

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

**TESCO PROPERTIES, INC., and** )  
**PEPPER TREE – MEMPHIS, LTD.,** )  
 )  
**Plaintiffs,** )

**No. 2:21-cv-02743-JTF-atc**

**v.** )

**AMY WEIRICH, in her official** )  
**capacity as 30th Judicial District** )  
**Attorney General, JENNIFER SINK,** )  
**in her official capacity as Chief Legal** )  
**Officer for the City of Memphis, and** )  
**CITY OF MEMPHIS** )

**Defendants,** )

**v.** )

**UNITED STATES DEPARTMENT OF** )  
**HOUSING AND** )  
**URBAN DEVELOPMENT** )

**Defendants.** )

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**MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION FOR ABATEMENT  
OF NUISANCE OR TO FILE SUPPLEMENTAL PETITION BY JENNIFER SINK, IN  
HER OFFICIAL CAPACITY AS CHIEF LEGAL OFFICER FOR THE CITY OF  
MEMPHIS, AND THE CITY OF MEMPHIS**

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Consolidated Case Defendant Jennifer Sink, in her official capacity as Chief Legal Officer for the City of Memphis, and the City of Memphis (collectively, “the City”) hereby move, under Rule 15 of the Federal Rules of Civil Procedure, for leave to file a Second Amended Petition for abatement of public nuisance to assert a common law nuisance claim. Alternatively, the City requests leave to file a supplemental pleading to assert a common law nuisance claim.

In support of this Motion, the City relies on the law and argument set forth in the Memorandum in Support filed concurrently with this Motion.

Respectfully Submitted,

BAKER DONELSON BEARMAN  
CALDWELL & BERKOWITZ, P.C.

s/ Bruce A. McMullen

Bruce A. McMullen (#18126)

Jennie Vee Silk (#35319)

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*Attorneys for Jennifer Sink in Her Official  
Capacity as Chief Legal Officer for the City  
of Memphis and the City of Memphis*

**CERTIFICATE OF CONSULTATION**

I hereby certify that counsel for Chief Legal Officer Sink, Bruce McMullen and Jennie Silk, consulted with counsel for the Consolidated Case Plaintiffs, Alexander Wharton on August 17, 2022 via telephone. Mr. Wharton advised that Consolidated Case Plaintiffs oppose the relief sought in this Motion. Also on August 17, 2022, Bruce McMullen and Jennie Silk consulted with counsel for HUD, Stuart Canale, by telephone. On August 18, 2022, Mr. Canale advised by email that HUD does not oppose this motion. On August 18, 2022, Jennie Silk consulted with Jim Newsom, counsel for Amy Weirich, by telephone, who advised that General Weirich does not oppose this Motion.

*s/ Bruce A. McMullen* \_\_\_\_\_  
Bruce A. McMullen

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of August 2022, the foregoing was served by the Court's ECF system to all counsel of record.

*s/ Bruce A. McMullen* \_\_\_\_\_  
Bruce A. McMullen

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

**TESCO PROPERTIES, INC., and  
PEPPER TREE – MEMPHIS, LTD.,**  
  
**Plaintiffs,**

v.

**AMY WEIRICH, in her official  
capacity as 30th Judicial District  
Attorney General, JENNIFER SINK,  
in her official capacity as Chief Legal  
Officer for the City of Memphis, and  
CITY OF MEMPHIS**  
  
**Defendants,**

v.

**UNITED STATES DEPARTMENT OF  
HOUSING AND  
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**Defendants.**

**No. 2:21-cv-02743-JTF-atc**

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**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND  
AMENDED PETITION FOR ABATEMENT OF NUISANCE OR TO FILE  
SUPPLEMENTAL PETITION BY JENNIFER SINK, IN HER OFFICIAL CAPACITY  
AS CHIEF LEGAL OFFICER FOR THE CITY OF MEMPHIS, AND THE CITY OF  
MEMPHIS**

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Consolidated Case Defendants Jennifer Sink, in her official capacity as Chief Legal Officer for the City of Memphis, and the City of Memphis (collectively, “the City”), hereby submit this Memorandum in Support of Motion for Leave to File Second Amended Petition for Abatement of Nuisance (“Amended Petition”), or, alternatively, to File Supplemental Petition under Rule 15 of the Federal Rules of Civil Procedure.

In the last two weeks, the City of Memphis has responded to two complaints of collapsed walkways and a fire. The physical structure of Peppertree Apartments is literally deteriorating beneath the feet of its residents. It is bad enough that the residents of Peppertree Apartments are required to live in a complex rampant with crime, but they now also have to worry about the structural integrity of the buildings in which they live. Accordingly, the City seeks to add a claim for common law nuisance in addition to the statutory nuisance claims in the Second Amended Petition.

## **I. BACKGROUND**

### **A. Procedural Background**

On November 22, 2021, the City and the State of Tennessee, ex rel. Amy Weirich, District Attorney for the Thirtieth Judicial District of Tennessee at Memphis (“District Attorney Weirich”) initiated a nuisance action in the Shelby County Environmental Court (“Environmental Court”)<sup>1</sup> against Consolidated Case Plaintiffs Peppertree Apartments, Pepper Tree – Memphis LTD, and TESCO Properties, Inc. (collectively, “Peppertree”) to abate the long-term pattern of criminal activity at the Peppertree Apartments, a federally subsidized housing complex located in the Whitehaven community of Memphis, Tennessee. (ECF No. 77 at PageID 1348–1364, 1372–1382.) The Petition for Abatement of Nuisance was based in part on an investigation conducted by the Memphis Police Department (“MPD”), which revealed that, among other things, 1,649 emergency calls were reported from Peppertree between March 1, 2020 and October 3, 2021 in response to numerous shootings, aggravated assaults, drug related crimes, gambling, and arson. (*Id.* at PageID 1352–1354.) The claims in the Petition were grounded in Tennessee Code Annotated § 29-3-101 *et seq.*

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<sup>1</sup> In 2006, the Environmental Court entered a temporary restraining order against Defendants and the Peppertree property due to ongoing criminal activity. (ECF No. 77 at PageID 1376.)

Defendants later filed an Amended Petition in the Environmental Court case. (ECF No. 77 at PageID 1372.) The Amended Petition added Pepper Tree – Memphis, LTD as a defendant. (*See id.*) The allegations in the Amended Petition were otherwise identical to those in the original petition.

Peppertree removed the Environmental Court action to this Court on December 1, 2021.<sup>2</sup> (*Id.* at PageID 1343–1346.) On December 15, Peppertree filed a motion for preliminary injunction seeking to enjoin the state court nuisance proceedings. (ECF No. 11).

On June 21, 2022, this Court joined the United States Department of Housing and Urban Development (“HUD”) as a necessary party to the Peppertree cases. (Case No. 2:21-cv-02745, ECF No. 27). In so doing, the Court found that HUD has significant contractual and financial interests in the Peppertree property including “the primary mortgage on the Peppertree property, the two subordinate liens, the HAP contract terms, regulatory agreements, as well as possessing significant control of the property regarding use and occupancy.” The Court found that “HUD is so intertwined with the Peppertree property that disposing of the action in the party’s absence will, as a practical matter, impair or impede the party’s ability to protect the interest.” *Id.* at PageID 686.

On July 29, 2022, the Court denied Plaintiffs’ Motion to Remand the nuisance action to Environmental Court. (Case No. 2:21-cv-02745, ECF No. 28). The Court concluded:

Even though a public nuisance involves state law issues as defined under Tenn. Code. § 29-3-101(a)(2)(A), the Court finds that Defendants have raised a substantial-federal interest with respect to the HAP contract between HUD and TESCO Properties. For purposes of remand, the Court is reminded that federal question jurisdiction is proper only when a federal question is presented on the face of Plaintiffs’ Petition—unless there is an exception. Upon careful review of the HAP contract that governs Peppertree as an affordable housing property, the Court

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<sup>2</sup> The removed case was assigned Case No. 2:21-cv-02745-JTF-atc in this Court.

finds that federal question jurisdiction does exist at this juncture of the litigation under the substantial-federal question doctrine exception.

*Id.* at PageID 732.

On August 5, 2022, this Court consolidated the two lawsuits into this case. (Case No. 2:21-cv-02745, ECF No. 29.)

## **B. Recent Developments at the Peppertree Apartments**

Since the initial nuisance action based on the pervasive criminal activity was filed in Environmental Court, a number of events have transpired, raising serious questions about whether the condition of the premises endangers the life or health of the residents or otherwise obstructs the reasonable and comfortable use of property. These events include at least two collapsing elevated walkways, a large fire, and repeated HUD inspection failures.

