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Counsel to Bay 9 Holdings LLC

**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 PRELIMINARY OBJECTION AND RESERVATION OF
RIGHTS TO INTERCITY INVESTMENT PROPERTIES, INC.’S EMERGENCY MOTION
TO ENFORCE COMPLIANCE WITH CURE ORDERS AND RELATED RELIEF**

Bay 9 Holdings LLC (“*Bay 9*”) files this preliminary objection and reservation of rights (this “*Preliminary Objection*”) to *Intercity Investment Properties, Inc.’s Emergency Motion to Enforce Compliance with Cure Orders and for Related Relief* [Dkt. 1767] (the “*Motion*”). This Preliminary Objection is limited to the request in the Motion for (a) emergency relief, and (b) to modify a prior Order without any factual or legal basis. To the extent the Court determines the Motion does not fail on its face, Bay 9 requests this Court to set the Motion in accordance with ordinary order and confirm that pursuant to L.B.R. 7007.1, July 29, 2024 is the response deadline to the Motion. Should the

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.



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Court determine a hearing is warranted, Bay 9 requests a hearing on or after August 19, 2024.² In support of this Preliminary Objection, Bay 9 states:

PRELIMINARY OBJECTION

1. At the conclusion of this Court’s bench ruling on June 12, 2023, the Court shared with all parties “I hope this is a new chapter for the Edgemere and a new chapter in a more constructive relationship between the landlord and the new tenant.” June 12, 2024, Tr. 65:21-24. Bay 9 is incredibly proud of the efforts of the Edgemere team to transition the community over the past year to new ownership that has resulted in brighter days for the staff and residents that call the Edgemere their home. During Bay 9’s ownership, the Edgemere has dramatically increased occupancy, maintained its five star Medicare rating, embarked on a multi-million dollar capital improvement campaign throughout the campus (in addition to the projects identified in the June 12 Order), and has been awarded national accolades for its resident experience. Despite all these positive operational successes, regrettably Bay 9 has continued to experience a far less than constructive business relationship with Intercity Investment Properties, Inc. (“*ICI*” or “*Landlord*”).

2. The Motion seeking emergency relief is **not an emergency**. There is nothing in the Motion that even suggests a need for an immediate hearing or any exigency – it would be both a waste of judicial resources and extremely prejudicial to Bay 9 to schedule this matter on an emergency basis. In addition to there not being an emergency, the Motion does not seek to enforce the June 12 Order (as defined in the Motion). While the Landlord titles the Motion seeking to “enforce compliance with cure orders”, a plain reading of the Motion is to the contrary. The Landlord – presumably unhappy with the Court’s prior rulings – is **seeking to modify orders** to (a) set an

² Undersigned counsel will be out of the country and otherwise traveling for other matters between July 28, 2024 and August 14, 2024.

arbitrary deadline of December 31, 2024 to complete a multimillion dollar repair project, (b) to gain access to certain details concerning the project that are neither required by the June 12 Order or the Ground Lease, and (c) to provide an accounting of the use of escrow funds under an escrow agreement to which the Landlord is not a party. Motion, ¶ 28.

3. Based on the text of the Motion, while the Landlord references Bankruptcy Code sections 105(a) and 365(b)(1), what it appears to seek is to modify this Court's June 12 Order³ pursuant to Rule 60 of the Federal Rules of Civil Procedures (as made applicable by Fed. R. Bankr. P. 9024). As a preliminary matter, there is no legal basis to modify the June 12 Order, which was entered over a year prior to the Motion. Fed. R. Civ. P. 60(c)(1). Further, there are no other reasons that justify the relief requested to modify the June 12 Order. The Landlord's desire for a different order could have been addressed by appeal, and not by motion practice 13 months later.

