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

In re:	§	CASE NO. 09-37010 (SGJ)
	§	
ERICKSON RETIREMENT COMMUNITIES, LLC, et al.¹	§	CHAPTER 11
	§	
	§	Jointly Administered
	§	
Debtors.	§	

**OMNIBUS REPLY TO OBJECTIONS TO CONFIRMATION OF DEBTORS'
FOURTH AMENDED JOINT PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

The above-captioned debtors and debtors in possession (the “Debtors”) by their attorneys,
DLA Piper LLP (US), file this omnibus reply (this “Reply”) to the objections (collectively, the

¹ The Debtors in these chapter 11 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, Warminster Campus, LP.

“Objections”) to confirmation of its Fourth Amended Joint Plan of Reorganization.² In support of this Reply, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

The objections to confirmation of the Plan should be overruled in their entirety. The Debtors will address a majority of the objections filed by Holders of Secured Tax Claims by placing the entire amount of such claims for years 2009 and prior in an escrow account pending the Court’s determination of the Debtors’ tax liability pursuant to the Debtors’ Amended Tax Liability Motion. By placing the amounts allegedly owed to the Holders of Secured Tax Claims into an escrow account, the Debtors will ensure that the Holders of Secured Tax Claims will have their liens protected and priority status under the Bankruptcy Code Preserved.

Additionally, several objections to confirmation of the Plan assert that the Debtors’ principal purpose in filing the Plan was the avoidance of taxes. These objections are unsupported by facts or law and ignore the realities of the Debtors’ bankruptcy cases. The Debtors filed for bankruptcy due to a combination of weakness in the senior housing market, unprecedented tightening in credit markets, and maturing debt obligations that the Debtors were unable to service. The Plan implements a complex reorganization of numerous related entities with billions in liabilities. The assertion that the Plan’s principal purpose is the avoidance of a few million dollars in tax liability borders on ridiculous and ignores the facts. Furthermore, the funds for the Secured Tax Claims are being placed in escrow and will be paid in full upon determination of the Debtors’ Amended Tax Liability Motion. Thus, the Plan does not avoid the payment of taxes and it is certainly not the principal purpose of the Plan.

² Each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Plan, Disclosure Statement or applicable Objection.

Finally, the remainder of the objections concerns the assumption and assignment of various contracts. Certain objectors assert that the Plan is ambiguous as to whether their contracts will be assumed and assigned. The Debtors are diligently attempting to resolve these objections. However, to the extent that these objections are not settled, the Plan provides that any contracts which are not assumed or are not subject to a motion to assume by the Effective Date will be rejected.

This Reply incorporates by reference the following pleadings: (a) Debtor's Memorandum of Law in Support of Their Request for an Order Confirming the Debtors' Fourth Amended Joint Plan or Reorganization Under Chapter 11 of the Bankruptcy Code; (b) the Declaration of Gerald Doherty in Support of Entry of an Order Confirming the Debtors' Fourth Amended Joint Plan or Reorganization Under Chapter 11 of the Bankruptcy Code; and (c) the Declaration of Paul Rundell in Support of Entry of an Order Confirming the Debtors' Fourth Amended Joint Plan or Reorganization Under Chapter 11 of the Bankruptcy Code.

As set forth in detail below, the objections to confirmation should be overruled because they lack merit and do not raise valid points of fact and law sufficient to prevent confirmation.

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider confirmation of the Debtors' plan pursuant to 28 U.S.C. §§ 157 and 1334 and the General Order Regarding Procedures for Complex Chapter 11 Cases issued by the United States Bankruptcy Court for the Northern District of Texas on January 13, 2006. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The basis for the relief requested herein is section 1129 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002 and 3020 of the Federal Rules of Bankruptcy

Procedure (the “Bankruptcy Rules”), and Local Bankruptcy Rules 2002.1 and 3020.1.

BACKGROUND

4. On October 19, 2009 (the “Petition Date”), the Debtors commenced these cases by each filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors remain in possession of their assets and continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

6. On November 2, 2009, the Office of the United States Trustee (the “U.S. Trustee”) appointed an Official Committee of Unsecured Creditors (the “Committee”) in these cases [Docket No. 258]. No trustee or examiner has been appointed.

