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COUNSEL FOR THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	<b>CASE NO. 09-37010-sgj11</b>
	§	
<b>ERICKSON RETIREMENT COMMUNITIES, LLC, et al.</b>	§	<b>CHAPTER 11</b>
	§	
<b>Debtors.<sup>1</sup></b>	§	

**RESPONSE OF THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS TO THE OBJECTIONS  
OF CHARLES W. SCHLAUCH AND JAN MATILDE WALECKA  
TO FOURTH AMENDED JOINT PLAN OF REORGANIZATION FOR THE  
DEBTORS PROPOSED BY ERICKSON RETIREMENT COMMUNITIES, LLC**

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<sup>1</sup> The Debtors in these chapter 11 cases (the "Cases") are Erickson Retirement Communities, LLC, Ashburn Campus, LLC, Columbus Campus, LLC, Concord Campus GP, LLC, Concord Campus, LP, Dallas Campus GP, LLC, Dallas Campus, LP, Erickson Construction, LLC, Erickson Group, LLC, Houston Campus, LP, Kansas Campus, LLC, Littleton Campus, LLC, Novi Campus, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC, and Warminster Campus, LP.

TO THE HONORABLE STACEY G. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through its undersigned counsel, hereby files this response (the "Response")<sup>2</sup> to (collectively, the "Objections")<sup>3</sup> (I) the objection of Charles W. Schlauch and (II) the objection of Jan Matilde Walecka (together with Charles W. Schlauch, the "GPP Objectors"), to Debtors' Fourth Amended Joint Plan of Reorganization Proposed By Erickson Retirement Communities, LLC (the "Plan"). In support of this Response, the Committee respectfully states as follows:

### **I. RESPONSE**

1. The GPP Objectors contend that the Growth Participation Plan beneficiaries are entitled to participate in the Liquidating Creditor Trust on the grounds that the Growth Participation Plan has "unfairly been singled out." The objection of the GPP Objectors should be overruled for the following reasons:

- The GPP Objectors ignore the fact that the Liquidating Creditor Trust exists by virtue of "gifts" from Redwood and the Debtors' senior lenders. Numerous courts, including courts in this district, have confirmed plans of reorganization under the "gifting doctrine" that would have otherwise failed on unfair discrimination or improper classification grounds. See In re Idearc, Inc., 2009 WL 5205346 (Bankr. N.D. Tex. Dec. 22, 2009) (finding no unfair discrimination in the gifting context); see also In re Journal Register Company, 407 B.R. 520 (Bankr. S.D.N.Y. 2009) (finding that gift plan did not unfairly discriminate under section 1123(a)(4) of the Bankruptcy Code). Therefore, while it is true that certain creditors, including creditors with higher priority than the beneficiaries of the Growth Participation Plan, will not stand to benefit from proceeds distributed by Liquidating Creditor Trust, such an arrangement is not only necessary to achieve a global settlement in these Cases, but is permitted under this district's prevailing case law.

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<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Debtors' Plan.

<sup>3</sup> The Objections have not been filed on the docket for these Cases, but rather served via mail on the Committee's counsel.

- Even if all of the Debtors' unsecured creditors were to fully participate in the Liquidating Creditor Trust, the GPP Objectors cannot be properly classified as unsecured creditors. Rather, the rights arising under the Growth Participation Plan are effectively equity interests in the Debtors, as the Growth Participation Plan is nothing more than a phantom stock plan. Moreover, payments with respect to the Growth Participation Plan (i) cannot be made until such time that the Debtors' lenders are paid in full and (ii) are contractually prohibited pursuant to that certain Trust Indenture, dated as of November 1, 2007, governing the STAMPS issuance. See Plan, Section 6.4.2. Therefore, in the instance that the Court finds that the Growth Participation Plan is a debt instrument and should not be properly recharacterized as equity, its contractual subordination cannot be overlooked.
- The GPP Objectors' assertion that certain payments should have been made to them prior to the Petition Date and that such payments should now be made to the GPP Objectors *as a priority class* not only turns absolute priority on its head but proposes a transaction prohibited by law. Generally, payments with respect to equity while insolvent are illegal dividends and subject to avoidance pursuant to chapter 5 of the Bankruptcy Code. Thus, even if the payments had been made prior to the Petition Date, such payments would have been in contravention of law and subject to avoidance. The GPP Objectors' request that the Plan facilitate such an illegal transaction should be overruled.

## **II. RESERVATION OF RIGHTS**

2. The Committee reserves the right to revise, amend or supplement this Response prior to or at the Plan confirmation hearing with respect to any other requests for relief sought by any party in connection with the Plan.

WHEREFORE, the Committee respectfully requests that the Court (i) overrule the Objections; and (ii) grant such other and further relief to the Committee as the Court may deem necessary and proper.

DATE: April 13, 2010

Respectfully submitted,

THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the parties receiving electronic notice via the Court's ECF noticing system on this 13<sup>th</sup> day of April, 2010.

/s/ Samuel M. Stricklin  
Samuel M. Stricklin