MORGAN STANLEY ET AL. SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "**Agreement**") is dated as of **April __, 2010** and entered into made by and among Erickson Retirement Communities, LLC, Erickson Construction, LLC ("**ERC**"), Erickson Group, LLC ("**Erickson Group**"), Littleton Campus, LLC, Dallas Campus LP, Dallas Campus GP, LLC, Kansas Campus, LLC, (collectively, the "**Debtors**"), MSRESS III Dallas Campus, L.P. ("**Dallas MSRESS**"), MSRESS III Denver Campus, LLC ("**Denver MSRESS**;" together with Dallas MSRESS, the "**Ground Lessors**"), MSRESS III Kansas Campus, L.P ("**Kansas MSRESS**" and, collectively with the Ground Lessors, the "**Morgan Stanley Entities**") and Capmark Finance, Inc., acting in its capacities as collateral and administrative agents for participated and syndicated secured loans to the Littleton Debtor (defined below). All parties referenced above are referred to herein, collectively, as the "**Settling Parties**". Subject to Court approval of the Plan and Disclosure Statement (defined below), this Agreement is intended by the Settling Parties to fully, finally and forever satisfy, resolve, discharge and settle any claims held between the parties that are related to the Ground Leases (defined below), upon and subject to the terms and conditions hereof.

RECITALS

A. WHEREAS on October 19, 2009 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "**Erickson Bankruptcy**") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "**Bankruptcy Court**"). The Debtors remain in possession of their assets and continue to manage their businesses as debtors in possession. No trustee or examiner has been appointed in these cases, although an examiner has been requested.

B. WHEREAS the Debtor Erickson Retirement Communities, LLC is a Maryland limited liability company that owns and/or controls, among other properties, the subsidiaries Littleton Campus, LLC (the "**Littleton Debtor**"), Dallas Campus GP, LLC, Dallas Campus LP (together, the "**Dallas Debtor**") and Kansas Campus LP (the "**Kansas Debtor**"), which are campus-style communities that offer seniors a life cycle of retirement services. All three campuses are open and operating but at various stages of development.

C. WHEREAS Capmark Finance, Inc., as collateral and administrative agent (the "**Littleton Agent**") to certain construction loan lenders (collectively, the "**Littleton Lenders**"), extended revolving loans (as may have been amended, restated, supplemented or otherwise modified from time to time, the "**Littleton Construction Loan**") to Littleton Debtor under that certain Construction Loan Agreement, dated March 29, 2006 by and between the Littleton Agent and the Littleton Debtor. The proceeds of the Construction Loan Agreement were loaned to Littleton Debtor and were used for the development and construction of a continuing care retirement community known as Wind Crest, located in Littleton, Colorado (the "**Wind Crest Campus**"). In connection with the Littleton Construction Loan, the Littleton Debtor granted a first-priority lien to the Littleton Agent on all of its assets relating to the Wind Crest Campus, including any proceeds and products therefrom. In addition, ERC and Erickson Group guaranteed the obligations relating to the Littleton Construction Loan and granted a first-priority lien on its assets relating to the Wind Crest Campus. Accordingly, Littleton Agent has a first-priority lien on the Sale Proceeds (defined below) relating to the Wind Crest.

D. WHEREAS Bank of America, N.A., as collateral and administrative agent (the "**Dallas Agent**") to certain construction loan lenders (collectively, the "Dallas Lenders"), extended revolving loans (as may have been amended, restated, supplemented or otherwise modified from time to time, the "**Dallas Construction Loan**") to Dallas Debtor under that certain Construction Loan Agreement, dated May 25, 2005 by and between the Dallas Agent and the Dallas Debtor, with the loan amount being increased pursuant to an Amended and Restated Loan Agreement dated November 30, 2005, as amended and restated by a Second Amended and Restated Loan Agreement dated April 28, 2006, as further amended on November 27, 2007 in an Amendment No. 1 to Second Amended and Restated Loan Agreement and as amended on February 27, 2009 in an Amendment No. 2. The proceeds of the Construction Loan Agreement were loaned to Dallas Debtor and were used for the development and construction of a continuing care retirement community known as Highland Springs, located in Dallas, Texas (the "**Highland Springs Campus**"). In connection with the Dallas Construction Loan, the Dallas Debtor granted a lien to the Dallas Agent on all of its assets, including any proceeds and products therefrom. In addition, ERC guaranteed the obligations relating to the Dallas Construction Loan and granted a first-priority lien on those assets relating to the Highland Springs Campus. Accordingly, Dallas Agent has a first-priority lien on the Sale Proceeds relating to the Highland Springs Campus.

