

## The Real Estate Roundtable

March 25, 2002

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Re: Draft Guidance for Protecting Building Environments from  
Airborne Chemical, Biological or Radiological Attacks

Dear Elissa:

This letter summarizes a variety of real estate industry comments on the draft "Guidance for Protecting Building Environments from Airborne Chemical, Biological or Radiological Attacks." (the "Guidance"). We understand the Guidance was developed by the Workgroup on Building Air Protection (Workgroup) working under the auspices of the President's Office on Homeland Security (OHS). As an industry, we strongly support the efforts of the President to fully engage the real estate sector — on a voluntary basis — in the Nation's homeland security efforts. With many tenants demanding unprecedented attention to security issues, we believe the industry is highly motivated to consider any and all reasonable and constructive guidance in this area.

The comments set out below represent the views of security and engineering experts at various companies participating in The Real Estate Roundtable (RER), as well as those of members of the Building Owners and Managers Association, International (BOMA); the Institute of Real Estate Management (IREM); the International Council of Shopping Centers (ICSC), which includes retail tenants; the National Association of Real Estate Investment Trusts (NAREIT); the National Association of Realtors (NAR); and, the Real Estate Board of New York (REBNY). The respective mission statements of those seven organizations are attached. In addition, a joint comment letter from IREM and NAR is also attached. While affiliated with the Roundtable, we understand that the National Multi Housing Council/National Apartment Association is providing comments in separate and independent communications.

### Summary

The comments described below reflect the concerns of diverse segments of the national real estate market including the owners of large "trophy" properties in and around central business districts and owners of small office, retail, and residential buildings in outer suburban and rural areas. While owners of smaller properties were often more wary of the scope of the Guidance than others, most responses were marked by respect for the constructive tone and substance of the Workgroup's initial recommendations. When serious concerns were raised they tended to focus on specific suggestions that were seen as having limited applicability and/or cost-effectiveness when applied to certain types of *existing* buildings. Even for the authors of some of those comments, however, the fact that the document was guidance — and not a set of inflexible mandates — went some distance toward alleviating those concerns.

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### **Preliminary Nature of the Initial Guidance Document**

We recognize that the Guidance is just the first, and perhaps most general, of a series of documents contemplated by the Workgroup that will focus on chemical, biological or radiological attacks (CBRs). As indicated in the "Background" section, the Guidance is focused "on shorter-term goals" while "more comprehensive guidance is being developed." Despite the fact that the document is apparently not intended to be a definitive or comprehensive statement of federal policy, it still has important legal, policy and practical implications. We are, therefore, glad to have an opportunity to comment and do so with the expectation that the additional "comprehensive" guidance ultimately will be developed. In fact, some of our specific comments may best be addressed in that more definitive set of recommendations.

### **Industry's Ongoing Efforts to Address CBRs**

A number of comments included a discussion of company and trade association efforts – many of which began prior to September 11, 2001 – to increase industry awareness of the same issues addressed in the Guidance. In addition, the point was made by one trade association that existing emergency plans at many properties, as well as regional building codes, include elements of the Workgroup's recommendations. At the same time, one major retail company expressed the view that the Workgroup's recommendations would add to the quality of industry-wide dialogue and education. Examples of ongoing educational and information exchange efforts include BOMA's task force and educational programs on building security issues; national and regional workshops and conferences sponsored by The International Council of Shopping Centers (ICSC); and ASHRAE's preliminary recommendations in this area. Market-driven security practices are also being influenced by extensive portfolio-wide risk-assessments of existing properties being undertaken by leading companies in all industry sectors. In addition, current practices are being affected constructively by the expert advice many companies are receiving on the best ways to design and build out new properties to mitigate the risk of airborne bio-hazards.

