

6.3.8.1 Transferred Assets. Novi shall grant, sell, assign, transfer and deliver to Redwood Novi, upon receipt by PNC Bank, National Association, as collateral and administrative agent for the Holders of the Novi Construction Loan Claims, \$24,914,000 in Cash and \$389,000 from the Cedar Crest Receivable as required under Section 4 of this Plan and Redwood Novi shall purchase from Novi, free and clear of all liens and liabilities (except for expressly assumed liabilities, if any, by Redwood Novi and the liens securing such liabilities) all assets and properties of Novi of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, owned, leased or licensed, including all real property, all Transferred Claims of Novi, and all transferred contracts to which Novi is a party, but not including any Excluded Assets. Redwood shall provide replacement adequate collateral to secure the Novi Letters of Credit in exchange for release of existing collateral.

6.3.8.2 The Community Loan and Other NFP Agreements. The Novi Community Loan shall be amended and restated at the outstanding balance amount and assumed by Redwood Novi, as modified. Redwood Novi's obligations under the Novi Community Loan shall be subordinate to all other debt owed by Redwood Novi or its successor (including, without limitation, any new capital equity funding or debt incurred by Redwood Novi or its successor). The Working Capital Loan agreement and note and other agreements between Novi and Fox Run Village, Inc. will be terminated as of the Effective Date, and Redwood Novi and Fox Run Village, Inc. will enter into new agreements on mutually agreed upon terms consistent with the terms agreed to with the NSC on the record as part of the Auction.

6.3.8.3 Guarantees. Except as set forth in ~~Section 6.4.8~~Sections 4.1.4 and 6.4.7 of this Plan with respect to the Erickson Group Guaranty Claims, all guarantees of the Novi Construction Loan and Novi Junior Loan will be terminated and released.

6.3.8.4 New Novi Revolver. Redwood will make available a revolver to fund costs of the borrower, including construction costs, marketing costs, departmental charges, development fees and taxes (the "*New Novi Revolver*"). Any funds drawn under the New Novi Revolver will be secured by a priming lien against the same collateral as the collateral that secured the prepetition debt, including IEDs. The available commitment amount under the New Novi Revolver will be mutually determined by Redwood and borrower. Redwood will provide a separate revolving facility for the purpose of funding reasonable working capital needs of Fox Run Village, Inc., secured by a priming lien on funds received by Novi from Fox Run Village, Inc. (excluding proceeds of the Novi Community Loan).

### 6.3.9 *Warminster*.

6.3.9.1 Interests in Warminster. ERC's ownership interests in Warminster will be transferred to PropCo.

6.3.9.2 Warminster Purchase Option Deposit. The outstanding balance of the purchase option deposit refund obligation reflected in the Warminster Purchase Option Deposit Refund Agreement in the amount of \$75,000,000 shall be reinstated in full. The collateral securing the Warminster Purchase Option Deposit Refund Agreement shall remain unchanged. Warminster's obligations under the Purchase Option Refund Deposit Agreement will be guaranteed by IEDs collected by Warminster after November 27, 2009 not to exceed \$10 million. Any cross-defaults relating to other Landowners shall be eliminated. Reorganized Warminster shall assume the Warminster Purchase Option Deposit Refund Agreement in accordance with the terms of Exhibit D hereto as it currently exists, or otherwise on terms mutually agreeable to Ann's Choice and the Ann's Choice Trustee.

6.3.9.3 Development Rights. Redwood shall assume the existing Development Agreement relating to the Ann's Choice Campus or otherwise enter into a new Development Agreement ~~on terms mutually agreeable to Redwood, Ann's Choice and the Ann's Choice Trustee~~ **as set forth in Exhibit D hereto.**

6.3.9.4 Guarantees. All guarantees of ERC and its affiliates will be terminated. Redwood, DevCo and PropCo shall provide a new completion guaranty on the same terms as the existing completion guaranty associated with the Ann's Choice Bonded Community.