E. WHEREAS PNC Bank, National Association as collateral and administrative agent (the "**Kansas Agent**") to certain construction loan lenders (collectively, the "Kansas Lenders"; together with the Littleton Lenders and Dallas Lenders, the "**Lenders**"), extended revolving loans (as may have been amended, restated, supplemented or otherwise modified from time to time, the "**Kansas Construction Loan**") to Kansas Debtor under that certain Construction Loan Agreement, dated April 20, 2007 by and between the Kansas Agent and the Kansas Debtor. The proceeds of the Construction Loan Agreement were loaned to Kansas Debtor and were used for the development and construction of a continuing care retirement community known as Tall Grass, located in Overland Park, Johnson County, Kansas (the "**Tallgrass Creek Campus**"). In connection with the Kansas Construction Loan, the Kansas Debtor granted a lien to the Kansas Agent on all of its assets, including any proceeds and products therefrom. In addition, ERC and Erickson Group guaranteed the obligations relating to the Kansas Construction Loan and granted a first-priority lien on those assets relating to the Tallgrass Creek Campus. Accordingly, Kansas Agent has a first-priority lien on the Sale Proceeds relating to the Tallgrass Creek Campus.

F. WHEREAS on October 11, 2006, Denver MSRESS entered into a transaction with the Littleton Debtor to purchase the land upon which the Wind Crest Campus is located and to lease this property back to the Littleton Debtor pursuant to the terms of the Ground Lease Agreement dated October 11, 2006 (the "**Littleton Ground Lease**").

G. WHEREAS in connection with the Littleton Ground Lease, the Littleton Agent, Denver MSRESS and Littleton Debtor entered into that certain Ground Lessor Tri-Party Agreement dated October 11, 2006 (as may have been amended, restated, supplemented or otherwise modified from time to time, the "**Littleton Tri-Party Agreement**"), whereby Denver MSRESS agreed, among other things, to subordinate all of Denver MSRESS' interests in Wind Crest Campus, including the real property, improvements thereon and the partnership interests of the Littleton Debtor to the liens of the Littleton Agent in such collateral.

H. WHEREAS on April 28, 2006, Dallas MSRESS entered into a transaction with the Dallas Debtor to purchase the land upon which Highland Springs Campus is located and to lease this property back to the Dallas Debtor pursuant to the terms of the Ground Lease Agreement dated April 28, 2006 (the "**Dallas Ground Lease**"; with the Littleton Ground Lease, the "**Ground Leases**").

I. WHEREAS in connection with the Dallas Ground Lease, the Dallas Agent, Dallas MSRESS and Dallas Debtor entered into that certain Ground Lessor Tri-Party Agreement dated April 28, 2006 (as may have been amended, restated, supplemented or otherwise modified from time to time, the "**Dallas Tri-Party Agreement**"), whereby Dallas MSRESS agreed, among other things, to subordinate all of Dallas MSRESS' interests in Highland Springs Campus, including the real property, improvements thereon, the partnership interests of the Dallas Debtor to the liens of the Dallas Agent in such collateral.

J. WHEREAS on or about April 3, 2007, Debtor Kansas Campus, LLC (the "**Kansas Debtor**"), executed and delivered, among other things, a Promissory Note, a Loan Agreement, and a Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "**Kansas Subordinated Mortgage**"), pursuant to which Kansas MSRESS provided mezzanine financing to the Kansas Debtor in the original principal amount of $25,000,000, which financing was secured by, *inter alia*, a subordinate lien on approximately 65 acres in Overland Park, Kansas upon which the Tallgrass Creek Retirement Community is located.

K. WHEREAS in connection with the Kansas Subordinated Mortgage, the Kansas Agent, Denver MSRESS, and the Kansas Debtor entered into that certain Subordination & Standstill Tri-Party Agreement dated April 3, 2007 (as may have been amended, restated, supplemented or otherwise modified from time to time, the "**Kansas Tri-Party Agreement**"), whereby Kansas MSRESS agreed, among other things, to subordinate all of Kansas MSRESS' interests in the Tallgrass Creek Retirement Community, including the real property, improvements thereon, and the membership interests of the Kansas Debtor to the liens of the Kansas Agent in such collateral.

