

6.4.8 **Participation.** A Beneficiary may only participate in the recoveries of the claims and Causes of Action assigned to the Liquidating Creditor Trust if such Beneficiary consents to the global settlement (the “**Global Settlement**”) between the Creditors Committee and the Debtors. Any Beneficiary that does not consent to the Global Settlement will not be a beneficiary of (i) the Revolver Deficiency Waivers, (ii) Construction Loan Deficiency Waivers, (iii) the Lender Pay-Over Waivers (defined below), (iv) the Trust Cash, (v) the recoveries from the claims and Causes of Actions assigned to the Liquidating Creditor Trust and (vi) recoveries from any other Trust Asset. Any objection filed by a Beneficiary to the Global Settlement or vote against the Plan and the releases contained therein, will disqualify a Beneficiary from participating in the Liquidating Creditor Trust. Further, a Holder of an Erickson Group Guaranty Claim may only participate in the Guaranty Claim GST Allocation if such Holder consents to the Global Settlement. Any objection filed by a Holder of an Erickson Group Guaranty Claim to the Global Settlement or vote against the Plan and the releases contained therein will disqualify a Holder of an Erickson Group Guaranty Claim from participating in the Guaranty Claim GST Allocation.

6.4.9 **Distributions to Three Subclasses of Claims.**

Tier A Subclass – Trade Claims:

(a) **Participants:** Tier A will consist of Beneficiaries that that are not Holders of (i) a mezzanine loan/sale-leaseback deficiency claim, (ii) mezzanine loan/sale-leaseback guarantee claim, (iii) Permitted Non-Debtor Obligations (defined below) or (iv) Participating Construction Claims (defined below) (collectively, the “**Trade Class**”). The Trade Class shall include Allowed General Unsecured Claims held by current and former employees of the Debtors (excluding Claims arising under the Growth Participation Plan).

(b) **Recovery:** Tier A shall receive, *pro rata*, the first \$7 million of dividends paid by the Liquidating Creditor Trust (“**Trade Dividend**”). Following the payment of the Trade Dividend in full, Tier A will not be entitled to any further distributions from the Liquidating Creditor Trust, subject to the Proration Trigger Event (defined below).

Tier B Subclass – Construction Claims:

(a) **Participants:** Tier B will consist of Beneficiaries which are Holders of the following:

(i) guarantees by a Subject Debtor of pre-petition obligations (including letters of credit) of non-debtor ERC subsidiaries or affiliates (“**Permitted Non-Debtor Obligations**”), *provided* that Permitted Non-Debtor Obligations shall not include (i) any claim held by, (ii) guarantees of pre-petition obligations of, or (iii) letters of credit issued to the following: John Erickson, any member of the Erickson family, any trust or special purpose vehicle created or managed primarily for the benefit of John Erickson or any member of the Erickson family (“**Excluded Insider Obligations**”)-and;

(ii) deficiency and guarantee claims of the construction lenders (the “**Construction Claims**”) to Columbus (the “**Columbus Lender**”) and Kansas (the “**Non-Consenting Construction Lenders**”). For the avoidance of doubt, the Non-Consenting Construction Lenders are not waiving their deficiency and guaranty claims.; and

(iii) the Sedgebrook Trustee Liquidating Trust Claim.

(b) **Recovery:** Tier B will not receive any distribution from the Liquidating Creditor Trust until the Trade Dividend has been paid in full. Thereafter Tier B shall participate in all

dividends from the Liquidating Creditor Trust, *pro rata*, with other Tier B participants only, up to \$2 million (the “*Tier C Trigger Event*”), and thereafter, with Tier C participants *pro rata*, subject to the Proration Trigger Event (defined below).

(c) *Limitations:*

(i) The amount of Permitted Non-Debtor Obligations that may participate in Tier B shall be capped at \$21 million (the “*Participating Permitted Non-Debtor Obligations*”). To the extent that Permitted Non-Debtor Obligations exceed \$21 million (the “*Excess Permitted Non-Debtor Obligations*”), the Participating Permitted Non-Debtor Obligations of each Tier B participant shall be reduced *pro rata*. The holders of Excess Permitted Non-Debtor Obligations shall be deemed to have waived the right to receive a distribution from the Liquidating Creditor Trust on account of such excess amounts.