6.3.9.5 Community Loan. The Warminster Community Loan shall be ~~amended and restated at the outstanding balance amount and assumed by Warminster, on terms mutually agreeable to Redwood, Ann's Choice and the Ann's Choice Trustee~~ **reinstated in the full amount of the Warminster Community Loan. Warminster shall assume, reinstate and/or ratify the Warminster Community Loan in accordance with the terms of Exhibit D hereto.**

6.3.9.6 Other Warminster Bond Obligations. Warminster shall assume, reinstate and/or ratify the mortgage securing the Ann's Choice Bonds and Warminster and Warminster GP shall each assume, reinstate and/or ratify all other obligations, encumbrances, and agreements relating to the Ann's Choice Bonds to which it was a party as of the Petition Date. Subject to the occurrence of the Effective Date, any IED funds relating to the Ann's Choice Campus that remain in escrow on the occurrence of a Trigger Event as that term is used in the Initial IED Order and Additional IED Procedures Order shall be released to Warminster and such formerly escrowed funds shall thereafter be available for use pursuant to the Bond Documents provided that there then exist no defaults under one or more of the provisions of the Bond Documents set forth in Schedule 6.3.9.6. Any new Management Agreement and any amendments or modifications to the terms of any Master Lease relating to the Ann's Choice Campus shall be ~~on terms reasonably acceptable to the Ann's Choice Trustee and Redwood. The Debtors reserve the right to seek approval of any new agreements and the Plan over the objection of such a party on any basis available to the Debtors.~~ **as set forth in Exhibits D and E hereto.**

6.3.9.7 New Warminster Revolver. ~~Redwood will make available a revolver to fund costs of the borrower, including construction costs, marketing costs, departmental charges, development fees and taxes (the "New Warminster Revolver"). The available commitment amount under the New Warminster Revolver will be mutually determined by Redwood and borrower. Redwood will provide a separate revolving facility for the purpose of funding reasonable working capital needs of Ann's Choice Campus (together with the New Warminster Revolver, the "New Warminster Revolvers"). The terms of the New Warminster Revolvers must be mutually agreeable to Redwood and Ann's Choice and, to the extent they have approval rights under the relevant Bond Documents, the Ann's Choice Trustee.~~ **Warminster Working Capital Loan. Warminster shall assume, reinstate and/or ratify the Working Capital Loan to Ann's Choice as modified and in accordance with the terms of Exhibit D hereto (the "New Warminster Revolver").**

6.3.9.8 TIP Funding. The Warminster IEDs collected prior to November 27, 2009 will be transferred to the TIP. To the extent that the Ann's Choice Trustee is unwilling to facilitate the transfer, the Debtors reserve the right prior to or at the Plan Confirmation Hearing to seek the Court's intervention.

6.3.9.9 Warminster Letters of Credit. The claims of PNC Bank, National Association, on account of the Warminster Letters of Credit shall be ~~allowed~~ **Allowed** as of the Effective Date. Unless PNC agrees to different treatment, PNC Bank, National Association shall not release its liens on the certificates of deposit pledged to secure the Warminster Letters of Credit except to the extent the Warminster Letters of Credit are returned, undrawn, to PNC Bank, National Association. Upon release **by PNC Bank, National Association** of the liens on the certificates of deposit pledged to

secure the Warminster Letters of Credit ~~as set forth in this paragraph~~ and the payment of the cash proceeds of such certificates of deposit ~~shall then be Purchased Assets~~ in accordance with Section 11.1(t)(iii) hereof. PNC Bank, National Association shall have no further claims against Warminster with respect to the Warminster Letters of Credit.

