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Counsel to Debtors and Debtors in Possession

Counsel to the Initial Plan Sponsors

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

In re:

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

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Jointly Administered)

NOTICE OF SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

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



PLEASE TAKE NOTICE that, on March 6, 2023, Debtor Northwest Senior Housing Corporation, on the one hand, and Bay 9 Holdings LLC, on the other, executed the *Second Amendment to Asset Purchase Agreement*, attached hereto as **Exhibit A**.

DATED: March 7, 2023

POLSINELLI PC

/s/ Trinitee G. Green

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Exhibit A

Second Amendment to Stalking Horse APA

SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

This SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT (this "Amendment") is entered into as of March 6, 2023, by and between NORTHWEST SENIOR HOUSING CORPORATION, a Texas not-for-profit corporation. (the "Seller"), and BAY 9 HOLDINGS LLC, a Delaware limited liability company (the "Purchaser").

RECITALS

WHEREAS, Seller and Purchaser are parties to that certain Asset Purchase Agreement dated as of December 16, 2022 by and between the Seller and the Purchaser (as may be amended in accordance with its terms, including that certain First Amendment to Asset Purchase Agreement, dated January 13, 2023, the "Asset Purchase Agreement"¹);

WHEREAS, on February 6, 2023, the Seller and UMB Bank, N.A as Trustee and DIP Lender (together, the "Plan Sponsors") filed their *Notice of (I) Cancellation of Auction, (II) Designation of the Stalking Horse Bidder as the Successful Bidder, and (III) Amendment to Stalking Horse Asset Purchase Agreement* [Dkt. No. 1149], identifying the Purchaser as the Successful Bidder to acquire the Assets pursuant to the terms of the Asset Purchase Agreement, subject to entry of the Confirmation Order;

WHEREAS, commencing February 21, 2023 and continuing through February 24, 2023, the Bankruptcy Court conducted an evidentiary hearing to consider whether to authorize the Seller's proposed Sale to Purchaser, including the Purchaser's proposed adequate assurances of future performance of the Ground Lease (the "Sale Hearing"); and

WHEREAS, the Seller and the Purchaser desire to amend the Asset Purchase Agreement to address certain aspects of the Sale that were raised at the Sale Hearing, in accordance with Section 8.7 of the Asset Purchase Agreement, as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

Defined Terms. Capitalized terms used but not otherwise defined herein have the meanings given to them in the Asset Purchase Agreement.

¹ Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such term in the Asset Purchase Agreement.

Amendments.

1. The definition of “Cure Amounts” shall be deleted in its entirety and replaced with the following:

“**Cure Amounts**” means the monetary amounts and/or nonmonetary obligations necessary pursuant to 11 U.S.C. § 365(b)(1)(A) and (B) to cure defaults under Assumed Contracts other than the Ground Lease.

2. The Asset Purchase Agreement shall include the following definition at Section 1.1, in alphabetical order:

“**Ground Lease Cure**” means with respect to the Ground Lease, the monetary and/or nonmonetary obligations determined necessary by the Bankruptcy Court pursuant to 11 U.S.C. § 365(b)(1)(A) and (B) to cure defaults under the Ground Lease, including (i) cure amounts or obligations under 11 U.S.C. § 365(b)(1)(A) relating to the property conditions at the Premises as determined by the Bankruptcy Court in its February 6, 2023 bench ruling (as may be supplemented by a written order or ruling issued by the Bankruptcy Court, the “**Property Conditions Ruling**”), and (ii) cure amounts, if any, under 11 U.S.C. § 365(b)(1)(B) relating to pecuniary losses that were the subject of an evidentiary hearing before the Bankruptcy Court between February 13-15, 2023, pending a ruling on same (the “**Pecuniary Cure Ruling**”).