(ii) The amount of Construction Claims of the Non-Consenting Construction Lenders that may participate in Tier B shall be capped at \$70 million (the “*Participating Construction Claims*”). To the extent that Construction Claims exceed \$70 million (the “*Excess Construction Claims*”), the Participating Construction Claims of each Tier B participant shall be reduced *pro rata*. The holders of Excess Construction Claims shall be deemed to have waived the right to receive a distribution from the Liquidating Creditor Trust on account of such excess amounts.

(iii) Holders of Permitted Non-Debtor Obligations and the Columbus Lender shall use their respective reasonable good faith efforts to satisfy their claims first from the assets of the applicable non-debtor ERC subsidiary or affiliate or Columbus collateral, respectively, before seeking to enforce their right to receive a distribution from the Liquidating Creditor Trust. To the extent that a holder of a Participating Permitted Non-Debtor Obligation or the Columbus Lender has received payment in respect of their claims from the assets of the applicable non-debtor ERC subsidiary or affiliate or Columbus collateral, respectively, such payment will be deemed to be first applied to such creditors’ respective Excess Permitted Non-Debtor Obligation or Excess Construction Claim and then to reduce the amount of its Participating Permitted Non-Debtor Obligations or Participating Construction Claims, respectively.

(iv) The amount of the the Sedgebrook Trustee Liquidating Trust Claim shall be capped at \$3.5 million.

(v) ~~(iv)~~ For the avoidance of doubt, holders of Participating Construction Claims shall only be entitled to one distribution on account of their deficiency and guarantee claims.

Tier C Subclass– Mezzanine/Sale-Lease Back Claims:

(a) ~~(d)~~ *Participants:* Tier C will consist of Beneficiaries that hold mezzanine loan/sale-leaseback guarantee claims and deficiency claims that have not been voluntarily waived in writing (“*Mezzanine Claims*”).

(b) ~~(e)~~ *Recovery:* Tier C shall not participate in dividends from the Liquidating Creditor Trust until the occurrence of the Tier C Trigger Event. Thereafter, Tier C shall participate with Tier B in all dividends of the Liquidating Creditor Trust, *pro rata*, subject to the Proration Trigger Event (defined below).

(c) ~~(f)~~ *Limitations:*

(i) The amount of Mezzanine Claims that may participate in Tier C shall be capped at \$100 million (“*Participating Mezzanine Claims*”). To the extent that mezzanine loan/sale-leaseback guarantee claims and deficiency claims that have not been voluntarily waived in writing exceed \$100 million (the “*Excess Mezzanine Claims*”), the Participating Mezzanine Claims of each Tier C participant shall be reduced *pro rata*. The holders of Excess Mezzanine Claims shall be deemed to have waived the right to receive a distribution from the Liquidating Creditor Trust on account of such excess amounts.

(ii) For the avoidance of doubt, holders of Participating Mezzanine Claims shall only be entitled to one distribution on account of their mezzanine loan/sale-lease back deficiency claims and guarantee claims.

STAMPS:

(d) ~~(g)~~ *Stamps Pay-Over Obligation and Tier A Subclass Participation*: For purposes of distributions from the Liquidating Creditor Trust and subject to (b) below, the holders of STAMPS shall participate in Tier A, *provided, however*, any amount distributable to the STAMPS shall be ~~paid to the holders of Senior Indebtedness⁸~~, subject to the Lender Pay-Over Waivers (defined below) **and shall be paid by the Trustee to the holders of Senior Indebtedness⁹** in Tier A, *pro rata* (the “*STAMPS Pay-Over Obligation*”). To the extent permitted under section 13.10 of the STAMPS Indenture (defined below), the fees of the STAMPS indenture trustee, up to \$250,000, will not be subject to the STAMPS Pay-Over Obligation (the “*STAMP Fees*”).