7. On November 13, 2009, the Debtors filed the Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 293] and the Disclosure Statement for Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 292].

8. On November 25, 2009, the U.S. Trustee filed an Amended Appointment to the Committee [Docket No. 378].

9. On December 22, 2009, the Debtors commenced an auction to sell the Debtors’ assets (the “Auction”). Redwood and Coastwood were qualified to bid on the Debtors’ assets at the Auction.

10. At the commencement of the Auction, the Debtors and their advisors deemed Coastwood’s initial bid, consisting of cash, Term Loan A securities, and subordinated preferred securities, to be higher and/or better than Redwood’s stalking horse bid. After 18 hours of negotiations and 25 rounds of spirited bidding, Redwood was determined to be the successful

bidder at the Auction with a final all cash bid price of \$365 million. The sale of the Debtors' Assets will be consummated pursuant to the terms of the Plan.

11. On December 30, 2009, the Debtors filed the Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 605] and the Disclosure Statement for Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 604].

12. On January 11, 2010, the U.S. Trustee filed a Second Amended Appointment of Official Unsecured Creditors' Committee [Docket No. 678].

13. On January 13, 2010, the Committee filed its Motion for an Order Determining Appropriate Allocation of Value for Debtors' Plan of Reorganization (the "Committee's Allocation Motion") [Docket No. 698].

14. On March 1, 2010, the Debtors filed the Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 907] and the Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 909].

15. On March 5, 2010 the Disclosure Statement Hearing was held. This Court entered an order approving the Disclosure Statement on March 8, 2010.

16. On or before April 9, 2010, the following creditors filed Objections to confirmation of the Debtors' Fourth Amended Joint Plan of Reorganization:

- (a) Treasurer of Douglas County, Colorado ("Douglas County") [Docket No. 1066],
- (b) County Commissioners of Johnson County, Kansas [Docket No. 1253],
- (c) The City of Overland Park, Kansas [Docket No. 1255], HCP, Inc. [Docket Nos. 1265],

- (d) ACE Group of Companies [Docket No. 1266],
- (e) Westchester Fire Insurance Company, a member of ACE Group of companies [Docket No. 1267];
- (f) The Bank of New York Mellon [Docket No. 1269];
- (g) The County of Loudoun, Virginia [Docket No. 1272];
- (h) Dallas County and Harris County, et al. [Docket No. 1275];
- (i) Wells Fargo Bank National Association, as successor indenture for certain Bonds issued by Overland Park [Docket No. 1277]; and
- (j) Regional Construction Services, Inc. and Sergio Luciani [Docket No. 1278].

17. A hearing regarding the confirmation of the Debtors' Plan is scheduled to be held on April 15, 2010.

I. EACH OF THE OBJECTIONS SHOULD BE OVERRULED

A. The County Commissioners of Johnson County, Kansas' Objection

18. The County Commissioners of Johnson County, Kansas ("Johnson County") assert that the Plan improperly: (1) gives the Debtors the option to not pay Johnson County's Class 2 Secured Tax Claim (the "Johnson County's Tax Claim") from the proceeds of the sale of the collateral allegedly securing the Tax Claim; (2) allows claims with lower priority to the Tax Claim to be paid in full in violation of Bankruptcy Code section 1129; (3) ignores the Tax Claim's priority over consensual liens on the same collateral; and (4) fails to provide for the payment of accrued postpetition interest as required by Bankruptcy Code sections 511 and 1129(a)(9)(C) and (D).

19. Johnson County asserts that it is owed approximately \$1.7 million on account of its Tax Claim for real property taxes owed by the Kansas Campus, LLC Debtor (the "Kansas

Campus”). The Debtors dispute their liability under the Tax Claim and Johnson County’s valuation of the Kansas Campus and on April 2, 2010, the Debtors filed the Debtors’ Motion for Determination of Tax Liability. The Debtors filed their Amended Motion for Determination of Tax Liability on April 9, 2010 (the “Amended Tax Liability Motion”). The Debtors will pay the Johnson County Tax Claim in full on the Closing Date.