3. Section 2.3 of the Asset Purchase Agreement shall be deleted in its entirety and replaced with the following:

2.3 Assumed Liabilities. Upon the terms and subject to the conditions contained in this Agreement, at the Closing, Purchaser shall assume or otherwise be responsible for, which amounts shall be in addition to the Purchase Price, for (collectively, the “**Assumed Liabilities**”):

(a) all liabilities and obligations under the Purchased Assets accruing or arising on or after the Effective Time (except real estate Taxes for tax year 2023 relating to the Premises and paid by Seller prior to the Closing);

(b) all Cure Amounts associated with the Assumed Contracts (other than the Ground Lease), and all liabilities and obligations arising under or related to the Assumed Contracts (other than the Ground Lease) accruing or arising on or after the Effective Time;

(c) all liabilities and obligations arising under or related to the Ground Lease accruing or arising on or after the Effective Time; *provided, however*, that notwithstanding the immediately foregoing, Purchaser assumes all liabilities and obligations under the Ground Lease relating to property conditions accruing or arising on or before the Effective Time, solely to the extent (i) not identified in the list of property conditions set forth on Schedule 8.2(c), or (ii) identified on Schedule 8.2(c) as a “Non-Default” item (as determined by the Property Conditions Ruling) and then only to the extent the condition of such property materially changes after the Effective Time to a condition that would be a default under Section 5.8 of the Ground Lease if not repaired or maintained to the extent required under the Ground Lease; and

(d) all liabilities required to be paid by Purchaser pursuant to this Agreement (such as, without limitation, stamp and recording Tax, solely to the extent not exempt under 11 U.S.C. § 1146).

4. Section 2.4(g) of the Asset Purchase Agreement (Excluded Liabilities) shall be deleted in its entirety and replaced with the following:

(g) the Ground Lease Cure, including (i) those items identified on Schedule 8.2(c) as a “Default Determined in Property Conditions Ruling” or as otherwise set forth in the Property Conditions Ruling, (ii) any amounts due Landlord pursuant to the Pecuniary Cure Ruling, (iii) any Liabilities in connection with the Landlord Litigation, whether arising prior to, or from and after the Closing, and (iv) pre-Effective Time Claims for indemnification under Section 5.7 of the Ground Lease, as set forth in Section 8.2(d).

5. Section 2.5(d) of the Asset Purchase Agreement (Closing Proceedings) shall be deleted in its entirety and replaced with the following:

(d) At the Closing, Purchaser shall assume the Assumed Liabilities (which shall be in addition to, and not a credit against, the Purchase Price), *provided, however*, with regard to Assumed Contracts other than the Ground Lease, the Purchaser shall pay to each Contract Party any Cure Amounts, in cash, by wire transfer of immediately available funds, necessary to assume and assign any Assumed Contract, at such time as may be designated by the Court in the Confirmation Order; *provided, further, however*, except as expressly stated at Section 2.3, the Seller shall satisfy any Ground Lease Cure consistent with Section 8.2 to permit the assumption and assignment of the Ground Lease to Purchaser free and clear of any Encumbrances and Liens effective as of the Closing Date.

6. Section 5.5(a) of the Asset Purchase Agreement (Cure Process) shall be deleted in its entirety and replaced with the following:

(a) Cure Process. Except with respect to the Ground Lease, Purchaser shall pay cash or other acceptable consideration to the third party (or parties) to the applicable Assumed Contract (each, a “**Contract Party**”) in order to cure the monetary defaults and satisfy any pecuniary obligations of Seller (or obtain waivers with respect thereto) with respect to the Business. Except as expressly stated at Section 2.3, Seller shall satisfy the Ground Lease Cure consistent with Section 8.2 to permit the assumption and assignment of the Ground Lease to Purchaser free and clear of any Encumbrances and Liens effective as of the Effective Time. The Purchaser shall provide adequate assurance of future performance under the Assumed Contracts.

7. Section 8.2 of the Asset Purchase Agreement shall be deleted in its entirety and replaced with the following:

8.2 Satisfaction of Cure Amounts Related to Ground Lease.

(a) Seller shall pay the Ground Lease Cure Amount to the Landlord within two (2) business days of the Closing. Seller represents, and it shall be a condition precedent to Purchaser's obligations to the Closing pursuant to Section 6.2(a), that it shall remedy Schedule 8.2(c) items 8, 11, 18, 23 and 40 on or prior to Closing. Seller shall file a notice with the Bankruptcy Court identifying each of the nonmonetary items set forth in the Property Conditions Cure Ruling and certifying that Seller or its designee has fully satisfied as of the Closing. In the event that items 16, 20 and 24 on Schedule 8.2(c) are incapable of being fully satisfied prior to Closing, the Seller and Purchaser shall enter into an escrow agreement as of the Closing Date and deposit into escrow a reserve amount acceptable to the Parties and the Trustee sufficient to satisfy the applicable Ground Lease Cure items; provided, however, solely with respect to the ongoing investigation regarding Schedule 8.2(c) items 16, 20 and 24, to the extent the Seller and Purchaser are unable to reach an agreement with respect to any repair or restoration, either Party may seek further relief from the Court consistent with the Property Conditions Cure Ruling.