(e) ~~(h)~~ *Waiver of Stamps Pay-Over Obligation*. Without limiting the Lender Pay-Over Waivers, upon the occurrence of the Proration Trigger Event, the STAMPS Pay-Over Obligation shall be deemed waived in its entirety and, thereafter, holders of the STAMPS shall be entitled to a *pro rata* share of all Liquidating Creditor Trust distributions.

Proration Trigger Event:

(f) ~~(i)~~ *Relevant Definitions*:

(i) “*Tier A Percentage Recovery*” means the quotient of \$7 million divided by the total amount of Allowed Claims entitled to participate in Tier A plus the STAMP Fees, but excluding all other Claims of the STAMPS.

(ii) “*Tier B/C Percentage Recovery*” means the quotient of the total amount of distributions made by the Liquidating Creditor Trust to Tier B and Tier C participants, in the aggregate, divided by the total amount of Allowed Claims entitled to participate in Tier B and Tier C, in the aggregate.

(g) ~~(j)~~ *Application*: As set forth above, upon the payment of the Trade Dividend to Tier A, in full, Tier A will not be entitled to participate in any further distributions from the Liquidating Creditor Trust. However, if as a result of future distributions to participants in Tier B and Tier C, the Tier B/C Percentage Recovery equals or exceeds the Tier A Percentage Recovery (the

⁸ “Senior Indebtedness” shall have the meaning ascribed to such term in that Trust Indenture, dated November 1, 2007, by and among, Erickson Retirement Communities, LLC and The Bank of New York, as Trustee (the “*STAMPS Indenture*”).

⁹ “Senior Indebtedness” shall have the meaning ascribed to such term in that Trust Indenture, dated **November 1, 2007, by and among, Erickson Retirement Communities, LLC and The Bank of New York, as Trustee (the “*STAMPS Indenture*”).**

“*Proration Trigger Event*”), all subsequent distributions from the Liquidating Creditor Trust will then be made to Tier A, Tier B and Tier C, *pro rata*.

6.4.10 *Lender Waivers.*

Subordination/Pay-Over: Except with respect to the NSC/NFP Carveout Claims, Corporate Revolver Lenders, Construction Lenders and holders of Permitted Non-Debtor Obligations will waive all subordination and pay-over rights with respect to distributions from the Liquidating Creditor Trust and the recipients thereof (the “*Lender Pay-Over Waivers*”); *provided* that a Lender Pay-Over Waiver shall only be effective with respect to a holder of mezzanine loan/sale-leaseback deficiency claims or mezzanine loan/sale-leaseback guarantee claims if the beneficiary of such waiver shall have first entered into a settlement agreement, acceptable to the relevant lenders granting such waiver.

Subrogation: The grant of an effective Lender Pay-Over Waiver shall include a lender’s waiver of subrogation rights with respect to (1) Excess Mezzanine Claims or (2) mezzanine loan/sale-leaseback deficiency claims or mezzanine loan/sale-leaseback guarantee claims voluntarily waived by holders thereof in writing.

6.4.11 *Formation.* The Creditors Committee shall have authority with respect to drafting the definitive trust documents, governance and selection of a Trustee, subject to approval by the Bankruptcy Court. The Creditors Committee shall consult with the Agents with respect to the drafting and governance of the Liquidating Creditor Trust

6.4.12 *Claims Process.* The Liquidating Creditor Trust will have the right to object to Claims in connection with the post-Effective Date Claims allowance process; *provided that* the Liquidating Creditor Trust shall not have the right to object to any Claims ~~of the Corporate Revolver Lenders and Construction Lenders, lenders under the UMBC Building Construction Loan, and Agents, all of which shall~~ that have been deemed by the Plan to be Allowed. Prior to the Effective Date, the Debtors shall consult with the Creditors Committee in connection with such Claims allowance process.