L. WHEREAS on December 22 and 23, 2009, the Debtors conducted an auction for the sale of substantially all of the Debtors' assets. At the conclusion of the auction, Redwood-ERC Senior Living Holdings, LLC ("**Redwood**") was determined by the Debtors to have submitted the highest and best bid for the assets in the aggregate amount of $365 million (the "**Sale Proceeds**").

M. WHEREAS on December 14, 2009, Morgan Stanley Entities filed a Joint Motion with campus mezzanine lenders Michigan Retirement System Entities and HCP ER3, LP in Warminster, Pennsylvania, HCP ER2, LP in Novi, Michigan, HCP ER6, LP in Houston Texas (collectively, the "**HCP Landholder Entities**") and HCP, Inc. ("**HCP**" and collectively with the HCP Landholder Entities, the "**HCP Entities**"), for an Order Appointing an Examiner Pursuant to 11 U.S.C. §1104 (the "**Joint Motion for Appointment of an Examiner**").

N. WHEREAS on December 22, 2009, certain of the Debtors filed adversary proceeding complaints relating to the Wind Crest Campus and the Highland Springs Campus and seeking, *inter alia*, a declaratory judgment recharacterizing the Dallas Ground Lease transaction

and the Littleton Ground Lease transactions as financing agreements and not true leases [AP Case Nos. 09-03466 and 09-03465] (the "**Recharacterization Proceedings**").

O. WHEREAS Dallas MSRESS and Denver MSRESS timely answered the Complaints filed in the Recharacterization Proceedings and disputed certain of the factual allegations and legal conclusions asserted by the Debtors in the Recharacterization Proceedings and generally denied that any grounds existed to recharacterize the Dallas Ground Lease and the Littleton Ground Lease as financing agreements.

P. WHEREAS among others, each of the Agents for those lenders of the Corporate Revolver[1], Landowner Debtors (as defined in the Plan), the Agent for the Construction Lenders and Morgan Stanley Entities claim a competing lien and claim against the Sale Proceeds.

Q. WHEREAS the Debtors' have filed their Disclosure Statement for Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "**Disclosure Statement**") and Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as such plan may be amended and modified, the "**Plan**"). The Plan and Disclosure Statement contemplate a settlement of the respective claims against and to the Sale Proceeds including a resolution of the disputes of the claims of the Morgan Stanley Entities as further set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties hereby agree as follows, subject to Bankruptcy Court approval:

Section 1. PAYMENTS AND TRANSFERS

1.1 Cash Payment. Upon the later of the Operative Date or the closing of the Redwood sale as contemplated under the Plan, a cash payment shall be made to Denver MSRESS of $1,000,000 from the TIP pursuant to, and in accordance with, the terms and conditions of the Plan (the "**Payment Carve-Out**").

1.2 The Ground Lessors agree to transfer legal ownership of the property subject to the Littleton Ground Lease and the Dallas Ground Lease. The Ground Lessors, respectively, covenant to convey legal title by quitclaim deed, in a form reasonably acceptable to the Debtors and Redwood, as directed in the Plan, the parcels of real property subject to the Ground Leases excluding the Littleton Out-Parcel, as soon as reasonably practicable after the Operative Date (the "**Transfers**"), as those parcels of real property are more particularly described in the following documents:

(i) Purchase Agreement dated October 11, 2006 (the "**Littleton Purchase Agreement**"), by and among Littleton Debtor, ERC and Denver MSRESS, for the acquisition of the real property relating to the Wind Crest Campus, located in Littleton, Douglas County, Colorado (as more particularly described in the Littleton Purchase Agreement); and

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1/ Terms used herein and not otherwise defined shall have the meaning ascribed to them under the Plan.

(ii) Purchase Agreement dated April 28, 2006 (the "**Dallas Purchase Agreement**"), by and among Dallas Debtor, ERC and Dallas MSRESS, for the acquisition of the real property relating to the Highland Springs Campus, located in Dallas, Collin County, Texas (as more particularly described in the Dallas Purchase Agreement);

Section 2. TRANSFER AND DISPOSITION OF THE LITTLETON OUT-PARCEL

2.1 Transfer of Littleton "Out-Parcel." The Littleton Out-Parcel shall, at any time after the later of (i) the Operative Date; or (ii) the closing of the Redwood sale pursuant to the Plan, at the sole and absolute election of the Littleton Agent, be transferred to a special purpose entity created by the Littleton Agent (the "**Littleton Out-Parcel SPE**").