6.3.10 *Erickson Construction.* Erickson Construction shall grant, sell, assign, transfer and deliver to DevCo, and DevCo shall purchase from Erickson Construction, free and clear of all liens and liabilities, all assets and properties of Erickson Construction of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, owned, leased or licensed, including all transferred contracts to which Erickson Construction is a party, but not including any Excluded Assets. Unless PNC Bank, National Association agrees to different treatment, PNC shall not release the certificates of deposit pledged to secure the Erickson Construction Letters of Credit except to the extent Erickson Construction Letters of Credit and ERC Letters of Credit are returned, undrawn, to PNC Bank, National Association. Following release of certificates of deposit as set forth in this paragraph, such certificates of deposit shall be Purchased Assets.

6.3.11 *Erickson Group.* Erickson Group will be liquidated and dissolved in accordance with applicable law, subject to the terms and conditions of the Plan.

6.3.12 *Payment in Full Claims.* To the extent unpaid as of the Effective Date, Allowed Administrative Expense Claims (including, without limitation, the Auction Fee), Allowed Compensation and Reimbursement Claims, Allowed Priority Tax Claims, Allowed DIP Funding Claims, Allowed Other Priority Claims, Allowed Secured Tax Claims, and Allowed Mechanic's Lien Claims (to the extent these Claims are not junior to other Claims pursuant to applicable state law) shall be reserved for or paid from the Transaction Proceeds, subject to the terms and conditions of the Plan.

#### 6.4 *Liquidating Creditor Trust.*

6.4.1 *Establishment of Liquidating Creditor Trust.* On the Effective Date, the Liquidating Creditor Trust will be established pursuant to the Trust Agreement and other documents to be included in the Plan Supplement. Under the Definitive Agreement, Redwood is acquiring the Causes of Action, counterclaims and defenses listed below which the Debtors would have otherwise been entitled to bring and which are not transferred, waived or released under the Plan. Redwood will assign the Causes of Action listed below to the Liquidating Creditor Trust for the exclusive benefit of the Beneficiaries that consent to the Global Settlement.

- All Chapter 5 Avoidance Actions of ERC, Erickson Construction, and the Landowner Debtors (collectively, the "**Subject Debtors**"), including, but not limited to, actions against ~~John Erickson and members of the Erickson family~~ **Parties** (the "**Transferred Chapter 5 Avoidance Actions**"). Chapter 5 Avoidance Actions against Redwood Retained Employees will be excluded from the Transferred Chapter 5 Avoidance Actions assigned to the Liquidating Creditor Trust. Further and except with respect to ~~John Erickson and members of the Erickson family~~ **Parties**, the Liquidating Creditor Trust will covenant not to prosecute Chapter 5 Avoidance actions against employees of the Subject Debtors (including the Redwood Retained Employees) if (A) such employees received transfers during the period ending October 18, 2008 and beginning on the date that the applicable statute of limitations for fraudulent conveyances for such transfer began to run and (B) such transfers during that period do not exceed \$350,000, in the aggregate; *provided*, that the covenant not to sue will not apply to transfers to such employees within one (1) year prior to October 19, 2009 (such employees falling below the foregoing threshold, "**Non-Threshold Employees**").

- All Non-Avoidance Causes of Action against the directors and officers of the Subject Debtors in their capacities as such (the “*Transferred D&O Claims*”).