Peppertree Apartments consists of multiple two-story units, connected by a series of connecting and elevated walkways. On July 27, 2022, one of those elevated walkways collapsed. *See* Rimkus Consulting Group Structural Engineering Report, **Exhibit A**. Despite being on notice as of July 27, 2022 that the elevated and connecting walkways were deteriorating and structurally unsound, the management and ownership of the Peppertree Apartments failed to take any action to shore up or repair the deteriorating walkways throughout the complex.<sup>3</sup>

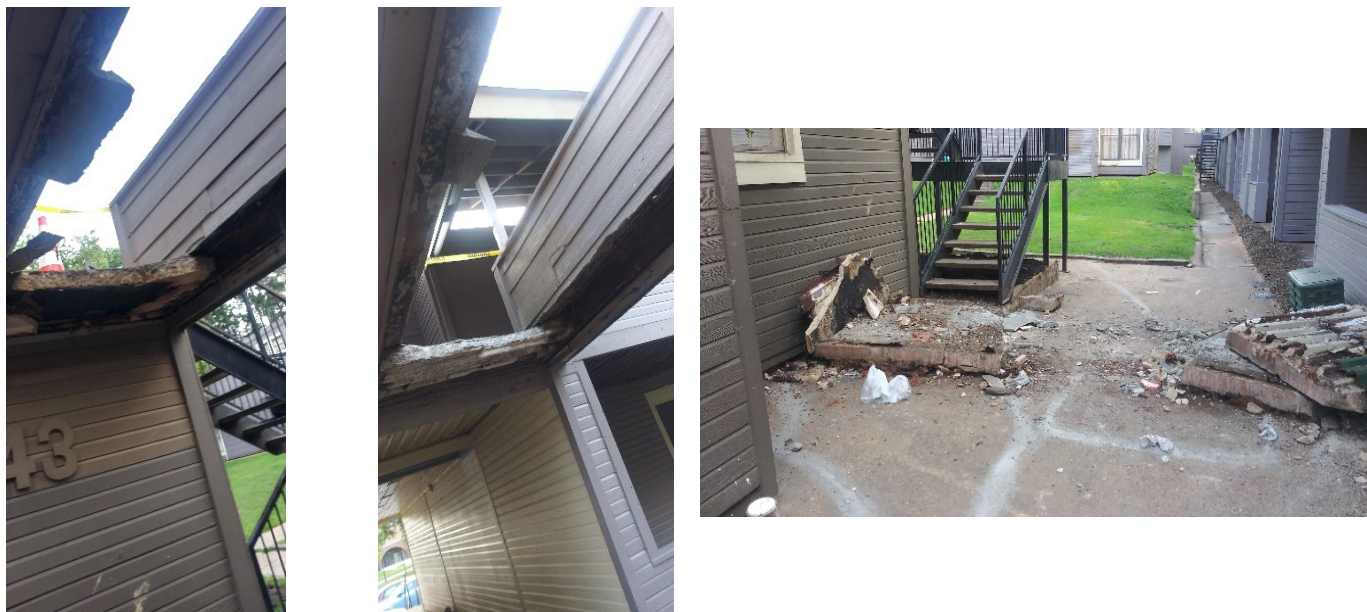
Six days later, on August 2, 2022, a second-floor connecting walkway collapsed at the Peppertree Apartments injuring three people, including a 14-year-old girl.<sup>4</sup> *See also* Rimkus

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<sup>3</sup> The Management of Peppertree Apartments did not report this July 27, 2022 collapse to the office of Code Enforcement. The City was unaware of this incident until after receipt of the Rimkus Consulting Group Structural Engineering Report, Exhibit A, on August 17, 2022.

<sup>4</sup> *Walkway collapse at Peppertree Apartments sends three people to hospital, MFD says*, Fox 13 (August 2, 2022), <https://www.fox13memphis.com/news/local/walkway-collapse-peppertree-apartments-sends-three-people-hospital-mfd-says/GCYUJN66FJF7XAWHGY7RELIN7E/>; 2 injured after walkway collapses at Peppertree Apartments, WREG Channel 3 News (Aug. 3, 2022), <https://wreg.com/news/local/3-injured-after-walkway-collapses-at-peppertree-apartments/>.

Consulting Group Structural Engineering Report, Exhibit A. Ten days later, on August 12, 2022, the media reported that a second-floor concrete slab located over a tenant's porch fell onto the first-floor.<sup>5</sup> A resident of Peppertree Apartments told reporters that the walkways “feel[] like mush, like you are about to fall through it.”<sup>6</sup>



Images of the August 3, 2022 walkway collapse.

City of Memphis Code Enforcement responded to the August 2 collapse and conducted an inspection and found structural issues in walkways, stairs, porches, and balconies throughout the complex. See Aug. 3, 2022 Inspection Report, attached hereto as **Exhibit B**. City of Memphis Code Enforcement required Peppertree to repair and replace stairways, decks, porches, and balconies throughout the entire property, as well as obtain an inspection by a structural engineer.

<sup>5</sup> *Second walkway in 10 days collapses at Peppertree Apartments, residents say*, Fox 13 (August 12, 2022), <https://www.fox13memphis.com/news/local/second-walkway-10-days-collapses-peppertree-apartments-residents-say/BW64HNXM75E4RNM2GZQS23QE5A/>;

<sup>6</sup> *Residents fear another walkway collapse at Peppertree Apartments*, Fox 13 (Aug. 3, 2022), <https://www.fox13memphis.com/news/local/residents-fear-another-walkway-collapse-peppertree-apartments/KBNKJVTO6ZEH7HY4IEMEEKP5LY/>.



*Id.* at p. 4. Code Enforcement issued a Notice to Correct Violation to Pepper Tree-Memphis LTD, and ordered the following conditions be abated by August 17, 2022:

Stairways, decks, porches and balconies must be repaired or replaced throughout the entire property (IPMC 304.10)

All repairs must be in a workmanlike manner

Failure to comply shall result in Court Actions and Fines

*See* Notice to Correct Violation, Exhibit B, p. 5. That citation is scheduled to be heard in Environmental Court on August 22, 2022 at 9:00 am.

On August 15, 2022, Peppertree Apartments was cited by Code Enforcement for:

1. Having unsafe exterior surfaces;
2. Having unsafe conditions-exterior structure;
3. Having a dangerous and/or unsafe structure;
4. Having unsafe stairs, porches, walks and parking areas;
5. Failing to comply with Notice to Correct Violation; and
6. Failure to provide structural engineering findings.

*See* Aug. 15, 2022 Citation, attached hereto as **Exhibit C**.

The August 15 Citation noted that, instead of repairing the deteriorating walkways and other structures, Peppertree Apartments merely sealed off the areas, “posing a threat to egress.”

*Id.* at p. 2. *See also* Memphis Fire Department Inspection Reports, **Exhibit D**. The Court Action Report attached to the August 15 Citation notes:

Upon initial inspection [on August 3, 2022], property was not in compliance due to damaged and dilapidated stairways, decks, porches, and balconies through-out the entire Peppertree Apartment premises.

During recheck [on August 15, 2022], property made little effort to remedy the situation. Further damages were noticed during the re-inspection of the property. A balcony collapsed onto a residents (sic) porch as proper repairs were not made.

*Id.* at p. 3. That citation was heard on August 17, 2022 in Environmental Court.

At the August 17, 2022 hearing in Environmental Court, Peppertree submitted a report

from a structural engineer that concluded that the structural integrity of the connected and elevated walkways was compromised, “making them unsafe to remain in service in their current state”. *See* Rimkus Consulting Group Structural Engineering Report, **Exhibit A**.

On August 17, 2022, a fire occurred on the property, which appears to have resulted in an entire building being burnt. The fire was in the leasing office and fortunately, no one was injured, but the structure was completely burned and the remaining structure is a hazard.

Further, during the week of August 1, 2022, HUD conducted a second Real Estate Assessment Center (“REAC”) inspection of the Peppertree Apartments, which resulted in a failing score of 44. As the Court previously noted, REAC inspection results are scored from 0 to 100, and a score below 60 is considered failing. (ECF No. 77-23 at PageID 2032–2033.) This second REAC inspection was necessary due to the initial failing score of the Peppertree Apartment’s January 2021 REAC inspection, which was 49. (ECF No. 36 at PageID 278.) To date, Peppertree has failed to cure its failing inspection from January 2022.

The Peppertree Apartments is a public nuisance in every sense of the word, putting its tenants and the community at risk. Accordingly, the City seeks to file a Second Amended Petition for Abatement of Nuisance or a supplemental pleading to add a claim for nuisance under Tennessee common law, a draft of which is attached as **Exhibit E**. The proposed Second Amended Petitions outlines all of the factors contributing to the abhorrent and unsafe conditions at the Peppertree Apartments that must be abated to protect the residents of Peppertree Apartments and the community at large.

As shown *supra*, the conditions at Peppertree Apartments have only grown worse since the November 2021 nuisance action was initiated. Consolidated Case Plaintiffs have allowed the conditions at the property to deteriorate even further—despite the pendency of the original

nuisance action. The lack of structural integrity and other code enforcement violations pose a grave risk to human life, and it is within this Court’s purview to consider all of these factors when adjudicating the nuisance action. If the Court permits the filing of the Second Amended Petition, it may then fashion a remedy to alleviate *all* of the dangerous conditions at the Peppertree Apartments—not just the criminal aspects.

## II. LEGAL STANDARD

Courts should freely give leave to amend a pleading “when justice so requires.” Fed. R. Civ. P. 15(a)(2). “In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” *Parchman v. SLM Corp.*, 896 F.3d 728, 736 (6th Cir. 2018) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Sixth Circuit case law “manifests ‘liberality in allowing amendments to a complaint.’” *Newberry v. Silverman*, 789 F.3d 636, 645 (6th Cir. 2015) (quoting *Janikowski v. Bendix Corp.*, 823 F.2d 945, 951 (6th Cir. 1987)).

“A district court may ‘permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.’” *Ne. Ohio Coal. For the Homeless v. Husted*, 837 F.3d 612, 625 (6th Cir. 2016) (quoting Fed. R. Civ. P. 15(d)). A supplemental pleading may set forth new facts, new claims, and new parties. *Stewart v. Shelby Tissue, Inc.*, 189 F.R.D. 357, 361 (W.D. Tenn. 1999). Courts are given “broad discretion” under Rule 15(d) to allow supplemental pleadings. Fed. R. Civ. P. 15 advisory committee’s note to 1963 amendment. “Factors such as undue delay, trial inconvenience, and prejudice to the parties should be considered when evaluating a motion to file a supplemental pleading.” *Stewart*, 189 F.R.D. at 362 (citation omitted). “However, as a general rule, applications

for leave to file a supplemental pleading are normally granted.” *Id.* (citing *McHenry v. Ford Motor Co.*, 269 F.2d 18, 25 (6th Cir. 1959)).

