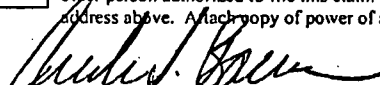


B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT      Northern District of Texas		PROOF OF CLAIM	
Name of Debtor: Erickson Retirement Communities, LLC		Case Number: 09-37010	
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): MSRESS III Kansas Campus, LLC		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____	
Name and address where notices should be sent: Andrew Bauman, Morgan Stanley, 1585 Broadway, 37th Floor, New York, New York 10036 and Matthew G. Summers, Esquire, Ballard Spahr LLP, 300 E. Lombard Street, 18th Floor, Baltimore, Maryland 21202			
Telephone number: (410) 528-5679			
Name and address where payment should be sent (if different from above):  <div style="text-align: center; font-weight: bold; font-size: 1.2em;">RECEIVED FEB 25 2010 BMC GROUP</div>		<input type="checkbox"/> 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.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
Telephone number:			
1. Amount of Claim as of Date Case Filed: \$ <u>28,260,000.00</u>			
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.  <input checked="" type="checkbox"/> 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.		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.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> 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).  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> 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).  <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)( ).  Amount entitled to priority:  \$ _____  <small>*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.</small>	
2. Basis for Claim: <u>See Schedule</u> (See instruction #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: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> 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: <u>See Schedule</u>  Amount of Secured Claim: \$ <u>28,260,000.00</u> Amount Unsecured: \$ _____			
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: 02/23/2010	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.  		
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.			FOR COURT USE ONLY

Erickson Ret. Comm. LLC



01287

**Schedule to Proof of Claim**

**In re: *Erickson Retirement Communities, LLC, et al.*,  
Case No. 09-37010 (Chapter 11) (Jointly Administered)**

**In re: *Kansas Campus, LLC*  
Case No. 09-37024 (Chapter 11)**

**United States Bankruptcy Court for the Northern District of Texas**

**Creditor: MSRESS III Kansas Campus, LLC ("MSRESS Kansas")**

This Schedule supplements the information stated in the accompanying Proof of Claim and shall constitute part of the Proof of Claim.

**I. Basis for the Claim**

On or about April 3, 2007, Debtor Kansas Campus, LLC (the "Kansas Debtor"), executed and delivered, among other things, a Promissory Note, a Loan Agreement, and a Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Mortgage"), pursuant to which MSRESS Kansas provided mezzanine financing to the Kansas Debtor in the original principal amount of \$25,000,000, which financing was secured by, *inter alia*, a subordinate lien on approximately 65 acres in Overland Park, Kansas upon which the Tallgrass Creek Retirement Community is located. True and correct copies of the Promissory Note, the Loan Agreement, and the Mortgage are attached hereto as Exhibits A, B, & C, respectively, and incorporated herein by reference. The Promissory Note, the Loan Agreement, and the Mortgage, together with all other documents evidencing, documenting, perfecting, or concerning the indebtedness owed by the Kansas Debtor and ERC (as hereinafter defined) to MSRESS Kansas are hereinafter referred to collectively as the "Loan Documents."

Erickson Retirement Communities, LLC ("ERC"), executed and delivered a Limited Guaranty and Indemnity Agreement dated April 3, 2007 (the "Guaranty"), in favor of MSRESS Kansas by which it guaranteed the full and prompt performance of all obligations of the Kansas Debtor to MSRESS Kansas. A true and correct copy of the Guaranty is attached hereto as Exhibit D and incorporated herein by reference. ERC pledged its member interest in the Kansas Debtor to MSRESS Kansas as security for the obligations of the Kansas Debtor under the Loan Documents and ERC's obligations under the Guaranty pursuant to a Member Interest Pledge Agreement dated April 3, 2007. True and correct copies of the Member Interest Pledge Agreement and related UCC financing statements are attached hereto as Exhibits E & F, respectively, and incorporated herein by reference.

On or about October 19, 2009 (the "Petition Date"), ERC, the Kansas Debtor, and certain of their affiliates and subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

Prior to the Petition Date, the Kansas Debtor defaulted under the Loan Documents by virtue of, among other things, its failure to make payments to MSRESS Kansas as and when due. As a result of these defaults, as of the Petition Date, the Kansas Debtor and ERC are obligated to pay the sum of \$25,000,000.00 plus interest in the amount of \$3,260,000.00 to MSRESS Kansas.

## **II. Calculation and Classification of the Claim**

MSRESS Kansas asserts a claim, as of the Petition Date, in the aggregate amount of \$28,260,000.00, consisting of principal in the amount of \$25,000,000.00 and accrued but unpaid interest in the amount of \$3,260,000.00, together with accrued, unpaid indebtedness of the Kansas Debtor and ERC to MSRESS Kansas, both absolute and contingent, existing prior to the commencement of the Chapter 11 case, together with all fees, commissions, attorneys' fees, and other costs and expenses, accrued and accruing with respect thereto and provided for in the Loan Documents.

The claim is secured by a subordinated perfected security interest in and liens against substantially all of Kansas Debtor's property and ERC's member interest in the Kansas Debtor.

Under the Guaranty, ERC also is liable for the full amount claimed herein.

## **III. Notices**

All notices concerning this claim and/or any objections to this claim should be served on all of the following:

Mr. Andrew S. Bauman  
Executive Director  
Morgan Stanley  
1585 Broadway, 37<sup>th</sup> Floor  
New York, New York 10036

-and-

Matthew G. Summers, Esquire  
Ballard Spahr LLP  
300 E. Lombard Street, 18<sup>th</sup> Floor  
Baltimore, Maryland 21202

#### IV. Reservation of Rights

In early February 2010, MSRESS Kansas and certain affiliated entities reached a settlement agreement in principle with, *inter alia*, the Debtors which settlement agreement would resolve the disputes involving MSRESS Kansas in the bankruptcy case. MSRESS Kansas has filed this proof of claim in order to preserve its rights in the event that the settlement agreement in principle does not become a fully executed settlement agreement or the settlement is not consummated.

MSRESS Kansas reserves the right to amend this proof of claim to include amounts not stated above, including, without limitation, costs, expenses, attorneys' fees, and any other charges or amounts due, as appropriate, under applicable bankruptcy and non-bankruptcy law. MSRESS Kansas reserves all of its rights and remedies, including, without limitation, the right to amend this proof of claim to include additional charges, adjustments and the like, due and payable under the Loan Documents and Guaranty, as the same become quantified, known or available. MSRESS Kansas further reserves the general right to amend, supplement, or modify this claim (including, but not limited to, the classification and amount of the claim asserted herein). MSRESS Kansas further reserves the right to file requests for payment of administrative expenses or other claims entitled to priority.

The filing of this Proof of Claim is not: (a) a waiver or release of MSRESS Kansas' rights against any person, entity or property; (b) a consent by MSRESS Kansas to the jurisdiction of the Bankruptcy Court with respect to any matter other than the subject matter of this claim; (c) a consent by MSRESS Kansas to any proceedings commenced in this case or otherwise involving MSRESS Kansas; (d) a waiver of the right to withdraw the reference, or otherwise to challenge the jurisdiction of this Court, with respect to the subject matter of this claim, any objection or other proceedings in this case against or otherwise involving MSRESS Kansas; or (e) an election of remedies.

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PROMISSORY NOTE

Kansas

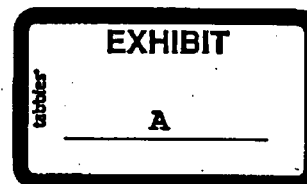
\$25,000,000.00

April 3, 2007

FOR VALUE RECEIVED, the undersigned, KANSAS CAMPUS, LLC, a Maryland limited liability company having a mailing address at 701 Maiden Choice Lane, Baltimore, Maryland 21228 ("Borrower") promises to pay to the order of MSRESS III KANSAS CAMPUS, L.P., a Delaware limited partnership, at its office at 1585 Broadway, Floor 37, New York, New York 10036 (the payee and each successor holder of this Note being herein called the "Lender") or to such other person or at such other place as the Lender may from time to time designate in writing, the principal sum of TWENTY-FIVE MILLION AND 00/100 DOLLARS (\$25,000,000.00) with interest from the date hereof payable in arrears at an annual rate of fourteen per cent (14 %), calculated on the basis of a 360 day year but accruing on the unpaid principal balance for the actual number of days elapsed.

Principal and interest evidenced by this Promissory Note shall be paid as follows:

- a. If the date hereof is not the first day of a month, on the first day of the month next following the date hereof, interest only at the rate set forth above shall be paid upon the principal balance outstanding hereon from the date hereof.
- b. Commencing on the first day of the second month after the date hereof, or if the date hereof is the first day of a month then commencing on the first day of the first month after the date hereof, and continuing on the first day of each successive month until the Maturity Date (hereinafter defined), interest only at the rate set forth above.
- c. The entire principal balance and interest thereon shall in any event be due and payable on April 1, 2019 (the "Maturity Date").



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If any installment of principal or interest or both is not paid within the time frame provided in the Loan Agreement (hereinafter defined), there shall also be immediately due and payable an administrative late charge of five percent (5%) of the amount of such payment. In addition, such past due payment shall bear interest at the maximum interest rate then allowable under the laws of the State of Kansas; provided, however such interest rate shall not exceed a maximum rate of eighteen percent (18%) per annum (the "Default Interest Rate").

At the option of Lender the entire indebtedness evidenced by this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default: (1) failure to pay to the Lender in full any principal or interest and such failure continues for a period of five (5) days or default of Borrower or any endorser or guarantor hereof under any liability, obligation or undertaking, hereunder or otherwise to the Lender that continues after any applicable notice required hereunder or therein and the expiration of any applicable grace period; (2) any Event of Default under the terms of that certain Loan Agreement of even date herewith between Borrower and Lender (the "Loan Agreement"), or any other instrument given to secure this Note shall occur and continue after any applicable notice required therein and the expiration of any applicable grace period, including but not limited to any failure of the Project (as defined in the Loan Agreement) to satisfy the Balance Test (as defined in the Loan Agreement) pursuant to and in accordance with Section 23.4 of the Loan Agreement; (3) any statement, representation or warranty made by the undersigned, or any endorser or any guarantor hereof in the Security Documents (as defined in the Loan Agreement), or in any supporting financial statement of the undersigned or any endorser or guarantor hereof shall have been false in any material respect; and (4) the liquidation, termination or dissolution of

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the Borrower or any endorser or guarantor hereof, or any of such ceasing to carry on actively its present business.

Borrower agrees to pay all costs of collection, including reasonable fees and expenses of Lender's attorneys, upon any default in the payment of principal or interest when due, which default continues beyond any applicable grace or cure period, and all costs including reasonable fees and expenses of Lender's attorneys in case it becomes necessary to protect the security hereof, whether or not suit is commenced.

This Note may be prepaid in whole but not in part (except as provided below) pursuant to the terms and provisions of Section 24.1 of the Loan Agreement.

The Lender shall have the right to require that the indebtedness evidenced hereby be paid, in full, in accordance with the terms of Section 24.2 of the Loan Agreement.

In the event the payments required to be made hereunder or pursuant to the Security Documents (as defined in the Loan Agreement), whether such payments are characterized as interest or otherwise, shall at any time exceed the limits permitted by any law governing usury or any other law applicable to the loan evidenced hereby, all such excess sums paid by Borrower for the period in question shall, without further agreement or notice between or by any party hereto, be applied to the principal balance as a partial prepayment thereof without premium.

Borrower and all endorsers and guarantors of this Promissory Note hereby severally waive presentment for payment, protest and demand, notice of protest, demand and of dishonor and nonpayment of this Note and Borrower's (and any endorser's or guarantor's) liability hereunder shall remain unimpaired, notwithstanding any extension of the time of payment or other indulgence granted by Lender, or the release of all or any part of the security for the

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payment hereof or the liability of any party which may assume the obligation to make payment of the indebtedness evidenced hereby or the performance of the obligations of Borrower.

Whenever notice, demand or a request under this Note may properly be given to Borrower or Lender, the same shall be given in accordance with the provisions of the Loan Agreement.

This Note is secured by the Security Documents (as defined in the Loan Agreement), which includes the Mortgage (as defined in the Loan Agreement), which Mortgage encumbers certain property, more particularly described therein, located in the City of Overland Park, Johnson County, Kansas (the "Property").

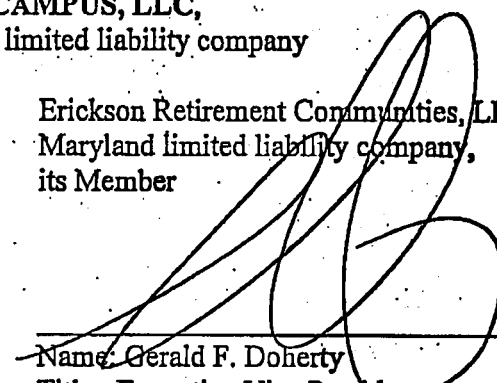
The transaction of which this Promissory Note is a part bears a reasonable relation to the State of Kansas, in as much as the Property is located in the State of Kansas; accordingly, the Borrower and the Lender agree that this Promissory Note shall be governed by and construed in accordance with the laws of the State of Kansas, to the maximum extent the parties may so lawfully agree.

**EXECUTED AS A SEALED INSTRUMENT**, as of the day and year first above written.

**BORROWER:**

**KANSAS CAMPUS, LLC,**  
a Maryland limited liability company

By: Erickson Retirement Communities, LLC, a  
Maryland limited liability company,  
its Member

By:   
Name: Gerald F. Doherty  
Title: Executive Vice President



## LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made and entered into as of April 3, 2007 by and between MSRESS III KANSAS CAMPUS, L.P., a Delaware limited partnership ("Lender"), and KANSAS CAMPUS, LLC, a Maryland limited liability company ("Borrower").

### RECITALS

A. Borrower acquired approximately 65 acres located in Johnson County, City of Overland Park, Kansas (as more specifically described on Exhibit A attached hereto, the "Property") for development as a continuing care retirement community ("CCRC") known as Tallgrass Creek Retirement Community ("Tallgrass Creek"). When complete, the CCRC will include approximately 1,100 independent living units and approximately 152 health care units (of which amount 64 will be assisted living units and 88 will be nursing care units (individually, a "Unit" and collectively, the "Units")) and accessory uses (collectively, the "Project").

B. The Project will be developed and operated on the Property consistent with the following outline:

(i) Borrower has and will continue to, subject to certain management and financing arrangements described below, develop the Project for lease to Tallgrass Creek, Inc., a Maryland non-stock corporation ("TGC") in accordance with the terms of a Master Lease and Use Agreement between TGC and Borrower dated October 20, 2006 (the "Master Lease"). Under the Master Lease, TGC operates the Project. In addition, the Master Lease provides TGC with certain rights to purchase the interest of Borrower in the Property and the Project.

(ii) Borrower has retained Erickson Retirement Communities, LLC ("ERC") to manage the development of the Project in accordance with that certain Development Agreement dated October 20, 2006 (the "Development Agreement").

(iii) Residents of the Units (the "Residents") will occupy their Unit and receive various services pursuant to terms of an agreement (the "Residence and Care Agreement") between each Resident and TGC. Residents are required to deliver certain funds upon obtaining residency of their Unit ("Entrance Deposits"), which may be refunded under the terms of the Residence and Care Agreement. In addition, Residents will make certain monthly payments ("Monthly Fees"), which can include the cost of services acquired, as more fully described in the Residence and Care Agreements.

C. The development of the Project will be financed consistent with the following outline:

(i) TGC will loan Borrower the proceeds from the Entrance Deposits provided by Residents (the "Community Loan") under the terms of a certain loan agreement and note (the "Community Loan Agreement" and the "Community Note,"

respectively), which Community Loan had been secured, in part by the Community Mortgage and Security Agreement, dated April 3, 2007 (the "Community Loan Mortgage") (collectively, the "Community Loan Documents"), the proceeds of which will be used, among other things, to finance the acquisition, development, improvement and construction of the Property and the Project. The Community Loan Mortgage is subordinate to the Construction Loan Documents (as defined below).

(ii) Borrower has obtained from Mercantile-Safe Deposit and Trust Company, among other lenders (collectively, "Construction Lender"), a revolving loan and letter of credit facility in the aggregate principal amount of up to Sixty-Five Million Dollars (\$65,000,000) (the "Construction Loan") to be used for the construction of the Project and for certain other permitted purposes as more particularly set forth in the Construction Loan Agreement between Lender and Borrower dated as of April 3, 2007 (the "Construction Loan Agreement"), which Construction Loan is secured, in part, by that certain Amended and Restated Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing by Borrower encumbering the Property and the Project in favor of Lender of even date with the Construction Loan Agreement. The Construction Loan Agreement together with any and all additional documents executed and delivered by Borrower to the Construction Lender in connection with the Construction Loan are hereinafter collectively the "Construction Loan Documents."

(iii) Using proceeds of the Community Loan and the Construction Loan, Borrower will continue to (a) develop the Property for the Project in accordance with the zoning approvals and permits and the health care approvals, and (b) loan funds to TGC from time to time, but not exceeding at any one time the amount of Thirty Million Dollars (\$30,000,000) for the purchase of insurance for the Property, payment of taxes on the Property and to otherwise make any and all valid expenditures necessary for operating and/or maintaining the Property (the "Working Capital Loan"), the terms of which are set forth in a loan agreement and a note (the "Working Capital Loan Agreement" and the "Working Capital Promissory Note," respectively). The Working Capital Loan and TGC's obligation to lend funds to Borrower under the Community Loan are secured, in part, by a Security Agreement, Pledge and Collateral Assignment of License and Residence and Care Agreement dated April 3, 2007, between TGC and Borrower (the "Working Capital Security Agreement"), pursuant to which, TGC assigned to Borrower all of its right, title and interest in and to all inventory, accounts, general intangibles, chattel paper, equipment and fixtures, licenses, Residence and Care Agreements (as defined in the Working Capital Security Agreement), and cash and deposits, but only the foregoing which are now located at, or used in connection with or relate to, or arise from the Project, its development, financing and operation, including all payments to be made by residents of the Project under the Residence and Care Agreements which are subject to the terms of a Lockbox Account Agreement, dated October 20, 2006, between TGC and Borrower (the "Lockbox Account Agreement"). The Working Capital Loan Agreement, Working Capital Promissory Note, Working Capital Security Agreement, and Lockbox Account Agreement are collectively referred to herein as the "Working Capital Loan Documents".

(iv) Certain improvements to be constructed on the Property as part of the Project as more particularly defined in Resolution No. 3542 adopted by the City of Overland Park, Kansas (the "City") on September 11, 2006 (the "Special Improvements") will be financed with the proceeds of City of Overland Park, Kansas, Transportation Development District Special Assessment Bonds, Series 2006 (Tallgrass Creek Project) in the aggregate principal amount of \$14,950,000 (the "Special Assessment Bonds"). The proceeds of the Special Assessment Bonds will be disbursed in accordance with and subject to the terms of that certain Trust Indenture dated November 1, 2006 by and between the City and Manufacturers and Traders Trust Company, as trustee (the "Trust Indenture"). The Trust Indenture and any and all additional documents executed and delivered by the Borrower pursuant to the Trust Indenture or in connection with the Special Assessment Bonds are hereinafter collectively the "Special Improvement Financing Documents."

D. Borrower desires to borrow from Lender the sum of Twenty-Five Million Dollars (\$25,000,000.00) (the "Mezzanine Loan") on the terms and conditions set forth in this Agreement and in the promissory note delivered simultaneously herewith (the "Mezzanine Note").

NOW, THEREFORE, in consideration of the premises and the respective agreements set forth herein, and in reliance upon the respective representations and warranties made hereunder, the parties agree as follows:

ARTICLE I.  
DEFINITIONS

1.1 Defined Terms. In addition to terms defined in the recitals or elsewhere in this Agreement, the following definitions will apply to this Agreement:

(a) "Security Documents" means the Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing from Borrower to Lender (the "Mortgage"), the Lender-Developer Agreement between ERC and Lender, certain UCC-1 financing statements, the Limited Guaranty of ERC, the Member Pledge from ERC to Lender of its interests in Borrower, and the Pledge Agreement from Borrower to Lender with regard to various contract rights and public entitlements, in each instance as more fully described in the applicable document.

(b) "Term" shall mean the period from the date hereof until such time as the Mezzanine Loan and all other amounts due and payable under the Mezzanine Note and this Agreement have been paid in full.

1.2 Index. Attached as Schedule A is an index to terms defined in this Agreement.

ARTICLE II.  
LOAN

Simultaneously with the delivery of this Agreement, Lender has advanced to Borrower the entire principal amount of the Mezzanine Loan and has received from Borrower and ERC, as applicable, the Mezzanine Note and the Security Documents. In addition, Borrower has complied with the Closing Conditions of Exhibit C and the Closing Requirements of Exhibit D.

ARTICLE III.  
LOAN PAYMENTS AND SECURITY

3.1 Principal and Interest on the Mezzanine Loan. Borrower will make payments on the Mezzanine Loan in accordance with this Agreement and the Mezzanine Note.

3.2 Acceleration. In the event of a default by Borrower of its obligations under this Agreement beyond any applicable notice and cure period, the full amount of Mezzanine Loan, including any Make-Whole Amount, shall be immediately due and payable by Borrower to Lender.

3.3 Additional Payments. If Lender shall make any expenditure for which Borrower is responsible or liable under this Agreement, or if Borrower shall become obligated to Lender under this Agreement for any sum other than principal and interest, the amount thereof shall be due and payable by Borrower to Lender, together with all applicable sales taxes thereon, if any, simultaneously with the next succeeding monthly payment under the Mezzanine Note or at such other time as may be expressly provided in this Agreement for the payment of the same.

3.4 [Reserved]

3.5 Unconditional Obligation. Principal and interest on the Mezzanine Loan shall be paid to Lender without demand and without deduction, set-off, claim or counterclaim of any nature whatsoever which Borrower may have or allege to have against Lender, and all such payments shall, upon receipt by Lender, be and remain the sole and absolute property of Lender. All such sums shall be paid to Lender in legal tender of the United States by wire transfer of immediately available federal funds or by other means acceptable to Lender in its sole discretion. If Lender shall at any time accept any sums after the same shall become due and payable, such acceptance shall not excuse a delay upon subsequent occasions, or constitute or be construed as a waiver of any of Lender's rights hereunder.

3.6 Past Due Payments. If Borrower fails to make any payment of principal, interest or any other sums or amounts to be paid by Borrower hereunder on or before the date such payment is due and payable and such failure continues for a period of five (5) days, Borrower shall pay to Lender an administrative late charge of five percent (5%) of the amount of such payment. In addition, such past due payment shall bear interest at the maximum interest rate then allowable under the laws of the state in which the Property is located, from the date such payment became due to the date of payment thereof by Borrower.

ARTICLE IV.  
ASSURANCES

4.1. Maintain Existence and Good Standing. Borrower will maintain its existence, in good standing in all requisite jurisdictions, and will secure and maintain all necessary licenses and approvals to operate in accordance with all applicable laws.

4.2. Compliance With Agreements. Borrower will comply with all documents applicable to the development of the Project and its performance under agreements with TGC and any other parties.

4.3. Compliance With Laws. Borrower will comply with all applicable laws, rules and regulations in connection with the conduct of its business and the completion of the Project.

4.4. Further Assurances. Borrower will provide, and where applicable, will secure the performance of ERC to provide, such other necessary or appropriate documentation and assurances as to assure Lender of the full benefit of the Security Documents.

ARTICLE V.  
USE AND OPERATION OF PROPERTY

5.1 Development of the Project. Borrower covenants and agrees that it shall develop and construct, or cause to be developed and constructed, the Project in accordance with this Agreement, the Third Party Documents (defined in Section 20.1 below) and any other agreements relating to the Project (the "Project Documents").

5.2 Permitted Use. Borrower covenants and agrees that it will not perform, nor allow to be performed at the Project any acts which will cause the cancellation of any insurance policy covering the Project or any part thereof (unless another adequate policy is available), nor shall Borrower sell or otherwise provide or permit to be kept, used or sold in or about the Project any article which may be prohibited by law or by the standard form of fire insurance policies, or any other insurance policies required to be carried hereunder, or fire underwriter's regulations.

5.3 Necessary Approvals. Borrower shall maintain in good standing all licenses, permits and approvals necessary to perform its obligations with regard to the Project under all applicable laws. Lender shall at no cost or liability to Lender cooperate with Borrower in this regard, limited to executing all applications and consents required to be signed by Lender in order for Borrower to obtain and maintain such approvals.

5.4 Lawful Use, Etc. Borrower shall not use or suffer or permit the use of the Project or the Property for any unlawful purpose. Borrower shall not commit or suffer to be committed any waste on the Property, or in the Project, nor shall Borrower cause or permit any unlawful nuisance thereon or therein. Borrower shall not suffer nor permit the Property, or any portion thereof, to be used in such a manner as (i) might reasonably impair Lender's interest therein or to any portion thereof, or (ii) might reasonably allow a claim or claims for adverse usage or adverse possession by the public, as such, or of implied dedication of the Property or any portion thereof.

5.5 Environmental Matters. Neither Borrower nor any of its employees, agents, invitees, licensees, contractors, guests, or permittees shall use, generate, manufacture, refine, treat, process, produce, store, deposit, handle, transport, release, or dispose of Hazardous Substances in, on or about the Property or the groundwater thereof, in violation of any federal, state or municipal law, decision, statute, rule, ordinance or regulation currently in existence or hereafter enacted or rendered. Borrower shall give Lender prompt notice of any claim received by Borrower from any person, entity, or governmental authority that a release or disposal of Hazardous Substances has occurred on the Property or the groundwater thereof.

Borrower shall not discharge or permit to be discharged into any septic facility or sanitary sewer system serving the Property any toxic or hazardous sewage or waste other than that which is permitted by applicable law or which is normal domestic waste water for the type of business contemplated by this Agreement to be conducted by Borrower on, in or from the Property. Any toxic or hazardous sewage or waste which is produced or generated in connection with the use or operation of the Property shall be handled and disposed of as required by and in compliance with all applicable local, state and federal laws, ordinances and rules or regulations or shall be pre-treated to the level of domestic wastewater prior to discharge into any septic facility or sanitary sewer system serving the Property.

5.6 Compliance With Restrictions, Etc. Borrower, at its expense, shall comply with all restrictive covenants and other title exceptions affecting the Property ("Permitted Exceptions").

5.7 Notices and Reports. Borrower shall prepare and deliver to Lender periodic reports, not less than monthly, of the state of the business and affairs of the Borrower. Borrower

shall cause ERC, as the sole member of Borrower, or its delegate, to prepare statements of the financial condition of the Borrower as of the last day of each month, such financial statements for the Borrower to include (i) statements of profits or losses, (ii) balance sheets as of the close of such month, (iii) statements of cash flow, (iv) statements of changes in capital, and (v) a narrative explanation of variances to each TAB Summary (defined in Section 5.8 below). Such statements and reports shall, if requested by Lender, be certified by the chief financial officer of ERC and shall be in form and substance reasonably satisfactory to Lender. Copies of such statements shall be furnished to Lender within thirty (30) days after the end of each month. Annual financial statements (unaudited) shall be furnished to Lender within sixty (60) days after the close of the fiscal year. Borrower shall also provide to Lender (a) a detailed description of any amounts paid within such period to ERC or any affiliate thereof in excess of amounts reflected in the relevant annual budgets and plans for the development of each Phase (defined in Section 11.2(a) below) ("Phase Plans") then in effect; and (b) copies of all reports, notices or other transmittals either (x) made by the Borrower and/or ERC to any lender or other entity under any loans affecting the Property or the Project ("Project Loans"), or (y) received by the Borrower or ERC from ERC (in its capacity as the Developer or otherwise), TGC, or any other entity under any Project Loans. Borrower also shall provide copies to Lender of all reports and notices received or made by the Borrower and/or ERC relating to any other Project Documents.

5.8 Annual TAB Summaries. Borrower has provided to Lender a Total Anticipated Budget containing multi-year projections (the "TAB Summary") for the construction of the Project, setting forth the costs and expenses relating to specific Phases of the Project as contained in each Phase Plan (see Exhibit I attached). Borrower shall submit to Lender on a monthly basis the most recent TAB Summary (in format comparable to Exhibit I attached) for the Project, reflecting the reasonably projected income and expenditures (capital, operating and other) for the Project. Borrower shall identify and provide a narrative to Lender explaining any material adverse changes regarding the TAB Summary.

5.9 Major Decisions Affecting Borrower, the Project, the Property and the improvements. The affirmative consent or approval of the Lender shall be required for each of the following "Major Decisions":

(a) causing the modification, amendment, extension or termination of any documents or agreements entered into, made, given or delivered, as applicable, in connection with or in any manner related to the Project Documents, or any agreement between ERC and TGC, and, after the termination thereof, the entry into, making, giving or delivering, as applicable, of any new or substitute document or agreement; provided, however, Lender's consent for change orders shall only be required to the extent that any one or more of such change orders exceed (i) \$500,000 individually or (ii) \$750,000 in the aggregate per building.