The assignment of claims of the Subject Debtors and Erickson Group to the Trust (or other such third party with respect to assets of Erickson Group other than the Estate Assigned Claims) shall be exclusive of any and all claims or Causes of Action against the Lenders ~~and~~, Agents and Bond Trustees (and each of their respective affiliates, officers, directors, employees, agents, attorneys and advisors) both in their capacities as Lenders and/or Agents (and in the case of the Bond Trustees, as trustees), and in any other capacities, all of which claims and/or Causes of Action, including but not limited to Chapter 5 Avoidance Actions and any other avoidance actions, shall be expressly waived and enjoined, pursuant to the Plan, by the Debtors, each of the Acquisition Companies, the Creditors Committee, the Liquidating Creditor Trust, Holders of each of the Ashburn Junior Loan Claims, Columbus Junior Loan Claims, Concord Junior Loan Claims, Dallas Junior Loan Claims, Houston Junior Loan Claim, Kansas Junior Loan Claim, Littleton Junior Loan Claim, Novi Junior Loan Claim, Warminster Junior Loan Claim, any other mezzanine lender, Holders of Claims under the STAMPS, the Lenders, Agents, Bond Trustees, and the NSC-NFPs and Holders of Allowed Claims that receive Distributions under the Plan (subject to the right of each creditor to opt-out with respect to the Third Party Releasees pursuant to Section 12.6 of the Plan). The assignment of claims of the Subject Debtors and Erickson Group to the Trust (or other such third party with respect to assets of Erickson Group other than the Estate Assigned Claims) shall be exclusive of any and all claims or Causes of Action against the NSC and the NSC-NFPs (and each of their respective affiliates, officers, directors, employees, agents, attorneys and advisors, but excluding, for the avoidance of doubt, their vendors<sup>8</sup> with respect to any transfer of property of the Debtors' estates) all of which claims and/or Causes of Action, including but not limited to Chapter 5 Avoidance Actions and any other avoidance actions, shall be expressly waived and enjoined, pursuant to the Plan, by the Debtors, each of the Acquisition Companies, the Creditors Committee, the Liquidating Creditor Trust, Holders of each of the Ashburn Junior Loan Claims, Columbus Junior Loan Claims, Concord Junior Loan Claims, Dallas Junior Loan Claims, Houston Junior Loan Claim, Kansas Junior Loan Claim, Littleton Junior Loan Claim, Novi Junior Loan Claim, Warminster Junior Loan Claim, any other mezzanine lender, Holders of Claims under the STAMPS, the Lenders, Agents, Bond Trustees, and the NSC-NFPs and Holders of Allowed Claims that receive Distributions under the Plan (subject to the right of each creditor to opt-out with respect to the Third Party Releasees pursuant to Section 12.6 of the Plan). In addition to the Causes of Action described above, on and after the Effective Date, the Debtors will assign the following Causes of Action to the Liquidating Creditor Trust: (i) Non-Avoidance Causes of Action against all directors, officers, managing members and managers of Erickson Group (the “*Estate Assigned D&O Claims*”), (ii) all Chapter 5 Avoidance Actions of Erickson Group, other than such claims against Redwood Retained Employees (subject to the limitations described herein with respect to Non-Threshold Employees) (the “*Estate Assigned Chapter 5 Avoidance Actions*”), (iii) all Non-Avoidance Causes of Action not acquired by Redwood and not otherwise released or enjoined by the Plan (together with the Estate Assigned D&O Claims and Estate Assigned Chapter 5 Avoidance Actions, the “*Estate Assigned Claims*”), (iv) unencumbered assets of the Debtors' Estates, and (v) Excluded Assets (excluding those Excluded Assets subject to prior liens, to the extent of the value of such liens, or other disposition pursuant to the terms of the Plan, including but not limited to the Littleton Out-Parcel and the UMBC Building) (collectively with the Transferred Claims and the Trust Cash, the “*Trust Assets*”) (except for those assets held by Erickson Group that may be transferred to another third party entity, including but not limited to the GST Loan). The Trust Assets transferred to the Liquidating Creditor Trust, subject to the applicable provisions of Section 6.4 of the Plan, will fully vest in, the Liquidating Creditor Trust, free and clear of all claims, liens, encumbrances and other liabilities, including all Claims against and Interests in the Debtors, with all Liquidating Creditor Trust proceeds to

<sup>8</sup> For the purposes of this section, the term “vendors” does not include the officers, directors, employees, agents, attorneys, or advisors of the NSC or of the NSC-NFPs or of their affiliates.



