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| <b>UNITED STATES BANKRUPTCY COURT</b> <b>Northern District of Texas</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  | <b>PROOF OF CLAIM</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Name of Debtor:<br><b>Warminster Campus GP, LLC</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | Case Number:<br><b>09-37027</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 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):<br><b>Manufacturers and Traders Trust Company</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.<br><br>Court Claim Number: _____<br>(If known)<br><br>Filed on: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Name and address where notices should be sent:<br><b>Manufacturers and Traders Trust Company</b><br><b>25 South Charles Street, 10th Floor, Baltimore, MD 21201</b><br><b>Attn: Linda J. Weinberg, Senior Vice President</b><br><br>Telephone number:<br><b>(410) 244-4025</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Name and address where payment should be sent (if different from above):<br><br><br>Telephone number:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 1. Amount of Claim as of Date Case Filed:      \$ <u>3,590,250.00</u><br><br>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.<br><br>If all or part of your claim is entitled to priority, complete item 5.<br><br><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.<br><br>Specify the priority of the claim.<br><br><input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).<br><br><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).<br><br><input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).<br><br><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).<br><br><input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).<br><br><input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)( ).<br><br>Amount entitled to priority:<br>\$ _____<br><br><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 attached</u><br>(See instruction #2 on reverse side.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 3. Last four digits of any number by which creditor identifies debtor: _____<br><br>3a. Debtor may have scheduled account as: _____<br>(See instruction #3a on reverse side.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 4. Secured Claim (See instruction #4 on reverse side.)<br>Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.<br><br>Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other<br>Describe: <u>see attached</u><br><br>Value of Property: \$ <u>TBD</u> Annual Interest Rate _____ % <u>see attached</u><br><br>Amount of arrearage and other charges as of time case filed included in secured claim,<br>if any: \$ <u>see attached</u> Basis for perfection: <u>see attached</u><br><br>Amount of Secured Claim: \$ <u>3,590,250.00</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.)<br><br><b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b><br><br>If the documents are not available, please explain:                                                                                                                                     |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Date:<br><b>02/24/2010</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | <b>FOR COURT USE ONLY</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 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.<br><br><div style="display: flex; align-items: center;"> <div style="flex: 1;"> <b>Manufacturers and Traders Trust Company</b><br/>           By: <b>Mark S. Gaffin, Director</b> </div> <div style="flex: 2; text-align: center;"> <br/> <b>410-244-3932</b> </div> </div>                                                                                                                                                                                                 |  | <b>Erickson Ret. Comm. LLC</b><br><br>01558                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

## ATTACHMENT

This claim (the "Claim") arose as a result of a risk participation by Manufacturers and Traders Trust Company ("M&T") in an interest rate swap agreement (the "Swap") entered into between PNC Bank, National Association ("PNC") and Erickson Retirement Communities, LLC ("ERC"), and PNC's subsequent pre-petition termination of the Swap. Pursuant to the Risk Participation Agreement between PNC and M&T (the "Risk Participation Agreement"), M&T is subrogated to all the rights of PNC against ERC under the governing Swap documents to the extent of M&T's Participation Percentage (as defined in the Risk Participation Agreement). The Claim is secured pursuant to the Security Agreement and related documents executed and delivered by ERC in connection with the Credit Agreement, dated July 27, 2007, as amended or modified from time to time (the "Credit Agreement"), between ERC, as one of the borrowers, and PNC in its capacity as administrative agent on behalf of the lenders under the Credit Agreement.

The Claim is supported by the attached documents and, pursuant to the Bankruptcy Court's Order Granting Joint Motion to Establish Protocol Under Federal Rules of Bankruptcy Procedure 3001 and 2019 for Filing Proofs of Claim, entered on February 8, 2010, by the documents to be submitted in support of proofs of claim filed by Wilmington Trust as PNC's successor administrative agent under the Credit Agreement and PNC's proof of claim against ERC arising under the Swap.

In addition to the amount set forth in this Proof of Claim, M&T reserves the right to collect as part of its Claim, in accordance with the terms of the governing documents and applicable law, all pre-petition and post-petition interest and other charges, including, without limitation, all attorneys' fees and expenses that accrue under the governing documents.

M&T reserves the right to supplement and/or amend this Proof of Claim from time to time and to assert an unsecured claim in this bankruptcy case to the extent that the value of the collateral is insufficient to satisfy the Claim in full amount. M&T also reserves the right to amend and/or supplement this Proof of Claim in all other respects and to add additional claims of any nature whatsoever, including but not limited to claims entitled to administrative priority.

The filing of this Proof of Claim is not an acknowledgment or admission that the Bankruptcy Court has jurisdiction over M&T's claims against any Debtor or non-Debtor entity, and M&T reserves all rights with respect thereto.

(Local Currency-Single Jurisdiction)



International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of July 27, 2007

PNC BANK, NATIONAL ASSOCIATION and ERICKSON RETIREMENT COMMUNITIES,  
("PNC") LLC ("OBLIGOR")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: —

### 1. Interpretation

(a) **Definitions.** The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

#### (a) General Conditions.

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or potential event of default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable: --

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that: --

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

#### **4. Agreements**

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party: --

(a) **Furnish Specified Information.** It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

#### **5. Events of Default and Termination Events**

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party: --

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity, of such Credit Support Document;

(iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: --

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of

an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:

--

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below: --

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b) for such party (which will be the Affected Party): --

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction.

(ii) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the credit worthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

- (c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

**6. Early Termination**

- (a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

- (b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) **Right to Terminate.** If: --

- (1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or
- (2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

- (c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).



(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to other party a statement (1) showing, in reasonable detail,

such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default: —

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect to the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) **Second Method and Loss.** If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from Termination Event: --

(1) **One Affected Party.** If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) **Two Affected Parties.** If there are two Affected Parties: --

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (1) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## **7. Transfer**

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: --

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer is not in compliance with this Section will be void.

## 8. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
  - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 10. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated: —

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## **11. Governing Law and Jurisdiction**

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably: --

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in its Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdictions of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## **12. Definitions**

As used in this Agreement: --

"**Additional Termination Event**" has the meaning specified in Section 5(b).

"**Affected Party**" has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means: —

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meanings specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iii).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"law"** includes any treaty, law, rule or regulation and **"lawful"** or **"unlawful"** will be construed accordingly.

**"Local Business Day"** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**"Loss"** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or

any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding where to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under

this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payers.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of: --

(a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination applies, immediately before that Early Termination Date).

**"Termination Event"** means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective date specified below with effect from the date specified on the first page of this document.

PNC BANK, NATIONAL ASSOCIATION

ERICKSON RETIREMENT  
COMMUNITIES, LLC

\_\_\_\_\_  
(Name of party)

\_\_\_\_\_  
(Name of Party)

By: \_\_\_\_\_

Name: Hans-Michael Hurdle

Title: Senior Vice President

By:  \_\_\_\_\_

Name: Jeffrey A. Jacobson

Title: Executive Vice President &  
Chief Financial Officer



**SCHEDULE**

**to the**

**Master Agreement**

**dated as of July 27, 2007**

**between**

**ERICKSON RETIREMENT COMMUNITIES, LLC ("OBLIGOR")**

**and**

**PNC BANK, NATIONAL ASSOCIATION ("PNC")**

**Part 1. Termination Provisions.**

- (a) **"Specified Entity"** means in relation to PNC for the purpose of:--

Section 5(a)(v), Not Applicable  
Section 5(a)(vi), Not Applicable  
Section 5(a)(vii), Not Applicable  
Section 5(b)(ii), Not Applicable

and in relation to OBLIGOR for the purpose of:--

Section 5(a)(v), Loan Parties  
Section 5(a)(vi), Loan Parties  
Section 5(a)(vii), Loan Parties  
Section 5(b)(ii), Loan Parties

For purposes of this Agreement, the term "Loan Parties" will have the meaning specified under the Credit Agreement (as defined in Part 5(i) of this Schedule).

- (b) **"Specified Transaction"** will have the meaning specified in Section 12 of this Agreement and, in addition, in relation to OBLIGOR only, shall include any other contract or agreement now existing or hereafter entered into between OBLIGOR (or any Credit Support Provider) and PNC (or any Affiliate thereof).
- (c) The **"Cross Default"** provisions of Section 5(a)(vi) will apply to OBLIGOR and PNC.

