

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

PROOF OF CLAIM

Name of Debtor: ERICKSON RETIREMENT COMMUNITIES, LLC

Case Number: 09-37010 (SGJ)

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):

THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS INDENTURE TRUSTEE UNDER THE INDENTURE, DATED AS OF NOVEMBER 1, 2007, PURSUANT TO WHICH ERICKSON RETIREMENT COMMUNITIES, LLC ISSUED ITS SUBORDINATED TAXABLE ADJUSTABLE MEZZANINE PUT SECURITIES SERIES 2007

☐ Check this box to indicate that this a previously filed claim

Court Claim Number: _____
(If known)

Name and address where notices should be sent:
THE BANK OF NEW YORK MELLON, AS INDENTURE TRUSTEE
Default Administration Group
101 Barclay Street, Floor 8W
New York NY 10286
Attn: Gary Bush, Vice President
Tel: 212-815-2747

with a copy to:
THOMPSON & KNIGHT LLP
919 Third Avenue, 39th Floor
New York, New York 10022
Attn: Ira L. Herman, Esq.
Tel: 212-751-3001

Filed on: _____

Name and address where payment should be sent (if different from above):

RECEIVED

FEB 18 2010

BMC GROUP

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

Telephone number:

1. Amount of Claim as of Date Case Filed:

\$47,845,000.00 aggregate principal amount, plus interest, late fees, Trustee compensation, reimbursement and indemnification, together with any and all other amounts due under the above-referenced Indenture and the Securities issued pursuant thereto, at law or in equity. SEE ATTACHMENT

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: SEE ATTACHMENT

(See instructions #2 on reverse side)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Equipment ☐ Other
Describe:

Value of Property: \$ _____ Annual Interest Rate: _____ %

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: \$ _____ Basis for perfection: _____

Amount of Secured Claim: \$ _____ Amount of Unsecured: \$ _____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5).

☐ Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7).

☐ Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8).

☐ Other - Specify applicable paragraph of 11 U.S.C. §507(a)().

Amount entitled to priority:

\$ _____

Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

DATE:

2/9/2010

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Gary Bush, Vice President

FOR COURT USE ONLY

Erickson Ret. Comm. LLC



00902

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§152 and 3571.

**ATTACHMENT TO PROOF OF CLAIM OF
THE BANK OF NEW YORK MELLON, AS INDENTURE TRUSTEE**

1. This Proof of Claim is made by The Bank of New York Mellon ("BNYM" or the "Trustee") as the Indenture Trustee under that certain Indenture,¹ dated as of November 1, 2007 (the "Indenture"), between Erickson Retirement Communities, LLC ("ERC" or the "Issuer"), and The Bank of New York, as Trustee. A copy of the Indenture is attached hereto as Exhibit A. Pursuant to the Indenture, ERC issued its Subordinated Taxable Adjustable Mezzanine Put Securities Series 2007 due March 15, 2018 (the "Securities"), of which \$47,845,000.00 aggregate principal amount are outstanding. The Securities are held by certain registered Holders (the "Holders").

2. Pursuant to the Indenture and the Securities, as of October 19, 2009, the date ERC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Petition Date"), the following liquidated amounts were and still are due and owing to the Trustee, for the benefit of the Holders:

a.	Unpaid principal:	\$47,845,000.00
b.	Accrued unpaid interest:	
	i. Contract Rate	\$2,631,475.00
	ii. Default Rate	\$715,083.40
c.	<u>Unpaid fees and expenses:</u>	<u>\$1,640.00</u>
	Total:	<u>\$ 51,193,198.40</u>

3. Additionally, the following are due to the Trustee, for the benefit of the Holders, on the Securities and under the Indenture:

- a. Interest. The amount of interest accruing on the Securities from the Petition Date to the date of payment of the Securities, at the rates and in the manner set forth in the Securities and in the Indenture, including, without limitation at the Default Rate;
- b. Other Interest. The amount of interest accruing on past-due installments of interest on the Securities to the date of payment of such installments, at the rates and in the manner set forth in the Securities and in the Indenture, including, without limitation at the Default Rate; and
- c. Other Charges. All other amounts due or to become due to the Trustee with respect to, arising under or from, or in connection with the Indenture or the Securities, at law or in equity, whether now due or hereafter arising, which amounts presently may be unliquidated or contingent, but may become fixed and liquidated in the future, including, but not limited to, all amounts owed as or for interest, charges, penalties, premiums, late fees,

¹ All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Indenture.

advances, Trustee compensation, actual out-of-pocket expenses, including the reasonable fees and expenses of the Trustee's agents and counsel, (including, without limitation, pursuant to Section 12.11 of the Indenture), indemnification of the Trustee (including, without limitation, pursuant to Section 12.12 of the Indenture), and any damages for breach of any covenant defined or described in the Indenture or the Securities.

4. As the amount of the claims asserted in paragraph 3 hereof cannot, at this time, be reasonably calculated or estimated, the total amount of all claims set forth in this Proof of Claim currently is unliquidated, but is in no event less than the liquidated amount of \$51,193,198.40. Therefore, the final claim of the Trustee, for the benefit of the Holders, may be in a greater amount than stated herein. The Trustee, for the benefit of the Holders, does not waive any of its rights to recover all of the foregoing amounts by not asserting a specific dollar amount at this time.

5. This Proof of Claim asserts an unsecured claim against ERC.

6. This Proof of Claim serves, and is intended to serve, as a notice of a claim for any and all amounts due or to become due under the Indenture or the Securities to the Trustee and/or the Holders as set forth in this Proof of Claim, the provisions of each of which are expressly incorporated herein by reference, whether or not summarized or identified specifically in this Proof of Claim, and all interested parties are on notice of, and advised to examine carefully, the provisions of the Indenture and the Securities to determine, among other things, the full scope of this Proof of Claim.

7. This Proof of Claim is not an election of remedies or waiver of any claims not expressly asserted herein. BNYM does not waive, and expressly reserves, all rights and remedies at law or in equity that BNYM, individually or as Trustee, and/or the Holders have or may have against ERC, or any other person or entity, including, without limitation, rights that can be asserted by BNYM on behalf of the Holders, whether such right or remedy arises before, upon or after the Petition Date. BNYM further reserves all of its procedural and substantive defenses to any claim that may be asserted against BNYM, individually or as Trustee, by ERC or any other person or entity. Nothing in this Proof of Claim is intended to be or should be construed to limit BNYM's, or the Holder's rights, remedies, or interests with respect to the subject matter of this Proof of Claim or any matter relating to the Securities or the Indenture.

8. BNYM also reserves the right (a) to amend, revise, update, or supplement this Proof of Claim at any time and in any respect, including, without limitation, the addition of further documents and information, as necessary or appropriate to support, amend, quantify or correct amounts, to provide additional detail regarding the claims set forth herein, to assert alternative theories of recovery, or to fix the amount of any contingent or unliquidated claim, (b) to file additional proofs of claim for additional claims that may be based on the same or additional documents or other liability or indebtedness of ERC or any of the Debtors in these jointly administered cases to BNYM and/or the Holders, and (c) to file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the above amounts and additional amounts.

9. This Proof of Claim is not intended to be, and shall not be construed as (a) a waiver of any defaults, or (b) a waiver or limitation of any rights at law or in equity, remedies, claims or interests of BNYM, the Trustee or the Holders.

10. In filing this Proof of Claim, BNYM does not submit itself to the jurisdiction of this Court for any purpose other than with respect to the allowance of this Proof of Claim for any and all amounts due under the Indenture and the Securities. BNYM does not consent to the jurisdiction of this Court to hear or determine any other matter relating to (i) the Indenture or the Securities, (ii) the rights and remedies of the Trustee or the Holders pursuant to the Indenture or the Securities, or (iii) the subject matter of this Proof of Claim.

11. All notices concerning this proof of claim should be sent to:

THE BANK OF NEW YORK, AS INDENTURE TRUSTEE
Default Administration Group
101 Barclay Street, Floor 8W
New York, NY 10286
Attention: Gary Bush, Vice President

with copies to:

THOMPSON & KNIGHT LLP
919 Third Avenue, 39th Floor
New York, New York 10022-3915
Phone: 212-751-3045
Fax: 214-999-9139
Attention: Ira L. Herman, Esq.

[Remainder of Page Intentionally Left Blank]

EXHIBIT A

TRUST INDENTURE

dated as of November 1, 2007

between

ERICKSON RETIREMENT COMMUNITIES, LLC

and

THE BANK OF NEW YORK

as Trustee

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Exhibit A Form of Series 2007 Security

Exhibit B Form of Authentication Order

TRUST INDENTURE

THIS TRUST INDENTURE is entered into as of November 1, 2007 by and between ERICKSON RETIREMENT COMMUNITIES, LLC, a Maryland limited liability company (together with its successors and assigns, the "Company"), and THE BANK OF NEW YORK, a national banking association, being qualified to accept and administer the trusts hereby created, as trustee (together with its successors and assigns, the "Trustee").

WITNESSETH:

WHEREAS, the Company is authorized by law to issue promissory notes, bonds, securities, guaranties and other evidences of indebtedness and other obligations, and deems it desirable to issue from time to time unsecured subordinated debt securities subject to and upon the terms of this Indenture for the purpose of financing working capital and for other lawful and corporate purposes; and

WHEREAS, the Company intends to issue, initially, up to \$50,000,000 aggregate principal amount of its Erickson Retirement Communities, LLC Subordinated Taxable Adjustable Mezzanine Put SecuritiesSM (STAMPSSM) Series 2007 (the "Series 2007 Securities"); and

WHEREAS, the Company deems it desirable to provide in this Indenture for the issuance from time to time of Additional Securities (as defined herein); and

WHEREAS, the proceeds of the Series 2007 Securities will be used to pay the offering and issuance expenses related to the Series 2007 Securities and for other general corporate purposes; and

WHEREAS, the Company is entering into this Indenture for the purpose of issuing the Series 2007 Securities, and providing for the issuance of Additional Securities (as defined herein) from time to time, as unsecured subordinated Indebtedness (as defined herein) of the Company; and

WHEREAS, the Trustee has agreed to accept the trusts herein created upon the terms herein set forth; and

WHEREAS, all things necessary to make the Securities (as defined herein), as and when issued as provided in this Indenture, the legal, valid and binding obligations of the Company according to the import thereof, and to constitute this Indenture a valid indenture and agreement of the Company have been done and performed, and the creation, execution and delivery of this Indenture and the execution and issuance of the Securities, subject to the terms hereof, in all respects have been duly authorized;

SM Servicemark of B.C. Ziegler and Company.

THE SERIES 2007 SECURITIES HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES OR BLUE SKY LAWS OF ANY STATE AND, UNLESS SO REGISTERED, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. THE SERIES 2007 SECURITIES ARE BEING OFFERED AND SOLD ONLY TO "ACCREDITED INVESTORS" (AS DEFINED UNDER RULE 501(a) UNDER THE SECURITIES ACT), IN RELIANCE ON THE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY SECTION 4(2) OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. THE SERIES 2007 SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND MAY NOT BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT AS DESCRIBED HEREIN AND IN THE SERIES 2007 SECURITIES. ANY PURCHASER OF A SERIES 2007 SECURITY WILL BE DEEMED TO HAVE MADE CERTAIN REPRESENTATIONS AND AGREED TO THE TRANSFER RESTRICTIONS AS DESCRIBED HEREIN AND IN THE SERIES 2007 SECURITIES.

THE COMPANY AGREES, AND EACH OWNER OF THE SECURITIES BY ACCEPTING A SECURITY AGREES, THAT THE INDEBTEDNESS EVIDENCED BY THE SECURITIES IS SUBORDINATED IN RIGHT OF PAYMENT, TO THE EXTENT AND IN THE MANNER PROVIDED IN THIS INDENTURE AND IN THE SECURITIES, TO THE PRIOR PAYMENT IN FULL OF ALL SENIOR INDEBTEDNESS.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, the Company, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the mutual covenants herein contained and the purchase and acceptance of the Securities by the Owners thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, does hereby agree and covenant with the Trustee and with the respective Owners of the Securities as follows:

ARTICLE I

DEFINITIONS

The following terms have the meanings set forth in the recitals hereto:

Company
Trustee
Securities Act
Series 2007 Securities

"Accountant" means a firm of independent certified public accountants, which may be the external auditing firm of the Company.

"Additional Securities" means Securities issued under and pursuant to the provisions of Section 2.13.

"Additional Notice" shall have the meaning given to such term in Section 4.02.

"Adjustable Long-Term Mode" means, as applicable, (a) the Initial Adjustable Long-Term Mode, (b) the period from and after the Initial Rate Change Date, until, but not including, the next succeeding Rate Change Date, and (c) the period from and after any Rate Change Date until, but not including, the next succeeding Rate Change Date or the Maturity Date.

"Adjustable Long-Term Rate" means, as of any time, the interest rate borne by the Securities during the then applicable Adjustable Long-Term Mode.

"Applicable Procedures" means the standard practices and procedures of the Clearing Agent and the administrative procedures memorandum attached as an exhibit to the placement agreement relating to a series of Securities.

"Authentication Order" shall have the meaning given to such term in Section 2.01.

"Authorized Company Representative" means any President or Executive Vice President of the Company or any other person or persons at the time designated to act on behalf of the Company by a written Certificate, signed on behalf of the Company by any one of its Presidents or Executive Vice Presidents and furnished to the Trustee, containing the specimen signature of each such person.

"Bankruptcy Code" means Title 11 of the United States Code, as amended, or any successor statutory provisions.

"Beneficial Owner" means, while a Security is in the form of a Master Security, an accountholder for whose benefit the Clearing Agent is holding such Master Security. If at any time the Security is not held in a Clearing System, Beneficial Owner shall mean Owner for purposes of this Indenture.

"Business Day" means any day other than a (i) Saturday or Sunday or legal holiday or a day on which banking institutions in the City of New York, New York or in the city in which the principal office of the Trustee is located are authorized or required by law to close or (ii) day on which the New York Stock Exchange is closed.

"Certificate" means a certificate or report, in form and substance satisfactory to the Trustee, executed: (a) in the case of a Company Certificate, by an Authorized Company Representative; and (b) in the case of a Certificate of any other person, by such person, if an individual, and otherwise by an officer, partner or other authorized representative of such person; provided that in no event shall any individual be permitted to execute any Certificate in more than one capacity.

"Clearing Agent" any firm, trust, corporation, partnership, limited partnership, limited liability company or other form of legal entity (excluding natural persons), which has been

designated as clearing agent with respect to the Securities, and any successor which is a "clearing agency" registered under Section 17A of the Securities Exchange Act of 1934, as amended.

"Clearing System" means a system under which (i) the ownership of beneficial interests in the Securities may be transferred only in accordance with the Applicable Procedures and (ii) physical security certificates in fully registered form are registered only in the name of the Clearing Agent or its nominee as holder, with the physical Security certificates "immobilized" in the custody of or on behalf of the Clearing Agent.

"Community Loans" means loans made by the Operator of a Project, to the Landowner of such Project, of amounts received in the form of initial entrance deposits from residents or prospective residents of such Project.

"Completion Guarantee" means an agreement delivered by the Company in connection with a Project Financing pursuant to which the Company guarantees the lien-free completion of construction of a Project or a portion thereof.

"control" means, for the purposes of the definitions of Controlled Entity, Controlling Entity and Related Entity, when used with respect to any Person, the ownership of at least 50% of the voting rights with respect to the securities of, or any ownership interest in, such Person, or the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Controlled Entity" means any firm, trust, corporation, partnership, limited partnership, limited liability company or other form of legal entity (excluding natural persons) which is controlled by the Company or by any other entity described in this definition.

"Controlling Entity" means any firm, trust, corporation, partnership, limited partnership, limited liability company or other form of legal entity (excluding natural persons) which (1) controls the Company or any other entity described in this definition or (2) is a stockholder, partner, member, joint venturer, trustee, guardian or fiduciary of the Company or of any entity described in this definition.

"Debt Service Fund" means the special fund of that name created pursuant to Section 6.01 hereof, including the Principal Account, the Interest Account, the Purchase Account and the Prepayment Account therein.

"Default Rate" means the Adjustable Long-Term Rate then in effect plus four percent (4%) per annum.

"Deferred Compensation Plan" means the deferred compensation plan of the Company effective as of March 1, 1998 whereby certain members of the Company's senior management and other highly compensated employees may defer annual compensation for tax-planning purposes.

"Delivery" or "deliver," when used with respect to Securities held in a Clearing System, means the making of or the irrevocable authorization to make appropriate modifications to the

account of a Beneficial Owner by the Clearing Agent and the relevant Master Security in accordance with the Applicable Procedures.

"Distribution Covenant Amount" means the Required Liquidity Amount plus \$50,000,000.

"Distributions" means the payment of any dividends, equity distributions, return on capital, investment earnings, or any sum of money on account of a member's interest in the Company, to any Person, including a Related Entity. For the purposes of this Indenture, "Distributions" include (i) any payment or funding on account of the Growth Participation Plan, the Deferred Compensation Plan, or any profit sharing plan of the Company; and (ii) any payment to any employee of the Company other than (a) such employee's salary, (b) an annual bonus paid to such employee in the ordinary course of business, (c) any payment on account of a severance agreement with an employee in the ordinary course of business, or (d) any payment or other compensation for work performed or services rendered as outlined in the Company's policy manual, management contract, employment contract or other such record. For the purposes of this Indenture, "Distributions" also include loans by the Company to current, retiring or retired members, officers or employees of the Company against Distributions or against the right to receive Distributions, except for such loans permitted by the provisions of Section 10.08.

"Event of Bankruptcy" means the filing of a petition in bankruptcy or the commencement of a proceeding under the Bankruptcy Code or any other applicable law concerning insolvency, reorganization or bankruptcy by or against the Company as debtor other than any involuntary proceeding which has been finally dismissed without entry of an order for relief or similar order and as to which all appeal periods have expired.

"Event of Default" means any of the events described in Section 11.01 hereof.

"Existing Building Loan" means, collectively, the term loan and the letter of credit facility made available to the Company by Mercantile-Safe Deposit and Trust Company (now known as PNC Bank, National Association) pursuant to a Fourth Amended and Restated Loan Agreement dated December 11, 2003, as amended, modified or supplemented from time to time.

"Financing Documents" means, collectively, this Indenture, the Securities and any other agreements, documents and instruments evidencing the Company's obligations under this Indenture and the Securities.

"Fiscal Year" means the fiscal year ending December 31, or any other fiscal year designated from time to time in writing by the Company to the Trustee.

"Fund" means any of the funds (including the accounts therein) created pursuant to Section 6.01 hereof.

"Growth Participation Plan" means the Growth Participation Plan of Group effective as of September 1, 1998, as it may be amended or supplemented.

"Group" means Erickson Group, LLC, the sole member of the Company.

"Indebtedness" means any (a) obligations for borrowed money, (b) obligations representing the deferred purchase price of property, (c) the amount of any other obligations (including obligations under financing leases) which would (except for the amount thereof being immaterial) be shown as a liability on a balance sheet prepared in accordance with generally accepted accounting principles, and (d) guarantees of any such obligation of a third party, but excluding trade debt incurred in the ordinary course of business.

"Indenture" means this Indenture, as amended, supplemented, restated or otherwise modified from time to time, pursuant to one or more Supplemental Indentures.

"Initial Adjustable Long-Term Mode" means, with respect to each series of Securities, the period from and after the date of issuance and delivery of such series of Securities, until, but not including, the applicable Initial Rate Change Date.

"Initial Interest Rate" means the rate at which the Securities will bear interest initially as set forth in Section 2.02(c) of this Indenture.

"Initial Rate Change Date" means the date specified as such in the form of Security for any series of Securities attached to the Indenture or any supplemental indenture.

"Interest Payment Date" means March 15 and September 15 of each year, and any date the principal of the Securities is paid, including on the Maturity Date, or if such day is not a Business Day, the immediately succeeding Business Day.

"Issue Date" means the date of original issuance and first authentication and delivery of each series of Securities to the initial purchasers thereof against payment therefor, as set forth in the Trustee's certificate of authentication.

"Landowner" means a Related Entity which either (i) owns the land on which a Project is located, or (ii) ground leases the land on which a Project is located.

"Majority of Owners" means the Owners of at least 51% of the aggregate principal amount of all Outstanding Securities, as evidenced by a written instrument or instruments executed by said Owners and received by the Trustee.

"Management Change Notice" means the notice described in Section 10.09.

"Management Change Tender Date" means the date which is set forth in the notice to Owners delivered pursuant to Section 2.03(a).

"Management Change Tender Notice" means the notice described in Section 2.03(b).

"Management Change Tender Notice Date" means a Business Day not more than 45 days or less than 30 days immediately preceding the Management Change Tender Date.

"Master Security" shall have the meaning given to such term in Section 2.01.

"Maturity Date" means, with respect to the Series 2007 Securities, March 15, 2018 (or sooner upon acceleration or as otherwise provided herein), and with respect to Additional Securities, the maturity date set forth in the Supplemental Indenture authorizing such Additional Securities.

"Office Construction Loan" means a loan to finance the acquisition and construction of an office building for the Company, the principal amount of which shall not exceed \$50,000,000 (subject to increase as permitted in Section 10.07).

"Operator" means any entity that either leases a Project from a Landowner or has acquired a Project and initially hires the Company to manage such Project.

