

Trinitee G. Green (SBN 24081320)
Polsinelli PC
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
Facsimile: (214) 397-0033
tggreen@polsinelli.com

Jeremy R. Johnson (*Pro Hac Vice* Pending)
Brenna A. Dolphin (*Pro Hac Vice* Pending)
Polsinelli PC
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
Facsimile: (212) 684-0197
jeremy.johnson@polsinelli.com
bdolphin@polsinelli.com

PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION

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

In re:

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

..... Debtor.

Northwest Senior Housing Corporation,

..... Plaintiff,

v.

Intercity Investment Properties, Inc., and Kong
Capital, LLC,

..... Defendants.

Chapter 11

Case No. 22-30659 (MLV)

Adv. No. 22-30660 (MLV)

COMPLAINT

Plaintiff, Northwest Senior Housing Corporation d/b/a Edgemere, the above-captioned debtor and debtor-in-possession (“**Edgemere**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) and the plaintiff in the above-captioned adversary proceeding (the

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



“**Adversary Proceeding**”), by its undersigned counsel, hereby files this complaint (the “**Complaint**”) against defendant Intercity Investment Properties, Inc. (“**Intercity**”) and Kong Capital LLC (“**Kong**” and, together with Intercity, the “**Defendants**”), and alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

NATURE OF ACTION

1. Since 1999, Edgemere has owned and operated a continuing care retirement community (the “**Community**” known as a “**CCRC**”) in the Dallas metropolitan area. Over the course of the last several months, Defendants have engaged in unprecedented and unlawful activities attempting to destroy Edgemere’s business. Despite being under a non-disclosure agreement with Edgemere, and in possession of Edgemere’s confidential information, Defendants directly contacted the press, Edgemere’s residents, and Texas regulators without notice to Edgemere, all for the singular purpose of trying to manufacture an improper basis to terminate Intercity’s 52-year ground lease with Edgemere and wrongfully retake the property on which the Community sits – all so that they can repurpose it to make a windfall profit.

2. Defendants’ combined efforts would not only destroy Edgemere’s business, but also directly endanger the well-being of the more than 400 senior citizens that depend on Edgemere to provide both a safe place to live and certain health care services. Defendants’ actions would result in the loss of the significant entrance fee deposits paid by residents to become part of the Community, the loss of their homes, and the loss of the health care services upon which they rely. Defendants’ unlawful conduct has significantly damaged Edgemere’s business and the Community, and Edgemere is entitled to significant compensatory and exemplary (including punitive) damages as well as equitable relief to ensure Edgemere’s continued operations without Defendants’ interference.

PARTIES

3. Plaintiff Edgemere is incorporated as a Texas not-for-profit corporation exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code (“**IRC**”). Edgemere was formed to build and operate the Community, a CCRC located at the Property (as defined below), and provide housing, health care, and other related services to over 400 residents (each a “**Resident**,” and collectively, the “**Residents**”) in the independent living, assisted living, memory care, and skilled nursing facilities at the Property. Edgemere has operated at the Property since 1999, and Edgemere is the current lessee to the Lease (as defined below). Edgemere is certified pursuant to Section 33.102 of the Texas Administrative Code, and is qualified to be a CCRC.

4. Defendant Intercity is a Texas corporation with its principal place of business located at 4301 Westside Dr. #100, Dallas, TX 75209-6546. Intercity is a real estate investment company that holds a portfolio of retail, office, mixed-use, and multi-family assets. Intercity is the purported owner of the Property, which it leases to Edgemere pursuant to the Lease. Intercity is not certified to operate a CCRC pursuant to Section 33.102 of the Texas Administrative Code.

5. Defendant Kong is a Texas limited liability company with its principal place of business located at 2309 Bridle Path, Austin, TX 78703-3207. Kong is a real estate private equity firm that claims to specialize in strategic investments in the senior housing sector, but Kong is not authorized to operate a CCRC in Texas. At all relevant times, Kong has been acting as an agent for Intercity.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the matters raised in this Complaint under 28 U.S.C. § 1334. Such jurisdiction is core under 28 U.S.C. §§ 157(b)(2)(A), (B), (C), and (O). To the extent

that any matter raised in this Complaint is not core, Edgemere consents to the Court's entry of final orders under 28 U.S.C. § 157(c)(2).

7. Venue of this Complaint is proper under 28 U.S.C. §§ 1408 and 1409.

8. The claims alleged herein are properly brought as an adversary proceeding pursuant to, inter alia, Fed. R. Bankr. P. 7001(1), (2), (7), (8), and (9).

FACTUAL BACKGROUND

A. Edgemere's Facilities and Operations

9. Edgemere is a CCRC situated on 16.25-acre site located in Dallas, Texas. The Community consists of a total of 504 units separated into (i) an independent living section of 304 units, consisting of one-, two- and three-bedroom units, ranging from 800 to 2,026 square feet, and (ii) a health center, consisting of multi-level housing facilities including 68 assisted living units, 45 memory care support assisted living units, and 87 skilled nursing beds. The units are built around two courtyards, and provide a high level of staffing and specialists. The mix of independent living, assisted living, memory care, and skilled nursing allows the Residents to "age-in-place" so that they can live at the Community and continue to receive increasing levels of care as they age.

10. Edgemere has long been regarded as a premier luxury community in its market, providing high-end amenities for which Residents contract and rely upon as they enter the Community. To live at the Community, the Residents enter a "Residency Agreement" that requires payment of a sizeable, one-time, partially refundable entrance fee and a monthly service fee. In return, the Community provides the Residents different levels of care and the opportunity to age comfortably and safely in place.

11. Specifically, a Resident will pay an entrance fee (the "**Entrance Fee**"), generally ranging from \$345,000 to \$1,454,000, and fixed monthly fees (the "**Monthly Service Fees**") for Edgemere's commitment to provide life care services for the duration of the Resident's life.

Edgemere agrees to provide these services regardless of whether the Resident's needs change over time; in some cases a Resident may require additional services or the costs of providing such services may increase for Edgemere. Significantly, Edgemere's commitment to provide life care services continues even if a Resident's financial condition deteriorates and he or she is unable to continue to make monthly payments.

12. As is common in CCRC facilities, each of the Residents agrees that, so long as other contractual conditions are met, a large portion of his or her Entrance Fee will be refunded to the Resident or the Resident's estate when the Resident moves out or dies. And Residents, like other CCRC residents, agree that any Entrance Fee refund will only be paid once another Resident moves into the specific unit and Edgemere receives a new Entrance Fee for the vacated unit.

B. The Bonds

13. The Community was originally funded by tax-exempt bonds, which were refinanced in 2015 and 2017. Currently, Edgemere owes approximately \$107 million in obligations under its bonds, which are secured by liens on certain of Edgemere's assets as set forth in the applicable bond documents. UMB Bank, N.A., acts as the indenture trustee and master trustee (the "**Trustee**") under those bonds (the "**Bonds**").

C. The Lease and Non-Disclosure Agreement

14. Defendant Intercity purports to own the real property and improvements located at 8523 Thackery Street, Dallas, Texas 75225 (the "**Property**"), and more particularly described as Lots I 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.

15. On or about November 5, 1999, Edgemere and Defendant Intercity entered into a Ground Lease by which Edgemere leased the Property (the "**Lease**"). A true and correct copy of the Lease is attached hereto as **Exhibit A** and is incorporated herein by reference.

16. When Edgemere and Intercity entered into the Lease, the parties knew and understood that Edgemere intended to operate the Community as a CCRC regulated by the Texas Department of Insurance. *See* Lease, Exh. A, § 5.5 (Lessee (Edgemere) 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); § 5.18 (Lessee (Edgemere) 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 such agreement is consistent with Section 5.5 of this Lease ...). Intercity agreed that Edgemere was entitled to use the Property to operate the Community for the full term of the Lease free from Intercity's interference. (*See id.* §§ 2.3, 2.4).

17. Senior Quality Lifestyles Corporation (“**SQLC**”) was the original parent company and sponsor of Edgemere, and SQLC encountered financial difficulties over the years leading up to 2019. In June 2019, Lifespace Communities, Inc. (“**Lifespace**”), a non-profit owner and successful operator of a nationwide portfolio of CCRC's, entered the picture and became the new sponsor and parent company of Edgemere and SQLC. Aiming to revitalize and sustain the Community, Lifespace also took over management of Edgemere.

18. In late 2020 and early 2021, Edgemere, under the new leadership of Lifespace and now navigating the fallout from the worldwide COVID-19 pandemic, engaged professionals to evaluate its capital structure, including its significant liabilities, to develop strategies to improve Edgemere's operations and long-term financial stability.

19. Edgemere attempted to engage in negotiations with Intercity regarding the Lease or to buy the Property, but Intercity refused to respond. Edgemere then stopped paying rent in September 2021, and immediately thereafter, Intercity finally began to engage in negotiations.

20. As a condition to sharing highly-sensitive, confidential information regarding Edgemere and the Community, Edgemere required Intercity to sign a Confidentiality and Non-Disclosure Agreement dated as of September 7, 2021 (the “**NDA**”), a true and correct copy of which is attached hereto as **Exhibit B** and is incorporated herein by reference.

21. The NDA not only prohibited Intercity from disclosing Edgemere’s confidential information (as defined in the NDA) (the “**Confidential Information**”) to any third parties,² but also expressly limited the way Intercity could use such Confidential Information. Specifically, Intercity agreed that it would only use Edgemere’s Confidential Information to evaluate a potential restructuring of the Lease (or obligations under the Bonds), or with respect to its rights under the Lease. (Exh. B, at § 2). And Intercity expressly agreed that it would not use Edgemere’s Confidential Information “for any competitive purpose.” (*Id.* at § 3).

22. As part of its analysis and negotiations, Edgemere realized that the Lease contained terms that were inappropriate for a CCRC and that violated applicable law. As described in greater detail in Count 7 below, the Lease purports to provide that, upon termination, Intercity can assume Edgemere’s Residency Agreements with Residents and otherwise step into Edgemere’s shoes, and could, despite the terms of the Residents’ Residency Agreements and the substantial Entrance Fees

² Although the NDA allows disclosures to certain Representatives, the NDA provides that the parties “agree to instruct their respective Representatives not to disclose Confidential Information to any Person without the written permission of the disclosing party providing such Confidential Information.” (Exh. B, § 2). In other words, disclosure of Confidential Information by a party’s Representative constitutes a breach by such party under the NDA. (*See id.* § 11 (“Each party shall be responsible for any breach of this Agreement by any of its Representatives.”)).

paid, seek to expel or remove the Residents from the Community. But Intercity is not authorized to own or operate a CCRC, making the Lease contrary to Texas law and public policy. (*Id.* § 8.2)

23. Over the next several months, Edgemere and Intercity, along with the Trustee, engaged in discussions regarding the Lease, including detailed discussions of specific terms by which the Lease could be restructured (as well as potential terms to restructure the obligations under the Bonds), with the aim of a global resolution among Edgemere, Intercity, and the Trustee. To facilitate those discussions, and advance what Edgemere assumed were good faith negotiations, Edgemere provided Intercity with a substantial volume of highly confidential and proprietary information, including financial and operational information relating to Edgemere and the Community.

24. On information and belief, Intercity never intended to keep its promises under the NDA, but instead, used the NDA to gain information it could use to its advantage to develop its own business plan and strategy to intentionally destroy Edgemere's business and retake possession of the Property. Rather than using Edgemere's Confidential Information for permitted purposes under the NDA, Intercity conducted due diligence on how to put the Property to a competing use – a use that would put Edgemere out of business and result in the Residents never recovering their Entrance Fees.

25. For example, on September 17, 2021, only ten (10) days after executing the NDA, Intercity issued a Notice of Lessor's Intent to Terminate the Lease (the "**Notice to Terminate**").

D. The Forbearance Agreement

26. During this time, Edgemere, Intercity, and the Trustee were also negotiating a forbearance agreement to facilitate discussions about the Lease. Intercity dragged out the forbearance negotiations for more than three months until December 2021, and in the meantime, was preparing its strategy to destroy Edgemere's business.

27. Intercity waited until December 21, 2021 to agree to enter into the long-contemplated Forbearance Agreement (the “**Forbearance Agreement**”) with Edgemere and the Trustee that was intended to cover a number of months over the fall and spring. While Intercity’s foot-dragging caused the initial term of the Forbearance Agreement to cover only ten days between December 21, 2021 and December 31, 2021, it was premised on – and specifically described – the parties’ intent to extend the Forbearance Agreement through March 31, 2022. A true and correct copy of the Forbearance Agreement is attached hereto as **Exhibit C** and is incorporated herein by reference.

28. The Forbearance Agreement included specific milestones that extended through March 2022. Specifically, the Forbearance Agreement expressly contemplated that Edgemere would provide a Lease restructuring term sheet by December 21, 2021, with Intercity’s substantive response due 14 days later, on January 4, 2022. (*See* Exh. C. § II(e)(1), (2)). Likewise, the Forbearance Agreement required submission of “13-week cash budget” extending from December 10, 2021 into March 2022. (*See id.*, § II(e)(1)-(6)).

29. Just like with the NDA, Intercity had no intent to perform under the Forbearance Agreement.

30. Edgemere provided the contemplated Lease restructuring term sheet to Intercity earlier than required, on December 6, 2021. Despite its express agreement to provide a substantive written response and comments to Edgemere’s term sheet, Intercity did not respond. When Edgemere inquired about Intercity’s failure to respond, Intercity stated that it was not interested in restructuring the Lease.

31. Under the Forbearance Agreement, Edgemere was also required to wire \$357,878.59 to Intercity, representing one month's rent due under the Lease, by December 21, 2021. In turn, Intercity was obligated to deliver a notice rescinding the Notice to Terminate.

32. Edgemere wired the \$357,878.59 to Intercity on December 21, 2021. Intercity did not rescind the Notice to Terminate.

33. The Forbearance Agreement also provided that Edgemere would pay Intercity's reasonable professional fees related to the Forbearance Agreement within fourteen days after receiving invoices reflecting the fees. Before the end of December 2021, after Edgemere had paid the agreed one-month rent payment, Intercity claimed the Forbearance Agreement was not effective because Edgemere had not yet paid Intercity's professional fees. At the time, Intercity had neither demanded payment of those fees nor provided invoices or supporting documentation for the professional fees. Edgemere's time to pay the professional fees had not even started running, let alone expired.

34. Intercity provided Edgemere with invoices on January 7, 2022, for approximately \$299,000 in professional fees, and provided wiring instructions on January 10, 2022 for payment of the professional fees. Edgemere wired the \$299,000 on January 10, 2022.

35. Immediately thereafter, Intercity advised Edgemere and the Trustee, for the first time, that it was not willing to extend the Forbearance Agreement. Intercity did not, of course, return any of the payments it had just received.

36. On January 17, 2022, Intercity, through counsel, wrote Edgemere to rescind its Notice to Terminate. But in the same letter, Intercity advised Edgemere that the Notice to Terminate was automatically reinstated effective immediately.

37. Intercity never had any intention of performing the NDA or Forbearance Agreement, negotiating with Edgemere, or extending the Forbearance Agreement. To the contrary, Intercity acted in bad faith and delayed any substantive responses to Edgemere while it prepared its takeover strategy.

E. Defendant Intercity Breaches the NDA and Tries to Destroy Edgemere's Business and the Community

38. Upon information and belief, Intercity, through its agent and representative Kong, mined social media outlets, including Facebook, to identify individual Residents of the Community.

39. Despite its obligations under the NDA and its possession of Edgemere's Confidential Information, Intercity, through its agent Kong, then directly contacted numerous Residents and began attempting to frighten them that Edgemere would be unable to repay their Entrance Fees – without explaining, of course, that Intercity's competing plan was to repurpose the Property and leave the Residents no hope of a refund of their Entrance Fees. Despite being under the NDA, Intercity, through its agent and representative Kong, also openly discussed Edgemere's Confidential Information obtained under the NDA, including non-public information about Edgemere's financial condition and strategic plans.

40. In addition, despite being under NDA, on February 22, 2022, Intercity, through its counsel, sent a letter (the “**Intercity Letter**”) to Edgemere and numerous third parties – including the Trustee, the Community's Residents' Association, the Texas Attorney General, and the Texas Department of Insurance, which appears to disclose and was necessarily based on Confidential Information relating to Edgemere, its financial condition, including (a) the discussions and negotiations related to the Transaction (as defined in the NDA), (b) the financial condition of

Edgemere, and (c) Edgemere's business plans. A true and correct copy of the Intercity Letter is attached hereto as **Exhibit D** and is incorporated herein by reference.

41. The Intercity Letter indicated that Intercity had hired Kong to consult on matters relating to the Lease and the Transaction, but also revealed Intercity's scheme to work with Kong to wrest control of the Community from Edgemere and the Residents. Specifically, the Intercity Letter acknowledged the scheme by stating "[Kong] has the necessary expertise and personnel to convert the [Community] from a CCRC into a senior living rental facility." (Exh. D, p. 2). And the Intercity Letter made clear this scheme was real and already underway by demanding that Edgemere work with Intercity "to effectuate this conversion to a rental community as safely and seamlessly as possible." (*Id.* p. 3).

42. Further, despite being under NDA, Intercity, through its agent Kong, communicated with *The Dallas Morning News* ("DMN"). On February 22, 2022, Lifespace received an email from Natalie Walters, a reporter with DMN, requesting comment on a story about Edgemere that DMN planned to publish imminently. In the email, Ms. Walters identified herself as the "money" reporter for DMN. Ms. Walters indicated that she had been contacted by Kong and provided a list of questions regarding Edgemere's Confidential Information. Despite being under NDA and in possession of Edgemere's Confidential Information, Defendants communicated with Ms. Walters in an attempt to destabilize the Community, with full knowledge, awareness, and intent that such Confidential Information would be communicated to the public in violation of the NDA, and to the detriment of Edgemere, all as part of their scheme to destroy Edgemere's business.

43. The DMN subsequently published several negative stories about Edgemere, and the negative press coverage continues. Indeed, the initial DMN story quoted Kong, and referenced

landlord concerns in its caption. *See* Natalie Walters, “High-end Dallas retirement community’s financial woes worry investors, landlord,” *Dallas Morning News* (February 27, 2022) (the “**February 27 Article**”), a true and correct copy of which is attached hereto as **Exhibit E** and is incorporated herein by reference.

44. Among other things, in a deliberate effort to destabilize the Community and dissuade prospective residents from joining the Community, and despite knowing that Edgemere had previously implemented an Entrance Fee escrow account to safeguard future residents’ Entrance Fee deposits during the restructuring discussions, Kong falsely stated in the February 27 Article that “[i]t’s unfair and unjust for Edgemere to continue to take deposits from future residents under current circumstances.”

45. Further, in its attempt to destroy the Community, and despite being under NDA, Kong’s CEO provided inflammatory quotes to DMN, including stating “I fear the residents are on a sinking ship and some of them may not even know it.”

46. Upon information and belief, Intercity, through its agent and representative Kong, disclosed additional Confidential Information to DMN in an effort to convince that outlet to publish an additional article regarding Edgemere and its financial situation and, in particular, the purported uncertainty regarding the repayment of the Residents’ Entrance Fees.

47. As a result of Intercity’s and Kong’s communications with DMN despite being under NDA, DMN then published an additional article on March 16, 2022. *See* Natalie Walters, “‘We are very nervous’: Families of former Edgemere residents worry they may not get deposits back,” *Dallas Morning News* (March 16, 2022) (the “**March 16 Article**”). A true and correct copy of the March 16 Article is attached hereto as **Exhibit F** and is incorporated herein by reference. Ms. Walters also did at least one television news interview as a result.

48. Defendants' actions have significantly damaged Edgemere's operations, exactly as Defendants intended.

F. Intercity's Bad Faith and Disruptive Inspection Demands

49. In addition to its disruptive media campaign and improper Resident communication strategy, in November 2021, Intercity demanded a comprehensive inspection of Edgemere and the Property (the "**November 2021 Inspection**"). Edgemere accommodated Intercity's demand.

50. Then again, immediately after reneging on its prior commitment and refusing to extend the Forbearance Agreement, Intercity demanded another comprehensive inspection of Edgemere and the Property in January 2022 (the "**January 2022 Inspection**"). Edgemere again accommodated, and this time, Kong accompanied Intercity on the January 2022 Inspection.

51. During the January 2022 Inspection, rather than evaluate the current condition of the Property, Kong, in furtherance of Intercity's scheme to wrest control of the Property and Community from Edgemere, grilled Edgemere's executives and staff regarding Edgemere's financial situation and general operations.

52. In March 2022, all rent and other defaults were cured, including payments to Intercity of nearly \$3.2 million.³ In response to this substantial payment, Intercity provided Edgemere an estoppel certificate confirming that Edgemere had cured all defaults and no remaining or additional default was pending (the "**Estoppel Certificate**"). A true and correct copy of the Estoppel Certificate, dated March 7, 2022, is attached hereto as **Exhibit G** and is incorporated herein by reference. Nonetheless, immediately after all defaults under the Lease were

³ On information and belief, \$250,000 of the approximately \$3.2 million cure payment was to reimburse Intercity for professional fees it claimed it paid Kong in conjunction with the Forbearance Agreement and other aspects of the negotiations with Edgemere. As established herein, Intercity instead remarkably required Edgemere to reimburse it for fees it paid to its partner and agent, Kong, to develop and implement its unlawful and malicious scheme to wrest control of the Community from Edgemere for Intercity's and Kong's windfall profit.

cured in March 2022, Intercity demanded a third comprehensive inspection of the Property, now requesting at least four (4) days on site at the Community (the “**March 2022 Inspection Demand**”).

53. Further, despite Intercity’s actions to destroy Edgemere’s business, Intercity demanded in mid-March that Edgemere sign a certification that Intercity had not committed any defaults under the Lease. Based on all of Intercity’s bad acts, Edgemere refused to sign the certification. Intercity used that refusal as a pretense to send Edgemere another Notice of Default, asserting that the failure to sign the certificate would permit Intercity to exercise rights to take over the Property in thirty days, or as of April 16, 2022. This letter forced Edgemere to commence these Chapter 11 Cases before the purported April 16 deadline.

54. On information and belief, the November 2021 Inspection, January 2022 Inspection, and March 2022 Inspection Demand were the first and only inspections and demands made by Intercity during the entire term of the Lease. Intercity and its agent and representative Kong used these inspections to evaluate how to prepare the Community for an alternative use after they destroy Edgemere’s business and thereby create a windfall for themselves while causing Residents to lose their homes and forfeit their substantial Entrance Fee deposits. In its counsel’s March 24, 2022 letter, Intercity even acknowledged that part of the purpose of the March 2022 Inspection Demand was to search for additional undisclosed defaults under the Lease, despite recently inspecting the Property twice, having just accepted more than \$3.2 million, and confirming in the Estoppel Certificate that Edgemere had cured all defaults under the Lease. A true and correct copy of Intercity counsel’s March 24, 2022 letter is attached hereto as **Exhibit H** and is incorporated herein by reference.

55. Intercity's repeated and continuing demands for inspections were and are made in bad faith and intended to disrupt Edgemere's business, sow additional seeds of fear and discord among the Residents, and create the false impression that Edgemere will be unable to continue to provide care and service to the Residents.

G. Defendants' Actions Demonstrate a Concerted And Malicious Effort to Harm Edgemere's Business and Wrongfully Obtain Control of Edgemere

56. Defendants are attempting to drive Edgemere out of business so that Intercity can wrongfully takeover the Community and the Property to repurpose it for a competing use.

57. Unfortunately, Defendants' efforts to harm Edgemere's business are working. In the aftermath of Defendants' breaches of the NDA and other misconduct, call volume from prospective residents has dropped, tours among prospective residents have diminished, referrals of existing Residents to higher levels of care within the Community are down, and individuals previously committed to joining the Community have delayed closing on their contracts. In fact, in 2021, despite the ongoing COVID-19 pandemic, Edgemere closed on contracts with new residents for 48 units, an average of four each month. In the two months since Kong and Intercity caused the first article in DMN to be published, Edgemere has not closed any new Residency Agreements. Edgemere is not making sales, despite the fact that Edgemere has in place an Entrance Fee escrow account to safeguard future residents' Entrance Fee deposits during the restructuring process.