20. If the Amended Tax Liability Motion is still pending at the time of Closing, the Debtors will place an amount equal to the Johnson County’s Tax Claim in escrow pending the Court’s ruling on the Debtors’ tax liability owed to Johnson County. Thus, the Debtors assert that the Johnson County Tax Claim will be fully provided for and the Plan does not violate the priority scheme under the Bankruptcy Code or any of the applicable provision in Bankruptcy Code section 1129.

21. Pursuant to the Plan and Bankruptcy Code section 506, to the extent that the Court determines that the Johnson County Tax Claim is oversecured and that Johnson County is entitled to postpetition interest, the Debtors will pay such interest. See Plan at section 1.179 and 1.180; see also 11 U.S.C. § 506.

B. The City of Overland Park, Kansas’ Objection

22. The City of Overland Park, Kansas (“Overland Park”) objects to confirmation of the Plan because: (i) the Plan fails to specify the manner in which certain documents entered into by the Kansas Campus, LLC, Erickson and Overland Park related to the Transportation Development District (the “TDD”) will be treated in connection with the proposed sale of the Kansas Campus (including: (1) the Infrastructure Development Agreement; (2) the Project Development Agreement; (3) Tax Regulatory Agreement; (4) Agreement for Administrative

Services; and (5) lease of the Kansas Campus to Tallgrass, Inc.) (collectively, the “Kansas Documents”), (ii) the provision of the Plan regarding Redwood Kansas’ assumption of the Debtors’ obligations under the Bonds is ambiguous, (iii) the Plan fails to describe the source of payment of taxes and special assessments relating to the Kansas Campus, and (iv) the Plan was filed for the principal reason of improperly avoiding taxes in violation of Bankruptcy Code section 1129(d).

23. The Debtors are currently seeking to resolve the issue surrounding the assumption of the Kansas Documents. To the extent issues remain, the Debtors and Redwood will introduce testimony at the confirmation hearing addressing the open issues.

24. If the Amended Tax Liability Motion is still pending at the time of closing, the Debtors will place an amount equal to the Overland Park’s Secured Tax Claim in escrow with the Title Company pending the Court’s ruling on the Debtors’ tax liability owed to Overland Park. Thus, the Debtors assert that Overland Park’s Secured Tax Claim will be fully provided for and unimpaired under the Plan.

25. Additionally, Overland Park asserts that because the Amended Tax Liability Motion seeks to impair the claims of, and avoid taxes owed to, numerous local taxing authorities, that the Plan, when read in conjunction with the Amended Tax Liability Motion, violates Bankruptcy Code section 1129(d), which prohibits a court from confirming a plan of reorganization “if the principal purpose of the plan is the avoidance of taxes” See 11 U.S.C. § 1129(d). The governmental unit objecting to confirmation pursuant to Bankruptcy Code 1129(d) has the burden of proof to show, by a preponderance of the evidence, that a debtor’s principal purpose of its plan was the avoidance of taxes. See id.; see also In re South Beach

Securities, Inc., 376 B.R. 881, 894 (Bankr. N.D. Ill. 2007).

26. Overland Park fails to introduce a single fact that supports their allegations that the Plan vitiates Bankruptcy Code section 1129(d). In fact, the record in these cases is clear that overwhelming debt and market conditions forced the Debtors to file and the Plan provides a good faith resolution of claims of all creditors.

27. The Debtors are entitled to consider and utilize the tax advantages of a chapter 11. In re South Beach Securities, 376 B.R. at 894 (“[a] debtor is entitled to ‘take advantage of tax incidents of the estate’ as long as tax avoidance is not the principal purpose”). Courts have recognized that “a debtor’s desire to avoid adverse tax consequences alone is insufficient to establish bad faith.” In re Lafayette Hotel Partnership, 227 B.R. 445, 452 (Bankr. S.D.N.Y. 1998); see also In re 203 North LaSalle Street Partnership, 126 F.3d 955, 969 (7th Cir. 1997), rev’d on other grounds, 516 U.S. 434 (1999). Thus, the Debtor respectfully submits that the principal purpose for filing the Plan was not the avoidance of taxes.