"Optional Tender Date" means each Rate Change Date.

"Optional Tender Notice" means the notice described in Section 2.02(d)(i)(A).

"Optional Tender Notice Date" means the 30th day (or if such 30th day is not a Business Day, the immediately preceding Business Day) immediately preceding a Rate Change Date.

"Outstanding" or "outstanding" when used with reference to the Securities means all Securities authenticated and delivered under this Indenture as of the time in question, except:

(a) All Securities theretofore cancelled or required to be cancelled under Section 2.09 hereof;

(b) Securities for the payment or prepayment of which provision has been made in accordance with Article IV; and

(c) Securities in substitution for which other Securities have been authenticated and delivered pursuant hereto.

In determining whether the Owners of a requisite aggregate principal amount of Securities Outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions hereof, Securities which are held by or on behalf of the Company (unless all of the Securities Outstanding are then owned by or on behalf of the Company) or a Related Entity shall be disregarded for the purpose of any such determination and deemed not to be Outstanding. At the request of the Trustee, the Company shall provide to the Trustee a Certificate executed by an Authorized Company Representative identifying all Securities held by or on behalf of the Company or a Related Entity, upon which the Trustee may conclusively rely.

"Owner" means, in reference to the Securities, any person who shall be the registered owner of any Security, as shown on the registration books of the Trustee, including the Clearing Agent, or its nominee.

"Parity Debt" means, collectively, the Securities and any other Indebtedness issued and outstanding which states by its terms that it is on a *pari passu* basis in right of payment and security except, as to funds created hereunder for any Series of Securities, to the Securities; and

for which, in the case of Indebtedness other than the Securities, the Trustee shall have received from the Company and the lender thereof a notice of the incurrence or issuance of such Indebtedness certifying the status of such Indebtedness as Parity Debt, in order for such Indebtedness to qualify as Parity Debt hereunder. Such notice shall identify the principal amount of the Indebtedness, and the Trustee shall be entitled to rely conclusively thereon absent written notice to the contrary.

"Permitted Encumbrances" has the meaning given to such term in Section 10.10.

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, a governmental body or a political subdivision, a municipal corporation, a public corporation or any other group or organization of individuals.

"Physical Security" shall have the meaning given to such term in Section 2.11

"Prepayment Account" means the account by that name created by Section 6.01.

"Prepayment Price" means with respect to any Securities, the principal amount of such Securities, plus accrued and unpaid interest thereon to the prepayment date.

"Principal Office" means, when used with respect to the Trustee, its principal corporate trust office, which is currently located at 101 Barclay Street, Floor 8 West, New York, NY 10286, Attn: Global Corporate Trust.

"Project" means a continuing care retirement community project developed, constructed, operated and/or managed by the Company or any of the Related Entities.

"Project Financings" means revolving construction loans, letters of credit, surety bonds and other credit accommodations of any kind made available to the Company and/or Related Entities for the acquisition or construction of any Projects, including Community Loans and funds provided by any institutional investor, in its capacity as an investor in one or more Landowners or Projects.

"Project Guarantees" means guarantees of Project Financings, together with subordination agreements and other agreements executed by the Company in connection with such Project Guarantees. Project Guarantees do not include Completion Guarantees or Purchase Deposit Refund Guarantees.

"Purchase Account" means the account by that name created by Section 6.01.

"Purchase Deposit Refund Guarantee" means an agreement delivered by the Company in connection with a Project Financing pursuant to which the Company guarantees to an Operator the repayment, by a Landowner, of the purchase option deposit paid by such Operator in connection with a Project, plus such other amounts as are sufficient to redeem all outstanding indebtedness issued by or on behalf of such Operator in connection with such Project.

"Purchase Price" means, (a) with respect to the Series 2007 Securities, the price at which any Series 2007 Security for which an Optional Tender Notice or a Management Change Tender Notice (as applicable) has been received pursuant to Section 2.02(c) or Section 2.03(b) (as applicable) shall be purchased on any Optional Tender Date or Management Change Tender Date (as applicable), which shall be an amount equal to 100% of the Outstanding principal amount thereof plus accrued interest (if any) to, but not including, the date of purchase; and (b) with respect to Additional Securities, the purchase price therefor as set forth in the Supplemental Indenture authorizing such Additional Securities.

"Rate Change Date" means, as applicable, (i) the Initial Rate Change Date and (ii) thereafter, the last day of the then applicable Adjustable Long-Term Mode; provided, however, that such date must fall on the 15th day in March.

"Regular Record Date" means, as applicable, with respect to the Securities, the fifteenth calendar day immediately preceding: (i) an Interest Payment Date, (ii) a prepayment date, (iii) an Optional Tender Date, (iv) a Management Change Tender Date or (v) the Maturity Date.

"Regulatory Body" means any federal, state or local government, department, agency, authority or instrumentality and other public or private body, including accrediting organizations, having regulatory jurisdiction and authority over the Company or its facilities or operations.

"Related Entity" means any firm, trust, corporation, partnership, limited partnership, limited liability company, limited liability partnership or other form of legal entity (excluding natural persons) which (1) controls, is controlled by or is under common control, with the Company or any other entity described in this definition, or (2) is a stockholder, partner, member, joint venturer, trustee, guardian or fiduciary of or with the Company or of or with any entity described in this definition. Anything to the contrary in this definition notwithstanding, the term "Related Entity" includes Landowners but excludes (i) Operators (provided the Company does not have an ownership interest therein), (ii) any institutional investor, in its capacity as an investor in or lender to any one or more Landowners or Projects, (iii) The Erickson Foundation, Inc., a Maryland non-profit corporation or any subsidiary thereof, and (iv) JCE Holding Corp., a Maryland corporation, Senior Living Limited Partnership, a Nevada limited partnership, Senior Living Limited Partnership II, a Nevada limited partnership, J & N Nevada Holding, Inc., a Nevada corporation, Jonan Foundation, a Maryland non-profit corporation, NorthBay, LLC, a Maryland limited liability company, 2002 Nancy A. Erickson GST Trust, a Maryland trust, 2002 John C. Erickson GST Trust, a Maryland trust, and Irrevocable Trust of John C. Erickson dated January 1, 2002, a New York trust, or any subsidiary thereof or successor entity to any of the entities listed in this clause (iv).

"Remarketing Agent" means B.C. Ziegler and Company and its successors or assigns and any successor appointed by the Company to serve as remarketing agent for the Securities.

"Remarketing Agreement" means any remarketing agreement or agreements executed and delivered in connection with the Securities, as amended, modified or supplemented in accordance with the provisions thereof.

"Representative" means a duly authorized indenture trustee or other trustee, agent or representative for any Senior Indebtedness.

"Required Liquidity Amount" has the meaning set forth in Section 10.05 of this Indenture.

"Reset Rate" means the rate set by the Remarketing Agent equal to the lowest rate that would enable all of the Securities to be sold at par on the applicable Rate Change Date.

"Responsible Officer" shall mean, when used with respect to the Trustee, any officer of the Trustee with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Sale Distribution" has the meaning specified in Section 10.03(c).

"Securities" means the Series 2007 Securities and any Additional Securities.

"Senior Indebtedness" means any obligation of the Company for the payment of money (other than Distributions) whether now or hereafter incurred, other than the Securities, Parity Debt and Subordinated Debt, including all deferrals, renewals, extensions or refinancings of or amendments, modifications or supplements to, obligations of the kind described in this definition. Senior Indebtedness does not include, and shall not include, any obligation to pay money to Mr. John C. Erickson, Nancy Erickson, any Controlling Entity or any family member of Mr. John C. Erickson. Senior Indebtedness includes the Senior Company Revolver.

"Senior Company Revolver" means the credit facilities made available to the Company by the Senior Revolver Lender.

"Senior Credit Agreement" means the Credit Agreement among the Company (and the other Loan Parties party thereto), the several Lenders from time to time party thereto and PNC Bank, National Association, as Administrative Agent, as amended, modified, supplemented, replaced or substituted from time to time.

"Senior Revolver Lender" means PNC Bank, National Association, as Administrative Agent pursuant to the Senior Credit Agreement, or any other financial institution having a similar role under the Senior Credit Agreement.

"Special Record Date" means the date and time established by the Trustee for determination of which Owners shall be entitled to receive overdue interest on the Securities.

"Subordinated Debt" means Indebtedness (a) with respect to which no payment shall be made if there is an Event of Default under this Indenture or under Senior Indebtedness, (b) which states by its terms that it shall be unsecured and in all respects subordinated to the Securities and Parity Debt, and (c) with respect to which the lender of such Subordinated Debt and the Company deliver to the Trustee a written acknowledgment of, and consent to, the provisions of Article XV herein.

"Subordinated Documents" means any note or other instrument evidencing Subordinated Debt, and any and all other documents, agreements or instruments executed and delivered in connection therewith, if any.

"Supplemental Indenture" or "indenture supplemental hereto" means any indenture amending or supplementing this Indenture which may be entered into in accordance with the provisions of this Indenture.

"Tax Distributions" means distributions to be made by the Company to its members, in each calendar year, in an amount equal to the income tax liability attributable to its members for federal, state or local taxes on account of attribution under the Code of income of the Company, if any, to such members.

"Trustee" means The Bank of New York, as trustee, or any successor trustee, appointed pursuant to Article XII hereof.

"Untendered Series 2007 Security" means, as applicable, any Series 2007 Security described in an Optional Tender Notice or a Management Change Tender Notice, as applicable, that is not tendered to the Trustee or the Remarketing Agent on the applicable Optional Tender Date or Management Change Tender Date.

The words "hereof," "herein," "hereto," "hereby," and "hereunder" (except in the form of Security) refer to the entire Indenture. All words and terms importing the singular number shall, where the context requires, import the plural number and vice versa.

ARTICLE II

THE SECURITIES

Section 2.01. Form of Series 2007 Securities; Clearing Agent; Authentication by Trustee.

(a) All Securities shall be issued as fully registered Securities without coupons.

(b) Initially, the Series 2007 Securities shall be issued pursuant to a Clearing System as one or more "jumbo" or "master" Securities (each, a "Master Security") with no physical distribution of certificates to be made except as provided in Section 2.11. Any provisions of this Indenture requiring physical delivery of the Series 2007 Securities shall, with respect to any Series 2007 Securities held under a Clearing System, be deemed to be satisfied by a notation on the registration books maintained by the Trustee that such Series 2007 Securities are subject to a Clearing System. The aggregate principal amount of any Master Security may from time to time be increased or decreased by endorsements made to a Master Security by the Clearing Agent; provided that the aggregate principal amount of all Master Securities may not, in any event, exceed the aggregate principal amount of Series 2007 Securities validly issued, authenticated and then outstanding.

(c) So long as a Clearing System is being used, one or more Master Certificates in the aggregate principal amount of the Series 2007 Securities and registered in the name of the Clearing Agent will be issued and required to be deposited with the Clearing Agent and held in its custody. The Clearing System will be maintained by the Clearing Agent and will evidence beneficial ownership of the Series 2007 Securities, with transfers of beneficial ownership effected on the records of the Clearing Agent.

(d) Notwithstanding any other provisions of this Indenture to the contrary, with respect to the Series 2007 Securities, the Clearing Agent will act as clearing agent for such Securities and such Securities shall be issued in the form of, or shall be exchanged for, as applicable, a single fully registered Master Security registered in the name of the Clearing Agent or any other entity designated by the Clearing Agent, as nominee for the Clearing Agent. So long as the Clearing Agent or any other entity designated by the Clearing Agent is the Owner of the Securities, as nominee of the Clearing Agent, references herein to Owners or holders of the Securities shall mean the Clearing Agent or any other entity designated by the Clearing Agent and shall not mean the Beneficial Owners of the Securities.

(e) The interest of each of the Beneficial Owners of the Series 2007 Securities will be recorded, and transfers of beneficial ownership interests in the Series 2007 Securities which are registered in the name of the Clearing Agent or any other entity designated by the Clearing Agent, will be accomplished in accordance with the Applicable Procedures.

(f) With respect to Series 2007 Securities registered in the name of the Clearing Agent or any other entity designated by the Clearing Agent as nominee of the Clearing Agent, the Company and the Trustee shall have no responsibility or obligation to any person on behalf of whom the Clearing Agent holds an interest in the Series 2007 Securities, except as expressly provided in this Indenture. Without limiting the immediately preceding sentence, the Company and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Clearing Agent or any other entity designated by the Clearing Agent with respect to any ownership interest in the Securities, (ii) the delivery to any other person, other than an Owner, as shown on the registration books, of any notice with respect to the Securities, including any notice of prepayment, or (iii) the payment to any other person, other than an Owner, as shown in the registration books of any amount with respect to principal of, premium, if any, or interest on, the Series 2007 Securities.

(g) Notwithstanding any other provisions of this Indenture to the contrary, the Company and the Trustee shall be entitled to treat and consider the person in whose name each Series 2007 Security is registered in the registration books of the Trustee as the absolute owner of such Series 2007 Security for the purpose of payment of principal, Purchase Price or Prepayment Price, and interest with respect to such Security, for the purpose of giving notices of prepayment and other matters with respect to such Series 2007 Security, for the purpose of registering transfers with respect to such Security, and for all other purposes whatsoever. The Trustee shall pay all principal of, interest on, and the Prepayment Price of, the Securities only to or upon the order of the respective Owners, as shown in the registration books as provided in this Indenture, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Company's obligations

with respect to payment of principal of, and interest on, or the Prepayment Price of, the Series 2007 Securities to the extent of the sum or sums so paid.

(h) No person other than an Owner, as shown in the registration books of the Trustee, shall receive a Security certificate evidencing the obligation of the Company to make payments of principal or Prepayment Price, and interest, pursuant to this Indenture.

(i) Any provision of this Indenture permitting or requiring the delivery of Series 2007 Securities shall be accomplished in accordance with the Applicable Procedures.

(j) Beneficial Owners shall have no rights under this Indenture with respect to any Master Security held on their behalf by the Clearing Agent, or under the Master Security, and the Clearing Agent may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Master Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by such Clearing Agent or impair, as between such Clearing Agent and the Beneficial Owners, the operation of customary practices governing the exercise of the rights of a Beneficial Owner of any Series 2007 Security.

(k) Transfers of Master Securities shall be limited to transfers in whole, but not in part, to the Clearing Agent for the Securities, its successors or their respective nominees.

(l) An Owner may grant proxies and otherwise authorize any Person to take any action which an Owner is entitled to take under this Indenture or the Series 2007 Securities.

(m) The Series 2007 Securities and the Trustee's certificate of authentication shall be in substantially the form attached hereto as Exhibit A, which is incorporated herein and forms a part of this Indenture. Any Additional Securities shall be in the form set forth in the Supplemental Indenture authorizing such Additional Securities. The Trustee shall authenticate and deliver on behalf of the Company, the Series 2007 Securities from time to time upon receipt of, and in accordance with, a written request of an Authorized Company Representative in the form attached hereto as Exhibit B (the "Authentication Order"). In authenticating the Series 2007 Securities, the Trustee shall register the Series 2007 Securities in the name of the Clearing Agent or its nominee, and in the principal amount, set forth in the Authentication Order, and shall add the actual date of its authentication of the Series 2007 Securities. The Series 2007 Securities shall be issued in denominations of \$25,000 and whole multiples of \$5,000 in excess thereof. The Series 2007 Securities shall be numbered consecutively upward from R-1. Upon receipt of the Authentication Order, the Trustee shall give the notice to the escrow agent identified therein in the form attached as Exhibit B to the Authentication Order.

(n) Receipt of the Authentication Order by the Trustee in accordance with the provisions of this Section 2.01 shall constitute full authority for the Trustee to authenticate and deliver the Series 2007 Securities in accordance with the terms thereof, and the Trustee shall have no duty to verify whether investors are purchasing the Series 2007 Securities in

compliance with the Securities Act, applicable state securities laws and the provisions of the Indenture.

Section 2.02. Details of the Series 2007 Securities.

(a) The Series 2007 Securities may be issued, at the option of the Company, from time to time on or before December 21, 2007 in an aggregate principal amount of up to \$50,000,000. The Series 2007 Securities shall mature on the Maturity Date.

(b) Each of the Series 2007 Securities shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated unless it is (i) authenticated on an Interest Payment Date, in which event it shall bear interest from such Interest Payment Date or (ii) authenticated prior to the first Interest Payment Date, in which event it shall bear interest from the date of authentication; provided, however, that if at the time of authentication payment of interest is in default, such Series 2007 Securities shall bear interest from the date to which interest has been paid. The Series 2007 Securities shall bear interest at the Adjustable Long-Term Rate described below payable on each Interest Payment Date. Interest on the Series 2007 Securities shall be calculated on the basis of a 360-day year of twelve 30-day months.

(c) Adjustable Long-Term Rate; Adjustable Long-Term Mode; Interest Rate Adjustment.

(i) From the Issue Date until, but not including, the Initial Rate Change Date, the Series 2007 Securities shall bear interest at the Adjustable Long-Term Rate equal to 11% per annum, payable on each Interest Payment Date. From and after the Initial Rate Change Date, the Series 2007 Securities shall bear interest at an Adjustable Long-Term Rate equal to the then current Reset Rate.

(ii) Unless the Company delivers the notice as provided in the next paragraph, (A) the Adjustable Long-Term Mode immediately following the Initial Adjustable Long-Term Mode shall be the period of two years from March 15, 2010 and (B) each subsequent Adjustable Long-Term Mode shall be a period equal to the then ending Adjustable Long-Term Mode. The Rate Change Date shall be the day immediately succeeding the then applicable Adjustable Long-Term Mode. In no event shall an Adjustable Long-Term Mode extend beyond the Maturity Date.

Notwithstanding the preceding paragraph, the Company may elect to change the Adjustable Long-Term Mode, in which event the Company, no later than the 60th day immediately preceding the Initial Rate Change Date or any subsequent Rate Change Date, shall deliver to the Trustee and the Remarketing Agent written notice (A) specifying the Company's determination of (1) the next succeeding Adjustable Long-Term Mode, which shall be of a period of not less than two years or any whole multiple of one year in excess thereof and shall end on March 14 of the year selected by the Company, and (2) the Rate Change Date to occur at the end of such Adjustable Long-Term Mode (which shall be March 15), or (B) specifying that the Series 2007 Securities are to bear the Adjustable Long-Term Rate to the Maturity Date.

(iii) Except for the Initial Interest Rate, the Adjustable Long-Term Rate shall be the Reset Rate. On the 45th day immediately preceding the Initial Rate Change Date or a subsequent Rate Change Date, as applicable, or on the immediately succeeding Business Day, if such 45th day is not a Business Day, the Remarketing Agent shall determine the Reset Rate and provide prompt written notice thereof to the Trustee. The Reset Rate shall be the lowest rate that would enable all of the Series 2007 Securities to be sold at par on such Initial Rate Change Date or subsequent Rate Change Date, as applicable. The Reset Rate shall be determined by the Remarketing Agent in its judgment having due regard to prevailing market conditions and shall be binding on the Company and the Owners (absent manifest error). The Reset Rate shall be effective from and after such Initial Rate Change Date or subsequent Rate Change Date, as applicable, until, but not including, the next succeeding Rate Change Date. If for any reason the Reset Rate cannot be or is not determined by the Remarketing Agent in the manner specified above, the Reset Rate will be equal to the Adjustable Long-Term Rate in effect during the immediately preceding Adjustable Long-Term Mode.

(iv) Promptly upon receiving the Remarketing Agent's notice of the Reset Rate pursuant to Section 2.02(b)(iii), but in no event more than four Business Days thereafter, the Trustee shall notify each Owner of the Series 2007 Securities of the Reset Rate that will be applicable to the Series 2007 Securities on and after the Initial Rate Change Date or the subsequent Rate Change Date, as applicable, and of the next succeeding Rate Change Date.

(d) Optional Tender of Series 2007 Securities.

(i) The Series 2007 Securities shall be purchased by the Company (from the sources set forth in subsection (e) below), at the option of an Owner, from the Owner thereof at the Purchase Price, on each Optional Tender Date, provided that:

(A) the Owner has delivered to the Company and the Remarketing Agent written notice (the "Optional Tender Notice") not later than 4:00 p.m. prevailing Baltimore, Maryland time on the Optional Tender Notice Date (such Optional Tender Notice to be irrevocable and effective upon receipt), that states (1) the principal amount of Series 2007 Securities that are to be purchased (which amount shall be \$25,000 and whole multiples of \$5,000 in excess thereof) and the portion retained, if any (which must be \$25,000 and whole multiples of \$5,000 in excess thereof), and (2) if less than all of the Owner's Series 2007 Securities are to be purchased, the CUSIP numbers and security numbers of the Series 2007 Securities to be purchased; and

(B) delivery of the Series 2007 Securities to be tendered for purchase shall be effected by book-entry credit to the account of the Beneficial Owner on the records of the Clearing Agent in accordance with the Applicable Procedures, at or prior to 4:00 p.m., prevailing Baltimore, Maryland time on the Business Day immediately preceding the applicable Optional Tender Date.

(ii) Interest on the Series 2007 Securities tendered pursuant to this subsection (d) shall cease to accrue on the Optional Tender Date.