58. Further, the string of articles in DMN, which Defendants initiated despite their NDA obligations (which Defendants never intended to honor), continue to damage Edgemere's business.

59. Defendants' egregious misconduct has directly damaged Edgemere's business and exacerbated the financial situation Edgemere has been working for months to comprehensively address.

60. Defendants' intentional actions to harm Edgemere's business not only dissuade potential new residents from joining the Community, but also diminish Entrance Fee revenue that is necessary for Edgemere to fulfill obligations under the Residency Agreements and to service its obligations under the Bonds.

61. Likewise, Intercity's disavowal of the Forbearance Agreement, including entering into the Forbearance Agreement with no present or actual intent to fulfill its obligations thereunder, resulted in Intercity harvesting in excess of \$650,000 in cash from Edgemere (and nearly \$3.9 million overall) while providing no consideration or benefit to Edgemere in return.

COUNT 1

(Breach of Contract (NDA) – Against Defendant Intercity)

62. Edgemere incorporates by reference the allegations in all preceding paragraphs as if set forth fully herein.

63. Edgemere brings this claim against Defendant Intercity to enforce its rights under the NDA.

64. The NDA constitutes a valid and enforceable contract between Edgemere and Intercity, among others.

65. Under the NDA, Intercity made a number of promises to Edgemere, including, without limitation, to:

(a) Hold Edgemere's Confidential Information in strict confidence and not disclose such Confidential Information to any third party except as permitted by the NDA (*see* NDA, Exh. B, § 2);

(b) Not to use Edgemere's Confidential Information for any purpose other than a Permitted Use *and not to use the Confidential Information for any competitive purpose* (*see* NDA, Exh. B, § 3 (emphasis added));

(c) Instruct its agents and representatives not to disclose Confidential Information to any Person without the written permission of the disclosing party providing such Confidential Information (Edgemere) (*see* NDA, Exh. B, § 2); and

(d) Be responsible for any breach of the NDA by any of its representatives (*see* NDA, Exh. B, § 11).

66. Intercity materially breached its obligations arising under the NDA, including, without limitation, the foregoing, by repeatedly, either directly or through its agent and representative Kong, using Edgemere's Confidential Information to compete with and destroy Edgemere's business, and by disclosing Edgemere's Confidential Information to third parties. In particular, while in possession of Edgemere's Confidential Information, which Intercity and Kong were allowed to use only for a Permitted Purpose as set forth in the NDA, Intercity and Kong:

(a) sent the Intercity Letter (Exh. D hereto) to counsel for the Trustee, the Residents' Association, the Residents, and officials of the Texas Attorney General's Office and the Texas Department of Insurance;

(b) communicated with DMN to initiate a negative press campaign resulting in highly negative coverage of Edgemere in DMN and other publications (*see* Exhs. E and F hereto);

(c) engaged (and continue to engage) in direct communications with the Residents; and

(d) used Confidential Information to evaluate and attempt to implement competitive opportunities against Edgemere, including converting the Community and Property to a different use.

67. The foregoing actions are blatant violations of the NDA.

68. The improper disclosures of Edgemere's Confidential Information were intended by Intercity and its representative Kong to undermine Edgemere's business so that Defendants can wrest control of the Community away from Edgemere – a devastating act of direct competition with Edgemere – and obtain the buildings and other improvements to the Property, including the Community, with no consideration to Edgemere (or the Trustee), and then convert the Community and Property to a new use that Intercity and Kong believe would result in substantially higher profits to each of them. And along the way, Intercity and Kong would either evict the Residents from the Community or deny them refunds of the substantial Entrance Fees they previously paid. Intercity and Kong undertook these actions with a singular motivation – to capture a substantial windfall at the direct expense of Edgemere, the Residents, and the bondholders.

69. Intercity's breaches of the NDA have damaged and continue to substantially harm and damage Edgemere and its business in an amount to be determined at trial. Indeed, Intercity's breaches of the NDA and other misconduct substantially contributed to Edgemere having to file for chapter 11 protection on April 14, 2022.

70. Accordingly, Edgemere sues Intercity for damages and other relief arising from Intercity's breach of the NDA.

COUNT 2

(Promissory Fraud Against Defendant Intercity)

71. Edgemere incorporates by reference the allegations in all preceding paragraphs as if set forth fully herein.

72. Defendant Intercity entered into the NDA with no present intent to perform.

73. Instead, on information and belief, Intercity's intent was to gain Edgemere's Confidential Information that Intercity could use to Edgemere's detriment and to destroy Edgemere's business. Among other things, Intercity gained invaluable insight into Edgemere's past and current financial performance, short and long-term financial projections, specific marketing plans and initiatives, and overall long-term strategic plans.

74. Additionally, on information and belief, Intercity entered into the Forbearance Agreement with no present intent to perform. Though Intercity's delays in responding in negotiations caused that agreement to cover only ten days in late December 2021, it was based on specifically described the parties' intent to extend the Forbearance Agreement through March 31, 2022. The Forbearance Agreement included specific milestones that extended through March 2022. Specifically, the Forbearance Agreement contemplated that Edgemere would provide a Lease restructuring term sheet by December 21, 2021, with Intercity's substantive response due 14 days later, on January 4, 2022 (days after the initial expiration). (*See* Exh. C. § II(e)(1), (2)). Likewise, the Forbearance Agreement required submission of "13-week cash budget" extending from December 10, 2021 into March 2022 (months beyond the initial expiration). (*See id.*, § II(e)(1)-(6)).

75. Beyond the express terms of the Forbearance Agreement, Intercity's actions further confirm it never intended to comply with its obligations. For example, Edgemere provided the

contemplated Lease restructuring term sheet to Intercity earlier than required, on December 6, 2021. Despite its express agreement to provide a substantive written response and comments to Edgemere's term sheet, Intercity did not respond. When Edgemere inquired about Intercity's failure to respond, Intercity stated that it was not interested in restructuring the Lease.

76. After Intercity received all of the monetary and other benefits under the Forbearance Agreement, including substantial payments of rent and reimbursement of legal fees, Intercity failed and refused to provide a written response and comments to Edgemere's term sheet or otherwise negotiate in good faith regarding a Lease restructuring.

77. Edgemere relied upon Intercity's promises to abide by the terms of the NDA and Forbearance Agreement, and would not have entered into those agreements if it knew that Intercity had no intention to honor its obligations thereunder.

78. Intercity's disavowal of the NDA and Forbearance Agreement is in furtherance of its scheme to undermine Edgemere's business so that it can take the Community away from Edgemere, convert the Community to a rental community (rather than a regulated CCRC), or convert it to some other purpose altogether, in order to realize a higher value that would result from such new use, either evicting Residents from the Community or denying them credit for the substantial Entrance Fees they previously paid.

79. Intercity's fraud and misrepresentations relating to the NDA and Forbearance Agreement, and otherwise, have substantially damaged and continue to damage Edgemere and its business in an amount to be determined at trial.

80. Accordingly, Edgemere sues Intercity for damages and other relief arising from Intercity's promissory fraud of Edgemere related to the NDA and Forbearance Agreement. Indeed,

Intercity's promissory fraud, and other misconduct, substantially contributed to Edgemere having to file its Chapter 11 Case.

81. Further, Intercity's conduct in entering into the NDA and Forbearance Agreement with no present intent to abide by those agreements' terms reflects Intercity's specific intent to cause substantial injury or harm to Edgemere. Intercity's conduct was both malicious and fraudulent and thus justifies an award of exemplary damages against Intercity in an amount sufficient to punish Intercity and deter Intercity and others from like conduct in the future.

COUNT 3

(Tortious Interference With Existing Contractual and Business Relations – Against Defendants Intercity and Kong)

82. Edgemere incorporates by reference the allegations in all preceding paragraphs as if set forth fully herein.

83. Edgemere has valid and enforceable Residency Agreements with the Residents.

84. By engaging in direct, improper discussions with the Residents while under the NDA with Edgemere, and by making false and malicious statements to DMN (including, without limitation, that "[i]t's unfair and unjust for Edgemere to continue to take deposits from future residents under current circumstances" when Defendants knew that Edgemere had months earlier instituted an escrow for all Entrance Fees received from new residents effective as of September 27, 2021 as expressly acknowledged in the Forbearance Agreement (Exh. C, *see* § VIII)), Defendants committed willful and intentional acts of interference with Edgemere's contractual relationships with the Residents.

85. Defendants' actions were intended to create, and had the effect of creating, extreme fear and concern among the Residents regarding the future viability of the Community, whether the Residents would be able to continue to reside at the Community, and whether they or their

families would receive a return of any of their Entrance Fees upon the Residents leaving the Community. Because the return of any Entrance Fees to a given Resident or his/her family is contingent in part upon the Resident's unit being occupied by a new resident, the chilling effect of Defendants' misconduct on prospective sales to new residents (as described in Count 4 below) has a direct and profoundly negative impact on the Residents and their families. As a result, Edgemere has been forced to adjust (*i.e.*, lower) its financial projections provided to the Trustee in connection with the proposed postpetition financing of these Chapter 11 Cases and any restructuring and/or refinancing of the Bonds. Defendants' misconduct thus likewise interferes with Edgemere's contractual relations with the bondholders by preventing Edgemere from fulfilling its obligations under the Bonds, whether restructured or otherwise.

86. Defendants' willful and intentional acts of interference are in furtherance of their scheme to destroy Edgemere's business, wrest control of the Community away from Edgemere, convert the Community to a different use to realize a windfall, and either evict Residents from the Community or deny them the promised return of the substantial Entrance Fees they previously paid.

87. Defendants' tortious interference with Edgemere's existing contractual and business relationships has proximately caused substantial damages to Edgemere and its business in an amount to be determined at trial. Indeed, Defendants' tortious interference with Edgemere's existing contractual and business relationships and other misconduct substantially contributed to Edgemere having to file its Chapter 11 Case.

88. Accordingly, Edgemere sues Defendants for damages and other relief arising from their tortious interference with Edgemere's existing contracts and business relationships.

89. Further, Intercity's and Kong's respective actions in tortiously interfering with Edgemere's existing contracts and business relations by, among other things, disclosing Edgemere's confidential and proprietary information to DMN and the Residents, among others, reflects that each of Intercity and Kong took those actions with the specific intent to cause substantial injury or harm to Edgemere. Intercity's and Kong's individual and joint conduct was malicious and thus justifies an award of exemplary damages against Intercity in an amount sufficient to punish Intercity and Kong and deter them and others from like conduct in the future.

COUNT 4

(Tortious Interference With Prospective Contractual and Business Relations – Against Defendants Intercity and Kong)

90. Edgemere incorporates by reference the allegations in all preceding paragraphs as if set forth fully herein.

91. There is a reasonable probability that Edgemere would, with future prospective residents of the Community, enter into life care contracts and/or residency agreements and form business relationships.

92. By engaging in direct, improper discussions with the Residents while under the NDA with Edgemere, and by making false and malicious statements to DMN (including, without limitation, that “[i]t’s unfair and unjust for Edgemere to continue to take deposits from future residents under current circumstances” when Defendants knew that Edgemere had months earlier instituted an escrow for all Entrance Fees received from new residents effective as of September 27, 2021 as expressly acknowledged in the Forbearance Agreement (Exh. C, *see* § VIII)), Defendants either acted with a conscious desire to prevent Edgemere's prospective contractual and business relations from occurring, or knew the interference was certain or substantially certain to occur as a result of their conduct.

93. As a result of Defendants' misconduct, call volume from prospective residents has dropped, tours among prospective residents have diminished, referrals of existing residents to higher levels of care within the Community are down, and individuals previously committed to joining the Community have delayed closing on their contracts. In fact, in 2021, despite the ongoing COVID-19 pandemic, Edgemere closed on contracts with new residents for 48 units, an average of four each month. In the two months since Kong and Intercity caused the first article in DMN, Edgemere has not closed any new Residency Agreements.

94. As a result of the precipitous drop in interest by prospective residents, Entrance Fee deposits and other revenue will fall substantially going forward, thus further threatening Edgemere's financial viability. In response, Edgemere has been forced to adjust (*i.e.*, lower) its financial projections provided to the Trustee in connection with the proposed postpetition financing of these Chapter 11 Cases and any restructuring and/or refinancing of the Bonds.

95. Defendants' acts of interference are independently tortious or unlawful as evidenced in part by their breaches of the NDA and other misconduct described herein.

96. Defendants' tortious interference with Edgemere's prospective contractual and business relationships has proximately caused substantial damages to Edgemere and its business in an amount to be determined at trial. Indeed, Defendants' tortious interference with Edgemere's prospective contractual and business relationships and other misconduct substantially contributed to Edgemere having to file its Chapter 11 Case.

97. Accordingly, Edgemere sues Defendants for damages and other relief arising from their tortious interference with Edgemere's prospective contracts and business relationships.

98. Further, Intercity's and Kong's respective actions in tortiously interfering with Edgemere's prospective existing contracts and business relations by, among other things,

disclosing Edgemere's confidential and proprietary information to DMN and the Residents, among others, reflects that each of Intercity and Kong took those actions with the specific intent to cause substantial injury or harm to Edgemere. Intercity's and Kong's individual and joint conduct was malicious and thus justifies an award of exemplary damages against Intercity in an amount sufficient to punish Intercity and Kong and deter them and others from like conduct in the future.

COUNT 5

(Civil Conspiracy – Against Defendants Intercity and Kong)

99. Edgemere incorporates by reference the allegations in all preceding paragraphs as if set forth fully herein.

100. On information and belief, Intercity and Kong each has an improper object to be accomplished, consisting of their scheme to destroy Edgemere's business, wrest control of the Community away from Edgemere, convert the Community to an alternative use to realize the much higher value that would result from such new use, and either evict Residents from the Community or deny them repayment of the substantial Entrance Fees they previously paid.

101. On information and belief, Intercity and Kong have reached a meeting of the minds on the improper object to be accomplished and a course of action in order to accomplish such improper object.

102. Defendants' acts in furtherance of the improper object to be accomplished are independently tortious or unlawful as evidenced in part by their breaches of the NDA and other misconduct described herein.

103. Although Kong is and has acted as agent or representative of Intercity, on information and belief, Kong is also acting for its own personal gain in connection with Defendants' improper scheme.

104. Defendants' conspiracy and other misconduct has proximately caused substantial damages to Edgemere and its business in an amount to be determined at trial. Indeed, Defendants' conspiracy and other misconduct substantially contributed to Edgemere having to file its Chapter 11 Case.

105. Further, in implementing their fraudulent scheme for their individual and collective benefit, Intercity and Kong engaged in fraudulent acts and otherwise acted with specific intent to cause substantial injury or harm to Edgemere. Intercity's and Kong's individual and joint conduct was both fraudulent and malicious and thus justifies an award of exemplary damages against Intercity in an amount sufficient to punish Intercity and Kong and deter them and others from like conduct in the future.

COUNT 6

(Equitable Subordination – Against Defendant Intercity)

106. Edgemere incorporates by reference the allegations in all preceding paragraphs as if set forth fully herein.

107. Defendant Intercity has engaged in a campaign intended to destabilize and destroy the business of Edgemere and the Community. It has committed unlawful acts and used unlawful means, and engaged in outrageous conduct.

108. Among other things, Intercity has engaged in substantial, ongoing inequitable conduct consisting of, among other things, breach of the NDA, promissory fraud relating to the NDA and the Forbearance Agreement, tortious interference with Edgemere's current and prospective contracts and business relations, civil conspiracy with Kong, and other misconduct described above.

109. Intercity's willful and brazen misconduct has caused injury to Edgemere and its other creditors, and has conferred an unfair advantage on Intercity.

110. Intercity's misconduct is substantial, involves moral turpitude, is a breach of duty and/or a misrepresentation whereby other creditors, including the bondholders, were deceived to their damage, and/or is gross misconduct amounting to fraud, overreaching or spoliation. Indeed, Intercity's misconduct should shock the conscience of the Court.

111. Based on Intercity's misconduct and resulting substantial damage to Edgemere and its other creditors, all existing and future claims of Intercity under the Lease should be equitably subordinated to all other allowed claims in Edgemere's bankruptcy case, including the Residents' claims and the bondholders' claims.

112. Equitable subordination of Intercity's existing and future claims under the Lease as requested herein is consistent with the provisions of the Bankruptcy Code.

COUNT 7

(Reformation of Lease – Against Defendant Intercity)

113. Edgemere incorporates by reference the allegations in all preceding paragraphs as if set forth fully herein.

114. Except as expressly set forth below, the Lease constitutes a valid and enforceable contract between Edgemere and Defendant Intercity.

115. When Edgemere and Intercity originally entered into the Lease, the parties knew and understood that Edgemere intended to operate the Community as a CCRC regulated by the Texas Department of Insurance. Consistent with this knowledge and understanding, Section 5.5 of the Lease provides that Lessee (Edgemere) 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. Section 5.18 of the Lease further provides in relevant part that Lessee (Edgemere) 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 such agreement is consistent with Section 5.5 of this Lease ... (*See Lease, Exh. A, §§ 5.5, 5.18.*)

116. Despite that both parties knew and understood that the Community would be operated as a regulated CCRC, where the safety, well-being, and treatment of the Residents is paramount, the parties made a mutual mistake regarding one of the other provisions of the Lease that is contrary to the foregoing provisions of the Lease and important Texas public policy interests in protecting the Residents. In particular, Section 8.2 of the Lease provides in relevant part that:

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... *** 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. ***

(*See id.*, at § 8.2 (emphasis added).)

117. As drafted, Section 8.2 of the Lease can be read to permit Intercity upon any breach thereunder to repossess the Community and then either seek to assume the Residents' Residency Agreements despite the fact that Intercity is not a licensed CCRC operator, or seek to expel or remove the Residents despite their Residency Agreements and the substantial Entrance Fees they paid to ensure their continued residency and care at the Community.

118. In fact, it now appears that Intercity seeks to take advantage of this provision of the Lease in an attempt to destroy Edgemere's business, wrest control of the Community away from Edgemere, convert the Community to realize the much higher value that it believes would result from such new use, and either evict the Residents from the Community or deny them credit for the substantial Entrance Fees they previously paid.

119. That Section 8.2 purports to provide rights to Intercity that are inconsistent with the other provisions of the Lease as well as important underlying Texas public policy interests in protecting CCRC residents, which was known to the parties when they entered into the Lease, demonstrates their mutual mistake in including such rights in Section 8.2 of the Lease.

120. As a result of the parties' mutual mistake, the Lease should be reformed to eliminate any and all provisions therein, including Section 8.2, providing Intercity any direct or indirect right to assume Edgemere's Residency Agreements with the Residents, terminate such agreements without the consent of such Residents, or otherwise evict the Residents.

121. Additionally, and/or alternatively, if the Court finds the parties did not make a mutual mistake with respect to Section 8.2 of the Lease as set forth above, the Court should find

and declare that to the extent that Section 8.2 would permit Intercity to either seek to assume the Residents' Residency Agreements despite the fact that Intercity is not a licensed CCRC operator, or seek to expel or remove the Residents despite their Residency Agreements and the substantial Entrance Fees such Residents paid to ensure their continued residency and care at the Community, that Section 8.2 is void and unenforceable as against Texas public policy. In fact, representatives of the Texas Department of Insurance have raised concerns regarding the ability of Intercity to take possession of and operate the Community upon any default under the Lease.

WHEREFORE, Edgemere respectfully requests that the Court grant the following relief in favor of Edgemere:

- A. Judgment against Defendant Intercity for breach of the NDA under Count 1;
- B. Judgment against Defendant Intercity for promissory fraud relating to the NDA and Forbearance Agreement under Count 2;
- C. Judgment against Defendants Intercity and Kong for tortious interference with Edgemere's current contracts and business relations under Count 3;
- D. Judgment against Defendants Intercity and Kong for tortious interference with Edgemere's prospective contracts and business relations under Count 4;
- E. Judgment against Defendants Intercity and Kong for civil conspiracy under Count 5;
- F. Judgment against Defendant Intercity for equitable subordination of all of Intercity's existing and future claims against Edgemere under the Lease to all other allowed claims in Edgemere's bankruptcy case under Count 6;

G. Judgment against Defendant Intercity for reformation of the Lease and/or for a declaration regarding the invalidity and unenforceability of portions of Section 8.2 of the Lease as against Texas public policy under Count 7;

H. An award of monetary damages, including compensatory damages, in an amount to be determined at trial, under Counts 1-5;

I. An award of exemplary damages, including punitive damages, in an amount to be determined at trial, under Counts 2-5;

J. An award of Edgemere's reasonable attorney's fees and costs;

K. An award of prejudgment interest and post-judgment interest on the monetary damages awarded under Counts 1-5 as provided by law; and

L. Such other and further legal and equitable relief as may be just and proper.

Dated: April 14, 2022
Dallas, Texas

POLSINELLI PC

/s/ Trinitee G. Green
Trinitee G. Green (SBN 24081320)
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
Facsimile: (214) 397-0033
tggreen@polsinelli.com

Jeremy R. Johnson (*Pro Hac Vice* Pending)
Brenna A. Dolphin (*Pro Hac Vice* Pending)
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
Facsimile: (212) 684-0197
jeremy.johnson@polsinelli.com
bdolphin@polsinelli.com

Jerry L. Switzer, Jr. (*Pro Hac Vice* Pending)
150 N. Riverside Plaza, Suite 3000
Chicago, Illinois 60606
Telephone: (312) 819-1900
Facsimile: (312) 819-1910
jswitzer@polsinelli.com

Thomas Kokoruda (*Pro Hac Vice* Pending)
Andrew J. Ennis (*Pro Hac Vice* Pending)
900 West 48th Place, Suite 900
Kansas City, Missouri 64112
Telephone: (816) 753-1000
Facsimile: (816) 753-1536
tkokoruda@polsinelli.com
aennis@polsinelli.com

PROPOSED COUNSEL TO THE
DEBTORS
AND DEBTORS IN POSSESSION

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS Northwest Senior Housing Corporation	DEFENDANTS Intercity Investment Properties, Inc., and Kong Capital LLC			
ATTORNEYS (Firm Name, Address, and Telephone No.) Polsinelli PC 2950 N. Harwood St., Suite 2100 Dallas, TX 75201 (214) 397-0030	ATTORNEYS (If Known)			
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Breach of Contract, Promissory Fraud, Tortious Interference with Existing Contractual and Business Relations, Civil Conspiracy, Business Disparagement, Equitable Subordination, Reformation of Lease				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input checked="" type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input checked="" type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input checked="" type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input checked="" type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input checked="" type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input checked="" type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input checked="" type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input checked="" type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input checked="" type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)			
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if a jury trial is demanded in complaint	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 Demand \$			
Other Relief Sought				

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Northwest Senior Housing Corporation		BANKRUPTCY CASE NO. 22-30659 (MVL)
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Michelle V. Larson
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Trinitee G. Green		
DATE April 14, 2022	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Trinitee G. Green	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

EXHIBIT A

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	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"	2
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"	3
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	<u>7</u>
5.1 Rent.	<u>7</u>
5.2 Taxes And Assessments	<u>7</u>
5.3 Delinquent Rent.	<u>8</u>
5.4 Utility and Other Governmental and Quasi - Governmental Charges	<u>8</u>
5.5 Use of the Land	<u>8</u>
5.6 Improvements Required by Law.	<u>8</u>
5.7 Observance of Laws.	<u>9</u>
5.8 Repair, Maintenance and Restoration	<u>9</u>
5.9 Inspection	<u>9</u>
5.10 Construction and Alteration of Buildings	<u>9</u>
5.11 Liens.	<u>10</u>
5.12 Setback Lines.	<u>10</u>
5.13 Insurance.	<u>10</u>
(a) Commercial Property Insurance	<u>10</u>
(b) Builders and Installation Risk	<u>11</u>
(c) Commercial General Liability.	<u>11</u>
(d) Worker's Compensation Insurance	<u>12</u>
(e) Umbrella Liability	<u>12</u>
(f) Payment and Performance Bonds	<u>12</u>
(g) Flood Insurance	<u>12</u>
(h) General Requirements for Insurance	<u>13</u>
(i) Certificates of Insurance	<u>14</u>
(j) Waiver of Subrogation	<u>14</u>
(k) Adjustment and Adequacy of Coverage	<u>14</u>
5.14 Loss or Damage to Improvements	<u>14</u>
(a) Use of Insurance Proceeds.	<u>14</u>
(b) Disbursement of Insurance Proceeds	<u>15</u>
(c) Lessor's Inspections	<u>15</u>
5.15 Indemnity	<u>16</u>
5.16 Reimbursable Expenses	<u>16</u>
(a) Lessor's Expenses	<u>16</u>
(b) Enforcement Expenses	<u>16</u>
5.17 Assignment.	<u>17</u>
(a) Consent to Assignment.	<u>17</u>
(b) Assumption of Lease	<u>17</u>
(c) "Assignment" Defined	<u>17</u>
(d) Assignment In Violation Of Section Is Void.	<u>18</u>
5.18 Subletting	<u>18</u>
5.19 Utilities	<u>18</u>
5.20 Surrender	<u>18</u>
5.21 Holdover	<u>19</u>
5.22 Waste or Unlawful Use.	<u>19</u>
5.23 Environmental Protection	<u>20</u>
(a) Hazardous Materials	<u>20</u>
(b) Restriction on Use of Hazardous Materials.	<u>20</u>
(c) Remediation of Release of Hazardous Materials.	<u>20</u>

(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	<u>33</u>
9.8	Governing Law and Venue	<u>33</u>
9.9	Waiver of Jury Trial.	<u>33</u>
9.10	Time Is Of The Essence.	<u>33</u>
9.11	Memorandum of Lease	<u>33</u>
9.12	Captions and Headings.	<u>34</u>
9.13	Copies.	<u>34</u>
9.14	Estoppel Certificates	<u>34</u>
9.15	Lease Prior To Any Mortgages Or Security Interest On Fee	<u>34</u>
9.16	Lessor's Representations and Warranties.	<u>34</u>
9.17	Lessee's Representations and Warranties	<u>34</u>
9.18	Entire Agreement, Binding Effect	<u>35</u>

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-subexisting 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-subexisting 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.