2.2 Retention of Mortgages.

2.2.1 The Littleton Agent shall retain its first-priority mortgage lien against the right, title and interest in the Littleton Out-Parcel to secure (i) the amounts owed to the Littleton Agent under the Littleton Construction Loan after deducting any amounts received under the Plan (without taking into account any discharge of the Littleton Debtors' obligations under the Littleton Construction Loan based upon confirmation of the Plan, or otherwise); and (ii) the Carrying Costs (defined below) advanced by Littleton Agent or the Littleton Lenders.

2.2.2 On or before the Operative Date, Denver MSRESS shall be granted a junior lien against the right, title and interest in the Littleton Out-Parcel subordinated to the first-priority lien held by the Littleton Agent to secure (i) an amount equal to $26,650,000, less any amounts Denver MSRESS receives under the Plan; and (ii) any Carrying Costs advanced by Denver MSRESS. The Debtors, the Littleton Agent, or the Littleton Out-Parcel SPE, as applicable, shall execute and deliver a mortgage in a form reasonably acceptable to Denver MSRESS to secure the junior lien granted to Denver MSRESS on or before the Operative Date or, if transferred to the Littleton Agent or the Littleton Out-Parcel SPE, contemporaneously with any transfer of the Littleton Out-Parcel to the Littleton Agent or the Littleton Out-Parcel SPE.

2.3 Disposition of the "Littleton Out-Parcel."

2.3.1 Within 30 days of the execution and delivery of this Agreement, the Littleton Agent shall engage an independent third party licensed appraiser, to appraise the value of the Littleton Out-Parcel (the "**Appraisal**"). The Littleton Agent shall provide notice to, and confer with, Denver MSRESS concerning the engagement of the appraiser (but shall have no obligations to accept any comments or recommendations of Denver MSRESS). The cost of the Appraisal shall be deemed a Carrying Cost (as hereinafter defined) and shall be advanced by the Littleton Agent and/or the Littleton Lenders. The Littleton Agent shall provide to Denver MSRESS a copy of the Appraisal within two (2) business days of the Littleton Agent's receipt thereof.

2.3.2 Except as set forth below, the Littleton Agent shall, at its sole and absolute discretion, control the process, timing and amount to be received for any disposition of the Littleton Out-Parcel. Without limiting the foregoing, the Littleton Agent shall be entitled to:

(a) direct the Littleton Debtor to sell the Littleton Out-Parcel pursuant to a sale under 11 U.S.C. § 363 upon such terms and conditions approved by the Littleton Agent (the "**Bankruptcy Sale Process**"); or

(b) if the Littleton Agent has elected to transfer the Littleton Out-Parcel under Section 2.1 above:

(i) select a commercial real estate broker to market the Littleton Out-Parcel;

(ii) determine the terms and conditions of any agreement relating to the compensation of any commercial real estate broker; and

(iii) determine whether, when and on what terms (including price) to market the Littleton Out-Parcel; provided, however, that if the Littleton Agent determines that the Littleton Out-Parcel should be listed or advertised for sale at a price certain, the advertised listing price during the first six months the Littleton Out-Parcel is listed for sale shall be an amount equal to or exceeding the value assigned the Littleton Out-Parcel in the Appraisal (collectively, the "**Private Sale** Process").

The Littleton Agent shall provide notice to, and confer with, Denver MSRESS regarding the foregoing and shall provide copies to Denver MSRESS of all offers received for the Littleton Out-Parcel upon receipt of any such offers; provided, further, that prior to accepting any offer to purchase the Littleton Out-Parcel received from a third party, the Littleton Agent shall provide to Denver MSRESS no less than forty-eight (48) hours notice of the intent to accept any such offer.

2.3.3 Should the Littleton Agent elect to dispose of the Littleton Out-Parcel under Section 2.3.2(a) above, each of the Littleton Agent, Littleton Lenders and Denver MSRESS reserve their respective rights to credit bid under 11 U.S.C. § 363(k).