4. To the extent the Landlord seeks to expedite the repair project and require an arbitrary completion by December 31, 2024, such relief would be harmful to the Edgemere and its residents. The purported evidence submitted by ICI in its Motion from an ICI employee driving by the Edgemere and their opinion that no work has been done in the past year is simply incorrect. As is common for large-scale repair projects, there has been significant work completed by Bay 9 prior to the physical repair phase. Prior to and soon after Bay 9's purchase of the Edgemere, it spent several months completing engineering and design work. After the engineering and design phase was complete in the fall of 2023, Bay 9 engaged in a competitive bidding process to hire a general contractor for the repair work. Once Bay 9 selected a contractor in the winter of 2024, additional time was spent negotiating the project contract to make sure it was consistent with the June 12 Order,

³ The Motions attempts to relitigate several other orders entered in the context of the sale and plan confirmation entered over a year ago. Based on its requested relief, it appears only to seek to modify the June 12 Order. Bay 9 reserves all rights to respond to any aspect of the Motion should the Court determine the Motion does not fail on its face.

resulting in a signed contract in March 2024. Once the final contract was negotiated, a communications and planning campaign commenced with staff, residents and other constituents of the Edgemere including the highly sensitive Plaza constituents. In the Spring of 2024, the Edgemere embarked on preconstruction site work that included tree removal and other landscape and hardscape changes to make ready the site for the project.

5. It is in the strong interest of Bay 9 and the Edgemere's residents to complete the project as quickly as possible. However, any large-scale project undertaken at a community with vulnerable populations must also consider the effects of the disruptions caused by the project. Given the scope the project and the realities posed by the nature of the asset (which include the extra work required to protect the asset while areas become exposed during the work) we have been informed by our contractors and other professionals that a successful repair project as required under the June 12 Order will be complete in September 2025. To modify the June 12 Order to arbitrarily set a deadline for completion of December 2024 is inconsistent with both the June 12 Order and the requirement of a prompt cure under Bankruptcy Code section 365. ICI offers no reason to rush the repairs project.

6. As ICI noticed, repairs to exterior façade began in late April 2024, which we understand prompted ICI's May 8, 2024 letter. As Mrs. Hatch advised ICI on May 15, 2024, there is no objection to any reasonable request by ICI to observe the repairs, only that such observations need to be coordinated in a construction project for safety, security, and without interference.⁴ Bay 9 again confirmed to ICI on July 9, 2024, that it will accommodate ICI's reasonable request to inspect the repairs pursuant to the Ground Lease and Bay 9's owner's representative is in communication with

⁴ Bay 9 previously accommodated ICI's request for inspection during January and February 2024. Indeed, ICI's inspection team included twelve (12) persons on January 24-25, 2024, and an additional large team that conducted an inspection on February 21, 2024. At its request, ICI inspected substantially the entire campus, including vacant and occupied resident units. Approximately five (5) months later on June 21, 2024, ICI shared the Terracon report that ICI claims include various default conditions, most of which were already found by this Court in the June 12 Order and other orders of this Court to either be nondefault items under the Ground Lease or already cured.

ICI to schedule this inspection. This however, is not enough for ICI. Rather, ICI has demanded Bay 9 cease its work so that ICI can conduct additional tests or inspections, directly jeopardizing Bay 9's ability to comply with the June 12 Order. Attached hereto as **Exhibit A** is a copy of a letter from ICI's Counsel, dated July 8, 2024, requesting that Bay 9 immediately cease work. Despite our requests, ICI has provided no valid basis under the Ground Lease or the June 12 Order (or any other order of this Court) that grants ICI the rights to halt Bay 9's work. As such, the work the at the project is continuing.

7. Despite the Landlord's continued animosity to Bay 9, Bay 9 has consistently tried to work constructively with the Landlord to resolve each of the Landlord's asserted demands and alleged disputes. Here, the Landlord replied to Bay 9's May 15, 2024 letter on June 21, 2024 – over five weeks later – with two (2) letters setting forth numerous demands with unreasonable and arbitrary timelines. Rather than provide any reasonable time for responses, the Landlord seeks emergency relief from this Court. Notwithstanding the Landlord's preferred method of litigating matters in this Court rather than engage in business discussions, Bay 9 intends to fully respond to the Landlord's questions, concerns, and demands, pursuant to the terms of the Ground Lease and/or this Court's prior orders.