If such provisions apply:--

**"Specified Indebtedness"** will have the meaning specified in Section 12 of this Agreement, except that, with respect to PNC, such term shall not include letters of credit issued to the extent they are not paid when due solely as a result of technical malfunction, inadvertence, administrative error or legal prohibition or obligations in respect of deposits received. In addition, with respect to OBLIGOR, "Specified Indebtedness" shall include, without limitation, the obligations of OBLIGOR under any Credit Facility (as defined in Part 5(i) of this Schedule).

**"Threshold Amount"** shall mean:

In the case of PNC, an amount (or its equivalent in other currencies) at any time equal to the greater of  
(a) 3% of the consolidated stockholders' equity of The PNC Financial Services Group, Inc., a

Pennsylvania corporation, as shown in its most recent annual or quarterly financial statements prepared in accordance with generally accepted accounting principles in the United States, or (b) \$25,000,000.

In the case of OBLIGOR, an amount (or its equivalent in other currencies) at any time equal to \$500,000.00.

- (d) The "*Credit Event Upon Merger*" provisions of Section 5(b)(ii) will apply to both parties.
- (e) The "*Automatic Early Termination*" provision of Section 6(a) will not apply to either party.
- (f) *Payments on Early Termination.* For the purpose of Section 6(e) of this Agreement:--
  - (i) Market Quotation will apply.
  - (ii) The Second Method will apply.
- (g) "*Termination Currency*" means United States Dollars.
- (h) *Additional Termination Event* will apply.
  - (i) Impossibility. The occurrence of an Impossibility will be a Termination Event. The party that is subject to an Impossibility, other than as a result of its own misconduct, will be the "Affected Party". For purposes of this Agreement, the term Impossibility means the occurrence, after the date on which a Transaction is entered into, of a natural or man-made disaster, armed conflict, act of terrorism, riot, labor disruption, act of State or any other event or circumstance beyond the control of a party, which event or condition prevents (other than as a result of its own misconduct) a party (the "Affected Party"):
    - (1) from performing any absolute or contingent obligation, to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
    - (2) from performing, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction.

All terms and conditions of this Agreement applicable to an Illegality shall be equally applicable to Impossibility and the definition of Termination Event shall be amended to include Impossibility. If an Event of Default occurs and the same event or circumstances also constitutes an Impossibility, then such Event of Default will be treated as an Impossibility under this Agreement.

- (ii) Co-termination. If (A) that certain Credit Agreement (as defined in Part 5(i) of this Schedule) matures, expires, or is terminated or cancelled by any party thereto for any reason, in each case prior to the termination of all Transactions under this Agreement, or (B) PNC ceases to be a party to such Credit Agreement for any reason and such cessation occurs prior to the termination of all Transactions under this Agreement, and (C) OBLIGOR fails, within thirty (30) days of such event, to pledge and deliver pursuant to a Credit Support Annex acceptable to PNC "Eligible Collateral Support" as defined therein, then such occurrence will constitute a Termination Event under this Agreement and OBLIGOR will be the sole Affected Party.

## Part 2. Tax Representations.

(i) PNC represents at all times hereunder that (A) it is a national banking association organized or formed under the laws of the United States, and (B) it is a United States resident for United States federal income tax purposes.

(ii) OBLIGOR represents at all times hereunder that (A) it is a limited liability company organized under the laws of the State of Maryland, and (B) it is a United States resident for United States federal income tax purposes.

**Part 3. Agreement to Deliver Documents.**

(a) Tax forms, documents or certificates to be delivered pursuant to Section 4(a).

| Party required to deliver document | Form, Document or Certificate                                                                                                                                                                                                                                       | Date by which to be Delivered                    | Covered by Section 3(d) |
|------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|-------------------------|
| PNC and OBLIGOR                    | Any form or document reasonably requested by the other party that is required to enable such other party to make payments under this Agreement without deduction or withholding for or on account of Taxes or with such withholding or deduction at a reduced rate. | As soon as reasonably practicable after request. | Yes                     |

(b) Other documents to be delivered pursuant to Section 4(a).

| Party required to deliver document | Form, Document or Certificate                                                                                                                                           | Date by which to be Delivered               | Covered by Section 3(d) |
|------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|-------------------------|
| PNC                                | A certified copy of the resolutions of the board of PNC evidencing PNC's authority to enter into this Agreement and each Transaction entered into under this Agreement. | Promptly after execution of this Agreement. | Yes                     |
| PNC                                | An incumbency certificate with respect to the signatory of this Agreement.                                                                                              | Upon execution of this Agreement            | Yes                     |

| Party required to deliver document | Form, Document or Certificate                                                                                                                                                   | Date by which to be Delivered                                                                                           | Covered by Section 3(d) |
|------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|-------------------------|
| OBLIGOR                            | A certified copy of the resolutions of the board of OBLIGOR evidencing OBLIGOR's authority to enter into this Agreement and each Transaction entered into under this Agreement. | Promptly after execution of this Agreement.                                                                             | Yes                     |
| OBLIGOR                            | An incumbency certificate with respect to the signatory of this Agreement.                                                                                                      | Upon execution of this Agreement.                                                                                       | Yes                     |
| OBLIGOR                            | Most recent annual audited and quarterly unaudited financial statements of OBLIGOR                                                                                              | (i) Upon execution of this Agreement, and (ii) promptly upon reasonable demand by PNC.                                  | No                      |
| OBLIGOR                            | Executed Credit Support Annex (as defined in Part 4(c) of this Agreement).                                                                                                      | Concurrently with the execution and delivery of this Agreement and the completion of the initial Transaction hereunder. | Yes                     |

**Part 4. Miscellaneous.**

(a) *Addresses for Notices.* For the purpose of Section 10(a) of this Agreement:--

Address for notices or communications to PNC:

Address: One PNC Plaza, 9th Floor  
249 Fifth Avenue  
Pittsburgh, PA 15222-2707

Attention: Swap Operations  
Facsimile No.: 412-762-8667  
Telephone No.: 412-762-1375

Address for notices or communications to OBLIGOR:

Address: Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Baltimore, MD 21228

Attention: Jeffrey A. Jacobson, Executive Vice President and Chief Financial Officer  
Telephone No.: (410) 737-8914  
Facsimile No.: (216) 737-8828

- (b) **Calculation Agent.** Unless otherwise specified in a Confirmation in relation to the relevant Transaction, the Calculation Agent is PNC.

- (c) **Credit Support Document.** Details of any Credit Support Document:--

"Credit Support Document" means in relation to PNC, none.

"Credit Support Document" means in relation to OBLIGOR, each agreement and instrument, now or hereafter existing, of any kind or nature which secures, guarantees or otherwise provides direct or indirect assurance of payment or performance of any existing or future obligation of OBLIGOR under this Agreement, made by or on behalf of any person or entity (including, without limiting the generality of the foregoing, any agreement or instrument granting any lien, security interest, assignment, charge or encumbrance to secure any such obligation, any guaranty, suretyship, letter of credit, put option or subordination agreement relating to any such obligation and any "keep well" or other financial support agreement relating to OBLIGOR), and in any event, "Credit Support Document" in relation to OBLIGOR shall include without limitation that certain (i) Security Agreement, dated as of July 27, 2007, made by OBLIGOR and Erickson Construction, LLC in favor of PNC; (ii) Security Agreement, dated as of July 27, 2007, made by Dallas Campus GP, LLC, Senior Campus Services, LLC, Concord Campus GP, LLC and Warminster Campus GP, LLC in favor of PNC; (iii) Guaranty, dated as of July 27, 2007, made by Senior Campus Services, LLC, Concord Campus GP, LLC, Dallas Campus GP, LLC and Warminster Campus GP, LLC in favor of PNC; (iv) Deed of Trust, Security Agreement and Fixture Filing, dated as of July 27, 2007, made by OBLIGOR to Bruce D. McLean and D. Seward Woelper, as trustees thereunder, for the benefit of PNC; (v) Pledge Agreement, dated as of July 27, 2007, made by OBLIGOR in favor of PNC; (vi) Pledge Agreement, dated as of July 27, 2007, made by Erickson Group, LLC in favor of PNC; (vii) Collateral Assignment of Contracts, dated as of July 27, 2007, made by OBLIGOR and Erickson Construction, LLC in favor of PNC; (viii) Limited Guaranty, dated as of July 27, 2007, made by Erickson Group, LLC in favor of PNC; and (ix) Credit Support Annex (if any), made by OBLIGOR in favor of PNC pursuant to Part 1(h)(ii) of this Agreement (as any of the above documents may be amended, modified, supplemented or replaced from time to time).