2.3.4 Should the Littleton Agent approve a sale to a third party (the "**Approved Sale**") either through the Bankruptcy Sale Process or the Private Sale Process, Denver MSRESS agrees to cooperate in the consummation of such Approved Sale including, but not limited to, releasing its retained mortgage against the Littleton Out-Parcel. Denver MSRESS waives any and all rights it may have a junior lienholder, or otherwise, to object to the manner (including price) of the disposition of the Littleton Out-Parcel, provided that the terms and conditions are complied with.

2.3.5 Payment of Carrying Costs. Until the Littleton Out-Parcel is sold pursuant to the procedures set forth above, any and all costs to maintain and preserve the Littleton Out-Parcel first arising after the transfer of closing of the sale of the Debtors' assets to Redwood, including payment of real estate taxes and insurance (collectively, the "**Carrying Costs**") may, but are not required to, be advanced by the Littleton Agent, the Littleton Lenders and/or Denver MSRESS. Should the Littleton Agent, Littleton Lenders or Denver MSRESS advance any Carrying Costs, the Littleton Agent, Littleton Lenders and/or Denver MSRESS shall

be reimbursed such Carrying Costs as a first priority expense from the proceeds from the sale of the Littleton Out-Parcel.

2.4 Disposition of Proceeds from Sale of Littleton Out-Parcel. Upon consummation of an Approved Sale, the proceeds from such sale shall be paid as follows:

(i) First, to the payment of any transaction costs relating to the sale including, but not limited to, broker's commission, transfer taxes, reasonable attorneys' fees and the reimbursement to the Littleton Agent, Littleton Lenders or Denver MSRESS for the advancement of Carrying Costs;

(ii) Second, to the Littleton Agent, for the benefit of the Littleton Lenders, up to an amount of $6,000,000; and

(iii) Third, the balance (if any) of such proceeds shall be evenly split 50% to the Littleton Agent for the benefit of the Littleton Lenders and 50% to Denver MSRESS up to the amounts of the claims of, respectively, the Littleton Agent and Denver MSRESS.

Section 3. WITHDRAWAL OF CLAIMS AND RELEASES

3.1 Withdrawal of all of Morgan Stanley Entities' Motions and Objections in the Erickson Bankruptcy Proceedings. As a show of good faith, the Morgan Stanley Entities previously withdrew from participation in the Joint Motion for Appointment of an Examiner [Docket No. 520]. Upon the Operative Date, the Morgan Stanley Entities shall take such steps and file such documents as are necessary to cause the withdrawal, with prejudice, of their Motion for Order Authorizing Examination of the Debtors Pursuant to Bankruptcy Rule 2004 [Docket No. 559]. The Morgan Stanley Entities also covenant that they will not proceed with any Rule 2004 exams already scheduled.

3.2 Withdrawal of the Debtors' Complaints for Declaratory Judgment. Upon the Operative Date and the Transfers, the Debtors shall take such steps and file such documents as are necessary in the adversary proceedings to cause the withdrawal and dismissal, with prejudice, of the Recharacterization Proceedings.

3.3 Joint Release of All Other Claims. Upon the Operative Date, each Settling Party expressly, and by operation of the Final Order, on behalf of itself and its predecessors, successors and assigns, hereby fully, forever and finally generally waives, releases and discharges, the other Settling Party, and each of the Settling Parties, and each of their employees, agents, representatives, independent contractors, consultants, experts, attorneys, accountants, trustees, predecessors, successors, heirs, and assigns, and all persons or entities acting by, through or on behalf of any of them, of and from any and all claims, rights, duties, actions, causes of action, torts or tort liability, duty of care liability claims, contracts, damages, losses, debts, obligations, agreements, liabilities, indemnifications, environmental or other regulatory or governmental claims or obligations, attorneys' fees, costs, expenses, settlements, judgments, fines, restitution or forfeitures, of any nature whatsoever, whether asserted or unasserted, known

or unknown, suspected or unsuspected, fixed or contingent, and whether arising under state statutory law, federal statutory law, state common law, federal common law or otherwise, which arise out of or in connection with any of the Morgan Stanley Entities' claims against the Debtors, other than the obligations set forth in this Agreement and subject to the rights of the Morgan Stanley Entities to assert claims against the Debtors and receive payments as provided for in the Plan, including, without limitation, through the TIP and the Liquidating Creditor's Trust, which rights are expressly preserved; and provided further that the Morgan Stanley Entities shall consent to the releases, waivers, and injunctions provided to and for the benefit of the Lenders (as such term is defined in the Plan) as set forth in the Plan. Notwithstanding anything to the contrary herein, the claims asserted by PPF MF 3900 Gracefield Road, LLC against the Debtors, certain non-debtor affiliates, and Sovereign Bank, are not being released, are not affected by this Agreement, and, without any concession by the Debtors or the Lenders as to the validity of those claims, are expressly preserved.