be distributed by the Trustee in accordance with the provisions of the Plan. The Debtors estimate that the value of the potential preference Causes of Action is approximately \$7.5 million. The Debtors believe that claims may exist with respect to D&O coverage but the Debtors express no opinion with respect to those claims. **Any reference in this Plan to potential Causes of Action against any director, officer, other insider, or former employee of any of the Debtors should not be construed to suggest that the Debtors believe that any such valid claim exists or is worthy of pursuit, and, The Plan, the confirmation of the Plan, and any agreements consummated pursuant to the Plan, shall be without prejudice to any such parties' defenses to any such potential claims and all defenses to such potential claims parties' defenses, affirmative defenses, or defensive offsets, and any other defenses under applicable bankruptcy and nonbankruptcy law, nonbankruptcy law, or both to such potential claims as may be reserved under the Plan, including without limitation any Chapter 5 Avoidance Causes of Action, Estate Assigned Chapter 5 Avoidance Actions, Non-Avoidance Causes of Action, Estate Assigned D&O Claims, and Estate Assigned Claims, and any such defenses shall be fully preserved and are not precluded (whether by res judicata, collateral estoppel, judicial estoppel, or otherwise) by confirmation of the Plan.** On the Effective Date, the Liquidating Creditor Trust will be provided with funding in an amount specified in the Plan Confirmation Order or other Plan Documents, which amount may be used as set forth in Section 6.4.18 of the Plan and as otherwise determined by the Creditors Committee and/or the Trustee of the Liquidating Creditor Trust, including to pay the reasonable fees and expenses incurred by the Liquidating Creditor Trust or the Trustee in administering the Liquidating Creditor Trust. The Trustee will be appointed pursuant to the Plan Confirmation Order. Notwithstanding any provision of the Plan, the Disclosure Statement or any order on the Disclosure Statement and/or Plan, the Company's membership interests in Lincolnshire Campus, LLC, Naperville Campus, LLC and Hingham Campus, LLC shall remain subject to all liens granted to the relevant Bond Trustee under the relevant Bond Documents or such terms as agreed to by the parties, **shall not constitute Trust Assets, and shall be treated as provided elsewhere in this Plan. Notwithstanding any provision of the Plan, the Disclosure Statement or any order on the Disclosure Statement and/or Plan, the Company's membership interests in St. Louis Campus, LLC shall remain subject to the lien of Sovereign Bank, and such membership interests and the Company's membership interests in Point View Campus II, LLC shall not constitute Trust Assets.** Nothing in this Section or otherwise in this Plan, and nothing in the Plan Confirmation Order, shall operate to transfer the Excluded Assets free and clear of, or release or in any manner affect, the claims, liens, encumbrances or other liabilities of any lender (or other creditor), or agent for such lender (or other creditor), against or with respect to any person or entity that is not one of the Debtors or the property of any such person or entity; *provided, however, except as otherwise provided in this Plan, the Bond Trustee* ~~Trustees~~ shall not be entitled to receive any distributions from the Trust Assets other than the Excluded Assets that are the subject of the Bond ~~Trustee's~~ **Trustees'** liens.

6.4.2 **Exclusions.** Holders of the following types of claims may not participate as Beneficiaries of the Liquidating Creditor Trust and will not be included in the definition of Beneficiary as used in the in Plan: (1) except for Permitted Non-Debtor Obligations (defined below), all deficiency claims of Corporate Revolver Lenders (including, but not limited to, deficiency Interest Rate Swap Claims), which shall be waived as against all of the Debtors except Erickson Group (the "**Revolver Deficiency Waiver**"), (2) except for Permitted Non-Debtor Obligations and the Non-Consenting Construction Lenders (defined below), all loan deficiency and guarantee claims of Construction Lenders, which shall be waived as against all of the Debtors except Erickson Group (the "**Construction Loan Deficiency Waivers**"), (3) all intercompany claims, (4) all obligations with respect to purchase option deposits, (5) claims under the Growth Participation Plan (6) except for Permitted Non-Debtor Obligations, guarantees of ERC's non-debtor subsidiaries' prepetition obligations, (7) UMBC Building Construction Loan deficiency claims, (8) all mezzanine loan/sale-leaseback deficiency claims and guarantee claims that have been waived in writing or pursuant to the Plan, (9) community loan claims, (10) NFP Claims, and (11) purchase deposit claims (the "**Excluded Claims**"). **Claims arising under the**