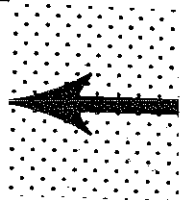
- 9.18 **Entire Agreement, Binding Effect.** This Lease and those provisions of the Option Agreement continuing thereunder as provided therein and those leases and service contracts to be assumed by Lessee hereunder constitute a complete integration of all prior agreements between Lessor and Lessee and 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

Signature

Printed Name: Edward R. Jacobson Jr.

Printed Name: _____

Title: President

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

BY


Assistant City Attorney

PROPERTY MANAGEMENT DIRECTOR


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;

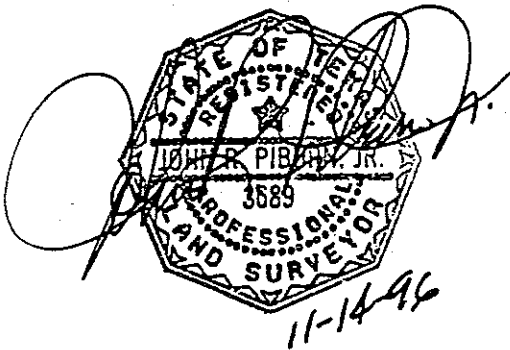
THENCE S89°44'30"E along the said south line of Bandera Avenue, a distance of 50.00 feet to a 5/8" iron rod with red cap stamped "RPLS 4625" set for corner at the northwest corner of the aforementioned Block 8/5464;

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.



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

EXHIBIT A TRACT 1

100 200

SCALE: 1" = 100'

BANDERA AVENUE

60' R.O.W.

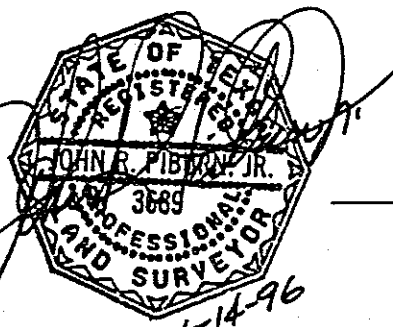
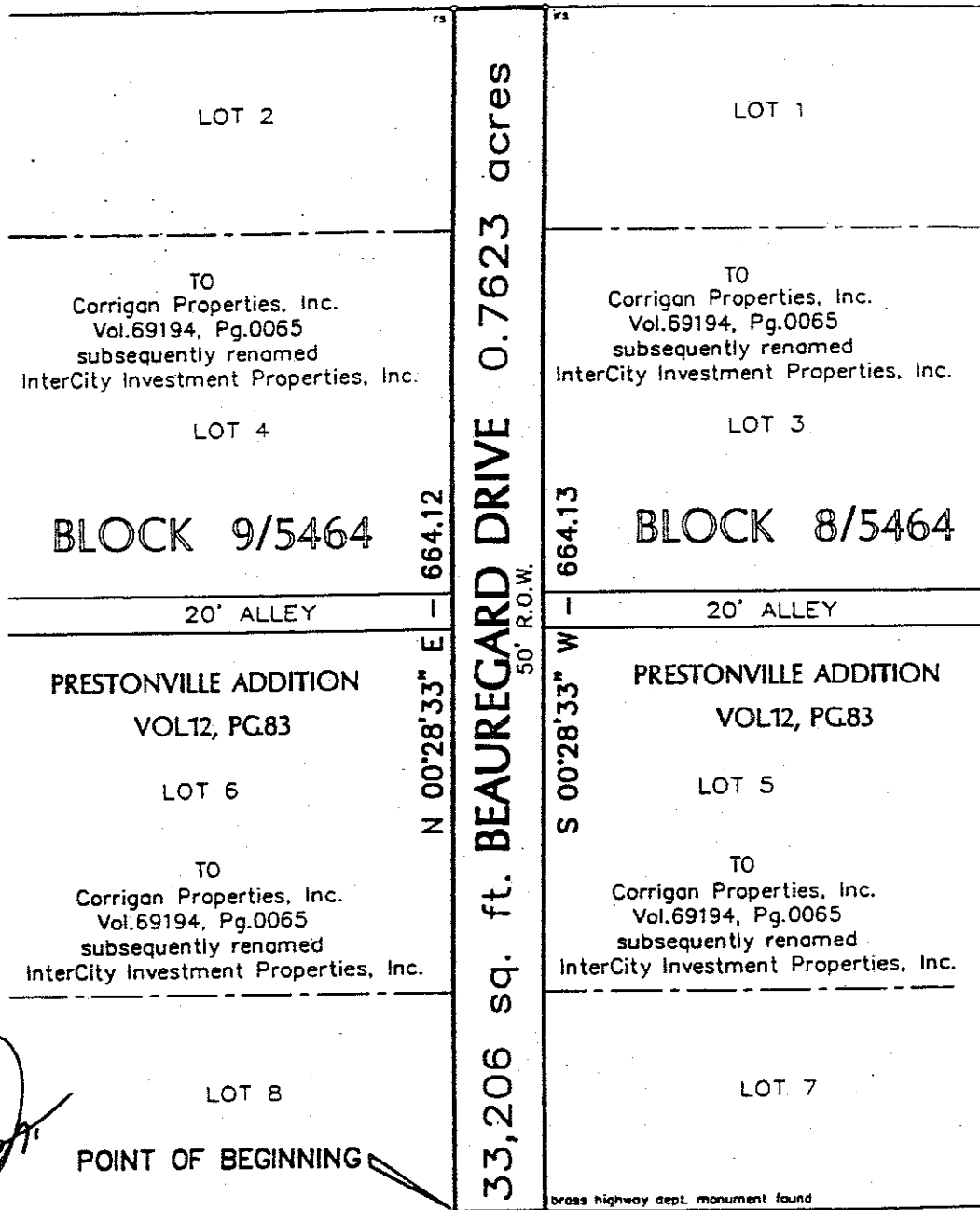
S 89°44'30" E
50.00

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.

REVIEWED
11/15/96
[Signature]



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;

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;

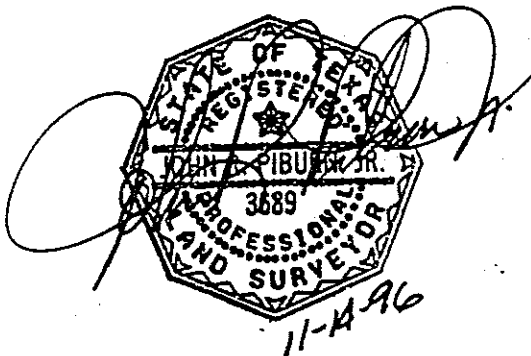
THENCE S00°28'33"W along the said west line of Beauregard Drive, a distance of 20.00 feet to an "x" cut set for corner at the northeast corner of Lot 6, Block 9/5464, as conveyed to Corrigan by the aforementioned Deed;

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;

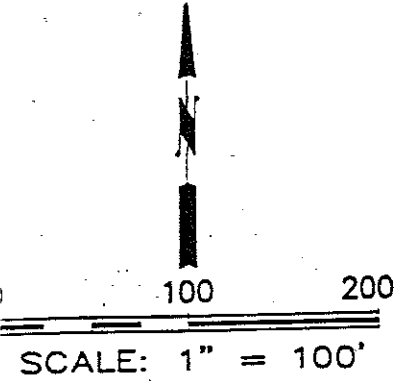
THENCE N89°44'00"W along the said north line of Northwest Highway, a distance of 20.00 feet to the POINT OF BEGINNING and containing 23,202 square feet or 0.5326 acres of land, more or less.

*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.



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

EXHIBIT A TRACT 2



BANDERA AVENUE

60' R.O.W.

S 89°44'30" E
20.00

NOTES:

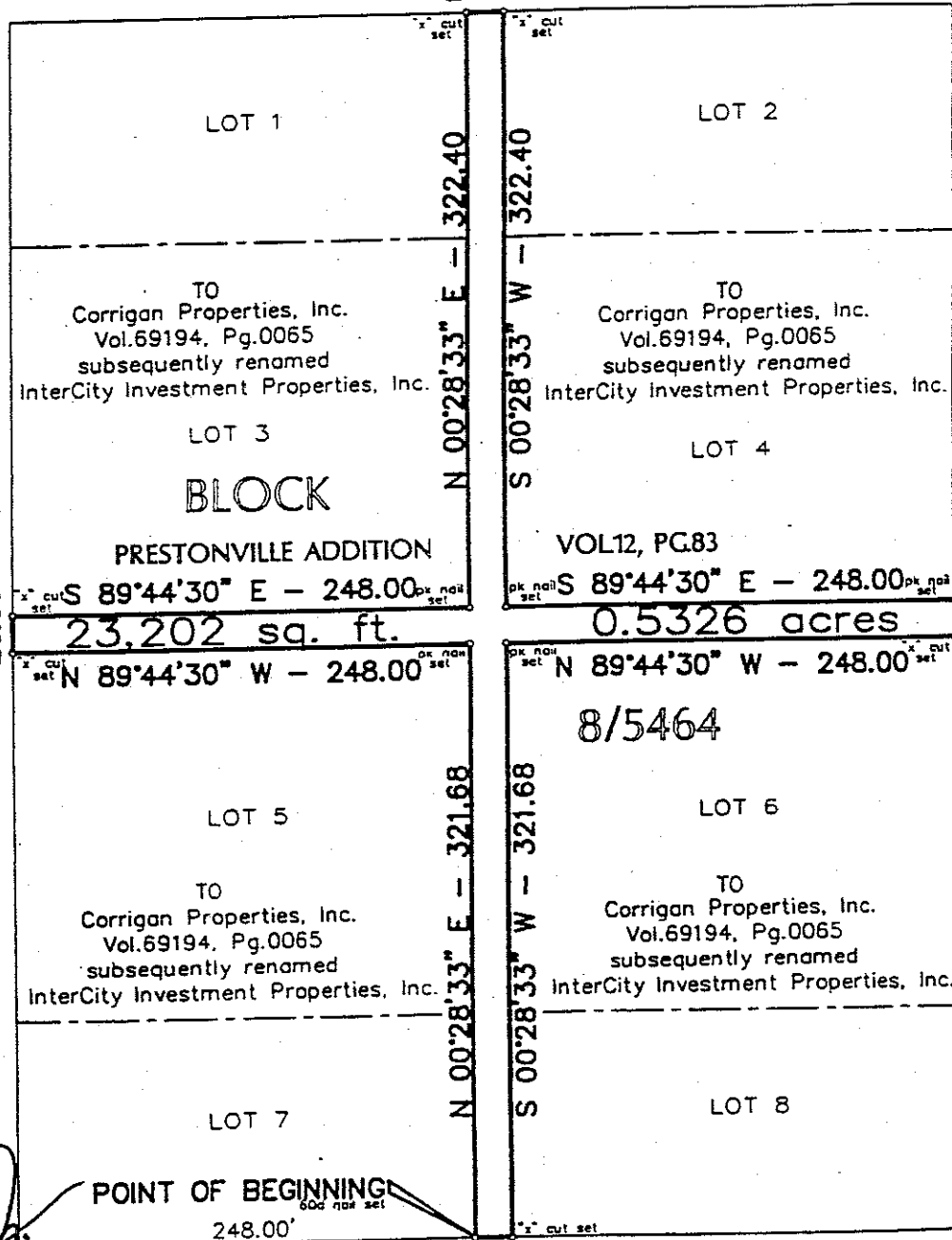
Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

John Wiley
11/15/96

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.

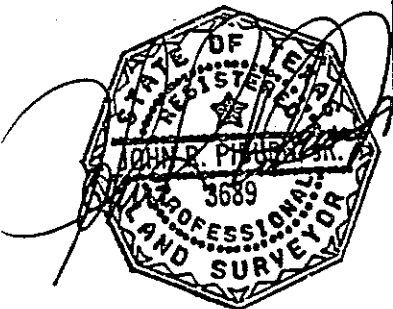


EXHIBIT A TRACT 3

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;

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;

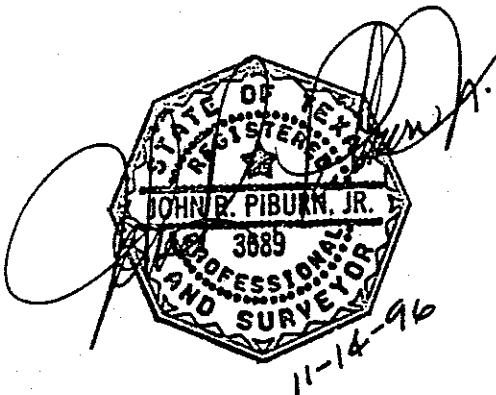
THENCE along the said west line of Thackery, with a non-tangent curve to the right which has a central angle of 04°46'33", a radius of 283.00 feet, and a chord which bears S32°15'12"W - 23.58 feet, an arc distance of 23.59 feet to an "x" cut set for corner at the northeast corner of Lot 6, Block 8/5464,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

*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.



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

EXHIBIT A TRACT 3

100 200

SCALE: 1" = 100'

NOTES:

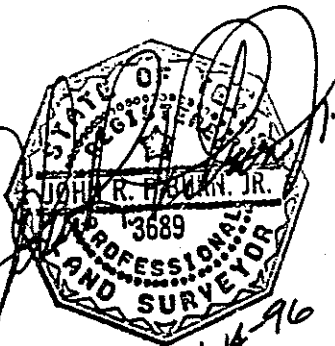
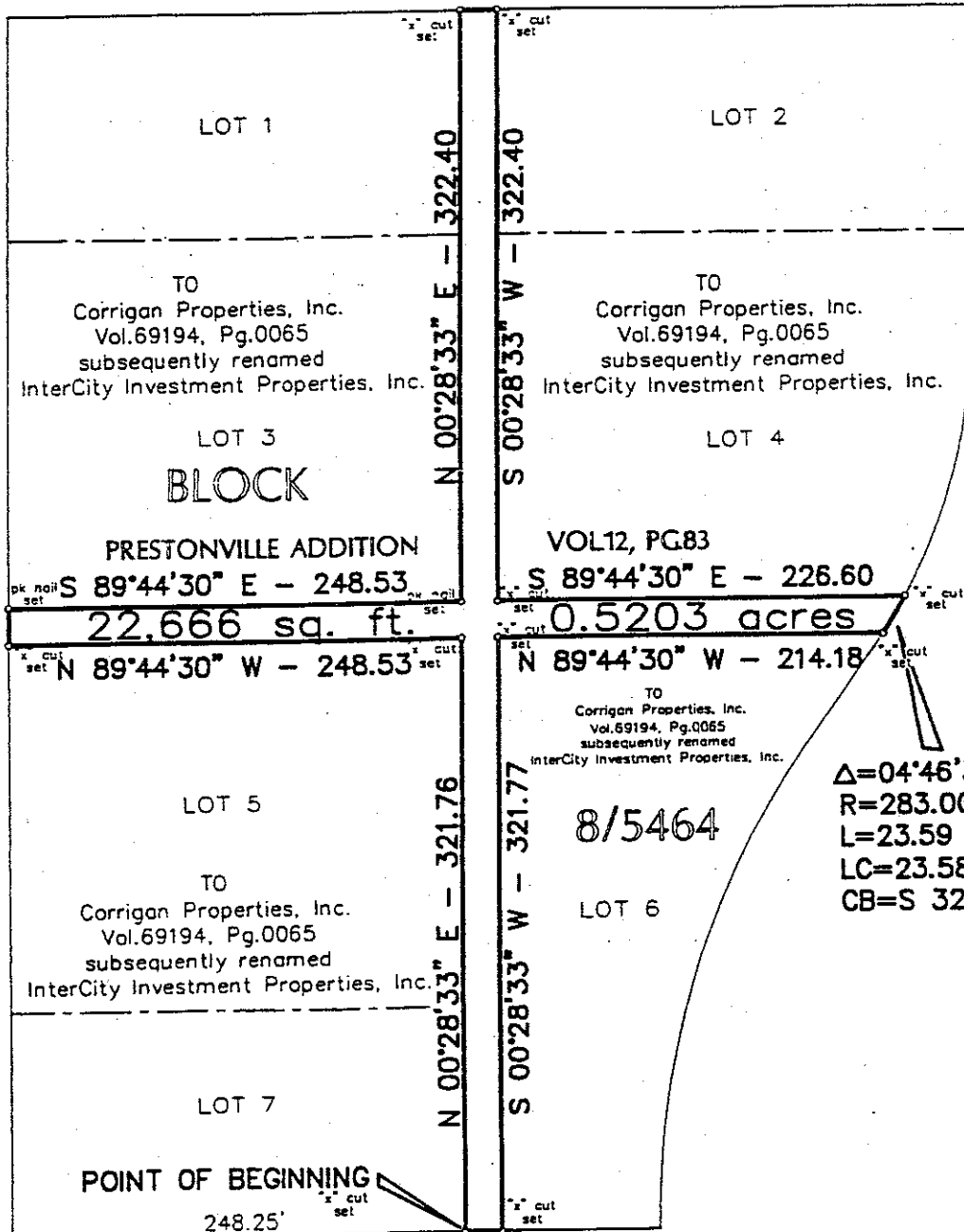
Bearings are based upon the north line of Northwest Hwy. (N89°44'00"W) as recorded by plat of PRESTONVILLE ADDITION in Vol.12, Pg.83, Map Records, Dallas County, Texas.

BEAUREGARD DRIVE

50' R.O.W.
N 00°28'33" E
20.00

BANDERA AVENUE

60' R.O.W.

S 89°44'30" E
20.00THACKERY STREET
60' R.O.W.

NORTHWEST HIGHWAY

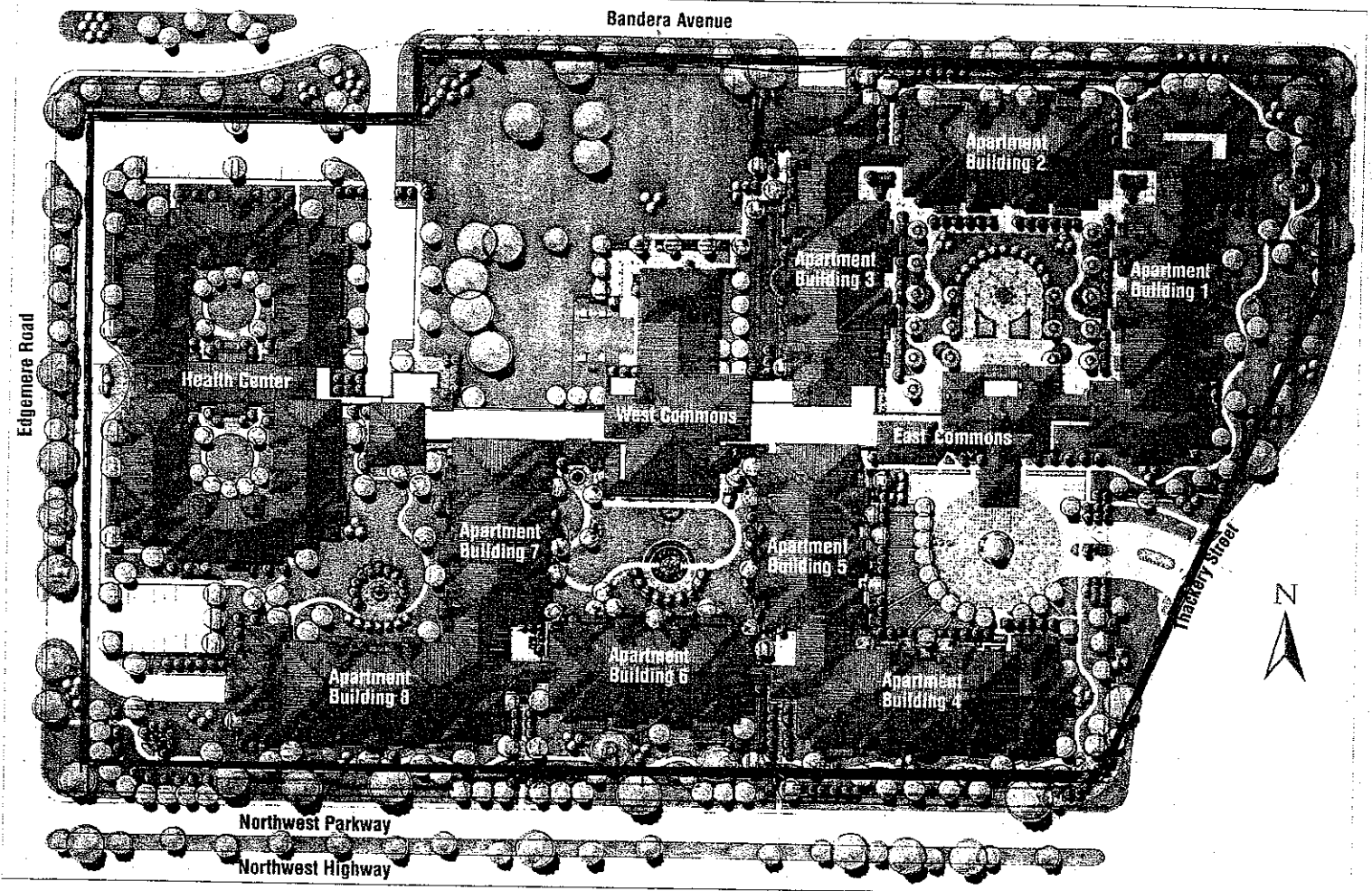
150' R.O.W.

