summit Charleston, WV	90 Residential Units 40 Assisted Living Apartments	Developed by Greystone; in operation

Community	Unit Mix	Status
Pennsylvania Place Ottumwa, IA	81 Residential Units 34 Assisted Living Apartments	Developed by Greystone; in operation
Kobernick House Sarasota, FL	188 Residential Units 85 Assisted Living Apartments 15 Alzheimer's Units	In operation
Lambeth House New Orleans, LA	118 Residential Units 51 Assisted Living Apartments 39 Nursing Beds	Developed by Greystone; in operation
Montgomery Place Hyde Park, IL	160 Residential Units 93 Nursing Beds	In operation
University Village Tampa, FL	448 Residential Units 72 Assisted Living Apartments 240 Nursing Beds	In operation
Freedom Village Bradenton, FL	510 Residential Units 140 Assisted Living Apartments 120 Nursing Beds	In operation
Hartsfield Village Munster, IN	103 Residential Units 50 Assisted Living Apartments 106 Nursing Beds	Developed by Greystone; In Operation
Glenwood Marietta, OH	69 Residential Units 48 Assisted Living Apartments Existing Nursing Home	Developed by Greystone; In operation
Village at Heritage Point Morgantown, WV	90 Residential Units 40 Assisted Living Apartments Existing Nursing Home	Developed by Greystone; in operation
Maplewood Clarksburg, WV	84 Residential Units 44 Assisted Living Apartments 51 Existing Nursing Beds	Developed by Greystone; in operation

Management Agreement

Pursuant to the terms of the Management Agreement, the Manager is required to provide all management services necessary to operate the Community including but not limited to financial management, purchasing, public relations, recruitment of personnel and supervision of the day-to-day operations and programs of the Community. The duties of the Manager under the Management Agreement include, without limitation, preparing annual budgets, contracting for utilities and other operation and maintenance services; purchasing necessary furniture, fixtures, equipment and supplies; preparing monthly statements of operations; obtaining and maintaining all licenses, permits and approvals; supplying management and supervision of operational services provided by the Obligor's employees and Manager's recommended manuals, forms and systems; providing a qualified and experienced Administrator for the Community who will be an employee of the Manager, subject to the right of the Obligor to require his/her discharge for cause; recommending, purchasing and installing appropriate on-site accounting and informational management system and software; making available for consultation and advice its staff of professional consultants who are employees of Manager; collecting the revenues from the Community; maintaining proper books of account and records; providing necessary statistical reports and data to meet local, state and federal regulatory requirements; preparing ongoing marketing programs; subject to the approval of the Obligor, engaging certified public accountants to prepare annual audits of the books, records and accounting procedures of the Community; subject to the approval of the Obligor, engaging counsel as necessary to enforce payment of charges or compliance with other terms of residency agreements, or to dispossess Lifecare Residents; evaluating, proposing and recommending insurance coverages relating to

the interests of the parties, and procuring and maintaining insurance coverages approved by the Obligor; preparing annual management plan, operating strategies and forecasts for the Community and recommending adjustments and/or revisions; and, in general, operating the Community in accordance with the highest standards for a retirement Community in full compliance with all applicable statutes, ordinances, rules and regulations.

The Management Agreement will be effective on a date determined by the Manager and agreed upon by the Obligor, which is anticipated to be approximately twelve (12) months prior to the first day of scheduled occupancy by the first apartment Lifecare Resident of the Community (the "*Commencement Date*") and will terminate one hundred eighty (180) months thereafter subject to cancellation after 36 months with the provision of sixty (60) days written notice. As compensation for services rendered pursuant to the Management Agreement, the Obligor will pay the Manager a monthly management fee (the "*Management Fee*") of \$10,000 per month from the commencement date until initial occupancy, \$24,000 per month for initial occupancy through month 42, \$38,000 per month for months 43 through 90, and \$29,000 per month thereafter. In performance of its obligations under the Management Agreement, the Manager will be an independent contractor and, except as described above, will not be subject to any right of control of Obligor over the methods by which it carries out its delegated duties. In addition to the Management Fee, the Manager will be entitled to reimbursable costs and expenses which will include all expenses incurred by the Manager to recruit the Administrator; payroll, incentive and benefit costs of the Manager for employment of the Administrator (not to exceed 1.35 times the direct payroll costs incurred by the Manager for the Administrator); travel expenses incurred by employees of the Manager in connection with the performance of duties under the Management Agreement; and any other costs and expenses incurred by the Manager expressly agreed upon by the parties. The Manager has agreed to subordinate 50% of its Management Fees, not including reimbursable costs and expenses, to the debt service on the Series 1999 Bonds.

OTHER PROFESSIONAL SERVICES

The General Contractor

The Obligor has selected Andres Construction Services, Dallas, Texas as the *General Contractor* for the Community under a contract (the "*Construction Contract*") that provides for payment to the General Contractor in the amount of the cost of the work done plus a fee, with a guaranteed maximum price of \$64,695,265.

Prior to its selection as General Contractor and pursuant to the terms of a Preconstruction Services Agreement, dated as of July 1, 1998, between the General Contractor and the Obligor, the General Contractor has provided certain preconstruction services for the Community including, but not limited to, defining criteria and establishing Community design, coordinating with the Architect, providing input identification of services and estimated costs to be included in the general conditions for the construction contract. The Preconstruction Services Agreement provides that the General Contractor receive a maximum fee of \$150,000 for preconstruction services payable \$5,000 per month during the preconstruction period with the balance due at the start of construction, but with a credit of \$90,000 against the construction fee.

The General Contractor has been operating continuously since its establishment in 1991 and has successfully completed over \$250,000,000 in construction since that time. The General Contractor employs a permanent salaried staff of 40 persons and a field labor force that varies based upon the amount of general construction work not covered by subcontract. All field construction with respect to the Community will be accomplished through subcontractors to be approved by the Obligor.

Recent facilities built by the General Contractor include the following:

Project and Location	Project Type	Construction Costs	Completion Date
La Playa Beach Resort Naples, FL	Hospitality	\$6,400,000 (Renovation)	1995
		1,900,000 (New)	1995
MCI-Richardson Richardson, TX	Commercial	2,800,000	1996
Majestic Loft Residences Dallas, TX	Residential	8,500,000	1997
Hockaday School Dallas, TX	Educational	4,800,000	1998
Rocking Horse Ranch Apartments Austin, TX	Residential	21,000,000	1998
King's Manor Apartments Houston, TX	Residential	16,000,000	1999
Mandolin Apartments Houston, TX	Residential	24,500,000	1999
Highland Ridge Tower Nashville, TN	Commercial	29,000,000	1999

Construction Contract

The Obligor will execute a construction contract (the "Construction Contract") with the General Contractor for construction of the Community concurrently with delivery of the Series 1999 Bonds. The Construction Contract is based on a cost of the work plus a fee with a guaranteed maximum price.

The Construction Contract requires the General Contractor to substantially complete construction of the Community within 24 months with the Independent Living Units and related commons complete within 22 months. In the event the General Contractor does not complete construction within the specified construction period, the General Contractor will be liable for liquidated damages for each day of delay past the required date of substantial completion, prorated on a unit basis for units delayed, in an amount approximating the following number of days of delay and percentages of daily debt service: (i) 1-30 days - 30%; (ii) 31-60 days - 55%; and (iii) 61 days and thereafter - 100%.

The General Contractor is required under the Construction Contract to furnish the Obligor with a performance bond and a labor and material payment bond, each in the amount of 100% of the guaranteed maximum price under the Construction Contract.

The Architects

The principal architect for the Community is the firm of Three Architecture, Inc., Dallas, Texas (the "Architect").

The Architect was founded in 1983 and has established an expertise in hospitality, senior living, residential, office, retail and recreational architecture. The Architect is recognized for applying its knowledge

of artistic design concepts to various types of projects. The Architect provides services on both a national and an international basis.

The Architect has been involved in the recent design of five senior living facilities. The Architect's senior living facility project experience includes the following:

Facility and Location	Type of Facility	Year of Completion
Signature Pointe on the Lake Dallas, TX	103 Residential Units 66 Assisted Living units 190 Nursing Beds	1998
Caruth Haven Court Dallas, TX	99 Assisted Living Units	1999
Golden Living Communities Arlington, TX	230 Residential Units	2000
Golden Living Communities Fort Worth, TX	248 Residential Units	2001
Golden Living Communities Memphis, TN	200 Residential Units	2001

To assist in the design of the Community, the architectural design firm of Aldrian Guskowski, Inc. ("AGI") of Elm Grove, Wisconsin was engaged as consulting architect to the Architect.

AGI is an architectural firm recognized in the retirement community industry and has been associated with the design of major retirement communities since 1967. AGI's experience in the design of multi-family and senior housing environments has resulted in the design of over 60,000 housing units of all types. In addition, AGI has experience in the design of extended care health facilities and is called upon regularly to design buildings of this type throughout the United States. AGI is involved with the programming, master planning and full service design of senior living and health care facilities on a daily basis. Its staff of architectural, engineering and support specialists provides professional services nationwide from its full-service office in Wisconsin.

A representative list of the projects for which AGI has provided design services includes the following:

Completed Projects	Residential Units	Assisted Living/SNF Beds	Status
Friendship Village Dayton, OH	72	-	Complete
San Camillo Retirement Community Wauwatosa, WI	297	40 AL	Complete
Chambrel at Westlake Cleveland, OH	201	50 AL	Complete
Springhill Erie, PA	150	30 AL	Complete
Oakbrook Common Dearborn, MI	150	200 NB 30 AL	Complete
Sandhill Cove Stuart, FL	168	42 AL	Complete

Completed Projects	Residential Units	Assisted Living/SNF Beds	Status
The Highlands at Pittsford Pittsford, NY	96	48 AL	Complete
NorthPark Terrace Sioux City, IO	48	62 AL	Complete
Oakbrook Common II Dearborn, MI	90	30 AL	Complete
Blakeford at Green Hills Nashville, TN	132	48 AL 40 NB	Complete
Maplewood Bridgeport, WV	80	44 AL	Complete
Hartsfield Village Munster, IN	103	50 AL 106 NB	Complete
Glenwood Marietta, OH	69	48 AL	Complete

Construction Oversight Manager

The construction consulting firm of Pan Western Corporation of Scottsdale, Arizona has been selected as the *Construction Oversight Manager* for the Community during the construction period. The Construction Oversight Manager has more than 20 years experience as construction consultants to lending institutions.

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APPENDIX B

FINANCIAL FEASIBILITY STUDY

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EDGEMERE

Examination of a Financial Forecast

**Three Months and Five Years Ending
December 31, 2004**

EDGEMERE

Three Months and Five Years Ending December 31, 2004

Table of Contents

	<u>Page</u>
Accountants' Examination Report.....	1
Forecasted Financial Statements:	
Forecasted Statements of Activities and Change in Net Assets	6
Forecasted Statements of Cash Flows.....	7
Forecasted Statements of Financial Position.....	8
Summary of Significant Forecast Assumptions and Significant Accounting Policies:	
Basis of Presentation.....	9
Background of Northwest Senior Housing Corporation	9
Description of the Project	10
Development and Management of the Project	12
Texas Regulatory Requirements	15
Residency Agreement and Services Provided for Independent Living Units.....	16
Assumed Project Sources and Uses of Funds	20
Characteristics of the Market Area.....	24
Summary of Market Analysis.....	59
Assumed Project Utilization	59
Summary of Significant Accounting Policies.....	65
Resident Service Revenues	66
Entrance Fees and Amortization	67
Investment Income	69
Expenses	69
Ground Lease Option and Ground Lease Agreement	71
Assets Whose Use is Limited.....	72
Property and Equipment and Depreciation Expense	74
Long-Term Debt and Interest Expense	75
Other Current Assets and Current Liabilities	77
Forecasted Impact of Year 2000	78
Supplementary Disclosure - Period Beyond the Forecast	79
Sensitivity Analyses for Supplementary Disclosure.....	84



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ACCOUNTANTS' EXAMINATION REPORT

Board of Directors
Northwest Senior Housing Corporation:

We have prepared a financial feasibility study of the plans of Northwest Senior Housing Corporation (the Corporation) to construct and operate a continuing care retirement community to be known as Edgemere, which will be located in Dallas, Texas.

The study was undertaken to evaluate the ability of the Corporation to generate sufficient funds to meet its operating expenses, working capital needs and other financial requirements, including the debt service requirements associated with the proposed:

- \$50,495,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Series 1999A Fixed Rate (the Series 1999A Bonds);
- \$7,335,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Series 1999B Extendable Rate Adjustable Securities SM (EXTRASSM)(the Series 1999B Bonds);
- \$5,000,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Series 1999C Extendable Rate Adjustable Securities SM (EXTRASSM)(the Series 1999C Bonds);
- \$55,000,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Series 1999D Variable Rate (the Series 1999D Bonds); and
- \$250,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Taxable Series 1999E Extendable Rate Adjustable Securities SM (EXTRASSM)(the Series 1999E Bonds).

Management of the Corporation and management of the Corporation's contracted manager, Greystone Management Services Company, LLC (collectively referred to as Management) plan to construct the continuing care retirement community which will include 256 independent living apartments, 84 assisted living units of which 24 will be dementia-focused, and 64 skilled nursing beds of which 20 will be dementia-focused, and supporting common areas (the Project). Management anticipates that the Project will be completed and available for occupancy in September 2001.

Management assumes that the Series 1999 Bonds will be the primary source of funds for the construction of the Project. The responsibility for payment of debt service on the Series 1999 Bonds is solely that of the Corporation. Other necessary funds to finance the Project are assumed to be provided from interest earned on trustee-held funds.



The proceeds from the sale of the Series 1999 Bonds and other sources of funds would be used to:

- Pay Project related costs;
- Fund the interest, letter-of-credit fees, and remarketing fees on the Series 1999 Bonds for a period of 30 months;
- Fund a portion of start-up costs during pre-opening;
- Fund a Debt Service Reserve Fund;
- Pay financing and legal costs associated with the issuance of the Series 1999 Bonds; and
- Fund ground lease payments for 26.5 months.

According to B.C. Ziegler and Company (the "Managing Underwriter"), the Series 1999A Bonds are assumed to be tax-exempt fixed rate bonds and to have a bond yield equal to 7.43 percent and an average coupon rate of 7.19 percent. Interest payments on the Series 1999A Bonds are assumed to be payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. Principal on the Series 1999A Bonds is assumed to be payable annually on November 15 beginning in November 15, 2005 with a final maturity on November 15, 2029. The Series 1999A Bonds are assumed to be issued net of an original issue discount equaling approximately \$1,398,000.

According to the Managing Underwriter, the Series 1999B Bonds are assumed to be tax-exempt extendable rate adjustable bonds with interest payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. The average annual coupon interest rate on the Series 1999B Bonds is assumed to be 5.75 percent. The Series 1999B Bonds are assumed to mature on November 15, 2029. Management assumes the Series 1999B Bonds will be redeemed in full by November 15, 2004.

According to the Managing Underwriter, the Series 1999C Bonds are assumed to be tax-exempt extendable rate adjustable bonds with interest payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. The average annual coupon interest rate on the Series 1999C Bonds is assumed to be 5.75 percent. The Series 1999C Bonds are assumed to mature on November 15, 2029. Management assumes that the Series 1999C Bonds will be redeemed in full by November 15, 2004.

The Corporation's Managing Underwriter has indicated that the Series 1999D Bonds are assumed to be tax-exempt variable rate demand bonds. Management anticipates that the Corporation will enter into an interest rate swap (the "SWAP") for a period that approximates the construction period and the initial move-in period in order to convert the interest rate on the Series 1999D Bonds from variable to fixed rate. The net interest cost associated with the Series 1999D Bonds is assumed to be 4.5 percent during the forecast period provided by the Managing Underwriter. Interest on the Series 1999D Bonds is assumed to be payable monthly beginning December 1st, 1999. The Series 1999D Bonds are assumed to have a final maturity of November 15, 2029. Management assumes that the Series 1999D Bonds will be redeemed in full by November 15, 2004. In addition to interest cost, the Corporation will pay letter-of-credit fees and remarketing agent fees while the Series 1999D Bonds are outstanding.

According to the Managing Underwriter, the Series 1999E Bonds are assumed to be extendable rate adjustable taxable bonds and to bear interest at an average rate of 8.00 percent during the forecast period. Interest on the Series 1999E Bonds is assumed to be payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. The Series 1999E Bonds are assumed to mature on November 15, 2029. Management assumes the Series 1999E Bonds will be redeemed in full by November 15, 2002.

Proceeds from the issuance of the Series 1999E Bonds will be utilized by the Corporation to fund the costs of issuance in excess of applicable tax law limitations.

Our procedures included analysis of:

- The Corporation's objectives, timing and financing;
- Future demand for the Corporation's services including consideration of:
 - Economic and demographic characteristics of the Project's defined market area;
 - Locations, capacities and competitive information pertaining to other existing and planned facilities in the market area;
 - Current reservations of the independent living units; and
 - Forecasted occupancy and utilization levels.
- Project related costs, debt service requirements and estimated financing costs;
- Staffing requirements, salaries and wages, related fringe benefits and other operating expenses;
- Anticipated entrance fees, monthly service fees, and per diem charges for the Project's residents; and
- Sources of other operating and non-operating revenues.

The accompanying financial forecast for the three months ending December 31, 1999 and each of the five years ending December 31, 2004, was assembled by Management and is based on Management's assumptions. The financial forecast includes:

- Forecasted Statements of Activities and Change in Net Assets (Deficit);
- Forecasted Statements of Cash Flows; and
- Forecasted Statements of Financial Position.

We have examined the accompanying financial forecast. Our examination was made in accordance with standards for an examination of a financial forecast established by the American Institute of Certified Public Accountants, and, accordingly, included such procedures as we considered necessary to evaluate both the assumptions used by Management and the preparation and presentation of the forecast.

Legislation and regulation at all levels of government have affected and may continue to affect the operations of continuing care retirement communities. The financial forecast is based upon legislation and regulations currently in effect. If future legislation or regulations related to the Corporation's operations are subsequently enacted, such legislation or regulations could have a material effect on future operations.

The interest rates, principal payments, Project-related costs and other financing assumptions are described in the section entitled "Summary of Significant Forecast Assumptions and Accounting Policies." If actual interest rates, principal payments, or funding requirements are different from those assumed, the amount of the Series 1999 Bonds and debt service requirements would need to be adjusted accordingly from those indicated in the forecast. If such interest rates, principal payments, and funding requirements are lower than those assumed, such adjustments would not adversely affect the forecast.

Our conclusions are presented below:

- In our opinion, the accompanying financial forecast is presented in conformity with guidelines for presentation of a financial forecast established by the American Institute of Certified Public Accountants.
- In our opinion, the underlying assumptions provide a reasonable basis for Management's forecast. However, there will usually be differences between the forecasted and actual results because events and circumstances frequently do not occur as expected, and those differences may be material.
- The accompanying financial forecast indicates that sufficient funds could be generated to meet the Corporation's operating expenses, working capital needs and other financial requirements, including the debt service requirements associated with the proposed Series 1999 Bonds during the forecast period. However, the achievement of any financial forecast is dependent upon future events, the occurrence of which cannot be assured.

We have no responsibility to update this report for events and circumstances occurring after the date of this report.

KPMG LLP

October 13, 1999
Atlanta, Georgia

Edgemere

See Summary of Significant Forecast Assumptions and Significant Accounting Policies

Forecasted Statements of Activities and Change in Net Assets (Deficit)
For the Three Months and Five Years Ending December 31, 2004
(in Thousands of Dollars)

	1999 (3 months)	2000	2001	2002	2003	2004
Revenue:						
Independent living fees	\$ -	-	23	3,349	7,037	9,521
Assisted living fees	-	-	-	931	2,180	3,189
Nursing fees	-	-	-	1,571	3,567	4,655
Healthcare discount	-	-	-	(141)	(324)	(702)
Entrance fee amortization	-	-	37	1,040	2,063	2,735
Other	-	-	3	143	305	413
Investment income	-	-	70	1,101	1,067	1,066
Total revenue	-	-	133	7,994	15,895	20,877
Expenses:						
Administration	8	102	1,407	3,078	3,192	3,233
Management fee	-	20	148	288	288	288
Activities	-	-	32	163	169	200
Dietary services	-	-	187	1,216	2,018	2,649
Facility costs	-	-	241	1,068	1,113	1,190
Security	-	-	16	98	101	104
Transportation	-	-	17	114	168	182
Environmental services	-	-	89	275	392	496
Assisted living services	-	-	61	414	583	1,072
Nursing services	-	-	50	1,140	1,524	1,768
Ground lease and land options	170	1,593	1,665	1,647	2,544	2,621
Interest	28	130	1,446	7,462	5,663	4,279
Depreciation	-	-	800	2,393	2,402	2,424
Amortization	32	234	286	577	566	546
Total expenses	238	2,079	6,445	19,933	20,723	21,052
Change in unrestricted net assets (deficit)	\$ (238)	(2,079)	(6,312)	(11,939)	(4,828)	(175)
Unrestricted net assets (deficit), beginning balance	\$ (955)	(1,193)	(3,272)	(9,584)	(21,523)	(26,351)
Unrestricted net assets (deficit), ending balance	\$ (1,193)	(3,272)	(9,584)	(21,523)	(26,351)	(26,526)

Edgemere

See Summary of Significant Forecast Assumptions and Significant Accounting Policies

Forecasted Statements of Cash Flows
For the Three Months and Five Years Ending December 31, 2004
(in Thousands of Dollars)

	1999	2000	2001	2002	2003	2004
	(3 months)					
Cash flows from operating activities:						
Change in unrestricted net assets (deficit)	\$ (238)	(2,079)	(6,312)	(11,939)	(4,828)	(175)
Adjustments to reconcile change in net assets (deficit) to net cash provided by (used in) operating activities:						
Depreciation and amortization	32	234	1,086	2,970	2,968	2,970
Series 1999 Bonds' discount amortization	12	53	53	53	53	53
Increase in prepaids and receivables	-	-	(19)	(512)	(569)	(360)
Increase (decrease) in current liabilities	845	5	97	173	(29)	25
Entrance fee amortization	-	-	(37)	(1,040)	(2,063)	(2,735)
Net cash provided by (used in) operating activities	651	(1,787)	(5,132)	(10,295)	(4,468)	(223)
Cash flows from investing activities:						
Increase in investments	-	-	-	-	-	(1,871)
Property, plant and equipment	(6,715)	(25,981)	(49,765)	(400)	(317)	(458)
Interest cost during construction	(1,059)	(2,218)	(3,594)	-	-	-
Payment of marketing costs	(69)	(824)	(772)	(508)	(508)	(254)
Decrease (increase) in escrowed resident deposits	(278)	(964)	335	1,983	1,335	660
Decrease (increase) in trustee held funds	(101,797)	30,733	49,227	709	861	(1,150)
Net cash provided by (used in) investing activities	(109,918)	746	(4,569)	1,784	1,371	(3,073)
Cash flows from financing activities:						
Entrance fees and deposits, net of refunds	278	964	9,794	38,511	28,097	15,880
Proceeds from the Series 1999 bonds and accrued interest	118,080	-	-	-	-	-
Original issue discount on Series 1999 Bonds	(1,398)	-	-	-	-	-
Principal payments on Series 1999 Bonds	-	-	-	(30,000)	(25,000)	(12,585)
Repayment of capital advances	(4,799)	-	-	-	-	-
Increase (decrease) in Charter Resident interest liability	16	77	(93)	-	-	-
Payment of issuance costs	(2,910)	-	-	-	-	-
Net cash provided by (used in) financing activities	109,267	1,041	9,701	8,511	3,097	3,295
Annual cash flow	\$ -	-	-	-	-	-
Beginning balance of cash and cash equivalents	\$ -	-	-	-	-	-
Ending balance of cash and cash equivalents	\$ -	-	-	-	-	-

Edgemere

See Summary of Significant Forecast Assumptions and Significant Accounting Policies

Forecasted Statements of Financial Position
At December 31
(in Thousands of Dollars)

	1999	2000	2001	2002	2003	2004
Assets						
Current assets:						
Cash and cash equivalents	\$ -	-	-	-	-	-
Net accounts receivable	-	-	2	469	1,024	1,370
Dietary and supplies inventory	-	-	17	62	76	90
Assets whose use is limited - current	2,189	4,905	12,657	12,608	12,407	16,368
Total current assets	2,189	4,905	12,676	13,139	13,507	17,828
Long-term investments	-	-	-	-	-	1,871
Assets whose use is limited:						
Debt Service Reserve Fund - Series 1999A	4,346	4,346	4,346	4,346	4,346	4,346
Debt Service Reserve Fund - Series 1999B	422	422	422	422	422	422
Debt Service Reserve Fund - Series 1999C	287	287	287	287	287	287
Debt Service Reserve Fund - Series 1999D	2,475	2,475	2,475	2,475	2,475	-
Project Fund- Funded Interest	8,356	7,072	3,073	-	-	-
Project Fund - Funded Letter-of-Credit and Remarketing Fees	2,260	1,355	449	-	-	-
Project Fund - Construction	83,651	55,107	1,650	990	330	-
Special Reserve Fund - Operating Account	-	-	-	4,000	4,000	4,000
Special Reserve Fund - Leasehold Account	-	-	1,665	1,647	2,544	2,621
Bond Fund	-	-	-	719	540	449
Entrance Fees Fund	-	-	3,470	6,242	5,323	9,298
Total assets whose use is limited	101,797	71,064	21,837	21,128	20,267	21,423
Less current portion	(2,189)	(4,905)	(12,657)	(12,608)	(12,407)	(16,368)
Assets whose use is limited, net	99,608	66,159	9,180	8,520	7,860	5,055
Property, plant and equipment	9,729	37,928	91,287	91,687	92,004	92,462
less accumulated depreciation	-	-	800	3,193	5,595	8,019
Net property, plant and equipment	9,729	37,928	90,487	88,494	86,409	84,443
Escrowed resident deposits	3,355	4,319	3,984	2,001	666	-
Unamortized marketing costs	1,958	2,782	3,503	3,660	3,773	3,610
Unamortized issuance costs	2,878	2,644	2,409	2,183	2,012	1,883
Total assets	\$ 119,717	118,737	122,239	117,997	114,227	114,690
Liabilities and Net Assets (Deficit)						
Current liabilities:						
Accounts payable	\$ -	-	86	311	381	448
Accrued expenses	-	-	11	129	170	218
Accrued interest	845	850	850	680	540	450
Current portion of long-term debt	-	-	30,000	25,000	12,585	750
Total current liabilities	845	850	30,947	26,120	13,676	1,866
Long-term debt	118,080	118,080	88,080	63,080	50,495	49,745
Original issue discount	(1,386)	(1,333)	(1,280)	(1,227)	(1,174)	(1,121)
Applicant deposit liability	3,355	4,319	3,984	2,001	666	-
Charter resident interest liability	16	93	-	-	-	-
Deferred revenue, resident entrance fees	-	-	1,028	4,895	7,470	8,632
Refundable resident entrance fees	-	-	9,064	44,651	69,445	82,094
Net assets (deficit), unrestricted	(1,193)	(3,272)	(9,584)	(21,523)	(26,351)	(26,526)
Total liabilities and net assets (deficit)	\$ 119,717	118,737	122,239	117,997	114,227	114,690

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Basis of Presentation

The financial forecast presents, to the best of the knowledge and belief of management of Northwest Senior Housing Corporation (the "Corporation"), and management of the Corporation's contracted manager, Greystone Management Services Company, LLC (the "Manager") (collectively referred to as "Management"), the expected financial position, results of activities and cash flows for the three months ending December 31, 1999 and each of the five years ending December 31, 2004. Accordingly, the financial forecast reflects Management's judgment as of October 13, 1999, the date of this forecast, based on present circumstances and the expected course of action. The assumptions disclosed herein are the assumptions which Management believes are significant to the financial forecast. There will usually be differences between the forecasted and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material.

Although Management is unable to prepare a financial forecast for the year ending December 31, 2005, it believes that the information presented under the section titled "Supplementary Disclosure - Period Beyond the Forecast" beginning on page B-79, is necessary for users to make a meaningful analysis of the forecasted results.

Certain information relating to 2005 has been included in the various notes and tables that follow, and under the section titled "Supplementary Disclosure - Period Beyond the Forecast", beginning on page B-79.

The information relating to the period covered under the supplementary disclosure is less reliable than the information presented in the financial forecast and, accordingly, is presented for analysis purposes only. Furthermore, there can be no assurance that the events and circumstances described in this analysis will occur.

Background of Northwest Senior Housing Corporation

The Corporation is a non-profit corporation that was incorporated in Texas in March of 1998 for the purpose of constructing, owning and operating a continuing care retirement community ("CCRC"). The Corporation has received a letter of determination dated September 8, 1999 from the Internal Revenue Service ("IRS"). The IRS determined that the Corporation qualifies as a charitable organization under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), is exempt from Federal income taxation under Section 501(a) of the Code and is not a private foundation within the meaning of Section 509(a) of the Code. The Corporation has no existing operations and is currently a development-stage enterprise.

The Board of Directors for the Corporation is comprised of a voluntary panel of officers who serve without compensation for their services. Currently, the composition of the Board includes five individuals. The Board reviews and approves the policies and budgets that Management recommends and oversees the overall management of the Corporation's business affairs and property.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Description of the Project

The Corporation plans to construct a continuing care retirement community which will include 256 independent living apartments, 84 assisted living units of which 24 will be dementia-focused, 64 traditional skilled nursing beds of which 20 will be dementia-focused, and supporting common areas (the "Project"). The Project's common areas will include restaurant-style dining rooms; a beauty salon and barber shop; a library; a mail and communications center; underground parking spaces, arts and crafts and card rooms; a convenience/sundry shop; an auditorium/multi-purpose room; outdoor recreation areas; guest rooms; a non-denominational meditation room; and a fitness center with an indoor swimming pool.

The table below presents the assumed configuration for the proposed Project:

Table 1		
Assumed Project Configuration		
Unit Type	Number of Units or Beds	Approximate Square Footage Per Unit
Independent Living Units		
One Bedroom Traditional	16	800
One Bedroom Deluxe	27	896
One Bedroom Grand	32	1,007
One Bedroom Den	32	1,129
Two Bedroom Classic	48	1,236
Two Bedroom Den	42	1,376
Two Bedroom Deluxe	45	1,500
Two Bedroom Grand	14	1,724
Total Independent Living Units	256	1,227⁽¹⁾
Assisted Living Units		
<i>Traditional Units:</i>		
Alcove Standard	10	400
Alcove Traditional	16	400
Alcove Deluxe	24	450
One Bedroom	10	500
Total Traditional Units	60	437⁽¹⁾
<i>Dementia Units:</i>		
Alcove	18	267
Suite	6	533
Total Dementia Units:	24	334⁽¹⁾
Total Assisted Living Units	84	---
Skilled Nursing Units		
Private Room	38	300
Private Deluxe	6	500
Private Dementia	20	300
Total Skilled Nursing Units	64	319⁽¹⁾
TOTAL UNITS	404	---

Source: Management

Note: (1) Weighted average square footage.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

The Project is estimated to consist of 709,000 square feet, including 76,547 square feet of common areas and approximately 138,000 square feet of underground parking space.

Construction of the Project is assumed to begin in December 1999 and is assumed to be completed and occupied as follows:

	Date	Units Available Upon Completion
Financing Completed	November 1999	November 1999
Relocation Begins ⁽¹⁾	November 1999	----
Relocation Ends ⁽¹⁾	January 2000	----
Asbestos Abatement Begins	November 1999	----
Asbestos Abatement Ends	March 2000	----
Demolition Begins	December 1999	----
Demolition Ends	March 2000	----
Construction Begins	February 2000	----
Construction Ends	December 2001	----
Independent Living Units Become Available ⁽²⁾	November 2001	256
Assisted Living Units Become Available ⁽²⁾ :		
Traditional	January 2002	60
Dementia	January 2002	24
Nursing Units Become Available ⁽²⁾ :		
Traditional	January 2002	44
Dementia	January 2002	20
		404

Source: Management

- Note: (1) Currently, the Project site contains approximately 311 existing rental apartments which are occupied under month-to-month leases. The Corporation has developed a plan to assist in the relocation of the current residents to allow for timely demolition of the existing buildings.
- (2) Although the independent living units may be available in September 2001, and the assisted living and nursing units in November 2001, Management has forecasted that residents would begin moving in into the independent living units, assisted living units and nursing units as noted in the table.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Forecasted stabilized occupancy levels are as follows:

Table 3

Forecasted Stabilized Occupancy Levels

	Forecasted Number of Months to Stabilized Occupancy	Forecasted Month Stabilized Occupancy Achieved	Forecasted Stabilized Occupancy Percentage
Independent Living Units	36	October 2004	95%
Assisted Living Units	36	October 2004	90%
Skilled Nursing Beds	93%	26	December 2003

Source: Management

Development and Management of the Project

The Developer is responsible for the development of the Project. The Developer is a Texas joint venture comprised of GCI Edgemere, Ltd., a Texas limited partnership (the "Investment Limited Partnership") and Greystone Development Company, LLC ("Greystone"), a Texas partner of the Investment Limited Partnership. Pursuant to the joint venture agreement, the Investment Limited Partnership's role is as an investor funding the pre-finance development costs associated with providing pre-finance development services required to be provided to the Owner pursuant to the Development Agreement (as hereinafter defined). Greystone's role in the joint venture is to manage the joint venture and to provide all services, on behalf of the Developer, which are required to be performed pursuant to the Development Agreement.

GCI Edgemere, Ltd.

The Investment Limited Partnership was formed to fund the pre-finance development costs associated with providing pre-finance development services. GCI Preston Hollow, Inc., a Texas corporation and a wholly-owned subsidiary of Greystone, is the General Partner of the Investment Limited Partnership. Partnership capital in the amount of \$4,800,000 was funded through subscriptions of partnership units.

Greystone Development Company, LLC

Greystone Development Company, LLC, a Delaware limited liability company, was recently formed and specializes in providing planning, development, marketing, management and certain consulting services related to senior living communities on a fee-for-service basis, primarily to not-for-profit clients. Greystone currently has a staff of approximately 75 persons, and senior management averages over ten years of senior living community experience. Management services are provided through Greystone Management Services Company, LLC, a wholly owned subsidiary of Greystone.

An affiliate of Greystone and its operating predecessor, Greystone Communities, Inc. ("GCI") was formed in 1989 as the successor to VHA Development Company, Inc., which was formed in 1982. Both Greystone and GCI are owned by Greystone Partners, Ltd. (a partnership including employees of Greystone), Brown & Root, USA, Inc., Chase Manhattan Corporation, Concorde Senior Living, LLC and

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Westport Realty Advisors, Ltd. The officers of GCI are identical to the officers of Greystone and the directors of GCI are the Managers of Greystone.

Greystone Development Company LLC is a special limited partner in the Westport Senior Living Investment Fund, L.P. which was formed in September, 1998. The purpose of the fund is the strategic acquisition of senior living communities, and the development of new communities in conjunction with local affinity groups such as hospitals, military organizations and nursing homes. Greystone Development Company LLC is the exclusive development and management company to the Westport Senior Living Investment Fund, L.P.

Development Agreement

The Corporation entered into a Development Services Agreement ("Development Agreement") dated February 20, 1998, as amended December 4, 1998 and May 19, 1999, with the Developer to provide certain development services for the Project as well as the pre-finance capital required to finance the initial development costs of the Project. Under the Development Agreement, the Developer will make available to the Corporation the services of Greystone personnel and such financial, accounting and informational services as may be necessary to provide the development services; designate a project leader who will have overall responsibility for coordinating development services for all aspects of the Project; and convene development meetings with the Corporation at least once a month to review progress and coordinate development activities.

Among the development services specified to be provided by the Developer under the Development Agreement are the following: (a) all necessary planning to implement the Development Plan approved by the Corporation, including any revisions thereto; (b) preparation of detailed budgets for each phase of development activity, which are to be submitted for the Corporation's approval; (c) assistance in obtaining all necessary governmental approvals required for development of the Project; (d) coordinating preparation of all design and construction plans and specifications by the Project architect and other design consultants; (e) development of a resident services program; (f) development and supervision of the marketing plan for the Project to prospective residents; (g) assistance in securing financing for the Project; (h) assistance in negotiating and awarding a construction contract for the project, and thereafter monitoring the progress of construction; and (i) assistance with marketing and pre-opening management services for the Project.

Pursuant to the Development Agreement, the Developer is responsible for the marketing of the Project until 90% overall occupancy is achieved (marketing after 90% occupancy is the responsibility of the Manager). In connection therewith, the Developer will (a) coordinate and manage the marketing staff to implement the overall marketing program; (b) develop and supervise implementation of a marketing and sales program, including promotional, advertising and median campaigns in connection with an advertising firm; (c) recruit, train and monitor the marketing and sales staff; (d) coordinate the design, construction and equipping of an information center; (e) develop a program for responding to public inquiries; (f) assist the Corporation in preparing resident disclosure documents; (g) develop resident admission criteria and coordinate the process for approving execution of Residency Agreements with prospective residents.

The Corporation shall exercise final authority on the following matters: selection and engagement of architect, other design professionals, engineering professionals and pre-construction consultants; negotiation and execution of a design contract for preparation of plans and specifications; approval of

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

final working drawings; selection and engagement of a source of permanent financing and the execution of all commitments with respect to financing; selection and engagement of a general contractor for construction; negotiation and execution of a construction contract; and final approval of all budgets for planning, development, construction and marketing required to be prepared by Developer.

As compensation for services rendered pursuant to the Development Agreement and as a return on pre-finance capital, the Corporation will pay the Developer approximately \$8,511,000, to be paid as follows:

Pre-finance of Capital Program:

- Return on pre-finance capital paid at closing \$5,111,000

Fees for Development Services:

- Prior to closing \$ 375,000
- At closing \$1,150,000
- During construction \$ 725,000
- Obtain certificate of occupancy \$ 500,000
- Pro-rata payments for occupancy \$ 650,000
- Total development fees \$3,400,000

Pursuant to the terms of the Development Agreement, the Corporation will also reimburse Developer for all reasonable out-of-pocket travel expenses for personnel employed by Developer, and a 3.5% administrative fee of the development fee (excluding the return on pre-finance capital) to cover miscellaneous office expenses.

Management has forecasted that the Developer will have advanced to the Corporation approximately \$4,799,000 for costs related to the pre-finance phase of the Project from funds provided by the Investment Limited Partnership. These advances and any additional advances will be reimbursed to the Developer from the proceeds of the Bonds. The Corporation has no obligation to reimburse advances made by the Developer unless and until closing of the Bonds. All risk for such advances associated with the failure to achieve a closing on the Project financing will be borne by the Developer.

Pursuant to the Development Agreement, the Developer could also receive an incentive payment up to a maximum amount of \$650,000 as follows:

- \$650,000 if an overall Project occupancy of 90 percent is achieved in 18 months;
- \$400,000 if an overall Project occupancy of 90 percent is achieved in 20 months;
- \$200,000 if an overall Project occupancy of 90 percent is achieved in 24 months; or
- \$150,000 if an overall Project occupancy of 90 percent is achieved in 30 months.

Management assumes that a 90 percent overall occupancy level will be achieved in 32 months, and therefore, has assumed that no incentive payment will be made to the Developer.

Greystone Management Services Company, LLC

In March 1998, the Corporation also entered into a Management Services Agreement (the "Management Agreement") as amended May 19, 1999 with Greystone Management Services Company, LLC a wholly-owned subsidiary of Greystone (the "Manager"), to provide day-to-day supervision and management of the Project, beginning approximately twelve months prior to the anticipated receipt by the Corporation of a certificate of occupancy for the Project and continuing for an initial term of 180 months, but is terminable by either party after 36 months with sixty days written notice.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Management Agreement

Pursuant to the terms of the Management Agreement, the Manager is required to provide all management services necessary to operate the Project including but not limited to financial management, purchasing, public relations, recruitment of personnel and supervision of the day-to-day operations and programs of the Project. The duties of the Manager under the Management Agreement include, without limitation, preparing annual budgets, contracting for utilities and other operation and maintenance services; purchasing necessary furniture, fixtures, equipment and supplies; preparing monthly statements of operations; obtaining and maintaining all licenses, permits and approvals; supplying management and supervision of operational services provided by the Corporation's employees and Manager's recommended manuals, forms and systems; providing a qualified and experienced Administrator for the Project who will be an employee of the Manager, subject to the right of the Corporation to require his/her discharge for cause; recommending, purchasing and installing appropriate on-site accounting and informational management system and software; making available for consultation and advice its staff of professional consultants who are employees of Manager; collecting the revenues from the Project; maintaining proper books of account and records; providing necessary statistical reports and data to meet local, state and federal regulatory requirements; preparing ongoing marketing programs in order to achieve stabilized occupancy; subject to the approval of the Corporation, engaging certified public accountants to prepare annual audits of the books, records and accounting procedures of the Project; subject to the approval of the Corporation, engaging counsel as necessary to enforce payment of charges or compliance with other terms of residency agreements, or to dispossess residents; evaluating, proposing and recommending insurance coverages relating to the interests of the parties, and procuring and maintaining insurance coverages approved by the Corporation; preparing annual management plan, operating strategies and forecasts for the Project and recommending adjustments and/or revisions; and, in general, operating the Project in accordance with the highest standards for a retirement facility in full compliance with all applicable statutes, ordinances, rules and regulations.

As compensation for services rendered pursuant to the Management Agreement, the Owner will pay the Manager a monthly management fee (the "Management Fee") of \$10,000 per month from the commencement date (12 months prior to opening of the independent living units) until initial occupancy, \$24,000 per month for initial occupancy through month 42, \$38,000 per month for months 43 through 90, and \$29,000 per month thereafter. In performance of its obligations under the Management Agreement, the Manager shall be an independent contractor and, except as described above, shall not be subject to any right of control of the Corporation over the methods by which it carries out its delegated duties. In addition to the Management Fee, Manager shall be entitled to reimbursable costs and expenses which shall include all expenses incurred by Manager to recruit the Administrator; payroll, incentive and benefit costs of Manager for employment of the Administrator (not to exceed 1.35 times the direct payroll costs incurred by Manager for the Administrator); travel expenses incurred by employees of Manager in connection with the performance of duties under the Management Agreement; and any other costs and expenses incurred by Manager expressly agreed upon by the parties. Fifty percent of the management fee will be subordinate to the Series 1999 Bonds. However, direct expenses incurred by the Management company will not be subordinated.

Texas Regulatory Requirements

The Texas Department of Insurance regulates CCRCs. As defined in Insurance Chapter 33 in the Texas Insurance Code, classification of a health care facility as "continuing care" requires the charging of an

Summary of Significant Forecast Assumptions and Significant Accounting Policies

entrance fee in an amount exceeding the monthly rent, the provision of services for a period exceeding one year or the life of the resident, and the offering of living accommodations along with personal care, medical, nursing, or other health-related services. CCRCs are required to disclose the terms of residency agreements, establish reserves and escrow requirements and provide adequate standards for the development and operation of the community. The proposed Project satisfies these requirements and, therefore, is subject to applicable CCRC regulations and is required to file for a Certificate of Authority with the State Insurance Commission.

Currently, there are no Certificate of Need requirements for facilities offering assisted living services in the State of Texas. However, facilities offering personal care services to residents are required to obtain licensing from the Texas Department of Human Services under the Texas Health Safety Code. The term "personal care" is defined as the provision of services other than the basic and primary needs of food, shelter and clothing.

In order to provide nursing care services, the Corporation must also obtain licensure through the Texas Department of Human Services under Chapter 247 of the Texas Health and Safety Code. Currently, a Certificate of Need is not required in Texas to offer nursing services on a private-pay basis.

Residency Agreement and Services Provided for Independent Living Units

The Corporation's minimum age requirement for admission to the independent living units is 62, although a spouse may be younger provided one partner is at least 62 years of age. Residents who occupy independent living units must be capable of living independently and have the necessary health status and financial resources to meet the Corporation's requirements.

Texas Statutes require that continuing care providers, which require payment of an entrance fee, obtain a Certificate of Authority ("COA") from the Texas State Insurance Commission prior to entering into a contract to provide continuing care (or lifecare) services. However, the COA application cannot be submitted until permanent financing is in place. Therefore, prior to Edgemere receiving a COA, prospective residents sign a Reservation Agreement. Once the COA is received from the Texas State Insurance Commission, the prospective residents who have executed a Reservation Agreement and placed a 5% deposit of the entrance fee amount, will execute a Residency Agreement. Subsequent to receiving a COA, the Reservation Agreement will no longer be utilized and prospective residents will execute a Residency Agreement upon reserving a unit.

In order to occupy a unit, residents must satisfy the Corporation's minimum health and financial requirements, execute a Residency Agreement, pay in full the entrance fee amount and pay the appropriate monthly service fees on an on-going basis. Under the Residency Agreement, prospective residents of the independent living units must pay an entrance fee which is 90% refundable. The Residency Agreement provides the use of an independent living unit and related services and amenities subject to payment of the required monthly service fees and entrance fee. The Residency Agreement also provides for unlimited access to assisted living care or skilled nursing care at lower rates than that required of non-life care residents. Specifically, upon permanent transfer from independent to assisted living or nursing, residents will pay the then market rate for a two bedroom classic apartment home plus the cost of two additional meals per day. For a temporary transfer, residents will be charged the

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

prevailing market rate for assisted living or nursing, in addition to the monthly service fees associated with their existing independent living unit.

If a resident is unable to live independently within the range of the services provided in the independent living units, as determined by the medical director of the Corporation in conjunction with the resident's physician and family, the resident will be transferred to an assisted living unit or skilled nursing unit on either a temporary or permanent basis. Residents who are the sole occupant of their independent living unit and who transfer on a permanent basis to either an assisted living or skilled nursing unit relinquish the right to reoccupy their independent living unit. In the event that the resident again becomes able to live independently, that resident will be entitled to the first available independent living unit of the type they last occupied.

Residents or their estates are entitled to a refund upon termination of their Residency Agreement equal to 90 percent of the original entrance fee paid. Payment of the refund is subject to receipt of a new entrance fee and re-occupancy of the vacated independent living unit by a new resident. Specifically, payment of the refund occurs on the later of the date of termination of the Residency Agreement or the date that a subsequent entrance fee has been received from a new resident and that individual has taken occupancy of the unit.

A deposit equal to 5 percent of the applicable entrance fee for the independent living unit is due upon submission of a Reservation Agreement or Residency Agreement, which effectively reserves the unit for the resident. The remaining 95 percent must be paid in full upon actual occupancy of the unit.

A processing fee of \$500 will be assessed due to termination of a reservation after 7 days from signing the Reservation Agreement or Residency Agreement for any reason other than death or serious illness of the prospective resident, the failure of the Corporation to meet its obligations under the Reservation Agreement or Residency Agreement, or other circumstances beyond the control of the prospective resident that equitably entitles the prospective resident to their deposit.

Charter Resident Benefit

The Corporation has offered a "Charter Benefit" to those residents who had paid an initial \$100 or \$1,000 priority deposit ("Charter Resident"). If an applicant qualifies as a Charter Resident, he or she is eligible for certain benefits. For instance, if an applicant signs a Reservation Agreement or Residency Agreement within five days of the sales presentation, the applicant will be entitled to benefits, including, but not limited to, the following: (i) a five percent discount on their Entrance Fee ("Charter Entrance Fee"); (ii) no increase of monthly fees through December 2002; (iii) 7 percent interest on the Entrance Fee deposit to the occupancy date; (iv) two months waiver of the Monthly Service Fee from the date the unit is available for occupancy; and (v) a permanent \$100 discount on second person monthly service fees.

Management's forecast assumes that all initial residents occupying the independent living units will qualify for some type of promotional discount or offer not exceeding what is currently offered to Charter Residents.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

The following table summarizes the entrance fees (reflecting a five percent Charter Resident Benefit discount) and monthly service fees under the Residency Agreement in 2002 dollars.

Table 4		
Entrance and Monthly Service Fees		
Independent Living Units		
Unit Configuration	Entrance Fees ⁽¹⁾ (2002 Dollars)	Monthly Service Fees (2002 Dollars)
Apartment Residences:		
One Bedroom Traditional	\$189,900	\$1,995
One Bedroom Deluxe	\$259,900	\$2,295
One Bedroom Grand	\$299,900	\$2,495
One Bedroom Den	\$349,900	\$2,695
Two Bedroom Classic	\$389,900	\$2,995
Two Bedroom Den	\$419,900	\$3,295
Two Bedroom Deluxe	\$459,900	\$3,595
Two Bedroom Grand	\$499,900	\$3,995
Second person fee	—	\$795

Source: Management

Note: (1) The Corporation currently offers a Charter Resident Benefit under which a resident who places a deposit within 5 days of attending a sales presentation is entitled to a 5 percent discount off the published entrance fee, two months of free independent living (assuming they move-in when their unit is available), a \$100 permanent discount off the second person fee, and other items. The entrance fees in this table reflect a 5 percent Charter Resident Benefit discount.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

As defined in the Residency Agreement, the resident is entitled to the use of an independent living unit and the following services and amenities:

- One meal credit for each day of the month (unused credits are forfeited at the end of the month);
- Light housekeeping on a weekly basis (including vacuuming, cleaning, dusting, and changing of bed linens);
- Weekly laundering of bed linens and towels;
- Heating, air conditioning, and electricity;
- Water, sewer service, basic cable television, and central trash collection (all telephone and premium cable costs are the responsibility of the resident);
- Full-time maintenance of buildings and grounds;
- Planned social, recreational, cultural, educational and wellness-related activities;
- Scheduled local transportation;
- 24-hour security services;
- Automatic washer and dryer;
- Oven and range, microwave, dishwasher, refrigerator and garbage disposal;
- Floor coverings and window treatments;
- Surface parking for all residents and guests and one secured underground parking space for each unit;
- Access to storage lockers for each unit;
- U.S mailbox in a central location for each unit;
- Emergency call system with 24-hour monitoring; and
- Health center attendants on duty at all times.

Services available at extra cost include additional meals, personal laundry, beauty/barber shop, additional parking and additional transportation.

Market demand differs for the various independent living units described above. Decisions regarding moving into an independent living unit are generally discretionary to the resident and based on availability and affordability. Decisions regarding direct entrance into an assisted living or nursing care unit are generally based on an individual's defined health care needs, as well as affordability. Under the Residency Agreement, residents in the independent living units will have guaranteed access to the assisted living units and skilled nursing units. Alternative temporary accommodations will be made available by the Corporation provided there are no spaces available upon permanent transfer.

Services Provided for Assisted Living Units

In exchange for the monthly service fee, residents of the assisted living units receive all the services offered to residents of the independent living units as well as three meals a day, assistance with daily living activities, and limited nursing supervision.

Services Provided for Skilled Nursing Beds

In exchange for the daily fee, skilled nursing residents receive comprehensive 24-hour skilled nursing services, special activity programs, social service programs, housekeeping, and three meals a day.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Assumed Project Sources and Uses of Funds

A summary of the assumed sources and uses of funds to finance the Project, as provided by Management and the managing underwriter, B.C. Ziegler and Company (the Managing Underwriter), is as follows:

Table 5

**Assumed Project Sources and Uses of Funds
(In Thousands of Dollars)**

Sources of Funds:	
Series 1999A Bonds (A)	\$ 50,495
Less: Original issue discount (A)	(1,398)
Net Series 1999A Bonds (A)	49,097
Series 1999B Bonds (B)	7,335
Series 1999C Bonds (C)	5,000
Series 1999D Bonds (D)	55,000
Series 1999E Bonds (E)	250
Net Total Series 1999 Bonds	116,682
Interest earned on funds held by Trustee (F)	8,575
Accrued interest (G)	24
Total Sources of Funds	\$ 125,281
Use of Funds:	
Project Costs:	
Construction, ground lease related, and other costs related to the Project (H)	\$ 72,984
Architectural and engineering fees (I)	2,486
Furniture, fixtures and equipment (J)	2,478
Development costs (K)	7,873
Marketing costs (L)	5,425
Contingency (M)	2,384
Total Project Related Costs:	93,630
Other Costs (N)	1,782
Debt Service Reserve Fund – Series 1999A (O)	4,346
Debt Service Reserve Fund – Series 1999B (P)	422
Debt Service Reserve Fund – Series 1999C (Q)	287
Debt Service Reserve Fund – Series 1999D (R)	2,475
Funded interest, letter-of-credit, remarketing agent fees and other (S)	19,215
Bond issuance and related costs (T)	3,124
Total Use of Funds	\$ 125,281

Source: Management and the Managing Underwriter

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

- (A) According to the Managing Underwriter, the Series 1999A Bonds are assumed to be tax-exempt fixed rate bonds and to have a bond yield equal to 7.43 percent and an average coupon of 7.19 percent. Interest payments on the Series 1999A Bonds are assumed to be payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. Principal on the Series 1999A Bonds is assumed to be payable annually on November 15 beginning in November 15, 2005 with a final maturity on November 15, 2029. The Series 1999A Bonds are assumed to be issued net of an original issue discount equaling approximately \$1,398,000.
- (B) According to the Managing Underwriter, the Series 1999B Bonds are assumed to be tax-exempt extendable rate adjustable bonds with interest payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. The average annual coupon interest rate on the Series 1999B Bonds is assumed to be 5.75 percent. The Series 1999B Bonds are assumed to mature on November 15, 2029. Management assumes the Series 1999B Bonds will be redeemed in full by November 15, 2004.
- (C) According to the Managing Underwriter, the Series 1999C Bonds are assumed to be tax-exempt extendable rate adjustable bonds with interest payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. The average annual coupon interest rate on the Series 1999C Bonds is assumed to be 5.75 percent. The Series 1999C Bonds are assumed to mature on November 15, 2029. Management assumes that the Series 1999C Bonds will be redeemed in full by November 15, 2004.
- (D) According to the Managing Underwriter, the Series 1999D Bonds are assumed to be tax-exempt variable rate demand bonds. Management anticipates that the Corporation will enter into an interest rate swap (the "SWAP") for a period that approximates the construction period and the initial move-in period in order to convert the interest rate on the Series 1999D Bonds from variable to fixed rate. The net interest cost associated with the Series 1999D Bonds is assumed to be 4.5 percent during the forecast period, as provided by the Managing Underwriter. Interest on the Series 1999D Bonds is assumed to be payable monthly beginning December 1st, 1999. The Series 1999D Bonds are assumed to have a final maturity of November 15, 2029. Management assumes that the Series 1999D Bonds will be redeemed in full by November 15, 2004. In addition to interest cost, the Corporation will pay letter-of-credit fees and remarketing agent fees while the Series 1999D Bonds are outstanding.
- (E) According to the Managing Underwriter, the Series 1999E Bonds are assumed to be extendable rate adjustable taxable bonds and to bear interest at an average rate of 8.00 percent during the forecast period. Interest on the Series 1999E Bonds is assumed to be payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. The Series 1999E Bonds are assumed to mature on November 15, 2029. Management assumes the Series 1999E Bonds will be redeemed in full by November 15, 2002. Proceeds from the issuance of the Series 1999E Bonds will be utilized by the Corporation to fund the costs of issuance in excess of applicable tax law limitations.
- (F) Interest is assumed to be earned on trustee-held funds at an assumed average annual rate of 5.75 percent and on the Debt Service Reserve Fund - Series 1999B, Series 1999C, Series 1999D, and Series 1999E accounts, and 6.25 percent for the Debt Service Reserve Fund- Series 1999A account, as provided to Management by the Managing Underwriter.
- (G) Represents accrued interest on the Series 1999 Bonds from the dated date to the delivery date.
- (H) Total construction, ground lease-related costs, real estate taxes during construction, sitework, and other construction-related costs for the Project are estimated to equal \$72,984,000. Approximately \$955,000 of these costs were paid by the Investment Limited Partnership prior to closing. The Investment Limited Partnership will be reimbursed at closing for those costs.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

The following table (in thousands) reflects construction and other project-related costs:

	Incurred Prior to Closing	Incurred After Closing	Total
Construction and related	\$ -	64,695	\$ 64,695
Asbestos abatement	-	2,000	2,000
Contingency	-	1,002	1,002
Land options, lease payments and real estate taxes	955	4,332	5,287
Total	\$ 955	72,029	\$ 72,984

The corporation has obtained a guaranteed maximum price (GMP) contract from Andres Construction Services for \$ 64,695,000 for the construction and related costs (including sitework and general requirements).

Pursuant to an environmental study performed by GME Consulting Services, Inc., the Corporation has estimated \$2,000,000 for asbestos abatement costs.

Management has estimated a \$1,002,000 construction contingency.

Land option payment and ground lease payments are based on the Ground Lease Agreement between the Corporation and Intercity Investment Properties, Inc. Payments for the ground lease were funded for approximately 26.5 months. In addition, real estate taxes have been funded for 2000 and 2001, estimated by Management to approximate \$192,000 and \$903,000, respectively.

- (I) Management has assumed that total architectural and engineering fees would approximate \$2,486,000 based on contractual arrangements with the architect, Three Architecture, Inc. Of these costs, \$1,024,000 were paid by the Investment Limited Partnership prior to financing and will be reimbursed at closing.
- (J) Management has assumed that total furniture and equipment costs would approximate \$2,478,000 as estimated by Management based on their experience with similar retirement communities. Of these costs, approximately \$73,000 were paid by the Investment Limited Partnership prior to financing and will be reimbursed at closing.
- (K) Management assumes that development costs totaling \$7,873,000 will be funded from bond proceeds as follows:
 - \$5,111,000 - return on capital advances
 - \$2,600,000 - Development Agreement Fees
 - \$ 162,000 - other development costs

Of these development costs, \$512,000 was paid by the Investment Limited Partnership prior to financing and will be reimbursed at closing.

In addition to the Development Agreement Fees paid from bond proceeds, the balance of the Development Agreement Fees (\$800,000) will be paid from entrance fees.

- (L) Management has assumed that total marketing costs would approximate \$5,425,000, as estimated by Greystone Development Company, LLC based on existing contractual arrangements. Prior to closing, the Investment Limited Partnership paid \$1,889,000 of these marketing costs, which will be reimbursed at closing.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

- (M) Management has assumed an overall Project contingency equal to \$2,384,000 (approximately 2.6 percent of Project related costs). Prior to closing, the Investment Limited Partnership paid \$101,000 of these costs, which will be reimbursed at closing.
- (N) Other costs totaling \$1,782,000 include an allowance of \$400,000 relating to the relocation of residents in the existing apartments that are to be demolished prior to beginning of construction, \$600,000 relating to pre-opening expenditures for staffing, management fees and other operating costs of the Project, and \$782,000 for administrative costs of the Manager and for legal and insurance costs of the Project. Prior to closing, the Investment Limited Partnership paid \$245,000 of these costs, which will be reimbursed at closing.
- (O) The initial deposit into the Debt Service Reserve Fund of the Series 1999A Bonds equals the estimated maximum annual debt service on the Series 1999A Bonds.
- (P) The initial deposit into the Debt Service Reserve Fund of the Series 1999B Bonds is equal to the estimated maximum annual interest on the Series 1999B Bonds. The balance in this fund will be applied toward the final payment of the Series 1999B bonds.
- (Q) The initial deposit into the Debt Service Reserve Fund of the Series 1999C Bonds is equal to the estimated maximum annual interest on the Series 1999C Bonds. The balance in this fund will be applied toward the final payment of the Series 1999C bonds.
- (R) The initial deposit into the Debt Service Reserve Fund of the Series 1999D Bonds is equal to the estimated maximum annual interest on the Series 1999D Bonds. The balance in this fund will be applied toward the final payment of the Series 1999D bonds.
- (S) Represents interest on the Series 1999 Bonds, letter-of-credit fees and remarketing agent fees during the first 30 months of the bond issue. Based on information provided by the Managing Underwriter, Management assumes that the funded interest will be net-funded in an amount equal to approximately \$10,640,000 (including \$24,000 in accrued interest) and that interest earnings on trustee-held funds equal to approximately \$8,575,000 will be credited to the funded interest account.
- (T) Bond issuance and related costs of approximately \$3,124,000 are estimated by the Managing Underwriter and include legal fees, accounting fees, underwriter fees, letter-of-credit issuance costs, and other costs associated with the issuance of the Series 1999 Bonds.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Characteristics of the Market Area

Assumptions for the future utilization of the Project were developed based on analysis of the following factors that may affect the demand for the Project's services:

- Site description and general area analysis;
- Defined primary market area for the Project;
- Demographic and economic characteristics of the defined primary market area;
- Estimated age and income qualified households within the defined primary market area;
- Description and utilization of existing and proposed comparable retirement communities within the defined primary market area;
- Penetration rates for retirement community services;
- Management's ability to market the independent living units at the Project;
- Description and utilization of existing assisted living facilities within the defined primary market area;
- Penetration rates for assisted living services; and
- Demand for nursing care services.

Each of the above factors and the resulting assumed utilization of the Project is described in the following sections.

Site Description

The Project will be developed on approximately 16 acres in Dallas, Dallas County, Texas, located approximately six miles north of downtown Dallas. The Project site is located on the north side of Northwest Highway between Thackery and Edgemere streets, north of the University Park and Highland Park cities. The Project site is located less than one mile west of the Northpark retail shopping mall and approximately three miles southwest of Presbyterian Hospital.

Currently, the Project site contains approximately 311 rental apartments which are approximately 56 percent occupied under month-to-month leases. The Corporation has developed a plan to assist in the relocation of the current residents to allow for timely demolition of the existing buildings.

General Area Analysis

This section of the report describes the characteristics of the Dallas, Texas area, as they pertain to the Project.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Highways

The Project site is located approximately four miles south of Interstate 635, which runs east/west approximately 10 miles north of downtown Dallas. Interstate 30, which runs east/west through downtown Dallas, provides access to the Dallas North Tollway Freeway and the Central Expressway (Highway 75) which run north/south through Dallas providing direct access to Northwest Highway which provides access to the Project. The Project site is also accessed by Interstate 35E, located approximately six miles west of the Project site which runs north/south through the area.

Public Transportation

The Dallas Area Rapid Transit system (DART) provides scheduled bus service throughout the Dallas metropolitan area seven days a week. The nearest DART bus stop is located on the corner of Northwest Highway and Thackery Street at the entrance to the Project site. DART also provides services for the elderly and handicapped individuals. Taxi services are also available in the area.

Airport

The Dallas Fort Worth International Airport (DFW) is located approximately 14 miles northwest of the Project. DFW is serviced by most major airlines and provides both national and international commercial service. In addition, the Dallas Love Field Airport, located approximately four miles west of the Project, is utilized for regional and general aviation services.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Primary Market Area of the Project

The primary market area of the Project is defined as the geographic area from which the majority of the prospective residents reside prior to assuming occupancy at the Project. Management considers a prospective resident to be one who has placed a deposit of five percent of the entrance fee for the selected independent living unit at the Project and who has signed a Reservation Agreement as a depositor (Depositor). Additionally, Management requires each Depositor to sign a health statement stating that their health status is sufficient to be able to reside in an independent living unit at the Project.

Based on the current addresses of Depositors of the Project, Management has defined the Project's primary market area to be a quadrilateral shaped area around the Project site, spanning approximately 11 miles from north to south and approximately 8 miles from west to east at the widest point. The primary market area includes University Park and Highland Park to the south and borders Belt Line Road to the north, just north of Interstate 635. The primary market area includes Midway Road to the west and includes Greenville Road to the east. The following table summarizes the zip codes all corresponding to the city of Dallas, which make up the Project's primary market area.

Table 6

Primary Market Area Zip Codes

Zip Code	Zip Code	Zip Code
75204	75220	75240
75205	75225	75243
75206	75229	75244
75209	75230	75251
75219	75231	

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 Summary of Significant Forecast Assumptions and Significant Accounting Policies

As of September 28, 1999, there were 164 independent living units reserved by 161 Depositors (three Depositors have reserved two units each) out of the total 256 independent living units available. Approximately 87 percent of the Depositors currently reside within the Project's defined primary market area. The following table summarizes the results of this analysis.

Table 7

Depositor Origin		
Area of Origin	Number of Independent Living Depositors	Percentage of Total Independent Living Depositors
Primary market area	140	87%
Other areas in Texas	18	11%
Out of state	3	2%
Total	161⁽¹⁾	100%

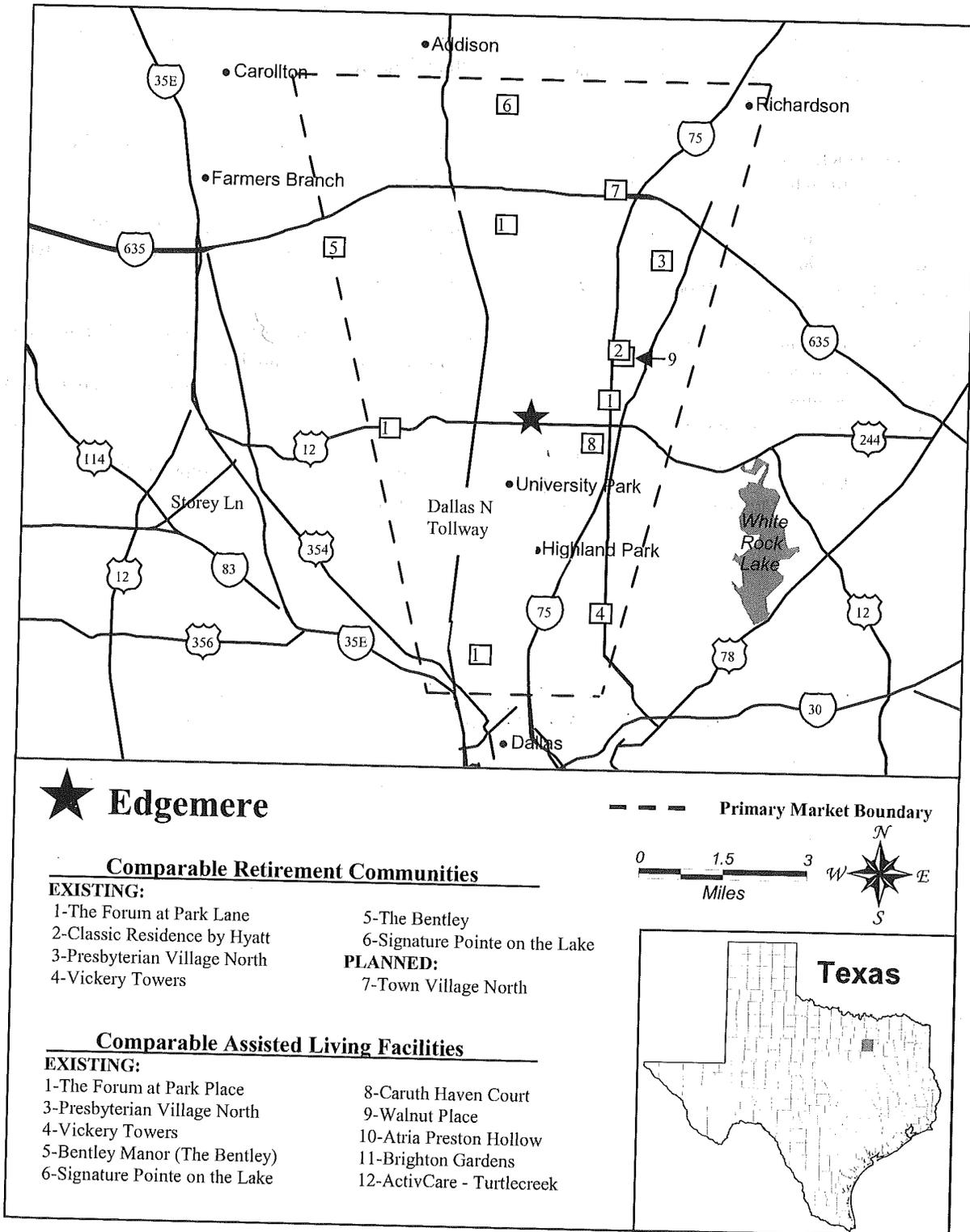
Source: Management

Note: (1) Indicates the total number of prospective residents who have reserved an independent living unit at the Project as of September 28, 1999. Three prospective residents have reserved two units each; therefore, the total number of reserved units is 164.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

The following map depicts the primary market area of the Project:



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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Population

The age distribution of the population in a geographic area is a key factor in the determination of the area's retirement housing needs. Population data regarding numbers of elderly are presented in the following tables. It should be noted that the 1999 and 2004 data are estimates and projections, respectively, based on the 1990 census.

Based on Management's analysis of the Depositors, the average age for females is 77 years and the average age for males is 79 years. The average age of all Depositors is 78 years.

As shown in the following tables, there are 319,985 persons estimated to be residing in the primary market area in 2004. Of the total population in 2004, 42,894 residents or 13.4 percent are 65 and older while 22,110 residents or 6.9 percent are 75 years of age or older.

The total population in the primary market area is estimated to increase from 1999 through 2004 at a rate of 0.8 percent compounded annually. The 65 and older population is estimated to increase at a rate of 2.8 percent compounded annually while the growth rate for persons 75 and older is estimated to increase at a rate of 3.4 percent compounded annually between 1999 and 2004.

The following table presents population data by age cohort and the anticipated average annual compounded percentage change between 1999 and 2004 in the primary market area.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 8
Elderly Population Change for Primary Market Area

	1999 (Estimated)	2004 (Projected)	Average Compounded Percentage Change 1999 - 2004
	Population	Population	
Primary Market Area			
Total Population	<u>307,758</u>	<u>319,985</u>	0.8%
Age 65 to 74 Population	18,742	20,784	2.1%
Age 75 to 84 Population	13,005	15,246	3.2%
Age 85 plus Population	<u>5,663</u>	<u>6,864</u>	3.9%
Total 65 plus	<u>37,410</u>	<u>42,894</u>	2.8%
Total 75 plus	<u>18,668</u>	<u>22,110</u>	3.4%

Source: Claritas, Inc., August 1999

The following table presents the percentage of total population by elderly age cohort in the primary market area, Texas and the United States.

Table 9
Percentage of Total Population by Elderly Age Cohort

Age Cohort	1999 (Estimated)		
	Primary Market Area	Texas	United States
65 plus	12.2%	11.1%	13.3%
75 plus	6.1%	5.1%	6.3%
85 plus	1.8%	1.4%	1.7%
Age Cohort	2004 (Projected)		
	Primary Market Area	Texas	United States
65 plus	13.4%	11.4%	13.5%
75 plus	6.9%	5.4%	6.7%
85 plus	2.1%	1.5%	1.9%

Source: Claritas, Inc., August 1999

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Estimated Eligible Households in the Primary Market Area

In order to qualify for residency at the Project, a prospective resident generally must be at least 62 years of age (or, if married, have a spouse 62 years of age) and demonstrate sufficient financial resources to pay the initial entrance fee, required monthly fees and other expenses related to independent living not provided for in the Residence and Care Agreement. Accordingly, Management has established certain criteria to identify potential residents who would be eligible to reside at the Project and be able to afford the monthly fee. Management estimates that residents should have a minimum monthly income of approximately 1.5 times the monthly fee of the selected unit, and an asset level sufficient to pay the amount of the entrance fee of the selected unit to enter the Project.

For admission to the Project, Management reviews each prospective resident's financial and health status on a case-by-case basis.

For purposes of quantifying the number of income eligible households in the primary market area, Management has assumed that the minimum income required for independent living at the Project is \$35,000; however, the majority of the independent living units require an income qualification of \$50,000. Therefore, Management has elected to present households with the following characteristics that would be eligible for residency in the Project based upon demographic age cohorts available at the date of this study:

- The householder is age 65 or older;
- Annual household income is \$35,000 or more; and
- Annual household income is \$50,000 or more.

As presented in Table 10, and based on a \$35,000 income qualification, there are an estimated 15,378 age and income eligible households in the primary market area in 1999. By 2004, there are projected to be 18,220 households in the primary market area headed by persons 65 or older with annual household incomes of greater than \$35,000. Based on a \$50,000 income qualification, there are an estimated 12,382 age and income eligible households in the primary market area in 1999. There are projected to be 15,179 households in the primary market area headed by persons 65 or older with annual household incomes of greater than \$50,000 by year 2004.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

The following table also presents the 1999 estimated household income distribution for householders age 75 and over in the primary market area. Based on the increased age criteria, and a \$35,000 income qualification, there are an estimated 7,327 age and income eligible households in the primary market area in 1999 and 9,038 age and income eligible households in the primary market area projected for the year 2004. Based on a \$50,000 income qualification for householders age 75 and over, there are an estimated 5,851 age and income eligible households in the primary market area in 1999 and 7,465 age and income eligible households in the primary market area for the year 2004.

As previously stated, the average age of Depositors who have reserved an independent living unit at the Project is 78 years. Therefore, Management assumes the majority of prospective residents would be at least 75 years at the time they move into the Project.

The following table presents the income eligible households in the primary market area at both a \$35,000 and \$50,000 income qualification level.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 10
Income Eligible Households in the Primary Market Area

	1999 (Estimated)		Total
	65-74	75+	
Total Households:	<u>12,397</u>	<u>12,522</u>	<u>24,919</u>
Household Income			<u>9,541</u>
Under \$35,000	<u>4,346</u>	<u>5,195</u>	2,996
\$35,000 - 49,999	1,520	1,476	3,479
\$50,000 - 74,999	1,786	1,693	2,234
\$75,000 - 99,999	1,214	1,020	6,669
\$100,000 plus	3,531	3,138	15,378
Total \$35,000 plus	8,051	7,327	12,382
Total \$50,000 plus	6,531	5,851	
Percentage of Income Eligible Households - \$35,000 plus	64.9%	58.5%	61.7%
Percentage of Income Eligible Households - \$50,000 plus	52.7%	46.7%	49.7%
	2004 (Projected)		Total
	65-74	75+	
Total Households:	<u>13,429</u>	<u>14,566</u>	<u>27,995</u>
Household Income			<u>9,775</u>
Under \$35,000	<u>4,247</u>	<u>5,528</u>	3,041
\$35,000 - 49,999	1,468	1,573	3,806
\$50,000 - 74,999	1,836	1,970	2,559
\$75,000 - 99,999	1,262	1,297	8,814
\$100,000 plus	4,616	4,198	18,220
Total \$35,000 plus	9,182	9,038	15,179
Total \$50,000 plus	7,714	7,465	
Percentage of Income Eligible Households - \$35,000 plus	68.4%	62.0%	65.1%
Percentage of Income Eligible Households - \$50,000 plus	57.4%	51.2%	54.2%

Source: Claritas, Inc., August 1999

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Market Area Real Estate Trends

Management has assumed that the majority of residents moving into the Project will sell their current home prior to residency. The ability of potential residents to sell their home in a timely fashion will have an impact on the Project's fill-up period and may impact the ability of residents to pay the entrance fee in some cases. The following table summarizes real estate trends in the University Park, Highland Park and Addison areas (located in North Dallas), which is assumed by Management to be reflective of real estate trends in the Project's primary market area, as provided by the Greater Dallas Area Association of Realtors.

Table 11

Real Estate Trends in North Dallas

	1998 ⁽¹⁾	1999 ⁽²⁾
Number of homes sold	2,085	1,965
Average sale price	\$354,554	\$399,940
Average days on market	78	61

Source: Greater Dallas Area Association of Realtors, August 1999

Note: (1) Data provided for the seven months ending July 31, 1998.

(2) Data provided for the seven months ending July 31, 1999.

Additionally it should be noted that the definition of households, as described previously includes not only homeowners, but also individuals and families who rent. According to information provided by Claritas, Inc., 68.2 percent of the 65 and over households within the primary market area own their own homes.

Unemployment Rate

The unemployment rates for the metropolitan statistical area (MSA) of Dallas, the State of Texas, and the United States are shown in the following table as recorded by the Bureau of Labor Statistics Data.

Table 12

Unemployment Trends

	1997	1998	1999 ⁽¹⁾
Dallas MSA	3.7%	3.2%	3.1%
State of Texas	5.4%	4.8%	4.8%
United States	4.9%	4.5%	4.3%

Source: Bureau of Labor Statistics Data, September 1999

Note: (1) Data provided for the seven months ending July 31, 1999.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Comparable Retirement Communities

Comparable retirement communities may include several types of communities. CCRCs may be life care, modified life care, fee-for-service, or rental communities. CCRCs offer apartments and/or cottages for residents who are able to live independently. Independent living apartment residents enjoy access to common area amenities which typically include a central dining room, a library, lounge areas, and other community areas. Various monthly fees usually cover laundering the resident's flat linen and housekeeping services, maintenance, scheduled transportation and one or more meals per day.

The life care concept offers housing and various levels of service and health care which provide for a resident's changing needs as he or she ages and begins to require a higher level of care. Life care arrangements typically include an entrance fee and a monthly service fee. In a life care facility, residents may receive assisted living or nursing care at little or no extra charge beyond the monthly fees paid in the independent living units. A modified life care facility typically offers a limited portion of assisted living or nursing care at little or no extra cost.

The fee-for-service community offers a variation of the traditional life care concept. The general concept of continuing care is offered at a fee-for-service facility, however, residents pay entrance fees and must pay market per diem rates for health care utilization.

A rental retirement community offers independent living housing and may offer a type of health care such as assisted living or nursing care. Residents are not typically required to pay an entrance fee. The resident signs a lease for the independent living unit selected and pays for various services on an a-la-carte basis. The resident may enter the community at various levels of care.

The Project is a life care community. Management has identified comparable retirement communities to be CCRCs (providing independent living, assisted living and nursing care services) or Non-CCRCs (which include independent living and may provide one or more levels of health care), which offer similar services and amenities within the primary market area of the Project, and which compete for similar age and income qualified residents.

The following table shows the comparable retirement communities located in the Project's primary market area.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 13
Comparable Retirement Communities Within the Primary Market Area

	The Project Edgemere	The Forum at Park Lane	Classic Residence by Hyatt	Presbyterian Village North
Location	Dallas	Dallas	Dallas	Dallas
Driving miles from the Project	—	1.4	2.0	3.7
Type of Contract	Life Care	Rental	Rental	Modified Life Care/Rental
CCRC or Non-CCRC	CCRC	CCRC	Non-CCRC	CCRC
Year Opened	—	1990	1989	1980
Independent Living Units:				
Studios	—	—	—	—
One-bedroom apartments	107	113	—	35
Two-bedroom apartments	149	77	20	72
Villas/Cottages	—	—	126	6
Total Independent Living Units	256	190	146	137
Assisted Living Beds	84 ⁽¹⁾	38	—	250
Nursing Care Beds	64 ⁽²⁾	90 ⁽⁵⁾	—	133 ⁽⁷⁾
Square footage:				
Independent Living Units:				
Studios	—	—	—	—
One-bedroom apartments	800-1,129	616-934	840-1,190	595
Two-bedroom apartments	1,236-1,724	865-1,463	1,065-1,500	800-860
Villas/Cottages	—	—	—	1,180
Entrance Fee:				1,300
Independent Living Units:				
Studios	—	—	—	—
One-bedroom apartments	\$189,900 - 349,900 ⁽³⁾	—	—	\$30,000-32,000 ⁽⁸⁾
Two-bedroom apartments	\$389,900-499,900 ⁽³⁾	—	—	\$41,000-62,000 ⁽⁸⁾
Villas/Cottages	—	—	—	\$55,000-57,000 ⁽⁸⁾
Second Person Entrance Fee	—	—	—	\$70,000-177,000 ⁽⁸⁾
Monthly Fee				
Independent Living Units:				
Studios	—	—	—	—
One-bedroom apartments	\$1,995 - 2,695 ⁽³⁾	\$2,150-2,950	\$2,680-3,640	\$675 ⁽⁸⁾
Two-bedroom apartments	\$2,995 - 3,995 ⁽³⁾	\$2,550-4,100	\$2,680-4,245	\$810-1,090 ⁽⁸⁾
Villas/Cottages	—	—	—	\$965-1,220 ⁽⁸⁾
Assisted Living Monthly Fee:	\$2,995-3,995 ⁽⁴⁾	\$2,450-2,800	—	\$995-1,360 ⁽⁸⁾
Second Person Monthly Fee	—	—	—	\$2,140-3,260 ⁽⁸⁾
Independent Living Units	\$795 ⁽³⁾	\$450	\$450	\$305 ⁽⁸⁾
Assisted Living Units	\$925 ⁽⁴⁾	\$2,400-2,500	—	\$505
Nursing Care:				
Daily fee	\$195 - 205 ⁽⁴⁾	\$102-135 ⁽⁵⁾	—	\$103-158
Occupancy rate:				
Independent living	N/A	100%	100%	99%
Assisted living	N/A	84% ⁽⁶⁾	—	99%
Nursing care	N/A	98%	—	97%

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 13 (continued)

Comparable Retirement Communities Within Primary Market Area

	Vickery Towers	The Bentley	Signature Pointe On the Lake	Planned Town Village North ⁽¹⁶⁾
Location	Dallas	Dallas	Dallas	Dallas
Miles from the Project	3.7	4.7	5.6	4.3
Type of Contract	Rental	Rental	Rental	Rental
CCRC or Non-CCRC	Non-CCRC	Non-CCRC	CCRC	Non-CCRC
Year Opened	1997	1997	1998	—
Independent Living Units:				
Studios	70	43	—	18
One-bedroom apartments	48	59	93	211
Two-bedroom apartments	32	7	12	56
Villas/Cottages	—	8	—	—
Total Independent Living Units	150	117	105	285
Assisted Living Beds	153	88	68 ⁽¹³⁾	—
Nursing Care Beds	—	—	178 ⁽¹⁴⁾	—
Square footage:				
Independent Living Units:				
Studios	406-604	325-527	—	430
One-bedroom apartments	824	538-730	400-676	653-816
Two-bedroom apartments	1,155	901	925-1,040	800-1,120
Villas/Cottages	—	681-1,018	—	—
Entrance Fee:				
Independent Living Units:				
Studios	—	—	—	—
One-bedroom apartments	—	—	—	—
Two-bedroom apartments	—	—	—	—
Villas/Cottages	—	—	—	—
Second Person Entrance Fee	—	—	—	—
Monthly Fee				
Independent Living Units:				
Studios	\$1,325-1,575	\$1,050-1,475	—	— ⁽¹⁶⁾
One-bedroom apartments	\$1,825-1,875	\$1,595-1,925	\$1,650-2,485	— ⁽¹⁶⁾
Two-bedroom apartments	\$2,025-2,325	\$2,295	\$3,195-3,840	— ⁽¹⁶⁾
Villas/Cottages	—	\$1,695-2,295	—	—
Assisted Living Monthly Fee:	\$1,825-3,775 ⁽⁹⁾	\$1,895-3,395 ⁽¹¹⁾	\$2,200-5,795 ⁽¹³⁾	—
Second Person Monthly Fee				
Independent Living Units	\$400	\$160-325	\$450	— ⁽¹⁶⁾
Assisted Living Units	—	—	\$600	—
Nursing Care:				
Daily fee	—	—	\$92-194 ⁽¹⁴⁾	—
Occupancy rate:				
Independent living	50% ⁽¹⁰⁾	100%	77% ⁽¹⁵⁾	—
Assisted living	50% ⁽¹⁰⁾	30% ⁽¹²⁾	60% ⁽¹⁵⁾	—
Nursing care	—	—	88% ⁽¹⁵⁾	—

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 13 (continued):

Source: Survey conducted August 1999

- Notes:
- (1) Includes 24 beds designated for early stage dementia care in the Project's assisted living facility.
 - (2) Includes 20 beds designated for late stage dementia care in the Project's nursing facility.
 - (3) The Project's entrance fees reflect a five percent Charter Resident Benefit discount off of the Standard Resident Deposit and are reflected in 2002 dollars. Entrance fees under both the Standard Resident Deposit and Charter Resident Benefit plans reflect a one-time 90 percent refundable deposit.
 - (4) The Project's assisted living rates are presented in 2002 dollars and nursing care rates are reflected in 2001 dollars. Dementia care beds included in assisted living are offered at monthly fees ranging from \$3,395 to \$3,995 (reflected in 2002 dollars). Dementia care beds included in the nursing care facility are offered at \$205 per day (reflected in 2001 dollars).
 - (5) Includes 22 beds designated for dementia care offered at rates between \$107 to \$197.
 - (6) Management of The Forum indicated lower occupancy in assisted living due to a high volume of transfers in and out of the facility from both independent living and nursing residents.
 - (7) Includes 55 beds designated for dementia care in the Alzheimer's Special Care Center at Presbyterian Village offered at rates between \$3,325 and \$4,175 per month.
 - (8) Entrances fees at the Presbyterian Village North reflect "Prepaid Lease Prices" which are non-refundable. Presbyterian Village North also offers a rental option. Monthly rental rates in the studios range between \$1,250 and \$1,300; between \$1,760 and \$2,680 in the one bedroom apartments; between \$2,270 and \$2,335 in the two bedroom apartments, and between \$2,475 and \$2,675 in the duplexes. A rental option is not offered in the free standing homes. The second person monthly fee is \$480 for all rental units.
 - (9) Range of fees at Vickery Towers indicate unit size ranging from studio to two bedroom units in addition to the four levels of care offered at increments ranging between \$300 and \$400, which is based on the level of assistance required for activities of daily living.
 - (10) Management at Vickery Towers indicated lower occupancy due to one tower, consisting of 75 units, was recently refurbished and opened in July 1999. The facility was purchased by Emeritus approximately six months ago.
 - (11) Range of fees at The Bentley's assisted living facility, Bentley Manor, reflect two levels of care; a base level, Flex 1, and a higher level of assistance, Flex 2. Flex 2 provides for increased time required for assistance with activities of daily living as compared to the Flex 1 plan. The Flex 2 plan is offered at approximately \$300 higher per month than the Flex 1 plan as reflected in the fee range shown.
 - (12) Bentley Manor opened in June 1999 and is currently in the fill-up stage.
 - (13) Includes 28 beds designated for early stage dementia care in Signature Pointe's assisted living facility. Early stage dementia care is offered at rates ranging between \$3,508 and \$5,795 per month based on semi-private vs. private room accommodations and unit size. The second person monthly fee in assisted living is \$600.
 - (14) Includes 36 beds designated for late stage dementia care in Signature Pointe's nursing facility. Late stage dementia care is offered at rates ranging between \$117 and \$194 per day. The 168 nursing beds also include 68 licensed nursing beds designated as "assisted living plus" care offered at rates ranging between \$92 and \$175 per day.
 - (15) Signature Pointe on the Lake opened in September 1998 and is still in the fill-up stage.
 - (16) Town Village North is currently under construction and is scheduled to open in May 2000. Management of the new development indicated proposed fees had not been established yet; however, it is targeted to be an upscale community serving higher income qualified seniors. Management indicated marketing efforts will begin in October 1999 and the pre-leasing of units will begin in November, 1999.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Other Independent Living Providers

Management has also identified four existing stand-alone independent living providers with a total of 632 independent living units located in the primary market area. These facilities offer independent living apartments only and do not offer an additional type of health care. In addition, these independent living providers offer monthly fees which require lower income qualifications. Therefore, Management has identified these stand-alone independent living providers as non-comparable and the 632 independent living units associated with these facilities will not be included in the following penetration calculations.

In addition, there is one Non-CCRC, Monticello West, consisting of 55 independent living units and 132 assisted living beds located in the primary market area. Management has determined that Monticello West is non-comparable due to the smaller size of the independent living units and lower income eligibility. Therefore, the 55 independent living units associated with Monticello West are not included in the following penetration analysis.

Planned Independent Living Development

According to local planning agencies and interviews at the existing comparable retirement communities, there are no other planned retirement communities or proposed stand-alone independent living facilities in the primary market area other than Town Village North as described in Table 13.

Summary of Comparable Independent Living Units

Of the comparable retirement communities in the primary market area previously profiled, the total number of existing independent living units located on a CCRC campus is 545 and the total number of existing independent living units on a Non-CCRC campus is 413. Accordingly, the total number of all existing independent living units of the comparable retirement communities in the primary market area is 958. The total number of existing and planned independent living units in the primary market area increases to 1,499 with the 285 planned independent living units at the proposed development, Town Village North, and the addition of the Project's 256 independent living units.

Independent Living Penetration Analysis

The market penetration rate is calculated by adding the total number of independent living units of the Project to those of the comparable retirement communities and independent living providers within the primary market area and dividing by the total number of age and income qualified households. Project penetration is that proportion of eligible households in a market area that must move into the Project to achieve full occupancy. Management has presented market and Project penetration rates for qualified households headed by individuals 65 years of age or older and for likely households headed by individuals 75 years of age or older. The following table presents both market and Project penetration rates within the primary market area assuming a \$35,000 income qualification based upon 2004 demographic projections.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 14
Independent Living Penetration Analysis - 2004

Based on a \$35,000 Income Qualification	Age and Income Eligible Households (65 Plus)	Likely Age and Income Eligible Households (75 Plus)
Market Penetration Rate for the Primary Market Area:		
Number of age and income eligible households	18,220	9,038
Market inventory of retirement communities:		
Project	212 ⁽¹⁾	212 ⁽¹⁾
Comparable retirement communities:		
Existing	910 ⁽²⁾	910 ⁽²⁾
Proposed	271 ⁽³⁾	271 ⁽³⁾
Total	1,393	1,393
Market penetration rate	7.6%	15.4%
Project Penetration Rate for the Primary Market Area:		
Number of age and income eligible households	18,220	9,038
Less: Existing inventory of available comparable units	910 ⁽²⁾	910 ⁽²⁾
Proposed competitive additions	271 ⁽³⁾	271 ⁽³⁾
Net number of age and income eligible households	17,039	7,857
Proposed units of the Project at 95 percent occupancy	212 ⁽¹⁾	212 ⁽¹⁾
Project penetration rate	1.2%	2.7%

Source: Management and Claritas, Inc., August 1999

- Notes: (1) Management has assumed that of the Project's 256 planned units, approximately 87 percent (223 units) would be filled by qualified residents originating from within the primary market area, based on the origin of Depositors, assuming a 95 percent occupancy rate (212 units).
- (2) Management has assumed that 100 percent of the residents at the existing comparable facilities (958 units) originated from within the primary market area, absent the analysis of specific resident origin data from these facilities and assuming a 95 percent occupancy rate (910 units).
- (3) Management has assumed that 100 percent of the potential residents who will reside at the planned comparable facility (285 units) will originate from within the primary market area, absent the analysis of specific resident origin data, assuming a 95 percent occupancy rate (271 units).

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Competitive Retirement Communities

Of the comparable retirement communities described previously, Management has identified the following four existing facilities and the one planned retirement community to be competitive when considering a \$50,000 income level and the anticipated service package to be offered at the Project:

- The Forum at Park Lane;
- Classic Residence by Hyatt;
- Presbyterian Village North;
- Signature Pointe on the Lake; and
- Town Village North.

These retirement communities are expected to compete for similar income qualified residents as those of the Project based on fees charged. The following table presents both market and Project penetration rates of the 691 existing independent living units and the 285 planned independent living units associated with the competitive facilities described above which are located in the primary market area, assuming a \$50,000 income qualification and based upon 2004 demographic projections.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 15

Independent Living Penetration Analysis - 2004

Based on a \$50,000 Income Qualification	Age and Income Eligible Households (65 Plus)	Likely Age and Income Eligible Households (75 Plus)
Market Penetration Rate for the Primary Market Area:		
Number of age and income eligible households	15,179	7,465
Market inventory of retirement communities:		
Project	212 ⁽¹⁾	212 ⁽¹⁾
Comparable retirement communities:		
Existing	656 ⁽²⁾	656 ⁽²⁾
Proposed	271 ⁽³⁾	271 ⁽³⁾
Total	1,139	1,139
Market penetration rate	7.5%	15.3%
Project Penetration Rate for the Primary Market Area:		
Number of age and income eligible households	15,179	7,465
Less: Existing inventory of available comparable units	656 ⁽²⁾	656 ⁽²⁾
Proposed competitive additions	271 ⁽³⁾	271 ⁽³⁾
Net number of age and income eligible households	14,252	6,538
Proposed units of the Project at 95 percent occupancy	212 ⁽¹⁾	212 ⁽¹⁾
Project penetration rate	1.5%	3.2%

Source: Management and Claritas, Inc., August 1999

- Notes: (1) Management has assumed that of the Project's 256 planned units, approximately 87 percent (223 units) would be filled by qualified residents originating from within the primary market area, based on the origin of Depositors, assuming a 95 percent occupancy rate (212 units).
- (2) Management has assumed that 100 percent of the residents at the existing competitive facilities (691 units) originated from within the primary market area, absent the analysis of specific resident origin data from these facilities and assuming a 95 percent occupancy rate (656 units).
- (3) Management has assumed that 100 percent of the potential residents who will reside at the planned comparable facility (285 units) will originate from within the primary market area, absent the analysis of specific resident origin data, assuming a 95 percent occupancy rate (271 units).

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Marketing the Project

The success of the Project is dependent on Management's ability to achieve specified presales, fill-up rates and turnover rates. Management began taking \$100 and \$1,000 non-binding priority deposits in October 1998. In May, 1999, Management began converting the priority deposits to contractual reservations by collecting five percent deposits of the respective entrance fee and by obtaining a signed Reservation Agreement. As of September 28, 1999, Management had converted 164 priority deposits to contractual reservations with five percent deposits.

The information in the following table reflects the history of Depositors of the Project who paid an initial five percent deposit, signed a Reservation Agreement and have been approved by the Board in accordance with residency requirements. As of September 28, 1999, 164 of the total 256 independent living units (64 percent) had been reserved.

Table 16
Marketing the Project

	Number of Units Reserved	Number of Cancellations	Net Reservations for Month	Cumulative Units Reserved	Cumulative Percentage of Total Units
1999:					
May ⁽¹⁾	26	0	26	26	10%
June	45	1	44	70	27%
July	54	7	47	117	46%
August	33	2	31	148	58%
September ⁽²⁾	19	3	16	164	64%
Total	177	13	164	164	64%

Source: Management

Note: (1) The Facility began marketing the Project by taking priority deposits of \$100 and \$1,000 in October 1998. Management began converting the priority deposits to five percent deposits in May, 1999.

(2) As of September 28, 1999.

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 Summary of Significant Forecast Assumptions and Significant Accounting Policies

The following table depicts the inventory of available units at the Project as well as units reserved by the 161 Depositors (three Depositors have reserved two units each) as of September 28, 1999.

Table 17

Inventory of Independent Living Units at the Project

Type of Unit	Approximate Square Footage	Available Inventory	Reserved Units ⁽¹⁾	Percentage Reserved
Apartments:				
One Bedroom Traditional	800	16	16	100%
One Bedroom Deluxe	896	27	18	67%
One Bedroom Grand	1,007	32	9	28%
One Bedroom Den	1,129	32	22	69%
Two Bedroom Classic	1,236	48	21	44%
Two Bedroom Den	1,376	42	33	79%
Two Bedroom Deluxe	1,500	45	35	78%
Two Bedroom Grand	1,724	14	10	71%
Total Independent Living Units		256	164	64%

Source: Management

Note: (1) Represents units selected by the 161 Depositors (three Depositors have reserved two units each.)

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 Summary of Significant Forecast Assumptions and Significant Accounting Policies

A questionnaire was mailed to 161 Depositors. As of October 12, 1999, 148 of the Depositors (92 percent) had returned the completed questionnaire. The following information was compiled for those 148 completed questionnaires.

- 151 (98 percent) indicated that they had paid a five percent deposit and that they intend to reside in an independent living unit at the Project.
- 2 (1 percent) indicated that they do not intend to reside in an independent living unit at the Project.
- 1 (1 percent) returned the survey incomplete, indicating that no disclosure will be made until additional information related to the Project is provided.
- 67 (44 percent) indicated that they would reside alone, 85 (55 percent) indicated that they would reside with a spouse, relative or friend.
- 137 (89 percent) indicated that they currently own their own home.
- 65 (47 percent) of the residents who currently own their own home indicated that it is necessary to sell their homes before paying the balance of their entrance fee and assuming occupancy of their independent living unit.
- Respondents indicated the following as to how soon they intended to move into their independent living unit after it becomes available:

Table 18
Move-ins After Independent Living Unit is Available

	Responses	Percentage of Respondents
0 - 30 days	40	27%
30 - 60 days	37	24%
60 - 90 days	8	5%
After sale of home	63	42%
Other	3	2%
Total	151	100%

Source: Questionnaire responses

- 10 (6 percent) of the respondents indicated they had reserved an independent living unit or were on a waiting list of a competitive community.
- Respondents indicated their primary reason(s) for choosing the Project were as follows:

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 19
Reason for Selecting the Project

	Number of Respondents ⁽¹⁾
Health care access	126
Geographic location	120
Physical security	89
Proximity to friends and relatives	79
Social activities	48
Other	23

Source: Questionnaire responses

Notes: (1) Respondents indicated more than one reason for choosing the Project.

The following table presents information regarding the reported net worth (including home values before payment of the entrance fee) and estimated annual income of the 161 Depositors as of September 28, 1999.

Table 20
Reported Annual Income and Net Worth

	Net Worth						Total
	Less than \$400,000	\$400,000 to \$600,000	\$600,000 to \$800,000	\$800,000 to \$1,000,000	\$1,000,000 to \$1,500,000	Above \$1,500,000	
Annual Income							
Less than \$35,000	—	2	—	—	—	3	5
\$35,000 to \$49,999	1	5	1	1	2	2	12
\$50,000 to \$59,999	—	4	3	3	3	1	14
\$60,000 to \$74,999	1	1	2	5	8	—	17
\$75,000 to \$99,999	—	1	5	7	11	14	38
\$100,000 to \$150,000	—	1	1	10	8	17	37
Greater than \$150,000	—	—	1	—	1	31	33
Total	2	14	13	26	33	68	156 ⁽¹⁾

Source: Resident applications

Notes: (1) Five Depositors have not disclosed financial data to Management. Of the 156 Depositors who reported financial information, the average net asset amount is approximately \$1,861,000 and the average annual income is approximately \$118,000. In addition, of the 156 Depositors who reported financial information, the median net asset amount is approximately \$1,175,000 and the median annual income is approximately \$95,000.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Description and Utilization of Assisted Living

According to the Texas Department of Human Services (the Department), assisted living facilities are licensed as Personal Care Homes under Texas Administrative Code Title 25. Personal Care Homes are permitted to assist residents with activities of daily living and personal care services. A Personal Care Home is defined as an establishment which provides food and shelter, personal care services, minor treatment under the direction of physician or services which meet some need beyond basic provision of food, shelter, and laundry, to four or more persons. Residents requiring nursing care other than the services provided by a home health agency cannot be admitted to a Personal Care Home. Personal Care Homes are able to serve residents who have mental or emotional disturbance but are not a danger, need assistance with movement, bathing, dressing and grooming, need daily reminders and need assistance with the administration of medications. There is no Certificate of Need (CON) requirement for a Personal Care Home. For the purposes of this report, the general industry term "Assisted Living" will be utilized to describe these facilities.

Initially, Management intends to directly admit residents to the assisted living units of the Project from the surrounding local community in order to reach a stabilized occupancy level. Management anticipates that residents of the Project's independent living apartments will begin to move through the continuum of care and the assisted living units will eventually be filled, in part, by residents transferring from the independent living units of the Project.

The following table summarizes the number of units, the percentage occupied and current monthly fees of the comparable existing assisted living facilities in the primary market area as of a survey conducted in August 1999. The weighted average occupancy level of these facilities is 69 percent due in part to the number of recently opened facilities that are in their fill-up stage.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 21
Assisted Living Facilities in the Primary Market Area

Assisted Living Facilities: The Project	Stand-Alone Facility	Miles from the Project	Number of Assisted Living Beds	Number of Dementia Care Beds	Percentage Occupied	Square Footage	Monthly Fees	
							Assisted Living	Dementia Care
Caruth Haven Court	No	—	60	24	—	267-533	\$2,995 - 3,695 ⁽¹⁾	\$3,395-3,995 ⁽¹⁾
The Forum at Park Lane	Yes	1.2	99	—	50% ⁽²⁾	400-630	\$2,400-4,325 ⁽³⁾	—
Walnut Place	No	1.4	38	—	84% ⁽⁴⁾	300-800	\$2,450-2,800 ⁽⁵⁾	—
Atria Preston Hollow	Yes	2.0	49	35	90%	350-600	\$2,250 -3,250 ⁽⁶⁾	\$3,000-3,800
Monticello West	Yes	2.6	48	16	73% ⁽⁷⁾	305-438	\$1,850-3,600 ⁽⁸⁾	\$2,950-3,350
Brighton Gardens	No	2.7	88	44	86% ⁽⁹⁾	325-525	\$1,950-3,100 ⁽¹⁰⁾	\$2,075-\$4,050
ActivCare-Turtlecreek	Yes	3.5	109	—	83% ⁽¹¹⁾	500	\$2,320-3,085	—
Presbyterian Village North	Yes	4.3	—	50	36% ⁽¹²⁾	250-350	—	\$1,995-,3450
Vickery Towers	No	3.7	78	55	99%		\$2,140-3,260	\$3,325-4,175
Bentley Manor	No	3.7	153	—	50% ⁽¹³⁾	406-1,155	\$1,825-3,775 ⁽¹⁴⁾	—
Signature Pointe on the Lake	No	4.7	88	—	30% ⁽¹⁵⁾	389-1,033	\$1,895-3,395 ⁽¹⁶⁾	—
Total Beds (excluding the Project)			790	224	69% ⁽¹⁹⁾		\$2,200-3,300 ⁽¹⁸⁾	\$3,508-5,795 ⁽¹⁸⁾

Source: Survey conducted August 1999

- Notes:
- (1) Assisted living and dementia care fees are reflected in 2001 dollars.
 - (2) Caruth Haven Court opened in February 1999 and is currently in the fill-up stage.
 - (3) Range of fees for Caruth Haven Court reflect sizes of studios to one-bedroom units and four levels of care based on time required for assistance with activities of daily living. Incremental pricing between levels of care range between \$350 and \$400 per month. The second person monthly fee is \$600.
 - (4) Management of The Forum indicated lower occupancy in assisted living due to a high volume of transfers in and out of the facility from both independent living and nursing residents.
 - (5) Second person monthly fees at The Forum range between \$2,400 and \$2,500.
 - (6) The second person monthly fee at Walnut Place is \$500.
 - (7) Atria Preston Hollow opened in September 1998. Management of Atria Preston Hollow indicated higher turnover due to recent resident deaths and dissatisfaction with unit sizes.
 - (8) Range of fees indicated for Atria Preston Hollow reflects three levels of care, including a basic level of assistance with activities of daily living, increased assistance with daily activities of living including assistance with meals and escorts, and hands on assistance with bathing, dressing, grooming and escorts, respectively. Incremental rates between levels of care range from \$250 to \$500 per month and the second person monthly fee is \$750.
 - (9) Management of Monticello West indicated lower occupancy due to high competition with newer facilities entering the market targeting upscale residents and offering increased services.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 21 continued

- (10) Assisted living fees at Monticello West reflect two levels of care; basic assisted living services and "special services." Special services include no assistance with activities of daily living plus additional assistance with escorts and incontinence and two hour checks daily. Special services are approximately \$425 higher per month than basic assisted living services as reflected in the fee range shown. The second person monthly fee in basic assisted living is \$500 while the second person monthly fee in special services is \$850 as shown.
- (11) Management of Brighton Gardens indicated lower occupancy due to recent transfers to nearby nursing facilities for residents desiring a higher level of care.
- (12) ActivCare opened its Turtlecreek location in October 1997. Management of ActivCare indicated low occupancy due to poor location. Management of ActivCare has indicated preliminary plans to designate 25 of the 50 units as early stage dementia units in hopes of increasing occupancy.
- (13) Management at Vickery Towers indicated lower occupancy due the fact that one tower consisting of 75 units that was recently being renovated opened in July 1999. The facility was purchased by Emeritus approximately six months ago.
- (14) Range of fees at Vickery Towers indicate unit size ranging from studio to two bedroom units in addition to the four levels of care offered at \$300 to \$400 increments, which is based on time required for assistance with activities of daily living.
- (15) Bentley Manor opened in June 1999 and is in the fill-up stage.
- (16) Range of fees at The Bentley's assisted living facility, Bentley Manor, reflect two levels of care; the basic level, Flex 1 and a higher level of care, Flex 2. Flex 2 provides for increased time required for assistance with activities of daily living as compared to basic assistance with activities provided for under the Flex 1 plan. The Flex 2 plan is offered at approximately \$300 higher per month than the Flex 1 plan as reflected in the fee range shown.
- (17) Signature Pointe on the Lake opened in September 1999.
- (18) Range of fees for both assisted living and dementia care at Signature Pointe on the Lake are based on unit size and semi-private vs. private room accommodations, respectively. Assisted living offers efficiencies, suites and one-bedroom units with a second person monthly fee of \$600.
- (19) Weighted average occupancy for all facilities.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Planned Assisted Living Development

According to local planning agencies and interviews at the existing retirement communities, there are no planned stand-alone assisted living developments or planned expansion projects within the primary market area.

There are 1,014 existing assisted living beds, including dementia care beds within the assisted living primary market area. Of these 1,014 beds, 262 are currently unoccupied and in the fill-up stage. Including the 84 planned beds at the Project, there will be total of 1,098 existing and planned assisted living beds within the primary market area.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Assisted Living Penetration Analysis

The increased size of the private paying frail elderly market has in recent years attracted providers to develop new and creative options for caring for this population. There have been few barriers to entering this market, since regulatory means do not restrict or limit supply. Methodologies for projecting bed need or demand for assisted living vary. The Texas Department of Human Services does not have a bed need methodology for assisted living or Personal Care Facilities. Research studies have identified impairment levels in activities of daily living (ADL) such as dressing, bathing, eating, toileting, mobility and taking medications, and instrumental activities of daily living (IADL) such as meal preparation, home maintenance, shopping and personal finance, all of which generally are used to measure levels of functioning and estimate the care needs of a specific population. The decision by elderly persons to enter an assisted living facility to meet their need for assistance often depends on alternatives available and is somewhat more discretionary than the decision to enter a nursing care facility, according to industry research studies.

Population data and income statistics may be utilized to some extent to estimate the number of qualified households (75+) for assisted living services, yet should not be relied upon entirely as a measure of success for a facility. The amount of cross subsidization that occurs between Adult Care Givers (assumed to be those households aged 45 to 64 earning in excess of \$50,000 annually) and parents may provide the financial means for a non-income qualified senior to afford this level of care. Additionally, non-income qualified seniors may have an asset base which would provide the financial means to afford this level of care. Thus, Project and market penetration rates are shown as a range between age qualified households and age and income qualified households.

Project and market penetration estimates have been computed using the following data to estimate the size of the qualified market.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 22
**Percentage of Elderly Requiring Assistance
with Activities of Daily Living (ADL)**

Age Group	Percentage of Population Requiring and Seeking Assistance with ADL
75 - 79	19.5%
80 - 84	31.2%
85 and over	49.5%
75 and over ⁽¹⁾	32.4%

Source: U.S. Bureau of the Census, The Need for Personal Assistance with Everyday Activities by Age: 1991. P-70-33, Washington, DC, December, 1993.

Note: (1) Weighted average for the 75+ age group.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Elderly requiring ADL assistance may seek care in a nursing home, boarding home, through home health services, or through other supportive programs, including a family caregiver.

Management has reported that the prospective residents of the assisted living units at the Project will generally meet the following profile prior to occupancy:

- 75 years of age or older;
- Living alone; and
- Requiring some assistance with activities of daily living.

Additionally, income characteristics have been applied to determine a range of Project and market penetration rates for age qualified and age and income qualified households. The income assumption is that a prospective resident will have an annual income of at least \$25,000, or will have an annual income between \$15,000 and \$25,000 and own a home. This assumption allows those with a home to be included as qualified households assuming that this asset base would be sufficient to cover the charges of an assisted living setting.

Table 23

Estimated Number of Qualified Households in the Primary Market Area - 2004

Estimated Age Eligible Households ⁽¹⁾	Estimated Age and Income Eligible Households ⁽²⁾	Percentage Requiring Assistance ⁽³⁾	Percentage Living Alone ⁽⁴⁾	Estimated Number of Age Qualified Households	Estimated Number of Age and Income Qualified Households
14,566	—	32.4%	57.1%	2,695	—
—	11,179	32.4%	57.1%	—	2,068

Source: Claritas, Inc., August 1999.

- Notes:
- (1) Age eligible households are those households age 75 and over, as shown in Table 22.
 - (2) Age and income eligible households include households (age 75 and over) with income over \$25,000 and homeowners (age 75 and over) with income between \$15,000 and \$25,000. The 2004 estimated median home value of homes owned by householders age 75 and over in the assisted living primary market area was \$280,841 according to information obtained from Claritas, Inc.
 - (3) Percentage requiring assistance is a weighted average of the eligible households and the percentage of the population requiring assistance with activities of daily living.
 - (4) Based on Claritas, Inc. demographic estimates, 1990 census.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

The Project penetration rate is presented as a range between the percentage of the age eligible households and the percentage of age and income eligible households that the Project would need to attract in order to achieve stabilized occupancy. Project penetration is calculated by dividing the number of assisted living units at the Project, by the total number of age eligible households and age and income eligible households in the assisted living primary market area.

The market penetration rate is presented as a range between the percentage of the age eligible households, and the percentage of age and income eligible households that the total market has or must absorb for the entire market to achieve stabilized occupancy. The market penetration rate is calculated by dividing the total competitive number of assisted living units within the assisted living primary market area by the total number of age and income qualified households within the assisted living primary market area. The following table presents Project and market penetration rates for assisted living services.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 24

Assisted Living Project and Market Penetration Rates – 2004

	Age Eligible Households	Age and Income Eligible Households
Project Penetration Rate for the Primary Market Area:		
Number of Qualified Households	2,695	2,068
Number of Planned Assisted Living Beds at the Project	76 ⁽¹⁾	76 ⁽¹⁾
Project Penetration Rate (based on Qualified Households)	2.8%	3.6%
Market Penetration Rate for the Primary Market Area:		
Number of Qualified Households	2,695	2,068
Number of Existing Filled Beds (a)	677 ⁽²⁾	677 ⁽²⁾
Total Qualified Households (b)	3,372	2,745
Number of Existing Filled Beds	677 ⁽²⁾	677 ⁽²⁾
Number of Planned Beds at the Project	76 ⁽¹⁾	76 ⁽¹⁾
Total Beds, Including the Project (c)	753	753
Number of Planned Competitive Beds and Beds Currently Being Filled (d)	236 ⁽³⁾	236 ⁽³⁾
Market Penetration Rates:		
Pre-opening of the Project (a/b)	20.1%	24.7%
Post-opening of the Project (c/b)	22.3%	27.4%
Post-opening of the Project and Planned and Currently Being Filled Competitive Beds ((c+d)/b)	29.3%	36.0%

Source: Management and Claritas, Inc. August 1999

- Note: (1) The penetration rates are calculated based upon the planned 84 assisted living beds at the Project assuming 100 percent of the prospective residents originate from the primary market area, and the beds reach 90 percent occupancy (76 beds).
- (2) Management has assumed that 100 percent of the residents at the existing facilities (752 beds) originated from within the primary market area, absent the analysis of specific resident origin data from these facilities and assuming a 90 percent occupancy rate (677 beds).
- (3) There are no planned beds, however, 262 beds are currently being filled at the existing facilities in the primary market area that have recently opened. Management has assumed that 100 percent of the residents at the recently opened facilities (262 beds) originated from within the primary market area, absent the analysis of specific resident origin data from these facilities and assuming a 90 percent occupancy rate (236 beds).

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 Summary of Significant Forecast Assumptions and Significant Accounting Policies

The following table provides an analysis of the Adult Care Givers within the assisted living primary market area who may potentially subsidize parental income in order that a parent would qualify for residency in an assisted living bed or influence a parental decision to choose the Project.

Table 25	
Analysis of Adult Care Givers in the Primary Market Area	
Profile of Adult Care Giver – 2004	Primary Market Area
Householders earning > \$50,000	
Age Cohort	
45 – 54	18,257
55 – 59	6,671
60 – 64	5,602
Total (A)	30,620
Penetration Rates of Adult Care Giver	
Pre-opening of Project ⁽¹⁾	2.2%
Post-opening of Project and Beds Currently Being Filled ⁽²⁾	3.2%

Source: Claritas, Inc., August 1999

Notes: (1) (677 total existing beds/A)

(2) ((677 total existing beds + 76 beds as calculated at the Project + 236 beds currently being filled as calculated at Table 24)/A)

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Demand for Nursing Care Services

According to the Texas Department of Human Services (the "Department"), there has been a moratorium on Medicaid nursing beds in Texas since legislation was passed on September 1, 1985. Due to this moratorium, Medicaid nursing beds are strictly limited to the physical facility design for which they were originally certified unless their transfer was expressly approved by the Department. Currently, there are regulations which govern the allocation, reallocation and decertification of Medicaid nursing beds on the occupancy of the nursing facilities in each county. There is no Certificate of Need requirement for private-pay nursing facilities in Texas.

The nursing beds at the Project are primarily reserved for residents who have signed a Reservation Agreement or Residency Agreement and are otherwise available for private pay residents from the community. Management anticipates that need for skilled nursing dementia services and the private room accommodations to be offered in the nursing facility will create sufficient demand from private payors in order to maintain the forecasted level of occupancy in the nursing facility.

A summary of the total number of nursing beds, daily charges, and occupancy rates as of August 1999 of the comparable nursing facilities nearest to the Project which are located in the primary market area is provided in the following table.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 26

Nursing Facilities in the Primary Market Area

	The Project	The Forum at Park Lane	Walnut Place	Traymore	Presbyterian Village North	IHS of Dallas at Treemont	Signature Pointe on the Lake
Miles from Project	—	1.4	2.0				5.6
Number of Nursing Care Beds	44	68	246	150	179	130	142
Number of Dementia Care Beds	20	22	54	—	—	—	36
Occupancy rate	—	98%	90%	100%	97%	70% ⁽³⁾	88% ⁽⁴⁾
Daily Rates							
Nursing Care							
Private	\$190-205 ⁽¹⁾	\$135	\$135-150	\$145-174	\$137-158	—	\$138-175
Semiprivate	—	\$102	\$90-100	\$117-140	\$103	\$106	\$92-133
Dementia Care	\$205 ⁽¹⁾	\$107-197	\$105-140	—	—	—	\$117-194
Payor Mix							
Private	100%	93%	100%	100%	100%	57%	80%
Medicaid	—	—	—	—	—	17%	—
Medicare	—	7%	—	—	—	9%	10%
Other	—	—	—	—	—	17%	10%

Source: Information based on telephone surveys conducted in August 1999.

- Notes:
- (1) Nursing care and related dementia care rates have been reflected in 2001 dollars.
 - (2) The 142 nursing beds also include 68 licensed nursing beds designated as “assisted living plus” care offered at rates ranging between \$92 and \$175 per day which are not reflected in the fee range shown for nursing care.
 - (3) Management of IHS indicated difficulty maintaining occupancy due to a larger number of semi-private rooms when residents appear to desire larger private rooms.
 - (4) Signature Pointe on the Lake opened in September 1998 and is currently in the fill-up stage.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Summary of Market Analysis

Future utilization of the Project depends on various factors, including:

- The Project's primary market area and certain economic and demographic factors which could affect its future utilization.
- Comparable retirement communities within its defined primary market area.
- Management's ability to market the proposed independent living units at the Project.
- Future turnover in independent living unit residency due to mortality, transfers to/from the various levels of care and the ability of the Project to market the independent living units as they become available.

Projected utilization for the Project is based on the following assumptions:

- Independent living units will be substantially filled by couples and individuals with incomes over \$50,000 and assets sufficient (or supported by adult care givers) to cover the monthly fees and other estimated living expenses.
- Marketing efforts for independent living units will be directed at the primary market area defined as a quadrilateral area surrounding the site in order to attract qualified residents.
- Approximately 86 percent of independent living units are expected to be filled by individuals and couples from the primary market area.
- Management evaluates all resident applications to ensure persons desiring residence at the Project generally will have incomes and net worth sufficient to pay the required entrance fee and monthly fees, and are capable of independent living at the time they sign the Reservation Agreement or Residency Agreement.
- Management expects that assisted living utilization will result from temporary and extended stay transfers from the independent living and direct admissions from the primary market area.
- Management expects that nursing utilization will result from temporary and extended stay transfers from the independent living and assisted living units and direct admissions from the primary market area.

Assumed Project Utilization

Assumed utilization for the Project is forecasted by Management based upon their experience with comparable facilities and the Project's existing market and competition. Units becoming available due to death, withdrawal or transfer to assisted living or nursing; and double occupancy of the independent living units has been provided by the Corporation's actuary, Milliman and Robertson, Inc. (the "Actuary").

The assumed utilization of the Project's various levels of care is presented in the next three tables.

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 Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 27
Assumed Utilization Schedule
Independent Living Units

Year Ending Dec. 31	Units Available			Units Occupied ⁽¹⁾				Total Units Becoming Available ⁽²⁾		
	Beginning of Year	End of Year	Weighted Average for Year	Beginning of Year	End of Year	Weighted Average for Year	Average Occupancy ⁽³⁾	Death or Withdrawal	Permanent Transfer to Assisted Living Unit or Skilled Nursing Bed	
2001	—	256	43	—	28	3	1%	—	—	
2002	256	256	256	28	135	85	33%	4	1	
2003	256	256	256	135	207	174	68%	7	3	
2004	256	256	256	207	243	230	90%	8	4	
2005 ⁽⁴⁾	256	256	256	243	243	243	95%	7	7	

Source: Management and the Actuary

- Notes: (1) Management assumes that the Project's independent living units will open in November 2001 and will reach 95 percent occupancy in 36 months in October 2004.
 (2) Total units becoming available is based on projections provided by the Corporation's actuary.
 (3) The average occupancy percentage is based on the weighted average of units available during that year.
 (4) **Year 2005 presented for information purposes.**

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 28

Assumed Utilization Schedule
Assisted Living Units (including Dementia)

Year Ending Dec. 31	Units Available			Units Occupied ⁽¹⁾			
	Beginning of Year	End of Year	Weighted Average for Year	Beginning of Year	End of Year	Weighted Average for Year	Average Occupancy ⁽²⁾
2001	—	—	—	—	—	—	—
2002	84	84	84	—	38	22	26%
2003	84	84	84	38	62	50	60%
2004	84	84	84	62	75.5	71	85%
2005 ⁽³⁾	84	84	84	75.5	75.5	75.5	90%

Source: Management

- Notes: (1) Management assumes that the Project's assisted living units will open in January 2002 and will 90 percent occupancy in 34 months in October 2004.
 (2) The average occupancy percentage is based on the weighted average of units available during that year.
 (3) **Year 2005 presented for information purposes.**

Table 29

Assumed Utilization Schedule
Skilled Nursing Beds (including Dementia)

Year Ending Dec. 31	Units Available			Units Occupied ⁽¹⁾			
	Beginning of Year	End of Year	Weighted Average for Year	Beginning of Year	End of Year	Weighted Average for Year	Average Occupancy ⁽²⁾
2001	—	—	—	—	—	—	—
2002	64	64	64	—	36	22	34%
2003	64	64	64	36	59.5	48	75%
2004	64	64	64	59.5	59.5	59.5	93%
2005 ⁽³⁾	64	64	64	59.5	59.5	59.5	93%

Source: Management

- Notes: (1) Management assumes that the Project's nursing beds will open in January 2002 and will reach 93 percent occupancy in 26 months in December 2003.
 (2) The average occupancy percentage is based on the weighted average of units available during that year.
 (3) **Year 2005 presented for information purposes.**

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Move-in rates, as forecasted by Management, are shown in the following table.

Table 30

Forecasted Move-in Rates

Month of Move-In	Independent Living Units	Assisted Living Units	Nursing
November-2001	15	-	-
December-2001	13	-	-
January-2002	11	6	6
February-2002	10	4	5
March-2002	10	3	3
April-2002	9	3	3
May-2002	9	3	3
June-2002	9	3	3
July-2002	9	3	2
August-2002	9	3	2
September-2002	8	3	2
October-2002	8	3	2
November-2002	8	2	2
December-2002	7	2	2
January-2003	7	2	2
February-2003	7	2	2
March-2003	7	2	2
April-2003	7	2	2
May-2003	6	2	2
June-2003	6	2	2
July-2003	6	2	2
August-2003	6	2	2
September-2003	5	2	2
October-2003	5	2	2
November-2003	5	2	2
December-2003	5	2	2
January-2004	4	2	2.5
February-2004	4	2	
March-2004	4	2	
April-2004	4	2	
May-2004	4	1	
June-2004	4	1	
July-2004	4	1	
August-2004	4	1	
September-2004	3	1	
October-2004	1	0.5	
Total	243	75.5	59.5

Source: Management

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

The forecasted double occupancy percentages in the independent living units are based upon assumptions provided by the Actuary and are as follows:

Table 31
Double Occupancy Percentage

Year	Double Occupancy Percentage
2000	- %
2001	44%
2002	43%
2003	42%
2004	41%
2005 ⁽¹⁾	38%

Source: The Actuary

Note: (1) Year 2005 presented for information purposes.

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 Summary of Significant Forecast Assumptions and Significant Accounting Policies

The following table summarizes the assumed origin and utilization of assisted living units, and skilled nursing beds including transfers from the independent living units, as provided by the Actuary, and direct admissions from the outside community.

Table 32
Assumed Utilization
of Assisted Living Units and Skilled Nursing Beds

Assisted Living Units

Year	Permanent Transfers from Independent Living Units	Temporary Transfers from Independent Living Units	Direct Admissions	Total
2001	—	—	—	—
2002	2	—	20	22
2003	5	—	45	50
2004	9	—	62	71
2005 ⁽¹⁾	12	—	63.5	75.5

Nursing Beds

Year	Permanent Transfers from Independent and Assisted Living Units	Temporary Transfers from Independent Living and Assisted Living	Direct Admissions	Total
2001	—	—	—	—
2002	2	2	17	21
2003	4	5	38	47
2004	9	7	43.5	59.5
2005 ⁽¹⁾	15	8	36.5	59.5

Source: Management and the Actuary
 Note: (1) Year 2005 presented for information purposes.

The assisted living units are assumed to be occupied by residents transferring from the independent living units as well as residents entering directly from the outside community. The skilled nursing beds are assumed to be occupied by residents transferring from the independent living units and assisted living units, as well as by residents from the outside community.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Summary of Significant Accounting Policies

(a) Basis of Accounting

The Corporation maintains its records according to the accrual basis of accounting.

(b) Deferred Costs

A portion of the marketing cost incurred by the Corporation in connection with acquiring initial Residency Agreements will be capitalized. These costs will be amortized on a straight-line basis over a period approximating the average life expectancy of the initial residents occupying the independent living units, assumed to approximate 12 years. Costs associated with the issuance of the Series 1999 Bonds will be capitalized and amortized over the life of the bonds using the effective interest method. These amortized costs are reflected in the statements of activities and change in net assets under amortization.

(c) Property and Equipment

Property and equipment are recorded at cost. Depreciation is being provided on the straight-line method over the estimated useful lives of depreciable assets. The cost of maintenance and repairs is charged to operations as incurred, whereas significant renewals and betterments are capitalized.

(d) Investment Income

Investment income is reported as operating revenue. Management has not forecasted unrealized gains or losses on the underlying investment and trustee-held funds.

(e) Interest Expense During Construction

Interest cost incurred on borrowed funds during the period of construction of capital assets, net of interest earnings during this same period, is capitalized as a component of the cost of acquiring those assets.

(f) Deferred Revenue - Entrance Fees

Entrance fees which are expected to be non-refundable to the resident are recorded as deferred revenue and are amortized into revenue using the straight-line method over the estimated remaining life expectancy of the resident, as determined by an actuarial report. The remaining life expectancy is re-evaluated annually and amortization periods adjusted accordingly. The balance of entrance fees expected to be refundable is amortized into revenue using the average asset life of the buildings on a straight-line basis.

(g) Estimated Obligation to Provide Future Services to Continuing Care Residents

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

The Corporation calculates the present value of the net cost of future services and use of facilities to be provided to residents under the Residency Agreement and compares that amount to the balance of deferred entrance fees. If the present value of the net cost of future services and use of the facilities exceeds deferred entrance fees, a liability is recorded (estimated obligation to provide future services and use of facilities to continuing care residents in excess of amounts received or to be received). No such obligation exists through the forecast period based on Management's assumptions.

(h) Resident Service Revenues

Resident service revenues are recorded at the estimated net realizable amount from residents and others for services rendered.

(i) Derivative Instruments

Management assumes the Corporation will enter into an interest rate swap with a rated counterparty in order to convert its variable rate debt under the Series 1999D Bonds into a fixed rate for a portion of the forecast period. The swap agreement contemplates an exchange of variable rate payments by the Corporation and fixed rate payments by a counterparty. The interest rate differential paid or received under the swap agreement is assumed to be recognized over the swap period as adjustments to interest expense. Management has forecasted that the Corporation would pay net interest on the Series 1999D Bonds at an effective rate equal to 4.5 percent. Management has not forecasted any gain or loss on the termination of the swap agreement.

Resident Service Revenues

Revenues for the Corporation are primarily generated from monthly service fees for the independent living units, amortization of entrance fees and monthly service fees and per diem charges from the assisted living and nursing residents.

Monthly service revenues for the independent living units are based on the monthly fees assumed by Management to be charged to the residents and the assumed utilization of the independent living units. Assisted living and nursing care revenues consist of revenue generated from services provided to residents either transferring from the independent living units or from residents admitted directly from outside the Project into the nursing beds or assisted living units. Residents transferring to an assisted living unit, specialty care or skilled nursing bed also pay the cost of additional meals and certain other supplies and services not covered under the monthly service fees.

Management has assumed that the first two months of resident move-ins into the independent living units will be subject to the Charter Resident Benefit (two months of free rent) and therefore, no revenue has been recorded in September and October 2001. In addition, Management has estimated that approximately 70 percent of double occupancy units will receive a Charter Resident Benefit under which the second person monthly service fee will be reduced by \$100.

Under the terms of the Residency Agreement, independent living residents have unlimited access to assisted living care, skilled nursing care, or specialty dementia care at lower rates than that required of non-life care residents which are directly admitted from the outside community. Specifically, upon permanent transfer from independent to assisted living or nursing, residents will pay the then market rate

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

for a two bedroom classic apartment home plus the cost of two additional meals per day. Upon a temporary transfer, residents will be charged the prevailing market rate for assisted living or nursing in addition to the monthly service fees associated with their existing independent living unit.

Resident service revenues were forecasted by Management based upon anticipated rates and are deemed competitive with similar communities in the primary market area.

Assisted living monthly fees for non-life care residents in 2002 dollars range from \$2,995 to \$3,995, depending upon unit type and care provided. Management estimates that nursing per diems in 2001 dollars will range from \$190 for the private units and \$205 for the private deluxe and private dementia units.

Nursing daily rates are assumed to increase by approximately 3 percent beginning January 1, 2002, and annually thereafter throughout the remainder of the forecast period.

Management assumes that monthly service fees for the independent living units and assisted living units would increase approximately 3 percent beginning January 1, 2003, and annually thereafter throughout the remainder of the forecast period.

The Project generates additional resident service revenue by charging for the following services:

- Rental of additional underground parking spaces;
- Additional resident and guest meals;
- Personal laundry;
- Barber and beauty; and
- Additional transportation.

Entrance Fees and Amortization

Forecasted entrance fees earned by the Corporation are based on the non-refundable portion of entrance fees being amortized on a straight line basis over the life expectancy of the residents in the independent living units, which has been forecast by the Actuary to be approximately 12 years, and on the refundable portion of entrance fees being amortized over the estimated useful life of the buildings.

Entrance fees rates are forecasted to increase at a 3 percent annual rate beginning in 2003 and annually thereafter throughout the forecast period.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

The following table summarizes entrance fees expected to be received by the Corporation from both initial entrants and from unit turnover caused by resident attrition.

Table 33
Entrance Fees
(in thousands)

	Conversion of Deposits ⁽¹⁾	Initial Entrance Fees, Net of Deposits ⁽²⁾	Total Initial Entrance Fees	Entrance Fees from Unit Turnover	Entrance Fee Refunds ⁽³⁾	Net Entrance Fees from Unit Turnover
1999	\$	—	—	—	—	—
2000		—	—	—	—	—
2001	520	9,859	10,379	—	(250)	(250)
2002	1,983	37,680	39,663	1,853	(1,022)	831
2003	1,335	26,155	27,490	3,818	(1,876)	1,942
2004	666	13,491	14,157	4,719	(2,330)	2,389
2005 ⁽⁴⁾	—	—	—	5,671	(2,472)	3,199

Source: Management and the Actuary

- Notes: (1) The table reflects the conversion of resident deposits (5 percent of the entrance fee) into entrance fees.
 (2) Initial entrance fees received are for the initial group of residents moving into the Project's independent living units.
 (3) Entrance fee refunds have been provided by the Actuary.
 (4) Year 2005 presented for information purposes only.

Pursuant to the Residency Agreement, refunds of entrance fees upon death or withdrawal of a resident are subject to reoccupancy of the resident's vacated independent living unit. During the initial years of operations, residents will transfer to either assisted living or nursing, generating vacancies of independent living units, which in turn generate new entrance fees upon their resale, with no associated refund due to the resident that transferred until their death or withdrawal.

The following table contrasts the delayed refunds from transferred residents (actuarially calculated refunds), by year, with what the refund would have been had a refund been paid to the resident of the vacated unit upon their transfer to the assisted living or nursing unit (as opposed to their death or withdrawal) and is for informational purposes:

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 34

Comparison of Refund Assumptions

(In Thousands of Dollars)

	Actuarially Calculated Refunds ⁽¹⁾	Refunds Made Upon Transfer
2001	\$ 250	\$ —
2002	1,022	1,520
2003	1,876	3,336
2004	2,330	4,003
2005 ⁽²⁾	2,472	4,671

Source: Management and the Actuary

Note: (1) Reflected in Management's financial forecast through 2004.

(2) Year 2005 presented for informational purposes.

Investment Income

Investment income consists of interest earned on assets whose use is limited and cash and investment balances. Investment income is assumed to be earned at an average annual rate of 5.75 percent on all trustee-held funds, except for the Debt Service Reserve Fund - Series 1999A which earn interest at 6.25 percent as provided to Management by the Managing Underwriter, and rates ranging from 4 percent to 5 percent on cash and cash equivalents and investments.

Expenses

Expenses for the Corporation have been forecasted by Management based upon historical experience of similar continuing care retirement communities adjusted for the assumed occupancy levels at the Project.

(a) Salaries, Wages and Related Benefits

Salaries and wages were based upon the assumed staffing levels, wage rates and assumed inflation of 3 percent annually. The cost of employee fringe benefits, consisting primarily of payroll taxes, health insurance and other costs, were forecasted by Management at approximately 24 percent of salaries and wages. The forecasted increase in fringe benefits is based on the assumed increases in staffing and salary and wage rates.

The following table presents the assumed staffing levels and average salaries for the Project during the forecast period.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Table 35					
Assumed Staffing Levels and Average Salaries					
Year ending December 31,					
	2001	2002	2003	2004	2005 ^(a)
Number of full time equivalents (FTEs)	58.0	106.9	145.9	185.5	185.5
Average salary	\$24,400	\$25,400	\$24,500	\$24,800	25,500

Source: Management

Note: (a) Year 2005 presented for information purposes.

(b) Administrative and General

Non-salary administrative and general expense includes costs for office supplies, telephone, professional fees and other miscellaneous costs. Management assumes administrative costs will increase 3 percent annually during the forecast period.

Administrative costs also include insurance costs for the Project, and real estate taxes.

Development costs and financial consulting fees incurred during the construction of the Project have been capitalized as property and equipment. Marketing costs and commissions incurred to obtain initial residents of the independent living units have been capitalized as unamortized marketing costs.

(c) Management Fees

Management fees are based upon the Management Agreement with the Manager, as discussed more fully in the subsection titled "Development and Management of the Project" on page B-12.

(d) Activities

Activity non-salary costs consist of travel, education, and resident entertainment costs as well as activities and wellness contract costs. Management forecasts activities expenses to increase 3 percent annually for inflation.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

(e) Dietary Services

Non-salary dining services costs, consisting of raw food and dietary supplies, were estimated by Management based on the experience of similar facilities and anticipated occupancy levels. Management assumes non-salary dining services expense would vary according to the number of residents at the facility. Inflationary increases in dietary expenses are assumed at 3 percent annually throughout the forecast period.

(f) Facility Costs

Facility non-salary costs consists of utilities and other costs of operating the Project. Facility costs were forecasted by Management based on the historical experience of similar facilities and anticipated utility cost per square foot. Costs are assumed to increase at a rate of 3 percent annually throughout the forecast period for inflation.

(g) Security

Security non-salary costs consist of certain expenses associated with providing security at the Project. Costs are assumed to increase at a rate of 3 percent annually throughout the forecast period for inflation.

(h) Environmental Services

Non-salary environmental services costs include repairs, housekeeping and laundry supplies and uniforms, and are assumed by Management to increase 3 percent annually for inflation.

(i) Assisted Living Services

Non-salary assisted living services expense consists of supplies and other costs for services provided to assisted living residents. Management assumes these costs would vary based on forecasted occupancy levels. Costs are assumed to increase at a rate of 3 percent annually throughout the forecast period for inflation.

(j) Nursing Services

Non-salary nursing services expense consists of supplies and other costs for nursing and patient medical services. Management assumes these costs would vary based on forecasted occupancy levels. Costs are assumed to increase at a rate of 3 percent annually throughout the forecast period for inflation.

Ground Lease Option and Ground Lease Agreement

The Corporation has entered into a Ground Lease Option Agreement dated September 9, 1997 (the "Option Agreement") with Intercity Investment Properties, Inc. (the "Owner"), a Texas corporation that currently owns the site where the proposed Project will be constructed. The Option Agreement provides the Corporation with the exclusive right to lease the property under specified terms and conditions as detailed in the separate Ground Lease Agreement (the "Ground Lease"). With the execution of the Option Agreement, the Corporation paid the Owner a non-refundable \$100,000 payment as initial option

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

consideration for a 6 month period. The Corporation has the right to extend this initial 6 month term for five successive 6 month periods provided that it provides the Owner with written notification of its intention to extend the option term and pays an additional \$100,000 per extension period. Management of the Corporation has exercised this extension right. The initial term of the option and the extension rights give the Corporation the ability to extend the aggregate option period to a total of 36 months. It is Management's intention to exercise this option upon closing of the bond offering and to enter into a lease arrangement with the Owner as described below.

The Corporation intends to lease the property on which the Project will be located under an operating lease with the Owner. The initial term of the Ground Lease is 55 years. Rental payments under the Ground Lease consist of base rent only and increase over time. Specifically, from the date that the Ground Lease is executed to the "Rent Escalation Date," the annual rental payment is \$1,200,000. The Rental Escalation Date is defined as the earlier of (1) six months after a Certificate of Occupancy is received from the City of Dallas or (2) thirty months after the initial execution of the Ground Lease. From the Rent Escalation Date through the "Stabilized Rent Date," the annual rental payment increases to \$1,600,000. The Stabilized Rent Date is defined as the earlier of (1) thirteen months after a Certificate of Occupancy is received from the City of Dallas or (2) thirty-seven months after the initial execution of the Ground Lease. Annual rental payments after from the Stabilized Rent Date through the end of the lease term are \$2,000,000 plus inflation adjustments. There is no purchase option associated with the Ground Lease or renewal option at the end of the initial lease term.

Rental payments will be increased for an inflationary factor beginning one year after the additional rent begins accruing equal to the CPI, but not to exceed 5 percent. Management has assumed a rate of inflation equal to 4 percent for the first two years, and 3 percent thereafter. Payment of the annual rental payments is not subordinate to debt service on the Series 1999 Bonds.

Rental payments (for 26.5 months) and option payments during the construction period are being funded with Series 1999 Bond proceeds.

Assets Whose Use is Limited

Financing for the Project is assumed by Management to be obtained primarily from the issuance of the Series 1999 Bonds. The Trustee is assumed to maintain the following funds and accounts for the Series 1999 Bonds under the terms of the related Series 1999 Trust Indentures (the Indentures).

- Project Fund, to be funded at closing from the Series 1999 Bond proceeds, will be utilized to pay the costs of Project construction and furnishings; in addition, interest, letter-of-credit fees and remarketing agent fees for the Series 1999 Bonds for a 30 month period will be paid from the Project Fund.
- Debt Service Reserve Fund- Series 1999A Bonds, to be funded at closing from the Series 1999 Bond proceeds, will contain an amount equal to the maximum annual principal and interest payment on the Series 1999A Bonds.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

- Debt Service Reserve Fund- Series 1999B Bonds, to be funded at closing from the Series 1999 Bond proceeds, will contain an amount equal to the maximum annual interest payment on the Series 1999B Bonds. The fund will be released and applied toward the final principal payment on the Series 1999B Bonds.
- Debt Service Reserve Fund- Series 1999C Bonds, to be funded at closing from the Series 1999 Bond proceeds, will contain an amount equal to the maximum annual interest payment on the Series 1999C Bonds. The fund will be released and applied toward the final principal payment on the Series 1999C Bonds.
- Debt Service Reserve Fund- Series 1999D Bonds, to be funded at closing from the Series 1999 Bond proceeds, will contain an amount equal to the maximum annual interest payment on the Series 1999D Bonds. The fund will be released and applied toward the final principal payment on the Series 1999D Bonds.
- Entrance Fees Fund, to contain separate accounts for the Series 1999B Bonds, Series 1999C Bonds, Series 1999D Bonds and Series 1999E Bonds, will be funded with entrance fees. The funds in this account will be used to redeem, prior to maturity, the principal on the Series 1999B Bonds, Series 1999C Bonds, Series 1999D Bonds and Series 1999E Bonds. Until all principal is paid for the Series 1999B Bonds, Series 1999C Bonds, Series 1999D Bonds and Series 1999E Bonds, all entrance fees received by the Corporation will be deposited into the Entrance Fees Fund.
- Special Reserve Fund, to contain two accounts, the Operating Account and the Leasehold Account, and to be funded from Entrance Fees. The Operating Account will be funded up to \$4,000,000. Ongoing operating expenses are assumed to be paid from operating revenue and shortfalls are assumed to be paid from the Operating Account. The Operating Account will remain funded at the \$4,000,000 level through entrance fees. The Leasehold Account will be funded to an amount equaling the annual ground lease rental amount.
- Bond Fund, to contain a principal and interest account. Management assumes that once the funded interest in the Project Fund has been utilized, the Corporation would make deposits into the Bond Fund equal to 1/6th of the next semi-annual interest payment due on the Series 1999A Bonds, Series 1999B Bonds, Series 1999C Bonds, and Series 1999E Bonds. Interest on the Series 1999D Bonds is assumed to be paid monthly. In addition, the Corporation would deposit, on a monthly basis, 1/12th of the next scheduled principal payment for the Series 1999A Bonds. The Bond Fund also contains a redemption account for the Series 1999B Bonds, Series 1999C Bonds, Series 1999D Bonds and Series 1999E Bonds. The redemption account would be funded from transfers from the Entrance Fees Fund.

For purposes of the feasibility study, Management has reflected entrance fees as retained in the Entrance Fees Fund (as opposed to transferring the entrance fees to the redemption account of the Bond Fund).

The Corporation is required pursuant to Texas statutes to fund a Reserve Fund Escrow equal to the total of all principal and interest payments due during the next 12 months on long-term financing arrangements. Under Texas statutes, this requirement can be met by other reserve funds held for the

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

purpose of meeting loan obligations if the total amount equals or exceeds the amount required by the statute. The Debt Service Reserve Funds held by the Trustee are intended to satisfy the debt service reserve requirements under Texas statutes. Under Texas statutes, the Trustee may release an amount equal to not more than one-twelfth of the Reserve Fund Escrow required if the Corporation requests the release in writing. The Trustee may not release funds from the Reserve Fund Escrow under this section more than once during a calendar year. The Corporation at any time may apply to the Commissioner for the withdrawal of all or part of the Reserve Fund Escrow. The Corporation may withdraw the funds upon the approval by the Commissioner. The application must be made and the approval given as provided by rule. The withdrawal must be repaid no later than 18 months after the date the amount is withdrawn.

Property and Equipment and Depreciation Expense

Property and equipment at the end of year 2004 is assumed by Management to be as follows:

Table 36

**Property and Equipment and Depreciation Expense
(in thousands of dollars)**

	Cost	Estimated Useful Life in Years	Forecasted Annual Depreciation
Land	\$ —	—	\$ —
Buildings	89,203	40	2,214
Furniture and Equipment	3,259	15	210
Total	\$ 92,462		\$ 2,424

Source: Management

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 Summary of Significant Forecast Assumptions and Significant Accounting Policies

A summary of the Project's construction costs, equipment additions and other fixed asset purchases during the forecast period is as follows:

Table 37
Schedule of Project Costs and Other Capital Additions
 (in thousands of dollars)

Year ending December 31,	Project Costs ⁽¹⁾	Other Fixed Asset Additions	Capitalized Net Interest Costs	Total
1999	\$ 6,715	—	1,059	\$ 7,774
2000	25,981	—	2,218	28,199
2001	49,715	50	3,594	53,359
2002	325	75	—	400
2003	217	100	—	317
2004	108	350	—	458
2005 ⁽²⁾	—	375	—	375

Source: Management

Note: (1) Capitalized Project costs exclude options payments on the land lease and lease payments during the construction period that are being expensed as incurred. Costs incurred with marketing of the Project are not reflected in the table.

(2) Year 2005 presented for information purposes.

Long-Term Debt and Interest Expense

The Corporation's land (leasehold interest), buildings, and equipment are assumed to be pledged as collateral for the Series 1999 Bonds. As provided by the Managing Underwriter, the Series 1999 Bonds will consist of:

- \$50,495,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Series 1999A Fixed Rate (the Series 1999A Bonds);
- \$7,335,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Series 1999B Extendable Rate Adjustable Securities SM (EXTRASSM)(the Series 1999B Bonds);
- \$5,000,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Series 1999C Extendable Rate Adjustable Securities SM (EXTRASSM)(the Series 1999C Bonds);
- \$55,000,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Series 1999D Variable Rate (the Series 1999D Bonds); and
- \$250,000 North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation Edgemere Project) Taxable

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Series 1999E Extendable Rate Adjustable SecuritiesSM (EXTRASSM)(the Series 1999E Bonds).

According to the Managing Underwriter, the Series 1999A Bonds are assumed to be tax-exempt fixed rate bonds and to have a bond yield equal to 7.43 percent and an average coupon rate of 7.19 percent. Interest payments on the Series 1999A Bonds are assumed to be payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. Principal on the Series 1999A Bonds is assumed to be payable annually on November 15 beginning in November 15, 2005 with a final maturity on November 15, 2029. The Series 1999A Bonds are assumed to be issued net of an original issue discount equaling approximately \$1,398,000.

According to the Managing Underwriter, the Series 1999B Bonds are assumed to be tax-exempt extendable rate adjustable bonds with interest payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. The average annual coupon interest rate on the Series 1999B Bonds is assumed to be 5.75 percent. The Series 1999B Bonds are assumed to mature on November 15, 2029. Management assumes the Series 1999B Bonds will be redeemed in full by November 15, 2004.

According to the Managing Underwriter, the Series 1999C Bonds are assumed to be tax-exempt extendable rate adjustable bonds with interest payable semi-annually on May 15 and November 15 of each year, beginning May 15, 2000. The average annual coupon interest rate on the Series 1999C Bonds is assumed to be 5.75 percent. The Series 1999C Bonds are assumed to mature on November 15, 2029. Management assumes that the Series 1999C Bonds will be redeemed in full by November 15, 2004.

The Corporation's Managing Underwriter has indicated that the Series 1999D Bonds are assumed to be tax-exempt variable rate demand bonds. Management anticipates that the Corporation will enter into an interest rate swap (the "SWAP") for a period that approximates the construction period and the initial move-in period in order to convert the interest rate on the Series 1999D Bonds from variable to fixed rate. The net interest cost associated with the Series 1999D Bonds is assumed to be 4.5 percent during the forecast period, as provided by the Managing Underwriter. Interest on the Series 1999D Bonds is assumed to be payable monthly beginning December 1st, 1999. The Series 1999D Bonds are assumed to have a final maturity of November 15, 2029. Management assumes that the Series 1999D Bonds will be redeemed in full by November 15, 2004. In addition to interest cost, the Corporation will pay letter-of-credit fees and remarketing agent fees while the Series 1999D Bonds are outstanding.

According to the Managing Underwriter, the Series 1999E Bonds are assumed to be extendable rate adjustable taxable bonds and to bear interest at an average rate of 8.00 percent during the forecast period. Interest on the Series 1999E Bonds is assumed to be payable semi-annually on May 15 and November of each year, beginning May 15, 2000. The Series 1999E Bonds are assumed to mature on November 15, 2029. Management assumes the Series 1999E Bonds will be redeemed in full by November 15, 2002. Proceeds from the issuance of the Series 1999E Bonds will be utilized by the Corporation to fund the costs of issuance in excess of applicable tax law limitations.

Interest expense includes amortization of the original issue discount associated with the Series 1999A Bonds (which has been calculated utilizing the level yield method) equal to \$12,000 in 1999 and \$53,000 throughout the remainder of the forecast period. Interest expense also includes the assumed net interest due to Charter Residents equal to approximately 2 percent (7 percent interest due to Charter Resident less 5 interest earned on reservation deposits) equal to \$16,000 in 1999, \$77,000 in 2000 and \$83,000 in 2001.

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 Summary of Significant Forecast Assumptions and Significant Accounting Policies

Interest expense on the Series 1999 Bonds, net of interest earnings, has been capitalized with property and equipment during the construction period.

The following table presents the forecasted annual debt service on the Series 1999 Bonds through 2008.

Table 38
Forecasted Annual Debt Service on the Series 1999 Bonds
(in thousands of dollars)

	Interest ⁽¹⁾	Principal	Annual Debt Service
1999	\$ 214	\$ —	\$ 214
2000	7,665	—	7,665
2001	7,703	—	7,703
2002	7,579	30,000 ⁽²⁾	37,579
2003	5,750	25,000 ⁽²⁾	30,750
2004	4,316	12,585 ⁽²⁾	16,901
2005	3,593	750	4,343
2006	3,548	795	4,343
2007	3,500	845	4,345
2008	3,449	895	4,344

Source: Management and the Managing Underwriter

Notes (1) Interest includes letter-of-credit fees and remarketing fees through 2004.

(2) Represent early redemption of the Series 1999B, Series 1999C, Series 1999D and Series 1999E Bonds.

Other Current Assets and Current Liabilities

Other current assets and current liabilities were estimated by Management based on industry standards and experience of similar facilities and approximate the following:

- Accounts receivable are forecasted at 30 days of resident service revenues.
- Prepaid expenses and other current assets are forecasted at 3 days of cash operating expenses.
- Accounts payable are forecasted at 15 days of cash operating expenses.
- Accrued expenses are based on salary expense and the number of days to be accrued at the end of each year, which approximates 14 days.
- Accrued interest is forecasted based on the assumed interest payment dates on the Series 1999 Bonds.

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Summary of Significant Forecast Assumptions and Significant Accounting Policies

Forecasted Impact of Year 2000

Management of the Corporation does not anticipate any year 2000 issues affecting its operations or incurring any material costs associated with potential remediation efforts.

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Supplementary Disclosure - Period Beyond the Forecast

The information presented under this section does not constitute a financial forecast. Although Management is unable to prepare a financial forecast for the year ending December 31, 2005, it believes that the following information is necessary for users to make a meaningful analysis of the forecasted results.

The information relating to the period covered under the supplementary disclosure is less reliable than the information presented in the financial forecast and, accordingly, is presented for analysis purposes only. Furthermore, there can be no assurance that the events and circumstances described in this analysis will occur.

Year 2005 is the first year during which the Project will operate at its stabilized occupancy levels during the entire year. Stabilized occupancy for the Project is assumed to be 95 percent, 90 percent, and 93 percent for the independent living units, assisted living units and nursing units, respectively.

Management has conducted sensitivity analyses on selected significant assumptions that it believes are particularly subject to variation. The sensitivity analyses are presented in Table A and Table B, and relate to the period beyond the forecast.

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Supplementary Disclosure for Period Beyond the Forecast
 Statement of Activity and Change in Net Assets (Deficit)
 For the Year Ending December 31, 2005
 (In Thousands of Dollars)

	2005
Revenue:	
Independent living fees	\$ 10,331
Assisted living fees	3,516
Nursing fees	4,794
Healthcare discount	(1,073)
Entrance fee amortization	2,953
Other	443
Investment income	1,341
Total revenue	22,305
Expenses:	
Administration	3,246
Management fee	400
Activities	206
Dietary services	2,777
Facility costs	1,224
Security	107
Transportation	188
Environmental services	513
Assisted living services	1,105
Nursing services	1,821
Ground lease and land options	2,699
Interest	3,640
Depreciation	2,460
Amortization	526
Total expenses	20,912
Change in unrestricted net assets (deficit)	\$ 1,393
Unrestricted net assets (deficit), beginning balance	\$ (26,526)
Unrestricted net assets (deficit), ending balance	\$ (25,133)

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Supplementary Disclosure for Period Beyond the Forecast
 Statement of Cash Flows
 For the Year Ending December 31, 2005
 (in Thousands of Dollars)

	2005
Cash flows from operating activities:	
Change in unrestricted net assets (deficit)	\$ 1,393
Adjustments to reconcile change in net assets (deficit) to net cash provided by (used in) operating activities:	
Depreciation and amortization	2,986
Series 1999 Bonds' discount amortization	53
Increase in prepaids and receivables	(76)
Increase (decrease) in current liabilities	13
Entrance fee amortization	(2,953)
Net cash provided by (used in) operating activities	1,416
Cash flows from investing activities:	
Increase in investments	(11,847)
Property, plant and equipment	(375)
Interest cost during construction	-
Payment of marketing costs	-
Decrease (increase) in escrowed resident deposits	-
Decrease (increase) in trustee held funds	9,736
Net cash provided by (used in) investing activities	(2,486)
Cash flows from financing activities:	
Entrance fees and deposits, net of refunds	3,199
Proceeds from the Series 1999 bonds and accrued interest	-
Original issue discount on Series 1999 Bonds	-
Principal payments on Series 1999 Bonds	(750)
Repayment of capital advances	-
Increase (decrease) in Charter Resident interest liability	-
Payment of issuance costs	-
Net cash provided by (used in) financing activities	2,449
Annual cash flow	\$ 1,379
Beginning balance of cash and cash equivalents	\$ -
Ending balance of cash and cash equivalents	\$ 1,379

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Supplementary Disclosure for Period Beyond the Forecast
Statement of Financial Position
At December 31, 2005
(in Thousands of Dollars)

Assets	2005
Current assets:	
Cash and cash equivalents	
Net accounts receivable	\$ 1,379
Dietary and supplies inventory	1,444
Assets whose use is limited - current	92
Total current assets	7,341
Long-term investments	10,256
	13,718
Assets whose use is limited:	
Debt Service Reserve Fund - Series 1999A	4,346
Debt Service Reserve Fund - Series 1999B	-
Debt Service Reserve Fund - Series 1999C	-
Debt Service Reserve Fund - Series 1999D	-
Project Fund- Funded Interest	-
Project Fund - Funded Letter-of-Credit and Remarketing Fees	-
Project Fund - Construction	-
Special Reserve Fund - Operating Account	4,000
Special Reserve Fund - Leasehold Account	2,699
Bond Fund	642
Entrance Fees Fund	-
Total assets whose use is limited	11,687
Less current portion	(7,341)
Assets whose use is limited, net	4,346
Property, plant and equipment	92,837
less accumulated depreciation	10,479
Net property, plant and equipment	82,358
Escrowed resident deposits	-
Unamortized marketing costs	3,193
Unamortized issuance costs	1,774
Total assets	\$ 115,645
Liabilities and Net Assets (Deficit)	
Current liabilities:	
Accounts payable	\$ 460
Accrued expenses	225
Accrued interest	444
Current portion of long-term debt	795
Total current liabilities	1,924
Long-term debt	48,950
Original issue discount	(1,068)
Applicant deposit liability	-
Charter resident interest liability	-
Deferred revenue, resident entrance fees	8,427
Refundable resident entrance fees	82,545
Net assets (deficit), unrestricted	(25,133)
Total liabilities and net assets (deficit)	\$ 115,645

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Supplementary Disclosure for Period Beyond the Forecast
Schedule of Debt Service Coverage and Other Ratios
 (in Thousands of Dollars)

For the Year Ending December 31, (in thousands of dollars, except ratios)		2005
Debt Service Coverage Ratio		
	\$	1,393
Change in unrestricted net assets (deficit)		
Deduct:		2,953
Entrance fee amortization		
Add:		2,460
Depreciation		526
Amortization		3,640
Interest expense		3,199
Entrance fees and deposits received, net of refunds (1)		
	\$	8,265
Funds available for debt service (1)	\$	4,346
Maximum annual debt service		1.90 x
Maximum annual debt service coverage ratio (1)		

(1) Pursuant to the Residency Agreement, refunds of entrance fees upon death or withdrawal of a resident are subject to reoccupancy of the resident's vacated independent living unit. During the initial years of operations, residents will transfer to either assisted living or nursing, generating vacancies of independent living units, which in turn generate new entrance fees upon their resale, with no associated refund due to the resident that transferred until their death or withdrawal. The Actuary has calculated a refund equal to \$2,472,000 in 2005 based upon these assumptions. If Management had paid a refund upon the vacating of a unit (as opposed to death or withdrawal of the resident), refunds in 2005 would approximate \$4,671,000 and the net entrance fees received, net of the refund amount would approximate \$1,000,000. Fund available for debt service would therefore decrease to approximately \$6,066,000 and the maximum annual debt service coverage ratio would approximate 1.40x.

At December 31, (in thousands of dollars, except ratios)		
Days Cash on Hand		
	\$	1,379
Cash		13,718
Long-term investments		4,000
Special Reserve Fund - Operating Account		2,699
Special Reserve Fund - Leasehold Account		
	\$	21,796
Total		
	\$	49
Daily operating expenses		445
Days Cash on Hand		

At December 31, (in thousands of dollars, except ratios)		2005
Reserve Ratio		
	\$	1,379
Cash and cash equivalents		13,718
Long-term investments		4,346
Debt Service Reserve Fund		4,000
Operating Reserve Fund		2,699
Leasehold Reserve Fund		
	\$	26,142
Total		
	\$	48,950
Long-term debt, less current portion		53%
Reserve Ratio		

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Sensitivity Analyses for Supplementary Disclosure

Sensitivity Analysis - I

The financial forecast is based on Management's assumptions that the Project would achieve and maintain a stabilized occupancy of 95 percent, 90 percent and 93 percent for the independent living units, assisted living units, and nursing care units, respectively, in year 2004, and that the Project would operate at its forecasted occupancy levels for an entire year in year 2005.

The financial data presented in Table A is provided to demonstrate the impact of a 1 percent decline in occupancy on the Maximum Annual Debt Service Coverage Ratio, Reserve Ratio and Days Cash on Hand Ratio and the approximate occupancy percentage to meet a breakeven ratio (defined by Management as a 1.00x Maximum Annual Debt Service Coverage Ratio) for year 2005, which is beyond the forecast period.

Table A
Sensitivity Analysis - I
Decline in Occupancy
Estimated Financial Information
2005 - Period Beyond the Forecast

	Year 2005	1% Decline in Occupancy	Breakeven Ratio Occupancy
Overall Occupancy			
Independent Living	95%	94%	81%
Assisted Living	90%	89%	73%
Nursing	93%	92%	78%
Maximum Annual Debt Service Coverage Ratio	1.90x	1.84	1.00x
Reserve Ratio	53%	50%	10%
Days Cash on Hand Ratio	445 Days	414 Days	12 Days

Source: Management

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Sensitivity Analysis - II

Management's forecast assumes that the independent living units would achieve stabilized occupancy equal to 95 percent after a 36-month move-in period. The financial data presented in Table B is provided to demonstrate the impact of an increase in the move-in period from 36 months to 48 months, twelve months longer than Management's forecast, on the Maximum Annual Debt Service Coverage Ratio, Reserve Ratio and Days Cash on Hand Ratio. For purposes of this sensitivity, Management assumes that the move-ins for the first twelve months would be the same as shown at Table 30 on page B-62; thereafter, Management has assumed the next 15 months at 4 move-ins per month, and the final 21 months at 3 move-ins per month.