C. Wells Fargo Bank National Association, As Successor Indenture Trustee, Objection

28. Wells Fargo Bank National Association (“Wells Fargo”) is the Indenture Trustee for \$15 million of bonds (the “Kansas Bonds”) issued by Overland Park. Wells Fargo objects to confirmation of the Plan because of (i) the Development Agreement; (ii) the Tax Regulatory Agreement; (iii) the Indemnity Agreement; (iv) the Services Agreement; and (v) the Continuing Disclosure Agreement (collectively, the “Agreements”). If the Agreements are being assumed in an acceptable manner they have no objection. If however, the Agreements are not assumed, Wells Fargo asserts the Plan is not confirmable because the holders of the bonds are not unimpaired and are being improperly denied their right to vote.

29. Further, Wells Fargo objects to any reduction of the amount owed to Overland Park for the special assessment pursuant to the Plan. They assert that the special assessment was determined based on the cost of the TDD and not the value of the land. Moreover, they assert that any reduction of the special assessment would constitute an improper impairment of the claims arising from the special assessment.

30. Wells Fargo also asserts that the language of the Plan must clarify that the liens arising due to the special assessment are unaffected by the Plan and will not be altered by the New Kansas Revolver. They also assert that the terms of the New Kansas Revolver must be acceptable to Wells Fargo.

31. The Debtors are currently attempting to reach a settlement with Wells Fargo regarding the assumption and assignment of the Agreements and the treatment of the special assessment.

32. Pursuant to Plan section 6.3.6.4, the New Kansas Revolver will have a priming lien against all assets of the Kansas Campus except the Kansas Bonds. The special assessment, which arose pursuant to the Kansas Bond, will not be primed. However, Wells Fargo does not have approval rights over the terms of the New Kansas Revolver. Furthermore, this point is academic given that the entire amount of the special assessment will be placed in an escrow account with the Title Company pending the Court's determination of the Amended Tax Liability Motion.

D. Dallas County and Harris County, et al. Objection

33. Dallas County objects to confirmation of the Debtors' Plan on the following grounds: (i) the Plan definition of "Allowed Claim" violates (1) Federal Rule of Bankruptcy

Procedure 3003(c)(4) which provides that a proof of claim filed in accordance with the rule supersedes any scheduling of that claim pursuant to Bankruptcy Code section 521(1), (2) Federal Rule of Bankruptcy Procedure 3001(f) which assumes that all properly filed proofs of claim are prima facie valid, and (3) Federal Rule of Bankruptcy Procedure 3003 because the Plan improperly renders as disputed all proofs of claims that are contrary to the Schedules; (ii) the definition of “Disputed Claim” violates Federal Rule of Bankruptcy Procedure 3003(c)(4) which provides that a proof of claim supersedes any scheduled amount on the basis that the Debtors are attempting to improperly use the Plan as a claim objection; (iii) the Plan definition of “General Unsecured Claim” improperly creates a catchall class of claims and cannot be used to avoid a lien merely by omitting a creditor from a definition or classification in the plan; (iv) the ability of the DIP Lender to credit bid on any collateral encumbered by Dallas County’s liens unless the Dallas County liens remain in place; (v) sections 6.3.4.4 and 6.3.5.4 of the Plan to the extent that any lien provided by the New Dallas Revolver and the New Houston Revolver primes their senior statutory liens; (vi) 6.3.10 of the Plan is improper absent the payment in full of all of Dallas County’s ad valorem business personal property claims by liens against the Debtors’ assets; (vii) any provisions that provide for the transfer of their collateral free and clear of liens are improper and fails to provide Dallas County with a right to an adversary proceeding; (viii) section 8.11 of the Plan which provides that a disputed claim that becomes an allowed claim with a distribution that occurs after the Effective Date shall be deemed to have occurred on the Effective Date is improper as it would deprive the County of post-effective date interest pursuant to Bankruptcy Code section 1129; (ix) the Plan does not provide for a disputed claims reserve; (x) Dallas County is entitled to adequate protection of its liens against the Debtors’ assets in the form of segregated funds; (xi) section 9.2 of the Plan is improper as it fails to provide for any