(b) except for (i) any loans from ERC, or (ii) Borrower's agreements under the Construction Loan Documents, the Community Loan Documents and the Special Improvement Financing Documents to which it is a party, borrowing money and issuing any evidences of indebtedness, securing any such loans by mortgage, pledge or other lien on any of the assets of the Borrower and, to the extent not previously approved, making any material decisions or taking any material actions under the applicable loan documents;

(c) causing the adoption, modification or amendment of the Development Plan or any Phase Plan of the Project (provided that Borrower may act with respect to this Major Decision without Lender's consent (but with reasonable prior notice to Lender) unless and until Lender provides written notice to the contrary);

(d) except as permitted by this Agreement and for Development Distributions (as defined in that certain Lender-Developer Agreement dated as of even date herewith between Lender and ERC) to ERC (if, as and when required or permitted under the Lender-Developer Agreement), making any loans or distributions;

(e) initiating, defending, adjusting, settling or compromising any significant litigation involving the Borrower or any other entity involved in the Project (provided that Borrower may act with respect to this Major Decision without Lender's consent [but with reasonable prior notice to Lender if the action will or may have aggregate cost implications of \$200,000 or more] unless and until Lender provides written notice to the contrary);

(f) acquiring any land, improvements or other real property, or any interest therein;

(g) electing to dissolve and terminate Borrower or become a party to a merger, transfer of assets or consolidation with any other person or entity;

(h) except to the extent required by the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), changing the insurance program of the Borrower as described in this Agreement (provided that Borrower may act with respect to this Major Decision without Lender's consent (but with reasonable prior notice to Lender if the change will diminish the creditworthiness of any insurer or would cause any insurance program to be commercially unreasonable in light of the nature and scope of the Project) unless and until Lender provides written notice to the contrary);

(i) subsequent to the completion of construction of any Phase, constructing any improvements or make any material (*i.e.*, with a cost in excess of \$200,000) capital improvements, repairs, alterations or changes in, to or of such Phase (provided that Borrower may act with respect to this Major Decision without Lender's consent [but with reasonable prior notice to Lender] unless and until Lender provides written notice to the contrary);

(j) voluntarily filing a bankruptcy petition on behalf of the Borrower;

(k) withdrawing funds from any escrows, reserves or accounts, unless such withdrawal is either: (i) a construction withdrawal for approved costs and expenses incurred by the Borrower for the approved development of the Project; or (ii) made to pay to Lender any sums to which it is entitled hereunder, including, as applicable, payment of the Prepayment Price and/or the Make-Whole Amount (each as defined in Section 24.1 below);

(l) initiating construction of a building or Phase which has not been approved for funding under any other financing for the Project, unless Borrower or Guarantor intends to finance such construction itself and has sufficient funds to complete such construction, and provided further, that such Borrower/Guarantor funded construction does not constitute a breach under the Construction Loan Documents, or any other financing documents related to the Project and/or under the Project Documents; or



(m) except as otherwise permitted, taking any action or making any decision that would (or is reasonably likely to) have a material adverse affect on the Project, the Borrower, a member of Borrower or its investment in the Borrower.

**5.10 Negative Covenants by Borrower.**

(a) Borrower shall not contract for goods or services at the Property in an aggregate annual amount greater than \$200,000 or approve any agreement for the provision of goods or services to the Borrower by any person who is an affiliate of ERC; provided that Borrower may act with respect to this subsection without Lender's consent (but with reasonable prior notice to Lender if the agreement will or may have an aggregate cost of \$200,000 or more and such agreement is not reflected in the approved development budget for the Project) unless and until Lender provides written notice to the contrary.

(b) Borrower shall not enforce the rights of the Borrower under any Project Document (as applicable); provided that Borrower may act with respect to this subsection without Lender's consent (but with reasonable prior notice to Lender if the action will or may have aggregate cost implications of \$200,000 or more) unless and until Lender provides written notice to the contrary.

**5.11 Prohibition on Distributions and Fees.** At any time during the Term that (i) there exists an uncured Event of Default or (ii) the payment of any of the following would result in an Event of Default, including a failure of the Balance Test, Borrower shall not make payment of any: (x) distributions to its members; or (y) development fees or distributions to the Developer under the Development Agreement.

**5.12 Survival.** As to conditions and uses of Borrower existing or occurring prior to the expiration or sooner termination of this Agreement, the provisions of this Article 5 shall survive the expiration or sooner termination of this Agreement to extent of any ongoing effects on Lender or its successors with respect to the Property.

**ARTICLE VI.  
TAXES AND ASSESSMENTS**

Throughout the entire Term of this Agreement, Borrower shall bear, pay and discharge all taxes, assessments and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every installment thereof which shall or may during the term hereof be charged, laid, levied, assessed, or imposed upon, or arise in connection with, Borrower's construction of the Project, or any part thereof. Borrower shall not be obligated to bear, pay or discharge Lender's U.S. income tax(es) or any other tax based on net income of Lender. Upon request of Lender, Borrower shall promptly furnish to Lender satisfactory evidence of the payment of any tax, assessment, imposition or charge required to be paid by Borrower pursuant to the foregoing.

ARTICLE VII.  
[RESERVED]

ARTICLE VIII.  
LICENSE, PERMITS, FEES, ETC.

Borrower shall keep and maintain in full force during the entire term of this Agreement all licenses, permits or other approvals necessary for its obligations in connection with the Project. Borrower shall, at its sole cost and expense, pay all license fees, permit fees, governmental impact fees or other expenses of any kind or nature whatsoever imposed on Borrower in connection with its construction of the Project.

ARTICLE IX.  
INSURANCE

9.1 Insurance by Borrower. Throughout the term of this Agreement, Borrower shall, at its sole cost and expense, maintain, or cause to be maintained, in full force and effect, the insurance of the types and in the amounts required of Borrower under the Development Agreement or any other Project Document.

9.2 Other Insurance. In addition, Borrower shall, at Lender's request, provide, keep and maintain in full force and effect such other insurance for such risks and in such amounts as may from time to time be commonly insured against in the case of business operations similar to those contemplated by this Agreement to be conducted by Borrower on the Property.

9.3 Carriers and Features. All insurance policies required to be carried by Borrower as provided in this Article shall be issued by insurance companies which have an A-:X or better rating by Best's Insurance Rating Service. All such policies shall be for periods of not less than one year and Borrower shall renew the same at least thirty (30) days prior to the expiration thereof. All such policies shall require not less than thirty (30) days written notice to Lender prior to any cancellation thereof.

Borrower shall pay the premiums for all insurance policies which Borrower is obligated to carry under this Article and, at least ten (10) days prior to the date any such insurance must be in effect, deliver to Lender a copy of the policy or policies, or a certificate or certificates thereof.

9.4 Failure to Procure Insurance. In the event Borrower shall fail to procure insurance required under this Article and fail to maintain the same in full force and effect continuously during the term of this Agreement, Lender shall be entitled, although not obligated, to procure the same and Borrower shall immediately reimburse Lender for such premium expense.

9.5 Waiver of Subrogation. Borrower agrees that, if any property owned by it and located in the Property shall be stolen, damaged or destroyed by an insured peril, Lender shall not have any liability to Borrower, nor to any insurer of Borrower, for or in respect of such theft, damage or destruction, and Borrower shall require all policies of risk insurance carried by it on its property in the Property to contain or be endorsed with a provision in and by which the insurer designated therein shall waive its right of subrogation against Lender.

ARTICLE X.  
DAMAGE OR DESTRUCTION

10.1. Notice. If, during the term of this Agreement, any improvements shall be destroyed or damaged in whole or in part by fire, windstorm or any other cause whatsoever, Borrower shall give Lender immediate notice thereof.

10.2 Construction Loan Documents. The parties acknowledge that decisions with regard to any damage or destruction of the Project are subject to the provisions of the Construction Loan Documents.

ARTICLE XI.  
CONSTRUCTION, ADDITIONS, ALTERATIONS AND REMOVALS

11.1 Prohibition. Except as hereinafter expressly provided, no structural portion of the improvements shall be demolished, removed or altered by Borrower in any manner whatsoever without the prior written consent and approval of Lender, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, however, Borrower shall be obligated to undertake all alterations to the improvements required by any applicable law or ordinance including, without limitation, any alterations required by any accessibility laws including without limitation the Americans with Disabilities Act and any other federal, state or local law governing accessibility to and within the improvements (the "Accessibility Laws"); and, in such event, Borrower shall comply with the provisions hereof.

11.2 Permitted and Required Construction and Renovation. Lender and Borrower acknowledge and agree that Borrower intends and has the right, and has agreed and shall be required as a covenant, obligation and condition hereunder to continue to develop, construct, expand and build out the to-be-constructed improvements as more particularly depicted on the Development Plan to complete the Project; and that from time to time various minor, non-material alterations may be undertaken by Borrower. Borrower hereby acknowledges and agrees that all construction and/or renovation of the improvements shall be conducted and completed in accordance with the following terms and conditions:

(a) Before the commencement of work on each new development phase of the Project within the Property (as set forth in the Development Plan, a "Phase"), final plans and specifications for such Phase shall be made available for Lender's review and approval (not to be unreasonably withheld or delayed so long as the plans and specifications comply with (i) all applicable governmental regulations, and (ii) all easements, covenants and restrictions of record, including without limitation the Permitted Exceptions).

(b) Before the commencement of work on any new Phase, Borrower shall obtain (and make available to Lender evidence of) the approval thereof by all governmental departments or authorities having or claiming jurisdiction of or over the Property, if required by such departments or authorities, and with any public utility companies having an interest therein, if required by such utility companies. In any such work, Borrower shall comply with all applicable laws, ordinances, requirements, orders, directions, rules and regulations of the federal, state, county and municipal governments and of all other governmental authorities having or claiming jurisdiction of or over the Property and of all their respective departments, bureaus and offices, and with the requirements and regulations, if any, of such public utilities, of the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction, or any other body exercising similar functions, and of all insurance companies then writing policies covering the Property or any part thereof.

(c) Before the commencement of work on any new Phase, Borrower shall make available to Lender a copy of its general construction contract for the construction of the subject improvements (the "General Contract"). Borrower shall, upon request of Lender, make Lender a co-obligee, additional insured or beneficiary of any general contractor's and/or subcontractor's payment bonds or performance bonds for the subject improvements. Proceeds of any such bonds shall be used to complete the construction of the improvements.

(d) Borrower represents and warrants to Lender that all work on the improvements will be performed in a good and workmanlike manner and in accordance with the terms, provisions and conditions of this Agreement and all governmental requirements.

(e) Lender shall have the right to inspect any such construction work at all times during normal working hours and to maintain at the Property for that purpose (at its own expense) such inspector(s) as it may deem necessary so long as such inspections do not interfere with Borrower's work (but Lender shall not thereby assume any responsibility for the proper performance of the work in accordance with the terms of this Agreement, nor any liability arising from the improper performance thereof).

(f) All such work shall be performed at no cost, expense or liability to Lender, and free of any liens (including mechanics or construction liens) on Lender's interest in the Property.

(g) Upon substantial completion of work on the improvements, Borrower shall procure and provide to Lender a copy of an original final certificate of occupancy, if applicable, from the appropriate governmental authorities verifying the substantial completion thereof.

(h) Borrower shall, and hereby agrees to, indemnify and save and hold Lender harmless from and against and reimburse Lender for any and all loss, damage, cost and expense (including, without limitation, reasonable attorneys' fees), at both trial and all appellate levels, incurred by or asserted against Lender which is occasioned by or results, directly or indirectly, from (i) any construction or renovation activities conducted upon the Property by Borrower or

otherwise pursuant to the Project Documents, whether or not the same is caused by or the fault of Borrower or any contractor, subcontractor, laborer, supplier, materialman or any other third party, or (ii) any obligations or liabilities of Lender which are entered into or assumed by Lender, as owner of the Property, in connection with the Project.

ARTICLE XII.  
MAINTENANCE AND REPAIRS

12.1 Repairs by Borrower. Borrower shall, to the extent so obligated in the Project Documents perform, at all times during the term of this Agreement and at its sole cost and expense, put, keep, replace and maintain the Property and the improvements in good repair and in good, safe and substantial order and condition, shall make all repairs thereto, both inside and outside, structural and non-structural, ordinary and extraordinary, howsoever the necessity or desirability for repairs may occur, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, and shall use all reasonable precautions to prevent waste, damage or injury.

12.2 Lender's Obligation. Lender shall not be required to make any alterations, reconstructions, replacements, changes, additions, improvements or repairs of any kind or nature whatsoever to the Property or any portion thereof (including, without limitation, any portion of the improvements) at any time during the term of this Agreement.

ARTICLE XIII.  
LENDER'S RIGHT OF INSPECTION AND ENTRY

13.1 Inspection. Lender and its agents shall have the right to enter upon the Property or any portion thereof at any reasonable time to inspect the operation, sanitation, safety, maintenance and use of the same, or any portions of the same and to assure itself that Borrower is in full compliance with its obligations under this Agreement (but Lender shall not thereby assume any responsibility for the performance of any of Borrower's obligations hereunder, nor any liability arising from the improper performance thereof). In making any such inspections, Lender shall not unduly interrupt or interfere with the residents and commercial tenants within the Project or the conduct of Borrower's or TGC's business.

ARTICLE XIV.  
ASSIGNMENT

14.1 Transfers by Borrower. Borrower may not transfer or assign this Agreement without Lender's prior written consent, which consent may be withheld in Lender's sole and absolute discretion. For purposes of this Section and the requirement of Lender's consent, "transfer" shall include, without limitation, the sale, transfer, assignment or other disposition of any member or ownership interests in Borrower. If given, the consent of Lender to an assignment, transfer or encumbrance shall not relieve Borrower or such assignee from the obligation of obtaining the express consent in writing of Lender to any further assignment, transfer or encumbrance. In addition, any such approved assignee shall expressly assume this

Agreement by an agreement in recordable form, an original executed counterpart of which shall be delivered to Lender prior to any assignment of this Agreement. Lender's consent to any assignment of this Agreement shall not operate to release any Borrower-assignor from its obligations hereunder, with respect to which said Borrower-assignor shall remain personally liable.

14.2 Assignment by Lender. Lender may assign its interest in this Agreement during the term hereof (either by assignment, transfer or lien); provided, however, that any such assignee shall be a Qualified Transferee, as described on Exhibit J. Borrower agrees that Lender and any affiliate of Lender is a Qualified Transferee. Borrower further agrees that with respect to an investment pool or investment fund which owns all or part of the membership interests in the Lender, or a lien on the membership interests in the Lender, a transfer of limited partner interests, limited liability company interests, syndicate interests or other interests in such investment pool or investment fund is not subject to any restriction pursuant to the terms of this Agreement.

#### ARTICLE XV.

#### LENDER'S INTEREST NOT SUBJECT TO LIENS

15.1 Liens, Generally. Borrower shall not create or cause to be imposed, claimed or filed upon the Lender's interest in the Property, or any portion thereof, any lien, charge or encumbrance whatsoever other than those created by the Construction Loan Documents, the Community Loan Documents and the Special Improvement Financing Documents. If, because of any act or omission of Borrower, any such lien, charge or encumbrance shall be imposed, claimed or filed, Borrower shall, at its sole cost and expense, cause the same to be discharged of record (by release, bonding, or obtaining a declaratory judgment confirming that the lien, charge or encumbrance does not affect Lender's interest) and Borrower shall indemnify and save and hold Lender harmless from and against any and all costs, liabilities, suits, penalties, claims and demands whatsoever, and from and against any and all attorneys' fees, at both trial and all appellate levels, resulting therefrom or on account thereof. In the event that Borrower shall fail to timely pursue, with reasonable diligence, removal of the lien, charge or encumbrance from Lender's interest, Lender shall have the option of paying, satisfying or otherwise discharging (by bonding or otherwise) such lien, charge or encumbrance and Borrower agrees to reimburse Lender, upon demand, for all sums so paid and for all costs and expenses incurred by Lender in connection therewith, together with interest thereon, until paid.

15.2 Mechanics Liens. Except for permitted assignments, Lender's interest in the Property shall not be subjected to liens of any nature by reason of Borrower's construction, alteration, renovation, repair, restoration, replacement or reconstruction of the improvements or any improvements on or in the Property, or by reason of any other act or omission of Borrower (or of any person claiming by, through or under Borrower) including, but not limited to, mechanics' and materialmen's liens. All persons dealing with Borrower are hereby placed on notice that such persons shall not look to Lender or to Lender's credit or assets (including Lender's interest in the Property) for payment or satisfaction of any obligations incurred in connection with the construction, alteration, renovation, repair, restoration, replacement or

reconstruction thereof by or on behalf of Borrower. Borrower has no power, right or authority to subject Lender's interest in the Property to any mechanic's or materialmen's lien or claim of lien. If a lien, a claim of lien or an order for the payment of money shall be imposed against the Property on account of work performed, or alleged to have been performed, for or on behalf of Borrower, Borrower shall, within thirty (30) days after written demand by Lender to do so, cause the Property to be released therefrom by the payment of the obligation secured thereby or by furnishing a bond or by any other method prescribed or permitted by law. If Borrower causes the lien to be released or bonded within said thirty (30) days, the filing of same shall not constitute an Event of Default. If a lien is released, Borrower shall thereupon furnish Lender with a written instrument of release in form for recording or filing in the appropriate office and otherwise sufficient to establish the release as a matter of record.

15.3 Contest of Liens. Borrower may, at its option, contest the validity of any lien or claim of lien if Borrower shall have first posted an appropriate and sufficient bond in favor of the claimant or paid the appropriate sum into court, if permitted by law, and thereby obtained the release of the Property from such lien. If judgment is obtained by the claimant under any lien, Borrower shall pay the same immediately after such judgment shall have become final and the time for appeal therefrom has expired without appeal having been taken. Borrower shall, at its own expense, defend the interests of Borrower and Lender in any and all such suits; provided, however, that Lender may, at its election, engage its own counsel and assert its own defenses, in which event Borrower shall cooperate with Lender and make available to Lender all information and data which Lender deems necessary or desirable for such defense.

15.4 Notices of Commencement of Construction. If specifically provided for under applicable law, prior to commencement by Borrower of work on any new Phase of construction on the Property, or other material construction, Borrower shall record or file a notice or affidavit of the commencement of such work (the "Notice of Commencement"), identifying Borrower as the party for whom such work is being performed, stating such other matters as may be required by law and requiring the service of copies of all notices, liens or claims of lien upon Lender. Any such Notice of Commencement must clearly and accurately reflect the respective interests of Borrower and Lender in the Property. A copy of any such Notice of Commencement shall be furnished to and approved by Lender and its attorneys prior to the recording or filing thereof, as aforesaid.

#### ARTICLE XVI. CONDEMNATION

16.1 In the event any action is filed to condemn the Property or the improvements thereof, the party having knowledge of such filing shall promptly give notice thereof to the other party.

#### ARTICLE XVII. SUBORDINATION

Subject to the terms of the Tri-Party Agreement, Lender's interest in the Property and the Project is subordinate to the Construction Loan Documents and the Community Loan Documents, specifically the Construction Loan Mortgage and the Community Loan Mortgage, respectively. To the extent permitted by the Tri-Party Agreement, Borrower hereby authorizes Lender to take such actions as Lender deems necessary to protect and secure its interest in the event of any action taken by the beneficiary of the Construction Loan Documents.

**ARTICLE XVIII.**  
**REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as follows:

**18.1 Structure, Organization and Good Standing.** Borrower and ERC are each a limited liability company, validly existing and in good standing under the laws of the State of Maryland, each has full power and all necessary licenses and permits, to enter into, deliver and perform its obligations under this Agreement and any other document, instrument or agreement noted in the recitals or executed and delivered in conjunction with the Project (the "Transaction Documents"), as applicable, and to own and operate its properties and to carry on its business as now conducted and as presently proposed to be conducted. Borrower is also qualified to conduct business as now conducted and as presently proposed to be conducted in the State of Kansas. Borrower has no subsidiaries. All of the issued and outstanding interests in Borrower are owned by ERC.

**18.2 Authority and Consents.** Borrower and ERC each have full power to enter into this Agreement and have taken all action, corporate and otherwise, necessary to authorize the execution, delivery and performance of this Agreement and the Transaction Documents, as applicable, the completion of the transactions contemplated hereby and thereby, and the execution and delivery of any and all instruments necessary or appropriate in order to effectuate fully the terms and conditions of this Agreement and the Transaction Documents. No consent or approval of any court, governmental agency, other public authority, financial institution or third party (except as has already been obtained) is required as a condition to (a) the authorization, execution, delivery and performance of this Agreement or the Transaction Documents ; or (b) the consummation by Borrower and ERC of the transactions contemplated herein or therein. This Agreement has been, and the Transaction Documents, upon execution, will be, properly executed and delivered by the duly authorized officers of the sole member of Borrower, and will constitute the valid and legally binding obligation of Borrower and ERC, and are, or will be, as applicable, enforceable against Borrower in accordance with their respective terms, except as enforcement of such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

**18.3 No Conflict.** Neither the execution and delivery of this Agreement and the Transaction Documents nor the carrying out of the transactions contemplated hereby and thereby will result in any violation, termination or modification of, or conflict with, either the organizational documents of Borrower or ERC, or any of the contracts or other instruments to which any of Borrower or ERC is a party, or of any judgment, decree, order, regulation or law applicable to any of Borrower or ERC.



18.4 Litigation, Claims, Etc. There is no litigation, claim or assessment pending, or to Borrower's knowledge, threatened, against or affecting Borrower, TGC or ERC in any court or before any governmental authority or arbitration board or tribunal which involve the possibility of materially and adversely affecting the Property, the Project, the financial condition of Borrower, TGC or ERC, or the ability of Borrower, TGC or ERC to perform their respective obligations under this Agreement and the Transaction Documents, or which may have a material adverse affect on this Agreement, the Project, Borrower, TGC, ERC or the transactions contemplated hereby, except as disclosed to Lender and listed in Schedule 18.4 attached hereto ("Disclosed Claims"). Neither Borrower nor ERC, or to Borrower's knowledge, TGC, is in default with respect to any order of any court or governmental authority or arbitration board or tribunal which involve the possibility of materially and adversely affecting the Property, the Project, the financial condition of Borrower, TGC or ERC, or the ability of Borrower, TGC or ERC to perform their respective obligations under this Agreement and the Transaction Documents, or which may have an adverse affect on this Agreement, the Project, Borrower, TGC, ERC or the transactions contemplated hereby.

18.5 Reserved.

18.6 Transaction Documents are Legal and Authorized. Compliance by ERC and Borrower with all of the provisions of this Agreement and the Transaction Documents (a) is within the limited liability company powers of each of ERC and Borrower; (b) will not violate any provisions of any law or any order of any court or governmental authority or agency and will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under the governing articles of each of ERC or Borrower or any indenture or any other agreement or instrument to which Borrower or ERC is a party or by which it or they may be bound or result in the imposition of any liens or encumbrances on any property of either ERC or Borrower; and (c) has been duly authorized by all necessary limited liability company action on the part of ERC and Borrower. This Agreement, the Transaction Documents and any other documents executed and/or delivered by Borrower and/or ERC to Lender in connection with the transaction contemplated hereby, have been duly executed by authorized officers of the sole member of Borrower and delivered and constituted the legal, valid and binding contracts and agreements of Borrower enforceable in accordance with their terms, except as enforcement of such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

18.7 Documents. True and complete copies of the Project Documents have been delivered to Lender and, to the best knowledge of Borrower, each of the Project Documents is in full force and effect and there is no default existing, pending or threatened under any material provision of the Project Documents.

18.8 Construction Loan Documents.

(a) Borrower has delivered all required reports and information to the Construction Lender pursuant to the Construction Loan Documents, subject to those items to be delivered to Construction Lender pursuant to that certain Post-Closing Agreement between Borrower and Construction Lender dated as of April 3, 2007.

(b) Borrower has complied with and continues to comply with the financial covenants and obligations pursuant to the Construction Loan Documents.

(c) Borrower has obtained and continues to maintain the insurance required by the Construction Loan Documents.

(d) There exists no default by Borrower under the Construction Loan Documents or any event or omission which with the passage of time or the giving of notices, would constitute a default.

18.9 Use of Proceeds. None of the transactions contemplated in this Agreement (including without limitation thereof, the use of proceeds from the Mezzanine Loan) will violate or result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulation issued pursuant thereto, including, without limitation, Regulations G, T and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II. Borrower does not own nor does Borrower intend to carry or purchase any "margin stock" within the meaning of said Regulation G.

18.10 The Project and the Property.

(a) Title. Borrower has good and marketable fee simple title to the Property, insurable at general commercial rates, subject only to the Permitted Exceptions set forth on Exhibit B attached hereto and to the liens relating to the Construction Loan Documents, and there are no unfulfilled covenants or obligations related to the acquisition of the Property.

(b) Governmental Approvals and Licenses. Borrower and TGC have received all of the governmental approvals and licenses relating to the development and operation of the Project on the Property listed in the health care law opinion provided by Polsinelli Shalton Flanigan Suelthaus PC.

18.11 Full Disclosure. To the best of Borrower's knowledge, after due inquiry, Borrower and ERC have provided to Lender access to or copies of all material information available or known to Borrower and ERC regarding the Property, the Project, TGC and ERC. To the best of Borrower's knowledge, all disclosures made to Lender have been true, complete and accurate in all material respects, and there are no material facts which have been deliberately withheld or unfairly presented to Lender.

18.12 No Defaults. No defaults have occurred under the Transaction Documents and neither ERC, TGC nor the Borrower is in default in the payment of principal of or interest on any indebtedness for borrowed money and none is in default under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been issued and no event has occurred and is continuing under the provisions of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder, and which involve the possibility of materially and adversely affecting the Property, the Project, the financial condition of Borrower, TGC or ERC, or the ability of Borrower, TGC or ERC to perform their respective obligations under this Agreement and the Transaction Documents, or which may have an adverse affect on this Agreement, the Project, Lender or the transactions contemplated hereby.

**18.13 Taxes.**

(a) All Tax Returns required to be filed on or before the date hereof by or on behalf of ERC and Borrower have been filed, and such Tax Returns are true, correct, and complete in all respects.

(b) ERC and Borrower have paid in full on a timely basis all Taxes owed by them, whether or not shown on any Tax Return.

(c) There is no action, suit, proceeding, investigation, audit or claim now proposed or pending against or with respect to ERC or Borrower in respect of any Tax.

(d) ERC and Borrower have withheld and paid over to the proper governmental authorities all Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts paid to any employee, independent contractor, creditor, or other third party.

For purposes of this Agreement, (i) "Tax" (including with correlative meaning the terms "Taxes" and "Taxable") means (a) all foreign, federal, state, local and other income, gross receipts, sales, use, ad valorem, value-added, intangible, unitary, transfer, franchise, license, payroll, employment, estimated, excise, environmental, stamp, occupation, premium, property, prohibited transactions, windfall or excess profits, customs, duties or other taxes, levies, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, (b) any liability for payment of amounts described in clause (a) as a result of transferee, liability, of being a member of an affiliated, consolidated, combined or unitary group for any period, or otherwise through operation of law, and (c) any liability for payment of amounts described in clause (a) or (b) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other person for Taxes; and (ii) "Tax Return" shall mean any return (including any information return), report, statement, schedule, notice, form, estimate, or declaration or estimated tax relating to or required to be filed with any governmental authority in connection with the determination, assessment, collection or payment of any Tax.

**18.14 Investment Company Act Status.** Neither ERC nor Borrower is an "investment company", or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

**18.15 Compliance with Law.** To the best of Borrower's knowledge, Borrower and ERC are each in compliance with all laws, ordinances, governmental rules or regulations to which it is subject, including, without limitation, ERISA, and all laws, ordinances, governmental rules or regulations relating to environmental protection, the violation of which would materially and adversely affect the Project, the Property, the business condition of Borrower or ERC, or any of ERC's or Borrower's ability to perform its obligations under this Agreement and the Transaction Documents to which it or they are a party or any other document or instrument contemplated thereby.

18.16 Environmental Matters.

(a) Hazardous Materials. "Hazardous Materials" shall mean any substance which is or contains (i) any "hazardous substance" as now or hereafter defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 *et seq.*) ("CERCLA") or any regulations promulgated under CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*) ("RCRA") or regulations promulgated under RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; (viii) mold; and (ix) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under Environmental Requirements (as hereinafter defined) or the common law, or any other applicable laws relating to the Property. Hazardous Materials shall include, without limitation, any substance, the presence of which on the Property requires reporting, investigation or remediation under Environmental Requirements.

(b) Environmental Requirements. "Environmental Requirements" shall mean all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders and decrees, now or hereafter enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivisions in which the Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over the owner of the Property, the Property, or the use of the Property, relating to pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or waste or Hazardous Materials into the environment (including, without limitation, ambient air, surface water, ground water or land or soil).

(c) Compliance. To Borrower's best knowledge, and subject to the matters disclosed in the reports listed on Schedule 18.16(c), the Property and the Project are not in violation of any Environmental Requirements, and except for types and amounts that are used in the ordinary course of the development and operation of the Project (and consistent with Environmental Requirements), there are no Hazardous Materials on the Property or within the Project.

18.17 Financial Disclosure. Borrower and ERC have delivered to Lender all financial statements, other financial documents and disclosures regarding Borrower and such financial statements, documents and disclosures fairly present the financial condition and the results of operations, change in membership interests, and cash flow of Borrower as of the date of this agreement, all in accordance with GAAP (where applicable).

