

EXHIBIT A

1222eric.txt

1

1 IN THE UNITED STATES BANKRUPTCY COURT FOR
2 THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

3 -----)

4 In The Matter of:

5 ERICKSON RETIREMENT COMMUNITIES, LLC,
6

Debtor

7 Case No. 09-37010-SGJ-11.
8

8 -----)

9
10 DLA PIPER
11 1251 Avenue of the Americas
12 New York, New York
13 Tuesday, December 22, 2009
14 10:02 A.M.

15
16
17 Transcript in the above-entitled matter
18 pursuant to Notice of Public Auction,
19 conducted by Matthew R. Niemann.

20
21
22
23 Reported by:
24 william Byrne
25 Job No. 16337

†

2

1 A P P E A R A N C E S :

2

3 HOULIHAN LOKEY

4 1222eric.txt
5 For ERC Retirement
6 Communities, LLC
7 123 North wacker Drive, 4th Floor
8 Chicago, Illinois 60606
9 BY: MATTHEW R. NIEMANN, Managing Director
10 DAVID WATSON
11 DLA PIPER
12 1251 Avenue of the Americas
13 New York, New York 10020
14 BY: THOMAS R. CALIFANO, ESQ.
15
16
17 KIRKLAND & ELLIS LLP
18 Attorneys for Coastwood
19 300 North LaSalle Street
20 Chicago, Illinois 60654
21 BY: MARK A. FENNELL, ESQ.
22 -and-
23 JAMES A. STEMPEL, ESQ.
24
25

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3

1
2 A P P E A R A N C E S: (Continued)
3 KOHLBERG KRAVIS ROBERTS & CO.
4 For Coastwood
5 9 West 57th Street
6 New York, New York 10019

1222eric.txt
7 BY: NATHANIEL M. ZILKHA, Director
8
9 VENABLE, LLP
10 Attorneys for Redwood Capital
11 Investments
12 750 E. Pratt Street, Suite 900
13 Baltimore, Maryland 21202
14 BY: MICHAEL J. BAADER, ESQ.
15 CAROLLYNN H.G. CALLARI, ESQ. (New York Office)
16
17 REDWOOD CAPITAL INVESTMENTS
18 7301 Parkway Drive
19 Hanover, Maryland 21076
20 BY: R. ALAN BUTLER, Managing Director
21
22 HEALTHCARE MANAGEMENT PARTNERS, LLC
23 1650 Market Street, 36th Floor
24 Philadelphia, Pennsylvania 19103
25 BY: SCOTT K. PHILLIPS, Managing Director

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1 A P P E A R A N C E S: (Continued)
2
3 MINTZ LEVIN COHN FERRIS GLOVSKY and
4 POPEO P.C.
5 Attorneys for Indenture Trustees
6 One Financial Center
7 Boston, Massachusetts 02111
8 BY: RICHARD H. MOCHE, ESQ.
9 -and-

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10 WILLIAM W. KANNEL, ESQ.

11

12 WHITEFORD TAYLOR PRESTON, LLP

13 Attorneys for NSC

14 Seven St. Paul Street

15 Baltimore, Maryland 21202

16 BY: MARTIN T. FLETCHER, ESQ.

17

18 BRACEWELL & GIULIANI LLP

19 Attorneys for Unsecured Creditors

20 Committee

21 1177 Avenue of the Americas

22 New York, New York 10036

23 BY: DANIEL S. CONNOLLY, ESQ.

24 ANDREW J. SHOULDER, ESQ.

25

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5

1 A P P E A R A N C E S: (Continued)

2 PNC BANK

3 Two Hopkins Plaza

4 Baltimore, Maryland 21201

5 BY: JIM SMITH, ESQ.

6 SEAN SCHROEDER, ESQ.

7

8 ALSTON & BIRD LLP

9 Attorneys for the Corporate Lenders

10 101 South Tryon Street, Suite 4000

11 Charlotte, North Carolina 28280

12 BY: JASON J. SOLOMON, ESQ.

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13 J. WILLIAM BOONE, ESQ.
14
15 BALLARD SPAHR, LLP
16 Attorneys for MSRESS III Entities
17 300 E. Lombard Street, 18th Floor
18 Baltimore, Maryland 21202
19 BY: MATTHEW G. SUMMERS, ESQ.
20
21
22
23
24
25