Table B
Sensitivity Analysis -II
Extended Independent Living Unit Move-in Period
Estimated Financial Information
2005 - Period Beyond the Forecast

	Year 2005	Sensitivity -II
Move-In Months	36	48
Maximum Annual Debt Service Coverage Ratio	1.90x	1.66x
Reserve Ratio	53%	43%
Days Cash on Hand Ratio	445 Days	339 Days

Source: Management

APPENDIX C

**DEFINITIONS OF CERTAIN TERMS
AND SUMMARY OF CERTAIN PROVISIONS
OF CERTAIN PRINCIPAL DOCUMENTS**

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TABLE OF CONTENTS

DEFINITION OF CERTAIN TERMS C-1

THE MASTER INDENTURE C-17

- Payment of Obligations C-17
- Application of Entrance Fees C-17
- Entrance Fees Fund C-17
- Operating Account C-19
- Leasehold Account C-19
- Investment of Funds C-19
- Payment of Principal, Premium and Interest; Receipts C-20
- Payment of Ground Lease Rentals, Taxes and Other Claims C-20
- Maintenance of Properties C-20
- Limitation on Disposition of Assets C-20
- Obligor to Provide Information; Stable Occupancy C-21
- Statement as to Compliance C-21
- Annual Audit of Obligated Group; Monthly Financial Report; Marketing and Occupancy Reports C-21
- Rate Covenant C-21
- Insurance C-23
- Limitations on Additional Indebtedness C-24
- Liens and Encumbrances C-27
- Budget C-27
- Operating Ratio Covenant C-27
- Liquidity Ratio Covenant C-28
- Failure to Maintain Ratios Not a Default C-29
- Marketing Targets C-29
- Occupancy Targets C-30
- Failure to Meet Targets Not a Default C-31
- Trade Payables Covenant C-31
- Management Consultant; Marketing Consultant C-31
- Management and Marketing Reports and Plans C-32
- Residency Agreements C-32
- Waiver of Certain Covenants C-32
- Insurance and Condemnation Proceeds C-32
- Leasehold Mortgage Provisions C-33
- Limitations on Consolidation, Merger, Conveyance and Transfer C-35
- Successor Corporation Substituted C-35
- Admission Of Obligated Group Members C-35
- Withdrawal of Obligated Group Members C-36
- Successor Obligated Group Representative C-36
- Compliance Certificates and Reports C-37
- Defaults and Remedies C-37
- Collection of Indebtedness and Suits for Enforcement by Master Trustee C-39
- Limitations on Suits C-39
- Control by Holders C-39
- Application of Money Collected C-40
- Resignation or Removal of the Master Trustee C-40
- Concerning the Master Trustee C-40
- Amendments and Waivers C-41
- Defeasance C-42

THE BOND INDENTURE C-43

- General C-43
- Bond Fund C-43
- Reserve Fund C-43
- Construction Fund C-44
- Cost of Issuance Fund C-44
- Rebate Fund C-44
- Investment of Funds C-44

Repayment to the Obligated Group Representative form the Funds	C-44
Additional Bonds	C-44
Arbitrage	C-44
Events of Default	C-44
Remedies on Default	C-44
Defeasance	C-45
Supplemental Bond Indentures	C-45
Release and Substitution of Series 1999 Notes	C-46
Bond Trustee	C-46
THE LOAN AGREEMENT	C-46
General	C-46
Other Obligations	C-47
Additional Bonds	C-47
Obligations of the Obligated Group Representative Unconditional	C-47
Tax Covenants	C-47
Assignment, Merger and Release of Obligations of the Obligated Group Representative	C-47
Failure to Perform Covenants; Remedies	C-47
Amendments, Changes and Modifications	C-48
Release and Indemnification	C-48
VARIABLE RATE BOND INDENTURE	C-48
Purchase of Tendered Series 1999D Bonds	C-48
Remarketing of Tendered Series 1999D Bonds; Payment of Purchase Price	C-48
Funds for Purchase Price of Series 1999D Bonds	C-49
Delivery of Purchased Series 1999D Bonds	C-49
Delivery of Proceeds of Sale of Purchased Series 1999D Bonds	C-50
Pledged Bonds	C-50
Special Rate Resetting	C-50
Non-presentment of Series 1999D Bonds	C-50
Creation of Bond Fund	C-51
Payments into Bond Fund	C-51
Draws on Credit Facility; Use of Moneys in Bond Fund	C-51
Project Fund	C-52
Completion or Termination of Project	C-52
Cost of Issuance Fund	C-52
Rebate Fund	C-52
Debt Service Reserve Fund	C-52
Investment of Moneys	C-52
Discharge of Indenture	C-52
Events of Default	C-53
Acceleration	C-53
Other Remedies; Rights of Owners of Series 1999D Bonds	C-54
Right to of Owners of Series 1999D Bonds to Direct Proceedings	C-54
Application of Moneys	C-54
Rights and Remedies of Owners of Series 1999D Bonds	C-55
Waivers of Events of Default	C-55
Notice of Default; Opportunity to Cure Defaults	C-55
Limitation on Defaults and Remedies	C-56
Bond Trustee	C-56
Tender Agent	C-56
Remarketing Agent	C-56
Supplemental Indentures Not Requiring Consent of Owners of Series 1999D Bonds	C-56
Supplemental Indentures Requiring Consent of Owners of Series 1999D Bonds	C-56
Limitation Upon Amendments and Supplements	C-57
Amendments of Variable Rate Loan Agreement Not Requiring Consent of Owners of Series 1999D Bonds	C-57
Amendments of Variable Rate Loan Agreement Requiring Consent of Owners of Series 1999D Bonds	C-57
Limitation Upon Amendments of Variable Rate Loan Agreement	C-57
Modifications of Credit Facility	C-57
Release and Substitution of Series 1999D Note	C-58

VARIABLE RATE LOAN AGREEMENT

Obligations	C-58
Tax Covenants	C-58
Events of Default	C-59
Remedies on Default	C-59
Waivers; No Additional Waiver Implied by One Waiver	C-60

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DEFINITION OF CERTAIN TERMS

Summarized below are definitions of certain words and terms used in this Official Statement. Any documents referred to in the following definitions include any modifications, amendments or supplements thereto from time to time made in accordance with the provisions of such documents. Words and terms that are capitalized in this Official Statement, whether or not defined below or elsewhere herein, are qualified by reference to the meanings assigned in the Master Indenture, Bond Indenture or Variable Rate Bond Indenture, as applicable, unless a different meaning clearly appears from the context.

"Act of Bankruptcy" means the dissolution or liquidation of the Obligor, or the filing of a voluntary petition in bankruptcy by the Obligor, or the consent to the filing of a bankruptcy petition against the Obligor, or the failure by the Obligor promptly to institute judicial proceedings to lift any execution, garnishment or attachment of such consequence as will materially impair its ability to carry on its operations, or the filing of a petition by or against the Obligor or the Issuer under the Federal Bankruptcy Code (11 USC 101, *et seq.*), or the adjudication of the Obligor as a bankrupt, or any assignment by the Obligor for the benefit of its creditors, or the application for, or consent to, the appointment of any receiver, trustee, custodian or similar officer by the Obligor, or the entry by the Obligor or the Issuer into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Obligor in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Code, or under any similar act which may hereafter be enacted; provided, however, that no involuntary petition in bankruptcy, or appointment of a trustee, custodian or receiver, without the consent of the Obligor, shall constitute an Act of Bankruptcy until sixty (60) days shall have elapsed from the date of filing thereof, during which time the Obligor has been unable to obtain the dismissal of the petition.

"Additional Facilities" means any project undertaken by an Obligated Group Member that is financed or refinanced pursuant to the Master Indenture by such Obligated Group Member by the issuance of Obligations, including (without limitation) any addition to or expansion of the Facilities on a site contiguous to or part of the same campus.

"Additional Indebtedness" shall mean any Indebtedness incurred or assumed by an Obligated Group Member subsequent to the date of the Master Indenture.

"Adjustable Rate Conversion Date" means the Floating Rate Interest Payment Date on which a Series 1999D Bond begins to bear interest at an Adjustable Rate in accordance with the terms hereof.

"Adjustable Rate Interest Payment Date" means: (i) with respect to a Series 1999D Bond in an Adjustable Rate Period of three hundred sixty-five (365) days or less, the day following the last day of such Adjustable Rate Period or the maturity date of such Series 1999D Bond (to the extent the conditions specified in the Variable Rate Bond Indenture are met); and (ii) with respect to a Series 1999D Bond in an Adjustable Rate Period of more than three hundred sixty-five (365) days, each May 15 and November 15, commencing with the May 15 or November 15 next succeeding the Adjustable Rate Conversion Date or the Adjustable Rate Reset Date, or the maturity date of such Series 1999D Bond (to the extent the conditions specified in the Variable rate Bond Indenture are met).

"Adjustable Rate Period" means the period from (a) an Adjustable Rate Conversion Date or an Adjustable Rate Reset Date, as appropriate, to (b) a subsequent Conversion Date or Adjustable Rate Reset Date, as appropriate, which Conversion Date or Adjustable Rate Reset Date may not be less than thirty (30) days from commencement of such Period and, if such date is more than three hundred sixty-five (365) days from commencement of such Period, shall be any May 15 or November 15 or the maturity date of such Series 1999D Bond as shall be specified by the Obligor on the Adjustable Rate Conversion Date or Adjustable Rate Reset Date in accordance with the Variable Rate Bond Indenture.

"Adjustable Rate Reset Date" means an Adjustable Rate Interest Payment Date subsequent to an Adjustable Rate Conversion Date on which a Series 1999D Bond begins to bear interest at a new Adjustable Rate in accordance with the terms of the Variable Rate Bond Indenture.

"Alternate Credit Facility" means any letter of credit meeting the requirements of the Variable Rate Loan Agreement, or any bank bond purchase agreement, revolving credit agreement, surety bond, bond insurance policy or other agreement or instrument under which any person or entity (other than the Issuer or the Obligor) undertakes to make or provide funds to make payment of the principal or purchase price of and premium, if any (if the Credit Facility being replaced secures the premium, if any, payable upon an optional redemption of such Series 1999D Bonds) and interest on Series 1999D Bonds supported by a Credit Facility, delivered to and received by the Bond Trustee: (i) replacing a then existing Credit Facility; (ii) effective as of a date at least five (5) days prior to the expiration of the Credit Facility being replaced; (iii) expiring on a date which is at least fifteen (15) days after an Interest Payment Date with respect to such Series 1999D Bonds and at least five (5) days after the delivery of any Alternate Credit Facility; (iv) issued on similar terms and conditions as the then existing Credit Facility, except that the Alternate Credit Facility may expire on a date which is later (but not earlier) than the expiration date of the Credit Facility being replaced, but such Alternate Credit Facility must have a term of at least three hundred sixty-four (364) days, and that the stated amount of the Alternate Credit Facility shall equal the sum of (A) the aggregate principal amount of Series 1999D Bonds at the time Outstanding supported by the Credit Facility (plus, if such Credit Facility secures the premium, if any, payable upon an optional

redemption of such Series 1999D Bonds, the maximum premium so secured), plus (B) an amount equal to the number of days' interest computed at the Maximum Rate sufficient to maintain the then current rating on the Series 1999D Bonds; and (v) accompanied by an opinion of Bond Counsel to the effect that the delivery thereof is authorized or permitted by the terms of the Variable Rate Bond Indenture, the Variable Rate Loan Agreement and the Act, and will not adversely affect the exclusion from gross income of interest on the Series 1999D Bonds for federal income tax purposes. An Alternate Credit Facility may be issued to provide only credit support or liquidity support so long as a separate Alternate Credit Facility provides, at all times while such Alternate Credit Facility is in effect, complementary liquidity support or credit support, as the case may be. An Alternate Credit Facility may be issued to provide credit support, liquidity support or both to one, some or all of the Series 1999D Bonds; however no more than one Alternate Credit Facility may provide credit or liquidity support on some or all of the Series 1999D Bonds at any time. At all times while any Series 1999D Bond is in a Floating Rate Mode or an Adjustable Rate Mode, such Series 1999D Bond shall be entitled to both credit support and liquidity support.

"Agency Obligations" means direct obligations of any agency or instrumentality of the United States of America and obligations on which the timely payment of principal and interest is fully guaranteed by any such agency or instrumentality when such obligations are backed by the full faith and credit of the United States of America and obligations of the Federal Home Loan Mortgage Corporation, Federal Credit System, Federal Home Loan Banks, Federal National Mortgage Association, Financing Corp. and Resolution Funding Corp.

"Annual Rent" means the Annual Rent as defined and described in the Ground Lease, calculated in accordance with the provisions of the Ground Lease.

"Assisted Living Units" means the assisted living beds that are part of the Facility and any assisted living beds in Additional Facilities.

"Authorized Denomination" means (a) for the Series 1999D Bonds in the Floating Rate Mode or the Adjustable Rate Mode, \$100,000 or any integral multiple thereof, (b) for the Series 1999D Bonds in the Fixed rate Mode, \$5,000 or any integral multiple thereof and (c) for all other Series 1999 Bonds, \$5,000 or any integral multiple of \$1,000 in excess thereof.

"Balloon Indebtedness" means Long-Term Indebtedness, 25% or more of the original principal amount of which matures during any consecutive twelve month period (the "Balloon Portion"), if such maturing principal amount is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such twelve month period. Balloon Indebtedness does not include Indebtedness that otherwise would be classified as Put Indebtedness.

"Bank" means the Series 1999D Credit Provider, initially being LaSalle Bank National Association.

"Bank Obligations" means the fees, expenses and reimbursement obligations of the Obligor to the Bank under the Reimbursement Agreement.

"Bond Indenture" means the Indenture of Trust dated as of November 15, 1999 between the Issuer and the Bond Trustee relating to the Series 1999A Bonds, Series 1999B Bonds, the Series 1999C Bonds and the Series 1999E Bonds.

"Bond Trustee" means Chase Bank of Texas, National Association, or any successor or assign thereof pursuant to the Bond Indenture.

"Capital Improvements" means any Additional Facilities or any other capital project undertaken by an Obligated Group Member.

"Certificate of Occupancy" means the final certificate of occupancy issued by the appropriate local governmental unit relating to all units and beds in the Facility.

"Chicago Time" means the time on any given day in the City of Chicago, Illinois, whether such time be Central Standard Time or Central Daylight Savings Time.

"Closing Date" means the date on which a series of Bonds is delivered to the purchaser or purchasers thereof and payment is received by the Trustee.

"Commitment Indebtedness" shall mean the obligation of any Person to repay amounts disbursed pursuant to a commitment from a financial institution to pay or refinance when due other Indebtedness of such Person, which other Indebtedness would be classified as Short-Term, Balloon or Put Indebtedness hereunder and was incurred in accordance with the provisions of the Master Indenture.

"Completion Certificate" means a certificate of the Obligor stating that construction of the Project has been completed or terminated and the date of such completion or termination.

"Completion Date" means the date specified in the Completion Certificate as the date of completion or termination.

"Completion Indebtedness" shall mean any Long-Term Indebtedness incurred by any Obligated Group Member for the purpose of financing, without materially changing the scope thereof, the completion of Capital Improvements for which Long-Term Indebtedness, Balloon Indebtedness or Put Indebtedness has been incurred.

"Construction Disbursement Agreement" means the Construction and Disbursement and Monitoring Agreement dated as of November 15, 1999 among the Obligor, the Bond Trustee and the Credit Provider.

"Construction Fund" means the construction fund created under the Bond Indenture.

"Conversion Date" means an Adjustable Rate Conversion Date, a Floating Rate Conversion Date or a Fixed Rate Conversion Date, as appropriate.

"Code" means the Internal Revenue Code of 1986, as amended.

"Cost of Issuance" means all costs and expenses incurred by the Issuer or the Obligor in connection with the issuance and sale of the Bonds, including without limitation (i) reasonable fees and expenses of accountants, attorneys, engineers, and financial advisors, (ii) materials, supplies, and printing and engraving costs, (iii) recording and filing fees and (iv) rating agency fees.

"Credit Facility" means any Liquidity Facility, letter of credit, bond insurance policy, bond purchase agreement, guaranty, line of credit, surety bond or similar credit or liquidity facility securing any Indebtedness of any Obligated Group Member.

"Credit Facility" means the Series 1999D Credit Facility and, if an Alternate Credit Facility is issued, the Alternate Credit Facility.

"Credit Facility Agreement" means any agreement between the Obligated Group Representative and the provider of a Credit Facility relating to the issuance of a Credit Facility.

"Credit Provider" means with respect to the Credit Facility supporting any of the Series 1999D Bonds, the issuer of the Series 1999D Credit Facility, and its successor in such capacity and its assigns; or, if an Alternate Credit Facility is issued, the issuer or issuers thereof, and their successors in such capacity and their assigns.

"Cross-over Date" means the date on which Cross-over Refunded Indebtedness is paid from the proceeds of the earnings on Cross-over Refunding Indebtedness.

"Cross-over Refunded Indebtedness" shall mean Indebtedness of a Person that is refunded by the proceeds of and the earnings on Cross-over Refunding Indebtedness.

"Cross-over Refunding Indebtedness" shall mean Indebtedness of a Person issued for the purpose of refunding other Indebtedness of such Person if the proceeds of such Cross-over Refunding Indebtedness are irrevocably deposited in escrow to secure the payment on the applicable Cross-over Date of the Cross-over Refunded Indebtedness and earnings on such escrow deposit are required to be applied to pay interest on either or both such Cross-over Refunding Indebtedness or such Cross-over Refunded Indebtedness until the Cross-over Date.

"Days' Cash on Hand" means, as of the date of calculation, the amount determined by dividing (a) the sum of the amount of cash, cash equivalents and marketable securities plus (without duplication) the amount of any board-designated assets consisting of cash, cash equivalents and marketable securities (excluding trustee-held funds and donor-restricted funds but including the Special Reserve Fund and the Entrance Fees Fund), as shown on the most recent audited or unaudited financial statements of such person, by (b) the quotient obtained by dividing the operating expenses (excluding depreciation and amortization expense and other non-cash items) as shown on such financial statements by the number of days covered by such financial statements.

"Debt Service" shall mean the aggregate principal (whether at maturity or pursuant to mandatory redemption requirements), interest payments and other payments of the Obligated Group on Long-Term Indebtedness during the period in question, including but not limited to any Balloon Indebtedness and Put Indebtedness that constitutes Long-Term Indebtedness for the period of time for which calculated; provided, however, that for purposes of calculating such amount:

(a) The amount of such payments for any future period shall be calculated in accordance with the assumptions contained in the provisions pertaining to restrictions as to the incurrence of Additional Indebtedness and the calculation of Debt Service Requirements contained in the Master Indenture;

(b) Principal and interest shall be excluded from the determination of Debt Service to the extent that such principal and interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Master Trustee or another person approved by the Master Trustee; and

(c) In the case of Long-Term Indebtedness incurred in connection with the issuance of any Related Bonds with a Related Bonds Debt Service Reserve Fund created and funded upon the date of issuance of the Related Bonds, Debt Service in the Fiscal Year in which the final maturity of such series of Related Bonds occurs shall be reduced by an amount equal to the Related Bonds Debt Service Reserve Fund Requirement for such series of Related Bonds.

"Debt Service Coverage Ratio" shall mean, with respect to any Fiscal Year, the ratio of Net Income Available for Debt Service for the Obligated Group for the Fiscal Year in question to the Maximum Annual Debt Service on all Outstanding Long-Term Indebtedness for the Obligated Group during such Fiscal Year.

"Debt Service Requirements" means, when used with respect to any Long-Term Indebtedness of the Obligated Group for any period, as of any particular date of calculation, the amount required to pay the sum of (a) the interest on such Long-Term Indebtedness payable during such period, and (b) the principal of or any sinking fund installment or other amount required to effect any mandatory redemption of such Long-Term Indebtedness, if any, during such period, less any amount of such interest or principal for the payment of which moneys or Investment Obligations, the principal of and interest on which when due will provide for such payment, are irrevocably held in trust, including (without limitation) any accrued interest and capitalized interest. For the purpose of calculating the Debt Service Requirements:

(a) with respect to any Variable Rate Indebtedness, interest on such Variable Rate Indebtedness shall be computed by assuming that the rate of interest is equal to the average annual rate of interest (calculated in the manner in which the rate of interest then borne by such Variable Rate Indebtedness is to be calculated) that was or would have been in effect for the twelve (12)-month period immediately preceding the date on which such calculation is made; provided, however, that if such average annual rate of interest cannot be calculated for such entire twelve (12)-month period but can be calculated for a shorter period, then the assumed interest rate shall be the average annual rate of interest that was or would have been in effect for such shorter period; and provided, further, that if such average annual rate of interest cannot be calculated for any preceding period of time, then the assumed interest rate shall be the Projected Rate.

(b) with respect to any Balloon Indebtedness, Debt Service shall be calculated as described under "The Master Indenture - Limitations on Additional Indebtedness" in subparagraph (i).

(c) with respect to any Put Indebtedness, such Indebtedness shall be assumed to bear interest on the unpaid principal balance thereof at the Projected Rate and payable on a level debt service basis over a twenty-five (25) year amortization;

(d) with respect to any Commitment Indebtedness, no Debt Service shall be deemed payable until such time as funding occurs under the commitment that gave rise to such Commitment Indebtedness. From and after such funding, the amount of such Debt Service shall be calculated in accordance with the actual amount required to be repaid on such Commitment Indebtedness and the actual interest rate and amortization schedule applicable thereto, utilizing the various assumptions contained herein. No Additional Indebtedness shall be deemed to arise when any funding occurs under any such commitment or when any such commitment is renewed upon terms that provide for substantially the same terms of repayment of amounts disbursed pursuant to such commitment as obtained prior to such renewal.

(e) with respect to Extendable Indebtedness, Debt Service shall be deemed payable in accordance with the terms of such Indebtedness.

(f) no Debt Service shall be deemed payable with respect to Non-Recourse Indebtedness; provided that no Revenues of any Obligated Group Member have been applied to any payment thereof other than Revenues derived from the Trust Estate securing the Non-Recourse Indebtedness on the date of the calculation. For any period in which funds or Revenues of any Obligated Group Member other than those derived from the property financed with the proceeds of the Non-Recourse Indebtedness are applied to Debt Service on the Non-Recourse Indebtedness, Debt Service on the Non-Recourse Indebtedness shall be included in Debt Service.

(g) with respect to any Guarantee of any Indebtedness that would constitute Long-Term Indebtedness if incurred directly by an Obligated Group Member, so long as (i) no default shall have occurred with respect to such Indebtedness; (ii) no demand for payment shall have been made with respect to such Guarantee and (iii) no payment shall have been made by such Obligated Group Member with respect to the debt service on such guaranteed indebtedness, twenty percent (20%) of the Debt Service Requirements of such guaranteed Indebtedness shall be taken into account in the calculation of the Obligated Group's

Debt Service Requirement with respect to such guaranteed Indebtedness; provided, however, if a default shall have occurred with respect to such guaranteed Indebtedness, a demand for payment shall have been made on such Guarantee or a payment shall have been made by such Obligated Group Member with respect to the debt service on such guaranteed Indebtedness, then 100% of Debt Service Requirements of such Indebtedness shall be taken into account in such calculation;

(h) if a Qualified Swap Agreement with a Swap Provider has been entered into requiring payment of a fixed interest rate or a variable interest rate on a notional amount and the Obligated Group Representative shall have provided written notice to the Master Trustee that such Qualified Swap Agreement was entered into for the purpose of providing substitute interest payments (or a portion thereof) for Indebtedness of a particular maturity or maturities in a principal amount equal to the notional amount of such Qualified Swap Agreement, then, during the term of such Qualified Swap Agreement and so long as the Swap Provider under such Qualified Swap Agreement is not in default under such Qualified Swap Agreement, for purposes of any calculation of interest on Long-Term Indebtedness, the interest rate (or portion thereof) on the Indebtedness of such maturity or maturities shall be determined as if such Indebtedness bore interest at the fixed interest rate or the variable interest rate, as the case may be, payable by an Obligated Group Member after giving effect to such Qualified Swap Agreement. Any obligations under such Qualified Swap Agreement, whether or not secured by an Obligation, shall not be separately included in any calculation of interest on Long-Term Indebtedness. No Additional Indebtedness shall be deemed to arise when any Qualified Swap Agreement is entered into or terminated. An Obligation may be issued in a notional amount to secure any Qualified Swap Agreement and shall not be deemed to be Outstanding under the Master Indenture for any purpose other than entitlement to the interest payments and any termination payments thereunder, secured equally and ratably with all other interest payments on Obligations.

"Dissemination Agent" means Chase Bank of Texas, National Association, or any successor or assign under the Continuing Disclosure Agreement dated as of November 15, 1999 between the Dissemination Agent and the Obligated Group Representative.

"Entrance Fee" means (a) all initial admission fees received by the Obligor pursuant to any agreement with respect to the granting of rights to the exclusive use of a unit in the Facility not required to be held in escrow under the laws of the State of Texas and net of any amount that has been refunded; provided, however, that deposits for admission to the Facility shall not be "Entrance Fees" until the prospective resident has a right to take possession of such unit pursuant to such agreement; and (b) all admission fees received by the Obligor pursuant to any agreement with respect to the granting of rights to exclusive use of any unit in the Facility previously occupied by another resident less any refunds paid to such prior resident upon regranteeing of rights to exclusive use of such unit.

"Entrance Fees Fund" means the Entrance Fees Fund established pursuant to the Master Indenture.

"Entrance Fee Redemption Date" means each February 15, May 15, August 15 and November 15 following an Entrance Fee Transfer Date.

"Entrance Fee Transfer Date" means the first Business Day of each January, April, July and October prior to the termination of the Entrance Fees Fund pursuant to the Master Indenture.

"Expenses" means the aggregate of all expenses of the Obligated Group for the applicable period calculated under generally accepted accounting principles, minus (a) interest on Long-Term Indebtedness of the Obligated Group, (b) depreciation and amortization and other non-cash expenses, (c) extraordinary expenses (including without limitation losses on the sale of assets other than in the ordinary course of business and losses on the extinguishment of debt), (d) any expenses resulting from a forgiveness of or the establishment of reserves against Indebtedness of an Affiliate that does not constitute an extraordinary expense, (e) losses resulting from any reappraisal, revaluation or write-down of assets and (f) development fees owed by the Obligor after the receipt of the Certificate of Occupancy.

"Expiration of the Term of the Credit Facility" means the expiration of the then existing Credit Facility in effect with respect of any Series 1999D Bonds, including extensions thereof, without provisions being made in accordance with the Variable Rate Loan Agreement for the delivery of an Alternate Credit Facility prior to any date upon which the Bond Trustee is required hereunder to give notice of a redemption of Series 1999D Bonds as a result of such expiration. No "Expiration of the Term of the Credit Facility" with respect to a Series 1999D Bond shall be deemed to occur to the extent of a remarketing of such Bond on the Fixed Rate Conversion Date without the security of a Credit Facility, and such Bond shall not be redeemed.

"Extendable Indebtedness" shall mean Long-Term Indebtedness which is payable at the option of the holder thereof, prior to its stated maturity; provided, however, that (a) such option may not be exercised more frequently than once a year and (b) the obligation by the obligor thereon to purchase tendered bonds is subject to the availability of funds for such purpose.

"Facility" means the senior living community consisting of: (a) the Facility Site, (b) 256 Independent Living Units, 84 Assisted Living Units, 44 skilled nursing beds, and 20 specialty care (dementia) beds, and attendant common areas, (c) necessary or useful

furnishings, equipment and machinery, and (d) such interests in land as may be necessary or suitable for the foregoing, including roads and rights of access, utilities and other necessary site preparation facilities.

"Facility Site" means the parcel of land containing approximately 16.5 acres located in the City of Dallas, Texas and more particularly described in the Master Indenture.

"Fees" means all fees charged to each and every resident of the Facility and any Additional Facilities, including, without limitation, all fees paid on a daily basis, all Monthly Service Charges and all Entrance Fees.

"Fiscal Quarter" means each three month period ending March 31, June 30, September 30 and December 31; provided that if the Fiscal Year of the Obligated Group is changed, Fiscal Quarter shall mean any one of the four three-consecutive month periods during such new Fiscal Year.

"Fiscal Year" means the period of 12 consecutive months beginning on January 1 in any calendar year and ending on December 31 of the same calendar year, or such other fiscal year as the Obligated Group Representative, with prior written notice to the Master Trustee, shall establish as the fiscal year of the Obligated Group.

"Fixed Rate Conversion Date" means the Floating Rate Interest Payment Date or the Adjustable Rate Interest Payment Date on which a Series 1999D Bond begins to bear interest at the Fixed Rate in accordance with the terms hereof.

"Fixed Rate Interest Payment Date" means each May 15 and November 15, commencing with the May 15 or November 15 next succeeding the Fixed Rate Conversion Date, and the maturity date of a Series 1999D Bond (to the extent such Series 1999D Bond is in the Fixed Rate Mode at such time).

"Floating Rate Conversion Date" means the Adjustable Rate Interest Payment Date on which a Series 1999D Bond begins to bear interest at a Floating Rate in accordance with the terms hereof.

"Floating Rate Interest Payment Date" means (a) with respect to the Floating Rate Period commencing on the Closing Date, the first Business Day of each month, commencing December 1, 1999, and the maturity date of a Series 1999D Bond (to the extent such Series 1999D Bond is in the Floating Rate Mode at such time), and (b) with respect to each Floating Rate Period commencing after an Adjustable Rate Period, the first Business Day of each month, commencing with the first Business Day of the month next succeeding the Floating Rate Conversion Date, and the maturity date of a Series 1999D Bond (to the extent such Series 1999D Bond is in the Floating Rate Mode at such time).

"Government Obligations" means direct obligations of the United States of America or obligations the full and timely payment of the principal of and interest on which is unconditionally guaranteed by the United States of America.

"Ground Lease" means the Ground Lease between the Ground Lessor, as Lessor, and the Obligor, as Lessee relating to the Facility Site.

"Ground Lease Rentals" means any payment of any installment of the Annual Rent under the Ground Lease.

"Ground Lessor" means Intercity Investment Properties, Inc., or any successors or assigns.

"Guarantee" shall mean, as applied to any Indebtedness for borrowed money, (a) a guarantee (other than by endorsement of negotiating instruments for collection in the ordinary course of business), direct or indirect, in any manner, of any part or all of such Indebtedness or (b) an agreement, direct or indirect, contingent or otherwise, providing assurance of the payment or performance (or payment of damages in the event of non-performance) of any part or all of such Indebtedness, including, without limiting the foregoing, the payment of amounts drawn down by letters of credit. Notwithstanding anything in the Master Indenture to the contrary, a guarantee shall not include any agreement solely because such agreement creates a lien on assets of any Person or any agreement providing for indemnification. The amount of a guarantee shall be deemed to be the maximum amount of the Indebtedness so guaranteed, subject to the provisions of the Master Indenture relating to the calculation of Debt Service Requirements.

"Hedge Agreement" means an interest rate swap, collar-floor forward or other hedging agreement, arrangement or security, however denominated, with respect to a series of Obligations.

"Holder" means a bearer of any Obligation issued in bearer form, and the registered Owner of any Obligation issued in registered form.

"Indebtedness" means any indebtedness or liability for borrowed money, any installment sale obligation or any obligation under any lease that is capitalized under generally accepted accounting principles and any Guarantee of any of the foregoing.

"Independent Accountant" means an Independent Person engaged in the accounting profession, either entitled to practice, or having members or officers entitled to practice, as a certified public accountant under the laws of the State of Texas, employed by the Obligated Group Representative from time to time to pass upon those matters required by the Master Indenture to be passed upon by an Independent Accountant. The firm of PricewaterhouseCoopers LLP is recognized as constituting Independent Accountants, subject to further action by the Obligor.

"Independent Actuary" means an Independent Person that is a registered professional actuary (a) having a favorable reputation for skill and experience in actuarial work relating to life care and continuing care retirement communities, and (b) employed by the Obligor from time to time.

"Independent Living Units" means the independent living units that are part of the Facility and any similar independent living units in Additional Facilities.

"Independent Person" means a Person who (a) is in fact independent, (b) does not have any direct financial interest or any material indirect financial interest in any Obligated Group Member or in any Affiliate of any Obligated Group Member, and (c) is not connected with any Obligated Group Member or with any Affiliate of any Obligated Group Member as an officer, employee, promoter, trustee, partner, director, or person performing similar functions.

"Initial Entrance Fees" shall mean Entrance Fees received upon the initial occupancy of any Independent Living Unit in the Initial Project not previously occupied until such time as the Facility has attained Stable Occupancy.

"Initial Project" shall mean the Facility.

"Initial Rate Change Date" means, for each series of EXTRASSM, the Initial Rate Change Date shown on the inside front cover of this Official Statement.

"Insurance Consultant" means a firm of Independent professional insurance consultants knowledgeable in the operations of retirement facilities and having a favorable reputation for skill and experience in the field of retirement facilities insurance consultation.

"Interest Payment Date" means, with respect to the Series 1999D Bonds, an Adjustable Rate Interest Payment Date, a Floating Rate Interest Payment Date or a Fixed Rate Interest Payment Date, as appropriate.

"Investment Securities" means:

- (a) Government Obligations;
- (b) Agency Obligations;
- (c) evidences of ownership of a proportionate interest in specified Government Obligations or Agency Obligations, which Government Obligations or Agency Obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$50,000,000;
- (d) savings accounts, time deposits and certificates of deposit, both domestic and euro, in any bank, including the Master Trustee or Bond Trustee, as appropriate, or any affiliate thereof, if such accounts or certificates are fully insured by Federal Deposit Insurance Corporation insurance or, to the extent not so insured, collateralized in the manner set forth for repurchase obligations in clauses (k)(i) and (k)(ii) below;
- (e) savings accounts and certificates of savings and loan associations that are under supervision of the State and federal associations organized under the laws of the United States of America and under federal supervision, but only to the extent that such accounts and certificates of state or federal associations are fully insured by the Federal Deposit Insurance Corporation or any successor federal agency or, to the extent not so insured, collateralized in the manner set forth for repurchase obligations in clauses (k)(i) and (k)(ii) below;
- (f) bankers' acceptances guaranteed by any bank having a combined capital, surplus and undivided profits of not less than \$50,000,000 and whose credit is rated by at least one of the Rating Agencies in one of its two highest rating categories without regard to any refinement or gradation of such rating categories by numerical modifier or otherwise;

(g) corporate obligations with a maturity of ten (10) years or less, including commercial paper maturing within 270 days of issue, upon which there is no default, rated by at least one of the Rating Agencies in its two highest rating categories without regard to any refinement or gradation of such rating category by numerical modifier or otherwise;

(h) guaranteed investment agreements with a commercial bank or trust company (including the Master Trustee or Bond Trustee, as appropriate, any related guarantors or an affiliate thereof) organized under the laws of any state of the United States of America or any national banking association or a branch of a foreign bank duly licensed under the laws of the United States of America or any state or territory thereof, provided that the bonds or debentures of such commercial bank or trust company or national banking association or branch of a foreign bank or any related guarantors are rated by Moody's at the time of the investment not lower than Moody's "Aa3" or are rated by S&P at such time not lower than S&P's "AA-" or are rated by Fitch at such time not lower than Fitch's "AA-";

(i) guaranteed investment agreements with any insurance company or any related guarantors whose bonds or debentures or claims paying ability is rated by Moody's at the time of the investment not lower than Moody's "Aa3" or by S&P at such time not lower than S&P's "AA-" or by Fitch at such time not lower than Fitch's "AA-";

(j) investments in money market funds restricted primarily to Government Obligations and/or Agency Obligations;

(k) repurchase agreements with: (A) a registered broker/dealer that is subject to Securities Investor's Protection Corporation liquidation in the event of insolvency or (B) any insurance company or bank, including the Master Trustee or Bond Trustee, as appropriate, or an affiliate thereof, having a combined capital, surplus and undivided profits of not less than \$50,000,000, provided that:

(i) the obligation of the registered broker/dealer, insurance company or bank to repurchase is collateralized by Government Obligations or Agency Obligations, which must have on the date of the repurchase agreement and at all times thereafter, as valued on a monthly basis, a fair market value equal to at least 103% of the amount of the repurchase obligation, including interest;

(ii) the securities are free from any lien, claim or interest of any parties other than the registered broker/dealer, insurance company or bank and the Trustee; and

(iii) the repurchase agreement provides for early repurchase upon the failure of the securities to maintain the required fair market value;

and provided further that either (A) title to and/or possession of such securities is transferred to the Master Trustee in its capacity as Master Trustee or the Bond Trustee in its capacity as Bond Trustee, as appropriate, (B) the securities are held by a third party (not as agent for the registered broker/dealer, insurance company or bank) for the benefit of the Master Trustee or Bond Trustee, as appropriate, and segregated from securities owned generally by such third party, (C) a perfected security interest under the Uniform Commercial Code of the state where the securities are located or book-entry procedures prescribed at 31 C.F.R. 306.1 *et seq.* or 31 C.F.R. 350.0 *et seq.* in such securities is created for the benefit of the holders, (D) if the repurchase agreement is with the bank serving as the Master Trustee or Bond Trustee, as appropriate, or related to the trust company serving as the Master Trustee or Bond Trustee, as appropriate, the third party holding such securities holds them as agent for the Master Trustee or Bond Trustee, as appropriate, as fiduciary for the holders and not as agent for the bank serving as the Master Trustee or Bond Trustee, as appropriate, or related to the trust company serving as the Master Trustee or Bond Trustee, as appropriate, in its commercial capacity or any other party; or (E) the securities are, to the knowledge of the Master Trustee or Bond Trustee, as appropriate, free and clear of all third-party claims;

(l) obligations of any state of the United States of America or any political subdivision thereof, the payment of the principal of and interest on which is secured by a letter of credit, bond insurance or other credit facility; and

(m) Investment agreements with banks that at the time such agreement is executed are rated in either of the two highest rating categories by a Rating Agency (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) or investment agreements with non-bank financial institution (1) all of the unsecured, direct long-term debt of either the non-bank financial institution or the related guarantor of such non-bank financial institution is at the time such agreement is executed rated by a Rating Agency in one of the two highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) for

obligations of that nature; or (2) if neither such non-bank financial institution nor the related guarantor has outstanding long-term debt which is rated, then all of the short-term debt of such non-bank financial institution or related guarantor is, at the time such agreement is executed, rated by a Rating Agency in the highest rating category (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned to short-term indebtedness by such Rating Agency.

"Leasehold Account" means the Leasehold Account of the Special Reserve Fund.

"Leasehold Reserve Account Requirement" means an amount equal to the Annual Rent payable in the current Rent Year (as defined and described in the Ground Lease); provided that the Leasehold Reserve Account Requirement shall never be less than \$1,200,000.

"Liquidity Facility" means a written commitment to provide money to purchase or retire any Indebtedness if (i) on the date of delivery of such Liquidity Facility, the unsecured Long-Term Indebtedness or claims paying ability of the provider of such Liquidity Facility or its parent holding company or other controlling entity is rated at least "A" by a least one of the Rating Agencies and (ii) as of any particular date of determination, no amount realized under such Liquidity Facility for the payment of the principal or the purchase or redemption price of such Indebtedness (exclusive of amounts realized for the payment of accrued interest on such Indebtedness) shall be required to be repaid by the obligor on such Long-Term Indebtedness for a period of at least one year.

"Liquidity Ratio" is described in "The Master Indenture - Liquidity Ratio Covenant".

"Liquidity Ratio Covenant" means the covenant set forth in "The Master Indenture - Liquidity Ratio Covenant".

"Long-Term Indebtedness" means all Obligations, together with all of the following Indebtedness incurred or assumed by any Obligated Group Member, including without limitation:

(a) any obligation for the payment of principal and interest with respect to money borrowed for an original term, or renewable at the option of the obligor thereon for a period from the date originally incurred, longer than one year;

(b) any obligation for the payment of money under leases that are required to be capitalized under generally accepted accounting principles;

(c) any obligation for the payment of money under installment purchase contracts having an original term in excess of one year;

(d) any obligation that would constitute Short-Term Indebtedness if a Liquidity Facility were not in effect with respect thereto; and

(e) any Guarantee of any Indebtedness that would be described in item (a), (b), (c) or (d) above if such Indebtedness were incurred directly by such Obligated Group Member.

"Management Consultant" means a nationally recognized firm of Independent professional management consultants or an Independent retirement facilities management organization knowledgeable in the operation of retirement facilities and having a favorable reputation for skill and experience in the field of retirement facilities management consultation.

"Marketing Consultant" means an Independent Person that is qualified to pass upon questions relating to the marketing of continuing care retirement communities of similar size, type and scope of operations to the Facility, and having a favorable national reputation for skill and experience in such areas.

"Marketing Target" means the marketing targets set forth in "The Master Indenture - Marketing Targets".

"Master Trustee" means Chase Bank of Texas, National Association, a national banking association, as trustee hereunder, and any successor in trust.

"Maturity" when used with respect to any Indebtedness means the date on which the principal of such Indebtedness or any installment thereof becomes due and payable as therein provided, whether at the Stated Maturity thereof or by declaration of acceleration, call for redemption, or otherwise.

"Maximum Annual Debt Service Requirement" shall mean the maximum Debt Service Requirement on any Long-Term Indebtedness of the Obligated Group as computed for the then current, or any future, Fiscal Year.

"Maximum Rate" means, with respect to the Series 1999D Bonds, the least of (i) fifteen percent (15%) per annum or (ii) the assumed per annum interest rate used in determining the interest portion of the Credit Facility, if any, or (iii) the maximum rate permitted by law. Upon the issuance of the Series 1999D Bonds and the concurrent delivery of the Series 1999D Credit Facility, the Maximum Rate will be ten percent (10%) while such Series 1999D Credit Facility secures the Series 1999D Bonds.

"Monthly Service Charges" means the monthly service fees required to be paid pursuant to the Residency Agreements.

"Net Income Available for Debt Service" shall mean, as to any period of time, all Revenues of the Obligated Group minus Total Expenses of the Obligated Group other than depreciation, amortization, interest (including any component of rental payment treated as a payment of interest), and minus Other Non-Cash Expenses of the Obligated Group, all as determined in accordance with generally accepted accounting principles (unless otherwise specifically required).

"Non-Recourse Indebtedness" means Long-Term Indebtedness incurred by an Obligated Group Member subsequent to the date of execution and delivery of the Master Indenture for the purpose of financing the purchase or acquisition of real or tangible personal property secured by a lien on, or security interest in, the property being purchased or acquired and evidenced by an instrument which expressly provides that upon default in the payment of the principal thereof or interest thereon the obligee thereof may look only to property securing the same and not to the credit of any Obligated Group Member nor to any other Trust Estate of any Obligated Group Member; provided that on the date of incurrence no revenues or funds of any Obligated Group Member are expected to be applied to any payment on the Non-Recourse Indebtedness other than revenues or funds derived from the property securing such Indebtedness.

"Obligated Group" means, collectively, all of the Obligated Group Members.

"Obligated Group Member" means the Obligor and any other Person who has satisfied the requirements set forth in the Master Indenture for becoming an Obligated Group Member and its successors until any such Person or a successor or transferee Person satisfies the requirements set forth in the Master Indenture for ceasing to be an Obligated Group Member.

"Obligated Group Representative" means Northwest Senior Housing Corporation, a Texas non-profit corporation, or any successor Obligated Group Representative appointed pursuant to the Master Indenture.

"Obligation" means any promissory note, guaranty, lease, contractual agreement to pay money or other obligation of any Obligated Group Member which is authenticated and delivered pursuant to the Master Indenture and which is entitled to the benefits of the Master Indenture.

"Obligor" means Northwest Senior Housing Corporation, a Texas non-profit corporation, and any and all successors thereto in accordance with the Master Indenture.

"Obligor Bonds" means Series 1999D Bonds purchased with moneys provided to the Tender Agent, or beneficial interests in Series 1999D Bonds purchased with moneys provided to the Remarketing Agent, by the Obligor, the Bond Trustee or an agent of the Bond Trustee for the account of the Obligor, an affiliate of the Obligor or by another Person for the account of the Obligor.

"Occupancy Target" means the occupancy target set forth "The Master Indenture - Occupancy Targets".

"Occupied Units" means Independent Living Units occupied by residents who have paid or are obligated to pay their Entrance Fees in full and are paying or obligated to pay their Monthly Service Charges.

"Officer's Certificate" means a certificate signed by a designated officer of the Obligated Group Representative and delivered to the Master Trustee.

"Operating Account" means the Operating Account of the Special Reserve Fund.

"Operating Ratio" has the meaning given to that term in "The Master Indenture - Operating Ratio Covenant".

"Operating Reserve Account Requirement" means an amount equal to \$4,000,000.

"Operating Revenues" shall mean the sum of gross resident and patient service revenues less contractual allowances and provisions for uncollectible accounts, free care, and discounted care, plus other operating income.

"Other Non-Cash Expenses" shall mean provision for bad debts, depreciation and amortization expense, and any other expense not requiring the payment of cash in any period.

"Outstanding" when used with respect to Bonds means, as of any particular time, all Bonds which have been duly authenticated and delivered by the Bond Trustee under the Bond Indenture or the Variable Rate Bond Indenture, except:

- (a) Bonds theretofore cancelled by the Bond Trustee or delivered to the Bond Trustee for cancellation after purchase in the open market or because of payment at or redemption prior to maturity;
- (b) Bonds for the payment or redemption of which cash funds (or Government Obligations to the extent permitted in the Bond Indenture) shall have been theretofore deposited with the Bond Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Bond Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Bond Trustee, shall have been filed with the Bond Trustee and provided further that prior to such payment or redemption, the Bonds to be paid or redeemed shall be deemed to be Outstanding for the purpose of transfers and exchanges under the Bond Indenture;
- (c) Bonds in lieu of which other Bonds have been authenticated under the Bond Indenture; and
- (d) Undelivered Bonds.

"Outstanding" when used with respect to Obligations means, as of the date of determination, all Obligations theretofore authenticated and delivered under the Master Indenture, except:

- (1) Obligations theretofore cancelled and delivered to the Master Trustee or delivered to the Master Trustee for cancellation;
- (2) Obligations for whose payment or redemption money (or Defeasance Obligations to the extent permitted by the Master Indenture) shall have theretofore been deposited with the Master Trustee or any Paying Agent for such Obligations in trust for the Holders of such Obligations pursuant to this Indenture; provided, that, if such Obligations are to be redeemed, notice of such redemption has been duly given or waived pursuant to the Master Indenture or irrevocable provision for the giving of such notice satisfactory to the Master Trustee has been made pursuant to the Master Indenture; and
- (3) Obligations upon transfer of or in exchange for or in lieu of which other Obligations have been authenticated and delivered pursuant to the Master Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Obligations have given any request, demand, authorization, direction, notice, consent, or waiver hereunder, Obligations owned by any Obligated Group Member or any Affiliate of any Obligated Group Member shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Master Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Obligations that the Master Trustee knows to be so owned shall be so disregarded. Obligations so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Master Trustee the pledgee's right so to act with respect to such Obligations and that the pledgee is not an Obligated Group Member or an Affiliate of any Obligated Group Member.

"Paying Agent" means any Person authorized by the Obligated Group Representative to pay the principal of (and premium, if any) or interest on any Obligations on behalf of the Obligated Group.

"Permitted Encumbrance" with respect to any Obligated Group Member means:

- (a) any lien arising by reason of any good faith deposit with such Person in connection with any lease of real estate, bid or contract (other than any contract for the payment of money), any deposit by such Person to secure any public or statutory obligation, or to secure, or in lieu of, any surety, stay or appeal bond, and any deposit as security for the payment of taxes or assessments or other similar charges;
- (b) any lien arising by reason of any deposit with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license or to enable such Person to maintain self-insurance or to participate in any funds established to cover any insurance risk or in connection with workers' compensation, unemployment insurance, any pension or profit-sharing plan or other social security, or to share in the privileges or benefits required for the participation of the Obligor in such arrangements;

(c) any judgment lien against such Person in an amount of less than \$250,000; and any judgment lien against such Person which equals or exceeds \$250,000, so long as such judgment is being contested in good faith and is fully bonded, fully covered by a letter of credit or other surety, or covered by insurance;

(d) any right reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license, permit or provision of law affecting any property of such Person; any lien on any property of such Person for taxes, assessments, levies, fees, water and sewer rents or charges and other governmental and similar charges and any lien of any mechanic, materialman, laborer, supplier or vendor for work or services performed or materials furnished in connection with such property that is not due and payable or that is not delinquent or the amount or validity of which is being contested and execution thereon stayed;

(e) the Master Indenture; and any lien or encumbrance disclosed in the title insurance policy delivered in connection with the issuance of the Series 1999 Bonds, provided that such lien or encumbrance is not extended, renewed or modified to apply to any property of such Person not subject to such lien or encumbrance on the date such policy is delivered, unless the lien or encumbrance, as so extended, renewed or modified, otherwise qualifies as a Permitted Encumbrance without reference to this clause;

(f) any lien or encumbrance on the Trust Estate securing any Indebtedness permitted by the Master Indenture, provided that such lien or encumbrance is subordinate to the lien of the Master Indenture;

(g) any lien with respect to moneys deposited by residents or others with such Person as security for, or as prepayment of, the cost of resident or other client care and any lien arising under law or by contract with respect to any deposit made by a prospective resident under a Residency Agreement prior to occupancy;

(h) any lien on property received by such Person through any gift, grant or bequest constituting a restriction imposed by the donor, grantor or testator on such gift, grant or bequest or the income therefrom;

(i) any lien (other than a lien on the Facility Site) of any third-party payor for recoupment of amounts paid to such Person for resident care;

(j) any lien, security interest or pledge that is senior to the lien, security interest and pledge of the Master Indenture in such Person's accounts receivable to secure Short-Term Indebtedness in an amount of not more than fifteen percent (15%) of such accounts receivable; provided that Short-Term Indebtedness secured by such Person's accounts receivable shall not exceed ten (10%) of Total Operating Revenues of the Obligated Group for the most recent Fiscal Year;

(k) any lien, security interest or pledge that is senior to the lien, security interest or pledge of the Master Indenture in such Person's accounts receivable that is granted or created solely to secure Short Term Indebtedness in an amount that does not exceed the amount of the accounts receivable subject to a delay in payment from third party payors;

(l) any lien granted for the benefit of all holders of Obligations in accordance with the Master Indenture;

(m) leases whereunder such Person is lessor which relate to property that is of a type that is customarily the subject of such leases, including without limitation office space for physicians and educational institutions, food service facilities, parking facilities, barber shops, beauty shops, flower shops, gift shops, radiology, pathology or other specialty services and pharmacy and similar departments, and leases of or licenses to use buildings or portions thereof located on the Facility Site which leases or licenses do not impair the operations being conducted in connection with the Facility (or, if no operations are being conducted therein, the operations for which the Facility was designed or last modified);

(n) any mortgage or lien placed upon any tangible real or tangible personal property being acquired by such Person to secure all or a portion of the purchase price thereof and any landlord's lien under any lease permitted under the Master Indenture; provided that the purchase price of the property being acquired by all Obligated Group Members in any Fiscal Year does not exceed in the aggregate ten percent (10%) of the book value (or, at the option of the Obligated Group Representative, current value) of the property, plant and equipment of the Obligated Group;

(o) any lien or encumbrance on any property existing on the date on which such property was acquired by such Person, including (without limitation) any acquisition as a result of a merger or consolidation permitted by the

Master Indenture, involving the owner of such property, provided that such lien is not extended, renewed or modified to apply to any property of such Person not subject to such lien on such date, unless the lien, as so extended, renewed or modified, otherwise qualifies as a Permitted Encumbrance without reference to this clause;

(p) such easements, rights-of-way, servitudes, restrictions and other defects, liens and encumbrances which shall not materially impair the use of the Facility for its intended purposes or the value of the Facility as evidenced by a certificate of an Independent engineer delivered to the Master Trustee;

(q) such easements, servitudes, restrictions, licenses, restrictive covenants, rights-of-way (including the dedication of public highways or public or private utility easements) as may be required by governmental authorities or utility providers in connection with the construction of, or the furnishing of utilities to, the Facility as described in an Officer's Certificate;

(r) any banker's lien arising in connection with the establishment and maintenance of depository bank accounts in the ordinary course of business; and

(s) the Ground Lease.

"Person" means any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or any other entity.

"Pledge Agreement" means the Pledge and Security Agreement, dated as of November 15, 1999, by and among the Obligor, the Bond Trustee and the Credit Provider, as amended or supplemented in accordance with the terms thereof.

"Pledged Bonds" means Series 1999D Bonds purchased with moneys provided to the Tender Agent, or beneficial interests in Series 1999D Bonds purchased with moneys provided to the Remarketing Agent.

"Principal Underwriters" means B.C. Ziegler and Company and The Chapman Company.

"Projected Rate" means the projected yield at par of an obligation, as set forth in a report of the Principal Underwriter or other investment banking firm appointed by the Obligated Group Representative (the scope, form, substance and other aspects thereof to be acceptable to the Master Trustee), which report shall state that in determining the Projected Rate the Principal Underwriter or other Person appointed by the Obligated Group Representative to determine such rate reviewed the yield evaluations at par of not less than five (5) obligations selected by the Principal Underwriter or other Person, which obligations the Principal Underwriter or other Person states in its report are reasonable comparators to be utilized in developing such Projected Rate and which obligations: (a) were Outstanding on a date selected by the Principal Underwriter or other Person which date so selected occurred during the forty-five (45) day period proceeding the date of the calculation utilizing the Projected Rate in question, (b) to the extent practicable, are obligations of persons engaged in operations similar to those of the Obligated Group Members and having on credit rating similar to that of the Obligated Group, (c) are entitled to the benefit of credit enhancement, if any, substantially the same as the obligation with respect to which such Projected Rate is being determined; and (d) to the extent practicable, have a remaining term and amortization schedule substantially the same as the obligation with respect to which such Projected Rate is being determined.

"Project Fund" means the fund by that name created in the Variable Rate Bond Indenture.

"Purchase Fund" means the Fund by that name established in the Variable Rate Bond Indenture.

"Put Indebtedness" shall mean Indebtedness, which is payable or required to be purchased or redeemed, at the option of the holder thereof, prior to its stated maturity date.

"Qualified Swap Agreement" shall mean an agreement between an Obligated Group Member and a Swap Provider under which the Obligated Group Member agrees to pay the Swap Provider an amount calculated at an agreed-upon rate or index based upon a notional amount and the Swap Provider agrees to pay such Obligated Group Member for a specified period of time an amount calculated at an agreed-upon rate or index based upon the same notional amount, where each Rating Agency then rating any Related Bonds has assigned to the unsecured long-term obligations of the Swap Provider, or of any Person who guarantees the obligation of the Swap Provider to make its payments to such Obligated Group Member, as of the date the Swap Provider to make its payments to such Obligated Group Member as of the date the swap agreement is entered into, a rating that is within the three highest rating categories (without regard to modifiers) of such Rating Agency.

"Rate Covenant" means the covenant set forth in "The Master Indenture - Rate Covenant".

"Rating Agency" shall mean any national rating agency which then rates any series of Related Bonds.

"Receipts" means all receipts, revenues, rentals, income, insurance proceeds (including, without limitation, all Medicaid, Medicare and other third-party payments), condemnation awards and other moneys received by or on behalf of any Obligated Group Member, including (without limitation) revenues derived from (a) the ownership, operation or leasing of any portion of the Facility (including, without limitation, Fees and any other fees payable by or on behalf of residents of the Facility) and all rights to receive the same (other than the right to receive Medicaid and Medicare payments), whether in the form of accounts, general intangibles or other rights, and the proceeds of such accounts, general intangibles and other rights, whether now existing or hereafter coming into existence or whether now owned or held or hereafter acquired, and (b) gifts, grants, bequests, donations and contributions heretofore or hereafter made that are legally available to meet any of the obligations of the Obligated Group Member incurred in the financing, operation, maintenance or repair of any portion of the Facility; provided, however, that there shall be excluded from Receipts (x) any moneys received by any Obligated Group Member from prospective residents or commercial tenants in order to pay for customized improvements to those Independent Living Units or other areas of the Facility to be occupied or leased to such residents or tenants, (y) all deposits made pursuant to Residency Agreements to be held in escrow until construction of the Facility is completed, a Certificate of Occupancy has been issued and appropriate licenses, if required, have been issued, and (z) all deposits and/or advance payments made in connection with any leases of the Independent Living Units and received prior to receipt of such certificate and licenses.

"Record Date" means, with respect to the Series 1999D Bonds, (a) with respect to any Floating Rate Interest Payment Date, the close of business on the Business Day next preceding such Interest Payment Date, and (b) with respect to any Adjustable Rate Interest Payment Date or Fixed Rate Interest Payment Date, the close of business on the first (1st) day of the calendar month in which such Interest Payment Date occurs.

"Refunds" means, for any period, the aggregate amount paid by an Obligated Group Member during such period, pursuant to the Residency Agreements, to residents or to the estates of deceased residents by reason of termination of any such Residency Agreements pursuant to the terms thereof or termination of such resident's occupancy in the Facility.

"Reimbursement Agreement" means the Letter of Credit Agreement between the Bank and the Obligor.

"Related Bond Indenture" means any indenture, bond resolution or other comparable instrument pursuant to which a series of Related Bonds is issued.

"Related Bonds" means the revenue bonds or other obligations issued by any state, territory or possession of the United States or any municipal corporation or political subdivision formed under the laws thereof or any constituted authority or agency or instrumentality of any of the foregoing empowered to issue obligations on behalf thereof ("governmental issuer"), pursuant to a single Related Bond Indenture, the proceeds of which are loaned or otherwise made available to any Obligated Group Member in consideration of the execution, authentication and delivery of an Obligation to or for the order of such governmental issuer.

"Related Bonds Debt Service Fund" means any bond fund, debt service fund, redemption fund or other similar fund or account for Related Bonds established under a Related Bond Indenture.

"Related Bonds Debt Service Reserve Fund" means any debt service reserve fund or other similar bond for Related Bonds established under a Related Bond Indenture.

"Related Bonds Debt Service Reserve Fund Requirement" means the amount required to be on deposit in a Related Bonds Debt Service Reserve Fund pursuant to a Related Bond Indenture.

"Related Bond Trustee" means the trustee and its successor in the trusts created under any Related Bond Indenture.

"Related Loan Agreement" means any loan agreement, financing agreement, credit agreement or other comparable instrument entered into in connection with a series of Related Bonds.

"Reserve Fund Requirement" means, with respect to (i) the Series 1999A Bonds, an amount equal to Maximum Annual Debt Service on the Series 1999A Bonds, (ii) the Series 1999B Bonds, an amount equal to one year's interest on the Series 1999B Bonds calculated at the then current interest rate on such Series 1999B Bonds, (iii) the Series 1999C Bonds, an amount equal to one year's interest on the Series 1999C Bonds calculated at the then current interest rate on such Series 1999C Bonds, (iv) the Series 1999 Bonds, an amount equal to the sum of (i), (ii) and (iii) above, and (v) any Additional Bonds, the amount specified in the supplemental indenture pursuant to which such Additional Bonds are issued.

"Reserve Requirement" means, with respect to the Series 1999D Bonds, an amount, as of any particular date of computation, equal to one year's interest on the Outstanding Series 1999D Bonds calculated at a per annum interest rate of 4.50%.

"Revenue Account" means the account by that name established in the Bond Fund for the Series 1999D Bonds.

"Reserved Units" means Independent Living Units for which residents have executed Residency Agreements and paid a deposit of at least 5% toward the Entrance Fees for such Independent Living Units.

"Residency Agreement" means each and every contract, including without limitation any "Reservation Agreement" or "Residency Agreement", as amended from time to time, between an Obligated Group Member and a resident of the Facility giving the resident certain rights of occupancy in the Facility, including, without limitation, the Independent Living Units, Assisted Living Units, skilled nursing beds, specialty care (dementia) beds and providing for certain services to such resident, which contract shall be in one of the forms previously delivered to the Principal Underwriters, as such forms may from time to time be amended, modified or supplemented in accordance with the Master Indenture.

"Revenue Test" means that after giving effect to the proposed action, the applicable Obligated Group Member would be permitted to incur at least \$1.00 of additional Long-Term Indebtedness.

"Revenues" shall mean for the Obligated Group for any period the sum of (a) gross service revenues less contractual allowances and provisions for uncollectible accounts, discounted care, and free care (to the extent related revenue is booked) plus (b) other operating revenues (excluding amortized Entrance Fees), plus (c) non-operating revenues, all as determined in accordance with generally accepted accounting principles consistently applied, and plus (d) Entrance Fees actually received net of refunds and excluding Initial Entrance Fees; provided, however, that no determination thereof shall take into account (v) unrealized gains or losses on investments, (w) income derived from the investment of the proceeds of Cross-over Refunding Indebtedness prior to the Cross-over Date, (x) any gain or loss resulting from the early extinguishment of Indebtedness or the sale, exchange or other disposition of Trust Estate not in the ordinary course of business, (y) gifts, grants, bequests or donations restricted as to use for a purpose inconsistent with the payment of Debt Service or operating expenses, and (z) insurance (other than business interruption) and condemnation proceeds. For purposes of any calculation that is made with reference to both Revenues and Total Expenses, any deduction from gross patient service revenues otherwise required by the preceding provisions of this definition shall not be made if and to the extent that the amount of such deduction is included in Total Expenses.

"Seasoned Funds" means moneys deposited by the Obligor with the Bond Trustee and so designated by the Obligor, which moneys either: (i) are accompanied by an opinion of nationally recognized bankruptcy counsel (selected by the Obligor and acceptable to the Credit Provider and the Bond Trustee), which opinion is acceptable to the Rating Agencies and the Bond Trustee to the effect that such moneys are not subject to avoidance as a preferential transfer under Section 547 of the Federal Bankruptcy Code in the event of the filing of a petition under Chapter 3 of the Federal Bankruptcy Code by or against the Issuer or the Obligor (or any "insider" of the Obligor within the meaning of the Federal Bankruptcy Code); or (ii) shall have been held by the Bond Trustee for at least one hundred twenty-three (123) days (three hundred sixty-seven (367) days, if the Obligor's obligations under the Variable Rate Loan Agreement or the Reimbursement Agreement are at any time guaranteed by an "insider" of the Obligor within the meaning of the Federal Bankruptcy Code) prior to the date such moneys are to be used to make payments on the Series 1999D Bonds, provided that no Act of Bankruptcy shall have occurred (or be continuing) during such one hundred twenty-three (123)-day period (three hundred sixty-seven (367)-day period, if the obligations of the Obligor under the Variable Rate Loan Agreement or the Reimbursement Agreement are at any time guaranteed by an "insider" of the Obligor within the meaning of the Federal Bankruptcy Code) after such moneys were deposited with the Bond Trustee.

"Seasoned Funds Account" means the Account by that name established in the Bond Fund for the Series 1999D Bonds.

"Series 1999 Bonds" means the Series 1999A Bonds, Series 1999B Bonds, Series 1999C Bonds, Series 1999D Bonds and Series 1999E Bonds.

"Series 1999A Bonds" means the North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Series 1999A Bonds.

"Series 1999B Bonds" means the North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Series 1999B Extendable Rate Adjustable SecuritiesSM (EXTRASSM).

"Series 1999C Bonds" means the North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Series 1999C Extendable Rate Adjustable SecuritiesSM (EXTRASSM).

"Series 1999D Bonds" means the North Central Texas Health Facilities Development Corporation Variable Rate Demand Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Series 1999D.

"Series 1999E Bonds" means the North Central Texas Health Facilities Development Corporation Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Taxable Series 1999E Extendable Rate Adjustable SecuritiesSM (EXTRASSM).

"Series 1999 Notes" means the Series 1999A Note, the Series 1999B Note, the Series 1999C Note, the Series 1999D Note, the Series 1999E Note and the Series 1999F Note issued by the Obligated Group Representative pursuant to the Master Indenture.

"Series 1999 Tax-Exempt Bonds" means all of the Series 1999 Bonds except the Series 1999E Bonds.

"Series 1999D Credit Facility" means the original Credit Facility delivered by the Obligor to the Bond Trustee on the Closing Date, and, unless the Obligor complies with the provisions the Variable Rate Loan Agreement, each letter of credit delivered by the Obligor to the Bond Trustee on or before a Conversion Date or an Adjustable Rate Reset Date against which the Bond Trustee shall be entitled to draw, in accordance with the terms thereof: (a) an amount sufficient to pay, with respect to the Series 1999D Bonds supported by such Credit Facility, (i) the aggregate principal amount of such Series 1999D Bonds, plus (at the option of the Obligor) an amount equal to the maximum optional redemption premium payable on such Series 1999D Bonds subsequent to such Conversion Date or Adjustable Rate Reset Date, as appropriate, or (ii) the purchase price or a portion of the purchase price equal to the aggregate principal amount of such Series 1999D Bonds delivered for purchase pursuant to the Variable Rate Bond Indenture; plus (b) while Series 1999D Bonds are outstanding in the Floating Rate Mode or the Adjustable Rate Mode, an amount equal to at least 54 days' accrued interest on such Series 1999D Bonds, calculated at an assumed rate per annum established in such Credit Facility and no greater than the Maximum Rate.

"Short-Term Indebtedness" means any Indebtedness (a) incurred or assumed by an Obligated Group Member for a term not exceeding 365 days, except any such Indebtedness with respect to which a Liquidity Facility is then in effect, and (b) any Guarantee of any Indebtedness that would be described in clause (a) above if such Indebtedness were incurred directly by an Obligated Group Member. Put Indebtedness shall not be deemed to constitute Short-Term Indebtedness for the purposes of the Master Indenture solely by reason of the option of the holder thereof to require the redemption or purchase thereof or any required redemption or purchase thereof in connection with the termination of the Liquidity Facility securing such Put Indebtedness prior to the stated maturity thereof.

"Significant Bondholder" means any holder of Related Bonds or Obligations in a principal amount equal to or greater than \$500,000.

"Special Reserve Fund" means the Special Reserve Fund established pursuant to the Master Indenture.

"Stable Occupancy" shall mean (a) with respect to the Initial Project, an average occupancy of all units and beds in the Facility during the preceding twelve-month period ending on the last day of a Fiscal Quarter equal to or greater than ninety percent (90%) and (b) with respect to any Additional Facilities, the occupancy level for the Additional Facilities defined as stable utilization or occupancy in the report of the Management Consultant or Marketing Consultant, as the case may be, issued in connection with the incurrence of Additional Indebtedness.

"Stated Maturity" when used with respect to any Indebtedness or any installment of interest thereon means any date specified in the instrument evidencing such Debt or such installment of interest as a fixed date on which the principal of such Indebtedness or any installment thereof or the fixed date on which such installment of interest is due and payable.

"Subordinated Indebtedness" means any promissory note, guaranty, lease, contractual agreement to pay money or other obligation the terms of the documents providing for the issuance of which expressly provide that all payments on such Subordinated Indebtedness shall be subordinated to the timely payment of all Obligations, whether currently Outstanding or subsequently issued.

"Surplus Construction Fund Moneys" means all moneys (including moneys earned pursuant to the provisions of the Bond Indenture) remaining in the Construction Fund and the Project Fund after completion or termination of the Project (as evidenced by a Completion Certificate) and payment of all other costs then due and payable from the Construction Fund and the Project Fund.

"Swap Provider" shall mean the counterparty with whom an Obligated Group Member enters into a Qualified Swap Agreement.

"Total Expenses" means the total operating and non-operating expenses of the Obligated Group determined in accordance with generally accepted accounting principles consistently applied; provided, however, that no determination thereof shall take into account (a) any loss resulting from the extinguishment of indebtedness or the sale, exchange or other disposition of investments or capital assets not in the ordinary course of business, (b) any unrealized loss on investments or (c) any development fees paid by the Obligor after receipt of the Certificate of Occupancy.

"Total Operating Expenses" means the sum of all Expenses of the Obligated Group for any applicable period, exclusive of (i) depreciation and amortization, (ii) interest expense, determined in accordance with generally accepted accounting principles consistently applied, (iii) operating expenses incurred to the extent such expenses were funded from proceeds of such Person's Long-Term Indebtedness, Additional Indebtedness or Subordinate Indebtedness as the case may be and such proceeds are still available for use during such period.

"Total Operating Revenues" means the sum of all operating revenues of the Obligated Group for any applicable period, determined in accordance with generally accepted accounting principles consistently applied.

"Trade Payable Covenant" means the covenant set forth in "The Master Indenture - Trade Payable Covenant".

"Trust Estate" means, with respect to the Master Indenture, the property of the Obligated Group Members pledged to the Master Trustee as security for the payment of the Obligations, including without limitation the revenue, accounts receivable and Receipts of the Obligated Group Members, subject to certain restrictions; the right, title and interest of the Obligated Group Members in the Ground Lease and the real property to which the Ground Lease is subject, together with improvements thereon; the right, title and interest of the Obligated Group in any personal property used at the Facility; and such other property that may in the future be pledged as additional security.

"Unrestricted Cash and Investments" means, as of the date of determination, any cash, cash equivalents and short-term securities (which have a readily determinable market price) which are not restricted in any manner, as evidenced by the most recent audited financial statements.

"Variable Rate Bond Indenture" means the Bond Trust Indenture dated as of November 15, 1999 between the Issuer and the Bond Trustee relating to the Series 1999D Bonds.

"Variable Rate Indebtedness" means, as of any particular date, Long-Term Indebtedness (other than Extendable Indebtedness) the interest rate on which is not established at a fixed rate or rates for the remaining term thereof.

THE MASTER INDENTURE

The following is a summary of certain provisions of the Master Indenture. The summary does not purport to be complete and is qualified in its entirety to reference to the Master Indenture itself.

Payment of Obligations. Each Obligated Group Member is jointly and severally liable for, and each has agreed to duly and punctually pay the principal of (and premium, if any), and the interest on each Obligation in accordance with the terms of the Obligation and the Master Indenture.

Application of Entrance Fees. (a) Until the conditions described in paragraph (b) below have been satisfied, the Obligor agrees that all Entrance Fees received shall be transferred to the Master Trustee within five Business Days of the receipt thereof. All such amounts received by the Master Trustee shall be deposited into the applicable account of the Entrance Fees Fund and applied as set forth in "The Master Indenture - Entrance Fees Fund".

(b) At such time as (i) the Series 1999B Bonds have been paid at maturity, redeemed or irrevocably called for redemption, and (ii) no Event of Default has occurred and is continuing, the Obligor shall no longer be required to transfer Entrance Fees to the Master Trustee, the Master Trustee shall terminate the Entrance Fees Fund, and the Master Trustee shall disburse any balance therein as directed in writing by an Authorized Representative.

(c) After the conditions described in paragraph (b) above have been satisfied, the Obligor may use all Entrance Fees received for any lawful purpose; provided that (i) first, if the full Operating Reserve Account Requirement is not on deposit in the Operating Account of the Special Reserve Fund, the Obligor shall transfer all Entrance Fees received within five Business Days of the receipt thereof to the Master Trustee for deposit into the Operating Account until such deficiency is cured and (ii) second, if the full Leasehold Reserve Account Requirement is not on deposit in the Leasehold Account of the Special Reserve Fund, the Obligor shall transfer all Entrance Fees received within five Business Days of the receipt thereof to the Master Trustee for deposit into the Leasehold Account until such deficiency is cured.

Entrance Fees Fund. (a) The Master Trustee shall deposit all Entrance Fees received from time to time from the Obligor as follows:

(i) into the Series E Account of the Entrance Fees Fund until such time as all Series 1999E Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity, then

(ii) into the Series D Account of the Entrance Fees Fund until such time as all Series 1999D Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity and all Bank Obligations have been paid or duly provided for, then

(iii) into the Series C Account of the Entrance Fees Fund until such time as all Series 1999C Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity, then

(iv) into the Series B Account of the Entrance Fees Fund until such time as all Series 1999B Bonds have been fully redeemed or irrevocably called for redemption or paid at maturity.

(b) Entrance Fees received by the Master Trustee and on deposit in the Entrance Fees Fund shall be transferred by the Master Trustee, to the extent of moneys on deposit therein, first from the Series B Account, then from the Series C Account, then from the Series D Account and finally from the Series E Account, as follows:

FIRST, to the Obligor to pay refunds required by Residency Agreements, with such disbursements to be made by the Master Trustee within two Business Days of receipt by the Master Trustee of an Officer's Certificate stating (i) that (A) the Obligor is required by Residency Agreements to pay refunds within the next 15 days and (B) no other moneys are available nor will be reasonably available to pay such refunds, and (ii) the amount of such refunds.

SECOND, on the first Business Day of each month into the Operating Account of the Special Reserve Fund, the amount, if any, needed to increase the amount on deposit in the Operating Account to an amount equal to the Operating Reserve Account Requirement; and

THIRD, on the first Business Day of each month into the Leasehold Account of the Special Reserve Fund, the amount, if any, needed to increase the amount on deposit in the Leasehold Account to an amount equal to the Leasehold Reserve Account Requirement.

(c) On each Entrance Fee Transfer Date an amount equal to the largest Authorized Denomination on deposit in the Series E Account shall be transferred to the Bond Trustee and shall be used by the Bond Trustee to redeem Series 1999E Bonds on the next Entrance Fee Redemption Date.

(d) On each Entrance Fee Transfer Date an amount equal to the largest Authorized Denomination on deposit in the Series D Account shall be transferred to the Bond Trustee and shall be used by the Bond Trustee to redeem Series 1999D Bonds on the next Entrance Fee Redemption Date.

(e) On each Entrance Fee Transfer Date an amount equal to the largest Authorized Denomination on deposit in the Series C Account shall be transferred to the Bond Trustee and shall be used by the Bond Trustee to redeem Series 1999C Bonds on the next Entrance Fee Redemption Date.

(f) So long as no Suspension Notice (as described below) has been delivered by the Obligor to the Master Trustee, on each Entrance Fee Transfer Date an amount equal to the largest Authorized Denomination on deposit in the Series B Account shall be transferred to the Bond Trustee and shall be used by the Bond Trustee to redeem Series 1999B Bonds on the next Entrance Fee Redemption Date.

(g) At the election of the Obligor, and upon compliance with the provisions described below, amounts on deposit in the Series B Account that are otherwise available to be used to redeem Series 1999B Bonds may be used to pay the costs of constructing Additional Facilities. To exercise such election, the Obligor must file with the Master Trustee an Officer's Certificate (a "Suspension Notice") stating its intention to undertake construction of an Additional Facility, directing the Master Trustee to suspend the special mandatory redemption of the Series 1999B Bonds, specifying the principal amount of the Series 1999B Bonds subject to the Suspension Notice, and the next Rate Change Date (including the Initial Rate Change Date) applicable to the Series 1999B Bonds. The Suspension Notice also shall state: (i) that the percentage of Independent Living Units in the Facility and in all prior Additional Facilities constituting Occupied Units is at least 90%; (ii) the percentage of Independent Living Units in the Facility and in all prior Additional Facilities constituting Reserved Units and Occupied Units is at least 95%; and (iii) no Event of Default has occurred and is continuing under the Master Indenture.

(h) Following receipt of a Suspension Notice, the Master Trustee shall suspend the transfer of moneys from the Series B Account to the Bond Trustee and shall retain Entrance Fees in the Series B Account, subject to the provisions described in Section 3.03(i), until the Obligor files with the Master Trustee an Officer's Certificate (a "Transfer Notice") stating that (i) the percentage of Independent Living Units in the Facility and in all prior Additional Facilities constituting Occupied Units for the three full calendar months prior to the date of the Transfer Notice was at least 90% and the percentage of Independent Living Units in the Facility and in all prior Additional Facilities constituting Reserved Units and Occupied Units was at least 95% (provided, that in calculating Occupied Units for the purposes of this clause (i) the Obligor shall disregard any Independent Living Unit to be constructed in the Additional Facility for which the resident has paid an Entrance Fee); (ii) the percentage of Reserved Units in the Additional Facility to be constructed is at least 70%; (iii) a guaranteed maximum price construction contract for the Additional Facility has been executed by the Obligor and the contractor for the Additional Facility, a copy of which shall accompany the Transfer Notice, and the amount available in the Series B Account subject to the

Transfer Notice, together with other funds available to the Obligor at the time of filing the Transfer Notice, will be sufficient to pay the total construction costs of the Additional Facility (without causing the Obligor to fall below the then required Liquidity Ratio); (iv) a building permit for the Additional Facility has been issued, a copy of which shall accompany the Transfer Notice; (v) construction on the Additional Facility shall commence at least 18 months prior to the Rate Change Date identified in the Suspension Notice and is expected to be completed prior to such date; and (vi) no Event of Default has occurred and is continuing under the Master Indenture. Upon receipt of the Transfer Notice, the Master Trustee shall transfer Entrance Fees in the amount specified in the prior Suspension Notice on deposit in the Series B Account to the Bond Trustee for deposit to the Construction Fund established in the Fixed Rate Bond Indenture.

(i) Notwithstanding the foregoing, if the Master Trustee has not received a Transfer Notice at least 18 months prior to the Rate Change Date identified in the Suspension Notice, the Master Trustee shall again commence to apply the Entrance Fees on deposit in the Series B Account to the purposes specified in this Section.

Operating Account. (a) The Master Trustee shall deposit in the Operating Account of the Special Reserve Fund moneys from the Entrance Fees Fund or any Entrance Fees received from time to time from the Obligor for deposit to the Operating Account until the amount on deposit therein equals the Operating Reserve Account Requirement.

(b) Moneys in the Operating Account shall be disbursed by the Master Trustee to or for the account of the Obligor within seven days of receipt by the Master Trustee of an Officer's Certificate to the effect that (i) such moneys will be used to pay (A) Costs of the Initial Project, (B) operating expenses of the Facility, including without limitation Ground Lease Rentals, (C) the costs of needed repairs to the Facility, (D) the costs of capital improvements to the Facility required by law or regulation, (E) judgements against the Obligor, or (F) amounts due on any Indebtedness of the Obligor, including any Bank Obligations, (ii) such moneys are anticipated to be expended in the calendar month following the month in which such Officers' Certificate is submitted, together with an itemized budget describing the uses for which such moneys are needed and the amount needed for each such use, and (iii) no other funds are available or will reasonably be available to make such payments.

(c) At such time as (i) no Event of Default has occurred and is continuing, (ii) the Series 1999B Bonds have been paid at maturity, redeemed or irrevocably called for redemption, (iii) the Obligor has complied with the Rate Covenant for each of the prior two consecutive Fiscal Years and (iv) the Obligor is then in compliance with the Operating Ratio and Liquidity Ratio Covenants as set forth in an Officer's Certificate, all amounts on deposit in the Operating Account shall be disbursed to the Obligor. Upon such disbursement to the Obligor, the Master Trustee shall terminate the Operating Account and the Operating Reserve Account Requirement.

Leasehold Account. (a) The Master Trustee shall deposit in the Leasehold Account of the Special Reserve Fund moneys from the Entrance Fees Fund or any Entrance Fees received from time to time from the Obligor for deposit to the Leasehold Account until the amount on deposit therein equals the Leasehold Reserve Account Requirement.

(b) Moneys in the Leasehold Account shall be disbursed by the Master Trustee to or for the account of the Obligor within seven days of receipt by the Master Trustee of an Officer's Certificate to the effect that (i) such moneys will be used to pay (A) Costs of the Initial Project, (B) operating expenses of the Facility, including without limitation Ground Lease Rentals, (C) the costs of needed repairs to the Facility, (D) the costs of capital improvements to the Facility required by law or regulation, (E) judgements against the Obligor, or (F) amounts due on any Indebtedness of the Obligor, including any Bank Obligations, (ii) such moneys are anticipated to be expended in the calendar month following the month in which such Officers' Certificate is submitted, together with an itemized budget describing the uses for which such moneys are needed and the amount needed for each such use, and (iii) no other funds are available or will reasonably be available to make such payments.

(c) At such time as (i) no Event of Default has occurred and is continuing, (ii) the Series 1999B Bonds have been paid at maturity, redeemed or irrevocably called for redemption, (iii) the Obligor has complied with the Rate Covenant for each of the prior two consecutive Fiscal Years and (iv) the Obligor is then in compliance with the Operating Ratio and Liquidity Ratio Covenants as set forth in an Officer's Certificate, all amounts on deposit in the Leasehold Account shall be disbursed to the Obligor. Upon such disbursement to the Obligor, the Master Trustee shall terminate the Leasehold Account and the Leasehold Account Reserve Account Requirement.

(d) The Leasehold Reserve Account Requirement for each Rent Year shall be evidenced by an Officers' Certificate delivered to the Master Trustee on or before the first day of such Rent Year stating the amount of the Leasehold Reserve Account Requirement and showing the calculation thereof.

Investment of Funds. Any moneys held by the Master Trustee under the Master Indenture as part of any fund or account established under the Master Indenture shall be invested or reinvested by the Master Trustee upon the receipt of a written direction from the Obligated Group Representative (upon which the Master Trustee is entitled to rely) in Investment Securities. Any such investments shall be held by or under the control of the Master Trustee and shall mature, or be redeemable at the option of the Master Trustee at such times as it is anticipated that moneys from the particular fund will be required for the purposes of the Master Indenture. For the purpose of any investment or reinvestment under this Section, investments shall be deemed to mature at the earliest date on which the obligor is,

on demand, obligated to pay a fixed sum in discharge of the whole of such obligation. Any Investment Securities may be purchased from or sold to the Master Trustee or any of its respective affiliates.

Payment of Principal, Premium and Interest; Receipts. Each Obligated Group Member is jointly and severally liable for, and will duly and punctually pay, the principal of (and premium, if any) and the interest on each Obligation in accordance with the terms thereof of the Master Indenture. So long as no Event of Default exists and is continuing hereunder, each Obligated Group Member shall be entitled to full possession and use of the Receipts other than Entrance Fees transferred to the Master Trustee as required by the Master Indenture.

Payment of Ground Lease Rentals, Taxes and Other Claims. Each Obligated Group Member will pay or discharge or cause to be paid or discharged before the same shall become delinquent, (1) Ground Lease Rentals, (2) all taxes, assessments, and other governmental charges lawfully levied or assessed or imposed upon it or upon its income, profits, or property, and (3) all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien upon its property; provided, however, that no such Person shall be required to pay and discharge or cause to be paid and discharged any such tax, assessment, governmental charge, or claim to the extent that the amount, applicability, or validity thereof shall currently be contested in good faith by appropriate proceedings and such Person shall have established and shall maintain adequate reserves on its books for the payment of the same.

Maintenance of Properties. Each Obligated Group Member will cause all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair, and working order and supplied with all necessary equipment, ordinary wear and tear, casualty, condemnation, and acts of God excepted. Each Obligated Group Member will cause to be made all necessary repairs, renewals, replacements, betterments, and improvements thereof, all as in the judgment of the Obligated Group Representative may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent any such Person from discontinuing the operation and maintenance of any of its properties if such discontinuance is, in the judgment of such Person (and in the opinion of the Governing Body of such Person if the property involved is any substantial part of the properties of such Person taken in the aggregate), desirable in the conduct of its business and not disadvantageous in any material respect to the Holders of the Obligations.

Limitation on Disposition of Assets. Except as described in "The Master Indenture - Consolidation, Merger, Conveyance and Transfer" each Obligated Group Member will not convey, sell, or otherwise dispose of any properties of such Person unless:

- (a) Ordinary Course or Intercompany. Such conveyance, sale, or disposition shall be in the ordinary course of business or to a member of the Obligated Group; or
- (b) Nonproductive Assets. Such property is an operating asset and is obsolete, worn out, or unnecessary, or, in the opinion of the Obligated Member Representative, unprofitable or undesirable; or
- (c) Fair Market Value. Such conveyance, sale, lease or disposition is, in the reasonable opinion of the Obligated Group Representative, for fair market value; or
- (d) In Kind Gifts. Such property consists of property received by an Obligated Group Member as a gift or bequest that constitutes property other than cash or property used in the operation of the residential retirement facilities operated by the Obligated Group; or
- (e) Basket. The aggregate fair market value of all property disposed of by the Obligated Group pursuant to this subparagraph (e) in any Fiscal Year does not exceed three percent (3%) of the aggregate book value (or, at the option of the Obligated Group Representative, current value) of all of the assets of the Obligated Group as of the last day of the most recent Fiscal Year for which audited financial statements have been filed with the Master Trustee as required by the Master Indenture and the Obligated Group is and shall remain in compliance with the Rate Covenant and the Liquidity Ratio Covenant after giving effect to the sale, transfer or disposition of assets; provided however, that such total value percentage may be increased to:
 - (i) 5% if the Obligated Group is and shall remain in compliance with the Rate Covenant and the Liquidity Ratio is not less than .45 after giving effect to the sale, transfer or disposition of assets; or
 - (ii) 7.5% if the Obligated Group is and shall remain in compliance with the Covenant and the Liquidity Ratio is not less than .60 after giving effect to the sale, transfer or disposition of assets; or
 - (iii) 10% if the Obligated Group is and shall remain in compliance with the Covenant and the Liquidity Ratio is not less than .75 after giving effect to the sale, transfer or disposition of assets; or

(iv) 100% if (A) the Obligated Group is and shall remain in compliance with the Rate Covenant, (B) the Liquidity Ratio is not less than 1.00 after giving effect to the sale, transfer or disposition of assets and (C) all Series 1999D Bonds have been redeemed or otherwise paid in full and all Bank Obligations have been paid in full.

Obligor to Provide Information; Stable Occupancy. (a) Upon the written request of the Principal Underwriters or the Master Trustee, the Obligated Group Representative shall provide and certify, at the Obligated Group Representative's expense, such information concerning the Facility, the Trust Estate, the Obligated Group, its finances and other topics as the Principal Underwriters or the Master Trustee may reasonably request.

(b) Within 30 days after Stable Occupancy has occurred, the Obligor shall deliver to the Master Trustee and the Principal Underwriters an Officer's Certificate to that effect.

Statement as to Compliance. The Obligated Group Representative will deliver to the Master Trustee, within 120 days after the end of each Fiscal Year, a written statement signed by a Designated Officer stating that

(a) a review of the activities of the Obligated Group Members during such year and of performance hereunder has been made under his supervision, and

(b) to the best of his knowledge, based on such review, each Obligated Group Member has fulfilled all its material obligations hereunder throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

The Obligated Group Representative will deliver to the Master Trustee promptly upon the discovery thereof a written statement describing any default which has not been cured or waived known to any executive officer of any Obligated Group Member under any instrument creating any material Indebtedness of such Obligated Group Member, specifying such default and the nature and status thereof.

Annual Audit of Obligated Group; Monthly Financial Reports; Marketing and Occupancy Reports. (a) Within 120 days of the end of each Fiscal Year, the Obligated Group Representative shall cause financial statements of the Obligated Group to be prepared with respect to such Fiscal Year in accordance with generally accepted accounting principles, consistently applied, which financial statements shall be audited by, and accompanied by a report of, an Independent Accountant. Such financial statements and reports shall be delivered upon completion to the Master Trustee, the Principal Underwriter and, upon request, to any Significant Bondholder.

(b) During the course of performing such audit, such Independent Accountant will perform a review of the provisions of the Master Indenture, all Supplements hereto, the Related Indentures and the Related Loan Agreements to determine whether any Event of Default has occurred and shall provide a report to the Master Trustee, either stating that no Event of Default has occurred or, if an Event of Default has occurred, describing the nature and extent of such Event of Default. Any Significant Bondholder who so requests shall be entitled to a copy of such report.

(c) Commencing with the first month following the Closing Date and ending on the last month of the first Fiscal Year in which Stable Occupancy in the Facility has occurred, the Obligated Group Representative shall submit within 35 days of the last day of each month to the Master Trustee, the Dissemination Agent and any Significant Bondholder who so requests copies of the unaudited financial reports on the development costs of the Initial Project to date and marketing and occupancy reports of the Obligated Group for such month, which reports shall include computations establishing the Obligated Group's compliance with the Rate Covenant, the Operating Ratio Covenant, the Liquidity Ratio Covenant, the Marketing Targets and the Occupancy Targets.

(d) Commencing with the first month of the Fiscal Year following the Fiscal Year in which Stable Occupancy in the Facility has occurred, the Obligated Group Representative shall submit within 35 days of the last day of each month to the Master Trustee, the Dissemination Agent and any Significant Bondholder who so requests copies of the unaudited financial statements of the Obligated Group for such month.

The Master Trustee shall act only as a repository for, and shall have no obligation to review, any financial statements or other reports submitted by the Obligated Group Representative.

Rate Covenant. (a) Each Obligated Group Member shall fix, charge and collect, or cause to be fixed, charged and collected, fees, rentals, rates and charges in each Fiscal Year for the use of the Facility and any other facilities of the Obligated Group and services provided or to be provided in connection therewith by the Obligated Group that shall be at least sufficient to produce in (i) the earlier of (A) the Fiscal Year that follows the first Fiscal Year in which Stable Occupancy has occurred or (B) the Fiscal Year ending December 31, 2005, a Debt Service Coverage Ratio as of the last day of such Fiscal Year that is not less than 1.10 and (ii) each Fiscal Year thereafter,

a Debt Service Coverage Ratio as of the last day of such Fiscal Year that is not less than (A) 1.20 or (B) if the Liquidity Ratio for such Fiscal Year is at least .40, 1.15.

(b) There shall be excluded from the calculation of the Debt Service Coverage Ratio required by paragraph (a) above:

(i) the Debt Service Requirements of any Additional Indebtedness, together with all Revenues and Total Expenses of any Additional Facilities financed with such Additional Indebtedness, until the later of:

(A) the first full Fiscal Year in which the completion of the acquisition, construction, renovation or replacement being paid for with the proceeds of such Additional Indebtedness occurs; or

(B) the first full Fiscal Year in which Stable Occupancy in the case of the acquisition, construction, renovation, or replacement of revenue producing facilities being financed with the proceeds of such Additional Indebtedness occurs, provided that such Stable Occupancy occurs no later than during the fourth full Fiscal Year following the incurrence of such Additional Indebtedness.

(ii) The Debt Service Requirements of any Additional Indebtedness if the following conditions are met:

(A) The Obligated Group Representative shall have delivered to the Master Trustee a report of a Management Consultant to the effect that the Debt Service Coverage Ratio for each of the two Fiscal Years following the later of (1) the Fiscal Year in which completion of the acquisition, construction, renovation or replacement being paid for with the proceeds of such Additional Indebtedness is estimated, or (2) the Fiscal Year in which Stable Occupancy in the case of the acquisition, construction, renovation, or replacement of revenue producing facilities being financed with the proceeds of such Additional Indebtedness is projected, provided that such Stable Occupancy is projected to occur in the Management Consultant's Report to occur no later than during the fourth full Fiscal Year following the incurrence of such Additional Indebtedness, or (3) the Fiscal Year in which Additional Indebtedness for other purposes is incurred, will not be less than 1.20 after giving effect to the incurrence of such Additional Indebtedness and the application of the proceeds thereof; provided, however, in the event the Management Consultant delivers a report stating that state or federal laws do not permit the Obligated Group to maintain the 1.20 ratio, then such ratio shall be reduced to that permitted by law; provided that if the Days' Cash on Hand of the Obligor as of the last day of such Fiscal Year is less than 60, such ratio shall not be less than 1.00. In the event that a Management Consultant's report is not required or utilized to incur Additional Indebtedness, an Officer's Certificate may be used in lieu of the Management Consultant's report for the purposes of this Section;

(B) The interest on such Additional Indebtedness and any projected start-up losses during such periods is funded from the proceeds thereof or other funds designated by the Obligated Group Representative, and continues to be available for such purposes during such periods; and

(C) No principal of such Additional Indebtedness shall be payable during such period, excluding any Additional Indebtedness which may become due as a result of the collection of entrance fees during such period.

(c) If the annual audit reflects a violation of the Rate Covenant described in paragraph (a) of this Section, then and in every such case (i) each Obligated Group Member shall (and shall cause each Obligated Group Affiliate to), within 60 days from receipt by the Obligated Group Representative of such annual audit, take all action necessary to cause the fees, rentals, rates and charges imposed and collected in connection with the operation of the Facility to produce the amount required by paragraph (a) of this Section and (ii) the Obligated Group Representative shall immediately employ a Management Consultant to prepare and submit a written report and recommendations within sixty (60) days with respect to the fees, rentals, rates and charges imposed and collected by the Obligated Group Members in connection with the operation of the Facility and with respect to improvements or changes in the operations or management of or the services rendered by the Obligated Group Members; provided, however, the Management Consultant shall not be required to submit an additional written report if the Management Consultant shall have submitted a written report in compliance with this Section during the preceding five months. The Obligated Group Representative shall require any Management Consultant employed hereunder to file its report and recommendations within 90 days from the Obligated Group Representative's receipt of the annual audit reflecting a violation of the Rate Covenant with the Master Trustee and the Principal Underwriters. Notwithstanding the foregoing, in the event the Management Consultant delivers a report stating that state or federal laws do not permit the Obligated Group Members to

maintain the 1.20 ratio, then such ratio shall be reduced to that permitted by law; provided that if the Days' Cash on Hand of the Obligor as of the last day of such Fiscal Year is less than 60, such ratio shall not be less than 1.00.

(d) Any Management Consultant retained pursuant to the Master Indenture may recommend (with respect to the fees, rentals, rates or other charges imposed by the Obligated Group Members and with respect to improvements or changes in the operations or management of or the services rendered by the Obligated Group Members) that the Obligated Group Members either (i) make no change, or (ii) make some change, even though such recommendation is not calculated to result in compliance with the provisions of paragraph (a) of this Section if, in the opinion of such Management Consultant, compliance with such recommendation should result in compliance with such provisions to the maximum extent feasible. Nothing set forth in this Section shall be construed to excuse the Obligated Group Members from (i) the payment in timely manner of all the payments required by the Master Indenture and all Supplements thereto and all other obligations of the Obligated Group Members as such payments become due and payable, and (ii) the requirement to employ a Management Consultant annually in the event that the fees, rentals, rates and charges imposed, collected and received by the Obligated Group Members in connection with its operation of the Facility fail to satisfy the requirements of paragraph (a) of this Section.

(e) Each Obligated Group Member shall promptly revise or cause to be revised the fees, rentals, rates and charges for use of the Facility and any other facilities owned or operated by the Obligated Group Members and services provided or to be provided in connection therewith by the Obligated Group Members in conformity with any lawful recommendation of the Management Consultant retained pursuant to the Master Indenture and shall otherwise follow the recommendations of such Management Consultant. If the Obligated Group Members shall revise such fees, rentals, rates and charges in conformity with the recommendations of the Management Consultant and otherwise follow such recommendations of the Management Consultant, then such failure to meet the requirements of paragraph (a) of this Section for such Fiscal Year shall not constitute an Event of Default under the Master Indenture. If approvals of any regulatory or supervisory authority are required in order to fix, charge, collect and otherwise implement any fees, rentals, rates and charges required by the operation of this Section, the Obligated Group Members shall take all action within its power to obtain such approvals in an expeditious manner.

Insurance. (a) The Obligated Group Members shall keep the Facilities adequately insured at all times and maintain with responsible insurers with respect to its facilities and operations insurance of such types, in such amounts and against such risks as are customarily maintained by persons in similar circumstances having facilities of a comparable type and size and offering comparable services as those of the Obligated Group Members, including (without limitation) the following insurance to the extent that such insurance is commercially available and customarily maintained by such persons or similar subject matter: (i) full fire, earthquake and extended coverage insurance on the Facilities providing for not less than full recovery of the insurable value (less reasonable deductibles and exclusions) of any damaged property; (ii) public liability and property damage insurance, including (without limitation) business automobile liability insurance and medical and professional liability insurance in amounts estimated to fully indemnify (less reasonable deductibles and exclusions) the Obligated Group Members and the Master Trustee, against the estimated loss or damage; and (iii) fidelity, comprehensive dishonesty, disappearance and destruction insurance. In addition, the Obligated Group Members shall (and shall cause the Obligated Group Affiliates to) obtain and maintain "use and occupancy" insurance, "business interruption" insurance or "additional expenses" insurance covering the loss of revenues by reason of the total or partial suspension of or interruption in the operation of the Facilities caused by damage to or destruction of the Facilities and additional expenses incurred in complying with the Residency Agreements in an amount not less than the amount required to meet the Debt Service Requirements of Outstanding Long-Term Indebtedness for a period of not less than 18 months.

(b) Except with respect to paragraph (a)(i) of this Section concerning Facilities, and any plant or equipment related to the Facilities which must be commercially insured, the Obligated Group Members may satisfy the requirements of paragraph (a)(ii) and paragraph (a)(iii) of this Section by (i) during any period in which 95% of the Independent Living Units in the Facility are Occupied Units, establishing and maintaining a self-insurance plan or (ii) participation in a group self-insurance trust insurance pool, in either case, protecting the Obligated Group Members against the risks required to be insured against by paragraphs (a)(ii) and (a)(iii) of this Section. Any group self-insurance trust must be approved by the Master Trustee. Any self-insurance plan shall provide for (i) establishment by the Obligated Group Members of a segregated fund of cash or marketable securities for the defense and payment of claims arising from such risks, (ii) funding of such fund in initial and subsequent amounts determined annually by an Independent Actuary employing accepted actuarial techniques customarily employed by the casualty insurance industry, such actuarial determination to be submitted to the Master Trustee within 60 days from the end of each Fiscal Year, (iii) annual reporting to the Master Trustee of the current fund balance of such fund as of the end of each Fiscal Year and an evaluation of the aggregate potential effect on the fund balance of claims asserted and pending that could ultimately be payable from such fund, such reports to be submitted within 60 days after the end of each Fiscal Year, and (iv) establishment and operation of a claims processing and risk management program. In connection with any such self-insurance plan, the Obligated Group Representative shall furnish to the Master Trustee, annually within 60 days after the end of each Fiscal Year, (A) a letter from an Independent Actuary to the effect that the self-insurance plan is maintaining adequate reserves and has been adequately funded and (B) a report with respect to the claims processing and risk management program referred to in item (iv) above.

(c) Not less frequently than every two years, within 60 days after the end of the Fiscal Year, the Obligated Group Representative shall employ an Insurance Consultant to review the insurance coverage of, and the insurance required by this Section for,

the Obligated Group Members and shall furnish to the Master Trustee signed copies of the report of such Insurance Consultant. Such report shall state whether, in the opinion of such Insurance Consultant, the Obligated Group Members have satisfied the requirements of this Section as of the last day of such Fiscal Year and make recommendations, if any, respecting the types, amounts and provisions of insurance that should be carried with respect to the Obligated Group Members, the Facilities, the construction and acquisition of any Capital Improvements and the operation, maintenance and administration of the Facilities. The Obligated Group Members shall increase or otherwise modify the kinds and amounts of insurance maintained by the Obligated Group Members to the extent that such increase or modification is recommended by the Insurance Consultant and results in substantially the same coverage as is customarily maintained by persons in similar circumstances having facilities of a comparable size and offering comparable services as those of the Obligated Group Members.

(d) The Obligated Group Representative shall furnish to the Master Trustee complete copies of all policies of insurance carried with respect to the Obligated Group Members, the Facilities and the operation, maintenance and administration of the Facilities, and all certificates of insurance reflecting such policies. If any material change occurs in any such insurance coverage, including without limitation an increase in the amount of any deductible or a decrease in the amount of coverage, the Obligated Group Representative shall so notify the Master Trustee at the time of such change. The Obligated Group Representative shall deliver to the Master Trustee certificates of renewal of any insurance at least 30 days prior to the expiration of any policy of insurance.

(e) Annually, within 60 days after the end of each Fiscal Year, the Obligated Group Representative shall employ, at the expense of the Obligated Group Representative, an Independent Actuary for the purposes of reviewing any self-insurance plan that may be established and operated pursuant to this Section and of making recommendations concerning the appropriate level of funding and soundness of reserves maintained by such self-insurance plan. The Obligated Group Representative shall cause a signed copy of any report of such an Independent Actuary to be filed with the Master Trustee for such action as may be deemed appropriate.

(f) Policies of insurance with respect to the Facilities and the operation of the Facilities shall specifically name the Master Trustee as mortgagee and shall contain standard non-contributing mortgagee clauses. Public liability insurance policies shall specifically name the Master Trustee as additional insured. All policies described in this subparagraph (f) shall provide that the insurer shall give at least 30 days' notice in writing to the Master Trustee of cancellation, termination or modification.

(g) In connection with the construction, maintenance, use, operation and repair of the Facilities, the Obligor shall comply with all reasonable requirements of any insurer writing any policy of insurance.

(h) Except as expressly provided herein, neither the Master Trustee nor the Principal Underwriters shall have any responsibility with respect to any insurance required under this Section, except that the Master Trustee shall receive the letters and opinions required to be delivered in accordance with this Section and shall hold the same for inspection by any Significant Bondholder. The Principal Underwriters and the Master Trustee shall be entitled to rely upon any opinions, letters, certifications, recommendations and reports provided in accordance with this Section and shall have no responsibility or duty to conduct any independent inquiry or investigation as to the adequacy or enforceability of any insurance procured or maintained by the Obligated Group Members or as to whether the Obligated Group Members have in fact procured and maintained the insurance required under this Section. No acceptance or approval of any insurance policy by the Master Trustee shall relieve or release the Obligated Group Members from any liability, duty or obligation under the provisions of the Master Indenture.

Limitations on Additional Indebtedness. Each Obligated Group Member shall not incur or permit to exist any Additional Indebtedness, except as follows:

- (a) Indebtedness of an Obligated Group Member owed to another Obligated Group Member;
- (b) Completion Indebtedness if an Officer's Certificate is delivered to the Master Trustee stating that
 - (i) the amount of such Completion Indebtedness does not exceed the amount (including financing costs, reserve funds and capitalized interest) necessary to provide a completed and equipped facility of the type and scope contemplated at the time that such Long-Term Indebtedness was originally incurred and
 - (ii) that such other Long-Term Indebtedness was estimated when incurred to be sufficient to provide such a completed and equipped facility;
- (c) Short-Term Indebtedness in an aggregate principal amount that shall not exceed 10% of the Total Operating Revenues of the Obligated Group for the most recent Fiscal Year of the Obligated Group for which audited financial statements have been filed with the Master Trustee as required by the Master Indenture; provided, however, that the Obligated Group Members shall have no such Short-Term Indebtedness Outstanding on any day unless during the 12-calendar month period immediately preceding such day there has been a period of at least 20 consecutive days during which the total principal amount of all such Short-Term Indebtedness Outstanding has not exceeded 5% of the Total Operating Revenues of the Obligated Group for such 12-month period, unless there is delivered to the Master Trustee and the Principal Underwriters an Officer's Certificate to the effect that such Short-Term Indebtedness was

incurred or continues to exist as a result of a temporary delay in the receipt by the Obligated Group Members of amounts due from third-party payors, governmental agencies or grantors and that the outstanding amount of such Short-Term Indebtedness has been reduced to the minimum amount practicable under the circumstances;

(d) Long-Term Indebtedness issued for the purpose of refunding (whether in advance or otherwise) any Outstanding Indebtedness of the Obligor, if the Master Trustee and the Principal Underwriters shall have received an Officer's Certificate to the effect that, after giving effect to the proposed refunding, the Maximum Annual Debt Service on all Outstanding Long-Term Indebtedness will not be increased by more than 10%;

(e) Non-Recourse Indebtedness, without limit;

(f) Subordinated Indebtedness, without limit;

(g) any other Long-Term Indebtedness, if

(i) the Master Trustee and the Principal Underwriters shall have received (A) an Officer's Certificate to the effect that the Debt Service Coverage Ratio for each of the two most recent Fiscal Years for which audited financial statements have been filed with the Master Trustee as required by the Indenture was not less than 1.20 for all Outstanding Long-Term Indebtedness (exclusive of any Outstanding Long-Term Indebtedness that is to be refunded or redeemed with proceeds of the Long-Term Indebtedness proposed to be incurred) and the Long-Term Indebtedness then proposed to be incurred, or (B) an Officer's Certificate to the effect that for the most recent Fiscal Year for which audited financial statements have been filed with the Master Trustee as required by the Master Indenture, the Debt Service Coverage Ratio was not less than 1.40 for all Outstanding Long-Term Indebtedness (exclusive of any Outstanding Long-Term Indebtedness that is to be refunded or redeemed with proceeds of the Indebtedness proposed to be incurred) and the Long-Term Indebtedness then proposed to be incurred; or

(ii) the Master Trustee shall have received (A) an Officer's Certificate to the effect that for the most recent Fiscal Year for which audited financial statements have been filed with the Master Trustee as required by the Master Indenture, the Debt Service Coverage Ratio was not less than 1.20 for all Outstanding Long-Term Indebtedness (excluding Debt Service with respect to the Long-Term Indebtedness then proposed to be incurred); and (B) a written report of a Management Consultant to the effect that the estimated Debt Service Coverage Ratio will be not less 1.20 after giving effect to the incurrence of such additional Long-Term Indebtedness and the application of the proceeds thereof for each of the first two full Fiscal Years following the later of (1) the estimated completion of the development, marketing, acquisition, construction, renovation or replacement being paid for with the proceeds of such additional Long-Term Indebtedness or (2) the first full Fiscal Year following Stable Occupancy in the case of construction, renovation or replacement of elderly housing facilities being financed with the proceeds of such additional Long-Term Indebtedness, provided that such Stable Occupancy is projected to occur no later than during the fourth full Fiscal Year following the incurrence of such Long-Term Indebtedness, or (3) following the incurrence of Long-Term Indebtedness for other purposes; provided, however, that in the event that a Management Consultant shall deliver a report to the Master Trustee to the effect that state or Federal laws or regulations or administrative interpretations of such laws or regulations then in existence do not permit or by their application make it impracticable for the Obligor to produce the required ratios, then such ratios shall be reduced to the highest practicable ratios then permitted by such laws or regulations.

(h) Long-Term Indebtedness to finance costs of construction of Additional Facilities upon delivery to the Master Trustee of an Officer's Certificate stating (i) the intended uses of the proceeds of such Long-Term Indebtedness and the estimated cost and the other requirements with respect to such Additional Facilities, (ii) at least 90% of the Independent Living Units in the Facility and any prior Additional Facilities will be Reserved Units, (iii) at least 60% of the Independent Living Units in the proposed Additional Facilities are Reserved Units, (iv) the Obligated Group Representative has delivered a report to the Master Trustee establishing compliance with clause (g) above, (v) the Additional Facilities are subject to the mortgage lien of the Master Indenture, (vi) the Additional Facilities are subject to a guaranteed maximum price contract, which contract shall be subject to a performance and payment bond in an amount not less than the contract price and shall include a liquidated damages provision with a penalty bond in an amount not less than the contract price and shall include a liquidated damages provision with a

penalty equal to one day's Debt Service for delays beyond the scheduled completion date, subject to customary extensions, and (vii) no Event of Default shall have occurred and be continuing under the Master Indenture.

(i) Balloon Indebtedness is permitted:

(i) Provided the requirements of clause (g) above are met in any year in which the Balloon Portion of such Balloon Indebtedness matures and provided that a binding take-out commitment is in place at the time of incurrence to pay off the Balloon Indebtedness when the Balloon Portion matures, or

(ii) The aggregate principal amount outstanding of Balloon Indebtedness does not exceed 10% of Operating Revenues, or

(iii) If the Balloon Portion of the Balloon Indebtedness has a remaining term of five years or greater, and the Obligated Group Representative establishes an amortization schedule and related sinking fund for the Balloon Debt by delivering an Officer's Certificate to the Master Trustee to the effect that:

(A) the amortization schedule provides for principal and interest payments that are not less than the amounts required to be paid by the terms of the Balloon Indebtedness;

(B) the Obligated Group Representative agrees to deposit the amount of principal reflected in the amortization schedule with a bank or trust company pursuant to an agreement acceptable to the Master Trustee and such payments are made to any required actual payments; and

(C) the requirements of (g) above are met when it is assumed that the Balloon Portion is payable in accordance with the amortization set forth in such Officer's Certificate.

If permitted under (i) or (ii) above, Debt Service is then assumed to be due on a level debt basis, computed as 25-year debt at the Projected Rate. Debt Service on Balloon Indebtedness referenced in (iii) above will be computed in accordance with the terms of the amortization schedule referenced therein.

(j) Put Indebtedness is permitted:

(1) in a principal amount that does not exceed ten percent (10%) of the Obligated Group's Operating Revenues for the immediately preceding Fiscal Year, if the requirements of clause (g) above are met; or

(2) it is in a principal amount of greater than 10% of the Obligated Group's Operating Revenues for the immediately preceding Fiscal Year and there is in place at the time such Put Indebtedness is incurred a binding commitment by a financial institution, which commitment and institution are acceptable to the Master Trustee, to provide financing sufficient to pay such Put Indebtedness on any date on which such Put Indebtedness may be tendered by the holder thereof occurring during the term of such commitment, and the requirements of clause (g) above are met.

(k) Extendable Indebtedness is permitted if the requirements of clause (g) above are met.

(l) Indebtedness incurred in connection with contributions to self-insurance or shared or pooled risk insurance programs required or permitted to be maintained under the Master Indenture, without limit.

(m) Guarantees to the extent the related Indebtedness subject to the Guarantee could be incurred as Additional Indebtedness under this Section.

(n) Any other Long-Term Indebtedness; provided that the aggregate principal amount of such Long-Term Indebtedness, together with the aggregate principal amount of all other Indebtedness then outstanding under clause (c) above and this clause (n), shall not exceed 15% of the Operating Revenues of the Obligated Group for the

most recent Fiscal Year for which audited financial statements have been filed with the Master Trustee pursuant to the Master Indenture; provided however, if the Indebtedness is outstanding under clause (c) above and is attributable to temporary delays in the receipt of funds from third-party payors, governmental agencies or grantors it shall be excluded from the computation of the maximum amount of such Indebtedness;

(o) Any Indebtedness under any Credit Facility Agreement pursuant to which a Credit Facility shall have been issued with respect to any other Indebtedness (herein referred to as "Credit-Enhanced Debt"), provided that, if any amount shall have been drawn under such Credit Facility for the purchase or payment of such Credit-Enhanced Debt (i) amounts payable under such Credit Facility Agreement shall constitute Indebtedness in determining whether any additional Indebtedness may be incurred by an Obligated Group Member in accordance with this Section, and (ii) if such Credit-Enhanced Debt shall have been retired by the application of amounts realized under such Credit Facility, the aggregate principal amount of such Credit-Enhanced Debt shall be excluded in the calculation of the Debt Service Requirements under the Master Indenture.

Liens and Encumbrances. Except for Permitted Encumbrances and as otherwise specifically permitted by the Master Indenture, each Obligated Group Member shall not create any lien or encumbrance nor allow any lien to remain against any portion of the Trust Estate.

Budget. Annually, at least 30 days after the beginning of each of its Fiscal Years occurring after receipt of the Certificate of Occupancy, the Obligated Group Representative shall prepare and cause to be delivered to the Master Trustee and the Principal Underwriters a written Budget in connection with the operation of the Facility, which Budget shall contain an estimate for each such Fiscal Year of expenses, capital requirements and cash flow of the Obligated Group Members with respect to the Facility and its obligations with respect to outstanding indebtedness of the Obligated Group Members. Such Budgets shall designate separately payments in respect of the Debt Service Requirements on all outstanding Obligations and all amounts due on any other indebtedness permitted under the Master Indenture during such Fiscal Year. The amount of fees, rentals, rates and charges set forth in each Budget for each Fiscal Year thereafter shall be sufficient to meet the Rate Covenant to the maximum extent feasible.

Operating Ratio Covenant. The Obligor covenants that during the period commencing with the first full Fiscal Quarter following the issuance of the Certificate of Occupancy and each full Fiscal Quarter thereafter (an "Occupancy Quarter") and ending on the last day of the first Fiscal Year in which Stable Occupancy has occurred, for any Occupancy Quarter in which the percentage of the total number of Independent Living Units in the Facility constituting Occupied Units is not at least equal to the "Feasibility Study Occupancy Target" set forth below as of the end of such Occupancy Quarter, it shall maintain the Operating Ratio for such Occupancy Quarter as shown below:

<u>Occupancy Quarters</u>	<u>Feasibility Study Occupancy Target</u>	<u>Operating Ratios</u>
1	19%	0.20
2	30%	0.30
3	41%	0.35
4	50%	0.40
5	58%	0.45
6	66%	0.50
7	73%	0.55
8	79%	0.60
9	84%	0.65
10	89%	0.70
11	93%	0.75
12	95%	0.80

(a) **Definitions.** For the purposes of this Section:

(i) the "Operating Ratio" for any Occupancy Quarter shall be the ratio of (A) Cash Available (defined below) to (B) the sum of Total Operating Expenses incurred during such Occupancy Quarter, excluding the sum of all Debt Service Requirements plus letter of credit and remarketing fees due in such Occupancy Quarter and all Refunds paid in such Occupancy Quarter;

(ii) "Cash Available" for such Occupancy Quarter shall mean Monthly Service Charges and other operating revenues earned from the Facility received during such Occupancy Quarter (other than Entrance Fees); and

(iii) for the purposes of calculating Total Operating Expenses incurred for any Occupancy Quarter under this Section, Ground Lease Rentals shall be excluded.

(b) Failure to Maintain Operating Ratio.

(i) If the actual Operating Ratio for any Occupancy Quarter is less than the Operating Ratio required above, as shown in the unaudited financial statements required by the Master Indenture, the Obligor shall, within 30 days of receipt by the Master Trustee of the monthly unaudited financial statements disclosing such deficiency (unless such deficiency has since been cured), prepare a written report setting forth in detail the reasons for such deficiency and shall adopt a specific plan setting forth steps designed to correct such deficiency as quickly as practicable; or

(ii) If the actual Operating Ratios for two successive Occupancy Quarters are less than the Operating Ratios required above, as shown in the unaudited financial statements required by the Master Indenture, the Obligor shall, within 30 days of receipt by the Master Trustee of the unaudited financial statements disclosing such deficiency (unless such deficiency has since been cured), obtain a written report prepared by a Management Consultant setting forth in detail the reasons for such deficiency and shall adopt a specific plan prepared by the Management Consultant setting forth steps designed to achieve the required Operating Ratio for the six months ending on the last day of the second full Occupancy Quarter following the date of such report and plan; provided, however, if the failure to achieve the required Operating Ratios for two successive Occupancy Quarters occurs during the last three Occupancy Quarters, such report and plan shall be designed to achieve the Operating Ratio required for the last Occupancy Quarter for the six months following the date of such report and plan.

(iii) Notwithstanding the foregoing, if a Management Consultant's report and plan has been prepared and implemented within the five months preceding an Occupancy Quarter for which a deficiency exists, no new report and plan need be prepared or implemented.

Liquidity Ratio Covenant. The Obligor covenants that it shall maintain a Liquidity Ratio as of the last day of each Fiscal Quarter of at least (i) .30 commencing with earlier of (A) the first full Fiscal Quarter following the Fiscal Quarter in which Stable Occupancy has occurred and all of the Series 1999D Bonds have been redeemed and all Bank Obligations have been paid in full or (B) December 31, 2005, and (ii) .35 commencing with the first full Fiscal Quarter of the second full Fiscal Year following redemption of all Series 1999D Bonds and the payment of all Bank Obligations in full. The "Liquidity Ratio," as of any date of calculation, is the ratio of (y) unrestricted cash and investments (exclusive of all moneys in any Related Bonds Debt Service Fund, but including all moneys held in any Related Bonds Debt Service Reserve Fund, the Special Reserve Fund and the Entrance Fees Fund), to (z) the aggregate principal amount of Long-Term Indebtedness Outstanding, excluding the Series 1999D Bonds, but including all other Related Bonds, on such date, but excluding deferred management fees, if any, and the then-current portion of the Debt Service Requirements of Long-Term Indebtedness.

(a) Testing Compliance. Compliance with the Liquidity Ratio Covenant shall be tested on each June 30 and December 31 commencing with the earlier of

(i) the June 30 or December 31 following the Fiscal Quarter in which Stable Occupancy has occurred, and

(ii) December 31, 2005, based on the unaudited financial statements required by the Master Indenture.

(b) Failure to Maintain Liquidity Ratio.

(i) If the actual Liquidity Ratio is less than .35, but greater than .30, the Obligor shall within 30 days after receipt of the financial statements disclosing such deficiency deliver a report to the Master Trustee and the Principal Underwriters setting forth in detail the reasons for such deficiency and adopt a specific plan setting forth steps designed to achieve the required Liquidity Ratio as quickly as practicable. Such report and plan shall be prepared and implemented pursuant to the Master Indenture.

(ii) If the Liquidity Ratio is less than .30 for any testing date, or the Obligor has not achieved a Liquidity Ratio of .35 pursuant to the report delivered in accordance with (A) above by

the end of the third full Fiscal Quarter following the violation, the Obligor shall, within 60 days after receipt of the financial statements disclosing such deficiency, obtain a Management Consultant's report setting forth in detail the reasons for such deficiency and recommendations with respect to rates, fees, charges and Obligor's methods of operation and other factors affecting its financial condition in order to return the Liquidity Ratio to the required level.

Failure to Maintain Ratios Not a Default. Notwithstanding anything to the contrary herein contained, the failure of the Obligor to maintain an Operating Ratio or a Liquidity Ratio required by the Master Indenture shall not be deemed to constitute an Event of Default, so long as the Obligor takes all action within its control to comply with the procedures as required by the Master Indenture for preparing or obtaining a report and implementing a plan for correcting such deficiency.

Marketing Targets. The Obligor covenants that commencing on December 31 following the Closing Date and continuing for each Fiscal Quarter thereafter (a "Marketing Quarter"), it shall market the Independent Living Units in the Facility, execute Residency Agreements and collect deposits of at least 5% of the Entrance Fees payable on execution of the Residency Agreements, so that the percentage of the total number of Independent Living Units in the Facility constituting Reserved Units is at least equal to the "Marketing Target" set forth below as of the end of each "Marketing Quarter" set forth below:

<u>Marketing Quarters</u>	<u>Marketing Targets</u>	
	<u>Number of Independent Living Units</u>	<u>Percentage of Independent Living Units</u>
1	166	65%
2	174	68%
3	182	71%
4	189	74%
5	197	77%
6	205	80%
7	212	83%
8	220	86%
9	225	88%

Each Marketing Quarter shown above shall consist of a Fiscal Quarter ending on the date shown above. For the purpose of determining the number of Reserved Units, any Residency Agreement covering two Independent Living Units shall count as two Reserved Units.

(a) **Marketing Reports.** So long as the Obligor is required to meet the Marketing Targets pursuant to this Section, including any extended period owing to the failure to meet any Marketing Target as provided for in subparagraph (b) below, the Obligor shall deliver to the Master Trustee and the Principal Underwriters monthly reports on the marketing of the Facility. Such marketing reports shall be sent by the tenth Business Day of each month, commencing on December 14, 1999, and shall show for the preceding month: (i) the number of Reserved Units at the beginning and at the end of the month, (ii) the number of Residency Agreements executed during the month, net of the number of Residency Agreements for which Refunds have been paid, and (iii) the number of Residency Agreements terminated during the month, specifying the reason for each termination.

(b) **Failure to Meet Marketing Target.**

(i) If at the end of any Marketing Quarter, the percentage of Reserved Units in the Facility is less than the Marketing Target specified for such Marketing Quarter, the Obligor shall, within 30 days of the end of such Marketing Quarter, prepare a written report setting forth in detail the reasons for such deficiency and shall prepare and adopt a specific plan setting forth steps designed to cause the number of Reserved Units to be at least equal to the Marketing Target specified above at the end of the first Marketing Quarter following the Marketing Quarter in which the deficiency occurred; provided, however, if the failure to achieve the Marketing Target occurs during the last Marketing Quarter, such plan shall be designed to achieve the Marketing Target required for the last Marketing Quarter at the end of the three months following the last Marketing Quarter.

(ii) If the Obligor fails to meet the Marketing Target for any two successive Marketing Quarters, the Obligor shall, within 30 days of the end of the most recent Marketing Quarter, obtain a written report prepared by a Marketing Consultant setting forth in detail the

reasons for such failure and shall adopt a specific plan prepared by the Marketing Consultant setting forth steps designed to cause the number of Reserved Units to be at least equal to the Marketing Targets specified above at the end of the first full Marketing Quarter following the date of such report and plan; provided, however, if the failure to achieve the required Marketing Targets for two successive Marketing Quarters occurs during the last three Marketing Quarters, such report and plan shall be designed to achieve the Marketing Target required for the last Marketing Quarter at the end of the three month period following the date of such report and plan.

(iii) Notwithstanding the foregoing, if a Management Consultant's report and plan has been prepared and implemented within the five months preceding an Occupancy Quarter for which a deficiency exists, no new report and plan need be prepared or implemented.

Occupancy Targets. The Obligor covenants that during the period commencing with the first full Fiscal Quarter following the issuance of the Certificate of Occupancy and ending on the last day of the first Fiscal Year in which Stable Occupancy has occurred, it shall market the Independent Living Units in the Facility and execute Residency Agreements so that the number and percentage of the total number of Independent Living Units in the Facility constituting Occupied Units is at least equal to the "Occupancy Target" set forth below as of the end of each "Occupancy Quarter" set forth below:

<u>Occupancy Quarters</u>	<u>Occupancy Targets</u>	
	<u>Number of Independent Living Units</u>	<u>Percentage of Independent Living Units</u>
1	13	5%
2	38	15%
3	69	27%
4	95	37%
5	120	47%
6	141	55%
7	161	63%
8	179	70%
9	197	77%
10	210	82%
11	223	87%
12	230	90%

(a) **Occupancy Reports.** The Obligor shall deliver to the Master Trustee and the Principal Underwriters (i) until 90% of the Independent Living Units in the Facility are Occupied Units, monthly reports on the occupancy of the Independent Living Units and (ii) thereafter, annual reports on the occupancy of the Independent Living Units in the Facility. Such reports shall be sent on the tenth Business Day of each month or year, as the case may be, commencing with the first month following the date of issuance of the Certificate of Occupancy, and shall show for the preceding month or year, as the case may be: (i) the number of Independent Living Units in the Facility constituting Occupied Units occupied at the beginning and at the end of the month or year, as the case may be; and (ii) the actual occupancy of the Independent Living Units in the Facility, as the case may be, as a percentage of capacity by level of care.

(b) **Failure to Meet Occupancy Target.**

(i) If at the end of any Occupancy Quarter, the percentage of Independent Living Units in the Facility constituting Occupied Units is less than the Occupancy Target specified for such Occupancy Quarter, the Obligor shall, within 30 days of the end of such Occupancy Quarter, prepare a written report setting forth in detail the reasons for such deficiency and shall prepare and adopt a specific plan setting forth steps designed to cause the number of Occupied Units in the Facility to be at least equal to the Occupancy Target specified above at the end of the first Occupancy Quarter following the Occupancy Quarter in which the deficiency occurred; provided, however, if the failure to achieve the Occupancy Target occurs during the last Occupancy Quarter, such plan shall be designed to achieve the Occupancy Target required for the last Occupancy Quarter at the end of the three months following the last Occupancy Quarter.

(ii) If the Obligor fails to meet the Occupancy Targets for any two successive Occupancy Quarters, the Obligor shall, within 30 days of the end of the most recent Occupancy Quarter, obtain a written report prepared by a Marketing Consultant setting forth in detail the reasons for such deficiency and shall adopt a specific plan prepared by the Marketing Consultant

setting forth steps designed to cause the number of Occupied Units in the Facility to be at least equal to the Occupancy Target specified above at the end of the first full Occupancy Quarter following the date of such report and plan; provided, however, if the failure to achieve the required Occupancy Targets for two successive Occupancy Quarters occurs during the last three Occupancy Quarters, such report and plan shall be designed to achieve the Occupancy Targets for the last Occupancy Quarter at the end of the three-month period following the date of such report and plan.

(iii) Notwithstanding the foregoing, if a Management Consultant's report and plan has been prepared and implemented within the five months preceding an Occupancy Quarter for which a deficiency exists, no new report and plan need be prepared or implemented.

Failure to Meet Targets Not a Default. Notwithstanding anything to the contrary contained herein, the failure of the Obligor to achieve a Marketing Target or an Occupancy Target required by the Master Indenture shall not be deemed to constitute an Event of Default, so long as the Obligor takes all action within its control to comply with the procedures as required by the Master Indenture for preparing or obtaining a report and implementing a plan for correcting such deficiency.

Trade Payables Covenant. (a) Commencing with the first full Fiscal Quarter following receipt of the Certificate of Occupancy, each Obligated Group Member covenants that it shall at all times maintain at least 90% of its undisputed trade accounts payable at less than 60 days and that not more than \$50,000 of the undisputed trade accounts payable of the Obligated Group will be payable at more than 90 days, provided that any trade accounts payable that is the subject of a bona fide dispute, the dispute of which is being diligently pursued by the Obligated Group Representative, shall be excluded from such computation. Compliance shall be tested (i) quarterly based on unaudited financial statements for each of the Fiscal Quarters and (ii) annually based on the annual audited financial statements.

(b) If the Trade Payable Covenant is not met for any Fiscal Quarter and it is not remedied within 30 days, the Obligated Group Representative shall prepare a report, within 60 days of such deficiency, setting forth in detail the reasons for the deficiency and a plan to comply with the Trade Payables Covenant by the end of the second Fiscal Quarter following the Fiscal Quarter in which the deficiency occurred. If the Obligated Group fails to meet the Trade Payables Covenant for two consecutive Fiscal Quarters, the Obligated Group Representative shall obtain a report from an Management Consultant, within 60 days of such deficiency, setting forth the reasons for the deficiency and a plan to comply with the covenant by the end of the second Fiscal Quarter following the date of the report.

(c) Notwithstanding anything to the contrary contained herein, the failure of the Obligated Group to meet the Trade Payables Covenant required by the Master Indenture shall not be deemed to constitute an Event of Default, so long as the Obligated Group Representative takes all action within its control to comply with the procedures required by the Master Indenture for preparing or obtaining a report and implementing a plan for correcting such deficiency.

Management Consultant; Marketing Consultant. For the purpose of performing the duties imposed on the Management Consultant and the Marketing Consultant by the Indenture, the Obligated Group Representative shall employ from time to time as required by the provisions of the Indenture a Management Consultant or a Marketing Consultant, as appropriate.

The Obligated Group Representative shall notify the Principal Underwriters and the Master Trustee of its intention to employ a consultant as Management Consultant or Marketing Consultant pursuant to this Section and the name of such consultant at least 30 days prior to such employment.

Whenever the Obligor is required pursuant to the Master Indenture to employ a Management Consultant or Marketing Consultant, the Obligated Group Representative shall notify the Principal Underwriters and the Master Trustee of the name of such consultant within seven Business Days of the event giving rise to such employment.

Whenever the Obligated Group Representative shall notify the Master Trustee and the Principal Underwriters of the name of a Management Consultant or Marketing Consultant that it intends to employ pursuant to this Section, the Obligated Group Representative shall also notify the Principal Underwriters and the Master Trustee of the scope of the services and terms of employment of such Management Consultant or Marketing Consultant; provided, however, that the determination of the scope of services and terms of employment of the Management Consultant or Marketing Consultant shall always be within the sole discretion of the Obligated Group Representative, and the Principal Underwriters shall have no right to object to the scope of services or terms of employment of the Management Consultant or Marketing Consultant so long as such scope of services is in accordance with the requirements of the Master Indenture.

Any agreement or contract between a Management Consultant or a Marketing Consultant and the Obligated Group Representative pursuant to this Section shall include an acknowledgment by such Management Consultant or a Marketing Consultant, as appropriate, that the Master Trustee will rely upon the recommendations made by such Management Consultant or Marketing Consultant.

Notwithstanding anything to the contrary contained herein or in the Indenture, no Obligated Group Member shall be required to concur with a recommendation contained in the report of a Management Consultant or Marketing Consultant that (i) conflicts with law or existing contracts or (ii) the Governing Body of such Obligated Group Member has determined by resolution to be unreasonable, impractical or unfeasible, nor shall any Obligated Group Member be obliged to implement any such recommendation, if, in the reasonable judgment of the Management Consultant or the Marketing Consultant, as applicable, such failure to concur with or to implement such recommendation will not prevent the implementation of other recommendations that are sufficient in the aggregate to enable such Obligated Group Member to rectify, within a reasonable period of time, the circumstance giving rise to employment of such Management Consultant or Marketing Consultant.

Management and Marketing Reports and Plans. Whenever the Obligor is required pursuant to the Master Indenture to prepare or obtain a report and plan for correcting a deficiency, the Governing Body of the Obligor shall cause such report and plan to be prepared or obtained and shall adopt such plan within the applicable time limit prescribed. If required, such report and plan shall be prepared by a Management Consultant or a Marketing Consultant, as appropriate, employed by the Obligor. Each such report and plan, regardless of whether prepared by the Obligor, a Management Consultant or a Marketing Consultant, must be in writing and contain sufficient detail to support the conclusions made concerning the reasons for the deficiency and the steps to be taken for its correction. Each report and plan prepared by a Management Consultant or a Marketing Consultant must be acknowledged in writing by the Obligor (although its concurrence in every conclusion or recommendation in the report and plan shall not be required). Each such report and plan, regardless of whether prepared by the Obligor, a Management Consultant or a Marketing Consultant, shall be implemented immediately upon its adoption, except to the extent limited by law or existing contracts. Copies of each such report and plan shall be sent to the Master Trustee and the Principal Underwriters. Any such report and plan shall be prepared or obtained at the expense of the Obligor.

Residency Agreements. Each Obligated Group Member shall carry out all of its obligations under each and every Residency Agreement. Each Obligated Group Member shall enter into with each resident of the Facility a Residency Agreement.

Except as otherwise expressly provided herein, the Obligated Group Representative may make such changes in the forms of Residency Agreement as it deems appropriate in the exercise of its business judgment.

Notwithstanding the foregoing, the rights, privileges and benefits of the residents under the Residency Agreements (except the right to a refund of the Entrance Fee prior to occupancy or where the Obligated Group Representative terminates a Residency Agreement) shall at all times be subordinate to the Master Indenture.

Nothing in this Section shall be construed to prohibit any amendment to the forms of the Residency Agreements previously delivered to the Principal Underwriters.

Waiver of Certain Covenants. Each Obligated Group Member may omit in any particular instance to comply with any covenant or condition described above if before or after the time for such compliance the Holders of the same percentage in principal amount of all Obligations then Outstanding the consent of which would be required to amend the provisions of the Master Indenture to permit such noncompliance shall either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived and, until such waiver shall become effective, the obligations of each Obligated Group Member and the duties of the Master Trustee in respect of any such covenant or condition shall remain in full force and effect.

Insurance and Condemnation Proceeds. (a) The Obligated Group Representative agrees to notify the Master Trustee immediately in the case of the destruction or damage of any portion of the property, plant or equipment of any Obligated Group Member as a result of fire or other casualty, which are estimated to exceed \$1,000,000.

(b) Net proceeds of any insurance relating to such damage or destruction not exceeding \$1,000,000 may be paid directly to the applicable Obligated Group Member. If such net proceeds exceed \$1,000,000, the Master Trustee shall retain and apply such net proceeds as set forth herein.

(c) The Obligated Group Members hereby assign to the Master Trustee all right, title and interest of the Obligated Group Members in and to any net proceeds of any award, compensation or damages payable in connection with any condemnation.

(d) The net proceeds of any condemnation shall be initially paid to the Master Trustee for disbursement or use. If net proceeds do not exceed \$1,000,000, such net proceeds shall upon the Obligated Group Representative's request be paid by the Master Trustee to the applicable Obligated Group Member.

(e) Each Obligated Group Member covenants that it will expend an amount not less than the amount of such net proceeds to (i) repair, replace or restore the damaged or destroyed property, plant and equipment, (ii) acquire or construct additional capital assets, or (iii) prepay the principal portion of any Obligations.

(f) In the event such net proceeds exceed \$1,000,000 the Obligated Group Representative shall as soon as practicable after the date on which the net proceeds are finally determined, elect by written notice to the Master Trustee one of the following three options:

(i) Option 1-Repair and Restoration. The Obligated Group Representative may elect to replace, repair, reconstruct, restore or improve any of the property, plant and equipment or acquire additional property, plant and equipment. If the Obligated Group is not in default, any net proceeds of insurance relating to such damage or destruction received by the Master Trustee shall be released by the Master Trustee to the applicable Obligated Group Member upon the receipt of an Officer's Certificate of the applicable Obligated Group Member specifying the expenditures made or to be made or the Debt incurred in connection with such repair, reconstruction, restoration, improvement or acquisition and stating that such net proceeds, together with any other moneys legally available for such purposes, will be sufficient to complete such replacement, repair, reconstruction, restoration, improvement or acquisition.

(ii) Option 2-Prepayment. The Obligated Group Representative may elect to have all or a portion of the net proceeds applied to the prepayment of any Obligation and may select which such Obligation will be so prepaid. The Obligated Group Representative shall, in its notice of election to the Master Trustee, direct the Master Trustee to apply such net proceeds when and as received, to the prepayment of such Obligation; provided that such net proceeds must aggregate at least \$1,000,000.

(iii) Option 3-Partial Restoration and Partial Prepayment. The Obligated Group Representative may elect to have a portion of such net proceeds applied to the replacement, repair, reconstruction, restoration and improvement of the property, plant and equipment or the acquisition of additional property, plant and equipment with the remainder of such net proceeds to be applied to prepay such Obligation; provided that if this Option 3 is elected at least \$1,000,000 must be applied to prepay such Obligation. The Obligated Group Representative may comply with the notice and approval requirements of Options 1 and 2.

(g) Amounts received by the Master Trustee in respect of any insurance or condemnation awards shall, at the written request of the Obligated Group Representative, be deposited within the Master Trustee in Investment Securities (as defined in the Related Loan Agreements) subject to the applicable Obligated Group Member's right to receive the same. If the applicable Obligated Group Representative elects to proceed under either Option 1 or 3, any amounts in respect of such net proceeds not so paid to the applicable Obligated Group Member shall be transferred to the Related Bond Trustee for deposit into the debt service fund for the Related Bonds.

Leasehold Mortgage Provisions. The Obligor hereby covenants and agrees as follows:

(a) The Obligor will promptly pay, when due and payable, the net rent, additional rent, taxes and all other sums and charges mentioned in and made payable pursuant to the Ground Lease.

(b) The Obligor will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by the Obligor as lessee under the Ground Lease, within the period (exclusive of grace periods) provided in the Ground Lease, or such lesser periods (exclusive of grace periods) as are provided in the Master Indenture, and will do all things necessary to preserve and to keep unimpaired its rights under the Ground Lease.

(c) The Obligor will promptly notify the Master Trustee in writing of any default by the Obligor in the performance or observance of any of the terms, covenants or conditions on the part of the Obligor to be performed or observed under the Ground Lease.

(d) The Obligor will (i) promptly notify the Master Trustee in writing of the receipt by the Obligor of any notice from the Ground Lessor and of any notice noting or claiming any default by the Obligor in the performance or observance of any of the terms, covenants or conditions on the part of the Obligor to be performed or observed under the Ground Lease; (ii) promptly notify the Master Trustee in writing of the receipt by the Obligor of any notice from the Ground Lessor to the Obligor of termination of the Ground Lease pursuant to the provisions of the Ground Lease; (iii) promptly cause a copy of each such notice received by the Obligor from the Ground Lessor under the Ground Lease to be delivered to the Master Trustee; provided, however, that no such delivery by the Obligor to the Master Trustee of any such notices shall be deemed to waive, release, or modify any obligation of the Ground Lessor to separately provide such notice to the Master Trustee pursuant to the terms of the Ground Lease; and (iv) promptly notify the Master Trustee in writing of any default by the Ground Lessor in the performance or observance of any of the terms, covenants or conditions on the part of the Ground Lessor to be performed or observed.

(e) The Obligor will promptly notify the Master Trustee in writing of any request made by the other party to the Ground Lease for arbitration proceedings pursuant to the Ground Lease and the institution of any arbitration

proceedings, as well as all proceedings thereunder, and will promptly deliver to the Master Trustee a copy of the determination of the arbitrators in each such arbitration proceeding. The Master Trustee shall have the right, at the Obligor's sole cost and expense, to participate in any such arbitration proceedings in association with the Obligor or on their own behalf as interested parties and no determination made in such arbitration proceeding or settlement or agreement in connection therewith shall be binding upon the Master Trustee unless and until the Master Trustee have participated in such proceeding and/or consented to such settlement or agreement.

(f) The Obligor will not, without the prior written consent of the Master Trustee (which may be granted or withheld in the sole and absolute discretion of the Master Trustee), terminate, modify or surrender or suffer or permit any termination, modification or surrender of the Ground Lease.

(g) The Obligor will, within twenty (20) days after written demand from the Master Trustee, obtain from the Ground Lessor and deliver to the Master Trustee a certificate setting forth the name of the tenant thereunder and stating that such Ground Lease is in full force and effect, is unmodified or, if the Ground Lease has been modified, the date of each modification (together with copies of each such modification), that no notice of termination thereon has been served on the Obligor, stating that no default or event which with notice or lapse of time (or both) would become a default is existing under the Ground Lease, stating the date to which net rent has been paid, and specifying the nature of any defaults, if any, and containing such other statements and representations as may be requested by Master Trustee.

(h) The Obligor will furnish to the Master Trustee, upon demand, proof of payment of all items that are required to be paid by the Obligor pursuant to the Ground Lease and proof of payment which is required to be given to the Ground Lessor.

(i) The Obligor shall not consent to any waiver or modification or cancellation of any provision of the Ground Lease nor to the subordination of the Ground Lease to any mortgage of the fee interest of the Ground Lessor.

(j) The Obligor shall execute and deliver, on request of the Master Trustee, such instruments as the Master Trustee may deem useful or required to permit the Master Trustee to cure any default under the Ground Lease or permit the Master Trustee to take such other action as the Master Trustee considers desirable to cure or remedy the matter in default and preserve the interest of the Master Trustee and in the Trust Estate.

(k) The Obligor shall not treat the Ground Lease as terminated by any election made under Section 355(h) of the Bankruptcy Code or under any similar law or right of any nature, and hereby assigns to the Master Trustee any right to acquiesce in any such termination.

(l) If the Obligor defaults in the performance of any of its obligations under the Ground Lease, including, without limitation, any default on the payment of rent and other charges and impositions made payable by the tenant under the Ground Lease, then, in each and every case, the Master Trustee may, at its option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all the rights of the Obligor thereunder in the name of and on behalf of the Obligor. The Obligor shall, on demand, reimburse the Master Trustee for all advances made and expenses incurred by the Master Trustee in curing any such default (including, without limitation, attorneys' fees, costs and expert witness fees), together with interest thereon computed at the maximum rate permitted by applicable law from the date that an advance is made or expense is incurred, to and including the date the same is paid.

(m) The Obligor shall give the Master Trustee notice of its intention to exercise each and every option to extend the term of the Ground Lease, at least twenty (20) but not more than sixty (60) days prior to the expiration of the time to exercise such option under the terms thereof. If the Obligor intends to extend the term of the Ground Lease, it shall deliver to the Master Trustee, contemporaneously with the notice of such decision, a copy of the notice of extension delivered to the landlord thereunder. If the Obligor does not intend to extend the term of the Ground Lease, the Master Trustee may, at their option, exercise the option to extend in the name and on behalf of the Obligor. In any event, the Obligor hereby appoints the Master Trustee as its attorney-in-fact to execute and deliver, for and in the name of the Obligor, all instruments and agreements necessary under the Ground Lease or otherwise to cause an extension of the term thereof. This power, being coupled with an interest, shall be irrevocable as long as the Secured Debt remains unpaid.

The generality of the provisions of this section relating to Ground Lease shall not be limited by other provisions of the Master Indenture setting forth particular obligations of the Obligor which are also required by the Obligor as the lessee under the Ground Lease.

Limitations on Consolidation, Merger, Conveyance, and Transfer. Each Obligated Group Member has agreed not to consolidate with or merge into any corporation or convey or transfer its properties substantially as an entirety to any Person, unless

(a) such consolidation, merger, or transfer (1) is between an Obligated Group Member and a member of the Combined Group and (2) the surviving Person is an Obligated Group Member, or

(b) all of the following conditions exist:

(i) the Person formed by such consolidation or into which the Obligated Group Member merges or the Person which acquires substantially all of the properties of the Obligated Group Member as an entirety is a Person organized and existing under the laws of the United States of America or any State or the District of Columbia and expressly assumes by supplemental indenture the due and punctual payment of the principal (and premium, if any) and interest on Obligations and the performance and observance of every covenant and condition of the Master Indenture;

(ii) the Revenue Test is met with respect to such consolidation, merger, or transfer;

(iii) immediately after such transaction, no default of the Master Indenture has occurred;

(iv) the Person formed by such consolidation or into which the Obligated Group Member merges or the Person which acquires substantially all of the properties of the Obligated Group Members as an entirety will be an organization described in Section 501(c)(3) of the Code;

(v) the Obligated Group Member delivers to the Master Trustee an Officer's Certificate stating that such consolidation, merger, conveyance, or transfer and such supplemental indenture comply with the Master Indenture and do not affect the status of interest on any indebtedness secured by Outstanding Obligations under the Code and that all conditions precedent provided for in the Master Indenture have been complied with; and

(vi) the Obligated Group Member delivers to the Trustee an Opinion of Counsel which shall state that such consolidation, merger, conveyance, or transfer and such supplemental indenture comply with the Master Indenture, the such consolidation, merger, conveyance or transfer will not affect the status of interest on any indebtedness secured by Outstanding Obligations under the Code, and all conditions precedent provided for in the Master Indenture relating to such transaction have been complied with.

Successor Corporation Substituted. Upon any consolidation or merger, or any conveyance or transfer of properties and assets of an Obligated Group Member in accordance with the provisions of preceding heading, the successor Person will succeed to, and be substituted for, and may exercise every right and power of such Obligated Group Member under the Master Indenture. Provided, however, that no such conveyance or transfer will have the effect of releasing any other Person, which has become an Obligated Group Member in the manner described in this paragraph from its liability as obligor and maker on any of the Obligations.

Admission Of Obligated Group Members. A Person may become an Obligated Group Member only if:

(a) the Person proposing to become an Obligated Group Member expressly assumes, by indenture supplemental to the Master Indenture, executed and delivered to the Master Trustee, in form satisfactory to the Master Trustee, jointly and severally with every other Obligated Group Member, the due and punctual payment of the principal of (and premium, if any), and interest on all the Obligations and coupons appertaining thereto and the performance of the covenants of the Obligated Group Members set forth in the Master Indenture;

(b) the Obligated Group Representative has consented to the inclusion of such Person as an Obligated Group Member as evidenced by a Consent of the Obligated Group Representative;

(c) the Revenue Test is met with respect to the admission of such Person as an Obligated Group Member;

(d) immediately after giving effect to such admission, no default under the Master Indenture has occurred and is continuing;

(e) the Master Trustee shall have received evidence from each Rating Agency that such admission will not adversely affect the then current rating on any series of Related Bonds;

(f) the Obligated Group Representative has delivered to the Master Trustee an Officer's Certificate which shall state that such admission will not affect the status of interest on any indebtedness secured by Outstanding Obligations under the Code, that the supplemental indenture required by clause A of this paragraph constitutes a legal, valid, and binding obligation of such Person enforceable in accordance with its terms and will not adversely affect the enforceability of the Master Indenture against any Obligated Group Member, subject to customary exceptions and that all conditions precedent in the Master Indenture relating to such transaction have been complied with; and

(g) the Obligated Group Representative shall have delivered to the Master Trustee an Opinion of Counsel which shall state that the admission and such supplemental indenture comply with the Master Indenture, that such admission will not affect the status of interest under the Code on any Debt secured by Outstanding Obligations, that the supplemental indenture and the Master Indenture, as so supplemented constitute legal valid and binding obligations of such Person, that the admission of such person as an Obligated Group Member will not adversely affect the enforceability of the Master Indenture against any Obligated Group Member, and that all conditions precedent provided for in the Master Indenture relating to such admission have been complied with.

Withdrawal of Obligated Group Members. Any Obligated Group Member may, upon 30 days' prior written notice to the Master Trustee, withdraw as an Obligated Group Member, and the Master Trustee, upon Request of such Obligated Group Member, and at such withdrawing Obligated Group Member's expense, will execute and deliver an appropriate instrument releasing such Obligated Group Member from any liability or obligation under the provisions of the Master Indenture provided that:

(a) the withdrawing Obligated Group Member requests such release as evidenced by a Board Resolution;

(b) either, the withdrawing Obligated Group Member does not have any Obligations Outstanding, or the Obligated Group Representative confirms the obligation of each remaining Obligated Group Member to repay any Obligations of such withdrawing Obligated Group Member Outstanding after such withdrawal;

(c) the Revenue Test is met with respect to the withdrawal of such Person as an Obligated Group Member;

(d) immediately after giving effect to such withdrawal, no default under the Master Indenture has occurred and is continuing;

(e) the Master Trustee shall have received evidence from each Rating Agency that such withdrawal will not adversely affect the then current rating on any series of Related Bonds;

(f) the Obligated Group Representative shall have delivered to the Master Trustee an Officer's Certificate which shall state that all conditions precedent provided in the Master Indenture relating to such withdrawal have been complied with; and

(g) the Obligated Group Representative delivers to the Master Trustee an Opinion of Counsel which states that such withdrawal will not affect the status of interest on any indebtedness secured by Outstanding Obligations under the Code, and that all conditions precedent provided for in the Master Indenture relating to such transaction have been complied with.

Any Person that has withdrawn from the Obligated Group may again become a member of the Combined Group in accordance with the provisions of the heading "THE MASTER INDENTURE--Admission of Obligated Group Members."

Successor Obligated Group Representative. Northwest Senior Housing Corporation shall serve as the Obligated Group Representative until such time as Northwest Senior Housing Corporation either (i) withdraws from the Obligated Group in accordance with the Master Indenture or (ii) delivers to the Master Trustee its resignation as the Obligated Group Representative. Northwest Senior Housing Corporation covenants to fulfill all of the duties of the Obligated Group Representative under the Master Indenture. Northwest Senior Housing Corporation agrees that it shall not withdraw from the Obligated Group or resign as Obligated Group Representative until Northwest Senior Housing Corporation has appointed another Obligated Group Representative and such successor Obligated Group Representative has accepted its duties in writing. Each Obligated Group Member by becoming an Obligated Group Member acknowledges that the Obligated Group Representative has certain powers and duties under the Master Indenture and authorizes the Obligated Group Representative to exercise such powers and carry out such duties.

Compliance Certificates and Reports. Whenever any of the following amounts or dates are a condition to the taking of any action permitted by the Master Indenture,

(a) estimated Revenues, Operating Revenues, Total Operating Revenues, Expenses, Total Expenses, Total Operating Expenses, Other Non-Cash Expenses and Net Income Available for Debt Service of any Person for any future Fiscal Year shall be established by a certificate or report of a Management Consultant stating the amount of such estimated item based upon assumptions provided by such Person and stating that such assumptions are, in the opinion of the Management Consultant, reasonable.

(b) any of:

(1) Revenues, Operating Revenues, Total Operating Revenues, Expenses, Total Expenses, Total Operating Expenses, Other Non-Cash Expenses and Net Income Available for Debt Service of any Person for any prior Fiscal Year or period,

(2) Maximum Annual Debt Service of any Person,

(3) principal of and interest on any Indebtedness, and

(4) book value of any assets,

shall be established by an Officer's Certificate of the Obligated Group Representative stating the amount of such item and that such amounts have been derived from either the most recent financial statements of the Obligated Group delivered to the Master Trustee pursuant to the Master Indenture or, for any period other than a prior Fiscal Year, from the internally prepared financial statements of the Obligated Group for such period; and

(c) the current value of the properties of any Person shall be established by an Officer's Certificate of the Obligated Group Representative that (1) states the appraised value of the properties of such Person, (2) is accompanied by one or more written appraisals made by Independent Persons experienced in appraising the value of similar properties stating such Person's opinion of value of such property as of a date not more than three years preceding the date such Officer's Certificate is delivered to the Master Trustee and (3) states the aggregate book value of all other properties of such Person; and

(d) the anticipated date of completion of any construction project of any Person shall be established by an Officer's Certificate of the Obligated Group Representative; and

(e) securities shall include any amounts invested in marketable securities, whether classified as short-term or long-term assets.

All calculations required to be made with respect to the Combined Group are to be made after elimination of inter-company items on a combined basis. The character or amount of any asset, liability or item of income or expense required to be determined or any consolidation, combination or other accounting computation required to be made for the purposes of the Master Indenture, is to be determined or made in accordance with generally accepted accounting principles in effect on the date of the Master Indenture, or at the option of the Obligated Group Representative, at the time in effect (provided that such generally accepted accounting principals are applied consistently with the requirements existing either on the date of the Master Indenture or at the time in effect) except that assets, liabilities, items of income and expenses of Affiliates which are not included in the Combined Group are not to be taken into account, and except where such principles are inconsistent with the requirements of the Master Indenture; provided, however, that there will not be included in the calculation of Adjusted Revenues, Annual Debt Service Requirements or Available Revenues of any Person, any item otherwise required to be included in such calculation with respect to any Person which has withdrawn or is withdrawing from the Combined Group.

Defaults and Remedies. Each of the following events constitutes an "Event of Default" under the Master Indenture:

(a) default in the payment of the principal of (or premium, if any), or interest on any Obligations when due and payable at Maturity and the continuance of such default beyond the period of grace, if any, provided in the instrument creating such Obligation; or

(b) any Obligated Group Member fails to observe or perform any other covenant or agreement (other than a covenant or agreement whose performance or observance is described in this paragraph) on the part of such Person contained in the Master Indenture for a period of 45 days after the date of written notice of such failure, has been given to the Obligated Group Representative by the Master Trustee, or to the Obligated Group Representative and the

Master Trustee by the Holders of at least 25% in aggregate principal amount of the Obligations then Outstanding; provided that if any such default can be cured by such Obligated Group Member but cannot be cured within the 45-day curative period described above, it will not constitute an Event of Default if corrective action is instituted by such Obligated Group Member within such 45-day period and diligently pursued until the default is corrected; or

(c) a decree or order by a court having jurisdiction in the premises has been entered adjudging any Obligated Group Member a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization or arrangement of any Obligated Group Member under the Federal Bankruptcy Code or any other similar applicable Federal or State law, and such decree or order has continued undischarged and unstayed for a period of 90 days; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of any Obligated Group Member or of its property, or for the winding up or liquidation of its affairs, has been entered, and such decree or order remained in force undischarged and unstayed for a period of 90 days; or

(d) any Obligated Group Member has instituted proceedings to be adjudicated a voluntary bankrupt, or has consented to the institution of a bankruptcy proceeding against it, or has filed a petition or answer or consent seeking reorganization or arrangement under the Federal Bankruptcy Code or any other similar applicable Federal or state law, or has consented to the filing of any such petition, or has consented to the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of it or of its Property, or has made assignment for the benefit of creditors, or has admitted in writing its inability to pay its debts generally as they become due, or action has been taken by the Governing Body of any Obligated Group Member in furtherance of any of the aforesaid purposes; or

(e) any Obligated Group Member has failed to pay or make provision for payment of any recourse Debt having a principal balance of not less than \$100,000 and the continuance of such failure beyond the period of grace therein provided, if any; or

(f) an event of default, as therein defined, under any instrument under which Obligations may be incurred or secured, or under which any Related Bond Indenture occurs and is continuing beyond the applicable period of grace, if any; or

(g) Obligor fails to observe or perform any of the terms, conditions or covenants contained in the Ground Lease, or the breach of any provisions herein relating to the Ground Lease, or the breach by the Obligor of any of the representations and warranties contained herein or in the Ground Lease, or the occurrence of any other event or condition which immediately, or with notice or lapse of time or both, would constitute a default pursuant to the terms of the Ground Lease or would otherwise entitle the Ground Lessor to exercise any of its rights or remedies under the Ground Lease.

If an Event of Default occurs and is continuing, then the Master Trustee or the Holders of not less than 25% in principal amount of the Outstanding Obligations (or, in the case of any Event of Default described in subparagraph (f) above resulting in the loss of any exclusion from gross income of interest on, or the invalidity of, any Debt secured by a pledge of Obligations, the Holders of not less than 25% in principal amount of the Outstanding Obligations of the affected series) may declare the principal of all the Obligations to be due and payable immediately, by written notice to the Obligated Group Representative and all Holders of Obligations (and to the Master Trustee if given by the Holders of Obligations), and upon any such declaration such principal becomes immediately due and payable.

At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Master Trustee, the Holders of a majority in principal amount of the Outstanding Obligations, by written notice to the Obligated Group Representative and the Master Trustee, may rescind and annul such declaration and its consequences if

(1) one or more Obligated Group Members has paid or deposited with the Master Trustee a sum sufficient to pay

(A) all overdue installments of interest on all Obligations,

(B) the principal of (and premium, if any, on) any Obligations which have become due otherwise than by declaration of acceleration and interest thereon at the rate borne by the Obligations, and

(C) all sums paid or advanced by the Master Trustee under the Master Indenture and the reasonable compensation, expenses, disbursements and advances of the Master Trustee, its agents and counsel; and

(2) all Events of Default, other than the non-payment of the principal of Obligations which have become due solely by such acceleration, have been cured or waived as provided in the Master Indenture.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Collection of Indebtedness and Suits for Enforcement by Master Trustee. The Obligated Group Members have agreed that if:

(1) default is made in the payment of any installment of interest on any Obligation when such interest becomes due and payable, or

(2) default is made in the payment of the principal of (or premium, if any, on) any Obligation at the maturity thereof,

each Obligated Group Member will, upon demand of the Master Trustee, pay to it, for the benefit of the Holders of such Obligations and coupons, the whole amount then due and payable on such Obligations and coupons for principal (and premium, if any) and interest, with interest at the rate borne by the Obligations upon the overdue principal (and premium, if any); and, in addition, such further amount to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Master Trustee, its agents and counsel.

If the Obligated Group Members fail to pay any of the foregoing amounts upon demand, the Master Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Obligated Group Members or any other Corporation upon the Obligations and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Obligated Group Members or any other Corporation upon the Obligations, wherever situated.

If an Event of Default occurs and is continuing, the Master Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Obligations by such appropriate judicial proceedings as the Master Trustee deems most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in the Master Indenture or in aid of the exercise of any power granted in the Master Indenture, or to enforce any other proper remedy.

Limitations on Suits. No Holder of any Obligation has any right to institute any proceeding, judicial or otherwise, with respect to the Master Indenture, or for the appointment of a receiver or trustee, or for any other remedy unless

(1) such Holder has previously given written notice to the Master Trustee of a continuing Event of Default;

(2) the Holders of not less than 25% in principal amount of the Outstanding Obligations have made written request to the Master Trustee to institute proceedings in respect of such Event of Default in its own name as Master Trustee;

(3) such Holder or Holders have offered to the Master Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Master Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Master Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Obligations;

it being understood and intended that no one or more Holders of Obligations or coupons has any right to affect, disturb or prejudice the rights of any other Holders of Obligations or coupons, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under the Master Indenture, except as described in this paragraph and for the equal and ratable benefit of all the Holders of Obligations and coupons.

Control by Holders. Holders of a majority in principal amount of the Outstanding Obligations have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Master Trustee or exercising any trust or power conferred on the Master Trustee, provided that

(i) such direction does not conflict with any rule of law or with the Master Indenture,

(ii) the Master Trustee may take any other action deemed proper by the Master Trustee which is not inconsistent with such direction; and

(iii) the Master Trustee shall not be required to act on any direction given to it until indemnity is provided to it.

Application of Money Collected. Any money collected by the Master Trustee as the result of the exercise of any remedy available after the occurrence and continuance of an Event of Default under the Master Indenture will be applied in the following order, at the date or dates fixed by the Master Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Obligations or coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

First: To the payment of all amounts due the Master Trustee under the Master Indenture;

Second: To the payment of the amounts then due and unpaid upon the Obligations and coupons, other than Obligations or appurtenant coupons constituting subordinated indebtedness, for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Obligations and coupons for principal (and premium, if any) and interest, respectively;

Third: To the payment of the amounts then due and unpaid upon the Obligations and coupons constituting subordinated indebtedness for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Obligations and coupons for principal (and premium, if any) and interest, respectively;

Fourth: To the Obligated Group Representative.

Resignation or Removal of the Master Trustee. The Master Trustee may resign at any time by giving written notice to the Obligated Group Representative. If an instrument of acceptance by a successor Trustee has not been delivered to the Master Trustee within 30 days after the Master Trustee gives notice of resignation, the resigning Master Trustee may petition a court of competent jurisdiction for the appointment of a successor Master Trustee.

The Master Trustee may be removed (i) if no Event of Default has occurred and is continuing under the Master Indenture, then by act of the Obligated Group Representative and (ii) at any time by the Holders of a majority in principal amount of the Outstanding Obligations. In addition, the Master Trustee may be removed by the Obligated Group Representative or (upon the petition of any Holder of a Obligation who has been a bona fide Holder thereof for at least 6 months) by a court of competent jurisdiction, if at any time the Master Trustee ceases to be eligible under the Master Indenture and fails to resign after written request by the Obligated Group Representative, or any Holder of a Obligation, or the Master Trustee becomes incapable of acting or is adjudged a bankrupt or insolvent or a receiver of the Master Trustee or of its property is appointed or any public official takes charge or control of the Master Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation.

Neither the resignation nor removal of the Master Trustee nor the appointment of a successor Master Trustee will become effective until the acceptance of appointment by a successor Master Trustee under the Master Indenture.

If the Master Trustee resigns, is removed, or becomes incapable of acting, or if a vacancy occurs in the office of Master Trustee for any cause, the Corporation is required promptly to appoint a successor Master Trustee. If, within one year after such resignation, removal, or incapability, or the occurrence of such vacancy, a successor Master Trustee is appointed by the Holders of a majority in principal amount of the Outstanding Obligations, the successor Master Trustee so appointed will supersede the successor Master Trustee appointed by the Obligated Group Representative. If no successor Master Trustee has been appointed by the Obligated Group Representative or the Holders of Obligations, any Holder of a Obligation who has been a bona fide Holder for at least 6 months may petition any court of competent jurisdiction for the appointment of a successor Master Trustee.