6.4.13 *Information Preservation and Production.* The Debtors and the Acquisition Companies will agree to preserve all documents and electronic data and provide access to such information to the Liquidating Creditor Trust to facilitate the prosecution of any and all Causes of Action, including but not limited to Chapter 5 Avoidance Actions and claims related to director and officers, the GST Loan and other claims. The Debtors’ and Acquisition Companies’ obligation to preserve documents and electronic data pursuant to this Section 6.4.13 shall terminate on the first year anniversary of the Effective Date, *provided*, that the Debtors, the Acquisition Companies and the Trustee shall negotiate in good faith the terms under which such documents and electronic data shall be transferred to the possession of the Liquidating Creditor Trust, at the Liquidating Creditor Trust’s expense at the conclusion of the one year period.

6.4.14 *Notice of Causes of Action.* Subject to the releases and limitations expressly described herein and under the Plan (including with respect to the Redwood Retained Employees), the intent of the Global Settlement and the Plan is to transfer all claims, Causes of Action, counter-claims and other defenses of the Debtors (including the right to recoveries therefrom) to the Liquidating Creditor Trust, with certain exceptions expressly set forth in this Plan. The Liquidating Creditor Trust is receiving such Causes of Action as the representative of the estate under section 1123(b)(3)(B) of the Bankruptcy Code and Trustee shall have standing to prosecute such Causes of Action. Neither the Creditors Committee nor the Trustee have commenced an investigation of the Debtors’ books and records with respect to potential Causes of Action. To the extent that a Cause of Action against a Holder of a Claim against or Interest in the Debtors or any other party, is not specifically identified or described in this Plan, the failure to identify such Cause of Action should not be construed

as a waiver or defense to such Cause of Action. For the avoidance of doubt, no 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, shall be transferred to the Liquidating Creditor Trust, the Trustee shall not have standing to pursue such claims or Causes of Action, and all such claims and Causes of Action shall be waived, released and discharged pursuant to the Plan. Furthermore, and for the avoidance of doubt, no claims or Causes of Action against the NSC and/or the NSC-NEPs (and each of their respective affiliates, officers, directors, employees, agents, attorneys, and advisors, but excluding, for the avoidance of doubt, their vendors with respect to any transfer of property of the Debtors' estates), shall be transferred to the Liquidating Creditor Trust, the Trustee shall not have standing to pursue such claims or Causes of Action, and all such claims and Causes of Action shall be waived, released and discharged pursuant to the Plan.

6.4.15 *No Substantive Consolidation.* The formation and implementation of the Liquidating Creditor Trust is not, and shall not be deemed, to constitute or cause in effect a substantive consolidation of the Debtors and distributions from the Liquidating Creditor Trust shall be made accordingly. The governing body of the Liquidating Creditor Trust shall endeavor to account for creditor recoveries amongst the creditors of the various Estates to the extent possible.

6.4.16 *Tax Treatment of Transfers to Liquidating Creditor Trust.* The transfer of the Trust Assets to the Liquidating Creditor Trust will be treated for all purposes of the Internal Revenue Code of 1986, as amended, e.g., Sections 61(a)(12), 483, 1001, 1012 and 1274, as a deemed transfer first to Beneficiaries (in proportion to the fair market value of the Liquidating Creditor Trust interests received by each) in exchange for the Claims held by each that are to be satisfied by the interests in the Liquidating Creditor Trust. This will be followed by a deemed transfer by each such Beneficiary to the Liquidating Creditor Trust.

6.4.17 *Tax Treatment of Beneficiaries.* Beneficiaries will be treated as the grantors of the Liquidating Creditor Trust, and the Trustee will file tax returns for the Liquidating Creditor Trust as a "grantor trust" pursuant to Section 1.671-4(a) of the U.S. Treasury Regulations, and to the extent otherwise required by applicable law. Items of income, gain, loss, expense and other tax items will be allocated to those Beneficiaries that would be entitled to receive such items if they constituted cash distributions or reductions therefrom and such Beneficiaries shall be responsible for the payment of taxes on a current basis that result from such allocations to the extent otherwise required by applicable law.