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]
nu

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)

EXHIBIT B

BCLP Comments 7 September 2021

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (this “**Agreement**”) is entered into as of this _____ day of September 2021, by and among Lifespace Communities, Inc., and its respective affiliated organizations (“**Lifespace**”) including Northwest Senior Housing Corporation a Texas not for profit corporation (“**Edgemere**”), whose corporate office is located at 4201 Corporate Drive, West Des Moines, Iowa, 50266, and Intercity Investments Properties, Inc. (“**Company**”), whose principal place of business is located at 4301 Westside Drive, Suite 100, Dallas, Texas 751209.

Lifespace, Edgemere and Company are interested in evaluating and discussing various strategic, business and/or financial options relating to the Ground Lease dated November 15, 1999 between Company and Edgemere (the “**Transaction**”). In order to permit Lifespace and Company to evaluate the merits and risks of the Transaction, they desire to exchange certain confidential information related to each other and their respective Affiliates (as defined below) and to provide for the protection of such confidential information and to restrict its use.

In consideration of their mutual promises herein, the parties agree as follows:

1. **Definitions.** For the purposes of this Agreement, each of the terms set forth below shall have the following meaning:

(a) “**Confidential Information**” means all information disclosed by Lifespace, Edgemere or by Company (in each case related to itself or its Affiliates) to the other in the course of their discussions concerning the Transaction, whether marked or designated as “confidential” or not (hereinafter referred to as “**Confidential Information**”). Without limiting the generality of the foregoing, “**Confidential Information**” includes (i) all financial, resident, client, patient (excluding Protected Health Information as that term is defined by HIPAA), vendor, supplier, employee or other business or personal information; (ii) information relating to trade secrets, trademarks, service marks, patents or copyrights, or any applications therefore; (iii) information relating to existing or contemplated products, services, offerings, technology, processes, manuals, computer systems and/or software; (iv) information relating to business plans, sales or marketing methods, methods of doing business, customer and vendor lists and information; (v) the existence of this Agreement or the discussions or negotiations that are currently taking place or have taken place concerning the Transaction, including any proposed terms and conditions, the status of such discussions or negotiations; (vi) information relating to the financial condition of Edgemere and its negotiations with stakeholders and creditors; (vii) information relating to discussions between Edgemere and governmental authorities and regulators including the Texas Attorney General’s Office and the Texas Department of Insurance; (viii) all copies and reproductions of any of the foregoing. “**Confidential Information**” will not, however, include information that (i) was already known to the receiving party at the time that discussions between Lifespace, Edgemere and Company commenced, unless the information is or was subject to a prior confidentiality agreement signed by the parties; (ii) has become publicly known through no wrongful act of the receiving party; (iii) has been received from a third party without restriction on disclosure and without breach of an obligation of confidentiality on the disclosing party; (iv) has been independently developed by the receiving party without breach of this Agreement; (v) has been approved for release by written authorization of the disclosing party; or (vi) is required to be disclosed by law, regulation, governmental proceeding, court order or similar process or otherwise and the provisions of Section 2 of this Agreement have been complied with.

(b) “Representatives” of a party shall mean its officers, directors, partners, members, managers, stockholders, Affiliates, agents, advisors (including, without limitation, attorneys, accountants, consultants, bankers and financial advisors) and employees, in each case that have a need to know such Confidential Information in order to assist a party in evaluating the Transaction or to assist a party in exercising its rights hereunder and who agree to maintain the confidentiality of such information in accordance with the terms of this Agreement.

(c) “Affiliate” of a party means any other Person that owns or controls, directly or indirectly, a party, any Person that controls or is controlled by or is under common control with a party, and each of that Person’s senior executive officers, directors, and partners and, for any Person that is a limited liability company, that Person’s managers and members. For the purposes of this Agreement, the terms “control,” “controlled by,” or “under common control with” mean the ability to control the actions and activities of a party whether by voting authority, ownership, contract or otherwise.

(d) “Person” as used in this Agreement means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

2. Nondisclosure of Confidential Information. Lifespace, Edgemere and Company mutually agree to hold each other’s Confidential Information in strict confidence and not to disclose such Confidential Information to any third party except as permitted herein. Each party agrees to protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as it would use to protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care. Lifespace, Edgemere and Company may disclose to its respective Representatives each other’s Confidential Information for purposes of evaluating the merits and risks associated with the Transaction or to assist such party in exercising its rights under this Agreement, the Ground Lease or in connection with any reorganization by Lifespace and/or Edgemere including, without limitation, any reorganization in connection with a proceeding involving Lifespace and/or Edgemere under the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, (each a “**Permitted Use**”). Lifespace, Edgemere and the Company agree to instruct their respective Representatives not to disclose Confidential Information to any Person without the written permission of the disclosing party providing such Confidential Information. In the event of any unauthorized use or disclosure of Confidential Information by any party or its Representatives, such party shall, promptly upon discovery of any such unauthorized use or disclosure, notify the party disclosing such Confidential Information of such unauthorized use or disclosure and take reasonable steps requested by the disclosing party to regain possession of such Confidential Information and prevent further breach of this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, a party may disclose, provide and/or furnish Confidential Information pursuant to any of the following: (i) if required by law, regulation, governmental proceeding, court order or similar process or otherwise, so long as the party provides the disclosing party with written notice thereof so that the disclosing party may seek a protective order or other appropriate remedy, and/or (ii) in connection with enforcing any agreement or rights between the parties. In the event of disclosure pursuant to clause (i) in the foregoing sentence, the party seeking disclosure will cooperate with the disclosing party, at the disclosing party’s expense, in seeking any protective order or other similar remedy and in the event that such protective order or other remedy is not obtained, the party seeking disclosure shall furnish only that portion of the Confidential Information that such party is advised is legally required to be disclosed and such disclosure shall not constitute a breach of this Agreement.

BCLP Comments 7 September 2021

3. Use of Confidential Information. Lifespace, Edgemere and the Company agree not to use the Confidential Information for any purpose other than a Permitted Use and each party specifically agrees not to use the Confidential Information for any competitive purpose.

4. Ownership of Confidential Information. Lifespace, Edgemere and the Company acknowledge that all Confidential Information of a disclosing party will be owned solely by the disclosing party.

5. Redelivery of Confidential Information. All documents and other tangible objects containing or representing Confidential Information and all copies thereof which are in the possession of the receiving party shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party upon disclosing party's request, or, at the option of the receiving party, shall be destroyed (except for such Materials that are retained for a Permitted Use), and the receiving party shall certify in writing to the disclosing party that such Confidential Information has been destroyed. In addition, the receiving party shall destroy all copies of notes, analyses, compilations, reports, forecasts, studies, interpretations and other materials (collectively, "**Materials**") prepared by or for such party or its Representatives that contain, are based on, or otherwise reflect or are derived from any Confidential Information and certify in writing to the disclosing party that such copies have been destroyed except for such Materials that are retained for a Permitted Use. Notwithstanding the foregoing, any party and its Representatives are entitled to retain (a) one copy of the Confidential Information and Materials as may be required to comply with any pre-existing, bona fide, internal document retention policy and (b) Confidential Information and Materials stored in a party's and/or its Representatives' automatic archival procedures,

6. No Rights; No Representations. Nothing contained in this Agreement will be construed as granting to any third party, including a receiving party hereunder, any rights, by license or otherwise, to any Confidential Information disclosed pursuant to this Agreement. Each party hereby acknowledges and agrees that neither the disclosing party nor any of its Representatives (i) makes any representation or warranty concerning the accuracy or completeness of the Confidential Information or (ii) shall have any liability to a receiving party as a result of the use of the Confidential Information by such receiving party or its Representatives, except as may arise pursuant to a definitive agreement between or among the parties, when, as, and if executed, and subject to such limitations and restrictions as may be specified in such definitive agreement.

7. No Obligation to Close the Transaction. Nothing in this Agreement shall be construed to create a binding obligation on any party to consummate the Transaction. The parties will only become legally obligated to proceed with a Transaction in accordance with the terms and conditions of a definitive agreement that the parties may enter into following the date of this Agreement.

8. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then all of the remaining terms of this Agreement will continue in full force and effect as if such invalid or unenforceable term had never been included.

9. Waiver. If a party waives any term, provision or a receiving party's breach of this Agreement, such waiver shall not be effective unless it is in writing and signed by the disclosing party. No waiver shall constitute a waiver of any other or subsequent breach by any party.

10. No Assignment. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however that no party shall assign or

transfer any rights or obligations under this Agreement without the prior written consent of each of the other parties.

11. Remedies. The parties understand and agree that money damages would not be a sufficient remedy for any breach of this Agreement by any party, a party's Affiliates, or a party's Representatives. Accordingly, in the event of a breach of this Agreement, the non-breaching disclosing party, in addition to any other remedies at law or in equity that it may have, shall be entitled without proof of actual damages and without the requirement of posting a bond or other security, to seek equitable relief, including without limitation, injunctive relief or specific performance or both. Each party shall be responsible for any breach of this Agreement by any of its Representatives. None of the parties hereto shall assert, and each hereby waives, any claim against the other parties (including their respective Affiliates and Representatives), on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of any breach of this Agreement.

12. Governing Law; Forum; Venue; Legal Fees. This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of Texas. Venue shall be the state and federal courts located in Texas. The parties agree that the prevailing party in any suit to enforce this Agreement shall be entitled to recover its reasonable costs and attorneys' fees.

13. Entire Agreement. This Agreement contains the entire, complete, and integrated agreement among the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous understandings, agreements or representations by or between the parties, written or oral, express or implied, which may have related to the subject matter hereof in any way.

14. Amendments. This Agreement may be amended, modified, and supplemented only by written agreement among each of the parties which states that it is intended to be a modification of this Agreement.

15. Counterparts. This Agreement may be executed by the different parties in any number of separate counterparts, each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same Agreement. It is agreed by the parties hereto that facsimile and PDF signature pages signed by the parties hereto shall be binding to the same extent as original signature pages.

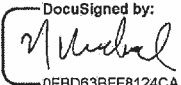
16. Term of Agreement. This Agreement shall have a term of two years from the date first set forth above.

[Balance of page intentionally left black; signature page follows.]

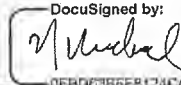
BCLP Comments 7 September 2021

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date written above.

Lifespace Communities, Inc.

DocuSigned by:

By: _____
Name: Nick Harshfield
Title: CFO & Corporate Treasurer

Northwest Senior Housing Corporation

DocuSigned by:

By: _____
Name: Nick Harshfield
Title: CFO

Intercity Investments Properties, Inc.

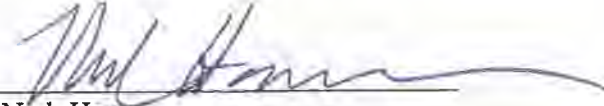
By:  _____
Name: Nick Hannon
Title: Executive Vice President

EXHIBIT C

CONFIDENTIAL

FORBEARANCE AGREEMENT

This Forbearance Agreement (the “Forbearance Agreement”) dated as of this 21st day of December, 2021, is by and among (i) **NORTHWEST SENIOR HOUSING CORPORATION**, a Texas non-profit corporation (the “Obligated Group Representative”); (ii) **SENIOR QUALITY LIFESTYLE CORPORATION**, a Texas non-profit corporation (“SQLC” and together with the Obligated Group Representative, the “Obligated Group” and each an “Obligated Group Member”); (iii) **UMB BANK, N.A.**, in its capacity as successor master trustee (the “Master Trustee”, and collectively with the hereinafter defined Bond Trustee, the “Trustee”) under that certain Amended and Restated Master Trust Indenture, Deed of Trust and Security Agreement, dated as of November 15, 1999 and effective as of April 1, 2006, by and between JPMorgan Chase Bank, National Association, in its capacity as initial master trustee (the “Prior Master Trustee”) and the Obligated Group, as supplemented by that certain Supplemental Indenture Number 4, dated as of May 1, 2015, and as further supplemented by that certain Supplemental Indenture Number 6, dated as of March 1, 2017 (collectively, as amended and supplemented, the “Master Indenture”); (iv) **UMB BANK, N.A.**, in its capacity as successor bond trustee (the “2015 Bond Trustee”) under that certain Indenture of Trust, dated as of May 1, 2015, (the “2015 Bond Indenture”) by and between the Tarrant County Cultural Education Facilities Finance Corporation (the “Issuer”) and The Bank of New York Mellon Trust Company, National Association, in its capacity as initial bond trustee; (v) **UMB BANK, N.A.**, in its capacity as successor bond trustee (the “2017 Bond Trustee”, and together with the 2015 Bond Trustee, the “Bond Trustee”) under that certain Indenture of Trust, dated as of March 1, 2017, (the “2017 Bond Indenture”) by and between the Issuer and The Bank of New York Mellon Trust Company, National Association, in its capacity as initial bond trustee; (vi) **INTERCITY INVESTMENT PROPERTIES, INC.**, a Texas corporation (the “Landlord”); and (vii) solely with respect to Sections II (c), (f), (g), and (h) **LIFESPACE COMMUNITIES, INC.**, an Iowa non-profit corporation acting solely in its capacity as manager pursuant to the Management Services Agreement (defined herein) (the “Manager”). Capitalized terms used and not defined herein have the meanings given such terms in the applicable Bond Documents (as such term is defined below).

RECITALS

A. At the request of the Obligated Group, the Issuer issued its Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015A in the original aggregate principal amount of \$53,600,000 (the “2015A Bonds”) and its Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015B in the original aggregate principal amount of \$40,590,000 (the “2015B Bonds” and collectively with the 2015A Bonds, the “2015 Bonds”) pursuant to the 2015 Bond Indenture.

B. Pursuant to that certain Loan Agreement, dated as of May 1, 2015, by and between the Issuer and the Obligated Group Representative (the “2015 Loan Agreement”), the Issuer loaned the proceeds of the 2015 Bonds to the Obligated Group for the purpose of, *inter alia*, financing the construction, renovation and equipping of seven Assisted Living Units, as well as financing certain other capital expenditures at the Facilities.

C. At the request of the Obligated Group, the Issuer issued its Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project), Series 2017 in the

original aggregate principal amount of \$21,685,000 (the “2017 Bonds” and collectively with the 2015 Bonds, the “Bonds”) pursuant to the 2017 Bond Indenture.

D. Pursuant to that certain Loan Agreement, dated as of March 1, 2017, by and between the Issuer and the Obligated Group Representative (the “2017 Loan Agreement” and together with the Master Indenture, the 2015 Bond Indenture, the 2017 Bond Indenture, the 2015 Loan Agreement and other documents evidencing or securing the Bonds, the “Bond Documents”), the Issuer loaned the proceeds of the 2017 Bonds to the Obligated Group for the purpose of, among other things, refinancing the Issuer’s Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2006A.

E. As security for the obligations owing on the Bonds, the Obligated Group granted to the Trustee a first priority security interest in substantially all of its assets, as described in the Bond Documents (together with any collateral granted herein, the “Collateral”).

F. The Facilities are located on approximately 16.25 acres of real property that the Obligated Group Representative leases from the Landlord pursuant to that certain Ground Lease, effective November 5, 1999 (the “Lease”).

G. The Facilities are managed pursuant to that certain Management Services Agreement, dated the 15th day of August, 2019, between the Obligated Group Representative and the Manager (the “Management Agreement”) under which the Manager provides certain management and support services necessary to operate the Facilities for which it is reimbursed (“Shared Services Allocation”).

H. Events of Default and events which, with the provision of notice and the failure to cure within the applicable curative period, would constitute Events of Default, have occurred and are continuing under the Bond Documents, each as identified on **Exhibit A** (collectively, the “Specified Defaults”). The Obligated Group also anticipates additional events, which constitute Events of Default, or which, with the provision of notice and the failure to cure within the applicable curative period, would constitute Events of Default, each as identified on **Exhibit A** (collectively, the “Known Anticipated Defaults”), to occur during the Forbearance Period (as defined below).

I. An Event of Default has occurred under the Lease due to the Obligated Group Representative’s failure to pay Rent from September 1, 2021 to December 1, 2021 (the “Lease Default”). As a result of the Lease Default, the Landlord served a Notice of Nonpayment of Rent, dated September 7, 2021 (the “Notice of Nonpayment”) on the Obligated Group Representative. Thereafter, the Landlord served a Notice of the Lessor’s Intention to Terminate Lease on the Bond Trustee, dated September 17, 2021 (the “Notice to Terminate”). Certain defaults are anticipated to occur under the Lease as a result of the failure to pay rent under the Lease (the “Known Anticipated Lease Defaults”) during the Forbearance Period.

J. The Obligated Group has requested that the Trustee temporarily forbear from exercising its rights and remedies under the Bond Documents with respect to the Specified Defaults and the Known Anticipated Defaults and the Master Trustee, at the direction of the Holders of not less than a majority in aggregate principal amount of the Obligations that are Outstanding under the Master Indenture, and each Bond Trustee, at the direction of the holders of

a majority in aggregate principal amount of the applicable Bonds (the “Directing Holders” and together with the Trustee, the “Creditor Parties”), and in reliance upon the truth of the foregoing recitals, and of the promises, conditions and covenants herein contained, has agreed to such requests pursuant to the terms and conditions of this Forbearance Agreement.

K. The Obligated Group has further requested that the Landlord forbear from exercising its rights and remedies under the Lease and the Landlord, in reliance upon the truth of the foregoing recitals, and of the promises, conditions and covenants herein contained, has agreed to such requests pursuant to the terms and conditions of this Forbearance Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

I. ACKNOWLEDGEMENTS.

(a) Affirmation of Recitals. The Obligated Group hereby confirms, represents and warrants to the Creditor Parties and the Landlord (collectively, the “Forbearing Parties”) that the Recitals set forth at the beginning of this Forbearance Agreement are true and accurate in all respects, and the Obligated Group acknowledges that the Trustee and Landlord are relying upon such truth and accuracy in entering into this Forbearance Agreement, and that the Directing Holders have so relied in directing the Trustee to enter into this Forbearance Agreement.

(b) Acknowledgments in Connection with the Bonds.

(1) Agreement of Trustee Pursuant to Trustee Direction. All references in this Forbearance Agreement to the Trustee’s agreeing with or agreement to, consenting to or consent to, acknowledging or acknowledgement of, or any like action by the Trustee, shall refer to such entity having been directed to so agree, consent, acknowledge or take like action pursuant to a direction of even date herewith from the Directing Holders.

(2) Acknowledgements Respecting Status and Representations. The Obligated Group hereby acknowledges and represents to the Trustee, upon which representations the Trustee has relied in entering into this Forbearance Agreement, and the Directing Holders have relied in directing the Trustee to enter into this Forbearance Agreement, that: (i) the Obligated Group is obligated (x) under the Bond Documents to pay and perform all of its obligations thereunder, and (y) to pay and perform all of its Outstanding Obligations (as defined below); (ii) the outstanding principal on the Bonds as of November 30, 2021 is \$109,185,000; (iii) the Trustee has a valid first priority lien on the Collateral to secure the Bonds subject to any Permitted Encumbrances; (iv) because of the Specified Defaults, the Trustee is now entitled to exercise rights and remedies under the Bond Documents; (v) all representations and warranties of each Obligated Group Member in this Forbearance Agreement are true and correct as of the date hereof, and shall survive the execution of this Forbearance Agreement; (vi) each Obligated Group Member is duly authorized to enter into this Forbearance Agreement; and (vii) upon execution and delivery hereof, this Forbearance Agreement will be legal and binding on each Obligated Group Member. The amounts referenced in subsection (ii) hereinabove, and all other obligations of each

Obligated Group Member under the Bond Documents including interest, fees, costs and expenses, are hereinafter collectively referred to as the “Outstanding Obligations.”

(3) No Waiver. Each Obligated Group Member hereby acknowledges that: (i) the Specified Defaults constitute defaults under the Bond Documents that have not been waived by the Trustee and that the same entitle the Trustee to declare an Event of Default under the Bond Documents and to the extent the Trustee has not previously provided any requisite notice to the Obligated Group declaring an Event of Default with respect to the Specified Defaults, this Forbearance Agreement shall constitute such notice and nothing in (a) the Bond Documents, or (b) this Forbearance Agreement, and no action or inaction pursuant hereto, pursuant to any such documents, or pursuant to the Bond Documents, shall be deemed to prevent, impair or limit the Trustee’s respective rights and remedies against each Obligated Group Member, it being expressly understood and agreed that the Trustee reserves such rights and remedies, and does not waive the Specified Defaults or Known Anticipated Defaults, or any of the respective Creditor Parties’ rights, which are available to the Creditor Parties; and (ii) nothing in this Forbearance Agreement is intended to serve as a waiver of any payment or other obligation of any Obligated Group Member under any of the Bond Documents, that interest shall continue to accrue on all of the Obligated Group’s obligations under the Bond Documents as set forth in the Bond Documents, and each of such obligations shall continue in full force and effect, subject to the terms and conditions of this Forbearance Agreement as more specifically set forth herein. The parties acknowledge that, subject to the terms of this Forbearance Agreement and the Creditor Parties’ agreement to forbear as more particularly set forth herein, all terms of the Bond Documents remain in full force and effect. Each Obligated Group Member further acknowledges and agrees that no failure on the part of the Trustee and no delay in exercising any right or remedy, and no action or inaction pursuant hereto or pursuant to the Bond Documents, shall operate as a waiver thereof by the Trustee or be deemed to prevent, impair or limit the Trustee’s rights and remedies against any Obligated Group Member, it being expressly understood and agreed that the Trustee reserves such rights and remedies. Each Obligated Group Member further acknowledges and agrees that any single or partial exercise of any rights pursuant hereto or pursuant to the Bond Documents shall not preclude any other or further exercise thereof or the exercise of any other right, it being agreed that such rights and remedies (x) are cumulative and are in addition to, and not exclusive of, any rights or remedies provided at law or in equity, and (y) are not conditioned or contingent on any attempt by the Trustee to exercise any of its rights under any related document against any Obligated Group Member.

(4) Specified Defaults and Known Anticipated Defaults. The Obligated Group represents and warrants that as of the date hereof there is no other default or Event of Default, or any event or anticipated event which, with notice or lapse of time or both, would constitute a default or Event of Default under any of the Bond Documents other than the Specified Defaults and Known Anticipated Defaults.

(5) Ratification of Security Interest. The Obligated Group hereby ratifies and confirms its grant of security interests in the Collateral in favor of the Trustee to secure the Outstanding Obligations and the validity of the related liens. To the best of their knowledge, the Obligated Group hereby warrants that, except for (i) that certain

\$316,433.00 investment paid by SQLC to become a Caring Communities member and (ii) the SQLC goodwill value of \$188,223.00 (collectively, the “Excluded Assets”), there are no material assets owned by any Obligated Group Member that are not subject to the liens granted in favor of the Trustee under the Bond Documents or herein.

(c) Acknowledgements in Connection with the Lease.

(1) Acknowledgements Respecting Status and Representations. The Obligated Group Representative hereby acknowledges and represents to the Landlord, upon which representations the Landlord has relied in entering into this Forbearance Agreement that: (i) the Lease constitutes a valid and binding obligation of the Obligated Group Representative; (ii) the Obligated Group Representative is obligated under the Lease to pay and perform the Lease Obligations (as defined below); (iii) because of the Lease Default, the Landlord is entitled, but not required, to exercise rights and remedies under the Lease; (iv) any rescission of the Notice to Terminate shall not prevent, impair or limit the Landlord’s rights and remedies against the Obligated Group as set forth in subsection (I)(c)(2) herein below; (v) all representations and warranties of the Obligated Group Representative in this Forbearance Agreement are true and correct as of the date hereof, and shall survive the execution of this Forbearance Agreement; (vi) the Obligated Group Representative is duly authorized to enter into this Forbearance Agreement; and (vii) upon execution and delivery hereof, this Forbearance Agreement will be legal and binding on the Obligated Group Representative. The amounts referenced in subsection (i) hereinabove, and all other obligations of the Obligated Group Representative under the Lease, including, without limitation, reporting obligations and the payment of Rent and Landlord’s fees, costs and expenses, are hereinafter collectively referred to as the “Lease Obligations.”