The Obligated Group Representative is required to mail notice of each resignation and each removal of the Master Trustee and each appointment of a successor Master Trustee to the Registered Holders of Obligations as their names and addresses appear in the books of the Obligation Register and is required to publish notice of each resignation and each removal of the Master Trustee and each appointment of a successor Master Trustee once in an Authorized Newspaper in each place of payment.

Concerning the Master Trustee. The Master Indenture contains various limitations on the liability of the Master Trustee. The Master Trustee is not liable for any error of judgment made in good faith by a Responsible Officer, unless the Master Trustee was negligent in ascertaining the pertinent facts. The Master Trustee is not liable for any action taken or omitted to be taken by it in good faith in

accordance with the direction of the Holders of a majority in principal amount of the Outstanding Obligations relating to the time, method, and place of conducting any proceeding for any remedy available to the Master Trustee, or exercising any trust or power conferred upon the Master Trustee, under the Master Indenture. No provision of the Master Indenture requires the Master Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties under the Master Indenture, if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured. In the absence of bad faith on its part, and except during the continuance of an Event of Default under the Master Indenture, the Master Trustee may conclusively rely, as to the truth of statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Master Trustee and conforming to the requirements of the Master Indenture; but in the case of any such certificates or opinions which are specifically required by the Master Indenture to be furnished to the Master Trustee, the Master Trustee is under a duty to examine these certificates or opinions for conformity to the requirements of the Master Indenture. If an Event of Default under the Master Indenture has occurred and is continuing, the Master Trustee is required to exercise the rights and powers vested in it by the Master Indenture, and to use the same degree of care and skill in such exercise, as a reasonably prudent man would exercise or use under the circumstances in the conduct of its own affairs.

Amendments and Waivers. (a) Without the consent of the Holders of any Obligations, each Obligated Group Member, when authorized by a Board Resolution, and the Master Trustee at any time may enter into one or more indentures supplemental to the Master Indenture for any of the following purposes:

- (i) to evidence the succession of another Person to an Obligated Group Member, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of an Obligated Group Member pursuant to the Master Indenture or additions to, or withdrawals from, membership in the Combined Group in accordance with the provisions of the Master Indenture;
- (ii) to add to the covenants of the Obligated Group Members for the benefit of the Holders of Obligations, or to surrender any right or power in the Master Indenture conferred upon the Obligated Group Members or to add to the Events of Default enumerated in the Master Indenture;
- (iii) to cure any ambiguity or to correct or supplement any provision in the Master Indenture that may be inconsistent with any other provision in the Master Indenture, or to make any other provision with respect to matters or questions arising under the Master Indenture that is not inconsistent with the Master Indenture provided such action does not adversely affect the interests of the Holders of Obligations;
- (iv) to modify or supplement the Master Indenture in such manner as may be necessary or appropriate to qualify the Master Indenture under the Trust Indenture Act of 1939 as then amended, or under any similar Federal or State statute or regulation including provisions whereby the Master Trustee accepts such powers, duties, conditions and restrictions in the Master Indenture and the Obligated Group Members undertake such covenants, conditions or restrictions additional to those contained in the Master Indenture as would be necessary or appropriate so to qualify the Master Indenture; provided, however, that nothing in the Master Indenture will be deemed to authorize inclusion in the Master Indenture or in any indenture supplemental provisions referred to in Section 316(a) (2) of the said Trust Indenture Act or any corresponding provision provided for in any similar statute hereafter in effect;
- (v) in connection with any other change that, in the judgment of an Independent Management Consultant, a copy of whose report will be filed with the Master Trustee, (i) is in the best interest of the Combined Group and (ii) does not materially adversely affect the Holder of any Obligation; provided that no such change will be made if within 30 days of its receipt of such Independent Management Consultant's report, the Master Trustee has obtained a report from another Independent Management Consultant indicating that in its opinion either clause (i) or clause (ii) of this Clause (e) is not satisfied; provided further, that the Master Trustee will be under no duty to retain another such Independent Management Consultant;
- (vi) to create and provide for the issuance of Obligations as permitted hereunder;
- (vii) to increase or maintain any credit rating assigned to any series of Related Bonds by a Rating Agency;
- (viii) to permit the financial statements required therein to more accurately reflect the financial position and operations of the Obligated Group; and
- (ix) to make any amendment to any provision of the Master Indenture or to any Supplemental Indenture which is only applicable to Obligations issued thereafter or which will not apply so long as any Obligation then Outstanding remains Outstanding.

(b) With the consent of the Holders of not less than a majority in principal amount of the Outstanding Obligations, by Act of said Holders delivered to the Obligated Group Representative and the Master Trustee, each Obligated Group Member, when authorized by a Board Resolution, and the Master Trustee may enter into an indenture or indentures supplemental to the Master Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Master Indenture or of modifying in any manner the rights of the Holders of the Obligations and coupons under the Master Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Obligation affected thereby,

(i) change the Stated Maturity of the principal of, or any installment of interest on (or any mandatory redemption date for), any Obligations, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, or change any Place of Payment where, or the coin or currency in which, any Obligations or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the redemption date), or

(ii) reduce the percentage in principal amount of the Outstanding Obligations, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of the Master Indenture or certain defaults hereunder and their consequences) provided for in the Master Indenture, or

(iii) modify any of the provisions of this paragraph or certain other provisions as described in the Master Indenture, except to increase any such percentage or to provide that certain other provisions of the Master Indenture cannot be modified or waived without the consent of the Holder of each Obligation affected thereby.

It is not necessary for any Act of Holders of Obligations under this paragraph to approve the particular form of any proposed supplemental indenture, but it will be sufficient if such Act approves the substance thereof.

(c) In executing, or accepting the additional trusts created by, any supplemental indenture permitted by the Master Indenture, the Master Trustee is entitled to receive, and (subject to the liabilities and duties of the Master Trustee in the Master Indenture) is fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by the Master Indenture. The Master Trustee may, but is not (except to the extent required by the Master Indenture) obligated to, enter into any such supplemental indenture which affects the Master Trustee's own rights, duties or immunities under the Master Indenture or otherwise.

Defeasance. (a) If at any time the Obligated Group Members have paid or caused to be paid the principal of (and premium, if any) and interest on all the Obligations Outstanding under the Master Indenture, as and when the same have become due and payable, and if the Obligated Group Members have also paid or provided for the payment of all other sums payable under the Master Indenture by each Obligated Group Member then the Master Indenture will cease to be of further effect (except as to (1) rights of registration of transfer and exchange, (2) substitution of mutilated, defaced, or apparently destroyed, lost or stolen Obligations, (3) rights of Holders to receive payments of principal thereof (and premium, if any) and interest thereon and remaining obligations of the Obligated Group Members to make mandatory sinking fund payments, (4) the rights, remaining obligations, if any, and immunities of the Master Trustee under the Master Indenture and (5) the rights of the Holders as beneficiaries of the Master Indenture with respect to the property so deposited with the Master Trustee payable to all or any of them) and the Master Trustee, on the Obligated Group Representative's Request accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Obligated Group Representative, shall execute proper instruments acknowledging satisfaction of and discharge the Master Indenture.

(b) The Obligations and the coupons will be deemed to have been paid if (1) in case of Obligations to be redeemed on any date prior to their Stated Maturity, the Obligated Group Representative, by Obligated Group Representative Request, has given to the Master Trustee in satisfactory form its irrevocable instructions to give notice of redemption of such Obligations, (2) there has been deposited with the Master Trustee either money sufficient, or Defeasance Obligations the principal of and the interest on which will provide money sufficient without reinvestment (as established by an Officer's Certificate delivered to the Master Trustee accompanied by a report of an Independent Accountant setting forth the calculations upon which such Officer's Certificate is based), to pay when due the principal of (and premium, if any), and interest due and to become due on such Obligations on and prior to the redemption date or Stated Maturity thereof, as the case may be, and (3) in the event such Obligations are not by their terms subject to redemption within the next 45 days, the Obligated Group Representative, by Obligated Group Representative Request, must have given the Master Trustee in satisfactory form its irrevocable instructions to give a notice to the Holders of such Obligations that the deposit required by (2) above has been made with the Master Trustee and that such Obligations and coupons are deemed to have been paid in accordance with this paragraph and stating such maturity or redemption date upon which money is to be available for the payment of the principal of (and premium, if any), and interest on such Obligations.

THE BOND INDENTURE

The following is a summary of certain provisions of the Bond Indenture. Such summary does not purport to be complete and is qualified in its entirety by reference to the Bond Indenture.

General. The Issuer and the Bond Trustee will execute the Bond Indenture under which the Series 1999 Bonds are being issued. Under the Bond Indenture, the Issuer pledges, conveys, and assigns to the Bond Trustee all of its right and interest in the Loan Agreement (except for certain rights to payment of expenses and indemnification) and the Series 1999 Notes, including all revenues and receipts received or to be received thereunder, as security for the payment of the principal of the Series 1999 Bonds and the interest and redemption premium, if any thereon, for the benefit and security of all holders of the Series 1999 Bonds. The Bond Indenture creates a Bond Fund, Reserve Fund, Cost of Issuance Fund and Construction Fund, each of which is to be held by the Bond Trustee, and the Rebate Fund, which is not assigned to the Bond Trustee.

Bond Fund. The Bond Fund contains three separate accounts, the Principal Account, the Interest Account and the Entrance Fee Redemption Account. Moneys on deposit in the Principal Account are to be used to pay the principal of and premium, if any, on the Bonds when due and payable. Moneys on deposit in the Interest Account are to be used to pay interest on the Bonds. Moneys on deposit in the Entrance Fee Redemption Account are to be used to redeem the Series 1999E Bonds, the Series 1999C Bonds and the Series 1999B Bonds, in that order of priority. There will be deposited in the respective accounts of the Bond Fund all accrued interest received from the sale of the Bonds to the initial purchasers thereof, all payments made on the Series 1999 Notes, all moneys required to be transferred to the Bond Fund from the Reserve Fund, all other moneys required to be deposited therein pursuant to the Loan Agreement, and all other moneys received by the Bond Trustee when accompanied by directions that such moneys are to be deposited in the Bond Fund. Income from the investment of moneys on deposit in the Bond Fund is to be deposited into the Interest Account, unless there exists a deficiency in the Reserve Fund, in which case such investment income shall be deposited (up to the amount of such deficiency) in the Reserve Fund.

The Issuer authorizes and directs the Bond Trustee in the Bond Indenture to withdraw sufficient funds from the Bond Fund to pay the principal of, premium, if any, and interest on the Bonds as the same becomes due and payable.

Reserve Fund. Pursuant to the Loan Agreement, the Obligated Group Representative will fund the Reserve Fund by transferring Reserve Fund Obligations in an aggregate amount equal to the Reserve Fund Requirement to the Bond Trustee for deposit into the appropriate Reserve Account of the Reserve Fund.

Except as provided otherwise in the Bond Indenture, moneys in the Reserve Fund are to be used solely for the payment of the principal of and interest on the Bonds in the event moneys in the Bond Fund are insufficient to make such payments when due, whether on an interest payment date, redemption date, maturity date, acceleration date or otherwise, provided that moneys on deposit in a Reserve Account of the Reserve Fund shall be used only to make such payment with respect to the related series of Bonds.

Upon the occurrence of an Event of Default under the Bond Indenture and a declaration by the Bond Trustee that the principal of and interest on the Bonds is immediately due and payable, any Reserve Fund Obligations in the Reserve Fund will be deposited to the Principal Account and applied in accordance with the provisions of the Bond Indenture. In the event of the redemption of any series of Bonds in whole, any Reserve Fund Obligations on deposit in the applicable Reserve Account of the Reserve Fund in excess of the Reserve Fund Requirement on the Bonds of such series to be Outstanding immediately after such redemption will be deposited to the Principal Account and applied to the payment of the principal of the series of Bonds to be redeemed in whole. On May 1 and November 1 in each year, any earnings on the Reserve Fund Obligations on deposit in a Reserve Account of the Reserve Fund that are in excess of the Reserve Fund Requirement will be deposited during the construction period for any Project into the Construction Fund created in connection with the issuance of Bonds for such Project or, if after the completion of such construction period, into the Interest Account of the Bond Fund.

In the event any moneys in any Reserve Account of the Reserve Fund are transferred to the Bond Fund to make up a deficiency in the Principal Account or Interest Account on any payment date for the Bonds, except if such moneys are transferred due to the redemption of all Bonds, the Obligated Group Representative agrees to deposit additional Reserve Fund Obligations in an amount sufficient to satisfy the Reserve Fund Requirement, such amount to be deposited in no more than 12 equal consecutive monthly installments, the first installment to be made within seven months of such transfer or receipt of written notice from the Bond Trustee of a deficiency. In the event the value of the Reserve Fund Obligations deposited into the Reserve Fund is less than the Reserve Fund Requirement, the Obligated Group Representative agrees to deposit additional Reserve Fund Obligations in an amount sufficient to satisfy the Reserve Fund Requirement, such amount to be deposited in no more than three equal consecutive monthly installments, the first installment to be made within 30 days of such transfer or receipt of written notice from the Bond Trustee of a deficiency. If an Event of Default, as defined in the Bond Indenture, occurs and the Bond Trustee declares the Outstanding Bonds to be due and payable, Reserve Fund Obligations in the appropriate Reserve Account of the Reserve Fund are to be transferred by the Bond Trustee to the Principal Account of the Bond Fund to pay principal of the related series of Bonds.

Construction Fund. Any moneys remaining from the proceeds of sale of the Bonds after making the required deposits into the Bond Fund and Reserve Fund will be deposited into the Construction Fund. The Bond Trustee will disburse moneys in the Construction Fund to the Obligated Group Representative to pay the costs of acquiring and constructing each Project upon the Obligated Group Representative's compliance with the terms and conditions of the Loan Agreement and the Construction Disbursement Agreement. Income from the investment of monies on deposit in the Construction Fund is to be credited to the Construction Fund.

Cost of Issuance Fund. A Cost of Issuance Fund has been established with the Bond Trustee. The Bond Trustee will disburse moneys in the Cost of Issuance Fund for Cost of Issuance upon compliance with the Loan Agreement.

Rebate Fund. A special Rebate Fund has been established with the Bond Trustee. Based on a report prepared annually by a nationally recognized independent consultant, the Obligated Group Representative shall cause to be deposited into the Rebate Fund any amounts required to assure compliance with the Code. The Rebate Fund and any moneys on deposit therein are not subject to the lien of the Bond Indenture.

Investment of Funds. The moneys held by the Bond Trustee in the various funds created under the Bond Indenture, at the written request and direction of the Obligated Group Representative, may be invested by the Bond Trustee only in Investment Securities to the extent permitted by law.

Repayment to the Obligated Group Representative from the Funds. Any amounts remaining in the Bond Fund, Reserve Fund or Construction Fund after payment in full of the Bonds (or after making provision for such payment), the fees and expenses of the Bond Trustee and the Paying Agents (including attorneys fees, if any), the Administration Expenses, and all other amounts required to be paid under the Bond Indenture and under the Loan Agreement are required to be paid to the Obligated Group Representative upon the termination of the Loan Agreement.

Additional Bonds. Upon compliance with and subject to the terms and conditions of the Loan Agreement and Bond Indenture, the Issuer has agreed to authorize the issuance of additional Bonds for the purpose of providing funds to pay the costs of acquiring, constructing, equipping, completing or expanding any Project and/or, to the extent permitted by law, to refund any Bonds theretofore issued and then Outstanding under the Bond Indenture.

Arbitrage. The Issuer has agreed to observe certain covenants with respect to the use of the proceeds of the Tax-Exempt Series 1999 Bonds to assure that the exclusion of the interest on the Tax-Exempt Series 1999 Bonds from the gross income of the owners thereof for federal income tax purposes is not adversely affected. Failure by the Issuer to comply with such covenants may cause the interest on the Tax-Exempt Series 1999 Bonds to become includable in gross income of the owners of the Bonds.

Events of Defaults. Each of the following events is defined in the Bond Indenture as an "Event of Default" :

- (a) Default in the payment of the principal of or premium, if any, on any Bond when the same shall become due and payable, whether at the stated maturity thereof, or upon proceedings for redemption or as required by the sinking fund provisions hereof or otherwise.
- (b) Default in the payment of any installment of interest on any Bond when the same shall become due and payable.
- (c) Declaration under the Master Indenture that the principal of, and accrued interest on, any Obligation issued thereunder is immediately due and payable.
- (d) Failure by the Issuer in the performance or observance of any other of the covenants, agreements or conditions in its part in the Bond Indenture or in the Bonds contained, which failure shall continue for a period of 60 days after written notice specifying such failure and requesting that it be remedied, is given to the Issuer and the Obligor by the Bond Trustee or to the Issuer, the Obligor and to the Bond Trustee by the owners of not less than 51% in principal amount of the Bonds Outstanding; provided that such failure is the result of the failure of the Obligor to perform its obligations under the Agreement.

Remedies on Default. Under the Bond Indenture, upon the occurrence of an Event of Default, the Bond Trustee shall in the event the payments on any Note have been accelerated by the Master Bond Trustee, by notice in writing given to the Issuer and the Obligated Group Representative, declare all the Bonds immediately due and payable. In addition, upon the occurrence of an Events of Default the Bond Trustee may also proceed to pursue any available remedy by suit, at law or in equity, to enforce the covenants and agreements provided in the Bond Indenture.

If any Event of Default has occurred, the Bond Trustee may be required by the owners of at least 25% in aggregate principal amount of the Bonds then Outstanding to exercise one or more of the remedies specified in the Bond Indenture as the Bond Trustee shall deem most expedient, provided the Bond Trustee is indemnified as provided in the Bond Indenture.

No Owner of any Bond has the right to institute any suit, action or proceeding for the enforcement of the Bond Indenture unless, as more specifically provided in the Bond Indenture, the Bond Trustee has failed to proceed within a reasonable time after having been (i) requested to institute such suit, action or proceeding by the owners of a majority of the aggregate principal amount of the Bonds Outstanding and (ii) offered reasonable indemnity against the costs and liabilities to be incurred. Nothing in the Bond Indenture shall, however, affect or impair the right of any owner of Bonds to enforce the payment of the principal of, premium, if any, or interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each of the Bonds to the respective owners of the Bonds at the time and place, from the source and in the manner herein, and in the Bonds expressed.

The Bond Indenture provides that any moneys collected by the Bond Trustee pursuant to the provisions thereof conferring remedies on default, after payment of the expenses of the collection proceedings, shall be deposited in the Bond Fund, to be applied ratably towards all payments due on the Bonds Outstanding, as more fully provided in the Bond Indenture.

Defeasance. When the Bonds become due and payable and the whole amount of the principal of, premium, if any, and interest due and payable upon all of such Bonds has been paid, or provision has been made for such payment, together with the payment of all other sums payable under the Bond Indenture (including but not limited to the fees and expenses of the Bond Trustee and any Paying Agent, in accordance with the provisions of the Bond Indenture), the right, title and interest of the Bond Trustee in and to the trust estate and all covenants, agreements and other obligations of the Issuer to the Bondholders cease, terminate, and become void and are discharged and satisfied. In such event, upon the written request of the Issuer or of the Obligated Group Representative, and upon receipt of an Opinion of Counsel to the effect that all conditions precedent in the Bond Indenture relating to the satisfaction and discharge of the Bond Indenture have been complied with, the Bond Trustee will (i) execute such documents as may be reasonably required by the Issuer, (ii) release any Reserve Fund Credit Facility and (iii) subject to the provisions of the Bond Indenture, turn over to the Obligated Group Representative any surplus in the Bond Fund, Reserve Fund and Construction Fund.

All Outstanding Bonds of any one or more series will prior to the maturity or redemption date thereof be deemed to have been paid if (i) in the case where such Bonds are to be redeemed on any date prior to their maturity, the Obligated Group Representative has given to the Bond Trustee irrevocable written instructions to give notice of redemption of such Bonds on said redemption date, (ii) there has been deposited with the Bond Trustee (or another depository) either moneys in an amount sufficient or Government Obligations which do not contain provisions permitting the redemption thereof at the option of the issuer, or any other person other than the holder thereof, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Bond Trustee or any Paying Agent at the same time (including the Bond Fund and the Reserve Fund), are sufficient in the opinion of an independent certified public accountant, to pay when due the principal of, premium, if any, and interest due and to become due on such Bonds on or prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event the Bonds are not subject to redemption within the next 45 days, the Obligated Group Representative has given to the Bond Trustee irrevocable written instructions to give, as soon as practicable, a notice to the owners of such Bonds that the deposit required by (ii) above has been made with the Bond Trustee (or another depository) and that such Bonds are deemed to have been paid and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of, premium, if any, and interest on such Bonds.

Supplemental Bond Indentures. Without the consent of, or notice to, the Bondholders of the Bonds, the Issuer and the Bond Trustee may at any time enter into supplemental Bond Indentures which (a) add covenants and agreements to the Bond Indenture for the protection of the Bondholders, (b) cure any ambiguity or cure, correct or supplement any defect or inconsistent provision in the Bond Indenture or for any other purpose, if such supplement does not adversely affect the interests of the holders of the Bonds, (c) make subject to the Bond Indenture additional revenues, properties, or collateral, (d) qualify the Bond Indenture under the Trust Bond Indenture Act of 1939, if such is required in the Opinion of Counsel, (e) set forth the terms and conditions of, additional Bonds issued pursuant to the Bond Indenture, (f) satisfy the requirements of any rating agency, and (g) maintain the extent to which the interest on the Bonds is not includable in the gross income of the recipients thereof. With the consent of the owners of at least a majority of the aggregate principal amount of the Bonds of any particular series then Outstanding and affected thereby, the Issuer and the Bond Trustee may enter into supplemental Bond Indentures for any other purpose except that no supplemental Bond Indenture shall, without the consent of the owners of all of the Bonds Outstanding, (a) permit an extension of the maturity of, or a reduction of the aggregate principal amount of, or a reduction of the rate of, or an extension of the time of payment of, interest on, or a reduction of a premium payable upon any redemption of, any Bond, (b) deprive any owner of a Bond Outstanding of the lien created by the Bond Indenture (other than as originally permitted thereby), (c) give privilege or priority to any Bond over any other Bond, or (d) reduce the aggregate principal amount of the Bonds required for consent to any supplemental Bond Indenture. Except as set forth in the Bond Indenture, neither the Issuer nor the Bond Trustee shall consent to any amendment to the Loan Agreement or the Master Bond Indenture without notice to and the written approval or consent of the owners of at least a majority of the aggregate principal amount of the Bonds Outstanding.

Release and Substitution of Series 1999 Notes. The Bond Trustee shall surrender the Series 1999 Notes to the Master Trustee, unless objected to in writing by the Issuer within ten days of receipt of notice from the Bond Trustee of such proposed substitution, upon presentation to the Bond Trustee prior to such surrender of the following:

(a) an original executed counterpart of a master trust indenture (the "Replacement Master Indenture") executed by the Obligor, all current Obligated Group Members and certain other parties named therein (collectively, the "New Group") and an independent corporate trustee (the "Replacement Trustee") meeting the eligibility requirements of the Master Trustee as set forth in the Master Indenture;

(b) an original replacement note or similar obligations issued by the Obligor (the "Substitute Note") under and pursuant to and secured by the Replacement Master Indenture, which Substitute Note has been duly authenticated by the Replacement Trustee;

(c) an Opinion of Counsel addressed to the Bond Trustee and the Issuer (in form and substance acceptable to the Bond Trustee and the Issuer) to the effect that:

(i) the Replacement Master Indenture has been duly authorized, executed and delivered by each member of the New Group, the Substitute Note has been duly authorized, executed and delivered by the Obligor and the Replacement Master Indenture and the Substitute Note are each a legal, valid and binding obligation of each member of the New Group, subject in each case to customary exceptions for bankruptcy, insolvency and other laws generally affecting enforcement of creditors' rights and application of general principles of equity, (ii) all requirements and conditions to the issuance of the Substitute Note set forth in the Replacement Master Indenture have been complied with and satisfied; and (iii) registration of the Substitute Note under the Securities Act of 1933, as amended, is not required or, if registration is required, the Substitute Note has been so registered;

(d) an Opinion of Bond Counsel that the surrender of the Series 1999 Notes and the acceptance by the Bond Trustee of the Substitute Note will not adversely affect the validity of the Bonds or any exemption for the purposes of federal income taxation to which interest on the Bonds would otherwise be entitled;

(e) a written report of a Management Consultant addressed to the Bond Trustee and the Issuer to the effect that: (x) the covenants and provisions contained in the Replacement Master Indenture are not materially less restrictive than then-current industry standards, based on the covenants and provisions contained in the credit documents of at least two other health care credit groups considered by the Management Consultant to be comparable to the New Group based on operations and financial condition, and (y) the conditions described in the Master Indenture could be met for the incurrence of one dollar of additional Long-Term Indebtedness (as defined in the Master Indenture) when it is assumed that the members of the New Group were parties to the existing Master Indenture for the relevant Fiscal Years; and

(f) such other opinions and certificates as the Bond Trustee may reasonably require, together with such reasonable indemnities as the Bond Trustee may request.

Bond Trustee. The Bond Trustee has agreed to perform the duties imposed on it under the Bond Indenture and to use the same degree of care and skill as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. Under the Bond Indenture, the Bond Trustee is not answerable for the exercise of its rights under the Bond Indenture other than for its negligence or willful misconduct. Prior to taking any action under the Bond Indenture, the Bond Trustee may require satisfactory indemnity against any liabilities which it may incur and which are not due to its negligence or willful misconduct. The Bond Indenture establishes procedures for the resignation or removal of the Bond Trustee and the appointment of a successor by the owners of at least a majority of the aggregate principal amount of the Bonds Outstanding or, if no event of default has occurred and is continuing under the Bond Indenture, by an instrument in writing executed by the Obligated Group Representative.

THE LOAN AGREEMENT

The following is a summary of certain provisions of the Loan Agreement. Such summary does not purport to be complete and is qualified in its entirety by reference to the Loan Agreement.

General. The proceeds of sale of the Series 1999 Bonds will be loaned to the Obligated Group Representative to provide for the financing and refinancing of the acquisition, construction or installation of health facilities. Concurrently with the sale and delivery of the Series 1999 Bonds, the Issuer and the Obligated Group Representative will execute a Loan Agreement and the Obligated Group Representative will execute and deliver to the Bond Trustee the Series 1999 Notes in a principal amount equal to the aggregate principal

amount of the Series 1999 Bonds. Pursuant to the terms and provisions of the Master Indenture, the Obligated Group Members have agreed to pledge and grant a security interest in the Gross Revenues of Obligated Group Members to the Master Trustee to secure the Series 1999 Notes. In addition, under the Loan Agreement, the Obligated Group Representative will fund the Reserve Fund Requirement as described under "THE BOND INDENTURE--Reserve Fund." The Obligated Group Representative will covenant under the Loan Agreement to replenish any deficiencies in the amount on deposit with the Bond Trustee in the Reserve Fund by causing Reserve Fund Obligations in amounts sufficient to satisfy the Reserve Fund Requirement to be deposited in each Reserve Account of the Reserve Fund.

The Obligated Group Representative will have the option to prepay the Series 1999 Notes by depositing cash or Government Obligations with the Bond Trustee for deposit in the Bond Fund. Prepayments shall be used for the redemption or purchase of the Series 1999 Bonds then Outstanding in the manner and to the extent provided by the Bond Indenture.

Other Obligations. The Obligated Group Representative will agree to pay the reasonable and necessary fees and charges of the Bond Trustee and any paying agent. The Obligated Group Representative also will agree to pay the reasonable expenses of the Issuer in connection with the issuance of the Bonds. The Obligated Group Representative will also indemnify the Issuer against certain liabilities with respect to the Project and the Bonds.

Additional Bonds. Upon compliance with and subject to the terms and conditions of the Loan Agreement and Bond Indenture, the Issuer has agreed to authorize the issuance of additional bonds for the purpose of providing funds to pay the cost of acquiring, constructing, equipping, completing or expanding the Project and/or, to the extent permitted by law, to refund any Bonds theretofore issued and then Outstanding under the Bond Indenture.

Obligations of the Obligated Group Representative Unconditional. The obligations of the Obligated Group Representative to make the payments required pursuant to the Series 1999 Notes are absolute and unconditional. Until such time as the principal of, premium, if any, and interest on the Series 1999 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Obligated Group Representative will not suspend or discontinue any payments pursuant to the Series 1999 Notes, for any cause.

Tax Covenants. The Obligated Group Representative and the Issuer have agreed to comply with certain covenants to assure that the exclusion of the interest on the Tax-Exempt Series 1999 Bonds from the gross income of the owners of the Series 1998A Bonds for federal income tax purposes is not adversely affected. Failure by the Obligated Group Representative or the Issuer to comply with such covenants may cause the interest on the Series 1999 Bonds to become includable in the gross income of the owners thereof.

Assignment, Merger and Release of Obligations of the Obligated Group Representative. Under certain conditions, the Obligated Group Representative may assign its interest in the Loan Agreement without the necessity of obtaining the consent of the Issuer or the Trustee, but such assignment shall not relieve the Obligated Group Representative from primary liability for any of its obligations under the Loan Agreement unless the Obligated Group Representative has been released from its obligations under the Master Indenture by the Master Trustee except in connection with the release of the Obligated Group Representative by the Master Trustee from the Obligated Group Representative's obligations under the Master Indenture. See "THE MASTER INDENTURE--Withdrawal of Obligated Group Members". Any assignee will, in any event, assume the obligations of the Obligated Group Representative under the Loan Agreement. Assumption of such obligations is not required in the case of a lease of a portion of the Project or an operating contract for the performance by others of the Obligated Group Representative services in connection with the Project. The Obligated Group Representative may not dispose of all or substantially all of its assets nor consolidate with or merge into another corporation except in accordance with the Master Indenture.

Failure to Perform Covenants; Remedies. Upon failure of the Obligated Group Representative to pay when due any payment (other than payment on any Note, which default shall have no grace period) required to be made under the Loan Agreement or to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Loan Agreement, and continuation of such failure for a period of 60 days after written notice, specifying such failure and requesting that it be remedied, is given to the Obligated Group Representative by the Issuer or the Bond Trustee, the Issuer or the Bond Trustee shall have the following remedies:

- (a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Issuer, and require the Obligated Group Representative to carry out any agreements with or for the benefit of the Bondholders and to perform its duties under the Act or the Loan Agreement; or
- (b) by action or suit in equity require the Obligated Group Representative to account as if it were the trustee of an express trust for the Issuer; or
- (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer; or

(d) upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Bond Trustee and the Bondholders, have appointed a receiver or receivers of the Trust Estate upon a showing of good cause with such powers as the court making such appointment may confer.

Failure of the Obligated Group Representative to make a payment on any Note does not constitute an event of default under the Loan Agreement. The Bond Trustee's remedies for such a failure are solely those of a holder of a Note under the Master Indenture.

Amendments, Changes and Modifications. No amendment, change, modification or alteration of the Loan Agreement is permissible without the written consent of the Bond Trustee. Pursuant to the provisions of the Bond Indenture, the consent of the holders of at least a majority of the aggregate principal amount of all Bonds then Outstanding is required for any amendment, change or modification of the Loan Agreement, except for amendments, changes or modifications as may be required (i) by the provisions of the Loan Agreement or Bond Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission in the Loan Agreement, (iii) in connection with the issuance of Additional Bonds, (iv) to satisfy any requirements imposed by a rating agency if necessary to maintain the then current rating on the Bonds, (v) to maintain the extent to which the interest on the Bonds is not includable in the gross income of the recipients thereof, if in the opinion of Bond Counsel such amendment is necessary, or (vi) in connection with any other change in the Loan Agreement which, in the judgment of the Bond Trustee, is not to the prejudice of the Bond Trustee or the holders of the Bonds.

Release and Indemnification. Pursuant to the provisions of the Loan Agreement, the Obligated Group Representative has agreed to release, indemnify and hold harmless the Issuer, Dallas County, Texas and their respective officers, directors, commissioners, officials, consultants, servants and employees (collectively, the "Indemnified Parties").

VARIABLE RATE BOND INDENTURE

The following is a summary of certain provisions of the Variable Rate Bond Indenture. Such summary does not purport to be complete and is qualified in its entirety by reference to the Variable Rate Bond Indenture.

Purchase of Tendered Series 1999D Bonds. The Tender Agent shall accept all Series 1999D Bonds properly tendered to it for purchase, and the Remarketing Agent shall accept all properly given directions to tender beneficial interests in Series 1999D Bonds, in accordance with the provisions of the Series 1999D Bonds as set forth in the Variable Rate Bond Indenture. However, the Tender Agent shall not accept any Series 1999D Bonds tendered, and the Remarketing Agent shall not accept any directions to tender any beneficial interests in any Series 1999D Bonds, (i) during an Adjustable Rate Period or the Fixed Rate Period (other than those Series 1999D Bonds deemed tendered as of an Adjustable Rate Conversion Date, an Adjustable Rate Reset Date or the Fixed Rate Conversion Date), or (ii) if at the time of the tender the principal of the Series 1999D Bonds shall have been accelerated.

The Remarketing Agent shall establish a separate and segregated "Purchase Fund." The Remarketing Agent shall hold, as agent and bailee, all moneys delivered to it for the purchase of beneficial interests in Series 1999D Bonds in the Purchase Fund in trust and without investment, solely for the benefit of the persons delivering such moneys, until the beneficial interests in such Series 1999D Bonds purchased with such moneys have been designated by the Remarketing Agent as being held for the account of such persons.

In the event that the Series 1999D Bonds are no longer held in a book-entry only system, the Tender Agent shall establish and hold the Purchase Fund. The Tender Agent shall hold all Series 1999D Bonds delivered to it in trust for the benefit of the respective owners of Series 1999D Bonds delivering such Series 1999D Bonds until moneys representing the purchase price of such Series 1999D Bonds have been delivered to or for the account of such owners of Series 1999D Bonds. The Tender Agent shall hold all moneys delivered to it for the purchase of Series 1999D Bonds in the Purchase Fund in trust and without investment, solely for the benefit of the persons delivering such moneys, until the Series 1999D Bonds purchased with such moneys have been delivered to or for the account of such persons.

The agent then holding the Purchase Fund (*i.e.*, the Remarketing Agent or the Tender Agent, as the case may be) shall withdraw sufficient funds from the Purchase Fund to pay the purchase price of tendered beneficial interests in Series 1999D Bonds or Series 1999D Bonds, as the case may be, as the same becomes due and payable.

Remarketing of Tendered Series 1999D Bonds; Payment of Purchase Price. The Remarketing Agent shall use its best efforts to remarket (i) optionally tendered beneficial interests in Series 1999D Bonds, of which it has received notice of tender from a beneficial owner, (ii) optionally tendered Series 1999D Bonds, of which it has received notice of tender from the Tender Agent or (iii) mandatorily tendered beneficial interests in Series 1999D Bonds (if the Series 1999D Bonds are held in a book-entry only system) or Series 1999D Bonds (if the Series 1999D Bonds are no longer held in a book-entry only system), in each case at a price equal to 100% of the principal amount thereof plus accrued interest to the purchase date.

Upon receipt of a duly tendered written notice of an optional tender of beneficial interest in Series 1999D Bonds or of an optional tender of Series 1999D Bonds, the Remarketing Agent (if the Series 1999D Bonds are then held in a book-entry system) or the Tender Agent (if the Series 1999D Bonds are no longer held in a book-entry only system), as applicable, shall notify the Remarketing Agent (if

applicable), the Obligor, the Credit Provider and the Bond Trustee of the principal amount of Series 1999D Bonds (or beneficial interests therein) tendered and the date fixed for purchase, which date shall be a Business Day not less than seven days from the date of receipt of such notice by the Tender Agent or the Remarketing Agent, as the case may be, during a Floating Rate Period.

By 3:00 p.m., Chicago time, on the Business Day next preceding each purchase date (whether optional or mandatory) during a Floating Rate Period or an Adjustable Rate Period, the Remarketing Agent shall give notice to the Tender Agent, the Credit Provider, the Obligor and the Bond Trustee of the principal amount of such Series 1999D Bonds (or beneficial interests therein) remarketed, and, if the Series 1999D Bonds are no longer held in a book-entry only system, the names, addresses and taxpayer identification numbers of the purchasers and the denominations in which the Series 1999D Bonds are to be issued to each purchaser. If less than all of the Series 1999D Bonds (or beneficial interests therein) to be tendered on such purchase date have been remarketed, the Remarketing Agent shall, in addition, notify the Bond Trustee, the Tender Agent, the Credit Provider and the Obligor by 3:00 p.m., Chicago time, on the Business Day next preceding the purchase date (whether optional or mandatory), of the principal amount of Series 1999D Bonds (or beneficial interests therein) which have not been remarketed and the amount of accrued interest to be paid on such Series 1999D Bonds (or beneficial interests therein) on such purchase date. Purchasers of Series 1999D Bonds (or beneficial interests therein) which have been remarketed shall be required to deliver the purchase price thereof directly to the Remarketing Agent (if the Series 1999D Bonds are held in a book-entry only system) or to the Tender Agent (if the Series 1999D Bonds are no longer held in a book-entry only system), as the case may be, for deposit in the Purchase Fund not later than 9:00 a.m., Chicago time, on each purchase date (whether optional or mandatory) during a Floating Rate Period or an Adjustable Rate Period. By 9:30 a.m., Chicago time, on each purchase date (whether optional or mandatory) during a Floating Rate Period or an Adjustable Rate Period, the Remarketing Agent (if the Series 1999D Bonds are held in a book-entry only system) or the Tender Agent (if the Series 1999D Bonds are no longer held in a book-entry only system), as the case may be, shall notify the Bond Trustee, the Remarketing Agent (if applicable), the Credit Provider and the Obligor of any Series 1999D Bonds (or beneficial interests therein) which have been remarketed for which payment has not been received.

With respect to any Series 1999D Bonds then secured by a Credit Facility, by 10:00 a.m., Chicago time, on each purchase date (whether optional or mandatory), the Bond Trustee shall, upon receipt of the notices described above, as appropriate, draw upon the Credit Facility securing such Series 1999D Bonds in an amount equal to the purchase price of: (1) any tendered Series 1999D Bonds (or beneficial interests therein) not remarketed (if the Remarketing Agent fails to notify the Bond Trustee of Series 1999D Bonds remarketed as provided above, the Bond Trustee shall assume that the tendered Series 1999D Bonds have not been remarketed); and (2) any tendered Series 1999D Bonds (or beneficial interests therein) remarketed and for which payment has not been received. The Credit Provider shall cause funds so drawn to be wired to the Remarketing Agent or the Tender Agent, as appropriate, with notice to the Bond Trustee, not later than 1:00 p.m., Chicago time, on the purchase date. The Remarketing Agent or the Tender Agent, as appropriate, shall use such funds promptly to pay holders of Series 1999D Bonds.

Funds for Purchase Price of Series 1999D Bonds. On the date Series 1999D Bonds (or beneficial interests therein) are to be purchased pursuant to the provisions of the Variable Rate Bond Indenture, the Remarketing Agent (if the Series 1999D Bonds are held in a book-entry only system) or the Tender Agent (if the Series 1999D Bonds are no longer held in a book-entry only system), as the case may be, shall deliver the purchase price to the tendering holder (or the tendering beneficial owner) of Series 1999D Bonds only from the funds listed below, in the order of priority indicated:

(a) the proceeds of the sale of such Series 1999D Bonds (or beneficial interests therein) which have been remarketed by the Remarketing Agent to any person other than the Obligor (or any "insider" of the Obligor within the meaning of the federal Bankruptcy Code) or the Issuer or any guarantor of the Obligor's obligations under the Variable Rate Loan Agreement prior to the time such Series 1999D Bonds (or beneficial interests therein) are to be purchased, and, if the Series 1999D Bonds are held in a book-entry only system, delivered to the Remarketing Agent, or, if the Series 1999D Bonds are no longer held in a book-entry only system, delivered to the Tender Agent, on the purchase date;

(b) moneys drawn under the Credit Facility; and

(c) moneys deposited by the Obligor with the Remarketing Agent (if the Series 1999D Bonds are held in a book-entry only system) or the Tender Agent (if the Series 1999D Bonds are no longer held in a book-entry only system), as the case may be, pursuant to the Variable Rate Loan Agreement, which moneys shall be segregated by the Remarketing Agent or the Tender Agent, as appropriate, in a separate account in the Purchase Fund apart from, and not commingled with, other moneys held by the Remarketing Agent or the Tender Agent, as appropriate, in the Purchase Fund.

Delivery of Purchased Series 1999D Bonds. If the Series 1999D Bonds are held in a book-entry only system, the Remarketing Agent shall designate beneficial interests in Series 1999D Bonds purchased with moneys described in clause (a) above under the caption "Funds for Purchase Price of Series 1999D Bonds" as being held for the account of such purchasers. Beneficial interests purchased with moneys described in clause (b) above under the caption "Funds for Purchase Price of Series 1999D Bonds" shall be designated by the

Remarketing Agent as being held for the account of the Obligor for the benefit of the Credit Provider indicating their status as Pledged Series 1999D Bonds. Beneficial interests in Series 1999D Bonds purchased with moneys described clause (c) above under the caption "Funds for Purchase Price of Series 1999D Bonds" shall be designated by the Remarketing Agent as being held for the account of the Obligor indicating their status as Obligor Series 1999D Bonds.

If the Series 1999D Bonds are no longer held in a book-entry only system, the Tender Agent shall make available by 11:00 a.m., Chicago time, on a purchase date (whether optional or mandatory), at its principal office, Series 1999D Bonds purchased with moneys described in clause (a) above under the caption "Funds for Purchase Price of Series 1999D Bonds" for receipt by the purchaser thereof. Series 1999D Bonds purchased with moneys described in clause (a) above under the caption "Funds for Purchase Price of Series 1999D Bonds" shall be registered in the manner directed by the Remarketing Agent and delivered to the Remarketing Agent for redelivery to the purchasers thereof. Series 1999D Bonds purchased with moneys described in clause (b) above under the caption "Funds for Purchase Price of Series 1999D Bonds" shall be delivered by the Tender Agent to the Bond Trustee, and registered by the Bond Trustee in the name of the Obligor indicating their status as Pledged Series 1999D Bonds, and disposed of pursuant to clause (c) above under the caption "Funds for Purchase Price of Series 1999D Bonds." Series 1999D Bonds purchased with moneys described in clause (c) above under the caption "Funds for Purchase Price of Series 1999D Bonds" shall be registered in the name of the Obligor for the benefit of the Credit Provider indicating their status as Obligor Series 1999D Bonds and delivered to the Obligor.

Delivery of Proceeds of Sale of Purchased Series 1999D Bonds. Except in the case of the sale of Pledged Series 1999D Bonds, the proceeds of the sale of any Series 1999D Bonds (or beneficial interests therein), to the extent not required to pay the purchase price thereof, shall be paid to or upon the order of the Obligor; and the proceeds of the sale of Pledged Series 1999D Bonds (or beneficial interests therein) shall be paid to or upon the order of the Credit Provider. However, proceeds of the remarketing of Pledged Series 1999D Bonds in an Adjustable Rate Mode representing accrued interest on such Series 1999D Bonds from the date of the last interest drawing (or, with respect to Series 1999D Bonds in an Adjustable Rate Mode longer than 365 days, from the latter of the date of the last interest drawing with respect to such Series 1999D Bonds or the last Interest Payment Date for Series 1999D Bonds in an Adjustable Rate Mode) with respect to such Series 1999D Bonds to the date of the last interest drawing with respect to Series 1999D Bonds in an Adjustable Rate Mode shall be retained by the Bond Trustee in the Accrued Interest Account of the Bond Fund and used to pay interest on such Series 1999D Bonds on the next Interest Payment Date to the extent that such interest will not be paid by a drawing on the Credit Facility.

Pledged Bonds. Pledged Bonds shall be held in accordance with the provisions of the Pledge Agreement.

Special Rate Resetting. If any Series 1999D Bonds constitute Pledged Series 1999D Bonds or Obligor Series 1999D Bonds due to a failure in remarketing such Series 1999D Bonds on a mandatory tender date, the Remarketing Agent shall be entitled to determine a new and higher Floating Rate or Adjustable Rate with respect to such Series 1999D Bonds, as appropriate (under the conditions and subject to the limitations provided above), effective on such date as the Remarketing Agent is able to remarket such Pledged Series 1999D Bonds or Obligor Series 1999D Bonds in whole. Such new and higher rate with respect to such Series 1999D Bonds shall be established by the Remarketing Agent in its sole judgment having due regard for prevailing financial market conditions at the lowest rate which will permit the Pledged Series 1999D Bonds or Obligor Series 1999D Bonds to be sold at a price of par plus accrued interest to such delivery date, but in any event such new and higher rate with respect to such Series 1999D Bonds shall not be in excess of the Maximum Rate. The determination of a new and higher Floating Rate or Adjustable Rate with respect to such Series 1999D Bonds, as appropriate, by the Remarketing Agent shall be conclusive and binding upon the Issuer, the Obligor, the Bond Trustee, the Credit Provider, the Tender Agent and the holders of Series 1999D Bonds.

Non-presentment of Series 1999D Bonds. If any check or draft representing payment of interest, principal, premium or purchase price on any Series 1999D Bonds is returned to the Bond Trustee or the Tender Agent or is not presented for payment by the payee thereof, or any Series 1999D Bonds is not presented for payment of principal or premium at the maturity or redemption date, or purchase price at the purchase date, if amounts drawn under a Credit Facility or the proceeds of a remarketing of such Series 1999D Bonds by the Remarketing Agent, or, during an Adjustable Rate Period or the Fixed Rate Period, Seasoned Funds and/or Government Obligations purchased with Seasoned Funds sufficient to pay such interest, or such principal and premium or purchase price, as is applicable, shall have been made available to the Bond Trustee or the Tender Agent for the benefit of the owner of the applicable Series 1999D Bonds, all liability of the Issuer to the owner of such Series 1999D Bonds for such interest or such principal and premium or purchase price shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Bond Trustee or the Tender Agent to hold such moneys and/or Government Obligations, without investing or reinvesting the same and without liability for interest thereon, for the benefit of the owner of such Series 1999D Bonds, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on such owner's part under the Variable Rate Bond Indenture or on, or with respect to, such Series 1999D Bonds, and thereafter such Series 1999D Bonds shall no longer be considered to be outstanding. The Bond Trustee's or Tender Agent's obligation to hold such moneys and/or Government Obligations shall continue for a period equal to two years following the date on which such payment was due, whether at maturity, or at the date fixed for redemption thereof, or otherwise, at which time the Bond Trustee or the Tender Agent, upon payment of all fees and expenses due and owing to it and receipt of indemnity satisfactory to it, shall surrender such funds so held to the Credit Provider upon its written direction or, if the Credit Provider is not owed any moneys under the Reimbursement Agreement, to the Obligor upon its

written direction. Following such surrender, any claim for payment under the Variable Rate Bond Indenture by the owner of any Series 1999D Bonds of whatever nature shall be made only upon the Obligor.

Creation of Bond Fund. There is created under the Series 1997B Indenture the "Bond Fund". Within the Bond Fund there are created by the Issuer and ordered established with the Bond Trustee five trust accounts to be designated the "Revenue Account," the "Seasoned Funds Account," the "Credit Facility Account", the "Accrued Interest Account," and the "Entrance Fee Redemption Account".

Payments into Bond Fund. There shall be deposited into the Bond Fund when received: (i) all payments specified in the Variable Rate Loan Agreement; (ii) all moneys required to be so deposited in connection with any redemption of Series 1999D Bonds; (iii) all revenues derived or received by the Bond Trustee under or with respect to the Credit Facility except those required to be deposited in the Purchase Fund; (iv) any amounts directed to be transferred into the Bond Fund pursuant to any provision of the Variable Rate Bond Indenture; (v) all other moneys when received by the Bond Trustee which are required to be deposited into the Bond Fund or which are accompanied by directions that such moneys are to be paid into the Bond Fund; (vi) any amounts received pursuant to the Variable Rate Loan Agreement if the Obligor elects not to replace, repair, rebuild or restore the Project as provided therein and (vii) all moneys received by the Bond Trustee from the Master Trustee on each Entrance Fee Transfer Date pursuant to the Master Indenture. Any amounts paid to the Bond Trustee as optional redemption premiums while any Series 1999D Bonds are in the Adjustable Rate Mode, which do not constitute Seasoned Funds when paid or which are not derived from draws under the Credit Facility, shall be held in the Seasoned Funds Account and shall not be commingled with any other moneys held by the Bond Trustee until such time as they constitute Seasoned Funds and are used to pay the optional redemption premium. Any amounts derived or received by the Bond Trustee under or with respect to the Credit Facility shall be held in the Credit Facility Account and shall not be commingled with any other moneys held by the Bond Trustee. Any amounts paid to the Bond Trustee out of remarketing proceeds of Pledged Series 1999D Bonds in an Adjustable Rate Mode representing accrued interest on such Series 1999D Bonds from the date of the last interest drawing (or, with respect to Series 1999D Bonds in an Adjustable Rate Mode longer than 365 days, from the latter of the date of the last interest drawing with respect to such Series 1999D Bonds or the last Interest Payment Date for Series 1999D Bonds in an Adjustable Rate Mode) with respect to such Series 1999D Bonds to the date of the last interest drawing with respect to Series 1999D Bonds in an Adjustable Rate Mode shall be deposited in the Accrued Interest Account and shall not be commingled with any other moneys held by the Bond Trustee. Any other amounts received for deposit in the Bond Fund shall be held in the Revenue Account and shall not be commingled with any other moneys held by the Bond Trustee.

Draws on Credit Facility; Use of Moneys in Bond Fund. Before 10:00 a.m., Chicago time, on the Business Day immediately preceding each Interest Payment Date, or the date upon which Series 1999D Bonds that are secured by the Credit Facility mature or are to be redeemed, the Bond Trustee shall draw on the Credit Facility with respect to Series 1999D Bonds secured by the Credit Facility an amount which shall be sufficient for the purpose of paying the principal, premium (but only if such is permitted by the terms of the Credit Facility) and interest coming due and payable on the Series 1999D Bonds (whether at maturity, upon redemption or upon acceleration) on such Interest Payment Date (or, in the case of Series 1999D Bonds in the Adjustable Rate Mode, interest accrued or which will accrue to such draw date net of any moneys on deposit in the Accrued Interest Account of the Bond Fund or the Credit Facility Account with respect to such Series 1999D Bonds) or such date upon which Series 1999D Bonds mature or are to be redeemed and interest accrued on any Series 1999D Bonds in the Adjustable Rate Mode since the last interest drawing with respect to such Series 1999D Bonds (net of any moneys on deposit in the Accrued Interest Account of the Bond Fund or the Credit Facility Account with respect to such Series 1999D Bonds). However, the Bond Trustee shall not draw under any Credit Facility with respect to the payment of any Pledged Series 1999D Bonds, Obligor Series 1999D Bonds or Fixed Rate Series 1999D Bonds. The Credit Provider, in accordance with the terms of the Credit Facility, shall cause funds so drawn to be wired to the Bond Trustee not later than 11:00 a.m., Chicago time, on the Interest Payment Date, first Business Day of each month, maturity date or redemption date, as appropriate. All amounts paid to the Bond Trustee with respect to the Credit Facility shall be deposited in the Credit Facility Account of the Bond Fund upon receipt thereof by the Bond Trustee. The Bond Trustee shall use such funds promptly to pay holders of Series 1999D Bonds when due.

Before 10:00 a.m., Chicago time, on the date upon which any Series 1999D Bonds are to be purchased, the Bond Trustee shall draw on the Credit Facility an amount which, when added to the remarketing proceeds (if any), shall be sufficient for the purpose of paying the purchase price coming due and payable on the Series 1999D Bonds (or beneficial interests therein) secured by such Credit Facility on such purchase date. However, the Bond Trustee shall not draw on any Credit Facility with respect to the payment of any Pledged Series 1999D Bonds, Obligor Series 1999D Bonds or any Fixed Rate Series 1999D Bonds. The Credit Provider, in accordance with the terms of the Credit Facility, shall cause funds so drawn to be wired to the Tender Agent (if the Series 1999D Bonds are not held in a book-entry only system) or the Remarketing Agent (if the Series 1999D Bonds are held in a book-entry only system) not later than 1:00 p.m., Chicago time, on the purchase date. All amounts paid to the Tender Agent or the Remarketing Agent with respect to the Credit Facility shall be deposited in the Purchase Fund.

Moneys derived from the Credit Facility shall be used solely for the payment of the principal or purchase price of and premium, if any (but only if the Credit Facility secures the premium, if any, payable upon an optional redemption of such Series 1999D Bonds), and interest on the Series 1999D Bonds secured by such Credit Facility (other than Pledged Series 1999D Bonds, Obligor Series 1999D Bonds or Fixed Rate Series 1999D Bonds). The payment of any premium on the Series 1999D Bonds in the event of an optional redemption thereof after an Adjustable Rate Conversion Date or an Adjustable Rate Reset Date shall be made from Seasoned Funds or from funds

derived from a draw under the Credit Facility if such is permitted by the terms thereof (in each case, if the Series 1999D Bonds are secured by a Credit Facility). Immediately following the honoring of any draw under any Credit Facility, an amount equal to the amount of such draw shall be transferred from the Revenue Account of the Bond Fund or the Purchase Fund to the Credit Provider as reimbursement for such draw.

Project Fund. There is established under the Variable Rate Bond Indenture a "Project Fund." The Bond Trustee shall make payments from the Project Fund, to or upon the order of the Obligor, with respect to the Project.

Completion or Termination of Project. (a) At such time as the Obligor determines that construction of a Project has been completed or has determined to terminate any further construction of the Project, it shall deliver the Completion Certificate to the Bond Trustee.

(b) All Surplus Construction Fund Moneys remaining in the Project Fund after the Completion Certificate is filed with the Bond Trustee and payment of all other costs then due and payable shall be transferred to the Revenue Account of the Bond Fund and applied to the redemption of the Bonds pursuant to the Variable Rate Bond Indenture.

Cost of Issuance Fund. A Cost of Issuance Fund has been established with the Bond Trustee. The Bond Trustee will disburse moneys in the Cost of Issuance Fund for Cost of Issuance upon compliance with the Variable Rate Loan Agreement.

Rebate Fund. A special Rebate Fund has been established with the Bond Trustee. The Obligated Group Representative shall cause to be deposited into the Rebate Fund any amounts required to assure compliance with the Code. The Rebate Fund and any moneys on deposit therein are not subject to the lien of the Variable Rate Bond Indenture.

Debt Service Reserve Fund. The Bond Trustee shall establish and maintain a "Debt Service Reserve Fund." Funds on deposit in the Debt Service Reserve Fund shall be used to make up any deficiencies related to Series 1999D Bonds in the Revenue Account of the Bond Fund. Permitted Investments in the Debt Service Reserve Fund shall be evaluated by the Bond Trustee as of April 30 and October 31 of each year at fair market value. In the event the amount of moneys on deposit in the Debt Service Reserve Fund is less than the Reserve Requirement due to a withdrawal therefrom or is less than 90% of the Reserve Requirement upon the annual valuation of assets therein, notification of the amount of such shortfall shall promptly be delivered by the Bond Trustee to the Obligor and such deficiency shall be reimbursed from payments received under the Variable Rate Loan Agreement. In the event the amount of moneys on deposit in the Debt Service Reserve Fund is more than 110% of the Reserve Requirement, any such excess shall be transferred by the Bond Trustee to the Project Fund during construction of the Project and thereafter to the Revenue Account of the Bond Fund. If at any time any Series 1999D Bonds are to be redeemed, amounts on deposit in the Debt Service Reserve Fund in excess of the Reserve Requirement (giving effect to such redemption) may at the direction of the Obligor be transferred to the Revenue Account of the Bond Fund and applied to the redemption price of such Series 1999D Bonds.

Investment of Moneys. Moneys held in the Bond Fund, the Project Fund and the Debt Service Reserve Fund shall be invested and reinvested by the Bond Trustee upon written directions of the Obligor in Investment Securities. However, any moneys held in the Credit Facility Account, the Seasoned Funds Account, the Accrued Interest Account of the Bond Fund or the Rebate Fund shall be invested and reinvested solely in Government Obligations. Moneys held in the Purchase Fund shall not be invested by the Remarketing Agent or the Tender Agent. The Bond Trustee may make any and all such investments through its own investment department, or through any of its affiliates or subsidiaries. All investment income shall be retained in the fund or account to which the investment is credited from which such income is derived; provided, however, that, prior to the Completion Date, all investment income from the Debt Service Reserve Fund not required to make up any deficiency in the Debt Service Reserve Fund required by the Variable Rate Loan Agreement shall be allocated and transferred to the Project Fund.

Discharge of Indenture. If the Issuer shall pay or cause to be paid, or there shall be otherwise paid, or provision shall be made for the payment of, the principal, premium, if any, and interest due or to become due on the Series 1999D Bonds at the times and in the manner stipulated therein, and if the Issuer shall not then be in default under any of the other covenants and promises in such Series 1999D Bonds and the Variable Rate Bond Indenture to be kept, performed and observed by it or on its part, and if the Issuer shall pay or cause to be paid to the Bond Trustee all sums of money due or to become due according to the provisions of the Variable Rate Bond Indenture or of the Series 1999D Bonds and of the Variable Rate Loan Agreement (and the Bond Trustee and the Remarketing Agent shall have paid all amounts payable to the Credit Provider from funds held pursuant to the Variable Rate Bond Indenture and the Credit Facility shall have been returned to the Credit Provider for cancellation), then the interests in the Trust Estate and rights granted by the Variable Rate Bond Indenture shall cease, determine and be void, and the Bond Trustee shall take such actions, at the request and expense of the Issuer or the Obligor, as may be necessary to evidence the cancellation and discharge of the lien of the Variable Rate Bond Indenture. A Series 1999D Bonds shall be deemed to be paid for all purposes of the Variable Rate Bond Indenture when: (i) payment of the principal of and the applicable redemption premium, if any, on such Series 1999D Bonds, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in the Variable Rate Bond Indenture, or otherwise), shall have been provided to the Bond Trustee by irrevocably depositing with the Bond Trustee, in trust, and the Bond Trustee shall have irrevocably set aside exclusively for such payment, any combination of (1) Seasoned Funds sufficient to make such payment, and/or (2) Government Obligations

(purchased with Seasoned Funds) not subject to redemption or prepayment and maturing as to principal and interest in such amounts and at such times as will, in the opinion of an independent certified public accountant delivered to the Bond Trustee, provide sufficient moneys, without reinvestment of any matured amounts, to make such payment (and there shall be no such reinvestment); (ii) the Bond Trustee shall have been given irrevocable written instructions to call all outstanding Series 1999D Bonds for redemption on a date certain, if such Series 1999D Bonds are to be called for redemption prior to maturity; (iii) the Bond Trustee shall have received a written opinion of Bond Counsel to the effect that such deposit (and the payment of the Series 1999D Bonds therefrom) will not adversely affect the exclusion from gross income of interest on the Series 1999D Bonds for federal income tax purposes; (iv) all necessary and proper fees, compensation and expenses of the Bond Trustee and the Tender Agent pertaining to the Series 1999D Bonds shall have been paid or the payment thereof provided for to the satisfaction of the Bond Trustee; and (v) the Bond Trustee shall have received any other items required by the Rating Agencies. If the Series 1999D Bonds are in the Floating Rate Mode or the Adjustable Rate Mode, the Bond Trustee shall have received written evidence from each Rating Agency then rating the Series 1999D Bonds that such provision, in and of itself, will not result in a withdrawal or lowering of the then current rating on the Series 1999D Bonds.

Events of Default. Each of the following events is defined as, and declared to constitute, an "Event of Default" under the Variable Rate Bond Indenture:

- (i) default in the due and punctual payment of the principal or purchase price of, or premium, if any, or interest on, any outstanding Series 1999D Bonds, whether at the stated maturity thereof, upon the purchase date thereof, upon any proceedings for redemption, or upon the maturity thereof by declaration of acceleration; or
- (ii) default by the Issuer in its performance or observance of any of the other covenants, agreements or conditions contained in the Variable Rate Bond Indenture, and the continuation thereof for the period after notice as described under the caption "Variable Rate Bond Indenture - Events of Default and Remedies - Notice of Default; Opportunity to Cure Default" in this Appendix; or
- (iii) receipt by the Bond Trustee of a written notice from the Credit Provider following a drawing under the Credit Facility with respect to the payment of interest on Series 1999D Bonds, which notice shall be received prior to the close of business on the tenth day following the drawing, to the effect that the amount available to be drawn under the Credit Facility to pay interest on such Series 1999D Bonds has not been reinstated to equal at least 54 days' accrued interest at the Maximum Rate; or
- (iv) receipt by the Bond Trustee of a written notice from the Credit Provider that an event of default has occurred under a Reimbursement Agreement, which notice directs the Bond Trustee to cause an acceleration of any Series 1999D Bonds; or
- (v) an event of default has occurred and is continuing under the Variable Rate Loan Agreement or the Master Indenture.

Acceleration. Upon (a) the occurrence of an Event of Default described in clause (i) above or (b) upon the occurrence of an Event of Default described in clause (iii) or (iv) above if the written notice from the Credit Provider to the Bond Trustee is not accompanied by a direction by the Credit Provider to the Bond Trustee to cause, pursuant to the Variable Rate Bond Indenture, a mandatory tender of all Bonds currently Outstanding, the Bond Trustee shall immediately accelerate the maturity of the Bonds then Outstanding, whereupon the principal of and all accrued interest on the Bonds shall become immediately due and payable, without premium. Upon the occurrence of any other Event of Default, the Bond Trustee may, and shall, if requested to do so by the owners of not less than 25% in aggregate principal amount of the Series 1999D Bonds then outstanding, accelerate the maturity of the Series 1999D Bonds, whereupon the principal of and all accrued interest on the Series 1999D Bonds shall become immediately due and payable, without premium; provided that, if the Credit Provider is not in default with respect to its payment obligations under the Credit Facility, the Credit Provider has given its written consent to such acceleration.

Within one Business Day following an acceleration of the Series 1999D Bonds, the Bond Trustee shall draw upon the Credit Facility in accordance with its terms in an amount which equals the total amount of principal of and interest on the Series 1999D Bonds coming due and payable that are so secured. However, no such draw shall be made to pay any Pledged Series 1999D Bonds, Obligor Series 1999D Bonds or any Series 1999D Bonds not secured by the Credit Facility. Interest on the Series 1999D Bonds shall cease to accrue on the date on which the Bond Trustee receives the moneys drawn under the Credit Facility. All amounts paid to the Bond Trustee with respect to any Credit Facility shall be deposited in the Credit Facility Account of the Bond Fund upon receipt thereof by the Bond Trustee. All moneys held by the Bond Trustee in the Revenue Account or the Seasoned Funds Account of the Bond Fund shall be applied by the Bond Trustee to reimburse the Credit Provider, or, to the extent that the Credit Provider fails to honor such draw, to pay the Series 1999D Bonds. All fees and expenses payable (or reasonably expected to be incurred) to the Bond Trustee or the Tender Agent prior to the discharge of the Variable Rate Bond Indenture shall be paid from available funds held by the Bond Trustee other than funds representing proceeds of draws under the Credit Facility, or moneys already held for the benefit of holders of Series 1999D Bonds.

Other Remedies; Rights of Owners of Series 1999D Bonds. Upon the occurrence of any Event of Default, the Bond Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal or purchase price of and premium, if any, and interest on the Series 1999D Bonds then outstanding, and the performance by the Issuer of its obligations under the Variable Rate Bond Indenture. If the Credit Provider is not in default under the Credit Facility, the Bond Trustee shall not be entitled to exercise any remedy under the Variable Rate Bond Indenture, with respect to an Event of Default set forth in clause (ii) or (v) above under the caption "Events of Default," without the prior written consent of the Credit Provider.

Subject to the last sentence of the prior paragraph, if an Event of Default shall have occurred, and if requested to do so by the owners of not less than 25% in aggregate principal amount of the Series 1999D Bonds then outstanding, and if indemnified, the Bond Trustee shall be obligated to exercise one or more of the rights and powers conferred by the Variable Rate Bond Indenture as the Bond Trustee, being advised by counsel, shall deem most expedient in the interests of owners of the Series 1999D Bonds.

Right of Owners of Series 1999D Bonds to Direct Proceedings. Upon the occurrence of an Event of Default, the owners of a majority in aggregate principal amount of the Series 1999D Bonds then outstanding shall have the right, at any time, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Variable Rate Bond Indenture, other than for the payment of the principal or purchase price of and premium, if any, and interest on the Series 1999D Bonds. However, that direction shall not be otherwise than in accordance with the provisions of law and of the Variable Rate Bond Indenture. If the Credit Provider is not in default under the Credit Facility, no such direction shall be followed by the Bond Trustee without the prior written consent of the Credit Provider.

Application of Moneys. All moneys relating to the Series 1999D Bonds received by the Bond Trustee pursuant to any right given or action taken under the Variable Rate Bond Indenture shall (after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees and expenses, liabilities and advances of the Issuer, the Bond Trustee and the Tender Agent including but not limited to counsel fees) be deposited in the Revenue Account of the Bond Fund (or if received from the Credit Provider, in the Credit Facility Account of the Bond Fund) and all moneys in the Bond Fund shall be applied as follows:

(i) Unless the principal of all the Series 1999D Bonds outstanding shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST - To the payment to the persons entitled thereto of all installments of interest then due on the outstanding Series 1999D Bonds and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege (provided, however, that no payment shall be made with respect to any Pledged Series 1999D Bonds or Obligor Series 1999D Bonds);

SECOND - To the payment to the persons entitled thereto of the unpaid principal of, and premium, if any, on, the outstanding Series 1999D Bonds which shall have become due (other than Series 1999D Bonds matured or called for redemption for the payment of which moneys are already held pursuant to the provisions of the Variable Rate Bond Indenture) in the order of their due dates, and, if the amount available shall not be sufficient to pay in full the principal of each Series 1999D Bonds due on any particular date, together with such premium, then to the payment ratably, according to the amount of principal and premium due on such date, to the persons entitled thereto, without any discrimination or privilege (provided, however, that no payment shall be made with respect to any Pledged Series 1999D Bonds or Obligor Series 1999D Bonds);

THIRD - To the payment to the Credit Provider to reimburse the Credit Provider for drawings on the Credit Facility used to pay principal of or premium or interest on the Series 1999D Bonds secured by the Credit Facility and any amounts owed to the Credit Provider under the Reimbursement Agreement; and

FOURTH - To the payment to the Obligor of any remaining moneys.

(ii) If the principal of all the outstanding Series 1999D Bonds shall have become due or shall have been declared due and payable by acceleration, all such moneys shall be applied first to the payment of the principal, premium, if any, and interest then due on such Series 1999D Bonds, without preference or priority of principal and premium over interest or of interest over principal and premium, or of any installment of interest over any other installment of interest, or of any Series 1999D Bonds over any other Series 1999D Bonds, ratably, according to the amounts due respectively for principal, premium, if any, and interest, to the persons entitled thereto, without any discrimination or privilege (provided, however, that no payment shall be made with respect to any Pledged Series 1999D Bonds or Obligor Series 1999D Bonds), and second to the payment of all obligations owed to the Credit Provider pursuant to the Reimbursement Agreement.

(iii) If the principal of all the outstanding Series 1999D Bonds shall have been declared due and payable by acceleration, and if such declaration shall thereafter have been rescinded and annulled, then the moneys shall be applied in accordance with the provisions of subparagraph (i) above; provided, however, that in the event that the principal of all the Series

1999D Bonds shall later become due or be declared due and payable by acceleration, the moneys shall be applied in accordance with the provisions of subparagraph (ii) above.

Notwithstanding the foregoing restrictions on payment in respect of any Pledged Series 1999D Bonds or Obligor Series 1999D Bonds, moneys may be applied to the payment first of Pledged Series 1999D Bonds and second of Obligor Series 1999D Bonds, but only after payment in full of all other outstanding Series 1999D Bonds and of all obligations owed to the Credit Provider pursuant to the Reimbursement Agreement. To the extent that such surplus moneys are not available for application to Pledged Series 1999D Bonds or Obligor Series 1999D Bonds after acceleration of the Series 1999D Bonds, all Pledged Series 1999D Bonds and Obligor Series 1999D Bonds shall be deemed to be no longer outstanding and shall be canceled, and no payment shall be made in respect thereof. Under no circumstances shall any Pledged Series 1999D Bonds or Obligor Series 1999D Bonds be paid with moneys on deposit in the Credit Facility Account of the Bond Fund; rather Pledged Series 1999D Bonds and Obligor Series 1999D Bonds shall be paid solely and only from moneys on deposit in the Revenue Account of the Bond Fund.

Rights and Remedies of Owners of Series 1999D Bonds. No owner of any Series 1999D Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Variable Rate Bond Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy thereunder, unless:

- (i) an Event of Default has occurred of which the Bond Trustee has been notified or of which the Bond Trustee is deemed to have notice;
- (ii) the owners of not less than 25% in aggregate principal amount of the Series 1999D Bonds then outstanding shall have made written request to the Bond Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in the name or names of such owners, and shall have offered to the Bond Trustee indemnity;
- (iii) the Bond Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, within 60 days; and
- (iv) if the Credit Provider is not in default under the Credit Facility, the Credit Provider has given its prior written consent thereto.

No one or more owners of the Series 1999D Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of the Variable Rate Bond Indenture by such owners' action, and all proceedings at law or in equity shall be instituted, had and maintained in the manner provided in the Variable Rate Bond Indenture and for the equal and ratable benefit of the owners on all Series 1999D Bonds then outstanding. Nothing in the Variable Rate Bond Indenture, however, shall affect or impair the right of any Series 1999D Bonds owner to enforce the payment of the principal of and premium, if any, and interest on any Series 1999D Bonds owned by such Series 1999D Bonds owner at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and premium, if any, and interest on any Series 1999D Bonds to the owner thereof at the time and place, from the source, and in the manner expressed in such Series 1999D Bonds.

Waivers of Events of Default. The Bond Trustee may in its discretion, and with the prior written consent of the Credit Provider (if the Credit Provider is not in default under the Credit Facility) shall, waive any Event of Default and its consequences, and shall do so upon the written request of the owners of a majority in aggregate principal amount of the Series 1999D Bonds then outstanding. However, the Bond Trustee may not waive an Event of Default described in: (a) subparagraph (i) above under the caption "Events of Default and Remedies - Events of Default" without the written consent of the registered owners of all Series 1999D Bonds then outstanding; or (b) subparagraphs (iii) or (iv) above under the caption "Events of Default and Remedies - Events of Default" without the written consent of the registered owners of all Series 1999D Bonds then outstanding that are supported by the Credit Facility, and written notice from the Credit Provider (x) of the full reinstatement of amounts available to be drawn under the Credit Facility following any draw thereunder in connection with such Event of Default and (y) that the notice sent pursuant to subparagraph (iii) or (iv) above under the caption "Events of Default and Remedies - Events of Default" has been rescinded.

Notice of Default; Opportunity to Cure Defaults. No default under subparagraph (ii) above under the caption "Events of Default and Remedies - Events of Default" shall constitute an Event of Default until the Credit Provider (if the Credit Provider is not in default under the Credit Facility) shall have concurred therein, and actual notice of such default by registered or first class mail shall be given to the Issuer and the Obligor by the Bond Trustee or by the owners of not less than 25% in aggregate principal amount of all Series 1999D Bonds outstanding, and the Issuer and the Obligor shall have had 30 days after receipt of such notice at their option to correct said default or to cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within the applicable period. However, if said default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer and the Obligor, or either of them, within the applicable period and diligently pursued until the default is corrected.

Limitation on Defaults and Remedies. Prior to the Expiration of the Term of the Credit Facility and as long as the Credit Provider is not in default under the Credit Facility, the Credit Provider shall be entitled, but not obligated, to direct the Bond Trustee in the exercise of all rights and remedies under the Variable Rate Bond Indenture, including, but without limitation, acceleration of the Series 1999D Bonds, institution of legal proceedings and the granting of any waivers with respect to the foregoing. Until such time as the Credit Provider is in default of its payment obligations under the Credit Facility, neither the Bond Trustee, the Issuer nor the owners of the Series 1999D Bonds shall have the right or be permitted to exercise any of the rights or remedies granted or permitted to any one or more of them under the Variable Rate Bond Indenture without the express written consent of the Credit Provider. However, the Bond Trustee shall have the ability to accelerate the maturity of the Series 1999D Bonds upon the occurrence of an Event of Default described in subparagraph (iii) or (iv) above under the caption "Events of Default and Remedies - Events of Default" without the express written consent of the Credit Provider.

Bond Trustee. The Bond Trustee, prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in the Variable Rate Bond Indenture, and no implied covenants or obligations shall be read into the Variable Rate Bond Indenture against the Bond Trustee. In case an Event of Default has occurred (which has not been cured or waived), the Bond Trustee shall exercise such of the rights and powers vested in it by the Variable Rate Bond Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

The Bond Trustee shall not be required to take notice or be deemed to have notice of any default or Event of Default, except an Event of Default described under subparagraphs (i), (iii) or (iv) under the caption "Events of Default and Remedies - Events of Default" in this Appendix E, unless the Bond Trustee shall be specifically notified in writing of such default or Event of Default by the Issuer, the Remarketing Agent, the Tender Agent, the Credit Provider, the Obligor or the owners of at least 25% in aggregate principal amount of the Series 1999D Bonds then outstanding.

Before taking any action under the Variable Rate Bond Indenture (except with respect to any drawing under the Credit Facility and payment of the Series 1999D Bonds therefrom at the time or times payment is due, or with respect to acceleration of the Series 1999D Bonds and payment of the Series 1999D Bonds upon such acceleration), the Bond Trustee may require that an indemnity bond satisfactory to it be furnished for the reimbursement of all expenses which it may incur and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct, by reason of any action so taken.

Tender Agent. In the event the Series 1999D Bonds are no longer held in a book-entry only system and upon the direction of the Obligor, the Bond Trustee shall appoint a Tender Agent for the Series 1999D Bonds. The Tender Agent shall have power to act (a) in the authentication and delivery of Series 1999D Bonds in connection with transfers and exchanges, and (b) in effecting purchases and sales of Series 1999D Bonds pursuant to the Variable Rate Bond Indenture, receiving notices of tender for purchase, making deliveries of Series 1999D Bonds and holding Series 1999D Bonds pursuant hereto.

Remarketing Agent. Ziegler Securities, a division of B.C. Ziegler and Company, has been appointed initial Remarketing Agent for the Series 1999D Bonds, pursuant to the Remarketing Agreement.

Supplemental Indentures Not Requiring Consent of Owners of Series 1999D Bonds. The Issuer and the Bond Trustee may, without the consent of, or notice to, any of the owners of Series 1999D Bonds, enter into an indenture or indentures supplemental to the Variable Rate Bond Indenture, not inconsistent with the terms and provisions thereof, for any one or more of the following purposes: (i) to cure any ambiguity, formal defect or omission in the Variable Rate Bond Indenture; (ii) with the consent of the Credit Provider, to grant to or confer upon the Bond Trustee, for the benefit of the Series 1999D Bonds owners, any additional rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Series 1999D Bonds owners or the Bond Trustee; (iii) to subject to the Variable Rate Bond Indenture additional revenues, properties or collateral; (iv) to modify, amend or supplement the Variable Rate Bond Indenture, or any indenture supplemental thereto, in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, or to permit the qualification of the Series 1999D Bonds for sale under the securities laws of any of the states of the United States, and if the Issuer so determines, to add to the Variable Rate Bond Indenture or any indenture supplemental thereto such other terms, conditions and provisions as may be permitted by the Trust Indenture Act of 1939, as amended, or any similar federal statute; (v) to add to the covenants and agreements of the Issuer contained in the Variable Rate Bond Indenture other covenants and agreements thereafter to be observed for the protection of the Series 1999D Bonds owners or to surrender or limit any right, power or Issuer in the Variable Rate Bond Indenture reserved to or conferred upon the Issuer; (vi) elaborate on any provisions necessary to exercise any conversion options, including better enabling different Series 1999D Bonds to be in different Modes; (vii) providing for the substitution of an Alternate Credit Facility; (viii) to amend or modify the Variable Rate Bond Indenture or any part thereof with respect to procedures for disbursements from the Project Fund so long as the Credit Provider consents to any such amendment or modification in writing; and (ix) to make any other change which does not, in the opinion of the Bond Trustee, have a material adverse effect upon the interests of the holders of Series 1999D Bonds.

Supplemental Indentures Requiring Consent of Owners of Series 1999D Bonds. The owners of not less than a majority in aggregate principal amount of the Series 1999D Bonds then outstanding shall have the right, from time to time, to approve the execution

by the Issuer and the Bond Trustee of such indenture or indentures supplemental to the Variable Rate Bond Indenture as shall be deemed necessary and desirable by the Issuer for the purposes of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Variable Rate Bond Indenture or in any supplemental indenture.

Limitation Upon Amendments and Supplements. Without the consent and approval of the owners of all of the Series 1999D Bonds then outstanding, there is not permitted: (i) an extension of the maturity of the principal of, or the time for payment of any redemption premium or interest on, any Series 1999D Bonds, or a reduction in the principal amount of any Series 1999D Bonds, or the rate of interest or redemption premium thereon, or a reduction in the amount of, or extension of the time of any payment required by, any Series 1999D Bonds, or a material modification of the holders' optional tender rights; (ii) a privilege or priority of any Series 1999D Bonds over any other Series 1999D Bonds; (iii) a reduction in the aggregate principal amount of the Series 1999D Bonds required for consent to such a supplemental indenture; (iv) the deprivation of the owner of any Series 1999D Bonds then outstanding of the lien created by the Variable Rate Bond Indenture; (v) an alteration of the obligations of the Credit Provider under the Credit Facility; or (vi) the amendment of this provision. No amendment or supplement to the Variable Rate Bond Indenture may be entered into without the Bond Trustee and the Issuer first receiving: (a) an opinion of Bond Counsel to the effect that such amendment or supplement is authorized under the Variable Rate Bond Indenture and the Act, and will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Series 1999D Bonds; and (b) written evidence from each Rating Agency then rating the Series 1999D Bonds (if the Series 1999D Bonds are then rated) to the effect that the appropriate Rating Agency has reviewed the amendment or supplement, and that the effectiveness thereof will not, by itself, result in a reduction or withdrawal of such Rating Agency's then current rating on the Series 1999D Bonds.

Amendments of Variable Rate Loan Agreement Not Requiring Consent of Owners of Series 1999D Bonds. The Issuer and the Obligor, as the case may be, may, with the prior written consent of the Bond Trustee and the Credit Provider, amend or modify the Variable Rate Loan Agreement, or any provisions thereof, or may consent to the amendment or modification thereof, in any manner not inconsistent with the terms and provisions of the Variable Rate Bond Indenture, for any one or more of the following purposes: (i) to cure any ambiguity or formal defect in the Variable Rate Loan Agreement; (ii) to grant to or confer upon the Issuer or the Bond Trustee, for the benefit of the owners of Series 1999D Bonds, any additional rights, remedies, powers or authorities that lawfully may be granted to or conferred upon the Issuer or the Bond Trustee; (iii) to identify more clearly the Project, or any part thereof, or to add to or subtract from the Project, or any part thereof, any property that, in the written opinion of Bond Counsel filed with the Issuer, the Credit Provider and the Bond Trustee, will not impair the compliance of the Series 1999D Bonds with the Act, or adversely affect the exclusion from gross income for purposes of federal income taxation of the interest on the Series 1999D Bonds; (iv) to amend or modify the Variable Rate Loan Agreement, or any part thereof, in any manner specifically required or permitted by the terms thereof, including, without limitation, as may be necessary to maintain the exclusion from gross income for purposes of federal income taxation of the interest on the Series 1999D Bonds; (v) to amend or modify the Variable Rate Loan Agreement, or any part thereof, with respect to procedures for disbursements from the Project Fund; and (vi) to make any other change which does not, in the opinion of the Bond Trustee, have a material adverse effect upon the interests of the holders of the Series 1999D Bonds.

Amendments of Variable Rate Loan Agreement Requiring Consent of Owners of Series 1999D. The owners of not less than a majority in aggregate principal amount of the Series 1999D Bonds then outstanding, with the prior written consent of the Bond Trustee and the Credit Provider if the Credit Provider is not in default under the Credit Facility, shall have the right, from time to time, to consent to and approve the amendment or modification of the Variable Rate Loan Agreement as shall be deemed necessary and desirable by the Bond Trustee for the purpose of amending and modifying, in any particular, any of the terms or provisions contained in the Variable Rate Loan Agreement.

Limitation Upon Amendments of Variable Rate Loan Agreement. Without the approval and consent of the owners of all of the Series 1999D Bonds then outstanding, this is not permitted: (i) the extension of the time for any payment under the Variable Rate Loan Agreement, or a reduction in the amount of any such payment under the Variable Rate Loan Agreement; or (ii) the payment to any person other than the Bond Trustee and the Tender Agent as provided therein of any amount due under the Variable Rate Loan Agreement. No amendment of the Variable Rate Loan Agreement may be entered into without the Bond Trustee and the Issuer first receiving: (a) an opinion of Bond Counsel to the effect that such amendment is authorized under the Variable Rate Bond Indenture and the Act, and will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Series 1999D Bonds; and (b) written evidence from each Rating Agency then rating the Series 1999D Bonds (if the Series 1999D Bonds are then rated) to the effect that the appropriate Rating Agency has reviewed the amendment, and that the effectiveness thereof will not, by itself, result in a reduction or withdrawal of such Rating Agency's then current rating on the Series 1999D Bonds.

Modifications of Credit Facility. The Credit Facility may not be modified without the prior written consent of 100% of the owners of Series 1999D Bonds secured by the Credit Facility (except to correct any formal defects in the Credit Facility, which modification may be made with the consent of the Obligor, the Credit Provider and the Bond Trustee, and without the consent of the owners of Series 1999D Bonds), other than to (a) effect transfers thereof, (b) effect extensions thereof, or (c) effect reductions and reinstatements thereof, all in accordance with the terms of the Credit Facility as then in effect. Pursuant to the Variable Rate Loan Agreement, however, the Obligor has the right to obtain an Alternate Credit Facility without the consent of the owners of Series 1999D.

Release and Substitution of Series 1999D Note. The Bond Trustee shall surrender the Series 1999D Note to the Master Trustee, upon presentation to the Bond Trustee prior to such surrender of the following:

(a) an original executed counterpart of a master trust indenture (the "Replacement Master Indenture") executed by the Obligor, all current Obligated Group Members and certain other parties named therein (collectively, the "New Group") and an independent corporate trustee (the "Replacement Trustee") meeting the eligibility requirements of the Master Trustee as set forth in the Master Indenture;

(b) an original replacement note or similar obligations issued by the Obligor (the "Substitute Note") under and pursuant to and secured by the Replacement Master Indenture, which Substitute Note has been duly authenticated by the Replacement Trustee;

(c) an Opinion of Counsel addressed to the Bond Trustee (in form and substance acceptable to the Bond Trustee) to the effect that:

(i) the Replacement Master Indenture has been duly authorized, executed and delivered by each member of the New Group, the Substitute Note has been duly authorized, executed and delivered by the Obligor and the Replacement Master Indenture and the Substitute Note are each a legal, valid and binding obligation of each member of the New Group, subject in each case to customary exceptions for bankruptcy, insolvency and other laws generally affecting enforcement of creditors' rights and application of general principles of equity, (ii) all requirements and conditions to the issuance of the Substitute Note set forth in the Replacement Master Indenture have been complied with and satisfied; and (iii) registration of the Substitute Note under the Securities Act of 1933, as amended, is not required or, if registration is required, the Substitute Note has been so registered;

(d) an Opinion of Bond Counsel that the surrender of the Series 1999D Note and the acceptance by the Bond Trustee of the Substitute Note will not adversely affect the validity of the Bonds or any exemption for the purposes of federal income taxation to which interest on the Bonds would otherwise be entitled;

(e) a written report of a Management Consultant addressed to the Bond Trustee to the effect that: (x) the covenants and provisions contained in the Replacement Master Indenture are not materially less restrictive than then-current industry standards, based on the covenants and provisions contained in the credit documents of at least two other health care credit groups considered by the Management Consultant to be comparable to the New Group based on operations and financial condition, and (y) the conditions described in the Master Indenture could be met for the incurrence of one dollar of additional Long-Term Indebtedness (as defined in the Master Indenture) when it is assumed that the members of the New Group were parties to the existing Master Indenture for the relevant Fiscal Years;

(f) the written consent of the Credit Provider if the Credit Provider is not in default under the Credit Facility; and

(g) such other opinions and certificates as the Bond Trustee may reasonably require, together with such reasonable indemnities as the Bond Trustee may request.

VARIABLE RATE LOAN AGREEMENT

The following is a summary of certain provisions of the Variable Rate Loan Agreement. Such summary does not purport to be complete and is qualified in its entirety by reference to the Variable Rate Loan Agreement.

Obligations. In the Variable Rate Loan Agreement, the Obligor agrees to pay the principal of and premium, if any, and interest on the Series 1997B Master Note at the dates and the places and in the manner mentioned therein, in the Master Indenture, in the Supplemental Master Indenture and in the Variable Rate Loan Agreement.

The Obligor agrees to make prompt payment to the Bond Trustee, for deposit in the Revenue Account and/or Seasoned Funds Account of amounts sufficient to pay the principal of and premium, if any, and interest on the Series 1999D Bonds, whether at maturity, upon redemption or otherwise.

The Obligor agrees to make payments to the Bond Trustee: (1) with respect to amounts due on the Series 1999D Bonds in the Floating or Adjustable Rate Mode on each Interest Payment Date (other than by reason of redemption), by 11:00 a.m. Chicago time, on the Business Day next preceding such Interest Payment Date, and with respect to amounts accrued as interest in any other month on Series 1999D Bonds in the Adjustable Rate Mode on the first Business Day of each month and five days prior to each Interest Payment Date with

respect to Series 1999D Bonds in the Fixed Rate Mode; and (2) with respect to amounts due on the Series 1999D Bonds on an acceleration date, by 11:00 a.m., Chicago time, on the acceleration date.

The Obligor shall provide for the payment of the principal of and interest on the Series 1999D Bonds (except Obligor Bonds, Pledged Bonds and Series 1999D Bonds in the Fixed Rate Mode), whether at maturity, upon redemption or otherwise, by the delivery of the Initial Credit Facility to the Bond Trustee simultaneously with the original issuance and delivery of the Series 1999D Bonds, and, on or prior to each Conversion Date other than a Fixed Rate Conversion Date and on or prior to each Adjustable Rate Reset Date, each Initial Credit Facility may be replaced with an Alternate Credit Facility pursuant to the provisions, and subject to the conditions, set forth in the Variable Rate Loan Agreement and in the Variable Rate Bond Indenture. The Obligor shall provide for the payment of the redemption premium (in the case of an optional redemption during an Adjustable Rate Period or the Fixed Rate Period) by the delivery of (i) (A) Seasoned Funds, or (B) a Credit Facility which permits the Bond Trustee to draw thereunder for the payment of such premium (in either case, if the Series 1999D Bonds are secured by a Credit Facility), or (ii) other funds (if the Series 1999D Bonds are not secured by a Credit Facility).

The Obligor may elect to convert the rate of interest borne by any Series 1999D Bonds from (i) the Floating Rate Mode to the Adjustable Rate Mode or the Fixed Rate Mode, (ii) the Adjustable Rate Mode to the Floating Rate Mode or the Fixed Rate Mode, or (iii) an Adjustable Rate Period of one duration to an Adjustable Rate Period of another duration within the Adjustable Rate Mode.

In the event the moneys in the Debt Service Reserve Fund are less than the Reserve Requirement by reason of a transfer of moneys to the Revenue Account of the Bond Fund pursuant to the Variable Rate Bond Indenture, the Obligor shall pay to the Bond Trustee an amount sufficient to cause the amount in the Debt Service Reserve Fund to equal the Reserve Requirement, which amount shall be payable in twelve substantially equal monthly installments with the first monthly installment payable not later than the first day of the seventh month after the date of such transfer. In the event the moneys in the Debt Service Reserve Fund are less than 90% of the Reserve Requirement by reason of a deficiency in the market value of securities held therein, an amount sufficient to cause the amount held in the Debt Service Reserve Fund to equal the Reserve Requirement shall be paid by the Obligor not more than 120 days after receipt by the Obligor from the Bond Trustee of notice of such deficiency.

When the Series 1999D Bonds are held in a book-entry only system, the Obligor agrees to pay to the Bond Trustee, by 1:00 p.m., Chicago time, amounts sufficient to pay the purchase price of any beneficial interest in the Series 1999D Bonds to be purchased pursuant to the VRDB Indenture on the date such beneficial interest is to be purchased. However, that the obligation of the Obligor to make such payment with respect to the purchase of beneficial interests shall be reduced by the amount of money available for such payment from the remarketing of beneficial interests. Further, to the extent that payment has been made under the Credit Facility, the Obligor shall not be obligated to make such payment until the due date specified in the Reimbursement Agreement.

When a book-entry only system is not in effect, the Obligor agrees to pay to the Tender Agent by 1:00 p.m., Chicago time, amounts sufficient to pay the purchase price of any Series 1999D Bonds to be purchased pursuant to the Variable Rate Bond Indenture on the date such Series 1999D Bonds are to be purchased. However, the obligation of the Obligor to make such payment with respect to the purchase of Series 1999D Bonds shall be reduced by the amount of money available for such payment from the remarketing of Series 1999D Bonds. Further, to the extent that payment has been made under the Credit Facility, the Obligor shall be obligated to make such reimbursement as specified in the Reimbursement Agreement.

Tax Covenants. The Obligated Group Representative and the Issuer have agreed to comply with certain covenants to assure that the exclusion of the interest on the Tax-Exempt Series 1999 Bonds from the gross income of the owners of the Series 1998A Bonds for federal income tax purposes is not adversely affected. Failure by the Obligated Group Representative or the Issuer to comply with such covenants may cause the interest on the Series 1999 Bonds to become includable in the gross income of the owners thereof.

Events of Default. The occurrence and continuance of any of the following events shall constitute an "Event of Default" under the Variable Rate Loan Agreement:

(a) Failure by the Obligor to pay or cause to be paid any payment required to be paid or prepaid under the Variable Rate Loan Agreement when and as the same becomes due and payable.

(b) Failure by the Obligor to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Variable Rate Loan Agreement, other than as referred to in clause (a) above; provided, however, that such failure shall not constitute an Event of Default until actual notice of such default by registered or certified mail shall be given to the Obligor by the Issuer, the Credit Provider, the Bond Trustee or the owners of not less than 25% in aggregate principal amount of all Series 1999D Bonds outstanding and the Obligor shall have had 60 days after receipt of such notice to correct said default or to cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within such 60-day period, or, if the nature of the default is such that it cannot be cured within such 60-day period but can be cured within a longer period, no Event of Default shall occur if the Obligor institutes corrective action within such 60-day period and diligently pursues such action until the default is corrected.

- (c) The occurrence of an Act of Bankruptcy.
- (d) The occurrence of an Event of Default under the Variable Rate Bond Indenture.

Remedies on Default. Whenever any Event of Default shall have happened, but only with the written consent of the Credit Provider if the Credit Provider is not in default under the Credit Facility, then:

(a) If the Series 1999D Bonds are accelerated pursuant to the Variable Rate Bond Indenture, the principal of the loan, together with all interest accrued thereon, shall become immediately due and payable upon delivery of the notice required by of the Variable Rate Bond Indenture.

(b) The Issuer may take whatever action at law or in equity may appear necessary or desirable to collect the payments due and thereafter to become due during the term of the Variable Rate Loan Agreement , or enforce performance and observance of any obligation, agreement or covenant of the Obligor under the Variable Rate Loan Agreement.

Waivers; No Additional Waiver Implied by One Waiver. The Bond Trustee may in its discretion, and with the prior written consent of the Credit Provider (if the Credit Provider is not in default under the Credit Facility) shall, waive any Event of Default and its consequences, and shall do so upon the written request of the owners of a majority in aggregate principal amount of the Series 1999D Bonds then outstanding; provided that (i) no Event of Default then exists under the Variable Rate Bond Indenture, and (ii) the Bond Trustee may not waive any Event of Default unless there has been full reinstatement of amounts available to be drawn under the Credit Facility.

APPENDIX D

PROPOSED FORM OF BOND COUNSEL OPINION

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APPENDIX D

DRAFT

NORTH CENTRAL TEXAS HEALTH FACILITIES DEVELOPMENT CORPORATION
RETIREMENT FACILITY REVENUE BONDS
(NORTHWEST SENIOR HOUSING CORPORATION - EDGEMERE PROJECT)
SERIES 1999

WE HAVE ACTED AS BOND COUNSEL for North Central Texas Health Facilities Development Corporation (the "Issuer") solely for the purpose of rendering an opinion as to the validity of the Issuer's Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation - Edgemere Project) Series 1999A (the "Series 1999A Bonds"), Series 1999B Extendable Rate Adjustable SecuritiesSM (EXTRASSM) (the "Series 1999B Bonds"), Series 1999C Extendable Rate Adjustable SecuritiesSM (EXTRASSM) (the "Series 1999C Bonds"), Variable Rate Demand Series 1999D Bonds (the "Series 1999D Bonds") and Taxable Series 1999E Extendable Rate Adjustable SecuritiesSM (EXTRASSM) (the "Series 1999E Bonds") under Texas law, and the status of the interest on the Tax-Exempt Series 1999 Bonds (as defined below) under federal income tax law, and for no other purpose. In such capacity, we do not take responsibility for any matters relating to such transaction except as covered below, and specifically we have not been requested to examine, and have not investigated or verified any records, material or matters relating to the financial condition or capacity of the Issuer or Northwest Senior Housing Corporation (the "Obligor"), a Texas nonprofit corporation, or any matter relating to the Obligor, other than as stated below, or the disclosure thereof in connection with the sale of the Series 1999 Bonds, and we express no opinion with respect thereto.

THE SERIES 1999A BONDS, SERIES 1999B BONDS, SERIES 1999C BONDS, SERIES 1999D BONDS AND TAXABLE SERIES 1999E BONDS are hereinafter collectively referred to as the "Series 1999 Bonds", and the Series 1999A Bonds, Series 1999B Bonds, Series 1999C Bonds and Series 1999D Bonds are hereinafter collectively referred to as the "Tax-Exempt Series 1999 Bonds".

THE SERIES 1999A BONDS, SERIES 1999B BONDS, SERIES 1999C BONDS AND TAXABLE SERIES 1999E BONDS (the "Fixed Rate Bonds") are issued pursuant to an Indenture of Trust dated as of November 15, 1999 (the "Fixed Rate Indenture") between the Issuer and Chase Bank of Texas, National Association (the "Trustee"). The Series 1999D Bonds are issued pursuant to a Bond Trust Indenture dated as of November 15, 1999 (the "Variable Rate Indenture") between the Issuer and the Trustee. The Fixed Rate Indenture and the Variable Rate Indenture are each referred to herein individually as an "Indenture" and collectively as the "Indentures".

WE HAVE EXAMINED the validity of the Series 1999 Bonds, bearing interest from their date, until maturity or redemption, at the interest rates set forth in the applicable Indenture. Interest on the Series 1999 Bonds is payable and the Series 1999 Bonds mature on the dates set forth in the applicable Indenture and the

Series 1999 Bonds are subject to optional and mandatory redemption prior to maturity in accordance with the terms and conditions stated on the face of the Series 1999 Bonds. The Series 1999 Bonds are issuable only as fully registered bonds in the denominations described in the applicable Indenture.

WE HAVE EXAMINED certified copies of the proceedings of the Board of Directors of the Issuer; certificates and resolutions of the Obligor; the opinion of Thompson & Knight LLP, Counsel to the Obligor, upon which we rely to the extent described below; and other instruments authorizing and relating to the issuance of the Series 1999 Bonds, including one of the executed Series 1999 Bonds.

BASED ON SUCH EXAMINATION, IT IS OUR OPINION that the Resolution of the Issuer authorizing the Series 1999 Bonds (the "Bond Resolution") has been duly and lawfully adopted by, and constitutes a valid and binding obligation of, the Issuer, and that the Series 1999 Bonds have been duly authorized, issued and delivered in accordance with Texas law and constitute legal, valid, binding and enforceable obligations of the Issuer in accordance with their terms. The principal of, redemption premium, if any, and interest on the Fixed Rate Bonds are payable from, and secured by a pledge and assignment of, the revenues derived by the Issuer from the Obligor pursuant to a Loan Agreement related to the Fixed Rate Bonds, dated as of November 15, 1999 (the "Fixed Rate Loan Agreement") between the Issuer and the Obligor. The principal of, redemption premium, if any, and interest on the Variable Rate Bonds are payable from, and secured by a pledge and assignment of, the revenues derived by the Issuer from the Obligor pursuant to a Loan Agreement related to the Variable Rate Bonds, dated as of November 15, 1999 (the "Variable Rate Loan Agreement") between the Issuer and the Obligor. The Fixed Rate Loan Agreement and the Variable Rate Loan Agreement are each referred to herein as a "Loan Agreement" and collectively as the "Agreements". The Obligor has agreed and is unconditionally obligated to the Issuer to make the payments due under each Loan Agreement to the Trustee under the related Indenture for deposit into the Bond Fund or the Reserve Fund established by such Indenture in amounts sufficient to pay and redeem, or provide for the payment and redemption of, the principal of, redemption premium, if any, and interest on the applicable Series 1999 Bonds, when due, as required by the related Indenture. We do not, however, express any opinion nor make any comment with respect to the sufficiency of the security for or the marketability of the Series 1999 Bonds.

IT IS OUR OPINION that each Loan Agreement has been duly and lawfully authorized, executed, and delivered by, and is a legal, valid and binding obligation of, the Issuer, enforceable against the Issuer in accordance with its terms and conditions. We are relying upon the opinion, dated this date, of Counsel for the Obligor to the effect that each Loan Agreement has been duly and lawfully authorized, executed and delivered by the Obligor, and is a legal, valid and binding obligation of the Obligor, enforceable in accordance with its terms and conditions.

THE SERIES 1999 BONDS ARE FURTHER SECURED BY the related Indenture whereunder the Trustee is custodian of the funds established by such Indenture and is obligated to enforce the rights of the Issuer and the owners of the Series 1999 Bonds secured by such Indenture and to perform other duties, in the manner and under the conditions stated in such Indenture; and it is our further opinion that each Indenture has been duly and lawfully authorized, executed, and delivered by the Issuer, and that each is a valid and binding agreement of the Issuer enforceable against the Issuer in accordance with its terms and conditions.

AS FURTHER SECURITY FOR THE BONDS, the Obligor under and pursuant to a Master Trust Indenture, Mortgage and Security Agreement, dated as of November 15, 1999, as supplemented (the "Master Indenture"), by and between the Obligor and Chase Bank of Texas, National Association, as Master Trustee, has issued its Series 1999 Notes (the "Notes") in favor of the Issuer, who has assigned such Notes to the Trustee, for the purpose of evidencing the obligation of the Obligor to make the payments due under the Loan Agreements. Counsel to the Obligor has rendered an opinion as to the validity and enforceability of the

Master Indenture and the Notes. We have not been requested to render, nor have we rendered, any opinion on such matters.

THE OWNERS OF THE SERIES 1999 BONDS shall never have the right to demand payment thereof out of any funds raised or to be raised by taxation, and the Series 1999 Bonds are payable solely from the sources described in each Indenture.

EACH INDENTURE PERMITS, with certain exceptions as therein provided, the amendment thereof at any time by the Issuer with the consent of the registered owners of not less than a majority in aggregate principal amount of all bonds at the time outstanding thereunder.

IN OUR OPINION, except as discussed below, the interest on the Tax-Exempt Series 1999 Bonds is excludable from the gross income of the owners for federal income tax purposes under the statutes, regulations, published rulings, and court decisions existing on the date of this opinion. We are further of the opinion that the Tax-Exempt Series 1999 Bonds are not "specified private activity bonds" (other than "qualified 501(c)(3) bonds") and that accordingly interest on the Tax-Exempt Series 1999 Bonds will not be included as an individual or corporate alternative minimum tax preference item under section 57(a)(5) of the Internal Revenue Code of 1986 (the "Code").

IN EXPRESSING OUR OPINION as to the exclusion of interest on the Tax-Exempt Series 1999 Bonds from the gross income of the owners as described above, we have relied upon, and assumed to be correct, (i) the representations, covenants and agreements of the Issuer and the Obligor in each Loan Agreement, and information furnished by and on behalf of the Issuer and the Obligor and particularly certificates and representations of officers and representatives of the Issuer and the Obligor with respect to certain material facts which are solely within their knowledge relating to the proposed use of the proceeds of the Tax-Exempt Series 1999 Bonds and the organization and operation of the Obligor that affect such exclusion and (ii) an opinion of Counsel to the Obligor, upon which we rely, to the effect that the Obligor is an organization described in section 501(c)(3) of the Code and exempt from taxation under section 501(a) of the Code. We call your attention to the fact that failure by the Issuer or the Obligor to comply with such representations and covenants may cause the interest on the Tax-Exempt Series 1999 Bonds to become includable in gross income of owners thereof retroactively to the date of issuance of the Tax-Exempt Series 1999 Bonds.

WE CALL YOUR ATTENTION TO THE FACT that the interest on tax-exempt obligations such as the Tax-Exempt Series 1999 Bonds will be (a) included in a corporation's alternative minimum taxable income for purposes of determining the alternative minimum tax imposed on corporations by section 55 of the Code, (b) subject to the branch profits tax imposed on foreign corporations by section 884 of the Code and (c) included in the passive investment income of an S corporation and subject to the tax imposed by section 1375 of the Code.

EXCEPT AS STATED ABOVE, we express no opinion as to any other federal income tax consequences of acquiring, carrying, owning or disposing of the Tax-Exempt Series 1999 Bonds.

IT IS FURTHER OUR OPINION THAT the Taxable Series 1999 Bonds are not obligations described in section 103(a) of the Code.

EXCEPT AS STATED ABOVE, we express no opinion as to any other federal income tax consequences of acquiring, carrying, owning or disposing of the Taxable Series 1999 Bonds.

THE OPINIONS contained herein are limited to the extent that enforceability of the Series 1999 Bonds, the Bond Resolution, each Indenture and each Loan Agreement may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or remedies generally and to the extent that certain equitable remedies, including specific performance, may be unavailable.

Respectfully,

E D G E M E R E



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Landlord's

Exhibit 15

for February 21-23, 2023 hearing

MEMORANDUM

TO: BURT JORDAN
FROM: STEVE DONOSKY 
DATE: MARCH 17, 1997
RE: NORTHWEST LIFECARE JOINT VENTURE

Northwest Lifecare Joint Venture, a JV between:

Developer: Greystone Communities, Inc. and
Gregory Development Company

Experience:

Greystone	-Development of 21 projects since 1986. Currently have 5 projects under development. -Management of developed projects totals 15. -Total Independent Living Units 2,236. -Total Assisted Living Units 791. -Total Nursing Home Beds 645.
Gregory	-Development of over 2 million sf. in 18 projects since 1970, primarily office buildings. -Buildings developed in Dallas - Walnut Green, Meridian, Century Plaza, 1900 Pacific and Federal Express warehouse.

Operator: Northwest Lifecare, a non-profit corporation.

Architects: HKS will work in conjunction with a firm which specializes in retirement housing and has designed projects for Greystone in the past.

Underwriters: Alex Brown and Sons for the bond financing.

Design: "Traditional".

Improvements: Brick and stone. Highest quality construction.

- Timing: -55 year ground lease beginning as soon as lease can be executed.
-First 5 years is basically the time needed to develop out the project until stabilized.
-Underwriting will take 2 years during which time, Phase I will be developed and construction begins.
-Bond financing closes for Phase I in year 2.
-Begin development and underwriting of Phase II.
- Scope: Phase I- \$81,000,000.
Phase II- \$50,000,000 more or less.
- Phase I: A continuing care retirement community to be built in two phases. Phase I will include 220 independent luxury living units, 77 assisted living units and 60 nursing beds.

-Common Areas: 25,000 s.f. in 1-3 story buildings.
-Amenity Package will include recreational uses, service uses such as beauty and barber shop, post office and food services, possibly a quality restaurant.
- Independent Living Units: Full sized apartment homes ranging in size from ±804 s.f. to ±1,575 s.f.
- Zoning: -**No zoning change** is required. Minor variances may be asked for, but do not materially affect the project.
- Parking Required: -.7 spaces per unit plus 1 space per additional 300 s.f. for retirement housing (over 55).
-.3 spaces per bed for convalescent homes.
- Density Allowed: -45 dwelling units per net acre.
- Ground Lease: -30 acres more or less.
- Ground Lease Rent: -\$1,601,000 or approximately the current NOI on the property during the development phase allocated by Phase I and Phase II as development is undertaken.
-6 months after Certificate of Occupancy, rent escalates to \$2,135,000 as allocated by Phase I and Phase II as development is undertaken.
-13 months after Certificate of Occupancy, rent escalates to \$2,669,200 as allocated by Phase I and Phase II as development is undertaken.

- 36 months after Certificate of Occupancy, rent escalates by the percentage or overage factor negotiated.
- Each subsequent 5 years rental shall be escalated by the percentage or overage factor negotiated.

Advantages:

- Supplies big need in market.
- Retirees want to be in good location.
- Retiree's children want them to be close to home.
- Simple deal for Jordan Family. Go straight to ground lease, no option period.
- No rezoning needed.
- Cash rich tenancy.
- Non-profit corporation with local board making operational decisions for project.
- Member of Jordan Family shall have a seat on the board.
- Will be a landmark project on landmark site in North Dallas.
- Will be looked at favorably by Dallas City Powers.
- Safe Neighborhood for age group.
- Can prepay ground rent at any time.
- Good ground lease collateral.

Intangibles: Project will have possibly as much as \$50 million dollars in bank earning interest. Should Jordan Family want some prepaid rent, no problem.

Greystone has not built a project in Dallas, yet their world headquarters is here. They want this development to be the showplace for their company; the project represents their company.

Landlord's

Exhibit 16

for February 21-23, 2023 hearing

To: Burt Jordan
From: Steve Donosky

For meeting with Burt @ 2:15 PM on 5/28/97

1. To judge based on financials is not a fair measure of whether the deal will be successful.
2. Unfair to judge the deal based on the opinion of competitor, especially without checking out the references provided.
3. Did not call the references.
4. Did not go see a project that has been developed.
5. Why would Greystone or any developer invest \$3,000,000 in a deal they weren't sure they could do? That money (cash) would be gone.
7. In over 30 deals (including consulting assignments) all over the country- not one failure.
8. Lanahan has been doing these for over 20 years. He financed them before starting Greystone.
9. Gregory brings construction expertise to the table. Developer and contractor for over 30 years.

The Facts

1. Retirement use is best use (we all agree).
2. No zoning change required.
3. No demolition (damage) to the property or the Jordan family until 100% of the money needed to build the project is raised and in the bank.
4. Nothing of quality like it in market here.
5. The development will be spacious, preserving trees; green space.
6. No other developer is going to develop a project with a cash heavy balance statement.
7. No other developer will give Jordan family the option to receive prepaid ground rent.
8. You have said to me that you believe the value of the property is \$20-25 million (\$18-23 psf).
-At stabilization of \$2.7million ground rent (before escalators are considered), that rent is \$2.50 psf. If you take that rent and divide by 8% (a typical factor), the land value is \$31 psf. Greystone, by putting its use on your property, is making your property more valuable than it would otherwise be as apartment land.
9. Comps are topping out in best locations at \$12-13 psf for low rise apartment land. 1. Hanover
2. Deal 3. Genesis 4. Columbus 5. Lincoln
10. I believe that developments done today are typically put into single asset corporations or partnerships.
11. Once developed, the project will operate under a solid governmental system, complete with checks and balances.

Mutual Objectives

1. If you don't want to do our deal, fine. We will find another site.
2. Let's be honest with each other. Is it fair to change the basic economic terms of the deal after narrowing down negotiations on the land to basic timing issues?
3. If you do want to make this deal, then tell me how to make you comfortable.
4. Is it going to take a partner with a \$400 million financial statement like Hicks-Muse to make you comfortable. A partner like that comes in and leases the land from you and flips it to us for a very costly profit...very expensive money. Bad for the ultimate customers because that cost has to be paid for somewhere in the deal. Everything gets diluted down.
5. The Jordan Family is a better "partner" during the option. You maintain control get to keep the rents. You get paid for the option time. Incentive is built in for Greystone to get it done quickly.
6. You take on no debt; you risk no equity. You learn a new business.

Caruth Story

1. 1988 J.W. O'conor \$100 million deal for Northpark (Just before he died)
2. Ground rent is about \$2.8 million.
3. \$46 million cash; \$54 million zero coupon 10-year bond. That bond would pay off in less than one year. The cash would be worth about \$186 million today if it had been invested in the market over the past 9.5 years. The Hillcrest Foundation would have accrued liquid investments of over \$236 million. Today that land has a \$3 million ground rent after subordinated debt.
4. Today, national mall trends are scary. Retailers are demanding power centers. Mr. Nasher is investing more cash and debt on that land to compete. And although the mall is successful, the land is still worth about what it was 10 years ago, in my opinion.
5. The Northpark land is 88.5 acres.

My Point

1. This deal achieves the goals you laid out to me.
 - A. Coupon clip rent (and a lot of it).
 - B. Perfect use - creates value to land without zoning change (which is unlikely).
 - C. Jordan family will be viewed by the community as philanthropists.
 - D. Maintain some control - ultimate board seat, input during development stage.
 - E. Solid balance sheet of tenant to back ground rent.
 - F. No debt.
 - G. No subordination of fee.
 - H. No damage to Jordan family during option.
 - I. Jordan Family continues to manage and control apartments during the option time.
3. Burt this deal is win win for everybody. Don't throw it away.
4. Bring Lanahan back in here. Tell him your concerns. Let's work it out.

Landlord's

Exhibit 17

for February 21-23, 2023 hearing

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

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)	Case No. 22-30659-mvl-11
In Re:)	Jointly Administered Ch. 11
)	
NORTHWEST SENIOR HOUSING CORPORATION, et al.,)	Dallas, Texas
	)	January 23, 2023
	)	9:00 a.m. Docket
Debtors.)	
	)	PROPERTY CONDITION
	)	CURE HEARING [1023]
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHELLE V. LARSON,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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25 Proceedings recorded by electronic sound recording;
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1 DALLAS, TEXAS - JANUARY 23, 2023 - 9:08 A.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, The Honorable Michelle Larson presiding.

5 THE COURT: Please, be seated. Good morning,
6 everyone. We're here on our 9:00 o'clock docket, Case No.
7 22-30659, Northwest Senior Housing Corporation.

8 I can't see around the binders. Just give me a moment.
9 All righty. I'll take appearances for the record.

10 MR. JOHNSON: Good morning, Your Honor. Jeremy
11 Johnson from Polsinelli on behalf of the Debtors. Also with
12 me is Trinitee Green, who was a little delayed in getting
13 here, and Jay Switzer is on the WebEx. Thank you, Your Honor.

14 THE COURT: I feel her pain. 9:00 o'clock is hard.

15 MS. FURNESS: Your Honor, Aimee Furness from Haynes
16 and Boone here on behalf of UMB. And with me I have Dan
17 Bleck, Emily Musgrave, Catherine Lombardo, Kaitlin Walsh, and
18 I believe Eric Blythe is on the WebEx, all for UMB.

19 THE COURT: Good morning. Thank you very much.

20 MS. VANDESTEEG: Good morning, Your Honor. Elizabeth
21 Vandesteeg and Eileen Sethna of Levenfeld Pearlstein,
22 Elizabeth Pittman of Jackson Walker, and Ivan Gold of Allen
23 Matkins, on behalf of Intercity Investment Properties, Inc.

24 And Your Honor, I believe that we did see last week that
25 Mr. Gold's *pro hac* had been granted, so we should be good to

1 go.

2 THE COURT: Excellent. Thank you very much.

3 MS. VANDESTEEG: Thank you.

4 THE COURT: I remember signing it. Welcome, Mr.
5 Gold.

6 MR. GOLD: Thank you, Your Honor. Good morning.

7 THE COURT: Good morning.

8 MR. MCCARTIN: Good morning, Your Honor. Steve
9 McCartin and Tom Scannell on behalf of the Committee.

10 THE COURT: Good morning.

11 MS. WALKER: Good morning, Your Honor. Adrienne
12 Walker, I'm here today with Matthew Davis, from Locke Lord, on
13 behalf of Bay 9 Holdings.

14 THE COURT: Good morning. All right. Is there
15 anyone else in the courtroom who would like to make an
16 appearances?

17 All righty. And I have received an electronic roll call.
18 The only one on the electronic roll call, which is hard to say
19 today, is Ms. Lombardo, who I think we already had an
20 appearance for.

21 Is there anyone on WebEx who would like to make an
22 appearance today?

23 And if you're on the telephone, you can press *6 to
24 unmute.

25 (No response.)

1 THE COURT: All right. Hearing no further takers, I
2 have a great deal of binders, and I know that the parties have
3 been working on exhibit stipulations. I do have what's
4 entitled the "Stipulated and Objected Exhibit List" for the
5 23rd and the 24th. Is that where we're going to start?
6 Excellent. How would we like to proceed?

7 MS. VANDESTEEG: Good morning again, Your Honor.
8 Elizabeth Vandesteeg on behalf of Intercity Investment
9 Properties, Inc.

10 I think it likely makes sense to start with those exhibits
11 that have been stipulated to.

12 THE COURT: Uh-huh.

13 MS. VANDESTEEG: And all parties have agreed that
14 those stipulated can be admitted, and we'd go ahead and ask
15 that all stipulated and agreed orders [sic] be admitted for
16 purposes of the hearing today and tomorrow.

17 THE COURT: All righty. With respect to what was
18 handed up to me, are there any objections to those
19 stipulations? Are we still all on the same page?

20 MS. MUSGRAVE: Good morning, Your Honor. Emily
21 Musgrave.

22 I'm not sure exactly what was handed up to you, but I
23 don't think I have any objections.

24 THE COURT: Okay.

25 MS. VANDESTEEG: We can circulate copies.

1 THE COURT: Yes. Yes. Let's make sure we're --

2 MS. VANDESTEEG: It's the copy that was sent and
3 circulated yesterday.

4 THE COURT: -- all on the same page before I announce
5 them.

6 (Pause.)

7 MS. MUSGRAVE: I think that's fine, Your Honor.

8 THE COURT: Okay.

9 MS. MUSGRAVE: It looks right.

10 THE COURT: Okay. Thank you very much.

11 All right. So, for purposes of the record, I'm just going
12 to announce where the various exhibits of the parties can be
13 found, and then I'll announce which ones have been stipulated
14 to. Will that suffice, Ms. Jeng?

15 (Court confers with Clerk.)

16 THE COURT: All righty. So, with respect to the Plan
17 Sponsors, their exhibits can be found at Docket 1068 and
18 Docket 1087, is the amended list. Is that correct, Ms.
19 Musgrave?

20 MS. MUSGRAVE: Yes, Your Honor.

21 THE COURT: Okay. Thank you very much.

22 On behalf of Lifespace -- I'm confused. Just one moment.

23 (Pause.)

24 THE COURT: Okay. These were for the adversary. Let
25 me push that to the side.

1 And then with respect to Intercity, it appears that the
2 exhibits can be found at Docket 1070, with the sealed exhibits
3 at Docket 1071. Okay.

4 MS. VANDESTEEG: Yes, Your Honor. And the list that
5 was circulated in terms of stipulated and objected also notes
6 a few Intercity exhibits that have been withdrawn during the
7 meet-and-confer process between the parties.

8 THE COURT: Okay. All righty. Thank you very much.

9 Okay. So, in terms of stipulations, the following will be
10 admitted based upon the parties' agreement: Intercity's
11 Exhibit 1, 1A, 1I, Exhibit 3, 8, 9, 10, 11, 13, 19, 20, 21,
12 22, 23, 24, 25, 27, 28, and 29. Each of those will be
13 admitted.

14 (Intercity Investment Properties' Exhibits 1, 1A, 1I, 3,
15 8, 9, 10, 11, 13, 19, 20, 21, 22, 23, 24, 25, 27, 28, and 29
16 are received into evidence.)

17 THE COURT: On behalf of the Plan Sponsors, pursuant
18 to agreement, the following exhibits will be admitted:
19 Exhibit 1, 2, 3. Each of those will be admitted.

20 (Plan Sponsors' Exhibits 1, 2, and 3 are received into
21 evidence.)

22 THE COURT: And do I have Bay 9 exhibits?

23 MS. VANDESTEEG: Your Honor, Bay 9's exhibits --

24 THE COURT: I know they're not stipulated yet, but do
25 I have them at all?

1 MS. VANDESTEEG: Bay 9's exhibits are actually
2 encompassed within ICI's exhibits. We decided to try to save
3 paper.

4 THE COURT: Okay.

5 MS. VANDESTEEG: So we can reference ICI's binders
6 and exhibits with respect to those exhibits that Bay 9 has
7 proposed.

8 THE COURT: Okay. And do you have a copy of the
9 list, Ms. Walker, of the reference?

10 MS. WALKER: Yes, Your Honor.

11 THE COURT: Okay. Excellent. Thank you.

12 Okay. So that handles admission of stipulated exhibits.
13 How would you like to proceed now?

14 MS. VANDESTEEG: Yes, Your Honor. I think it makes
15 sense to go directly then to arguing on those exhibits that do
16 have objections. I believe then there will still be a couple
17 of other housekeeping matters once we resolve the evidentiary
18 issues surrounding exhibits that have been at this point
19 designated as confidential.

20 THE COURT: Uh-huh.

21 MS. VANDESTEEG: We understand that there may be some
22 potential changes with respect to the parties' views on those
23 designations. And once we address those issues and get an
24 update, we'll need to revisit how we are going to approach
25 opening or closing the hearing to the extent that there are

1 still exhibits that are designated as confidential, subject to
2 protective order, which we will simply need to be able to use
3 in connection with our witnesses.

4 THE COURT: Okay. Thank you, Ms. Vandesteeg.

5 MS. VANDESTEEG: Thank you.

6 THE COURT: Ms. Musgrave?

7 MS. MUSGRAVE: That makes sense to me. And I think,
8 as Your Honor outlined, there are no objections to the Plan
9 Sponsors' exhibits, so those objections are just to
10 Intercity's.

11 THE COURT: Okay. Thank you very much. So let's
12 start with which non-confidential exhibits we have objections
13 to.

14 MS. VANDESTEEG: Thank you, Your Honor. I am going
15 to defer ICI's argument to Ms. Pittman. I don't know if Ms.
16 Musgrave wants to present their objections in the first place,
17 or we just get up and discuss them.

18 THE COURT: Well, why don't we start with identifying
19 each and why it's necessary, and then I'll hear from the
20 Objectors.

21 MS. VANDESTEEG: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MS. PITTMAN: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MS. PITTMAN: You've got some fresh blood at the

1 podium this morning.

2 THE COURT: I'm not that bad.

3 MS. PITTMAN: My name is Elizabeth Pittman, I'm with
4 Jackson Walker, and appearing today on behalf of Intercity
5 Investment Properties, Inc.

6 And we would like to walk through some of ICI's proposed
7 exhibits that Plan Sponsors have objected to, the first of
8 those being what we have designated as Exhibit 1B. This was
9 also Exhibit B to the amended cure statement. And it is the
10 field report prepared by The Building Consultant dated July
11 12, 2020 and the corresponding transmittal email included in
12 the production.

13 If Plan Sponsors would like to clarify their objections
14 before I --

15 THE COURT: Okay. Fair enough.

16 MS. PITTMAN: Would you like to take them one by one,
17 or just I can list all of them now and let --

18 THE COURT: If there are categorical groupings --

19 MS. PITTMAN: Uh-huh.

20 THE COURT: -- that make sense, I'll hear them in
21 terms of categories. Otherwise, we'll go one by one.

22 MS. PITTMAN: Sure. I think, with respect to the
23 first group, we can maybe put together Exhibits 1B and 1C,
24 with 1C also being Exhibit C to the amended cure statement or
25 proposal. And that is the 2021 facility assessment report

1 prepared by Plante Moran and dated on October 15, 2021.

2 THE COURT: Fair enough. Ms. Musgrave?

3 MS. MUSGRAVE: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. MUSGRAVE: Emily Musgrave.

6 I think it does make sense to group 1B and 1C. 1C is the
7 Plante Moran report. 1B is The Building Consultant report.

8 Your Honor, there is no witness from Plante Moran on
9 anyone's witness list or here today who can testify to this
10 report's contents, how it was prepared, for what purpose it
11 was prepared. What was the scope? What was included or
12 excluded and why? What did Plante Moran look at? There's no
13 one here today who can tell us, and I've never had any
14 opportunity whatsoever to examine anyone from Plante Moran
15 about this report.

16 This hearing is the time for ICI to present the evidence
17 it has in support of the property condition cure they allege,
18 and ICI certainly knew who to call at Plante Moran if they
19 wanted to discuss this report. They deposed a Plante Moran
20 witness in the adversary proceeding, another case, last fall.

21 And I'll note also, and this sort of previews where I
22 think we're going a little bit in the future, they have
23 designated the deposition transcript of that witness as an
24 exhibit or proposed exhibit here today.

25 And I want to be clear. That was a deposition that

1 happened in another matter last fall. And I also want to
2 point out that at the time that that deposition happened,
3 Intercity initially took the position that I could not attend.
4 I was finally allowed in, it had already started, and I was
5 explicitly precluded from asking any questions.

6 So, Your Honor, this report is hearsay, is wholly lacking
7 in foundation, and I would submit that it is fundamentally
8 unfair and improper for the report to come in today without
9 any witness to discuss it.

10 THE COURT: Thank you very much, Ms. Musgrave.

11 Ms. Pittman?

12 MS. PITTMAN: Thank you, Your Honor.

13 THE COURT: I'm sorry, Ms. Pittman. I hate to
14 interrupt you. Are your arguments the same with respect to
15 The Building Consultant report? I think that Ms. Walsh was
16 getting there.

17 MS. MUSGRAVE: I got so wound up about the Plante
18 Moran and forgot about The Building Consultant, Your Honor.
19 But yes, all of that holds, and I would take it even one step
20 further with respect to The Building Consultant. There's no
21 deposition, there's nothing, this report is two and a half
22 years old, and there are no witnesses here today to talk about
23 it.

24 THE COURT: Okay. Thank you very much. Now, Ms.
25 Pittman.

1 MS. PITTMAN: Thank you, Your Honor. And I do want
2 to start by just kind of speaking practically.

3 THE COURT: Uh-huh.

4 MS. PITTMAN: These reports have been front and
5 center in this proceeding for months, as Your Honor is well
6 aware, and this is a two-day bench trial with five witnesses.
7 All of the reports, these two reports and then two other
8 reports we'll get to later, have been used in every deposition
9 taken related to the property condition cure. And just common
10 sense and efficiency would provide that these reports should
11 be allowed to be admitted and used with the witnesses.

12 But going to Ms. Musgrave's specific evidentiary
13 arguments, I will start with Exhibit 1B, The Building
14 Consultant report. It's certainly relevant as to the property
15 conditions at The Edgemere. We understand that it did occur
16 in 2020, but that does not mean that it is irrelevant to
17 today's proceedings.

18 Again, this report was used in the depositions of the Plan
19 Sponsors/Edgemere's 30(b)(6) witnesses in which those
20 witnesses authenticated that this was the copy of The Building
21 Consultant report that they used, confirmed that they had seen
22 it. They had also transmitted it to Plante Moran to
23 incorporate into the Plante Moran report, and that transmittal
24 email is included in attachment with this exhibit.

25 And so we believe that there is a foundation laid as to

1 what this report is and how Edgemere received it, interpreted,
2 and used it. And that's how we would use it with the
3 witnesses today.

4 Regarding Ms. Musgrave's hearsay objection, this report is
5 actually not hearsay. This should be admitted as an opposing
6 party admission under Federal Rule of Evidence 801(d)(2). And
7 there's actually three different vehicles that the Court could
8 use -- pick your poison -- on which of the methods that this
9 should be admitted against Plan Sponsors.

10 First would be pursuant to Rule 801(d)(2)(B), which says
11 that it can be an opposing party statement if the statement is
12 offered against an opposing party and is one that the party
13 manifested that it adopted or believed to be true.

14 In this instance, we have deposition testimony from the
15 30(b)(6) witnesses that Edgemere received The Building
16 Consultant report and took actions in reliance on the report
17 itself, therefore being an action in which Edgemere manifested
18 the contents of The Building Consultant report to be true.

19 Similarly, Edgemere forwarded on The Building Consultant
20 report a year later to Plante Moran for Plante Moran to refer
21 to in creating its 2021 report -- again, constituting an
22 action in which the opposing party believed the content or
23 adopted the content of The Building Consultant report to be
24 true.

25 The second one I'll direct the Court's attention to is

1 Federal Rule of Evidence is 801(d)(2)(D), which is an opposing
2 party's statement where the statement is made by the opposing
3 party agent or employee on a matter within the scope of that
4 relationship.

5 We believe that by Edgemere hiring, retaining, working
6 with, collaborating with The Building Consultant in the
7 creation of that report, as is supported by the scope of the
8 report, preliminary statement, as well as deposition
9 testimony, that The Building Consultant was an agent of
10 Edgemere. And I will get into that more on the Plante Moran
11 side.

12 THE COURT: Uh-huh.

13 MS. PITTMAN: And lastly, I'll direct the Court's
14 attention to 801(d)(2)(C), which is an opposing party
15 statement by a person whom the party authorized to make a
16 statement on the subject.

17 Edgemere hired The Building Consultant to assess the
18 condition of the building envelope of the property. It
19 explicitly authorized The Building Consultant to make such a
20 statement. And therefore it should be admitted as non-
21 hearsay, as an opposing party admission against Plan Sponsors.

22 I'll take any questions if the Court has any specific to
23 The Building Consultant report before I move on to the Plante
24 Moran report.

25 THE COURT: All righty. We'll take them in order.

1 801(d)(2)(D) -- (B)?

2 MS. PITTMAN: 801(d)(2)(B).

3 THE COURT: Yes.

4 MS. PITTMAN: Yes, ma'am.

5 THE COURT: It's your position that The Edgemere
6 adopted a field report prepared by an expert consultant?

7 MS. PITTMAN: It is our position that The Edgemere
8 took affirmative actions in which it manifested that it
9 adopted or believed the content of the report to be true. And
10 that's the text of that Subpart (B), quote, is (1) the party
11 manifested that it adopted or believed to be true.

12 Based on Edgemere's conduct subsequent to The Building
13 [Consultant] report, both in relying on its contents and
14 taking further steps with respect to the building envelope,
15 and then also forwarding it on to a subsequent expert to
16 review and incorporate into their report, we believe that
17 those actions constitute its admission under 801(d)(2)(B).

18 THE COURT: But I'm not going to have a witness that
19 looked at the stucco, looked at the courtyard, determined if
20 the weeps were shut or open, or did anything? Who's going to
21 testify?

22 MS. PITTMAN: The 30(b)(6) witnesses who were
23 designated to testify about the commission of this report, the
24 discussions regarding this report, the use of this report.
25 And if I might --

1 THE COURT: Listen to what you said. The commission
2 of the report, the use of the report, they read the report.
3 They didn't prepare the report.

4 MS. PITTMAN: Understood, Your Honor. Agreed. No
5 witness in this court over the next two days will have
6 prepared The Building Consultant report.

7 THE COURT: All righty. Explain to me how The
8 Building Consultant, the company, is an agent of the Debtor.

9 MS. PITTMAN: Yes, Your Honor. And I do have a brief
10 -- trial brief regarding the Fifth Circuit case law regarding
11 agency law and its relevance to an opposing party admission
12 done by an opposing party's expert. And there's a case
13 specifically on point that is *Collins v. Wayne Corp.*, 621 F.2d
14 777 (5th Cir. 1980).

15 THE COURT: Uh-huh.

16 MS. PITTMAN: And to give the Court just some brief
17 context, in this case there was a tractor-trailer that
18 jackknifed and hit a passenger bus. And unfortunately, many
19 passengers were injured and deceased. The passengers brought
20 a lawsuit against the bus designer for a defective design. It
21 came out during the discovery process that the bus company had
22 hired a third-party investigator two days after the accident
23 to investigate the causes and factors that contributed to the
24 accident. A copy of that report was also furnished to the
25 plaintiffs in that matter.

1 The plaintiffs then sought at jury trial to admit the
2 report prepared by the third-party investigator hired by the
3 bus company. And the Fifth Circuit found reversible error in
4 the District Court's refusal to do so, stating that the
5 independent investigator that was not hired for purposes of
6 litigation but rather to conduct a factual investigation on
7 behalf of the opposing party could constitute an agency
8 relationship and admission. And the Court --

9 THE COURT: Can you give me a pinpoint cite, --

10 MS. PITTMAN: Yes, ma'am.

11 THE COURT: -- Ms. Pittman? Thank you.

12 MS. PITTMAN: So, specifically, I would direct the
13 Court's attention to Pages 781 and 782.

14 THE COURT: Okay. Thank you.

15 MS. PITTMAN: And the Court did note that of course
16 the agent's report did not constitute a judicial admission
17 binding on the opposing party, and noted, quote, that the bus
18 company, quote, would have an opportunity to explain why some
19 of the third-party investigator's conclusions were not
20 consistent with the opposing party at trial.

21 And that's what the witnesses will have the opportunity to
22 do over the next two days. To the extent that they disagree
23 with the statements made by their agent two years ago, they
24 are free to provide those distinctions in their testimony in
25 court.

1 But Edgemere hired The Building Consultant, defined the
2 terms of the scope of work done by The Building Consultant,
3 collaborated with The Building Consultant, authorized The
4 Building Consultant to be on the grounds, finalized the report
5 provided by The Building Consultant. And they were not
6 retained for purposes of litigation. They were retained to do
7 a factual investigation on behalf of Edgemere of The Edgemere
8 property.

9 Therefore, they are an agent, and it can constitute a non-
10 hearsay admission by an opposing party's statement pursuant to
11 Federal Rule of Evidence 801(d) (2) (D).

12 THE COURT: Thank you very much. Okay. And then,
13 finally, (d) (2) (C), made by a person whom the party authorized
14 to make a statement on the subject.

15 MS. PITTMAN: Yes, Your Honor.

16 THE COURT: Okay. So if The Building Consultant was
17 authorized to make a statement, to whom? Because I'm used to
18 using 801(d) (2) (C) to say, I sent my agent, I sent my vice
19 president over to make a statement on behalf of the company.
20 They were an authorized agent of the company. Who did the
21 Debtors authorize The Building Consultant to make a statement
22 to?

23 MS. PITTMAN: A general statement regarding the
24 condition of the property. The report was initially furnished
25 to Edgemere, but Plante -- Edgemere then sent it further. It

1 was not solely kept internal. That report was sent then
2 externally. And therefore it was authorization of The
3 Building Consultant to also make that statement to third
4 parties, with respect only to that limited content of the
5 report.

6 THE COURT: Okay. So you said you had different
7 arguments with respect to Plante Moran?

8 MS. PITTMAN: Slightly different, Your Honor.

9 THE COURT: All righty.

10 MS. PITTMAN: So, before we get back into the weeds
11 of the various different subsections of opposing party
12 admission, I would also like to direct Your Honor's attention
13 with respect to the Plante Moran report to Federal Rule of
14 Evidence 803 as well as, I believe, 802, yes, and 804. And
15 specifically 804. I misspoke.

16 THE COURT: Okay.

17 MS. PITTMAN: As Ms. Musgrave mentioned, the Landlord
18 did take a deposition of Plante Moran. I find it a little
19 form over substance to call it an entirely different
20 proceeding, seeing as all of the exhibits and discovery used
21 in this case were exchanged in that adversary proceeding.

22 But she is correct that Landlord did depose Plante Moran,
23 I believe it was in August of 2022. And because UMB is not a
24 party to the adversary, they were not permitted to ask
25 questions of the Plante Moran witness. However, counsel for

1 the Debtor, Polsinelli, was present at that deposition,
2 objected to questioning throughout the deposition, and was
3 afforded the opportunity to ask questions of the witness and
4 declined.

5 Therefore, we believe that the deposition, should the
6 Court want to consider it in tandem with the report, could be
7 admissible as prior testimony of an unavailable witness.

8 And to round that out for unavailability, in 804(a),
9 criteria for being unavailable -- sorry, let me look through
10 my notes -- (a)(5) is what we're discussing here. And the
11 declarant's attendance could not be secured for this hearing.
12 Plante Moran is, I believe, based out of Chicago. They are
13 outside of subpoena range. And therefore they are an
14 unavailable witness for purposes of 804.

15 They have been prior deposed. They were represented by
16 the opposing party, that at the time being Edgemere, but
17 Edgemere is subsumed in the Plan Sponsors for purposes of
18 today and tomorrow's hearings. And so that deposition should
19 be admitted pursuant to Rule 804.

20 And then, similarly, the report itself comes in under the
21 same 801 subparts that we discussed earlier, with a special
22 emphasis on agency in this case, Your Honor. We spent a lot
23 of time with the 30(b)(6) witnesses discussing the dynamic
24 between Edgemere and the Plante Moran evaluators. We know
25 that prior to Plante Moran beginning its site assessment that

1 it was provided with a copy of The Building Consultant report
2 as well as other documentation from Debtors.

3 We also know that the scope of Plante Moran's engagement
4 was limited by conversations with Chris Soden, who is one of
5 the 30(b)(6) witnesses on behalf of Debtors. And that is
6 provided in the engagement letter itself that we discussed
7 with the witness.

8 We also know the Plante Moran had to get -- had to
9 coordinate with Edgemere to visit the property, was escorted
10 around the property by Edgemere personnel while it conducted
11 its site visit. That during the site visit, Edgemere asked
12 Plante Moran to highlight and emphasize certain conditions of
13 the property in making its report.

14 We also have received discovery that Plante Moran
15 delivered drafts of the report to Plan Sponsors, asking for
16 their input and offering to incorporate any questions or
17 comments before finalizing the draft. We also have testimony
18 that Edgemere had to authorize Plante Moran to finalize a
19 draft. And, of course, Edgemere did not pay Plante Moran, you
20 know, until receiving the report.

21 Again, directing the Court's attention to *Collins*, and
22 there's a similar -- a more recent Texas federal court case
23 that expands a bit on *Collins*, and I'll read that cite as
24 well. And that case is *Fractus S.A. v. AT&T Mobility, LLC*,
25 Case No. 2:18-cv-00135-JRG, 2019 WL 4805910. And that's an

1 Eastern District of Texas case from late September 2019. And
2 if you want a pin cite to start at, I would recommend starting
3 at Page 2.

4 And this is -- the *Fractus* case examines the *Collins* case
5 as well as its progeny and summarizes it for a more recent
6 explanation of the same logic employed in *Collins*. And it
7 spends a lot of time discussing the differences between an
8 expert hired for purposes of providing a report outside of
9 litigation versus an expert that is hired to prepare a report
10 for purposes of litigation.

11 And the *Fractus* court highlights that because, for an
12 agency relationship to exist, "The agent shall act on the
13 principal's behalf and subject to the principal's control."
14 And in saying that, the *Fractus* court is quoting the *Third*
15 *Restatement of Agency*, Section 1.01.

16 And that's because a retained expert for purposes of
17 litigation is retained to hire -- is retained to provide an
18 unbiased, objective expert opinion, whereas an expert that
19 isn't necessarily hired in purposes of litigation may actually
20 be subject to the control, acting on the behalf of the hiring
21 party.

22 And in the *Fractus* court, it wasn't intellectual property
23 case, but they provided an example of an expert, quote,
24 employed or retained to analyze pre-suit claims of
25 infringement and prepare a report opining on whether or not

1 that company, the company that hired the expert, should take a
2 license, and that that could constitute, depending on
3 additional facts surrounding it, an agency relationship.

4 That's what we believe happened with the commission of the
5 Plante Moran report in early to mid-2021. It was not
6 commissioned for purposes of assisting in litigation, but
7 rather we have ample witness testimony that the Plante Moran
8 report was commissioned to provide third-party support for
9 company numbers to be submitted for purposes of bond
10 negotiations.

11 And in doing so, that would also lead into the Plante
12 Moran report's admission under the other subsections of Rule
13 801(d)(2) in that the Plante Moran report is one that it
14 manifested or adopted to believe true because they used it in
15 its negotiations with the bondholder. And similarly, they
16 authorized Plante Moran to make a statement -- in this case,
17 to the bondholders -- regarding the property condition and
18 what Plante Moran believed to be the expected capital
19 expenditures necessary for the property.

20 And, again, I would remind the Court that to whatever
21 extent the Debtors or Plan Sponsors disagree now with the
22 statements contained in the Plante Moran report, they will
23 have ample opportunity to provide those distinctions in their
24 testimony over the next two days.

25 THE COURT: Thank you, Ms. Pittman. And can you give

1 me that *Fractus* cite one more time?

2 MS. PITTMAN: Yes, Your Honor.

3 THE COURT: The Westlaw cite.

4 MS. PITTMAN: Yes. The Westlaw cite would be 2019 WL
5 4805910.

6 THE COURT: All righty.

7 MS. PITTMAN: And that's pin cite 2.

8 THE COURT: I appreciate that. I missed a number.

9 MS. PITTMAN: Uh-huh. And I will note that the
10 holding in the *Fractus* court was that they did not admit the
11 expert report because the expert was explicitly hired for
12 litigation purposes.

13 THE COURT: Thank you very much.

14 Ms. Musgrave?

15 MS. MUSGRAVE: Thank you, Your Honor. And I'm happy
16 to address, you know, whichever of those issues is sort of
17 most salient for the Court.

18 But I think where I began is that, under this reading of
19 the Federal Rules of Evidence, I think you basically
20 eviscerate the hearsay exception because you're essentially
21 saying that any consultant that a party hires can thereby be
22 one of these sort of statements against interest, what we all
23 learned as admissions by party opponent. That's certainly not
24 what happened here.

25 And I also want to be clear about the way in which these

1 reports are going to be used today. These reports support
2 line items in that table that is in the amended cure
3 statement. That is substantive. There's data being drawn
4 from these reports. And Intercity has known back in November
5 that they were going to have to support the claim that they
6 assert as a cure claim here, and that they were, if they
7 wanted to do it with Plante Moran, they had every opportunity
8 to do that.

9 I don't understand the unavailability argument here. I
10 don't understand why a witness couldn't be contacted or
11 brought in or put up for deposition or any of the other
12 circumstances that one would generally do if one had critical
13 underlying data that was being used to support a claim.

14 I also think it's wholly insufficient to argue that the
15 Debtors somehow adopted the numbers that were in this report.
16 First of all, and I'll preview for the Court, I don't think
17 that will be the testimony here today at all.

18 Second of all, that still provides no opportunity to
19 examine the basis for these reports or why they ought to come
20 in.

21 I'm happy to talk specifically about the Rules, but I
22 don't think this is what the Federal Rules of Evidence
23 contemplate or provide.

24 THE COURT: Thank you, Ms. Musgrave.

25 MS. MUSGRAVE: I'll also note, Your Honor, I was

1 unaware of the trial brief or any of that case law. It sounds
2 to me from a reading that it's quite different, particularly
3 with an expert that was retained after the fact, not
4 consultants that were retained years prior to the litigation.
5 But I would be happy to explore those issues further if the
6 Court finds that helpful.

7 THE COURT: Okay. Thank you very much, Ms. Musgrave.
8 Mr. Johnson?

9 MR. JOHNSON: Thank you, Your Honor. Just very
10 quickly.

11 We obviously concur with the comments of the counsel to
12 UMB. But I would say this, Your Honor. This issue is not
13 that dissimilar from the letter briefing that happened
14 regarding the FTI piece. Now, both parties had an opportunity
15 to submit a letter brief. None of these arguments, these
16 fresh arguments today were submitted by ICI on behalf of their
17 attempting to seek to include the FTI summary of the Plante
18 Moran report, which is effectively double hearsay, and the
19 Plante Moran report actually is a part of The Building
20 Consultant report, so we're looking at triple hearsay at some
21 point here, Your Honor.

22 But at the end of the day, just on the idea that it was
23 manifested to be true, I think Your Honor is aware that that's
24 not the case. The letter briefing was specifically about you
25 ruled -- I believe correctly, Your Honor -- that there is a

1 small portion of that letter -- there's a small portion of
2 that FTI chart that was not just a summary of a prior report,
3 it was the company's response to the Plante Moran report. And
4 we expect that that will be -- you'll be taking testimony
5 about that today.

6 So I don't think you could take the position that simply
7 because a report was paid for by somebody, that the company
8 has sat down and endorsed it or manifested it or it becomes
9 automatically true.

10 And that's the biggest problem we have, is the problem is
11 you're only going to hear the company's side of the view, of
12 the actual report and the findings here. You could have heard
13 Plante Moran's viewpoint with respect to this, but they were
14 not called or sought as a witness. Presumably, that was a
15 strategic decision by ICI, and they need to live with the
16 consequences of that.

17 But what they're trying to do is say, let's just take the
18 report and leave that on its face and everybody can just fight
19 against this report, without the ability to cross-examine or
20 have Plante Moran explain how they came up with the various
21 definitions and breakdowns that they did, like they did in
22 their deposition.

23 So, thank you, Your Honor.

24 THE COURT: Thank you. Thank you, Mr. Johnson. Ms.
25 Pittman?

1 MS. PITTMAN: Thank you, Your Honor. I'll try to
2 just briefly address those comments.

3 First, I just again want to highlight that the Plante
4 Moran report and the author of the report was deposed
5 specifically all about how he came to draft his report, what
6 he did, what he saw, why he wrote what he wrote. And that
7 deposition, wherein Edgemere, Debtors' counsel was present and
8 participated, is admissible under 804.

9 I do just want to briefly respond to the argument that
10 this is the same thing as the FTI report. I certainly
11 acknowledge that the FTI report contained a summary of a
12 different report, and that is why we, whenever the Court
13 issued her guidance on redactions, we were okay with that.

14 THE COURT: Uh-huh.

15 MS. PITTMAN: Also, I think it's a bit unfair for
16 counsel to tell ICI how ICI is going to use the exhibits here.
17 We are not anticipating focusing on the numbers in these
18 reports. Rather, as Your Honor will hear during opening
19 statements and throughout questioning, the Landlord is trying
20 to discuss the conditions of the property around The Edgemere.
21 And the fact that multiple third-party witnesses observed
22 certain property conditions is very relevant. It is a
23 statement that can be applied against an opposing party,
24 because I understand that they might not believe the contents
25 of the report to be true, but at certain points in time they

1 did take affirmative steps wherein they did believe it to be
2 true, or at least represented that they were true. For
3 example, forwarding on The Building Consultant report to
4 Plante Moran, and then especially with Plante Moran using the
5 contents in the Plante Moran report in negotiations with a
6 third party of the bondholder.

7 It doesn't make sense to allow the Debtor to say in one
8 instance, we're using this, we're believing it to be true,
9 we're providing it as support at least to our internal
10 numbers, and then to try to walk it back after the fact.

11 So, again, we're wanting to bring in these reports, Your
12 Honor, to discuss the conditions noted by these multiple
13 experts. That's certainly highly relevant. To the extent
14 that the 30(b)(6) witnesses or any other witness disagrees
15 with the contents of the report, that is what witness
16 examination is designed to allow, and they can provide those
17 distinctions then.

18 THE COURT: Thank you very much, Ms. Pittman.

19 Give the Court one moment with the case law that was
20 cited.

21 (Pause.)

22 THE COURT: The Court is going to sustain the
23 objections to the admission of The Building Consultant report
24 and to the Plante Moran report. I do believe that, without a
25 witness, these reports would constitute inadmissible hearsay.

1 The Court might feel differently if it wasn't apparent
2 from the pleadings how the reports will be used. The reports
3 will be used essentially to prove that the assertions therein
4 are true, that there are conditions on the property, or at
5 least there were conditions on the property in 2020 and 2021,
6 when the reports were made, that required repair on a certain
7 time period.

8 Without a witness, I'm not sure how we could get to the
9 meat of the report. Who looked at what? If something is
10 deemed critical, what does critical mean? What does immediate
11 mean? In terms of expert consultants such as these, the proof
12 is in the definitions and in the opinions of the folks who
13 actually walked the property.

14 I appreciate the case law and the argument. Ms. Pittman's
15 argument, I think you're doing the best with what you have.
16 But what you don't have is a witness. And to be honest,
17 taking a look at *Fractus* and the *Fox* case coming out of the
18 Fifth Circuit at 694 F.2d 1349, each of these cases emphasize
19 that creating an exception and deeming an expert an agent of a
20 party is to be construed extremely narrowly. And I don't
21 think that this is the right situation.

22 This is not an accident investigator. If there is a bus
23 accident and I run a bus company and I hire a third-party
24 investigator, perhaps that is going to become my report, my
25 statement on the accident, if I'm going to use that with my

1 insurer, et cetera.

2 But in this situation, we have field reports and property
3 condition reports that were prepared by experts in that field,
4 I assume the same type of experts that we'll see later in this
5 hearing from Terracon and perhaps from ARCH. But to use the
6 Plante Moran report or The Building Consultant report in a
7 vacuum, without the ability to hear from the authors of that
8 report, just seems inappropriate.

9 Again, the request of a third party to do a report on
10 property, in the Court's estimation, does not make that party
11 your agent. Perhaps if the Debtor sent The Building
12 Consultant out or sent Plante Moran out to make statements on
13 their behalf to other third parties other than just "Here's my
14 report," I don't see how that can come in under the Rules of
15 Evidence. It seems to me that each of these reports, without
16 more, is hearsay. And the Court declines to determine that
17 The Building Consultant or Plante Moran were the Debtors'
18 agents for purposes of essentially mere preparation of the
19 reports themselves. And that will constitute the Court's
20 ruling.

21 MS. PITTMAN: Thank you, Your Honor.

22 THE COURT: Ms. Pittman?

23 MS. PITTMAN: Yes. Just to keep moving forward, I
24 believe that the next objected-to exhibit is ICI's Exhibit 1H.
25 That was also Exhibit H to the amended cure statement. And

1 that is the property condition report prepared by Terracon
2 dated on January 6, 2023.

3 THE COURT: Ms. Musgrave?

4 MS. MUSGRAVE: Thank you, Your Honor. So, Item 1H is
5 indeed the Terracon report. Here, I understand we do have a
6 witness who's going to talk about it. But our submission is
7 that an expert report is nonetheless hearsay. Even a
8 witness's own prior out-of-court statement is itself hearsay.
9 And in this situation, it's being offered for the truth of the
10 matter asserted. It's not being offered, for example, by way
11 of impeachment or any other reason that it ought to be
12 admitted into evidence. There's no exceptions to the hearsay
13 rule.

14 So, even though the witness is here, expert reports are
15 generally not themselves admissible in court proceedings
16 because they're hearsay, and that's the basis for our
17 objection.

18 THE COURT: Okay. Thank you very much, Ms. Musgrave.
19 Ms. Pittman?

20 MS. PITTMAN: Thank you, Your Honor. And yes,
21 understood on the typical treatments of expert reports as
22 hearsay.

23 THE COURT: Uh-huh.

24 MS. PITTMAN: We just believe that this is a very
25 unique circumstance of a bench trial, two days, five

1 witnesses, all parties have this report, are using this
2 report.

3 But to the extent that the Court does agree that the
4 Terracon report is inadmissible hearsay, we would just like to
5 ask for the Court's guidance. There are some reports attached
6 -- or, I'm sorry, some pictures attached to the back of the
7 Terracon report that, should Landlord seek to use or enter
8 those photos as exhibits, it will certainly do so with first
9 laying the proper foundation with the witness to authenticate
10 the photo. But if the Court would be willing to agree that,
11 should the proper foundation be laid, those photos can be
12 admitted, we think that that would just expedite the process
13 and the testimony of the experts.

14 THE COURT: Okay. Thank you very much, Ms. Pittman.
15 Ms. Walker?

16 MS. WALKER: Your Honor, I'm just rising for
17 efficiencies because this was one of the two exhibits on our
18 list. And Your Honor, I think an additional cause is under
19 Federal Rule 807 under the residual exception.

20 THE COURT: Uh-huh.

21 MS. WALKER: Your Honor, this was a report planned
22 for litigation. It certainly would aid the Court with its
23 efficiencies, and it's a statement that's supported by
24 sufficient guarantees of trustworthiness. We're going to have
25 both of the witnesses -- sorry, the Terracon witness, and I'll

1 have a very similar argument for the ARCH report as well --
2 here today.

3 It's more probative for the Court, rather than going
4 through line by line. You'll have the information in the
5 report in front of you that would aid the Court with its
6 review. And that's precisely why Rule 807 is here.

7 Thank you.

8 THE COURT: Thank you very much, Ms. Walker.

9 All righty. Again, thank you very much for your
10 arguments.

11 With respect to the Terracon report, and to the extent
12 ARCH testifies and there's an ARCH expert report, the Court
13 will take that up with the witness itself. If there is a
14 witness that's on the stand, we'll take up the expert report
15 at that time.

16 MS. PITTMAN: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 MS. PITTMAN: And that will also apply to the next
19 objected exhibit, I believe, which is ICI Exhibit 2, the
20 expert report prepared by ARCH. So, if it's okay with Your
21 Honor, I'll just move on to the next.

22 THE COURT: Yes. I'll --

23 MS. MUSGRAVE: I'm sorry, Your Honor. One quick
24 thing.

25 THE COURT: Ms. Musgrave?

1 MS. MUSGRAVE: Your Honor, with respect the ARCH
2 report, I understand the Court has ruled on the hearsay
3 objection. We also have a relevance objection to that report
4 coming in.

5 As we have said a number of times, including in front of
6 the Court, that -- our witness, our rebuttal witness is not
7 relying on that expert report in support of the cure piece.
8 The property condition cure piece was prepared in connection
9 with adequate assurance. So we have a relevance objection to
10 that report coming in as well.

11 THE COURT: Okay. We'll take that up at the time the
12 witness is called.

13 MS. PITTMAN: Your Honor, the next exhibit that is
14 objected to is ICI Exhibit 5. And I would like to note that
15 we're getting into documents that were filed under seal --

16 THE COURT: Okay.

17 MS. PITTMAN: -- by Landlord.

18 MS. MUSGRAVE: I'm sorry, Ms. Pittman. Wasn't there
19 an Exhibit 4 that was objected to also? Did we skip over
20 that?

21 MS. PITTMAN: Exhibit 4 has been withdrawn.

22 MS. MUSGRAVE: Oh. Sorry. Okay.

23 MS. PITTMAN: Yeah.

24 MS. MUSGRAVE: Well, that was easy. Thank you.

25 THE COURT: Objection sustained.

1 (Laughter.)

2 THE COURT: I'm kidding. That makes for a bad
3 record. I'm kidding.

4 Exhibit 5?

5 MS. PITTMAN: Yes. Exhibit 5. So, this is a
6 document that has been designated by Debtors as confidential.
7 So, just to educate the Court before opposing counsel gets up
8 here, this would be The Edgemere capital plan for 2020 through
9 2029 produced by Debtors at Edgemere 0018196. It's an Excel
10 file, but we've included it in the witness binders as a PDF.

11 MS. MUSGRAVE: Thank you, Your Honor. Our objections
12 to this document -- and I believe that Ms. Pittman will
13 correct me if that's not right -- this may be relevant to
14 Exhibits 5, 6, and 7, which I think are all of the same
15 nature.

16 THE COURT: Okay.

17 MS. MUSGRAVE: Our objections are hearsay and
18 relevance. The first, as to the hearsay objection, again, an
19 out-of-court statement that is being offered for the truth of
20 the matter asserted. To the extent there are questions for
21 the 30(b)(6) witnesses from the Debtors, they'll be able to
22 answer them live on the stand. Their own out-of-court
23 statements are not admissible.

24 In terms of the relevance objections, the point of this
25 hearing is for ICI to carry its burden of proving an existing

1 default under the ground lease. Edgemere's own capital plans
2 have no relevance to this proceeding.

3 THE COURT: Thank you, Ms. Musgrave.

4 MS. PITTMAN: Your Honor, just so I am addressing the
5 right things, are we grouping together 5 through 7? Is that
6 correct?

7 THE COURT: We can.

8 MS. PITTMAN: Okay.

9 THE COURT: We can, if they're similar in nature.

10 MS. PITTMAN: Yes, Your Honor. These are capital
11 plans, with Exhibit 5 being starting in 2020, Exhibit 6 being
12 starting in 2022, and Exhibit 7 starting at Year 2023, all
13 filed under seal.

14 THE COURT: Okay. So I have 5. I don't have 6. And
15 7 notes "Produced in native form," and I have a cover page but
16 nothing behind it. Am I supposed to?

17 MS. PITTMAN: I believe with respect to Exhibit 6 the
18 tab was omitted, but if you perhaps flip a few pages past the
19 papers of Exhibit 5 you will find a slip sheet designating
20 Exhibit 6.

21 THE COURT: Thank you. Thank you. I found that.

22 MS. PITTMAN: And Exhibit 7 was such that if we
23 printed it out it would kill a forest.

24 THE COURT: Fair enough.

25 MS. PITTMAN: So we will certainly pull that up in

1 native form.

2 But all of these are Excel spreadsheets that were prepared
3 by Debtors at some point. We recognize that they may not be
4 final drafts of the budget. They are in native form. They
5 weren't, you know, submitted on letterhead. But they were
6 prepared by Debtors and produced by Debtors. This is a
7 classic opposing party statement. We have discussed these
8 with the witnesses. To the extent that the witnesses do not
9 believe that these are final form, they can provide testimony
10 to that fact. And we're not offering them as a final draft of
11 the budget.

12 But it is incredibly relevant because these capital plans
13 allocate line items to certain property conditions. And so
14 that's relevant to show Edgemere's knowledge and belief in, at
15 least at some point of time, the existence of certain property
16 conditions, as well as the prioritization that Debtors
17 associated with that property condition.

18 To the extent that the Court still believes that it's
19 hearsay, these would also be admitted as a business record.
20 We have testimony from the deposition witnesses to that
21 extent. And if that is something that the Court would like to
22 take up with the witnesses as we offer them and lay that
23 foundation, we're happy to do that. But we think it's
24 unnecessary because this is just a classic statement by
25 opposing party.

1 THE COURT: Thank you, Ms. Pittman. And so that the
2 Court is clear, you intend to take these up with the Debtor
3 witnesses?

4 MS. PITTMAN: Yes, Your Honor.

5 THE COURT: Okay. Thank you.

6 Anything further, Ms. Musgrave?

7 MS. MUSGRAVE: No, that's fine, Your Honor. We stand
8 on our objections. I'm not sure the foundation has been laid
9 for these to be business records.

10 THE COURT: Okay.

11 MS. MUSGRAVE: But if it is, then I agree, that would
12 be an exception to hearsay. My relevance objection stands.

13 THE COURT: Okay. Thank you.

14 I'm going to overrule the relevance objection, and I'm
15 going to allow admission of these exhibits with the Debtors'
16 witness, subject to business records prove-up.

17 And you have copies of these as well, Ms. Musgrave?

18 MS. MUSGRAVE: I think so, Your Honor.

19 THE COURT: Okay. All right, Ms. Pittman. Where do
20 we go next?

21 MS. PITTMAN: I believe the next objected-to exhibit
22 is ICI's Exhibit 12, and that is an email correspondence from
23 K. Dehenau of Plante Moran dated August 26, 2021.

24 THE COURT: All right. Also in the confidential
25 binder.

1 MS. PITTMAN: Yes. Your Honor, we designated this
2 exhibit in support of our agency argument as it's an email
3 from Plante Moran seeking input from Debtor. To the extent
4 that the Court has already ruled on that agency argument, we
5 can withdraw this exhibit.

6 THE COURT: Okay. All right. 12 will be deemed
7 withdrawn.

8 MS. PITTMAN: Same with respect to ICI's Exhibit 14.
9 We can withdraw, having already ruled on admissibility of the
10 Plante Moran report.

11 THE COURT: Okay. Thank you very much. Exhibit 14
12 will be deemed withdrawn due to the Court's prior rulings.

13 MS. PITTMAN: The next one will be ICI's Exhibit 15.
14 This is the Plante Moran engagement letter executed by both
15 Plante Moran and Debtor dated July 12, 2021 and produced by
16 Plante Moran at Bates Label PM_001773 through 84.

17 MS. MUSGRAVE: Thank you, Your Honor. With the
18 exclusion of the Plante Moran report, I think the engagement
19 letter likely follows. There's no one from Plante Moran who's
20 going to testify to the contents of this engagement letter,
21 what Plante Moran's perspective was on it, whether they in
22 fact did the things in this engagement letter, and how -- I
23 think its relevance was that it related to their work, which
24 is part and parcel of the report that the Court has now
25 excluded. So I think that same logic holds with respect to

1 this document.

2 THE COURT: Thank you, Ms. Musgrave.

3 Ms. Pittman?

4 MS. PITTMAN: Your Honor, this is a contract between
5 Debtor and Plante Moran. We believe that it is relevant to
6 show state of mind of Debtor in 2021 with respect to property
7 conditions as well as other steps taken by the Debtor with
8 respect to property conditions prior to filing its petition
9 for bankruptcy.