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1 A P P E A R A N C E S (CONTINUED)
2
3 WINSTON & STRAWN LLP
4 For Bank of America
5 35 West Wacker Drive
6 Chicago, Illinois 60601
7 BY: BRIAN SWETT, ESQ.
8
9
10 BANK OF AMERICA CORPORATION
11 Ctr 100 North Tryon Street
12 Charlotte, North Carolina 28255
13 BY: ANDREW MAIDMAN, Senior Vice President
14
15 KENNEDY FUNDING

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16 Two University Plaza
17 Hackensack, New Jersey 07601

18 BY: CLINT HYNES

19

20

21

22 Also Present:

23 BILL SHINE, Wind Crest for Cap. Mark

24 DAN BLACK, Wind Crest, Legal

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ANDREW BALLMAN, MSRESS III, Legal

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MR. NIEMANN: It is 10:02

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a.m., Eastern time on December 22,

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2009. We are beginning the Erickson

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Retirement Communities auction

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pursuant to the United States

7

Bankruptcy Court for Northern

8

District of Texas, Dallas Division,

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Judge Jernigan's order approving,

10 1222eric.txt
10 among other things, the bidding
11 procedures for the sale of
12 substantially all of the debtors'
13 assets.

14 The matter was fully noticed
15 to all bidders that the auction was
16 commencing at 10 o'clock Eastern
17 time, New York, at the offices of
18 DLA Piper.

19 We have opened the auction, we
20 have just received an e-mail from
21 Coastwood, as one of the competing
22 bidders that they need to consider
23 some matters.

24 We have informed them if they
25 need to consider some matters, we've

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2 informed them these matters will be
3 considered within the auction
4 itself. So we are going to adjourn
5 the auction for 15 minutes and
6 e-mail Coastwood asking them for
7 their presence at this time, so we
8 can then recommence the auction.

9 Off the record.
10 (Whereupon, an off the
11 record discussion was held.)
12 MR. NIEMANN: I apologize for

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13 the tightness of the room. This
14 event is a little more popular than
15 we anticipated.

16 To start out with the ground
17 rules we are going to ask that each
18 bidder designate two people to
19 speak; one business and one legal.
20 Because we have a court reporter and
21 we are trying to record everything
22 and make a record. We would ask
23 that before you speak each time give
24 your name and identify who you are
25 speaking on behalf of. Everybody

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2 should have a list of the breakout
3 rooms. Okay. If you don't have
4 one, we can get you one.
5 Robb, raise your hand. If
6 anybody needs a list of the breakout
7 rooms or any other information ask
8 Robb. Obviously, when we take
9 breaks, and we anticipate there will
10 be many, we expect that no one will
11 be speaking to either of the bidders
12 without our consent and without
13 observation from at least somebody
14 from Houlihan.
15 We are also going to ask that

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16 each others constituents we may have
17 questions for, designate two people
18 for us to go to, and at the break
19 give that information to Robb. So
20 Robb will take down the list, and
21 when we need people for meetings and
22 breakout sessions, we will be able
23 to get you then. The only people we
24 expect to speak in this room are the
25 bidders, unless we have a question

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2 for anybody else here or a point of
3 clarification.
4 Other than that, if anybody
5 else other than the bidders has an
6 issue, bring it to us at a break and
7 we will try to get it addressed.
8 But, as I said, unless we have a
9 specific question for you we don't
10 expect anybody other than the
11 bidders to speak in this room.
12 We are going to start out --
13 and Matt will walk you through how
14 we are going to start out. We are
15 going to start out by going through
16 some communications that we received
17 from the NSC. I just want to make
18 sure for the record that we are not

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19 conceding the relevance or the
20 validity of the communication nor
21 are we conceding that this in any
22 way amends the consent that the NSC
23 gave on September 14, which was
24 reaffirmed last Friday in court.
25 But what we are going to do to

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2 clarify the record, Matt is going to
3 walk the two bidders through this,
4 and then we are going to take a
5 break for some clarification.
6 So I ask before we get started
7 if, can you tell us, for Coastwood
8 who is going to be speaking on your
9 behalf?
10 MR. FENNELL: Mark Fennell
11 from the law firm of Kirkland &
12 Ellis, speaking on behalf of
13 Coastwood for these NSC related
14 issues.
15 MR. STEMPEL: And James
16 Stempel for Coastwood, also. If I
17 can tweak your request for one
18 lawyer, one business person. For
19 the NSC portion, if Mark Fennell
20 from Kirkland & Ellis could speak
21 for those, and for the bid process