- (d) **Credit Support Provider.**

"Credit Support Provider" means in relation to PNC, none.

"Credit Support Provider" means in relation to OBLIGOR, any person or entity (other than OBLIGOR), that now or hereafter secures, guarantees or otherwise provides direct or indirect assurance of payment or performance of any existing or future obligation of OBLIGOR under this Agreement, which shall include without limitation Erickson Construction, LLC, Concord Campus GP, LLC, Dallas Campus GP, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC, Erickson Group, LLC.

- (e) **Governing Law.** This Agreement will be governed by and construed in accordance with the law of the State of New York (without reference to choice of law doctrine).

- (f) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply to the following Transactions or groups of Transactions (in each case starting from the date of this Agreement): all Transactions.
- (g) **"Affiliate"** will have the meaning specified in Section 12 of this Agreement.

**Part 5. Other Provisions.**

- (a) **Conditions Precedent.** The condition precedent in Section 2(a)(iii)(1) does not apply to a payment and delivery owing by a party if the other party shall have satisfied in full all its payment or delivery obligations under Section 2(a)(i) of this Agreement and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under Section 2(a)(i).
- (b) **Consent to Recording.** Each party (i) consents to the recording, by the other party or its agents, of telephone conversations between officers, employees or agents of the consenting party or its Affiliates and officers, employees or agents of the other party or its Affiliates who quote on, agree to or otherwise discuss terms of Transactions or potential Transactions, or other matters relating to this Agreement or any Credit Support Document, and (ii) agrees to give notice of such recording to such officers, employees and agents of it and its Affiliates.
- (c) **Change of Account.** Any account designated by a party pursuant to Section 2(b) shall be in the same legal and tax jurisdiction as the original account.
- (d) **Confirmations.** As provided in Section 8(e)(ii) of this Agreement, the parties intend that they shall be legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). The terms of a Transaction subject to this Agreement orally agreed to shall be deemed to constitute a "Confirmation" as referred to in this Agreement, even if not so specified by the parties. As promptly as practicable after any such oral agreement, the parties shall enter into a definitive Confirmation with respect to such Transaction in accordance with the Section 8(e)(ii) of this Agreement, whereupon such definitive Confirmation shall supersede and replace such oral agreement and such oral agreement shall have no further legal force or effect.
- (e) **Additional Representations and Warranties.** The specified party represents and warrants to the other party (which representations and warranties will be deemed to be repeated on each date on which a Transaction is entered into) as follows:
  - (i) In the case of PNC, PNC is a national banking association duly organized under the federal laws of the United States of America.
  - (ii) In the case of OBLIGOR, OBLIGOR is a limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization.
  - (iii) In the case of each party, such party is entering into this Agreement and each Transaction for its own account as principal (and not as agent or in any other capacity, fiduciary or otherwise).
  - (iv) In the case of each party:
    - (A) In the case of each party, it is an "eligible contract participant" as such term is defined in Section 1a(12) of the Commodity Exchange Act, as amended.
    - (B) Such party is entering into this Agreement, including all Transactions hereunder, in connection with a line of its business.

(v)

- (A) In the case of OBLIGOR: it intends and acknowledges that this Agreement, including all Transactions hereunder, shall constitute a "swap agreement" as defined in 11 U.S.C. §101(53B) as in effect on the date of this Agreement (or any successor provision of similar import).
- (B) In the case of PNC: (1) it intends and acknowledges that this Agreement, including all Transactions hereunder, shall constitute a "qualified financial contract" and a "swap agreement," as those terms are defined in 12 U.S.C. §1821(e)(8)(D) as in effect on the date of this Agreement (or any successor provision of similar import), (2) without limiting the generality of Section 3(a)(i), PNC, by corporate action, is authorized under applicable non-insolvency law to enter into and perform its obligations under this Agreement, each Credit Support Document (if any) to which it is party and each Transaction hereunder, (3) it will, at all times during the term of this Agreement, maintain as part of its official books and records a copy of this Agreement (including all Confirmations from time to time and all other supplements hereto and documents incorporated by reference herein) and each Credit Support Document (if any) to which it is party, and evidence of its authorization of the foregoing, and (4) this Agreement, each Confirmation, each Credit Support Document (if any) to which it is party, and any other documentation relating to this Agreement to which it is a party or that it is required to deliver will be executed and delivered by an officer of PNC of the level of Vice President or higher.

(vi) In the case of each party:

- (A) It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and each Transaction and as to whether this Agreement and each Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into this Agreement or any Transaction; it being understood that information and explanations related to the terms and conditions of this Agreement or any Transaction shall not be considered investment advice or a recommendation to enter into this Agreement or such Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of this Agreement or any Transaction.
- (B) It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement and each Transaction. It is also capable of assuming, and assumes, the risks of this Agreement and each Transaction.
- (C) The other party is not acting as a fiduciary for or an adviser to it in respect of this Agreement or any Transaction.
- (D) The economic terms of this Agreement and such Transaction have been and will be individually tailored and negotiated; the creditworthiness of the other party was a material consideration in its entering into or determining the terms of this Agreement and such Transaction. Each party has received and reviewed financial information concerning the other party and has had a reasonable opportunity to ask questions of and receive answers and information from the other party concerning such other

party, this Agreement, such Credit Support Document, and such Transaction; and the transferability of this Agreement, such Credit Support Document, and such Transaction is restricted as provided herein and therein.

- (vii) In the case of each party, such party intends and acknowledges that this Agreement, including all Transactions hereunder, shall be commercial transactions and shall not be transactions in "securities" for purposes of any securities law (including without limitation the Securities Exchange Act of 1934, as amended, and the Securities Act of 1933, as amended).
- (f) **Accuracy of Specified Information.** Section 3(d) is modified by deleting the period at the end thereof and appending thereto the following: "or, in the case of audited or unaudited financial statements, a fair presentation of the financial condition, results of operations or cash flows (as applicable) of the relevant person for the dates and periods specified therein in conformity with generally accepted accounting principles in the United States."
- (g) **Set-off.** Section 6 is modified by adding the following Section 6(f) thereto:

(f) **Set-off.** Any amount (the "Early Termination Amount") payable to one party (the "Payee") by the other party (the "Payer") under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Sections 5(b)(ii) or 5(b)(iii) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer or any Affiliate of the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the Payer or any Affiliate of the Payer or instrument(s) or undertaking(s) issued or executed by one party (or if applicable to the context hereto, any Affiliate thereof) to, or in favor of, the other party (or if applicable to the context hereto, any Affiliate thereof) (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

- (h) **Jurisdiction.** Section 11(b) is modified by deleting the words "non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City," and replacing them with the words "non-exclusive jurisdiction of the courts of the State of New York and the Commonwealth of Pennsylvania and the United States District Courts located in the Borough of Manhattan in New York City and in Allegheny County, Pennsylvania,".



(i) ***Existing and Future Credit Facilities.***

- (i) As used in this Agreement, the following terms shall have the following meanings:

"Financing" shall mean any loan, extension of credit or financial accommodation (including, without limiting the generality of the foregoing, any commitment relating to any of the foregoing).