10 To the extent that Your Honor thinks that it's hearsay --
11 and, again, I don't believe it is; it is an opposing party
12 statement; it is countersigned by Nick Harshfield of Lifespace
13 and he authenticated it in his deposition -- we can do a
14 business records exception. I think that's unnecessary,
15 especially in light of the tight timing over the next two
16 days, but respect the Court's decision, of course.

17 THE COURT: Okay. Thank you, Ms. Pittman.

18 The Court is going to admit Exhibit 15. I'm going to give
19 ICI some leeway with this particular engagement letter. Of
20 course, I am prepared to be enlightened on its relevance, but
21 as it stands, given that it was countersigned by Mr.
22 Harshfield and ICI seeks to cross-examine him with respect to
23 the engagement letter, the Court is going to admit it.

24 (Intercity Investment Properties Exhibit 15 is received
25 into evidence.)

1 MS. PITTMAN: I believe we have two left, Your Honor.
2 The next one is ICI Exhibit 16, and that is the deposition of
3 the Plante Moran witness discussing the content of the Plante
4 Moran report. And seeing as the Court has already ruled on
5 the admissibility of that testimony as an unavailable witness,
6 we can withdraw the use of Exhibit 16.

7 THE COURT: Thank you. The Court will note that
8 Exhibit 16 is withdrawn in conjunction with the Court's prior
9 ruling.

10 MS. PITTMAN: And similarly with the last exhibit
11 that is objected to, being ICI Exhibit 26. That was an email
12 from Plante Moran to Edgemere conveying the final draft of the
13 Plante Moran report. In light of the judge's ruling on the
14 admissibility of the Plante Moran report, we can also withdraw
15 this exhibit.

16 THE COURT: All righty. Okay. And this is Exhibit
17 26? Correct, Ms. Pittman?

18 MS. PITTMAN: Yes, Your Honor.

19 THE COURT: All righty. Thank you very much. The
20 Court will note for the record that Exhibit 26 will be
21 withdrawn due to the Court's prior ruling.

22 All right. I think that leaves us with -- oh, the
23 remainder of the ICI exhibits have been stipulated to. Thank
24 you very much. And each of the Plan Sponsors' exhibits have
25 been stipulated to, and Bay 9's will be addressed as necessary

1 in connection with the remainder of exhibits.

2 All righty. I think that brings us to opening statements.
3 Would folks like a few minutes before we begin opening
4 statements, or would you like to push through?

5 MS. VANDESTEEG: Thank you, Your Honor. For the
6 record, Elizabeth Vandesteeg on behalf of Intercity Investment
7 Properties, Inc.

8 I think we still had a couple more housekeeping matters,
9 Your Honor.

10 THE COURT: Oh, I apologize. Let's go.

11 MS. VANDESTEEG: Oh, no worries. Beyond the back-
12 and-forth on admissibility of certain of the objected-to
13 exhibits, we still need to get to resolution with respect to
14 which of the remaining admitted exhibits are still going to
15 be, for purposes of this hearing today and tomorrow,
16 designated as confidential.

17 THE COURT: Right.

18 MS. VANDESTEEG: And to the extent that there remain
19 certain exhibits that are going to be relied upon either as
20 admitted or for purposes of impeachment that are designated as
21 confidential, how would we collectively like to address these
22 issues.

23 I will say at the outset, Your Honor, when we were last in
24 front of the Court last Thursday on our pretrial status and
25 this issue first came up, the Court had asked whether it would

1 be possible for the parties to engage in their lines of
2 questioning in a manner which would not have to expose what
3 has been designated as confidential information.

4 THE COURT: Right, given that the Court could follow
5 along.

6 MS. VANDESTEEG: Correct, Your Honor. That's not
7 going to be possible, --

8 THE COURT: Okay.

9 MS. VANDESTEEG: -- for Intercity, at the very least.
10 I can't speak for the other parties, but as we prepared for
11 hearing today, that's simply not going to be possible. We
12 will be -- we will be making use of certain of what has still
13 been designated, at least as of this moment, as confidential
14 in connection with our questioning today.

15 So I'm probably going to go ahead and defer to the Plan
16 Sponsors' counsel to give us an update on where we are on
17 confidentiality. But if, for example, those capital budgets
18 are still --

19 THE COURT: Right.

20 MS. VANDESTEEG: -- designated confidential, --

21 THE COURT: 5, 6, 7.

22 MS. VANDESTEEG: -- if, for example, The Edgemere's
23 excerpt from that FTI report is still designated confidential,
24 then I think we're probably going to need to close the
25 courtroom and the hearing.

1 THE COURT: Okay.

2 MS. VANDESTEEG: Thank you.

3 THE COURT: Thank you.

4 Mr. Johnson?

5 MR. JOHNSON: Thank you, Your Honor. We've conferred
6 on our side, Your Honor. And to the extent that those capital
7 budgets are ultimately used as part of that, we don't have --
8 we don't think the courtroom needs to be cleared for purposes
9 of those --

10 THE COURT: Okay.

11 MR. JOHNSON: -- prior drafts. Thank you, Your
12 Honor.

13 THE COURT: All righty. And so ICI Exhibit 3, which
14 is the excerpt of the FTI report, that's now been stipulated
15 as not confidential, as redacted?

16 MR. JOHNSON: Correct, Your Honor.

17 THE COURT: Okay.

18 MR. JOHNSON: As redacted.

19 THE COURT: All righty. Okay. So, 5, 6, and 7 will
20 not be confidential.

21 So, before we finish the hearing, which we know will
22 likely be on a different day, we'll address getting those
23 unsealed to the extent they're admitted in connection with the
24 witness testimony. All right.

25 MR. JOHNSON: Thank you, Your Honor.

1 THE COURT: Thank you very much, Mr. Johnson.

2 Now, I know with rebuttal exhibits the issue may come up.
3 Have the parties prepared what I loosely will call the VIP
4 List, in case we do have to close the hearing at some point?
5 If not, you need to do so if the issue arises.

6 MS. VANDESTEEG: Your Honor, that is certainly
7 something that I think all of us can collectively do in short
8 order.

9 THE COURT: Okay.

10 MS. VANDESTEEG: I believe that that simply leaves
11 one potential --

12 THE COURT: Uh-huh.

13 MS. VANDESTEEG: -- exhibit remaining. I'm going to
14 defer to counsel for Bay 9. That would be the ARCH Consultant
15 report.

16 THE COURT: Okay. Thank you.

17 Ms. Walker?

18 MS. WALKER: Thank you, Your Honor. And the reason
19 -- so, the -- one exhibit that may be admitted is the ARCH
20 report, and we've designated that as confidential, primarily
21 because there's two parts to the report. And Your Honor, it's
22 a property conditions assessment and a forecast. And we
23 intend to be relying on that as part of our adequate assurance
24 if we are the successful bidder for the property. We don't
25 want today, before the bidding deadline or the auction, to

1 televise in a public forum what the scope of perhaps adequate
2 assurances are. So that is why we've had to hold on to that.

3 So, as much as it would be an inconvenience to the Court,
4 we think it is probative and relevant to today's hearing, but
5 we also believe it's confidential until we get to that phase
6 of the case.

7 THE COURT: Okay. Is there any way to piece and
8 parse through the report --

9 MS. WALKER: I --

10 THE COURT: -- so that we could perhaps unseal a
11 portion? Or is it just not written that way?

12 MS. WALKER: I think that would be almost harder to
13 do than anything else.

14 And Your Honor, most of the people here today have already
15 been given access to it as under a protective order. I have
16 already responded to the Committee's request. I'm not going
17 to reply that they too would be bound by the protective order.
18 I just am more concerned about the audience and the media that
19 listen in to your hearings and that concern.

20 THE COURT: Okay.

21 MS. WALKER: Thank you.

22 THE COURT: Thank you very much.

23 All righty. So we'll put a pin in the ARCH report for now
24 and we'll deal with that at the time.

25 What I would like counsel to consider in their questioning

1 of the witnesses is -- and I recognize this may interrupt flow
2 just a bit -- but if you could put the questions with respect
3 to at least what we've designated as the one piece of a
4 confidential exhibit, if we could put that at the end. I'd
5 like to make the hearing as public as possible, but as we
6 stated at what I'll just call the planning sessions leading up
7 to this particular hearing, there's likely going to come a
8 time where we have to open and close the hearing. And so to
9 the extent that we address confidential exhibits, we'll try to
10 push those to the end of our witnesses' testimony so that we
11 can leave as much open of the witnesses as possible, because
12 inquiring minds want to know.

13 Okay. So, with respect to openings, it's 10:21. Do we
14 have any other housekeeping matters, Ms. Vandesteeg?

15 MS. VANDESTEEG: Not to my knowledge, Your Honor.

16 THE COURT: Okay.

17 MS. VANDESTEEG: I don't know if anyone else has any
18 remaining issues to address.

19 THE COURT: Okay. Anything from the Plan Sponsors or
20 Bay 9?

21 MS. MUSGRAVE: Nothing from Plan Sponsors, Your
22 Honor. Thank you.

23 MS. WALKER: No, Your Honor.

24 THE COURT: Okay. So, with that, I'm going to give
25 folks -- is ten minutes good?

1 MS. VANDESTEEG: It is, Your Honor.

2 THE COURT: Okay.

3 MS. VANDESTEEG: And I suspect that if we can get
4 through openings, maybe we'd be in a great place then for a
5 quick break before we get into witness testimony.

6 THE COURT: Okay. Fair enough. So, but I will take
7 a quick break right now first. So we'll take just a ten-
8 minute break.

9 MS. VANDESTEEG: Oh, thank you, Your Honor.

10 THE COURT: And then the Court will return from
11 recess about 10:35.

12 MS. VANDESTEEG: Thank you.

13 THE CLERK: All rise.

14 (A recess ensued from 10:22 a.m. until 10:36 a.m.)

15 THE CLERK: All rise.

16 THE COURT: Please, be seated. We'll go back on the
17 record in Case No. 22-30659. I think when we left we were
18 preparing for opening arguments.

19 One matter of update. As we predicted, I think we had one
20 motion to lift stay that was on our docket for 1:30 tomorrow.
21 That has also dropped off. So tomorrow we do have an ample
22 amount of time to conclude the hearing.

23 I think when we last spoke we thought we would go twenty,
24 twenty, and ten in terms of openings. Again, I'm not the type
25 of judge that likes to keep time, but I do know that we have a

1 lot to get through. So, brevity would be appreciated, at
2 least for openings.

3 MS. VANDESTEEG: Thank you, Your Honor. I think we
4 can do better than twenty.

5 THE COURT: Ooh.

6 OPENING STATEMENT ON BEHALF OF INTERCITY INVESTMENT PROPERTIES

7 MS. VANDESTEEG: For the record, Elizabeth Vandesteeeg
8 on behalf of Intercity Investment Properties, Inc.

9 Your Honor, at issue today, Section 365(b)(1)(A), which
10 requires Debtor to cure or provide adequate assurance of
11 prompt cure of all monetary and nonmonetary defaults in order
12 to assume and assign the lease. And today we are really
13 dealing with those nonmonetary defaults. Specifically, lease
14 defaults caused by failure of The Edgemere to keep the
15 property in good and safe repair, order, and condition, as
16 required by the lease between Edgemere and ICI.

17 There are a few lease defaults that we're going to talk
18 about over the course of the next couple days, Your Honor.
19 There's the failure to maintain under Section 5.8; the failure
20 to keep the premises in good and safe repair, order, and
21 condition under Section 5.8; the failure to keep the premises
22 in a strictly safe, clean, orderly, and sanitary condition
23 under Section 5.7; and the failure to maintain exterior
24 infrastructure -- *i.e.*, the curbs, the sidewalks -- under
25 Section 5.6.

1 Your Honor, you're also going to hear and have seen in the
2 briefing that Plan Sponsors are trying to tack a different
3 layer of burden on the Landlord, that of proof of the exact
4 cost of repairs necessary to address these defaults, and that
5 is not the law. Of course that's not the law. How could the
6 Landlord go out and solicit bids, review availability and
7 material costs for each of these defaults? How could the
8 Landlord engage contractors and anticipate unexpected
9 additional costs of completion, and then wait for the jobs to
10 be completed and invoiced to determine actual monetary cost to
11 repair these conditions? That would be an insurmountable and
12 impractical burden, and it would grant the Landlord rights and
13 impose responsibilities that simply do not exist under the
14 lease.

15 The burden of pricing the nonmonetary defaults urged by
16 the Plan Sponsors cannot be found in either Section 365 or in
17 case law.

18 Imagine, for example, a simpler situation than what we
19 have here. Imagine that the Debtor lacks insurance, in
20 contravention of the lease. The cure is for the Debtor to go
21 get the insurance coverage, not for the Landlord to go out and
22 shop for premiums or try to place insurance on its own.

23 And as we all know, we are not talking about carpets or
24 countertops in a residential apartment here, Your Honor.

25 We're talking about a 16.25-acre campus with over a million

1 square feet of improvements, together with walking paths,
2 fountains, parking garages, retaining walls, made to safely
3 and comfortably house over 300 seniors in various stages of
4 health and infirmity.

5 Put simply, a nonmonetary cure is not a check. It's not
6 even a payment plan. A nonmonetary cure is the identification
7 of the conditions that give rise to the defaults and proposed
8 solutions. And bankruptcy courts around the country that have
9 recently addressed the need for cure of nonmonetary lease
10 defaults have utilized a range of cure solutions, which can be
11 bundled into different combinations urged by debtors to meet
12 the cure obligations of Section 365.

13 But here, Your Honor, the Plan Sponsors have proposed
14 nothing.

15 To be clear, you will hear over the next couple of days
16 that nearly every party in this room and their respective
17 experts agree that there are lots of problems with the
18 condition of the property that will need to be addressed
19 within the remaining lifetime of the lease to keep in
20 compliance with those lease provisions.

21 You will hear that Edgemere and Lifespace have known about
22 numerous of these conditions for years, dating back to 2019,
23 in particular with respect to the significant cracking and
24 staining of the building envelope and stucco. And that, Your
25 Honor, covers the entire property, that whole campus, all the

1 buildings.

2 You will also see and hear evidence of defaults, other
3 defaults, of failed state or poor condition related to the
4 deterioration of the flat roof at the health center, of aged
5 and obsolete HVAC units, unevenness in sidewalks and cracks in
6 retaining walls, just to name a few. These items and systems
7 have already either failed, are in poor condition, or require
8 immediate further investigation to determine how extensive the
9 default is that will need to be cured and what may be
10 necessary to cure it.

11 Again, these are all known conditions that cause The
12 Edgemere property not to be in good and safe repair or
13 condition, as required by the lease.

14 Your Honor, these are conditions that have been flagged on
15 numerous different property condition assessments commissioned
16 by various different parties, including The Edgemere itself.
17 And you will see and hear that Edgemere and Lifespace have
18 included and denoted certain of these major projects as must
19 haves, Your Honor -- and that's a quote, "must haves" -- on
20 their annual planning budgets for multiple years running, but
21 have failed to undertake any actual meaningful effort or
22 expend any meaningful funds to address or remediate these
23 known defaults, choosing instead to spend their limited
24 resources elsewhere.

25 These conditions must be addressed now, prior to

1 assumption and assignment of the lease. And contrary to Plan
2 Sponsors' arguments, there is simply no legal requirement that
3 any prior default notice be provided prior to the cure notice.
4 And we've provided the Court with ample case law to that
5 point.

6 As we have previously discussed, these notions of cure and
7 adequate assurance exist along a continuum. All of the
8 parties here and all of the experts agree that there are
9 multiple property conditions at The Edgemere that will have to
10 be addressed on one side of that spectrum or the other, either
11 in the immediate present or the near present as a cure of a
12 nonmonetary default or in connection with any potential
13 assignee's provision of adequate assurance of future
14 performance under the lease.

15 And Your Honor, I think we need to look no further than
16 Bay 9's pleading to see that they also seem to support that
17 position.

18 The conditions that you will hear about today and tomorrow
19 are those that the Landlord has identified as constituting
20 present and existing nonmonetary defaults in need of cure.
21 And what we are asking Your Honor to do is to look at the
22 evidence presented relating to those existing conditions and
23 determine which of them constitute current defaults. Because
24 all of us, I believe, agree that there will be others that
25 will have to be addressed in connection with adequate

1 assurance.

2 The Court will need to determine which of the property
3 conditions as of today are not in good and safe repair, order,
4 and condition, as required by the lease. And then, once Your
5 Honor has determined which of these defaulted conditions must
6 be cured under (b) (1) as a prerequisite to the assumption and
7 assignment, the Court can then evaluate the method or methods
8 by which that cure can be achieved.

9 It is, however, the Debtors' burden to demonstrate that it
10 can cure or provide adequate assurance of prompt cure of these
11 conditions.

12 Again, Your Honor, it's not a check. But case law and
13 common sense provide a few different options. The Debtor
14 could use their in-house people to address and correct certain
15 of these defective conditions.

16 The Debtors could go out and solicit bids for the
17 necessary repairs and replacements. They could select the
18 contractor of their choice, enter into a contract, and then
19 provide proof that the Debtor has taken on that obligation and
20 arranged for the remedy of those conditions.

21 The Debtor could create an escrow or a reserve out of the
22 sales proceeds that would be set aside to fund the necessary
23 repairs.

24 Or, Your Honor, it's possible that some alteration of the
25 asset purchase agreement and the purchase price adjustment of

1 some sort to get the buyer to perform the work on the other
2 side of that transaction, maybe that could constitute adequate
3 assurance of prompt cure.

4 But one thing that is consistent under each of those
5 proposed cure options is that none of them involve the
6 provision of a check to the Landlord for the Landlord to go
7 out to try to fix the defective conditions. And that is
8 because the Landlord does not have the obligation or the
9 authority to make repairs to this property under the lease.
10 It is an explicit contractual obligation of the tenant, of the
11 Debtor.

12 Indeed, the Landlord doesn't have the right to interfere
13 with the tenant's quiet enjoyment of the property, and that is
14 why those maintenance and repair duties are allocated to the
15 tenant.

16 While cost estimates may be useful to understand the
17 potential magnitude of the obligation, it ultimately does not
18 matter to the Landlord how much or how little the Debtor has
19 to pay to cure the conditions, only that they be cured.

20 In sum, we ask the Court to listen to the fact and expert
21 witness testimony regarding those current property conditions
22 at The Edgemere to determine which conditions require
23 performance and cure under the various different applicable
24 sections of the lease and to order the Debtor to cure those
25 defaults in an appropriate manner or to provide adequate

1 assurance of a prompt cure, as required by Section 365(b)(1),
2 prior to the assumption and assignment of the lease.

3 Thank you, Your Honor.

4 THE COURT: Thank you very much, Ms. Vandesteeg.

5 Ms. Musgrave? However you're comfortable arguing. I know
6 once before you asked to stand up. However you're comfortable
7 arguing, but you do need the mic pretty close. These are just
8 not the best mics to be picked up on the record. So, whatever
9 is most comfortable.

10 MS. MUSGRAVE: Thank you, Your Honor. Is this good?

11 THE COURT: It is.

12 MS. MUSGRAVE: Okay. Great.

13 OPENING STATEMENT ON BEHALF OF UMB BANK, N.A.

14 MS. MUSGRAVE: Good morning, Your Honor. Emily
15 Musgrave, again, on behalf of UMB as Bond Trustee, DIP Lender,
16 and Initial Plan Sponsor.

17 This hearing is about one predicate question, whether the
18 Landlord has met its burden of proving that there is an
19 existing default under the ground lease. That's what Section
20 365 requires. That's what all the case law requires. That is
21 the burden ICI must satisfy here today.

22 If and only if ICI shows there is an existing default
23 under the ground lease, then the question becomes how much it
24 would cost to remedy the default.

25 Because ICI knows it cannot carry its burden here, the

1 Landlord has seized on this second step of the process, how
2 much would it cost to remedy the defaults. But ICI can't make
3 it past step one, proving an existing default under the ground
4 lease.

5 Simply put, Your Honor, if the Landlord cannot prove an
6 existing default, how much it would cost to remedy it is
7 irrelevant.

8 In particular, ICI must show that the Debtors have failed
9 to act as a reasonably prudent owner in maintaining the
10 community in good and safe repair. The community which, by
11 the way, just happens to be the premier senior living facility
12 in Dallas, which is heavily regulated and which has also, as
13 Your Honor will hear, had recent inspections.

14 ICI has had two separate chances to meet this burden. On
15 the December 23, 2022 bar date, as you'll hear today, ICI
16 filed its original cure statement. That original cure
17 statement listed not a single item constituting a default
18 under the ground lease. That original cure statement, as
19 you'll hear, never suggested anyone else prove amounts due and
20 owing, either. All it said was the amount to cure the
21 defaults on this property is approximately \$52 million.

22 And as you'll also hear, the original cure statement
23 relied on one thing and one thing only, which was the report
24 from Plante Moran conducted over 15 months ago.

25 With the Court's permission, ICI took a second bite at the

1 apple here and filed an amended cure statement on January 10,
2 2023. This one had a couple new aspects. First, it had a
3 punch list of items ICI now alleged constituted existing
4 defaults on the property. Forty-six items in a table,
5 totaling to just north of \$15 million, which I'll note is a 70
6 percent reduction from the first cure statement that had been
7 filed only two weeks prior.

8 These items in a table are the 46 separate defaults under
9 the ground lease that ICI claims must be fixed in order for
10 the property to be returned in the good and safe order a
11 reasonable person would expect. And so it is ICI's burden to
12 prove each and every one of these defaults.

13 The support for those 46 items, as you'll hear, comes from
14 three sources: the Plante Moran report, The Building
15 Consultant report, and the Terracon report. I'll ask the
16 Court to listen carefully to what evidence we have for these
17 alleged defaults and associated numbers, and where that
18 evidence comes from.

19 Your Honor has excluded both the Plante Moran and The
20 Building Consultant reports. And so, for these reasons, at
21 the end of this hearing I will specifically ask Your Honor to
22 disregard line items in ICI's 46-line table attributable to
23 both Plante Moran and The Building Consultant, because neither
24 can be proven here today.

25 I will also ask the Court to disregard the multiple

1 duplicative and contradictory items on ICI's amended cure
2 statement table. As you'll hear, the Landlord has provided no
3 explanation for this duplication, which again enhances with
4 absolutely no basis the amount they say they are owed.

5 How did this happen, this sort of duplication and
6 contradiction? Because, as I'll get to in a moment and as the
7 Court will hear, not one expert was consulted in putting
8 together this cure statement table.

9 That leaves the line items in the 46-line table
10 attributable to Terracon. So let's talk about Terracon.
11 There is a witness from Terracon here to testify, Mr. Michael
12 Hull. You'll hear that Terracon, hired by ICI itself, went
13 out to the property over two days in July of 2022 with a team
14 of six people. You'll hear that they apparently identified
15 issues Terracon believed were of such immediate concern that
16 they could affect the lives and safety of the residents. And
17 you'll hear that Mr. Hull's standard practice if these kinds
18 of immediate issues are identified is to tell someone
19 immediately, as soon as he can get to a safe place and do it.

20 But in this case, as you'll hear, Terracon, a nationally-
21 recognized expert, cannot recall when it informed ICI of its
22 findings, and the only evidence before this Court will be that
23 Terracon did absolutely nothing for six months. And that is
24 because the only report from Terracon that appears to exist is
25 dated January 6, 2023, as in two weeks ago. That is two weeks

1 after the original bar date for filing a cure statement and
2 four days before the amended cure statement was due.

3 Neither Mr. Hull nor Mr. Hannon of ICI, who engaged
4 Terracon and who will also testify here today, can recall when
5 they spoke with each other about these issues -- again, issues
6 Mr. Hull says affect life and safety.

7 Neither witness can recall if they ever reviewed a draft
8 of the report together, how long it took to convert a draft of
9 the report to a final, whether a draft still exists or was
10 deleted, or even when ICI requested that the draft be
11 finalized.

12 To be clear, Your Honor, you'll hear that neither Mr. Hull
13 of Terracon nor Mr. Hannon of ICI can be any more specific
14 about Terracon's conveying its findings to ICI than to say it
15 happened at some point between July 2022 and January 2023.

16 Nor, as you'll hear, did the Landlord at any point during
17 those six months issue a notice of default to the Debtor or
18 come to this Court for a single one of those conditions.
19 These defaults, some alleged to affect life and safety, were
20 raised for the very first time by counsel in its pleading on
21 January 10, 2023.

22 Because, as I mentioned, there is no support for items
23 derived from Plante Moran and The Building Consultant, this
24 Terracon report is the only remaining item supporting the 46-
25 line table in the amended cure.

1 You'll hear, though, Your Honor, that ICI never once
2 consulted with Terracon in preparing this table. Instead,
3 these items were cherry-picked from Plante Moran, The Building
4 Consultant, and Terracon. And you'll hear that it was ICI,
5 Kong Capital, and their counsel who made this decision, that
6 not a single expert was ever consulted, and that this team
7 pulled these line items from tables in expert reports that
8 both described more immediate repair conditions and also
9 separately described what were instead ongoing capital
10 planning requirements.

11 As a result, Your Honor, no one can testify as to how
12 these decisions were even made or why. Why was this item
13 included and that one not? What is the basis for alleging
14 this item from the Terracon report or the Plante Moran report
15 or The Building Consultant report is in fact an existing
16 default? There is not a single witness here today who can
17 tell this Court.

18 Unable to prove the defaults it alleges through any of its
19 own witnesses, you'll hear and you may recall that ICI sought
20 out witnesses from the Debtor to try to discover its way to a
21 new and different cure claim, well after its first and second
22 bar dates. And I expect, Your Honor, that you'll hear ICI go
23 line by line through old reports, asking the Debtor whether
24 they have addressed this old issue or that one. But as you'll
25 also hear, these reports were prepared for an entirely

1 different purpose: not a list of items currently in need of
2 repair, but rather a wish list, a moon shot if money were no
3 object.

4 Because of the exigencies of this proceeding, Your Honor,
5 even though we will submit that ICI cannot meet its burden of
6 proving a default under the ground lease, much less a punch
7 list of 46 separate defaults, we are nonetheless also prepared
8 to address the question that would follow if ICI did somehow
9 meet that burden: how much would it cost to fix these things?

10 So, even if we agree to add every item that Terracon says
11 is of immediate concern right now, that total is \$492,000.
12 Not the \$52 million ICI alleged on December 23, 2022 and not
13 the \$15 million alleged on the January 10, 2023 bar date.
14 \$492,000. And it's not even \$492,000, because, as you'll
15 hear, \$220,000 of that is actually an estimate for additional
16 investigations to try to identify more repairs.

17 So, even giving ICI and Terracon the benefit of every
18 single doubt, you'll hear that the most they can prove here
19 today is \$492,000 minus \$220,000, which is a grand total of
20 \$272,000 in cure.

21 To be clear, Your Honor, we submit that they won't even be
22 able to prove that, because there is insufficient evidence
23 that these Terracon items constitute a default under the
24 ground lease. But if there is anything north of zero today,
25 that's it, \$272,000.

1 That said, Your Honor, and again, because of the
2 exigencies of the situation, we will also present our rebuttal
3 expert from ARCH Consultants. Mr. Tim Winnecke will walk
4 through the 46-line table and offer his own opinion of the
5 items included and their associated amounts, so that, were the
6 Court to credit that ICI has proven that certain of those 46
7 items are indeed defaults, the Court will also have the
8 benefit of our expert's opinion on most.

9 To be clear, Your Honor, Mr. Winnecke is offering no
10 opinion on whether these are existing defaults under the
11 ground lease. That is ICI's burden and their burden alone.
12 But what you'll hear from Mr. Winnecke at the end of the day
13 is that even of these property conditions ICI now includes in
14 its punch list, associated repairs do not even total \$1
15 million, and certainly not \$15 million.

16 In sum, Your Honor, ICI will not be able to carry its
17 burden of proving that these 46 line items constitute existing
18 defaults under the ground lease, which is what Section 365
19 requires. They can't prove it with previously-issued notices
20 of default for these conditions. You'll hear there are none.
21 They can't prove it with Plante Moran, who is not here and
22 whose report is not in evidence. They can't prove it with The
23 Building Consultant, who is not here and whose report is not
24 in evidence. And they can't prove it with Terracon, whom, as
25 you'll hear, they inexplicably appear not to have spoken with

1 for six months between inspection and final report, and with
2 whom they never once discussed the 46-line table.

3 Your Honor, it is simply not enough for ICI, Kong, and
4 counsel to cherry-pick at will items they think carry a big
5 price tag and slap them in a table, which I submit is what
6 you'll essentially hear -- what you'll hear essentially
7 happened here.

8 That is certainly not even in the ballpark of meeting
9 their burden, which, again, is to prove there is an existing
10 default of the ground lease.

11 Thank you.

12 THE COURT: Thank you very much, Ms. Musgrave.

13 Ms. Walker?

14 OPENING STATEMENT ON BEHALF OF BAY 9 HOLDINGS, LLC

15 MS. WALKER: Your Honor, Adrienne Walker for Bay 9
16 Holdings.

17 And Your Honor, thank you for permitting Bay 9 to have a
18 limited role in this property condition hearing. And while
19 our participation will certainly remain limited, it's also
20 critical, Your Honor, because if we're the successful buyer
21 your determination on the property conditions is going to have
22 a direct and immediate pecuniary impact on our client of the
23 condition of the property we're going to acquire.

24 This will also have a direct and immediate impact on our
25 proof of adequate assurance that would come at a later

1 hearing.

2 Your Honor, after Bay 9 -- and I've sat through now many,
3 many hours of depositions, and honestly, just participating at
4 the most limited level -- I sat there, and it actually
5 reminded me of my days in law school. And not the law school
6 classes, but actually the car I drove. My grandfather took
7 ill and allowed me to use his car. It was a beautiful luxury
8 car. And I had two months of it. And in some point -- well,
9 I had more than that -- but at two months in, I noticed a leak
10 on my driveway. Realized soon enough there was a leak in the
11 radiator.

12 And being a law student and tight on cash, what do I do?
13 I could either fix the radiator or I can put radiator fluid
14 in, kick the can down the road. So, being tight on cash,
15 that's exactly what I did. But it didn't mean that there
16 wasn't a hole in the radiator. It didn't mean that if I
17 didn't repair the hole that the radiator eventually would
18 fail, which it did. Talking to my grandfather about this, he
19 said, why didn't you fix the radiator? He said, of course
20 you're going to fix the radiator, that's what a prudent person
21 would do. But I, being a little bit financially deficient,
22 didn't.

23 And that's exactly why we stood forward and submitted our
24 limited statement. The limited statement is on two items.
25 One, the roof; and two, the façade. And I think the evidence

1 that you're going to hear in the next two days is going to be
2 resoundingly that everybody knew there were major cracks in
3 the façade, and major cracks meaning all the experts and the
4 Debtor itself will tell you more than a quarter-inch. Stucco
5 has little spider cracks. You hear about those. But it's the
6 more significant cracks. And that it was profound of every
7 single building.

8 ARCH came and did an assessment as well as a forecast.
9 We're relying on that statement in our presentation. And
10 they're going to testify as to these cracks. And Your Honor,
11 I do think the uncontroverted evidence, both from the Debtor,
12 from Terracon, from their direct observations, from ARCH's
13 direct observations, was that for years they knew about this
14 façade problem. They put these amounts in their capital
15 expense budget. These were not wish list items. These were
16 needs.

17 And Your Honor, while a leaking façade may not impair the
18 life safety of the residents of The Edgemere, it's still a
19 defect that needs to be repaired, as any prudent owner would
20 do.

21 So we believe that the evidence would establish that, no
22 matter what, this façade issue needs to be repaired. It's a
23 defect today, just like the hole in my radiator was back in
24 law school. And Your Honor, we leave to the other parties the
25 proof on the other issues. We do take a position that the

1 roof -- and you'll hear uncontroverted evidence -- is fine.
2 The flat roof. So there are tile roofs at a pitch, and
3 there's a flat roof. And I think the Debtor has testimony
4 that we'll be presenting that the roof is in fine condition
5 for many years to come.

6 Thank you.

7 THE COURT: Thank you so much. All right. Does
8 anyone else wish to make any sort of opening statement?

9 Okay. Before we --

10 MR. JOHNSON: I apologize, Your Honor. Sorry about
11 that.

12 THE COURT: Oh, please. Mr. Johnson.

13 MR. JOHNSON: I was just deciding whether it was
14 worth it to add something, and I guess I'm going to take a
15 shot anyway.

16 OPENING STATEMENT ON BEHALF OF THE DEBTORS

17 MR. JOHNSON: Your Honor, just --

18 THE COURT: You can't be half-pregnant now. You're
19 at the podium.

20 (Laughter.)

21 MR. JOHNSON: Exactly. Now I've got to come up with
22 something to say.

23 So, no, Your Honor, just very briefly, from the Debtors'
24 perspective, Your Honor, we see this as another attempt by
25 ICI to desperately paint the sort of picture that all is not

1 well at The Edgemere. This is consistent with their very
2 first pleading in the case, where they said Edgemere's a
3 sinking ship, consistent with their pleadings that we are
4 going to run out of cash in August, we are going to run out
5 of cash in November, we are going to run out of cash in
6 December.

7 We think that the situation is quite the opposite, that
8 the Debtors have -- the Debtors have Lifespace, Your Honor.
9 And, again, much of this is managed at the Lifespace level.
10 But they are extremely good operators of senior living
11 communities. They operate 17-plus communities. This
12 community in particular, as you're well aware from the prior
13 testimony, is -- was called the Ritz Carlton of CCRCs. This
14 is one of the finest communities in the country, Your Honor.
15 It had some of the highest entrance fees associated with it
16 when it was going -- when it was operated as an entrance fee
17 community because it is such a nice facility.

18 We've gone through this before as part of the cash
19 collateral and adequate protection fights early on in the
20 case. The Debtors are incentivized. First of all, they're
21 incentivized with both carrots and sticks. They can't make
22 sales if they don't upkeep the property.

23 So, is it a very large piece of property? Yes. Are
24 there frequently problems with it? Yes. You're going to
25 hear that there's always a problem with stucco. There's

1 always going to be a crack in stucco from the moment you put
2 it up. If they seal all the cracks tomorrow, there'll be
3 cracks in the stucco in a few weeks.

4 So what the Debtors have attempted to do is manage these
5 issues -- obviously, with a priority on patient safety,
6 resident safety. That is priority number one. But number
7 two is working with what they have and what they can do
8 throughout this process.

9 And the sale process was going extremely well, coming out
10 of COVID, Your Honor. You heard testimony about that earlier
11 in these cases, about the forty-plus sales that happened
12 prior to the -- prior to ICI's engaging *Dallas Morning News*
13 and talking about The Edgemere.

14 So the community was well maintained. There were no
15 complaints from residents. I think the Committee counsel
16 said at a hearing just a couple weeks ago that they haven't
17 heard any complaints from residents about the quality of
18 that.

19 But I think in light of when -- this all comes down to,
20 when you evaluate the legal standard, and particularly this
21 issue with respect to the default, Your Honor, the lease
22 contains very typical provisions that you would find in any
23 lease. This is also a ground lease. So, you know, the
24 building itself was not built by the Landlord. This is not
25 the Debtors managing the Landlord's property. This is the

1 Debtor managing the property that it built. It contains very
2 common provisions about maintaining it in good quality and
3 handing it over in good quality when the time comes, Your
4 Honor.

5 But that's sort of what's important here, is that when
6 you look at what the Landlord's interest is in the current
7 entity that is Edgemere, and what that interest is is a
8 reversionary interest in receiving a property that is in
9 fairly good condition in 30-plus years.

10 So we're spending a lot of time and money, we have spent
11 an awful lot of time and money -- I'm sure the bills from
12 this are going to be fairly large when they all come through
13 in terms of what we're doing here -- but respectfully, Your
14 Honor, I think we're chasing a ghost, a ghost that has been
15 created by ICI.

16 There were no issues regarding the property's
17 maintenance. There were no major catastrophic issues. There
18 are regulators that review the community. It is a five-star
19 Medicare facility. It is inspected by the City of Dallas as
20 to all the physical plant and those sort of issues. There's
21 multiple layers of people that serve as check-and-balances on
22 this.

23 And Your Honor, we're going to establish today and
24 tomorrow that The Edgemere and the Debtors have maintained
25 the property in the fashion that the residents are accustomed

1 to, to both keep them safe and to protect the investment.

2 Thank you, Your Honor.

3 THE COURT: Thank you very much, Mr. Johnson.

4 Okay. Again, before we talk about beginning our evidence,
5 I just wanted to state for the record what may be obvious to
6 everyone else. But I have had an opportunity to read your
7 briefs very thoroughly. But also, to the extent that it
8 assists with the efficiency of going through the witnesses,
9 prior to taking the bench, you wouldn't be surprised to find
10 out I was a bankruptcy lawyer, but you might be surprised to
11 find out that my side hustle was construction litigation.

12 (Laughter.)

13 THE COURT: And so I am extremely familiar with
14 construction terms. And so to the extent that you're taking
15 the parties and your witnesses and your experts through the
16 definitions of various construction terms, you're not doing it
17 for the Court's benefit. I was able to get through your
18 briefs and your reports without a lot of difficulty. If I
19 have any questions, if I don't understand a particular
20 construction term, I will stop and get a definition or a
21 better understanding.

22 But I just wanted to let you know, for the Court's
23 benefit, you can power through with construction terms. But
24 obviously, for anyone else's benefit, whether it be defining
25 something for the witness itself, to keep them focused, for

1 any other purposes, feel free to make your presentation as you
2 wish. But I just wanted to let you know that for efficiency
3 purposes.

4 I think that's it. So it's almost 11:15. How do we want
5 to proceed in terms of beginning with evidence? Ms.
6 Vandesteeg?

7 MS. VANDESTEEG: Thank you, Your Honor. Unless the
8 Court otherwise has a preference, I think it's time to stop
9 with the argument and put on some evidence.

10 THE COURT: All righty. Ms. Musgrave, anything
11 further?

12 MS. MUSGRAVE: No. That works for me. Thank you,
13 Your Honor.

14 THE COURT: Okay. Ready when you are.

15 MS. VANDESTEEG: Thank you, Your Honor. We'd like to
16 call our first witness, Mr. Nick Hannon.

17 THE COURT: All right. Mr. Hannon, if you can
18 approach the witness box.

19 Do we have exhibit binders ready for the witness?

20 MS. VANDESTEEG: I am checking right now, Your Honor.

21 THE COURT: Okay.

22 MS. VANDESTEEG: I believe that we did -- I believe
23 that we have provided the three binders to the Court, and I
24 believe we've got the extra for the witness right here.

25 THE COURT: Okay. Excellent.

1 MS. VANDESTEEG: May I approach the witness?

2 THE COURT: Please.

3 (Pause.)

4 THE COURT: All righty. Mr. Hannon, if you could
5 raise your right hand for me.

6 (The witness is sworn.)

7 THE COURT: Thank you very much. Please be seated.

8 MS. VANDESTEEG: Your Honor, before we turn to the
9 witness, for housekeeping purposes with respect to the binders
10 that ICI has provided, there was both a hard-copy black binder
11 as well as a softbound smaller binder. We had previously
12 segregated those binders between those that were not
13 confidential and filed under seal and those that were. I
14 believe that, with the exception of the ARCH report, we have
15 now determined that all of them are now designated as not
16 confidential and able to be used. But that is why there are
17 two separate binders that we may need to work through. The
18 numbers will stay the same. We just may need to toggle
19 between the two binders.

20 THE COURT: Right. And that's fine. So, as I
21 understand it, the only one that may remain confidential is
22 ARCH, correct?

23 MS. VANDESTEEG: Correct. And that is what has been
24 marked as ICI's Exhibit 2.

25 THE COURT: And with respect to that, we did get one

Hannon - Direct

77

1 message from the United States Trustee's Office. Has Ms.
2 Lambert been provided with the confidential exhibits? She's
3 not here.

4 MS. VANDESTEEG: It is my understanding that she has
5 not been, Your Honor.

6 THE COURT: Okay.

7 MS. VANDESTEEG: Subject, again, to the
8 acknowledgement that the UST has statutory authorities to
9 receive and treat information that has been protected by
10 protective order, we could forward those --

11 THE COURT: I would appreciate that.

12 MS. VANDESTEEG: -- sealed exhibits to her.

13 THE COURT: I would appreciate that, especially since
14 we've unsealed 5 through 7. So if someone could email her
15 those, I'd appreciate that.

16 MS. VANDESTEEG: We will take care of that
17 immediately. Thank you, Your Honor.

18 NICHOLAS PAUL HANNON, INTERCITY INVESTMENT PROPERTIES, INC.'S

19 WITNESS, SWORN

20 DIRECT EXAMINATION

21 BY MS. VANDESTEEG:

22 Q Mr. Hannon, could you please state and spell your name for
23 the record?

24 A Yes. Nicholas Paul Hannon. Closer?

25 Q Make sure also that you're close enough to the microphone

Hannon - Direct

78

1 so it can take up all of your testimony, okay?

2 A Yes. Nicholas Paul Hannon.

3 Q Thank you. Mr. Hannon, have you ever testified in court
4 before?

5 A No.

6 Q Thank you for being here today.

7 A You're welcome.

8 Q Mr. Hannon, who are you employed by?

9 A Intercity Investment Properties, Inc.

10 Q What is your job title with Intercity?

11 A I'm executive vice president.

12 Q And if I refer to Intercity Investment Properties, Inc. as
13 either Intercity or ICI, you'll know who I'm talking about,
14 right?

15 A Yes.

16 Q Thanks. Mr. Hannon, what is your highest level of
17 education?

18 A A bachelor's degree.

19 Q In what?

20 A Journalism and business law.

21 Q Do you have any other --

22 A A long, long time ago.

23 Q Sorry for interrupting. I will do my best not to do that.
24 Mr. Hannon, do you have any other industry or specialty
25 certificates?

Hannon - Direct

79

1 A Certificates, yes. I have a certificate of real estate
2 investments from the University of California, Irvine. I've
3 also in the past been a licensed real estate broker in
4 California, Arizona, Utah, Nevada, and Georgia.

5 Q I hate to ask, Mr. Hannon, but how long have you been in
6 the real estate industry?

7 A Let's see. I developed my first real estate property in
8 1974, so I guess that would be a good start point. Almost 50
9 years. Is that math right? I think it is.

10 Q How long have you been with ICI?

11 A Over ten years.

12 Q What are your responsibilities at ICI?

13 A I have overall responsibility for the company at large. I
14 focus on different things as need be.

15 Q What is ICI's business?

16 A ICI is a family office company that manages its own real
17 estate portfolio. A multi-generational family here in Texas.

18 Q Do your responsibilities extend to the real estate
19 investments, to the real estate holdings?

20 A Yes.

21 Q What are your responsibilities with respect to the real
22 estate?

23 A Well, again, overall, everything about them. We're
24 stewards of a number of properties that we collect rents from
25 and do different things, depending on our obligations under

1 the individual leases.

2 Q Do your responsibilities extend to oversight over property
3 condition?

4 A In situations where the leasehold calls for that, yes.
5 Sometimes it's a hybrid, a little bit -- certain conditions
6 are landlord's and certain conditions are tenant. It depends
7 on what the lease says.

8 Q Does ICI take on maintenance obligations with respect to
9 any of its real estate holdings?

10 A Yes.

11 Q Under what circumstances?

12 A Again, driven back to leasehold obligations where there's
13 been a contract struck, a bargain has been made as to which
14 party will meet what obligations. And that varies with
15 different holdings.

16 Q Does ICI have a specific division or entity within the
17 company that is responsible for property management? Sorry.
18 Property maintenance?

19 A Yes. We --

20 Q Tell us about that.

21 A We have a group called Intercity Maintenance we've had for
22 years. Example, we have master plumbers, certified air
23 conditioning experts. We have our own fleet of vehicles, our
24 own building. We maintain spare parts and equipment,
25 especially in the area of air conditioning, where we're -- we

Hannon - Direct

81

1 know that R-22 is being taken off the table as a lawful thing.

2 Q What's R-22?

3 A R-22 is a refrigerant used in the older air conditioners
4 that the Government has regulated, saying that they can no
5 longer make it because of its effect on greenhouse gases.

6 Q Let's go back to the overall ICI maintenance arm.

7 A Sure.

8 Q Are you involved in that ICI maintenance part of ICI?

9 A Yes, I am.

10 Q What is your role?

11 A Well, they report to myself and one other party.

12 Q Who's that?

13 A Chris Jordan.

14 Q And what is Mr. Jordan's role with ICI?

15 A He's the president.

16 Q Approximately how many properties does ICI own?

17 A Approximately 25.

18 Q Is ICI responsible for property condition maintenance at
19 all approximately 125 of those properties?

20 A No.

21 Q Why not?

22 A The terms of the lease that were entered into with that
23 particular tenant.

24 Q Let's talk briefly about the different types of leases
25 that ICI may have over those different 25 properties. What

Hannon - Direct

82

1 are the different types of leases that may be in play over
2 those 25 properties?

3 A Well, at the highest level, depending on the product type,
4 if it's an office lease, it could be that all outside-of-suite
5 issues are landlord's responsibility to care for, and in some
6 cases can bill back to the tenant, including janitorial. And
7 in some cases, it's a hybrid where certain responsibilities
8 are the tenant's.

9 In the retail world, the shopping centers that we own,
10 it's much more limited. We have typically, depending on the
11 individual lease, our responsibilities are typically limited
12 to structural issues and roof. All others are the burden of
13 the tenant, sometimes individually and sometimes through a
14 bill-back process.

15 Other leases are called absolute net leases. We have
16 leased a couple of those, one with a CVS drugstore in it,
17 another one with a Lowe's Building Supplies, where the
18 landlord has transferred in the bargain that all obligations
19 to take care of the property are with the tenant, including
20 paying taxes, keeping appropriate insurance, naming us
21 insured, all the building envelope, all the improvements,
22 everything. We basically just collect a check on those sorts
23 of leases.

24 Then there's another lease, which is called a ground
25 lease. And a ground lease is really, from a functioning point

Hannon - Direct

83

1 of view, much like the absolute net lease. All obligations to
2 maintain the property are transferred to the tenant for the
3 use of the ground, and therefore we don't get involved with
4 those kinds of ground leases. We have several of those. It
5 -- that also includes, in most ground leases, and certainly in
6 our ground lease, ground leases, that the improvements are
7 indeed not a reversionary right, that those are our
8 improvements.

9 In our -- the legal opinions we've received and is widely
10 held in the industry is that once those improvements are
11 built, right down to the trees planted, they become fixed and
12 become a landlord-owned property. So it's not a reversionary
13 interest. We own The Edgemere's improvements.

14 Q It's a great way to turn specifically to The Edgemere.

15 A Sure.

16 Q Are you familiar -- and when I talk about Edgemere, let's
17 pause on that for a moment. Are you familiar with the lease
18 between ICI and The Edgemere?

19 A Yes.

20 Q I'm going to ask that you turn to what we have marked as
21 Landlord Exhibit 1A.

22 A In this thick book?

23 Q That should be in the big black binder.

24 A 1A. I'm there.

25 Q Do you recognize this document?

Hannon - Direct

84

1 A I do.

2 Q What is it?

3 A It appears to be a ground lease between Intercity
4 Investment Properties, Inc. and Northwest Senior Housing
5 Corporation.

6 Q Northwest Senior Housing Corporation?

7 A Yes.

8 Q And if I refer to that as Edgemere, are we on the same
9 page?

10 A Yes.

11 Q To your knowledge, when was this ground lease entered
12 into?

13 A To my knowledge, it would have been around 1999. I wasn't
14 with the company.

15 Q How did you become aware of the existence of this lease?

16 A Well, it's always been in my purview of responsibilities.
17 It's just been a passive investment. So it would have been
18 ten years ago, plus.

19 Q Are there specific provisions of this lease that you
20 believe are relevant to today's hearing?

21 MS. MUSGRAVE: I'm going to object, Your Honor. I
22 think we've veered into calling for something of a legal
23 conclusion. Perhaps Ms. Vandesteege could be more precise
24 about what she's asking the witness to do with respect to the
25 ground lease.

Hannon - Direct

85

1 THE COURT: Ms. Vandesteeg?

2 MS. VANDESTEEG: Your Honor, he is the representative
3 of the Landlord. He is familiar with the terms of the lease.
4 He knows why we are here at the hearing. And I'm asking him
5 if there are specific provisions of this lease that he
6 believes are relevant for the purposes of today's hearing in
7 terms of his testimony regarding the requirements under
8 Section 5.6, 5.7, 5.8., 5.9 with respect to the Debtors'
9 obligations to repair, maintain, make certain that these
10 things are in good and safe order.

11 THE COURT: I think you've hit upon her objection.
12 For efficiency purposes, why don't you direct him to the
13 sections, and then if he has anything to add, if we miss any,
14 you can maybe ask the follow-up.

15 MS. VANDESTEEG: Excellent.

16 MS. MUSGRAVE: Thank you, Your Honor.

17 BY MS. VANDESTEEG:

18 Q Mr. Hannon, could you please turn to Section 5.6? It's on
19 Page --

20 A Yes.

21 Q -- 8.

22 A I'm there.

23 Q Mr. Hannon, what does Section 5.6 of the lease provide?

24 A Improvements required by law. Would you like me to read
25 the rest of it?

Hannon - Direct

86

1 Q Why don't you read it to yourself and then provide us your
2 understanding as Landlord of what rights this grants to the
3 Landlord.

4 A Sure. (Pause.) Okay. It's my understanding of this that
5 this is the covenant where the Tenant promises at its own
6 expense to make, build, maintain, repair all the fences,
7 sewers, drains, roads, curbs, sidewalks, parking areas, which
8 are areas largely known as infrastructure, that are required
9 by law, and that they will maintain and repair them on or the
10 public property adjoining them.

11 There's also a clause at the end that appears to be
12 something that was written between the parties with respect to
13 an alley that got abandoned and some land that was joined to
14 the site.

15 Q Thank you, Mr. Hannon. Please take a look at 5.7 and give
16 us your same summary of what you believe the Landlord's rights
17 are under this Section 5.7.

18 A May I have a minute to read it?

19 Q Please do.

20 A Thanks. (Pause.) Yes. This is a section that we in the
21 industry would just call a government client -- compliance
22 paragraph. Whatever the government that has some governance
23 over you, we want you to always build the improvements in
24 compliance, and that's what I view this section as.

25 Q Moving onto Section 5.8, Mr. Hannon, please take a moment

Hannon - Direct

87

1 to review and give us your view of what rights this grants the
2 Landlord and what obligations it imposes on the Tenant.

3 A Yes, I don't need as much time on this section. Do you
4 want me to read it or just explain what I think it is?

5 Q Explain, please.

6 A Okay. This is the covenant to repair, maintain, and
7 restore the improvements, our improvements, in good, safe,
8 working order, and reparations as needed.

9 Q You said our improvements. What do you mean by our
10 improvements?

11 A The improvements built on the property. The buildings,
12 the parking structure, the landscape, the trees, sidewalks.
13 Those are real property owned by Intercity, in my opinion,
14 with Edgemere having a leasehold interest for the next 32
15 years. It's what I think.

16 Q Mr. Hannon, with respect to Section 5.9, please also
17 review that and let us know what you believe this grants in
18 terms of rights to the Landlord and obligations to the Tenant.

19 A Yes. 5.9 is inspection. And when necessary, with some
20 notice, we have the right to enter the premise with ourselves
21 and/or experts to determine if there's compliance with the
22 state of repair and the condition of the premises. Very
23 common in virtually every lease we have.

24 Q Mr. Hannon, do you know if there's any provision in this
25 lease that grants ICI the right to enter onto the premises and

Hannon - Direct

88

1 conduct any repairs or construction to the property during the
2 duration of the lease?

3 A Not to my knowledge.

4 Q Mr. Hannon, what kind of a facility to your knowledge is
5 The Edgemere?

6 A A senior living center.

7 Q Do you know where in the market The Edgemere sits in terms
8 of quality of senior living?

9 A I do now. I didn't a year ago.

10 Q What do you know now?

11 A It's my understanding that this is a market -- at the top
12 of the market. People keep using the analogy of a Ritz
13 Carlton and that it's a beautiful property with the most
14 discerning of residents.

15 Q Could you describe your understanding and experience of
16 the relationship between ICI and Edgemere over the life of the
17 lease so far?

18 A Could you restate that? I'm sorry. I don't fully
19 understand the question.

20 Q Sure. Let's say for the first 15 years of the lease, what
21 was the nature of the relationship? How was the relationship
22 between ICI and Edgemere?

23 A Well, I've only been with the company for ten years, so
24 during my ten years' time it's been one of a -- we've been a
25 passive investor, per the design, that the -- you know, we get

Hannon - Direct

89

1 a check wired into our account every month. Or used to.

2 And the only other interventions I've had with them prior
3 to 2015 was when their insurance certificates weren't received
4 to prove that they continued to carry the insurance as
5 required under the lease.

6 In about 2015-2016, they undertook to expand the premises,
7 and they asked for some documents for us to help support
8 getting the money they needed from the bond people to expand
9 the premises and do several other things. They did several
10 expansions. And so during that time I was involved with them.
11 Up until that time, I'd never been on the property.

12 Q Were you on the property in that 2015 time when the
13 expansions were happening?

14 A Actually, not. Others may have been, but I wasn't. The
15 first time I was on the property was the first time I went on
16 a guided tour after this -- after the Tenant quit paying rent.

17 Q We'll come back to that.

18 A Okay.

19 Q Let's take it one step at a time.

20 A Sure.

21 Q So, what about after that 2015 through I think you said it
22 was maybe 2017 expansion time? How were things between ICI
23 and Edgemere then after that time?

24 A Just great.

25 Q Was there a time at which that changed?

Hannon - Direct

90

1 A Yes.

2 Q When was that?

3 A From my own firsthand experience, it was September of
4 2021, although I understand phone calls had been made into our
5 company -- I wasn't present at those calls -- before that.

6 Q So, to your personal knowledge, what happened in September
7 of 2021?

8 A The Tenant stopped paying rent.

9 Q How did ICI respond to that?

10 A At that time, I think we engaged a law firm and tried to
11 determine what our rights were. We were -- it came right out
12 of left field for us. We had no idea that up until -- at
13 least I had no idea personally until September when the rent
14 didn't come in. Of 2021.

15 Q Did that rent payment default trigger any other concerns
16 at ICI?

17 A Yes. It's been our experience, because we have hundreds
18 of tenants, hundreds of tenants, if we -- when one -- a tenant
19 fails to pay rent, it suggests some sort of duress. Certainly
20 financial duress. And that's a call to arms.

21 Q Why is that a call to arms?

22 A Well, we've given someone a possessory right under their
23 leasehold to sit on our property. And so there's a number of
24 promises that the parties make in these leases, and if they
25 don't do the fundamental one of paying rent, what else is a

1 problem?

2 Q In your experience, generally speaking, what else might be
3 a problem?

4 A There is almost always another problem. You end up with
5 different things. Typically, if there -- if the tenant who is
6 not paying rent is struggling not to pay rent, he or she may
7 not be funding other obligations under the lease. By way of
8 example, keeping their insurance certificate up to date, doing
9 improvements to code and complying with the Texas Department
10 of Licensing and Registration, with ADA, giving access to
11 people who are disabled. These are all compliance things that
12 must be done.

13 That turned out to be actually what happened. We got a
14 notice from the State of Texas about -- that they failed to
15 have the paperwork showing the compliance on their expansion
16 space, creating spaces that were functional for disabled
17 people.

18 Q We'll come back to that as well.

19 A Sure.

20 Q Right now let's just talk still a little bit more
21 generally --

22 A Okay.

23 Q -- in your experience. So, again, more generally, before
24 we turn specifically to The Edgemere, --

25 A All right.

Hannon - Direct

92

1 Q -- what steps does ICI take with respect to tenants who
2 have stopped paying rent? What would next steps be?

3 A Well, the first thing would be to find out -- to try to
4 speak with the tenant. And in this case, we had the Tenant
5 been speaking to us, just not directly to me. And so we find
6 out what's going on. Is their business under stress? Have
7 they gotten overleveraged, borrowed too much money? Have they
8 -- has the world -- the business world changed for them? All
9 kinds of tenants fail, and so you just have to understand
10 their world.

11 Q Let's turn specifically back to Edgemere.

12 A Okay.

13 Q What were the next steps that ICI took after Edgemere
14 defaulted on its rent payment in September of 2021?

15 A Well, specifically, I couldn't tell you as I stand here.
16 We retained a law firm and we began giving them notices as
17 guided under the lease and by our counsel to try to get them
18 back on board and in compliance.

19 Q Did ICI seek information from Edgemere after the rent
20 payment default?

21 A Let me think about that. I would assume so, but I
22 couldn't point to a specific conversation.

23 Yes, that would be exactly what we would always do. We'd
24 call them up and say, What's going on?

25 Q To the best of your recollection, did you have those

Hannon - Direct

93

1 conversations with representatives of Edgemere, seeking
2 information about what's going on?

3 A Yeah, but I couldn't speak to a specific call.

4 Q We can speak to generalities.

5 A Yeah.

6 Q Do you recall, then, what the nature of the conversations
7 were generally and what the nature of the information sought
8 generally was after ICI defaulted on its rent payments?

9 A After ICI?

10 Q I'm sorry, after Edgemere defaulted on its rent payment to
11 ICI. Thank you.

12 A Yes. Let the record show that it was not ICI. Edgemere
13 -- yes. The discussion was, What's going on? And at that
14 time -- do you want me to expand on that, or does that --

15 Q Yes.

16 A -- cover it?

17 So, Edgemere at that time had a different law firm and a
18 different lawyer, and that lawyer's dealings with us had been
19 unusual. Normally, when a tenant can't make rent, we --
20 there's a certain pattern. You know, how do we work together?
21 The stories start going on, and we peel back the onion. In
22 this case, the attorneys and the Tenant came at us a little
23 differently.

24 Q How so?

25 A Well, allegations and -- that were made that would

Hannon - Direct

94

1 normally not be made by a tenant who was blatantly in default,
2 such as the lease was illegal and they were in touch with the
3 Attorney General's Office and that we're really in trouble for
4 entering into this lease.

5 Q At some point, did you receive any financial information
6 from Edgemere?

7 A We did at some point.

8 Q Do you recall what types of financial information you
9 received from Edgemere after the rent payment default?

10 A Yes. I think I'm accurate about this. At our attorney's
11 recommendation, and in order to get a look at our own tenant's
12 financials, we were basically, in my perspective, bullied into
13 signing a non-disturbance -- a nondisclosure agreement, excuse
14 me, so we could see the financials of our tenant.

15 Q Subsequent to entering into that nondisclosure agreement,
16 did ICI receive additional information from Edgemere?

17 A Yes. We received a report. Can I name the report here?
18 I can't keep straight what's confidential.

19 Q I believe that for purposes of the hearing today, yes, you
20 may reference the report that has now been designated as not
21 confidential. However, --

22 A Okay.

23 MS. VANDESTEEG: Your Honor, one --

24 BY MS. VANDESTEEG:

25 Q With respect to the use now -- and Mr. Hannon, why don't

Hannon - Direct

95

1 you first tell us what report it is that we're going -- that
2 you're going to be telling us about?

3 A FTI report.

4 Q Okay. Thank you.

5 A That's what were -- one of the things we were supplied.

6 MS. VANDESTEEG: So, this report is what has been
7 marked as ICI and admitted as ICI Exhibit 3. We had simply
8 included slip sheets with the binders that had been circulated
9 and provided to the Court. We do have copies to be included
10 now within the binders, as this document has now been
11 admitted.

12 May I approach the witness and the bench?

13 THE COURT: Yes.

14 THE WITNESS: Thank you.

15 MR. JOHNSON: Pardon me. May we see that?

16 MS. VANDESTEEG: Yes, of course.

17 MR. JOHNSON: Thank you. Is this the redacted
18 version --

19 MS. VANDESTEEG: Yes.

20 MR. JOHNSON: -- that we had agreed? Thank you.

21 (Discussion.)

22 MS. VANDESTEEG: Your Honor, before we make use of
23 this exhibit, as Your Honor may recall, there was a minute
24 order entered in connection with the use of this exhibit at
25 Docket Number 1073.

Hannon - Direct

96

1 THE COURT: I do.

2 MS. VANDESTEEG: Your Honor, the only clarification
3 that we would seek from the Court, as this redacted version of
4 this exhibit has now been admitted and designated not
5 confidential for purposes of this hearing, is an
6 acknowledgement that this use of this redacted version is
7 indeed a permitted use under the applicable nondisclosure
8 agreement.

9 THE COURT: Okay. Would the Debtor so stipulate, Mr.
10 Johnson, or do you need the Court to rule?

11 MR. JOHNSON: I apologize, Your Honor. I was
12 actually looking at the report.

13 THE COURT: Okay.

14 MR. JOHNSON: So is it -- I believe the minute entry
15 did not address whether or not this was a permitted use or
16 not. Did it?

17 THE COURT: It did not.

18 MS. VANDESTEEG: Correct.

19 THE COURT: I think that --

20 MR. JOHNSON: So I don't think -- so we're not
21 stipulating at all that this is a permitted use --

22 THE COURT: Okay.

23 MR. JOHNSON: -- of the report. We did agree that
24 the redacted version of the report could be used, but we're
25 not agreeing -- but I think we were arguing two different

Hannon - Direct

97

1 things in our letter briefs, as Your Honor probably saw, on
2 the permitted use side. We didn't address that and aren't
3 taking a position on it.

4 THE COURT: Okay. So, Ms. Vandesteeg?

5 MS. VANDESTEEG: Your Honor, we find ourselves again
6 in a bit of an unenviable and somewhat confusing catch 22,
7 where at the same time that this redacted version of the
8 exhibit has been admitted for use and counsel for the Debtors
9 has, for purposes of this hearing, this public hearing,
10 stipulated that this information is not confidential and yet
11 still appears to be trying to reserve the right to weaponize
12 this against ICI in connection with the pending adversary
13 proceeding or otherwise.

14 That's our concern, Your Honor, which is why we're looking
15 for clarification that, for the limited purpose of using this
16 redacted version in connection with this hearing over the
17 course of today and tomorrow, that this is, in fact, a
18 permitted use under the NDA.

19 THE COURT: Okay. Thank you very much, Ms.
20 Vandesteeg.

21 Ms. Musgrave?

22 MS. MUSGRAVE: So, my concern is a little bit
23 different, --

24 THE COURT: Okay.

25 MS. MUSGRAVE: -- although it does relate to this

Hannon - Direct

98

1 document, which is that I would object to the use of the
2 document with this witness as to whom no foundation has been
3 laid that this witness can talk about this document. We
4 haven't heard, for example, yet from any of the Debtor's
5 witnesses who would explain what it is and what it was
6 prepared for.

7 So my objection was more foundational and relevance at
8 this point in time, which I think is different than what Ms.
9 Vandesteeg is saying.

10 THE COURT: Okay. So, but before we get to that, Mr.
11 Johnson, anything further on permitted use?

12 MR. JOHNSON: Nothing further, Your Honor. I don't
13 think there's any intent to try and weaponize it one way or
14 the other. I just think that we hadn't -- we hadn't
15 stipulated that it was a permitted use or not permitted use.
16 We have reserved our rights in the adversary, and we want
17 those rights to stay reserved. But we understand the purpose
18 of --

19 THE COURT: Okay. Thank you very much, Mr. Johnson.

20 So, before getting to Ms. Musgrave's objection, to the
21 extent that this requires a court ruling, I had not ruled as
22 part of my minute entry but I will so rule today that the use
23 of this small, redacted portion of the FTI Consulting report
24 dated November 24, 2021 will be deemed by this Court to be a
25 permitted use pursuant to the NDA. I am going to allow for

Hannon - Direct

99

1 all parties to reserve their rights as they pertain to the
2 adversary proceeding itself.

3 And of course, this is only the Court's two cents on the
4 subject, but as the Court understands the better part of the
5 adversary proceeding, it was about documents and information
6 that were used prepetition. So this use of the FTI report,
7 from the Court's perspective, shouldn't bear on the adversary
8 proceeding allegations, nor the defense of those by ICI.

9 But for purposes of this hearing and the broader portion
10 of the cure/adequate assurance/pecuniary loss, the Court will
11 allow the use of this particular report to be a permitted use
12 under the NDA.

13 Now, to Ms. Musgrave's point, Ms. Vandesteeg?

14 MS. VANDESTEEG: Thank you, Your Honor, for that
15 clarification.

16 THE COURT: So her objection is foundational with
17 this witness as to the use of the report.

18 MS. VANDESTEEG: Correct, Your Honor, and I'd like to
19 spend a moment with the witness to be able to develop that
20 foundation.

21 THE COURT: Okay.

22 MS. MUSGRAVE: I'll reserve and stand back up.

23 THE COURT: Okay.

24 MS. MUSGRAVE: Thank you.

25 THE COURT: Thank you.

Hannon - Direct

100

- 1 BY MS. VANDESTEEG:
- 2 Q Mr. Hannon, --
- 3 A Yes.
- 4 Q -- let's go back to where we were.
- 5 A Certainly.
- 6 Q You had testified that you received an FTI report.
- 7 A Correct.
- 8 Q Looking now at what has been marked and admitted as ICI
- 9 Exhibit 3, take a moment to review that exhibit, please.
- 10 A Yes.
- 11 Q Do you recognize this document?
- 12 A Yes.
- 13 Q What do you recognize it to be?
- 14 A This -- my understanding is this is a -- capital
- 15 expenditures for The Edgemere project with -- primarily
- 16 provided by Edgemere.
- 17 Q Is this the first time you're seeing this document?
- 18 A That I'm looking at now?
- 19 Q Correct.
- 20 A No.
- 21 Q When did you first see this document?
- 22 A It would have been something after probably November/
- 23 December of 2021.
- 24 Q How did you first receive this document?
- 25 A It was part of the -- we were in the process of learning

Hannon - Direct

101

1 about what we were into at this point, having no experience of
2 this scale, as to the Tenant indicating to us that they did
3 not have the money to meet their obligations and they were
4 circling for a bankruptcy, in lay terms. And therefore we
5 asked to see the information about what was going on
6 underneath the hood, to use a metaphor.

7 Q You mentioned Tenant. That's Edgemere, again?

8 A Edgemere, uh-huh. Sorry.

9 Q Did Edgemere or one of its representatives provide this
10 document to ICI?

11 A Yes.

12 Q Did you then subsequently have conversations with Edgemere
13 or its representatives about this document?

14 A I'm sure we did, but I don't recall specifically.

15 Q In looking at what has been marked as Exhibit 3, is this a
16 full copy of the document that ICI received from Edgemere?

17 A No.

18 Q What does it appear to be?

19 A It appears to be substantially redacted or hidden from the
20 daylight of information.

21 MS. MUSGRAVE: Your Honor, I would object and move to
22 strike the hidden-from-the-daylight comment.

23 MS. VANDESTEEG: I mean, --

24 THE COURT: Objection sustained. It's redacted.

25 BY MS. VANDESTEEG:

Hannon - Direct

102

1 Q Mr. Hannon, for those --

2 A Yes.

3 Q -- portions of the report that remain unredacted, do
4 those, to the best of your recollection, appear to be true and
5 accurate copies from the report that you were provided by
6 Edgemere?

7 A They appear to be.

8 MS. VANDESTEEG: Your Honor, I think that we have met
9 foundational obligations in order for Mr. Hannon to be able to
10 testify now about his understanding, his recollections, and
11 how he interpreted and used this document.

12 MS. MUSGRAVE: Your Honor, I'm going to re-raise my
13 previous objection. What we've heard now is that Mr. Hannon
14 received this document, but he actually just testified that,
15 although he may have had conversations with Edgemere about it,
16 he can't recall those conversations. There's no testimony
17 that he was in any way involved in preparing it, in reviewing
18 it, or in determining what might have been included in it. So
19 I think the foundation has not be laid with respect to this
20 witness and this document.

21 THE COURT: Ms. Vandesteeg?

22 MS. VANDESTEEG: Your Honor, this document is an
23 opposing party statement. This is a document that was
24 prepared by Edgemere or its representative, provided to Mr.
25 Hannon, provided to ICI, in order for ICI to engage in these

Hannon - Direct

103

1 conversations with respect to potential discussions and a
2 potential restructuring.

3 These are the company's very own words provided to others
4 about certain of the company's projected needs as of August
5 2021.

6 Your Honor, I'm not -- I don't think this is hearsay in
7 the first instance under those standards. But even if it is,
8 we're not looking for the truth of the matter of what these
9 specific items might cost for repair. These are conditions
10 and projects that the Debtor has stated it identified in some
11 form had a capital need over the course of some period of
12 time, and it's presenting these again externally to others for
13 consideration and for putting into place with respect to their
14 own planning purposes.

15 THE COURT: Thank you, Ms. Vandesteeg. Ms. Musgrave?

16 MS. MUSGRAVE: Thank you, Your Honor. My objection
17 actually wasn't hearsay; it's foundation. And there will be
18 witnesses, the 30(b)(6) witnesses from the Debtor who are here
19 today, and I think they might be able to lay a proper
20 foundation for this document, but I don't believe that this
21 witness can.

22 THE COURT: Ms. Vandesteeg?

23 MS. VANDESTEEG: Then, Your Honor, with respect to
24 foundation, we can reserve that for later. For purposes of
25 talking to Mr. Hannon today, it is about how ICI received this

1 information, how they interpreted it, what they did with it.
2 And then although he testified he cannot remember specific
3 conversations, I do believe that we are going to be able to
4 talk through some general things that were discussed with
5 Edgemere and its representatives with respect to certain of
6 these issues.

7 MS. MUSGRAVE: I'm not sure how we're going to be
8 able to talk through general things if he just said he doesn't
9 recall. But I would stand on the objection, which I think
10 this is more appropriately taken up with the Debtors, who,
11 again, are here today to testify about it.

12 MS. VANDESTEEG: Your Honor?

13 THE COURT: Yes. You have counsel coming.

14 MS. VANDESTEEG: I'm a little on my heels, because,
15 by agreement of the parties, what we had discussed with
16 respect to our witnesses is that we are going to be presenting
17 each witness -- for efficiency purposes, again, of this two-
18 day hearing -- for rebuttal, cross, redirect, release the
19 witness. So we were not looking to have a process whereby
20 we're going to be presenting different witnesses at different
21 periods of time. I thought that we were trying to avoid some
22 of this.

23 I do think that there will be every opportunity to
24 specifically lay foundation through both of the 30(b)(6)'s in
25 terms of who actually prepared these numbers, who prepared the

Hannon - Direct

105

1 conditions list, what that is based on. Again, I'm not
2 seeking for Mr. Hannon to provide the foundation. I'm seeking
3 to allow Mr. Hannon on behalf of ICI to testify as to what ICI
4 did in response to the document and the information that it
5 was provided by Edgemere.

6 THE COURT: Okay. Anything further, Ms. Musgrave?

7 MS. MUSGRAVE: No, that's it, Your Honor.

8 THE COURT: Okay. I'm going to give you a little bit
9 of leeway here, Ms. Vandesteeg. I do believe the witness
10 testified that he did receive them and he testified that he
11 doesn't recall the conversations himself. So I think the
12 question is either going to have to be, what did ICI do, and
13 he is the representative of ICI, but I think we're inching
14 into an inability of this witness to talk about the specifics
15 of this because it looks like perhaps others did that. So I'm
16 going to give you a little bit of leeway, but I'm going to
17 need you to ask him questions that hit to his personal
18 knowledge.

19 MS. VANDESTEEG: Your Honor, --

20 THE COURT: All righty?

21 MS. VANDESTEEG: Yes, Your Honor. And I think that
22 you're going to be fine with where we're going here.

23 THE COURT: All righty.

24 BY MS. VANDESTEEG:

25 Q So, again, to be clear, Mr. Hannon, ICI received Exhibit 3

Hannon - Direct

106

1 from The Edgemere or its representatives, correct?

2 A And this is Exhibit 3?

3 Q Yes.

4 A Yes.

5 Q What did you, Mr. Hannon, glean from this document that
6 you were provided by Edgemere?

7 A Glean?

8 Q What did it tell you?

9 A Well, a couple of things. I think the one that jumped off
10 the page was that, back in August of 2021, the company and
11 apparently their consultant thought that \$20 million needed to
12 be put into the property.

13 MS. MUSGRAVE: Your Honor, I'm going to renew my
14 objection. I think this is exactly the kind of testimony I
15 was concerned about, which is this isn't his document and he's
16 now describing not only the contents of it but what his
17 interpretation is of what it means. That's very different
18 than Your Honor's leeway for "What did you do with this
19 document?"

20 THE COURT: Thank you, Ms. Musgrave.

21 Ms. Vandesteeg?

22 MS. VANDESTEEG: He's describing his response, Your
23 Honor, ICI and Mr. Hannon's response to the document that was
24 provided to them by Edgemere.

25 We are not looking to say that this is the truth of the

Hannon - Direct

107

1 matter asserted. Again, this was a document that he has
2 testified was provided to him by Edgemere, and he is
3 testifying as to his reaction, to ICI's reaction to this
4 information provided by Edgemere.

5 THE COURT: So, with that objection, he is testifying
6 that he thought this was the company's -- this \$19 million
7 number was the company's needs for capital expenditures?
8 That's what he thought that it meant?

9 THE WITNESS: Correct.

10 BY MS. VANDESTEEG:

11 Q Mr. Hannon?

12 A Correct.

13 THE COURT: Ms. Musgrave?

14 MS. MUSGRAVE: I think it's the same objection, Your
15 Honor. This isn't so much what he did with the document or
16 what he thought next steps might be or any of the things that
17 would be appropriate for someone receiving a document. He's
18 purporting to interpret the numbers in it, which I think,
19 again, is more appropriate for the Debtors, who will be called
20 later today.

21 MS. VANDESTEEG: Your Honor, he's not interpreting.
22 He's reading the number on paper and explaining ICI's reaction
23 to it.

24 THE COURT: Again, I'm taking this for the limited
25 purpose of ICI's reaction. So, just in terms of an

Hannon - Direct

108

1 evidentiary objection, I'll just encourage the parties to
2 recognize that the Court does have the opportunity as the
3 trier of fact here to weigh the evidence of the different
4 parties and the weight given to each piece of evidence.

5 So I'm going to allow the witness to testify as to what he
6 finds important on the document itself. And then we'll hear
7 from the other parties as to what they think is important and
8 perhaps what they meant when they said it.

9 MS. VANDESTEEG: Thank you, Your Honor.

10 MS. MUSGRAVE: Thank you, Your Honor.

11 THE COURT: All righty.

12 BY MS. VANDESTEEG:

13 Q With that, Mr. Hannon, looking again at ICI's Exhibit 3,

14 --

15 A Yes.

16 Q -- what did you view as important from this document that
17 you were provided by Edgemere?

18 A I'm not sure how to answer that. Would you like me to
19 answer it by line item or category or --

20 Q Mr. Hannon, why don't we do this? When you received this
21 information --

22 A Uh-huh.

23 Q -- from Edgemere, were there specific things included in
24 this document that were particularly troubling or concerning
25 to ICI?

Hannon - Direct

109

1 A Yes.

2 Q Please describe those for us.

3 A Well, first of all, the sheer amount, not having any basis
4 for knowing if that amount was right.

5 The second thing that jumped out looking at this, not ever
6 having been on the site when I received this, was the building
7 envelope repair, having had a great deal of experience about
8 building envelope repairs.

9 Q Why would that be especially troubling to you?

10 A Besides the fact that it's \$5 million, that category, my
11 experience has been that, until you undertake that project,
12 you don't really know how much that is.

13 Q What is your experience with respect to building envelope
14 based on?

15 A All my years in the business, but more specifically, in
16 the last two or three years, I've been involved with two such
17 projects where the building envelope basically had failure.
18 And they were both properties of similar materials, build,
19 use, and nearby.

20 Q Aside from building envelope issues, were there any other
21 pieces of information contained within this document provided
22 to you by Edgemere that were especially troubling or
23 concerning?

24 A Especially troubling. Well, whenever you have life safety
25 issues -- let me look to see that's there. Exhaust fans in

Hannon - Direct

110

1 the garage that may or may not be removing the CO2 correctly
2 so people are breathing good air down there. Fire suppression
3 problems. And again, that's tied back to my experience. In
4 the last approximate ten years, the fire codes changed
5 dramatically, and with very little grandfathering allowed.
6 Very expensive to replace a controller or a fire pump. And
7 the fire code has changed at least two times since 2012.
8 Excuse me.

9 Q Was ICI aware of any of these listed issues prior to
10 receiving this FTI report?

11 A I was not.

12 Q Why not?

13 A We hadn't been advised by the Tenant that there were some
14 deficiencies.

15 Q Prior to receiving this report, had ICI conducted an
16 inspection of the property?

17 A Not during my tenure.

18 Q Why not?

19 A There was no requirement. We have plenty to do on the
20 properties where it's our responsibility.

21 Q After ICI received this information from The Edgemere in
22 Exhibit 3, what next?

23 A This was in fall of 2021, and at this time our lawyers
24 were navigating all interaction with The Edgemere and their
25 lawyers at the time. And at this time, the negotiations --

Hannon - Direct

111

1 you know, things move very fast in a world we as real estate
2 people are unfamiliar with -- that a forbearance agreement was
3 being discussed in a way to give The Edgemere an opportunity
4 to solve their problems.

5 Q To your knowledge, at some point was a forbearance
6 agreement executed?

7 A Finally, after many delays and seeing the drafts, we
8 finally got something in December, and it had some problems in
9 it.

10 Q What were the problems in it?

11 A Well, overarching, it failed to have some -- speak
12 articulately to our expectation of what a forbearance
13 agreement was, not being lawyers and not being experts in
14 bankruptcy. So we instructed our attorneys to add some
15 specific language here and there that got us more comfortable,
16 and on their advice, to give The Edgemere an opportunity to
17 save themselves, we proceeded.

18 Q I don't think we need to get too much farther into
19 forbearance for purposes of property condition, --

20 A Okay.

21 Q -- but at some point that forbearance agreement expired,
22 right?

23 A Correct.

24 Q So, after you received this information from The Edgemere
25 in Exhibit 3, what did ICI do next in connection with seeking

Hannon - Direct

112

1 further information with respect to the property condition?

2 A Well, we wanted to do an investigation --

3 THE COURT: Let me stop you, Mr. Hannon.

4 THE WITNESS: Yes.

5 THE COURT: I just want to get a good feel for the
6 time period. Are we --

7 THE WITNESS: Sure.

8 THE COURT: Are we now after the expiration of the
9 forbearance agreement, Ms. Vandesteeg?

10 MS. VANDESTEEG: Why don't we let Mr. Hannon answer?

11 THE COURT: Oh, okay. I just --

12 MS. VANDESTEEG: For purposes --

13 THE COURT: I thought that that's where you led to,
14 but I just want to make sure. Okay.

15 MS. VANDESTEEG: And it is, but let's let him testify
16 and --

17 THE COURT: Okay.

18 MS. VANDESTEEG: -- instead of me having to do --

19 THE COURT: All righty. Thank you.

20 MS. VANDESTEEG: -- instead of me doing it.

21 BY MS. VANDESTEEG:

22 Q So, I'm sorry, Mr. Hannon. Your -- with respect to the
23 property condition, you were saying that the next steps were?

24 A Well, once we were alerted that there had -- in our
25 opinion, from these words, that there was -- that the Tenant

Hannon - Direct

113

1 had not only failed to pay rent, but had likely, without
2 having any knowledge except for this paper, failed to meet
3 their commitments under at least 5.8 of the lease. So we
4 started pushing to get an investigation.

5 Q Thank you. Do you recall when the forbearance agreement
6 expired?

7 A I do.

8 Q When was that?

9 A The end of 2021. The last day of 2021.

10 Q Do you recall when it was that ICI started seeking an
11 inspection of the property?

12 A I'd have to see something to remind me.

13 Q Do you recall generally if it was before or after
14 expiration of the forbearance agreement?

15 A I would say generally it would have been before, but I
16 can't tell you exactly.

17 Q At some point, did -- were you, ICI, provided with an
18 opportunity to inspect the property?

19 A We were told that we would be allowed to inspect the
20 property. That's not what we got.

21 Q What did you get?

22 A We got controlled sales tours.

23 Q You said tours. Were there multiple of these tours?

24 A Yes.

25 Q Do you recall when the first tour was?

Hannon - Direct

114

1 A Not exactly.

2 Q Approximately?

3 A Approximately December of 2021. I wasn't on that tour.

4 Q Do you know, if -- if you weren't there, who was on that
5 tour?

6 A I have -- I know at least some of the people that were on
7 the tour.

8 Q Who, to your knowledge?

9 A It would have been our attorneys at the time and Chris
10 Jordan.

11 Q Was there another tour after that first tour that you
12 mentioned that you think was in December of 2021?

13 A Yes.

14 Q When was that next tour, to the best of your recollection?

15 A Roughly January of 2022, and I was on that tour.

16 Q So that we're all clear, then, the tour that you were on
17 was after the expiration of the forbearance agreement?

18 A Correct.

19 Q Why did you want to take that second tour of the property
20 in approximately January of 2022?

21 A I wanted to see for myself observable conditions that
22 would show me if Edgemere had undertaken responsibly their
23 requirements under 5.8 to take care of the property in safe
24 and good order.

25 Q How long were you on the property on that January 2022

Hannon - Direct

115

1 tour?

2 A Approximately an hour. It could have been up to two, but
3 closer to an hour.

4 Q Was it a guided or escorted tour? Were you with someone
5 from The Edgemere?

6 A Yes. We were. We were at all times with Edgemere people.

7 Q Do you recall who that person was, person or people who
8 were with you?

9 A I do not specifically in the first tour. My impression
10 was the gentleman had been with them a long time. He was
11 their head sales guy, and very enthusiastic. And quite
12 frankly, we were very impressed with the living situation and
13 the finishes and the carpet and the dining rooms and the
14 swimming pool. I'd never seen any of it. So the part that
15 you could see, that the residents could see, looked really --
16 it looked excellent.

17 Q Were there parts of the property that you were not allowed
18 to see on that January 2022 tour?

19 A I wouldn't say not allowed. We were guided. This is
20 where you're going to go. You know, we asked to see things
21 and we were -- I don't think we were shown anything that they
22 wouldn't have shown a resident.

23 We didn't see the fire riser room. We didn't see the
24 cooling towers. We didn't see the roof. We didn't look at
25 any of the structural supports. It was a sales tour. We went

Hannon - Direct

116

1 in -- and I can't remember which tour it was, the first or the
2 second tour that I was on. We saw only two living units, one
3 that had not been remodeled, and I think that was in memory
4 care, and then we saw one in IL that had been remodeled.
5 Looked beautiful.

6 Q While on your tour in January 2022, did you see any issues
7 that indicated any deferred maintenance or problems with the
8 property condition?

9 A We saw --

10 MS. MUSGRAVE: Your Honor, I'm going to object. I
11 don't know that a foundation has been laid for this witness as
12 an expert to talk about deferred maintenance or what other
13 issues there might be on the property.

14 THE COURT: Ms. Vandesteeg?

15 MS. VANDESTEEG: Your Honor, I am happy to do two
16 things. First, lay more of a foundation with respect to Mr.
17 Hannon's personal experience in connection with building
18 maintenance, repair, upkeep, and general property condition.
19 And also, Your Honor, we're going toward his personal
20 observations here, things he saw with his own eyes when on
21 property.

22 THE COURT: Okay. So I would like you to lay the
23 foundation. I don't know if we're still looking at Exhibit 3,
24 but at least this is the first time with this particular
25 witness we've spoken to deferred maintenance. So I do think

Hannon - Direct

117

1 you need to lay the foundation for where we're headed with
2 this particular witness.

3 MS. VANDESTEEG: Excellent.

4 THE COURT: Thank you.

5 MS. VANDESTEEG: Thank you.

6 BY MS. VANDESTEEG:

7 Q Mr. Hannon, I recall that you told us that ICI has a
8 division called ICI Maintenance which reports up to you. In
9 connection with your roles and responsibilities to ICI
10 generally, as well as in overseeing ICI Maintenance, what
11 experience do you have in connection with maintenance of a
12 building, identifying certain outstanding property conditions
13 that need to be addressed, and any specific areas of expertise
14 that you've addressed recently with respect to other ICI
15 properties?

16 A Well, the first part of your question was my
17 responsibilities?

18 Q Your responsibilities and also your direct experience.

19 A And only at Intercity or overall?

20 Q Over your entire -- I think you said it was nearly 50
21 years, but obviously --

22 A Right.

23 Q -- Intercity is the last ten, so that may be the most
24 recent.

25 A Yeah, I've been involved with procuring, building,

Hannon - Direct

118

1 operating, managing, and financing real estate held for
2 investment for all those years. And in the process, you learn
3 a lot about construction, just as many of us do. People who
4 have their own home understand these things. And so at
5 Intercity, with our Maintenance Division, which at one time
6 did work for other people besides us, often I was called in to
7 look with our experts. Engineers. We've often hired
8 engineers, master plumbers, air conditioning people,
9 structural people. We've had many, many cases where we have
10 to look for symptoms in order to correctly diagnose a problem.
11 Symptoms don't tell you the problem; they lead you to the next
12 step.

13 Q Tell us about your personal experience with respect to
14 working with the other professionals to help to observe and
15 identify certain symptoms.

16 A Well, there are some that are so common sense when you
17 think about it. If you see a discolored tile, that's liquid
18 that caused that discoloring. What was that source? Could be
19 a number of things. Liquid is not a good thing in a building.

20 One of the things I look at -- and by the way, this
21 particular building is pretty okay -- is you look at the air
22 conditioning supplies. The next time you're --

23 THE COURT: I'm going to object to that, but I'm
24 going to let the witness testify, but I'd like my objection on
25 the record.

Hannon - Direct

119

1 (Laughter.)

2 MS. VANDESTEEG: Go ahead, Mr. Hannon.

3 THE COURT: I apologize, Mr. Hannon. Please proceed.

4 MS. MUSGRAVE: Sustained, Your Honor.

5 THE WITNESS: It's quite all right.

6 One of the great things to look at is look at the air
7 conditioning supplies and returns. And if you're in an older
8 building, look up at the ceiling tiles and around that. If
9 the filters haven't been maintained, you're putting stress on
10 your HVAC equipment. You're probably also in a dirty
11 building.

12 So there's lots of telltale signs. Any place you find
13 water in your building envelope is a bad, bad day as a
14 landlord. And that water can come from the ground, it can
15 come from water that you've delivered through potable water or
16 sanitary, or it can come from the outside and weather. And
17 that's probably the biggest demon in protecting an asset, is
18 moisture penetration into the shell. Many people have had --
19 and for those of you that are just residential, if you had a
20 basement, you've probably got to fight water sometime in your
21 life. The damage unchecked is unknown. It can be amazingly
22 big.

23 BY MS. VANDESTEEG:

24 Q Mr. Hannon, in terms of your, again, personal experience
25 in being able to observe certain conditions that may indicate

Hannon - Direct

120

1 water infiltration, what types of things in your experience
2 have you seen and have you observed?

3 A Discoloration from water penetration, ceiling tiles,
4 walls, paint peeling and popping, baseboards moving a little
5 bit, discoloration in drywall.

6 Another place it shows up -- and sometimes there can be
7 other causes -- is the heaving of the slab or the pedestrian
8 walkways. It can be caused by other things besides water.

9 Q Mr. Hannon, I think you also had testified previously that
10 you had had a couple of recent experiences involving building
11 envelopes and stucco. What has been your personal experience
12 in terms of observing and helping to identify potential
13 problems regarding deferred maintenance or other property
14 conditions involving building envelopes or stucco?

15 A Well, in the last three or four years, I've been involved
16 with two projects. One is a -- about a block from this
17 property, built almost the identical time, with a hundred
18 residential units, apartments.

19 Q Is this another one of ICI's projects?

20 A This one is.

21 Q Okay. So this is one that you, again, you have personal
22 familiarity with?

23 A That's right.

24 Q Okay. Tell us a little bit more.

25 A It was built about the same time, the turn of the century.

Hannon - Direct

121

1 Had -- our company built it. It had the same issues around
2 retaining walls, around the building envelope. You know,
3 stuff that was to-code at the time but may not be today. But
4 nonetheless, the water is in the building. And it's been my
5 experience that you -- it is impossible to effectively price
6 without peeling back the envelope in certain areas, or
7 otherwise known as destructive investigations, because -- and
8 that's -- if I may expound a little bit, this is one of the
9 things in this entire thing that's bothered me. We keep
10 talking about fixing the cracks and painting the building.
11 That would be great if that's all there is here, but it's not
12 been my experience that that's all that's here. When you had
13 water that's been finding its way through the smallest
14 hairline crack, or a weep screen that's been puttied in by a
15 maintenance guy that didn't know what he was doing, or design
16 flaws where that humidity that came down between the Tyvek and
17 the DensGlass and the EIFS, you're going to have water build-
18 up, and that water is going to what water does left alone with
19 organic material.

20 MS. MUSGRAVE: Your Honor, I'm going to renew my
21 objection to this witness offering what is essentially at this
22 point expert opinion. He was explicitly disclosed, first of
23 all, as a fact witness. But I'd also be, with the Court's
24 permission, willing to conduct a very limited *voir dire*. I
25 just have one question for him, actually, to establish the

Hannon - Direct

122

1 lack of expertise in this area before he goes on.

2 THE COURT: Ms. Vandesteeg?

3 MS. VANDESTEEG: A couple points in response, Your
4 Honor.

5 First, counsel had requested that the witness provide a
6 foundation for him to be able to testify, then, as to
7 observations that he made at The Edgemere and how he was
8 qualified on issues of deferred maintenance and property
9 condition. And that is exactly what this witness is doing, is
10 providing, then, the basis of his experience at other projects
11 that qualify him to, again, talk about what he personally
12 observed with his eyes at The Edgemere.

13 Your Honor, I will note that we did not simply designate
14 Mr. Hannon as a fact witness. Indeed, he was listed on our
15 expert designations as an unretained expert based upon his
16 experience in this very industry.

17 I don't know that we have a problem with a limited *voir*
18 *dire*. We're not prepared for it. I'm not looking to qualify
19 him as a testifying expert. But I am laying the foundation
20 for him to be able to answer questions specifically with
21 respect to his observations at The Edgemere, how those weigh
22 into what he and ICI have identified as property conditions
23 and defects raising to the level of a default under the lease,
24 and these are -- these are exactly what is at issue today,
25 Your Honor.

Hannon - Direct

123

1 THE COURT: Okay. Thank you.

2 MS. MUSGRAVE: Your Honor, maybe I can just sort of
3 cut to the chase and make a brief representation to the Court,
4 understanding that it's a bench trial.

5 THE COURT: Please.

6 MS. MUSGRAVE: So, when Mr. Hannon was disclosed, he
7 was disclosed indeed as an unretained expert, and it said his
8 testimony is factual in nature but we designate him in an
9 abundance of caution since we will be relying on his
10 specialized knowledge of building maintenance and repair
11 issues learned in a many-decades-long career in commercial
12 real estate management.

13 So the question I was going to have for him at *voir dire*,
14 and I can just represent this to the Court, is that at his
15 deposition he was asked, and I quote, "What, if any,
16 experience or specialized knowledge do you have regarding
17 building maintenance and repair issues? Answer: Did you say
18 specialized? Question: Yes. Answer: None. By way of an
19 example, I don't have a license to repair HVAC equipment. I'm
20 not a master plumber, by way of example."

21 So he was specifically asked this question at his
22 deposition about what this experience was, he said he didn't
23 have any, and now he's purporting to provide it. And I would
24 again submit that it veers into expert testimony anyway.

25 THE COURT: Thank you, Ms. Musgrave.

Hannon - Direct

124

1 Ms. Vandesteeg, before you respond, I guess my question
2 is, are you calling Mr. Hannon only as a fact witness, as you
3 described, to describe what he saw with his eyes, or are you
4 calling him as an expert as well? Because it matters.

5 MS. VANDESTEEG: Your Honor, Mr. Hannon is
6 fundamentally a fact witness here. We have not presented him
7 with an expert report. We have not presented him with expert
8 qualifications. We have not provided any sort of 26(a)
9 disclosures here.

10 That said, I do believe that his expertise, that his
11 personal experience, that his qualifications are highly
12 probative and do go toward the weight of his own observations,
13 which, yes, are his personal observations, and he will testify
14 as to what he saw as a fact witness.

15 I think that Mr. Hannon -- I shouldn't be speaking for Mr.
16 Hannon. But in reviewing that deposition transcript, Your
17 Honor, I think that he perceived that question as, Do you have
18 any certifications or any other specialized specific
19 knowledge? And as he qualified, then, his answer, he said, I
20 don't have any certifications. I'm not qualified to fix HVAC.
21 But I think he's also providing to the Court that he does have
22 a wealth of decades of knowledge around deferred maintenance
23 and property conditions.

24 THE COURT: Ms. Musgrave?

25 MS. MUSGRAVE: That question in the deposition was

Hannon - Direct

125

1 the exact language that was used in the disclosure with
2 respect to this witness, and the reason for asking it was to
3 probe the basis for which he was being offered. Because,
4 frankly, it was a little confusing to have a fact witness
5 disclosed on the expert disclosures, but he's not really an
6 expert, and we're sort of trying to figure that out.

7 So when he said, I don't have any of that specialized
8 experience, that to us was the end of the issue. I'm more
9 than surprised to hear that that answer is now not what we
10 understood it to be.

11 THE COURT: Thank you, Ms. Musgrave.

12 Any final words?

13 MS. VANDESTEEG: No, Your Honor.

14 THE COURT: Okay. Unless you want to start getting
15 into CVs and *voir dire* -- and I know all you Texans are
16 thinking *voir dire*. No. No.

17 MS. MUSGRAVE: I hesitated on that pronunciation,
18 Your Honor. I did.

19 THE COURT: Thank you. Thank you. South Louisiana
20 over here. Very French.

21 But in any event, I think that as I understand what ICI is
22 attempting, and has done so, is that Mr. Hannon does have 50
23 years in the real estate industry. And Mr. Hannon certainly
24 probably has, based upon you taking the walk to lay the
25 foundation, he has the experience necessary to say, okay,

Hannon - Direct

126

1 discoloration in stucco, discoloration in ceiling tiles, that
2 means something, and it could mean a number of issues.

3 Now, is he a certified remediator? No. Is he a certified
4 water expert? No. And I think that probably goes to the
5 questions that you asked at the deposition.

6 So I'm going to allow him to tell me what he has seen in
7 his experience. And again, with respect to the sidebars and
8 what that means at The Edgemere, we are going to leave that to
9 the experts. I appreciate his lay opinion, but I'll take that
10 and weigh it at the appropriate time.

11 So I'm going to allow the testimony. I'm not taking his
12 expert testimony as to whether any one of these issues needs
13 to be done and things like that. We'll get to those that are
14 actually licensed in property condition assessment. But
15 again, I am going to allow the testimony from a lay
16 perspective.

17 And again, like you said, that which he saw with his eyes.
18 And to the extent he wants to tell me what he thinks it means,
19 he is welcome to, because that's his lay opinion. That's the
20 Court's ruling.

21 MS. MUSGRAVE: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 MS. VANDESTEEG: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 BY MS. VANDESTEEG:

Hannon - Direct

127

1 Q Mr. Hannon?

2 A Yes.

3 Q With that, let us turn back to The Edgemere.

4 A Did you want me to describe further experience at other
5 buildings, or are we done with that?

6 Q Well, let's maybe just give you one moment, --

7 A Okay.

8 Q -- because we're going to turn to stucco.

9 A Okay.

10 Q Have you had any specific recent experience with respect
11 to stucco problems at other buildings?

12 A Yes.

13 Q Tell us a little about that.

14 A Well, I try to keep thinking recent times, but as I just
15 mentioned, I've been involved directly with two buildings of
16 almost identical age in North Texas that had housed people
17 that was built with the same system, which was, you know,
18 systems tend to be built similarly during an era when certain
19 systems are competitive. And in that process, there was a
20 number of things in this MD EIFS system and these stucco
21 systems that was being used around then. And I know I'm not
22 an expert on this, but my experience has been that they end up
23 allowing water penetrations because the way they manage the
24 EIFS or the support membranes for patios or other penetrations
25 into the building over time.

Hannon - Direct

128

1 Q In your experience, are there ways to visually observe
2 some of those indicia of potential water infiltration?

3 A There are telltale signs. There are symptoms.

4 Q What are those?

5 A We've talked about some of them. Obviously, the cracking
6 is one thing, but cracking can happen in stucco at a very fine
7 line. It depends on the frequency and where the crack occurs.
8 Expansion is supposed to be built into it.

9 It can also be the weep screens. You can look at those
10 and see if they're rusted.

11 The other thing that is common with these systems is the
12 penetrations. And what's happened, those were caulked in when
13 they were built, but over 20 years, in our freeze-thaw climate
14 in Dallas, they -- they dry up and shrink. And now the water
15 can find its way in where those penetrations are in the
16 building.

17 And so we run -- with many of our buildings, we get people
18 out to take care of that caulking constantly, because if you
19 don't you're allowing the moisture into the building. It's
20 very expensive, by the way, to do.

21 Q Thank you. Mr. Hannon, --

22 A By way of example, one I had, we thought -- just can't
23 stop me, can you? We had a 248-unit project that I was
24 involved with that the estimate was \$3 million to do a new
25 building envelope, and we just completed it for a little over

Hannon - Direct

129

1 \$14 million, because when we peeled back the onion, we got
2 surprised. When moisture gets with organic material,
3 deterioration occurs. And it can be through just the water
4 itself, or it can be the Petrie dish that it grows.

5 Q So let's go back to The Edgemere and your tour in January
6 of 2022. Did you personally observe any visible indicia that
7 there could be a problem with the stucco at The Edgemere?

8 A Yes.

9 Q What did you observe?

10 A We observed -- we didn't really get to walk the exterior,
11 but what we could see through windows, we could see numerous
12 substantial caulking of crevices in the stucco panels
13 throughout the property, some that had not been done and some
14 that had been done. They -- they're a different color,
15 apparently, until you go back and treat the material and paint
16 it. So what we could see from the windows was a great deal of
17 caulking and cracks, and cracks uncaulked.

18 Q With respect to the uncaulked cracks, did you visually
19 observe yourself cracks that were more substantial than simply
20 the hairline cracks that you had mentioned?

21 A Oh, very much so. You wouldn't be able to see them from
22 as far away as we were.

23 Q How --

24 A The hairline cracks, you've got to get up pretty close on.

25 Q How far away were you where you could observe cracking in

Hannon - Direct

130

1 the stucco at The Edgemere, approximately?

2 A Yeah, I'm just not sure. Across the courtyard. We were
3 looking out a window.

4 Q Farther than you and I are?

5 A Farther than you, yeah.

6 Q Farther than you and this other wall?

7 A Yes.

8 Q Okay. With respect to those cracks that had been caulked,
9 you said there was a different color?

10 A Yes.

11 Q So it had not been, then, painted over?

12 A The ones that I could see had not been.

13 Q Does that painting process have any further impact on
14 preventing water intrusion, or is that just cosmetic, --

15 A It does --

16 Q -- to your knowledge?

17 A It does have more value. There's a series of different
18 kinds of paint coatings with different density of particulate
19 matter that do a better job of creating a water seal. And we
20 just recently painted one of our buildings of stucco the same
21 size, and we picked a highly dense thorough coat waterproof
22 paint that seals in the minor cracks in the process.

23 Also, different materials have different lifespans. You
24 can paint a building and three years later it's gone, or you
25 can paint it correctly and ten years it makes it.

Hannon - Direct

131

1 Q Aside from the cracking in the stucco that you observed at
2 The Edgemere, did you see any other visual indications that
3 there may have been other problems with the stucco or the
4 building envelope?

5 A Not in those tours, the building envelope, no.

6 Q Why would ICI be concerned?

7 A Well, let me take that back.

8 Q Oh.

9 A We had discolored ceiling tiles which we could see, which
10 is an indication of water, which could have something to do
11 with the building envelope if that water came from a roof or
12 an envelope. It could have come from other sources.

13 Q And those are interior ceiling panels, right?

14 A Correct.

15 Q Okay. Why would ICI be concerned about the condition of
16 the stucco or the building envelope at Edgemere?

17 A Because we believed the lease called for The Edgemere to
18 take care of the property in good and safe order and repair.

19 Q How, to your view as landlord, is the existence of cracks
20 in the stucco an indication that the property is not in good
21 and safe condition, repair, and order under Section 5.8?

22 A In my opinion, it's a blatant symptom of some bigger
23 problem.

24 Q You said that there was then a second tour that you went
25 on at The Edgemere?

Hannon - Direct

132

1 A Correct.

2 Q Do you recall when that was?

3 A Approximately a month or two later, maybe March '22.

4 Q And what was the purpose of that second tour?

5 A Again, this tour was to see if we could get a better look
6 at what some of these problems were. It was disappointing.

7 Q Why was it disappointing?

8 A Well, in this case, the individual that joined us wasn't
9 -- wasn't even on assignment. They were -- they were either
10 corporate or a regional person. I don't recall what it was.
11 But they had no legacy knowledge to tell us what -- when's the
12 last time you had a problem here? Has that leak been fixed?
13 When's your last fire inspection? When's the last time you --
14 do you have your record of your elevator inspections and when
15 is the modernization plan? Because elevators around that age,
16 it's time to do them.

17 So we just basically had a guided tour. And as you may
18 recall, we've talked about we -- the individual really didn't
19 know the building. We got lost looking for the pool. It took
20 us an extra ten minutes.

21 Q To your recollection, was there anything else additional
22 of note that you were able to personally observe and identify
23 indicating deferred maintenance or outstanding property
24 conditions that needed to be addressed as a result of your
25 second tour in approximately March of '22?

Hannon - Direct

133

1 A Yes.

2 Q What is that?

3 A On a couple of locations around the property, we were able
4 to or I was able to observe uneven concrete, pedestrian
5 walkways, curbs, some stucco damage around some of the
6 portals, not uncommon for a property not cared for.

7 Q Why would those be conditions, the uneven sidewalks, the
8 curbs, why would those be of concern to ICI?

9 A Well, those two are really life safety issues, especially
10 when you have people living onsite, and in this case, some
11 people that are infirm. It doesn't take much of a separation
12 from one panel of concrete sidewalk to the other to send
13 somebody to the ground.

14 Q Is it your view, then, that those uneven sidewalks, again,
15 are an issue that mean, to your view, that The Edgemere was
16 not in compliance with Section 5.8 to keep the property in
17 good and safe repair?

18 A Exactly what jumped out at us. You know, that doesn't
19 meet safe at all. And it is something that has to be ongoing.
20 We have a lot of clay in North Texas. Heaving in concrete
21 walkways isn't uncommon. It just needs to be addressed
22 timely.

23 Q Mr. Hannon, in either of your Edgemere tours, either in
24 approximately January or in approximately March of 2022, did
25 you have the opportunity to go up on any of the roofs?

Hannon - Direct

134

1 A No.

2 Q Did you have the opportunity to view any of the mechanical
3 or electrical or plumbing systems?

4 A No.

5 Q Other than those two tours in January, approximately
6 January and approximately March of 2022, what else did ICI do
7 to learn more about the condition of The Edgemere?

8 A Well, we really started pushing for getting an expert in
9 there to inspect it and really see what we have. All we had
10 was symptoms at this point.

11 Q Was there an expert that ICI was seeking to engage?

12 A Yes. We had some experience, a recent experience using
13 Terracon. It's a very large, credible, national engineering
14 organization that does a broad spectrum of engineering tasks,
15 and they had recently done some work for us on another
16 property, and so we contacted them.

17 Q Let's put a pin in Terracon for now. We'll come back.
18 Jumping back in time, you told us that in fall, in September
19 of 2021, Edgemere had had a rent payment default, correct?

20 A Yes.

21 Q Were there subsequent rent payment defaults?

22 A Yes. They -- I'm trying to remember. I don't think rent
23 was -- any rent was paid until around the first of 2022, any
24 additional rent. I think I'm right about that.

25 Q Do you recall if Edgemere timely paid rent for January of

Hannon - Direct

135

1 2022?

2 A I do recall, and I don't think they did.

3 Q What about with respect to February of 2022?

4 A No. No, they did not pay in February, is my recollection.

5 Q And what about March of 2022?

6 A I'm just not sure. I don't think so, but I don't -- I'm
7 over my skis here. I don't know.

8 Q Do you recall at some point Edgemere did catch up on
9 outstanding past-due rent?

10 A Yes.

11 Q Do you recall, as a part of that catchup, as a part of
12 that catchup, there being any requests of any type of
13 estoppels under the lease?

14 A Oh, yes. They -- The Edgemere requested an estoppel from
15 us, which we did provide them, and we requested an estoppel of
16 them, which they did not provide.

17 Q Do you recall what was the estoppel that the Landlord
18 provided? What was the nature of that?

19 A The Tenant's -- Edgemere's attorneys created the document.
20 We had to -- I think it needed some adjustment. And they
21 wanted it signed, and I'm not exactly sure why as I sit here
22 today. I probably could remember. It may have been had to do
23 with the forbearance. I'm just not sure.

24 Q You had said that ICI was requesting an estoppel of Debtor
25 as well. Do you remember what the nature of the estoppel was

Hannon - Direct

136

1 that ICI was seeking from the Debtor?

2 A Well, our lease calls for we can ask for that from time to
3 time, and so our lawyers -- I want to say March of '22, I'm
4 not sure -- but we wanted an estoppel from them which does the
5 things that estoppel agreements do.

6 Q What do estoppel agreements do?

7 A Well, depending on what the specifics of it written, it
8 basically is a representation of the condition of the
9 contractual relationship between the parties, so far as one
10 party knows. I think that's right. So I don't know.

11 Q To your recollection, Debtor did not provide the requested
12 estoppel to ICI?

13 A No. Very frustrating. It's our understanding that, per
14 the lease, we can require that, and we never got it.

15 Q Why was it important to ICI to get that estoppel
16 certificate from the Debtor?

17 A Well, we wanted to find out all the things about our
18 property and the lease and they would represent that they're
19 meeting all those obligations. Particularly at this point,
20 are they taking care of the property under these clauses we're
21 discussing, 5.6 through 5.9?

22 Q What are those clauses under the lease, to your
23 recollection?

24 A Not by name, but I can look them up.

25 Q Sure.

Hannon - Direct

137

1 A Let's see, it would be improvements required by law;
2 observance of laws; repair, maintenance, and restoration; and
3 inspection.

4 Q And ICI did not get an estoppel signing off on any of
5 those --

6 A No.

7 Q -- specific provisions?

8 A No, we did not. Very frustrating.

9 Q Mr. Hannon, I think that you testified it was your best
10 recollection that those discussions were happening in March of
11 2022; is that correct?

12 A Uh-huh. Yes. Sorry.

13 Q What happened next?

14 A Well, around the middle of April, the Tenant filed for
15 bankruptcy. Edgemere.

16 Q Let's back up to Terracon for a moment. Were there any
17 other next steps or communications with Terracon before the
18 Debtor filed for bankruptcy?

19 A Yes.

20 Q What was that?

21 A Well, it was on or about this time that we decided we
22 needed to get our experts in. We had several flags I've just
23 spoken of, and at this point we needed to get our engineers in
24 there to have a look. And so we retained Terracon around the
25 first week of April. I don't recall the date.

Hannon - Direct

138

1 Q Okay. And then the Debtor files bankruptcy?

2 A Yes. Two weeks later, the Tenant files bankruptcy.

3 Q Did ICI get its inspection with Terracon then?

4 A No.

5 Q At some point, did ICI get an inspection with Terracon of
6 the property?

7 A Using the word inspection loosely, yes.

8 Q When was Terracon permitted to go in to perform its
9 property condition assessment?

10 A It's my understanding July of 2022. I wasn't there,
11 though.

12 Q Do you know why there was a delay between the request to
13 allow Terracon to perform its property condition assessment
14 and the date by which it was permitted to perform that
15 property condition assessment?

16 A My opinion? The Edgemere was delaying getting us in
17 there.

18 Q How was Terracon finally permitted to get access to the
19 property?

20 A After a bit of legal wrangling, it was approved.
21 Disappointingly, though, none of the pre-inspection documents
22 were provided to them, so they went in pretty cold.

23 MS. VANDESTEEG: Your Honor, I'm looking at the
24 clock, trying to determine what makes sense in terms of a
25 breaking point. I likely still have, I suspect, another 30

Hannon - Direct

139

1 minutes or so with this witness. We could try to move a
2 little faster, but I do want to be respectful of the Court's
3 timing --

4 THE COURT: Uh-huh.

5 MS. VANDESTEEG: -- as well as other parties in the
6 courtroom, and looking to see what folks would prefer.

7 THE COURT: Okay. Ms. Musgrave, what do you think?

8 MS. MUSGRAVE: I have no preference. Happy to do
9 whatever works for the Court.

10 THE COURT: Okay. Let me check with my staff.

11 (Pause.)

12 THE COURT: All righty. So I think what we'll do is,
13 if it's okay with the witness -- would the witness like to
14 break now, or do you want to see if you could finish up
15 direct?

16 THE WITNESS: I would say go with whatever's best for
17 everybody.

18 THE COURT: Okay. All righty. Well, I appreciate
19 that.

20 I think what we'll do is we'll try to finish up direct.
21 It sounds like you're thinking we could probably finish by
22 1:15, 1:30. And so we'll do that and we'll break at that
23 time.

24 MS. VANDESTEEG: Excellent.

25 THE COURT: Thanks.

Hannon - Direct

140

1 MS. VANDESTEEG: Thank you.

2 BY MS. VANDESTEEG:

3 Q All right, Mr. Hannon. I think you said that Terracon was
4 able to get onsite for its site visit in July; is that
5 correct?

6 A That is my understanding.

7 Q What next?

8 A What's next? Well, I'm not sure what you're asking. I'm
9 sorry.

10 Q After Terracon was on its site visit, what was your next
11 involvement or engagement with respect to Terracon?

12 A Just with respect to Terracon?

13 Q Yes.

14 A Because, keep in mind, we're very busy with lots of legal
15 activities, so --

16 Q Yes, sir. We're talking strictly about property
17 conditions, so --

18 A Okay, because that was what -- we were very distracted
19 with all this sort of thing. New to us.

20 Q Let's talk about what was happening with respect to how
21 ICI was gaining more information with respect to the condition
22 of the property.

23 A Yes. At some point, we, as we typically do, you get a
24 first draft of what's going on, and we provided feedback to
25 Michael about gaps in being accurate. And so we weren't in

Hannon - Direct

141

1 any big rush at this point because things were going on. We
2 were advised nothing could come to a head too quick. And so
3 we just continued to try to push through that and get his
4 document accurate. His document is a national template, I am
5 told. In other words, if we didn't -- the definitions in it,
6 the template format, weren't really our decision. This is how
7 -- and I'll let Michael Hull tell you that, or Terracon.

8 So we were fine with all that, with the exception of some
9 languages that was used incorrectly in describing the parties,
10 such as using the word tenant versus people reported things or
11 the owner or what was a resident. There was some confusion
12 around that. There was some other discrepancies that weren't
13 right, almost all language stuff.

14 Q Do you recall when you got that first draft from Terracon?

15 A I don't.

16 Q You went through some general discussions back and forth
17 with Terracon. Do you recall when those discussions happened?

18 A I don't.

19 Q I think you said that there were discussions around
20 language and definitions. Were there other issues or language
21 that was discussed beyond those things?

22 A Language things? No, there was a number of things. We
23 found some errors, a couple -- as an example, there was a
24 photograph that was labeled one thing but it was really
25 another. We like to get things pretty accurate, especially

Hannon - Direct

142

1 since at this point we realize it's -- we're in -- going to
2 find ourselves in legal things, so we want it to be accurate.

3 Q To your recollection, from draft of report that was
4 received through final report of Terracon, did any of the
5 conditions that Terracon identified change?

6 A No. No.

7 Q From the draft of the report to the final of the Terracon
8 report, to your knowledge, did any of the specific cost
9 estimates with respect to potential remediation of the
10 conditions change?

11 A Not to my knowledge.

12 Q Do you recall any specific discussions -- do you recall
13 any discussions with Terracon about potential modifications to
14 either conditions observed or cost estimates related to
15 conditions?

16 A I recall at one time, and it just stands out, I don't know
17 why I think I remember it, but I had conveyed to Michael Hull
18 that I thought the costing for the elevator modernizations was
19 too low because I had just contracted for and performed three
20 modernizations in similar slow-speed, low-rise elevators in
21 Dallas. I thought I knew what the cost was.

22 Q To your recollection, did the cost estimate that Terracon
23 provided with respect to elevator modernization change?

24 A Not to my knowledge. Michael stood his ground and checked
25 with his experts, and to my knowledge, it was -- he didn't use

Hannon - Direct

143

1 the number I thought it would cost, which was his decision.

2 Q Mr. Hannon, sitting here today, is it your belief and
3 understanding that there are property conditions at The
4 Edgemere that are not in good and safe repair?

5 A Yes.

6 Q And can you tell us all of the bases for that
7 understanding?

8 A All of the bases?

9 Q Well, you've told us about your own personal observations,
10 for example.

11 A Yeah. It was that and the various reports that were
12 received by my eyes, all in -- two of them in the last month
13 for the first time. I'd never seen the Plante Moran report,
14 nor had I seen The Building Consultant's report until sometime
15 this month.

16 Q So you've referenced The Building Consultant report, the
17 Plante Moran report. Were there any other reports that you
18 reviewed which helped to form your understanding that there
19 were certain property conditions at The Edgemere that
20 indicated they were not in good and safe repair?

21 A Yeah. The Terracon report, of course.

22 Q Anything else that helped you to form that understanding?

23 A My experience with buildings of that age and construction
24 in the market and things that I observed onsite, limited
25 things.

Hannon - Direct

144

1 Q Mr. Hannon, I am going to direct you to Exhibit 1.

2 A I seem to have just -- oh, 1. There it is. It's 1 and
3 then it goes to A. Okay.

4 Q That's right. Exhibit 1 before we get to the letters.

5 A Okay.

6 Q Mr. Hannon, do you recognize this document?

7 A I do.

8 Q What is this?

9 A This is an amended statement of cure claim with respect to
10 the existing defaults under the lease with Edgemere and
11 ourselves. I think.

12 Q Well, is that what it says?

13 A It does. It says -- I'm paraphrasing, yes.

14 Q Okay. Thank you. Were you involved in any way in the
15 preparation of this document or any part of this document?

16 A Yes.

17 Q Which part?

18 A I was one of the people in the room during the discussions
19 of building this document with respect to my knowledge and
20 experience with taking care of real estate.

21 Q Can you --

22 A My -- go ahead.

23 Q -- direct us to what page you were looking at when you say
24 yes, you were involved in assisting?

25 A It could be many places, but under the table that's on

Hannon - Direct

145

1 Page 12 through 15 I was involved with a -- in the group, in a
2 team environment, trying to develop the most realistic numbers
3 with what limited information we had. And moreover, the
4 function and the condition issues, because largely I discount
5 the price stuff involved here, because I don't know if
6 anyone's done any work in North Texas in the last 12 months,
7 but costs have gone through the roof for any kind of building.
8 So I don't know if these costs are too low. They could be.

9 Q So you were more focused on the list of the existing
10 conditions --

11 A Yes.

12 Q -- than on the estimated cost?

13 A Very much so.

14 Q Mr. Hannon, in looking at this chart, and I'm going to
15 call it the conditions chart, okay?

16 A Sure. It says Category of Conditions. I like that.

17 Q So, in looking at this conditions chart, and if you need
18 to take a minute to look through it, --

19 A Yes.

20 Q -- have you personally observed all of these conditions at
21 The Edgemere?

22 A No.

23 Q How, then, did you determine that they were appropriate to
24 be listed on this conditions chart?

25 A Well, the team determined it, with a combination of our

Hannon - Direct

146

1 own -- our own view of seeing symptoms during the sales tours
2 that we were given and then the use of the three different
3 property condition reports that we had.

4 Q Mr. Hannon, is this conditions chart simply a combination
5 of all of the conditions or projects listed on those various
6 reports?

7 MS. MUSGRAVE: Objection. Leading.

8 THE COURT: Please rephrase, Ms. Vandesteeg.

9 BY MS. VANDESTEEG:

10 Q Mr. Hannon, how do you decide which conditions were
11 appropriate to include within this conditions chart as you
12 were reviewing these other reports and factoring in your own
13 observations?

14 A Well, as I recall, the team, we went through all the areas
15 that had been flagged as a -- some violation of 5.8 or
16 whichever one it was, and tried to aggregate them into
17 categories that made sense -- interior finishes, heating and
18 air conditioning, building envelope -- tried to put them in
19 similar categories so a reader could understand them and we
20 could understand them ourselves. So it was a combination of
21 what we viewed and experts' opinions of the areas that were
22 not in compliance.

23 Q Mr. Hannon, I don't see anything listed on this conditions
24 chart with respect to updating of independent living units.
25 Right?

Hannon - Direct

147

1 A Yes.

2 Q Why wasn't something like that included?

3 A Well, it could be argued either way, but I argued, and
4 apparently successfully, that that wasn't so much Landlord's
5 concern, even though it's arguable that it is, that this was
6 -- assuming that these units are habitable, I want to make
7 that caveat, because if these units don't have HVAC and
8 working plumbing and are able to be secured, then this isn't
9 what we should have done. But assuming that it's just the
10 skins in the apartments, refreshing the carpet, possibly
11 remodeling the bathroom with a more accessible shower, some of
12 the things that they had to do, I didn't feel like that was a
13 violation of 5.8. Some people might. Assuming that every
14 unit is habitable. That's my opinion.

15 Q Mr. Hannon, --

16 A So I took that out. I think it was \$7 or \$8 million in
17 one study.

18 Q Mr. Hannon, I'd like you to take a minute and review each
19 of the conditions that are listed on this conditions chart so
20 that we can go through a couple of general questions.

21 A I'm pretty familiar with it. Go ahead.

22 Q So, Mr. Hannon, why would the -- let me back it up. Our
23 conditions chart here, starting at Page 12 in Exhibit 1, has
24 breakdowns of certain conditions listed by categories, by
25 broader categories, right?

Hannon - Direct

148

1 A Correct.

2 Q What are those broader categories that are identified as
3 conditions on this conditions chart?

4 A Site work; building envelope; interior finishes; plumbing
5 systems; heating, ventilation, and air conditioning systems;
6 electrical systems. And there's another one that's not
7 properly labeled, but it's life safety/fire control. Maybe
8 that's under electric systems, but it's -- it should be its
9 separate category, maybe.

10 Q Mr. Hannon, looking under the site work category, --

11 A Yes.

12 Q -- why, to your view, are the conditions listed those that
13 rise to the level, in your view, of constituting a default
14 under the lease in that the property is not in good and safe
15 repair?

16 A Which of the lists under site work, of the list of those
17 categories?

18 Q Correct.

19 A All of them.

20 Q And why are those site work conditions ones that, in your
21 view, if they exist, are ones that mean the property is not in
22 good and safe repair?

23 A May I just pick one?

24 Q Yes.

25 A How about localized repairs of mortar joints in retaining

Hannon - Direct

149

1 walls. We have a lot of experience around this, as I
2 mentioned, a block away. And these retaining walls are just
3 not about beauty. They support a whole bunch of material
4 that's in those in the dirt and in the foundation of the
5 property. And if they're not maintained or if they're built
6 substandard, they've got to be ripped out and rebuilt.

7 So, in one sense, it's supporting a bunch of the
8 infrastructure. The other thing it's doing, it's holding soil
9 back. And the third thing it's doing, it's a life safety
10 issue. That -- if a retaining wall comes down on a pedestrian
11 wall and there's an elderly person walking along there, it's
12 not a good thing, because it will come down all at once.

13 Q What about the one above it with respect to the courtyard
14 walking paths and displaced sections of stone pavers? Is that
15 the one that you referenced earlier that you also observed
16 with your own eyes?

17 A Show me where you are again.

18 Q One above, where you were -- sorry. Let's see.

19 A It's not above.

20 Q Oh, on Page 13.

21 A Thank you. Yeah, that's -- that's -- both those items are
22 like *Building Safety 101*.

23 In fact, as I recall, during the time of this bankruptcy,
24 I received a lawsuit from someone who fell on the concrete,
25 which I forwarded on to our attorneys. I assume somebody is

Hannon - Direct

150

1 handling it.

2 Q Well, Mr. Hannon, let's --

3 A I was told I need to do nothing about it, even though we
4 were being sued.

5 Q Let's take a quick look, to make sure we're all on the
6 same page, --

7 A Sure.

8 Q -- at what we have marked as ICI Exhibit 25.

9 A (pause) Yes. Sorry.

10 Q Is this the complaint that you were referencing with
11 respect to the slip-and-fall?

12 A Yes.

13 Q And if you take a look on Page 3 of this exhibit,
14 Paragraph 11, could you read that paragraph for us?

15 A Sure. "On or about June 6, 2020, Plaintiff was walking
16 outside Defendant's parking lot when she fell and stumbled due
17 to an uneven concrete on the sidewalk and caused her injuries.
18 As a result of Defendant's negligent conduct, Plaintiff
19 sustained substantial injuries to her person and was forced to
20 incur physical and economic damages."

21 Q Thank you. Let's turn back to Exhibit 1 and our
22 conditions chart.

23 A I am there.

24 Q Looking over the conditions set forth in the building
25 envelope category, Mr. Hannon, why were these included as

Hannon - Direct

151

1 conditions that, in your view, constituted defaults under the
2 lease?

3 A Just about everything in there has to do with -- although
4 not everything -- but most of the material in there has to do
5 with keeping water outside of the building, which is how you
6 take care of your building, you keep water out of it. And
7 it's not something you delay. Not everything is about water,
8 but darn near.

9 The copper piping and the hot water boiler system where
10 Terracon saw dissimilar metal interface corrosion with
11 electrolysis on it, so that's -- that's not -- I guess it is
12 water, isn't it?

13 But most everything you're going to see was water
14 penetration of the building, not rebuilding wood trellises
15 that had apparently, with water on that wood, it had finally
16 just failed.

17 Q Is that also a safety concern, if you have deteriorating
18 wood trellises?

19 A Oh, very much.

20 Q Is it your view that each of the conditions listed here on
21 the conditions chart under the building envelope constitutes a
22 default under various provisions of the lease?

23 A Absolutely.

24 Q Mr. Hannon, let's turn to Page 14. And looking at our
25 interior finishes category, is it your view that these

Hannon - Direct

152

1 conditions listed constitute defaults under the lease?

2 A Yes.

3 Q Why is that?

4 A Well, let's look at them separately. The first one says,
5 correct above ceiling condensation patch and paint. Now, I
6 don't know who Plante Moran had look at that condition, and I
7 don't know if the water they're identifying is condensation or
8 not. So that jumped out at me, because painting and patching
9 is covering up the symptom. You can paint and patch and caulk
10 the crack and everything's fine, but until you peel back and
11 see what you have, you don't know if you're not letting the
12 building really deteriorate. So that definitely is one.

13 Q And I think, before you go to the next, I think that you
14 had previously testified that you also personally visually
15 observed stained ceiling tiles?

16 A Oh, yes, very much.

17 Q Okay.

18 A That's correct. The next one is a code issue. Whenever
19 you have a duplex electric outlet near a water source in a
20 bathroom or a kitchen, as people know from their own homes,
21 those have an interrupter, so it throws a breaker so people
22 don't get electrocuted. And apparently, I didn't see this,
23 under select kitchen sinks there was no GFCIs, which is a
24 place where water goes.

25 Q A code violation is a --

Hannon - Direct

153

1 A Today --

2 Q -- default under the lease?

3 A Today, yes, absolutely. That's not a safe condition at
4 all, having anything that's not GFCI near water.

5 Q Let's take a look at the conditions listed under the
6 plumbing systems category.

7 A Yes.

8 Q Is it your opinion that each of these conditions would
9 constitute a default under the lease?

10 A Yes. Under 5.8, these are really important, especially
11 the ones that have been named here really need to be -- the
12 fire suppression systems made out of industrial plumbing-grade
13 steel over time erode. We have a number of buildings this
14 age, and if you -- what happens is they break or fail at the
15 exact wrong time, so it needs to be gone through. This number
16 is probably low.

17 Q We'll come back to --

18 A Okay.

19 Q -- estimated cost in a minute.

20 A Sure.

21 Q Let's take a look at the heating, ventilation, air
22 conditioning systems items.

23 A Okay.

24 Q Is it your view that each of the conditions set forth in
25 this set constitute defaults under various provisions of the

Hannon - Direct

154

1 lease?

2 A It is.

3 Q Why is that?

4 A These are our heating and ventilating and air conditioning
5 systems, and if not properly maintained and changed out,
6 they'll fail. They'll fail. And I'm confident that some of
7 them, without having firsthand knowledge, do not work now, but
8 I don't know that for a fact.

9 Q You're basing that on other reports that you reviewed in
10 preparing this conditions chart?

11 A Yes, and my experience.

12 Q And what about with respect to electrical systems? Is it
13 your view that each of the conditions listed under electrical
14 systems constitutes a default under various provisions of the
15 lease?

16 A I can't be as sure about the first one, install portable
17 generator docking station, if that's code, with, you know, no
18 one that I know can keep up with fire code. When we have to
19 redo a building, we end up getting a fire consultant to get us
20 the latest code.

21 That one aside, it's a no-brainer. All this stuff should
22 be in good repair and good condition.

23 Q And based upon reports that you reviewed, --

24 A Yes.

25 Q -- it is your understanding that it is not in good and

Hannon - Direct

155

1 safe condition?

2 A That's right.

3 Q Let's go back to that portable --

4 MS. MUSGRAVE: Your Honor, I'm going to object to
5 this continued line of questioning about reports that he's
6 reviewed. I believe the reference is to reports that have
7 been excluded from evidence and no one here will talk about
8 them. So to the extent he wants to offer a lay opinion about
9 what he himself observed, I understand that. But if he's
10 going to be interpreting expert reports that have been
11 explicitly excluded from evidence, I do object.

12 MS. VANDESTEEG: I think, for those, Your Honor,
13 because we were just talking about electrical systems, he was
14 referring to Terracon, because I was about to come back to
15 that portable generator issue for just one moment.

16 THE COURT: Okay. So the portable generator is about
17 the Plante Moran report. She has a larger objection, Ms.
18 Vandesteege, that your witness is testifying, because this
19 chart is built upon two excluded reports, mainly The Building
20 Consultant and Plante Moran, but he's testifying about his
21 reviewing them in preparation of the report. That's the
22 objection.

23 MS. VANDESTEEG: Your Honor, he's testifying that to
24 the extent these conditions do exist they would constitute
25 defaults under the lease.

Hannon - Direct

156

1 Your Honor, we will be going in with additional expert
2 testimony, both from Terracon and from ARCH, later in this
3 proceeding that will then help to bolster this Court's
4 understanding as to whether these conditions exist from the
5 perspective of an expert beyond simply Mr. Hannon's own
6 personal observations.

7 THE COURT: Okay. So let's just do this going
8 forward. I understand in spades that the witness reviewed
9 reports that are outside of the purview of this Court in
10 preparation of this chart. And I understand again the
11 witness's credible testimony that they disturbed him and that
12 he believes that, if those conditions exist, they are defaults
13 under the lease. But I'd like you to focus on that which this
14 witness knows about --

15 MS. VANDESTEEG: Thank you, Your Honor.

16 THE COURT: -- in terms of this list. So please.

17 MS. VANDESTEEG: Well, in great news, we were about
18 to move on from the conditions in any event.

19 BY MS. VANDESTEEG:

20 Q Mr. Hannon, can you take a moment to review in this
21 conditions chart the estimated cost column, what we have
22 called "Amount"?

23 A Yes. Uh-huh.

24 Q What do you understand that Amount column to mean?

25 A Those are estimates of the cost to bring these conditions

Hannon - Direct

157

1 into compliance with the lease.

2 Q How did you determine what this estimated cost should be
3 as it is set forth in this conditions chart?

4 A This was a -- something I didn't decide personally, but it
5 was a group discussion with our team that was going over
6 everything. And I was called for where I had experience or
7 recent knowledge of what it would actually cost here in North
8 Texas. And for so many of these the number was hard to get my
9 head around, because in the case of the Terracon report that
10 says you've got to spend \$100,000 to find out what's going on
11 with the building envelope, as I just told you of an
12 experience I've had, this fix could be a little patch and
13 paint, but my experience is it won't be.

14 Q So you can't say with any certainty as to whether these
15 estimated costs to repair conditions --

16 A Not with --

17 Q -- could or would end up being the actual cost to repair
18 such conditions?

19 A No, I could not. The only way I can do that is that you
20 -- you totally diagnose the problem, you build a set of
21 specifications, and then you have the job bid. Anything short
22 of that is somebody's guessing a little bit.

23 Q Aside from those that we have already discussed today, are
24 there any other concerns that ICI has related to the
25 conditions at the property regarding Edgemere's ability to

Hannon - Direct

158

1 perform under the lease?

2 A Well, I believe that we still have a couple of concerns
3 under their insurance compliance, and we're working with their
4 insurance people and they've been very cooperate and we're
5 trying to get that cleaned up.

6 Another area is have they built that new Phase 2 and
7 health center to compliance for not having barriers, you know,
8 ADA compliance, so disabled people can use the bathroom, get a
9 drink, get in or out of the building. So we don't -- we now
10 have a notice of a violation that the State is concerned about
11 it, so we're concerned about it.

12 Q Thank you. Anything else?

13 A About the conditions?

14 Q Yes.

15 A I'm always worried about what I can't see, but that's it.

16 Q Thank you.

17 MS. VANDESTEEG: That is all for direct of this
18 witness, Your Honor. I assume that we'd want to then break
19 and return for cross after lunch?

20 THE COURT: Yes, I think that makes sense. Ms.
21 Musgrave?

22 MS. MUSGRAVE: Sure. That's fine with me, Your
23 Honor. Thank you.

24 THE COURT: Okay. Well, thank you, Mr. Hannon. I'll
25 allow you to step down while we talk about logistics.

Hannon - Direct

159

1 By the time I get off the bench, it'll probably be about
2 1:25. When would the parties like to return?

3 MS. VANDESTEEG: Your Honor, whatever pleases the
4 Court is what we will do. As Your Honor may recall, we still
5 do have cross of Mr. Hannon and two additional witnesses that
6 we were seeking to barrel through today. I think that our
7 housekeeping and evidentiary matters took a little longer than
8 folks would have expected. It would be my preference to keep
9 our lunch break as short as possible.

10 THE COURT: Okay. Ms. Musgrave?

11 MS. MUSGRAVE: That's fine with me. I'm happy to
12 take a short lunch, Your Honor.

13 It might be helpful -- I think that direct was a good bit
14 longer than what we had anticipated. I think it was two hours
15 long. So I think it might be helpful for logistical purposes
16 if we could get a sense if other directs are similar, likely
17 to be similar in length?

18 THE COURT: Okay. Ms. Vandesteeg, do you have an
19 estimate?

20 MS. VANDESTEEG: I suspect that Michael Hull will not
21 be quite as long, but will still be one of our longer
22 examinations.

23 THE COURT: Uh-huh.

24 MS. VANDESTEEG: I suspect that Mr. Harshfield, on
25 the other side, will be relatively limited.

Hannon - Direct

160

1 THE COURT: Okay.

2 MS. MUSGRAVE: Works for us, Your Honor.

3 THE COURT: Okay. And again, because one of the
4 things that I'll need to do, especially for my staff's sake,
5 is to figure out how long we'll go tomorrow. Obviously, folks
6 need to plan. Well, I'm not going to presuppose what we have
7 tomorrow, because I'll just speak to Ms. Harden because she'll
8 know.

9 So, with that, again, 1:25. Let me consult with my staff.

10 (Pause.)

11 THE COURT: Could the parties return at 2:00?

12 MS. VANDESTEEG: Yes, Your Honor.

13 MS. MUSGRAVE: Yes, Your Honor. Thank you.

14 THE COURT: Okay. Any concerns with anyone? All
15 righty. The Court will stand in recess until 2:00 o'clock.

16 MS. MUSGRAVE: Thank you, Your Honor.

17 THE CLERK: All rise.

18 MR. JOHNSON: Thank you.

19 (A luncheon recess ensued from 1:23 p.m. to 2:06 p.m.)

20 THE CLERK: All rise.

21 THE COURT: Please, be seated. All right. Good
22 afternoon, everyone. We're going to go back on the record in
23 Case No. 22-30659. When we broke, I think Ms. Vandesteege had
24 concluded her direct examination of Mr. Hannon. Are we ready
25 to proceed with cross, Ms. Musgrave?

Hannon - Direct

161

1 MS. MUSGRAVE: Yes, Your Honor. Thank you.

2 THE COURT: Okay. Please. Mr. Hannon? And I'll
3 just remind you that you're under oath.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Thank you very much.

6 THE WITNESS: There are glasses here. Do you see --

7 THE COURT: Somebody else's glasses?

8 THE WITNESS: Yeah.

9 THE COURT: Are those readers that we always keep
10 there?

11 THE CLERK: They're just there.

12 THE COURT: Okay. They're just there.

13 A VOICE: House readers.

14 (Laughter.)

15 THE WITNESS: I thought it was pretty thoughtful.

16 THE COURT: They come with the building.

17 And Ms. Musgrave, does the witness have your exhibits as
18 well? Okay. Excellent.

19 MS. MUSGRAVE: Headed there now, Your Honor, if I
20 may.

21 THE COURT: Please.

22 THE WITNESS: Thank you.

23 THE COURT: Ready when you are.

24 MS. MUSGRAVE: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. MUSGRAVE:

2 Q Mr. Hannon, I believe you testified earlier that Intercity
3 retained Terracon in April of 2022. Does that sound right?

4 A It does sound right.

5 Q And Terracon inspected the property --
6 (Beeping.)

7 THE COURT: Just one moment. Mr. Blackman, can you
8 please mute your line? Thank you. I apologize, Ms. Jeng.

9 MR. BLACKMAN: I'm sorry. It was muted. I'll try
10 again.

11 THE COURT: Thank you. Appreciate it.
12 I apologize. Thank you.

13 MS. MUSGRAVE: Thank you.

14 BY MS. MUSGRAVE:

15 Q And Terracon inspected the property in July of 2022; is
16 that right?

17 A That's my understanding.

18 Q You spoke with Terracon before that inspection?
19 Specifically, Michael Hull?

20 A Yes.

21 Q But you don't specifically recall those conversations?

22 A Not specifically.

23 Q And you also don't recall whether you exchanged any emails
24 with Mr. Hull of Terracon before that site inspection in July
25 2022; is that right?

1 A I don't recall.

2 Q Now, Terracon prepared a report of its site inspection of
3 the property; do you recall that?

4 A Yes.

5 Q And that report was dated January 6, 2023, just a couple
6 weeks ago?

7 A Yes.

8 Q So let's back up a little bit and explore what happened
9 here between the site visit in July 2022 and the report from
10 Terracon in January 2023. So, beginning with that site visit
11 in July 2022, you were not present, right?

12 A At the -- at the inspection?

13 Q At the inspection. You are not?

14 A Correct. I was not.

15 Q And to the best of your knowledge, no one from Intercity
16 was present?

17 A To the best of my knowledge.

18 Q Do you know how many days Terracon was onsite?

19 A Only what I've read.

20 Q And when you say what you've read, what you read where,
21 sir?

22 A In the various documents and so forth.

23 Q When did you read that?

24 A I don't recall.

25 Q Okay. You don't know how many people from Terracon were

1 there for the site visit?

2 A Not from firsthand experience.

3 Q Okay.

4 A I wasn't there.

5 Q But at some point after the Terracon site visit, you did
6 speak with Mr. Hull. Is that right?

7 A Yes.

8 Q You don't recall when you spoke with him?

9 A I'm sorry. Is that a question?

10 Q It was.

11 A I don't recall when? Yeah, I don't. I don't. Sorry.

12 Q And you don't recall how many times you spoke with him?

13 A I don't.

14 Q You don't know whether it was more than five?

15 A I don't.

16 Q Less than five?

17 A I don't recall.

18 Q But you do recall discussing with him in particular the
19 need for further investigative studies. Is that right?

20 A I'm not sure we talked about it during the time frame
21 you're discussing.

22 Q Is it your testimony here today, sir, that at no point
23 between July of 2022 and January of 2023 did you discuss
24 further investigative studies with Mr. Hull?

25 A No. That's not my testimony.

1 Q Oh, what is your testimony?

2 A I don't recall when I discussed that with him, if I
3 discussed it with him.

4 Q Okay. Nonetheless, to the best of your knowledge, sir, no
5 further investigative studies were ever actually done; is that
6 right?

7 A Yes. We were disappointed.

8 Q And you raised that request for further investigative
9 studies with your counsel; is that true?

10 A Yes.

11 MS. VANDESTEEG: Objection to the extent that it
12 calls for any disclosure of privileged communications between
13 ICI and counsel.

14 MS. MUSGRAVE: I wasn't inquiring about any
15 privileged communications. I'm just checking to determine
16 what happened with the investigative studies.

17 THE COURT: Okay. Sustained to that point.

18 BY MS. MUSGRAVE:

19 Q After the inspection, Mr. Hull never told you about any
20 issues on the property that were of immediate concern for
21 residents' health and safety, did he?

22 A I don't recall.

23 Q And if Mr. Hull had told you there were issues on the
24 property that were of immediate concern for the residents'
25 health and safety, you would have done something about that,

1 right?

2 MS. VANDESTEEG: Objection as to form. I think it's
3 an incomplete hypothetical.

4 MS. MUSGRAVE: I'm not asking hypothetically, Your
5 Honor. I'm just asking, if he had had this information, what
6 he would have done.

7 THE COURT: Overruled.

8 THE WITNESS: Can you give me an example?

9 BY MS. MUSGRAVE:

10 Q Yeah. I'll give you this specific example so we don't
11 veer into hypothetical territory. If Mr. Hull had told you
12 there were issues on the property that were of immediate
13 concern for the residents' health and safety, you would have
14 done something about that, right?

15 A Not necessarily.

16 Q Since the July 2022 site visit, you're not aware of any
17 notice of defaults that Intercity issued to the Debtors
18 arising from issues that Terracon identified, true?

19 A Anything like that would have been handled by our
20 attorneys.

21 Q Okay. But just to answer my question, you're not aware of
22 any?

23 A I can't think -- I don't know what notices were filed,
24 because what we're learning about the Bankruptcy Rules, you
25 just don't do certain things during bankruptcy. So we just

1 didn't know. So we talked -- we told our attorneys.

2 Q Okay. All right. Could I ask you, sir, to turn, please,
3 to -- this is the white exhibit binder here. If you could --

4 A January 23rd?

5 Q Yes.

6 A Thank you.

7 THE COURT: You're in the main binder or the
8 supplemental?

9 MS. MUSGRAVE: It is the Initial Plan Sponsors'
10 amended exhibit binder. And I'm looking at Exhibit 3 in this
11 binder.

12 BY MS. MUSGRAVE:

13 Q Are you there, sir?

14 A I am there.

15 Q Okay.

16 A Sorry.

17 Q This is the engagement letter between Intercity and
18 Terracon; is that right?

19 A It is a -- a proposal from Terracon, yes.

20 Q Okay. And it's dated April 1, 2022; is that right?

21 A I'm sorry. April 1st, yes.

22 Q And if you flip over to Page 5, do you see it's signed
23 there by Michael Hull?

24 A Yes.

25 Q Now, if I could direct your attention, please, sir, to

1 Section 2.2, which is on Page 3 of this document. Do you see
2 that?

3 A I do.

4 Q And if I can read, please, from --

5 MS. MUSGRAVE: My apologies, Your Honor. Was this
6 exhibit admitted into evidence? If not, I'll be happy to do
7 that.

8 THE COURT: It's my understanding that your -- yes,
9 it is -- yes, it was stipulated to. Your 1 through 3 were
10 stipulated to.

11 MS. MUSGRAVE: I just wanted to make sure the Court
12 didn't need anything further in terms of moving it into
13 evidence.

14 THE COURT: No. Each of these are admitted. And to
15 the extent that the record was unclear before, pursuant to
16 stipulation, each of the Plan Sponsors' 1 through 3 have been
17 admitted, including this exhibit through the Terracon
18 engagement letter.

19 MS. MUSGRAVE: Thank you, Your Honor.

20 THE COURT: Please proceed.

21 BY MS. MUSGRAVE:

22 Q So, we're turning now to Section 2.2, the schedule. Could
23 you please read silently while I read aloud from the second
24 sentence there?

25 And it says, "The draft report will be submitted within 20

1 business days after the site access and receipt of your
2 written notice to proceed. The final report will be submitted
3 within five business days following receipt of Client's
4 comments on the draft report."

5 Do you see that?

6 A I do.

7 Q But Terracon did not provide a draft of its report to you
8 within 20 days after its site visit. Is that true?

9 A I don't know, but I doubt it.

10 Q And you don't recall when Terracon actually sent you a
11 draft. Is that right?

12 A Correct.

13 Q Couldn't say, for example, if it happened before December
14 2022?

15 A I don't recall.

16 Q You don't recall whether Mr. Hull emailed you a draft of
17 the report?

18 A Honestly, Counselor, the first time I read this section
19 was when you read it during our deposition.

20 Q Well, I understand that about the section of this
21 particular proposal, but --

22 A I looked at this as --

23 Q But let me direct your attention --

24 A Sure.

25 Q -- back to my question. You don't recall whether Mr. Hull

Hannon - Cross

170

1 emailed you a draft of the report, do you?

2 MS. VANDESTEEG: Your Honor, objection as to
3 relevancy of this line of questioning. I'm not sure where
4 we're going and how it's pertinent to the burdens of proof and
5 facts at issue today.

6 MS. MUSGRAVE: Your Honor, the --

7 THE COURT: Ms. Musgrave?

8 MS. MUSGRAVE: Of course. The amended cure statement
9 includes in it a table with 46 lines, a number of which are
10 attributable directly to Terracon. Terracon inspected the
11 property in July 2022, and we didn't hear anything from them
12 or receive a final report until nearly six months later, on
13 January 6, 2023.

14 And if I can make a proffer to the Court about what I
15 expect the evidence will show when Mr. Hull takes the stand,
16 is that certain of those items are of a quality that we're
17 describing as immediate. So I'm exploring what happened in
18 that six-month period with respect to items Terracon said were
19 immediate and ought to be attended to but we don't hear
20 anything for six more months.

21 THE COURT: Okay. Thank you, Ms. Musgrave.

22 Anything further, Ms. Vandesteeg?

23 MS. VANDESTEEG: Your Honor, I don't believe that
24 there is any argument or indication whatsoever that Mr. Hannon
25 created the Terracon report, had anything to do with the

1 Terracon report.

2 To the extent that there are questions with respect to Mr.
3 Hull's finding as to the nature of the conditions and the
4 potential "immediacy" of them, I think that's more properly
5 reserved for Mr. Hull. Again, I don't see the relevancy of
6 these questions to Mr. Hannon.

7 MS. MUSGRAVE: I will also certainly ask Mr. Hull
8 about his report.

9 The question for this witness, though, is that, under this
10 proposal, a draft was supposed to be sent to Intercity within
11 20 days of that site visit back in July, and I'm trying to
12 understand if that happened, what his recollection is of why
13 that didn't happen, and why there's no report until we see the
14 final for the very first time on January 6th of this year.

15 MS. VANDESTEEG: Again, Your Honor, I think he's
16 testified that he doesn't recall when the draft was received.
17 The only report that ICI is relying upon is the final report
18 dated January 6th.

19 THE COURT: I'm going to overrule the objection. I
20 do believe that the greater part of the questioning on when
21 the report was prepared and Terracon's performance of its
22 services under the agreement are probably better lodged for
23 Terracon for the purposes that you're seeking to reach, Ms.
24 Musgrave.

25 But with that said, I do believe that it is appropriate to

Hannon - Cross

172

1 ask this witness if, based upon his knowledge, whether he ever
2 received a report. Because I think, if I recall from the last
3 hearing, Terracon was retained by ICI, correct?

4 MS. VANDESTEEG: Yes, Your Honor.

5 THE COURT: Okay. Then, again, I'm going to give you
6 a little bit of leeway, Ms. Musgrave. Let's not beat it to
7 death.

8 MS. MUSGRAVE: Understood, Your Honor. And I think
9 the point is largely made at this point, and we can --

10 THE COURT: Okay.

11 MS. MUSGRAVE: We can pretty much move on.

12 THE COURT: All righty. Thank you.

13 MS. MUSGRAVE: So, I appreciate that.

14 BY MS. MUSGRAVE:

15 Q So, Mr. Hannon, you would agree with me that at some point
16 Terracon was directed to finalize their report, right?

17 A We got a final report.

18 Q And you got that final report on January 6th. Is that the
19 one you're talking about?

20 A It's dated January 6th. I don't know if it came in the
21 evening of the 5th or the -- you know, I don't know. But
22 right -- right at that date.

23 Q And at some point before January 6th, or the evening of
24 January 5th, as you say, a direction was given by you, Kong
25 Capital, and your counsel to Terracon to finalize that report;

1 is that right?

2 MS. VANDESTEEG: Objection, Your Honor. I think that
3 assumes facts not in evidence.

4 MS. MUSGRAVE: Well, I'm happy to ask him who
5 directed --

6 THE COURT: Please restate.

7 MS. MUSGRAVE: Sure. No problem.

8 THE COURT: Thank you.

9 BY MS. MUSGRAVE:

10 Q Mr. Hannon, who directed Terracon to finalize the report?

11 A I don't recall. I really don't. Could have been me. I
12 don't know.

13 Q I'm sorry. I didn't hear the last thing you said.

14 A It could have been me. I don't recall saying, let's make
15 this -- let's get this final out.

16 MS. MUSGRAVE: Your Honor, may I approach the witness
17 with a copy of his deposition transcript?

18 THE COURT: Of course.

19 BY MS. MUSGRAVE:

20 Q Sir, what I've just handed you is a copy of the transcript
21 of the deposition, your deposition that took place on January
22 18, 2023. Do you recall that deposition?

23 A I do.

24 Q And you understood at that time that you were under oath?

25 A I do.

1 Q I'm going to direct your attention, please, sir, to Page
2 80 of that deposition. I'll give you a moment to get there.

3 MS. VANDESTEEG: Counsel, was that 80, eight zero?

4 MS. MUSGRAVE: Eight zero.

5 THE WITNESS: Mine only goes through 34.

6 THE COURT: He might be looking at the bottom of the
7 page rather than the --

8 THE WITNESS: I was.

9 BY MS. MUSGRAVE:

10 Q If I may. There's actually -- it's a little cumbersome,
11 but there's four pages to the --

12 A Oh.

13 Q -- sheet here. We were trying to save some trees.
14 There's Page 80 right here.

15 A Okay.

16 Q Sir, I'm going to direct your attention to Line 20 on that
17 Page 80 and ask that you please read silently while I read
18 aloud.

19 Question: Who ultimately directed Mr. Hull to finalize
20 the Terracon report?

21 Answer: It would have been our team. Myself and
22 Levenfeld Pearlstein, Jackson Walker, Kong.

23 Question: Do you recall when that direction was given?

24 Answer: No.

25 Did I read that correctly?

1 A Yes.

2 Q So, back to my question. Who directed Terracon to
3 finalize the report?

4 A I don't specifically recall, but it would have been our
5 team.

6 Q Okay. You can set that aside, sir. Move on.

7 A Okay.

8 Q And just so I understand, even though this report was
9 finalized only about two weeks ago, you don't know when that
10 direction was given?

11 A It was sometime prior to January 6th.

12 Q When you say sometime prior to January 6th, can you be a
13 little more specific?

14 A I can't.

15 Q Okay.

16 A And I didn't say that it was finalized at that time. I
17 don't know when it was finalized. That's when I got the
18 report.

19 Q All right. Can you turn, please, sir, to Exhibit 1 in the
20 Initial Plan Sponsors' amended exhibit binder? It's the white
21 binder.

22 A I'm sorry. What section?

23 Q 1, please.

24 A Okay.

25 THE COURT: And just for the record purposes, the

1 exhibits that Ms. Musgrave has referenced are at Docket 1087.

2 MS. MUSGRAVE: Thank you, Your Honor.

3 THE COURT: Thank you.

4 THE WITNESS: I'm there.

5 BY MS. MUSGRAVE:

6 Q Great. Sir, this is a Notice of Intercity Investment
7 Properties, Inc.'s Statement Regarding Lease Cure Amount, and
8 it has a date filed of 12/23/2022. Do you see that?

9 A I do.

10 Q And you've seen this document before, right?

11 A Yes.

12 Q Sir, I'm going to direct your attention, please, to
13 Exhibit B, which is a little hard to find. It's actually
14 pretty close to Tab 2, if that's helpful.

15 A B, did you say?

16 Q Yes.

17 A Yes.

18 Q Great. And on the first page of Exhibit B, do you see
19 that there's a table and it says, Cure Amount Summary as of
20 12/23/2022?

21 A I'm sorry. Redirect me again. I'm lost.

22 Q All right.

23 A Where is this table? I don't see a table in this --

24 Q Did you make it to Exhibit B after --

25 A I'm in B, and I don't see a table.

Hannon - Cross

177

1 MS. MUSGRAVE: Your Honor, may I approach the
2 witness?

3 THE COURT: Please.

4 MS. MUSGRAVE: It's --

5 THE WITNESS: Oh. Not in it. It's an exhibit.
6 Thank you.

7 BY MS. MUSGRAVE:

8 Q A lot of paper flying around. Do you now see a table
9 that's titled, Cure Amount Summary as of 12/23/2022?

10 A I do.

11 Q And do you see there's a line item there that says,
12 Intercity Investment Properties, Inc. Lease Amounts?

13 A I do.

14 Q And it has a subtotal of \$52,811,012.01?

15 A Is there, I'm sorry, I didn't know the question.

16 Q Yes.

17 A Do I see --

18 Q That was the question. Do you see that?

19 A Yes, I do now.

20 Q Okay.

21 A Thank you.

22 Q And you don't recall having any involvement in preparing
23 this table, do you?

24 A I do not recall being involved with this.

25 Q And outside of discussions with your counsel, you don't

1 know how that amount was calculated?

2 A (no immediate response)

3 Q Do you?

4 A I certainly know how one of them was.

5 Q Well, I'm focusing specifically on that \$52 million now.

6 A Oh, okay. No, I do not.

7 Q Okay. All righty.

8 MS. MUSGRAVE: Your Honor, may I have just a moment?

9 I have to get a different --

10 THE COURT: Yes.

11 MS. MUSGRAVE: -- exhibit binder.

12 THE COURT: Of course.

13 MS. MUSGRAVE: Thank you.

14 (Pause.)

15 BY MS. MUSGRAVE:

16 Q Okay. We're going to switch over to the big black binder
17 now, please, sir.

18 A Uh-huh. Yes.

19 Q And turning to Exhibit 1H.

20 A Terracon Property Condition Report?

21 Q Yes, sir.

22 A I am there.

23 Q You beat me. Sir, the first time you read this report was
24 sometime after January 6th; is that right?

25 A Could have been on January 6th, but yes.

1 Q Okay. So on or after January 6th?

2 A Correct.

3 Q Okay. Let me ask you, please, to turn to Table 1.1 of
4 this report.

5 A Yes.

6 MS. MUSGRAVE: And Judge, I'll note for the record
7 that I realize we haven't done a lot with the witness to bring
8 in this document yet, but exigencies of time and witnesses
9 being what they are, I would ask the Court to take today any
10 of the testimony that I'm going to offer from Mr. Hannon and
11 tie it up when Mr. Hull is able to take the stand, if that's
12 all right.

13 THE COURT: Okay. Ms. --

14 MS. VANDESTEEG: Your Honor, I would just object to
15 this one also in that we don't have the foundation, and this
16 was objected to by counsel as coming in as an exhibit. So I
17 just want to be thoughtful and deliberate about what purpose
18 we're using this exhibit for now when it has otherwise been
19 objected to in terms of its admissibility.

20 MS. MUSGRAVE: Your Honor, if Ms. Vandesteeg wants to
21 keep it out of evidence, I'm a hundred percent fine with that
22 decision.

23 MS. VANDESTEEG: No, we do have this on our list,
24 Your Honor, and we're happy to have it admitted. Like I said,
25 I'm just concerned about what use counsel has of it to use

1 with the witness while at the same time objecting to its
2 admissibility.

3 MS. MUSGRAVE: Well, I do object to its
4 admissibility, and I'm happy to renew that objection at any
5 point. But if the report is going to be in evidence, then I
6 do have some questions for this witness about it.

7 THE COURT: Well, I think what the issue is, is would
8 you prefer her to recall?

9 MS. VANDESTEEG: No, Your Honor. I would prefer to
10 stick with, then, what we had agreed to in terms of keeping
11 our witnesses on and off for efficiency purposes.

12 THE COURT: Uh-huh.

13 MS. VANDESTEEG: I suppose let's go ahead and allow
14 counsel to ask her questions, and if we need to in some way
15 revisit then the testimony later, as we would prefer not to,
16 we can do so.

17 THE COURT: Right. Obviously, in terms of
18 deliberating with respect to a ruling, the Court will consider
19 this part of the testimony if and when the exhibit comes in as
20 evidence.

21 MS. VANDESTEEG: Or could we just move to admit it
22 now, for efficiency purposes again?

23 MS. MUSGRAVE: Well, I'm still objecting to its
24 admission because no foundation has been laid.

25 I mean, I think in the ordinary course, Your Honor, I

Hannon - Cross

181

1 would prefer to recall this witness after we get a ruling on
2 the report and after Mr. Hull has been able to testify. But I
3 don't know that we're in a position to do that today.

4 MS. VANDESTEEG: Let us proceed, Your Honor.

5 THE COURT: Okay. Let's proceed. Again, as the
6 Court stated -- which is, of course, not ideal -- but we'll
7 proceed with the questions on the report prior to its
8 admission. If by some chance the report is never admitted,
9 then we'll disregard this portion of the testimony.

10 MS. MUSGRAVE: And I can represent to the Court that
11 I don't anticipate it being a long line of questions. I just
12 want to make sure that we have in the record this witness's
13 knowledge of the report.

14 THE COURT: Okay. Thank you so much.

15 MS. MUSGRAVE: Thank you.

16 BY MS. MUSGRAVE:

17 Q So, Mr. Hannon, if I could ask you, please, to turn to --
18 well, it's very difficult to see these page numbers. There's
19 a table just a few pages in titled, 1.1. Immediate Repairs
20 Cost Table. Do you see that?

21 A Say again?

22 Q And if you don't, I can come over.

23 A Where?

24 Q It's Table 1.1. Immediate Repairs Cost Table.

25 A That is small print.

- 1 Q It's very small, yeah.
- 2 A I see that.
- 3 Q Okay.
- 4 A Yes.
- 5 Q And just so I'm clear, sir, you had no involvement in
6 putting together this table. Right?
- 7 A That is correct.
- 8 Q Is it fair to say that, for each item in this table, you
9 first became aware of each of these issues when you read about
10 them in this report?
- 11 A (Pause.) I'm looking. (Pause.) No.
- 12 Q It was a poorly-phrased question. Let me try again.
- 13 A All right.
- 14 Q I'm talking specifically about this table. So, just so
15 I'm clear, you had no involvement in putting together this
16 table in this report. Is that right?
- 17 A Correct.
- 18 Q Okay. Turning your attention to the -- oh, I think you
19 can see that -- to the bottom of the table, it says, Total
20 Immediate Repairs, \$492,000. Do you see that?
- 21 A I do.
- 22 Q And you had no involvement in putting together that total;
23 is that right?
- 24 A That's right. Correct.
- 25 Q All right. And if you could just turn back to the page

1 immediately before this table, do you see where it says Total
2 Early Term Replacement Reserve Costs?

3 A I do.

4 Q And it lists a total of \$7,235,450?

5 A Do I see that?

6 Q Do you see that?

7 A Yes, ma'am.

8 Q And you had no involvement in coming up with the items
9 included in this amount, right?

10 A With the items? I do not, did not.

11 MS. MUSGRAVE: Your Honor, I was true to my word.
12 That's it with the exhibit.

13 THE COURT: Okay.

14 BY MS. MUSGRAVE:

15 Q Okay. Sir, can you please turn to Exhibit 1 in this big
16 black binder?

17 A Yes. I'm there. Go ahead.

18 MS. VANDESTEEG: Counsel, to be clear, are we
19 referring to Exhibit 1 in ICI's exhibits?

20 MS. MUSGRAVE: Is it the same? I missed one.

21 BY MS. MUSGRAVE:

22 Q All right. To avoid any confusion, let's please switch to
23 the white binder, the small white binder, and go to Exhibit 2,
24 please.

25 A Okay.

1 Q And I'll ask you --

2 A Exhibit 1?

3 Q Exhibit 2.

4 A Exhibit 2?

5 Q At Page 12.

6 A I'm not finding a page number, but I'm --

7 Q It's in the bottom right.

8 A You want me to go to Page 12? Of Exhibit 2?

9 Q Yes, please.

10 (Interruption.)

11 THE COURT: Could you please mute that line, Ms.
12 Jeng? Thank you.

13 (Court confers with Clerk.)

14 THE COURT: So, I'd ask the folks on WebEx, again,
15 unless you're going to participate in the hearing, to please
16 keep your lines on mute. Thank you very much.

17 THE WITNESS: The punch-hole person wasn't very good
18 on this one. I'm going to have to fix it a little bit so I
19 can make it work. Okay. I'm there. I'm there.