(b) The Seller or Litigation Trust (as defined in the Plan) are liable for any Liabilities arising under or related to the Landlord Litigation, and any of the Landlord's fees and expenses under Section 5.16 of the Ground Lease subject to an order by the Bankruptcy Court finding that the Seller or Litigation Trust may be responsible therefor, in each case, whether arising prior to, or from and after the Closing Date, and the Confirmation Order shall so provide.

(c) Unless otherwise directed by an order of the Bankruptcy Court in the Chapter 11 Case (including the Confirmation Order, Property Conditions Ruling or any Pecuniary Cure Ruling), Schedule 8.2(c) sets forth those known property conditions at the Premises identified by the Landlord that were the subject of the Bankruptcy Court's evidentiary hearing between January 23-24, 2023 and the resulting Property Conditions Ruling. For the avoidance of doubt: (i) known property conditions identified on Schedule 8.2(c) as a "Default Determined in Property Conditions Ruling" shall be a Ground Lease Cure; (ii) property conditions not identified on Schedule 8.2(c) shall be an Assumed Liability of Purchaser pursuant to Section 2.3(d)(i); and (iii) property conditions identified as "Non-Default" shall be an Assumed Liability only to the extent provided at Section 2.3(d)(ii).

(d) Seller represents that its general liability insurance is an occurrence policy. Seller covenants to maintain its insurance policies through the Closing Date, including its general liability policy. Consistent with Section 4.1.5 of the Plan, upon the Closing Date, the Seller's interests in its insurance policies, including for general liability shall be transferred to the Litigation Trust and shall

be administered by the Litigation Trustee, including to accept any pre-Closing Date claim that but for the Plan, could have been the responsibility of the Seller, and the Confirmation Order shall so provide. The Confirmation Order shall further provide that, to the extent the Landlord asserts a claim for indemnification under Section 5.7 of the Ground Lease for a pre-Closing Date occurrence, the Landlord may assert against the Seller's applicable insurance providers in respect of the Ground Lease; *provided, however*, nothing in the Confirmation Order shall (i) create a direct right of action if one does not otherwise exist under applicable law, and (ii) shall be deemed to modify, amend, waive, or otherwise prejudice any of the insurance providers' rights or defenses under or with respect to the insurance policies.

Miscellaneous.

1. Upon the effectiveness of this Amendment, each reference in the Asset Purchase Agreement to "this Agreement," "hereunder," "hereof" or words of like import referring to the Asset Purchase Agreement shall mean and be a reference to the Asset Purchase Agreement as amended hereby.

2. Except as specifically amended herein, the Asset Purchase Agreement shall continue to be in full force and effect and is hereby in all respects ratified and confirmed, and the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any party under the Asset Purchase Agreement.


3. This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties and delivered to the other parties.

4. Except to the extent inconsistent with the Bankruptcy Code, this Amendment shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to its conflicts of law rules.


[Remainder of Page Intentionally Left Blank; Signatures Follow.]

IN WITNESS WHEREOF, each of the parties has caused this Amendment to be executed
as of the date first written above.

BAY 9 HOLDINGS LLC:

By: 
Name: Kjerstin Hatch
Title: President

**NORTHWEST SENIOR HOUSING
CORPORATION:**

By: 
Name: David K. Stewart
Title: Director and Chairman of the
Restructuring Committee of the Board of
Directors of Northwest Senior Housing
Corporation

SCHEDULE 8.2(c)

Schedule 8.2(c)