"Credit Facility" means (i) that certain Credit Agreement, dated as of July 27, 2007, by and among OBLIGOR and Erickson Construction, LLC, as "Borrowers" thereunder, Concord Campus GP, LLC, Dallas Campus GP, LLC, Senior Campus Services, LLC and Warminster Campus GP, LLC, as "Subsidiary Guarantors" thereunder, Erickson Group, LLC, as "Owner" thereunder, the "Lenders" party thereto and PNC (the "Credit Agreement"), and (ii) each other agreement, including any security agreement, to which OBLIGOR and PNC or any Affiliate thereof now or hereafter may become party (and to which other lenders, borrowers or other persons may be or become party), and any note or other instrument made by OBLIGOR (alone or together with other persons or entities) payable to or held by PNC or any Affiliate thereof, involving any Financing to OBLIGOR, and in the case of (i) through (ii) above, in the form existing on the date when such agreement or instrument has been initially executed and, without regard to (A) any termination or cancellation thereof, whether by reason of payment of all obligations of OBLIGOR thereunder or otherwise, or (B) unless consented to in writing by PNC or any Affiliate thereof, any amendment, modification, supplement, waiver or consent thereto or thereof.

- (ii) Until all obligations of OBLIGOR under this Agreement, now existing or hereafter arising, have been paid in cash and performed in full and all Transactions under the Master Agreement have terminated, OBLIGOR will at all times perform, comply with and observe all covenants and agreements of each Credit Facility applicable to it, which covenants and agreements, together with related definitions and ancillary provisions, are incorporated (and upon execution of any future Credit Facility shall automatically be deemed incorporated) by reference herein and, for the avoidance of doubt, shall be construed to apply hereunder for the benefit of PNC as though (A) all references therein to any party (or parties) extending Financing were to PNC and (B) for any such covenants and agreements that are conditioned on or relate to either the existence of such Financing or OBLIGOR having any obligations arising out of or in connection therewith, all references to such Financing or obligations were to OBLIGOR's obligations under this Agreement.

- (iii) Section 5(a)(vi) is amended by deleting the semicolon at the end thereof and replacing it with the following: "or (3) in respect of OBLIGOR only (and subject to any applicable grace period not to exceed 30 days), any default, event of default or similar condition or event (however described) under any Credit Facility;"

- (j) ***Default Rate.*** Notwithstanding anything to the contrary herein, the term "Default Rate" will be as defined in Section 2.7 of the Credit Agreement in the form that such section took on the date when such Credit Agreement was executed *without regard to* (A) any termination or cancellation of such Credit Agreement (whether by reason of payment of all obligations of OBLIGOR thereunder or otherwise) or (B) any amendment, modification, supplement, waiver or consent thereto or thereof unless consented to in writing by PNC or any Affiliate thereof.

- (k) ***Service of Process.*** OBLIGOR hereby irrevocably consents to service of any summons, complaint or other legal process on it in any suit, action or proceedings relating to this Agreement, any Credit Support Document or any Transaction by registered or certified U.S. mail, postage prepaid, to it at its address for notices described herein, and agrees that such service shall constitute in every respect valid

and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law).

- (l) **Facsimiles.** For purposes of this Agreement, any Credit Support Document or any Transaction, any execution counterparts delivered by facsimile transmission shall be effective as delivery of an original counterpart thereto and shall be deemed to be an original signature thereto.
- (m) **ERISA Representation.** In the case of each party, each party represents that it is not (i) an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (ii) a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code"), subject to Title I of ERISA or Section 4975 of the Code, or a plan as so defined but which is not subject to Title I of ERISA or Section 4975 of the Code (each of which, an "ERISA Plan"), (iii) a person or entity acting on behalf of an ERISA Plan, (iv) a person or entity the assets of which constitute assets of an ERISA Plan, or (v) a person or entity the assets of which are or are deemed to be assets of any "employee benefit plan" or "plan" by reason of the U.S. Department of Labor's plan asset regulation 29 C.F.R. Section 2510.3-101.
- (n) **WAIVER OF JURY TRIAL.** EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT, ANY CREDIT SUPPORT DOCUMENT OR ANY TRANSACTION.
- (o) **Limitation of Liability.** To the fullest extent permitted by law, no claim may be made by either party against the other or any affiliate, director, officer, employee, attorney or agent thereof for any special, indirect, consequential or punitive damages in respect of any claim arising from or relating to this Agreement, any Credit Support Document or any Transaction or any statement, course of conduct, act, omission or event in connection with any of the foregoing (whether based on breach of contract, tort or any other theory of liability); and each party hereby waives, releases and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist.
- (p) **USA Patriot Act.** PNC hereby notifies OBLIGOR that pursuant to the requirement of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 27, 2001) (the "Act"), it is required to obtain, verify and record information that identifies OBLIGOR, which information includes the name and address of OBLIGOR and the other information that will allow PNC to identify OBLIGOR in accordance with the Act.
- (q) **Outstanding Specified Transactions.** Upon the effectiveness of this Agreement, unless otherwise agreed to in writing by the parties to this Agreement with respect to enumerated Specified Transactions, all Specified Transactions then outstanding between the parties shall be subject to the terms hereof.

The parties hereto have executed the Master Agreement referred to in the caption of this Schedule and have agreed to the contents of this Schedule.

PNC BANK, NATIONAL ASSOCIATION

ERICKSON RETIREMENT COMMUNITIES,  
LLC

By: \_\_\_\_\_

Name: Hans-Michael Hurdle

Title: Senior Vice President

By: \_\_\_\_\_

Name: Jeffrey A. Jacobson

Title: Executive Vice President and  
Chief Financial Officer

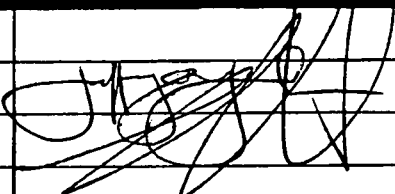
# ERICKSON RETIREMENT COMMUNITIES, LLC

## RESOLUTIONS OF BOARD OF DIRECTORS

(Master Resolutions for PNC Bank Capital Markets Services and Products)

WHEREAS, the Board of Directors of ERICKSON RETIREMENT COMMUNITIES, LLC, a Maryland limited liability company (the "Company") previously adopted resolutions on June 11, 2007, and July 10, 2007 (the "Original Resolutions"), authorizing certain actions in connection with a revolving line of credit from PNC Bank, National Association (the "Bank") to the Company in the amount of up to Three Hundred Million Dollars (\$300,000,000) (the "Line of Credit") and now desires to supplement such resolutions with respect to SWAP and other transactions to be entered into by the Company with the Bank and its affiliates.

1. Obtaining Services and Products. Resolved, that any ~~ONE~~ (1) of the following:

| Name                   | Title                                         | Authorized Signature                                                                | Signing Authority          |
|------------------------|-----------------------------------------------|-------------------------------------------------------------------------------------|----------------------------|
| 1. John C. Erickson    | Chairman & CEO                                |  | Single signature; no limit |
| 2. Jeffrey A. Jacobson | Executive V.P., CFO and Treasurer             |                                                                                     | Single signature; no limit |
| 3. Gerald F. Doherty   | Executive V.P., General Counsel and Secretary |                                                                                     | Single signature; no limit |
| 4.                     |                                               |                                                                                     |                            |
| 5.                     |                                               |                                                                                     |                            |
| 6.                     |                                               |                                                                                     |                            |

are hereby authorized, at any time and from time to time: (a) to obtain the following services and products from Bank, PNC Capital Markets LLC ("PNCCM") or any other direct or indirect subsidiary of The PNC Financial Services Group, Inc. (collectively, "PNC") as may be required by the terms of the Line of Credit: (i) interest or currency swaps, futures, options, collars, caps, floors, forward rate or other interest rate protection or similar arrangements, (ii) equity, credit or other derivative products, and (iii) asset securitizations and other receivables financing transactions; (b) to execute and deliver to or in favor of PNC such agreements, documents and instruments, required or requested by PNC in connection with any of the foregoing products, services or actions, including but not limited to evidences of indebtedness, guaranties, interest rate or currency protection agreements, equity, credit and other derivative documents (on International Swap Dealers Association forms or otherwise), asset securitization and other receivables financing agreements, trust agreements or other indentures, collateral security documents (including but not limited to security agreements, financing statements, pledge agreements, assignments, mortgages or deeds of trust), and any supporting documents required by the terms of any of the foregoing agreements, documents or instruments, any of which may contain a warrant of attorney authorizing PNC to confess judgment against the Company for all

sums due or to become due by the Company to PNC and/or a provision waiving the right to trial by jury; (c) to execute and deliver to or in favor of PNC any amendments, modifications, renewals or supplements of or to any of the foregoing agreements, documents or instruments; and (d) to take any other action requested, required or deemed advisable by PNC in order to effectuate the foregoing, all such actions being hereby approved, ratified and confirmed in all respects.