20 BY MS. MUSGRAVE:

21 Q Sir, do you recall testifying earlier about this table
22 that starts on Page 12 of this document and goes over to Page
23 15?

24 A I do.

25 Q Just to be clear, you did not create this table, did you?

1 A No.

2 Q Your law firm created this table?

3 A I didn't say that.

4 Q Sir, is it your testimony here today that someone other
5 than your law firm created this table?

6 A No.

7 Q Did your law firm create this table?

8 A My recollection is that it was basically the amalgamation
9 of our team, and the law firm is included in that team. I
10 don't know who did the typing. Could have been Levenfeld.
11 Could have been Walker.

12 Q When you say Walker, is that Jackson Walker?

13 A Yes, ma'am. Sorry.

14 Q Okay. And when you talk about the team that worked on
15 this table, that team consisted of you, Kong Capital, and your
16 counsel. Is that right?

17 A Yes.

18 Q That counsel, again, is Levenfeld and Jackson Walker?

19 A Yes, ma'am.

20 Q That team did not include anyone from Terracon?

21 A Not when I was around. No.

22 Q And that team did not include anyone from Plante Moran?

23 A Correct.

24 Q And that team did not include anyone from The Building
25 Consultant?

1 A Correct.

2 Q And, again, just so I'm clear, I believe you testified
3 earlier that you had seen a report from Plante Moran. Do you
4 recall that?

5 A Yes.

6 Q And the first time you saw that report was in the last
7 couple weeks; is that true?

8 A Yes.

9 Q And the same with The Building Consultant's report?

10 A That the first time I saw it was in the last couple weeks?

11 Q Yes.

12 A Yes.

13 Q So, as part of the team of you, Kong Capital, and counsel
14 that worked on this table, what was your role specifically?

15 A My role was of counsel with my experience in the costs,
16 having done much of this kind of work many times recently in
17 North Texas and knowing what things cost.

18 Q Is it your testimony here today, sir, that your role was
19 more involved than simply being in the room with the team?

20 A No.

21 Q Would you agree that your role was being in the room with
22 the team?

23 A Yes.

24 Q Turning your attention back to this chart, you understand
25 that the column labeled Source has initials for the property

1 condition report from which the item derives; is that right?

2 A Yes.

3 Q And so where it says PM, is that Plante Moran?

4 A That's what I think.

5 Q And where it says T, that's Terracon?

6 A Yes.

7 Q And where it says TBC, that's The Building Consultant?

8 A That's my understanding.

9 Q And then the team -- you, Kong Capital, Levenfeld
10 Pearlstein, and Jackson Walker -- decided which pieces of each
11 of these sources to include in the table?

12 A I don't know if I'd characterize it that way, but together
13 we collected the information and tried to organize it into
14 sections that made sense.

15 MS. VANDESTEEG: Hold on one moment, because I'm
16 concerned that some of this testimony that is being sought and
17 provided is drifting into communications that involve
18 attorney-client privileged communications, and I'd ask that we
19 just take a moment to reset boundaries so that the witness
20 does not begin to divulge information that is indeed attorney-
21 client privileged.

22 THE COURT: Ms. Musgrave?

23 MS. MUSGRAVE: Certainly, Your Honor. And I'm not
24 intending to inquire into any privileged topics. The
25 difficulty here is that this table is the essence of the

Hannon - Cross

188

1 amended cure statement, and I'm trying to find the basis for
2 it, and so far I'm being told it's privileged.

3 THE COURT: Thank you.

4 MS. VANDESTEEG: And Your Honor, I think that if Ms.
5 Musgrave wanted to ask what the basis is, that is something
6 that Mr. Hannon had testified to and I think he can testify to
7 again. It's asking about the specific nature of who said what
8 and contributed what to a group discussion that is the
9 problem. But if she wants to ask him what his knowledge of
10 what the basis is, I think that's a different question.

11 MS. MUSGRAVE: That's not the question I was trying
12 to ask, Your Honor. I agree. That was elicited previously.
13 But I'm trying to determine how these various pieces were
14 pulled from reports and who made that decision. So if that is
15 a privileged communication, then I will move on. But I just
16 want to note that I am trying to explore that. I just don't
17 seem to be able to.

18 THE COURT: Right. I think that what would be an
19 acceptable line of questioning, again, is asking the witness
20 if he or anyone not his lawyers, essentially, because we
21 certainly -- we don't want to invade any discussions between
22 you and your lawyers, because that is all privileged
23 communication.

24 But I think that that the fair boundaries were what he did
25 towards the table or what anyone from ICI not including

1 counsel did towards preparation of the table.

2 If lawyers prepared it, that's a fine answer, but we'll
3 just leave it there. I don't want you to divulge A did this,
4 B did that, and C did that, if those characters work for
5 either of your two law firms. All righty?

6 MS. MUSGRAVE: And I think maybe, Your Honor, I can
7 come at this a little bit differently and explore non-counsel
8 entities that might have --

9 THE COURT: All righty.

10 MS. MUSGRAVE: Okay.

11 THE COURT: Better. Thank you.

12 BY MS. MUSGRAVE:

13 Q So, Mr. Hannon, you did not discuss with Plante Moran
14 which categories of conditions were going to be included in
15 this table, did you?

16 A I did not.

17 Q And you did not discuss with The Building Consultant which
18 categories of conditions were going to be included in this
19 table, did you?

20 A I did not.

21 Q You did not discuss with Terracon which categories of
22 conditions were going to be included in this table, did you?

23 A I don't recall doing that.

24 Q And this table was first put together in the last couple
25 of weeks; does that sound right?

Hannon - Cross

190

1 A That's my understanding. I didn't actually create it.

2 MS. MUSGRAVE: Your Honor, may I have a moment to
3 confer with my co-counsel?

4 THE COURT: Yes. Please.

5 (Pause.)

6 MS. MUSGRAVE: Thank you very much, Your Honor, and
7 thank you, Mr. Hannon. I have nothing further.

8 THE COURT: Thank you very much. Redirect? Or I'm
9 sorry, is there anyone else who wishes to further cross-
10 examine? I apologize. Please.

11 MR. DAVIS: Thank you, Your Honor. Matthew Davis for
12 Bay 9.

13 CROSS-EXAMINATION

14 BY MR. DAVIS:

15 Q Just a couple of clarification questions, Mr. Hannon. If
16 you could, turn to ICI Exhibit 1 in the ICI binder in front of
17 you.

18 A Is that the big black one?

19 Q The cure statement. The amended cure statement.

20 THE COURT: Yes.

21 THE WITNESS: And it's what section?

22 BY MR. DAVIS:

23 Q Exhibit 1.

24 A I'm there.

25 Q And then --

- 1 A I'm there.
- 2 Q -- Page 13, which was the table that I believe you called
3 the conditions table earlier.
- 4 A Category of conditions?
- 5 Q Yes, sir. Do you see that?
- 6 A I do.
- 7 Q I believe your prior testimony was discussing the items in
8 this table being a default if they existed. Is that right?
9 If the conditions existed?
- 10 A To the extent I didn't see them myself.
- 11 Q Right. And that's what I wanted to clarify. As to on
12 Page 13 of the table, do you see the entry there, Patch EIFS,
13 correct flashing, power wash, repaint building? About halfway
14 down?
- 15 A Under building envelope?
- 16 Q Yes, sir.
- 17 A How does that start out? Patch EIFS?
- 18 Q Yes, sir.
- 19 A I do see it.
- 20 Q Okay. And that's a condition related to the building
21 envelope, the exterior, the stucco on the building. Correct?
- 22 A Yes. Excluding the health center.
- 23 Q Okay. And that's a condition that you personally observed
24 with your own eyes during your two tours, correct?
- 25 A Yes. Not all of it. I didn't -- I didn't see, from where

1 I was, any of the flashing. I couldn't see it from where I
2 was.

3 Q But you did see the conditions noted in this related to
4 patching of EIFS existed on the building exterior with your
5 own eyes, correct?

6 A Yes.

7 Q And that existed in at least January and March of 2022,
8 correct?

9 A Yes.

10 Q Okay. You also mentioned that you had a similar property
11 nearby where building envelope repairs had been done recently.
12 Is that --

13 A Yes.

14 Q Was that building also a stucco exterior?

15 A Yes. Built about the same time.

16 Q Okay. And that -- did that building exhibit cracks?

17 A Yes.

18 Q Were you involved in the determination of whether repairs
19 should be done on that building?

20 A Yes.

21 Q And what led you to determine repairs would be necessary
22 for that building?

23 A Well, when we saw the symptoms, we retained a consultant
24 to do discovery to find out, you know, really diagnose what --
25 what, if any, the problem was and the extent of the problem.

1 So we retained a consultant to investigate it.

2 Q And did your observations of that building reveal a
3 similar level of cracking as you saw at Edgemere?

4 A I don't know if I could say that, similar. Probably, but
5 I couldn't say that. Cracking is cracking.

6 Q Based on your experience and your observations of
7 Edgemere, would you, if you were operating Edgemere, seek to
8 have those -- the building envelope repaired?

9 A The first thing I'd do.

10 MR. DAVIS: No further questions.

11 THE COURT: Thank you, Mr. Davis.

12 Is there anyone else who wishes to cross-examine Mr.
13 Hannon?

14 THE WITNESS: Can I add to that? May I?

15 THE COURT: Actually, you can respond only in
16 response to a question.

17 THE WITNESS: Sorry.

18 CROSS-EXAMINATION, RESUMED

19 BY MR. DAVIS:

20 Q Do you have anything you'd like to add?

21 A Glad you brought that up. The way you characterized that
22 question, can you restate that question?

23 Q Yes. Based on your experience in the real estate
24 industry, close to 15 years, and what you observed at Edgemere
25 related to the building envelope, would you personally move to

1 have that building envelope repaired immediately?

2 A Yes. Moreover, not just the symptoms, I would find out --
3 this is like you go into a doctor and you've got a fever. So
4 is that just one solution? The cracks are symptoms. They're
5 evidence. I don't know what the scope of the repair is, but
6 it would be a top priority. But the fix isn't necessarily
7 repairing the cracks. The cracks are the symptoms.

8 Q Okay. Thank you, sir.

9 A I just want to be clear.

10 THE COURT: Is there anyone else who wishes to cross-
11 examine Mr. Hannon?

12 All righty. Any redirect, Ms. Vandesteeg?

13 REDIRECT EXAMINATION

14 BY MS. VANDESTEEG:

15 Q Hello, Mr. Hannon.

16 A Hello.

17 Q Can I please direct you back to what we have marked as ICI
18 Exhibit 1, that chart on Page 12, our conditions chart?

19 A I'm there.

20 Q My recollection from your testimony on our direct is that
21 it's your belief and opinion that each of the conditions that
22 are listed on that conditions cure --

23 MS. MUSGRAVE: Objection, Your Honor. Leading.

24 THE COURT: Please restate, Ms. Vandesteeg.

25 BY MS. VANDESTEEG:

1 Q Mr. Hannon, the conditions chart, --

2 A Uh-huh. Yes.

3 Q -- to your view, are those defaults under the lease, those
4 conditions?

5 A Yes.

6 Q Thank you.

7 MS. VANDESTEEG: Nothing further, Your Honor.

8 THE COURT: Thank you very much. Anything further of
9 this witness, ladies and gentlemen?

10 MS. VANDESTEEG: No, Your Honor.

11 MS. MUSGRAVE: No, Your Honor. Thank you.

12 MR. DAVIS: No, Your Honor.

13 THE COURT: Thank you very much. You may step down,
14 Mr. Hannon. Thank you very much for your testimony today.

15 THE WITNESS: Thank you.

16 THE COURT: You're welcome.

17 (The witness steps down.)

18 MS. VANDESTEEG: Oh, yes. I'm sorry. Mr. Hannon?

19 From our perspective, the witness is excused. Thank you.

20 THE COURT: Thank you.

21 MS. VANDESTEEG: Before you go sauntering off.

22 Your Honor, unless the Court would otherwise like to take
23 any other recess or break, we would like to call our second
24 witness, Michael Hull.

25 THE COURT: All righty. Does anyone need a break?

Hull - Direct

196

1 MS. MUSGRAVE: I'm good to proceed, Your Honor.

2 Thank you.

3 THE COURT: All righty. Please take the stand, sir.

4 If you can raise your right hand for me.

5 MR. HULL: Yes, ma'am.

6 (The witness affirms.)

7 THE COURT: Thank you so much.

8 Take your time.

9 MS. VANDESTEEG: Thank you.

10 MICHAEL JEFFREY HULL, INTERCITY INVESTMENT PROPERTIES, INC.'S

11 WITNESS, AFFIRMED

12 DIRECT EXAMINATION

13 BY MS. VANDESTEEG:

14 Q Good afternoon, Mr. Hull.

15 A Good afternoon.

16 Q Can you please state and spell your full name for the
17 record?

18 A Full name is Michael Jeffrey Hull, spelled M-I-C-H -- let
19 me restart. M-I-C-H-A-E-L, J-E-F-F-R-E-Y, H-U-L-L.

20 Q Thank you, Mr. Hull. Have you ever testified in court
21 before?

22 A Never.

23 Q Mr. Hull, what is your highest level of education?

24 A I have a bachelor of science in civil engineering from
25 Oklahoma State University.

Hull - Direct

197

1 Q When did you earn that degree?

2 A December of 2010.

3 Q Do you currently hold any professional licenses?

4 A I do. I am a licensed Professional Engineer in the State
5 of Texas, and I also carry a premier certificate for firestop
6 special inspections.

7 Q For how long have you held your professional engineering
8 license?

9 A Approximately four years.

10 Q And how long have you been certified as a firestopping
11 special inspector or certified as one?

12 A Approximately four years.

13 Q Are you currently employed?

14 A Yes.

15 Q Where are you employed?

16 A I am employed with Terracon Consultants, Incorporated.

17 Q How long have you worked at Terracon?

18 A Seven years this May.

19 Q What is your current job title at Terracon?

20 A My title is Group Manager.

21 Q How long have you held that title?

22 A Approximately two years.

23 Q What is your role and responsibilities as a Group Manager?

24 A As a Group Manager, I oversee and manage subordinate staff
25 and assign work and project flow.

Hull - Direct

198

1 Q How big is the group that you manage?

2 A Four.

3 Q In your role as a Group Manager, do you perform property
4 condition assessments?

5 A I do.

6 Q How many property condition assessments have you
7 performed?

8 A At my time with Terracon, I have performed or been
9 associated with 267 property condition assessments.

10 Q What is involved in a typical property condition
11 assessment for Terracon?

12 A There's many phases, but it starts off with an engagement
13 with a client, the organization of reconnaissance, collection
14 of documents that are related to that reconnaissance. We
15 perform reconnaissance and assessment, and then we produce a
16 report. In the simplest of terms.

17 Q By reconnaissance and assessment, is that the site visit
18 observation component?

19 A That is correct.

20 Q So let me state it back to you a different way to make
21 sure I understand, then. There are -- there's the engagement,
22 there is some pre-site visit investigation?

23 A Yes.

24 Q The site visit itself, and then a creation of a report?

25 A Yes. That reflects those observations.

Hull - Direct

199

1 Q At some point, Terracon was contacted by Intercity
2 Investment Properties. Correct?

3 A Correct.

4 Q And if I refer to Intercity Investment Properties as
5 Intercity or ICI, we'll all know what I'm talking about,
6 right?

7 A That is correct.

8 Q Great. To the best of your recollection, when was
9 Terracon first contacted by Intercity with respect to The
10 Edgemere?

11 A First quarter of 2022. Possibly February. February.
12 Yeah.

13 Q Was that reach-out to you?

14 A I don't recall.

15 Q Do you recall speaking with anyone from Intercity at that
16 first part of 2022?

17 A Yes.

18 Q Who did you speak with?

19 A I spoke with Mr. Nick Hannon.

20 Q Do you recall what you discussed with Mr. Hannon at that
21 time?

22 A We discussed the potential for property condition
23 assessment services for The Edgemere site.

24 Q During that first conversation, were you provided with any
25 details about that potential job at The Edgemere?

Hull - Direct

200

1 A Not initially.

2 Q At that time, what did you understand The Edgemere to be?

3 A A retirement community.

4 Q Was Terracon hired in that early part of 2022?

5 A Not in February.

6 Q Was Terracon hired by ICI at some point with respect to
7 Edgemere?

8 A Yes.

9 Q Do you recall when?

10 A Yes. Our engagement letter was executed on April 1st of
11 2022.

12 Q Did Terracon take any steps to gather information or
13 otherwise prepare for the property condition assessment of
14 Edgemere prior to its site visit?

15 A Yes. It is standard practice for all PCAs to send out a
16 property questionnaire that requests a few -- just a general
17 discussion of current condition, in addition to capital
18 historical -- capital expenditure documents, construction
19 documents, site plans, rent rolls, items like that. And any
20 past engineering studies.

21 Q I think you just said that that's Terracon's typical
22 process. Is that the process also used with respect to The
23 Edgemere, that questionnaire --

24 A Yes.

25 Q -- and request for information?

Hull - Direct

201

1 A Yes.

2 Q Did you receive any of the requested information or
3 questionnaire responses for Edgemere ahead of your site visit?

4 A No.

5 Q Prior to the site visit, did anyone inform you that there
6 had been any prior condition assessments that had been
7 performed at The Edgemere?

8 A We were unaware.

9 Q Prior to the site visit, did Terracon review any prior
10 condition assessment reports for The Edgemere?

11 A We did not.

12 Q Is it necessary for Terracon, is it -- let's back up. Is
13 it generally necessary for Terracon to receive that type of
14 pre-site visit information before it goes to the site?

15 A It is expected. It is not uncommon that we don't receive
16 it, but it is expected.

17 Q Is it possible for Terracon to still do the site visit and
18 prepare its observations into a report and do a property
19 condition assessment without having received pre-site-visit
20 information?

21 A Yes. That is correct.

22 Q Did Terracon conduct the site visit and property condition
23 assessment of The Edgemere?

24 A Yes, we did.

25 Q When was the site visit?

Hull - Direct

202

1 A Early July of 2022.

2 Q Who from Terracon was present at that site visit?

3 A The site visit lasted approximately two days, and the team
4 consisted of myself, Mr. Anil Garg, Mr. Eric Gonzalez, Mr.
5 Adrian Alvarez, Mr. Chris Longoria, and Mr. Al Syedi.

6 Q So a total of six people on the site visit team, correct?

7 A Yes. That is correct.

8 Q Now, you, Mr. Hull, testified that you're a licensed
9 Professional Engineer, correct?

10 A That is correct.

11 Q Of those other five colleagues that you named who were on
12 that Edgemere site visit for the Terracon team, are those
13 colleagues also licensed Professional Engineers?

14 A Some of them are, yes.

15 Q Which ones are also licensed Professional Engineers?

16 A Mr. Anil Garg is a licensed Professional Engineer in a
17 number of states, specifically in structural engineering.

18 Mr. Eric Gonzalez is a licensed Professional Engineer in
19 more of a mechanical background.

20 And Mr. Adrian Alvarez is a licensed mechanical P.E.

21 Pardon me, Professional Engineer.

22 THE COURT: Mr. Hull, did you say that he was also
23 mechanical?

24 THE WITNESS: Yes.

25 THE COURT: Okay. Thank you very much.

Hull - Direct

203

1 BY MS. VANDESTEEG:

2 Q What about the other two remaining members of that
3 Terracon team, Mr. Longoria and Mr. Garg? What were their
4 roles?

5 A I already mentioned that Mr. Garg was the structural
6 Professional Engineer.

7 Q I must have misnoted and I had that marked for Mr. Syedi.

8 A Syedi.

9 Q Okay.

10 A So we'll start off with Mr. Syedi.

11 Q Thank you.

12 A Mr. Syedi is a building envelope specialist. He is not a
13 licensed Professional Engineer, but he has years of
14 experience.

15 Q And what about Mr. Longoria?

16 A Mr. Longoria is a -- not a licensed engineer, but he also
17 has years and years of envelope and roof experience, and is
18 also a certified drone operator.

19 Q Why did you need a certified drone operator?

20 A Some of the parts of the roof were inaccessible. And to
21 do so would be extraordinarily unsafe.

22 Q Why, generally speaking, did Terracon put together and
23 bring this team of six professionals to perform the property
24 condition assessment at The Edgemere?

25 A A property of this size -- type and size and complexity

Hull - Direct

204

1 requires a finer-toothed comb. And so we -- one person -- it
2 can't be expected to have one person assess that entire site
3 in short order. So it's -- it's both a team effort and a time
4 matter.

5 Q Why did you determine that the team should also include
6 mechanical engineers and structural engineers and building
7 envelope specialists?

8 A That request was also made by Intercity. And that is a
9 common request for PCAs. Occasionally, a variety of clients
10 will ask for we'd like a roofing specialist attached to the
11 assessment group, we'd like a structural engineer to look at
12 this parking garage. That is not an uncommon common task.

13 Q To your view, do you think that this was an appropriately-
14 diverse team in terms of specialties for this property
15 condition assessment of a property like The Edgemere?

16 A Yes. We had at least one to two people covering each
17 building subsystem.

18 Q How long was the Terracon team onsite at The Edgemere?

19 A Approximately two days.

20 Q During that time, was the Terracon team able to do any
21 destructive testing or sampling?

22 A No. No. That is -- that is far beyond our scope.

23 Q So what is it that you were able to do and perform as part
24 of that onsite assessment?

25 A The scope of a property condition assessment site visit is

Hull - Direct

205

1 pretty much limited to an interview with site contacts, being
2 escorted if site contacts are available, and it's -- it's a
3 visual-only assessment. So we do not conduct destructive
4 testing, and it's -- we don't essentially put our fingers into
5 mechanical systems and to belts and to electrical panels.
6 It's -- besides being quite unsafe, it's not -- not part of
7 our scope.

8 Q As part of your visual inspection, do you -- if you're not
9 taking sampling, do you otherwise memorialize, does Terracon
10 memorialize its observations and its findings as a result of
11 these site visits?

12 A Yes. We take photos.

13 Q Did you take photos at The Edgemere?

14 A Yes.

15 Q Just you, or other members of your team as well?

16 A All of my team took photos. In addition to the drone
17 operator, who took photos with the drone.

18 Q You mentioned as a part of Terracon's site visit there is
19 also an interview component. Were you provided with that
20 interview opportunity in connection with Terracon's site visit
21 at The Edgemere?

22 A We were.

23 Q Who, to the extent you remember, was the person that you
24 were permitted to interview at Edgemere?

25 A They were both representatives of Edgemere, but I don't

Hull - Direct

206

1 believe they were -- they were more corporate division-
2 related.

3 Q Do you recall those two individuals' names?

4 A Jared and Chris? Is that -- I'm trying to think. Soden?
5 I apologize. I don't recall his last name. Either of their
6 last names. It's documented in our report.

7 Q Thank you. I think you've also said that -- and correct
8 me if I'm wrong -- typically, there will be an escort also for
9 the Terracon team when you are performing a site visit for
10 your PCA. Was there that type of an escort also at The
11 Edgemere?

12 A Yes. An escort was provided.

13 Q Was that escort with your team at all times that you were
14 onsite?

15 A The team was permitted to venture off into different
16 groups. So the team was not all in one place at the same
17 time. So we had multiple escorts. But we were permitted
18 access to a number of places that we requested.

19 Q Were you permitted access to interiors --

20 A Yes.

21 Q -- at The Edgemere?

22 A Yes.

23 Q Were you permitted to -- access to the independent living
24 facilities?

25 A A sample.

Hull - Direct

207

1 Q Were you permitted with access to the plaza, the health
2 center?

3 A Yes. A sample.

4 Q Were you permitted access to the roofs?

5 A Yes.

6 Q Were you permitted access to the parking garage?

7 A Yes.

8 Q Were you permitted access to the overall courtyard and
9 campus?

10 A Yes.

11 Q Did Terracon prepare a report of its findings, a formal
12 property condition assessment?

13 A We did.

14 Q I would like for you to turn to what has been marked as
15 Exhibit 1H in the black binder. The first exhibit is Exhibit
16 1, and then there are letters coming after it.

17 A I'm here.

18 MS. MUSGRAVE: Your Honor, I would just at this point
19 renew my objection to the report on the grounds of hearsay.

20 THE COURT: Thank you, Ms. Musgrave.

21 Ms. Vandesteeg?

22 MS. VANDESTEEG: I'm not yet moving to admit it, Your
23 Honor. I was simply going to ask the witness if he can
24 verify, in looking at it, that this Exhibit 1H is the property
25 condition report prepared by Terracon as the culmination of

Hull - Direct

208

1 its property condition assessment of The Edgemere.

2 THE WITNESS: Yes. That's -- this is correct.

3 MS. VANDESTEEG: Okay.

4 THE COURT: We'll put a pin in the objection.

5 BY MS. VANDESTEEG:

6 Q You can set that exhibit aside now for a moment. Mr.
7 Hull, we're going to, without looking at your report right
8 now, --

9 A Okay.

10 Q -- talk about some of your observations.

11 A Um, so --

12 Q Hold on. Let me -- let me give you a little more detail.
13 As part of its assessment of The Edgemere, did Terracon break
14 down its site visit and its observations and recommendations
15 by different building systems?

16 A Yes.

17 Q What are the different building system categorizations by
18 which Terracon organizes its observations and recommendations?

19 A The standard breakdown for our property condition reports,
20 the subsystems consist of: Site Improvement; Building
21 Structure and Exterior; Roofing; Interiors; Conveyance, which
22 is moving sidewalks and elevators, it's vertical
23 transportation; MEP, which combines both mechanical, which is
24 HVAC, air conditioning, electrical systems and plumbing; and
25 then Fire Protection and Life Safety.

Hull - Direct

209

1 Q Okay. So I think that we just identified seven different
2 systems. I'm going to make sure that I got them right, okay?

3 A Yeah.

4 Q Site Improvements; Building Structure and Exterior; Roof;
5 Building Interior; Vertical Transportation, which I think you
6 said were elevators, moving sidewalks.

7 A Yeah. Escalators.

8 Q Escalators. Mechanical, Electrical, and Plumbing. That's
9 all one?

10 A Yes.

11 Q And then Fire Protection and Life Safety? And that's one?

12 A That is correct.

13 Q When Terracon is performing its property condition
14 assessments and preparing its report, does Terracon typically
15 have ways of ranking or assessing different conditions of the
16 items that it sees?

17 A Yes.

18 Q How does Terracon rank those different conditions?

19 A They're typically broken down into two buckets. The first
20 and most critical bucket is more of an immediate condition,
21 and those conditions are observed to be a threat to life
22 safety or other building systems.

23 So a roof leak may not be an immediate concern to life
24 safety, but it is -- it would have a potential to damage other
25 interior, other building systems.

Hull - Direct

210

1 Rusted steel, displaced sidewalks, all of those are
2 concerns to life safety.

3 The other bucket is we place items in the reserve term.
4 So those items aren't necessarily identified as risks to life
5 safety and other building systems, but they are critical for
6 capital planning.

7 Q And as Terracon is assessing various items throughout the
8 campus, is Terracon also applying different condition
9 evaluation definitions to those specific items? In terms of
10 good condition, fair condition, poor condition?

11 A Somewhat, yes. It's either in a failed state or -- or
12 good, fair, poor, failed.

13 Q What is your definition of a failed state?

14 A A failed state would be it ceases to be functional in its
15 intended purpose. And it also has the potential to damage
16 other systems or be a threat to life safety.

17 Q What, in your opinion, is a poor condition?

18 A Poor condition would likely be something that is
19 approaching the end of its -- it's very near the end of its
20 useful life. Not necessarily a threat to life safety issues,
21 but it could be. But typically approaching the end of its
22 useful life.

23 Q How would you define something in fair condition?

24 A Likely halfway through its useful life, receiving regular
25 maintenance. That's -- that's pretty much the base for it.

Hull - Direct

211

1 Q And what about something that is in good condition?

2 A Good condition is likely recently installed or receiving
3 above average -- it would have to be quite new. Within the
4 first few years of its useful life. Depending on the building
5 system.

6 Q Let's take some time now to go through each of your seven
7 building systems that you identified Terracon groups these
8 things into and talk about what your observations were.

9 Let's start with the first system, the site improvements.
10 Did you and your team observe any conditions with respect to
11 site improvements that you determined were either in a failed
12 state or in poor condition?

13 A Yes.

14 Q What were those?

15 A I'm going to try and do this without the report. But we
16 observed pavers that were displaced, which can cause trip
17 hazards. And on a similar note, we observed sidewalks that
18 were displaced throughout the site that can cause a trip
19 hazard.

20 And those -- those are -- for this type of site, those are
21 extremely critical to resolve, given the residents and the
22 degree of their mobility. It was a concern when we observed
23 it, so we -- we made it in a failure state.

24 Also, we observed retaining walls that had reached a
25 failure state, that had significant cracking.

Hull - Direct

212

1 That's all I can recall right now.

2 Q In addition to those sidewalks and retaining walls that
3 you observed in what you deemed to be a failed state, were
4 there any other site improvement conditions that you and your
5 team determined were in poor condition?

6 A I'd have to recall, but some pavement work we observed.
7 I'd have to look at the report.

8 Q We'll come back if we need to do that.

9 Let's turn to the second system that you identified for
10 us, --

11 A Uh-huh.

12 Q -- the building structure and exterior.

13 A Yes.

14 Q Did you and your team observe any conditions or items with
15 respect to the building structure and exterior --

16 A Yes.

17 Q -- that you determined were -- that you determined were
18 either in a failed state or in poor condition?

19 A I'm sorry. Yes.

20 Q Please tell us what you observed.

21 A Regarding structural failure states, we observed the
22 cooling tower support frame, which is a steel frame that
23 supports the cooling tower within a light well, that was
24 observed to have severe rust in some -- in some locations, and
25 our structural engineer documented that as a critical matter.

Hull - Direct

213

1 Q Why would that be a critical matter?

2 A If the cooling tower supports continue to rust that
3 support the cooling tower, it is possible that it would result
4 in a catastrophic failure of the cooling tower, because the
5 cooling tower -- the cooling tower would no longer be
6 supported, and it would -- it would either damage other
7 building materials or it -- it would also cease operation,
8 likely, if it was no longer supported in accordance with the
9 way it was built.

10 Q Okay. So let's break this down.

11 A Okay.

12 Q Cooling tower. How big is a cooling tower? How big are
13 the cooling towers at The Edgemere?

14 A I'm trying to think about this.

15 Q Like, bigger than this podium?

16 A Yes. Ten feet by ten feet, and maybe fifteen feet high.

17 Q So, --

18 A As big as a small room.

19 Q Ten feet on each side?

20 A Yes.

21 Q And fifteen feet high?

22 A Yes. They vary in dimensions, and -- based on size and
23 the capacity.

24 Q And you said that there are --

25 A There's -- and there's also --

Hull - Direct

214

1 Q -- frames on the -- like, legs holding them up?

2 A Yes.

3 Q And it was -- you mentioned rusting. Where was that
4 rusting that you observed?

5 A The rusting was on the supports, the steel supports.

6 Q So we have a unit that you said is ten by ten by fifteen,

7 --

8 A Yes.

9 Q -- suspended?

10 A So, let me rephrase. So there are two cooling tower cells
11 that sit on a support. So essentially two -- two mini-rooms
12 that sit next to each other. And each of those are a cell of
13 the cooling tower. And they are both supported by the same
14 structural support.

15 Q And that's the structural support that you observed
16 rusting on?

17 A Yes.

18 Q So when you're talking about if there's a failure of that
19 structural support, that's a physical failure?

20 A Yes.

21 Q Where are the cooling towers located?

22 A They are located in a mechanical light well near the
23 loading dock. But it's accessible from the interior space.
24 You can't get at it from the outside. Rightfully so.

25 Q In addition to the rusting of the structural support that

Hull - Direct

215

1 you and your team observed, were there other conditions with
2 respect to the cooling towers that you determined were in a
3 failed state or in poor condition?

4 A Yes.

5 Q What were those conditions?

6 A So, specifically as a mechanical piece of equipment, the
7 cooling tower was exhibiting a significant amount of rust,
8 which led our mechanical specialist to -- to ask questions and
9 to deduce that maintenance wasn't being properly performed to
10 address the corrosion, because water -- the water that's in
11 the cooling tower has to be treated with anti-corrosion
12 chemicals. And if it's left to its own devices, those -- its
13 function will be diminished.

14 Q So is that condition one that goes to the structural
15 integrity of the cooling tower or the operational integrity of
16 the cooling tower?

17 A That is more the operational side.

18 Q Okay.

19 A So, because -- sorry.

20 Q What is a cooling tower's operational job? Dumbed down
21 for -- at least for this lawyer.

22 A I am not a mechanical specialist, but I will -- from what
23 I -- the cooling tower chills water with the outside air. It
24 exchanges that thermal energy with refrigerant that is fed
25 from other pieces of equipment throughout the building. That

Hull - Direct

216

1 is the simplest. It essentially feeds the air conditioning
2 for a large portion of the building.

3 Q So the cooling tower, am I to understand it's part of the
4 HVAC system?

5 A Yes.

6 Q Why would a fully functioning HVAC system be critical
7 here?

8 A Because if it fails and you lose air conditioning and
9 cooling capacity for whatever places, whatever areas it
10 serves, those areas are no longer cooled. And in Texas, it
11 does tend to get a little hot. So, --

12 Q Do you recall if you or your team took any photographs of
13 the conditions that you observed with respect to the cooling
14 tower?

15 A We did.

16 Q I'd like for you to take a look -- we're going to --

17 MS. VANDESTEEG: Your Honor, may we put exhibits up
18 for him to reference in terms of photographs?

19 THE COURT: Yes, we may.

20 MS. VANDESTEEG: Thank you.

21 BY MS. VANDESTEEG:

22 Q I'd like to put up on the screen what you and your team
23 marked as Photo #61.

24 MS. MUSGRAVE: Your Honor, unless I'm
25 misunderstanding, I believe these photos are attached to the

Hull - Direct

217

1 report, so I'm wondering if now is the time for me to renew
2 the hearsay objection.

3 MS. VANDESTEEG: Your Honor, these photos are
4 attached to the report. I don't believe that these photos are
5 hearsay. They are separately admissible as the visual
6 indications of the conditions of the properties as he and his
7 team saw them at the time. They help him to describe these
8 conditions.

9 But we are not providing any further commentary or further
10 analysis with respect to these photos. They are simply here
11 to provide visual context around the description of what the
12 observations were.

13 THE COURT: Ms. Musgrave?

14 MS. MUSGRAVE: If it's being used as a demonstrative,
15 I can understand that and I think that's fine. I'm not -- I'm
16 not clear if these photos are being offered into evidence
17 separately and apart from the report.

18 MS. VANDESTEEG: I don't believe that we've decided
19 that yet, Your Honor. For now, I think using them as a
20 demonstrative is fine, and we can revisit if we want to try to
21 admit the report overall over a hearsay objection.

22 THE COURT: Okay.

23 MS. MUSGRAVE: I'm fine with the photos, Your Honor.
24 I just want to make sure that this isn't a gateway to
25 different pieces of the report then showing up on the screen.

Hull - Direct

218

1 THE COURT: Okay. Thank you.

2 BY MS. VANDESTEEG:

3 Q I believe that's actually Photograph 60. Thank you. It's
4 the first one.

5 Mr. Hull, do you recognize this Photograph 60?

6 A Yes.

7 Q Can you describe to us what this is depicting in terms of
8 the observations that you made at The Edgemere?

9 A The photo might be upside down, but it --

10 (Laughter.)

11 A It shows rusted structural supports that are part of that
12 cooling tower frame. And I was present when this photo was
13 taken.

14 Q Thank you. And it's your opinion that rusting of this
15 type on a cooling tower is evidence that that cooling tower is
16 in a failed state?

17 A Yes.

18 Q Can we take a look at Photograph #61, please? Mr. Hull,
19 do you recognize this photograph?

20 A I do.

21 Q Can you describe to us, please, what you and your team
22 were observing in connection with this photograph that was
23 taken?

24 A This is seriously cracked structural member. Fortunately,
25 it is right-way-up. But it is -- it is a failed structural

Hull - Direct

219

1 piece.

2 Q That's part of the structural framing of this cooling
3 tower?

4 A Yes.

5 Q Can we please take a look at Photo #62? Mr. Hull, do you
6 recognize this photograph?

7 A I do.

8 Q What observations that you and your team were making at
9 The Edgemere is this photograph showing us further evidence
10 of?

11 A As I described earlier, there -- the two cells of the
12 cooling tower, there is a -- kind of a mechanical corridor
13 between them. This is a cross member that is indicating rust.

14 Q And in your opinion, the evidence of that rust is evidence
15 that this particular piece is in a failed state?

16 A Yes. In conjunction with the other observations that were
17 related to this.

18 Q The other rusted support --

19 A Yes.

20 Q -- structures and the cracks?

21 A Yes.

22 Q Thank you. Can we also take a look at Photo #63? Oh, we
23 may have lost Photo #63. Oh, well.

24 Mr. Hull, in addition to the rusting and cracks that you
25 saw in the structural support of the cooling towers, were

Hull - Direct

220

1 there other problems that you and your team observed with
2 respect to the cooling towers, either in terms of structure or
3 function?

4 A There are some related pumps, so it's a functional, that
5 will need allowance for. The condition is reaching the end of
6 its useful life.

7 Q Are those pumps separate from the cooling tower that we
8 just discussed?

9 A They are, yes, they are separate, but they -- they're
10 connected in -- as a system.

11 Q Let's come back to those pumps.

12 A Fair enough.

13 Q Anything else with respect to the cooling tower that you
14 and your team observed in either a failed state or poor
15 condition?

16 A Not to my recollection.

17 Q Okay, Mr. Hull. Back to just our overall system of
18 building structure and exterior. Aside from and in addition
19 to the cooling tower, did you and your team identify any other
20 --

21 A Yes.

22 Q -- items within this particular category that you
23 determined were either in a failed state or in a state of poor
24 condition?

25 A Yes.

Hull - Direct

221

1 Q What were those?

2 A My team observed an expansion joint that was exposed to
3 the elements along the -- well, The Edgemere expansion effort
4 that was performed I believe in 2016. So there was an
5 expansion of the campus, and where these two phases meet,
6 there's an expansion joint that we observed. And it could be
7 observed from grade, from above. And water was -- or, soil
8 had been eroded, exposing this joint. And you could see
9 deterioration at the -- above and below from the garage. And
10 water intrusion and staining could be observed from the garage
11 level.

12 Q Let's back up for a second.

13 A Of course.

14 Q We are talking about a joint. I think you said -- did you
15 call it an expansion joint?

16 A It's an expansion joint. Um, am I permitted to make an
17 analogy, like a medical --

18 Q I would love that. What --

19 A Uh, --

20 Q What is an expansion joint?

21 A Cartilage. So, when the cartilage deteriorates, then
22 you've got bones pushing on each other, and it's painful for
23 the person, and in this case, the building.

24 Q Why is it painful, or bad, let's say, for the building?

25 A It can cause other structural distresses, and you can get

Hull - Direct

222

1 cracks in unseen areas. And -- yeah.

2 Q And I think you said that you and your team were able to
3 observe this particular joint both above the joint looking
4 down at it from the ground --

5 A Yes.

6 Q -- as well as from within the parking garage looking up at
7 that joint above you in the garage?

8 A Yes.

9 Q What did you observe with respect to this joint when
10 looking from above that caused you and your team to determine
11 that that joint was in a state of failure?

12 A We -- my team observed the erosion of landscaping soil.
13 So if water was -- in the past, water was permitted to flow
14 into this joint. It was carrying soil and debris through that
15 joint and essentially made a -- just a pit. And that was --
16 that was cause for concern. Because the joint shouldn't have
17 been exposed.

18 Q And what did you and your team observe from within the
19 parking structure looking up at that same expansion joint?

20 A We did observe cracking and water staining. So it was --
21 it was tracking the soil and the debris from above and passing
22 it through whatever maze that we could see. And it was -- you
23 could see staining on the structural members.

24 Q What did that staining indicate to you from on the
25 underside?

Hull - Direct

223

1 A Water intrusion. Into the parking garage.

2 Q Did you and your team take any photographs of this
3 expansion joint?

4 A We did.

5 Q Let's take a look at Photo 57. Do you recognize this
6 photograph?

7 A I do.

8 Q What is this a photograph of?

9 A This is a underside -- this -- from within the garage, the
10 main garage, this is a -- looking up at the joint photo. But
11 this is the cracking.

12 Q And is this photo an accurate depiction of your physical
13 observations?

14 A Yes.

15 Q What are we looking at in this photo?

16 A You are looking at a CMU, a Concrete Masonry Unit wall
17 that has cracked horizontally. And also, it appears,
18 vertically in some spaces, but the horizontal crack is enough
19 of a concern.

20 Q And why is that horizontal crack a concern?

21 A It just means, it shows that there's other structural
22 issues that we can't see.

23 Q And is this beam right at that expansion joint that you
24 mentioned?

25 A It may be nearby. It's close.

Hull - Direct

224

1 Q Let's take a look at Photograph #58. Do you recognize
2 this photograph?

3 A Yes.

4 Q What is this a photograph of?

5 A This photograph is a continuation of the previous. It's
6 -- it shows that the crack proceeds into an additional
7 supporting CMU wall.

8 Q And is this photograph also an accurate depiction of your
9 observations --

10 A Yes.

11 Q -- that you saw?

12 A Yes.

13 Q Let's take a look at Photograph 59. Do you recognize this
14 photograph?

15 A It looks familiar.

16 Q What is this photograph?

17 A I believe this is a photograph of looking up, vertically,
18 straight up, in vicinity of this, of other observed cracking
19 in the garage.

20 Q Is this photograph an accurate depiction of your
21 observations from within that parking garage of the expansion
22 joint?

23 A Yes.

24 Q And what are we looking at in that red box that's noted on
25 this photograph?

Hull - Direct

225

1 A It's showing that the -- where the two slabs meet, it
2 appears that they're cracked, it's cracked. So, --

3 Q Is that what one would expect to see of an expansion
4 joint?

5 A Not to that degree.

6 Q In your opinion, is this evidence of an expansion joint in
7 a failed state?

8 A Yes.

9 Q Let's take a look also at Photograph 71. Mr. Hull, do you
10 recognize this photograph?

11 A Yes.

12 Q What is this photograph depicting?

13 A This photograph is depicting erosion around the foundation
14 level from landscaping. And it -- it shows that water is
15 being able to flow down underneath the foundation. And then
16 it's -- it's difficult to see beyond that because the photo
17 doesn't show.

18 Q Is this photograph an accurate depiction of what your
19 observations were at The Edgemere site?

20 A Yes.

21 Q And I think you said that this showed -- it shows where
22 the water goes down.

23 A Yeah.

24 Q Is that area that we see where that expansion joint is?

25 A There may be another photo, but it's a similar -- water

Hull - Direct

226

1 does flow downhill. So it does -- it flows into the space.

2 But it is a hidden condition on where it goes from there and
3 what problems it may be causing.

4 Q Based upon your site visit and your observations, you were
5 able to identify that the expansion joint was in a failed
6 state, correct?

7 A Correct.

8 Q Were you able, as a part of your visual inspection, to
9 determine all of the potential issues that may presently exist
10 with respect to other damage that might be caused by the
11 failure of that expansion joint?

12 A No. A property condition assessment is, at its core, a
13 non-exhaustive and visual-only assessment. So we will not
14 capture everything under the sun. And it's -- hidden
15 conditions are anticipated. And that's one of the main
16 limitations to a report like this.

17 Q What, in your view, would be necessary in order to
18 determine the full extent of that defective condition related
19 to that expansion joint?

20 A There are probably a number of items, but I would -- you
21 would probably start with excavating and possibly doing
22 destructive testing of that joint, if adhesion had failed or
23 just finding out where the water is traveling to.

24 Q Was that part of Terracon's scope of its property
25 condition assessment?

Hull - Direct

227

1 A Absolutely not.

2 Q Would you recommend that that work be done?

3 A Yes.

4 Q Is it necessary?

5 A Yes.

6 Q Aside from the cooling tower and this expansion joint,
7 were there any other items that Terracon identified as being
8 in either a failed state or poor condition as part of this
9 building structure and exterior system?

10 A We observed, the team observed the envelope stucco system
11 to be exhibiting a number of failed conditions in a variety of
12 locations around the site. So we recommended an additional
13 investigation to determine the scope of those repairs.

14 Q You said you saw a number of failed states. What --

15 A Yeah.

16 Q What did you see? Give us a little more detail.

17 A Wall cracking. You can see staining. There's evidence of
18 past repairs. I'd have to review my report.

19 Q Well, why does wall cracking, for example -- and by wall,
20 do you mean the stucco?

21 A The stucco. Yes. We observed cracking.

22 Q Why is cracking in stucco evidence to you of a failed
23 state of that particular system?

24 A Cracking, however small, in stucco can permit water
25 intrusion behind the scenes, and that condition can affect

Hull - Direct

228

1 other conditions. And like I defined earlier with an
2 immediate concern, it's not necessarily a threat to life
3 safety, but a threat to other building systems. So it may
4 impact structural components in addition to jeopardizing the
5 condition of the stucco panels.

6 Q When you and your team were onsite, did you visually
7 observe any specific cracking or other indicia of the stucco
8 that indicated that there had been that water infiltration?

9 A Water infiltration, we couldn't see. You'd have to do a
10 destructive testing. But we observed enough cracking and
11 repairs to make that recommendation.

12 Q Did you take any photographs, you and your team take any
13 photographs of the damaged stucco?

14 A Yes.

15 Q Let's look at Photograph 49. Can you tell us what this
16 photograph depicts?

17 A This photograph depicts a stucco panel repair, in --
18 likely in conjunction with water intrusion from a gutter
19 system. So water was likely pooling in the gutter and
20 persistently impacting this part of the wall. And it
21 apparently -- it appears to have been deteriorated to a state
22 that they had to repair it, prior to the time of
23 reconnaissance.

24 Q Is this photograph an accurate depiction of your
25 observations at The Edgemere?

Hull - Direct

229

1 A Yes. I saw this condition.

2 Q Let's take a look at Photograph #50. What are we seeing
3 in this photograph?

4 A This photograph indicates staining at a stucco joint.

5 Q Is this photograph an accurate depiction of the conditions
6 that you observed at The Edgemere?

7 A Yes.

8 Q And what does this condition indicate to you?

9 A This would lead me to believe that there is water
10 intrusion at some point in the stucco wall. And it is weeping
11 out of that joint, maybe unintentionally, but it is also
12 staining that wall.

13 Q Did you observe staining of this sort at other locations
14 at The Edgemere?

15 A Yes.

16 Q One or two, or multiple locations?

17 A Multiple.

18 Q Let's turn to Paragraph 67. I'm sorry, Photograph 67.
19 Mr. Hull, do you recognize this photograph?

20 A I do.

21 Q What is this photograph of?

22 A This is a photo of a number of cracks that we observed in
23 stucco panels, but they have -- they were repaired prior to
24 reconnaissance.

25 Q Is this photograph an accurate depiction of your

Hull - Direct

230

1 observations at The Edgemere?

2 A Yes.

3 Q If cracks in stucco have been patched like this, does this
4 mean that the underlying problem or defect has been repaired?

5 A That is unknown. You'd have to do destructive testing.

6 There's no way to confirm that. Essentially, you've put a
7 Band-Aid on it. And you've, to make another medical analogy,
8 you've put a Band-Aid on it but you still might have an
9 infection.

10 Q You don't know until you open that up?

11 A You don't know if -- yeah. That is correct.

12 Q Mr. Hull, it doesn't look like these patches have been
13 painted over. Is that, to your knowledge, accurate? Would
14 they be painted over?

15 A I would argue that they should be painted over.

16 Q With respect, then -- is there -- were there any other
17 observations that you and your team made with respect to the
18 stucco or the building envelope that indicated to you that
19 that condition was one in a failed state or poor condition?

20 A I'm sorry. Could you say that again?

21 Q Yes. Were there any other observations, aside those that
22 we've already discussed, that you and your team made with
23 respect to the stucco or building envelope that led you to
24 your conclusion that those were in a failed state or poor
25 condition?

Hull - Direct

231

1 A Not that I recall, but I would have to review my report.

2 Q With respect to the overall building structure and
3 exterior, we talked about the cooling tower, the expansion
4 joint, and the stucco building envelope. Were there any other
5 items within that system that you and your team determined
6 were either in a failed state or in poor condition?

7 A I believe we already covered the retaining walls and site.
8 I'm sure there are others, but I'd have to review the report.

9 Q Okay.

10 A But not in a state of failure that I recall.

11 Q But perhaps others in poor condition?

12 A Yes. I'd have to review the report.

13 Q With respect to the issues that we have discussed so far,
14 did you have any communications with either of those two
15 Edgemere representatives, as part of your interview or
16 otherwise, with respect to any of those conditions that you
17 observed in either a failed condition or poor, or a poor
18 condition?

19 A Yes.

20 Q Please tell us.

21 A During the interview stage at the very beginning of our
22 site reconnaissance, it is standard to ask inquisitive
23 questions about what's being planned and what's been done in
24 person, face to face. And it came to light that stucco
25 replacement was a planned capital expenditure, the details of

Hull - Direct

232

1 which were not disclosed at that -- during that interview.

2 Q Did the representative tell you when they expected to
3 undertake those repairs?

4 A Yes.

5 Q When did they say?

6 A Uh, --

7 MS. MUSGRAVE: Objection. Hearsay.

8 MS. VANDESTEEG: Okay. We'll come back.

9 BY MS. VANDESTEEG:

10 Q Without getting into the answer, did that person also tell
11 you approximately how much they intended to spend?

12 MS. MUSGRAVE: Objection. Hearsay.

13 THE COURT: Objection sustained.

14 BY MS. VANDESTEEG:

15 Q Mr. Hull, do you remember who it was who told you those
16 answers?

17 A I don't recall. It was one of the -- or direct
18 representative, one of the direct representatives from
19 Edgemere. I believe Jared or Chris. I'd have to look at my
20 report to --

21 Q Jared or Chris?

22 A Yes.

23 Q Okay. Thank you.

24 MS. VANDESTEEG: With respect to hearsay, Your Honor,
25 for both of those individuals, Mr. Hull has testified that

Hull - Direct

233

1 they were The Edgemere representatives who were escorting him
2 around the site. And it is our position that whatever
3 statement was made and answer given is an opposing party
4 statement that comes in over hearsay.

5 MS. MUSGRAVE: I'm not sure how it's an opposing
6 party statement in this proceeding. It would have come from
7 the Debtors, who are here to testify themselves.

8 MS. VANDESTEEG: Your Honor, it is the Plan Sponsors
9 who are opposing the very relief that we are seeking. This is
10 absolutely an opposing party statement. It is the Debtors'
11 own representative telling Mr. Hull, in connection with his
12 questioning, what other expenditures do you have planned and
13 when, at what price, so that he could factor that in in his
14 own observations and determinations with respect to the
15 conditions of the property.

16 MS. MUSGRAVE: I guess I'd come back, Your Honor, to
17 the best evidence rule. I mean, they're here. We can ask
18 them this question themselves on the stand. It doesn't need
19 to come in through hearsay this way.

20 THE COURT: I'm going to overrule the objection.

21 MS. VANDESTEEG: Thank you, Your Honor.

22 BY MS. VANDESTEEG:

23 Q Mr. Hull, you can answer for us. To the extent that you
24 were informed by The Edgemere representative, either Chris or
25 Jared, as to when those building envelope repairs were

Hull - Direct

234

1 expected to be undertaken and at what cost, please do so.

2 A The interview occurred in -- during the site
3 reconnaissance in July of 2022. The site representatives
4 reported a \$3 million allowance for building envelope
5 replacement/repairs in 2023.

6 Q Thank you.

7 A No other details were provided.

8 Q Let's move on to the next system, the roof. Did you and
9 your team observe any issues or conditions with respect to the
10 roof system that you determined to either be in a failed state
11 or in poor condition?

12 A Yes.

13 Q What did you observe?

14 A My team observed a number of deferred maintenance items,
15 such as debris on the roof membrane, on the flat roof
16 membrane. And that condition can result in leaks if left
17 unattended.

18 Q How can debris on the roof result in leaks if left
19 unattended?

20 Q So, what we observed was sheet metal, tools, fasteners,
21 like screws and drills. Really not appropriate material to be
22 on a roof. And they can puncture, easily puncture any
23 membrane. And it appeared -- and it had appeared during our
24 reconnaissance that that had been that way for some time.

25 Q Did you and your team observe any tearing or cuts in the

Hull - Direct

235

1 membrane of that flat roof?

2 A Yes.

3 Q Did you take any photographs of those cuts in the membrane
4 in the flat roof?

5 A I believe one of my team members took a photograph. And
6 then the instance was shown to me.

7 Q Let's turn to Photo #40, please. Mr. Hull, is this the
8 photograph that you were referring to?

9 A Yes.

10 Q What is this photograph showing us?

11 A This photograph shows an assessor indicating with a pen a
12 tear that was observed along the roof perimeter.

13 Q Is this photo an accurate depiction of that observation of
14 the torn membrane at The Edgemere?

15 A Yes.

16 Q Why are tears in the membrane of the flat roof like this a
17 problem?

18 A Well, a roof -- a roof's function is to prevent water from
19 coming into the building, just like windows and walls are
20 meant to prevent from coming into the sides. So that's the
21 whole point of a building, is to keep water out. And any
22 water that gets in, it's supposed to let it out.

23 If there's a tear on a roof, it compromises that function.
24 And then you -- it has the potential to damage other building
25 systems, including electrical, including structure. And

Hull - Direct

236

1 sometimes it's quite difficult to chase down leaks if it's --
2 if it's a small enough tear.

3 Q And, again, in your experience, debris left on roofs can
4 get blown around and cause tears like this?

5 A Yes.

6 Q And you personally observed debris on roofs?

7 A Yes.

8 Q Aside from the debris, were there any other issues that
9 you and your team identified with respect to the roof system
10 that you determined were either in a failed state or in poor
11 condition?

12 A The plaza roof, I believe, which is the health care side,
13 was observed to -- a portion of the roof, a majority of it,
14 there is a northern expansion to the plaza. That is a
15 relatively new section. The majority of the southern section
16 consists of a modified bitumen roof, and that roof was
17 observed to be original to that building and was quite
18 deteriorated. So we recommended a full complete replacement
19 of that roof.

20 In addition to the condition that we observed, you could
21 also see granule loss. So, with modified bitumen roofing, it
22 -- there's adhered -- there's adhered granules with the --
23 with the roof assembly. And as it wears and tears, it will
24 essentially act like sand dunes. And once that disappears off
25 the top of that membrane, UV rays will aggressively

Hull - Direct

237

1 deteriorate the roof membrane.

2 Q Did you and your team observe that loss of the granular
3 coating on that modified bitumen roof of the health center?

4 A Yes.

5 Q Did you take any photographs of that?

6 A Yes.

7 Q Let's take a look at Photo 31. Do you recognize this
8 photograph?

9 A I do.

10 Q And what is this?

11 A This is an overall view of a modified bitumen roof between
12 a number of clay shingle sections. But this was taken on
13 foot.

14 Q And was this photograph taken on that modified bitumen
15 roof at the health center at The Edgemere on your site visit?

16 A This is not a health care photo. This photo was not taken
17 from the health -- from the health care portion.

18 Q Elsewhere at The Edgemere?

19 A Elsewhere at The Edgemere. There are -- there are
20 connectors at The Edgemere that also consist of modified
21 bitumen roof, and they -- they essentially go from -- well,
22 not everyone is familiar. There's a lobby at The Edgemere,
23 and it runs almost east to west all the way to the care
24 center, the plaza. And it consists of these connectors, and
25 they typically look like this. So, --

Hull - Direct

238

1 Q Is this photograph representative of the overall condition
2 of the original modified bitumen roof at The Edgemere?

3 A Yes.

4 Q And is this photo an accurate depiction of what you saw at
5 The Edgemere?

6 A Absolutely.

7 Q And when we talk about this modified bitumen roof, is that
8 also what we've been referring to as the low roof or the flat
9 roof?

10 A Some of them. Not all low roof/flat roofs are, in short
11 form, mod-bit roofs.

12 Q What is it in this mod-bit roof that demonstrates to you
13 that this is in a failed state or poor condition?

14 A Exposure of the base membrane. It's not supposed to --
15 it's not supposed to look so worn.

16 Q So we can kind of see areas of darker and areas --

17 A Yes.

18 Q -- of lighter. Which is the part that is the exposed
19 membrane?

20 A The darker is the exposed. And when there's granule loss,
21 you get these gray granule piles. So, --

22 Q Those are the sand dunes that you said you observed?

23 A Yes. For lack of a less eloquent way.

24 Q Were there any other issues or items with respect to the
25 roofing system that you and your team identified were either

Hull - Direct

239

1 in a failed state or in poor condition?

2 A Not to my recollection. But I'd have to look. You said
3 to the roof system?

4 Q Correct.

5 A There were -- there were gutter and downspout issues that
6 we did observe.

7 Q What gutter and downspout issues did you observe?

8 A The gutter -- the failed gutter state -- I guess the
9 failed state for the gutters were observed in a number of
10 locations, either to be damaged or full of debris, like
11 leaves. Not -- because if that water builds up and isn't
12 allowed to drain past the gutters into the downspouts, it will
13 add weight to those roof systems. And extra weight beyond
14 what the roof system is designed for can be a problem.

15 Q And that's why you determined that the existence of those
16 conditions constituted a failed state or poor condition?

17 A Yes. Yes. The downspouts were observed to be damaged in
18 a number of locations. And if those -- those downspouts take
19 from the other roofing systems from the gutters and distribute
20 it either onto another lower membrane, lower roof section, or
21 on the grade.

22 Q Did you take any photographs of the issues with respect to
23 the downspouts and the gutters?

24 A Yes.

25 Q Can we take a look at Photo 45, please? Mr. Hull, do you

Hull - Direct

240

1 recognize this photograph?

2 A I do.

3 Q And what is this showing us?

4 A This shows a downspout that is on some portion of the --
5 on the interior of the roof. But it's also showing that
6 there's no splash guard, so that any runoff from that
7 downspout is continuously eroding away. It's causing further
8 wear and tear to the roof membrane.

9 Q Is this photograph an accurate depiction of your
10 observations with respect to these downspouts?

11 A Yes.

12 Q Can we please turn to Photograph 48? Do you recognize
13 this photograph, Mr. Hull?

14 A I do.

15 Q What is this showing us?

16 A This is a damaged gutter system. And this current state
17 will significantly diminish its ability to transfer water from
18 one end to the appropriate downspout. And it'll just -- it'll
19 just drain or it'll leak right here.

20 Q Is this an accurate depiction of your observations of the
21 failed gutters at The Edgemere?

22 A Yes.

23 Q Is this the only gutter in this condition?

24 A No.

25 Q Just a representative sample?

Hull - Direct

241

1 A Just a representative. Yeah. Yeah.

2 Q Okay.

3 A Many photos are representative samples, because if we
4 included every photo that we wanted, it would be at least 500
5 pages.

6 Q And a lot more time than we have over today and tomorrow?

7 A Yes.

8 Q Okay. Thank you. Were there any other, aside from the
9 roof debris, the gutters, the splash guards, the issues with
10 respect to the mod-bit roof deterioration and tears, were
11 there any other items or conditions with respect to the roof
12 system that you and your team determined were either in a
13 failed state or in poor condition?

14 A An absence of splash guards.

15 Q Let's --

16 A Which is more of a -- it can be a maintenance issue if
17 someone just takes care of it. But if left unattended, it's
18 -- you're now dealing with the force that water carries as it
19 comes down the downspout. And it'll just deteriorate the
20 roofing system.

21 So these splash cards are sacrificial and they absorb that
22 kinetic energy as it hits that roof and it just -- the less
23 kinetic energy, the better, as it flows on to the next
24 membrane.

25 Q Was it you and your team's observation that The Edgemere

Hull - Direct

242

1 had not been properly maintaining and did not have sufficient
2 splash guards in place around the campus?

3 A Yes.

4 Q Did you and your team observe any other issues that were
5 either in a failed state or poor condition with respect to the
6 roof system?

7 A Not that I recall, but I would have to check.

8 Q Mr. Hull, let's move on to our fourth building system,
9 which you identified as building interior.

10 A Yes.

11 Q With respect to the building interior system, did you and
12 your team identify any problems or issues that were either in
13 a failed state or in poor condition?

14 A No, actually. The interior spaces were in exceptional
15 quality and condition, and it was a -- it was a pleasant
16 experience to walk through it, because it was taken quite good
17 care of, which is honestly what I would have expected for that
18 retirement community.

19 Q Excellent. Let's move right on, then.

20 A Okay.

21 Q With respect, then, to the vertical transportation system,
22 were there any issues or conditions that you and your team
23 identified as either being in a failed state or in poor
24 condition?

25 A Not in a failed or poor state.

Hull - Direct

243

1 THE COURT: Could you tell me which category again,
2 Ms. Vandesteeg?

3 MS. VANDESTEEG: Yes, ma'am. We are looking at
4 vertical transportation.

5 THE COURT: Thank you.

6 THE WITNESS: No.

7 BY MS. VANDESTEEG:

8 Q Okay. What did you observe?

9 A In line with many other similar buildings, elevators have
10 a modernization cycle where the controllers reach a certain
11 age and you have to swap them. So we recommended, in
12 conjunction with our observations, that modernization of a
13 number of elevators would need to occur.

14 Also, during site reconnaissance, there was an elevator
15 technician that was present attending to one of -- one of the
16 elevators. And I believe it was reported that one of them was
17 not functional, but there are a number of other elevators, so
18 it wasn't -- it wasn't the end of the world.

19 Q So the existence of one nonfunctioning elevator at any
20 given point in time does not otherwise result in the entire
21 system being in poor condition?

22 A Correct. It is reaching -- they are approaching the end
23 of their useful life for modernization.

24 Q So this would be something that you would identify as a
25 longer-term need for attention, for planning, for repair, but

Hull - Direct

244

1 not an immediate defect?

2 A That's correct. A capital plan exercise.

3 Q Let's move on to mechanical, electrical, and plumbing.

4 With respect to this system, did you and your team observe or
5 identify any items or conditions that you determined were
6 either in a state of failure or in poor condition?

7 A Hmm. I'm sorry. I'll have to think about this. This is
8 a big section.

9 As far as state of failure, we observed a lack of GFCI
10 outlets, ground fault circuit interrupter outlets, hair dryer
11 outlets, in a select number of dwellings that we sampled.
12 That's an electrical fire hazard. So that was -- that was an
13 immediate add.

14 I'm sure there are other immediate critical -- pardon me,
15 poor or failed state MEPs, mechanical systems, but I'd have to
16 review my report.

17 Q Well, you'd mentioned earlier other pumps around the
18 cooling tower, and I told you to hold on those. Is that where
19 these -- is that where those pumps would come into play?

20 A Those pumps, I believe they were -- I would have to review
21 the report. But that also reminded me of another item. We --
22 our team did observe copper piping in a select number of
23 mechanical rooms that was corroded and in a poor state and has
24 the potential for rupture and functional disruption.

25 Q Immediate rupture?

1 A Well, rusted pipe can rust -- can probably -- potentially
2 rupture at any time.

3 Q Do you recall --

4 A You just don't know when.

5 Q Do you recall you and your team taking any photographs of
6 those copper pipes?

7 A We did.

8 Q Could you please pull up Photograph #98? Do you recognize
9 this photograph?

10 A I do.

11 Q And can you tell us what this is?

12 A This is an elbow for a copper tubing, and it is circled as
13 it is exhibiting significant rust and corrosion.

14 Q Is this photograph an accurate depiction of your
15 observations of this copper piping at The Edgemere?

16 A Yes.

17 Q Let's to go Photo 99. What is this photograph?

18 A This photograph is a close-up of the previous photograph,
19 and it indicates the degree in which it's corroded.

20 Q Is this photograph an accurate depiction of your
21 observations of this copper piping at The Edgemere?

22 A Yes.

23 Q And just so I'm clear, if we're talking about corrosion of
24 this copper piping, we're talking about those parts that look

25 --

Hull - Direct

246

1 A Yeah. Gunky.

2 Q Yeah. And a different color?

3 A Yes. Whatever the --

4 Q Okay. Were there any other items or conditions that you
5 and your team observed with respect to the mechanical,
6 electrical, and plumbing systems that you determined were
7 either in a failed state or in poor condition?

8 A I would have to check my report, but I believe we
9 documented pump refurbishment, but I'm not necessarily sure
10 that was a failed state. I'd have to check the report. That
11 might have been a poor state because they'd reached the end of
12 their useful life. And if -- so now we've got cooling tower
13 pumps and the cooling tower itself that are both reaching the
14 ends of their useful life. And if you replace one and not the
15 other, the whole system still might not work the way we'd all
16 hope. You would also have two independent failure scenarios,
17 which is a problem.

18 Q Let me see if I'm understanding you. We went through the
19 cooling tower, --

20 A Uh-huh.

21 Q -- both the structural frame and the operational capacity,
22 both of which I believe that you and your team identified as
23 failed state?

24 A Yes.

25 Q Am I hearing that the pumps associated with the cooling

Hull - Direct

247

1 tower may not be in failed state, but you and your team still
2 identify them to be in poor condition?

3 A That is correct.

4 Q What other, if any, of these components with respect to
5 the cooling tower in and out did you determine were in poor
6 condition, even if not in a failed state?

7 A There is an exchanger that is associated with the cooling
8 tower system, and the exchanger, like I said before, exchanges
9 that thermal energy with the water and the refrigerant.

10 Q How big is this exchanger?

11 A Like a wardrobe. It's not that big. It's, you know, a
12 double door.

13 Q Sure.

14 A That's about the size.

15 Q And what were the conditions, what were the things that
16 you and your team identified were in poor condition with
17 respect to these heat exchangers?

18 A I believe that our team observed that the heat exchanger
19 and the pumps were all approaching the end of their useful
20 life, approaching 20 to 25 years. So these all are
21 independent failure cases, because they could fail
22 independently of each other. And so if one fails, the whole
23 system goes down.

24 Q And I think you said that they were all approaching end of
25 useful life, 20 to 25 years. Was it your team's observation

Hull - Direct

248

1 that this entire system -- the cooling towers, the pumps, the
2 heat exchanger -- were all original to that original build?

3 A Yes. I would have to confirm that. I believe that is
4 true.

5 Q So, in addition to the copper piping, the GFCI, which were
6 both identified as in failed states, and the pumps going in
7 and out of the cooling tower and the heat exchanger that you
8 determined were in poor condition, were there any other items
9 or issues with respect to the mechanical, electrical, or
10 plumbing system that you and your team determined to be in
11 either a failed state or poor condition?

12 A Yes.

13 Q And what's that?

14 A I believe we documented two independent cases. We
15 documented an absence of infrared scans of electrical panels.
16 That's more of a poor state of recommended maintenance
17 procedure. The reason why we recommended that is electrical
18 panels can heat up sometimes if there's too much resistant.
19 Resistance, pardon me. And they can start fires if not
20 properly wired up.

21 The other item was --

22 Q Hold on. Why did you determine that to be in poor
23 condition? Did you have any evidence that that hadn't been
24 performed?

25 A I believe my mechanical engineer, Mr. Eric Gonzalez,

Hull - Direct

249

1 reported that there was no evidence of that ever being
2 performed.

3 Q Okay.

4 A Which is why we recommended it for the full term, every
5 year, as a standard practice for The Edgemere.

6 I had another one. I apologize.

7 Q My fault. I cut you off.

8 A That's all right. It's hard to do this without the
9 report.

10 Q You're doing great.

11 A So, we did -- we did infrared.

12 Q Let's go back to the -- to the pumps for a moment. Do you
13 recall taking any photographs with respect to the other
14 cooling tower pump or pieces?

15 A Yes.

16 Q Let's pull one of those up real quick. With -- can we
17 pull up, please, Photo #94? Do you recognize this photograph?

18 A I do.

19 Q What is this a photograph of?

20 A This is a very close-up photo of a portion of the fins on
21 the cooling tower. And the fins kind of allow for that heat
22 exchange, that evaporation to occur. But in this state, they
23 are severely corroded.

24 Q Is this photograph an accurate depiction of your
25 observations at The Edgemere with respect to these fins?

Hull - Direct

250

1 A Yes.

2 Q And in your view, then, does this indicate that the system
3 is in, remind me, a failed state or in poor condition?

4 A It likely still functions, but it is in a poor state and
5 not receiving adequate maintenance.

6 Q Okay. As we sit here today, anything else that you can
7 recall that you and your team identified as being in a failed
8 state or poor condition in connection with the mechanical,
9 electrical, and plumbing system?

10 A Not to my knowledge. I'd have to -- I have to look at the
11 report.

12 Q Let's turn finally to the fire protection and life safety
13 system.

14 A Okay.

15 Q To your recollection, were there any issues or conditions
16 that you and your team observed and identified with respect to
17 fire protection and life safety that were either in a failed
18 state or in poor condition?

19 A Yes.

20 Q What did you see?

21 A I believe we already documented the GFCI item. That's
22 typically a life safety issue, but it is also kind of an
23 electrical issue.

24 In addition, we observed fire pumps that were in --
25 approaching the end of their useful life. So those will need

Hull - Direct

251

1 refurbishment. And also controller equipment for those pumps
2 are -- will need refurbishment as well.

3 Q How were you and your team able to identify that those
4 were items that required refurbishment or were at the end of
5 their useful life?

6 A Through using a lot of industry documents and a lot of our
7 own experience, our mechanical engineer, our structural
8 engineer. A common life span of pumps and fire pumps and
9 domestic pumps can be in the range of 20 to 25 years. But you
10 still need to refurbish it. Sometimes the motor has to be
11 replaced. Sometimes the pump components have to be replaced.

12 Q Did you have any information as to whether these items had
13 been maintained over the course of their life?

14 A I'd have to review the report. But based on our
15 recommendation that we recommended refurbishment, it's -- and
16 I believe it was in a poor state. So, --

17 Q Thank you. Do you recall anything else that you and your
18 team observed with respect to fire protection and life safety
19 that you determined to be in a failed state or poor condition?

20 A Not that I recall. I'm sure there's something. I just
21 can't --

22 Oh. My apologies. So, in the parking garages, it was
23 observed that the carbon monoxide detectors were not
24 calibrated correctly. So we were unaware if they would even
25 operate as intended. And for a parking garage not to have

Hull - Direct

252

1 carbon monoxide detection and not to activate the exhaust fans
2 is a problem.

3 Q Why is that a problem?

4 A Well, if carbon monoxide accumulates in the parking
5 garage, then -- and nothing exhausts it, then you've,
6 essentially, you've walked into a very dangerous situation, --

7 Q Is --

8 A -- similar to walking into a hydrogen sulfide cloud.

9 Q Is carbon monoxide something that one would expect would
10 be likely to accumulate in a parking garage?

11 A I would expect so.

12 Q Why is that?

13 A A parking garage houses vehicles, and the start-up and
14 shut-down of a number of resident vehicles would likely create
15 a large component of carbon monoxide and other particulates --
16 smoke, smog -- in that space.

17 Q Were you and your team able to determine that that system
18 was not functioning?

19 A Yes. I believe our mechanical engineer documented that.

20 Q Mr. Hull, in addition to all of the conditions that you
21 and your team noted --

22 A Yes.

23 Q -- that were in failed state and poor and fair and good in
24 connection with your report, you also noted certain estimated
25 costs attributable -- attributable to potential repairs or for

Hull - Direct

253

1 future capital allocations. What were those estimated costs
2 based on?

3 A A number of the costs are estimated based on the expected
4 additional investigation that would be required to even start
5 the discovery process. So it is in no way the end-all be-all
6 of that -- of those condition estimates.

7 Usually, we use labor at like appropriate and recent
8 current labor rates and material costs for various building
9 systems. So roofing, pump refurbishment, cooling tower
10 replacement, items like those, we have a good grasp of
11 industry costs and industry standard.

12 Q Did Terracon go out and bid any repairs for any of the
13 conditions that it identified at The Edgemere?

14 A No.

15 Q Why not?

16 A It is beyond our scope.

17 Q So, for those specific things, for example, where perhaps
18 a cost is allocated to the gutter repairs, is that based just
19 on an estimate based upon your observations?

20 A Yes.

21 Q When would actual costs for any repairs or remediation
22 undertaken at The Edgemere be known?

23 A Well, you'd have to -- you'd have to do more discovery and
24 likely bid it out and get a far more accurate and regional
25 cost. Some things cost different in Boston, Chicago, San

Hull - Direct

254

1 Francisco than they do in Dallas.

2 Q But, again, that was not within the scope of Terracon's
3 engagement to provide a property condition assessment?

4 A Correct.

5 Q Mr. Hull, you may recall that a substantial part of your
6 deposition involved questions about how, when, in what manner
7 draft reports may have been provided to ICI and discussions
8 may have happened. Do you recall that?

9 A I do.

10 Q Regardless of the details about specifics of timing and
11 those conversations, is it unusual for a draft at Terracon to
12 go through draft iterations before it becomes a final report?

13 A It is not unusual.

14 Q Is it unusual for any of your opinions or estimates to
15 change or become refined over the course of site visit to
16 final report?

17 A No, it is not unusual.

18 Q Does part of Terracon's typical report-drafting process
19 include conversations with a client?

20 A Yes.

21 Q And you have testified that you did have conversations
22 with ICI between site visit and final report, correct?

23 A That is correct.

24 Q Do you consider the final report that we looked at at
25 Exhibit 1H to be your under-oath opinion on this matter as we

Hull - Direct

255

1 sit here today?

2 A Yes.

3 Q Notwithstanding any things that may or may not have been
4 contained in a prior draft report, correct?

5 A Correct.

6 Q And do you stand behind all of the conclusions and
7 opinions in that final report?

8 A I do.

9 Q Thank you.

10 MS. VANDESTEEG: That is all I have on direct.

11 THE COURT: Thank you, Ms. Vandesteeg.

12 MS. MUSGRAVE: Your Honor, we're wondering if the
13 Court would be amenable to just a ten-minute recess before
14 cross-examination?

15 THE COURT: Yes, I would. All righty. It is 4:21.

16 We'll take a break until 4:35 and come back for cross.

17 Do you have something to drink, Mr. Hull?

18 THE WITNESS: I have two bottles water.

19 THE COURT: Okay.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: All righty.

22 THE CLERK: All rise.

23 THE COURT: We'll be in recess until 4:35.

24 (A recess ensued from 4:21 p.m. until 4:47 p.m.)

25 THE CLERK: All rise.

Hull - Direct

256

1 THE COURT: Please, be seated. All righty. We're
2 going to go back on the record in Case No. 22-30659. I think
3 when we last broke Mr. Hull was on the stand with Terracon and
4 we were preparing for cross-examination.

5 MS. MUSGRAVE: Thank you, Your Honor. Slight change
6 of plans on our side. Ms. Walsh is going to handle the cross-
7 examination.

8 THE COURT: Okay. Fair enough.

9 Thank you very much, Mr. Hull. And I will remind you that
10 you're under oath. Thank you.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Ms. Walsh?

13 MS. WALSH: Hello, Your Honor. Kaitlin Walsh on
14 behalf of UMB.

15 And I'd just like to say thank you to the House for the
16 provision of the reading glasses. In the last-minute change,
17 so I'm very now happy that I can read exactly what it is that
18 I'm meant to be reading. So, thank you.

19 THE COURT: Yes. House rules. Take a vig off of
20 that.

21 (Laughter.)

22 THE COURT: Leave the proverbial quarter on the
23 table.

24 CROSS-EXAMINATION

25 BY MS. WALSH:

1 Q Mr. Hull, I believe you testified regarding what --
2 regarding certain systems failing at The Edgemere. Is that
3 correct?

4 A That is correct.

5 Q What does it mean for a system to fail?

6 A Failure can mean a multiple, a variety of things. Usually
7 failure in this instance is a -- it ceases to function the way
8 it is intended. And I believe also in a state of concern for
9 life safety and habitability conditions.

10 Q When you say a state of concern for life safety, what do
11 you mean?

12 A Like, a trip hazard or fire systems not working or not
13 being functional. That would be a state of failure.

14 Q And what does it mean for something to be in poor
15 condition?

16 A Poor condition, I would argue is the end of its useful
17 life, likely still functional, but very near the end of its
18 useful life.

19 Q Is a determination of whether something is in poor
20 condition tied to the age of the system?

21 A In addition to a number of -- in addition to the observed
22 condition.

23 Q Is that the primary factor?

24 A Age and condition are a combination of factors.

25 Q Would something be considered poor simply because of its

1 age, notwithstanding that it was functioning in good
2 condition?

3 A It could be, but that -- that level of distinction would
4 be pretty high. I would -- I would want to know what
5 maintenance records someone has. If I'm looking at a 20-year-
6 old roof and it has a 20-year life but it looks like it's five
7 years old, then someone's doing something correct and they're
8 taking care of that roof, as manufacturers intended.

9 Q Mr. Hull, did you testify regarding the cooling towers at
10 The Edgemere?

11 A I did.

12 Q And did you testify -- I believe you testified that the
13 cooling towers had failed at The Edgemere. Is that correct?

14 A No.

15 Q What was -- so, could you please refresh my memory? I
16 heard you say that the cooling towers had failed. Can you
17 please clarify your testimony regarding the cooling towers?

18 A I'm happy to clarify.

19 Q Thank you.

20 A The cooling towers as a functional mechanical system are
21 in a poor state. They function, purportedly, but they are
22 very near the end of their useful life, and maintenance
23 doesn't appear to be appropriate for those systems.

24 They are not in a state of failure because the cooling
25 towers themselves still function.

1 Q I believe you testified that the expansion joint had
2 failed; is that correct?

3 A It was showing signs of deterioration. And we -- we
4 documented it as a failure.

5 Q So what does that -- what is your recommendation when
6 something is failed, when something has failed?

7 A Based on our observations, we make a recommendation to
8 resolve that condition.

9 Q To replace it?

10 A It may not be that simple. It's not always just replacing
11 it. So, --

12 Q Is it ever a reasonable course, if something has failed,
13 to just fix something?

14 A Yes. But something as complex as building requires a
15 number of interconnecting pieces. It's not always a simple
16 solution just to replace it outright.

17 Q Well, what about something like an expansion joint?

18 A An expansion joint, if you could document that there were
19 no other affected areas, then that's a reasonable assumption.
20 But in that case, we didn't make that -- we didn't make that
21 conclusion.

22 Q I'm sorry. You didn't make what conclusion?

23 A We didn't make the conclusion that it was isolated to one
24 area. So we were concerned that the expansion joint was a
25 symptom of a number of other problems with that overall

1 expansion joint. Because the expansion joint, it follows a
2 path that is not visible to the eye. It's underground, and it
3 connects those two buildings.

4 Q So is it your recommendation that that expansion joint
5 should be replaced immediately?

6 A It should be investigated. Because, like I said, you
7 can't see the whole thing. It's a hidden condition. So you
8 wouldn't make a blanket statement that it just needs to be
9 replaced. That wouldn't be appropriate. Additional
10 investigations are required to ascertain the true condition,
11 and that would require some -- some bidding and some
12 additional investigations.

13 Q So you don't know if it's failed, then? Is that correct?

14 A What we observed, the condition that we observed was in a
15 state of failure because it was permitting water intrusion and
16 erosion was observed. That was a select instance.

17 Q In your report, did you -- isn't it right that in your
18 report you differentiated between immediate needs and then
19 replacement reserve costs?

20 A Yes.

21 Q And isn't the replacement of the expansion joint contained
22 in the replacement reserve costs, as opposed to immediate
23 needs?

24 A No. I believe the investigation of the expansion joint is
25 an immediate item that requires further investigation, and

1 there may be a condition, a line item in the reserve table
2 that also accounts for that. I would have to -- I would have
3 to review the report again.

4 Q And with respect to the cooling tower replacements, just
5 to clarify, you were not -- you did not testify that those had
6 failed. Correct?

7 A That is correct.

8 Q Okay.

9 A The cooling towers functionally have not failed.

10 Q Okay. And is it your testimony that the stucco façade had
11 failed?

12 A The stucco façade was observed in a number of instances
13 throughout the site to have failure conditions. It requires
14 further investigation to determine the breadth of those
15 conditions throughout the site. In addition to the joint,
16 it's not appropriate to say a blanket statement for the whole
17 -- the whole site.

18 Q Over what period of time did you suggest the repair of the
19 stucco façade in your report?

20 A The allowance for stucco repairs I believe is documented
21 in the reserve table. The investigation is an immediate item.
22 And there should -- there are statements that include hidden
23 conditions and unknowns in that discovery. But based on the
24 immediate investigation, we included an allowance for stucco
25 replacement.

1 Q Okay. So I'd like to go back to the beginning of
2 Terracon's involvement with this case. Terracon did a
3 property condition assessment, correct?

4 A That is correct.

5 Q And that process began with a safety meeting?

6 A So, the process -- so, are you asking the process of the
7 entire PCA or the process of the site reconnaissance?

8 Q The process of the entire PCA.

9 A The process of the PCA starts with initial engagement,
10 with whoever our client happens to be. In this case, it was
11 ICI.

12 Once an agreement is reached and the terms are set, all
13 parties are -- execute, we move forward with arranging
14 reconnaissance and requesting related documentation.

15 The reconnaissance did not occur within the time frame
16 alluded to in the engagement letter. We -- it was signed
17 April 1st, but we conducted our reconnaissance well after the
18 three days itemized in the engagement letter. So a lot of the
19 schedule changed with timeline. The reconnaissance -- from
20 the engagement letter, we request documentation related to the
21 building, capital expenditures, historical, engineering
22 documents. Then we perform our investigation, our field
23 assessment. We then provide a report that is a summary of
24 that, of those observations.

25 Q So, in this case, you had -- there -- you formulated a

1 procedure to do a walkthrough; is that right?

2 A Yes.

3 Q And then you did the walkthrough on the property?

4 A Yes.

5 Q And your team was onsite for two days?

6 A Approximately two days.

7 Q And that was July 13th and 14th, 2022, right?

8 A That sounds correct. I'd have to check the report.

9 Q Approximately 9:00 to 5:00 each day?

10 A Approximately.

11 Q With a field team of six people?

12 A Yes.

13 Q And then there was a report team totaling eight people?

14 A Yes.

15 Q Did you -- you didn't otherwise conduct any site visits,
16 correct?

17 A That is correct.

18 Q Did you ask anyone else to conduct any other site visits?

19 A No.

20 Q So, for the second step here, after you were at the
21 property, was you conducted an internal group meeting, right?

22 A Yes.

23 Q And this is a follow-up to items that you observed during
24 the site visit, in preparation for preparing the report,
25 right?

1 A That is correct.

2 Q And here you did that in order to identify a number of
3 immediate and critical items, right?

4 A That is correct.

5 Q Things that you believed were -- required immediate
6 attention because of their critical nature?

7 A Yes.

8 Q And also a number of reserve items that should be planned
9 for in a future capital expense, right?

10 A That is correct.

11 Q So, immediate items are those that are threats to life and
12 safety or a building system that could catastrophically fail
13 and possibly harm the building occupants, right?

14 A Yes. Yes. It's a threat to life, life safety, and a
15 threat to other building systems. Whether or not it's
16 catastrophic is not necessarily a criteria. It just has the
17 potential to damage other systems. Like a roof leak. A roof
18 leak may not cause catastrophic failure of a ceiling tile, but
19 --

20 Q But it would still be an immediate need?

21 A It would -- it would be an immediate need. Because you'd
22 want to address it, because if it's left unattended it might
23 cause some other issues.

24 Q But would that be something that would just be -- that
25 would just be something that would be repaired, correct?

1 A Potentially. You'd probably want to look into what's
2 causing the leak, where the leak is coming from. Roof leaks
3 sometimes take a little bit to chase down. Warehouses can
4 have leaks that are fifty feet from the origin.

5 Q Your purpose in identifying these immediate items is so
6 that you can bring them to somebody's attention, right?

7 A That is correct.

8 Q In particular, so that you can bring them to your client's
9 attention?

10 A Yes.

11 Q And your client here was ICI?

12 A That is correct.

13 Q And so because you're identifying in this inquiry threats
14 to life and safety, you tell your client about these issues as
15 soon as you are able, right?

16 A Yes, typically.

17 Q Now, in addition to these immediate items, you mentioned
18 that you would identify reserve items, right?

19 A Yes.

20 Q And these are items that would be anticipated in terms of
21 future capital planning, right?

22 A Yes. Items that wouldn't classify as a threat to life and
23 safety, nor impact other building systems, but still be
24 nearing their end of useful life during the reserve term of
25 this particular report.

1 Q So things that aren't immediate?

2 A Yes. But some of them are critical in nature, if they are
3 -- like, they may not -- they may still be functioning, but if
4 they fail in year one or year two, that's still near enough to
5 today that it is a cause for concern.

6 Q And those items would be anticipated as part of a
7 continuous capital plan?

8 A Yes.

9 Q But they're not immediate or critical in nature?

10 A They're important, but they're not classified under the
11 immediate cost table.

12 Q But the immediate and critical items, you would tell your
13 client as soon as you got to a safe place, right?

14 A Yes, typically. But it would likely be after that
15 meeting, because I would want to write one email instead of
16 six.

17 Q After what meeting?

18 A Like, when we talked about the follow-up meeting between
19 -- for after a site reconnaissance. I would prefer to meet
20 with my entire team, find a list, a draft list of what we saw,
21 what we observed, and then deliver that. Or at least have a
22 conversation about those items.

23 Q But that would be done as soon as possible after the site
24 visit?

25 A As schedule allows.

Hull - Cross

267

1 Q In this case, you identified the property conditions that
2 you would classify as immediate, right?

3 A Say that again? I'm sorry.

4 Q In this case, on this site visit, you identified issues
5 that you would classify as immediate needs, right?

6 A Yes, that is correct.

7 Q And you estimated that those immediate issues here totaled
8 \$492,000?

9 A There are stipulations to each of those -- some of those
10 conditions that require investigation. And it should be noted
11 that, even with that total amount, there are hidden conditions
12 throughout. So it is a start to some of these investigations,
13 and it may not be the end-all.

14 Q Okay. But Table 1.1 in your report, which includes the
15 immediate needs table, totals \$492,000, right?

16 A That appears correct.

17 Q And to your point regarding investigations, some portion
18 of that \$492,000 total immediate needs amount was for
19 investigations, correct?

20 A Yes. Some of those conditions are -- the aggregate of
21 those immediate conditions in the immediate table sums to
22 \$492,000. But those investigations may highlight other hidden
23 conditions that are not accounted for in our report because
24 they are, in fact, a hidden condition.

25 Q And that was -- and the amount in your immediate needs

Hull - Cross

268

1 chart that relates to these investigations is \$220,000,
2 correct?

3 A I'd have to look at the report. That -- that sounds
4 close.

5 Q And these are additional investigations --

6 A Yes.

7 Q -- that these -- this \$220,000 would pay for, these are
8 additional investigations to determine whether repairs are
9 needed?

10 A It's more in line with it is an estimate to determine the
11 start of a destructive inspection and an investigation phase
12 for each of these items. It is -- they are so very
13 complicated and -- the scale of the conditions are so unknown
14 that it's not quite accurate to place one number.

15 Q So, those investigations, that \$220,000 cost, that's not
16 what it would cost to do the actual repair?

17 A Likely not.

18 Q So here you identified immediate issues that needed to be
19 addressed, correct?

20 A Correct.

21 Q But you did not report these issues to ICI as soon as you
22 got to a safe place, correct?

23 MS. VANDESTEEG: Objection. I think that assumes
24 facts not in evidence and may have misstated some of his prior
25 testimony.

1 THE COURT: Please rephrase. Thank you, Ms. Walsh.

2 MS. WALSH: Yeah. Withdrawn.

3 BY MS. WALSH:

4 Q So you mentioned that after you would have this initial
5 meeting with your team, that at that point you would typically
6 convey to the client any immediate concerns, correct?

7 A Yes.

8 Q When did that meeting happen in this case?

9 A I'm sorry, I don't -- I don't recall.

10 Q Did it happen within a week of your site visit?

11 A I don't recall. I --

12 Q Did it happen within a month of your site visit?

13 A Possibly.

14 Q So, --

15 A I don't -- I don't really know. I can't nail down a date.

16 Q So you identified immediate and critical issues and you
17 don't remember how long after identifying those immediate and
18 critical issues that you discussed with your team if they had
19 identified other immediate and critical issues?

20 A I don't recall.

21 Q Was it before the end of the summer that you got together
22 with your team to discuss the immediate and life threatening
23 or life -- the life safety issues that you had purportedly
24 identified?

25 A It's possible.

Hull - Cross

270

1 Q Are you certain that you had that meeting with your team?

2 A I'm pretty confident that we had that meeting.

3 Q And you're certain that you had that meeting before you
4 reported anything to ICI?

5 A Yes.

6 Q Okay. So, --

7 A Because I -- it's not -- if I didn't have the meeting with
8 my team before I reached out to ICI, I would have essentially
9 been assuming a number of details from my team.

10 Q But you don't remember when that meeting with your team
11 happened?

12 A It likely happened shortly after our reconnaissance. I
13 just can't -- I don't recall the date.

14 Q Okay. But maybe before the end of the summer?

15 A Yes. Quite possible. That would make sense. But I can't
16 -- I don't have a date.

17 Q Do you recall whether you told ICI about these -- the
18 issues that you deemed immediate and critical during the month
19 of July?

20 A I want to -- I think we might have had a conversation, but
21 I couldn't tell you when. I don't know if it was July. That
22 doesn't sound --

23 Q So you think you might have had a conversation with ICI at
24 any time, or you think you might have had a conversation with
25 them in July?

Hull - Cross

271

1 A Well, we -- I had a number of conversations with ICI. I
2 just don't recall the dates.

3 Q Did you reach out to ICI and tell them that you had
4 identified immediate and safety concern issues at The
5 Edgemere?

6 A Yes, I believe I -- I did reach out.

7 Q Okay. When did you reach out to ICI?

8 A Like I said, I don't recall the date.

9 Q Do you recall whether it was in August of 2022?

10 A It's possible. If site reconnaissance happened mid-July,
11 it's possible, after a meeting with my team, it happened
12 sometime after the site visit but before the report.

13 Q Do you recall whether it was in September --

14 A I --

15 Q -- of 2022?

16 A I don't. It's possible, but I'd have to review a number
17 of documents.

18 Q Do you recall if it happened before the end of 2022?

19 MS. VANDESTEEG: Your Honor, I'm going to object. I
20 don't understand the relevance of this line of questioning
21 with respect to this expert's testimony as to the conditions
22 on the property.

23 MS. WALSH: Your Honor, I'm trying to understand. If
24 Mr. Hull identified issues that were deemed critical and
25 immediate in nature, he provided testimony in his deposition

1 that he would have told somebody as soon as he could get to a
2 safe place. So I'm just trying to understand when it was that
3 he provided this information to ICI, because especially given
4 the lag in time between the site visit and the ultimate
5 provision of the report in January of -- this month, in
6 January of this year.

7 THE COURT: Ms. Vandesteeg?

8 MS. VANDESTEEG: Your Honor, I don't know that the
9 witness has been asked if he identified any conditions that
10 made him feel as though he was not in a "safe place." I don't
11 think this witness has testified that he saw any active fires
12 or active leaks. I'm not quite sure what this line of
13 questioning is, Your Honor, and I'm not sure of its relevance.

14 THE COURT: I'm going to overrule the objection. I
15 think that the Plan Sponsors have the right to get to the
16 bottom of the timing of the report. And, again, whether or
17 not it's "when he gets to a safe place," I think the witness
18 has testified, and excuse me, I'm paraphrasing here, that an
19 immediate item is that which threatens life and safety or
20 potentially could damage other building systems. And the
21 question is when was ICI advised of those immediate items.
22 And I'm using that as a term of art.

23 So I'm going to allow the Plan Sponsors to get to the
24 bottom of that line of questioning. So I'll give you a little
25 bit more leeway on this one, Ms. Walsh.

1 MS. WALSH: Thank you, Your Honor.

2 BY MS. WALSH:

3 Q So, just to clarify, you have no idea when you -- when you
4 spoke to ICI about these immediate life safety issues?

5 A I know we spoke. I don't --

6 Q You don't know when?

7 A -- recall when.

8 Q You also don't recall sending any emails to Mr. Hannon
9 during the latter part of 2022 regarding the report, correct?

10 A I would have to verify my documents. I --

11 Q I believe you testified at your deposition that --

12 A I think we did send some communication. I just don't have
13 -- I don't have record of that.

14 Q Okay. So you may have sent an email communication; you
15 just don't have any recollection?

16 A I, yeah, I send a lot of emails.

17 Q So, notwithstanding that you don't recall whether you sent
18 an email or when you communicated the findings to ICI, you did
19 ultimately get to the final step in your usual process here,
20 which is completing a final report, right?

21 A That is correct.

22 Q And you did that on January 6, 2023?

23 A Near that date, yes.

24 Q Is it Terracon's usual practice to allow six months to
25 elapse between a site visit and issuing a report?

1 A That's an excellent question. As I stated before, the
2 engagement was on April 1st, and a lot of time elapsed between
3 reconnaissance, which essentially negated the scheduling
4 commitments that Terracon has. And it's between our client
5 and Terracon what's an appropriate timeline.

6 Q So, so what you're saying is it wasn't just six months
7 that elapsed, it was nine months that elapsed?

8 A No. I'm saying the engagement occurred on April 1st.
9 Site reconnaissance occurred on the second week in July. That
10 is when report production likely began. And then now we are
11 January 6th.

12 Q Okay. So putting aside when the engagement was executed,
13 focusing just on the time between the site visit and the
14 finalization of the report, is it normal for Terracon to have
15 a six-month period of time between a site visit and
16 finalization of a report?

17 A It is not normal, but it is also the proclivity of the
18 client.

19 Q A common turnaround time -- or, withdrawn. So, when you
20 say the proclivity of the client, did ICI -- withdrawn. What
21 -- were there communications regarding delaying the report?

22 A I don't recall any of those communications.

23 Q A common turnaround time for a report is about 20 business
24 days, right?

25 A Yes.

1 Q But I believe you testified that it can depend upon the
2 proclivities of the client. What proclivities are you
3 speaking of?

4 A Well, it's -- I'm -- I don't know what goes through my
5 clients' mind, either ICI or any other client, so I can't --

6 Q But --

7 A It's -- sometimes it's schedule. I apologize.

8 Q So when you say proclivities of the client, do you mean
9 sometimes a client will say, hey, we don't want the report in
10 the normal 20 days, we want it in six months?

11 A It's possible.

12 Q Is that what happened here?

13 A I -- I'd have to -- I'd have to check my emails.

14 Q Do you have an understanding of why that might happen?

15 A No, not really.

16 Q So, is it your testimony -- withdrawn. Did you send ICI a
17 draft of the report within 20 business days of the site visit?

18 A draft?

19 A No.

20 Q In fact, you cannot recall when you sent ICI a draft
21 report, right?

22 A That is correct.

23 Q But we know there was a final report on January 6, 2023,
24 so we can agree that a draft existed on January 5, 2023,
25 right?

Hull - Cross

276

1 A Sorry. Say the dates again and rephrase them?

2 Q So, we know that that report was finalized on January 6,
3 2003 [sic], so we can agree, right, that a report existed, a
4 draft existed on January 5, 2023?

5 A Yes.

6 Q But you don't know when that draft was first created,
7 right?

8 A It's a long process.

9 Q Do you know when that draft was first created?

10 A It started likely shortly after reconnaissance, and then
11 it -- and then it was finalized on January 6th.

12 Q Is it possible that whatever draft existed has now been
13 deleted?

14 A Possible, but unlikely.

15 Q Unlikely why?

16 A It's just unlikely. It would be my hope that that
17 wouldn't have happened, but it is possible.

18 MS. WALSH: Just one minute, Your Honor, please.

19 THE COURT: Sure.

20 BY MS. WALSH:

21 Q Mr. Hull, may -- could I please turn your attention to --
22 do you have a small white binder up there?

23 A I do

24 Q Okay. Can you please turn to Tab 2?

25 A I'm here.

1 Q And I am showing you Plan Sponsors' Exhibit 2, which is
2 ICI's amended cure statement. Do you see that?

3 A Is it one of the other pages?

4 Q The first page says Intercity Investment Properties,
5 Inc.'s Amended Statement of Cure Claims.

6 A Yes. That's what it reads.

7 Q It's fair to say that, before your deposition on January
8 13th of this year, you had never seen this document before,
9 correct?

10 A That's correct.

11 Q And you had no involvement in preparing this document?

12 A That's correct.

13 Q Can we please turn to Page 12?

14 A I'm here.

15 Q There's a table here with three columns. Do you see that?

16 A I see the table.

17 Q Categories of Condition, Source, and Amount. Do you see
18 that on the page?

19 A I do see it.

20 Q You didn't create this table, did you?

21 A I did not.

22 Q And you had no involvement in creating this table
23 whatsoever?

24 A I did not.

25 Q You don't know who did create this table?

1 A Not to my knowledge.

2 Q You don't know whether line items in the table may or may
3 not correlate to line items from your report?

4 A I don't know.

5 Q You don't know what the letters TBC mean when they appear
6 in the Source column?

7 A That was illuminated to me during my deposition. But I --

8 Q So you now know?

9 A I now know what they mean.

10 Q But prior to your deposition, you did not know what those
11 --

12 A I did not.

13 Q What do you know TBC to stand for now?

14 A As I recall, as it was explained to me in my deposition,
15 TBC stands for The Building Consultant.

16 Q Does the name The Building Consultant mean anything to
17 you?

18 A No.

19 Q And you didn't rely on any materials from The Building
20 Consultant in formulating your report, right?

21 A I did not.

22 Q Prior to your deposition, you -- withdrawn. You don't
23 know what the letters PM mean when they appear in the Source
24 column, right?

25 A Not before my deposition.

Hull - Cross

279

1 Q And now what do you know?

2 A I believe it stands for Plante Moran.

3 Q But prior to your deposition, you did not know what PM
4 meant?

5 A No.

6 Q The name Plante Moran doesn't mean anything to you, does
7 it?

8 A No.

9 Q And you didn't rely on materials from Plante Moran in
10 formulating your report, right?

11 A I did not.

12 MS. WALSH: Your Honor, may I just have one moment to

13 --

14 THE COURT: Of course.

15 MS. WALSH: -- confer with my co-counsel?

16 THE COURT: Of course.

17 MS. WALSH: Thank you.

18 (Pause.)

19 BY MS. WALSH:

20 Q So, Mr. Hull?

21 A Yes.

22 Q You testified a little earlier, I believe, that there's a
23 -- it's a table, the Table 1.1 in your report relates to
24 immediate needs, correct?

25 A Yes. Immediate conditions that were observed.

Hull - Cross

280

1 Q And then there was a second table at the beginning of your
2 report. Do you recall Table 1.2?

3 A Yes. That -- I believe that pertains to the reserve table
4 of conditions.

5 Q What is the reserve timeline in the report?

6 A When -- a little bit of backstory. My apologies. When we
7 generate an engagement letter, usually that question is asked
8 of the client, and it is also the client's choice. But
9 typically it's 10 to 12 years for reserve time. Sometimes it
10 can get as long as 20 to 30 years, but then you start
11 replacing the same thing twice. So, in this instance and per
12 our engagement letter, it was 10 years.

13 MS. WALSH: I have no further questions at this time,
14 Your Honor.

15 THE COURT: Okay. Thank you very much, Ms. Walsh.

16 MS. WALSH: Thank you.

17 THE COURT: Is there anyone else who wishes? Please
18 approach.

19 MR. DAVIS: Thank you, Your Honor. Matthew Davis for
20 Bay 9 Holdings.

21 CROSS-EXAMINATION

22 BY MR. DAVIS:

23 Q Good afternoon, sir.

24 A Good afternoon.

25 Q Does each building on the campus at The Edgemere have a

Hull - Cross

281

1 stucco exterior?

2 A Yes. It appeared to.

3 Q And you saw cracking on each of those buildings?

4 A Yes.

5 Q And those cracks in some cases exceeded a quarter of an
6 inch?

7 A Yes.

8 Q And cracks of that size -- well, at what point do cracks
9 give you a concern about water infiltration?

10 A I would argue that cracks of any size have the potential.
11 Hairline cracks only get bigger. Large cracks are
12 automatically of concern. But it's -- all crack sizes are
13 significant.

14 Q Okay. And based on the cracks you observed, you
15 recommended the investigation that you've testified about,
16 correct?

17 A That is correct.

18 Q But regardless of what that investigation reveals, the
19 failure state of the stucco existed in July of 2022, when you
20 observed the property, correct?

21 A That is correct.

22 MR. DAVIS: No further questions, Your Honor.

23 THE COURT: Thank you.

24 REDIRECT EXAMINATION

25 BY MS. VANDESTEEG:

Hull - Redirect

282

1 Q Hello again, Mr. Hull.

2 A Hello.

3 Q Following up a bit on counsel's last questions with
4 respect to the stucco, you've also had some conversations with
5 counsel for the Plan Sponsors about the joint, and I just want
6 to clear up one thing again. It is your testimony that the
7 expansion joint is in a state of failure, correct? Presently?

8 A The observed condition regarding the expansion joint is in
9 a state of failure.

10 Q But today, because you don't know the extent of that
11 failure, I think what you've testified is that simple
12 replacement is not enough; there must be the investigation
13 first. Correct?

14 A That is correct.

15 MS. WALSH: Objection, Your Honor. Leading.

16 BY MS. VANDESTEEG:

17 Q In any event, --

18 THE COURT: Sustained.

19 BY MS. VANDESTEEG:

20 Q -- whether before or after further investigation, is
21 replacement of that expansion joint necessary today?

22 A Yes.

23 Q You and I talked a lot about items in a failed state or in
24 poor condition, correct?

25 A Yes.

1 Q Are each of the conditions that you and I discussed and
2 that you identified, you and your team identified as being in
3 a failed state, set forth on the cost tables set forth in
4 Table 1?

5 A Can you state your question again?

6 Q Sure. We had talked about failed-state items and those in
7 poor condition. For the failed-state items, are all of those
8 listed on Chart 1?

9 A Yes.

10 Q And for the items that you had identified as being in poor
11 condition, are all of those listed in Chart 1?

12 A Not necessarily.

13 Q Could some of those also be listed in a second chart, what
14 others may have called the replacement reserves chart?

15 A Yes.

16 Q But the fact that they happen to be listed on a
17 replacement reserves chart does not mean that they are not
18 presently in poor condition, correct?

19 A That is correct.

20 MS. VANDESTEEG: Your Honor, at this point I'd like
21 to move into admission the photographs that we went through
22 with Mr. Hull with respect to his further testimony and
23 observations with respect to the conditions as they existed at
24 the time of Terracon's site visit at The Edgemere. We did go
25 through the exercise of him laying the appropriate grounds for

Hull - Redirect

284

1 authenticity, and he has been able to appropriately check all
2 those boxes, and we would seek to admit those photographs at
3 this time.

4 We do not seek further admission of the broader Terracon
5 report, but simply those photographs without any further
6 commentary.

7 THE COURT: Thank you, Ms. Vandesteeg.

8 MS. WALSH: No objection, Your Honor.

9 THE COURT: Okay. So, I believe the next exhibit
10 reference for ICI would be Exhibit 30. Am I correct?

11 MS. VANDESTEEG: Yes, Your Honor.

12 THE COURT: Okay. So, Exhibit 30 will be Photographs
13 -- and correct me if I miss any -- 60, 62, --

14 MS. VANDESTEEG: One moment, Your Honor. Let me --

15 THE COURT: All right.

16 (Pause.)

17 MS. VANDESTEEG: Okay, Your Honor. I am ready when
18 you are.

19 THE COURT: Okay. 60 and 62.

20 MS. VANDESTEEG: Your Honor, I think we had 60 -- we
21 had 61 as well, Your Honor.

22 THE COURT: Okay. Why don't you put 61 on the
23 screen.

24 MS. VANDESTEEG: Kendra, can you put Photograph 61 up
25 on the screen? Thank you.

1 THE COURT: Get it up there or I'll take away your
2 electronics.

3 (Laughter.)

4 THE COURT: That's a joke. Strike that from the
5 record, Ms. Jeng.

6 (Pause.)

7 THE COURT: I remember there was one that we couldn't
8 pull up. It was either 61 or 63, I thought, but --

9 MS. VANDESTEEG: It was -- that one was 63, according
10 to my notes, Your Honor.

11 THE COURT: Okay.

12 (Pause.)

13 THE COURT: Ms. Gradney, are you getting her
14 attention? Oh, maybe not. Maybe not. I'm sorry. I thought
15 maybe she was --

16 MS. VANDESTEEG: I think that she's just logging back
17 on to the Court's --

18 THE COURT: Oh, I apologize. Okay. I thought she
19 was getting your attention.

20 MS. VANDESTEEG: There we go. There is 61, Your
21 Honor.

22 THE COURT: Okay. And I'm not sure that I saw that
23 one, but -- all right. So, 60, 61, and 62. 57 and 58. 59.
24 71. 49 and 50. And 67. And I've got 40. 31. 45. 48. 98
25 and 99. 94. And that's the last of the photos that I have.

Hull - Redirect

286

1 MS. VANDESTEEG: Your Honor, your notes are the same
2 as my notes.

3 THE COURT: Okay. Excellent. All right. So, again,
4 those photographs together will make up ICI's Exhibit 30.
5 I'll ask, after the hearing, if you could upload that as an
6 additional exhibit. And it can be at the end of the hearing.
7 But it's much easier for the Clerk's Office to keep track of
8 the admitted exhibits. So we'll admit each of those.

9 MS. VANDESTEEG: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 MS. VANDESTEEG: And we will take care of uploading
12 that for you.

13 THE COURT: All righty.

14 (Intercity Investment Properties, Inc.'s Exhibit 30 is
15 received into evidence.)

16 MS. VANDESTEEG: Your Honor, with that we are
17 finished with Michael Hull as a witness and we would like to
18 excuse him.

19 THE COURT: Okay. Oh, no, no, I have some questions.

20 MS. VANDESTEEG: Oh. Very well.

21 THE COURT: Okay. Thank you.

22 MS. VANDESTEEG: Then I will go sit down.

23 THE COURT: All righty.

24 EXAMINATION BY THE COURT

25 THE COURT: Good afternoon, again. Thank you, again,

Hull - Examination by the Court

287

1 Mr. Hull, for testifying today.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: You stated a few times that it was your
4 standard procedure after you were engaged to send out a
5 questionnaire, asking for things like building plans,
6 maintenance logs, and things of that nature. Did you send out
7 that questionnaire in this instance?

8 THE WITNESS: Yes.

9 THE COURT: Okay. And who did you send it to?

10 THE WITNESS: Typically, at the start of a project,
11 or sorry, at a start of any PCA engagement, we don't have the
12 direct site contact at the time of engagement.

13 THE COURT: Uh-huh.

14 THE WITNESS: So that questionnaire is sent to our
15 client, --

16 THE COURT: Okay.

17 THE WITNESS: -- and that request for documentation
18 is included in the engagement letter.

19 THE COURT: Okay. All righty.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: And with respect to the timing on the
22 preparation of the report, I understand that you don't recall
23 very specific dates, but I'm trying to get my head around
24 timing. And I'm only talking about the timing between the
25 visit itself. The engagement, there's a whole story that goes

Hull - Examination by the Court 288

1 with the engagement and prepetition bankruptcy, which I'm not
2 as interested in.

3 So, from the timing of the visit itself, July 13th and
4 14th, through the preparation of the report on January 6th, I
5 believe that you testified that the timing of your report is
6 based upon the proclivities of the client. I'll confess, I
7 don't understand what the proclivity of the client means.

8 THE WITNESS: In this regard, Your Honor, it's
9 essentially as the client requires it. If a client wants a
10 final or wants to wait on it, it is -- it is their decision.

11 THE COURT: Okay. So in an instance where there
12 looks to be a five or six-month time period between the visit
13 and the report, is the Court to assume that the client didn't
14 want a report?

15 THE WITNESS: No, that's -- I don't believe that's
16 necessarily true.

17 THE COURT: Okay. Then --

18 THE WITNESS: I don't think they wanted a finalized

19 --

20 THE COURT: -- enlighten me.

21 THE WITNESS: -- a finalized report.

22 THE COURT: Okay. So you believe there would have
23 been a draft report that would have been sent to ICI at some
24 point in the process?

25 THE WITNESS: That is correct.

Hull - Examination by the Court

289

1 THE COURT: Okay. And so when do you typically
2 prepare your draft reports?

3 THE WITNESS: We typically start production shortly
4 after site reconnaissance, because we are -- we are confined
5 to that timeline.

6 THE COURT: Because that'd be closer to your
7 observations?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 THE WITNESS: Yeah. Because the farther out we get,
11 it's more -- it's harder to recall certain events --

12 THE COURT: Sure.

13 THE WITNESS: -- or certain observations.

14 THE COURT: So you believe that you prepared that
15 report in your typical 20-day --

16 THE WITNESS: It was likely variable in this
17 instance.

18 THE COURT: Okay.

19 THE WITNESS: I unfortunately don't recall the true
20 timeline.

21 THE COURT: I mean, were there leaves on the trees?
22 I'm trying --

23 THE WITNESS: Yeah, I guess so.

24 THE COURT: I'm trying to pick a season.

25 THE WITNESS: Yeah, no, I hear you. I understand.

Hull - Examination by the Court

290

1 It -- I'm stuck in an office all day. I don't really see the
2 trees on the outside.

3 THE COURT: I feel you.

4 THE WITNESS: It's possible. And I --

5 THE COURT: Okay.

6 THE WITNESS: I wish I had a better answer for you,
7 but I apologize, Your Honor.

8 THE COURT: Do you recall ever being directed not to
9 prepare a report?

10 THE WITNESS: No.

11 THE COURT: Okay. So, essentially, and I don't want
12 to put words in your mouth, but with respect to the report,
13 you're waiting to essentially -- to be prodded by your client?

14 THE WITNESS: In this instance, yes.

15 THE COURT: Okay. So, obviously, something happened
16 in the late December/January time frame where the report was
17 being finalized. What were the circumstances around you
18 finalizing that report? Because we're only talking about a
19 couple weeks ago. What were those circumstances when you were
20 asked to finalize it?

21 THE WITNESS: I was instructed by my project
22 executive, who is a Terracon employee --

23 THE COURT: Uh-huh.

24 THE WITNESS: -- assigned to this project, to proceed
25 with finalization. And I assume someone told him to give that

Hull - Examination by the Court

291

1 direction.

2 THE COURT: So, someone being someone from Terracon
3 or someone being an outside party, like a client?

4 THE WITNESS: A client or a client representative
5 likely told Mr. Doug Baum, my project executive, --

6 THE COURT: Uh-huh.

7 THE WITNESS: -- to tell me to finalize the report.

8 THE COURT: Okay.

9 THE WITNESS: All I recall is when my project
10 executive told me to move.

11 THE COURT: Okay. And when was that?

12 THE WITNESS: That was in the January 5th/4th
13 timeline. In preparation of the January 6th final.

14 THE COURT: So you went from zero to 60?

15 THE WITNESS: Yeah.

16 THE COURT: You had a draft report and you finalized
17 it in just a couple days' time?

18 THE WITNESS: Yes. Because the draft report didn't
19 require any changes upon finalization.

20 THE COURT: So it had been ready for quite some time,
21 and you just proceeded when you were prodded by Mr. Baum?

22 THE WITNESS: Baum.

23 THE COURT: Baum?

24 THE WITNESS: B-A-U-M.

25 THE COURT: Okay. Thank you. By Mr. Baum. I have a

Hull - Examination by the Court

292

1 funky accent, so I'll get it wrong.

2 THE WITNESS: No worries.

3 THE COURT: That's the point when you finalized it,
4 signed it, and turned it in?

5 THE WITNESS: That is correct.

6 THE COURT: Okay. All right. Does anyone have any
7 other questions based upon the Court's questions?

8 FURTHER REDIRECT EXAMINATION

9 BY MS. VANDESTEEG:

10 Q Mr. Hull, I think you testified that there were
11 communications between Terracon and your client between the
12 site visit and the finalizing of the report?

13 A Yes.

14 Q Although you can't remember specific times and specific
15 communications, were those communications scattered over that
16 period of months or were they clustered at the beginning or
17 clustered at the end? To your recollection?

18 A I think they were scattered. Pretty scattered. I know I
19 -- I recall a conversation about elevators, but I don't -- I
20 don't recall when that happened.

21 Q And I --

22 A I'm sorry.

23 Q And I think that you testified at your deposition there
24 were conversations also about certain language and definitions
25 and things of that nature?

Hull - Further Redirect

293

1 A Yes. As I was not privy to certain leasing language and,
2 I guess, party language, it helped to clarify that in the
3 report.

4 Q But, again, did the conditions that you observed and
5 identified change from site visit, draft of report, to final
6 report?

7 A No. No.

8 Q And as you sit here today, your final report, the January
9 6th report, is your opinion, your sworn testimony as to your
10 observations and your recommendations and your findings under
11 oath?

12 A That is correct.

13 Q Thank you.

14 THE COURT: All right. Any further questions?

15 MS. WALSH: No, Your Honor.

16 THE COURT: Okay.

17 MS. VANDESTEEG: Your Honor, with that, we would
18 excuse this witness.

19 THE COURT: Okay.

20 MS. VANDESTEEG: Unless the Court has additional
21 questions.

22 THE COURT: Mr. Davis was --

23 MR. DAVIS: Oh, no, I was just --

24 THE COURT: Oh, just stretching? Okay. All righty.

25 Mr. Hull, you're excused. Thank you very much for your

1 testimony here today.

2 THE WITNESS: Thank you, Your Honor.

3 MS. VANDESTEEG: Thank you.

4 THE WITNESS: It was my first time.

5 (The witness steps down.)

6 MS. VANDESTEEG: Your Honor, at this point I think we
7 would move on to Witness #3, and I think we've got another 50
8 minutes to go. So if we want to power through, great. I
9 don't know if anyone needs a five-minute break. But we would
10 otherwise seek to call Nick Harshfield --

11 THE COURT: Uh-huh.

12 MS. VANDESTEEG: -- in his capacity as an -- as an
13 adverse witness here.

14 THE COURT: Okay. Just one moment. Mr. Johnson?

15 MR. JOHNSON: Well, that's exactly what I -- thank
16 you, Your Honor. Jeremy Johnson on behalf of the Debtors.

17 That's exactly what I wanted to talk about. We have 50
18 minutes, approximately 50 minutes. I know there's a hard stop
19 in here for 6:30. If we can get Mr. Harshfield -- the direct
20 will be taken by ICI and then the cross will be done by UMB
21 and/or us, as necessary. If we can get it done in the next 50
22 minutes, we can get him online right now.

23 THE CLERK: He's already on.

24 MR. JOHNSON: But I know we don't want to roll over
25 to the next day if we can avoid it. So, --

1 THE COURT: I think he --

2 THE CLERK: He's on.

3 THE COURT: Ms. Jeng said he's on. So I guess the
4 question is whether or not he can be done in that amount of
5 time.

6 MS. VANDESTEEG: I think that's a pretty high
7 likelihood, Your Honor. And it was also my understanding that
8 he's not available tomorrow, unless Mr. Johnson tells us
9 anyway. I had thought that his availability was limited to
10 today.

11 MR. JOHNSON: His availability was limited to today,
12 Your Honor. But when -- he's been on hold all afternoon and
13 he had to change his schedule around for tomorrow. So, I
14 mean, if we had to do him tomorrow, if we had to put him up
15 tomorrow, we could find some way to do that. But tomorrow
16 we'd have another three witnesses and --

17 MS. VANDESTEEG: Two.

18 MR. JOHNSON: I mean, well, it would be --

19 THE COURT: Three if he testified.

20 MR. JOHNSON: -- three with Mr. Harshfield, is what
21 I'm saying. And those two are going to be potentially longer.
22 So, so but if we can -- if the parties think we can get it
23 done, I'd love for him to get it out of the way right now.
24 I'm sure he'd like to get on to his day as well. He's
25 testifying as well on Wednesday. So, --

1 THE COURT: Okay. Well, if we think we can get him
2 done, let's get him done.

3 MS. VANDESTEEG: Let's give it a shot.

4 THE COURT: All righty. Mr. Harshfield, if you could
5 unmute your line and say, "Testing, testing."

6 MR. HARSHFIELD: Testing, testing.

7 THE COURT: All right. Well, Ms. Musgrave or Ms.
8 Walsh, do you believe he can get done? How much cross do you
9 have, I guess is my question.

10 MS. WALSH: I mean, Your Honor, I think it's likely
11 that we have about a half hour of cross.

12 THE COURT: Okay.

13 MS. WALSH: So, --

14 THE COURT: How much direct do you have, Ms.
15 Vandesteeg?

16 MS. VANDESTEEG: I suspect I'd also be about half an
17 hour, Your Honor.

18 THE COURT: Okay.

19 MS. VANDESTEEG: So we'd be running up on a little
20 over.

21 THE COURT: Okay. Give me just one second.

22 (Pause.)

23 THE COURT: Let me see if the CSOs can stay. Please.

24 If you'd give me one moment, Mr. Harshfield, I'm going to
25 see if we can get our CSOs to stay. Because if we can't, I

Harshfield - Direct

297

1 can't stay.

2 MR. HARSHFIELD: Yes, Your Honor.

3 (Pause.)

4 THE COURT: Okay. Thank you very much. Okay. Mr.
5 Harshfield, we have a green light until 7:00, and then
6 everybody turns into a pumpkin. So, 7:00 is really closer to
7 6:50, because we've got to pack up and move on out.

8 All righty. Ms. Vandesteeg?

9 MS. VANDESTEEG: Excellent.

10 THE COURT: So I'm going to go ahead and swear you
11 in, Mr. Harshfield. If you could raise your right hand for
12 me.

13 (The witness is sworn.)

14 THE COURT: Thank you very much.

15 Please proceed.

16 MS. VANDESTEEG: Thank you.

17 NICK HARSHFIELD, INTERCITY INVESTMENT PROPERTIES, INC.'S

18 WITNESS, SWORN

19 DIRECT EXAMINATION

20 BY MS. VANDESTEEG:

21 Q Mr. Harshfield, thank you for joining us late today. I
22 appreciate it.

23 Could you please state and spell your name for the record?

24 A Nick Harshfield. N-I-C-K, H-A-R-S-H-F-I-E-L-D.

25 Q Thank you, Mr. Harshfield. You are presently the CFO,

Harshfield - Direct

298

1 chief financial officer, for Lifespace Communities, Inc.,
2 correct?

3 A That is correct.

4 Q And you have held that role since June of 2020, correct?

5 A Correct.

6 Q You also concurrently serve as the vice chair and
7 treasurer of Edgemere as well, correct?

8 A Correct.

9 Q And in those roles, some of your responsibilities are to
10 review CAPEX budgets at a summary level. Correct?

11 A Correct.

12 Q And you work with other folks with expertise to ensure
13 that the budgets are appropriate for capital expenditures,
14 right?

15 A Yes.

16 Q And you are ultimately responsible for the preparation of
17 Edgemere's annual budget, right?

18 A Yes.

19 Q We're talking a lot about property conditions today and
20 tomorrow. For you, in your role, as I understand it, with
21 respect to the property condition and condition issues, your
22 role is to understand and to lean upon experts, those subject
23 matter experts, but you yourself are not a subject matter
24 expert on property condition issues, correct?

25 A That is correct.

Harshfield - Direct

299

1 Q Thank you. Mr. Harshfield, Lifespace has known about the
2 building envelope and façade stucco problems at The Edgemere
3 since the time of the affiliation with SQLC in 2019, correct?

4 A That's my understanding, yes.

5 Q And Mr. Harshfield, let's just back up, because you have
6 been identified as Edgemere's 30(b)(6) witness on certain of
7 these topics, correct?

8 A Yeah, I'm not necessarily familiar with the legal
9 designation, but --

10 Q Let's put it a different way. You have been identified
11 and presented by Edgemere as one of the witnesses capable and
12 knowledgeable about testifying on the questions that we are
13 going through today. Correct?

14 A Correct.

15 Q Mr. Harshfield, do you recall that Edgemere's 20 -- let me
16 back up. Strike that. Mr. Harshfield, in terms of preparing
17 CAPEX budgets for a particular year, isn't it correct that
18 Edgemere and Lifespace begin the preparation of those budgets
19 in the summer before the year in which they are going to be
20 applicable?

21 A Yes, that is the general cadence.

22 Q So with respect to The Edgemere 2020 CAPEX budget, that
23 budget was prepared in summer of 2019, correct?

24 A That would be my assumption, yes. I was -- since I wasn't
25 with Lifespace or Edgemere during that year, but that would be

Harshfield - Direct

300

1 the normal course for the timetable.

2 Q After the time in which you became employed with Lifespace
3 and Edgemere in June of 2020, did you become familiar with the
4 2020 CAPEX budget?

5 A I would say I would have reviewed it. But do I recall the
6 details of that budget? No, I do not.

7 Q Okay. Mr. Harshfield, you should have a binder of
8 exhibits that was sent to you, a black binder. Correct?

9 A Yes, I do.

10 Q Great. Thank you. And I'm going to ask you to turn to
11 what has been marked and admitted as ICI Exhibit 5. And I'll
12 also see if we can put this up on the screen, because we might
13 be able to make it a little bigger.

14 Oh. I'm sorry. Mr. Harshfield, clarification.

15 A Sure.

16 Q We had previously split apart some of these exhibits into
17 sealed and unsealed before we determined that all of these
18 could be used unsealed in connection with this particular
19 hearing. The exhibit I'm asking you to look at is actually in
20 the smaller floppy binder of exhibits. It should still have a
21 tab for Exhibit 5 within that smaller binder.

22 A I believe I'm there.

23 Q Excellent. Mr. Harshfield, this is, to the best of your
24 knowledge, Edgemere's 2020 CAPEX budget, correct?

25 A Correct.

Harshfield - Direct

301

1 Q And if we scroll down -- and, again, this budget would
2 have been prepared, to the best of your knowledge, in summer
3 of 2019?

4 A Yes. That is correct.

5 Q And this budget identifies a number of different projects
6 or items with respect to capital expenditures or property
7 conditions that The Edgemere was considering spending funds on
8 in 2020, correct?

9 A That's what this would demonstrate, yes.

10 Q Okay. So let's take a look at the Building Improvements
11 category, and the second-to-last item listed within necessary
12 building improvements for 2020 CAPEX. That says: Repair,
13 paint, and waterproof stucco in the plaza. Plaza is the
14 health care building, right?

15 A That is correct.

16 Q Okay. So the 2020 CAPEX budget calls for repair, paint,
17 and waterproof stucco, Plaza, \$240,000, with a note: This is
18 to prevent constant water leaks in the health care building.
19 Do you know if that -- do you know if money was expended to
20 perform repair, paint, and waterproof of the stucco in the
21 health care building in 2020?

22 A I don't know specifically to this. No, I do not.

23 Q Had you heard about, at the time that you became employed
24 with Lifespace, any prior constant leaking in the health care
25 building?

Harshfield - Direct

302

1 A I understood that there was concerns. And my
2 understanding from the folks who were involved in the work,
3 that all the immediate issues were corrected, I believe in
4 2020. Some of it may have spilled over into 2021.

5 Q The folks involved that you're talking about, is that Gary
6 Conkin?

7 A Yes. Gary Conkin. And Russell Mauk as well.

8 Q Who is Gary Conkin and what is his role?

9 A He is Director of Construction, I believe is his title.

10 Q With Lifespace?

11 A Yes.

12 Q And what about Russell Mauk?

13 A Russell Mauk is our VP of Redevelopment and Construction
14 and Design.

15 Q And that is, again, of Lifespace?

16 A Correct.

17 Q So, fair to say that in 2020 you, Mr. Harshfield, heard
18 from Mr. Mauk and/or Mr. Conkin that there were problems with
19 respect to water leaks related to the stucco at The Edgemere?

20 A So, I wouldn't specifically say water leaks. I understood
21 that there were -- there were reviews of the stucco, and my
22 understanding in all the conversations is that the issues were
23 corrected.

24 Q Mr. Harshfield, in 2020, did you have concerns about the
25 building envelope?

Harshfield - Direct

303

1 MS. VANDESTEEG: Oh, did we lose him?

2 THE CLERK: No.

3 THE WITNESS: No, I'm still here.

4 BY MS. VANDESTEEG:

5 Q Oh, there you are.

6 A Okay.

7 THE COURT: Hi, Mr. Harshfield.

8 THE WITNESS: Hello. So, again, I would say that my
9 understanding, from talking with Mr. -- primarily Mr. Mauk, is
10 that there were areas that needed to be addressed and that
11 they were addressed.

12 BY MS. VANDESTEEG:

13 Q That's not quite what I asked you. I asked you if, in
14 2020, you had concerns about the building envelope at
15 Edgemere?

16 A I don't know that I had specific concerns myself, no,
17 outside of what -- the communications I had with those
18 individuals that have the expertise.

19 Q Mr. Harshfield, you are aware that in May of 2020
20 Lifespace hired The Building Consultant to perform an
21 assessment of the building envelope, the stucco at The
22 Edgemere, correct?

23 A Correct.

24 Q And you are aware that The Building Consultant completed
25 their report in July of 2020?

Harshfield - Direct

304

1 A Correct.

2 Q And Edgemere did receive that Building Consultant report,
3 correct?

4 A Yes.

5 Q Have you yourself seen or reviewed that report?

6 A Not in detail, no. The first -- honestly, the first time
7 I saw it in detail was during the deposition.

8 Q Had you reviewed it at all prior to your deposition?

9 A Not personally, no.

10 Q Mr. Harshfield, The Building Consultant was brought in in
11 2020 because issues had already been identified with the
12 building envelope, correct?

13 A That's my understanding.

14 Q And The Building Consultant was brought in to investigate
15 those issues, correct?

16 A That is my understanding, yes.

17 Q And I believe that you just said that you understand that
18 some of the repairs recommended by The Building Consultant
19 were addressed, but do you have any personal knowledge as to
20 whether all of the conditions identified by The Building
21 Consultant have been addressed?

22 A I do not.

23 Q To your knowledge, between The Building Consultant report
24 date of July 2020 and June of 2021, did Edgemere hire anyone
25 to perform any further assessment of The Edgemere's building

Harshfield - Direct

305

1 envelope or the façade?

2 A From July of 2020 to when?

3 Q June of 2021.

4 A Not that I'm aware of, no.

5 Q Mr. Harshfield, that 2020 budget, Exhibit 5, that would

6 have been the first capital budget for Edgemere post-

7 Lifespace's SQLC affiliation, right?

8 A Correct.

9 Q You were involved in the 2021 capital budget planning,
10 right?

11 A Again, at a high-level review standpoint, yes. Not in the
12 details.

13 Q But you were still involved in that planning process for
14 Edgemere for 2021?

15 A Yes.

16 Q And that began in the summer of 2020?

17 A Yes.

18 Q And it would have resulted in a final 2021 budget at the
19 end of 2020?

20 A Correct.

21 Q Now, we've not seen a 2021 budget, a capital budget. Do
22 you know if -- do you recall whether that capital budget
23 identified the building envelope as a need for The Edgemere in
24 year 2021?

25 A I do not recall.

Harshfield - Direct

306

1 Q Do you recall if the 2021 budget included roof reparations
2 as a need for 2021?

3 A I do not recall.

4 Q Mr. Harshfield, you were then also involved in the 2022
5 capital budget planning process for Edgemere, correct?

6 A Yes.

7 Q And that would have also have begun in the summer of 2021,
8 correct?

9 A Correct.

10 Q Mr. Harshfield, I'd like you to turn to what we have
11 marked as Exhibit 3. This one is going to be a loose document
12 tucked into the pocket of the black binder, as we were not
13 sure of its treatment when we were putting together those
14 binders.

15 A I have it.

16 Q Mr. Harshfield, do you recognize this document?

17 A I do.

18 Q And it's been redacted, correct? It's just some portion
19 of this document that is visible?

20 A That is correct.

21 Q Let's turn to the first substantive page. There's a
22 summary that says, Company Projected Need, August 2021. The
23 company that we're talking about in this document is The
24 Edgemere, correct?

25 A Correct.

Harshfield - Direct

307

1 Q So this is a summary of The Edgemere's own projected need
2 as of August 2021 for certain items, certain capital and
3 property condition items that it's including in its budget for
4 2022 and 2023, correct?

5 A So, I would say these are financial projections, and these
6 are the capital expenditure portions of those capital
7 projections that were developed for purposes of negotiating
8 capital restructuring.

9 Q Mr. Harshfield, did you -- were you involved in the
10 preparation of these company-projected need numbers?

11 A Not in detail, no, I was not.

12 Q Do you know who was?

13 A The local leadership at Edgemere, and I believe Chris
14 Soden also had some input into these numbers as well.

15 Q Chris Soden? Remind us Mr. Soden's role.

16 A He's a Director of Plant Operations for Lifespace.

17 Q And to your knowledge, he was the other witness, the
18 representative presented to ICI to testify on the property
19 condition issues, correct? Isn't -- is that your
20 understanding?

21 A Yes.

22 Q So Mr. Soden would be someone who's very aware of the
23 property condition at The Edgemere and the needs for certain
24 repairs or remediation that may be necessary, correct?

25 A I believe so, yes.

Harshfield - Direct

308

1 Q So Mr. Soden helped put together and identify these
2 specific conditions that needed to be addressed as part of the
3 company-projected need in August 2021?

4 A So, these were put together pretty close to about the time
5 that he started with Lifespace and supporting Edgemere. So
6 some of these numbers had been developed internally. And then
7 soon after his -- I can't exactly remember when he started
8 with Lifespace, but he did provide some input into the final
9 projections.

10 Q Well, I'm talking less about the projections than I'm
11 talking about the actual conditions listed here that the
12 company had identified had a need for a spend in 2021. How
13 did the company determine which of these projects had that
14 immediate need for a 2022 spend?

15 A So I would -- I would disagree with the characterization
16 of immediate need. These, again, were for purposes of a
17 negotiation strategy for the restructuring, the capital
18 restructuring for Edgemere. And, you know, we essentially, we
19 pulled it as many of these expenditures realistically could
20 happen over a number of years. We pulled as much forward as
21 we could, again, to ensure that we had a strong position to
22 end up with the best possible outcome for Edgemere through the
23 capital restructuring negotiations.

24 Q So let me see if I understand. Are you still there, Mr.
25 Harshfield? We've lost your video.

Harshfield - Direct

309

1 A Yes.

2 Q Okay. Thank you.

3 THE COURT: Just so you're aware, Mr. Harshfield,
4 every now and then, if there's even just a bit of sound from
5 anyone else on the line, we lose your visual for a moment. So
6 you just stick with us and we'll stick with you.

7 THE WITNESS: Yes, Your Honor.

8 BY MS. VANDESTEEG:

9 Q Mr. Harshfield, just in looking at this chart, and let's
10 go ahead and turn to the second substantive page where we've
11 got detail by project. This chart again states, Company
12 Projected Need, August 2021. Correct?

13 A Yes.

14 Q And it lists a number of different items by project or
15 description under program area or building and grounds or
16 building exterior or culinary or equipment, correct, as we're
17 going down the page?

18 A Correct.

19 Q And those are action items or conditions or things,
20 correct?

21 A Yes.

22 Q And then we have two columns under the Company Projected
23 Need, one with dollar amounts for 2022 and one with dollar
24 amounts for 2023, correct?

25 A Correct.

Harshfield - Direct

310

1 Q Is it your understanding that those are The Edgemere's
2 estimated costs that would be necessary in the years 2022 and
3 2023, as they understood in August of 2021, to address certain
4 known and identified conditions at the property?

5 A You know, my answer remains the same, that this document
6 was put together for capital restructuring negotiations, and
7 we pulled as much anticipated future capital needs into the
8 2022 and 2023 columns as part of the cash flow projections so
9 that we could put forward the best possible outcome for
10 Edgemere through the capital restructuring negotiations.

11 Q So is it your testimony that these numbers on Exhibit 3
12 were developed only for negotiation purposes and not as a way
13 for Edgemere to identify expenditures that were necessary with
14 respect to the property condition?

15 A The purpose of this document was to develop -- help
16 develop a negotiation strategy for capital -- for capital
17 restructuring.

18 Q So let's ask a different way, Mr. Harshfield: Was it
19 Edgemere's understanding and belief that, for example,
20 building envelope repair, I'm looking about halfway down this
21 page, building envelope repair is listed as an item.

22 A Yes.

23 Q Correct?

24 A Yes.

25 Q And the company-projected need was listed as \$3 million in

Harshfield - Direct

311

1 2022 and an additional \$2 million in 2023. Is it your
2 position that those estimates are inaccurate or that work was
3 not necessary with respect to the building envelope repair?

4 A I'm saying that the timing of 2022 and 2023 is not
5 relevant -- necessary to when that work needed to be done.

6 Q Mr. Harshfield, do you agree that building envelope work
7 needed to be done and was known to be needed to be done as of
8 August 2021?

9 MR. JOHNSON: Objection, Your Honor. This is, I
10 think, the seventh or eighth question that's trying to get to
11 the same fact, and Mr. Harshfield keeps repeating the same
12 answer, which is that this was a document designed for
13 something else, and counsel keeps testifying that it's some
14 sort of different need or necessity or something along those
15 lines.

16 THE COURT: Ms. Vandesteeg, response?

17 MS. VANDESTEEG: I don't think he's answered my
18 question, Your Honor.

19 THE COURT: Okay. Let's --

20 MS. VANDESTEEG: I can ask a different way.

21 BY MS. VANDESTEEG:

22 Q Mr. Harshfield, --

23 MR. JOHNSON: But that's the objection, Your Honor.
24 They keep asking the same question different ways, searching
25 for a different answer. This has been about five to ten

Harshfield - Direct

312

1 minutes of this.

2 THE COURT: Okay.

3 MR. JOHNSON: He's explained to the Court what he
4 believes the need portion of that chart, what it meant and
5 what the purpose was behind it. So I guess we can do it
6 again, but we're running out of time.

7 THE COURT: You have asked it a number of different
8 ways, Ms. Vandesteeg, so let's ask your --

9 MS. VANDESTEEG: Sure.

10 THE COURT: -- I know you don't feel like you're
11 getting an answer, so let's try one more time.

12 BY MS. VANDESTEEG:

13 Q Mr. Harshfield, do you believe that the numbers set forth
14 in Columns 1 and 2 of Exhibit 3 are an accurate depiction of
15 what the company needs were with respect to capital
16 expenditures and spending on other building condition projects
17 for the year of 2022?

18 A No, I cannot affirm as to what the timing of the need
19 actually was.

20 Q Let's take a look, then, at what we've marked as Exhibit
21 6, which should also be located in that smaller white binder.

22 A Okay.

23 THE COURT: If your binder is like mine, Mr.
24 Harshfield, it's the last part of Exhibit 5.

25 MS. VANDESTEEG: We did understand, yes, that there

Harshfield - Direct

313

1 was --

2 THE WITNESS: Yes. I have a little --

3 MS. VANDESTEEG: -- a missed --

4 THE COURT: Yes, there might be one missing tab, is
5 what I'm saying.

6 THE WITNESS: Someone was kind enough to put a little
7 post-it tab on there for me.

8 THE COURT: You got the special treatment.

9 MS. VANDESTEEG: And we'll also put this one up on
10 the screen so we can try to blow it up a little bit.

11 BY MS. VANDESTEEG:

12 Q Mr. Harshfield, this is Edgemere's capital plan for 2022,
13 correct?

14 A 2022. Yes.

15 Q And this document is not intended for restructuring or
16 negotiation purposes, correct? This is the document that sets
17 forth what Edgemere's projected capital needs are and the
18 property conditions that should be addressed in the year 2022,
19 correct?

20 A So, this document is for budgeting and planning purposes,
21 is the purpose of this document.

22 Q Right. So it identifies the projects that The Edgemere
23 has identified needs to be addressed or should be addressed in
24 some priority, and we'll get into that, in the year 2022,
25 correct?

Harshfield - Direct

314

1 A Yes.

2 Q Mr. Harshfield, these Edgemere budgets do contain a column
3 that sets forth Edgemere's priority for each of these
4 projects, correct, and that's one of the columns right here on
5 this budget that we see in the middle of the screen, right?

6 A Yes. For priority purposes through the planning process,
7 yes.

8 Q Okay. And if we scroll down to the bottom, we'll see what
9 those numbers mean in terms of priority.

10 (Pause.)

11 MS. VANDESTEEG: You've got to keep scrolling all the
12 way down.

13 THE COURT: More scrolling.

14 MS. VANDESTEEG: More scrolling. More scrolling.
15 Keep going. A little bit more. There's our summary coming up
16 at the bottom. A little bit more down. Okay.

17 BY MS. VANDESTEEG:

18 Q So, at the very bottom, we have a chart that does say, By
19 priority.

20 A Uh-huh.

21 Q And it provides the chart, then, for understanding, the
22 key. Priority 1 is defined as must have, correct?

23 A Yes.

24 Q That means something that must be done for that calendar
25 year, correct? It's a must have?

Harshfield - Direct

315

1 A Actually, it is -- it is intended to indicate dollars that
2 we want to ensure are allocated. It doesn't necessarily mean
3 that it's work that has to be done that year, but it is work
4 that's a priority that we want to at least have allocated for
5 that year.

6 Q Surely, Mr. Harshfield, there must be some correlation
7 between the urgency of the project getting done, the condition
8 of the property related to that project, and its priority
9 number on your budget for the year, correct?

10 A May I give a for instance?

11 Q No, I'd prefer for you to answer my question first.

12 A Okay. Sure. So may you repeat your -- repeat your
13 question, please?

14 Q I said, Surely, Mr. Harshfield, there must be some
15 correlation between the severity of the need to address the
16 condition listed and its priority number for getting addressed
17 in that upcoming year, correct? There must be some
18 correlation.

19 A I would differ with your terminology of severity. If it's
20 urgent and severe, we address it as soon as we possibly can.
21 We don't wait for a budget process.

22 Q So should we assume that these must haves are not must
23 haves as listed on The Edgemere capital budget?

24 A They are budget priorities to ensure that we have the
25 dollars allocated.

Harshfield - Direct

316

1 Q To ensure that you have the dollars allocated, because
2 they need to be addressed in that year, correct?

3 A As I look down through a number of these, there's a number
4 of items that did not have to be addressed.

5 Q Well, Mr. Harshfield, if something is considered a must
6 have, it would generally be addressed in the upcoming capital
7 budget, correct?

8 A Generally, we would work to ensure that it's addressed,
9 yes.

10 Q Okay.

11 MS. VANDESTEEG: So let's scroll up just a little bit
12 and over to the left a little bit. Right there. Oh, back
13 down a little bit.

14 BY MS. VANDESTEEG:

15 Q Mr. Harshfield, again, we're looking at The Edgemere 2022
16 capital planning budget. And I'm looking at this section here
17 for community projects needing approval, and I see five
18 projects listed. Do you see those with me?

19 A Okay.

20 Q Yes?

21 A Yes.

22 Q And they're each listed as --

23 A I do.

24 Q Great. And they're each listed as Priority 1, must have.
25 Correct?

Harshfield - Direct

317

1 A Correct.

2 Q And I see building roof. Flat roofs need to be done in
3 conjunction with HC. That's health center, I believe, right?

4 A Yes.

5 Q HVAC. And I see that must have, \$2 million for 2022. You
6 see that on the chart with me?

7 A I do.

8 Q And then I see building HVAC, HC HVAC needs to be done in
9 conjunction with flat roofs, Priority 1. Again, that's a must
10 have, right?

11 A Yes.

12 Q Listed at \$550,000 as a must have for 2022, right?

13 A It does, yes.

14 Q Okay.

15 A It's listed.

16 Q And then we'll skip over common areas, but then we see
17 building improvement, envelope stucco, repainting, and
18 replacing gutters. Priority 1, must have, right?

19 A Yes.

20 Q And that's \$3 million must have for 2022, right?

21 A Correct.

22 Q Let's go back to Exhibit 3 for just a minute.

23 A I'm there.

24 Q And I'm looking again at the second substantive page,
25 Detail by Project, and I'm seeing listed on here also building

Harshfield - Direct

318

1 roof, \$2 million, 2022; building envelope repair, \$3 million,
2 2022. Those are the same numbers for those two items, right?

3 A Yes, they are.

4 MS. VANDESTEEG: Let's scroll over a little bit to
5 the right on Exhibit 6. Now, let's look -- oh, not quite that
6 far.

7 BY MS. VANDESTEEG:

8 Q Let's stay in that building envelope line -- the envelope,
9 stucco, repainting, and replacing gutters -- that had a must
10 have Priority 1 for 2022 at \$3 million. That also has \$2
11 million set aside in 2023, correct?

12 A Correct.

13 Q And looking back also then at the company projected need,
14 Exhibit 3 for building envelope repair, that one also projects
15 an additional \$2 million needed to deal with building envelope
16 repair in 2023, correct?

17 A Correct.

18 Q Mr. Harshfield, it's 2023 now, right?

19 A It is.

20 Q We're already partway through January 2023. Did Edgemere
21 address or remediate and --

22 MS. VANDESTEEG: Actually, before I move on, let's
23 scroll back up to the top of this document. Sorry. By that I
24 mean Exhibit 6. Okay. Thank you.

25 BY MS. VANDESTEEG:

Harshfield - Direct

319

1 Q So, at the top of this budget, there are a number of other
2 conditions and items and projects that are listed, correct?

3 A Yes.

4 Q And there a number of those also that are listed at
5 Priority #1, correct?

6 A Correct.

7 Q Do you recall what the total Priority 1 must have project
8 spend was for 2022?

9 A No, I do not recall.

10 Q Okay.

11 MS. VANDESTEEG: Let's scroll all the way back down
12 to the bottom of this Exhibit 6. Okay. Thank you.

13 BY MS. VANDESTEEG:

14 Q So, looking then at this summary chart, if we again are
15 looking at these summaries by priority, must have, must have,
16 Priority #1, \$6,547,000 for 2022. An additional \$5,000,112
17 for 2023. Mr. Harshfield, to your knowledge, did Edgemere
18 address or remediate all of those must have projects in year
19 2022?

20 A I do not know the details of what is in those numbers.

21 Q Mr. Harshfield, do you know if Edgemere spent \$3 million
22 on building envelope repairs in 2022?

23 A I do not believe that capital expenditures for 2022
24 amounted to that amount, no.

25 Q So is that a no, The Edgemere did not spend \$3 million on

Harshfield - Direct

320

1 building envelope repairs in 2022?

2 A To my knowledge, the answer is no.

3 Q And did Edgemere spend \$2 million on roof repairs in 2022?

4 A To my knowledge, no.

5 Q Did Edgemere spend \$550,000 on HVAC repairs in 2022?

6 A I do not know that answer.

7 Q Mr. Harshfield, do you know what the Edgemere's total
8 capital expenditures were in 2022?

9 A I do not know the number specifically.

10 Q Do you have a range? Do you have an estimate?

11 A No, I don't.

12 Q Let's take a look at what has been marked and admitted as
13 Exhibit 22, please.

14 A In the binder?

15 Q Yes. In the black binder, please.

16 A Okay.

17 Q And let's look at Page 9 of 12. Well, first of all, hold
18 on. Do you recognize this document, Exhibit 22?

19 A It appears to be the -- the first page appears to be the
20 report sent to UMB Bank.

21 Q This report is publicly filed on EMMA, isn't it? It's a
22 quarterly filing?

23 A Yeah, this looks like -- this looks like -- yes, this
24 looks like the EMMA filing, yes.

25 Q Okay. So this is a public record, correct?

Harshfield - Direct

321

1 A Correct.

2 Q Let's look at Page 9. And this is for -- hold on. Before
3 we move, this is for the three quarters ending March 31, 2022?
4 Q1 2022?

5 A Yes.

6 Q Okay. Thank you. Now, let's turn to Page 9.

7 A 9 of 15?

8 Q 9 of -- no, I'm sorry. It would be 12 of 15, or Page 9 of
9 12 at the bottom of the document.

10 A Okay.

11 Q Do you see where on this chart there is a listing for
12 capital expenditures, actual and budget?

13 A I do.

14 Q And this says that in the first quarter Edgemere spent
15 \$993,000 on capital expenditures total, right?

16 A Correct.

17 Q About a million short of the budget of \$1,930,000, right?

18 A Correct.

19 Q All right. So this gets us through Q1. And Mr.
20 Harshfield, Edgemere filed bankruptcy on April 14th of 2022,
21 right?

22 A That does sound right, yes.

23 Q Okay. And since Edgemere has been in bankruptcy, we can
24 track capital expenditures through the monthly operating
25 reporting that Edgemere has to do, right?

Harshfield - Direct

322

1 A Yes.

2 Q So let's then turn ahead to Exhibit 29 in this black
3 binder.

4 A Okay.

5 Q Do you recognize this document?

6 A I do.

7 Q This is the Debtors' monthly operating report for the
8 month end November 30, 2022, right?

9 A Correct.

10 Q And you signed this document, correct?

11 A Yes.

12 Q Let's turn to the second-to-last page of this monthly
13 operating report. Okay. Do you see with me the line about
14 two-thirds of the way down this chart for capital
15 expenditures?

16 A I do.

17 Q Postpetition period November 1, 2022 through November 30,
18 2022, Edgemere spent \$38,995 on capital expenditures, right?

19 A Correct.

20 Q So, going over one more column, cumulative 04/14/2022
21 through November 30, 2022, the course of the bankruptcy,
22 through the end of November, Edgemere had spent \$875,057 on
23 total capital expenditures, right?

24 A Correct.

25 Q So, totaling up Q1 plus what we know about through

Harshfield - Direct

323

1 November 2022, would you agree with me that Edgemere spent
2 collectively less than \$2 million on capital expenditures over
3 that time period?

4 A Yes. Through November 30, yes.

5 Q So do you agree with me that it's certain that Edgemere
6 did not spend \$3 million on building envelope repairs in 2022?

7 A Yes.

8 Q So to the extent that there was a problem with the
9 building envelope that Edgemere knew needed to be corrected,
10 it has not been corrected in 2022, correct?

11 A So, I don't -- what I can't say is that, is that saying
12 that the building envelope is defective and needs to be
13 corrected? I don't know the details or the substance behind
14 what that work is intended to be.

15 Q Okay. And that's fine. You've said you're not the
16 property -- your property condition expert guy. But if
17 experts were to find that there was a current existing problem
18 with the condition of the building envelope at the Edgemere,
19 you agree with me that that problem was not corrected in 2022?

20 MS. WALSH: Objection, Your Honor. Calls for
21 speculation.

22 THE WITNESS: I cannot say that either. You're
23 assuming that --

24 THE COURT: There's a --

25 THE WITNESS: Sorry.

Harshfield - Direct

324

1 THE COURT: Just a minute, Mr. Harshfield. There's
2 an objection. She says calls for --

3 MS. WALSH: Calls for speculation.

4 THE COURT: Thank you.

5 BY MS. VANDESTEEG:

6 Q Mr. Harshfield, let me phrase it a different way. To the
7 extent that experts identify that there was a problem with The
8 building envelope at the Edgemere, you can tell us that The
9 Edgemere did not spend \$3 million to address that problem in
10 2022, correct?

11 MS. WALSH: Objection stands. Calls for speculation.

12 THE COURT: I'm going to overrule the objection as to
13 whether or not they spent the \$3 million.

14 THE WITNESS: I can say that Edgemere did not spend
15 \$3 million on capital expenditures through November 30th of
16 '22.

17 BY MS. VANDESTEEG:

18 Q And to put a finer point on it, again, Mr. Harshfield, if
19 we're talking about the building envelope, Edgemere did not
20 spend \$3 million on the building envelope in 2022?

21 MS. WALSH: Objection. Asked and answered. We're
22 asking the same questions over and over again here.

23 MS. VANDESTEEG: Your Honor, he's --

24 MR. JOHNSON: Your Honor, it's almost 6:30 --

25 MS. WALSH: And we have -- yes, my response to that

Harshfield - Direct

325

1 question as well.

2 MR. JOHNSON: -- and we have an extensive cross that
3 needs to be done, so --

4 THE COURT: I am going to sustain the objection to
5 asked and answered.

6 MS. VANDESTEEG: Okay.

7 THE COURT: I believe you've asked it a few ways.
8 It's the same \$3 million. It was not spent in 2022.

9 BY MS. VANDESTEEG:

10 Q Okay. Let's go back. Let's go back, then, to summer of
11 2021. Mr. Harshfield, --

12 THE COURT: How much more do you have, Ms.
13 Vandesteeg?

14 MS. VANDESTEEG: Not much more.

15 THE COURT: Okay.

16 BY MS. VANDESTEEG:

17 Q Mr. Harshfield, let's go back in time to summer of 2021.
18 In summer of 2021, you engaged Plante Moran, correct?

19 A Yes, I did.

20 Q Why did you engage Plante Moran?

21 A For purposes of providing support for the financial
22 projections prepared by FTI.

23 Q You were looking for third-party support of the FTI report
24 that you were preparing for capital structure negotiations,
25 right?

Harshfield - Direct

326

1 A Yes.

2 Q You didn't hire Plante Moran to perform a condition
3 assessment of the Edgemere?

4 A Well, that is the support for the financial projections,
5 is a property condition report.

6 Q It was an assessment of the condition of the property,
7 correct?

8 A Correct.

9 Q Plante Moran went out and did a site visit, correct?

10 A Yes.

11 Q They observed the actual condition of the property and
12 they provided a report to you of the condition of the
13 property, correct?

14 A Yes, they did.

15 Q And you are aware that Plante Moran identified certain
16 conditions at the property as, quote, critical needs to be
17 addressed within three years and at an estimated cost of
18 \$20,784,403; you're aware of that, correct?

19 MS. WALSH: Objection. This calls for information
20 that's not in evidence.

21 MS. VANDESTEEG: Your Honor, we can have him take a
22 look at the report. He signed the engagement letter. The
23 report is addressed to him. He said that he did engage Plante
24 Moran, that Plante Moran provided the report. I can ask him
25 if he has seen it and if this is the report. I'm looking to

Harshfield - Direct

327

1 refresh his recollection as to the number stated on the report
2 that he commissioned and reviewed.

3 MS. WALSH: Your Honor, this is inappropriate. This
4 report has not been included into evidence. There's nobody to
5 substantiate this report. We -- it's not a proper source of
6 questioning. There's been nobody to lay any foundation as to
7 what this report was from the preparer's perspective.

8 THE COURT: I'm going to sustain the objection. Ms.
9 Vandesteeg, it seems like we're back-dooring into a report
10 that we do not have a witness here to testify about. If you
11 want to ask Mr. Harshfield -- I mean, I think you have.

12 MS. VANDESTEEG: Sure.

13 THE COURT: I think you've asked him why it was
14 prepared and things of that nature. But to start cherry-
15 picking information from the report, and again, we don't have
16 that expert here.

17 MS. VANDESTEEG: Sure, Your Honor.

18 THE COURT: So it's sustained.

19 MS. VANDESTEEG: And I appreciate that. But Mr.
20 Harshfield did just testify that he was relying on Plante
21 Moran to put together the company-projected needs that he did
22 put together. That, Your Honor, is where I think this tie-in
23 comes in.

24 MS. WALSH: Objection.

25 THE COURT: I think that's a bit of a paraphrase.

Harshfield - Direct

328

1 MS. WALSH: That misstates testimony, Your Honor.

2 THE COURT: That's another way to put it. I --

3 MS. VANDESTEEG: Well, Your Honor, I'll go to his
4 deposition testimony, because I don't think that that's
5 misstating it.

6 THE COURT: Actually, I take fairly good notes. I
7 believe that he said that he engaged Plante Moran for support
8 for the financial projections that FTI was preparing, and that
9 he used that for the capital needs.

10 MS. VANDESTEEG: Correct. He was relying --

11 THE COURT: And that it was a property condition
12 report. And you drilled down on so, essentially, isn't that
13 exactly what it is, your capital needs?

14 MS. VANDESTEEG: Sure.

15 THE COURT: So, --

16 MS. VANDESTEEG: And Your Honor, we can set aside the
17 numbers. Truly, we can set aside the numbers.

18 THE COURT: Uh-huh.

19 MS. VANDESTEEG: Let's put a -- let's put a finer
20 point on this.

21 BY MS. VANDESTEEG:

22 Q Mr. Harshfield, Plante Moran, in connection with their
23 property condition assessment, observed and included in their
24 report that there existed conditions with respect to the
25 building envelope at The Edgemere. Correct?

Harshfield - Direct

329

1 MS. WALSH: Same objection, Your Honor. Counsel is
2 asking for what Plante Moran did, which is completely out of
3 evidence, and this is inappropriate.

4 THE COURT: Sustained.

5 BY MS. VANDESTEEG:

6 Q Mr. Harshfield, was Plante Moran told of your intended
7 purpose, to use its report to be relied on by a different
8 professional in connection with restructuring negotiations?

9 MS. WALSH: Your Honor, same objection, what Plante
10 Moran was told. They're not here.

11 THE COURT: I think you need to ask a better question
12 right here, Ms. Vandesteeg, because, to be honest, I didn't
13 understand it.

14 MS. VANDESTEEG: Understood.

15 BY MS. VANDESTEEG:

16 Q Mr. Harshfield, do you remember, do you recall the
17 purposes, the specific purpose for which Plante Moran was
18 engaged?

19 MS. WALSH: Objection. Asked and answered.

20 BY MS. VANDESTEEG:

21 Q Mr. Harshfield, do you know whether the answer that you
22 have provided with respect to the purpose for which Plante
23 Moran was engaged is consistent with the language in the
24 Plante Moran engagement letter?

25 A I would say the Plante Moran engagement letter is standard

Harshfield - Direct

330

1 language.

2 Q Mr. Harshfield, do you know if your answer for the purpose
3 of the Plante Moran report is consistent with the Plante Moran
4 engagement letter?

5 A I couldn't tell you. I don't -- I can't recall the
6 details of what the engagement letter said.

7 Q Could you please turn to what has been marked and admitted
8 as Exhibit 15?

9 A Okay.

10 Q And let's turn, then, to the -- do you recognize this
11 document? Let me back up. Do you recognize this document?

12 A I do.

13 Q This is the engagement letter --

14 A I do.

15 Q -- between Lifespace and Plante Moran Living Forward,
16 correct?

17 A Yes.

18 Q Addressed to you, Mr. Harshfield. Correct?

19 A Correct. Correct.

20 Q Let's turn forward to, down at the bottom, what is Page 4
21 at the bottom or Page 5 of 13 at the top, Exhibit A, Scope of
22 Services.

23 A Yeah. Uh-huh.

24 Q Plante Moran calls out its scope of services as PMLF, what
25 I've been calling Plante Moran, will create a facility

Harshfield - Direct

331

1 assessment report to help identify and list issues of concern
2 and maintenance expenditures. The report will include an
3 overview of the facility, a list of conditions observed,
4 facility photos and recommendations.

5 Did I read that correctly?

6 A Yes.

7 Q Okay. So, given that, would you agree with me that Plante
8 Moran was also engaged to simply provide an assessment of the
9 condition of the property to The Edgemere?

10 MS. WALSH: Objection. Asked and answered.

11 THE COURT: I'm going to overrule the objection and
12 allow the witness to answer the question.

13 THE WITNESS: Well, the purpose of the engagement was
14 to provide the report they provided, facility assessment with
15 dollars estimated, so that we could use that report as support
16 for the FTI projections.

17 BY MS. VANDESTEEG:

18 Q Mr. Harshfield, have you physically been to The Edgemere
19 campus?

20 A Yes.

21 Q When were you last there?

22 A I was there for a town hall meeting maybe less than a
23 month ago.

24 Q Did you have the opportunity to walk around the property?

25 A To some extent, yes.

Harshfield - Direct

332

1 MR. JOHNSON: Your Honor, objection. Ten minutes ago

2 --

3 MS. VANDESTEEG: I've got one last question.

4 MR. JOHNSON: -- counsel advised that they -- okay.

5 THE COURT: It's the last question. Please.

6 BY MS. VANDESTEEG:

7 Q Mr. Harshfield, when you were walking around the property
8 at The Edgemere, did you personally observe any cracking or
9 staining of the stucco of the buildings at the Edgemere?

10 A I'm sure I did. Did I specifically remember it? No. I'm
11 not sure -- I mean, I have -- I can't give you any expertise
12 as to what cracking and staining may be.

13 Q I'm just asking you for what you saw with your eyes.

14 A I would say here and there. Again, you know, what I saw
15 was a beautiful building.

16 Q Okay.

17 MS. VANDESTEEG: Nothing further.

18 THE COURT: Okay. Thank you.

19 Ms. Walsh? Are we going to use -- are you going to use
20 this exhibit, because -- oh, never mind. It's gone now.

21 MS. WALSH: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. WALSH:

24 Q Hello, Mr. Harshfield.

25 A Hello.

Harshfield - Cross

333

1 Q Are the Edgemere budgets a determination of what is
2 necessary to be spent in the coming year?

3 A They're an estimate of dollars to be allocated for
4 expected expenditures.

5 Q And generally, you would try to address "must have items,"
6 right?

7 A Yes. Again, --

8 Q But --

9 A -- depends on the context of those items.

10 Q But does categorization as a must have item mean that it's
11 a critical need?

12 A No, it does not.

13 Q And if there are critical needs at The Edgemere, does The
14 Edgemere address them?

15 A Absolutely.

16 Q Are you aware of any current unaddressed life safety
17 issues at The Edgemere?

18 A I am not.

19 Q Are you aware of any current unaddressed critical needs?

20 A I am not.

21 Q Are there any necessary maintenance issues that need to be
22 addressed in order to keep The Edgemere safe?

23 A Not that I'm aware of.

24 Q Are there any necessary maintenance issues that need to be
25 addressed in order to keep The Edgemere operating well?