(iii) An Untendered Series 2007 Security shall be deemed to have been purchased pursuant to this subsection (d) if there has been irrevocably deposited in trust with the Remarketing Agent or the Trustee monies sufficient to pay the Purchase Price of the Untendered Series 2007 Security. In the event an Owner of a Series 2007 Security to be purchased fails to tender such Series 2007 Security as herein provided, said Owner shall not be entitled to any payment (including interest to accrue subsequent to the Optional Tender Date) other than the Purchase Price as of the Optional Tender Date for such Untendered Series 2007 Security and any Untendered Series 2007 Securities will no longer be entitled to the benefit of this Indenture, except for the purpose of payment of the Purchase Price therefor.

(iv) Series 2007 Securities purchased by the Company or a Related Entity shall remain outstanding and remain subject to the provisions of this Indenture.

(v) Notwithstanding any provisions contained herein, during any period in which the Series 2007 Securities are maintained pursuant to a Clearing System, optional tenders and purchases of the Series 2007 Securities shall occur in accordance with the Applicable Procedures.

(e) Payment of Purchase Price of the Series 2007 Securities on Optional Tender Dates.

(i) The Series 2007 Securities for which a notice pursuant to subsection (d) above has been received shall, except as otherwise provided in Article XIII of this Indenture, be purchased from the Owners thereof on the Optional Tender Date at the Purchase Price, which shall be payable from the following sources and in the order of priority listed (and the Trustee shall have no right or obligation to use monies from any other source):

(A) proceeds of the remarketing or purchase of the Series 2007 Securities pursuant to the Remarketing Agreement, which proceeds are on deposit in the Purchase Account; and

(B) amounts received by the Trustee from or on behalf of the Company for deposit into the Purchase Account.

The Trustee as Paying Agent shall cause the purchase price of tendered Series 2007 Securities to be paid pursuant to subsection (d) above solely from the sources described in this Section 2.02(d)(i) and neither the Trustee nor the Remarketing Agent shall be responsible for the failure of any other person to furnish monies for the Purchase Price of such Series 2007 Securities. In purchasing Series 2007 Securities hereunder, the Trustee as Paying Agent shall be acting as a conduit for the Company and shall not be deemed to be purchasing Series 2007 Securities for its own account.

(ii) At or prior to 10:00 a.m. prevailing Baltimore, Maryland time, on the Business Day immediately preceding each Optional Tender Date, the Remarketing Agent will give written notice to the Company and the Trustee specifying the principal amount of the Series 2007 Securities, if any, that have been remarketed and the principal amount of the Series 2007 Securities, if any, that have not been remarketed. If physical security certificates have been delivered to the Owners of the Series 2007 Securities, such notice shall include the name, address and tax identification number of each prospective purchaser to whom the Remarketing

Agent has remarketed and sold the Series 2007 Securities. If all or a portion of the Series 2007 Securities subject to purchase have not been remarketed, the Company shall deliver to the Trustee for deposit into the Purchase Account no later than 10:30 a.m. prevailing Baltimore, Maryland time on each Optional Tender Date an amount equal to the Purchase Price of the Series 2007 Securities that have not been remarketed as specified in the notice received from the Remarketing Agent.

(iii) The Remarketing Agent shall deliver to the Trustee, no later than 10:30 a.m. prevailing Baltimore, Maryland time, on each Optional Tender Date, in immediately available funds, an amount equal to the Purchase Price of the Series 2007 Securities set forth in the Remarketing Agent's notice as having been remarketed. The Trustee shall deposit monies received from the Remarketing Agent pursuant to this subsection (iii) into the Purchase Account.

The Trustee as Paying Agent shall pay the Purchase Price for each tendered Series 2007 Security at or prior to 5:00 p.m., prevailing Baltimore, Maryland time, on the Optional Tender Date only after receipt of such Series 2007 Security in accordance with the provisions of subsection (d) above.

(iv) The Trustee shall promptly mail notice by first-class mail to the Owner of any Series 2007 Security that is an Untendered Series 2007 Security, which notice shall state that interest on such Series 2007 Security ceased to accrue to the former Owner thereof as of the Optional Tender Date on which such Series 2007 Security was to have been tendered, that the Trustee will not register and will not recognize, any further transfer of such Series 2007 Security by the former Owner thereof, and that the former Owner of such Series 2007 Security ceased to be entitled to the benefits and security of this Indenture as of such Optional Tender Date, except to receive the monies representing the Purchase Price of such Series 2007 Security against delivery thereof at the principal office of the Trustee. Untendered Series 2007 Securities will cease to bear interest as of the Optional Tender Date regardless of whether notice has been provided in accordance with this paragraph. Monies to be used for the purchase of any Untendered Series 2007 Security shall be deposited with the Trustee and held in trust by the Trustee segregated from all other monies held by the Trustee under this Indenture, without liability for interest thereon, and shall be paid to the former Owner of such Untendered Series 2007 Security upon presentation thereof. Except as provided in the following paragraph, the former Owner of such Untendered Series 2007 Security shall thereafter be restricted exclusively to such monies for the satisfaction of any claim of whatever nature on its part under this Indenture or on, or with respect to, such Untendered Series 2007 Security.

Any monies which the Trustee holds in trust for the payment of the Purchase Price of any Untendered Series 2007 Security and which remain unclaimed for a period of one year after the Optional Tender Date on which such Untendered Series 2007 Security was to have been tendered, upon the Company's written request to the Trustee, but only to the extent not prohibited by applicable escheat law, shall be paid to the Company; provided, however, that:

(1) before the Trustee makes any such payment to the Company, the Trustee, at the Company's expense, shall cause notice to be given once by first-class mail to the former Owner of such Untendered Series 2007 Security at the last address for such Owner reflected on the registration books of the Trustee,

to the effect that such monies remain unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notice by mail, any unclaimed balance of such monies then remaining will be paid to the Company; and

(2) no such payment shall be made to the Company if the Trustee has notice, within the meaning of Section 12.03(h) hereof, that an Event of Default shall have occurred and be continuing under this Indenture.

After the payment of such unclaimed monies to the Company, the Owner of such Untendered Series 2007 Security shall thereafter look only to the Company for the payment thereof, and all liability of the Trustee with respect to such monies shall thereupon cease.

(f) Intentionally deleted.

(g) Remarketing of the Series 2007 Securities on Optional Tender Dates. Upon receipt by the Remarketing Agent of any Optional Tender Notice, the Remarketing Agent shall offer for sale and use commercially reasonable efforts to remarket pursuant to the Remarketing Agreement the Series 2007 Securities to be purchased on such Optional Tender Date at the Purchase Price.

(h) Payments of Interest, Principal, Prepayment Price and Purchase Price.

The principal of, and interest on, and the Prepayment Price or Purchase Price of, the Series 2007 Securities shall be payable in lawful money of the United States of America. Principal of and the Prepayment Price of the Series 2007 Securities shall be payable upon presentation and surrender of the Series 2007 Securities as they become due at the principal office of the Paying Agent. Interest on the Series 2007 Securities shall be payable to the Owners of the Series 2007 Securities by (a) check or draft mailed to such Owners at their addresses as they appear on registration books kept by the Trustee as security registrar on the Regular Record Date, or (b) by bank wire transfer for registered Owners of \$500,000 or more of the Series 2007 Securities who have provided the Trustee with written instructions on or before the Regular Record Date for such Interest Payment Date.

If any principal of or interest on any of the Series 2007 Securities is not paid when due (whether at the Maturity Date, by acceleration or prepayment or otherwise), then the overdue installments of principal and, to the extent permitted by law, interest, shall bear interest until paid at the Default Rate, and shall be paid to the Owners thereof as of the close of business on the Special Record Date. Notice of any Special Record Date shall be given to such Owners not later than 10 days before such Special Record Date in the same manner as notices of prepayment are given in accordance with Section 4.03.

Section 2.03. Tender and Purchase of Series 2007 Securities on Management Change Tender Dates.

(a) Promptly upon receiving a Management Change Notice, but in no event more than four Business Days thereafter, the Trustee shall provide written notice (which shall be prepared by the Company) to each Owner of the Series 2007 Securities and the Company

specifying (i) that a Management Change has occurred, (ii) that the Series 2007 Securities will be subject to optional tender on a date (the "Management Change Tender Date") established by the Company (which date shall be no earlier than 90 days or later than 120 days after the date of such notice and shall fall on the fifteenth day of a month or, if such day is not a Business Day, the immediately succeeding Business Day) and (iii) that on the Management Change Tender Date, the Company will purchase Series 2007 Securities delivered to the Trustee for purchase by the Company.

(b) The Series 2007 Securities shall be purchased by the Company (from the source set forth below in subsection (g) below), at the option of an Owner, from the Owner thereof at the Purchase Price, on each Management Change Tender Date, provided that:

(i) the Owner has delivered to the Trustee written notice (the "Management Change Tender Notice") not later than 4:00 p.m. prevailing Baltimore, Maryland time on the Management Change Tender Notice Date (such Management Change Tender Notice to be irrevocable and effective upon receipt), that states (A) the principal amount of the Series 2007 Securities that are to be purchased (which amount shall be \$25,000 and whole multiples of \$5,000 in excess thereof) and the portion retained, if any (which must be \$25,000 and whole multiples of \$5,000 in excess thereof), and (B) if less than all of the Owner's Series 2007 Securities are to be purchased, the CUSIP numbers and security numbers of the Series 2007 Securities to be purchased; and

(ii) delivery of the Series 2007 Securities to be tendered for purchase shall be effected by book-entry credit to the account of the Beneficial Owner on the records of the Clearing Agent in accordance with the Applicable Procedures, and at or prior to 4:00 p.m., prevailing Baltimore, Maryland time on the Business Day immediately preceding the applicable Management Change Tender Date.

(c) Interest on the Series 2007 Securities tendered pursuant to Section 2.03(b) will cease to accrue to such Owner on such Management Change Tender Date.

(d) Any Series 2007 Security described in a Management Change Tender Notice given to the Trustee pursuant to Section 2.03(b)(i) as a Series 2007 Security to be purchased on a Management Change Tender Date that is not tendered as herein provided shall be deemed to have been purchased if there has been irrevocably deposited in trust with the Trustee monies sufficient to pay the Purchase Price of such Untendered Series 2007 Security. In the event an Owner of a Series 2007 Security to be purchased fails to tender such Series 2007 Security as herein provided, said Owner shall not be entitled to any payment (including interest to accrue subsequent to the Management Change Tender Date) other than the Purchase Price as of the Management Change Tender Date for such Untendered Series 2007 Security and any Untendered Series 2007 Security will no longer be entitled to the benefit of this Indenture, except for the purpose of payment of the Purchase Price therefor.

(e) Series 2007 Securities purchased by the Company or a Related Entity on a Management Change Tender Date shall remain outstanding and remain subject to the provisions of this Indenture.

(f) Upon payment of the Purchase Price of a Series 2007 Security for which the Trustee has received a Management Change Tender Notice, such tendered Series 2007 Security will be delivered to the Company; provided, however, that during any period in which the Series 2007 Securities are maintained pursuant to a Clearing System, optional tenders and purchases of the Series 2007 Securities on a Management Change Tender Date shall occur in accordance with the Applicable Procedures.

(g) At or prior to 10:00 a.m. prevailing Baltimore, Maryland time, 24 days immediately preceding each Management Change Tender Date, the Company will give notice to the Trustee specifying the Purchase Price of the tendered Series 2007 Securities, if any. The Company shall deliver to the Trustee for deposit into the Purchase Account no later than 10:30 a.m. prevailing Baltimore, Maryland time on each Management Change Tender Date an amount equal to the Purchase Price of the Series 2007 Securities for which the Trustee has received a Management Change Tender Notice.

(h) The Series 2007 Securities for which a Management Change Tender Notice has been received shall be purchased from the Owners thereof on the Management Change Tender Date at the Purchase Price, which shall be payable solely from amounts received by the Trustee from or on behalf of the Company for deposit into the Purchase Account as provided in subsection (g) above (and the Trustee shall have no right or obligation to use monies from any other source), and neither the Trustee nor the Remarketing Agent shall be responsible for the failure of any other person to furnish monies for the Purchase Price of such Series 2007 Securities. In purchasing Series 2007 Securities hereunder, the Trustee as Paying Agent shall be acting as a conduit for the Company and shall not be deemed to be purchasing Series 2007 Securities for its own account.

(i) The Trustee as Paying Agent shall cause the payment of the Purchase Price for each tendered Series 2007 Security at or prior to 5:00 p.m., prevailing Baltimore, Maryland time, on the Management Change Tender Date to the Owner thereof, only after receipt of such Series 2007 Security by the Trustee in the manner and prior to the time described in subsection (b) above.

(j) The Trustee shall promptly mail notice by first-class mail to the Owner of any Series 2007 Security that is an Untendered Series 2007 Security, which notice shall state that interest on such Series 2007 Security ceased to accrue to the former Owner thereof as of the Management Change Tender Date on which such Series 2007 Security was to have been tendered, that the Trustee will not register and will not recognize, any further transfer of such Series 2007 Security by the former Owner thereof, and that the former Owner of such Series 2007 Security ceased to be entitled to the benefits of the Indenture as of such Management Change Tender Date, except to receive the monies representing the Purchase Price of such Series 2007 Security against delivery thereof at the principal office of the Trustee. Untendered Series 2007 Securities will cease to bear interest as of the Management Change Tender Date regardless of whether notice has been provided in accordance with this paragraph. Monies to be used for the purchase of any Untendered Series 2007 Security shall be deposited with the Trustee and held in trust by the Trustee segregated from all other monies held by the Trustee under the Indenture, without liability for interest thereon, and shall be paid to the former Owner of such Untendered Series 2007 Security upon presentation thereof.

Except as provided in the following paragraph, the former Owner of such Untendered Series 2007 Security shall thereafter be restricted exclusively to such monies for the satisfaction of any claim of whatever nature on its part under the Indenture or on, or with respect to, such Untendered Series 2007 Security.

Any monies which the Trustee holds in trust for the payment of the Purchase Price of any Untendered Series 2007 Security and which remain unclaimed for a period of one year after the Management Change Tender Date on which such Untendered Series 2007 Security was to have been tendered, upon the Company's written request to the Trustee, but only to the extent not prohibited by applicable escheat law, shall be paid to the Company; provided, however, that:

(i) before the Trustee makes any such payment to the Company, the Trustee, at the Company's expense, shall cause notice to be given once by first-class mail to the former Owner of such Untendered Series 2007 Security at the last address for such Owner reflected on the registration books of the Trustee, to the effect that such monies remain unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notice by mail, any unclaimed balance of such monies then remaining will be paid to the Company; and

(ii) no such payment shall be made to the Company if the Trustee has notice that an Event of Default shall have occurred and be continuing under the Indenture.

After the payment of such unclaimed monies to the Company, the Owner of such Untendered Series 2007 Security shall thereafter look only to the Company for the payment thereof, and all liability of the Trustee with respect to such monies shall thereupon cease.

Section 2.04. Execution.

The Securities shall be executed by the manual or facsimile signature of an Authorized Company Representative. The validity of any Security so executed shall not be affected by the fact that the Authorized Company Representative whose signature appears on such Security has ceased to hold office at the time of issuance or authentication or at any time thereafter.

Section 2.05. Authentication.

No Securities shall be valid for any purpose hereunder until the certificate of authentication printed thereon is duly executed by the manual signature of an authorized signatory of the Trustee. Such authentication shall be proof that the Owner is entitled to the benefit of the trusts hereby created.

Section 2.06. Registration, Transfer and Exchange.

(a) The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange ("Registrar"), and an office or agency where Securities may be presented for payment ("Paying Agent"). The Principal Office of the Trustee shall serve as the office or agency for the aforementioned purposes. The Registrar shall keep a register of the Securities and of their transfer and exchange. The Paying Agent

shall hold in trust for the benefit of the Owners or the Trustee all moneys held by the Paying Agent for the payment of the Securities. The Trustee shall at all times act as Paying Agent and Registrar.

(b) Master Securities may be transferred or exchanged only in accordance with Section 2.11 hereof. Beneficial interests in a Master Security may be transferred or exchanged only in accordance with the Applicable Procedures.

(c) THE SERIES 2007 SECURITIES HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OR THE SECURITIES OR BLUE SKY LAWS OF ANY STATE AND, UNLESS SO REGISTERED, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS AND, IF REQUESTED BY THE COMPANY, UPON DELIVERY TO THE COMPANY AND THE TRUSTEE OF A CERTIFICATION OF THE TRANSFEREE OR AN OPINION OF COUNSEL (SATISFACTORY TO THE COMPANY) TO THE EFFECT THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAW.

Section 2.07. Mutilated, Destroyed, Lost or Stolen Securities.

(a) If any Security is mutilated, lost, stolen or destroyed, the Owner thereof shall be entitled to the issuance of a substitute Security of the same maturity provided that:

(i) in all cases, the Owner may be required by the Company or the Trustee to provide indemnity to the Company and the Trustee acceptable to the Company and the Trustee against any and all claims arising out of or otherwise related to the issuance of substitute Securities pursuant to this Section;

(ii) in the case of a mutilated Security the Owner shall deliver the Security to the Trustee for cancellation; and

(iii) in the case of a lost, stolen or destroyed Security, the Owner shall provide evidence, satisfactory to the Trustee, of the ownership and the loss, theft or destruction of the affected Security.

Upon compliance with the foregoing, a new Security of like tenor and denomination, executed by the Company, shall be authenticated by the Trustee and delivered to the Owner, all at the expense of the Owner to whom the substitute Security is delivered. Notwithstanding the foregoing, the Trustee shall not be required to authenticate and deliver any substitute for a Security which has been called for prepayment or which has matured or is about to mature and, in any such case, the principal or Prepayment Price then due and accrued interest thereon or becoming due shall be paid by the Trustee in accordance with the terms of the mutilated, lost, stolen or destroyed Security without substitution therefor.

(b) Every substituted Security issued pursuant to this Section 2.07 shall constitute an additional contractual obligation of the Company, whether or not the Security alleged to have

been destroyed, lost or stolen shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

(c) All Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities, and shall preclude any and all other rights or remedies, unless expressly inconsistent with any law or statute existing or hereafter enacted with respect to the replacement or payment of negotiable instruments, investments or other securities without their delivery.

Section 2.08. Temporary Securities.

Intentionally omitted.

Section 2.09. Cancellation and Disposition of Surrendered Securities.

The Trustee shall cancel (a) all Securities surrendered for transfer or exchange, for payment at the Maturity Date or for prepayment, and (b) all Securities purchased at the direction of the Company and surrendered to the Trustee for cancellation, and the Trustee shall dispose of such Securities in accordance with the Trustee's document retention policies. Upon request, the Trustee shall deliver to the Company a certificate of cancellation or disposition in respect of all Securities cancelled or disposed of in accordance with this Section. The Company, at any time, may deliver Securities to the Trustee for cancellation.

Section 2.10. Acts of Owners; Evidence of Ownership.

Any action to be taken by Owners may be evidenced by one or more concurrent written instruments of similar tenor signed or executed by such Owners in person or by an agent appointed in writing. The fact and date of the execution by any Person of any such instrument may be proved by acknowledgment before a notary public or other officer empowered to take acknowledgments or by an affidavit of a witness to such execution or by any other method satisfactory to the Trustee. Any action by the Owner of any Security shall bind all future Owners of the same Security or of any Security issued upon the exchange or registration of transfer thereof in respect of anything done or suffered by the Company or the Trustee in pursuance thereof.

Section 2.11. Discontinuance of Clearing System.

(a) Physical Securities shall be transferred to all Beneficial Owners, as identified by the Clearing Agent, in exchange for their beneficial interests in Master Securities only if (i) the Clearing Agent notifies the Company that such Clearing Agent is unwilling or unable to continue as Clearing Agent for any Master Security (or such Clearing Agent ceases to be a "clearing agency" registered under Section 17A of the Exchange Act) and a successor Clearing Agent is not appointed by the Company within ninety (90) days of such notice or cessation, (ii) the Company in its sole discretion determines that the Master Securities (in whole but not in part) should be exchanged for Physical Securities and delivers a written note

to the Trustee to such effect; or (iii) an Event of Default has occurred and is continuing and the Registrar has received a written request from the Clearing Agent to issue Physical Securities.

(b) The Clearing Agent may determine to discontinue providing its service with respect to the Securities at any time by giving written notice and all relevant information on the Beneficial Owners of the Securities to the Company and the Trustee and discharging its responsibilities with respect thereto under applicable law. If there is no successor Securities Depository appointed by the Company, the Trustee shall authenticate and deliver Securities to the Beneficial Owners thereof. The Company may determine not to continue participation in a Clearing System (or a successor clearing system) at any time by giving reasonable written notice to the Clearing Agent and the Trustee. In such event, the Trustee shall make provisions to notify Beneficial Owners of the Series 2007 Securities, by providing notice to the Clearing Agent, that the Series 2007 Securities will be directly issued to Beneficial Owners of the Series 2007 Securities as of a date set forth in such notice.

(c) In the event that Series 2007 Securities are to be issued directly to Beneficial Owners, the Company shall promptly execute and deliver Series 2007 Securities in certificated form ("Physical Securities"), registered in the names of the Beneficial Owners of the Series 2007 Securities shown on the records of the Clearing Agent provided to the Trustee, as of the date set forth in the notice above, to the Trustee, and the Trustee shall authenticate and deliver the Series 2007 Securities to the Beneficial Owners thereof. Physical Securities issued to Beneficial Owners shall be substantially in the form attached hereto as Exhibit A hereto.