### III. ARGUMENT

The City should be granted leave to plead claims for violation of Tennessee nuisance laws. Leave to amend should be freely granted “when justice so requires.” Fed. R. Civ. P. 15(a)(2). In this case, there is no “apparent or declared reason” why leave to amend or supplement the pleadings should not be granted. *See Parchman*, 896 F.3d at 736. Therefore, justice requires that the City be granted an opportunity to assert a claim for common law nuisance.

First, the claim is not futile. Under Tennessee law, “a nuisance extends to everything that endangers life or health, gives offense to the senses, violates the laws of decency, or obstructs the reasonable and comfortable use of property.” *Sherrod v. Dutton*, 635 S.W.2d 117, 119 (Tenn. Ct. App. 1982). “This follows from the basic principle that a common law nuisance is not founded on any statute and a public nuisance may exist with or without statutory predicate.” *State ex rel. Swann v. Pack*, 527 S.W.2d 99, 103 (Tenn. 1975). “Generally, a nuisance does not depend upon negligence although negligence may exist. The nuisance consists of the harmful effects or the danger of the thing.” *Zollinger v. Carter*, 837 S.W.2d 613, 615 (Tenn. Ct. App. 1992). “The key element of any nuisance is the reasonableness of the defendant's conduct under the circumstances.” *Sadler v. State*, 56 S.W.3d 508, 511 (Tenn. Ct. App. 2001) (citing 58 Am.Jur.2d *Nuisances* § 76).

The Peppertree Apartments is a public nuisance, and the owner’s and management’s conduct has been entirely unreasonable under the circumstances. The owner and management of Peppertree were on notice as of July 27, 2022, the date of the first collapse, that the elevated walkways were deteriorating and unsafe, but they did nothing. Now, multiple walkways have collapsed, injuring three people including a child. Peppertree Apartments is currently in violation of multiple city codes due to the lack of structural integrity. *See* Aug. 3 Inspection Report, Ex. B;

Aug. 15 Citation, Ex. C. Further, Peppertree Apartments scored five points lower on its recent REAC inspection compared to its failed January 2022 inspection. The lack of structural integrity and the inhabitability of the Peppertree Apartments directly endanger the life and health of anyone living at or visiting the property.

Second, there is no undue delay, bad faith, or dilatory motive. The factual events giving rise to the claim for common law nuisance occurred on July 27, August 3, August 15, and August 17, 2022. This Motion is brought within days of these events occurring, and is, therefore, timely.

Finally, Peppertree will not be prejudiced if this Court grants the relief requested. Despite having been initiated in December 2021, this matter is still procedurally in its infancy. There has been no scheduling order entered. The parties have not taken discovery. And there is no trial date which might be affected should the Motion be granted.

Moreover, justice requires this amendment. As the Court has noted, HUD has significant interests in the Peppertree Apartments, which would be impaired should the Environmental Court determine the conditions at the Peppertree Apartments are such that the property must be condemned. If the Court permits this amendment, the City will ask the Court to accept jurisdiction over the pending Environmental Court proceedings related to the Code Enforcement violations at the Peppertree Apartments since they bear directly on the common law public nuisance claims. This amendment and resulting consolidation will serve to protect HUD's interest in the property, as well as to preserve judicial resources and prevent potentially contrary rulings by two courts.

### **CONCLUSION**

For these reasons, the City respectfully requests leave to file a Second Amended Petition for Abatement of Nuisance or a supplemental pleading to add a claim for public nuisance under Tennessee common law.

Respectfully Submitted,

BAKER DONELSON BEARMAN  
CALDWELL & BERKOWITZ, P.C.

s/ Bruce A. McMullen

Bruce A. McMullen (#18126)

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*Attorneys for Jennifer Sink in Her Official  
Capacity as Chief Legal Officer for the City  
of Memphis and the City of Memphis*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of August 2022, the foregoing was served by the Court's ECF system to all counsel of record.

*s/ Bruce A. McMullen*  
Bruce A. McMullen

# EXHIBIT A





Rimkus Consulting Group, Inc.  
12140 Wickchester Lane, Suite 300  
Houston, TX 77079  
Telephone: (713) 621-3550

August 3, 2022

Mr. Bob Cuttle  
TESCO Development, Inc.  
2171 Judicial Drive, Suite 200  
Germantown, TN 38138

Re: Rimkus Matter No: 100179993  
**Subject: Notice of Hazardous Condition**

Dear Mr. Cuttle:

We are writing this letter to indicate unsafe conditions with the connecting walkways between apartment buildings and the elevated walkways along the front of the apartment buildings (**Photograph 1**), based on our inspection performed on August 3, 2022. These conditions were located at the Peppertree Apartments at 4243 Graceland Drive in Memphis, Tennessee.

Rimkus Consulting Group, Inc. (Rimkus) was notified by your office that a connecting walkway had collapsed the night of August 2, 2022 (**Photograph 2**), and was asked to assess the remaining walkways of identical construction for immediate life-safety concerns. During the inspection, Rimkus was informed that an elevated walkway had collapsed approximately 1 week prior, on or about July 27, 2022 (**Photograph 3**).

Rimkus inspected walkways in the vicinity of the collapse locations but did not inspect every walkway on the property. The inspection path included a representative sample of the walkways. The following conditions were systemic and representative of the other buildings not inspected. During the inspection, the following conditions were observed on the walkways:

- Structural steel framing exposed by the collapsed walkways was deteriorated with a significant loss of cross-section, and the remaining steel was delaminating (**Photographs 4 and 5**).
- The metal deck and structural steel framing visible on the undersides of intact connecting walkways were extensively deteriorated, and localized displacement had occurred at the deck-bearing edges (**Photograph 6**).

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Page 2

- HSS steel girders supporting the end of the connecting walkways were deteriorated with a notable loss of cross section at bearing points, and the remaining steel was delaminating (**Photograph 7**).
- The elevated walkway metal deck had rusted through and no longer provided structural support along a significant length of the bearing edges (**Photographs 8 and 9**).
- The concrete slabs that formed the walkways had been poured without steel reinforcement, relying solely on the metal deck for support, and the concrete aggregate was pea gravel, several pieces of which had split within the concrete. The steel had deteriorated and retained limited or no structural capacity, and the split pea gravel will continue to crack the concrete internally (**Photograph 10**).

The cumulative effect of these conditions has compromised the structural integrity of the connecting and elevated walkways, making them unsafe to remain in service in their current state.

**The following temporary measures are recommended to preserve life safety:**

- All connecting walkways and the area beneath the walkway structures should be removed from service with secure barricades that will prevent access and use.
- All elevated walkways and the areas beneath the walkway structures should be removed from service with secure barricades that will prevent access and use.
- Alternately, all elevated walkways along the front of the buildings should be temporarily shored down the center of the metal deck span. Secure barricades should be provided in the areas located directly below the elevated walkways, with protected pathways as required to maintain egress.

These temporary measures shall remain in place until additional assessments can be performed that confirm sufficient structural stability and/or repairs can be completed.

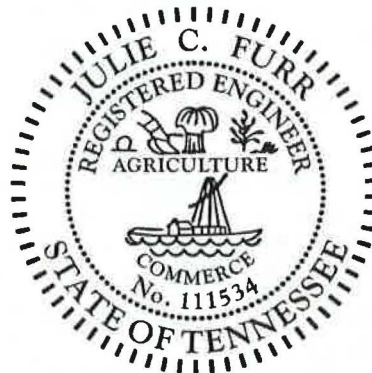
Representatives of TESCO were made aware of this condition and our recommendations at the time of our inspection, but this letter should be forwarded to all other applicable parties. Please do not hesitate to contact us if you have any questions or concerns.

Julie Furr

Digitally signed by: Julie Furr  
DN: CN = Julie Furr C = US  
O = Tennessee  
Date: 2022.08.03 16:14:21 -  
06'00'

Julie C. Furr, P.E., S.E.C.B.  
Tennessee Engineering No. 111534  
Senior Consultant

Attachments: Photographs, Annotated Aerial View





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**Photograph 1**

Connecting walkway (red arrow) and elevated walkway (yellow arrow).



**Photograph 2**

Connecting walkway: remaining concrete slab and steel framing.



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**Photograph 3**

Elevated walkway: remaining debris left in place and exposed framing.



**Photograph 4**

Connecting walkway: deteriorated and delaminated steel (yellow arrow) and concrete cross-section without steel reinforcement.





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**Photograph 5**

Elevated walkway: deteriorated and delaminated steel support (yellow arrow).



**Photograph 6**

Connecting walkway: extensive deterioration and localized displacement (inset).



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**Photograph 7**

Connecting walkway: deteriorated structural steel HSS girder at the bearing point.



**Photograph 8**

Elevated walkway: delaminated and expanded steel edge framing (yellow arrow) and deteriorated metal deck with a full loss of cross-section along the edge (red arrow).





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**Photograph 9**

Elevated walkway: deteriorated metal deck with a full loss of cross section and voids between the supported concrete above.



**Photograph 10**

Typical condition: exposed broken edge of concrete without steel reinforcement and with split aggregate (yellow arrows).