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and bids I will speak.
23 MR. CALIFANO: That's fine.
24 MR. BAADER: I am Michael
25 Baader from Venable, LLP. I will be

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2 speaking on behalf of Redwood on
3 behalf of legal issues, and Alan
4 Butler will be speaking on behalf of
5 Redwood on behalf of the business
6 issues.
7 MR. NIEMANN: And for
8 Coastwood, who is speaking to the
9 business issues?
10 MR. ZILKHA: Nat Zilkha from KKR
11 is speaking on the business issues
12 for Coastwood.
13 MR. NIEMANN: Just bear with
14 us for a moment while we go through
15 the rest of the list.
16 Project lenders, who were your
17 designees? And this says Tom said
18 to the extent we have questions or
19 as we go into breakout session into
20 the individual breakout rooms to the
21 extent we need the project lenders'
22 participation in those meetings or
23 NSC or the unsecured creditors
24 committee's participation we need to

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25 know who your designees will be. So

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2 let's just go through the list.

3 MR. SHINE: Wind Crest will be
4 Bill Shine for Cap Mark. Dan Black
5 for legal.

6 MR. SMITH: For PNC it will be
7 Jim Smith for legal and Sean
8 Schroeder for business.

9 MR. SWETT: For Bank of
10 America, Brian Swett for legal;
11 Andrew Maidman, for the business.

12 MR. SHOULDER: For the
13 official Committee of Unsecured
14 Creditors it will be Andrew
15 Schouler of Bracewell & Giuliani
16 for legal and Mike Atkinson of
17 Proximity for financial.

18 MR. NIEMANN: We've asked for
19 whoever the loudest person in your
20 group to be your spokesman.

21 MR. BOONE: Bill Boone for the
22 corporate lenders on the legal side;
23 Chris Docket for our financial side.

24 MR. FLETCHER: For the NSC,
25 Martin Fletcher and Scott Phillips

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2 on business.

3 MR. NIEMANN: Sir, is there
4 any constituent we haven't covered?

5 MR. KANNEL: Bill Kannel and
6 Rich Moche for legal, and we don't
7 have a business representative.

8 MR. NIEMANN: Bear with me
9 for just a second. I think with
10 respect to the administrative
11 matters that is all behind us.

12 So it will be Matt Summers who
13 is representing the MSRESS III
14 entities which are the sub-debtors
15 sub guarantors and I would be
16 designated for legal, and Andrew
17 Ballman will be designated for
18 business issues.

19 MR. NIEMANN: Can you make
20 sure, by the way, that everybody
21 that said who you are gives cards to
22 the court reporter, so we can put
23 together a comprehensive list. And
24 at some point we might want to
25 distribute a sign-in list.

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2 MR. NIEMANN: Are there any
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3 other -- I apologize for not -- any
4 other constituents, sub-debt or
5 otherwise?

6 MR. HYNES: Clint Hynes with
7 Kennedy Funding on the business
8 side, with no legal representation.

9 MR. NIEMANN: Is there any
10 other constituents? All right,
11 that's great.

12 For the record I'm Matt
13 Niemann with Houlihan Lokey.

14 As we have discussed with the
15 individual bidders, and as we
16 discussed with the NSC, the approach
17 we are going to take initially in
18 this auction will be to get as much
19 clarity and certainty around what we
20 will call the NSC open issues list
21 or request list, which we are going
22 to operate off of a letter that was
23 sent, as Tom indicated earlier, late
24 yesterday which both bidders have
25 received. In fairness to both

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2 bidders, I don't think either one
3 had enough time to digest the
4 entirety of the letter and the
5 issues, but as we have told them we
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6 have got a job to do today. Our
7 intention is to complete this
8 auction today and designate a winner
9 at the end of today.

10 I think everybody, at least,
11 in our discussions with the bidders
12 are in agreement with that
13 objective. I believe the NSC is as
14 well, and I'm not leaving anybody
15 else out. I'm just saying those are
16 the discussions we have had so far.
17 So what we will do first is, we will
18 go through every single issue on
19 that list as well as the individual
20 communities and we will alternate by
21 categories.

22 So we are going to ask
23 Coastwood first to respond to all
24 the issues listed in the overall
25 category, and then we are going to

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2 ask Redwood to respond to each of
3 those issues.
4 If you have questions or there
5 is not sufficient clarity, our
6 suspicion is, if there are 80 issues
7 on this list there is five or six
8 that lack sufficient clarity. And

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9 we want to get this list down to as
10 narrow a list as possible. Then we
11 will break and we will meet
12 individually with the bidders and
13 the NSC, and to the extent we need
14 lenders or the committee whoever
15 needs to be in that room in the
16 breakout rooms, and we will bring
17 everything else back on the record.