ARTICLE XIX.  
LIABILITY OF LENDER; INDEMNIFICATION

19.1 Liability of Lender. Lender shall not be liable to Borrower, its employees, agents, business invitees, licensees, customers, clients, family members or guests for any damage, injury, loss, compensation or claim arising out of or resulting from any act or event occurring within the Property, including, but not limited to: (a) repairs to any portion of the Property; (b) interruption in Borrower's or TGC's use of the Property; (c) any accident or damage resulting from the use or operation by Borrower or any other person or persons of any equipment within the Property, including without limitation, heating, cooling, electrical or plumbing equipment or apparatus; (d) the termination of this Agreement by reason of the condemnation or destruction of the Property in accordance with the provisions of this Agreement; (e) any fire, robbery, theft, mysterious disappearance or other casualty occurring within the Property; (f) the actions of any other person or persons; and (g) any leakage or seepage in or from any part or portion of the Property, whether from water, rain or other precipitation that may leak into, or flow from, any part of the Property, or from drains, pipes or plumbing fixtures in the improvements. Any goods, property or personal effects stored or placed by the Borrower or its employees in or about the Property shall be at the sole risk of the Borrower.

19.2 Indemnification of Lender. Borrower shall defend, indemnify and save and hold Lender harmless from and against and reimburse Lender for, any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, costs and expenses of every kind or nature, including reasonable attorneys' fees and court costs, at both the trial and all appellate levels, incurred by Lender arising directly or indirectly from or out of: (a) any failure by Borrower, ERC or TGC to perform any of the terms, provisions, covenants or conditions of this Agreement on Borrower's, ERC's or TGC's part to be performed; (b) any accident, injury or damage which shall happen at, in or upon the Property, occurring during the term of this Agreement or any extension hereof; (c) any matter or thing arising out of the condition, occupation, maintenance, alteration, repair, use or operation by any person of the Property, or any part thereof, or the operation of the business contemplated by this Agreement to be conducted thereon, thereat, therein, or therefrom; (d) any failure of Borrower to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any governmental authority, including, without limitation, the Accessibility Laws; (e) any contamination of the Property, or the groundwaters thereof, and occasioned by the use, transportation, storage, spillage or discharge thereon, therein or therefrom of any toxic or hazardous chemicals, compounds, materials or substances, whether by Borrower, ERC, TGC or by any agent or invitee of Borrower, ERC or TGC; (f) any discharge of toxic or hazardous sewage or waste materials from the Property into any septic facility or sanitary sewer system serving the Property, whether by Borrower or by any agent of Borrower, ERC or TGC; (g) any other act or omission of Borrower, ERC, TGC, or its or their employees, agents, invitees, customers, licensees or contractors; or (h) any agreement entered into by Lender, at the request of Borrower, or in order to carry out any obligations of Borrower, as owner of the Property, in connection with the Project.

Borrower's indemnity obligations under this Article and elsewhere in this Agreement arising prior to the termination, expiration or assignment of this Agreement shall survive any such termination, expiration or assignment (except to the extent that any such obligations arise out of acts occurring following any such termination, expiration or assignment hereof).

19.3 Notice of Claim or Suit. Borrower shall promptly notify Lender of any claim, action, proceeding or suit instituted or threatened against Borrower or Lender of which Borrower receives notice or of which Borrower acquires knowledge. In the event Lender is made a party to any action for damages or other relief against which Borrower has indemnified Lender, as aforesaid, Borrower shall defend Lender, pay all costs and shall provide effective counsel to Lender in such litigation or, at Lender's option, shall pay all reasonable attorneys' fees and costs incurred by Lender in connection with its own defense or settlement of said litigation.

## ARTICLE XX. THIRD PARTY RIGHTS AND OBLIGATIONS

20.1 Third Party Documents. Lender and Borrower acknowledge that the Project and/or the interests of Lender, Borrower and TGC therein are subject and subordinate to various documents involving other parties, relating to the development, financing, leasing, occupancy and management of the Project on the Property, including without limitation the documents described and identified in Exhibit E attached hereto (referred to herein collectively as the "Third Party Documents," and otherwise as defined in said Exhibit E). Borrower has agreed and does hereby agree with and in favor of Lender to fully and timely perform all of its material obligations under and relating to the Third Party Documents. In the event that Borrower fails to fully and timely perform all of its material obligations under and relating to the Third Party Documents, and Borrower further fails to cure any Event of Default resulting therefrom, Borrower hereby irrevocably constitutes and appoints Lender as attorney-in fact for Borrower with full power, but not the obligation, to cure any Event of Default and otherwise perform any of Borrower's material obligations under and relating to the Third Party Documents. The foregoing appointment shall be irrevocable and shall be deemed to be coupled with an interest on the part of the Lender.

20.2 Compliance with Third Party Documents. Borrower shall comply with all material terms and provisions of the Third Party Documents, subject to Borrower's right to pursue all available remedies, at law and in equity, with respect to any alleged default in the performance of the developer/development manager's duties and obligations under the Third Party Documents, or otherwise contest, in good faith and with due diligence, any such alleged default by Borrower. Unless required by applicable laws, Borrower shall not enter into any modifications or amendments of the Third Party Documents, nor, except as otherwise expressly set forth in this Agreement, terminate the same prior to the expiration thereof, without Lender's prior written consent; nor shall Borrower elect not to extend the term of the Third Party Documents without Lender's prior written consent. In addition to the obligations contained herein, Borrower agrees to promptly deliver to Lender copies of all notices provided to Borrower under the terms of the Third Party Documents concerning notices of default, notices of changes or modifications and the like.

ARTICLE XXI.  
DEFAULT

21.1 Events of Default. Each of the following events shall be an "Event of Default" hereunder by Borrower and shall constitute a breach of this Agreement:

(a) If Borrower shall fail to pay, within five (5) days of when due, any sums payable under the Mezzanine Note or this Agreement.

(b) If Borrower shall violate or fail to comply with or perform any other term, provision, covenant, agreement or condition to be performed or observed by Borrower under this Agreement, and such violation or failure shall continue for a period of thirty (30) days after written notice from Lender of such default. In the event of a default other than a monetary default, if the nature of the default is such that it cannot reasonably be cured within the time period specified above, then Borrower shall have such additional time as is reasonable to effect such cure provided that (i) Borrower has commenced and diligently pursued such curative actions within the time period specified above, (ii) Borrower at all times diligently and continuously pursues such curative actions, and (iii) Borrower is not otherwise in default hereunder.

(c) If any assignment, transfer or encumbrance shall be made or deemed to be made that is in violation of the provisions of this Agreement.

(d) If, at any time during the term of this Agreement, Borrower shall file in any court, pursuant to any statute of either the United States or of any state, a petition in bankruptcy or insolvency, or for reorganization or arrangement, or for the appointment of a receiver or trustee of all or any portion of Borrower's property, including, without limitation, its leasehold interest in the Property, or if Borrower shall make an assignment for the benefit of its creditors or petitions for or enters into an arrangement with its creditors.

(e) If, at any time during the term of this Agreement, there shall be filed against Borrower in any courts pursuant to any statute of the United States or of any state, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or a portion of Borrower's property, and any such proceeding against Borrower shall not be dismissed within sixty (60) days following the commencement thereof.

(f) If any of Borrower's assets shall be seized under any levy, execution, attachment or other process of court where the same shall not be vacated or stayed on appeal or otherwise within thirty (30) days thereafter, or if any of Borrower's assets is sold by judicial sale and such sale is not vacated, set aside or stayed on appeal or otherwise within thirty (30) days thereafter.

(g) If Borrower defaults under any of the Project Documents and does not cure any such default within any applicable notice, grace and/or cure periods.

(h) If TGC defaults under any of the Third Party Documents and does not cure any such default within the applicable notice and cure period.

(i) If the Project fails the Balance Test (defined in Section 23.4 below) as determined under Section 23.4.

(j) If Guarantor defaults under the Guaranty (defined in Section 26.2 below) or any of the Third Party Documents.

(k) If Borrower takes any action which constitutes a Major Decision pursuant to Section 5.9, without the required prior written consent of Lender.

(l) If the Construction Lender exercises its right to require mandatory prepayment under the terms of the Construction Loan and the Construction Loan is not refinanced or otherwise replaced in an amount deemed appropriate by Lender.

**21.2 Remedies on Default.** Upon the occurrence of an Event of Default hereinabove specified and subject to the terms of the Tri-Party Agreement:

(a) Lender may, subject to the limitations hereinafter set forth, terminate this Agreement and, peaceably or pursuant to appropriate legal proceedings, exercise any right or remedy permitted under the Security Documents.

(b) Lender may sue for all sums, charges, payments, costs and expenses due from Borrower to Lender hereunder either: (i) as they become due under this Agreement, or (ii) at Lender's option, accelerate the maturity and due date of the whole or any part of the Mezzanine Loan, as well as all other sums, charges, payments, costs and expenses required to be paid by Borrower to Lender hereunder, including, without limitation, damages for breach or default of Borrower's obligations hereunder in existence at the time of such acceleration, such that all sums due and payable under this Agreement shall, following such acceleration, be treated as being and, in fact, be due and payable in advance as of the date of such acceleration. Lender may then proceed to recover and collect all such unpaid sums so sued for from Borrower by distress, levy, execution or otherwise. Regardless of which of the foregoing alternative remedies is chosen by Lender under this subparagraph (b), Lender shall not be under any obligation to minimize or mitigate Lender's damages or Borrower's loss as a result of Borrower's breach of or default under this Agreement.

In addition to the remedies hereinabove specified and enumerated, Lender shall have and may exercise the right to invoke any other remedies allowed at law or in equity as if the remedies of re-entry, unlawful detainer proceedings and other remedies were not herein provided. Accordingly, the mention in this Agreement of any particular remedy shall not preclude Lender from having or exercising any other remedy at law or in equity. Nothing herein contained shall be construed as precluding the Lender from having or exercising such lawful remedies as may be



and become necessary in order to preserve the Lender's right or the interest of the Lender in the Property and in this Agreement, even before the expiration of any notice periods provided for in this Agreement, if under the particular circumstances then existing the allowance of such notice periods will prejudice or will endanger the rights and estate of the Lender in this Agreement.

21.3 Lender May Cure Borrower Defaults. If Borrower shall default in the performance of any term, provisions, covenant or condition on its part to be performed hereunder Lender may, after notice to Borrower and a reasonable time to perform after such notice (or without notice if, in Lender's reasonable opinion, an emergency involving a threat to life or health or of imminent destruction of material property interests exists) perform the same for the account and at the expense of Borrower. If, at any time and by reason of such default, Lender is compelled to pay, or elects to pay, any sum of money or do any act which will require the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights hereunder or otherwise, such sum or sums, together with interest thereon at the highest rate allowed under the laws of the state in which the Property is located, shall be repaid to Lender by Borrower promptly when billed therefor.

21.4 Rights Cumulative. The rights and remedies provided and available to Lender in this Agreement are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by Lender, shall be deemed to be in exclusion of any other.

#### ARTICLE XXII. NOTICES

All notices, elections, requests and other communication hereunder shall be in writing and shall be deemed to have been given or made when delivered by hand or by overnight courier, or five (5) days after deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested or, in the case of notice by telex, facsimile transmission or other telegraphic communications equipment, when properly transmitted with receipt acknowledged upon transmission, addressed as follows or to such other address as may be hereafter designated in writing by one party to the others:

If to Lender: MSRESS III Kansas Campus, L.P.  
c/o Mr. Andrew Bauman  
Morgan Stanley/US RE Investing Division  
1585 Broadway, Floor 37  
New York, New York 10036  
Phone: (212) 761-4468  
Fax: (212) 507-4861

With a copy to: Mark Pollak, Esquire  
Wilmer Hale LLP  
100 Light Street, Suite 1300  
Baltimore, Maryland 21202  
Phone: (410) 986-2860  
Fax: (410) 986-2828

If to Borrower: Kansas Campus, LLC  
701 Maiden Choice Lane  
Baltimore, Maryland 21228  
Attn: General Counsel  
Phone: (410) 402-2350  
Fax: (410) 402-2348

or such other address as may be designated by either party by written notice to the other. Any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Agreement shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

ARTICLE XXIII.  
ADDITIONAL COVENANTS OF BORROWER

23.1 Conduct of Business. Borrower shall not engage in any business other than the development of the Project and activities incidental thereto, and shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect and in good standing its corporate, limited partnership, limited liability company or other entity status and existence and its rights and licenses necessary to conduct such business.

23.2 Additional Covenants of Borrower. In addition to the other covenants and representations of Borrower herein and in this Agreement, Borrower hereby covenants, acknowledges and agrees that Borrower shall:

(a) [Deleted].

(b) Give prompt notice to Lender of any litigation or any administrative proceeding involving Borrower, ERC, TGC, Lender, the Property or the Project of which Borrower has notice or actual knowledge and which involves a potential uninsured liability equal to or greater than \$100,000 or which, in Borrower's reasonable opinion, may otherwise result in any material adverse change in the business, operations, property, prospects, results of operation or conditions, financial or otherwise, of Borrower, ERC, TGC or the Project.

23.3 Borrower a Single Purpose Entity. Borrower represents, agrees and warrants that Borrower is, and throughout the Term will remain, a Single Purpose Entity as defined, described and contemplated on Exhibit F hereof.

23.4 Balance Test. At all times during the Term, the Project shall satisfy the "Balance Test" pursuant to the terms of this Section 23.4 and as further defined in Exhibit G. In addition to any other reports required under this Agreement, Borrower shall prepare (or cause to be prepared) and furnish to Lender within 30 days after the end of each calendar quarter, and promptly upon written request at any time by Lender in connection with the occurrence of a

material adverse event before the end of a calendar quarter, a projection of the Balance Test computation as of the end of such calendar quarter (or such other date as may be specified by Lender) in the form attached hereto and made part of Exhibit G; together with such supporting and additional information as may be requested by Lender in writing. Such report shall be for informational purposes only and Lender shall not be bound by any determination made by Borrower of the Balance Test computation in any such report provided to Lender. The Project shall be considered to fail the Balance Test upon the determination by Lender, in its reasonable discretion, to that effect and the delivery of notice (a "Balance Test Default Notice") to Borrower setting forth a summary of the computation underlying that determination. Within ten (10) business days following delivery of such Balance Test Default Notice, Borrower shall have the opportunity to supply documentation demonstrating that the Project satisfies the Balance Test which is satisfactory to Lender, in Lender's sole discretion; *provided, however*, that such right shall not apply if the determination by Lender is based on a failure of the Project to satisfy the Balance Test appearing on the face of a Balance Test report provided to Lender under this Section. If, after such 10-business day period, the parties disagree as to whether the Project fails to satisfy the Balance Test solely because of the projected costs to complete the Project, the final determination of the projected costs to complete shall be made by an independent consultant mutually selected by Lender and Borrower within five (5) business days following the close of the prior 10-business day period. The independent third party shall be directed to produce its conclusions regarding the costs to complete the Project for purposes of the Balance Test within 30 days of its engagement. If the parties are unable to agree on an acceptable third party for resolving their dispute as to costs, or if the dispute regarding the Balance Test cannot otherwise be resolved by the parties, the final determination shall be made by Lender in the exercise of its reasonable discretion. Within five (5) business days following any final determination under this Section 23.4 that the Project fails to satisfy the Balance Test, ERC shall have the right to cure the out-of-balance condition by making an additional capital contribution to Borrower of cash in such amount as shall cause the Project to satisfy the Balance Test after such additional capital contribution. The failure by Lender to contest any assumptions used by Borrower in preparing the Balance Test report as of any date shall not restrict Lender's right to contest the validity of those assumptions in applying the Balance Test as of a later date.

ARTICLE XXIV.  
PREPAYMENT RIGHTS

24.1 Borrower's Option to Prepay. Borrower shall have the option to prepay the Mezzanine Loan (the "Borrower Prepayment Option"), as follows:

(a) Borrower shall exercise its Borrower Prepayment Option hereunder at any time by giving at least sixty (60) days written notice to Lender of Borrower's intent to exercise the Borrower Prepayment Option.

(b) The "Prepayment Price" to be paid by Borrower upon exercise of the Borrower Prepayment Option, if exercised, shall be determined as follows:

(i) If prepayment of the Mezzanine Loan pursuant to the Borrower Prepayment Option under this Section 24.1 (the "Optional Prepayment") occurs prior to the

Make-Whole Deadline (defined below): the original principal amount of the Mezzanine Loan (and all other amounts due thereunder or hereunder), plus the Make-Whole Amount (defined below).

(ii) If the Optional Prepayment occurs on or after the Make-Whole Deadline: the Prepayment Price shall be equal to the then outstanding principal amount of the Mezzanine Loan and all other amounts due to Lender under the Mezzanine Note or this Agreement.

(c) The Optional Prepayment shall occur on or before a date which is sixty (60) days after Lender's receipt of Borrower's exercise notice, or at such other time as shall be mutually acceptable to Lender and Borrower.

(d) The Prepayment Price shall be paid in cash, by wire transfer to Lender's account.

(e) All expenses incurred by Borrower and/or Lender in connection with prepayment of the Mezzanine Loan (including Lender's attorneys' fees) shall be paid by Borrower.

(f) Borrower shall be deemed to have exercised and effected the Borrower Prepayment Option hereunder, and shall be obligated to pay to Lender the full Prepayment Price immediately and without offset or credit, in the event that title to the Property is transferred or conveyed to the holder of any mortgage or similar lien or encumbrance or party claiming thereunder or purchasing at foreclosure thereof, pursuant to an exercise of any purchase option or foreclosure of any mortgage or other lien or encumbrance to which the Property has been or is subjected.

For purposes of this Agreement, "Make-Whole Amount" shall mean, with respect to any amounts of the original principal amount of the Mezzanine Loan re-paid to Lender prior to April 3, 2011 (the "Make-Whole Deadline"), an amount equal to such additional sum of money, if any, as must be added to such amount so that if such total amount (i.e., such partial or full repayment of the original principal amount of the Mezzanine Loan (as applicable) plus, without duplication, the additional sum of money) were, on such date, used to purchase non-callable United States Treasury Securities having maturity dates as close to the Make-Whole Deadline as possible, such investment would result in the same yield to Lender that Lender would have received had Borrower made all payments of principal and interest on the original principal amount of the Mezzanine Loan through the Make-Whole Deadline.

**24.2 Lender's Right to Require Borrower to Exercise the Borrower Prepayment Option.** Lender shall have the absolute right, but not the obligation, to require Borrower to prepay the Mezzanine Loan in an amount equal to the original principal amount of the Mezzanine Loan plus the Make-Whole Amount, and including any other amounts then due and owing to Lender hereunder on any of the following dates or upon the occurrence of any of the following events:

(a) at any time from and after the Make-Whole Deadline, in the sole and absolute discretion of Lender; or

(b) at any time following the occurrence of an Event of Default with respect to Borrower or a default by Guarantor under the Guaranty (as defined in Section 26.2 below).

In order to exercise Lender's right to require prepayment, Lender shall deliver to Borrower and to ERC written notice (the "Exercise Notice") of such exercise, which notice shall state Lender's computation of the applicable prepayment amount due in full satisfaction of the Mezzanine Loan. The giving of the Exercise Notice by Lender shall constitute an irrevocable commitment by the Borrower to prepay the Mezzanine Loan. The prepayment of the Mezzanine Loan pursuant to Lender's right to require prepayment shall occur on or before a date which is one hundred twenty (120) days after Borrower's receipt of the Exercise Notice, or at such other time as shall be mutually acceptable to Lender and Borrower and shall be conducted in accordance with the provisions of Section 24.1.

**24.3 Rights Subject to Agreement.** The Borrower Prepayment Option as set forth in this Article XXIV shall be subject to the payment to Lender, within the time frames set forth above, as applicable, of all amounts due or payable to Lender pursuant to the terms of this Agreement. In the event of an early termination of this Agreement, the rights of Borrower to prepay the Mezzanine Loan under Section 24.1 hereof shall, unless Borrower has filed or otherwise becomes subject to any type of bankruptcy event or filing, survive only until thirty (30) days after Borrower's receipt of notice that this Agreement has been terminated (TIME BEING OF THE ESSENCE); provided that Lender's rights under Section 24.2 shall survive an early termination of this Agreement until the original stated maturity date of the Mezzanine Note.

#### ARTICLE XXV: ADDITIONAL REQUIREMENTS

**25.1 Book Entry System.** The Lender, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices a copy of each agreement pursuant to which any rights to payments, property or other consideration (the "Loan Payments") hereunder are transferred or assigned to another person (a "Loan Assignee") and a register for the recordation of the names and addresses of Lender and any Loan Assignee, and the amount and type of any Loan Payments owing to, Lender and any Loan Assignee pursuant to the terms hereof from time to time (the "Register"); provided, however, in no event will Borrower be obligated to make Loan Payments to Lender and any Loan Assignee in the aggregate in excess of the Loan Payments payable hereunder. The entries in the Register shall be conclusive absent manifest error, and Borrower, Lender, and each Loan Assignee may treat each person whose name is recorded in the Register pursuant to the terms hereof as the owner of the Loan Payments hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, Lender and each Loan Assignee, at any reasonable time and from time to time upon reasonable prior notice. No assignment of any Loan Payments shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause. It is intended that this Section 25.1 constitute a "book

entry system" within the meaning of Treasury Regulation Section 1.871-14(c)(1)(i)(B) and shall be interpreted consistently therewith.

25.2 Future Amendment. Subject to the terms and conditions of the Third Party Documents and the related agreements executed by Lender, Borrower hereby agrees to amend this Article XXV from time to time as Lender deems necessary or desirable in order to effectuate the intent hereof, provided that the same does not result in any material change in the economic costs and benefits derived and incurred hereunder, or affect Borrower's ability to use, develop, construct or improve the Property.

25.3 Tax Treatment of the Mezzanine Loan. Borrower and Lender hereby agree not to take any position with the U.S. Internal Revenue Service (in any filing therewith or otherwise) and for financial accounting purposes, that is inconsistent with the characterization of the Mezzanine Loan as a loan for U.S. federal income tax and GAAP purposes.

#### ARTICLE XXVI MISCELLANEOUS

26.1 Reserved.

26.2 Guaranty and Lender-Developer Agreement. Lender has entered into this Agreement in reliance upon (i) the Limited Guaranty and Indemnity Agreement by ERC in favor of Lender dated as of even date herewith (the "Guaranty"), pursuant to which Guarantor has provided certain guarantees and indemnities relating to Borrower's performance of its obligations under this Agreement, and (ii) the Lender-Developer Agreement between Guarantor and Lender dated of even date herewith, pursuant to which Guarantor grants certain rights to Lender with respect to the Development Agreement.

26.3 Estoppel Certificates. Borrower shall from time to time, within fifteen (15) days after request by Lender and without charge, give a Borrower Estoppel Certificate in the form attached hereto as Exhibit H and containing such other matters as may be reasonably requested by Lender to any person, firm or corporation specified by Lender and certifying as to the accuracy of statements as set forth therein.

26.4 Brokerage. Lender and Borrower hereby represent and warrant to each other that they have not engaged, employed or utilized the services of any business or real estate brokers, salesmen, agents or finders in the initiation, negotiation or consummation of the business and loan transaction reflected in this Agreement. On the basis of such representation and warranty, each party shall and hereby agrees to indemnify and save and hold the other party harmless from and against the payment of any commissions or fees to or claims for commissions or fees by any real estate or business broker, salesman, agent or finder resulting from or arising out of any actions taken or agreements made by them with respect to the business and real estate transaction reflected in this Agreement.

26.5 No Partnership or Joint Venture. Lender shall not, by virtue of this Agreement, in any way or for any purpose, be deemed to be a partner of Borrower in the conduct of Borrower's business upon, within or from the Property or otherwise, or a joint venturer or a member of a joint enterprise with Borrower.

26.6 Entire Agreement. This Agreement contains the entire agreement between the parties and, except as otherwise provided herein, can only be changed, modified, amended or

terminated by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Lender and Borrower that there are no verbal agreements, representations, warranties or other understandings affecting the same, and that Borrower hereby waives, as a material part of the consideration hereof, all claims against Lender for rescission, damages or any other form of relief by reason of any alleged covenant, warranty, representation, agreement or understanding not contained in this Agreement. This Agreement shall not be changed, amended or modified except by a written instrument executed by Lender and Borrower.

26.7 Waiver. No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon Lender or Borrower unless in writing and executed by Lender or Borrower, as the case may be. Neither the failure of Lender or Borrower to insist upon a strict performance of any of the terms, provisions, covenants, agreements and conditions hereof, nor the acceptance of any sums by Lender with knowledge of a breach of this Agreement by Borrower in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies that Lender or Borrower may have or a waiver of any subsequent breach or default in any of such terms, provisions, covenants, agreements and conditions.

26.8 Time. Time is of the essence in every particular of this Agreement, including, without limitation, obligations for the payment of money.

26.9 Costs and Attorney's Fees. If either party shall bring an action to recover any sum due hereunder, or for any breach hereunder, and shall obtain a judgment or decree in its favor, the court may award to such prevailing party its reasonable costs and reasonable attorneys' fees, specifically including reasonable attorneys' fees incurred in connection with any appeals (whether or not taxable as such by law). Lender shall also be entitled to recover its reasonable attorneys' fees and costs incurred in any bankruptcy action filed by or against Borrower, including, without limitation, those incurred in seeking relief from the automatic stay, in dealing with the assumption or rejection of this Agreement, in any adversary proceeding, and in the preparation and filing of any proof of claim.

26.10 Captions and Headings. The captions and headings in this Agreement have been inserted herein only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of, or otherwise affect, the provisions of this Agreement.

26.11 Severability. If any provision of this Agreement shall be deemed to be invalid, it shall be considered deleted therefrom and shall not invalidate the remaining provisions of this Agreement.

26.12 Successors and Assigns. The agreements, terms, provisions, covenants and conditions contained in this Agreement shall be binding upon and inure to the benefit of Lender and Borrower and, to the extent permitted herein, their respective successors and assigns.

26.13 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state in which the Property is located.

26.14 Waiver of Jury Trial. BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM OR THEIR HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF,


UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER'S ACCEPTING THIS AGREEMENT.

**26.15 Usury Clause.** It is the intent of Lender and Borrower to comply strictly with any applicable usury law. Lender shall not at any time be entitled to charge, receive, or collect, and Lender shall not be deemed to have contracted for, charged, or received, as interest on the principal indebtedness outstanding hereby, any amount in excess of the maximum amount to be contracted for, charged or received by applicable law, and in the event the Lender ever charges, receives, or collects as interest any such excess, such excess shall be cancelled if charged but not received or collected, or be deemed partial payment of the principal indebtedness evidenced hereby if received or collected, and if such excess has been received or collected and the principal shall have been paid in full, all such excess interest shall forthwith be refunded to Borrower. The term "applicable law," as used herein, shall mean the laws of the State of Kansas.

**26.16 Legend.** Notwithstanding anything contained herein to the contrary, the interests and rights of Lender pursuant to this Agreement are subject in all respects to the terms, covenants, and limitations as set forth in that certain Subordination and Standstill Tri-Party Agreement dated as of April 3, 2007 among Construction Lender, as Agent, Lender and Borrower (the "Tri-Party Agreement"), the provisions of which Tri-Party Agreement are incorporated herein by reference to the same extent as if fully set forth herein.

**26.17 ORAL AGREEMENTS.** WITHOUT LIMITING THE FOREGOING PROVISIONS HEREIN, THE FOLLOWING PROVISION IS SET FORTH IN ORDER TO COMPLY WITH THE REQUIREMENTS OF K.S.A § 16-118 AND SERVES AS NOTICE TO BORROWER. THE PARTIES AGREE THAT THIS ENTIRE AGREEMENT IS NONSTANDARD AND CONTAINS SUFFICIENT SPACE FOR THE PLACEMENT OF NONSTANDARD TERMS. THIS AGREEMENT CONTAINS ALL OF THE AGREEMENTS AND IS INTENDED TO BE THE FINAL EXPRESSION OF THE CREDIT AGREEMENT OF BORROWER AND LENDER, AND SUPERSEDES ANY AND ALL PRIOR DISCUSSION AND/OR AGREEMENTS RELATIVE THERETO. THIS AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR ORAL CREDIT AGREEMENT OR OF A CONTEMPORANEOUS ORAL CREDIT AGREEMENT BETWEEN BORROWER AND LENDER. BORROWER AND LENDER HEREBY INITIAL THIS PROVISION AS AN AFFIRMATION THAT NO UNWRITTEN, ORAL CREDIT AGREEMENTS EXIST BETWEEN THE PARTIES OR BETWEEN ANY PARTY AND ANY AGENT OF ANY PARTY TO THIS LOAN AGREEMENT.

BORROWER'S INITIALS:  
LENDER'S INITIALS:

  
\_\_\_\_\_  
\_\_\_\_\_



UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER'S ACCEPTING THIS AGREEMENT.

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26.16 Legend. Notwithstanding anything contained herein to the contrary, the interests and rights of Lender pursuant to this Agreement are subject in all respects to the terms, covenants, and limitations as set forth in that certain Subordination and Standstill Tri-Party Agreement dated as of April 3, 2007 among Construction Lender, as Agent, Lender and Borrower (the "Tri-Party Agreement"), the provisions of which Tri-Party Agreement are incorporated herein by reference to the same extent as if fully set forth herein.

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BORROWER'S INITIALS:

LENDER'S INITIALS:

ARTICLE XXVII  
RIGHTS AND OBLIGATIONS OF BORROWER WITH RESPECT TO PERFORMANCE BY  
TGC

Notwithstanding any provision of this Agreement to the contrary, to the extent that this Agreement requires or otherwise obligates Borrower to enforce or require any performance by TGC with respect to the Project or otherwise, Lender hereby acknowledges and agrees that Borrower's obligation of enforcement pursuant to this Agreement shall be limited by Borrower's contractual rights and powers to enforce or otherwise compel such performance by TGC pursuant to the assignment of any of such rights or powers to Borrower, or otherwise.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, Lender and Borrower have caused this Agreement to be  
duly executed on or as of the day and year first above written.