### **Issue: Limitations on Owners' Expertise in Diagnosing a Possible Attack**

A number of comments expressed concern that parts of the Guidance reflect unrealistic assumptions about the ability of building owners to quickly identify when and how a CBR may be occurring. For example, were there to be a more general release of contaminants in the neighborhood of a building, there will often be no public alert system to communicate that fact quickly and authoritatively to owners. In the case of many types of contaminants there are simply no CBR sensors, monitors or other technologies capable of forewarning owners of an incident. In many situations, the owner's on-site management team (if there is one) will have a very limited ability to determine if the source of the contamination is inside or outside of the building. The ramifications of these inevitable knowledge gaps will be substantial. For example, while closing air intakes will be appropriate when the contamination is outside the building, the opposite response may be indicated when there is an internal source. In light of this insight it would appear that the last sentence in Section 1 stating that securing air intakes is the "first line of defense" against CBRs will not always be true. In this same regard, the references in the Guidance to the need to train personnel to respond to CBRs may be somewhat simplistic. Even the highly trained staff at the World Trade Center had no idea those buildings were under attack until after the arrival of the second plane. At a minimum, the "responsibilities" of staff, referred to on the last line of pg. 11 (Emergency Plans section) should be limited to "known" events.

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### **Issue: Determining the Primary/Priority Audience for the Guidance**

Upon reviewing the Guidance a number of real estate companies and trade associations were concerned about the decision of the Workgroup to effectively “punt” on the issue of risk assessments. As you know, the draft attaches a non-exclusive list of organizations that can help the reader obtain “insight into ...building risk assessment”. Perhaps, this approach reflects limits on the availability to the Workgroup of relevant expertise or simply the difficulty in achieving consensus on any “objective” criteria for a generally applicable risk-assessment protocol. Nonetheless, many comments suggested the absence of some sort of common-sense filter for businesses to use in determining the relevance of many of the Workgroup’s recommendations will unintentionally marginalize the guidance. By seeking too broad an audience the Guidance may lose credibility.

In the end, to reach an audience beyond owners of large “trophy” buildings or owners of properties housing particularly sensitive occupants (e.g., media, government, military, or politically symbolic organizations), the more detailed guidance developed by the Workgroup will need to tailor its recommendations for lower risk buildings. For now, the Guidance could acknowledge that use of the document may differ for owners whose risk assessment — or the exercise of common sense — suggests the building is at very low risk for an “attack”. In that case, perhaps, apart from provisions such as those included in the “Know Your Building” and “Physical Security” sections, much of the rest of the document may be of general rather than specific interest.

At the same time, it should be noted that one major retail owner’s security expert pointed out the document would have broad applicability for retail property owners if used as a self-evaluation tool. The owner representative stated “I believe this document provides a tool that can be used to effectively evaluate any [retail] property, regardless of design or age.” The commenter went on to say:

I still have concerns about creating “standards” that the industry has no reasonable ability to meet, consequently creating unfair or negative public perceptions relative to the security of our properties. That said, if this document is used as it appears to be intended, to provide a roadmap for self-evaluation, it accomplishes that goal very nicely.

### **Issue: New Construction versus Retrofits; Different Occupancy Types**

The Workgroup has recommended that, in the future, “comprehensive guidance” is necessary to address the qualitatively different set of implementation challenges associated with *existing versus new* buildings. We are pleased that the Workgroup appears to understand the importance of this issue. Inevitably, perhaps, this initial guidance sometimes gives short shrift to that very practical difference and we ask that you be as sensitive as possible to the new building versus retrofit distinction. Some additional or more pronounced acknowledgement of this important consideration would be appropriate, especially when it comes to major issues like relocation of air intakes or isolation of mail rooms. Certainly, the blanket statement in the Conclusion (p. 12) that the “recommendations are applicable to both new and existing buildings” needs to be deleted or revised to indicate that “some” or “many” recommendations “may” be applicable to both types of buildings.

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### **Issue: Preventing Access to Outdoor Air Intakes**

The guidance recommends the relocation of intake vents, located at or below ground level, as the “preferable” approach to the security of outdoor inlets. It then, wisely, suggests alternatives in the event that a particular retrofit is “infeasible.” We appreciate the sensitivity shown by the Workgroup to the need for a series of increasingly less burdensome alternatives. Still, we would strongly suggest that the words “or impractical” be added to ensure there is no implication that if the retrofit can theoretically be done (without cost as a factor) it should be done. In many cases, fresh air inlets located below the “roof” or high sidewall” have been incorporated into significant architectural elements of the building. In all but the most security sensitive multi-tenanted buildings it may require consent of all the building tenants — *both* as to the importance of the security retrofit and its related expense — before that kind of project is “feasible.” Certainly, this type of retrofit of an existing building is not fairly characterized by the summary statement in the Conclusion (p.12) that “the recommendations presented here are ones that can be implemented reasonably quickly.”