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## **Annotated Aerial View**



# Peppertree Apartments

4243 Graceland Drive  
Memphis, TN



COMPLEX  
BOUNDARY

RIMKUS PATH OF  
INSPECTION



ELEVATED  
WALKWAYS

CONNECTING  
WALKWAYS





# EXHIBIT B



- Repair damaged windows, skylights, doors, and door frames. (304.13)
- Exterior walls must be free from holes, breaks, loose or rotting materials, and kept waterproof. (304.6)
- Repair structural members to be free of from deterioration and capable of of supporting the imposed dead and live loads. (304.4)
- Maintain/Cut overgrown grass, weeds, and plant growth from the building and the premises. (302.4)
- Remove all rubbish and garbage from the exterior of the property. (308.1)
- Remove all inoperable vehicles from the premises. (302.8)
- Secure the building from the weather and to prevent trespass.
- Repair damaged stairs, ramps, landings, balcony porches, decks and/or
- other walking surfaces. (305.4) MUST OBTAIN A STRUCTURAL ENGINEER
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**II. INTERIOR:**

- We were unable to gain access to the interior of the building. Please contact us as soon as possible to schedule an interior inspection.
- Repair or replace all damaged or missing structural components. This shall include but is not limited to all damaged or missing trusses, roof rafters, wall studs and floor joists. (305.2)

- Repair damaged stairs, ramps, landings, balcony porches, decks and/or other walking surfaces. (305.4)
- Remove all rubbish and garbage from the interior of the property. (308.1)
- Replace all missing or damaged electrical covers. This shall include but is not limited to all panel boxes, junction boxes, switch and outlet covers. (604.3)
- Repair all damaged electrical equipment, wiring and appliances. (605.1)
- Repair all damaged plumbing fixtures. (504.1)
- Repair damaged elevators, dumbwaiters, and/or escalators. All elevators, dumbwaiters, and escalators must comply with ASME A17.1. (606.1)
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**NOTES:**

- Contact the Memphis and Shelby County Office of Construction Code Enforcement at (901) 222-8392 for all required repair and/or demolition permits. If the Building Department requires a permit, you must provide the Division of Public Works with a copy of your building permit application form, a copy of all structural engineer's reports required by the Building Department and a copy of the building permit final. A copy of this inspection report is being forwarded to the Building Official.
  
- The City of Memphis Code, Section 16-81, and Shelby County Code, Section 3-25 [Reference 1200-3-11-02 (Asbestos)] require building owners and/or operators to submit a notification of intent to do demolition or renovation at least ten (10) working days prior to the start of the activity even if no asbestos is present so compliance can be verified. Notification also includes the submission of an asbestos survey report. Please contact the Health Department at (901) 222-9725 for more information.



**This Inspection Report does not include repairs required for occupancy of this building. A Use and Occupancy permit must be obtained from the Building Department before re-occupying this building.**



**This building has been determined to have "unsafe conditions" as defined in the City of Memphis Ordinance # 5708. It must not be occupied for occupied for business, storage and / or habitable purposes until conditions have been corrected to the satisfaction of the Memphis and Shelby County Office of Construction Code Enforcement and the Division of Public Works.**



**This building contains conditions which require an inspection by a structural engineer licensed in the State of Tennessee. All repairs shall be inspected and approved in writing by a structural engineer. The Division of Public Works shall receive a copy of all engineer's reports.**

**INSPECTED BY:** B. FRAZIER (901)293-9281 **Date:** 8/3/2022



**Division of Public Works  
 Neighborhood Improvement  
 Department of Code Enforcement  
 4225 Riverdale Rd.  
 Memphis, TN 38141  
 (901) 636-7464 TTY# 636-6501**

<b>NOTICE TO CORRECT VIOLATION</b>	Date				
	Source			Area	
	SR No				

Name				Parcel ID			
Address				Owner		Agent	
City		State	Zip	Note			

	Address Of Violation
--	----------------------

You are hereby notified to (see item marked X on check list)	Code Section
Keep your unit and the premises thereof, in a clear and sanitary condition.	308.1
Dispose of garbage and rubbish in a clean and sanitary manner.	308.2 308.3
Exterminate rats, roaches, insects, fleas, and/or termites.	309.2;309.3;309.5
Discontinue the excessive use of extension cords.	605.4
Discontinue the use of open flame space heaters.	602.3 603.1
Properly maintain (repair and paint) or demolish fences, out-buildings; Remove debris.	302.7 304.1
<b>Maintain</b> exterior property areas in a clean and sanitary condition free from any accumulation of rubbish, trash & debris.	302.1 308.1
Cut and maintain area free of excessive, overgrown, grass, weeds and shrubbery.	302.4
Remove and maintain area free of junked automobile parts, refrigerators, stoves & other chattels from premises.	302.1 308.1
Vehicle(s) declared a public nuisance.	302.8
Storage of vehicle(s) on public or private property prohibited.	302.8
Remove and maintain area free of all vehicles in violation (inoperable, wrecked, partially dismantled).	302.8; 302.8.1; 302.8.2
Other:	

The items listed being a violation of the Housing Code of the City of Memphis, you are hereby notified to abate the condition(s) by \_\_\_\_\_ . You may telephone 636-7464 to request a hearing regarding these matters.

Code Enforcement Inspector				Phone		
Closed Date			Computer Code		By	
VOYC		VOB		VOM		REINSPECTION CODES/DATES

**PENALTY:** Section 1-8 of the Code of Ordinances as amended by Sec. 103.5, 106.1, 106.2, 106.3, and 106.4 of the IPMC of Memphis Tennessee as adopted on 01/29/2019 provides, upon conviction of failure to comply, a fine of not more than \$50.00 for each offense. Each day the owner/occupant fails to comply with said order shall constitute an additional offense.

# EXHIBIT C



Division of Public Works  
 Neighborhood Improvement  
 4225 Riverdale Rd  
 Memphis, TN 38141  
 (901) 636-7464 TTY# 636-6501

SR No. 203717L



City of Memphis, County of Shelby, State of Tennessee

N<sup>o</sup>. MCE0730

In the General Sessions Court of Memphis, Tennessee

The undersigned, being duly sworn, upon his oath deposes and says:

On the 15 day of AUGUST, 2022 at \_\_\_\_\_ M.  
 Name PEPPER TREE - MEMPHIS LTD (PEPPER TREE) (First Last) (ADTS)  
 E-mail \_\_\_\_\_

Address 4243 GRACELAND DR MEMPHIS, TN (full address) 38116  
 Phone \_\_\_\_\_ Date of Birth \_\_\_\_\_ Sex \_\_\_\_\_ Race \_\_\_\_\_  Tenant  Owner

Did unlawfully, on premises within the City of Memphis, specifically 4243 GRACELAND DR MEMPHIS, TN (full address) 38116  
 did then and there commit the following offense/s, as marked, in violation of City Ordinance  
 Chapter No. 5708

Section No.	Description of Violation	Section No.	Description of Violation
		<input checked="" type="checkbox"/>	108.1.1 Having a dangerous and/or unsafe structure
		<input checked="" type="checkbox"/>	302.3 Having unsafe stairs, porches, walks and parking areas
			302.7 Improperly maintaining accessory structures
			304.13 Having unsafe windows, doors and hatchways
			302.8 Having commercial vehicles parked in a Residential area
			304.14 Having improper or no guards and screens for windows and doors
<input checked="" type="checkbox"/>	304.4, 304.5, 304.6, 304.7 Having unsafe exterior surfaces		309.1 Failing to exterminate insects, rodents, etc.
<input checked="" type="checkbox"/>	304.1.1 Having unsafe conditions- exterior structure	<input checked="" type="checkbox"/>	106.4 Failing to comply with Notice to Correct Violation
	302.8 Having inoperable vehicle/s	Other: <b>FAILURE TO PROVIDE STRUCTURAL ENGINEERING FINDINGS</b>	
	305.1 Having unsanitary conditions- interior		
	305.1.2 Having unsafe conditions- interior		
Inspector/Officer <u>B. FRAZIER</u>			

You are to appear in Division 14 of the General Sessions Court, Memphis, Shelby County, Tennessee, located at 201 PORLAP AVE on the 17 day of AUGUST, 2022 at 9:00 AM, to respond to this complaint.

I hereby affix my signature with the understanding that such is not a plea of guilty, but to certify that I received the defendant's copy of this complaint.

Jessica Moore  
 Signature



Property

Address

4243 Graceland Dr

Case No.

5835614

## COURT ACTION REPORT

Date Inspector

Date	Inspector	
8/3/2022	A. Lewis	First Inspection: Upon initial inspection, property was not in compliance due to
		damaged and dilapidated stairways, decks, porches, and balconies through-
		out the entire Peppertree Apartments premises.
8/15/2022	A. Lewis	Recheck and what was observed: During recheck, property made little effort to
		remedy the situation. Further damages were noticed during the re-inspection
		of the property. A balcony collapsed onto a residents porch as proper repairs
		were not made.
8/15/2022	A. Lewis	Issued Court Summons to appear on:
		<b>2022-AUG-17      201 Poplar      9:00 AM</b>
		Additional Notes: Bob Cuttle 901-759-1855, a member of the parent company
		was on site during the re-inspection. Before re-inspection, a balcony had
		collapsed on the premises. The area where the balcony collapsed was sealed
		off with plywood to prevent civilians from possible injuries. Numerous pathways,
		balconies, and stairways appeared dilapidated and pose serious safety
		concerns to not only the residents, but the maintenance staff and security as
		well. Mr. Cuttle explained that they had spoken with a Structural Engineer who
		informed them to place support beams beneath balconies, walkways, etc until
		they could draft up a plan to properly reinforce or repair those areas.

# EXHIBIT D



**Attached Images:**

**Attached Images:**



City of Memphis  
**Division of Fire Services**  
Fire Prevention Bureau  
**2668 Avery Avenue**  
**Memphis, TN 38112**  
**Phone: 901.636.5401**



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**GENERAL INSPECTION**

**Record Number: FIRE-INSP-22-01892**

August 17, 2022

4317 GRACELAND DR, MEMPHIS 38116  
MEMPHIS, 38116

An inspection of your facility on Tuesday, August 16, 2022 revealed the results listed below.

<b>Inspection Number:</b> 33600838	<b>Date:</b> 08/16/2022	<b>Status:</b> Passed
------------------------------------	-------------------------	-----------------------

**Record Type:** Fire Inspection

**Business Name:** Pepper Tree Apartments

**Location:** 4317 GRACELAND DR, MEMPHIS 38116 MEMPHIS, 38116

**Contact:**

**Inspector:** Anthony Robertson, anthony.robertson@memphistn.gov

**Result Comment:** On 8/4/22 the Pepper Tree apartments had a structure that collapsed at 4317 and 4271 Graceland Dr. causing the breezeways to be unusable and only one exit for residents to egress from. This facility is notified to be on fire watch until structure has been repaired and all exit are usable. Fire-watch information has been left with management and explained what has to take place during fire watch.