**BORROWER:**

**KANSAS CAMPUS, LLC,**  
a Maryland limited liability company

By: Erickson Retirement Communities, LLC, a  
Maryland limited liability company,  
its Member

By: 

Name: Gerald F. Doherty  
Title: Executive Vice President

*[Signatures continue on following page.]*

**LENDER:**

**MSRESS III KANSAS CAMPUS, L.P., a Delaware  
limited partnership**

**By: MSRESS III Kansas Campus GP, LLC**

By:  (SEAL)

**Name: Andrew Bauman**

**Title: Vice President**

**SCHEDULE A**

**DEFINED TERMS**

Accessibility Laws	Section 11.1
Agreement	Opening Paragraph
Balance Test	Section 23.4
Balance Test Default Notice	Section 23.4
Borrower	Opening Paragraph
Borrower Prepayment Option	Section 24.1
CCRC	Recitals - A
CERCLA	Section 18.16(a)
City	Recitals - C(iv)
Community Loan	Recitals - C(i)
Community Loan Agreement	Recitals - C(i)
Community Loan Documents	Recitals - C(i)
Community Loan Mortgage	Recitals - C(i)
Community Note	Recitals - C(i)
Construction Lender	Recitals - C(ii)
Construction Loan	Recitals - C(ii)
Construction Loan Agreement	Recitals - C(ii)
Construction Loan Documents	Recitals - C(ii)
Development Agreement	Recitals - B(ii)
Disclosed Claims	Section 18.4
Entrance Deposits	Recitals - B(iii)
Environmental Requirements	18.16(b)
ERC	Recitals - B(ii)
ERISA	Section 5.9(h)
Event of Default	Section 21.1
Exercise Notice	Section 24.2
General Contract	Section 11.2(c)
Guaranty	Section 26.2
Hazardous Materials	Section 18.16(a)
Lender	Opening Paragraph
Loan Assignee	Section 25.1
Loan Payments	Section 25.1
Lockbox Account Agreement	Recitals - C(iii)
Major Decisions	Section 5.9
Make-Whole Amount	Section 24.1(f)
Make-Whole Deadline	Section 24.1(f)
Master Lease	Recitals - B(i)
Mezzanine Loan	Recitals - D

Mezzanine Note	Recitals - D
Monthly Fees	Recitals - B(iii)
Mortgage	Section 1.1(a)
Notice of Commencement	Section 15.4
Optional Prepayment	Section 24.1(b)(i)
Permitted Exceptions	Section 5.6
Phase	Section 11.2(a)
Phase Plans	Section 5.7
Prepayment Price	Section 24.1(b)
Project	Recitals - A
Project Documents	Section 5.1
Project Loans	Section 5.7
Property	Recitals - A
Qualified Transferee	Exhibit J
RCRA	Section 18.16(a)
Register	Section 25.1
Residence and Care Agreement	Recitals B(iii)
Residents	Recitals - B(iii)
Security Documents	Section 1.1(a)
Single Purpose Entity	Section 23.3 and Exhibit F
Special Assessment Bonds	Recitals - C(iv)
Special Improvements	Recitals - C(iv)
Special Improvement	
Financing Documents	Recitals - C(iv)
TAB Summary	Section 5.8
Tallgrass Creek	Recitals - A
Tax	Section 18.13
Taxes	Section 18.13
Taxable	Section 18.13
Tax Return	Section 18.13
Term	Section 1.1(b)
TGC	Recitals - B(i)
Third Party Documents	Section 20.1
Transaction Documents	Section 18.1
Tri-Party Agreement	Section 26.16
Trust Indenture	Recitals - C(iv)
Unit or Units	Recitals - A
Working Capital Loan	Recitals - C(iii)
Working Capital Loan Agreement	Recitals - C(iii)
Working Capital Loan Documents	Recitals - C(iii)
Working Capital Security Agreement	Recitals - C(iii)
Working Capital Promissory Note	Recitals - C(iii)

**SCHEDULE 18.4**

**DISCLOSED CLAIMS**

Robert Lee Butt, et. al., v. Erickson Retirement Communities, LLC, et. al., Case No.: 03-C-05-009447 OT, is currently pending in the Circuit Court of Baltimore County, Maryland.

The case arises out of alleged carbon monoxide poisoning of the Plaintiff while he was performing services for an outside consultant at Oak Crest Village. The Plaintiff alleges permanent brain damage and loss of concentration and memory. Damages have been requested in the amount of \$20,000,000.

The claim is covered by insurance carried by Erickson (subject to a \$50,000 deductible). Additional parties such as architect and HVAC contractor have been brought into case. Due to an amended complaint filed by Plaintiff and cross claims filed on behalf of Erickson, the case mediation, discovery and trial schedules will be reset.

**SCHEDULE 18.16(c)**

1. Phase I Environmental Site Assessment Report by Olsson Associates ("OA") prepared for Erickson Retirement Community, dated December, 2005, with corrections as of April 18, 2006, OA Project No.: 2005-0950.
2. Phase II Environmental Site Assessment by OA prepared for Erickson Retirement Community, dated January, 2006, OA Project No. 2005-0950.



**EXHIBIT A**

**LEGAL DESCRIPTION**

**(SEE ATTACHED)**

**PARCEL 1:**

Lot 1 and Tract A, ERC Campus, Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas.

**PARCEL 2:**

A non-exclusive easement for vehicular and pedestrian traffic, ingress and egress over driveways and vehicular parking areas as provided in the instrument labeled "Access Easement Agreement" filed in Book 8124, Page 163.

**PARCEL 3:**

A perpetual access easement for vehicular and pedestrian traffic access, ingress and egress over and across that area provided in the instrument labeled "Access Easement (option 1)" filed in Book 8171, Page 332.

1. Encroachments, overlaps, boundary line disputes, and any matters occurring subsequent to March 28, 2007 that would be disclosed by an accurate survey and inspection of the land.
2. Easements or claims of easements occurring subsequent to March 28, 2007, not shown by the public records, and which would be disclosed by an accurate survey and inspection of the land.
3. General taxes for the year 2007 and subsequent years, none now due and payable.
4. The following ordinance or resolution creating a district with the power to impose special assessments against the land has been recorded in conformity with K.S.A. 40-1134:  
  
Resolution No. WD 96-36: Enlarging Consolidated Main Sewer District of Johnson County, Ks to include the area known as Tomahawk Creek No. 3 Enlargement and implementing a sewer main extension project to serve the enlargement area, filed in Book 4988, Page 719 and refiled in Book 5009, Page 627.  
  
Resolution No. 2839: Enlargement of Consolidate Main Sewer District of Johnson County, Kansas pursuant to Johnson County Charter Resolution No. 29-92, filed in Book 4989, Page 842.  
  
NOTE: For your information, your Policy does not insure against loss or damage arising from special assessments by any district having power to impose them, if they are not due and payable at the office of the County Treasurer.  
  
Special assessments, if any, levied by the City of Overland Park, which are not yet due and payable at the office of the County Treasurer.
5. Right of Way, Access Control and Access Easement, Water Line Easement, Drainage Easement and Sanitary Sewer Easement established by and shown on the recorded plat of said subdivision filed in Book 200609, Page 002307.
6. The plat of said subdivision makes the following dedication:  
  
Tract A shall be dedicated by subsequent document in fee simple absolute, by Kansas Warranty Deed, to the City of Overland Park. Said tract is intended to be used for public open area space, natural preservation areas, and may include a bike/hike trail. The exact location of the bike/hike trail will be determined in field at the time of construction and any prior specific routings of bike/hike trails on preliminary plats are purely conceptual and do not control the final location of said trails.
7. Storm Drainage Variance filed in Volume 3129, Page 605.
8. Permanent and temporary easement for water transmission line as created by Eminent Domain Case 90C 10001 (Parcel No. 16) and filed in Volume 3233, Page 177.
9. Permanent Drainage Easement granted to the City of Overland Park, Kansas, filed in Volume 4250, Page 41.
10. Right-of-way granted to Consolidated Main Sewer District, filed in Book 5330, Page 639.
11. Permanent Easement granted to Water District No. 1 of Johnson County, Kansas, filed in Book 6039, Page 646.
12. Permanent Drainage Easement granted to the City of Overland Park, filed in Book 7546, Page 144.
13. Traffic Signal Easement granted to the City of Overland Park, filed in Book 7546, Page 147.
14. Terms and Provisions of Access easement Agreement filed in Book 8124, Page 163. (Benefit easement)
15. INTENTIONALLY DELETED AS OF REVISION NO. 3
16. Rights of access to Highway 69 as condemned by the State Highway Commission of Kansas in Johnson County District Court Case No. 32605, except that the premises shall abut upon and have access to said Highway over and across the 3rd and 4th courses in the description of the property taken as shown on the report of the appraisers.

17. Right-of-Way granted to Consolidated Main Sewer District of Johnson County, filed in Book 200604, Page 005765.
18. Easement granted to KCP&L, filed in Book 200605, Page 005572.
19. Terms and provisions of Stream Corridor Maintenance Agreement filed in Book 200609, Page 002308. Addendum to Stream Corridor Maintenance Agreement filed in Book 200611, Page 004411.
20. Tenancy rights, either as month to month or by virtue of written leases, of Tallgrass Creek, Inc. and residents under the Residence and Care Agreements.
21. Permanent Easement granted to Water District No. 1 of Johnson County (Kansas), filed in Book 200612, Page 006332.
22. Right of Way granted to Oneok, Inc., filed in Book 200702, Page 000121.
23. Mortgage, Security Agreement and Fixture Filing executed by Kansas Campus, LLC, a Maryland limited liability company, to Mercantile-Safe Deposit and Trust Company, a Maryland corporation, dated April 28, 2006 and filed May 11, 2006 in Book 200605 at Page 004515, which states that it secures a lien in the original amount of \$20,000,000.00.  
As amended by Amended and Restated Mortgage, Security Agreement and Fixture Filing, dated \_\_\_\_\_ and filed \_\_\_\_\_, 2007 at Book \_\_\_\_\_, page \_\_\_\_\_ among the Land Records of Johnson County, Kansas.
24. Financing Statement executed by Kansas Campus, LLC, to Mercantile-Safe Deposit and Trust Company, filed May 11, 2006 in Book 200605 at Page 004516, affecting the items therein described, which have become or may become affixed to the land.  
Amendment filed April \_\_\_\_\_, 2007 in Book \_\_\_\_\_ at Page \_\_\_\_\_.
25. UCC-1 Financing Statement by and between Erickson Retirement Group, as Debtor, and Mercantile-Safe Deposit and Trust Company, as Collateral and Administrative Agent, as Secured Party, filed April \_\_\_\_\_, 2007 in Book \_\_\_\_\_ at Page \_\_\_\_\_.
26. UCC-1 Financing Statement filed with Johnson County, KS on \_\_\_\_\_, 2007 at Book \_\_\_\_\_, page \_\_\_\_\_ disclosing Tallgrass Creek, Inc., as Debtor, and Kansas Campus, LLC, as Secured Party.
27. Terms and provisions of the unrecorded lease by and between Kansas Campus, LLC, and Tallgrass Creek, Inc., dated \_\_\_\_\_, notice of which is given by the Memorandum of Master Lease filed \_\_\_\_\_, 2007 at Book \_\_\_\_\_, page \_\_\_\_\_ among the Land Records of Johnson County, Kansas.
28. Mortgage and Security Agreement by Kansas Campus, LLC as Mortgagor for the benefit of Tallgrass Creek, Inc. as Mortgagee, securing indebtedness in the amount of \$318,262,000, dated \_\_\_\_\_ and filed \_\_\_\_\_, 2007 at Book \_\_\_\_\_, page \_\_\_\_\_ among the Land Records of Johnson County, Kansas.
29. Subordination and Standstill Tri-Party Agreement by and between Mercantile-Safe Deposit and Trust Company, as Collateral and Administrative Agent, MSRESS III Kansas Campus, L.P., and Kansas Campus, LLC, filed April \_\_\_\_\_, 2007 in Book \_\_\_\_\_, at Page \_\_\_\_\_.

**EXHIBIT C**

**CONDITIONS TO CLOSING**

1.1 **Borrower's Deliveries.** Prior to the advance of the Mezzanine Loan, Borrower shall deliver to Lender, at Borrower's sole cost and expense, the following:

(a) ***Title Commitments.*** Commitments (the "Title Commitments") to the Borrower for ALTA Form B (1992) Lender's Title Insurance Policies committing to insure, at standard rates titles to the Property as being good and marketable, subject only to the Permitted Exceptions, in the amount of not less than Twenty-Five Million Dollars (\$25,000,000.00), issued by Chicago Title Insurance Company (the "Title Insurer"). The Title Commitments shall be effective as of the date of the Mezzanine Note (the "Closing Date"), and shall reflect that fee simple title is held by Borrower and that each Lender's Title Insurance Policy to be issued to Lender (the "Title Insurance Policies") shall contain an extended coverage endorsement over the general or standard exceptions which are a part of the printed form of the policy and subject only to the Permitted Encumbrances. Each Title Insurance Policy shall, in addition, (a) not contain any exceptions for (i) liens for labor or material, whether or not of record, (ii) parties in possession, (iii) unrecorded easements, (iv) taxes and special assessments not shown on the public records, and (v) any matter that the Survey discloses; and (b) provide for the following endorsements: (A) an access endorsement insuring that there is direct and unencumbered access to the Property from all adjacent public streets and roads, (B) if applicable, a survey endorsement insuring that all foundations in place as of the date of such policy are within the lot lines and applicable setback lines, that the improvements do not encroach on adjoining land or any easements, and that there are no encroachments of improvements from adjoining land on the Property or any part thereof, except as shown on the survey, and (C) such other endorsements as Lender may reasonably require.

(b) ***UCC Searches.*** Written results of searches reflecting any liens, judgments, tax liens, bankruptcies, and open dockets (the "UCC Searches"), conducted by a company reasonably acceptable to the Lender.

(c) ***Copies of Documents.*** Legible copies of all documents of record referred to in any Title Commitment or disclosed by the UCC Searches.

(d) ***Survey.*** Current ALTA/ACSM land title survey of the Property (the "Survey") certified to Borrower, Lender and the Title Insurer (and such other persons or entities as the Borrower and Lender may designate) by a surveyor registered in the State of Kansas and acceptable to Lender. Lender agrees that Peridian Group, Inc. is acceptable as the surveyor to provide the Survey. The Survey shall also contain a surveyor's certification acceptable to Lender.

(e) ***Environmental Reports.*** Environmental assessment, in form and substance acceptable to Lender, regarding the presence and condition of any Hazardous Materials on the Property, or conditions which have or could result in the violation of any Environmental Requirements.

(f) *Project Related Materials.* Such other information regarding the Project and the Property as may be requested by Lender to enable Lender to effect necessary due diligence with regard to the investment of funds by Lender.

1.2 Inspection. Lender shall be given full access to, and shall have the right to inspect, (a) the Project and the Property, (b) all financial records pertaining to the operation of the Project, and (c) files and records pertaining to the processing of approvals for the Project and the marketing of Units. All such materials shall be treated as confidential by Lender.

1.3 Limited Recourse. Notwithstanding anything to the contrary in this Agreement or in any documents delivered by Lender in connection with the consummation of the transaction contemplated hereby, it is expressly understood and agreed that Lender's liability shall be limited to and payable and collectible only out of assets held by Lender and not any of Lender's directors, officers, employees, shareholders, contract holders or policyholders, shall be subject to any lien, levy, execution, setoff or other enforcement procedure for satisfaction of any right or remedy of Borrower in connection with the transaction contemplated hereby. A provision comparable to the foregoing shall be inserted in such Transaction Documents as Lender shall require.

1.4 Conditions to the Closing. Lender's obligation to settle on this transaction shall be conditioned on the following and Lender being satisfied, in Lender's sole discretion, with:

(a) the condition of title to the Property as evidenced by the Title Commitment and the Survey;

(b) the disclosure provided by Borrower and ERC relative to the Property, the Project and ERC;

(c) the absence of any casualty, condemnation or event involving any Hazardous Materials deemed by Lender to affect adversely and materially the Property or the Project;

Should Lender determine, at any time prior to the Closing Date, that one or more of the conditions have not, cannot or will not be complied with to Lender's sole and absolute satisfaction, Lender may terminate this Agreement.

**EXHIBIT D**

**CLOSING REQUIREMENTS**

1.1 **Time and Place.** The closing of the transactions contemplated hereunder (the "Closing") shall take place at a location selected by the Lender on or before April 3, 2007.

1.2 **Deliveries by Borrower.** At the Closing, the Borrower shall deliver to the Lender the following:

(a) Copies of the Articles of Organization of Borrower and ERC certified as true, complete and correct by an officer of ERC.

(b) Certificates, dated as of the Closing, in form and substance satisfactory to Lender and their counsel, executed by the sole member of Borrower and by the Secretary of ERC and certifying: (i) the incumbency of the officer who executed the Agreement; (ii) attaching copies of resolutions or consents adopted by the sole member of Borrower and the Board of Directors of ERC authorizing and approving the execution of this Agreement and the consummation of the transactions contemplated hereby; and (iii) the authority of the sole member of Borrower and the officer of ERC who executed the Agreement.

(c) Title Commitment and Survey which comply with Exhibit C above.

(d) Legal opinions of counsel to Borrower and ERC, addressed to the Lender and their respective successors and assigns, including legal opinions from (i) Gallagher, Evelius & Jones, LLP, Maryland counsel to Borrower and ERC (regarding authority to enter into agreements, enforceability, and existence of litigation), and (ii) Polsinelli Shalton Flanigan Suelthaus PC, Kansas counsel to Borrower and ERC (regarding compliance with health laws, enforceability, and compliance with laws for the Project), satisfactory in form and substance to the Lender and their special counsel.

(e) Reserved.

(f) Estoppel and agreement from TGC, in form reasonably satisfactory to Lender, (i) that no default exists by TGC or Borrower under the Project Documents, which has not been cured, (ii) that there are not any litigation or claims pending, or on appeal, against TGC which affect TGC's financial stability, in each instance to Lender.

(g) Reserved.

(h) Reserved.

(i) Such other documentation relating to the transactions contemplated hereby as may be reasonably requested by Lender or its counsel.

1.3 **Further Assurances.** In addition to the actions, documents and instruments specifically required to be taken or delivered hereby, prior to and after the date hereof, without additional

consideration, each of the parties hereto agrees to execute, acknowledge and deliver such other documents and instruments and take such other actions as the other party may reasonably request in order to complete and perfect the transactions contemplated in this Agreement.



**EXHIBIT E**

**THIRD PARTY DOCUMENTS**

The Community Loan Documents as defined in C(i) of the Recitals of this Agreement, the Construction Loan Documents as defined in C(ii) of the Recitals of this Agreement and the Special Improvement Financing Documents as defined in C(iv) of the Recitals of this Agreement.

**EXHIBIT F**

**SINGLE PURPOSE ENTITY REQUIREMENTS**

Borrower or its assignee shall throughout the Term hereof do all things necessary to continue to be and remain a Single Purpose Entity (including without limitation, if Borrower is a partnership, insuring that each General Partner of Borrower continues as a Single Purpose Entity and shall not amend its Articles of Organization or Operating Agreement, or if Borrower is a corporation, that Borrower shall not amend its Articles of Incorporation or Bylaws, or if Borrower is a limited liability company, Borrower shall prevent any Member manager of Borrower from amending such Member's Articles of Organization or Bylaws or other formation documents). For purposes hereof, "Single Purpose Entity" shall mean a person, other than an individual, which (a) is formed, organized or reorganized solely for the purpose of undertaking the activities as contemplated under the Agreement, (b) does not engage in any business unrelated to the Property and the permitted use thereof under the Agreement, (c) has not and will not have any assets other than those related to its interest in the Property and has not and will not have any indebtedness other than indebtedness contemplated or as permitted under the Agreement or otherwise incurred in the ordinary course of business, (d) maintains its own separate books and records and its own accounts, in each case which are separate and apart from the books and records of any other any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority ("Person"), (e) holds itself out as being a Person separate and apart from any other Person, (f) does not and will not commingle its funds or assets with those of any other Person except as required under any of the Third Party Documents, (g) conducts its own business in its own name, (h) maintains separate financial statements, (i) pays its own liabilities out of its own funds, (j) observes all limited liability company formalities, partnership formalities or corporate formalities, as applicable, (k) maintains an arm's-length relationship with its affiliated Persons, (l) does not guarantee or otherwise obligate itself with respect to the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as required or expressly authorized under the Agreement, (m) does not acquire obligations or securities of its partners, members or shareholders, (n) allocates fairly and reasonably shared expenses, including without limitation, any overhead for shared office space; (if any), (o) uses separate stationary, invoices and checks, (p) except as required or expressly authorized or contemplated under the Agreement, and the Third Party Documents, does not and will not pledge its assets for the benefit of any Person other than Lender or make any loans or advances to any other Person, (q) does and will correct any known misunderstanding regarding its separate identity, and (r) maintains adequate capital in light of its contemplated business operations.

In addition to the foregoing, and consistent with the Single Purpose Entity requirements hereof, Borrower covenants and agrees that throughout the Term hereof, Borrower shall not (i) voluntarily file or consent to the filing of a petition for bankruptcy, insolvency, reorganization, assignment for the benefit of creditors or similar proceedings under any federal or state bankruptcy, insolvency, reorganization or other similar law or otherwise seek any relief under

any laws relating to the relief of debts or the protection of debtors generally; (ii) 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 (except as permitted herein) or convert to another type of legal entity, without in each case Lender's consent; (iii) own any subsidiary, or make any investment in, any Person without the consent of Lender; (iv) 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 partners, members, shareholders, principals and affiliates of the Person, or any general partner, managing member, principal or affiliate thereof or any other Person; or (v) become insolvent or fail to pay its debts and liabilities from its assets as the same shall become due.

**EXHIBIT G**

**BALANCE TEST**

For purposes of this Agreement "Balance Test" shall mean the determination, made as of any date, for the Project, as to whether

- (i) the sum of the Projected Remaining Entrance Deposits  
exceeds

(ii) the sum of (x) the projected cost to complete construction and development of the Project as of the date of determination, taking into account anticipated cost increases and general inflationary trends; carrying costs through completion of the Project, including, without limitation, debt service on any financing of the Project and payment of interest on the Mezzanine Loan; and projected absorption of units in the Project based on current market environment for units of the type offered in the Project and long-term residential mortgage rates, as the same relate to the market demand for residential real estate; (y) the original principal amount of the Mezzanine Loan; and (z) \$21,000,000.00.

The projected cost to complete construction and development of the Project shall be determined based on all the facts and circumstances at the time of the determination, but in any event shall be no less than the projected costs to complete construction and development reflected in the Development Plan as then in effect as reflected in the Development Agreement as amended from time to time, including specifically the Phase Budgets and Phase Forecasts plus the aggregate "Unallocated Expense Summaries and Forecasts", as such term is defined therein.

The following defined terms shall apply for purposes of the foregoing:

"Project Balance Test Coverage Amount" shall mean an amount, determined as of any date, equal to (A) \$21,000,000 reduced by (B) the sum of the amounts set forth below with respect to each of the residential buildings in the Project which, on or before the date of determination, have been leased to TGC pursuant to the Master Lease or delivered to and accepted by TGC; provided, however, that the Project Balance Test Coverage Amount shall at all times be no less than \$9,000,000. The amounts described in clause (B) above are as follows:

Building Reference	Reduction in Project Balance Test Coverage Amount
Residential Building 1.1	\$1,200,000
Residential Building 1.2	1,200,000
Residential Building 1.3	1,200,000
Residential Building 1.4	1,200,000

<b>Residential Building 2.1</b>	<b>1,200,000</b>
<b>Residential Building 2.2</b>	<b>1,200,000</b>
<b>Residential Building 2.3</b>	<b>1,200,000</b>
<b>Residential Building 2.4</b>	<b>1,200,000</b>
<b>Extended Care 1</b>	<b>1,200,000</b>
<b>Extended Care 2</b>	<b>1,200,000</b>
<b>Total</b>	<b>\$12,000,000</b>

**"Projected Remaining Entrance Deposits"** shall mean the entrance deposits projected to be received by Borrower based on entrance deposits for similar type units which have been sold or settled as of the date of determination and other applicable assumptions reflected in the proforma development budgets included in the Development Plan and the Phase Plans then in effect affecting the projected entrance deposits to be received for the Project.

**EXHIBIT H**

**BORROWER ESTOPPEL CERTIFICATE**

THIS BORROWER'S ESTOPPEL CERTIFICATE ("Certificate") is given this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by KANSAS CAMPUS, LLC, a Maryland limited liability company ("Borrower") in favor of MSRESS III KANSAS CAMPUS, L.P., a Delaware limited liability company ("Lender").

**RECITALS:**

A. Pursuant to the terms and conditions of that certain Loan Agreement ("Agreement") dated April 3, 2007, Lender loaned to Borrower certain amounts more particularly described in the Agreement.

B. Pursuant to the terms and conditions of the Agreement, Lender has requested that the Borrower execute and deliver this Certificate with respect to the Agreement.

NOW, THEREFORE, in consideration of the above premises, the Borrower hereby makes the following statements for the benefit of Lender:

1. The copy of the Agreement and all amendments, if any, attached hereto and made a part hereof as Exhibit A is a true, correct and complete copy of the Agreement, which Agreement is in full force and effect as of the date hereof, and has not been modified or amended.

2. The Agreement sets forth the entire agreement between the Lender and the Borrower relating to the loan described therein.

3. There exist no uncured or outstanding defaults or events of default under the Agreement, or events which, with the passage of time, and the giving of notice, or both, would be a default or event of default under the Agreement.

4. No notice of termination has been given by Lender or Borrower with respect to the Agreement.

5. All payments due the Lender under the Agreement through and including the date hereof have been made, including the monthly payment of interest for the period of \_\_\_\_\_ to \_\_\_\_\_ in the amount of \$\_\_\_\_\_.

6. As of the date hereof, the monthly interest on the Mezzanine Loan under the Agreement is \_\_\_\_\_.

7. There are no disputes between the Lender and the Borrower with respect to any sum due under the Agreement or with respect to any provision of the Agreement.

8. The Borrower represents and warrants that (a) all conditions and requirements to be undertaken by Lender under the Agreement have been completed and complied with, and (b) Borrower has no offsets, counterclaims or defenses with respect to its obligations under the Agreement.

9. The Borrower understands and acknowledges that Lender is relying upon the representations set forth in this Certificate, and may rely thereon in connection with the assignment of the Agreement to \_\_\_\_\_.

IN TESTIMONY WHEREOF, witness the signature of the Borrower as of the day and year first set forth above.

KANSAS CAMPUS, LLC, a Maryland limited liability company

By: Erickson Retirement Communities, LLC, a Maryland limited liability company, its Sole Member

By: \_\_\_\_\_  
Gerald F. Doherty,  
Executive Vice President and  
General Counsel

STATE OF MARYLAND

COUNTY OF BALTIMORE

On this the \_\_\_\_ day of 20\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the Executive Vice President and General Counsel for ERICKSON RETIREMENT COMMUNITIES, LLC, a Maryland limited liability company, as Sole Member of KANSAS CAMPUS, LLC, a Maryland limited liability company, and that he/she, as such Executive Vice President and General Counsel being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself/herself as such officer.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public, State of Maryland  
Printed Name:  
Notary Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT I**

**FORM OF TAB SUMMARY**

(See Attached.)