distribution on its disputed claims and the payment of the undisputed portion of the County's claim is needed to minimize accrual of their claim and benefit the Estate; (xii) section 12.2 of the Plan to is improper as it could be construed as preventing the enforcement of the County's liens and right to collect postpetition taxes; (xiii) sections 12.5 and 12.6 of the Plan could prevent Dallas County from collecting postpetition taxes owed on the Debtors' assets in Texas that are sold or taxes owed by a nondebtor party that is subject to a Third Party Release; (xiv) any sale of the Debtors' assets that does not result in the retention of 2010 ad valorem real property tax liens against the Debtors' assets located in Texas, the payment of 2010 estimated business personal property ad valorem taxes against personal property in Texas and their receipt of payment for taxes owed from 2004 – 2009 with interest at the statutory rate of 1% per month pursuant to Bankruptcy Code 506(b) and 511 as an improper sale under the Bankruptcy Code.

34. Dallas County misreads the Plans definition of “Allowed Claim.” See Plan at Section 1.5. The Plan defines an Allowed Claim as follows:

Allowed means, with respect to any Claim, (i) a Claim against a Debtor which has been listed on the Debtor's Schedules, as such Schedules may be amended from time to time pursuant to Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary Proof of Claim has been filed, (ii) any Claim for which a Proof of Claim was properly and timely filed in accordance with any order of the Bankruptcy Court, the Plan, the Bankruptcy Code, and the Bankruptcy Rules, as to which no objection to allowance has been interposed by a party in interest or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective Holder, or (iii) any Claim expressly allowed by a Final Order or pursuant to this Plan. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed, and for which no Proof of Claim has been timely filed, is not considered Allowed and shall be expunged on the Effective Date without further action by the Debtors or the Reorganized Debtors and without any further notice to or action, order or approval of the Bankruptcy Court.

Pursuant to the Plan at section 1.5, any party that files a timely and proper Proof of Claim will have an Allowed Claim, unless there has been a pending or valid objection. Dallas County ignores that an Allowed Claim could be treated pursuant to option (i), (ii), *or* (iii). Thus, the language that Dallas County objects to only applies to scheduled claims and not claims for which a proof of claim has been filed and there is no pending or granted objection.

35. Additionally, Dallas County's use of ellipses leads it to misread the definition of "Disputed Claim." Dallas County's misinterpretation of Disputed Claim stems from their misinterpretation of Allowed Claim. The Plan defines Disputed Claim as follows:

Disputed Claim means a Claim (excluding the \$2.5 million payment to be made to the Liquidating Creditor Trust pursuant to Section 6.4 herein) **that has neither been Allowed or disallowed pursuant to a Final Order of the Bankruptcy Court**, and (a) if no Proof of Claim has been filed by the applicable deadline: (i) a Claim that has been or hereafter is listed on the Schedules as disputed, contingent, or unliquidated; or (ii) a Claim that has been or hereafter is listed on the Schedules as other than disputed, contingent, or unliquidated, but as to which the Debtors or Reorganized Debtors or any other party in interest has interposed an objection or request for estimation which has not been withdrawn or determined by a Final Order; or (b) if a Proof of Claim or other request for payment has been filed by the applicable deadline: (i) a Claim for which no corresponding Claim has been or hereafter is listed on the Schedules or Allowed in this Plan; (ii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as other than disputed, contingent, or unliquidated, but the nature or amount of the Claim or as asserted in the Proof of Claim varies from the nature and amount of such Claim as listed on the Schedules to the extent of such variance; (iii) a Claim for which a corresponding Claim has been or hereafter is listed on the Schedules as disputed, contingent, or unliquidated; or (iv) a Claim for which a timely objection or request for estimation is interposed by the Debtors, the Reorganized Debtors or any other party in interest which has not been withdrawn or determined by a Final Order.

Plan at section 1.81 (emphasis added). Disputed Claims do not include Allowed Claims. Thus, a claim for which a timely and proper proof of claim has been filed will not fall within the definition of a Disputed Claim unless there is a pending or granted objection to that proof of

claim. The definition of Disputed Claim does not attempt to convert the Plan into a claim objection or run afoul of the requirements in Bankruptcy Rule 3001 and Bankruptcy Code section 521.