8. To be clear, Bay 9 is fully complying with this Court's orders and the Ground Lease. It is plain on its face that the Motion seeks to relitigate many of the alleged property conditions this Court already determined were not defaults under the Ground Lease, or were previously found by this Court to be cured by the bankruptcy debtor prior to Bay 9's purchase of the Edgemere. Attempting to relitigate issues previously found by this Court – without any evidence suggesting the condition has deteriorated since Bay 9 acquired the project – is a clear violation of June 12 Order, interferes with Bay 9's business operations, and denies Bay 9 its right to quiet enjoyment under the

Ground Lease. Further, the verifiably untrue statements in the Motion and related correspondence that Bay 9 is not maintaining the property in accordance with the Ground Lease, has denied ICI's request to inspect under the Ground Lease, or that Bay 9 has improperly used escrow funds for the repair projects may have been improperly accessed may give rise to claims against ICI that Bay 9 is investigating. Bay 9 intends to fully protect its rights under the Ground Lease, orders of this Court, and applicable law.

Reservation of Rights

9. While Bay 9 objects to the relief requested in the Motion in full, this Preliminary Objection addresses only ICI's demand for emergency relief and its attempt to modify the June 12 Order contrary to the legal standard under Fed. R. Civ. P. 60. To the extent the Court determines the Motion does not fail on its face, Bay 9 reserves the right to raise additional objections to the Motion in accordance with ordinary order, confirming July 29, 2024 as the response deadline and setting any hearing on the matter for a date at the Court's convenience after August 19, 2024.

WHEREFORE, Bay 9 respectfully requests this Court enter an Order: (i) denying the emergency relief requested in the Motion; (ii) denying the Motion requesting modification of this Court's orders; and (iii) affording such other relief as is just and proper.

Dated: July 10, 2024

Respectfully submitted,

LOCKE LORD LLP

/s/ Adrienne K. Walker

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Counsel to Bay 9 Holdings LLC

CERTIFICATE OF SERVICE

I certify that on July 10, 2024, a true and correct copy of the foregoing was served electronically on all persons via the Court's CM/ECF System.

/s/ Adrienne K. Walker

Adrienne K. Walker

EXHIBIT A

Walker, Adrienne

From: Elizabeth B. Vandesteeg <evandesteeg@lplegal.com>
Sent: Monday, July 8, 2024 6:38 PM
To: Walker, Adrienne; List, Chelsey; Swanson, David
Cc: Eileen M. Sethna; Ryan C. Hardy; Jacob Sparks
Subject: Edgemere - Post-Cure follow-up: Immediate response needed [LP-ACTIVE.47780.47780-138154.FID1394679]

Importance: High

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

Adrienne,

It has come to our attention that Bay 9's contractors are in the process of replacing portions of the stucco façade that previously were removed from the Plaza building at the Edgemere. Please immediately instruct Bay 9 and/or its contractors to stop. If the underlying portion of the building envelope system is re-covered, ICI will not be able to inspect the work already performed without destructive testing.

We thought we were clear that ICI intended to inspect the building envelope restoration work, as it is entitled to do under the Lease—that was the express reason we have repeatedly asked for access. Please let this email serve to dispel any lack of clarity: ICI intends to inspect the work and demands that efforts to impair its access and inspection rights—including resealing or applying new stucco to building envelope openings—cease **immediately**. ICI reserves all of its rights and, if needed, will go to court on an emergency basis to enforce those rights.

Please confirm by **12:00 PM CT tomorrow, July 9th** that no further work will be performed to cover up any openings in the stucco at the Plaza building until ICI has had the opportunity to access and inspect.

For further sake of clarity, this demand and deadline in no way is intended to (and does not) modify the July 15th extended response deadline for the requests set forth in the Post-Close Lease Compliance letter dated June 21, 2024.

Thank you,

Lisa



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