Harshfield - Cross

334

1 A Not that I'm aware of.

2 Q How would you identify if any such conditions existed?

3 A We would typically hear from the local leadership of the
4 -- of the capital need. The local plant operations team.

5 Q And you have not heard from local leadership of any such
6 needs, right?

7 A None that are outstanding, no.

8 Q Are there any existing events of default under the lease?

9 MS. VANDESTEEG: Objection to the extent that it
10 calls for a legal conclusion.

11 THE COURT: The witness may answer with lay
12 testimony.

13 THE WITNESS: I'm not aware of any, but again, I'm
14 not an attorney.

15 BY MS. WALSH:

16 Q What does it mean for a CCRC to be a five-star facility?

17 A (Coughs) Excuse me.

18 THE COURT: Take a moment.

19 THE WITNESS: So, a five-star facility -- a five-star
20 facility is directly related to its health center, typically
21 skilled nursing health center, and the five-star rating is a
22 federal Medicare -- Medicare, Medicaid department's
23 certification for a health center.

24 BY MS. WALSH:

25 Q And is The Edgemere a five-star healthcare facility?

Harshfield - Cross

335

1 A Yes. Five-star, which is the highest rating you can
2 obtain.

3 Q And I believe you just testified that The Edgemere is a
4 beautiful building, correct?

5 A Yes.

6 Q And it's a five-star facility, right?

7 A Yes.

8 Q Mr. --

9 A In fact, every time -- every time I take someone on a tour
10 of Edgemere, they comment to me how beautiful the community
11 is.

12 Q Mr. Hannon of ICI testified earlier today, and he
13 described The Edgemere as having the most discerning of
14 residents. Would you agree with that characterization?

15 A Oh my goodness, yes.

16 Q And have any of those discerning residents complained that
17 the property is not well maintained?

18 A Not that I'm aware of. And I'd say they had an
19 opportunity to let me know just a few weeks ago when I was
20 there for a town hall, and I heard -- I heard nothing.

21 Q Are you familiar with the facts surrounding the cure of
22 lease obligations in March of 2022?

23 A Somewhat, yes.

24 Q Do you recall negotiations with the Landlord at this time
25 regarding the payment of cure?

Harshfield - Cross

336

1 A I do, yes. Well, -- yes, go ahead. I'm sorry.

2 Q Do you recall conversations regarding the request for
3 provision of an estoppel certificate?

4 A From the Landlord or from Edgemere?

5 Q A request -- well, I'm speaking about the request from the
6 Landlord -- from the Landlord for an estoppel certificate from
7 The Edgemere. Are you familiar with that?

8 A Yes. I am familiar with that, yes.

9 Q And are you familiar that ICI requested such an estoppel
10 certificate?

11 A Yes, I am.

12 Q Did Edgemere provide an estoppel certificate in response
13 to this request?

14 A No, Edgemere did not.

15 Q Did Edgemere's refusal to provide an estoppel certificate
16 have anything to do with concerns about property condition
17 defaults?

18 A I don't recall any property condition issues entering into
19 those discussions. As I recall, the reason for not signing
20 was to keep options open with regards to potential
21 negotiations with the Landlord.

22 Q Mr. Harshfield, has The Edgemere's response times to any
23 maintenance items changed with respect -- withdrawn. Has The
24 Edgemere's response times changed with respect to repair
25 issues since the Edgemere filed for bankruptcy protection?

Harshfield - Cross

337

1 A Not that I'm aware of.

2 Q Have The Edgemere's response times changed with respect to
3 maintenance since the bankruptcy filing?

4 A Not that I'm aware of.

5 Q Terracon visited The Edgemere in July of 2022, right?

6 A I don't specifically recall the date.

7 Q Do you recall Terracon visiting Edgemere in the summer of
8 2022?

9 A Yeah, frankly, with Terracon, I specifically don't
10 remember the date for Terracon.

11 Q But are you aware that there was a site visit by Terracon
12 to The Edgemere?

13 A Yes.

14 Q And that it was over the summer of 2022?

15 A I remember it was in -- yeah, that sounds about right.

16 Q Did -- following that visit, did ICI or Terracon ever
17 contact you to raise any issues requiring immediate repair?

18 A None that I recall.

19 Q Any life safety issues?

20 A None that I recall.

21 Q Any critical need issues?

22 A None that I recall.

23 Q Did you hear from them at all following that site visit?

24 A Personally, I did not, no.

25 Q Did ICI contact you to discuss Terracon's findings when

Harshfield - Cross

338

1 they were finished?

2 A No.

3 MS. WALSH: Your Honor, may I just have one moment to
4 confer?

5 THE COURT: Please.

6 (Pause.)

7 MS. WALSH: I have no further questions at this time,
8 Your Honor. Thank you.

9 THE COURT: Thank you very much, Ms. Walsh. Any
10 further cross-examination of Mr. Harshfield?

11 MR. DAVIS: Nothing from Bay 9, Your Honor.

12 THE COURT: Oh, thank you very much, Mr. Davis.

13 (Laughter.)

14 THE COURT: With that, I meant for letting me know
15 without having to approach the actual podium. But still,
16 thank you.

17 Ms. Vandesteeg?

18 MS. VANDESTEEG: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. VANDESTEEG:

21 Q Mr. Harshfield, you mentioned that Edgemere received a
22 five-star rating from an agency, correct?

23 A Correct.

24 Q Which agency is that again?

25 A Centers for Medicare and Medicaid Services.

Harshfield - Redirect

339

1 Q Does that agency inspect the roof at the property?

2 A They inspect a number of things at the health center.

3 Q So it's based on the health center, correct?

4 A Yes. It's based on the health center.

5 Q Does that agency inspect the garage?

6 A Not that I'm aware of.

7 Q Does the agency inspect the stucc...

8 A You know, if -- well, I would say if there was a garage
9 under the health center, yes, they would inspect the garage
10 under the health center.

11 Q Okay. Does the agency -- does that agency inspect the
12 stucco or the building envelope?

13 A Not that I'm aware of.

14 Q Mr. Harshfield, you said that you didn't get a list of any
15 conditions or critical needs from ICI in summer of 2022, but
16 you did receive that list of critical needs from Plante Moran
17 in fall of 2021, didn't you?

18 A We received the report, yes.

19 Q Thank you.

20 MS. VANDESTEEG: Nothing further.

21 THE COURT: Okay. Thank you very much, Ms.
22 Vandesteeg.

23 Just give me one moment to review my notes.

24 (Pause.)

25 EXAMINATION BY THE COURT

Harshfield - Examination by the Court 340

1 THE COURT: Mr. Harshfield, when we were going
2 through Exhibit 6, the Excel spreadsheet that was blue and
3 gray, it was the projected capital needs for budget and
4 capital planning purposes, I believe you testified, and that
5 was the --

6 THE WITNESS: Yes.

7 THE COURT: That was the exhibit with Priority 1, 2,
8 and 3 based on must have, important but can be deferred, or
9 optional.

10 Explain to me what part of the process for which you
11 prepared this. Is this prepared in connection with Lifespace
12 and The Edgemere? Is this Edgemere only? How was this
13 prepared and for what reason?

14 THE WITNESS: So, it's prepared -- excuse me --
15 prepared by Edgemere, with the support of Lifespace subject
16 matter experts. And then ultimately the entire budget --
17 capital budget and the operating budget is presented to
18 Lifespace leadership, and then ultimately approved by the
19 Lifespace board.

20 THE COURT: And when I was reviewing Exhibit 6,
21 everything wasn't that was asked about. So, for example, in
22 the one column on community projects, there was the building
23 roof for \$2 million, the building envelope stucco for \$3
24 million, I believe, and I want to say HVAC was \$550,000. But
25 in that exact same area, there were two other things, common

Harshfield - Examination by the Court 341

1 area refurbishment of \$1.8 million, main building reno, \$3.9
2 million. And these were also given Priority 1.

3 And so my question for you is, must have, from the company
4 standpoint, is must have what the Edgemere would really like
5 to do in 2022 or whatever the area is? Would that include
6 things we know we may need to repair, things that may be at
7 the end of their useful life, plus stuff that we really want
8 to do, like renos and refurbs?

9 THE WITNESS: That's correct, Your Honor.

10 THE COURT: Okay.

11 THE WITNESS: I would say that in -- in this instance
12 as well, it was mostly aligned with our capital planning that
13 we were doing with Edgemere in anticipation of having funds
14 available for the restructuring that we could move some of
15 these things forward sooner than later.

16 THE COURT: And so, for example, for the \$1.8 million
17 common area refurbishment, what kind of things did The
18 Edgemere want to do as part of the refurb?

19 THE WITNESS: New carpet. New paint. Some new
20 furnishings.

21 THE COURT: Okay. And the main --

22 THE WITNESS: Some things that we would call a
23 refresh. I'm sorry.

24 THE COURT: A refresh? Thank you.

25 THE WITNESS: Yeah, a refresh. Yes.

Harshfield - Examination by the Court 342

1 THE COURT: I'd like to refresh my chambers, I know.

2 What about a main building renovation, \$3.9 million? What
3 was included in the main building renovation that Edgemere
4 wanted to do at that time?

5 THE WITNESS: It'd be the same type of work, Your
6 Honor.

7 THE COURT: All righty. Thank you very much.

8 THE WITNESS: Refresh. Paint. Paint and carpet and
9 furnishings.

10 THE COURT: I appreciate that.

11 Is there anyone who has any other questions for Mr.
12 Harshfield based on the Court's questions? Ms. Vandesteeg?

13 MS. VANDESTEEG: Your Honor, I think we were looking
14 at Exhibit 6, correct?

15 THE COURT: Yes, ma'am.

16 FURTHER REDIRECT EXAMINATION

17 BY MS. VANDESTEEG:

18 Q Mr. Harshfield, directing your attention up to some of the
19 must have Priority 1s toward the top of this exhibit, --

20 A Yes.

21 Q -- I'm looking also at an item listed for -- about two-
22 thirds of the way down here for create concrete walkways for
23 safety in pond area.

24 MR. JOHNSON: Objection, Your Honor. This wasn't
25 really within the purview of your cross or redirect or

Harshfield - Further Redirect

343

1 whatever it qualifies as when the Court does it. But at the
2 end of the day, Your Honor, it's not an invitation to go back
3 through the budgets and start hitting -- asking about every
4 line item, and that's, I think, exactly where we're headed,
5 for the next eight minutes anyway.

6 THE COURT: Ms. Vandesteege, again, I did give you
7 full time for your questions.

8 MS. VANDESTEEGE: Sure.

9 THE COURT: And all I asked was directly where you
10 were --

11 MS. VANDESTEEGE: Oh, understood.

12 THE COURT: -- in your questioning. So do you have
13 any questions based upon my questions?

14 MS. VANDESTEEGE: No, Your Honor.

15 THE COURT: Okay.

16 MS. VANDESTEEGE: I was simply trying to get an
17 understanding, then, of a different Priority 1 --

18 THE COURT: Uh-huh.

19 MS. VANDESTEEGE: -- as a must have, and how that then
20 related to the other category down below. That's all I was
21 going to ask.

22 THE COURT: All righty. Well, I think I'm going to
23 sustain the objection in this particular --

24 MS. VANDESTEEGE: Understood.

25 THE COURT: -- at this particular time.

1 MS. VANDESTEEG: Then, no, Your Honor, I have nothing
2 more.

3 THE COURT: Okay. Thank you very much.

4 Mr. Harshfield, thank you very much for sticking with us
5 all day, and I'm glad that we could accommodate your schedule
6 to finish you up today. And so with that, you're excused.
7 Thank you.

8 MS. VANDESTEEG: Thank you, Your Honor.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: You're very welcome.

11 THE WITNESS: Thank you so much.

12 THE COURT: Thank you.

13 (The witness is excused.)

14 THE COURT: With respect to tomorrow, again, we can
15 start at 10:30. I don't intend to impose upon my staff or the
16 Marshals to stay until 7:00 again tomorrow night. So I would
17 like folks to think overnight about how long the direct,
18 cross, and closings will take, so that we can actually kind of
19 finish tomorrow.

20 Ms. Jeng, correct me if I'm wrong: We have the whole
21 afternoon for Edgemere, correct?

22 THE CLERK: Yes.

23 THE COURT: Thank you very much. So we'll start at
24 10:30. We have a couple matters at 9:30, we'll start at
25 10:30, and we can go for the remainder of the day. But I

1 would like the day to end at some semblance of normalcy.

2 So if you guys will think about that overnight and perhaps
3 talk in the 9:30 or 10:30 range to kind of figure it out. I
4 don't want to time folks. It's not my strong suit, nor my
5 preference. But I do want to kind of finish on time.

6 So I'm glad we were able to get to three today. I
7 understand that we still have a decent amount of time left.
8 So I want to give everybody their time, but I think we do need
9 to try to end in that 5:00-5:30 range tomorrow. Okay?

10 MS. VANDESTEEG: Understood, and thank you, Your
11 Honor.

12 THE COURT: You're very welcome.

13 Okay. With that, the Court will stand adjourned for the
14 day. I'm going to remain on the bench for a second.

15 THE CLERK: All rise.

16 (Proceedings concluded at 6:54 p.m.)

17 --oOo--

18

19 CERTIFICATE

20 I certify that the foregoing is a correct transcript from
21 the electronic sound recording of the proceedings in the
above-entitled matter.

22 **/s/ Kathy Rehling**

01/26/2023

23

24 _____
Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS	4
OPENING STATEMENTS	
- By Ms. Vandesteeg	52
- By Ms. Musgrave	59
- By Ms. Walker	67
- By Mr. Johnson	70
WITNESSES	
<u>Intercity Investment Properties, Inc.'s Witnesses</u>	
Nicholas Paul Hannon	
- Direct Examination by Ms. Vandesteeg	77
- Cross-Examination by Ms. Musgrave	162
- Cross-Examination by Mr. Davis	190
- Redirect Examination by Ms. Vandesteeg	194
Michael Jeffrey Hull	
- Direct Examination by Ms. Vandesteeg	196
- Cross-Examination by Ms. Walsh	257
- Cross-Examination by Mr. Davis	280
- Redirect Examination by Ms. Vandesteeg	282
- Examination by the Court	287
- Further Redirect Examination by Ms. Vandesteeg	292
Nick Harshfield	
- Direct Examination by Ms. Vandesteeg	297
- Cross-Examination by Ms. Walsh	333
- Redirect Examination by Ms. Vandesteeg	338
- Examination by the Court	340
- Further Redirect Examination by Ms. Vandesteeg	342
EXHIBITS	
<u>Intercity Investment Properties, Inc.'s Exhibits</u>	Received
1, 1A, 1I, 3, 8, 9, 10, 11, 13, 19, 20, 21, 22, 23, 24, 25, 27, 28, and 29	8
15	43
30	286

INDEX
Page 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS, cont'd.

Plan Sponsors' Exhibits

Received

1, 2, and 3

8

RULINGS

31/41/43/98/105/108/125

Notice of 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) [1023]

END OF PROCEEDINGS

345

INDEX

346-347

Landlord's

Exhibit 18

for February 21-23, 2023 hearing

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

1
2
3
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)	Case No. 22-30659-mvl-11
In Re:)	Jointly Administered Ch. 11
)	
NORTHWEST SENIOR HOUSING CORPORATION, et al.,)	Dallas, Texas
	)	January 24, 2023
	)	9:00 a.m. Docket
Debtors.)	
	)	PROPERTY CONDITION
	)	CURE HEARING [1023]
	)	<i>(Continued from 01/23/2023)</i>
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHELLE V. LARSON,
UNITED STATES BANKRUPTCY JUDGE.

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transcript produced by transcription service.

1 DALLAS, TEXAS - JANUARY 24, 2023 - 10:35 A.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, The Honorable Michelle Larson presiding.

5 THE COURT: Please, be seated. Good morning, ladies
6 and gentlemen. Or as Yogi Berra said, It's *déjà vu* all over
7 again.

8 All righty. We have one matter on our 10:30 docket today.
9 That's Case No. 22-30659, Northwest Senior Housing
10 Corporation. I'll take appearances for the record, and I'll
11 start with those in the courtroom.

12 MR. JOHNSON: Good morning again, Your Honor. Jeremy
13 Johnson and Trinitee Green on behalf of the Debtors. Thank
14 you.

15 THE COURT: Good morning.

16 MS. FURNESS: Good morning, Your Honor. Aimee
17 Furness of Haynes and Boone, and I have with me Dan Bleck,
18 Emily Musgrave, and Kaitlin Walsh of the Mintz Levin law firm.
19 Also, Eric Blythe is on the WebEx.

20 THE COURT: Thank you very much.

21 MS. VANDESTEEG: Good morning, Your Honor. Elizabeth
22 Vandesteeg and Eileen Sethna of Levenfeld Pearlstein, as well
23 as Elizabeth Pittman of Jackson Walker and Ivan Gold of Allen
24 Matkins, on behalf of Intercity Investment Properties, Inc.

25 THE COURT: Good morning.

1 MS. WALKER: Good morning, Your Honor. Adrienne
2 Walker, I'm here today with Matthew Davis, from Locke Lord, on
3 behalf of Bay 9 Holdings.

4 THE COURT: Good morning. Is there anyone on WebEx
5 who would like to make an appearance this morning?

6 I'll note from the electronic roll that we also have an
7 appearance by Ms. Catherine Lombardo with the Mintz Levin firm
8 on behalf of UMB. And we have the electronic appearance of
9 Ms. Green as well with Polsinelli on behalf of the Debtors.

10 All righty. So we're again here on the property condition
11 cure portion of the 365 assumption and assignment issues
12 related to Intercity's ground lease with the Debtors. I think
13 when we concluded yesterday we had done three of the potential
14 five witnesses that ICI intended to call. So where should we
15 go next? Anything logistical to handle before we get back
16 into evidence?

17 MS. VANDESTEEG: Not to my knowledge, Your Honor.

18 THE COURT: Okay. And have the parties had an
19 opportunity to consider the time limitations of today and give
20 any estimates of --

21 MS. VANDESTEEG: Your Honor, given the timing around
22 when court concluded yesterday and our resumption of today, we
23 have not had the opportunity to directly confer. However, I
24 am confident that we are going to be able to get through these
25 final two witnesses today.

1 THE COURT: Okay. With meaningful closings today as
2 well?

3 MS. VANDESTEEG: Yes, Your Honor.

4 THE COURT: Okay. Excellent. Good to know.

5 Ms. Musgrave, Ms. Walsh, anything to add?

6 MS. MUSGRAVE: Nothing from us, Your Honor. Thank
7 you.

8 THE COURT: Okay. Appreciate it.

9 Okay, then. Ms. Vandesteeg?

10 MS. VANDESTEEG: Thank you, Your Honor. At this
11 point, ICI will call as an adverse witness Christopher Soden.

12 THE COURT: Is Mr. Soden live or on WebEx?

13 MR. JOHNSON: He's on WebEx, Your Honor.

14 THE COURT: He's on WebEx? Okay.

15 So, Mr. Soden, if you could please say, "Testing, testing"
16 so that you appear on the screen.

17 MR. SODEN: Yes. Can you see me?

18 THE COURT: I can. Thank you very much, sir. If you
19 could raise your right hand for me.

20 (The witness is sworn.)

21 THE COURT: Thank you very much.

22 Please proceed, Ms. Vandesteeg.

23 MS. VANDESTEEG: Thank you.

24 CHRISTOPHER SODEN, INTERCITY INVESTMENT PROPERTIES, INC.'S

25 WITNESS, SWORN

Soden - Direct

7

1 DIRECT EXAMINATION

2 BY MS. VANDESTEEG:

3 Q Mr. Soden, can you please state and spell your name for
4 the record?

5 A Christopher Soden. C-H-R-I-S-T-O-P-H-E-R. Soden, S-O-D-
6 E-N.

7 Q Thank you. Mr. Soden, you are the National Director of
8 Plant Operations and Engineering at Lifespace Communities,
9 Inc., correct?

10 A Correct.

11 Q You've held that position since June of 2021?

12 A Correct.

13 Q And that was your first employment with Lifespace,
14 correct?

15 A Correct.

16 Q Mr. Soden, you have been presented by Edgemere as a
17 representative under Rule 30(b)(6) to testify on property
18 conditions and maintenance, correct?

19 A Correct.

20 Q Mr. Soden, you agree that some maintenance of The Edgemere
21 building needs to be prioritized over others, right?

22 A Yes.

23 Q And there are some immediate needs in terms of maintenance
24 at The Edgemere, right?

25 A Some immediate needs, yes, just depending on what -- what

Soden - Direct

8

1 the item is.

2 Q Well, you would agree that problems with the building
3 envelope at The Edgemere would be an issue that would have to
4 be addressed immediately, if, for example, it is allowing
5 water infiltration. Correct?

6 A Correct.

7 Q And when The Edgemere is considering whether a large
8 repair needs to be done, you would hire specialists in that
9 area to assess the specific condition that would need to be
10 addressed, correct?

11 A Correct.

12 Q Mr. Soden, how old are the flat roofs, the modified
13 bitumen roofs at The Edgemere?

14 A I don't know exactly. I mean, they're original.
15 Twenty-something years old.

16 Q In the past couple of years, there have been some roof
17 leaks at The Edgemere, right?

18 A Yes.

19 Q And Edgemere has just been patching those leaks, correct?

20 A I'm sorry. Can you repeat that?

21 Q Edgemere has only been patching those leaks, correct?

22 A Yes.

23 Q There's been no removal or replacement of any portion of
24 that original flat modified bitumen roof, correct?

25 A Correct.

Soden - Direct

9

1 Q Mr. Soden, you have personally seen some ponding water on
2 those flat roofs at The Edgemere, haven't you?

3 A Yes.

4 Q And to be clear, ponding water are standing pools of
5 sitting water, right?

6 A Yes.

7 Q Since you joined Lifespace in June of 2021, Edgemere has
8 not hired a roof specialist to inspect the ponding on those
9 flat roofs, correct?

10 A Not to my knowledge, no.

11 Q To your knowledge, The Building Consultants informed
12 Edgemere in 2020 of blistering and granular loss on the roofs,
13 correct?

14 A Yes.

15 Q And you do agree that, based on your personal
16 observations, those flat roofs are showing signs of wear,
17 cracking, and delaminated caulking. Correct?

18 A Correct.

19 Q Mr. Soden, you personally have been up on those flat
20 modified bitumen roofs, correct?

21 A I have.

22 Q When were you up on those roofs most recently?

23 A Six months ago, probably.

24 Q Mr. Soden, have you personally observed any granular loss
25 on The Edgemere's flat modified bitumen roofs?

Soden - Direct

10

1 A I mean, I'm not a roofing expert, so I don't -- I mean,
2 there's some wear on the roof, but specifically to that, I
3 don't -- I'm not an expert in that category.

4 Q Mr. Soden, what would granular loss look like on The
5 Edgemere's flat roofs?

6 A So, the granular is on top of the tar, and so,
7 specifically areas that are walked on frequently, you could
8 lose some -- some granules, so it'd be a smooth section of the
9 roof.

10 Q So, you would be able to identify upon personal
11 observation whether there was any granular loss on those flat
12 modified bitumen roofs, right?

13 A I would be able to identify it, but not the extent of the
14 damage.

15 Q I'd like to show you what has been marked and admitted as
16 ICI Exhibit 30. Specifically, Photo #31. Hold on, please.
17 Apparently, the WiFi is having some trouble.

18 (Pause.)

19 Q Excellent. And turning, then, to Photograph #31. Mr.
20 Soden, do you agree with me that this a photograph --

21 (Echoing.)

22 Q -- a photograph of the modified bitumen roof?

23 THE COURT: Just one second.

24 (Pause.)

25 BY MS. VANDESTEEG:

Soden - Direct

11

1 Q Mr. Soden, do you --

2 A I think I lost you.

3 Q Oh. Are you back?

4 THE COURT: We apologize. We had a little technical
5 difficulty.

6 THE WITNESS: Okay.

7 BY MS. VANDESTEEG:

8 Q And of course we've lost the photograph. Hold on one
9 moment, please, Mr. Soden. There we go. Can you see this
10 photograph?

11 A I can.

12 Q Mr. Soden, so do you agree with me that this is a
13 photograph of a portion of the modified bitumen flat roof at
14 The Edgemere?

15 A Yes.

16 Q And do you agree with me also that this photograph shows
17 granular loss on that modified bitumen roof at The Edgemere?

18 A Yes. Some -- yes.

19 Q Which of the parts here to you, to your observation,
20 demonstrate that granular loss? How do we see that?

21 A I mean, without actually standing on it, it's hard to say,
22 because the lines are seams in the roofing material. But the
23 lighter areas in the middle of the seams, there would be some
24 granular loss.

25 Q Thank you. But, again, since at least June of 2021,

Soden - Direct

12

1 Edgemere has not removed or replaced any portion of that flat
2 roof system?

3 A Correct.

4 Q And since at least June of 2021, Edgemere has not had a
5 professional specialized assessment of those flat roofs
6 performed, correct?

7 A Correct.

8 Q Mr. Soden, with respect to Photograph #31, you said you
9 were last on the roofs about six months ago. Is this
10 photograph consistent with your observations, your personal
11 observations of what those roof conditions were like when you
12 were last on the roofs?

13 A I mean, I -- I can't say. I didn't walk every single
14 roof. I don't remember the specific roofs, if so.

15 Q Is it consistent with your general observations of the
16 flat roof conditions when you were last on the roofs at The
17 Edgemere about six months ago?

18 A Yes.

19 Q Mr. Soden, The Edgemere hired The Building Consultant to
20 prepare a report in 2020, correct?

21 A Yes.

22 Q And your understanding is that The Building Consultant
23 worked specifically, their assessment was focused on the
24 building exterior, correct?

25 MS. WALSH: Objection, Your Honor. The Building --

Soden - Direct

13

1 THE WITNESS: Correct.

2 MS. WALSH: The Building Consultant report is not in,
3 and I don't believe any foundation has been laid with this
4 witness if he even was at Lifespace, was here at the time or
5 knows anything about The Building Consultant report. That is
6 not in evidence.

7 THE COURT: Sustained.

8 MS. VANDESTEEG: Your Honor, I'm asking him simply if
9 he understands and is aware that The Building Consultant was
10 hired and that they prepared a report.

11 I've not asked any specific questions as to any findings
12 in this report. I'm asking him if he, as the National
13 Director of Plant Operations and Engineering and a 30(b)(6)
14 witness provided to speak on property conditions, is aware of
15 the existence of these prior reports commissioned by The
16 Edgemere.

17 THE COURT: Okay. Well, let's take it in parts,
18 then.

19 MS. VANDESTEEG: Thank you.

20 BY MS. VANDESTEEG:

21 Q So, again, Mr. Soden, you are aware that The Edgemere
22 hired The Building Consultant to prepare a report in 2020,
23 correct?

24 A Correct.

25 Q What do you understand The Building Consultant was hired

Soden - Direct

14

1 to investigate?

2 A The envelope of the community.

3 Q And what is your understanding of the overall nature of
4 The Building Consultant's observations?

5 MS. WALSH: Your Honor, I'm going to object again.
6 This is another way for ICI to try to back-door in The
7 Building Consultant report that has been already ruled on by
8 this Court to be excluded from evidence.

9 THE COURT: Ms. Vandesteeg?

10 MS. VANDESTEEG: Your Honor, again, I am not trying
11 to admit this into evidence. What I'd like to get into and
12 what I can ask next is whether The Edgemere took any specific
13 actions with respect to repairs after The Building Consultant
14 prepared their report and provided recommendations.

15 MS. WALSH: And Your Honor, we don't have any idea
16 what's in the report, so this lacks -- there's no way to
17 create the foundation here that's necessary for Mr. Soden to
18 be able to testify as to what was done as a basis of The
19 Building Consultant report.

20 The Building Consultant report is not in evidence. We
21 don't know what's in it. We can't ask anybody about what was
22 in it, how it was prepared.

23 THE COURT: Ms. Vandesteeg?

24 MS. VANDESTEEG: Again, Your Honor, I am seeking to
25 elicit testimony from the witness who was presented to us as

Soden - Direct

15

1 the person most knowledgeable on actions taken with respect to
2 The Edgemere on repairs and building maintenance from January
3 of 2020 through present.

4 THE COURT: I'm going to allow the question on what
5 actions The Edgemere took based upon the report, but I'm not
6 going to allow questions that would essentially elicit
7 information of the contents of the report, because, again, the
8 Court has already ruled upon that.

9 MS. VANDESTEEG: Understand.

10 THE COURT: The report itself has not been admitted,
11 so to elicit a summary of that report through another witness
12 is not any more reliable. But I will allow you to ask about
13 actions taken over the years.

14 BY MS. VANDESTEEG:

15 Q And I think that was my last pending question here to you,
16 Mr. Soden, is: Are you aware of any actions taken by The
17 Edgemere in terms of repairs or remediation after you received
18 -- after The Edgemere received The Building Consultant's
19 report with its observations and recommendations?

20 A Yes.

21 Q What repairs or remediation were undertaken?

22 A It was a total of about \$1.6 million of roofing repairs,
23 roofing replacement, gutters, step-up flashings. Yeah. I
24 think that was pretty much it.

25 Q Mr. Soden, was all of that repair work that you just

Soden - Direct

16

1 described with that -- I think you said it was \$1.5, \$1.6
2 million? Is that correct?

3 A Correct. Yeah.

4 Q Was all of that work performed prior to your beginning
5 employment with Lifespace in June of 2021?

6 A Yes.

7 Q You're unaware of any other specific repairs or
8 replacements made by -- sorry, made to The Edgemere's building
9 envelope since you joined the Lifespace team in June of 2021,
10 correct?

11 A Can you rephrase that?

12 Q Sure. You had just provided us with an answer that you
13 were aware of certain repairs that had been performed on the
14 building envelope before you joined the Lifespace team in
15 2021, correct?

16 A Correct.

17 Q Are you aware of any projects with respect to repairs or
18 other investigations or remediation with respect to the
19 building envelope at The Edgemere after you began employment
20 in June of 2021?

21 A Yes.

22 Q What are you aware of?

23 A I mean, there's been a window leak or two where the
24 caulking had to be replaced. A couple patches on the -- a
25 couple of the flat roofs that we had to cut out a section and

Soden - Direct

17

1 replace it or patch it.

2 Q Are you aware of any other more substantial or meaningful
3 projects undertaken with respect to repair or remediation of
4 the building envelope since the beginning of your employment
5 with Lifespace in June of 2021?

6 A No.

7 Q Do you know specifically whether any action has been taken
8 to seal any window heads at Edgemere?

9 A I don't know the specifics. I know we've had some window
10 leaks that we have repaired.

11 Q Do you know if Edgemere has taken any efforts to address
12 any cracks more than one-eighth of an inch in the stucco at
13 The Edgemere?

14 A Not specifically, no.

15 Q Do you know if there has been any water intrusion testing
16 performed at The Edgemere?

17 A Not to my knowledge.

18 Q Do you know if there have been any efforts to ensure that
19 sprinklers are located at least 24 inches from the side of the
20 buildings of The Edgemere?

21 A I am unaware.

22 Q Do you know whether there have been any efforts or
23 investigations undertaken to ensure that there is correct
24 lapping of the flashing at The Edgemere?

25 A I am unaware.

Soden - Direct

18

1 Q In terms of timing also for the repairs that you indicated
2 have been completed after The Building Consultant prepared
3 their report, again, those were completed before your
4 employment began in June of 2021, correct?

5 A Correct.

6 Q So those repairs were also completed before Plante Moran
7 performed its site visit and assessment in July of 2021,
8 correct?

9 A Correct.

10 Q And those repairs would have been completed before any
11 capital budget planning for The Edgemere for the year 2022
12 commenced, correct?

13 A Correct.

14 Q Mr. Soden, you agree that there is currently staining on
15 the stucco at The Edgemere, correct?

16 A Correct.

17 Q And it's true that even prospective residents have
18 commented on the staining of the stucco on the side of the
19 buildings, correct?

20 A Not directly to me, no.

21 Q Well, you've heard about those things, correct, in terms
22 of comments made by prospective residents as to staining on
23 the side of the buildings?

24 A Yes.

25 Q Mr. Soden, do you believe that there is algae growing in

Soden - Direct

19

1 the stucco at the buildings?

2 A Yes.

3 Q Have you ever tested it to see whether or not it could be
4 mold?

5 A We have not, no.

6 Q Have you personally observed horizontal cracks in the
7 stucco at The Edgemere?

8 A Yes.

9 Q And have you observed horizontal cracks in the stucco that
10 have water stains below them?

11 A Yes.

12 Q Are those presently observable at The Edgemere?

13 A Yes, I believe so.

14 Q And I think that you said that you haven't really paid
15 that much attention to the staining at The Edgemere. Is that
16 correct?

17 MS. WALSH: Objection. Misstates testimony.

18 THE COURT: Sustained.

19 BY MS. VANDESTEEG:

20 Q Mr. Soden, I believe that you were provided with a copy of
21 your deposition transcript by counsel earlier this morning.
22 Is that correct?

23 A Yes.

24 Q Do you have a copy of that in front of you?

25 A I do.

Soden - Direct

20

1 Q I'd ask that you turn to -- is yours a single page of
2 testimony per page, or four pages, four little squares of
3 testimony per pages?

4 A Four pages.

5 Q Okay. Could you please turn to --

6 A Four pages.

7 Q -- what will be Page 14 of the document but Page 53 in
8 the little box of the four different squares.

9 A Okay.

10 Q And Mr. Soden, I'd like to turn you to the statement that
11 you made on Page 53 at Lines 12 through 16. Could you read
12 that for us?

13 A Which lines again?

14 Q 12 through 16, please.

15 A (reading) I don't think I've honestly -- I don't think
16 I've ever paid that much attention. I assume there's
17 staining, but I've never looked if there's a stain above or
18 below or side-to-side. I just see the staining.

19 Q Is that an accurate representation of your testimony with
20 respect to your personal observations as to the staining
21 around those cracks?

22 A Yes.

23 Q Mr. Soden, do you agree that that type of staining could
24 indicate that water is getting behind the stucco?

25 A It could potentially be getting behind the stucco. But,

Soden - Direct

21

1 again, the stucco is designed for that.

2 Q Mr. Soden, you're not an expert on stucco, correct?

3 A I am not, no.

4 Q Have you personally observed cracks larger than one-eighth
5 of an inch in the stucco at The Edgemere?

6 A I can't say for sure.

7 Q What about to the best of your recollection based upon
8 your personal observations? Do you think that you have
9 observed cracks larger than one-eighth of an inch in the
10 stucco at The Edgemere?

11 A Yes.

12 Q And, again, since your time of employment at Lifespace
13 since June of 2021, The Edgemere hasn't hired any expert to do
14 any further analysis into the potential causes or consequences
15 of the cracking in the stucco, correct?

16 A Correct.

17 Q You do agree with me, though, that proper water management
18 at that exterior face of the EIFS and stucco is of the utmost
19 importance, correct?

20 A Yeah, to a point, because the actual water barrier is
21 behind the stucco. The stucco isn't the water barrier.

22 Q Mr. Soden, I'd like you to turn again to your deposition
23 transcript, and this time please turn to Page 15 of the
24 overall document and Page 57 of those smaller boxes.

25 A Okay.

Soden - Direct

22

1 Q And do you see at the top of that, at Line 1, I asked you
2 a question of: And in fact, they go on to say it again here,
3 this is another reason that proper water management at the
4 exterior face of the EIFS and stucco is of the utmost
5 importance?

6 MS. WALSH: Objection, Your Honor. This portion of
7 the deposition transcript is directly speaking about The
8 Building Consultants, and so I would renew my objection to
9 questioning that was specifically about The Building
10 Consultant report as being, again, a way for -- trying to
11 back-door The Building Consultant's report into evidence.

12 MS. VANDESTEEG: And Your Honor, that is why I asked
13 the question as I did, without reference to the report, simply
14 asking the question that then I put to Mr. Soden, and I'm
15 seeking for him to provide his response to that specific
16 question.

17 THE COURT: Ms. VandesteeG, candidly, you're using
18 deposition testimony in an odd way. I'm used to a question
19 being asked, and then if the witness doesn't give the same
20 answer they gave to that deposition, then you seek to impeach
21 the witness with the deposition testimony.

22 We seem to be going straight to deposition testimony. So
23 correct me if I'm wrong. Let's go to the deposition
24 testimony. Lead me there.

25 MS. VANDESTEEG: Yes, Your Honor. And I just asked

Soden - Direct

23

1 the witness the question of --

2 THE COURT: No, no, no. Lead me to the deposition.

3 MS. VANDESTEEG: Oh, yes, certainly. I am at Page
4 57.

5 THE COURT: Are we in Exhibit 16?

6 MS. VANDESTEEG: Your Honor, I don't believe that the
7 final deposition transcripts were included as exhibits because
8 they were not final at the time. I do have an extra copy, if
9 I could approach.

10 THE COURT: Okay. Please. If you have an extra.

11 MS. VANDESTEEG: I do.

12 THE COURT: Thank you. Thank you very much.
13 Appreciate that.

14 MS. VANDESTEEG: Thank you, Your Honor.

15 THE COURT: And one more time with the page. I
16 apologize.

17 MS. VANDESTEEG: Certainly. It's --

18 THE COURT: Of the transcript.

19 MS. VANDESTEEG: It's Page 57.

20 THE COURT: Okay. Thank you.

21 (Pause.)

22 THE COURT: Okay. So now that I have it in front of
23 me, re-ask your question, please, Ms. Vandesteeg. Thank you.

24 MS. VANDESTEEG: Thank you, Your Honor.

25 BY MS. VANDESTEEG:

Soden - Direct

24

1 Q Mr. Soden, you would agree with me that proper water
2 management at the exterior face of the EIFS and stucco is of
3 the utmost importance, correct?

4 A Yes. In a way. It's built to -- the -- I'll explain it
5 more. The stucco isn't what seals the entire community. It
6 sheds the water off. But it is designed, if water gets behind
7 it, there is a water barrier that is the true water barrier
8 from it getting into the community.

9 Q Mr. Soden, that is a little different than the testimony
10 that you provided to us at your deposition, is it not?

11 A I didn't explain the barrier behind it, but I did at some
12 point in the deposition explain what that water barrier is
13 behind the stucco, and I remember referencing like brick at
14 your home in Texas. It's the same thing. You have brick that
15 sheds that water, and then you have a water barrier behind
16 that that is designed to keep it from going -- because it's
17 not a completely waterproof system.

18 Q Okay. I appreciate all that, Mr. Soden, but I'm simply
19 trying to determine whether it is your opinion that proper
20 water management at the exterior face of the stucco is
21 important.

22 A Yes.

23 Q Mr. Soden, since the time of your employment at Lifespace,
24 there has been no destructive testing or other probing with
25 respect to the stucco at The Edgemere, correct?

Soden - Direct

25

1 A Correct.

2 Q And you would agree with me that the exterior building
3 envelope at The Edgemere needs work to get it back to good
4 condition, correct?

5 A Yes.

6 Q Let's talk about some structural issues. Mr. Soden, are
7 you a structural engineer?

8 A I am not.

9 Q When was the last time that Edgemere brought in someone to
10 perform a structural assessment at The Edgemere?

11 A Within the last six months.

12 Q And do you know, before that assessment was done, when the
13 last time was that The Edgemere had brought in anyone to do
14 any sort of a structural assessment?

15 A I do not.

16 Q Would you agree with me that a parking garage could be a
17 great litmus test to assess potential structural --

18 (Interruption.)

19 Q -- structural issues regarding -- I'm sorry. Strike that.
20 Mr. Soden, would you agree with me that a parking garage could
21 be a good place to start to do some analysis with respect to
22 whether there are structural issues?

23 A Correct.

24 Q Mr. Soden, the parking garage at The Edgemere has cracks
25 in the concrete, doesn't it?

Soden - Direct

26

1 A Yes.

2 Q And you have also seen leaks in the concrete in the
3 parking garage, right?

4 A Leaks in an expansion joint, yes.

5 Q Let's talk about that expansion joint. There is an
6 expansion joint in the parking garage at The Edgemere that is,
7 at best, in poor condition, correct?

8 A I'm not an expert on what an expansion joint is supposed
9 to be. I know that it drips from time to time.

10 Q And you personally have observed that dripping, correct?

11 A I have, yes.

12 Q I'm going to show you what we have marked and admitted as
13 ICI 30 #59.

14 THE COURT: So we're looking for Photo 59 in Exhibit
15 30? Gotcha.

16 MS. VANDESTEEG: Yes, thank you.

17 THE COURT: Okay.

18 BY MS. VANDESTEEG:

19 Q Mr. Soden, in looking at Photograph 59, will you agree
20 with me that that is a photograph of that expansion joint in
21 the parking garage at The Edgemere?

22 A No, I don't think that is the expansion joint. The
23 expansion joint has rubber in between it. I think -- I think
24 that's right next to the expansion joint, but I don't think
25 that's a photo of the actual expansion joint itself.

Soden - Direct

27

1 Q Got it. Thank you for that clarification. So we'll take
2 that one down.

3 With respect to the expansion joint that you have observed
4 leaking, you have not made any repairs to that expansion joint
5 at The Edgemere since you last witnessed its leaking, correct?

6 A We have not, no.

7 Q Mr. Soden, you have also personally observed cracks in the
8 retaining walls at The Edgemere, correct?

9 A Yes.

10 Q And those are still existing, those cracks in the
11 retaining walls are existing as of today, correct?

12 A Yes.

13 Q Mr. Soden, since the beginning of your employment at
14 Lifespace, you have from time to time seen stained ceiling
15 tiles that need to be replaced, correct?

16 A Yes.

17 Q To your knowledge, has there been any further
18 investigation undertaken as to the root cause of those stained
19 ceiling tiles?

20 A Yeah. And when we see a stained ceiling tile, we -- we
21 figure out why it's stained and make that repair and then
22 replace the ceiling tile.

23 Q To your knowledge, at present, are there any stained
24 ceiling tiles at The Edgemere?

25 A I mean, there's -- I couldn't say for sure.

Soden - Direct

28

1 Q Mr. Soden, you ultimately approve all capital expenditures
2 at The Edgemere, correct?

3 A Correct.

4 Q And in terms of building out Edgemere's capital budget,
5 that's something you're involved in, right?

6 A Yes.

7 Q How do you go about preparing The Edgemere's capital
8 budgets?

9 A So, the community submits their wish list of what they
10 would like to see, and then we go through it based on
11 financials and what we're expected to spend in capital that
12 year and give our input on pricing and stuff. And then it
13 goes -- it goes on through approvals up the chain, and then
14 ultimately to the board of directors.

15 Q Beyond pricing, you are also involved in assisting to
16 determine the prioritization of those projects listed in the
17 capital budget, correct?

18 A Correct.

19 Q And fair to say that you try to make those budgets as
20 accurate as possible. Right?

21 A Yes.

22 Q And Mr. Soden, you've developed a 1, 2, 3 prioritization
23 methodology in The Edgemere capital budgets, right?

24 A Yes.

25 Q And what is Priority #1? It's must have, right?

Soden - Direct

29

1 A It means must have, but that -- it depends on what it is.
2 I mean, an apartment turn is a 1.

3 Q What does the term "must have" mean to you in terms of the
4 listing of conditions and prioritization of items set forth on
5 Edgemere's capital budget?

6 A So, a must have would be a life safety. But most -- most
7 life safety items aren't budgeted for, because we find out
8 about them at the time it goes down and we make the repair.

9 Now, I think NCS, the nurse call system, we know is just
10 getting old, which is life safety, and so we budget
11 appropriate because we know we have to replace that nurse call
12 system.

13 Q Okay. Beyond life safety and something else that has gone
14 down, what else constitutes a Priority Level 1 must have?

15 A Water intrusion in the building. But, again, we would fix
16 that at the time of finding it.

17 Q Okay. So if those are things that --

18 A Apartment turns.

19 Q If those are things that are fixed off-budget immediately
20 upon discovery, what, for purposes of the capital budget, how
21 do you decide what is prioritized as a must have Priority 1 on
22 those budgets?

23 A So, like HVAC, for example. For H-V-A-C. We budgeted a
24 must have to replace we'll say 30 of them. Whether we need to
25 replace 30 of them or we need to replace 60 of them, there's

Soden - Direct

30

1 just a placeholder in the budget to replace some of them
2 throughout the year as needed. So that's a -- that's a must
3 have. We must HVAC units. So we go off a history of we
4 replaced 25 last year, so maybe this year we'd need a couple
5 more, so let's -- let's ask for 30 and then see how the year
6 goes.

7 Q Is it fair to say that something listed as must have is
8 something that, from your perspective, in identifying Priority
9 1, must be addressed in that upcoming capital year?

10 A No, not necessarily, because budgets change. More
11 important stuff comes up. And so the capital budget is a
12 budget; it can always change throughout the year.

13 Q Which I appreciate, but at the time it's created, if
14 something is prioritized as Priority 1 must have, do you
15 anticipate that it should be addressed in the year in which it
16 is budgeted as Priority #1 and listed as something requiring
17 must have Priority 1 treatment?

18 A Yes. With endless funds and a perfect world, yes, we
19 would do everything on that list.

20 Q So is the only reason that a must have Priority 1 as
21 listed on a capital budget would not be actually dealt with in
22 that year is because there are insufficient funds to do so?

23 A No, not at all. Something more important could have come
24 up, like a boiler or a big rooftop unit or something. If it
25 came up, they would have kicked something off the list and

Soden - Direct

31

1 moved it down the list.

2 Q But is that just because there would be insufficient funds
3 to address both the immediate off-budget item as well as the
4 Priority 1 must have project?

5 A No, because we have a budget. We try to stick within the
6 budget. I mean, every business has a budget that you try to
7 stick within. And so say we're doing \$5 million, and -- we
8 need to stick within that money unless an emergency life
9 safety comes up.

10 Q Well, you have two other levels of priority in your
11 budgets, right? There's also a Priority Level 2, which is
12 listed as important but can be deferred. Correct?

13 A Correct.

14 Q And then there's also Priority #3, which is optional.
15 Correct?

16 A Correct.

17 Q So, in terms of priority, again, when you're listing
18 projects, what's the difference between a must have and an
19 important but can be deferred?

20 A So, a must have would be what we feel like or the
21 community feels like must be done. But that could be new
22 carpet in the living room, that they feel like that's the most
23 important thing on their list.

24 The deferred stuff is stuff we would like to do, that
25 we'll have to do someday, like SALTO locks. We have

Soden - Direct

32

1 electronic locks. We budget sometimes for SALTO locks in a
2 community, and while we don't need it, it would be nice, but
3 it could be pushed on to future years.

4 Q Mr. Soden, you said the community helps to develop. You
5 yourself personally also are responsible for including items
6 on the capital budget and helping to prioritize them.

7 Correct?

8 A Yes.

9 Q Would you agree with me that if a Priority Level 1 must
10 have is not addressed in the year it is budgeted for, it
11 should remain a 1 on the next year's budget as well?

12 A More than likely, yes. It just -- it depends on what
13 other items came up throughout that year.

14 Q Mr. Soden, I'd like you to turn to what has been marked as
15 ICI Exhibit #5. I believe that you had received both a large
16 black hardcover black binder as well as a soft floppy kind of
17 a smaller -- bound papers. And I think that you're going to
18 find #5 in that smaller bound set of exhibits.

19 A Yes.

20 Q Do you recognize this document?

21 A Uh, well, that's 2020. I mean, the document in all, yes.
22 The layout.

23 Q What do you recognize about the layout?

24 A That it's our standard form.

25 Q And by our, you mean the standard form for the capital

Soden - Direct

33

1 budgets for Edgemere?

2 A Yes.

3 Q Now, Mr. Soden, this is for 2020 CAPEX, correct?

4 A Correct.

5 Q So this is before your time. You wouldn't have been
6 involved in the preparation of this budget, right?

7 A Correct.

8 Q Have you subsequently reviewed this budget?

9 A I have not, no.

10 Q Mr. Soden, do you have personal knowledge as to whether
11 all of the projects listed on this 2020 capital expense budget
12 were addressed in 2020?

13 A I do not, no.

14 Q Do you know if they have been addressed at any time prior
15 to 2020? I mean, sorry, subsequent to 2020?

16 A I am unaware.

17 Q Mr. Soden, after you began your employment with Lifespace
18 in June of 2021, were you involved in preparing the capital
19 expense budget for Edgemere for upcoming year 2022?

20 A Yes.

21 Q Also in summer of 2021, were you in communication with
22 Plante Moran regarding an assessment that Plante Moran was
23 performing of The Edgemere?

24 A Yes.

25 Q Did you have any communications with Plante Moran

Soden - Direct

34

1 regarding Edgemere's expected capital budget for year 2022?

2 A Yeah, I helped with some of the numbers in the Plante
3 Moran report, yes.

4 Q Why were you involved in helping with some of the numbers
5 in the Plante Moran report?

6 A In my experience with Plante Moran -- I've worked with
7 them in the past -- their numbers are extremely high, and they
8 include items that we wouldn't normally do, such as
9 consultants and architects and project managers and some of
10 those ancillary items like that that we wouldn't do because we
11 have people in-house that do that.

12 Q So, to your view, the numbers that you were coming up with
13 and providing to Plante Moran were more reasonable?

14 A Yes. For the line items I helped with, yes.

15 Q In that black binder in front of you, could you please
16 turn to what has been marked and admitted as ICI Exhibit 11?
17 Mr. Soden, this is an email from you dated August 17, 2021.
18 Correct?

19 A Correct.

20 Q Going to Kyle Dehenau. And Kyle Dehenau is the individual
21 at Plante Moran who was in charge of the Plante Moran
22 assessment of The Edgemere, correct?

23 A Correct.

24 Q And looking back in this stream, Mr. Dehenau, earlier that
25 day, had asked for you to send him the rough CAPEX budget that

Soden - Direct

35

1 you had provided to your internal team, correct?

2 A Correct.

3 Q And you then responded sometime later that morning with,
4 then, the response that we see at the top of this exhibit,
5 correct?

6 A Correct.

7 Q And you stated, "This is what we sent. Let me know if you
8 want to discuss." Right?

9 A Correct.

10 Q So, Mr. Soden, in August of 2021, you had sent a rough
11 budget to your team providing that the envelope -- and did you
12 mean the building envelope by the word "envelope" there?

13 A Yes.

14 Q That you expected that the building envelope would needed
15 budgeted repairs of \$3 million in 2022 and \$2 million in 2023.
16 Correct?

17 A Correct.

18 Q And you also -- skip one bullet point -- stated that you
19 believed that the flat roof needed repairs in 2022 of \$2
20 million and the HC -- that's Health Center, right?

21 A Yes.

22 Q The HV -- sorry, the HC HVAC system needed repairs also,
23 which you believed would cost about \$550,000 in 2022.
24 Correct?

25 A Correct. And those two projects have to be done at the

Soden - Direct

36

1 same time.

2 Q So, again, these were your -- these were the projects that
3 you had identified and the estimated costs that you had
4 identified in August of 2021 for necessary work in 2022,
5 right?

6 A Correct. For budgetary purposes.

7 Q Well, for budgetary purposes or for actual completion-of-
8 the-work purposes?

9 A Well, it was all put in for our capital budgets, which
10 capital budgets change day to day, week to week, month to
11 month. So this is best-case scenario with endless funding.

12 Q Mr. Soden, didn't you just testify to us that these were
13 your more realistic numbers for what these items would cost?

14 MS. WALSH: Objection. Misstates testimony.

15 THE WITNESS: Yeah, through --

16 THE COURT: Sustained.

17 BY MS. VANDESTEEG:

18 Q Mr. Soden, in 2021, did the building envelope at The
19 Edgemere require repairs?

20 A Yes.

21 Q And in 2021, was it your opinion that a reasonable
22 estimate for the cost of those repairs --

23 (Echoing.)

24 THE COURT: I apologize, Ms. Vandesteeg. Just one
25 second.

Soden - Direct

37

1 Can you mute that line, Ms. Jeng? All righty.

2 Could everyone on WebEx please keep your lines muted? If
3 you're just joining, just make sure -- this seems silly now
4 that I'm saying it out loud, but when you're just joining, if
5 you would get out and come back in, please make sure that your
6 line is muted at all times. Appreciate it. Thank you.

7 Please proceed, Ms. Vandesteeg. I apologize for the
8 interruption.

9 MS. VANDESTEEG: No worries.

10 BY MS. VANDESTEEG:

11 Q Mr. Soden, was it your view, was it your opinion in 2021
12 that a reasonable cost of the repairs that you acknowledge
13 were needed would be \$3 million in 2022 and \$2 million in
14 2023?

15 A Yes.

16 Q Mr. Soden, did you identify that there were repairs that
17 were necessary at The Edgemere on the flat roofs and Health
18 Center HVAC in 2021?

19 A With the HVAC system, the HVAC system needs to be upgraded
20 to a different type of system. And part of doing that, you
21 have to replace the roof at the same time.

22 There's 200 penetrations in the roof from the HVAC system,
23 and when the HVAC system is redesigned and we eliminate those
24 penetrations in the roof, at that point you would replace the
25 roof.

Soden - Direct

38

1 Q So, for that HVAC system, that HVAC system you said needed
2 to be updated. That is an R-22 HVAC system; is that correct?

3 A Correct.

4 Q And the R-22 system is in fact obsolete and no longer in
5 production, correct?

6 A Correct.

7 Q Okay. So, going back to 2021, you had identified that the
8 HVAC system was going to need to be replaced, and in
9 connection, the roof was also going to need to be replaced.
10 Correct?

11 A Correct. But the HVAC system is in complete working
12 order. It's to redesign the system to make it a better
13 system, not that the system isn't working at all.

14 Q But the R-22 system is obsolete and is no longer in
15 production, correct?

16 A Correct. But you can buy -- you can replace individual
17 units with new Freon and get rid of the R-22 without doing the
18 entire system.

19 Q Mr. Soden, you did include this as a condition that needed
20 to be addressed in 2021, and you estimated that the cost of
21 that repair and of replacement would be \$2 million for the
22 roof and \$550,000 for the HVAC system, correct?

23 A Correct. But it was not a repair of the system.

24 Q It was a replacement of the system. Correct?

25 A Correct.

Soden - Direct

39

1 Q And a replacement of that flat roof. Correct?

2 A Correct.

3 Q Mr. Soden, based on your experience -- let's go back to
4 the envelope. The conditions that you identified in need of
5 repair in 2021 for the building envelope, those still exist,
6 correct? Those have not yet been addressed?

7 A Correct.

8 Q Mr. Soden, is it still your opinion that the cost to
9 repair those building envelope issues could be \$5 million?

10 A It could be, yes.

11 THE COURT: Just give me one moment.

12 Mr. Embry? Thank you.

13 BY MS. VANDESTEEG:

14 Q Mr. Soden, I would like to --

15 THE COURT: Just one second, Ms. Vandesteeg.

16 MS. VANDESTEEG: Oh, of course.

17 THE COURT: We all want to be at that party out
18 there. I know. I would have brought snacks.

19 I'm sorry, Mr. Soden. We're getting a lot of noise from
20 the hall. There's something more fun going on out there. I'm
21 sending my clerk out to be the fun-sucker.

22 (Pause.)

23 THE COURT: Thank you very much.

24 Please proceed, Ms. Vandesteeg.

25 MS. VANDESTEEG: Thank you.

Soden - Direct

40

1 BY MS. VANDESTEEG:

2 Q Mr. Soden? Let me get back in front of the microphone so
3 you can hear me. Mr. Soden, could you please turn to what has
4 been marked and admitted as Exhibit 3? And I think that
5 you'll find this in the front pocket of that black binder,
6 because it had not been yet approved when we first put
7 together that binder.

8 A Yes. I have it.

9 Q Do you recognize this document, Mr. Soden?

10 A Yes. It looks like capital budget projections through '22
11 and '23.

12 Q Turning to that first substantive page with the chart with
13 the redactions around it, --

14 A Uh-huh.

15 Q -- where it talks about company projected need, August
16 2021, did you help to prepare this chart?

17 A Yes.

18 Q Did you help to identify the conditions and projects that
19 went into this chart?

20 A Yes.

21 Q And did you also help, then, to prepare the cost estimates
22 that might be necessary to address each one of those listed
23 projects?

24 A Yes. For some of the line items, yes.

25 THE COURT: For my benefit, Ms. Vandesteeg, we're on

Soden - Direct

41

1 Exhibit 3 out of the FTI report?

2 MS. VANDESTEEG: Yes, Your Honor.

3 THE COURT: Okay. Thank you very much.

4 BY MS. VANDESTEEG:

5 Q Let's turn to the next page, Mr. Soden, where we have
6 detail by project.

7 A Yes.

8 Q Mr. Soden, you said that you helped to prepare these
9 numbers. Who else helped to prepare this list, both in terms
10 of the items listed as well as potential associated costs to
11 address those items?

12 A So, I believe Plante Moran played a role in this. And
13 then beyond that I would think our finance team.

14 Q Did you yourself have any other conversations with any
15 individuals in putting together your portion of either the
16 items identified or the potential associated costs to address
17 them?

18 A Yeah, I would have had conversations on some of the
19 projects on them and the numbers.

20 Q Mr. Soden, why was this company projected need chart
21 created?

22 A For capital budgets.

23 Q Was it for -- also for planning purposes for what projects
24 needed to be prioritized to be addressed in terms of actual
25 repair and remediation in 2022?

Soden - Direct

42

1 A No. It's for the capital budgets. And my understanding
2 was, working with FTI, they were treating the ten-year plan as
3 part of the bankruptcy and restructuring for the bondholders.

4 Q So, to your view, with respect to at least the items that
5 you listed, did you believe that those were existing
6 conditions that did need to be addressed in 2022?

7 A No, not necessarily. I mean, specifically, the update IL
8 common area finishes, I mean, that's personal opinion. I
9 mean, Edgemere's a beautiful community. And so we put that
10 number in there to potentially update the common area
11 flooring, light fixtures, stuff like that, but it wasn't a
12 need for that specific year.

13 Q Let's take a look on mid-page on this second page detail
14 by project. Do you see the line item for building roof?

15 A I do.

16 Q Was it your --

17 A Yes.

18 Q Was it your recommendation that that item be listed as one
19 of the items that needed to be addressed in 2022?

20 A Not specifically in 2022. Again, it goes back to the HVAC
21 project and when that whole project can happen at the same
22 time.

23 Q But Mr. Soden, this is still listed here on this Exhibit 3
24 as an item that requires attention and allocates a company
25 projected need of \$2 million for 2022, correct?

Soden - Direct

43

1 A Yeah. Same thing as the renovation for \$4 million. Yes.

2 Q Well, let's also look at the building envelope repair.

3 That's also listed as a condition here that needs to be
4 addressed as a company projected need that was identified in
5 August of 2021. Correct?

6 A Correct.

7 Q And we see again estimated costs, or potential estimated
8 costs of repair. You're allocating \$3 million in 2022 and \$2
9 million in 2023. Correct?

10 A Correct.

11 Q So, as you sit here today, with respect to those two items
12 in particular, were those figures included because they were
13 conditions that needed to be addressed, or simply for
14 restructuring negotiations?

15 A They were included because they need to be addressed, but
16 not necessarily in 2022. We were building out a projected
17 capital budget for the next ten years, and so we added those
18 items in there because in the next ten years for sure those
19 items need to be addressed.

20 Q If they needed to be addressed in the next ten years, why
21 were they included in 2022 and 2023?

22 A Because the budgets are -- are created for best-case
23 scenario. I mean, it just -- same thing as the renovation.
24 We would love to do it, but it doesn't have to be done today.

25 Q Well, with respect to repair of the building envelope, is

Soden - Direct

44

1 that something that you would love to do, or is it something
2 that needs to be done?

3 A It needs to be done at some point, yes.

4 Q Mr. Soden, can you please turn to what has been marked and
5 admitted as Exhibit 6?

6 MS. VANDESTEEG: I apologize. I don't think that
7 this exhibit has yet been admitted. It has been marked as
8 Exhibit 6.

9 BY MS. VANDESTEEG:

10 Q Mr. Soden, this is one that you're going to have to look
11 in the small binder to find it.

12 A Yes. Yes, I have it.

13 Q Do you recognize this document, Mr. Soden?

14 A I do.

15 Q What is this?

16 A Capital budget planning for 2022.

17 Q Were you personally involved in the creation of this
18 document?

19 A Yeah. For some line items, yes.

20 Q This document was prepared at some point during the
21 standard budgeting process for Edgemere, right?

22 A Correct.

23 Q Is this the type of document that is typically kept in
24 Edgemere's system?

25 A Yes.

Soden - Direct

45

1 Q Was this document created approximately in the summer of
2 2021 for planning purposes for 2022?

3 A Yeah. Around there, yes.

4 Q And that, again, is part of the typical capital planning
5 budget process for Edgemere, right?

6 A Correct.

7 Q Do you know who else was involved in the creation of this
8 document?

9 A The community, the executive director. I mean, really,
10 the whole leadership team of the community would have their
11 input. Our finance team. Regional vice presidents.

12 Q To the best of your knowledge, does this appear to be a
13 true and accurate copy of The Edgemere's 2022 capital planning
14 budget?

15 A Yeah. To the best of my knowledge.

16 Q Mr. Soden, we see on this budget again that we have a
17 number of different conditions and projects listed, correct,
18 under -- under the column of Description?

19 A Correct.

20 Q And, again, we see a column, then, that states Priority,
21 and lists, then, priority at 1, 2 -- I'm not sure if I see any
22 3s. But we see a Priority column, right?

23 A Yes.

24 MS. VANDESTEEG: Your Honor, before we go further
25 into this document, I'd like to move for its admission.

Soden - Direct

46

1 THE COURT: Any objection?

2 MS. WALSH: No objection.

3 THE COURT: Okay. I think early on we had this
4 admitted subject to prove-up, so it is now admitted.

5 MS. VANDESTEEG: Thank you, Your Honor.

6 (Intercity Investment Properties, Inc.'s Exhibit 6 is
7 received into evidence.)

8 BY MS. VANDESTEEG:

9 Q So, again, we talked about these priorities, with Priority
10 1 defined within this document as must have. Correct?

11 A Be a need.

12 Q Mr. Soden, the prioritization schedule defines 1 as must
13 have, right?

14 A Correct.

15 Q And --

16 A Yes.

17 Q And again, in this budget we have Priority 2 defined as
18 important but can be deferred. Right?

19 A Correct.

20 Q And Priority 3 as optional, correct?

21 A Correct.

22 Q Mr. Soden, looking up at some of the Priority #1s in this
23 2022 capital budget, I see one that lists, for example, create
24 concrete walkways for safety in pond area. And that's listed
25 as a must have, right?

Soden - Direct

47

1 A Yes.

2 Q Would you agree with me that creation of sidewalks for
3 safety purposes is indeed a must have that needs to be
4 addressed in 2022, as set forth in this budget?

5 A Depending on the situation. I think we talked about
6 before this was a resident requesting a sidewalk because it
7 was a shorter path to where she wanted to go. And so we have
8 to make a judgment call if it's money well spent to create a
9 path for one resident in a very large community and change the
10 layout of the courtyard.

11 Q Mr. Soden, do you remember the inclusion of this line item
12 onto this 2022 capital budget?

13 A I don't specifically remember that line item.

14 Q And Mr. Soden, this line item doesn't say for a single
15 resident's requested purpose. It says for safety purposes.
16 Correct?

17 A Correct. We wouldn't get into that detail on this.

18 Q So if something is, again, listed as needs attention for
19 safety purposes and is listed here as a Priority 1 must have,
20 that should be something that, would you agree with me, needs
21 to be addressed in the upcoming year?

22 A For specific safety issues, yes. For this specific issue,
23 no.

24 Q Do you know if this sidewalk issue addressed here as a
25 safety issue was addressed and handled in 2022?

Soden - Direct

48

1 A To the best of my knowledge, the conversation was had with
2 the resident to use the normal walking paths and not deviate
3 from the paths.

4 Q Is that a no, this condition was not addressed in 2022?

5 MS. WALSH: Objection. Asked and answered.

6 THE WITNESS: I mean, it was addressed with the
7 resident, so yes.

8 MS. WALSH: This is argumentative.

9 THE COURT: Okay. Just one moment. Mr. Soden, there
10 was an objection. It is overruled.

11 Please ask the question again.

12 MS. VANDESTEEG: Thank you.

13 BY MS. VANDESTEEG:

14 Q Mr. Soden, was this condition, this safety condition
15 identified on the 2022 capital planning budget, addressed in
16 2022?

17 A Yes. It was addressed with the resident, not addressed
18 by installing the sidewalk.

19 Q Mr. Soden, do you know if all of the other Priority 1
20 projects listed in this first plant summary at the top of this
21 budget were addressed in 2022?

22 A I am not aware, no.

23 Q Let's go down toward the bottom of this document. Up top
24 of yours, you should see Page something of 4. Let's go to
25 Page 4 of 4.

Soden - Direct

49

1 A Okay.

2 Q Sorry. As I'm bopping up and down here, I'm like in
3 between on my glasses. You see with me this category right
4 above the CAPEX summary of "Community Projects Needing
5 Approval"?

6 A Correct.

7 Q Who do those projects need approval from?

8 A The board of directors.

9 Q The Edgemere board of directors?

10 A I believe it's both Edgemere board of directors and
11 Lifespace board of directors, but I'm not involved in that
12 process.

13 Q Do you know who is on The Edgemere board of directors?

14 A I do not, no.

15 Q Mr. Soden, do you agree with me that the first item listed
16 there is flat roofs, needs to be done in conjunction with
17 HVAC, targeting \$2 million at Priority 1 must have. Correct?

18 A Correct.

19 Q And, again, we're looking at the --

20 THE COURT: Can you point me to the page?

21 MS. VANDESTEEG: Yes, Your Honor. We're at Page 4 of
22 4, the last page of this exhibit.

23 Why don't we also pull it up on the screen? We might be
24 able to see it a little more easily.

25 THE COURT: I've got it now.

Soden - Direct

50

1 MS. VANDESTEEG: Okay.

2 THE COURT: Thank you. I was still up in Plant
3 Summary. Thank you. Flat roofs.

4 MS. VANDESTEEG: Flat roofs. Correct.

5 BY MS. VANDESTEEG:

6 Q Mr. Soden, do you see that that's listed there as a
7 Priority 1 must have for 2022?

8 A Correct.

9 Q \$2 million?

10 A Correct.

11 Q And you see also with me, right below that, HC, Health
12 Center, HVAC. Needs to be done in conjunction with flat
13 roofs. Priority 1 for 2022, \$550,000. Right?

14 A Correct.

15 Q And we see also envelope. Stucco. Repainting. Replacing
16 gutters. And replacing gutters. Do you see that?

17 A Yes.

18 Q Also Priority 1. Must have. Right?

19 A Correct.

20 Q Budgeting for \$3 million in 2022 and \$2 million in 2023,
21 right?

22 A Correct.

23 Q Was that building envelope project undertaken in 2022?

24 A It was not.

25 Q Why not?

Soden - Direct

51

1 A Just other priorities within -- within the community.
2 Same as why we didn't do the AL common area refurbishment, the
3 IL main building. Just other priorities come up that are more
4 important, and these are -- these budgets are created to shoot
5 for the moon.

6 Q Well, Mr. Soden, these are the same numbers that were in
7 the company projected needs and they were the same numbers
8 that you provided to Mr. Dehenau at Plante Moran. And I think
9 you said that these were the more realistic numbers because it
10 was your experience that Plante Moran tended to inflate their
11 numbers, they were higher numbers. Correct?

12 MS. WALSH: Objection. Misstates testimony.

13 BY MS. VANDESTEEG:

14 Q Mr. Soden? Is it your view that these are shoot for the
15 moon --

16 THE COURT: No, no, no. There was an objection that
17 it misstates testimony. I don't think he's testified to that
18 today.

19 MS. VANDESTEEG: We'll -- I will strike that and
20 rephrase it a different way.

21 THE COURT: Okay. Please.

22 BY MS. VANDESTEEG:

23 Q Mr. Dehenau [sic], I think you did already testify today
24 that you believed that your reasonable -- I'm sorry, that your
25 estimates as to the CAPEX budget and the numbers that you

Soden - Direct

52

1 provided to Plante Moran were more reasonable than Plante
2 Moran's numbers. Correct?

3 A Correct.

4 Q And I believe that you also previously testified today
5 that when you sent that email in 2021, it was your reasoned
6 estimate that those were the costs associated with those
7 repair costs for the building envelope and the roof. Correct?

8 A Correct.

9 Q And those are the same numbers that are included in this
10 2022 capital budget, correct, for the roof and for the HVAC
11 and for the building envelope?

12 A Correct.

13 Q So, Mr. Soden, which is it? Are these reasonable
14 estimates based upon your experience, or are they shoot-for-
15 the-moon numbers?

16 A Well, the -- the numbers are reasonable numbers. It's the
17 overall capital budget is shoot for the moon.

18 Q So what took priority in 2022 over repairs to the building
19 envelope or repairs to the roof and HVAC system?

20 A So, we can make repairs to any of those systems to prolong
21 the life of them by extending the useful life of an asset,
22 just like the roof repairs extend the useful life. So, excuse
23 me, the numbers are put in here is if we can do the entire
24 thing, like the AL refurb and the IL main building refurbs. We
25 put the numbers in there is if we can do the entire project at

Soden - Direct

53

1 one time, but then the project might not be completed in that
2 year because other -- other more important items would trump
3 that.

4 Q Mr. Soden, I'm not focusing on refurb. I'm not focusing
5 on the cosmetics of carpets or paint. I'm focused on building
6 envelope conditions that you have testified you knew were
7 present in 2021 and that you included in these budgets for
8 2022.

9 I'm talking about roof issues that you have testified that
10 you were aware of in 2021 and have still observed both of
11 these conditions still present at The Edgemere today.

12 So with respect to these items, why were these not
13 addressed in 2022?

14 A Because repairs could be made to extend the useful life of
15 the asset.

16 Q Mr. Soden, who made the decision not to undertake the
17 projects listed here for building envelope, for flat roof, and
18 for HVAC? Who made the decision not to undertake those
19 projects in 2022?

20 A I'm not a hundred percent sure on that.

21 Q Well, Mr. Soden, you've been presented as the person who
22 can give us this type of information. So, to the best of your
23 knowledge, who would make the decision not to undertake these
24 projects? Who made that decision not to undertake these
25 projects in 2022?

Soden - Direct

54

1 A So, it would have been the board-approved capital budget,
2 which I don't believe this is the actual board-approved
3 capital budget. I would think that the board didn't approve
4 \$19 million in one year for Edgemere, and so the list was
5 brought down from there.

6 Q Mr. Soden, did you have any discussions with anyone either
7 at the board or otherwise in management with respect to the
8 need to undertake projects regarding the building envelope,
9 the roof, or the HVAC in 2022?

10 A Definitely not the board. I mean, I'd have some
11 conversations with our finance team on if -- if it has to be
12 done or we can -- if we can prolong it with some repairs.

13 Q Mr. Soden, since these projects were not undertaken in
14 2022, would you expect that they would have rolled over to the
15 2023 budget?

16 A In the 2023 budget, yes.

17 Q Mr. Soden, do you agree with me that to the extent these
18 projects were not undertaken in 2022, these conditions don't
19 get better on their own with age? Correct?

20 A They do not.

21 Q Mr. Soden, I'm going to show you what has been marked as
22 Exhibit 7. We only have this in native form, so I'm going to
23 have to put it up on the screen in front of you.

24 (Pause.)

25 MS. VANDESTEEG: For whatever reason, this one was a

Soden - Direct

55

1 little tougher to manipulate into PDF form.

2 BY MS. VANDESTEEG:

3 Q Mr. Soden, do you recognize what we have marked as Exhibit
4 7?

5 A Yeah. Yes. That's our standard -- Lifespace standard
6 capital budget form.

7 Q For 2023 now, correct?

8 A Correct.

9 Q And this document was prepared at some point during
10 Edgemere and Lifespace's standard budgeting process, correct?

11 A Correct.

12 Q And this document was produced by Edgemere, and it's the
13 type of document that is typically kept on Edgemere's system,
14 right?

15 A Correct.

16 Q For this record, this budget was created in summer of 2022
17 as part of the capital planning process for 2023, right?

18 A Correct.

19 Q And you were personally involved in the creation of this
20 document, right?

21 A Yes. When it comes to some line items, yes.

22 Q To the best of your knowledge, does this appear to be a
23 true and accurate copy of the capital plan for Edgemere for
24 2023?

25 A To the best of my knowledge, that's the community-

Soden - Direct

56

1 submitted plan. I do not know if that is the board-approved
2 plan or not.

3 MS. VANDESTEEG: Your Honor, I'd move to admit
4 Exhibit 7 into evidence.

5 MS. WALSH: No objection. But just to clarify for
6 the record that he's testified that he doesn't know what it
7 is. So it is what it is. He said that he's not sure that it
8 is the final.

9 THE COURT: I think he's testified that it is the
10 community-submitted plan but he does not know --

11 MS. WALSH: The board-approved.

12 THE COURT: -- that it is the board-approved plan.
13 So, with that, --

14 MS. WALSH: Yes.

15 THE COURT: -- with that caveat, Exhibit 7 is
16 admitted. Thank you.

17 (Intercity Investment Properties, Inc.'s Exhibit 7 is
18 received into evidence.)

19 BY MS. VANDESTEEG:

20 Q Mr. Soden, same prioritization schedule on this capital
21 plan, right, with Priority #1 being a must have?

22 A Correct.

23 Q And Priority 2 being important but can be deferred?

24 A Correct.

25 Q And Priority 3 being optional, right?

Soden - Direct

57

1 A Correct.

2 Q So, we again start here with a list of projects and items
3 identified with respect to plant, right?

4 A Uh-huh. Yes.

5 Q And there are a number of these that are again listed as
6 Priority 1 and Priority 2. Right?

7 A Correct.

8 Q Mr. Soden, do you know, were all -- I'm sorry. Let me
9 back up. Mr. Soden, are you aware of whether any of these
10 Priority 1s listed for 2023 were rolled over from Priority 1
11 needs from 2022?

12 A Yeah, I -- yeah, several of them. I mean, they're on the
13 capital budget every single year. Like reoccupancy of units,
14 HVAC replacements, all of -- I mean, those are every year on
15 the capital budget.

16 Q For items that don't simply roll over from year to year as
17 ongoing needs, like refurbishment, but are instead discrete
18 projects related to existing property conditions that must or
19 should be remedied, are those specific types of projects that
20 were listed as must haves for 2022 that you can see or
21 otherwise understand were carried over as Priority 1 for 2023?

22 A (Pause.) Sorry. It's super-small.

23 MS. VANDESTEEG: Can we blow it up on the screen a
24 little bit?

25 THE COURT: If you can blow it up to where you can at

Soden - Direct

58

1 least see through 2023.

2 MS. VANDESTEEG: Is that a little bit better?

3 THE WITNESS: Yes. Correct. Much better.

4 BY MS. VANDESTEEG:

5 Q Okay.

6 A Yeah. Modernization of elevators I think could have been
7 on there. I'm trying to review the two of them to see what
8 line items are there. Yeah. Modernization of elevators was
9 in 2022. I think it rolled over to 2023. But we did spend
10 \$200,000-and-some on elevator modernization, but there are so
11 many elevators in the community, can't do them all, so we need
12 that continuously in every year until we get through all of
13 them.

14 Q Let's go down and take a look at Line 16. Sidewalks in
15 pond courtyard. That's one that we saw in 2022, right?

16 A I think it was worded a little bit different in 2022.

17 Q Well, maybe let's --

18 A And --

19 Q -- scroll over to the description so we can see the
20 description, then, blown up up above. Now, if we look up
21 above, then, at the top of this sheet, where then it expands
22 what that says, you agree with me the description for
23 sidewalks in pond courtyard says: Create concrete walkways
24 for safety in pond area. Correct?

25 A Correct.

Soden - Direct

59

1 Q And Mr. Soden, that's the exact same description that we
2 saw in the 2022 capital budget, correct?

3 A It is.

4 Q And you told us that that work was not performed in 2022,
5 correct?

6 A Correct.

7 Q It is something that still needs to be done for safety
8 purposes in 2023, correct?

9 A Someone thinks so, whoever put that specific line item in
10 there, yes. But my recollection is that the conversation was
11 had with the resident that requested that, and so it is not an
12 immediate safety concern.

13 Q Do you think it's more accurate to rely on your
14 recollection of a conversation or on the perception of the
15 person who put that need in there for safety purposes, Mr.
16 Soden?

17 A I mean, either way. I mean, common area refurbishments,
18 someone could think that everything's perfect, a hundred
19 percent fine, there's nothing that needed to be done, but then
20 someone felt like it needed to go in here as a line item.

21 Q But I'm talking about this one for safety purposes, Mr.
22 Soden. If someone thought this was a safety issue.

23 MR. JOHNSON: Objection, Your Honor.

24 THE WITNESS: It depends on the purpose.

25 MR. JOHNSON: Objection, Your Honor. I think the --

Soden - Direct

60

1 counsel is testifying that somebody thinks this is a safety
2 issue. I think Mr. Soden has already testified that he thinks
3 a resident has put this specific request in. We don't know
4 who this resident this, what the safety issue is. The words
5 are literally what they are on the page. I don't know what
6 Mr. Soden can add to them beyond what he's already said. It's
7 the same issue we just addressed 15 minutes ago on the same
8 set of capital plan budgets.

9 THE COURT: Ms. Vandesteeg?

10 MS. VANDESTEEG: Your Honor, that's correct. I'm
11 trying to parse between Mr. Soden's -- what is really hearsay
12 with respect to what someone may have said with respect to a
13 resident's complaint and what is on their own capital budget
14 reflected as a safety item. I'm just trying to allow us to
15 weigh the -- which might be of more accurate import.

16 MR. JOHNSON: Your Honor, --

17 THE COURT: I think that's --

18 MR. JOHNSON: -- they're arguing that that hearsay
19 should be -- that the resident's hearsay is important, but
20 what Mr. Soden is saying is not. I mean, this is competing
21 hearsay. It's --

22 MS. VANDESTEEG: This record is --

23 MR. JOHNSON: It's sort of a waste -- it's -- I'm not
24 going to say it's a waste of time, but we've gone through this
25 issue before. I think the point that ICI has been trying to

Soden - Direct

61

1 make here has been made, for whatever worth it is.

2 THE COURT: Anything further, Ms. Vandesteeg?

3 MS. VANDESTEEG: Your Honor, I'm happy to move on.

4 THE COURT: I think that's best, because I do believe
5 that you've elicited everything that the witness has with
6 respect to this particular issue. So, please.

7 MS. VANDESTEEG: Absolutely.

8 BY MS. VANDESTEEG:

9 Q Mr. Soden, I believe that you testified that the building
10 envelope project, the roof project, and the HC HVAC project,
11 as called out as Priority #1 must haves in 2022, were not
12 addressed in 2022. Correct?

13 A Correct.

14 Q So should we expect to see those items rolled over onto
15 the 2023 budget?

16 A In most cases, yes.

17 Q In what cases would those not roll over as Priority #1
18 must haves? Again, just with respect to the roof, the HVAC,
19 and the building envelope. What would cause those not to
20 appear on the 2023 budget if the work had not been done?

21 A So, if we deferred it to the following year, if we said in
22 2023 we're not going to spend the money on it, we can make
23 repairs and make it last 'til 2025, then it wouldn't
24 necessarily be in 2023. And then it -- I'm unsure if this is
25 the board-approved budget, but if the board didn't approve

Soden - Direct

62

1 those projects and this is the official final budget, then
2 they could be removed for that purpose as well.

3 Q Their removal from the capital budget doesn't mean that
4 the repairs have otherwise been completed. Correct?

5 A Correct.

6 Q And given what you know about the existing conditions at
7 The Edgemere with respect to the building envelope and the
8 roof and the HVAC at the Health Center, would you expect to
9 see them on the 2023, 2024, 2025 budgets? Let's start with
10 2023. Would you expect to see them as projects that should be
11 addressed in 2023?

12 A In the initial budget created by the community? Yes. But
13 as it goes through the approval processes, it could fall off.

14 Q But this is the budget that you said is the community
15 budget. You can't tell us if it's the board-approved budget,
16 but I think you said this is the community budget.

17 A This would be the one the community submitted, but if this
18 particular one has been all the way through the board, then
19 line items could have been removed --

20 Q Mr. Soden, would --

21 A -- if they weren't approved.

22 Q Would you have recommended, did you recommend, that the
23 building envelope be included within the -- as a project to be
24 addressed in 2023?

25 A Yeah. We had conversations about it. And, again, if we

Soden - Direct

63

1 had the endless funds to do everything we wanted to do, then
2 we would do the exterior, mainly for aesthetic purposes.

3 Q Mr. Soden, do you recall, did you recommend that the roof
4 repair project be included as a project for 2023 purposes?

5 A I don't -- I don't recall. There were conversations with
6 including the HVAC and the roof as one project, when that
7 project gets approved, for modernization purposes.

8 Q Did you recommend that that collective HVAC and roof
9 project be included as a project to be addressed in 2023?

10 A I don't recall if we had that specific conversation.

11 Q Let's just scroll down, then, to the bottom of this
12 Exhibit 7. And I'd like you to tell me if you see anywhere
13 along the way to the bottom either the building envelope
14 project, the roof project, or the HC -- the Health Center HVAC
15 project.

16 (Pause.)

17 Q Mr. Soden, if we hit these summary charts at the bottom,
18 is that -- is that the end?

19 A Yes. Yeah.

20 Q You agree with me that those projects were not anywhere
21 listed on this 2023 capital budget. Correct?

22 A They were not. There was an HVAC at the top, which would
23 part of the HVAC system, just not the entire modernization.
24 It would be keeping the system running and replacing units as
25 needed.

Soden - Direct

64

1 Q But, again, to be clear, those projects that we saw listed
2 on the 2022 budget that were not addressed in 2022 do not
3 otherwise appear here on the 2023 budget?

4 A Correct.

5 Q Mr. Soden, do you know who made the determination not to
6 include those projects on the 2023 budget?

7 A I do not.

8 Q Do you know why the decision was made not to include those
9 projects on the 2023 budget?

10 A I do not.

11 Q Do you know who would know that?

12 A Again, it depends on if it was -- if it was initially put
13 in by the community and then it was removed by the board or
14 somewhere along the way. It -- I don't know which version
15 this is in the process. You know, it's a -- it's a very long
16 process that goes through many versions, and I don't know
17 specifically which one this is.

18 Q Mr. Soden, setting aside Exhibit 7, you recall that
19 Terracon performed a property condition assessment of The
20 Edgemere, and in connection with that property condition
21 assessment performed a site visit, correct?

22 A Correct.

23 Q And that site visit took place in July of 2022. Right?

24 A Yes.

25 Q And you personally were present for that site visit with

Soden - Direct

65

1 Terracon?

2 A I was.

3 Q And Jared was also present? That's -- is that Jared
4 Richardson?

5 A Correct.

6 Q What's Jared's role?

7 A He is the Plant Director at the community.

8 Q Were you and Jared both present for the interview that
9 Terracon conducted as part of their site visit?

10 A At the beginning, yes.

11 Q Do you recall telling or hearing Jared tell Terracon that
12 Edgemere planned to undertake building envelope repair
13 projects in 2023 and planned to spend \$3 million on the
14 building envelope in 2023?

15 A I don't recall that specific conversation.

16 Q Do you recall Terracon asking questions about any
17 potential projects, upcoming projects related to the building
18 envelope?

19 A Yeah, I mean, they -- they asked some questions about the
20 envelope. I remember like if it leaks, do we have any issues
21 with falling stucco, stuff like that. But I don't -- I don't
22 remember specifics about Jared and a dollar amount. And there
23 were times that we were split up.

24 Q So if that was a statement that Terracon were to have said
25 they were provided by either you or Jared, do you have any

Soden - Direct

66

1 reason to believe that Jared didn't tell that information to
2 Terracon?

3 MS. WALSH: Objection. Calls for speculation.

4 MS. VANDESTEEG: I'll withdraw it.

5 THE COURT: Okay.

6 MS. VANDESTEEG: Your Honor, if possible, I'd like to
7 take a very brief break to confer with my team to see if
8 there's anything else for us to address on our preliminary
9 questioning of Mr. Soden, and then come back. I suspect, if
10 there's anything, it will be brief. And if that would be then
11 a good time for the Court to want to break for a lunch break,
12 we could do that. I don't know how long counsel is planning
13 on taking with Mr. Soden after I conclude.

14 THE COURT: Quick question. You said your
15 preliminary questioning of the witness.

16 MS. VANDESTEEG: Correct.

17 THE COURT: You were referring to direct, I assume?

18 MS. VANDESTEEG: Correct. Direct.

19 THE COURT: Okay.

20 MS. VANDESTEEG: We called him as adverse, so --

21 THE COURT: Okay. All righty.

22 MS. VANDESTEEG: -- just trying to make sure that
23 we're all on the page in terms of the order of things.

24 THE COURT: I appreciate that. How long of a recess
25 do you need?

Soden - Direct

67

1 MS. VANDESTEEG: Just a couple minutes, Your Honor.

2 THE COURT: Okay. So, it's 12:15. We'll break until
3 12:20.

4 MS. VANDESTEEG: Thank you, Your Honor.

5 THE CLERK: All rise.

6 (A recess ensued from 12:15 p.m. until 12:23 p.m.)

7 THE CLERK: All rise.

8 THE COURT: Please. Be seated. We'll go back on the
9 record in Case No. 22-30659. Ms. Vandesteeg?

10 MS. VANDESTEEG: Thank you, Your Honor. Just very
11 briefly.

12 THE COURT: Fair enough.

13 DIRECT EXAMINATION, RESUMED

14 BY MS. VANDESTEEG:

15 Q Mr. Soden, you are aware that we are currently in the
16 midst of a prospective sale and auction process in this
17 bankruptcy proceeding for The Edgemere, right?

18 A Correct.

19 Q And it is our --

20 (Court confers with Clerk.)

21 THE COURT: Could you please speak up a little bit,
22 Mr. Soden?

23 THE WITNESS: Yes. Sorry.

24 BY MS. VANDESTEEG:

25 Q Mr. Soden, it is our understanding that the Plante Moran

Soden - Direct

68

1 report was the only document listed in the Debtors' and the
2 RBC data room for prospective bidders to review related to the
3 property condition or capital needs. Do you have any
4 knowledge about that?

5 A I do not, no.

6 Q Were you asked for your opinion on what information
7 regarding property conditions or capital needs might be
8 relevant or appropriate to share with potential bidders?

9 A I have not been involved in that process at all.

10 Q So, no, you were not asked for your opinion on that?

11 A No.

12 Q Thank you.

13 MS. VANDESTEEG: Your Honor, with that, I'll pass the
14 witness.

15 THE COURT: Okay. Thank you very much.

16 Give me one moment. I apologize. All righty.

17 So, Ms. Walsh, how much time do you think you have with
18 the witness?

19 MS. WALSH: I think approximately an hour.

20 THE COURT: An hour? Oh, so we should definitely
21 break before that. Okay. I apologize, Mr. Soden. We'll have
22 to keep you on the proverbial stand over a lunch break. It is
23 12:25. I'll ask both counsel and the witnesses how much time
24 they need for lunch.

25 MS. VANDESTEEG: Your Honor, we would be happy coming

Soden - Direct

69

1 back at 1:00.

2 THE COURT: At 1:00? Okay.

3 MS. MUSGRAVE: That works for us, Your Honor. Thank
4 you.

5 THE COURT: Okay. Mr. Soden, how much time do you
6 need for lunch?

7 THE WITNESS: Yeah, I can do 1:00 o'clock.

8 THE COURT: 1:00 o'clock? How about staff?

9 (Court confers with Clerk.)

10 THE COURT: We'll return at 1:05.

11 MS. VANDESTEEG: Thank you, Your Honor.

12 MR. DAVIS: Thank you, Your Honor.

13 THE CLERK: All rise.

14 THE COURT: All right. Court will stand on recess
15 until 1:05.

16 (A luncheon recess ensued from 12:26 p.m. until 1:12 p.m.)

17 THE CLERK: All rise.

18 THE COURT: Please, be seated. We're going to go
19 back on the record in Case No. 22-30659. Do we still have Mr.
20 Soden?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Good afternoon. Thank you very much, Mr.
23 Soden. I'll remind you that you're still under oath. All
24 right.

25 Is there anything to handle in terms of logistics before

Soden - Cross

70

1 we proceed to cross-examination of Mr. Soden? All righty.
2 Ms. Walsh?

3 THE WITNESS: No, ma'am.

4 THE COURT: Tall right. Thank you.

5 CROSS-EXAMINATION

6 BY MS. WALSH:

7 Q Good afternoon, Mr. Soden.

8 A Hello.

9 Q Can you please describe your approach to repairs at The
10 Edgemere community?

11 A So, we have -- we have some systems in place. It's called
12 a CMMS system. Computerized Maintenance Management System.
13 And so within that system, when a repair needs to be made, a
14 work order is created. It can be critical. I don't know,
15 like low, medium -- critical, medium, and low. And so those
16 work orders are distributed. Anything that's submitted as a
17 critical need, as life safety or a trip hazard, sprinkler head
18 not working, smoke detector not working, those are all
19 immediate fixes.

20 Anything else within the community, we have a pretty
21 strict guideline at Lifespace that I implemented of a 48-hour
22 turnaround for repairs, depending on availability of material,
23 obviously.

24 Q Are you aware of any current unaddressed life safety
25 issues requiring repair at The Edgemere?

1 A I am not.

2 Q With a building of the size of The Edgemere, is it
3 possible that there are issues that may need to be addressed,
4 non-life safety issues that may need to be addressed
5 currently?

6 A Yeah. Absolutely. I mean, with over a million square
7 foot, it's hard to see everything. You know, stained ceiling
8 tile or, you know, a piece of baseboard that's broken,
9 something like that. I mean, when you have over a million
10 square foot, it's hard to see everything, so there's
11 definitely items that need to be fixed.

12 Q Are you aware of any such items at this time?

13 A I am not, no.

14 Q And if you were aware of such items, what would you do?

15 A Have a conversation with the plant director and his
16 supervisor to repair them, just like when I go in and do my
17 tours of communities I'll point stuff out that I see that they
18 might not see. I mean, different people walk things
19 differently. Some people look at the ground. Some people
20 look at ceilings. And so -- and that's a lot of the reason we
21 have a regional team, is you see different things than the
22 people that are in the community and see the same thing every
23 single day.

24 So I'll put a work order in the system so that we can
25 track it and see how long it takes to repair those items, so

1 that I know from a home office standpoint if we're taking too
2 long or if there's a complaint about something. We have full
3 visibility of all the work orders.

4 Q Mr. Soden, do you recall that you went through some
5 budgets with the Landlord's counsel earlier today?

6 A Yes.

7 Q And those budgets include items that are designated as
8 "must haves." Is that right?

9 A Correct.

10 Q And those are indicated on the budgets of having the
11 highest priority, right?

12 A Correct.

13 Q Do must haves include cosmetic items?

14 A In some cases, yes.

15 Q In the case of the budget, is a lobby refresh designated
16 as a must have?

17 A Yes.

18 Q And what does that mean, a lobby refresh?

19 A Carpet. Paint. Light fixtures. Maybe a couple pieces of
20 art work. Just to -- just to give it a refresh, a fresher
21 look, a modern -- more modern look.

22 Q So, is it necessary that all #1 Priority items be
23 addressed?

24 A No.

25 Q I believe you spent some time talking with Landlord's

1 counsel regarding the stucco façade; is that right?

2 A Correct.

3 Q And there was some discussion regarding the budgeted
4 amount for the stucco façade, right?

5 A Correct.

6 Q Is the exterior envelope project budgeted for just for
7 repairs, or does it include improvements as well?

8 A It includes improvements as well. I mean, we would make
9 the repairs and then we would paint the entire community for
10 aesthetic purposes.

11 Q Is the roof maintainable?

12 A Yeah. We -- we make repairs as needed. If there's a leak
13 or something happens, you know, the roof itself, in a couple
14 weeks, we have a section replaced or patched. I mean, the
15 caulking really isn't a part of the roof system. Caulking
16 deteriorates and you get a leak, and then you just simply
17 replace it for five dollars. I mean, very simple fix.

18 Q So, replacing the caulking, that's just -- that's an
19 ongoing maintenance item, then?

20 A Yeah. Any caulking, it's just an ongoing maintenance
21 issue that never stops.

22 Q So, the roof -- so, does the roof need to be replaced now?

23 A No. The roof needs to be replaced when the HVAC project
24 is completed.

25 Q Now, when you say that the roof needs to be replaced when

Soden - Cross

74

1 the HVAC is completed, is that because -- why is that?

2 A So, right now, the way the building was originally
3 designed when it was built, there's somewhere between 180 and
4 220 penetrations. So, actual holes in the roofs where pipes
5 go through. And so any time you have penetration, whether it
6 was designed that way or not, the penetration is going to
7 eventually leak. Something is going to happen. I mean, the
8 ultimate goal on a roof is to have zero penetrations. And so
9 with redesigning the system and removing the 200-plus holes in
10 the roof that were designed that way, you're going to
11 eliminate all of those potential leaks.

12 Q Can you explain a little bit more the 200-plus holes in
13 the room?

14 A So, there's 200-plus HVAC units. And the way those HVAC
15 units are designed is there's an electrical line, there's a
16 thermostat, there's line sets, so your refrigerant lines would
17 have to go from the roof to the unit inside to the apartment
18 itself. So, each one, I mean, they spider all over inside the
19 walls, then they go to each individual unit. So every point
20 that that -- those pipes, you have to have a hole in the roof,
21 and then you seal around those -- are a potential leak.

22 Q So is the point, as I understand it, that these two
23 projects need to be done together for efficiency's sake?

24 A Yeah. Absolutely. I mean, because to replace the entire
25 roof, you would have to remove the 200-plus HVAC units to

1 replace the roof, and so you would abso... you would only do
2 it at the same time. There's really no other way to do it.

3 Q So it's not a question of this project, this larger
4 project, the roof and the HVAC project, of having to be done
5 now; it's just that, when they're done, they have to be done
6 together. Is that right?

7 A Correct. Yes.

8 Q And as I understand it, the HVAC system is something
9 called R-22s. Is that right?

10 A Correct. Yes.

11 Q And new parts aren't being made for the R-22, right?

12 A To my knowledge, it's only the Freon. So, the Freon
13 natural gas that goes inside the unit is not made anymore.

14 Q Do you have a plan for continued maintenance of that
15 system?

16 A Yeah, we can -- we can replace individual units that have
17 the new Freon in it. It's -- the Freon is per -- per
18 apartment. And so if one unit breaks and it can't be
19 repaired, or, you know, we have a -- we have Freon on hand.
20 It's not a unit we use. There's just (inaudible) the
21 manufacturer. And so we can recharge the units. And then if
22 the unit does need to be replaced, we can just replace that
23 one individual unit with a whole new system that has the new
24 Freon. And I think that's somewhere around \$5,000 a unit is
25 what we pay for those to have those replaced.

1 Q So this system -- is this system, is the HVAC system in
2 good working order?

3 A Yes. Absolutely.

4 Q And do you typically replace a functioning system if
5 instead it can be repaired and maintained?

6 A No.

7 Q Are there any third-party entities that monitor or
8 evaluate the property conditions at The Edgemere?

9 A Yeah. So we have -- we have CMS, which is Center for
10 Medicare and Medicaid Services, specifically for our Health
11 Center, our higher levels of living -- skilled nursing,
12 assisted living, and memory care -- that they do yearly
13 inspections.

14 We also have an FPA. The Fire Marshal will come out that
15 does inspections as well of every -- I mean, they check food
16 temps, they check exit signs. I mean, they're very thorough.

17 Q Okay. So I believe you just said that the CMS would
18 evaluate the skilled nursing, the assisted living, and the
19 memory care. Is that right?

20 A Correct.

21 Q And then are there any other third-party entities that
22 monitor or evaluate the property conditions?

23 A The State Fire Marshal will do yearly inspections as well,
24 along with the local City Fire Marshal.

25 Q When was the last time the property was inspected by one

1 of those entities?

2 A I don't know the date exactly. Within the last six
3 months. Actually, it was during the Terracon report. That's
4 when it was. When Terracon was doing their tour, CMS was on
5 the property doing their annual inspection.

6 Q So, CMS was on the property in July of 2022?

7 A Correct. Yes.

8 Q And when was the last time the City of Dallas was on the
9 property?

10 A So, we just had a certificate of occupancy inspection from
11 the City of Dallas, from the City of Dallas Building
12 Department, within the last three months, maybe four months.
13 It's been very recently.

14 Q So the City of Dallas was there for the certificate of
15 occupancy issue since Terracon was there, after Terracon was
16 there?

17 A Correct. Yes.

18 Q And what is it that the City of Dallas looks at?

19 A So, they send out all the inspectors. They send out the
20 plumbing inspector, the building inspector, the Health
21 Department inspector, mechanical inspector. It's all -- a
22 certificate of occupancy, you get when you first open a
23 community or when a community is sold or there's different
24 things that can prompt those. And it was found through a
25 liquor license thing that we needed to update our certificate

1 of occupancy. So they scheduled all of the tours to come out.

2 Q So, did the City of Dallas issue the certificate of
3 occupancy?

4 A Yes. They did.

5 Q Would the City have issued a certificate of occupancy if
6 there were repairs that needed to be done?

7 MS. VANDESTEEG: Objection as to --

8 THE WITNESS: No.

9 MS. VANDESTEEG: -- foundation for this witness in
10 terms of what that scope of repairs would be that the City
11 might be addressing.

12 THE COURT: Please lay the foundation.

13 MS. WALSH: Well, let me ask a different question.
14 Withdrawn.

15 THE COURT: Fair enough.

16 BY MS. WALSH:

17 Q Did the City identify any issues that needed to be
18 addressed while they were onsite in connection with the
19 certificate of occupancy?

20 A Yes. The Health Department inspector, health food
21 inspector, there was a soda machine, a pop machine, like a
22 fountain machine installed sometime over the years, and she
23 wouldn't give us a certificate of occupancy until we tiled the
24 wall behind that. I think she wrote that a corner guard was
25 cracked and broke in the kitchen, and so we had to replace

1 that. And I think -- I think those were the only two
2 citations we got throughout the whole inspection process.

3 Q So the City Inspector noticed cracked tiles behind the
4 soda machine, right?

5 A No tiles. Yes.

6 Q Oh, no tiles? Thank you. And the community addressed the
7 missing tiles behind the soda machine. And I think you said a
8 corner guard?

9 A Yeah. Within -- within a week's time, we had to have it
10 all completed. They give you deadlines when they give you
11 citations like that. And so I believe -- I believe we had a
12 week to get those repaired or fixed and then send pictures in
13 to the City.

14 Q Is the City looking at the same part of the facility that
15 CMS looked at?

16 A No. They go -- I would say they went a little more in
17 depth. I mean, CMS doesn't necessarily drill into electrical
18 rooms. They'll -- they'll peek in there, in mechanical rooms.
19 Compared to the City, I mean, they walked every square inch of
20 the electrical rooms and mechanical rooms.

21 Q And CMS doesn't look into the independent living, right?

22 A Correct.

23 Q But the City of Dallas did?

24 A Yes. And a lot of the systems are the same when it comes
25 to the electrical rooms and some of the mechanicals and stuff.

Soden - Cross

80

1 They share systems.

2 Q So, within the past six months or so, the entire campus
3 has been evaluated by a government entity, right?

4 A Correct.

5 Q And I believe you mentioned that there has been a recent
6 fire inspection, right?

7 A Yeah. So, we do quarterly fire inspections. And they're
8 -- it's broken up. With a larger community like that, you
9 break it up. I mean, the fire inspectors would be there for a
10 month straight through our third-party company. And so they
11 come in four times a year and break up the community to where
12 the entire community gets an inspection once a year.

13 Q Overall, how would you describe the current condition of
14 The Edgemere?

15 A Everything is beautiful. It's in -- it's in great
16 condition. I mean, it's The Edgemere. That's what everyone
17 calls it.

18 MS. WALSH: Your Honor, I'd just like a few minutes
19 to just confer. Thank you.

20 (Pause.)

21 BY MS. WALSH:

22 Q Mr. Soden, I think I have one more question for you.
23 Could you please tell me the results of the fire inspection?

24 A I don't know the exact results, but I know, I mean, from
25 time to time they'll find a light bulb out in an exit sign,

1 something like that, that we'll repair.

2 You know, CMS, if they find anything like that, we have a
3 very short time frame. So, anything that would have blew us
4 out in that report is -- is addressed immediately, because
5 it's part of our licensing for the community.

6 Q And what was the result of the CMS inspection?

7 A Again, sorry, I don't know -- I don't know the specifics,
8 but CMS always finds something. I mean, it doesn't matter if
9 the food is a quarter of a degree off. If that's what they
10 want to find, they're going to find it. And so I would assume
11 that there was some citations, because it's -- it's one in a
12 billion to get zero citations from CMS.

13 And there's different severities of tags, is what they
14 call it, where -- from not a big deal at all, all the way up
15 to what they call an IJ, an Immediate Jeopardy. I can say
16 with a hundred percent confidence we have not got an Immediate
17 Jeopardy.

18 And so, yeah, I'm not -- I'm not certain on the exact
19 tags, but CMS has strict guidelines. You have 30 days. And
20 they will come and reinspect, or depending on if it's, you
21 know, like -- they'll write, like, a box in front of an
22 electrical panel, okay, which technically you're not supposed
23 to have, someone set a box there. A lot of times you can just
24 send CMS a picture and they'll say, Okay, that tag is cleared.
25 But you only have 30 days max, unless you file an appeal with

1 CMS.

2 Q So, as a result of the CMS inspection, was -- did Edgemere
3 -- what was the result of The Edgemere inspection? Was it
4 rated a five-star facility?

5 A It was. So, we passed the inspection, and then we did get
6 our five-star rating for the Health Center.

7 Q So, to the extent there were any issues that were
8 identified, they have -- have they all been addressed?

9 A Yes. A hundred percent.

10 Q Because if they hadn't been addressed, you would not have
11 gotten the five-star rating, right?

12 A Correct. The severity of the tags directly reflect -- or
13 severity and not completing them directly affects your five-
14 star rating. So if we would have gotten anything that was
15 severe, it would have knocked down the five-star rating, and
16 if we wouldn't have fixed anything, it would have knocked down
17 the five-star rating. And five stars is high -- is high as
18 you can go.

19 Q Okay.

20 MS. WALSH: All right. I have nothing else for this
21 witness at this time. Thank you.

22 THE COURT: Thank you. Does anyone else wish to
23 cross-examine Mr. Soden?

24 MS. WALKER: Bay 9 declines. Thank you.

25 THE COURT: Okay. Thank you very much. Any

Soden - Redirect

83

1 redirect?

2

REDIRECT EXAMINATION

3

BY MS. VANDESTEEG:

4

Q Hello again, Mr. Soden. You were just talking -- excuse

5

me -- with Trustee's counsel about CMS. Can you tell us

6

again, what is CMS?

7

A The Center for Medicare and Medicaid Services.

8

Q Great. And I think what we're talking about here is CMS

9

has developed, would you agree with me, that what the test is

10

relates to their life safety code and the health care

11

facilities code requirements? That's the test that we're

12

talking about and the facility's site visit investigation that

13

they were doing. Right?

14

A Correct.

15

Q Do you know how CMS defines their life safety code and

16

health care facilities code requirements?

17

A No, not the entire code, no.

18

Q Okay. If I were to tell you that on their own webpage CMS

19

provides the following standards and definitions for what this

20

entails, CMS provides that the LSC -- and that's Life Safety

21

Code, right?

22

A (no audible response)

23

Q Is that a yes?

24

A Correct.

25

Q Thank you.

1 A Yes. Correct. Sorry.

2 Q The LSC is a set of fire protection requirements designed
3 to provide a reasonable degree of safety from fire. It covers
4 construction protection and operational features designed to
5 provide safety from fire, smoke, and panic. Would that
6 comport with your understanding of what CMS intends the Life
7 Safety Code standards to be?

8 A Yes.

9 Q And then we're talking about the health care facilities
10 code requirements, right?

11 A Correct.

12 Q And this is where you're saying that Edgemere received a
13 five-star rating for health care facilities and code
14 requirements by CMS, right?

15 A Correct.

16 Q Okay. So if I were to tell you that CMS defines its
17 standards and requirements with respect to -- and they refer
18 to it as HCFC for that Health Care Facilities Code
19 requirements -- if I were to tell you that CMS provides that
20 the HCFC is a set of requirements intended to provide minimum
21 requirements for the installation, inspection, testing,
22 maintenance, performance, and safe practices for facilities,
23 material, equipment, and appliances, would that comport with
24 your understanding of what those HCFC requirements are
25 pursuant to the CMS standards?

Soden - Redirect

85

1 A Yes.

2 Q So, again, for purposes of that five-star rating, Edgemere
3 had to demonstrate that it had those minimum requirements in
4 place. Correct?

5 A Correct.

6 Q Now, CMS, neither under its LSC nor its HCFC standards and
7 requirements, it's not inspecting the building envelope,
8 correct? Not the stucco?

9 A Correct.

10 Q And it's not inspecting the roof, correct?

11 A Correct. But in both instances, if a complaint was filed
12 with CMS related to those, then they would actually --
13 absolutely look at those. Like, if there was a roof leak in a
14 complaint or a stucco leak in a complaint submitted to them,
15 then they would come and investigate that.

16 Q I'm talking about just as part of their standard
17 investigation, as you said they were onsite doing their annual
18 inspection back in July of 2022. They weren't looking at the
19 stucco and they weren't looking at the roof, right?

20 A Correct.

21 Q And CMS at that time was not looking at the HVAC system.
22 Correct?

23 A Correct. As part of their normal questioning of residents
24 and team members, they will ask questions like that, if the
25 HVAC system is functioning, because they do confidential

1 questioning of a certain amount of team members and residents.

2 Q Did CMS do any visual inspection of the HVAC system?

3 A No, not to my knowledge.

4 Q Did CMS do any visual inspection of the parking garage or
5 the expansion joint in the parking garage?

6 A No, they did not.

7 Q Does the State -- does the Fire Marshal that you talked
8 about, in connection with their inspections, do they evaluate
9 the stucco or the building envelope?

10 A They do not.

11 Q Do they evaluate the roof?

12 A They do not.

13 Q Do they evaluate the parking garage and any expansion
14 joints in the parking garage?

15 A No.

16 Q And what about the City of Dallas in connection with the
17 certificates of occupancy: Does the City of Dallas evaluate
18 the building envelope or the stucco?

19 A As part of our tour, we did not. I would -- we did not
20 walk the exterior, no.

21 Q Does the City of Dallas inspect the roof?

22 A We did not, as part of the tour.

23 Q Does the City of Dallas inspector evaluate the HVAC
24 system?

25 A They did look at all mechanical equipment.

Soden - Redirect

87

1 Q Did the City of Dallas provide you with a specific
2 evaluation of the existing HVAC system at The Edgemere?

3 A They did not. They just gave us the certificate of
4 occupancy, that we passed the inspection.

5 Q Did the City of Dallas inspect the parking garage and the
6 expansion joint in the parking garage?

7 A They inspected the parking garage. We walked through to
8 the parking garage. But I'm unaware of the expansion joint
9 specifically.

10 Q Okay. Thank you. You mentioned that part of your
11 expected repair, remediation, and other things that you would
12 expect to do with respect to the building envelope would not
13 just be repairs, but also, from your view, an aesthetic
14 repainting of the facility. Is that -- am I summing that up
15 correctly?

16 A Correct.

17 Q Isn't it true, Mr. Soden, that painting over repairs in
18 stucco is not just an aesthetic component, it's also
19 preventative in that it further impacts the life and the
20 overall stability and structure of that stucco material?

21 A Yes. Painting with the right material, yes, it does help
22 protect any repairs made.

23 Q Thank you, Mr. Soden.

24 MS. VANDESTEEG: I have nothing more.

25 THE COURT: Thank you very much, Ms. Vandesteeg.

Soden - Redirect

88

1 Anything further for the witness?

2 MS. WALSH: Nothing further from Plan Sponsors.

3 MS. WALKER: No, Your Honor.

4 THE COURT: Okay. Well, thank you very much, Mr.

5 Soden, for your testimony today. You may get down from the
6 proverbial stand. Appreciate it.

7 THE WITNESS: Thank you.

8 (The witness steps down.)

9 THE COURT: All right. Ms. Vandesteeg?

10 MS. VANDESTEEG: Your Honor, at this point we would
11 turn to Plan Sponsors to determine whether they are planning
12 on calling a rebuttal witness, their rebuttal expert in
13 connection with Terracon.

14 THE COURT: Okay. Have you closed your evidence?

15 MS. VANDESTEEG: We have, Your Honor, but we have --
16 we have closed our evidence in chief. I will point out that
17 we had designated potentially ARCH as being a witness on our
18 side as well.

19 THE COURT: Right.

20 MS. VANDESTEEG: However, at this point, Your Honor,
21 we are going to rest on the evidence that we have presented,
22 subject to our right, then, to cross ARCH in the event that
23 they are called as rebuttal.

24 THE COURT: Of course.

25 MS. VANDESTEEG: Thank you.

1 THE COURT: Okay. Thank you very much.

2 All right. So, ICI has closed. Ms. Musgrave, Ms. Walsh?

3 MS. MUSGRAVE: Your Honor, I think it would be
4 helpful for us, since ICI has closed its evidence, if we could
5 just have a five-minute break.

6 THE COURT: Fair enough. Excellent.

7 MS. MUSGRAVE: Thank you, Your Honor.

8 THE COURT: All righty. And, actually, I have
9 something that I need to attend to. So, it is 1:42. I'll be
10 back on the bench at 2:00. All righty.

11 THE CLERK: All rise.

12 MS. VANDESTEEG: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 (A recess ensued from 1:42 p.m. to 2:05 p.m.)

15 THE CLERK: All rise.

16 THE COURT: Please. Be seated. Thank you very much.
17 We're going to go back on the record in Case No. 22-30659. I
18 think when we last broke ICI had closed on its evidence and I
19 was waiting to hear from the Plan Sponsors.

20 MS. MUSGRAVE: Your Honor, the Plan Sponsors have no
21 witnesses to present at this time.

22 THE COURT: Okay.

23 MS. MUSGRAVE: We're prepared to proceed to closing
24 arguments.

25 THE COURT: Okay. So both parties have rested.

1 MS. WALKER: Your Honor?

2 THE COURT: All parties, excuse me.

3 MS. WALKER: Not all parties.

4 THE COURT: Or not. Okay.

5 MS. WALKER: Thank you. Your Honor, Bay 9 would like
6 to call Mr. Winnecke to the stand.

7 THE COURT: Okay.

8 MS. MUSGRAVE: Your Honor, I am going to lodge an
9 objection at this time. I understand that Bay 9 was entitled
10 to proceed in a limited way in this manner, but I think the
11 Court was pretty clear we weren't going to have a spinoff
12 litigation within this one, and so I think our decision not to
13 call the witness ought to stand at this time.

14 THE COURT: Okay. Ms. Walker?

15 MS. WALKER: Your Honor, with permission of the
16 Court, we are asking to confirm that we still do have a
17 pecuniary interest. Your Honor, you made that determination.
18 And I think Your Honor would agree we've demonstrated
19 restraint in the entire proceedings.

20 And Your Honor, I think you'll agree the reason why we
21 have a pecuniary interest is because we have an offer to
22 purchase this project for \$48.5 million. Whatever Your Honor
23 decides as far as cure is going to have a dramatic impact on
24 how we bid at the auction, how anybody else looks at this
25 property.

1 Mr. Winnecke has put a property conditions report in -- in
2 -- not into evidence. I would like to pursue it to be into
3 evidence. And it has a direct impact on our position in this
4 case.

5 And Your Honor, for purposes of this evidentiary hearing,
6 we did submit a statement designating Mr. Winnecke as our
7 expert and for adequate assurance and our witness for today.
8 We've also identified that his report would be pursued to be
9 admitted into evidence. We've already said that.

10 And we did that primarily because we didn't want to be in
11 this position today of having -- that Plan Sponsors rest. And
12 so we're not seeking him as rebuttal. We're seeking him as
13 our own evidence for the Court, which, Your Honor, this is a
14 contested matter and we do believe we're within all four
15 corners of 914 to pursue this.

16 THE COURT: Thank you, Ms. Walker.

17 Ms. Musgrave?

18 MS. MUSGRAVE: Your Honor, here's my concern. The
19 stalking horse is a bidder at this point in the process and
20 not a party to this proceeding. And I think what Ms. Walker
21 just said is exactly the issue, which is that this is now
22 verging very much into the question of what is cure and what
23 is adequate assurance, which is exactly what the Court said we
24 were not going to do here today.

25 So our objection stands, and our decision not to call any

1 witnesses in the case ought to be the end of the hearing, and
2 any other issues ought to be pursued at the adequate assurance
3 point when that time comes.

4 MS. WALKER: Finally -- may I just, finally? Your
5 Honor, whatever you decide today is cure, we're going to be
6 relying upon that. We're going to be saying down the road,
7 when this Landlord, the day after we close and says, you know
8 about all that stucco, you have to repair it, and we're going
9 to say, you know what, there is an order of this Court saying
10 that was cured. And unless Your Honor has all of the evidence
11 before you, we run the risk of having a later attack.

12 So, yes, today is precisely cure. We have a pecuniary
13 interest on what is cure versus adequate assurance. We have a
14 witness here today who's ready, able, and willing to testify
15 about the conditions that he personally observed that go
16 directly to the relevance of what you're about to determine.

17 So, yes, we do think that it's -- we have a pecuniary
18 interest and we do have standing on this issue. We have a
19 witness who's credible and able to testify. And we designated
20 him. The fact that another party doesn't want to call it,
21 that's their choice.

22 THE COURT: Thank you, Ms. Walker.

23 Ms. Musgrave?

24 MS. MUSGRAVE: Your Honor, other bidders are not here
25 asking the same treatment and the same opportunity at this

1 point in the proceeding. And the cure portion of this case is
2 not the pecuniary interest of the bidder.

3 Certainly, they have an interest in adequate assurance,
4 but that's where the distinction needs to be drawn. And I
5 think the Court was quite clear about that. This hearing was
6 to establish cure.

7 MS. WALKER: And --

8 THE COURT: Ms. Walker?

9 MS. WALKER: -- for the risk of -- for the risk of --

10 MS. MUSGRAVE: I'm sorry, Your Honor. I just want to
11 modify just a footnote to what I said.

12 MS. WALKER: Please.

13 MS. MUSGRAVE: This hearing is to establish the
14 estates' claim for cure.

15 THE COURT: Thank you.

16 MS. WALKER: And at the risk, Your Honor, we bid
17 under an APA that said that the Seller is to cure. Our
18 purchase price was dependent upon -- and the purchase price we
19 had -- if we were to cure -- if we were to kick the can and
20 say it's non-cure because we weren't able to put on this and
21 let's kick the can to adequate assurance, we have lost that
22 bite at the apple, and that was primarily, when you negotiate
23 an APA, it has all of those features.

24 Thank you.

25 THE COURT: Okay. Thank you.

1 MS. MUSGRAVE: Your Honor, I'm sorry. One more, one
2 more point that I would raise for the Court's consideration.
3 I think Ms. Walker said that their expert is here today. This
4 is their expert on adequate assurance, not their expert on
5 cure, and this is a proceeding to determine the property
6 condition cure.

7 MS. WALKER: We don't disagree with that. He is a
8 witness and he can testify.

9 THE COURT: Okay. Let me find the asset purchase
10 agreement. If anyone has a good cite, a docket reference.

11 MS. WALKER: I wish I did. It's attached to the
12 bidding procedures order, though, Your Honor.

13 THE COURT: Okay.

14 (Pause.)

15 MS. GREEN: Did the Court find the bidding
16 procedures?

17 THE COURT: Not yet, Ms. Green.

18 MS. GREEN: Okay. I believe it is --

19 THE COURT: Oh, just my random scroll found it.
20 Okay. Thank you. Apparently I was close enough.

21 (Pause.)

22 (Discussion amongst counsel.)

23 THE COURT: Oh, I'm sorry, if you all are still
24 looking for it. It is ECF 946, if you guys are looking for it
25 --

1 MS. VANDESTEEG: Thank you, Your Honor.

2 THE COURT: -- as well.

3 (Pause.)

4 THE COURT: I'm just working through the definitions.
5 Just one second.

6 MS. WALKER: Sure. Of course. It's your court.

7 (Pause.)

8 THE COURT: So, in terms of the APA, because I'm not
9 sure that the schedules are fully built out, and that's not
10 uncommon at this stage, --

11 MS. WALKER: That's right.

12 THE COURT: -- can I assume that the definition of
13 "Assumed Contracts," which would include executory contracts
14 and unexpired leases to be assumed by the bidder as part of
15 the assumption and assignment, can I assume that that would
16 encompass the ground lease with ICI?

17 MS. WALKER: Yes, Your Honor. It's actually more
18 particular. When you look at the asset purchase agreement --
19 and actually, I will -- someplace, I must have it in my notes
20 -- we expressly say that we are going to assume -- and,
21 actually, we put this into our filing last Friday.

22 THE COURT: Okay.

23 MS. WALKER: We say that the reason why we're here
24 and primarily participating is because we agreed to cure all
25 leases except for the ground lease. And the ground lease, the

1 Sellers are. And that's where it went into our purchase price
2 consideration, was knowing that we were going to get a lease
3 without any monetary or nonmonetary defaults, that those were
4 going to be cured.

5 So, when you look through the APA, it actually has a few
6 parentheticals: except for the ground lease that the Sellers
7 are going to cure. And cure amount includes the monetary and
8 nonmonetary defects. Defaults, excuse me. Defaults.

9 THE COURT: Just one second.

10 (Pause.)

11 MS. WALKER: Your Honor, I was able to find the pin
12 cite in the APA that I was just referencing, if you were --

13 THE COURT: Please.

14 MS. WALKER: If that's where you're looking. So,
15 yes, at exhibit to 946. So, in the APA, it's Section 2.3(a)
16 and 2.5(d). And that's where -- where you're going to find
17 the cure is the Sellers' and the adequate assurance.

18 THE COURT: Okay. Thank you very much.

19 MS. WALKER: Thank you.

20 (Pause.)

21 THE COURT: Thank you.

22 (Continued pause.)

23 THE COURT: Okay. So, I've had an opportunity to
24 refresh my recollection of the APA. So I guess my question to
25 you, Ms. Musgrave, is this: If the time is not now, when is

1 the time for a bidder to determine, from their perspective,
2 what is cure and what is adequate assurance of future
3 performance? Or is your position that any bidder would
4 essentially have to rely upon this Court's ruling today
5 without any bidder intervention, so to speak?

6 MS. MUSGRAVE: I appreciate the question, Your Honor.
7 I'm going to defer to Mr. Bleck on this one.

8 THE COURT: Please. Mr. Bleck?

9 MR. BLECK: Yes. Good afternoon, Your Honor.

10 So, I think we're -- we have to take a step back. So,
11 when we were walking through the issues regarding setting the
12 schedule here, one of the things that we wanted to do was
13 establish the amount of the cure claim so that bidders
14 understood and the estate understood what the obligation of
15 the estate would be to cure this obligation.

16 We also said that a bidder, if it's successful, will have
17 to determine at the time of the hearing on the approval of the
18 sale to prove it can provide adequate assurance of future
19 performance. And each bidder can show a different way or a
20 different avenue to show adequate assurance of future
21 performance. So we expected that at that hearing any bidder
22 that was successful would be addressing this question.

23 I guess what I'm struggling with here, Your Honor, is that
24 the APA was negotiated. And I'll say it this way. The estate
25 was saddled with the cure claim associated with the Landlord's

1 obligations. That was a negotiated deal. We all understood
2 that. All the other cure obligations are on the buyer under
3 this structure.

4 And so we said, we'll take the risk of cure. But then
5 we're going to have the ability to determine what that cure
6 amount is. The estate should have the ability to contest the
7 amount of the cure claim and have the Court establish the cure
8 claim.

9 The bidder obviously has a different perspective here.
10 They want to move as much in the bucket of cure as possible,
11 because, if it's not, then it's an obligation that may rise in
12 the future regarding certain abatements and repair, or call it
13 what you want, going forward. So it's a classic shifting of
14 the buckets or the table or the balance sheet.

15 And what we're struggling with is this was a negotiated
16 deal. We agreed to take on the cure costs, but we have the
17 right to object to the cure. We've put on our case. We've
18 decided to rest. There shouldn't be the ability of the bidder
19 now to try to interject itself into these proceedings. If
20 they intended to do this, they could have negotiated it as
21 part of the APA as well, that they have standing to pursue
22 this claim.

23 We understood the risk we were going to take, and we
24 accepted that risk, understanding that we were going to have a
25 dispute with the Landlord as to the amount of the cure, not

1 with respect to the bidder.

2 THE COURT: Thank you, Mr. Bleck.

3 MR. BLECK: Thank you.

4 THE COURT: Ms. Walker, anything further?

5 MS. WALKER: I actually don't agree -- I don't
6 disagree with most of what Mr. Bleck just said. Yes, it was
7 negotiated. But it wasn't negotiated, it doesn't say in the
8 APA, Bidder, you have no say or no voice or no opinion as to
9 what the cure amount is. Because, clearly, the Plan Sponsors
10 and the Seller would love for the cure to be as small as
11 possible. That's common sense.

12 It's also common sense, when the bidder put in their
13 stalking horse bid, it had a view when it negotiated the
14 purchase price on what might be cure and what might be
15 adequate assurance. There was nothing that said, you cannot
16 participate. If there was, we would have negotiated that.
17 But we have standing, was a pecuniary interest in the ultimate
18 outcome of this the proceeding.

19 So this is the time. We designated this witness a few
20 days ago under Your Honor's process. Nobody objected.

21 THE COURT: Uh-huh.

22 MS. WALKER: We filed the statement. And they
23 objected originally that we would even participate, so I'm not
24 saying they had no voice, they had no opinion. But when we
25 raised this, we put this on the table, we have an opinion of

1 what cure should be. We have participated in that process.
2 We have isolated the area of dispute, as Your Honor -- when we
3 filed what we said on Friday, we said, façade, the exterior
4 façade.

5 So we have pursued this. We have filed these statements.
6 And we have questions of a witness that we put on our list
7 that was told to us was going to be here. And we take the
8 position that we have an opportunity to fully examine that,
9 because it is today. And we're going to be relying on that.

10 So, ultimately, whatever Your Honor decides is cure, of
11 course that is the final determination. But then we're going
12 to use that. We are certainly going to use that and say, you
13 know what, that's -- if you think that quarter-inch is fine
14 and that's not a defect, we're going to say that after the
15 case. And I'm going to rely on that.

16 So we just have an opinion, and we have a witness, and we
17 would like to ask some questions of that witness.

18 THE COURT: Okay. Thank you again, Ms. Walker.

19 Anything further, Ms. Musgrave or Mr. Bleck?

20 MR. BLECK: No, Your Honor.

21 THE COURT: Okay. It's 2:30. The Court is going to
22 take a brief recess, and I'll return at 2:45.

23 MS. WALKER: Thank you, Your Honor.

24 THE CLERK: All rise.

25 (A recess ensued from 2:26 p.m. until 2:46 p.m.)

1 THE CLERK: All rise.

2 THE COURT: Please. Be seated. We're going to go
3 back on the record in Case No. 22-30659. And I'm going to
4 address specifically whether Bay 9 Holdings, as part of this
5 hearing, will be allowed to call its own witness with respect
6 to the issues of cure pursuant to 365 of the Code.

7 The Court is not going to allow Bay 9 to call a separate
8 witness today, and there are a handful of reasons for that.
9 Number one, as part of the lead-up to today's hearing, the
10 Court was clear that it did not want to delve into the
11 potentiality for any separate fight, let's just say, between a
12 bidder and the Plan Sponsors.

13 Number two is the reason that generally a bidder is not
14 entitled to standing on a matter like this prior to a sale.

15 The third reason is that although Bay 9 is the stalking
16 horse, and I certainly appreciate the elevated interest a
17 stalking horse may have in 365 rather than that of any other
18 bidder, at this juncture, being only the stalking horse,
19 they're not the winning bidder.

20 And finally, again, I do believe that this is in keeping
21 with the Court's prior holding that I would allow the
22 participation of Bay 9 in the hearing. But I think that the
23 request is to go a step further than that, which is
24 essentially that we would be the rejiggering at this point and
25 creating essentially a new adversarial posture, so to speak,

1 between the Plan Sponsors and the stalking horse that I don't
2 think that, in all fairness, the Plan Sponsors would have
3 prepared for, so to speak. So it would be a wee bit of an
4 ambush litigation in that way.

5 And finally, I do believe that the burden, again, of cure
6 and of default is on the Landlord. And I think that this
7 would -- I don't know if it would be a switching of the
8 burdens or essentially just kind of a spinning top of burden
9 on cure and default if I were to allow the interjection of new
10 evidence to be put on by Bay 9 at this point.

11 Now, given this request, the Court will, as part of its
12 ruling, determine if there is another time for this fight.
13 The Court wants to have a little bit more time with the APA
14 before making that determination. And just in the small bit
15 of time that I took today to come back out here and rule,
16 again, primarily on standing and other issues, I don't think
17 that I've had sufficient amount of time to parse through the
18 way that the APA will work in terms of shifting liabilities
19 and whether or not this Court's ruling with respect to the
20 hearing over the last two days will be the be-all end-all.

21 So, with that said, and the Court's reservation to more
22 thoughtfully consider that particular issue, I am going to
23 deny the stalking horse the right to affirmatively call its
24 own witness as part of the hearing today, and we'll move on to
25 closings.

1 MS. WALKER: Your Honor, may I just ask for
2 clarification of whether we may proceed and ask some
3 argumentation -- some arguments in closing?

4 THE COURT: Yes, you may.

5 MS. WALKER: Thank you, Your Honor. And I don't
6 think, because of the need for a determination as to cure
7 before the bidding, I don't think we're going to be asking the
8 Court for a further hearing on this matter. Our goal is to
9 simply have a determination as to what is the default. So I
10 just want -- I don't -- to the extent -- I appreciate you
11 reserving, because we didn't intend to sandbag anybody,
12 because we put it on the record we were going to do this.

13 THE COURT: Right.

14 MS. WALKER: And so I don't know if the Landlord is
15 going to do anything different, because I think they were
16 presuming the Plan Sponsors would bring the witness, and I had
17 said that we were going to. So it was nobody's intent to
18 ambush. We're not seeking other -- our goal is simply to
19 know, at the end of the day, what's a default and what's not a
20 default. So, thank you.

21 THE COURT: I do appreciate that. Thank you.

22 Okay. In terms of closing, I think we're going to have
23 enough time to close today, based upon the time. Do the
24 parties have any thoughts on how we proceed in terms of
25 closing arguments? Ms. Musgrave?

1 MS. MUSGRAVE: Yes, Your Honor. Thank you. I think,
2 if Bay 9 is going to give a closing, they ought to go first,
3 which would give the parties that have presented evidence here
4 today the opportunity to then respond in their remarks as
5 well.

6 THE COURT: Okay. And is the thought Bay 9, then the
7 Plan Sponsors, with the final word being by the Landlord?

8 MS. MUSGRAVE: That's what I assume, since the
9 Landlord has the burden.

10 THE COURT: Fair enough. Thank you.

11 Ms. Walker, are you prepared to go, or do you need a brief
12 minute?

13 MS. WALKER: No, Your Honor. In the interests of
14 time, I'm happy to go, --

15 THE COURT: Okay.

16 MS. WALKER: -- although I appreciate the opportunity
17 to be able to present to Your Honor.

18 CLOSING ARGUMENT ON BEHALF OF BAY 9 HOLDINGS, LLC

19 MS. WALKER: And I actually think, after sitting
20 through, and I do think we have intentionally kept a bit of a
21 Switzerland between the two parties, and I think that's
22 generally where we are, despite the last back-and-forth,
23 which, again, Your Honor, we had no intent to sandbag anybody.

24 THE COURT: Yes.

25 MS. WALKER: But Your Honor, I think the most salient

1 fact that you heard in the entire proceeding came from Mr.
2 Soden, at least as far as Bay 9. And the question very much
3 succinctly presented was, is the stucco in good condition?
4 And he said no, it's not in good condition. And Your Honor,
5 under 5.8 of the lease, it says you need to keep the property
6 in good and safe repair.

7 And so we have been here primarily and my remarks are
8 going to be really as to the façade, --

9 THE COURT: Uh-huh.

10 MS. WALKER: -- and our primary issue, is that the
11 evidence that you've heard from every witness has been that
12 there are defects in the stucco. Every witness, from the
13 first one, ICI's Mr. Hannon, who said on his two tours, even
14 though they weren't the exhaustive ones that he wanted, there
15 were defects. He could see them, you know, not maybe a mile
16 away, but definitely at a great distance. And in his opinion,
17 it was, in his experience as 50 years in real estate, those
18 ought to have been repaired.

19 We also heard how these items were not -- they're not
20 surprises. They didn't happen because of a storm. They've
21 been building up for years. You had capital expense budgets
22 that identified these. And while they might be shoot-for-the-
23 moon issues, they really weren't as far as the façade, because
24 at each level they were there.

25 And the only reason, and you heard this at the end of the

1 day from the CFO at Lifespace, was it was a financial -- they
2 were in financial distress. And that's very common for
3 bankruptcy judges and bankruptcy courts to see this. They
4 knew it was there and they just tried to kick the can down the
5 road.

6 And so now we hear Mr. Soden, who confirms, their -- the
7 Debtors' own person, says this is not in good condition.

8 And of course, Your Honor, you heard from Terracon. And
9 Terracon, too, said, I inspected this. I saw it with my own
10 eyes. And I, too, agree that there were defects in the stucco
11 that rose to the level of needing to be repaired.

12 All of these conditions were there at various points of
13 time over a series of years. This is nothing new. This is
14 not a surprise. This is a defect that has been existing and
15 brewing even greater.

16 We don't know what the magnitude of the dollars are.
17 We're not presuming what they are. We heard evidence of
18 estimates from three to five or more, depending on what the
19 ultimate bid comes in. But the nonmonetary defect is
20 precisely what the Bankruptcy Code requires be cured, and
21 that's precisely what the lease requires that the Seller do.
22 It requires a repair up to the reasonably prudent standard
23 under the *Nadler* decision.

24 So, Your Honor, what we see is we're going to eventually,
25 hopefully, be the successful winner. And we're going to be

1 here hopefully in a couple weeks saying we have complete
2 ability to prove our adequate assurance.

3 But in order to do that, we're going to say that this
4 defect needs to be cured because it rises to the level of a
5 default under the lease because the lease says good and safe
6 repair. Mr. Soden agrees. It's not in good condition.
7 Nobody agrees it's in good condition. The overall campus
8 might be beautiful, but you saw the pictures yourself of the
9 stucco. You saw the cracks. You cannot deny that that is a
10 problem that needs to be done.

11 So our view is very simple. There could be other defects.
12 We've left that to the Landlord and everybody else to fight.
13 But it is plainly, uncontrovertedly clear that those stucco
14 defects need to be remedied.

15 Now, I hope, as the successful future representative
16 owner, right, that it's just the stucco. We don't know. But
17 what we do know is that is a defect, you need to understand
18 what it is, you need to just solve it. And that's -- and
19 that's our request. Your Honor, there are ways that you can
20 address that, of course. During the sale, there are going to
21 be some sale proceeds.

22 Totally respect that the Landlord doesn't care who pays
23 for it. And I totally respect that the Seller and Plan
24 Sponsors completely care who pays for it. And all we want to
25 do is our fair, bargained-for exchange of getting a building

1 that's cured of these of nonmonetary defects.

2 So, in closing, Your Honor, you heard from every witness
3 who saw the building. They all saw the defects. You've heard
4 from a project property consultant expert. It's their job to
5 observe and report. They did that.

6 The Debtor had gotten their own consultants. And while
7 that -- that -- reports aren't in evidence, you heard that
8 they got these reports. Why else would you have gotten and
9 hired two project property assessments if you didn't think
10 there was a problem? It had been a problem brewing for years.
11 They recorded it. They put it in their capital expense
12 budgets. It's now time to pay.

13 I know they're in bankruptcy. Cash has been tight. They
14 have been limited on what they can spend with their debtor-in-
15 possession financing. But that's not the Buyer's
16 responsibility. We negotiated otherwise.

17 And we ask the Court to find that this is a default,
18 because a reasonably prudent person -- even Mr. Soden agreed
19 it's not in good condition -- a reasonably prudent person
20 should have repaired this. And now is the time to pay for it.

21 Thank you.

22 THE COURT: So, I have a question for you, Ms.
23 Walker.

24 MS. WALKER: Yes.

25 THE COURT: I've obviously over the last two days

1 heard a great deal of evidence. And I've heard a great deal.
2 I think I'll take some of the terminology from I think it was
3 Mr. Hannon that says, there are symptoms. There are symptoms
4 of issues in the stucco. But no one brought me a forensic
5 stucco expert. They exist. No one brought me anyone that's
6 put a moisture meter up to the stucco and said, there's water,
7 there's water intrusion, there's water behind the stucco,
8 that's a problem.

9 And so my question is, am I being asked to declare a
10 default under the lease because -- I saw at least the one
11 picture of cracks, and I saw the picture of staining -- am I
12 asked to declare a default under a lease based upon those
13 symptoms?

14 MS. WALKER: I think you're asked, at least we are
15 asking you, to find a default into the condition of the
16 stucco. In order to repair the stucco, you may need to look
17 and see what is causing that. And I think that's the defect
18 we're asking.

19 Now, I think what you've heard the witnesses say today,
20 and Terracon say yesterday: When you're doing the repair, you
21 could put -- you could just patch it, but it's not going to
22 solve it. So any prudent owner would make an understanding of
23 the source. And I think we heard, for the water infiltration,
24 sometimes you have to find the source, and it may be so many
25 yards away. Perhaps that's what you need to do with the

1 stucco as well.

2 Because if it only requires patching because there's no
3 other problem, great. That would be what we would hope is
4 found. And maybe it's just age and those cracks happen. We
5 don't know. But if you -- when someone comes out to actually
6 bid on the project to do the repair, that sometimes in the
7 construction world, as Your Honor told us you had experience
8 in, sometimes you find the source. So, when you're fixing --
9 you know, I draw these great analogies. I repair boats. My
10 grandfather had the car I started with, so my father had a
11 boat shop, and I repair boats. And so I knew that I could
12 just put the cover on, but I knew I was taught that 99 percent
13 of the work that you do before you put that top coat on is all
14 underground, it's all -- it's all layering.

15 So we want to fix the stucco, and that's the default. If
16 it requires a prudent person to kind of make some other
17 repairs so that the stucco sticks, of course, that's what you
18 would do. Similar if you were painting. You would sand it
19 down enough.

20 So that I think the defect we're asking and the default is
21 that the stucco is not maintained. You've got to repair that.
22 And if that causes, you know, check to make sure there's no
23 moisture, of course, that's what a reasonably prudent owner
24 would do.

25 THE COURT: Uh-huh. Okay. Thank you, Ms. Walker.

1 MS. WALKER: Thank you.

2 THE COURT: Ms. Musgrave, Ms. Walsh?

3 MS. MUSGRAVE: That's me, Your Honor.

4 THE COURT: All righty.

5 CLOSING ARGUMENT ON BEHALF OF UMB BANK, N.A.

6 MS. MUSGRAVE: And Your Honor, we have a
7 demonstrative that will go with the closing argument today.

8 When we began yesterday morning, I said this hearing was
9 about one predicate question, whether the Landlord has met its
10 burden of proving that there is an existing default under the
11 ground lease. So it makes sense to start with Section 365,
12 which the Court alluded to just a few minutes ago, which is
13 that that default must be existing. And if we look at the
14 case law, it is the Landlord's burden to demonstrate existing
15 defaults under the ground lease. And we've provided here a
16 few squibs from cases that were also in our papers, for the
17 Court's reference.

18 So, going from 365 to the Landlord's burden, the next
19 place to go is to the ground lease itself. In the ground
20 lease, Section 5.8 requires good and safe repair and order.
21 And this is a standard to which courts apply the standard of a
22 reasonably prudent owner. And we've provided here a squib
23 from the *Nadler* case, setting forth the standard, which was
24 also included in our papers.

25 What this means, taken together, is that the Landlord has

1 the burden of showing that Debtors have failed to maintain the
2 community in a manner consistent with that of a reasonably
3 prudent owner. And ICI had two separate chances to carry its
4 burden of demonstrating that the Debtors had failed to
5 maintain the community in this manner. This hearing was the
6 Landlord's opportunity to prove up the defaults they alleged.
7 It was not an invitation to initiate a brand new fishing
8 expedition, to request new investigations, new studies, new
9 assessments.

10 So let's talk about what defaults they have actually
11 alleged, what defaults they were to prove up today.

12 Looking first to the original cure statement that was
13 filed on the bar date of December 23, 2022. On this first bar
14 date, they alleged no defaults. No punch list, no items in
15 need of repair, nothing. Just an amount. North of \$52
16 million.

17 And I'll note, Your Honor, it's odd, to say the least,
18 that the Landlord now says amounts are essentially not their
19 job here, when their first cure statement had nothing but an
20 amount.

21 Let's turn to the amended cure statement that was filed on
22 January 10, 2023. And what we're looking at here, Your Honor,
23 is a table in the amended cure statement that begins on Page
24 12 and goes through Page 15. This is a 46-line punch list.
25 These are the defaults they have alleged, and these are the

1 defaults they needed to prove up here today. These are the 46
2 separate defaults under the ground lease that ICI claims must
3 be fixed in order for the property to be returned in a good
4 and safe order a reasonable person would expect. And so it is
5 ICI's burden to prove each and every one of these defaults.

6 Let's look at this table. You heard from Mr. Hannon that
7 he was in the room when this table was being prepared and that
8 the support for these 46 items came from three sources: the
9 Plante Moran report, The Building Consultant report, and the
10 Terracon report. And you also heard from Mr. Hannon that the
11 only other people in the room when this table was being
12 prepared were Kong Capital and counsel: Levenfeld Pearlstein
13 and Jackson Walker.

14 We do not know how the decisions were made to include this
15 line item or that one. Why is this line from Plante Moran in
16 here and that one from Terracon?

17 And I'll say, Your Honor, from a plain reading even as a
18 non-construction lawyer, some of the line items sure look
19 duplicative.

20 We can't know the answers to this. Indeed, we're
21 precluded from even asking because counsel said that's
22 privileged.

23 Here's what we do know. Not one of these three reports is
24 in evidence before this Court today. Not Plante Moran, not
25 The Building Consultant, not Terracon. And not one of those

1 experts was ever consulted in the preparation of this table.
2 Not Plante Moran, not The Building Consultant, and not
3 Terracon.

4 Mr. Hannon offered his lay experience based on decades in
5 the industry, and it sounds like he made some calls about
6 whether the numbers in this table made sense to him. Elevator
7 repair stands out in my memory.

8 Mr. Hannon offered his lay observations that some of the
9 items listed on the amended cure table might be an issue, if
10 they exist.

11 But with respect to items attributed, for example, to
12 Plante Moran, he testified that he did not know who Plante
13 Moran asked to look at various conditions or what they found.
14 That was outside his purview.

15 But Your Honor, they had a nationally-recognized expert,
16 Terracon, standing at the ready, with their own findings and
17 their own opinion. And neither Mr. Hannon nor his counsel
18 ever so much as picked up the phone to call them and talk to
19 them about this table.

20 So, let's look at this table. And I'll ask Ms. Lombardo
21 to go back to the beginning. So, if we start at the beginning
22 here, what we've tried to do with some color here for the
23 Court is to take a look at the items that were attributed to
24 Plante Moran and to The Building Consultant. And I'll note
25 we've got those in orange, but you'll see a yellow line here,

1 Your Honor, and that's because for certain items we see this
2 Footnote 15, which seems to suggest that there may have been
3 two sources for that item. So it's not, strictly speaking,
4 just attributable to Plante Moran.

5 THE COURT: Right. Because Mr. Hull, I think, did
6 testify about the retaining walls.

7 MS. MUSGRAVE: That was my recollection, too, Your
8 Honor, yes.

9 THE COURT: Uh-huh.

10 MS. MUSGRAVE: Because there is no Plante Moran
11 report in evidence and there is no Terra -- there is no,
12 forgive me, Building Consultant report in evidence, and
13 neither provided a witness here today, we would submit that
14 these items ought to be removed from the table and from the
15 Court's consideration. There was no proof offered to support
16 ICI's burden with respect to these line items.

17 And that leaves Terracon. If ICI had consulted Terracon,
18 this chart would have been even further reduced. Because as
19 you heard from Mr. Hull, he identified two different types of
20 items, those that are affecting -- those that are immediate,
21 affecting life safety or building systems, and those that are
22 reserve, replacements for capital planning. And it is only
23 this immediate category that could be an alleged existing
24 default here. There is no requirement in the lease for
25 reserve for capital planning. That's what's anticipated in

1 the future.

2 And Mr. Hull testified that the amount associated with
3 these immediate needs is indeed \$492,000. Of this, however,
4 he agreed that \$220,000 was for additional investigations.

5 And I want to pause here for a moment, Your Honor, and
6 talk about these additional investigations. ICI knew by no
7 later than November that they would need to prove alleged
8 existing defaults, and even that was four months after
9 Terracon's inspection. They did not ask for additional
10 investigations at any point in November, in December, or the
11 beginning of January, even knowing that they had the burden of
12 proving up the alleged existing defaults.

13 An additional investigation is not a default. That means
14 that \$220,000 here is not associated with an alleged existing
15 default. So the most that has been established here today, if
16 we believe everything Mr. Hull testified, is \$272,000.

17 We do, though, Your Honor, need to pause on Terracon's
18 credibility here today. Mr. Hull testified that he identified
19 issues that were of such immediate concern that they could
20 affect the lives and safety of the residents. He agreed his
21 standard practice, if these kinds of immediate issues are
22 identified, is to tell someone immediately, as soon as he can
23 get to a safe place and do it. But in this case, as you'll
24 hear, Terracon -- again, a nationally-recognized expert --
25 cannot recall when it informed ICI of its findings. And the

1 only evidence before this Court remains that Terracon did
2 nothing for six months. And that date we have because the
3 only report from Terracon that appears to exist -- which,
4 again, was never entered into evidence -- is dated January 6,
5 2023, as in two weeks ago.

6 We heard some explanation that this delay was due to ICI's
7 proclivities. And I'm still not sure I understand what that
8 means. But the fact remains that neither Mr. Hull nor Mr.
9 Hannon of ICI, who engaged Terracon, can recall when they
10 spoke with each other about these issues. Again, issues Mr.
11 Hull says affect life and safety. Neither Mr. Hull nor Mr.
12 Hannon could be any more specific about Terracon's conveying
13 its findings to ICI than to say it happened at some point
14 between July 2022 and January 2023. Your Honor may recall
15 that Mr. Hull didn't even know if there were leaves on the
16 trees at that point in time.

17 But Your Honor, we do know that these immediate issues
18 were not raised with the Debtors or with this Court until six
19 months later. And if these issues are not immediate, they are
20 not existing defaults under the ground lease.

21 Yes, again, there could be reserve requirements for
22 capital planning, including the standard maintenance you heard
23 Mr. Chris Soden testify is always being promptly addressed.
24 But those are not existing defaults under the ground lease,
25 and that is what the Landlord was to prove today.

1 Unable to prove the defaults it alleged with its own
2 witnesses, the Landlord pivoted and sought to elicit from the
3 Debtors' own witnesses instead lay opinion to support the
4 items alleged in the 46-line table.

5 Earlier today, Mr. Soden looked at photographs. And he
6 told you a number of things. I want to flag five for the
7 Court.

8 First, he told you that capital budgets are wish lists.
9 They are budgets for planning purposes for the upcoming year.
10 They are created, I believe his words, to shoot for the moon.
11 These are not items that must be addressed in the upcoming
12 year.

13 When there are must-have issues that affect life or
14 safety, The Edgemere fixes them. For HVAC, for example, Mr.
15 Soden said, we budget for these units and then we replace them
16 throughout the year as needed.

17 There was a request from a resident for an additional
18 sidewalk, and that was resolved directly with the resident by
19 suggesting the resident stick to the existing pathway.

20 And another must have included a lobby refresh, because
21 people would really like to have a refresh. I like new carpet
22 as much as the next person, but I would submit that not doing
23 that refresh is simply not an issue that a reasonably prudent
24 owner would believe would be required to keep the property in
25 good and safe order.

1 And Mr. Soden testified he is not aware of any life safety
2 issues that need to be addressed.

3 Not making budget is also not a default under the ground
4 lease.

5 The second thing I wanted to note from Mr. Soden's
6 testimony is the photo of the expansion joint that Mr. Hull
7 testified at length about. Mr. Soden testified that,
8 actually, it did not look like a photo of the expansion joint
9 at all because the expansion joint had rubber in it.

10 This, I think, Your Honor, is the problem with ignoring
11 the experts to whom the items in the table are directly
12 attributed and instead relying on lay witnesses to interpret
13 six-month-old photographs.

14 The third item I wanted to flag from Mr. Soden's testimony
15 is that he testified that Plante Moran numbers are extremely
16 high. Mr. Soden explained that they include things the
17 Edgemere would not do, for example, because The Edgemere has
18 in-house people to address those items. And Mr. Harshfield
19 and Mr. Soden additionally explained that these numbers were
20 for an entirely different purpose -- namely, that they were
21 higher because they were for restructuring negotiations,
22 which, yet again, makes it very hard to understand why any of
23 the line items attributable to Plante Moran in the table can
24 be credited here today.

25 The fourth item Mr. Soden testified to was that, after The

1 Building Consultant did their work, The Edgemere undertook
2 repairs totaling approximately \$1.6 million.

3 And fifth and finally, Mr. Soden testified that The
4 Edgemere is monitored by CMS, who does yearly inspections of
5 skilled nursing, assisted living, and memory care, and also by
6 the State Fire Marshal and the local City Fire Marshal, who
7 also do yearly inspections.

8 Mr. Soden testified that CMS inspected the property in
9 July of 2022 and the City of Dallas did its certificate of
10 occupancy inspection within the last three to four months,
11 after Terracon.

12 He testified they sent out a plumbing inspector, a
13 building inspector, a Health Department inspector, and a
14 mechanical inspector. And in Mr. Soden's words as I recall
15 them, they walked every square inch of the mechanical rooms
16 and the electrical rooms.

17 This was so thorough that the City of Dallas wouldn't give
18 The Edgemere the certificate of occupancy until missing tile
19 was replaced behind a soda machine. And Mr. Soden further
20 testified that The Edgemere replaced that tile and a corner
21 guard that was also identified within a week, and a
22 certificate of occupancy was granted.

23 Within the past six months, the entire campus has been
24 evaluated by at least one government entity in addition to the
25 Fire Marshal. And, Mr. Soden explained, anything that would

1 have been in the reports from CMS or the Fire Marshal is
2 addressed immediately because it's part of the licensing. And
3 The Edgemere was rated a five-star facility, which is as high
4 as you can go.

5 And just a word, Your Honor, about Bay 9. Bay 9
6 represented that every witness testified there are cracks in
7 the stucco. And Ms. Lombardo is now putting up a beautiful
8 picture of the property, too. But what we also heard from Mr.
9 Soden was that the redo of the building envelope is not an
10 immediate issue that needs to be addressed now. The façade
11 can be repaired and maintained. And what Bay 9, a potential
12 future purchaser, is trying to accomplish with the argument
13 about the stucco is saddling the estate with a free upgrade.

14 As I previewed for the Court when we began this hearing
15 yesterday morning, the Landlord has not met its burden of
16 proving any existing default under the ground lease. There is
17 not the \$52 million the Landlord alleged on the first bar date
18 in December 2022, with no actual defaults listed, and not the
19 \$15 million they then somehow alleged instead only two weeks
20 later. This hearing was the Landlord's opportunity to prove
21 that the lines in the table in the amended cure statement
22 constitute 46 defaults of the ground lease, and they simply
23 have not done that.

24 Thank you.

25 THE COURT: Thank you, Ms. Musgrave.

1 Ms. Vandesteeg, are you prepared to close or do you need a
2 minute?

3 MR. JOHNSON: Your Honor, I have a short close on
4 behalf of the Debtors.

5 THE COURT: Mr. Johnson.

6 MR. JOHNSON: Thank you, Your Honor.

7 CLOSING ARGUMENT ON BEHALF OF THE DEBTORS

8 MR. JOHNSON: Even though we have all this extra
9 time, we'll keep this brief. I'm not going to repeat anything
10 that Ms. Musgrave addressed, but I would like to address a
11 couple issues pertaining to The Edgemere.

12 THE COURT: Please.

13 MR. JOHNSON: ICI testified regarding this estoppel
14 certificate that happened pre-filing back in March of 2022.
15 The implication -- not the implication, the direct statement
16 was, well, they refused to file this estoppel certificate;
17 they must have known that there were these significant
18 property defects.

19 Mr. Harshfield testified about this, so I think, you know,
20 it's sort of shone some light on exactly what was happening
21 here. I think that sort of, you know, speculation is wildly
22 improper. I mean, if the Court recalls, there was a
23 prepetition default that was cured in the excess of \$3 million
24 that was paid to the Landlord in March of 2022.

25 After that payment was received -- and the Landlord

1 provided an estoppel certificate at that time, certifying that
2 you have cured the rent defaults, which included significant
3 professional fees as well -- then they turned around and said,
4 hey, we'd really like an estoppel certificate from Edgemere.
5 Will you please send us one?

6 And as Mr. Harshfield testified, we refused to send one,
7 and we did that for other reasons. It related to negotiation.
8 It related to language that was in the estoppel certificate
9 that might have an impact on the litigation that we were
10 preparing to file against the Landlord.

11 So there were real reasons not to sign it, but there's no
12 evidence of anything involving a capital expenditure issue or
13 a property condition defect related to that. It was done for
14 other purposes.

15 And shortly after that, Your Honor, as you probably
16 recall, you know, the Landlord issued a notice of default for
17 failure to provide the estoppel certificate. That was
18 obviated by the bankruptcy filing at that point, but we don't
19 think it bears on this particular issue.

20 On certain of the inspections, Your Honor, we obviously
21 concur with UMB's comments, but one thing I'd like to note,
22 that as Your Honor pointed out in a prior hearing, there was a
23 substantial fight about this inspection issue, like what
24 inspection was going to be permitted, why were they seeking an
25 inspection, to what extent would they be allowed to do this?

1 Because as was testified by ICI, there were several
2 inspections. They prefer to call them tours, but there were
3 several inspections prior to the filing. But we would note
4 that there was one inspection ordered by this Court, and you
5 said, you get one shot to go in there, you should do your
6 inspection, whatever you think you need to do as part of that
7 inspection, and if there's any issues I want you to bring them
8 back to me.

9 You also said, Your Honor, if you need more inspections
10 after that, it's without prejudice to you to come back and ask
11 for additional inspections. And that never happened, Your
12 Honor. The one inspection did happen. No such request for an
13 additional inspection was made to the Debtors and denied. No
14 such request was made to the Court.

15 Your Honor, we think that's indicative of the fact they
16 got what they needed to get or what they thought they needed
17 to get at that time. And the fact that they're up here
18 standing now saying, we need to do more inspections to figure
19 out what defaults might exist, shouldn't -- should not weigh
20 in terms of this -- in terms of the Court's evaluation of a
21 default here.

22 But the important things to take away, Your Honor, and I
23 think Ms. Musgrave covered some of these, but it's important
24 for me to get this on the record as well, that Edgemere
25 protected the residents. It also protected the most

1 vulnerable of the residents that were in the health care
2 facility. It covered all life safety issues at all
3 appropriate times. There is no allegation or no proof
4 regarding some sort of major problem that was a life safety
5 condition. Rather, there were just sort of assumptions of
6 these things are life safety conditions and all of this is an
7 issue.

8 Edgemere also responded to emergencies, handled
9 significant matters immediately, without regard to the capital
10 planning budgets. So when --

11 MS. VANDESTEEG: Your Honor, I don't typically object
12 to closings, but Mr. Johnson appears to me to be up here
13 testifying in large part to things that were not in any way
14 brought up in evidence, raised by witnesses here in connection
15 with the hearing over the last two days. And I'm just
16 concerned that we're wandering a bit far afield of what has
17 actually been presented to the Court in connection with these
18 two days of hearing.

19 MR. JOHNSON: Well, Your Honor, I guess since I'm
20 down to my last two bullets, I'll say this one thing. Number
21 one, with respect to the last point, Your Honor, Mr. Soden
22 testified that Edgemere -- Mr. Soden and Mr. Harshfield both
23 testified that Edgemere responded to emergencies, handled
24 immediate issues without regard to capital planning budgets.
25 That testimony was put on, was put on by both of those

1 witnesses today, Your Honor.

2 So that was literally our last point, Your Honor, before
3 we got to the conclusion, Your Honor, which, you know, it is
4 the Debtors' contention and we think the evidence put on today
5 is that The Edgemere made responsible budgeting decisions to
6 maintain the property in good condition, Your Honor. And of
7 course they did. This is in Edgemere's own interest. It's in
8 Lifespace's own interest. Up until November of 2022,
9 Lifespace still expected to manage this community going
10 forward.

11 The roles have changed in terms of who's going to manage
12 it in the future, but there's no evidence on file that
13 Lifespace or Edgemere acted irresponsibly to protect a
14 substantial asset. They built this community. It has a great
15 reputation in the community -- you've heard about that -- for
16 several years. And Your Honor, we think that all weighs in
17 favor of Edgemere being a responsible steward of the property
18 during its 20 years of operating it.

19 Thank you.

20 THE COURT: Thank you, Mr. Johnson.

21 And Ms. Vandesteeg, with respect to your objection, the
22 Court can distinguish between evidence and argument. I
23 appreciate the objection. I think that perhaps Mr. Johnson
24 gave a little bit of latitude to a portion of Mr. Harshfield's
25 testimony with respect to the declination of execution of the

1 estoppel certificate for litigation purposes. I don't believe
2 I heard that in the testimony. But I will check.

3 MS. VANDESTEEG: Thank you, Your Honor. Your Honor,
4 in light of the three separate closings coming before mine,
5 could I take just a couple of moments to --

6 THE COURT: Sure.

7 MS. VANDESTEEG: -- collect my final thoughts before
8 I come up for my closing?

9 THE COURT: Would you like the Court to take a
10 recess, or do you just want a moment?

11 MS. VANDESTEEG: You know, I'd love a brief recess,
12 --

13 THE COURT: Sure.

14 MS. VANDESTEEG: -- if we could take ten minutes.

15 THE COURT: Sure.

16 MS. VANDESTEEG: Thank you, Your Honor.

17 THE COURT: The Court will recess until 3:35.

18 THE CLERK: All rise.

19 (A recess ensued from 3:25 p.m. to 3:40 p.m.)

20 THE CLERK: All rise.

21 THE COURT: Please. Be seated. All righty. We'll
22 go back on the record in Case No. 22-30659. When we last
23 broke, we were in closing arguments, and I believe that we're
24 prepared for the Landlord ICI's closing statements. Good
25 afternoon again, Ms. Vandesteeg.

1 MS. VANDESTEEG: Good afternoon again, Your Honor.
2 Thank you for giving me a moment.

3 THE COURT: Happy to.

4 CLOSING STATEMENT ON BEHALF OF INTERCITY INVESTMENT
5 PROPERTIES, INC.

6 MS. VANDESTEEG: Your Honor, you heard yesterday
7 morning in openings an accusation that the Landlord is here to
8 chase a ghost. But indeed, it is the Plan Sponsors who are
9 trying to create and impose phantom burdens and nebulous
10 standards rooted neither in the law nor in the lease.
11 Interestingly, no one has attacked the lease. No one has
12 argued that any section is unenforceable or unclear, and that
13 is because it is black and white, as is the law.

14 So let's start with the lease. Your Honor, there are
15 several sections that impose obligations on the Debtor which
16 we believe are absolutely front and center and at issue today.
17 There is Section 5.6, the duty to maintain infrastructure,
18 including curbs, sidewalks, things of that nature. There's
19 Section 5.7, that in addition to compliance with laws,
20 ordinances, rules, and obligations, has an additional separate
21 obligation to "keep the premises in a strictly safe, clean,
22 orderly, and sanitary condition."

23 Your Honor, there's Section 5.8, which provides, in
24 relevant part, and I quote, that "Lessee will, at Lessee's own
25 expense, from time to time at all times during the term, well

1 and substantially restore, repair, maintain, amend, and keep
2 all improvements on the land, with all necessary reparations
3 and amendments whatsoever, in good and safe repair, order, and
4 condition."

5 Your Honor, we did hear Mr. Hannon's testimony, and the
6 lease itself is clear that there is no provision in the lease
7 that provides that the Landlord can enter the premises to
8 perform work and then invoice Tenant for costs.