36. Dallas County's objection to the definition of "General Unsecured Claim" contained in the Plan is similarly unfounded. Dallas County asserts that in defining a General Unsecured Claim to include "any Claim asserted against any Debtor which is not included within the other specifically defined classes hereunder", the Debtors are attempting to improperly reclassify claims or avoid liens without an adversary proceeding. Dallas County's objection is vague on this point and the Debtors are not entirely clear why Dallas County is objecting to the definition of General Unsecured Claim. However, the Debtors provide for all other classes of claims in the Plan and Dallas County does not assert why or how its claim may be impaired by the language in the definition of General Unsecured Claim. The definition of General Unsecured Claim does not affect any secured party's rights and the Plan properly provides for classification of unsecured claims against the Debtors pursuant to Bankruptcy Code section 1122.

37. Dallas County's objection to section 2.4 of the Plan which provides that in the event of any sale or disposition of the DIP Facility collateral, ERC Funding Co. LLC, the DIP lender shall have the right to credit bid any or all of the DIP Facility obligations under Bankruptcy Code section 363(k) or otherwise should be overruled because it will be resolved through the payment of Dallas County's secured tax liens pursuant to the Plan's provisions regarding Class 2 Secured Tax Claims. To the extent that Dallas County's claims may be subject to determination pursuant to the Amended Tax Liability Motion, the Debtors shall place the entire amount of Dallas County's asserted Class 2 claim into an escrow account with the Title Company pending the Court's determination of the Debtors' liability for such claims.

38. Dallas County's objections regarding their ad valorem property liens, ad valorem real and/or business personal taxes owed by the Debtors, the segregation of funds to adequately protect their liens and the failure of the Plan to provide for retention of the liens that secure the taxes owed to them should be overruled. As an initial matter, Dallas County is not entitled to a Secured Tax Claim for 2010 ad valorem real property tax because these taxes arose postpetition and are obligations of the Debtors' estates. See In re Shoreham Paper Co., 117 B.R. 274, 281-83 (Bankr. W.D. Mich. 1990); In re Merry-Go-Round Enterprises, Inc., 227 B.R. 775, 785 (Bankr. D. Md. 1998). Any claims for tax liability incurred by the Debtors in 2010 will give rise to an administrative expense claim pursuant to Bankruptcy Code section 503(b)(1)(B)(i). See 11 U.S.C. § 503(b)(1)(B)(i); see also In re Merry-Go-Round Enterprises, Inc., 227 B.R. at 785.

39. Regarding the remainder of Dallas County's concerns regarding their liens, the Debtors believe that these concerns will be adequately addressed by having the asserted amount of Dallas County's Secured Tax Claims placed in an escrow account with the Title Company pending the determination of the Debtors' tax liability pursuant to the Amended Tax Liability Motion. Dallas County's liens can attach to the funds to be placed in escrow.

40. Pursuant to the Plan and Bankruptcy Code section 506, to the extent that the Court determines that Dallas County's Secured Tax Claim is oversecured and that Dallas County is entitled to postpetition interest, the Debtors will pay such interest. See Plan at section 1.179 and 1.180; see also 11 U.S.C. § 506.

41. Furthermore, the Amended Tax Liability Motion is scheduled for April 27, 2010, which is three days prior to the Closing Date and the Effective Date of the Plan. Thus, Dallas County's Secured Tax Claim will be determined by the Court and paid in full prior it being

entitled to postconfirmation interest.

E. The County of Loudoun, Virginia Objection

42. The County of Loudoun, Virginia (“Loudoun County”) asserts that the Plan: (1) lacks specificity because it gives the Debtors unfettered discretion on how to treat its Secured Tax Claims; (2) fails to explain how and when its Secured Tax Claim will be paid and, thus, renders Loudoun County impaired because the lack of specificity in the Plan alters Loudoun County’s legal, equitable and contractual rights; (3) has a principal purpose of avoidance of taxes in violation of Bankruptcy Code section 1129(d); (4) violates absolute priority by providing more favorable treatment of claims which have lower priority than its Secured Tax Claim; (5) fails to identify the source of funds to pay its Secured Tax Claims, which would violate the priority scheme set forth in the Bankruptcy Code if certain lower priority claims are paid out of the Sale Proceeds; (6) fails to recognize that Loudoun County’s statutory lien primes all consensual liens; and (7) does not provide for postconfirmation interest if the Debtors do not pay its Secured Tax Claim in full in cash upon confirmation.