6.4.18 *Trust Expenses.* All Liquidating Creditor Trust expenses will be charged against and paid from either the Trust Cash or the proceeds of any Causes of Action and proceeds from asset sales of other Trust Assets as determined by ~~the Creditors Committee and the Trustee~~ and Trust governing board, as applicable. All such expenses will be paid by the Trustee when due and payable. Counsel and any other professionals retained by the Trustee or the Liquidating Creditor Trust (the "*Trust Professionals*") will submit monthly statements ("*Monthly Fee Statements*") for services rendered and costs incurred to the Trustee for review and approval. The Trustee will have thirty (30) days from receipt of each Monthly Fee Statement to object to the Monthly Fee Statement. In the event that any objection is received by the relevant Trust Professional and cannot be promptly resolved by the Trust Professional and the Trustee, the dispute will be submitted by the Trustee to the Bankruptcy Court for adjudication. The Bankruptcy Court will retain jurisdiction to adjudicate objections to Monthly Fee Statements. In the event that no objection is raised to a Monthly Fee Statement within the thirty (30) day period, the requested amount in the Monthly Fee Statement will be promptly paid by the Trustee, subject to any requirements under the Plan.

6.4.19 *Creditors Committee Professional Fees.* The Debtors will first apply the DIP financing funds of up to \$600,000 and then, an additional maximum consideration of up to \$500,000 will be made available from the TIP to the payment of the fees and expenses of the Committee's attorneys and financial advisors up to an allowed amount of \$1.1 million. Any fees and expenses incurred by the Committee's attorneys and financial advisors during the Chapter 11 Cases and allowed in excess of such amount will be paid from Trust Cash and/or the Liquidating Creditor Trust recoveries prior to any distribution to Beneficiaries. The amount paid (a) from the initial \$2.5 million in Trust Cash, or (b) from recoveries prior to any distribution to Beneficiaries shall be determined solely by agreement between the Creditors Committee and its professionals prior to the Effective Date of the Plan.

6.4.20 *Limitation of Liability.* No recourse will ever be had, directly or indirectly, against the Trustee, its members, officers, directors, employees, professionals, representatives, agents, successors or assigns, by legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge or note, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Creditor Trust under this Plan or by reason of the creation of any indebtedness by the Liquidating Creditor Trust or the Trustee under this Plan. All such liabilities under this Plan will be enforceable only against, and will be satisfied only out of, the assets of the Liquidating Creditor Trust. The Liquidating Creditor Trust and the Trustee and their respective officers, directors, employees, professionals, representatives, agents, successors or assigns will not be liable for any act they may do, or omit to do hereunder in good faith and in the exercise of their sound judgment; provided, however, that this Section will not apply to any gross negligence or willful misconduct by the Liquidating Creditor Trust and the Trustee or their respective officers, directors, employees, professionals, representatives, agents, successors or assigns.

SECTION 7. GOVERNANCE OF REORGANIZED DEBTORS

7.1 *Board of Managers.* The members of the initial board of directors or managers (if any) of the Reorganized Debtors will be disclosed in the Plan Supplement and pursuant to the terms of the Definitive Agreement.

7.2 *Officers.* The officers of the Debtors immediately prior to the Effective Date will serve as the initial officers of the Reorganized Debtors on and after the Effective Date and in accordance with any employment and severance agreements with the Reorganized Debtors and applicable non bankruptcy law, unless Redwood designates replacement officers. On and after the Effective Date, the officers of the respective Reorganized Debtors will be determined by the Reorganized Debtors' respective boards of directors or managers. The initial officers of the Acquisition Companies will be disclosed in the Plan Supplement.

7.3 *Continued Corporate Existence.* Except as otherwise provided herein, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date are amended by or in accordance with the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval. The foregoing shall be without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable state law.

7.4 *Transfer of Assets; Successor Liability.* The Restructuring Transactions may result in substantially all of the respective assets, properties, rights, liabilities, duties, and obligations of