(d) In connection with the transfer of a Master Security in its entirety to Beneficial Owners pursuant to this Section 2.11, such Master Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall upon written instructions from the Company authenticate and deliver, to each Beneficial Owner identified by the Clearing Agent for the Securities in exchange for its beneficial interest in such Master Security, an equal aggregate principal amount of Physical Securities of authorized denominations.

Section 2.12. Payments to Clearing Agent; Payments to Beneficial Owners.

(a) Notwithstanding any other provision of this Indenture to the contrary, so long as any Security is registered in the name of the Clearing Agent or any other entity designated by the Clearing Agent, as nominee of the Clearing Agent, all payments with respect to principal of, interest on, or the Prepayment Price of, such Security and all notices with respect to such Security shall be made and given, respectively, pursuant to the Applicable Procedures.

(b) Payments by the Clearing Agent to Beneficial Owners will be governed by the Applicable Procedures, and will be the responsibility of the Clearing Agent and not of the Trustee or the Company, subject to any statutory and regulatory requirements as may be in effect from time to time.

Section 2.13. Additional Securities.

(a) The Company may issue Additional Securities hereunder from time to time for any lawful and corporate purpose; provided, however, that the conditions precedent to the incurrence of Parity Debt set forth in Section 10.07 have been met.

(b) The Trustee shall authenticate the Additional Securities upon receipt of a written request of the Company therefor, accompanied by:

(i) a Supplemental Indenture setting forth the terms of the Additional Securities and providing for additional payments to be made by the Company sufficient to cover the payment of the principal of, interest on, the Prepayment Price of, and the Purchase Price of, such Additional Securities;

(ii) a certified resolution of the Company (A) establishing and approving the series of Additional Securities to be issued and providing the terms and form of Additional Securities thereof and directing the payments to be made into the Funds created by the Supplemental Indenture, and (B) authorizing the execution and delivery of any required amendments or supplements to the Financing Documents and execution and delivery of the Additional Securities to be issued;

(iii) a Certificate of the Company, executed by an Authorized Company Representative stating (A) that such Authorized Company Representative has no knowledge that an Event of Default hereunder has occurred and is continuing, and (B) that the Company will have after the issuance of the Additional Securities, cash and cash equivalents equal to the Required Liquidity Amount; and

(iv) an opinion or opinions of counsel that (A) all conditions prescribed herein as precedent to the issuance of the Additional Securities have been fulfilled, (B) the Additional Securities have been duly authorized and executed by the Company and when authenticated and delivered pursuant to the request of the Company will be valid, legally binding obligations of the Company, enforceable against the Company in accordance with their terms (except to the extent that the rights and remedies created thereby are subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights and remedies of creditors generally and the exercise of judicial discretion in accordance with general principles of equity and that the availability of specific enforcement, injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought), and (C) all consents of any regulatory bodies required as a condition to the valid issuance of the Additional Securities have been obtained;

provided, however, that any and all Additional Securities shall be issued on a parity with the Series 2007 Securities and shall rank equally and ratably with the Series 2007 Securities as general unsecured Indebtedness of the Company and shall be subordinated to the Senior Indebtedness as provided herein.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties.

In order to induce the Trustee to execute and deliver this Indenture, the Company, for the benefit of the Trustee and the Owners, represents and warrants that the following statements are true, correct and complete as of the date hereof:

(a) Good Standing. The Company is a limited liability company validly existing in good standing under the laws of the jurisdiction in which it was organized as described herein under the definition of "Company", and has the limited liability company power to own its property and to carry on its business and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary.

(b) Authority. The Company has the limited liability company power and authority to enter into and to execute and deliver the Financing Documents to which it is a party and to perform and comply with the terms, conditions and agreements set forth herein and therein, all of which have been duly authorized by all proper and necessary action of the Board of Directors of the Company.

(c) Binding Agreements. The Financing Documents to which the Company is a party have been duly executed and delivered by the Company and constitute the valid and legally binding agreements and obligations of the Company enforceable against the Company in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights and remedies of creditors generally, and the exercise of judicial discretion in accordance with general principles of equity.

(d) Litigation. Except as disclosed in the Private Placement Memorandum dated November 1, 2007, relating to the Securities, there are no actions, suits, proceedings, inquiries or investigations at law or in equity, before or by any court, administrative agency or public body or board pending or, to the best knowledge of any Authorized Company Representative executing this Indenture on behalf of the Company, threatened against or affecting the Company (i) contesting the existence of the Company or the authority of the officers of the Company, or challenging the right or authority of the Company to issue and sell the Securities, or (ii) wherein an unfavorable ruling or finding would materially adversely affect the transactions contemplated by the Company in connection with the issuance and sale of the Securities, or the business, financial position, or operations of the Company, or (iii) which in any manner raises any question affecting the authority of the Company or any of the officers of the Company to execute the Financing Documents to which the Company is a party.

(e) Consents and Approvals. No consent, approval, authorization or other action by, or filing with, any Regulatory Body is required for the execution and delivery by the Company of the Financing Documents to which it is a party, or if required, the requisite consent, approval,

or authorization has been obtained, the requisite filing has been accomplished, or the requisite action has been taken.

(f) No Conflicting Agreements. The authorization, execution and delivery by the Company of each of the Financing Documents to which it is a party and the compliance with the terms and conditions thereof and the consummation of the transactions contemplated therein, do not and will not (i) violate any laws applicable to the Company, or (ii) breach any of the terms and conditions of, or constitute a default under, or result in the creation or imposition of any lien upon any of the properties or assets of the Company pursuant to the terms of, the Company's organizational documents, or any indenture, mortgage, agreement or other instrument to which the Company is a party or by which the Company or any of its properties is bound.

(g) Bankruptcy or Insolvency. No proceedings by or against the Company have been commenced in bankruptcy or for reorganization, liquidation, or the readjustment of debts under the United States Bankruptcy Code or any other law, whether state or federal, nor has the Company made an assignment for the benefit of creditors, admitted in writing its inability to pay debts generally as they become due, or filed, or had filed against it, any action seeking an order appointing a trustee or receiver of all or a substantial part of the property of the Company.

(h) Dissolution. No judicial proceeding has been filed or is pending for the dissolution of the Company, and no circumstances have occurred or exist which have triggered or will trigger a dissolution of the Company under the organizational documents of the Company or under the laws of the jurisdiction in which the Company was organized.

(i) Securities Laws. The Company is not engaged in a securities related business, is not an "investment company" within the meaning of any securities laws and is not in violation of any applicable federal securities laws or state securities ("blue sky") laws.

ARTICLE IV

PREPAYMENT OF SECURITIES

Section 4.01. Prepayment.

The Securities may be prepaid by the Company only in accordance with the provisions of this Article. Subject to the provisions of Article XIII hereof, the Company may prepay the Series 2007 Securities in whole at any time, upon payment of the applicable Prepayment Price therefor. The Series 2007 Securities may not be prepaid in part. The prepayment provisions for Additional Securities shall be set forth in the Supplemental Indenture authorizing such Additional Securities.

Section 4.02. Notice of Prepayment.

(a) The Company shall deliver notice to the Trustee and the Remarketing Agent of its intention to prepay the Securities at least 45 days prior to the prepayment date. The Trustee

shall cause notice of such prepayment hereunder, which notice shall be prepared by the Company, to be mailed by first class mail, postage prepaid, to the Owners of all Securities at the registered addresses appearing in the registration books kept for such purpose pursuant to Article II hereof. Each such notice shall (i) be mailed at least 30 days prior to the prepayment date, (ii) specify the prepayment date and the Prepayment Price, and (iii) state that on the prepayment date, the Securities to be prepaid will be payable at the principal office of the Trustee, that from that date interest will cease to accrue and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or on the Securities to be prepaid; provided, however, that so long as the Clearing Agent or its nominee is the sole Owner of the Securities under a Clearing System, prepayment notices will be sent to the Clearing Agent or such other nominee as is specified by an authorized representative of the Clearing Agent. Any failure on the part of the Clearing Agent to give such notice to a Beneficial Owner or any defect therein shall not affect the sufficiency or validity of any proceedings for the prepayment of the Securities. No defect affecting any Security, whether in the notice of prepayment or mailing thereof (including any failure to mail such notice), shall affect the validity of the prepayment proceedings for any other Securities.

(b) Conditional Notice. If at the time of mailing of a notice of prepayment there shall not have been deposited with the Trustee monies sufficient to prepay all the Securities to be prepaid, such notice may state that it is conditional, that is, subject to the deposit with the Trustee on or prior to the prepayment date of monies sufficient to pay the Prepayment Price of all such Securities, and such notice shall be of no effect unless such monies are so deposited.

(c) Intentionally Deleted.

(d) CUSIP Identification. Upon the payment of the Prepayment Price of the Securities to be prepaid, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by Issue Date and Maturity Date, the Securities to be prepaid, provided that neither the Company nor the Trustee shall be deemed to have made any representation as to the correctness of such CUSIP number.

Section 4.03. Effect of Prepayment.

If payment of the Prepayment Price of the Securities to be prepaid has been duly provided for on the prepayment date, then the Securities to be repurchased shall become due and payable in accordance herewith and (unless there shall be a Default in the payment of the consideration payable in connection with such repurchase) interest on such Securities will cease to accrue on such date, and the Owners will have no rights with respect to such Securities nor will they be entitled to the benefits of this Indenture except to receive payment of the Prepayment Price thereof. All such amounts shall be considered paid on the date due if the Paying Agent holds on that date immediately available funds sufficient to pay the amount then due with respect to the Securities (unless there shall be a Default in the payment of such amounts to the respective Owners).

ARTICLE V

INTENTIONALLY DELETED

ARTICLE VI

FUNDS AND ACCOUNTS

Section 6.01. Establishment of Certain Funds and Accounts.

The Company hereby establishes with the Trustee a Debt Service Fund, and within such Fund, a Principal Account, an Interest Account, a Purchase Account, and a Prepayment Account. The Debt Service Fund and the accounts thereunder are pledged to the Trustee for the payment of the Securities as provided herein and held in trust for the Owners of the Securities.

Additional Funds and accounts are hereby authorized to be created by Supplemental Indenture in order to effectuate the issuance of Additional Securities so long as the creation of any such Funds and accounts does not adversely affect the status of the Series 2007 Securities and any Additional Securities as pari passu Indebtedness of the Company, subject to the provisions hereof.

Section 6.02. Debt Service Fund.

The Trustee shall maintain the Debt Service Fund for the Series 2007 Securities as follows:

(a) The Company shall pay, or cause to be paid, to the Trustee for deposit into the Debt Service Fund amounts sufficient to pay, as the same become due and payable, to the Owners thereof, the principal or Prepayment Price of and interest on, and the Purchase Price of the Series 2007 Securities.

(b) In order to provide for the payment of the amounts described under paragraph (a) of this Section with respect to the Series 2007 Securities, the Company shall pay an amount equal to the sum of the following:

(i) on the Business Day immediately preceding each Interest Payment Date, the amount necessary to make the amount on deposit in the Interest Account equal to the amount of accrued and unpaid interest on the Series 2007 Securities payable on such Interest Payment Date; and

(ii) on or before the date on which the Series 2007 Securities are to be prepaid pursuant to Article IV of this Indenture, the amount necessary to make the amount on deposit in the Prepayment Account on the prepayment date, equal to the Prepayment Price;

(iii) if the Company has received notice from the Remarketing Agent pursuant to Section 2.02(d)(ii)(B) of this Indenture that not all of the Series 2007 Securities tendered for purchase and available for remarketing have been remarketed, the Company shall pay to the

Trustee for deposit into the Purchase Account no later than 10:30 a.m. Baltimore, Maryland time on each applicable Optional Tender Date an amount equal to the Purchase Price of Series 2007 Securities which have not been remarketed as specified in such notice; and

(iv) on or before the Maturity Date, the amount necessary to make the amount on deposit in the Principal Account equal to the principal amount of the Securities outstanding.

(c) Application of Debt Service Fund. Monies in the Debt Service Fund shall be applied to the payment when due of principal or Prepayment Price of and interest on, and the Purchase Price of, the Series 2007 Securities; provided that if the amounts paid into the Debt Service Fund (following any transfers as provided herein) are insufficient to pay such amounts, then such amounts shall be applied as provided in Section 11.04.

Section 6.03. Intentionally Deleted.

Section 6.04. Intentionally Deleted.

Section 6.05. Monthly Statements by Trustee.

The Trustee shall send the Company monthly statements of account of the Funds and accounts established hereunder, showing the balance in each Fund and account at the beginning and the end of each month, and a description of any deposits, withdrawals and investments made with respect to each Fund and account during the month.

Section 6.06. Monies to be Held for All Owners.

Until applied as herein provided, monies and investments held in all Funds and accounts established hereunder shall be held in trust for the benefit of the Owners of all Outstanding Securities.

ARTICLE VII

INTENTIONALLY DELETED

ARTICLE VIII

INTENTIONALLY DELETED

ARTICLE IX

UNSECURED OBLIGATION

Section 9.01. Unsecured Obligation.

The Securities constitute an unsecured obligation of the Company. The obligation of the Company to pay or cause to be paid the Securities and all other amounts payable hereunder or

thereunder shall be absolute, irrevocable, complete and unconditional, and the amount, manner and time of payment of such amounts shall not be decreased, abated, rebated, setoff, reduced, abrogated, waived, diminished or otherwise modified in any manner or to any extent whatsoever regardless of any right of setoff, recoupment or counterclaim that the Company might otherwise have against the Trustee or any other party or person and regardless of any contingency, force majeure, event or cause whatsoever.

Notwithstanding anything in this Section 9.01 to the contrary, the rights of the Owners of the Securities are subordinated to the rights of holders of Senior Indebtedness pursuant to Article XIII hereof.

ARTICLE X

COVENANTS OF COMPANY

Section 10.01. Payment of Principal and Interest on Securities.

Subject to the provisions of Article XIII hereof, the Company shall promptly pay the principal or Prepayment Price of and interest on, and the Purchase Price of, every Security on the date, at the place and in the manner provided herein and in the Securities according to the true intent and meaning thereof. Prior to 11:00 A.M., New York City time, on each Interest Payment Date, prepayment date, Optional Tender Date, Management Change Tender Date or the Maturity Date, the Company shall have deposited with the Paying Agent money, in funds immediately available on such date, sufficient to make cash payments, if any, due on such Interest Payment Date, prepayment date, Optional Tender Date, Management Change Tender Date or the Maturity Date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Owners on such Interest Payment Date, prepayment date, Optional Tender Date, Management Change Tender Date or the Maturity Date, as the case may be.

Section 10.02. Maintenance of Existence; Mergers and Consolidations.

The Company shall maintain its existence as a limited liability company validly existing and in good standing under the laws of the State of Maryland.

The Company covenants and agrees that it shall not:

(a) merge into or consolidate with any person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case a Majority of Owners' consent;

(b) fail to preserve its existence as a Person, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of a Majority of the Owners, amend, modify, terminate or fail to comply with the provisions of the Company's articles of organization, operating agreement or similar organizational documents, as the case may be, as the same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would

adversely affect the ability of the Company to perform its obligations hereunder, under the Securities or under the other Financing Documents;

(c) commingle its assets with the assets of any of its general partners, members, shareholders, affiliates, principals or of any other person;

(d) fail to maintain its records, books of account and bank accounts separate and apart from those of the Related Entities;

(e) enter into any contract or agreement with any Controlling Entity, except upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with third parties other than any Controlling Entity or are more favorable to the Company or are otherwise consistent with the Company's current business practices in regards to Controlling Entities;

(f) seek the dissolution or winding up in whole, or in part, of the Company;

(g) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any Related Entity or any other Person;

(h) fail to file its own tax returns;

(i) fail either to hold itself out to the public as a legal person separate and distinct from any other person or to conduct its business solely in its own name in order not to mislead others as to the identity with which such other party is transacting business; or

(j) engage in any business other than (A) the acquisition, construction, development, sale, or management of continuing care retirement communities, except as related to the business of acquiring, constructing, developing, selling or managing continuing care retirement communities, (B) providing development, construction management, consulting and other related services to The Erickson Foundation, Inc. or Retirement Living TV, LLC, (C) the management of electronic medical records throughout the country for its communities and hospitals, physicians and other medical facilities unrelated to an Erickson community and (D) any line of business that is related to the current lines of business of the Company

Section 10.03. Distributions. The Company covenants and agrees that:

(a) Except for Tax Distributions (which may be made without restriction) and Sale Distributions, no Distribution shall be made if:

(i) the aggregate value of all such Distributions (except for any payment or funding on account of the Growth Participation Plan, Tax Distributions and Sale Distributions) consummated during any twelve (12) month period would exceed \$20,000,000; provided, however, that the \$20,000,000 limitation specified herein will be increased by \$5,000,000 for every \$50,000,000 that the Company's cash and cash equivalents for such twelve (12) month period exceed the Distribution Covenant Amount,

(ii) such Distribution would cause the Company to have cash and cash equivalents less than the Required Liquidity Amount, or

(iii) if an Event of Default under the Indenture has occurred and is continuing.

(b) The Company shall have the right, in connection with the sale of a Project, to transfer its interest in a Landowner, including, if applicable, as a redemption or a distribution to an Operator or to a Related Entity (a "Sale Distribution").

(c) The Company shall deliver to the Trustee on or before June 1, in each year, a Certificate setting forth the Distributions made, if any, in the immediately preceding twelve-month period and stating compliance with the provisions of this Section and Section 10.05.

Section 10.04. Compliance with Laws.

The Company shall conduct its affairs and carry on its business and operations in such manner as to comply with any and all applicable laws of the State and the United States and duly observe and conform to all valid orders, regulations or requirements of any government authority relative to the conduct of its business and the ownership of its property; provided, nevertheless, that nothing in this Indenture shall require it to comply with, observe and conform to any such law, order, regulation or requirement of any governmental authority so long as the validity thereof shall be contested in good faith.

Section 10.05. Liquidity.

The Company will at all times maintain cash and cash equivalents equal to the sum of \$15,000,000 plus the greater of the following:

(a) an amount needed to satisfy the highest level of liquidity required under any liquidity covenant contained in documentation relating to the Senior Company Revolver; or

(b) the sum of \$6,000,000 per Project for the first four (4) Projects under development by the Company and \$7,500,000 for each additional Project under development by the Company; provided, however, that the foregoing requirement shall only apply with respect to a Project from the date of commencement of construction of the first residential building of such Project and continuing until two neighborhoods have been completed by the Company; and, provided, further, that the foregoing requirement shall not apply to any Project that is sold by the Company following the date hereof.

The Company's required amount of cash and cash equivalents specified above is hereby referred to herein as the "Required Liquidity Amount." For purposes of determining compliance with this Section 10.05, the Company may include in "cash and cash equivalents" amounts drawn by the Company under the Senior Company Revolver.

Section 10.06. New Projects; Additional Investments.

The Company shall not acquire, construct, or develop new Projects (or land therefor) or authorize a Related Entity to acquire, construct, or develop a new Project (or land therefor) if at

the time such new Project (or land therefor) is to be acquired, constructed, or developed the Company's cash and cash equivalents are less than the Required Liquidity Amount or an Event of Default has occurred and is continuing. The Company may at any time invest additional sums of money with respect to a Project if such additional investment is necessary in order to satisfy conditions to funding of a Project Financing or to avoid, remedy or prevent the continuance of a default with respect to such Project Financing. For purposes of this Section 10.06, "develop" means to purchase land. Nothing in this Section shall be construed to prohibit the Company from acquiring, constructing or developing additional buildings or neighborhoods at an existing Project.

Section 10.07. Permitted Indebtedness.

(a) The Company shall not incur or permit to exist any Indebtedness, except:

- (i) Completion Guarantees;
- (ii) Purchase Deposit Refund Guarantees;
- (iii) Project Guarantees;
- (iv) the Senior Company Revolver and any refinancing thereof;
- (v) the Existing Building Loan, the Office Construction Loan and a financing to purchase furniture and fixtures in the new office building of the Company and any refinancings of any of the foregoing;
- (vi) Parity Debt;
- (vii) Subordinated Debt;
- (viii) Indebtedness existing as of August 31, 2007;
- (ix) Indebtedness incurred in connection with the acquisition of an airplane in an amount not to exceed \$15,000,000 and any refinancing thereof; and
- (x) additional Indebtedness incurred in the ordinary course of its business, consistent with the Company's prior practices.

(b) With respect to Indebtedness described in subsections 10.07(a)(iii), 10.07(a)(iv), 10.07(a)(v), 10.07(a)(vi), 10.07(a)(vii) and 10.07(a)(ix), the Company may not incur, increase or modify such Indebtedness if (i) an Event of Default has occurred and is continuing, or (ii) the Company does not have, or will not have after the incurrence, increase or modification of such additional Indebtedness, cash and cash equivalents at least equal to the Required Liquidity Amount. Notwithstanding the foregoing, (i) Senior Indebtedness described in subsections 10.07(a)(iii), 10.07(a)(iv) and 10.07(a)(v) may be increased or modified, without restriction, if such change is necessary in order to satisfy conditions to funding of such Senior Indebtedness, or to avoid, remedy or prevent the continuance of a default with respect to any Senior Indebtedness, (ii) Senior Indebtedness described in 10.07(a)(vi), 10.07(a)(vii) and

10.07(a)(ix) may be modified (but the principal amount may not be increased) if such modification is necessary in order to avoid, remedy or prevent the continuance of a default with respect to any Senior Indebtedness, and if such modification is not, in the Company's reasonable opinion, adverse to the Owners of the Securities, and (iii) lines of credit established under Senior Indebtedness described in 10.07(a)(iv), 10.07(a)(v) and 10.07(a)(ix) may be drawn on to the stated maximum principal amount of such facility without restriction.