2. Ratification. Resolved, that all past acts of officers, managers, agents and other representatives of the Company in executing such agreements, documents and instruments, obtaining credit and giving security on behalf of the Company are hereby approved, ratified and confirmed in all respects.

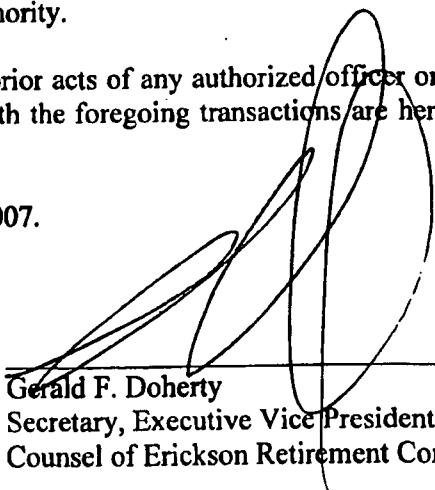
3. Telephonic and Other Requests. Resolved, that Bank or PNCCM is authorized to take any action authorized hereunder based upon (a) the telephonic request of any person purporting to be a person authorized to act hereunder, (b) the signature of any person authorized to act hereunder that is delivered to Bank or PNCCM personally or by facsimile transmission, or (c) any telex originated by any of such persons, tested in accordance with such procedures as may be established between the Company and Bank or PNCCM from time to time.

4. General. Resolved, that a certified copy of these resolutions be delivered to Bank or PNCCM and that they and the authority vested in the persons specified herein will remain in full force and effect until a certified copy of a resolution of the Company revoking or modifying these resolutions and such authority has been delivered to Bank or PNCCM.

**FURTHER RESOLVED**, that the authority hereby granted is intended to be in addition to and to supplement any prior grants of authority.

**FURTHER RESOLVED**, that all prior acts of any authorized officer on behalf of ERC or any subsidiary of ERC in connection with the foregoing transactions are hereby ratified and affirmed.

ADOPTED on September 17, 2007.



Gerald F. Doherty  
Secretary, Executive Vice President and General  
Counsel of Erickson Retirement Communities, LLC

October 17, 2007



Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Baltimore, MD 21228-5968

Attn: Sherrie Rovnan  
Phone: 410-402-2301

**Subject: Reference #: 014c001\_7246 - Confirmation of Transaction dated as of October 17, 2007 between Erickson Retirement Communities, LLC and PNC Bank, National Association.**

Dear Ms. Rovnan:

The purpose of this letter agreement is to confirm the terms and conditions of the Transaction (the "Transaction") entered into between Erickson Retirement Communities, LLC ("ERICKSON") and PNC Bank, National Association ("PNC") on the Trade Date specified below. This letter constitutes a "Confirmation" as referred to in the ISDA Master Agreement (the "Master Agreement") specified below.

1. The definitions and provisions contained in the 2000 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) and any addenda or revisions thereto, are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.
2. ERICKSON and PNC are parties to an ISDA Master Agreement and related schedule dated as of July 27, 2007, that sets forth the general terms and conditions applicable to transactions between ERICKSON and PNC (a "Master Agreement"), and this Confirmation supplements, forms a part of, and is subject to, such Master Agreement. All provisions contained or incorporated by reference in such Master Agreement shall govern this Confirmation, except as modified expressly below.
3. Each party represents and warrants to agree with the other party as follows:
  - (a) Such party is fully informed of and capable of evaluating, and has evaluated, the potential financial benefits and risks, the tax and accounting implications, the appropriateness in light of its individual financial circumstances, business affairs, and risk management capabilities, and the conformity to its policies and objectives, of this Transaction.
  - (b) Such party has entered into this Transaction in reliance upon its own judgment. Neither party holds itself out as advising, or any of its employees or agents as having the authority to advise, the other party as to whether or not it should enter into this Transaction, and neither party shall have any liability whatsoever in respect of any advice of such nature given, or views expressed, by it or any such persons to the other party, whether or not such advice is given or such views are expressed at the request of the other party.
  - (c) Such party has entered into this Transaction for purposes of hedging and not for the purpose of speculation.

4. The terms of the particular Transaction to which this Confirmation relates are as follows:

Type of Transaction: Rate Swap Transaction

Notional Amount: USD 125,000,000.00

Trade Date: October 17, 2007

Effective Date: October 17, 2007

Termination Date: August 1, 2010, subject to adjustment in accordance with the Modified Following Business Day convention.

**Fixed Amounts:**

Fixed Rate Payer: ERICKSON

Fixed Rate Payer  
Payment Dates: The 15<sup>th</sup> day of each month, commencing on November 15, 2007 and ending on the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Fixed Rate: 4.75 %

Fixed Rate Day  
Count Fraction: Actual / 360

Business Days: New York

**Floating Amounts:**

Floating Rate Payer: PNC

Floating Rate Payer  
Payment Dates: The 15<sup>th</sup> day of each month, commencing on November 15, 2007 and ending on the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate for  
Initial Calculation  
Period: 5.045 %

Reset Dates: The 15<sup>th</sup> day of each month, commencing on November 15, 2007 and ending on July 15, 2010, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate Option: USD-LIBOR-BBA (Dow Jones Page 3750 previously known as Telerate page 3750)

Designated Maturity: One (1) Month

Floating Rate Day  
Count Fraction: Actual / 360

Business Days: New York

Calculating Agent: PNC  
Compounding: Not Applicable

Payment Instructions: Payments to PNC shall be made in immediately available funds to:

PNC Bank, Pittsburgh  
ABA #: 043-000-096  
Account #: 196030010411  
Account of: Investment Operations  
Attn.: Derivative Products

Payments to ERICKSON shall be made in immediately available funds to:

Bank Name: PNC Bank, N.A.  
ABA #: 054000030  
Account #: 5501339099  
Account Name: Erickson Retirement Communities

**PAYMENT ADVICE NOTIFICATION SHALL BE DELIVERED VIA  
E-MAIL TO THE FOLLOWING ADDRESS:**  
[sherrie.rovnan@erickson.com](mailto:sherrie.rovnan@erickson.com)

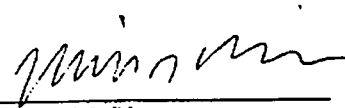
Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation, returning a signed copy to Chris Arnberg via fax at (412) 762-8667, returning one signed original to Chris Arnberg at One PNC Plaza - 9<sup>th</sup> Floor, 249 Fifth Avenue, Pittsburgh, PA 15222 via Overnight delivery, and retaining the other original for your records. Chris' direct telephone number is (412) 768-8647.

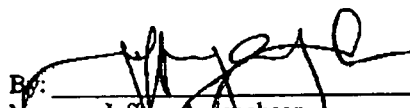
Yours Sincerely, --

Accepted and agreed as of the date first above written:

**PNC BANK, NATIONAL ASSOCIATION**

**ERICKSON RETIREMENT COMMUNITIES,  
LLC**

By:   
Name: Richard S. Pierce  
Title: Vice President

By:   
Name: Jeffrey A. Jacobson  
Title: EVP & Chief Financial Officer

## **Risk Participation Agreement**

This Risk Participation Agreement (this "Agreement"), dated as of October 22, 2007 (the "Agreement"), is entered into between PNC Bank, National Association ("PNC") and Manufacturers and Traders Trust Company (the "Participant").

### **Recitals:**

- A. PNC and ERICKSON RETIREMENT COMMUNITIES, LLC (the "Counterparty") are parties to that certain ISDA Master Agreement dated as of July 27, 2007 a copy of which is attached hereto as Exhibit A (referred to herein as the "Master Agreement").
- B. PNC and Counterparty have entered into an Interest Rate Swap having a Trade Date of October 17, 2007 and an Effective Date of October 17, 2007, the terms and conditions of which are governed by the Master Agreement and evidenced by that certain Confirmation (the "Confirmation"), a copy of each of which is attached hereto as Exhibit B (the "Swap Transaction").
- C. PNC has agreed to sell, and Participant has agreed to purchase, a risk participation in the Swap Transaction on the terms and conditions set forth herein (the "Participation").
- D. To induce the Participant to enter into the Participation, PNC has agreed to pay Participant a non-refundable Participation Payment (as defined below).