43. As with the other Secured Tax Claims that are subject to the Amended Tax Liability Motion, the Debtors shall place the face amount of Loudoun County’s Secured Tax Claim in an escrow account pending the Court’s determination of the Debtors tax liability. Upon the Courts determination of the Debtors’ tax liability, Loudoun will receive payment in Cash of its Allowed Secured Tax Claim. The Debtors respectfully submit that this proposal will resolve any issues related to the priority of payments under the Plan, the identity of the source of funds, and the status of Loudoun County’s liens.

44. Furthermore, the Amended Tax Liability Motion is scheduled for April 27, 2010,

which is three days prior to the Closing Date and the Effective Date of the Plan. Thus, the Court will rule on Loudoun County's Secured Tax Claim and it will be paid in full prior to any entitlement to postconfirmation interest.

45. Additionally, the Plan provides for the payment of Administrative Claims as follows:

Except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to a different treatment, the Debtors shall pay to each Holder of an Allowed Administrative Expense Claim Cash in an amount equal to such Claim on the Effective Date, or as soon thereafter as is reasonably practicable; provided, however, **that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors, as Debtors in Possession**, or liabilities arising under obligations incurred by the Debtors, as Debtors in Possession, in accordance with the Budget (as defined in the DIP Facility), **shall be paid by the Debtors, as applicable, in the ordinary course of business**, consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

Plan at section 10.1 (emphasis added). Thus, Loudoun County's Administrative Expense Claim for taxes incurred by the Debtors for 2010 shall be paid as they come due. Furthermore, Loudoun County is not without recourse should the Debtors fail to pay its Administrative Expense Claim because the Court shall retain jurisdiction "to ensure that Distributions to holders of Allowed Claims are accomplished as provided [in the Plan]." Plan at section at 13(a).

F. The HCP, Inc. Objection

46. HCP, Inc. ("HCP") asserts a conditional objection to confirmation of the Plan. Specifically, HCP asserts that: (i) the Wells Fargo, as Bond Trustee to the Ann's Choice Bonds (the "Bond Trustee"), is not entitled to certain rights under its subordination agreement with HCP and (ii) the Subordination Agreement does not relate to HCP's settlement of issues related to its Houston and Novi Campuses.

47. The Debtors and the Bond Trustee have reached a settlement regarding the Bond Trustee's objection to the Debtors' motion to approve its settlement with HCP. Accordingly, the Debtors assert that the HCP conditional objection is moot and the settlement agreement adequately addresses all of HCP's concerns.

G. Regional Construction Services, Inc. Objection

48. Regional Construction Services, Inc. ("Regional") filed an objection to confirmation of the Plan asserting the Plan: (i) fails to provide for attachment of its liens to the sales proceeds, (ii) fails to provide sufficient procedures and assurances that the priority of its liens will be decided before the distribution of any proceeds from the sale of its collateral, (iii) fails to provide for a process by which the priority of any Mechanics Liens is to be decided, and (iv) fails to provide any escrow mechanism to protect the claims in the event of distributions of the sales proceeds prior to such a lien priority determination.

49. Debtors assert that the Regional Objection is moot due to a settlement reached by the Debtors and Regional. The settlement addresses all of Regional's concerns.