Section 10.08. Loans.

The Company shall not make loans to Mr. John C. Erickson, Nancy Erickson, Controlling Entities, Controlled Entities or any family members of Mr. John C. Erickson, except advances necessary in order to satisfy conditions to funding of a Project Financing or to avoid, remedy, or prevent the continuance of, a default with respect to such Project Financing.

Section 10.09. Management.

(a) The Company shall provide written notice (the "Management Change Notice") to the Trustee and the Remarketing Agent within 15 calendar days following the occurrence of any of the following events (each, a "Management Change"): (i) John C. Erickson and the members of his immediate family (including his spouse, children and siblings) cumulatively own directly and indirectly less than 51% of the Company, (ii) the death or resignation of John C. Erickson as Chairman and Chief Executive Officer of the Company, or (iii) forty percent (40%) or more of the Presidents and Executive Vice Presidents of the Company shall have resigned or been replaced within a twelve-month period.

(b) The Management Change Notice shall specify:

(i) in the event of a change described in Section 10.09(a)(iii), the names of the Presidents or Executive Vice Presidents that have been replaced or have resigned within the relevant twelve month period;

(ii) in the event of a change described in Section 10.09(a)(ii) or (iii), the names and background of any newly hired Presidents or Executive Vice Presidents and an indication of whether each such President or Executive Vice President is to fill the position on a temporary or permanent basis; and

(c) in the event of a change described in Section 10.09(a)(i), a statement showing the ownership of the Company following such management change.

Section 10.10. Dividend and Other Payment Restrictions Affecting Related Entities.

The Company shall not, and shall not permit any Related Entity to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction (other than the Permitted Encumbrances described below) on the ability of any Related Entity to:

(a) pay dividends or make any other distributions to the Company or any Related Entity on its capital stock, partnership interest, membership interest or with respect to any other interest or participation in, or measured by, its profits, or

(b) pay any Indebtedness owed to the Company or any Related Entity, or

(c) except as permitted by Section 10.08, make loans or advances to the Company or any Related Entity, or

(d) sell, lease or transfer any of its properties or assets to the Company or any Related Entity.

"Permitted Encumbrances" means encumbrances or restrictions now or hereafter existing under or by reason of: (a) Senior Indebtedness; (b) this Indenture and the Securities; (c) applicable law; (d) Indebtedness assumed by the Company or any Related Entity in conjunction with the acquisition of a Related Entity or a Project (including land therefor) as in effect at the time of such acquisition (except to the extent such Indebtedness was incurred in connection with or in contemplation of such acquisition, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the person, so acquired), provided that, such Indebtedness would be permitted by the terms of this Indenture to be incurred; (e) customary non-assignment provisions in leases entered into in the ordinary course of business and consistent with past practices of the Company or such Related Entity; or (f) purchase money obligations for property acquired in the ordinary course of business that impose restrictions on the Company or Related Entities ability to sell, lease or transfer any of their properties or assets.

Section 10.11. Insurance.

The Company shall provide, or cause to be provided, insurance (including appropriate self-insurance) against loss or damage of the kinds customarily insured against by Persons similarly situated and owning like properties, including, but not limited to, fire, public liability, business interruption and other insurance, with reputable insurers or with the government of the United States of America or an agency or instrumentality thereof, in such amounts with such deductibles and by such methods as shall be determined in good faith by the Company to be appropriate.

Section 10.12. Company Books and Records; Audits; Reports.

The Company covenants to keep accurate records and books of account in accordance with generally accepted accounting principles consistently applied and to have its financial statements examined annually by an Accountant. The Trustee shall maintain copies of any reports, certificates or documents delivered by the Company to the Trustee under this Indenture at its principal office and shall make such reports, certificates and documents available for inspection at its principal office upon any Owner's reasonable request. The Company will provide to the Trustee, and to each Owner who shall have filed a written request therefor with the Company, the following documents:

(a) within 48 days after the close of each quarter, unaudited quarterly financial statements of the Company, accompanied by a brief description of the Company's business and operations; and

(b) within 125 days of the close of each Fiscal Year, audited financial statements of the Company, accompanied by (i) the statement of such Accountant that in the course of its audit of the Company nothing has come to the Accountant's attention to lead it to believe that any Event of Default exists hereunder or, if that is not the case, specifying such default or possible default, and (ii) the Certificate of an Authorized Company Representative that no Event of Default exists hereunder or, if that is not the case, a statement specifying such default or possible default; and

(c) within 125 days of the close of each Fiscal Year, a statement describing the ownership of the Company, the name of the chief executive officer of the Company and the names of the members of the board of directors of the Company, and such other information pertaining to the operations of the Company and the Related Entities as may be reasonably requested by a Majority of Owners; and

(d) within 48 days after the close of each quarter, an update of the information set forth under the heading "Management's Discussion on Operations and Cash Flows" contained in the Private Placement Memorandum related to the Series 2007 Securities dated November 1, 2007.

Section 10.13. Accounting Methods and Fiscal Year.

The Company shall not adopt, permit or consent to any change in accounting practices of the Company other than as required by generally accepted accounting principles and will not adopt, permit or consent to any change in its established Fiscal Year.

Section 10.14. Further Assurances.

The Company covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions required to be performed by it and contained in this Indenture, and in any and every Security executed and delivered hereunder. The Company covenants that it shall from time to time execute and deliver such further instruments and take such further action as may be requested of the Company by the Trustee, if such request is reasonable and is required to carry out the purpose of this Indenture.

Section 10.15. Compliance Certificate; Notice of Default.

The Company shall deliver to the Trustee, within ninety (90) calendar days after the end of each fiscal year of the Company, a Certificate stating whether or not the signatory to such Certificate knows of any Default or Event of Default by the Company in performing any of its obligations under this Indenture or the Securities. If such signatory does know of any such Default or Event of Default, then such Certificate shall describe the Default or Event of Default and its status. Upon the Company becoming aware of the occurrence of any Default or Event of Default, the Company shall give prompt written notice to the Trustee of such Default or Event of Default, and any remedial action proposed to be taken.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

THE PROVISIONS OF THIS ARTICLE ARE SUBJECT TO THE PROVISIONS OF ARTICLE XIII (SUBORDINATION).

Section 11.01. Events of Default Defined.

Each of the following shall be an Event of Default hereunder:

(a) payment of any installment of interest on, principal, or the Purchase Price of, the Securities is not made when the same becomes due and payable; or

(b) either (i) the failure to pay, when due, an amount in respect of Senior Indebtedness or in respect of any Parity Debt of the Company (so long as the balance of such Parity Debt exceeds \$500,000) and such failure continues beyond any applicable grace or cure period or is not waived by the holder thereof; or (ii) the acceleration by the holder thereof of Senior Indebtedness or any Parity Debt of the Company (so long as the balance of such Parity Debt exceeds \$500,000); or

(c) an Event of Bankruptcy shall occur, and, in the event of a filing of an involuntary case in bankruptcy under the Bankruptcy Code or the commencement of a proceeding under any other applicable law concerning bankruptcy, insolvency or reorganization against the Company, such petition or proceeding shall remain undismissed or unstayed for a period of 90 days; or

(d) the cash and cash equivalents of the Company are less than the Required Liquidity Amount for a period of 90 consecutive days or more; or

(e) failure by the Company to observe or perform any covenant, condition or agreement on its part to be observed or performed under this Indenture, other than as referred to in (a) or (d) above, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied and stating that such notice is a "Notice of Default" hereunder, is given by the Trustee or a Majority of Owners; provided, however, that such period shall be extended if corrective action is instituted within such period and is being diligently pursued until the default is remedied as certified by the Company in a Certificate signed by an Authorized Company Representative; or

(f) there shall be a material breach of warranty made herein by the Company as of the date it was intended to be effective and the breach is not cured for a period of 30 days after written notice, specifying such breach and requesting that it be remedied and stating that such notice is a "Notice of Default" hereunder, is given by the Trustee to the Company; provided, however, that such period shall be extended if corrective action is instituted within such period and is being diligently pursued until the breach is remedied as certified by the Company in a Certificate signed by an Authorized Company Representative and delivered to the Trustee.

Section 11.02. Acceleration of Maturity.

(a) Upon the happening of any Event of Default under Section 11.01(a) or (b), then in every such case the Trustee may, and upon the written request of a Majority of Owners, shall, by a notice in writing to the Company, declare the principal of all of the Outstanding Securities to be due and payable. Upon the giving of such notice of declaration, such principal, and all accrued and unpaid interest thereon, shall become and be immediately due and payable, anything in the Securities or in this Indenture to the contrary notwithstanding.

(b) Upon the happening of any Event of Default under Section 11.01(c), then, ipso facto, the principal of all of the Outstanding Securities, and all accrued and unpaid interest thereon, shall be immediately due and payable without notice to the Company or any other person or other action, anything in the Securities or in this Indenture to the contrary notwithstanding.

(c) Upon the happening and continuance of any Event of Default under Section 11.01(d) or Section 11.01(e) or Section 11.01(f) then and in every such case the Trustee may, and upon the written request of a Majority of Owners, shall, by a notice in writing to the Company, declare the principal of all of the Outstanding Securities to be due and payable. Upon the giving of notice of such declaration, such principal, and all accrued and unpaid interest thereon, shall become and be immediately due and payable, anything in the Securities or in this Indenture to the contrary notwithstanding.

(d) Intentionally Deleted.

(e) At any time after the principal of the Securities shall have been so declared to be due and payable pursuant to Section 11.02(a), (b) or (c) above, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such Event of Default, or before the completion of the enforcement of any other remedy under this Indenture, the Trustee, by written notice to the Company, shall annul or rescind such declaration and its consequences if: (i) monies shall have accumulated in the Debt Service Fund sufficient to pay all arrears of interest, if any, upon all of the Outstanding Securities (except the interest accrued on such Securities since the last Interest Payment Date) and the principal of all matured Securities (except the principal of any Securities not due and payable by their terms) or, if applicable, the Purchase Price of the Securities; (ii) monies shall have accumulated and be available sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee; and (iii) every other Event of Default known to the Trustee in the observance or performance of any covenant, condition or agreement contained in the Securities or in this Indenture or any of the other Financing Documents (other than an Event of Default in the payment of the principal of such Securities then due only because of a declaration under this Section) shall have been remedied to the satisfaction of the Trustee or waived by a Majority of Owners. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 11.03. Enforcement.

(a) For so long as any Senior Indebtedness is Outstanding, the Trustee may not take any enforcement action under this Indenture, except as permitted by Sections 11.03(d) and (e) below and Article XIII of this Indenture.

(b) If any Event of Default occurs, the Trustee may proceed, and upon the written request of a Majority of Owners, shall proceed, to protect and enforce its rights and remedies and the rights of the Owners under this Indenture by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant contained herein or in aid of execution of any power herein granted, or for the enforcement of any proper legal or equitable remedy as the Trustee shall deem most effectual to protect and enforce such rights.

(c) In the enforcement of any remedy under this Indenture, the Trustee shall be entitled to sue for, enforce payment of, and receive, any and all amounts then or during any Event of Default becoming, and at any time remaining, due on the Securities or otherwise under any of the provisions of this Indenture or of the Securities, with interest on overdue payments at the Default Rate, together with any and all costs and expenses of collection and of all proceedings hereunder and under such Securities, without prejudice to any other right or remedy of the Trustee or the Owners and to recover and enforce any judgment or decree but solely as provided herein and in the Securities and from the sources and monies provided herein and in the Securities for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect in any manner provided by law the monies adjudged or decreed to be payable. If an Event of Default specified in Section 11.01(i) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount due with respect to the Securities, including any unpaid and accrued interest, and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

(d) Regardless of whether any Senior Indebtedness is then Outstanding, the Trustee shall have the right to file suit against the Company to enjoin any violation or potential violation of the covenants set forth in Sections 10.02, 10.03, 10.06, 10.07, 10.08, and 10.10. In addition the Trustee shall have the right to seek specific performance of the Company's obligations set forth in Section 10.12.

(e) Nothing contained in this Indenture shall prevent the Trustee or the Owners, in a liquidation or dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property, in an assignment for the benefit of creditors or any marshalling of the Company's assets and liabilities, from filing one or more proofs of claim in connection with the amounts due under or with respect to this Indenture and the Securities.

Section 11.04. Priority of Payments following Default.

If an Event of Default occurs and the monies held by the Trustee under this Indenture (other than monies then held or set aside under this Indenture for the payment of any Securities

at the Maturity Date or on any prepayment date that have not been presented for payment) shall not be sufficient to pay all charges, compensation, expenses, disbursements, advances and liabilities then due to the Trustee (including, without limitation, the fees and expenses of any counsel to the Trustee) and the principal of and interest on the Securities as the same become due and payable (either by their terms or by acceleration of maturity under the provisions of Section 11.02), such monies together with any monies then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Article or otherwise, after the payment of all charges, compensation, expenses, disbursements, advances and liabilities then due to the Trustee, shall be applied by the Trustee as follows:

(a) Unless the principal of all the Securities shall be due and payable, all such monies shall be applied:

FIRST: to the payment to the persons entitled thereto of the interest then due on the Securities and, if the amount available shall not be sufficient to pay in full all such interest, then to the payment of such interest, ratably, to the persons entitled thereto, without any discrimination or preference;

SECOND: to the payment to the persons entitled thereto of the unpaid principal then due on any of the Outstanding Securities in the order of the due dates for such payments, with interest upon such principal from the respective dates upon which such amounts shall have become due and payable (whether upon proceedings for prepayment or otherwise), and, if the amount available shall not be sufficient to pay in full the principal due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of interest due on such date, and then to the payment of such principal, ratably, according to the amount due on such date, to the persons entitled thereto, without any discrimination or preference; and

THIRD: to the payment of the interest on and the principal of the Securities as the same become due and payable (whether upon proceedings for prepayment or otherwise).

(b) If the principal of all the Securities shall have become due and payable, either by their terms or by a declaration of acceleration, all such monies shall be applied to the payment of the principal and interest then due and unpaid upon the Outstanding Securities, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any such Security over any other such Security, pro rata according to the amounts due respectively for principal and interest, to the persons entitled thereto, without any discrimination or preference.

Whenever monies are to be applied by the Trustee pursuant to the provisions of this Section, such monies shall be applied by the Trustee at such times, and from time to time, as the Trustee in its sole discretion determines, having due regard to the amount of such monies available for application and the likelihood of additional monies becoming available for such application in the future. The setting aside of such monies in trust for the benefit of all Owners of the Outstanding Securities shall constitute proper application by the Trustee, and the Trustee shall incur no liability whatsoever to any Owners or to any other person for any delay in

applying any such monies, so long as the Trustee acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Indenture as may be applicable at the time of application by the Trustee. Whenever the Trustee exercises such discretion in applying such monies, it shall fix the date (which shall be an Interest Payment Date unless the Trustee deems another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal of the Securities paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date. The Trustee shall not be required to make payment to the Owner of any Security unless such Security is presented to the Trustee for appropriate endorsement.

Section 11.05. Effect of Discontinuance of Proceedings.

In case any proceedings taken by the Trustee or the Owners on account of any default in respect of the Securities shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Owners, then and in every such case the Trustee and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been taken.

Section 11.06. Majority of Owners May Control Proceedings.

Anything in this Indenture to the contrary notwithstanding, the Majority of Owners shall have the right (subject to the provisions of Section 12.03(m) and Article XIII), by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee under this Indenture, provided that such direction shall not be otherwise than in accordance with law or the provisions of this Indenture, and that the Trustee shall have the right to decline to follow any such direction that, in the opinion of the Trustee, conflicts with law or this Indenture, is unduly prejudicial to the rights of Owners or would involve the Trustee in any liability (including in its individual capacity) unless the Trustee is offered indemnity reasonably satisfactory to it; *provided*, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 11.07. Restrictions upon Action by Individual Owners.

No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder or for any other remedy hereunder unless (i) such Owner previously shall have given to the Trustee written notice of the Event of Default on account of which such suit, action or proceeding is to be instituted, (ii) a Majority of Owners shall have made written request to the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted by this Indenture or to institute such action, suit or proceeding in its or their name, and (iii) there shall have been offered to the Trustee security and indemnity acceptable to the Trustee against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions

precedent to the execution of the powers and trusts of this Indenture or to any other remedy hereunder; provided, however, that notwithstanding the foregoing provisions of this Section and without complying therewith, a Majority of Owners may institute any such suit, action or proceeding in their own names for the benefit of all Owners.

It is understood and intended that, except as otherwise provided above, no one or more Owners shall have any right in any manner to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all Owners of the Outstanding Securities, and that any individual right of action or other right given by law to one or more of such Owners is restricted by this Indenture to the rights and remedies herein; provided, however, that nothing herein shall affect or impair the right of any Owner of any Security to enforce payment of the principal of or interest on such Security at the time and place, from the source and in the manner expressed herein and in the Securities.

Section 11.08. Actions by Trustee.

All rights of action under this Indenture or under any of the Securities enforceable by the Trustee may be enforced by it without the possession of any of such Securities or the production thereof at the trial or other proceeding relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of all Owners subject to the provisions of this Indenture.

Section 11.09. No Remedy Exclusive.

No remedy herein conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder (except as restricted hereunder) or now or hereafter existing at law or in equity or by statute.

Section 11.10. No Delay or Omission Construed as a Waiver; Waiver of Default.

No delay or omission of the Trustee or any Owners to exercise any right or power accruing upon any Event of Default shall impair any such right or power, nor shall any such delay or omission be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given by this Article to the Trustee and the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient.

Subject to Sections 11.02 and 14.02, a Majority of Owners may, by notice to the Trustee, with respect to the Securities, waive any default that shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Indenture or before the completion of the enforcement of any other remedy under this Indenture; but no such waiver shall extend to or affect any other existing or any subsequent default or impair any rights or remedies consequent thereon.

Section 11.11. Notice of Default.

The Trustee shall mail to all Owners of Securities written notice of the occurrence of any continuing Event of Default as provided in Section 12.02. The Trustee shall not, however, be subject to any liability to the Company or any such Owner by reason of its failure to mail any notice required by Section 12.02.

ARTICLE XII

THE TRUSTEE

Section 12.01. Certain Duties and Responsibilities of Trustee.

(a) The Trustee accepts the trusts hereby created and agrees to perform the duties herein required of it upon the terms and conditions hereof. The Trustee shall have the right, power and authority, at all times, to do all things not inconsistent with the express provisions of this Indenture which it may deem necessary or advisable in order to: (i) enforce the provisions of this Indenture, (ii) take any action with respect to any Event of Default, (iii) institute, appear in or defend any suit or other proceeding with respect to an Event of Default, or (iv) protect the interests of the Owners of any Outstanding Securities.

The Trustee shall be responsible only for performing those duties of the Trustee specifically provided for herein and no implied duties or liabilities shall be read into this Indenture against the Trustee. In addition to the duties set forth above the Trustee shall:

(i) hold all sums delivered to it by the Company for the payment of principal or Prepayment Price of and interest on the Securities in trust for the benefit of the Owners as specified herein, until such sums shall be paid to such Owners or otherwise disposed of as herein provided; and

(ii) keep such books and records with respect to the Securities as shall be consistent with prudent industry practice (including specifically the Security registration books) at its designated principal office and make such books and records available for inspection by the Company and the Remarketing Agent at all reasonable times.

(b) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and, except as provided in the next succeeding sentence in respect of the period during the continuance of an Event of Default, the Trustee shall not be liable for any action reasonably taken or omitted to be taken by it in good faith and believed by it in good faith to be within the discretion or power conferred upon it hereby, or be responsible other than for its own negligence or willful misconduct. In case an Event of Default has occurred and is continuing of which the Trustee has been notified as provided in Section 12.03(h) or of which it is deemed to have notice pursuant to such Section, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee of liability for its own negligent action, its own negligent failure to act or its own willful misconduct, or for a breach of its obligations hereunder, except that

(i) this subsection shall not be construed to limit the effect of subsection (a) or (b) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by its officers, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any direction of a Majority of Owners permitted to be given by them under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity, satisfactory to the Trustee, against such risk or liability is not assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 12.02. Notice if Default Occurs.

Within 45 days after the occurrence of any Event of Default hereunder of which the Trustee has been notified as provided in Section 12.03(h) or of which it is deemed to have notice pursuant to such Section, the Trustee shall give to the Owners notice of such Event of Default hereunder known to the Trustee, unless such Event of Default shall have been cured or waived; provided, however, that, in the case of an Event of Default of the character described in Section 11.01(d), (e) or (f) the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interest of the Owners; and provided, further, that in the case of any Event of Default of the character described in Section 11.01(d), (e) or (f) no such notice to Owners shall be given until at least 30 days after the occurrence thereof.

Section 12.03. Certain Rights of Trustee.