Similarly, even the recommendation to secure air intakes might be infeasible in more cases than the Workgroup may imagine. For example, many such inlets draw air from public rights-of-way which will be impractical to secure. To address that scenario one commenter suggested that closed circuit television together with a mechanism to close the intake louvers upon discovery of suspicious behavior may be appropriate in some instances.

### **Issue: Isolation of Mail Rooms**

A major retail shopping center’s security expert was generally very impressed with the Guidance. The one recommendation, however, that he (and a number of others) suggested might be “a stretch for most [retail] properties, given how the typical management offices are designed, would be the isolation of the reception/lobby/mail handling areas from the balance of the office complex.” According to the commenter, “this would not be a typical ‘price tag’ issue” because the new mail room (a non-revenue producing space) would need to be carved out of otherwise rentable area designed for retail uses.

### **Issue: Abuse of Guidance by Insurers or Plaintiff’s Attorneys**

A number of comments reflected concern that despite the intent of the Workgroup to provide guidance and not a definitive standard of care, others including plaintiffs’ attorneys and insurance companies might not use the document in that way. Some attorneys can be expected to try and demonstrate that the guidance is actually a hard and fast “standard of care” and insurers to use compliance or non-compliance with *all* elements of the guidance in coverage (or policy pricing) decisions. To address this concern one commenter proposes language at or near the end of the “Conclusion” section as follows:

The suggestions set forth in this Guidance are not intended to be a standard of care that every building owner and manager should implement for every building. Rather, the decision concerning which, if any, of the protective measures should be implemented for any building should be based on several factors, including the perceived risk associated with the building and its tenants, engineering and architectural feasibility and cost.

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To improve the prospects that the Guidance is not misused please consider the following additional specific edits:

- in the second sentence on page 4, change “highly critical” to “more important”;
- delete the second sentence under “Conclusions” or modify it to conform to the language set forth above;
- modify the third sentence of the second paragraph under “Conclusions” to state that “some” of the recommendations can be implemented reasonably quickly

### **Additional Comments**

#### *a.) “Know Your Building” (p.4):*

- One comment pointed out the building survey section, while generally correct, contemplates the collection of data via a building “walk-through” but provides no useful information about the practical implications of that data. There are instances where a connection is made to the walk-through investigation survey in later sections (e.g., discussion of modifying HVAC system on p.5). Many of the questions asked in that section, however, are not connected practically to the rest of the document.
- Another comment suggested the list of questions in the survey section be expanded to add as a final question: “type of filtration utilized other technologies UVC lamps?”

*b.) Importance of Personnel Issues:* With cleaning contractors and other vendors having access to most areas of offices and other types of commercial real estate, it is very important to know *who* works in your buildings at all times and who has access to what areas of each building. While the section on key card access goes some distance to addressing this issue, one major office building owner commented that the personnel issue should have been highlighted more directly.

*c.) Identification/Protection of Occupants within Specific HVAC zones:* A major retail tenant commented that the guidance should at least raise the issue of identifying actual occupants of each HVAC zone. It is one thing, the retail company noted, to physically localize any CBR impacts, but the people that could have been affected should also be easily and quickly identified for treatment, monitoring, etc. The comment noted that this issue may be covered in future documents in more detail, but that this set of recommendations would be remiss without mentioning the point now.

*d.) Emergency Response Plans:* According to one comment, the Guide references response plans for dealing with diverse (non-terrorist) contingencies including fire and natural disasters. The comment suggests these plans should also be taken into account in the decision-making process related to management of the HVAC systems. The comment suggests that reference to these plans in the 2nd paragraph of the “scope” section on page three, should be amended by adding the words “that takes into account an overall emergency response plan.” at the end of the third sentence.

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*e.) Identification System:* According to a major property management company, the recommendation to introduce an identification system to limit access to properties and check all packages prior to entry is unrealistic in many properties because of multiple entrances. The company notes that in larger properties, the costs to implement the system will introduce an undue financial burden. It is also pointed out that many older high-rise properties do not have sufficient lobby space to facilitate screening installations

*f.) Filtration:* According to the same property management company, the entire discussion regarding filtration is flawed. The point is made that while many of the principles set out in that section are accurate; their application is misguided, confusing or so non-specific as to be meaningless. The comment states, by way of example, that "the first section discussing HVAC Controls offers sequentially, contradictory recommendations each time stating, '...in some cases do this,' without discussing what those conditions are. Even with the additional information, one must ask whether the individuals charged to operate a building are capable of correctly assessing and reacting to this kind of situation."