3.4 Subordination/Subrogation/Pay-Over: As set forth in the Plan, each of the Littleton Lenders, Dallas Lenders and Kansas Lenders waive all (i) subordination and pay-over rights with respect to distributions from the Liquidating Creditor's Trust and the recipient by the Morgan Stanley Entities; and (ii) subrogation rights with respect to any claims filed by Morgan Stanley Entities, including any mezzanine loan/sale-leaseback deficiency claims or mezzanine loan/sale-leaseback guarantee claims that have been voluntarily waived by the Morgan Stanley Entities; provided that the Lenders pay-over waiver and subrogation waiver shall only be effective upon approval of this Agreement and the Operative Date (the "**Lenders Waiver**"). Further, the Debtors hereby waive any and all objections to the treatment of the mezzanine loan/sale-leaseback deficiency claim or mezzanine loan/sale-leaseback guarantee claim asserted by Denver MSRESS as an unsecured claim entitled to receive distributions from the Liquidating Creditor's Trust. The terms of this paragraph 3.4 shall only be effective upon approval of this Agreement and the Operative Date.

Section 4. APPROVALS

4.1 Plan of Reorganization. Approval for this Agreement will require entry of an order confirming the Plan that incorporates and reflects these terms and conditions of this Agreement. If this Agreement is not approved through confirmation of the Plan, this Agreement shall be null and void and the Settling Parties shall be restored to all of their respective rights as they existed prior to the execution and delivery of this Agreement.

4.2 Morgan Stanley Support. The Morgan Stanley Entities agree to support the Plan subject to the terms contained herein.

4.3 Agent Signatures. The Littleton Agent, Dallas Agent and Kansas Agent shall agree to execute this Agreement within two (2) business days following the entry of a Final Order confirming the Plan.

Section 5. MUTUAL REPRESENTATIONS, COVENANTS AND WARRANTIES

Each of the Settling Parties represents warrants and agrees with the other Settling Parties as follows:

5.1 Independent Advice. It has received independent legal advice from its attorneys with respect to each of the matters contained herein, including the advisability of making the settlement provided herein, executing the Agreement and consummating the transactions contemplated thereby.

5.2 Reliance. Except as expressly stated in this Agreement, neither it nor any of its officers, members, managers, agents, partners, employees, representatives, or attorneys has made any statement or representation to any person regarding any fact relied upon in entering into this Agreement, and it is not relying upon any statement, representation or promise of any person (or of any officer, agent, employee, representative, or attorney for any other person) in executing this Agreement. Rather, except as expressly set forth in this Agreement, each Settling Party is relying exclusively on its own diligence and investigation.

5.3 Diligence and Investigation. It has made such investigation of the facts pertaining to this Agreement and of all the matters pertaining thereto as it deems necessary.

5.4 Understanding. It has read this Agreement and understands the contents hereof.

5.5 No Assignment. There has been no assignment, sale or transfer, by operation of law or otherwise of such parties' interests or any claim, right, cause of action, demand, obligation, liability or interest released by it as provided herein.

Section 6. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

6.1 Operative Date. This Agreement shall become operative on the first date on which each of the following has occurred (such date being defined as the "**Operative Date**"):

(a) **Execution**. This Agreement has been fully executed; and

(b) **Final Orders**. The Bankruptcy Court has entered orders confirming the Plan, neither the operation nor effect of which has been reversed, stayed, modified or amended, and as to which order, or any revision, modification or amendment thereto, the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing has been taken or is pending (the "**Final Order**"). The Final Order shall also consist of an order to which an appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been filed, or the time to do any of the foregoing has not yet expired, but as to which the Settling Parties, in their sole and absolute discretion, jointly elect to declare this Agreement effective.

For the avoidance of doubt, the distributions, if any, from the sale proceeds from the sale of the Littleton Out-Parcel shall not be a condition precedent the effectiveness of this Agreement.