H. ACE Group of Companies Objection

50. ACE Group of Companies ("ACE") asserts that it issued several builder's risk and excess builder's risk policies and an excess commercial property policy (collectively, the "ACE Policies"). ACE also asserts that it issued a construction performance bond (the "ACE Bond") naming the Debtors, as principals, and Concord Township, Pennsylvania, as the obligee. ERC agreed to indemnify ACE for any losses related to the ACE Bond (the "Indemnity Agreement"). ACE objects to confirmation of the Plan because the Plan: (i) fails to disclose the proposed treatment of the ACE Policies or the Indemnity Agreement; (ii) improperly assigns the ACE

Policies without ACE's consent, (iii) fails to provide assurance of performance by the assignee of the ACE Policies, (iv) is not insurance neutral to the extent it impairs the rights and obligations of the insures that issued insurance policies to the Debtors, (v) improperly classifies the ACE Bond as property of the Estate that can be assigned, (vi) improperly classifies the ACE Bond as an executory contract that can be assumed or assigned. In the alternative, ACE objects to confirmation even if the ACE Bond is executory because it cannot be assigned because it is a non-assignable financial accommodation under Bankruptcy Code section 365.

51. The Debtors will assume the ACE Policies. The Debtors will amend their contract rejection list to reflect the assumption of the Ace Policies.

52. The Debtors are currently working with ACE to resolve the objection to the assumption and assignment of the ACE Bond. If the Debtors are unable to reach a mutually acceptable settlement with ACE, the Debtors will not assume the ACE Bond.

I. Westchester Fire Insurance Company's, a member of the ACE Group of companies, Objection

53. Westchester Fire Insurance Company ("ACE II") issued the ACE Bond naming Concord Campus, L.P. as principal and Concord Township, Pennsylvania as obligee. ACE II objects to the confirmation of the Plan for the following reasons: (i) the Plan incorrectly classifies the ACE Bond as part of the Debtors' Estate, (ii) even if the ACE Bond is part of the Debtors' Estate, it is improperly classified as an executory contract, and (iii) even if ACE Bond is deemed an executory contract, the Plan improperly provides that it will be assumed even though it is a non-assignable financial accommodation under Bankruptcy Code section 365(c)(2). ACE also asserts a reservation of rights regarding its right to litigate issues related to the ACE Bond.

54. The Debtors are currently attempting to resolve this objection to the Plan and the assumption of the ACE Bond. However, should the Debtors and ACE II fail to reach a settlement, the Debtors will not assume the ACE Bond.

J. The Bank of New York Mellon Objection

55. The Bank of New York Mellon (“BONY”) asserts a limited objection to the Plan concerning certain additions and modifications to the Plan that they allege affect BONY and the STAMPS holders. BONY has asked the Debtors to provide additional language in the Plan regarding: (i) the cancellation and surrender of the STAMPS and the STAMPS Indenture, (ii) the preservation of BONY’s charging lien, and (iii) the payment of BONY’s fees and expenses.

56. The Debtors have reviewed BONY’s proposed amendments to the Plan and agree that they have substantive effects on the treatment of any class of creditors and thus are willing to include them in the Plan.

K. Treasurer of Douglas County, Colorado Objection

57. The Treasure of Douglas County, Colorado (“Douglas County”) asserts that the Plan is not confirmable because the Plan: (i) fails to provide for the payment of accrued postpetition interest at the state statutorily proscribed rate of 12%, (ii) lacks specificity as to how Class 2 Secured Tax Claims will be treated, (iii) improperly treats unsecured Priority Tax Claims more favorably than Secured Tax Claims, (iv) improperly ignores Douglas County’s lien’s priority over consensual liens in violation of Bankruptcy Code section 1129(b)(2)(A)(i)(I), and (v) improperly subordinates the Douglas County statutory liens. Douglas County further asserts that the source of funds is not identified. If Class 4 Littleton Construction Loan Claimants are paid out of the Sale Proceeds, the Plan would violate Douglas County’s first lien on the Sales

Proceeds.

58. The Debtors will place Douglas County's Secured Tax Claim to an escrow account pending the Court's decision regarding the Amended Tax Liability Motion. Douglas County will be paid in full for its Secured Tax Claim. Furthermore, pursuant to the Plan and Bankruptcy Code section 506, Douglas County will receive prepetition interest in an amount that it is entitled to under applicable law. See Plan section 1.179, 1.180. and 4.13.2; see also 11 U.S.C. § 506. By placing these funds in an escrow account, the Debtors will ensure that Douglas County's Secured Tax Claim and liens are protected.

CONCLUSION

Based on the foregoing, the Court should confirm the Debtors' Fourth Amended Joint Plan of Reorganization.

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Respectfully submitted,

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