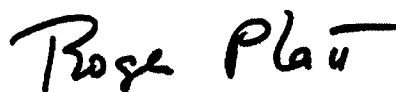
*g.) Return Air Grill Relocation:* According to one comment the apparent recommendations to relocate return air grills and convert open design return air plenums to a ducted design are ill conceived, poorly reasoned and unjustified.

*h.) Negative Pressure Requirement:* One comment relates to Section B. Physical Security, Subsection 5, "Isolation of Lobbies, Mail Rooms, loading docks ....." The section discusses maintaining a negative pressure in these areas. According to the commenter, negative pressure in a building lobby presents a host issues, starting with pulling in dust and debris from the street to infiltration of external contaminants (i.e. pollution and possibly environmental/biological contaminants). The commenter agrees that the HVAC systems in these higher risk areas should be isolated from the rest of building but points out they should operate as customarily designed.

## Conclusion

In conclusion, the real estate industry welcomes the opportunity to work with you, the Office of Homeland Security and the other federal agencies that make up the Workgroup to limit the risk of — and harm caused by — bio-terrorist attacks on commercial and multi-family buildings. I have no doubt that the Workgroup's final work product will reach a broad audience and will add to the quality of national dialogue on building security. I hope you will read and consider these comments in the constructive spirit in which they were offered and will revise the current draft to meet our concerns. The more flexible and practical federal guidelines can be in this area the more likely they are to receive serious attention among all sectors of our industry. At the Roundtable, and at affiliated trade associations, we will certainly do our best to make the Workgroup's important initiative a success. Of course, as you proceed with more detailed guidance, we stand ready to offer a private sector perspective on those projects as well.

Sincerely,



Roger Platt  
Senior Vice President and Counsel

- **Building Owners and Managers Association, International (BOMA).** Building Owners and Managers Association (BOMA) International is a dynamic international federation of 105 local associations. BOMA International's 18,600-plus members own or manage more than nine billion square feet of downtown and suburban commercial properties and facilities in North America and abroad.
- **Institute of Real Estate Management (IREM).** The Institute of Real Estate Management, an affiliate of the National Association of Realtors®, is the source of education and professional recognition for managers of all types of properties. The Institute's mission is to educate, certify and promote the professional competence of IREM members in order to meet the needs of those who utilize their services. Today, IREM's 9,500 members manage 24% of the nation's conventionally financed apartment units, 1.4 million units of federally assisted housing, 44% of the nation's office buildings, and 9.6% of the nation's retail space
- **International Council of Shopping Centers (ICSC).** ICSC is the global trade association of the shopping center industry. Its 38,000 members in the U.S., Canada and more than 70 other countries include shopping center owners, developers, managers, marketing specialists, investors, lenders, retailers and other professionals as well as academics and public officials. ICSC is a trade association with over 40,000 members, including owners, developers, managers, retailers, lenders and others with a professional interest in the shopping center industry.
- **National Association of Real Estate Investment Trusts (NAREIT).** NAREIT is the national trade association for real estate investment trusts and publicly traded real estate companies. Members are real estate investment trusts (REITs) and other businesses that own, operate and finance income-producing real estate, as well as those firms and individuals who advise, study and service those businesses.
- **National Association of Realtors® (NAR).** The National Association of Realtors®, the "Voice for Real Estate," is the nation's largest professional association, representing more than 830,000 members. Founded in 1908, NAR is composed of residential and commercial REALTORS®, who are brokers, salespeople, property managers, appraisers, counselors and others engaged in all aspects of the real estate industry.
- **Real Estate Board of New York (REBNY).** Through REBNY, Manhattan's most talented energetic and influential real estate professionals work with the city's political establishment to promote public policies that expand New York's economy, encourage the development and renovation of commercial and residential real property, enhance the city's appeal to investors as a business location and as a place to live, and facilitate property management.
- **The Real Estate Roundtable (RER).** The Real Estate Roundtable is the organization that brings together leaders of the nation's top public and privately-held real estate ownership, development, lending and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy.