Except as otherwise provided in Section 12.01:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, telephone call, facsimile transmission, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed, made or presented by the proper party or parties and may accept and rely upon the same as conclusive evidence of the truth and accuracy of the statements and opinions contained therein;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a writing signed by an Authorized Company Representative, and any resolution of the Company may be sufficiently evidenced by a copy of such resolution certified by an officer of the Company;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may request and, in the absence of bad faith on its part, rely upon a Certificate of an Authorized Company Representative and/or an opinion of counsel;

(d) the Trustee may consult with counsel and the written advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Owners pursuant to this Indenture, unless the Company or such Owners shall have offered to the Trustee security or indemnity acceptable to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled, upon reasonable notice and during regular business hours, and subject further to the Company's safety and confidentiality requirements, to examine the books, records and premises of the Company or the Company personally or by agent or attorney;

(g) the Trustee may employ or retain such counsel, accountants, appraisers, agents, custodians or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and shall not be responsible for any misconduct or negligence on the part of any of them if employed or retained with reasonable care, and the rights privileges, protections, immunities and benefits given to the Trustee hereunder are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder;

(h) the Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder unless a Responsible Officer of the Trustee shall have received written notification at the Principal Office of the Trustee, and such notice references the series of Securities and this Indenture, or obtained actual knowledge thereof, and in the absence of such notice or actual knowledge, the Trustee may conclusively assume that there is no Event of Default; provided, however, that the Trustee shall be required to take and be deemed to have notice of its failure to receive the monies necessary to make payments when due of the interest on, principal, or the Purchase Price of, the Securities;

(i) except for information provided by the Trustee concerning the Trustee for such purposes, the Trustee shall have no responsibility with respect to any information in any offering memorandum or other disclosure material distributed with respect to the Securities, and the Trustee shall have no responsibility for compliance with securities laws in connection with issuance and sale or resale of the Securities;

(j) in the event the Trustee shall receive inconsistent or conflicting requests and indemnity from two or more groups of Owners, each representing less than a Majority of Owners, the Trustee, in its sole discretion, may determine what action, if any, shall be taken;

(k) except as otherwise expressly provided by the provisions of this Indenture, the Trustee shall not be obligated and may not be required to give or furnish any notice, demand, report, request, reply, statement, advice or opinion to the Owner of any Security or to the Company or any other Person, and the Trustee shall not incur any liability for its failure or refusal to give or furnish same unless obligated or required to do so by express provisions hereof;

(l) the Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture;

(m) notwithstanding anything to the contrary contained in this Indenture, the Trustee shall be under no obligation to institute any suit, or to undertake any proceeding under this Indenture, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays and counsel fees and other reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct;

(n) except with respect to Section 11.01(a), the Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article X. Delivery of reports, information and documents to the Trustee under Article X is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely on Officer's Certificates); and

(o) in no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; provided, however, that the Trustee's conduct does not constitute willful misconduct.

Section 12.04. Not Responsible for Recitals or Issuance of Securities, etc.

(a) The recitals contained herein or in the Securities, except the certificate of authentication signed on behalf of the Trustee, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes

no representations as to the validity or sufficiency of this Indenture, except that the Trustee represents that said Indenture has been duly authorized, executed and delivered by the Trustee and represents that this Indenture constitutes a legal, valid and binding obligation of the Trustee in accordance with the terms hereof, except as its enforceability may be subject to (i) the exercise of judicial discretion in accordance with general equitable principles; and (ii) applicable liquidation, conservatorship, receivership, bankruptcy, insolvency, reorganization, moratorium, rearrangement and other similar laws for the relief of debtors generally heretofore or hereafter enacted to the extent that the same may be constitutionally applied. Further, the Trustee makes no representations as to the validity or sufficiency of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or, upon disbursement from the Funds created herein, the proceeds thereof. The Trustee shall have no duty to perform, confirm, review or verify any calculations or determinations made hereunder (including, without limitation, determinations of interest or interest rates).

(b) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Securities, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof or thereof required as a condition of such action which is deemed desirable by the Trustee for the purpose of establishing the right of the Company to the authentication of any Securities, the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee.

Section 12.05. May Hold Securities.

The Trustee or any other agent of the Company, in its individual or any other capacity, may become the Owner of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee or such other agent.

Section 12.06. Money Held in Trust.

Except as provided in Section 6.06 hereof, all money held in any Debt Service Fund under any provision of this Indenture shall be held in trust for the benefit of the Owners but need not be segregated from other funds held in trust under this Indenture by the Trustee, but shall be segregated at all times from all funds of the Company or the Trustee not held by the Trustee under this Indenture. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise provided in this Indenture.

Section 12.07. Corporate Trustee Required; Eligibility.

Any Trustee appointed hereunder which shall be an entity organized and doing business under the laws of the United States of America or of any state that is either a trust company or a bank, authorized under such laws to exercise trust powers, having a combined capital, surplus and undivided profits of at least \$50,000,000, and subject to supervision or examination by federal or state authority. If at any time the Trustee shall cease to be eligible in accordance with

the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 12.08. Resignation and Removal of Trustee; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 12.09 of this Indenture unless such resignation occurs at any time after an Event of Default has occurred and the Trustee's compensation as described herein is not paid for a period of 30 days.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by a Majority of Owners, by a written request for removal delivered to the Company and the Trustee, or, provided that there is then no Event of Default, by written notice from the Company to the Trustee.

(d) If at any time:

(i) the Trustee shall cease to be eligible under Section 12.07 of this Indenture or under applicable law and shall fail to resign after written request therefor by the Company or by an Owner who has been a bona fide Owner for at least six months, or

(ii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (x) the Company may remove the Trustee, or (y) any Owner who has been a bona fide Owner for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company shall promptly appoint a successor Trustee. If within one year after the occurrence of such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee has not been appointed by the Company, a successor Trustee may be appointed by a Majority of Owners, and the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Owners and accepted appointment in the manner hereinafter provided, the Trustee or any Owner who has been a bona fide Owner for at least six months may, on behalf of himself and

all other Owners similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by causing to be mailed, at the expense of the Company, written notice of such event to the Owners. Each notice shall include the name of the successor Trustee and the address of its principal office.

(g) Notwithstanding any of the foregoing, no removal, resignation or termination of the Trustee shall take effect until a successor Trustee shall have been appointed.

The obligations of the Company to indemnify the Trustee and pay the fees and expenses of the Trustee as provided in this Indenture shall survive the removal, resignation or termination of the Trustee.

Section 12.09. Acceptance of Appointment by Successor Trustee.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and the retiring Trustee, an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges and expenses, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be eligible under this Article.

Section 12.10. Merger, Conversion, Consolidation or Succession to Business.

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such entity shall be otherwise eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Section 12.11. Fees, Charges and Expenses of Trustee.

The Company shall pay the Trustee from time to time such compensation for its services rendered hereunder as shall be agreed in writing, and the Company shall reimburse the Trustee for its actual out-of-pocket expenses (including reasonable fees and expenses of its counsel and agents) necessarily incurred in connection therewith, including (without limitation) the costs of

all notices required to be given to Owners. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust.

Section 12.12. Indemnity.

The Company shall indemnify the Trustee against any and all loss, liability, damage, claim or expense (including the reasonable fees and expenses of counsel and taxes other than those based upon the income of the Trustee) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the reasonable costs and expenses of defending itself against any claim (whether asserted by the Company, any Owner or any other Person) or liability in connection with the exercise or performance of any of its powers and duties hereunder. The Company need not pay for any settlement made without its consent. The Trustee shall notify the Company promptly of any claim for which it may seek indemnification. Failure by the Trustee to so notify the Company will not relieve the Company of its obligations hereunder. The Company will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable and documented fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through the Trustee's negligence, bad faith or willful misconduct.

To secure the Company's payment obligations in Sections 12.11 and 12.12, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except as otherwise required by law. Such lien will survive the satisfaction and discharge of this Indenture. When the Trustee incurs expenses or renders services after an Event of Default specified in Section 11.01(c) occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any applicable bankruptcy law.

ARTICLE XIII

SUBORDINATION

WITH RESPECT TO THE RIGHTS OF HOLDERS OF SENIOR INDEBTEDNESS, THIS ARTICLE XIII SUPERCEDES ALL OTHER PROVISIONS OF THIS INDENTURE.

Section 13.01. Agreement to Subordinate.

The Company agrees, and each Owner of the Securities by accepting a Security agrees, that the indebtedness evidenced by the Securities is subordinated in right of payment, to the extent and in the manner provided in this Article XIII, to the prior payment in full of all Senior Indebtedness and that this subordination is made for the benefit of the holders of Senior Indebtedness and such holders are made obligees and third party beneficiaries hereunder and they and/or each of them may enforce such provisions. Notwithstanding the foregoing, except as provided in Section 13.03 and 13.04 or otherwise provided for in accordance with the provisions

of this Indenture, regularly scheduled payments of principal and interest, the Purchase Price of, and the Prepayment Price of, the Securities may be made.

For the purposes of this Indenture, Senior Indebtedness shall not be deemed to have been paid in full and shall be deemed Outstanding until the holders of the Senior Indebtedness shall have indefeasibly received payment in full in cash of all Senior Indebtedness; provided that if any holder of Senior Indebtedness agrees to accept payment in full of such Senior Indebtedness for consideration other than cash, such holder shall be deemed to have indefeasibly received payment in full of such Senior Indebtedness. The provisions of this Article XIII shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Senior Indebtedness is rescinded or must otherwise be returned by any holder of Senior Indebtedness upon the insolvency, bankruptcy or reorganization of the Company or otherwise, all as though such payment had not been made.

The expressions "prior payment in full," "payment in full" and "paid in full" and any other similar term or phrase when used in this Article XIII with respect to Senior Indebtedness shall mean the payment in full of the principal of and premium, if any, and interest (including post-petition interest on such Senior Indebtedness, to the extent and only to the extent, that such post-petition interest is an allowed claim against the Company which is enforceable against the Company in a bankruptcy case under the Bankruptcy Code) and other amounts due on such Senior Indebtedness.

Section 13.02. Liquidation; Dissolution; Bankruptcy.

Upon any distribution to creditors of the Company in a liquidation or dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property, in an assignment for the benefit of creditors or any marshalling of the Company's assets and liabilities, (a) holders of all Senior Indebtedness shall first be entitled to receive payment in full of all amounts due or to become due thereon before any Owner of the Securities shall be entitled to receive any payment or distribution with respect to the principal of, or interest on, Prepayment Price of and Purchase Price of, the Securities (except that Owners of the Securities may receive securities of the Company that are subordinated to at least the same extent as the Securities to Senior Indebtedness and any notes, instruments or securities issued in exchange for Senior Indebtedness) and (b) until all Senior Indebtedness is paid in full, any distribution to which Owners of the Securities would be entitled but for this Article shall be made to holders of Senior Indebtedness (except that Owners of the Securities may receive securities that are subordinated to at least the same extent as the Securities to (x) Senior Indebtedness and (y) any notes, instruments or securities issued in exchange for Senior Indebtedness), as their interests may appear.

Nothing contained in this Article XIII shall prevent the Trustee or the Owners, in a liquidation or dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property, in an assignment for the benefit of creditors or any marshalling of the Company's assets and liabilities, from filing one or more proofs of claim in connection with the amounts due under or with respect to this Indenture and the Securities.

Section 13.03. Default On Senior Indebtedness.

No payment of principal or interest on, including the Prepayment Price or interest on or the Purchase Price of, or any additional amounts with respect to the Securities may be made, if a Responsible Officer of the Trustee has received written notice at its Principal Office ("Non Payment Notice") from the Company or any holder of Senior Indebtedness, no later than noon on the Business Day immediately preceding the date on which such payment is to be made, that either (i) any Senior Indebtedness of the Company was not paid when due and any applicable grace period with respect to such default has ended and such default has not been cured or waived, or (ii) the maturity of any Senior Indebtedness of the Company has been accelerated. In the event that the Company has delivered to the Trustee a sum of money for the payment of principal or interest on the Securities and a Responsible Officer of the Trustee receives a Non Payment Notice prior to such payment actually being made, the Trustee will use its reasonable best efforts to return such money to the Company. If the holder of Senior Indebtedness rescinds a default or acceleration in writing, the Company shall immediately so notify the Trustee at its Principal Office and provide the Trustee with each such holder's written rescission at its Principal Office, and payments of the principal of, interest on or Purchase Price of, and additional amounts which may become due and payable under the Securities and the Indenture, may thereafter be made unless and until a Responsible Officer of the Trustee receives another Non Payment Notice as described above.

Section 13.04. Prohibitions on Payment.

(a) No payment of principal or interest on, including the Prepayment Price or interest on or the Purchase Price of, or any additional amounts with respect to the Securities may be made, if a Responsible Officer of the Trustee has received written notice at its Principal Office ("Default Notice") from the Company or the Senior Revolver Lender, no later than noon on the Business Day immediately preceding the date on which such payment is to be made, that either (i) a default (without giving effect to any applicable grace or cure period) has occurred and is continuing under the Senior Company Revolver, or any such payment of principal, including the Prepayment Price or interest on or the Purchase Price of the Securities would cause a default under the Senior Company Revolver and that such default has not been cured or waived, or (ii) the maturity of the Senior Company Revolver, or any portion thereof, has been accelerated. In the event that the Company has delivered to the Trustee a sum of money for the payment of principal or interest on the Securities and a Responsible Officer of the Trustee receives a Default Notice prior to such payment actually being made, the Trustee will use its reasonable best efforts to return such money to the Company. If the Senior Revolver Lender rescinds a default or acceleration in writing, the Company shall immediately so notify the Trustee at its Principal Office and provide the Trustee with the Senior Revolver Lender's written rescission at its Principal Office, and payments of the principal of, interest on or Purchase Price of, and additional amounts which may become due and payable under the Securities and the Indenture, may thereafter be made unless and until a Responsible Officer of the Trustee receives another Default Notice as described above.

(b) No payment of the Prepayment Price may be made unless a Responsible Officer of the Trustee has received from the Company at its Principal Office a written statement from the Senior Revolver Lender stating that either (i) all credit commitments provided under the Senior

(c) prevent the Trustee or any Owner of the Securities from exercising its available remedies upon a default or Event of Default, subject to the rights of holders and owners of Senior Indebtedness to receive distributions and payments otherwise payable to Owners of the Securities, and subject to the restrictions contained in this Indenture.

If the Company fails because of this Article XIII to pay principal of or interest on or the Purchase Price of a Security on the due date, or the Prepayment Price on the prepayment date, such failure is still a default or Event of Default.

No right of any holder of any Senior Indebtedness established in this Article XIII shall at any time or in any way be prejudiced or impaired by any act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any failure by the Company to comply with the terms of this Indenture.

Section 13.08. Subordination May Not Be Impaired By Company.

No right of any holder of Senior Indebtedness to enforce the subordination of the indebtedness evidenced by the Securities shall be impaired by any act or failure to act by the Company or any holder of Securities or by the failure of the Company or any holder of Securities to comply with this Indenture.

The holders of Senior Indebtedness may increase, extend, renew, modify or amend the terms of Senior Indebtedness or any security (including any guarantees) therefor and release, sell or exchange such Indebtedness (including any guarantees) and otherwise deal freely with the Company, all without affecting the liabilities and obligations of the parties to this Indenture. No provision in any Supplemental Indenture which modifies this Article XIII or otherwise affects the superior position of the holders of the Senior Indebtedness shall be effective against the holders of Senior Indebtedness who have not consented thereto, in advance, in writing, which consent may be withheld in the sole and absolute discretion of the holders of the Senior Indebtedness.

Section 13.09. Distribution, Payment Or Notice To Representative.

Whenever a distribution or payment is to be made or a notice given to holders of Senior Indebtedness, the distribution or payment may be made and the notice given to their Representative.

Upon any payment or distribution of assets of the Company referred to in this Article XIII, the Trustee and the Owners of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction or upon any Certificate of such Representative or of the liquidating trustee or agent or other person making any distribution to the Trustee or to the Owners of the Securities for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XIII.

Section 13.10. Rights Of Trustee.

Notwithstanding the provisions of this Article XIII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment or distribution by the Trustee, and the Trustee and the paying agent may continue to make payments on the Securities, unless the Trustee shall have received by noon on the Business Day immediately preceding the date of such payment a Non Payment Notice as provided in Section 13.03. Only the Company, a holder of Senior Indebtedness or a Representative may give a Non Payment Notice.

The Trustee shall be entitled to rely on the delivery to it of written notice by a person representing such person to be a holder of Senior Indebtedness (or a trustee or agent on behalf of such holder) to establish that such notice has been given by a holder of Senior Indebtedness (or a trustee or agent on behalf of any such holder).

During any period in which the Company is acting as paying agent, the Company, as paying agent, shall be charged with knowledge of the existence of any facts that would prohibit the making of any payment or distribution hereunder immediately upon the happening of such fact.

The Trustee in its individual or any other capacity may hold Senior Indebtedness with the same rights it would have if it were not Trustee. The Trustee is entitled to all of the rights set forth in this Article XIII in respect of Senior Indebtedness at any time held by it to the same extent as any other holder of Senior Indebtedness, and nothing elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder. Any paying agent, any authenticating agent, any conversion agent, any security registrar and their successors may do the same with like rights.

Nothing in this Article XIII shall apply to the Trustee's rights under Sections 12.11 and 12.12 hereof.

Section 13.11. Authorization To Effect Subordination.

Each Owner by the Owner's acceptance thereof authorizes and directs the Trustee on the Owner's behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article XIII and appoints the Trustee to act as the Owner's attorney-in-fact for any and all such purposes. Without limiting the foregoing, each holder of Senior Indebtedness or Representative is hereby irrevocably authorized and empowered (in its own name or in the name of the Owners of the Securities or the Trustee or otherwise), but shall have no obligation, to demand, sue for, collect and receive every payment or distribution referred to in Section 13.02 above and give acquittance therefor and to file claims and proofs of claim and take such other action as it may deem necessary or advisable for the exercise or enforcement of any of the rights or interests of the holders or owners of the Senior Indebtedness hereunder.

Section 13.12. Remedies.

The rights and remedies of the Trustee and the Owners shall also be limited as provided in Article XI hereof.

Section 13.13. Amendments.

No amendment or modification of the provisions of this Article XIII shall be effective against the holders of Senior Indebtedness who have not consented thereto, in advance, in writing, which consent may be withheld in the sole and absolute discretion of each holder of Senior Indebtedness.

ARTICLE XIV

AMENDMENTS AND SUPPLEMENTS

Section 14.01. Amendments and Supplements Without Owners' Consent.

This Indenture may be amended or supplemented from time to time, without the consent of the Owners of the Securities, by a Supplemental Indenture authorized by a resolution of the Board of Directors of the Company, a certified copy of which shall be filed with the Trustee, for one or more of the following purposes:

(a) to add additional covenants of the Company or to surrender any right or power herein conferred upon the Company; or

(b) to cure any ambiguity or to cure, correct or supplement any defective (whether because of any inconsistency with any other provision hereof or otherwise) provision of this Indenture in such manner as shall not be inconsistent with this Indenture or to make any other provisions with respect to matters or questions arising under this Indenture, provided such action shall not adversely affect the interests of the Owners; or

(c) to provide or modify procedures permitting Owners to utilize an uncertificated system of registration for any Series of Securities or to appoint a Clearing Agent for any Series of Securities and provide for procedures relating to a Clearing System; or

(d) to modify, alter, amend, supplement or restate this Indenture in any and all respects necessary, desirable or appropriate in connection with the delivery to the Trustee of a letter of credit, liquidity facility, standby Security purchase agreement or other security arrangement obtained or provided by the Company; or

(e) to modify, alter, amend, supplement or restate this Indenture in any and all respects necessary, desirable or appropriate in order to satisfy the requirements of any rating service which may from time to time provide a rating on any series of Securities, or in order to obtain or retain such rating on any series of Securities as is deemed necessary by the Company and the Placement Agent; or

(f) to modify, alter, amend or supplement this Indenture in any other respect which is not adverse to the Owners of the Securities, or to qualify the Indenture under the Trust Indenture Act of 1939;

(g) to modify, alter, amend or supplement this Indenture in any and all respects necessary, desirable or appropriate in order to appoint a registrar or paying agent for the Securities; or

(h) to issue Additional Securities.

Section 14.02. Amendments With Owners' Consent.

Subject to the provisions of Section 13.12 hereof, this Indenture may be amended from time to time by a Supplemental Indenture approved by a Majority of Owners; provided, that (a) no amendment shall be made which affects the rights of some but less than all of the Owners of the Securities without the consent of a Majority of Owners of the Securities so affected, (b) except as expressly authorized hereunder, no amendment which alters the interest rates on any Securities, the Maturity Date, Interest Payment Dates or this Article XIV may be made without the consent of the Owners of all Securities affected thereby.

Section 14.03. Other Matters Relating to Amendments and Supplements.

The Trustee shall not be obligated to enter into or consent to any Supplemental Indenture which affects the rights, duties, liabilities and immunities of the Trustee under this Indenture or otherwise. Before the Company and the Trustee shall enter into any Supplemental Indenture pursuant to this Article XIV, there shall have been delivered to the Trustee an opinion of counsel stating that such Supplemental Indenture or amendment is authorized or permitted by this Indenture, complies with its terms, will, upon the execution and delivery thereof, be valid and binding upon the Company, as the case may be, in accordance with its terms subject to usual and customary exceptions for bankruptcy and creditor's rights, laws and equity. Upon the execution and delivery of any Supplemental Indenture pursuant to the provisions of this Article XIV, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Company, the Trustee and all Owners of the Securities then Outstanding shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments. In addition, no amendment or supplement to this Indenture shall become effective until signed by an Authorized Company Representative. Notice of any amendment or supplement to this Indenture shall be given by the Trustee to the Owners at least ten days prior to its effective date.