### **Agreement:**

In consideration of the foregoing and of the mutual covenants contained herein and other good and valuable consideration (the sufficiency of which is hereby irrevocably acknowledged by each of the parties) and intending to be legally bound, the parties hereto agree as follows:

- 1. **Definitions.** Unless otherwise defined herein, all capitalized terms shall have the meanings specified in the Confirmation, the Master Agreement and the 2000 Definitions (the "2000 Definitions") as published by the International Swaps and Derivatives Association, Inc. In the event of any inconsistency, the terms which shall prevail will be determined in the following order:

- (i) this Agreement,
- (ii) the Confirmation,
- (iii) the Master Agreement, and
- (iv) the 2000 Definitions.

As used in this Agreement, except where the context clearly requires otherwise:

"Close-Out Value" means the amount, if any, determined as payable by Counterparty to PNC pursuant to Section 6(e) of the Master Agreement.

"Participation Payment" means the following amount: \$420,000.00.

"Participation Percentage" means the following percentage: 75%.

"Swap Documents" means the Master Agreement, as supplemented by the Confirmation, and any other documents executed and/or delivered in connection therewith.

- 2. **Covenants of PNC.** PNC agrees to



- (i) pay Participant the Participation Payment on or before October 24, 2007, subject to Participant's execution of this Agreement; and
  - (ii) perform all of its payment obligations under the Swap Transaction on the date due and to comply with all provisions of the Swap Documents.
- 3. Participation. Upon the designation of an Early Termination Date by either PNC or the Counterparty as a result of the occurrence of an Event of Default as described in Section 5(a) of the Master Agreement or as a result of the occurrence of a Termination Event as described in Section 5(b) of the Master Agreement, PNC shall provide written notice to Participant stating such information as is contemplated under Section 6(d)(i) of the Master Agreement (the "Close-Out Notice"), and (i) if the Close-Out Value is positive, Participant agrees to pay PNC an amount equal to the product of Participant's Participation Percentage multiplied by the Close-Out Value; and (ii) if the Close-Out Value is zero or negative, no payment shall be due pursuant to this Section 3. Prior to Participant making a payment pursuant to clause (i) above, this Agreement shall not be construed to confer upon Participant any interest in the Swap Documents or any payments by or to Counterparty in connection therewith. Upon payment by Participant pursuant to clause (i) above, Participant shall, subject to this Agreement, be subrogated to all of the rights of PNC against Counterparty under the Swap Documents to the extent of its Participation Percentage. Notwithstanding anything set forth above, upon designation of an Early Termination Date as contemplated by this Section 3, PNC shall, prior to requesting the payment due from Participant in accordance with clause (i) above, pursue its right of early termination against Counterparty pursuant to Section 6 of the Master Agreement. If PNC has not received payment from Counterparty on or before the payment date provided for in Section 6(d)(ii) of the Master Agreement, any amount due by Participant pursuant to clause (i) above shall be paid to PNC on or before the first Business Day after receipt by Participant of the Close-Out Notice. If PNC collects from Counterparty some or all of the amount due to PNC under Section 6(e) of the Master Agreement after Participant has made any payment to PNC pursuant to clause (i) above, PNC shall promptly pay Participant an amount equal to Participant's subrogated Participation Percentage of the amount collected from Counterparty (including a pro rata share of any interest paid by Counterparty on such amount).
- 4. Participation Records. The interest of Participant in the Swap Transaction shall be appropriately evidenced on PNC's books and records, and PNC shall make copies of documentation related to such interest available to Participant upon Participant's reasonable request.
- 5. Enforcement. Subject to its responsibilities under Section 9, PNC may take any action, without prior notice to or the consent of the Participant, which it determines in its sole discretion to be suitable or fitting to enforce remedies under the Swap Documents or respecting performance by Counterparty of its obligations under any of the Swap Documents or compliance with any of the terms thereof, including without limitation taking or abstaining from taking any action thereunder, or any other actions in connection therewith; provided that PNC shall not, without the consent of Participant, release any collateral that secures counterparty's obligations under the Swap Documents agree to any amendment, modification, waiver, transfer or assignment of the Swap Documents; provided, further that, if Participant shall refuse to consent to any such requested release of collateral, amendment, modification, waiver, transfer or assignment within five (5) days of such request, then PNC may, at its option at any time thereafter, but prior to a payment having been made under Section 3(i), terminate this Agreement. Upon such termination, Participant shall have no further interest in the Swap Transaction or any of the Swap Documents and no further obligations under this Agreement.
- 6. Notice of Event of Default. PNC shall not be deemed to have knowledge or notice of the occurrence of any Event of Default (other than a default under Section 5(a)(i) of the Master Agreement) or Termination Event, as the case may be, under the Master Agreement, unless and until:
  - (i) PNC has received written notice from Counterparty referring to the Master Agreement and describing such Event of Default or Termination Event, as the case may be, or
  - (ii) PNC has sent written notice to Counterparty referring to the Master Agreement and such Event of Default or Termination Event.

PNC shall, promptly after learning of an Event of Default or Termination Event with respect to Counterparty, notify Participant thereof.

7. PNC's Representations. PNC represents and warrants to Participant that:

- (i) to the best of its knowledge, no Event of Default or event that, with the giving of notice or lapse of time or both, would become an Event of Default, has occurred or is continuing under the Master Agreement;
- (ii) no Early Termination Date has occurred or been designated; and
- (iii) as of the date hereof, all obligations of PNC and, to the best of PNC's knowledge, of Counterparty under the Swap Transaction required to be performed by it on or before such date have been fulfilled.

8. Participant's Investigation; No Reliance on PNC. Participant acknowledges that:

- (i) Participant has performed and will continue to perform its own credit analysis of Counterparty and its own investigation of the risks involved in the transactions contemplated by the Swap Documents and in entering into this Agreement and it is not relying, and will not rely on, PNC with respect thereto;
- (ii) Participant has reviewed and approved the form and substance of the Swap Documents;
- (iii) PNC has not made and shall not at any time be deemed to make any representation or warranty, express or implied, with respect to the validity, enforceability, value or sufficiency of, or title to, any security, if any, therefor, or as to the financial condition or creditworthiness of Counterparty; and
- (iv) PNC shall have no responsibility to Participant for any errors or omissions in any reports, financial statements or other information provided by Counterparty pursuant to or in connection with the Swap Documents.

9. No Recourse; Limitations of PNC's Liability. Except in the case of the failure of PNC to comply with Sections 2(i) and 3 of this Agreement, Participant shall not have recourse against PNC for any payment of any amount made under the Swap Documents. PNC's only obligation with respect to payments to Participant shall be to remit to Participant the sum provided for in Section 2(i) hereof and its pro rata share of any recoveries relating to advances by Participant pursuant to Section 3(i) hereof. Although PNC will exercise the same care in administering the Swap Documents as if the Swap Documents were made entirely for PNC's own account, PNC shall have no liability to Participant for any loss except a loss due to PNC's own gross negligence or willful misconduct. Without limiting the foregoing, PNC shall be fully protected in relying upon any certificate, document or other communication which appears to it to be genuine and to have been signed or presented by the proper person or persons, and upon the advice of legal counsel, independent accountants and other appropriate experts and shall not be required to make any inquiry concerning the performance of Counterparty of its obligations under or compliance by Counterparty with the terms and conditions of any of the Swap Documents. PNC shall not be deemed to have a fiduciary relationship with Participant, and no similar covenants, responsibilities, duties, obligations or liabilities shall be read into this Agreement or shall otherwise exist against PNC.