City of Memphis  
Division of Fire Services  
Fire Prevention Bureau  
2668 Avery Avenue  
Memphis, TN 38112  
Phone: 901.636.5401



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**GENERAL INSPECTION**

Record Number: FIRE-INSP-22-01890

August 18, 2022

4261 GRACELAND DR, MEMPHIS 38116  
MEMPHIS, 38116

An inspection of your facility on Thursday, August 18, 2022 revealed the results listed below.

**ORDER TO COMPLY:** Since these conditions are contrary to the local and/or State Fire Prevention Code, you must correct each item upon receipt of this notice. An inspection to determine compliance with this notice will be conducted on or about 09/01/2022. If you fail to comply with this notice before the next inspection, you may be liable for the penalties provided by law for such violations.

**Inspection Number:** 33605289                      **Date:** 08/18/2022                      **Status:** ReInspection - OTC Issued

**Record Type:** Fire Inspection

**Business Name:** Peppertree Apartments

**Location:** 4261 GRACELAND DR, MEMPHIS 38116 MEMPHIS, 38116

**Contact:** Larry W Sisson

**Inspector:** Mark Wormley, mark.wormley@memphistn.gov

**Result Comment:** I spoke with Lisa Gooden, the apartment manager at Peppertree Apartments. I told her she/they have until 8/26/2022 to either relocate the tenants to a different location until the issue is resolved or make All breezeways safe for the tenant to use. they can use any option(s) to use that they see fit to make sure there's two means of egress for the tenants as well as first responders.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

**TESCO PROPERTIES, INC., and  
PEPPER TREE – MEMPHIS, LTD.,** )

**Plaintiffs,** )

v. )

**AMY WEIRICH, in her official  
capacity as 30th Judicial District  
Attorney General, JENNIFER SINK,  
in her official capacity as Chief Legal  
Officer for the City of Memphis, and  
CITY OF MEMPHIS** )

**Defendants,** )

v. )

**UNITED STATES DEPARTMENT OF  
HOUSING AND  
URBAN DEVELOPMENT** )

**Defendants.** )

**No. 2:21-cv-02743-JTF-atc**

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**SECOND AMENDED PETITION FOR ABATEMENT OF NUISANCE  
AND REQUEST FOR INJUNCTIVE RELIEF**

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Jennifer Sink, in her official capacity as Chief Legal Officer for the City of Memphis, and the City of Memphis (collectively, “the City”), hereby file this Second Amended Petition for Abatement of Nuisance and Request for Injunctive Relief, and states its complaint against Peppertree Apartments, Pepper Tree – Memphis Ltd., and TESCO Properties, Inc. as follows:

**PARTIES**

1. Jennifer Sink is Chief Legal Officer of the City of Memphis, Tennessee.

2. The City of Memphis is a municipality in the State of Tennessee.

3. Amy Weirich is District Attorney for the 30<sup>th</sup> Judicial District of the State of Tennessee at Memphis.

4. The Peppertree Apartments is a federally subsidized affordable housing apartment complex located at 4243 Graceland Drive, Memphis, Shelby County, Tennessee 38116.

5. TESCO Properties, Inc. is a Tennessee corporation doing business in Memphis, Shelby County, Tennessee. TESCO Properties serves as the property manager/managing agent for Peppertree Apartments.

6. Pepper Tree – Memphis, Ltd. is the owner of Peppertree Apartments.

7. The United States Department of Housing and Urban Development (“HUD”) is a federal agency that possesses a financial and contractual interest in Peppertree Apartments, and it has been joined as a necessary party under Rule 19 of the Federal Rules of Civil Procedure by order of this Court.

### **JURISDICTION**

8. This action raises disputed and substantial questions of federal law, as is necessary to satisfy federal question jurisdiction under 28 U.S.C. § 1331.

### **VENUE**

9. Venue is proper in the United States District Court for the Western District of Tennessee under 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claims occurred and continue to occur in this district, and the property at issue is located within the United States District Court for the Western District of Tennessee.

10. Shelby County, Tennessee is also the proper venue for this action pursuant to Tennessee Code Annotated § 29-3-103, which provides for actions to be brought in the county wherein such nuisance exists.

### **FACTS**

11. The Peppertree Apartments is an apartment complex with numerous units, common areas, and parking lots. It is the site of an active drug trade, as well as numerous crimes of violence. The criminal activity, caused by a mix of tenants and non-tenants, creates a dangerous and violent atmosphere that poses a clear danger to the tenants and the community at large.

12. The Peppertree Apartments is comprised of one parcel of real property with its appurtenances and attachments.

13. Over the past several years, the Memphis Police Department (“MPD”), District Attorney’s Office, and City of Memphis have received numerous complaints from citizens in the community concerning Peppertree Apartments. Complaints have pertained to shootings and violence at the property, as well as structural issues affecting the safety and habitability of the property.

14. In 2006, the Shelby County Environmental Court entered a temporary restraining order against Peppertree Apartments. At that time, Peppertree Apartments agreed to implement safety measures such as identifying decals for vehicles lawfully on the property with towing of any unauthorized vehicles, an electronic gate system, improved lighting, and security guards. In conjunction with the action, Peppertree Apartments entered the Safeways program, which is a collaborative effort of law enforcement and property managers. Peppertree Apartments is no longer a part of the program, apparently due to a failure to pay dues.

15. An investigation by the MPD and Multi-Agency Gang United (“MGU”) revealed, among other things, that:

a. Between March 1, 2020 and August 18, 2022, MPD responded to 2,221 calls taking place at Peppertree Apartments. Of those calls, 173 calls were for shootings, 293 involved guns, 55 were for assault/battery, 20 involved large gatherings of people, nine involved drugs, nine were for robberies, and eight involved gambling.

b. MPD has documented 442 Part I crimes from March 1, 2020 to August 16, 2022. Of those crimes, 66 were aggravated assaults, 78 were for burglary; 6 were drug felonies, 11 were drug misdemeanors, two were drug equipment violations, four were murders, 10 were robberies, 28 were felony weapon law violations, and 19 were misdemeanor weapons violations.

c. MPD has documented shootings with a person hit on April 16, 2020, April 22, 2020, June 12, 2020, June 26, 2020, July 12, 2020, July 21, 2020, October 4, 2020, December 1, 2020, January 30, 2021, May 4, 2021, May 13, 2021, May 20, 2021, June 3, 2021, June 25, 2021, and October 4, 2021, March 5, 2022, May 4, 2022, June 19, 2022, and July 27, 2022.

d. Additionally, in 2022 alone, MPD has responded to 28 calls for shots fired and 78 calls for weapons violations.

e. Further, MPD documented numerous drug incidents, including a gang related drug incident on May 7, 2020, and an armed party under the influence of drugs on June 13, 2020, and sales of drugs on July 29, 2021 and September 12, 2021.

f. Moreover, MPD dealt with large crowds on multiple occasions. In at least one instance, on April 28, 2020, the crowd was fighting and armed with guns. In another instance, on April 12, 2021, there were shots fired out of the large crowd.

g. One MPD officer who lives adjacent to Peppertree Apartments has called well-over 100 times over the past six years for shots fired and shooting calls. The officer has also called for two arsons, large fights, and suspicious persons, and prowlers in progress. Many of the vehicles are illegally parked, making it difficult for residents to see around them and causing issues for drop-off and dismissal at nearby Hillcrest High School. Security is often not present or insufficient.

16. Between December 1, 2021 and August 16, 2022, MPD took 149 offense reports from Peppertree Apartments.

17. Additionally, the criminal activity at Peppertree Apartments has garnered much media attention, furthering its reputation in the community as a haven for criminal activity. One resident described the property as a “warzone.” Another resident described bullets going through his windshield and head rest. A resident of a nearby senior living facility stated residents sleep on the floor because of shootings.

18. The Peppertree Apartments consists of multiple two-story units, connected by a series of connecting and elevated walkways. Tenants must use these walkways to gain access to their apartments. Upon information and belief, on or around July 27, 2022, one of those elevated walkways collapsed.

19. The Peppertree Apartments, Pepper Tree – Memphis Ltd., and TESCO Properties, Inc. took no action to fortify any of the other elevated walkways in the complex following that collapse.

20. Just six days later, on August 2, 2022, another second-floor walkway collapsed injuring three individuals, including a 14-year-old child.

21. Residents described feeling unsafe while traversing other walkways at Peppertree Apartments. One resident described the walkways as unsteady leaving her feeling as if she was “about to fall through it.”

22. On August 3, 2022, the City of Memphis Department of Code Enforcement cited Peppertree Apartments for various building code violations including, but not limited to, having dangerous and unsafe structures. The inspector observed that “[n]umerous pathways, balconies, and stairways appear dilapidated and pose serious safety concerns to not only the residents, but the maintenance staff and security as well.” (August 3 Inspection Report, attached as **Exhibit A**.)

23. On August 3, 2022, the City of Memphis Department of Code Enforcement ordered the Peppertree Apartments to hire a structural engineer to “[r]epair damaged stairs, ramps, landings, balcony porches, decks and/or other walking surfaces.”

24. On August 3, 2022, a structural engineer believed to have been hired by TESCO Properties, Inc., Rimkus Consulting Group at the request of HUD following the July 27, 2022 walkway collapse, inspected walkways at Peppertree Apartments in the vicinity of the collapse locations, but they did not inspect every walkway on the property. The inspection path included a representative sample of the walkways at the Peppertree Apartments.