(2) No Waiver. The Obligated Group Representative hereby acknowledges that: (i) no action or inaction, and no delay in exercising any right or remedy, pursuant hereto, or pursuant to the Lease, shall be deemed to prevent, impair or limit the Landlord’s rights and remedies against the Obligated Group Representative except as provided in this Forbearance Agreement, it being expressly understood and agreed that the Landlord reserves such rights and remedies, and does not waive any Lease Default or Known Anticipated Lease Default, or any of the Landlord’s rights, which are available to the Landlord; and (ii) nothing in this Forbearance Agreement is intended to serve as a waiver of any payment or other obligation of the Obligated Group Representative under the Lease. The parties acknowledge that, subject to the terms of this Forbearance Agreement and the Landlord’s agreement to forbear as more particularly set forth herein, all terms of the Lease remain in full force and effect, nothing in this Forbearance Agreement is intended to serve as a waiver of any payment or Lease Obligation of any Obligated Group Member under the Lease, Rent shall continue to accrue under the Lease as set forth in the Lease, and each of such obligations shall continue in full force and effect, subject to the terms and conditions of this Forbearance Agreement as more specifically set forth herein. The Obligated Group Representative further acknowledges and agrees that any single or partial exercise of any rights pursuant hereto or pursuant to the Lease shall not preclude any other or further exercise thereof or the exercise of any other right, it being agreed that such rights and remedies (x) are cumulative and are in addition to, and not exclusive of, any rights or

remedies provided at law or in equity, and (y) are not conditioned or contingent on any attempt by the Landlord to exercise any of its rights under any related document against the Obligated Group Representative.

II. COVENANTS AND AGREEMENTS OF THE OBLIGATED GROUP.

To further induce the Forbearing Parties to enter into this Forbearance Agreement and to forbear, and the Directing Holders to direct the Trustee to enter into this Forbearance Agreement, as and to the extent provided in this Forbearance Agreement, the Obligated Group further covenants and agrees, and represents and warrants to the Forbearing Parties as follows:

(a) Budget.

(1) Attached hereto as **Exhibit B** is a cash budget (the “Approved Budget”) prepared by the Obligated Group for the Forbearance Period, which Approved Budget sets forth a good faith projection of all cash receipts and disbursements relating to the Obligated Group’s operations during such period. The Obligated Group hereby covenants and agrees that during the term of this Forbearance Agreement it shall operate and collect the cash receipts set forth in the Approved Budget; *provided, however*, that for each Measuring Period (as defined below), the Obligated Group shall not be in violation of this covenant unless cash receipts collected for a particular Measuring Period are less than 90% of the amount of budgeted cash receipts expected to be collected for the corresponding Measuring Period set forth in the Approved Budget (the “Revenue Variance”). The Obligated Group shall be permitted to pay the expenses only as set forth in the Approved Budget in the amounts, time and categories set forth in the Approved Budget for the Measuring Period (the “Budgeted Expenses”), subject to the Expense Variance (as defined below). The Obligated Group shall not make any expenditures that would cause any line-item in the expense lines of the Approved Budget, during any Measuring Period, to exceed 110% of the amount set forth in such line-item in the Approved Budget during the corresponding Measuring Period, *provided, however*, that professional fees shall not exceed one hundred percent (100%) of such budgeted line-item, and the aggregate expenditures during any Measuring Period shall not exceed 105% of the aggregate amount budgeted therefor in the Approved Budget in the corresponding Measuring Period (the “Expense Variance”; and together with the Revenue Variance, the “Variances”). The Revenue Variance and the Expense Variance shall each be measured on the last day of each month set forth in the Approved Budget (each such date, a “Measuring Date” and each such monthly period a “Measuring Period”), with the first such Measuring Date being the last day of the month in which the Effective Date (as defined below) occurs. Except as otherwise provided herein, any Budgeted Expenses not requisitioned or paid for in a particular budget period may be requisitioned or paid for during a subsequent period, and for the purpose of calculating compliance with the covenants in this section, the Approved Budget will be revised following notice to the Forbearing Parties to move such expenditures to the later period. Except as otherwise provided herein, Budgeted Expenses may be paid in an earlier period (i.e., requisitioned or paid for in any month prior to the month for which such expenditure was budgeted) in the reasonable discretion of the Obligated Group, provided such payment does not otherwise violate the Expense Variance. In the event of any such prepayment of expenditures, the Approved Budget shall be deemed amended to move the

expenditure into the month in which the actual expenditure was made for the purpose of calculating compliance with the covenants in this section. The Obligated Group will provide a written explanation in reasonable detail explaining the amount of and the reason for the prepayment or delay in payment in connection with their monthly reporting obligations hereunder.

(2) The Obligated Group acknowledges and agrees that (i) the Budgeted Expenses are limited to the expenses necessary for the Obligated Group to operate the Facilities and (ii) during the Forbearance Period the Obligated Group will not make any payments related to any other expenses or obligations not otherwise in the Approved Budget, including but not limited to the Outstanding Obligations, Shared Services Allocation and Rent.

(3) Notwithstanding the foregoing, the Obligated Group may continue to pay entrance fee (“Entrance Fee(s)”) refunds due to former residents or their beneficiaries to the extent that the resident has terminated their Residency Agreement, the resident’s unit was resold prior to September 27, 2021 and the new Entrance Fee for such unit has not been escrowed as set forth in Section VIII hereof.

(b) Fees and Expenses. The Obligated Group acknowledges and agrees that all reasonable fees and expenses of the Trustee and Landlord, respectively, including, but not limited to, reasonable fees and expenses of their attorneys and advisors (“Expenses”), in connection with the Specified Defaults to date and the negotiation, execution and enforcement of this Forbearance Agreement shall not be included in the Approved Budget, but shall be paid by the Obligated Group on the Effective Date. Thereafter, the Obligated Group shall reimburse the Trustee and Landlord for all Expenses incurred in connection with the development and implementation of a long-term resolution regarding the Obligated Group’s obligations under the Bond Documents and the Lease within fourteen (14) business days following receipt of a statement itemizing such Expenses in reasonable detail.

(c) Material Transactions Covenant. During the Forbearance Period, the Obligated Group shall not enter into any material transaction outside the ordinary course of business, incur additional indebtedness outside the ordinary course of business (other than additional indebtedness incurred under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act or a related or supplemental act (“CARES Act Funds”)) or under the American Rescue Plan Act or a related or supplemental act (“ARPA Funds”), or execute any term sheet, letter of intent, exclusivity agreement or other documentation pertaining thereto, unless approved in advance in writing by the Trustee and Landlord, including without limitation, affiliation, merger, change of control, sale or similar transactions, payments to any affiliates, granting of a lien, mortgage or security interest in any of its property or encumber any assets, engagement to refinance, refund or purchase the Bonds in the secondary market, or enter into any partnership, joint venture, monetization or similar transaction with respect to the programs or assets of the Obligated Group.

(d) Occupancy Covenant.

(1) The Obligated Group covenants that for each calendar month set forth below (each an “Occupancy Month”), the Obligated Group shall have Occupied the total number of all Independent Living Units at or above the applicable IL Occupancy

Requirement set forth below (the “IL Occupancy Requirement”), which level shall be measured as of the last day of the applicable Occupancy Month.

Measuring Month	IL Occupancy Requirement
November 2021	233
December 2021	237

(2) The Obligated Group covenants that for each Occupancy Month, the Obligated Group shall have Occupied the total number of all assisted living units, memory care units and skilled nursing beds at or above the applicable Health Care Occupancy Requirement set forth below (the “Health Care Occupancy Requirement” and together with the IL Occupancy Requirement, the “Occupancy Requirements”), which level shall be measured as the average occupancy for the applicable Occupancy Month.

Occupancy Month	Health Care Occupancy Requirement
November 2021	101.7
December 2021	102.0

For purposes of this section, the term “Occupied” includes any units for which a Residency or Life Care Agreement has been entered into and with respect to which an Entrance Fee has been received in each case in accordance with the terms of the Forbearance Agreement.

(e) Proposed Long-Term Resolution. The Obligated Group agrees that during the Forbearance Period it shall comply with the following “Milestones” related to the development and implementation of a long-term resolution regarding the Obligated Group’s obligations under the Bond Documents and the Lease:

(1) On the Effective Date, the Obligated Group shall deliver a term sheet for a lease restructuring to the Forbearing Parties;

(2) No later than fourteen (14) days after delivery of the term sheet for a lease restructuring, the Landlord shall provide a written response and comments to the term sheet sharing such response with the Obligated Group and Creditor Parties. Notwithstanding anything herein, nothing in this Forbearance Agreement is intended to impose any obligation on Landlord to enter into a lease restructuring with the Obligated Group Representative.

(3) No later than December 10, 2021, Obligated Group shall deliver a 13-week cash budget to the Forbearing Parties;

(4) No later than December 20, 2021, Obligated Group shall deliver to the Forbearing Parties long term projections and actuarial analysis; and

(5) No later than thirty (30) days after receipt of the projections, the Creditor Parties shall deliver a term sheet for the treatment of the Bonds and the economic terms of the restructured lease to the Obligated Group; and

(6) No later than fourteen (14) days after delivery of the term sheet, Obligated Group shall provide a written response to the term sheet for treatment of the Bonds.

(f) Trustee's Retention of Financial Consultants. The Bond Trustee has retained RBC Capital Markets ("RBC") to advise the Creditor Parties with respect to the Obligated Group's performance and its obligations under the Bond Documents. The Obligated Group hereby agrees to provide RBC with any materials and information that RBC may reasonably request from time to time. The Obligated Group further agrees that it shall provide any such requested materials and information to RBC no later than seven (7) Business Days following such request or as soon as such materials and information becomes available.

(g) Entrance Fee Discounting. During the Forbearance Period, the Obligated Group shall not discount or provide any incentives with respect to Entrance Fees or monthly service fees, other than the discounts or deferrals agreed to between the Bond Trustee and the Obligated Group.

(h) Regulatory Communications. The Obligated Group shall notify the Forbearing Parties promptly following the Obligated Group's receipt or transmission of any non-routine notices or other written communications from any governmental authority or agency with regulatory oversight of the Facilities, including without limitation, the Texas Department of Aging and Disability Services, the Texas Department of Insurance, and/or the Attorney General for the State of Texas, (collectively the "Regulators") and shall contemporaneously provide copies of any such notices or other communications to the Forbearing Parties. All parties to this Forbearance Agreement shall coordinate all communications, formal or informal, with the Regulators, and the Forbearing Parties and Obligated Group agree not to have any communications with the Regulators without prior notice to the Obligated Group or Forbearing Parties, respectively.

(h) Landlord Information Request. The Obligated Group shall (1) keep all real and personal property taxes and assessments current, (2) maintain all insurance coverage required under the Lease, (3) provide all information and fulfill all other obligations arising under the Lease (other than the obligation to pay Rent), including, without limitation providing evidence of the timely payment all taxes, assessments and insurance premiums and (4) subject to the terms of the non-disclosure agreement between the Landlord and the Obligated Group Member dated as of September 13, 2021, and any amendments thereto, provide Landlord with any materials and information that the Landlord may reasonably request from time to time no later than seven (7) Business Days following such request or as soon as such materials and information becomes available. The Obligated Group shall provide Landlord with copies of all materials and information that the Obligated Group provides to RBC concurrently with the delivery of such materials to RBC.

III. FINANCIAL REPORTING.

(a) By the twentieth (20th) day following the end of each month the Obligated Group shall provide to the Forbearing Parties and their advisors the following information which shall be made available to the Bondholders:

(1) Balance sheet, statement of operations, accounts payable aging report, statement of cash flows and occupancy reports for the prior monthly period;

(2) A comparison between budgeted cash receipts and disbursements set forth on the Approved Budget and actual cash receipts and disbursements incurred during such prior month period;

(3) Occupancy reports designated by units, as well as a monthly sales and marketing update;

(4) A summary of any capital expenditures made during the prior month period; and

(5) Such other information and supporting documentation as any Forbearing Party may from time-to-time reasonably request.

The foregoing financial and other documents shall be in addition to any reporting requirements required by the Bond Documents, the Lease or as set forth herein.

IV. CONDITIONS TO EFFECTIVENESS OF FORBEARANCE AGREEMENT.

This Forbearance Agreement shall not become effective until each of the following shall have occurred (such time being defined as the “Effective Date”):

(a) A fully executed copy of this Forbearance Agreement shall be delivered to the Forbearing Parties by the Obligated Group;

(b) The Directing Holders shall have approved in writing this Forbearance Agreement and directed the Trustee to execute it (in form and substance satisfactory to the Creditor Parties);

(c) The Obligated Group shall reimburse each of the Trustee and Landlord the Expenses contemplated by Section II(b) of this Forbearance Agreement; and

(d) The Obligated Group shall wire \$357,878.59 to the Landlord to pay one month’s Rent under the Lease, and the Landlord shall deliver a notice rescinding the Notice to Terminate.

V. FORBEARANCE TERMINATION EVENTS; REMEDIES.

(a) Forbearance Termination Events. The period of this forbearance (the “Forbearance Period”) shall commence on the Effective Date, and shall continue until the earlier of (i) a Forbearance Termination Event; or (ii) December 31, 2021 (the “Expiration Date”). A “Forbearance Termination Event” shall be the occurrence of any one of the following:

(1) If any representation made by any Obligated Group Member under this Forbearance Agreement or in any report delivered thereunder shall not have been true, accurate or complete in any material respect when made;

(2) The occurrence of any Event of Default or default under any Bond Document, other than Specified Defaults and the Known Anticipated Defaults or an Event

of Default under the Lease other than the Lease Default and the Known Anticipated Lease Defaults;

(3) A violation by any Obligated Group Member of any of its covenants and obligations under this Forbearance Agreement, including without limitation the Occupancy Requirements;

(4) a failure to be in compliance with the terms of the Approved Budget (subject to the Variances); provided that if a Variance with respect to expenditures is a result of increased revenues, it shall not be an Event of Default as long as the expense Variance does not exceed 75% of the revenues in excess of budgeted revenues;

(5) The incurrence of additional indebtedness (other than CARES Act Funds or ARPA Funds) by any Obligated Group Member without the prior written consent of the Trustee and Landlord;

(6) The commencement of: (i) proceedings naming any Obligated Group Member as a debtor under any chapter of the United States Bankruptcy Code, 11 U.S.C. § 101 et. seq., (ii) receivership proceedings naming any Obligated Group Member or involving a substantial part of any Obligated Group Member's property, (iii) an assignment for the benefit of creditors by any Obligated Group Member, or (iv) any similar event or proceeding involving any Obligated Group Member or a substantial part of any Obligated Group Member's property;

(7) Any Obligated Group Member suspends all or a substantial portion of its operations;

(8) Any Obligated Group Member (i) has any material license or similar authorization relating to its business revoked, modified or suspended for any period of time or (ii) is disqualified from participation in any federal or state program.

In the event a Forbearing Party has knowledge of a Forbearance Termination Event or terminates this Forbearance Agreement, it shall promptly provide notice to the other Forbearing Parties.

(a) Remedies Upon Termination. Upon the expiration or termination of the Forbearance Period, the forbearance granted in this Forbearance Agreement shall immediately and automatically terminate, all deferred amounts hereunder shall be due and payable in full and the Forbearing Parties shall have available to them all rights and remedies specified under this Forbearance Agreement, any of the Bond Documents, the Lease, or under applicable law. Absent payment in full of all unpaid Rent and other amounts due under the Lease on or before such expiration or termination, the rescission of the Notice to Terminate shall be immediately and automatically reinstated without the need for any further notice from Landlord and the new cure period, which shall run for 70 calendar days, shall commence simultaneously with the reinstatement of the Notice of Termination.

VI. AGREEMENT TO FORBEAR.

(a) Forbearance by the Trustee. During the Forbearance Period, the Creditor Parties hereby agree to forbear from exercising remedies under the Bond Documents arising by reason of the Specified Defaults and/or Known Anticipated Defaults. Upon the termination of the Forbearance Period, all forbearances, deferrals and indulgences granted by the Creditor Parties pursuant to this Forbearance Agreement shall automatically terminate, and the Creditor Parties shall thereupon have, and shall be entitled to exercise, any and all of their respective rights and remedies under the Bond Documents. Each Obligated Group Member acknowledges that the aforesaid agreement by the Trustee shall not have the effect of releasing any person or entity from liability for repayment of the indebtedness or performance of the obligations evidenced and/or secured by the Bond Documents. Each Obligated Group Member hereby waives all notices of default and rights to cure as provided in the Bond Documents or otherwise with respect to the Specified Defaults or Known Anticipated Defaults. Each Obligated Group Member also reaffirms the Trustee's right to payment of its fees and expenses as Trustee and to the lien securing the same, all as set forth in the Bond Documents. Each Obligated Group Member acknowledges and agrees that nothing in this Forbearance Agreement shall act in derogation of (i) the Trustee's right to payment of its fees and expenses; (ii) the lien that arises and is otherwise granted to the Trustee for such fees and expenses; or (iii) the right of the Trustee to apply or setoff Trustee Held Funds (as defined below) towards such fees or expenses or the Outstanding Obligations (which may include the Trustee accelerating such amounts owed under the Bond Documents for such setoff or application).

(b) Forbearance by the Landlord. During the Forbearance Period, the Landlord hereby agrees to forbear from exercising remedies under the Lease. Upon the termination of the Forbearance Period, all forbearances, deferrals and indulgences granted by the Landlord pursuant to this Forbearance Agreement shall automatically terminate, and the Landlord shall thereupon have, and shall be entitled to exercise, any and all of its respective rights and remedies under the Lease. The Obligated Group Representative acknowledges that the aforesaid agreement by the Landlord shall not have the effect of releasing any person or entity from liability for repayment of the indebtedness or performance of the obligations evidenced by the Lease.

VII. VOLUNTARY ACTION.

Each Obligated Group Member hereby acknowledges and agrees that it (i) has read and understands the contents of this Forbearance Agreement, (ii) has had the opportunity to consult with counsel of its choice throughout all of the negotiations that preceded the execution of this Forbearance Agreement, and (iii) has acted voluntarily and without duress in connection with the execution and delivery of this Forbearance Agreement after reviewing and understanding each provision of this Forbearance Agreement and without reliance upon any promise or representation of any person or persons acting for or on behalf of the Forbearing Parties.

VIII. ENTRANCE FEE ESCROW.

As of September 27, 2021, all Entrance Fees received from new residents shall be escrowed as set forth in a form attached hereto as **Exhibit C**.

IX. FURTHER ASSURANCES.

The Obligated Group will take such other reasonable actions as (a) the Creditor Parties may reasonably request from time to time to perfect or continue the Trustee's security interests in the Collateral and (b) as the Forbearing Parties may request to accomplish the objectives of this Forbearance Agreement, the Lease and the Bond Documents.

X. MISCELLANEOUS.

(a) Notices. All notices, demands, requests and other communications required pursuant to the provisions of this Forbearance Agreement shall be given in accordance with the Bond Documents or Lease, as applicable (as modified by any change of address notifications heretofore given by the parties hereto).

(b) No Modification or Waiver. None of the terms or provisions of any of the Bond Documents, the Lease, or of this Forbearance Agreement may be changed, waived, modified, discharged or terminated except by a written instrument executed by the parties or party against whom enforcement of the change, waiver, modification, discharge or termination is asserted. None of the terms or provisions of the Bond Documents, the Lease, or this Forbearance Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

(c) Counterparts. This Forbearance Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes, provided, however, that all such counterparts shall together constitute one and the same instrument. A PDF signature hereon shall be deemed an original for all purposes.

(d) Time is of the Essence. Time shall be of the essence with respect to each and every of the various undertakings and obligations set forth in this Forbearance Agreement.

(e) Successors and Assigns. The provisions of this Forbearance Agreement shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of the Forbearing Parties, and the respective successors and assigns of each Obligated Group Member; provided, however, nothing herein shall be intended as a consent to an assignment not specifically permitted by the Bond Documents or Lease.

(f) Entire Agreement Related to the Bonds. The various Bond Documents, as confirmed and affected by this Forbearance Agreement, constitute the entire agreement between the Creditor Parties, the Obligated Group and the other parties to the Bond Documents and this Forbearance Agreement relating to or connected with the Bonds.

(g) Entire Agreement Related to the Lease. The Lease, as confirmed and affected by this Forbearance Agreement, constitutes the entire agreement between the Landlord and the Obligated Group Representative relating to or in connection with the real property described in the Lease.

(h) No Third-Party Beneficiaries. This Forbearance Agreement shall be solely for the benefit of the parties to this Forbearance Agreement and no other person or entity shall be a third party beneficiary hereof.

(i) Applicable Law. This Forbearance Agreement shall be construed in accordance with and governed by the laws of the State of Texas without giving effect to the choice of laws principles thereof.

(j) Captions. The captions and headings in this Forbearance Agreement are for convenience only and in no way define or describe the scope or content of any provision of this Forbearance Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Forbearance Agreement as a sealed instrument as of the date first above written.

**NORTHWEST SENIOR HOUSING CORPORATION,
Obligated Group Member**


By: _____
Its: President & CEO

**SENIOR QUALITY LIFESTYLE CORPORATION,
Obligated Group Member**

By: _____
Its: _____

**UMB BANK, N.A.,
as Bond Trustee under the 2015 Bond Indenture**

By: _____
Its: _____

**UMB BANK, N.A.,
as Bond Trustee under the 2017 Bond Indenture**

By: _____
Its: _____

**UMB BANK, N.A.,
as Master Trustee under the Master Indenture**


By: _____
Its: _____

IN WITNESS WHEREOF, the parties have executed this Forbearance Agreement as a sealed instrument as of the date first above written.

**NORTHWEST SENIOR HOUSING CORPORATION,
Obligated Group Member**

By: _____
Its: _____

**SENIOR QUALITY LIFESTYLE CORPORATION,
Obligated Group Member**

DocuSigned by:


By: Jesse Jantzen
Its: President & CEO

**UMB BANK, N.A.,
as Bond Trustee under the 2015 Bond Indenture**

By: _____
Its: _____

**UMB BANK, N.A.,
as Bond Trustee under the 2017 Bond Indenture**

By: _____
Its: _____

**UMB BANK, N.A.,
as Master Trustee under the Master Indenture**

By: _____
Its: _____

IN WITNESS WHEREOF, the parties have executed this Forbearance Agreement as a sealed instrument as of the date first above written.


NORTHWEST SENIOR HOUSING CORPORATION,
Obligated Group Member

By: _____
Its: _____

SENIOR QUALITY LIFESTYLE CORPORATION,
Obligated Group Member


By: _____
Its: _____

UMB BANK, N.A.,
as Bond Trustee under the 2015 Bond Indenture




By: Irina Palchuk
Its: Senior Vice President

UMB BANK, N.A.,
as Bond Trustee under the 2017 Bond Indenture




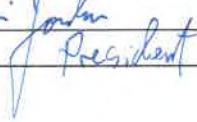
By: Irina Palchuk
Its: Senior Vice President

UMB BANK, N.A.,
as Master Trustee under the Master Indenture



By: Irina Palchuk
Its: Senior Vice President

**INTERCITY INVESTMENT PROPERTIES, INC.,
Landlord**

By: 
Its:  President

With respect to Sections II (a), (c), (g), (h) and (i) and III

**LIFESPACE COMMUNITIES, INC.,
solely in its capacity as Manager**

By: _____
Its: _____


[Signature Page to Forbearance Agreement]

**INTERCITY INVESTMENT PROPERTIES, INC.,
Landlord**

By: _____
Its: _____

With respect to Sections II (a), (c), (g), (h) and (i) and III

**LIFESPACE COMMUNITIES, INC.,
solely in its capacity as Manager**

DocuSigned by:


By: Jesse Jantzen
Its: President & CEO

[Signature Page to Forbearance Agreement]

Exhibit A

Specified Defaults and Known Anticipated Defaults

The following events, which constitute Events of Default or which, with the provision of notice and the failure to cure within the applicable curative period, would constitute Events of Default have occurred and are continuing (collectively, the “**Specified Defaults**”):

1. Failure by the Obligated Group Representative to pay monthly debt service in October and November 2021;
2. Failure by the Obligated Group Representative to maintain a Debt Service Coverage Ratio of 1.0x as of December 30, 2020;
3. Failure by the Obligated Group Representative to pay amounts due under the Ground Lease as of October, November, and December 2021;
4. Failure by the Obligated Group Representative to maintain the real property free of liens other than Permitted Liens.