9 There is nothing in the lease that limits the Debtors'
10 obligations to maintain, to keep in good repair, to keep in
11 strict safe condition, life safety concerns or life safety
12 standards. That's not -- that's not what the lease provides.

13 There is nothing in the lease that limits the obligations
14 of the Debtor to merely keep the property in a functioning
15 standard. The lease requires good condition, to keep it in a
16 strictly safe, clean, orderly, and sanitary condition. And
17 that failure to maintain, Your Honor, that is a default under
18 the lease.

19 Your Honor, we agree that it is ICI's burden to prove the
20 existence of a nonmonetary default, not a potential dollar
21 amount to repair that defective condition.

22 Your Honor, we refer you to Section 365(b)1(A) of the
23 Code. In order to assume a lease, and assume and assign a
24 lease under Section 365(f) (2), a debtor-in-possession must
25 cure or provide adequate assurance of a prompt cure of those

1 defaults, and it applies to both monetary and nonmonetary
2 defaults, and it's measured at the time of assumption, not at
3 the petition date.

4 Your Honor, the case law that we have cited in the briefs
5 in connection with this matter make it clear that the courts
6 recognize that these nonmonetary defaults, the need to provide
7 cures of those nonmonetary defaults absolutely go to the
8 requirement to maintain and repair defective conditions at the
9 property.

10 For example, in *Northwest Territorial Mint*, the court
11 identified 21 conditions in need of repair to cure nonmonetary
12 defaults, ranging from parking lot and sidewalk repairs and
13 replacement of an evaporative cooler to repairing sheetrock
14 and water-damaged floors. There was no quantification of cost
15 here, Your Honor. The court required that the repairs be done
16 prior to assumption and assignment.

17 In *2300 Xtra Wholesalers*, with respect to assumption of
18 35,000 square feet under a commercial lease, the court
19 ordered, first, additional security of \$112,000 to the
20 landlord, and two, \$250,000 to be deposited into escrow "to
21 fund repairs on the property," with the debtor also providing
22 evidence of \$3 million of cash on-hand and budgeting \$500,000
23 for renovations and committing to perform certain repairs with
24 in-house construction personnel. Again, not trying to distill
25 this down to monetary damages, but requiring that repairs be

1 made.

2 In *Prime Motor Inns*, which was a hotel ground lease, the
3 bankruptcy court ordered specified repairs in an expert
4 consultant's report to be completed within six months as a
5 condition to assumption. Again, no quantification as to cost.

6 There is simply no requirement that the landlord -- that
7 the Landlord, let's be clear -- that the Landlord reduce to
8 monetary damages the cure of nonmonetary defaults. No case
9 has been offered by Plan Sponsors for that proposition, and
10 the case law that we have cited just now, and also in even
11 greater detail in our briefs, demonstrates otherwise. While
12 those potential cost estimates may be useful, they are not
13 dispositive of the requirement that Edgemere perform and cure
14 nonmonetary defaults.

15 Your Honor, there's also no law requiring prior notice of
16 default. Not under the Code. Not in any applicable case law.
17 The ordinary meaning of default for cure purposes is merely a
18 failure to perform a task or fulfill an obligation. And Your
19 Honor, that's from *American Heritage Dictionary* cited in *Old*
20 *Market* and in the Ninth Circuit's recent decision in *In Re*
21 *Hawkeye Entertainment* in our briefing. There is no
22 requirement that a prior notice of default be served.

23 In *Old Market* -- and Your Honor, if there's one case that
24 you really, from our view, need to make sure you review, it is
25 this very recent *Old Market* ruling out of the Southern

1 District of New York. And this argument was raised by the
2 debtor in *Old Market* and it was firmly rejected, where the
3 court found that the cure notice absolutely functioned as a
4 notice of default.

5 *Old Market* also held that repair obligations arise
6 whenever the repairs are needed, regardless of whether
7 landlord gave notice of the defaults or demanded that repairs
8 be made. And like the lease in *Old Market*, ICI's lease
9 imposes an ongoing repair and maintenance obligation on the
10 Debtor. It is also not dependent on a demand or notice.

11 And another point of clarity with respect to the lease,
12 Your Honor: Not only is such prior notice not required by the
13 law, under the lease this duty to maintain and repair is a
14 continuing one. In addition, the lease also contains a
15 specific nonwaiver clause at Section 8.3.

16 In addition, setting all of that aside, Your Honor, there
17 is really no argument that the Landlord has not put parties on
18 notice. Not only has the Landlord raised its concerns with
19 respect to property conditions many times in this Court and
20 across multiple pleadings in the bankruptcy case, the Landlord
21 also expressly asserted counterclaims against the Debtor in
22 the adversary proceeding for its breach of Section 5.8 of the
23 lease based on its failure to maintain the property.

24 So, Your Honor, what is the standard of breach here? What
25 is the standard for that nonmonetary default under the lease?

1 Plan Sponsors have argued that the reasonably prudent owner
2 standard applies under Texas law to a general duty to repair.
3 And Your Honor, there has been no evidence presented in
4 connection with these hearings that a reasonably prudent owner
5 would do nothing to address the conditions at issue for
6 multiple years. Not to investigate, further investigate known
7 and troubling conditions, relying instead on Band-Aid repairs,
8 again, over a period of multiple years, and constantly
9 deferring expenses necessary to maintain a good condition of
10 the property, of the building envelope, of the roof, of the
11 HVAC, of the sidewalks. Instead, electing to spend money on
12 other things that it deemed more important, like residential
13 refresh turns.

14 Your Honor, the cure is governed by the terms of the lease
15 and whether a default exists under the lease, not by
16 artificial thresholds or by Plan Sponsors referencing their
17 terms of must have or critical or life safety or whether
18 residents have lodged complaints as to the carpet or the food
19 or the chandeliers. The duties under the lease are plainly
20 not limited to the cosmetic appearance of the interior of the
21 premises. And it's noteworthy, Your Honor, that we are not
22 seeking any cures with respect to the cosmetic finishes. We
23 are not in any way imposing cure and nonmonetary defaults for
24 purposes of independent living turns on apartments, in terms
25 of the refreshing and cosmetic upgrades that folks have talked

1 about over the course of this hearing. That is not the focus
2 of the nonmonetary default identified by the Landlords.

3 We are talking about the guts of the property: the
4 building envelope, the roof, the mechanical systems, Your
5 Honor. Those are what are at issue here. It is those
6 failures to maintain that have caused defaults under the
7 lease.

8 Now, Plan Sponsors have made it clear that they would like
9 to weaponize the chart that was provided in the Landlord's
10 amended cure statement in a vacuum of what the evidence was
11 that was actually presented in this courtroom over the past
12 two days. Your Honor, remember, we're talking five witnesses,
13 sorry, four witnesses, an expert, photos, budgets, other
14 statements presented by the Debtors' witnesses themselves.
15 And I think it's interesting that we heard from Mr. Harshfield
16 that the Debtors didn't have any problem acknowledging
17 conditions, potential conditions, exposures, potential needs
18 for spending money for budgeting purposes or for negotiating a
19 potential prospective restructuring, but when it was time to
20 actually do the work, we heard that those numbers really mean
21 nothing.

22 Your Honor, we're not here to talk about the numbers.
23 We're here to talk about the conditions. And we think that by
24 the Debtors' own statements with respect to the numbers that
25 were listed, that does also indicate that the Debtors were

1 well aware of the conditions of the items listed on their
2 budgets.

3 And the uncontroverted evidence presented not only by Mr.
4 Hannon and Terracon but also by Debtors' own representative,
5 Mr. Chris Soden, is that the Debtors have deferred attention
6 to their must-have conditions for years. The inconvenient
7 fact is that there are existing conditions that must be
8 addressed now, prior to assumption and assignment, because the
9 Debtors have delayed maintenance, repairs, restorations, and
10 replacements year over year, while they instead allocated
11 their scant resources to other items.

12 The Debtors simply deleting these conditions now from a
13 2023 budget does not make the condition go away. That
14 deletion does not cure the existing nonmonetary default.

15 Let's again go back to the evidence that was provided by
16 the witnesses. The uncontroverted evidence demonstrates that
17 each of the property condition assessments had noted that the
18 Edgemere's building envelope is in poor condition. And this
19 poor condition does not evolve overnight, Your Honor. In
20 fact, as we heard, it has existed and has known to have been
21 in existence for years. And the Debtors' own witness, Mr.
22 Soden, admitted that this poor condition will not just improve
23 on its own.

24 Let's talk about what some of the other witnesses
25 presented in terms of evidence. Mr. Hannon, he validated the

1 lease and he provided testimony and evidence to this Court
2 about what ICI believes is required by the Debtors with
3 respect to its obligations to keep the property in good and
4 safe repair and condition.

5 Mr. Hannon himself told you about the cracks in the stucco
6 that he was able to observe on his brief tours of the property
7 while not even viewing them even through windows, Your Honor.

8 Mr. Hannon himself testified that he was able to see
9 uneven sidewalks, and he informed this Court about the
10 existence of the slip-and-fall lawsuit that has been filed
11 against both ICI and The Edgemere as a result of someone
12 slipping as a result and falling and becoming injured as a
13 result of uneven sidewalks.

14 Mr. Hull, Your Honor, Mr. Hull, you'll recall, talked at
15 length about the conditions that he and his team observed, a
16 Terracon team of six individuals, including four licensed
17 Professional Engineers from multiple different specialties --
18 structural engineers, building envelope specialists,
19 mechanical engineers -- documenting and providing you with
20 evidence on multiple conditions that he and his team
21 determined were either in a state of failure, a present state
22 of failure, or in poor condition.

23 As Your Honor will recall, Mr. Hull also testified about
24 the uneven sidewalks. I think he used the word
25 differentiation in the sidewalks, which he deemed were a

1 tripping hazard and a safety hazard.

2 He talked to you about cracks that he saw in the retaining
3 walls. He talked to you about structural failures with
4 respect to the cooling tower structure. We showed some
5 pictures, and we'll come back to those, of substantial rust on
6 that cooling tower structure and on the other slabs leading
7 into the cooling tower. He also talked to you about
8 additional cooling tower issues that put that operational
9 status right on the verge between a failed state and poor
10 condition.

11 He talked to you about the stucco. And Your Honor, this
12 one is important, because what Mr. Hull said is that that
13 building envelope is in a current state of failure. Given
14 their present observations, their visual observations, they
15 already determined that that envelope is in a state of
16 failure, and they allocated \$3.6 million in terms of repair
17 costs. But what's important is that Mr. Hull said it's not --
18 it wouldn't be prudent to simply do those repairs without also
19 doing an assessment of whether there's more beyond the failed
20 state that they can already see. And that's the need for the
21 further assessment that Terracon also called out. Could you
22 simply repair it, the failed state that exists? Yes. But in
23 his expert opinion, that might not be the smartest and most
24 prudent move.

25 Mr. Hull also testified to you about the expansion joint

1 that, again, he testified is in a current state of failure.
2 And he also said, sure, you could go ahead and replace it as
3 is, but he would strongly urge and he did strongly urge that
4 further assessment be done, because it is not readily apparent
5 from a visual observation whether there was additional damage
6 behind the defect he could already see.

7 Your Honor, Mr. Hull also testified about what he and his
8 team visually observed with respect to conditions in a failed
9 state or poor condition with respect to the roof. He talked
10 about debris that they saw on that roof that in his view could
11 be the cause of the tears in the membrane that he and his team
12 observed on the roof. He testified as to damaged gutters with
13 missing splashguards. He testified as to missing downspouts.
14 And he testified that the flat roof, the modified bitumen
15 roof, showed signs of serious deterioration, not just with
16 those tears that we saw, but also with respect to severe
17 granular loss.

18 Mr. Hull also testified to this Court about certain failed
19 -- certain conditions that were in a failed state or poor
20 condition involving the mechanical and electrical and plumbing
21 system for the building. He testified that there are certain
22 copper pipes that are in a severely deteriorated state, and
23 we'll come back to that. He testified as to certain
24 components related to the cooling tower and the HVAC with
25 respect to the pumps and the heat exchangers that were very,

1 very fast approaching end of life and which he determined were
2 in poor condition overall, Your Honor.

3 And again, what we're talking about is, is this property
4 being maintained in accordance with the requirements of the
5 lease and whether the Debtor is maintaining it in good
6 condition.

7 Your Honor, finally, Mr. Hull did provide testimony as to
8 certain issues related to the fire protection and life safety
9 system that he identified were in a failed state or poor
10 condition. And specifically, he provided testimony with
11 respect to the CO monitoring system in the garage, which he
12 and his team observed was in a failed state. Again, Your
13 Honor, these are known conditions identified by both a fact
14 witness who made some personal observations as well as by a
15 team of experts, of Professional Engineers.

16 Now, let's talk about Mr. Soden. Mr. Soden admitted that
17 he personally observed water leaking through that expansion
18 joint, and he admitted that The Edgemere has done nothing to
19 repair that defective condition.

20 Mr. Soden admitted that the building envelope is not in
21 good condition and is in need of repair. He admitted that he
22 was aware that the building envelope was in need of repair as
23 far back as 2021 when he first began his work at Lifespace.
24 But he also admitted that The Edgemere has failed to correct
25 the condition and do the necessary repairs since then.

1 Mr. Soden admitted that he was aware that the flat roof,
2 that modified bitumen roof, was in need of repairs as far back
3 as 2021, and he has also admitted that The Edgemere has failed
4 to do any meaningful roof repair or replacement work since
5 that time.

6 These were known failures to maintain the property. These
7 are nonmonetary defaults under the lease. They have appeared
8 as must have items to address on Edgemere's capital budgets,
9 and yet they have been ignored.

10 THE COURT: That's part of my question, Ms.
11 Vandesteeg, is you've attributed a lot of weight to budgeting,
12 which, from the Court's perspective, is primarily a financial
13 tool. And I recognize that your property folks have a hand in
14 preparing specifically CAPEX budgets, and they have, and I
15 don't want you to attribute any "bent" to this, but they have
16 a wish list --

17 MS. VANDESTEEG: Uh-huh.

18 THE COURT: -- of the capital expenditures that they
19 would like to see performed with respect to the property.

20 You've attributed a great deal of weight and priority to
21 what the Debtors knew, should have known, or wanted to do
22 based upon their capital budget, when Priority 1 included
23 refurbishments, included the pond concrete sidewalk, included
24 some carpet replacement, some face uplifts for the property.
25 So how is the Court to attribute what I believe the Landlord

1 is interpreting "must have" to be to what those who dealt with
2 the capital budgeting are telling me "must have" means, which
3 is essentially, if we have the money we would like to do these
4 things over the next few years, but that doesn't mean that we
5 have to.

6 It's sort of like if my son says, "I must have Legos for
7 Christmas," and he gets an Incredible Hulk doll instead.
8 Okay, there is must have and there's really would like.

9 MS. VANDESTEEG: Sure, Your Honor. I'd be happy to
10 address to that, because perhaps I didn't -- perhaps I have
11 not yet clarified why it is that we are referencing those
12 numbers.

13 Your Honor, to my view, it is that the inclusion of those
14 conditions, as well as the Debtors' allocation of substantial
15 numbers to them in their own budgets, simply provides
16 additional weight and credence to the other testimony that we
17 have already received from Mr. Soden from a factual
18 perspective in terms of admission that the building envelope
19 was not in good condition and in need of repair, in terms of
20 his factual testimony with respect to his personal
21 observations with respect to, for example, water leaking
22 through the expansion joint, and with respect to his personal
23 observations with respect to, for example, roof deterioration.

24 Now, Your Honor, I think it's important that Mr. Soden
25 noted he is not an expert on these particular issues and that

1 he would defer to the experts. And that, Your Honor, is where
2 we come back to Terracon, because Terracon is an expert,
3 Terracon did have building envelope experts out there, did
4 have roofing experts, had structural engineers, had mechanical
5 engineers. And Terracon then comes over and not only verifies
6 and validates Mr. Soden's own observations and his beliefs
7 that these things were in bad condition, but from their expert
8 perspective says not only is that bad, it's in a failed state
9 from an expert's perspective.

10 So the budget side, Your Honor, again, I think it merely
11 provides some weight. I don't think that it is in any way
12 dispositive. I think that it is those observations as to
13 condition, both by the fact witnesses as well as corroborated
14 and in fact even strengthened by the expert, that are mission
15 critical here, Your Honor. Those are the nonmonetary
16 defaults.

17 I think that the references to them in the budget simply
18 indicate that the work had never been performed. Which,
19 again, the budgets are just kind of gravy, because Mr. Soden
20 himself testified that the work was not performed, the
21 conditions were not repaired. Mr. Harshfield testified that
22 those monies were not expended on those projects.

23 So I appreciate the opportunity to refocus, because that
24 is not the focus of where we are, Your Honor. It is in that
25 identification of those existing conditions as identified by

1 fact witnesses, including the Debtors' own, and as further
2 strengthened by Terracon's observations and expert opinions on
3 those conditions.

4 I would like to, though, we also have a little PowerPoint
5 to run through --

6 THE COURT: Fair enough.

7 MS. VANDESTEEG: -- to provide a summary for the
8 Court, because I do think it's important to acknowledge, when
9 again we're talking about conditions, who has acknowledged the
10 existence of that condition.

11 So let's go to this first page. Stucco and associated
12 staining. The existence of that condition is referenced by
13 Mr. Hannon. Referenced by Mr. Hull. Mr. Harshfield admitted
14 that there were cracks in the buildings and that he had
15 personally observed them. Mr. Soden testified that there were
16 cracks and staining and that the building envelope was not in
17 good condition and would require repair.

18 Condition issues with respect to the modified bitumen
19 roofs, those flat roofs. Mr. Hull said they're in poor
20 condition, and parts of them are in need of full replacement.
21 Mr. Soden also acknowledged that they were in not good
22 condition and that no repairs -- no meaningful repairs had
23 been undertaken since his time at Lifespace since 2021.

24 Let's go on down to the next page. And as Your Honor will
25 recall, we did provide certain photographs that demonstrate

1 some of those areas where there were express observations of
2 certain cracking in the building, certain present staining,
3 evidence of prior attempts at repairs.

4 We can go on to the next page. Evidence of cracks that
5 had been tried to have been filled in and repaired.

6 So, again, Your Honor, these are existing conditions at
7 The Edgemere which the fact witnesses all observed and
8 testified existed and which the experts said are in a failed
9 state.

10 Let's continue. With respect to the roof, Your Honor, as
11 you'll recall, we did provide photographs that show the
12 granular loss that Mr. Hull testified to and that Mr. Soden
13 also acknowledged is granular loss on those modified bitumen
14 roofs. There's evidence of that tearing of the membrane on
15 those roofs. And there's evidence then of those downspouts
16 that don't have then any splashguards or other way to relieve
17 the water other than simply dumping it onto another roof
18 surface. Again, existing conditions, Your Honor, that
19 constitute a failure to maintain.

20 Let's go onto the next slide, please. Your Honor, we
21 talked about this one just a few moments ago. Terracon
22 provided its expert testimony with respect to the cooling
23 tower framing. It determined that that structural frame was
24 in a failed state and it determined that the operational --
25 certain of the operational components were in poor condition.

1 Again, Mr. Hull, we have this in here as "conduct a structural
2 investigation," because while Mr. Hull said that these things
3 could be simply replaced, again, he believed it would be more
4 prudent, prior to simply replacing, to undertake further
5 structural assessment of these issues.

6 But we did -- he did, I should say -- he presented his
7 expert testimony -- and we'll go ahead to the next page --
8 that the structure itself is in a state of failure as a result
9 of this rusting seen on the structural frame and the
10 structural components of the cooling tower. Again, existing
11 condition.

12 Let's go on to the next slide. Mr. Hull and the Terracon
13 team provided their expert opinion that there were certain
14 copper piping sections in the -- at The Edgemere that they
15 were able to observe that were in a failed state.

16 Let's go to the next slide. And Your Honor, again,
17 Terracon, in their expert opinion, determined that these pipes
18 are in a failed state. This is an existing condition that
19 constitutes a default under the lease and it must be cured.

20 Let's go on to the next page. With respect to the HVAC
21 systems, Mr. Hull provided again his expert testimony based
22 upon Terracon's actual observations of the conditions that
23 these HVAC units were in poor condition and were going to need
24 to be repaired in very short order. And I believe his
25 specific testimony is that the failure to address and fix

1 these conditions could result in multiple failures, as the
2 system is really all tied together. And he presented some
3 additional photographs with respect to these visually observed
4 conditions, which I think we have on the next slide. Oh,
5 might have forgotten.

6 Well, let's move on to the parking -- let's go back one
7 slide. Your Honor, we talked about this one a moment ago,
8 too, this expansion joint. Mr. Hull testified current state
9 of failure. Mr. Soden testified he's visually seen water
10 coming through that expansion joint. As Mr. Hull testified,
11 that's like losing the cartilage between your bones. You can
12 have foundations of buildings running into each other. That,
13 Your Honor, is a failure to maintain, and it constitutes a
14 default under the lease that must be cured prior to assumption
15 and assignment of the lease.

16 Next slide, please. And these were photographs that Mr.
17 Hull took in connection with the structural joint as he
18 observed them in the parking garage.

19 Next slide, please. Site conditions, Your Honor. There
20 were numerous site conditions identified by both fact and
21 expert witnesses that constitute present nonmonetary defaults
22 under the lease in that they render the property not in good
23 and safe repair and condition. Your Honor, Mr. Hull testified
24 that there were cracks in the retaining walls that needed to
25 be addressed. And while we didn't include it on here, I

1 believe that Mr. Soden also testified that there were
2 presently cracks in those retaining walls.

3 I think we might have switched that inadvertently with the
4 repair of the courtyard walking paths, which Mr. Hull
5 identified needed to be replaced. Mr. Hannon also visually
6 observed problems with the sidewalk and the sidewalk being
7 uneven. Again, Your Honor, that is an existing present
8 default that has been testified and evidence has been provided
9 both from fact and expert witnesses. That is a present
10 nonmonetary default that must be cured.

11 Next slide, please. Mr. Hull also provided testimony of
12 known existing conditions with respect to fire protection and
13 life safety that he and his team determined were those that
14 were either in poor condition or in a failed state.

15 To the extent that Mr. Hull and his expert testimony are
16 right -- and again, we have not received any expert testimony
17 to the contrary, Your Honor -- each of these is an existing
18 nonmonetary condition, nonmonetary default under the release
19 that requires cure prior to assumption and assignment.

20 THE COURT: When you say there's no contrary
21 testimony, didn't we receive testimony from, at a minimum, Mr.
22 Soden that there had been a number of fire marshal inspections
23 and there was either nothing noted or anything that was noted
24 has since been repaired?

25 MS. VANDESTEEG: Your Honor, I don't know if there is

1 currently a code violation.

2 THE COURT: Uh-huh.

3 MS. VANDESTEEG: What Mr. Hull and the Terracon team
4 were doing were analyzing these for where they are in terms of
5 their overall condition and how close his team identified them
6 to being end of useful life. And as I recall his testimony,
7 it is that the fire pump in particular is one that is right up
8 on the edge.

9 THE COURT: Uh-huh.

10 MS. VANDESTEEG: I don't know that it has triggered
11 any code violations, I think we would have heard about that,
12 but it is nonetheless one that the Terracon team has
13 identified in accordance with his definitions as being in poor
14 condition and requiring immediate attention to get up to --
15 I'm trying to remember the Terracon definition for poor -- to
16 acceptable condition, I believe it is, Your Honor.

17 THE COURT: The definition of poor condition was
18 still functioning but nearing the end of the useful life, and
19 that it was tied to both age and condition. So in other
20 words, it could still be functioning, but eventually it would
21 have to be replaced.

22 MS. VANDESTEEG: Correct. It could still be
23 functioning, but it could be in poor condition, Your Honor.

24 THE COURT: Uh-huh.

25 MS. VANDESTEEG: Next slide, please. So, what did we

1 hear in closing argument from the Plan Sponsors and from Mr.
2 Soden? Instead, Your Honor, they pointed to a CMS rating
3 score and they pointed to an occupancy inspection by Dallas
4 County, and yet Mr. Soden had to admit that neither CMS nor
5 Dallas County is inspecting the stucco and the building
6 envelope. They're not inspecting and analyzing the roof.
7 They're not inspecting and analyzing expansion joints in the
8 garage. I just am not certain that those are as relevant or
9 as applicable as the evidence and testimony that we received
10 from Mr. Hannon and Mr. Hull on property condition.

11 So let's bring it back to the law, Your Honor. We think
12 that it is clear under the evidence and testimony provided to
13 this Court that there are existing nonmonetary defaults at the
14 property, and these are in default of the lease.

15 Now, again, we believe that we have met our burden here,
16 Your Honor, to prove to the Court the existence of one or more
17 of these nonmonetary defaults that require cure. It's now
18 incumbent upon the Debtor to provide a solution as to how
19 conditions can be cured. And as we identified in our opening
20 and as the case law that we have cited provides, there could
21 be a number of different options. The Debtors could use their
22 in-house people potentially to address and correct certain of
23 these defective conditions. The Debtors could go out and
24 solicit bids for the necessary repairs and replacements. They
25 can select the contractor of their choice. They can enter

1 into that contract and then provide proof that they've taken
2 on that obligation. They could agree to escrow or reserve an
3 account to remedy and to address these nonmonetary defaults
4 carved out from sales proceeds to fund repairs. Or perhaps an
5 alteration of some sort to the asset purchase agreement and
6 purchase price might be able to constitute further adequate
7 assurance of prompt cure.

8 I don't have a say in that one, Your Honor. But again,
9 cure of these nonmonetary defaults is not about a check. It's
10 not about a list of potential numbers. It's about resolving
11 the nonmonetary defaults, that property condition, the
12 property defect.

13 And that is all the Landlord is seeking, is for the Debtor
14 to fulfill its contractual obligations and to remedy those
15 condition defaults prior to the sale and assumption of the
16 lease, prior to any transfer free and clear to some new
17 potential assignee, as the law requires. The Debtor continues
18 to fail to propose any legitimate solution for a cure here to
19 meet its burdens under 365.

20 Again, Landlord has been raising concerns about the
21 condition of this property since day one of this case, and for
22 months before with the Debtors. Everyone in this courtroom
23 has now seen evidence of these existing conditions, of these
24 nonmonetary defaults under the lease. These are real, and
25 these are serious conditions that do need to be addressed,

1 Your Honor. They can't wait any longer. Even if maybe they
2 could roll over to another budget, given the procedure here
3 and the desire to now assume and assign this lease, they can't
4 wait any longer. What is broken currently must be fixed.
5 That is what the law requires. It is what this Court should
6 require.

7 So, again, Your Honor, I think that the evidence is clear
8 and I think that this Court has been presented with testimony,
9 with photographs, that nonmonetary defaults exist, and I think
10 that that is the question, the simple question for this Court
11 to determine. Have you been presented evidence of existing
12 defective conditions at the property that constitute
13 nonmonetary defaults of the Debtors' obligations under the
14 lease to keep the property in good and safe repair, condition,
15 and order, and to keep strictly safe all of those conditions?

16 Thank you, Your Honor.

17 THE COURT: Thank you, Ms. Vandesteeg. I have one
18 question for you, and it's an attempt to marry this cure
19 statement to the evidence that the Court has been presented
20 with over the past couple days, which is: I understand Mr.
21 Hull's testimony, and as presented by the Plan Sponsors in
22 their closing, you provided for the Court in your Docket 1023
23 a variety of conditions that the Landlord asserts are defaults
24 that needed to be cured and that total \$15.6 million.

25 MS. VANDESTEEG: Yes, Your Honor.

1 THE COURT: And you've attributed the source of those
2 items as you went down, and I certainly appreciate that. And
3 starting at the top of the list, with limited exception -- for
4 example, localized repairs of mortar joints; I recognize that
5 Mr. Hull did testify about that -- but the Court has heard no
6 evidence on tree removal, planters, albeit it could be a tree
7 root that causes a piece of sidewalk to pop up. I grant you
8 that.

9 MS. VANDESTEEG: Yes, Your Honor.

10 THE COURT: I would have to consult my notes, but I'm
11 not sure that I heard evidence on a damaged trellis.
12 Condensers. Heat pumps. The portable docking station.
13 Ceiling condensation patch and paint and damage. I don't
14 think that I have the evidence of these things.

15 And before you answer my question, and it gets a little
16 deeper than that, as I appreciate your argument that the code
17 doesn't say, Landlord, please provide me a number of how to
18 fix a nonmonetary cure. I appreciate that. But the question
19 is I feel like I'm being asked to make a bit of a leap.

20 I am given photographs of a roof that is aged, that I have
21 testimony that is not leaking, but based upon your engineer --
22 excuse me, your expert, who is an engineer, definition of poor
23 condition, is in poor condition in his definition, I've got
24 what I am going to loosely say is probably a three-inch tear
25 in a membrane, I've got testimony about slabs of sheet metal

1 and some drills and things of that sort sitting on what I can
2 assume to be a flat roof, because I don't know where else it
3 would sit, how am I to extrapolate that to the amount of
4 damages that you've put to it?

5 You've shown me the condition of one or two roofs, and you
6 would like me to extrapolate that to all the roofs, to all the
7 HVAC units, things of that nature. How am I going to make
8 that leap?

9 MS. VANDESTEEG: Your Honor, I'm not sure that we're
10 asking you to make that leap. And --

11 THE COURT: So my question is, the numbers that
12 you've got here in your cure statement, that is your estimated
13 cost for replacing just what you showed me pictures of?

14 MS. VANDESTEEG: No, Your Honor. And this --

15 THE COURT: No?

16 MS. VANDESTEEG: Not necessarily, is what I should
17 say, Your Honor.

18 THE COURT: Okay.

19 MS. VANDESTEEG: And that is where I don't think we
20 should be focused on the numbers, Your Honor. We're not here
21 about numbers. The Court's determination for today is whether
22 we have presented evidence of conditions at the property that
23 constitute a nonmonetary default.

24 So, Your Honor, you asked about that chart in connection
25 with our -- and that's a pleading, Your Honor, and I think

1 that Mr. Hannon did testify --

2 THE COURT: It's also basically the equivalent of
3 your proof of claim, for lack of a better word, for your cure,
4 though.

5 MS. VANDESTEEG: Yes, Your Honor, but the cure is
6 again the necessity to repair or replace or otherwise address
7 the condition, the nonmonetary default. It's the existence of
8 that nonmonetary default that we're here for today, Your
9 Honor.

10 So in terms of the list, as we were preparing, and we have
11 two days and we had limited witnesses and we knew that there
12 would be some evidentiary debates, we needed to focus on those
13 conditions that are most critical. So, Your Honor --

14 THE COURT: Well, with all due fairness, you're
15 focusing on those which are most critical because that's what
16 your lease would otherwise require them to fix. Your lease
17 can't say or doesn't say, I would like yellow dandelions in
18 the front flower planters.

19 MS. VANDESTEEG: Exactly right, Your Honor.

20 THE COURT: It doesn't say, I want the latest and
21 greatest carpet. It says good and safe working repair, and
22 I'm paraphrasing on that.

23 MS. VANDESTEEG: And that is why we're focused on
24 these issues here, Your Honor. That is why these are the
25 issues that we are presenting evidence on. That is why these

1 are the issues that we asked Mr. Soden about in terms of the
2 condition of the building envelope, in terms of the condition
3 of the roof.

4 We are not asking Your Honor to take from today to say,
5 well, the Debtors are going to have to go out to spend \$2
6 million with respect to a roof. No. We're saying we have
7 presented evidence that that is a roof and -- well, let's just
8 talk about the stucco, because as I said, I think everybody,
9 everybody agrees --

10 THE COURT: Stucco's a big deal.

11 MS. VANDESTEEG: -- on the stucco. Right? So, Your
12 Honor, what we are not looking for today is for the Court to
13 say, oh, well, I've heard, you know, testimony that the stucco
14 might be \$3 million, it might be \$5 million, maybe it's
15 somewhere in between, we don't really know. I've also heard
16 that maybe there should be other experts who are looking at
17 this stucco.

18 What I think we all can agree, Your Honor, that there is a
19 problem, an existing problem with the stucco. There are
20 cracks. There is staining. And Terracon has qualified the
21 existing state of the stucco as a failed state.

22 So, Your Honor, what we are seeking is a determination by
23 the Court that that is a property condition that is a
24 nonmonetary default. It is a default of the Debtors'
25 obligation to keep that property in good and safe repair,

1 order, and condition.

2 And Your Honor, once you make that determination, that
3 again is where it is the Debtors' burden to come up with how
4 it wants to address, how it wants to resolve, how it wants to
5 cure that nonmonetary default.

6 And I think that this is exactly the point that Ms. Walker
7 was raising, too. If we have these known defaults now and the
8 Debtor wants to say, oh, well, I don't know how much it's
9 going to cost to repair and I don't really want to come up
10 with a different solution for it, well, then, Your Honor, what
11 they're seeking is simply the ability to absolve everyone of
12 liability.

13 If the Debtor isn't going to take on an obligation to cure
14 that existing default, and it's proposing then to assume and
15 assign in a free and clear sale to Bay 9 or any other
16 assignee, free of any obligation to cure, that's exactly the
17 scenario that the *Old Market* court said no way, no how. And
18 that is where the *Old Market* court said, you know what, no.
19 This is a free and clear sale. You can't put that known
20 existing condition -- and there it was strictly a roof issue,
21 Your Honor.

22 THE COURT: Uh-huh.

23 MS. VANDESTEEG: But the court said no, the repair
24 obligation for that existing condition with respect to the
25 roof must be on the debtor. It must be part of a cure of that

1 nonmonetary default that must be addressed on that side of the
2 spectrum, Your Honor.

3 So that is the evidence that we have been presenting here,
4 are those existence -- the existence of those existing
5 property conditions, property defects that constitute
6 nonmonetary defaults.

7 THE COURT: Well, what the Court is struggling with,
8 and I'll just tell you with respect to stucco, what the Court
9 is struggling with is one of the things that the lease
10 provides is good and safe repair, reasonable wear and tear
11 excepted. I didn't hear any evidence on whether or not that
12 stucco staining could just be reasonable wear and tear. In
13 fact, I think that what your witness said is he doesn't know.
14 Okay?

15 Now, I understand in spades his request for an
16 investigation, but I'm just trying to, without the ability to
17 put pictures to numbers to give the Court good estimates, I'm
18 trying to figure out how the Court would determine the scope
19 of what the Landlord considers to be cure.

20 MS. VANDESTEEG: Well, Your Honor, with respect to
21 the scope, it's the -- it's the repair of the condition of the
22 building envelope. And I think what Mr. Hull testified is
23 that that building envelope is already in a failed state.
24 Yes, he conceded he can't tell you the specific cause of each
25 one of those stainings, but he also testified that water

1 infiltration is absolutely a cause of staining. And again, he
2 said it is in a failed state, it requires repair. He included
3 an allowance for repair should someone want to do that, but
4 suggested --

5 THE COURT: I think he testified that -- all right,
6 let me be careful with this -- water infiltration is a cause
7 of stucco staining. I do not believe, but I will review the
8 testimony in detail, I do not believe that he testified that
9 water infiltration is the cause of this stucco staining.

10 MS. VANDESTEEG: I think that's accurate, Your Honor.
11 But --

12 THE COURT: That was part of his "Go hire another
13 consultant" --

14 MS. VANDESTEEG: Correct.

15 THE COURT: -- investigation recommendation.

16 MS. VANDESTEEG: But his team observation and his
17 professional expert opinion is that, even if he can't identify
18 precisely the cause for each stain, the visual -- the visual
19 condition that he was able to observe, he and his team were
20 able to observe, still resulted in a finding that that
21 building envelope is in a failed state presently, currently.

22 THE COURT: And when you say the building envelope,
23 is he talking about the building envelope on all the buildings
24 at The Edgemere or the building envelope on a particular
25 building?

1 MS. VANDESTEEG: Your Honor, my recollection is that
2 his testimony was that it was with respect to The Edgemere
3 overall, that the building envelope for The Edgemere was in a
4 failed state.

5 He may have qualified somewhat with respect to the Health
6 Center, on which there was some evidence of specific cracks
7 having been repaired but not repainted, but I believe that
8 with respect to those, the other buildings that have not been
9 in any way addressed or remediated or are in a failed state,
10 with respect to the Health Center, he may have said that, at
11 the very least, that one building in particular, he would
12 recommend at least that the further testing be done at that
13 building. But with respect to the remaining of the campus,
14 yes, Your Honor, failed condition.

15 THE COURT: Okay. Thank you, Ms. Vandesteeg. I
16 believe the last question that I have is, at your Page 15 of
17 your chart, there is a handful of things that I don't recall
18 getting any testimony on or evidence. So if there is
19 evidence, I want you to point me to it.

20 At the end -- and take this in the semi-joking manner that
21 it is given -- this seems to be a grab bag of extras here at
22 the end. Inflation. Contingency. Permit testing and
23 printing. Professionals' fees and costs and construction
24 managers' fees and costs.

25 MS. VANDESTEEG: Yes, Your Honor.

1 THE COURT: And where is my evidence for each of
2 these?

3 MS. VANDESTEEG: There is none, Your Honor.

4 THE COURT: Okay.

5 MS. VANDESTEEG: That was included simply as a
6 convenience --

7 THE COURT: Okay.

8 MS. VANDESTEEG: -- in terms of, again, potential
9 estimated costs. But it is not the estimated cost that
10 Landlord is seeking to prove here; it is the existence of
11 certain of these conditions that constitute events --
12 nonmonetary defaults under the lease.

13 THE COURT: Okay. All right. Anything further, Ms.
14 Vandesteeg?

15 MS. VANDESTEEG: No, Your Honor, not unless you have
16 any additional questions.

17 THE COURT: I do not.

18 MS. VANDESTEEG: Thank you very much.

19 THE COURT: Thank you very much.

20 All righty. Again, I want to compliment the lawyers on
21 their presentation and keeping to the doubly-expanded two-day
22 hearing limit. I certainly appreciate that. I know my staff
23 will appreciate leaving on time today.

24 I want to recognize the work that I know that has happened
25 behind the scenes and the amount of work that it took to

1 proceed at the pace at which you did to prepare for this
2 hearing. I certainly appreciate that. There's been a lot of
3 depositions, and I'm sure negotiation and fights behind the
4 scenes. So I certainly appreciate all the hard work that's
5 been put into it.

6 In terms of the Court's ruling, I don't know that I can
7 give you a time today. I know that this is an important part
8 of the process for you folks, but I also know that, with the
9 amount of evidence that the Court has taken in, this is
10 certainly a decision I'd like to take some care with, and I'm
11 not sure that it is conducive to one of my more brief bench
12 rulings that I've given you from time to time, nor do I
13 believe, due to the stake of the issues, that it's probably in
14 anyone's best interest for me to give less than kind of
15 painstaking attention to the preparation of the ruling.

16 So I can't give you a better estimate of my time period,
17 but I certainly hope you recognize that the Court recognizes
18 that it's important to this process and will act with all
19 expediency, although I do have a really busy January and
20 February, so I will try to do my level best.

21 You guys will be here a lot between now and the third week
22 in February, if I have any updates I'll certainly provide them
23 to you guys just in terms of when to expect a ruling.

24 Do the parties have any other questions of the Court?

25 MS. MUSGRAVE: We have none, Your Honor. Thank you

1 very much. And I thank the Court and the Court's staff for
2 the extra time these two days.

3 THE COURT: Okay. Thank you very much, Ms. Musgrave.
4 Ms. Vandesteeg?

5 MS. VANDESTEEG: Likewise, Your Honor. I think that
6 that is it for today, and we also appreciate the Court's time
7 and extra time over the last few days.

8 THE COURT: Okay. Oh, absolutely. Thank you so
9 much. Appreciate it.

10 If there are any movements, I know we're here -- is it
11 tomorrow or the next day? Thursday?

12 MS. VANDESTEEG: Tomorrow, Your Honor.

13 THE COURT: Tomorrow. If there's any movements, if
14 any of the motions were to settle, agree to get pushed,
15 anything like that, please advise us so that we can do that in
16 preparation, although, for the most part, I think I have
17 hearings all morning on motions to dismiss, or maybe motions
18 for summary judgment in another case. My days are running
19 together.

20 So, other than that, I'll see you guys tomorrow.

21 MS. VANDESTEEG: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: Thanks so much.

25 THE CLERK: All rise.

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(Proceedings concluded at 4:41 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling

01/27/2023

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS	4
WITNESSES	
<u>Intercity Investment Properties, Inc.'s Witnesses</u>	
<u>Christopher Soden</u>	
- Direct Examination by Ms. Vandesteeg	7
- Cross-Examination by Ms. Walsh	70
- Redirect Examination by Ms. Vandesteeg	83
EXHIBITS	
<u>Intercity Investment Properties, Inc.'s Exhibits</u>	Received
6	46
7	56
CLOSING ARGUMENTS	
- By Ms. Walker	104
- By Ms. Musgrave	111
- By Mr. Johnson	122
- By Ms. Vandesteeg	128
RULINGS	101/160
Notice of 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) [1023] - <i>Taken Under Advisement</i>	
END OF PROCEEDINGS	163
INDEX	164

Landlord's

Exhibit 19

for February 21-23, 2023 hearing

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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)

(Jointly Administered)

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

Bay 9 Holdings LLC, ("Bay 9") hereby submits this response (the "Response") to *Intercity Investment Properties, Inc.'s Objection to Adequate Assurance Provided by Stalking Horse Bidder* [Docket No. 980] (the "Objection") and in support of the anticipated sale transaction. In support of this Response, Bay 9 respectfully states as follows:

PRELIMINARY STATEMENT²

1. Bay 9, the Successful Bidder, intends to acquire The Edgemere in an all-cash purchase price of \$48.5 million and to reposition The Edgemere as a premier Dallas senior living

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

² Capitalized terms used in this Preliminary Statement but not otherwise defined, shall have the meaning ascribed to such term in the Response below.

rental community. With a debt-free balance sheet and the dedicated financial support and investment expertise of its sponsor, Lapis Municipal Opportunities Fund IV LP (the “Sponsor”), a fund managed by Lapis Advisers, LP, Bay 9 has both the financial wherewithal and proven business experience to successfully operate The Edgemere, including meeting its obligations under that certain Ground Lease (the “Lease”) with Intercity Investment Properties, Inc. (the “Landlord”).

2. Under Bay 9’s ownership, The Edgemere will be managed by Long Hill at Edgemere, LLC, an affiliate of the Long Hill Company (“Long Hill”). Long Hill has over twenty (20) years of full-service management experience, including many projects arising from a financial or operational restructuring. While Long Hill will replace the management services previously provided by Lifespace, it is already working closely with Lifespace to transition operations and to ensure as seamless as possible transition for both the residents and the existing employees of The Edgemere, at least 90% of whom will be asked to become employees of Bay 9.

3. Bay 9 intends to offer significant and credible evidence that Bay 9 has provided the Landlord with adequate assurance of Bay 9’s future performance of the Lease at the confirmation and sale hearing scheduled before this Court to commence on February 21, 2023 (the “Confirmation and Sale Hearing”), in connection with the Plan Sponsors’ confirmation of their *Third Amended Plan of Reorganization* dated December 19, 2022,. At the Confirmation and Sale Hearing, Bay 9 will establish the following facts in support of this Court’s determination that it has provided the Landlord with adequate assurance of future performance of the Lease:

- a. Bay 9 is a special purpose entity formed by its Sponsor and is sufficiently capitalized to acquire and successfully operate The Edgemere. Prior to the Confirmation and Sale Hearing, the Sponsor will have met its initial capital commitment to Bay 9 by transferring \$55,000,000 to Bay 9 for Bay 9’s payment of the balance of the Purchase Prices (\$2.425 million in deposit having previously been funded), and to fund operating shortfalls or capital expense needs at The Edgemere (the “Acquisition Capital”);

- b. Bay 9's officers have decades of investment expertise, including significant and specialized expertise in life care communities such as The Edgemere;
- c. 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;
- d. Bay 9 underwent a process to identify Long Hill, a strong and capable independent management firm with particular expertise in turnarounds and financial restructuring senior living projects, which will aid Bay 9 in repositioning The Edgemere as a premier senior living rental community;
- e. Long Hill has successfully managed over 100 senior living communities in various capacities, and in such capacities has not caused a default on any of its debts, including any ground lease;
- f. Bay 9 conducted extensive diligence of The Edgemere. In addition to the financial, regulatory, marketing, vendor, staffing and other typical diligence materials provided to bidders through the sale process, Bay 9 toured the Community, conducted interviews with key leadership members at The Edgemere, met with the Landlord and its advisors, met with the Committee members at The Edgemere, and the considered the general economic outlook for the senior living industry in the Dallas area;
- g. Bay 9 reviewed several property conditions assessments prepared by various parties in interest in these Chapter 11 Cases and was informed by these assessments in evaluating the potential post-closing capital expense needs of The Edgemere over a multi-year period;
- h. Under Bay 9's direction, Long Hill has begun to conduct extensive diligence of The Edgemere and consulted with Bay 9 in developing a business model that demonstrates operational stability and projected growth for The Edgemere (the "Model");
- i. Bay 9 has obtained a permanent capital commitment from its Sponsor to fund up to \$15,000,000 to address capital expense needs identified by Bay 9, including any repairs to The Edgemere that impact life safety or to fund any unfunded operating expenses (the "Capital Expense Commitment");
- j. Bay 9 has obtained a three (3) year irrevocable capital commitment from its Sponsor to fund up to \$1,000,000, solely to be used to pay any of unanticipated shortfalls in Bay 9's ability to meet its rent obligations under the Lease (the "Rent Commitment");
- k. Pursuant to this Court's bench ruling on February 6, 2023 regarding the property conditions cure hearing (the "Property Conditions Ruling"), Bay 9 is in the process of engaging a structural engineer to investigate the condition of the expansion joint in The Edgemere garage. Based upon this independent assessment, Bay 9 will work

with the Plan Sponsors to address this repair. If needed, the parties may seek further hearing before this Court on this matter; and

1. Pursuant to the Property Conditions Ruling, Bay 9 intends to collaborate with the Debtors to identify an appropriate façade engineer/specialist to conduct the invasive testing directed by the Court. Based upon this independent assessment, Bay 9 will work with the Plan Sponsors to address this matter. If needed, the parties may seek further hearing before this Court on this matter.

4. By its Objection, the Landlord seeks to amend the Lease to add additional terms and requirements that are not in the Lease. A lease enhancement is not the intent or requirement of Bankruptcy Code sections 365(b)(1)(C) and (f)(2)(B). Through the Objection, the Landlord argues a distorted version of the law and an equally contorted version of the facts, in an attempt to distract the Court from the Landlord’s ultimate goal – to reclaim the property currently leased to Edgemere at no cost. *See* Objection ¶ 53.

5. Indeed, the Landlord gratuitously created a list of factors that it suggests courts should consider if the proposed assignee is a newly formed entity, despite that none of the cases the Landlord cites for this proposition involve a newly-formed entity. *See* Objection ¶ 20. The Landlord likewise incorrectly suggests that adequate assurance of future performance would require, among other things, providing a guaranty from the Sponsor and establishing a capital expenditure reserve for an astonishing \$52.5 million dollars to address its unproven estimate for *ten years’ worth of potential capital expenditures*. *See* Objection ¶ 43(c). As determined in at the Property Conditions Ruling, this request lacks a fundamental understanding of what are appropriate assurances under Bankruptcy Code section 365(f)(2)(B). Contrary to the Landlord’s exorbitant reserve demands, the case law confirms that to demonstrate adequate assurance of future performance, Bay 9 is only required to establish its ability to perform on the Lease is more probable than not. No guarantee of success is required, and a successful demonstration of adequate assurance can be made in any number of ways.

6. The Initial Assurances and Supplemental Assurances offered to the Landlord and summarized above establish that it is more likely than not that Bay 9 has the financial wherewithal and requisite skills and support of its Sponsor and Long Hill to perform under the Lease.

RESPONSE

A. General Case Background

7. On April 14, 2022 (the “Petition Date”), Senior Quality Lifestyles Corporation and Northwest Senior Housing Corporation (together, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”).

8. On November 2, 2022, UMB Bank, N.A., in its capacity as successor bond trustee and master trustee for the Original Bonds (together, the “Trustee”) and in its capacity as a lender under the DIP Credit Agreement (the “DIP Lender,” and together with the Trustee, the “Initial Plan Sponsors”) filed its *Motion of Trustee and DIP Lender for Entry of an Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing and Approving the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation and Sale Hearing; and (V) Granting Related Relief* [Docket No. 755] (the “Bidding Procedures Motion”), which Bidding Procedures Motion, along with its related filings, first identified Bay 9 as the potential stalking horse bidder in connection with a sale of the above-captioned Debtors’ assets. On November 2, 2022, the Initial Plan Sponsors filed the Plan of Reorganization of the Trustee and DIP Lender Dated November 2, 2022 [Docket No. 752] and the Disclosure Statement for the Plan of Reorganization of the Trustee and DIP Lender Dated November 2, 2022 [Docket No. 753].

9. Thereafter, settlement discussions among the Initial Plan Sponsors, the Debtors, Lifespace Communities, Inc. (“Lifespace”) and the Official Committee of Unsecured Creditors

(the “Committee”) resulted in the filing of the *Third Amended Plan of Reorganization of the Plan Sponsors Dated December 19, 2022* [Docket No. 933] (the “Plan”) and the *Third Amended Disclosure Statement for the Plan of Reorganization of the Plan Sponsors Dated December 19, 2022* [Docket No. 934] (as corrected by the filing of the *Notice of Filing of Corrected Exhibit 3 to Third Amended Disclosure Statement* [Docket No. 945]).

10. Following the Bankruptcy Court’s ruling approving the Bidding Procedures Motion at a hearing held on December 16, 2022, on December 20, 2022, the Bankruptcy Court entered the *Order (I) Authorizing and Approving the Bidding Procedures; (II) Authorizing Entry into the Stalking Horse Asset Purchase Agreement; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Scheduling Combined Confirmation and Sale Hearing and (V) Granting Related Relief* [Docket No. 946], which order formally approves the asset purchase agreement with Bay 9, subject to higher or better offers at the Auction.

11. On February 3, 2023, the Plan Sponsors filed their *Notice of (I) Cancellation of Auction, (II) Designation of the Stalking Horse Bidder as the Successful Bidder, and (III) Amendment to Stalking Horse Asset Purchase Agreement* [Dkt No. 1149], designating Bay 9 as the Successful Bidder.

B. Background Relating to Bay 9’s Adequate Assurance of Future Performance

12. Following the filing of the Bidding Procedures Motion, the Landlord instantly targeted Bay 9, assuming, with no basis, that Bay 9 could not meet its adequate assurance obligations. Indeed, on November 22, 2022, weeks before Bay 9 was even named as the Stalking Horse Bidder, the Landlord filed *Intercity Investment Properties, Inc.’s Motion for Authority to Conduct Examinations Under Federal Rule of Bankruptcy Procedure 2004* [Docket No. 817] (the “Landlord 2004 Motion”) and *Intercity Investment Properties, Inc.’s Motion for Expedited Hearing on Intercity Investment Properties, Inc.’s Motion for Authority to Conduct Examinations*

from Long Hill in support of Bay 9’s ability to perform under any assumed contracts, including the Lease.

16. Subsequently, following receipt of *Intercity Investment Properties, Inc.’s First Set of Requests for Production of Documents Related to Second Amended Plan of Reorganization Proposed by the Plan Sponsors* served on Bay 9 on December 14, 2022 and *Supplement to First Set of Requests for Production of Documents Related to Third Amended Plan of Reorganization Proposed by the Plan Sponsors* served on Bay 9 on December 20, 2022 (together, the “Document Requests”), and notwithstanding that Bay 9 had already met its adequate assurance obligations by virtue of the package provided on December 16, 2022, Bay 9 timely responded to the Document Requests on January 4, 2023.

17. Additionally, following receipt of *Intercity Investment Properties, Inc.’s First Set of Interrogatories Related to the Third Amended Plan of Reorganization Proposed by the Plan Sponsors* (the “Interrogatories”), Bay 9 timely responded to the Interrogatories on January 6, 2023.

18. Immediately upon being identified as the Successful Bidder, Bay 9 began preparing for its ownership. On February 6 and 7, 2023, key members of Bay 9, the Sponsor and Long Hill’s management team organized and participated in a series of in-person meetings with the Landlord’s business representatives, members of the Committee, and the Executive Director for The Edgemere. These initial meetings were very productive and have aided Bay 9 as it prepares for the acquisition of The Edgemere, upon obtaining the necessary court and regulatory approvals.

19. In addition, the Sponsor has met its commitments to Bay 9. Prior to the Confirmation and Sale Hearing, the Sponsor will have fulfilled its commitment to fund the Acquisition Capital to Bay 9 in the amount of \$55,000,000. Further, Bay 9 has obtained a permanent Capital Expense Commitment up to \$15,000,000 to fund capital expense needs identified by Bay 9, including any repairs to The Edgemere that impact life safety or to fund any

unfunded operating expenses. Finally, Bay 9 has obtained a three (3) year irrevocable Rent Commitment up to \$1,000,000, solely to be used by Bay 9 to pay any unanticipated shortfalls in Bay 9's ability to meet its rent obligations under the Lease.

C. Bay 9 Has Demonstrated Adequate Assurance of Future Performance of the Lease

20. Bay 9 has sufficiently demonstrated adequate assurance of future performance of the Lease under Section 365(f)(2) of the Bankruptcy Code – and the Objection should be overruled.

21. Assessing whether adequate assurance has been demonstrated requires a facts and circumstances evaluation. *In re Texas Health Enters. Inc.*, 72 F. App'x 122, 126 (5th Cir. 2003); *In re Patriot Place, Ltd.*, 486 B.R. 773, 801 (Bankr. W.D. Tex. 2013). The Bankruptcy Code does not define adequate assurance, but courts have determined that it should be interpreted practically and defined by commercial standards. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309-10 (5th Cir. 1985) (the language “adequate assurance of future performance” is derived from the Uniform Commercial Code and commentaries indicate it is to be defined by commercial rather than legal standards); *In re Texas Health Enters., Inc.*, 246 B.R. 832, 835 (Bankr. E.D. Tex. 2000) (same).

22. Courts in this District have made clear that proving adequate assurance does not require a guarantee of success or a demonstration that the obligor under a lease “will thrive, make a profit or provide a guarantee of performance[.]”, and, instead, the relevant demonstration is whether the obligor can “meet its rental and other lease obligations.” *In re Senior Care Ctrs., LLC*, 607 B.R. 580, 596 (Bankr. N.D. Tex. 2019).⁴

23. The test measuring adequate assurance requires a showing that the debtor or assignee's ability to perform on an executory contract or unexpired lease being assumed or

⁴ The Landlord suggests there is some debate about whether a lease must be assumed in its entirety. *See* Objection ¶¶ 22-27, 44-49. Bay 9 submits that no such debate exists. Rather, consistent with the Asset Purchase Agreement, the Landlord will be made whole for any past defaults by Debtors, and Bay 9 will be responsible for post-closing performance under the Lease.

assumed and assigned is “more probable than not”. *See, e.g., In re Res. Tech., Inc.*, 624 F.3d 376, 384 (7th Cir. 2010) (affirming lower court’s requirement of assignee to “show it was more likely than not to perform the obligations of the contract”); *In re Patriot Place, Ltd.*, 486 B.R. at 804 (adequate assurance standard is less stringent than feasibility standard under 11 U.S.C. § 1129(a)(11)); *In re PRK Enters., Inc.*, 235 B.R. 597, 603 (Bankr. E.D. Tex. 1999) (“the assurance of future performance is adequate if performance is likely (i.e. more probable than not); the degree of assurance necessary falls considerably short of an absolute guaranty.”)).

24. In assessing whether adequate assurance of future performance has been demonstrated, courts may consider many factors particular to the facts of the case, including: (1) whether the debtor’s financial data indicates its ability to generate an income stream sufficient to meet its obligations; (2) the general economic outlook in the debtor’s industry; (3) the presence of a guarantee; (4) the debtor’s payment history; (5) presence of a security deposit; (6) evidence of profitability; (7) plan that would earmark money exclusively for the landlord; and (7) whether the unexpired lease is at, or below, the prevailing rate. *In re Senior Care Ctrs., LLC*, 607 B.R. at 596 (citing *In re Patriot Place, Ltd.*, 486 B.R. at 801) (internal citations omitted). However, many of these facts are not applicable where the proposed assignment is to a newly created entity. In such instances, it is more appropriate to assess the financial health of supporting entities, and any agreements the assignee may enter into with third parties.

i. Bay 9 is owned and supported by the Sponsor, who has the financial wherewithal to support Bay 9’s performance under the Lease.

25. In instances where the assignee is a newly formed entity and does not have operating or financial history to offer as evidence, the court may properly review the financial wherewithal or operating history of supporting entities. *In re Res. Tech.*, 624 F.3d at 385 (reviewing financial backers in analyzing assignee’s adequate assurance); *In re C.W. Mining Co.*, No. 08-20105, 2010 WL 841396, at *9 (Bankr. D. Utah Mar. 2, 2010) (“It is proper to judge a

proposed assignee’s future performance by the financial strength of its backers and its operating agreements with experienced . . . companies.”).

26. The Initial Assurances package provided sufficient evidence of Bay 9’s ability to comply with its go forward obligations under the Lease. Among other things, the Initial Assurances demonstrated that Bay 9 has strong leadership that is supported by an experienced and capable Sponsor. The Initial Assurances included background regarding the Sponsor’s long and successful history of investing in senior living communities, including several such communities in Texas. In addition, the Initial Assurances included a link to the Sponsor’s most recent annual summary statement, and attached a letter from Lapis to Bay 9 evidencing its stated intent to fund the Acquisition Capital.

27. The Landlord attempts to discredit the Sponsor’s intent to capitalize Bay 9, suggesting that the capital commitment letter in its Initial Assurances does not sufficiently obligate the Sponsor to support Bay 9 financially. Objection ¶¶ 32-33. This argument is illogical and the Sponsor’s actions belie the Landlord’s unfounded speculation. First, the Acquisition Capital provides Bay 9 with sufficient cash on its balance sheet to acquire The Edgemere and to meet its operating and capital needs. Second, the permanent Capital Expense Commitment provides assurances that Bay 9 will have the resources to meet its capital needs or unanticipated repair expenses. Finally, the irrevocable Rent Commitment provides assurances that Bay 9 will have the resources to meet any unforeseen shortfall in payment of the rent under the Lease. *Contra In re Wash. Cap. Aviation & Leasing*, 156 B.R. 167, 174 (Bankr. E.D. Va. 1993) (financial backing found too speculative where evidence provided in support of cash infusions was “unclear at best”).

ii. *Bay 9 has the made agreements with entities having relevant senior living industry experience.*

28. Bay 9 has selected Long Hill to serve as its independent manager of The Edgemere. Long Hill’s expertise and successful management of similar senior living communities supports

Bay 9's assertion that it has provided adequate assurance of future performance of the Lease. The Initial Assurances included a letter from Long Hill describing Long Hill's extensive relevant history serving as manager, court-appointed receiver and advisory consultant in skilled nursing, assisted living, hospice and community care communities, including currently providing full service management (through its subsidiaries) to 17 senior living communities, 11 of which are in Texas. Long Hill's management team also has particularly relevant experience, with one of its members having served as a board member for a chain of 22 skilled nursing facilities in Texas and another member having served as the CEO of a hospice organization with multiple Texas sites of care. In addition, Long Hill conducted extensive diligence of The Edgemere and was instrumental in developing the Model, which supports Bay 9's assurances that it will be able to adequately perform under the Lease.

29. The Landlord incorrectly asserts that "neither Lapis nor its designated management company, Long Hill, has extensive (if any) experience operating CCRC's." Objection ¶¶ 38-39. More accurately, Long Hill has assisted and advised operations of multiple senior living facilities, including three CCRC's. The Sponsor has similar experience in purchasing distressed senior living facilities and rehabilitating operations. Notably, neither Long Hill nor the Sponsor have ever defaulted on any of their debts (including lease obligations) on any project that they have directly owned or independently managed. The Court can properly consider both the Sponsor's and Long Hill's experience in investing and operating similar situations to determine the existence of adequate assurance.

30. The information provided by Bay 9 is more than sufficient to demonstrate adequate assurance of future performance for a newly formed entity. *See In re C.W. Mining Co.*, 2010 WL 841396, at *9 (finding adequate assurance of future performance had been demonstrated for assignment to newly formed entity where newly formed entity's principal had relevant industry

experience, cash had been earmarked for capitalization of newly formed entity, and newly formed entity had a plan in place to provide same services as the debtor); *In re Serv. Merch. Co., Inc.*, 297 B.R. 675 (Bankr. M.D. Tenn. Aug. 29, 2002 (“[A]ny judgment concerning the strength of [the newly formed entity’s] operating performance necessarily depends upon the business experience of [its] sole owner and chief executive officer.”); *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance demonstrated in case of assignment to newly purchased entity despite recognition that purchaser’s assets would be limited at first where purchaser’s principal testified to relevant experience and financial capacity to capitalize the entity and additional assets would be committed as needed and parties involved in day to day operations had experience and were committed to the project).

iii. *The Landlord’s arguments are founded on distinguishable and mischaracterized case law.*

31. The Objection cites a plethora of cases which have been stretched to align with the Landlord’s narrative. The Landlord first suggests that payment of rent in advance is “the best form of adequate assurance,” relying on *In re Hub of Military Circle, Inc.*, 19 B.R. 460, 461 (Bankr. E.D. Va. 1982). Objection ¶ 18. However, the Landlord fails to mention that the *Hub of Military Circle* court states—in the same sentence—that “adequate assurance could take many forms.” 19 B.R. at 461. While rent paid in advance may be the Landlord’s preference, under the facts relating to Bay 9’s acquisition, there is no basis to compel Bay 9 to prepay rent or post a security deposit when the Lease terms do not so require. The Landlord does not, and cannot, cite any case *requiring* the assignee to provide a deposit or rent in advance in order to prove adequate assurance. *See, e.g., In re Bygaph, Inc.*, 56 B.R. at 605 (newly formed assignee showed adequate assurance by establishing principal’s experience in industry and personal financial resources); *In re Hub of*

Military Circle, Inc., 19 B.R. at 461 (finding adequate assurance based on ability to rehabilitate and landlord's ability to seek relief from court).

32. Moreover, the Landlord curiously and misleadingly suggests that because Bay 9 is a newly formed entity, adequate assurance may include sufficient financial backing, escrow deposits, other forms of security, guarantees, financial statements and substantial net worth, proceeds earmarked for rent, and substantial cash reserves. *See* Objection ¶ 20. However, each of the cases cited by the Landlord for the proposition of what adequate assurance for a newly-formed entity might include are cases where no assignment to a newly-formed entity was contemplated at all. *See Buchakian v. Musikahn Corp.*, 69 B.R. 55 (E.D. N.Y. 1986); *Seacoast Prods., Inc. v. Spring Valley Farms, Inc.*, 34 B.R. 379 (M.D. N.C. 1983); *In re Gold Standard at Penn, Inc.*, 75 B.R. 669 (Bankr. E.D. Penn. 1987); *In re Taylor Mfg., Inc.*, 6 B.R. 370 (Bankr. N.D. Ga. 1980). Simply put, the factors referenced by the Landlord may or may not be relevant in any showing of adequate assurance of future performance under the facts of these Chapter 11 Cases.

33. Finally, the Landlord's attempt to characterize Bay 9's adequate assurance information as similar to the adequate assurance information in *Sea Harvest Corp. v. Riviera Land Co.*, 868 F.2d 1077 (9th Cir. 1989) and *In re Washington Capital Aviation & Leasing* is disingenuous. Objection ¶ 32. In *Sea Harvest*, the only adequate assurance information at issue was a single paragraph in an affirmation providing, "The undersigned Petitioner recognizes the ongoing obligation to maintain such Leases and pay all obligations with regard thereto as the same arise." *Sea Harvest Corp.*, 868 F.2d at 1080. Such a statement is not remotely on par with the information shared in the Initial Assurances and Supplemental Assurances. Additionally, in *Washington Capital Aviation*, the debtor's principal offered to put funding in an escrow account but the evidence of the principal's financial condition did not comply with general accounting principles and there was no indication of how the principal would have funds to make the requisite

deposit. *In re Wash. Cap. Aviation & Leasing*, 156 B.R. at 174. The Sponsor, on the other hand, has shared its annual summary statement, has demonstrated its ability to provide the Acquisition Capital, and has made a Capital Expense Commitment and a Rent Commitment to financially support Bay 9, each of which provide the Landlord with adequate assurances that Bay 9 will perform under the Lease. At bottom, Bay 9 has sufficiently demonstrated it is more likely than not it will be able to perform its post-closing obligations under the Lease and any arguments by Landlord to the contrary are unavailing.

D. Meeting the Landlord’s Wish List is Not Required for Adequate Assurance

34. Rather than focusing on the adequate assurance information provided by Bay 9 and recognizing that such information satisfies the adequate assurance standard, the Landlord seeks to use the proposed assumption and assignment of the Lease as an opportunity to improperly amend and improve the terms of the Lease. *See In re Bygaph, Inc.*, 56 B.R. at 605 (“[T]he assumption and assignment process is not designed to afford a landlord with a benefit in addition to that which he originally bargained for under the original lease.”). Indeed, in the Objection the Landlord sets forth its laundry list of desires for its new tenant, treating those as “minimum” adequate assurance requirements. *See* Objection ¶ 43. However, under the Bankruptcy Code and controlling case law, Bay 9 is required only to demonstrate it is more probable than not that Bay 9 can meet its obligations under the Lease. Demonstrating adequate assurance does not require the Landlord’s position be improved.

35. Nor does adequate assurance require further security in the form of a deposit under § 365(l). The Landlord states that “[g]uarantees and letters of credit constitute forms of security contemplated by 11 U.S.C. § 365(l).” Objection ¶ 43.a, n.6. Bankruptcy Code section 365(l) is not applicable to these Chapter 11 Cases because the Lease never required the Debtors to post a security deposit, give a letter of credit, or offer an affiliate guaranty. Subsection (l) is intended to

“give the landlord the benefit of his original agreement with the debtor.” S. REP. NO. 98-65, at 68 (1984).⁵ The Lease does not identify a security deposit contemplated by the Debtors and the Landlord. Requiring Bay 9 to now make a deposit simply because it is assignee under the Lease is contrary to the legislators’ intent, and places the Landlord in a better position than it had been. *See In re Bygaph, Inc.*, 56 B.R. at 605 (“The emphasis is on protection; the assumption and assignment process is not designed to afford a landlord with a benefit in addition to that which he originally bargained for under the original lease.”).

36. Moreover, the Landlord need not “like” Bay 9 as a tenant or have been willing to lease to Bay 9 in the ordinary course of its business outside of these Chapter 11 Cases. *In re C.W. Mining Co.*, 2010 WL 841396, at *9 (internal citation omitted) (“A party objecting to an assignment . . . must show more than dislike for the proposed assignee; the party must show actual detriment.”). It is of no relevance or import what type of information the Landlord would like or would allegedly seek from a new tenant. The Landlord’s contrary suggestions should not be afforded any credence. *See* Objection ¶¶ 40-43. The only relevant inquiry here is whether Bay 9 has demonstrated it is more likely than not that it will be able to comply with the future obligations under the Lease. The answer to that inquiry, as will be demonstrated at the Confirmation and Sale Hearing, is unequivocally “yes”.

CONCLUSION AND RESERVATION OF RIGHTS

WHEREFORE for the reasons set forth herein, Bay 9 respectfully requests that the Court overrule the Objection, find that Bay 9 has demonstrated adequate assurance of future performance in connection with the Lease, and grant such just relief as it may deem just and proper. Bay 9

⁵ Indeed, Bay 9 has found no authority and limited secondary sources analyzing Bankruptcy Code section 365(l), suggesting this subsection is used in limited circumstances. The Landlord has equally failed to demonstrate that Section 365(l) is applicable to the Lease.

reserves its right to raise additional arguments and present its evidence at the Confirmation and Sale Hearing.

Dated: February 9, 2023

Respectfully submitted,

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/s/ Matthew H. Davis

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Counsel to Bay 9 Holdings LLC

CERTIFICATE OF SERVICE

I certify that on February 9, 2023, a true and correct copy of the foregoing was served electronically on all persons via the Court's CM/ECF System.

/s/ Matthew Davis

Matthew H. Davis

Landlord's

Exhibit 20

for February 21-23, 2023 hearing

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Counsel for Intercity Investment Properties, Inc.

Counsel for Intercity Investment Properties, Inc.

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

In re:)
)
Northwest Senior Housing Corporation, *et al.*,) Chapter 11
)
Debtors¹) Case No. 22-30659 (MVL)
)
)

DECLARATION OF HANNAH E. WALSH

STATE OF TEXAS §
§
COUNTY OF DALLAS §

HANNAH E. WALSH, pursuant to 28 U.S.C. § 1746 hereby declares as follows:

1. I am over the age of eighteen (18) years, am of sound mind, and am otherwise competent to make this Declaration.
2. I am an attorney at the law firm Jackson Walker LLP in Dallas, Texas. In that capacity, I have gained personal knowledge of the facts and circumstances described in this Declaration and the documents and records discussed. The facts stated in this Declaration are true and correct. If called as a witness, I could and would competently testify

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 (“SQLC”) (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

regarding the matters set forth in this Declaration.

3. Attached hereto as **Exhibit 1** is a true and correct copy of an article dated February 9, 2023 entitled “Fitch Places Lifespace Communities, Inc. on Rating Watch Negative,” which I retrieved from the Fitch Ratings website on February 16, 2023 at: <https://www.fitchratings.com/research/us-public-finance/fitch-places-lifospace-communities-inc-on-rating-watch-negative-09-02-2023#:~:text=Fitch%20Ratings%20%2D%20New%20York%20%2D%2009,Lifospace%20on%20Rating%20Watch%20Negative.>

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 16, 2023



Hannah E. Walsh, Declarant

Landlord's

Exhibit 20-A

for February 21-23, 2023 hearing

Exhibit 1

to Walsh Declaration



RATING ACTION COMMENTARY

Fitch Places Lifespace Communities, Inc. on Rating Watch Negative

Thu 09 Feb, 2023 - 1:41 PM ET

Fitch Ratings - New York - 09 Feb 2023: Fitch Ratings has placed Lifespace Communities, Inc.'s 'BBB' Issuer Default Rating (IDR) and 'BBB' Long-Term rating on approximately \$525.4 million of bonds issued through various authorities on behalf of Lifespace on Rating Watch Negative.

In addition, Fitch has placed the 'BBB' rating on approximately \$41.8 million of series 2015 retirement facility revenue bonds issued by the Tarrant County Cultural Education Facilities Finance Corporation on behalf of Querencia at Barton Creek on Rating Watch Negative.

RATING ACTIONS

We use cookies to deliver our online services, to understand how they are used and for advertising purposes. Details of the cookies we use and instructions on how to disable them are set out in our Privacy Policy.

I UNDERSTAND

Lifespace Communities (IA) /General Revenues/1 LT	LT	BBB Rating Watch Negative Rating Watch On	BBB Rating Outlook Stable
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Querencia at Barton Creek (TX) /General Revenues/1 LT	LT	BBB Rating Watch Negative Rating Watch On	BBB Rating Outlook Stable
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[VIEW ADDITIONAL RATING DETAILS](#)

SECURITY

The bonds are secured by a pledge of unrestricted receivables of the obligated group (OG) and a mortgage interest in certain property.

KEY RATING DRIVERS

ANALYTICAL CONCLUSION

Fitch has placed the ratings on Rating Watch Negative due to Lifespace's plan to fund approximately \$143 million of entrance fee refunds for residents of Northwest Senior Housing Corporation d/b/a Edgemere (Edgemere, a non-Obligated Group entity, which Lifespace purchased in 2019) as part of Edgemere's bankruptcy restructuring. Lifespace currently contemplates funding this liability through a combination of the proceeds from subordinate debt to be issued by the Lifespace Obligated Group (Lifespace OG) in an amount not to exceed \$100 million (likely about \$82 million) and internal cash flows of the Lifespace OG.

It is anticipated that should Lifespace's deposit to the Edgemere Residents Trust result in a reduction of Lifespace's days cash on hand (DCOH) to below 250 days, that portion of the payment may be deferred for up to two years, but must be paid in full in year three unless payment would result in an Event of Default under the Lifespace OG's Master Trust

maintaining these minimum liquidity thresholds, Fitch nevertheless believes that the payment of these liabilities will materially inhibit Lifespace's cash flow growth over the next several years. Fitch sees this as a negative, given that Lifespace's cash flow is already constrained due to recent declines in independent living unit (ILU) occupancy.

Moreover, as the subordinate bonds are not being issued in the interest of a revenue-producing project, Lifespace's incurrence of this additional debt will erode its cash-to-adjusted debt, which is already relatively low for the rating category, due to additional borrowings Lifespace has transacted in order to finance its substantial campus redevelopment plan.

Fitch expects to resolve the Rating Watch once the terms of the transaction have been finalized, expected to occur around mid-April.

RATING SENSITIVITIES

Factors that could, individually or collectively, lead to negative rating action/downgrade:

--Fitch expects to resolve the Rating Watch once the terms of the transaction are finalized and Fitch can evaluate the full impact on Lifespace's credit profile and incorporate operational updates, such as progress on occupancy improvement and planned capital projects. This is expected to occur around mid-April.

--While a multi-notch downgrade to below investment grade is a possibility, it is not the likely outcome given Lifespace's considerable credit strength as one of the largest and most geographically diverse life plan community (LPC) systems in the country. Any downgrade is likely to be limited to one notch, unless Lifespace's core credit profile has shown material deterioration, which would be exacerbated by its cash flow commitment to the Edgemere Residents Trust.

BEST/WORST CASE RATING SCENARIO

International scale credit ratings of Sovereigns, Public Finance and Infrastructure issuers

CREDIT PROFILE

Headquartered in Des Moines, IA, Lifespace is one of the largest LPC systems in the country, currently operating 17 LPCs in nine states. The OG consists of 11 LPCs in six states: Abbey Delray, Abbey Delray South and Harbour's Edge in Delray Beach, FL; The Waterford, in Juno Beach, FL; Village on the Green in Longwood, FL Beacon Hill in Lombard, IL; Oak Trace in Downers Grove, IL; Claridge Court in Prairie Village, Kansas; Friendship Village of Bloomington (FV of Bloomington) in Bloomington, Minnesota; Friendship Village of South Hills in Upper St. Clair, Pennsylvania; and Querencia in Austin, TX. The OG operates 2,981 ILUs; 282 ALUs; 163 MSUs; and 792 SNF beds.

In June 2019, Lifespace completed an affiliation with SQLC and as a result became the sole member of three communities located in Texas -- Querencia; Edgemere (not rated by Fitch) in Dallas; and Tarrant County Senior Living Center, Inc. d/b/a Stayton at Museum Way (not rated by Fitch) in Fort Worth. Querencia joined the Lifespace OG with the issuance of the series 2021 bonds. On April 14, 2022, Edgemere and SQLC (collectively the debtors) filed for relief under Chapter 11 of the U.S. Bankruptcy Code.

For more information on Lifespace, please see Fitch's report dated Sept. 13, 2022.

REFERENCES FOR SUBSTANTIALLY MATERIAL SOURCE CITED AS KEY DRIVER OF RATING

The principal sources of information used in the analysis are described in the Applicable Criteria.

ESG CONSIDERATIONS

Unless otherwise disclosed in this section, the highest level of ESG credit relevance is a score of '3'. This means ESG issues are credit-neutral or have only a minimal credit impact on the entity, either due to their nature or the way in which they are being managed by the

Primary Rating Analyst

+1 212 908 0545

margaret.johnson@fitchratings.com

Fitch Ratings, Inc.

Hearst Tower 300 W. 57th Street New York, NY 10019

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Senior Director

Committee Chairperson

+1 212 908 0674

eva.thein@fitchratings.com

MEDIA CONTACTS

Sandro Scenga

New York

+1 212 908 0278

sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

PARTICIPATION STATUS

The rated entity (and/or its agents) or, in the case of structured finance, one or more of the transaction parties participated in the rating process except that the following issuer(s), if any, did not participate in the rating process, or provide additional information, beyond the issuer's available public disclosure.

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APPLICABLE MODELS

Numbers in parentheses accompanying applicable model(s) contain hyperlinks to criteria providing description of model(s).

Portfolio Analysis Model (PAM), v2.0.0 ([1](#))

ADDITIONAL DISCLOSURES

[Solicitation Status](#)

[Endorsement Policy](#)

ENDORSEMENT STATUS

Iowa Finance Authority (IA)

EU Endorsed, UK Endorsed

DISCLAIMER & DISCLOSURES

All Fitch Ratings (Fitch) credit ratings are subject to certain limitations and disclaimers.

Please read these limitations and disclaimers by following this link:

<https://www.fitchratings.com/understandingcreditratings>. In addition, the following <https://www.fitchratings.com/rating-definitions-document> details Fitch's rating definitions for each rating scale and rating categories, including definitions relating to default. ESMA and the FCA are required to publish historical default rates in a central repository in accordance with Articles 11(2) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 and The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 respectively.

Published ratings, criteria, and methodologies are available from this site at all times. Fitch's code of conduct, confidentiality, conflicts of interest, affiliate firewall, compliance, and other relevant policies and procedures are also available from the Code of Conduct section of this site. Directors and shareholders' relevant interests are available at <https://www.fitchratings.com/site/regulatory>. Fitch may have provided another permissible or ancillary service to the rated entity or its related third parties. Details of permissible or

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investigation of the factual information relied upon by it in accordance with its ratings methodology, and obtains reasonable verification of that information from independent sources, to the extent such sources are available for a given security or in a given jurisdiction. The manner of Fitch's factual investigation and the scope of the third-party verification it obtains will vary depending on the nature of the rated security and its issuer, the requirements and practices in the jurisdiction in which the rated security is offered and sold and/or the issuer is located, the availability and nature of relevant public information, access to the management of the issuer and its advisers, the availability of pre-existing third-party verifications such as audit reports, agreed-upon procedures letters, appraisals, actuarial reports, engineering reports, legal opinions and other reports provided by third parties, the availability of independent and competent third-party verification sources with respect to the particular security or in the particular jurisdiction of the issuer, and a variety of other factors. Users of Fitch's ratings and reports should understand that neither an enhanced factual investigation nor any third-party verification can ensure that all of the information Fitch relies on in connection with a rating or a report will be accurate and complete. Ultimately, the issuer and its advisers are responsible for the accuracy of the information they provide to Fitch and to the market in offering documents and other reports. In issuing its ratings and its reports, Fitch must rely on the work of experts, including independent auditors with respect to financial statements and attorneys with respect to legal and tax matters. Further, ratings and forecasts of financial and other information are inherently forward-looking and embody assumptions and predictions about future events that by their nature cannot be verified as facts. As a result, despite any verification of current facts, ratings and forecasts can be affected by future events or conditions that were not anticipated at the time a rating or forecast was issued or affirmed.

The information in this report is provided "as is" without any representation or warranty of any kind, and Fitch does not represent or warrant that the report or any of its contents will meet any of the requirements of a recipient of the report. A Fitch rating is an opinion as to the creditworthiness of a security. This opinion and reports made by Fitch are based on established criteria and methodologies that Fitch is continuously evaluating and updating. Therefore, ratings and reports are the collective work product of Fitch and no individual, or group of individuals, is solely responsible for a rating or a report. The rating does not

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The ratings above were solicited and assigned or maintained by Fitch at the request of the rated entity/issuer or a related third party. Any exceptions follow below.

ENDORSEMENT POLICY

Fitch's international credit ratings produced outside the EU or the UK, as the case may be, are endorsed for use by regulated entities within the EU or the UK, respectively, for regulatory purposes, pursuant to the terms of the EU CRA Regulation or the UK Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019, as the case may be. Fitch's approach to endorsement in the EU and the UK can be found on Fitch's [Regulatory Affairs](#) page on Fitch's website. The endorsement status of international credit ratings is provided within the entity summary page for each rated entity and in the transaction detail pages for structured finance transactions on the Fitch website. These disclosures are updated on a daily basis.

[US Public Finance](#) [Healthcare and Pharma](#) [North America](#) [United States](#)

Landlord's

Exhibit 21

for February 21-23, 2023 hearing

BAY 9 HOLDINGS LLC

CONSENT OF SOLE MEMBER

Grenelle Holdings, LLC, a Delaware limited liability company (the "Member"), the sole member of Bay 9 Holdings LLC (the "Company"), hereby adopts the following resolutions:

RECITALS

Whereas, Northwest Senior Housing Corporation, a Texas not for profit corporation (the "Seller") is a debtor and debtor in possession in that certain chapter 11 case pending in the Northern District of Texas Bankruptcy Court (the "Bankruptcy Court") and is the owner and operator of a continuing care retirement community (the "Edgemere Community") on land owned by Intercity Investment Properties (the "Landlord"), located at 8523 Thackery St., Dallas, Texas 75225, and leased to the Seller pursuant to that certain Ground Lease dated November 5, 1999 with the Landlord (the "Ground Lease").

Whereas, the Company intends to purchase substantially all of the assets of the Edgemere Community and assume the Ground Lease, pursuant to the terms and conditions of that certain Asset Purchase Agreement, dated December 16, 2022 (the "Purchase Agreement"). The conditions to close on the Purchase Agreement include, but are not limited to (i) entry of an order authorizing the sale transaction and confirming the Third Amended Plan of Reorganization of the Plan Sponsors under Chapter 11 of the Bankruptcy Code, dated December 19, 2022, and (ii) obtaining the necessary regulatory licenses and permits to operate the Edgemere Community.

Whereas, as set forth in the Purchase Agreement, the Buyer's stalking horse offer of \$48.5 million (subject to adjustments therein) is subject to higher and better offers through a competitive auction process pursuant to bidding procedures approved by the Northern District of Texas Bankruptcy Court on December 20, 2022. If any qualified overbids are received for the Seller's assets by January 13, 2023, the Seller will conduct an auction on January 17, 2023. If no qualified overbids are received by January 13, 2023, the Seller must cancel the auction and proceed to seek approval of the Sale Transaction in order to implement the Plan.

Whereas, the Company and its authorized agents and officers ("Authorized Agents") have negotiated an asset sale transaction with Northwest Senior Housing Corporation, a Texas not for profit corporation (the "Seller"), for the acquisition of substantially all of the assets of Seller (the "Transaction") upon the terms and conditions set forth in the Asset Purchase Agreement, dated as of December 16, 2022 (as amended, supplemented or modified from time to time, the "Purchase Agreement"), by and between the Company and Seller, together with certain ancillary documents contemplated thereby (collectively, the "Ancillary Agreements" and together with the Purchase Agreement, the "Transaction Documents");

Whereas, the Member, the Company and the Authorized Agents deem it desirable and in the best interest of the Company to proceed with the consummation of the Transaction.

RESOLUTIONS

NOW, THEREFORE, BE IT RESOLVED, that the actions of the Company and its Authorized Agents, in negotiating the Transaction be, and they hereby are, in all respects, ratified, confirmed, and approved.

BE IT FURTHER RESOLVED that the Company be and it is hereby authorized to enter into the Transaction.

BE IT FURTHER RESOLVED that Kjerstin Hatch, as President of the Company, be, and hereby is, authorized and directed in the name and on behalf of the Company to execute and deliver the Transaction Documents, affidavits, certificates, consents, and any other documentation she deems necessary or appropriate with regard to the Transaction.

BE IT FURTHER RESOLVED that Kjerstin Hatch, as President of the Company, be, and hereby is, authorized and directed in the name and on behalf of the Company to take such actions as she deems necessary or appropriate to consummate the transactions contemplated herein or which are necessary or appropriate to carry out the intent and accomplish the purposes of the foregoing preamble and resolutions.

In witness hereof, the Member has executed this Consent as of December 27, 2022.

GRENELLE HOLDINGS, LLC

By: _____


Kjerstin Hatch
President

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:47 AM 10/26/2022
FILED 09:47 AM 10/26/2022
SR 20223862457 - File Number 7103428

CERTIFICATE OF FORMATION
OF
TRURO HOLDINGS LLC

- 1 The name of the limited liability company is "Truro Holdings LLC" (the "Company").
- 2 The address of the registered office of the Company is c/o Delaware Corporations LLC, 1000 N West Street, Suite 1501, City of Wilmington, County of New Castle, Delaware 19801.
- 3 The name and address of the registered agent for service of process of the Company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act is Delaware Corporations LLC, 1000 N West Street, Suite 1501, City of Wilmington, County of New Castle, Delaware 19801.

Executed this 26th day of October, 2022

By:

/s/ Jonathan Baum
Jonathan Baum
(Authorized Person)

BAY000003

BAY 9 HOLDINGS LLC
CERTIFICATE OF INCUMBENCY

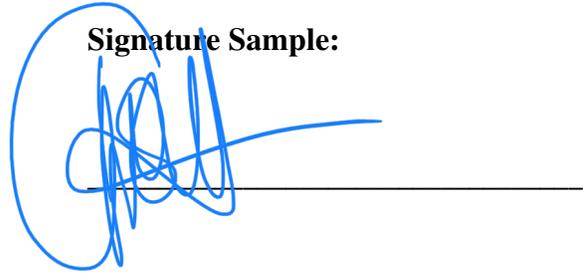
I, Kjerstin Hatch, the undersigned, in my capacity as President of Bay 9 Holdings LLC, a Delaware limited liability company (the "Company") hereby certify the following:

1. That I am the duly elected President of the Company.

2. That the persons named below do presently hold the titles specified below, each of whom is authorized to act on own behalf of the Company, and the signature opposite their respective names is their true signature:

Name:	Title:
Kjerstin Hatch	President

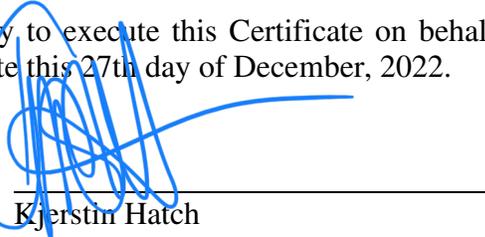
Signature Sample:



Basia Terrell	Vice President
---------------	----------------



3. That I have the power and authority to execute this Certificate on behalf of the Company and that I have so executed this Certificate this 27th day of December, 2022.



Kjerstin Hatch

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "GRENELLE HOLDINGS LLC", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF OCTOBER, A.D. 2022, AT 12:55 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

7107253 8100
SR# 20223876475

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 204719291
Date: 10-27-22

BAY000005

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:55 PM 10/27/2022
FILED 12:55 PM 10/27/2022
SR 20223876475 - File Number 7107253

CERTIFICATE OF FORMATION
OF
GRENELLE HOLDINGS LLC

- 1 The name of the limited liability company is "Grenelle Holdings LLC" (the "Company").
- 2 The address of the registered office of the Company is c/o Delaware Corporations LLC, 1000 N West Street, Suite 1501, City of Wilmington, County of New Castle, Delaware 19801.
- 3 The name and address of the registered agent for service of process of the Company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act is Delaware Corporations LLC, 1000 N West Street, Suite 1501, City of Wilmington, County of New Castle, Delaware 19801.

Executed this 27th day of October, 2022

By:

/s/ Jonathan Baum
Jonathan Baum
(Authorized Person)

BAY000006



Office of the Secretary of State

October 31, 2022

Attn: CT CORPORATION SYSTEM

CT Corporation System
701 Brazos Street, Ste. 720
Austin, TX 78701 USA

RE: Bay 9 Holdings LLC
File Number: 804789745

It has been our pleasure to file the application for registration and issue the enclosed certificate of filing evidencing the authority of the foreign limited liability company (llc) to transact business in Texas.

Unless exempted, the foreign entity is subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the entity at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the foreign entity. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <https://window.state.tx.us/taxinfo/franchise/index.html>.

The registered foreign entity is not required to file annual reports with the Secretary of State. An application for amended registration must be filed with the Secretary of State if the foreign entity changes its name, changes the purposes to be pursued in Texas, or changes the assumed name it elected to use on its application for registration. It is important for the foreign entity to continuously maintain a registered agent and office in Texas. Failure to maintain an agent or office or file a change to the information in Texas may result in the revocation of the entity's registration by the Secretary of State.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555

Enclosure



Office of the Secretary of State

CERTIFICATE OF FILING OF

Bay 9 Holdings LLC
File Number: 804789745

The undersigned, as Secretary of State of Texas, hereby certifies that an Application for Registration for the above named Foreign Limited Liability Company (LLC) to transact business in this State has been received in this office and has been found to conform to the applicable provisions of law.

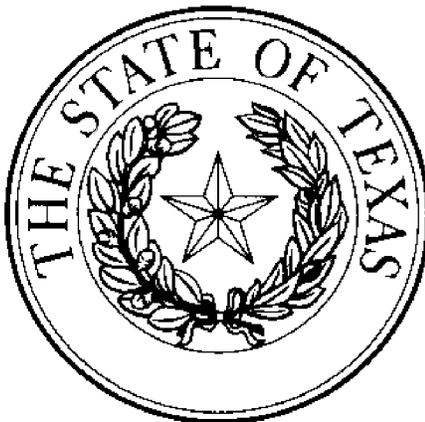
ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing the authority of the entity to transact business in this State from and after the effective date shown below for the purpose or purposes set forth in the application under the name of

Bay 9 Holdings LLC

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 10/27/2022

Effective: 10/27/2022



A handwritten signature in black ink, appearing to read "John B. Scott".

John B. Scott
Secretary of State

Come visit us on the internet at <https://www.sos.texas.gov/>

**Form 304
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$750



**Application for
Registration
of a Foreign Limited
Liability Company**

This space reserved for office use.

1. The entity is a foreign limited liability company. The name of the entity is:

Bay 9 Holdings LLC

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

2A. The name of the entity in its jurisdiction of formation does not contain the word "limited liability company" or "limited company" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is: _____

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state or foreign country) Delaware

and the date of its formation in that jurisdiction is: 10/26/2022
mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign limited liability company currently exists as a valid limited liability company under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the limited liability company that it proposes to pursue in the transaction of business in Texas are set forth below.

All lawful business in which a limited liability may be engaged.

The entity also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is organized.

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: 11/02/2022

mm/dd/yyyy Late fees may apply (see instructions).

8. The principal office address of the limited liability company is:

265 Magnolia Avenue; Suite 100	Larkspur	CA	US	94929
<i>Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip/Postal Code</i>

Complete item 9A or 9B, but not both. Complete item 9C.

9A. The registered agent is an organization (cannot be entity named above) by the name of:

C T Corporation System

OR

9B. The registered agent is an individual resident of the state whose name is:

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
-------------------	-------------	------------------	---------------

9C. The business address of the registered agent and the registered office address is:

1999 Bryan St. Suite 900	Dallas	TX	75201-3136
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each governing person is:

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)					
IF INDIVIDUAL					
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>		
OR					
IF ORGANIZATION					
<i>Grenelle Holdings LLC</i>					
<i>Organization Name</i>					
265 Magnolia Avenue; Suite 100		Larkspur	CA	US	94939
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)					
IF INDIVIDUAL					
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>		
OR					
IF ORGANIZATION					
<i>Organization Name</i>					
<i>Street or Mailing Address</i>					
<i>City</i>					
<i>State</i>					
<i>Country</i>					
<i>Zip Code</i>					

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)					
IF INDIVIDUAL					
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>		
OR					
IF ORGANIZATION					
<i>Organization Name</i>					
<i>Street or Mailing Address</i>					
<i>City</i>					
<i>State</i>					
<i>Country</i>					
<i>Zip Code</i>					

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: October 27, 2022

Jonathan Baum

Signature of authorized person (see instructions)

Jonathan Baum

Printed or typed name of authorized person.

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "TRURO HOLDINGS LLC", CHANGING ITS NAME FROM "TRURO HOLDINGS LLC" TO "BAY 9 HOLDINGS LLC", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF OCTOBER, A.D. 2022, AT 10:56 O`CLOCK A.M.




Jeffrey W. Bullock, Secretary of State

7103428 8100
SR# 20223874526

Authentication: 204717408
Date: 10-27-22

You may verify this certificate online at corp.delaware.gov/authver.shtml

BAY000012

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:56 AM 10/27/2022
FILED 10:56 AM 10/27/2022
SR 20223874526 - File Number 7103428

STATE OF DELAWARE
CERTIFICATE OF AMENDMENT

1 The name of the limited liability company is "Truro Holdings LLC" (the "Company").

2 The Certificate of Formation of the Company is hereby amended as follows:

Paragraph 1 of the Certificate of Formation is hereby deleted in its entirety and replaced by the following:

"1 The name of the limited liability company is "Bay 9 Holdings LLC" (the "Company").

Executed this 27th day of October, 2022

By:

/s/ Jonathan Baum
Jonathan Baum
(Authorized Person)

Bay 9 Holdings LLC Organization Chart



Redd, Hanna

From: Basia Terrell <bterrell@lapisadvisers.com>
Sent: Wednesday, December 28, 2022 6:46 PM
To: David Lawlor
Cc: Jackson Rueter
Subject: Edgemere

David,

We just received access to the RBC dataroom, please confirm you have access to it as well?

Jackson and I are going to update the most recent monthlies into our model tomorrow and re-review GL info on costs. In anticipation of completing the review, do you have time on Friday afternoon (ideally around 2/3pm EST) to go over the model and what needs to be tweaked? We need to provide our business case to Landlord by Tues Jan 3rd.

Basia Terrell, CFA

Managing Principal, Partner
Lapis Advisers, LP
265 Magnolia Avenue, Suite 100
Larkspur, CA 94939
T: 415-376-6283

Redd, Hanna

From: David Lawlor <dlawlor@longhillcompany.com>
Sent: Wednesday, December 21, 2022 5:31 PM
To: Basia Terrell; Jackson Rueter
Subject: RE: Consulting arrangement & fine tuning Edgemere model

I've pinged Victor – he has connected with Chelsey and Adrienne to finalize.

David M. Lawlor
President/CEO
The Long Hill Company
580 Long Hill Avenue
Shelton, CT 06484
www.longhillcompany.com
(o) 203.944.8283
(f) 203.925.2667
(c) 203.305.2318



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From: Basia Terrell <bterrell@lapisadvisers.com>
Sent: Wednesday, December 21, 2022 3:45 PM
To: David Lawlor <dlawlor@longhillcompany.com>; Jackson Rueter <jrueter@lapisadvisers.com>
Subject: Consulting arrangement & fine tuning Edgemere model

Hello David,

At this stage we have been given a green light to engage with you and examine details in RBC's dataroom, although it seems consulting agreement is still outstanding. Can you please let me know if you have a final draft for us to execute?

We noted deterioration in cost control in the past two months that we would like to understand better – both by studying GL as well as engaging Edgemere personnel in the operating performance discussion. I think it would be crucial for you & your team to be involved in those calls so once we have the consulting agreement in place we can advance and set up follow up.

Thank you -

Basia Terrell, CFA

Managing Principal, Partner
Lapis Advisers, LP
265 Magnolia Avenue, Suite 100
Larkspur, CA 94939
T: 415-376-6283

Redd, Hanna

From: Basia Terrell <bterrell@lapisadvisers.com>
Sent: Thursday, December 29, 2022 4:06 PM
To: David Lawlor
Cc: Jackson Rueter; Erich Marriott
Subject: RE: Edgemere

Jackson can you share your updated version – updated for recent #s but NOT for forward assumptions. Tomorrow after 11am CT works for me.

From: David Lawlor <dlawlor@longhillcompany.com>
Sent: Thursday, December 29, 2022 12:49 PM
To: Basia Terrell <bterrell@lapisadvisers.com>
Cc: Jackson Rueter <jrueter@lapisadvisers.com>; Erich Marriott <emarriott@longhillcompany.com>
Subject: Re: Edgemere

We received detail GL and census on Tuesday, checking with team on progress reconciling T3M to the model to try and update working capital drag.

David M. Lawlor
President/CEO
The Long Hill Company
580 Long Hill Avenue
Shelton, CT 06484
www.longhillcompany.com
(o) 203-944-8283
(f) 203-925-2667
(c) 203-305-2318

From: Basia Terrell <bterrell@lapisadvisers.com>
Sent: Wednesday, December 28, 2022 6:46:26 PM
To: David Lawlor <dlawlor@longhillcompany.com>
Cc: Jackson Rueter <jrueter@lapisadvisers.com>
Subject: Edgemere

David,

We just received access to the RBC dataroom, please confirm you have access to it as well?

Jackson and I are going to update the most recent monthlies into our model tomorrow and re-review GL info on costs. In anticipation of completing the review, do you have time on Friday afternoon (ideally around 2/3pm EST) to go over the model and what needs to be tweaked? We need to provide our business case to Landlord by Tues Jan 3rd.

Basia Terrell, CFA

Managing Principal, Partner
Lapis Advisers, LP
265 Magnolia Avenue, Suite 100
Larkspur, CA 94939
T: 415-376-6283

Redd, Hanna

From: David Lawlor <dlawlor@longhillcompany.com>
Sent: Thursday, December 29, 2022 4:05 PM
To: Basia Terrell
Cc: Jackson Rueter; Erich Marriott; Greg Thome
Subject: RE: Edgemere

I will send invite for 2pm ET call.

We will have our analytical to you prior to our meeting.

David M. Lawlor
President and CEO
The Long Hill Company
580 Long Hill Avenue
Shelton, CT 06484
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From: David Lawlor <dlawlor@longhillcompany.com>
Sent: Thursday, December 29, 2022 3:49 PM
To: Basia Terrell <bterrell@lapisadvisers.com>
Cc: Jackson Rueter <jrueter@lapisadvisers.com>; Erich Marriott <emarriott@longhillcompany.com>
Subject: Re: Edgemere

We received detail GL and census on Tuesday, checking with team on progress reconciling T3M to the model to try and update working capital drag.

David M. Lawlor
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Shelton, CT 06484
www.longhillcompany.com
(o) 203-944-8283
(f) 203-925-2667
(c) 203-305-2318

From: Basia Terrell <bterrell@lapisadvisers.com>
Sent: Wednesday, December 28, 2022 6:46:26 PM
To: David Lawlor <dlawlor@longhillcompany.com>
Cc: Jackson Rueter <jrueter@lapisadvisers.com>
Subject: Edgemere

David,

We just received access to the RBC dataroom, please confirm you have access to it as well?

Jackson and I are going to update the most recent monthlies into our model tomorrow and re-review GL info on costs. In anticipation of completing the review, do you have time on Friday afternoon (ideally around 2/3pm EST) to go over the model and what needs to be tweaked? We need to provide our business case to Landlord by Tues Jan 3rd.

Basia Terrell, CFA

Managing Principal, Partner
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265 Magnolia Avenue, Suite 100
Larkspur, CA 94939
T: 415-376-6283

Redd, Hanna

From: David Lawlor <dlawlor@longhillcompany.com>
Sent: Tuesday, January 3, 2023 8:24 PM
To: Basia Terrell
Cc: Jackson Rueter; Greg Thome; Pamela Griffin; Beth Bemis; Erich Marriott; Shapiro, Jill; Kristy Barton
Subject: Re: Outstanding Info Request

We'll gather comment and respond early tomorrow morning. Thank you.

David M. Lawlor
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The Long Hill Company
580 Long Hill Avenue
Shelton, CT 06484
www.longhillcompany.com
(o) 203-944-8283
(f) 203-925-2667
(c) 203-305-2318

From: Basia Terrell <bterrell@lapisadvisers.com>
Sent: Tuesday, January 3, 2023 8:20:08 PM
To: David Lawlor <dlawlor@longhillcompany.com>
Cc: Jackson Rueter <jrueter@lapisadvisers.com>; Greg Thome <gjthome@longhillcompany.com>; Pamela Griffin <pgriffin@longhillcompany.com>; Beth Bemis <ebemis@longhillcompany.com>; Erich Marriott <emarriott@longhillcompany.com>; Shapiro, Jill <Jill.Shapiro@fticonsulting.com>
Subject: Outstanding Info Request

David & team, [Here is a draft email of additional info requests we have. Please add/edit for information you are seeking. I would love to send over tonight or tomorrow am. Thanks.](#)

Kevin/ Jill,

Thank you for jumping in here to assist. A few more questions:

1. Please post most update occupancy stats across the various levels of care; it would be helpful if that was loaded into the RBC data room weekly through to the auction date.
2. Can you let us know when you will be posting November financials?
3. Does Edgemere have a list of vacant or soon to be vacant positions at the community?
4. Can you please upload/send us the most recent payroll from the Workday system? Please include a legend or key that allows us to identify positions and respective wages thank you. If there is an updated team roster for Jan 1 that would be great too.
5. Do you have a schedule that is a bit more descriptive for 2019-2022 capex spend itemized by project? For example, we pulled below data from the fixed asset schedule sorting for largest expense categories in 2021. We know tile roof was replaced but is there a schedule that can identify precisely which buildings? \$512k spend on

“model apartment renovation” presumably that is several model apartments – would love to understand how many.

2019 IL Roofing 4.1 21	2019 IL Roofing 4	Building and Improvements	979,983.87
Model Apartment Renovation	Model Apartment R	Building and Improvements	512,711.38
Roof Repair/Replacement	Roof Repair/Repla	Building and Improvements	470,300.00
Roof/Gutter Repair Project - Bldgs 1-3 & Admin	Roof/Gutter Repal	Building and Improvements	462,500.00
Elevator Project	Elevator Project	Building and Improvements	298,030.00

6. I know you functioned with limited liquidity since Plant Moran report was issued in oct 2021, but curious which (if any) of the capex projects identified by Plant Moran were you able to address?

From: DeLuise, Kevin <Kevin.Deluise@fticonsulting.com>

Sent: Tuesday, January 3, 2023 10:49 AM

To: Shandler, Chad <Chad.Shandler@fticonsulting.com>; Basia Terrell <bterrell@lapisadvisers.com>; Nick Harshfield <nick.harshfield@lifespacecommunities.com>

Cc: Jackson Rueter <jrueter@lapisadvisers.com>; John Falldine <John.Falldine@lifespacecommunities.com>; Walker, Adrienne <awalker@lockelord.com>; David Lawlor <dlawlor@longhillcompany.com>; O'Dell, Naomi <naomi.o'dell@rbc.com>; Moilanen, Max <max.moilanen@rbccm.com>; vmilione@nixonpeabody.com; Greg Thome <githome@longhillcompany.com>; Pamela Griffin <pgriffin@longhillcompany.com>; Beth Bemis <ebemis@longhillcompany.com>; Erich Marriott <emarriott@longhillcompany.com>; Shapiro, Jill <Jill.Shapiro@fticonsulting.com>

Subject: RE: [EXTERNAL] RE: Outstanding Requests from 12/30 Call

Hello all,

Responding to Jackson’s question below.

Amortization income is the amortization monthly on the specific contract the resident signs, taking their life expectancy and amortizing the non refundable portion of the entrance fee straight line basis. When a resident contract is cancelled (expired or moved out), the remaining portion of the non refundable EF that has not been fully amortized is posted as move out income. Edgemere uses Continuing Care Actuaries LifeCalc software for this calculation.

Please let Jill Shapiro and me know directly if you need any additional information.

Regards,

kjd

Kevin J. DeLuise

Managing Director
Corporate Finance and Restructuring

FTI Consulting

+1.646.485.0590 T

+1.201.741.2255 M

kevin.deluise@fticonsulting.com

1166 Avenue of the Americas | 15th Floor

New York, NY 10036

www.fticonsulting.com



#1 Restructuring Advisor
12th Consecutive Year

From: Shandler, Chad <Chad.Shandler@fticonsulting.com>

Sent: Tuesday, January 3, 2023 11:30 AM

To: Basia Terrell <bterrell@lapisadvisers.com>; Nick Harshfield <nick.harshfield@lifespacecommunities.com>

Cc: Jackson Rueter <jrueter@lapisadvisers.com>; John Falldine <John.Falldine@lifespacecommunities.com>; Walker, Adrienne <awalker@lockelord.com>; David Lawlor <dlawlor@longhillcompany.com>; O'Dell, Naomi <naomi.o'dell@rbc.com>; Moilanen, Max <max.moilanen@rbccm.com>; vmilione@nixonpeabody.com; Greg Thome <gjthome@longhillcompany.com>; Pamela Griffin <pgriffin@longhillcompany.com>; Beth Bemis <ebemis@longhillcompany.com>; Erich Marriott <emarriott@longhillcompany.com>; DeLuise, Kevin <Kevin.Deluise@fticonsulting.com>; Shapiro, Jill <Jill.Shapiro@fticonsulting.com>

Subject: RE: [EXTERNAL] RE: Outstanding Requests from 12/30 Call

Please go through Kevin DeLuise and Jill Shapiro cc'd here.

Thank you.

Happy New Year

Chad J. Shandler

+1.212.841.9349 T | +1.917.647.5824 M

chad.shandler@fticonsulting.com

From: Basia Terrell <bterrell@lapisadvisers.com>

Sent: Tuesday, January 3, 2023 11:28 AM

To: Nick Harshfield <nick.harshfield@lifespacecommunities.com>

Cc: Jackson Rueter <jrueter@lapisadvisers.com>; John Falldine <John.Falldine@lifespacecommunities.com>; Shandler, Chad <Chad.Shandler@fticonsulting.com>; Walker, Adrienne <awalker@lockelord.com>; David Lawlor <dlawlor@longhillcompany.com>; O'Dell, Naomi <naomi.o'dell@rbc.com>; Moilanen, Max <max.moilanen@rbccm.com>; vmilione@nixonpeabody.com; Greg Thome <gjthome@longhillcompany.com>; Pamela Griffin <pgriffin@longhillcompany.com>; Beth Bemis <ebemis@longhillcompany.com>; Erich Marriott <emarriott@longhillcompany.com>

Subject: Re: [EXTERNAL] RE: Outstanding Requests from 12/30 Call

Thank you Nick. Happy to work through one point of contact.

Chad which individual on your team should we be sending follow ups to?

On Jan 3, 2023, at 6:15 AM, Nick Harshfield <nick.harshfield@lifespacecommunities.com> wrote:

All,

I am concerned that with multiple requests now coming from multiple people, I personally am not going to be able to keep up and ensure that you are responded to timely, and that the data room is also updated for all bidders.

Moving forward, please be sure to funnel your requests for information through the FTI team, as I think that will solve both concerns.

I appreciate your cooperation.

Thank you,

From: Jackson Rueter <jrueter@lapisadvisers.com>
Sent: Tuesday, January 3, 2023 9:46 AM
To: Nick Harshfield <Nick.Harshfield@lifespacecommunities.com>; John Falldine <John.Falldine@lifespacecommunities.com>
Cc: Basia Terrell <bterrell@lapisadvisers.com>; Walker, Adrienne <awalker@lockelord.com>; David Lawlor <dlawlor@longhillcompany.com>; O'Dell, Naomi <naomi.o'dell@rbc.com>; Moilanen, Max <max.moilanen@rbccm.com>; VMILIONE@nixonpeabody.com; Greg Thome <githome@longhillcompany.com>; Pamela Griffin <pgriffin@longhillcompany.com>; Beth Bemis <ebemis@longhillcompany.com>; Erich Marriott <emarriott@longhillcompany.com>
Subject: RE: [EXTERNAL] RE: Outstanding Requests from 12/30 Call

Nick,

Thank you for your response. We want to follow-up on #6 to make sure we are looking at the same line for Move Out Income:

Financial Row	Jan 2022 Actual MTD	Feb 2022 Actual MTD	Mar 2022 Actual MTD	Apr 2022 Actual MTD	May 2022 Actual MTD	Jun 2022 Actual MTD	Jul 2022 Actual MTD
Entrance Fees Earned							
4630 - Amortization Income	\$84,200.00	\$105,648.51	\$105,573.91	\$98,473.26	\$104,195.32	\$98,943.03	\$101,981
4640 - Move Out Income	\$0.00	\$25,524.93	\$55,006.60	\$70,384.65	\$62,669.28	\$23,565.51	\$73,554

Given it is in the "Entrance Fees Earned" revenue category, we thought it may be revenue recognition of the difference between the actuarial EF liability and cash EF liability of a resident's EF upon re-sale of their unit.

If you could please reconfirm what Move Out Income is, we would appreciate it. If it is a reclass of DON/ADON agency, it would also be helpful to understand why that is recognized as revenue for the community and where there may be offsetting expenses.

Thank you,

Jackson Rueter | Lapis Advisers, LP
Direct 415-877-4838
Cell 303-748-1883

From: Nick Harshfield <Nick.Harshfield@lifespacecommunities.com>
Sent: Tuesday, January 3, 2023 7:57 AM
To: David Lawlor <dlawlor@longhillcompany.com>; John Falldine <John.Falldine@lifespacecommunities.com>
Cc: Basia Terrell <bterrell@lapisadvisers.com>; Walker, Adrienne <awalker@lockelord.com>; O'Dell, Naomi <naomi.o'dell@rbc.com>; Moilanen, Max <max.moilanen@rbccm.com>; Jackson Rueter <jrueter@lapisadvisers.com>; VMILLIONE@nixonpeabody.com; Greg Thome <gjthome@longhillcompany.com>; Pamela Griffin <pgriffin@longhillcompany.com>; Beth Bemis <ebemis@longhillcompany.com>; Erich Marriott <emarriott@longhillcompany.com>
Subject: RE: [EXTERNAL] RE: Outstanding Requests from 12/30 Call

David and Jackson,

I renumbered your questions below, starting with David's. Here I what we have for you

1. On December 25, 2022, all team members for Edgemere were migrated from ADP to Workday. They are all Edgemere employees, no co-employer status.
 - a. With the Workday environment, all HR, Payroll and Timekeeping systems are integrated.
2. Listing and background of sales team
 - a. Director of sales – Chris Silasavage – 2+ years of tenure. Has done rental.
 - b. Sales Counsellor – Leslie Doran Sparacino – has been working at other Lifespace communities for several months and will not be returning to Edgemere
 - c. Move-in coordinator - Fred Gollay – 3 years
 - d. Sales Assistant – Joel Hernandez just departed to start his own business. Had been with Edgemere 12 years. Fred can fill both roles for now.
 - e. Sales Counsellor 2 - Vacant
 - f. AL Sales – Jennifer Wilson – 1.5 years, but second time working in this role at Edgemere
 - g. Admissions for Skilled – Kristin Forester – less than 1 year, but second time working in this position. Knows the market well.
 - h. Clinical liaison (skilled outside sales) – Vacant. Laura Baker resigned due to uncertainty around new ownership/mgmt.
3. Public relationship efforts for Edgemere have predominately been lead by FTI's strategic communications group. The Point Group predominately leads public relations for LifeSpace. As the situation has been fluid throughout the bankruptcy case given the alleged landlord's efforts, the litigation, and end game, the communications have primarily been responding to the Dallas Morning News requests, preparing communications to residents and employees, and preparing talking points for the sales team. Any new message or campaign was put on hold pending the outcome of the bankruptcy case due to the consideration that Edgemere has one opportunity to reboot itself at the conclusion of the proceeding.
4. Edgemere used to let residents opt out of housekeeping services and receive a credit, this was done away with in 2020, but we grandfathered residents in, these are those residents that were grandfathered in
5. This is the contra revenue account to adjust Medicare revenues to the PDPM rate
6. This is agency for the DON/ADON, most of it was just a reclass as it was in consulting for prior months
7. See file attached
8. For the utilities contract, I need to work through legal to ensure that I can share the contract itself. But here is what we have locked in for 2022 and 2023, then 2024 though 2026

Historical Energy Supply Budget

Year	Rate	Edgemere
		9,585,835
2021	\$0.0338	\$324,001
2022	\$0.0572	\$548,310
2023	\$0.0572	\$548,310
a. 2024*	\$0.0633	\$606,916

9. Monthly agency spend attached

From: David Lawlor <dlawlor@longhillcompany.com>
Sent: Saturday, December 31, 2022 9:44 AM
To: John Falldine <John.Falldine@lifespacecommunities.com>; Nick Harshfield <Nick.Harshfield@lifespacecommunities.com>
Cc: Basia Terrell <bterrell@lapisadvisers.com>; Walker, Adrienne <awalker@lockelord.com>; O'Dell, Naomi <naomi.o'dell@rbc.com>; Moilanen, Max <max.moilanen@rbccm.com>; Jackson Rueter <jrueter@lapisadvisers.com>; VMILIONE@nixonpeabody.com; Greg Thome <githome@longhillcompany.com>; Pamela Griffin <pgriffin@longhillcompany.com>; Beth Bemis <ebemis@longhillcompany.com>; Erich Marriott <emarriott@longhillcompany.com>
Subject: [EXTERNAL] RE: Outstanding Requests from 12/30 Call

Good morning John and Nick,

Thanks again for the time yesterday. We had a few additional follow-up questions to Jackson’s requests below, as follows:

1. **PEO:** Could you please provide more information regarding the recent PEO change. Who is the co-employer with Workday, the new PEO? Was the ADP deposit rolled over or a new deposit posted and can you provide a list of Workday support/service bundling? Was ADP historical information rolled to Workday? Is Workday integrated with clocks and scheduling software for all departments? How is this integration going, and how is your team holding up - I know these conversions can be quite a challenge.
2. **Sales Team:** We talked about the sales team being adequately staffed for the low volume of sales that has occurred. Have there been any new members added or departures from this team in the last 6 months and are there any current vacancies? Could you share more information about this team, by level of care. Interested to learn how the team is doing under the significant PR challenge.
3. **PR Efforts:** We discussed the enormous public relations challenge your team has been confronting. You noted the good support you have received from “The Point Group”. Could you please share this contract along with the PR strategy to address negative publicity, and the additional press that Edgemere will likely receive in the coming months?

Many thanks,

David M. Lawlor
President and CEO
The Long Hill Company
580 Long Hill Avenue
Shelton, CT 06484
www.longhillcompany.com
(o) 203.944.8283
(f) 203.925.2667

(c) 203.305.2318



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From: Jackson Rueter <jrueter@lapisadvisers.com>

Sent: Friday, December 30, 2022 7:07 PM

To: John.Falldine@lifespacecommunities.com; nick.harshfield@lifespacecommunities.com

Cc: Basia Terrell <bterrell@lapisadvisers.com>; David Lawlor <dlawlor@longhillcompany.com>; Walker, Adrienne <awalker@lockelord.com>; O'Dell, Naomi <naomi.o'dell@rbc.com>; Moilanen, Max <max.moilanen@rbccm.com>

Subject: Outstanding Requests from 12/30 Call

John and Nick,

Appreciate you both taking some time today to talk through our questions about Edgemere. As you requested, please find a list of outstanding questions / follow-up items below from our discussion:

4. **Environmental Services Contra-Revenue (IL Revenue)** – Approximately \$7,000 contra-revenue per month, consistently. Please let us know what this represents.
5. **Ancillaries Contractual (HC+AL+MC Revenue)** – Large contra-revenue line item. During the call you stated this may be a contractual allowance to achieve the appropriate PDPM for Medicare, but needed to confirm. Please confirm.
6. **Move Out Income** – Please define what this revenue line represents.
7. **Centralized Systems and Services Expense (G&A)** – What software and systems are included in this line? What are the expenses associated with each software / system included?
8. **Utilities (Plant Operations)** – You mentioned a multi-year contract was recently signed with a significant year-over-year increase (20-25%). Please confirm budgeted utility amounts for 2023 and the amount of the rate increase compared to the prior year (percentage and dollars). Please also provide the active utility contract(s).
9. **Agency Expenses (Throughout P&L)** – Please quantify agency spend during 2022, and current levels of Agency spend, if any.

Please let me know if you have any questions on the above.

Thank you,

Jackson Rueter | Lapis Advisers, LP

811 E 17th Avenue

Denver, CO 80218

Direct 415-877-4838

Cell 303-748-1883

www.lapisadvisers.com



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Landlord's

Exhibit 23

for February 21-23, 2023 hearing

Exhibit 23

(with exhibit 23-A)

Declaration of Kyle DeHenau dated _____, with Exhibit A

Landlord's

Exhibit 24

for February 21-23, 2023 hearing

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

In re:)
)
Northwest Senior Housing Corporation, *et al.*,) Chapter 11
)
Debtors¹) Case No. 22-30659 (MVL)
)

**AMENDED NOTICE OF DEPOSITION SUBPOENA TO PROVIDE EVIDENTIARY
DEPOSITION TESTIMONY TO PLANTE & MORAN CRESA, LLC**

PLEASE TAKE NOTICE that Intercity Investment Properties, Inc. will serve Plante & Moran CRESA, LLC (“Plante Moran”) by and through its counsel, Chris Nelson, with the attached subpoena pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, directing Plante Moran to present a Kyle DeHenau of Plante Moran as a representative to appear for an oral and videotaped deposition on February 9, 2023 at 2:30 PM (CST) to occur at the offices of Levenfeld Pearlstein, LLC, located at 120 S Riverside Plaza, Suite 1800, Chicago, IL 60606.

¹ The Debtors in these chapter 11 cases, (the "Bankruptcy"), 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 (“SQLC”) (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.

Dallas, Texas
February 5, 2023

JACKSON WALKER LLP

Michael S. Held (State Bar No. 09388150)
W. Ross Forbes, Jr. (State Bar No. 00796564)
Edwin Buffmire (State Bar No. 24078283)
Marc Fuller (State Bar 24032210)
2323 Ross Avenue, Suite 600
Dallas, Texas 75201
Telephone: (214) 953-6000
Facsimile: (214) 953-5822
Email: mheld@jw.com
Email: rforbes@jw.com
Email: ebuffmire@jw.com
Email: mfuller@jw.com

*Local Counsel for Intercity Investment
Properties, Inc.*

/s/ Elizabeth B. Vandesteeg

LEVENFELD PEARLSTEIN, LLC

Elizabeth B. Vandesteeg (admitted *pro hac vice*)
Harold D. Israel (admitted *pro hac vice*)
Eileen M. Sethna (admitted *pro hac vice*)
2 North LaSalle Street, Suite 1300
Chicago, IL 60602
Telephone: (312) 346-8380
Facsimile: (312) 346-7634
Email: evandesteeg@lplegal.com
Email: hisrael@lplegal.com
Email: esethna@lplegal.com

Counsel for Intercity Investment Properties, Inc.

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

In re:)
)
Northwest Senior Housing Corporation, *et al.*,) Chapter 11
)
Debtors²) Case No. 22-30659 (MVL)
)

**AMENDED SUBPOENA TO PROVIDE EVIDENTIARY DEPOSITION
TESTIMONY TO PLANTE & MORAN CRESA, LLC**

TO: Plante & Moran CRESA, LLC, by and through Chris Nelson, 3000 Town Center
Suite 400, Southfield, MI 48075

FROM: Intercity Investment Properties, Inc. by and through its attorneys of record, W. Ross
Forbes, Jr. and Michael S. Held Jackson Walker, LLP, 2323 Ross Ave., Ste. 600,
Dallas, TX 75201.

Intercity Investment Properties, Inc., pursuant to Rules 30 and 45 of the Federal Rules of
Civil Procedure, as made applicable to this proceeding by Rule 7030 and 9016 of the Federal Rules
of Bankruptcy Procedure (“Bankruptcy Rules”) as well as Rule 2004 and Bankruptcy Local Rule
2004, by and through its counsel, issues the attached subpoena to Plante & Moran CRESA, LLC.

YOU ARE ALSO COMMANDED to appear for an evidentiary deposition on **February
9, 2023**, beginning at **2:30 PM (CST)** to occur at the offices of Levenfeld Pearlstein, LLC,
located at 120 S Riverside Plaza, Suite 1800, Chicago, IL 60606, regarding the topics and
documents set forth in Exhibit A. The evidentiary deposition will be taken by oral
examination before a court reporter authorized by law to administer oaths and take
testimony pursuant to Federal Rule of Bankruptcy Procedure 7028 and may be videotaped.

² The Debtors in these chapter 11 cases, (the "Bankruptcy"), 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 (“SQLC”) (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas
75225.

Dallas, Texas
February 5, 2023

JACKSON WALKER LLP

Michael S. Held (State Bar No. 09388150)
W. Ross Forbes, Jr. (State Bar No. 00796564)
Edwin Buffmire (State Bar No. 24078283)
Marc Fuller (State Bar 24032210)
2323 Ross Avenue, Suite 600
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Facsimile: (214) 953-5822
Email: mheld@jw.com
Email: rforbes@jw.com
Email: ebuffmire@jw.com
Email: mfuller@jw.com

*Local Counsel for Intercity Investment
Properties, Inc.*

/s/ Elizabeth B. Vandesteeg

LEVENFELD PEARLSTEIN, LLC

Elizabeth B. Vandesteeg (admitted *pro hac vice*)
Harold D. Israel (admitted *pro hac vice*)
Eileen M. Sethna (admitted *pro hac vice*)
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Facsimile: (312) 346-7634
Email: evandesteeg@lplegal.com
Email: hisrael@lplegal.com
Email: esethna@lplegal.com

Counsel for Intercity Investment Properties, Inc.

UNITED STATES BANKRUPTCY COURT

Northern District of Texas

In re Northwest Senior Housing Corporation, et al. Debtor

Case No. 22-30659 (MVL)

Chapter 11

SUBPOENA TO TESTIFY AT A DEPOSITION & TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS IN AN ADVERSARY PROCEEDING

To: Plante & Moran CRESA, LLC, by and through Chris Nelson, 3000 Town Center Suite 400, Southfield, MI 48075

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to

[X]

be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: See Exhibit A, attached

Table with 2 columns: PLACE (Offices of Levenfeld Pearlstein, LLC located at 120 S Riverside Plaza, Suite 1800, Chicago, IL 60606) and DATE AND TIME (February 9, 2023 at 2:30 p.m. (CST))

The deposition will be recorded by this method:

Stenographic and/or videotape

[] Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Table with 2 columns: PLACE and DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

02/05/2023

CLERK OF COURT

OR

/s/ Elizabeth B. Vandesteeg

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing Intercity Investment Properties, Inc., who issues or requests this subpoena, are: Michael S. Held, Jackson Walker, LLP, 2323 Ross Ave., Ste. 600, Dallas, TX 75201, mhheld@jw.com, (214) 953-5966

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

I. DEFINITIONS

As used herein, the following terms have specific meanings as defined in this section:

1. “You” refers to Plante & Moran CRESA, LLC.
2. “Edgemere” refers to Northwest Senior Housing Corporation, its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.
3. “Intercity” refers to Intercity Investment Properties, Inc., its predecessors, successors, and any agent, representative, employee, or other person acting or purporting to act on its behalf.
4. The “Lease” refers to the Ground Lease between Intercity and Edgemere dated November 5, 1999 that covers the property and improvements where Edgemere operates.
5. The “Property” refers to the approximately 16.25 acres located at the Northwest Corner of the intersection of Thackery Road and Northwest Highway in Dallas, Texas, that is subject to the Lease.
6. “Improvements” means and includes all buildings or other improvements, by whomever made, placed on the Property since the Lease was executed.
7. “Property Condition Report” refers to the 2021 Facility Assessment Report You prepared for Lifespace Communities, Inc. and/or Edgemere in 2021 assessing capital expenditure needs for Edgemere over the following ten years.
8. “Site Visit” refers to Your visit to the Property to prepare the Property Condition Report.
9. The term “concerning” means relating to, referring to, describing, evidencing, or constituting.

II. MATTERS FOR ORAL EXAMINATION

1. Your knowledge of Edgemere and its assets and liabilities.
2. Your knowledge of Edgemere's ability to perform its obligations under the Lease.
3. Any agreements You entered into concerning Lifespace, Edgemere, the Lease, the Property, or the Improvements.
4. The nature of Your relationship with Edgemere, Lifespace Communities, Inc., and/or FTI Consulting, Inc.
5. Your knowledge of the Property and the Improvements.
6. The instructions provided to you in conjunction with the Property Condition Report.
7. The bases for and Your preparation of the Property Condition Report.
8. Your engagement, communications, and interactions with Edgemere, Lifespace Communities, Inc., and/or FTI Consulting, Inc. in creating and finalizing the Property Condition Report.
9. Your observations of the Property and Improvements during Your Site Visit.
10. The findings and conclusions in the Property Condition Report.
11. Your finalization, retention and production of Property Condition Report.
12. Your knowledge of Edgemere's historical spending and its needs for current and future spending on and attention to capital expenditures related to Edgemere, the Property, or the Improvements.
13. Your qualifications regarding preparation of reports, such as the Property Condition Report.
14. Your understanding of any disclosure concerning Edgemere's financial condition to any third party.
15. Your understanding of Edgemere's disclosure or distribution of the Property Condition Report to any third party, including but not limited to Lifespace Communities, Inc., and/or FTI Consulting, Inc.
16. Your understanding of Edgemere's disclosure of the condition of the Property or Improvements, or expected capital expenditures to any third party, including but not limited to Lifespace Communities, Inc., and/or FTI Consulting, Inc.
17. Your understanding of Edgemere or Lifespace's disclosure or use of Your Property Condition Report to any third party, including but not limited to prospective bidders of the Edgemere's assets as part of the Bankruptcy.
18. Your availability to testify in Dallas, Texas.

Landlord's

Exhibit 25

for February 21-23, 2023 hearing

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

In RE:)
)
NORTHWEST SENIOR HOUSING)Chapter 11
CORPORATION, et al.,)Case No. 22-30659 (MVL)
Debtors.)

The deposition of KYLE DeHENUAU, called for
examination pursuant to the Rules of Civil
Procedure for the United States District Courts
pertaining to the taking of depositions, taken at
120 South Riverside Plaza, on the 9th day of
February, 2023, at the hour of 2:37 p.m.

Reported by: Gina M. Luordo, CSR, RPR, CRR
License No.: 084-004143

Page 2

1 APPEARANCES:
 2 ON BEHALF OF INTERCITY INVESTMENT PROPERTIES, INC.
 and KONG CAPITAL LLC:
 3
 4 LEVENFELD PEARLSTEIN, LLC
 BY: MS. EILEEN M. SETHNA
 120 South Riverside Plaza, Suite 1800
 5 Chicago, Illinois 60606
 (312) 476-7650
 6 esethna@lplegal.com
 7
 8 ON BEHALF OF NORTHWEST SENIOR HOUSING CORPORATION:
 9
 10 POLSINELLI
 BY: MR. JERRY L. SWITZER, JR.
 (Via videoconference)
 11 150 North Riverside Plaza, Suite 3000
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 jswitzer@polsinelli.com
 12
 13 ON BEHALF OF BAY 9 HOLDINGS, LLC:
 14 LOCKE LORD
 BY: MR. MATTHEW H. DAVIS
 15 2200 Ross Avenue, Suite 2800
 Dallas, Texas 752015
 (214) 740-8000
 mdavis@lockelord.com
 16
 17
 18 ON BEHALF OF UMB BANK:
 19 MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO,
 P.C.
 20 BY: MS. KAITLIN R. WALSH
 MS. CATHERINE S. LOMBARDO
 (Via videoconference)
 21 One Financial Center
 Boston, Massachusetts 02111
 (617) 542-6000
 22 kwalsh@mintz.com
 cslombardo@mintz.com
 23
 24
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Page 4

I N D E X

1
 2 WITNESS EXAMINATION
 3 KYLE DeHENU
 4 By Ms. Sethna 7
 5 By Mr. Davis 80
 6 By Ms. Sethna (further) 107
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 9 E X H I B I T S

10 NUMBER	DESCRIPTION	PAGE
11 Exhibit 1	Amended Notice of Deposition	9
12 Exhibit 2	E-mail Chain Bates PM_001657-1658	17
13 Exhibit 3	E-mail Chain Bates PM_001785-1786	20
14 Exhibit 4	Engagement Letter Bates PM_001817-1828	22
15 Exhibit 5	E-mail Chain Bates PM_001803-1804	26
16 Exhibit 6	E-mail Bates PM_001787	29
17 Exhibit 7	The Building Consultant Field Report Bates PM_001607-1192	30
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Page 3

1 APPEARANCES (continued):
 2 ON BEHALF OF PLANTE MORAN CRESA AND THE WITNESS:
 3 PLANTE MORAN
 BY: MR. CHRISTOPHER J. NELSON
 4 General Counsel
 (Via videoconference)
 5 3000 Town Center, Suite 400
 Southfield, Michigan 48075
 6 (248) 223-3350
 chris.nelson@plantemoran.com
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 Also Present:
 24 Mr. Jermeij Koster - Kong Capital LLC
 Ms. Kate Ford - Kong Capital
 25 Mr. Chris Jordan - Intercity Investments

Page 5

E X H I B I T S

2 NUMBER	DESCRIPTION	PAGE
3 Exhibit 8	2021 Facility Assessment Report Bates PM_001660-1747	35
4 Exhibit 9	E-mail Bates PM_001656	40
5 Exhibit 10	E-mail Chain Bates PM_001550-1551	41
6 Exhibit 11	Telephone Notes	77
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Page 6

1 (Whereupon, the witness was
 2 sworn.)
 3 MS. SETHNA: Good afternoon. This is the
 4 deposition pursuant to subpoena of Plante Moran
 5 CRESA's 30(b)(6) witness, Kyle DeHenau, taken in
 6 connection with the bankruptcy proceeding entitled
 7 In re: Northwestern Senior Housing Corporation, et
 8 al., Case No. 22-30659 pending in the Northern
 9 District of Texas, Dallas Division.
 10 Do you want to get appearances for the
 11 record, please?
 12 THE COURT REPORTER: This is the court
 13 reporter. If the people attending remotely can
 14 identify themselves.
 15 MR. NELSON: Chris Nelson appearing on behalf
 16 of Plante Moran CRESA and the witness.
 17 MR. SWITZER: Jerry Switzer on behalf of the
 18 debtor.
 19 MS. WALSH: Kaitlin Walsh on behalf of UMB.
 20 MS. SETHNA: Let's go off the record.
 21 (Whereupon, a discussion was
 22 had off the record.)
 23
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 25

Page 7

1 KYLE DeHENUA,
 2 having been first duly sworn, was examined and
 3 testified as follows:
 4 EXAMINATION
 5 BY MS. SETHNA:
 6 Q. So pardon the disruption. As people will
 7 join the meeting, the court reporter will ask for
 8 their appearances so that we can have a clean
 9 record of who attended. Does that make sense?
 10 A. Yes.
 11 Q. It's nice to see you again.
 12 MR. DAVIS: Just for the record, I'll state my
 13 appearance also.
 14 MS. SETHNA: Please. Forgive me.
 15 MR. DAVIS: Matthew Davis with Locke Lord on
 16 behalf of Bay 9 Holdings, the successful bidder at
 17 the auction and would note that this is the second
 18 of four authorized depositions of the court's order
 19 on adequate assurance.
 20 BY MS. SETHNA:
 21 Q. Thank you for appearing again today. It's
 22 good to see you. I know that we have done this
 23 once before in September of 2022 in connection with
 24 the adversary proceeding. So you're familiar with
 25 the deposition ground rules, but just as a primer,

Page 8

1 I'm going to run through a few of those rules
 2 again. Is that okay?
 3 A. Okay.
 4 Q. The first of which is I'm going to ask
 5 that you answer any and all of your questions
 6 audibly so that our court reporter can take down
 7 everything that you're saying, okay?
 8 A. Okay.
 9 Q. I will assume that any question I ask you
 10 you understood before you prepare any response,
 11 okay?
 12 A. Okay.
 13 Q. If at any time you need to take a break,
 14 please feel free to ask. Just I'd ask that you
 15 answer any question that's pending at the time
 16 before we take the break.
 17 A. Understood.
 18 Q. The other thing that's very important,
 19 even though you might know what I might ask, you
 20 need to make sure that you wait for me to finish my
 21 question before responding so that we have a clean
 22 transcript, okay?
 23 A. Okay.
 24 Q. If any party or their counsel interposes
 25 an objection, then I will still expect you to

Page 9

1 answer audibly provided that you understood the
 2 question I asked you, okay?
 3 A. Okay.
 4 Q. Terrific. I'm going to show you what's
 5 been marked as DeHenau Exhibit 1.
 6 (Whereupon, DeHENUA Deposition
 7 Exhibit No. 1 was marked for
 8 identification.)
 9 BY MS. SETHNA:
 10 Q. Have you seen this document?
 11 A. No.
 12 Q. I'm going to ask you to take a look at it,
 13 and let me know when you're ready to be questioned.
 14 A. Okay.
 15 Q. Would you agree with me that this is an
 16 amended notice of deposition pursuant to a subpoena
 17 to Plante Moran CRESA?
 18 A. Yes.
 19 Q. And on Exhibit A, Schedule 2, it talks
 20 about the matters for oral examination. Do you see
 21 this page?
 22 A. Yes.
 23 Q. Were you able to review the Topics 1
 24 through 18 on Exhibit A, Section 2?
 25 A. I will review in detail now.

<p style="text-align: right;">Page 10</p> <p>1 Q. Thank you. Take your time. 2 A. Okay. 3 Q. Are you prepared today to testify as to 4 the matters on Schedule -- Exhibit A No. 2? 5 A. Yes. 6 Q. Wonderful. What did you do in preparation 7 for your deposition this afternoon? 8 A. I just had a discussion with internal 9 counsel on the procedures to expect. 10 Q. And when did you discuss these with 11 counsel? 12 A. This morning. 13 Q. Did you speak with anyone else? 14 A. No. 15 Q. Have you had any reason to speak to anyone 16 with an entity called Bay 9 Holdings, LLC? 17 A. Not that I can recall. 18 Q. Did you speak to anyone with Mr. Davis's 19 law firm, Locke Lord? 20 A. I don't believe I did. 21 Q. Have you spoken to anyone with relation to 22 a Lapis entity? 23 A. I don't believe I have. 24 Q. What about anyone at Polsinelli? 25 A. Previously I had one phone discussion with</p>	<p style="text-align: right;">Page 12</p> <p>1 call? 2 A. I don't believe they were. 3 Q. Have you had any occasion to speak with 4 LifeSpace about your deposition this afternoon? 5 A. No. 6 Q. Did you speak to anyone at the law firm of 7 Cooley in preparation for your deposition today? 8 A. Not that I can recall. 9 Q. Is there anything that would affect your 10 memory to recall whether or not you had 11 conversations with these law firms or parties? 12 A. There's not. 13 Q. Did you speak to anyone at UMB Bank? 14 A. I don't believe I did. 15 Q. Have you spoken to anyone from the law 16 firm of Mintz Levin? 17 A. I don't believe I did. 18 Q. Is there anyone else you communicated with 19 about your testimony this afternoon? 20 A. No. 21 Q. Did you review any documents in 22 preparation for your testimony this afternoon? 23 A. Very quickly reviewed the facility 24 assessment report. 25 Q. And when you say facility assessment</p>
<p style="text-align: right;">Page 11</p> <p>1 Polsinelli maybe three to four weeks ago. 2 Q. And what was discussed during that phone 3 call? 4 A. They asked for details on the report, 5 property condition report or facility assessment 6 report. 7 Q. And what sort of details did they ask 8 about? 9 A. As I recall, they had questions regarding 10 the definition of the condition of the facility, 11 poor, fair, good, and the definition of critical 12 need versus deferred maintenance versus property 13 enhancement. 14 Q. And what information did you provide to 15 Polsinelli on that call? 16 A. I advised them to look at the definition 17 that was listed in the report. 18 Q. How long did that conversation last? 19 A. 15 minutes maybe. It was short. 20 Q. And who was a part of the conversation? 21 You and who else? 22 A. I don't recall the individuals. I believe 23 it was just two others from Polsinelli. I don't 24 recall their names. 25 Q. Was anyone from LifeSpace present on that</p>	<p style="text-align: right;">Page 13</p> <p>1 report, can you be more exacting? 2 A. It was the final deliverable that was 3 issued to LifeSpace, the client. 4 Q. And do you recall the date of that report? 5 A. I believe it was sometime in October. 6 Q. Of which year? 7 A. I think it would have been '21. 8 Q. So October of 2021? 9 A. I believe so. 10 Q. Did you review any other documents other 11 than the final report that Plante Moran issued to 12 LifeSpace? 13 A. No. 14 Q. I'm going to go through a series of 15 questions about your background, the 16 pre-inspection, diligence, your report much like we 17 did before. 18 So let's start with your background. Can 19 you tell me your highest level of education? 20 A. A bachelor of science in architecture and 21 civil engineering. 22 Q. And when did you earn that degree? 23 A. May of 2009. 24 Q. From which institution? 25 A. Lawrence Technological University.</p>

Page 14	1 Q. Do you have any certifications? 2 A. LEED accredited professional. 3 Q. And when did you become LEED accredited? 4 A. I don't recall the exact date. It would 5 have been sometime in 2008 or 2009. 6 Q. Do you have any other certifications? 7 A. I do not. 8 Q. How about a license, do you hold a 9 license, a professional license? 10 A. I don't. 11 Q. Do you reside in Texas? 12 A. I do not. 13 Q. Where do you live? 14 A. Chicago, Illinois. 15 Q. And you're currently employed with Plante 16 Moran; is that right? 17 A. That's correct. 18 Q. In what capacity do you work for Plante 19 Moran? 20 A. My role is as a project manager. 21 Q. And just so we are clear on the record, 22 when I say Plante Moran Living Forward, is it okay 23 that we colloquially refer to it is Plante Moran? 24 A. Yes. 25 Q. We understand that there's different	Page 16	1 A. Specifically in managing their projects 2 through design planning and construction. 3 Q. Prior to Plante Moran, where did you work? 4 A. Pepper Construction. 5 Q. In what capacity did you work for Pepper? 6 A. I was a senior project manager. 7 Q. In your role as a senior project manager 8 for Pepper Construction, did you do similar work as 9 to the work you do now with Plante Moran? 10 A. I managed the construction of buildings. 11 Q. And were those buildings in the senior 12 living market segment? 13 A. They were not. 14 Q. So your first entree to senior living was 15 your time at Plante Moran? 16 A. That's correct. 17 Q. In your capacity as project manager for 18 Plante Moran, you came to be aware of an 19 opportunity with LifeSpace Communities, Inc.; is 20 that right? 21 A. Yes. 22 Q. And was Plante Moran engaged by LifeSpace? 23 A. I believe we were, yes. 24 Q. Do you recall when? 25 A. I do not.
Page 15	1 entities, but you and I can be on the same page 2 when I refer to Plante Moran? 3 A. Yes. 4 Q. Okay. How long have you been employed 5 with Plante Moran? 6 A. Almost four years. 7 Q. So did you start your work with Plante 8 Moran in 2019? 9 A. Yes. 10 Q. And were you employed as a project manager 11 initially in 2019 and have held that position 12 since? 13 A. That was my role, yes, when I was hired. 14 Q. And in what city is your office? 15 A. Chicago, Illinois. 16 Q. What are the scope of responsibilities in 17 your role as a project manager for Plante Moran? 18 A. I assist clients with large capital 19 improvement projects such as building renovations 20 or new building projects. 21 Q. Is there a specific market sector of 22 clients that you serve? 23 A. Yes, senior living. 24 Q. And in what capacity do you serve the 25 senior living clients?	Page 17	1 Q. Do you recall in what scope Plante Moran 2 was engaged by LifeSpace Communities, Inc.? 3 A. I believe it was to perform a facility 4 assessment of The Edgemere Community. 5 Q. And was that the first opportunity that 6 Plante Moran had with LifeSpace Communities, Inc.? 7 A. It was not. 8 Q. And had you been personally involved with 9 other engagements on behalf of Plante Moran for 10 LifeSpace? 11 A. Yes. 12 Q. And were those other engagements also 13 facility assessment reports? 14 A. Yes. 15 Q. So the preparation of a facilities 16 assessment report is part of the general scope of 17 your service as a project manager at Plante Moran; 18 is that right? 19 A. Yes. 20 Q. I'm going to show you what I am marking 21 DeHenu Exhibit 2. 22 (Whereupon, DeHENAU Deposition 23 Exhibit No. 2 was marked for 24 identification.) 25

Page 18

1 BY MS. SETHNA:
2 Q. And this is Bates stamped PM_1657.
3 A. Okay.
4 Q. Terrific. Can you describe this document?
5 A. Yes. It is Pat McCormick reaching out to
6 me notifying me of an opportunity with LifeSpace.
7 Q. And PM_1657 is a series of e-mails, the
8 first of which is from July 8, 2021; is that right?
9 A. Yes.
10 Q. And what is the scope of the opportunity
11 described to be in the e-mail to you?
12 A. A facility assessment for a campus in
13 Dallas, Texas called Edgemere.
14 Q. And is there any other information in this
15 correspondence about the scope of what Plante Moran
16 is being asked to do?
17 A. Pat lists an estimated size of the campus
18 and some details on a new employee that is starting
19 and his availability to travel to Dallas.
20 Q. So I'm looking at the bottom part of that
21 in the e-mail from Patrick McCormick. Can you tell
22 me his title with Plante Moran?
23 A. Partner.
24 Q. And he writes to you a little description
25 about the campus and that they, presumably

Page 19

1 LifeSpace, is wanting a facility assessment to look
2 at future capital needs as well as evaluate
3 renovations. Do you see that?
4 A. Yes.
5 Q. And it goes on to say they just hired a
6 new facilities guy by the name of Chris Soden who
7 would be working on the project along with Russell
8 Mauk.
9 Had you worked with either Chris Soden or
10 Russell Mauk before?
11 A. I had not worked with Chris. I had worked
12 with Russell.
13 Q. And in what capacity had you worked with
14 Russell Mauk before?
15 A. On other facility assessments for
16 different campuses.
17 Q. And what is -- in what capacity was your
18 engagement with Russell Mauk?
19 A. I typically issued the final report to
20 Russell for his review.
21 Q. Understood. And what did you understand
22 Chris Soden to be a relative to LifeSpace
23 Communities, Inc.?
24 A. The new facilities guy as it's written.
25 Q. Great. And this talks about setting some

Page 20

1 dates for you to come down to Dallas, Texas to do
2 the assessment; is that right?
3 A. That's right.
4 Q. Did you come to an agreement about the
5 dates and times of a facilities assessment?
6 A. Yes, we must have because I did end up
7 going down to Dallas.
8 Q. I'm going to show you what's marked as
9 DeHenu Exhibit 3 Bates stamped PM_1785.
10 (Whereupon, DeHENU Deposition
11 Exhibit No. 3 was marked for
12 identification.)
13 THE WITNESS: Okay.
14 BY MS. SETHNA:
15 Q. Would you agree with me that this looks to
16 be a series of continued e-mails between Plante
17 Moran and LifeSpace relative to the potential
18 engagements to conduct the facilities assessment at
19 The Edgemere?
20 A. Yes.
21 Q. And at the bottom, there's an e-mail from
22 Pat McCormick dated Thursday, July 8, 2021 in
23 which, and I'm going to paraphrase, sort of midway
24 during the paragraph there at the bottom I've
25 copied Kyle. Do you see that part?

Page 21

1 A. I do.
2 Q. And you were a recipient of this e-mail by
3 the addressee mark; is that right?
4 A. Yes.
5 Q. I have copied Kyle on this, so you have
6 his direct e-mail. He has worked with Russell and
7 the recent due diligence project, so we're gaining
8 a better understanding of issues that the team
9 likes to look at. I understand the scope of this
10 may be a little different as there may be some
11 renovation strategy involved in the process.
12 Do you see what I've just read?
13 A. Yes.
14 Q. Does that appear to be an accurate
15 depiction of the content of that paragraph?
16 A. Yes.
17 Q. If we're looking back at that same
18 sentence, in this e-mail, it says the scope may be
19 a little different. What did you understand that
20 to mean?
21 A. I couldn't say.
22 Q. And did you understand or ask about what
23 the renovation strategy involved might mean?
24 A. I don't recall. I often will ask in my
25 interview with a facilities person when I'm on site

<p style="text-align: right;">Page 22</p> <p>1 if they have any planned renovations and note that 2 in the report. 3 Q. Were you ever told at the initial 4 inception whether or not the facility assessment 5 would be used as a negotiation strategy? 6 A. I don't recall that, no. 7 (Whereupon, DeHENAU Deposition 8 Exhibit No. 4 was marked for 9 identification.) 10 BY MS. SETHNA: 11 Q. I'm showing you what I've marked as 12 DeHenau Exhibit 4, PM_1817. Do you recognize this 13 document? 14 A. Yes. 15 Q. What do you recognize it to be? 16 A. An engagement letter for a facility 17 assessment. 18 Q. And the date of this engagement is 19 July 12, 2021; is that right? 20 A. Yes. 21 Q. And it's between Nick Harshfield as the 22 CFO of LifeSpace Communities, Inc. and Plante Moran 23 Living Forward. Would you agree? 24 A. Yes. 25 Q. Can you describe for me the scope of the</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Phase I is a -- I'll call it a discovery 2 period or request for information period where we 3 analyze any information that can be provided to us. 4 Phase II is the site visit. Phase III is 5 generating and delivering the report. 6 Q. And what was the estimated time that 7 Plante Moran proposed as being comprehensive for 8 each of the -- and the aggregate of each of the 9 three phases? 10 A. The only place I can see a time noted is a 11 draft of the facility assessment would be delivered 12 four weeks following the site visit. 13 Q. Was this agreement ever modified in 14 writing? 15 A. Not that I can recall. 16 Q. If it had been modified in writing, would 17 it have been appended and produced as a separate 18 engagement? 19 A. If it was updated, we likely would have 20 written an amendment and attached it. 21 Q. Let's talk about Phase I. Site leadership 22 will fill out a questionnaire and provide Plante 23 Moran with building documents such as construction 24 plans, completed and planned capital expenditure 25 expenses, and known issues related to the building.</p>
<p style="text-align: right;">Page 23</p> <p>1 work contemplated in this engagement? 2 A. To conduct a facility assessment for the 3 Edgemere property in Dallas, Texas. 4 Q. And part of the first page, background and 5 understanding, there's a reference that Plante 6 Moran had made key assumptions regarding the 7 engagement based upon discussions with Chris Soden. 8 Do you see that? 9 A. Yes. 10 Q. And do you recall what those key 11 assumptions were made? 12 A. I do not. 13 Q. I'm going to ask you to turn to in the 14 same exhibits Bates No. PM_1820 and 21. It's 15 Exhibit A of the engagement letter. Do you see 16 what I'm talking about? 17 A. Yes. 18 Q. And can you describe for us the scope of 19 services that Plante Moran was engaged to do? 20 A. Yes, conduct a facility assessment for the 21 Edgemere property. 22 Q. And were there certain phases included in 23 the services? 24 A. Yes, three phases. 25 Q. Can you describe those generally for me?</p>	<p style="text-align: right;">Page 25</p> <p>1 Do you agree that's what Phase I 2 contemplates on this engagement letter? 3 A. Yes. 4 Q. And tell me did site leadership fill out a 5 questionnaire for Plante Moran in advance of the 6 Phase II? 7 A. I don't recall. 8 Q. Do you recall ever receiving construction 9 plans from the site leadership? 10 A. I believe we -- I believe we did. 11 Q. And did you receive a completed and 12 planned capital expenditure expenses log? 13 A. I don't recall. 14 Q. Were any known issues related to the 15 building disclosed to you? 16 A. I'm unsure of that. 17 Q. Did you receive any additional information 18 from site leadership in advance of your on-site 19 visit to Dallas? 20 A. It's -- it's possible. I don't remember 21 anything specifically. 22 Q. I'm going to show you what's been marked 23 as DeHenau Exhibit 5 Bates stamped PM_1803. 24 25</p>

Page 26

1 (Whereupon, DeHENU Deposition
2 Exhibit No. 5 was marked for
3 identification.)
4 BY MS. SETHNA:
5 Q. Would you agree with me this is an e-mail
6 exchange between ultimately you and the site
7 leadership relative to information requested
8 pre-inspection? Is that fair?
9 A. Yes.
10 Q. And can you tell me as you read these what
11 information you were provided pre-inspection?
12 A. Gary references limited drawings, provided
13 a link, but what was included in that link, I don't
14 remember specifically.
15 Q. And in the e-mail from Chris Soden to you
16 on July 15th, it looks like he references searching
17 for a capital list at that point; is that right?
18 A. Yes.
19 Q. At any point in the negotiation of the
20 engagement letter we just discussed, did LifeSpace
21 suggest that Plante Moran was hired for purposes of
22 litigation?
23 A. No.
24 Q. Were you told that the information as to
25 Plante Moran's facilities assessment would be

Page 27

1 critical to any negotiation strategy?
2 A. No, none that I can recall.
3 Q. Do you recall what the goal of the Plante
4 Moran engagement was as it related to LifeSpace and
5 The Edgemere?
6 A. As I understood it, it was to develop a
7 capital expenditure plan.
8 Q. And you were engaged to essentially
9 observe, assess, and report back to LifeSpace. Is
10 that a fair summary of your services?
11 A. Yes.
12 Q. I'm going to show you what's been marked
13 as DeHenau Exhibit 6, Bates stamped Plante Moran
14 1820.
15 Forgive me. It's already Exhibit 4. Can
16 you go back to Exhibit 4? Forgive me. If you look
17 at what's been -- sorry. The number is Plante
18 Moran 1820, the Bates number at the bottom.
19 A. Okay.
20 Q. What does it describe the property to be?
21 A. An 850,000-square-foot three-story
22 building built in 2002 located at 8523 Thackery
23 Street in Dallas. The building includes 504
24 residential units. The makeup of those units is
25 further described and various amenity spaces.

Page 28

1 Q. Was that information provided to Plante
2 Moran?
3 A. It was stated in the e-mail from Pat
4 McCormick to me.
5 Q. At any time in your pre-visit information
6 gathering, were you or anyone at Plante Moran
7 advised that my client, Intercity Investment
8 Properties, Inc., owned the property?
9 A. No, I don't believe so.
10 Q. And at any time prior to your visit or
11 subsequent thereto did you learn that The Edgemere
12 leased the use of the property from Intercity
13 Investment Properties, Inc.?
14 A. I don't recall.
15 Q. Was there any directive or feedback to
16 Plante Moran from LifeSpace about the potential
17 impact of your facility assessment report in any
18 negotiations with Intercity Investment Properties,
19 Inc.?
20 A. Not that I can recall.
21 Q. Was there any direct feedback to you or
22 your team from LifeSpace about the potential impact
23 the results of your facilities assessment might
24 have on the negotiation with the bondholders of the
25 project?

Page 29

1 A. I don't believe so.
2 Q. Were there any directive or feedback
3 provided to you or your team from LifeSpace about
4 the potential impact of the results of your
5 facilities assessment report on any party?
6 A. No, I don't believe so.
7 Q. There was never a separate engagement
8 between Northwest Senior Housing Corporation doing
9 business as The Edgemere and Plante Moran, was
10 there?
11 A. None that I'm aware of.
12 Q. I'm going to show you what I'm going to
13 mark as DeHenau No. 6.
14 (Whereupon, DeHENU Deposition
15 Exhibit No. 6 was marked for
16 identification.)
17 BY MS. SETHNA:
18 Q. Do you see this document?
19 A. Yes.
20 Q. And do you recognize it to be an e-mail
21 from you to Chris Soden at LifeSpace Communities,
22 Inc.?
23 A. Yes.
24 Q. And in this e-mail, you mention that you
25 were missing some documents, including construction

Page 30

1 documents, floor plans, or capital expenditure
2 lists from the community. Do you see that?
3 A. I do.
4 Q. Do you recall ever being provided the
5 construction documents?
6 A. I don't recall what was provided.
7 Q. I'm going to show you what I will have
8 marked as DeHenau Exhibit 7.
9 (Whereupon, DeHENAU Deposition
10 Exhibit No. 7 was marked for
11 identification.)
12 BY MS. SETHNA:
13 Q. Do you recognize that document?
14 A. I recall seeing it, yes.
15 Q. And can you describe for me what it is?
16 A. It was a -- it is a report generated by
17 the building consultant that reviewed, I believe,
18 the facade of the community.
19 Q. And this was -- at least PM_1667 -- 1607
20 is an initial e-mail from Russell Mauk at LifeSpace
21 Communities sending to you an assessment of The
22 Edgemere envelope from the building consultants; is
23 that right?
24 A. Yes.
25 Q. Were you told why the building consultants

Page 31

1 had been engaged by LifeSpace to conduct a field
2 report?
3 A. I don't know if I was told why they were
4 engaged.
5 Q. And did you inquire as to why this report
6 was provided to you in advance of your inspection?
7 A. I don't know if I would have asked that.
8 Q. Were you told why the building consultant
9 report might help Plante Moran with its assessment
10 of The Edgemere?
11 A. I don't believe I was.
12 Q. Did you review the building consultant
13 report?
14 A. I'm sure I did.
15 Q. I'm going to ask you to turn to a page in
16 this exhibit, Page 1085. Let me know when you're
17 there.
18 A. Okay.
19 Q. Under the pergola roof mounts, there's
20 another full paragraph, third from the bottom,
21 which says there has been a lot of deferred
22 maintenance, and now it is time to get busy and
23 take care of the most critical areas first. I
24 recommend hiring a knowledgeable professional that
25 can make a list and prioritize the most important

Page 32

1 items to address.
2 Do you see that?
3 A. I do.
4 Q. Did I fairly and accurately read for you
5 the content of that paragraph?
6 A. Yes.
7 Q. Do you recall understanding that a
8 significant amount of deferred maintenance existed
9 prior to your arrival at The Edgemere?
10 A. I don't recall that.
11 Q. Were you told whether LifeSpace or
12 Edgemere had hired a knowledgeable professional who
13 can make that list and prioritize the most
14 important items before your engagement?
15 A. I don't believe I was.
16 Q. Did that information provided in the
17 building consultant's report impact your approach
18 to reviewing the condition of the property?
19 A. Any information provided ahead of my site
20 visit is helpful and will guide me in how I review
21 the building.
22 Q. What does that mean?
23 A. If there was something previously called
24 out, I'll make note to seek it out and review it
25 myself.

Page 33

1 Q. So what in this report drew your attention
2 to seek out any certain conditions of the property
3 during your time on campus, if you recall?
4 A. As I recall, this report called out a
5 condition of the building envelope, windows,
6 facade, the doors possibly.
7 Q. And the call-out of the condition of the
8 building envelope, the windows, the doors, how did
9 that information impact your decisions about how to
10 use your time on campus during your facilities
11 assessment?
12 A. I don't know if it would have impacted the
13 way I utilized my time. I always spend time
14 walking around the outside of the building
15 reviewing those items regardless if I got a report
16 or not.
17 Q. Does your approach to a facilities
18 assessment change with the age of a building?
19 A. It may.
20 Q. So for instance, would you have a
21 different approach in a facilities assessment of
22 new construction?
23 A. I don't know if it would. I review the
24 same components of the building, the same areas of
25 the building regardless of its age.