**Kansas Campus, LLC**  
**Pro Forma Project Summary**  
**March 29, 2007**  
**Through 2016**

Comm Flns thru 2016	
Proforma	
Project Totals	

Net Operating Lease	11,571,838
Entrance Deposits	319,298,477
Working Capital Loan Payment	17,314,803
<b>Total Funds</b>	<b>348,184,718</b>

Hard Construction Costs (Construction Fees Included)	163,189,057
<b>Soft Costs:</b>	
Architecture	10,820,176
Engineering	3,484,297
Fees, Permits	4,951,054
Builders Risk	643,153
Departmental Costs	37,297,085
Land	20,252,445
Property Taxes (Land Only)	625,641
FF&E (Marketing Center)	1,175,730
Contingency (3% of Hard Costs)	5,303,834
<b>Total Direct Costs</b>	<b>247,552,351</b>

<b>Direct Margin (Excluding Financing &amp; Indirect Costs)</b>	<b>100,632,368</b>
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<b>Direct Margin %</b>	<b>40.65%</b>
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Interest Expense (Construction Loan)	24,879,584
Interest Expense (CNL)	10,500,000
Interest on Tax Exempt Bond	6,877,000
Outside Legal Fees	1,061,523
Financing Costs/Other	1,680,627
Working Capital Loan to Community	29,548,527
<b>Sub Total Financing Costs</b>	<b>74,547,272</b>
<b>Total Direct &amp; Financing Costs</b>	<b>322,099,622</b>
<b>Contribution Cumulative Cash (Excluding other In</b>	<b>26,085,096</b>

<b>Contribution Margin</b>	<b>8.10%</b>
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<b>Other Indirect Costs</b>	
Development Fees (5% of Entrance Deposits)	15,984,924

<b>Total Other Indirect Costs</b>	<b>15,984,924</b>
<b>Total Costs</b>	<b>338,064,546</b>

<b>Project Margin Cumulative Cash</b>	<b>10,120,172</b>
<b>Plus Estimated Purchase Price</b>	<b>61,000,000</b>
<b>Adjusted Margin Post Purchase</b>	<b>71,120,172</b>

<b>Margin as % of Total Revenues</b>	<b>2.91%</b>
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<b>Financing Structure</b>	
Maximum Borrowing	\$55,000,000
Investor Equity	\$15,000,000
Special Tax District Bond	\$14,950,000
LOC Interest Rate	8.50%
Equity Rate	14.00%

<b>Average Absorption per Month:</b>	<b>13.10</b>
<b>ILU</b>	<b>1,100</b>
<b>RG 1.0 (SNE/ALF)</b>	<b>162</b>
<b>Total Units</b>	<b>1,252</b>

**EXHIBIT J**

**QUALIFIED TRANSFEREE**

**"Qualified Transferee"** shall mean

(a) an insurance company, bank, savings and loan association, investment bank, trust company, commercial credit corporation, pension plan, pension fund, pension fund advisory firm, mutual fund, real estate investment fund or governmental entity or plan; or

(b) an investment company, money management firm or "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, which regularly engages in the business of making or owning real estate loans or investments, or an "institutional accredited investor" within the meaning of Regulation D of the Securities Act of 1933, as amended; or

(c) a Person that is otherwise a Qualified Transferee but that is acting in an agency capacity for a syndicate of lenders where at Agreement 51% (by loan balance owned) of the lenders in such syndicate are otherwise Qualified Transferees under clauses (a) through (c) above; or

(d) an institution substantially similar to any of the foregoing; or

(e) an investment fund, limited liability company, limited partnership or general partnership where a nationally recognized manager of investment funds, which is a Qualified Transferee, acts at the general partner, managing member or fund manager; or

(f) any entity Controlled by or Controlling, or under common Control (each term, as defined below) with, any of the entities described in clauses (a) through (d) of this definition,

provided, that, in case of each of clauses (a) through (e) of this definition, such party has at least \$600,000,000 in total assets (in name or under management) and (except with respect to a pension advisory firm, asset manager, or similar fiduciary) at least \$200,000,000 in capital/statutory surplus or shareholder's equity, and except with respect to a pension advisory firm, asset manager or similar fiduciary, is regularly engaged in the business of making or owning commercial real estate loans (or interests therein) or investments.

For purposes of this definition only, "Control" means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise, and "Controlled" and "Controlling" having meanings correlative thereto.

**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FIXTURE FILING**

**KANSAS CAMPUS, LLC,**  
a Maryland limited liability company  
(Mortgagor)

to

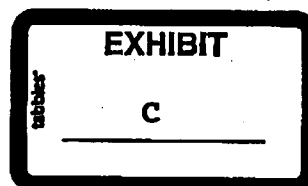
**MSRESS III KANSAS CAMPUS, L.P.,**  
a Delaware limited partnership

(Mortgagee)

April 3, 2007

DRAFTED BY AND WHEN RECORDED, RETURN TO:

**WILMER HALE, LLP**  
100 Light Street, 13th Floor  
Baltimore, Maryland 21202-3268  
Attention: Mark Pollak, Esquire



**MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FIXTURE FILING**

**THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING** (this "Mortgage") is made as of the 3rd day of April, 2007, by KANSAS CAMPUS, LLC, a Maryland limited liability company (the "Mortgagor"), in favor of MSRESS III KANSAS CAMPUS, L.P., a Delaware limited partnership (the "Mortgagee") for itself and on behalf of any successor holders of the Mezzanine Note secured hereby and hereafter defined.

**RECITALS**

**A.** Pursuant to the terms of that certain Mezzanine Loan Agreement between Mortgagor and Mortgagee of even date herewith (the "Mezzanine Loan Agreement"), Mortgagee agreed to loan to Mortgagor the sum of Twenty-Five Million Dollars (\$25,000,000) (the "Mezzanine Loan") on the terms and conditions more particularly set forth therein and in the promissory Mezzanine Note delivered simultaneously therewith (the "Mezzanine Note").

**B.** The Mortgagor intends to use the proceeds of the Mezzanine Loan to finance the construction and development of a retirement community (the "Retirement Community") on the Land (hereinafter defined). The Retirement Community will be leased to and operated by Tallgrass Creek, Inc., a Maryland non-stock corporation ("TGC").

**C.** As a condition to Mortgagee's agreement to make the Mezzanine Loan, Mortgagee has required that the payment of the Mezzanine Note be secured by, among other things, this Mortgage. This Mortgage secures (a) the payment of all sums due to the Mortgagee by the Mortgagor according to the terms of any of the Security Documents (hereinafter defined), (b) the Mortgagor's obligations with respect to future advances, which may be made by the Mortgagee for any reason and (c) the performance of, and compliance with, all of the obligations of the Mortgagor (express or implied) contained in the Security Documents.

**NOW THEREFORE**, in consideration for the making of the Mezzanine Loan by Mortgagee and the covenants, representations and warranties set forth in this Mortgage, Mortgagor hereby agrees as follows:

**SECTION 1. DEFINITIONS.** Whenever capitalized in this Mortgage, the following terms shall have the meaning given in this Section 1, unless the context clearly indicates a contrary intent.

**1.1. Encumbrances:** All liens, mortgages, rights, leases, restrictions, easements, deeds of trust, covenants, agreements, rights of way, rights of redemption, security interests, conditional sales agreements, land installment contracts, options, and all other burdens or charges.

1.2 Environmental Requirements: Any federal, state, regional, county or local law, statute, ordinance, rule or regulation; or court administrative order or decree; or private agreement, which requires special handling, collection, storage, treatment, disposal or removal of any materials located in or on or about the Property, or which concerns public health, safety, or the environment, including, without limitation, relating to (i) releases, discharges, emissions, or disposals to air, water, land or ground water, (ii) the withdrawal or use of ground water and (iii) the exposure of persons to toxic, hazardous or other controlled, prohibited, or regulated substances.

1.3 Event of Default: Any one or more of the events described in Section 8.01 hereof.

1.4 Insurance and Condemnation Proceeds. All of the items described in Section 2.04.

1.5 Land: The land consisting of approximately 65 acres located at 7100 W. 141<sup>st</sup> Street in Overland Park, Johnson County, Kansas, which is more particularly described in Exhibit A attached to this Mortgage and incorporated by reference herein.

1.6 Mezzanine Note: The Promissory Mezzanine Note of even date herewith payable to the Mortgagee by the Mortgagor evidencing the Mezzanine Loan in the face amount of Twenty-Five Million Dollars (\$25,000,000.00), including all current and future replacements, supplements, amendments and attachments thereto.

1.7 Mortgage: This instrument, including all current and future supplements, amendments and attachments thereto.

1.8 Mortgagee: MSRESS III Kansas Campus, L.P., a Delaware limited partnership, its successors and assigns, and any subsequent holders of the Mezzanine Note.

1.9 Mortgagor: Kansas Campus, LLC, its successors and assigns.

1.10 Permitted Encumbrances: Those exceptions, if any, which appear in the title policy insuring the interest of the Mortgagee hereunder, or any encumbrance hereinafter approved in writing by Mortgagee.

1.11 Project: The term "Project" shall have the meaning set forth in the Mezzanine Loan Agreement.

1.12 Project Documents: The term "Project Documents" shall have the meaning set forth in the Mezzanine Loan Agreement.

1.13 Property: All of the property described in Sections 2.1, 2.2, 2.3 and 2.4.

1.14 Personal Property: All of the personal property and fixtures described in Section 2.2.

1.15 Real Property: All of the real property described in Section 2.1.

1.16 Rents: All of the rents, earnings, proceeds, accounts, general intangibles and other rights described in Section 2.3.

1.17 Security Documents: The term "Security Documents" includes the Mezzanine Loan Agreement, the Mezzanine Note and each other document included in the meaning set forth in the Mezzanine Loan Agreement.

## SECTION 2. GRANT

2.1 Real Property. The Mortgagor, in consideration of the Mortgagee making the Mezzanine Loan to the Mortgagor and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, hereby mortgages, warrants, grants, bargains, sells, conveys and assigns to the Mortgagee all of its right, title and interest in and to the Land described more particularly in Exhibit A attached hereto as a part hereof, together with (a) all buildings and improvements now or hereafter located on the Land, (b) all rights, rights of way, air rights, riparian rights, franchises, licenses, easements, tenements, hereditaments, appurtenances, accessions and other rights and privileges now or hereafter belonging to the Land or the buildings and improvements thereupon, now owned or hereafter acquired by the Mortgagor (hereinafter collectively referred to as the "Real Property"), subject to the Permitted Encumbrances.

2.2 Personal Property and Fixtures. The Mortgagor further grants and assigns to the Mortgagee a security interest in, all of the Mortgagor's interest in all of the machines, apparatus, equipment (including, without limitation, embedded software), fixtures and articles of personal property now or hereafter located on the Land or in any improvements thereon, including without limitation all furniture, fixtures, equipment and building materials acquired with the proceeds of the Mezzanine Loan, and all the right, title and interest of the Mortgagor in and to any of such property which may be subject to any title retention or security agreement or instrument having priority over this Mortgage (hereinafter collectively referred to as the "Personal Property").

2.3 Rents and Other Rights. The Mortgagor further grants and assigns to the Mortgagee all of the Mortgagor's interest in (a) all rents, profits, royalties, issues, revenues, income, proceeds, earnings and products generated by or arising out of the Property and all accounts receivable arising in connection with the Property and all contracts for the use and occupancy of all or any portion of the Property (including but not limited to agreements with the residents of the Retirement Community), all contracts of sale for all or any portion of the Property, and all deposits to secure performance by contract purchasers for all or any portion of the Property, (b) all of the general intangibles, actions, rights in action, estate, right, title, use, claim and demand of every nature whatsoever, at law or in equity, which the Mortgagor may now have or may hereafter acquire in and to the Property, and (c) all right, title and interest of the Mortgagor in and to all extensions, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Property, hereafter acquired by or released to the Mortgagor, or constructed, assembled or placed by or for the Mortgagor on the Property, and all

conversions of the security constituted thereby (hereinafter collectively referred to as the "Rents").

2.4 Insurance Policies and Condemnation Awards. The Mortgagor further grants and assigns to the Mortgagee all insurance policies and insurance proceeds pertaining to the Property and all awards or payments, including interest thereon and the right to receive the same, which may be made with respect to any of the Property as a result of any taking or any injury to or decrease in the value of the Property (hereinafter collectively referred to as the "Insurance and Condemnation Proceeds").

2.5 Security Interest Under the Uniform Commercial Code. Any portion of the Property which by law is or may be real property shall be deemed to be a part of the Real Property for the purposes of this Mortgage. The remainder of the Property shall be subject to the Kansas Uniform Commercial Code as now or hereafter in effect (hereinafter referred to as the "Uniform Commercial Code") and this Mortgage shall constitute a Security Agreement with respect thereto. The Mortgagor hereby grants to the Mortgagee a security interest in that portion of the Property not deemed a part of the Real Property for the purpose of securing performance of all of the Mortgagor's obligations under the Security Documents. With respect to such security interest (a) the Mortgagee may exercise all rights granted or to be granted, a secured party under the Uniform Commercial Code and (b) upon the occurrence of an Event of Default the Mortgagee shall have a right of possession superior to any right of possession of the Mortgagor or any person claiming through or on behalf of the Mortgagor. The Mortgagor shall execute and file such financing statements and other security agreements as the Mortgagee shall require from time to time with respect to personal property and fixtures included in the Property. Upon any failure by the Mortgagor to do so, the Mortgagee may execute, record and file all such financing statements and other security agreements for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and attorney-in-fact of the Mortgagor to do so. The Mortgagor agrees to pay any and all filing and recording fees or other charges with respect to such documents. Further, to the extent permitted by applicable laws, the Mortgagee may file, without any Mortgagor's signature, one or more financing statements or other notices disclosing the Mortgagee's liens and other security interests. All financing statements and notices may describe the Mortgagee's collateral as all assets or all personal property of Mortgagor. Notwithstanding the filing of such "all assets" financing statements, the scope of the Mortgagee's liens and security interests with respect to the collateral shall be governed by the granting language of the Security Documents.

### SECTION 3. HABENDUM CLAUSE AND DEFEASANCES.

To HAVE AND TO HOLD the Property unto the Mortgagee, and its successors and assigns forever, and Mortgagor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto the Mortgagee and its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to the Property hereafter acquired by, or released to, the Mortgagor or constructed, assembled or placed by the Mortgagor on the Real Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling,

placement or conversion, as the case may be, and in each such case, without any further mortgage, pledge, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein. Notwithstanding the foregoing, the Mortgagor shall, at its own cost, make, execute, acknowledge, deliver and record any and all such further acts, deeds, conveyances, mortgages, notices of assignment, transfers, assurances and other documents as the Mortgagee shall from time to time require for better assuring, conveying, assigning, transferring and confirming unto the Mortgagee of the Property and the other rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign for carrying out the intention of facilitating the performance of the terms of this Mortgage. In addition, the Mortgagor hereby agrees that this Mortgage is a security agreement under the Uniform Commercial Code and creates in the Mortgagee a security interest thereunder in, among other things, all Personal Property, Insurance and Condemnation Proceeds and Rents. This Mortgage shall be effective as a financing statement pursuant to the Uniform Commercial Code. The Mortgagor shall, at its own cost and expense, execute, deliver and file any financing statements, continuation certificates and other documents the Mortgagee may require from time to time to perfect and maintain in favor of the Mortgagee a security interest under the Uniform Commercial Code in such Personal Property, Insurance and Condemnation Proceeds and Rents. Without limiting the generality of any of the foregoing, the Mortgagor hereby irrevocably appoints the Mortgagee attorney-in-fact, coupled with an interest, for the Mortgagor to execute, deliver and file any of the documents referred to hereinabove for and on behalf of the Mortgagor.

Provided always, and these presents are upon this express condition, that if the Mortgagor or its successors or assigns shall well and truly pay or cause to be paid, in full, unto the Mortgagee, its successors or assigns, the obligations secured by this Mortgage, and otherwise perform the Mortgagor's respective obligations under the Security Documents to which the Mortgagor is a party, then this Mortgage, and the estate hereby granted, shall cease, terminate and be void, and the Mortgagee shall furnish to the Mortgagor a satisfaction of this Mortgage in proper form for recording, but Mortgagee shall not be required to bear any expense or cost in connection with such satisfaction or the recording thereof.

This Mortgage secures, inter alia, present and future advances made by the Mortgagee pursuant to the Security Documents, including, without limitation, advances made to enable completion of the Project, plus accrued and unpaid interest. The priority of such future advances shall relate back to the date of this Mortgage, or to such later date as required by applicable law. This Mortgage also secures advances made by the Mortgagee with respect to the Property for the payment of taxes, assessments, maintenance charges, and insurance premiums, costs incurred by the Mortgagee for the protection of the Property or the lien of this Mortgage, including attorneys' fees, and expenses incurred by the Mortgagee by reason of the occurrence of an Event of Default hereunder, including attorneys' fees, and the priority of such advances, costs and expenses shall also relate back to the date of this Mortgage, or to such later date as required by applicable law. This Mortgage secures future advances under the Mezzanine Note pursuant to K.S.A. § 58-2336. The maximum principal amount that may be secured by this Mortgage is \$25,000,000.00; provided that in no event shall Mortgagee be obligated to advance to or for the benefit of Mortgagor in excess of the stated principal amount of the Mezzanine Note.



The Mezzanine Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. This Mortgage secures all funds advanced pursuant to the Mezzanine Loan Agreement (which advances shall constitute part of the indebtedness evidenced by the Mezzanine Note, whether more or less than the principal amount stated in the Mezzanine Note) and the punctual performance, observance and payment by the Mortgagor of all of the requirements of the Mezzanine Loan Agreement and the Mezzanine Note to be performed, observed or paid by the Mortgagor. In the event of express and direct contradiction between any of the provisions of the Mezzanine Loan Agreement and any of the provisions contained herein, then the provisions contained in the Mezzanine Loan Agreement shall control. Any warranties, representations and agreements made in the Mezzanine Loan Agreement by the Mortgagor shall survive the execution and recording of this Mortgage and shall not merge herein.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES

4.1 Warranty of Title and Further Assurances. The Mortgagor warrants that the Mortgagor is lawfully seized of an indefeasible fee simple estate in the Property free and clear of all encumbrances (except for Permitted Encumbrances), and that it has the right and authority to convey the Property and warrants specially title to the Property and that it will execute such further assurances as may be requested. The Mortgagor further covenants that the lien created hereby is and will be maintained as a third lien upon the Property, subject only to the lien of the Construction Loan and the Community Loan (as such capitalized terms are defined in the Mezzanine Loan Agreement).

#### SECTION 5. COVENANTS, RIGHTS, AND DUTIES OF MORTGAGOR GENERALLY

5.1 Covenant to Pay Obligations and to Perform Obligations Under the Terms of the Security Documents. The Mortgagor covenants that it will punctually (a) pay or cause to be paid to the Mortgagee all amounts due under the Security Documents executed by the Mortgagor, which includes the principal and interest of the Mezzanine Loan and all other costs and indebtedness secured hereby, according to the terms of the Security Documents executed by the Mortgagor; (b) perform and satisfy all other obligations of the Mortgagor under the Security Documents; (c) construct the Project in accordance with the terms of the Security Documents.

5.2 Escrow Account. At the Mortgagee's option, the Mortgagor agrees that:

5.02.1 Upon written request of the Mortgagee, the Mortgagor will pay to the Mortgagee monthly installments, each of which shall be equal to one-twelfth (1/12th) of the sum of (a) the estimated annual premiums for all insurance policies required by Sections 7.1 and 7.2, and (b) the estimated annual taxes, assessments and governmental charges pertaining to the Property, to be held by the Mortgagee in an escrow account established with the Mortgagee (the "Escrow Account") and disbursed by the Mortgagee to pay insurance premiums as they become due and taxes, assessments and governmental charges before any penalty or interest shall accrue thereon. Any Escrow Account established in accordance with this Section 5.2 shall be maintained and disbursed in accordance with the terms of the Special Improvement Financing Documents (as defined in the Mezzanine Loan Agreement). Estimates are to be made solely by

the Mortgagee in its reasonable determination and payments shall be made on the day of the month designated by the Mortgagee. No interest shall be payable by the Mortgagee on the Escrow Account unless, and then only to the extent that, applicable law shall otherwise require. All overpayments to the Escrow Account shall be applied to reduce future payments to the Escrow Account, if any, or shall be returned to the Mortgagor, at the sole discretion of the Mortgagee.

5.02.2 Upon the request of the Mortgagee, the Mortgagor shall pay such additional sums into the Escrow Account as the Mortgagee determines are necessary, so that one month prior to the date the Mortgagee is required to make payments of insurance premiums, or taxes, assessments or governmental charges, as the case may be, payments can be made therefor out of the Escrow Account.

5.02.3 The Mortgagor hereby grants the Mortgagee a security interest in the sums on deposit in the Escrow Account to secure the obligations secured hereby, and upon the occurrence of an Event of Default, the Mortgagee may, unless prohibited by applicable law, apply the balance of the Escrow Account to operate the Property or to satisfy the Mortgagor's obligations under the Security Documents, as the Mortgagee may elect.

5.3 Compliance With Laws. The Mortgagor shall comply with all laws a breach of which would adversely affect (a) the financial condition of the Mortgagor, (b) the ability to use buildings and other improvements on the Land for the purposes for which they were designed or intended, (c) the value or status of the Property, or (d) the value or status of the Mortgagee's title to the Property.

5.4 Changes in Applicable Tax Laws. In the event (a) any law is hereafter enacted which imposes a tax upon the Mezzanine Loan, any of the Security Documents, or the transactions evidenced or contemplated by any of the Security Documents, or (b) any law now in force governing the taxation of mortgages, debts secured by mortgages, or the manner of collecting any such tax, shall be changed or modified, in any manner, so as to impose a tax upon the Mezzanine Loan, any of the Security Documents, or the transactions evidenced or contemplated by any of the Security Documents (including, without limitation, a requirement that revenue stamps be affixed to any or all of the Security Documents), the Mortgagor will promptly pay any such tax. If the Mortgagor fails to make prompt payment, or if any law either prohibits the Mortgagor from making the payment or would penalize the Mortgagee if the Mortgagor makes the payment, then the failure, prohibition, or penalty, shall entitle the Mortgagee, in accordance with the terms of the Mezzanine Loan Agreement, to declare the entire unpaid principal balance of the Mezzanine Loan, together with all accrued interest, prepayment premium and any other amounts due, immediately due and payable; provided that if no Event of Default has occurred, the Mortgagor shall thereupon have thirty (30) days to pay the entire amount due without penalty or prepayment premium. If an Event of Default has occurred and is continuing or if the Mortgagor fails to make payment in full within thirty (30) days, then the Mortgagee shall be entitled to exercise all rights hereunder as though an Event of Default had occurred.

5.5 Certifications, Licenses, Permits, Etc.: The Mortgagor will obtain or cause to be obtained all certifications, licenses, permits and governmental approvals as may be necessary or required to complete the Project and operate the Retirement Community.

5.6 Sale of Assets, Consolidation, Merger, Etc.: Except as may be otherwise expressly permitted by the Mezzanine Loan Agreement, the Mortgagor shall not (a) sell, lease, transfer or otherwise dispose of its properties and assets with a fair market value in excess of \$50,000 to any person, (b) consolidate with or merge into any other entity, or permit another entity to merge into it, or acquire all or substantially all the properties or assets of any other person or entity, (c) enter into an arrangement, directly or indirectly, with any person whereby it or any of its subsidiaries or affiliates shall sell or transfer any property, real or personal, which is used and useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property for substantially the same purpose or purposes as the property being sold or transferred, or (d) cause or consent to any change in its name, ownership of member interests in the Mortgagor, or management or in the manner in which its business is conducted. Notwithstanding the foregoing, Mortgagor shall be permitted to allow a transfer of one percent or less of the membership interests in the Mortgagor to any entity which is wholly owned by Erickson Retirement Communities, LLC, provided that any such entity executes and delivers a pledge of such membership interests to Mortgagee.

5.7 Distributions, Etc.: The Mortgagor will not pay any income, bonuses, profits, salaries or fees to any of its members or make any distribution of cash or property to any of its members or affiliates thereof (including other partnerships or limited liability companies in which any of its members own an interest) except as may be permitted in the Mezzanine Loan Agreement.

5.8 Reserved.

5.9 Further Assurances and Continuation Statements. The Mortgagor from time to time will execute, acknowledge, deliver and record, at the Mortgagor's sole cost and expense, all further instruments, deeds, conveyances, supplemental mortgages, assignments, financing statements, transfers and assurances as in the reasonable opinion of the Mortgagee's counsel may be necessary (a) to preserve, continue and protect the interest of the Mortgagee in the Property, or (b) to secure the rights and remedies of the Mortgagee under this Mortgage and the other Security Documents. The Mortgagor, at the request of the Mortgagee, shall promptly file any continuation statements required by the Uniform Commercial Code to maintain the lien on any portion of the Property subject to the Uniform Commercial Code.

5.10 Expenses. The Mortgagor shall reimburse the Mortgagee for any sums, including reasonable attorney's fees and expenses, incurred or expended by them (a) in connection with any action or proceeding to sustain the lien, security interest, priority, or validity of any Security Documents, (b) to protect, enforce, interpret, or construe any of their rights under the Security Documents, (c) for any title examination or title insurance policy relating to the title to the Property, or (d) for any other purpose contemplated by the Security Documents. The Mortgagor shall, upon demand, pay all such sums together with interest thereon at the Default Interest Rate defined in the Mezzanine Note accruing from the time the expense is paid. All such sums so expended by the Mortgagee shall be secured by this Mortgage. In any action or proceeding to

foreclose this Mortgage or to recover or collect the Mezzanine Loan, the provisions of law allowing the recovery of costs, disbursements, and allowances shall be in addition to the rights given by this Section 5.10.

**5.11 Environmental Requirements:** The Mortgagor represents and warrants to the Mortgagee that except for the matters disclosed in the Environmental Reports (as defined in the Mezzanine Loan Agreement), copies of which have previously been provided to Mortgagee, there are no hazardous substances on the Real Property, that the Mortgagor has not utilized the Real Property, nor any part thereof, to treat, deposit, store, dispose of, or place any hazardous substances, as defined by 42 U.S.C.A. Section 9601(14) ("Hazardous Substances"); nor has the Mortgagor authorized any other person or entity to treat, deposit, store, dispose of, or place any Hazardous Substance on the Real Property, or any part thereof; and to the actual knowledge of the Mortgagor, and except as disclosed in the Environmental Reports, no other person or entity has treated, deposited, stored, disposed of, or placed any Hazardous Substance on the Real Property or any part thereof, except for paint and similar substances normally used in connection with the proper construction of the Project and/or the maintenance and operation of the existing facilities on the Land, in quantities not exceeding those normally kept on hand at similar facilities, all of which are stored, used and disposed of in compliance with all applicable legal and Environmental Requirements. The Mortgagor further covenants and agrees to give written notice to the Mortgagee immediately upon acquiring knowledge of the existence of any condition relating to the Property which constitutes a material threat to the health, safety or property of the Mortgagor or others.

The Mortgagor hereby covenants and agrees that, if at any time it is determined that there are Environmental Materials (hereinafter defined) located on the Real Property, the Mortgagor shall promptly take or cause to be taken, at its sole expense, such actions as may be necessary to comply with all Environmental Requirements. The term "Environmental Materials" means any materials which: (i) under any Environmental Requirements require special handling in collection, storage, treatment or disposal, (ii) are defined as hazardous material, hazardous substances or hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA") or any similar federal law or laws of the state in which the Property is located, or (iii) are oil, petroleum products and their by-products. If the Mortgagor shall fail to take such action, the Mortgagee may make advances or payments towards performance or satisfaction of the same but shall be under no obligation to do so; and all sums so advanced or paid, including all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, including, without limitation, reasonable attorneys' fees, fines, or other penalty payments, shall be at once repayable by the Mortgagor and shall bear interest at the Default Interest Rate defined in the Mezzanine Note or at the maximum interest rate which the Mortgagor may by law pay, whichever is lower, from the date the same shall become due and payable until the date paid, and all sums so advanced or paid, with interest as aforesaid, shall become a part of the indebtedness secured hereby. The Mortgagor further covenants and agrees that the Mortgagor shall, and shall cause others to, carry on the business and operations on the Real Property so as to comply and remain in compliance with all Environmental Requirements.

The Mortgagor shall defend, indemnify and hold harmless the Mortgagee against any loss, cost or expense (including, without limitation, cleanup costs, and reasonable attorneys' fees) incurred by the Mortgagee resulting from the presence on the Property at any time of any Environmental Materials. This indemnity shall apply notwithstanding any negligent or other contributory conduct by or on the part of any third parties and shall survive: (i) repayment of the Mezzanine Loan and the full release of the lien of this Mortgage; (ii) the extinguishment of the lien by foreclosure, power of sale, or any other action; or (iii) the delivery of a deed in lieu of foreclosure.

#### **SECTION 6. RIGHTS AND DUTIES OF MORTGAGOR WITH RESPECT TO MANAGEMENT AND USE OF THE PROPERTY**

6.1 Control by the Mortgagor. Until the happening of an Event of Default, the Mortgagor shall have the right to possess and enjoy the Property and, except as prohibited by the Security Documents, to receive the Rents.

6.2 Management. At all times the Mortgagor shall provide competent and responsible management to maintain and operate the Property.

6.3 Financial Statements; Books and Records. The Mortgagor shall furnish to the Mortgagee annual financial and operating statements of the Mortgagor. Such statements shall show all items of income and expense for the operation of the Property, shall be certified by the Chief Financial Officer of the Mortgagor's member and shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis. All such financial and operating statements shall be supplied in draft form not later than ninety (90) days after the close of Mortgagor's fiscal year prepared by a certified public accountant and in final form not later than one hundred twenty (120) days after the close of the Mortgagor's fiscal year audited by a firm of independent certified public accountants acceptable to the Mortgagee. The Mortgagor shall also provide the Mortgagee with copies of all federal, state and local tax returns and filings within ten (10) days of the date the same are filed. The Mortgagor shall deliver, and shall cause Lessee to deliver, to Mortgagee monthly financial statements on a consolidated and consolidating basis within thirty days after each calendar month, certified by the Chief Financial Officer of the Mortgagor's sole member as to the accuracy thereof. The Mortgagor agrees to make its books and records relating to the operation of the Property available for inspection by Mortgagee, upon request at any reasonable time, at the Mortgagor's principal place of business or at such other location in the State of Maryland as the Mortgagee may reasonably request. This paragraph shall be in addition to any other financial reporting provisions set forth in the Security Documents.

6.4 Restriction of Assignment of Rents. The Mortgagor shall not assign the Rents arising from the Property or any part thereof or any interest therein without the prior written consent of the Mortgagee, except as permitted by the Mezzanine Loan Agreement. Any attempted assignment, pledge, hypothecation, or grant without such consent shall be null and void.

6.5 Alterations and Improvements. The Mortgagor shall not make any structural alterations or improvements on the Property except in accordance with approved plans and

specifications submitted to and approved by the Mortgagee, as provided in the Mezzanine Loan Agreement. All alterations or improvements shall be erected (a) in a good and workmanlike manner strictly in accordance with all applicable law, (b) entirely on the Land (c) without encroaching upon any easement, right of way, or land of others, (d) so as not to violate any applicable use, height, set-back or other applicable restriction, and (e) without permitting any mechanic's lien to attach to the Property which is not being contested as permitted in Section 6.10. All alterations, additions, and improvements to the Property shall automatically be a part of the Property and shall be subject to this Mortgage.