The Obligated Group anticipates the below listed additional events, which constitute Events of Default or which, with the provision of notice and the failure to cure within the applicable curative period, would constitute Events of Default to occur during the Forbearance Period (collectively, the “**Known Anticipated Defaults**”):

Exhibit B**Approved Budget****Cash Flow Budget**

	Projected Nov-21	Projected Dec-21	Total 2-Months
Total Operating Receipts	\$ 1,625,397	\$ 2,593,111	\$ 5,218,508
Operating Disbursements			
Salaries & Wages	898,270	1,324,889	2,223,159
Employee Benefits & Taxes	195,183	233,191	429,354
Culinary	332,207	202,513	434,820
Environmental Services	25,823	25,995	51,818
General & Administration	319,633	534,079	649,712
Leisure Services	26,057	26,057	52,114
Plant	192,900	177,429	370,328
Skilled Nursing	166,116	171,722	337,838
Funding of Property Tax Reserve	160,478	160,478	320,956
Ground Lease	-	357,880	357,880
Home Office Allocation	128,182	(228,182)	-
Other Disbursements	3,203	9,243	18,445
Total Operating Disbursements	2,451,130	2,995,294	5,446,423
Net Cash from Operations	174,267	(402,183)	(227,915)
Capital Expenditures	(710,000)	(115,315)	(825,315)
Restructuring Professional Fees - Borrower	(144,280)	(527,336)	(671,616)
Restructuring Professional Fees - Bondholder/Landlord	-	(70,000)	(70,000)
Earned Entrance Fee and Transferred to Operations	-	-	-
Entrance Fee Refunds Paid	(66,093)	(174,352)	(240,445)
Net Cash Flow	\$ (746,107)	\$ (1,289,188)	\$ (2,035,295)
Cash Rollforward			
Beginning Cash and Investments ²	\$ 5,674,772	\$ 4,928,665	\$ 5,674,772
Net Cash Flow	(746,107)	(1,289,188)	(2,035,295)
Ending Cash and Investments	\$ 4,928,665	\$ 3,639,477	\$ 3,639,477

Exhibit C

Form of Entrance Fee Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (as the same may be amended or modified from time to time pursuant hereto, this “Agreement”) is made and entered into as of _____, 2021, by and among NORTHWEST SENIOR HOUSING CORPORATION D/B/A EDMERERE, a Texas nonprofit corporation (the “Company”), REGIONS BANK, an Alabama banking corporation, as escrow agent (the “Escrow Agent”), UMB BANK, N.A., as Trustee (as hereinafter defined) and each Resident (as hereinafter defined) (each Resident, collectively with the Company and the Escrow Agent, the “Parties”, or individually, a “Party”).

Preliminary Statement. The Company owns and operates The Edgemere (“Edgemere”), a continuing care retirement community located in Dallas, Texas. For the benefit of the Company, the Tarrant County Cultural Education Facilities Finance Corporation (the “Issuer”) issued the following bonds (i) pursuant to the Indenture of Trust dated as of May 1, 2015 (the “2015 Indenture”) between the Issuer and UMB BANK, N.A., as trustee: (a) Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015A (the “Series 2015A Bonds”) and (b) Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2015B (the “Series 2015B Bonds”); and (ii) pursuant to the Indenture of Trust dated as of March 1, 2017 (the “2017 Indenture”) between the Issuer and UMB BANK, N.A., as trustee, the Retirement Facility Revenue Bonds (Northwest Senior Housing Corporation – Edgemere Project) Series 2017 (the “Series 2017 Bonds” and together with the Series 2015A Bonds and Series 2015B Bonds, the “Bonds”). The Company is also a party to that certain ground lease dated November 5, 1999 by and between Intercity Investment Properties, Inc., a Texas corporation, as lessor and the Company, as lessee (the “Ground Lease”). Certain Events of Default have occurred and are continuing under the Bond Documents and Ground Lease (as defined in the Indenture and Ground Lease, respectively). In accordance with that certain Forbearance Agreement, dated as of _____, 2021, between the Company and the Trustee and in accordance with Section 7.4 of the Residency Agreement (as hereinafter defined) as such Section 7.4 is amended by the provisions of the Addendum to Residency Agreement (the “Addendum”), the Company has agreed to escrow Entrance Fees (as defined below) for the benefit of residents entering into a Residency Agreement on or after September 27, 2021 who execute and deliver a Joinder to Escrow Agreement in the form attached hereto as **Attachment A** (a “Joinder Agreement”) (each such resident, a “Resident”). The Company has requested that the Escrow Agent receive, hold, and disburse the entrance fees (the “Entrance Fees”) of Residents paid pursuant to their applicable residency agreements (the “Residency Agreements”) entered into by such Resident and the Company, from and after September 27, 2021 to, but not including, the date the Company delivers the Trigger Date Notice (as hereinafter defined). The purpose of the Agreement is for the protection of the prospective Resident.

The Escrow Agent acknowledges that it is willing to receive, hold, and disburse the Escrowed Funds (as defined below) in escrow in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. Appointment. The Company hereby designates and appoints the Escrow Agent as the Escrow Agent to receive, hold, and disburse the Escrowed Funds (as defined below), and the Escrow Agent hereby accepts such appointment to receive, hold, and disburse the Escrowed Funds upon the terms and subject to the conditions set forth in this Agreement.

2. Escrowed Funds. On each date from and after the date of this Agreement, but before the date the Company delivers the Trigger Date Notice (as defined below), on which a Resident or prospective Resident of a living unit at Edgemere enters into a Residency Agreement and a Joinder Agreement and delivers payment to the Company of any Entrance Fee, the Company shall promptly transmit such Entrance Fee, or portion thereof, to the Escrow Agent for deposit to the Escrow Account. The funds on deposit in the Escrow Account representing the Entrance Fees or any portion thereof paid by a Resident to the Company for deposit in escrow with the Escrow Agent shall remain the property of the Resident or the Resident's legal representative until refunded to the Resident or the Resident's legal representative or released by the Escrow Agent to such party as may be entitled thereto as directed pursuant to Section 4 hereof. Such funds shall not be subject to any liens or charges by the Escrow Agent.

The Escrow Agent shall hold all Entrance Fees deposited into the Escrow Account in escrow (the "Escrowed Funds") on the terms and conditions set forth in this Agreement. The Escrow Agent agrees to provide the Company a monthly report that shows all individual transactions in the Escrow Account reflecting all deposits made to and disbursements made from the Escrow Account during the relevant period.

3. Deposit of Escrowed Funds.

The Escrow Agent will hold the Escrowed Funds in a noninterest-bearing account that is FDIC-insured up to the maximum amount permitted by law.

4. Release of Escrowed Funds.

(a) The Escrow Agent shall hold all funds in escrow and shall not disburse any Escrowed Funds from the Escrow Account except in accordance with written instructions as described below:

(i) Transfer Upon Termination of Residency Agreement prior to Trigger Date. Prior to the date on which a restructuring or refinancing of all or substantially all of the Bonds and a restatement of the Ground Lease is consummated (the scheduled date of such restructuring or refinancing, the "Trigger Date"), Escrowed Funds shall be released in accordance with this Section 4(a)(i). Within four (4) Business Days following delivery of a notice from the Company to the Escrow Agent, with a copy to the Resident and the Trustee, in the form of **Attachment B** attached hereto (a "Disbursement Notice (Pre-Trigger Date)"), the Escrow Agent shall release to the Resident, in accordance with instructions set forth in the Disbursement Notice (Pre-Trigger Date), such portion of a Resident's Entrance Fee escrowed with the Escrow Agent, less any amounts permitted under Sections 7.1 and/or 7.2 of the Residency Agreement (the "Retained Sums"), of any Resident at Edgemere who terminates the Residency Agreement or whose Residency Agreement is otherwise terminated in accordance with the terms thereof and who, prior to

the Trigger Date, complies with all other requirements set forth in the Residency Agreement to terminate the Residency Agreement (a “Termination of Residency Agreement”). The Escrow Agent is authorized and directed to transfer or disburse all Retained Sums in accordance with the Company’s written instructions, which may include transferring such Retained Sums to the Company’s bank accounts, whether held by the Escrow Agent or any other financial depository. The Company shall deliver a Disbursement Notice (Pre-Trigger Date) with respect to the applicable Resident within fifteen (15) Business Days after the date of the Termination of Residency Agreement, provided that the Termination of Residency Agreement occurs before the Trigger Date.

(ii) Transfer on Trigger Date. No later than fifteen (15) Business Days prior to the Trigger Date, the Company and the Trustee shall deliver to the Escrow Agent and the Company shall provide each Resident a notice in the form attached hereto as **Attachment C** (the “Trigger Date Notice”), setting forth the Trigger Date and the last date, which shall be five (5) Business Days prior to the Trigger Date, by which a Resident can give notice of termination of the Residency Agreement in accordance with Section 7.4 of the Residency Agreement as amended by the Addendum (a “Notice of Termination”). The Business Day prior to the Trigger Date, the Company shall give the Escrow Agent a notice in the form attached hereto as **Attachment D**, identifying each Resident who has delivered a Notice of Termination no later than the fifth (5th) Business Days prior to the Trigger Date. All Escrowed Funds on deposit on the Trigger Date, other than those credited in the name of a Resident identified in Attachment D, shall be disbursed in accordance with the directions set forth in Attachment D. Escrowed Funds on deposit on the Trigger Date credited in the name of a Resident identified in Attachment D shall remain in escrow and distributed in accordance with Section 4(a)(iii) below.

(iii) Transfer after the Trigger Date. Escrowed Funds, less Retained Sums, of any Resident who delivered a Notice of Termination and no later than sixty (60) days after the Trigger Date complies with all other requirements set forth in the Residency Agreement to terminate the Residency Agreement, including vacating occupancy at Edgemere, shall be released to the Resident in accordance with this Section 4(a)(iii). Within fifteen (15) Business Days of the Termination of Residency Agreement, the Company shall deliver a notice from the Company to the Escrow Agent, with a copy to the Resident, in the form of **Attachment E** attached hereto (a “Disbursement Notice (Post-Trigger Date)”). Within four (4) Business Days of the delivery of such Disbursement Notice (Post-Trigger Date), the Escrow Agent shall release, in accordance with instructions set forth in such notice, (i) to the Resident such portion of a Resident’s Entrance Fee escrowed with the Escrow Agent, less the Retained Sums applicable to such Resident, as set forth in the Disbursement Notice (Post-Trigger Date); and (ii) to or at the direction of the Company, such Retained Sums. Any amount remaining in the Escrowed Fund ninety (90) days after the Trigger Date (that is, Escrowed Funds of Residents who gave a Notice of Termination but did not comply with all other requirements set forth in the Residency Agreement to terminate the Residency Agreement, including vacating occupancy at Edgemere) shall be released to the Trustee for deposit under the Bond Documents.

(b) The Escrow Agent shall not be responsible for performing any calculations with regards to this Section 4 or determining the accuracy or veracity of any notices delivered pursuant hereto and shall act solely upon written instructions as provided for herein.

(c) In providing instructions as to the release of Escrowed Funds to a Resident, the Company shall comply with the provisions for the return of Entrance Fees set forth in the Residency Agreement. Any time that the Company provides notice to a Resident pursuant to this Agreement, a copy shall be provided to the Trustee.

5. Security Procedures. In the event a Disbursement Notice is issued (other than in writing at the time of execution of this Agreement), whether in writing, by facsimile or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on **Schedule 1** hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent. If the Escrow Agent is unable to contact any of the authorized representatives identified in **Schedule 1**, the Escrow Agent is hereby authorized to seek confirmation of such instructions by telephone call-back to any one or more of the Company's executive officers ("**Executive Officers**"), which shall include the titles of Chair, Secretary or Treasurer, as the Escrow Agent may select. Such Executive Officer shall deliver to the Escrow Agent a fully executed incumbency certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. The Escrow Agent and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Company to identify (a) the beneficiary, (b) the beneficiary's bank, or (c) an intermediary bank. The Escrow Agent may apply any of the escrowed funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. The Company acknowledges that these security procedures are commercially reasonable.

6. Escrow Agent.

(a) The Escrow Agent shall have only those duties as are specifically and expressly provided herein, which shall be deemed purely ministerial in nature, and no other duties shall be implied. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument, or document between the Parties, in connection herewith, if any, nor shall the Escrow Agent be required to determine if any person or entity has complied with any such agreements, nor shall any additional obligations of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement. For purposes of this Agreement, in the event of any conflict between the terms and provisions of this Agreement and any other agreement among the Parties, the terms and conditions of this Agreement shall control. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction, or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper Party or Parties without inquiry and without requiring substantiating evidence of any kind. The Escrow Agent shall be under no

duty to inquire into or investigate the validity, accuracy, or content of any such document, notice, instruction, or request.

(b) The Escrow Agent shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to either other Party. In the event that the Escrow Agent shall be uncertain or believes there is some ambiguity as to its duties or rights hereunder or shall receive instructions, claims, or demands from any Party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be given a direction in writing by the Parties which eliminates such ambiguity or uncertainty to the satisfaction of Escrow Agent or by a final and non-appealable order of a court of competent jurisdiction. The Parties agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, incidental, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. It is the intention of the Parties hereto that Escrow Agent shall never be required to use, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers.

(c) The Escrow Agent undertakes to perform all duties which are expressly set forth herein for a fee as described in **Schedule 2**, which shall be promptly paid by the Company. The Escrow Agent shall also be entitled to reimbursement by the Company for all reasonable expenses, disbursements, and advances actually incurred or made by the Escrow Agent in accordance with any of the provisions of this Agreement (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ), exclusive of any such expense, disbursement, or advance that may arise from its own gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction.

7. Successor Escrow Agent.

The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving thirty (30) days advance notice in writing of such resignation to the Parties specifying a date when such resignation shall take effect. If the Parties fail to appoint a successor escrow agent prior to the expiration of thirty (30) days following receipt of the notice of resignation, the Escrow Agent may petition a court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the Parties hereto. The Escrow Agent's sole responsibility after such thirty (30) day notice period expires shall be to hold the Escrowed Funds (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, or in accordance with the directions of a court of competent jurisdiction, at which time of delivery Escrow Agent's obligations hereunder shall cease and terminate. The Escrow Agent shall have the right to make demand on the Company for any amount due and owing to the Escrow Agent under this Agreement.

8. Disclosures; TIN; Tax Reporting.

(a) Patriot Act Disclosure. Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”) requires the Escrow Agent to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, the Parties acknowledge that Section 326 of the USA PATRIOT Act and the Escrow Agent’s identity verification procedures require the Escrow Agent to obtain information which may be used to confirm the Parties identity including without limitation name, address, and organizational documents (“identifying information”). The Parties agree to provide the Escrow Agent with and consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent.

(b) Taxpayer Identification Numbers (“TIN”). The Company shall provide the Escrow Agent with fully executed IRS Form W-8 or W-9 for the Company and any Resident paying Entrance Fees to be Escrowed Funds, and/or other reasonably required documentation. The Company represents that its correct TIN assigned by the IRS, or any other taxing authority, is set forth in the delivered forms, as well as in the Substitute IRS Form W-9 set forth on the signature page of this Agreement with or using any service provided by the Escrow Agent.

(c) Tax Reporting. All interest, if any, or other income earned under this Agreement shall be allocated to the Company and reported, as and to the extent required by law, by the Escrow Agent to the IRS, or any other taxing authority, on IRS Form 1099 or 10425 (or other appropriate form) as income earned from the Escrowed Funds by the Company whether or not said income has been distributed during such year. Any other tax returns required to be filed will be prepared and filed by the Company with the IRS and any other taxing authority as required by law. The Parties acknowledge and agree that Escrow Agent shall have no responsibility for the preparation and/or filing of any income, franchise or any other tax return with respect to the Escrowed Funds. The Parties further acknowledge and agree that any taxes payable from the income earned on the investment of any sums held in the Escrowed Funds shall be paid by the Company. In the absence of written direction from the Parties, all proceeds of the Escrowed Funds shall be retained in the Escrowed Funds and reinvested from time to time by the Escrow Agent as provided in this Agreement. Escrow Agent shall withhold any taxes it deems appropriate, including but not limited to the required withholding in the absence of proper tax documentation, and shall remit such taxes to the appropriate authorities.

9. Notices.

All notices, requests, demands, and other communications hereunder shall be given in writing and shall be sent by electronic transmission with a copy to the Parties at their respective addresses delivered by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

If to the Trustee: Irina Palchuk
UMB Bank, N.A.
120 Sixth Street South, Suite 1400,
Minneapolis, MN 55402

E-mail: Irina.palchuk@umb.com.

With a copy to: Poonam Patidar, Esq.
Mintz Levin Cohn Ferris Glovsky & Popeo, PC
One Financial Center
Boston, Massachusetts 02111
E-mail: ppatidar@mintz.com:

If to the Company: Nick Harshfield CFO
Northwest Senior Housing Corporation
8523 Thackery Street
Dallas, Texas 75225
E-mail: nick.harshfield@lifespacecommunities.com

With a copy to: Sandra Parker General Counsel
Northwest Senior Housing Corporation¹
15601 Dallas Parkway Suite 200
Dallas, Texas 75001
E-mail: Sandra.parker@lifespacecommunities.com

If to Escrow Agent: Doug Milner, Senior Vice President
Regions Bank
Corporate Trust 3773 Richmond Avenue, Suite 1100 Houston,
Texas 77046
Email: Doug.Milner@Regions.com

With a copy to: Janet Vaughan Robertson
Schulman, Lopez, Hoffer & Adelstein, LLP
1017 Heights Boulevard
Houston, Texas 77008
E-mail: jrobertson@slh-law.com

If to a Resident, in accordance with the notice provisions of such Resident's Residency Agreement.

Any Party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

10. Indemnity.

Company agrees to defend and indemnify Escrow Agent and its officers, directors, partners, employees and agents (each herein called an “Indemnified Party”) against and to hold each Indemnified Party harmless from and against any and all claims, losses, liabilities, damages, deficiencies, penalties, costs and expenses (including, without limitation, reasonable attorney’s fees and disbursements, whether for internal or external counsel) resulting from (i) any breach by Company of this Agreement or of any Residency Agreement entered into with a Resident from whom a Deposit has been collected and deposited in escrow with Escrow Agent, (ii) any gross negligence, willful misconduct or violation of law or regulation by Company, (iii) any incomplete or erroneous data or information furnished by or for Company to Escrow Agent, (iv) any claim of any third party, including, but not limited to, a claim by a Resident or a Resident’s legal representative that Escrow Agent is responsible for any act or omission of Company or any of its directors, officers, employees, agents or representatives, (v) any failure of Company to perform its obligations with respect to the distribution of Escrow Agent’s Privacy Policy Notice and its Deposit Terms and Conditions and other consumer disclosures as described in Section 12 of this Agreement, (vi) the execution, delivery or performance of this Agreement by such Indemnified Party, and (vii) the compliance or attempted compliance by any Indemnified Party with any instruction or direction upon which the Escrow Agent is authorized to rely under this Agreement, except to the extent that any such loss, liability or expense may result from the gross negligence or willful misconduct of such Indemnified Party, as finally determined by a court of competent jurisdiction. **IT IS THE EXPRESS INTENT OF THE COMPANY TO INDEMNIFY EACH OF THE INDEMNIFIED PARTIES FOR, AND HOLD THEM HARMLESS AGAINST, THEIR OWN GROSSLY NEGLIGENT ACTS OR OMISSIONS.**

11. Right of Interpleader.

Notwithstanding anything contained herein to the contrary, should any controversy arise involving the Parties hereto or any of them or any other person, firm or entity with respect to this Agreement or the Escrow Account, or should a substitute escrow agent fail to be designated as provided in Section 7 hereof, or if Escrow Agent should be in doubt as to what action to take, Escrow Agent shall have the right, but not the obligation, ether to (a) withhold delivery of funds held in the Escrow Account until the controversy is resolved, the conflicting demands are withdrawn or its doubt is resolved or (b) institute a petition for interpleader in any court of competent jurisdiction to determine the rights of the Parties hereto. In the event Escrow Agent is a party to any dispute, Escrow Agent shall have the additional right to refer such controversy to binding arbitration. Should a petition for interpleader be instituted, or should Escrow Agent be threatened with litigation or become involved in litigation or binding arbitration in any manner whatsoever in connection with this Agreement or the Escrow Account, the Company agrees to reimburse Escrow Agent for its attorneys’ fees and any and all other expenses, losses, costs and damages incurred by Escrow Agent in connection with or resulting from such threatened or actual litigation or arbitration prior to any disbursement hereunder.

12. Documents Provided to Resident.

Company agrees that, upon receipt of an Entrance Fee from a Resident and, in any event, before transmission of such Entrance Fee to Escrow Agent for deposit in escrow, Company will deliver to the Resident a copy of Escrow Agent’s (i) Privacy Policy Notice in the form attached hereto as **Attachment F**, or any updated version thereof as authorized by Escrow Agent from time

to time during the period that this Agreement shall remain in effect and, (ii) the Deposit Terms and Conditions provided to Company by the Escrow Agent, and (iii) any other consumer disclosures provided by the Escrow Agent to the Company.

13. Miscellaneous.

(a) Accounting. Every month, the Escrow Agent will provide the Company and Trustee with an accounting of the Entrance Fees deposited into the Escrow Account, including the contract number of the Resident from whom the Entrance Fee was collected, the amount of such Entrance Fees, and all disbursements from the Escrow Account. At the request of The Commissioner of Insurance of the Texas Department of Insurance, the Escrow Agent shall issue a statement indicating the status of the Escrow Account.

(b) Waiver. A waiver of any of the provisions of this Agreement shall not constitute and shall not be deemed a waiver of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing. Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, representation, warranty, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver.

(c) Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the Parties, whether oral or written.

(d) Amendment and Termination. This Agreement may be amended only by the express written consent of the Parties hereto, which consent on the part of the Escrow Agent shall not be unreasonably withheld or delayed if the duties or responsibilities of the Escrow Agent are not increased by such amendment. This Agreement will terminate upon the occurrence of both (a) the distribution of the entire Escrowed Funds in accordance with the terms and provisions of this Agreement, and (2) the Trigger Date.

(e) Headings. The headings in this Agreement are for reference purposes and shall not affect the meaning or interpretation of this Agreement.

(f) Applicable Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Texas. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

(g) Severability. If any term or provision of this Agreement or the application thereof to any entity or person or circumstance is or to any extent shall become invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to entities, persons, or circumstances other than those held invalid or unenforceable under the laws now or hereafter in effect in the jurisdiction governing this Agreement, shall not be affected thereby, and each term and provision shall be held valid and enforceable to the greatest possible extent.

(h) Counterparts. This Agreement may be executed in one or more counterparts. Each such counterpart, when executed and delivered, shall be an original, but all such counterparts together shall constitute a single document. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document. Executed signature pages may be delivered by facsimile or email and, when so delivered, shall have the same force and effect as an original.

(i) Construction. The Company, the Trustee, the Escrow Agent and their respective legal counsel actively participated in the negotiation and drafting of this Agreement, and in the event of any ambiguity or mistake herein, or any dispute with respect to the provisions hereof, no provision of this Agreement shall be construed unfavorably against any of the Parties on the ground that he, it, or his or its counsel was the drafter thereof.