ARTICLE XV

SUBORDINATED DEBT

Section 15.01. Agreement to Subordinate.

The indebtedness evidenced by Subordinated Debt is subordinated in right of payment, to the extent and in the manner provided in this Article XV, to the prior payment in full of all Parity Debt and Senior Indebtedness. This subordination is made for the benefit of the holders of the Parity Debt and Senior Indebtedness and such holders are made obligees and third party beneficiaries hereunder and they and/or each of them may enforce such provisions. Regularly

scheduled payments of principal and interest, the purchase price of, and the prepayment price of, the Subordinated Debt may be made only if (i) no Event of Default has occurred or is continuing hereunder, and (ii) if such payment would neither cause an Event of Default nor cause the Company's cash and cash equivalents to fall below the Required Liquidity Amount.

For the purposes of this Article XV, Parity Debt and Senior Indebtedness shall not be deemed to have been paid in full and shall be deemed Outstanding until the holders of the Parity Debt and Senior Indebtedness shall have indefeasibly received payment in full in cash of all Parity Debt and Senior Indebtedness. The provisions of this Article XV shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Parity Debt or Senior Indebtedness is rescinded or must otherwise be returned by any holder of Parity Debt or Senior Indebtedness upon the insolvency, bankruptcy or reorganization of the Company or otherwise, all as though such payment had not been made.

The expressions "prior payment in full," "payment in full" and "paid in full" and any other similar term or phrase when used in this Article XV with respect to Parity Debt and Senior Indebtedness shall mean the payment in full of the principal of and premium, if any, and interest (including post-petition interest on such Indebtedness, to the extent and only to the extent, that such post-petition interest is an allowed claim against the Company which is enforceable against the Company in a bankruptcy case under the Bankruptcy Code) and other amounts due on such Indebtedness.

Section 15.02. Liquidation; Dissolution; Bankruptcy.

Upon any distribution to creditors of the Company in a liquidation or dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property, in an assignment for the benefit of creditors or any marshalling of the Company's assets and liabilities, (a) holders of all Senior Indebtedness shall first be entitled to receive payment in full of all amounts due or to become due thereon before any Owner of the Securities shall be entitled to receive any payment or distribution with respect to the principal of, or interest on, Prepayment Price of and Purchase Price of, the Securities (except that Owners of the Securities may receive securities of the Company that are subordinated to at least the same extent as the Securities to Senior Indebtedness and any notes, instruments or securities issued in exchange for Senior Indebtedness); (b) holders of all Parity Debt shall then be entitled to receive payment in full of all amounts due or to become due thereon before any holder of the Subordinated Debt shall be entitled to receive any payment or distribution with respect to the principal of, or interest on, prepayment price of and purchase price of, the Subordinated Debt (except that holders of the Subordinated Debt may receive securities that are subordinated to at least the same extent as the Subordinated Debt to Parity Debt and any notes, instruments or securities issued in exchange for Parity Debt); and (c) until all Senior Indebtedness and Parity Debt is paid in full, any distribution to which holders of Subordinated Debt would be entitled but for this Article shall be made to holders of Senior Indebtedness or holders of Parity Debt (subject to the provisions of Article XIII), as their interests may appear.

Nothing contained in this Article XV shall prevent the holders of Subordinated Debt, in a liquidation or dissolution of the Company or in a bankruptcy, reorganization, insolvency,

receivership or similar proceeding relating to the Company or its property, in an assignment for the benefit of creditors or any marshalling of the Company's assets and liabilities, from filing one or more proofs of claim in connection with the amounts due under or with respect to such Subordinated Debt.

Section 15.03. Default On Parity Debt or Senior Indebtedness.

No payment of principal or interest on, or any additional amounts with respect to any Subordinated Debt may be made, if (i) an Event of Default has occurred or is continuing hereunder, or (ii) such payment would either cause an Event of Default or cause the Company's cash and cash equivalents to fall below the Required Liquidity Amount.

Section 15.04. When Distribution Must Be Paid Over.

In the event that a holder of Subordinated Debt receives any payment of principal or interest with respect to such Subordinated Debt at a time when such payment is prohibited by Section 15.03 hereof, such payment shall be held by such holder of Subordinated Debt, in trust for the benefit of, and immediately shall be paid over and delivered to the Company, upon the written request of any holder of Senior Indebtedness or Parity Debt, for application to the payment of all Senior Indebtedness and Parity Debt (subject to the provisions of Article XIII) remaining unpaid to the extent necessary to pay all Senior Indebtedness and Parity Debt (subject to the provisions of Article XIII) in full in accordance with their terms, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness or Parity Debt (subject to the provisions of Article XIII).

Section 15.05. Notice By Company.

The Company shall promptly notify a Responsible Officer of the Trustee and the paying agent in writing of any facts known to the Company that would cause a payment of any principal or interest with respect to Subordinated Debt to violate this Article XV, but failure to give such notice shall not affect the subordination of Subordinated Debt as provided in this Article XV.

Section 15.06. Intentionally Deleted.

Section 15.07. Relative Rights.

Nothing in this Indenture shall impair as between the Company and the holders of Subordinated Debt, the obligation of the Company, which is absolute and unconditional, to pay principal of and interest on, Subordinated Debt in accordance with its terms.

No right of any holder of any Senior Indebtedness or Parity Debt established in this Article XV shall at any time or in any way be prejudiced or impaired by any act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any failure by the Company to comply with the terms of this Indenture.

Section 15.08. Subordination May Not Be Impaired By Company.

No right of any holder of Senior Indebtedness or Parity Debt to enforce the subordination of Subordinated Debt shall be impaired by any act or failure to act by the Company or any holder of Subordinated Debt or by the failure of the Company to comply with this Indenture.

The holders of Senior Indebtedness or Parity Debt may (subject to the provisions of Article XIII) increase, extend, renew, modify or amend the terms of Parity Debt or Senior Indebtedness or any security (including any guarantees) therefor and release, sell or exchange such Indebtedness (including any guarantees) and otherwise deal freely with the Company, all without affecting the liabilities and obligations of the parties to this Indenture.

Section 15.09. Intentionally Deleted.

Section 15.10. Intentionally Deleted.

Section 15.11. Authorization To Effect Subordination.

Each holder of Subordinated Debt authorizes and directs the Trustee on such holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article XV and appoints the Trustee to act as such holder's attorney-in-fact for any and all such purposes. Without limiting the foregoing, each holder of Senior Indebtedness or Representative and the Trustee (subject to the provisions of Article XIII (as between the Trustee and the holders of Senior Indebtedness)) is hereby irrevocably authorized and empowered, but shall have no obligation, to demand, sue for, collect and receive every payment or distribution referred to in Section 15.02 above and give acquittance therefor and to file claims and proofs of claim and take such other action as it may deem necessary or advisable for the exercise or enforcement of any of the rights or interests of the holders or owners of the Senior Indebtedness or Parity Debt hereunder.

Section 15.12. Remedies.

Except as provided in the second paragraph of Section 15.02, for so long as any Senior Indebtedness or Parity Debt is outstanding, holders of Subordinated Debt shall have no right whatsoever to (i) exercise any remedy under the Subordinated Documents (and otherwise available at law or in equity), (ii) bring or take any action against the Company or any of its property or any Related Entity to enforce any claim or claims under the Subordinated Documents or in connection with the Subordinated Debt, or (iii) sue upon or collect or receive payment of, and the Company agrees not to pay to the holders of Subordinated Debt, any such claim or claims, and the provisions of any of the Subordinated Documents providing for any remedies shall be of no force or effect.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

Section 16.01. Illegal, etc. Provisions Disregarded.

If any term or provision of this Indenture or the Securities or the application thereof for any reason or circumstances shall to any extent be held invalid or unenforceable, the remaining provisions or the application of such term or provision to persons and situations other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision hereof and thereof shall be valid and enforced to the fullest extent permitted by law.

Section 16.02. Notices and Other Communications.

Except as otherwise expressly provided herein, all notices, requests, consents, directions, demands or other communications required or authorized to be given to the Company or the Trustee, pursuant to this Indenture shall be in writing and shall be sent by certified mail, return receipt requested or overnight delivery, postage prepaid, or by facsimile transmission to the following address:

(a) If to the Company, to: Erickson Retirement Communities, LLC
701 Maiden Choice Lane
Baltimore, Maryland 21228
Attention: General Counsel
Telephone:
Telecopier:

(b) If to the Trustee, to: The Bank Of New York
101 Barclay Street, Floor 8 West
New York, NY 10286
Attention: Global Corporate Trust
Telephone: (212) 815-5360
Telecopier: (732) 667-9188

or to such other addresses as may from time to time be furnished to the parties, effective upon the receipt of notice thereof given as set forth above. Except as otherwise expressly provided herein, notices to be provided by the Trustee to the Owners shall be in writing and shall be sent by first class mail postage prepaid, to such Owners address as shown on the registration books of the Trustee as of the most recent Regular Record Date. Failure to deliver a notice or communication to an Owner or any defect in it shall not affect its sufficiency with respect to other Owners.

Any notice or communication shall be deemed to be duly given if made in writing and delivered: (a) by hand (in which case such notice shall be effective upon delivery); (b) by facsimile (in which case such notice shall be effective upon receipt of confirmation of good transmission thereof); or (c) by overnight delivery by a nationally recognized courier service (in which case such notice shall be effective on the Business Day immediately after being deposited

with such courier service), or (d) by first class mail (registered or certified, return receipt requested) (in which case such notice shall be effective five Business Days after being deposited in the mail, postage prepaid), in each case, to the recipient party's address or facsimile number, as applicable, set forth above. The Company or the Trustee by notice to the other may designate additional or different addresses or facsimile numbers for subsequent notices or communications. If a notice or communication is delivered in the manner provided above, it is duly given, whether or not the addressee receives it.

If the Company delivers a notice or communication to Owners, it shall deliver a copy to the Trustee at the same time. If the Trustee is required, pursuant to the express terms of this Indenture or the Securities, to deliver a notice or communication to the Owners, the Trustee shall also deliver a copy of such notice or communication to the Company.

All notices or communications shall be in writing.

Section 16.03. Governing Law.

This Indenture shall be governed, in all respects including validity, interpretation and effect by, and shall be enforceable in accordance with, the laws of the United States of America and of the State of Maryland.

Section 16.04. Successors and Assigns.

All the covenants, promises and agreements in this Indenture contained by or on behalf of the Company or by or on behalf of the Trustee shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 16.05. Headings and Subheadings for Convenience Only.

The table of contents and descriptive headings and subheadings in this Indenture are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 16.06. Counterparts.

This Indenture may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same instrument.

Section 16.07. Payments or Actions Due on Saturday, Sunday or other non-Business Days.

Unless otherwise indicated herein, in the event that an Interest Payment Date or any date on which any action is required to be taken hereunder or under the Securities is not a Business Day, then the required payment or action shall be made or taken on the next succeeding Business Day with the same force and effect as if such payment was made or other action taken on the designated date.

Section 16.08. Termination of the Company's Obligations Upon Cancellation of the Securities.

The obligations of the Company under this Indenture shall terminate when:

(a) all Securities theretofore authenticated and delivered (other than Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.07) have been delivered to the Trustee for cancellation; and

(b) the Company has paid or caused to be paid or made sufficient provision for payment of all other sums payable hereunder by the Company.

After the conditions set forth in (a) and (b) above have been satisfied, the Trustee, upon request, shall acknowledge in writing the discharge of the Company's obligations under this Indenture.

Section 16.09. No Recourse Against Others.

A director, officer, employee or member, as such, of the Company, shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Owner by accepting a Security, waives and releases all such liability. Such waiver and release are part of the consideration for issuance of the Securities.

IN WITNESS WHEREOF, the Company has caused this Indenture to be executed by a
Authorized Company Representative, and the Trustee has caused this Indenture to be executed
by one of its authorized officers, all as of the day and year first above written.

ERICKSON RETIREMENT COMMUNITIES,
LLC

By: _____ (SEAL)

Name:

Title:

THE BANK OF NEW YORK,
as Trustee

By: _____
Authorized Officer

EXHIBIT A

[FORM OF SECURITY]

[front of the Security]

THIS SECURITY IS A MASTER SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A CLEARING AGENT OR A NOMINEE OF A CLEARING AGENT OR A SUCCESSOR CLEARING AGENT. THIS SECURITY IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE CLEARING AGENT OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE CLEARING AGENT TO A NOMINEE OF THE CLEARING AGENT OR BY A NOMINEE OF THE CLEARING AGENT TO THE CLEARING AGENT OR ANOTHER NOMINEE OF THE CLEARING AGENT) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE CLEARING AGENT TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF THE CLEARING AGENT OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE CLEARING AGENT (AND ANY PAYMENT IS MADE TO THE CLEARING AGENT OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE CLEARING AGENT), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, THE CLEARING AGENT, HAS AN INTEREST HEREIN.

TRANSFERS OF THIS MASTER SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF THE CLEARING AGENT OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS MASTER SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE.

THE SECURITIES HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES OR BLUE SKY LAWS OF ANY STATE AND, UNLESS SO REGISTERED, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS AND, IF REQUESTED BY THE COMPANY, UPON DELIVERY TO THE COMPANY AND THE TRUSTEE OF A CERTIFICATION OF THE TRANSFEREE OR AN OPINION OF COUNSEL (SATISFACTORY TO THE

COMPANY) TO THE EFFECT THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAW.

No. R-__

\$ _____

ERICKSON RETIREMENT COMMUNITIES, LLC
SUBORDINATED TAXABLE ADJUSTABLE MEZZANINE PUT SECURITIES
(STAMPSSM) SERIES 2007

<u>Maturity Date</u>	<u>Initial Interest Rate</u>	<u>Initial Rate Change Date</u>	<u>CUSIP</u>
March 15, 2018	11%	March 15, 2010	

REGISTERED OWNER:

PRINCIPAL AMOUNT:

SM Servicemark of B.C. Ziegler and Company

ERICKSON RETIREMENT COMMUNITIES, LLC (the "Company"), a limited liability company organized and existing under the laws of the State of Maryland, for value received, hereby promises to pay, upon presentation and surrender hereof at the principal office of The Bank of New York, a national banking association, as trustee, or its successor in trust (the "Trustee"), solely from the sources described in the Indenture and as hereinafter provided, to the registered owner hereof, or registered assigns or legal representative, the principal sum stated above on the maturity date stated above, subject to prior prepayment as hereinafter provided, and in like manner to pay, interest on said sum at the rate and on the dates described below and to the extent permitted by law, interest on overdue installments of such interest at the Adjustable Long-Term Rate then in effect plus four percent (4%) per annum. The Securities shall bear interest at the Adjustable Long-Term Rate, as the same shall be determined from time to time pursuant to the Indenture. Interest on the Securities shall be calculated on the basis of a 360-day year of twelve 30-day months and shall be paid semiannually on each March 15 and September 15. The Securities shall initially bear interest at the Initial Interest Rate stated above. Each of the Securities shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated unless it is (i) authenticated on an Interest Payment Date, in which event it shall bear interest from such Interest Payment Date or (ii) authenticated prior to the first Interest Payment Date, in which event it shall bear interest from the date of authentication; provided, however, that if at the time of authentication payment of interest is in default, such Securities shall bear interest from the date to which interest has been paid. Capitalized terms used and not otherwise defined herein have the meaning given such terms in the Indenture.

Interest shall be payable on each Interest Payment Date (a) by check mailed to the registered owner hereof at such owner's address as it appears on the registration books kept by the Trustee on the Regular Record Date or (b) by bank wire transfer for registered owners of \$500,000 or more of Securities, who have provided the Trustee with written instructions on or before the Regular Record Date for such Interest Payment Date; provided that if there is a default

in the payment of interest due hereon, such defaulted interest shall be payable to the person in whose name this Security is registered as of the close of business on a subsequent date fixed by the Trustee (the "Special Record Date") that is at least 10 and not more than 15 days before the date set for the payment of such defaulted interest. Notice of any Special Record Date will be given as hereinafter provided to the registered owner hereof not later than 10 days before the Special Record Date. The principal of, interest on, Prepayment Price of, and Purchase Price of, the Securities are payable in lawful money of the United States of America.

THE INDEBTEDNESS EVIDENCED BY THE SECURITIES IS UNSECURED AND, TO THE EXTENT AND IN THE MANNER PROVIDED IN THE INDENTURE, EXPRESSLY SUBORDINATE AND SUBJECT IN RIGHT OF PAYMENT TO THE PRIOR PAYMENT IN FULL OF ALL SENIOR INDEBTEDNESS, AS DEFINED IN THE INDENTURE, WHETHER OUTSTANDING AT THE DATE OF THE INDENTURE OR THEREAFTER INCURRED, AND THIS SECURITY IS ISSUED SUBJECT TO THE PROVISIONS OF THE INDENTURE WITH RESPECT TO SUCH SUBORDINATION. EACH HOLDER OF THIS SECURITY, BY ACCEPTING THE SAME, AGREES TO AND SHALL BE BOUND BY SUCH PROVISIONS AND AUTHORIZES THE TRUSTEE ON SUCH HOLDER'S BEHALF TO TAKE SUCH ACTION AS MAY BE NECESSARY OR APPROPRIATE TO EFFECTUATE THE SUBORDINATION SO PROVIDED AND APPOINTS THE TRUSTEE AS SUCH HOLDER'S ATTORNEY IN FACT FOR SUCH PURPOSE.

IN WITNESS WHEREOF, the Company has caused this Security to be duly executed with the manual or facsimile signature of a duly authorized Authorized Company Representative.

Dated:

ERICKSON RETIREMENT COMMUNITIES, LLC

By: _____
Authorized Company Representative

AUTHENTICATION CERTIFICATE

This Security is one of the Erickson Retirement Communities, LLC Subordinated Taxable Adjustable Mezzanine Put SecuritiesSM (STAMPSSM) Series 2007 described in the within-mentioned Indenture.

THE BANK OF NEW YORK,
as Trustee

By: _____
Authorized Signatory

Date of Authentication:

[back of the security]

The Securities; The Trust Indenture. This Security is one of a duly authorized series of securities designated "ERICKSON RETIREMENT COMMUNITIES, LLC SUBORDINATED TAXABLE ADJUSTABLE MEZZANINE PUT SECURITIESSM (STAMPSSM) SERIES 2007" (the "Securities") aggregating up to \$50,000,000 in principal amount, dated _____, 2007 for purposes of reference and issued under and pursuant to the Trust Indenture dated as of November 1, 2007 between the Company and the Trustee (the "Indenture"). Pursuant to the Indenture, the Company agrees to pay the principal and Purchase Price of, and Prepayment Price of, and interest on, the Securities. This Security is an unsecured obligation of the Company.

Reference is made hereby to the Indenture for a description of the rights, limitations of rights, obligations, duties and immunities of the Company, the Trustee and the holders of the Securities. By the acceptance of this Security, the holder hereof assents to all of the provisions of the Indenture. The Indenture is on file at the principal office of the Trustee.

When used with respect to the Trustee, "Principal Office" means, when used with respect to the Trustee, its principal corporate trust office, which is currently located at 101 Barclay Street, Floor 8 West, New York, NY 10286, Attn: Global Corporate Trust.

The Indenture allows the issuance of additional Securities pursuant to supplemental indentures.

Adjustable Long-Term Mode.

"Adjustable Long-Term Mode" means, as applicable, (1) the Initial Adjustable Long-Term Mode, (2) the period from and after the Initial Rate Change Date, until, but not including, the next succeeding Rate Change Date, and (3) the period from and after any Rate Change Date until, but not including, the next succeeding Rate Change Date or the maturity date of the Securities.

"Initial Adjustable Long-Term Mode" means the period from and after the date of issuance and delivery of the Securities, until, but not including, the Initial Rate Change Date.

"Rate Change Date" means, as applicable, (1) the Initial Rate Change Date and (2) thereafter, the last day of the then applicable Adjustable Long-Term Mode; provided, however, that such date must fall on the 15th day in March.

Unless the Company delivers the notice as provided in the next paragraph, (1) the Adjustable Long-Term Mode immediately following the Initial Adjustable Long-Term Mode shall be the period of two years from March 15, 2010 and (2) each subsequent Adjustable Long-Term Mode shall be a period equal to the then ending Adjustable Long-Term Mode. The Rate Change Date shall be the day immediately succeeding the then applicable Adjustable Long-Term Mode. In no event shall the Adjustable Long-Term Mode extend beyond the final maturity date for the Securities.

Notwithstanding the preceding paragraph, the Company may elect to change the Adjustable Long-Term Mode, in which event the Company, no later than the 60th day

immediately preceding the Initial Rate Change Date or any subsequent Rate Change Date, shall deliver to the Trustee and the remarketing agent for the Securities (the "Remarketing Agent") written notice (1) specifying the Company's determination of (A) the next succeeding Adjustable Long-Term Mode, which shall be of a period of not less than two years or any whole multiple of one year in excess thereof and shall end on March 14 of the year selected by the Company, and (B) the Rate Change Date to occur at the end of such Adjustable Long-Term Mode (which shall be March 15), or (2) specifying that the Securities are to bear the Adjustable Long-Term Rate to the final maturity date for the Securities.