25. The Rimkus Report, attached as **Exhibit B**, noted the following conditions were observed on the walkways that were inspected:

- a. Structural steel framing exposed by the collapsed walkways was deteriorated with a significant loss of cross-section, and the remaining steel was delaminating;
- b. The metal deck and structural steel framing visible on the undersides of intact connecting walkways were extensively deteriorated, and localized displacement had occurred at the deck-bearing edges;



- c. HSS steel girders supporting the end of the connecting walkways were deteriorated with a notable loss of cross section at bearing points, and the remaining steel was delaminating;
- d. The elevated walkway metal deck had rusted through and no longer provided structural support along a significant length of the bearing edges;
- e. The concrete slabs that formed the walkways had been poured without steel reinforcement, relying solely on the metal deck for support, and the concrete aggregate was pea gravel, several pieces of which had split within the concrete;
- f. The steel had deteriorated and retained limited or no structural capacity, and the split pea gravel will continue to crack the concrete internally.

26. The Rimkus Report recommended that all connecting and elevated walkways and the area beneath the walkway structures should be removed from service with secure barricades that will prevent access and use. Alternately, all elevated walkways along the front of the buildings should be temporarily shored down the center of the metal deck span. Secure barricades should be provided in the areas located directly below the elevated walkways, with protected pathways as required to maintain egress.

27. These recommendations, if implemented, would constitute a major fire hazard. The connected and elevated walkways are necessary for ingress and egress in case of a fire emergency, and at least two egresses are required. If the walkways are barricaded or only permitted one path of egress, the residents will be at grave risk should a fire erupt.

28. On August 12, 2022, the media reported another collapse in which a second-floor concrete slab fell onto the porch of the first-floor tenant's apartment. Upon information belief, this was the walkway that collapsed on July 27, 2022.

29. The City of Memphis Department of Code Enforcement conducted an inspection on August 13, 2022. No management was present, so Code Enforcement returned on August 15, 2022 and issued another citation against the Peppertree Apartments for having unsafe and

dangerous exterior surfaces, conditions, and structures, and further, required an appearance in the Shelby County Environmental Court on August 17, 2022. It also cited the Peppertree Apartments for failure to provide structural engineering findings as required by the August 3, 2022 citation.

30. The connected and elevated walkways throughout the Peppertree Apartments are unsafe and must be taken out of service; but taking them out of service creates an unacceptable fire hazard. Accordingly, the Peppertree Apartments are currently uninhabitable. *See* Memphis Fire Department Inspection Reports, attached as **Exhibit C**.

31. Between January 11-14, 2022, HUD caused the Real Estate Assessment Center (“REAC”) to inspect the Peppertree Apartments. REAC inspections result in a score between 0 and 100. Any score below 60 is considered failing. Peppertree Apartments received a failing score of 49 during this inspection.

32. On or about August 2-4, 2022, HUD caused a second REAC inspection of the Peppertree Apartments, which resulted in a failing score of 44. This score was even lower than the score obtained from the January 2022 inspection.

33. On August 17, 2022, the leasing office at Pepper Tree caught fire and was destroyed. This is the second major fire at the Peppertree Apartments in the past year.

34. The habitability, safety, and structural conditions at Peppertree Apartments have deteriorated and will continue to deteriorate absent Court intervention. The owner of Peppertree Apartments, Pepper Tree — Memphis LTD, and the manager, TESCO Properties, Inc., have been on actual notice of the unsafe, unlawful and unacceptable conditions at the Peppertree Apartments for at least ten months, but they have refused to make any effort to remedy the deplorable conditions.

### **CLAIMS**

**Count I: Nuisance Under Tennessee Code Annotated § 29-3-101 et seq.**

1. The allegations contained in the foregoing paragraphs are incorporated herein by reference as if specifically re-alleged herein.

2. Tennessee Code Annotated § 29-3-101(a)(2) defines a “nuisance” as:

Any place in or upon which lewdness, prostitution, promotion of prostitution, patronizing prostitution, unlawful sale of intoxicating liquors, unlawful sale of any regulated legend drug, narcotic, other controlled substance or controlled substance analogue, any sale or possession with intent to sell of drug paraphernalia, . . . unlawful gambling, any sale, exhibition or possession of any material determined to be obscene or pornographic with intent to exhibit, sell, deliver or distribute matter or materials . . . drunkenness, fighting, breaches of the peace are carried on or permitted . . . .

3. Peppertree Apartments is a nuisance under Tennessee Code Annotated § 29-3-101(a)(2).

4. The criminal activities occurring on the property are well documented. These illegal activities include, among other things, illicit drug activities, unlawful gambling, drunkenness, fighting, and breaches of the peace.

5. This action is filed in an effort to stop the long-term and worsening problem of criminal activity occurring at Peppertree Apartments. The complex presents an uncontrolled danger and a nuisance, serving as a haven for drug-related issues, violence, criminal disturbances, and other dangerous behavior.

6. Pepper Tree – Memphis, Ltd. and TESCO Properties, Inc. are the owners and manager of the property, respectively. As a result, they are guilty of maintaining a nuisance under Tennessee Code Annotated § 29-3-101(b).

7. The City prays that this Court enter a temporary writ of injunction enjoining and restraining the further continuance of the nuisance. The City further requests the Court to award her any additional damages or relief for which it may be entitled.

**Count II: Common Law Nuisance Claim**

8. The allegations contained in the foregoing paragraphs are incorporated herein by reference as if specifically re-alleged herein.

9. The Peppertree Apartments poses a substantial risk to the health and safety of the tenants, staff, and visitors of the property.

10. The Peppertree Apartments is overrun with criminal activity which threatens the safety of its residents and other members of the community.

11. The Peppertree Apartments has fallen into a state of disrepair due to the inaction of its owner, Pepper Tree – Memphis, Ltd., and its manager, TESCO Properties, Inc. Individuals have been injured as a direct result of the unsafe structural conditions at the property.

12. The City hereby respectfully asks this Court to enjoin the nuisance on the property, and to award it any other relief or damages for which it may be entitled.

WHEREFORE, the City asserts its right to relief as follows:

1. That the Court enter temporary writ of injunction and/or preliminary injunction against the Peppertree Apartments enjoining and restraining the further continuance of the nuisance;

2. That the Court enter temporary writ of injunction and/or preliminary injunction against the Peppertree Apartments enjoining them from accepting new tenants and from renewing any expiring leases;

3. That a judgment be entered declaring Peppertree Apartments a public nuisance pursuant to the laws of the State of Tennessee;

4. That an order be entered that the City of Memphis is permitted to communicate directly with the tenants of Peppertree Apartments to provide relocation assistance to anyone that requests it;

5. The Court accept jurisdiction over all pending and future Environmental Court actions related to the Peppertree Apartments and consolidate with the instant action;

6. That the Court award the City any additional relief or damages to which it may be entitled, including, but not limited to, an award of the attorney's fees and costs incurred in bringing this action.

Respectfully Submitted,

BAKER DONELSON BEARMAN  
CALDWELL & BERKOWITZ, P.C.

*s/ Bruce A. McMullen* \_\_\_\_\_

Bruce A. McMullen (#18126)

Jennie Vee Silk (#35319)

Pete A. Brunson (#37109)

165 Madison Avenue, Suite 2000

Memphis, Tennessee 38103

Telephone (901) 526-2000

bcmullen@bakerdonelson.com

jsilk@bakerdonelson.com

pbrunson@bakerdonelson.com

*Attorneys for Plaintiff Jennifer Sink in Her  
Official Capacity as Chief Legal Officer for  
the City of Memphis and the City of  
Memphis*



**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of August 2022, the foregoing was served by the Court's ECF system to all counsel of record.

*s/ Bruce A. McMullen* \_\_\_\_\_  
Bruce A. McMullen

# EXHIBIT A



Division of Public Works  
 Department of Code Enforcement  
 Commercial Anti-Neglect  
 4225 Riverdale Rd  
 Memphis, TN 38141  
 (901) 636-7464 TTY# 636-6501

## INSPECTION REPORT

<b>CASE NUMBER:</b>	5837142	<b>PARCEL AND MAP NO:</b>	079004 00019 (73-N)
<b>INSPECTION DATE:</b>	8/3/2022	<b>INSPECTOR:</b>	B. FRAZIER
<b>PROPERTY USE:</b>	APT	<b>ADDRESS:</b>	4243 GRACELAND DR
<b>NO. BUILDINGS:</b>	306 UNITS	<b>NO. FLOORS:</b>	2
<b>FIRST FLOOR AREA:</b>	3472 SQ. FT.	<b>BUILDING AREA:</b>	3472
<b>BASEMENT:</b>	N/A	<b>TENANT:</b>	PEPPER TREE APT
<b>OWNER:</b>	PEPPER TREE - MEMPHIS LTD 2171 JUDICIAL DR STE 200 GERMANTOWN, TN 38138	<b>CONTACT:</b>	
<b>REINSPECT DATE:</b>	8/11/2022	<b>DATE OF NOTICE:</b>	8/3/2022

**YOU ARE HEREBY NOTIFIED TO CORRECT THE FOLLOWING CODE VIOLATIONS OF THE CITY OF MEMPHIS ORDINANCE #5708.**

The building is 51% damaged and should be demolished immediately. (110.1) Contact the Memphis and Shelby County Office of Construction Code Enforcement at (901) 222-8392 for all required repair and/or demolition permits. If the Building Department requires a permit, you must provide the Division of Public Works Code Enforcement Commercial Anti Neglect with a copy of your building permit application form, a copy of all structural engineer's reports required by the Building Department and a copy of the building permit final. As an Alternative if the owner or person of interest to the property wishes not to demolish the building a plan to make proper repairs and to bring the building and property up to City of Memphis and Shelby County Codes must be submitted with proof of permits being pulled and passing inspections.