6.6 Restrictions on Sale and Transfer of the Property. The Mortgagor shall not permit the Property, or any part or portion thereof or any interest therein, to be transferred (whether by voluntary or involuntary conveyance, merger, operation of law, or otherwise), other than as may expressly be permitted under the provisions of this Mortgage or the Mezzanine Loan Agreement, without the prior written consent of the Mortgagee required under the Mezzanine Loan Agreement. Any transferee of the Property or any part or portion thereof in fee simple, by virtue of its acceptance of the transfer, shall (without in any way affecting the Mortgagor's liability under the Security Documents) be conclusively deemed to have agreed to assume primary liability for the performance of the Mortgagor's obligations under the Security Documents. The sale, assignment, transfer or conveyance of any member interest in the Mortgagor shall be deemed a sale, assignment, transfer and conveyance of the Property in contravention of the provisions of this paragraph, and the sale, assignment, transfer or conveyance of member or other interest of any kind in any of the members of the Mortgagor shall be deemed a sale, assignment, transfer and conveyance of the Property in contravention of the provisions of this paragraph. This section shall not apply to any condemnation, any disposition permitted by Section 6.9 or any disposition by the Mortgagee by foreclosure hereunder or as otherwise permitted by the Security Documents.

6.7 Restriction on Encumbrances. The Mortgagor shall not allow any Encumbrances on the Property except the Permitted Encumbrances. The Mortgagor shall give the Mortgagee prompt notice of any default in or under any Permitted Encumbrances and any notice of foreclosure or threat of foreclosure. The Mortgagor shall comply with its obligations under all Permitted Encumbrances. The Mortgagee may, at its election, satisfy any Encumbrance (other than a Permitted Encumbrance not then in default), and the Mortgagor shall, on demand, reimburse the Mortgagee for any sums advanced for such satisfaction together with interest at the Default Interest Rate stated in the Mezzanine Note accruing from the date of satisfaction, which sums shall be secured hereby.

6.8 Maintenance, Waste, Repair and Inspection. The Mortgagor shall: (a) keep and maintain the Property in good order, condition, and repair and make, in a prompt manner, all equipment replacements and repairs necessary to insure that the security for the Mezzanine Loan is not impaired; (b) not commit or suffer any waste of the Property; (c) promptly protect and conserve any portion of the Property remaining after any damage to, or partial destruction of, the Property; (d) promptly repair, restore, replace or rebuild any portion of the Property which is damaged or destroyed; (e) promptly restore the balance of the Property remaining after any condemnation; (f) permit the Mortgagee or its designees to inspect the Property at all reasonable times; and (g) not make any material change in the grade of the Property or permit any material

excavation of or on the Property, except as required for utility easements and in connection with improvements contemplated in the Mezzanine Loan Agreement.

6.9 Removal and Replacement of Equipment and Improvements. Except for actions taken in connection with the preparation of the Property for the construction of the Project, no part of the Property, except supplies consumed or raw materials, work in progress and finished goods sold or transferred in the ordinary course of business operations as they are currently conducted, shall be removed from the Land, demolished, or materially altered without the prior written consent of the Mortgagee. The Mortgagor may, without consent and free from the lien and security interest of this Mortgage, remove and dispose of any worn out or obsolete fixtures or equipment which are a part of the Property, provided that prior to or simultaneously with their removal, such fixtures and equipment shall be replaced with fixtures or equipment of equal or greater value. The replacement fixtures or equipment shall be free of all Encumbrances, shall automatically be subject to the lien and security interest of this Mortgage, and shall automatically be subject to the granting clauses hereof. Upon the sale of any removed fixtures and equipment which are not replaced, the proceeds shall, at the election of the Mortgagee, be applied as a prepayment of amounts guaranteed by the Mortgagor under the Security Documents, whether then due or not. All sales shall be conducted in a commercially reasonable manner.

6.10 Taxes and Permitted Contests. The Mortgagor shall pay or cause to be paid: (a) all taxes, assessments and other governmental charges on or before the date any interest or penalty begins to accrue or attach thereto; and (b) all lawful claims which, if unpaid, might become a lien or charge upon the Property; provided, however, that the Mortgagor shall not be required to pay any taxes or claim the amount, validity or payment of which is being contested, in good faith, by appropriate legal proceedings, and so long as, in the sole opinion of the Mortgagee, no part of the Property is in danger of being sold, forfeited or lost and the contest is not impairing the security for the Mezzanine Loan. Upon payment thereof, the Mortgagor shall promptly supply the Mortgagee with receipts showing the payment of the taxes or claim.

6.11 Restrictive Covenants, Zoning, etc. No restrictive covenant, zoning change, or other restriction affecting the Property may be entered into, requested by or consented to by the Mortgagor without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld.

6.12 Preservation of Appurtenances. The Mortgagor will do all things necessary to preserve intact and unimpaired, all easements, appurtenances, and other interests and rights in favor of, or constituting any portion of, the Property.

## SECTION 7. INSURANCE AND CONDEMNATION

7.1 Builder's Risk and Casualty Insurance. At all times that any amounts are guaranteed or owing by the Mortgagor under the Security Documents, the Mortgagor shall keep the Property insured for the benefit of the Mortgagee against loss or damage by either standard builder's risk insurance or all-risk peril insurance, as the Mortgagee may require from time to time. Such insurance shall be written in amounts equal to the greater of the total amount due and owing by the Mortgagor to the Mortgagee under the Security Documents, one hundred percent (100%) of the replacement value of the Property (excluding land), or such other

amount as may be approved by the Mortgagee. Such insurance shall be written in forms and by companies satisfactory to the Mortgagee, and the losses thereunder shall be payable to the Mortgagee alone and not to the Mortgagor and the Mortgagee, jointly. The policy or policies of such insurance shall, if requested by the Mortgagee, be delivered to and retained by the Mortgagee, and shall contain a standard New York Mortgage Clause showing the loss, if any, as payable to the Mortgagee and shall require the insurer to give the Mortgagee at least thirty (30) days' prior notice of its cancellation or nonrenewal of the policy or policies. The Mortgagor shall provide the Mortgagee with receipt evidencing the payment of all premiums due on such policies. The Mortgagor shall give the Mortgagee prompt notice of any loss covered by such insurance, and the Mortgagee shall have the right (subject to the approval of the Mortgagor, so long as no Event of Default has occurred) to adjust any loss covered by an insurance policy. All monies received as payment for a loss covered by an insurance policy ("Insurance Proceeds") shall be paid over to the Mortgagee to be applied, at the option of the Mortgagee, either to the prepayment of the indebtedness secured by the Mortgage or to the payment of other charges or expenses actually incurred by the Mortgagor in the restoration, reconstruction, repair, renovation or replacement of the Property.

7.2 Liability Insurance. The Mortgagor will at all times keep itself insured against liability for damages arising from any accident or casualty in or upon the Property by maintaining comprehensive general public liability insurance, the minimum limits of which shall be One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, with a minimum Ten Million Dollars (\$10,000,000) in excess liability (umbrella form) coverage per occurrence and in the aggregate.

7.3 Contractors' Insurance. During the construction of the improvements, the Mortgagor will cause all contractors and subcontractors (including the Mortgagor if applicable) to obtain and keep in effect (or secure coverage itself) a contractors' liability insurance policy or policies in builders' all risk form, with loss payable endorsements acceptable to the Mortgagee, insuring the Project described in the Mezzanine Loan Agreement and all materials and supplies purchased with advances of the Mezzanine Loan, together with a policy or policies for Workers' Compensation Insurance to the full extent required by the laws of the State of Kansas. Upon request, the Mortgagor shall provide the Mortgagee with evidence satisfactory to the Mortgagee that all such insurance is in effect.

7.4 Other Insurance. The Mortgagor may not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under the above paragraph unless the Mortgagee is included thereon as a named insured with losses payable to the Mortgagee as above provided. The Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to the Mortgagee the policy or policies of such insurance.

If any of the Project on the Property are located in an area which has been identified as a non-minimal flood hazard area, the Mortgagor will keep the Property covered by flood insurance in an amount at least equal to the full amount secured by this Mortgage or the maximum limit of coverage available for the Property.



Unless a written waiver from the Mortgagee is obtained, the Mortgagor shall (a) keep all of its insurable properties insured against all risks usually insured against by persons operating like properties in the localities where the properties are located; and (b) maintain public liability insurance against claims for personal injury, death or property damage suffered by others upon or in or about any premises occupied by it or occurring as a result of its maintenance or operation of any automobiles, trucks or other vehicles or airplanes or other facilities or as a result of the use of products sold by it or services rendered by it.

7.5 Condemnation and Allocation of Condemnation Awards. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceeding for a condemnation, will notify the Mortgagee of such proceedings. The Mortgagee may participate in any such proceedings, and the Mortgagor will, from time to time, deliver to the Mortgagee all instruments requested by them to permit such participation. Any award or payment made as a result of any taking shall be paid to the Mortgagee, to be applied (a) if funds sufficient to restore the remainder of the Property are available from such award or payment (together with other funds supplied or caused to be supplied by the Mortgagor) and no Event of Default is then outstanding, to the restoration of the remainder of the Property, or (b) if sufficient funds are not available to restore the remainder of the Property, or an Event of Default is then outstanding, to prepayment of amounts guaranteed by the Mortgagor under the Security Documents, whether then due or not. All moneys not utilized for the repair or restoration of the remainder of the Property shall be applied as a prepayment of amounts guaranteed by the Mortgagor under the Security Documents, whether then due or not, in inverse order of maturity. The application of any award or payment as a prepayment of amounts due under the Mezzanine Note shall take effect only on the actual date of the receipt of the payment or award by the Mortgagee. In the event any payment or award is used to restore the Property, as aforesaid, the Mortgagee shall not be obligated to see to the proper allocation thereof, nor shall any amount so used be deemed a payment of any indebtedness secured by this Mortgage. Payments or awards to be used for restoration purposes, as aforesaid, shall be held by the Mortgagee and disbursed under such terms and conditions, to such persons, and at such times, as the Mortgagee may determine.

## SECTION 8. DEFAULT

8.1 Event of Default. The occurrence of any of the following shall constitute an Event of Default:

8.01.1 Event of Default Under Other Security Documents. An "Event of Default" (if so defined) occurs under a Security Document other than this Mortgage.

8.01.2 Insurance Provisions. The failure of the Mortgagor to perform its obligations set forth in Section 7 to keep the Property adequately and continually insured.

8.01.3 Receiver, Bankruptcy. If the Mortgagor (a) applies for, or consents in writing to, the appointment of a receiver, trustee, or liquidator for it of the Property, or of all or substantially all of its assets, (b) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they become due, (c) makes an assignment for benefit of creditors, (d) files a petition or an answer seeking a reorganization, composition, adjustment arrangement with creditors, or takes advantage of any insolvency law, (e) files an answer admitting the

material allegations of a petition filed against it in any bankruptcy, reorganization, composition, adjustment, arrangement, or insolvency proceeding, or (f) is dissolved as a result of an adversary suit or proceeding.

8.01.4 Receiver; Bankruptcy (Involuntary). If (a) any execution or attachment levied against the assets of the Mortgagor is not set aside, discharged, or stayed within sixty (60) days, (b) an order, judgment, or decree is entered by any court of competent jurisdiction on the application of a creditor, adjudicating the Mortgagor a bankrupt or insolvent, or appointing a receiver, trustee, or liquidator for the Mortgagor of all or substantially all of its assets, or (c) an order of relief is entered against the Mortgagor pursuant to any bankruptcy statute or law and such order, judgment, or decree continues unstayed and in effect for a period of sixty (60) days.

8.01.5 Assignment of Rents. Any attempted assignment by the Mortgagor of the whole or any part of the Rents in contravention of Section 6.4.

8.01.6 Prohibited Transfer or Encumbrance. Any transfer or event in violation of Sections 6.5, 6.6, 6.7 or 6.9.

8.01.7 Loss of License. The loss of any material license or permit necessary for the improvement, operation, occupancy, or use of the Property (whether such license or permit is issued to the Mortgagor or to another entity responsible for the operation of the Retirement Community).

8.01.8 Defaults under Superior Liens. Any default by the Mortgagor under any documents executed in connection with any superior liens against the Property, which default is not cured within any applicable grace or cure period.

8.01.9 Environmental Requirements. Failure of the Mortgagor to comply with all Environmental Requirements which is not cured within thirty (30) days after notice from the Mortgagee.

8.01.10 Other Defaults. The failure of the Mortgagor to perform or observe any of its obligations or covenants under this Mortgage not previously specifically referred to in this Article 8, which failure continues for a period of thirty (30) days after written notice to the Mortgagor; provided, however, that the Mortgagee may, in its sole discretion, extend the cure period for any default upon the reasonable request of the Mortgagor in the event that the default cannot be cured within the time set forth in this Mortgage and the Mortgagor is diligently pursuing cure of the default.

8.01.11 Environmental Liens. If the Environmental Protection Agency of the United States ("EPA"), or any other state or federal agency or any other person or entity (a) asserts or creates a lien upon any or all of the Property by reason of the failure of the Mortgagor to comply with all Environmental Requirements or (b) commences an action or proceeding based on any claims against the Mortgagor, the Property, the Mortgagee for damages or cleanup costs related to the Mortgagor's failure to comply with all Environmental Requirements, and in the case of such an action or proceeding Mortgagor is unsuccessful in obtaining a dismissal of such action or proceeding within thirty (30) days but in any event prior to the date any lien attaches to the Property.

8.01.12 Future Advances. If Mortgagor without the prior written approval of the Mortgagee, sends written notice to the Mortgagee which purports to limit the indebtedness secured by this Mortgage and to release the obligation of Mortgagee to make any additional advances to Mortgagor.

8.2 Payment or Performance by the Mortgagee. Upon the occurrence of any Event of Default, the Mortgagee may, at its option, make any payments or take any other actions it deems necessary or desirable to cure the Event of Default or conserve the Property. The Mortgagor shall, upon demand, reimburse the Mortgagee for all sums so advanced or expenses incurred by the Mortgagee, together with interest at the Default Interest Rate stated in the Mezzanine Note from the date of advance or payment of the same, which sums shall be secured by this Mortgage. The Mortgagee may enter upon the Property without prior notice to the Mortgagor or judicial process and may take any action to enforce their rights under this Section 8.2 without liability to the Mortgagor.

8.3 Completion of Project: Upon the occurrence of an Event of Default, the Mortgagor agrees that the Mortgagee may, in addition to any other remedies available to it and in its sole discretion, (i) enter upon the Land and complete the Project in accordance with the Project Documents with such changes therein as the Mortgagee may deem appropriate, and employ watchmen to protect the Property, (ii) at any time discontinue any work commenced in respect of the Project, (iii) assume any or all contracts covered by any other contracts made by the Mortgagor relating to the construction or equipping of the Retirement Community and take over and use all or any part of the labor, materials, supplies and equipment contracted for by the Mortgagor, (iv) engage builders, contractors, and others for the purpose of furnishing labor, materials and equipment in connection with the Project, and (v) pay, settle or compromise all bills or claims that may become liens against the Property. The Mortgagor shall be liable to the Mortgagee for all sums paid or incurred by Mortgagee to construct and equip the Project whether the same shall be paid or incurred pursuant to the provisions of this Section 8.3 or otherwise (such liabilities to be part of the Mortgagor's obligations), and all payments made or liabilities incurred by the Mortgagee hereunder of any kind whatsoever shall be paid by the Mortgagor to the Mortgagee upon demand with interest at the Default Interest Rate provided in the Mezzanine Note. For the purpose of exercising the rights granted by this Section, the Mortgagor hereby irrevocably constitutes and appoints the Mortgagee its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Mortgagor.

8.4 Possession by Mortgagee. Upon the occurrence of an Event of Default, the Mortgagee may enter upon and take possession of the Property with notice to the Mortgagor, but without judicial process or the appointment of a receiver. The Mortgagee may exclude all persons from the Property and may proceed to operate the Property and receive all Rents. The Mortgagee shall have the right as agent for the Mortgagor to operate the Property and carry on the business of the Mortgagor, either in the name of the Mortgagor or otherwise. The Mortgagee shall not be liable to the Mortgagor for taking possession of the Property, as aforesaid, nor shall the Mortgagee be required to make repairs or replacements, and the Mortgagee shall be liable to account only for Rents actually received by the Mortgagee. All Rents collected by the Mortgagee shall be applied (a) first, to pay all expenses incurred in taking possession of the Property, (b) second, to pay costs and expenses to operate the Property and/or to comply with the

terms of the Security Documents, including actual attorney's fees, (c) third, to pay all sums secured by the Security Documents in the order of priority selected by the Mortgagee, and (d) fourth, with the balance, if any, to the Mortgagor or such other person as may be entitled thereto.

FOR THE PURPOSE OF OBTAINING POSSESSION OF THE PROPERTY IF AN EVENT OF DEFAULT HEREUNDER OR UNDER THE MEZZANINE NOTE OR OTHER SECURITY DOCUMENTS HAS OCCURRED AND IS CONTINUING, MORTGAGOR HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD IN THE STATE OF KANSAS OR ELSEWHERE, AS ATTORNEY FOR MORTGAGOR AND ALL PERSONS CLAIMING UNDER OR THROUGH MORTGAGOR, TO APPEAR FOR AND CONFESS JUDGMENT IN EJECTMENT AGAINST MORTGAGOR FOR POSSESSION OF THE PROPERTY AND TO APPEAR FOR AND CONFESS JUDGMENT AGAINST MORTGAGOR, AND AGAINST ALL PERSONS CLAIMING UNDER OR THROUGH MORTGAGOR, IN FAVOR OF MORTGAGEE, FOR RECOVERY BY MORTGAGEE OF POSSESSION THEREOF, FOR WHICH THIS MORTGAGE, OR A COPY THEREOF VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT; AND THEREUPON A WRIT OF POSSESSION MAY IMMEDIATELY ISSUE FOR POSSESSION OF THE PROPERTY, WITHOUT ANY PRIOR WRIT OR PROCEEDING WHATSOEVER AND WITHOUT ANY STAY OF EXECUTION. IF FOR ANY REASON AFTER SUCH ACTION HAS BEEN COMMENCED IT SHALL BE DISCONTINUED, OR POSSESSION OF THE PROPERTY SHALL REMAIN IN OR BE RESTORED TO MORTGAGOR, MORTGAGEE SHALL HAVE THE RIGHT FOR THE SAME DEFAULT OR ANY SUBSEQUENT DEFAULT TO BRING ONE OR MORE FURTHER ACTIONS AS ABOVE PROVIDED TO RECOVER POSSESSION OF THE PROPERTY. MORTGAGEE MAY CONFESS JUDGMENT IN EJECTMENT THEREIN BEFORE OR AFTER THE INSTITUTION OF PROCEEDINGS TO FORECLOSE THIS MORTGAGE OR TO ENFORCE THE MEZZANINE NOTE OR OTHER SECURITY DOCUMENTS, OR AFTER ENTRY OF JUDGMENT ON THE MORTGAGE OR ON THE MEZZANINE NOTE, OR AFTER A SHERIFF'S SALE OF THE PROPERTY IN WHICH MORTGAGEE IS THE SUCCESSFUL BIDDER. THE AUTHORIZATION TO PURSUE SUCH PROCEEDINGS FOR OBTAINING POSSESSION IS AN ESSENTIAL PART OF THE ENFORCEMENT OF THE MORTGAGE AND THE MEZZANINE NOTE AND THE OTHER SECURITY DOCUMENTS, AND SHALL SURVIVE ANY EXECUTION SALE TO MORTGAGEE.

8.5 Collection of Rents. Upon the occurrence of an Event of Default and upon written demand by the Mortgagee to the tenants, all Rents shall be payable directly to the Mortgagee.

8.6 Acceleration; Judgment; Foreclosure. At any time during the existence of an Event of Default, the Mortgagee, at the Mortgagee's option, may declare the Mezzanine Loan to be immediately due and payable without further demand, and may recover judgment against the Mortgagor for all amounts owing in connection with the Mezzanine Loan (but neither the recovery of judgment nor the levy of execution on the Property shall affect the Mortgagee's rights hereunder or the lien hereof), may institute an action for the foreclosure of this Mortgage and the sale of the Property pursuant to the judgment or decree of a court of competent

jurisdiction, sell the Property to the highest bidder or bidders at public auction at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner as may be required by law, or in the absence of any such requirement, as Mortgagee may deem appropriate, and from time to time adjourn such sale announcement at the time and place specified for such sale or for such adjourned sale or sales without further notice except such as may be required by law, and may invoke any other remedies permitted by Kansas law or provided in this Mortgage or in any other Security Document, including, without limitation, the sale of the Property, in such a foreclosure proceeding or by public sale, or through a sheriff's sale, in one or several parcels, at the Mortgagee's option and without obligation to have the Property marshalled. The Mortgagee shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees permitted under applicable law, costs of documentary evidence, abstracts and title reports.

8.7 Application and Proceeds of Sale. Upon a sale under Section 8.6, the purchaser shall receive that portion of or interest in the Property purchased by it free from any claims of the Mortgagor and without any liability to see to the application of the purchase money. The net proceeds from the sale, after deduction of all costs of the sale, shall be applied, unless otherwise required under Kansas law, (a) first, to pay all expenses incurred in taking possession of the Property, (b) second, to pay costs and expenses to operate the Property, including attorney's fees, (c) third, to pay all sums guaranteed by or due from the Mortgagor under the Security Documents, whether then due or not, in the order of priority determined by the Mortgagee, and (d) fourth, the balance, if any, to the Mortgagor or to other persons entitled thereto.

8.8 Insurance or Condemnation After Deficiency. If the Property is sold in a foreclosure proceeding under Section 8.6 prior to receipt of a condemnation award or payment, the Mortgagee shall receive and apply the proceeds of the award or payment toward the satisfaction of any deficiency resulting from the sale, whether or not a deficiency judgment is sought, recovered, or denied.

8.9 Right of the Mortgagee to Bid. The Mortgagee may bid and become the purchaser at a foreclosure sale under this Mortgage.

8.10 Bond. The Mortgagor waives any right to require the person authorized to make the sale hereunder to post a bond.

8.11 Appointment of a Receiver.

(a) Upon the occurrence of an Event of Default, the Mortgagee shall be entitled to and Mortgagor hereby consents to, the immediate appointment of a receiver for the Property, without regard to the value of the Property or the solvency of any person liable for payment of the amounts due under the Security Documents. Upon obtaining possession of the Property or upon the appointment of a receiver, the Mortgagee or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, (c) receive all Rents, and (d) complete the construction of any unfinished improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Project and make and enter into any further contracts which may be necessary, either in

their or its own name or in the name of the Mortgagor (the cost of completing the Project shall be expenses secured by this Mortgage and accrue interest as set forth herein). In so doing, the Mortgagee or such receiver shall have the right to manage the Property and to carry on the business of the Mortgagor and may exercise all of the rights and powers of the Mortgagor, either in the name of the Mortgagor, or otherwise, including, but without limiting the generality of the foregoing, the right to lease the Property, to cancel, modify, renew or extend any Lease or sublease of the Property and to carry on any contracts entered into by the Mortgagor with respect to the Property. The Mortgagee or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The Mortgagor shall pay on demand to the Mortgagee or the receiver (as the case may be) the amount of any deficiency between (a) the Rents received by the Mortgagee or the receiver, and (b) all expenses incurred in taking possession of, and operating, the Property, together with interest thereon at the Default Interest Rate as provided in the Mezzanine Note. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default and the enforcement of such remedies, once commenced, shall continue for so long as the Mortgagee shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

(b) The failure of the Mortgagor to pay any taxes or assessments assessed against the Property, or any installment thereof, in each case prior to delinquency, or the failure to maintain in effect insurance covering the Property as required by this Mortgage or the other Security Documents, shall constitute waste. The Mortgagor hereby consents to the appointment of a receiver, should the Mortgagee elect to seek such relief. The Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor or hearing thereon. Payment by the Mortgagee for or on behalf of the Mortgagor of any such delinquent payment shall not cure the default nor shall it impair the Mortgagee's right to the appointment of a receiver.

8.12 Remedies Cumulative. All rights, powers, and remedies of the Mortgagee provided for in the Security Documents are cumulative and concurrent and shall be in addition to and not exclusive of any appropriate legal or equitable remedy provided by law or contract. Exercise of any right, power, or remedy shall not preclude the simultaneous or subsequent exercise of any other by the Mortgagee.

8.13 Consent to Jurisdiction and Venue. The Mortgagor consents to be sued in any jurisdiction where any of the Property is located.

8.14 Rights Under the Uniform Commercial Code. Upon the occurrence of an Event of Default, the Mortgagor shall assemble and make available to the Mortgagee those portions of the Property which consist of personal property at a place to be designated by the Mortgagee, and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code. Any notices required by the Uniform Commercial Code shall be deemed reasonable if mailed certified mail, return receipt requested, postage prepaid, by the Mortgagee to the Mortgagor. Disposition of the Property shall be deemed commercially reasonable if made pursuant to a public offering advertised at least twice in a newspaper of general circulation in the County where the Property is located.

**8.15. WAIVER OF JURY TRIAL.** THE MORTGAGOR HEREBY VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY A JURY IN ANY ACTION, PROCEEDING OR LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THE MEZZANINE LOAN, THIS MORTGAGE, OR ANY OF THE OTHER SECURITY DOCUMENTS TO WHICH THE MORTGAGOR IS A PARTY. THIS WAIVER APPLIES TO ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS AND PROCEEDINGS, INCLUDING PARTIES WHO ARE NOT PARTIES TO THIS MORTGAGE. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY THE MORTGAGOR WHO ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE EXECUTION OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. THE MORTGAGOR FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

#### **SECTION 9. MISCELLANEOUS**

**9.1 Financing Sign on Property, Publicity.** The Mortgagor authorizes the Mortgagee, at the expense of the Mortgagee, to place signs on the Land at any locations selected by the Mortgagee and approved by the Mortgagor until completion of the Project, and to prepare and furnish news releases at any time to the news media or any other publications selected by the Mortgagee advertising the fact that financial assistance for the Project has been obtained from the Mortgagee.

**9.2 Waivers.** No term of any Security Document shall be deemed waived unless the waiver shall be in writing and signed by the parties making the waiver. No failure by the Mortgagee to insist upon the Mortgagor's strict performance of any of the terms of the Security Documents to which the Mortgagor is a party shall be deemed or construed as a waiver of those or any other terms. Any delay in exercising or enforcing any rights with respect to a Default or an Event of Default shall not bar the Mortgagee from exercising any rights under the Security Documents, or at law or in equity.

#### **9.3 Consents.**

**9.03.1** The Mortgagee may (a) release any person liable under the Security Documents, (b) release any part of the security, (c) extend the time of payment of the Mezzanine Loan, and/or (d) modify the terms of the Security Documents, regardless of consideration and without notice to or consent by the holder of any subordinate lien on the Property. No release, extension or modification of the security held under the Security Documents shall impair or affect the lien of this Mortgage or the priority of such lien over any subordinate lien.

**9.03.2** Regardless of whether a person has been given notice or has given its prior consent, it shall not be relieved of any obligation under any Security Documents by reason of (a) the failure of the Mortgagee, or any other person to take any action, foreclose, or otherwise enforce any provision of the Security Documents, (b) the release of any other person liable under

any Security Document, (c) the release of any portion of the security under the Security Documents, or (d) any agreement or stipulation between any subsequent owners of the Property and the Mortgagee extending the time of payment or modifying the terms of any Security Document.

9.4 Headings. All section headings are for convenience only and shall not be interpreted to enlarge or restrict the provisions of this Mortgage.

9.5 Notices. All notices required or permitted hereunder shall be in writing and delivered personally or made by addressing the same to the party to whom directed at the following addresses by registered or certified mail, return receipt requested:

- (a) If to the Mortgagee: MSRESS III Kansas Campus, L.P.  
c/o Mr. Andrew Bauman  
Morgan Stanley/US RE Investing Division  
1585 Broadway, Floor 37  
New York, New York 10036

with a copy to (which shall not constitute notice):

Mark Pollak, Esquire  
Wilmer Hale, LLP  
100 Light Street, 13th Floor  
Baltimore, Maryland 21202

- (b) If to Mortgagor: Kansas Campus, LLC  
c/o Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Baltimore, Maryland 21228  
Attn: Chief Financial Officer

with a copy to (which shall not constitute notice):

General Counsel  
Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Baltimore, Maryland 21228

Any party may change the address to which notices are to be sent by a writing directed to the other party in the manner aforesaid. Unless otherwise specifically provided, all notices hereunder delivered personally shall be deemed delivered upon such personal delivery, and all notices hereunder given by mail, as aforesaid, shall be deemed delivered five (5) days after deposited in a United States Post Office, general or branch, or an official mail depository, maintained by the U.S. Postal Service, enclosed in a registered or certified prepaid wrapper addressed as above provided. Notice of change of address shall be deemed served when received.



9.6 Binding Effect. No transfer of any portion of the Property or any interest thereon shall relieve any transferor of its obligations under the Security Documents. No transferor of any obligation under any Security Document shall be relieved of its obligations by any modification of any Security Document subsequent to the transfer.