18 So ideally, whether it takes
19 an hour or eight hours, we want to
20 pin down these issues as well, and
21 we have not talked to the lenders
22 about this yet, but we would like to
23 ultimately achieve the same thing,
24 if you will, whatever the thing is,
25 with the lenders, and that is as

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2 much clarity.

3 And in fairness to the lenders
4 I don't know what the ultimate bid
5 is so we can't ask them to opine
6 because what we have right now have
7 effectively three bids. We have two
8 bids from Redwood, and we have had
9 one bid from Coastwood. Redwood
10 will call up the original Redwood
11 reinstatement bid, and the Redwood

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12 all cash bid. We have a bid from
13 Coastwood, which is a reinstatement
14 bid with less reinstatement, more
15 cash relative to the Redwood
16 reinstatement bid.

17 As we sit here right now at
18 10:58, it is the company's position
19 that Coastwood is the prevailing bid
20 as we sit here right now. And we
21 shared our analytics with Coastwood
22 and Redwood, and I think it is safe
23 to say neither side completely
24 agrees with our analytic on how we
25 are valuing the other side's

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2 securities, but we have taken a
3 position on a quantitative basis
4 that Coastwood may in fact be
5 slightly less than the Redwood
6 reinstatement bid.
7 We believe they are certainly
8 higher than the Redwood cash bid,
9 and in our preliminary consultation
10 with the lenders and the NSC, which
11 gets us to the qualitative factors
12 of this, we are of a view that
13 notwithstanding that lesser dollar
14 amount, that Coastwood is the

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15 current prevailing bid as we start
16 the auction.

17 Having said that, we are going
18 to go through everything else I just
19 discussed before we come back to
20 discussing pricing in terms.

21 The other objective we have
22 today is, we would ideally like, we
23 the debtors, and I think we speak
24 for the NSC and I think we speak for
25 the bidders and I hope we speak for

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2 the lenders, we would like to get
3 this to an all cash versus all cash
4 bidding.

5 So that is going to be where
6 we are going to try to drive this.
7 We may not be successful, it may be
8 a hodgepodge, and it may be a mix,
9 but if everything goes as we would
10 like it to go, we will end the day
11 with an all cash bid, that we ERC
12 deem to be the highest and best on
13 both quantitative and qualitative
14 factors, and we will take that to
15 the court. That is our objective
16 whether we get there or not, but we
17 will finish this today.

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18 I ask each bidder, Coastwood
19 first, any questions before we
20 begin? None. Redwood any
21 questions? None.
22 We are just going to put up on
23 the screen -- the bidders have these
24 issues, but just so that everybody
25 in the room who either hasn't

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2 received a letter or otherwise to
3 try to -- I know it may be difficult
4 to read, but this is the best we
5 could do.
6 So with that, on the first
7 category of issues, we would ask
8 Coastwood and we will just go issue
9 by issue to state your general
10 position on the issue.
11 So we are on page 4 of the
12 attachment to the NSC's letter of
13 last night. NSC requests overall
14 category provision.
15 On the Erickson way, Coastwood
16 what's your position on the Erickson
17 way?
18 MR. FENNELL: This is Mark
19 Fennell this is representing
20 Coastwood the Erickson way that is
Page 19

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21 fine with us, we plan to maintain
22 it.

23 MR. NIEMANN: On the 501-C3
24 status, what is your position?

25 MR. FENNEL: That is Mark

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2 Fennell representing Coastwood.

3 The Erickson way that is fine,
4 as long as it is reasonably
5 consistent with our overall deal,
6 but it is our intent to maintain the
7 501-C3 status.

8 MR. NIEMANN: Tax exempt bond?

9 MR. FENNEL: The same
10 response as on the 501-C3.

11 MR. CALIFANO: Which is?

12 MR. FENNEL: It is our intent
13 to maintain the tax exempt status of
14 the bonds as long as it's reasonably
15 consistent with the overall deal.

16 MR. NIEMANN: Commitment to
17 mission?

18 MR. FENNEL: We share the
19 NSC's commitment to their mission,
20 and we would be willing to work with
21 them to further that objective.