**I. EXTERIOR**

- Provide address numbers that are plainly visible from the street. (304.3)
- Repair the roof to eliminate all leaks. Repair or replace all missing and/or damaged roof flashing, roof decking, and roofing. (304.7)
- Repair or replace all damaged and/or missing gutters and downspouts. (304.7)

- Repair damaged windows, skylights, doors, and door frames. (304.13)
- Exterior walls must be free from holes, breaks, loose or rotting materials, and kept waterproof. (304.6)
- Repair structural members to be free of from deterioration and capable of of supporting the imposed dead and live loads. (304.4)
- Maintain/Cut overgrown grass, weeds, and plant growth from the building and the premises. (302.4)
- Remove all rubbish and garbage from the exterior of the property. (308.1)
- Remove all inoperable vehicles from the premises. (302.8)
- Secure the building from the weather and to prevent trespass.
- Repair damaged stairs, ramps, landings, balcony porches, decks and/or
- other walking surfaces. (305.4) MUST OBTAIN A STRUCTURAL ENGINEER
- 
- 
- 
- 
- 
- 
- 

**II. INTERIOR:**

- We were unable to gain access to the interior of the building. Please contact us as soon as possible to schedule an interior inspection.
- Repair or replace all damaged or missing structural components. This shall include but is not limited to all damaged or missing trusses, roof rafters, wall studs and floor joists. (305.2)

- Repair damaged stairs, ramps, landings, balcony porches, decks and/or other walking surfaces. (305.4)
- Remove all rubbish and garbage from the interior of the property. (308.1)
- Replace all missing or damaged electrical covers. This shall include but is not limited to all panel boxes, junction boxes, switch and outlet covers. (604.3)
- Repair all damaged electrical equipment, wiring and appliances. (605.1)
- Repair all damaged plumbing fixtures. (504.1)
- Repair damaged elevators, dumbwaiters, and/or escalators. All elevators, dumbwaiters, and escalators must comply with ASME A17.1. (606.1)
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**NOTES:**

- Contact the Memphis and Shelby County Office of Construction Code Enforcement at (901) 222-8392 for all required repair and/or demolition permits. If the Building Department requires a permit, you must provide the Division of Public Works with a copy of your building permit application form, a copy of all structural engineer's reports required by the Building Department and a copy of the building permit final. A copy of this inspection report is being forwarded to the Building Official.
- The City of Memphis Code, Section 16-81, and Shelby County Code, Section 3-25 [Reference 1200-3-11-02 (Asbestos)] require building owners and/or operators to submit a notification of intent to do demolition or renovation at least ten (10) working days prior to the start of the activity even if no asbestos is present so compliance can be verified. Notification also includes the submission of an asbestos survey report. Please contact the Health Department at (901) 222-9725 for more information.





**This Inspection Report does not include repairs required for occupancy of this building. A Use and Occupancy permit must be obtained from the Building Department before re-occupying this building.**



**This building has been determined to have "unsafe conditions" as defined in the City of Memphis Ordinance # 5708. It must not be occupied for occupied for business, storage and / or habitable purposes until conditions have been corrected to the satisfaction of the Memphis and Shelby County Office of Construction Code Enforcement and the Division of Public Works.**



**This building contains conditions which require an inspection by a structural engineer licensed in the State of Tennessee. All repairs shall be inspected and approved in writing by a structural engineer. The Division of Public Works shall receive a copy of all engineer's reports.**

**INSPECTED BY:** B. FRAZIER (901)293-9281 **Date:** 8/3/2022



**Division of Public Works  
 Neighborhood Improvement  
 Department of Code Enforcement  
 4225 Riverdale Rd.  
 Memphis, TN 38141  
 (901) 636-7464 TTY# 636-6501**

<b>NOTICE TO CORRECT VIOLATION</b>	Date				
	Source			Area	
	SR No				

Name				Parcel ID					
Address				Owner		Agent		Occupant	
City		State	Zip	Note					
				Address Of Violation					

You are hereby notified to (see item marked X on check list)	Code Section
Keep your unit and the premises thereof, in a clear and sanitary condition.	308.1
Dispose of garbage and rubbish in a clean and sanitary manner.	308.2 308.3
Exterminate rats, roaches, insects, fleas, and/or termites.	309.2;309.3;309.5
Discontinue the excessive use of extension cords.	605.4
Discontinue the use of open flame space heaters.	602.3 603.1
Properly maintain (repair and paint) or demolish fences, out-buildings; Remove debris.	302.7 304.1
<b>Maintain</b> exterior property areas in a clean and sanitary condition free from any accumulation of rubbish, trash & debris.	302.1 308.1
Cut and maintain area free of excessive, overgrown, grass, weeds and shrubbery.	302.4
Remove and maintain area free of junked automobile parts, refrigerators, stoves & other chattels from premises.	302.1 308.1
Vehicle(s) declared a public nuisance.	302.8
Storage of vehicle(s) on public or private property prohibited.	302.8
Remove and maintain area free of all vehicles in violation (inoperable, wrecked, partially dismantled).	302.8; 302.8.1; 302.8.2
Other:	

The items listed being a violation of the Housing Code of the City of Memphis, you are hereby notified to abate the condition(s) by \_\_\_\_\_ . You may telephone 636-7464 to request a hearing regarding these matters.

Code Enforcement Inspector				Phone			
Closed Date			Computer Code		By		
VOYC		VOB		VOM		REINSPECTION CODES/DATES	

**PENALTY:** Section 1-8 of the Code of Ordinances as amended by Sec. 103.5, 106.1, 106.2, 106.3, and 106.4 of the IPMC of Memphis Tennessee as adopted on 01/29/2019 provides, upon conviction of failure to comply, a fine of not more than \$50.00 for each offense. Each day the owner/occupant fails to comply with said order shall constitute an additional offense.

# EXHIBIT B



Rimkus Consulting Group, Inc.  
12140 Wickchester Lane, Suite 300  
Houston, TX 77079  
Telephone: (713) 621-3550

August 3, 2022

Mr. Bob Cuttle  
TESCO Development, Inc.  
2171 Judicial Drive, Suite 200  
Germantown, TN 38138

Re: Rimkus Matter No: 100179993  
**Subject: Notice of Hazardous Condition**

Dear Mr. Cuttle:

We are writing this letter to indicate unsafe conditions with the connecting walkways between apartment buildings and the elevated walkways along the front of the apartment buildings (**Photograph 1**), based on our inspection performed on August 3, 2022. These conditions were located at the Peppertree Apartments at 4243 Graceland Drive in Memphis, Tennessee.

Rimkus Consulting Group, Inc. (Rimkus) was notified by your office that a connecting walkway had collapsed the night of August 2, 2022 (**Photograph 2**), and was asked to assess the remaining walkways of identical construction for immediate life-safety concerns. During the inspection, Rimkus was informed that an elevated walkway had collapsed approximately 1 week prior, on or about July 27, 2022 (**Photograph 3**).

Rimkus inspected walkways in the vicinity of the collapse locations but did not inspect every walkway on the property. The inspection path included a representative sample of the walkways. The following conditions were systemic and representative of the other buildings not inspected. During the inspection, the following conditions were observed on the walkways:

- Structural steel framing exposed by the collapsed walkways was deteriorated with a significant loss of cross-section, and the remaining steel was delaminating (**Photographs 4 and 5**).
- The metal deck and structural steel framing visible on the undersides of intact connecting walkways were extensively deteriorated, and localized displacement had occurred at the deck-bearing edges (**Photograph 6**).

August 3, 2022  
Rimkus Matter No. 100179993

Page 2

- HSS steel girders supporting the end of the connecting walkways were deteriorated with a notable loss of cross section at bearing points, and the remaining steel was delaminating (**Photograph 7**).
- The elevated walkway metal deck had rusted through and no longer provided structural support along a significant length of the bearing edges (**Photographs 8 and 9**).
- The concrete slabs that formed the walkways had been poured without steel reinforcement, relying solely on the metal deck for support, and the concrete aggregate was pea gravel, several pieces of which had split within the concrete. The steel had deteriorated and retained limited or no structural capacity, and the split pea gravel will continue to crack the concrete internally (**Photograph 10**).

The cumulative effect of these conditions has compromised the structural integrity of the connecting and elevated walkways, making them unsafe to remain in service in their current state.

**The following temporary measures are recommended to preserve life safety:**

- All connecting walkways and the area beneath the walkway structures should be removed from service with secure barricades that will prevent access and use.
- All elevated walkways and the areas beneath the walkway structures should be removed from service with secure barricades that will prevent access and use.
- Alternately, all elevated walkways along the front of the buildings should be temporarily shored down the center of the metal deck span. Secure barricades should be provided in the areas located directly below the elevated walkways, with protected pathways as required to maintain egress.

These temporary measures shall remain in place until additional assessments can be performed that confirm sufficient structural stability and/or repairs can be completed.

Representatives of TESCO were made aware of this condition and our recommendations at the time of our inspection, but this letter should be forwarded to all other applicable parties. Please do not hesitate to contact us if you have any questions or concerns.