TO: Elissa Feldman  
Indoor Environments Division

FR: National Association of REALTORS®  
Institute of Real Estate Management

DATE: March 22, 2002

RE: Building Air Quality Workgroup

On behalf of the 800,000 members of the National Association of Realtors® (NAR) and its affiliate, the Institute of Real Estate Management (IREM), we welcome this opportunity to provide comments and feedback on the proposed "Guidance for Protecting Building Environments from Airborne Chemical, Biological, or Radiological Attacks". Because many of our members also develop and sell commercial property, which may be subject to these guidelines, NAR and IREM have an interest in ensuring that any government policy addressing building security does not unduly burden the ability of our members to conduct their business.

NAR and IREM agree with the principal that reducing a building's vulnerability to an airborne chemical, biological or radiological terrorist attack requires a comprehensive approach. However, each building environment is different and those variables must be taken into account when developing a plan to prevent a CBR incident. We have four general areas of concern regarding these proposed Guidelines:

#### **Owners Have Already Taken Action**

Even before the events of September 11, owners and developers of commercial property were required to develop a variety of comprehensive safety plans, which incorporated some of the emergency response elements of these guidelines. After the terrorist attacks, many commercial property owners took it upon themselves to assess the adequacy of these plans and update and improve them where necessary. This was done because the tenants were demanding these improvements, not because of federal guidance or regulatory pressure. In addition, many planning, construction and other building codes require many of the elements included in the guidelines.

#### **Guidelines Should Remain Voluntary**

These proposed Guidelines, while a comprehensive compendium of actions an owner may take to protect a property, should remain voluntary and flexible in nature. Mandating these types of guidelines would impose a needlessly uniform regulatory scheme over an extremely heterogeneous universe of properties.

#### **Guidelines Should Only Apply to New Construction, Where Appropriate**

These proposed Guidelines should only apply to new construction and development activities; extensive retrofitting of existing properties should be minimized. For example, on page six of the proposed Guidelines, there is a discussion on relocating the outdoor air intake vents. The relocation of these vents, while possibly feasible, may be prohibitively expensive, depending upon the physical location of the vents and the layout of the building. The Guidelines should allow property owners the flexibility to implement actions or strategies that can accomplish the same goal without requiring extensive physical changes to the building.

### **Guidelines Must Consider Cost**

Underlying all of these concerns is the issue of cost. In a perfect world, property owners would have access to unlimited resources to make their buildings as impervious to terrorist attack as possible. However, commercial Realtors exist in a highly competitive environment, with competing demands on finite resources. These proposed Guidelines should not let “the perfect be the enemy of the good”. That is why NIOSH and their federal agency partners must incorporate sufficient flexibility in the Guidelines that allows property owners to develop specific actions to accomplish broad safety and emergency response goals within their budget and keeps them competitive in the commercial real estate marketplace.

### **Better Prioritization Methods Must be Developed** *(This is tentative)*

These proposed Guidelines mistakenly assume that all commercial buildings across the country are equally subject to terrorist attack. Is it reasonable to assume that an apartment building in rural Texas shares the same level of risk as a large office building in Manhattan, and therefore both buildings must conduct the same rigorous terrorist attack prevention activities? We believe that NIOSH and its federal agency partners must develop a better methodology to prioritize which commercial buildings may be more subject to a terrorist attack than others, and outline the safety and emergency response strategies and activities that may be appropriate for each building, depending on its level of risk.

### **Increased Insurance Premiums**

The adoption of these guidelines may ultimately give way to an avalanche of increased insurance premiums for property owners/managers as insurance companies, underwriters banks and other financial and legal institutions begin to recognize them as *de facto* regulatory standards. The stringent requirements will inevitably result in increased violations and subsequent lawsuits by tenants and third-party plaintiffs. Clearly, this will result in skyrocketing insurance claims for property damage and lawsuits, especially in states without tort reform laws. Insurance premiums will rise to accommodate the increased demand for judgments and higher attorneys’ fees.

NAR and IREM thank NIOSH and the other partner federal agencies for allowing comment on the proposed Guidelines. If you have any questions regarding these comments, please contact Megan Booth, at 202-383-1222, Russell Riggs, at 202-383-1259, or Doug Miller, at 202-383-1117.