10. Reimbursement and Indemnification. Participant shall reimburse PNC on demand for its Participation Percentage of all reasonable out-of-pocket expenses, including reasonable attorney's fees, incurred by PNC in connection with the collection from Counterparty of any amounts relating to advances by Participant pursuant to Section 3(i) hereof, to the extent not recovered from Counterparty, and shall indemnify and hold PNC harmless from and against Participant's Participation Percentage of the amount of any reasonable costs, expenses (including reasonable attorney's fees and disbursements), claims, damages, actions, losses or liabilities, except such as result from PNC's own gross negligence or willful misconduct, that PNC may

suffer or incur in connection with this Agreement or any of the Swap Documents, or the transactions contemplated hereby or thereby, or any actions taken by PNC hereunder or thereunder. The obligations and indemnities under this Section 10 shall survive the termination of the Swap Documents.

11. Termination of Participant's Obligations. Except as provided in Section 5, Participant's obligations under this Agreement shall remain in full force and effect, notwithstanding the termination of the Swap Transaction, until (i) 90 days after the payment by Counterparty of the last payment required to be made by Counterparty under the Swap Documents or (ii) the complete payment of amounts due and payable by Participant hereunder, whichever is later.
12. Default By Participant. In the event that Participant shall fail to perform any obligation to be performed by it under this Agreement and such failure is not remedied on or before the third Business Day after notice of such failure is given by PNC to Participant, Participant shall have no right, if and for so long as such failure is continuing, to withhold its consent in connection with any waiver, amendment, modification, transfer or assignment of any Swap Document.
13. Condition to Payment. Each payment hereunder by one party (the "Payer") to another (the "Payee") is subject to the condition precedent that no amount remains due and payable hereunder from the Payee to the Payer.
14. Payments; Default Interest. Any and all payments due under this Agreement shall be made by Federal funds wire or in other immediately available funds. Overdue payments shall accrue interest at a per annum rate equal to USD-LIBOR-BBA (as defined in the 2000 Definitions) for a period of one month plus 1% per annum. Such default interest will be calculated on the basis of daily compounding and the actual number of days elapsed.
15. Notices. All notices in connection with Sections 5, 6 and 9(b) of the Master Agreement delivered by or received by PNC shall be promptly copied to Participant at the following address. All notices in connection with this Agreement shall be sent by facsimile transmission or certified mail, postage prepaid. All such notices shall be sent to the respective address or facsimile number (as the case may be) as follows (unless PNC receives notice of a change of address from Participant):

if to PNC: PNC Bank, National Association  
One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, PA 15222-2707  
Attn: Ryan Retetagos  
Derivative Products

Facsimile No.: (412) 762-8667

if to Participant: M&T Bank  
  
25 South Charles Street, 12<sup>th</sup> floor  
Mail Code MD2-CS47  
Attn: Craig P. Hallgren

Telephone: (410) 244-4353  
Facsimile: (410) 244-4660

Except as provided to the contrary in Section 3 hereof, the provision of Section 10 of the Master Agreement relating to deemed receipt of notices shall apply to notices given under this Agreement as though such provisions were set forth in full herein.

16. Entire Agreement; Counterparts. This Agreement embodies the entire agreement and understanding between PNC and Participant and supersedes any and all prior agreements and understandings with respect to the subject matter hereof. This Agreement may not be amended or in any manner modified unless such

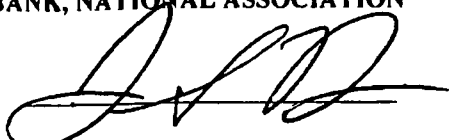
amendment or modification is in writing and signed by all parties hereto. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

17. Benefits and Binding Effect. Participant may not sell, assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of PNC (which consent shall not be unreasonably withheld), and PNC may not sell, assign or otherwise transfer its rights or obligations under this Agreement or the Master Agreement without the prior written consent of Participant (which consent shall not be unreasonably withheld). Any purported sale, assignment or transfer not in compliance with this Section 17 shall be void. Subject to the foregoing, all provisions contained in this Agreement or any document or agreement referred to herein or relating hereto shall inure to the benefit of and shall be binding upon the respective permitted successors and assigns of PNC and Participant.
18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to choice of law principles in such state.
19. Waiver of a Jury Trial. Each Party hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement, and acknowledges that this waiver is a material inducement to the other party entering into this Agreement.
20. Representations and Warranties. Each Party hereto continually represents and warrants to the other party during the term of this Agreement that (a) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and has the requisite power, authority and approvals to enter into and perform its obligations under this Agreement; (b) this Agreement has been duly authorized and does not conflict with or contravene any provision of, its constitutive documents, any applicable law or regulation, or any contractual restriction binding on its assets, (c) the signatories to this Agreement are duly authorized and empowered to sign and deliver the same on behalf of it; (d) this Agreement is its legal, valid and binding obligation enforceable against it in accordance with the respective terms hereof (subject to the effect of bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally); and (e) all authorizations of, exemptions by and filings with any governmental or other authority that are required to be made or obtained by it in connection with this Agreement have been made or obtained and are valid and subsisting.

The Parties have executed this Agreement by their duly authorized officers as of the date first set forth above.

**PNC BANK, NATIONAL ASSOCIATION**

By:



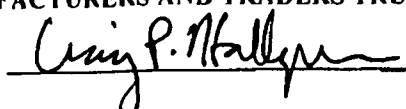
Name: James Bernier

Title: Senior Vice President

Date: \_\_\_\_\_, \_\_\_\_\_

**MANUFACTURERS AND TRADERS TRUST COMPANY**

By:



Name: Craig P. Hallgren

Title: Administrative Vice President

Date: OCTOBER 22, 2007



September 29, 2009

**VIA OVERNIGHT DELIVERY**

Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Baltimore, MD 21228-5968  
Attention: Jeffrey A. Jacobson, Executive Vice President  
and Chief Financial Officer

**Re: Notice of Termination of Swap with PNC Bank, National Association**

Dear Mr. Jacobson:

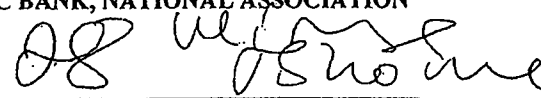
Erickson Retirement Communities, LLC ("Obligor") and PNC Bank, National Association ("PNC") are parties to that certain ISDA Master Agreement (and related Schedule) dated as of July 27, 2007 (the "Master Agreement"), as supplemented by that certain Confirmation Letter dated October 17, 2007, Reference #014c001\_7246 (the "Confirmation" and together with the Master Agreement, collectively the "Swap Documents"). Capitalized terms used in this letter but not defined herein shall have the meanings set forth in the Swap Documents.

An Event of Default has occurred under Section 5(a)(vi) of the Master Agreement as a result of the occurrence and continuance of certain events of default in respect of Obligor under that certain Credit Agreement dated as of July 27, 2007, by and among, inter alia, Obligor, the Lenders party thereto (including PNC), and Wilmington Trust FSB, as successor Administrative Agent, as amended. Accordingly, pursuant to our rights under Section 6(a) of the Master Agreement, PNC hereby designates September 30, 2009 as the Early Termination Date in respect of all outstanding Transactions under the Swap Documents (including the Transaction evidenced by the Confirmation). PNC will provide Obligor with a separate letter detailing the amount payable by Obligor to PNC (as determined in accordance with Section 6(e) of the Master Agreement) in respect of such terminated Transactions.

PNC hereby expressly reserves all rights and remedies available under the Swap Documents, any related agreement, or otherwise available at law or equity. All rights and remedies under the Swap Documents are cumulative and not alternative, and PNC may proceed in any order from time to time against Obligor and/or any other person or persons liable for any or all of the obligations arising under the Swap Documents. Neither the failure to exercise, nor any delay in exercising, any such right or remedy, at any time, nor the occurrence by PNC, in its discretion, of engaging in any discussions with Obligor about its operating performance, financial condition or prospects nor of a potential resolution of the above-referenced Event of Default, shall be deemed or constitute a waiver or impairment of any of PNC's rights, remedies or options.