22 MR. NIEMANN: And what, if
23 any, details with respect to the

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24 personnel financial commitment has
25 been made?

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2 MR. FENNELL: We don't have
3 any details on this point.

4 MR. NIEMANN: So as we sit
5 here right now there is no personnel
6 financial commitment to the mission
7 from Coastwood.

8 And by the way, qualitative or
9 quantitative? I just want whatever
10 specificity that you can give us
11 right now.

12 MR. FENNELL: Correction to my
13 prior response. There have been
14 discussions about a \$10 million
15 charitable contribution, no
16 agreement has been reached on that,
17 but there have been discussions
18 about that, and I think subject to
19 mutually agreeable terms our folks
20 would be willing to do that.

21 MR. NIEMANN: So it is not a
22 hard commitment, it is an item that
23 has been discussed and the
24 quantitative amount is 10 million
25 dollars?

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2 MR. FENNELL: That is correct.
3 MR. NIEMANN: Regulatory
4 risks.
5 MR. FENNELL: We would
6 anticipate that the existing
7 conditions around regulatory risk
8 would stay in place, so we would now
9 be willing to agree to this ask.
10 MR. NIEMANN: So, what you
11 are saying you are not willing to
12 eliminate the regulatory risk
13 condition to closing from your
14 current view?
15 MR. FENNELL: Correct.
16 MR. NIEMANN: Making the
17 community hall for shared costs,
18 true up restructuring expenses and
19 third-party healthcare billing.
20 Coastwood.
21 MR. FENNELL: The 7.1 million
22 dollars is fine. We are agreeable
23 to that.
24 MR. NIEMANN: Is that an
25 increase in 6.6 to 7.1?

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MR. FENNELL: Correct.

MR. NIEMANN: The \$500,000 per month. If what that means is that the buyer would pay that \$500,000 per month, we would not be willing to do that. If it's being paid by the estate, that would be fine with us.

So what you are saying is you will now take on the obligation of prepaying the 7.1 preclose, it will be a closing amount.

MR. FENNELL: Correct.

MR. NIEMANN: Stalking horse proposals for bonding communities. Coastwood?

MR. FENNELL: We would like to be the stalking horse if we are the successful bidder at each of the those communities, that would be our intent.

MR. NIEMANN: And what is your current position, if any, or your current status of the

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negotiations with the bonding communities?

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4 MR. FENNELL: We've had
5 discussions with each of the three
6 communities. We have made
7 proposals, none of which have been
8 accepted so far.

9 MR. NIEMANN: Have you shared
10 those proposals with the debtors?

11 MR. FENNELL: No.

12 MR. NIEMANN: We have
13 requests to see those. Do you have
14 copies we can see or is there an
15 issue with sharing them?

16 MR. FENNELL: We will get you
17 copies.

18 MR. NIEMANN: If we could get
19 those in the room as soon as
20 possible, we would like to. Is
21 there any problem with that?

22 MR. STEMPEL: Now let us
23 discuss that and present them to
24 you, so it is clear.

25 MR. CALIFANO: This is Tom

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2 Califano, on behalf of the debtors.
3 Jim, so the record is clear,
4 we expect -- and I don't want a
5 response from you, and I'm not
6 expecting a response from you -- we

1222eric.txt
7 expect to get them at the break
8 before we start again.

9 MR. NIEMANN: Have you
10 assessed value with respect to any
11 of the bonded communication in your
12 proposals or negotiations?

13 MR. FENNELL: We have.

14 MR. NIEMANN: With respect to
15 each of the communities?

16 MR. FENNELL: Yes.

17 MR. NIEMANN: And when we say
18 bonded communities, or the
19 terminology that is being used in
20 this letter, what do you consider to
21 be the bonded communities?

22 MR. FENNELL: It is Monarch,
23 Sedgebrook and Linden Ponds.

24 MR. NIEMANN: And to whom did
25 you make the proposals?

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2 MR. FENNELL: Counsel to the
3 bondholders.

4 MR. NIEMANN: Who is that?

5 MR. FENNELL: Mintz Levin.

6 MR. NIEMANN: When were they
7 made?

8 MR. FENNELL: I don't have the
9 precise dates in my mind, but over

10 1222eric.txt
the last two weeks.

11 MR. NIEMANN: We can get you
12 those dates. So as we stand here
13 right now, you do not have an
14 acceptance to your proposal on these
15 three bonded communities?