Except for the Initial Interest Rate, the Adjustable Long-Term Rate shall be the Reset Rate. On the 45th day immediately preceding the Initial Rate Change Date or a subsequent Rate Change Date, as applicable, or on the immediately succeeding Business Day, if such 45th day is not a Business Day, the Remarketing Agent shall determine the Reset Rate and provide prompt written notice thereof to the Trustee. The Reset Rate shall be the lowest rate that would enable all of the Securities to be sold at par on such Initial Rate Change Date or subsequent Rate Change Date, as applicable. The Reset Rate shall be determined by the Remarketing Agent in its judgment having due regard to prevailing market conditions and shall be binding on the Company and the registered owners of the Securities (absent manifest error). The Reset Rate shall be effective from and after such Initial Rate Change Date or subsequent Rate Change Date, as applicable, until, but not including, the next succeeding Rate Change Date. If for any reason the Reset Rate cannot be or is not determined by the Remarketing Agent in the manner specified above, the Reset Rate will be equal to the Adjustable Long-Term Rate in effect during the immediately preceding Adjustable Long-Term Mode.

Promptly upon receiving the Remarketing Agent's notice of the Reset Rate described above, but in no event more than four Business Days thereafter, the Trustee shall notify each Owner of the Securities of the Reset Rate that will be applicable to the Securities on and after the Initial Rate Change Date or the subsequent Rate Change Date, as applicable, and of the next succeeding Rate Change Date.

Optional Tender and Purchase of Securities on Optional Tender Dates.

"Optional Tender Date" means each Rate Change Date.

"Optional Tender Notice Date" means, the 30th day (or if such 30th day is not a Business Day, the immediately preceding Business Day) immediately preceding a Rate Change Date.

"Purchase Price" means with respect to any Securities, an amount equal to 100% of the Outstanding principal amount thereof plus accrued interest (if any) to, but not including, the date of purchase.

"Untendered Security" means, as applicable, any Security described in an Optional Tender Notice or a Management Change Tender Notice, as applicable, that is not tendered to the Trustee or the Remarketing Agent on the applicable Optional Tender Date or Management Change Tender Date.

The Securities shall be purchased by the Company (from the sources set forth in the Indenture), at the option of the registered owner, from the registered owner on each Optional Tender Date at the Purchase Price of the Securities tendered on such date, provided that:

(1) the Owner has delivered to the Company and the Remarketing Agent a written notice (the "Optional Tender Notice") not later than 4:00 p.m. prevailing Baltimore, Maryland time, on the Optional Tender Notice Date (such Optional Tender Notice to be irrevocable and effective upon receipt), that states (A) the principal amount of the Securities that are to be purchased (which amount shall be \$25,000 and whole multiples of \$5,000 in excess thereof) and the portion retained, if any (which must be \$25,000 and whole multiples of \$5,000 in excess thereof), and (B) if less than all of the Owner's Securities are to be purchased, the CUSIP numbers and security numbers of the Securities to be purchased; and

(2) delivery of the Series 2007 Securities to be tendered for purchase shall be effected by book-entry credit to the account of the Beneficial Owner on the records of the Clearing Agent in accordance with the Applicable Procedures at or prior to 4:00 p.m., prevailing Baltimore, Maryland time on the Business Day immediately preceding the applicable Optional Tender Date.

Interest on Securities tendered as described above shall cease to accrue on the Optional Tender Date.

An Untendered Security shall be deemed to have been purchased if there has been irrevocably deposited in trust with the Remarketing Agent or the Trustee monies sufficient to pay the Purchase Price of the Untendered Security. In the event a registered owner of a Security to be purchased fails to tender such Security as herein provided, said registered owner shall not be entitled to any payment (including interest to accrue subsequent to the Optional Tender Date) other than the Purchase Price for such Untendered Security as of the Optional Tender Date and any Untendered Security will no longer be entitled to the benefit of the Indenture, except for the purpose of payment of the Purchase Price therefor.

Tender and Purchase on Management Change Tender Dates.

"Management Change Notice" means the written notice from the Company to the Trustee of the occurrence of any of the following events: (1) John C. Erickson and the members of his immediate family (including his spouse, children and siblings) cumulatively own directly or indirectly less than 51% of the Company, (2) the death or resignation of John C. Erickson as Chairman and Chief Executive Officer of the Company, or (3) forty percent (40%) or more of the Presidents and Executive Vice Presidents of the Company shall have resigned or been replaced within a twelve-month period.

"Management Change Tender Notice Date" means a Business Day not more than 45 days or less than 30 days immediately preceding the Management Change Tender Date.

Promptly upon receiving a Management Change Notice, but in no event more than four Business Days thereafter, the Trustee shall provide written notice (which shall be prepared by the Company) to each holder of the Securities and the Trustee specifying (1) that a Management Change has occurred, (2) that the Securities will be subject to optional tender on a date (the "Management Change Tender Date") established by the Company (which date shall be no earlier

than 90 days or later than 120 days after the date of such notice and shall fall on the fifteenth day of a month or, if such day is not a Business Day, the immediately succeeding Business Day) and (3) that on the Management Change Tender Date, the Company will purchase Securities delivered to the Trustee for purchase by the Company.

The Securities shall be purchased by the Company (from monies delivered by the Company to the Trustee for such purpose pursuant to the Indenture), at the option of the registered owner, from the registered owner thereof at the Purchase Price, on each Management Change Tender Date, provided that:

(1) the registered owner has delivered to the Trustee written notice (the "Management Change Tender Notice") not later than 4:00 p.m. prevailing Baltimore, Maryland time on the Management Change Tender Notice Date (such Management Change Tender Notice to be irrevocable and effective upon receipt), that states (A) the principal amount of the Securities that are to be purchased (which amount shall be \$25,000 and whole multiples of \$5,000 in excess thereof) and the portion retained, if any (which must be \$25,000 and whole multiples of \$5,000 in excess thereof), and (B) if less than all of the registered owner's Securities are to be purchased, the CUSIP numbers and security numbers of the Securities to be purchased; and

(2) delivery of the Series 2007 Securities to be tendered for purchase shall be effected by book-entry credit to the account of the Beneficial Owner on the records of the Clearing Agent in accordance with the Applicable Procedures at or prior to 4:00 p.m., prevailing Baltimore, Maryland time on the Business Day immediately preceding the applicable Management Change Tender Date.

Interest on the Securities tendered as described above will cease to accrue on such Management Change Tender Date.

Any Security described in a Management Change Tender Notice given to the Trustee pursuant to the Indenture as a Security to be purchased on a Management Change Tender Date that is not tendered by the registered owner thereof to the Trustee as herein provided shall be deemed to have been purchased if there has been irrevocably deposited in trust with the Trustee monies sufficient to pay the Purchase Price of such Untendered Security. In the event a registered owner of a Security to be purchased fails to tender such Security as herein provided, said registered owner shall not be entitled to any payment (including interest to accrue subsequent to the Management Change Tender Date) other than the Purchase Price as of the Management Change Tender Date for such Untendered Security and any Untendered Security will no longer be entitled to the benefit of the Indenture, except for the purpose of payment of the Purchase Price therefor.

Prepayment. The Securities may not be prepaid by the Company except as provided in the Indenture.

"Prepayment Price" means with respect to any Securities, the principal amount of such Securities, plus accrued and unpaid interest thereon to the prepayment.

The Company shall deliver notice to the Trustee and the Remarketing Agent of its intention to prepay the Securities at least 45 days prior to the proposed prepayment date. The

Trustee shall cause notice of any prepayment of Securities hereunder, which notice shall be prepared by the Company, to be mailed by first class mail, postage prepaid (except when DTC is the registered owner of all of the Securities and except for persons or entities owning or providing evidence of ownership satisfactory to the Trustee of a legal or beneficial ownership in at least \$1,000,000 of principal amount of Securities who so request, in which cases, by certified mail, return receipt requested or as otherwise required by the Letter of Representations), to the registered owners of all Securities at the registered addresses appearing in the registration books kept for such purpose. Each such notice shall (i) be mailed at least 30 days prior to the prepayment date, (ii) specify the prepayment date and the Prepayment Price, and (iii) state that on the prepayment date the Securities will be payable at the principal office of the Trustee, that from that date interest will cease to accrue and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or on the Securities; provided, however, that so long as DTC or its nominee is the sole registered owner of the Securities under a Clearing System, prepayment notices will be sent to Cede & Co. or such other nominee as is specified by an authorized representative of DTC. Any failure on the part of DTC, or a Participant to give such notice to a Beneficial Owner or any defect therein shall not affect the sufficiency or validity of any proceedings for the prepayment of the Securities. No defect affecting any Security, whether in the notice of prepayment or mailing thereof (including any failure to mail such notice), shall affect the validity of the prepayment proceedings for any other Securities.

Effect of Prepayment. On the date designated for prepayment, notice having been given as provided herein, the Securities shall become and be due and payable at the Prepayment Price and, if monies for the payment of the Prepayment Price are held by the Trustee as provided in the Indenture, interest on the Securities shall cease to accrue, such Securities shall cease to be entitled to any benefit or security under the Indenture, and the registered owners thereof shall have no rights in respect of the Securities except to receive payment of the Prepayment Price thereof.

Acceleration. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Securities then outstanding under the Indenture may become or may be declared due and payable before the stated maturities thereof, together with the interest accrued thereon.

Persons Deemed Owners; Restrictions upon Actions by Individual Owners. The Company and the Trustee may deem and treat the Person in whose name this Security is registered as the absolute owner hereof (whether or not this Security shall be overdue and notwithstanding any notation of ownership or other writing hereon made by anyone other than the Company or the Trustee) for the purpose of receiving payment of or on account of the principal, interest, Purchase Price or Prepayment Price of, this Security, and for all other purposes except as otherwise provided herein with respect to the payment of interest on this Security, and neither the Company nor the Trustee shall be affected by any notice to the contrary. All such payments so made to any such registered owner, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable under this Security.

The registered Owner of this Security shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with

respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect hereto, except as provided in the Indenture.

Transfer and Exchange. This Security may be exchanged for an equal aggregate principal amount of the Securities, of the same maturity and bearing interest at the same rate and of other authorized denominations, and the transfer of this Security may be registered, upon presentation and surrender of this Security at the principal office of the Trustee, together with an assignment in the form attached to this Security duly executed by the registered owner hereof or such owner's attorney or legal representative and, if requested by the Company, upon delivery to the Company and the Trustee of a certification of the transferee or an opinion of counsel (satisfactory to the Company) to the effect that such transfer is in compliance with the Securities Act and applicable state securities law.

The Company and the Trustee may require the person requesting any such exchange or transfer to reimburse them for any tax or other governmental charge payable in connection therewith. Neither the Company nor the Trustee shall be required to register the transfer of this Security or make any such exchange of this Security after the Company has given its notice of prepayment pursuant to Article IV of the Indenture. In addition, the Company and the Trustee shall not be required to issue, exchange or register the transfer of any Security or any portion thereof prior to a Optional Tender Date after notice thereof has been given, unless prior to the Optional Tender Date the transferee of such Security or portion thereof delivers to the Trustee and to the Trustee a written acknowledgement of such Optional Tender Date and agrees in writing to be bound by such tender. Further, the Company and the Trustee shall not be required to issue, exchange or register the transfer of any Security or any portion thereof prior to a Management Change Tender Date after notice thereof has been given, unless prior to the Management Change Tender Date the transferee of such Security or portion thereof delivers to the Trustee and to the Trustee a written acknowledgement of such Management Change Tender Date and agrees in writing to be bound by such tender.

Modifications. Modifications or alterations of the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

Negotiability. This Security shall be and be deemed to be for all purposes a negotiable instrument subject only to the provisions for registration and registration of transfer stated herein.

Governing Law. This Security shall be governed by and construed in accordance with the laws of the State of Maryland.

The Securities are issuable as registered Securities in denominations of \$25,000 or any multiple of \$5,000 in excess thereof.

Except as otherwise provided in the Indenture, this Security shall not be entitled to any right or benefit under the Indenture, or be valid or become obligatory for any purpose, until this Security shall have been authenticated by execution by the Trustee of the certificate of authentication inscribed hereon.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers the within Security unto _____
(the "Transferee")

(Please insert Social Security or Taxpayer Identification Number of Transferee Below)

_____, whose address, including zip code is as follows: _____

(Please print or typewrite name and address, including zip code of Transferee)

The undersigned hereby irrevocably constitutes and appoints the Transferee as its attorney-in-fact to register the transfer of the within Security on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Name of Transferor

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member or participant in a signature guarantee program.

NOTICE: The signature above must correspond with the name of the Owner as it appears upon the front of this Security in every particular without alteration or enlargement or any change whatsoever.

SCHEDULE A

SCHEDULE OF EXCHANGES OF INTERESTS IN THE MASTER SECURITY¹

The following exchanges of a part of this Master Security for an interest in another Master Security or for Securities in certificated form, have been made:

Date of Exchange	Amount of decrease in Principal amount of this Global Security	Amount of Increase in Principal amount of this Global Security	Principal amount of this Global Security following such decrease or increase	Signature or authorized signatory of Trustee
------------------	---	---	--	--

¹ This is included in Master Securities only.

EXHIBIT B

[FORM OF AUTHENTICATION ORDER]

ERICKSON RETIREMENT COMMUNITIES, LLC

_____, 2007

The Bank of New York, as Trustee
101 Barclay Street, Floor 8 West
New York, NY 10286

Ladies and Gentlemen:

You are Trustee for the Subordinated Taxable Adjustable Mezzanine Put SecuritiesSM (STAMPSSM) Series 2007 (the "Securities") to be issued by Erickson Retirement Communities, LLC (the "Company") in an aggregate principal amount of up to \$50,000,000, pursuant to a Trust Indenture dated as of November 1, 2007 between you and the Company (the "Indenture").

There have been delivered to you, in your capacity as Trustee under the Indenture, at the address set forth above, in _____, _____ typewritten Security Certificates duly executed on behalf of the Company by the facsimile signature of its Authorized Company Representative. You are requested to authenticate the Securities in your capacity as Trustee under the Indenture in the registered names, numbers and principal amounts listed in Appendix A attached hereto. You are requested to deliver the complete, authenticated Securities to the registered owners thereof at the addresses listed in Appendix A.

B.C. Ziegler and Company, acting as placement agent for the Securities, has placed an amount equal to the price paid by the purchasers of the Securities for purchase of the Securities on the date hereof, identified on Appendix A hereto, in an escrow account with Marshall & Ilsley Trust Company, N.A., Milwaukee, Wisconsin, a national banking association (the "Escrow Agent"). You are requested to deliver the notice attached hereto as Exhibit B to the Escrow Agent.

SM _____
Servicemark of B.C. Ziegler and Company.

Please acknowledge receipt of the foregoing instructions by signing and returning to the undersigned the enclosed copy of this letter.

Very truly yours,

ERICKSON RETIREMENT COMMUNITIES,
LLC

By: _____ (SEAL)

Jeffrey A. Jacobson
Managing Director

Receipt of the aforementioned instructions is hereby acknowledged this ____ day
of _____, 2007.

THE BANK OF NEW YORK, as Trustee

By: _____

Appendix A

Attachment to be provided by the Placement Agent

Appendix B

_____, 2007

Marshall & Ilsley Trust Company, N.A.
Milwaukee, Wisconsin

Re: Erickson Retirement Communities, LLC Subordinated Taxable Adjustable Mezzanine
Put SecuritiesSM (STAMPSSM) Series 2007

Ladies and Gentlemen:

Reference is made to the Escrow Agreement dated as of November 1, 2007 among you, as escrow agent (the "Escrow Agent"), Erickson Retirement Communities, LLC ("Erickson") and B.C. Ziegler and Company (the "Escrow Agreement"). The undersigned, The Bank of New York, is the trustee (the "Trustee") under the Trust Indenture, dated as of November 1, 2007, between Erickson and the Trustee identified in the Escrow Agreement. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Escrow Agreement.

The Trustee has received irrevocable instructions from Erickson to authenticate and deliver, on behalf of Erickson, Subordinated Taxable Adjustable Mezzanine Put SecuritiesSM (STAMPSSM) Series 2007 in the principal amounts and to the registered owners set forth on Schedule 1 attached hereto (the "Securities"). The Trustee has also received irrevocable instructions from Erickson to notify you of the Trustee's receipt of Erickson's instructions to authenticate and deliver such Securities. As provided in Section 6 of the Escrow Agreement, the Escrow Agent shall release to Erickson the Subscription Payments deposited by the Purchasers identified on Schedule 2 with the Escrow Agent thereunder. Interest thereon may be paid to Erickson on _____, 2007. The Subscription Payments to be released shall be only those Subscription Payments corresponding to the Subscriptions of the Purchasers designated on Schedule 2, in the principal amounts set forth opposite such Purchasers' names. No other Subscription Payments shall be released to Erickson. Subscription Payments which are not released to Erickson on the date hereof shall remain in the custody of the Escrow Agent, subject to the provisions of the Escrow Agreement, until _____, 2007.

SM Servicemark of B.C. Ziegler and Company.

If you have any questions concerning this letter, please contact _____
at _____.

The Bank of New York, as Trustee

By: _____
Name: _____
Title: _____

Acknowledged and Agreed By:

Erickson Retirement Communities, LLC

By: _____
Name: _____
Title: _____

Appendix C

[Date]

Via Overnight Delivery

and

Via Telecopier: () -

Via Email: @pnc.com

PNC Bank, Agent
c/o PNC Capital Markets LLC
1600 Market Street - 21st Floor
Philadelphia, PA 19103
Attention: _____

Dear _____:

This letter constitutes prior written notice to PNC Bank given in accordance with the provisions of Section 13.04 of the Trust Indenture dated as of November 1, 2007 (the "Indenture") by and between Erickson Retirement Communities, LLC (the "Company") and The Bank of New York ("Trustee"), of a proposed payment of principal, interest and/or purchase price with respect to the Securities described in the Indenture.

The reason for the proposed payment is (check one):

_____ Tender on Management Change Tender Date

_____ Tender on Rate Change Date

_____ Maturity Date of the Securities

The principal amount of the proposed payment will be up to \$ _____. The proposed payment will also include accrued interest.

Attached hereto are pro formas for Company operations for the one year period after the date of the proposed payment.

The date of the proposed payment is _____, 20____. We understand and acknowledge that if this notice is received by you on a date that is less than 25 days prior to the

date of the proposed payment, we may not receive a response before the date of the proposed payment, the result of which is that the Trustee will not be authorized, pursuant to the terms of the Indenture, to make such payment.

Erickson Retirement Communities, LLC

By: _____
Name: _____
Title: _____

Receipt

PNC Bank hereby acknowledges receipt of this notice (including attachments) on the ____ day of _____, _____, which date is at least 25 days from the proposed date of payment specified above, or, if less, constitutes sufficient notice. PNC Bank continues to have the rights accorded to it under the Indenture to give notice of default as provided for Section 13.04 of the Indenture.

PNC Bank

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Company has caused this Indenture to be executed by a
Authorized Company Representative, and the Trustee has caused this Indenture to be executed
by one of its authorized officers, all as of the day and year first above written.

ERICKSON RETIREMENT COMMUNITIES,
LLC

By: _____ (SEAL)
Gerald E. Doherty
Executive Vice President

THE BANK OF NEW YORK,
as Trustee

By: _____
Authorized Officer

IN WITNESS WHEREOF, the Company has caused this Indenture to be executed by a
Authorized Company Representative, and the Trustee has caused this Indenture to be executed
by one of its authorized officers, all as of the day and year first above written.

ERICKSON RETIREMENT COMMUNITIES,
LLC

By: _____ (SEAL)

Name:

Title:

THE BANK OF NEW YORK,
as Trustee

By: *Leheng L. L...*
Authorized Officer

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

DIRECT DIAL: (212) 751-3091
EMAIL: Jennifer.Christian@tklaw.com

919 THIRD AVENUE
39TH FLOOR
NEW YORK, NEW YORK 10022-3915
(212) 751-3001
FAX (212) 999-9162
www.tklaw.com

AUSTIN
DALLAS
FORT WORTH
HOUSTON
NEW YORK
SAN ANTONIO

ALGIERS
LONDON
MEXICO CITY
MONTERREY
PARIS

February 17, 2010

VIA FEDERAL EXPRESS

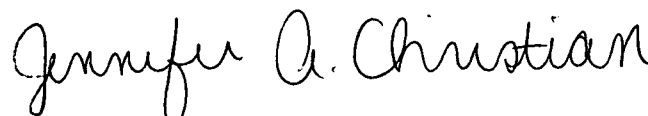
BMC Group Inc.
Attn: Erickson Retirement Communities, LLC
Claims Processing
18750 Lake Drive East
Chanhassen, MN 55317

Re: *Erickson Retirement Communities, LLC, et al.,*
Jointly Administered Case No. 09-37010 (SGJ)

Enclosed for filing is one (1) Proof of Claim on behalf of The Bank of New York Mellon, as Indenture Trustee, together with a "receipt copy." Kindly date-stamp the copy and return it to me in the pre-paid envelope provided.

Thank you for your consideration.

Very truly yours,



Jennifer A. Christian

JAC/jml
Enclosures