<p style="text-align: right;">Page 34</p> <p>1 Q. Would your approach to a facilities 2 assessment of a building that was 20 years old with 3 known deferred maintenance impact your approach? 4 A. Again, I don't know if it would. I look 5 at the same components of a building regardless of 6 the age. 7 Q. Did you have occasion to meet with the 8 site leadership at The Edgemere? 9 A. I did -- I did meet with Chris and one 10 other individual, I believe. 11 Q. And Chris is Chris Soden? 12 A. Yes. 13 Q. And at any time did you speak with Chris 14 Soden about the findings of the building consultant 15 field report dated July 2020? 16 A. I don't recall if I did. 17 Q. Do you recall if you spoke to the other 18 site representative who was with you that you 19 referenced without knowing his name? 20 A. I don't recall if I did or not. 21 Q. Do you know if any of the reported 22 concerns and issues of deferred maintenance had 23 been addressed by LifeSpace prior to your arrival? 24 A. If I was aware of anything that was 25 addressed, I likely would have noted it in my</p>	<p style="text-align: right;">Page 36</p> <p>1 of the site leadership who was on campus with you 2 in 2021? 3 A. On Page 5, I list James Oates. 4 Q. Do you recall having any conversation with 5 James Oates about the findings and conclusions of 6 the building consultant's report from July of 2020? 7 A. I don't recall conversation specific to 8 that report. 9 Q. What dates were you on site at The 10 Edgemere? 11 A. In the report, we list July 20th and 12 July 21st of 2021 in the report. 13 Q. Do you have any reason to dispute that 14 those were the dates you were on site at The 15 Edgemere? 16 A. No. 17 Q. Did The Edgemere approve Plante Moran's 18 site visit? 19 A. They must have. 20 Q. Did The Edgemere escort Plante Moran 21 around the property? 22 A. As I remember, the first day they did. 23 The second day they did not because I spent most of 24 my time on the outside of the building. 25 Q. And do you recall with whom you spent day</p>
<p style="text-align: right;">Page 35</p> <p>1 report. 2 Q. Did The Edgemere provide you with any 3 other documents prior to your site visit? 4 A. They may have. I don't recall 5 specifically what was provided. 6 Q. You ended up conducting the facilities 7 assessment of the Edgemere; is that right? 8 A. I did. 9 Q. Do you recall the dates of your 10 assessment? 11 A. I don't. 12 Q. I'm going to show you what I'll have 13 marked as DeHenau Exhibit 8. 14 (Whereupon, DeHENAU Deposition 15 Exhibit No. 8 was marked for 16 identification.) 17 BY MS. SETHNA: 18 Q. Do you recognize that document? 19 A. I do. 20 Q. Do you need time to review? 21 A. No. 22 Q. What do you recognize it to be? 23 A. The final deliverable of the facility 24 assessment report for The Edgemere property. 25 Q. And do you recall the other representative</p>	<p style="text-align: right;">Page 37</p> <p>1 1 on July 20, '21? 2 A. It was James and Chris. 3 Q. Did either James or Chris or any other 4 representative from site leadership highlight 5 specific areas or buildings for you to examine? 6 A. No buildings other than what's listed in 7 this report. 8 Q. And I'm sorry. When you say this report, 9 do you mean your report? 10 A. My report. 11 Q. Understood. 12 Were you the only representative from 13 Plante Moran on site during the two days in 2021? 14 A. Yes. 15 Q. Did The Edgemere remain engaged with 16 Plante Moran while you drafted the facility 17 assessment? 18 A. I'm not quite -- I'm not quite sure I 19 understand. 20 Q. Fair enough. Was either LifeSpace or 21 Edgemere site leadership involved in providing you 22 information and feedback during your process of 23 preparing your assessment report? 24 A. It's possible. 25 Q. Do you know if they, they being</p>

<p style="text-align: right;">Page 38</p> <p>1 LifeSpace-Edgemere, provided you information to 2 incorporate into your report? 3 A. I don't recall. Again, it's possible. 4 Q. Did Plante Moran provide the draft report 5 to The Edgemere and LifeSpace in the time 6 prescribed? 7 A. I don't recall. 8 Q. Did Edgemere and LifeSpace receive drafts 9 of the report before it was finalized? 10 A. I don't recall. That is a normal part of 11 our process to issue a draft report. 12 Q. I'm sorry. You recall that it is or is 13 not? 14 A. I don't recall specific to this 15 engagement, however, it is a normal part of our 16 proceeding to issue a draft report before 17 finalizing. 18 Q. Other than the building consultant report 19 provided to you by Russell Mauk, were you provided 20 any other property condition evaluations from The 21 Edgemere or LifeSpace? 22 A. I don't recall. 23 Q. So I'm going to ask you some questions 24 about this report that's in front of you. Can you 25 explain to me the methodologies in the preparation</p>	<p style="text-align: right;">Page 40</p> <p>1 state of the conditions and what any future 2 associated expenses might be? 3 A. I would say yes. Yes, I think that's 4 fair. 5 Q. As part of your preparation of this 6 report, did you seek any additional input or 7 feedback from LifeSpace or Edgemere? 8 A. I don't -- I don't recall. 9 Q. I'm going to show you Bates No. PM_1656 10 and what I will mark as DeHenau No. 9. 11 (Whereupon, DeHENAU Deposition 12 Exhibit No. 9 was marked for 13 identification.) 14 BY MS. SETHNA: 15 Q. Do you recognize this to be an e-mail from 16 you to Chris Soden at LifeSpace regarding The 17 Edgemere capex budget? 18 A. Yes. 19 Q. And in this e-mail, you say that you're 20 working on the estimate for Edgemere. A couple 21 weeks ago you had sent an e-mail with a rough capex 22 budget to your internal team. Could you please 23 forward that e-mail to me? I'd like to align my 24 budget with yours and make any adjustments now that 25 I'm looking at the campus in more detail.</p>
<p style="text-align: right;">Page 39</p> <p>1 of this report? 2 A. I review any documents that are sent to me 3 before a site visit. I typically generate an 4 interview to conduct with on-site staff. I spend 5 the first portion of the day interviewing staff, 6 reviewing building systems and building components. 7 I then request a tour of the building to review 8 common area spaces, back-of-house spaces, rooftops, 9 mechanical units, a collection of unoccupied rooms 10 at each level of care, and exterior envelope. 11 I take notes along the way. I come back, 12 review that, and begin to develop a report and 13 costs associated with capital expenditures that I 14 see will be necessary over a 10-year period. 15 Q. Are the photographs included in this 16 report photographs that you took during your two 17 days at The Edgemere in 2021? 18 A. Yes. On occasion, if I'm provided a 19 photograph of the community that I feel illustrates 20 a condition, I will sometimes include that, but for 21 the most part, they're almost all photos that I 22 took myself. 23 Q. Even after the on-site interview and the 24 pre-site inspection questionnaire, is the Plante 25 Moran process to give an independent view as to the</p>	<p style="text-align: right;">Page 41</p> <p>1 Do you see that? 2 A. I do. 3 Q. Did I do a fair job in reciting the 4 content of that e-mail? 5 A. Yeah. 6 Q. This e-mail is dated August 17, 2021, so 7 you would agree that this was after your on-site 8 visit; is that right? 9 A. Yes. 10 Q. Do you know if you were provided with a 11 capex budget? 12 A. I don't know. 13 Q. And when you say you'd like to align your 14 budget with LifeSpace's, what does that mean? 15 A. I couldn't say for certain. 16 Q. I'm going to show you Plante Moran 1550 17 that I will have marked as DeHenau No. 10. 18 A. Okay. 19 (Whereupon, DeHENAU Deposition 20 Exhibit No. 10 was marked for 21 identification.) 22 BY MS. SETHNA: 23 Q. And would you agree with me this appears 24 to be a series of e-mails between you and Chris 25 Soden relative to that capex budget we just</p>

<p style="text-align: right;">Page 42</p> <p>1 discussed in the prior e-mail? 2 A. Yes. 3 Q. Is this the rough capex budget that 4 LifeSpace provided to you for The Edgemere? 5 A. I would assume it is. 6 Q. Were any other budgets prepared or 7 provided to you in preparation of your report? 8 A. I don't know. 9 Q. Were you told by Chris Soden on what bases 10 the estimates or the time frames in which the work 11 would be completed were based upon? 12 A. I don't recall. 13 Q. Was this, we'll call it, rough budget 14 influential on the ultimate cost table that you 15 provided as part of your report? 16 A. I don't remember if it was or wasn't. 17 Q. Were you provided any other information as 18 to costs or conditions? 19 A. I don't recall if I was. 20 Q. Were you told by LifeSpace or Edgemere to 21 mirror your assessment to comport with the rough 22 budget? 23 A. I don't recall ever being directed to do 24 that. 25 Q. Were you told to include the estimated</p>	<p style="text-align: right;">Page 44</p> <p>1 A. It was one building interconnected. It 2 was a large campus, one interconnected building, so 3 no, no more than one building. 4 Q. Is the -- is the reference to one the 5 entire campus of The Edgemere? 6 A. Yes. 7 Q. And can you read for me the summary of 8 your findings on that same page? 9 A. Overall, The Edgemere Community was found 10 to be in fair condition as many building envelope 11 materials, interior finishes, and mechanical 12 systems would require a significant investment over 13 a 10-year capital improvement effort. The building 14 was well-maintained, and most expenditures included 15 are due to building age and specific materials 16 reaching their end of their useful life expectancy. 17 Various recommendations have been made throughout 18 this report and are accounted for within the 19 facility assessment capital planning improvement 20 budget that is to be implemented over a period of 21 one to 10 years. 22 Q. And do you recall how you settled on a 23 period of 10 years as the term for your evaluation? 24 A. That is typical of our facility assessment 25 report.</p>
<p style="text-align: right;">Page 43</p> <p>1 costs or timing of any of the particular, call it, 2 seven categories into your report? 3 A. I don't remember if I was. 4 Q. I'm going to go back to your report, which 5 is Exhibit DeHenau No. 8. I'm on Page PM_1662, 6 which is Page 3 of the report. Do you see the 7 table of contents there? 8 A. Yes. 9 Q. And would you agree with me there are 10 essentially four parts of the report? 11 A. Yes. 12 Q. And so Section A is the executive summary; 13 Section B, the approach; Section C, the property 14 overview; and Section D, the building assessment; 15 is that right? 16 A. Yes. 17 Q. If you turn to the next page, PM_1664, 18 this outlines the dates, the community staff 19 present as well as you as the Plante Moran 20 representative. It also states there was one 21 building that was assessed as part of the report. 22 Do you see that? 23 A. I do. 24 Q. Did you actually assess more than one 25 building?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. At the bottom of that same page, the 2 condition summary is listed noting The Edgemere and 3 certain of the systems that you observed are marked 4 in either good or poor condition. Do you see that? 5 A. Yes. 6 Q. So do you agree that 1.0 site work was 7 noted as in good condition in your report; is that 8 right? 9 A. Yes. 10 Q. And the building envelope is in poor 11 condition? 12 A. Correct. 13 Q. 3.0, the interior renovations noted as 14 good condition? 15 A. Yes. 16 Q. 4.0, the plumbing systems in fair 17 condition? 18 A. Yes. 19 Q. 5.0, the HVAC systems in fair condition? 20 A. Yes. 21 Q. And the electrical systems and furniture 22 and equipment listed in good condition? 23 A. Yes. 24 Q. How does Plante Moran describe good 25 condition?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. It is defined on Page 10 of the report. 2 Q. Can you tell me what the definition of 3 good is according to Plante Moran in your report? 4 A. Observed to be of average to above average 5 condition for the building system or material 6 assessed with consideration of its age, design, and 7 geographical location. Generally, other than 8 normal maintenance, no work is recommended or 9 required. 10 Q. How does Plante Moran define fair? 11 A. Observed to be of average condition for 12 the building system evaluated satisfactory, 13 however, some short-term and/or immediate attention 14 is required or recommended primarily due to normal 15 aging and wear of the building system to return the 16 system to a good condition. 17 Q. Lastly, how does Plante Moran define poor 18 condition? 19 A. Observed to be of below average condition 20 for the building system evaluated, requires 21 immediate repair, significant work or replacement 22 is anticipated to return the building system or 23 material to an acceptable condition. 24 Q. Are there any other categories that Plante 25 Moran uses relative to labeling a condition</p>	<p style="text-align: right;">Page 48</p> <p>1 \$11,107,965. 2 Q. And what was Plante Moran's complete cost 3 with escalation for The Edgemere? 4 A. \$52,535,217. 5 Q. When you talk about the term of years, you 6 put it in categories. So critical need, you said, 7 was years 1 to 3; is that correct? 8 A. Yes. 9 Q. And when does that clock start ticking? 10 Is it the date of your report? 11 A. I would say it's a period that closely 12 follows the date of the report. 13 Q. So year 1 would be between October 15, 14 2021 or thereabout until October 15 thereabout, 15 2022. Would you agree? 16 A. Yes, with the caveat that in a lot of 17 cases, it takes some time to review this report, 18 secure funding, gain approval, spend dollars. So I 19 suppose that's up to the community or whoever 20 reviews this report and decides if they'll spend 21 those dollars. 22 Q. But nowhere in the report does it say one 23 to three years give or take, correct? 24 A. Correct. 25 Q. And whether or not a community needs to</p>
<p style="text-align: right;">Page 47</p> <p>1 assessed in its reports? 2 A. No, I don't believe so. 3 Q. Page No. PM_1665, which is Page 6 of the 4 same report, this is the summary of costs by 5 priority of The Edgemere. Do you see that? 6 A. I do. 7 Q. And this lists The Edgemere as the name of 8 the facility and then puts certain numbers and 9 estimates of costs in certain categories. Would 10 you agree? 11 A. Yes. 12 Q. Could you describe for me what is noted as 13 a critical need for The Edgemere? 14 A. Are you asking me to call out the dollar 15 amount associated? 16 Q. Yes, and the term of years. 17 A. Critical need is a capital expenditure 18 planned for the next one to three years. We noted 19 or I noted \$20,784,403. 20 Q. Okay. And what about deferrable 21 maintenance? 22 A. An expenditure assumed to be spent in 23 years 4 through 6, \$20,642,848. 24 Q. And lastly, property enhancement? 25 A. An expenditure plan for years 7 to 10,</p>	<p style="text-align: right;">Page 49</p> <p>1 raise money, reserve money is not the concern of 2 Plante Moran; is that right? 3 A. Yes, that's fair. 4 Q. Would the same follow suit relative to the 5 term of years for deferrable maintenance between 6 four and six years after your report, correct? 7 A. Yes. 8 Q. And then the property enhancement is in 9 years 7 to 10 after the October 15 or thereabout 10 2021 final report, correct? 11 A. Yes. 12 Q. Page 7 of the report, which is noted as 13 PM_1666, this is a summary of costs by category. 14 Do you agree? 15 A. Yes. 16 Q. And can you describe for me the 17 correlation between the summary cost by category 18 and the summary cost by priority on the prior page? 19 A. Category designates what type of -- what 20 type of building component or material that those 21 dollars are associated with. And on Page 6 of the 22 report, that table designates when dollars are 23 anticipated to be spent for years 1 through 10. 24 Q. Thank you. 25 I'm going to go to Section B of the</p>

<p style="text-align: right;">Page 50</p> <p>1 report, Page 9 marked PM_1668. Let me know when 2 you're there. 3 A. Okay. 4 Q. This talks about, as you described 5 earlier, essentially Phase I of your investigation 6 where you gather information; is that fair? 7 A. Yes. 8 Q. And it looks that it's noted here that 9 interviews were conducted with James Oates on 10 July 12th -- forgive me -- July 20, 2021. Do you 11 see that? 12 A. Yes. 13 Q. Was there an interview conducted with 14 Chris Soden on either of the two days you were on 15 site? 16 A. I recall him -- I recall him being in the 17 room, but the interview was primarily with James. 18 He had most knowledge on the facility. 19 Q. And then for the next two days for 20 July 2122 -- withdraw. 21 For July 20 and 21, you walked the 22 facilities with both James and Chris Soden; is that 23 right? 24 A. Yes. 25 Q. This also notes that you photographed the</p>	<p style="text-align: right;">Page 52</p> <p>1 building's critical needs in order to provide a 2 rough order of magnitude of potential costs for 3 capital improvement planning. 4 Q. Thank you. 5 Were you ever provided with any 6 maintenance records for The Edgemere? 7 A. I don't recall if I was. 8 Q. Do you recall if you were ever provided 9 with or saw any equipment service records? 10 A. I don't recall if I was. 11 Q. Do you recall if you were provided with or 12 had access to any completed work report for repairs 13 at The Edgemere? 14 A. I don't recall if I was. 15 Q. Do you know if you requested any 16 maintenance records, equipment service records, or 17 completed work reports for repairs at The Edgemere? 18 A. I don't remember if I did. 19 Q. Did your assessment include any intrusive 20 or destructive testing or evaluations? 21 A. No. 22 Q. What did your assessment include? 23 A. Whatever I could see visually. 24 Q. Visual only, correct? 25 A. That's right.</p>
<p style="text-align: right;">Page 51</p> <p>1 building's general conditions and to illustrate the 2 specific observed deficiencies; is that right? 3 A. Yes. 4 Q. And you reviewed the LifeSpace-provided 5 floor plans and documents, correct? 6 A. Yes. 7 Q. Do you recall what documents were included 8 in your review? 9 A. Not beyond what's written here. 10 Q. Is there any part of this report that 11 describes or defines the documents that you were 12 provided with and reviewed? 13 A. I don't believe so. 14 Q. Do you want to take a look? 15 A. If a specific document was referenced, I 16 typically call it out in the report. 17 Q. And what are the purposes of the 18 assessment as noted on Page 9 of your report? 19 A. Observe and document readily visible 20 potential site materials and building system 21 defects that might significantly affect the value 22 of the buildings and properties, communicate 23 conditions identified that may have a significant 24 impact on the future operation of the buildings, 25 assist LifeSpace leadership in identifying the</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. I'm going to ask you to turn to Page 1688 2 of your report. 3 A. Okay. 4 Q. And would you agree with me this is 5 Section D, building assessment of the final report 6 you prepared, and this relates to the condition 7 summary of the site? Do you agree? 8 A. I do. 9 Q. These little dots on the side, I'm going 10 to refer to them as bullet points. Is that okay 11 for reference? 12 A. Yes. 13 Q. So the eighth bullet point down talks 14 about the stone retaining walls. Do you see that? 15 A. I do. 16 Q. Can you describe for me what you note in 17 your report about the retaining walls? 18 A. Are you asking what I noted about the 19 condition? 20 Q. Yes, please. 21 A. The mortar joints at some areas of the 22 retaining walls are beginning to crack and 23 separate. There's also evidence of previous 24 patching. It is recommended that a mason tuckpoint 25 areas where mortar joints are damaged. In the</p>

<p style="text-align: right;">Page 54</p> <p>1 future, if walls continue to crack, it is 2 recommended that a structural engineer review and 3 provide an engineered solution such as tie-backs. 4 Q. I'm going to ask you to turn to Page 34 of 5 your report. It's PM_1693. Do you see these 6 photographs? 7 A. Yes. 8 Q. And did you take these photographs? 9 A. I believe I did. 10 Q. And did you also include the descriptor 11 below each of the photographs on Page 34 of your 12 report? 13 A. Yes. 14 Q. Do the photographs included on Page 34 15 fairly and accurately depict the condition of the 16 retaining walls at The Edgemere that you personally 17 observed? 18 A. Yes. 19 Q. I'm going to ask you to turn to Page 37 of 20 your report. 21 A. Okay. 22 Q. Bullet point 3 talks about multiple areas 23 of cracking stucco. Do you see that? 24 A. I do. 25 Q. Can you tell me what your note is relative</p>	<p style="text-align: right;">Page 56</p> <p>1 windows be replaced since they at the end of the 2 their useful life expectancy. During the 3 replacement of the window, the head flashing can be 4 corrected. 5 The community should also consider 6 installing a light-gauge metal sill pan to further 7 prevent water infiltration into the building and/or 8 behind the exterior facade. The community should 9 consider utilizing the building consultant report 10 as a bid document for facade repairs and window 11 replacement and allocate an allowance in addition 12 to the selected bidder's price for unforeseen 13 damages and repairs. 14 Q. Thank you. 15 The last condition noted on Page 37 16 relates to the roofs; is that right? 17 A. Yes. 18 Q. And can you describe for me the different 19 roof types of The Edgemere buildings? 20 A. The perimeter portions of the roof 21 consists of clay tiles over a membrane. 22 Q. And were you told anything by the 23 community representative relative to the condition, 24 repair, or replacement of the clay tile roof? 25 A. Yes. Per the representative, the clay</p>
<p style="text-align: right;">Page 55</p> <p>1 to the condition of the stucco? 2 A. Multiple areas of cracking stucco or EFIS 3 were observed as well as facade staining from 4 improper roof flashing, parapet flashing, scupper 5 flashing, sill flashing, or other exterior 6 protrusions such as light fixtures. 7 Q. Do the photographs on Page 38 and 39 8 fairly and accurately depict the condition of the 9 stained facade and stucco that you observed at The 10 Edgemere? 11 A. Yes. 12 Q. Back to Page 37, can you describe for me 13 your comments about the condition of the windows at 14 The Edgemere? 15 A. Exterior windows are vinyl Pella windows 16 that are mostly original to the building. The 17 community has been experiencing water and air 18 infiltration and has re-caulked the windows as 19 needed. Would you like me to keep going? 20 Q. Please do. 21 A. Per a facade investigation conducted by 22 the building consultant in 2020, the head of the 23 windows are improperly flashed. Additionally, weep 24 holes were blocked with caulking installed by a 25 previous contractor. It is recommended that the</p>	<p style="text-align: right;">Page 57</p> <p>1 tile roof was replaced and repaired on all areas of 2 the campus except the health center wing and the 3 Phase II IL wing. 4 Q. Were you able to independently verify 5 whether the clay tile roof had been, in fact, 6 replaced? 7 A. If I recall correctly, the tile looked 8 new, and I was able to come across photos of it 9 being replaced. 10 Q. Did you bring with you a drone for your 11 visit in July of 2021? 12 A. No. 13 Q. Were you provided any aerial access to 14 observe the condition of the tile roof? 15 A. I was provided access to the roof, to flat 16 portions of the roof where I could observe the 17 sloped clay tile portions of the roof. 18 Q. Going on to Page 38, there are flat roof 19 systems also at The Edgemere; is that right? 20 A. Yes. 21 Q. And can you describe for me the substance 22 and condition of the flat roofs? 23 A. Interior roof system on both the IL and 24 health center wings are a built-up bituminous 25 membrane system. All flat roofs are original to</p>

<p style="text-align: right;">Page 58</p> <p>1 the building and are showing signs of wear, 2 cracking, improper flashing, and delaminated 3 caulking. The parapet flashing details at the flat 4 roofs are also damaged in several areas. A 5 majority of the flat roofs drain to scupper 6 openings and downspouts at the perimeter. The 7 north addition of the health center wing utilizes 8 interior roof conductors within adjacent overflow 9 conductor. 10 It is recommended that all areas of the 11 flat roof be removed and replaced with the 12 exception of the north and south health center 13 additions, which were found to be in good 14 condition. On the health center wing flat roof, 15 mechanical -- on the health center wing flat roof, 16 mechanical units and electrical penetrations 17 utilized improper curbs and were improperly 18 flashed. As part of the roof replacement project, 19 the community should consider replacing the curbs 20 and MEP penetration flashing. 21 Q. Do the photographs included on Page 45 22 noted as PM_1704 fairly and accurately depict the 23 condition of the flat roofs as you observed them to 24 be during your time at The Edgemere in July of 25 2021?</p>	<p style="text-align: right;">Page 60</p> <p>1 to Page 87 of your report. Can you describe for me 2 what's included on Section D, cost analysis of the 3 Plante Moran report? 4 A. This is a capital expenditure budget for 5 The Edgemere Community categorized in the various 6 building areas and identifying the amount of 7 dollars that are projected to be spent in years 1 8 through 3, 4 through 6, and 7 through 10. 9 Q. Do you agree with me that the last three 10 columns of this very small fonted chart are 11 entitled critical needs, deferrable maintenance, 12 and property enhancements? 13 A. Yes. 14 Q. And you'd also agree with me that on the 15 left hand, there is a list of conditions, and those 16 are described as program areas; is that right? 17 A. That's correct. 18 Q. Are these further categorized into 19 different building systems? 20 A. I'm not quite sure what you mean. 21 Q. So in Section 1.0, do you see that listed 22 in blue? It's called site? 23 A. Yes. 24 Q. So are the conditions noted beneath site 25 in 1.0 generally site conditions you observed as</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Yes. 2 Q. Once an observed condition is noted, at 3 what point do you categorize it as good, fair, or 4 poor? 5 A. At what point in my process? 6 Q. Yes. 7 A. Typically after the site visit is complete 8 and I've had a chance to review my notes and my 9 photos. 10 Q. If a condition is noted as poor, does that 11 ultimately put that in a critical need time window 12 for attention and cost planning? 13 A. Not necessarily. 14 Q. Can you explain? 15 A. It's possible that I could call out a wall 16 to be repainted. I don't -- I don't necessarily 17 think that's a critical need. So something can be 18 in poor condition, but not be a critical need to 19 the building operating or being functional. 20 MS. SETHNA: Let's take a quick break, and then 21 we'll dive into the report. 22 (Whereupon, a short break was 23 taken.) 24 BY MS. SETHNA: 25 Q. Mr. DeHenau, I'm going to ask you to turn</p>	<p style="text-align: right;">Page 61</p> <p>1 part of your time at The Edgemere? 2 A. Yes. 3 Q. And then there are quantities listed in 4 the second column; is that right? 5 A. Yes. 6 Q. Can you tell me what the next column says? 7 A. Unit. 8 Q. And there are different terms used in that 9 particular column, notably EA, which I presume 10 means each? 11 A. That's correct. 12 Q. And then year; is that right? 13 A. Yes. 14 Q. And allowance; is that correct? 15 A. Yes. 16 Q. What does the term year mean as it relates 17 to unit? 18 A. Dollars to be spent annually. 19 Q. Right. And how about the term allowance 20 as it's used in the unit column? 21 A. An estimated value. 22 Q. And what about the term each? 23 A. Cost per one of a certain quantity. 24 Q. Understood. 25 What conditions are noted in that site</p>

Page 62

1 category listed as 1.0 as requiring cost planning
2 for the critical need period of years 1, 2, and 3?
3 A. Tree removal from interior courtyard
4 raised planters, tree removal from raised planters
5 outside of interior courtyards, replace landscaping
6 in raised planters, landscaping maintenance, patch
7 mortar joints in retaining walls, rebuild damaged
8 cedar trellis in courtyards.
9 Q. Is there any critical needs cost ascribed
10 with the correct raised masonry planters in years 1
11 through 3?
12 A. Yes.
13 Q. Where do you see that?
14 A. Oh, I'm sorry. The second to last line --
15 in the site category?
16 Q. Yes.
17 A. There are no costs associated. I
18 apologize.
19 Q. No worries. I just wanted to make sure I
20 understand the report as it's written.
21 So the site subtotal for critical needs is
22 estimated as what number?
23 A. The critical need cost is \$1,057,700.
24 Q. Let's stay within that same site category.
25 What conditions were noted as requiring deferred

Page 63

1 maintenance for years 4, 5, and 6?
2 A. Landscaping maintenance and patch mortar
3 joints in retaining walls.
4 Q. And what is the estimated cost for the
5 deferred maintenance of the site category for years
6 4, 5, and 6?
7 A. 982,737.
8 Q. What are the property conditions noted as
9 requiring property enhancement planning?
10 A. Landscaping maintenance and patch mortar
11 joints in retaining walls.
12 Q. And what is the estimated spend for years
13 7, 8, 9, and 10?
14 A. 1,037,641.
15 Q. What are those costs estimates based upon?
16 A. They can be based on a number of things.
17 We have benchmarking. We have a benchmarking
18 database of costs that I can pull from. Others are
19 my own estimates. It could be an estimate that is
20 provided to the community that I utilized in this
21 report.
22 Q. As you sit here today, do you know which,
23 if any, of the categories in condition cost
24 assessments were attributed to your database?
25 A. I do not.

Page 64

1 Q. Do you know which of any of the conditions
2 or cost estimates in the site category are
3 attributable to information provided to you by the
4 community?
5 A. I do not.
6 Q. Do you know which of the cost estimates
7 related to the conditions noted in the site
8 category are based upon your own estimates?
9 A. I do not.
10 Q. As you sit here today, do you stand by the
11 number and estimates that are included in the site
12 category at The Edgemere for both critical needs
13 deferred maintenance and property enhancement
14 planning?
15 A. There's nothing that I'm aware of that
16 would change my opinion.
17 Q. Let's look down to Section 2.0. It's
18 called the building envelope. Do you see that?
19 A. Yes.
20 Q. Can you describe for me what conditions
21 you observed to require critical needs cost
22 planning?
23 A. Replace built-up roof system. Increase
24 gutter size in areas where rainwater is not
25 captured. Clean gutters annually. Re-connect PVC

Page 65

1 downspouts to underground storm system. Replace
2 wood soffit supports as needed. Rebuild wood
3 trellis structures. Replace windows and exterior
4 doors. Patch EFIS. Correct flashing, power wash
5 and repaint building excluding the health center.
6 Power wash and paint health center wing, in
7 parentheses, Edgemere provided estimate.
8 Q. In fact, different from the site category
9 above each and every of the conditions that you
10 observed and included in Section 2.0 are all listed
11 as critical needs; is that right?
12 A. Yes.
13 Q. And there's a special denotation in that
14 last line item that you referred to as power wash
15 and paint health center wing, and it notes Edgemere
16 provided estimate. Do you see that?
17 A. I do.
18 Q. Do you recall who at The Edgemere provided
19 you with an estimate?
20 A. I do not.
21 Q. If The Edgemere or LifeSpace had provided
22 you with any estimates, would they have been
23 similarly denoted next to each of the conditions?
24 A. Not necessarily, and that's probably me
25 just being not consistent in how I designate that.

Page 66

1 It's possible others were Edgemere-provided
2 estimates, but I couldn't say which.
3 Q. And what was the total estimated cost for
4 building envelope critical needs?
5 A. 7,869,750.
6 Q. What is the estimate for the conditions
7 relative to the building envelope in the deferred
8 maintenance category of years 4, 5, and 6?
9 A. \$134,010.
10 Q. And in the property enhancement category
11 in years 7, 8, 9, and 10?
12 A. \$155,133.
13 Q. Why do you estimate such a drastic
14 difference between the critical needs period and
15 the following deferred maintenance and property
16 enhancement periods?
17 A. There's likely more information in the
18 narrative of my report. As I recall or if I recall
19 correctly, the other items that have costs in the
20 critical need would -- I projected they would need
21 correction in years 1 through 3 as opposed to later
22 years.
23 Q. Does your presumption when you estimate
24 cost planning for that second period of time, years
25 4, 5, and 6 and then the third period of time, 7,

Page 67

1 8, 9, and 10, presume that work noted as critical
2 is actually completed in years 1, 2, and 3?
3 A. I'm not sure I understand your question.
4 Q. Okay. Let me try again.
5 Do you presume that the conditions you
6 note and the cost planning in the critical needs
7 category, that that work is completed as part of
8 your evaluation as to what the cost estimates
9 should be for the following two categories of time?
10 A. Are you asking as it relates to a line
11 item that has costs in both categories?
12 Q. Yes. Thank you for specifying.
13 A. Yes.
14 Q. So let's just stay right there with the
15 building envelope. There is a total estimated
16 critical needs cost of \$7,869,750. Do you see
17 that?
18 A. I'm sorry. Can you call out where you're
19 seeing that number?
20 Q. Of course. It's the building envelope
21 subtotal for the critical needs.
22 A. Oh, I yes.
23 Q. And the next two years have a modest
24 estimate of \$100,000 or so. Do you see that?
25 A. The next two categories?

Page 68

1 Q. The next two categories of time, the
2 deferred maintenance and the property enhancements.
3 A. Yes.
4 Q. So does your estimate of \$134,000 or so,
5 for instance, on the gutters spent presume that the
6 gutters were increased in size, and the areas where
7 rainwater is not captured is addressed timely in
8 years 1, 2, or 3?
9 A. No. Those costs are associated with
10 cleaning gutters annually.
11 Q. Is there a direct correlation between the
12 estimate included in years 1, 2, and 3 related to
13 the gutter cost?
14 A. Which gutter cost?
15 Q. On that same line item, 1, 2, 3 down from
16 the building envelope category?
17 A. Can you ask your question again?
18 Q. Sure. So Section 2.0 is the building
19 envelope. Do you see that?
20 A. Yes.
21 Q. Three conditions down, there's an estimate
22 of clean gutters annually; is that right?
23 A. Yes.
24 Q. And is there a correlation between each of
25 those three columns and the estimated amounts

Page 69

1 associated with the annual cleaning?
2 A. It is simply an annual cost of \$30,000
3 allocated to clean the gutters.
4 Q. And the difference between the three
5 columns is inflation?
6 A. That's right.
7 Q. Understood.
8 What about the plumbing systems in Section
9 4.0?
10 A. What is your question?
11 Q. Do you see that?
12 A. Yes.
13 Q. What conditions did you include in the
14 critical needs category for the plumbing systems?
15 A. Miscellaneous maintenance of fire
16 suppression system, add isolation valves, estimated
17 100, replace piping, valves, and unions.
18 Q. And what was the cost estimated as
19 critical needs related to the plumbing systems in
20 years 1, 2, and 3?
21 A. \$323,750.
22 Q. And in years 4, 5, and 6, what conditions
23 did you note required additional planning?
24 A. Miscellaneous maintenance of fire
25 suppression system, add isolation valves, replace

Page 70

1 piping union -- piping valves and unions.
2 Q. And what did you estimate that amount to
3 be?
4 A. \$413,196.
5 Q. And in years 7 through 10, the property
6 enhancement condition?
7 A. Miscellaneous maintenance of fire
8 suppression system, replace domestic water pumps,
9 add isolation valves, replace piping valves and
10 union.
11 Q. And what do you estimate the cost to be?
12 A. 522,790.
13 Q. As far as the HVAC systems, you estimated
14 1,491,000 as critical needs cost in years 1, 2, and
15 3; is that right?
16 A. I did.
17 Q. What conditions did you note were included
18 in that category?
19 A. Replace boilers, replace independent
20 living unit heat pumps, replace health center fan
21 coil units and condensers.
22 Q. And in the deferred maintenance category,
23 you estimated another \$1,085,477 for years 4
24 through 6; is that right?
25 A. Yes.

Page 71

1 Q. And what was the cost planning for the
2 property enhancement in that same HVAC systems
3 category?
4 A. Replace independent living unit heat
5 pumps, retrofit BAS.
6 Q. And what do those initials stand for?
7 A. Building automation system.
8 Q. On what did you base the cost estimates
9 for those numbers?
10 A. Are you asking for all five of those
11 expenses?
12 Q. Correct.
13 A. I don't recall exactly.
14 Q. Do you recall which resources you could
15 have relied upon in providing those estimates?
16 A. The same I noted before, utilizing
17 benchmarking data that we collect, an estimate
18 provided by the client, or my own estimate.
19 Q. Are any of those cost estimates forced on
20 Plante Moran?
21 A. I'm not sure I understand forced.
22 Q. So are those cost estimates based upon
23 your personal observations and information
24 provided?
25 A. As I said, sometimes. Sometimes they're

Page 72

1 an estimate provided by the community.
2 Q. I'm going to ask you to turn to Page 11 of
3 the report. It's PM_1670.
4 A. Okay.
5 Q. And can you describe for me what this
6 approach in Section B of your report states
7 relative to the opinions of Plante Moran as it
8 relates to probable cost?
9 A. Are you asking me to read this?
10 Q. Please, the first paragraph.
11 A. Based upon observations during our site
12 visit and information received from our interviews
13 with building users, which were for the purpose of
14 this report was deemed reliable, Plante Moran
15 Living Forward prepared general scope opinions of
16 probable costs based on appropriate remedies for
17 the deficiencies noted. Such remedies and their
18 associated costs were considered commensurate with
19 the subject's position in the market and prudent
20 expenditures.
21 These opinions are for components of
22 systems exhibiting significant deferred maintenance
23 and existing deficiencies requiring major repairs
24 or replacement. Repairs or improvements that could
25 be classified as cosmetic, a decorative part or

Page 73

1 parcel of a building renovation program, routine or
2 normal preventative maintenance were included as
3 property enhancements. Costs provided are based on
4 mid-level commercial pricing.
5 Q. Since the estimates provided on the
6 cost -- the summary of budgets that we just talked
7 about, has there been any change, to your
8 knowledge, in the current inflationary market?
9 A. Escalation in general in construction
10 materials, based on the date of this report, I
11 couldn't say -- I'm not quite sure what I used as
12 an escalation and how it compares to what
13 escalation is today.
14 Q. Understood. Were the cost estimates that
15 you provided as part of the table that we discussed
16 on Page 87 relative to cost materials and labor in
17 the Dallas market?
18 A. Yes. I typically apply a multiplier that
19 adjusts pricing up or down based on the geographic
20 area of the community.
21 Q. As you sit here today, you don't know the
22 multiplier that you applied?
23 A. I do not.
24 Q. Did you review the completeness of the
25 summary of budgets with LifeSpace?

Page 74

1 A. I don't recall if I did or not.
2 Q. Do you recall reviewing the details
3 included in the cost analysis with anyone at
4 Edgemere?
5 A. I don't know if I would have known the
6 difference between LifeSpace and Edgemere as it
7 related to my engagement.
8 Q. Well said.
9 Do you recall having any conversations
10 with anyone relative to the conditions noted in the
11 category that you placed them in?
12 A. I don't know if I did or not.
13 Q. Do you recall ever being asked to move a
14 condition from a critical needs bucket, let's call
15 it, into a different category?
16 A. I don't know if I was asked to do that or
17 not.
18 Q. Do you recall ever being asked to change
19 the allocation of a cost estimate from either
20 deferred maintenance to critical needs or property
21 enhancement to deferred maintenance?
22 A. I don't know if I was requested to do that
23 here.
24 Q. Were you ever asked or do you recall being
25 asked to move or front load any of the conditions

Page 75

1 and cost estimates into the critical needs period
2 in years 1, 2, and 3?
3 A. No, I don't recall that.
4 Q. You signed this report on behalf of Plante
5 Moran; is that right?
6 A. Yes.
7 Q. And in your role at Plante Moran, are you
8 the custodian of this report and have access to it?
9 A. While it's being produced, yes. Today I
10 don't know if I do or not.
11 Q. Is the report you're looking at that we
12 have previously marked as Exhibit 8 an accurate
13 copy of the final property -- final facilities
14 assessment report furnished to LifeSpace on
15 October 15, 2021?
16 A. This exhibit says 15.
17 Q. It's previously marked as Exhibit 15 for
18 your prior deposition. It has now been marked as
19 part of this bankruptcy proceeding as Exhibit 8.
20 A. Yes.
21 Q. As you sit here today, you had personal
22 knowledge of the property conditions described and
23 photographed in this final report; is that right?
24 A. Yes.
25 Q. Is it a regular practice of Plante Moran

Page 76

1 to create property assessment reports?
2 A. Yes.
3 Q. And is a regular part of Plante Moran's
4 business to keep and maintain reports it's engaged
5 to produce, correct?
6 A. Yes.
7 Q. Do you recall if Plante Moran has been
8 paid for its services provided in conjunction with
9 the facilities assessment engagement?
10 A. I believe we have.
11 Q. Do you recall who paid Plante Moran for
12 its services in connection with this facilities
13 assessment?
14 A. I don't know.
15 Q. Do you know if LifeSpace paid for the
16 services rendered by Plante Moran as it relates to
17 this property assessment?
18 A. I believe they would have because our
19 engagement was with LifeSpace.
20 Q. But as you sit here, you don't know from
21 which party funds came to pay Plante Moran for its
22 services?
23 A. I could not say.
24 Q. Has there been any subsequent engagement
25 by Plante Moran -- of Plante Moran by LifeSpace?

Page 77

1 A. No.
2 Q. Has there been any subsequent engagement
3 by Plante Moran -- of Plante Moran by Edgemere?
4 A. No.
5 Q. Do you know if Plante Moran has been paid
6 for its review in response to the subpoena served
7 upon it in regard to this bankruptcy proceeding?
8 A. Can you ask that question again?
9 MR. NELSON: Can you restate that for me?
10 MS. SETHNA: For sure.
11 BY MS. SETHNA:
12 Q. Has Plante Moran been paid for its review
13 and for your testimony in conjunction with the
14 subpoena?
15 A. I don't believe we have.
16 MS. SETHNA: I'm going to take a five-minute
17 break just to go through my notes, and hopefully
18 that will be the wrap of our time together.
19 (Whereupon, a short break was
20 taken.)
21 (Whereupon, DeHENAU Deposition
22 Exhibit No. 11 was marked for
23 identification.)
24 BY MS. SETHNA:
25 Q. Mr. DeHenau, I'm going to show you what I

Page 78

1 have marked as DeHenau No. 11, Bates stamp PM_006.
 2 Do you see this document?
 3 A. Yes.
 4 Q. Can you describe what's included in this
 5 document?
 6 A. They are notes from a conversation I had
 7 with Russell Mauk on November 11, 2021.
 8 Q. And you had furnished your final report to
 9 the LifeSpace Communities, Inc. on October 15,
 10 2021, correct?
 11 A. Correct.
 12 Q. So this conversation happened subsequent
 13 to your issuance and their receipt of your final
 14 report, correct?
 15 A. Correct.
 16 Q. And can you read for me what the notes
 17 from your conversation include?
 18 A. Edgemere is not financially functioning.
 19 IL census is at roughly 70 percent. Looking for a
 20 way to reduce exposure to the cost. They are
 21 wondering if they can shrink the size of the
 22 community. Would like to parcel off some of the
 23 building and sell. Possibly cut off the southern
 24 wings and turn into condos.
 25 Cannot access the community due to the

Page 79

1 sensitive nature of the conversation. Russell
 2 believes they should parcel off one-third, keep
 3 two-thirds of the units. Keep the health care
 4 portion designated as the plaza. Possible scopes
 5 of work, two high-level concepts to parcel off.
 6 Look into feasibility of selling units without
 7 adding a lot line. Identify any zoning
 8 restrictions. Develop path forward and next steps.
 9 Q. Thank you.
 10 Was the scope of this conversation in
 11 relation to the engagement Plante Moran had with
 12 LifeSpace for the facilities assessment?
 13 A. I don't know if it was or not.
 14 Q. Was there ever a separate engagement
 15 between LifeSpace or Edgemere and Plante Moran as
 16 it relates to the Edgemere?
 17 A. No.
 18 Q. Do you recall what information was
 19 provided to you relative to a comment that Edgemere
 20 was not financially functioning?
 21 A. I don't recall if anything was provided or
 22 not.
 23 Q. Did anything in the conversation that you
 24 had with Russell on November 11, 2021 impact your
 25 decisions or cost allocations of the report that

Page 80

1 you issued on October 15, 2021?
 2 A. No. This conversation came after the
 3 report was issued.
 4 Q. And your report never changed based on the
 5 information and subsequent conversations that you
 6 had with LifeSpace or Edgemere?
 7 A. No.
 8 Q. Are the opinions in the facilities
 9 assessment report that we've discussed at length
 10 and marked as DeHenau Exhibit No. 8 the true and
 11 accurate opinions of Plante Moran as to the
 12 facilities assessment commonly known as The
 13 Edgemere?
 14 A. Yes.
 15 Q. If called to testify in court, your
 16 testimony would be consistent with that offered
 17 today as part of your deposition?
 18 A. Yes.
 19 MS. SETHNA: I'll pass the witness.
 20 EXAMINATION
 21 BY MR. DAVIS:
 22 Q. Matthew Davis for Bay 9. We met earlier
 23 today, and we have not met before today, correct?
 24 A. That's right.
 25 Q. Prior to the deposition, did you speak

Page 81

1 with anyone at Levenfeld about the property before
 2 your deposition?
 3 A. No, I don't believe I did.
 4 Q. Do you have any training or education in
 5 finance?
 6 A. I do not.
 7 Q. In capital budgeting?
 8 A. Specifically, no.
 9 Q. Any training or education in capital
 10 planning?
 11 A. Not beyond my education in construction.
 12 Q. Have you visited the property since your
 13 site visit in July of 2021?
 14 A. No.
 15 Q. So you do not know the current condition
 16 of the property?
 17 A. I do not.
 18 Q. You don't know what maintenance has been
 19 done on the property since your visit?
 20 A. I do not.
 21 Q. You don't know what repairs may have been
 22 conducted since your visit?
 23 A. I do not.
 24 Q. You don't know whether any items on the
 25 property currently are in need of any repair at

Page 82

1 all, correct?
2 A. That's correct.
3 Q. There have been a lot of questions about
4 the capital budget or capital plan that you have
5 laid out in your report. So a capital budget
6 doesn't equate to a timetable of exactly when money
7 is going to be spent, correct? It's a forecast,
8 correct?
9 A. That's correct. It's an estimate.
10 Q. But it's an estimate of something in the
11 future. You're forecasting when expenses might
12 arise, right?
13 A. Yes, that's correct.
14 Q. You're not providing an opinion that money
15 must be spent in that year, right?
16 A. It is a forecasted estimate.
17 Q. Have you ever heard of the term property
18 conditions assessment?
19 A. I don't know if I have or not. Can you be
20 more specific?
21 Q. Well, in reviewing a property and a report
22 is put together called a property conditions
23 assessment, have you ever seen a report with that
24 title in this context?
25 A. I don't know if I have or not.

Page 83

1 Q. Is your facility assessment report an
2 assessment of the condition of the property?
3 A. Yes.
4 Q. Would you say that your report is step 1
5 in the process of determining the ultimate capital
6 expenditures for the project?
7 A. I believe it could be used to aid someone
8 in developing a capital expenditure plan.
9 Q. But there would need to be additional
10 steps to actually implement the expenditures
11 planned, correct?
12 A. Yes.
13 Q. Would it be fair to say that the facility
14 assessment report sets the initial priorities which
15 are then evaluated as part of the actual
16 expenditure plan?
17 A. I think that's fair.
18 Q. And that evaluation of actual expenditures
19 is dependent on the decisions of the owner or
20 the -- call them the owner of the property, right?
21 A. Correct.
22 Q. And because this is a forecast in a
23 capital budget, items within the budget can move
24 around as far as when those expenditures actually
25 occur, right?

Page 84

1 A. That's possible.
2 Q. Something you forecast that would be done
3 in year 2 could actually occur in year 4 depending
4 on client needs and decisions, right?
5 A. Yes.
6 Q. And ultimately it's your client who elects
7 what is best for the property as part of
8 implementing a capital plan?
9 A. That's right.
10 Q. Your report and your budgeting plan is
11 merely intended to assist the client in evaluating
12 how to prioritize their capital plan; is that
13 right?
14 A. That's correct.
15 Q. Could you flip back to Exhibit 2 that you
16 looked at earlier?
17 A. Okay.
18 Q. And the paragraph starting with -- in the
19 e-mail from July 8, 2021, do you see the paragraph
20 starting it is a 850,000-square-foot campus?
21 A. Yes.
22 Q. And that sentence also says the assessment
23 is to look at future capital needs as well as
24 evaluate renovations. Did I read that correctly?
25 A. Yes.

Page 85

1 Q. So this confirms that from the beginning,
2 your retention was to look at future needs and a
3 forecast, right?
4 A. Yes.
5 Q. Could you turn to Exhibit 4 that you
6 looked at, which is the engagement letter?
7 A. Okay.
8 Q. If you turn over to -- at the bottom right
9 there is PM_1820. Do you see that?
10 A. Yes.
11 Q. Do you see Phase III there at the bottom
12 of the page?
13 A. Yes.
14 Q. And Phase III is the creation of the
15 report itself, right?
16 A. That's right.
17 Q. And the last line there, your report will
18 also include a cost estimate to identify potential
19 upcoming expenditures, and then it goes on to
20 discuss the various categories. Do you see that?
21 A. I do.
22 Q. So as described in your engagement letter,
23 your report is identifying potential expenditures,
24 not required expenditures, correct?
25 A. Yes.

Page 86

1 Q. Now let's turn over to Exhibit 8, which
2 was your report.
3 A. Okay.
4 Q. Let's start on Page 2 of your report,
5 PM_1661.
6 A. Okay.
7 Q. Are you on that page?
8 A. Yes.
9 Q. The second sentence of the first paragraph
10 there, the goal of this assessment is to provide
11 LifeSpace with a summary of the condition of the
12 community and develop a capital planning template
13 with three major categories, critical need/life
14 safety, deferred maintenance, and property
15 enhancements. Did I read that correctly?
16 A. Yes.
17 Q. So again, based on this cover letter, the
18 goal of the assessment is to develop a capital
19 planning template, right?
20 A. That's correct.
21 Q. And that's a forecast, a forward-looking
22 template, right?
23 A. It is.
24 Q. Now, if you turn to Page PM_1664, do you
25 see the summary of findings there?

Page 87

1 A. I do.
2 Q. The second sentence on that summary, the
3 building was well-maintained, and most expenditures
4 included are due to building age and specific
5 materials reaching the end of their useful life
6 expectancy.
7 Did I read that correctly?
8 A. You did.
9 Q. So your recommendations in this report are
10 based on some combination of the age of the
11 condition you observed and the estimated useful
12 life of the condition you observed; is that right?
13 A. Yes.
14 Q. And it is possible for maintenance to keep
15 a particular system functioning longer than the
16 estimated useful life; is that right?
17 A. It is possible.
18 Q. So simply because something has -- well,
19 step back.
20 The estimated useful life is essentially
21 an average of what you expect some particular
22 system, how long you expect it to last, right?
23 A. That's right.
24 Q. So something being at the end of its
25 estimated useful life does not mean it is no longer

Page 88

1 functioning, right?
2 A. Not necessarily so.
3 Q. Now if you can turn with me to Page
4 PM_1665.
5 A. Okay.
6 Q. Now, you talked -- you recall that if you
7 look at the table there at the bottom, that breaks
8 down the costs between critical need, deferrable
9 maintenance, and property enhancement?
10 A. Yes.
11 Q. And those -- would it be fair to say those
12 categories are intended to set priorities for the
13 budget?
14 A. Yes.
15 Q. For example, critical need are the highest
16 priority items to be addressed, right?
17 A. Correct.
18 Q. Deferrable maintenance are secondary
19 priorities to be addressed?
20 A. Correct.
21 Q. And property enhancement are third level
22 of priorities to be addressed, right?
23 A. Correct.
24 Q. But again, those are budgeting priorities,
25 not a suggestion by you that those expenditures

Page 89

1 have to occur in those particular years, right?
2 A. Yes.
3 Q. So a critical need doesn't mean that
4 something has to be done in that one- to three-year
5 window. It's just your recommendation that the
6 client should plan for the possibility that an
7 expense could be necessary in that window. Is that
8 a fair way to say it?
9 A. Yes, my recommendation based on my
10 observations.
11 Q. If you turn with me to PM_1668.
12 A. Okay.
13 Q. Do you see the purpose section on 1668?
14 A. Yes.
15 Q. Do you see the third bullet point there?
16 A. Yes.
17 Q. And that states assist LifeSpace
18 leadership in identifying the building's critical
19 needs in order to provide a rough order of
20 magnitude of potential costs for capital
21 improvement planning.
22 Did I read that correctly?
23 A. You did.
24 Q. So let's break that apart a little bit.
25 First, your -- what you're identifying is a rough

Page 90

1 estimate of potential cost, right?
2 A. That's correct.
3 Q. So not -- you're not through this report
4 guaranteeing that whatever number in here is what
5 something is going to cost to remedy?
6 A. That's correct.
7 Q. And again, that is a potential cost.
8 You're not stating that those costs will absolutely
9 be required to be incurred, right?
10 A. It is a forecasted cost.
11 Q. And they're forecasted costs because
12 they're part of a capital improvement plan, right?
13 A. Correct.
14 Q. If you flip over to PM_1669, do you see
15 the definitions there?
16 A. I do.
17 Q. Do you see the poor definition?
18 A. I do.
19 Q. And it states there, the second sentence,
20 requires immediate repair, significant work or
21 replacement is anticipated to return the building
22 system and material to an acceptable condition.
23 Did I read that correctly?
24 A. You did.
25 Q. But the poor condition, without knowing

Page 91

1 more, we would not be able to determine whether
2 immediate repair, significant work, or replacement
3 is necessary for that particular condition, is that
4 right, as a general matter under a poor definition?
5 A. It could be one of the three, I suppose.
6 Q. Do you see priority definitions below
7 there on PM_1669 as well?
8 A. Yes.
9 Q. So let's start with critical need. Items
10 that through our observations or discussions with
11 the community may require capital expenditure
12 within the next one to three years by virtue of
13 current condition, remaining useful life, or the
14 community's priorities.
15 Did I read that correctly?
16 A. You did.
17 Q. So again, your critical need category is
18 not solely based on your observations of
19 conditions. It also takes into account your
20 discussions with the community, correct?
21 A. Correct.
22 Q. So the community or the client's needs and
23 planning also factor into what is or is not a
24 critical need?
25 A. That's right.

Page 92

1 Q. And if the client were to later elect that
2 something they thought would be a critical need in
3 their original budget -- capital budgeting plan was
4 not actually a critical need, you wouldn't have --
5 you would have no issue with the client moving that
6 to a different category, right?
7 MS. SETHNA: Objection to form.
8 BY MR. DAVIS:
9 Q. Let me rephrase that.
10 If, based on your discussions, the client
11 originally stated that they believed a particular
12 item was a critical need and was placed in a
13 critical need category, we'll start with that as
14 the starting point, okay? If you had further
15 discussions with the client about that particular
16 item and they determined that it actually was not a
17 critical need in their view, it was deferred
18 maintenance, would you have an issue with an item
19 being shifted from critical need to deferred
20 maintenance based on your discussions with the
21 client?
22 A. I suppose I would need to know exactly
23 what that is, but in most cases, based on what
24 their viewpoint of what that request was, I would
25 not have an issue with moving it.

Page 93

1 Q. And then at the end of that sentence
2 there, it says this is by virtue of current
3 condition, remaining useful life, or the
4 community's priorities. And we previously
5 discussed that two of the elements that you're
6 always looking at are the current condition and
7 remaining useful life, right?
8 A. Correct.
9 Q. But the third element that leads you to
10 place things in a particular category are the
11 community's priorities, right?
12 A. That's right.
13 Q. And that's because this is the community's
14 priorities for their capital budgeting, right?
15 A. That's correct.
16 Q. The community can elect to move things
17 around within their own capital budget, right?
18 MS. SETHNA: Objection. Calls for speculation.
19 BY MR. DAVIS:
20 Q. You can answer.
21 A. I suppose where and how they spend the
22 dollars or how they evaluate my report is up to
23 them.
24 Q. So if you look at deferred maintenance
25 there in priority definitions, again, this is --

<p style="text-align: right;">Page 94</p> <p>1 this states that these are items that through our 2 observations or discussions with the community may 3 require capital expenditure within the next four to 4 six years by virtue of current condition, remaining 5 useful life, or the community's priorities, right? 6 A. Right. 7 Q. And actually, going back to critical need, 8 again, that says these items may require 9 expenditure, right? 10 A. That's right. 11 Q. And deferred maintenance may require 12 expenditure, correct? 13 A. Correct. 14 Q. And again, deferred maintenance category 15 is based on both your observations and your 16 discussions with the community? 17 A. That's right. 18 Q. And deferred maintenance, in addition to 19 being based on the condition of an item or its 20 estimated useful life, is also based on the 21 community's priorities, correct? 22 A. That is correct. 23 Q. And let's finish out the section with 24 property enhancement. 25 These are items that through our</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Yes. 2 Q. So replacement and repair preliminary 3 budgets are based on approximate quantities. Did I 4 read that correctly? 5 A. Yes. 6 Q. So is it fair to say that the budgets 7 contained in your report are intended to be 8 preliminary budgets? 9 A. Yes. 10 Q. Do you see the final paragraph on PM_1670? 11 A. Yes. 12 Q. Please note that since the budget values 13 in this report are conceptual values only and do 14 not represent hard bid market pricing, our opinions 15 of probable cost will likely vary from actual 16 market conditions. 17 Did I read that correctly? 18 A. You did. 19 Q. So again, these are estimates, not an 20 actual statement on what it will cost to do any 21 particular project? 22 A. That's correct. 23 Q. Moving on to the remainder of that 24 paragraph, these conceptual budget values are 25 intended for a high-level planned approach by</p>
<p style="text-align: right;">Page 95</p> <p>1 observations or discussions with the community may 2 require capital expenditure within the next seven 3 to 10 years by virtue of current condition, 4 remaining useful life, or the community's 5 priorities. 6 Did I read that correctly? 7 A. You did. 8 Q. And like the previous two, these are items 9 that may require capital expenditure, correct? 10 A. That's correct. 11 Q. It's not a guarantee that any expenditure 12 will be required, right? 13 A. That's right. 14 Q. These are items that are placed in this 15 category based both on your observations and your 16 discussions with the community, correct? 17 A. Correct. 18 Q. And these are items that are placed in 19 this category based on the current condition, the 20 remaining useful life, and the community's 21 particular priorities, right? 22 A. That's right. 23 Q. Let's turn over to PM_1670. Do you see 24 the third paragraph there starting with replacement 25 and repair?</p>	<p style="text-align: right;">Page 97</p> <p>1 LifeSpace in consideration for future renovations 2 of the aforementioned buildings. 3 Did I read that correctly? 4 A. Yes. 5 Q. So again, this is for planning in a 6 looking -- from a looking-forward perspective, 7 right? 8 A. That's right. 9 Q. And those plans could change based on 10 LifeSpace's decisions, right? 11 A. Yes. 12 Q. And the final paragraph here, we highly 13 recommend that if any of the recommendations are to 14 move forward accordingly, LifeSpace, A, have a 15 formal design completed by a registered 16 architectural or engineering firm; B, in 17 conjunction with its registered architectural or 18 engineering firm and construction professional 19 develop a refined cost estimate; and C, undergo the 20 formal competitive bid process per the requirements 21 set forth. 22 Did I read that correctly? 23 A. Yes. 24 Q. And so does that fit -- that fits with 25 what we were talking about earlier that this report</p>

Page 98

1 is kind of the starting point in figuring out what
2 expenditures will be, correct?
3 A. That's right.
4 Q. It is your recommendation there's at least
5 one additional step of designing what you're going
6 to do, right?
7 A. Yes.
8 Q. Then after that, there's further
9 consultations with both architects and engineers
10 and other professionals to develop a refined cost
11 estimate, right?
12 A. Correct.
13 Q. Based on this report, we have no idea what
14 that refined cost item for any item is, correct?
15 A. I do not.
16 Q. And then finally after those two steps and
17 additional refinements in costs are done, then
18 there's a formal competitive bid process to
19 actually determine the cost of any actual -- the
20 remedy of any actual issue, correct?
21 A. Correct.
22 Q. If you could turn over to PM_1688 in
23 Exhibit 8, your report.
24 A. Okay.
25 Q. I think it's the eighth bullet point, the

Page 99

1 bullet point you discussed earlier discussing the
2 retaining walls. Do you see that one where the
3 bullet starts with stone retaining walls?
4 A. Yes.
5 Q. And if you need to take a moment to read
6 that and refresh your recollection as to what that
7 bullet point discusses.
8 A. Okay.
9 Q. So one of your findings related to the
10 retaining wall is there had been prior patching,
11 correct?
12 A. Correct.
13 Q. And it's possible for effective patching
14 to maintain the retaining wall in a functional
15 state, right?
16 A. Yes.
17 Q. Only if patching were unable to keep the
18 retaining wall in a functional state would
19 additional steps be necessary, right?
20 A. Yes.
21 Q. And you don't know whether that's the case
22 one way or the other sitting here today, correct?
23 A. I do not.
24 Q. If you could turn with me to PM_1696 in
25 your report.

Page 100

1 A. Okay.
2 Q. On the facade section, do you see the
3 fourth bullet point starting it is recommended?
4 A. Yes.
5 Q. It states it is recommended that the
6 building be patched, power washed, and repainted
7 only after roof, window, and miscellaneous flashing
8 is repaired.
9 Did I read that correctly?
10 A. Yes.
11 Q. So as to the facade, it was your
12 recommendation as of this report that patching of
13 cracked areas through maintenance would be -- in
14 addition to power washing and painting would be
15 sufficient; is that correct?
16 A. Can you ask that again?
17 Q. Is it your recommendation through this
18 report that the necessary steps to address any
19 issues with a facade are to patch, power wash, and
20 repaint?
21 A. Yes, as I state, after the roof, window,
22 and flashing is repaired.
23 Q. Then if we step down to the windows, in
24 the first -- in the first bullet point there, it
25 says the community has been experiencing water and

Page 101

1 air infiltration and has re-caulked the windows as
2 needed, correct?
3 A. Correct.
4 Q. And that re-caulking would have restored
5 the seal of those windows when it was completed,
6 right?
7 A. It may have.
8 Q. But your recommendation to replace the
9 windows is based on estimated useful life alone,
10 right?
11 A. I think that's a contributing factor.
12 Q. Well, in the third bullet point there, you
13 say it is recommended that the windows be replaced
14 since they are at the end of their useful life
15 expectancy. Did I read that correctly?
16 A. Yes.
17 Q. Is there another factor you're aware of
18 beyond the remaining useful life expectancy for
19 replacement of the windows?
20 A. Not beyond what is written in this report.
21 Q. So there's no indication based on your
22 report that the windows are not functioning as
23 intended, correct?
24 A. I make a statement in the second bullet
25 point weep holes were blocked with caulking

Page 102

1 installed by previous contractor that could affect
2 the performance of the windows.
3 Q. So with that, if those blockages are
4 cleared, there would be no indication that the
5 windows are not functioning as intended?
6 A. It would be best practice to clear the
7 weep holes.
8 Q. All right. Let's turn to PM_1746, which
9 is at the very end of your report and is the table
10 you were looking at earlier.
11 A. Okay.
12 Q. All right. Do you recall the questioning
13 on the category Site 1.0 there at the top where you
14 went through the various numbers?
15 A. I do.
16 Q. And the numbers in this table are broken
17 down into critical needs, deferrable maintenance,
18 and property enhancement costs, right?
19 A. Correct.
20 Q. But again, that is setting a
21 looking-forward budget priority, right?
22 A. Correct.
23 Q. That is not saying that expenditures must
24 occur in those years, correct?
25 A. It is my recommendation.

Page 103

1 Q. Now, let's drop down again to the building
2 envelope section. Well, actually, before we leave
3 site, you have landscaping maintenance listed in
4 there. Why do you view landscaping maintenance as
5 a capital expense?
6 A. It is typically an annual expense that
7 communities experience, so I typically include it
8 in a site cost.
9 Q. Do you do it as a capital expense?
10 A. Yes.
11 Q. So if we look at Section 2.0 there on
12 PM_1746, the building envelope section, again, the
13 costs for this section are broken into critical
14 needs, deferrable maintenance, and property
15 enhancement cost, correct?
16 A. Correct.
17 Q. And like the site section, those various
18 categories, critical need, deferrable maintenance,
19 and property enhancement do not mean that
20 expenditures must occur in the indicated years,
21 right?
22 A. Correct. It is my recommendation.
23 Q. Those are -- those are looking-forward
24 budgeting priorities, correct?
25 A. Correct.

Page 104

1 Q. Then you also were asked about the
2 plumbing system section. Do you recall that?
3 A. I do.
4 Q. And again, the plumbing system section is
5 broken down into critical needs, deferrable
6 maintenance, and property enhancement, right?
7 A. Correct.
8 Q. And like the site and the building
9 envelope, the breakdown of those into those three
10 categories does not mean expenditures must occur in
11 the years indicated, right?
12 A. That's right.
13 Q. It's simply a budgeted forecast of where
14 expenses might occur?
15 A. Correct.
16 Q. And then you finally were asked about the
17 HVAC system section. Do you recall that?
18 A. I do.
19 Q. And again, like the other sections, the
20 HVAC system costs are broken into critical needs,
21 deferrable maintenance, and property enhancement?
22 A. Yes.
23 Q. And those various categories are not
24 intended to state that any expense must be incurred
25 in those particular years, right?

Page 105

1 A. It is my recommendation.
2 Q. Those items are a budgeting forecast to
3 assist with capital planning, right?
4 A. Correct.
5 Q. On the facade specifically, if there has
6 been a decision to investigate the facade that
7 includes destructive testing, would you defer to
8 whatever recommendation arises from that
9 investigation as the next steps and costs related
10 to the facade?
11 MS. SETHNA: Objection to form. Go ahead if
12 you understand the question.
13 THE WITNESS: Can you restate it?
14 BY MR. DAVIS:
15 Q. Let's break it down.
16 Your review of the facade was a visual
17 inspection only, right?
18 A. That's correct.
19 Q. Typically would you say that destructive
20 testing and invasive testing can provide a more
21 in-depth understanding of any issues related to the
22 building facade?
23 A. Yes.
24 Q. In this case, if a decision has been made
25 to undertake destructive testing of the facade,

<p style="text-align: right;">Page 106</p> <p>1 would you defer to whatever the results of that 2 testing suggest should be done related to the 3 facade? 4 MS. SETHNA: Objection to form. 5 THE WITNESS: Can I answer? 6 BY MR. DAVIS: 7 Q. Yes. 8 A. That would be a more comprehensive review 9 than what I conducted. 10 Q. Do you think that review would provide a 11 more accurate understanding of the necessary steps 12 to addressing facade concerns? 13 A. Assuming the individual and company who 14 performs that review is qualified, yes. 15 Q. Let's go back to PM_1670 in your report, 16 probable cost. 17 A. Okay. 18 Q. Going back to the third paragraph there, 19 replacement and repair, preliminary budget, do you 20 see that? 21 A. I do. 22 Q. The second to last sentence there says 23 budgets were arrived using metro Detroit area 24 material and labor costs. Do you see that? 25 A. I do.</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Correct. 2 Q. And when we went through your final table 3 on Page 87 of your report, we talked at length 4 about the conditions noted in the left column on 5 the summary of budgets; isn't that right? 6 A. That's right. 7 Q. Each of the conditions noted on this 8 summary are conditions that you personally observed 9 to exist at The Edgemere; isn't that correct? 10 A. Yes. It is possible that some of these 11 are planned expenditures by the community that are 12 included in this report. 13 Q. So as you sit here today, do you know 14 which of those? 15 A. I can't say with certainty. A typical 16 planned expenditure is -- in Section 3, interior 17 finishes, independent living unit terms, that's an 18 example of something that could be planned that I'm 19 not specifically observing. 20 Q. Is there -- pardon me. Strike that. 21 Do you have any recollection that anyone 22 at the community objected to your placement of the 23 conditions listed on this schedule in a critical 24 needs category? 25 A. I don't know if anyone objected to my</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Would you expect the Detroit area material 2 and labor cost to differ from Dallas area material 3 and labor cost? 4 A. I couldn't say with accuracy here today. 5 Q. But you would agree that this report 6 relies on material and labor costs from Detroit, 7 not Dallas, right? 8 A. Our benchmarking data is derived from 9 material costs in the metro Detroit area. 10 MR. DAVIS: I'll pass the witness. 11 MS. SETHNA: Kaitlin or Kate, do you have any 12 questions on behalf of UMB? 13 MS. WALSH: UMB has no questions at this time. 14 MS. SETHNA: Jay, do you have any questions on 15 behalf of the debtor? 16 MR. SWITZER: I do not. Thank you. 17 MS. SETHNA: I just have a few follow-up 18 questions. 19 FURTHER EXAMINATION 20 BY MS. SETHNA: 21 Q. You were asked just now about the comments 22 on Page 10 of your report relative to the 23 observations and discussions that you made on site 24 and how those observations correlate to your 25 report, right?</p>	<p style="text-align: right;">Page 109</p> <p>1 initial assessment. 2 Q. Did anyone at LifeSpace or Edgemere change 3 or alter the summary of budgets as it sits today as 4 PM_1746 and part of your final report issued 5 October 15, 2021? 6 A. I don't know if anyone with the client 7 altered these budgets or asked me to shift 8 categories or dollar amounts. 9 Q. Would Plante Moran need either LifeSpace 10 or Edgemere's consent and approval to finalize this 11 report? 12 A. Do we need approval? I don't think we 13 would need approval. As a courtesy, we provide a 14 draft for them to review. 15 Q. Do you know if any of the site leadership 16 at Edgemere or LifeSpace withheld their approval to 17 finalize the report based on your categorizations 18 and noted conditions from your time at Edgemere? 19 A. I don't recall if anyone withheld an 20 approval. 21 Q. So as you sit here today, it's your 22 opinion that LifeSpace and Edgemere approved this 23 final report on October 15, 2021? 24 A. I don't know if approve is the best term. 25 They accepted this report as the final deliverable.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q. Thank you.</p> <p>2 If a condition that you observed was not</p> <p>3 addressed in the time that you estimated to be</p> <p>4 appropriate and prudent, would the condition get</p> <p>5 better on its own?</p> <p>6 MR. DAVIS: Objection. Form.</p> <p>7 BY MS. SETHNA:</p> <p>8 Q. Go ahead.</p> <p>9 A. It's unlikely that something would get</p> <p>10 better over time if unaddressed.</p> <p>11 MS. SETHNA: Thank you. I have nothing</p> <p>12 further.</p> <p>13 MR. DAVIS: Nothing further.</p> <p>14 MS. SETHNA: Chris Nelson, do you want to</p> <p>15 reserve signature or waive?</p> <p>16 MR. NELSON: Please.</p> <p>17 (Whereupon, the deposition</p> <p>18 concluded at 5:26 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 112</p> <p>1 I further certify that the taking of this</p> <p>2 deposition was pursuant to subpoena and that there</p> <p>3 were present at the deposition the attorneys</p> <p>4 hereinbefore mentioned.</p> <p>5 I further certify that I am not counsel</p> <p>6 for nor in any way related to the parties to this</p> <p>7 suit, nor am I in any way interested in the outcome</p> <p>8 thereof.</p> <p>9 IN TESTIMONY WHEREOF: I have hereunto set</p> <p>10 my hand and affixed my notarial seal this 12th day</p> <p>11 of February, 2022.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 </p> <p>17 NOTARY PUBLIC, COOK COUNTY, ILLINOIS</p> <p>18 LIC. NO. 084-004143</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 111</p> <p>1 STATE OF ILLINOIS)</p> <p>2) SS:</p> <p>3 COUNTY OF C O O K)</p> <p>4 I, GINA M. LUORDO, a notary public within</p> <p>5 and for the County of Cook County and State of</p> <p>6 Illinois, do hereby certify that heretofore,</p> <p>7 to-wit, on February 9, 2023, personally appeared</p> <p>8 before me, at 120 South Riverside Plaza, Chicago,</p> <p>9 Illinois, KYLE DeHENAU, in a cause now pending and</p> <p>10 undetermined in the United States District Court</p> <p>11 for the Northern District of Texas; Dallas Division</p> <p>12 In Re: Northwest Senior Housing Corporation, et al.</p> <p>13 I further certify that the said KYLE</p> <p>14 DeHENAU was first duly sworn to testify the truth,</p> <p>15 the whole truth and nothing but the truth in the</p> <p>16 cause aforesaid; that the testimony then given by</p> <p>17 said witness was reported stenographically by me in</p> <p>18 the presence of the said witness, and afterwards</p> <p>19 reduced to typewriting by Computer-Aided</p> <p>20 Transcription, and the foregoing is a true and</p> <p>21 correct transcript of the testimony so given by</p> <p>22 said witness as aforesaid.</p> <p>23 I further certify that the signature to</p> <p>24 the foregoing deposition was not waived by counsel</p> <p>25 for the respective parties.</p>	<p style="text-align: right;">Page 113</p> <p>1 Veritext Legal Solutions</p> <p>2 1100 Superior Ave</p> <p>3 Suite 1820</p> <p>4 Cleveland, Ohio 44114</p> <p>5 Phone: 216-523-1313</p> <p>6 February 15, 2023</p> <p>7 To: CHRISTOPHER J. NELSON</p> <p>8 Case Name: In Re: Northwest Senior Housing Corporation, Et Al. v.</p> <p>9 Veritext Reference Number: 5756695</p> <p>10 Witness: Kyle DeHenau Deposition Date: 2/9/2023</p> <p>11 Dear Sir/Madam:</p> <p>12 Enclosed please find a deposition transcript. Please have the witness</p> <p>13 review the transcript and note any changes or corrections on the</p> <p>14 included errata sheet, indicating the page, line number, change, and</p> <p>15 the reason for the change. Have the witness' signature notarized and</p> <p>16 forward the completed page(s) back to us at the Production address</p> <p>17 shown</p> <p>18 above, or email to production-midwest@veritext.com.</p> <p>19 If the errata is not returned within thirty days of your receipt of</p> <p>20 this letter, the reading and signing will be deemed waived.</p> <p>21 Sincerely,</p> <p>22 Production Department</p> <p>23</p> <p>24</p> <p>25 NO NOTARY REQUIRED IN CA</p>

Page 114

1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2

3 ASSIGNMENT REFERENCE NO: 5756695
CASE NAME: In Re: Northwest Senior Housing Corporation, Et
Al. v.

4 DATE OF DEPOSITION: 2/9/2023
WITNESS' NAME: Kyle DeHenau

5 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
6 my testimony or it has been read to me.
7 I have made no changes to the testimony
as transcribed by the court reporter.

8

9 Date Kyle DeHenau
10 Sworn to and subscribed before me, a
Notary Public in and for the State and County,
11 the referenced witness did personally appear
and acknowledge that:

12 They have read the transcript;
13 They signed the foregoing Sworn
Statement; and
14 Their execution of this Statement is of
their free act and deed.

15 I have affixed my name and official seal
16 this ____ day of _____, 20____.

17 _____
18 Notary Public
19 _____
Commission Expiration Date

20
21
22
23
24
25

Page 116

1 ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 5756695

3 PAGE/LINE(S) / CHANGE /REASON

4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

20 Date Kyle DeHenau
21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
22 DAY OF _____, 20____.

23 _____
Notary Public

24 _____
25 Commission Expiration Date

Page 115

1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2

3 ASSIGNMENT REFERENCE NO: 5756695
CASE NAME: In Re: Northwest Senior Housing Corporation, Et
Al. v.

4 DATE OF DEPOSITION: 2/9/2023
WITNESS' NAME: Kyle DeHenau

5 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
6 my testimony or it has been read to me.
7 I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
8 well as the reason(s) for the change(s).
9 I request that these changes be entered
as part of the record of my testimony.

10

11 I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
that both be appended to the transcript of my
12 testimony and be incorporated therein.

13 Date Kyle DeHenau
14

15 Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
16 and acknowledge that:

17 They have read the transcript;
They have listed all of their corrections
18 in the appended Errata Sheet;
They signed the foregoing Sworn
19 Statement; and
Their execution of this Statement is of
20 their free act and deed.

21 I have affixed my name and official seal
22 this ____ day of _____, 20____.

23 _____
Notary Public

24 _____
25 Commission Expiration Date

&	1,057,700 62:23	150 2:10	1820 23:14
& 2:19	1,085,477 70:23	155,133 66:12	27:14,18 85:9
0	1,491,000 70:14	1550 41:16	113:2
001550-1551 5:7	1.0 45:6 60:21 60:25 62:1 102:13	15th 26:16	2
001607-1192 4:24	10 5:6 39:14 41:17,20 44:13	1607 30:19	2 4:13 9:19,24 10:4 17:21,23 62:2 67:2 68:8 68:12,15 69:20 70:14 75:2 84:3,15 86:4
001656 5:5	44:21,23 46:1	1656 40:9	2.0 65:10 68:18 103:11
001657-1658 4:14	47:25 49:9,23 60:8 63:13	1657 18:2,7	2.0. 64:17
001660-1747 5:4	66:11 67:1 70:5 95:3	1661 86:5	2/9/2023 113:8 114:3 115:3
001785-1786 4:16	107:22	1662 43:5	20 4:15 34:2 37:1 50:10,21 114:16 115:22 116:22
001787 4:21	100 69:17	1664 43:17 86:24	20,642,848 47:23
001803-1804 4:20	100,000 67:24	1665 47:3 88:4	20,784,403 47:19
001817-1828 4:18	107 4:6	1666 49:13	2002 27:22
006 78:1	1085 31:16	1667 30:19	2008 14:5
02111 2:22	11 1:6 5:8 72:2 77:22 78:1,7 79:24	1668 50:1 89:11,13	2009 13:23 14:5
084-004143 1:25 112:18	11,107,965 48:1	1669 90:14 91:7	2019 15:8,11
1	1100 113:1	1670 72:3 95:23 96:10 106:15	2020 34:15 36:6 55:22
1 4:11 9:5,7,23 37:1 48:7,13 49:23 60:7 62:2,10 66:21 67:2 68:8,12 68:15 69:20 70:14 75:2 83:4	12 22:19	1671 54:5	2021 5:3 13:8 18:8 20:22 22:19 36:2,12 37:13 39:17 41:6 48:14
1,037,641 63:14	120 1:14 2:4 111:8	1693 54:5	
	12th 50:10 112:10	1696 99:24	
	134,000 68:4	17 4:13 41:6	
	134,010 66:9	1704 58:22	
	15 11:19 48:13 48:14 49:9 75:15,16,17 78:9 80:1 109:5,23 113:4	1746 102:8 103:12 109:4	
		1785 20:9	
		18 9:24	
		1800 2:4	
		1803 25:23	
		1817 22:12	

[2021 - accepted]

Page 2

49:10 50:10 57:11 58:25 75:15 78:7,10 79:24 80:1 81:13 84:19 109:5,23 2022 7:23 48:15 112:11 2023 1:15 111:7 113:4 20th 36:11 21 13:7 23:14 37:1 50:21 2122 50:20 214 2:16 216-523-1313 113:3 21st 36:12 22 4:17 22-30659 1:7 6:8 2200 2:15 223-3350 3:6 248 3:6 26 4:19 2800 2:15 29 4:21 2:37 1:15	70:15 75:2 108:16 3.0 45:13 30 4:22 6:5 30,000 69:2 3000 2:10 3:5 312 2:5,11 323,750 69:21 34 54:4,11,14 35 5:3 37 54:19 55:12 56:15 38 55:7 57:18 39 55:7	69:22 5.0 45:19 504 27:23 52,535,217 48:4 522,790 70:12 542-6000 2:22 5756695 113:7 114:2 115:2 116:2 5:26 110:18	8 8 5:3 18:8 20:22 35:13,15 43:5 63:13 66:11 67:1 75:12,19 80:10 84:19 86:1 98:23 80 4:5 819-1900 2:11 850,000 27:21 84:20 8523 27:22 87 60:1 73:16 108:3
216-523-1313 113:3 21st 36:12 22 4:17 22-30659 1:7 6:8 2200 2:15 223-3350 3:6 248 3:6 26 4:19 2800 2:15 29 4:21 2:37 1:15	4 4 4:17 22:8,12 27:15,16 47:23 60:8 63:1,6 66:8,25 69:22 70:23 84:3 85:5 4.0 45:16 69:9 40 5:5 400 3:5 41 5:6 413,196 70:4 44114 113:2 45 58:21 476-7650 2:5 48075 3:5	6 6 4:21 6:5 27:13 29:13,15 47:3,23 49:21 60:8 63:1,6 66:8,25 69:22 70:24 60606 2:5,10 617 2:22	9 9 2:13 4:11 5:5 7:16 10:16 40:10,12 50:1 51:18 63:13 66:11 67:1 80:22 111:7 982,737 63:7 9th 1:14
3 3 4:15 20:9,11 43:6 48:7 54:22 60:8 62:2,11 66:21 67:2 68:8,12 68:15 69:20	5 5 4:19 25:23 26:2 36:3 63:1 63:6 66:8,25	7 7 4:4,22 30:8 30:10 47:25 49:9,12 60:8 63:13 66:11,25 70:5 7,869,750 66:5 67:16 70 78:19 740-8000 2:16 752015 2:15 77 5:8 7832 112:16	a able 9:23 57:4 57:8 91:1 above 46:4 65:9 113:17 absolutely 90:8 acceptable 46:23 90:22 accepted 109:25

<p>access 52:12 57:13,15 75:8 78:25</p> <p>accordance 114:5 115:5</p> <p>account 91:19</p> <p>accounted 44:18</p> <p>accredited 14:2 14:3</p> <p>accuracy 107:4</p> <p>accurate 21:14 75:12 80:11 106:11</p> <p>accurately 32:4 54:15 55:8 58:22</p> <p>acknowledge 114:11 115:16</p> <p>act 114:14 115:20</p> <p>actual 83:15,18 96:15,20 98:19 98:20</p> <p>actually 43:24 67:2 83:10,24 84:3 92:4,16 94:7 98:19 103:2</p> <p>add 69:16,25 70:9</p> <p>adding 79:7</p> <p>addition 56:11 58:7 94:18 100:14</p>	<p>additional 25:17 40:6 69:23 83:9 98:5,17 99:19</p> <p>additionally 55:23</p> <p>additions 58:13</p> <p>address 32:1 100:18 113:15</p> <p>addressed 34:23,25 68:7 88:16,19,22 110:3</p> <p>addressee 21:3</p> <p>addressing 106:12</p> <p>adequate 7:19</p> <p>adjacent 58:8</p> <p>adjustments 40:24</p> <p>adjusts 73:19</p> <p>advance 25:5 25:18 31:6</p> <p>adversary 7:24</p> <p>advised 11:16 28:7</p> <p>aerial 57:13</p> <p>affect 12:9 51:21 102:1</p> <p>affixed 112:10 114:15 115:21</p> <p>eforemention... 97:2</p> <p>aforsaid 111:16,22</p>	<p>afternoon 6:3 10:7 12:4,19 12:22</p> <p>age 33:18,25 34:6 44:15 46:6 87:4,10</p> <p>aggregate 24:8</p> <p>aging 46:15</p> <p>ago 11:1 40:21</p> <p>agree 9:15 20:15 22:23 25:1 26:5 41:7 41:23 43:9 45:6 47:10 48:15 49:14 53:4,7 60:9,14 107:5</p> <p>agreement 20:4 24:13</p> <p>ahead 32:19 105:11 110:8</p> <p>aid 83:7</p> <p>aided 111:19</p> <p>air 55:17 101:1</p> <p>al 1:7 6:8 111:12 113:6 114:3 115:3</p> <p>align 40:23 41:13</p> <p>allocate 56:11</p> <p>allocated 69:3</p> <p>allocation 74:19</p> <p>allocations 79:25</p>	<p>allowance 56:11 61:14,19</p> <p>alter 109:3</p> <p>altered 109:7</p> <p>amended 4:11 9:16</p> <p>amendment 24:20</p> <p>amenity 27:25</p> <p>amount 32:8 47:15 60:6 70:2</p> <p>amounts 68:25 109:8</p> <p>analysis 60:2 74:3</p> <p>analyze 24:3</p> <p>annual 69:1,2 103:6</p> <p>annually 61:18 64:25 68:10,22</p> <p>answer 8:5,15 9:1 93:20 106:5</p> <p>anticipated 46:22 49:23 90:21</p> <p>apart 89:24</p> <p>apologize 62:18</p> <p>appear 21:14 114:11 115:15</p> <p>appearance 7:13</p> <p>appearances 2:1 3:1 6:10</p>
---	---	---	--

7:8 appeared 111:7 appearing 6:15 7:21 appears 41:23 appended 24:17 115:11 115:18 applied 73:22 apply 73:18 approach 32:17 33:17,21 34:1,3 43:13 72:6 96:25 appropriate 72:16 110:4 approval 48:18 109:10,12,13 109:16,20 approve 36:17 109:24 approved 109:22 approximate 96:3 architects 98:9 architectural 97:16,17 architecture 13:20 area 39:8 73:20 106:23 107:1,2 107:9 areas 31:23 33:24 37:5	53:21,25 54:22 55:2 57:1 58:4 58:10 60:6,16 64:24 68:6 100:13 arises 105:8 arrival 32:9 34:23 arrived 106:23 ascribed 62:9 asked 9:2 11:4 18:16 31:7 74:13,16,18,24 74:25 104:1,16 107:21 109:7 asking 47:14 53:18 67:10 71:10 72:9 assess 27:9 43:24 assessed 43:21 46:6 47:1 assessment 5:3 11:5 12:24,25 17:4,13,16 18:12 19:1 20:2,5,18 22:4 22:17 23:2,20 24:11 26:25 28:17,23 29:5 30:21 31:9 33:11,18,21 34:2 35:7,10 35:24 37:17,23 42:21 43:14	44:19,24 51:18 52:19,22 53:5 75:14 76:1,9 76:13,17 79:12 80:9,12 82:18 82:23 83:1,2 83:14 84:22 86:10,18 109:1 assessments 19:15 63:24 assignment 114:2 115:2 116:2 assist 15:18 51:25 84:11 89:17 105:3 associated 39:13 40:2 47:15 49:21 62:17 68:9 69:1 72:18 assume 8:9 42:5 assumed 47:22 assuming 106:13 assumptions 23:6,11 assurance 7:19 attached 24:20 115:7 attended 7:9 attending 6:13 attention 33:1 46:13 59:12	attorneys 112:3 attributable 64:3 attributed 63:24 auction 7:17 audibly 8:6 9:1 august 41:6 authorize 115:11 authorized 7:18 automation 71:7 availability 18:19 ave 113:1 avenue 2:15 average 46:4,4 46:11,19 87:21 aware 16:18 29:11 34:24 64:15 101:17
			b
			b 4:9 5:1 6:5 43:13 49:25 72:6 97:16 bachelor 13:20 back 21:17 27:9,16 39:8 39:11 43:4 55:12 84:15 87:19 94:7 106:15,18 113:15

<p>background 13:15,18 23:4 backs 54:3 bank 2:18 12:13 bankruptcy 6:6 75:19 77:7 bas 71:5 base 71:8 based 23:7 42:11 63:15,16 64:8 71:22 72:11,16 73:3 73:10,19 80:4 86:17 87:10 89:9 91:18 92:10,20,23 94:15,19,20 95:15,19 96:3 97:9 98:13 101:9,21 109:17 bases 42:9 bates 4:13,15 4:17,19,21,23 5:4,5,6 18:2 20:9 23:14 25:23 27:13,18 40:9 78:1 bay 2:13 7:16 10:16 80:22 beginning 53:22 85:1 behalf 2:2,7,13 2:18 3:2 6:15</p>	<p>6:17,19 7:16 17:9 75:4 107:12,15 believe 10:20 10:23 11:22 12:2,14,17 13:5,9 16:23 17:3 25:10,10 28:9 29:1,6 30:17 31:11 32:15 34:10 47:2 51:13 54:9 76:10,18 77:15 81:3 83:7 believed 92:11 believes 79:2 benchmarking 63:17,17 71:17 107:8 beneath 60:24 best 84:7 102:6 109:24 better 21:8 110:5,10 beyond 51:9 81:11 101:18 101:20 bid 56:10 96:14 97:20 98:18 bidder 7:16 bidder's 56:12 bit 89:24 bituminous 57:24</p>	<p>blockages 102:3 blocked 55:24 101:25 blue 60:22 boilers 70:19 bondholders 28:24 boston 2:22 bottom 18:20 20:21,24 27:18 31:20 45:1 85:8,11 88:7 break 8:13,16 59:20,22 77:17 77:19 89:24 105:15 breakdown 104:9 breaks 88:7 bring 57:10 broken 102:16 103:13 104:5 104:20 bucket 74:14 budget 40:17 40:22,24 41:11 41:14,25 42:3 42:13,22 44:20 60:4 82:4,5 83:23,23 88:13 92:3 93:17 96:12,24 102:21 106:19</p>	<p>budgeted 104:13 budgeting 81:7 84:10 88:24 92:3 93:14 103:24 105:2 budgets 42:6 73:6,25 96:3,6 96:8 106:23 108:5 109:3,7 building 4:22 15:19,20 24:23 24:25 25:15 27:22,23 30:17 30:22,25 31:8 31:12 32:17,21 33:5,8,14,18,24 33:25 34:2,5 34:14 36:6,24 38:18 39:6,6,7 43:14,21,25 44:1,2,3,10,13 44:15 45:10 46:5,12,15,20 46:22 49:20 51:20 53:5 55:16,22 56:7 56:9 58:1 59:19 60:6,19 64:18 65:5 66:4,7 67:15 67:20 68:16,18 71:7 72:13 73:1 78:23 87:3,4 90:21</p>
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<p>100:6 103:1,12 104:8 105:22 building's 51:1 52:1 89:18 buildings 16:10 16:11 37:5,6 51:22,24 56:19 97:2 built 27:22 57:24 64:23 bullet 53:10,13 54:22 89:15 98:25 99:1,3,7 100:3,24 101:12,24 business 29:9 76:4 busy 31:22</p>	<p>campus 18:12 18:17,25 33:3 33:10 36:1 40:25 44:2,5 57:2 84:20 campuses 19:16 capacity 14:18 15:24 16:5,17 19:13,17 capex 40:17,21 41:11,25 42:3 capital 2:2 3:24 3:24 15:18 19:2 24:24 25:12 26:17 27:7 30:1 39:13 44:13,19 47:17 52:3 60:4 81:7,9 82:4,4,5 83:5,8 83:23 84:8,12 84:23 86:12,18 89:20 90:12 91:11 92:3 93:14,17 94:3 95:2,9 103:5,9 105:3 captured 64:25 68:7 care 31:23 39:10 79:3 case 1:7 6:8 99:21 105:24 113:6 114:3</p>	<p>115:3 cases 48:17 92:23 categories 43:2 46:24 47:9 48:6 63:23 67:9,11,25 68:1 85:20 86:13 88:12 103:18 104:10 104:23 109:8 categorizations 109:17 categorize 59:3 categorized 60:5,18 category 49:13 49:17,19 62:1 62:15,24 63:5 64:2,8,12 65:8 66:8,10 67:7 68:16 69:14 70:18,22 71:3 74:11,15 91:17 92:6,13 93:10 94:14 95:15,19 102:13 108:24 catherine 2:20 caulked 55:18 101:1 caulking 55:24 58:3 101:4,25 cause 111:9,16 caveat 48:16</p>	<p>cedar 62:8 census 78:19 center 2:21 3:5 57:2,24 58:7 58:12,14,15 65:5,6,15 70:20 certain 23:22 33:2 41:15 45:3 47:8,9 61:23 certainty 108:15 certificate 115:11 certification 114:1 115:1 certifications 14:1,6 certify 111:6,13 111:23 112:1,5 cfo 22:22 chain 4:13,15 4:19 5:6 chance 59:8 change 33:18 64:16 73:7 74:18 97:9 109:2 113:13 113:14 115:8 116:3 changed 80:4 changes 113:12 114:7 115:7,9</p>
c			
<p>c 43:13 97:19 111:3 ca 113:25 call 11:3,15 12:1 24:1 33:7 42:13 43:1 47:14 51:16 59:15 67:18 74:14 83:20 called 1:10 10:16 18:13 32:23 33:4 60:22 64:18 80:15 82:22 calls 93:18</p>			

<p>chapter 1:6 chart 60:10 chicago 2:5,10 14:14 15:15 111:8 chris 3:25 6:15 19:6,9,11,22 23:7 26:15 29:21 34:9,11 34:11,13 37:2 37:3 40:16 41:24 42:9 50:14,22 110:14 chris.nelson 3:6 christopher 3:3 113:5 city 15:14 civil 1:11 13:21 114:5 115:5 classified 72:25 clay 56:21,24 56:25 57:5,17 clean 7:8 8:21 64:25 68:22 69:3 cleaning 68:10 69:1 clear 14:21 102:6 cleared 102:4 cleveland 113:2 client 13:3 28:7 71:18 84:4,6</p>	<p>84:11 89:6 92:1,5,10,15,21 109:6 client's 91:22 clients 15:18,22 15:25 clock 48:9 closely 48:11 cohn 2:19 coil 70:21 collect 71:17 collection 39:9 colloquially 14:23 column 61:4,6 61:9,20 108:4 columns 60:10 68:25 69:5 combination 87:10 come 20:1,4 39:11 57:8 commensurate 72:18 comment 79:19 comments 55:13 107:21 commercial 73:4 commission 114:19 115:25 116:25 common 39:8 commonly 80:12</p>	<p>communicate 51:22 communicated 12:18 communities 16:19 17:2,6 19:23 22:22 29:21 30:21 78:9 103:7 community 17:4 30:2,18 39:19 43:18 44:9 48:19,25 55:17 56:5,8 56:23 58:19 60:5 63:20 64:4 72:1 73:20 78:22,25 86:12 91:11,20 91:22 93:16 94:2,16 95:1 95:16 100:25 108:11,22 community's 91:14 93:4,11 93:13 94:5,21 95:4,20 company 106:13 compares 73:12 competitive 97:20 98:18 complete 48:2 59:7</p>	<p>completed 24:24 25:11 42:11 52:12,17 67:2,7 97:15 101:5 113:15 completeness 73:24 component 49:20 components 33:24 34:5 39:6 72:21 comport 42:21 comprehensive 24:7 106:8 computer 111:19 concepts 79:5 conceptual 96:13,24 concern 49:1 concerns 34:22 106:12 concluded 110:18 conclusions 36:5 condensers 70:21 condition 11:5 11:10 32:18 33:5,7 38:20 39:20 44:10 45:2,4,7,11,14 45:17,19,22,25</p>
---	--	--	---

<p>46:5,11,16,18 46:19,23,25 53:6,19 54:15 55:1,8,13 56:15,23 57:14 57:22 58:14,23 59:2,10,18 63:23 70:6 74:14 81:15 83:2 86:11 87:11,12 90:22 90:25 91:3,13 93:3,6 94:4,19 95:3,19 110:2 110:4 conditions 33:2 40:1 42:18 51:1,23 60:15 60:24,25 61:25 62:25 63:8 64:1,7,20 65:9 65:23 66:6 67:5 68:21 69:13,22 70:17 74:10,25 75:22 82:18,22 91:19 96:16 108:4,7 108:8,23 109:18 condos 78:24 conduct 20:18 23:2,20 31:1 39:4 conducted 50:9 50:13 55:21</p>	<p>81:22 106:9 conducting 35:6 conductor 58:9 conductors 58:8 confirms 85:1 conjunction 76:8 77:13 97:17 connect 64:25 connection 6:6 7:23 76:12 consent 109:10 consider 56:5,9 58:19 consideration 46:6 97:1 considered 72:18 consistent 65:25 80:16 consists 56:21 construction 16:2,4,8,10 24:23 25:8 29:25 30:5 33:22 73:9 81:11 97:18 consultant 4:22 30:17 31:8,12 34:14 38:18 55:22 56:9 consultant's 32:17 36:6</p>	<p>consultants 30:22,25 consultations 98:9 contained 96:7 contemplated 23:1 contemplates 25:2 content 21:15 32:5 41:4 contents 43:7 context 82:24 continue 54:1 continued 3:1 20:16 contractor 55:25 102:1 contributing 101:11 conversation 11:18,20 36:4 36:7 78:6,12 78:17 79:1,10 79:23 80:2 conversations 12:11 74:9 80:5 cook 111:5 112:17 cooley 12:7 copied 20:25 21:5 copy 75:13</p>	<p>corporation 1:7 2:7 6:7 29:8 111:12 113:6 114:3 115:3 correct 14:17 16:16 45:12 48:7,23,24 49:6,10 51:5 52:24 60:17 61:11,14 62:10 65:4 71:12 76:5 78:10,11 78:14,15 80:23 82:1,2,7,8,9,13 83:11,21 84:14 85:24 86:20 88:17,20,23 90:2,6,13 91:20,21 93:8 93:15 94:12,13 94:21,22 95:9 95:10,16,17 96:22 98:2,12 98:14,20,21 99:11,12,22 100:15 101:2,3 101:23 102:19 102:22,24 103:15,16,22 103:24,25 104:7,15 105:4 105:18 108:1,9 111:21</p>
--	---	---	---

<p>corrected 56:4 correction 66:21 corrections 113:12 115:17 correctly 57:7 66:19 84:24 86:15 87:7 89:22 90:23 91:15 95:6 96:4,17 97:3 97:22 100:9 101:15 correlate 107:24 correlation 49:17 68:11,24 corresponden... 18:15 cosmetic 72:25 cost 42:14 48:2 49:17,18 59:12 60:2 61:23 62:1,9,23 63:4 63:23 64:2,6 64:21 66:3,24 67:6,8,16 68:13,14 69:2 69:18 70:11,14 71:1,8,19,22 72:8 73:6,14 73:16 74:3,19 75:1 78:20 79:25 85:18 90:1,5,7,10</p>	<p>96:15,20 97:19 98:10,14,19 103:8,15 106:16 107:2,3 costs 39:13 42:18 43:1 47:4,9 49:13 52:2 62:17 63:15,18 66:19 67:11 68:9 72:16,18 73:3 88:8 89:20 90:8,11 98:17 102:18 103:13 104:20 105:9 106:24 107:6,9 counsel 3:4 8:24 10:9,11 111:24 112:5 county 111:3,5 111:5 112:17 114:10 115:15 couple 40:20 course 67:20 court 1:1 6:12 6:12 7:7 8:6 80:15 111:10 114:7 court's 7:18 courtesy 109:13 courts 1:12 courtyard 62:3 courtyards 62:5,8</p>	<p>cover 86:17 crack 53:22 54:1 cracked 100:13 cracking 54:23 55:2 58:2 create 76:1 creation 85:14 cresa 3:2 6:16 9:17 cresa's 6:5 critical 11:11 27:1 31:23 47:13,17 48:6 52:1 59:11,17 59:18 60:11 62:2,9,21,23 64:12,21 65:11 66:4,14,20 67:1,6,16,21 69:14,19 70:14 74:14,20 75:1 86:13 88:8,15 89:3,18 91:9 91:17,24 92:2 92:4,12,13,17 92:19 94:7 102:17 103:13 103:18 104:5 104:20 108:23 crr 1:24 cs lombardo 2:23 csr 1:24</p>	<p>curbs 58:17,19 current 73:8 81:15 91:13 93:2,6 94:4 95:3,19 currently 14:15 81:25 custodian 75:8 cut 78:23</p> <hr/> <p style="text-align: center;">d</p> <hr/> <p>d 4:1 43:14 53:5 60:2 dallas 1:3 2:15 6:9 18:13,19 20:1,7 23:3 25:19 27:23 73:17 107:2,7 111:11 damaged 53:25 58:4 62:7 damages 56:13 data 71:17 107:8 database 63:18 63:24 date 13:4 14:4 22:18 48:10,12 73:10 113:8 114:3,9,19 115:3,13,25 116:20,25 dated 20:22 34:15 41:6 dates 20:1,5 35:9 36:9,14</p>
---	---	--	--

<p>43:18 davis 2:14 4:5 7:12,15,15 80:21,22 92:8 93:19 105:14 106:6 107:10 110:6,13 davis's 10:18 day 1:14 36:22 36:23,25 39:5 112:10 114:16 115:22 116:22 days 37:13 39:17 50:14,19 113:18 dear 113:10 debtor 6:18 107:15 debtors 1:8 decides 48:20 decision 105:6 105:24 decisions 33:9 79:25 83:19 84:4 97:10 decorative 72:25 deed 114:14 115:20 deemed 72:14 113:19 defects 51:21 defer 105:7 106:1</p>	<p>deferrable 47:20 49:5 60:11 88:8,18 102:17 103:14 103:18 104:5 104:21 deferred 11:12 31:21 32:8 34:3,22 62:25 63:5 64:13 66:7,15 68:2 70:22 72:22 74:20,21 86:14 92:17,19 93:24 94:11,14,18 deficiencies 51:2 72:17,23 define 46:10,17 defined 46:1 defines 51:11 definition 11:10,11,16 46:2 90:17 91:4 definitions 90:15 91:6 93:25 degree 13:22 dehenau 1:10 4:3 6:5 7:1 9:5 9:6 17:21,22 20:9,10 22:7 22:12 25:23 26:1 27:13 29:13,14 30:8</p>	<p>30:9 35:13,14 40:10,11 41:17 41:19 43:5 59:25 77:21,25 78:1 80:10 111:9,14 113:8 114:4,9 115:4 115:13 116:20 delaminated 58:2 deliverable 13:2 35:23 109:25 delivered 24:11 delivering 24:5 denotation 65:13 denoted 65:23 department 113:22 dependent 83:19 depending 84:3 depict 54:15 55:8 58:22 depiction 21:15 deposition 1:10 4:12 6:4 7:25 9:6,16 10:7 12:4,7 17:22 20:10 22:7 26:1 29:14 30:9 35:14 40:11 41:19 75:18 77:21</p>	<p>80:17,25 81:2 110:17 111:24 112:2,3 113:8 113:11 114:1,3 115:1,3 depositions 1:13 7:18 depth 105:21 derived 107:8 describe 18:4 22:25 23:18,25 27:20 30:15 45:24 47:12 49:16 53:16 55:12 56:18 57:21 60:1 64:20 72:5 78:4 described 18:11 27:25 50:4 60:16 75:22 85:22 describes 51:11 description 4:10 5:2 18:24 descriptor 54:10 design 16:2 46:6 97:15 designate 65:25 designated 79:4 designates 49:19,22</p>
--	---	--	---

<p>designing 98:5 destructive 52:20 105:7,19 105:25 detail 9:25 40:25 details 11:4,7 18:18 58:3 74:2 determine 91:1 98:19 determined 92:16 determining 83:5 detroit 106:23 107:1,6,9 develop 27:6 39:12 79:8 86:12,18 97:19 98:10 developing 83:8 differ 107:2 difference 66:14 69:4 74:6 different 14:25 19:16 21:10,19 33:21 56:18 60:19 61:8 65:8 74:15 92:6 diligence 13:16 21:7</p>	<p>direct 21:6 28:21 68:11 directed 42:23 directive 28:15 29:2 disclosed 25:15 discovery 24:1 discuss 10:10 85:20 discussed 11:2 26:20 42:1 73:15 80:9 93:5 99:1 discusses 99:7 discussing 99:1 discussion 6:21 10:8,25 discussions 23:7 91:10,20 92:10,15,20 94:2,16 95:1 95:16 107:23 dispute 36:13 disruption 7:6 district 1:1,2 1:12 6:9 111:10,11 dive 59:21 division 1:3 6:9 111:11 document 9:10 18:4 22:13 29:18 30:13 35:18 51:15,19 56:10 78:2,5</p>	<p>documents 12:21 13:10 24:23 29:25 30:1,5 35:3 39:2 51:5,7,11 doing 29:8 dollar 47:14 109:8 dollars 48:18 48:21 49:21,22 60:7 61:18 93:22 domestic 70:8 doors 33:6,8 65:4 dots 53:9 downspouts 58:6 65:1 draft 24:11 38:4,11,16 109:14 drafted 37:16 drafts 38:8 drain 58:5 drastic 66:13 drawings 26:12 drew 33:1 drone 57:10 drop 103:1 due 21:7 44:15 46:14 78:25 87:4 duly 7:2 111:14</p>	<p>e e 4:1,9,13,15,19 4:21 5:1,5,6 18:7,11,21 20:16,21 21:2 21:6,18 26:5 26:15 28:3 29:20,24 30:20 40:15,19,21,23 41:4,6,24 42:1 84:19 ea 61:9 earlier 50:5 80:22 84:16 97:25 99:1 102:10 earn 13:22 edgemere 17:4 18:13 20:19 23:3,21 27:5 28:11 29:9 30:22 31:10 32:9,12 34:8 35:2,7,24 36:10,15,17,20 37:15,21 38:1 38:5,8,21 39:17 40:7,17 40:20 42:4,20 44:5,9 45:2 47:5,7,13 48:3 52:6,13,17 54:16 55:10,14 56:19 57:19 58:24 60:5</p>
--	---	--	--

<p>61:1 64:12 65:7,15,18,21 66:1 74:4,6 77:3 78:18 79:15,16,19 80:6,13 108:9 109:2,16,18,22 edgemere's 109:10 education 13:19 81:4,9 81:11 effective 99:13 effort 44:13 efis 55:2 65:4 eighth 53:13 98:25 eileen 2:4 either 19:9 37:3 37:20 45:4 50:14 74:19 109:9 elect 92:1 93:16 electrical 45:21 58:16 elects 84:6 element 93:9 elements 93:5 email 113:17 employed 14:15 15:4,10 employee 18:18 enclosed 113:11</p>	<p>ended 35:6 engaged 16:22 17:2 23:19 27:8 31:1,4 37:15 76:4 engagement 4:17 19:18 22:16,18 23:1 23:7,15 24:18 25:2 26:20 27:4 29:7 32:14 38:15 74:7 76:9,19 76:24 77:2 79:11,14 85:6 85:22 engagements 17:9,12 20:18 engineer 54:2 engineered 54:3 engineering 13:21 97:16,18 engineers 98:9 enhancement 11:13 47:24 49:8 63:9 64:13 66:10,16 70:6 71:2 74:21 88:9,21 94:24 102:18 103:15,19 104:6,21 enhancements 60:12 68:2</p>	<p>73:3 86:15 entered 115:9 entire 44:5 114:5 115:5 entities 15:1 entitled 6:6 60:11 entity 10:16,22 entree 16:14 envelope 30:22 33:5,8 39:10 44:10 45:10 64:18 66:4,7 67:15,20 68:16 68:19 103:2,12 104:9 equate 82:6 equipment 45:22 52:9,16 errata 113:13 113:18 115:7 115:10,18 116:1 escalation 48:3 73:9,12,13 escort 36:20 esethna 2:6 essentially 27:8 43:10 50:5 87:20 estimate 40:20 63:19 65:7,16 65:19 66:6,13 66:23 67:24 68:4,12,21</p>	<p>70:2,11 71:17 71:18 72:1 74:19 82:9,10 82:16 85:18 90:1 97:19 98:11 estimated 18:17 24:6 42:25 61:21 62:22 63:4,12 66:3 67:15 68:25 69:16,18 70:13,23 87:11 87:16,20,25 94:20 101:9 110:3 estimates 42:10 47:9 63:15,19 64:2,6,8,11 65:22 66:2 67:8 71:8,15 71:19,22 73:5 73:14 75:1 96:19 et 1:7 6:7 111:12 113:6 114:3 115:3 evaluate 19:2 84:24 93:22 evaluated 46:12,20 83:15 evaluating 84:11 evaluation 44:23 67:8</p>
--	---	--	--

<p>83:18 evaluations 38:20 52:20 evidence 53:23 exact 14:4 exacting 13:1 exactly 71:13 82:6 92:22 examination 1:11 4:2 7:4 9:20 80:20 107:19 examine 37:5 examined 7:2 example 88:15 108:18 except 57:2 exception 58:12 exchange 26:6 excluding 65:5 executed 115:10 execution 114:14 115:19 executive 43:12 exhibit 4:11,13 4:15,17,19,21 4:22 5:3,5,6,8 9:5,7,19,24 10:4 17:21,23 20:9,11 22:8 22:12 23:15 25:23 26:2 27:13,15,16</p>	<p>29:15 30:8,10 31:16 35:13,15 40:12 41:20 43:5 75:12,16 75:17,19 77:22 80:10 84:15 85:5 86:1 98:23 exhibiting 72:22 exhibits 23:14 exist 108:9 existed 32:8 existing 72:23 expect 8:25 10:9 87:21,22 107:1 expectancy 44:16 56:2 87:6 101:15,18 expenditure 24:24 25:12 27:7 30:1 47:17,22,25 60:4 83:8,16 91:11 94:3,9 94:12 95:2,9 95:11 108:16 expenditures 39:13 44:14 72:20 83:6,10 83:18,24 85:19 85:23,24 87:3 88:25 98:2 102:23 103:20</p>	<p>104:10 108:11 expense 89:7 103:5,6,9 104:24 expenses 24:25 25:12 40:2 71:11 82:11 104:14 experience 103:7 experiencing 55:17 100:25 expiration 114:19 115:25 116:25 explain 38:25 59:14 exposure 78:20 exterior 39:10 55:5,15 56:8 65:3</p> <hr/> <p style="text-align: center;">f</p> <hr/> <p>facade 30:18 33:6 55:3,9,21 56:8,10 100:2 100:11,19 105:5,6,10,16 105:22,25 106:3,12 facilities 17:15 19:6,24 20:5 20:18 21:25 26:25 28:23 29:5 33:10,17 33:21 34:1</p>	<p>35:6 50:22 75:13 76:9,12 79:12 80:8,12 facility 5:3 11:5 11:10 12:23,25 17:3,13 18:12 19:1,15 22:4 22:16 23:2,20 24:11 28:17 35:23 37:16 44:19,24 47:8 50:18 83:1,13 fact 57:5 65:8 factor 91:23 101:11,17 fair 11:11 26:8 27:10 37:20 40:4 41:3 44:10 45:16,19 46:10 49:3 50:6 59:3 83:13,17 88:11 89:8 96:6 fairly 32:4 54:15 55:8 58:22 familiar 7:24 fan 70:20 far 70:13 83:24 feasibility 79:6 february 1:15 111:7 112:11 113:4 feedback 28:15 28:21 29:2</p>
--	---	---	--

<p>37:22 40:7 feel 8:14 39:19 ferris 2:19 field 4:23 31:1 34:15 figuring 98:1 fill 24:22 25:4 final 13:2,11 19:19 35:23 49:10 53:5 75:13,13,23 78:8,13 96:10 97:12 108:2 109:4,23,25 finalize 109:10 109:17 finalized 38:9 finalizing 38:17 finally 98:16 104:16 finance 81:5 financial 2:21 financially 78:18 79:20 find 113:11 findings 34:14 36:5 44:8 86:25 99:9 finish 8:20 94:23 finishes 44:11 108:17 fire 69:15,24 70:7</p>	<p>firm 10:19 12:6 12:16 97:16,18 firms 12:11 first 7:2 8:4 16:14 17:5 18:8 23:4 31:23 36:22 39:5 72:10 86:9 89:25 100:24,24 111:14 fit 97:24 fits 97:24 five 71:10 77:16 fixtures 55:6 flashed 55:23 58:18 flashing 55:4,4 55:5,5 56:3 58:2,3,20 65:4 100:7,22 flat 57:15,18,22 57:25 58:3,5 58:11,14,15,23 flip 84:15 90:14 floor 30:1 51:5 follow 49:4 107:17 following 24:12 66:15 67:9 follows 7:3 48:12 fonted 60:10</p>	<p>foot 27:21 84:20 forced 71:19,21 ford 3:24 forecast 82:7 83:22 84:2 85:3 86:21 104:13 105:2 forecasted 82:16 90:10,11 forecasting 82:11 foregoing 111:20,24 114:13 115:18 forgive 7:14 27:15,16 50:10 form 92:7 105:11 106:4 110:6 formal 97:15 97:20 98:18 forth 97:21 forward 14:22 22:23 40:23 72:15 79:8 86:21 97:6,14 102:21 103:23 113:15 found 44:9 58:13 four 7:18 11:1 15:6 24:12 43:10 49:6 94:3</p>	<p>fourth 100:3 frames 42:10 free 8:14 114:14 115:20 front 38:24 74:25 full 31:20 functional 59:19 99:14,18 functioning 78:18 79:20 87:15 88:1 101:22 102:5 funding 48:18 funds 76:21 furnished 75:14 78:8 furniture 45:21 further 4:6 27:25 56:6 60:18 92:14 98:8 107:19 110:12,13 111:13,23 112:1,5 future 19:2 40:1 51:24 54:1 82:11 84:23 85:2 97:1</p>
			g
			<p>gain 48:18 gaining 21:7 gary 26:12</p>

<p>gather 50:6 gathering 28:6 gauge 56:6 general 3:4 17:16 51:1 72:15 73:9 91:4 generally 23:25 46:7 60:25 generate 39:3 generated 30:16 generating 24:5 geographic 73:19 geographical 46:7 gina 1:24 111:4 give 39:25 48:23 given 111:16 111:21 glovsky 2:19 go 6:20 13:14 27:16 43:4 49:25 77:17 105:11 106:15 110:8 goal 27:3 86:10 86:18 goes 19:5 85:19 going 8:1,4 9:4 9:12 13:14 17:20 20:7,8</p>	<p>20:23 23:13 25:22 27:12 29:12,12 30:7 31:15 35:12 38:23 40:9 41:16 43:4 49:25 53:1,9 54:4,19 55:19 57:18 59:25 72:2 77:16,25 82:7 90:5 94:7 98:5 106:18 good 6:3 7:22 11:11 45:4,7 45:14,22,24 46:3,16 58:13 59:3 great 19:25 ground 7:25 guarantee 95:11 guaranteeing 90:4 guide 32:20 gutter 64:24 68:13,14 gutters 64:25 68:5,6,10,22 69:3 guy 19:6,24</p>	<p>happened 78:12 hard 96:14 harshfield 22:21 head 55:22 56:3 health 57:2,24 58:7,12,14,15 65:5,6,15 70:20 79:3 heard 82:17 heat 70:20 71:4 held 15:11 help 31:9 helpful 32:20 hereinbefore 112:4 heretofore 111:6 hereunto 112:9 high 79:5 96:25 highest 13:19 88:15 highlight 37:4 highly 97:12 hired 15:13 19:5 26:21 32:12 hiring 31:24 hold 14:8 holdings 2:13 7:16 10:16 holes 55:24 101:25 102:7</p>	<p>hopefully 77:17 hour 1:15 house 39:8 housing 1:6 2:7 6:7 29:8 111:12 113:6 114:3 115:3 hvac 45:19 70:13 71:2 104:17,20</p>
			i
			<p>idea 98:13 identification 9:8 17:24 20:12 22:9 26:3 29:16 30:11 35:16 40:13 41:21 77:23 identified 51:23 identify 6:14 79:7 85:18 identifying 51:25 60:6 85:23 89:18,25 ii 24:4 25:6 57:3 iii 24:4 85:11 85:14 il 57:3,23 78:19 illinois 2:5,10 14:14 15:15 111:1,6,9 112:17</p>

<p>illustrate 51:1 illustrates 39:19 immediate 46:13,21 90:20 91:2 impact 28:17 28:22 29:4 32:17 33:9 34:3 51:24 79:24 impacted 33:12 implement 83:10 implemented 44:20 implementing 84:8 important 8:18 31:25 32:14 improper 55:4 58:2,17 improperly 55:23 58:17 improvement 15:19 44:13,19 52:3 89:21 90:12 improvements 72:24 inception 22:4 include 39:20 42:25 52:19,22 54:10 69:13 78:17 85:18</p>	<p>103:7 included 23:22 26:13 39:15 44:14 51:7 54:14 58:21 60:2 64:11 65:10 68:12 70:17 73:2 74:3 78:4 87:4 108:12 113:13 includes 27:23 105:7 including 29:25 incorporate 38:2 incorporated 115:12 increase 64:23 increased 68:6 incurred 90:9 104:24 independent 39:25 70:19 71:4 108:17 independently 57:4 indicated 103:20 104:11 indicating 113:13 indication 101:21 102:4 individual 34:10 106:13</p>	<p>individuals 11:22 infiltration 55:18 56:7 101:1 inflation 69:5 inflationary 73:8 influential 42:14 information 11:14 18:14 24:2,3 25:17 26:7,11,24 28:1,5 32:16 32:19 33:9 37:22 38:1 42:17 50:6 64:3 66:17 71:23 72:12 79:18 80:5 initial 22:3 30:20 83:14 109:1 initially 15:11 initials 71:6 input 40:6 inquire 31:5 inspection 13:16 26:8,11 31:6 39:24 105:17 installed 55:24 102:1</p>	<p>installing 56:6 instance 33:20 68:5 institution 13:24 intended 84:11 88:12 96:7,25 101:23 102:5 104:24 intercity 2:2 3:25 28:7,12 28:18 interconnected 44:1,2 interested 112:7 interior 44:11 45:13 57:23 58:8 62:3,5 108:16 internal 10:8 40:22 interposes 8:24 interview 21:25 39:4,23 50:13 50:17 interviewing 39:5 interviews 50:9 72:12 intrusive 52:19 invasive 105:20 investigate 105:6</p>
---	--	---	--

investigation 50:5 55:21 105:9 investment 2:2 28:7,13,18 44:12 investments 3:25 involved 17:8 21:11,23 37:21 isolation 69:16 69:25 70:9 issuance 78:13 issue 38:11,16 92:5,18,25 98:20 issued 13:3,11 19:19 80:1,3 109:4 issues 21:8 24:25 25:14 34:22 100:19 105:21 item 65:14 67:11 68:15 92:12,16,18 94:19 98:14,14 items 32:1,14 33:15 66:19 81:24 83:23 88:16 91:9 94:1,8,25 95:8 95:14,18 105:2	j	33:12,23 34:4 34:21 37:25 41:10,12 42:8 50:1 52:15 63:22 64:1,6 73:21 74:5,12 74:16,22 75:10 76:14,15,20 77:5 79:13 81:15,18,21,24 82:19,25 92:22 99:21 108:13 108:25 109:6 109:15,24 knowing 34:19 90:25 knowledge 50:18 73:8 75:22 knowledgeable 31:24 32:12 known 24:25 25:14 34:3 74:5 80:12 kong 2:2 3:24 3:24 koster 3:24 kwalsch 2:23 kyle 1:10 4:3 6:5 7:1 20:25 21:5 111:9,13 113:8 114:4,9 115:4,13 116:20	l
	j 3:3 113:5 james 36:3,5 37:2,3 50:9,17 50:22 jay 107:14 jermev 3:24 jerry 2:9 6:17 job 41:3 join 7:7 joints 53:21,25 62:7 63:3,11 jordan 3:25 jr 2:9 jswitzer 2:11 july 18:8 20:22 22:19 26:16 34:15 36:6,11 36:12 37:1 50:10,10,20,21 57:11 58:24 81:13 84:19	k	l 2:9 labeling 46:25 labor 73:16 106:24 107:2,3 107:6 laid 82:5 landscaping 62:5,6 63:2,10 103:3,4 lapis 10:22 large 15:18 44:2 lastly 46:17 47:24 law 10:19 12:6 12:11,15 lawrence 13:25 leadership 24:21 25:4,9 25:18 26:7 34:8 36:1 37:4 37:21 51:25 89:18 109:15 leads 93:9 learn 28:11 leased 28:12 leave 103:2 leed 14:2,3 left 60:15 108:4 legal 113:1 116:1 length 80:9 108:3

<p>letter 4:17 22:16 23:15 25:2 26:20 85:6,22 86:17 113:19 level 13:19 39:10 73:4 79:5 88:21 96:25 levenfeld 2:3 81:1 levin 2:19 12:16 lic 112:18 license 1:25 14:8,9,9 life 44:16 56:2 86:13 87:5,12 87:16,20,25 91:13 93:3,7 94:5,20 95:4 95:20 101:9,14 101:18 lifespace 11:25 12:4 13:3,12 16:19,22 17:2 17:6,10 18:6 19:1,22 20:17 22:22 26:20 27:4,9 28:16 28:22 29:3,21 30:20 31:1 32:11 34:23 37:20 38:1,5,8 38:21 40:7,16</p>	<p>42:4,20 51:4 51:25 65:21 73:25 74:6 75:14 76:15,19 76:25 78:9 79:12,15 80:6 86:11 89:17 97:1,14 109:2 109:9,16,22 lifespace's 41:14 97:10 light 55:6 56:6 likely 24:19 34:25 66:17 96:15 likes 21:9 limited 26:12 line 62:14 65:14 67:10 68:15 79:7 85:17 113:13 115:7 116:3 link 26:13,13 list 26:17 31:25 32:13 36:3,11 60:15 listed 11:17 37:6 45:2,22 60:21 61:3 62:1 65:10 103:3 108:23 115:7,17 listing 115:7 lists 18:17 30:2 47:7</p>	<p>litigation 26:22 little 18:24 21:10,19 53:9 89:24 live 14:13 living 14:22 15:23,25 16:12 16:14 22:23 70:20 71:4 72:15 108:17 llc 2:2,3,13 3:24 10:16 load 74:25 located 27:22 location 46:7 locke 2:14 7:15 10:19 lockelord.com 2:16 log 25:12 lombardo 2:20 long 11:18 15:4 87:22 longer 87:15,25 look 9:12 11:16 19:1 21:9 27:16 34:4 51:14 64:17 79:6 84:23 85:2 88:7 93:24 103:11 looked 57:7 84:16 85:6 looking 18:20 21:17 40:25</p>	<p>75:11 78:19 86:21 93:6 97:6,6 102:10 102:21 103:23 looks 20:15 26:16 50:8 lord 2:14 7:15 10:19 lot 31:21 48:16 79:7 82:3 lplegal.com 2:6 luordo 1:24 111:4</p>
m			
<p>m 1:24 2:4 111:4 madam 113:10 made 23:6,11 44:17 105:24 107:23 114:7 magnitude 52:2 89:20 mail 4:13,15,19 4:21 5:5,6 18:11,21 20:21 21:2,6,18 26:5 26:15 28:3 29:20,24 30:20 40:15,19,21,23 41:4,6 42:1 84:19 mails 18:7 20:16 41:24 maintain 76:4 99:14</p>			

<p>maintained 44:14 87:3</p> <p>maintenance 11:12 31:22 32:8 34:3,22 46:8 47:21 49:5 52:6,16 60:11 62:6 63:1,2,5,10 64:13 66:8,15 68:2 69:15,24 70:7,22 72:22 73:2 74:20,21 81:18 86:14 87:14 88:9,18 92:18,20 93:24 94:11,14,18 100:13 102:17 103:3,4,14,18 104:6,21</p> <p>major 72:23 86:13</p> <p>majority 58:5</p> <p>make 7:9 8:20 31:25 32:13,24 40:24 62:19 101:24</p> <p>makeup 27:24</p> <p>managed 16:10</p> <p>manager 14:20 15:10,17 16:6 16:7,17 17:17</p> <p>managing 16:1</p> <p>mark 21:3 29:13 40:10</p>	<p>marked 9:5,7 17:23 20:8,11 22:8,11 25:22 26:2 27:12 29:15 30:8,10 35:13,15 40:12 41:17,20 45:3 50:1 75:12,17 75:18 77:22 78:1 80:10</p> <p>market 15:21 16:12 72:19 73:8,17 96:14 96:16</p> <p>marking 17:20</p> <p>mason 53:24</p> <p>masonry 62:10</p> <p>massachusetts 2:22</p> <p>material 46:5 46:23 49:20 90:22 106:24 107:1,2,6,9</p> <p>materials 44:11 44:15 51:20 73:10,16 87:5</p> <p>matter 91:4</p> <p>matters 9:20 10:4</p> <p>matthew 2:14 7:15 80:22</p> <p>mauk 19:8,10 19:14,18 30:20 38:19 78:7</p>	<p>mccormick 18:5,21 20:22 28:4</p> <p>mdavis 2:16</p> <p>mean 21:20,23 32:22 37:9 41:14 60:20 61:16 87:25 89:3 103:19 104:10</p> <p>means 61:10</p> <p>mechanical 39:9 44:11 58:15,16</p> <p>meet 34:7,9</p> <p>meeting 7:7</p> <p>membrane 56:21 57:25</p> <p>memory 12:10</p> <p>mention 29:24</p> <p>mentioned 112:4</p> <p>mep 58:20</p> <p>merely 84:11</p> <p>met 80:22,23</p> <p>metal 56:6</p> <p>methodologies 38:25</p> <p>metro 106:23 107:9</p> <p>michigan 3:5</p> <p>mid 73:4</p> <p>midway 20:23</p> <p>midwest 113:17 116:1</p>	<p>mintz 2:19 12:16</p> <p>mintz.com 2:23 2:23</p> <p>minute 77:16</p> <p>minutes 11:19</p> <p>mirror 42:21</p> <p>miscellaneous 69:15,24 70:7 100:7</p> <p>missing 29:25</p> <p>modest 67:23</p> <p>modified 24:13 24:16</p> <p>moment 99:5</p> <p>money 49:1,1 82:6,14</p> <p>moran 3:2,3 6:4,16 9:17 13:11 14:16,19 14:22,23 15:2 15:5,8,17 16:3 16:9,15,18,22 17:1,6,9,17 18:15,22 20:17 22:22 23:6,19 24:7,23 25:5 26:21 27:4,13 27:18 28:2,6 28:16 29:9 31:9 36:20 37:13,16 38:4 39:25 41:16 43:19 45:24 46:3,10,17,25</p>
--	---	---	--

<p>49:2 60:3 71:20 72:7,14 75:5,7,25 76:7 76:11,16,21,25 76:25 77:3,3,5 77:12 79:11,15 80:11 109:9 moran's 26:25 36:17 48:2 76:3 morning 10:12 mortar 53:21 53:25 62:7 63:2,10 mounts 31:19 move 74:13,25 83:23 93:16 97:14 moving 92:5,25 96:23 multiple 54:22 55:2 multiplier 73:18,22 mvl 1:7</p>	<p>nature 79:1 necessarily 59:13,16 65:24 88:2 necessary 39:14 89:7 91:3 99:19 100:18 106:11 need 8:13,20 11:12 35:20 47:13,17 48:6 59:11,17,18 62:2,23 66:20 66:20 81:25 83:9 86:13 88:8,15 89:3 91:9,17,24 92:2,4,12,13,17 92:19,22 94:7 99:5 103:18 109:9,12,13 needed 55:19 65:2 101:2 needs 19:2 48:25 52:1 60:11 62:9,21 64:12,21 65:11 66:4,14 67:6 67:16,21 69:14 69:19 70:14 74:14,20 75:1 84:4,23 85:2 89:19 91:22 102:17 103:14 104:5,20</p>	<p>108:24 negotiation 22:5 26:19 27:1 28:24 negotiations 28:18 nelson 3:3 6:15 6:15 77:9 110:14,16 113:5 never 29:7 80:4 new 15:20 18:18 19:6,24 33:22 57:8 nice 7:11 nick 22:21 normal 38:10 38:15 46:8,14 73:2 north 2:10 58:7 58:12 northern 1:2 6:8 111:11 northwest 1:6 2:7 29:8 111:12 113:6 114:3 115:3 northwestern 6:7 notably 61:9 notarial 112:10 notarized 113:14 notary 111:4 112:17 113:25</p>	<p>114:10,18 115:15,23 116:23 note 7:17 22:1 32:24 53:16 54:25 67:6 69:23 70:17 96:12 113:12 noted 24:10 34:25 45:7,13 47:12,18,19 49:12 50:8 51:18 53:18 56:15 58:22 59:2,10 60:24 61:25 62:25 63:8 64:7 67:1 71:16 72:17 74:10 108:4,7 109:18 notes 5:8 39:11 50:25 59:8 65:15 77:17 78:6,16 notice 4:11 9:16 notifying 18:6 noting 45:2 november 78:7 79:24 number 4:10 5:2 27:17,18 62:22 63:16 64:11 67:19 90:4 113:7,13</p>
n			
<p>n 4:1 name 19:6 34:19 47:7 113:6 114:3,4 114:15 115:3,4 115:21 names 11:24 narrative 66:18</p>			

<p>numbers 47:8 71:9 102:14,16 115:7</p>	<p>102:24 103:20 104:10,14</p>	<p>opinion 64:16 82:14 109:22</p>	<p>43:5,6,17 44:8 45:1 46:1 47:3 47:3 49:12,18 49:21 50:1 51:18 53:1 54:4,11,14,19 55:7,12 56:15 57:18 58:21 60:1 72:2 73:16 85:12 86:4,7,24 88:3 107:22 108:3 113:13,15 115:7 116:3</p>
<p>o</p>	<p>october 13:5,8 48:13,14 49:9 75:15 78:9 80:1 109:5,23</p>	<p>opinions 72:7 72:15,21 80:8 80:11 96:14</p>	<p>paid 76:8,11,15 77:5,12</p>
<p>o 111:3,3 oates 36:3,5 50:9 objected 108:22,25 objection 8:25 92:7 93:18 105:11 106:4 110:6 observations 71:23 72:11 89:10 91:10,18 94:2,15 95:1 95:15 107:23 107:24 observe 27:9 51:19 57:14,16 observed 45:3 46:4,11,19 51:2 54:17 55:3,9 58:23 59:2 60:25 64:21 65:10 87:11,12 108:8 110:2 observing 108:19 occasion 12:3 34:7 39:18 occur 83:25 84:3 89:1</p>	<p>offered 80:16 office 15:14 official 114:15 115:21 oh 62:14 67:22 ohio 113:2 okay 8:2,3,7,8 8:11,12,22,23 9:2,3,14 10:2 14:22 15:4 18:3 20:13 27:19 31:18 41:18 47:20 50:3 53:3,10 54:21 67:4 72:4 84:17 85:7 86:3,6 88:5 89:12 92:14 98:24 99:8 100:1 102:11 106:17 old 34:2 once 7:23 59:2 openings 58:6 operating 59:19 operation 51:24</p>	<p>opportunity 16:19 17:5 18:6,10 opposed 66:21 oral 9:20 order 7:18 52:1 52:2 89:19,19 original 55:16 57:25 92:3 originally 92:11 outcome 112:7 outlines 43:18 outside 33:14 36:24 62:5 overall 44:9 overflow 58:8 overview 43:14 own 63:19 64:8 71:18 93:17 110:5 owned 28:8 owner 83:19,20</p>	<p>paint 65:6,15 painting 100:14 pan 56:6 paragraph 20:24 21:15 31:20 32:5 72:10 84:18,19 86:9 95:24 96:10,24 97:12 106:18 parapet 55:4 58:3 paraphrase 20:23 parcel 73:1 78:22 79:2,5 pardon 7:6 108:20</p>
		<p>p</p>	
		<p>p.c. 2:19 p.m. 1:15 110:18 page 4:10 5:2 9:21 15:1 23:4 31:15,16 36:3</p>	

<p>parentheses 65:7</p> <p>part 11:20 17:16 18:20 20:25 23:4 38:10,15 39:21 40:5 42:15 43:21 51:10 58:18 61:1 67:7 72:25 73:15 75:19 76:3 80:17 83:15 84:7 90:12 109:4 115:9</p> <p>particular 43:1 61:9 87:15,21 89:1 91:3 92:11,15 93:10 95:21 96:21 104:25</p> <p>parties 12:11 111:25 112:6</p> <p>partner 18:23</p> <p>parts 43:10</p> <p>party 8:24 29:5 76:21</p> <p>pass 80:19 107:10</p> <p>pat 18:5,17 20:22 28:3</p> <p>patch 62:6 63:2 63:10 65:4 100:19</p>	<p>patched 100:6</p> <p>patching 53:24 99:10,13,17 100:12</p> <p>path 79:8</p> <p>patrick 18:21</p> <p>pay 76:21</p> <p>pearlstein 2:3</p> <p>pella 55:15</p> <p>pending 6:8 8:15 111:9</p> <p>penetration 58:20</p> <p>penetrations 58:16</p> <p>people 6:13 7:6</p> <p>pepper 16:4,5,8</p> <p>percent 78:19</p> <p>perform 17:3</p> <p>performance 102:2</p> <p>performs 106:14</p> <p>pergola 31:19</p> <p>perimeter 56:20 58:6</p> <p>period 24:2,2 39:14 44:20,23 48:11 62:2 66:14,24,25 75:1</p> <p>periods 66:16</p> <p>person 21:25</p> <p>personal 71:23 75:21</p>	<p>personally 17:8 54:16 108:8 111:7 114:11 115:15</p> <p>perspective 97:6</p> <p>pertaining 1:13</p> <p>phase 24:1,4,4 24:21 25:1,6 50:5 57:3 85:11,14</p> <p>phases 23:22 23:24 24:9</p> <p>phone 10:25 11:2 113:3</p> <p>photograph 39:19</p> <p>photographed 50:25 75:23</p> <p>photographs 39:15,16 54:6 54:8,11,14 55:7 58:21</p> <p>photos 39:21 57:8 59:9</p> <p>pipng 69:17 70:1,1,9</p> <p>place 24:10 93:10</p> <p>placed 74:11 92:12 95:14,18</p> <p>placement 108:22</p> <p>plan 27:7 47:25 82:4 83:8,16</p>	<p>84:8,10,12 89:6 90:12 92:3</p> <p>planned 22:1 24:24 25:12 47:18 83:11 96:25 108:11 108:16,18</p> <p>planning 16:2 44:19 52:3 59:12 62:1 63:9 64:14,22 66:24 67:6 69:23 71:1 81:10 86:12,19 89:21 91:23 97:5 105:3</p> <p>plans 24:24 25:9 30:1 51:5 97:9</p> <p>plante 3:2,3 6:4 6:16 9:17 13:11 14:15,18 14:22,23 15:2 15:5,7,17 16:3 16:9,15,18,22 17:1,6,9,17 18:15,22 20:16 22:22 23:5,19 24:7,22 25:5 26:21,25 27:3 27:13,17 28:1 28:6,16 29:9 31:9 36:17,20 37:13,16 38:4</p>
--	---	--	---

<p>39:24 41:16 43:19 45:24 46:3,10,17,24 48:2 49:2 60:3 71:20 72:7,14 75:4,7,25 76:3 76:7,11,16,21 76:25,25 77:3 77:3,5,12 79:11,15 80:11 109:9 plantemoran.... 3:6 planters 62:4,4 62:6,10 plaza 1:14 2:4 2:10 79:4 111:8 please 6:11 7:14 8:14 40:22 53:20 55:20 72:10 96:12 110:16 113:11,11 plumbing 45:16 69:8,14 69:19 104:2,4 pm 4:14,16,18 4:20,21,24 5:4 5:5,7 18:2,7 20:9 22:12 23:14 25:23 30:19 40:9 43:5,17 47:3 49:13 50:1</p>	<p>54:5 58:22 72:3 78:1 85:9 86:5,24 88:4 89:11 90:14 91:7 95:23 96:10 98:22 99:24 102:8 103:12 106:15 109:4 point 26:17,19 53:13 54:22 59:3,5 89:15 92:14 98:1,25 99:1,7 100:3 100:24 101:12 101:25 points 53:10 polsinelli 2:8 10:24 11:1,15 11:23 polsinelli.com 2:11 poor 11:11 45:4,10 46:17 59:4,10,18 90:17,25 91:4 popeo 2:19 portion 39:5 79:4 portions 56:20 57:16,17 position 15:11 72:19 possibility 89:6</p>	<p>possible 25:20 37:24 38:3 59:15 66:1 79:4 84:1 87:14,17 99:13 108:10 possibly 33:6 78:23 potential 20:17 28:16,22 29:4 51:20 52:2 85:18,23 89:20 90:1,7 power 65:4,6 65:14 100:6,14 100:19 practice 75:25 102:6 pre 13:16 26:8 26:11 28:5 39:24 preliminary 96:2,8 106:19 preparation 10:6 12:7,22 17:15 38:25 40:5 42:7 prepare 8:10 prepared 10:3 42:6 53:6 72:15 preparing 37:23 prescribed 38:6</p>	<p>presence 111:18 present 3:23 11:25 43:19 112:3 presumably 18:25 presume 61:9 67:1,5 68:5 presumption 66:23 prevent 56:7 preventative 73:2 previous 53:23 55:25 95:8 102:1 previously 10:25 32:23 75:12,17 93:4 price 56:12 pricing 73:4,19 96:14 primarily 46:14 50:17 primer 7:25 prior 16:3 28:10 32:9 34:23 35:3 42:1 49:18 75:18 80:25 99:10 priorities 83:14 88:12,19,22,24 91:14 93:4,11</p>
--	--	--	--

<p>93:14 94:5,21 95:5,21 103:24 prioritize 31:25 32:13 84:12 priority 47:5 49:18 88:16 91:6 93:25 102:21 probable 72:8 72:16 96:15 106:16 probably 65:24 procedure 1:12 114:5 115:5 procedures 10:9 proceeding 6:6 7:24 38:16 75:19 77:7 process 21:11 37:22 38:11 39:25 59:5 83:5 97:20 98:18 produce 76:5 produced 24:17 75:9 production 113:15,17,22 professional 14:2,9 31:24 32:12 97:18 professionals 98:10</p>	<p>program 60:16 73:1 project 14:20 15:10,17 16:6 16:7,17 17:17 19:7 21:7 28:25 58:18 83:6 96:21 projected 60:7 66:20 projects 15:19 15:20 16:1 properties 2:2 28:8,13,18 51:22 property 11:5 11:12 23:3,21 27:20 28:8,12 32:18 33:2 35:24 36:21 38:20 43:13 47:24 49:8 60:12 63:8,9 64:13 66:10,15 68:2 70:5 71:2 73:3 74:20 75:13,22 76:1 76:17 81:1,12 81:16,19,25 82:17,21,22 83:2,20 84:7 86:14 88:9,21 94:24 102:18 103:14,19 104:6,21</p>	<p>proposed 24:7 protrusions 55:6 provide 11:14 24:22 35:2 38:4 52:1 54:3 86:10 89:19 105:20 106:10 109:13 provided 9:1 24:3 26:11,12 28:1 29:3 30:4 30:6 31:6 32:16,19 35:5 38:1,19,19 39:18 41:10 42:4,7,15,17 51:4,12 52:5,8 52:11 57:13,15 63:20 64:3 65:7,16,18,21 66:1 71:18,24 72:1 73:3,5,15 76:8 79:19,21 providing 37:21 71:15 82:14 prudent 72:19 110:4 public 111:4 112:17 114:10 114:18 115:15 115:23 116:23 pull 63:18</p>	<p>pumps 70:8,20 71:5 purpose 72:13 89:13 purposes 26:21 51:17 pursuant 1:11 6:4 9:16 112:2 put 48:6 59:11 82:22 puts 47:8 pvc 64:25</p> <p style="text-align: center;">q</p> <p>qualified 106:14 quantities 61:3 96:3 quantity 61:23 question 8:9,15 8:21 9:2 67:3 68:17 69:10 77:8 105:12 questioned 9:13 questioning 102:12 questionnaire 24:22 25:5 39:24 questions 8:5 11:9 13:15 38:23 82:3 107:12,13,14 107:18</p>
--	--	--	---

<p>quick 59:20 quickly 12:23 quite 37:18,18 60:20 73:11</p>	<p>12:8,10 13:4 14:4 16:24 17:1 21:24 22:6 23:10 24:15 25:7,8 25:13 27:2,3 28:14,20 30:4 30:6,14 32:7 32:10 33:3,4 34:16,17,20 35:4,9,25 36:4 36:7,25 38:3,7 38:10,12,14,22 40:8 42:12,19 42:23 44:22 50:16,16 51:7 52:7,8,10,11,14 57:7 65:18 66:18,18 71:13 71:14 74:1,2,9 74:13,18,24 75:3 76:7,11 79:18,21 88:6 102:12 104:2 104:17 109:19</p>	<p>recognize 22:12,15 29:20 30:13 35:18,22 40:15</p> <p>recollection 99:6 108:21</p> <p>recommend 31:24 97:13</p> <p>recommendat... 89:5,9 98:4 100:12,17 101:8 102:25 103:22 105:1,8</p> <p>recommendat... 44:17 87:9 97:13</p> <p>recommended 46:8,14 53:24 54:2 55:25 58:10 100:3,5 101:13</p> <p>record 6:11,20 6:22 7:9,12 14:21 115:9</p> <p>records 52:6,9 52:16,16</p> <p>reduce 78:20</p> <p>reduced 111:19</p> <p>refer 14:23 15:2 53:10</p> <p>reference 23:5 44:4 53:11 113:7 114:2 115:2</p>	<p>referenced 34:19 51:15 114:11 115:15</p> <p>references 26:12,16</p> <p>referred 65:14</p> <p>refined 97:19 98:10,14</p> <p>refinements 98:17</p> <p>refresh 99:6</p> <p>regard 77:7</p> <p>regarding 11:9 23:6 40:16</p> <p>regardless 33:15,25 34:5</p> <p>registered 97:15,17</p> <p>regular 75:25 76:3</p> <p>related 24:25 25:14 27:4 64:7 68:12 69:19 74:7 99:9 105:9,21 106:2 112:6</p> <p>relates 53:6 56:16 61:16 67:10 72:8 76:16 79:16</p> <p>relation 10:21 79:11</p> <p>relative 19:22 20:17 26:7 41:25 46:25</p>
<p>r</p>			
<p>r 2:20 rainwater 64:24 68:7 raise 49:1 raised 62:4,4,6 62:10 reaching 18:5 44:16 87:5 read 21:12 26:10 32:4 44:7 72:9 78:16 84:24 86:15 87:7 89:22 90:23 91:15 95:6 96:4,17 97:3 97:22 99:5 100:9 101:15 114:5,6,12 115:5,6,17 readily 51:19 reading 113:19 ready 9:13 reason 10:15 36:13 113:14 115:8 116:3 rebuild 62:7 65:2 recall 10:17 11:9,22,24</p>	<p>receipt 78:13 113:18 receive 25:11 25:17 38:8 received 72:12 receiving 25:8 recent 21:7 recipient 21:2 reciting 41:3</p>		

<p>49:4 54:25 56:23 66:7 72:7 73:16 74:10 79:19 107:22 reliable 72:14 relied 71:15 relies 107:6 remain 37:15 remainder 96:23 remaining 91:13 93:3,7 94:4 95:4,20 101:18 remedies 72:16 72:17 remedy 90:5 98:20 remember 25:20 26:14 36:22 42:16 43:3 52:18 remotely 6:13 removal 62:3,4 removed 58:11 rendered 76:16 renovation 21:11,23 73:1 renovations 15:19 19:3 22:1 45:13 84:24 97:1 repaint 65:5 100:20</p>	<p>repainted 59:16 100:6 repair 46:21 56:24 81:25 90:20 91:2 95:25 96:2 106:19 repaired 57:1 100:8,22 repairs 52:12 52:17 56:10,13 72:23,24 81:21 rephrase 92:9 replace 62:5 64:23 65:1,3 69:17,25 70:8 70:9,19,19,20 71:4 101:8 replaced 56:1 57:1,6,9 58:11 101:13 replacement 46:21 56:3,11 56:24 58:18 72:24 90:21 91:2 95:24 96:2 101:19 106:19 replacing 58:19 report 4:23 5:4 11:4,5,6,17 12:24 13:1,4 13:11,16 17:16 19:19 22:2 24:5 27:9</p>	<p>28:17 29:5 30:16 31:2,5,9 31:13 32:17 33:1,4,15 34:15 35:1,24 36:6,8,11,12 37:7,8,9,10,23 38:2,4,9,11,16 38:18,24 39:1 39:12,16 40:6 42:7,15 43:2,4 43:6,10,21 44:18,25 45:7 46:1,3 47:4 48:10,12,17,20 48:22 49:6,10 49:12,22 50:1 51:10,16,18 52:12 53:2,5 53:17 54:5,12 54:20 56:9 59:21 60:1,3 62:20 63:21 66:18 72:3,6 72:14 73:10 75:4,8,11,14,23 78:8,14 79:25 80:3,4,9 82:5 82:21,23 83:1 83:4,14 84:10 85:15,17,23 86:2,4 87:9 90:3 93:22 96:7,13 97:25 98:13,23 99:25</p>	<p>100:12,18 101:20,22 102:9 106:15 107:5,22,25 108:3,12 109:4 109:11,17,23 109:25 reported 1:24 34:21 111:17 reporter 6:12 6:13 7:7 8:6 114:7 reports 17:13 47:1 52:17 76:1,4 represent 96:14 representative 34:18 35:25 37:4,12 43:20 56:23,25 request 24:2 39:7 92:24 115:9,11 requested 26:7 52:15 74:22 require 44:12 64:21 91:11 94:3,8,11 95:2 95:9 required 46:9 46:14 69:23 85:24 90:9 95:12 113:25</p>
--	---	--	--

<p>requirements 97:20</p> <p>requires 46:20 90:20</p> <p>requiring 62:1 62:25 63:9 72:23</p> <p>reserve 49:1 110:15</p> <p>reside 14:11</p> <p>residential 27:24</p> <p>resources 71:14</p> <p>respective 111:25</p> <p>responding 8:21</p> <p>response 8:10 77:6</p> <p>responsibilities 15:16</p> <p>restate 77:9 105:13</p> <p>restored 101:4</p> <p>restrictions 79:8</p> <p>results 28:23 29:4 106:1</p> <p>retaining 53:14 53:17,22 54:16 62:7 63:3,11 99:2,3,10,14,18</p> <p>retention 85:2</p>	<p>retrofit 71:5</p> <p>return 46:15,22 90:21</p> <p>returned 113:18</p> <p>review 9:23,25 12:21 13:10 19:20 31:12 32:20,24 33:23 35:20 39:2,7 39:12 48:17 51:8 54:2 59:8 73:24 77:6,12 105:16 106:8 106:10,14 109:14 113:12 114:1 115:1</p> <p>reviewed 12:23 30:17 51:4,12</p> <p>reviewing 32:18 33:15 39:6 74:2 82:21</p> <p>reviews 48:20</p> <p>right 14:16 16:20 17:18 18:8 20:2,3 21:3 22:19 26:17 30:23 35:7 41:8 43:15 45:8 49:2 50:23 51:2 52:25 56:16 57:19 60:16 61:4,12</p>	<p>61:19 65:11 67:14 68:22 69:6 70:15,24 75:5,23 80:24 82:12,15 83:20 83:25 84:4,9 84:13 85:3,8 85:15,16 86:19 86:22 87:12,16 87:22,23 88:1 88:16,22 89:1 90:1,9,12 91:4 91:25 92:6 93:7,11,12,14 93:17 94:5,6,9 94:10,17 95:12 95:13,21,22 97:7,8,10 98:3 98:6,11 99:15 99:19 101:6,10 102:8,12,18,21 103:21 104:6 104:11,12,25 105:3,17 107:7 107:25 108:5,6</p> <p>riverside 1:14 2:4,10 111:8</p> <p>role 14:20 15:13,17 16:7 75:7</p> <p>roof 31:19 55:4 56:19,20,24 57:1,5,14,15,16 57:17,18,23 58:8,11,14,15</p>	<p>58:18 64:23 100:7,21</p> <p>roofs 56:16 57:22,25 58:4 58:5,23</p> <p>rooftops 39:8</p> <p>room 50:17</p> <p>rooms 39:9</p> <p>ross 2:15</p> <p>rough 40:21 42:3,13,21 52:2 89:19,25</p> <p>roughly 78:19</p> <p>routine 73:1</p> <p>rpr 1:24</p> <p>rules 1:11 7:25 8:1 114:5 115:5</p> <p>run 8:1</p> <p>russell 19:7,10 19:12,14,18,20 21:6 30:20 38:19 78:7 79:1,24</p>
			s
			<p>s 2:20 4:9 5:1 113:15 115:8,8 116:3</p> <p>safety 86:14</p> <p>satisfactory 46:12</p> <p>saw 52:9</p> <p>saying 8:7 102:23</p>

[says - show]

Page 28

<p>says 21:18 31:21 61:6 75:16 84:22 93:2 94:8 100:25 106:22 schedule 9:19 10:4 108:23 science 13:20 scope 15:16 17:1,16 18:10 18:15 21:9,18 22:25 23:18 72:15 79:10 scopes 79:4 scupper 55:4 58:5 seal 101:5 112:10 114:15 115:21 searching 26:16 second 7:17 36:23 61:4 62:14 66:24 86:9 87:2 90:19 101:24 106:22 secondary 88:18 section 9:24 43:12,13,13,14 49:25 53:5 60:2,21 64:17 65:10 68:18 69:8 72:6</p>	<p>89:13 94:23 100:2 103:2,11 103:12,13,17 104:2,4,17 108:16 sections 104:19 sector 15:21 secure 48:18 see 7:11,22 9:20 19:3 20:25 21:12 23:8,15 24:10 29:18 30:2 32:2 39:14 41:1 43:6,22 45:4 47:5 50:11 52:23 53:14 54:5,23 60:21 62:13 64:18 65:16 67:16,24 68:19 69:11 78:2 84:19 85:9,11 85:20 86:25 89:13,15 90:14 90:17 91:6 95:23 96:10 99:2 100:2 106:20,24 seeing 30:14 67:19 seek 32:24 33:2 40:6 seen 9:10 82:23</p>	<p>segment 16:12 selected 56:12 sell 78:23 selling 79:6 sending 30:21 senior 1:6 2:7 6:7 15:23,25 16:6,7,11,14 29:8 111:12 113:6 114:3 115:3 sense 7:9 sensitive 79:1 sent 39:2 40:21 sentence 21:18 84:22 86:9 87:2 90:19 93:1 106:22 separate 24:17 29:7 53:23 79:14 september 7:23 series 13:14 18:7 20:16 41:24 serve 15:22,24 served 77:6 service 17:17 52:9,16 services 23:19 23:23 27:10 76:8,12,16,22 set 88:12 97:21 112:9</p>	<p>sethna 2:4 4:4 4:6 6:3,20 7:5 7:14,20 9:9 18:1 20:14 22:10 26:4 29:17 30:12 35:17 40:14 41:22 59:20,24 77:10,11,16,24 80:19 92:7 93:18 105:11 106:4 107:11 107:14,17,20 110:7,11,14 sets 83:14 setting 19:25 102:20 settled 44:22 seven 43:2 95:2 several 58:4 sheet 113:13 115:7,10,18 116:1 shift 109:7 shifted 92:19 short 11:19 46:13 59:22 77:19 show 9:4 17:20 20:8 25:22 27:12 29:12 30:7 35:12 40:9 41:16 77:25</p>
---	---	---	---

<p>showing 22:11 58:1</p> <p>shown 113:16</p> <p>shrink 78:21</p> <p>side 53:9</p> <p>signature 110:15 111:23 112:16 113:14</p> <p>signed 75:4 114:13 115:18</p> <p>significant 32:8 44:12 46:21 51:23 72:22 90:20 91:2</p> <p>significantly 51:21</p> <p>signing 113:19</p> <p>signs 58:1</p> <p>sill 55:5 56:6</p> <p>similar 16:8</p> <p>similarly 65:23</p> <p>simply 69:2 87:18 104:13</p> <p>sincerely 113:21</p> <p>sir 113:10</p> <p>sit 63:22 64:10 73:21 75:21 76:20 108:13 109:21</p> <p>site 21:25 24:4 24:12,21 25:4 25:9,18,18 26:6 32:19 34:8,18 35:3</p>	<p>36:1,9,14,18 37:4,13,21</p> <p>39:3,4,23,24</p> <p>41:7 45:6</p> <p>50:15 51:20</p> <p>53:7 59:7</p> <p>60:22,24,25</p> <p>61:25 62:15,21</p> <p>62:24 63:5</p> <p>64:2,7,11 65:8</p> <p>72:11 81:13</p> <p>102:13 103:3,8</p> <p>103:17 104:8</p> <p>107:23 109:15</p> <p>sits 109:3</p> <p>sitting 99:22</p> <p>six 49:6 94:4</p> <p>size 18:17 64:24 68:6 78:21</p> <p>sloped 57:17</p> <p>small 60:10</p> <p>soden 19:6,9,22 23:7 26:15 29:21 34:11,14 40:16 41:25 42:9 50:14,22</p> <p>soffit 65:2</p> <p>solely 91:18</p> <p>solution 54:3</p> <p>solutions 113:1 116:1</p> <p>sorry 27:17 37:8 38:12 62:14 67:18</p>	<p>sort 11:7 20:23</p> <p>south 1:14 2:4 58:12 111:8</p> <p>southern 78:23</p> <p>southfield 3:5</p> <p>spaces 27:25 39:8,8</p> <p>speak 10:13,15 10:18 12:3,6 12:13 34:13 80:25</p> <p>special 65:13</p> <p>specific 15:21 36:7 37:5 38:14 44:15 51:2,15 82:20 87:4</p> <p>specifically 16:1 25:21 26:14 35:5 81:8 105:5 108:19</p> <p>specifying 67:12</p> <p>speculation 93:18</p> <p>spend 33:13 39:4 48:18,20 63:12 93:21</p> <p>spent 36:23,25 47:22 49:23 60:7 61:18 68:5 82:7,15</p> <p>spoke 34:17</p>	<p>spoken 10:21 12:15</p> <p>square 27:21 84:20</p> <p>ss 111:2</p> <p>staff 39:4,5 43:18</p> <p>stained 55:9</p> <p>staining 55:3</p> <p>stamp 78:1</p> <p>stamped 18:2 20:9 25:23 27:13</p> <p>stand 64:10 71:6</p> <p>start 13:18 15:7 48:9 86:4 91:9 92:13</p> <p>starting 18:18 84:18,20 92:14 95:24 98:1 100:3</p> <p>starts 99:3</p> <p>state 7:12 40:1 99:15,18 100:21 104:24 111:1,5 114:10 115:15</p> <p>stated 28:3 92:11</p> <p>statement 96:20 101:24 114:13,14 115:19,19</p>
--	--	---	---

<p>states 1:1,12 43:20 72:6 89:17 90:19 94:1 100:5 111:10 stating 90:8 stay 62:24 67:14 stenographic... 111:17 step 83:4 87:19 98:5 100:23 steps 79:8 83:10 98:16 99:19 100:18 105:9 106:11 stone 53:14 99:3 storm 65:1 story 27:21 strategy 21:11 21:23 22:5 27:1 street 27:23 strike 108:20 structural 54:2 structures 65:3 stucco 54:23 55:1,2,9 subject's 72:19 subpoena 6:4 9:16 77:6,14 112:2 subscribed 114:10 115:14</p>	<p>116:21 subsequent 28:11 76:24 77:2 78:12 80:5 substance 57:21 subtotal 62:21 67:21 successful 7:16 sufficient 100:15 suggest 26:21 106:2 suggestion 88:25 suit 49:4 112:7 suite 2:4,10,15 3:5 113:2 summary 27:10 43:12 44:7 45:2 47:4 49:13,17,18 53:7 73:6,25 86:11,25 87:2 108:5,8 109:3 superior 113:1 supports 65:2 suppose 48:19 91:5 92:22 93:21 suppression 69:16,25 70:8 sure 8:20 31:14 37:18 60:20</p>	<p>62:19 67:3 68:18 71:21 73:11 77:10 switzer 2:9 6:17,17 107:16 sworn 6:2 7:2 111:14 114:10 114:13 115:14 115:18 116:21 system 46:5,12 46:15,16,20,22 51:20 57:23,25 64:23 65:1 69:16,25 70:8 71:7 87:15,22 90:22 104:2,4 104:17,20 systems 39:6 44:12 45:3,16 45:19,21 57:19 60:19 69:8,14 69:19 70:13 71:2 72:22</p>	<p>taken 1:13 6:5 59:23 77:20 takes 48:17 91:19 talk 24:21 48:5 talked 73:6 88:6 108:3 talking 23:16 97:25 talks 9:19 19:25 50:4 53:13 54:22 team 21:8 28:22 29:3 40:22 technological 13:25 telephone 5:8 tell 13:19 18:21 25:4 26:10 46:2 54:25 61:6 template 86:12 86:19,22 term 44:23 46:13 47:16 48:5 49:5 61:16,19,22 82:17 109:24 terms 61:8 108:17 terrific 9:4 18:4 testified 7:3 testify 10:3 80:15 111:14</p>
		t	
		<p>t 4:9 5:1 table 42:14 43:7 49:22 73:15 88:7 102:9,16 108:2 take 8:6,13,16 9:12 10:1 31:23 39:11 48:23 51:14 54:8 59:20 77:16 99:5</p>	

<p>testimony 12:19,22 77:13 80:16 111:16 111:21 112:9 114:6,7 115:6 115:9,12 testing 52:20 105:7,20,20,25 106:2 texas 1:2 2:15 6:9 14:11 18:13 20:1 23:3 111:11 thackery 27:22 thank 7:21 10:1 49:24 52:4 56:14 67:12 79:9 107:16 110:1,11 thereabout 48:14,14 49:9 thereof 112:8 thereto 28:11 thing 8:18 things 63:16 93:10,16 think 13:7 40:3 59:17 83:17 98:25 101:11 106:10 109:12 third 31:20 66:25 79:2 88:21 89:15 93:9 95:24 101:12 106:18</p>	<p>thirds 79:3 thirty 113:18 thought 92:2 three 11:1 23:24 24:9 27:21 47:18 48:23 60:9 68:21,25 69:4 86:13 89:4 91:5,12 104:9 thursday 20:22 ticking 48:9 tie 54:3 tile 56:24 57:1 57:5,7,14,17 tiles 56:21 time 8:13,15 10:1 16:15 24:6,10 28:5 28:10 31:22 33:3,10,13,13 34:13 35:20 36:24 38:5 42:10 48:17 58:24 59:11 61:1 66:24,25 67:9 68:1 77:18 107:13 109:18 110:3 110:10 timely 68:7 times 20:5 timetable 82:6 timing 43:1</p>	<p>title 18:22 82:24 today 7:21 10:3 12:7 63:22 64:10 73:13,21 75:9,21 80:17 80:23,23 99:22 107:4 108:13 109:3,21 together 77:18 82:22 told 22:3 26:24 30:25 31:3,8 32:11 42:9,20 42:25 56:22 took 39:16,22 top 102:13 topics 9:23 total 66:3 67:15 tour 39:7 town 3:5 training 81:4,9 transcribed 114:7 transcript 8:22 111:21 113:11 113:12 114:5 114:12 115:5 115:11,17 transcription 111:20 travel 18:19 tree 62:3,4 trellis 62:8 65:3</p>	<p>true 80:10 111:20 truth 111:14,15 111:15 try 67:4 tuckpoint 53:24 turn 23:13 31:15 43:17 53:1 54:4,19 59:25 72:2 78:24 85:5,8 86:1,24 88:3 89:11 95:23 98:22 99:24 102:8 two 11:23 37:13 39:16 50:14,19 67:9 67:23,25 68:1 79:3,5 93:5 95:8 98:16 type 49:19,20 types 56:19 typewriting 111:19 typical 44:24 108:15 typically 19:19 39:3 51:16 59:7 73:18 103:6,7 105:19</p>
---	--	---	--

u	unforeseen 56:12	using 106:23	visible 51:19
ultimate 42:14 83:5	union 70:1,10	utilized 33:13 58:17 63:20	visit 24:4,12 25:19 28:5,10
ultimately 26:6 59:11 84:6	unions 69:17 70:1	utilizes 58:7	32:20 35:3
umb 2:18 6:19 12:13 107:12 107:13	unit 61:7,17,20 70:20 71:4 108:17	utilizing 56:9 71:16	36:18 39:3 41:8 57:11 59:7 72:12 81:13,19,22
unable 99:17	united 1:1,12 111:10	v	visited 81:12
unaddressed 110:10	units 27:24,24 39:9 58:16 70:21 79:3,6	v 113:6 114:3 115:3	visual 52:24 105:16
under 31:19 91:4	university 13:25	value 51:21 61:21	visually 52:23
undergo 97:19	unoccupied 39:9	values 96:12,13 96:24	w
underground 65:1	unsure 25:16	valves 69:16,17 69:25 70:1,9,9	wait 8:20
understand 14:25 19:21 21:9,19,22 37:19 62:20 67:3 71:21 105:12	upcoming 85:19	various 27:25 44:17 60:5 85:20 102:14 103:17 104:23	waive 110:15
understanding 21:8 23:5 32:7 105:21 106:11	updated 24:19	vary 96:15	waived 111:24 113:19
understood 8:10,17 9:1 19:21 27:6 37:11 61:24 69:7 73:14	use 28:12 33:10	verify 57:4	walked 50:21
undertake 105:25	used 22:5 61:8 61:20 73:11 83:7	veritext 113:1,7 116:1	walking 33:14
undetermined 111:10	useful 44:16 56:2 87:5,11 87:16,20,25 91:13 93:3,7 94:5,20 95:4 95:20 101:9,14 101:18	veritext.com. 113:17	wall 59:15 99:10,14,18
	users 72:13	versus 11:12,12	walls 53:14,17 53:22 54:1,16 62:7 63:3,11 99:2,3
	uses 46:25	videoconfere... 2:9,21 3:4	walsh 2:20 6:19 6:19 107:13
		view 39:25 92:17 103:4	want 6:10 51:14 110:14
		viewpoint 92:24	wanted 62:19
		vinyl 55:15	wanting 19:1
		virtue 91:12 93:2 94:4 95:3	wash 65:4,6,14 100:19
			washed 100:6

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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