16 MR. FENNEL: That's correct.

17 MR. NIEMANN: Continuing with
18 the open issues.

19 Accounting for internal
20 transfers?

21 MR. FENNEL: We are fine with
22 this issue.

23 MR. NIEMANN: Yeah, that is a
24 fair point.

25 What is your interpretation of

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2 per discussions with NFP's advisors,
3 what is your position on this issue?

4 MR. FENNEL: I think we
5 indeed are in agreement with the NFP
6 advisors; for the specifics of that
7 agreement we would need to get back
8 to you.

9 MR. NIEMANN: As we sit here
10 right now, what do you think you are
11 in agreement on?

12 MR. LIN: This is Max Lin with

1222eric.txt

13 KKR.

14 Our understanding of this
15 agreement is that any internal
16 transfers from an IL unit to an RG
17 unit, the IED will be billed at the
18 external rate as opposed to the rate
19 on the former IL unit.

20 MR. NIEMANN: With respect to
21 deleveraging communities. Coastwood?

22 MR. FENNELL: We are in
23 agreement with this principle, we
24 think our proposal does that.

25 MR. NIEMANN: With respect to

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1 -Proceedings-

2 indemnification and release.

3 MR. FENNELL: Our expectation
4 is that would be provided in the
5 plan, so we are fine with that issue
6 but it will be dealt with in the
7 plan.

8 MR. NIEMANN: On this
9 particular issue, and we'll have a
10 couple of issues like this. We
11 actually believe this is largely an
12 issue between the debtors and the
13 lenders, not the bidders releasing
14 the NSC. So we understand the NSC's
15 request, and we believe it is a plan

16 1222eric.txt
issue as well.

17 So what I'm hearing from you
18 is wherever we come out on that, if
19 it works for NSC, it works for us
20 and it works for you.

21 MR. FENNELL: Yes.

22 MR. CALIFANO: Your bid is not
23 conditioned on indemnification.

24 MR. ZILKHA: I think we need to
25 confer on that point.

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2 MR. CALIFANO: Let me make it
3 clear. If, for example, one of the
4 other constituencies that they are
5 seeking a releasee from, the project
6 lenders say that they won't consent
7 to a release, does your bid still
8 stand or is your support for a plan
9 going to change?

10 MR. ZILKHA: I think we would
11 like to defer to talk about it.

12 MR. NIEMANN: There's a whole
13 continuum of scenarios, but to the
14 extent there is some regulatory
15 issue, to the extent that the
16 debtors and NSC are at odds, and
17 there is, whether it be litigation
18 or simply being at odds, we the

1222eric.txt
19 debtors aren't willing to give the
20 level of release that the NSC is
21 looking for or the lenders aren't
22 willing to give it. What we are
23 asking you is, is that going to be a
24 closing condition that whatever the
25 NSC wants, they get?

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1 -Proceedings-
2 MR. FENNELL: We understand.
3 MR. NIEMANN: So we need
4 clarity on that.
5 Now, warranties. What is
6 your position on that?
7 MR. FENNELL: We're not
8 willing to provide warranties.
9 MR. NIEMANN: The designee
10 for Redwood on the overall issues.
11 Erickson Way.
12 MR. BUTLER: Alan Butler from
13 Redwood. We support the Erickson
14 Way.
15 MR. NIEMANN: 501-C3 status.
16 MR. BAADER: Mike Baader for
17 Redwood.
18 We agree to preserve or assist
19 the NSC in preserving their 501-C3
20 status, and the way they structure
21 these agreements.

1222eric.txt
22 MR. NIEMANN: By the way, we
23 are not opposed to you saying we are
24 taking the same position that
25 Coastwood did, if that is more

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1 -Proceedings-
2 efficient. So whatever is most
3 efficient for you.
4 The tax exempt bond.
5 MR. BAADER: Mike Baader for
6 Redwood. We are willing to work
7 with NSC to ensure that the tax
8 exempt status of bonds is preserved
9 should it be attacked.
10 MR. NIEMANN: Commitment
11 commission.
12 MR. BUTLER: Alan Butler, for
13 Redwood. We share the commitment to
14 the mission.
15 MR. NIEMANN: With respect to
16 personal financial commitment. It's
17 really the same question we asked of
18 Coastwood. As we stand here right
19 now what, if any, commitment or
20 discussions have been had between
21 Redwood and any principals of
22 Redwood and the NSC?
23 MR. BUTLER: The principal of
24 Redwood has expressed a willingness

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25 to support the mission, but no

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1 -Proceedings-

2 specific dollar amounts have been
3 discussed.