9.7 Amendment. This Mortgage may not be modified except in writing signed by (a) the Mortgagee and (b) the Mortgagor.

9.8 Severability. In the event any provision of this Mortgage shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

9.9 Notices from Governmental Authorities Affecting the Property. Any notice from any governmental or quasi-governmental authority or corporation with respect to the Property sent to or known by the Mortgagor shall be promptly transmitted to the Mortgagee.

9.10 Applicable Law. This Mortgage shall be governed by, and construed in accordance with, the laws of the State of Kansas.

9.11 Time of the Essence. Time is of the essence with respect to the Security Documents.

9.12 Effect of Payments. Any payment or other performance made in accordance with the Security Documents by any person other than the Mortgagor shall not entitle such person to any right of subrogation under the Security Documents, unless expressly consented to in writing by the Mortgagee.

9.13 Word Forms. The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

9.14 Assignment of Rents. The Mortgagor, does hereby sell, assign, transfer and set over unto the Mortgagee all of the rents, profits, income and other moneys, whether due or to become due, under all oral or written leases, licenses or other agreements for the use or occupancy of the Property, or any part thereof, in existence or coming into existence during the period this Mortgage is in effect. This assignment is absolute and effective immediately, provided that Mortgagor shall have a license to receive, collect and obtain the benefit of such rents, profits, income and other amounts until an Event of Default hereunder. This assignment of rents shall run with the land and be good and valid as against the Mortgagor herein, or those claiming by, through or under the Mortgagor, from the date of the recording of this Mortgage in Kansas, provided, however, that the Mortgagor may collect and retain such rents, profits and income so long as the Mortgagor is not in default hereunder. This assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Mortgage. In the event of a sale on foreclosure which shall result in deficiency, this assignment shall stand as security during the redemption period for the payment of such deficiency.

Upon the occurrence of an Event of Default by the Mortgagor under this Mortgage, the Mezzanine Note or the Security Documents, the Mortgagor shall, upon demand therefor made by

the Mortgagee, deliver and surrender possession of the Property to the Mortgagee, who shall thereafter collect the rents, profits and income therefrom, rent or lease said Property or any portion thereof upon such terms and for such time as it may deem best, terminate any tenancy and maintain proceedings to recover rents or possession of the Property from any tenant or trespasser, and apply the proceeds of such rent, profits and income actually collected, less all reasonable costs incurred in making such collection or in renting, leasing, operating or maintaining the Property, in such order of priority, proportion and upon such item or items as it may determine.

If the Mortgagor fails, refuses or neglects to deliver or surrender such possession, the Mortgagee shall be entitled to the appointment of a receiver of the Property and of the earnings, issues, rents, profits and income with such power as the Court making such appointment may confer. The collection by the Mortgagee of rents or other income from the Property shall in no way waive the right of the Mortgagee to foreclose this Mortgage in the event of default, and the Mortgagee shall be entitled to all of the rights and remedies accorded to a mortgagee by the statutes of the State of Kansas in effect from time to time.

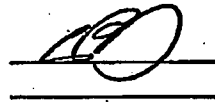
**9.15 Future Advances.** If Mortgagor sends a written notice to Mortgagee which purports to limit the indebtedness secured by this Mortgage and to release the obligation of Mortgagee to make any additional advances to Mortgagor, such a notice shall be ineffective as to any future advances made: (i) to enable completion of the improvements on the Property for which the Mezzanine Loan secured hereby was originally made; (ii) to pay taxes, assessments, maintenance charges and insurance premiums; (iii) for costs incurred for the protection of the Property or the lien of this Mortgage; (iv) for expenses incurred by Mortgagee by reason of a default of Mortgagor hereunder or under the Mezzanine Note or Mezzanine Loan Agreement; and (v) for any other costs incurred by Mortgagee to protect and preserve the Property. It is the intention of the parties hereto that any such advance made by Mortgagee after any such notice by Mortgagor shall be secured by the lien of this Mortgage on the Property.

**9.16 [Intentionally Omitted.]**

**9.17 Release.** If the indebtedness evidenced by this Mortgage is paid in full in accordance with the terms of this Mortgage, the Mezzanine Note, the Mezzanine Loan Agreement or any of the other Security Documents, then this conveyance shall become null and void and be released at Mortgagor's request and expense, and the Mortgagee shall have no further obligation to make advances under and pursuant to the provisions hereof or in the Mezzanine Loan Agreement or any of the other Security Documents.

9.18 ENTIRE AGREEMENT; AMENDMENT. THE PARTIES AGREE THAT THIS ENTIRE AGREEMENT IS NONSTANDARD AND CONTAINS SUFFICIENT SPACE FOR THE PLACEMENT OF NONSTANDARD TERMS. THIS AGREEMENT CONTAINS ALL OF THE AGREEMENTS AND IS INTENDED TO BE THE FINAL EXPRESSION OF THE CREDIT AGREEMENT OF MORTGAGOR AND MORTGAGEE, RELATING TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ANY AND ALL PRIOR DISCUSSION AND/OR AGREEMENTS RELATIVE THERETO. THIS AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR ORAL CREDIT AGREEMENT OR OF A CONTEMPORANEOUS ORAL CREDIT AGREEMENT BETWEEN MORTGAGOR AND MORTGAGEE. MORTGAGOR AND MORTGAGEE HEREBY INITIAL THIS PROVISION AS AN AFFIRMATION THAT NO UNWRITTEN, ORAL CREDIT AGREEMENTS BETWEEN THE PARTIES EXIST.

MORTGAGOR'S INITIALS:  
MORTGAGEE'S INITIALS:



The provisions hereof and any of the other Security Documents may be amended or waived only by an instrument in writing signed by Mortgagor and the Mortgagee, subject to the provisions of the other Security Documents.

9.19 Waiver of Statutory and Other Rights. To the extent permitted by law, Mortgagor shall not, and will not, apply for or avail itself of and hereby expressly waives for itself and its successors and assigns any appraisement, valuation, stay, homestead exemption, extension or exemption laws, any so-called "Moratorium Laws", all rights to redeem, periods of redemption and equity of redemption now existing or hereafter enacted, and any other law which would prevent or hinder the enforcement or foreclosure of this Mortgage. Mortgagor, for itself and all who may claim through or under it, expressly waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agree that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

9.20 Business Loan. The Mezzanine Loan secured by this Mortgage is a "business loan" within the meaning of K.S.A. § 16-207.

9.21 Legend. Notwithstanding anything contained herein to the contrary, the interests and rights of Lender pursuant to this Mortgage are subject in all respects to the terms, covenants, and limitations as set forth in that certain Subordination and Standstill Tri-Party Agreement dated as of April 3, 2007 among Mercantile-Safe Deposit and Trust Company, as Agent, Mortgagee and Mortgagor (the "Tri-Party Agreement"), the provisions of which Tri-Party Agreement are incorporated herein by reference to the same extent as if fully set forth herein.

9.18 ENTIRE AGREEMENT; AMENDMENT. THE PARTIES AGREE THAT THIS ENTIRE AGREEMENT IS NONSTANDARD AND CONTAINS SUFFICIENT SPACE FOR THE PLACEMENT OF NONSTANDARD TERMS. THIS AGREEMENT CONTAINS ALL OF THE AGREEMENTS AND IS INTENDED TO BE THE FINAL EXPRESSION OF THE CREDIT AGREEMENT OF MORTGAGOR AND MORTGAGEE, RELATING TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ANY AND ALL PRIOR DISCUSSION AND/OR AGREEMENTS RELATIVE THERETO. THIS AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR ORAL CREDIT AGREEMENT OR OF A CONTEMPORANEOUS ORAL CREDIT AGREEMENT BETWEEN MORTGAGOR AND MORTGAGEE. MORTGAGOR AND MORTGAGEE HEREBY INITIAL THIS PROVISION AS AN AFFIRMATION THAT NO UNWRITTEN, ORAL CREDIT AGREEMENTS BETWEEN THE PARTIES EXIST.

MORTGAGOR'S INITIALS:  
MORTGAGEE'S INITIALS:

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AB

The provisions hereof and any of the other Security Documents may be amended or waived only by an instrument in writing signed by Mortgagor and the Mortgagee, subject to the provisions of the other Security Documents.

9.19 Waiver of Statutory and Other Rights. To the extent permitted by law, Mortgagor shall not, and will not, apply for or avail itself of and hereby expressly waives for itself and its successors and assigns any appraisal, valuation, stay, homestead exemption, extension or exemption laws, any so-called "Moratorium Laws", all rights to redeem, periods of redemption and equity of redemption now existing or hereafter enacted, and any other law which would prevent or hinder the enforcement or foreclosure of this Mortgage. Mortgagor, for itself and all who may claim through or under it, expressly waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agree that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

9.20 Business Loan. The Mezzanine Loan secured by this Mortgage is a "business loan" within the meaning of K.S.A. § 16-207.

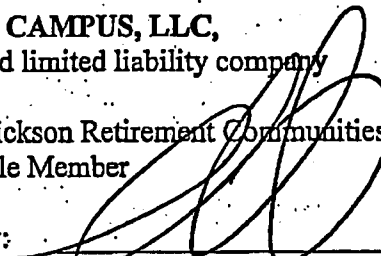
9.21 Legend. Notwithstanding anything contained herein to the contrary, the interests and rights of Lender pursuant to this Mortgage are subject in all respects to the terms, covenants, and limitations as set forth in that certain Subordination and Standstill Tri-Party Agreement dated as of April 3, 2007 among Mercantile-Safe Deposit and Trust Company, as Agent, Mortgagee and Mortgagor (the "Tri-Party Agreement"), the provisions of which Tri-Party Agreement are incorporated herein by reference to the same extent as if fully set forth herein.

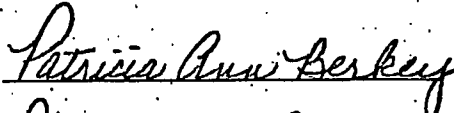
IN WITNESS WHEREOF the Mortgagor, by its duly authorized member, has executed  
and delivered this Mortgage as of the date and year first written above.

WITNESSES:

KANSAS CAMPUS, LLC,  
a Maryland limited liability company

By: Erickson Retirement Communities, LLC,  
Sole Member

By:  (SEAL)  
Gerald F. Doherty,  
Executive Vice President

  
Patricia Ann Berkey  
Print Name:

The undersigned hereby certifies that the  
address of Mortgagee is:

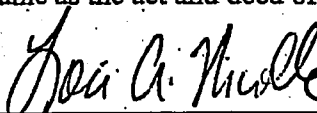
MSRESS III Kansas Campus, L.P.  
c/o Mr. Andrew Bauman  
Morgan Stanley/US RE Investing Division  
1585 Broadway, Floor 37  
New York, New York 10036

STATE OF MARYLAND :

: SS:

CITY OF BALTIMORE :

On the 29<sup>th</sup> day of March, 2007 before me personally came Gerald F. Doherty, to me known to be the person who executed the foregoing instrument, and who, being by me duly sworn, did depose and say that he is an Executive Vice President of Erickson Retirement Communities, LLC, a Maryland limited liability company, which is the sole member of Kansas Campus, LLC, a Maryland limited liability company; and that he executed the foregoing instrument in the name of Kansas Campus, LLC, and that he had authority to sign the same, and acknowledged that he executed the same as the act and deed of Kansas Campus, LLC.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 12/1/10

Lori A. Nicolle, Notary Public  
City of Baltimore  
State of Maryland  
My Commission Expires Dec. 1, 2010

EXHIBIT A

Description of Land

**PARCEL 1:**

Lot 1 and Tract A, ERC Campus, Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas.

**PARCEL 2:**

A non-exclusive easement for vehicular and pedestrian traffic, ingress and egress over driveways and vehicular parking areas as provided in the instrument labeled "Access Easement Agreement" filed in Book 8124, Page 163.

**PARCEL 3:**

A perpetual access easement for vehicular and pedestrian traffic access, ingress and egress over and across that area provided in the instrument labeled "Access Easement (option 1)" filed in Book 8171, Page 332.



**LIMITED GUARANTY AND INDEMNITY AGREEMENT**

FOR VALUE RECEIVED, and in consideration for, and as an inducement to MSRESS III KANSAS CAMPUS, L.P., a Delaware limited partnership, as "Lender," to enter into a certain Loan Agreement dated as of April 3, 2007 (the "Agreement;" capitalized terms not specifically defined herein shall, unless the context otherwise requires, have the meaning ascribed to such terms in the Agreement) with KANSAS CAMPUS, LLC, a Maryland limited liability company, as "Borrower," ERICKSON RETIREMENT COMMUNITIES, LLC, a Maryland limited liability company, as "Guarantor," unconditionally and absolutely indemnifies and holds Lender, its officers, directors, shareholders, employees, agents, attorneys, successors and assigns and each of them, jointly and severally, harmless from and against any loss, cost, liability, damage, claim or expense, including attorneys' fees, suffered or incurred by Lender at any time, arising under or on account of any of the following, and guarantees to Lender payment and performance of any loss, cost, liability, or expense suffered or incurred by Lender at any time, arising under or on account of, each of the following (collectively, the "Guaranteed Obligations"):

(a) Fraud, willful misconduct, or material misrepresentation made by Borrower or Guarantor or their affiliates in or in connection with (i) the Agreement, (ii) this Limited Guaranty and Indemnity Agreement ("Guaranty"), (iii) the Project Documents to which either Borrower and/or Guarantor are a party, or (iv) any other documents executed by Borrower or Guarantor in connection therewith or the Mezzanine Loan.

(b) The failure by Borrower to pay or cause to be paid charges for labor, materials or other charges owed pursuant to the Contracts which may create liens on any portion of the Property.

(c) The misapplication or misappropriation of (i) proceeds of insurance covering any portion of the Property, (ii) proceeds of the sale, condemnation or transfer in lieu of condemnation of any portion of the Property, or (iii) other income relating to the Property received by or on behalf of Borrower or Guarantor for any period for which there are unpaid amounts due and payable pursuant to the Agreement.

(d) Borrower's causing or permitting waste to occur in, on or about the Property or failing to maintain or causing to be maintained the Property and Improvements, except for ordinary wear and tear.

(e) The failure of Borrower to properly apply and pay to Lender any and all sums and amounts received or payable to Borrower at the time of delivery of any completed elements of the Project pursuant to any agreement with TGC, or any successor entity, as set forth in the Project Documents, after proper payment of all prior due and payable obligations of Borrower under the Project Documents, to the extent of all amounts due and payable to Lender at that time.

EXHIBIT

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(f) Any loss by fire or any other casualty to the extent not compensated by insurance proceeds as a result of Borrower's failure to comply with the insurance provisions of the Agreement.

(g) All court costs and reasonable attorneys' fees actually incurred by Lender for which Borrower is liable pursuant to the terms of the Agreement.

(h) The removal of any chemical, material or substance in excess of legal limits or which is required by any governmental entity, to which exposure is prohibited, limited, or regulated by any federal, state, county, or local authority, and which may or could pose a hazard to the health and safety of the occupants of the Property (which substances are also defined in the Agreement as "Hazardous Substances"), regardless of the source of origination (including sources off the Property which migrate onto the Property or its groundwater); the restoration of the Property to comply with all governmental regulations pertaining to Hazardous Substances found in, on or under the Property, regardless of the source of origination (including sources off the Property which migrate onto the Property or its groundwater); ; and any indemnity or other agreement to hold Lender harmless from and against any and all losses, liabilities, damages, injuries, costs and expenses relating to Hazardous Substances arising under Article XIX of the Agreement. Guarantor shall not be liable hereunder if the Property becomes contaminated due to acts on the Property (including sources off the Property which migrate onto the Property or its groundwater) subsequent to Lender's re-entry onto the Property by a termination of the Agreement and Lender's acquisition of the Property through a foreclosure on the Mortgage. Liability hereunder shall extend beyond termination or expiration of the Agreement unless at such time Borrower provides Lender with an environmental assessment report acceptable to Lender, in Lender's sole discretion, showing the Property to not be in violation of any law or laws relating to Hazardous Substances. The burden of proof under this subsection with regard to establishing the date upon which such Hazardous Substances were placed or appeared in, on or under the Property shall be upon Guarantor.

(i) Any and all costs incurred in order to cause the Property to comply with any applicable Accessibility Laws and any indemnity or other agreement to hold Lender harmless from and against any and all losses, liabilities, damages, injuries, costs or expenses of any kind arising as a result of non-compliance with any Accessibility Laws that first become effective, or for any violation of any applicable Accessibility Laws resulting from alterations or improvements to the Property that are performed subsequent to Lender's re-entry onto the Property by a termination of the Agreement and Lender's acquisition of the Property through a foreclosure on the Mortgage. The burden of proof under this subsection with regard to establishing the date upon which such non-compliance with any Accessibility Laws occurred at the Property shall be upon Guarantor.

(j) Any failure by Borrower to pay in full interest or principal on the Mezzanine Note or to pay any other sum or amount due to Lender under the Agreement. Notwithstanding the foregoing to the contrary, commencing on the date that a final certificate of occupancy has been issued by Johnson County and/or the City of Overland Park, Kansas for the final residential building of the first residential neighborhood of the Tallgrass Creek continuing care retirement community, Guarantor's liability under this subsection shall be limited, for each period during

which all interest on the Mezzanine Note and other sums are not otherwise paid in full to Lender by Borrower, to the amount of management fees and development fees which are paid or are payable to Guarantor under the Management and Marketing Agreement, dated as of October 20, 2006, by and between Guarantor and TGC (as amended, the "Management Agreement") and the Development Agreement, during such period for which interest or such other sums have not been paid; provided that for purposes of this paragraph (j), amounts payable but not paid by Guarantor because such payments have been subordinated pursuant to the Construction Loan Documents shall not be considered "payable" and the amount of Guarantor's liability hereunder shall not include such amounts until Guarantor is entitled to pay such amounts.

(k) (i) Guarantor shall comply with all material terms and provisions of the Management Agreement, as the manager thereunder, shall not enter into any modifications or amendments of the Management Agreement, nor, except as otherwise expressly set forth in the Agreement, terminate the same prior to the expiration thereof, without Lender's prior written consent. Guarantor shall not elect not to extend the term of the Management Agreement without Lender's prior written consent. Guarantor shall promptly deliver to Lender copies of all notices provided by Guarantor or the TGC under the terms of the Management Agreement concerning notices of default, notices of changes or modifications to the Premises (as defined in the Management Agreement) and the like.

(ii) In addition to the foregoing, Guarantor hereby agrees to subordinate its right to payment under the Management Agreement to the Guaranteed Obligations and assign its right to such payment to Lender, subject to the terms of this subsection (k)(ii). In furtherance of such subordination and assignment, Guarantor shall unconditionally and irrevocably direct TGC to send all fees payable under the Management Agreement ("Management Fees") to an account (and any successor account) established by Lender at Bank of America, or such other financial institution as Lender may designate from time to time, for the purpose of implementing the terms of this subsection (k) (the "Lockbox Account"). Lender may, at its option, declare that all Management Fees paid into the Lockbox Account shall remain in the Lockbox Account and be used solely for the purpose of paying any amounts owing from Guarantor to Lender. Lender may, at its option, by written notice to TGC, direct that any and all future payments in respect of Management Fees shall be made directly to Lender to be held by Lender and to be distributed to satisfy Guarantor's obligations under this Guaranty. Lender is and shall be at all times the sole owner of the Lockbox Account and shall have the right to change the identity of the Lockbox Account depository at any time and without notice to Guarantor. Guarantor hereby acknowledges that it does not have access to the Lockbox Account and has no ownership interest whatsoever in the Lockbox Account, including, without limitation, any power or authority to withdraw or wire transfer funds from, or to direct the withdrawal or wire transfer of funds from, the Lockbox Account, and agrees that it shall not now or in the future seek access to, or claim any ownership interest in the Lockbox Account, including without limitation, the power to exercise any of the foregoing rights. Notwithstanding Guarantor's intention that Lender be the sole owner of the Lockbox Account, to the extent that Guarantor may be deemed to have any ownership interest in the Lockbox Accounts, Guarantor hereby grants to Lender a security interest in and a pledge of each Lockbox Account and all funds deposited therein, to secure the payment and performance of its obligations to Lender. The security interest hereby granted and conveyed covers and will cover all forms of accounts in which funds in the Lockbox Account are

placed, as well as all income and proceeds from the disposition of the account. Any Management Fees received by Guarantor from TGC to which it is not entitled shall be received and held in trust by Guarantor, solely as agent for Lender, and Guarantor shall immediately turn over same to Lender for deposit in the Lockbox Account and/or application to and against obligations and amounts owing from Guarantor to Lender. Guarantor shall execute such endorsements as may be necessary to effect the provisions of this subsection (k). In this regard, Guarantor hereby grants Lender a special and irrevocable power of attorney coupled with an interest to make any such endorsement as attorney-in-fact for Guarantor, and with full power of substitution. Lender shall release the Management Fees to Guarantor from the Lockbox Account (or if paid to Lender, from Lender's possession), on a monthly basis, provided that no default with respect to Guarantor under the terms of this Guaranty and that no Event of Default (as defined in the Agreement) with respect to Borrower under the Agreement has occurred and is then continuing and all obligations and amounts owing from Guarantor to the Lender are satisfied through and including the then-current fiscal period. Guarantor shall be entitled to any amounts remaining in the Lockbox Account (or if paid to Lender, in Lender's possession) upon ultimate satisfaction of all obligations and amounts owing from Guarantor and the Borrower to Lender.

The effectiveness of the immediately preceding paragraph in this subsection (k)(ii) shall be suspended unless and until Lender provides written notice to the contrary.

(l) (i) Guarantor shall comply with all material terms and provisions of the Development Agreement, as the developer thereunder, shall not enter into any modifications or amendments of the Development Agreement, nor, except as otherwise expressly set forth in the Agreement, terminate the same prior to the expiration thereof, without Lender's prior written consent. Guarantor shall not elect not to extend the term of the Development Agreement without Lender's prior written consent. Guarantor shall promptly deliver to Lender copies of all notices provided by Guarantor or Borrower under the terms of the Development Agreement concerning notices of default, notices of changes or modifications to the Property and the like. In addition to the foregoing, Guarantor hereby agrees to subordinate its right to payment under the Developer Agreement to the Guaranteed Obligations.

(ii) In the event that any Development Distribution (as defined in the Lender-Developer Agreement, dated as of even date herewith, between Guarantor and Lender) that is paid to Guarantor will cause or causes the Project to fail the Balance Test as set forth in the Agreement, or will increase or increases such a Balance Test failure, Guarantor shall not be entitled to the payment of any such Development Distribution and any amounts so received by Guarantor shall promptly be repaid by Guarantor to Borrower.

(m) Guarantor hereby agrees and guarantees to Lender that it will complete the construction of any buildings, non-residential elements, and/or any related infrastructure or public improvements of or related to the Project that are initiated by Borrower or any affiliate, free of any liens or encumbrances, including the payment or bonding of any mechanics' liens filed with respect to the Project. This guaranty will be independent of the other rights and obligations of the parties hereto and may be enforced by any remedy available at law or in equity.

(n) Guarantor will at all times maintain liquidity in an amount equal to the Liquidity Requirement. During any period that Guarantor is not in compliance with the Liquidity Requirement, Guarantor is precluded from making any New Investments, which shall be Lender's sole remedy for breach of this subsection (n). The "Liquidity Requirement" shall require Guarantor to maintain Cash and Cash Equivalents in an amount equal to the sum of: (i) the greater of \$24,000,000 or such amount as may be required to satisfy the highest level of liquidity required under any liquidity covenant contained in documentation relating to Senior Indebtedness; plus (ii) \$15,000,000. The following definitions will apply to this subsection:

(1) "Cash and Cash Equivalents" includes amounts drawn by Guarantor under the Bank Line of Credit.

(2) "Bank Line of Credit" means an existing line of credit provided by Mercantile-Safe Deposit and Trust Company, and any replacement line of credit.

(3) "New Investments" means the expenditure of funds for the acquisition (including the acquisition of land), construction or development of new continuing care retirement communities (or land therefor) ("CCRC"), either directly or through an affiliate. New Investments will not include the expenditure of funds required under the terms of any financing for a then existing CCRC or necessary to avoid the existence or continuance of a default with respect to any financing on a CCRC.

(4) "Parity Debt" means collectively, (A) any securities (the "Subordinated Securities") issued under the Trust Indenture dated June 15, 2003, as amended, between Guarantor and Deutsche Bank National Trust Company, and (B) any other indebtedness of Guarantor that is by its terms on a *pari passu* basis with the Subordinated Securities insofar as any right to payment and security is concerned.

(5) "Senior Indebtedness" means any other indebtedness of Guarantor other than (a) Parity Debt, and (b) indebtedness that by its terms is explicitly subordinated to the Parity Debt.

(o) If the exercise by Lender or Borrower of their rights under Article XXIV of the Agreement, regarding the requirements of Borrower to purchase the Lender's entire interest in the Mezzanine Loan, would result in a violation of the liquidity and/or equity requirements imposed upon Borrower under any Project Loan, Guarantor shall be obligated to contribute to Borrower, or at Lender's option, such amounts shall be paid directly to Lender by Guarantor, 100% of all additional capital contributions required to fund the purchase of Lender's entire interest in the Mezzanine Loan.

(p) Intentionally deleted.

(q) If the Project becomes subject to bond financing, in the event that TGC fails or declines to exercise its purchase option and thereby causes any purchase deposit paid to Borrower to be refunded by Borrower to TGC, Guarantor hereby agrees and guarantees Lender

that Guarantor shall be solely responsible for, and shall timely make, full payment to TGC of such of any and all transaction costs related to the purchase deposit on behalf and for the account, of Borrower, to the extent that Borrower does not have funds sufficient for such payment. At the time of such payment, Guarantor shall obtain a full and absolute release from the secured party under the bond financing, and recover for the benefit of Borrower, all collateral assigned by Borrower to the secured party under the bond financing. Without limiting the obligation to pay any and all amounts, costs and expenses (including those in excess of the transaction costs related to the refund of the purchase deposit) needed to fully redeem and retire the applicable issue of bonds and to obtain a full and absolute release of the Project from all liens, encumbrances or any interests of any third party arising out of the purchase option.

(r) Guarantor hereby guarantees the timely and complete performance of any obligations of Lender which may arise from any agreement with any third party related to the development and operation of the Project that is entered into by Lender as a mortgagee of the Land (or which Lender may be subject as "owner" of the Land). Guarantor hereby agrees that Lender is entering into such agreements as the mortgagee only, upon the request of Borrower, TGC and/or Guarantor, that Lender shall have no liability or obligation under such agreements and that such obligations and liabilities are to be assumed and performed by Borrower, TGC and Guarantor, as applicable, without claim to Lender.

(s) Any failure by Borrower to comply with and/or satisfy, or cause compliance with or satisfaction of, any conditions, requirements, permits, approvals, or authorizations relating to the development and/or operation of the Property or the Project.

(t) Guarantor hereby guarantees the payment of any late payment fees, attorneys' fees or other non-scheduled fees or charges payable to Lender by Borrower that Borrower is prohibited from paying to Lender pursuant to the terms of the Construction Loan Documents.

(u) Intentionally Deleted.

(v) Any failure by Lender to receive a required payment when due and payable under any of the Security Documents that results from a failure by Borrower to direct the Construction Lender to release funds for payment to Lender from any funds or accounts held pursuant to the Construction Loan Documents.

The obligations in subsections (a) through (v), except as specifically provided otherwise therein, shall survive the termination or expiration of the Agreement. Lender's rights under this Guaranty are in addition to all rights of Lender under the Agreement, and payments by Guarantor under this Guaranty shall not reduce the obligations and liabilities of Borrower under the Agreement; provided, however, this shall not be construed to permit Lender to collect from Borrower for the same obligations or liabilities for which Lender has already received payment from Guarantor. The obligations in subsections (b), (c), (d), (f), (h), and (s) shall be applicable only so long as, and to the extent that, such actions and matters are within the control of the Guarantor and/or the Borrower by virtue of Guarantor's engagement as manager under the Management Agreement or as Developer under the Development Agreement.

The Agreement and this Guaranty, and the obligations of Guarantor and Borrower hereunder and thereunder, are secured by a pledge of all of the membership interests in Borrower pursuant to the Pledge Agreement, the terms and conditions of which are hereby incorporated herein by this reference, however, unless specifically set forth herein, recourse is not limited for such security for the enforcement of any rights hereunder.

The validity of this Guaranty and the obligations of the Guarantor shall not be terminated, affected, or impaired by reason of (i) any forbearance, releases, settlements or compromises between Lender and Borrower or any other guarantor, by reason of any waiver of or failure to enforce any of the rights and remedies reserved to Lender in the Agreement or otherwise, (ii) the invalidity, illegality or unenforceability of the Agreement for any reason whatsoever, (iii) the relief or release of Borrower or any other guarantor from any of their obligations under the Agreement by operation of law or otherwise, including, without limitation, the insolvency, bankruptcy, liquidation or dissolution of Borrower or any other guarantor or the rejection of or assignment of the Agreement in connection with proceedings under the bankruptcy laws now in effect or hereafter enacted (other than any written release of Borrower or any release of Borrower pursuant to the express terms of the Agreement in connection with a permitted assignment thereunder as provided hereinbelow), (iv) any modification or amendment of the Agreement, or (v) any other act or omission of Lender or Borrower which would otherwise constitute or create a legal or equitable defense in favor of Guarantor except to the extent that the same constitutes a defense to enforcement of the Agreement against the Borrower thereunder.