Julie Furr  
Digitally signed by: Julie Furr  
DN: CN = Julie Furr C = US  
O = Tennessee  
Date: 2022.08.03 16:14:21 -  
06'00'

Julie C. Furr, P.E., S.E.C.B.  
Tennessee Engineering No. 111534  
Senior Consultant  
Attachments: Photographs, Annotated Aerial View

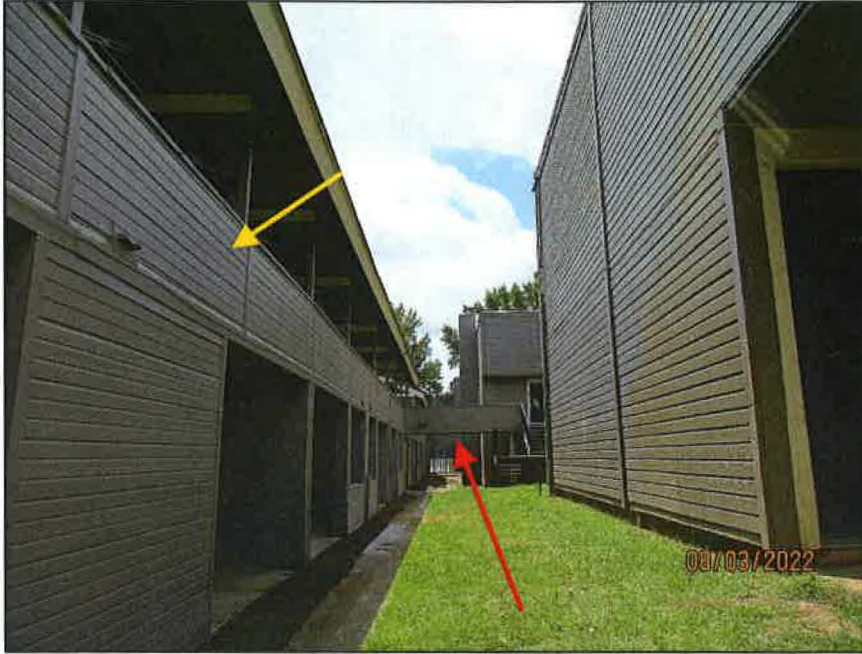




August 3, 2022  
Rimkus Matter No. 100179993

**Photograph 1**

Connecting walkway (red arrow) and elevated walkway (yellow arrow).



**Photograph 2**

Connecting walkway: remaining concrete slab and steel framing.



August 3, 2022  
Rimkus Matter No. 100179993

**Photograph 3**

Elevated walkway: remaining debris left in place and exposed framing.



**Photograph 4**

Connecting walkway: deteriorated and delaminated steel (yellow arrow) and concrete cross-section without steel reinforcement.





August 3, 2022  
Rimkus Matter No. 100179993

**Photograph 5**

Elevated walkway: deteriorated and delaminated steel support (yellow arrow).



**Photograph 6**

Connecting walkway: extensive deterioration and localized displacement (inset).



August 3, 2022  
Rimkus Matter No. 100179993

**Photograph 7**

Connecting walkway: deteriorated structural steel HSS girder at the bearing point.



**Photograph 8**

Elevated walkway: delaminated and expanded steel edge framing (yellow arrow) and deteriorated metal deck with a full loss of cross-section along the edge (red arrow).





August 3, 2022  
Rimkus Matter No. 100179993

**Photograph 9**

Elevated walkway: deteriorated metal deck with a full loss of cross section and voids between the supported concrete above.



**Photograph 10**

Typical condition: exposed broken edge of concrete without steel reinforcement and with split aggregate (yellow arrows).



August 3, 2022  
Rinkus Matter No. 100179993

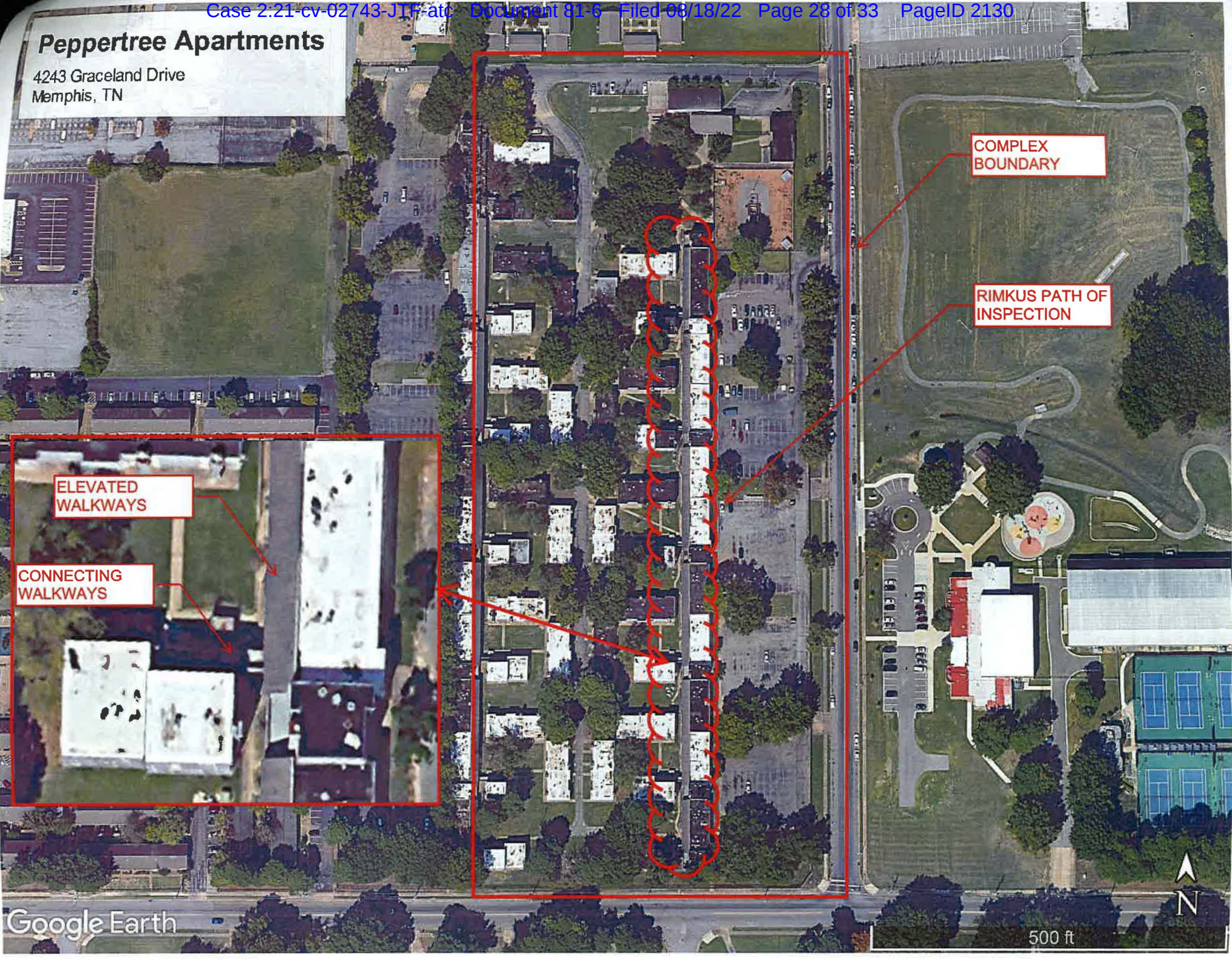
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## **Annotated Aerial View**



# Peppertree Apartments

4243 Graceland Drive  
Memphis, TN



COMPLEX  
BOUNDARY

RIMKUS PATH OF  
INSPECTION



ELEVATED  
WALKWAYS

CONNECTING  
WALKWAYS





# EXHIBIT C



City of Memphis  
Division of Fire Services  
Fire Prevention Bureau  
2668 Avery Avenue  
Memphis, TN 38112  
Phone: 901.636.5401



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**GENERAL INSPECTION**

Record Number: FIRE-INSP-22-01673

August 04, 2022

4317 GRACELAND DR, MEMPHIS 38116  
MEMPHIS, 38116

An inspection of your facility on Thursday, August 4, 2022 revealed the results listed below.

**ORDER TO COMPLY:** Since these conditions are contrary to the local and/or State Fire Prevention Code, you must correct each item upon receipt of this notice. An inspection to determine compliance with this notice will be conducted on or about 08/18/2022. If you fail to comply with this notice before the next inspection, you may be liable for the penalties provided by law for such violations.

<b>Inspection Number:</b> 33570751	<b>Date:</b> 08/04/2022	<b>Status:</b> Reinspection - OTC Issued
------------------------------------	-------------------------	------------------------------------------

**Record Type:** Fire Inspection

**Business Name:** Peppertree Apartments

**Location:** 4317 GRACELAND DR, MEMPHIS 38116 MEMPHIS, 38116

**Contact:** Brent Frost

**Inspector:** Mark Wormley, mark.wormley@memphistn.gov

**Result Comment:** I spoke with Mr. Brent Forest, the regional manager of the Peppertree apartments on 8/4/2022, about the current issue with the breezeway/ walkway that collapsed a few days ago. I along with Inspector Antonio Mack told mr. forest that it's a major safety violation and it also violation a means of egress and access. Egress for tenants to get out to a safe area if refuge, access for firefighters who may have to respond to that location to do their job effectively. Mr. Forest gave us his word that the tenants will be relocated within a couple of days to another location within the property until the breezeway/walkway has been deem safe to use by the structural engineer who's on the property today. I'll come back to reinspect this location once Mr. Forest contacts me. FYI, this is an apartment complex (residential). Mr. Forest was made aware of the IFC 2021 chapter 10( means of egress) as well.

**Attached Images:**

**Attached Images:**



City of Memphis  
**Division of Fire Services**  
Fire Prevention Bureau  
**2668 Avery Avenue**  
**Memphis, TN 38112**  
**Phone: 901.636.5401**



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**GENERAL INSPECTION**

**Record Number: FIRE-INSP-22-01892**

August 17, 2022

4317 GRACELAND DR, MEMPHIS 38116  
MEMPHIS, 38116

An inspection of your facility on Tuesday, August 16, 2022 revealed the results listed below.

<b>Inspection Number:</b> 33600838	<b>Date:</b> 08/16/2022	<b>Status:</b> Passed
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**Record Type:** Fire Inspection

**Business Name:** Pepper Tree Apartments

**Location:** 4317 GRACELAND DR, MEMPHIS 38116 MEMPHIS, 38116

**Contact:**

**Inspector:** Anthony Robertson, anthony.robertson@memphistn.gov

**Result Comment:** On 8/4/22 the Pepper Tree apartments had a structure that collapsed at 4317 and 4271 Graceland Dr. causing the breezeways to be unusable and only one exit for residents to egress from. This facility is notified to be on fire watch until structure has been repaired and all exit are usable. Fire-watch information has been left with management and explained what has to take place during fire watch.