4 MR. NIEMANN: Regulatory
5 risks?

6 MR. BAADER: Our position is
7 the same as Coastwood's at this
8 point.

9 MR. NIEMANN: Making the
10 community whole for shared cost for
11 shared costs, true up restructuring
12 expenses and third-party health care
13 billing. Redwood.

14 MR. BUTLER: We have agreed to
15 5 million dollars.

16 MR. NIEMANN: So just to
17 clarify, your initial and all cash
18 bid allocated 5 million dollars for
19 this bucket, if you will, of
20 expenses for the NSC and the
21 communities, you just heard
22 Coastwood say their allocation was
23 6.6 and they've gone to 7.1, and you
24 are standing at 5.

25 MR. BUTLER: Correct.

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1 -Proceedings-

2 MR. NIEMANN: And with
3 respect to the \$500,000 preclosing,
4 what's Redwood's position?

5 MR. BUTLER: We are going to
6 stay at 5 million dollars.

7 MR. NIEMANN: So you are not
8 willing to prefund any part of that
9 preclosing, so that becomes a
10 closing cost, the same as Coastwood?

11 MR. BUTLER: Correct.

12 MR. NIEMANN: Stalking horse
13 proposals for bonded communities.

14 MR. BUTLER: Alan Butler. We
15 have expressed a willingness to be
16 the stalking horse as well. We have
17 shared proposals with the NSC for
18 all three properties.

19 MR. NIEMANN: Have you shared
20 those proposals with the debtors?

21 MR. BUTLER: I do not whether
22 or not the NSC has done that. I'm
23 not sure we have as well.

24 MR. CALIFANO: The same thing
25 I said to Jim, we can expect them at

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1 -Proceedings-

2 the break.

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3 MR. NIEMANN: In your proposals
4 or your discussions or otherwise,
5 has there been any discussion around
6 valuation for, and by the way bonded
7 communities we're assuming you are
8 using the same list of Monarch,
9 Sedgebrook and Linden Ponds, right?

10 MR. BUTLER: Yes.

11 MR. NIEMANN: Has there been
12 any discussion of valuation with
13 respect to those proposals or any
14 discussions generally with the NSC
15 on those communities?

16 MR. BUTLER: Yes. We have
17 shared them with the NSC.

18 MR. NIEMANN: And will that
19 be reflected in the proposals?

20 MR. BUTLER: Yes.

21 MR. NIEMANN: And when were
22 those discussions had?

23 MR. BUTLER: We submitted them
24 a week ago, approximately.

25 MR. NIEMANN: Accounting for

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1 -Proceedings-
2 internal transfers, you heard the
3 clarity that Coastwood gave; do you
4 have a different position on that?
5 MR. BUTLER: We have the same
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6 position.

7 MR. NIEMANN: Deleveraging of
8 the communities, what's Redwood's
9 position?

10 MR. BUTLER: We agree that the
11 deleveraging is appropriate at
12 certain campuses and others we feel
13 comfortable with the leverage
14 position.

15 MR. NIEMANN: Insofar as your
16 Redwood reinstatement bid, your
17 Redwood cash bid would deleverage
18 the communities entirely?

19 MR. BUTLER: It would.

20 MR. NIEMANN: Indemnification
21 and release. You heard Coastwood's
22 position; is yours different?

23 MR. BAADER: Our position is
24 the same as Coastwood's on this
25 point.

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2 MR. NIEMANN: In other words,
3 you need some time to think about
4 it?

5 MR. BAADER: Yes.

6 MR. NIEMANN: On warranties.

7 MR. BUTLER: Our position is
8 the same as Coastwood's on this

1222eric.txt

9 point.

10 MR. NIEMANN: Shifting into
11 the next category, the resident and
12 care agreement.

13 Redwood, what is your position
14 with respect to that agreement to
15 run with land above and beyond the
16 issue of subordination that we
17 achieved several weeks ago with the
18 lenders? So in some respect this
19 isn't --

20 MR. CALIFANO: To tell you the
21 debtor's position. This is not a
22 bidder issue. This is an issue that
23 really bidders have no control over.
24 It's a lender/debtor/NSC issue, just
25 so everybody knows the status at a

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2 meeting on November 30th at DLA's
3 Baltimore offices, it was agreed
4 that the residents and care
5 agreements would not be disturbed in
6 a foreclosure.