Guarantor represents and warrants that it is the direct or indirect owner of one hundred percent (100%) of the equity interests of Borrower and, therefore has a material economic interest in Borrower and that the execution of this Agreement will be of direct benefit to it. This Guaranty will remain in full force and effect as to any renewal, modification, amendment, or extension of the Agreement, any assignment or transfer by Lender, any assignment or transfer by Borrower, any change in the status, composition, structure or name of Borrower or Guarantor, and as to any assignee of Borrower's interest under the Agreement.

If Guarantor, directly or indirectly, advances any sums to Borrower, Guarantor's rights to contribution for such sums and indebtedness will be subordinate in all respects to the amounts then and thereafter due and owing by Borrower under the Agreement. Payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any right, title or interest (whether by way of subrogation or otherwise) in and to any of the rights or remedies Lender may have against Borrower, unless and until all of the obligations then payable or performable by Borrower under the Agreement have been performed, including particularly, but without limitation, payment of the full amount then due and owing to Lender under the Agreement and this Guaranty.

The liability of Guarantor for the Guaranteed Obligations and other obligations contained in this agreement shall be primary; in any rights of action which accrue to Lender under the Agreement, Lender may proceed against Guarantor and/or Borrower, jointly or severally, and may proceed against Guarantor without having demanded performance of, commenced any action against, exhausted any remedy against, or obtained any judgment against Borrower. This is a guaranty of payment and not of collection, and Guarantor waives any obligation on the part

of Lender to enforce the terms of the Agreement against Borrower as a condition to Lender's right to proceed against Guarantor.

Guarantor expressly waives (i) notice of acceptance of this Guaranty and of presentment, demand and protest, (ii) notice of any default hereunder or under the Agreement (other than notices and copies thereof to the parties specified in and as expressly required by the Agreement) and of all indulgences, (iii) demand for observance, performances or enforcement of any terms for provisions of this Guaranty or the Agreement, and (iv) all other notices and demands otherwise required by law which Guarantor may lawfully waive. Guarantor agrees that if this Guaranty is enforced by suit or otherwise, Guarantor shall reimburse Lender, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

Guarantor agrees that in the event that Borrower shall become insolvent or shall be adjudicated a bankrupt, or shall file a petition for reorganization, arrangement or other relief under any present or further provision of the Bankruptcy Reform Act of 1978, or if such a petition be filed by creditors of said Borrower, or if Borrower shall seek a judicial readjustment of the rights of its creditors under any present or future Federal or State law or if a receiver of all or part of its property and assets is appointed by any State or Federal court, no such proceeding or action taken therein shall modify, diminish or in any way affect the liability of Guarantor under this Guaranty.

Guarantor further agrees that, (a) to the extent Guarantor makes a payment or payments to Lender under this Guaranty, which payment or payments or any part thereof are substantially invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to Guarantor or its respective estate, trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, this Guaranty and the advances or part thereof which have been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the date such initial payment, reduction or satisfaction occurred and (b) to the extent Borrower makes a payment or payments to Lender under the Agreement, which payment or payments or any part thereof are substantially invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to the Borrower or its estate, trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable clause, then, to the extent of such payment or repayment, Guarantor shall nevertheless be liable hereunder to the same extent as it would have been if the obligations of Borrower had not been so invalidated, declared to be fraudulent or preferential, set aside or required to be repaid.

Guarantor hereby waives, to the maximum extent permitted by law, all defenses available to a surety, whether or not the waiver is specifically enumerated in this Guaranty.

All of the terms and provisions of this Guaranty shall inure to the benefit of the successors and assigns of Lender and are binding upon the respective successors and assigns of Guarantor.



Within seven (7) days after written request therefor from Lender, Guarantor shall deliver to Lender, or its designee, an estoppel letter from Guarantor ratifying and confirming Guarantor's obligations under this Guaranty.

A determination that any provision of this Guaranty is unenforceable or invalid will not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Guaranty to any person or circumstances is illegal or unenforceable will not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

No modification or amendment of this Guaranty will be effective unless executed by Guarantor and consented to by Lender in writing, and no cancellation of this Guaranty will be valid unless executed by Lender in writing.

If Borrower's obligations are void or voidable due to illegal or unauthorized acts by Borrower in the execution of the Agreement, Guarantor shall nevertheless be liable hereunder to the same extent as it would have been if the obligations of Borrower had been enforceable against Borrower.

This Limited Guaranty and Indemnity Agreement is governed exclusively by its provisions, and by the laws of the State of Maryland, as the same may from time to time exist.

Notwithstanding anything contained herein to the contrary, the interests and rights of Lender pursuant to this Guaranty are subject in all respects to the terms, covenants, and limitations as set forth in that certain Subordination and Standstill Tri-Party Agreement dated as of April 3, 2007 among Mercantile-Safe Deposit and Trust Company, as Agent, Lender and Borrower (the "Tri-Party Agreement"), the provisions of which Tri-Party Agreement are incorporated herein by reference to the same extent as if fully set forth herein.

*[Signature on following page.]*

**IN WITNESS WHEREOF**, the undersigned has caused this Limited Guaranty and  
Indemnity Agreement to be executed as of April 3, 2007.

**ERICKSON RETIREMENT COMMUNITIES,  
LLC, a Maryland limited liability company**

By: 

Name: Gerald F. Doherty

Title: Executive Vice President

**MEMBER INTEREST PLEDGE AGREEMENT**

THIS MEMBER INTEREST PLEDGE AGREEMENT (the "Agreement") is made and entered into as of April 3, 2007, (the "Effective Date"), by ERICKSON RETIREMENT COMMUNITIES, LLC, a Maryland limited liability company ("ERC" or the "Pledgor"), in favor of MSRESS III KANSAS CAMPUS, L.P., a Delaware limited partnership (the "Pledgee").

**RECITALS**

WHEREAS, Pledgee has made a loan to Kansas Campus, LLC, a Maryland limited liability company ("Borrower"), secured by a mortgage on that certain real property owned by Borrower and located in the City of Overland Park, Johnson County, Kansas (the "Property"); and

WHEREAS, subject to and upon the terms and conditions set forth in this Agreement and the Loan Agreement (the "Mezzanine Loan Agreement"), between Pledgee and Borrower, Pledgee has made the Mezzanine Loan, which together with all other capitalized terms not defined herein shall have the meaning set forth in the Mezzanine Loan Agreement; and

WHEREAS, Pledgor has partially guaranteed Borrower's performance under the Mezzanine Loan Agreement pursuant to that certain Limited Guaranty and Indemnity Agreement of even date herewith from Pledgor in favor of Pledgee (the "Guaranty"); and

WHEREAS, Pledgor, directly or indirectly, is the sole owner of one hundred percent (100%) of the equity interests of the Borrower; and

WHEREAS, as a condition precedent to Pledgee making the Mezzanine Loan to Borrower, Pledgor has agreed to pledge and grant to Pledgee a security interest in the entire member interest in Borrower held by Pledgor consisting of a 100% sole member interest held by ERC (collectively, the "Member Interest"), in order to secure Borrower's performance under the Mezzanine Loan Agreement and ERC's performance under the Guaranty.

**AGREEMENTS**

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Defined Terms. Any capitalized term not otherwise defined herein shall have the meaning given to such term in the Mezzanine Loan Agreement.

2. Pledge. As security for (i) Borrower's full, prompt and complete payment of interest, and all other amounts required to be paid by Borrower under the Mezzanine Loan Agreement when due, (ii) the full, prompt and complete performance of all other obligations of

**EXHIBIT**

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Borrower under the Mezzanine Loan Agreement when due, and (iii) Pledgor's full, prompt and complete performance of all of its obligations under the Guaranty ((i) (ii) and (iii) are hereinafter collectively referred to as the "Obligations"), the Pledgor hereby pledges and assigns to Pledgee the Member Interest and hereby grants to Pledgee a security interest in and to the Member Interest, including without limitation, all of Pledgor's capital accounts in and interest in the income, profits, gains and losses of Borrower and of Pledgor's right to receive distributions and the return of capital contributions from Borrower (collectively, the "Collateral"); provided however, that the Collateral shall not include cash payments, distributions or return of capital contributions or other payments by Borrower paid on, or in respect of, the Member Interest ("Distributions") so long as, at the time such Distributions are made or after giving effect to such Distributions, (A) neither Borrower nor Pledgor is in continuing default under any of the Project Documents (beyond applicable notice and cure periods), (B) Borrower is not in continuing default (beyond applicable notice and cure periods) under the Mezzanine Loan Agreement dealing with any payment thereunder, (C) no other default under the Mezzanine Loan Agreement dealing with matters other than any payment shall have occurred and is continuing (beyond applicable notice and cure periods) as to which Pledgee has not waived such Event of Default, (D) no claim for payment or performance has been made by Pledgee against Pledgor under the Guaranty which has not been satisfied, and (E) Pledgor has established in favor of Pledgee, as security for the payment of the Prepayment Price under the Mezzanine Loan Agreement, a letter of credit or other assurance or financial security, in a form reasonably approved in writing by Pledgee, assuring Pledgee that the net amount of all Distributions (net of amounts which are re-contributed by Pledgor to Borrower in order to pay bona fide obligations of Borrower under the Project Documents) will be available to apply toward payment of the Prepayment Price if and when it becomes due and payable. Borrower may only make, and Pledgor may only receive, Distributions which are made in accordance with the foregoing conditions and limitations on making Distributions free and clear of the lien and operation of this Agreement.

3. Financing Statement. Simultaneously with execution hereof, Pledgor authorizes Pledgee to file a UCC-1 Financing Statement with the State of Maryland (the "Financing Statement") evidencing the security interest granted by Pledgor to Pledgee in the Collateral. The Pledgor agrees that, at any time and from time to time, Pledgor will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable, or that the Pledgee may reasonably request, in order to perfect and protect any security interest granted hereby or to enable the Pledgee to exercise and enforce its rights and remedies hereunder with respect to the Member Interest or other Collateral.

4. Remedies, Rights Upon Default.

(a) Upon and after the occurrence of an Event of Default, and subject to the provisions of Section 2 hereof, the Pledgee shall have the rights and remedies with respect to the Collateral provided for in the Uniform Commercial Code in effect in the State of Maryland (the "UCC"), including the right to, without demand of performance or other demand, advertisement, or notice of any kind (except such notice as may be specifically required by law and the notice and advertisement requirement specified in subsection (c) hereinbelow), to or upon the Pledgor or any other person, forthwith realize upon its security interest in the Collateral or any part

thereof, and forthwith sell or otherwise dispose of and deliver the Collateral or any part thereof at public or private sale or sales, at any time or place, at such prices and on such terms (including, but without limitation, a requirement that any purchaser of all or any part of the Collateral purchase the Member Interest or other interests constituting the Collateral for investment and without any intention to make a distribution thereof) as it may deem best, for cash or on credit, or for future delivery without assumption of any credit risk, with the right of Pledgee or any purchaser to purchase upon any such sale the whole or any part of the Collateral free of any right or equity of redemption in the Pledgor, which right or equity is hereby expressly waived and released to the extent permitted by law.

(b) The proceeds of any such disposition shall be applied as follows:

(i) First, to the costs and expenses incurred in connection therewith or incidental thereto or to the care or safekeeping of any of the Collateral or in any way relating to the exercise or enforcement of the rights of the Pledgee hereunder, including reasonable attorneys' fees and legal expenses incurred in connection therewith;

(ii) Second, to the satisfaction of the Obligations which are then due and payable;

(iii) Third, to the payment of any other amounts required by applicable law; and

(iv) Fourth, to the Pledgor to the extent of any surplus proceeds.

(c) Any notification required by Section 9-611 of the UCC shall be deemed reasonably and properly given if given to the Pledgor in accordance with Section 11 hereof, at least ten (10) days before any sale or disposition of any of the Collateral. Any advertisement of the sale or other disposition of such Collateral shall be deemed to be reasonable if such advertisement is placed in a newspaper of general circulation in or about the location of the principal place of business of the Borrower at least once in each of the two (2) calendar weeks immediately preceding the sale.

5. Representations and Warranties. The Pledgor hereby represents, warrants and covenants to the Pledgee as follows:

(a) Pledgor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Maryland and its address is 701 Maiden Choice Lane, Baltimore, Maryland 21228;

(b) Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Maryland, and is qualified to do business in the state in which the Property is located;

(c) This Agreement has been duly executed and delivered by the Pledgor and is a valid and binding obligation of the Pledgor enforceable against it in accordance with its

terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally;

(d) Pledgor is the sole holder of record and the sole beneficial owner of the Member Interest free and clear of any liens, warrants, calls, security interests, options, encumbrances or other charges thereon or affecting title thereto, except the security interest created by this Agreement and perfected by the filing of the Financing Statement and the security interest therein granted to the Construction Lender pursuant to the Construction Loan Documents;

(e) Pledgor has full legal power and right to pledge and grant the security interest conveyed hereby in the Collateral and every part thereof; the making of such pledge and the granting of such security interest do not violate the provisions of any law, regulation, contract, agreement, restrictive covenant or legend, order of court, corporate charter or bylaw, stockholders agreement or other instrument binding upon it or any part of the Collateral; and no consent or approval of any governmental body or regulatory authority, or any securities exchange, was or is necessary to the validity or effectiveness thereof;

(f) The issuance of the Member Interest has been duly authorized and the Member Interest is validly issued, fully paid and nonassessable;

(g) All corporate actions or other actions or consents necessary to authorize and effectuate the terms of this Agreement on behalf of Pledgor have been taken or obtained;

(h) Pledgor will not (i) suffer or permit any amendment or modification of the operating agreement of the Borrower without the prior written consent of Pledgee (which consent may not be unreasonably withheld, conditioned or delayed); (ii) without the prior written consent of Pledgee, assign its rights to control Borrower or permit any other person to control Borrower; or (iii) waive, release or compromise any rights or claims that Pledgor may have against any other party which arise under the operating agreement of the Borrower;

(i) The Member Interest is not an interest which is dealt in or traded on securities exchanges or in securities markets, the terms of Borrower's operating agreement do not expressly provide that it is a security governed by Article 8 of the UCC, nor is the Borrower registered as an investment company under the federal investment company laws, and the Member Interest is not held in a securities account and is not certificated. Pledgor, so long as this Agreement is in effect, will not certificate the Member Interest.

6. Preservation of Collateral. The Pledgor will pay promptly when due all taxes, assessments and governmental charges and levies upon or against the Collateral, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith by appropriate proceedings. The Pledgee may, at its option, make any payments or take any other action it may reasonably deem necessary or desirable to cure any default by Pledgor pursuant to the terms of this Agreement, to remove or discharge any liens, attachments or levies against or upon the Collateral, whether voluntary or involuntary, or otherwise to conserve, protect or further perfect its interest in the Collateral. The

Pledgor shall, promptly upon demand, reimburse the Pledgee for all such advances or expenses incurred by the Pledgee.

7. No Further Transfer or Encumbrances. Except as permitted by the express terms of the Mezzanine Loan Agreement, the Pledgor hereby covenants and agrees that it shall not sell, convey or otherwise dispose of any of the Collateral, nor create, incur or permit to exist any pledge, mortgage, lien, charge, encumbrance or any security interest whatsoever with respect to any of the Collateral or the proceeds thereof. The Pledgor further covenants and agrees that it shall not consent to or approve the issuance of any additional Member Interest in Borrower or the merger of Borrower with any other entity, except (i) where the issuance is not prohibited by the express terms of Mezzanine Loan Agreement and where the issued interests or entrusts in the entity surviving the merger, is subject to the lien created under this Agreement, and (ii) any issuance of member interests in Borrower to a non-equity member as provided in Borrower's organizational documents, copies of which have been provided to Lender. Without in any way limiting the foregoing, unless and until Borrower exercises the Purchase Option set forth in the Mezzanine Loan Agreement and pays Pledgee all amounts due in connection therewith, Pledgor may not elect to or voluntarily sell or in any manner convey the Member Interest.

8. Voting Rights. Notwithstanding anything herein to the contrary, unless and until an Event of Default occurs and is continuing, and the Pledgee forecloses upon the Collateral in accordance with this Agreement, the Pledgor shall have the right to exercise its voting and other rights with respect to the Member Interest and Pledgor shall have the right to receive Distributions, but only under and subject to the terms, conditions and limitations applicable to Distributions as set forth in Section 2 above. Notwithstanding the foregoing sentence, upon the occurrence and during the continuation beyond applicable notice and cure periods of (i) an Event of Default under the Mezzanine Loan Agreement or (ii) a claim by the Pledgee under the Guaranty which has not been satisfied, the Pledgee shall be entitled to exercise any and all rights of conversion, exchange or subscription or any other similar rights, privileges or options pertaining to the Collateral as if it were the absolute owner thereof, including, without limitation, the right to exchange, at its discretion, any and all of the Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of the Borrower or, upon the exercise of any such right, privilege or option pertaining to the Collateral, and in connection therewith, to deposit and deliver any and all of the Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Pledgee may determine.

10. Duty of Pledgee. The Pledgee may take any action set forth in this Agreement without liability to the Pledgor (except for Pledgee's own gross negligence or willful misconduct), Borrower or any other person, except to account for property actually received by it, but the Pledgee shall have no duty to exercise any of such rights, privileges or options and shall not be responsible for any failure to do so or delay in so doing. The Pledgee's only duty with respect to the Collateral shall be to exercise reasonable care to assure the safe custody of the Collateral, and the Pledgee shall be relieved of all responsibility for the Collateral upon delivery or proffer of delivery of the Collateral to the Pledgor.

11. Costs. The Pledgor shall pay on demand all costs and expenses (including reasonable attorney's fee) incurred by and on behalf of the Pledgee incident to any collection; servicing, sale, disposition or other action taken by the Pledgee with respect to the Collateral or any portion thereof following the occurrence and during the continuance of an Event of Default; provided, however, that this Agreement shall in all respects be nonrecourse to Pledgor and Pledgee shall look only to the Member Interest to satisfy any liability of Pledgor hereunder.

12. Notices.

(a) Any and all notices, demands, consents, approvals, offers, elections and other communications required or permitted under this Agreement shall be deemed adequately given if in writing and the same shall be delivered either in hand, or by mail or Federal Express or similar expedited commercial carrier, addressed to the recipient of the notice, postpaid and registered or certified with return receipt requested (if by mail), or with all freight charges prepaid (if by Federal Express or similar carrier).

(b) All notices required or permitted to be sent hereunder shall be deemed to have been given for all purposes of this Agreement, upon the date of receipt or refusal, except that whenever under this Agreement a notice is either received on a day which is not a business day or is required to be delivered on or before a specific day which is not a business day, the day of receipt or required delivery shall automatically be extended to the next business day.

(c) All such notices shall be addressed:

If to Pledgee: MSRESS III Kansas Campus, L.P.  
c/o Morgan Stanley US RE Investing Division  
1585 Broadway, Floor 37  
New York, NY 10036  
Attn: Andrew S. Bauman  
Phone: (212) 761-4468  
Fax: (212) 761-0253

With a copy to: Wilmer Hale LLP  
100 Light Street – Suite 1300  
Baltimore, Maryland 21202  
Attn: Mark Pollak, Esq.  
Phone: (410) 986-2860  
Fax: (410) 986-2828



If to Pledgor: Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Baltimore, Maryland 21228  
Attn: General Counsel  
Phone: (410) 402-2350  
Fax: (410) 402-2348

By notice given as herein provided, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses effective upon receipt by the other parties of such notice and each shall have the right to specify as its address any other address within the United States of America.

13. Entire Agreement. This Agreement contains the full understanding of the Pledgor and the Pledgee in respect of the pledge of the Collateral, and may not be amended or otherwise modified except in a writing duly executed by the Pledgor and the Pledgee.

14. Waiver. The failure by either party to insist upon or to enforce any of its rights hereunder shall not constitute a waiver thereof. Any waiver shall be in writing and signed by the party granting the waiver.

15. Exercise of Rights. All rights, remedies and powers of the Pledgee hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all other rights, remedies and powers given hereunder or in or by any other instrument or any law now existing or hereafter made or enacted.

16. Severability. If any term, covenant or condition of this Agreement, or the application thereof to any person, shall be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those to which it is held to be invalid or unenforceable shall not be affected thereby, and each term shall be valid and enforceable to the fullest extent permitted by law.

17. Termination. This Agreement shall terminate upon the earlier to occur of (i) the termination of the Mezzanine Loan Agreement and performance in full of the Obligations, or (ii) Pledgor's transfer of its interest in the Borrower or in the Mezzanine Loan Agreement pursuant to Article 14 of the Mezzanine Loan Agreement.

18. Binding Nature of Agreement. This Agreement shall be binding upon Pledgor and Pledgee and their respective successors and assigns.

19. Construction. When used herein, the singular may also refer to the plural and vice versa; and the use of any gender shall be applicable to all genders. Headings in the Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

20. Governing Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

22. Legend. Notwithstanding anything contained herein to the contrary, the interests and rights of Lender pursuant to this Agreement are subject in all respects to the terms, covenants, and limitations as set forth in that certain Subordination and Standstill Tri-Party Agreement dated as of April 3, 2007 among Mercantile-Safe Deposit and Trust Company, Pledgee and Pledgor (the "Tri-Party Agreement"), the provisions of which Tri-Party Agreement are incorporated herein by reference to the same extent as if fully set forth herein.

*[Signatures on following pages.]*

**EXECUTED AND ACKNOWLEDGED** by the undersigned as of the day and year first written above.

**PLEDGOR:**

**ERICKSON RETIREMENT COMMUNITIES,  
LLC, a Maryland limited liability company**

By: 

Name: Gerald F. Doherty

Title: Executive Vice President

**[SIGNATURES CONTINUE ON NEXT PAGE]**

**PLEDGE:**

**MSRESS III KANSAS CAMPUS, L.P., a Delaware  
limited partnership**

**By: MSRESS III Kansas Campus GP, LLC**

By:  (SEAL)

**Name: Andrew Bauman**

**Title: Vice President**

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Patricia A. Berkey  
Wilmer Cutler Pickering Hale and Dorr LLP  
100 Light Street, Suite 1300  
Baltimore, Maryland 21202

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

Erickson Retirement Communities, LLC

OR

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

701 Maiden Choice Lane

CITY

Baltimore

STATE

MD

POSTAL CODE

21228

COUNTRY

USA

1d. TAX ID #: SSN OR EIN

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

1e. TYPE OF ORGANIZATION

LLC

1f. JURISDICTION OF ORGANIZATION

Maryland

1g. ORGANIZATIONAL ID #, if any

W04550497

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. TAX ID #: SSN OR EIN

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

MSRESS III Kansas Campus, L.P.

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

1585 Broadway, Floor 37 (c/o A. Bauman)

CITY

New York

STATE

NY

POSTAL CODE

10036

COUNTRY

USA

4. This FINANCING STATEMENT covers the following collateral:

All of Debtor's member interest in Kansas Campus, LLC, a Maryland limited liability company ("KC"), including without limitation, all of Debtor's capital accounts in and interest in the income, profits, gains and losses of KC and of Debtor's right to receive distributions and the return of capital contributions from KC as pledged pursuant to that certain Member Interest Pledge Agreement, dated as of April 3, 2007, by Debtor in favor of Secured Party.

5. ALTERNATIVE DESIGNATION (if applicable):	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		<input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2			
8. OPTIONAL FILER REFERENCE DATA						

EXHIBIT

F

### UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Patricia A. Berkey  
Wilmer Cutler Pickering Hale and Dorr LLP  
100 Light Street, Suite 1300  
Baltimore, Maryland 21202

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

Kansas Campus, LLC

OR

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

701 Maiden Choice Lane

CITY

Baltimore

STATE

MD

POSTAL CODE

21228

COUNTRY

USA

1d. TAX ID #: SSN OR EIN

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

1e. TYPE OF ORGANIZATION  
LLC

1f. JURISDICTION OF ORGANIZATION  
Maryland

1g. ORGANIZATIONAL ID #, if any  
W10747368

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. TAX ID #: SSN OR EIN

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR SP) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

MSRESS III Kansas Campus, L.P.

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

1585 Broadway, Floor 37 (c/o A. Bauman).

CITY

New York

STATE

NY

POSTAL CODE

10036

COUNTRY

USA

4. This FINANCING STATEMENT covers the following collateral:

All of Debtor's right, title and interest to the contracts and agreements listed on Exhibit A attached hereto, together with any and all rights of Debtor thereunder including but not limited to, any accounts, reserves, credits, escrows, retainage and/or other rights to receive any payments or other sums in connection therewith, as pledged pursuant to that certain Pledge Agreement dated as of April 3, 2007, by Debtor in favor of Secured Party.

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (or record) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (Additional Fee)		All Debtors Debtor 1 Debtor 2			
8. OPTIONAL FILER REFERENCE DATA						

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b>
<b>B. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>
Patricia Ann Berkey Wilmer Cutler Pickering Hale and Dorr LLP 100 Light Street, Suite 1300 Baltimore, Maryland 21202

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names**

1a. ORGANIZATION'S NAME Kansas Campus, LLC						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS 701 Maiden Choice Lane			CITY Baltimore	STATE MD	POSTAL CODE 21228	COUNTRY USA
1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION LLC	1f. JURISDICTION OF ORGANIZATION Maryland		1g. ORGANIZATIONAL ID #, if any W10747368 <input type="checkbox"/> NONE	

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

2a. ORGANIZATION'S NAME						
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION		2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE	

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)**

3a. ORGANIZATION'S NAME MSRESS III Kansas Campus, L.P.						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS 1585 Broadway, Floor 37 (c/o A. Bauman)			CITY New York	STATE NY	POSTAL CODE 10036	COUNTRY USA

**4. This FINANCING STATEMENT covers the following collateral:**

All assets of Debtor which are now or hereafter located on or affixed to certain real estate owned by Debtor in Overland Park, Johnson County, Kansas, which is more particularly described on Exhibit A attached hereto and incorporated by reference herein, or which constitutes fixtures under applicable law.

5. ALTERNATIVE DESIGNATION (if applicable):		LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		All Debtors		Debtor 1	Debtor 2
8. OPTIONAL FILER REFERENCE DATA							

File with: Land Records of Johnson County, Kansas

**PARCEL 1:**

Lot 1 and Tract A, ERC Campus, Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas.

**PARCEL 2:**

A non-exclusive easement for vehicular and pedestrian traffic, ingress and egress over driveways and vehicular parking areas as provided in the instrument labeled "Access Easement Agreement" filed in Book 8124, Page 163.

**PARCEL 3:**

A perpetual access easement for vehicular and pedestrian traffic access, ingress and egress over and across that area provided in the instrument labeled "Access Easement (option 1)" filed in Book 8171, Page 332.



### UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address)
Patricia Ann Berkey Wilmer Cutler Pickering Hale and Dorr LLP 100 Light Street, Suite 1300 Baltimore, Maryland 21202

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Kansas Campus, LLC					
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 701 Maiden Choice Lane			CITY Baltimore	STATE MD	POSTAL CODE 21228
1d. TAX ID #: SSN OR EIN		ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION LLC	1f. JURISDICTION OF ORGANIZATION Maryland	1g. ORGANIZATIONAL ID #, if any W10747368
					<input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
2d. TAX ID #: SSN OR EIN		ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
					<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME MSRESS III Kansas Campus, L.P.					
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 1585 Broadway, Floor 37 (c/o A. Bauman)			CITY New York	STATE NY	POSTAL CODE 10036
					COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

All assets of Debtor which are now or hereafter located on or affixed to certain real estate owned by Debtor in Overland Park, Johnson County, Kansas, which is more particularly described on Exhibit A attached hereto and incorporated by reference herein, or which constitutes fixtures under applicable law.

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
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			Debtor 1			Debtor 2
8. OPTIONAL FILER REFERENCE DATA						

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**PARCEL 3:**

A perpetual access easement for vehicular and pedestrian traffic access, ingress and egress over and across that area provided in the instrument labeled "Access Easement (option 1)" filed in Book 8171, Page 332.

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# Northern District of Texas Claims Register

09-37010-sgj11 Erickson Retirement Communities, LLC

**Judge:** Stacey G. Jernigan

**Chapter:** 11

**Office:** Dallas

**Last Date to file claims:** 02/28/2010

**Trustee:**

**Last Date to file (Govt):**

<b>Creditor:</b> (13027251) MSRESS III Kansas Campus, LLC c/o Andrew Bauman/Matthew Summers Ballard Spahr LLP, 300 E Lombard, 18 Fl Baltimore, Maryland 21202 410-528-5679	<b>Claim No: 26</b> <i>Original Filed</i> Date: 02/24/2010 <i>Original Entered</i> Date: 02/24/2010	<b>Status:</b> <i>Filed by:</i> CR <i>Entered by:</i> Knapp, Bradley <i>Modified:</i>
--	---	--

Secured claimed: \$28260000.00

**Total** claimed: \$28260000.00

**History:**

Details    26-1    02/24/2010 Claim #26 filed by MSRESS III Kansas Campus, LLC, total amount claimed: \$28260000 (Knapp, Bradley )

**Description:** (26-1) Real Estate

**Remarks:**

## Claims Register Summary

**Case Name:** Erickson Retirement Communities, LLC

**Case Number:** 09-37010-sgj11

**Chapter:** 11

**Date Filed:** 10/19/2009

**Total Number Of Claims:** 1

	Total Amount Claimed	Total Amount Allowed
<b>Unsecured</b>		
<b>Secured</b>	\$28260000.00	
<b>Priority</b>		
<b>Unknown</b>		
<b>Administrative</b>		
<b>Total</b>	\$28260000.00	\$0.00