Very truly yours,

**PNC BANK, NATIONAL ASSOCIATION**

By: 

Hirouye Teshome, Vice President

cc: Senior Campus Services, LLC, Guarantor  
Concord Campus GP, LLC, Guarantor  
Dallas Campus GP, LLC, Guarantor  
Warminster Campus GP, LLC, Guarantor  
Erickson Group, LLC, Guarantor

The PNC Financial Services Group

One PNC Plaza 249 Fifth Avenue Pittsburgh Pennsylvania 15222 2707

www.pnc.com



October 1, 2009

**VIA OVERNIGHT DELIVERY**

Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Baltimore, MD 21228-5968  
Attention: Jeffrey A. Jacobson, Executive Vice President  
and Chief Financial Officer

**Re: Notice of Early Termination Amount Owing Under Swap with PNC Bank**

Dear Mr. Jacobson:

Erickson Retirement Communities, LLC ("Obligor") and PNC Bank, National Association ("PNC") are parties to that certain ISDA Master Agreement (and related Schedule) dated as of July 27, 2007 (the "Master Agreement"), as supplemented by that certain Confirmation Letter dated October 17, 2007, Reference #014c001\_7246 (the "Confirmation" and together with the Master Agreement, collectively the "Swap Documents"). Capitalized terms used in this letter but not defined herein shall have the meanings set forth in the Swap Documents.

As a result of the occurrence and continuance of an Event of Default under Section 5(a)(vi) of the Master Agreement, we elected to terminate the outstanding swap transaction between us governed by the Master Agreement and evidenced by the Confirmation (the "Transaction"), effective as of September 30, 2009. We notified you of such Early Termination Date by letter dated September 29, 2009 (a copy of which accompanies this letter). This letter is PNC's notification to Obligor of the amount (the "Early Termination Amount") owing by Obligor to PNC in respect of such terminated Transaction and constitutes the statement required by Section 6(d)(i) of the Master Agreement.

The Early Termination Amount is determined in accordance with Section 6(e)(i)(3) of the Master Agreement (based on the parties election of "Second Method and Market Quotation" in the Schedule to the Master Agreement), and is equal to "(A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party." We determined the Settlement Amount in respect of the terminated Transaction on the basis of the following quotations we were able to secure on September 30, 2009 from three (3) Reference Market-makers: (1) \$4,770,000 from Credit Suisse; (2) \$4,787,000 from Nomura; and (3) \$4,802,000 from JPMorgan Chase. Under the terms of the Master Agreement, if exactly three quotations are provided, the Market Quotation (which comprises the Settlement Amount) will be the quotation remaining after disregarding the highest and lowest quotations (which in this case results in the Settlement Amount of \$4,787,000). As of the date of this letter, the Unpaid Amounts owing by PNC to Obligor with respect to the terminated Transaction is \$0, and the Unpaid Amounts owing by Obligor to PNC with respect to the terminated Transaction is \$0. Accordingly, the **Early Termination Amount payable by Obligor to PNC in respect of the terminated Transaction is \$4,787,000** (the sum of the Settlement Amount (\$4,787,000) plus the Termination Currency Equivalent of the Unpaid Amounts owing to PNC (\$0) less the Termination Currency Equivalent of the Unpaid Amounts owing to Obligor (\$0).

The PNC Financial Services Group  
One PNC Plaza 249 Fifth Avenue Pittsburgh Pennsylvania 15222 2707  
[www.pnc.com](http://www.pnc.com)

Payment of the Early Termination Amount is due and payable in full on October 2, 2009 (which is the date on which this notice is effective), and should be made by wire transfer to PNC via the following instructions:

Bank: PNC Bank, N.A., Pittsburgh  
ABA #: 043-000-096  
Account #: 196030010411  
Account of: Investment Operations  
Attn: Derivative Products

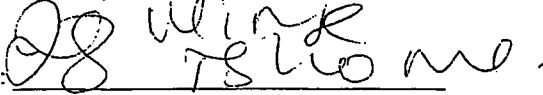
or in other immediately available funds delivered to the undersigned on behalf of PNC. Pursuant to Section 6(d)(ii) of the Master Agreement, interest at the Applicable Rate (defined as PNC's cost of funding rate plus 1% per annum compounding on a daily basis) shall accrue and be payable on the Early Termination Amount for each day that such amount remains unpaid after October 2, 2009.

Pursuant to Section 9 of the Master Agreement, PNC hereby notifies Obligor it is liable to PNC for all reasonable out-of-pocket expenses, including legal fees, incurred by PNC by reason of the enforcement and protection of its rights under the Master Agreement and as a result of the early termination of the Transaction, including, but not limited to, the costs of collection.

PNC hereby expressly reserves all rights and remedies available under the Swap Documents, any related agreement, or otherwise available at law or equity. All rights and remedies under the Swap Documents and any related agreements are cumulative and not alternative, and PNC may proceed in any order from time to time against the Obligor and/or any other person or persons liable for any or all of the obligations arising under the Swap Documents or under any related agreements. Neither the failure to exercise, or any delay in exercising, any such right or remedy, at any time, nor the occurrence by PNC, in its discretion, of engaging in any discussions with the Obligor about their operating performance, financial condition or prospects or a potential resolution of the payment of the Early Termination Amount, shall be deemed or constitute a waiver or impairment of any of PNC's rights, remedies or options.

Very truly yours,

PNC BANK, NATIONAL ASSOCIATION

By:   
Hirouye Teshome, Vice President

cc: Senior Campus Services, LLC, Guarantor  
Concord Campus GP, LLC, Guarantor  
Dallas Campus GP, LLC, Guarantor  
Warminster Campus GP, LLC, Guarantor  
Erickson Group, LLC, Guarantor

# SILLS CUMMIS & GROSS

A PROFESSIONAL CORPORATION

The Legal Center  
One Riverfront Plaza  
Newark, New Jersey 07102-5400  
Tel: 973-643-7000  
Fax: 973-643-6500

One Rockefeller Plaza  
New York, NY 10020  
Tel: 212-643-7000  
Fax: 212-643-6500

Lucas F. Hammonds  
Associate  
Direct Dial: (973) 286-5534  
E-mail: lhammonds@sillscummis.com

650 College Road East  
Princeton, NJ 08540  
Tel: 609-227-4600  
Fax: 609-227-4646

February 25, 2010

By Federal Express

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

Re: Erickson Retirement Communities, LLC; Case No. 09-37010 in  
the United States Bankruptcy Court for the Northern District of  
Texas

Dear sir or madam:

Enclosed for filing please find original, signed proofs of claim (along with their accompanying addenda) by Manufacturers and Traders Trust Company ("M&T"), in its capacity as risk participant in an interest rate swap, against the above-referenced debtor and related debtors whose cases are being administered jointly with the above-referenced case. Enclosed please also find copies of those original proofs of claim to be stamped "Filed" and returned in the enclosed self-addressed, pre-paid FedEx envelope upon the filing of the originals.

For your reference, the following table sets forth each of the claims enclosed for filing.

| <u>Debtor</u>         | <u>Case No.</u> | <u>Claim Amount</u> |
|-----------------------|-----------------|---------------------|
| Dallas Campus GP, LLC | 09-37013        | \$3,590,250.00      |
| Erickson Group, LLC   | 09-37015        | \$3,590,250.00      |



**SILLS CUMMIS & GROSS**  
A PROFESSIONAL CORPORATION

BMC Group, Inc.

February 25, 2010

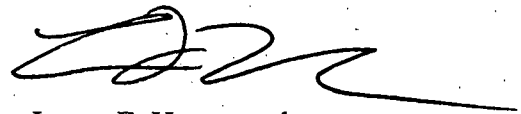
Page 2

|                             |          |                |
|-----------------------------|----------|----------------|
| Erickson Construction, LLC  | 09-37016 | \$3,590,250.00 |
| Senior Campus Services, LLC | 09-37017 | \$3,590,250.00 |
| Concord Campus GP, LLC      | 09-37021 | \$3,590,250.00 |
| Warminster Campus GP, LLC   | 09-37027 | \$3,590,250.00 |

Enclosed please also find a copy of M&T's proof of claim against Erickson Retirement Communities, LLC, Case No. 09-37010, for the amount of \$3,590,250.00, the original of which was submitted yesterday, February 24, 2010, via FedEx, but was inadvertently submitted without the full group of supporting documents meant to accompany it. The enclosed copy includes the full set of documents. Please file them together with the original claim.

Thank you for your assistance in this matter. If you have any questions about or issues with the filing of these claims or return shipping, please contact me at (973)-286-5534.

Regards,



Lucas F. Hammonds

LFH  
Enclosures