7 So it is our position that
8 this is not an issue to the bidders,
9 it is not within the bidders'
10 control, and other than having them
11 survive in a foreclosure, which I

1222eric.txt

12 understand is not an issue.

13 Is there anything you want to
14 add on this issue?

15 MR. NIEMANN: The only thing
16 I would add to Tom's point is that
17 technically I think it was so long
18 as the individual resident is not in
19 default it will be honored through
20 foreclosure. If they are in
21 default, it would not be the case.

22 If I remember correctly what
23 the specific position of the
24 lenders, the project lenders was.
25 So I guess I would ask Redwood is

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1 -Proceedings-

2 there anything beyond that position
3 that concerns you or otherwise with
4 respect to this aspect of this
5 provision of the NSC request?

6 MR. BUTLER: We agree with the
7 NSC's request and position.

8 MR. NIEMANN: IED pricing?

9 MR. BUTLER: We agree with the
10 NFP's right to approve pricing.

11 MR. NIEMANN: Coastwood. In
12 bed RNC agreement to run with land.
13 You just heard the discussion. Do
14 you have any contrary position to

1222eric.txt

15 what you just heard from Redwood and
16 us?

17 MR. FENNELL: We have the same
18 position as Redwood.

19 MR. NIEMANN: IED pricing.

20 MR. FENNELL: We have the same
21 position as Redwood.

22 MR. NIEMANN: Shifting into
23 the management contract category.

24 The first provision is the
25 assumption of the outstanding

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1 -Proceedings-
2 agreement at confirmation. Here,
3 again, we believe this is largely a
4 debtor NSC issue. I think there may
5 be a typo here.

6 Successful bidder to assume
7 outstanding management agreements at
8 confirmation to be replaced by new
9 management agreement at closing.

10 It really is dictated, we
11 believe, by what those terms are
12 which we are going to get into in
13 the next several questions. So with
14 respect to this issue, I think it is
15 largely dictated by the responses to
16 the balance of the questions. So we
17 are not asking for a response on

1222eric.txt

18 this particular provision.
19 Term of management contract.
20 Coastwood.
21 MR. FENNELL: We would be
22 willing to do the five year, three
23 year.
24 MR. NIEMANN: What about the
25 form of the management agreement as

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2 attached to the Redwood consent
3 letter dated 9/14/09?
4 MR. FENNELL: The form is
5 final, subject to the other
6 modification generally discussed in
7 this list.
8 MR. NIEMANN: In this list
9 that we are going through?
10 MR. FENNELL: Yes.
11 MR. NIEMANN: So we will get
12 to those.
13 MR. FENNELL: Right.
14 MR. NIEMANN: The performance
15 metrics?
16 MR. FENNELL: The performance
17 metrics in the management contract
18 attached to that letter are fine.
19 MR. NIEMANN: The 9/14/09
20 plus occupancy drops an excess of 5

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21 percent, giving rise to termination.
22 MR. FENNELL: To the 5 percent
23 occupancy drop metric we assume that
24 that is going to be tested on an
25 annual basis and that it is tested

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2 sort of separately under each
3 management contract.
4 To the extent that is true, we
5 are fine with it.
6 MR. NIEMANN: So it's a
7 several testing on an annual basis?
8 MR. FENNELL: Right.
9 MR. NIEMANN: As we sit here
10 right now, do you have any
11 commitment to any other type of
12 management agreement with the NSC or
13 the individual communities with
14 respect to a longer term management
15 agreement or a shorter term
16 management agreement. There has
17 been a discussion about a ten-year
18 management agreement, so what's the
19 current status of those discussions
20 and proposals?
21 MR. ZILKHA: Does your question
22 relate to only those properties that
23 are managed by NSC, or does it

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24 include properties that are outside
25 the NSC?

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2 MR. NIEMANN: Any of the
3 properties that are affected by your
4 bid.

5 MR. ZILKHA: We have a signed
6 nonbinding letter of intent with
7 Charlestown related to a ten-year
8 management contract.

9 MR. NIEMANN: Have the
10 debtors seen that letter?

11 MR. ZILKHA: It was signed this
12 morning.

13 MR. NIEMANN: We make the
14 same request of that letter that we
15 made with respect to the bonded
16 communities. At the break we would
17 like that to be presented to the
18 debtors.

19 Now, are there any other
20 discussions whether it is by written
21 proposal or just general discussions
22 concerning any longer term
23 management agreements or shorter
24 term?

25 MR. ZILKHA: We have ongoing