	CATEGORY OF CONDITIONS AS OF CLOSING DATE	DEFAULT DETERMINED IN PROPERTY CONDITIONS RULING	NON-DEFAULT
	SITE WORK		
1.	Tree Removal from interior courtyard raised planters		X
2.	Tree Removal from Raised Planters (Outside of Interior Courtyards)		X
3.	Localized repairs of mortar joints in retaining walls		X
4.	Repair cracking in retaining walls.		X
5.	Rebuild damaged cedar trellis in courtyards		X
6.	Repair courtyard walking paths and the displaced sections of the stone pavers		X
7.	Replace select sections of concrete sidewalk		X
	BUILDING ENVELOPE		
8.	Replace the original modified bitumen roofs (including Plaza and Commons) and address and remediate the ponding issues throughout the low-slope membrane roofs	Replace torn membrane shown in ICI Exhibit 30 ¹ , Photos 31 and 40; remove sheet metal and debris	X
9.	Increase gutter size and areas where rainwater is not captured		X
10.	Clean gutters		X
11.	Repair damaged gutter	Repair or replace severely dented gutter depicted at ICI Exhibit 30, Photo 48.	
12.	Reconnect PVC downspouts to UG Storm System		X
13.	Replace Wood Soffit Supports as Needed		X
14.	Rebuild Wood Trellis Structures		X
15.	Replace Windows & Exterior Doors		X
16.	Patch EIFS, Correct Flashing, Powerwash, Repaint Building (Exclude HC)	As stated on the record on February 21, 2023, , Purchaser has selected SOCOTEC (at Purchaser's Cost) to prepare a report to determine scope of repairs needed to façade, including areas shown in ICI Exhibit 30, Photos 49, 50, 67, and 68; Court will review expert report and determine nature of any issues. Seller and Trustee reserve rights to contest.	
17.	Powerwash and Paint Health Center Wing		X
18.	Conduct structural investigation of cooling tower framing	Seller required to address rusting on structural support beams by restoring or repairing the beams.	

¹ ICI Exhibit 30 was filed in the Chapter 11 Case on January 24, 2023 at Docket No. 1100.

	CATEGORY OF CONDITIONS AS OF CLOSING DATE	DEFAULT DETERMINED IN PROPERTY CONDITIONS RULING	NON-DEFAULT
19.	Conduct structural investigation of the exposed joint on the west side of Phase II, under Building 3		X
20.	Investigate stucco and associated staining (may include destructive testing and/or repairs to disturbed finish materials)	See line 16 above.	
21.	Install roof to roof downspout splash blocks		X
22.	Clean debris off the field of the roof, roof gutters and downspouts, and replace broken roof tiles		X
23.	Replace copper piping for the hot water boiler systems to solve for the severe electrolysis (dissimilar metal interface corrosion)	Corroded pipe in Ex. 30, Photos 98 & 99 to be replaced.	
24.	Replacement of the parking structure expansion joints	As stated on the record on February 21, 2023, Purchaser has selected SOCOTEC (at Purchaser's Cost) to prepare a report to determine scope of repairs needed to façade, including areas shown in ICI Exhibit 30, Photos 49, 50, 67, and 68; Court will review expert report and determine nature of any issues. Seller reserves rights to contest.	
	INTERIOR FINISHES		
25.	Correct above ceiling condensation, patch & paint damage		X
26.	Inspect and install GFCI receptacles under the select kitchen sinks in dwelling units		X
27.	PLUMBING SYSTEMS		
28.	Maintenance of Fire Suppression System		X
29.	Add Isolation Valves (projected 100)		X
30.	Replace Piping/Valves and Unions		X
31.	Replace Condenser Water Pump		X
	HEATING/VENTILATION/AIR CONDITIONING SYSTEMS		
32.	Replace Boilers		X
33.	Replace Independent Unit Heat Pumps		X
34.	Replace Health Center FCUs & Condensers		X
35.	Replace DX Split System		X
36.	Conduct Annual Infrared Scans of Electrical System		X
37.	Replace Cooling Tower Pump		X
38.	Replace Water Source Heat Pumps		X
39.	Replace plate-frame heat exchanger		X
40.	Repair or replace carbon monoxide detectors in garage.	Seller to repair and/or recalibrate carbon monoxide detectors	
	ELECTRICAL SYSTEMS		
41.	Install Portable Generator Docking Station		X

	CATEGORY OF CONDITIONS AS OF CLOSING DATE	DEFAULT DETERMINED IN PROPERTY CONDITIONS RULING	NON-DEFAULT
42.	Repair fire pump motor electrical issues		X
43.	Modernize and upgrade the Carbon Monoxide monitoring and ventilation system in garage		X
44.	Replace Dectron dehumidifier at pool		X
45.	Upgrade Fire pump controller		X
46.	Refurbish fire pump		X