6.2 Termination Date.

(a) If this Agreement is not effective by May 7, 2010, unless such date is extended by a writing signed by all Settling Parties (the "**Termination Date**"), then this Agreement shall become null and void, subject to and in accordance with Section 5.3, below, and the Settling Parties shall be returned to the status quo ante as if this Agreement had never been executed.

(b) If the Court does not enter the Final Orders, or if the Court enters a Final Order and appellate review is sought and, on such review, the entry of the Final Order is finally vacated, modified or reversed, then this Agreement and the settlement incorporated herein shall be cancelled and terminated, unless all parties who are adversely affected thereby (including the Lenders), in their sole discretion within ten (10) days from the date of the mailing of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the settlement under the terms of the Final Order as modified by the Court or on appeal.

6.3 Effect of Termination. Unless otherwise ordered by the Court, in the event that this Agreement shall not become effective on or prior to the Termination Date or this Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the settlement as described herein is not approved by the Court or the Final Order is reversed or vacated following any appeal taken therefrom, then:

(a) the Settling Parties shall be restored to their respective positions as if this agreement had not been executed and delivered, and with all of their respective claims and defenses preserved as they existed, including, without limitation, the Proofs of Claim filed with respect to the Ground Leases held by Denver MSRESS and Dallas MSRESS, and all claims and defenses in the Recharacterization Proceedings. The Settling Parties shall take such steps and file such documents as are necessary to cause such claims and defenses to be restored.

(b) the terms and provisions of this Agreement shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in any action or proceeding for any purpose; and

(c) any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

Section 7. NO ADMISSIONS

7.1 No Admissions. The Settling Parties intend this Agreement and the settlement described herein to be a final and complete resolution of all disputes between them with respect to the Morgan Stanley Entities' Ground Lease claims, and it shall not be deemed an admission by any Settling Party as to the merits of any claim or defense with respect to the Ground Lease claims.

7.2 Agreement Inadmissible. Neither this Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the

settlement is, or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Settling Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement shall be admissible in any proceeding for any purpose, except to seek approval of or to enforce the terms of the settlement.

7.3 Recitals Not Binding. In the event that the settlement is terminated or does not receive preliminary or final court approval, the Recitals set forth in the agreement shall not constitute binding admissions, statements against interest or be admissible as evidence in any proceedings between or involving one or more of the Parties to establish any fact, waiver, estoppel, contention, assertion or allegation of any kind or nature whatsoever.

Section 8. MISCELLANEOUS PROVISIONS

8.1 Intent/Further Assurances. The Settling Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

8.2 Avoidability. In the event that the settlement is terminated or does not receive final court approval, then, subject to Section 6.2 hereof, this Agreement shall be terminated in accordance with Section 6.3 of this Agreement.

8.3 Good Faith. The Settling Parties agree that the Agreement as described herein were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

8.4 Disclosure. Nothing in this Agreement shall prohibit any comment on the accuracy of any public description of the settlement.

8.5 Integration. Any exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

8.6 Amendments. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties, as the case may be, or their respective successors-in-interest.

8.7 Authority. Each counsel or other person executing this Agreement or any of its exhibits on behalf of any party hereto hereby warrants that such person has the full authority to do so.

8.8 Counterparts. This Agreement may be executed by facsimile and in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

8.9 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto, including any corporation or other entity into or with which any party merges, consolidates or reorganizes.

8.10 Jurisdiction. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of such Bankruptcy Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

8.11 Governing Law. This Agreement and any exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles.

8.12 Interpretation. The Settling Parties, including their counsel, have participated in the preparation of this Agreement, and this Agreement is the result of the joint efforts of the Settling Parties. This Agreement has been accepted and approved as to its final form by all Settling Parties and upon the advice of their respective counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Settling Party as a result of the manner of the preparation of this Agreement. Each Settling Party agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Settling Party shall not be employed in the interpretation of this Agreement and are hereby waived.

8.13 Entire Agreement. This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Agreement or any of its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true; each party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

THE DEBTORS

Erickson Retirement Communities, LLC

_____ _____

Name: Date:
Title:

Erickson Construction, LLC

_____ _____

Name: Date:
Title:

Erickson Group, LLC

_____ _____

Name: Date:
Title:

Senior Campus Services, LLC

_____ _____

Name: Date:
Title:

[CONTINUED]