(j) Business Day. For purposes of this Agreement, "Business Day" shall mean any day other than a Saturday, a Sunday, or any other day on which banks doing business in the State of the Escrow Agent's domicile are authorized or required to be closed for business.

(k) Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

(l) Compliance with Court Orders. In the event that any escrow property (including, without limitation, the Escrowed Funds) shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders, or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties hereto or to any other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside, or vacated.

(m) Force Majeure. Company agrees that Escrow Agent shall not be in breach of this Agreement or be liable to Company for any loss or delay resulting from any act or delay or failure to act caused by circumstances not within the Escrow Agent's control, including, without limitation, malfunction of electronic media, interruption of power supply or other utilities, fire, flood, ice, earthquake, explosion, snow storm or other act of God, strike or stoppage of labor, industrial sabotage, war, insurrection, riot, act of terrorism or other civil disturbance, delays in the mail or courier service, delay in public funding, change of law, rule or government regulation or interpretation, court order, or the insolvency, unavailability or failure to act or delay in acting of any other bank or payment system, United States mail, express or armored courier, governmental agency or any other party necessary to the Escrow Agent's discharge of a performance obligation contemplated by this Agreement.

(n) Liens. The Company hereby (i) affirms the Trustee's first priority lien on the Entrance Fees granted under the Bond Documents, as defined in the Indenture, (ii) further affirms that any Entrance Fees not otherwise released to the Residents pursuant to the terms hereof shall be subject to such lien and (iii) grants the Trustee a security interest in its rights hereunder


including its rights to receive any Entrance Fees, subject to the CCRC Act (as defined in the Indenture). Nothing herein is intended to grant to the Trustee a security interest in any Resident's rights under this Escrow Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.


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

By:  _____
Name: 0FBD63BFF8124CA... NICK HIRSCHFELD
Its: Chief Financial Officer

REGIONS BANK, an Alabama banking corporation, as Escrow Agent,

By:  _____
Name: Doug Miller
Its: Senior Vice President

UMB BANK, N.A., as Trustee

By:  _____
Name: Virginia Housum
Its: Senior Vice President

Attachment A**JOINDER TO ESCROW AGREEMENT**

This Joinder to Escrow Agreement (this “Joinder Agreement”) is made as of the _____ day of _____, 202__ by the undersigned Depositor(s) (whether one or two people, the “Depositor”).

1. The Depositor hereby certifies to Regions Bank, an Alabama banking corporation (the “Escrow Agent”), that the Depositor has entered into a Residency Agreement, dated _____, 202__, together with the Addendum to Residency Agreement, dated _____, 202__ (the “Residency Agreement”) with Northwest Senior Housing Corporation d/b/a Edgemere (“Edgemere”).

2. The Depositor hereby further certifies that the Depositor (i) has received a copy of the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among the Escrow Agent, Edgemere, UMB Bank, N.A., as trustee, and the Residents (as defined in the Escrow Agreement); (ii) has read and understands the terms of the Escrow Agreement; and (iii) has received a copy of the Escrow Agent’s Privacy Policy Notice and its Deposit Terms and Conditions.

3. The Depositor acknowledges and agrees that the Depositor’s Entrance Fee shall be administered and disbursed in accordance with the provisions of the Escrow Agreement and in accordance with and in fulfillment of Edgemere’s contractual obligations under the Residency Agreement and Addendum. The Depositor further acknowledges, accepts and agrees that the Escrow Agent may rely on the directions given to the Escrow Agent in accordance with the Escrow Agreement with respect to the Depositor’s Escrowed Funds.

4. This Joinder Agreement shall be binding upon the Depositor and the Depositor’s successors, assigns, heirs and personal representatives.

This Joinder Agreement shall be construed and interpreted in accordance with the laws of the State of Texas without application of conflicts of law principles.

Date: _____

Depositor’s signature

Depositor’s name (please print)

Depositor’s signature

Depositor’s name (please print)

Edgemere certifies to the Escrow Agent that the Depositor identified above is a Resident (as defined in the Escrow Agreement) whose Entrance Fee is being delivered for deposit to the Escrow Account established under the Escrow Agreement.

Date: _____

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name:

Title:

Attachment B

DISBURSEMENT NOTICE

(For Termination of Residency Agreement prior to the Trigger Date)

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”), and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

Under the Escrow Agreement, the Escrow Agent holds in account number _____ the Entrance Fee for the Resident identified below. The Company hereby requests return to the Resident of the Entrance Fee less the Retained Sums and the transfer to the Trustee of the Retained Sums. The Escrow Agent shall transfer such amounts in accordance with the instructions set forth in Exhibit 1 attached hereto (for the amount to be returned to the Resident or the Resident’s legal representative) and in Exhibit 2 (for the Retained Sums).

Name of Resident:

Amount of Entrance Fee:

Amount of Retained Sums:

Amount to be returned to Resident:

This request is being made because:

- ☐ The Resident canceled the Residency Agreement within seventy-two hours of its execution, and the Entrance Fee must be returned by _____, 202__, pursuant to Section 246.056 of the Texas Health and Safety Code.
- ☐ The Resident has terminated the Residency Agreement.
- ☐ The Resident has died.
- ☐ The Company canceled the Residency Agreement and requests the return of the Entrance Fee to the Resident or the Resident’s legal representative.

Disbursement Notice Signature Page

Dated this _____ day of _____, 20____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name:

Title:

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”), and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

Resident’s Name: _____

Residency Agreement Date: _____

Amount of Refund: _____

Payment to be made as follows:

☐ by check☐ by wire transfer

Payee: _____

Address: _____

If by wire transfer:

Bank: _____

ABA No.: _____

Account No. _____

Dated this _____ day of _____, 20_____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____
Name:
Title:

Exhibit 2 to Disbursement Notice**Remittance Instructions**

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”) and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

Resident’s Name: _____

Residency Agreement Date: _____

Amount of Retained Sums: \$ _____

Transfer to the Trustee by wire as follows:

Bank: UMB Bank, N.A., as trustee _____

ABA No.: _____

Account No. _____

Dated this _____ day of _____, 20____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name:

Title:

Attachment C

TRIGGER DATE NOTICE

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”), and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

The Company and Trustee hereby notify you that the Trigger Date has been set as [●], 2021.

The last day that a Resident can give a notice of termination in accordance with Section 7.4 of the Residency Agreement, as amended by the Addendum, is, 202_.

Dated this _____ day of _____, 20_____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name:

Title:

UMB BANK, N.A.

By: _____

Name:

Title:

Attachment D

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”), and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

The Residents who have provided a Notice of Termination in advance of the Trigger Date are identified on Exhibit 1 attached hereto.

The Company directs the Escrow Agent to transfer all Escrowed Funds other than the Escrowed Funds credited to the Residents identified on Exhibit 1 in accordance with the instructions attached hereto as Exhibit 2.

Dated this _____ day of _____, 20_____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____
Name:
Title:

Residents who have provided a Notice of Termination in advance of the Trigger Date

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”), and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

NameDate of Residency Agreement

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Dated this _____ day of _____, 20____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name:

Title:

Exhibit 2 to Attachment D

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”), and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

Escrowed Amount: \$ _____

Deposit amount noted above to Northwest Senior Housing Corporation account at Regions Bank (account no. _____).

Dated this _____ day of _____, 20____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name:

Title:

Attachment E

DISBURSEMENT NOTICE

(For Termination of Residency Agreement after the Trigger Date)

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”), and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

Under the Escrow Agreement, the Escrow Agent holds in account number _____ the Entrance Fee for the Resident identified below. The Company hereby requests return to the Resident of the Entrance Fee less the Retained Sums and the transfer to the Trustee of the Retained Sums. The Escrow Agent shall transfer such amounts in accordance with the instructions set forth in Exhibit 1 attached hereto (for the amount to be returned to the Resident) and in Exhibit 2 (for the Retained Sums).

Name of Resident: _____

Amount of Entrance Fee: _____

Amount of Retained Sums: _____

Amount to be returned to Resident: _____

This request is being made because the Resident has terminated the Residency Agreement.

Dated this _____ day of _____, 20____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name: _____

Title: _____

Exhibit 24 to Disbursement**Remittance Instructions**

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”), and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

Resident’s Name: _____

Residency Agreement Date: _____

Amount of Refund: _____

Payment to be made as follows:

☐ by check☐ by wire transfer

Payee: _____

Address: _____

If by wire transfer:

Bank: _____

ABA No.: _____

Account No. _____

Dated this _____ day of _____, 20____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name:

Title:

Exhibit 2 to Disbursement Notice**Remittance Instructions**

Reference is made to the Escrow Agreement, dated as of [●], 2021 (the “Escrow Agreement”), among NORTHWEST SENIOR HOUSING CORPORATION (“Company”), UMB BANK, N.A., as trustee (the “Trustee”), and REGIONS BANK, as escrow agent (“Escrow Agent”), and each Resident (as defined in the Escrow Agreement). Capitalized terms used but not otherwise defined herein have the meanings given them in the Escrow Agreement.

Resident’s Name: _____

Residency Agreement Date: _____

Amount of Retained Sum: \$ _____

Transfer to the Trustee by wire as follows:

Bank: UMB BANK, N.A., as trustee _____

ABA No.: _____

Account No. _____

Dated this _____ day of _____, 20____.

NORTHWEST SENIOR HOUSING
CORPORATION

By: _____

Name:

Title:

Schedule 1

Authorized Representatives

Schedule 2**Escrow Agent Fee**

Regions Bank shall charge an annual escrow fee in accordance with the following schedule for its services as Escrow Agent, which shall be payable within thirty (30) days of receipt of Regions Bank's invoice.

Exhibit C

New Residency Agreement Addendum

NORTHWEST SENIOR HOUSING CORPORATION D/B/A EDMERERE

ADDENDUM TO RESIDENCY AGREEMENT

This Addendum to Residency Agreement (“Addendum”) is made and entered into this _____ day of _____, _____ (“Effective Date”) by and between Northwest Senior Housing Corporation d/b/a Edgemere (“Edgemere”) and _____ (whether one person or two, “Resident”).

- A. Resident has entered into a Residency Agreement (“Agreement”) with Edgemere and has paid the first installment of the Entrance Fee required pursuant to Section 5.2 of the Agreement on _____ (“Deposit Date”).
- B. The parties desire to amend the Agreement with respect to the provisions regarding the refund of the Entrance Fee through the Trigger Date.
- C. “Trigger Date” is defined as the date on which a restructuring or refinancing of substantially all of the Bonds issued by the Tarrant County Cultural Education Facilities Finance Corporation for the benefit of The Edgemere is consummated. Now, therefore, in consideration of the mutual covenants herein contained, Resident and Edgemere agree that Section 7.4 of the Agreement will be amended as follows and that such provision will supersede any other provisions of the Agreement to the extent inconsistent, including Sections 5.2, 5.5, 7.1, 7.2, and 7.7:

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

(b) Notwithstanding anything to the contrary in this Agreement, in the event (1) you paid any portion of the Entrance Fee on or after the Effective Date but before the Trigger Date (defined below) and (2) this Agreement terminates for any reason prior to the Trigger Date or you give notice of termination of this Agreement in accordance with Sections 7.1 or 7.2 hereof no later than five (5) business days prior to the Trigger Date and you vacate occupancy of the Community no later than sixty (60) days after you deliver such notice of termination to us, then that portion of the Entrance Fee (without interest) paid on or after the Effective Date but before the Trigger Date will be refunded to you, less any amounts permitted under Sections 7.1 and/or 7.2 of this Agreement and any costs incurred, if any, at your request, and such refund to be made within twenty (20) business days of the date of termination of this Agreement.

The Edgemere hereby acknowledges and agrees that any portion of the Entrance Fee paid by you on or after the Effective Date but before the Trigger Date (the “**Escrowed Funds**”) shall be held in escrow by Regions Bank, an Alabama banking corporation (the “**Escrow Agent**”) in accordance with the terms of an Escrow Agreement, an unexecuted copy of which is attached hereto as Attachment A (the “**Escrow Agreement**”). Consistent with the previous paragraph, Edgemere will direct the Escrow Agent to release the Escrowed Funds to you as described in this Section 7.4(b) to the extent you are entitled to a refund under this Section 7.4(b). If this Agreement has not been terminated by the Trigger Date and you have not given notice of termination of this Agreement prior to the fifth (5th) business day prior to the Trigger Date, then on the Trigger Date the Escrowed Funds will be released by the Escrow Agent to us or our designee and your sole right to a refund thereafter shall be in accordance with Sections 5.2 and 7.4 of this Agreement without giving effect to amendments made by this Addendum. If you have given notice of termination of this Agreement on or before the fifth (5th) business day prior to the Trigger Date and you have not vacated occupancy of the Community by sixty (60) days after the delivery of such notice, then on the day after such sixtieth (60th) day, the Escrowed Funds will be released by the Escrow Agent to us or our designee and your sole right to a refund thereafter shall be in accordance with Sections 1.3, 1.4, 7.1, 7.2, and 7.4(a) of this Agreement without giving effect to amendments made by this Addendum.

For purposes of this Section 7.4(b), the “**Trigger Date**” shall mean the date on which a restructuring or refinancing of substantially all of the Bonds issued by the Tarrant County Cultural Education Facilities Finance Corporation for the benefit of The Edgemere is consummated.

Edgemere hereby agrees to give you notice of the Trigger Date at least fifteen (15) business days prior to the Trigger Date.”

Nothing herein changes any other provisions of the Agreement, including any rights of Resident or Edgemere to terminate the Agreement, except to the extent inconsistent with the foregoing. Except as amended hereby, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Edgemere and Resident have signed this Addendum on the day and year first written above.

Dated this _____ day of _____, 20_____.

RESIDENT(S):

Signature: _____

Printed Name:

Signature: _____

Printed Name:

**NORTHWEST SENIOR HOUSING
CORPORATION D/B/A EDMERE**

By: _____

Name:

Title:

EXHIBIT D



2 North LaSalle Street, Suite 1300
Chicago, Illinois 60602
(312) 346-8380
Fax: (312) 346-8434
www.lplegal.com

Elizabeth B. Vandesteeg
(312) 476-7650
evandesteeg@lplegal.com

February 22, 2022

VIA EMAIL or FEDEX

<u>Name</u>	<u>Delivery address</u>	<u>Representation</u>
Michael Jenkins	Jenkins.michael@dorsey.com	Counsel to Lifespace/Interim General Counsel to Edgemere
David Grossklaus	grossklaus.david@dorsey.com	Counsel to Lifespace
Thomas Califano	tom.califano@sidley.com	Counsel to Edgemere
Daniel Bleck	DSBleck@mintz.com	Counsel to the Bondholders
Poonam Patidar	PPatidar@mintz.com	Counsel to the Bondholders
Abigail Ryan	Abigail.Ryan@oag.texas.gov	Texas Attorney General's Office
Esther Chavez	Esther.Chavez@oag.texas.gov	Texas Attorney General's Office
Ben Gonzalez	ben.gonzalez@tdi.texas.gov	Texas Department of Insurance
Edgemere Residents' Association	Edgemere 8523 Thackery Street Dallas, TX 75225	

RE: Edgemere – Need for Immediate Attention

All:

As most of you know, we represent Intercity Investments, Inc. ("ICI"), the landlord of the Northwest Senior Housing Corporation (the "Edgemere"), pursuant to a Ground Lease dated November 1999 (the "Lease"). ICI has been forbearing on its rights and remedies since September 2021, when the Edgemere first missed a lease payment (with the exception of the single catch-up payment made in connection with a forbearance agreement), and it has failed to make any rent payment since that time (collectively, the "Payment Defaults"). Unless the Payment Defaults are cured in full, the Lease will terminate on March 11, 2022 (the "Termination Deadline") – less than three weeks away.

February 22, 2022

Page 2

During these past months when the rent has gone unpaid, ICI has learned the following troubling facts about the Edgemere's current situation:

- The Quarterly Financial Report for the year ended December 31, 2021 showed approximately \$6.6 million dollars in cash and cash equivalents, with a monthly burn rate of approximately \$1 million;
- As of December 31, 2021, the Edgemere had only 62 days cash on hand;
- There is approximately \$124 million accrued to be paid in current and future resident refunds;
- There is no money for capital expenditures;
- The Edgemere owes approximately \$110 million on the bond debt;
- The Edgemere failed to meet its debt service covenant for the years ending December 31, 2019 and December 31, 2020, and bond payment default occurred in the fourth quarter of 2021;
- The bondholders were first informed of the Edgemere's failure to meet its debt service covenant on February 14, 2020, *over two years ago*;
- The Edgemere failed to post or otherwise publish audited financial information for the year ending December 31, 2020 (and the Quarterly Financial Reports for 2021 are unclear and inconsistent on whether such audit was even completed);
- Bondholders have been selling their bonds at prices more than seventy percent below original purchase price;
- There is increased and substantial competition for senior living in North Dallas;
- Residency has been declining to a staggering low – with overall occupancy at only 64.5%;
- The Edgemere provided false and misleading information about the Lease to residents in a recent disclosure statement.

During this time, we have reached out to various parties in interest, seeking to understand whether anyone intends to cure the Payment Defaults, and requesting updated financial information and other information regarding a potential strategy or plan in the event that such Payment Defaults are not cured. To date, we have yet to receive a definitive response or plan from anyone regarding the Payment Defaults. Instead, we have been met with silence as to a specific plan. And our request for an introduction to counsel for the residents has likewise gone unanswered.

The Edgemere's, Lifespace's, and the bondholders' collective failure to act over the last two years has put the Edgemere's residents at an avoidable and unnecessary risk. It's frankly unconscionable that ICI and, more importantly, the Edgemere's residents have not yet been presented with a plan to address the Payment Defaults and the Termination Deadline. As we rapidly approach the Termination Deadline, ICI has no choice but to assume that the Payment Defaults will not be cured and that the property will revert to ICI upon the Termination Deadline.

Accordingly, ICI has begun working on a go-forward solution for the Edgemere residents, in an attempt to ensure that residents are not displaced, and services are maintained, on and after the Termination Deadline. Specifically, ICI has determined that its expert industry consultant, Kong Capital LLC, has the necessary expertise and personnel to convert the building from a CCRC into a senior living rental facility. Such a rental community will continue to offer all levels of care, but, unlike the Edgemere's current model, will

February 22, 2022

Page 3

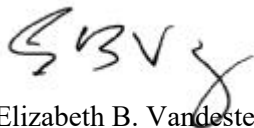
not be dependent on resident financing or entrance fees. But the residents will be provided with a pathway to direct feedback to and participation in the management of the facility. Ideally, there would be a period of months in which to complete this transition and conversion. Unfortunately, we do not have the luxury of several months here – we are left with only a dwindling matter of weeks before the Termination Deadline.

In order to effectuate this conversion to a rental community as safely and seamlessly as possible, we expect your full cooperation. We request the prompt assistance of all stakeholders to allow ICI and Kong to begin to address certain pressing items such as, for example, licensure, certifications, and employee and vendor communications. And, most critically, we need immediate access to the residents to discuss plans that we are developing and considering in terms of residency and associated benefits post-conversion.

In that light, please let us know your availability for an in-person meeting at Jackson Walker's office in Dallas (2323 Ross Ave.) on Thursday, February 24th at 2 PM or Friday, February 25th at 8:30 AM.

We look forward to your response and expect to receive it without delay.

Very truly yours,

A handwritten signature in black ink, appearing to read 'EBV', with a stylized flourish extending from the end.

Elizabeth B. Vandesteeg

EBV:nlb

cc: Eileen M. Sethna
Harold D. Israel

EXHIBIT E

[High-end Dallas retirement community's financial woes worry investors, landlord](#)

The Dallas Morning News

By Natalie Walters

February 27, 2022

The financial health of Edgemere, one of Dallas' premier retirement communities, is being threatened by falling occupancy levels and an expired deal with its landlord and bondholders that allowed it to delay making monthly payments since October.

Edgemere's own financial disclosures, along with independent examinations by an investment firm hired by the landlord and a major credit rating agency, document the luxury senior living community's dire cash position.

The company that operates the community — where independent living residents pay entrance fees of as much as \$1.4 million — recently alerted bond investors that it had fallen far below a requirement to keep 150 days of cash on hand, according to a [filing](#) with Electronic Municipal Market Access. EMMA is a service of the Municipal Securities Rulemaking Board, which protects investors, state and local governments and the public interest.

As of Dec. 31, Edgemere said it had only 62 days' worth of cash — or enough to stretch through March 3.

Compounding the risk is an expired forbearance agreement with Dallas-based Intercity Investment Properties Inc., which owns the 16 acres of North Dallas land wedged between Preston Hollow and University Park where Edgemere opened its doors in 2001. That agreement allowed Edgemere to delay payments of monthly rent, as well as interest and principal on its \$109 million of outstanding debt, according to Edgemere's 2021 financial report.

"It's unfair and unjust for Edgemere to continue to take deposits from future residents under current circumstances," said Coe Schlicher, CEO of Kong Capital, an Austin-based real estate private equity firm that specializes in strategic investments in senior housing.

Intercity Investment hired Schlicher's firm to help it find a solution, considering that a financial failure of Edgemere could affect the living situation and health of hundreds of seniors, he said. The 1.55-million-square-foot facility contains 304 independent living apartments, 113 assisted living suites and 87 nursing beds.

"I fear the residents are on a sinking ship and some of them may not even know it," Schlicher said.

Rachel Chesley, senior managing director of Washington, D.C.-based FTI Consulting, responded to questions from *The Dallas Morning News* on behalf of Edgemere. Chesley said Edgemere has had "productive discussions" with Intercity Investment over the delayed rent payments as it seeks to conserve Edgemere's cash.

"Unfortunately, despite our full compliance with the terms of the forbearance agreement and productive discussions, the landlord failed to extend the forbearance agreement and has sought to terminate the lease, contrary to its prior representations," Chesley said.

Edgemere hasn't decided how it will move forward, but "any path forward will allow Edgemere to continue operations uninterrupted, maintaining the health and lifestyle of our residents," Chesley said. To protect the entrance deposits of residents who have signed agreements since Sept. 29, she said Edgemere created an escrow account "to ensure they are not at risk."

Edgemere is holding more than \$124 million in total deposits from current residents, as well as from residents who moved out, according to its latest financial report on Feb. 14.

Chesley criticized Intercity Investment for "its interference with Edgemere's relationship with its bondholders, regulators, and residents" and insisted the discussions will have "no impact to our current residents."

In response to Edgemere's claims, Intercity Investment said through Schlicher: "Years of operating losses, mountains of debt, and an upside-down balance sheet are Edgemere's responsibility."

On Thursday, bondholders led by UMB Bank said they are no longer waiting and will seek immediate payment from Edgemere of its outstanding debt.

Called the 'Ritz-Carlton of senior living'

Edgemere's occupancy decline during COVID-19 was seen broadly across the senior housing industry, which was "hammered," according to an annual report by research firm Integra Realty Resources. It sees demand surging in the next 12 months as seniors who were waiting to move into retirement communities begin to sign agreements.

But while COVID-19 certainly weighed down Edgemere's finances, its troubles began earlier.

When Edgemere first opened, it “immediately set a new standard for luxury senior living,” according to the not-for-profit organization’s website. Schlicher described the Mediterranean-styled community as the “Ritz-Carlton of senior living.”

But Edgemere is facing increasing competition from newer luxury senior living communities in Dallas.

The Tradition-Prestonwood opened in 2010, followed by a Lovers Lane location in 2015; Belmont Village Turtle Creek opened in 2013; Preston of the Park Cities opened in 2018; and the \$140 million Ventana high-rise opened in 2019.

In recent years, Edgemere’s average occupancy in its independent living units has been steadily dropping — from 93.3% in 2018 to 74% last year, according to its 2021 financial report.