*Growth Participation Plan are expressly excluded because pursuant to the terms of the Growth Participation Plan, payments under the plan are deferred until all outstanding obligations owed to the Debtors' lenders are paid in full.* Notwithstanding the foregoing, in the event that an NFP is entitled to any distribution from the Liquidating Creditor Trust, then such distribution shall be paid to the Agent with whom that NFP is party to a subordination agreement, and such Claim shall not be an Excluded Claim (for the avoidance of doubt, NFPs are not entitled to a distribution from the Liquidating Creditor Trust pursuant to the terms of the Plan). For the avoidance of doubt, Holders of General Unsecured Claims against Erickson Group do not assign or waive such Claims or the treatment of such Claims. Notwithstanding anything in the Plan to the contrary, U.S. Bank National Association, as Bond Trustee for the Bond Community known as Sedgebrook shall participate as a "Tier B" Beneficiary with an Allowed Claim in the amount of \$3.5 million (the "Sedgebrook Trustee Liquidating Trust Claim").

**6.4.3 Purpose of Liquidating Creditor Trust.** The purposes of the Liquidating Creditor Trust are (i) to liquidate any non-cash Trust Assets; (ii) to prosecute and resolve the Causes of Action; (iii) to maximize recovery of the Trust Assets for the benefit of Beneficiaries; and (iv) to distribute the proceeds of the Trust Assets to Beneficiaries.

**6.4.4 Prosecution of Actions.** The Liquidating Creditor Trust may commence adversary or other legal proceedings to pursue any Causes of Action. Proceeds recovered through any such proceeding will be deposited into the Liquidating Creditor Trust and will be distributed by the Trustee to Beneficiaries in accordance with the provisions of the Plan. The Except as provided in Section 6.4.7 of the Plan, the Trustee will have the authority to settle any and all Causes of Action without the need for approval by the Bankruptcy Court. Further, the Trustee may, in its discretion (but subject to Section 6.4.7 of the Plan), elect to abandon any non-cash Trust Assets.

**6.4.5 Trust Funding.** On the Effective Date, the Liquidating Creditor Trust will be provided with funding in an amount of \$2.5 million in Cash (the "*Trust Cash*") from the TIP, which amount may be used as set forth in Section 6.4.18 of the Plan and as otherwise determined by the Trustee, including to pay the reasonable fees and expenses incurred by the Liquidating Creditor Trust or the Trustee in administering the Liquidating Creditor Trust.

**6.4.6 D&O Indemnification.** The Liquidating Creditor Trust shall not be liable, directly or indirectly, for the Debtors' postpetition obligation to indemnify directors and officers under the Plan.

**6.4.7 GST Loan and Collection.** Under the Plan and/or the Plan Documents, the rights of Erickson Group with respect to the GST Loan will be assigned to the Liquidating Creditor Trust (or other third party or entity) for the benefit of Construction Lenders with Erickson Group Guaranty Claims (which guarantee claims are expressly reserved and not otherwise waived against Erickson Group). The Committee and lenders with Erickson Group Guaranty Claims will discuss in good faith the terms under which In connection with any such assignment to the Liquidating Creditor Trust (or other third party or entity) may receive the right to prosecute collection claims arising from the GST Loan and distribution of proceeds therefrom) such assignment shall be effected by the Plan and the Plan Confirmation Order; (ii) the terms of such assignment shall be set forth in the Trust Agreement; and (iii) after the entry of the Plan Confirmation Order but prior to the Effective Date, the Bankruptcy Court shall enter an order, pursuant to sections 105(a) and 1142(b) of the Bankruptcy Code, in which it directs the parties to the Trust Agreement to execute and deliver the Trust Agreement and directs the parties thereto (other than the Debtors) to implement the terms thereof with respect to the GST Loan.