Lifespace Communities bought Edgemere and two other Texas properties in 2019 shortly before the pandemic hit, which may have hampered its turnaround plans for Edgemere. Iowa-based Lifespace ranks as the nation’s fifth-largest not-for-profit multisite senior living organization with 15 communities, according to a 2021 report from LeadingAge and Ziegler.

Edgemere’s unrestricted cash position fell from about \$37 million at the end of 2019 to less than \$7 million at the end of 2021, according to its 2020 and 2021 financial reports.

Edgemere is classified as a continuing care retirement community, an alternative to conventional assisted living facilities and nursing homes that allows residents to age into different levels of care without having to move into a new facility.

The communities start with a massive cash reserve from residents’ deposits but if they lose money each year, the reserve eventually runs dry, Schlicher said.

Many continuing care communities can borrow money in perpetuity to keep operations running, Schlicher said. But that’s not possible for Edgemere.

That’s because Edgemere doesn’t have an unlimited amount of time to pay back its debtors. Northwest Senior Housing Corp., doing business as Edgemere, signed a 55-year ground lease in 1999 with Intercity Investment, according to a copy of the lease filed in Dallas County.

After the 55 years are up or if Edgemere can’t pay its rent, then Intercity Investment has no obligation to keep the senior living facility running, Schlicher said. Edgemere is 22 years into its lease, meaning it has 33 years to pay back its debts in full.

What happens to the entrance fees?

Edgemere has an agreement in which residents or their estate receive up to 90% of their entrance fees back when they move out or die, according to Edgemere’s website. The money is returned once Edgemere has received a deposit from a new resident taking over the unit.

The fees for residents range from \$346,000 to \$1.45 million, depending on apartment size, according to a disclosure statement Edgemere provides to new residents. Most people finance entrance fees to continuing care retirement communities by selling their homes, according to Kiplinger.

In addition, Edgemere residents pay monthly service fees of \$4,176 to \$8,933, according to its disclosure document. Those in assisted living or memory care units are charged monthly fees of \$7,033 to \$10,486.

Entrance fees or deposits are first used to issue refunds to prior residents and then can be used for operating expenses, capital improvements and debt repayment, said Edgemere spokeswoman Chesley.

Residents risk losing some of their deposits in the event of a bankruptcy filing, Schlicher said.

“Based on the publicly filed quarterly financial reports, Edgemere does not appear to have the current assets necessary to pay in full its landlord, its bondholders, its resident refunds and other creditors,” he said.

Edgemere’s annual losses have accelerated in recent years, from \$12 million in red ink in 2018 to about \$30 million last year, according to its 2018 and 2021 financial reports.

Bondholders await payment, too

In total, Edgemere has issued four municipal bond sales totaling \$317 million — with \$109 million in outstanding debt, according to Electronic Municipal Market Access.

EMMA data shows Edgemere’s bonds were trading at 80 cents on the dollar on Jan. 26. The next day, they were trading at about 22 cents on the dollar after 22.7% of Edgemere’s bonds were sold, a loss of more than 72%. As of Feb. 24, Bloomberg data valued the bonds at 30 cents on the dollar.

Fitch Ratings, one of the big three credit rating agencies that examine organizations’ ability to repay debt on time and in full, downgraded Edgemere’s bonds in November to a “D,” which stands for default, according to Fitch’s website.

“Once an organization gets to a D, there’s not a lot of surveillance left that we can do because that’s the worst-case scenario,” said Kevin Holloran, a Fitch senior director and sector leader of its not-for-profit health care group.

Fitch rates 160 similar retirement communities, and Edgemere is the only one with the low D rating, Holloran said. Edgemere was previously downgraded in March 2021 to below investment grade to “CC,” which meant default was likely, according to Fitch.

“This was a long decline,” said Fitch associate director Rebecca Greive, noting that her team conducted an extensive review of Edgemere.

Edgemere’s downfall is tied to its occupancy decline, Greive said.

“The Dallas market is highly competitive,” she said. “Once occupancy dips and doesn’t recover, it can be very difficult, especially when you have a heavy debt burden like Edgemere.”

The 1.55-million-square foot facility contains 304 independent living apartments, 113 assisted living suites and 87 nursing beds.

How much do residents know?

Thomas Murphy, CEO of financial planning firm Murphy & Sylvest in Dallas, said he visits his mother-in-law regularly at Edgemere and has noticed a marked decrease in occupancy.

“There are significantly less people than two or three years ago,” Murphy said. “It’s just my observation, but I’d say there are less than 50% of the residents there used to be.”

Murphy said he wasn't aware Edgemere hadn't paid rent since October, though he recalled that residents were invited to community meetings in December to discuss finances.

Murphy, who described Edgemere as coming "through the pandemic with flying colors" in terms of care provided to residents, said he didn't attend the meetings.

Edgemere spokeswoman Chesley said incoming residents receive a disclosure statement detailing its financial position. The disclosure notes that Intercity, once the Edgemere ground lease ends or a default occurs, can either continue residency agreements and life care contracts or cancel them.

She also said Edgemere staff keeps a residents' council and residents' families informed and provided emails sent in September and December about forbearance discussions with the landlord and bondholders.

Murphy said he also wasn't aware Intercity Investment could bring in a new tenant if Edgemere can't pay its rent.

"That would be a big ordeal," Murphy said.

In Texas, the state insurance department regulates the financial condition of licensed continuing care retirement communities like Edgemere. That includes reviewing disclosures provided to current and potential residents, said department spokesman Ben Gonzales.

Gonzales declined to comment on whether the state is examining Edgemere's disclosures.

Dr. Paul Radman, a former endodontist and president of the Edgemere Resident Association, said Lifespace's chief executive told the resident association about the forbearance agreement in late 2021. He said he has full confidence in Edgemere management.

"I'm not worried," he said. "I'm assuming, and realistically I think, that Edgemere will survive."

COVID-19 is "no doubt the worst thing that could've happened" to Edgemere, he said, and is likely the major cause of its financial troubles.

"We all feel that we're at the best facility in Dallas," said Radman, who has lived at Edgemere for five years. "Maybe we're not as worried as we should be, but we're just not."

EXHIBIT F

We are very nervous': Families of former Edgemere residents worry they may not get deposits back

The Dallas Morning News

By Natalie Walters

March, 16, 2022

When 89-year-old John Stallings was ready for a retirement home in 2012, he didn't need to look around.

"Edgemere was the only place Dad would go. He knew it was nice," said his daughter, Jay Thomas, about the luxury retirement community in the heart of Dallas.

Stallings put down a deposit of \$326,012 to reserve a spot in the Mediterranean-styled community that enables residents to age into different levels of care. Ninety percent of that deposit — \$293,411 — would be refunded to him or his estate when he moved out or died, according to a copy of the contract provided to The Dallas Morning News.

Stallings wanted his refund to be an inheritance for his three granddaughters, according to his daughter.

It's been almost three years since Stallings moved out and over two years since he died, and the family still has not received its deposit back from Edgemere, said Jay Thomas and her husband, William.

"We don't feel very sure at all that we will see that money again," William Thomas said.

Last month, The Dallas Morning News reported that Edgemere's financial health was being threatened by falling occupancy levels and an expired deal with its landlord and bondholders that had allowed it to delay making monthly payments since October. That has left families like the Thomases fearing they'll never see the deposits their loved ones paid to secure a spot in the high-end retirement community.

How occupancy affects deposits

Occupancy in Edgemere's 304 independent living apartments has been steadily dropping — from 93.3% in 2018 to 74% last year, according to its 2021 financial report. Margaret Johnson, head of the senior living space at Fitch Ratings, said occupancy in the 90% to 95% range is considered good for continuing care retirement communities but higher is better.

Because refunds of deposits, which range up to \$1.4 million, aren't initiated until a new tenant moves in and hands over a deposit, according to resident contracts, there's a growing line of former residents or their family members waiting for their units to be rented.

But when a retirement community is struggling to fill units, it's not able to complete the cycle by returning the original deposit. That's how Edgemere addressed the Stallings family's situation to The News, without specifically discussing their case.

"Edgemere is compliant with all of its contractual obligations and former residents or their families are receiving refunds pursuant to their respective entrance fee contracts to the extent Edgemere has received a corresponding entrance fee from a new tenant," said Rachel Chesley, senior managing director of Washington, D.C.-based FTI Consulting.

FTI Consulting was hired in early 2021 by Edgemere's parent company to evaluate operations and marketing strategies and advise it on addressing financial issues, according to a call open to the public on March 10 about Edgemere's finances.

Besides declining occupancy, Edgemere also faced an expired forbearance deal with its landlord and bondholders. On March 9, Edgemere said it reached a new agreement with bondholders and had paid back the rent it owed to the landowner, giving it time for discussions about strengthening its finances. Edgemere also said it had made arrangements for upcoming lease payments.

Chesley declined to address how long the provisions would last or to say where the money came from or the amount. She also declined to specify how many former residents are waiting for refunds.

'You don't have any control'

For Stallings' family, their wait has been marked by what they said has been an inability to get answers about everything from why his unit hasn't been updated to whether prospective tenants have toured it.

"The problem with the whole process is it's treated like you bought this unit from them but you don't have any control of it," William Thomas said. "You're really leasing it from them."

The Thomases said they contacted Edgemere management many times but didn't receive communication from the company until they hired an attorney last fall. On Jan. 19, their attorney received an e-mail from Edgemere executive director John Falladine indicating he hoped to have a response by the end of the week. That never came.

After The News' original story, William Thomas said Edgemere lawyers tried to set up a call with his lawyer but the attorneys weren't able to find a mutually available time. Edgemere has since hired a new law firm, Polsinelli, which has 21 U.S. offices, according to its latest announcement.

"We can't close his estate until the money comes in," William Thomas said. "We just filed for a tax extension for him this year hoping that maybe in a few months we may have some resolution to this."

To protect incoming resident deposits, fees received after Sept. 27, 2021, are being held by an escrow agent during debt restructuring negotiations, Chesley said. William Thomas said he and his family assumed Stallings' deposit in 2012 was escrowed but that wasn't expressly stated in their contract.

In Texas and other states, retirement communities like Edgemere that require entrance fees exceeding three months payments are required to keep the money in escrow until it reaches a certain level of viability. At that point, the funds are released and can be used for operating costs, said Ben Gonzales, spokesman for the Texas Department of Insurance, which regulates licensed senior care facilities like Edgemere.

The idea is that once a retirement community reaches a certain level of occupancy, it will be able to maintain it and residents won't have trouble getting their deposits back in a timely manner.

Previously, Edgemere was running at high occupancy levels when there weren't competing facilities in the area. That gave it the freedom to dip into the escrow. The funds are first used to issue refunds to prior residents and then can be used for operating expenses, capital improvements and debt repayment, Chesley previously said.

But once its occupancy levels dropped, Edgemere couldn't keep up with the cycle.

Jesse Jantzen, CEO of Edgemere's parent company, Lifespace, declined an interview but said in an e-mailed statement to The News that the company has revamped its marketing and sales process to address "the growing competitive market" because occupancy is the "most important factor to the community's financial health." He said the results have been positive with 48 move-ins last year.

"For those residents awaiting refunds, it's important that the pace continues because the more move-ins to Edgemere, the more refunds will be able to be paid as soon as the [debt] restructuring is completed and the funds are released to Edgemere from the escrow account," Jantzen said.

'Edgemere is more of an outlier'

Fitch Ratings, one of the three big credit rating agencies, downgraded Edgemere's \$109 million in bonds to a "D" for default in November. This week, Fitch withdrew its rating entirely, citing Edgemere's default.

Further complicating Edgemere's situation is a 55-year ground lease with the owner of the 16 acres of land where the 1.55 million-square-foot facility sits. When Edgemere's lease with its landowner terminates, including through default, the landowner can cancel residency agreements and contracts, according to a copy of a disclosure statement that Edgemere gives residents.

FTI Consulting provided the disclosure to The News.

"Edgemere takes no position as to the enforceability of this lease or its provisions," the disclosure said.

Most of the 169 life plan communities that Fitch rates use an entrance fee model and are able to maintain it, Johnson said

"Edgemere is more of an outlier," Johnson said. "It didn't happen overnight. The new competition played a role in their ability to recover and build up their occupancy, which then feeds into negative operations. If you don't have solid operations, then you're drawing down cash and that led to what happened."

Edgemere's annual losses have accelerated in recent years, from \$12 million in red ink in 2018 to about \$30 million last year, according to its 2018 and 2021 financial reports. Its net operating margin fell from -2.2% at the end of 2020 to -26% at the close of 2021, according to its 2021 annual report. It also failed to meet its historical debt service coverage ratio covenant with bondholders in 2019, 2020 and 2021.

The COVID-19 pandemic hit the senior housing industry hard as seniors delayed signing contracts for units. Among life plan communities tracked by Fitch, median net operating margins, including entrance fees, fell from 23% in 2019 to 18% in 2020 for investment-grade borrowers, Johnson said. Fitch doesn't have data for 2021 yet.

'I am livid'

Michael Frost of Austin said his mother put down a deposit of about \$270,000 to move into Edgemere in 2016. She moved out of her unit in March 2018 and died a little over a year ago. After it sat empty for nearly three years, Edgemere leased her unit in November, but Frost hasn't received her deposit back.

"I am livid," he said. "It's not just about the money. It's the principle."

He contacted Edgemere after The News' original article and was told someone would get back to him. On March 14, Polsinelli associate Eliza Dawson contacted Frost, according to a voicemail provided to The News. Dawson told Frost that he won't receive the money until Edgemere has cleaned up its financial situation, which will trigger the release of the deposits taken in after Sept. 27 that are in escrow.

Dawson didn't provide a timeline but said she would contact him with monthly updates, Frost said. He asked for biweekly updates instead.

"We are very nervous we won't see any of that money," Frost said.

Toni Weinstein recalls visiting Edgemere in 2018 to scout the place for her mother. The entrance fee was going to be about \$1 million for the unit she viewed. As a Dallas lawyer at global law firm Dentons, Weinstein knew to ask questions.

She said she asked an Edgemere employee in the leasing office how the money was protected once handed over.

"I'll never forget, she looked at me and said 'easy peasy' and I thought it was extremely cavalier when we're talking about almost \$1 million," she said.

Weinstein asked if the deposits were kept in a segregated account and she said she didn't receive an answer. She then asked whether she was dependent on Edgemere to rent out the apartment in order to receive the deposit back and what would happen to the money in the event of a bankruptcy.

"She said, 'I don't know why you're asking these questions' and I said, 'Well, because this is a lot of money to me,' " Weinstein said.

At that point, Weinstein said, the Edgemere employee accused her of shopping the property on behalf of a competitor and had a tour guide escort her out of the building.

"I was a little shaken because it's all a very stressful process to find a home regardless of who you're doing it for," Weinstein said. "And I think what really upset me is that this is a vulnerable population, and as a society, we should do better by them."

Afterward, an Edgemere employee sent flowers to Weinstein's law office and called to apologize, she said. But Weinstein decided to look elsewhere.

"For a long time in Dallas, Edgemere was the gold standard and everybody in the Park Cities had their parents living there," Weinstein said. "But it all just feels wrong. And I could see from a cursory glance that it was ground lease land so my next question was going to be, 'What happens when the ground lease comes due?' "

Considering that Edgemere's monthly rent payments are also high, Weinstein said, she doesn't understand where all the money has gone. Edgemere residents pay monthly service fees of \$4,176 to \$8,933, according to its disclosure document. Those in assisted living or memory care units are charged monthly fees of \$7,033 to \$10,486.

"It appears to be that when you ask hard questions, which people should ask, you don't get answers," Weinstein said.

+++

EXHIBIT G

GROUND LESSOR'S LANDLORD ESTOPPEL

This Ground Lessor's Landlord Estoppel ("**Estoppel**") is executed as of March 7, 2022 ("**Effective Date**"), by Intercity Investment Properties, Inc., a Texas corporation ("**Landlord**"), for the benefit of Northwest Senior Housing Corporation, a Texas not-for-profit corporation ("**Tenant**") and UMB BANK, N.A., in its capacity as successor master trustee (the "**Master Trustee**"), and collectively with the hereinafter defined Bond Trustee, the "**Trustee**") under that certain Amended and Restated Master Trust Indenture, Deed of Trust and Security Agreement, dated as of November 15, 1999 and effective as of April 1, 2006, by and between JPMorgan Chase Bank, National Association, in its capacity as initial master trustee (the "**Prior Master Trustee**") and the Obligated Group, as supplemented by that certain Supplemental Indenture Number 4, dated as of May 1, 2015, and as further supplemented by that certain Supplemental Indenture Number 6, dated as of March 1, 2017 (collectively, as amended and supplemented, the "**Master Indenture**"); UMB BANK, N.A., in its capacity as successor bond trustee (the "**2015 Bond Trustee**") under that certain Indenture of Trust, dated as of May 1, 2015, (the "**2015 Bond Indenture**") by and between the Tarrant County Cultural Education Facilities Finance Corporation (the "**Issuer**") and The Bank of New York Mellon Trust Company, National Association, in its capacity as initial bond trustee; UMB BANK, N.A., in its capacity as successor bond trustee (the "**2017 Bond Trustee**"), and together with the 2015 Bond Trustee, the "**Bond Trustee**") under that certain Indenture of Trust, dated as of March 1, 2017, (the "**2017 Bond Indenture**") by and between the Issuer and The Bank of New York Mellon Trust Company, National Association, in its capacity as initial bond trustee.

RECITALS:

Tenant entered into that certain Ground Lease (the "**Lease**") dated as of November 17, 1999, a true and correct copy of which, as amended, is attached and marked **Attachment 1** pursuant to which Landlord leases to Tenant the land (the "**Property**") described on **Exhibit A** to the Lease and attached hereto. Landlord is the owner of the Property and Landlord's interest in the Lease. Tenant is the owner of the leasehold estate (the "**Leasehold**") created, and to the extent provided, by the Lease (the "**Assets**").

Capitalized terms in this Estoppel which are not defined herein have the same definition as provided in the Lease.

Therefore, Landlord certifies to the Tenant and the Trustee as follows:

1. The copy of the Lease set forth on **Attachment 1** is true, complete and correct copy of the Lease and there are no amendments, modifications or other alterations to the terms of the Lease.
2. The Lease is in full force and effect. The term of the Lease commenced on November 17, 1999 and expires on November 17, 2054

3. As of the effective date of this Estoppel, there exists the following Events of Default with respect to the Lease to the actual knowledge of Landlord:

- Events of Default under Sections 8.1(a) and 8.1(b) of the Lease on account of Tenant's failure to pay (i) rent for the months of October 2021, November 2021, December 2021, January 2022, February 2022, and March 2022, all as required under Section 8.1 of the Lease and (ii) related fees and expenses, as required under sections 5.3 and 5.16 of the Lease (each of the foregoing shall be referred to collectively, the "**Monetary Events of Default**"); and
- Events of Default under Section 8.1(c) of the lease on account of numerous broker's liens filed against the Property by David Steve Donosky d/b/a Steve Donosky Company which liens have not been timely satisfied as required under Section 5.11 of the Lease.

4. The following amounts are due to Landlord to cure the Monetary Events of Default (the "**Cure Amounts**"): ¹

Base Rent	\$2,024,730.91
Late Charges/Interest	\$ 202,473.08
Professional Fees	\$ <u>799,387.18</u>
Total:	<u>\$ 3,026,591.17</u>

5. Landlord is the current owner of the Property free and clear of any liens and is entitled to all of the rights of the Landlord pursuant to the Lease.

6. The monthly Rent is paid in advance on the first of each month and was previously paid in full through but not including the monthly payment which was due on October 1, 2021.

7. Upon payment of the Cure Amounts and removal of all broker's liens asserted by David Steve Donosky d/b/a Steve Donosky Company and filed against the Property, Landlord is unaware of any other Events of Default under the Lease and no default with the passage of time or the giving of notice would constitute an Event of Default under the Lease.

¹ Supporting documentation for all fees and expenses is attached as **Attachment 2**.


8. Landlord acknowledges that Tenant and Trustee are relying upon Landlord's statements and agreements herein made in funding the Cure Amounts. Landlord and the person executing this Estoppel on behalf of Landlord, have the power and authority to execute this Estoppel and Landlord has obtained all of the consents or approvals necessary or desirable to effectuate the terms of this Estoppel.

Intercity Investment Properties, Inc.,
a Texas corporation

By: _____

Name: _____

Title: _____


Nicholas P. Hannon
ITS: EVP

ATTACHMENT 1

Lease

ATTACHMENT 2

Supporting Documentation of Fees and Expenses

EXHIBIT H



2 North LaSalle Street, Suite 1300
Chicago, Illinois 60602
(312) 346-8380
Fax: (312) 346-8434
www.lplegal.com

Harold D. Israel
Partner
(312) 476-7573
hisrael@lplegal.com

March 24, 2022

VIA EMAIL

Bobby Guy
Polsinelli PC
401 Commerce Street, Suite 900
Nashville, Tennessee 37219

bguy@polsinelli.com

**Re: Northwest Senior Housing Corporation-Edgemere:
Reply to Response to Inspection Request**

Dear Bobby:

Reference is hereby made to that certain Ground Lease dated on or about November 17, 1999 (as amended, the "Lease"), between Intercity Investment Properties, Inc., a Texas corporation ("Landlord") and Northwest Senior Housing Corporation, a Texas not-for-profit corporation ("Lessee"). Capitalized terms used in this letter shall have the same meanings set forth in the Lease unless otherwise defined herein.

Thank you for agreeing to Landlord's request for an inspection. As a preliminary matter, Landlord shares Lessee's concern for the health and safety of its residents. Lessee's deteriorating financial situation is clear to anyone who has examined its financial statements on EMMA, learned of Fitch's recent decision to no longer monitor it (after consistently lowering its bond rating over the last two years). As you are in no doubt aware, when an entity such as the Lessee is having financial problems, it is not unusual for that entity to defer capital expenditures. It is only natural, therefore, that the Landlord, as the building owner, would be concerned about the nature and condition of its building and the possible impact on the residents of the building.

Landlord's concern is further heightened by Lessee's failure to return (or even respond to) Landlord's request (as set forth in both my March 8, 2022 email and my March 17, 2022 letter to Lessee, both of which you were copied on) for a tenant estoppel letter. This refusal to even acknowledge receipt of this request, or your unwillingness to return my call, suggests that there are defaults under the Lease that Lessee is unwilling to disclose.

To be clear, Landlord has not had an opportunity to inspect the building. Instead, it took two visits of the premises that were much more in the nature of an extended tour taken by a prospective resident than a building owner trying to learn the condition of the property. The person leading the most recent tour was a regional facility manager who did not have working knowledge of the building. He could not answer basic questions and, in fact, could not locate the pool in the first instance.

Regardless of label, section 5.9 of the Lease is clear and unambiguous as it provides "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." (emphasis added). There is no limit on the number of inspections or the length in a given period.

Bobby Guy
March 24, 2022
Page | 2

In specific response to your letter:

1. Information request: Our March 18, 2022 letter outlined the nature of the inspection
2. Firm that will be leading the inspection: Terracon
3. Proposed length of the inspection: To be determined by Terracon after consulting with Lessee
4. Lessee personnel: Local building engineer and others to be determined by Terracon after consulting with Lessee

Landlord also requests a detailed listing of (i) capital expenditures (nature and amount) for the remainder of 2022 and (ii) all deferred maintenance projects, including the timing of when the projects will be completed and the anticipated budget (collectively, the "Capital Expenditure Schedule").

Please provide (i) the name and contact information of the building engineer, and potential inspection dates and times, on or before 3:00 p.m. on March 28, 2022 and (ii) the Capital Expenditure Schedule on or before 3:00 p.m. on March 31, 2022.

Landlord reserves all of its legal and equitable remedies in the event that Lessee does not timely respond to this letter.

Very truly yours,



Harold D. Israel

cc: Eileen M. Sethna
Elizabeth B. Vandesteeg